

# LEGISLATIVE RESEARCH UNIT

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May 21, 2008

## PENALTIES FOR DUI

asked for information on Illinois penalties for DUI. We summarize below major administrative and criminal penalties for DUI. It would not be possible to describe all potential legal consequences of DUI without writing a much longer report. Please note also that a 2007 act taking effect July 1 of this year will rewrite the main section of the Vehicle Code on DUI; and another 2007 law taking effect next January 1 will make other changes, including increasing mandatory license suspension periods for refusing to take or failing a blood alcohol test. We describe below major changes that those acts will make in current law.

### Administrative Suspension of License

The Illinois Vehicle Code authorizes the Secretary of State to suspend the driver's license of any driver arrested for DUI who either fails a chemical test or refuses to be tested.<sup>1</sup> The suspension is automatic and separate from any criminal penalties. Even if an offender requests a judicial hearing to challenge the arrest, the suspension will take effect.

Refusal to be tested is to result in a mandatory suspension of the driver's license for 6 months the first time,<sup>2</sup> or 3 years for a repeat refusal within 5 years.<sup>3</sup> (Public Act 95-400, effective January 1, 2009, will double the mandatory suspension for a first refusal to 12 months.) Any driver found by a test to have a blood alcohol concentration (BAC) of at least 0.08% receives a mandatory suspension of 3 months the first time,<sup>4</sup> or 1 year for any additional time within 5 years.<sup>5</sup> (Public Act 95-400 will double the mandatory suspension for a first failure of the test to 6 months effective January 1, 2009.)

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## **Suspension of License After Conviction**

Anyone later convicted of DUI (which can be committed even without having a BAC of at least 0.08%<sup>6</sup>) is to receive a mandatory driver's license suspension lasting one of the following lengths of time:<sup>7</sup>

<i>Number of DUI conviction</i>	<i>Suspension (years)</i>
1	1
2 (within 20 years)	5
3	10
4 or more	Never restored

## **Judicial Driving Permits**

After a first-time DUI offender's arrest, the trial court can order the Secretary of State to issue a judicial driving permit (JDP) if necessary to relieve undue hardship.<sup>8</sup> No JDP may be issued until the 31st day of license suspension.<sup>9</sup> A JDP allows the offender to drive between home and work, or for employment duties, and only during specific times.<sup>10</sup> It also can allow driving to get alcohol or drug counseling, or to attend school, if the offender has no alternative transportation.<sup>11</sup> (Public Act 95-400, effective next January 1, will replace the term "judicial driving permit" with "monitoring device driving permit" (MDDP) and make some changes in procedures for their issuance and use. Use of MDDPs will not be limited to particular kinds of destinations; but they will be valid only in vehicles equipped with breath alcohol interlock devices.)

## **Criminal Penalties**

Criminal penalties for DUI depend on the driver's age and BAC; whether the driver was transporting children while under the influence; and whether the driver had any prior DUI convictions. We summarize these penalties below. For more information on penalties authorized for crimes under Illinois law, we enclose a copy of our chart "Penalties for Crimes in Illinois".

The penalties for DUI in various situations are complex, and constantly being made more so by statutory changes. The summary below describes the major provisions on this subject, but the actual statutes must be consulted for exact details. Our summary is based on Public Act 95-578, which completely rewrites section 11-501 of the Illinois Vehicle Code effective June 1, 2008, replacing several versions of that section that

resulted from amendments made to it in recent years. We note any major changes that the new act makes in the currently effective versions of that section.

