



DCJS

Office of Probation and Correctional Alternatives

DWI Offender Management: Technological Advances and Changes in the Field

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Shaina Kern, DCJS OPCA

Maureen McKeown CASAC, DCJS OPCA

NYS Division of Criminal Justice Services
Office of Probation and Correctional Alternatives





“Leandra’s Law” in NYS

Chapter 496 of the Laws of 2009 signed into law
November 18, 2009

First Effective Date--December 18, 2009—VTL §1192-2a (b)

- New Class E Felony Offense- (b) With a child. No person shall operate a motor vehicle in violation of subdivision two, three, four, four or four-a of this section while a child who is fifteen years of age or less is a passenger in such vehicle. Penalty of up to 4 years in state prison
- §1193 (1) (c) 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, respectively.

“Leandra’s Law” in NYS

Requires Law Enforcement to File a Report with the NYS Child Abuse/Neglect Hotline for Investigation

First Effective Date-December 18, 2009-VTL §1192 (12)(b)

Chapter 496 of the Laws of 2009, Section 2 (b)

- Where a law enforcement officer alleges a violation of paragraph (b) of subdivision two-a of this section and the operator of the vehicle is a parent, guardian, or custodian of, or other person legally responsible for, a child aged fifteen years or less who is a passenger in such vehicle, then the officer shall report or cause a report to be made, if applicable, in accordance with Article 6 of the social services law.

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“Leandra’s Law” in NYS

***Second Effective Date August 15, 2010–VTL §1192 (2), (2-a), or (3)**

Sanctions--VTL §1193 (1) (b) (ii) and (c) (iii) Requires for persons committing VTL §1192 (2), (2-a), (3) misdemeanor or felony DWI crimes, on or after the date of enactment, (November 18, 2009) **and** sentenced on or after August 15, 2010, that they be sentenced to a period of probation or conditional discharge, ***in addition to any sentence of imprisonment or payment of any fine or penalty imposed***, and that they be ordered to install an Ignition Interlock Device in any motor vehicle they ***“own or operate”***. The law requires that the IID be installed ***“in no event for less than six months”***. The term of probation or conditional discharge shall run consecutive to any term of imprisonment. The Ignition Interlock Device condition appears on the NYS Driver’s License and the Driver’s License File.

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“Leandra’s Law” in NYS

Chapter 496 of the Laws of 2009, Section 9

VTL §1198 (9)

- (a) No person whose driving privilege is restricted pursuant to this article or the penal law shall request, solicit or allow any other person to blow into an ignition interlock device, or to start a motor vehicle equipped with the device, for the purpose of providing the person so restricted with an operable motor vehicle.
- (b) No person shall blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is so restricted.
- (c) No person shall tamper with or circumvent an otherwise operable ignition interlock device.
- (d) No person subject to a court ordered ignition interlock device shall operate a motor vehicle without such a device.
- (e) In addition to any other provisions of law, any person convicted of a violation of paragraph (a), (b), (c) or (d) of this subdivision shall be guilty of a Class A misdemeanor.

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New York State Regulations 9 NYCRR Part 358

- DCJS has promulgated strict state regulations governing the timely installation and monitoring of compliance by persons ordered to install and maintain Ignition Interlock devices (IIDs).
- Part 358 outlines regulations as they relate to the responsibilities of operators, IID manufacturers, installers, and monitors including probation departments.
- Judges play an important role in the enforcement of court-ordered probation and monitoring conditions.

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9 NYCRR Part 358 Courts and Operator Requirements

DCJS/OPCA Regulation requirements for installation of IID's and notifications:

- Monitor shall receive notification from the Court pursuant to its county plan for IID condition/installation within 5 business days
- 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 or designated Monitor
- Operator shall submit to service visits within 30 calendar days of prior installation or service visits where the device does not automatically transmit data directly to the monitor. Submit to 30-day visits, followed by 60-day visits, where the device automatically transmits data directly to the monitor or the device head is sent to the manufacturer.

