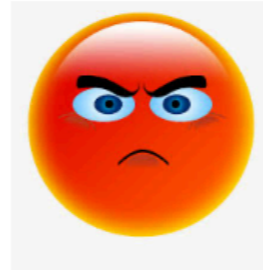


Garden State CLE presents:

12 Angry Credits



Advising Your DWI Clients in a BAIID World



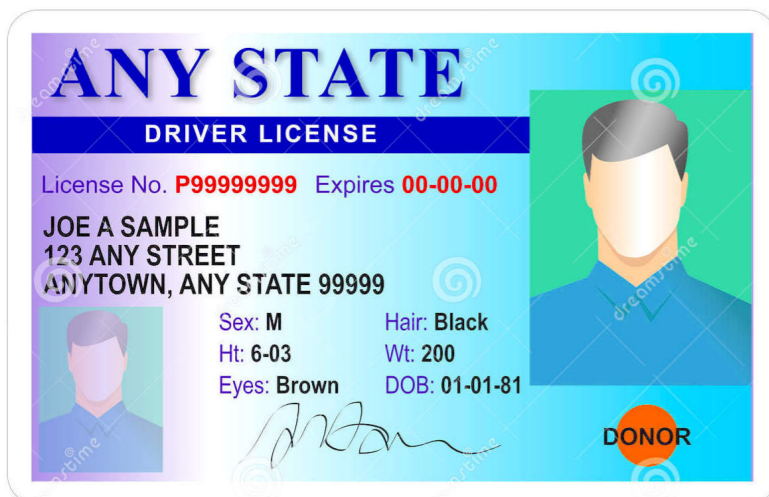
Lesson Plan

**Robert Ramsey
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Instructors

Initial Client Meeting: Preliminary Questions

- 1. What offense number is this for the client? The sentencing for a first offense DWI (factually or by way of step-down) will be triggered in every case by the installation of the BAID. Until a BAID has been installed, a convicted defendant will be subject to an indefinite forfeiture of driving privileges.**
- 2. What is the client's BAC? The BAC for a first offender will determine the length of the BAID commitment or whether there will also be a determinate term of a license suspension.**
- 3. Were you driving under the influence of drugs? There is no BAID for a first offender u/I drugs, just a license forfeiture ranging from 7 to 12 months**



Initial Client Meeting: Legal Advice

- 1. Select a BAIID installation facility that is close to your home. This is because you will have to take your vehicle back for recalibration approximately every 60 days, a process that takes about one hour.**
- 2. Shop around for the best price. Installers around the state have a variety of billing plans. Find the one that meets your financial abilities. You can find a list of licensed BAIID installers at this link:**

https://www.state.nj.us/mvc/pdf/license/Licensed_Ignition_Interlock_Installers.pdf

3. If you cannot afford the cost of the BAIID, there are statutory discount programs available. If your family income does not exceed 100% of the federal poverty level, the monthly leasing fee shall be 50% of the fee established for persons who do not qualify for the reduced fee. If your family income does not exceed 149% of the federal poverty level, the monthly leasing fee shall be 75% of the fee established by regulation for persons who do not qualify for the reduced fee. Additionally, persons who qualify for a reduced fee are not be required to pay the initial installation fee, the cost for monitoring of the device, or any fees for calibration or removal of the device.



4. The BAIID only needs to be installed in one motor vehicle owned, leased, or principally operated by you.



5. During the term of the BAIID duration, you may not drive any vehicle in New Jersey other than one in which an ignition interlock device has been installed. If you do and get caught by the cops, you will be subject to a one year suspension [NJSA 39:4-50.19(a)]. The same penalty applies to you if you try to start your vehicle by having someone (or something) else blow into the BAIID. The person who blows into the BAIID for you is a disorderly person [NJSA 39:4-50.19(b)(1)]. A person who knowingly allows you to operate a vehicle that does not have a BAIID is also a disorderly person. [NJSA 39:4-50.19(b)(3)].

6. A person who tampers with your BAIID or tries to circumvent its functions is a disorderly person [NJSA 39:4-50.19(b)(2)].

