Developments in the Illinois Summary Suspension Law

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By

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I. Introduction

Since 1972, any person in actual physical control of a motor vehicle on an Illinois public highway and lawfully arrested for DUI is deemed to have consented to chemical tests to determine blood alcohol or drug levels. Despite many amendments until 1986, two constants remained in the implied consent law: (1) Only those who refused chemical tests were subject to suspension of driving privileges, and (2) the timely filing of a request for a hearing challenging suspension delayed enforcement until after a decision on the challenge.

Responding to claims that swift and certain suspension would determine drunk driving (claims supported by National Transportation Safety Board studies), the legislature passed and the Governor signed a new summary suspension law, which took effect January 1, 1986.

The new statute eliminated those two important elements of the previous law: i.e., those who take and fail, as well as those who refuse, chemical tests could have driving privileges suspended, and the request for hearing no longer delays the suspension.

Since January 1, 1986 the law has been amended by the legislature and interpreted in numerous appellate and supreme court decisions, many of which are discussed below.

II. Constitutional Considerations

The United States Supreme Court has developed a four part test to determine the constitutionality of the prehearing deprivation of a protected property interest. Under the test, courts must consider (1) the private interest affected by the state's action; (2) the risk of erroneous deprivation of that interest; (3) the value of any additional or substitute procedural safeguards; and (4) the government's interest, including the fiscal or administrative burdens imposed by these additional or substitute requirements.

While courts have generally upheld prehearing suspension of driving privileges (i.e., "summary suspension"), they consider the length of the proposed suspension of privileges as well as the availability of a prompt post-deprivation evidentiary hearing and hardship relief during the suspension period.

In various constitutional challenges to the Illinois summary suspension law, the Illinois Supreme Court has held that section 2-118.1 does not violate due process by limiting the issues that drivers can raise at the suspension hearing, that the hearing procedure does not violate the separation of powers doctrine; that section 11-501.1 passes muster on procedural due process and equal protection grounds; and that section 6-206.1 does not violate the separation of powers doctrine by providing for issuance of judicial driving permits (JDPs) by the circuit court rather than the secretary of state.

A constitutional challenge may be raised to new section 11-501(a)(5) and its incorporation into section 11-501.1 as a basis for statutory summary suspension. Section 11.501(a)(5) prohibits driving or the exercise of physical control over a vehicle by one whose blood or urine contains any amount of illegally ingested cannabis or "controlled substance" and defines the offense as driving while under the influence. The courts have repeatedly held that a criminal statute must bear a reasonable relation to the legislative policy it is designed to further.

The legislative policy behind our DUI laws is expressed in section 6-206.1:

> It is hereby declared a policy of the State of Illinois that the driver who is impaired by alcohol or other drugs is a threat to the public safety and welfare. Therefore, to provide a deterrent to such practice and to remove problem drivers from the highway, a statutory summary driver's license suspension is appropriate.

Each paragraph of sections 11-501(a)(1)-(4) relates directly to impaired driving or impairment in exercise of physical control over a vehicle. Section 11-501(a)(5) does not, and is probably unconstitutional for that reason. However, it is conceivable that the statute could pass constitutional muster if enacted as a separate offense and not under the general DUI statute.

III. Provisions of the Illinois Summary Suspension Law

A; *Generally*

Any driver lawfully arrested for the offenses enumerated under section 11-501 while in actual physical control of a motor vehicle on a public highway is subject to the law. The laws do not apply beyond the public highways (e.g., in private parking lots).