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9 NYCRR Part 358 Probation/Monitor- Operator Requirements

Regulations require probation/monitors to provide notification of the following events to the Court and District Attorney, within 3 business days:

1. Operator failure to install IID on the vehicle they "own or operate," or
2. Operator has not complied with required service visit, or
3. Report of alleged tampering or circumvention of IID, or
4. Report of failed or missed start-up retest, or
5. Report of failed or missed rolling retest, or
6. Any report of a failed test where BAC is .05% or higher (even on the initial start-up test or rolling test)

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NYS DWI Laws and IID Program: Among the Strongest in the Nation

Increased Offender Accountability –

- New York is one of only four “First Offender Mandatory States” –IID Installation is required upon first DWI conviction and is Court-Ordered
- IID is required for all DWI Convictions –motor vehicles “owned or operated”
- Localities (Probation and CD Monitors) Perform Monitoring and Supervision
 - NYS Governor’s Traffic Safety Committee (GTSC) provides nearly \$3 million in NHTSA funds - based on number of convictions where an IID is ordered
 - Current Grant term: October 1, 2012-September 30, 2013
 - Includes Monitoring of operators who do not install IID’s

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9 NYCRR Part 358 and Statutory “Unaffordability” Provisions of Law

- “Unaffordability” distinguished from Indigence
- **Financial Disclosure Report (DPCA-500IID-FDR)**
available (English/Spanish) at
<http://www.criminaljustice.ny.gov/opca/ignition.htm>
 - 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
 - **Progression of Cost Considerations by Judiciary :**
Affordability>>>> Payment Plan (partial payment)>>>>
Waiver Considerations (Waivers are not free)
 - IID Manufacturer agreements provide a maximum statewide rate of “unaffordability” of 10% before renegotiation is considered.

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DWI Supervision in New York State

- At the end of April 2013, Probation Officers were supervising 112,208 probationers and 2,814 Interim Probation Supervision Cases.
- 25, 619 or 23% of those being supervised were on probation due to a DWI.
- 4% of active probationers are sex offenders.
- The huge percentage of DWI cases being supervised by probation every day begs the question: What can we do to more effectively supervise DWI offenders?

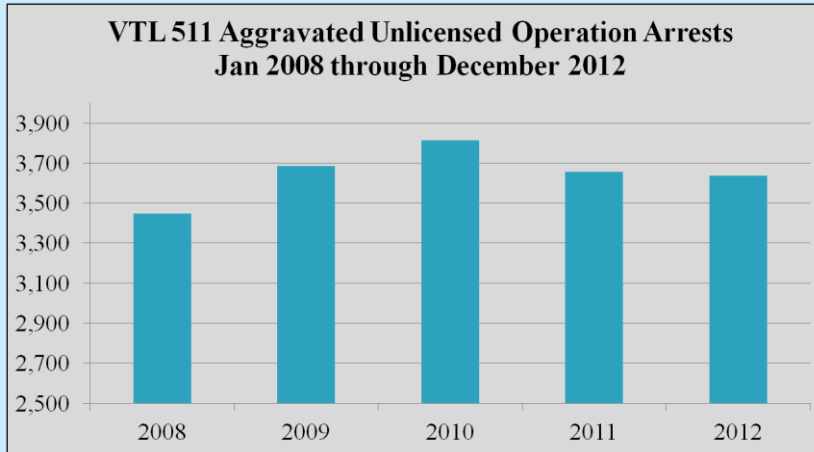
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Total Program Report of IID Orders and/or Installations in NYS: August 15, 2010 thru March 31, 2013

- **45,824** sentencing orders were issued in NYS
- **13,232** interlocks installed (28.9% rate)
- **90%** (11,909) of defendants were ordered to pay the full cost of the interlock
- **6.8%** (901) of defendants were granted waivers
- **3.2%** (422) of convicted operators were ordered to make partial payment

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Unlicensed Operators Will Continue To Drive.....