7. How does the BAIID work? In order to start your vehicle, you will have to blow a breath sample into the BAIID. If your BAC is less than 0.05%, the vehicle will start and function normally. However, a BAC of 0.05% or greater will prevent your vehicle from starting for one hour. After that time has expired, you can attempt to introduce another breath sample. Your BAIID will also require so-called rolling retests on a random basis about every 15 to 20 minutes while you are driving. If your BAC is measured at 0.05%

or greater, the BAIID will create a loud, obnoxious noise in the vehicle and flash your lights and sound your horn. This will continue until you pull the vehicle over safely and shut off the engine. The engine will remain inoperable for one hour after which you can introduce a new sample of your breath.

8. You will have to bring your BAIID back to the installer about every 60 days so it can be recalibrated. If you do not perform this maintenance function, the BAIID will lock you out indefinitely and you will be unable to start your vehicle until you have obtained a one-time use lock-out code from your installer.

9. Can the BAIID be placed on other types of vehicles besides cars? Yes, it can be installed in trucks, motor cycles, boats and vehicles used at your place of work.

10. What if I do not own or drive any vehicle? Instead of the BAIID requirement, you will simply forfeit your driving privileges for a period of time, depending upon your BAC level and what offense number this is for you. You will have to testify under oath that you do not own, lease or operate a motor vehicle. If you later acquire a vehicle during your suspension term, you must immediately notify the court and install an ignition interlock device in the vehicle. You may also be able to terminate the balance of your license suspension period by being resentenced.

11. What will happen when I go to court? If you are a first offender for either DWI with a BAC of less than 0.15%, a refusal, or both, it is important that you take the necessary



steps to install the BAIID before your court date. If you are convicted by way of a guilty plea or a trial, the judge will forfeit your driving privileges until you go to the MVC and show proof that you have an interlock device. MVC will restore your driving privileges and return your license that will have a notation on it that you are restricted to driving vehicles equipped with a BAIID. If your BAC is 0.15% or greater, the installation of the BAIID will allow the judge to begin your license suspension term that will range from 4 to 6 months.

12. What about second and subsequent DWI offenders? The imposition of sentence is not dependent upon the installation of the BAIID. The judge will sentence you immediately to license forfeiture and order that you install the BAIID during the forfeiture period and for an additional term of 2 to 4 years after your driving privileges have been restored.

13. What if I am not from New Jersey? You can satisfy the BAIID requirement by having the device installed in your vehicle in your home state. The installer must represent a company that is licensed to install BAIID devices in New Jersey. [N.J.S.A. 39:4-50.20].

14. Should the case go to trial? Under the new law, there is no downside to trying a first offense DWI and/or refusal. Because school zone offenses for DWI and refusal have been repealed, prosecutors only have companion tickets to exert any pressure for a guilty plea. Many clients may wish to take a chance at trial on a first offense due to immigration, civil suits and other collateral consequences related to a DWI conviction.



15. Removal of BAIID - An ignition interlock device can be removed on the date the defendant completes the installation period only if he submits to the MVC certification from the BAIID vendor that:

(1) during the final 30 days of the installation period there was not more than one failure to take or pass a test with a blood alcohol concentration of 0.08% or higher unless a re-test conducted within five minutes of the initial test indicates a blood alcohol concentration of less than 0.08%; and

(2) that the defendant complied with all required maintenance, repair, calibration, monitoring, and inspection requirements related to the device.

If the vendor does not issue a certification to the person because there were two or more test results of 0.08 BAC or greater during the final 30 days, the vendor must forward the violation information to the MVC and the court. The municipal court judge must then decide whether to extend the period of ignition interlock device installation for up to 90 days or order the issuance of the certification from the vendor to the chief administrator.



First Offender DWI Sentencing

- a.) **First offenders charged with driving under the influence of alcohol or with a BAC ranging from .08 but less than 0.10**

Fine range: \$250 - \$400

Additional costs and assessments: \$389

License forfeiture: The sentencing judge must impose an indefinite period of license forfeiture until the defendant installs an ignition interlock device in one motor vehicle the person owns, leases, or principally operates whichever the person most often operates. Once installed, the BAID must remain in use for three months (See NJSA 39:4-50.17(a)(1))

Defendant has no vehicle: License forfeiture of 3 months

Jail: discretionary up to 30 days

IDRC: 12 to 48 hours

MVC Surcharges: \$3000 (payable \$83.33 per month)



b.) First offenders charged with driving with a BAC ranging from 0.10 but less than 0.15%

Fine range: \$300 - \$500

Additional costs and assessments: \$389

License forfeiture: The sentencing judge must impose an indefinite period of license forfeiture until the defendant installs an ignition interlock device in one motor vehicle the person owns, leases, or principally operates whichever the person most often operates. Once installed, the BAID must remain in use for period ranging from seven months to one year. (See NJSA 39:4-50.17(a)(1)(b)).

