



DPCA

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

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Implementing Leandra’s Law in New York State

- Authority: November 18, 2009 —Governor David Paterson signs Chapter 496 of the Laws of 2009 :
 - Effective December 18, 2009-
 - New Class E Felony Offense-Enhanced Penalties for Persons who Operate a Motor Vehicle while Intoxicated with a Child passenger under 16 years of age, with penalty of up to 4 years in state prison
 - 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.

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- Impact: Section 5 of Chapter 496 of the Child Passenger Protection Act or Leandra's Law is 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”

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New York State joins 9 other states as “first offender states” implementing statewide mandatory use of Ignition Interlock Devices including Alaska, Arizona, Colorado, Hawaii, Louisiana, Nebraska, New Mexico, Utah and Washington.

Illinois and Arkansas have implemented non-mandatory programs

California has implemented a limited pilot program

Alcohol Ignition Interlocks are a proven tool to effectively reduce impaired driving, protect the public and support long-term risk reduction among drunk drivers according to a study by The Traffic Injury Research Foundation, February 2010

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- Which agency is statutorily authorized to lead? Chapter 496 of the Laws of 2009, Section 4 (g)
- § 4. Subdivision 1 of section 1193 of the vehicle and traffic law is
- amended by adding a new paragraph (g) to read as follows:
- (g) The division of probation and correctional alternatives shall
- **promulgate regulations governing the monitoring of compliance by persons**
- **ordered to install and maintain ignition interlock devices to provide**
- **standards for monitoring by departments of probation, and options for**
- **monitoring of compliance by such persons, that counties may adopt as an**
- alternative to monitoring by a department of probation.

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- Statutory provision and requirement to address “unaffordability”
- 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.

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- What are the 8 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)
 - Statewide Training—NYPTI, Magistrates, Judicial Webinar
 - Leadership

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Who are the stakeholders?

- 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

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- DPCA Promulgated Statewide Emergency Regulations
 - DPCA promulgated Statewide Emergency Regulations on April 23, 2010 as Part 358 of 9 NYCRR
 - Formal Rulemaking pursuant to the Statewide Administrative Procedure Act (SAPA) has also commenced.
 - DPCA involved all state and local stakeholders in the development and review of multiple drafts of the regulations.
 - Draft regulations shared with governors counsel, legislature, judiciary, state agencies (DMV, SCOC, DOCS, Parole, DCJS, OASAS) counties/probation departments, prosecutors, defense counsel, NYSAC, county executives and managers, stop-dwi and drinking driver programs, ignition interlock manufacturers, etc.

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- Request for Manufacturer Applications
 - Manufacturers Roundtable Held March 8, 2010
 - Request for Applications –Proposals Returnable May 12, 2010
 - 7 manufacturers submit applications to be considered as “qualified” to do business on and after August 15, 2010
 - service availability —available to all DWI operators within 50 miles
 - 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)

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- Manufacturers are requested to submit pricing structures in their applications as “ceiling” costs for three-year contract agreements with DPCA
- Manufacturers advised to assume a 10% statewide “unaffordability rate” and build that assumption into their cost structures
- DPCA develops statewide Financial Disclosure Report (FDR) Form for use by operators seeking waiver of costs by sentencing judge
 - FDR Form is available to operators at DPCA Website www.dpca.state.ny.us
 - Operators requesting waiver must submit three copies to court for judiciary, district attorney and defense counsel
 - FDR based on declared income, assets, and expenses not government entitlements

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DPCA Regulations require manufacturer IID specifications:

- IID set point of .025% BAC
- Start-up test; and Start-up retest of 5-15 minutes(following failed Start-up test)
- Initial Rolling test within random variable intervals ranging from 5-15 mins.
- Subsequent Rolling tests at random intervals not to exceed 30 mins.
- Rolling retests within 1-3 minutes following failed or missed rolling test.
- IID shall enter lockout mode upon following events: one failed start-up retest, one missed start-up retest, one failed rolling re-test or one missed rolling retest within one service period, or one missed service visit. Lockout requires operator to return to service center 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

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DPCA regulations require counties (and the NYC) 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 to report failed tasks/tests/lockouts

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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

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

 - 25,000 convictions (felony and misdemeanor)
 - 9,000 (40%) sentenced to probation
 - 16,000 (60%) other dispositions including prison (300-400), jail and large majority pay fine
 - 50-70% of first-time offenders do not return

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- 25,000 convictions
 - Nationally, fewer than 10% (7-8%) of operators required to have ignition interlock devices installed on their vehicles ever violate.
 - Ignition Interlock Technology is invasive, sensitive and effective—it works and so.... let it work!
 - Important to distinguish probation and non-probation (CD) cases and to manage them differently (do not “widen the net”)
 - Impact Example: Orange County—829 DWI Convictions in 2008
 - 211 (24%) sentenced to probation/102 felonies & 109 misdemeanors—21 offenders will violate
 - 618 (66%) jail, prison or fine—majority paid fine will be granted conditional discharge and monitored—61 offenders will violate