The arresting officer is required to warn of the potential consequences of submitting to or refusing testing. Failure to properly administer the warnings may be a basis for rescinding the suspension. In a recent decision, *People v. Wegielnik* the first appellate district held that the state may not suspend if the person does not understand English well enough to comprehend the request to submit to testing. The length of suspension is a function of whether the person is a first offender or multiple offender as defined by section 11-500 and whether the person has taken the test or tests and what the results were. It may be summarized as follows:

(i) No suspension if the person submits to testing that reveals a blood alcohol concentration (BAC) of less than .10 and blood or urine testing does not demonstrate the presence of a drug substance, or compound listed in the Illinois Controlled Substances Act or cannabis as listed by the Cannabis Control Act resulting from illegal use;

(ii) A three month suspension for a first offender who submits to testing that reveals a BAC of .10 or more;

(iii) A six month suspension for a first offender who refuses testing;

(iv) A 12 month suspension if the arrestee submits to testing that reveals a BAC of .10 or more and is not a first offender;

(v) A 24 month suspension for an arrestee who refuses testing and is not a first offender;

(vi) A three month suspension if the blood or urine testing discloses the presence of cannabis or a controlled substance (regardless of whether the person is a first or multiple offender).

The law enforcement agency employing the arresting officer must designate the type of test – i.e., breath, blood, or urine – to be administered. Under proper circumstances an officer may request multiple tests and refusal to submit to any single lawfully requested test may constitute a refusal. Also note that effective January 1, 1990 the law has been amended to specifically provide that a "urine test may be administered even after a blood or breath test or both has been administered.

Effective January 1, 1991, section 11-501.6 authorizes testing "if there is probable cause to believe that such person was the driver at fault, in whole or in part, for a motor vehicle accident which resulted in the death or personal injury of any person".

Inexplicably, suspensions for violation of this section are authorized under sections 6-206(a)(31). This is significant for two reasons: first, hearings challenging suspensions or seeking driving relief under this section would be held as administrative proceedings in the office of the secretary of state pursuant to sections 2-118(a) and 6-206(c)(3) rather than before the court of venue. Second, other provisions of the summary suspension law are not necessarily applicable – for example, the suspension would not necessarily take effect the 46th day from the date notice is served on the defendant as provided under section 11-501.1(g).

A similar statutory provision in Pennsylvania was recently struck down by that state's superior court, underscoring the constitutional issue. The court held that requiring drivers to submit to a blood test even without probable cause to believe they were intoxicated violates the Fourth Amendment prohibition against unreasonable searches.

B. ***Sworn Report and Confirmation of Summary Suspension.***

Once the driver has failed or refused testing, the officer must (1) submit a sworn report to the circuit court of venue and the Secretary of State's office certifying that he or she (a) lawfully requested that the driver submit to testing and that (b) the driver either refused or that testing demonstrated a BAC of .10 or more or the illegal presence of cannabis or a controlled substance as defined, and (2) serve notice of the statutory summary suspension on the driver. Failure to serve notice of the summary suspension violates due process and may be a basis for rescission of the summary suspension.

Under the law, the notice of summary suspension must be served on the driver immediately. The only exception is for blood or urine (not breath) testing, where notice may be served by deposit in the U.S. mail with postage prepaid to the driver at the address indicated on the Uniform Traffic Ticket. However, even if the officer fails to serve notice, rescission may not be warranted if the officer has acted diligently.

The sworn report designed by the Secretary of State's office and used by law enforcement agencies across the state contains a section in which the arresting officer may indicate the grounds upon which he reasonably believed the driver to be under the influence. It would appear, however, that since there is no statutory or constitutional requirement that the grounds for arrest be indicated on the sworn report, failure to include them is not a basis for rescission.

Similarly, although the Secretary of State's form contains spaces for time and place of test, place of arrest, and the like, failure to include such information is probably not a basis for rescission since there is no statutory or constitutional requirement that such information be indicated. However, if the officer supplies erroneous information, rescission of the suspension may be appropriate unless the defect is properly amended.

The suspension becomes effective 46 days after the date that notice of the summary suspension was served. For a breath analysis this will normally be 46 days after the date of arrest. In cases of blood or urine testing, it is typically 46 days after notice is deposited in the mail.

The officer is required to confiscate the person's driver's license and forward it, along with the sworn report, to the circuit court of venue. The officer must issue a receipt for the license, allowing the person to drive (if the license is otherwise valid) until the suspension becomes effective, unless rescinded before then by order of the court.

