



**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 # 2018-7

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

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

DATE: June 22, 2018

**RE: IID “Non-Installers” with Titled/Registered Motor Vehicles-
Probation/Monitor Notification to the Court and District Attorney**

Since the implementation of New York State’s Ignition Interlock Program or “Leandra’s Law” on August 15, 2010, and through December 31, 2017, 127,232 individuals have been ordered to install an Ignition Interlock Device (IID) in any motor vehicle that they “own or operate”. During the same period, Probation Departments and other IID monitors have reported a total of 34,089 (26.8% of ordered) IID’s were installed in the motor vehicles of operators convicted of DWI and other alcohol-related crimes within 10 days of sentencing, and/or in advance of sentencing. Additionally, the NYS Qualified Manufacturers report that, since program implementation, an additional 15% of the operators sentenced have installed IIDs in their motor vehicles when they regain their NYS Driver’s License in the months and years that follow.

Included among those ordered to install IID’s in New York State are operators— “non-installers”—who sell their motor vehicles and divest themselves of title or transfer ownership and registration. Often this occurs as operators no longer possess a valid NYS Driver’s License; their licenses are suspended or revoked following sentence. In regards to non-installation, NYS Vehicle and Traffic Law Section §1198 (4)(a) specifies that the court is to make a finding of “good cause” for that failure, which is to be entered in the record. That section continues:

“Good cause may include a finding that the person is not the owner of a motor vehicle if such person asserts under oath that such person is not the owner of any motor vehicle and that he or she will not operate any motor vehicle during the period of interlock restriction except as may be otherwise authorized pursuant to law. "Owner" shall have the same meaning as provided in section one hundred twenty-eight of this chapter.”

Probation and other IID Monitors in New York State are required to conduct quarterly checks of motor vehicle ownership/title and/or registration status for all “non-installers” using the NYS Department of Motor Vehicle’s Registration and Title Databases. Based upon the information obtained, the IID monitor shall notify the appropriate Court and District Attorney’s

Office, reporting “non-installer” operators with motor vehicles titled and/or registered to them. During the 2017 calendar year, IID monitors conducted 67,857 Registration/Title checks resulting in 1,869 notifications made to the Courts and District Attorney’s Offices. Please see Table 1 below.

Table 1: 2017 DMV Checks of “Non-Installers”

**Lens Entry, DMV Checks of Non-Installers and Court/DA Notification Report
January 1, 2017 – December 31, 2017**

| Agency Name | New orders | Installed | Cases Added to LENS* | DMV Registration Checks Completed** | Court/DA Notifications*** | Notes |
|--------------|---------------|--------------|----------------------|-------------------------------------|---------------------------|-------|
| TOTAL | 16,152 | 4,168 | 19,294 | 67,857 | 1,869 | |

*The number of vehicle operators court ordered to have an ignition interlock device installed pursuant to such aforementioned laws who are registered in NYS' DMV LENS, or comparable system by the applicable monitor each quarter.
 ** The number of operators ordered to install an IID pursuant to such aforementioned laws who have not had such devices installed, regarding whom the applicable monitor has made inquiries to the NYS DMV to ensure that no vehicles are registered or titled to such person during each quarter.
 *** The number of notifications made by the applicable IID monitor to courts and district attorneys.

IID “non-installer” operators who have been convicted of DWI and related crimes who continue to maintain title/ownership and/or registration to motor vehicles continue to pose a threat to highway and community safety. Accordingly, the following guidance is provided to Probation Departments and other IID Monitors.

Pre-Sentence Investigations

To identify the motor vehicles of operators convicted of DWI and related crimes who are required to install the IID, and inform the court so that it can proceed in making findings of “good cause” that such operators no longer own or operate motor vehicles, probation departments are reminded to run DMV title/registration inquiries as part of the Pre-Sentence Investigation completed on all DWI cases.

While probation officers are knowledgeable about competing registration checks, they may be less familiar with title checks. Title checks can be performed on the Integrated Justice Portal (IJP) in the following ways:

1. To obtain title information if the Vehicle Identification Number (VIN) known:
 - a. Conduct a registration search via the IJP
 - b. Enter VIN
 - c. Check Box to “Include History”
 - d. Title information will be returned in results

2. To obtain title information if the VIN is *not* known:
 - a. Conduct a Registration Group Search using the subject's name
 - b. Review results for current VINs
 - c. Proceed to search by VIN in #1 above

3. To obtain a list of all motor vehicles registered to an address (including those not in the subject's name) proceed as follows:
 - a. Submit a Special Computer Application request
 - b. Results may indicate other vehicles which the subject may have access to/be driving

Probation Officers should discuss the results of the vehicle check with the defendant during the interview as part of the pre-sentence investigation, and be sure to include the information in the pre-sentence investigation report submitted to the court. Since vehicle ownership is synonymous with title and/or registration, all motor vehicles titled/registered with the defendant should be identified to the court as required to have an IID installed. All situations where DMV records differ from what the operator reports, including identification of a titled vehicle which the operator claims to have junked, should be brought to the court's attention for further consideration. The court may wish to review any documentation provided by the operator which supports this claim, prior to making a finding of *good cause* for non-installation for vehicle(s) which appear on his/her DMV records.

