

The MDDP Law and Applicable Secretary of State Regulations

(Including Revisions Effective January 14, 2011)

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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”) to be issued pursuant to court order. (See P.A. 95-400; P.A. 95-578; 625 ILCS 5/6-206.1). The Secretary of State’s (“SOS”) office adopted rules under the Illinois Administrative Code (“IAC”) implementing the new law.

Thereafter, effective February 14, 2011, the MDDP statute was further amended to make the process of issuance largely automatic without the need for a court order. This was in response to the reticence of some judges to grant MDDPs to individuals that they did not believe should be granted relief and in order to streamline the process. The SOS adopted emergency administrative rules in response to the additional responsibilities assigned to it under the amended statute as well to make other changes in its rules. See P.A. 96-1526. Also 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.).

Note that the emergency rules were effective February 15, 2011 stating that Governor Quinn signed the Public Act on February 15, 2011. However Governor Quinn signed the Act on February 14, 2011 and the Act become effective on that date.

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 a SSS) 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- The original MDDP statute effective January 1, 2009 was consistent with the law governing JDPs in that MDDPs were issued pursuant to court order by the SOS. Under the amended statute effective February 14, 2011, the MDDP eligible driver is automatically enrolled in the program without the need for a court order. However, under the new statute, if the person does not wish to participate in the program he or she is required to appear in court and, after being admonished as to the consequences of driving without a MDDP during the period of summary suspension, may opt out of the program. The clerk of the court will then send notice to the Secretary of State advising of the person’s decision to opt out.

MDDPs, like JDPs, 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 Secretary of State is required to issue the permit if the person meets the requirements of the statute. See IVC Section 6-206.1(a) and Section B below;

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 who issuance were not 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 (with certain limited exceptions – see F below. Also 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. 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. The SOS 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 or aggravated driving under the influence involving death; or
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 a 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. Such person, if granted a RDP will then, again, be subject to BAIID requirements. 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 traffic violation as provided in IVC Section 6-206.1(c-1). See 92 IAC sec. 1001.444(a)(4).

Note: Important Practice Tip:

Under revised SOS rules a MDDP that is cancelled and the driving privileges of the person are revoked as a result of the DUI arrest that was the basis for the issuance of the MDDP will be required to comply with BAIID requirements if granted a RDP after an administrative hearing before the SOS. THIS INCLUDES INDIVIDUALS WHO OTHERWISE WOULD NOT HAVE BEEN BAIID MANDATED.

Therefore, when representing a client who is not otherwise required to have a BAIID RDP, it would be advisable to continue the DUI matter to a date after the SSS ends (and the MDDP has therefore expired) to avoid cancellation and revocation while the MDDP is still in effect thereby subjecting the person to BAIID requirements unnecessarily.

This would appear to be contrary to the provisions of IVC Section 206.1(c-1) which provides for cancellation for offenses "other than the one for which the MDDP is issued".

See 92 IAC sec. 1001.444(a)(4).

C. Application

The issuance process for a MDDP is largely automatic. At the time of (or shortly after) the mailing of the confirmation of the SSS the SOS will also forward a notice describing the MDDP program. This notice will contain a tear off section titled "MDDP Program Application" which the individual must return to the SOS requesting issuance of the MDDP. If the SOS does not receive this document back it will send a follow-up reminder notice to the person. If neither of these forms is returned the MDDP will not be issued. See IVC Section 6-206.1(a).

D. Procedure Upon Issuance

Upon issuance of the MDDP the SOS will:

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

Failure to comply with these requirements will result in cancellation of the BAIID. See IVC Section 6-206.1(a). See also 92 IAC sec. 1001.444(b)(1).

As under previous law governing JDPs, a MDDP is not effective until the 31st day of the SSS. There is no relief available for the first 30 days of the SSS. See IVC Section 6-206.1(a). See also 92 IAC sec. (b)(2)(A).

E. Declining Issuance of the MDDP

In order to decline issuance of the MDDP, the statute requires that the person file a petition with the court of venue. The court is then required to then advise the person of the penalties for driving while suspended. The person, after being advised, may then execute a written document declining issuance that is then to be filed with the court and forwarded by the clerk to the SOS. See IVC Section 6-206.1(a). See also 92 IAC sec. 1001.444(a)(1).

Note: Important Practice Tip:

The procedure required by the SOS avoids the need to appear in court despite the provisions of the statute that provide otherwise. Specifically, if the person does not send in the MDDP Program Application form the permit will not be issued. Although the notice sent by the SOS states that the person is automatically enrolled in the program, enrollment does not actually occur unless the application is returned, thereby obviating the necessity for a court order declining issuance.

A person may also 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 BAID Division of the SOS in writing. However, after terminating participation, a person may only re-enroll once. See 92 IAC sec. 1001.444(a)(6).

