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April 2016

Kathleen Clark, Chair
Members of the Board of Representatives
Otsego County
197 Main Street
Cooperstown, NY 13326

Report Number: S9-15-3

Dear Ms. Clark and Members of the Board of Representatives:

A top priority of the Office of the State Comptroller is to help county officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support county operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals we conducted an audit of six counties throughout New York State. The objective of our audit was to determine if the applicable county departments were adequately monitoring the State's Ignition Interlock Program to ensure proper use and compliance. We included Otsego County (County) in this audit. Within the scope of this audit, we examined the county departments' policies and procedures and reviewed the record of actions taken to comply with monitoring requirements of the Ignition Interlock Program for the period January 1, 2010 through March 10, 2015. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This report of examination letter contains our findings and recommendation specific to the County. We discussed the findings and recommendation with County officials and considered their comments, which appear in Appendix A, in preparing this report. County officials generally agreed with our recommendation and indicated they would take corrective action. At the completion of our audit of the six counties, we prepared a global report that summarizes the significant issues we identified at all of the counties audited.

Summary of Findings

Department officials generally monitored the ignition interlock device (IID) installations and negative activities of offenders as required. However, we found one of 34 cases requiring installations was installed after the required 10 business days, two days late. The monitor did not report this late installation to the court or district attorney. In addition, the monitor did not report one case with negative activity,¹ among the eight completed installations, due to registered BAC levels and resulting IID lockout.

Background and Methodology

Otsego County is governed by a 14-member County Board of Representatives (Board) and has a population of approximately 62,000. The County's fiscal year 2015 general fund budget totaled \$78.4 million. The County's Probation Department (Department) monitors the installation and activity of court-ordered ignition interlock devices (IIDs) using one supervisor, one senior probation officer, four adult-probation officers and a third-party vendor as monitors. As of March 5, 2015, the County was monitoring 52 open cases² that required an IID installation.

"Leandra's Law," a New York State law enacted November 18, 2009,³ is intended to protect the safety of the public. It requires, among other things, that – as a condition of being sentenced for certain alcohol-related offenses occurring on or after August 15, 2010 – a convicted individual install and maintain a breath alcohol IID on any vehicle owned or operated by that individual for a certain period of time.⁴ An ignition interlock device installed in a vehicle requires the operator to provide a breath sample in order to start the car.

The New York State Division of Criminal Justice Services (DCJS) has regulations for, among others, counties in regard to establishing standards for the usage and monitoring of IIDs ordered by criminal courts for probation and conditional discharge alcohol-related sentences.⁵ The County's Probation Department is responsible for monitoring court-ordered IIDs for individuals

¹ For audit purposes, a negative event (activity) is the result of an individual's actions that are not in compliance with listed events in 9 NYCRR Section 358.7 (d) (1).

² Composed of 12 probation cases and 40 conditional discharge cases

³ The Child Passenger Protection Act (Chapter 496 of the Laws of 2009) is commonly referred to as Leandra's Law, which amended provisions of the Vehicle and Traffic Law (VTL), Executive Law and Penal Law. Provisions addressing the ignition interlock device became effective August 15, 2010, and Chapter 169 of the Laws of 2013, which strengthens certain provisions of Leandra's Law, took effect on November 1, 2013 (see Appendix B for additional detail). After this audit began, the Penal law was further amended to provide that when a court sentence includes a condition that an IID be installed and maintained by a defendant, and the court later declares that individual to be delinquent, the condition to have the IID installed continues to be in effect during the period of delinquency. The court may also extend the period of the IID installation by the period of the delinquency (see Chapter 440 of the Laws of 2015, effective November 20, 2015).

⁴ See VTL Sections 1193, 1198; see also Executive Law Section 259-c.

⁵ See VTL Section 1193(1) (g) and 9 NYCRR Part 358 – Handling of Ignition Interlock Cases Involving Certain Criminal Offenders.

sentenced to probation and those sentenced to conditional discharge.⁶ However, the Probation Department has contracted out services for monitoring of individuals with conditional discharge sentences to a third-party vendor. Probation cases with an IID order requirement are generally assigned to one of four adult-probation officers. All conditional discharge cases with an IID order requirement are monitored by a third-party vendor. Monitoring is a key component for ensuring that a vehicle operator is complying with a court order and for protecting the safety of the public.

