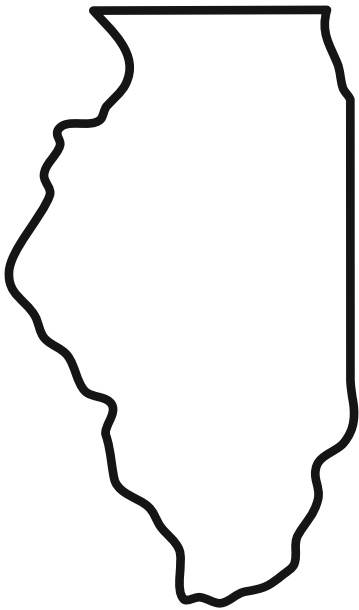


Crimes and Immigration Law: What You Need to Know

A Guide for Immigrants in Illinois



The Criminal System

It is important to know how the criminal system works, because a criminal arrest could affect your ability to remain legally in the United States.

How does the criminal process begin?



Arrest

An arrest occurs when you are not free to leave an interaction with the police. The police must have sufficient evidence (probable cause) to make an arrest.



Processing

After the police arrest someone, they are usually taken to a police station for processing. During this stage, the police:

- Gather your biographical information
- Take your fingerprints and photo
- Search you and take your personal property, including your clothing

Depending on the charge, you might be released from police custody. If not, you will be taken to the Cook County Jail.

Citation

Sometimes, instead of arresting a person, the police will issue a citation. You will be given a document with a court date and location and must appear in court that day.

YOUR RIGHTS DURING AN ARREST

RIGHT TO REMAIN SILENT: Tell the police: “I will remain silent until I can speak to a defense lawyer.”

PROTECTION AGAINST UNREASONABLE SEARCHES: Tell the police: “I do not consent to a search.”

PROTECTION AGAINST UNREASONABLE ARRESTS: Ask the police, “Am I free to go?”

RIGHT TO SPEAK TO A LAWYER: If you are arrested, call our Arrest Hotline at 844-817-4448. A lawyer will come to the police station to represent you for free.

Crimes in Illinois

Vehicle-related offenses

It is illegal to:

- Drive without a valid license
- Drive under the influence of drugs or alcohol
- Have an open container of alcohol in the car
- Have marijuana that you can access in the car
- Leave the scene of an accident
- Continue driving after the police have signaled for you to stop.

Immigration authorities take driving under the influence (DUI) offenses very seriously.

Individuals with DUI arrests are prioritized for arrest and detention by ICE. DUIs also have negative consequences for discretionary applications such as asylum and when seeking a bond from an immigration judge.



To drive legally in Illinois you must have:

- A vehicle registered with the state
- A U.S. driver's license
- An insured vehicle

People with work permits are eligible for driver's licenses. People without lawful immigration status can also apply for a license in Illinois if they have a valid passport or consular card and if they can show they have lived in Illinois for one year.

Drug offenses

Possession of drugs, including marijuana, remains a federal crime.

Possession of even a small amount of drugs can result in automatic denial of bond by the immigration court and make you ineligible for certain immigration applications.

Selling drugs has even harsher consequences, making you ineligible for almost all possibilities for lawful status and a priority for deportation.



Offenses against other people

Endangering the welfare of minors and child neglect

You may not cause or allow:

The life or health of a minor to be endangered, or

A child to be placed in circumstances that endanger his or her life or health

Examples: physical harm; excessive corporal punishment; creating a risk of injury; committing or permitting a sexual offense against a child; leaving a child under 6 years old alone in a vehicle for 10 minutes; leaving a child under 14 alone for an unreasonable period of time; not providing food, clothing, shelter or medical treatment.

Domestic Violence

A person commits domestic battery if the person knowingly:

(1) Causes bodily harm, or

(2) Makes physical contact in an insulting or provocative manner

with a family member or household member, including a current/former romantic partner.

It is also a crime to interfere with a domestic violence report and to violate a “protective order,” which is a court order saying you cannot have contact with someone.

