

Traffic Offenses

PARKING

Parking on the UNL Campus

Do I Have To Buy A Parking Permit?

If you want to use UNL parking facilities, you need to obtain a parking permit. All UNL parking facilities, except meters and time-controlled zones, require a permit at all times unless otherwise posted. Vehicles will be ticketed once each 24-hour period (beginning at midnight) for most violations except metered and time-controlled areas.

For the latest information on obtaining a parking permit and the costs go the UNL Parking and Transit Services web cite: <http://parking.unl.edu>

What Happens If I Get A Ticket?

You must pay the ticket within 30 calendar days from the date of the violation. The penalties for various types of parking tickets range from \$10 to \$200 with the more expensive tickets being Unauthorized Parking in a Handicapped Stall or using a counterfeit or stolen permit. For a complete list of the parking ticket fine schedule, go to <http://parking.unl.edu/enforcement>

Failure to pay any portion of your parking tickets will result in your license plate number being placed on the impoundment list for towing. Unpaid parking tickets may also result in a students grades or registration being held.

This Ticket Is A Mistake! What Can I Do About It

Appeal it. If you feel you have been unjustly issued a parking ticket you have 14 days from the date of the violation to file an appeal with UNL Parking Appeals Committee. You must prove by “substantial and valid evidence” that the parking violation was not committed or that it occurred due to circumstances beyond your control. An appeal may be filed by filling out an appeal form at the UNL Parking and Transit Office on campus at 625 Stadium Drive Parking Garage, Suite A (lower south west corner) or sending a letter by regular mail or e-mail or through the web site. E-mail: park@cwis.unl.edu Web site: <http://parking.unl.edu>

City of Lincoln Tickets

I Received A Parking Ticket From The City While On Campus. Do I Have To Pay?

If you don't pay the ticket within 15 working days your license plate will go on the city's impoundment list and your car can be towed. Most city parking tickets cost \$10. The fine is \$40 for parking in front of a fire hydrant, \$100 for parking in a handicapped stall without a permit on the first offense, \$200 on the second offense and \$300 on the third offense. If you miss the deadline on paying the ticket and your car gets towed you will have to pay the \$53 towing fee in addition to storage costs.

Is There Anyone I Can Talk To About This Unfair City Parking Ticket?

If you believe your ticket would be dismissed if someone heard your explanation, you might try talking to one of the attorneys representing the city. You should be aware that anything you tell a city attorney may be used against you in court. He or she is not representing you. The city attorney's job is to prove that you violated the law. However, since he or she has the discretionary power to dismiss your ticket, you may elect to try to discuss it with him or her.

How Do I Contest This City Parking Ticket In Court?

If the city attorney chooses not to dismiss your ticket, you may ask him or her to set an arraignment date. On your arraignment date, you will go to the assigned courtroom and enter a plea of not guilty. The judge will set another date for trial. You may hire an attorney or represent yourself at the trial on your parking ticket.

TRAFFIC OFFENSES

I Received A Traffic Ticket. Do I Have To Appear In Court?

Unless you pay the ticket ahead of time through the mail you must appear in court on the date and time noted in a box on the lower right hand side of the ticket. This first court date is called an arraignment.

What Is An Arraignment?

An arraignment is a hearing in court before a judge in which the charge against you is read. You will be asked to enter a plea of “guilty” or “not guilty.” If you have not had an opportunity to consult an attorney prior to the arraignment and you wish to do so, it is possible to enter a plea of “not guilty” at the arraignment and still change your plea to “no contest” or “guilty” at a later date if, after discussing your case with an attorney, you decide you do not want to contest the charge. If you plead “not guilty” at the arraignment, the judge will set a date for trial approximately four weeks from the day of arraignment. Pleading not guilty at the arraignment leaves all your options open until you have more time to decide what you want to do.

If you do not want to contest the charge or talk to an attorney, you can plead “guilty” or “no contest” at the arraignment and the judge will usually sentence you on the spot. If you were involved in an auto accident but you do not want to contest the traffic ticket, always plead “no contest” rather than “guilty.”

Can I Just Pay The Traffic Ticket Without Appearing In Court?

Sometimes it is possible to avoid going to court if you wish to plead guilty to some types of traffic offenses. This can be done by signing a “waiver” of rights form, which is sometimes printed on the back on the ticket. Then you either mail it to the court along with the fine and court costs or sign it and pay the fine in the office of the Clerk of the Court.

When you sign a waiver you waive your constitutional right to a trial, to confront witnesses against you and other related rights. However, if you have no intention of contesting your case, it may be the most convenient way to proceed.

Some traffic offenses are waivable and some are not. Counties differ in their waiver policies. In most counties, you must appear in court if, for example, you are charged with driving in excess of 20 miles per hour over the speed limit. You are also often not allowed to pay the fine by waiver if you are involved in an accident or are charged with negligent, careless, or reckless driving. Waiver forms and information concerning waivers can be obtained from the courthouse of the county where you received the citation.

If you are pleading guilty by waiver, remember that the court must receive the waiver and payment of fine and court costs PRIOR to the date of the arraignment. If you fail to show up for your arraignment and you fail to take care of the citation by waiver, a bench warrant can be issued for your arrest and you can be charged with the additional criminal offense of failing to appear. Notification of your failure to appear will be sent to the Nebraska Department of Motor Vehicles, and your driver’s license will be suspended unless you take care of the ticket within 20 days.

I Want A Trial On My Traffic Ticket: Should I Hire An Attorney?

If you want to contest a traffic offense you must decide whether to hire an attorney to represent you or to represent yourself. Because of the less severe penalties given in traffic offense cases than in other criminal cases, the free legal services of a court-appointed attorney are usually not provided.

