



**New York State  
Division of Criminal Justice Services  
Office of Probation and Correctional Alternatives**

**New York State  
Probation Practitioner Handbook for the  
Management of the DWI Offender**

**August 2015**

*This document is intended to serve as a practice reference for probation departments in New York State. Staffing and resources vary with jurisdiction and impact the provision of services.*

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# New York State Probation Practitioner Handbook for the Management of the DWI Offender—

## Section I. Introduction and Overview

The NYS Division of Criminal Justice Services' Office of Probation and Correctional Alternatives (OPCA) acknowledges the continued efforts of probation departments in effectively supervising nearly 24,000 DWI offenders placed under their supervision by the Courts. Reducing probationer recidivism and promoting public safety are primary goals of probation departments throughout New York State. For the DWI offender population, promoting highway and traffic safety through greater accountability assists in reducing roadway injuries and fatalities. Probation officers may work at the pretrial, investigation, and supervision stages of the criminal case process to ensure offender accountability, treatment and effective supervision in order to promote law-abiding behavior and facilitate the successful reintegration of offenders into the community. This New York State Probation Practitioner Handbook for the Management of the DWI Offender has been developed drawing upon the latest research as well as the wealth of experience and knowledge of probation professionals in New York State.

In New York State, the Probation DWI Offender population represents approximately 23% of the total adult probation population under community supervision. DWI Offender caseloads in some counties exceed 40% of adults under supervision.

Probation departments have assumed additional responsibilities related to the DWI offender population with the passage of Chapter 496 of the Laws of 2009, otherwise known as "Leandra's Law". Probation departments supervise individuals sentenced to probation supervision and ordered by the courts to install ignition interlock devices in their motor vehicles as a result of their conviction for "Leandra's Law" crimes. Probation departments and other monitors oversee individuals sentenced to conditional discharge in New York State.

In New York State, 58 local probation departments serve 62 counties, overseeing nearly 110,000 adult and 6,000 juveniles under community supervision. These departments serve geographically and demographically diverse communities ranging from small rural communities to large urban centers. Probation department resources vary across the state.

During the fall of 2013, OPCA conducted five regional focus groups and one Live Meeting webinar to assess DWI offender management practices employed in New York State. The results of the focus groups were shared during the final Live Meeting Wrap-Up session. A recording of that session can be found on the Integrated Justice Portal (IJP) via the following path: **Resources > Reference Library > Probation > Training.**

This activity was conducted by OPCA supported through a grant from the Governor's Traffic Safety Committee (GTSC).

The five focus groups were conducted to assess probation's management of DWI offenders and determine the different practices in place in participating jurisdictions that could then be shared for informational purposes with all probation departments in New York State. A total of 149 probation officers and administrators representing 45 probation departments participated in these meetings. Some of the central themes that emerged concerning the diversity among departments included the following:

- Probation departments have specific needs and practices based on the available resources including treatment providers, funding, work schedule, employment practices, technology, and workloads, as well as local judicial, prosecution and defense practices.
- Many of the larger and medium sized departments have specialized DWI offender officers and/or units, while many of the small departments have limited ability to develop specialized units, but may still designate a single officer as a specialist.
- Probation departments in more populated areas typically have greater access to treatment providers, and many report multiple treatment provider options within their respective communities.
- Several departments report the availability of flexible scheduling by their staff while others are bound by contractual restrictions that limit non-traditional work hours.

This document is intended as a resource for probation management and probation officers who are supervising DWI offenders. This document covers all the steps in which a probation officer may have contact with a DWI offender from the pretrial stage through supervision to completion of probation. This document covers many related topics such as technology for supervision and special populations. It is not intended to be read once in totality, but rather to be utilized regularly as questions arise in a particular area of supervision.

## **Section II. DWI Offender Management Components**

There are many components that experts agree comprise effective supervision and management of DWI offenders in the community. The components include the following:

- Investigation.
- Supervision by a probation officer.
- Surveillance by officers and/or local law enforcement.
- Treatment for alcohol and/or other drug issues.
- Technology to assist supervision such as ignition interlocks devices.
- Communication with the sentencing court.

Effective probation management of the DWI Offender requires ongoing communication between probation officers and other law enforcement agencies, treatment providers and the sentencing court. These collaborative networks or supervision teams can work together to hold the offender accountable, assist the offender in maintaining compliance with treatment and conditions of probation supervision, and enhance public safety. Each component will be discussed at length in the following sections.

### **Section III. Pre-Trial Supervision**

Pre-trial supervision can be an effective means of ensuring that offenders return to court, while reducing unnecessary reliance on jail incarceration. By allowing defendants at low risk of absconding to return to the community while awaiting trial, and with the approval of the court, defendants can be effectively screened and assessed for alcohol dependency, and become engaged in treatment at a critical time when the incentive for changing behavior is its greatest. Pre-trial supervision services can provide a very effective opportunity for the offender to change behavior and allow information to be promptly reported back to the court that can benefit the offender at sentencing. In addition to the benefits of early engagement, pre-trial supervision can provide an excellent source of information which may be utilized at the pre-plea or pre-sentence, and post-conviction supervision stages. Pre-trial staff commonly interview defendants while they are held or detained in police lock-ups or local jails. Typically, pre-trial staff utilize pre-trial screening assessments, questionnaires, and criteria to determine a defendant's risk of failing to appear before court. In the case of DWI defendants, the pre-trial agency may wish to focus on issues specific to this population. Some DWI specific issues for screeners to note may include:

- Does the person currently have a valid driver's license?
- Does the person own or have access to a vehicle?
- Does the person have a history of treatment

Having a license and access to a vehicle may provide an increased opportunity for flight. However, the release of a defendant also presents specific opportunities for monitoring license and vehicle activity. If a defendant is actively in treatment, the supervising officer/agency can coordinate with the defendant's treatment provider to inform the treatment plan, and seek modification of conditions of supervision from the Court.

Chapter 169 of the Laws of 2013, signed by Governor Andrew M. Cuomo on July 26, 2013, amended Vehicle and Traffic Law (VTL) §1193 for defendants who committed their offenses on or after November 1, 2013, recognizing the imposition of Ignition Interlock Devices (IIDs) to be installed prior to sentencing as a preventive measure. Of note to Pre-Trial Supervision staff, the period of IID restriction commences from the earlier of either the date of sentencing, or the date of installation in advance of sentencing as ordered by the court, unless the defendant is sentenced to incarceration in which case the period begins at release. This chapter law also reaffirmed that a court may not authorize the operation of a motor vehicle by any individual whose license or privilege to operate a motor vehicle has been revoked. Probation departments and other pre-trial programs need to be mindful of these possibilities and ensure that any such IID's installed pre-trial are installed and monitored pursuant to court order. The results of any missed or failed retests (start-up or rolling

retests) or any tests with a BAC over .05 percent, as well as any missed service visits or any evidence of tampering or circumvention should be reported to the court within three business days of the monitor becoming aware of those events. It is recommended that a summary of the defendant's overall performance under IID monitoring be provided to the court prior to the defendant court appearance. If the defendant is sentenced to a conditional discharge, or period of probation supervision, it is critical that the pre-sentence IID monitor communicate the date of installation, general compliance, and other matters of importance.

## **Section IV. Pre-Sentence and Pre-Plea Investigations and Reports**

The following section includes information on the development and writing of pre-sentence or pre-plea investigation reports. The information covered will be a review of the existing general research on this area, a review of the information about the practices of certain departments in New York State and recommendations for different practices in report writing.

### **I. Summary of the Research**

Adding additional relevant information to pre-plea and pre-sentence investigations and reports is an element to consider in probation practice. This is because sentencing decisions, orders and conditions, and case planning all depend on relevant information gathered during the investigation stage and contained in these reports. The report lays the foundation for required probation orders and conditions, supervision, and case planning. The investigation phase is also an excellent time to establish a collaborative network for the case.

The American Probation and Parole Association (APPA) has provided guidelines for community supervision of drunk drivers.<sup>1</sup> APPA's first guideline reads: *"Investigate, collect, and report relevant and timely information that will aid in determining appropriate interventions and treatment needs for DWI offenders during the release, sentencing, and/or supervision phases."*

This guideline specifies the need to gather vital information early on with DWI offenders in order to make appropriate releasing and/or sentencing recommendations to courts, as well as to provide the information to the supervising officer for appropriate risk level assignment as well as case planning purposes.

APPA provides the following as Key Points for the pre-sentence investigation and report pertaining to probation:

- "Gather information on the offender's prior criminal history and traffic record."
- "Conduct an actuarial risk and needs assessment on DWI offenders."
- "Screen and/or assess DWI offenders for substance abuse issues."
- "Screen and assess DWI offenders for poly-substance abuse and mental health issues."
- "If not collected (or complete) at the presentence phase, collect information prior to case or supervision planning."

In gathering information about a DWI offense, whenever possible, the data should come from multiple different sources to ensure that the information obtained is accurate. Sources of information on prior criminal history may include:

- The police, district attorneys and/or court records which details the instant offense.

Whenever available, probation officers preparing such reports should thoroughly review all charging documents that provide details about the crime, including careful review of accusatory instruments including criminal information and indictments. Writers should request any Criminal History and highlight prior convictions for DWI or other VTL convictions, or adjudications involving such offenses. An Interstate Identification Index (III) search should be done to obtain out-of-state criminal history.

- The offender's personal history.

This can be gathered during an interview with the offender and cover all the standard areas of interview such as family and employment, with an emphasis on factors related to the drinking driving behavior. The focus should include prior Driving While Intoxicated (DWI), Driving While Ability Impaired (DWAI) or Driving Under the Influence (DUI) arrests both in and out of state and any pleas resulting in reduced charges for those offenses. This data is important to assess the individual offender, but should not be accepted at face value as DWI offenders frequently minimize the extent of the alcohol or drug use or prior crimes.

- The offender's alcohol or drug use history.

Obtaining information about prior treatment history can be very important. If an offender indicates a prior treatment history, the probation officer can request a signed release of information (ROI) from the offender. This will allow the officer to request relevant information from the treatment provider as OASAS regulation 14 NYCRR Section 822(2.2) (e) requires case records to be maintained by treatment providers for 6 years after the date of discharge. This may include a discharge summary from the former treatment provider. See the uniform *OASAS Criminal Justice Release* in Appendix B.

- Substance Abuse and DWI specific assessments, where available.

Assessments may be conducted by probation officers who have completed requisite training for the specific assessment device used in their jurisdiction, and can provide information on an offender's need for further evaluation by a licensed clinician and substance abuse treatment. An actuarial assessment of DWI risk level is highly recommended at this stage, as such an assessment can evaluate the risk of an offender committing a new DWI related crime in the future. This information can be useful in making an informed decision on level of supervision. OPCA has issued guidance on DWI Risk Assessment Tools.<sup>ii</sup>

- Collateral interviews.

Probation officers should, whenever possible, also interview appropriate contacts, which may include the offender's family members, employer, friends, treatment providers (medical, mental health or substance abuse) and any other individuals the offender interacts with or has interacted with on a regular basis. These individuals can often provide important information about the offender that otherwise would not be known.

- Access to Motor Vehicle Information.

The offender's access to a vehicle should be well-documented. A probation officer should review the Department of Motor Vehicles (DMV) data systems for all vehicles registered or titled to the offender, but also obtain information on all other vehicles the offender may have access to, including the vehicle the offender was driving at the time of offense. These vehicles may include those owned by family members or significant others who reside in the home. Information as to registration or title provides a sentencing judge with critical information, as well as the supervising officer for the purposes of surveillance.

- The level of risk that the offender poses to the community.

The summary recommendation regarding a DWI offender's level of risk to the community should be based upon all of the information that the officer has gathered and analyzed during the course of the investigation. Research indicates that re-offense risk is most accurately measured by DWI offender-specific actuarial risk assessment instruments. These instruments may be used to anchor the judgment or impressions of the probation investigator. OPCA recommends that departments consider utilizing a combination of the general risk assessment such as New York Correctional Offender Management Profiling for Alternative Sanctions NYCOMPAS and a specialized DWI risk assessment.