Installation and activity requirements that must be monitored include the following:⁷

- The monitor shall receive court notification of an order for the IID within five business days from sentencing.
- The operator is required to have an IID installed within 10 business days of the court order or if sentenced to imprisonment, upon release from imprisonment, whichever is applicable.
- The operator shall submit to service visits at defined intervals (see Appendix B for details).
- The monitor shall notify the appropriate court and district attorney, within three business days, of the following:
 - Operator failure to install an ordered IID;
 - Operator non-compliance with a service visit requirement;
 - Any report of alleged tampering with or circumventing of the IID or an attempt thereof;
 - Any report of a lock-out mode, and/or any report of a failed test or retest when the BAC is 0.05 percent or higher.

Appendix B includes more details of monitoring requirements. The failure by an individual to comply with the Ignition Interlock Program may result in the conditional discharge or probation sentence being modified or revoked by the court.

To complete our audit objective, we conducted interviews with Department personnel and reviewed policies/procedures. We also reviewed court orders and information that the Department maintained for the IID records we sampled. We examined communications to ensure that appropriate monitoring actions were taken and tested records to confirm compliance. The conditional discharge cases were eliminated from testing as the Department contracted for monitoring services with a third-party vendor. We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix C of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional

⁶ As a general premise, probation is a sentencing option used by the court that permits the offender to remain in the community under conditions specified by the court, and involves some form of supervision or reporting requirement. A conditional discharge is a sentencing option which is generally used for minor violations that do not require probation supervision. The regulations provide, in part, that the county's ignition interlock program plan "shall specify monitoring by the probation department where the operator is subject to a period of probation supervision and may designate one or more alternative persons or entities, in lieu of the probation department, responsible for monitoring where an ignition interlock device has been imposed pursuant to a conditional discharge" (see 9 NYCRR Section 358.4 [c]).

⁷ See 9 NYCRR Section 358.7.

judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

Audit Results

The County's Probation Department is responsible for monitoring court-ordered IIDs for individuals sentenced to probation and those sentenced to conditional discharge. The Department has contracted with a third-party vendor for monitoring individuals sentenced to conditional discharge with a court-ordered IID; therefore, conditional discharge cases are not included in our audit results.

Department officials generally monitored the IID installations and negative activities of offenders as required. However, one of 34 IIDs ordered was installed after the required 10 business days, two days late. The monitor did not report this late installation to the court or district attorney. In addition, the monitors did not report one case with negative activity, among the eight completed installations, due to registered BAC levels and resulting IID lockout.

IID Installations – We selected 34 court orders⁸ requiring IID installation for offenders sentenced to probation to determine if the Department adequately monitored the installations and notified the court of violations as required. In 26 cases, the individuals indicated that they did not own or operate a vehicle. We tested and confirmed that none of the 26 had a registered vehicle during the IID order period. However, one of the eight remaining IID orders was installed after the required 10 business days, two days late. Further, the monitor did not report the violation to the court or district attorney. The Department monitor attributed the lack of reporting to the change of officers assigned to the case.

Negative IID Activity – We reviewed the reported negative IID activity from the vendor for all eight cases with installed devices (eight negative events)⁹ and found that the monitor did not notify the court and district attorney in one case (six negative events), because graduated sanctions were imposed. These events included failed tests due to BAC levels and IID lockouts.

While the IIDs potentially stop individuals from starting and driving their vehicle with a BAC higher than 0.025 percent,¹⁰ courts rely on county monitoring to ensure an individual is following sentencing conditions and to protect the public. A failure to adequately monitor the IID program and report violations could prevent a court from knowing about noncompliance and from deciding whether an individual's sentence needs to be modified or revoked to keep the county roadways safe.

⁸ See Appendix C for methodology.

⁹ A "negative event" is counted each time an individual's actions are not in compliance with listed events in 9 NYCRR Section 358.7 (d) (1). For example, each of the following is counted as a separate "event" for a total of three negative events even though the three events occur in one attempt to start a vehicle: a breath sample is given at a BAC of 0.05 percent, a sample is not given for a re-test, and a lock-out results.

¹⁰ See 9 NYCRR Section 358.5 (c) (2).

Recommendation

1. Department officials should address the causes of monitors' late or missed reporting of IID Program violations to the court and district attorney, and institute procedures, as necessary, to help ensure that all violations are reported in a timely manner.

The County Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Clerk of the Board's office.

We thank the officials and staff of the Otsego County Probation Department for the courtesies and cooperation extended to our auditors during this audit.

Our office is available to assist you upon request. If you have any further questions, please contact Ann Singer, Chief Examiner of the Statewide and Regional Projects Unit, at (607) 721-8306.

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

RESPONSE FROM COUNTY OFFICIALS

The County officials' response to this audit can be found on the following page.