This may come down to a cost/benefit analysis: You must weigh the cost of hiring an attorney to represent you in court against the possible penalties. If you face just a fine it may not be worth hiring an attorney but if your driver’s license is at stake because of points it may very well be worth the expense.

Student Legal Services has a policy of representing students in certain types of traffic offense cases in Lancaster County. Even if your case does not fall within the Student Legal Services guidelines for representation, an SLS attorney can review your case and help you consider your options.

Can I Just Represent Myself?

Yes, you can but there is an old saying in the legal profession that he who represents himself has a fool for a client. If you have considered the alternatives and still want to represent yourself, you need to learn how a traffic offense is prosecuted. It is the prosecutor's job to prove beyond a reasonable doubt that you committed the violation.

The prosecutor will present evidence first. This usually involves calling as a witness the police officer who gave you the citation. After the officer testifies you will have an opportunity to ask him or her questions. The prosecutor sometimes calls additional witnesses.

After the prosecutor has finished putting on evidence, it is your turn. You (the defendant) may take the oath and testify for yourself. If you do so, the prosecutor can ask you questions after you testify. You may also call other witnesses who can help your case, such as a passenger who can testify that you were not speeding.

After you have finished presenting your evidence, the prosecutor has the option of calling rebuttal witnesses. The prosecutor and then the defendant will each have an opportunity to summarize their arguments to the judge before the trial is over.

What Is "The Point System"?

In addition to the penalties of fines and court costs, a conviction of some types of traffic violations can also cost you points off your driver's license. The Nebraska Department of Motor Vehicles (DMV) will revoke the driver's license and privilege to drive of anyone accumulating 12 or more points within a two-year period.

The revocation is usually for a six-month period starting the date the order of revocation is signed. A person who has had his or her driver's license revoked must complete a driver's education course approved by the Department of Motor Vehicles and must pay the cost of the course to get the license back.

If you are under 21 years old and accumulate six or more points within a one-year period you will be notified by the DMV that you must take an eight-hour driving class or your license will be suspended.

Anyone the police catch driving during the period of revocation will be charged with the crime of Driving Under a Suspended License (DUS). The penalty for conviction of DUS in Lancaster County is up to 90 days in jail and a fine of \$500, and one year additional license suspension.

How Can I Check My Points?

If you want to find out how many points are assessed for a particular traffic violation consult Section 60-4,182, Volume 3B of the Nebraska Revised Statutes, 1943, Reissue 2004. The Department of Motor Vehicles keeps a record of points accumulated for anyone holding a Nebraska driver's license. You can call the Nebraska Department of Motor Vehicles in Lincoln, Nebraska at (402) 471-2281 to find out how many points you have accumulated.

Misdemeanors

What Is The Difference Between A Misdemeanor And A Felony?

Crimes are divided into three general categories: felonies, misdemeanors and infractions. Crimes classified as felonies are considered to be more serious, carry a more severe penalty, and involve a more complex court procedure. Although misdemeanors are considered less serious than felonies, a person convicted of a misdemeanor often risks the possibility of being fined and sometimes going to jail. Infractions usually carry only a fine and are often categorized with traffic violations. It is possible to be charged with violating a federal law, state law or a city ordinance.

Can I Get A Free Attorney To Represent Me?

The Student Legal Services' attorneys provide court representation to students charged with misdemeanors in Lancaster County but not felonies. Students charged with a felony or a misdemeanor outside of Lancaster County need to hire a private attorney or request the appointment of the Public Defender. Public Defenders are attorneys appointed by the court to represent defendants who cannot afford to hire their own attorneys.

I've Been Cited (Arrested) For A Misdemeanor: What Are My Rights?

Finding yourself in a situation in which you are arrested and questioned by the police is not something anyone wants to think about. However, unless you understand some basic facts about your rights and responsibilities during various stages of the criminal process, it is easy to incriminate yourself and jeopardize your legal defense.

FIRST STAGE: ARREST

How Do I Know If I'm Under Arrest?

You are arrested when you are taken into custody or when your freedom is restricted by a police officer. Sometimes arrest involves a search of your person or a "pat down" and handcuffing. Many times you will simply be instructed to accompany an officer to the police station. If you are ever in doubt as to whether you are under arrest or not, it usually doesn't hurt to ask. If you are *not* under arrest, you should be free to leave. If the officer will not let you leave, then you are under arrest. Once you are under arrest, your Miranda Rights are in effect.

What Are Miranda Rights?

- 1) You have a right to remain silent.
- 2) Anything you say to *anyone* can and will be used against you.
- 3) You have a right to have an attorney present to represent you.
- 4) If you cannot afford an attorney, the court will appoint one.

Whether the police officer tells you these rights or not, you should exercise them. It is best not to answer any questions from the police or talk to anyone until you have an opportunity to talk to an attorney. Being under arrest is an intimidating situation. You may think that if you answer the officer's questions, he or she will let you go or the judge will be easier on you. This is not the case. It is the officer's job to collect evidence in support of the charges. If you do have information which can help your case, let an attorney help you decide how the information can best be used. If the police want to question you, tell them you want to call your attorney and you don't want to talk to them until the attorney is present.

What Is The Difference Between Receiving A Citation And Being Arrested?

Tickets or citations are sometimes given to a defendant instead of going through the process of taking you to jail, fingerprinting you and taking your mug shot. You are required to show up in court for your arraignment on the date and time noted on the citation. Failure to appear can result in a criminal charge and the issuing of a bench warrant for your arrest.

