



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Oversight of Persons Convicted of Driving While Intoxicated

New York City Department of Probation



Report 2014-N-4

October 2015

Executive Summary

Purpose

To determine whether the New York City Department of Probation provided proper oversight of persons convicted of Driving While Intoxicated. Significant emphasis was placed on Probation's administration of the Ignition Interlock Device Program. Our audit covers the period August 15, 2010 to May 19, 2015.

Background

In New York, Driving While Intoxicated (DWI) is a serious crime. If a person is convicted of DWI, the offender is subject to a range of sanctions, including license suspension or revocation, significant fines, and possible jail time. Also, pursuant to the Child Passenger Protection Act (Act), as prescribed by Section 1192 of the Vehicle and Traffic Law, persons sentenced for DWI on or after August 15, 2010 must install an Ignition Interlock Device (IID) in any vehicle they own or operate. In addition, the Department of Motor Vehicles (DMV) adds an "ignition interlock restriction" to their operator's license.

In New York City, persons convicted of DWI are monitored by either the Queens District Attorney's Office or the New York City Department of Probation (Probation), as determined by the sentencing judge. The IID connects to the vehicle's ignition system. The vehicle operator must blow into the device before the vehicle can be started. If the operator's blood alcohol concentration (BAC) exceeds the allowable level preset into the IID (.025), the IID will notify Probation and prohibit the driver from starting the car. For the period August 15, 2010 through December 31, 2014, the courts ordered the installation of 2,166 IIDs for offenders under Probation's supervision.

Key Findings

- Of the 2,166 IIDs ordered by courts, only 111 IIDs (5 percent) were actually installed, and the installation rate is on the decline.
- Probation's oversight of DWI offenders was weak. Probation Officers (POs) did not always fulfill certain oversight responsibilities. For example, in 70 of 100 sampled cases, there was no evidence that DMV checks of offenders were performed upon intake. Further, in 32 of the 70 cases, there was no evidence that DMV checks were performed by the POs during the offender's entire probation term.
- Offenders who violated the terms of their probation were not always sanctioned or sanctioned sufficiently. In particular, referrals of probation violators were not made to the appropriate courts or District Attorneys (DAs), when otherwise required.

Key Recommendations

- Develop and implement processes and procedures to ensure that DWI offenders install IIDs in any vehicle(s) they own or have permission to operate, as ordered by the courts.
- Require POs to make and document all required DMV checks and home visits, as well as pertinent follow-up actions.
- When offenders violate the terms of their probation, make referrals to the appropriate courts and DAs, as warranted.

Other Related Audit/Report of Interest

[New York City Police Department: Reporting and Utilization of Bias Incident Data \(2014-N-2\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

October 7, 2015

Ms. Ana Bermúdez
Commissioner
New York City Department of Probation
33 Beaver Street
New York, NY 10004

Dear Commissioner Bermúdez:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Department of Probation entitled *Oversight of Persons Convicted of Driving While Intoxicated*. The audit was performed 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.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

Table of Contents

Background	5
Audit Findings and Recommendations	8
Offender Noncompliance with Courts' IID Installation Orders	8
Weaknesses in Probation Officer Oversight Activities	9
Recommendations	13
Audit Scope and Methodology	14
Authority	14
Reporting Requirements	15
Contributors to This Report	16
Agency Comments	17
State Comptroller's Comments	23

State Government Accountability Contact Information:

Audit Director: Frank Patone

Phone: (212) 417-5200

Email: StateGovernmentAccountability@osc.state.ny.us

Address:

Office of the State Comptroller
 Division of State Government Accountability
 110 State Street, 11th Floor
 Albany, NY 12236

This report is also available on our website at: www.osc.state.ny.us

Background

The New York State Office of Probation and Correctional Alternatives (OPCA) reports that New York State averages 25,000 drunken-driving convictions annually, with about 4,000 of them occurring in New York City. Further, according to the Governor’s Traffic Safety Commission, the number of alcohol-related automobile accidents in New York City has risen in recent years, with more than 1,300 alcohol-related automobile accidents in 2013. The following bar graph summarizes the number of alcohol-related automobile accidents in New York City from 2008 through 2013.



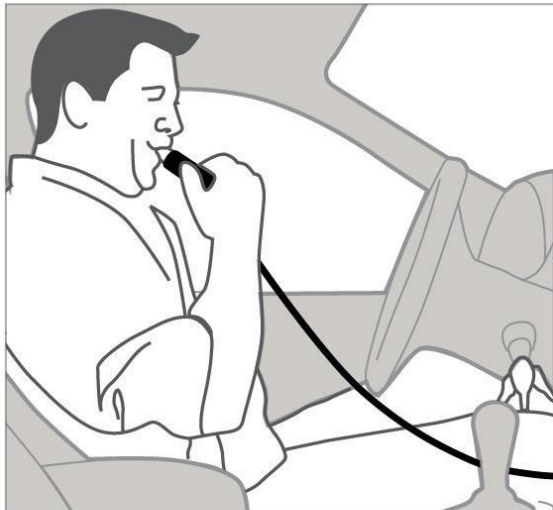
In New York, drunk driving, or Driving While Intoxicated (DWI), is a serious crime that may be adjudicated as a misdemeanor or felony, depending on the specific circumstances. If convicted of DWI under Section 1192 of the Vehicle and Traffic Law, offenders are subject to a range of sanctions, including but not limited to license suspension or revocation, significant fines, and possible jail time. When imposing sentence, the judge considers the driver’s age, blood alcohol concentration (BAC), and the number of prior similar offenses.