- Corresponding recommendations regarding incarceration or community supervision with special conditions. The Evaluative Analysis and Recommendation sections of the report should include a brief synthesis of the following factors:

- The probability of re-offense;
- Recommendations regarding risk that were identified by a general risk and any DWI offender specific assessment/evaluation, as applicable;
- Factors gleaned from the investigation that tend to exacerbate risk (e.g., history of failure at Alcohol or Other Drug (AOD) treatment, access to vehicles, prior DWI convictions, high BAC at time of arrest(s));
- Resources that are available which support the criminal justice system management of the offender's risk in the community (e.g., supportive family/friends, specialized treatment, stable employment and residence, access to technology for supervision, sufficient supervision resources, and ability to limit access to vehicles);
- Special conditions pertinent to the individual offender needed to monitor risk if probation is recommended; probation officers must recommend conditions of probation that specifically address each offender's DWI behaviors.

## II. Pre-Plea and Pre-Sentence Investigations and Reports in New York State

Probation departments have reported the following in their 2013-2014 Probation Annual Plans submitted to OPCA:

- Fourteen departments report probation officers who specialize in DWI offender pre-sentence investigations.
- Additional information relevant to sentencing orders and conditions of probation which inform supervision and case planning.

Probation officers participating in the regional DWI Offender Management Focus Groups coordinated by OPCA reported the following:

- Participants reported their probation departments included some additional elements in their department presentence investigations where the offense is drinking or drugged driving-related. They reported this was done to inform case specific planning, the potential need for increased surveillance, etc.
- The pre-sentence report is viewed as a tool for the supervision officer and the treatment provider.<sup>1</sup>
- The use of specialized DWI offense PSI officers is preferred whenever possible or feasible. In some departments where such specialization is not possible, DWI PSI's may be assigned to DWI supervision officers.
- Departments frequently include specialized DWI offender conditions with the pre-sentence report even when incarceration is recommended by probation. Further, "Leandra's Law" requires that persons be sentenced to probation supervision or conditional discharge in addition to any other fine, penalty, or sentence of incarceration, and that such period of supervision shall run consecutive to any period of incarceration.
- PSI interviews for DWI cases extending to two or three hours were reported by some departments because this allows the officer the opportunity to establish a rapport with the defendant and delve deeper into the circumstances of the instant offense and the offender's history. Others utilize a two session interview process that includes a home visit and collateral contacts between the interviews.
- Collateral contacts are important in order for the probation officer to gather additional information and to build a network for supervision. Frequently, collateral contacts include the following: family members, significant others, employers, treatment providers, and law enforcement. The Probation Supervision Rule in New York State, 9 NYCRR Part 351,

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<sup>1</sup> Please refer to 9 NYCRR Part 357, "Case Record Management" for information regarding mandatory and discretionary sharing of information, including with treatment providers.

recognizes the strong value of collateral contacts in the supervision of offenders, particularly as it concerns high and greatest risk probationers.

- A PSI worksheet/format is frequently used in DWI offense cases. The interview begins with general questions and then moves into more specific areas (See Appendix A PSI Worksheet).
- Officers generally check the offender's Driver's Abstract from the Department of Motor Vehicles (DMV) with every PSI. This ensures that possible false or faulty offender self-reports are checked for accuracy against the records of the DMV.

### **III. Recommendations for Pre-Plea and Pre-Sentence Investigations and Reports in New York State**

The pre-plea and pre-sentence investigation phase is an excellent time to establish the collaborative network that will work together to provide supervision, treatment and monitoring of the offender.

#### **i. Pre-Plea and Pre-Sentence Investigations**

- Pre-plea and pre-sentence investigations for drinking or drugged driving crimes should include all relevant information and comply with DCJS' Rule 9 NYCRR Part 350 governing Investigations and Reports, as well as applicable law--see CPL §390.30

#### **ii. Specialized Probation Officers**

Whenever possible, DWI Offender pre-sentence investigations should be assigned to an experienced officer, preferably one who works solely or primarily with DWI offenders or has a significant concentration of DWI offenders on the caseload, and who has received specialized training in DWI offender management. The capacity of probation departments to specialize is largely dependent on available resources.

#### **iii. Document Review**

Prior to interviewing the defendant, investigating officers should review the following documents whenever available:

- Accusatory Instrument (Indictment or Information)
- Police Affidavit
- Offender's Statement
- Offender Statements and affidavits relevant to any prior convictions
- Victim Statement
- Criminal Record inclusive of Criminal Record check from other states (NCIC)
- Driver's Abstract from the Department of Motor Vehicles
- Probation Record
- Prior substance abuse treatment history

#### iv. Defendant Interviews

Thorough interviews should be conducted with defendants. DCJS Regulation §350.6(c) (2) requires the interviews to be held in-person (i.e. face-to-face interviews in real time in either direct physical proximity or remotely by video conference). At the time of the interview, the officer should have the defendant sign any Release of Information Forms (see Appendix B for the NYS Office of Alcoholism and Substance Abuse Services Release for Criminal Justice Clients – TRS-49) necessary for the probation department to gather information and records from outside sources. Interviews should include questions in the following areas:

- **Criminal History** (including description of all offenses whether or not they were driving related)
- **Substance Abuse History**
- **Conditions of Probation** – Where applicable, the anticipated conditions of probation including those defined in NYS Penal Law §65.10 (2) (e) alcohol or substance abuse or a court approved intervention program and §65.10(2) (e)-1 accident prevention course, and particularly and Vehicle and Traffic Law §1193(1) and §1198(2) ignition interlock device, and VTL §1193(1-a) community service, as required, should all be discussed.
- **Physical Health** – Inquire about the offender's past and current physical health. Become aware of the offender's overall physical health/limitations and prescribed medications. Offenders may use medical conditions as a means to justify behavior or elicit sympathy. Offenders may also report that a prescribed medication may have been the cause of their impaired driving.
- **Mental Health and Developmental Disabilities** – Inquire about the offender's mental health status including any past or current diagnoses or prescribed medication. Whenever possible, the interviewer should obtain information about any developmental disabilities, involvement in treatment programs, and whether the offender is the recipient of social security disability. Inquire and make a note about any experiences in treatment relative to mood or anxiety disorders and any medications for the same. Anti-anxiety medications can appear on drug tests and can cause impairment in drivers, so it is important to know what substance the offender is prescribed. Obtain written consent from the offender to follow through on mental health history from any past or current treatment providers to confirm diagnosis, treatment and any medications. (See Appendix B Release of Information Form)
- **Employment/Military History** – Ask the offender about any employment and/or military history, including the type of work/position, dates of employment, reason for leaving, any terminations or dishonorable discharges. Review the DD-214 form *Certificate of Release or Discharge from Active Duty* to verify active duty military service. Take note of employment arrangements that require vehicle use and/or provide ease of access to vehicles. It is essential to contact past and current employer(s) to verify employment and reasons for leaving, where applicable.

- **Family History** – Include complete information relative to the offender’s spouse or significant other, children, parents, siblings, step-siblings, and other members of the extended family. Information about significant family members may include age, relationship to offender, significance of that relationship, past convictions, etc. With respect to the offender’s relationship history, it is imperative that persons past and present are reviewed as well as the ages and genders of the offender’s children or step-children. It is also important to obtain information on any vehicles that belong to family members to which the offender may have access. Additionally, the investigating probation officer may report any impact the potential sentence would have on the defendant’s family.
- **Alcohol/Substance Abuse History** – Establish any history of alcohol/substance abuse. Many DWI offenders have prior treatment histories for substance abuse. Be sure to obtain the following information:
  - Establish use vs. abuse. Are there any prior alcohol/substance related diagnoses?
  - History of alcohol/drug use (age of onset, frequency, type of drug, etc.)
  - What was used at time of the offense? Alcohol, drugs or both?
  - Is there a history of treatment (treatment providers and duration)?
  - Was alcohol/drug use a factor in employment, being terminated from a job, criminal arrests, relationships, etc.?
  - If alcohol/substance abuse is an issue for an offender, take note of any relapses.

**Education** – Inquire about the offender’s educational/vocational experience. The interviewer should take note of any disciplinary actions (particularly those relating to incidents of drinking or drug use), behavioral problems or failure to complete an educational program. When confirming educational information, requests may include dates enrolled, classes enrolled in, diplomas or degrees earned, attendance and disciplinary actions, and other pertinent information. It is also relevant to ask if the offender received special education services or was determined to be in need of such services, as this may indicate a need to carefully review all documentation with the offender. The extent to which educational information is explored and subsequently confirmed may vary depending on how long it has been since the person has been in school.

- **Vehicle Usage** – Inquire about offender’s vehicle access including any vehicles they “own” (which includes any vehicles registered and/or titled in their name) as well as any vehicles they will “operate” or will have access to such as a family member’s or work vehicle. Obtain make, model and plate numbers for all vehicles to which the offender has access. Include information about the vehicle they were driving at the time of arrest, even if the vehicle has been totaled or will not be driven again.
- **Residence Information** - Include a chronological listing of locations where the offender has established residence. Include relevant information such as the distance from the offender’s home to treatment, employment and probation and any means of transportation for the offender, other than driving themselves, such as family or public transportation.

Make note of any second residences, including vacation homes which the defendant, their significant other or their family might maintain.

- **Activities/Hobbies/Special Interests** – It is important to determine if the offender’s social activities will support him/her maintaining sobriety (e.g., religious and/or community groups etc.), or may be detrimental to maintaining sobriety (e.g., softball or bowling league, where participants may drink alcoholic beverages during and after games).
- **Victim Impact Statement** – This should include the victim’s description of the offense, and the impact on the victim and the victim’s family. Also, include the victim’s recommendations and comments relative to sentencing and conditions of supervision where appropriate. Encourage the submission of the Victim Impact Statement to the Court, if the victim is willing. Whenever possible, work with the Victim Advocate to obtain information and ensure that the victim is offered services. In some cases the victim may not want to be interviewed or be involved in the process. Rather than allowing the offender’s version of the offense to stand alone, whenever relevant, the investigator should submit a victim impact statement on behalf of the victim as provided in CPL §390.30 (3). This requires a review of police/court reports, including any available victim or witness statements, medical reports, as well as information from other collateral sources. This information should be summarized or quoted as appropriate to describe what happened to the victim. In the case of offenses related to DWI personal injuries or fatal crashes, great care should be taken to represent the victim’s interests, while ensuring that they are not re-victimized/re-traumatized by the Victim Impact interview process. Probation Officers are encouraged to work with victim advocates, where they are available, on any such cases and to exercise consideration in all correspondence with victims.
- **Description of Present Offense** – A detailed account of the offense is necessary to provide an accurate description of the severity of the crime, BAC level, damages and or injuries sustained by the defendant and/or any victims. This section of the investigation can provide a sense of the offender’s level of denial, perception of the victim(s) and justification for the behavior. Victim information gleaned from any arrest-related documents should be referenced under this section separately from the Victim Impact Statement section.

v. Contacts that comprise Collaborative Networks

Whenever possible, interviews with relevant contacts should be conducted to assist in the investigation. These interviews will allow the probation officer to obtain information about the offender and also assess the veracity of the offender. Offenders should sign a release of information form, as required in order for the probation officer to access records. Relevant contacts may include but are not limited to the following:

- Household Members
- Family Members
- Treatment Providers
- Employers
- Friends

- Spouses or Significant Others
- Schools
- Clergy
- Support Groups (such as AA/NA or a Secular Equivalent) - It is important to note that participation in these support groups cannot be made mandatory unless there is a secular option available to the probationer. Therefore, any proposed condition of probation would need to be reviewed and approved by the county attorney or other legal counsel before it is used by the department. If confidentiality prevents other participants from advising probation, the offender could be asked to keep a journal detailing each meeting's date, times and location as well as the topic for the meeting without referencing names. The probationer would be expected to bring the journal to the probation appointments for discussion and review.
- Victim(s)

Departments that conduct a two-session DWI offender PSI interview may wish to complete interviews of all relevant contacts prior to the second interview so that any areas of discrepancy or concern can be discussed in that subsequent session.

