Office of the New York State Comptroller

Division of Local Government
& School Accountability

Ignition Interlock Program Monitoring

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State of New York
Office of the State Comptroller

Division of Local Government
and School Accountability

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Dear County Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government 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 county governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit, entitled Ignition Interlock Program Monitoring. 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 General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the Statewide Audits office, as listed at the end of this report.

Respectfully submitted,

Office of the State Comptroller
Division of Local Government
and School Accountability

State of New York
Office of the State Comptroller

EXECUTIVE SUMMARY

An ignition interlock device (IID) is a breath-alcohol measurement device used to monitor individuals convicted of certain alcohol-related offenses. An IID installed in a vehicle requires the operator to provide a breath sample in order to start the vehicle. The vehicle will not start if the device registers the driver's blood-alcohol level above a certain pre-set limit. Drivers are also prompted to blow into the device at unknown intervals to ensure they have not been drinking after the vehicle has started.

On November 18, 2009, New York State enacted legislation[1] to protect public safety. It requires that, as a condition of being sentenced for certain alcohol-related offenses occurring on or after August 15, 2010, convicted individuals must install and maintain an IID on any vehicle they own or operate for a certain period of time.[2] The New York State Division of Criminal Justice Services (DCJS) has regulations for counties and others establishing standards for the usage and monitoring of IIDs ordered by criminal courts for these alcohol-related sentences.[3]

Our audit focused on six counties' monitoring of cases with IID court orders (the Ignition Interlock Program). County probation departments monitor court-ordered installations and IID use for probation sentences, and the county, as part of its Program plan, identifies a responsible party to monitor conditional discharge sentences. These monitors must report related violations to the appropriate court[4] and district attorney as well as certain negative IID activity (including failed tests due to blood alcohol content (BAC) levels, reports of alleged tampering with or circumventing an IID or an attempt thereof, IID lockouts, or non-compliance with a service visit requirement). The failure of an individual to comply with the Program may result in the court modifying or revoking the conditional discharge or probation sentence. Therefore, monitoring is a key component for ensuring that a vehicle operator is complying with a court order and for protecting public safety.

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[1] 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 C 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).

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

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

[4] This may include the county, city, town or village courts.

Scope and Objective

The objective of our audit was to determine if counties using public resources for the State's Ignition Interlock Program were adequately monitoring the program to help ensure the safety of the public, for the period January 1, 2010 through May 29, 2015. Our audit addressed the following related question:

- Are the applicable county departments adequately monitoring the Ignition Interlock Program to ensure proper IID installation and use, and are officials complying with reporting requirements?

Audit Results

Each county in our audit had a process for monitoring IID installations and negative activities[5] of an operator, and generally worked with the operators to help ensure compliance. However, the county officials responsible did not always report violations to the appropriate court and district attorney as required.

Our examination of 682 cases requiring court-ordered IID installations found that 66 operators, who indicated they owned or operated a vehicle, did not comply with program regulations because they either installed the IIDs late or did not install them at all.[6] The monitors were late in reporting 14 of those cases (in Erie and Wayne) and did not report 50 cases at all (in Cortland, Erie, Montgomery, Otsego, Suffolk and Wayne). In four other cases (in Montgomery and Suffolk), vehicles were in fact registered to individuals who had indicated they did not own or operate a vehicle during the court-ordered IID period. The respective monitors did not report these cases, two of which they confirmed. We found no record of attempts to verify the other two.

Additionally, none of the six counties consistently provided notifications to the courts and district attorneys of operators with negative IID activity. Of the 215 cases with installed IIDs,[7] 70 cases had negative IID activity. Fifty-five of the 70 cases (79 percent) were either not reported (in Cortland, Erie, Montgomery, Otsego and Suffolk) or not reported in a timely manner (in Cortland, Suffolk and Wayne).

While IIDs potentially stop individuals from starting and driving their vehicle with a BAC higher than 0.025 percent,[8] county monitoring helps to ensure an individual is following sentencing conditions and protects the public. A failure to adequately monitor the IID program and report violations could prevent a court from knowing about noncompliance and therefore deciding whether to modify or revoke an individual's sentence to keep the roadways safe.