Upon receipt of the sworn statement, the Secretary of State must enter the suspension on the person's driving record for the appropriate period and confirm by mailing notice to the driver and the circuit court of venue. If the sworn report is defective because of error or insufficient information, the Secretary of State must return the sworn report (without entering the suspension) to the circuit court of venue, with a copy to the law enforcement agency responsible for issuing it, identifying the defect.

However, failure of the Secretary of State to reject and return a defective sworn statement is not a basis for rescission. In *People v. Badoud*, the Illinois Supreme Court considered whether a suspension entered by the Secretary of State on an unsworn report could be cured by having the officer resworn in open court without first requiring rescission of the suspension.

In upholding the right to cure, the court held as follows:

> [W]e do not believe that the General Assembly intended to be void a suspension entered upon a report which is unsworn…. The most reasonable interpretation of the statutory scheme is that, while it permits a defendant to insist on having an unsworn report corrected, it does not permit him to escape responsibility for drunk driving by pointing to the technical deficiency in the completion of the officer's report….

Relying upon *People v Badoud*, other courts have upheld the right to cure the sworn report based on an arresting officer's illegible signature, incorrect date of testing, and incorrect date of arrest without first requiring rescission of the suspension and new service of the corrected sworn statement or notice of suspension. However, if the state does not seek to amend a defective report, the suspension may be rescinded.

C. *The Summary Suspension Hearing*

1. Introduction

The summary suspension is not effective until the driver is notified in writing of the impending suspension and the right to a hearing challenging it. The request for hearing must be in writing and state the grounds upon which rescission is sought. The hearing must be held within 30 days after filing of the request or on the first scheduled appearance date on the Uniform Traffic Ticket.

2. Timing of the Hearing

Controversy and litigation have continued since the fourth appellate district held in *In Re Trainor* that the hearing must be held within 30 days of the date of request for hearing unless the defendant caused the delay. The court reasoned that this statutory requirement was a legislative expression of its "determination of what constitute a prompt hearing for due process requirements…."

However, in *People v Webb*, the court held that due process and statutory requirements were satisfied by a hearing on the first scheduled appearance date or within 30 days of the request for hearing, whichever came later. The court did not disagree with *Trainor* but distinguished it because the request for hearing in *Trainor* was filed after the first appearance date, therefore requiring no judicial interpretation of the alternative nature of the statute.

In *People v Gresik,* the defendant's attorney filed a petition to rescind and set the hearing for the 30th day following its filing, one week before the first appearance date listed on the uniform DUI citation issued by the officer. On the hearing date, the state obtained a continuance to the original first scheduled appearance date, which was still six days before the effective date of the suspension. On the next court date, the defendant filed a motion to rescind based upon the failure of the state to proceed within 30 days of the filing of the petition to rescind. The trial court denied the motion.

The first appellate district court, citng *Webb*, held that the statutory requirements had been met. The court found that even though the hearing had not been held within 30 days of the petitioner's filing, it could have been held on the first appearance date. Further, in rejecting the defendant's due process claims, the court in *Gresik* cited *People v Gerke.*

> In *Gerke*, our supreme court stated that "a hearing on the suspension, when requested, is to be conducted within 30 days after receipt of the written request or the first appearance date on the Uniform Traffic Ticket [citation omitted]. The first appearance date on the Uniform Traffic Ticket must be not less than 14 days but within 49 days after the date of arrest, whenever practicable [citation omitted]. The summary suspension hearing will be held not later than three days after the suspension is to become effective…. A three day delay is not nearly long enough to implicate the due process clause."

Accordingly, under *Gresik* and *Gerke*, if the first appearance date set by the officer is more than 49 days after the date of arrest and more than 30 days following the filling of the petition, there may well be a due process basis for rescission.

However, contrary to *Webb* and *Gerke,* (and citing *Trainor*), the third district appellate court held in *People v Johnson* that the failure to hold a hearing within 30 days violated the petitioner's due process rights and the trial court had no alternative but to rescind his summary suspension."