The collaborative network will consist of individuals that will best provide on-going supervision and support of the offender. It is essential that members of this collaborative network maintain on-going and open communication with one another.

vi. Home Contacts

Whenever possible, Departments may wish to conduct a Home Contact as part of the PSI in order to assess appropriateness of the household and surroundings. Whenever possible, the visit should include an observation, not a search, of the following:

- Inventory of vehicles to which the offender has access.
- Presence of alcohol or signs of other drugs in the household.
- Proximity to work, treatment and probation

vii. Assessments / Evaluations

DWI offenders should be referred to a provider who is approved by the NYS Office of Alcoholism and Substance Abuse Services (OASAS) for an assessment of the impaired driver during the period of the pre-plea or pre-sentence investigation whenever possible. This evaluation will assist officers in determining the offender's amenability to treatment and may provide additional information regarding the defendant's history of substance abuse, level of risk to the community and other factors. Information obtained from this evaluation should be referenced within the text of the report and should be used when making sentencing recommendations to the Court. When such evaluation cannot be conducted at the PSI stage, it should be considered a priority upon the commencement of probation supervision following sentencing.

See VTL §1193(1a)(c) regarding court ordered assessment: “A court sentencing a person pursuant to paragraph (a) or (b) of this subdivision shall: (ii) order that such person receive an assessment of the degree of their alcohol or substance abuse and dependency pursuant to the provisions of section eleven hundred ninety-eight-a of this article. Where such assessment indicates the need for treatment, such court is authorized to impose treatment as a condition of such sentence except that such court shall impose treatment as a condition of a sentence of probation or conditional discharge pursuant to the provisions of subdivision three of section eleven hundred ninety-eight-a of this article.”

viii. Specialized Risk and Need Assessment Instruments

Whenever possible, the DWI offender should be assessed by a trained probation officer or treatment provider using an actuarial risk assessment designed for DWI offenders. A guide to such specialized assessments can be found in the OPCA publication “Summary of Alcohol-Related Risk Assessment Instruments” located in the References section of the IJP.

ix. Mandatory Conditions

Probation officers should be mindful of all mandatory probation conditions set forth in New York State Penal Law §65.10(3) and all mandatory DWI offender probationer conditions set forth in VTL §1193 and §1198 as applicable.

x. Specialized Orders & Conditions

The pre-sentence report should include a recommendation for specialized DWI offender conditions of probation. These conditions should be matched to the individual offender. Departments may wish to develop standardized conditions for special populations. See Appendix I for examples of conditions used in various departments in New York State for the DWI-related population under supervision. These conditions may be reviewed, selected and modified as appropriate to comport with local policies and procedures and resources as well as the needs of specific offenders.

**Criteria for DWI Offender Orders and Conditions of Probation**

**General:** A sentencing or dispositional order imposed on an offender by a court which allows that offender to remain in the community subject to behavioral conditions specified by that court and monitored by a probation officer.

**Primary Goals:** Offender accountability, public safety, and recidivism reduction.

**Construction of Orders and Conditions of Probation**

**Specific and non-ambiguous:** There should be no question as to what behaviors the court intended the offender to engage in or refrain from.

**Quantifiable:** The courts' behavioral expectations of the offender must be phrased in such a way that the behaviors to be monitored can essentially be counted or measured in some manner (time, rate, frequency, distance, duration, etc.).

**Enforceable:** Conditions that are specific, quantifiable, and achievable by the offender are more easily and readily enforced by the probation officer, police and the courts.

**Responsivity:** Conditions should reflect and adapt to the case specifics and include mandatory DWI offender conditions required by law where applicable.

**Legal:** Specific probation conditions should be reviewed with each department's legal representatives to ensure legal compliance in terms of content and scope, address local concerns, and should be promoted with the judiciary to promote acceptance.

### **Justification for Orders & Conditions**

Specific orders and conditions may be tailored to address underlying nature of the offense and the risks and needs of the individual offender. The rationale for using particular orders and conditions are as follows:

- The conditions address the rehabilitation of the offender and the protection of the community.
- The conditions address the safety of the public, as well as offender themselves. They are consistent with treatment contracts/requirements utilized by all approved treatment providers and assist in the offender's rehabilitation by providing external behavioral controls until the offender can develop appropriate internal controls.
- The conditions address legal mandates, enhance community safety, aid in the offender's rehabilitation, and/or assist Probation in adequately supervising this offender.
- The conditions address and complement the treatment goals of accepting responsibility for one's actions and setting in place safeguards to relapse.

## **Section V. Probation or Post-Sentence Supervision**

Probation Supervision is of critical importance to the management of DWI offenders. This section is comprised of a review of the existing research pertinent to this area, as well as a description of different practices for supervision.

### **Summary of the Research:**

The American Probation and Parole Association (APPA) *Guidelines for Community Supervision of DWI Offenders* identify these six guidelines for effective supervision:

#### ***"Key Elements of DWI Offender Supervision:***

**Guideline 1:** Investigate, collect, and report relevant and timely information that will aid in determining appropriate interventions and treatment needs for DWI offenders during the release, sentencing, and/or supervision phases.

### **Key Points**

- Gather information on the offender's prior criminal history and traffic record.
- Conduct an actuarial risk and needs assessment on DWI offenders.
- Screen and/or assess DWI offenders for substance abuse issues.
- Screen and assess DWI offenders for poly-substance abuse and mental health issues.
- Whenever possible, prepare and provide a prerelease report to releasing and presentence report to sentencing authorities.
- If not collected (or complete) at the presentence phase, collect information prior to case or supervision planning

**Guideline 2:** Develop individualized case or supervision plans that outline supervision strategies and treatment services that will hold DWI offenders accountable and promote behavioral change.

### **Key Points**

- Develop individualized case or supervision plans on DWI offenders.
- Base elements of the case plan on information collected related to the offender's history, risk and criminogenic needs, and substance abuse issues.
- Involve the offender in the development of the plan.
- Develop goals and objectives in the plans that are strength-based.
- Include graduated responses that are tied to the offender's completion or lack of completion of objectives.
- Develop a behavioral contract (signed by the offender) outlining supervision goals and strategies.
- Match the offender with appropriate treatment services based on their indicated needs.
- Identify services and support needed to help offender accomplish his or her goals and objectives.
- Reevaluate the case or supervision plan with the offender and treatment providers regularly to determine if adjustments need to be made.

**Guideline 3:** Implement a supervision process for DWI offenders, which balance supervision strategies aimed at enforcing rules with those designed to assist offenders in changing behavior.

### **Key Points**

- Develop and implement supervision strategies based on evidence-based practices.
- Focus on supervision strategies that enforce rules and facilitate behavioral change.
- Monitor DWI offenders closely and consistently.
- Apply graduated sanctions and incentives in a swift and certain manner.

- *Understand the impact of the cycle of addiction and the stages of change on the supervision process.*
- *Develop rapport and utilize good communication skills designed to increase DWI offenders' motivation to change and decrease their resistance and ambivalence to the change process.*
- *Assist the offender in accessing needed services and treatment.*
- *Take advantage of tools and technologies available to aid in the monitoring of DWI offenders.*

**Guideline 4:** *Where possible, develop partnerships with programs, agencies, and organizations in the community that can enhance and support the supervision and treatment of DWI offenders.*

### **Key Points**

- *Identify and develop partnerships with service and treatment providers that will enhance supervision services and meet the needs of DWI offenders.*
- *Develop written agreements that support and outline how the partnership will function.*
- *Develop written policies and procedures regarding interagency partnerships.*
- *Understand how information flows intra-agency and interagency and identify the impact on privacy.*
- *Discuss information sharing needs with partner agencies and strive to overcome barriers related to information exchange.*

**Guideline 5:** *Supervision staff should receive training that will enhance their ability to work effectively with DWI offenders.*

### **Key Points**

- *Provide training to staff on evidence-based practices that support the effective supervision of DWI offenders.*
- *Assure staff receives training on substance abuse, cycle of addiction, and the stages of change.*
- *If your agency does not provide formal training, educate yourself.*

**Guideline 6:** *Assess the effectiveness of supervision practices on DWI offender through both process and outcome measures.*

### **Key Points**

- *Evaluate your agency's effectiveness in supervision of DWI offenders.*
- *Assess process and outcome measures.*
- *Learn from and share evaluation results."*

DWI offender-specific supervision is a hallmark of contemporary DWI offender management efforts.

**Specialized knowledge and training of staff facilitates:**

- effective assessment and interviewing skills;
- supervision and field work practices;
- the development of DWI offender-specific case plans with tailored conditions of supervision that enhance offender accountability, victim protection and community safety;
- ongoing, individualized case management strategies; periodic reassessments of risk and continual monitoring of dynamic risk factors; and
- appropriate use of ancillary supervision strategies as needed (e.g., electronic monitoring, home or portable breathalyzers) to promote risk management and public safety.

Specialized caseloads, the use of team-based case management, appropriate use of incentives, and proactive responses to non-compliance are also important factors in effective supervision. Research has demonstrated that supervision, coupled with substance abuse treatment and ignition interlock device installation, can result in marked reductions in recidivism, as such an equal emphasis on all is advised. For this reason, community supervision officers, treatment providers, ignition interlock professionals, and others should work closely together in an ongoing fashion to monitor compliance and reinforce progress.

## **Recommendations for Community Supervision of DWI Offenders**

DCJS' Probation Supervision Rule, specifically 9 NYCRR §351.7 (f) sets forth specific parameters, including procedures by which probation departments may issue supervisory directives and/or instructions for an offender to follow as part of his/her respective supervision plan. These are not conditions of probation, but clarify any general or specific conditions relating to supervision and other relative to conduct, rehabilitation, movement and controls. The use of such supervisory directives and/or instructions may be helpful in the supervision of DWI offenders in the enforcement of court ordered conditions and other obligations.

### **I. Specialized Caseloads and Officers**

Over half of the probation departments in New York State have reported employing specialized DWI caseloads. Some departments have also introduced specialized units which may also include specialized DWI PSI writers, and in some departments interstate transfer officers. The level of specialization is beneficial due to the many tasks that DWI supervision entails, including IID installation, monitoring of license status and increased surveillance to ensure the offender is not driving. Regardless of the level of supervision, a specialized caseload, with specially trained probation officers, ensures more effective supervision.

DWI cases may require additional time and resources to ensure effective supervision. Because DWI offender cases require additional time and resources to ensure effective community

supervision, it may be beneficial for officers who are responsible for the community supervision of DWI offenders to have a reduced caseload. Considering the constraints in resources available to probation departments, it is recommended that probation officers supervising offenders who have been designated to be greatest or high risk have reduced caseloads due to the significant number of DWI probationers and amount of additional supervision work required. Some Departments have noted that offenders compliant with IID's and other conditions of probation, and with the aid of other supervision technologies, can be supervised consistent with a traditional caseload size.

When possible, DWI Offender supervision should be assigned to the caseload of an experienced Officer/Unit who either solely or primarily works with DWI offenders or has a significant concentration of DWI offenders on the caseload, and who has received specialized training on DWI offender management. These probation officers should obtain training in the following areas:

- Risk and need actuarial assessments
- Responsivity
- Prevalence of driving while intoxicated within New York State and nationally
- Offender Characteristics
- Assessment
- Understanding the results of evaluation of DWI Offenders
- Community Management of DWI Offenders
- Motivational Interviewing
- Substance Abuse Treatment Models
- Cognitive Behavioral Intervention Model
- Relapse Prevention
- Technology Tools for Monitoring and Surveillance
- Offender Denial
- Special Populations of DWI Offenders (ex. Adolescents, Females)
- Cultural and Ethnic Awareness
- Graduated Responses
- DMV Licensing

## **II. Home Contacts**

Home Contacts are required to be completed according to the assigned supervision level pursuant to 9 NYCRR Part 351, DCJS' Probation Supervision rule. Departments use a combination of announced and unannounced home contacts at varying times of day. The use of positive home contacts can provide the probation officer with information and insight into the probationer's surroundings and behavior. Visits that are conducted by probation teams allow one officer to talk with the offender, while the other officer(s) conduct a plain view, a consensual, a search authorized by a specific search condition, or a search incident to a lawful arrest. The search may include looking for alcohol, illegal and/or previously unreported prescription drugs, the presence of empty alcohol containers in the garbage or recycling container, and the presence of unknown vehicles in the driveway or in front of the house. During these visits, officers should verify which room or rooms in the home in which the offender actually lives and sleeps.

