

HB0657



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0657

Introduced 1/28/2005, by Rep. Jack D. Franks

SYNOPSIS AS INTRODUCED:

625 ILCS 5/11-501

from Ch. 95 1/2, par. 11-501

Amends the Illinois Vehicle Code. Increases the penalties for driving under the influence of alcohol, drugs, or intoxicating compounds while transporting a child under the age of 16 years.

LRB094 04162 DRH 34184 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning transportation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Vehicle Code is amended by changing
5 Section 11-501 as follows:

6 (625 ILCS 5/11-501) (from Ch. 95 1/2, par. 11-501)

7 Sec. 11-501. Driving while under the influence of alcohol,
8 other drug or drugs, intoxicating compound or compounds or any
9 combination thereof.

10 (a) A person shall not drive or be in actual physical
11 control of any vehicle within this State while:

12 (1) the alcohol concentration in the person's blood or
13 breath is 0.08 or more based on the definition of blood and
14 breath units in Section 11-501.2;

15 (2) under the influence of alcohol;

16 (3) under the influence of any intoxicating compound or
17 combination of intoxicating compounds to a degree that
18 renders the person incapable of driving safely;

19 (4) under the influence of any other drug or
20 combination of drugs to a degree that renders the person
21 incapable of safely driving;

22 (5) under the combined influence of alcohol, other drug
23 or drugs, or intoxicating compound or compounds to a degree
24 that renders the person incapable of safely driving; or

25 (6) there is any amount of a drug, substance, or
26 compound in the person's breath, blood, or urine resulting
27 from the unlawful use or consumption of cannabis listed in
28 the Cannabis Control Act, a controlled substance listed in
29 the Illinois Controlled Substances Act, or an intoxicating
30 compound listed in the Use of Intoxicating Compounds Act.

31 (b) The fact that any person charged with violating this
32 Section is or has been legally entitled to use alcohol, other

1 drug or drugs, or intoxicating compound or compounds, or any
2 combination thereof, shall not constitute a defense against any
3 charge of violating this Section.

4 (b-1) With regard to penalties imposed under this Section:

5 (1) Any reference to a prior violation of subsection
6 (a) or a similar provision includes any violation of a
7 provision of a local ordinance or a provision of a law of
8 another state that is similar to a violation of subsection
9 (a) of this Section.

10 (2) Any penalty imposed for driving with a license that
11 has been revoked for a previous violation of subsection (a)
12 of this Section shall be in addition to the penalty imposed
13 for any subsequent violation of subsection (a).

14 (b-2) Except as otherwise provided in this Section, any
15 person convicted of violating subsection (a) of this Section is
16 guilty of a Class A misdemeanor.

17 (b-3) In addition to any other criminal or administrative
18 sanction for any second conviction of violating subsection (a)
19 or a similar provision committed within 5 years of a previous
20 violation of subsection (a) or a similar provision, the
21 defendant shall be sentenced to a mandatory minimum of 5 days
22 of imprisonment or assigned a mandatory minimum of 240 hours of
23 community service as may be determined by the court.

24 (b-4) In the case of a third or subsequent violation
25 committed within 5 years of a previous violation of subsection
26 (a) or a similar provision, in addition to any other criminal
27 or administrative sanction, a mandatory minimum term of either
28 10 days of imprisonment or 480 hours of community service shall
29 be imposed.

30 (b-5) The imprisonment or assignment of community service
31 under subsections (b-3) and (b-4) shall not be subject to
32 suspension, nor shall the person be eligible for a reduced
33 sentence.

34 (c) (Blank).

35 (c-1) (1) A person who violates subsection (a) during a
36 period in which his or her driving privileges are revoked

1 or suspended, where the revocation or suspension was for a
2 violation of subsection (a), Section 11-501.1, paragraph
3 (b) of Section 11-401, or for reckless homicide as defined
4 in Section 9-3 of the Criminal Code of 1961 is guilty of a
5 Class 4 felony.

