

HB5797



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5797

by Rep. Katherine Cloonen

SYNOPSIS AS INTRODUCED:

625 ILCS 5/11-501
625 ILCS 5/11-501.01

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

Amends the Illinois Vehicle Code. Makes a first offense for driving under the influence while transporting a child under the age of 16 a factor in aggravation, rather than a second offense. Provides that the first conviction of aggravated driving under the influence while transporting a child under 16 shall require the installation of an ignition interlock device, rather than the second conviction.

LRB098 19197 MLW 54349 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL 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 Sections 11-501 and 11-501.01 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

1 that renders the person incapable of safely driving; or

2 (6) there is any amount of a drug, substance, or
3 compound in the person's breath, blood, or urine resulting
4 from the unlawful use or consumption of cannabis listed in
5 the Cannabis Control Act, a controlled substance listed in
6 the Illinois Controlled Substances Act, an intoxicating
7 compound listed in the Use of Intoxicating Compounds Act,
8 or methamphetamine as listed in the Methamphetamine
9 Control and Community Protection Act. Subject to all other
10 requirements and provisions under this Section, this
11 paragraph (6) does not apply to the lawful consumption of
12 cannabis by a qualifying patient licensed under the
13 Compassionate Use of Medical Cannabis Pilot Program Act who
14 is in possession of a valid registry card issued under that
15 Act, unless that person is impaired by the use of cannabis.

16 (b) The fact that any person charged with violating this
17 Section is or has been legally entitled to use alcohol,
18 cannabis under the Compassionate Use of Medical Cannabis Pilot
19 Program Act, other drug or drugs, or intoxicating compound or
20 compounds, or any combination thereof, shall not constitute a
21 defense against any charge of violating this Section.

22 (c) Penalties.

23 (1) Except as otherwise provided in this Section, any
24 person convicted of violating subsection (a) of this
25 Section is guilty of a Class A misdemeanor.

26 (2) A person who violates subsection (a) or a similar

1 provision a second time shall be sentenced to a mandatory
2 minimum term of either 5 days of imprisonment or 240 hours
3 of community service in addition to any other criminal or
4 administrative sanction.

5 (3) A person who violates subsection (a) is subject to
6 6 months of imprisonment, an additional mandatory minimum
7 fine of \$1,000, and 25 days of community service in a
8 program benefiting children if the person was transporting
9 a person under the age of 16 at the time of the violation.

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

17 (5) A person who violates subsection (a) a second time,
18 if at the time of the second violation the alcohol
19 concentration in his or her blood, breath, or urine was
20 0.16 or more based on the definition of blood, breath, or
21 urine units in Section 11-501.2, shall be subject, in
22 addition to any other penalty that may be imposed, to a
23 mandatory minimum of 2 days of imprisonment and a mandatory
24 minimum fine of \$1,250.

25 (d) Aggravated driving under the influence of alcohol,
26 other drug or drugs, or intoxicating compound or compounds, or

1 any combination thereof.

2 (1) Every person convicted of committing a violation of
3 this Section shall be guilty of aggravated driving under
4 the influence of alcohol, other drug or drugs, or
5 intoxicating compound or compounds, or any combination
6 thereof if:

7 (A) the person committed a violation of subsection
8 (a) or a similar provision for the third or subsequent
9 time;

10 (B) the person committed a violation of subsection
11 (a) while driving a school bus with one or more
12 passengers on board;

13 (C) the person in committing a violation of
14 subsection (a) was involved in a motor vehicle accident
15 that resulted in great bodily harm or permanent
16 disability or disfigurement to another, when the
17 violation was a proximate cause of the injuries;

18 (D) the person committed a violation of subsection
19 (a) and has been previously convicted of violating
20 Section 9-3 of the Criminal Code of 1961 or the
21 Criminal Code of 2012 or a similar provision of a law
22 of another state relating to reckless homicide in which
23 the person was determined to have been under the
24 influence of alcohol, other drug or drugs, or
25 intoxicating compound or compounds as an element of the
26 offense or the person has previously been convicted

