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**STATE DIRECTOR'S MEMORANDUM #2010-14**

TO: County Executives/Administrators  
Probation Directors/Commissioners

FROM: Robert M. Maccarone, Deputy Commissioner and Director

DATE: December 3, 2010

SUBJECT: Guidance for the Interstate and Intrastate Transfer of Ignition Interlock Cases

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**Introduction**

On November 18, 2009, Governor David A. Paterson signed into law Chapter 496 of the Laws of 2009, entitled "The Child Passenger Protection Act of 2009" known as "Leandra's Law". This new law requires the installation of breath alcohol ignition interlock devices in the motor vehicles owned or operated by offenders convicted of DWI misdemeanor and felony offenses who are sentenced on or after August 15, 2010. The Division of Criminal Justice Services (DCJS) has promulgated regulations (9 NYCRR Part 358) governing the monitoring of compliance by persons ordered to install and maintain ignition interlock devices on vehicles they own or operate. A section of these rules governs the transfer of probation and conditional discharge cases between New York State and other states, as well as between counties within the State of New York. Monitors of both probation and conditional discharge cases have requested that the DCJS Office of Probation and Correctional Alternatives provide further guidance in the area of ignition interlock case transfer between counties and between states. This document is based on the new regulation and provides recommendations regarding the implementation of the rule and should be viewed as guidance and interpretation and not as an expansion of the required regulation.

For additional information, please refer to Part 358 of Title 9 NYCRR found at <http://www.dpca.state.ny.us/pdfs/358.pdf>, as well as your county's Ignition Interlock plan available at <http://www.dpca.state.ny.us/ignition.htm>.

## **Identification of Ignition Interlock Transfer Cases**

The identification of Ignition Interlock cases for transfer to other jurisdictions should occur as early as possible in the criminal justice process as outlined in this guidance. OPCA recommends that pre-sentence Investigations be conducted on convicted DWI offenders, and not waived, so probation can provide the best available information to the Court and ensure that the supervising or monitoring agency is fully apprised of the offender/operator.

Section 358.7 (a) (1) of Title 9 NYCRR requires that local monitors receive notification of any operator which it has responsibility to monitor within five (5) business days of the sentencing court's order imposing the condition of an Ignition Interlock Device. The process describing how supervising probation departments and monitors are apprised of the Court's order was included by Counties and the City of New York in their plans submitted to OPCA. The courts have been encouraged to make this notification via form DPCA-5110-IIN, "Monitor Notification of Ignition Interlock Order" which can be found under the Probation Services Suite of *e-Justice, New York* --Ignition Interlock tab. Upon receipt of such an order from a sentencing court, the monitor should immediately review the operator residence section. In the event this form advises that an operator is living in a jurisdiction other than that served by the monitor, and the monitor was not previously aware of this out-of-jurisdiction residence, the monitor should develop a plan of action to ensure a smooth transfer of the case that is compliant with Ignition Interlock requirements. Where a period of incarceration, other than intermittent, has been imposed, monitors should receive notification within five (5) business days of the defendant's release pursuant to their county plan.

## **Intrastate Transfer**

Cases where Intrastate transfer of Ignition Interlock is considered include those in which:

- The defendant resides in another county at the time of arrest/prior to sentencing,
- The defendant expresses a desire to relocate to another county prior to sentencing, or
- The defendant expresses a desire to relocate to another county following sentencing.

It is recommended that the District Attorney's Office review an operator's residential address at the time of arraignment for an Ignition Interlock qualifying offense to determine if any transfer issues need to be considered. In the event that a defendant is Released Under Supervision (RUS) to a Probation Department on an Ignition Interlock qualifying arrest charge, the Probation Department's pre-trial program should confirm the defendant's address, and monitor such address for any changes that may occur pending the return court date. Where a defendant is released to a pre-trial program not operated by a probation department, the pre-trial program should notify the District Attorney's Office of any change in the status of the defendant's residential address.

In cases where a plea to an Ignition Interlock qualifying charge is entered by a defendant who resides in a county other than the jurisdiction where the case is pending, AND a pre-sentence investigation is not ordered, the Court will notify the appropriate Ignition Interlock monitor for the county.

