

Consumer Legal Guide

Your Guide to Illinois Traffic Courts

PRESENTED BY
THE ILLINOIS JUDGES ASSOCIATION
AND THE ILLINOIS STATE BAR
ASSOCIATION



**ILLINOIS JUDGES
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Traffic courts hear more cases than any other court. Hundreds of thousands of traffic cases are heard each year in courts throughout Illinois.

Some traffic violations are settled before they reach the court, if the defendant admits guilt and agrees to pay and mail a fine to the circuit clerk. A defendant who chooses to proceed in this manner will usually receive a conviction on his or her driving record for the citation.

Frequently, however, an appearance in traffic court is required. The defendant often desires to appear in court in order to work out a more acceptable negotiated plea. Court appearances are mandatory for more serious offenses, including driving under the influence (DUI) and reckless driving, where a jail sentence is possible.

Among the most common traffic violations are speeding, running a red light, or failure to provide proof of insurance. Drivers also break the law if they commit numerous other violations such as disobeying the Child Passenger Safety Act; (DUI); drag racing; reckless driving; leaving the scene of an accident where property damage, injury or death is involved; fleeing to elude police; and driving with a suspended or revoked driver's license.

RECEIVING A TRAFFIC TICKET

If you are stopped by a police officer for violating a traffic law, and you are issued a ticket, it should include the nature of the charge, the date, time and location of the charge, and the statute or ordinance you are accused of violating. You will be asked to sign an affidavit, agreeing to appear in court on a set date and time. If you fail to sign the affidavit, you could face an additional penalty. Your signature on the affidavit is not an admission of guilt; it simply indicates your willingness to appear in court. If you receive a ticket for an offense punishable by jail, you will be arrested and will need to post bail before you are released. A court date is given to you at the time of your release.

TRAFFIC PENALTIES

A violation of traffic laws carries penalties that can range from a maximum fine of \$100

for a parking violation up to a prison sentence of ten years or more for serious offenses that result in death. Certain offenses also may result in the suspension or revocation of your driver's license, such as a conviction for not stopping for a school bus which is loading or unloading children, or a conviction for speeding through a construction zone.

At the municipal level, traffic violations are indicated in ordinances and are usually punishable by a fine. At the county or state level, violations such as business offenses or misdemeanors, may carry more serious penalties. Felony offenses, for example, where death resulted, are usually not heard in traffic court, but in criminal court.

The term "Supervision" is mentioned in several places in this brochure. Supervision is a sentencing option available to the court for most traffic offenses where the defendant has a good driving record. With Supervision the defendant usually receives a fine, traffic school or community service and is placed on a definite term of Supervision. If the defendant complies with the conditions imposed by the court, the Supervision is then terminated satisfactorily. The defendant does not receive a conviction on his or her record.

In Illinois, most traffic charges are categorized as either "petty" or "misdemeanor" offenses.

Petty offenses are those punishable by fine only. They include stop sign and red light violations, most speeding tickets, lane change violations and driving without insurance. Fines range from \$1.00 to \$1,000. Fines are either payable on the day assessed or on such later date as the court may direct.

Misdemeanors are divided into three (3) classes, referred to as Class A, B and C.

Class A is the most serious. It includes violations such as driving under the influence, speeding 40 or more miles over the posted speed limit, driving while license suspended or revoked, reckless driving or leaving the scene of an accident. The possible penalties for Class A misdemeanors are up to 364 days in jail and/or fines up to \$2,500. Day for day good time credit applies to most misdemeanor jail sentences.

Class B misdemeanors, such as selling or providing a fraudulent driver's license or permit, carry a possible penalty of up to six (6) months in jail and/or fines up to \$1500.

Class C misdemeanors, such as drag racing, are punishable by jail up to thirty (30) days

and/or fines up to \$1,000.

Should a motorist receive three (3) moving violation convictions in a twelve (12) month period, regardless of the classifications outlined above---even petty offenses---the Illinois Secretary of State will suspend the motorist's driver's license.

COURT PROCEDURES

Whether you receive a traffic citation for a petty offense, or are charged with a more serious traffic violation, and need to appear in court, you should follow certain decorum. You should arrive to court on time and dress in a manner that shows respect for the court.

The judge who hears your case will begin by explaining an individual's rights in traffic cases. The judge will also outline how the court call will proceed. You may choose to resolve your case by having your attorney speak with the prosecutor. You may then decide to enter a negotiated plea of guilty. If you decide to plead not guilty and contest the ticket(s), your case will then be resolved through a trial.

Most traffic cases are conducted as a "bench trial," where a judge alone hears and decides the case based on the facts presented. Occasionally, jurors are summoned to hear a traffic case.

Each person testifying-- including you, the arresting officer and any witnesses --will be asked to take an oath and tell the truth about what occurred. After the arresting officer and any other prosecution witnesses testify, you and any of your witnesses will be asked to testify. The prosecution has the burden of proving its case. In a petty offense case, that burden is "by a preponderance of the evidence". For misdemeanor charges, the prosecution's burden is the heavier one of "beyond a reasonable doubt". After the close of all the evidence, the judge (or jury) will decide whether the prosecution has proven its case.

If you are found guilty of committing a petty offense traffic violation, the judge will issue a sentence that may include a fine and court costs, attendance at an approved Traffic Safety School, a period of Court Supervision or a conviction.