The petitioner in *Johnson* took no steps to set the matter for a hearing after filing the petition. The court rejected the state's contention that it was the petitioner's burden to secure a hearing date within 30 days of the filing of the petition. Instead, the court held as follows:

> [T]he petitioner met the initial filing requirements of section 2-118.1 and thus fulfilled his burden of proceeding with the petition. Once those requirements were met, the burden shifted to the State to ensure that a hearing date was set within 30 days. The State did not meet its burden.

However, it should be noted that the court does not address whether the petitioner's rights would have been violated had the matter proceeded on the first appearance date even if that were beyond 30 days from the filing date, since that was not in issue.

Taking a position contrary to *Johnson* and citing *People v Grange*, the fifth appellate district in *People v Sowers* held that merely filing a petition for hearing does not in itself start the 30 day time period. Instead, the defendant must make an active attempt to have the matter heard by the court.

Inevitably, both the proper procedure for filing and presenting a petition for rehearing and the time within which a hearing must be held to satisfy statutory and due process requirements will be settled by the Illinois Supreme Court.

3. Conduct of the Hearing

While the hearing may be based solely on review of the officer's official reports, the driver has the right to subpoena the officer. If the officer fails to appear, the statute provides that the failure "shall be considered the same as the failure of a complaining witness to appear in any criminal proceeding." No Illinois court has decided whether failure to appear in response to a subpoena may be a basis to rescind suspension. In *People v Johnson*, the second appellate district invalidated a local court rule providing for rescission of a suspension if the officer failed to appear even if the officer is not under subpoena. In holding that the hearing could proceed on the officer's reports, the court stated as follows:

> Section 2-118.1(b) makes it clear that the State is permitted to use the arresting officer's sworn report to support the summary suspension of a defendant's driver's license provided that the arresting officer is not under subpoena to appear.

Further, in *People v Clayton*, the fourth appellate district held that if the officer was not subpoenaed or otherwise required to appear and his or her sworn statement had been properly filed with the court, failure to appear was not a basis in itself to grant rescission.

In a recent decision the Illinois Supreme Court held that summary suspension proceedings may be conducted under the authority of a local ordinance and prosecuted by a village attorney. In reversing the first appellate district, the court in *The Village of Palatine v Regard* held that municipalities have the authority to adopt provisions of the Illinois Vehicle Code by reference. The court found that a municipality could thus empower the Secretary of State to suspend the driver's license of those who violate a summary suspension ordinance.

The decision is troubling for two reasons. The court had previously acknowledged that the statutory summary suspension is an exclusive function of the circuit court, not the Secretary of State's office, which only acts to confirm the suspension. Second, and more important, the court fails to address the fact that section 11-501.1 does not expressly authorize the circuit court to suspend under a local ordinance summary suspension violation. Compare this with the language of section 11-501 (driving while under the influence) which does contain such a provision:

> The Secretary of State shall revoke the driving privileges of any person convicted under this section *or a similar provision of a local ordinance*. Emphasis added).

The significance of this distinction is not addressed by the court.

The summary suspension hearing is generally limited to four specific issues:

Whether (1) the driver was placed under arrest for DUI (pursuant to section 11-501 or a similar provision of a local ordinance);

2) the arresting officer had reasonable grounds to believe that the driver was DUI;

3) the driver was advised that driving privileges would be suspended if he or she (i) unlawfully refused to submit to requested testing or (ii) submitted to testing which disclosed a blood alcohol concentration of .10 or more or the presence of cannabis or a controlled substance; and

4) the driver (i) unlawfully refused to submit to lawfully requested testing or (ii) submitted to testing which disclosed a blood alcohol concentration of .10 or more or the presence of cannabis or a controlled substance.

While the statute provides that the summary suspension hearing be limited to these issues, the Illinois Supreme Court in *People v McClain* held that the circuit court may also consider alleged deficiencies in the sworn report at the hearing. The court reasoned that the officer's sworn report functions like a civil complaint.

Along these lines, courts have held that hearing requests that allege grounds not well founded in law or fact are subject to sanctions under the Illinois Code of Civil Procedure and that the sworn report may be certified in lieu of swearing under section 1-109 of the same Act.

