

## Practice Tip

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*Three new public acts increase the penalty for driving while revoked, modify secretary of state formal hearing procedures, increase minimum mandatory penalties for some DUI offenses, extend the use of breath alcohol ignition interlock devices (BAIIDs), and make other changes.*

### New DUI, Traffic Laws Stiffen Penalties

By Larry A. Davis

*"Overall, PA 92-0418 will substantially extend the BAIID requirement and increase the number of users."*

Governor Ryan signed three major traffic-related bills last August, all of which took effect immediately. This article reviews the changes and comments on their likely impact.

#### Sentencing for driving while revoked

The first new law, PA 92-0340, effective August 10, 2001, makes a number of significant changes in sentencing provisions for the offense of driving while revoked.

Changes to 625 ILCS 5/6-303(c) and (d) (subsections (d-2) and (d-3) are new) provide for minimum periods of incarceration/community service upon conviction for the offense of driving while suspended or revoked (625 ILCS 5/6-303(a)) where the revocation is based upon a previous conviction for driving under the influence (625 ILCS 5/11-501), leaving the scene of an accident (625 ILCS 5/11-401(a)), or reckless homicide (720 ILCS 5/9-3), or where the suspension is based on the summary suspension law (625 ILCS 5/11-501.1).

Specifically, conviction of a first violation remains a Class A misdemeanor, but the minimum mandatory sentence was increased from seven consecutive days of imprisonment or 30 days community service to 10 consecutive days of imprisonment or 30 days of community service. Conviction of a second violation remains a Class 4 felony, but now has a minimum mandatory sentence of 30 days imprisonment, not necessarily consecutive, or 300 hours of community service. The old law did not require a minimum mandatory sentence.

Conviction of a third violation also remains a Class 4 felony, but now requires a minimum sentence of 30 days imprisonment (not necessarily consecutive) where none was required before. For a fourth or subsequent conviction, the offense is still a Class 4 felony but now requires a minimum sentence of 180 days of imprisonment (not necessarily consecutive) where none was required before.

Remember, these minimum mandatory sentences only apply to convictions. Supervision remains a sentencing option for those without a prior sentencing disposition for driving while revoked/suspended within 10 years (730 ILCS 5/5-6-1(i)).

New sections 625 ILCS 5/6-303(c-1) and (d-1) provide for increased minimum sentences upon conviction for violating section 6-303(a) where the basis for the revocation/suspension is something other than a violation of 625 ILCS 5/11-501, 11-401(a), 11-501.1, or 720 ILCS 5/9-3.

Conviction of a first violation remains a Class A misdemeanor with no minimum mandatory sentencing requirements. For conviction of a second violation, the offense remains a Class A misdemeanor but a minimum mandatory sentence of 100 hours of community service is now required. For conviction of a third violation, the offense remains a Class A misdemeanor, with a minimum mandatory sentence of 30 days of imprisonment (not necessarily consecutive) or 300 hours of community service.

Revised section 730 ILCS 5/5-6-3 allows for incarceration of more than six months for offenders who have committed a fourth or subsequent violation of section 6-303(c) and are placed on probation or conditional discharge.

New section 625 ILCS 5/6-303(c-2) provides that after a fourth conviction for a violation of section 6-303(a) (regardless of the basis of the revocation/suspension), the court may impose the additional penalties of seizing the license plates of the person's vehicle and immobilizing the vehicle for a period to be determined by the court.

### **Revised DUI penalties, restricted-driving-permit limitations, and BAIIDs**

PA 92-0418, effective August 17, 2001, makes changes in secretary of state formal hearing procedures, increases minimum mandatory penalties for some DUI offenses, bars restricted driving permits (RDPs) for minimum mandatory periods and requires installation of breath alcohol ignition interlock devices (BAIIDs) for certain offenders as a condition of receiving an RDP.

**SOS hearings.** The new law, via changes to 625 ILCS 5/2-118(a), and (d) and 5/3-402(B)(7)(a), authorizes a fee of up to \$50 for the filing of any petition, motion, or request for hearing before the secretary of state. These funds are to be used only to fund the Department of Administrative Hearings. The secretary has promulgated rules governing the assessment and administration of these fees. The new rules require payment of fees for hearing requests made on or after October 15, 2001.

