



OPCA

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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- 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"

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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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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; and again on July 21, 2010
 - 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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- 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)
 - Statewide Training—NYPTI, Magistrates, Judicial Webinar, Law Enforcement
 - Statewide Public Education and Media Campaign
 - Strong Leadership

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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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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.

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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 for monitors to report failed tasks/tests/lockouts to DA and Courts

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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
 - 30% are second and repeat offenders.

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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 the technology 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	105	465	570	21	55	76
Allegany	10	74	84	17	25	42
Bronx	64	825	889	46	100	146
Brockton	71	384	455	53	37	90
Cattaraugus	62	193	255	42	17	59
Cayuga	12	88	100	10	44	54
Chemung	60	262	322	53	147	200
Chemung	63	1199	1262	82	444	526
Chenango	24	55	79	16	12	28
Citron	54	142	196	36	34	70
Columbia	34	85	119	21	13	34
Cortland	21	70	91	17	34	51
Delaware	23	74	97	21	6	27
Dutchess	76	568	644	71	168	239
Essex	341	1,038	1,379	264	214	478
Franklin	12	83	95	16	41	57
Fulton	30	95	125	8	12	20
Genesee	62	170	232	34	34	68
Greene	27	59	86	17	23	40
Hamilton	2	10	12	1	1	2
Hempstead	34	88	122	21	17	38
Jefferson	42	178	220	24	33	57
Kings	101	974	1,075	71	95	166
Lewis	14	25	39	12	14	26
Madison	47	153	200	41	30	71
Madison	25	108	133	12	22	34
Monroe	264	1,332	1,596	183	415	598
Montgomery	31	68	99	26	3	29
Nassau	272	1,948	2,220	154	860	1,014
New York	70	566	636	35	66	101
Orange	48	342	390	53	88	141
Orleans	69	292	361	64	68	132
Orleans	108	452	560	59	132	191
Oswego	74	317	391	41	31	72
Orange	163	681	844	102	108	210
Oswego	121	63	184	5	34	39
Seneca	39	160	199	21	67	88
Schoharie	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
Putnam	30	131	161	23	67	90
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	20	45	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	159	210	32	39	71
Tioga	26	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	39	53	14	8	22
Statewide	4,326	21,091	25,417	2,961	6,130	9,091

Source: NYS DPCA IPRS as of 3/15/2009 and CCH as of 1/20/10

Provided by: NYS DCJS OJRP 3/2/2010

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Implementing Leandra's Law in New York State

- 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 class and features

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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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New York State
Office of Probation and Correctional Alternatives
IGNITION INTERLOCK DEVICE AVAILABILITY AS OF JULY 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 De- tect	Class III Features					
													Fuel Cell Fail Recall	Restrict- ed Drive Time	Unlock 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	\$75.00	\$75.00														
Alcohol Countermeasure Systems Corp.	WR3	I	\$75.00	\$75.00														
Senso-O Lock of America, LLC	FR000	I	\$100.00	\$85.00														

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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
- 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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Implementing Leandra's Law in New York State

- “Unaffordability” v. Indigency
 - DPCA strives to provide best information to Judges and develops statewide Financial Disclosure Report available at www.dpca.state.ny.us
 - Applicant required to complete and submit three 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-DPCA assume a maximum of 10% statewide rate of “unaffordability” before renegotiation is considered—discuss experiences in other states

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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”
 - Monthly lease fee equates to “gallon of gasoline a day”.....
 - 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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