

## **Rural Area Flexibility Analysis**

### 1. Types and estimated number of rural areas:

Forty-three (43) of the 57 local probation departments outside of New York City are located in rural areas and will be affected by the proposed revised rule.

### 2. Reporting, recordkeeping, and other compliance requirements, and professional services:

The existing rule implemented Chapter 469 of the Laws of 2009, commonly referred to as "Leandra's Law", in relation to the monitoring of the use of court-ordered ignition interlock devices (IIDs) ordered upon defendants sentenced for a DWI misdemeanor or felony. It established various reporting, recordkeeping, and other compliance requirements. The proposed regulatory amendments make minor modifications to incorporate certain statutory changes resulting from enactment of Chapter 169 of the Laws of 2013, establishes parameters with respect to reduced breath samples for certain operators consistent with revised National Highway Traffic Safety Administration (NHTSA) Breath Alcohol Ignition Interlock Device Model Specifications, as well as limited revisions to improve practice based on the experience of the field since implementation of the original rule as well as address program and individual accountability issues which have arisen. 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authorize the operation of a motor vehicle by any individual whose license or privilege to operate a motor vehicle has been revoked.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 establish 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. Since 2014 DCJS has required 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 and maintain a 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 real time reporting and emergency notification program requirements where such is required in any county plan;
  - Report a confirmatory failed test or re-test where the BAC is .05 percent or higher and provide immediate written notice to DCJS and the Department of Health (DOH) whenever their IID device, services, and/or operations has been compromised or does not function as intended in New York State 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 to provide a written summary of any requested or approved DOH modification.

3. Costs:

DCJS does not anticipate any additional costs experienced by rural areas resulting from proposed regulatory changes. The proposed regulatory changes continue to allow each county and the city of New York as a whole, 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 and 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.

As to operator costs associated with IID devices Vehicle and Traffic Law (VTL) §1198 (5) establishes that the court, upon determining financial "unaffordability" to pay the cost of the device, may impose a payment plan with respect to the device or waive the fee. Additionally, this VTL provision requires that where the cost is waived, DCJS through regulation shall determine who bears the costs of the device or through such other agreement which may be entered into. The proposed rule revision retains existing language which states manufacturers and not local governments bear such costs. Statistics from August 15, 2010 through December

31, 2016, indicate that 27,053 operators (90.4%) were ordered to pay all IID costs associated with the installation and monthly charges; 1,191 operators (4.0%) paid the IID costs through payments plans; and 1,677 or 5.6% of operators had costs waived.

4. Minimizing adverse impact:

DCJS does not anticipate that the proposed changes, which among its provisions revises or adds regulatory language to be consistent with Chapter 169 of the Laws of 2013, and current NHTSA specifications of IIDs, will have any adverse impact on rural areas. DCJS remains steadfast in its efforts to minimize adverse impact of the existing rule and any proposed changes upon local government, especially rural counties. As noted earlier, since 2010 DCJS has annually submitted applications and been awarded grants from GTSC of NHTSA monies to help offset local government costs in performing monitoring services. The existing and proposed revised rule language have both been crafted to offer guidance and structure in plan development and implementation. Other features with respect to monitoring continue to afford considerable flexibility as to particular actions where feasible, yet ensure swift and certain action where necessary to achieve uniformity in handling of certain failed tasks and failed tests, safeguard the public and better guarantee offender accountability. The proposed regulatory revisions retain several regulatory provisions as to operator responsibility to assist the judiciary's consideration of financial "unaffordability" and minimize unnecessary waivers, and to ensure operators convey timely information to monitors, the courts, and installation/service providers. Further, proposed regulatory amendments retain language that in the event of judicial waiver of an operator's IID cost, monitors will use the established procedures to ensure costs are proportionately borne among manufacturers.

While DCJS regulatory language establishes that IID manufacturers may elect to do business in one, two, three or all four regions of NYS, all three IID manufacturers with DOH certified IIDs have elected to do business throughout NYS. Through the prior establishment of regions, which include both rural and non-rural counties in three regions, proposed regulatory revisions continue to establish that a manufacturer doing business with a non-rural county must do business with rural counties within the region upon the same

favorable terms which guarantee service availability of installation/service providers within 50 miles of any operators residence statewide.

DCJS continues to make model forms available which assist jurisdictions in application of Leandra's Law and its amendments. These forms are of particular assistance to those rural counties with limited staff resources to undertake form development independently. These forms also have been disseminated to all courts by the Office of Court Administration.

5. Rural area participation:

The existing rule was developed with the input from a workgroup which included rural probation representatives. DCJS has considered feedback on the existing rule since its implementation provided by qualified manufacturers, and local jurisdictions, including county IID monitors. Opportunities for feedback included regular communications with qualified manufacturers, involving quarterly conference calls with the manufacturers, and an annual manufacturers' conference hosted by DCJS. These annual conferences have been attended by both manufacturers and probation/CD monitoring agencies. Additionally, DCJS has communicated on the existing rule and proposed changes with local probation departments during probation professional association meetings and conferences. DCJS has discussed changes with and received support of the proposed revisions from the NYS Probation Commission, most recently on April 18, 2017, distributed a draft copy of the proposed revision to all Probation Directors and CD Monitors and all qualified manufacturers, further discussed the proposed revisions with qualified manufacturers, probation and CD monitors, and other interested State and local entities at the Annual IID Manufacturers Conferences held, and made additional revisions based on feedback received from these stakeholders to address certain service delivery issues raised. Overall, feedback was positive as to proposed regulatory changes.