#### First Offense

Driving under the influence of alcohol and/or any other drug(s) or intoxicating compound(s) that endanger safe driving is a Class A misdemeanor, punishable by up to 1 year in jail and a fine up to \$2,500.<sup>12</sup> (There is also a mandatory fine, in addition to any other fine, of \$500 for a first offense, or \$1,000 for a repeat offense, of which 20% goes to the arresting police department and 80% to the state's General Revenue Fund.<sup>13</sup>)

#### Second Offense

A second DUI offense, if it occurs at least 5 years after the first, is also a Class A misdemeanor. But if the second offense occurs within 5 years after the previous DUI offense, there is a mandatory minimum penalty of at least 5 days in jail or at least 240 hours of community service.<sup>14</sup> Under P.A. 95-758, a second offense will bring those mandatory consequences whether or not it occurs within 5 years after the first one.<sup>15</sup>

#### Third Offense

A third DUI offense is a Class 2 felony,<sup>16</sup> punishable by 3-7 years in prison or up to 4 years' probation, and by a fine up to \$25,000. If the third DUI offense occurs within 5 years after the second, there is a mandatory minimum penalty of at least 10 days in jail or at least 480 hours of community service.<sup>17</sup> Under P.A. 95-578, the third DUI offense need not occur within 5 years after the second to bring those mandatory minimum penalties.<sup>18</sup>

#### Fourth Offense

A fourth DUI offense is also a Class 2 felony, for which the driver is ineligible for probation or conditional discharge.<sup>19</sup>

#### Fifth Offense

A fifth DUI offense is a Class 1 felony, punishable by 4-15 years in prison and a fine up to \$25,000, for which the driver is ineligible for probation or conditional discharge.<sup>20</sup>

### Sixth or Further Offense

A sixth or later DUI offense is a Class X felony,<sup>21</sup> punishable by 6-30 years in prison and a fine up to \$25,000. Probation is not allowed for any Class X felony.

### DUI Causing Death

A DUI offense that is the proximate cause of another person's death is a Class 2 felony for which the convicted driver must be sentenced to between 3 and 14 years in prison "unless the court determines that extraordinary circumstances exist and require probation."<sup>22</sup>

### DUI While License is Revoked or Suspended for DUI

Committing DUI during a period of license suspension or revocation that resulted from DUI or reckless homicide is a Class 4 felony,<sup>23</sup> punishable by 1-3 years in prison and a fine up to \$25,000. A third DUI offense, if committed during a license suspension or revocation that was imposed for one of those reasons, is a Class 3 felony,<sup>24</sup> punishable by 2-5 years in prison and a fine up to \$25,000. A fourth or fifth DUI offense, committed during a license suspension or revocation for one of the reasons mentioned above, is a Class 2 felony.<sup>25</sup> (Public Act 95-578 will make a fifth offense a Class 1 felony effective this July 1.<sup>26</sup>) Such a fourth or fifth offender is ineligible for probation or conditional discharge.<sup>27</sup>

### DUI While Transporting a Child

Anyone 21 or older who commits DUI while transporting a person under age 16 is subject to a sentence of 6 months in jail; a mandatory minimum fine of \$1,000; and 25 days of community service in a program to benefit children.<sup>28</sup> If such a driver, when committing DUI a first time, is involved in a crash causing bodily harm to the child under 16, and the DUI offense is the proximate cause of the injury, it is a Class 4 felony with an (apparently mandatory) sentence of at least 1 year in prison, a mandatory fine of \$2,500, and 25 days of community service in a program to benefit children. The imprisonment and assignment to community service cannot be suspended, and probation is not allowed in lieu of part of those sanctions.<sup>29</sup> Public Act 95-578 will not impose a mandatory minimum sentence of 1 year, but will require the mandatory fine and community service.<sup>30</sup>

A second DUI offense, if committed by a person 21 or older while transporting a person under 16, brings a mandatory minimum of 6 months in jail, a mandatory minimum fine of \$1,000,

and 140 hours of mandatory community service, including at least 40 hours in a program to benefit children.<sup>31</sup> If the second DUI offense, committed by a person at least 21 while transporting a person under 16, occurs within 10 years after the person's first DUI offense, it is a Class 4 felony resulting in a sentence (apparently mandatory) of 1 year in prison, 25 days of community service in a program to benefit children, and a mandatory minimum fine of \$2,500 in addition to any other penalties.<sup>32</sup> If the second DUI offense is committed within 10 years after the person's first DUI offense, and while committing the second offense the driver, who is at least 21, is involved in a crash causing bodily harm to the child under 16, with the DUI offense being the proximate cause of the injury, it is a Class 4 felony with an (apparently mandatory) sentence of at least 1½ years in prison, a mandatory fine of \$5,000, and 25 days of community service in a program to benefit children. The imprisonment and assignment to community service cannot be suspended, and probation is not allowed in lieu of part of those sanctions.<sup>33</sup> Public Act 95-578 will make a second DUI offense while transporting a person under 16 a Class 2 felony regardless of how long it occurs after a first offense, and require a \$2,500 fine and at least 25 days of community service in a program to benefit children.<sup>34</sup>