Defendant has no vehicle: License forfeiture of 7 months to one year

Jail: discretionary up to 30 days

IDRC: 12 to 48 hours

MVC Surcharges: \$3000 (payable \$83.33 per month)



c.) First offenders charged with driving with a BAC of 0.15% or greater

Fine range: \$300 - \$500

Additional costs and assessments: \$389

License forfeiture: The determinate term of license forfeiture for a defendant with this BAC level does not begin to run until the defendant has installed a BAID in one motor vehicle the person owns, leases, or principally operates whichever the person most often operates. Thereafter, a forfeiture term will begin ranging from 4 to 6 months. The BAID must remain installed during the determinate term of the forfeiture and for an additional period of 9 to 15 months after the defendant's driver's license has been returned. (NJSA 39:4-50-17(a)(2)(b)).

Defendant has no vehicle: License forfeiture of 13 to 21 months.

Jail: discretionary up to 30 days

IDRC: 12 to 48 hours

MVC Surcharges: \$3000 (payable \$83.33 per month)



d.) First offenders charged with driving under the influence of drugs or allowing operation while under the influence of drugs.

Fine range: \$300 - \$500

Additional costs and assessments: \$389

License forfeiture: There is no BAID permitted for these defendants. Forfeiture ranges from 7 months to one year.

Jail: discretionary up to 30 days

IDRC: 12 to 48 hours

MVC Surcharges: \$3000 (payable \$83.33 per month)



e.) Refusals - First offenders

Fine range: \$300 - \$500

License forfeiture: For a first refusal, the judge must impose an indefinite forfeiture of driving privileges until the defendant installs an ignition interlock device in one motor vehicle owned, leased, or principally operated by the person, whichever the person most often operates. Once installed, the BAID must remain on the vehicle for a term ranging from 9 to 15 months (NJSA 39:4-50.17(a)(2)).

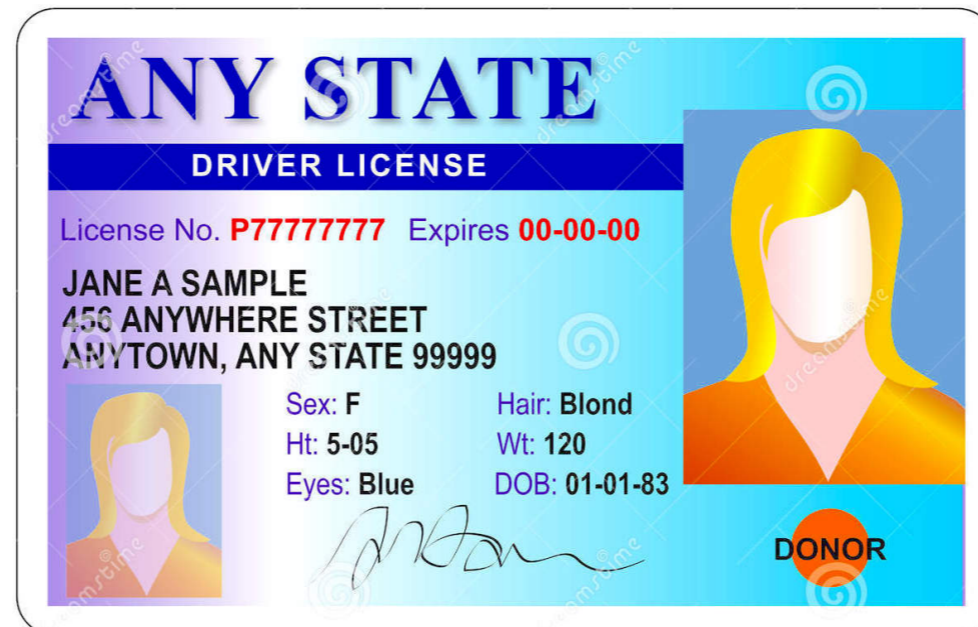
Companion DWI sentence: Statute is silent as to concurrent or consecutive BAID terms.

Defendant has no vehicle: License forfeiture of 9 to 15 months which may run either consecutive to or concurrent with the DWI license forfeiture.

