



STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
OFFICE OF PROBATION AND CORRECTIONAL ALTERNATIVES
80 Wolf Road
Albany, New York 12205
<http://criminaljustice.state.ny.us>

SEAN M. BYRNE
ACTING COMMISSIONER

ROBERT M. MACCARONE
DEPUTY COMMISSIONER
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(518) 485-7692
(518) 485-5140 FAX

Honorable Chris Collins
Erie County Executive
95 Franklin Street
Buffalo, New York 14202

July 12, 2010

Dear County Executive Collins:

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 your inclusion of forms in the plan. Your plan indicates that Erie County will be well-positioned to implement the new law on August 15th.

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.

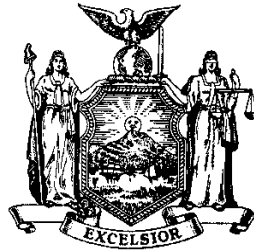
OPCA looks forward to our continued work together as we implement this new public safety measure. Should you have any questions please feel free to call or e-mail Walter Cogswell at 518-485-5168 or Walter.Cogswell@dpc.state.ny.us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert M. Maccarone".

Robert M. Maccarone
Deputy Commissioner and Director

- c Rachelle Cybulski, Probation Director
John Sullivan, STOP-DWI Coordinator



New York State
Division of Probation and Correctional Alternatives (DPCA)

IGNITION INTERLOCK PROGRAM PLAN

DAVID A. PATERSON
GOVERNOR



ROBERT MACCARONE
STATE DIRECTOR

Erie COUNTY IGNITION INTERLOCK PROGRAM PLAN

INSTRUCTIONS: In accordance with New York State Division of Probation and Correctional Alternatives (DPCA) Rules and Regulations 9 NYCRR Section 358.4, every county, and the City of New York, shall establish an ignition interlock program plan with respect to the usage of ignition interlock devices and monitoring compliance of any operator subject to the condition of an ignition interlock device as directed by a sentencing court. Such plan shall be approved, as applicable, by the county executive, county administrator, etc., and in cities with a population of one million or more, the mayor, and become effective on or before August 15, 2010. **The plan shall be filed with DPCA no later than June 15, 2010.** Where a plan has been amended by the county/city, it shall be promptly filed with DPCA in advance of its new effective date. Please complete all portions of the attached plan and return **no later than June 15, 2010** to:

**Walter Cogswell
Community Corrections Representative III
NYS Division of Probation and Correctional Alternatives
80 Wolf Road – Suite 501
Albany, New York 12205**

Or E-Mail
Applications2010@dpca.state.ny.us

NOTE: This plan form has been prepared so that you may check appropriate boxes and type responses into expanding text boxes.

Plan prepared by:
Name: Rachelle Cybulski
Title: Commissioner
Phone Number: 716-858-8205
E-Mail: Rachelle.cybulski@erie.gov
Address: Street:1 Niagara Plaza
City: Buffalo, New York
Zip Code: 14202

Questions about plan should be directed to:

Same as above
Or

Name
Phone
E-Mail

1. Every county/city shall develop a plan in consultation with the county/city’s probation director, district attorney, and in New York City the district attorney from each of the five boroughs, sheriff or Police Commissioner where applicable, STOP–DWI Coordinator, a representative of its drinking driver program where applicable and where more than one program exists in the county, a representative designated by the county executive, a superior and local criminal court judge designated by the administrative judge for the county, and in New York City a superior and local criminal court judge designated by the deputy chief administrative judge, a representative of an agency providing legal services to those unable to afford counsel in criminal cases designated by the county executive. A county/city may consult with other persons or entities as the county executive deems appropriate with respect to development of its plan. Indicate those consulted in the preparation of this plan. Check all that apply:

- District Attorney and in NYC the District Attorney from each of the five boroughs
- Drinking Driver Program Representative
- Local Criminal Court Judge
- Police Commissioner (Specify Department _____)
- Probation Director
- Representative of Legal Services for Indigent
- Sheriff
- STOP-DWI Coordinator
- Superior Court Judge
- Other (Specify _____)
- Other (Specify _____)

2. Every plan shall specify monitoring by the probation department where the operator is subject to a period of probation supervision.