A third DUI offense (which need not be within 10 years after the second offense), if committed by a person 21 or older while transporting a person under 16, is also a Class 4 felony, with an (apparently mandatory) sentence of 1½ years in prison, a mandatory fine of \$2,500, and 25 days of community service benefiting children.<sup>35</sup> If a driver has three times committed the offense of DUI while 21 or older and transporting a person under 16, and the last such offense is within 20 years after a previous DUI offense, it is a Class 3 felony, bringing a sentence (apparently mandatory) of 3 years in prison, 25 days of community service in a program to benefit children, and a mandatory \$25,000 fine.<sup>36</sup> Under P.A. 95-578, a third DUI offense while transporting a person under 16 will be a Class 2 felony and bring a mandatory fine of \$25,000 and 25 days of community service in a program benefiting children.<sup>37</sup>

If a driver who is 21 or older has four times committed DUI while either (a) transporting a person under 16, or (b) having a BAC of at least 0.16%, the fourth offense is a Class 2 felony that is not subject to probation or conditional discharge and brings a minimum fine of \$25,000.<sup>38</sup> Public Act 95-578 will add 25 days of community service for committing a fourth DUI while transporting a person under 16, but will reduce the fine for a fourth offense while having a BAC of at least 0.16% to \$5,000.<sup>39</sup>

Under P.A. 95-578, a fifth DUI offense while transporting a person under 16 will be a Class 1 felony and bring a mandatory fine of \$25,000 and 25 days of community service in a program

benefiting children.<sup>40</sup> A sixth or later violation while transporting a person under 16 will be a Class X felony, requiring the same mandatory fine and community service.<sup>41</sup>

#### Driving With Twice the BAC Limit

Anyone convicted of DUI while driving with a BAC of at least 0.16% must do at least 100 hours of community service and pay a \$500 fine in addition to any other penalties.<sup>42</sup> Committing DUI with at least a 0.16% BAC, within 10 years after any other DUI offense, requires a minimum of 2 days in jail and a \$1,250 fine.<sup>43</sup> A DUI offense with at least a 0.16% BAC that is the third DUI offense of any kind within 20 years is a Class 2 felony and requires a mandatory minimum of 90 days in jail and a \$2,500 fine.<sup>44</sup> Public Act 95-578 will remove the requirements that the second DUI be committed within 10 years, and that the third be committed within 20 years, after the first DUI offense.<sup>45</sup>

A fourth or fifth DUI offense, if the last three were all committed with at least 0.16% BACs, is a Class 2 felony with a mandatory minimum fine of \$2,500, and the offender is ineligible for probation or conditional discharge.<sup>46</sup> Under P.A. 95-578, a fourth DUI offense, if committed with at least a 0.16% BAC, is a Class 2 felony, and a fifth is a Class 1 felony. Both crimes bring minimum \$5,000 fines whether or not the previous DUI offenses were committed with at least 0.16% BACs.<sup>47</sup>

As mentioned earlier, a sixth or later DUI offense of any kind is a Class X felony.<sup>48</sup>

#### Aggravated DUI

The following acts constitute aggravated DUI: (1) committing DUI for more than the second time;<sup>49</sup> (2) committing DUI while driving a school bus carrying persons under age 19; (3) committing DUI a second time, after either a conviction for committing reckless homicide while under the influence, or a conviction for a DUI offense that caused great bodily harm or permanent disability or disfigurement; (4) committing DUI in a school speed zone, if that is the proximate cause of bodily harm to another person; (5) committing DUI that is the proximate cause of the death of another person in a motor vehicle, snowmobile, all-terrain vehicle, or watercraft accident; (6) committing DUI during a period of license suspension or revocation resulting from DUI, reckless homicide, or failure to report an accident; (7) committing DUI without having a license, permit, or JDP, or knowing that the vehicle lacks liability insurance; and (8) committing a second DUI while transporting a person under 16.<sup>50</sup> (The item designated (8) was added by P.A. 95-578.)