Comments of Local Officials

The results of our audit and recommendations have been discussed with local officials and their comments, which appear in Appendix A, have been considered in preparing this report.

[5] 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).

[6] For those instances where individuals did not install the IIDs, the monitors either verified that they disposed of their vehicles during the installation period (two cases) or reported the failure to install IIDs (12 cases).

[7] See Appendix B for details.

[8] See 9 NYCRR Section 358.5(c) (2).

Introduction

Background

Alcohol consumption can change an individual's judgment, coordination and ability to drive a vehicle. According to the Governor's Traffic Safety Commission, there were about 7,000 alcohol-related automobile accidents in New York State (excluding New York City) in 2013, as shown in Figure 1.

Figure 1: Alcohol-Related Motor Vehicle Crashes in New York State

Audited Counties	2010	2011	2012	2013
Cortland	41	42	52	48
Erie	561	604	556	548
Montgomery	62	54	33	46
Otsego	66	52	56	56
Suffolk	802	902	872	853
Wayne	68	75	55	54
Subtotal – Audited Counties	1,600	1,729	1,624	1,605
Other Counties	5,839	5,602	5,708	5,396
State Total (excluding NYC)	**7,439**	**7,331**	**7,332**	**7,001**

"Leandra's Law," a New York State law enacted November 18, 2009,[9] 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.[10]

An IID installed in a vehicle requires the operator to provide a breath sample in order to start the vehicle. The vehicle will not start if the device registers the driver's blood-alcohol level above a certain pre-set limit. During the trip, drivers are also prompted to blow into the device at unknown intervals to ensure they have not been drinking after the vehicle has started. IIDs are equipped with recording

[9] 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 C for additional detail. See also Chapter 440 of the Laws of 2015, effective November 20, 2015).

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

devices that capture the number of times the automobile was started or attempted to be started, the operator's blood alcohol level at the time an attempt was made to start the vehicle, and the duration the automobile was driven during the monitoring period to deter drinking and driving.

The New York State Division of Criminal Justice Services (DCJS) has regulations for counties and others establishing standards for the usage and monitoring of IIDs ordered by criminal courts for these alcohol-related sentences.[11] County probation departments are responsible for monitoring court-ordered IIDs for individuals sentenced to probation. Those sentenced to a conditional discharge are monitored by a county-designated department,[12] individual or entity, which may also be the county probation department. Monitoring is a key component for ensuring that a vehicle operator is complying with a court order and for protecting public safety.

Installation and activity requirements that must be monitored include the following:[13]

- The monitor shall receive notification of an order for the IID within five business days of 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 C for details).

- The monitor shall notify the appropriate court[14] and district attorney, within three business days, of the following:

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

[12] As a general premise, probation is a sentencing option for 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 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 NYCRR Section 358.4[c]).

[13] See 9 NYCRR Section 358.7.

[14] This may include the county, city, town or village courts.

- 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 .05 percent or higher.

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

From August 15, 2010 to December 31, 2014, there have been 76,727 court orders received by New York State counties that require the installation of an ignition interlock device on a vehicle owned or operated by the individual sentenced. The counties reported that 20,932 ignition interlock devices (27 percent) were installed.[15] We recognize, however, there may be reasonable explanations as to why an IID installation did not occur in a given situation. For example, Leandra's Law now provides that an operator may assert 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.[16] Another possibility is that the operator, although subject to the installation requirement, no longer owns or operates a vehicle and therefore has not installed the device.

We audited six counties to determine whether they were adequately monitoring individuals having court-ordered sentences with an IID requirement for installation and device use, during the period January 1, 2010 through May 29, 2015. Our audit focused on the obligations of over 16,900 individuals with court-sentenced IID requirements. As shown in Figure 2, probation cases with a court-ordered IID are assigned to staff in the Probation Department for case supervision, which includes monitoring IID installation and activity. Conditional discharge cases are monitored by specific individuals designated

[15] New York State Ignition Interlock Annual Statistics: 2010-2014 available at http://www.criminaljustice.ny.gov/opca/pdfs/Ignition-Interlock-Annual-Statistics-2010-2014.pdf

[16] See Chapter 169 Laws of 2013.

by each county: probation officers or assistants, staff of a county department, or a third-party vendor.