- The Probation Department is designated as the monitor where the operator is subject to a period of probation.

3. Every plan shall specify the persons or entities responsible for monitoring where an ignition interlock device has been imposed pursuant to a conditional discharge. The following are designated to monitor conditional discharge cases:

- District Attorney
- Drinking Driver Program
- Police Commissioner (Specify Department _____)
- Probation
- Sheriff
- STOP-DWI Coordinator
- TASC
- Traffic Safety Board Representative
- Other Agency or Organization* (Specify: _____)

*Must be similar individual, agency or organization; cannot be a qualified manufacturer and/or installation/service provider.

Comments: (Provide any additional comments, if any, regarding the monitoring of conditional discharge cases here)

Provide contact information for your designated monitors: (attach additional pages if necessary)

Department/Agency: Central Police Services/ Stop DWI Program Contact Name: John Sullivan Phone Number: 716-858-6291 E-Mail: John .sullivan@erie.gov Address: Street:45 Elm St City: Buffalo, NY Zip Code: 14203	Department/Agency: Contact Name: Phone Number: E-Mail: Address: Street: City: Zip Code:
Department/Agency: Contact Name: Phone Number: E-Mail: Address: Street: City: Zip Code:	Department/Agency: Contact Name: Phone Number: E-Mail: Address: Street: City: Zip Code:

4. Every plan shall establish that where an operator is under probation supervision, the department selects the specific class and features of the interlock device from a qualified manufacturer in its region. The operator may 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.

This plan establishes that where an operator is under probation supervision, the department selects the specific class and features of the interlock device from a qualified manufacturer in its region. The operator may 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. Every plan shall establish that where an operator has received a sentence of conditional discharge, the monitor shall select the class of ignition interlock device available from a qualified manufacturer in its region for any such operator. The operator may select the model of the ignition interlock device from within the class designated by the monitor from a qualified manufacturer in the operator's region of residence.

This plan establishes that where an operator has received a sentence of conditional discharge, the monitor shall select the class of ignition interlock device available from a qualified manufacturer in its region for any such operator. The operator may select the model of the

ignition interlock device from within the class designated by the monitor from a qualified manufacturer in the operator's region of residence.

6. In the event more than one qualified manufacturer does business within its region, the county/city shall establish an equitable procedure for manufacturers to provide ignition interlock devices without costs where an operator has been determined financially unable to afford the costs and has received a waiver (waiver cases) from the sentencing court. The equitable procedure should be based upon the proportion of ignition interlock devices paid to each qualified manufacturer by operators in the county/city.

Describe the procedure that the county/city will utilize to ensure the equitable distribution of waiver cases among manufacturers operating in the county/city. This will require coordination between the courts and monitors.

The Leandra Statute requires that an operator's ability to pay be considered by the Court. Where found unable to afford an IID, an operator shall receive an IID at no cost. Erie County's standard of eligibility for consideration of a no cost IID is that the operator must be an Active Recipient of Welfare Cash Assistance. Operators with this status will carry a card, issued by the Erie County Social Services Department, indicating this fact. This card or status does not ENTITLE the operator to a no-cost IID, it makes them eligible for consideration, by the court, for a No-Cost Device.

IID manufacturers will supply an IID, without cost, to operators who have been determined financially unable to pay. A financial disclosure form to be used in this determination will be submitted to, reviewed, and approved or denied by, the court. If approved by the court, the operator will submit the form to the provider at the time of installation. All Operators are eligible to apply for a no cost IID regardless of Social Services Status.

STOP-DWI will serve as the referee for the distribution of no cost IID's among providers. Approved no-cost operators will not choose a provider, but instead will be assigned one in rotation when they phone to advise of their IID-CD.

