

# **The New MDDP Law and Applicable Secretary of State Regulations**

Larry A. Davis  
960 Rand Road  
Ste. 210  
Des Plaines, IL. 60016  
847-390-8500

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Effective January 1, 2009 Illinois eliminated the use of Judicial Driving Permits (“JDPs”) and replaced them with Monitoring Device Driving Permits (“MDDPs”). (See P.A. 95-400; P.A. 95-578; 625 ILCS 5/6-206.1). The Secretary of State’s office has adopted rules under the Illinois Administrative Code (“IAC”) implementing the new law. See 92 IAC section 1001.444 et seq. All statutory references are to the Illinois Vehicle Code (“IVC”) (625 ILCS 5/1-101 et seq.),

***A. Highlights / Comparison with Previous Law***

- 1- Consistent with the law governing JDPs, MDDPs are only available to statutory summary suspension (“SSS”) first offenders as defined by IVC Section 11-500. Generally, this includes offenders who have not had a previous DUI disposition (including supervision, conviction or statutory suspension) within five (5) years of the current arrest. Those who are not statutory first offenders, under current Illinois law are not eligible for any relief during the period of the SSS;
- 2- Consistent with the law governing JDPs, MDDPs are issued pursuant to court order by the Secretary of State (“SOS”). MDDPs are not Restricted Driving Permits (RDPs) which are issued to a revoked driver after an administrative hearing before the SOS. See IVC Section 2-118;
- 3- Unlike the law governing JDPs which could only be issued for employment, medical, alcohol treatment or educational purposes within set days and times, MDDPs have no limitations with respect to times or purpose. See IVC Section 6-206.1(a-1);
- 4- While the court previously retained statutory discretion to deny a petition for a JDP, the court is required to grant such an order if the person meets the requirements of the statute. See IVC Section 6-206.1(a);
- 5- The SSS for first offenders has been increased from 3 months to 6 months for those who submit to testing and from 6 months to 12 months for those who refuse testing. The length of suspension remains the same for SSS second offenders (and as stated earlier – these individuals are not eligible for any relief from the court or the SOS). See Sections 6-208.1(1), (2);
- 6- Unlike the law governing JDPs which were not issued conditioned on the installation of an breath alcohol ignition interlock device (“BAIID”) (unless ordered by the court) - with only certain limited exceptions - a MDDP can only be issued to a person who operates a vehicle equipped with a BAIID. See IVC Section 6-206.1(a-1);
- 7- Unlike the law governing JDPs, persons seeking issuance of a MDDP are no longer required to have an alcohol/drug evaluation completed for the court’s review. See IVC Section 6-206.1 generally.

## ***B. Eligibility***

A person must be a first offender as defined under IVC Section 11-500. If the person is a SSS second offender he or she is not eligible for any form of driving relief. See IVC Section 6-206.1(a). The court may not grant the MDDP if:

1. The person does not otherwise have a valid driver's license;
2. The current arrest for DUI involves death or great bodily harm;
3. The person has previously been convicted of reckless homicide;
4. The person is less than 18 years of age.

See IVC Section 6-206.1(a).

If a person's driving privileges are suspended, revoked, cancelled or otherwise become invalid after being granted an MDDP, the MDDP becomes invalid and must be surrendered to the SOS. Thereafter, to seek any driving relief the person must petition for a Restricted Driving Permit ("RDP") to the SOS and comply with all applicable rules. However, if the 'invalidation' is removed, then the person may obtain another MDDP for the balance of the period of the period of suspension unless the MDDP has been cancelled for a subsequent traffic violation as provided in IVC Section 6-206.1(c-1). See 92 IAC sec. 1001.444(a)(5).

## ***C. Application***

The application process for a MDDP is largely automatic. Although the statute does not expressly require that a petition for issuance of the MDDP be filed, generally the courts are requiring the filing of such a petition in which the person is required to attest to his eligibility for the permit. The statute does require that the court:

1. Inform the person of his or her right to a MDDP;
2. The obligations associated with issuance of the MDDP.

The statute further provides that the court shall grant the MDDP unless the person declines the permit in writing.

