



**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  
AND DIRECTOR  
(518) 485-7692  
(518) 485-5140 FAX

August 12, 2010

Mr. James W. Wallace, Jr.  
Herkimer County Administrator  
109 Mary Street  
Herkimer, New York 13350

Dear County Administrator Wallace:

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 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 incorporation of forms into the plan. Your plan indicates that Herkimer 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](mailto:Walter.Cogswell@dpc.state.ny.us).

Sincerely,

A handwritten signature in cursive script, reading "Robert M. Maccarone".

Robert M. Maccarone  
Deputy Commissioner and Director

c Josephine M. Sohn, Acting Probation Director

**Cogswell, Walter (DPCA)**

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**From:** Garry Murphy [gmurphy@herkimercounty.org]  
**Sent:** Thursday, August 12, 2010 9:36 AM  
**To:** Cogswell, Walter (DPCA)  
**Subject:** HERKIMER COUNTY IGNITION INTERLOCK PLAN  
**Attachments:** header.htm



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

# **IGNITION INTERLOCK PROGRAM PLAN**

**DAVID A. PATERSON  
GOVERNOR**



ROBERT MACCARONE  
STATE DIRECTOR



**HERKIMER 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@dpc.state.ny.us](mailto:Applications2010@dpc.state.ny.us)

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

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Plan prepared by:  
Name: Josephine M. Sohn  
Title: Director  
Phone Number: (315) 867-1160  
E-Mail: [jsohn@herkimercounty.org](mailto:jsohn@herkimercounty.org)  
Address: Street: 109 Mary Street, #1202  
City: Herkimer  
Zip Code: 13350

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 County Administrator - James Wallace)
- Other (Specify County Legislator - Robert Hyde)

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) At this time it is unknown as to the impact this population will have on the duties of the Herkimer County Probation Department.

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

Department/Agency: Probation Contact Name: Josephine M. Sohnn Phone Number: (315) 867-1160 E-Mail: jsohnn@herkimercounty.org Address: Street: 109 Mary Street, #1202 City: Herkimer	Department/Agency: Contact Name: Phone Number: E-Mail: Address: Street: City:
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Zip Code: 13350	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 Waiver process must be coordinated between the court(s) and the Probation Department. Depending upon the number of qualified manufacturers within the region, the number of active Interlock Devices currently being monitored and the number of waiver requests received during a periodic interval (monthly, semi-annually, annually, etc.). When the Probation Department is notified that a waiver has been approved by the sentencing court, the Probation Department would then determine which manufacturer will provide the next device free of charge. The County is aware of the need to distribute waived cases equitably and proportionately and the manufacturer shall be assigned to allow for equitable and proportionate distribution of waiver cases.

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.

Any State Funds made available will be distributed to the County, as the Probation Department is designated as the sole monitoring agency for the interlock program. There are no additional County Funds allocated for the monitoring of this population

Provide contact information for fiscal officer:

Name: Mrs. Kim Enea

Title: Herkimer County Treasurer

Phone Number: (315) 867-1144

E-Mail: kenea@herkimercounty.org

Address: Street: 108 Court Street

City: Herkimer

Zip Code: 13350

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.

When conducting Pre-Sentence/Pre-Plea Investigations, and an IID is required/recommended, the Probation Department will submit specific conditions to be included on the Order and Conditions of Probation/Conditional Discharge for the Court to impose. Signed Monitor Notification Order(s) (Form DPCA-510-IIN; Form DPCA-10CD-IID) MUST accompany the disposition from the Court for each case. Upon the imposition of a sentence of Probation or a period of Conditional Discharge, the sentencing court shall be asked to immediately thereafter provide notification to the Probation Department noting the condition of ignition interlock. Said communication should be via facsimile or mail.

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.

Upon the imposition of a sentence of Probation or a period of Conditional Discharge, the sentencing court shall be asked to immediately thereafter provide notification to the Probation Department noting the waiver of the cost of the ignition interlock device; as noted on the Monitor Notification Order (Form DPCA-510-IIN; Form DPCA-10CD-IID). Said communication should be via facsimile or mail.

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 sentencing court will follow the same procedure as noted in section 8a (above). If the operator is under probation supervision, the court must include transfer paperwork (DPCA-16) with the Monitoring Order and other disposition paperwork submitted to the Probation Department.

The sentencing court must direct the operator to the Herkimer County Probation Department PRIOR to the installation of the ignition interlock device(s) to provide information to the probation department in compliance with DPCA Rules and Regulations Section 358.7(c)(3).

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 sentencing court will send the Monitor Notification of Ignition Interlock Order and conditions of probation or conditions of Conditional Discharge to the Probation Department. The Probation Department will utilize the VINE network for notification of the operator's release from incarceration. The court will order the operator, upon release from incarceration, to report to the Herkimer County Probation Department to provide information in compliance with DPCA Rules and Regulations Section 358.7(c)(3). The operator will have 10 business days to have the ignition interlock device(s) installed in the vehicle(s) and an additional 3 days to make notification to the Probation Department of the installation following his/her release from incarceration. If the operator fails to have the device(s) installed in the vehicle(s) AND notify the Probation Department in the time frame allotted, the court will be notified.

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.

The Herkimer County Probation Department will notify the sentencing court and the Herkimer County District Attorney's Office via mail within three (3) business days, using Form DPCA-133CR-IID where an operator has failed to have the ignition interlock device(s) installed on his/her own vehicle(s) or on vehicle(s) which he/she operates, where the operator has not complied with the service visit requirement, any report of alleged tampering with or circumventing an ignition interlock device or in an attempt thereof, any report of a "lock-out mode", and/or any report of a failed test or re-test where the BAC is indicated as .05% or higher.

It will be determined by the Herkimer County Probation Department when the violation(s) have reached a level where public safety has been compromised and a Violation of Probation Petition will be filed, rather than a misconduct report. Initial steps prior to a Violation of Probation Petition being filed with the court may include

an Administrative Review with the Director of Probation, enhanced supervision, referral made for a higher level of substance abuse treatment, etc.

If the operator has been sentenced to a Conditional Discharge, the Herkimer County Probation Department will notify the sentencing court and the Herkimer County District Attorney's Office within three (3) days of any failed task(s) or failed test(s) in accordance with DPCA Rules and Regulations Section 358.7(d)(i-viii)..

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: Chairperson, Board of Legislators

Date