Other common crimes against the person:

- Murder and manslaughter: intentionally or unintentionally killing somebody
- Simple assault and battery: causing someone to fear harm or causing harm or unwanted physical contact
- Aggravated assault and battery: assault or battery with aggravating factors, such as having a weapon, causing more serious harm, a certain type of victim such as a police officer or elderly or disabled person
- Sexual assault, including any unwanted sexual contact



Offenses against property

Common property offenses are theft, fraud, and burglary (entering a building with the intent to commit theft or another serious crime). **Many recently-arrived migrants have been arrested for shoplifting!**



Interference with public officers

It is against the law to:

- Resist arrest, where there was an underlying basis for the arrest
- Provide false information to the police, including your name and date of birth
- Destroy or alter evidence



Weapons offenses

It is against the law to:

- Possess a firearm without a license (FOID)
- Carry a loaded firearm outside one's home, without a second license (concealed carry license)
- Possess other deadly weapons.



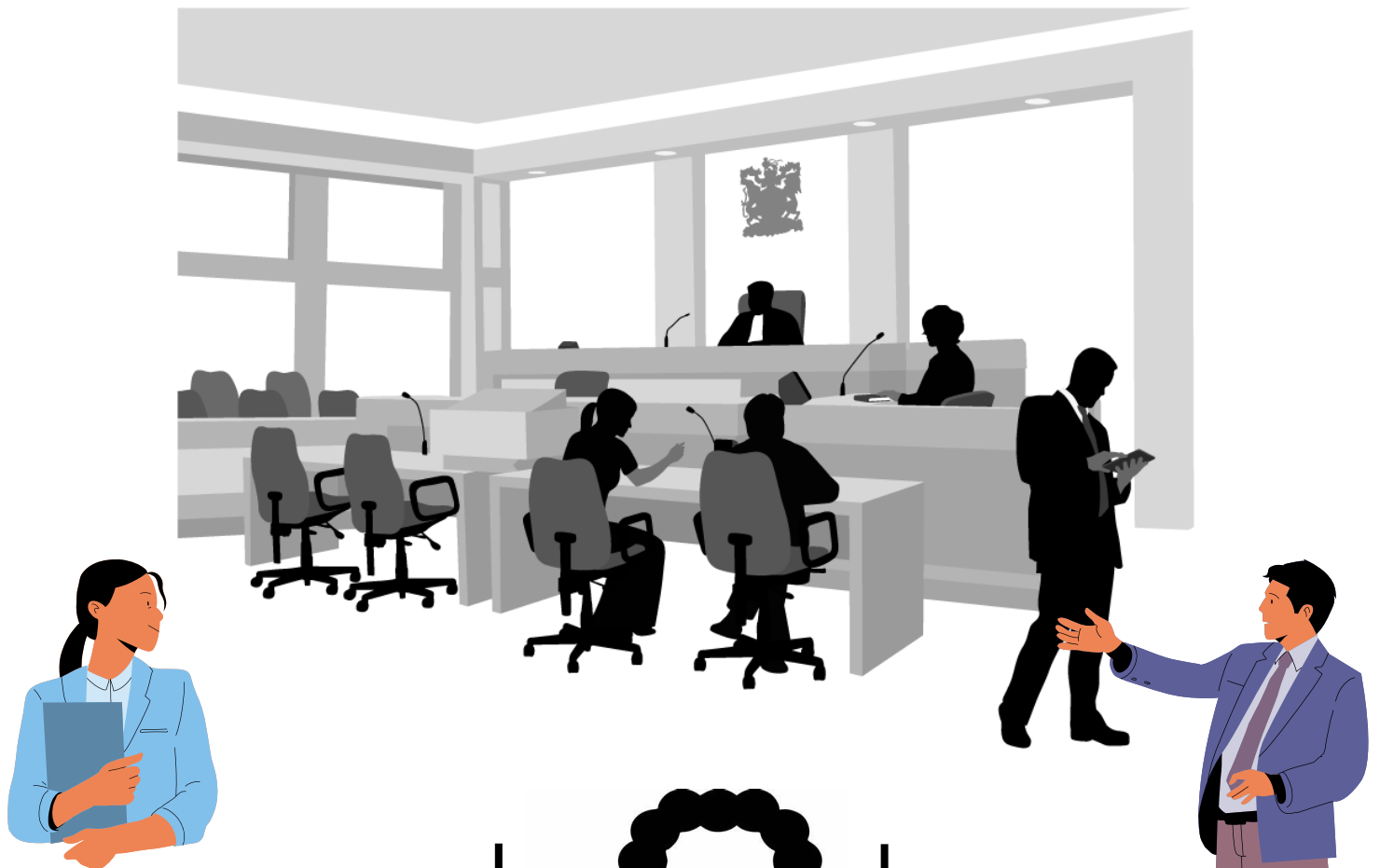
Most immigrants without permanent status are not eligible for firearms licenses and therefore cannot carry guns.