If you are taken to jail and charged with a misdemeanor it is often possible to post bond and be released from jail within a few hours. If you do not have enough money with you to post your bond you can use your one phone call to contact someone who can post it for you. If you are charged with a felony you will have to stay in jail until the judge sets your bond at the arraignment, which is usually within 24 hours unless you are arrested on the weekend when court is not in session. The purpose of a bond is to insure that you will appear at your next court date. If you do not appear the bond money will be forfeited, a warrant will be issued for your arrest and you will receive the additional charge of Failure to Appear.

When Can An Officer Search My Belongings Or Me?

Before or during an arrest the police may want to search your person, apartment or car. There are two basic rules to remember in this situation: 1) *Never* give the police *consent* to search your person, apartment, house, or vehicle either verbally, in writing, or by your actions, and 2) *Never* physically resist the police or physically try to stop them from searching. Simply state that they do not have your permission to search.

Do I Have To Answer Police Questions?

If the police ask you to come to the station and talk to them, but you are not under arrest, you do not have to do so. If you say anything incriminating during this “voluntary cooperation” session it can be used against you. Since you are not in custody, the police have no obligation to remind you of your right to remain silent. This is not to suggest that you should be rude or lie to the police; simply tell them you do not want to talk to them without your attorney present. You also do not have to agree to have your photograph taken or submit to fingerprinting if you are not under arrest.

SECOND STAGE: ARRAIGNMENT

What Is An Arraignment?

The arraignment is the first time you go to court in relation to your case. If you have hired an attorney, your attorney may go with you to court. The hearing proceeds in this order:

1. All the information concerning your arraignment is noted on your citation, including time, date, and courtroom number. If you do not have a citation call the city (441-7283) or county (441-7321) attorney’s office to get this information.
2. Sit down in the courtroom and wait for your name to be called. When your name is called go to the front of the courtroom and stand before the judge.
3. The prosecutor will read aloud the charge pending against you. The judge will ask if you understand the possible penalties and if you are prepared to enter a plea at this time.
4. **You should not plead “guilty” or “no contest” unless you have talked to an attorney. Once you plead “guilty” or “no contest”, you cannot change your mind later and ask for a trial.** If you plead guilty or no contest, the judge will ask the prosecutor for a factual basis. The prosecutor will read facts supporting the charge from the police report. The judge will ask if you have anything to say about the facts. You may give your version. If the judge accepts the guilty or no contest plea, he or she will usually proceed immediately to sentencing unless the judge wants to order a pre-sentence investigation, in which case a sentencing date will be set about five or six weeks away. If the judge proceeds to sentencing, you will have a chance to speak on your own behalf before the sentence is given.
5. If you plead not guilty, the judge will set a date for trial about five weeks away. You have three basic options in terms of obtaining an attorney. The judge will ask if you plan to have an attorney represent you at the trial. If you have hired a private attorney or you intend to hire one, give this information to the judge. If you are charged with a misdemeanor in Lancaster County, a Student Legal Services attorney might represent you. If you are charged with a crime that carries a possible jail sentence and you can’t afford to hire an attorney, you may ask the court to appoint an attorney from the Public Defender’s Office to represent you. Always plead “not guilty” at arraignment unless you have discussed your case with an attorney and you are sure you do not want to contest the charge. You can change your plea to guilty later in the proceedings if you want to and the judge will not penalize you for pleading not guilty at arraignment.

THIRD STAGE: PRETRIAL MOTIONS, PLEA BARGAINING, PRETRIAL DIVERSION

My Attorney Filed A Motion To Suppress In My Case: What Does That Mean?

If you are represented by an attorney he or she will discuss the progress of your case and keep you informed of hearings you must attend or decisions you must make regarding your case.

Sometimes your attorney will file pretrial motions such as a motion to suppress evidence. The judge will hold a separate hearing on the motion prior to your trial and will render a decision on the particular issue raised in the motion. Your attorney should explain to you the purpose of the motion and the significance of the outcome.

What Is Plea Bargaining?

Occasionally during the period between arraignment and trial, your attorney will persuade the prosecutor to reduce the charge pending against you to a lesser charge with a less severe penalty in return for your plea of guilty or no contest to the amended charge. Sometimes the prosecutor will dismiss the charge altogether if you agree to pay the court costs.

If you are not represented by an attorney you may be tempted to discuss your case with the prosecutor to try to persuade him or her to reduce or dismiss the charge. This is usually a mistake. Anything you say to the prosecutor regarding your case that might be incriminating can be used against you later in court.

What Is Pretrial Diversion?

Lancaster County has a pretrial diversion program available to first time offenders charged with certain types of crimes (NOT DUI). Under the Pretrial Diversion Program, the prosecutor dismisses your case if you 1) are accepted into the Pretrial Diversion Program and 2) admit to the pretrial screening officer that you believe there is a reasonable likelihood you would be convicted of the charge if the case went to trial. In Lancaster County, you may be accepted into the program after an interview concerning your background and criminal record check. A fee is charged and participants are required to complete a minimum of 24 hours of volunteer work. In addition, participants must not be convicted of any offense during the pretrial diversion period. If a participant does not comply with the terms of pretrial diversion, the charge can be refiled.

PRETRIAL DIVERSION

If you are charged with a misdemeanor in Lancaster County, you may be able to have your case dismissed through Pretrial Diversion if you:

- Have no prior criminal convictions
- Complete 24-40 hours of community service
- Complete course work such as alcohol education
- Refrain from violating the law for 6 months

FOURTH STAGE: TRIAL

What Happens At Trial? What Is My Role?

If your attorney and the prosecutor have not been able to work out a satisfactory resolution to your case prior to trial, the judge or jury will decide your innocence or guilt of the charge pending against you. The prosecutor must carry the burden of proving your guilt beyond a reasonable doubt.