Officers should make visits in teams wherever possible. The teams may consist of probation officers or as joint operations with other law enforcement officers, who are acting in support of the probation officer(s). It is important to note that where a police officer accompanies a probation officer on a home contact, it must be in a support capacity and not for the purpose of initiating unlimited searches for evidence of criminal activity. Whenever possible, the visits should be held at varying times of day and days of the week and should include evenings and/ or weekends, as resources permit. Home contacts must occur at least as frequently as minimally specified in the aforementioned rule.

### **III. Development of Case Plan**

The case plan flows from the risk/need assessment and more specific clinical evaluations. The plan must be specific to long-term goals, short-term goals, and action steps as well as indicating the identified service providers. The case plan should be periodically updated at the time of reassessment (every 6 months) and as various goals and action steps are met, and to reflect new goals and action steps which may be identified.

### **IV. Classification by the Probation Department**

Upon assignment to the specialized officer/unit, DWI offenders should be placed under a supervision level as determined by the results of their risk assessment(s), officer judgment, and any departmental policies that may apply. Given their pattern of repeat offending, departments may wish to classify offenders with multiple DWI convictions, but who may score low on risk assessments, into one of the higher classifications described in the Probation Supervision Rule. The increased contacts with the probationer required by those levels will provide the officer the opportunity to become acquainted with the offender, become familiar with their daily habits, and propensity for relapse or continued driving while intoxicated. DCJS-OPCA establishes classification of probationers in *Regulation §351.5 Assessment and Case Planning*.

### **V. Workload Duties**

Officers should develop a supervision plan and contact standards based on a risk assessment of each DWI offender, the offender's history of DWI offenses, and the offender's progress in treatment. As noted above, personal, home, and collateral contacts shall be made in accordance with the offender's assigned risk classification level pursuant to 9 NYCRR Part 351. Officers should monitor the treatment progress of each offender by maintaining regular contact with the offender's treatment provider. Ensuring compliance with Ignition Interlock requirements and utilization of related data are important elements of and integral to a DWI Officer's work.

### **VI. Confidentiality Waivers and Disclosures**

It is recommended that DWI offenders sign confidentiality waivers to allow for contact with service providers and involved agencies.

Supervision officers should ensure that DWI offenders sign release of information forms for at least the following types of information:

- Treatment Providers
- Drug Court where applicable
- Doctors or other medical professionals who may prescribe medications to the offender
- Offender's employer, particularly if driving is required by the employer
- Other Professionals and other Collateral Contacts involved in the treatment and/or supervision of the offender

## **VII. Collateral Contacts/Collaborative Networks**

Officers should develop a collateral network<sup>iii</sup> that may include the relevant contacts identified during the PSI, but may also include any others the officer deems necessary.

A variety of individuals in the community may have information to share that will be both supportive and/or informative of potential high risk behavior.

## **VIII. Case Conferencing**

Departments generally utilize some form of case conferencing with treatment providers, and/or drug court(s) where involved. Some conferences may take place in person. The meetings are used to discuss specific cases as well as issues related to DWI offender management in the community. In most cases, the conferences occur monthly. Probation officers report they are in contact with treatment providers on a regular basis. Probation officer may also participate in "Joint Staffing" session to address issues that occur with a DWI offender in treatment.

Probation departments commonly utilize some form of case conferences within the department as well, whereby the assigned Probation Officer can discuss cases with his/her Supervisor on a regular basis. Some probation departments will conference problematic cases with a team of probation professionals in order to discuss and consider possible responses which may include the filing of a violation of probation.

## **IX. Modifications of Orders & Conditions**

Adjustments to DWI offender orders and conditions should be addressed on a case-by-case basis and may be used as incentives for compliance or sanctions for non-compliance and with the approval of the court. Officers can refer to CPL §410.20 and DCJS rules §351.7 (d) (7) for more information on requesting modifications.

## **X. Assessments**

Whenever possible, a specialized risk and need assessment should be conducted at the onset of supervision if it was not completed during the pre-sentence investigation. DWI offenders should have ongoing assessments as they progress in supervision and treatment, and as any circumstances change. It is important that no single instrument or data source be used to make

critical decisions. Supervision officers, treatment providers and other key stakeholders must assess offenders on an ongoing basis and need to be in tune with dynamic or changeable factors.

Specialized Risk assessments should supplement, not replace, the use of a generalized Risk and Need Assessment. There are multiple *specialized* risk instruments that have been validated on a drinking and driving population on which probation officers can be trained. The NYCOMPAS is a *general* risk and need instrument that can be used to assist probation officers in assessing risk of general recidivism and developing offender case plans.

## **XI. Employment**

Probation officers should consider contacting the DWI offender's employer at the onset of supervision and during the course of supervision, as determined necessary. This will allow the officer to determine if the employment is appropriate, as well as ensure that full disclosure, as required, is made to the employer. Probation officer contact with employers may serve to provide support for both the employer and the offender, which may assist with employment retention. State law, specifically VTL §1198(8), establishes and DCJS' Ignition Interlock regulatory provision §358.7(c) (5) recognizes the opportunity for limited exemption in certain instances for an offender to drive an employer owned vehicle without an IID installed strictly limited to the scope of his/her employment where the employer is made aware of the IID restriction imposed upon the offender and permits the offender to drive without the device. It is critical that the request, approval, and limitations of such exemptions be discussed with all involved parties, and be appropriately documented in probation records. The DPCA (OPCA) -535EA-IID form should be filled out and signed by the employer with a copy going to the employer, one to the probationer and one to the monitor. The form can be found in Appendix G.

Probation officers can assist unemployed offenders in obtaining employment by working with "*Ready, Set, Work*" initiatives and also forming relationships with Department of Labor [Career/One-Stop Centers](#).

## **XII. Ignition Interlock Devices**

Many departments have begun using a single e-mail address or point of contact person for all communications with IID manufacturers to receive confirmation of installations as well as vendor reports. Using a single point of access has allowed officers to continue supervising an offender even when the assigned officer is out of the office. In some departments, IIDs are also being used as surveillance tools by use of devices with a GPS component, which can track an offender's location each time they use the device. Some officers also use the device as a remote breathalyzer and may call the probationer and ask them to go out to their vehicle and attempt to start it. The officer can determine the results of the breathalyzer either by hearing the car start over the phone or by watching the real time reporting site.

## **XIII. Supervision of IID Requirements for Post-Incarceration Cases**

In cases where a defendant is sentenced to a period of incarceration, such sentence must also include IID monitoring as a condition of Probation or Conditional Discharge. Such sentence of

Probation or Conditional Discharge commences upon the offender's release from incarceration. Notice of sentence should be provided to the applicable monitor by the Court within five days of sentence. Monitors should enter the offender into the Victim Information and Notification Everyday (VINE) system to determine the offender's release date. If a monitor has trouble locating a defendant on their release, they should reach out to their local DOCCS Parole/Community Supervision office to obtain updated contact information. Violations of the IID requirement including failure to install, failed or missed retests, failed tests with a BAC over .05, missed service appointments or attempted tampering or circumvention should be reported to both the sentencing court and to the DOCCS Community Supervision Officer. OPCA and DOCCS have worked together to coordinate processes for improved information sharing on these cases of mutual interest. (See Appendix J on "DWI Offenders Released from DOCCS.")

#### **XIV. Transfers**

##### **i. Identification of Ignition Interlock Transfer Cases**

The identification of Ignition Interlock cases for transfer to other jurisdictions should occur as early as possible in the criminal justice process as outlined in this resource handbook. OPCA recommends that pre-sentence investigations be conducted on convicted DWI offenders, and not waived, so that probation can provide the best available information to the court of jurisdiction and ensure that the supervising or monitoring agency is fully apprised of the offender/operator's history and status.

DCJS' rule governing Handling of Ignition Interlock Cases Involving Certain Criminal Offenders, specifically Rule §358.7 (a) (1) requires that local monitors receive notification of any operator which it has responsibility to monitor within five business days of the sentencing court's order imposing the condition of an Ignition Interlock Device. The process describing how supervising probation departments and monitors are apprised of the court's order was included by counties (inclusive of the City of New York) in their IID Plans submitted to OPCA. The courts have been encouraged to make this notification via form DCJS/OPCA-510-IIN, "Monitor Notification of Ignition Interlock Order," which can be found under the Probation Services Suite of e-Justice, New York --Ignition Interlock tab. Upon receipt of such an order from a sentencing court, the monitor should immediately review the operator residence section. In the event this form advises that an operator is living in a jurisdiction other than that served by the monitor, and the monitor was not previously aware of this out-of-jurisdiction residence, the monitor should develop a plan to ensure a smooth transfer of the case that is compliant with Ignition Interlock requirements. Where a period of incarceration, other than intermittent, has been imposed, monitors should receive notification within five business days of the defendant's release pursuant to their county plan. However, monitors should communicate with the jail upon receipt of the court order to determine the projected discharge date and communicate periodically with the jail prior to release.

Please refer to State Directors Memorandum #2010-14 for further information on the transfer of Ignition Interlock cases.

## ii. Intrastate and Interstate Transfers

For information on the Intrastate and Interstate Transfer of DWI cases, please refer to 9 NYCRR Part 349:

Interstate and Intrastate Transfer of Probation Supervision for Adults and Juveniles found at <http://www.criminaljustice.ny.gov/opca/pdfs/349rev14dec11.pdf>, 9 NYCRR Part 358 Handling of Ignition Interlock Cases Involving Certain Criminal Offenders found at <http://www.criminaljustice.ny.gov/opca/pdfs/358.pdf>, and State Directors Memorandum #2010-14 "Guidance for the Interstate and Intrastate Transfer of Ignition Interlock Cases", which is posted in the Integrated Justice Portal.

Cases where intrastate transfer of Ignition Interlock is considered include those in which:

- The defendant resides in another county at the time of arrest/prior to sentencing;
- The defendant expresses a desire to relocate to another county prior to sentencing; or
- The defendant expresses a desire to relocate to another county following sentencing.

It should be noted that there is currently no provision in New York State law for the intrastate transfer of legal jurisdiction over a conditional discharge (CD) case. OPCA has begun the process of amending 9 NYCRR §358.7(b) (2) which currently states, "Where an operator has received a sentence of conditional discharge and resides in another county at the time of sentencing or thereafter, the county monitor of the receiving jurisdiction shall select the class of Ignition Interlock device available from a qualified manufacturer in its region for any such operator."

*Proposed* amendments to DJCS Rule Part 358 are being considered that will allow monitors in sentencing counties to oversee and monitor IID conditions for operators convicted and sentenced to a conditional discharge, who either reside in a different county at sentence or subsequently relocate to another county. When the change in Part 358 is approved, and the new Rule is promulgated, county probation departments and monitors will be advised through a State Directors Memorandum.

For Ignition Interlock-eligible cases where PSIs are ordered, during that investigation, the Probation Department should confirm the residence status of the defendant, and any plans he or she has to relocate. During any such Pre-Trial Supervision or PSI status (e.g. release on recognizance), if the Probation Department learns that the defendant is currently, or plans to reside outside of the jurisdiction of the court, the Probation Department should notify the court and district attorney's office accordingly, so that the transfer of supervision, inclusive of Ignition Interlock requirements will be considered in the court proceedings.

Cases where *Interstate transfer* of Ignition Interlock is considered include those in which:

- The defendant resides in another state at the time of arrest/prior to sentencing;
- The defendant expresses a desire to relocate to another state prior to sentencing; or
- The defendant expresses a desire to relocate to another state following sentencing.
- And the defendant has a second DWI conviction.