The installation of an Ignition Interlock Device (IID) in any vehicle driven by the offender is a significant tool used by the courts to help curb DWI (see Illustrations 1 and 2). Pursuant to the Child Passenger Protection Act (Act), also known as Leandra’s Law, signed into law on November 18, 2009, persons sentenced for DWI on or after August 15, 2010 must install an IID in any vehicle they own or operate. In addition, the Department of Motor Vehicles (DMV) adds an “ignition interlock restriction” to their operator’s license. In November 2013, the Act was amended to require defendants who claim that they do not own a vehicle to state under oath that they will not operate a motor vehicle without an IID during the interlock restriction period.

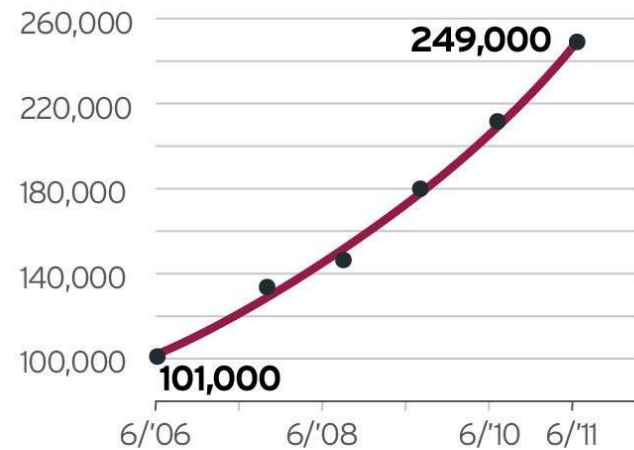
Illustration 1

Ignition interlocks

To start a car with an ignition interlock, a driver has to blow into a tube for several seconds. The device reads the driver's blood-alcohol level. If the driver registers a blood-alcohol level above the pre-set limit, the car won't start. In addition, drivers are prompted to blow into the tube every hour while the engine is running to ensure they haven't been drinking after the car has started.



Estimated installed interlocks in the U.S.



Sources: Oregon Department of Transportation; National Highway Traffic Safety Administration; Richard Roth; FBI
 DAVID BADDERS/THE OREGONIAN

Illustration 2



Source: LifeSafer Interlock

As the illustrations show, the IID connects to the vehicle's ignition system, and the driver must blow into the device before the vehicle can be started. If the operator's BAC exceeds the allowable level preset into the IID (.025 in New York State), the IID will notify the manufacturer and prevent the driver from starting the car. The IID manufacturer then notifies Probation of the alert.

A summary of the numbers of IIDs ordered by the courts throughout New York State and actually installed in motor vehicles annually from 2012 through 2014 is presented in the following table.

Year	Number of IIDs Ordered by the Courts	Number of IIDs Actually Installed	Percentage of IIDs Ordered That Were Installed
2012	18,288	4,897	26.78
2013	17,718	4,430	25.00
2014	17,475	4,483	25.65
Totals	53,481	13,810	25.82

As the table indicates, courts Statewide ordered the installation of 53,481 IIDs from 2012 through 2014. However, only 13,810 (25.82 percent of the total ordered) were actually installed.

In New York City, persons convicted of DWI are monitored by either the Queens District Attorney's Office or the New York City Department of Probation (Probation) – the agency we reviewed for this audit – as decided by the sentencing judge. All DWI offenders must have an IID installed in any vehicle they own or operate. Convicted drivers bear the cost of IID installation, a monthly monitoring fee, and IID removal costs. The Act provides, however, for fee waivers for persons who cannot afford these costs.

Probation, with a budget of approximately \$85.7 million and 1,015 employees, reports that the courts ordered the installation of 2,166 IIDs for persons under its supervision for the period August 15, 2010 through December 31, 2014.

Audit Findings and Recommendations

Only a small percentage of the court-ordered IIDs were installed in the cars of persons cited for alcohol-related motor vehicle violations. Probation's oversight of persons convicted of DWI was weak. Probation Officers (POs) often did not provide sufficient oversight of DWI offenders. As a result, probationers who violated the terms of their probation were not always sanctioned or sanctioned sufficiently. This could increase the risk that offenders' problematic driving conduct will persist and potentially harm other motorists in the New York City metropolitan area.