If, as courts have consistently held, the rules of civil procedure govern these proceedings, it would seem fair to argue that the ordinary rules of discovery apply to them. That, in turn, raises interesting questions; i.e., do parties have the right to file and require answers to requests to admit fact, interrogatories, etc.? Can the defendant require deposition of witnesses, including the arresting officer and evidence technicians?

Further, if answers to written discovery are not required sooner than 28 days from the date of filing, may defendants argue that the inability to get timely discovery before or soon after a summary suspension infringed their constitutional and statutory right to a prompt hearing?

While no Illinois case has yet addressed these issues, it seems likely that the courts will be confronted by them. The Illinois Supreme Court may be well advised to establish a set of procedural rules through its rules committee to govern these hearings, thereby preserving the statutory and constitutional right to a *prompt* hearing.

4. Burden of Proof

Under a recent amendment to the law, defendants now can require full disclosure before the hearing of all information about any chemical test given to them. This provision was inspired by the Illinois Supreme Court's decision in *People v Orth* which gives defendants the burden of establishing a prima facie case for rescission.

Prior to the Illinois Summary Suspension Law, the controlling case on burden of proof was *Village of Park Forest v Angel* which held that the burden under the old implied consent law rested with the State.

> The legislature has provided that an implied consent hearing is to proceed in the circuit court as in other civil proceedings. Since it is a proceeding in which plaintiff seeks suspension of the driving privileges of the defendant, we hold that the plaintiff has

> the burden of proof to resolve all of the issues prescribed by a preponderance of the evidence to warrant the requested suspension.

After several appellate court decisions found that the new summary suspension laws give the defendant the burden of proof, the Illinois Supreme Court agree in *People v Orth:*

> [T]he statute does not clearly allocate the burden of proof. The statute's ambiguity on this point means that we must interpret it with some caution, and with an eye towards the federal and Illinois Constitutions.

After examining the factors established by the U. S. Supreme Court in determining whether an administrative procedure meets due process requirements, the court held that "placing the burden of proof upon the suspended motorist would not violate the due process clause of either the Federal or State Constitutions."

The court nevertheless tempered its decision by stating as follows:

> [O]ur conclusion is heavily influenced by our holding… that the state will have the burden of showing the reliability of test results if the motorist first makes a *prima facie* showing that the results were unreliable. This holding considerably reduces the risk that placing the initial burden of proof upon all suspended motorists will result in the erroneous deprivation of any motorist's license…. Once the motorist has made a *prima facie* case…the State can only avoid rescission by moving for the admission of the test into evidence and laying the required foundation.

In its decision the court also concludes that the legislature intended for the driver to bear the burden.

Since the *Orth* decision, litigation has centered on the question of what constitutes a sufficient *prima facie* showing to shift the burden to the State. The court in *Orth* anticipated such disputes and tried to lend guidance in its opinion:

> It only remains to consider what evidence presented by the motorist will constitute a *prima facie* case for rescission…such evidence may consist of any circumstance which tends to cast doubt on the test's accuracy, including, but not limited to, credible testimony by the motorist that he was not in fact under the influence of alcohol. Only if the trial judge finds such testimony credible will the burden shift to the State to lay a proper foundation for the admission of the test results…

While the *Orth* decision addressed only the burden of proof for chemical test results, courts have relied on *Orth* in giving the burden to the defendant for all of the statutorily enumerated grounds for rescission.

By requiring the defendant only to establish a prima facie case of chemical test results unreliability (at which point the burden shifts to the state), the Illinois Supreme Court addressed the risk of an unconstitutional deprivation of driving privileges. Nowhere in *Orth* did the court indicate such constitutional concerns about a defendant's burden on the other issues; curiously, the burden has nevertheless been applied by the way of *Ort* to the remaining issues.

The following attempts to establish a prima facie case have been rejected by the courts: (1) asking for judicial notice of the Illinois Department of Public Health administrative rule that breath analysis machines must only be accurate within plus or minus .01 percent; (2) defendant's testimony that he blew into a breath analysis machine three times before a reading could be obtained; and (3) defendant's testimony that the machine failed to indicate a breath analysis result even though he followed the breath machine operator's instructions.

