



**Division of Criminal  
Justice Services**

**ANDREW M. CUOMO**  
Governor

**MICHAEL C. GREEN**  
Executive Deputy Commissioner

**ROBERT M. MACCARONE**  
Deputy Commissioner and Director

**STATE DIRECTOR'S MEMORANDUM # 2018-1**

**TO: Probation Directors and Commissioners  
Ignition Interlock Monitors**

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

**DATE: January 17, 2018**

**RE: COURT AUTHORIZATION FOR DEFENDANT TO USE REDUCED BREATH  
SAMPLE VOLUME IN IGNITION INTERLOCK DEVICE**

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The amendments to Title 9 NYCRR Part 358- *Handling of Ignition Interlock Cases Involving Certain Criminal Offenders*, effective November 15, 2017, ensure that New York State's IID Program will remain at the forefront of judicially ordered programs in the United States. Overall, the changes to Part 358 updated, clarified, and strengthened 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.

Included in these amendments is language which authorizes the installation and use of ignition interlock devices with settings that measure lower breath sample volumes for operators with *documented medical conditions*, when approved by the Court. Specifically, the added section of the regulation states that Qualified Manufacturers must:

*agree to any reduced breath sample volume as permitted by NHTSA from 1.5 liters to 1.2 liters, or any subsequent NHTSA reduced volume sample standards, where an individual has submitted sufficient documentation from a physician of a condition which prevents regular operation at normal breath volume levels and such proof authorizing reduction in the breath sample volume has been approved by the applicable criminal court and notification has been provided to the qualified manufacturer by the applicable monitor. [358.5(c)(3)]*

The above ensures that certain operators with documented medical conditions, as approved by the court, may install an ignition interlock device in their motor vehicle that measures a reduced breath volume sample. This will result in an increase in the number of successful installations for operators meeting the specified criteria thereby increasing highway, and public safety.

In order to document the determination by the applicable Court, the NYS Division of Criminal Justice Services, in conjunction with Counsel from the Office of Court Administration (OCA), developed the attached "COURT AUTHORIZATION FOR DEFENDANT TO USE REDUCED BREATH SAMPLE VOLUME IN IGNITION INTERLOCK DEVICE" Form.

The operator/defendant must submit the medical documentation to the Court and ask that the Court complete the Court Authorization for Defendant to Use Reduced Breath Sample Form. The Office of Court Administration has agreed to provide the form on its own website with other IID Forms.

Court approval is required before the operator/defendant will be permitted to install the IID with reduced breath sample volume.

**This form is intended to be completed by the Court and provided to the appropriate Probation Department/Monitor within five (5) business days of the determination.**

OPCA will request OCA to share this form with the courts, and the form will also be posted in the Probation Suite of the Integrated Justice Portal (IJP) for your reference. When convenient, the Probation Department/Monitor may also provide the form to the operator/defendant to submit along with his/her medical documentation to the Court.

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](mailto:Leonard.Price@dcjs.ny.gov) with any questions.

Attachments:

- 1) DCJS/OPCA- 511-REDUCTION IN IID BREATH SAMPLE