Offender Noncompliance with Courts' IID Installation Orders

Probation should ensure that offenders install IIDs in any vehicles they own or have permission to operate. However, for the period August 15, 2010 through December 31, 2014, only 111 (5.12 percent) of the 2,166 court-ordered IIDs were actually installed in the vehicles of persons cited for alcohol-related motor vehicle violations who were assigned to Probation. A summary of the numbers of IIDs ordered by the courts in New York City and actually installed in motor vehicles annually for this time period is presented in the following table.

Year	Number of IIDs Ordered by the Courts	Number of IIDs Actually Installed	Percentage of Court-Ordered IIDs Actually Installed
**2010	98	7	7.14
2011	703	52	7.39
2012	465	29	6.24
2013	441	15	3.40
2014	459	8	1.74
Totals	2,166	111	5.12

** Partial year (August 15 through December 31)

In addition, the IID installation rate (5.12 percent) for offenders assigned to Probation was considerably less than recent Statewide rates (about 26 percent), and it has been declining in recent years – from over 7 percent to less than 2 percent. Consequently, there is material risk that a significant number of persons cited for alcohol-related motor vehicle violations continue to drive without the court-ordered IIDs intended to protect other motorists.

Probation officials attributed the low IID installation rate in New York City to the availability of public transportation. However, officials did not provide us with any data or studies to support this assertion. Moreover, there was little evidence that Probation routinely followed up with offenders to ensure they installed IIDs in their vehicles. According to some of the case files we reviewed, offenders circumvented the IID requirement by driving vehicles owned by family members or other parties.

For example, on March 9, 2014, an offender was stopped for a traffic violation and subsequently arrested and charged with aggravated unlicensed operation of a motor vehicle. The vehicle he

drove belonged to his sister, who lived in the same household. (Note: Probation is prohibited from performing DMV checks on offenders' household members. However, pursuant to Vehicle and Traffic Law §1198(7)(b), anyone who knowingly rents, leases, or lends a motor vehicle to a person whose driving privileges are subject to the IID requirement may be charged with a misdemeanor.) In this instance, Probation held an Administrative Hearing, where the offender was warned that if this happened again, he could go to jail.

In another case (in 2013), an offender was stopped for a traffic violation and caught driving without an IID on two separate occasions within a 12-month period. On one occasion, the offender was charged with resisting arrest related to erratic driving. Subsequently, on another occasion, he was stopped and charged with another DWI. The offender was eventually ordered back to court and was sentenced to 12 to 39 months in jail.

If not for the aforementioned traffic violations, Probation would not have known these offenders were driving without licenses or IIDs. Further, based on our review, we concluded that there is material risk that offenders who do not install IIDs in any vehicle they own or operate circumvent that requirement by operating vehicles owned by other parties. As the examples indicate, such offenders can pose a danger to other motorists and the public. Consequently, Probation should place sufficient priority on ensuring that DWI offenders comply with their respective court orders.

In response to our draft report, Probation indicated that offenders were 100 percent compliant with their court orders, to the extent that those without IIDs either did not own motor vehicles or they asserted that they would not operate any motor vehicle during the period of restriction. In fact, however, certain offenders drove vehicles without IIDs during the period of restriction, as illustrated by the aforementioned cases. Thus, offenders were not fully compliant with the terms of their court orders. Further, given limitations in Probation's oversight of offenders, as detailed subsequently in the report, the risk of offender non-compliance is significant.

Probation officials also cited the availability of public transportation in New York City and the comparatively low rate of motor vehicle ownership as explanations for low IID installation rates. Nevertheless, the offenders in question drove motor vehicles, perhaps because public transportation did not adequately meet their unique transportation needs. Thus, it is highly speculative to assume that offenders will simply use public transportation instead of installing IIDs in their vehicles. Further, low vehicle ownership rates have virtually nothing to do with IID installation rates. The fact remains that all of the offenders in question drove motor vehicles.

Weaknesses in Probation Officer Oversight Activities

POs have a number of activities they must perform to provide proper oversight of their assigned offenders. In addition to ensuring that offenders install IIDs in any vehicle(s) they operate, POs must check probationers' DMV records; make periodic personal or electronic contacts (via kiosk) with offenders; and notify authorities when an offender's IID registers an unacceptable BAC (provides an "alert"). Further, when an offender breaches the terms of his/her probation (or "absconds"), Probation should notify the respective sentencing courts for further judicial action, as may be appropriate. We found, however, that POs do not always perform the required actions,

at times leaving offenders insufficiently supervised and sometimes unsanctioned when they violate the terms of their probation.

Performance of Department of Motor Vehicles Checks

When NYC-based offenders are convicted and sentenced to probation with the IID condition, they are directed to report to the Probation Intake unit in their home borough within seven days of the conviction. At that time, their assigned PO should run a DMV “check” (inquiry) to determine whether the probationers’ driver licenses were previously suspended or revoked, and whether they have any vehicles registered in their name. This information is needed to identify the vehicles, if any, in which IIDs should be installed.