You and your attorney will decide if you should testify on your own behalf and make other strategic decisions together.

Can I Represent Myself?

Yes you can, but there is an old saying in the legal profession that he who represents himself has a fool for a client. If you have considered the alternatives and still want to represent yourself, you need to learn how a misdemeanor is prosecuted. It is the prosecutor's job to prove beyond a reasonable doubt that you committed the crime.

The prosecutor will present evidence first. This usually involves calling as a witness the police officer who gave you the citation. After the officer testifies you will have an opportunity to ask him or her questions. The prosecutor sometimes calls additional witnesses.

After the prosecutor has finished putting on evidence, it is your turn. You (the defendant) may take the oath and testify for yourself. If you do so, the prosecutor can ask you questions after you testify. You may also call other witnesses who can help your case.

After you have finished presenting your evidence, the prosecutor has the option of calling rebuttal witnesses. The prosecutor and then the defendant will each have an opportunity to summarize their arguments to the judge before the trial is over.

FIFTH STAGE: SENTENCING

What Is A Pre-Sentence Investigation?

The judge often orders a pre-sentence investigation after the defendant has been found guilty or pleads guilty and requests probation. The purpose of the pre-sentence investigation is to look into the defendant's background to see if he or she is likely to be a good candidate for probation. The pre-sentence investigation is conducted by the probation office. The defendant meets with a probation officer who interviews the defendant regarding past criminal offenses, educational and family history, employment record and use of alcohol and drugs. Sometimes tests are conducted to measure a defendant's drug or alcohol use as in a case where the defendant is charged with Driving While Under the Influence of Alcohol (DUI). The probation office prepares a report on this information along with a recommendation to the court as to whether the defendant would be a good candidate for probation. The judge studies this report prior to making a decision.

Can I Speak To The Judge Before I'm Sentenced?

Yes. The right of allocution is the right of the defendant to speak on her own behalf in open court before the judge prior to the pronouncement of sentence. In addition to this right you may present evidence to the Court in order to persuade the court that probation or a lighter sentence is appropriate in your case. Evidence may consist of witnesses who are familiar with the defendant's character and can give positive information regarding her potential for a successful probation.

What Is Probation?

If the defendant is granted probation certain "probation conditions" will be ordered by the court and the defendant must abide by these conditions or risk jail. The court may order any condition it deems appropriate that is reasonably related to the defendant's rehabilitation. If the defendant/probationer is convicted of violating probation conditions she can be resentenced on the original charge, which may include jail.

What If I'm Sentenced To Jail?

If you are facing a jail sentence you should be represented by an attorney. If you cannot avoid a jail sentence the court might grant you work and school release.

What Is Work And School Release?

Work/School release allows the defendant to go to work or classes but return to the jail immediately afterward. If you expect jail time you need to obtain a Work/School Release form and fill it out completely. You will need the signatures of your boss and your academic advisor.

MISDEMEANOR PENALTIES

OFFENSE	MAXIMUM PENALTIES
Contributing to the Delinquency of a Minor (Neb. Rev. Stat. §28-709)	1 year and/or \$1,000 fine
Criminal Mischief/Destruction of Property (Neb. Rev. Stat. §28-519)	
less than \$200	3 months and/or \$500 fine
\$200-\$500	6 months and/or \$1,000 fine
\$500-\$1,500	1 year and/or \$1,000 fine
Disturbing the Peace (Neb. Rev. Stat. §28-1322)	3 months and/or \$500 fine
(L.M.C. §9.20.050)	6 months and/or \$500 fine
Driving While Under The Influence of Alcohol or Drugs (DUI) (Neb. Rev. Stat. §60-6,196; L.M.C. §10.16.030)	NOTE: New changes in the law See <u>Driving While Under The Influence</u>
Fraudulent/Altered Driver's License (§60-491; §5.04.080)	3 months and/or \$500 fine
Maintaining A Disorderly House (L.M.C. §9.20.030)	6 months and/or \$500 fine
	<u>MINIMUM PENALTIES</u>
	1 ST offense -- \$250
	2 nd offense -- \$350
	3 rd offense -- \$400 and 3 days jail
Minor In Possession/Consuming Alcohol (§53-180.02; §5.04.100)	3 months and/or \$500 fine
Misrepresenting Age to Purchase Alcohol (§53-180.01; §5.04.090)	3 months and/or \$500 fine
Possession of Marijuana (Neb. Rev. Stat. §28-416(11))	
One Ounce or Less - 1st Offense	\$100 fine
One Ounce or Less - 2nd Offense	5 days jail and/or \$200 fine
Between one Ounce and one Pound	7 days and/or \$500 fine
Procuring Alcohol for a minor (Neb. Rev. Stat. §53-180)	1 year and/or \$1,000 fine
(L.M.C. §5.04.070)	3 months and/or \$500 fine
Theft (Neb. Rev. Stat. §28-510)	
less than \$200	6 months and/or \$1,000 fine
\$200-\$500	1 year and/or \$1,000 fine
\$500-\$1,500	5 years and/or \$10,000 fine
\$1,500 or more	20 years and/or \$25,000 fine

Neb. Rev. Stat. is Nebraska Revised Statutes (state laws) and L.M.C. is Lincoln Municipal Code.
First numbers listed are state laws.

What If I Can't Pay My Fine?

If you cannot pay a fine ordered by the court on sentencing day you should ask if you may make special arrangements regarding payment. The Clerk's office will present you with a time payment form at your request. You must have the fine and court costs paid by the date on the form or a bench warrant will be issued for your arrest.

How Will This Conviction Affect Me?

