

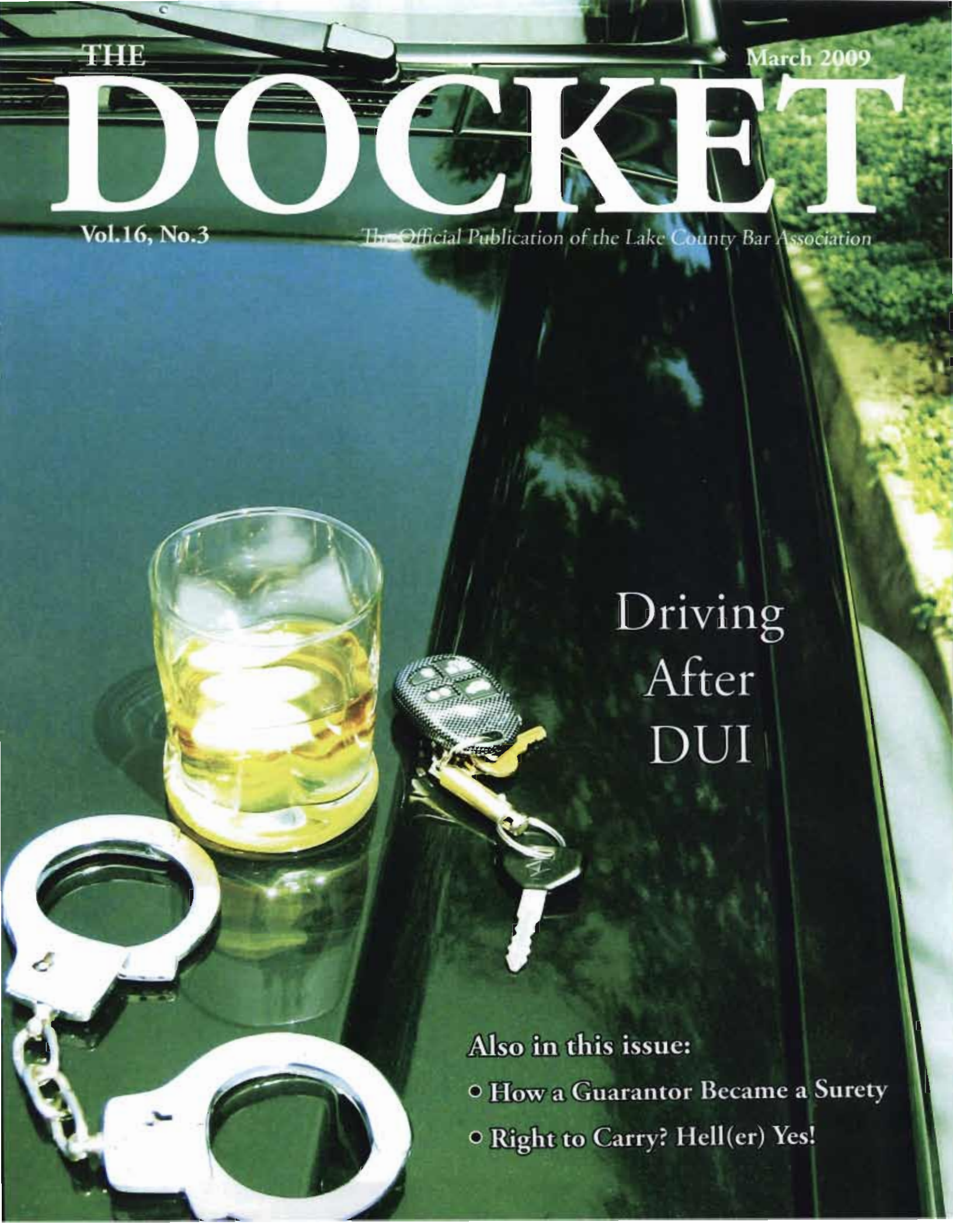
THE

March 2009

# DOCKET

Vol.16, No.3

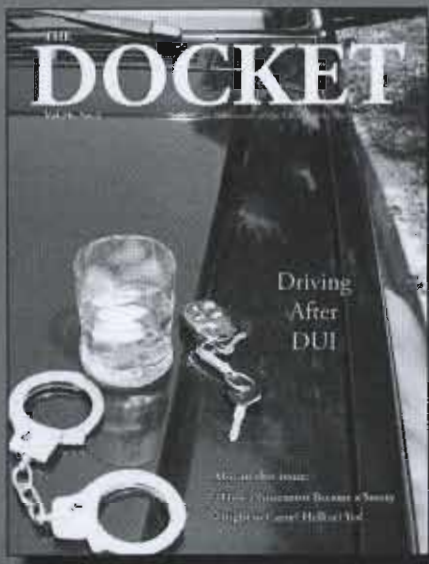
The Official Publication of the Lake County Bar Association

A photograph of a dark, reflective car surface. In the foreground, there is a glass of whiskey with ice, a set of keys with a black keychain, and a pair of silver handcuffs. The background shows a blurred view of a road and greenery.