Probation officials maintain that the DMV checks are performed at intake in every case. Thereafter, Probation officials should perform quarterly or monthly DMV checks (based on risk) on the offenders to identify changes in their license or registration status during the IID period set by the courts.

We reviewed the case files of a sample of 100 offenders (60 of whom were repeat offenders) to determine whether the above-noted DMV checks were performed. We identified the following deficiencies:

- In 70 cases, there was no evidence that DMV checks were performed at intake;
- In 32 cases, there was no evidence that DMV checks were performed by the POs during the offender’s entire probation term. We also noted 17 of these 32 offenders did not install an IID;
- Of the 68 cases that did have DMV checks during the probation term, 22 were considered high risk, thus warranting monthly DMV checks. However, we found evidence of monthly checks in only one of the 22 case files; and
- In nine of the 68 cases, there was a notation in the case files that the DMV checks were performed as a result of our audit.

We discussed our observations with Probation officials, and they said that DMV checks are performed at intake in every case, except for drivers who possess licenses issued by other states and/or whose vehicles are registered in another state. Nonetheless, Probation officials had limited assurance that the checks were actually performed, given the absence of supporting documentation in the files we reviewed. Moreover, the absence of DMV checks and related actions increases the risk that offenders’ problematic conduct will persist and potentially harm other motorists.

Responding to Ignition Interlock Device Alerts

According to the New York Codes, Rules and Regulations and New York City’s Interlock Program Plan, Probation is required to notify the sentencing court, the District Attorney, and the probationer’s alcohol treatment provider and drinking driver program, where applicable, within three days of the violation, when a probationer does one of the following:

- Fails to install an IID in his/her vehicle (unless the PO believes the installation will be completed within a reasonable time not to exceed 10 business days from sentencing);
- Fails to attend a scheduled IID service visit (unless the PO believes the visit will be completed within a reasonable time not to exceed five days from the scheduled date);
- Has three unsuccessful start-up tests, two unsuccessful rolling tests, or any instances where the IID entered lockout mode;
- Attempts to tamper with or circumvent the device;
- Sends his/her IID into a lockout mode, failed test, or failed re-test where the BAC is .05 percent or higher; and
- Does anything else that would seriously jeopardize the operator's successful completion of the sentenced interlock period.

Probation may recommend that the court modify the probationer's conditions of probation, such as an extension of the ignition interlock period, referral to an alcohol/substance abuse treatment program, or referral to the DMV for license suspension or revocation.

We analyzed Probation's IID alert log for the nine-month period January 1, 2014 to September 30, 2014, and found that there were 207 alerts logged during that time period, 30 of which should have resulted in the above required notifications. Of the 30 alerts, 22 were for a BAC over .05; four were for unsuccessful start-up tests/rolling tests/lockout mode; and four alerts were for device circumvention and/or tampering. Based on our review of the probationers' case files, Probation did not notify the sentencing court or the District Attorney in any of these 30 instances, as otherwise required. (In one case, we did note that Probation notified the client's alcohol treatment provider.)

When we discussed our observations with Probation officials, they stated that, over time, many alerts from the IID vendors are "false positives," and the vendors cannot confirm whether the BAC reading was actually caused by an alcohol contaminant. However, they did not provide us with any data or analyses to support this assertion, particularly the extent to which false positives do or do not occur. Therefore, Probation generally does not notify the courts as well as other affected parties of the IID alerts. Further, Probation officials did not explain why they do not alert the sentencing court or the District Attorney in the event of other alerts, such as device tampering.

We followed up with the Chief Clerk of the New York City Supreme Court (Criminal Division) to determine whether they would welcome the aforementioned referrals. He told us that the courts take driving while intoxicated very seriously and Probation should not hesitate to refer alerts as required. Again, the failure to respond to such alerts could increase the risk to the public.

Following Up on Absconders

The New York Codes, Rules and Regulations (Part 352) define the term "absconder" as a probationer who has failed to make his or her whereabouts known for a period of 30 calendar days subsequent to his or her last failure to report, or who has left the jurisdiction of the court without permission of the court or PO with intent to evade supervision. Upon determination that an offender has absconded, the PO shall file with the relevant court a Violation of Probation

Petition together with a request for a Declaration of Delinquency and a warrant for the arrest of the offender.

According to their files, two of our sampled offenders met the definition of an absconder. However, in neither case did Probation file a Violation of Probation, a request for Declaration of Delinquency, or a warrant for their arrest. Thus, there was no penalty requested or applied for their noncompliance with the terms of their probation. Since the absconders are not held accountable, there may be an increased risk to the public if they are driving an unmonitored vehicle or not complying with other probation requirements.

