

Regulatory Impact Statement

1. Statutory authority:

Chapter 496 of the Laws of 2009, commonly referred to as Leandra's Law was a groundbreaking measure which strengthened various laws specifically relative to driving while intoxicated (DWI) or while impaired by drugs. The purpose of the law was to achieve greater offender accountability, promote public safety, combat and deter drunk driving, and better safeguard the welfare of child passengers. Among its provisions were requirements of rulemaking to the former Division of Probation and Correctional Alternatives, which was merged in 2010 with the Division of Criminal Justice Services (DCJS). Specifically, pursuant to Vehicle and Traffic Law (VTL) §1193(1) (g) DCJS is responsible for promulgating regulations governing the monitoring of compliance by persons ordered to install and maintain ignition interlock devices to provide standards for monitoring by probation departments, and options for monitoring of compliance by such persons, that counties may adopt as an alternative to monitoring by a probation department. Further, VTL §1198(5) (a) establishes that in the event of a court waiving the cost of any operator subject to the Leandra's Law requirement of installation and maintenance of an ignition interlock device (IID), "the cost of the device shall be borne in accordance with regulations issued [by DCJS] ...or pursuant to such other agreement as may be entered into for provision of the device."

2. Legislative objectives:

The proposed rule amendments serves both the Governor's and the Legislature's underlying objective of "Leandra's Law" and its subsequent amendment, Chapter 169 of the Laws of 2013, to further strengthen DWI laws and penalties through statewide implementation of IID conditions so as to better enhance public/traffic safety, achieve greater offender accountability, and guarantee quality assurance through the establishment of minimum standards for the usage and monitoring of IIDs following a conviction of or adjudication as a Youthful Offender arising from a violation of VTL §1192(2),(2-a), (3) or any crime defined by the VTL or Penal Law of which an alcohol-related violation of any provision of §1192 is an essential element, or

where ordered by a court in advance of sentence following an individual's arrest for one of the specified offenses.

3. Needs and benefits:

Rule amendments are necessary to reflect Chapter 169 of the Laws of 2013, as well as to incorporate particular changes of the revised National Highway Traffic Safety Administration (NHTSA) specifications for IIDs, and achieve certain operational refinements deemed appropriate following programmatic experience.

The proposed regulatory changes are beneficial to better safeguard the public, optimize traffic safety, and to promote greater offender and service delivery accountability.

4. Costs:

a. DCJS does not anticipate that proposed rule revisions will result in any additional costs to local government. The proposed regulatory changes continue to allow each jurisdiction with the flexibility to choose one or more persons or entities responsible for monitoring conditional discharge cases where a defendant has been required to install and maintain a functioning IID in any vehicle which they own or operate and affords the same flexibility as to cases involving individuals who agree or are ordered to install and maintain an IID in advance of sentencing. Since 2010, DCJS has annually applied for and received grant funding from the NYS Governor's Traffic Safety Committee (GTSC) in NHTSA monies to help offset local government costs in performing monitoring services. Currently, monies are distributed to the localities pursuant to a formula based on recent statistics of DWI conviction rates. DCJS is unaware of any local government concerns with this formula. DCJS has recently received approval of approximately 1.2 million dollars for Federal fiscal year 2018, similar to the prior Federal fiscal year award.

The revised regulation is not expected to result in any additional costs to two of the three qualified manufacturers, nor to their installation/service providers. One manufacturer, CST/Intoxalock, may have additional expenses as well as additional income as a result of operators having to visit their installation/service

providers rather than the past practice of mailing in the handsets without service visits. This practice prevented monthly inspection of the IID installation and the opportunity for technicians to detect any attempted tampering or circumvention by the operator, allowing for a potential public safety risk.

In accordance with existing regulations, all manufacturers applied for undertaking IID service delivery in conformity with NYS statutory and regulatory provisions. DCJS has contracts with all manufacturers as to operational performance and approve their maximum fee/charge schedule which takes into account a 10% fee waiver cost.

