

OPCA



Implementing the Child Passenger Protection Act or “Leandra’s Law” in New York State

NYS Sheriffs Association
13th Annual Road Patrol and Law Enforcement
Supervisors Training Conference
September 14, 2010
Gideon Putnam Hotel, Saratoga Springs

Robert M. Maccarone
Deputy Commissioner DCJS
and Director OPCA

1

Implementing Leandra’s Law in New York State

- Authority: November 18, 2009—Governor David A. Paterson signs Chapter 496 of the Laws of 2009 :
 - Effective December 18, 2009
 - New Class E Felony Offense-DWI with a Child passenger under 16 years of age is punishable by to 4 years in state prison (445 arrests as of August 30, 2010). Note “CIV” notation by police.
 - Also enhances penalties for driving while intoxicated and causing the death or serious injury to any child (ren) passenger under 16 years of age. Operators convicted of Aggravated Vehicular Assault (Class C Felony) and Aggravated Vehicular Homicide (Class B Felony) offenses are subject to state imprisonment up to 15 and 25 years imprisonment, respectively.

2

Implementing Leandra's Law in New York State

- Section 5 of Chapter 496 of the Child Passenger Protection Act or Leandra's Law
 - Effective August 15, 2010
 - Requires that persons convicted of having committed VTL Section 1192 Misdemeanor or Felony DWI Offenses, on or after the date of enactment, (November 18, 2009) and sentenced on or after August 15, 2010, be sentenced to a term of probation or conditional discharge, in addition to any sentence of imprisonment or payment of any fine imposed, and have an Ignition Interlock Device installed in any motor vehicle they "own or operate". Law requires that the IID be installed for a minimum of six months.

3

Implementing Leandra's Law in New York State

- New York State joins 9 other states as "first offender states" requiring mandatory use of Ignition Interlock Devices
- Alcohol Ignition Interlocks are a proven tool to effectively reduce impaired driving, protect the public and support long-term risk reduction among drunk drivers--Study by The Traffic Injury Research Foundation, February 2010
- Research indicates that offender behavior reverts when the IID is removed
- Court ordered conditions for use of ignition interlock devices for longer periods of time

4

Implementing Leandra's Law in New York State

- Statute requires OPCA to promulgate regulations and address "unaffordability" ---270 days timeframe

Chapter 496 Section 5

- (a) The cost of installing and maintaining the ignition interlock device shall be borne by the person subject to such condition unless the court determines such person is financially unable to afford such cost whereupon such cost may be imposed pursuant to a payment plan or waived.
- In the event of such waiver, the cost of the device shall be borne in accordance with regulations issued under paragraph (g) of subdivision one of section eleven hundred ninety-three of this article or pursuant to such other agreement as may be entered into for provision of the device.

5

Implementing Leandra's Law in New York State

Who are the stakeholders? Working Group?

- Governor, Legislature, Judiciary
- Counties/Agencies—Probation, STOP-DWI, DDP, TASC, etc.
- Prosecutors and Defense Counsel
- Law Enforcement-NYSP, Sheriffs, Police
- Statewide Associations—NYSAC, STOP-DWI Coordinators,
- NYS Drinking Driver Programs, Traffic Safety Programs
- State Agencies—Governor's Counsel, DOH, DMV, OGS, OSC, OAG, OASAS, DCJS, Parole, DOCS, DOB
- ITSMR-Institute for Traffic Safety Management and Research
- Ignition Interlock Device Manufacturers
- Motor Vehicle Operators and the Public

6

Implementing Leandra's Law in New York State

- DPCA Promulgated Statewide Emergency Regulations
 - DPCA promulgated Statewide Emergency Regulations on April 23, 2010 as Part 358 of 9 NYCRR; and again on July 21, 2010
 - DPCA involved all state and local stakeholders in the development and review of multiple drafts of the regulations.

7

Implementing Leandra's Law in New York State

- What are the 9 essential components of implementation?
 - Establish Workgroup (December 2010)
 - Promulgate Emergency Regulations (April 23, 2010)
 - Request for Applications by Manufacturers (May 12, 2010)
 - Contract Development and Execution—(July 15, 2010)
 - County Plans (Submission Deadline 6/15/10)
 - Promulgate Statewide Forms (June 3, 2010) & Reports
 - Statewide Training—NYPTI, Magistrates, Judicial Webinars, Regional Law Enforcement Training
 - Statewide Public Education and Media Campaign
 - Strong Leadership & Commitment to Goal of Implementation

