Table of Contents

Volume 25

CHAPTER 1. LAW—DRIVING UNDER THE INFLUENCE OF ALCOHOL 1

§ 1:1 The history of DUI law in Illinois
§ 1:2 Summary of new traffic, DUI, and criminal laws in 2024
§ 1:3 Summary of new traffic, DUI, and criminal laws in 2025
§ 1:4 The law on DUI and vehicles in Illinois
§ 1:5 The criminal offense of DUI applies anywhere in the state
§ 1:6 Municipal power to prosecute DUI as local ordinance
§ 1:7 Municipal power to prosecute state vehicle code DUI violations
§ 1:8 Municipal DUI ordinances constitutional protections
§ 1:9 Statute of limitations—Criminal DUI offenses
§ 1:10 Proof of driving a motor vehicle—Major case summaries
§ 1:11 —Opinion evidence
§ 1:12 Definition of actual physical control
§ 1:13 Actual physical control—Major cases
§ 1:14 Necessity—Generally
§ 1:15 —The shelter doctrine
§ 1:16 Insanity defense not applicable
§ 1:17 Mental illness defense allowed
§ 1:18 Definition of a vehicle
§ 1:19 Snowmobiles and DUI laws
§ 1:20 Driving under the influence of alcohol—The basics
§ 1:21 —Finding of guilty reversed
§ 1:22 —Proof beyond reasonable doubt affirmed
§ 1:23 Aggravated DUI while vehicle uninsured—Finding of guilty reversed
§ 1:24 Aggravated DUI while suspended or revoked—Finding of guilty affirmed
§ 1:25 Aggravated DUI—Proof of prior DUI convictions
§ 1:26 —Use of juvenile DUI adjudication as a prior approved
§ 1:27 Mens Rea—No mental state required for DUI
§ 1:28 Actus Reus—Driving must be a voluntary act
§ 1:29 Driving with a blood or breath alcohol concentration of 0.08 or greater—The per se offense

§ 1:30 Challenges to the per se offense
§ 1:31 Proof of intoxication at the time of driving—Postdriving consumption
§ 1:32 The *corpus delicti* of the offense must be proven
§ 1:33 *Corpus delicti*—Not proven
§ 1:34 Aggravated DUI—What constitutes bodily harm and great bodily harm
§ 1:35 —Proximate cause
§ 1:36 — —The Martin Rule
§ 1:37 —Proximate cause and foreseeability
§ 1:38 — —Condition v. cause
§ 1:39 —Proximate cause and intervening cause
§ 1:40 —Proximate cause and medical conditions
§ 1:41 —Proximate cause and "Act of God"
§ 1:42 —Expired license
§ 1:43 —Suspended or revoked license
§ 1:44 Admissibility of evidence challenging proximate cause precluded
§ 1:45 The law on DUI and aircraft in Illinois—FUI
§ 1:46 The law on DUI and watercraft in Illinois—BUI

CHAPTER 2. LAW—DRIVING UNDER THE INFLUENCE OF DRUGS, CANNABIS AND INTOXICATING COMPOUNDS..... 235

§ 2:1 The problem of drugged driving—Generally
§ 2:2 Drugged driving law in Illinois—The statute
§ 2:3 Definition of intoxicating compounds
§ 2:4 Glue sniffing and intoxicating compounds
§ 2:5 The definition of a "drug" is undefined
§ 2:6 Specific drug identification v. class of drugs
§ 2:7 Section 11-501(a)(3), (4) and (5)—Proof that drug has an intoxicating effect required
§ 2:8 —Proof that driver is incapable of safely driving required
§ 2:9 Witnesses and opinions re: drug impairment
§ 2:10 Zero tolerance of cannabis and equal protection
§ 2:11 DUI cannabis—Cases under 11-501(a)(4) and (a)(5)
§ 2:12 —The 5ng Limit
§ 2:13 —Medical marijuana
§ 2:14 —Medical marijuana cardholders, the 5ng limit and equal protection
§ 2:15 —Field sobriety tests
§ 2:16 DUI drugs—Field sobriety tests
§ 2:17 —Probable cause found

§ 2:18 —Not proven beyond reasonable doubt
§ 2:19 —Proven beyond reasonable doubt
§ 2:20 DUI cannabis—Probable cause found
§ 2:21 —Proof beyond reasonable doubt found
§ 2:22 DUI drugs and cannabis—Probable cause not found
§ 2:23 Driving under combined influence of drugs and alcohol
§ 2:24 Prescription defenses to DUI drug charges
§ 2:25 The metabolite defense to drugged driving under zero tolerance
§ 2:26 Metabolites: what constitutes a "drug, substance, or compound" under 11-501(a)(6)
§ 2:27 Cannabis—What constitutes delta-9-tetrahydrocannabinol
§ 2:28 Section 11-501(a)(6)—Any amount of an illegal drug in breath, blood or urine
§ 2:29 —Methamphetamine—Proof not established
§ 2:30 Field testing for drugs
§ 2:31 Illegal transportation of cannabis

CHAPTER 3. IMPLIED CONSENT—STATUTORY SUMMARY SUSPENSION/REVOCATION LAW 291

§ 3:1 History of implied consent in Illinois
§ 3:2 Illinois implied consent law generally
§ 3:3 Length of summary suspension—DUI first offenders generally
§ 3:4 —DUI non-first offenders generally
§ 3:5 —DUI cannabis
§ 3:6 Illinois implied consent—Cannabis and mandatory field sobriety testing
§ 3:7 Cannabis implied consent suspension for refusing field sobriety testing under 11-501.9—Hearings
§ 3:8 Implied consent applies to 11-401 leaving scene injury or death
§ 3:9 Definition of statutory summary revocation
§ 3:10 Challenges to implied consent laws—Fourth Amendment
§ 3:11 Implied consent is not punishment
§ 3:12 Implied consent and judicial leniency
§ 3:13 Implied consent law is separate and distinct from the criminal case
§ 3:14 No right to counsel at implied consent hearings
§ 3:15 The purpose of implied consent—Legislative intent
§ 3:16 Right to implied consent hearing—Generally
§ 3:17 Standing to challenge summary suspension

§ 3:18 Summary suspension challenges and the mootness doctrine
§ 3:19 Statute of limitations
§ 3:20 Petition to rescind must state grounds
§ 3:21 Filing a petition to rescind summary suspension
§ 3:22 Filing a petition before confirmation is proper
§ 3:23 Service of petition to rescind
§ 3:24 The purpose of a summary suspension hearing
§ 3:25 Scope of hearing
§ 3:26 Timing of hearing—Generally
§ 3:27 —The 30-day rule
§ 3:28 —Bifurcation
§ 3:29 —The 30-day rule or first court date dilemma
§ 3:30 —Motorist's right to select own hearing date
§ 3:31 —The 30-day hearing calculation
§ 3:32 —Statute on Statutes re: holidays and weekends
§ 3:33 —Due process trumps statute
§ 3:34 —Change or substitution of judge
§ 3:35 —Refiling a summary suspension hearing
§ 3:36 —Delays due to failure to answer discovery
§ 3:37 —Delays attributable to defendant
§ 3:38 Discovery delays—Failure to produce police videos and breath testing records
§ 3:39 —Failure to produce list of witnesses
§ 3:40 —Objections to discovery do not toll 30-day hearing requirement
§ 3:41 —Production of discovery on the day of hearing
§ 3:42 —Attributable to the defendant
§ 3:43 Summary suspension hearing is a civil proceeding
§ 3:44 The burden of going forward is on the motorist to establish a prima facie case
§ 3:45 Establishing a prima facie case—Major methods
§ 3:46 Sample cases where prima facie case found
§ 3:47 —Uncertainty in test measurement
§ 3:48 —Prima facie case as a discovery sanction
§ 3:49 Sample cases where prima facie case not found
§ 3:50 Motions for directed findings against the motorist
§ 3:51 If prima facie case is established, burden shifts to State to avoid rescission
§ 3:52 Burden of proof is on the motorist by a preponderance of evidence
§ 3:53 Summary suspensions only apply to vehicles on public highways
§ 3:54 Private property—Burden is on defendant to prove not on public highway

