

STATE:

General Reference:

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAQ):

Presumption (BAC):

Types of Drugs/Drugs and Alcohol:

Other:

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West's Smith-Hurd Illinois Compiled Statutes  
Annotated

Under the influence of alcohol 625 ILCS 5/11-501(a)(2)  
 $\geq .08^{357\text{and}358}$  or Any Amount<sup>359</sup> of Cannabis,  
 Controlled Substance or Intoxicating Compound  
 (Under the Use of Intoxicating Compounds  
 Act<sup>360</sup>) or 625 ILCS 5/11-501(a)(1) and (6)<sup>361</sup>  
 $\geq .08$  625 ILCS 5/11-501.2(b)(3)  
 Under the influence of (1) **Any Drug** (2) an  
 Intoxicating Compound or (3) a Combination of  
 Any Drug, Intoxicating Compound and Alcohol  
 625 ILCS 5/11-501(a)(3), (4) and (5)  
 The court may impose as a condition of bail of a  
 defendant charged with DUI that the defendant  
 refrain from operating a motor vehicle not  
 equipped with an ignition interlock device. The  
 court also may allow a defendant who is not  
 self-employed to operate a vehicle owned by the  
 defendant's employer that is not equipped with  
 an ignition interlock device in the course of the  
 defendant's employment. 725 ILCS 5/110-10 (b)  
 (14.4)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to  
Drugs (Yes/No):**Yes**<sup>362and363</sup> 625 ILCS 5/11-501.5(a)**Yes**<sup>364</sup> 625 ILCS 5/11-501.1**Yes** 625 ILCS 5/11-501.1(a)

<sup>357</sup> This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more. 625 ILCS 5/11-501.2(a)(5)

<sup>358</sup> Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 625 ILCS 5/11-501.2(a)(5), 501.8(v). cf. *People v. Thoman* 770 N.E.2d 228 (Ill. App. 2002)

<sup>359</sup> As found in the breath, blood or urine "resulting from unlawful use or consumption." 625 ILCS 5/11-501(a)(6)

<sup>360</sup> For a list of "intoxicating compounds," see 720 ILCS 690/1.

<sup>361</sup> The provision of the drunk driving law, that makes it an offense to operate a motor vehicle with any amount of cannabis or controlled substance in the body, was held to be constitutional under both the State and Federal constitutions. *People v. Fate*, 636 N.E.2d 549 (Ill. 1994), and *People v. Gassman*, 622 N.E.2d 845 (Ill. App. 2 Dist. 1993)

<sup>362</sup> Before a PBT can be administered, a law enforcement officer must have "reasonable actual DWI arrest for the purpose of assisting the officer in determining whether to require a chemical (evidentiary) test under the implied consent law. The law allows a defendant to introduce PBT test results into evidence at a DWI trial. The State does not have this same right. *People v. Rose*, 643 N.E.2d 865 (Ill. App. 4 Dist. 1994)

<sup>363</sup> Under an 18-month pilot program, the use of a "pupillimeter" may be substituted for a preliminary breath test device. 625 ILCS 5/11-501.5(b)

<sup>364</sup> **Persons Under 21 Years Old.** Under a separate implied consent law, a law enforcement officer may request that a person who is under 21 years old submit to a chemical test of either his/her blood, breath or urine for alcohol concentration if there is "probable cause to believe" that such person has consumed any amount of alcohol. An actual DWI arrest is not required. 625 suspicion" to believe that the driver has violated the DWI law. The test is given prior to an ILCS 5/11-501.8(a)

Chemical Breath Tests for Alcohol Concentration: (continued)

Refusal to Submit to Chemical Test Admitted into Evidence:	<b>Yes</b> (Criminal and Civil Cases) 625 ILCS 5/11-501.2(c)(1), <i>People v. Thomas</i> , 558 N.E.2d 656 (Ill. App. 2 Dist. 1990) and <i>People v. Garriott</i> , 625 N.E.2d 780 (Ill. App. 4 Dist. 1993)
Other Information:	If there is probable cause <sup>365</sup> of “driving while under the influence” related to a death or injury to another person, the driver <u>must</u> submit to chemical test of their blood, breath or urine for alcohol concentration or drug content. 625 ILCS 5/11-501.2(c)(2)
<u>Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:</u>	
Blood:	<b>Yes</b> 625 ILCS 5/11-501.1 and 5/11-501.8
Urine:	<b>Yes</b> 625 ILCS 5/11-501.1 and 5/11-501.8
Other:	Other bodily substances 625 ILCS 5/11-501.2
<u>Adjudication of DWI Charges:</u>	
Mandatory Adjudication Law (Yes/No):	<b>No</b>
Anti-Plea-Bargaining Statute (Yes/No):	<b>No</b> <sup>366</sup>
Pre-Sentencing Investigation Law (PSI) (Yes/No):	<b>Yes</b> Alcohol or Drug Evaluation (screening required) with appropriate treatment. 625 ILCS 5/11-501(e)
<u>Sanctions for Refusal to Submit to a Chemical Test:</u>	
<u>Refusal to Take a Preliminary Breath Test:</u>	
Criminal Sanctions (Fine/Jail):	<b>None</b>
Administrative Licensing Action (Susp/Rev):	<b>None</b>
Other:	<b>None</b>
<u>Refusal to Take Implied Consent Chemical Test</u> <sup>367</sup> :	
Criminal Sanction (Fine/Jail):	<b>None</b>
Administrative Licensing Action (Susp/Rev):	<b>First refusal – Suspension for 6 months A</b> Judicial Driving Permit is available after 30 days