According to Probation officials, offenders are considered absconders after 90 days of failing to report. A failure to report is mailed to the offender after 30 days. After 60 days, Intelligence Officers deliver the aforementioned letter to the offender's address. After 90 days, a Violation of Probation should be filed with the applicable court. Probation officials acknowledged that Probation generally did not enforce these provisions of the Rules.

Contacts and Visits with Offenders

In addition to performing DMV checks, Probation's intake process includes a risk-assessment instrument to determine how extensively the assigned PO should monitor the offender. The level of monitoring is commensurate with the level of assessed risk. Low-risk offenders, without registered vehicles, are assigned to a PO for the first few months of probation and are then moved to the kiosk system (see Illustration 3). Such offenders must report to an automated kiosk, located at most Probation offices, once a month to verify contact information and answer questions about employment and any subsequent violations or arrests. Low-risk offenders who maintain vehicle ownership may be required to report to both their PO and the kiosk, as necessary.

Illustration 3



A Probation Kiosk

Probation had more intensive monitoring protocols for medium- and high-risk offenders. For such offenders, Probation had several different Case Management Protocols in effect during our audit period, as follows: Protocol 20-01-11 (March 3, 2011 through January 5, 2012); Protocol 20-02-11 (January 6, 2012 through October 27, 2013); and Protocol 20-02-13 (October 28, 2013 through the end of our fieldwork). These protocols included the number of Probation office visits that high-risk and medium-risk offenders were required to make during the first four months of their probation and then for periods thereafter. (Note: Probation could not provide us with the Protocol in effect during the period prior to March 3, 2011.)

We reviewed the case files for a judgmental sample of offenders to determine if they complied with the applicable Protocols, based on the available documentation. The results of our review are detailed as follows:

- For the period covered by Protocol 20-01-11, we selected five medium- and high-risk offenders who were referred to supervised probation for review. According to the applicable protocol, offenders were required to make two Probation office visits per month. However, four of the five offenders did not comply with this requirement;
- For the period covered by Protocol 20-02-11, we selected 13 medium- and high-risk offenders who were referred to supervised probation for review. During this period, such offenders were also required to make two Probation office visits per month. However, 8 of the 13 offenders did not comply with the requirement; and
- For the period covered by Protocol 20-02-13, we selected one medium-risk and two high-risk offenders for review. During this period, high-risk offenders were required to make four office visits per month, and medium-risk offenders were required to make two visits per month. However, none of the three offenders met their respective requirements for monthly office visits.

Moreover, there was no documentation in the case files of any follow-up actions taken by POs when offenders did not comply with their office visit requirements.

In response to our draft report, Probation officials questioned the reliability of our observations given the existence of multiple case management protocols during the audit period. We note that during our audit fieldwork, officials did not advise us that different protocols were in place at different times during the period. After receiving Probation's response, we re-examined the case files in question, applying the corresponding protocols, to assess Probation's compliance with them. As previously detailed, we still identified non-compliance with the protocols, and we revised our report as appropriate.

Recommendations

1. Develop and implement processes and procedures to ensure that DWI offenders install IIDs in any vehicle(s) they own or have permission to operate, as ordered by the courts.
2. Require POs to make and document all required DMV checks and home visits, as well as pertinent follow-up actions, when appropriate.

3. Ensure that POs promptly follow up on no-show offenders, absconders, and those who attempt to circumvent their court-ordered IID installation requirement.
4. When offenders violate the terms of their probation, make referrals to the appropriate courts and DAs, as warranted.

Audit Scope and Methodology

The objective of our audit was to determine whether the New York City Department of Probation provided proper oversight of persons convicted of Driving While Intoxicated. Significant emphasis was placed on Probation's administration of the Ignition Interlock Device Program. Our audit covers the period August 15, 2010 to May 19, 2015.

To accomplish our objective, we reviewed the governing statutes and regulations, and interviewed relevant Probation officials to gain an understanding of the Program, from sentencing to probation expiration, and the underlying controls. We reviewed the quarterly reports Probation sends to the Office of Probation and Correctional Alternatives (OPCA) and compared them against a list prepared by the Office of Court Administration (OCA) of all known convictions where an IID was ordered and the accused was sentenced to Probation. We selected a sample of 100 IID cases and reviewed the associated case files for each, as well as the entries for those cases in Probation's Reusable Case Management System to check for compliance with the Rules.

We conducted our performance audit in accordance with generally accepted government auditing standards. 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

This audit was performed 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.

Reporting Requirements

We provided a draft copy of this report to Probation officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of the report.

In their response, Probation officials agreed with some of our report's observations and conclusions, but disagreed with others. Our rejoinders to certain Probation comments are included in the report's State Comptroller's Comments.