8

Implementing Leandra's Law in New York State

- Request for Manufacturer Applications
 - Manufacturers Roundtable Held March 8, 2010
 - Request for Applications –Proposals Returnable May 12, 2020
 - 6 manufacturers “qualified” to do business on and after August 15, 2010--Open & Continuous RFA thereafter (3 new Applications pending)
 - compliance with regulations (DPCA Part 358 of and DOH Part 59)
 - intent to service 1-4 regions within NYS—regional approach attracts multiple vendors and new vendors, ensuring a quality product and service at a competitive price (affordability)
 - Set initial fee/charge structure ceiling —competition drives pricing
 - **Qualified Manufacturers must provide Court ordered “payment plan” or IID’s to operators deemed unable to afford them —assume 10% statewide “unaffordability” rate (not indigency)

9

Implementing Leandra's Law in New York State

DPCA Regulations require manufacturer IID specifications:

- IID set point of .025% BAC
- Start-Up Test: if failure--a Start-Up Retest within 5-15 minutes (continues)
- Start-Up Test: if successful--Initial Rolling Test within a random variable interval ranging from 5-15 mins. If Rolling Test successful: subsequent Rolling Tests at random intervals not to exceed 30 mins. If unsuccessful (failed or missed Rolling Test): Rolling Retest promptly within 1-3 minutes. Failed or missed Rolling Retest causes vehicle horn to sound & IID to emit high pitch shrill prompting operator to pull over and shut off vehicle.
- IID lockout mode: one failed or missed “start-up retest”, one failed or missed “rolling retest” within one service period, or one missed service visit. Operator must return to service center for data download and IID reset within 5 business days or the motor vehicle becomes inoperable (will not start)
- All events, including failed start-up tests, failed rolling tests are recorded and reported to monitors. Lockout mode: monitors must report to DA and Court.

10

Implementing Leandra's Law in New York State

County Planning Process--regulations require counties to submit implementation plans by June 15, 2010

- Designate monitoring agency for CD cases (default is probation)
- Acknowledge agreement with statewide regulations: monitoring agencies for CD cases to determine Class of Instrument; probation to determine Class and features; and operators to select model and manufacturer of IID
- Procedure for equitable distribution of "waived" IID units
- Procedure for distribution of any available funding to support monitoring
- Procedure for Court notification to monitoring agencies within 5 business days
- Procedure for advanced notification of operators released from incarceration
- Procedure for monitors to report failed tasks/tests/lockouts to DA and Courts

11

Implementing Leandra's Law in New York State

DPCA Regulations requirements for monitoring:

- Monitor shall receive court notification of order for IID within 5 business days
- Installation/service provider shall install within 7 business days of request— Operators required to have IID installed w/in 10 business days of Court Order
- Operator shall provide proof of installation within 3 business days to Court, County Probation Department and any designated monitor
- Operator shall submit to service visits within 30 calendar days. For detachable handheld units, submit to 30-day visits, followed by 60-day visits
- **Monitor shall notify the appropriate court and district attorney, within 3 business days of following: 1) operator failure to install IDD, 2) operator has not complied with required service visit, 3) any report of alleged tampering or circumvention of IDD, or 4) any report of lockout mode, and/or any report of a failed test or retest where BAC is .05% or higher

12

Implementing Leandra's Law in New York State

- Metrics--DWI Convictions in New York State
- 2008 Data
 - 65,000 arrests for DWI
 - 25,000 convictions (felony and misdemeanor)
 - 20,000 violations (DWAI)

 - 25,000 convictions (felony and misdemeanor)
 - 9,000 (40%) sentenced to probation
 - 16,000 (60%) other dispositions including prison, jail and large majority pay fine

13

Implementing Leandra's Law in New York State

- Monitoring and Offender Accountability –Touchstone of Effective Ignition Interlock Programs --Harm Reduction
 - Impact on Localities for Monitoring and Supervision
 - OPCA invited to submit statewide grant application for \$3 million to the NYS Governor's Traffic Safety Committee (GTSC)—Start Date 10/1/10
 - NHTSA funds to be distributed to counties and the City of New York based on number of DWI convictions
 - Grant term: 1, 2010-Sept. 30, 2011
 - Federal Funds regarded as seed money and not sustaining

14

Implementing Leandra's Law in New York State

- Multiple Manufacturers to serve 25,000 offenders
 - NYS divided into four (4) regions (consistent with COPA regions) to ensure that the service is available in all localities.
 - Manufacturers may seek to be “qualified” to do business in 1,2, 3 or all 4 regions; must meet DPCA, DOH regulations and the 50-mile service requirement---this spurs competition
 - Importantly, State Regulations provide that Operators will shop manufacturer (model) but probation and monitoring agencies will determine the class of ignition interlock device and probation will determine class and features

15

Implementing Leandra's Law in New York State

- IID classified into three (3) distinct classes:**
- CLASS I: This CLASS contains the following features:
 - Meets all New York State Department of Health and National Highway Traffic Safety Administration Regulations and Standards, Utilizes fuel cell technology,
 - Reporting capabilities, Capabilities for storage of data, Programmable Re-Test Sequences, Data download, inspection and re-calibration service, and
 - Anti-tampering and anti-circumvention features.