Figure 2: County Population, IID Court Orders and Designated Monitors

County	Approximate Population	Court Orders[a] (August 15, 2010-March 31, 2015)	Designated Monitor of Probation Cases Requiring IID	Designated Monitor of Conditional Discharge Cases Requiring IID
Cortland	49,000	406	Probation Department	Probation Department
Erie	920,000	4,696	Probation Department	County Stop DWI
Montgomery	50,000	322	Probation Department	District Attorney
Otsego	62,000	322	Probation Department	Third-Party Vendor
Suffolk	1,500,000	10,010	Probation Department	Probation Department
Wayne	93,000	1,167	Probation Department	Probation Department

[a] Per "New York State Total Program Report August 15, 2010 – March 31, 2015" available at http://www.criminaljustice.ny.gov/opca/pdfs/IID-Total-Program-Report-thru-March-31-2015.pdf

Once an IID is installed, the vendor notifies the monitor of device usage and negative activity. Such notification can be of all activity or negative activity only. The vendor's device activity report generally includes a record of the date, time, test results, camera images and the vehicle's mapped location. The monitor can review the IID camera images to help determine who provided each breath sample and potentially ascertain whether the result was inaccurate or if a violation in fact occurred. The monitor also may contact the individual directly to gain an understanding of what occurred, which serves as a deterrent by letting the individual know the activity is being watched.

Objective

The objective of our audit was to determine if counties using public resources for the State's Ignition Interlock Program were adequately monitoring the program to help ensure the safety of the public. Our audit addressed the following related question:

- Are the applicable county departments adequately monitoring the Ignition Interlock Program to ensure proper IID installation and use, and are officials complying with reporting requirements?

Scope and Methodology

For the period January 1, 2010 through May 29, 2015, we interviewed county officials and staff, reviewed policies and procedures, identified the program requirements, and reviewed samples of counties' court orders and information that the counties maintained for their IID records. We tested individual names against public records and examined communications to ensure compliance with the monitoring regulations for the Ignition Interlock Program. The Otsego County

conditional discharge cases were excluded from our testing because that county's probation 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 B of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional 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.

Comments of Local Officials

The results of our audit and recommendations have been discussed with local officials and their comments, which appear in Appendix A, have been considered in preparing this report.

Monitoring

The State's Ignition Interlock Program requires counties to monitor the installation and use of Ignition Interlock Devices (IID) and report instances of noncompliance to the courts and district attorneys. County monitors should have knowledge of the regulations, their role and responsibilities, and the monitoring and reporting process.

We tested the monitoring of 682 court-ordered IID installations during the audit period. All six counties in our audit had a process for monitoring installations and negative IID activities of operators, and generally worked with operators to ensure compliance. However, county-designated officials responsible for such monitoring did not consistently report operator violations to the appropriate court and district attorney as required.

Of the 66 installation violations in our test (52 IIDs installed late and 14 IIDs not installed[17]), the monitors reported violations late in 14 cases (21 percent) and did not report 50 violations at all (76 percent). Of the 50 cases that were not reported, two individuals never installed an IID as ordered by the court. In four other cases, vehicles were in fact registered to individuals who had indicated they did not own or operate a vehicle during the court-ordered IID period. The respective monitors did not report these cases, two of which they confirmed. We found no record of attempts to verify the other two.

Of the 215 cases with installed IIDs,[18] 70 cases had negative IID activity. The monitors reported 17 of the 70 cases (24 percent) late and did not report 38 cases (54 percent) at all.

Reporting of IID Installation Violations

A county is required to report to the appropriate court and district attorney when an individual, who is sentenced with a court order that requires an IID installation and who owns or operates a vehicle, does not install an IID within 10 business days of the court order or (if sentenced to imprisonment) upon release from imprisonment.

The counties generally monitored the IID installation activities of operators. All six counties had cases with IID installations and installations that occurred both within and after the 10 business day installation period. We selected 682 court orders with an IID requirement for testing,[19] of which 231 cases indicated a vehicle

[17] For those instances where individuals did not install the IIDs, the monitors either verified that they disposed of their vehicles during the installation period (two cases) or reported the failure to install IIDs (12 cases).

[18] See Appendix B for details.