See IVC Section 6-206.1(a).

## ***D. Procedure for Issuance***

If the person is eligible and has not declined the MDDP in writing, the court must enter an order which directs the SOS to issue the MDDP and which:

1. Requires the person to pay the SOS a BAIID administration fee of \$30.00 per month;
2. Specifies that the person shall have the BAIID installed within 14 days of the issuance of the MDDP;

See IVC Section 6-206.1(a)

Upon installation, the BAIID provider must notify the SOS of the installation, otherwise the SOS must cancel the MDDP. As under previous law governing JDPs, a MDDP is not effective until the 31<sup>st</sup> day of the SSS. There is no relief available for the first 30 days of the SSS. See IVC Section 6-206.1(a).

A person may voluntarily terminate participation in the MDDP program by written notification and surrender of the permit to the SOS. Likewise, the person may resume participation during the period of the SSS by notifying the BAIID Division of the SOS in writing. See 92 IAC sec. 1001.444(a)(6).

### ***E. Indigents***

If the court determines that the person is indigent then upon being presented with a court document verifying same, the BAIID provider shall install the BAIID without charge. The provider may then seek reimbursement from the Indigent BAIID Fund administered by the SOS. This fund will receive its monies from the BAIID providers in the form of 5% of their gross revenues. See IVC Section 6-206.1(c-5) and 92 IAC sec. 1001.444(l)(1).

The provider is prohibited from charging the indigent person any fees except a one (1) month security deposit that does not exceed the cost of one month's rental. See 92 IAC sec. 1001.444(b)(C).

### ***F. Exceptions to the BAIID Requirement***

A person issued a MDDP may only drive a vehicle equipped with a BAIID. CDL holders are prohibited from driving commercial vehicles on a MDDP. See IVC Section 6-206.1(a-1).

A person who operates an employer owned vehicle in the course of his or her employment may be allowed to drive such vehicle without a BAIID if the court approves such a use. If granted permission, the person must have in his or her possession –while driving – a file stamped copy of the court order. However this exemption does not apply if the person:

1. drives a school bus or school vehicle;
2. drives a vehicle designed to transport more than 15 passengers;
3. drives an employer owned vehicle that is owned by an entity that is wholly or partially owned by the person or a family member of the person holding the MDDP. This includes an entity that is a corporation and the person or the person's immediate family own 5% or more of the outstanding shares;
4. drive an employer owned vehicle that is made available to the MDDP holder for personal use;

5. drives a vehicle assigned exclusively to the person and the vehicle is used solely for commuting to and from employment.

See IVC Section 6-206.1(a-2) and 92 IAC sec. 1001.444(j).

Additionally, a person may not drive an exempted vehicle for more than 6 days a week, 12 hours per day. See IVC Section 6-206.1(a-2).

### ***G. Modification or Waiver of BAIID Requirement For Medical Reasons***

A person may seek a waiver of the BAIID requirement by submitting a medical report supporting the request to the SOS. However, as a condition of granting a waiver, the person must satisfy SOS alcohol/drug evaluation and treatment requirements as provided at 92 IAC sec. 1001.400-1001.490 (Subpart D). See 92 IAC sec. 1001.444(i).

### ***H. Traffic Violations While Driving on a MDDP***

If the person is convicted of or receives court supervision for the following offenses, the MDDP shall be cancelled (these do not include offenses alleged as part of the occurrence for which the MDDP was issued):

1. IVC Section 6-206.2 (Violations relating to an ignition interlock device);
2. IVC Section 11-401 (Leaving the scene of an accident involving death or personal injury);
3. IVC Section 11-501 (DUI);
4. IVC Section 11-503 (Reckless Driving);
5. IVC Section 11-506 (Street Racing or Aggravated Street Racing);
6. Any offense for which alcohol or drugs is an element of the offense;
7. De-installation of the BAIID without prior authorization of the SOS.

