



STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
OFFICE OF PROBATION AND CORRECTIONAL ALTERNATIVES
80 Wolf Road
Albany, New York 12205
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SEAN M. BYRNE
ACTING COMMISSIONER

ROBERT M. MACCARONE
DEPUTY COMMISSIONER
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(518) 485-7692
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August 4, 2010

Honorable Joanne M. Mahoney
Onondaga County Executive
John H. Mulroy Civic Center, 14th Floor
Syracuse, New York 13202

Dear County Executive Mahoney:

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 and the extensive level of cooperation you received in its preparation. Your plan indicates that Onondaga 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 Honorable William J. Fitzpatrick, District Attorney
Al Giacchi, Probation Commissioner
Barry Weiss, Administrative Officer, District Attorney's Office



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

IGNITION INTERLOCK PROGRAM PLAN

DAVID A. PATERSON
GOVERNOR



ROBERT MACCARONE
STATE DIRECTOR

ONONDAGA 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: Barry Weiss
Title: Onondaga County STOP DWI Coordinator
Phone Number: 314-435-2470
E-Mail: BarryWeiss@ongov.net
Address: Street:505 South State Street
City: Syracuse
Zip Code: 13202

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: Onondaga County District Attorney's Office Contact Name: Barry Weiss Phone Number: 315-435-2470 E-Mail: Address: Street:505 South State Street City: Syracuse, NY Zip Code: 13202	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.

ONONDAGA COUNTY'S PLAN:

Any potential waiver of the cost has to be determined and agreed upon in writing by the District Attorney's Office and the defense counsel in advance of sentencing with consent of the judge or magistrate. In order to be considered for any waiver, the defendant's attorney must have written proof that the operator's does not have any financial means to pay for at least six (6) months of an interlock. The defendant also must have proof in the form of a certified check that the DWI fine and all surcharges will be paid at the time of sentencing. Any waiver will only be considered if the defendant is a first time DWI offender and being permitted to drive for employment only. The waiver will be reviewed by the STOP DWI Coordinator and the Bureau Chief of the District Attorney's DWI Bureau. No waivers of payment will be issued for Conditional Discharges or Probation sentences that are not supported by documented proof of a need to "drive."

As stated in the regulations, the vendor of the interlock will underwrite the cost for any waiver for the individual who meets the "need to drive" criteria.

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.

ONONDAGA COUNTY PLAN:

Representatives of Onondaga County Probation, District Attorney's Office, Court Administration, STOP DWI, Onondaga County Sheriff and/or Syracuse Police Department, Onondaga County Management & Budget (representing the financial commitment of Assigned

Counsel) will meet on a quarterly basis to review all ignition interlock installations, pending and completed ones. At that time all financial obligations will be discussed and distribution as necessary will be decided. In addition, any request or distribution involving STOP DWI fund, will go to the STOP DWI Advisory Board before being submitted to the County Executive for final review.

Provide contact information for fiscal officer:

Name: James Rowley

Title: Onondaga County Chief Fiscal Officer

Phone Number: 315-435-3346

E-Mail:

Address: Street:421 Montgomery Street

City: Syracuse

Zip Code: 13202

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.

ONONDAGA COUNTY PLAN:

The sentencing court will notify by letter, fax or email the Probation Department or the monitoring agency (Onondaga County District Attorney's Office) that the interlock is to be placed in the defendant's vehicle or vehicles.

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.

ONONDAGA COUNTY PLAN:

Any potential waiver of the cost has to be determined and agreed upon in writing from the District Attorney's Office and the defense attorney in advance of sentencing. In order to be considered for any waiver, the defendant's attorney must have proof that the defendant will pay any imposed DWI fine at the time of the sentencing. If no fine is able to be paid, the defendant is not eligible for consideration of any waiver. The waiver will only be considered if the defendant is a first time offender and has an absolute need to drive for employment or educational purposes. Consideration will not be given to those who "need to drive to work," but for those who have proof from an employer that the use of a vehicle is necessary. All defendants

who reside in the City of Syracuse have public transportation (CENTRO) at their disposal and will be encouraged to use public transportation as an energy saving method.

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.

ONONDAGA COUNTY PLAN:

Each court within Onondaga County will be required to email, fax or mail to the DWI Unit of Onondaga County Probation notification of any intrastate or interstate transfer of probation within five (5) business day. Since a CD case cannot be transferred in the same manner as a probation case, the original sentencing court will maintain jurisdiction over the case. The monitor in the receiving county will have to make provisions to notify the sentencing court (and the CD monito in that county) of any violations.

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.

ONONDAGA COUNTY PLAN:

Onondaga County will employ all the mechanisms in place today to notify the appropriate individuals and agencies as to the date of release. The monitoring agency (Onondaga County District Attorney's Office) will inform Onondaga County Probation as well as the originating court of the appropriate information. Onondaga County has used the VINE system since its inception and will use all the features of VINE to maintain the proper and appropriate communication with the respective agencies and individuals. Additionally, the Onondaga County District Attorney's Office (montioring agency) is the lead agency with New York State's Re-entry program in Onondaga County and have the relationships to maintain proper communication for notification on all levels for release.

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.

ONONDAGA COUNTY PLAN:

Onondaga County will meet the standard as stated in Part 358.7(d)(1). For those on Probation, the DWI Unit of the Onondaga County Probation Department will receive within the agreed upon time an electronic communication concerning a failed task. Those who then fail the test will be required to report to County Probation in person to explain the circumstances for the failed test. For operators who fail tests and are sentenced to an interlock as a Conditional Discharge, the report will be sent to the court and the monitoring agency that requested the interlock device to be installed. The District Attorney's Office as monitoring agency will notify the appropriate court within three (3) business days where and when an operator has failed to install, has not complied with a service visit requirement, reports of alleged tampering/circumvention, report of a lock-out mode and/or any report of a failed test or re-test where the BAC is .05 or higher. The monitoring agency will work with Probation and the Court Administration to develop a grid to be used to fully address all the questions and have a consistent reporting mechanism.

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