The monitoring agency in Erie County is the Stop DWI Program. Stop DWI will maintain a list of the qualified manufacturers and will track the number of operators serviced by each manufacturer. Initially operators who qualify for a waiver will be assigned on a round robin basis. The number of operators being served by each manufacturer will be totaled and updated every quarter. At the end of the first quarter, and going forward, this total will be used to assign cases of indigent operators on a proportionate basis by the Stop DWI monitor.

Note- this would require that ALL those assigned conditional discharges would be referred directly to Stop DWI, instead of sent directly to manufacturers. In cases where waivers were not granted, Stop DWI would advise operators to go to the provider of their choice. However, in cases where a waiver has been granted, Stop DWI would mandate to the operator the provider that must be selected.

7. Every plan shall establish a distribution formula for any available funding earmarked for probation supervision and/or monitoring purposes associated with 9 NYCRR Part 358 (Handling of Ignition Interlock Cases Involving Certain Criminal Offenders).

Describe the distribution formula that the county/city will utilize for any funding specifically provided for probation supervision and/or monitoring purposes associated with DPCA Rules and Regulations 9 NYCRR Part 358. Counties may choose to distribute funds according to the percentage of cases handled by each monitoring entity.

Money may be allotted to Stop DWI as the designated primary monitor of conditional discharges in Erie County. The ECPD, which anticipates an increase in DWI supervision cases as a result of this legislation, would also receive funding.* Initially Stop DWI will have the bulk of responsibility however Probation will see an increase in DWI probation cases due to operators failure to comply with ignition interlock and consequently being placed on probation, resulting in the need for additional resources for the Probation Department.

*A conclusion on the final formula or disbursement will have to be reached. It is difficult to determine exact expenses, however initial funding would support the hiring of a Probation Assistant (approximately \$80,000.00 per year with benefits). Subsequent to that (depending on the revenue stream available) the split could be 50/50.

Provide contact information for fiscal officer:

Name: Paulette Woods

Title: Sr. Budget Examiner

Phone Number: 716-858-8211

E-Mail: Paulette.woods@erie.gov

Address: Street:1 Niagara Plaza

City: Buffalo, NY

Zip Code: 14202

8. Every plan shall establish a procedure whereby the probation department and any other monitor will be notified no later than five (5) business days from the date an ignition interlock condition is imposed by the sentencing court, any waiver of the cost of the device granted by the sentencing court, and of any intrastate transfer of probation or interstate transfer of any case which either has responsibility to monitor. Such procedure shall also establish a mechanism for advance notification as to date of release where local or state imprisonment is imposed.

a. Describe the procedure the county/city will utilize to ensure the probation department and any other monitor will be notified of the ignition interlock condition no later than five (5) business days from the date an ignition interlock condition is imposed by the sentencing court.

The sentencing court will fax form STOP-DWI IID-1 (copy attached) to Stop DWI within one business day of sentencing. The court will provide to the operator the Erie County Ignition

Interlock Program form STOP-DWI IID-2 (copy attached) to the operator directing him of the steps to take and time frame.

Upon receipt of probation order supervising PO will review probation conditions with probationer and if interlock is ordered will explain said condition.

When license revocation/suspension period is over (anywhere from 6-18 months), if supervising PO has ascertained that certain specific conditions have been fulfilled to include payment of all fines and surcharges, completion of substance abuse treatment and attendance at a Victim Impact panel, PO will then submit a relicensing request to the sentencing Judge informing said Judge that the probationer has served the mandatory revocation period and is requesting permission to apply for a driver's license. Supervising PO will also require probationer to write the sentencing Court a letter asking to have his/her license reinstated.

If Judge approves, the probationer will be given a Letter of No Objection (DPCA -680) indicating that as a court ordered condition of probation, the probationer may drive only a motor vehicle equipped with an IGNITION INTERLOCK DEVICE. He/she will be instructed to take said form to the Department of Motor Vehicles and follow their instructions for relicensing. Probationer will also be reminded that the DMV will determine if they are eligible to be relicensed.