A conviction is a permanent part of your criminal record and may affect job or professional school opportunities. The effect it will have on your future depends on the nature of the crime and the type of job you are seeking. Completion of the Pretrial Diversion Program will keep a conviction off your record but it will not erase the record of your arrest or citation.

Can I Get My Criminal Record Expunged Or Erased?

Yes, Nebraska has a law, Nebraska Revised Statute, §29-2264, Supp. 2005, which allows a person to petition the court for an order setting aside, or nullifying, the conviction. Anyone interested in finding out more about this process should talk to an attorney specializing in criminal law.

IF YOU ARE THE VICTIM OF A CRIME

Students who become victims of crimes need to know how the criminal justice system will respond to what has happened to them.

How Can I Be Certain That Charges Will Be Filed Against The Perpetrator?

Report the incident to the police as soon as possible. The sooner the police are involved the better chance they have of apprehending the perpetrator and collecting evidence and names of potential witnesses. After the police have gathered information and arrested or cited suspects a report of the case is developed and forwarded to the City or County Attorney's office.

Talk to the prosecutor assigned to your case and request that charges be filed if they have not been filed already. The attorneys who work in the City or County Attorney's office are called prosecutors. The prosecutor handling the case must decide 1) *if* charges should be filed, 2) *which* charges should be filed, and 3) *against* whom. The prosecutor is also responsible for representing the people of the state in proving in court that the person charged with the crime did in fact commit the crime beyond a reasonable doubt. If you are a victim of a crime you will be working with the prosecutor assigned to your case. The prosecutor will explain what will be asked of you during the proceedings, including pretrial depositions and trial testimony.

Will I Have To Testify?

If you want the perpetrator to be convicted you will probably have to testify. However, victims are not required to testify in court in every case. Sometimes cases are settled prior to trial in the plea bargaining process. The County Attorney may decide to allow the defendant to plead guilty to a reduced charge in which case there will not be a trial. If you are asked to testify the County Attorney should meet with you prior to trial and help you prepare your testimony.

Will I Be Reimbursed For Property Damage And Medical Costs?

If your property has been damaged or destroyed as a result of the crime or you have suffered injury requiring medical attention, the perpetrator of the crime may be required to pay restitution and reimburse you. You should discuss the possibility of restitution with the prosecutor handling your case. Sometimes perpetrators will be required to pay restitution to the victim as part of probation requirements. If the perpetrator is sentenced to jail, restitution may not be part of the sentence ordered by the court.

Can I File A Civil Lawsuit Against The Perpetrator?

In some cases the restitution provided to the victim through the criminal justice system is inadequate or nonexistent. You may choose to file a lawsuit in civil court against the perpetrator of the crime to win compensation for any damages, including pain and suffering. This lawsuit is separate from the prosecution in criminal court. For example, in a situation where the victim is sexually assaulted, two legal proceedings can take place. One legal proceeding is the criminal prosecution of the alleged perpetrator. The second legal proceeding is a civil suit filed by the victim against the alleged perpetrator for money damages. The victim could sue under an intentional tort theory for medical expenses, pain and suffering, etc. You will need to have a lawyer represent you in the civil lawsuit unless you elect to file your case in Small Claims Court.

What Are My Rights As A Victim?

Nebraska has a statutory Bill of Rights for Victims in section 81-1848 of the Nebraska Revised Statutes. Please see the chart below.

VICTIMS BILL OF RIGHTS

Victims and witnesses of crimes have the following rights:

- (1) To be informed by local law enforcement agencies and the county attorney of the final disposition of the case. If the crime charged is a felony, the victim shall be notified whenever the defendant or perpetrator is released from custody;
- (2) To be notified that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the person an unnecessary trip to court;
- (3) To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;
- (4) To be informed of financial assistance and other social services available as a result of being a witness or a victim of a crime, including information on how to apply for the assistance and services;
- (5) To be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled;
- (6) To be provided, whenever possible, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families of defendants;
- (7) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, shall be returned to the person within ten days of being taken;
- (8) To be provided with appropriate employer intercession services to insure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances;
- (9) To be entitled to a speedy disposition of the case in which they are involved as a victim or witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter; and
- (10) To have the family members of all homicide victims afforded all of the above rights.

Excerpt from Nebraska Revised Statutes §81-1848

Where Can I Go For Counseling And More Information?

Various community organizations have attempted to establish sources of help for victims. Some sources attempt to help victims cope with the psychological and emotional injury suffered as a result of the crime while other organizations offer monetary compensation.

UNL Victim Advocate—Women’s Center, 340 Nebraska Union. This on-campus service provides students with crisis intervention, counseling and referral in situations involving sexual assault, relationship violence and stalking. (402) 472-0203

Counseling and Psychological Services—213 University Health Center. Professional counseling available to currently enrolled students. (402) 472-7450 or 472-3461

Crime Victims Reparations Committee—P.O. Box 94946, Lincoln, NE 68509-4946. Victims, dependents of victims, or parents of victims are eligible. Must have suffered bodily injury from a crime. Committee awards up to \$10,000 to cover medical and other expenses not recoverable by insurance or other sources. (402) 471-2828

Victim Witness Unit — Lincoln Police Department. Refers victims to various sources of help; provides information on the legal process. Volunteers accompany victims to court. (402) 441-7181

Rape/Spouse Abuse Hotline — Gives Lincoln area victims information regarding help and shelter; provides assistance in reporting abuse. (402) 475-7273

Child Protective Services—Provides help in cases of child abuse. (402) 471-7000

In Omaha: YWCA Women Against Violence—Helps in cases of child/ spouse abuse, domestic violence, sexual assault, and child sexual assault. (402) 345-7273

Statewide Abuse Hotline (800) 652-1999 (toll free)

Driving While Under The Influence Of Alcohol Or Drugs

What Is DUI? What Is DWI?