<sup>365</sup> In addition to statutory law, case law provides that for the purpose of determining blood alcohol concentration, a blood sample may be taken without consent or by force for a DWI offense (injury or non-injury related) as long as the police have “probable cause” of such offense. *People v. Byrd*, 574 N.E.2d 1269 (Ill. App. 4 Dist. 1991), and *People v. Yant*, 570 N.E.2d 3 (Ill. App. 2 Dist. 1991)

<sup>366</sup> A defendant cannot obtain deferred judgment and be placed on supervision if within the past 10 years that person has (1) been convicted of DWI, (2) pleaded guilty to or stipulated-facts supporting the conviction of a DWI offense charge or (3) received supervision for a prior DWI offense. 730 ILCS 5/5-6-1(c) and (d)

<sup>367</sup> A person involved as a driver in an a fatal accident or an accident involving severely bleeding wounds, distorted extremities, or injuries that required the injured party to be carried from the scene (or any person arrested after being involved as a driver in a fatal accident or an accident involving personal injury) is deemed to have consented to undergo chemical testing for alcohol, drugs, or intoxicating compounds if the testing occurs within 12 hours of the time of the occurrence of the accident that led to the arrest. The person's driving privileges are subject to statutory summary suspension under Section 11-501.1 if that person refuses to undergo the testing. 625 ILCS 5/11-401(b-1)

of the suspension. Also, restricted driving privileges are available under 625 ILCS 5/6-206(c)(3)

Subsequent refusals<sup>368</sup> (within 5 years)

Suspension for **3 years** (2 years mandatory) 625 ILCS 5/6-206(c)(3), 6-206.1, 6-208.1 and 11-501.1

Other:

**Injury/Death Related Implied Consent Law.**

Under another separate and independent implied consent law, 625 ILCS 5/11-501.6, if a law enforcement officer has arrested a driver under any provision of the vehicle code and the driver has been involved in an accident that has resulted in either an injury or a fatality, the officer may request that the person submit to a chemical test of their blood, breath or urine for the purpose of determining either the alcohol or drug content in such person's blood. This law, like its predecessor, does not provide for individualized suspicion of impairment. If a driver refuses to submit to such a test, their driving privileges are suspended as follows: first Refusal – 6 months; a refusal where the driver has had a previous license suspension for either (1) a DWI offense conviction or (2) a refusal/admin. per se action under 625 ILCS 5/11-501.1 – 2 years These suspensions, however, are not mandatory. If a driver requests a hearing, the State can modify the suspension order or issue a restricted license for employment, educational or medical purposes. 625 ILCS 5/6-208.1, 11-500 and 11-501.6(a), (c) and (e) A person subject to this implied consent law is still subject to the provisions of 625 ILCS 5/11-501.1. I.e., the driver must comply with both implied consent laws. This revised statute (625 ILCS 5/11-501.6) was held not to violate the unreasonable search and seizure provisions of either the Federal or State constitutions. *Fink v. Ryan*, 673 N.E.2d 281 (Ill. 1996) cert denied 521 U.S. 1118 (1997)

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<sup>368</sup> Or a refusal where the person has had a previous DWI offense conviction or admin. per se violation (within 5 years). 625 ILCS 5/11-500 The mandatory license suspension provisions for subsequent refusals by a person > 21 years old have been held constitutional on both equal protection and due process of law grounds. *People v. Fisher*, 705 N.E.2d 67 (Ill. 1998)

**Persons Under 21 Years Old.** Persons under 21 years old, who refuse to submit to a chemical test for alcohol concentration under 625 ILCS 5/11-501.8(a), are subject to the following sanctions: first refusal – Suspension 6 months (30 days mand. Restricted driving privileges may be issued after 30 days.); subsequent refusal – Suspension 2 years (12 months mand. Restricted driving privileges may be issued after 12 months.) 625 ILCS 5/6-208.2 After a hearing, the State Secretary of State has the authority to “rescind” this licensing action. 625 ILCS 5/6-206(c)(3) and 6-208.2(a)

Sanctions Following a Conviction for a DWI OffenseCriminal Sanctions<sup>369</sup>:

## Imprisonment:

First and second offenses (Class A misdemeanor) – Less than **1 year**; third offenses<sup>370and371</sup> (Class 4 felony) – **1 to 3 years** fourth or subsequent offenses: (Class 2 felony: mandatory minimum of 10 days of imprisonment or mandatory minimum of 480 hours of community service – not eligible for a sentence of probation or conditional discharge; 730 ILCS 5/5-8-1 (5), 625 ILCS 5/11-501 and 730 ILCS 5/5-8-1(a)(7) and 5-8-3(a)(1) Second offense (within 5 years) – **5 days**; third and subsequent offense (within 5 years) – **10 days** (if probation or conditional discharge is granted) 625 ILCS 5/11-501(c), (d) and (h) and 730 ICLS 5/5-5-3(c)(3) and 5-6-1(d)

## Mandatory Minimum Term:

**Child Endangerment.**<sup>372</sup> Jail sanctions are **enhanced** as follows if the driver was transporting a person <16 years old. A person 21 years of age or older convicted of DUI while transporting a person under the age of 16 is subject to 6 months of imprisonment, an additional mandatory minimum fine of \$1,000, and 25 days of community service. Second violations with no bodily harm punished as follows: 6 months of imprisonment, an additional mandatory minimum fine of \$1,000, and an additional mandatory minimum 140 hours of community service, which shall include 40 hours of community service in a program benefiting children. Second violations with no

<sup>369</sup> All DUI Felonies are prosecuted by the State Attorney of the county where the felony was charged; {prosecution of felony DUI by local authorities prohibited}. 625 ILCS 5/11-208.5