[19] Ibid.

was owned or operated. Sixty-six devices were installed late or not installed: 52 after 10 business days and 14 not at all. The late installations ranged from two to 30 days after the 10-business-day period. In 451 of the 682 cases, individuals indicated they did not own or operate a vehicle, and therefore did not install a device; however, four of these cases, in two counties (Montgomery and Suffolk), did have a vehicle during the IID order period, as shown in Figure 3.

Figure 3: IID Installations

County	Total IID Orders Tested	Indicated Vehicle Owned or Operated	Where Vehicles Were Indicated		Indicated No Vehicle Owned or Operated	No Vehicle Indicated but Found Registered
			IID Installed Late	IID Not Installed		
Cortland	60	25	3	1	35	0
Erie	201	60	17	12	141	0
Montgomery	56	14	5	1	42	1
Otsego[a]	34	8	1	0	26	0
Suffolk	250	82	21	0	168	3
Wayne	81	42	5	0	39	0
Total	**682[b]**	**231[c]**	**52**	**14**	**451**	**4**

[a] Probation cases only
[b] Composed of 401 conditional discharge cases and 281 probation cases
[c] Composed of 165 conditional discharge cases and 66 probation cases

For one of the four cases in which the individuals indicated they did not have a vehicle, the monitor at Montgomery told us that no vehicle was observed during home visits. However, during our audit fieldwork, the monitor learned of an owned vehicle through a probation investigation, but did not report the operator's failure to install an IID. Further, our audit found that two conditional-discharge cases in Suffolk had vehicles registered in another state. Although the case file showed an out-of-state address for these cases, no documentation was available to show that the monitor contacted the other state to determine if a vehicle was owned, and the cases were not reported. In the remaining case (Suffolk), the monitor identified vehicles registered in the State to the individual but did not report this to the court in a timely manner, or to the district attorney at all.

To determine if the counties' monitors reported installation violations, we examined the 231 court orders that had an IID requirement and when a vehicle was indicated as owned or operated. Of the 66 instances when the IID was installed either late or not at all, the monitors did not meet reporting requirements for 64 cases (97 percent), as shown in Figure 4.

Figure 4: County Reporting of IID Installation Violations

County	Total IID Installation Violations (Device Not Installed or Installed Late)	Not Reported	Reported Late
Cortland	4	4	0
Erie	29	14	13
Montgomery	6	6	0
Otsego[a]	1	1	0
Suffolk	21	21	0
Wayne	5	4	1
Total	**66**	**50**	**14**

[a] Probation cases only

In two of the 50 unreported cases (in Cortland and Montgomery), the individual did not install an IID when a vehicle was owned by that individual. However, during the time in which the individual was required to have the IID installed, the vehicles were either sold or indicated as repossessed, with appropriate documentation. In Erie, the 12 cases that did not have an IID installed (see Figure 3) were reported by the monitor to the courts, one case on time and 11 cases on average 18 days late.

The reporting activities associated with the installation violations varied. County officials indicated they generally worked with the individuals on timely installation of the IID. However, the volume of their cases could impact whether a report is processed when an individual does not install a device within the 10-business-day installation period. When monitors fail to report violations in a timely manner or at all, the courts may be unaware of the sentenced individual's noncompliance with their orders. This could potentially place the public at an increased risk of harm.