Jail: None

IDRC: 12 to 48 hours

MVC Surcharges: \$3000 (payable \$83.33 per month)



Second Offender DWI Sentencing

Fine range: \$500 - \$1000

Additional costs and assessments: \$389

License forfeiture: Second offenders are subject to a license forfeiture ranging from one to two years. NJSA 39:4-50(a)(2). The BAID must be installed both during and following the period of forfeiture set forth in the sentence. (NJSA 39:4-50.17(b)) After the forfeiture term is over and the defendant has received his license again, the BAID must remain installed for an additional term ranging from 2 to 4 years. (NJSA 39:4-50.17(b)). Note, the amended statute does not specifically exclude U/I drugs drug or allowing drugged operation cases from the BAID requirement as it does for first offenders.

Companion DWI sentence: Statute is silent as to concurrent or consecutive BAID terms.

Defendant has no vehicle: License forfeiture of 1 to 2 years followed by a forfeiture ranging from 2 to 4 years. These suspensions must run consecutively to the DWI license forfeiture.

Jail: 2 days (can be served in IDRC) to 90 days

IDRC: 48 hours of detainment

Community service: 60 days

MVC Surcharges: \$3000 (payable \$83.33 per month)



Third or subsequent DWI Offender Sentencing

Fine range: \$500 - \$1000

Additional costs and assessments: \$389

License forfeiture: Third or subsequent offenders are subject to a license forfeiture of 8 years. NJSA 39:4-50(a)(3). The BAID must be installed both during and after the forfeiture term in the sentence of the Court and must remain installed for an additional period ranging from 2 to 4 years after the forfeiture term is over and the defendant's license has been restored. (NJSA 39:4-50.17(b)). Note, the amended statute does not specifically exclude U/I drugs drug or allowing drugged operation cases from the BAID requirement as it does for first offenders.

Companion DWI sentence: Statute is silent as to concurrent or consecutive BAID terms.

Defendant has no vehicle: License forfeiture of 8 years followed by a forfeiture ranging from 2 to 4 years. These forfeitures must run consecutively to the DWI license forfeiture.

Jail: 180 days (up to 90 days can be served in an IDRC-approved inpatient facility)

IDRC: Completion of IDRC program an MVC condition of license restoration.

Community service: 60 days

MVC Surcharges: \$3000 (payable \$83.33 per month)



Refusals: Second offense

Plea bargaining: Subject to dismissal by way of plea agreement in exchange for a plea to the companion DWI charge. [DWI Plea Bargaining Guideline 4(B).]

Fine range: \$500 - \$1000

License forfeiture: Second offenders begin with an indefinite suspension. Thereafter, they are subject to a license forfeiture for a period of not less than one year or more than two years that begins following the installation of an ignition interlock device in one motor vehicle owned, leased, or principally operated by the person, whichever the person most often operates. Once the defendant gets his driving privileges restored, the BAID must remain installed for an additional period ranging from 2 to 4 years.

Companion DWI sentence: Statute is silent as to concurrent or consecutive BAID terms.

Defendant has no vehicle: License forfeiture of 1 to 2 years followed by a forfeiture ranging from 2 to 4 years. These suspensions must run consecutively to the DWI license forfeiture.

Jail: None

IDRC: 48 hours

MVC Surcharges: \$3000 (payable \$83.33 per month)



Refusals: Third or subsequent offenses

Plea bargaining: Subject to dismissal by way of plea agreement in exchange for a plea to the companion DWI charge. [DWI Plea Bargaining Guideline 4(B).]

Fine range: \$1000

License forfeiture: Third or subsequent offenders begin with an indefinite suspension. Thereafter, they are subject to a license forfeiture for a period of 8 years that begins following the installation of an ignition interlock device in one motor vehicle owned, leased, or principally operated by the person, whichever the person most often operates. Once the defendant gets his driving privileges restored, the BAID must remain installed for an additional period ranging from 2 to 4 years.

Companion DWI sentence: Statute is silent as to concurrent or consecutive BAID terms.

Defendant has no vehicle: License forfeiture of 8 years followed by a forfeiture ranging from 2 to 4 years. These suspensions must run consecutively to the DWI license forfeiture.

Jail: None

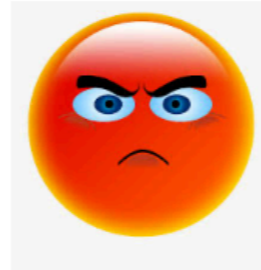
IDRC: Required through MVC as a condition of license restoration.

MVC Surcharges: \$3000 (payable \$83.33 per month)



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