

**IN THE COURT OF APPEALS OF IOWA**

No. 9-552 / 08-2000  
Filed August 6, 2009

**STATE OF IOWA,**  
Plaintiff-Appellant,

**vs.**

**DENNIS ALLEN PHIPPS,**  
Defendant-Appellee.

---

Appeal from the Iowa District Court for Plymouth County, Robert J. Dull,  
Judge.

Following the grant of discretionary review, the State seeks reversal of the  
district court's ruling disallowing use of a previous conviction of operating while  
intoxicated to enhance a current charge. **REVERSED.**

Thomas J. Miller, Attorney General, Mary Tabor and Kyle Hanson,  
Assistant Attorneys General, Darin J. Raymond, County Attorney, and Amy  
Oetken, Assistant County Attorney, for appellant.

Michael P. Murphy of Murphy, Collins & Bixenman, Le Mars, for appellee.

Considered by Vogel, P.J., and Potterfield and Mansfield, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

Dennis Phipps was arrested on July 20, 2008, and charged with operating while intoxicated, third offense, in violation of Iowa Code section 321J.2 (2007).<sup>1</sup> Phipps has two previous convictions for operating while intoxicated that the State alleges elevate the current charge to a third offense. Phipps was convicted of operating while intoxicated on May 23, 2000. Phipps concedes that his 2000 conviction may be used to enhance his current charge. Phipps was also arrested on July 7, 1995, for operating while intoxicated. Because of this arrest, his license was revoked effective July 18, 1995, and the revocation concluded July 18, 1996. Phipps was convicted of the July 7, 1995 charge of operating while intoxicated on September 4, 1996.

On October 10, 2008, Phipps filed a motion for adjudication of law points, arguing the effective date of his license revocation resulting from the 1996 conviction was more than twelve years before the arrest on his current charge. Therefore, according to his reading of the statutory twelve-year look-back provision, the 1996 conviction could not be used to enhance Phipps's charge in the current matter, and the current charge should be only a second offense. On December 3, 2008, the district court filed a written ruling finding the 1996 conviction could not be used to enhance Phipps's present charge. The State filed an application for discretionary review. The Iowa Supreme Court granted discretionary review on January 7, 2009. The State asserts the statute at issue

---

<sup>1</sup> Phipps was also charged with driving while revoked in violation of Iowa Code section 321J.21. That charge is not at issue on appeal.

is unambiguous, but if statutory interpretation was necessary, the district court misinterpreted the statute.

## **II. Standard of Review**

We review an adjudication of law points for errors at law. *State v. Maher*, 618 N.W.2d 303, 305 (Iowa 2000). We review issues of statutory interpretation and application for errors of law. Iowa R. App. P. 6.4; *State v. Morris*, 416 N.W.2d 688, 689 (Iowa 1987).

## **III. Merits**

Iowa Code section 321J.2(4)(a) provides, “Any conviction or revocation deleted from motor vehicle operating records pursuant to section 321.12 shall not be considered as a previous offense.” Iowa Code section 321.12(4) explains when records should be destroyed and states:

The director shall not destroy any operating records pertaining to arrests or convictions for operating while intoxicated, in violation of section 321J.2 or operating records pertaining to revocations for violations of section 321J.2A, except that a conviction or revocation under section 321J.2 or 321J.2A that is not subject to 49 C.F.R. § 383 shall be deleted from the operating records twelve years after the date of conviction or the effective date of revocation.

The State argues the plain language of this statute should be understood to convey that a conviction shall be deleted twelve years after the date of conviction, and a revocation shall be deleted twelve years after the effective date of revocation. The district court determined this statute was ambiguous and construed the statute to provide that convictions and/or revocations shall be deleted from the record twelve years from whichever occurred first as to a single driving incident.

“We resort to rules of statutory construction only when the explicit terms of a statute are ambiguous. A statute is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute.” *State v. Albrecht*, 657 N.W.2d 474, 479 (Iowa 2003) (internal quotations and citations omitted). When we interpret statutes, our goal is to determine legislative intent. *State v. Adams*, 554 N.W.2d 686, 689 (Iowa 1996). We do not speculate as to the probable legislative intent apart from words used in the statute. *Id.* Legislative intent can be expressed by omission as well as inclusion. *Id.* “In searching for legislative intent, we consider . . . the language of the statute, . . . its subject matter, the object sought to be accomplished, the purpose to be served, underlying policies, remedies provided, and the consequences of various interpretations.” *Albrecht*, 657 N.W.2d at 479.

We agree with the district court that the statute at issue is ambiguous. A review of the legislative history of Iowa Code section 321.12 helps clarify legislative intent in drafting the current statute. Before the statute was amended in 1997, Iowa Code section 321.12 (1997) read:

The director shall destroy any operating records pertaining to arrests or convictions for operating while intoxicated . . . which are more than twelve years old. The twelve-year period shall commence with the date of the arrest or conviction for the offense, whichever first occurs . . . .

The director shall destroy any operating records pertaining to revocations for violations of section 321J.2A which are more than twelve years old. The twelve-year period shall commence with the date the revocation of the person’s operating privileges becomes effective.

This section is instructive in two ways. First, it demonstrates the legislature’s intent to have two distinct twelve-year periods running, one for the arrest or

conviction, and another for the revocation of operating privileges. Second, it demonstrates the legislature's understanding and use of the phrase "whichever first occurs." The district court interpreted the statute at issue to allow for the deletion of convictions and/or revocations from the record twelve years after whichever occurred first. In reaching this conclusion, the district court read the phrase "whichever first occurs" into the statute. In interpreting statutes, we are confined to the express terms of the statute. *State v. Byers*, 456 N.W.2d 917, 919 (Iowa 1990). The phrase "whichever first occurs" was removed from the statute when it was amended in 1997. Had the legislature intended the twelve-year look-back period to apply to either a conviction or revocation, whichever occurred first, it presumably would have left the phrase "whichever first occurs" in the statute.

It appears that the 1997 amendment was an attempt by the legislature to join the two distinct paragraphs of section 321.12 (1997) into one paragraph so as to avoid repetition. However, this amendment allowed the current statute to retain the same meaning as the pre-1997 version. Thus, under the current statute, a conviction shall be deleted from the operating records twelve years after the date of conviction, and a revocation shall be deleted from the operating records twelve years after the effective date of revocation. Consequently, Phipps's 1996 conviction would have properly been on his record when he was arrested in 2008, and the State could use the 1996 conviction to enhance the current charge.

**REVERSED.**