Existing statutory and regulatory provisions govern IID costs. Amendments do not change provisions in this area. Statutorily, where a court, determines financial “unaffordability”, it may impose a payment plan or waive the fee. Where waived, jurisdictions have established a procedure whereby costs are proportionately borne among manufacturers utilized at the local level.

b. Through grant funding received from GTSC, DCJS employs a full-time Community Correction Representative 2 assigned to the IID program. DCJS as noted earlier has received a GTSC award of NHTSA monies to help offset monitor costs of local government incurred. DCJS does not anticipate additional state and/or local costs from proposed revisions.

5. Local government mandates:

The existing rule established that every jurisdiction must submit for DCJS approval an ignition interlock plan for monitoring the use of IIDs. This revised rule states that a county may submit an amended plan on its own initiative; and that DCJS may require modifications or updates as it deems necessary to be consistent with law or regulatory provisions. In 2014, DCJS requested that localities submit amended IID Plans to reflect any changes which may have occurred since the filing of the original plans, including those resulting from aforementioned Chapter 169. The County Plan content is straightforward, simple, and largely prescriptive to ease any burden on localities. Monitoring functions associated with IID operators are statutorily required. DCJS’ rule and proposed amendments have been carefully streamlined to afford considerable flexibility, yet require swift and certain court and district attorney notification as to certain failed tasks and failed tests. Additionally, it places specific responsibilities upon qualified manufacturers, installation/service providers, as

well as operators to provide timely information and/or reports to monitors so as to assist them in managing their caseload.

6. Paperwork:

As noted above, this revised rule clarifies that jurisdictions may submit an amended County IID Plan on its own initiative; and that DCJS may require modifications or updates as it deems necessary to be consistent with law or regulatory provisions. As part of receiving Federal award monies, DCJS requires and jurisdictions agree to have their monitors provide quarterly statistical information regarding IID program operations to DCJS. These statistical reports can be automatically generated by probation departments which use the Caseload Explorer system; 55 are using the Caseload Explorer System at this time and template reporting forms are available for the remaining monitors.

IID Manufacturers wishing to conduct business in NYS are required to apply to DCJS through a standardized application format. Currently three manufacturers have contracts with DCJS. DCJS recently issued a Request for Applications seeking additional interested manufacturers and/or distributors and is in the process of contracting with another company which has received necessary certification from the Department of Health and agrees to adhere to regulatory and contractual requirements. Other data reporting requirements imposed upon qualified manufacturers and installation/service providers are routine business activities and essential to offender accountability and community safety. DCJS, in conjunction with the Department of Motor Vehicles and Office of Court Administration, and other partners, has developed approximately fifteen (15) reporting forms to facilitate exchange of information and promote consistency, which greatly benefit all jurisdictions in program implementation and compliance. The Financial Disclosure Report is available in both English and Spanish.

7. Duplication:

While DOH certifies IIDs, this revision does not duplicate any other existing State or Federal requirements.

8. Alternatives:

This proposal takes into account changes in law, and NHTSA standards, and certain other refinements

which can only be accomplished through revising the existing regulation. In developing the proposal, DCJS considered feedback provided by the localities, qualified manufacturers, and other state and local entities. Additionally DCJS distributed an earlier rule proposal and made additional revisions based on feedback received from stakeholders to address certain operational issues raised. This proposal was discussed with and received support from the Probation Commission at its meeting in April 2017. Overall, DCJS received positive support as to proposed regulatory changes.

9. Federal standards:

There are no federal standards governing the monitoring of offenders ordered to use an IID. Notably, NHTSA published final updated Model Specifications for Breath Alcohol IIDs and this rule requires that any IID used meets these revised Specifications. As NYS law requires monitoring and DOH regulations require manufacturers with DOH approved certified IIDs satisfy DCJS regulations, it is necessary that DCJS' rule and proposed amendments be more comprehensive than Federal specifications, which are guidelines for the performance and uniform testing of IIDs.

10. Compliance schedule:

In light of DCJS previously disseminating proposed regulatory changes to all affected parties, positive feedback received, and that revisions are not substantial in nature, DCJS anticipates a 60 day maximum time from adoption to rule amendments becoming effective.