<sup>370</sup> This offense is defined as “Aggravated Driving Under the Influence of Alcohol or Drugs or a Combination of Both” and includes a second offense where there has been a prior DWI related reckless homicide offense. 625 ILCS 5/II-501(d)

<sup>371</sup> **Aggravated Driving.** The following offenses are also defined as felony “Aggravated Driving” offenses: (1) Driving a school bus while DWI while the bus is occupied by school children (imprisonment – 1 to 3 years/fine – not more than \$25,000); (2) causing a DWI-related accident which results in either great bodily harm or permanent disability or disfigurement (imprisonment – 1 to 12 years/fine – not more than \$25,000) (3) driving in a 20 MPH school or construction zone in violation of the drunk driving law and causing an accident that resulted in bodily harm (but not great bodily harm with disability or disfigurement) (imprisonment – 1 to 3 years/fine – not more than \$25,000), (4) any third or subsequent DWI or (5) a second DWI and a previous conviction relating to reckless homicide or DWI homicide. As a condition of probation or conditional discharge an offender must serve either 10 days of imprisonment or 60 days of community service. Restitution may be required. 730 ICLS 5/5-8-1(a)(7), 5-9-1(a)(1) and 625 ILCS 5/11-501(a), (d)(1) and (2) and (h)

<sup>372</sup> **Child Endangerment/.16.** Under another provision of law, 625 ILCS 11-501(c-4) and 730 ILCS 5/5-5-3(c)(4.1)(10), in addition to any other sanctions, a person, convicted for a drunk driving offense is subject to the following sanctions if they (1) were transporting a child < 16 years old or (2) had a BAC/BrAC ≥ .16: first offense – 100 hours (mand) community service/\$500 (mand) fine; second offense (within 10 years) – 2 days (mand) jail/\$1,250 (mand) fine; third off (within 20 years) – 90 days (mand) jail/\$2,500 (mand) fine; and, fourth or subsequent off- Class 2 felony-3 to 7 years imprisonment and a fine of not more than \$25,000 (\$2,500 mand) with no eligibility for probation/conditional discharge.

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bodily harm within 10 years is a Class 4 felony and in addition to any other penalty imposed, is subject to one year of Imprisonment, 25 days of mandatory community service in a program benefiting children, and a mandatory fine of \$2,500.

The penalties are increased if the person while committing a DUI was involved in a motor vehicle accident that resulted in bodily harm to the child under the age of 16 being transported by the person, if the violation was the proximate cause of the injury. This violation is a class 4 felony and is subject to one year of imprisonment, a mandatory fine of \$2,500, and 25 days of community service in a program benefiting children. If repeated within 10 years, it is subject to 18 months of imprisonment, a mandatory fine of \$5,000, and 25 days of community service in a program benefiting children.

The imprisonment or assignment of community service for any child endangerment violations is not subject to suspension, nor is the person eligible for a reduced sentence. 625 ILCS 5/11-501 (c-5)

Fine:

Amount (\$ Range):

First and second offenses – Not more than **\$2,500**; third and subsequent offenses – Not more than **\$3,000** 730 ICLS 5/5-9-1 (a)(1) and (2) {except for DUI by school bus drivers with children on bus- not more than \$25,000.}

Mandatory Minimum Fine (\$):

**Child Endangerment.** For a first or second offense (within 5 years), an additional \$1,000 fine is mandatory if at the time of the offense the driver was transporting a person <16 years old. 625 ILCS 5/11-501(c)

Other Penalties:

Community Service:

I. Second offense (within 5 years) – A minimum of **30 days** (Alternative to the term of 5 days of mandatory imprisonment) 625 ILCS 5/11-501(c) and (d) and 730 ICLS 5/5-5-3(c)(3)

II. For a third or subsequent offense where the offender has been granted either probation or conditional discharge, he/she must be sentenced to serve a minimum (mand) term of either **60 days** of community service or 10 days of imprisonment. 625 ILCS 5/11-501(h)

Restitution (e.g., Victim’s Fund)

**Yes** For all offenses Paid directly by a defendant to a victim. 730 ICLS 5/5-5-3(b)(7), 5-5-6 and 5-6-3.1(c)(9) There is also a victims’ compensation fund. 740 ILCS 45/1 et seq.

Other:

**Ignition Interlock.** The State Secretary of State shall require the use of “ignition interlock” devices

on all vehicles owned/used by second or subsequent DWI/ALR law violator or where there has been a combination of two or more DWI/ALR violations. The law does not provide for a time period for “ignition interlock” use. However, the State must promulgate regulations concerning certification and use of these devices. 625 ILCS 5/6-205(C) and (h), 5/6-206(c)(3) and 5/11-501(i)

**Visitation Program.** DWI offenders who are under 21 years old may be ordered by the court to participate in a special visitation program. An offender may be required to visit (1) a rehabilitation facility that cares for DWI victims, (2) a facility that cares for persons who are terminally ill from alcoholism, or (3) a morgue to observe persons who have been killed as a result of DWI related accidents. 625 ILCS 5/11-501.7

**Additional Fees.** I. A fee of up to **\$30** may be assessed against DWI offenders for court costs. 55

ILCS 5/5-1101(a) II. Second or sub. DWI offenders must be assessed **\$100** fee which is used to finance DWI education programs. 55 ILCS 5/5-1101(d)

**Surcharge.** Every offender is assessed a surcharge of \$4 for every \$40 (or fraction thereof) of a fine imposed. 730 ICLS 5/5-9-1(c) and 625 ILCS 5/16-104a

**Special Restitution.** A court may order a DWI offender to pay restitution to the Illinois Secretary of State for any costs incurred by that official’s office in obtaining evidence associated with the DWI offense. 625 ILCS 5/2-115

