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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

November 29, 2018

The Honorable Richard A. Brown
District Attorney
Queens County District Attorney's Office
125-01 Queens Boulevard
Kew Gardens, NY 11415

Re: Oversight of Persons Convicted of
Driving While Intoxicated
Report 2018-F-9

Dear Mr. Brown:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law, we have followed up on the actions taken by officials of the Queens County District Attorney's Office to implement the recommendations contained in our audit report, *Oversight of Persons Convicted of Driving While Intoxicated* (Report 2015-N-2).

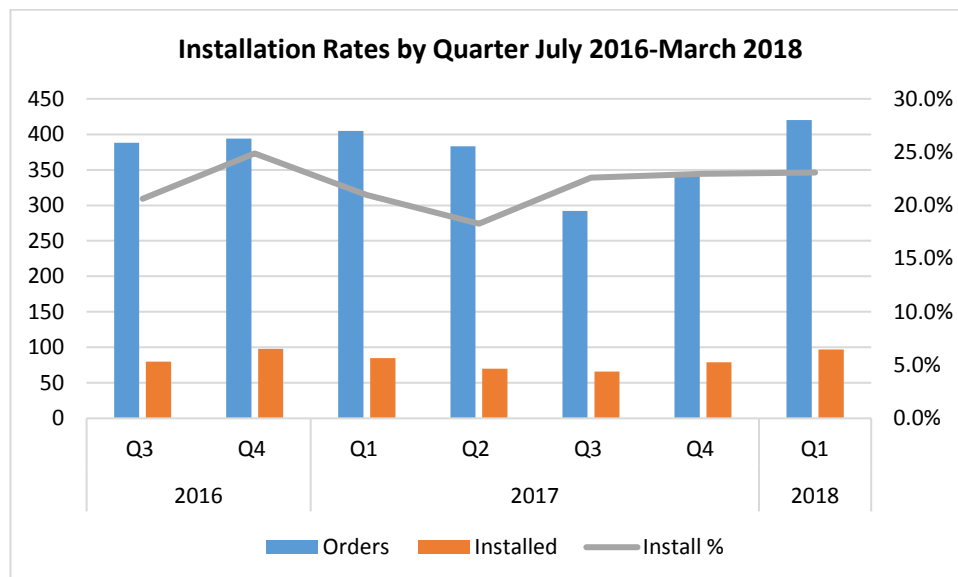
Background, Scope, and Objective

In New York, driving while intoxicated (DWI) is a serious crime that may be adjudicated as a misdemeanor or felony, depending on the specific circumstances. Convicted offenders are subject to a range of sanctions, including license suspension or revocation, significant fines, and possible jail time. The Child Passenger Protection Act (Act), also known as Leandra's Law, was signed into law on November 18, 2009, creating a new aggravated DWI offense for anyone who operates a vehicle while intoxicated by alcohol or drugs with a child passenger in the vehicle. Under the Act, starting on August 15, 2010, persons convicted of DWI must have an ignition interlock device (IID) installed in any vehicle they own or operate. An IID connects to a vehicle's ignition system and measures a driver's blood alcohol concentration (BAC). To start a vehicle with an IID, the driver must blow into a tube for several seconds. If the operator's BAC exceeds the allowable level preset into the IID (.025 in New York), the IID will prevent the driver from starting the car. Once the vehicle is running, drivers will be prompted to blow into the tube periodically to ensure that they have not been drinking while driving (rolling test). The IID vendor must alert the monitoring entity of any failed tests (alerts). Convicted drivers bear the cost of IID installation and removal; however, the Act grants fee waivers to those who cannot afford such costs.

In New York City, persons convicted of DWI whose sentence includes probation are monitored by the New York City Department of Probation, while those sentenced to a conditional discharge are monitored by the Queens County District Attorney’s Office (Office).