6 (2) A person who violates subsection (a) a third time,
7 if the third violation occurs during a period in which his
8 or her driving privileges are revoked or suspended where
9 the revocation or suspension was for a violation of
10 subsection (a), Section 11-501.1, paragraph (b) of Section
11 11-401, or for reckless homicide as defined in Section 9-3
12 of the Criminal Code of 1961, is guilty of a Class 3
13 felony. ~~(2.1) A person who violates subsection (a) a third~~
14 ~~time, if the third violation occurs during a period in~~
15 ~~which his or her driving privileges are revoked or~~
16 ~~suspended where the revocation or suspension was for a~~
17 ~~violation of subsection (a), Section 11-501.1, subsection~~
18 ~~(b) of Section 11-401, or for reckless homicide as defined~~
19 ~~in Section 9-3 of the Criminal Code of 1961, is guilty of a~~
20 ~~Class 3 felony;~~ and if the person receives a term of
21 probation or conditional discharge, he or she shall be
22 required to serve a mandatory minimum of 10 days of
23 imprisonment or shall be assigned a mandatory minimum of
24 480 hours of community service, as may be determined by the
25 court, as a condition of the probation or conditional
26 discharge. This mandatory minimum term of imprisonment or
27 assignment of community service shall not be suspended or
28 reduced by the court.

29 (2.2) A person who violates subsection (a), if the
30 violation occurs during a period in which his or her
31 driving privileges are revoked or suspended where the
32 revocation or suspension was for a violation of subsection
33 (a) or Section 11-501.1, shall also be sentenced to an
34 additional mandatory minimum term of 30 consecutive days of
35 imprisonment, 40 days of 24-hour periodic imprisonment, or
36 720 hours of community service, as may be determined by the

1 court. This mandatory term of imprisonment or assignment of
2 community service shall not be suspended or reduced by the
3 court.

4 (3) A person who violates subsection (a) a fourth or
5 subsequent time, if the fourth or subsequent violation
6 occurs during a period in which his or her driving
7 privileges are revoked or suspended where the revocation or
8 suspension was for a violation of subsection (a), Section
9 11-501.1, paragraph (b) of Section 11-401, or for reckless
10 homicide as defined in Section 9-3 of the Criminal Code of
11 1961, is guilty of a Class 2 felony and is not eligible for
12 a sentence of probation or conditional discharge.

13 (c-2) (Blank).

14 (c-3) (Blank).

15 (c-4) (Blank).

16 (c-5) Except as provided in subsection (c-5.1), a ~~A~~ person
17 who violates subsection (a), if the person was transporting a
18 person under the age of 16 at the time of the violation, is
19 subject to 6 months of imprisonment, an additional mandatory
20 minimum fine of \$1,000, and 25 days ~~an additional mandatory~~
21 ~~minimum 140 hours~~ of community service, ~~which shall include 40~~
22 ~~hours of community service~~ in a program benefiting children,
23 ~~and an additional 2 days of imprisonment.~~ The imprisonment or
24 assignment of community service under this subsection (c-5) is
25 not subject to suspension, nor is the person eligible for a
26 reduced sentence.

27 (c-5.1) A person who is convicted of violating subsection
28 (a) of this Section a first time and who in committing that
29 violation was involved in a motor vehicle accident that
30 resulted in bodily harm to the child under the age of 16 being
31 transported by the person, if the violation was the proximate
32 cause of the injury, is guilty of a Class 4 felony and is
33 subject to one year of imprisonment, a mandatory fine of
34 \$2,500, and 25 days of community service in a program
35 benefiting children. The imprisonment or assignment to
36 community service under this subsection (c-5.1) shall not be

1 subject to suspension, nor shall the person be eligible for
2 probation in order to reduce the sentence or assignment.

3 (c-6) Except as provided in subsections (c-7) and (c-7.1),
4 ~~(c-8)~~ a person who violates subsection (a) a second time, if at
5 the time of the second violation the person was transporting a
6 person under the age of 16, is subject to 6 months ~~an~~
7 ~~additional 10 days~~ of imprisonment, an additional mandatory
8 minimum fine of \$1,000, and an additional mandatory minimum 140
9 hours of community service, which shall include 40 hours of
10 community service in a program benefiting children. The
11 imprisonment or assignment of community service under this
12 subsection (c-6) is not subject to suspension, nor is the
13 person eligible for a reduced sentence.