All of these crimes, and others, can have consequences with immigration. Try to avoid situations that could lead to your arrest.

However, if you are arrested, don't forget that you still have rights. Call 844-817-4448 if you are arrested to have a defense attorney represent you at the police station.

Actors in the criminal system



The defense attorney

You can hire a private attorney or you can ask the court to appoint a public defender. Private lawyers and public defenders have the same qualifications and responsibilities:

- Advise you of your options and the possible consequences of a conviction (including immigration consequences).
- Protect your rights and interests.
- Obtain and evaluate the evidence against you.
- Negotiate with the prosecutor throughout the case.



The judge

The judge listens to the arguments of both sides and makes decisions regarding your case. If you are convicted, the judge decides your sentence.

The prosecutor

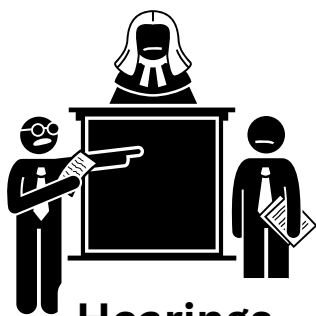
The prosecutor represents the state against the accused. Their responsibilities include:

- Investigating violations of the law
- Determining criminal charges
- Talking to the victim and witnesses about the crime
- Negotiating plea deals with the defense
- Recommending sentences upon conviction.

Other people present in court include the **interpreter** and the **judge's clerk**.

Criminal Court Procedures

1



Hearings

If you are detained, your first hearing will be to determine if you can be released from custody.

The following hearings will be to move your case forward and provide information to the court. You may have several hearings.

2



Discovery

Both the prosecutor and defense attorney will receive the evidence that exists in the case. This may include:

- Police reports
- Interviews with witnesses
- Physical evidence

3



Negotiation and guilty pleas

Not all cases go to trial. In the U.S., most cases are resolved through agreements between the prosecutor and the defense attorney. Usually, the defendant agrees to admit guilt to a certain crime in exchange for a lesser conviction or sentence.

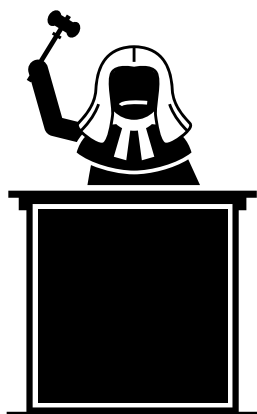
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Trial

All individuals charged with a crime have a right to a trial in which either a judge or a jury will determine whether they are guilty. During a trial, the defense attorney and the prosecutor present their evidence and make legal arguments. The complaining witness and other witnesses may testify. The defendant can choose whether to testify.

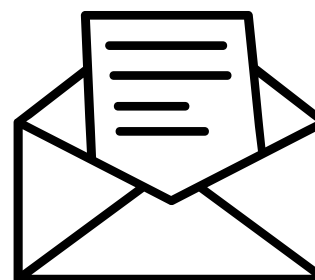
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Sentencing

If there is a finding of guilt, the court will impose a punishment based on the seriousness of the crime. The punishment could include jail time, but may not.

5



Appeal

If you do not agree with the court's decisions you can file an appeal. An appeal is an argument to a higher court that the lower court's decisions were wrong. The higher court will review the record to determine if the judge made errors. The higher court cannot consider new evidence.