If you are found guilty of committing a more serious traffic violation, the judge will issue a sentence that may include a fine and court costs, attendance at an approved Traffic Safety

School, a period of Court Supervision, or a period of Conditional Discharge (a conviction, and a form of non-reporting probation) or a period of Probation (a conviction and sentence that requires a Probation Officer to monitor your sentence), jail time, or any combination thereof. Sentences for driving under the influence will also include completing the counseling or treatment recommendations of an alcohol evaluation, and attending a Victim Impact Panel. At the time of sentencing the court will set a date for the payment of all fines, costs and administrative fees.

YOUR RIGHTS UNDER ILLINOIS LAW

1. You have a right to an attorney. If you are charged with a traffic violation which involves jail time as a penalty, you have the right to be represented by an attorney. It is prudent to hire an attorney for offenses punishable by jail time. A list of attorneys in your area, who are experienced in traffic law, is available through various referral programs, including the one offered by the Illinois State Bar Association at www.illinoislawyerfinder.com, or by calling the Association's lawyer referral service at (800)922-8757. Attorneys participating in the phone referral service will provide an initial consultation for a fee of not more than \$25.

The court may appoint an attorney to represent an indigent defendant if the offense carries the possibility of a jail sentence. The defendant must show proof of his or her financial hardship by providing the court with documents that include a current pay stub, W-2 forms, proof of disability or Social Security income, proof of public assistance, and possibly other documents. Many courts will also require the defendant to prepare and submit to the judge a financial affidavit describing the defendant's resources and debts.

If you are to appear in court and have hired an attorney to represent you, your attorney must be present on the first court date. Most courts will not grant a continuance if you do not have an attorney. You can ask for a continuance by contacting the court and requesting a new court date up to the day prior to your scheduled hearing.

2. You have a right of confrontation.

As a defendant in court, you have the right to confront and cross-examine the arresting officer and the prosecution's other witnesses. You also have the right to bring witnesses to testify on your behalf during the proceedings. If the witnesses in your defense fail to come voluntarily, you can have them subpoenaed.

You or your attorney can ask questions of the witnesses and present evidence, such as photographs, to support your testimony. The officer who issued the ticket will be notified to appear in court; you have the right to see any paperwork the officer presents prior to it being submitted to the judge.

3. You have a right to remain silent. As the defendant, you have the right to remain silent. You cannot be forced to testify.

4. You have a right to an appeal. If you believe that a legal error was made when the judge rendered the decision, you have the right to appeal your case to the Illinois Appellate Court. You must file a notice to appeal within 30 days after the traffic court made its final decision. No new evidence may be presented during the hearing conducted by the Illinois Appellate Court.

DRIVING UNDER THE INFLUENCE (DUI)

It has been said that driving is considered a privilege, not a right. There are many factors that can lead to your losing the privilege to drive, such as not paying fines or being convicted of repeated traffic violations.

A person convicted of a DUI will have his or her driving privileges revoked. They can only be restored after the revocation period is over, the reinstatement fee is paid, and, even then, a hearing before the Secretary of State is required prior to reinstatement.

Also, a person arrested for DUI who refuses or fails (.08 or more) a breathalyzer test will be suspended, regardless of the outcome of the DUI case. This is called a Statutory Summary Suspension. A Statutory Summary Suspension usually takes effect forty-six (46) days after the motorist receives the DUI ticket from the police officer. Driving privileges can only be restored upon expiration of the summary suspension pe-

riod (and payment of the reinstatement fee) or, if the Court after a hearing, grants a defendant's Petition to Rescind the Statutory Summary Suspension.

A person charged with the offense of DUI also faces a fine and court costs, imprisonment, or both, as well as a mandatory alcohol evaluation. A first-time DUI offender must pay a \$250.00 reinstatement fee to have the Secretary of State reinstate his or her driver's license; a second-time offender must pay a \$500.00 reinstatement fee. If you are charged with a DUI offense, you should hire an attorney immediately.

Persons charged with the offense of DUI, who have not had an alcohol-related offense and who have not had a traffic-related offense resulting in the death of another person within the past five years, may ask the judge to enter an Order directing the Illinois Secretary of State to issue a Judicial Driving Permit (JDP). The person must provide an alcohol evaluation and a notarized letter from his or her employer verifying employment, in order to obtain the JDP for work purposes. A JDP can only be issued for: 1) employment purposes, to drive to and from and during the course of work; or 2) for medical and/or substance abuse treatment; or 3) to attend an accredited educational institution. Those seeking a JDP for educational purposes, in addition to the alcohol evaluation, must also present to the court a letter from the registrar, superintendent or principal of the educational institution verifying the student's enrollment and class schedule. A JDP is only available for a Statutory Summary Suspension and cannot be granted to a defendant whose privileges are revoked for a DUI conviction.

NOTE: This information was prepared as a public service by the Illinois Judges Association and the Illinois State Bar Association. Its purpose is to inform citizens of their legal rights and obligations. Consult your lawyer if you have questions about the application of the law in a particular case.

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This pamphlet is prepared and published by the Illinois State Bar Association as a public service.

Every effort has been made to provide accurate information at the time of publication.

For the most current information, please consult your lawyer. If you need a lawyer and do not have one, call Illinois Lawyer Finder at (800) 922-8757 or online **www.IllinoisLawyerFinder.com**

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For more information on legal issues or to obtain single copies of each of the pamphlets listed above (free to individuals), please visit **www.ISBALawyers.com**
