

DUI STATUTES RE PHLEBOTOMY

(625 ILCS 5/11-500.1)

Sec. 11-500.1. Immunity.

(a) A person authorized under this Article to withdraw blood or collect urine or other bodily substance shall not be civilly liable for damages when the person, in good faith, withdraws blood or collects urine or other bodily substance for evidentiary purposes under this Code, upon the request of a law enforcement officer, unless the act is performed in a willful and wanton manner.

(b) As used in this Section, "willful and wanton manner" means a course of action that shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the health or safety of another.

(Source: P.A. 99-697, eff. 7-29-16.)

Fees allowed (officers can't collect)

625ILCS5/11-501.01(j): A person that is subject to a chemical test or tests of blood under subsection (a) of Section 11-501.1 or subdivision (c)(2) of Section 11-501.2 of this Code, whether or not that person consents to testing, shall be liable for the expense up to \$500 for blood withdrawal by a physician authorized to practice medicine, a licensed physician assistant, a licensed advanced practice registered nurse, a registered nurse, a trained phlebotomist, a licensed paramedic, or a qualified person other than a police officer approved by the Department of State Police to withdraw blood, who responds, whether at a law enforcement facility or a health care facility, to a police department request for the drawing of blood based upon refusal of the person to submit to a lawfully requested breath test or probable cause exists to believe the test would disclose the ingestion, consumption, or use of drugs or intoxicating compounds if:

(1) the person is found guilty of violating Section 11-501 of this Code or a similar provision of a local ordinance; or

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

(Source: P.A. 99-289, eff. 8-6-15; 99-296, eff. 1-1-16; 99-642, eff. 7-28-16; 100-513, eff. 1-1-18.)

Who can draw?

Section 1286.320(b) of the Illinois Administrative Code: “For samples collected in Illinois, the blood sample shall be collected by a licensed physician, physician assistant, licensed advanced practice nurse, registered nurse, **trained phlebotomist**, or certified paramedic. When a blood test of a person who has been taken to an adjoining state for medical treatment is requested by an Illinois law enforcement officer, the blood may be withdrawn only by a physician authorized to practice medicine in the adjoining state, physician assistant, licensed advanced practice nurse, registered nurse, trained phlebotomist acting under the direction of the physician, or certified paramedic. (Section 11-501.2(a) of the Illinois Vehicle Code)”

Section 1286.10 Definitions: "Phlebotomist" means a person trained to collect blood from another individual through venipuncture.

625ILCS5/11-501.2(a)(1): 1. Chemical analyses of the person's blood, urine, breath, or other bodily substance to be considered valid under the provisions of this Section shall have been performed according to standards promulgated by the Department of State Police by a licensed physician, registered nurse, trained phlebotomist, licensed paramedic, or other individual possessing a valid permit issued by that Department for this purpose. The Director of State Police is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, to issue permits which shall be subject to termination or revocation at the discretion of that Department and to certify the accuracy of breath testing equipment. The

Department of State Police shall prescribe regulations as necessary to implement this Section.

When the LE Phlebotomist can't draw (transfer to another state for medical treatment)

When a blood test of a person who has been taken to an adjoining state for medical treatment is requested by an Illinois law enforcement officer, the blood may be withdrawn only by a physician authorized to practice medicine in the adjoining state, a licensed physician assistant, a licensed advanced practice registered nurse, a registered nurse, a trained phlebotomist acting under the direction of the physician, or licensed paramedic. The law enforcement officer requesting the test shall take custody of the blood sample, and the blood sample shall be analyzed by a laboratory certified by the Department of State Police for that purpose.

At the Hospital

625ILCS5/11-501.6(b): Any person who is dead, unconscious or who is otherwise in a condition rendering such person incapable of refusal shall be deemed not to have withdrawn the consent** provided by subsection (a) of this Section. In addition, if a driver of a vehicle is receiving medical treatment as a result of a motor vehicle accident, any physician licensed to practice medicine, licensed physician assistant, licensed advanced practice registered nurse, registered nurse or a phlebotomist acting under the direction of a licensed physician shall withdraw blood for testing purposes to ascertain the presence of alcohol, other drug or drugs, or intoxicating compound or compounds, upon the specific request of a law enforcement officer. However, no such testing shall be performed until, in the opinion of the medical personnel on scene, the withdrawal can be made without interfering with or endangering the well-being of the patient.

** Keep in mind that the case law is trending towards an officer needing a search warrant, consent or exigent circumstances in a situation where the suspected impaired driver is unconscious or incapable of refusal. (People v. Pratt, 2018 IL App (5th) 170427)