



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

Honorable Edward A. Diana
Orange County Executive
Orange County Government Center
255 Main Street
Goshen, New York 10924

July 21, 2010

Dear County Executive Diana:

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 in particular the inclusion of forms in the plan. Your plan indicates that Orange 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". The signature is written in dark ink on a light-colored background.

Robert M. Maccarone
Deputy Commissioner and Director

c Derek Miller, Probation Director

New York State Division of Criminal Justice Services

Office of Probation and Correctional Alternatives

Ignition Interlock Program Plan Amendment

County: Orange

Date Last Full Plan Submitted: July 6, 2010

Date Amended / Modified: July 20, 2010

Amended / Modified as Follows:

Various sections modified/clarified per e-mails:

From: Slater, Thomas (DPCA)

Sent: Tuesday, July 20, 2010 10:35 AM

To: 'DMiller@co.orange.ny.us'

Cc: Maccarone, Robert (DPCA); Cogswell, Walter (DPCA)

Subject: FW:

Derek,

I have reviewed your responses to Walter's questions and they address the concerns raised. You will receive an approval letter shortly. In response to your question regarding selection of manufacturers in waiver cases, it is our intention that monitors select the manufacturer in waiver cases only. This ensures fairness in the distribution of waiver cases among manufactures but still preserves competition relative to the other cases. Thank you for your clarification on these questions. Tom

From: Miller, Derek <DMiller@co.orange.ny.us>

To: O'Donnell, James <jodonnell@co.orange.ny.us>; Maccarone, Robert (DPCA); Cogswell, Walter (DPCA); Scrittore, Donna <DScrittore@co.orange.ny.us>

Sent: Tue Jul 20 09:26:18 2010

Subject: FW:

Bob and Walter,

I retrieved this email out of my "Sent" folder this morning and am forwarding it as a reply to you regarding the Ignition Interlock Plan. As you can see the email was sent on July 7, 2010. Either you didn't receive it or it was overlooked. I believe I have addressed the areas you commented on when you reviewed our plan.

I would ask for clarification regarding the issue of waiver devices. We are allowed to choose any manufacturer when a waiver case is ordered whether it be a CD or probation?

Also to give an update as to how we are progressing. We have contacted each court individually and are putting together a master list of how they wish to notify regarding Ignition Interlock, each court has been given a supervisor's name as a point of contact and we will continue to follow up with them throughout the preparation and start up process until things become routine.

I will be contacting the vendors to set up a meeting(s) and will invite the DA, Legal Aid and judiciary to sit in with the vendors.

Please advise as to the status of the plan and also please note that my name is spelled Derek, thanks.

Derek Miller

Probation Director

From: Miller, Derek

Sent: Wednesday, July 07, 2010 3:50 PM

To: 'Cogswell, Walter (DPCA)'

Cc: O'Donnell, James

Subject: RE:

Walter thanks for the quick review

1) In response to number #1. Once the decision was made that Probation was going to be the monitor for all cases(a decision I support due the nature and complexity of the process) I invited the agencies that would be involved in the day to day workings of the process to review the plan and give input. DDP and Legal Aid were not invited, the Sheriff has been kept informed via monthly Department Head sub group meetings as has Emergency Services which now oversees Stop-DWI funds. I think one of things that distinguishes our county is that Department Heads meet twice a month, have frequent ongoing discussions and share information between departments. Leandra's Law and ignition interlock have been discussed numerous times in that setting since the passage of the law. As far as police input the Administrative Officer of this county Jimmy O'donnell has three decades of law enforcement experience including a number of years as a Lt. Colonel in the New York State Police and five years as Chief of the MTA Police and he reviewed and approved the plan prior to submission.

2) Question #6 we will do the best we can to be equitable in the number of waiver devices. However part 5 of the rule prohibits us from choosing the manufacturer of anyone given a CD so that could hamper our ability to do so in those cases. We are acutely aware of the need to balance the waiver devices and will take whatever actions are permitted under the rule to ensure that waiver cases are equitable as it will be crucial to encouraging healthy competition amongst the manufacturers. If we become aware of a discrepancy in waiver devices amongst manufacturers we will redirect the offender to an alternative vendor when possible. I see this as the part of the law/plan with the most variables.

3) Question#9 for Probation cases the department will notify the courts and District Attorney in writing within three business days after being notified by the manufacturer of a failed task, test or report. We will then proceed to the graduated sanctions and violation rule.

I believe this addresses your concerns. Please advise if any additional information is required.
Thanks.

Derek Miller

From: Cogswell, Walter (DPCA) [mailto:Walter.Cogswell@dpca.state.ny.us]

Sent: Wednesday, July 07, 2010 12:59 PM

To: Miller, Derek; Maccarone, Robert (DPCA)

Cc: O'Donnell, James; Scrittore, Donna; Tanner, Melanie

Subject: RE:

Derrick,

Thank you for submitting the Orange County Ignition Interlock Device Plan.

In reviewing the County Plan we had a few observations and questions.

Question #1) We noticed that there was no DDP, Police Commissioner, Sheriff, DWI Coordinator or Defense for the Indigent representation in the preparation of this plan. Were they invited and chose not to participate?

Question #6) The monitor will need to take a more active stance than what is proposed in the Plan. That is, the monitors will need to be aware of the proportion of waiver cases each manufacturer has and will probably need to refer waiver cases to particular manufacturers so as to obtain/maintain an equitable and proportionate distribution of these cases among the manufacturers.

