

ALCOHOL ISSUES FOR STUDENTS

STUDENT LEGAL SERVICE

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UNIVERSITY OF **ILLINOIS**

AT URBANA-CHAMPAIGN

KEY

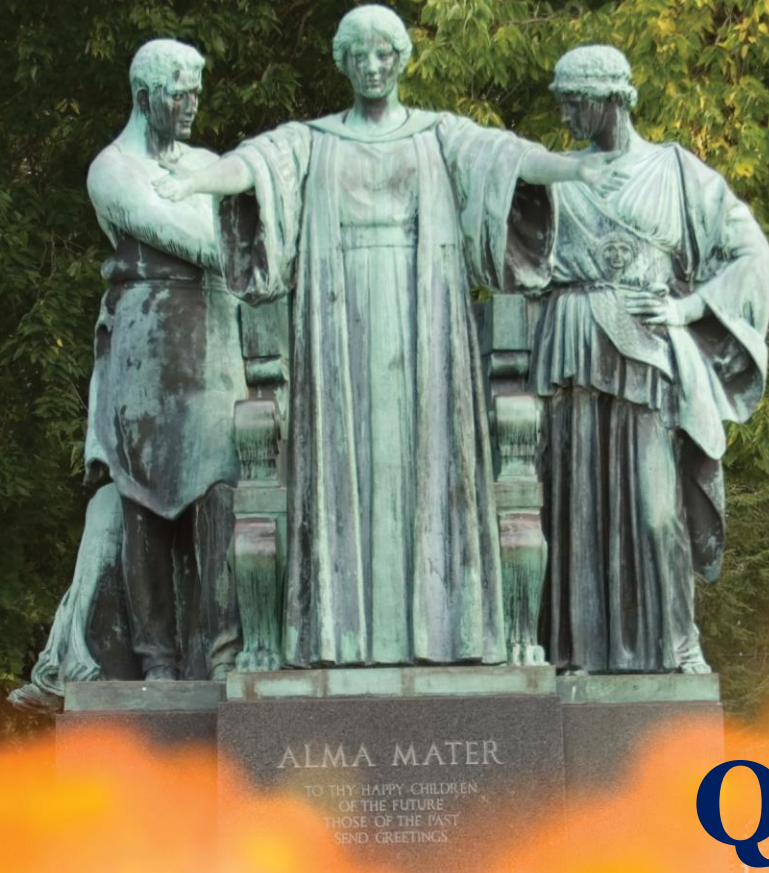
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ALCOHOL ISSUES FOR STUDENTS

Illinois Law





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QUESTION:

Can a person consume without
being in possession?

ANSWER:

No, but the police officer may be able to prove you consumed based on breath, physical characteristics (slurred speech, staggering, etc.), but one cannot consume without being in possession at some point.



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QUESTION:

I am under 21. I cook using various forms of alcohol and need to taste the wine before I use it. Can I legally do this?



ANSWER:

Technically, the answer is “no” unless you are enrolled in a culinary class. You can taste but not drink.



QUESTION:

May I drink Alcohol as part of a religious ceremony?



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ANSWER:

Yes, but do not try to start a religion where the drinking of alcohol is the central pillar of the faith. A fraternity or sorority house or apartment house is not going to be recognized as a bona fide religion!



PENALTIES

If you are charged with a State Offense for possession/consumption and found guilty, the consequences can be severe.

NOTE: City ordinance violation charges are petty offenses where jail is not a possibility.



QUESTION:

I heard a misdemeanor isn't a big deal – a fine and I go home. What's the big deal?



ANSWER

A finding of guilt for “minor in possession/ consumption of alcohol carries up to:

- 364 days in county jail.
- \$2,500.00 fine.
- Mandatory court costs, often more than the fine.
- Six month loss of driver’s license; one year for second and subsequent offenses.
- Where *Court Supervision* is granted, you still lose your license for three months



- In Champaign County, mandatory alcohol counseling through an online class for first offense.
- Automobile Insurance costs will likely increase
- U of I Office for Conflict Resolution (Student Discipline) will issue sanctions against you, which can impact transcripts and admission to graduate school



- Some professions will question your fitness for admission or license, but few will bar you altogether. You will have to explain yourself, which can be embarrassing.
- Most job applications ask if you have ever been convicted of a misdemeanor or felony.