§ 3:55 Defective sworn reports, warnings to motorists or confirmation of summary suspensions
§ 3:56 Lack of a "sworn" report
§ 3:57 Sworn Report v. Notice of Summary Suspension
§ 3:58 Defective sworn reports
§ 3:59 —Role of Secretary of State
§ 3:60 —Only fatal defects matter
§ 3:61 —Missing date and method of service
§ 3:62 —Failure to list reasonable grounds
§ 3:63 —Incorrect date of notice
§ 3:64 —Failure to sign "Receipt to Drive"
§ 3:65 —Illegible handwriting
§ 3:66 —Time and place of test
§ 3:67 —Method of service
§ 3:68 —Incorrect date of notice
§ 3:69 —Incorrect date of test or refusal
§ 3:70 Amending sworn reports
§ 3:71 Improper DUI charging document
§ 3:72 Lack of confirmation of summary suspension
§ 3:73 Improper length of suspension by Secretary of State
§ 3:74 Failure to serve Notice of Summary Suspension
§ 3:75 Improper service of notice of suspension—Blood or breath test
§ 3:76 Filing of Sworn Report with Secretary of State
§ 3:77 Warning to motorist
§ 3:78 —Multiple tests
§ 3:79 —Additional misstatements
§ 3:80 Discovery issues in summary suspension proceedings
§ 3:81 Discovery issues: due process and *Brady* material
§ 3:82 Discovery issues: Rule 237 Notices to Produce and Rule 214 Requests to Produce
§ 3:83 Subpoena of arresting officer
§ 3:84 Failure of officer to appear
§ 3:85 Use of the arresting officers "official reports" as evidence
§ 3:86 Subpoenas generally
§ 3:87 Failure to produce evidence
§ 3:88 Failure to produce videotapes of stop, arrest, or breath test
§ 3:89 Failure to produce dispatch tapes
§ 3:90 Failure to produce logbook
§ 3:91 Requests to admit facts
§ 3:92 Admissibility of evidence at summary suspension hearing
§ 3:93 Admissibility of evidence—Official reports

§ 3:94 —Sworn report is not conclusive evidence
§ 3:95 Civil rules of evidence apply
§ 3:96 Documentary evidence—Logbooks
§ 3:97 —Automated accuracy checks
§ 3:98 Accuracy check records and the admissibility of electronic evidence
§ 3:99 Automated accuracy check records—The business record exception
§ 3:100 —Improper foundation laid
§ 3:101 Motorist has no right against self-incrimination
§ 3:102 *Miranda* rights do not apply
§ 3:103 Hearsay admissible to prove probable cause
§ 3:104 Legality of stop or seizure can be contested at hearing
§ 3:105 What constitutes a stop or seizure
§ 3:106 Basis for stop of motorist
§ 3:107 Basis for stop—Alternative grounds
§ 3:108 Improper stop—Weaving
§ 3:109 —Delay at intersection
§ 3:110 —Driving slowly
§ 3:111 —Jurisdiction
§ 3:112 —Extra-territorial authority lacking
§ 3:113 —Speeding
§ 3:114 —Roadblock or checkpoint
§ 3:115 —Unusual conduct
§ 3:116 Proper stop of motorist
§ 3:117 —Unsafe speed at roadblock
§ 3:118 —Crossing center line
§ 3:119 Stops based on anonymous reports
§ 3:120 Known informant's tip insufficient
§ 3:121 Reasonable grounds is synonymous with probable cause
§ 3:122 Reasonable grounds to arrest—Test for when an arrest for DUI occurs
§ 3:123 Lack of probable cause to arrest defendant
§ 3:124 Probable cause to arrest found
§ 3:125 Probable cause and use of hospital test results
§ 3:126 Person was not in fact the actual driver equals rescission
§ 3:127 Postdriving consumption of alcohol
§ 3:128 Inaccurate breath test
§ 3:129 Alcohol concentration at time of test rather than driving controls
§ 3:130 Inherent inaccuracy of breathalyzer (industrial tolerance) is irrelevant

§ 3:131 Challenging improper testing procedures
§ 3:132 Types of improper breath testing procedures
§ 3:133 Improper 20-minute observation period
§ 3:134 Twenty-minute observation period and warning to motorist
§ 3:135 Belching is a basis for rescission
§ 3:136 Improper certification or accuracy procedures
§ 3:137 Evidence of repair or malfunction
§ 3:138 Incompetent breath test operator
§ 3:139 Postdriving consumption of alcohol
§ 3:140 Blood in the mouth during breath test
§ 3:141 Improperly maintained breathalyzer logbook records
§ 3:142 Improperly approved breath-testing devices
§ 3:143 Improper blood test procedures
§ 3:144 Administration of intravenous fluids prior to draw
§ 3:145 Hospital tests cannot be used for implied consent suspensions
§ 3:146 Hospital alcohol results not privileged in summary suspension hearings
§ 3:147 Zero tolerance tests cannot be used for DUI summary suspensions
§ 3:148 Warnings to motorist—Must be signed by driver
§ 3:149 —Failure to read
§ 3:150 —Must be read completely
§ 3:151 —Defects in forms
§ 3:152 —Accuracy of form
§ 3:153 —Inconsistent definitions of First Offender
§ 3:154 —Failure to translate into native language
§ 3:155 —Need not be read prior to preliminary breath test
§ 3:156 —Failure to understand
§ 3:157 —Reading it too fast
§ 3:158 A clear request for a test is mandatory or there is no refusal
§ 3:159 Types of refusals to submit to chemical testing
§ 3:160 Types of refusals—Refusing to sign hospital release or perform other pretest procedures
§ 3:161 —Physical inability to submit
§ 3:162 —Shy bladder syndrome or inability to urinate
§ 3:163 —Failure to perform 20 minute observation
§ 3:164 —Non-compliance with testing procedures
§ 3:165 —Refusals for requesting an attorney prior to chemical test
§ 3:166 —Conditional refusals
§ 3:167 —Refusals due to invalid test procedures
§ 3:168 —Constructive refusal through conduct

§ 3:169 —Second chance doctrine
§ 3:170 —State estopped from inconsistent positions between S.S. and criminal case
§ 3:171 —Incomplete breath test with partial result is refusal
§ 3:172 —Refusing to refuse
§ 3:173 —Refusal to submit to multiple testing
§ 3:174 —Submitting to hospital test does not nullify refusal of police test
§ 3:175 —Failure to agree or disagree
§ 3:176 —Refusal due to COVID-19
§ 3:177 An actual arrest for DUI must precede the test request
§ 3:178 Lawfulness of arrest may be challenged
§ 3:179 Unlawful warrantless entry into home is basis for rescission
§ 3:180 Reopening proofs
§ 3:181 Collateral estoppel and summary suspension hearings
§ 3:182 Rescission and retroactivity
§ 3:183 Motions for reconsideration
§ 3:184 Appeals of summary suspensions
§ 3:185 Appeals—Standard of review generally
§ 3:186 —Standard of review for prima facie case
§ 3:187 Stays of suspensions pending appeal