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Metrics--DWI Arrests in New York State

DWI Arrests VTL Section 1192

Year	Felonies	Misdemeanors	Total
2010	7,046	47,464	54,510
2011	6,417	43,987	50,404
2012	5,631	38,629	48,060

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Leandra's Law Dispositions December 18, 2009-July 22, 2013

- Class E Felony Arrests (VTL 1192 (2-a)(b))
Aggravated DWI with a Child under 16 years of age in the motor vehicle
- 3,096 Arrests
- Dispositions: 2404
- Total Sentences: 2088

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Leandra's Law Sentences Aggravated DWI with Child Cases

Sentences:

Prison	88 (4.2%)
Local Jail	149 (7.1%)
Time Served	15 (0.7%)
Jail & Probation	443 (21.2%)
Probation	926 (44.4%)
Fine	402 (19.3%)
Conditional Discharge	62 (3.0%)
Unconditional Discharge	3 (0.1%)
TOTAL SENTENCES	2088 (100%)

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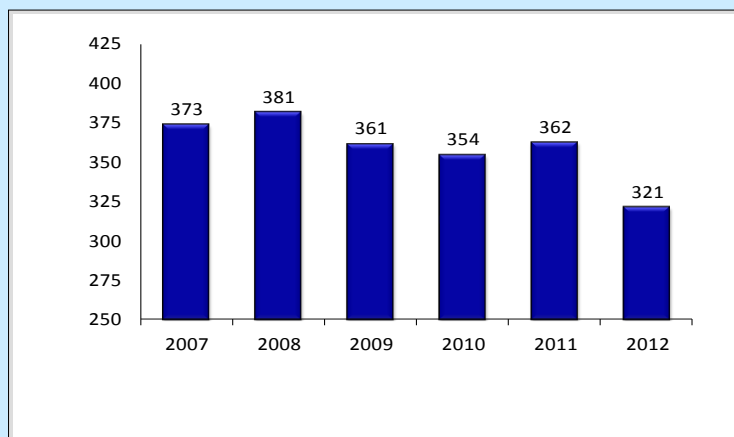
NYS DWI Crash Data

NYS DMV Statistics show:

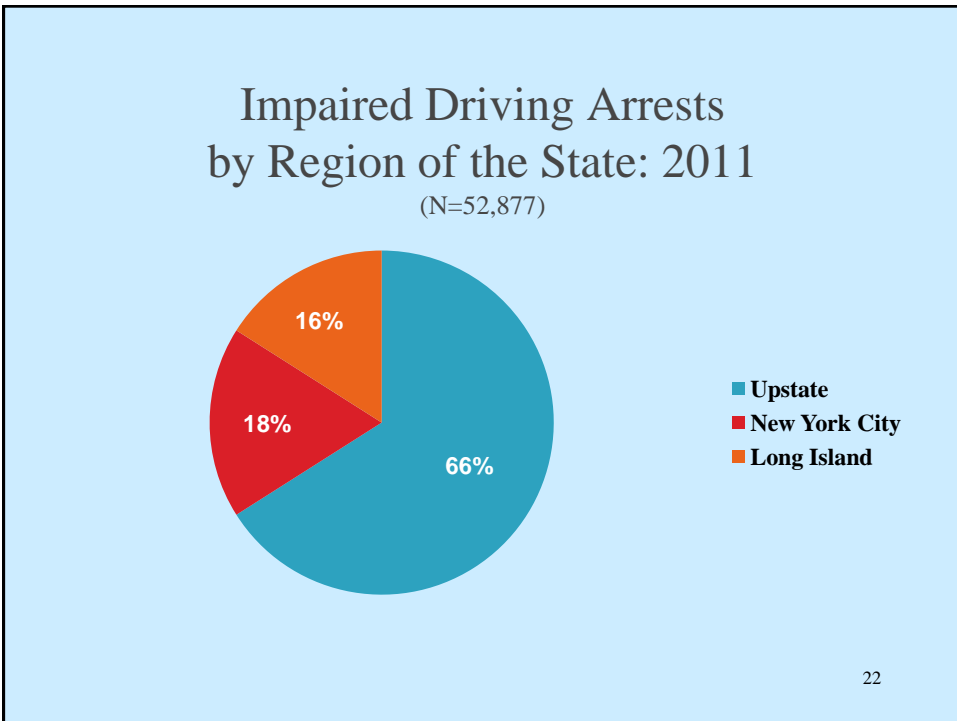
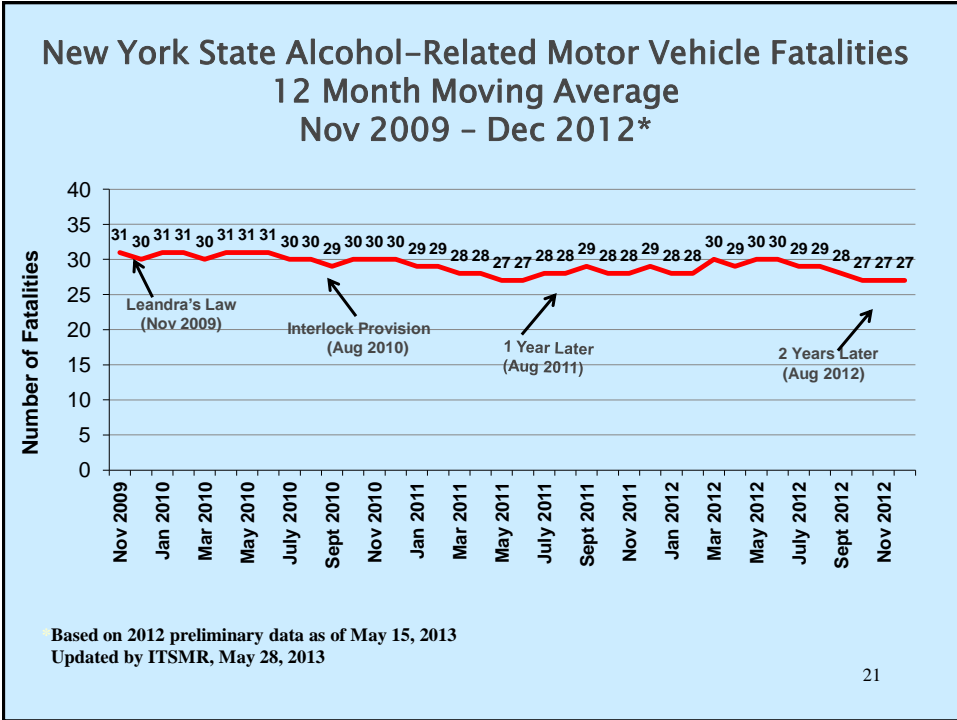
- There were 1077 fatal crashes in 2011 with 1153 fatalities.
- 362 (or 31%) of those fatal crashes involved alcohol.
- Preliminary figures for 2012 estimate 1124 total fatalities with 321 (or 29%) involving alcohol

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NYS Alcohol-Related Fatalities 2007-2012



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New DMV Regulations—Problem Drivers

- On **September 25, 2012**, the NYS Department of Motor Vehicles (DMV) adopted new regulations that give New York among the toughest protections in the nation against drivers who persistently drive under the influence of alcohol or drugs.
- Subdivision (b) of Section 136.4 is amended to read as follows:
 - (2) Upon the approval of an application for relicensing of a person who is deemed a problem driver under this subdivision, the commissioner may impose a problem driver restriction on such person's license or permit, as set forth in section 3.2 (c) (4) of this Title. As a component of this restriction, the commissioner may require such person to install an ignition interlock device in any motor vehicle owned or operated by such person. The ignition interlock requirement will be noted on the attachment to the driver license or permit held by such person.