For additional information on Interstate Transfer, please visit:

<http://www.interstatecompact.org/LinkClick.aspx?fileticket=bqpt53W3oQ0%3d&tabid=89>

## **XV. Probation Supervision Cases**

Pursuant to 9 NYCRR §358.7(b)(3), “Where an operator is subject to probation supervision and is granted reporting instructions and/or acceptance by a receiving state, the sending probation department selects the specific class and features of the ignition interlock device available from a qualified manufacturer in the receiving state. Thereafter, the operator may select the model of the ignition interlock device meeting the specific class and features selected by the sending county probation department from a qualified manufacturer in the receiving state region. The device shall be installed prior to relocation or return where feasible. A qualified manufacturer shall make necessary arrangements to ensure the county monitor in New York State and the receiving state receive timely reports from the manufacturer and/or installation/service provider.”

## **XVI. Travel / Movement**

Travel permits are recommended when DWI offenders are travelling outside of the county and/or the state. It is understood that certain offenders may be permitted to routinely travel between neighboring counties, and in some cases bordering states, due to employment, education, and/or certain treatment and medical needs. When transferring to another state, DWI offenders must comply with the laws of the destination state and the Interstate Commission for Adult Offender Supervision (ICAOS) and its governing rules, where applicable. The officer should discuss these laws with the offender (See Appendix C). Travel permits may be used as incentives for compliance. Alternatively, probation departments may decline to issue travel permits as a sanction for non-compliance. Travel documentation should comport with all local practices. NYS Penal Law §65.10(3) (b) requires sentences of probation to include a condition that the defendant remain within the jurisdiction of the court unless granted permission to leave by the court or probation officer.

## **XVII. Field Work**

Searches are an important element in maintaining offender compliance and should, whenever authorized and possible, be utilized on a regular and random basis in the management of DWI offenders. Search conditions are included as part of the Order and Conditions of Probation allowing a probation officer to conduct plain sight or basic searches during home contacts. These conditions will be subject to departmental policy. With respect to DWI offenders, such searches may include looking in a refrigerator, cabinets, garbage can or other common area that alcohol might be kept or disposed of. A search order is a specific request that a probation officer must seek from a judge to search a specific location in a probationer’s home based on specific evidence i.e. The probation officer has received a tip that the offender has illegal drugs stashed in the ceiling tiles of their bedroom. Searches should be conducted in compliance with local policy and practice and applicable state and federal law. It is recommended that searches be conducted in teams of at least two probation officers.

Other local law enforcement officers may support the work of the probation team in accordance with local department policy and practice.

A search can be an upsetting event for children residing in the home. The presence of multiple strangers in the home, firearms possibly being visible, authoritative tones of voice and possible anger (or resentment over the search) from their parents can cause children to be afraid. In cases in which children are present during a search, officers may be able to mitigate the disruptiveness of the event by speaking in lower than normal tones and avoiding making any statements that might lead the children to believe their parent(s) will be arrested or removed from the residence. If the parents are amenable, officers can introduce themselves to the children and tell them that they are there to speak with their parent(s) and check the house to make sure everyone is safe. Providing this information to the children may help to decrease their level of fear and anxiety. If a parent must be taken into custody, it is recommended to remove the children to different room first to try and decrease the amount of impact on them.

#### **XVIII. Evidence/Contraband**

- Evidence – Searches that reveal violations of probation conditions and/or illegal activity should be turned over to appropriate law enforcement agencies for processing and storage.
- Storage – Evidence that is seized as part of a search must be stored according to local department policy and practice in order to maintain the chain of evidence.
- Removal – Removal and storage of evidence and contraband must be conducted in compliance with local department policy and practice in order to maintain the chain of evidence.

#### **XIX. Electronic Monitoring / Global Positioning System (GPS)**

The use of this technology can be resource intensive, but when appropriately utilized, can enhance public safety. Local policy will determine whether Active or Passive GPS technologies are utilized. Departments should be mindful of both the benefits and limitations that these technologies provide in relation to the costs of such program. In particular, Active GPS monitoring and possible 24/7 response, when required, can prove expensive to operate.

In the case of home confinement electronic monitoring, OPCA's electronic monitoring procedures, established in accordance with Penal Law §65.10(4), as found at <http://www.criminaljustice.ny.gov/opca/pdfs/appendixelectronicmonitoring.pdf> must be followed.

Several departments use some form of electronic monitoring for DWI offenders, such as GPS or transdermal alcohol monitoring. Transdermal alcohol monitoring is an ankle bracelet that continually monitors a probationer for signs of alcohol use. This information is reported back to the monitoring company electronically and provided to the probation department. While transdermal monitoring units are effective in testing for the use of alcohol, they do not prevent impaired persons from driving a motor vehicle. GPS tracking is available on some transdermal monitors and is used effectively to track and document the offender's location. Active GPS

monitoring can be very costly to departments as it requires extensive staffing. GPS and other forms of electronic monitoring can be effective tools to probation officers and may be utilized at the discretion of the supervising officer with court approval. GPS can inform the supervising probation officer of the location of the offender, but it cannot advise of the offender's activities. Electronic monitoring and GPS may complement, but they are not substitutes for active probation supervision.

## **XX. Relicensing**

DWI offenders are required to follow certain procedures in reacquiring a driver's license. They include meeting new DMV relicensing requirements, and the expectations of probation department policies and judicial expectations regarding the relicensing of offenders. Departments report that where a DWI offender has little to no chance of reacquiring a driver's license, they commonly sell their vehicle or transfer the title to a family member, rather than installing an IID on a vehicle they cannot legally drive. Probation Officers must remain vigilant in the monitoring of these cases, as DWI offenders commonly demonstrate an inclination to drive without a license. Research shows that offenders who have had an IID installed have lower recidivism rates than those whose license has been revoked and therefore do not install an IID.<sup>iv</sup> Many departments are now allowing DWI offenders to apply for re-licensure if they follow a stringent set of criteria, including IID installation. (See Appendix D - Ulster County Relicensing Guidelines as an example of one county's policy).

## **XXI. Joint Field Operations**

Collaboration with other law enforcement in the jurisdiction is recommended for the enhancement of community safety. Joint operations may be useful for added safety on home visits or for additional personnel on special details such as New Year's Eve and/or holiday or events where alcohol is likely to be consumed. The probation officer in these cases would take the lead in communicating with the probationers and law enforcement would function to support the probation officer and be present to initiate arrests if necessary or to provide assistance as necessary. The presence of a police officer does not allow for a search of probationers and their residences to exceed the specifications in the court approved orders and conditions of probation.

## **XXII. Early Discharge**

Pursuant to local policy, early discharge may be considered where a probationer has met all conditions of their probation, including refraining from the use of drugs/alcohol, IID installation, treatment participation, and payment of financial obligations. See DCJS Rule 351.9 and CPL §410.90. CPL §410.90 makes reference to financial ability to comply with the restitution order. Both the DCJS Rule and CPL sections require that the individual is no longer in need of guidance, training, or other assistance which would be administered through probation and termination is not adverse to public protection.

Several departments reported considering early discharge for DWI offenders who have been compliant with all conditions of probation, had an IID installed, and effectively satisfied the period of IID installation. Departments have had success with providing probationers with a list of

requirements for early discharge at the start of supervision, allowing probationers to work most effectively towards that goal and incentivizing successful completion of probation supervision.

### **XXIII. Response to Non-Compliant Behavior**

The use of graduated responses for DWI offenders needs to take into account the nature of the offense and the potential for relapse and public safety. Non-compliant behavior should be communicated promptly to the Court in accordance with DCJS rules and regulations, including 9 NYCRR Part 352 Graduated Sanctions and Violations of Probation, and Part 358, Handling of Ignition Interlock Cases Involving Certain Criminal Offenders, as well as department policies and procedures. Swift and certain response to a DWI offender's non-compliant behavior promotes public safety and offender accountability.

### **XXIV. Response to Compliant Behavior**

The manner in which a probation officer responds to the appropriate actions and behaviors of a probationer can be just as important as the way they respond to negative behaviors. It is very important to provide graduated positive responses as well as sanctions. These can include verbally congratulating a probationer for completing a task, a written certificate or note of completion, a reduction in reporting days or drug testing (where appropriate), approval of a travel pass or any other positive reinforcement that will be effective with the probationer. If probationers feel that their positive behaviors are going unrecognized they may feel frustrated and stop engaging in positive behaviors. On the other hand, if probationers feel their successes are being recognized, they are more likely to continue engaging in those positive behaviors.

## **Section VI. Treatment, Drug or DWI Court**

The use of specialized courts to resolve cases of a specific nature has increased in recent years. The Drug Court Model has been developed to resolve cases where drugs or alcohol are the primary motivation or cause of the crime. These courts may be referred to as either drug courts, due to the type of cases primarily seen, or treatment courts in reference to the requirement of participants to attend treatment as one of their conditions of participation. Recently, a new type of specialty court that addresses only DWI cases has also been developed. Research by the National Highway Traffic Safety Administration (NHTSA) has shown that DWI courts can be very effective at reducing recidivism in DWI offenders.<sup>v</sup> In New York State, there are over 140 Drug Treatment Courts in operation and, since their inception in the 1990's, over 82,000 people have participated.

The primary difference between treatment courts and other courts is the intensive nature of the interactions between the offender and the court team. The team consists of the presiding judge, the district attorney, the defense council, the court case manager, probation staff and treatment providers. This team works jointly to help intensively monitor the offenders so that they can provide positive reinforcement for appropriate behavioral changes or consequences for engaging in negative behaviors. DWI courts follow ten guiding principles developed by The National Center for DWI Courts: <http://www.dwicourts.org/learn/about-dwi-court/-guiding-principles>.

The courts can operate either prior to sentencing and offer offenders the opportunity for a reduced sentence if successfully completed, or they can operate post-sentence as an alternative to incarceration. Most treatment courts use a step down model where offenders start at a very high level of monitoring and are required to attend intensive treatment, meet more frequently with their probation officer and attend court weekly. Participants in the court adhere to a strict behavioral contract as well. Those who are successful will be “stepped down” and allowed to attend court less frequently (e.g., every other week), reduce their treatment days and reduce their reporting to probation. Participants who violate the behavior contract, such as by consuming drugs or alcohol, will be sanctioned by the court and will face a consequence such as jail time, increased reporting or alcohol monitoring devices. Because treatment courts are generally scheduled weekly, any violations by participants can be addressed very swiftly, which is very effective in addressing negative behaviors.

If a participant is placed on interim probation supervision or is sentenced to probation supervision, a probation officer may need to file notices including those regarding violations. Probation officers may file a violation and request that the violation be resolved under the treatment court, but if the treatment court is not in session, the violation may be heard in another court part. .

Probation officers in the treatment court setting act as part of the court team, but their primary role in holding offenders accountable cannot be abdicated. Whenever possible, probation officers assigned to a treatment court case load should attend all treatment court meetings and court sessions. The meetings will be used to discuss the progress of all the court participants, and it is essential that officers provide all pertinent information regarding the probationer participants. This information may include a participant’s attendance at scheduled meetings, home visits, the results of drug testing and/or IID testing and any pertinent information regarding employment or other issues that an officer may have obtained over the previous week regarding that participant. It is vital that officers provide this information to the team in order to fully assess the participant’s compliance with court-ordered conditions. If participants are failing to meet their probation obligations it may be a sign of a larger problem (such as continued drug or alcohol use) and the court needs to intervene as soon as possible. It is imperative that the court team, including the probation officer, hold the offender accountable for his/her behavior, both good and bad. Repeat DWI offenders pose a significant public safety risk and the important role of the probation officer is essential to effectively supervising the offender and minimizing that risk. .

Most treatment courts require the participation of the offender over an extended period of time, with many courts requiring a minimum participation commitment of one year. Some participants take two to three years to complete the court program due to setbacks from violations. During this period, the participant may advance through different phases of the court program. Each stage of the program includes different requirements such as a minimum period of continued sobriety, completion of an interview or essay on readiness to advance, completion of court mandated service hours or payment of fines and court fees. Some courts may require a participant to remain on probation past the end or graduation from drug court. This continued supervision may serve to ease the transition of the participant from the intensity of the drug court intervention and provide continued support.