**Court Costs (Fees).** I. For counties with a population < 180,000: DWI/Misd – \$25; felony – \$40 705 ILCS 05/27.1(c) II. For counties with a population > 180,000 but < 3,000,000: Misd – \$50; felony – \$80 705 ILCS 105/27.1a(w) and 27.2(w) III. For counties with a population > 3,000,000: Misd – \$75 – \$110, felony – \$125 – \$190, 705 ILCS 105/27.2a(w)(1)

**EMS Cost.** A DWI offender is liable for the cost of any appropriate emergency response. Such cost shall not exceed **\$500** per public agency. 625 ILCS 5/11-501(f) and 730 ILCS 5/5-5-3

**Trauma Center Fund.** A convicted drunk driving law offender must pay a fee of **\$100**. This fee is deposited into the Trauma Center

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Fund and is used to pay for hospital trauma care. 705 ILCS 105/27.6(b) and 730 ILCS 5/5-9-1(c-5)

**Crime Laboratory Costs.** A convicted drunk driving law offender must be assessed a fee of **\$150** to cover the cost of any chemical analysis that was performed on their blood or urine. 730 ILCS 5/5-9-1.9

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for not less than 12 mandatory months (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC/UrAC  $\geq .04$ , (2) has any amount of cannabis or a controlled substance in their blood, breath or urine resulting from the unlawful use of the substance, (3) is under the influence of alcohol or drugs or (4) refuses to submit to a chemical test or tests for alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two violations of any of the above listed items, the "disqualification" is for life (10 years mand); however, there is a mandatory lifetime disqualification if, after the driver's CDL has been reinstated after the 10 year mandatory period, he/she commits another violation as noted above. In addition, a CMV operator who has any amount of alcohol or other drug(s) in their system must be placed "out-of-service" for 24 hours. 625 ILCS 5/1-115.3, 6-500, 6-514, 6-515 and 6-517

**Administrative Costs (Fee).** A person, who either has been convicted of or has had their license suspended for a drunk driving offense, is assessed a \$5 fee to defray administrative costs and to support the Spinal Cord Injury Paralysis Cure Trust Fund. 730 ILCS 5/5-9-1 (c-7)

**Equipment Costs.** In addition to any other sanctions, an offender must pay a fine of **\$100** for a first offense and **\$200** for a subsequent offense which is used to purchase law enforcement equipment related to the "prevention of alcohol related criminal violence". 625 ILCS 5/11-501

Administrative Licensing Actions:

See the Special Administrative Per Se Law below.

Pre-DWI Conviction Licensing Action:  
Administrative Per Se Law:

**Yes  $\geq .08$ (BAC/BrAC) or Any Amount<sup>373</sup> of Cannabis, Controlled Substance or Intoxicating Compound First action- **3 months suspension**<sup>374and375</sup> (30 days mand)**

<sup>373</sup> As found in the breath, blood or urine "resulting from unlawful use or consumption." 625 ILCS 5/11-501.1

<sup>374</sup> A Judicial Driving Permit (JDP) may be issued after the first 30 days of the suspension period have passed. A JDP may be issued following either an admin. per se law violation or an implied consent law chemical test refusal. The court may require a person to only operate motor vehicles that are equipped with ignition interlock devices as a condition for issuing a JDP. 625 ILCS 5/6-206.1(a) If a person with a JDP is issued another DUI citation, the arresting officer shall confiscate the JDP and within 10 days a hearing will be held for a summary suspension. If a person applying for a JDP is issued another DUI citation before the JDP is issued, the JDP application may not be granted. If a person with a JDP is issued a non -DUI citation, the JDP may be canceled by court order. 625 ILCS 5/6-206.16-206.1(c) A JDP cannot be issued to a person under 18 years old. 625 ILCS 5/6-206.1(a)(4)(iv); *People v. Delcorse*, 711 N.E.2d 1217 (Ill. App. 1999).

<sup>375</sup> For a case concerning when a person is considered to be a first offender and eligible for Judicial Driving Permit, see *People v. Warner*, 586 N.E.2d 678 (Ill. App. 1 Dist. 1991).

**Double Jeopardy.** Based upon the same factual situation, a person who has been subjected to licensing action under the administrative per se law may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *People v. Dvorak*, 658 N.E.2d 869 (Ill. App. 2 Dist. 1995), *People v. Fasbinder*, 663 N.E.2d 1052 (Ill. App. 4 Dist. 1996), *People v. Eck*, 664 N.E.2d 1147 (Ill. App. 5 Dist. 1996), and *People v. Lopeman*, 665 N.E.2d 881 (Ill. App. 3 Dist. 1996) Note: The Illinois Supreme Court has held that a person is not subjected to double jeopardy if he/she is prosecuted for a drunk driving offense following a licensing action for a refusal to submit to a chemical test under the implied consent law. *People v. Lavariega*, 676 N.E.2d 643 (Ill. 1997)

subsequent action<sup>376</sup> (within 5 years)<sup>377</sup> **-1 year suspension (mand)**<sup>378</sup> 625 ILCS 5/6-206(a)(31), 6-206.1, 6-208.1(a) and 11-501.1

**Persons Under 21 Years Old.** Under a separate admin per se law, persons under 21 years old, who have BAC/BrAC > **.00 but < .08**<sup>379and380</sup> are subject to the following sanctions: first violation– suspension **3 months** (30 days appears mand; restricted driving privileges may be issued after 30 days.); subsequent violation– suspension**1 year (mand)**<sup>381</sup> 625 ILCS 5/6-208.2 and 5/11-501.8 A Judicial Driving Permit (JDP) is not authorized by law. *People v. Schmidt*, 676 N.E.2d 11 (Ill. App. 3 Dist. 1997) After a hearing, the State Secretary of State has the authority to “rescind” this

