

Summary:

These proposed amendments make substantive and technical changes to the Division of Criminal Justice Services rule, entitled “Handling of Ignition Interlock Cases Involving Certain Criminal Offenders”. Overall, it updates, clarifies, and strengthens 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.

Rule Sections 358.1 and 358.2 are amended to update the objectives and applicability regulatory language to reflect recent statutory changes.

Rule Section 358.3 governing definitions, is amended to refine and/or reinforce certain definitional terms. Two new definitions of “Emergency Notification Program” and “real time reporting” are also added to reflect new programmatic features which are now operational.

Several proposed amendments are made to Rule Section 358.4 governing Ignition Interlock Program Plans. Plan content is updated to incorporate recent statutory changes as to imposition of IIDs in advance of sentencing and to better ensure that plans reflect handling of interim probation supervision cases. Additional proposed language will facilitate timely notification procedures to monitors where a court approves reduction in a breath sample in accordance with new regulatory provisions.

Rule Section 358.5, governing the Approval Process and Responsibilities of Qualified Manufacturers, is amended with respect to application procedures, including but not limited to, updating outdated language, and establishing parameters surrounding open application process and contractual term to promote consistency. Other proposed changes are sought to achieve greater offender and service delivery accountability. For example, new reporting language is proposed with respect to test results to better guarantee serious failed tests by operators are timely reported. Other changes strengthen provisions to establish timely DCJS notification of significant operational service delivery problems. Significantly, a new regulatory provision establishes a mechanism consistent with National Highway Traffic Safety Administration standards which will permit court authorization of a reduced breath sample for certain operators with certain health issues which prevent them from regular operational usage of the IID.

Rule Section 358.6 governing cancellation, suspension, and revocation of qualified

manufacturers, installation and service providers and IIDs, is modified to clarify that verbal and/or written notification or communication of disapproval, suspension in whole or in part, of revocation or cancellation of a manufacturer's device, services, and/or operations by another state or jurisdiction, may result in revocation of a certified IID or suspension or removal of a qualified manufacturer or installation/service provider in New York State.

Proposed changes to Rule Section 358.7 governing monitoring and Rule Section 358.9 governing installation and costs, would update these regulatory provisions to reflect recent statutory changes and reference interim probation supervision. Additionally, Rule Section 358.7 sets forth revised intrastate and interstate monitoring procedures to establish that for intrastate conditional discharge cases, the sentencing county monitor shall contact the monitor in the county of residence to determine the class of IID available and the sentencing county monitor shall perform monitor services. Further where there is an Emergency Notification Program, the monitor shall notify the IID Manufacturer so that the designated law enforcement agency within the county of residence shall receive all applicable communications/notifications. Further, where an IID is to be imposed in advance of sentencing, the monitor in the county of residence is to be similarly contacted by the monitor in the county where the court orders installation to determine the specific class and features of the IID available and an identical procedure will be required for Emergency Notification Programming in the county of residence. With respect to interstate transfer, regulatory language is streamlined.

Among proposed regulatory changes are the following:

- 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.
- Clarifies that the period of IID restriction will commence from the earlier of the date of sentencing, or the date of installation in advance of sentencing and that a court may not authorize the operation of a motor vehicle by any individual whose license or privilege to operate a motor vehicle has been revoked.
- Establishes that monitors select the class and features of IIDs available from an available manufacturer in the region where an operator resides.

- Requires that the applicable monitor coordinate monitoring with the NYS Department of Corrections and Community Supervision (DOCCS) where the operator is under DOCCS supervision and promptly provide such agency with reports of any failed tasks or failed reports.
- Requires a court authorization for a reduction in breath sample to be 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.
- Requires all jurisdictions to submit an 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 of DWI and/or other alcohol related offenses are subject to IID installation and related compliance provisions.
- Clarifies recent statutory change that affected operators provide proof of installation compliance with the IID requirement to the court and the applicable monitor where such person is under probation or conditional discharge supervision.
- Requires that manufacturers :
 - 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.

- Adhere to any county plan real time reporting and emergency notification program requirements;
- Report a failed test or re-test where the BAC is .05 percent or higher; and provide immediate written notice to DCJS and the 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.

Additionally, as existing DOH regulations require prior approval with respect to any operational modification of IIDs, new regulatory language reiterates this requirement and for any manufacturer to provide necessary documentation to DOH and that any such manufacturer notify DCJS of any intent to do so and provide a written summary of any requested or approved modification.