Under Nebraska law, you can be convicted of Driving While Under the Influence of Alcohol Or Of Any Drug (Nebraska Revised Statute §60-6,196, 2006 Supp.) if you were operating a motor vehicle or exercising physical control over one while under the influence of alcohol or any drug or when you score a .08 or more on a chemical test of your blood, breath, or urine. In Nebraska a DWI and DUI are simply different acronyms for the same offense.

What Can Happen To Me If I Am Convicted of DUI?

The penalties for a DUI conviction seem to steadily increase. Refer to the chart below for a full list of possible penalties. (See Nebraska Revised Statute §60-6,197.03, 2006 Supplement.) In 2006 the Nebraska Legislature created different penalties for a high BAC (breath or blood alcohol content). If you are convicted of First Offense DUI with a BAC between .08 and .149 the penalties are pretty much the same as they have been. [See chart.] However, if you are convicted and your BAC was .15 or above you are subject to harsher penalties. Two important differences to note are that you will have your driver’s license revoked for one year and you will serve some jail time, even if you are given probation.

DUI PENALTIES

1st Offense DUI (.08 to .149 BAC)

1st Offense DUI – High BAC (.15 and above)

Straight Sentence

Class W misdemeanor
7 to 60 days jail and
\$400 to \$500 fine

6 months license revocation

1 year license revocation

Penalty if Given Probation

60 day license revocation and
\$400 fine

1 year license revocation,
\$500 fine and
2 days jail or 120 hours community service

ALR Suspension

90 day license suspension

2nd Offense DUI (.08 to .149 BAC
above)

2nd Offense DUI – High BAC (.15 and
above)

Straight Sentence

Class W misdemeanor
30 to 180 days jail,
\$500 fine and
1 year license revocation

Class I misdemeanor
90 days to one year jail,
up to \$1000 fine and
1 to 15 year license revocation

Penalty if Given Probation

1 year license revocation,
\$500 fine and
10 days jail or 240 hours community service

1 to 15 year license revocation,
\$1000 fine and
30 days jail

ALR Suspension

1 year license suspension

3rd Offense DUI (.08 to .149 BAC)

3rd Offense DUI – High BAC (.15 and above)

Straight Sentence

Class W misdemeanor
90 days to one year jail,
\$500 fine and

Class IIIA felony
180 days to 5 years prison,
up to \$10,000 fine and

15 year license revocation

15 year license revocation

Penalty if Given Probation

2 to 15 year license revocation,
\$600 fine and
30 days jail

5 to 15 year license revocation,
\$1000 fine and
60 days jail

ALR Suspension

1 year license suspension

EFFECTIVE DATE: JULY 14, 2006

Why Was I Stopped?

The police officer must have a “reasonable suspicion based on articulable facts” that a law violation is occurring in order to stop the driver of a car. Almost any law violation is sufficient. For example, it is legal for a police officer to stop a driver who crosses the centerline of the highway or who has a taillight out. An officer can even stop a driver who is weaving within his or her own lane lines or the driver who fails to signal a turn or a lane change. However, if the officer makes a random stop of a driver and there is no articulable reason for doing so, it is possible that any evidence collected may later be kept out of court, including breath tests and the officer’s observations of the driver.

Do I Have To Perform The Field Sobriety Tests?

In Nebraska it is not against the law to refuse to perform field sobriety tests. SLS suggests that a driver who does not want to take the field sobriety tests should politely but firmly refuse to do so.

The officer uses field sobriety tests to establish probable cause to arrest the driver for DUI. The driver may be asked to follow a stimulus with her eyes, walk a straight line heel to toe, recite the alphabet, or hold one leg six inches in the air while counting to 30. Sound easy? Most drivers fail these tests according to the police officer’s judgment. Some people do not do well on balance and coordination tests whether or not they have been drinking. Also, the police officer’s evaluation of the driver’s performance is often much worse than the driver’s evaluation. In addition, the field sobriety tests give the State one more method of convicting a driver of DUI. It is better not to do them.

Do I Have To Do The Preliminary Breath Test (PBT)?

If the driver shows signs of intoxication after being pulled over by the police, the officer may ask the driver to take a “pretest” or preliminary breath test. The purpose of this portable breath test is to determine if the driver should be taken to the station for a more sophisticated breath test. In other words, the PBT is used to establish probable cause to arrest a driver. Refusal to submit to a preliminary breath test is a Class V misdemeanor carrying a \$100 fine and gives the officer probable cause to arrest you for DUI.

What Happens If I Fail The Preliminary Breath Test (PBT)?

If a driver tests over .08 on the preliminary breath test (PBT), then the officer has established probable cause to arrest the driver for DUI. Most likely a driver will then be transported to Cornhusker Place Detoxification Center where the arresting officer may direct the driver to take a chemical test of his or her blood, breath, or urine. The officer is allowed to choose the test. A breath test on the Intoxilyzer 5000 or the Datamaster machines is most commonly used in Lancaster County and throughout Nebraska, although blood tests are frequently used in Douglas County. Urine tests are rarely used for DUI arrests.

Can I Have My Own Test Conducted?

The driver has the right to have a physician examine and administer additional tests, but only after the officer's test of choice has been administered. A driver must request that she be allowed to conduct her own test. If a driver is denied the request to obtain her own physician's examination and blood test after the officer's test has been administered, the officer's test may not be admissible at the driver's trial. Some experts believe that blood tests are more accurate than breath tests and recommend that if the driver fails a breath test, it may be in her best interest to obtain a blood test.