1 under subparagraph (C) or subparagraph (F) of this
2 paragraph (1);

3 (E) the person, in committing a violation of
4 subsection (a) while driving at any speed in a school
5 speed zone at a time when a speed limit of 20 miles per
6 hour was in effect under subsection (a) of Section
7 11-605 of this Code, was involved in a motor vehicle
8 accident that resulted in bodily harm, other than great
9 bodily harm or permanent disability or disfigurement,
10 to another person, when the violation of subsection (a)
11 was a proximate cause of the bodily harm;

12 (F) the person, in committing a violation of
13 subsection (a), was involved in a motor vehicle,
14 snowmobile, all-terrain vehicle, or watercraft
15 accident that resulted in the death of another person,
16 when the violation of subsection (a) was a proximate
17 cause of the death;

18 (G) the person committed a violation of subsection
19 (a) during a period in which the defendant's driving
20 privileges are revoked or suspended, where the
21 revocation or suspension was for a violation of
22 subsection (a) or a similar provision, Section
23 11-501.1, paragraph (b) of Section 11-401, or for
24 reckless homicide as defined in Section 9-3 of the
25 Criminal Code of 1961 or the Criminal Code of 2012;

26 (H) the person committed the violation while he or

1 she did not possess a driver's license or permit or a
2 restricted driving permit or a judicial driving permit
3 or a monitoring device driving permit;

4 (I) the person committed the violation while he or
5 she knew or should have known that the vehicle he or
6 she was driving was not covered by a liability
7 insurance policy;

8 (J) the person in committing a violation of
9 subsection (a) was involved in a motor vehicle accident
10 that resulted in bodily harm, but not great bodily
11 harm, to the child under the age of 16 being
12 transported by the person, if the violation was the
13 proximate cause of the injury;

14 (K) the person in committing a ~~second~~ violation of
15 subsection (a) or a similar provision was transporting
16 a person under the age of 16; or

17 (L) the person committed a violation of subsection
18 (a) of this Section while transporting one or more
19 passengers in a vehicle for-hire.

20 (2) (A) Except as provided otherwise, a person
21 convicted of aggravated driving under the influence of
22 alcohol, other drug or drugs, or intoxicating compound or
23 compounds, or any combination thereof is guilty of a Class
24 4 felony.

25 (B) A third violation of this Section or a similar
26 provision is a Class 2 felony. If at the time of the third

1 violation the alcohol concentration in his or her blood,
2 breath, or urine was 0.16 or more based on the definition
3 of blood, breath, or urine units in Section 11-501.2, a
4 mandatory minimum of 90 days of imprisonment and a
5 mandatory minimum fine of \$2,500 shall be imposed in
6 addition to any other criminal or administrative sanction.
7 If at the time of the third violation, the defendant was
8 transporting a person under the age of 16, a mandatory fine
9 of \$25,000 and 25 days of community service in a program
10 benefiting children shall be imposed in addition to any
11 other criminal or administrative sanction.

12 (C) A fourth violation of this Section or a similar
13 provision is a Class 2 felony, for which a sentence of
14 probation or conditional discharge may not be imposed. If
15 at the time of the violation, the alcohol concentration in
16 the defendant's blood, breath, or urine was 0.16 or more
17 based on the definition of blood, breath, or urine units in
18 Section 11-501.2, a mandatory minimum fine of \$5,000 shall
19 be imposed in addition to any other criminal or
20 administrative sanction. If at the time of the fourth
21 violation, the defendant was transporting a person under
22 the age of 16 a mandatory fine of \$25,000 and 25 days of
23 community service in a program benefiting children shall be
24 imposed in addition to any other criminal or administrative
25 sanction.

26 (D) A fifth violation of this Section or a similar

1 provision is a Class 1 felony, for which a sentence of
2 probation or conditional discharge may not be imposed. If
3 at the time of the violation, the alcohol concentration in
4 the defendant's blood, breath, or urine was 0.16 or more
5 based on the definition of blood, breath, or urine units in
6 Section 11-501.2, a mandatory minimum fine of \$5,000 shall
7 be imposed in addition to any other criminal or
8 administrative sanction. If at the time of the fifth
9 violation, the defendant was transporting a person under
10 the age of 16, a mandatory fine of \$25,000, and 25 days of
11 community service in a program benefiting children shall be
12 imposed in addition to any other criminal or administrative
13 sanction.