14 (c-7) Except as provided in subsection (c-7.1) ~~(c-8)~~, any
15 person convicted of violating subsection (c-6) or a similar
16 provision within 10 years of a previous violation of subsection
17 (a) or a similar provision is guilty of a Class 4 felony and
18 ~~shall receive~~, in addition to any other penalty imposed, is
19 subject to one year of ~~a mandatory minimum 12 days~~
20 imprisonment, 25 days ~~an additional 40 hours~~ of mandatory
21 community service in a program benefiting children, and a
22 mandatory ~~minimum~~ fine of \$2,500 ~~\$1,750~~. The imprisonment or
23 assignment of community service under this subsection (c-7) is
24 not subject to suspension, nor is the person eligible for a
25 reduced sentence.

26 (c-7.1) A person who is convicted of violating subsection
27 (a) of this Section a second time within 10 years and who in
28 committing that violation was involved in a motor vehicle
29 accident that resulted in bodily harm to the child under the
30 age of 16 being transported, if the violation was the proximate
31 cause of the injury, is guilty of a Class 4 felony and is
32 subject to 18 months of imprisonment, a mandatory fine of
33 \$5,000, and 25 days of community service in a program
34 benefiting children. The imprisonment or assignment to
35 community service under this subsection (c-7.1) shall not be
36 subject to suspension, nor shall the person be eligible for

1 probation in order to reduce the sentence or assignment.

2 (c-8) (Blank). ~~Any person convicted of violating~~
3 ~~subsection (c-6) or a similar provision within 5 years of a~~
4 ~~previous violation of subsection (a) or a similar provision~~
5 ~~shall receive, in addition to any other penalty imposed, an~~
6 ~~additional 80 hours of mandatory community service in a program~~
7 ~~benefiting children, an additional mandatory minimum 12 days of~~
8 ~~imprisonment, and a mandatory minimum fine of \$1,750. The~~
9 ~~imprisonment or assignment of community service under this~~
10 ~~subsection (c-8) is not subject to suspension, nor is the~~
11 ~~person eligible for a reduced sentence.~~

12 (c-9) Any person convicted a third time for violating
13 subsection (a) or a similar provision, if at the time of the
14 third violation the person was transporting a person under the
15 age of 16, is guilty of a Class 4 felony and is subject to 18
16 months of imprisonment, a shall receive, in addition to any
17 ~~other penalty imposed, an additional mandatory fine of \$2,500,~~
18 and 25 days \$1,000, an additional mandatory 140 hours of
19 ~~community service, which shall include 40 hours~~ in a program
20 ~~benefiting children, and a mandatory minimum 30 days of~~
21 ~~imprisonment.~~ The imprisonment or assignment of community
22 service under this subsection (c-9) is not subject to
23 suspension, nor is the person eligible for a reduced sentence.

24 (c-10) Any person convicted of violating subsection (c-9)
25 or a similar provision a third time within 20 years of a
26 previous violation of subsection (a) or a similar provision is
27 guilty of a Class 3 ~~Class 4~~ felony and ~~shall receive,~~ in
28 addition to any other penalty imposed, is subject to 3 years of
29 imprisonment, 25 days an additional mandatory 40 hours of
30 community service in a program benefiting children, and a an
31 ~~additional~~ mandatory fine of \$25,000 ~~\$3000,~~ and a mandatory
32 ~~minimum 120 days of imprisonment.~~ The imprisonment or
33 assignment of community service under this subsection (c-10) is
34 not subject to suspension, nor is the person eligible for a
35 reduced sentence.