## **DWI Accountability Courts and Specially Trained Judges**

In February of 2014, Chief Judge Jonathan Lippman announced in the *Annual State of the Judiciary Address*, plans to implement specialized handling of DWI cases in Superior Courts throughout New York State. In implementing the plan, the Office of Court Administration would provide specialized training to Superior Court Judges who would preside over all felony DWI cases. For misdemeanor cases, Judge Lippman offered that similar to the felony DWI courts, specialized judges who are specially trained to handle DWI cases would manage such cases. Specialized training in handling of DWI cases would ensure more consistent outcomes in the disposition of these cases.

In the spring of 2014, OPCA participated in three regional training sessions implemented by the Office of Court Administration for the training of Superior Court Judges. The State Director's presentation entitled "DWI Offender Accountability Courts—The Role of Probation" emphasized the important role that probation plays in the management of nearly 24,000 DWI Offenders under supervision in New York State. The training emphasized that the DWI Probationer is often a repeat, alcohol-dependent offender who has been arrested and convicted a number of times, and that probation is reliant upon the courts in approving orders and conditions that enable the probation officer to hold the offender accountable and respond swiftly and certainly to probationer violations. Please see <http://www.criminaljustice.ny.gov/opca/pdfs/oca-dwi-offender-accountability-courts-role-of-probation-apr16.pdf> to view the presentation. It is recommended that Probation DWI Officers communicate with their Administrative Judges and Superior Court Judges who have received specialized training to share their knowledge and experiences in the development of these courts, and become active participants in these courts through delivery of Pre-Trial Services, Pre-Plea/Pre-Sentence Investigations, and Probation Supervision Services.

## **Section VII. Substance Abuse Treatment**

### **Substance Abuse Treatment Levels of Care:**

There are a variety of types of services available for substance use disorders which generally fall into the following Levels of Care as identified by OASAS

<http://www.oasas.ny.gov/treatment/health/locadtr/index.cfm>:

- **Crisis Services:** Short term intensive stay meant for individuals to detox from a substance crisis and recover sufficiently to engage in another level of treatment. This service is usually medically monitored and may require the administering of prescription drugs to ease a patient through the detoxification process.
- **Inpatient Treatment:** A patient resides at a facility (sometimes hospital-based, but not always) and attends treatment sessions for most of the day. This service is typically used for those patients unable to remain sober at home while attending outpatient treatment.
- **Outpatient Treatment:** A client/participant attends treatment sessions at the facility, and returns to their residence at night. These sessions may range from daily treatment for six or more hours to weekly for one-hour treatment sessions, depending on client needs. This

service also includes medication-based programs such as methadone or suboxone programs.

- **Residential Services:** Some treatment agencies offer residential services such as halfway houses or supportive living to those people attending treatment who require a sober living environment. These programs are not considered treatment, but may offer groups or other services.

**Self Help Meetings:** These programs are not considered treatment and are not in any way monitored by OASAS, but many people trying to remain sober have reported these programs provide important support and are very helpful. The meetings may differ in their format depending on the type, but they all consist of people who have struggled with addiction helping each other. There are groups for all types of addiction (Alcoholics Anonymous, Narcotics Anonymous,) and even secular versions such as Secular Organizations for Sobriety (SOS). There are also meetings that can be immensely helpful for family members of substance dependent individuals such as Alanon or Naranon.

Treatment Providers who have been certified by OASAS can be found on its website at (note that the site default is set to search for *clinical screeners*, select the middle button for *treatment providers*): [http://www.oasas.ny.gov/providerDirectory/index.cfm?search\\_type=3](http://www.oasas.ny.gov/providerDirectory/index.cfm?search_type=3)

## **Substance Abuse Treatment and Probation in New York State**

During OPCA's DWI Offender Management focus group, participants reported their experiences with treatment across the state. The following is a summary of those experiences, as reported by probation professionals:

- Local probation departments use private or county-based treatment providers for substance abuse. Departments report having access to treatment, but some departments are forced to refer offenders to neighboring counties for treatment due to limited resources within in their own county and long wait periods for initial appointments.
- Treatment of offenders can sometimes be delayed due to difficulties with an offender's insurance or lack of coverage for services.
- Treatment can sometimes be shortened significantly due to service caps both with private insurance and Medicaid.
- Some offenders, particularly in rural areas, may have difficulty in obtaining transportation to and from treatment.

### **Collaboration between Probation Department and Treatment Provider:**

- Many probation departments reported that they have strengthened their relationships with treatment providers by co-facilitating groups together. The result has been better attendance by probationers and increased coordination of services. The roles of the probation officer and the treatment provider are clearly defined.

- Treatment providers identify the proper treatment level for each offender. This may vary from weekly outpatient group attendance to a daily intensive treatment program to inpatient treatment following a recent use of alcohol or drugs. Departments can help to facilitate this process by supporting the recommendation and providing any information they have to help treatment providers make the most appropriate recommendation.
- Many departments share the outcomes of drug testing with treatment providers and request the same from treatment providers (when a signed release of information from the probationer is on file). This provides both agencies with a greater source of information regarding potential substance use by probationers.
- Departments utilize a variety of methods for coordinating treatment with providers including:
  - Written progress reports shared monthly;
  - Weekly or monthly conference calls to discuss progress;
  - Weekly or monthly in-person case conferences to discuss cases;
  - Joint staffing meetings to meet with an individual probationer usually due to a failure to comply with treatment or probation conditions.

All communication between treatment and probation requires a signed release of information on file in compliance with HIPAA and 42 CRF Part 2.

## **Recommendations for Treatment of Substance Abusers on Probation**

- DWI offenders should receive a comprehensive evaluation from an OASAS-certified treatment provider and participate in recommended treatment.
- The supervising probation officer should be in regular contact with the treatment provider to discuss compliance with treatment as well as compliance with probation orders and conditions. This contact should occur at least monthly for updates. “Red flags,” absences or conflicting information that should be discussed immediately. Probation Officers should enter detailed case notes on the results of meetings and conferences in the case file—probation case management system. The Unified Treatment Reporting Form (SQA-54) <http://www.oasas.ny.gov/mis/forms/sqa/documents/SQA-54.pdf> can be used to facilitate these reports.
- Where possible, case conferences between the Probation Department, the treatment provider and any other associated agencies or providers should be held regularly. These conferences should include other collateral contacts as needed. Case conferences with drug court will be scheduled by the court and should be attended as often as possible by probation officers assigned to that court.
- Probationers should be requested to sign a release of information that allows the officer and treatment provider to share information. Graduated responses, possibly including

court action, may be required should a probationer refuse to sign such release of information.

## **Section VIII. Driver's Licenses, Relicensing and Drinking Driver Programs**

In New York State, a person convicted of an impaired driving offense will have their license suspended or revoked.<sup>vi</sup> This suspension or revocation takes place at the time of sentencing, unless the judge issues a "Continuation of Driving Privileges." The continuation is sometimes referred to as a "20-Day Stay," as it allows certain drivers to continue driving for 20 days following sentencing. This 20-day period only allows a person who would otherwise lose their license to continue driving. It does not allow a person who is required to have an IID installed to drive without one. Once the 20 days elapse, the suspension or revocation becomes effective and the driver with a suspended or revoked driver's license is expected to surrender their license either to the court or the local DMV office. They may obtain a Non-Driver's ID card to use as photo ID.

Importantly, the court-ordered installation of the IID becomes effective and required upon sentencing in such cases. The "20-day stay" does not override the ignition interlock condition. With the recent amendment to "Leandra's Law" (Chapter 169 of the Laws of 2013, effective November 1, 2013), Courts may order the installation of the IID prior to sentencing. Further, the suspension or revocation of the driver's license by the Court does not cancel the requirement that the operator install the IID on any motor vehicle he/she "owns or operates."

A person whose license has been suspended or revoked due to an impaired driving conviction may apply for a conditional license. The following is a list of some of the reasons why someone may not qualify for a conditional license.<sup>vii</sup>

- The sentencing judge does not allow the person to attend a DDP or receive a conditional license;
- The person does not have a valid NYS license or a NYS license that can be renewed;
- The person has attended a Drinking Driver Program during the last five years;
- The person had another alcohol or drug-related violation during the last five years;
- The person had three alcohol or drug-related incidents within 25 years.

If the person is eligible for a conditional license, they will be notified by mail, in the "Order of Suspension or Revocation," issued by the Department of Motor Vehicles (DMV) as to how to obtain a conditional license. One condition is that DWI offenders must bring permission to the DMV from either the sentencing court or, where applicable, their probation officer in order to reapply for a license. If a person's probation contains a condition that prohibits them from obtaining a driver's license or driving, the person may face a violation of the terms of probation even if DMV issues them a driver's license in error. It is recommended that departments develop a policy on relicensing of DWI probationers. Ideally, a set of relicensing conditions will be developed and provided to each

probationer at the start of supervision so that they are aware of all of such conditions. Each probationer will have a set goal to work towards to obtain their driver's license, which will reduce the number of questions probationers ask their probation officers regarding when they can drive again. These conditions may include:

- Probationer must remain sober for a specified period of time as evidenced by no positive drug screens or breath tests during that period.
- Probationer must have a motor vehicle with an IID installed prior to applying for relicensing.
- Probationer must be either employed or a student.
- Probationer must have completed treatment or been engaged in treatment for a minimum period of time.
- Probationer must be in good standing both in probation and at treatment (if still attending).
- Probationer must have attended a DWI Victims Impact Panel as directed by the court or Probation Department where a condition of his/her sentence.

Another condition may be participation in a Drinking Driver Program (DDP). DDP's are comprised of seven weekly intensive educational sessions. Participants must pay \$75 to the DMV in order to register and they must pay a class fee to the agency conducting the classes (fee cannot exceed \$225). The participant must attend all classes and comply with any treatment recommendation made by the DDP provider.

Once a driver completes the necessary steps and is issued their conditional license, they must abide by the following:

- Regardless of the class of the revoked or suspended license, conditional licenses may not be used to operate a commercial motor vehicle (CMV) or a cab.
- They may drive to and from work, or drive for work (in a non-CMV), if it is required. For example, a person working as a plumber who drives a small pick-up truck, may drive between work sites, but the person may *not* drive a truck requiring a Commercial Driver's License (CDL).
- They may drive to DDP classes or the DMV to conduct business related to the DDP or the conditional license.
- They may drive to treatment or any medical appointments for themselves or a non-driving member of their household.
- They may drive to school or a training program, except for high school.
- They may drive to and from probation or court, or any activities ordered by either (e.g., Victim Impact Panels).
- They may drive a child to school or daycare, but only if the child's participation in those activities is necessary for the parent to remain employed.
- They will be given a three hour window each week in which to run errands, such as grocery shopping.

Following the successful completion of DDP and all associated conditions (payment of fees, participation in treatment) a driver can apply for their full non-commercial license back. Drivers with CDLs must wait the full period of the original suspension or revocation before they can apply for their CDL again. A driver must go to a DMV office to apply for their license and they must pay any

required fees in addition to the cost of the license itself. They must also make sure to bring proof of DDP completion with them.

DMV regulations, effective September 26, 2012, affect drivers with multiple alcohol or drug-related driving convictions or incidents. Drivers who have had three or more alcohol or drug-related incidents within 25 years and have had their license revoked will be required to submit their request for relicensing to the Driver Improvement Unit (DIU). The DIU will review their driving record and make a determination if the driver will be relicensed or not. There is a \$100 processing fee for the review process and the fee is not refundable, regardless of the outcome of the review.

Examples of how these changes affect persons applying for a driver license after their license is revoked are provided below.<sup>viii</sup>

- Applicants with three or four alcohol or drug-related driving convictions or incidents within a 25 year period, without a “serious driving offense” and whose revocation does not result from an alcohol or drug-related driving conviction or incident, will be denied relicensing for two years in addition to the statutory revocation period. Such applicants may then be relicensed with a [problem driver restriction](#) for two years. A “serious driving offense” is a fatal accident, a driving-related penal law conviction, conviction of two or more violations for which five or more points are assessed, or 20 or more points from any combination of violations.

Applicants with three or four alcohol or drug-related driving convictions or incidents within the preceding 25 years, without a serious driving offense and whose revocation does result from an alcohol or drug-related driving conviction or incident, will be denied relicensing for five years in addition to the statutory revocation period. Such applicants may then be relicensed with a problem driver restriction for five years with an IID.