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September 17, 2015

Ms. Ann C. Singer, Chief Examiner
State Office Building, Suite 1702
44 Hawley Street
Binghamton, NY 13901-4417

Dear Ms. Singer,

Please accept this letter as our response to the audit and corrective action plan for Otsego County Probation Department. As reported during our exit discussion, the Otsego County Probation Department agrees with the finding by the Office of State Comptroller's regarding our ignition interlock program procedures. I would like to thank you for this opportunity to respond to the finding and recommendation outlined in the draft audit report.

The audit period that was covered was from January 1, 2010 through March 10, 2015. The only issue documented in the audit, that prompted a recommendation, was late or missed reporting of ignition interlock device violations to the court and district attorney within a timely manner. Of all of the cases sampled for the audit, one case had violations where graduated sanctions were implemented rather than notifications being made to the court. Prior to the audit period there were no written policies and procedures in regard to the monitoring of ignition interlock devices. Otsego County referenced their Otsego County Ignition Interlock Program Plan for guidance on how to proceed with probation and Conditional Discharge sentences with orders for ignition interlock devices. In February 2015, the Updated Otsego County Ignition Interlock Program Plan had to be resubmitted to the Division of Criminal Justice Services for the same finding that was included in this audit. After resubmitting Otsego County's Update Plan all Probation Officers monitoring ignition interlock cases were informed that regardless of graduated sanctions being implemented for ignition interlock violations the court and district attorney must be notified of such violation(s) within three business days. Shortly after the on-site portion of the audit was completed written policies and procedures were developed for the monitoring of ignition interlock orders. All Probation Officers monitoring ignition interlock cases have been provided with a copy.

Again, thank you for this opportunity to respond to the Office of Comptrollers findings. The Otsego County Board of Representatives and the Otsego County Probation Department appreciate your time and desire to work together.

Sincerely,

Kathleen Clark, Chairwoman
Otsego County Board of Representatives

APPENDIX B

CERTAIN DEFINITIONS AND MONITORING REQUIREMENTS ¹¹

Definitions

“Ignition Interlock Device” – any blood alcohol concentration equivalence measuring device which connects to a motor vehicle ignition system and 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 on the device as required by standards of the department of health.

“Monitor” – the local probation department where the operator is under the probation supervision or any person(s) or entity(ies) designated in the county’s ignition interlock program plan for any operator granted conditional discharge.

Monitoring Requirements

Minimum standards for the usage and monitoring of ignition interlock devices imposed by a criminal court for a felony or misdemeanor under the Vehicle and Traffic Law or Penal Law are provided, in part, as follows.

- Any monitor shall receive notification pursuant to its county plan of all operators which it has responsibility to monitor within five business days of the sentencing court’s order imposing the condition of an ignition interlock device and of an operator’s release from imprisonment. Such monitor shall obtain proof of installation by the operator and installation/service provider.
- Every operator shall have installed and maintain a functioning ignition interlock device in any vehicle(s) he owns or operates within 10 business days of the condition being imposed by the court or if sentenced to imprisonment upon release from imprisonment; within three business days of installation, submit proof of installation to the court, county probation department, and any other designated monitor.
- Qualified manufacturers notify the monitor and county probation department when an ignition interlock device has been installed on an operator’s vehicle(s) within three business days of installation. Where a monitor learns that the operator no longer owns or operates a motor vehicle in which an IID has been installed, the monitor may issue letter of de-installation directly to the installation/service

¹¹ See Title 9 NYCRR Part 358, Handling of Ignition Interlock Cases Involving Certain Criminal Offenders. Available on the DCJS website: <http://www.criminaljustice.ny.gov/opca/ignition.htm>

provider which authorizes removal of the device. The monitor selects the class of IID and features to be used in the county.

- Upon learning of the following events: (i) that the operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates; (ii) that the operator has not complied with service visits requirements; (iii) a report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof; (iv) a report of a failed start-up re-test; (v) a report of a missed start-up re-test; (vi) a report of a failed rolling re-test; (vii) a report of a missed rolling re-test; and/or (viii) a report of a lockout mode; the applicable monitor shall take appropriate action consistent with public safety. Where under probation supervision, the county probation department shall adhere to Part 352. With respect to any operator sentenced to conditional discharge, the monitor shall take action in accordance with the provisions of its county ignition interlock program plan. At a minimum, any monitor shall notify the appropriate court and district attorney, within three (3) business days, where an operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates, where the operator has not complied with a service visit requirement, any report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof, any report of a lock-out mode, and/or any report of a failed test or re-test where the BAC is 0.05 percent or higher. The monitor may recommend a modification to the operator's condition of his or her sentence or release whichever is applicable as otherwise authorized by law, including an extension to the IID period, a requirement that the operator attend alcohol and substance abuse treatment and/or drinking driver program, referral to the Department of Motor Vehicles to determine whether the department may suspend or revoke the operator's license, or recommend revocation of sentence or release. Where the operator is under supervision by the Division of Parole, the monitor shall coordinate monitoring with the Division and promptly provide the parole agency with reports of any failed tasks or failed tests.
- Any monitor may disseminate relevant case records, including failed tasks or failed reports not otherwise sealed or specifically restricted in terms of access by state or federal law to, among others, appropriate law enforcement authorities. In all such instances, those to whom access has been granted shall not secondarily disclose such information without the express written permission of the monitor that authorized access.
- Every operator shall submit to service visits within thirty (30) calendar days of prior installation or service visits for the collection of data from the ignition interlock device and/or for inspection, maintenance, and recalibration purposes where the device does not automatically transmit data directly to the monitor; and submit to