CHAPTER 4. PROCEDURE—DRIVING UNDER THE INFLUENCE OF ALCOHOL/DRUGS 509

§ 4:1 Introduction
§ 4:2 Pretrial release and the Pretrial Fairness Act—Generally
§ 4:3 Pretrial Fairness Act—Detainability—Timeliness of petition to detain
§ 4:4 — —Offense is detainable—First through fourth DUI
§ 4:5 — —"The proof is evident or the presumption great"
§ 4:6 — —Threat of great bodily harm or dangerousness
§ 4:7 — —No conditions can mitigate threat
§ 4:8 — —Revocation of release
§ 4:9 — —Appeals—Generally
§ 4:10 — — —Mootness doctrine
§ 4:11 — —Sufficiency of written findings
§ 4:12 — —Probation revocation proceedings
§ 4:13 The rule of lenity
§ 4:14 Substitution of judge
§ 4:15 Right to attorney—Substitution of counsel

§ 4:16 —Waiver of counsel
§ 4:17 Discovery generally
§ 4:18 No right of discovery against a defendant in misdemeanor cases
§ 4:19 Discovery—Oral witness statements
§ 4:20 Discovery sanctions generally
§ 4:21 Discovery sanctions—Against the State
§ 4:22 —Dispatch tapes
§ 4:23 —Videotapes and video recordings
§ 4:24 —Missing video—Jury instructions
§ 4:25 —Against a defendant
§ 4:26 —Specific sanctions entered
§ 4:27 —Entered and reversed upon disclosure
§ 4:28 Subpoenas generally
§ 4:29 Subpoenas for hospital records
§ 4:30 Subpoena witness fees
§ 4:31 Preliminary hearings—Appeals of findings of no probable cause in DUI cases
§ 4:32 Grand jury procedures
§ 4:33 —Misuse of procedures
§ 4:34 Physician-patient privilege
§ 4:35 Breath alcohol and blood alcohol testing records
§ 4:36 Gas chromatography—Foundation and discovery
§ 4:37 Dispatch tapes and police communications
§ 4:38 Videotapes: In-squad tapes must be preserved
§ 4:39 Providing copies of discovery in felony cases
§ 4:40 Pretrial motions to dismiss
§ 4:41 —Failure to prosecute
§ 4:42 Speedy trial violations
§ 4:43 —Sufficiency of demand
§ 4:44 —Statutory violations
§ 4:45 —Constitutional violations
§ 4:46 —New or additional charges
§ 4:47 —Failure to appear and physical incapacity
§ 4:48 —Intrastate detainers and speedy trial demands
§ 4:49 —DUI cases
§ 4:50 —*Nolle prosequi*
§ 4:51 —Lack of due diligence for extensions
§ 4:52 —Simultaneous custody
§ 4:53 —Trial court delay in ruling
§ 4:54 —Ineffective assistance of counsel
§ 4:55 —COVID-19 and the pandemic
§ 4:56 —Compulsory joinder
§ 4:57 —Felony and misdemeanor
§ 4:58 —Knowledge of State required

§ 4:59 —Traffic citations and complaints
§ 4:60 Supreme Court Rule 504 and 505 violations
§ 4:61 Supreme Court Rule 552 violations
§ 4:62 False misleading or insufficient evidence before grand jury
§ 4:63 Due process violations—Delays in proceedings
§ 4:64 —Destruction of evidence
§ 4:65 Statute of limitations—DUI generally
§ 4:66 —Violations
§ 4:67 —When is prosecution commenced
§ 4:68 —Tolling—Pleading and proof of exceptions
§ 4:69 Repeal of laws by implication
§ 4:70 Defective or improper complaints
§ 4:71 Defective or improper indictments
§ 4:72 Defective indictments—Failure to list prior offenses under 111-3(c)
§ 4:73 Grand jury proceedings—Prosecutorial misconduct, false or misleading evidence
§ 4:74 Improper amendments to indictments, complaints or informations
§ 4:75 Motion to dismiss—Prosecutorial vindictiveness
§ 4:76 Motions in arrest of judgment
§ 4:77 Improper venue
§ 4:78 Double jeopardy
§ 4:79 —Municipal ordinances and state prosecutions
§ 4:80 —Misdemeanor and felony charges pending at the same time
§ 4:81 —Determining when it has attached
§ 4:82 —Grant of new trial
§ 4:83 Motions to suppress field sobriety tests—Horizontal gaze nystagmus
§ 4:84 Motions to suppress HGN tests—Specific cases
§ 4:85 Motions to suppress field sobriety tests other than HGN
§ 4:86 Motions in limine generally
§ 4:87 Burden initially on movant
§ 4:88 Preliminary breath test inadmissible at DUI trial
§ 4:89 Zero tolerance testing inadmissible in criminal DUI proceedings
§ 4:90 Mere compliance with test standards does not prevent suppression of inaccurate results
§ 4:91 Improper breath tests
§ 4:92 Improper blood tests
§ 4:93 Laboratory reports as prima facie evidence
§ 4:94 Prior convictions

§ 4:95 Motion for bill of particulars
§ 4:96 Motion for list of witnesses
§ 4:97 Motion to produce confessions
§ 4:98 Motion to suppress statements
§ 4:99 —Drug-induced confessions
§ 4:100 —Hospital questioning
§ 4:101 —Failure to videotape interrogated statements
§ 4:102 —Improper impeachment of defendant's credibility
§ 4:103 Motion to suppress eyewitness identification as misleading
§ 4:104 Motion to preserve evidence
§ 4:105 Proof of prior DUI offenses or convictions
§ 4:106 Admissibility of driver's abstract—Legal challenges
§ 4:107 The right to expert witness fees in DUI cases
§ 4:108 Guilty pleas and stipulations sufficient to convict—Rule 402
§ 4:109 — —Failure to admonish minimum and maximum sentences
§ 4:110 —Caselaw
§ 4:111 Jury trial waivers
§ 4:112 Jury waiver—Later added charges
§ 4:113 —Withdrawal of waiver
§ 4:114 Jury trial—Less than 12 persons
§ 4:115 Voir dire—The court's obligations under *Zehr*
§ 4:116 —Right of attorney to question jurors
§ 4:117 Fair jury trials—Unfair jurors
§ 4:118 Jury trial—Special interrogatories
§ 4:119 —Exclusion and allowing police to sit at prosecutor's table
§ 4:120 Jury instructions—Generally
§ 4:121 —Jury questions
§ 4:122 —Definition of reasonable doubt
§ 4:123 —Conversion factor and judicial notice
§ 4:124 —Police videotapes—Failure to capture field sobriety tests on video
§ 4:125 —Failure to include definition of offense or verdict form
§ 4:126 Jury deliberations—Viewing videos
§ 4:127 —Replacing jurors
§ 4:128 Viewing video during trial—Absence of defendant
§ 4:129 Motions for directed findings
§ 4:130 Motion for directed finding must be renewed for appeal purposes
§ 4:131 Nolle prosequi and State's motions to dismiss
§ 4:132 Improper questions by prosecutors

§ 4:133 Closing arguments—Right to make closing argument is fundamental
§ 4:134 —Improper prosecutorial arguments and remarks
§ 4:135 —Proper prosecutorial arguments and remarks
§ 4:136 Outrageous government conduct defense or dismissal
§ 4:137 Vindictive prosecution defenses
§ 4:138 Offers of proof