Applicants with three or four alcohol or drug-related driving convictions or incidents within the preceding 25 years with a serious driving offense will be indefinitely denied a driver license, unless there are compelling and extenuating circumstances.

Applicants with five or more alcohol or drug-related driving convictions or incidents on their lifetime driving record will be permanently denied a driver license, unless there are compelling and extenuating circumstances.

Applicants with two or more alcohol or drug-related driving convictions or incidents within the preceding 25 years will be required to serve their entire sanction period (suspension or revocation), even if they complete the Drinking Driver Program (DDP), and will be required to submit proof of rehabilitation.

Licenses with a court-imposed IID requirement will say “A4” on the front under the restrictions section. The back of the license will read “Ignition Interlock”. If the IID is administratively imposed by the DMV the license will read “A2” on the front and “Problem Driver” on the back. It is a driver’s responsibility to provide proof to the DMV that the IID requirement has been satisfied in order to have this condition removed from their license. The monitor should use OPCA 555SS “IID Sentence Satisfaction No Vehicle” and OPCA 550DA “IID Authorization to De-install DMV” forms for such purpose, as appropriate.

The following link provides information on OASAS Impaired Driver Services Information including approved DDP programs: <http://www.oasas.ny.gov/dwi/index.cfm>

## **Section IX. Victim Impact Panels and STOP DWI**

Victim Impact Panels are usually organized by groups such as the local STOP DWI program, but probation may play a strong role in the implementation of the panels. Panels may convene monthly at a location that serves one or more counties. The organizing group will schedule a time, location (usually a county building, such as a town hall), and coordinate with victims of DWI-related incidents who are willing to share their stories. DWI offenders are usually required to attend a victim impact panel by the sentencing judge, their probation officer or both. Attendees are asked to arrive at the meeting early and sign in, at which point they may be given a Breathalyzer test. Probation officers in the county may agree to assist the organizing group with this step by staffing the sign-in tables and conducting such alcohol screenings on attendees. During the course of the panel, victims of DWI-related incidents, and/or their survivors including family members of DWI fatalities, and sometimes even offenders who have driven drunk and caused a fatality will present their stories and provide perspective on how driving drunk can impact others. There is usually a monetary fee associated with the panels that offenders are required to pay. Some probation departments require probationers to attend an impact panel at the beginning of their probation term and again at the end to ensure that the probationer has internalized the message.

STOP DWI programs are county-based and are usually tied to a law enforcement office, such as the county sheriff or probation departments. County Stop DWI programs may coordinate and provide financial support for DWI checkpoints, DWI education for high school students and a variety of advertising to the community on the dangers of driving under the influence. The New York state STOP DWI Association website <http://www.stopdwi.org/> has videos, brochures and a variety of other resources that may be of use to probation officers.

## **Section X. Underage DWI Offenders**

This section discusses the special population of underage drinking offenders. This population pertains to offenders under the age of 21 who operates a motor vehicle under the influence of alcohol or drugs. This section will examine the existing research on this unique population from APPA, the New York State experience with this population and the recommended different practices for working with underage DWI offenders.

### **Summary of Research**

#### **According to the American Probation and Parole Association (APPA):<sup>ix</sup>**

Adolescents and young adults are typically the least experienced drivers on our roads. Consumption of alcohol, which impairs their judgment and coordination and makes them more likely to take risks, creates conditions under which tragedies can occur. In 2005, according to the National Highway Traffic Safety Administration, 7,460 people between the ages of 15 and 20 were killed in motor vehicle crashes – the number one cause of death in this age group. Twenty-eight percent of those

killed (2,089 individuals) had been drinking. Many more people in this age bracket experience injuries, some of which result in lifetime disabilities. Young drivers are also less likely to use seat belts when they have been drinking; of those killed in motor vehicle crashes that had been drinking, 74% were not wearing seat belts. Young people are likely to exercise poor judgment by riding in vehicles driven by peers who have been drinking, thus increasing their risk of injury or death. In 2001, 80% of frequent heavy drinkers reported having ridden with a driver who had been drinking (Youth Risk Behavior Survey, 2001).

Underage DWI offenders are defined as adolescents under the age of 21 who consume alcohol and/or other drugs and drive while their ability is impaired by those substances. The Institute of Traffic Safety Management Research (ITSMR) estimates that 7% of alcohol-involved fatal or personal injury crashes and 17% of drug-involved fatal and personal injury crashes are attributable to drivers under the age of 21. These numbers appear to be on a downward trend, but are significant. Recidivism for this age group also appears to be on a downward trend from about 1%, but individuals in this age group are disproportionately over represented in impaired driving and crash fatalities.

The American Probation and Parole Association (APPA) *Underage Drinking: Intervention Principles and Practice Guidelines for Community Corrections* has identified six principles for community supervision of underage impaired driving offenders:

- ***“Principle 1:*** *Effectively addressing underage drinking requires a comprehensive approach. This approach should seek to diminish the supply of alcohol available to underage drinkers. At the same time, it should decrease their consumption of alcohol by controlling and changing the behaviors and attitudes of those who engage in underage drinking.*
- ***Principle 2:*** *Responses by the justice system as a whole and by community supervision agencies in general should involve making balanced responses to youth that are tailored to the specific characteristics and situation of the young offender. Written criteria related to system responses should be established through policy-level collaboration to ensure fairness in access and utilization of services.*
- ***Principle 3:*** *Assessment, intervention, and supervision of underage drinking offenders should be based on practices that have been demonstrated by research to be effective.*
- ***Principle 4:*** *Responses to underage drinking must demonstrate an understanding of the cultural background of the youth offenders.*
- ***Principle 5:*** *Community corrections agencies and practitioners should strive to increase their individual and collective knowledge of underage drinking and responses to it by engaging in ongoing training and data collection for program evaluation and research.*
- ***Principle 6:*** *Community corrections agencies and professionals should be aware of and collaborate with community-based and justice system strategies and programs to reduce underage drinking.”*

## I. **Special Case Management Responsibilities**

### i. Pre-Sentence

- Obtain signed written consent to release information from the defendant.
- Refer defendant to a certified treatment provider who specializes in youth or adolescent treatment for a psychosocial evaluation.
- Transfer information to evaluating clinician, including police report, victim statements, criminal and social histories.
- Meet with the youth and his or her parents to explain the purpose of the evaluation and how the court will use the findings in disposition decision-making. Stress the importance of cooperation.
- Ensure that a risk and needs assessment has been conducted. Ideally, this includes Probation Officer making an in-home visit, in conjunction with evaluating clinician or clinical team. Ensure that the tool being used has been validated with adolescents as some tools are only validated for adults.
- Participate in post-assessment clinical case staffing devoted to evaluating the offender's appropriateness for community-based care and developing an initial treatment plan.
- Develop comprehensive case management recommendations based on results of the treatment evaluation and other pre-sentence evaluations. The case management recommendations should detail required legal and clinical interventions, and supervisory goals and methods. They should include a copy of the underage DWI offender-specific treatment plan.
- Formulate a report to the court synthesizing the results of the pre-sentence evaluations and making recommendations for disposition. The report should address the offender's appropriateness for community-based care, his or her designated level of risk for re-offending, and the case management plan. It should include an assessment of the most appropriate living environment for the youth and a description of treatment goals, objectives, and methods, and a timetable for their completion.

### ii. Post-Sentencing

- Conduct an orientation session with the youth and his or family to review court orders and terms of probation.
- Review expectations with regard to compliance with treatment program requirements. Stress the fact that the probation officer and therapist will be in regular, on-going communication with one another and that treatment compliance and progress will be closely monitored and reported to the presiding judge at regularly-scheduled court reviews.
- Collaboratively establish with the youth, his or her family and therapist a monitoring/supervision plan that specifies proscribed and prohibited activities, and persons responsible for tracking and reporting compliance and effectiveness.
- Track and carefully document the youth and his or her family's attendance of scheduled therapy sessions, and compliance with monitoring plan and terms of probation.
- Attend major clinical case staffing. Review with therapist the youth and his or her family's progress in achievement of defined therapy goals. Carefully document all findings.

- Maintain collateral contact, as appropriate, with other professionals providing intervention/monitoring services or educational/vocational support. Where applicable, this should include the youth's school or employer.
- Re-assess risk and needs assessments on an interval basis, preferably every six months. Use information to evaluate adequacy of case management and treatment plans, achievement of intervention goals, and the youth's readiness for a "step-down" in intensity of care.
- Submit regular formal reports to the presiding judge describing the youth's progress in treatment, achievement of specific legal and clinical goals, and continued appropriateness for community-based care. Keep the court apprised of anticipated time to completion of treatment program. Where possible and appropriate, have above information processed in formal court reviews with youth and family in attendance.

### iii. Criteria for Termination of Services

- Offender takes full responsibility for his criminal activity and acknowledges all behaviors for which he was convicted.
- Offender appears genuinely remorseful for driving while intoxicated and has empathy for any actual or potential victim(s).
- Offender was fully cooperative with his therapist(s) and compliant with therapeutic directives.
- Offender successfully completed the treatment program in its entirety.
- Offender understands the cycle of substance abuse and that continuing to use substances will result in new legal issues.
- Offender sufficiently understands his risk factors for relapsing and re-offending, and can identify and successfully employ coping and management skills to maintain control over his behavior.
- All of the offender's psychiatric and behavioral problems were adequately addressed, and he or she displays overall emotional maturity and behavioral control over his or her substance use, and other psychiatric and behavioral problems.
- Offender is gainfully employed or enrolled in an educational/vocational program that offers the promise of developing competitive job skills.
- Offender has positive peer and familial relationships that support him or her in maintaining a healthy lifestyle and refraining from future substance abuse and delinquent behavior.

## **Underage DWI Offenders on Probation in New York State**

Probation officers participating in the DWI Offender Management Focus Groups reported Underage DWI offenders appear to be increasing in frequency, in particular drug-related driving charges.

## **Recommendations for Underage DWI Offenders on Probation**

- It may be very difficult to distinguish between substance use, abuse and dependence in underage probationer. As such, it is essential to work with the treatment provider to obtain an

evaluation early in the case and to obtain additional information about the child and the family, when applicable.

- Underage DWI offenders should be referred to adolescent-specific treatment providers, where available.
- It is strongly recommended that underage DWI offenders not be placed in treatment groups with adults.
- Probation should maintain ongoing open communication with the family, treatment provider, child protective services and schools, as required.
- Some underage DWI offenders may be appropriate for consideration for early termination; these considerations should be made on a case-by-case basis, in consultation with the family, treatment providers, child protective services, schools and, of course, the courts.
- New York State has a Zero Tolerance Law for underage drinking, and the penalties for the first offense include a six month suspension of the New York State Driver's License and a \$125 civil penalty, as well as \$100 fee to terminate suspension. If a youth is convicted of a second Zero Tolerance offense, the penalty is increased to a revocation of their driver's license for one year or until they turn 21 and a \$125 civil penalty, as well as \$100 fee to terminate suspension.<sup>x</sup>
- Youth should have specialized conditions of probation that limit access to both alcohol and vehicles. These conditions may include the following:
  - No driving without a parent or guardian in the vehicle, even if the youth has a valid driver's license.
  - Participation in a Driver's Education or other driving course.
  - No use of alcohol or other substances.
  - Strict curfew.
- Probation officers with an underage DWI offender caseload, whenever possible, should receive specialized training as follows:
  - Dynamics of Underage DWI Offenders
  - Adolescent Brain Development
  - Prevalence of Driving While Intoxicated
  - Offender Characteristics
  - Assessment/Evaluation of Youth Offenders
  - Assessment/Evaluation of DWI Offenders
  - Community Management of DWI Offenders
  - Motivational Interviewing
  - Treatment Models
  - Cognitive Behavioral Intervention Model
  - Relapse Prevention
  - Technology Tools
  - Determining Progress

- Offender Denial
- Cultural and Ethnic Awareness
- Graduated Responses
- 

There are currently no validated actuarial risk assessment tools specifically for Underage DWI offenders, so probation officers may use a generalized risk assessment for youth, such as the YASI/Caseworks and a referral to a substance abuse provider who specializes in adolescent treatment.