Your Rights in Criminal Court

- A presumption of innocence
- A defense attorney
- An interpreter
- A quick and public trial
- A trial by jury
- Ability to confront witnesses
- Ability to testify or to remain silent
- Ability to present evidence
- A fair process according to established rules (due process)
- Appeal to a higher court



Your Responsibilities

- Attend all your hearings
- Comply with all conditions of your release
- Avoid additional arrests
- Keep your contact information updated

You will have a better chance of a favorable outcome in your case if you attend your hearings and do not get into further trouble.

Rights and obligations with your defense lawyer:

Attorney-Client Privilege: You may communicate with your attorney privately and those communications must be kept confidential.

Inform your attorney of your immigration status: It is important that you inform your attorney of your immigration status and whether you were born outside the United States so that your attorney can try to avoid negative immigration law consequences.

Stay in touch with your defense attorney: Always tell your attorney if your address or phone number changes. If you have a public defender and lose their number, call our main number at 312-603-0600.

How can I find information about my court date?

You should receive a document with the date and location of your hearing. If you lose that document, you can call the court at 312-603-5030 or the public defender's office at 312-603-0600 to ask for help.

You can sign up to receive court reminders at <https://courtreminder.cookcountyiil.gov/>.

Where is the court?

In Cook County, there are many courthouses. You may have to go to court far from where you live and where there is no public transportation. Make arrangements ahead of time!

Leighton Criminal Courthouse: 2600 S. California Avenue Chicago, IL 60608

2nd Municipal: 5600 Old Orchard Road Skokie, IL 60077

3rd Municipal: 2121 Euclid Rolling Meadows, IL 60008

4th Municipal: 1500 Maybrook Drive Maywood, IL 60153

5th Municipal: 10220 South 76th Avenue Bridgeview, IL 60455

6th Municipal: 16501 S. Kedzie Parkway Markham, IL 60428

Branch 23 & 29: 5555 West Grand Avenue Chicago, IL 60639

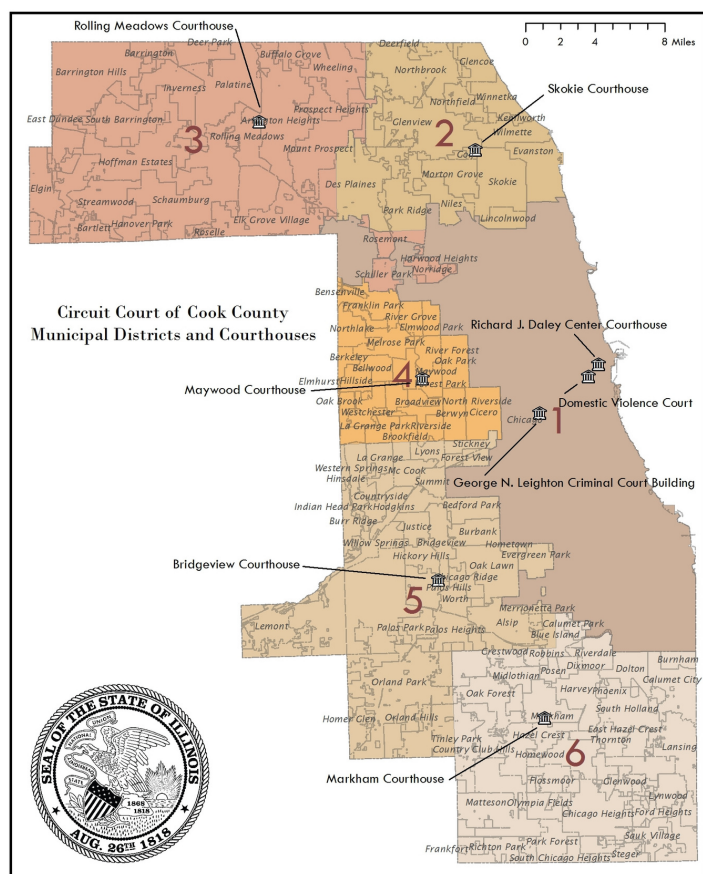
Branch 35 & 38: 727 East 111th Street Chicago, IL 60628

Branch 43 & 44: 3150 W. Flournoy Street Chicago, IL 60612

Domestic Violence Courthouse: 555 W. Harrison Street Chicago, IL 60607

Traffic Section, Richard J. Daley Center: 50 W. Washington St. Chicago, IL 60602

Juvenile Center: 1100 S. Hamilton Avenue Chicago, IL 60612



What should I do if I missed a court hearing?