14 (E) A sixth or subsequent violation of this Section or
15 similar provision is a Class X felony. If at the time of
16 the violation, the alcohol concentration in the
17 defendant's blood, breath, or urine was 0.16 or more based
18 on the definition of blood, breath, or urine units in
19 Section 11-501.2, a mandatory minimum fine of \$5,000 shall
20 be imposed in addition to any other criminal or
21 administrative sanction. If at the time of the violation,
22 the defendant was transporting a person under the age of
23 16, a mandatory fine of \$25,000 and 25 days of community
24 service in a program benefiting children shall be imposed
25 in addition to any other criminal or administrative
26 sanction.

1 (F) For a violation of subparagraph (C) of paragraph
2 (1) of this subsection (d), the defendant, if sentenced to
3 a term of imprisonment, shall be sentenced to not less than
4 one year nor more than 12 years.

5 (G) A violation of subparagraph (F) of paragraph (1) of
6 this subsection (d) is a Class 2 felony, for which the
7 defendant, unless the court determines that extraordinary
8 circumstances exist and require probation, shall be
9 sentenced to: (i) a term of imprisonment of not less than 3
10 years and not more than 14 years if the violation resulted
11 in the death of one person; or (ii) a term of imprisonment
12 of not less than 6 years and not more than 28 years if the
13 violation resulted in the deaths of 2 or more persons.

14 (H) For a violation of subparagraph (J) of paragraph
15 (1) of this subsection (d), a mandatory fine of \$2,500, and
16 25 days of community service in a program benefiting
17 children shall be imposed in addition to any other criminal
18 or administrative sanction.

19 (I) A violation of subparagraph (K) of paragraph (1) of
20 this subsection (d), is a Class 2 felony and a mandatory
21 fine of \$2,500, and 25 days of community service in a
22 program benefiting children shall be imposed in addition to
23 any other criminal or administrative sanction. If the child
24 being transported suffered bodily harm, but not great
25 bodily harm, in a motor vehicle accident, and the violation
26 was the proximate cause of that injury, a mandatory fine of

1 \$5,000 and 25 days of community service in a program
2 benefiting children shall be imposed in addition to any
3 other criminal or administrative sanction.

4 (J) A violation of subparagraph (D) of paragraph (1) of
5 this subsection (d) is a Class 3 felony, for which a
6 sentence of probation or conditional discharge may not be
7 imposed.

8 (3) Any person sentenced under this subsection (d) who
9 receives a term of probation or conditional discharge must
10 serve a minimum term of either 480 hours of community
11 service or 10 days of imprisonment as a condition of the
12 probation or conditional discharge in addition to any other
13 criminal or administrative sanction.

14 (e) Any reference to a prior violation of subsection (a) or
15 a similar provision includes any violation of a provision of a
16 local ordinance or a provision of a law of another state or an
17 offense committed on a military installation that is similar to
18 a violation of subsection (a) of this Section.

19 (f) The imposition of a mandatory term of imprisonment or
20 assignment of community service for a violation of this Section
21 shall not be suspended or reduced by the court.

22 (g) Any penalty imposed for driving with a license that has
23 been revoked for a previous violation of subsection (a) of this
24 Section shall be in addition to the penalty imposed for any
25 subsequent violation of subsection (a).

26 (h) For any prosecution under this Section, a certified

1 copy of the driving abstract of the defendant shall be admitted
2 as proof of any prior conviction.

3 (Source: P.A. 97-1150, eff. 1-25-13; 98-122, eff. 1-1-14;
4 98-573, eff. 8-27-13; revised 9-19-13.)