16

Implementing Leandra's Law in New York State

- **CLASS II:** This CLASS has all the features of CLASS I and contains the following additional features:
- Photographic positive identification capability (camera or biometric facial recognition).
- **CLASS III:** This CLASS has all the features of CLASSES I and II and contains one or more of the following additional features:
- GPS location of vehicle capability, Real time data reporting, Infra-red or other low-light camera capability for night use, Hum Tone Detection, Infra-red sensor that detects heat and proximity to verify human breath, Keys enabling service codes to be entered, Early recall system if a fuel cell fails-uses split cell technology, Restricted drive time capabilities, Unlock code to minimize towing due to lockouts, Voice instruction, Probation/Judicial Internet Access for Real-Time Monitoring 24/7, 911 Emergency Response, target tracking, subject must be in photo to take test.

17

New York State
Office of Probation and Correctional Alternatives

IGNITION INTERLOCK DEVICE AVAILABILITY AS OF August 15, 2010

Manufacturer	Device Model	Class	Install Fee (other fees apply)	Monthly Fee (other fees apply)	GPS location	Real- Time Data Report	Infra- red/low light camera	Infra- red sensor	Keyabi- le Service Codes	Inter- net Real- Time Moni- toring	Target Track- ing	Hum Tone Detect- ion	Class III Features					
													Fuel Cell Fail Recall	Restrict- ed Drive Time	Lockout Code	911 Emergency Response		
Consumer Safety Technology, Inc. Intoxalock	1001A	I	\$80.00	\$69.50														
Consumer Safety Technology, Inc. Intoxalock	1001A w/Advanced Wireless Technology	III	\$110.00	\$87.50	X	X	X					X	X	X	X	X	X	X
1A Smart Start, Inc.	SSI-1000	I	\$0.00	\$74.95														
1A Smart Start, Inc.	2020	III	\$0.00	\$74.95			X								X	X		
Interceptor Ignition Interlocks, Inc.	M-1	III	\$125.00	\$90.00	X	X	X		X	X								X
National Interlock Service (NY), Ltd.	FC 100 (no camera)	I	\$70.00	\$75.00														
National Interlock Service (NY), Ltd.	FC 100 (w/camera)	III	\$95.00	\$92.00			X					X						
Draeger Safety Diagnostics, Inc.	XT (Aug. 15, 2010)	III	\$85.00	\$80.00			X											
Alcohol Countermeasure Systems Corp.	WR2	I																
Alcohol Countermeasure Systems Corp.	WR3	I																
Senso-O Lock of America, LLC	FR000	I	\$100.00	\$85.00														

18

Implementing Leandra's Law in New York State

Matching operator with Class of Ignition Interlock Device

- Distinguish first time convicted offender from repeat offender and conditional discharges and probation cases
- Consider 92-93% compliance
- 25,000 convictions>>>>9,000 probation cases
- Utilizing all classes of instruments will lower cost to operator, increase affordability and decrease need for payment plans and consideration of waived costs
- Consider monitoring costs associated with real time reporting and resources required for real time response

19

Implementing Leandra's Law in New York State

- "Unaffordability" v. Indigency
 - OPCA develops statewide Financial Disclosure Report available at www.dpca.state.ny.us
 - Operator /Applicant required to complete/submit 3 copies to court
 - FDR Form captures offender's income, assets and expenses, including monthly service for cell phone, cable/satellite television
 - Affordability>>>> Payment Plan>>>> Waiver Considerations
 - **Manufacturers required to comply with Court authorized payment plan or waiver. Manufacturers agreements with NYS-OPCA assume a maximum of 10% statewide rate of "unaffordability" before renegotiation is considered—discuss experiences in other states

20

Implementing Leandra's Law in New York State

- Issues for Counties—Payment Plans and Judicial Waivers “unaffordability”
 - Cost will be borne by drunk drivers and **not** taxpayers and localities
 - Statute provides for “payment plans” judicially “waived” fees and costs for IID’s for operators determined by sentencing courts unable to afford the cost. This is not “legal indigency”
 - OPCA will regularly monitor “unaffordability” determinations, number and percent of waiver units ordered and provide opportunity for manufacturers to adjust pricing
 - Use of statewide FDR is an important training issue

21

Robert M. Maccarone
Deputy Commissioner and Director

NYS Division of Criminal Justice Services
Office of Probation and Correctional Alternatives
518-485-2394

Robert.Maccarone@dcjs.state.ny.us

Questions

22