<sup>376</sup> Or an admin. per se violation where the person has had a previous DWI conviction or refusal to submit to a chemical test (within 5 years). 625 ILCS 5/11-500

<sup>377</sup> If a person is found not guilty of a DWI offense associated with an admin. per se action (where the driver submitted to a chemical test and was found to have a BAC/BrAC  $\geq$  .08), the admin. per se action cannot be considered a prior offense in determining enhanced licensing sanctions for implied consent law refusals or subsequent admin. per se actions/DWI offenses. 625 ILCS 5/11-500

<sup>378</sup> A person is not eligible for a “restricted driving permit” under 625 ILCS 5/6-205(c). 625 ILCS 5/6-208.1(g)

<sup>379</sup> Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 625 ILCS 5/11-501.8(b)(v)

<sup>380</sup> A person under 21 years old is not subject to these licensing sanctions if the alcohol concentration was the result of alcohol consumed either as part of a religious service or as per prescribed medication. 625 ILCS 5/11-501.8(e)

<sup>381</sup> If a person under 21 years old is convicted of a drunk driving offense, any period of suspension imposed under 625 ILCS 5/6-208.2 for a refusal or admin per se action under 625 ILCS 5/11-501.8 is credited toward the minimum period of revocation imposed for the conviction. 625 ILCS 5/6-208.2(d)

**Special Note:** The administrative per se/implied consent law does not violate a person’s constitutional rights to due process of law or equal protection of the laws. *People v. Esposito*, 521 N.E.2d 873 (Ill. 1988), *People v. Gerke*, 525 N.E.2d 68 (Ill. 1988), and *People v. Fisher*, 705 N.E.2d 67 (Ill. 1998)

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licensing action. 625 ILCS 5/6-206(c)(3) and 6-208.2(a)

**Special Administrative Per Se Law:** Under another separate and independent admin. per se law, 625 ILCS 5/11-501.6, the State may suspend a license where (1) a person has been arrested for any vehicle code violation, (2) there has been an accident that resulted in either an injury or fatality and (3) the driver submits to a chemical test that indicates a BAC/BrAC  $\geq$  .08 or the presence of any amount of cannabis/controlled substance resulting from unlawful use in their blood or urine. Driving privileges are suspended as follows: first Action-3 months; an admin. per se action where the driver has had a previous license suspension for either (1) a DWI offense conviction or (2) a refusal/admin. per se action under 625 ILCS 5/11-501.1 – 1 **year**. These suspensions, however, are not mandatory. If a driver requests a hearing, the State can modify the suspension order or issue a restricted license {JDP} for employment, educational or medical purposes. 625 ILCS 5/6-208.1, 11-500 and 11-501.6(a), (c) and (e) A person subject to this admin. per se law is still subject to the provisions of 625 ILCS 5/11-501.1. i.e., the driver is subject to license suspensions under both admin. per se laws.

Other:

I. Under 625 ILCS 5/6-206(a)(1) and 6-208, a person’s license may be suspended/revoked for not more than 1 year if he/she has “committed” an offense that usually requires license revocation (e.g., DWI). i.e., such action can occur prior to a conviction and may be taken without a preliminary hearing. A post action hearing is available. The law establishing this type of action has been held constitutional. *People Ex Rel Eppinga v. Edgar*, 492 N.E.2d 187 (Ill. 1986) (*cert. den.*, 479 U.S. 914 (1986))  
II. Under 625 ILCS 5/6-301.3, the State may “invalidate” a driver’s license based either on a certified court order or as per administrative rule.

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**School Bus Operators.** A person’s privilege to operate a school bus is canceled administratively for 3 years if, while operating such a vehicle, he/she either (1) refuses to submit to a chemical test for alcohol concentration following a traffic offense arrest or (2) submits to such a test which indicates he/she was driving with an alcohol concentration > .00.<sup>382</sup> 625 ILCS 5/6-106.1a and 6-106.1b

Post DWI Conviction Licensing Action:

Type of Licensing Action  
(Susp/Rev):

**Revocation.** 625 ILCS 5/6-205, 6-208 and 11-501.

Term of License Withdrawal

(Days, Months, Years, etc.)First offense – 1 **year**; second offense (within 20 years) – **5 years**; third offense – **10 years**; subsequent offense – **Permanent**<sup>383</sup> 625 ILCS 5/6-208(b)(1), (2), (3) and (4)

Mandatory Minimum Term of  
Withdrawal:

First offense – **None** (A hardship license may be issued. 625 ILCS 5/6-205(c) and (i)); second offense (within 20 years) – **1 year**; third offense – **1 year**; subsequent offense – **1 year**<sup>384</sup> 625 ILCS 5/6-205(i) and 5/6-208(b)(1), (2), (3) and (4)<sup>385</sup>

Vehicle Impoundment/Confiscation:

**Forfeiture (Not Mandatory).** A vehicle is subject to forfeiture if it is used with the knowledge and consent of the owner in either (1) a third or subsequent DWI offense or (2) a second DWI offense where the offender had a prior alcohol/drug-related reckless homicide driving offense. 720 ILCS 5/36-1. Based on a showing of “financial hardship”, the vehicle will not be forfeited but its title must be transferred to either a spouse or other family member. 720 ILCS 5/36-1

Authorized by Specific  
Statutory Authority:  
Terms Upon Which Vehicle  
Will Be Released:

<sup>382</sup> This sanction does not apply if the alcohol concentration was the result of alcohol consumed as part of a religious service or ceremony or for medical purposes. 625 ILCS 5/6-106.1a(e)