The offenses cited above include similar provisions of local ordinances or out-of-state offenses.

See IVC Section 6-206.1(c-1) and 92 IAC sec. 1001.440(d).

### ***I. BAIID Violations***

The SOS is charged with the promulgation of administrative rules implementing the MDDP law. The SOS is also granted the authority under the statute to hold hearings where an affected person wishes to challenge an alleged violation which results in an extension of the SSS. In order to request a hearing the person must submit the request in writing together with a fee of \$50.00. Hearings will be held under the rules found at 92 IAC sec. 1001.10 et. seq. Also See IVC Sections 2-118, 6-206.1(g) and (j).

There are several general areas defined by the statute which may be the basis for MDDP violations;

1. tampering or attempting to tamper with or circumvent the BAIID device;
2. providing valid breath samples that register blood alcohol levels in excess of a set number of times in excess of that allowed under SOS rules;
3. failure to provide evidence to the SOS that the BAIID has been installed in the person's vehicle(s);
4. failure to follow any applicable rule adopted by the SOS.

See IVC Section 6-206.1(h).

The SOS rules governing violations provide that the following will constitute a violation of the BAIID program:

1. A conviction or court supervision for any of the offenses listed in Section 6-206.1(c-1) of the IVC;
2. Tampering or attempting to tamper with or unauthorized circumvention of the BAIID;
3. A violation of Section 6-206.2 of the IVC;
4. 10 or more unsuccessful attempts to start the vehicle with a BAIID installed within a 30 day period, excluding a BrAC reading of 0.05 or more;
5. 5 or more unsuccessful attempts to start the vehicle within a 24 hour period, excluding a BrAC reading of 0.05 or more;
6. A BrAC reading of 0.05 or more;
7. Failing a running retest, or failing to take a running retest;
8. Removing the BAIID without authorization from the Secretary;
9. Failing to utilize the BAIID as required;
10. Failing to submit a BAIID for a monitor report in a timely manner.

See 92 IAC sec. 1001.440(d).

### ***J. Extension of Suspension***

If the SOS determines that a violation of the MDDP law or rules has occurred (other than violations resulting in cancellation of the permit), the SOS will enter an extension of the SSS for an additional period of three (3) months. The extension will be for a period beyond the termination date of the original suspension. If the suspension has already terminated at the time of such determination, then the person will be re-suspended for a period of three (3) months. There are no limitations on the number of times a suspension may be extended or re-suspended (subject to the six (6) month limitation discussed in paragraph (P) below). During any period of suspension (including extension(s) or re-suspension) the only driving relief the person is eligible for is a MDDP subject to BAIID requirements. See IVC Section 6-206.1(j).

However, note that under SOS rules, a person may only obtain another MDDP once during any period of a suspension extension or re-suspension. See 92 IAC sec. 1001.440(a)(6).

### ***K. Termination of the Suspension***

If a person's MDDP has been cancelled as a result of a traffic violation as defined in Section 6-206.1(c-1), reinstatement is not automatic at the termination of the SSS. Instead, before reinstatement may be granted, the person is required to apply for a restricted driving permit before the Secretary of State (through an administrative hearing) and is required to drive on same for a period of not less than twice the original summary suspension period subject to BAIID requirements. See IVC Section 6-206.1(l).

### ***L. Impoundment, Seizure and Forfeiture***

A person who has violated the MDDP law or rules resulting in three (3) extensions of the person's summary suspension shall have his or her vehicle impounded at the person's own expense. A violation resulting in an fourth extension will be subject to seizure and forfeiture of the vehicle. The SOS is required to notify the prosecuting authority of third and fourth violations upon which the prosecuting authority is required to impound or seize and forfeit the vehicle. See IVC Section 6-206.1(k).