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DMV Regulations—Problem Drivers

Offense History	DMV Action
Five or more alcohol/drugged driving related convictions or incidents lifetime = "Persistently Dangerous Driver"	Permanent denial (subject to compelling or extenuating circumstances)
In last 25 years, three or four alcohol/drugged driving related convictions or incidents + one Serious Driving Offense (SDO) = "Persistently Dangerous Driver"	Permanent denial (subject to compelling or extenuating circumstances)
If revocation for alcohol-related offense, three or four alcohol/drugged driving related convictions or incidents without any SDO in last 25 years	Deny for five years in addition to statutory revocation period, then relicense with restricted license and interlock for five years.
If revocation for non-alcohol-related offense, three or four alcohol/drugged driving related convictions or incidents without any SDO in last 25 years	Deny for two years in addition to statutory revocation period, then relicense with restricted license for two years, but no interlock.
Two alcohol/drugged driving related convictions or incidents	No full relicensing until end of statutory minimum revocation period, even if DDP

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New DMV Regulations—Problem Drivers

- **No** provision in the DMV Regulations for payment plans or waiver of costs associated with the installation, lease or maintenance of IIDs.
- DMV regulations do not establish monitoring responsibilities
- Qualified manufacturers will have the test history (data download) of operators who install their IID
- In the event that an individual under probation supervision is required to install an IID under the authority of DMV, they should be referred to the DMV website, www.dmv.ny.gov, for direction and assistance.

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New DMV Regulations—Problem Drivers

- All operators labeled “problem drivers” by the DMV will not have an IID. These licenses are not considered a “conditional license” but the restrictions are very similar.
- An **A2 restriction and “Problem Driver”** are labeled on an operator’s license if an IID is *administratively imposed* by the DMV.
- An **A4 restriction and “Ignition Interlock”** are labeled on an operators license if an IID is *judicially imposed* by the court.

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Administrative Vs. Judicial Imposition of an IID

NEW YORK STATE
Commissioner of Motor Vehicles

DRIVER LICENSE
ID: 010 000 502 CLASS D

DOCUMENT
SAMPLE, LICENSE, II
1-1000 ANYPLACE AVE
ANYTOWN NY 12345
DOB: 06-09-85
SEX: F EYES: BR HT: 5-09
F: NONE
R: A2
ISSUED: 01-04-13 EXPIRES: 06-09-21 SMPASA2003

NEW YORK STATE
Commissioner of Motor Vehicles

DRIVER LICENSE
ID: 010 000 503 CLASS D

DOCUMENT
SAMPLE, LICENSE, II
1-1000 ANYPLACE AVE
ANYTOWN NY 12345
DOB: 06-09-85
SEX: F EYES: BR HT: 5-09
F: NONE
R: A1
ISSUED: 01-04-13 EXPIRES: 06-09-21 SMPASA2003

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Recent Legislation Changes

- Legislation was signed by Governor Cuomo on July 26, 2013 adding the following to the existing Leandra's Law:
 - A drunk driving charge while on a conditional license has upgraded to a felony
 - The only way to “waive” IID installation is for the offender to attest under oath they will not own or operate a vehicle during the ordered IID period.
 - Youthful Offenders are now subject to the same requirements as adults

Recent Legislation Changes

- The minimum IID condition length is now 12 months for those offenders that do not have an IID installed, but those who show proof of having the device installed for 6 months can have the condition removed at the judge's behest. Judges may still chose to order the condition for any portion or all of the period of Probation supervision.
- If an offender has an IID installed presentence the time will now count towards their period ordered at sentencing. If not installed prior to sentencing then the time of the condition starts at sentencing (not at the time the IID is installed post sentence).