To address the considerable delays in the Department of Administrative Hearings, the secretary is required to set a hearing date within 90 days of the written request and to render a decision within 90 days of the hearing's conclusion. These provisions apply to all hearings held on or after July 1, 2002.

**BAIIDs.** Under changes to 625 ILCS 5/6-205(c) and 5/6-206(c)(3), drivers who are revoked or suspended based on two or more convictions for violations of section 11-501 (or a similar local or out-of-state offense) and are issued a restricted driving permit after an administrative hearing may not operate a vehicle unless it is equipped with a breath alcohol ignition interlock device.

Note that those who have been convicted of three such offenses, or two within 20 years, face a minimum 10- or five-year revocation period, respectively. Thus, as a practical matter, a person on an RDP will be required to use a BAIID during these extended periods.

Additionally, drivers who are revoked or suspended two or more times within 10 years for a combination of a single conviction for violating section 11-501 (or a similar local or out-of-state offense) and (1) a suspension pursuant to section 11-501.1 arising out of separate occurrences or (2) two separate suspensions pursuant to section 11-501.1 and are issued an RDP after an administrative hearing may not operate a motor vehicle unless it is BAIID-equipped. The BAIID is not required for an RDP issued for employment purposes to someone required to operate his or her employer's occupational vehicle.

This new law will apply to offenses occurring on or after August 17, 2001. Existing SOS rules mandating installation of BAIIDs will continue to be applied to those whose offenses occurred before that date. (See 92 Ill Admin Code 1001.410 (Definition of "BAIID [Eligible] Petitioner").)

Overall, it will substantially extend the BAIID requirement and increase the number of users. The Act requires installation of a BAIID on any vehicle operated by the driver in question, whether he or she owns it or not, unless the employment exemption applies.

Note that unlike the a BAIID provisions in this Act, the ones in PA 92-0248 (discussed below) do not apply to out-of-state DUIs or vehicles owned by those other than the driver in question. On the other hand, while this Act requires a BAIID installation only after a driving permit is granted, 92-0248 requires installation on any vehicle owned by the person,

whether or not he or she has been granted driving privileges.

Also, those required to have a BAIID must pay a fee of up to \$20 per month to the secretary of state's DUI administration fund.

**RDPs.** The secretary of state may not issue an RDP to any person whose revocation is the result of a second or subsequent conviction of a violation of section 11-501, a similar provision of a local ordinance, or a similar out-of-state offense or any combination for a period of one year from the date of revocation.

**Miscellaneous changes.** PA 92-0418 also repeals the part of section 625 ILCS 5/6-205(d) that prohibited drivers under 21 who were revoked because of a subsequent DUI conviction from seeking reinstatement until they turn 21. They are now technically on the same footing as drivers over 21 – i.e., they are barred from seeking relief for one year after revocation, at which point they may seek an RDP. However, the reality is that under section 6-208(b) these persons will be revoked and not eligible for reinstatement for at least five years, which means after age 21 for most young drivers. Thus, this repeal effects no change in practice.

The Act also changes 625 ILCS 5/11-501(c-4) to increase minimum mandatory sentences for those convicted of violating section 11-501 or a similar provision of a local ordinance when the BAC is .16 or more or when transporting a child under the age of 16 as follows:

A first-time conviction of section 11-501(a) brings a mandatory minimum sentence of 100 hours of community service and a minimum fine of \$500. For a second conviction within 10 years, the mandatory minimum is two days' imprisonment and a \$1,250 fine. For a third conviction within 20 years, the offense is a Class 4 felony, bringing a mandatory minimum of 90 days in jail and a \$2,500 fine. For a fourth or subsequent conviction, the offender is not eligible for probation or conditional discharge and is subject to a minimum fine of \$2,500.

Note that the underlying predicate offenses for enhancement are not limited to transporting a child under the age of 16 or registering a BAC of .16 or more. However, enhancement cannot be based on violation of a similar local ordinance or out-of-state statute.