5. Collateral Estoppel

Dismissal of the substantive DUI offense, whether through a not guilty finding or on other grounds, is not an automatic basis for rescission of the statutory summary suspension, which is a separate civil proceeding.

However, there had been a split among appellate districts about application of collateral estoppel to issues shared by both proceedings. The Illinois Supreme Court recently resolved the split by deciding against applying the doctrine in *People v Moore*.

In *Moore*, after granting the defendant's petition to rescind when it found no probable cause to arrest, the court granted the defendant's motion to suppress his arrest in the criminal DUI case, holding that the state was collaterally estopped from relitigating probable cause. The fifth appellate district sustained the trial court's ruling, holding as follows:

> The doctrine of res judicata provides that a final judgment on the merits is conclusive to the rights of the parties and their privileges and, as to them, precludes a subsequent suit involving the same claim, demand or cause of action… Collateral estoppel, or issue preclusion, is a branch of res judicata and is found on the same policy, that is, to promote judicial economy and prevent repetitive litigation.

The supreme court, however, while concluding that the case contains "all of the elements necessary for the application of the doctrine of collateral estoppel", nevertheless refused to apply the doctrine to bar the state from relitigating the issue in the criminal DUI proceeding.

The court reasoned that if the results of summary suspension proceedings were given collateral effect, the state would as a practical matter require officers' testimony in every case (even if they had not been subpoenaed by the defendant) as well as other witnesses and would be reluctant to rely on officer's sworn reports, therefore frustrating legislative intent:

> The legislature has specifically directed that the license suspension proceedings are to be swift and of limited scope… If these proceedings were given preclusive effect, it would render meaningless this legislative purpose….

It is difficult to reconcile the court's conclusion with the legislative history of the summary suspension law and the court's own previous interpretations of the law. For example, the court has held (1) that the defendant must be allowed to challenge the chemical test result by raising non-compliance with the Department of Public Health standards, even though it is not one of the enumerated issues under section 2-118.1; (2) that a defendant may challenge the sufficiency of the officer's sworn report even though this is not one of the enumerated issues; (3) that once a defendant establishes a prima facie case against a chemical test result, the burden shifts to the state to lay a complete foundation for admitting the test result.

The court has consistently rejected attempts to limit the scope or breadth of these hearings, often concluding that doing so would deny due process, yet relies on the very limitations it has previously rejected to reach its decision in *Moore*.

Furthermore, use of the word "summary" by the legislature does not refer to the nature of the proceeding (as the court implies), but refers instead to the suspension itself; that is, the suspension is "summary" because it cannot be put off by a request for hearing or procedural delays in the hearing as it could under the previous law.

The court apparently views these proceedings as a type of administrative hearing where the quality of the process can be sacrificed for the sake of promptly reviewing the grounds for suspension. Thus, rather than considering collateral estoppel on a case by case basis under the traditional standard, the court simply bars application of the doctrine in all DUI proceedings.

This ignores the reality that many summary suspension proceedings are full evidentiary hearings that meet all of the tests for application of the doctrine as to a particular issue. That the statute and constitution give defendants the right to a prompt hearing does not mean they should or do get an abbreviated one. While the summary suspension hearing is an expedited proceeding which does not always lead to full exposition of the issues on the merits, appropriate application of collateral estoppel would promote effective use of judicial resources, and avoid duplicitious proceedings and inconsistent results.

6. Stay of Suspension

One of the major changes in the summary suspension law, as stated above, is that the hearing process no longer may stay or delay the effective date of the suspension. Nevertheless, the courts retain their inherent authority to grant a stay of a suspension pending appeal of a decision to sustain a statutory summary suspension.

7. Confidentiality

The original summary suspension law provided that the decision to rescind or sustain the summary suspension is only for use by the courts, police officers, and the Secretary of State. Nevertheless, the Secretary of State made the suspension part of the driver's public record, available to insurance companies and others. Under legislation initiated by the bar that took effect on September 21, 1989, the record of first offenders who are not convicted of the substantive DUI charge (including persons who receive court supervision or where the charges are dismissed) is confidential except while the suspension is in effect. In implementing this provision, the Secretary of State made it retroactive to January 1, 1986.

