

New 2009 Illinois DUI Laws - MDDP and Driving Permits

Effective January 1, 2009, the judicial driving permit, a hardship license formerly granted to first offenders (see 625 ILCS 11-500 for definition of 'first offenders') is abolished for all arrestees on or after 1-1-09. 625 ILCS 5/6-206.1 makes several substantial changes to the implied consent laws. But, before getting into those changes, let me state two things that are not affected. First, summary suspension hearings and procedures remain the same, other than the fact the length of the suspensions double (six months for a test failure, twelve months for a test refusal). Second, criminal DUI laws do not change.

Wheaton, IL ([PRWEB](#)) January 5, 2009 -- Effective January 1, 2009, the judicial driving permit, a hardship license formerly granted to first offenders (see 625 ILCS 11-500 for definition of 'first offenders') is abolished for all arrestees on or after 1-1-09. 625 ILCS 5/6-206.1 makes several substantial changes to the implied consent laws. But, before getting into those changes, let me state two things that are not affected. First, summary suspension hearings and procedures remain the same, other than the fact the length of the suspensions double (six months for a test failure, twelve months for a test refusal). Second, criminal DUI laws do not change.

What the new law does: in place of the judicial driving permit, the new law creates the Monitoring Device Driving Permit (MDDP). In essence, the law gives the first offender the option to drive after the 31st day of his suspension, for any purpose and at any time. Unless a defendant opts out of the MDDP law, the driver must agree to have a breath alcohol interlock ignition device (BAIID) installed on the car that the offender drives. (See Section 3 for a more detailed discussion of BAIID devices). If a driver is caught driving during a summary suspension and he has opted out of the MDDP, it is a Class 4 felony punishable by up to 1-3 years incarceration.

The MDDP is available only to 'first offenders', which is defined in 625 ILCS 11-500. Essentially, a 'first offender' is a person who has had no DUI suspensions or findings of guilty in the past 5 years. MDDPs are available only for First Offenders unless:

- (1) The offender's driver's license is otherwise invalid;
- (2) death or great bodily harm resulted from the arrest for Section 11-501;
- (3) the offender has ever been previously convicted of reckless homicide; or
- (4) the offender is less than 18 years of age.

Unlike a JDP, a first offender is entitled to an MDDP if he fits the above qualifications; the court has no discretion and must order an MDDP, unless the offender opts out in writing:

"(e) Following a statutory summary suspension of driving privileges pursuant to Section 11-501.1, for a first offender, the circuit court shall, unless the offender has opted in writing not to have a monitoring device driving permit issued, order the Secretary of State to issue a monitoring device driving permit as provided in Section 6-206.1. A monitoring device driving permit shall not be effective prior to the 31st day of the statutory summary suspension." 625 ILCS 5/6-208.1

Further, unlike a JDP, the offender does not need an alcohol evaluation or any supporting documentation in



order to have a MDDP granted. In summary, here are the features to the MDDP process:

An offender is arrested for DUI;

A sworn report, completed by the police officer, is sent to the Secretary of State (SOS);

The Secretary of State sends a Notice Order of Summary Suspension to the offender (effective on the 46th day after the test or refusal), along with MDDP information;

The offender then goes to court for the DUI;

The trial judge asks the offender whether he or she wants an MDDP;

If the offender says yes, then an order for an MDDP is completed;

If the offender says no, then the offender is admonished by the court and the offender signs an 'opt out' statement;

If yes, then an order for the MDDP is sent to the Secretary of State;

The Secretary of State then gets the Court Order;

The SOS reviews the offender for eligibility and determines any requirements that must be fulfilled (i.e. cost)

The SOS then sends the offender the requirements for the MDDP, i.e. the bill, etc.;

Once the offender meets the requirements, then the SOS sends the offender the MDDP;

The offender then has 14 days to have the MDDP installed.

The MDDP law requires the offender to pay to the SOS an administrative fee of 30.00 per month. 625 ILCS 5/6-206.1. The entire number of months must be paid up front. (i.e \$150.00 for a 6 month summary suspension and \$330.00 for a twelve month refusal suspension.)

The offender must take the vehicle to a certified BAIID installation company. These are private companies. There will be an installation fee (approximately \$150.00) and a monthly fee for the device (approximately \$115.00 per month).

Once installed, the device begins monitoring. It is initially uploaded to the SOS to notify them of installation. If not uploaded initially, then eventually the MDDP is cancelled.

Thereafter, the offender must bring the vehicle into the installer every 30 days for readings. The BAIID company sends a report to the SOS monthly, and the computer at the SOS looks for violations. There are a specific set of rules that have been promulgated by the Secretary of State of MDDP violations and other MDDP related issues. These rules can be found at 92 Ill. Adm. Code 1001, and in the Illinois Register at Volume 32, issue 28 pages 9819 to 9869 as proposed amendments, or online at http://ilsos.net/departments/index/register/register_volume32_issue28.pdf.