The act described in item (1) above is a Class 2 felony.<sup>51</sup> Most of the other violations are Class 4 felonies;<sup>52</sup> but some have higher penalties than the normal penalties for a Class 4 felony. Causing great bodily harm or permanent disability or disfigurement to another while committing DUI is punishable by 1-12 years in prison. Committing DUI and being involved in a motor vehicle, snowmobile, all-terrain vehicle, or watercraft accident that causes death is a Class 2 felony punishable by 3-14 years in prison if one person dies, or 6-28 years if at least 2 people die as a result.<sup>53</sup>

### **Additional Consequences of DUI for Offenders**

Convicted DUI offenders must be evaluated, at their expense, on whether they need alcohol or drug abuse treatment.<sup>54</sup> Any DUI offender may be required to attend a "victim impact panel" (apparently meaning a presentation by a group of persons about the impact of DUI on its victims).<sup>55</sup> Any DUI offender who causes an accident for which an emergency response is necessary is liable for all costs of the response.<sup>56</sup> An ignition interlock device designed to prevent a person who is under the influence of alcohol from driving is to be installed on each vehicle owned by a person convicted of a repeat DUI offense.<sup>57</sup>

We hope this information is helpful. Please let us know if we can be of further assistance.

Sincerely,

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Enclosure

Legislative Research Unit, "Penalties for Crimes in Illinois"  
(chart, Jan. 2005).

### Notes

1. 625 ILCS 5/6-206(a), subd. 31.
2. 625 ILCS 5/6-208.1(a), subd. 1.
3. 625 ILCS 5/6-208.1(a), subd. 3.
4. 625 ILCS 5/6-208.1(a), subd. 2.
5. 625 ILCS 5/6-208.1(a), subd. 4.

6. The elements of the crime listed in 625 ILCS 5/11-501(a)(2)-(6) include several, operating in the alternative, that do not require a BAC of at least 0.08%.
7. 625 ILCS 5/6-208(b), subds. 1 to 4.
8. 625 ILCS 5/6-208.1(f).
9. 625 ILCS 5/6-206.1(a).
10. 625 ILCS 5/6-206.1(a), subd. 1.
11. 625 ILCS 5/6-206.1(a), subds. 2 and 3.
12. 625 ILCS 5/11-501(b-2); 625 ILCS 5/11-501(c)(1), added by P.A. 95-578 (2007, eff. June 1, 2008), enacted by S.B. 607 (Cullerton-Silverstein et al.—Rose-Acevedo-Hernandez-Soto).
13. 625 ILCS 5/11-501(j); 625 ILCS 5/11-501.01(f), added by P.A. 95-578.
14. 625 ILCS 5/11-501(b-3).
15. 625 ILCS 5/11-501(c)(2), added by P.A. 95-578.
16. 625 ILCS 5/11-501(c-1)(2) as amended by P.A. 94-116 (2005, eff. Jan. 1, 2006); 625 ILCS 5/11-501(d)(2)(B), added by P.A. 95-578.
17. 625 ILCS 5/11-501(b-4) as amended by P.A. 94-116.
18. 625 ILCS 5/11-501(d)(3), added by P.A. 95-578.
19. 625 ILCS 5/11-501(c-1)(3) as amended by P.A. 94-116; 625 ILCS 5/11-501(d)(2)(C), added by P.A. 95-578.
20. 625 ILCS 5/11-501(c-1)(4) as amended by P.A. 94-116; 625 ILCS 5/11-501(d)(2)(D), added by P.A. 95-578.
21. 625 ILCS 5/11-501(c-16), added by P.A. 94-114 (2005, eff. Jan. 1, 2006); 625 ILCS 5/11-501(d)(2)(E), added by P.A. 95-578.
22. 625 ILCS 5/11-501(d)(2) as amended by P.A. 94-609 (2005, eff. Jan. 1, 2006); 625 ILCS 5/11-501(d)(2)(G) as amended by P.A. 95-578.
23. 625 ILCS 5/11-501(c-1)(1); 625 ILCS 5/11-501(d)(1)(G), added by P.A. 95-578.
24. 625 ILCS 5/11-501(c-1)(2); 625 ILCS 5/11-501(d)(2)(B), added by P.A. 95-578.
25. 625 ILCS 5/11-501(c-1)(3); 625 ILCS 5/11-501(d)(2)(C), added by P.A. 95-578.
26. 625 ILCS 5/11-501(d)(2)(D), added by P.A. 95-578.
27. 625 ILCS 5/11-501(c-1)(2.2); 625 ILCS 5/11-501(d)(2)(C) and (D), added by P.A. 95-578.
28. 625 ILCS 5/11-501(c-5) as amended by P.A. 94-110; 625 ILCS 5/11-501(c)(3) as amended by P.A. 95-578.
29. 625 ILCS 5/11-501(c-5.1), added by P.A. 94-110.
30. 625 ILCS 5/11-501(d)(1)(J) and (d)(2)(H).
31. 625 ILCS 5/11-501(c-6) as amended by P.A. 94-110.
32. 625 ILCS 5/11-501(c-7) as amended by P.A. 94-110.
33. 625 ILCS 5/11-501(c-7.1), added by P.A. 94-110.