What Happens If I Fail The Breath Test At Cornhusker Place Detox?

A driver with a test result of .08 or more will be issued a citation for DUI. A driver who refuses to take a test of his or her blood, breath, or urine will be issued a citation for both DUI and Refusal. In both circumstances the driver's license is impounded immediately and a 30 day temporary driver's license is issued. The driver has ten days in which to request a hearing with the Department of Motor Vehicles to challenge the revocation. The Department of Motor Vehicles shall conduct the hearing within 20 days after the request is filed.

Will It Help My Case If I Am Cooperative And Answer The Officer's Questions?

DO NOT waive your rights and DO NOT answer questions. After the driver has failed the breath test and seen the disappointing digits flash on the machine the police usually ask the driver to waive the right to remain silent and answer a few questions. If you waive your rights and answer questions you will probably incriminate yourself. Standard questions include: "What have you been drinking and how much? Are you under the influence of an alcoholic beverage now?" Anything you say can be used against you in court later. You should politely say that you do not wish to answer any questions at this time.

Why Did The Police Officer Take My Driver's License And What Is This ALR Thing?

Nebraska has an Administrative License Revocation (ALR) law. If a driver fails a test of his or her blood, breath or urine (or refuses to take a test), his or her driver's license is impounded immediately and a 30-day temporary driver's license is issued. The driver has ten days from the date of arrest in which to request a hearing before the Nebraska Department of Motor Vehicles (DMV) to contest the revocation. If the driver does not request a hearing driving privileges are automatically revoked for 90 days for a First Offense (one year for Refusal to take the test) when the temporary license expires. If a hearing is requested but the driver loses at the hearing driving privileges will be revoked for 90 days for failing the test, or one year for refusal to take a chemical test. The driver may appeal this administrative revocation to the District Court.

SLS suggests that you file the paper requesting the ALR hearing within the ten days after your arrest and immediately contact a lawyer.

The revocation hearing will be presided over by a hearing examiner whose duties are similar to those of a judge. The hearing examiner may or may not be an attorney. You have the right to be represented by an attorney at the hearing.

When a revocation hearing arises from a DUI citation the issues will be limited to the following:

- 1) Did the police officer have probable cause to believe you were operating a motor vehicle while under the influence?
- 2) Were you operating a motor vehicle while having an alcohol concentration of .08 or more?

When a revocation hearing arises from a refusal citation, the first issue is the same as with DUI, but the last issue becomes:

- 2) Did you, in fact, refuse to take or complete the chemical test after being asked to do so by a police officer?

The arresting officer must appear at the hearing and testify regarding the stop of the vehicle and the chemical test results. If refusal to take the test is an issue, the officer must testify about that as well. The burden of proof then shifts to the driver to establish grounds for NOT revoking his or her driver's license. The burden of proof at the administrative hearing is by a preponderance of the evidence rather than beyond a reasonable doubt as it is in court.

If the hearing officer decides against the driver on these issues the driver's license will be revoked for *90 days* for testing .08 or higher and *one year* for refusing the chemical test.

Will I Be Able To Drive To Work And Classes?

If your license is revoked for 90 days you may apply for a work driving permit which will allow you to drive to and from work during the last 60 days of your revocation. Work driving permits are not allowed on one-year revocations for Refusal. School driving permits are never allowed.

What Will Happen At My First Court Date (The One Written On My Citation)?

The citation for DUI states the date and time that the driver/defendant is to appear in court for arraignment. Any driver/defendant who has not yet obtained legal advice should plead "not guilty" at the arraignment. The not guilty plea can always be changed later if, after talking to an attorney, the defendant decides it is in her best interest to enter a guilty plea. At the arraignment the judge or prosecutor will call your name, tell you what the charges and penalties are and ask if you understand them and ask how you wish to plead. Without the advice or representation of an attorney always plead "not guilty." You will be escorted to the Clerk's office where you will be given a sheet of paper with your case identification number, trial date, time and courtroom number. You should bring this paper to your meeting with your attorney.

Do I Need An Attorney?

You do not need an attorney at your arraignment, but the sooner you speak with and hire an attorney the better. An attorney can obtain copies of the police report, talk to witnesses, and investigate the facts of the case to determine if there are some good defenses to the DUI charge. SLS represents UNL students on DUI in Lancaster County and there are no attorney fees. Representation is provided as a service of ASUN through your student fees. A private attorney may charge anywhere from \$500 to \$1,000, or more.

I Have Had Friends Whose DUI Was Reduced To A Reckless Driving. Can That Happen to Me?

Sometimes a DUI charge is reduced to a lesser offense such as reckless driving which carries a milder penalty of \$100 fine, \$44 court costs and 5 points off the driver's license. This usually happens in the time period between arraignment and trial when the prosecutor and defense attorney discuss the case. Since most experts recognize a margin of error on the Intoxilyzer or Datamaster breath tests, a DUI case with a low breath test between .08 and .088 has a chance of being amended to reckless driving.

A DUI charge may also be amended if the prosecution has a problem with proving the case for some reason. Perhaps the breath test was improperly administered. Part of the defense attorney's job is to carefully scrutinize the prosecutor's case to discover potential problems and capitalize on them. If your charge is reduced, you should thank your lucky stars and learn from the experience.

Will I Have A Jury Trial?

Everyone charged with DUI is entitled to a trial before a judge to determine if he or she is guilty beyond a reasonable doubt. A DUI defendant is entitled to a *jury* trial if the case is charged under state law as opposed to a city ordinance, or when the driver is stopped outside city limits by a state trooper or sheriff, or when facing a second offense with a BAC of .15 and above or for a third offense. Some cases are best tried before a judge and some before a jury. This is a strategy decision that the defendant and attorney make together.