5 (625 ILCS 5/11-501.01)

6 Sec. 11-501.01. Additional administrative sanctions.

7 (a) After a finding of guilt and prior to any final
8 sentencing or an order for supervision, for an offense based
9 upon an arrest for a violation of Section 11-501 or a similar
10 provision of a local ordinance, individuals shall be required
11 to undergo a professional evaluation to determine if an
12 alcohol, drug, or intoxicating compound abuse problem exists
13 and the extent of the problem, and undergo the imposition of
14 treatment as appropriate. Programs conducting these
15 evaluations shall be licensed by the Department of Human
16 Services. The cost of any professional evaluation shall be paid
17 for by the individual required to undergo the professional
18 evaluation.

19 (b) Any person who is found guilty of or pleads guilty to
20 violating Section 11-501, including any person receiving a
21 disposition of court supervision for violating that Section,
22 may be required by the Court to attend a victim impact panel
23 offered by, or under contract with, a county State's Attorney's
24 office, a probation and court services department, Mothers
25 Against Drunk Driving, or the Alliance Against Intoxicated

1 Motorists. All costs generated by the victim impact panel shall
2 be paid from fees collected from the offender or as may be
3 determined by the court.

4 (c) Every person found guilty of violating Section 11-501,
5 whose operation of a motor vehicle while in violation of that
6 Section proximately caused any incident resulting in an
7 appropriate emergency response, shall be liable for the expense
8 of an emergency response as provided in subsection (i) of this
9 Section.

10 (d) The Secretary of State shall revoke the driving
11 privileges of any person convicted under Section 11-501 or a
12 similar provision of a local ordinance.

13 (e) The Secretary of State shall require the use of
14 ignition interlock devices on all vehicles owned by a person
15 who has been convicted of a second or subsequent offense of
16 Section 11-501, or a first offense for a violation of
17 subparagraph (K) of paragraph (1) of subsection (d) of Section
18 11-501 of this Code, or a similar provision of a local
19 ordinance. The person must pay to the Secretary of State DUI
20 Administration Fund an amount not to exceed \$30 for each month
21 that he or she uses the device. The Secretary shall establish
22 by rule and regulation the procedures for certification and use
23 of the interlock system, the amount of the fee, and the
24 procedures, terms, and conditions relating to these fees.

25 (f) In addition to any other penalties and liabilities, a
26 person who is found guilty of or pleads guilty to violating

1 Section 11-501, including any person placed on court
2 supervision for violating Section 11-501, shall be assessed
3 \$750, payable to the circuit clerk, who shall distribute the
4 money as follows: \$350 to the law enforcement agency that made
5 the arrest, and \$400 shall be forwarded to the State Treasurer
6 for deposit into the General Revenue Fund. If the person has
7 been previously convicted of violating Section 11-501 or a
8 similar provision of a local ordinance, the fine shall be
9 \$1,000, and the circuit clerk shall distribute \$200 to the law
10 enforcement agency that made the arrest and \$800 to the State
11 Treasurer for deposit into the General Revenue Fund. In the
12 event that more than one agency is responsible for the arrest,
13 the amount payable to law enforcement agencies shall be shared
14 equally. Any moneys received by a law enforcement agency under
15 this subsection (f) shall be used for enforcement and
16 prevention of driving while under the influence of alcohol,
17 other drug or drugs, intoxicating compound or compounds or any
18 combination thereof, as defined by Section 11-501 of this Code,
19 including but not limited to the purchase of law enforcement
20 equipment and commodities that will assist in the prevention of
21 alcohol related criminal violence throughout the State; police
22 officer training and education in areas related to alcohol
23 related crime, including but not limited to DUI training; and
24 police officer salaries, including but not limited to salaries
25 for hire back funding for safety checkpoints, saturation
26 patrols, and liquor store sting operations. Any moneys received

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

6 (g) The Secretary of State Police DUI Fund is created as a
7 special fund in the State treasury. All moneys received by the
8 Secretary of State Police under subsection (f) of this Section
9 shall be deposited into the Secretary of State Police DUI Fund
10 and, subject to appropriation, shall be used for enforcement
11 and prevention of driving while under the influence of alcohol,
12 other drug or drugs, intoxicating compound or compounds or any
13 combination thereof, as defined by Section 11-501 of this Code,
14 including but not limited to the purchase of law enforcement
15 equipment and commodities to assist in the prevention of
16 alcohol related criminal violence throughout the State; police
17 officer training and education in areas related to alcohol
18 related crime, including but not limited to DUI training; and
19 police officer salaries, including but not limited to salaries
20 for hire back funding for safety checkpoints, saturation
21 patrols, and liquor store sting operations.

