



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
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August 4, 2010

Mr. David A. Wickerham
Saratoga County Administrator
40 McMaster Street
Ballston Spa, New York 12020

Dear County Administrator Wickerham:

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 Saratoga 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,

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

Robert M. Maccarone
Deputy Commissioner and Director

c Honorable James A. Murphy, III, District Attorney
Kathleen Kuznia, Deputy Director, Probation Department



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

IGNITION INTERLOCK PROGRAM PLAN

DAVID A. PATERSON
GOVERNOR



ROBERT MACCARONE
STATE DIRECTOR

SARATOGA 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

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: James Murphy, District Attorney, and co-author John H. Adams, Pending Probation Director

Title:

Phone Number: 5188852263

E-Mail: jmurphy@saratogacountyny.gov

Address: Street: 25 West High Street

City: Ballston Spa, NY

Zip Code: 12020-1912

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 Sheriff, NYSP, and Local Depts)
- Probation Director
- Representative of Legal Services for Indigent
- Sheriff
- STOP-DWI Coordinator
- Superior Court Judge
- Other (SpecifyVictim Services Provider)
- Other (SpecifyDMV Personnel, Town Supervisors, County Administration)

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: Saratoga County Probation Department Contact Name: Kathleen Kuznia Phone Number: 5188844120 E-Mail: kkuznia@saratogacountyny.gov Address: Street: 152 West High Street City: Ballston Spa, NY Zip Code: 12020	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.

Any operator claiming a financial inability to pay (unaffordability) for the installation and maintenance of an approved IID is required to submit in advance to the court 3 copies of the DPCA financial disclosure report form that was developed in conjunction with OCA (DPCA-5001ID-FDR available at <http://www.dpca.state.ny.us>. The statutory standard is not legal indigency. The form will assist the sentencing court in securing relevant financial information. It is solely the sentencing court's responsibility to determine the financial ability of a defendant to afford an IID device. The sentencing court shall determine whether to impose a modified payment plan or whether the fee/charge shall be waived entirely.

For those defendants whose fee has not been waived, excepting transfer cases, the Courts will provide the defendants with a list of qualified manufacturers deemed appropriate by the County which will ensure that the defendants meet their 10 day installation requirement. Probation will provide the list of manufacturers to the Courts as qualified vendors enter the market with equipment possessing the required class and features. For those defendants whose fee has been waived by the Court, they shall be directed to the Probation Department and the Probation Department shall assign these defendants to the vendors proportionate to the amount of "paying" business conducted by these vendors. For intrastate transfer cases (unaffordables), the receiving monitor shall select the manufacturer upon relocation. The department will maintain records to ensure equitability of distribution of unaffordables amongst vendors for Saratoga County residents.

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. 100 % to Saratoga County Probation

Provide contact information for fiscal officer:

Name: Samuel J. Pitcherale

Title: Treasurer

Phone Number: 5188844724

E-Mail: spitcherale@saratogacountyny.gov

Address: Street: 40 McMaster Street, Building #1

City: Ballston Spa, NY

Zip Code: 12020

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 probation department will be notified of a sentence which includes an IID device from the sentencing court. The sentencing court will mail and or fax the DPCA Form DPCA-510-IIN and the Probation or Conditional Discharge Order to inform the probation department of the new sentence no later than 5 days from the date of sentencing. The order will contain the date of sentencing and the amount of time the court is directing that the defendant maintain an IID device (the minimum requirement is 6 months on a CD). The documents will include the name and contact information for the sentenced defendant and the monitor contact information at the probation department. Once sentenced with an IID requirement, the defendant must inform the Probation Department within 24 hours after installation of a NYS approved IID. This will allow probation to commence monitoring as soon as possible.

It is Saratoga County's position that the IID requirement is mandated even while the defendant's license is suspended or revoked during the probationary or conditional discharge sentence. The defendant shall not be allowed to defer installation until the suspension or license revocation period is concluded. It is solely the defendant's responsibility to contact the probation department and make arrangements to install a New York State approved IID device or to provide proof that they do not own a vehicle or that the vehicle has been transferred to another person. If there are vehicles operated by other persons in the same household, but not owned or operated by the defendant, the owners of those vehicles will be expected to file a notarized affidavit with the Court that the defendant is not an operator of the vehicle. If such an affidavit is not filed with the Court, the defendant will be required to install an ignition interlock device in those vehicles as well.

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 Courts will be requested to mail or fax the Monitor Notification of Ignition Interlock Order Form (DPCA-510-IIN) and the CD or Probation Order to the Probation Department upon sentencing of the defendant. Further, the sentencing court must notify probation if the court granted any waiver of the cost of the IID on this form.

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 Courts will be requested to mail or fax the Monitor Notification of Ignition Interlock Order Form (DPCA-510-IIN) and the CD or Probation Order to the Probation Department upon sentencing of the defendant. The Court will also mail the signed DP-16 forms for probation sentences and any form developed to transfer CD sentences to the probation department.

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.

On local jail cases, the assigned probation officer shall contact the Sheriff's Department to determine the discharge date. VINE will be utilized for state prison inmates.

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 Probation Department, at a minimum, shall within 3 business days of notification, for any operator: notify the Court and the District Attorney using the DPCA Form DPCA-133CR-IID

(Notification to Court and District Attorney) where an operator has failed to have installed the ignition interlock device on the operator's owned or operated vehicles; where the operator has not complied with a service visit requirement; any report of alleged tampering with or circumventing an ignition interlock device or 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 .05 percent or higher pursuant to rule. The Probation Department may also file a violation of probation or conditional discharge with a Declaration of Delinquency after reviewing the nature of the transgression with the District Attorney's Office.

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 Administrator
Date