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DWI Supervision Technology

- Ignition Interlock Devices (IID)
- Transdermal Alcohol Monitors (SCRAM)
- License Plate Readers (LPR)
- Roadside Stop
- Risk and Need Assessments

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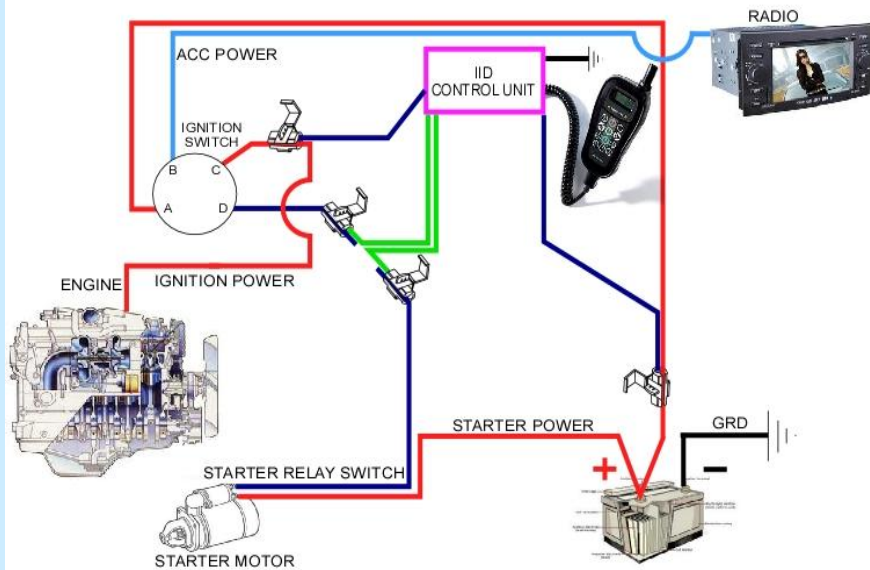
What is an Ignition Interlock Device?

- Any blood alcohol concentration equivalence measuring device connected to a motor vehicle ignition system that prevents a motor vehicle from being started without first determining through a deep lung breath sample that the operator's equivalent blood alcohol level does not exceed the calibrated setting (**.025%**) on the device.



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IGNITION SYSTEM WITH AN IID



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Ignition Interlock Devices- Alternative Uses

- IIDs can be used to breathalyze a probationer.
- IIDs with GPS and real time reporting can be used to locate probationers and track movements.
- IIDs can help reinforce sobriety for those probationers in treatment

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Ignition Interlock Devices: A Tool for Sobriety

Ignition Interlock Devices --in addition to being used as an enforcement measure, they have positive benefits in helping individuals maintain sobriety.

A 1999 Maryland Study -- documented unexpected outcome of participants asking to be allowed to keep their IID's longer than ordered in order to remain abstinent from alcohol use.

A 2012 Michigan Study -- suggested that some people convicted of a first time DWI believed that their use of alcohol was limited, or had no effect on them. Because the IID can provide immediate feedback, including breath analysis data, it can assist drivers in changing their perception of their own alcohol use.

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Re-Arrest Rates: Interlocked Vs. Not Interlocked

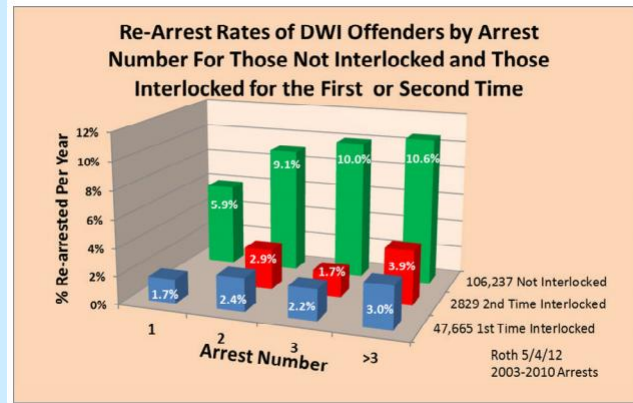
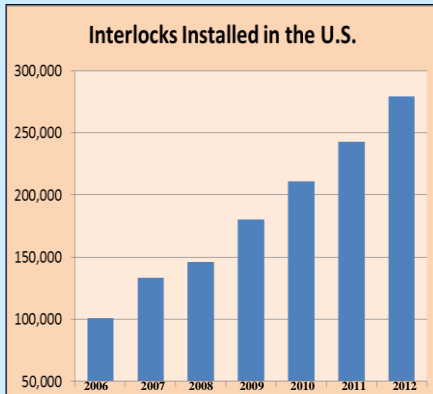


