

Changes to Illinois DUI License Suspension

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Illinois drunk driving laws have changed to provide harsher penalties for drunk drivers. There are new terms of license suspension and Monitoring Device Driving Permits.

On January 1, 2009, Illinois laws governing drunk driving changed significantly. Generally these new laws provide harsher penalties for drunk drivers. However, as with any legal development, the full consequences and concerns of these changes were not immediately clear.

Over the past six months, several issues with the changes to the laws have become apparent. Perhaps most notably the new laws are raising questions of interpretation regarding the meaning of the phrase “first offender” in the context of the automatic license suspension. Although this phrase may seem self-explanatory, its contextual usage gives rise to multiple possible interpretations.

Even though it doesn’t seem intuitive, in the interest of fairness and reasonableness, and in accordance with the clear statutory language governing license suspensions, the term “first offender” should be defined to include anyone who has not received a DUI in the past five years.

To understand this interpretation of the term “first offender,” one must understand the prior history of DUI laws in Illinois. When someone is arrested for DUI in Illinois or refuses to submit for chemical testing to evaluate blood alcohol content (BAC), that person is subject to an automatic license suspension — a Statutory Summary Suspension.

The Former Terms of License Suspension

Under the prior laws, the Statutory Summary Suspension lasted three months for a first offender who submitted a BAC result > .08, and six months for someone who refused to submit to a chemical test. However, a first offender could request a judicial driving permit (JDP), which granted only limited driving privileges for employment, education and medical purposes.

For purposes of the license suspension, the Illinois Code provided that the term “first offender” meant any person who had not had a driver’s license suspension for a drunk driving offense within five years prior to the date of the current offense. So, for example, if an individual had a DUI conviction 25 years earlier, that conviction would not bar the issuance of a JDP.

The New Terms of License Suspension

Under the new laws, the length of the Statutory Summary Suspension has increased; a person charged with drunk driving will lose his or her drivers' license for six months if he registered a BAC > .08, and a person who refuses to take a chemical test will lose driving privileges for a full year.

The JDP no longer exists; it has been replaced by a Monitoring Device Driving Permit (MDDP). The MDDP also provides driving privileges to eligible drivers, but this permit requires that the driver only drive a car equipped with a Breath Alcohol Ignition Interlock Device (BAIID). Such a device requires the driver to submit to a breath test before the vehicle will start. The individual requesting the MDDP is responsible for the costs affiliated with the installation, rental and calibration of the BAIID, as well as the \$30 monthly monitoring fee.

Like the JDP, the MDDP is only available to first offenders. However, Illinois judges have not reached a consensus regarding the definition of first offender as it applies to the new laws. Some judges assert that the term should be defined with reference to offenses from the past five years, while others insist on the plain meaning of the phrase, only granting permits to those who have never been subject to a Statutory Summary Suspension.

Definition of "First Offenders" Should Only Consider Past Five Years

To determine whether an individual is a first offender for the purposes of license suspension, the court should only consider an individual's record from the past five years. If the person requesting the MDDP has not been subject to a drivers license suspension or convicted of DUI within five years, that individual should be eligible for the MDDP.

This interpretation is supported by the plain language of the Illinois Code. According to Section 11-500 of the Illinois Code:

““First offender” shall mean ...any person who has not had a driver's license suspension for violating Section 11-501.1 within 5 years prior to the date of the current offense.”

Beyond the fact that the language is clear, though, this is a wise and well-considered policy decision. Depriving an individual of driving privileges can have significant ramifications. Without the ability to drive, a person may face restricted employment options or educational opportunities and is likely to be cut off from social support networks. Such a severe consequence now because an offense happened decades ago is not commensurate.

Because of the serious implications of a suspension, it should only be imposed when necessary to protect the safety of the driver and others on the roads. One presumption underlying the Statutory Summary Suspension is that a person who has driven while intoxicated is likely to do so again and that keeping the person off of the road will help to ensure public safety.

However, the BAIID is an equally effective protector of public safety. Rather than placing a general restriction on driving privileges, the device places a specific, technical restriction that will keep someone from driving under the influence.

Furthermore, if an individual received a DUI 30 years ago and is arrested again on suspicion of drunk driving, this hardly indicates a consistent pattern. Accordingly, the concerns for public safety are less warranted when the first offense was many years ago, than when the DUI involves a currently habitual drunk driver.

The availability of the MDDP is an implicit recognition that a complete suspension of driving privileges for six months creates significant hardship. Because of this hardship, it is important that the MDDP be granted whenever the public or the individual are not at risk of harm. For this reason, the courts should only consider the past five years of an individual's record when determining whether that person is eligible for the MDDP.