Supervision/Monitoring

Probation Officers/Monitors should consider filing a Violation of Probation (VOP) or a bringing a Violation of Conditional Discharge to the attention of the Court and District Attorney for operators/probationers identified as maintaining ownership/registration of a motor vehicle and having failed to install a IID as required by law. Bringing these matters to the prompt attention of the Court and District Attorney within five (5) business days is essential.

The circumstances of vehicle ownership may vary, and as such different recommendations discussed below may be appropriate.

Junked Vehicles

In situations where the operator claims to no longer own a motor vehicle which appears on his/her DMV records, and represents that the vehicle was "junked" and this was not previously known and/or addressed by the court at sentencing, and absent any further allegations of misconduct, it is recommended that the Probation Department/Monitor request the court issue an Appearance Ticket rather than a VOP/VOCD warrant. At the court appearance, the court may wish to review any documentation provided by the operator which supports this claim, prior to making a finding of *good cause* for non-installation of the IID pursuant to VTL §1198 4(a). The standardized language below has been prepared and has been included on the attached Notification Form for the use by Probation and other IID Monitors to bring these matters to the attention of the Court and District Attorney. It should be noted that junkyards are required to provide a receipt to the individual who junks a motor vehicle, and subsequently enter vehicle information into the NMVTIS (National Motor Vehicle Title Information System) to ensure that the title of the vehicle will no longer be associated with the owner.

THE ABOVE-NAMED DEFENDANT HAS BEEN FOUND, THROUGH A NYS DMV REGISTRATION/ TITLE CHECK CONDUCTED ON (MM/DD/YYYY), TO BE THE OWNER OF A MOTOR VEHICLE (VIN#:) WITHOUT AN IGNITION INTERLOCK DEVICE INSTALLED AS REQUIRED. WHILE THE OPERATOR CLAIMS TO NO LONGER OWN THIS VEHICLE, IT REMAINS ON HIS/HER DMV RECORD. PLEASE CALENDAR THIS CASE IN ORDER TO ADDRESS THE MATTER AND/OR ALLOW THE DEFENDANT TO PROVIDE DOCUMENTATION WHICH SUPPORTS A FINDING OF "GOOD CAUSE" FOR NON-INSTALLATION.

Current Vehicle Ownership

When a supervising/monitoring agency learns via a DMV inquiry or other means that an individual subject to an IID condition currently owns a motor vehicle (titled and/or registered) without an IID installed, it is recommended that the matter be returned to the court's attention through a VOP/VOCD. At a minimum, Probation/IID Monitor should recommend that the Court order the operator to install an IID in the motor vehicle. Where appropriate, other recommended responses up to and including revocation should be considered. Please ensure that regulatory timeframes regarding Court and District Attorney's Office notification are met through such VOP/VOCD process. Depending on the circumstances of the case, and local practice, a VOP/VOCD Warrant, or an appearance ticket may be recommended as appropriate. Where the individual subject to an IID condition has operated a motor vehicle without having the IID installed as required, or where other violation of VTL §1198 has occurred, the monitoring/supervising agency should promptly consult with the police and the District Attorney regarding the possibility of new criminal charges being pursued. Please recall that simply surrendering the plates from a vehicle and taking it off the road does not constitute non-ownership. If the vehicle is registered and/or titled to the operator, an IID must be installed as required by law.

The language below has been included on the attached Notification Form for use by monitors as "standard language" to bring these matters to the attention to the Court and District Attorney.

THE ABOVE-NAMED DEFENDANT HAS BEEN FOUND, THROUGH A NYS DMV REGISTRATION/ TITLE CHECK CONDUCTED ON (MM/DD/YYYY), TO BE THE OWNER OF A MOTOR VEHICLE (VIN#:) WITHOUT AN IGNITION INTERLOCK DEVICE INSTALLED AS REQUIRED.

Thank you for your attention to this matter. Please feel free to contact Community Correction Representative 2 Leonard R. Price at (518) 485-9941 or via email at Leonard.Price@dcjs.ny.gov if you have any questions.

cc: Honorable Lawrence Marks
Honorable Sherry Klein Heitler
District Attorneys