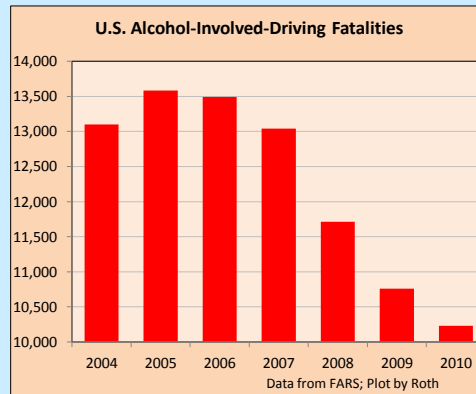
Chart from Richard Roth:
http://www.rothinterlock.org/researchsupportfor_nm_interlocklegislation.pdf

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Interlocks Up



Fatalities Down



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Handouts

- Total Program Report Handout
- IID Negative Events Report by County

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Non-Human Breath Sample



Artistic Rendering by Tanner Holford

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NYS IID Classification System

***Next Generation Contracts with NYS “Qualified Manufacturers” tentatively effective October 14, 2013 will require a camera in ALL Ignition Interlock Devices**

Class I: This device contains the following features: Meets all New York State DOH (Part 59), NHTSA Regulations and Standards, utilizes fuel cell technology, capabilities for storage of data, programmable re-test sequences, data download, anti-tampering and anti-circumvention features, ***camera-photographic positive identification capability, photo of the operator will be taken every time operator is prompted to take a test***, infra-red or other low light camera capability for night use, breath sample validity features, 24/7 access to operator data by monitors, and voice or visual instruction.

Class II: This device has all the features of Class I and contains the following additional features: Global Positioning System location of vehicle and real time data reporting.

Class III: This device has all the features of Class I and II and includes capacity for Emergency Notification to Law Enforcement- Emergency Response Program for interception of a targeted vehicle during a Rolling Re-Test failure.

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Transdermal Alcohol Monitors



- TAM units consist of a bracelet continuously worn by a probationer and a base unit that reports data to the parent company
- TAM bracelets cannot be removed by the probationer and have a tampering detection built in

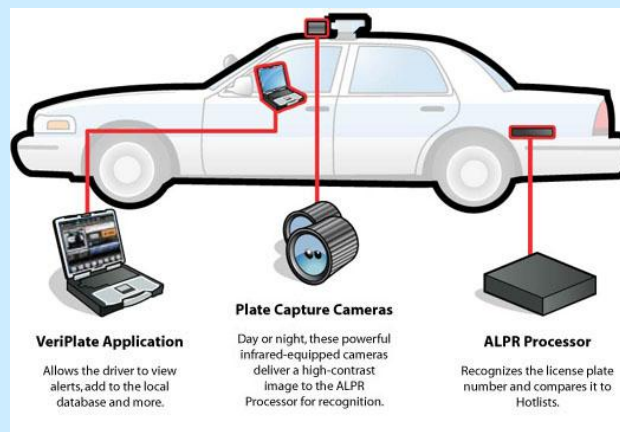
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Transdermal Alcohol Monitors in Monitoring

- TAM bracelets use a sensor to test sweat on the skin of the wearer for traces of alcohol. Some devices are able to provide a transdermal alcohol level and meet the Frye standard for admissibility in court.
- The tests occur frequently through out the day (usually every 30 minutes or so) and are uploaded at night to the base station.
- TAM bracelets can be used to monitor those probationers who have not installed an IID.
- Some bracelets also provide GPS tracking.