- Should the plea agreement call for a sentence of probation supervision, notification should be provided to the probation department by the Court. The sending probation department should promptly contact the receiving probation department to advise that department of the case. The receiving probation department will select the class and features of the Ignition Interlock device to be installed in the operator's vehicle. If the court has ordered the operator to pay all fees or has provided for a payment

plan, the operator can then select the model of Ignition Interlock device, which meets those class and features specifications, from a qualified manufacturer doing business in the operator's region of residence. In any case where the cost of the Ignition Interlock Device has been waived by the sentencing court, the monitor (probation) selects the qualified manufacturer to provide the device. A directory of Probation Interlock Ignition Monitors can be found in the Ignition Interlock tab of OPCA's website under "County IID Plans" at: <http://www.dpca.state.ny.us/ignition.htm>. It is important to note that the financial status of the offender may change with time and the court within the receiving jurisdiction may wish to reconsider any change in conditions concerning payment. An updated Financial Disclosure Report should be completed by the offender.

- Should the plea agreement call for a sentence to a Conditional Discharge (CD), notification should be provided to the designated CD Ignition Interlock Monitor in the sentencing court's jurisdiction by the sentencing Court. The CD monitor in the sending county should promptly contact the CD Monitor in the receiving county to advise that agency of the case. The CD monitor in the receiving county will select the class of the ignition interlock device to be installed in the operator's vehicle. If the court has ordered the operator to pay all fees or has provided for a payment plan, the operator can then select the model of ignition interlock device, which meets the class specification, from a qualified manufacturer doing business in the operator's region of residence. In any case where the cost of the ignition interlock device has been waived by the sentencing court, the monitor selects the qualified manufacturer to provide the device. A directory of Conditional Discharge Ignition Interlock Monitors can be found in the Ignition Interlock tab of OPCA's website under "County IID Plans" at: <http://www.dpca.state.ny.us/ignition.htm>.

It should be noted that there is currently no provision in New York statutes for the intrastate transfer of judicial jurisdiction over a Conditional Discharge case.

Whether the proposed disposition includes a sentence to probation supervision, or conditional discharge, the defendant should be encouraged to have an ignition interlock device from a qualifying manufacturer, for which service is available in both the sending and receiving counties, installed in his/her vehicle prior to sentencing. As previously noted, the required class (CD cases) and class and features (probation supervision) of the device will be determined by the receiving county. The monitoring/supervising authority with the day-to-day responsibility for the offender is in the best position to ensure community safety. A directory of Service Center locations and Qualified Manufacturers can be found in the Ignition Interlock tab of OPCA's website under "Manufacturers/Vendors" at: <http://www.dpca.state.ny.us/ignition.htm>.

In the event that an Ignition Interlock Device which meets the class and features requirements of the receiving county is not installed prior to sentencing, Title 9 NYCRR Part 358.7 provides that such device must be installed within ten (10) business days of the condition being imposed, or release from imprisonment.

For Ignition Interlock eligible cases where Pre-Sentence Investigations are ordered, during that investigation, the Probation Department should confirm the residence status of the defendant, and any plans he/she has to relocate. During any such Pre-Trial Supervision or Presentence Investigation phases, should the Probation Department learn that the defendant is residing outside of the jurisdiction of the Court, or plans to reside outside of the jurisdiction of the court, the Probation Department should notify the Court and District Attorney's office of such so that the transfer of Ignition Interlock requirements will be considered in the court proceedings.

## **Interstate Transfer**

Cases where Interstate transfer of Ignition Interlock is considered include those in which:

- The defendant resides in another State at the time of arrest/prior to sentencing,
- The defendant expresses a desire to relocate to another State prior to sentencing, or
- The defendant expresses a desire to relocate to another State following sentencing.

As in all potential Interstate transfer cases, all requirements of the Interstate Commission of Adult Offender Supervision (ICAOS) shall be followed. Probation officers with potential transfer cases should consult the department's Interstate Transfer Designee to ensure such compliance. The probation department's Interstate Transfer Designee will review the case to assess eligibility for transfer under ICAOS rules found at <http://www.interstatecompact.org/LinkClick.aspx?fileticket=bqpt53W3oQ0%3d&tabid=89>. Cases that qualify for transfer include:

- all felonies, and
- misdemeanors where the misdemeanor conviction is for the second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol and whose sentences include one year or more of supervision.

It should be noted that per compact rules, eligible offenders cannot automatically return or relocate to their home/receiving state without securing prior written reporting instructions or acceptance from the receiving state's interstate office. All requests for transfer must be made through the supervising probation department.