<sup>383</sup> A restricted license may be issued after this period. 625 ILCS 5/6-205(c) and (i)

<sup>384</sup> A “person may not make application for a license” if he/she has been convicted of a fourth or subsequent offense. 625 ILCS 5/6-208(b)(4)

<sup>385</sup> A person under 21 years old who is convicted of a DWI offense must have his/her license revoked for a mandatory period of 1 year. After this 1-year period, such a youthful offender must have his/her driving privileges restricted for at least 1 additional year. If the person is still under 21 years old after the expiration of the 1-year restricted license, restricted driving privileges may be granted in 12-month intervals until the person reaches 21. For a second or subsequent offense, a restricted license cannot be issued unless the offender operates vehicles that are equipped with ignition interlock devices. 625 ILCS 5/6-205(d)

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Other:

**Limited Impoundment.** I. Following a DWI arrest, a person’s vehicle may be impounded for not more than **12 hours** by law enforcement officers if such officers “reasonably believe” that the arrested person, upon release, will commit another DWI offense. 625 ILCS 5/4-203(e) II. If the offender is the registered owner of the vehicle: second offense – Impoundment for 24 hours; third offense – Impoundment for 48 hours. However, with the owner’s consent, the vehicle may be released sooner to a person who is a competent driver. 625 ILCS 5/4-203 (e-5)

Miscellaneous Sanctions  
Not Included Elsewhere:

Under 730 ILCS 5/5-6-1 and 5-6-3.1, a DWI offender may be placed in a court supervised diversion program. However, an offender cannot be placed in such a program if that person had a previous DWI conviction or been in such a diversion program within 5 years of the charged offense. As a supervision condition, he/she may be required to only operate motor vehicles equipped with ignition interlock devices.

Other Criminal Actions Related to DWI:

Homicide by Vehicle<sup>386</sup>:  
State Has Such a Law:

**Yes** Reckless homicide (Death must be the result of reckless action of the accused driver.) – Class 3 felony. However the offense is a Class 2 felony<sup>387and388</sup> if the defendant was under the influence of alcohol or drugs at the time of the offense 720 ILCS 5/9-3

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

Class 3 felony-**2 to 5 years** 730 ILCS 5/5-8-1(a)(6); Class 2 felony-**3 to 14 years** (if two or more person were killed, **6 to 28 years**) 730 ILCS 5/9-3(e)and (e-5)

Mandatory Minimum Term:  
Fine (\$ Range):

**None**  
Class 3 and 2 felonies – Not more than **\$25,000**  
730 ICLS 5/5-9-1(a)(l)

Mandatory Minimum Fine:

**None**

<sup>386</sup>“Custodial interrogations” concerning this crime must be videotaped to be considered valid evidence in court. 705 ILCS 405/5-401.5; 725 ILCS 5/103-2.1(b)

<sup>387</sup> The Class 2 felony offense for DWI reckless homicide was held constitutional on “equal protection” grounds. *People v. Warwick*, 621 N.E.2d 282 (Ill. App. 2 Dist. 1993), nor does it violate due process. *People v. Henderson* 768 N.E.2d 222 (Ill. App. 2002)

<sup>388</sup> The law provides that being under the influence of alcohol or drugs (in the same manner as a DWI offense) at the time of the violation is presumed evidence of a reckless act. 720 ILCS 5/9-3(b)

Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:

**Revocation**<sup>389</sup> 625 ILCS 5/6-205(a)(1)

Length of Term of  
Licensing Withdrawal:

First offense – 2 years; second offense (within 20 years) – **5 years**; third offense – 10 years; fourth and subsequent offense – Permanent 625 ILCS 5/6-208(b)(1), (2), (3) and (4)

Mandatory Action--Minimum  
Length of License Withdrawal:

**None** Under 625 ILCS 5/6-205(c), a restricted license may be issued.

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense<sup>392</sup>:

See Footnote Nos. <sup>390</sup> and <sup>391</sup>.

Sanction:

Criminal:

Imprisonment (Term):

First offense – Class A misdemeanor-Less than **1 year**; subsequent offense – Class 4 felony – **1 to 3 years** 625 ILCS 5/6-303(a), (d), (d-2) and (d-3) and 730 ILCS 5/5-8-1(a)(7) and 5/5-8-3(a)(1)

Mandatory Minimum Term  
of Imprisonment:

First offense – 10 consecutive days or community service; second offense – 30 days or community service; third offense – 30 days;

<sup>389</sup> A person convicted of “reckless homicide” is not eligible for a license until 24 months after release from imprisonment. 625 ILCS 5/6-103(15) and 5/6-208(b)(1)

<sup>390</sup> I. It is a Class A misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail term of less than 1 year and/or a fine of not more than \$1,000. II. Persons convicted of operating a CMV after disqualification are subject to a 1-year license revocation. This revocation does not appear to be mandatory. III. A person who operates a CMV after having been placed “out-of-service” is subject to the following CDL disqualification periods: first offense – 6 months; second offense (within 10 years) – 1 year; third or subsequent offense (within 10 years) – 3 years. If the offender was transporting passengers or hazardous materials, the disqualification periods are as follows: first offense – 1 year; second offense (within 10 years) – 3 years; third of subsequent offense (within 10 years) – 5 years. 625 ILCS 5/6-205(12)(a) and (c), 5/6-208, 5/6-507(b), (d) and (e), 5/6-514(i) and 730 ILCS 5/5-8-3(a)(1) and 5/5-9-1(1)(2)

