



STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
OFFICE OF PROBATION AND CORRECTIONAL ALTERNATIVES
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July 22, 2010

Honorable Michael T. O'Brien
Chairman, Cattaraugus County Legislature
303 Court Street
Little Valley, New York 14755

Mr. John R. Searles
Cattaraugus County Administrator
303 Court Street
Little Valley, New York 14755

Dear Chairman O'Brien and County Administrator Searles:

On November 18, 2009, Governor David A. Paterson signed into law the Child Passenger Protection Act or Chapter 496 of the Laws of 2009, referred to as "Leandra's Law". As you are aware, this important new law will help reduce drunken driving in New York State and promote traffic and community safety. "Leandra's Law" charged the NYS Division of Probation and Correctional Alternatives with the responsibility to promulgate regulations governing the monitoring of compliance by persons ordered to install and maintain ignition interlock devices on vehicles they own or operate. These regulations were promulgated as emergency regulations on April 23, 2010. Section 358.4 of these regulations requires that every County establish an ignition interlock program plan with respect to usage of ignition interlock devices and monitoring the compliance of an operator subject to installation of an ignition interlock device as directed by the sentencing court.

In order to facilitate this process, the Office of Probation and Correctional Alternatives (OPCA) prepared a simple plan document, which was largely prescriptive in format to ease preparation and submission. OPCA has received your plan and very much appreciates its timely submission. We have carefully reviewed and hereby approve your plan. I would like to take this opportunity to compliment you on its thoroughness, the extensive level of cooperation you received in its preparation, and the inclusion of treatment providers and drinking driver programs in your failure reporting procedure. Your plan indicates that Cattaraugus County will be well-positioned to implement the new law on August 15, 2010.

I would like to take this opportunity to make a few observations regarding the new statewide ignition interlock initiative and the newly promulgated regulations. In the process of crafting the new regulations the workgroup learned that first time offenders have a relatively low recidivism rate and are not likely to need the higher levels of technology and scrutiny offered by Class III devices. Additionally, there was a lot of feedback from counties concerning the cost of the devices and what they perceived would be high rates of “unaffordability”. Given these factors the workgroup crafted regulations that allow for different levels of devices with different levels of costs so that monitors can match risk with appropriate devices. Higher risk cases can receive higher Class devices and lower risk cases can receive lower Class devices. The selection of all Class III devices for both probation and conditional discharge cases could inflate the cost to operators and increase the number of waivers granted by the court due to the increased cost of the devices, without providing the commensurate increase in public safety. As counties move forward with the implementation of the interlock initiative, OPCA recommends that the monitors of both the probation and conditional discharge cases be allowed the flexibility to choose the Class of device for each operator so they can align the risk of the operator with the appropriate level of device.

OPCA looks forward to our continued work together as we implement this new public safety measure. Should you have any questions please feel free to call or e-mail Walter Cogswell at 518-485-5168 or Walter.Cogswell@dpc.state.ny.us.

Sincerely,



Robert M. Maccarone
Deputy Commissioner and Director

c Gerald E. Zimmerman, Probation Director

CATTARAUGUS COUNTY IGNITION INTERLOCK PLAN

I.

Prepared by:

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Suite 3140
Olean, NY 14760

Questions about plan should be directed to:

Same as above

II.

1. Plan Development

This plan has been developed in consultation with the following:

District Attorney:	Lori Rieman
Drinking Driver Program Representative:	James Griffith
Local Criminal Court Judge:	Hon. William H. Mountain III
Probation Director:	Gerald E. Zimmerman
Public Defender:	Mark Williams
Sheriff:	Timothy Whitcomb
Stop-DWI Coordinator:	Robert Buchhardt
Superior Court Judge:	Hon. Larry M. Himelein
County Administrator:	Jack Searles
Legislature Chairman:	Michael O'Brien
Other:	

2. Probation Cases

The Cattaraugus County Probation Department will monitor all operators upon whom an Ignition Interlock Device has been imposed and who are subject to a period of probation supervision. Monitoring will reside with the Cattaraugus County ATI programs within the Cattaraugus County Probation Department. For the remainder of 2010, a part time ATI Specialist will provide the required monitoring, and will communicate progress to the supervising probation officer.

3. Conditional Discharge Cases

The Cattaraugus County Probation Department will be responsible for monitoring when an Ignition Interlock Device has been imposed pursuant to a Conditional Discharge. Monitoring will reside with the Cattaraugus County ATI programs within the Cattaraugus County Probation Department. For the remainder of 2010, a part time ATI Specialist will provide the required monitoring for all conditional discharge cases and will communicate progress with the court and District Attorney.

4. Probation Cases – Class and Features of Device

When an operator is under probation supervision, the Cattaraugus County Probation Department will select the specific class and features of the interlock device from a qualified manufacturer in its region. The default Class for Cattaraugus County will be Class III device with the infra-red/lowlight camera feature. The operator will select the model of the Ignition Interlock Device, meeting the specific class and features selected by the Probation Department from a qualified manufacturer in the operator's region of residence.

5. Conditional Discharge Cases – Class and Features of Device

When an operator has received a sentence of conditional discharge, the Cattaraugus County Probation Department will select the specific class and features of the interlock device from a qualified manufacturer in its region. The default class for Cattaraugus County will be Class III device with the infra-red/lowlight camera feature. The operator will select the model of the Ignition Interlock Device, meeting the specific class and features selected by the probation department from a qualified manufacturer in the operator's region of residence.