36 (c-11) Any person convicted a fourth or subsequent time for

1 violating subsection (a) or a similar provision, if at the time
2 of the fourth or subsequent violation the person was
3 transporting a person under the age of 16, and if the person's
4 3 prior violations of subsection (a) or a similar provision
5 occurred while transporting a person under the age of 16 or
6 while the alcohol concentration in his or her blood, breath, or
7 urine was 0.16 or more based on the definition of blood,
8 breath, or urine units in Section 11-501.2, is guilty of a
9 Class 2 felony, is not eligible for probation or conditional
10 discharge, and is subject to a minimum fine of \$25,000 ~~\$3,000~~.

11 (c-12) Any person convicted of a first violation of
12 subsection (a) or a similar provision, if the alcohol
13 concentration in his or her blood, breath, or urine was 0.16 or
14 more based on the definition of blood, breath, or urine units
15 in Section 11-501.2, shall be subject, in addition to any other
16 penalty that may be imposed, to a mandatory minimum of 100
17 hours of community service and a mandatory minimum fine of
18 \$500.

19 (c-13) Any person convicted of a second violation of
20 subsection (a) or a similar provision committed within 10 years
21 of a previous violation of subsection (a) or a similar
22 provision ~~committed within 10 years of a previous violation of~~
23 ~~subsection (a) or a similar provision~~, if at the time of the
24 second violation of subsection (a) or a similar provision the
25 alcohol concentration in his or her blood, breath, or urine was
26 0.16 or more based on the definition of blood, breath, or urine
27 units in Section 11-501.2, shall be subject, in addition to any
28 other penalty that may be imposed, to a mandatory minimum of 2
29 days of imprisonment and a mandatory minimum fine of \$1,250.

30 (c-14) Any person convicted of a third violation of
31 subsection (a) or a similar provision within 20 years of a
32 previous violation of subsection (a) or a similar provision, if
33 at the time of the third violation of subsection (a) or a
34 similar provision the alcohol concentration in his or her
35 blood, breath, or urine was 0.16 or more based on the
36 definition of blood, breath, or urine units in Section

1 11-501.2, is guilty of a Class 4 felony and shall be subject,
2 in addition to any other penalty that may be imposed, to a
3 mandatory minimum of 90 days of imprisonment and a mandatory
4 minimum fine of \$2,500.

5 (c-15) Any person convicted of a fourth or subsequent
6 violation of subsection (a) or a similar provision, if at the
7 time of the fourth or subsequent violation the alcohol
8 concentration in his or her blood, breath, or urine was 0.16 or
9 more based on the definition of blood, breath, or urine units
10 in Section 11-501.2, and if the person's 3 prior violations of
11 subsection (a) or a similar provision occurred while
12 transporting a person under the age of 16 or while the alcohol
13 concentration in his or her blood, breath, or urine was 0.16 or
14 more based on the definition of blood, breath, or urine units
15 in Section 11-501.2, is guilty of a Class 2 felony and is not
16 eligible for a sentence of probation or conditional discharge
17 and is subject to a minimum fine of \$2,500.

18 (d) (1) Every person convicted of committing a violation of
19 this Section shall be guilty of aggravated driving under
20 the influence of alcohol, other drug or drugs, or
21 intoxicating compound or compounds, or any combination
22 thereof if:

23 (A) the person committed a violation of subsection
24 (a) or a similar provision for the third or subsequent
25 time;

26 (B) the person committed a violation of subsection
27 (a) while driving a school bus with persons 18 years of
28 age or younger on board;

29 (C) the person in committing a violation of
30 subsection (a) was involved in a motor vehicle accident
31 that resulted in great bodily harm or permanent
32 disability or disfigurement to another, when the
33 violation was a proximate cause of the injuries;

34 (D) the person committed a violation of subsection
35 (a) for a second time and has been previously convicted
36 of violating Section 9-3 of the Criminal Code of 1961

1 or a similar provision of a law of another state
2 relating to reckless homicide in which the person was
3 determined to have been under the influence of alcohol,
4 other drug or drugs, or intoxicating compound or
5 compounds as an element of the offense or the person
6 has previously been convicted under subparagraph (C)
7 or subparagraph (F) of this paragraph (1);