If you already have a defense attorney, call him or her right away. If you do not have an attorney, you will need to call or go to court. If there is a warrant for your arrest, you may be held in custody until you have a hearing to decide whether you can be released.

What are the immigration consequences if you are arrested or convicted?



Attention from the immigration authorities

If you have been fingerprinted at the border or for an immigration application, immigration authorities will be aware of your criminal arrest, and once aware of your arrest or conviction, they may detain you.



Categories of deportable offenses

- Crimes involving moral turpitude: often includes crimes where someone else is hurt, or crimes involving theft (even retail theft) or fraud
- Crimes involving drugs, including marijuana
- Crimes involving firearms
- Family-related crimes, such as domestic violence and child endangerment
- Aggravated felonies: includes rape, sexual abuse of a minor, murder, drug sales, certain firearms offenses, arson, crimes of violence with 1+ year sentences, theft & forgery with 1+ year sentences, fraud/money laundering involving more than \$10,000 and more!

Crimes outside of these categories can also affect your immigration case.

Immigration Detention

There are two types of immigration detention in the United States:

Mandatory: If you are found guilty in criminal court, that conviction may automatically make you ineligible for bond. Some types of convictions that trigger mandatory detention are crimes involving drugs, aggravated felonies, and crimes involving moral turpitude.

Discretionary: If you do not have a conviction that automatically disqualifies you from bond, an immigration judge will consider all of your arrests to determine whether you are a danger to society or a flight risk. Judges often deny bond to people arrested for driving under the influence more than once.

It is very important that you speak with your defense attorney about your immigration status so that they can consult with an immigration attorney and try to protect you from negative immigration consequences.

Possible denial of your application to remain in the United States

Most requests to remain in the United States are granted at the discretion of immigration authorities. These authorities will take into account the positive and the negative (your arrests!)



There are several applications for a person to regularize their status in the United States. Each application has its own requirements. Two popular requests for newly arrived immigrants are:

Temporary Protected Status (TPS):

TPS is a temporary way to remain in the United States. Only people from certain countries qualify for TPS.

You will not be eligible for TPS if you are convicted of:

- two or more misdemeanors OR
- one felony OR
- a misdemeanor crime that involves drugs (including marijuana) or prostitution or carries a sentence of more than 180 days in jail.

Asylum, Withholding of Removal and Protection under the Convention Against Torture:

Please note that there are several forms of protection if you fear returning to your country. Each one has its own requirements.

You will not be eligible for asylum if you are convicted of:

- an aggravated felony (see examples on page 9)
- any other offense that the immigration judge considers “particularly serious,” such as an offense where someone else was seriously harmed or an offense involving selling drugs.

Additionally, all criminal conduct can be used to determine that you do not deserve an immigration benefit.

Important Terms

Immigration Law Terms

Aggravated Felony: A crime defined under immigration law to be very serious. Not limited to felonies or to crimes containing the term “aggravated.” Many applications, including asylum, are not available to individuals with such crimes.

Alien Registration Number (A#): The 9-digit DHS case number. A person can use this number to find out if they have an immigration court date, and in communications with DHS/ICE.

Asylum, Withholding of Removal and Protection Under the Convention Against Torture (Form I-589): Asylum is for individuals who fear persecution (serious harm) if they return to their country. One must demonstrate that they will be persecuted because of their race, religion, nationality, political opinion, or for being a member of a particular social group. Withholding of Removal and protection under the Convention Against Torture are for people who do not qualify for asylum but who can demonstrate that they will be persecuted or tortured if deported to their country.

Crimes of Moral Turpitude (“CIMT”): Crimes that are considered immoral, including most crimes involving theft and fraud, and many crimes that involve harming another person.

Customs & Border Protection (“CBP”): The border enforcement branch of DHS, in charge of allowing or refusing entry into the U.S. Most recently-arrived migrants have contact with CBP at or near the border.

Department of Homeland Security (DHS): United States government agency that oversees immigration matters within the United States. CBP, ICE, and USCIS are part of DHS.