### ***M. Confidentiality***

Notation of issuance of the MDDP will not appear on the person's public driving record (consistent with the provision that the SSS for a first offender will not appear on his or her public driving record). See IVC Section 6-206.1(d).

### ***N. Summary of Other Provisions Governing MDDPs***

Upon receipt of the MDDP the person must have the BAIID installed by the BAIID provider within fourteen (14) days of issuance. Until the device is installed the person cannot operate a vehicle for any other purpose. The installer must notify the SOS within seven (7) days of its installation. See IVC Sections 6-206.1(a), (j) and 92 IAC sec. 1001.440(b)(2)(B).

The person can only operate vehicles installed with a BAIID including vehicles that are owned, rented, leased, loaned, etc. The device must be downloaded every sixty (60) days unless the person's suspension has been extended or re-suspended as a result of a violation of the program in which case such period is reduced to thirty (30) days. See 92 IAC sec. 1001.440(c)(2).

The person must comply with any service or inspection notification within five (5) working days of same. 92 IAC sec. 1001.440(c)(3).

Furthermore, the person must keep a journal of unsuccessful attempts to start the vehicle, test failures, retest problems or other problems with the BAIID (separate journals for each vehicle). See 92 IAC sec. 1001.440(c)(4).

#### ***O. SOS Action Upon Determination of a Violation***

1. If the person commits a violation under 6-206.1(c-1) the MDDP will be cancelled. If the person's MDDP has already expired prior to receipt of notice of the violation, then the person's privileges will be re-suspended and the person will thereafter be required to seek relief before the SOS as noted in section (K) above. See IVC Section 6-206.1(c-1) and 92 IAC sec. 1001.440(e)(1);
2. If evidence shows sufficient reason to believe that a violation of Section 6-206.2 has occurred relating to operation of a vehicle not equipped with a BAID; requesting another person to start a vehicle with a BAID to enable the offended to operate the vehicle; or tampering with or circumventing a BAID the SOS will cancel the MDDP. If the SSS has already terminated when the SOS receives the report of a violation the SOS will re-suspend the person for three (3) months. See IVC Section 6-206.1(h) and 92 IAC sec. 1001.440(e)(2);
3. If there is a violation of the provisions above relating to 10 or more unsuccessful attempts to start the vehicle within a thirty day period, 5 or more unsuccessful attempts to start the vehicle within a 24 hour period; or a single BrAC reading of .05 or more the SOS will extend the suspension or re-suspend the person for three (3) months. If the evidence shows multiple violations each determined violation will require a separate three (3) month extension of suspension or re-suspension (subject to the limitations noted in paragraph (P) below. See IVC Section 6-206.1(h) and 92 IAC sec. 1001.440(e)(3);
4. If there is a violation of the provision above relative to completion of a running retest the SOS will extend the suspension or re-suspend the person for three (3) months. See IVC Section 6-206.1(h) and 92 IAC sec. 1001.440(e)(4).

In all of the above cases will send a letter requesting an explanation of the specified violation. The SOS must receive a response within 21 days of the violation notice date which reasonably assures the SOS that no violation occurred. If the response does not so reasonably assure the SOS that no violation occurred then the above specified sanctions will be imposed. See 92 IAC sec. 1001.440(e)(2-4).

#### **P. Other MDDP Violations and Sanctions**

1. If the person fails to pay lease or rental fees due the BAID provider resulting in removal of the device the SOS will cancel the MDDP. See 92 IAC sec.1001.440(e)(5);



2. For failure to utilize the BAIID as required as shown by the monitor report(s) or for failure to submit a BAIID for a monitor report the SOS will extend the suspension or re-suspend the person for three (3) months. See 92 IAC sec. 1001.440(e)(6);

Note that multiple violations occurring within one (1) monitoring period will not result in extensions of suspension or re-suspensions totally more than six (6) months. See 92 IAC sec. 1001.440(e)(8).