If the offender receives is convicted of any moving violation during the MDDP period, the SOS shall extend the suspension for another 6 or 12 months, depending on the suspensions initial length:

"(b) The Secretary of State upon receiving a report of the conviction of any violation indicating a person was operating a motor vehicle during the time when said person's driver's license, permit or privilege was suspended by the Secretary, by the appropriate authority of another state, or pursuant to Section 11-501.1; except as may be specifically allowed by a probationary license to drive, judicial driving permit issued prior to January 1, 2009, monitoring device driving permit, or restricted driving permit issued pursuant to this Code or the law of another state; shall extend the suspension for the same period of time as the originally imposed suspension; however, if the period of suspension has then expired, the Secretary shall be authorized to suspend said person's driving privileges for the same period of time as the originally imposed suspension." 625 ILCS 5/6-303



MDDP Violations include:

- Tampering or attempted tampering
- 10 or more unsuccessful starts within a 30 day period
- 5 or more unsuccessful starts within a 24 hour period
- BAC of .05 or more
- Failing a running retest
- Failing to take a running retest
- Removing the BAIID device
- Failing to utilize the BAIID as required (under-usage)
- Failing to submit a timely monitoring report

Additionally, a driver must keep journal of:

- Unsuccessful starting attempts
- Failure to successfully complete a running retest
- Any problem with Device
- Name of driver for each of the above.

If the S.O.S. determines that a violation has occurred, it will notify driver who must respond in writing within 21 days. S.O.S. can extend the suspension for additional 3 months:

"(j) Upon making a determination that a violation of the requirements of the MDDP has occurred, the Secretary shall extend the summary suspension period for an additional 3 months beyond the originally imposed summary suspension period, during which time the person shall only be allowed to drive vehicles equipped with an ignition interlock device; provided further there are no limitations on the total number of times the summary suspension may be extended. The Secretary may, however, limit the number of extensions imposed for violations occurring during any one monitoring period, as set forth by rule. Any person whose summary suspension is extended pursuant to this Section shall have the right to contest the extension through a hearing with the Secretary, pursuant to Section 2-118 of this Code. If the summary suspension has already terminated prior to the Secretary receiving the monitoring report that shows a violation, the Secretary shall be authorized to suspend the person's driving privileges for 3 months, provided that the Secretary may, by rule, limit the number of suspensions to be entered pursuant to this paragraph for violations occurring during any one monitoring period. Any person whose license is suspended pursuant to this paragraph, after the summary suspension had already terminated, shall have the right to contest the suspension through a hearing with the Secretary, pursuant to Section 2-118 of this Code. The only permit the person shall be eligible for during this new suspension period is a MDDP." 625 ILCS 5/6-206.1(j)

For the first and second violations, the SOS will extend the suspension and MDDP for 3 month periods. After the third extension of the Summary suspension, local law enforcement will impound the vehicle for 30 days. After a fourth violation, the vehicle is permanently seized and forfeited.

MDDP Cancellations:

If the holder of the MDDP is convicted of or receives court supervision for a violation of Section 6-206.2, 6-303 (driving while suspended/revoked), 11-204 (fleeing and eluding), 11-401 (leaving the scene of an accident), 11-501 (DUI), 11-503 (reckless driving), 11-506 (street racing) or a similar provision of a local ordinance or a similar out-of-state offense or is convicted of or receives court supervision for any offense for which alcohol or drugs is an element of the offense and in which a motor vehicle was involved (for an arrest other than the one



for which the MDDP is issued) the MDDP is canceled.

The MDDP will also be canceled if the driver violates 625 ILCS 5/6-206.2, which includes driving a vehicle not equipped with a BAIID device after being issued an MDDP, or soliciting another to blow into a BAIID device in order to avoid a restriction.

If canceled, the driver is not automatically reinstated with full privileges at the end of the MDDP. Instead, the driver must apply for restricted drivers permit (RDP). If granted, the driver must then drive on the RDP for a length which is double the original period (with extensions).

If an offender is indigent, there is an indigent fund that can cover all or part of the cost of an MDDP.

Company cars: "Persons who are issued a MDDP and must drive employer-owned vehicles in the course of their employment duties may seek permission to drive an employer-owned vehicle that does not have an ignition interlock device. The employer shall provide to the Secretary a form, as prescribed by the Secretary, completed by the employer verifying that the employee must drive an employer-owned vehicle in the course of employment. If approved by the Secretary, the form must be in the driver's possession while operating an employer-owner vehicle not equipped with an ignition interlock device." 625 ILCS 5/6-206.1(a-2) However: The company cannot be owned in whole or in part by the driver or the driver's family; Cannot be used to drive a company car that is also made available for personal use; Car cannot be driven more than 12 hours per day and 6 days per week.

ABOUT THE AUTHOR:

In 2009, Donald Ramsell was named an Illinois Super Lawyer for the fourth time by Chicago Magazine. Ramsell's firm has handled over 13,000 DUI cases since 1986. In 2004 Ramsell argued before the Supreme Court of the United States. He is Board Certified in DUI Defense by the National College of DUI Defense, and is certified as an instructor in NHTSA SFSTs. Ramsell has appeared on Oprah, 20/20, and in London's Financial Times, the Wall Street Journal and 229 newspapers nationwide.

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