an initial service visit within thirty (30) calendar days of installation and service visits within sixty (60) calendar days of prior service visits where the device either automatically transmits data directly to the monitor for inspection, maintenance, or recalibration purposes or the device head is sent to the qualified manufacturer every thirty (30) calendar days for such purposes, including data download. However, an operator shall only remove the device head upon receipt of a new device head.

Chapter 169 of the Laws of 2013

On July 26, 2013, Chapter 169 of the Laws of 2013 was signed into law, to strengthen certain provisions of “Leandra’s Law” and establish new safeguards to help keep impaired drivers off the streets. This Chapter law took effect November 1, 2013 and applies to those violations committed on and after such date. Among its provisions are as follows:¹²

- Extending the period of interlock restriction to a minimum of 12 months (from six months) for individuals convicted of certain alcohol-related offenses.¹³
- Authorizes imposition of IIDs to be installed prior to sentencing as a preventive measure. The period of IID restriction will commence from the earlier of the sentencing date, or installation date in advance of sentencing.
- Establishing that a court can waive the installation of an IID only where the defendant asserts under oath that he/she is not the owner of any motor vehicle and that he/she will not operate any motor vehicle during the period of interlock restrictions, except as may be otherwise authorized pursuant to law.
- Ensuring that youth adjudicated as Youthful Offenders of DWI and/or other alcohol related offenses will be subject to Leandra’s Law provisions, including the IID requirement.
- Expanding upon the Class E felony, Aggravated Unlicensed Operation 1st Degree to capture operators who were given the benefit of a conditional license after a DWI and/or alcohol-related offense and then drive impaired again.
- Clarifies that operators provide proof of installation compliance with the IID requirement to the court and the probation department or other monitor where such person is under probation or conditional discharge supervision.

¹² See Leandra’s Law – Reform and Ignition Interlock Program Plan Updates, State of New York Division of Criminal Justice Service, Office of Probation and Correctional Alternatives, dated April 14, 2014.

¹³ VTL Section 1193(1) also provides that “such period of interlock restriction shall terminate upon submission of proof that such person installed and maintained an ignition interlock device for at least six months, unless the court ordered such person to install and maintain an ignition interlock device for a longer period of authorized...and specified in such order.”

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

We interviewed the County staff involved in the IID program for general background information and policies/procedures in place with respect to usage of ignition interlock devices and monitoring the compliance of an individual subject to installation of an ignition interlock device.

To determine if the Department is monitoring the IID program for both conditional discharge and probation cases, we obtained the list of individuals who were sentenced to install an IID. To verify reliability, we compared this list, which was pulled from the County Probation Department's quarterly reports,¹⁴ to the New York State Office of Court Administration (Unified Court System) records showing required IIDs.

We first sampled 44 of 121 cases reported by the County from 2013 through January 31, 2015 for conditional discharge and probation cases to focus on current impact to the public. The 10 conditional discharge cases were eliminated from testing because the Department contracted for monitoring services with a third-party vendor. We sorted the list for the sample by separating conditional discharge from probation cases, selecting three conditional discharge cases (to ensure identification as a conditional discharge case was accurate), selecting all cases for probation and all cases not identified as either conditional discharge or probation. We reviewed documentation in each individual file (hardcopy and electronic formats when available) to determine timing of installation of an IID and communications between the monitor and the courts/district attorney. Further, we met with County staff to understand the actions taken for negative IID activity related to a case.

For the same cases sampled that were identified by court documentation as not having a vehicle and where no IID was installed, we used software tools to determine if the individual had any vehicle registered.¹⁵

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹⁴ County reports: "Monitors' Report of Ignition Interlock Device Sentences Received" and "County Monitors' Report of Ignition Interlock Device Sentencing Orders Received and Installation Status"

¹⁵ The software accesses only public records reported in electronic format.