Probationers will additionally, be given a list of approved Ignition Interlock Providers and told to choose one upon relicensing.

Probationer will be informed that upon receipt of a license or permit, they will need to contact one of the listed interlock providers and set up an installation date. They will be firmly reminded that under no condition can they drive until an ignition interlock device is installed in their vehicle.

Once an interlock device has been installed, the supervising PO will monitor and review the probationer's interlock reports and take any necessary action if interlock irregularities and or violations are noted.

b. Describe the procedure the county/city will utilize to ensure the probation department and any other monitor will be notified no later than five (5) business days from the date an ignition interlock condition is imposed by the sentencing court of any waiver of the cost of the device granted by the sentencing court.

The referral form STOP- DWI IID-1 referred to above has an area for the sentencing court to check in the event that an indigent waiver is granted. The NYS Ignition Interlock Device Program Financial Disclosure Report form will be supplied to the vendor at the time of installation of the device.

c. Describe the procedure the county/city will utilize to ensure the probation department and any other monitor will be notified no later than five (5) business days from the date an ignition

interlock condition is imposed by the sentencing court of any intrastate transfer of probation or interstate transfer of any case which either has responsibility to monitor.

The probationer is ordered by the Court to report to the Probation Department directly after their Court appearance with a copy of the conditions of probation. The above referenced form STOP-DWI IID-1 has an area for the sentencing court to check in the event of a transfer and county the operator is to report to.

A master list of county monitoring agents and probation departments will be provided in some fashion by NYSDPCA. The operator will be required to contact the Erie County monitor or their county monitor for contact information in their respective county for installation and monitoring of the ignition interlock device. The receiving county will maintain correspondence with the originating county and report compliance, any violations and successful completion.

For example in the event that a resident of another county (for example, Monroe County) were to be sentenced in Erie County, the operator would be responsible for contacting the Erie County monitor, which would then refer him to the monitor in Monroe County and tell him to contact them within 5 business days. Erie County would follow up, contacting Monroe County and advising it that the operator would be in touch. Monroe County would advise Erie a) when the operator got in touch with them; b) when the operator had interlock installed; and c) provide Erie with an update in the event the operator violated Interlock or successfully completed.

In the event that an operator who already has ignition interlock installed on his vehicle as a result of a conditional discharge decides to move, he would be required to obtain court approval. The device would then be de-installed from his vehicle and the procedure above will be followed.

As for interstate transfers, there is currently no mechanism within the Interstate Compact to handle the transfer of a conditional discharge.

d. Describe the procedure the county/city will utilize for advance notification as to date of release where local or state imprisonment is imposed. Jurisdictions may wish to utilize the VINE network.

The Stop DWI monitor and the ECPD will register with VINE. On form STOP- DWI IID-1 there is an area to indicate a term of incarceration. A date of release will be calculated by STOP-DWI. At the ECPD a Probation Assistant will be assigned as the monitor for those incarcerated.

9. Every plan shall establish a procedure governing failure report recipients, including method and timeframe with respect to specific notification and circumstances. Failure report recipients are all persons or entities required to receive a report from the monitor of an operator's failed tasks or failed tests pursuant to a county/city's plan which may include, but is not limited to the sentencing court, district attorney, operator's alcohol treatment provider, and the drinking driver program, where applicable. At a minimum, the procedure shall be consistent with the provisions of DPCA Rules and Regulations Section 358.7(d) with respect to sentencing court and district attorney notification of specific failed tasks and failed tests reports.

Describe the county/city plan to report operator's failed tasks or failed tests to failure report recipients. Identify report recipients, method of reporting, events to be reported, and reporting time frames.

Stop DWI will notify the sentencing court and the DA within 3 business days by faxing the Ignition Interlock Court Report (DPCA 133CR-iiD) to both.

Acknowledgement

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

County Executive Signature: _____

Title of County Executive: County Executive

Date