CHAPTER 5. SEARCH AND SEIZURE LAW IN DUI CRIMINAL CASES..... 797
§ 5:1 Motions to suppress evidence—Generally
§ 5:2 —Hearsay admissible
§ 5:3 —Burden on movant and prima facie case
§ 5:4 —Identity issues
§ 5:5 —Hospital tests—No state action, no suppression
§ 5:6 — —Prearrest and postarrest indistinguishable
§ 5:7 — —False promises of hospital irrelevant
§ 5:8 Improper search—Plain view—Open containers
§ 5:9 The exclusionary rule—Applicability
§ 5:10 Fourth Amendment and privacy rights involving blood and breath tests
§ 5:11 Inventory searches
§ 5:12 Motion to suppress—Vehicle searches in DUI cases
§ 5:13 —Vehicle searches in non-DUI cases
§ 5:14 Fourth amendment and privacy concerns involving DNA testing of breath mouthpieces or blood samples
§ 5:15 Stops/seizures—Reasonable suspicion or probable cause?
§ 5:16 Seizures and searches are separate matters
§ 5:17 Definition of a seizure—Generally
§ 5:18 —Blocking a car
§ 5:19 —The parked car
§ 5:20 —Taking the driver's license
§ 5:21 —Police lights
§ 5:22 —Approaching stopped car
§ 5:23 —Field sobriety test(s)
§ 5:24 —Blocking normal path of moving vehicle
§ 5:25 —Police request to open the door
§ 5:26 —Police yell "no talking"
§ 5:27 —Request to stop
§ 5:28 Improper stops/seizures
§ 5:29 —Racially motivated
§ 5:30 —Touching lane lines
§ 5:31 —Avoiding a speed bump

§ 5:32 —Excessive nervousness
§ 5:33 —Driving under speed limit
§ 5:34 —Liability insurance out of state vehicles
§ 5:35 —Approaching parked car with gun drawn
§ 5:36 —Pulling into "No Parking" zone
§ 5:37 —Weaving
§ 5:38 —Driving slowly
§ 5:39 —Jurisdiction
§ 5:40 —Speeding, lidar, and radar
§ 5:41 —Roadblock
§ 5:42 —Unusual conduct or driving
§ 5:43 —Swaying and strong odor of alcohol before driving
§ 5:44 —Switching seats
§ 5:45 —Obstructed windshield and air fresheners
§ 5:46 —Tinted windows and out-of-state plates
§ 5:47 —Suspicious vehicle or activity
§ 5:48 —Leaving closed business parking lot
§ 5:49 —Police causing violation
§ 5:50 —Suspended drivers and restricted drivers permits
§ 5:51 —No parking zone
§ 5:52 —Tollbooth converted into roadblock
§ 5:53 —Order to shut off engine
§ 5:54 —Anonymous tip
§ 5:55 —Lanes not clearly marked, obstructing traffic
§ 5:56 —Crossing lane marker as new lane begins
§ 5:57 —Changing lanes while traveling through intersection
§ 5:58 —Driving with turn signal on
§ 5:59 —Failure to signal lane change
§ 5:60 —No turn signal required when moving within lane
§ 5:61 —Observing hand-to-hand exchange
§ 5:62 —Broken tail light
§ 5:63 —State's Attorney investigators
§ 5:64 —Unconstitutional statutes cannot provide basis
§ 5:65 —Wide left turn
§ 5:66 —Drinking alcohol in private parking lot
§ 5:67 —Following too close
§ 5:68 —Dissipation of reasonable suspicion
§ 5:69 Proper stops/seizures
§ 5:70 —Private security officers
§ 5:71 —Community caretaking
§ 5:72 —Roadblocks and field sobriety testing
§ 5:73 —Obstructed windshield
§ 5:74 —Tinted windows

§ 5:75 —Random license plate checks
§ 5:76 —MDDPs and RDPs
§ 5:77 —Improper lane usage
§ 5:78 —Weaving within lane
§ 5:79 —Crossing fog line
§ 5:80 —Remaining at green light
§ 5:81 —911 call of driver sleeping behind wheel
§ 5:82 —Avoiding roadblock
§ 5:83 —Suspicious vehicle
§ 5:84 —Stopping over stop line
§ 5:85 —Excessive braking
§ 5:86 —Minimum speed limit
§ 5:87 —Parked vehicles
§ 5:88 —Following too closely
§ 5:89 —Ordering driver to exit vehicle
§ 5:90 —Overweight truck
§ 5:91 —Obstructed windshield and air fresheners
§ 5:92 —Failure to properly display license plate
§ 5:93 —Dirty license plates
§ 5:94 —Tinted license plate cover
§ 5:95 —States with one license plate
§ 5:96 —Ball hitch obstructing plate
§ 5:97 —Registered owner suspended
§ 5:98 —Knowledge that driver is suspended or revoked
§ 5:99 —Turn signal required when moving onto shoulder
§ 5:100 —Turn signal 100 feet before turn
§ 5:101 —Defective taillight
§ 5:102 —Defective exhaust system
§ 5:103 —Hazard lights, slow speed and malfunctioning vehicle
§ 5:104 —Safety exception for lights and siren
§ 5:105 —Criminal trespass to real property
§ 5:106 —Narcotics transaction
§ 5:107 —Cell phone violations
§ 5:108 —Wearing a headset while driving
§ 5:109 —Vomiting out of car
§ 5:110 —Pace method for speeding
§ 5:111 —National crime database insurance information
§ 5:112 —Balance issues walking to car before driving
§ 5:113 —Collective knowledge doctrine
§ 5:114 Pretextual stops
§ 5:115 Anonymous and 911 calls
§ 5:116 Stops/seizures based on gunfire detection and location systems
§ 5:117 Prolonging the stop—Unlawful detention found

§ 5:118 —Request for field sobriety tests
§ 5:119 —Odor of cannabis
§ 5:120 —Free air dog sniff illegal
§ 5:121 —Lawful detention found
§ 5:122 Unlawful prolonging of detention—Towing the vehicle
§ 5:123 Length of detention acceptable
§ 5:124 Scope of officer's inquiries—No longer restricted by Fourth Amendment?
§ 5:125 —Request for identification
§ 5:126 Pat-down of driver prior to FST's
§ 5:127 Motions to suppress based upon lack of probable cause to arrest
§ 5:128 Probable cause—Factors constituting arrest
§ 5:129 —Seizure of keys constitutes arrest
§ 5:130 —When does arrest occur?
§ 5:131 —Handcuffing and transporting driver not an arrest
§ 5:132 DUI probable cause not found—Alcohol
§ 5:133 —Speeding and accident
§ 5:134 —Consumption of alcohol and glassy bloodshot eyes
§ 5:135 —SFSTS noncompliance with NHTSA standards
§ 5:136 —Accident with serious injuries to the driver
§ 5:137 —Dispelled facts and cannabis
§ 5:138 Probable cause found—DUI drugs
§ 5:139 —DUI alcohol
§ 5:140 —Non-fluent Spanish speaker translating officer instructions to Spanish speaking driver
§ 5:141 —Innocent explanations
§ 5:142 DUI probable cause found—Cannabis
§ 5:143 —"Unarresting" the defendant
§ 5:144 Preliminary breath tests—May be used to establish probable cause for DUI
§ 5:145 —Consent is required prior to admissibility
§ 5:146 —Evidence of refusal inadmissible
§ 5:147 Motion to suppress search—Transport to hospital by ambulance
§ 5:148 —Custodial searches following traffic or petty offenses
§ 5:149 Unlawful entry into the home
§ 5:150 Unlawful entry—Scope of consent
§ 5:151 —Hot pursuit
§ 5:152 —Third party consent
§ 5:153 —Driveway as curtilage
§ 5:154 Motions to suppress—Reopening proofs
§ 5:155 Roadblocks
§ 5:156 Approved purposes of roadblocks