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License Plate Readers



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LPR in DWI Offender Management

- Licenses Plates for Probationer's cars, as well as other vehicles they have access to can be entered into the database
- Very useful for surveillance of DWI probationers who claim they are not driving
- Those departments without their own LPR can work in conjunction with local police departments to ensure that cars supposedly taken off the road are not actually being driven.

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Roadside Stop

- Law Enforcement Officers' queries to the DMV will now go to DCJS as well to check probation status.
- These responses will be delivered to probation departments via Portal, Enforcer or Legacy Metro Interfaces.
- It is important to remember that Officers' searches will be limited to the name and DOB or VIN provided by the person stopped or on the vehicle they are driving.

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Roadside Stop Uses in DWI Supervision

- Reports of VIN# for probationer's car being involved in an event may prove the vehicle is being driven or has not been taken off the road.
- Reports of probationer's drivers license or name being run when probationer is not supposed to drive
- Reports of probationer's license or name being run in an outside county with no travel pass being issued.

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Risk and Need Assessments

- Risk and need assessments are meant to make supervision easier and more effective by telling us more about the offenders we supervise.
- The "risk" these assessments measure in general is the risk a probationer will reoffend.
- The measurement of "needs" tells us where to focus our supervision efforts.
- Together the two help us determine what level of supervision to assign as well as what sort of collateral services to recommend.

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COMPAS-Probation Risk Assessments

- The NYS COMPAS-Probation risk assessment measures the overall likelihood of rearrest for ANY felony or misdemeanor offense.
- It does not measure the likelihood of rearrest for
 - specific offense types (such as DWI or sex offenses) or
 - special populations (such as DWI and sex offenders, females and juveniles)
- Because DWI offenders are less likely to be rearrested for ANY offense (Figure 1), their risk scores are more often lower than those for other offenders (Figure2).

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Specialized Risk and Need Assessments

- There are many risk and need assessments designed for special populations:
 - STATIC-99 and Stable and Acute for sex offender populations
 - WRNA (Women's Risk and Need Assessment) for female offender populations
 - YASI for juvenile populations

These specialized risk assessments are all used in New York to help provide more information on these specialized populations.

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TCUDS II (Texas Christian University Drug Screen II)

- The TCUDS II is commonly referred to by the shortened name TCU.
- The TCU is available as part of the COMPAS as an additional screening tool.
- The purpose of the TCU is to screen for individuals with drug use or dependency in order to refer them to treatment.
- The TCU has been used 452 times through COMPAS since inception in New York State, by 10 different counties.
- The TCU is reliable and accurate for making appropriate treatment referrals, but does not provide DWI specific information.

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Assessments for DWI Offenders Factors to Consider

- Cost: Most tests have some cost for either administration or scoring.
- Predictive Validity: Some tests assess the likelihood of an offender engaging in drinking and driving behaviors.
- Length of test: The number of questions each test contains can vary greatly.
- Test Administration: Tests can be administered by the Officer, or can be self administered by the probationer.
- Scoring: Tests can be scored by the officer, by computer or in some cases by the company producing the test.

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Important Notes for Practical Use of Assessment Tools

- It is important to note that although assessments are a tool to assist with evaluating risks and needs, experienced staff judgment and information relative to the present situation plays an important role in assessing supervision levels and focusing Officer's efforts
- When COMPAS re-assessments are completed, the results are often accurate as the information entered is dynamic

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Handout

Chart of Risk and Need Assessment Tools

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Thank you.....

Questions?

- Shaina Kern (518) 485-8855
Shaina.Kern@dcjs.ny.gov
- Maureen McKeown (518) 485-9941
Maureen.McKeown@DCJS.ny.gov

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