- Multiple convictions are difficult to explain.
One conviction for MIP; you are just unlucky.
 - Two convictions makes an employer wonder if you are more than unlucky.
 - **THREE** suggests a pattern of very poor judgment and possible alcohol issues.



QUESTION:

Since it is illegal to possess alcohol under the age of 21, why is it that people under 21 can serve booze in campus bars? Don't they have possession when they serve?



ANSWER:

Illinois law permits municipalities to adopt ordinances that permit persons 19 or older to tend bar at a licensed premises, but NOT those 18 or younger, although 18 year olds are not minors.



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QUESTION:

What if a few of my friends and I are sitting at a table in a bar. Two of us are under 21. We have bottles of beer in front of us, but when the police come to our table, we have our hands in our laps and are not touching the beer?



ANSWER:

The law forbids actual physical possession by those under age 21.

The possession does not have to be exclusive.



This can be proved by circumstantial evidence, sometimes called constructive possession.

In everyday terms this means that if the alcohol is within your reach, dominion or control, it will be deemed to be in your possession, absent you proving to the contrary.



POSSESSION AND USE OF FAKE ID

Illinois Law



235 ILCS 5/10-1(e) Any person under the age of 21 years who, for the purpose of buying, accepting or receiving alcoholic liquor from a licensee, represents that he is 21 years of age or over shall be guilty of a *Class A Misdemeanor*.

Note: Urbana and Champaign have similar city ordinances which carry lesser penalties as they are *petty offenses*.



ILCS 335/14(a) (from Ch. 124, par. 34)

Sec. 14. Unlawful use of identification card.

(a) It is a violation of this Section for any person:

1. To possess, display, or cause to be displayed any cancelled or revoked identification card;
2. To display or represent as the person's own any identification card issued to another;



3. To allow any unlawful use of an identification card issued to the person;
4. To lend an identification card to another or knowingly allow the use thereof by another;
5. To fail or refuse to surrender to the Secretary of State, the Secretary's agent or any peace officer upon lawful demand, any identification card which has been revoked or cancelled;



PENALTIES

- Up to 364 days in jail.
- Mandatory \$500.00 fine plus court costs.
- Loss of driver's license for one year.
- U of I Student Discipline – local police forward all reports to U of I.
- Having to explain why you can't drive for your summer job.
- Explaining “Fraudulent Use/Possession of ID” to employer is awkward and implicates notions of Identity Theft, which makes employers very cautious about hiring you.



QUESTION

I am 21 years old. I “lost” my ID and learned that somebody used it to get into a bar. Am I guilty of something?



ANSWER

Potentially. If you lost your ID and reported it lost to police and/or Driver's Services, and had it replaced prior to learning about the use by another, you will have a strong legal defense.

The tale of the "lost" or "stolen" ID seems to be a phenomenon that largely occurs on college campuses. Police and prosecutors are naturally skeptical about this version of events. Rarely does it work.



Lending your over-21 ID to a friend or younger sibling and then concocting a cover story could lead to far more serious criminal charges.

Suspiciously naturally arise when it is a relative or look-alike in the same Fraternity/Sorority/Residence Hall.





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QUESTION

What happens if I get caught a second time?

ANSWER

You can be charged with a **Class 4 Felony**.

Student Legal Service will not be able to represent you; our office is not permitted to represent students charged with a felony.

Penalty is one to three years imprisonment and up to \$25,000.00 fine.



SOCIAL HOST LIABILITY



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25 ILCS 5/6-16 (a-1)(c) Any person shall be guilty of a Class A misdemeanor where he or she knowingly authorizes or permits a residence which he or she occupies to be used by an invitee under 21 years of age and (the person) occupying the residence knows that any such person under the age of 21 is in possession of or is consuming any alcoholic beverage; and ...