If a case is determined ineligible for interstate transfer under ICAOS rules, it is strongly recommended that the case be referred back to the sentencing court for further consideration. Although interstate relocation would be discouraged under such circumstances, should the court still approve the move, the appropriate monitor in the sending jurisdiction will be required to monitor the operator's IID status/compliance via a long distance arrangement. OPCA recognizes that this type of monitoring is not optimal. OPCA is working with the national office of ICAOS and other states to specifically address how the interstate transfer of "non-qualifying" offenses (first DWI Misdemeanor convictions) might be better handled. New York and other states have raised this important issue in national meetings of the Governor's Highway Safety Association (GHSA) now that nearly 50 states have implemented some form of administratively or judicially sanctioned ignition interlock conditions of supervision and monitoring. In addition to New York, nine states have implemented "mandatory first offender" laws with respect to DWI/DUI offenders.

## **Probation Supervision Cases**

Per Title 9 NYCRR Part 358.7 (b) (3), where an individual is required to be supervised with a condition for an ignition interlock device seeks to relocate to another state, the probation department in the sending state selects the specific class and features of the ignition interlock device available from a qualified manufacturer in the receiving state. In any case where the cost of the ignition interlock device has been waived by the sentencing court, the monitor (probation) selects the qualified manufacturer to provide the device. If the court has ordered the operator to pay all fees or has provided for a payment plan, the operator can then select the model of Ignition Interlock device, which meets the class specification, from a qualified manufacturer doing business in the operator's region of residence. The operator may then select the model of device from a qualified manufacturer in the receiving state which meets the sending probation

department's class and features requirements. OPCA has provided a list of IID manufacturers operating in other states with this memorandum.

Upon learning of the possibility of interstate transfer of an IID case, the probation department in New York will determine which qualified manufacturers provide service in the receiving state. Should the sending probation department's determination indicate concern regarding the provision of adequate IID monitoring in the receiving state, the sentencing court should be notified, and a judicial review of the relocation plan should be requested. The court should then consider whether or not to approve the operator's request to relocate, as well as other dispositional options that may be available.

In the event of Interstate Transfer, the interlock device is to be installed prior to relocation or return to the receiving state where feasible. Based upon the aforementioned assessment of qualified manufacturers, the operator should be encouraged to have an ignition interlock device of the required class and features installed in the sending jurisdiction by a qualified manufacturer which also provides service in the receiving state. This pre-departure installation will facilitate a continuity of IID service and monitoring. In any case, the operator shall have an ignition interlock device which meets the requirements of the sending probation department installed in any vehicle that he or she owns or operates within ten (10) business days of the condition being imposed by the court, or release from incarceration. The operator is not to drive any motor vehicle without an ignition interlock device installed.

With probation IID cases, it is recommended that the appropriate monitor in the sending jurisdiction, as well as that in the receiving state both request and receive reports on the operator's ignition interlock compliance/status.

### **Conditional Discharge Cases**

In the event that an Ignition Interlock operator receives a conditional discharge and is granted permission to relocate to another state, per Section 358.7 (b) (4), the CD monitor in the sending New York jurisdiction should select the class of the IID to be utilized. If the court has ordered the operator to pay all fees or has provided for a payment plan, the operator can then select the model of ignition interlock device, which meets the class specification, from a qualified manufacturer doing business in the operator's region of residence. In any case where the cost of the ignition interlock device has been waived by the sentencing court, the monitor selects the qualified manufacturer to provide the device. The CD monitor in the sending New York jurisdiction should receive the IID status/compliance reports from the qualified manufacturer.

As stated previously, OPCA is conducting a survey of other "mandatory first offender" states to determine how they are handling the interstate transfer of "non-qualifying offenses" as well as alternative dispositions, including conditional discharge cases, and we expect to provide counties with further guidance in this area.

The OPCA Interstate Office is available for assistance if you encounter issues in the transfer process. Questions concerning the interstate transfer process should be directed to [Sandra.Layton@dcjs.state.ny.us](mailto:Sandra.Layton@dcjs.state.ny.us) , or [Shaina.Kern@dcjs.state.ny.us](mailto:Shaina.Kern@dcjs.state.ny.us) . Questions concerning ignition interlock devices and cases should be directed to [Walter.Cogswell@dcjs.state.ny.us](mailto:Walter.Cogswell@dcjs.state.ny.us) .

cc: Supervising Judges through Honorable Judy Harris Kluger  
District Attorneys

Attachment

Ignition Interlock Device Manufacturers doing business in states outside of New York State