Under new sections 625 ILCS 5/6-206.2(e) and 208(c), a person who was convicted for a second or third DUI under section 11-501(c-4), was required to install a BAIID, and then was convicted of driving without the BAIID is prohibited from driving any non-BAIID-equipped vehicle for a period equal to that during which he or she was originally required to have the device.

Section 730 ILCS 5/5-6-3(e) was changed to allow offenders sentenced to probation for a fourth or subsequent violation of section 11-501(c-4) to be imprisoned for more than six months.

### **Compliance with federal DUI mandates**

The final Act, PA 92-0248, effective August 3, 2001, came at the request of the Illinois Department of Transportation to comply with federal law mandating that states pass specified DUI legislation or risk loss of control of some federal highway funds.

Revised sections 625 ILCS 5/6-205(h) and 5/11-501(i) provide that the secretary of state require the use of BAIIDs on all vehicles owned by someone who has been convicted of a second or subsequent violation of section 11-501 or a similar provision of a local ordinance as a condition of granting an RDP.

New section 625 ILCS 5/6-205(i) prohibits the secretary of state from granting an RDP for one year after the date of a second or subsequent revocation pursuant to section 11-501(a) or a similar local ordinance. This creates a new "hard time" provision for drivers convicted a second time for DUI. Note that, unlike PA 92-0418 above, it does not apply to those convicted of out-of-state DUI offenses.

Revised 625 ILCS 5/6-208.1(g) prohibits issuance of an RDP during the statutory summary suspension period to anyone who is not a first offender as defined in section 11-500 (note that section 5/6-208.1(h) was repealed). This section amends provisions which previously permitted second offenders as defined in section 11-500 who submitted to and failed testing (a one-year statutory summary suspension) to obtain relief after three months. It also amends that provision which

permitted second offenders who refused testing (a three-year statutory summary suspension) to obtain relief after two years.

Revised 625 ILCS 5/6-208.2(f) (subsection (g) was repealed) prohibits the issuance of an RDP to a person who is suspended for a second or subsequent time pursuant to section 11-501.8 for 12 months from the effective date of the suspension. This new provision amends the zero-tolerance law, which previously provided that the secretary of state may grant relief after six months from the effective date of the suspension for those who refuse testing and 90 days for those who fail.

Under revised 625 ILCS 5/11-501(c), a driver convicted a second time of violating section 11-501 or a similar local ordinance within five years must serve a minimum mandatory period of five days in jail (not necessarily consecutive) or 30 days of community services. This is an increase over the previous 48 hours of imprisonment or 100 hours of community service. The provision does not apply to out-of-state DUIs.

Under changes to 625 ILCS 5/11-501(c), someone convicted of violating section 11-501 while transporting a person under the age of 16 is subject to an additional minimum mandatory fine of \$500 and an additional five days of community service in a program benefiting children. It is unclear whether the "additional" fine and community service is to be imposed in addition to any other penalty or whether it represents the minimum penalty without regard to other penalties.

This paragraph goes on to provide for the same additional minimum penalties for the second DUI in five years. Again, it is unclear what "additional" means. First offenses from out-of-state are included for enhancement purposes.

Under 625 ILCS 5/11-501(h), those convicted of violating section 11-501 for a third, fourth, or subsequent time when their license or privileges are revoked/suspended pursuant to 625 ILCS 5/11-401.1, 501(a), 501.1, or 720 ILCS 5/9-3, or who are convicted for aggravated DUI (625 ILCS 5/11-501(d)) must serve at least 60 days community service or 10 days in jail if they are placed on probation or conditional discharge. This is an increase over the 30 days of community service or 48 hours in jail under the previous statute.

Finally, 625 ILCS 5/11-501(e) now requires that someone found guilty of violating section 11-501 or a similar provision of a local ordinance "undergo the imposition of treatment as appropriate" before final sentencing, even if given supervision.

Previously, this section required only a professional evaluation before sentencing to determine whether and to what extent an alcohol or drug problem existed. It is unclear what it means to require "imposition of treatment" prior to sentencing. Is it enough to merely enroll in treatment prior to sentencing, or must treatment be completed? Is it enough that the court impose treatment as a condition of sentencing? All of that remains to be seen.

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