§ 5:157 Boating checkpoints
§ 5:158 Compulsory extractions for blood and urine
§ 5:159 Warrantless, nonconsensual blood draws violate Fourth Amendment
§ 5:160 Statute mandating warrantless testing not unconstitutional per se
§ 5:161 Warrantless breath testing does not violate Fourth Amendment
§ 5:162 Warrantless testing and unconscious persons
§ 5:163 Warrantless blood testing—Exigency
§ 5:164 Warrantless testing—State action required
§ 5:165 —Implied consent—Urine
§ 5:166 — —Blood
§ 5:167 Search warrants—The implied consent exception
§ 5:168 —Challenges—General law
§ 5:169 —Motion to suppress denied
§ 5:170 —The actual consent exception
§ 5:171 —Obstructing justice
§ 5:172 Warrantless testing—No exigent circumstances
§ 5:173 —Good faith exception
§ 5:174 Revocation of consent on blood and urine draws
§ 5:175 Blood and urine draws must use reasonable means for extraction
§ 5:176 Defective search warrants—Blood and urine—No reasonable grounds for drug testing
§ 5:177 —Warrant must authorize both blood draw and tests?
§ 5:178 —Good faith exception
§ 5:179 Compulsory extractions for blood and urine—Warrantless, nonconsensual, and the use of force
§ 5:180 Blood or urine draws—Predicate-arrest not applicable in criminal case
§ 5:181 Compulsory breath tests and the Fourth Amendment

CHAPTER 6. TYPES OF DUI EVIDENCE 1033

§ 6:1 Introduction to chapter
§ 6:2 Science, technology, and lapses in the Criminal Justice System
§ 6:3 Copyright claims, discovery and the use of evidence
§ 6:4 The right of refusal
§ 6:5 —Refusal, self-incrimination, and the right to remain silent
§ 6:6 —Field sobriety tests
§ 6:7 —Preliminary breath tests
§ 6:8 —Refusal as consciousness of guilt

§ 6:9 —Request for an attorney as evidence at trial
§ 6:10 Refusal evidence and consciousness of guilt/inferences
§ 6:11 Chemical tests for alcohol
§ 6:12 —Origins of presumptive intoxication levels
§ 6:13 —Proof of alcohol concentration at the time of driving is necessary
§ 6:14 —Retrograde extrapolation of alcohol back to the time of driving
§ 6:15 —Extrapolation evidence disallowed
§ 6:16 —Foundation for extrapolation evidence allowed
§ 6:17 —The need for extrapolation evidence discussed
§ 6:18 —Delay between driving and test goes to weight and not admissibility
§ 6:19 —The rising blood alcohol concentration defense
§ 6:20 —Rate of absorption
§ 6:21 —Postdriving consumption of alcohol
§ 6:22 —Conversion of serum blood to whole blood using the ISP rules
§ 6:23 —Recommended sources for breath and blood alcohol testing information
§ 6:24 Breath alcohol testing
§ 6:25 —General theory of breath testing
§ 6:26 —The basic science of infrared spectroscopy and alcohol
§ 6:27 —Basic fuel cell detection of alcohol principles
§ 6:28 Preliminary breath screening devices (PBTs)
§ 6:29 Reliability of preliminary breath testers
§ 6:30 Preliminary breath testing devices—PBT accuracy checks and calibrations
§ 6:31 —Admission and use by defendant
§ 6:32 —Intoxilyzer S-D2
§ 6:33 —Intoxilyzer S-D5
§ 6:34 —Alco-Sensor III
§ 6:35 —Alco-Sensor IV PBT device
§ 6:36 Evidential breath testing devices
§ 6:37 —Illinois breath device network connectivity regulations
§ 6:38 —Intox EC-IR
§ 6:39 —Intox EC-IR errors
§ 6:40 —Intox EC-IR II
§ 6:41 —Intox EC-IR II with serial numbers 10,001 and above
§ 6:42 —RBT-IV
§ 6:43 —Intoxilyzer 8000
§ 6:44 Other alcohol devices

§ 6:45 —BAIID devices
§ 6:46 —SCRAM devices
§ 6:47 Foundational requirements for evidential breath blood and urine testing generally
§ 6:48 Confrontation clause issues in blood, breath and urine testing
§ 6:49 ISP rules and regulations—ISP testing rules: strict v. substantial compliance
§ 6:50 —Amended Illinois State Police Rules apply to pending cases
§ 6:51 Foundational requirements for evidential breath testing—The breath testing device must be approved by ISP
§ 6:52 —Operator must be licensed at time of test
§ 6:53 —Operator must be competent
§ 6:54 —Breath device must be certified as accurate
§ 6:55 —The 62-day rule
§ 6:56 —The 10% accuracy formula
§ 6:57 —Breath test ticket or printout
§ 6:58 —Breath logbook and certification records foundation
§ 6:59 —Failure to enter defendant's test in logbook
§ 6:60 —Failure to enter accuracy checks into logbook
§ 6:61 —Accuracy records and the confrontation clause
§ 6:62 —Automated accuracy checks
§ 6:63 —20-minute observation period
§ 6:64 —Gum in mouth
§ 6:65 —Belching
§ 6:66 —Breath mints
§ 6:67 —Chewing tobacco
§ 6:68 —Regurgitation
§ 6:69 —Recommended operating procedures
§ 6:70 —Central repository
§ 6:71 —Download data and source codes
§ 6:72 Sources of errors in breath testing
§ 6:73 —Ambient air blank masking
§ 6:74 —Body temperature and breath temperature
§ 6:75 —Breathing patterns
§ 6:76 —Partition ratio
§ 6:77 —Lack of duplicate breath testing
§ 6:78 —Radio frequency interference
§ 6:79 —Acid reflux (GERD) and mouth alcohol
§ 6:80 —Laryngopharangeal reflux
§ 6:81 —Dentures and dental adhesive
§ 6:82 —Blood in the mouth

§ 6:83 —Nonspecificity for ethanol and interfering substances
§ 6:84 —Soda pop, milk, energy drink, and false positives
§ 6:85 —Margin of error
§ 6:86 —Malfunctions breakdowns and repairs
§ 6:87 —Subsequent models, modifications, revisions, or improvements
§ 6:88 Accuracy check procedures—Dry gas evidential standards
§ 6:89 Drugged driving proof—The seven drug categories
§ 6:90 —Standards for certification as a drug recognition expert
§ 6:91 —The 12 step DRE protocol
§ 6:92 —The ARIDE program
§ 6:93 —Testing methods generally
§ 6:94 Scientific methods and legal admissibility
§ 6:95 Challenging DRE admissibility—*Daubert/Frye*
§ 6:96 Method validation
§ 6:97 Uncertainty of measurement—Margin of error—The science
§ 6:98 —Access to evidence
§ 6:99 —Margin of error—Caselaw
§ 6:100 Laboratory accreditation
§ 6:101 Blood alcohol testing
§ 6:102 —Foundational requirements—Applicability of ISP rules generally
§ 6:103 — —ISP procedure 1286.320
§ 6:104 — —Proper medical technique
§ 6:105 — —Chain of custody
§ 6:106 —Due process violation?
§ 6:107 —Headspace gas chromatography
§ 6:108 —Overview of how gas chromatograph test works to determine blood alcohol content
§ 6:109 —Understanding Gas Chromatography—A helpful analogy
§ 6:110 —Hospital blood—Serum/plasma
§ 6:111 —Hospital enzyme alcohol testing—Limitations
§ 6:112 —Police stations and jails
§ 6:113 —Arterial blood draws v. venous blood draws
§ 6:114 —Sources of error in blood testing
§ 6:115 —Chain of custody—Identity of sample issues
§ 6:116 — —Unsealed vial
§ 6:117 —Interfering substances
§ 6:118 —Serum/plasma results overreport true whole-blood levels