Question 9) We are trying to ensure that the reporting structure put in place by counties meets the standard laid out in Part 358.7(d)(1). We are looking for the language that the monitor (both Probation and the CD monitor, if not probation) will notify the appropriate court and District Attorney within 3 business days where 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 percent or higher. The Plan refers to Probation adhering to Part 352 (Graduated Sanctions and Violations of Probation). However, probation is also required to notify the court and the District Attorneys when the above-listed events occur and the Plan must reflect that.

I ask that you send me an e-mail addendum to the plan you already submitted (does not require formal county approval again) that addresses the items mentioned above as soon as you can. Once received and reviewed we will likely send-out a letter approving your plan. Thank you for all of your hard (and fast) work on this initiative.

Walter K. Cogswell

Adult Probation Operations

NYS Division of Criminal Justice Services

Office of Probation and Correctional Alternatives

80 Wolf Road, Suite 501

Albany, NY 12205-2604

ph: (518) 485-5168

fax: (518) 485-5159

From: Miller, Derek [mailto:DMiller@co.orange.ny.us]

Sent: Tuesday, July 06, 2010 5:10 PM

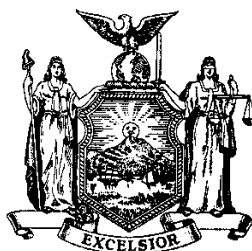
To: Maccarone, Robert (DPCA); Cogswell, Walter (DPCA)

Cc: O'Donnell, James; Scrittore, Donna; Tanner, Melanie

Subject:

<<2010-6 completed plan[1].doc>> <<ignitioninterlock.PDF>>

Bob and Walter here is the Interlock Plan for Orange County the adode pdf folder is the signature page. Please review and advise. Thanks. Derek Miller



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

IGNITION INTERLOCK PROGRAM PLAN

DAVID A. PATERSON
GOVERNOR



ROBERT MACCARONE
STATE DIRECTOR

ORANGE 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: Derek Miller
Title: Probation Director III
Phone Number: 845-291-4788
E-Mail: dmiller@orangecountygov.com
Address: Street:255-275 Main St
City: Goshen, NY
Zip Code: 10924

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: Orange County Probation Contact Name: Derek Miller Phone Number: 845-291-4788 E-Mail: dmiller@orangecountygov.com Address: Street:255-275 Main St City: Goshen, NY Zip Code: 10924	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 Probation Department as the sole monitor will keep a record of all installed devices in spreadsheet format. The total number of devices provided by each manufacturer will be measured proportionately against the number of "waiver" devices. This information will be reported to all courts on a quarterly basis.

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.

As the sole monitor in Orange County the Probation Department will be the recipient of all funds earmarked for supervision and/or monitoring purposes.

Provide contact information for fiscal officer:

Name: Joel Kleinman

Title: Orange County Commissioner of Finance

Phone Number: 845-291-2485

E-Mail: jkleinman@orangecountygov.com

Address: Street: 255-275 Main St.

City: Goshen, NY

Zip Code: 10924

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 courts will be provided by the Probation Department with Orange County Probation and New York State DPCA documents that may be submitted via mail, fax or email to the Probation Department. The sentencing court will have the responsibility to mail, fax or submit by email to the Probation Department within five business days of sentence.

The following form(s) will be utilized for this purpose:

DPCA-510-IIN "Monitor Notification of Ignition Interlock Order"

DPCA- 10CD-IID " Orders and Conditions of Conditional Discharge"

Orange County Probation Department Special Conditions for Ignition Interlock

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.

All courts will be provided with form DPCA-510-IIN to be completed and returned to the probation department within five business days of sentence.

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.

All courts will be provided with form DPCA-510-IIN to be completed and returned to the probation department within five business days of sentence.

When a pre-sentence investigation is ordered for sentencing of offenders that reside out of county or state the Probation Department will proactively monitor the disposition and facilitate eligible transfers and ignition interlock installation/monitoring via current departmental practices.

For offenders that reside out of county or state that are sentenced without a pre-sentence investigation the court will submit form DPCA-510-IIN within five business days of sentence. The Probation Department will facilitate eligible transfers and ignition interlock installation/monitoring as per DPCA rules.

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.

All courts will be provided with form DPCA-510-IIN to be completed and returned to the probation department within five business days of sentence.

The Probation Department has direct access to the county jail's inmate information system and will utilize that program for local jail sentences and VINE for state prison sentences.

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.

Upon notification of any failed test, task or report for offenders sentenced to probation the Probation Department will commence an investigation and take appropriate action in adherence with Part 352 (Graduated Sanctions and Violations of Probation).

For those offenders given a Conditional Discharge the probation department will notify the sentencing court and District Attorney in writing within three business days after being notified by the manufacturer of a failed test, task or report utilizing form DPCA 133CR-IID.

Conditional Discharge failures that will be reported to the court and District Attorney will include at a minimum:

- 1) Failed to have ignition interlock device installed on required vehicle(s).
- 2) Failed to comply with a service visit requirement.

- 3) A device report indicates possible tampering with or circumvention of the ignition interlock device or an attempt thereof.
- 4) A device report indicates that a lock-out mode was entered.
- 5) A device report indicates a failed or missed start up re- test or a failed or missed rolling re-test.
- 6) Violated other conditions of the sentence.

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