Within 90 days after final release of this report we request that the Commissioner of the New York City Department of Probation report to the State Comptroller advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

Contributors to This Report

Frank Patone, CPA, Audit Director
Michael Solomon, CPA, Audit Manager
Marc Geller, Audit Supervisor
Saviya Crick, CPA, CFE, Examiner-in-Charge
Marsha Millington, CPA, Senior Examiner
Sophia Lin, Staff Examiner
Noreen Perrotta, Senior Editor

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller
518-474-4593, asanfilippo@osc.state.ny.us

Tina Kim, Deputy Comptroller
518-473-3596, tkim@osc.state.ny.us

Brian Mason, Assistant Comptroller
518-473-0334, bmason@osc.state.ny.us

Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



Ana M. Bermúdez
Commissioner

33 Beaver Street, 23rd Floor
New York, New York 10004
+1 212 361 8976 tel
+1 212 361 8985 fax

August 14, 2015

Mr. Michael Solomon, CPA
Audit Manager
New York State Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane – 21st Floor
New York, NY 10038

Re: **DOP's Response to Draft Audit Report:**
"Oversight of Persons Convicted of Driving While Intoxicated" (2014-N-4)

Dear Mr. Solomon:

The New York City Department of Probation ("DOP") is in receipt of the July, 2015 Draft Report entitled "**Oversight of Persons Convicted of Driving While Intoxicated**" (the "Draft Report") for the period August 15, 2010 through May 19, 2015, prepared by the Office of the State Comptroller (OSC.) We would like to thank the Comptroller's audit team for their professionalism in conducting this audit, and are grateful for the opportunity to respond to the Draft Report.

DOP welcomes the opportunity to further examine and strengthen our practices, and has reviewed the draft findings and recommendations of this audit seeking appropriate opportunities to do so. While some areas have been identified with which we agree, there are assertions in the Draft Report with which we disagree. In a number instances OSC has drawn conclusions and made findings in contravention of the facts presented and interviews held -- which we hope you will correct in your final report.

It has been and will continue to be the goal of DOP to ensure that DWI offenders install IIDs in any vehicle(s) they own or have permission to operate, as ordered by the courts and within our legal authority, as well as to conduct all appropriate follow-ups. To this end, we have addressed each of the findings included on pages 8 – 13 of Draft Report in further detail below.



1. Offender Noncompliance with Courts' IID Installation Orders

AUDITOR'S FINDING:

Probation should ensure that offenders install IIDs in any vehicles they own or have permission to operate. For the period August 15, 2010 through December 31, 2014, only 111 (5.12 percent) of the 2,166 court-ordered IIDs were actually installed.

AGENCY RESPONSE:

As it is currently written the law does not require installation of an IID where the defendant is not the owner of any motor vehicle and asserts that he/she will not operate any motor vehicle during the period of interlock restriction. So, while the Draft Report characterizes the 5.12 percent installation rate as "Offender Noncompliance," it is more accurately a reflection of the limited number of offenders under probation supervision who both received DWI installation orders and have vehicles presently registered in their name.

Of the 2,166 court-ordered IID's, 111 met the above criteria and proceeded to have the IID installed. The other 2,055 were in full compliance with the law by not owning any motor vehicle and asserting that he/she will not operate any motor vehicle during the period of interlock restriction. Adding the 111 who physically installed the device to the 2,055 who complied with the law through non-ownership/assertion – fully accounts for the 2,166 court ordered IID's for the period of August 15, 2010 through December 31, 2014 and **yields a 100 percent compliance rate** with regard to IID court orders.

*
Comment
1

As for the concerns raised about the possibility of offenders driving vehicles that belong to family members as a means of circumventing the IID requirement, DOP discusses this with offenders and makes them aware of the consequences for such behavior. However, tracking family members', or any others' vehicles falls outside of the Department's jurisdiction and is not covered by the law – thereby leaving us with no legal authority to even perform a Department of Motor Vehicle (DMV) check to ascertain which, if any, other family/household members own vehicles.

*
Comment
2

In fact, a recent US Government Accountability Office (GAO) report on the use of Ignition Interlock devices specifically cites New York officials responsible for overseeing Statewide IID implementation as describing "a continuing challenge to increasing the number of installed interlocks where DWI offenders attempt to wait out the period an ignition interlock is required by temporarily signing over their vehicles to friends or family."

*See State Comptroller's Comments, page 23



AUDITOR'S FINDING:

The IID installation rate (5.12 percent) for offenders assigned to Probation is considerably less than recent statewide rates (about 26 percent.) Probation officials attributed the low installation rate in New York City to the availability of public transportation. However, officials did not provide us with any data or studies to support this assertion.

AGENCY RESPONSE:

It is general knowledge that New York City is distinguished from other US cities for its low personal automobile ownership and its significant reliance on public transportation. New York City has, by far, the highest rate of public transportation use of any American city, with 54.2 percent of workers commuting to work. About one in every three users of mass transit and two-thirds of the nation's rail riders live in New York City or its suburbs. New York is the only city in the United States where over half of all households do not own a car (Manhattan's non-ownership is even higher - around 75 percent; nationally, the rate is 8 percent). It is home to two of only five 24-hour subway systems in the United States and is number one in total number of passenger trips and government spending per capita on public transit. All told, the City accounts for some 40 percent of the nation's transit trips.