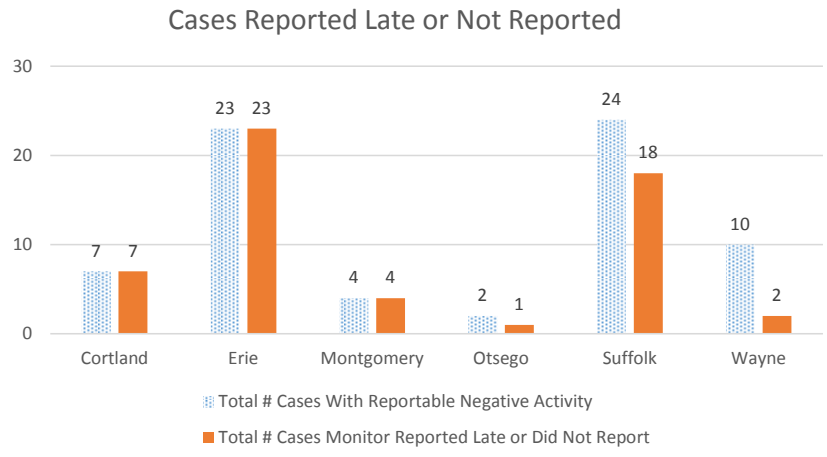
Reporting of Negative IID Activity

An IID vendor provides device activity to the county for use in monitoring. When a county's monitor receives a notification from an IID vendor, the monitor is able to review the individual's IID history and investigate the detail for reportable negative activity. The monitor should report the resulting violations to the appropriate court and district attorney.

The six counties generally monitored the negative IID activities of operators. However, none of them consistently reported negative

events[20] to the courts and district attorneys. We selected and reviewed the IID activity of 215 cases with an installed IID to determine if the monitors reported the negative IID activity to the courts and district attorneys in a timely manner. Of the 215 cases, 70 had reportable negative activity, of which 55 cases (79 percent) were reported late or not at all (Figure 5).

Figure 5: County Reporting of IID Negative Activity



For the 55 cases reported late or not at all, Figure 6 shows the average number of days beyond the 10-day requirement that it took monitors to report the negative activity. It also shows the number of negative events found for each case.

[20] 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 or higher, a sample is not given for a re-test, and a lock-out results.

Figure 6: Reportable Negative IID Activity

County	Cases Not Reported	Cases Reported Late	Average Days Cases Reported Late	Total Negative Events Not Reported or Reported Late
Cortland	4	3	8	30
Erie	23	0	NA	97
Montgomery	4	0	NA	35
Otsego[a]	1	0	NA	6
Suffolk	6	12	6	43
Wayne	0	2	7	28
Total	**38**	**17**		**239**

[a] Probation cases only

Many of these negative events were one instance of providing a breath sample into an IID to start a vehicle. However, there also were multiple attempts to start a vehicle over the IID period while having a BAC higher than 0.05. The following examples were not reported:

- In Montgomery, an individual sentenced on June 12, 2014 had four negative IID events that occurred on June 30, September 8, November 5, 2014 and February 16, 2015. The BAC levels ranged from 0.106 to 0.129.

- In Erie, an individual sentenced on August 4, 2014 had two negative events that occurred on October 11 and December 15, 2014. BAC levels reported ranged from 0.051 to 0.151.

Most county monitors generally understood the requirement to monitor negative IID activity. However, the Montgomery monitor was unaware of this requirement. We found four conditional discharge cases in Montgomery, with 35 negative IID events, which were not reported to the courts. In Erie, the monitor of conditional discharge cases told us that only cases with a pattern of negative activity are reported to the courts, as agreed to between the county and appropriate court. However, there was no evidence that Erie's 23 conditional discharge cases with negative activity, totaling 97 negative IID events, were reported to the court and district attorney. Multiple negative events such as these may indicate a pattern of behavior that should be reported.

Several counties indicated that at times a court or district attorney will instruct a monitor to stop these reports. In addition, other counties

cited a need for the courts to better understand the courts' impact on the monitor's function and the reporting requirements. For example, the counties indicated that court paperwork that is late or incomplete can delay the monitoring process. Additionally, in monitoring probation cases, the provisions of the IID regulations sometimes caused confusion for counties. As part of probation supervision, graduated sanctions (for example, verbal warnings or face-to-face visits with the probation officer) could be administered to a case for negative IID activity; however, the regulations also provide that the monitor notify the appropriate court and district attorney of certain negative IID events. Several county officials indicated that they thought the administration of graduated sanctions was a sufficient alternative to reporting certain negative IID events to the courts and district attorneys. In addition, some officials indicated there was a lack of specific guidance from the State for implementing the IID program.

While an IID prevents a vehicle from starting, the district attorney and court cannot assess an individual's behavior or consider modifying the sentence if the monitor fails to report the events.

Recommendation

1. Department officials should report all IID Program violations to the courts and district attorneys in a timely manner.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

We provided a draft copy of this global report to the six counties we audited and requested responses. We also provided a draft version of the respective individual letter reports to each of the counties and received responses from all of them. Each county's respective letter report includes the county's response to our audit and, in some instances, our comments on issues raised.

