



What You Need to Know About the BAIID Machine

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Criminal defense attorneys nowadays must answer questions about devices that detect the presence of alcohol in a driver's system, which is called a breath alcohol ignition interlock device (or BAIID). This article will explore exactly what the BAIID machine does, who is required to install it, and what "tips" you can give your clients to be successful while driving a vehicle equipped with the BAIID machine. This article will not explore the science or technology behind the BAIID machine.

WHAT IS THE BAIID MACHINE?

The BAIID machine uses advanced technology to read a driver's blood-alcohol content (BAC) before allowing the vehicle to be started. If the breath sample registers a BAC below the alcohol set point, the unit will allow the vehicle ignition switch to start the engine. If the unit detects a BAC test result above the alcohol set point, the unit will prohibit the vehicle from starting. (Ill. Adm. Code. 1001.410). The BAIID device prevents an intoxicated driver from starting the vehicle.

The BAIID machine is comprised of two parts: the hand-held device that the driver breathes into and the relay, which is underneath the dashboard. The BAIID device records all

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breath samples including the time, date, BrAC (Breath Alcohol Content), GPS location, breath temperature, breath pressure, test failures, tampering, and photo image.

Beginning in 2013, the Illinois Administrative Code has required photo-imaging technology. This technology captures most of the front of the cabin. The photo can positively identify the person submitting the breath sample. The camera takes multiple pictures of each breath sample. This ensures that the individual required to have the BAIID machine actually submits to the test, and does not have another individual do so.

You might ask the reason the device records the breath temperature and breath pressure. This ensures that

the sample is from a human. On occasion, Illinois drivers have attempted to have animals blow into the BAIID machine in order to start a vehicle or during a rolling retest. Therefore, the technology was adapted to prevent, in certain instances, your client's dog from blowing into the BAIID machine.

WHEN WILL YOUR CLIENT BE REQUIRED TO SUBMIT A BREATH SAMPLE?

The BAIID machine requires a sample every time the engine is started. The BAIID machine takes a breath sample and converts it to the Breath Alcohol Concentration (BrAC). The computer chip then logs the reading as well as the activity associated with the vehicle. The BAIID machine also requires an initial rolling retest. This sample is taken 5-15 minutes after the start-up. There will be further rolling retests every 15-22 minutes after the prior test for as long as the vehicle is running. A recalibration is required by the State to download the data logs and ensure that the unit is set to correctly detect alcohol. Some BAIID devices download the data logs through a cellular connection. If the device needs to be changed, a replacement can be sent to your client's home or preferred address. Calibration reports are sent every 30 to 60 days, depending on the program (either Monitoring Device Driving Permit (MDDP) (625 ILCS 5/6-206.1) or Restricted Driving Permit ("RDP")). This can be extended up to 120 days.

WHO NEEDS TO INSTALL A BAIID DEVICE?

There are two classifications of users and two sets of rules depending on the reason your client needs to install the device. Presently, those who have a DUI pending in the Circuit Court may be eligible for an MDDP (625 ILCS 5/6-206.1). The MDDP is the driving relief available during the period of statutory summary suspension.

Your client may be eligible for an MDDP if he or she: is a first offender (as defined by the statute in 625 ILCS 5/11-500), is over the age of 18, has an otherwise valid driver's license, the DUI did not involve death or great bodily harm, and your client does not have a prior conviction for reckless homicide or an aggravated DUI that resulted in death.

The second classification of users are those who can apply for a RDP if he or she: (1) has two or more DUI or reckless homicide convictions, or any combination thereof; (2) one DUI or reckless homicide conviction

and one statutory summary suspension within a 10 year period; (3) was convicted of driving while license revoked due to reckless homicide, so he is only allowed to drive a vehicle equipped with a BAIID; or (4) two or more Illinois DUI convictions, so he is required to install a BAIID for 12 consecutive months on all vehicles

registered in his name as a condition of RDP issuance (625 ILCS 5/6-205).