§ 6:119 —Admissibility of hospital tests under 11-501.4
§ 6:120 —Hospital tests—11-501.4 and compliance with 11-501.2
§ 6:121 —Hospital acting as agent of State
§ 6:122 —Admissibility of hospital tests and Rule of Evidence 803
§ 6:123 —Scientific facts cannot be legislated
§ 6:124 —Preanalytical errors in blood testing
§ 6:125 —Lactate ringers and serum tests
§ 6:126 —Preservatives and anticoagulants
§ 6:127 —Butterfly needles
§ 6:128 —Disinfectant swabs with alcohol
§ 6:129 —albicans and microorganisms
§ 6:130 —Autobrewery syndrome
§ 6:131 Sources of error in blood testing—Clotting and micro-clotting
§ 6:132 —Osmosis and serum or plasma
§ 6:133 —Severe blood loss
§ 6:134 —Hemolysis
§ 6:135 Urine testing—Collection of the urine sample
§ 6:136 Urine alcohol testing
§ 6:137 Urine testing—Leak of sample
§ 6:138 Chemical tests for drugs other than alcohol
§ 6:139 Blood tests for drugs—Generally
§ 6:140 —EMIT or enzyme-multiplied immunoassay technique
§ 6:141 Urine tests for drugs
§ 6:142 Right to independent testing
§ 6:143 Right of independent testing inadmissible at trial
§ 6:144 The development of a field sobriety test battery by NHTSA
§ 6:145 —Validity of standardized field sobriety tests
§ 6:146 —Horizontal gaze nystagmus—NHTSA procedures
§ 6:147 — —Causes
§ 6:148 — —HGN and the necessary foundation
§ 6:149 — —HGN and McKinney's 14x82 Litmus Test
§ 6:150 —Field sobriety tests (other than HGN)
§ 6:151 —One-leg stand test
§ 6:152 —Walk-and-turn test
§ 6:153 NHTSA field sobriety tests—Age limitations
§ 6:154 —Failure to follow instructions
§ 6:155 NHTSA field sobriety tests for alcohol or drugs—Admissibility
§ 6:156 NHTSA field sobriety manual—Admissibility
§ 6:157 Nonstandardized sobriety techniques—Generally

§ 6:158 —Alphabet test
§ 6:159 —Count down
§ 6:160 —Finger count
§ 6:161 —Romberg balance technique
§ 6:162 —Tracing or drawing technique
§ 6:163 —Vertical gaze nystagmus
§ 6:164 —Picking-up-coins
§ 6:165 —Convergence test
§ 6:166 The development of a field sobriety test battery by NHTSA—Field sobriety tests not designed for cannabis or drugs
§ 6:167 Cannabis—Green tongue syndrome
§ 6:168 Shift work sleep disorder
§ 6:169 Automatism Ambien and involuntary conduct
§ 6:170 Medical injuries to defendant
§ 6:171 —Display of scars or injuries
§ 6:172 Diabetic conditions
§ 6:173 Bloodshot, glassy eyes
§ 6:174 Flushed face or red face
§ 6:175 Odor of alcohol
§ 6:176 Indifferent attitude toward accident
§ 6:177 Confusion or lack of awareness
§ 6:178 Aggressive tailgating
§ 6:179 Warning to motorist inadmissible in criminal trial
§ 6:180 Officer's financial bias from fine money
§ 6:181 Officer's number of other DUI arrests—Relevancy
§ 6:182 Officer's disciplinary records admissible to impeach credibility
§ 6:183 Failure to write police report—Cross-examination
§ 6:184 Police videotapes
§ 6:185 —Taping defendant in rear seat of squad car without police present
§ 6:186 Police video cameras and hearsay objections
§ 6:187 Opinion testimony—Alcohol
§ 6:188 —Intoxication based on BAC levels
§ 6:189 —Accuracy of breath test based on field sobriety test performance
§ 6:190 —Drugs
§ 6:191 —Foundation for drug opinions
§ 6:192 —Percentage likelihood of being under influence
§ 6:193 —Illegal expert parroting
§ 6:194 —Comments on honesty of defendant
§ 6:195 —Exclusion and abuse of discretion
§ 6:196 —Ultimate issue properly allowed

§ 6:197 Paramedics, nurses, and medical records—Privilege does not apply
§ 6:198 Defendant's statements and testimony
§ 6:199 Defendant's statements—Admissibility under the completeness doctrine
§ 6:200 —Made during medical treatment admissible
§ 6:201 —Admission of being an alcoholic
§ 6:202 Prior convictions inadmissible at trial
§ 6:203 Accident crash reports not admissible

CHAPTER 7. THE RIGHTS OF ACCESS TO EVIDENCE AND TO PRESENT A DEFENSE IN DUI CASES 1391
§ 7:1 Introduction to the chapter
§ 7:2 The Sixth Amendment and DUI defense generally
§ 7:3 Sixth Amendment—Right to present meaningful defense to breath blood and urine testing
§ 7:4 —Compulsory process—The right of access to information
§ 7:5 The right to subpoena evidence or witnesses generally
§ 7:6 Using the Uniform Act to secure the attendance of witnesses from without a state in criminal proceedings for the production of records
§ 7:7 Sixth Amendment—Right to present expert testimony
§ 7:8 —Government interference with witnesses
§ 7:9 —Right to confront evidence—Machine or inspector or operator or source code
§ 7:10 —Confronting the machine
§ 7:11 —The adequacy of cross-examination
§ 7:12 —The right of independent testing

Volume 26

CHAPTER 8. PREPARING A DUI DEFENSE—PRETRIAL INVESTIGATION 1
§ 8:1 Introduction to the chapter
§ 8:2 Role of defense attorney in a DUI case
§ 8:3 The right to consult an attorney in DUI cases
§ 8:4 The client call from the scene or police station
§ 8:5 The client call after posting bond
§ 8:6 The initial client meeting
§ 8:7 Gathering evidence generally

§ 8:8 Types of evidence to gather
§ 8:9 Preservation motions/motions for sequestration
§ 8:10 Videotaping defendant or recording defendant's speech
§ 8:11 The defendant's version of events
§ 8:12 Witness statements
§ 8:13 Witness arrest (and other) records
§ 8:14 Medical history
§ 8:15 Records of past medical treatment
§ 8:16 Dental records, tongue piercings, dentures, bloody lips
§ 8:17 Vision and hearing records
§ 8:18 Prescriptions
§ 8:19 Psychiatric records
§ 8:20 Photographs of defendant's injuries
§ 8:21 Work records
§ 8:22 MSDS and volatiles records
§ 8:23 Mugshots
§ 8:24 Fingerprint cards
§ 8:25 Handwriting specimens of defendant
§ 8:26 Jail records—Jail admittance records
§ 8:27 Photographs of route of travel
§ 8:28 Photographs of scene of field sobriety tests
§ 8:29 Proving slopes—The milk trick and levels
§ 8:30 Signage and compliance with the Uniform Manual on Traffic Control Devices
§ 8:31 Village and county maps
§ 8:32 Measuring distances and lane widths
§ 8:33 Google Earth
§ 8:34 Google Maps and MapQuest
§ 8:35 Gunfire detection and location systems
§ 8:36 Highway maintenance records for roads and signs
§ 8:37 Highway design records
§ 8:38 Accident records at same location
§ 8:39 Photographs of vehicles
§ 8:40 Vehicle recalls
§ 8:41 Vehicle maintenance records
§ 8:42 The black box
§ 8:43 Photographs of damaged property
§ 8:44 Using skid marks to establish speed
§ 8:45 Repair bills or estimates
§ 8:46 Tow records and personnel
§ 8:47 Weather reports
§ 8:48 Cell phone records
§ 8:49 Credit card records