34. 625 ILCS 5/11-501(d)(1)(K) and (d)(2)(H), added by P.A. 95-578.
35. 625 ILCS 5/11-501(c-9) as amended by P.A. 94-110.
36. 625 ILCS 5/11-501(c-10) as amended by P.A. 94-110.
37. 625 ILCS 5/11-501(d)(2)(B), added by P.A. 95-578.
38. 625 ILCS 5/11-501(c-11) as amended by P.A. 94-110.
39. 625 ILCS 5/11-501(d)(2)(c), added by P.A. 95-578.
40. 625 ILCS 5/11-501(d)(2)(D), added by P.A. 95-578.
41. 625 ILCS 5/11-501(d)(2)(E), added by P.A. 95-578.
42. 625 ILCS 5/11-501(c-12); 625 ILCS 5/11-501(c)(4), added by P.A. 95-578.
43. 625 ILCS 5/11-501(c-13).
44. 625 ILCS 5/11-501(c-14) as amended by P.A. 94-116.
45. 625 ILCS 5/11-501(c)(5) and (d)(2)(B), added by P.A. 95-578.
46. 625 ILCS 5/11-501(c-15) as amended by P.A. 94-114.
47. 625 ILCS 5/11-501(d)(2)(C) and (D), added by P.A. 95-578.
48. 625 ILCS 5/11-501(c-16), added by P.A. 94-114; 625 ILCS 5/11-501(d)(2)(E), added by P.A. 95-578.
49. Although the statutory provision cited applies to any violation beyond a second one, other provisions (625 ILCS 5/11-501(c-1)(3) and (4) as amended by P.A. 94-116) make fourth, fifth, or additional violations more serious classes of felonies.
50. 625 ILCS 5/11-501(d)(1) as amended by P.A. 94-329 (2005, eff. Jan. 1, 2006) and P.A. 95-578.
51. 625 ILCS 5/11-501(d)(2) as amended by P.A. 94-116 and P.A. 95-578.
52. 625 ILCS 5/11-501(d)(2).
53. 625 ILCS 5/11-501(d)(2).
54. 625 ILCS 5/11-501(e); 625 ILCS 5/11-501.01(a), added by P.A. 95-578.
55. 625 ILCS 5/11-501(e-1); 625 ILCS 5/11-501.01(b), added by P.A. 95-578.
56. 625 ILCS 5/11-501(f); 625 ILCS 5/11-501.01(c), added by P.A. 95-578.
57. 625 ILCS 5/11-501(i); 625 ILCS 5/11-501.01(e), added by P.A. 95-578.