<sup>391</sup> **DWI While Suspended or Revoked.** A person who commits a DWI offense while driving privileges are still suspended or revoked for either a DWI offense, implied consent law violation, or vehicle homicide is subject to the following sanctions: first or second offense (Class 4 felony) – Imprisonment from 1 to 3 years and/or a fine of not more than \$25,000; third offense (Class 3 felony) – Imprisonment from 2 to 5 years and/or a fine of not more than \$25,000 and, if the court grants probation or conditional discharge, a person must serve either 10 days of incarceration or 60 days of community service; and, fourth or subsequent offense (Class 2 felony) – Imprisonment from 3 to 7 years and/or a fine of not more than \$25,000 and a person is not eligible for either “probation, a term of periodic imprisonment or conditional discharge.” 625 ILCS 5/11-501(c-1) and (h), 730 ILCS 5/5-8-1(a)(5) and (6) and 730 ILCS 5/5-5-3(c)(2)(S) and 5/5-9-1(a)(1) A person committing a DWI offense while driving privileges are still under either revocation or suspension for a previous DWI offense is subject to one of the following mandatory sanctions: (1) 30 con days of imprisonment; (2) 40 days of 24 hour periodic imprisonment; or, (3) 720 hours of community service. 730 ILCS 5/5-5-3(c)(4.1) A vehicle is subject to forfeiture if it is used with the knowledge and consent of the owner in the above offenses. 720 ILCS 36-1 Based on a showing of “financial hardship,” the vehicle will not be forfeited to the State. However, its title must be transferred to a spouse or other family. 720 ILCS 36-1

<sup>392</sup> This offense is considered aggravated driving under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or any combination thereof and is guilty of a Class 4 felony. {Class 3 felony on third violation} A DUI while knowingly driving without liability insurance is also aggravated driving under the influence. 625 ILCS 5/11-501 ( C-1) (1); (2) and (3)

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{mandatory minimum of 10 days of imprisonment or a mandatory minimum of 480 hours of community service} fourth or subsequent offense – 180 days. Fourth, fifth, sixth, seventh, eighth, or ninth violations: Class 4 felony – 180 days imprisonment; Tenth, eleventh, twelfth, thirteenth, or fourteenth violations: Class 3 felony – not eligible for probation or conditional discharge. Fifteenth or subsequent violation of this Section is guilty of a Class 2 felony – not eligible for probation or conditional discharge. 625 ILCS 5/6-303(c), (d), (d-2) and (d-3) and 730 ICLS 5/5-5-3(c)(4); (4.3), (4.5) and (4.6) and 5/5-6-3(e)

**Aggravated DUI Causing death – Class 2** felony. Unless the court determines that extraordinary circumstances exist and require probation, it shall be punished as follows: (A) a term of imprisonment of not less than 3 years and not more than 14 years if the violation resulted in the death of one person; or (B) a term of imprisonment of not less than 6 years and not more than 28 years if the violation resulted in the deaths of 2 or more persons. 625 ILCS 5/11-501 (d) (2)

Fine (\$ Range):

First offense – Not more than **\$2,500**;  
subsequent offense – Not more than **\$25,000**  
730 ICLS 5/5-9-1(a)(1) and (2)

Mandatory Minimum Fine:  
Administrative Licensing Actions:  
Type of Licensing Action  
(Susp/Rev):  
Length of Term of License  
Withdrawal Action:

**None**  
**Suspension or revocation** 625 ILCS 5/6-303(b)

If the original charge is based on a suspension, the suspension is extended an additional period of time equal to that of the original suspension. If the original charge is based on a revocation, the revocation is extended 1 year. 625 ILCS 5/6-303(b)

Mandatory Term of License  
Withdrawal Action:  
Other:

Same as above.  
**Community Service.** First offense – 30 days (alternative to jail); second offense – 300 hrs (alternative to imprisonment) 625 ILCS 5/6-303(c) and (d) and 730 ICLS 5/5-5-3(c)(4) and (4.3)  
**Vehicle Impoundment/Immobilization.** If the offender is the registered owner of the vehicle: second offense – Impoundment for 24 hours; third offense – Impoundment for 48 hours. However, with the owner’s consent, the vehicle may be released sooner to a person who is a

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competent driver. 625 ILCS 5/4-203(e-5) fourth offense – Seizure of the offender’s vehicle license plates and vehicle immobilization for a period of time to be determined by the court. 625 ILCS 5/6-303(c-2)

**Forfeiture:** The motor vehicle is subject to seizure and forfeiture if the revocation was pursuant to a DWI offense. 625 ILCS 5/6-303(g).

Habitual Traffic Offender Law:  
State Has Such a Law (Yes/No):  
Grounds for Being Declared an  
Habitual Offender:  
Term of License Rev While  
Under Habitual Offender Status:  
Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual  
Offender Status:  
Sanctions Following a Conviction of  
Driving While on Habitual  
Offender Status:  
Imprisonment (Term):  
Mandatory Minimum Term of  
Imprisonment:  
Fine (\$ Range):  
Mandatory Minimum Fine(\$):  
Licensing Actions (Specify):

**No**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):  
BAC Chemical Test Is Given to  
the Following Persons:

**Yes** 55 ILCS 5/3-3013

Driver:  
Vehicle Passengers:  
Pedestrian:

**Yes**  
**No**  
**Yes** (16 years old or older)

Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:  
Minimum Age (Years) Possession:

**21** 235 ILCS 5/6-16 and 6-20  
**21** There are exceptions for reasons of  
employment or by the order of a parent. 235  
ILCS 5/6-16, 235 ILCS 5/16-20  
**21** There are exemptions for religious  
ceremonies and for home use. 235 ILCS 5/6-20

Minimum Age (Years) Consumption:

Dram Shop Laws and Related  
Legal Actions:

State Has a Dram Shop Law (Yes/No):  
 “Dram Shop Law” Concept Has Been  
 Adopted Via a Change to the Common  
 Law Rule by Action of the Highest  
 Court of Record in the State (Case  
 Citation):

**Yes**<sup>393,394 and 395</sup> 235 ILCS 5/6-21

Dram Shop Actions-Social Hosts:

**No**

**No** *Charles v. Seigfried*, 651 N.E.2d 154 (Ill. 1995)

Other:

**None**

Criminal Action Against Owner  
 or Employees of Establishments  
 that Serve Alcoholic Beverages  
 to Intoxicated Patrons:

Type of Criminal Action:

**Class A Misdemeanor** 235 ILCS 5/6-16(a)

Term of Imprisonment:

**Less than 1 year** 730 ILCS 5/5-8-3(a)(1)

Fine (\$ Range):

**\$500** (mand) but not more than **\$2,500** 235 ILCS 5/6-16(a) and 730 ICLS 5/5-9-1(a)(2) See Court Costs (Fees).

Administrative Actions Against  
 Owners of Establishments that  
 Serve Alcoholic Beverages to  
 Intoxicated Patrons:

License to Serve Alcoholic

Beverages Withdrawn (Yes/No):

**Yes Suspension/Revocation** 235 ILCS 5/3-12 (State licenses) and 235 ILCS 5/7-5 (local licenses) Mandatory revocation for a conviction for a “willful” violation of the law. 235 ILCS 5/7-12

Length of Term of License

Withdrawal:

Not specified in the statute.<sup>396and397</sup>

Criminal Actions Against Owners

<sup>393</sup> Damages for personal injuries or to property are limited pursuant to a calculation based on the percent change in the consumer price index during the preceding 12 months. See 235 ILCS 5/6 21, as applied to the amounts of \$45,000 and \$55,000 depending on the loss incurred.

<sup>394</sup> In the *Seigfried* case as well as in previous decisions (e.g., *Cunningham v. Brown*, 174 N.E.2d 153 (Ill. 1961)), the Illinois Supreme Court has held that the Dram Shop Law is the exclusive remedy in all dram shop type liability situations. See also *Wakulich v. Mraz*, 751 N.E.2d 1, (Ill. App. 1 Dist. 2001).

<sup>395</sup> Under the judicially created doctrine of “complicity,” a licensee may not be liable for the injuries sustained by a third party from one of the licensee’s intoxicated patrons if the third party contributed to the intoxication of such patron. *Nelson v. Araiza*, 372 N.E.2d 637 (Ill. 1978), *Walter v. Carriage House Hotels, Ltd.*, 646 N.E.2d 599 (Ill. 1995), and *Graham v. United National Investors, Inc.*, 745 N.E.2d 1287 (Ill. App. 4 Dist. 2001)

<sup>396</sup> In lieu of either revoking or suspending a State license, the licensee may be allowed to pay an administrative fine of \$500 for each violation; however, the maximum or total fine amount that may be imposed for all violations during any licensing period is \$20,000. Also, in addition to revoking/suspending a local license, the licensee may be required pay an administrative fine of \$1,000 for a first offense, \$1,500 for a second offense (within 12 months) and \$2,500 for a third or subsequent offense (within 12 months); however, the maximum or total fine amount that may be imposed during any licensing period is \$15,000. 235 ILCS 5/3-12 and 7-5

<sup>397</sup> If a license has been revoked, the formally licensed premises cannot be re-licensed for 1 year. 235 ILCS 5/7-13

or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

**Class A Misdemeanor** 235 ILCS 5/6-16(a)

Term of Imprisonment:

**Less than 1 year** 730 ICLS 5/5-8-3(a)(1)

Fine (\$ Range):

**\$500** (mand) but not more than **\$2,500** 235 ILCS 5/6-16(a) and 730 ICLS 5/5-9-1(a)(2).

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

**Yes Suspension/Revocation** 235 ILCS 5/3-12 (State licenses) and 235 ILCS 5/7-5 (local licenses) Mandatory revocation for a conviction for a “willful” violation of the law. 235 ILCS 5/7-12

Length of Term License Withdrawal:

Not specified in the statute.<sup>398and399</sup>

Anti-Happy Hour Laws/Regulations:

**Yes** 235 ILCS 5/6-2S<sup>400</sup>

Open Container Law (Yes/No):

**Yes – driver and passengers**<sup>401</sup> 625 ILCS 5/11-502

Anti-Consumption Law (Yes/No):

**Yes**<sup>i</sup> A person cannot consume alcoholic beverages while operating a limousine, chartered bus, motor home or mini motor home. 625 ILCS 5/11-502(c)

<sup>398</sup> In lieu of either revoking or suspending a State license, the licensee may be allowed to pay an administrative fine of \$500 for each violation; however, the maximum or total fine amount that may be imposed for all violations during any licensing period is \$20,000. Also, in addition to revoking/suspending a local license, the licensee may be required to pay an administrative fine of \$1,000 for a first offense, \$1,500 for a second offense (within 12 months) and \$2,500 for a third or subsequent offense (within 12 months); however, the maximum or total fine amount that may be imposed during any licensing period is \$15,000. 235 ILCS 5/3-12 and 7-5

<sup>399</sup> If a license has been revoked, the formally licensed premises cannot be re-licensed for 1 year. 235 ILCS 5/7-13

<sup>400</sup> Rollin Foods v. Village of Glendale Heights. 646 N.E.2d 12 (Ill. App. 2 Dist. 1995)

<sup>401</sup> The law prohibits either drivers or passengers from consuming or possessing alcoholic beverages within the passenger area of a motor vehicle. There are exceptions for passengers who are riding in either limousines, chartered buses, motor homes or mini motor homes.