8. Judicial Driving Permits (JDPs)

When first offenders do not challenge the statutory summary suspension or it is otherwise sustained after a hearing, they may apply for a JDP to relieve an employment hardship, to allow themselves or a member of their household to obtain necessary medical treatment, or for educational purposes.

A request for judicial driving relief is initiated by filing a petition for a permit in the circuit court of venue. The petition cannot be initiated until the applicant is notified of the summary suspension, and cannot become effective before the 31st day of the suspension. Thus,

the petitioner is statutorily barred from driving during the first 30 days of the suspension unless it has been otherwise rescinded.

The court conducts a hearing and may only grant relief if the petitioner is able to demonstrate that no alternative means of transportation are reasonably available. The permit is only available during the specific times and for the specific routes necessary to accomplish its purpose. The hearing is civil and may be conducted concurrently with the petition to rescind.

Relief for other than the enumerated purposes is prohibited under the statute. Further, the court may not grant relief (1) until after the court is satisfied, after considering an alcohol/drug evaluation performed under section 2-101 of the Illinois Alcoholism and Other Drug Dependency Act, that it will not endanger the public safety or welfare; (2) to any person convicted of reckless homicide within the last five years; and (3) to anyone whose driving privileges are suspended or revoked (except for the current summary suspension).

The court is also authorized to consider whether the petitioner (1) has been repeatedly convicted of moving violations or involved in motor vehicle accidents that indicate disrespect for the public safety; (2) has been convicted of a traffic violation connected with a traffic accident resulting in the death of any person within the last 5 years; (3) is likely to obey the restrictions of the JDP; and (4) has any traffic violations pending.

Upon receipt of the court order, the Secretary of State is required to issue the JDP. Information concerning its issuance will not appear on the public record except while it is effective. If the order is incomplete or otherwise does not comply with the law, the Secretary of State must return the permit to the issuing court indicating why it cannot be issued.

If the person is issued a traffic citation while the JDP is effective, the court must consider canceling it. If the person is charged with a DUI violation, the court before which the charge is pending must forward the JDP to the court that issued it, where it must be cancelled and the Secretary of State notified.

The Illinois Supreme Court held by 4-3 decision in *People v Pine* that the Secretary of State has standing to appeal an order of the circuit court directing it to issue a JDP if the Secretary believes that the petitioners were second offenders and therefore not eligible for a JDP.

Persons who are not first offenders as defined under section 11-500 are not eligible for JDP relief. If they still wish to seek relief, they must petition the Secretary of State through an administrative hearing. Effective September 21, 1989, a second offender who has been suspended for 12 months as the result of submitting to and failing testing cannot apply for at least 90 days after the effective date of the suspension. A second offender suspended for 24 months for refusing testing cannot apply for at least six months after the effective date of the suspension.

Also effective September 21, 1989 the definition of first offender as contained in section 11-500 was amended. Previously, the statute defined a first offender as a person who had not been suspended for violating 11-501.1 since January 1, 1982 and had not been assigned court supervision or convicted within the last five years. Much litigation centered on how the five-year period was to be defined. To end such disputes, section 11-500 was changed to define a first offender as any person with no previous conviction or court assigned supervision for DUI or suspension for violation of 11-501.1 *within five years prior to the current offense.* Additionally, effective July 1, 1990, section 11-500 has been amended to incorporate the new cannabis and controlled substance language from section 11-501(a)(5), providing that this offense will also disqualify a person for first offender status.

IV. Conclusion

Over five years have passed since Illinois embraced the concept of summary suspension. Secretary of State statistics show that over 88 percent of all first offenders lose their privileges under the summary suspension law and that summary suspension arrests have decreased approximately 11 percent since 1986. Whether the summary suspension law can be credited must await further study; however, it seems likely that the law, in combination with changing attitudes about impaired driving, has contributed to the decrease.