



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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Honorable Steve Levy
Suffolk County Executive
H. Lee Dennison Building
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, New York 11788-0099

June 28, 2010

Dear County Executive Levy:

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 the preparation of the plan, your detailed process regarding the notification of monitors by the courts regarding sentences which require the installation of ignition interlocks, and your detailed process to notify courts and the district attorney of failures. It should be noted that the new rules require that the *monitor* notify both the district attorney and the courts when a failure occurs. Your plan indicates that Suffolk 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,



Robert M. Maccarone
Deputy Commissioner and Director

c. John K. Desmond, Probation Director



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

IGNITION INTERLOCK PROGRAM PLAN

DAVID A. PATERSON
GOVERNOR



ROBERT MACCARONE
STATE DIRECTOR

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: John K. Desmond
Title: Director
Phone Number: 631-852-5101
E-Mail: john.desmond@suffolkcountyny.gov
Address: Street:PO Box 205
City: Yaphank, New York
Zip Code: 11980

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 Suffolk)
- 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: Probation Contact Name: John K. Desmond Phone Number: 631-852-5101 E-Mail: john.desmond@suffolkcountyny.gov Address: Street: 100 East Avenue City: Yaphank, New York Zip Code: 11980	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 will report quarterly to the Courts the proportion of the ignition interlock devices being paid to each involved manufacturer. The Courts will then use these percentages to determine the assignment of the indigent 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.

All available funding will be allocated to the Suffolk County Probation Department which will monitor both probation and conditional discharge cases.

Provide contact information for fiscal officer:

Name: Eric Naughton

Title: Budget Director

Phone Number: 631-853-5684

E-Mail: eric.naughton@suffolkcountyny.gov

Address: Street: H. Lee Dennison Bldg., 10th Fl., Veterans Memorial Highway

City: Hauppauge, New York

Zip Code: 11788

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 attach the ignition interlock condition to the customary Conditions of Probation at the time of sentencing, and will forward to the Probation Department, on that date, this notification. The majority of the Courts will do a direct handover to Probation personnel on their sites. The remainder will forward this information by mail and/or County couriers to the Probation Department on the date of sentencing. The imposition of ignition interlock on a conditional discharge case will be handled as above, except there will be an imposition of the appropriate Conditions of the Conditional Discharge.

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 issuing of any waiver or modification of the cost of the device, or the extension of payment time, will occur at time of sentencing by the involved Court. This information will be attached to the appropriate court documents and forwarded as per (a) above.

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 notify the Probation Department regarding any appropriate intrastate or interstate transfer by the attachment of a Court Notification document to either the Conditions of Probation or of Conditional Discharge, and forwarding it to the Probation Department, as in (a) above.

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.

Advanced notification as to date of release will involve VINE, as well as regular contact by the Probation Department with the Suffolk County Sheriff's office, the New York State Department of Correction, Parole, and the County Parole Re-entry Coordinator. The individual Probation Officer assigned to a particular case will be responsible for developing the advanced notification for case management and ignition interlock purposes.

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, as the monitoring agency for all ignition interlock in Suffolk County, will review all information relevant to the following events.

Upon learning of the following events:

- (i) that the operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates;
- (ii) that the operator has not complied with service visits requirements;
- (iii) a report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof;
- (iv) a report of a failed start-up re-test;
- (v) a report of a missed start-up re-test;
- (vi) a report of a failed rolling re-test;
- (vii) a report of a missed rolling re-test; and /or
- (viii) a report of a lockout mode;

The Probation Department will respond as per Part 352 of the New York State Division of Probation and Correctional Alternatives Rules and Regulation, including the Suffolk County Probation Department's local procedures involving new offenses, violations and technical violations. The Probation Department shall notify the appropriate Court, within three (3) business days of our notification, where an operator has failed to have installed the ignition interlock device on his/her own vehicles(s) or vehicle(s) which he/she operates, 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. The District Attorney's office has stated that it will take notification of these situations upon notification by the Court. The notification to the appropriate Court may take the form either of a

summary to court or a violation of probation or a violation of conditional discharge. Where appropriate, the alcohol treatment provider and the Drinking Driver Program will be notified of an event by the Probation Department.

Depending on the situation, the Probation Department may recommend a modification of the operator's condition of his or her sentence or release whichever is applicable as otherwise authorized by law, including extension of his/her ignition interlock period, a requirement that the operator attend alcohol and substance abuse treatment and/or Drinking Driver Program, referral to the Department of Motor Vehicles to determine whether the department may suspend or revoke the operator's license, or recommend revocation of his/her sentence or release.

Where an individual is also under supervision of the New York State Division of Parole, and is involved in an ignition interlock event, the Probation Department will notify the Division of Parole either directly or through the local re-entry coordinator. Such notification shall take place within three (3) business days of the information regarding the event becoming available to the Probation Department.

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 6/14/10