§ 8:50 Restaurant and bar receipts
§ 8:51 Independent blood alcohol or urine tests
§ 8:52 Retesting the State's blood or urine samples
§ 8:53 Hospital records from incident
§ 8:54 Hospital laboratory records
§ 8:55 Using paid medical bills to prove treatments
§ 8:56 Prescription records or pill bottles
§ 8:57 Paramedic reports
§ 8:58 Speed per feet conversion charts
§ 8:59 Radar, lidar, and speed measuring devices
§ 8:60 Operators manuals/training manuals
§ 8:61 Certificates of warranty/accuracy
§ 8:62 Maintenance and repair records
§ 8:63 Tuning forks
§ 8:64 Daily equipment check records
§ 8:65 Dispatch and communications recordings
§ 8:66 Mobile data terminal records
§ 8:67 911 calls
§ 8:68 Booking room videos
§ 8:69 In-squad videos
§ 8:70 State experts generally
§ 8:71 State Experts—Preparing them with helpful articles or studies
§ 8:72 Googling the State's experts
§ 8:73 Publications
§ 8:74 Memberships in associations
§ 8:75 Learned treatises and peer-reviewed journal articles
§ 8:76 Police officers generally
§ 8:77 Googling the police officer
§ 8:78 MADD/AAIM awards
§ 8:79 Field sobriety training manuals
§ 8:80 Disciplinary records
§ 8:81 Payroll records—Overtime
§ 8:82 Cookie-cutter report writing
§ 8:83 Village board minutes
§ 8:84 Breath alcohol records generally
§ 8:85 Operator's manuals
§ 8:86 Operator's license and operator's license test records
§ 8:87 Technical manuals
§ 8:88 Memory downloads and logbooks
§ 8:89 Malfunction, breakdowns, and repair records
§ 8:90 Software revisions and source code issues
§ 8:91 Blood alcohol testing records generally
§ 8:92 National standards (NCCLS)

§ 8:93 ISP laboratory blood testing discovery rules
§ 8:94 NMS laboratory discovery order: Texas
§ 8:95 DNA testing or microorganism testing
§ 8:96 Newspaper or television reports
§ 8:97 Inspecting the breath-testing and booking room
§ 8:98 Independently testing the breath device
§ 8:99 Roadblock records
§ 8:100 Government grants and funding
§ 8:101 Body mass index charts
§ 8:102 Trade ingredients label exception to hearsay rule
§ 8:103 Social networking and witnesses
§ 8:104 Judicial notice of government websites
§ 8:105 Sources of expertise in forensic, medical and other DUI-related issues

CHAPTER 9. SENTENCING ISSUES IN DUI CASES 67
§ 9:1 Illinois DUI sentencing guide 2024-2025
§ 9:2 Statutory factors in aggravation
§ 9:3 DUI statutory fines and costs
§ 9:4 —Revocation of fines
§ 9:5 DUI drug and alcohol evaluations
§ 9:6 DUI evaluations and fifth amendment concerns
§ 9:7 Victim impact statements in DUI cases
§ 9:8 Improper victim impact statements in DUI cases
§ 9:9 DUI evaluations and sixth amendment right to counsel
§ 9:10 Judicial sentence calculation required at sentencing for certain DUI offenses
§ 9:11 One-act, one-crime rule
§ 9:12 —Multiple victims
§ 9:13 —DUI and PSMV
§ 9:14 —Reckless homicide and aggravated DUI
§ 9:15 Prior qualifying offenses—Prior DWLR and Class X sentencing
§ 9:16 Penalties—The misdemeanor DUI—First offense
§ 9:17 — —Second offense
§ 9:18 —Felony DUI—3rd or greater offense or aggravating factors
§ 9:19 Felony DUI—Presentence report required
§ 9:20 Passenger under 16—11-501(c)(3) six month jail sentence discretionary
§ 9:21 Sentencing must comply with statutes
§ 9:22 Sentencing in absentia—Presentence investigation required

§ 9:23 Sentencing issues in DUI cases—Adjudication of guilt must be made
§ 9:24 —Sentencing hearings generally—Evidence
§ 9:25 —Victim impact statements
§ 9:26 —Factors in consideration
§ 9:27 —Mercy as a factor
§ 9:28 —Improper consideration of factor(s)
§ 9:29 —Improper consideration of death
§ 9:30 —Improper double enhancement
§ 9:31 —Agreed sentencing caps
§ 9:32 —Determining which penalties apply—Multiple amendments to dui laws during the same legislative session
§ 9:33 —Right to elect to least severe DUI penalty
§ 9:34 —*Ex post facto laws*
§ 9:35 —Restitution issues
§ 9:36 —Void for vagueness
§ 9:37 —Void or illegal sentences
§ 9:38 —Court supervision
§ 9:39 —Cruel and degrading
§ 9:40 —Improper conditions
§ 9:41 —Firearms prohibitions
§ 9:42 —Revocation of supervision or probation
§ 9:43 —Mere arrests cannot be used in aggravation
§ 9:44 —Petitions to revoke sentences—Right to counsel
§ 9:45 —Due process
§ 9:46 —Revocation of sentence—Punishment limitations
§ 9:47 —Collaterally attacking the original sentencing order
§ 9:48 —Collaterally attacking prior convictions—Burden on defendant
§ 9:49 —General limitations
§ 9:50 —Excessive sentences
§ 9:51 —Comparative analysis
§ 9:52 —Ineffective assistance of counsel at sentencing
§ 9:53 —Reckless homicide and probation
§ 9:54 —Reviewing court cannot reduce sentences
§ 9:55 —Improper double enhancement
§ 9:56 —Improper conditions
§ 9:57 —Categorical denial of supervision in all DUIs improper
§ 9:58 —Improper increase on resentencing
§ 9:59 —Prior reckless driving
§ 9:60 —What constitutes a "prior" for sentencing enhancement
§ 9:61 —Bond forfeitures as prior convictions

§ 9:62 —Sentencing and new (2019) Supreme Court Rules
§ 9:63 —Uncounseled prior convictions with jail imposed are stricken
§ 9:64 Jurisdiction limited to 30 days following sentencing—Exceptions
§ 9:65 DUI sentencing credits—County jail programs
§ 9:66 Enhanced maximum sentencing—Proof of facts under *Apprendi*
§ 9:67 Mandatory minimums fines in DUI cases
§ 9:68 Fines cannot be imposed by clerk
§ 9:69 Mandatory minimum sentencing—Facts must be proven at trial beyond a reasonable doubt
§ 9:70 —Availability of probation added
§ 9:71 —Exception for drugs and DWLR
§ 9:72 Aggravated DUI death—Extraordinary circumstances and probation
§ 9:73 Aggravated DUI—Must consider mitigating factors
§ 9:74 —Improper aggravating factors
§ 9:75 Imprisonment—Good time credit and mandatory minimums
§ 9:76 —Electronic home supervision v. home detention
§ 9:77 Work release and periodic imprisonment
§ 9:78 Credit for home confinement
§ 9:79 Jail credit for date of arrest
§ 9:80 Sentencing in DUI cases and the rule of lenity
§ 9:81 Drug Court treatment in DUI cases
§ 9:82 Alternate sentencing—Mental Health Court
§ 9:83 Travel restrictions as a condition of sentence

CHAPTER 10. OTHER ISSUES IN DUI CASES 207
§ 10:1 Introduction to chapter
§ 10:2 Monitoring Device Driving Permits (MDDP)
§ 10:3 MDDP and exemptions
§ 10:4 MDDPs and registered cannabis users
§ 10:5 Zero-tolerance suspensions (motorists under age 21)—11-501.8
§ 10:6 Restricted drivers permit—Secretary of State regulations for alcohol and drug-related revocations, suspensions, and cancellations
§ 10:7 Restricted drivers permits and BAIID devices
§ 10:8 Commercial drivers license and alcohol laws
§ 10:9 Commercial drivers license—General disqualifications
§ 10:10 Personal injury suspensions—11-501.6
§ 10:11 — —Arrest required before request