## Driving After DUI

**Also in this issue:**

- How a Guarantor Became a Surety
- Right to Carry? Hell(er) Yes!



COVER STORY | 17

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## ARTICLES

- 7 Native Son: Hercules Paul Zagoras  
*by Ann Buche Conroy*
- 9 How a Guarantor Became a Surety  
*by Mark A. Van Donselaar*
- 15 Right to Carry? Hell(er) Yes!  
*by Newton Finn*
- 17 Driving After DUI:  
Illinois' New Monitoring Device Driving Permits  
*by Lisa L. Dunn*
- 21 A New Non-Profit Takes Root In Lake County  
*by Barbara Bell*
- 24 The List  
*by Kathleen M. Ryan*

## COLUMNS & OTHER CONTENT

- 3 President's Page: People's Law School - A Huge Success  
*by Bryan R. Winter*
- 5 Chief Judge's Page *guest written by Hon. John T. Phillips  
& Hon. Michael J. Fusz*
- 26 Executive Board Meeting Minutes  
*by Marjorie Sher, Secretary*
- 28 Bar Bulletin Board

LCBA Calendar | Back Cover

## ADVERTISERS

Attorney's Title Guaranty Fund, Inc.	<b>Back</b>
City of Waukegan	16
David L. Gates and Associates	4
Deposition Reporters	10
ISBA Mutual	14
Joseph Modica & Associates, Ltd.	12
L & L Reporting Services, Inc.	4
Lakeside Investigations	13
McDonald Hopkins LLC	<b>Front</b>
Neil H. Good	22
Pioneer Press	15
Professional National Title Network, Inc.	20
Suited To You	18
United Exchange Inc.	6
Vahl Reporting Service	23

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A publication of the



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# Driving After DUI

## Illinois' New Monitoring Device Driving Permits

by Lisa L. Dunn



The judicial driving permit, a limited license formerly granted to first offenders (as those offenders are defined by 625 ILCS 5/11-500) is abolished for all persons arrested for DUI after January 1, 2009. The first-time DUI offender can still be eligible to drive during the Statutory Summary Suspension after the 31<sup>st</sup> day of the suspension, but now receives a Monitoring Device Driving Permit (MDDP) issued under Section 6-206.1 of the Illinois Vehicle Code. It should be noted that the length of the summary suspension has doubled: six months for a test failure and twelve months for a test refusal.

This article covers: (1) the parameters of the permit; (2) the DUI offender's eligibility to receive a permit; (3) the restrictions imposed by the permits; (4) how to apply for an MDDP; and (5) certain terms and conditions of the MDDP program.

### Scope of the MDDP

An MDDP will allow the DUI offender to drive to **any** location at **any time** during the suspension with the requirement that the car must be

equipped with a Breath Alcohol Ignition Interlock Device (BAIID). The offender, or any individual driving the vehicle, must provide a breath sample into the BAIID unit prior to starting the vehicle and at random intervals throughout the travel time. This prevents someone else from blowing into the machine to get the car started. Offenders will

DUI offender may opt to not participate in the BAIID program, but then would not be eligible for any other driving relief during the Statutory Summary Suspension. Driving during a summary suspension without an MDDP subjects the driver to being charged with a Class 4 felony.

### Eligibility for an MDDP

A DUI offender must meet several conditions to be eligible for an MDDP. The conditions include: 1) the offender must have an otherwise valid driver's license at the time of the

not be restricted by time or distance: they can drive 24 hours per day, 7 days per week to any location as long as a BAIID device is installed on the vehicle. This differs from the judicial driving permit, which was granted for a specific purpose limiting the days, hours, and scope of driving. A

DUI arrest; 2) the arrest cannot have resulted in death or great bodily harm; 3) the offender cannot have been previously convicted of reckless homicide or aggravated DUI resulting in a death; 4) the offender may not operate a commercial motor vehicle with a commercial driver's li-

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*An MDDP will allow the DUI offender to drive to any location at any time during the suspension with the requirement that the car must be equipped with a Breath Alcohol Ignition Interlock Device (BAIID).*

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*Lisa L. Dunn is an attorney with an office in Arlington Heights. She represents clients in criminal and traffic matters in Lake and Cook County. She is also a 14-year veteran of the Secretary of State, Department of Administrative Hearings, currently working as a part-time contractual hearing Officer and has extensive experience with DUI license reinstatement hearings, BAIID violations, and interpretation of the rules and regulations of the Secretary of State. The views expressed in this article are not those of the Illinois Secretary of State but those of the author.*

cense during the period of the Statutory Summary Suspension; 5) the offender must be a first offender as defined by 625 ILCS 5/11-500, which is a person who has not failed a chemical test or refused a chemical test or had any findings of guilty in the past five years; and 6) the offender must be 18 or older.