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DWI in NYS 2008						
County	DWI Convictions 2008			DWI Sentenced to Probation 2008		
	Felony	Misdemeanor	Total DWI Convictions	Felony	Misdemeanor	Total DWI Sentenced
Albany	102	496	597	71	59	128
Albany	10	74	84	17	25	42
Bronx	64	823	887	46	100	146
Broome	71	384	455	53	37	90
Cattaraugus	62	153	215	42	17	59
Cayuga	12	88	100	10	44	54
Chautauque	66	252	317	63	147	210
Chemung	63	156	219	62	44	106
Chemung	24	55	79	16	12	28
Clinton	54	142	196	35	34	69
Columbia	34	80	114	21	13	34
Cortland	21	70	91	17	34	51
Delaware	23	74	97	21	6	27
Dutchess	78	569	647	71	158	229
Essex	341	1,038	1,379	264	214	478
Franklin	12	79	91	23	46	69
Franklin	12	83	95	18	41	59
Fulton	30	86	116	8	12	20
Hamilton	62	170	232	34	38	72
Hamilton	27	55	82	17	23	40
Hamilton	2	10	12	1	1	2
Herkimer	34	88	122	21	17	38
Jefferson	42	178	220	24	33	57
Kings	101	874	1,075	71	95	166
Lewis	14	20	34	12	4	16
Luzerne	47	153	200	41	34	75
Madison	25	108	133	12	22	34
Montgomery	264	1,332	1,596	183	415	598
Montgomery	33	48	81	26	24	50
Nassau	272	1,948	2,220	154	962	1,116
New York	75	566	641	35	66	101
Niagara	48	342	390	53	88	141
Oneida	85	293	378	55	63	118
Orangetown	109	452	561	59	132	191
Ontario	74	317	391	41	31	72
Orange	162	667	829	102	109	211
Orleans	12	63	75	4	38	42
Seneca	38	160	198	21	67	88
Sesago	17	90	107	12	6	18

DWI in NYS 2008						
County	DWI Convictions 2008			DWI Sentenced to Probation 2008		
	Felony	Misdemeanor	Total DWI Convictions	Felony	Misdemeanor	Total DWI Sentenced
Rensselaer	30	131	161	23	27	50
Queens	110	1,298	1,408	156	216	372
Rensselaer	34	117	151	28	46	74
Richmond	12	362	374	21	47	68
Rockland	78	249	327	51	31	82
St. Lawrence	30	162	192	34	29	63
Saratoga	99	306	405	72	64	136
Schenectady	30	176	206	22	27	49
Schoharie	16	38	54	13	10	23
Schuyler	25	29	54	18	14	32
Seneca	33	90	123	23	21	44
Stauben	65	190	255	61	26	87
Suffolk	595	2,746	3,341	254	1,731	1,985
Sullivan	51	158	210	32	39	71
Tioga	25	85	110	14	6	20
Tompkins	33	149	182	25	50	75
Ulster	78	320	398	43	54	97
Warren	47	177	224	31	24	55
Washington	23	76	99	12	27	39
Wayne	73	197	270	70	30	100
Westchester	162	1,080	1,242	91	277	368
Wyoming	17	85	102	20	32	52
Yates	14	34	48	8	8	16
Statewide	4,326	21,091	25,417	2,961	6,130	9,091

Source: NYS DPCA IPRS as of 2/15/2009 and CCH as of 1/20/10
 Provided by: NYS DCJS OJRP 3/2/2010

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- Issues for Counties—Costs of Monitoring and Supervision
 - DPCA has submitted a statewide grant application in an amount up to \$3 million to the Governor's Traffic Safety Committee (GTSC)—Start Date 10/1/10 (federal fiscal year)
 - If awarded, funds will be distributed to counties and the City of New York based on their percentage of 2008 DWI convictions
 - Grant term: October 1, 2010-Sept. 30, 2011
 - Federal Funds regarded as seed money and not sustaining

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- Multiple Manufacturers to serve 25,000 offenders
 - NYS divided into four (4) regions (consistent with COPA) to ensure that the service is available to all localities (avoid “cherry-picking”) and regulations require installation sites within 50 miles
 - Manufacturers may request to be qualified by DPCA to do business in 1,2, 3 or all 4 regions, provided they meet DPCA, DOH regulations and the 50-mile service requirement
 - This approach will spur statewide competition ensuring quality product and service at a competitive price
 - Operators will shop manufacturer (model) but probation and monitoring agencies will determine the class of ignition interlock device and probation will determine features as well

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- **Regions of New York State for IID Service Operation. New York State has been divided into four regions for the provision of ignition interlock services. A qualified manufacturer designated to conduct business in a given region must provide interlock services to every county in the region. Counties included in each of the four regions are as follows:**

Region 1: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates;

Region 2: Broome, Chenango, Clinton, Cortland, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, and Tompkins;

Region 3: Albany, Columbia, Delaware, Dutchess, Greene, Montgomery, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, and Washington; and

Region 4: Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester.

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- The New York State Division of Probation and Correctional Alternatives classifies all certified ignition interlock devices into categories based upon features of the devices. This classification system and subsequent device classification is subject to change by the Division as new information becomes available. The Division will classify ignition interlock devices utilizing the following system:
- 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.

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- 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.

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Matching operator with Class of Ignition Interlock Device

- Distinguish first time convicted offender from repeat offender and conditional discharges and probation cases
- 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

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- 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”
 - DPCA regulations places financial burden with “qualified manufacturers” and develops Financial Disclosure Report (FDR)
 - DPCA 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

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Thank You! Questions

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