PENALTIES

- Mandatory \$500.00 fine.
- Up to 364 days in jail.
- Possible eviction by landlord.
- Sanction by fraternity or sorority.
- Explaining to parents, employers what took place



QUESTION

I am only 20, but my name is on the lease. Can I be held legally responsible as a social host for allowing underage drinking?



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ANSWER

Yes. If you occupy or lease the premises you can be held responsible as long as you knew about the underage alcohol issues.

Under Champaign ordinance, you can be held to have violated the “Adult Responsibility” section if, using reasonable care, you “should have known of the possession or consumption of alcohol.”



Actual knowledge is required by State law, but local law has a lower standard, a mere preponderance of the evidence.

Generally, police write out tickets using local ordinances, EXCEPT on “unofficial” or other special days, when they will often cite under State laws.



QUESTION

I have four roommates who regularly party, and there are almost always underage students drinking. What can I do to avoid being charged with a crime?



ANSWER

The strongest action you can take is to call the police and ask for the removal of those who are underage. This must be done before the neighbors have made a complaint.

Realistically, few students are going to take this action as they have to deal with the other roommates the rest of the year and do not want to become social outcasts.



A more practical action is to leave the apartment during the gathering and have proof that you were not present.

This is NOT 100% guaranteed to protect you, however.



CHAMPAIGN / URBANA CITY ORDINANCE SYSTEM

19-year-olds are allowed to be present in bars but cannot possess or drink alcohol. This is the rule in Champaign and Urbana, but, as a general rule, not outside the twin cities, where 21 is the effective law.

PAY BY MAIL

Both Champaign and Urbana have a system where police will usually issue a city ordinance TICKET for offenses such as:

- Minor's Purchase/Possession of Alcohol
- Possession of Alcohol on Public Property
- Minor (under age 19) in a liquor establishment
- Fake ID, etc.

These are quasi-criminal offenses, not CRIMINAL charges although many could be called Criminal Misdemeanors if charged under State law.



If issued a City Ordinance Violation Ticket, you should:

1. Consult with a Student Legal Service attorney before taking action, especially if you believe you have a defense.
2. Evaluate with counsel the pros and cons of paying the fine by mail.
3. If paying by mail, do so promptly, **DO NOT WAIT** until the last day
4. If you mail the ticket in on time, it will not count as a conviction and you will not lose your license on alcohol offenses. It is a settlement; since nothing is filed in Court, technically you have not been charged with an offense.



5. On a second offense “pay by mail” is not permitted/accepted by Champaign.
6. If you had a fake ID but were not charged, be aware that the ID will be sent to the Secretary of State so that your Driver’s License can be administratively suspended. You can ask for a formal hearing, but the police officer does not have to appear; an affidavit by the police officer is permitted.



- What does the city have to prove in order to find you liable for a city ordinance violation ticket?
 - By a clear preponderance of evidence that you committed the offense.
 - Under state charges, the state must prove guilt “beyond a reasonable doubt”.
 - With city tickets, it amounts to “more likely than not”, a bit more than 50%, for a finding of guilt.
- Conviction is much easier in city cases.
- You will receive a fine and court costs if you are found guilty at trial. There are no fines or court costs if you are found not guilty.



QUESTION

Can I be charged with underage drinking under state law and local ordinance for the same act of drinking?



ANSWER

No. The ban on double jeopardy does apply. You have the right not to testify and not to incriminate yourself.



QUESTION

Does it violate double jeopardy to charge me in court and also to get penalties at Student Discipline?



ANSWER

No. The university system is not a criminal proceeding where the ban on being charged twice for the same offense applies.

Civil sanctions are not prohibited where the action was criminal and there was a conviction for the crime.

The constitutional rights you have in a Criminal proceeding in a court generally do not apply in a university discipline hearing.



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