8 (E) the person, in committing a violation of
9 subsection (a) while driving at any speed in a school
10 speed zone at a time when a speed limit of 20 miles per
11 hour was in effect under subsection (a) of Section
12 11-605 of this Code, was involved in a motor vehicle
13 accident that resulted in bodily harm, other than great
14 bodily harm or permanent disability or disfigurement,
15 to another person, when the violation of subsection (a)
16 was a proximate cause of the bodily harm; or

17 (F) the person, in committing a violation of
18 subsection (a), was involved in a motor vehicle,
19 snowmobile, all-terrain vehicle, or watercraft
20 accident that resulted in the death of another person,
21 when the violation of subsection (a) was a proximate
22 cause of the death.

23 (2) Except as provided in this paragraph (2), a person
24 convicted of aggravated driving under the influence of
25 alcohol, other drug or drugs, or intoxicating compound or
26 compounds, or any combination thereof is guilty of a Class
27 4 felony. For a violation of subparagraph (C) of paragraph
28 (1) of this subsection (d), the defendant, if sentenced to
29 a term of imprisonment, shall be sentenced to not less than
30 one year nor more than 12 years. Aggravated driving under
31 the influence of alcohol, other drug or drugs, or
32 intoxicating compound or compounds, or any combination
33 thereof as defined in subparagraph (F) of paragraph (1) of
34 this subsection (d) is a Class 2 felony, for which the
35 defendant, if sentenced to a term of imprisonment, shall be
36 sentenced to: (A) a term of imprisonment of not less than 3

1 years and not more than 14 years if the violation resulted
2 in the death of one person; or (B) a term of imprisonment
3 of not less than 6 years and not more than 28 years if the
4 violation resulted in the deaths of 2 or more persons. For
5 any prosecution under this subsection (d), a certified copy
6 of the driving abstract of the defendant shall be admitted
7 as proof of any prior conviction. Any person sentenced
8 under this subsection (d) who receives a term of probation
9 or conditional discharge must serve a minimum term of
10 either 480 hours of community service or 10 days of
11 imprisonment as a condition of the probation or conditional
12 discharge. This mandatory minimum term of imprisonment or
13 assignment of community service may not be suspended or
14 reduced by the court.

15 (e) After a finding of guilt and prior to any final
16 sentencing, or an order for supervision, for an offense based
17 upon an arrest for a violation of this Section or a similar
18 provision of a local ordinance, individuals shall be required
19 to undergo a professional evaluation to determine if an
20 alcohol, drug, or intoxicating compound abuse problem exists
21 and the extent of the problem, and undergo the imposition of
22 treatment as appropriate. Programs conducting these
23 evaluations shall be licensed by the Department of Human
24 Services. The cost of any professional evaluation shall be paid
25 for by the individual required to undergo the professional
26 evaluation.

27 (e-1) Any person who is found guilty of or pleads guilty to
28 violating this Section, including any person receiving a
29 disposition of court supervision for violating this Section,
30 may be required by the Court to attend a victim impact panel
31 offered by, or under contract with, a County State's Attorney's
32 office, a probation and court services department, Mothers
33 Against Drunk Driving, or the Alliance Against Intoxicated
34 Motorists. All costs generated by the victim impact panel shall
35 be paid from fees collected from the offender or as may be
36 determined by the court.

1 (f) Every person found guilty of violating this Section,
2 whose operation of a motor vehicle while in violation of this
3 Section proximately caused any incident resulting in an
4 appropriate emergency response, shall be liable for the expense
5 of an emergency response as provided under Section 5-5-3 of the
6 Unified Code of Corrections.

7 (g) The Secretary of State shall revoke the driving
8 privileges of any person convicted under this Section or a
9 similar provision of a local ordinance.

10 (h) (Blank).

11 (i) The Secretary of State shall require the use of
12 ignition interlock devices on all vehicles owned by an
13 individual who has been convicted of a second or subsequent
14 offense of this Section or a similar provision of a local
15 ordinance. The Secretary shall establish by rule and regulation
16 the procedures for certification and use of the interlock
17 system.