All six counties responded to the draft of this global report. Two of the responses (Otsego and Suffolk) were not global in nature. The following comments are excerpted from the other four responses (Cortland, Erie, Montgomery and Wayne).

County Reporting Requirements

Cortland County: "With regard to reporting negative Ignition Interlock Device Activity, I believe that it would be appropriate for the rule to differentiate between having to notify the court of reports of a 'lock-out' as opposed to a temporary 'lock-out.' "

Erie County: "It was our concern that automatic notification of events that do not involve drinking and driving or tampering risks [are] distracting the court and other partners from important notices requiring immediate action."

Montgomery County: ". . . [I]t has been our practice to first investigate negative events as there are at times mitigating factors that influence the elevated BAC in some instances. It would therefore seem prudent that not all negative events require notification to the County and District Attorney if, following documented and competent investigation, there is no verifiable infraction."

Timeliness

Cortland County: "With regard to installations that occurred after 10 business days it should be recognized that the process is not always expedient due to the transfer of supervision to another County or State and finding an installation site can be difficult especially when partial pay or waiver of payment has been ordered by the Court. Timeliness on the part of the Court to submit the order for Ignition Interlock to the monitoring agency is also crucial to having the interlock device installed."

Montgomery County: "Several issues identified in the report have been and continue to be examined regarding automobile ownership and delays in installation of the ignition interlock, although the timely receipt of Court orders for ignition interlock from various Courts continues to be an issue plaguing this compliance."

Wayne County: ". . . [T]he areas of noncompliance such as the reporting of negative activity or notification to the courts and DA may or not be within the controls of the departments alone for consistent compliancy. A shared complaint by the departments is that our counterparts within the justice system either directly or indirectly delay documentation to the respective probation departments."

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

To achieve our audit objective and obtain valid audit evidence, we performed the following procedures:

- We interviewed county staff involved in the IID program for general background information and policies/procedures in place with respect to IID usage and monitoring the compliance of individuals subject to installation of IID.

- To determine if departments are monitoring the IID Program for both conditional discharge and probation cases, we obtained the list of individuals with a court-ordered sentence to install an IID. To verify reliability, we compared this list, which was pulled from the county records, to the New York State Office of Court Administration (Unified Court System) records showing required IIDs.

- Of the 5,450 cases with an IID requirement,[21] we sampled a total of 682 cases, 401 conditional discharge and 281 probation cases reported by the county, to focus on current impact to the public. We sorted the list for the sample by separating conditional discharge from probation cases and judgmentally selecting a mix of cases based on the responsible designated monitors (i.e., Probation Department, County Stop DWI, district attorney or third-party vendor). For monitors identified as a third-party vendor, testing was excluded. We examined related supporting 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 attorneys. We met with county staff to understand the actions taken for negative IID activity related to a case[22] and the communications between the monitor and the courts/district attorneys.

- For the 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.[23]

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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

[21] The overall time period was from January 2013 through May 2015, but was different for each county depending on when fieldwork was started and completed.

[22] Of the original 682 cases sampled, negative activity was reviewed for all cases with an IID installed. If cases selected were closed and device activity was unavailable, replacement cases were selected. As a result, we selected and reviewed the IID activity of 215 cases.

[23] The software accesses only public records reported in electronic format.

APPENDIX C

CERTAIN DEFINITIONS AND MONITORING REQUIREMENTS[24]

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 or she owns or operates within 10 business days of the condition being imposed by the court or if sentenced to imprisonment upon release from imprisonment, whichever is applicable; 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 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 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)

[24] 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.

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 and driving 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 took effect November 1, 2013 and applies to those violations committed on and after such date. Among its provisions are as follows:[25]

[25] See Leandra's Law – Reform and Ignition Interlock Program Plan Updates, State of New York Division of Criminal Justice Services, Office of Probation and Correctional Alternatives, dated April 14, 2014.

- Extending the period of interlock restriction to a minimum of 12 months (from six months) for individuals convicted of certain alcohol-related offenses.[26]

- 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.

[26] 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 as authorized…and specified in such order."

APPENDIX D

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APPENDIX E

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