Given the above data it is surprising that the Comptroller's office would question the ready-availability of public transportation in New York City as compared to elsewhere, and that it would expect similar IID installation rates to those of the rest of the state given the widespread availability of public transit as a viable option to driving a personal vehicle.

*
Comment
3

Furthermore, in terms of vehicle registrations (personal vehicle ownership,) according to New York State DMV data, there are 7,372,340 registered private vehicles in all other NYS counties or approximately 1 per every 1.34 people; there are only 1,838,041 registered private vehicles in NYC or approximately 1 per every 4.57 people.

Additionally, national data indicates that many DWI offenders prefer license suspension to DWI installation and, generally, less than 10 percent of eligible offenders enter interlock programs.

*
Comment
4

AUDITOR'S FINDING:

There was little evidence that Probation routinely followed up with offenders to ensure they installed IIDs in their vehicles. According to some of the case files reviewed, offenders circumvented the IID requirement by driving vehicles owned by family members or other parties.

AGENCY RESPONSE:

In each of the two examples cited by OSC there was indeed documented follow up with offenders who were found to be driving vehicles owned by family members or other parties. In one case (offender



driving the vehicle of his sister) an Administrative Hearing was held. This offender subsequently completed probation without further incident. In the other case cited (offender stopped for multiple traffic violations, driving a vehicle without an IID) as stated in OSC's own Draft Report: the offender was "ordered back to court and sentenced to 12 to 39 months in jail." This type of follow-up and response takes place whenever an offender who has asserted under oath that he/she will not operate a vehicle is found to be driving during the interlock period.

*
Comment
5

However, as previously indicated tracking family members', or any others', vehicles falls outside of the Department's jurisdiction and is not covered by the law – thereby leaving us with no legal authority to even perform a Department of Motor Vehicle (DMV) check to ascertain which, if any, other family/household members own vehicles.

2. Weaknesses in Probation Officer Oversight Activities

AUDITOR'S FINDING:

Performance of Department of Motor Vehicles Checks

Case files of a sample of 100 offenders were reviewed to determine whether the required DMV checks were performed and deficiencies were identified. Probation officials said that DMV checks are performed at Intake in every case, except for drivers who possess licenses issued by other states and/or whose vehicles are registered in another state. Nonetheless, Probation officials had limited assurance that the checks were actually performed, given the absence of supporting documentation in the files we reviewed.

AGENCY RESPONSE:

The audit team looked for documentation of DMV checks in individual case notes. However, the tracking of the performance of these checks is contained in the Quarterly Ignition Interlock Report prepared by each borough, submitted to the NYS Office of Probation and Correctional Alternatives (OPCA) and the Queens District Attorney's Office and made available to the auditors.

*
Comment
6

Additionally, all current offenders are registered with the New York State License Event Notification Service (LENS) which automatically notifies of driver license events as they post drivers' records including: the expiration and renewal of a driver license, the suspension, revocation and restoration of a driver license and changes to a driver license class and privilege.

AUDITOR'S FINDING:

Responding to Ignition Interlock Device Alerts

An analysis of Probation's IID alert log for the nine-month period January 1, 2014 to September 30, 2014 found that Probation generally does not notify the courts as well as other affected parties of IID alerts.

*
Comment
7



AGENCY RESPONSE:

We partially agree with this finding. However, the Draft Report does not indicate that – as was discussed with and demonstrated for the auditors -- *every alert is investigated by the Department*. There are numerous instances where the IID vendor, when contacted, cannot confirm that there was a genuine alert. As an alternative to incarceration, probation supervises offenders in the community. This supervision involves more than simply monitoring and reporting of behavior. When offenders fail to meet expectations, Probation exercises its authority in responding to those incidents in a variety of ways. These responses are aimed at insuring public safety by targeting strategies that have the greatest likelihood of promoting change.

*
Comment
8

However, going forward, DOP will begin documenting false positives and IID vendor responses in our case management system, as well as assure notification to the courts and other stakeholders that will include the Department’s response to the alert.

AUDITOR’S FINDING:

Following up on Absconders

According to DOP files, two of the sampled offenders met the definition of an absconder. However, in neither case did Probation file a Violation of Probation, a request for Declaration of Delinquency, or a warrant for their arrest. Thus, there was no penalty requested or applied for their noncompliance with the terms of their probation. Since the absconders are not held accountable, there may be an increased risk to the public if they are driving an unmonitored vehicle or not complying with other probation requirements.