If a defendant decides to plead guilty he or she must waive the right to a trial including the right to call witnesses, to cross-examine the state's witnesses, to testify on your own behalf and to require the state to prove you guilty beyond a reasonable doubt. In Lancaster County these rights must be waived in writing and in the open courtroom before the judge will accept a guilty plea.

If you win at trial count yourself in the very lucky minority. If you lose you must decide whether to request probation or to take the straight statutory sentence. [See chart for possible penalties.] Most people are not sentenced on the same day they go to trial or enter a guilty plea.

What Is A Presentence Investigation?

If the defendant wants to be considered for probation he or she must undergo a presentence investigation, which includes meeting with a probation officer and obtaining an alcohol evaluation. A report is made on the defendant's family and educational background, social history, criminal record and the facts of the DUI Arrest. This information and the results of the alcohol evaluation are forwarded to the judge prior to the sentencing date.

The defendant and attorney will appear for sentencing before the judge on the designated day. The attorney has read the presentence investigation report and informed the defendant of what is to happen at sentencing.

If the judge feels you are not a good candidate for probation or you reject the probation offered, you will be given a straight sentence involving jail, a fine and a license revocation. [See chart for penalties.] Work driving permits and ignition interlock devices are not permitted on straight sentence license revocations.

What Does Being On Probation Mean?

If probation is granted, the conditions of probation the judge has chosen to impose become effective immediately. A defendant who wishes to accept the probation being offered must sign the probation order. The term of probation on a first offense is usually nine months to one year. Typical conditions include, but are not limited to, the following:

1. Abstaining from alcohol for one year, or for whatever length of probation a defendant is given. Random urine tests may be requested by the Probation Officer to confirm abstinence.
2. Completion of an alcohol *education* program or an alcohol *treatment* program if the alcohol evaluation suggests the need.
3. Monthly meetings with probation officer.
4. No law violations during the term of probation.
5. Attending Alcoholics Anonymous meetings.
6. Submitting to a chemical test upon request of your probation officer.
7. Driver's license revocation of *60 days* on a first offense, IF your BAC was below .15. If above .15, then your license revocation will be for *one year* and you will also be sentenced to *two days in jail*. The judge may give credit for the period of revocation already endured as a result of the ALR. The judge may allow you to install an interlock system on your car so you can drive after breathing into the mechanism. You must pay the cost of installation and monitoring if interlock is granted, which will cost about \$60 per month.
8. A \$400 fine (BAC below .15) or a \$500 fine (BAC above .15); and
9. Several hundred dollars (\$800 to \$1,000 and up) in court and probation costs.

What If I Get Caught Drinking Alcohol While On Probation?

Any violation of probation conditions can result in the state filing a motion to revoke your probation. If you are found guilty at the hearing on the motion to revoke the judge can sentence you on the original charge and impose the straight statutory sentence. You will also have to stand trial on any additional charges you acquired in the course of violating your probation such as Driving Under a Suspended License, Consuming Alcohol in Public, etc.

What Is An Alcohol Evaluation?

In Lancaster County Court a judge may require a complete alcohol evaluation with a certified counselor before sentencing a defendant to probation. An alcohol evaluation involves a session with a counselor who will administer tests and interview the probation applicant regarding a wide range of personal matters. If the evaluation reflects the person does not have an alcohol problem, a program of education may be recommended which can cost \$75-\$150 depending on the program.

However, if the evaluator determines the person has a problem with alcohol, a treatment program will be recommended. Types of programs include outpatient, intensive outpatient treatment, or inpatient treatment, all followed by aftercare. The cost ranges from \$360 to \$10,000 or more. A defendant who does not want to participate in the recommended treatment program can refuse probation and take the straight sentence. No one can make you go to treatment, but jail may be the only alternative.

If I Go To Jail, Will I Be Able To Attend Classes And Work?

Most defendants who decline probation on a DUI, first offense below .15, will receive seven days in jail. The maximum is 60 days. The defendant will need to report to the jail where she will be transported to the Work Release Center. Friends and relatives must provide transportation for her to and from the Work Release Center and her job site or school unless she uses the limited public bus service available.

What Is This Going To Cost Me?

As monetarily expensive as a DUI can be for a student, the real cost is in the fact that you must report this misdemeanor conviction on job applications and professional school applications into the foreseeable future. It is unpleasant. It is an experience to avoid. DUI is painful to the pocketbook. Some of the costs you are likely to encounter on a first offense are listed in the chart below:

Attorney's Fees.....	\$500-\$3,000
(SLS is prepaid through student fees, so there is no charge.)	
Fines (first offense).....	\$400-\$500
Appeal of DMV revocation, filing fee.....	\$79
Car insurance.....	will skyrocket
Breath Test at arrest.....	\$100
Additional blood test.....	\$75-\$150
Alcohol Evaluation.....	\$75-\$150
Alcohol Education Program.....	\$75-\$150
Alcohol Treatment Program.....	\$360-\$10,000+
Urine testing during probation.....	\$60
Interlock system on car.....	approximately \$60 per month

What Is An .02 Violation?

If you are under 21 years of age and operating a motor vehicle while having a BAC of between .02 and .08, you are violating Nebraska's .02 law (Nebraska Revised Statute §60-6,211.01, Reissue 2004). The penalty for a .02 infraction is 30 days license revocation (work and school driving permit may be requested) and a \$100 fine plus \$44 court costs. This conviction remains on your driving record at the Department of Motor Vehicles for three months only, so long as you have no moving traffic violations during that time.