HOW DOES YOUR CLIENT APPLY FOR THE BAIID?

If your client is requesting a MDDP, then he must complete an application by mail and forward it to the Secretary of State's office (92 Ill. Adm.Code. 1001.444). If your client is requesting a Restricted Driving Permit, he must apply for a hearing and the Secretary of State issues this (92 Ill. Adm.Code. 1001.441). Please note that neither the MDDP nor RDP can be obtained through the Circuit Court. The sole authority to issue either a MDDP or RDP rests with the Secretary of State's Office.

WHERE DO YOU OBTAIN THE BAIID MACHINE?

The Illinois Secretary of State maintains a list of Illinois Certified Vendors (See 92 Ill. Adm.Code. 1001.410). This list can be found at www.CyberdriveIllinois.com. In

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addition, the list of Certified Vendors will be made available when your client receives the MDDP in the mail. Your client can choose any vendor on the list. Some vendors offer discounts to clients who use attorney partners.

WHAT IS THE INSTALLATION TIME?

If your client receives a MDDP, the BAIID device must be installed within 14 days after receiving approval. Similarly, after the issuance of a RDP, your client will be given a limited amount of time to install the BAIID device. Your client must call a BAIID provider to schedule an appointment. The installation on a standard vehicle normally takes about an hour.

WHAT COSTS CAN YOUR CLIENT EXPECT FOR THE BAIID MACHINE?

Your client will incur costs from both the BAIID provider and the Secretary of State in order to install and maintain the BAIID machine. The costs can vary but typically the cost to install the BAIID machine is \$85; the rental fee is approximately \$80 per month; and there is an additional charge of \$30 per month to the Secretary of State for the RDP monitoring fee. The estimated annual cost totals \$1,405. The MDDP monitoring fee is paid up front because the length of your client's participation in the program can be calculated (presuming he successfully completes the program.)

WHAT ARE YOUR CLIENT'S RESPONSIBILITIES WITH THE BAIID DEVICE?

If your client is driving with a RDP, he must take the vehicle to the BAIID provider within the first 30 days to obtain an initial monitor report (92 Ill. Adm. Code. 1001.410), and thereafter no longer than every 60 days. Your client will be required to take the vehicle to the BAIID provider within five working days after service on the vehicle or an inspection notification. Your client will be required to maintain a journal (See 92 Ill. Adm. Code 1001.441). This journal is to record events such as any unsuccessful attempts to start the vehicle, failure to successfully complete a running retest, any problems with the BAIID and the name of the driver operating the vehicle at the time of the event. I suggest to my clients

that they keep a notebook in their car and make a note of any problems they have with the BAIID machine. This may include the BAIID machine registering something other than 0.0, failing a test or having mechanical trouble with the automobile. Also, your client must not remove the device without notifying the Secretary of State and surrendering the RDP.

The Secretary of State will download information from the BAIID device every 30 to 60 days. If a violation is detected, the Secretary of State will send a letter requesting an explanation. Your client should immediately respond to the inquiry. Failure to respond may result in the cancellation of the MDDP or RDP. Here, your client's journal of anything out of the ordinary would be utilized

WHAT ARE SOME VIOLATIONS OF THE BAIID PROGRAM?

Your client can be prosecuted for driving a vehicle not equipped with the BAIID machine. For example, your client may not drive someone else's car unless it is equipped with the BAIID machine. Your client can also be prosecuted if he has someone else submit the breath sample. Admittedly, this was more of a problem prior to 2013, when cameras were required to be installed; but, there are still certain BAIID drivers who attempt to have others submit breath samples. Another reason your client could be prosecuted for violating BAIID laws involves attempting to tamper with or circumvent the ignition interlock device. Tampering with the device can mean: attempting to start a vehicle without a valid breath sample; trying to remove the power to the machine without authorization; attempting to start the vehicle followed by the failure to take a rolling retest; or an unauthorized start. Please refer to Section 6-206.2 of the Illinois Vehicle Code for violations. Any of these violations are Class A misdemeanors.