Immigration & Customs Enforcement (ICE): The interior enforcement branch of DHS, in charge of the detention and deportation of noncitizens who are in the United States in violation of the law. Deportation officers and government attorneys who appear in court are also part of ICE.

Immigration Court (EOIR): This court decides whether a person can or should be deported from the United States, or whether one can stay in the United States with legal status. The judge will make the decision alone; there are no juries in immigration court.

Notice to Appear (NTA): This document explains the reasons the government has for deporting you from the United States and starts your immigration court case. If you are in immigration court proceedings, you should have received this document.

Temporary Protected Status (TPS): A temporary immigration benefit that the United States government grants to people from certain countries who arrived in the United States before a certain date, based on problems in that country. People who obtain TPS can live and work in the U.S.

U.S. Citizenship and Immigration Services (USCIS): Another branch of DHS that decides certain types of applications. TPS and work permit applications are filed with USCIS. USCIS also decides asylum applications for people who are not in immigration court proceedings.

U Visa: A special visa for victims of certain crimes in the United States who cooperate with authorities investigating that crime. To qualify, a police officer, prosecutor, or judge must sign a special certification form saying that you were a victim of the crime and that you cooperated in the investigation.

Criminal Law Terms

Arraignment: The first step during the criminal procedure in which the accused person stands in front of a judge and hears what charges are being filed against him or her.

Arrest: Occurs when one is not free to leave an interaction with the police. The police must have enough evidence to make an arrest. In the United States police, security guards, and in certain situations private individuals can detain someone and place them in police custody.

Arrest Warrant: An order signed by a judge authorizing the arrest of someone. The judge can issue an arrest warrant when someone misses their hearing.

Conviction: Under Illinois law, most but not all findings of guilt lead to a conviction. The immigration law definition is broader than the Illinois definition, and *any* guilty plea or finding of guilt combined with *any* sentence (including fines) is a conviction.

Court Supervision: An outcome in criminal court where the defendant pleads or is found guilty and must comply with court-imposed conditions, but where the state court later dismisses the case. Considered a conviction under immigration law but not under Illinois law.

Defendant: In criminal court, the person accused of a crime.

Deferred Prosecution: an agreement between the defendant and prosecutor in which the defendant agrees to comply with certain conditions in exchange for dismissal of the criminal charge. Does not require pleading guilty and therefore is not a conviction under immigration law.

Felony: Crimes for which one can receive a sentence of one year or more in prison. There are six classes of felonies in Illinois. Generally, but not always, felonies have more serious consequences under immigration law.

Grand Jury: A group of people who decide whether the prosecutor's evidence is sufficient to start a formal case against the defendant. Sometimes used by the state to begin a felony case.

Jail: The place where a person is detained while facing criminal charges or after receiving a sentence of less than one year. Additionally, some jails have contracts with the federal government and detain people in immigration custody.

Jury: A group of people, usually 12, who are present during a criminal trial and listen to the evidence and arguments of the prosecutor and defense attorney. At the end of the trial the jury renders a decision on the guilt of the accused person.

Misdemeanor: Crimes for which the maximum penalty is 364 days in jail. There are three classes of misdemeanors in Illinois: A, B, and C. Misdemeanors are less serious under the state's criminal law but can still have immigration consequences.

Petty offense: A crime or traffic offense punishable by a fine and for which jail time is not authorized. Does not affect eligibility for TPS or any other immigration application.

Probation: A type of punishment that can be given by the criminal court instead of prison time. The defendant is placed under the supervision of an officer and must regularly report to the officer.

Prison: An institution for people who have already been convicted of a crime and sentenced to one year or more of imprisonment.

Prosecutor: The state's attorney who represents the state against the defendant in criminal court. Remember that the immigration court will also have a prosecutor who represents the government. However, their responsibilities and obligations are different.

Public Defender: An attorney who can represent you free of charge in criminal court if you cannot afford to hire a private attorney. Public defenders have the same qualifications as private attorneys. Although you also have the right to an attorney in immigration court, there are no public defenders except in very limited situations in immigration court.

For more resources, scan the QR code below:

