



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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ROBERT M. MACCARONE
DEPUTY COMMISSIONER
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(518) 485-7692
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August 9, 2010

Honorable A.D. Berwanger, Chairman
Wyoming County Board of Supervisors
143 North Main Street
Warsaw, New York 14569

Re: Wyoming County Plan—Leandra's Law

Dear Chairman Berwanger:

Thank you for taking the time to speak with me last week. As you know, Governor David A. Paterson signed the Child Passenger Protection Act into law on November 18, 2009, often referred to as "Leandra's Law". This important new law will help reduce drunken driving in New York State and save lives. The provisions of law requiring the installation of ignition interlock devices on the vehicles of persons sentenced for DWI misdemeanor or felony crimes will go into effect on August 15, 2010. The mandated use of ignition interlock devices has effectively reduced DWI recidivism and arrests in other "first offender" states and we expect to achieve the same or better outcomes in New York State.

The NYS Division of Probation and Correctional Alternatives, now DCJS Office of Probation and Correctional Alternatives, was charged with the responsibility of promulgating 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 and can be found on our website at www.dpca.state.ny.us. Section 358.4 of these regulations requires that every County establish an ignition interlock program plan with respect to the 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.

OPCA has received your County Plan and very much appreciates its submission. I am very pleased to advise you that OPCA has approved your County Plan, and I would like to take this opportunity to compliment you on its thoroughness and the extensive level of cooperation you received in its preparation. However, we note that Wyoming County designated the New York State Police as the monitoring agency in conditional discharge cases and the NYS Division of

Parole as the monitoring agency in cases where the operator is released from state incarceration. Your county plan does not indicate these agencies were involved in the planning process and the New York State Police has informed us that they will not be performing this monitoring function. Also, the law does not currently allow for the Division of Parole to be a monitor for ignition interlock purposes. While providing flexibility to counties, Chapter 496 of the Laws of 2009 essentially requires that the county probation department monitor conditional discharge cases unless an acceptable alternative is selected by the County.

Accordingly, I hereby approve your plan with the designation of the Wyoming County Probation Department as the monitor in all conditional discharge cases by operation of law, as no acceptable alternative was presented in the county plan. Notwithstanding this provision, your plan indicates that Wyoming County is well-positioned to fully implement the ignition interlock provisions of Leandra's Law, effective August 15, 2010.

Further, I would like to make a few observations regarding the statewide ignition interlock initiative and the newly promulgated regulations. In the process of crafting the state 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 considerable 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 and costs so that monitors can match risk with appropriate devices. Higher risk cases can receive higher Class devices and lower risk cases lower Class devices. The selection of all Class III devices for both probation and conditional discharge cases may 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 and our regulations provide for monitors of both the probation and conditional discharge cases to be allowed the flexibility to choose the Class of device, and for Probation to also select the features for each operator so they can align the risk of the operator with the appropriate level of device. The operator selects the model and manufacturer of the device, except when the cost is waived.

OPCA looks forward to our collaboration with localities as we work to implement this new public safety measure and improve highway safety in New York State. Please feel free to contact OPCA Community Correction Representative Cogswell at 518-485-5168 or Walter.Cogswell@dpc.state.ny.us if you have any questions.

Sincerely,



Robert M. Maccarone
Deputy Commissioner and Director

cc: Joan E. Kibler, Probation Director
Acting Commissioner Sean Byrne



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

IGNITION INTERLOCK PROGRAM PLAN

DAVID A. PATERSON
GOVERNOR



ROBERT MACCARONE
STATE DIRECTOR

WYOMING 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: Joan Kibler
Title: Probation Director
Phone Number: 585 786 8869
E-Mail: jkibler@wyomingco.net
Address: Street: 143 North Main Street
City: Warsaw
Zip Code: 14569

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: New York State Police)

*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)

The New York State police will be the designated monitor for offenders that are sentenced to conditional discharges.

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

Department/Agency: Wyoming County Probation Department Contact Name: Joan Kibler Phone Number: 585 786 8869 E-Mail: jkibler@wyomingco.net Address: Street:143 North Main Street City: Warsaw Zip Code: 14569	Department/Agency: New York State Police Contact Name: Micheal Hockey Phone Number: 585 786 5152 E-Mail: mhockey@troopers.state.ny.us Address: Street:5297 Old Buffalo Road City: Warsaw NY Zip Code: 14569
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.

There are currently two manufacturers that operate in Wyoming County. Assuming both are approved by the state, those clients that are deemed to be financially unable to pay for the device, will be divided using calculation of apportionate use of both companies divided into the total. The resulting percentage will be used to divide up the clients that were determined to be financially unable to pay themselves.

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 funding that becomes available will be divided between the New York State police and the probation department, based on equitable distribution in relation to cases supervised.

Provide contact information for fiscal officer:

Name: Cheryl Mayer

Title: Treasurer

Phone Number: 585 786 8812

E-Mail: cmayer@wyomingco.net

Address: Street: 143 North Main Street

City: Warsaw
Zip Code: 14569

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 is present at County Court proceedings, thus will have immediate notification of the requirement in those cases. The justice courts are provided with fax numbers and contact information to reach the probation department and will be provided with the same information for the Warsaw barracks of the State Police. The courts will be advised to fax the information to the probation department or state police depending on the sentence, which can be done at any time of day or night. The monitoring agency will receive the documentation during business hours or the next business day after the court appearance

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.

If a waiver is granted at the time of sentencing, the above procedure will apply. If not, the Judge will be responsible to fax or deliver the documents to the monitoring agency within 5 days of the determination.

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 sending department will have responsibility to notify the receiving department of the requirement. This notification can be faxed or emailed to expedite the process. If the case is an Interstate transfer, the notification can be done through ICOTS with the sending county monitoring the Ignition Interlock. Of note, these cases will be scrutinized closely and if the transfer is not mandatory, permission will not be granted to relocate. Conditional Discharge cases cannot be transferred, therefore they will remain monitored by NYSP.

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.

In cases with local jail time imposed, the probation department, upon receipt of the sentencing disposition, will contact the jail for the release date. Prior to the offender's release, the probation staff will meet with the offender in jail to advise them of the process and their responsibilities regarding installation of the device. An appointment will be scheduled to meet after they are released to review the procedure and ensure their compliance. In the case of state incarceration, it will be recommended that these cases receive a Conditional Discharge after they have served their time, whereupon the New York State Division of Parole and/or New York State police will provide the monitoring of said individuals. The release of these individuals is already known to the division of parole as they are responsible to prepare for the offender's release back to the community. Currently, the parole officers assigned to supervise Wyoming County offenders, share the building that houses NYSP. As such they can coordinate the supervision of the Ignition Interlock.

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.

In the event that the operator has failed to have the device installed, has not complied with service visits, has tampered with or circumvented a device, failed a start-up re-test; missed a start-up retest; failed a rolling re-test; missed a rolling re-test or has a lockout mode, the probation department and other monitoring agency will be notified by email during business hours. When the offender is on probation, after business hours, the notification will be sent to the Sheriff's department who will then notify the probation officer. Upon verification that a violation has occurred with any of the afore-referenced issues, and any report of a failed test where the BAC is .05 or higher, the district attorney and court will be notified within three business days. When the offender has been sentenced to a Conditional Discharge the police will follow the same protocol.

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