AGENCY RESPONSE:

It is the policy of the Department to immediately follow-up on absconders. Further details on each of the two cases cited in the Draft Report are provided below:

In one of the cases cited, although the offender was generating “Failure to Reports” in DOP’s case management system -- which led the auditors to classify him as an “absconder” -- this case had actually been transferred to another jurisdiction. The offender had been approved to relocate and an intrastate transfer, through which continuous supervision was provided with no time gaps or actual failures to report on the part of the offender, was effected. Although all of the details regarding this transfer are properly documented, because DOP was unable to immediately close the case (while awaiting the provision of close-out document from the other county) – automatic “Failures to Report” continued to be generated thereby creating the *appearance of absconsion*.

In the other case, although the offender had initially failed to report, he was subsequently re-engaged, and similar to the offender in the first case -- successfully completed probation.

*
Comment
9



Vigilant monitoring and follow-up with regard to insuring that those under supervision are held properly accountable and meet their reporting requirements is the cornerstone of good probation work. When offenders fail to meet expectations, DOP employs strategies to promote change and exercises its authority in responding to insure public safety.

*
Comment
9

AUDITOR'S FINDING:

Contacts and Visits with Offenders

Probation's intake process includes a risk-assessment instrument to determine how extensively the assigned PO should monitor the offender. The level of monitoring is commensurate with the level of assessed risk. Our review of sampled files found that most did not comply with the required number of office visits.

AGENCY RESPONSE:

While the Draft Report indicates failure to comply with Departmental protocols regarding client contacts, the Case Management Protocols used by the auditors as the basis of this claim did not go into effect until October 28, 2013. However, 16 of the 24 cases sampled for examination were sentenced between 2010-2012 and four cases sentenced in the early months of 2013. Therefore, the required office visits referenced in the Draft Report were not in effect at the time.

*
Comment
10

As was pointed out to the auditors, 16 of the 24 cases sampled were subject to the Supervision and Case Management Protocols EPAP no. 20-02-11 issued on January 6, 2012, while only 8 were subject to the Supervision and Case Management Protocols EPAP no. 20-02-13 issued on October 28, 2013 (which superseded EPAP no. 20-02011.)

This constitutes a material error in the Draft Report as the contacts were not measured against the protocols that corresponded to the time periods of each individual case, and instead all of the sampled cases were measured against our most current Case Management Protocol which *only applies to cases that were sentenced after it went into effect.*

*
Comment
10

Once again, I want to thank you for the opportunity to review and respond to the Draft Report. We welcome the opportunity to further examine and strengthen our practices and look forward to the requisite corrections in your final report.

Respectfully submitted,

Ana M. Bermúdez

State Comptroller's Comments

1. As noted in the report, certain offenders asserted that they would not operate a motor vehicle, but nonetheless subsequently did so and were cited for traffic violations. Consequently, offenders were not 100% compliant with their court orders.
2. We acknowledge that Probation is prohibited from performing DMV checks on offenders' household members. Moreover, because of this limitation, there is an increased risk of abuse by offenders. Consequently, active monitoring of offenders is important, as our report concludes.
3. We did not question the ready availability of public transportation in New York City. However, the offenders in question drove motor vehicles, perhaps because public transportation did not adequately meet their unique transportation needs. Thus, it is highly speculative to assume that offenders will simply use public transportation instead of installing IIDs in their vehicles. Consequently, adequate oversight and monitoring of offenders is important. Also, see Comment 1.
4. According to a 2014 study by the U.S. General Accounting Office, actual nationwide IID installation rates were between 15 and 20 percent of those ordered to install them. The study further noted that the low installation rates can be attributed to low enforcement and monitoring as well as the associated IID installation and maintenance fees.
5. We acknowledge that Probation Officers followed up on the two offenders - after they were caught driving illegally. Our point is that better monitoring of offenders could help prevent such incidents from occurring in the first place.
6. The report cited by Probation officials has little information regarding the motor vehicles registered to offenders. The report has driver's license information and indicates whether or not an IID was installed. However, contrary to Probation's assertion, the report does not document or track the performance of DMV checks.
7. This is not the actual statement in the report regarding this matter. For the actual statement, please see report page 11.
8. We acknowledge that Probation is not required to act on and/or notify the courts or DAs of each and every IID alert. However, as stated in the report, Probation did not notify authorities in 30 cases where it was otherwise required by regulation to do so. Further, we are pleased that Probation indicates it will document false positives and IID vendor responses in the case management system, as well as ensure notification to the courts and other stakeholders.
9. At the time of our review, the case file for the first apparent absconder had no documentation of the offender's transfer to another jurisdiction. In the second case, the offender had absconded due to a failure to report. Moreover, without timely and properly documented follow-up on Failure to Report notices, Probation cannot be adequately assured that offenders have not absconded.
10. Prior to our draft report, Probation officials had not advised us that other protocols were in place during certain portions of our audit period. Applying the applicable protocols, we re-examined the case files in question with regard to Probation compliance with such protocols. Further, we revised our report as appropriate based on the results of our re-examination.