18 (j) In addition to any other penalties and liabilities, a
19 person who is found guilty of or pleads guilty to violating
20 subsection (a), including any person placed on court
21 supervision for violating subsection (a), shall be fined \$500,
22 payable to the circuit clerk, who shall distribute the money as
23 follows: 20% to the law enforcement agency that made the arrest
24 and 80% shall be forwarded to the State Treasurer for deposit
25 into the General Revenue Fund. If the person has been
26 previously convicted of violating subsection (a) or a similar
27 provision of a local ordinance, the fine shall be \$1,000. In
28 the event that more than one agency is responsible for the
29 arrest, the amount payable to law enforcement agencies shall be
30 shared equally. Any moneys received by a law enforcement agency
31 under this subsection (j) shall be used to purchase law
32 enforcement equipment that will assist in the prevention of
33 alcohol related criminal violence throughout the State. This
34 shall include, but is not limited to, in-car video cameras,
35 radar and laser speed detection devices, and alcohol breath
36 testers. Any moneys received by the Department of State Police

1 under this subsection (j) shall be deposited into the State
2 Police DUI Fund and shall be used to purchase law enforcement
3 equipment that will assist in the prevention of alcohol related
4 criminal violence throughout the State.

5 (k) The Secretary of State Police DUI Fund is created as a
6 special fund in the State treasury. All moneys received by the
7 Secretary of State Police under subsection (j) of this Section
8 shall be deposited into the Secretary of State Police DUI Fund
9 and, subject to appropriation, shall be used to purchase law
10 enforcement equipment to assist in the prevention of alcohol
11 related criminal violence throughout the State.

12 (l) Whenever an individual is sentenced for an offense
13 based upon an arrest for a violation of subsection (a) or a
14 similar provision of a local ordinance, and the professional
15 evaluation recommends remedial or rehabilitative treatment or
16 education, neither the treatment nor the education shall be the
17 sole disposition and either or both may be imposed only in
18 conjunction with another disposition. The court shall monitor
19 compliance with any remedial education or treatment
20 recommendations contained in the professional evaluation.
21 Programs conducting alcohol or other drug evaluation or
22 remedial education must be licensed by the Department of Human
23 Services. If the individual is not a resident of Illinois,
24 however, the court may accept an alcohol or other drug
25 evaluation or remedial education program in the individual's
26 state of residence. Programs providing treatment must be
27 licensed under existing applicable alcoholism and drug
28 treatment licensure standards.

29 (m) In addition to any other fine or penalty required by
30 law, an individual convicted of a violation of subsection (a),
31 Section 5-7 of the Snowmobile Registration and Safety Act,
32 Section 5-16 of the Boat Registration and Safety Act, or a
33 similar provision, whose operation of a motor vehicle,
34 snowmobile, or watercraft while in violation of subsection (a),
35 Section 5-7 of the Snowmobile Registration and Safety Act,
36 Section 5-16 of the Boat Registration and Safety Act, or a

1 similar provision proximately caused an incident resulting in
2 an appropriate emergency response, shall be required to make
3 restitution to a public agency for the costs of that emergency
4 response. The restitution may not exceed \$1,000 per public
5 agency for each emergency response. As used in this subsection
6 (m), "emergency response" means any incident requiring a
7 response by a police officer, a firefighter carried on the
8 rolls of a regularly constituted fire department, or an
9 ambulance.

10 (Source: P.A. 92-248, eff. 8-3-01; 92-418, eff. 8-17-01;
11 92-420, eff. 8-17-01; 92-429, eff. 1-1-02; 92-431, eff. 1-1-02;
12 92-651, eff. 7-11-02; 93-156, eff. 1-1-04; 93-213, eff.
13 7-18-03; 93-584, eff. 8-22-03; 93-712, eff. 1-1-05; 93-800,
14 eff. 1-1-05; 93-840, eff. 7-30-04; revised 10-21-04.)