Our prior report, issued July 29, 2016, covered the period August 15, 2010 through June 25, 2015 and determined whether the Office was providing effective oversight of persons who were convicted of DWI and sentenced to a conditional discharge. We found that while 9,604 offenders overseen by the Office received court orders to install IIDs, only 1,952 (20.3 percent) did. Generally, offenders who did not install IIDs signed court affidavits stating that they would not drive a motor vehicle during the period of conditional discharge unless it had an IID. We also found material non-compliance with the Office’s protocols to minimize the risk that offenders would drive vehicles without IIDs. Specifically, the Office often did not perform all required quarterly State Department of Motor Vehicles (DMV) vehicle ownership checks and/or did not refer stipulated IID violation alerts to the appropriate courts, district attorneys, and rehabilitation programs in accordance with the governing New York Codes, Rules and Regulations (Regulations) and the New York City Plan (Plan) for compliance with the Act.

During our follow-up review, we noted that the installation rate continued to vary during the year, with a rate of 23.1 percent during the first quarter of 2018, as the following graph illustrates.



The objective of our follow-up review was to assess the extent of implementation, as of July 19, 2018, of the three recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that the Office has made significant progress in addressing the issues identified in our initial report, as two recommendations were implemented and one was partially implemented.

Follow-Up Observations

Recommendation 1

Perform all required DMV checks to verify that offenders who disclaim vehicle ownership do not have vehicles registered in their names. Ensure that all offenders who are registered vehicle owners, or those who acknowledge the use of someone else's vehicle, install an IID as required.

Status – Partially Implemented

Agency Action – Subsequent to our initial audit, the Office hired a third Citywide Monitor to perform quarterly DMV checks for each offender. During our follow-up review, we found that substantial improvements have been made, but the Office still did not perform all required DMV checks.

We judgmentally selected offenders who were ordered to install IID devices during the third quarter of 2017 (July 1, 2017 to September 30, 2017) to determine whether the required quarterly DMV checks were completed. State Division of Criminal Justice Services statistics reported 292 orders (offenders) in this quarter. We reviewed a sample of 25 of these offenders (5 from each county/borough) and found that the required quarterly checks were not completed for 5 (20 percent). In our prior audit, for a sample of 40 offenders, none of the files had evidence that all four quarterly DMV checks had been performed.

Recommendation 2

Work with the appropriate courts of jurisdiction to ensure that the court documents accompanying DWI offenders assigned to the Office cite all relevant alerts outlined in the State IID Regulations and NYC Plan.

Status – Implemented

Agency Action – During the scope period of our prior audit (August 15, 2010 to June 25, 2015), on November 1, 2013, the Act was strengthened to extend the term of the IID to a mandatory 12-month period (from six months) for individuals convicted of DWI. The Office of Court Administration stated during our initial audit that new court order forms will have the mandatory 12-month term as well as the .025 BAC violation requirement, and that all court clerks were told to destroy any old forms so that form-driven errors do not occur.

We noted that, subsequent to our prior audit, the Office made considerable efforts to work with the appropriate courts to have the older forms updated; however, Office officials stated they do not have the authority to actually change these court documents. While only one of the three conditional court order forms provided to us (UCS-965B – Queens Criminal Court) was updated to comply with the mandatory 12-month term and .025 BAC violation requirement, the Office did take steps to implement the recommendation.

Recommendation 3

Refer all stipulated alerts pursuant to the State Regulations and NYC Plan to all appropriate parties, including the sentencing court, the applicable district attorney, and the offender's alcohol treatment provider and safe driver program, as required.

Status – Implemented

Agency Action – For our follow-up review, we sampled the stipulated DMV and manufacturer alerts and found that they were all referred as required. DMV violation notices were issued when required and manufacturer alerts were sent from the IID installers if an event involving an offender occurred, such as the installation or removal of the IID, a routine monthly service report, or a missed or failed re-test.

- DMV alerts – From the list of 36 offenders for whom there were DMV alerts in March 2018, we judgmentally selected 5 (1 from each county) and found that the Office sent violation notices to the sentencing courts and the applicable district attorneys, as required.
- Manufacturer alerts – From the list of 340 offenders for whom there were manufacturer alerts in March 2018, we judgmentally sampled 25 (5 from each county) and found that the Office sent alerts for events such as a failed start-up test, a failed rolling test, and a lockout, as required.

Major contributors to this report were Judy Grehl, Joan Williams, and Kevin Fung.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of the Queens County District Attorney's Office for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Michael Solomon
Audit Manager

cc: G. Davis III, Mayor's Office
Karen Rankin, Bureau Chief of Narcotics Trials
Jacqueline Duckfield, Director of Administration and Finance