E. Indigents

The person seeking issuance of the MDDP may seek indigency status from the SOS. In order to do so the person must advise the SOS in writing of this request. There are three (3) methods by which one may qualify as an indigent:

1. The person's monthly income is 150% or less of the federal poverty guidelines, as evidenced by a copy of their federal or state tax return for the most recent calendar year; or
2. The person is currently receiving Temporary Assistance to Needy Families as demonstrated by documentation from the Illinois Department of Human Services:
or
3. The person is currently receiving Supplemental Nutrition Assistance Program Benefits as demonstrated by documentation from the Illinois Department of Human Services.

See 92 IAC sec.1001.444(l)(4)(A-C).

A person's indigency status is valid for a period of 12 months. If the suspension is extended beyond 12 months and the person desires to continue driving on the MDDP with indigency status, he or she must renew the application for such status. 92 IAC sec.1001.444(1)(5).

Furthermore, if an Illinois driver commits an offense in another state and that state imposes BAIID requirements on such driver, Illinois will give reciprocal recognition to such requirements. See 92 IAC sec. 1001.444(m).

If the SOS determines that the person is indigent then 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(1)(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 (limited to one vehicle per person). See 92 IAC sec. 1001.444(b)(C).

F. Exceptions to the BAIID Requirement

1. Employment Exemption

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 SOS approves such a use. This exemption includes test-driving vehicles within a 5-mile radius of the place of employment. (The most common example would be a person engaged in the car repair business). 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. drives 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, i.e, is not also used for driving for work-related purposes during work.

See IVC Section 6-206.1(a-2) and 92 IAC sec. 1001.444(j)(1-2).

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).

The SOS may terminate the exemption if it receives credible evidence that the exemption is being violated by driving the vehicle for other than employment purposes. In such case the SOS will request an explanation to which the person must respond within 21 days. If no response is received or the response does not reasonably assure the SOS that no violation occurred, then the exemption will be terminated (a request for hearing will be granted – but will not stay the termination of the exemption. 92 IAC sec. 1001.444(j)(3).

2. Medical Exemption

A person may seek a waiver of the BAID 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).

This would include the requirement of a hearing to demonstrate that the person is not a risk to the public safety and welfare if granted the privilege to drive without a BAID device.

See 92 IAC sec. 1001.444(i)(1-2).

G. Traffic Violations While Driving on a MDDP or Unauthorized De-installation of the BAID Device – 6-206.1(c-1) Violations

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;

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

If the person de-installs the BAID device without prior authorization from the SOS the BAID device shall also be cancelled.

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

H. *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 or cancellation of the MDDP. 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. These include violations of Section 6-206.2, 6-303, 11-204, 11-204.1, 11-401, 11-501, 11-503, 11-506 (or a similar provision of a local ordinance or a similar out-of-state offense or for any offense involving a motor vehicle for which alcohol or drugs is an element of the offense (other than an offense for which the MDDP was issued);
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. 1001.444(d)(1-10).

I. Sanctions

1. Extension of Suspension

If the SOS determines that a violation of the MDDP law or rules has occurred (*other than a violation 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 (N) 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. 1001.444(a)(6).

2. Cancellation

If a person's MDDP has been cancelled as a result of a traffic violation as defined in Section 6-206.1(c-1) or as the result of an unauthorized de-installation as provided in that section, 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 or for the length of any extensions of suspension, whichever is longer, subject to BAIID requirements. See IVC Section 6-206.1(l).

J. 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).

K. 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).

L. 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) and 92 IAC sec. 1001.444(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. 1001.444(c)(2).

If the person has failed to submit a BAIID monitor report as required, then all future reports must be submitted within 37 days thereafter. Failure to submit the monitor report (without reasonable explanation from the person or the BAIID provider) will result in a letter from the SOS giving the person 10 days to submit the report from the date of the letter. Failure to comply will result in a 3 month extension of the SSS. If the person does not respond or cannot be located, the permit shall be cancelled. If the MDDP has already expired, then the person shall be re-suspended for twice the original length of the original SSS and cannot receive any further driving relief during such time except through a hearing with the SOS. See 92 IAC sec. 1001.444(e)(7).

The person must comply with any service or inspection notification within five (5) working days of same. 92 IAC sec. 1001.444(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. 1001.444(c)(4).

M. 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 (I)(2) above. See IVC Section 6-206.1(c-1) and 92 IAC sec. 1001.444(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 BAIID; requesting another person to start a vehicle with a BAIID to enable the offender to operate the vehicle; or tampering with or circumventing a

BAIID 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. 1001.444(e)(1);

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 (O) below. See IVC Section 6-206.1(h) and 92 IAC sec. 1001.444(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. 1001.444(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. 1001.444(e)(2-4).

N. Other MDDP Violations and Sanctions

1. If the person fails to pay lease or rental fees due the BAIID provider resulting in removal of the device the SOS will cancel the MDDP. See 92 IAC sec.1001.444(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. 1001.444(e)(6);

Note that multiple violations occurring within one (1) monitoring period will not result in extensions of suspension or re-suspensions totaling more than six (6) months. See 92 IAC sec. 1001.444(e)(8).