



**Division of Criminal
Justice Services**

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Governor

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Executive Deputy Commissioner

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Deputy Commissioner and Director

STATE DIRECTOR’S MEMORANDUM # 2017-12

**TO: Probation Directors and Commissioners, IID Monitors,
and Qualified Manufacturers of Ignition Interlock Devices**

**FROM: Robert M. Maccarone, Deputy Commissioner and Director *RMM*
Office of Probation and Correctional Alternatives**

DATE: November 15, 2017

**RE: Adopted Changes to Title 9 NYCRR Part 358 - Effective November 15, 2017
“Handling of Ignition Interlock Cases Involving Certain Criminal Offenders”**

New York State’s Ignition Interlock Program, which was implemented with the passage of Chapter 496 of the Laws of 2009, or “Leandra’s Law”, and as subsequently amended, is recognized as one of the strongest ignition interlock programs in the United States. New York is one of 23 “mandatory first offender” states that have enacted laws that require the installation of ignition interlock devices (IIDs) in the motor vehicles of operators convicted of DWI crimes, and it is the only state that includes supervision and monitoring. Chapter 169 of the Laws of 2013, effective November 1, 2013, amended “Leandra’s Law” and authorized the court-ordered installation of IID’s in the motor vehicles of individuals ticketed/arrested for DWI crimes in advance of sentencing. Other changes accomplished through Chapter 169 of the Laws of 2013 included extending the minimum period a device is to be ordered to 12 months, and affirmed that the law is applicable to Youthful Offenders. Significantly, New York is just one of four states where the installation of IID’s is judicially ordered and sanctioned, and the only state that requires that individuals convicted of DWI crimes be sentenced to probation supervision or conditional discharge, in addition to any fee, fine, penalty, or period of incarceration imposed by the Court.

Subsequent to the passage of “Leandra’s Law,” the then NYS Division of Probation and Correctional Alternatives was tasked with drafting, and promulgating the regulations that outlined New York State’s IID Program. These regulations, embodied in 9 NYCRR Part 358-- “*Handling of Ignition Interlock Cases Concerning Certain Criminal Offenders*” were developed with the input of the “Leandra’s Law” Statewide Committee, which included representatives from police, prosecutors, judges, probation, and treatment professionals.

In order to ensure that New York State’s IID Program reflects statutory and technological changes/advancements that have occurred since 2010, it became necessary to amend Part 358. Informed by input from the field, including three periods of public comment, the revised

Part 358 will become effective on November 15, 2017. Among the changes, the revised regulation:

- Reflects the imposition and monitoring of IIDs installed in conjunction with interim probation supervision and in cases prior to sentencing pursuant to a court order.
- Recognizes that a Court may order the installation of the IID, and that the restriction period will commence from the earlier of the date of sentencing, or the date of installation in advance of sentencing.
- Establishes that monitors select the class and features of IIDs available from an available manufacturer in the region where an operator resides for cases ordered in advance of sentencing.
- Authorizes the use of ignition interlock devices with settings that measure lower breath sample volumes to accommodate individuals with documented medical conditions. Requires court authorization consistent with NHTSA requirements and that every county plan establishes a procedure whereby the probation department and any other monitor be notified no later than five (5) business days from any such court approval of a reduced breath sample.
- Requires all jurisdictions to submit an updated IID plan reflective of all operators who may be subject to IID installation and maintenance with monitoring ordered by a court in advance of sentencing or at sentencing, and to make modifications or updates, as required by DCJS. DCJS has required since 2014, that plans have procedures in this area and to amend plans to be consistent with law and regulatory provisions.
- Clarifies recent statutory changes to better ensure that youth adjudicated as Youthful Offenders based upon underlying DWI and/or other Leandra's Law offenses are subject to IID installation and related compliance provisions.
- Clarifies that affected operators provide proof of installation compliance with the IID requirement to the court and the applicable monitor (probation or conditional discharge monitor) in advance of sentence. Previous language required the operator to provide proof to the court, county probation department, and any other designated monitor.
- Requires that manufacturers:
 - o Provide documentation and verification of their respective Standby Letter of Credit (SLOC) as specified in the manufacturer's contract with New York State;
 - The SLOC was previously incorporated in DCJS' 2013 contracts with manufacturers.
 - o Adhere to any county plan real time reporting and emergency notification program requirements;

- o Provide immediate written notice to DCJS and the Department of Health (DOH), whenever their IID devices, services, and/or operations has been compromised or does not function as intended in NYS, or any other state or jurisdiction or disapproved or suspended in whole or in part, revoked or otherwise cancelled by another state or jurisdiction or has received notice or communication from another state or jurisdiction that any such actions are imminent.
- Requires that monitors, notify the appropriate court and district attorney, within five (5) business days of the following events:
 - o where an operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates;
 - o any report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof;
 - o any report of a failed start-up re-test;
 - o any report of a missed start-up re-test;
 - o any report of a failed rolling re-test;
 - o any report of a missed rolling re-test; and/or

where the operator has not complied with a service visit requirement, and has not had his/her vehicle promptly serviced within the three business days immediately following the missed service appointment, the monitor shall notify the appropriate court and district attorney no later than the close of business on the fifth business day.
- Eliminates the previous requirement for monitors to notify the court and District Attorney of any test with a BAC of .05% or greater - recognizing and emphasizing the importance of reporting the confirmatory results of re-tests to New York's program.
- Requires IID Manufacturers to provide necessary documentation to the DOH and notification to DCJS of any requested or approved modification of an IID. DOH regulations require prior approval with respect to any operational modification of IIDs.

The revision to the language relating to notifications for missed service visits is based on an examination of IID manufacturer data, which largely indicates operators routinely make up a missed service visit in the days immediately following a visit. These changes, along with the expansion from three (3) days to five (5) days, during which notifications must be made to the court and district attorney, will provide relief to monitors, while maintaining the effectiveness for which New York's IID program is known. Further, courts will be able to authorize a reduced breath volume, where medically necessary, which will allow certain operators to maintain a vehicle with an IID installed, who previously would have been required to transfer ownership of any vehicle(s) owned. DCJS is currently working with the Office of Court Administration to develop a standardized medical documentation form that will be made available to the field during the next several weeks.

All of these changes to the DCJS Regulations ensure that New York State's IID Program will remain at the forefront of judicially ordered programs in the United States. Overall, these

changes update, clarify, and strengthen regulatory provisions to better enhance public/traffic safety, achieve greater offender accountability, and guarantee quality assurance with respect to Ignition Interlock Device (IID) program service delivery.

For your reference, attached is a copy of the new Part 358 "*Handling of Ignition Interlock Cases Concerning Certain Criminal Offenders*," effective November 15, 2017.

I want to thank you for your role in the continued success of the New York State IID Program. Please feel free to contact Community Correction Representative Leonard R. Price at Leonard.Price@dcjs.ny.gov with any questions.

Attachment:

- 1) Adopted DCJS Regulations 9 NYCRR Part 358