22 (h) Whenever an individual is sentenced for an offense
23 based upon an arrest for a violation of Section 11-501 or a
24 similar provision of a local ordinance, and the professional
25 evaluation recommends remedial or rehabilitative treatment or
26 education, neither the treatment nor the education shall be the

1 sole disposition and either or both may be imposed only in
2 conjunction with another disposition. The court shall monitor
3 compliance with any remedial education or treatment
4 recommendations contained in the professional evaluation.
5 Programs conducting alcohol or other drug evaluation or
6 remedial education must be licensed by the Department of Human
7 Services. If the individual is not a resident of Illinois,
8 however, the court may accept an alcohol or other drug
9 evaluation or remedial education program in the individual's
10 state of residence. Programs providing treatment must be
11 licensed under existing applicable alcoholism and drug
12 treatment licensure standards.

13 (i) In addition to any other fine or penalty required by
14 law, an individual convicted of a violation of Section 11-501,
15 Section 5-7 of the Snowmobile Registration and Safety Act,
16 Section 5-16 of the Boat Registration and Safety Act, or a
17 similar provision, whose operation of a motor vehicle,
18 snowmobile, or watercraft while in violation of Section 11-501,
19 Section 5-7 of the Snowmobile Registration and Safety Act,
20 Section 5-16 of the Boat Registration and Safety Act, or a
21 similar provision proximately caused an incident resulting in
22 an appropriate emergency response, shall be required to make
23 restitution to a public agency for the costs of that emergency
24 response. The restitution may not exceed \$1,000 per public
25 agency for each emergency response. As used in this subsection
26 (i), "emergency response" means any incident requiring a

1 response by a police officer, a firefighter carried on the
2 rolls of a regularly constituted fire department, or an
3 ambulance. With respect to funds designated for the Department
4 of State Police, the moneys shall be remitted by the circuit
5 court clerk to the State Police within one month after receipt
6 for deposit into the State Police DUI Fund. With respect to
7 funds designated for the Department of Natural Resources, the
8 Department of Natural Resources shall deposit the moneys into
9 the Conservation Police Operations Assistance Fund.

10 (j) A person that is subject to a chemical test or tests of
11 blood under subsection (a) of Section 11-501.1 or subdivision
12 (c)(2) of Section 11-501.2 of this Code, whether or not that
13 person consents to testing, shall be liable for the expense up
14 to \$500 for blood withdrawal by a physician authorized to
15 practice medicine, a licensed physician assistant, a licensed
16 advanced practice nurse, a registered nurse, a trained
17 phlebotomist, a certified paramedic, or a qualified person
18 other than a police officer approved by the Department of State
19 Police to withdraw blood, who responds, whether at a law
20 enforcement facility or a health care facility, to a police
21 department request for the drawing of blood based upon refusal
22 of the person to submit to a lawfully requested breath test or
23 probable cause exists to believe the test would disclose the
24 ingestion, consumption, or use of drugs or intoxicating
25 compounds if:

26 (1) the person is found guilty of violating Section

1 11-501 of this Code or a similar provision of a local
2 ordinance; or

3 (2) the person pleads guilty to or stipulates to facts
4 supporting a violation of Section 11-503 of this Code or a
5 similar provision of a local ordinance when the plea or
6 stipulation was the result of a plea agreement in which the
7 person was originally charged with violating Section
8 11-501 of this Code or a similar local ordinance.

9 (Source: P.A. 97-931, eff. 1-1-13; 97-1050, eff. 1-1-13;
10 98-292, eff. 1-1-14; 98-463, eff. 8-16-13.)