If your client is driving with a MDDP, several violations will result in either a cancellation or extension of the permit, and will also affect the vehicle's operation. For example, if the BAIID registers .025 or higher, then the vehicle will not start. If the BAIID records three BAC readings of .05 or higher within 30 minutes, the vehicle will be inoperable for 24 hours. After the 24-hour lockout, the device will call for a service early lockout and will need to be serviced within five business days. If your client fails to submit the BAIID for monitoring every 60 days, this is considered a violation. Finally, a violation also occurs if your client fails to maintain insurance.

WHAT VIOLATIONS WILL CAUSE THE HORN TO BLOW?

The horn will blow if: a running retest is not performed; the BrAC reading or a running retest is 0.05 or higher; or tampering or circumvention attempts are detected.

WHAT ADVICE SHOULD YOU PROVIDE YOUR CLIENT?

Your client should be advised not to engage in any



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conduct that will attract the attention of the Secretary of State. For example, your client should avoid causing any warning letters to be issued; avoid causing letters requesting an explanation and certainly avoid causing letters cancelling the permit. Your client should avoid a lockout. A 24-hour lockout prevents the car from being used for 24 hours. Your client will typically be able to view the countdown on his vehicle and will know how many minutes and hours he can continue to use the vehicle before the lockout commences.

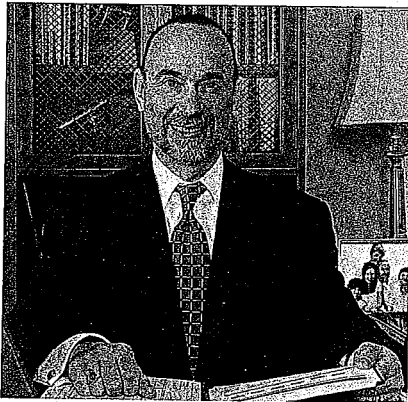
Twenty four hour lockouts are caused by three breath samples with a BrAC over .050. A service early lockout occurs when there has been a violation or series of violations that require the device to be serviced prior to the standard recalibration time period. The service early lockout will give your client a five day window and the car will operate normally during that period. Please advise your client that there is a fee typically associated with a lockout and to prepare to explain to the Secretary of State the cause of either the lockout or the service early lockout.

During the warm weather months, you can suggest that your client not leave the BAIID in direct sunlight. Your client should not cool down the car by leaving it running unattended. During the cold weather, suggest to your client not to leave the BAIID on the floor of the vehicle. Also, before submitting a breath sample, blow 3-4 warm breaths through the device. You should advise

your client not to warm up the vehicle by leaving it unattended. Finally, remind your client not to disconnect the BAIID unless authorized to do so by the manufacturer.

Your client should be reminded that consuming any food containing alcohol immediately prior to submitting a breath sample will most likely affect the result. Similarly, if your client is prone to using mouthwash immediately prior to submitting a breath sample, he should wait a sufficient period of time to ensure that the sample will not show any alcohol. According to one provider, Intoxalock, the driver should wait 10-15 minutes after eating, drinking anything other than water, or using any product that contains alcohol. Please note that the use of marijuana or other illegal substances do not affect the BrAC reading. The BAIID devices have a singular purpose - to detect the presence of alcohol.

Your client may ask you if he drinks something that contained alcohol but he did not know there was alcohol in it, will he get into trouble? You need to tell your client that he will be held responsible for any and all alcohol readings that are blown into the device. So, if your client drinks orange juice mixed with Everclear not knowing that his roommate put Everclear into the juice, and he registers a BrAC higher than .025, he will be responsible for that result. The practical tips that you can share with your clients should help them be successful while driving with the BAIID device. Of course, a client will only be successful to the extent he heeds your instructions.



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