Restrictions on the MDDP

The MDDP is not effective until the 31<sup>st</sup> day of the Statutory Summary Suspension period, affording an offender no driving relief during the first 30 days of the period. The program requires that the offender use an Illinois certified BAIID provider to install and monitor the BAIID on any vehicle that the offender will use during the period of the Statutory Summary Suspension. There are currently six vendors in Illinois who are certified to provide BAIIDs and services. All certified vendors are required to have installation sites statewide. A list of the BAIID installation sites and certified installers are available at [www.cyberdriveillinois.com](http://www.cyberdriveillinois.com) by searching for the BAIID program, or by calling (217) 524-0660.

The BAIID is a mechanical unit installed in a vehicle, and it requires the operator to take a Breath Alcohol Concentration test prior to starting the vehicle. BrAC is measured by the weight of alcohol in the volume of breath based upon grams of alcohol per 210 liters of breath. If the unit detects a BrAC test result below the alcohol set point, the unit will allow the vehicle ignition switch to start the engine. If the unit detects a BrAC test result above the alcohol set point, the BAIID prohibits the vehicle from starting.<sup>1</sup> As noted

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above, an individual found driving a vehicle without a BAIID during the Statutory Summary Suspension period can be charged with a Class 4 felony.

An individual may receive an exemption from installing a BAIID on a vehicle in very limited instances. This exemption may be granted if the DUI offender needs to drive employer-owned vehicles during the course of work hours and no vehicle is specifically assigned to the offender.

Application for an MDDP

DUI offenders should inform the court of their desire to obtain an MDDP at the first court appearance. The court does not have the authority to deny an MDDP or to require that the DUI offender participate in any alcohol-related classes or programs. The offender will complete an application form supplied by the Secretary of State, and which the Clerk's office will forward to the Secretary of State. The Secretary of

State will review the application and the offender's records to determine eligibility. The offender will be required to pay a \$30 per month non-refundable monitoring fee to the Illinois Secretary of State for the length of the MDDP. This fee must be paid in full before the MDDP is issued. Once the offender has satisfied all the requirements, the Secretary of State will send the MDDP to the offender. The Secretary of State's office has indicated that it will issue the MDDPs as efficiently as possible. Another form is available if the DUI offender chooses to opt out.

Participation in the MDDP Program

Upon receipt of the MDDP, the offender has 14 days to have the device installed on any and all cars that the offender wishes to drive during the Statutory Summary Suspension. The offender must take the vehicle(s) to a certified BAIID installation company. These private companies charge an installation fee, monthly

1. 92 Ill. Admin. Code Sec. 1001.410, available in the Illinois Register, Volume 33, Issue 2, January 9, 2009, pages 203-500.

rental fees, and calibration fees. An indigent fund is available to assist in the cost of the BAIID if the court finds that the offender is indigent. This finding will not apply to the Secretary of State monitoring fee.

The BAIID device will be read within the first 30 days for an initial monitor report. Thereafter, it will be read no longer than every 60 days for the purposes of calibration and having a monitor report of the device's activity prepared, which is sent to the Secretary of State by the BAIID provider or installer. The BAIID installer has seven days from the date of installation of the device to notify the Secretary of State of the installation. If the Secretary of State is not notified of the installation, then the MDDP will eventually be cancelled. If the BAIID detects an accumulation of five violations, the machine will be recalled for monitoring. The Secretary of State's office will review the results and determine if there have been any violations during the monitoring period. If no violations are detected, no further action will be taken. If there are violations, the Secretary of State will send



a letter to the DUI offender and give him an opportunity to explain the violations. If the offender does not respond to the request, or the explanation is deemed insufficient, the Statutory Summary Suspension may be extended for an additional three months. The offender will then be required to submit to monitoring every 30 days, or the MDDP may be

cancelled.

An offender can elect to opt-out of the MDDP program at any time. This is done by surrendering the MDDP to the Illinois Secretary of State. The Secretary of State will then give the offender authorization to have the BAIID device removed from his vehicle(s).

Once the DUI offender installs the MDDP, the Secretary of State deems him a BAIID Permittee. BAIID Permittees have numerous requirements that they must follow during the term of the Statutory Summary Suspension. If the Permittee violates the terms and conditions of the BAIID program, the Secretary of State can either extend the length of the Statutory Summary Suspension or cancel the MDDP and authorize the immediate removal/deinstallation of the BAIID device. The DUI offender will continue to operate his vehicle with the MDDP and BAIID device installed on the vehicle until the termination of the period of statutory summary suspension. ♦