6. Distribution of Waiver Cases

There exist six (6) manufacturers who are qualified to do business within Region 1 (Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming and Yates counties), although all may not ultimately provide services in Cattaraugus County. The Cattaraugus County Probation Department will maintain a list of those manufacturers who actually provide a vendor in Cattaraugus County, and will maintain records on a monthly basis concerning which manufacturers are providing devices in Cattaraugus County. Those operators, who have been determined to be financially unable to afford the costs and have received a waiver from the sentencing court, will be directed to a manufacturer according to the percentage of devices in use in the county from each manufacturer.

7. Distribution of Available Funding

Any available funding earmarked for probation supervision and/or monitoring purposes associated with 9 NYCRR Part 358, will be distributed to the Cattaraugus County Probation Department, as the Probation Department will be the solitary monitor for Cattaraugus County.

8. Notification of Ignition Interlock Orders

- a. The sentencing court will provide to the Cattaraugus County Probation Department the **Monitor Notification of Ignition Interlock Order (NIIO)** along with **Orders and Conditions of Adult Probation or Orders and Conditions of Conditional Discharge** within 5 business days of sentence, submitting the order electronically as a scanned document (signature in blue ink) or by fax (hard copy to follow by mail). The NIIO shall include the docket number, Criminal Justice Tracking Number (CJTN), conviction as a Misdemeanor or Felony and period of installation of the Ignition Interlock Device.
- b. The NIIO shall include a determination by the court as to the defendant's ability to pay or the waiver of Ignition Interlock Device Fees.
- c. The NIIO will inform the Cattaraugus County Probation Department of any intrastate or interstate transfer. *These transfers will be handled according to existing transfer rules. Regulations within NYS currently mandate that intrastate transfers include the transfer of jurisdiction to the receiving court. As soon as an intrastate transfer is identified by the NIIO, the receiving court and county probation department will be notified in order that the IID be imposed immediately. Interstate transfers will be handled according to the rules of the Interstate Compact. Conditional Discharge cases are not transferable, and the local court will retain jurisdiction. As such, arrangements with the monitoring agency in the county of residence will be made to have the monitoring reports sent to the court of jurisdiction. Out of state Conditional Discharges will need to be monitored by the Cattaraugus County monitoring agency (Probation Department), under procedures to be developed with DPCA and the manufacturers.*
- d. Currently, the Cattaraugus County Probation Department utilizes the VINE network to provide information upon the release dates of inmates specifically to assist in the tracking of collection cases. This utilization will be expanded to include the tracking of those cases which will involve the imposition of an Ignition Interlock Device upon release from incarceration.

9. Failure Reports

Failure reports will be provided to all parties who have a direct interest in the case. Specifically, these reports will be provided to the Court, District Attorney, Public Defender or Defense Counsel, as well as to the treatment agency and/or drinking driver program, as applicable. If the operator is under probation supervision, notification will also be provided to the supervising probation officer.

Failure reports will be generated if any of the following occur:

- a) that the operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates;
- b) that the operator has not complied with service visits requirements;
- c) a report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof;
- d) a report of a failed start-up re-test;
- e) a report of a missed start-up re-test;
- f) a report of a failed rolling re-test;
- g) a report of a missed rolling re-test; and/or
- h) a report of a lockout mode

Failure reports will be provided to the appropriate parties within 3 days of knowledge of a failure, together with a recommendation for action if warranted.

III.

Acknowledgement

This Ignition Interlock Program Plan has been developed in accordance with NYS Division of Probation and Correctional Alternatives Rules and Regulations 9 NYCRR Part 358.

County Administrator Signature: _____

Date: _____

County Legislature Chairman Signature: _____

Title: Legislature Chairman

Date: _____

DRAFT

CATTARAUGUS COUNTY IGNITION INTERLOCK PLAN

ADDENDUM 07/21/2010

The following adjustments are made to the Cattaraugus County Ignition Interlock Plan which has been submitted to the NYS Division of Criminal Justice Services Office of Probation and Correctional Alternatives and will be effective immediately. (Items with a strikethrough are eliminated, items underlined are additions). The remainder of the plan remains as originally submitted.

5. Conditional Discharge Cases – Class and Features of Device

When an operator has received a sentence of conditional discharge, the Cattaraugus County Probation Department will select the specific class ~~and features~~ of the interlock device from a qualified manufacturer in its region. The default class for Cattaraugus County will be Class III device ~~with the infrared/lowlight camera feature~~. The operator will select the model of the Ignition Interlock Device, meeting the specific class ~~and features~~ selected by the probation department from a qualified manufacturer in the operator's region of residence.

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Failure reports will be provided to all parties who have a direct interest in the case. Specifically, these reports will be provided to the Court, District Attorney, Public Defender or Defense Counsel, as well as to the treatment agency and/or drinking driver program, as applicable. If the operator is under probation supervision, notification will also be provided to the supervising probation officer.

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- b) that the operator has not complied with service visits requirements;
- c) a report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof;
- d) a report of a failed start-up re-test;
- e) a report of a missed start-up re-test;
- f) a report of a failed rolling re-test;
- g) a report of a missed rolling re-test; and/or
- h) a report of a lockout mode
- i) a specific BAC level of .05% or greater on failed tests or re-tests