§ 10:12 — —Type A injury defined
§ 10:13 — —Constitutional challenges under *McNeely*
§ 10:14 — —Delayed testing unconstitutional
§ 10:15 School bus driver implied consent suspensions and cancellations
§ 10:16 Out-of-state convictions
§ 10:17 FAA pilots license issues
§ 10:18 Immigration issues
§ 10:19 Bail bond forfeitures
§ 10:20 —Motions to vacate
§ 10:21 Cancellation of driving privileges—Definitions
§ 10:22 Suspension of driving privileges—Definitions
§ 10:23 Possession of drugs in a vehicle—Driving penalties
§ 10:24 Knowingly permitting a driver under the influence to operate a vehicle—Penalties
§ 10:25 Visiting Canada
§ 10:26 Closing argument techniques in DUI cases
§ 10:27 Cross-examination of a breath-test operator
§ 10:28 Defending DUI refusals in Jury trial cases—Practical tips
§ 10:29 Expungement of DUI arrests
§ 10:30 Expungement of bond forfeitures
§ 10:31 Expungement of records—Other pending cases
§ 10:32 Police civil liability for releasing motorist instead of arresting for DUI

CHAPTER 11. VEHICLE FORFEITURES AND IMPOUNDMENTS 307

§ 11:1 Vehicle forfeiture—Generally
§ 11:2 —Prompt post-seizure hearings
§ 11:3 —Civil in rem proceeding
§ 11:4 —Complaints and amendments
§ 11:5 —Eighth Amendment excessive amounts
§ 11:6 —Burden of proof
§ 11:7 —Acquittal of criminal offense
§ 11:8 —Challenging basis for stop
§ 11:9 —Triggering offenses
§ 11:10 —The innocent owner hearing
§ 11:11 —Fifth Amendment concerns
§ 11:12 —Motion to vacate judgment 2-1401
§ 11:13 Vehicle impoundment limitations
§ 11:14 Vehicle impoundment administrative fees and procedures
§ 11:15 Vehicle impoundment—Towing and storage fees

§ 11:16 Vehicle impoundment ordinances—Statutory and constitutional challenges
§ 11:17 Administrative fee amount must relate to actual costs
§ 11:18 Chicago DUI impoundments—Municipal code
§ 11:19 —Challenges
§ 11:20 Driving while suspended/revoked—Impoundment

CHAPTER 12. OTHER RELATED OFFENSES IN DUI CASES 349

§ 12:1 Introduction
§ 12:2 Leaving the scene of an accident—Damage to attended vehicle
§ 12:3 —Death or injury—Statutory summary suspensions and revocations
§ 12:4 — —Knowledge required
§ 12:5 Reckless driving—Proof required
§ 12:6 Failure to reduce speed to avoid accident—Proof
§ 12:7 Reckless homicide—General law
§ 12:8 —Proof found
§ 12:9 —Proof beyond reasonable doubt not found
§ 12:10 Driving while suspended or revoked—The elements of the offense
§ 12:11 —Definition of motor vehicle
§ 12:12 —Penalties
§ 12:13 —Proof that suspension was DUI-based unnecessary
§ 12:14 —Sentence not excessive
§ 12:15 Driving while revoked
§ 12:16 Driving while suspended—Violating MDDP law
§ 12:17 Driving while revoked—Out-of-state licenses
§ 12:18 —Prior DUI bond forfeiture
§ 12:19 —Calculation of priors within 10 year period
§ 12:20 —Improperly obtained driver's license
§ 12:21 —SOS abstract wrong date
§ 12:22 —Enhanced sentence—Prior convictions not elements and not disclosed to jury
§ 12:23 — —Prior convictions must be proven by conclusive records
§ 12:24 —Use of presentence report or driver's license abstract to prove prior convictions
§ 12:25 Enhanced penalties for DWLS/DWLR limited to DUI-related revocations or suspensions
§ 12:26 Driving while suspended or revoked—Excessive sentencing issues
§ 12:27 Driving during summary suspension—Felony enhancement

§ 12:28 Illegal alcohol transportation/open container—Penalties
§ 12:29 Illegal cannabis transportation or use in motor vehicle—Penalties
§ 12:30 Fraudulent IDs and driver's licenses—Penalties
§ 12:31 Underage consumption of alcohol and driving penalties
§ 12:32 —The parental supervision exception
§ 12:33 Unlawful transportation of alcohol
§ 12:34 Operating an uninsured motor vehicle
§ 12:35 Aggravated fleeing and eluding a peace officer
§ 12:36 Obstructing a peace officer—DUI traffic
§ 12:37 Ordinance violations—Administrative adjudication

CHAPTER 13. POST-TRIAL MOTIONS AND APPELLATE PROCEDURES 405

§ 13:1 Motions to withdraw guilty pleas
§ 13:2 —Pleading requirements
§ 13:3 Effect of amending post-trial motions—Superseded pleadings
§ 13:4 Time limits for filing motion to withdraw guilty plea
§ 13:5 Rule 604(d)—Certificate required for motions to withdraw pleas and to reconsider sentences
§ 13:6 Rule 604(d)—Failure to attach supporting affidavit excused
§ 13:7 Motions to withdraw guilty pleas—Actual hearing required
§ 13:8 —Hearing and experts
§ 13:9 Appeals—Incomplete trial court records
§ 13:10 Appeals and post-trial motions
§ 13:11 Appeals—Forfeiture of grounds
§ 13:12 —Timeliness following a negotiated plea
§ 13:13 Appeals following denial of a motion to withdraw guilty plea
§ 13:14 Appeals following stipulated bench trials
§ 13:15 Appeals by the state following the grant of motions to suppress in DUI cases
§ 13:16 Improper appeals—Municipal interlocutory appeals—Motions to suppress
§ 13:17 Improper appeals by the state—Midtrial rulings
§ 13:18 —Material witnesses
§ 13:19 Appeal—Waiver of right to appeal
§ 13:20 Reversal of conviction—When remand is not automatic
§ 13:21 Ineffective assistance of counsel in DUI cases

§ 13:22 Ineffective assistance of counsel—*Krankel* inquiries
§ 13:23 Ineffective assistance of counsel in DUI cases—Advice on waiving jury trial
§ 13:24 —Revocation of driving privileges not explained
§ 13:25 —Failure to introduce proof of valid driver's license
§ 13:26 —Failure to challenge SFSTs with NHTSA guidelines
§ 13:27 —Calling defendant an alcoholic
§ 13:28 —Incorrect advice on effect of conviction on driving privileges
§ 13:29 Post-conviction proceedings in DUI cases
§ 13:30 —First stage rulings
§ 13:31 —Second stage rulings
§ 13:32 —Third stage rulings

APPENDICES

Appendix A. Forms 459
Appendix B. N.H.T.S.A. Impairment Clue Chart 581
Appendix C. N.H.T.S.A. Impairment Cues and Information 585
Appendix D. N.H.T.S.A. 2006 Field Sobriety Manual Chapter 8 611
Appendix D-1. N.H.T.S.A. 2013 Field Sobriety Manual Chapter 8 635
Appendix D-2. N.H.T.S.A. DWI Detection and Standardized Field Sobriety Testing Pretest 697
Appendix E. Illinois State Police Blood, Breath and Urine Testing Rules 701
Appendix F. Disclosure of Forensic Laboratory Toxicological Testing Results (20 Ill. Adm. Code 1287.10 et seq.) 751
Appendix G. Illinois State Police Laboratory Procedures 755
Appendix H. National Safety Council Breath Testing Recommendations and Guidelines 841
Appendix I. State v. Olenowski (New Jersey Supreme Court, November 15, 2023)

	.....	847
Appendix J.	HGN Jury Instruction	889
Appendix K.	Closing Argument Transcripts	891
Appendix L.	Illinois Forensic Science Commission Reports	1021
Appendix M.	Sample Direct and Cross-examination Transcripts	1033
Appendix N.	Government and Manufacturer Documents	1079
Appendix O.	Drug and DRE Symptomology/ Symptomatology Resources	1083
Appendix P.	Direct and Cross Examination Questions	1099
Appendix Q.	Illinois State Police Offense Code Index (eff. 2020)	1117
Appendix R.	Illinois Lab Notices	1231

Table of Laws and Rules

Table of Cases

Index