## **Section XI. Female DWI Offenders**

This section is an overview of the special population of female DWI offenders. Although the crime is the same, female offenders often exhibit different characteristics and motivations as compared to male offenders and, therefore, the recommended interventions may differ. This section will review the existing research, the experiences of New York State probation departments with this special population and the different practices for working with the female DWI offender.

### **Summary of Research**

According to the Traffic Injury Research Foundation (TIRF)<sup>xi</sup>, although the vast majority of attention on DWI offenses focuses on men as offenders, an increased awareness of females as DWI offenders has surfaced in recent years. New York State’s “Leandra’s Law” in particular has been a primary source of this growing attention. The increase in female DWI offenders has influenced the initiation of new research and guidance for working with the special needs that female probationers present.

Preliminary findings by TIRF presented in *State of Knowledge: Female Drunk Drivers* suggest that adult women who commit DWI offenses may have the following characteristics:

- Female DWI offenders may drink less than their male counterparts, but due to differences in body composition, they metabolize it more slowly, resulting in a higher likelihood of DWI.
- Female DWI offenders tend to have a much more rapid progression from alcohol use to abuse, and then dependence.
- Female DWI offenders tend to be older than males, with an average age of 31 for first offense.
- Female DWI offenders are more likely than males to be single or divorced.
- Female DWI offenders have high rates of co-occurring mental health issues.
- Female DWI offenders have higher rates of opiate or sedative abuse.
- Female offenders tend to have more problems in other life areas and tend to have less knowledge or experience in the criminal justice system
- Female DWI offenders tend to have slightly lower recidivism rates, but the same characteristics for re-offense by males are present in recidivist females: high BAC at arrest, history of substance abuse and failed treatment.

To maximize the success of female DWI offenders, it is important that supervision officers assume a role that extends beyond enforcement tasks by also including supportive functions. The supervision officer should focus on understanding the specific needs of the offender and ensuring that appropriate

resources are available to address those needs. This requires the development of formal and informal partnerships with a range of relevant professionals experienced with providing specialized services to female DWI offender including the following:

- Mental health and substance abuse treatment providers;
- Domestic violence and other victim services organizations;
- Healthcare agencies;
- Educational and employment programs;
- Child care assistance and other services for women with children; and
- Substance abuse treatment providers.

The establishment of networks including other key individuals in the community who can serve as sources of support and accountability may also enhance supervision efforts with female DWI offenders. It is particularly critical to work closely with non-offending partners, parents or caregivers, or other family members to ensure that they understand the ways in which they can support supervision and treatment efforts. Fostering these types of relationships will also complement the approach that should be modeled by supervision officers – one in which accountability and support are carefully blended.

Female DWI offenders may benefit from more gender-responsive substance abuse treatment. The following treatment goals are particularly salient for female DWI offenders:

- Establishing and maintaining trusting, supportive, and equitable intimate relationships;
- Promoting autonomy and self-sufficiency;
- Developing a positive self-concept;
- Enhancing assertiveness and social competency;
- Increasing effective emotional management;
- Reducing self-destructive/self-injurious behaviors; and
- Ensuring healthy expression, and boundaries.

The research on female DWI offenders is extremely limited. Until recently, females who committed DWI offenses have been largely overlooked for a host of reasons. As a result, comparatively little is known about DWI offending females. The strategies for assessing, treating, and supervising the population remain in the early stages of development. Additional research is needed. In the meantime, the application of gender-specific principles and practices with women offenders and delinquent female youth, when coupled with lessons learned from the broader DWI offender management field, holds promise for the management of this special population.

## **Female DWI Offenders on Probation in New York State**

According to research conducted by The Institute for Traffic Safety Management and Research (ITSMR), in 2012, 24.3% of the drivers in alcohol-related motor vehicle crashes were women, increased from 23.3% in 2011.<sup>xii</sup> Women account for 23% of the DWI arrests in New York State according to the DCJS Office of Justice Research and Performance, but they make up a larger percentage (37.3%) of “Leandra’s Law”-specific arrests. ITSMR has also researched the rate of

female DWI recidivism and has found that in 2012 the rate was 16% of all female DWI offenders, but that this rate has been declining slowly over the last five years.<sup>xiii</sup>

Probation officers participating in the DWI Offender Management Focus Groups reported the following:

- Most departments reported having a very small, but growing female DWI offender caseload.
- Female offenders have previously appeared to receive less punishment from both law enforcement and judges than their male counterparts.
- Female offenders often have significant substance abuse or mental health problems.
- Female offenders require many resources.
- Females who are engaged in probation services tend to do very well.

## **Recommendations for Female DWI Offenders on Probation**

- Female DWI offenders need to be supervised and managed on an individual case-by-case basis in collaboration with the treatment provider.
- Whenever possible, supervision officers should develop collaborative networks that can serve as sources of support and accountability for female offenders. As with the supervision of male DWI offenders, officers should maintain contact and open communication with treatment providers and law enforcement.
- Supervision officers should work to ensure that female DWI offenders have access to all available specialized services including, substance abuse treatment, mental health treatment, domestic violence and victim services, education and employment, healthcare, and childcare services.
- A validated DWI risk assessment will be effective with female DWI offenders to determine risk of reoffending, but a female-specific needs assessment, such as the Women's Risk and Needs Assessment (WRNA), may be very helpful.

## **Section XII. Ignition Interlock Devices**

This section will cover the pertinent laws related to ignition interlock devices, how they work, the specific classes of IID's available for use in New York State and how failed or missed tests, as well as other events including failures to install, missed service visits, and circumvention/tampering are reported.

### **I. Ignition Interlock Regulations in New York State**

DCJS has promulgated strict state regulations (9 NYCRR Part 358) governing the timely installation and monitoring of compliance by persons ordered to install and maintain Ignition Interlock devices. Part 358 defines the responsibilities of operators, IID manufacturers, installers, and monitors including probation departments. DCJS Regulations provide the following:

- Monitor shall receive notification from the Court pursuant to its county plan for IID condition/installation within 5 business days.
- Operators are required to have IID installed within 10 business days of Court Order.
- Operators shall provide proof of installation within 3 business days to Court, County Probation Department or designated Monitor.
- Operator shall submit to service visits within 30 calendar days of prior installation or service visits where the device does not automatically transmit data directly to the monitor. Operator shall submit to 30-day visits, followed by 60-day visits, where the device automatically transmits data directly to the monitor or the device head is sent to the manufacturer.

Note: The requirement for the installation of the ignition interlock devices is effective upon sentencing and the operator is not allowed to operate the motor vehicle until the ignition interlock device is installed. The operator is required to install the ignition interlock device within 10 days of the court order. Importantly, the 20-day stay associated with DMV suspension does not apply to the required timely installation of the ignition interlock device.

Qualified manufacturers are required to provide notice to the appropriate monitor within three business days of knowledge or receipt of data of the following events:

1. installation of a device on an operator's vehicle(s);
2. report of a failed start-up re-test;
3. report of a missed start-up re-test;
4. report of a failed rolling re-test;
5. report of a missed rolling re-test;(vi) report of the device entering lockout mode;
6. failure of an operator to appear at a scheduled service visit; or
7. report of an alleged circumvention or tampering with the ignition interlock devices as prohibited by paragraphs (a), (c) or (d) of subdivision (9) of section 1198 of the Vehicle and Traffic Law, or an attempt thereof;

Regulations require probation/monitors to provide notification of the following events to the Court and District Attorney, within 3 business days:

1. operator failure to install IID on the vehicle they "own or operate," or
2. operator has not complied with required service visit, or
3. report of alleged tampering or circumvention of IID, or
4. report of failed or missed start-up retest, or
5. report of failed or missed rolling retest, or
6. any report of a failed test where BAC is .05% or higher (even on the initial start-up test or rolling test)

Other regulations are in place regarding manufacturers and vendors. A full version of the regulations can be found on the DCJS website along with common forms.<sup>xiv</sup> The confidential IID monitor forms such as the "Certificate of Completion/Authorization to De-Install Ignition Interlock Device(s)" can be found on the Integrated Justice Portal Resources » Reference Library » Probation » Ignition Interlock » Reports.

On July 26, 2013 Governor Andrew M. Cuomo signed Chapter 169 of the Laws of 2013, effective November 1, 2013, which strengthened certain aspects of “Leandra’s Law”. The amended law extends the period of interlock restriction to a minimum of 12 months (from 6 months) for individuals convicted of DWI and/or other alcohol-related offenses. This change is intended to function as a disincentive to any operator who previously would have been inclined to “wait out” the minimum period. The operator may apply to the court after a period of six months of installation and request that the Court authorize the de-installation of the IID, unless the court has ordered a longer period of installation or that the period of installation continue. The amended law also provides the following:

- Authorizes the court to order the installation of the IID prior to sentencing. The period of IID restriction will commence from the earlier of the date of sentencing or the date of installation in advance of sentencing. A court may not authorize the operation of a motor vehicle by any individual whose license or privilege to operate a motor vehicle has been revoked.
- Establishes that a court can waive the IID only where the defendant asserts under oath that he or she is not the owner of any motor vehicle and that he or she will not operate any motor vehicle during the period of interlock restriction, except as may be otherwise authorized pursuant to law. The term “owner” shall have the same meaning as provided in Vehicle and Traffic Law §128. This new language will potentially subject an offender to additional charges if he or she is found to have intentionally made a false statement to a court.
- Affirms that individuals convicted of DWI crimes and adjudicated as Youthful Offenders are subject to the provisions of “Leandra’s Law” including the ignition interlock requirement.
- Reclassifies as a Class E felony offense Aggravated Unlicensed Operation in the First 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 the requirement that operators provide proof of installation compliance with the ignition interlock requirement to the court and the probation department or other monitor where such person is under probation or conditional discharge supervision.

In December 2013, through contracts with localities that receive funding to support their IID programs, DCJS added the following tasks to promote effective IID program operations:

- All offenders being monitored for an IID condition will be registered with the NY DMV License Event Notification System (LENS) (or comparable system) for tracking.
- Any offender with an IID order who fails to install an IID must have their DMV records searched quarterly by the monitoring agency to ensure they have not registered or titled a vehicle in their name during that period.
- If a monitoring agency discovers that an offender has a vehicle registered or titled to them, but has failed to install an IID based on their claim that they do not own or operate a vehicle, the monitor must notify the sentencing court and district attorney as soon as possible.

## **II. Ignition Interlock Installation in New York State**

DCJS' Office of Probation and Correctional Alternatives requires that all monitors submit an IID report each quarter (see Appendix H). The purpose of this report is to collect vital information such as IID orders received at the time of sentencing or in advance of sentencing, installation rates, classification of devices, and type of payment ordered. On average, a total of 27.5 % of the offenders ordered to install an IID have actually installed the IID. This installation rate may be affected by many factors including the sale or transfer of offender vehicles. It is anticipated that amendments made to Leandra's Law through the passage of Chapter 169 of the Laws of 2013, effective November 1, 2013, will cause IID installation rates to increase and thereby enhance community and highway safety.

## **III. IID Failed/Missed Tests and other events (Negative Events Report)**

The Office of Probation and Correctional Alternatives requires that all manufacturers submit monthly reports to collect data on the number of devices that manufacturer has installed or de-installed for the month, as well as certain events described in Part 358. DCJS compiles this information into statewide report formats, which are periodically distributed to the field. Of particular use to the localities is the IID Negative Events Report (see Appendix H for a copy of this report) which includes the following information by county:

- Number of missed service visits.
- Number of failed or missed start-up retests.
- Number of failed or missed start-up retests where the operator's BAC was a .08 or higher.
- Number of failed or missed rolling retests.
- Number of failed or missed rolling retests where the operator's BAC was a .08 or higher.
- Number of vehicle lock outs.
- Number of vehicles disabled through lock-out.
- Number of attempted circumventions and/or tamperings.

Under Part 358, IID manufacturers are required by regulation to notify monitors within three business days of certain events. Upon review of the Negative Events Report, if it appears that a monitor is not receiving consistent notifications of any issues, they should follow up with the vendor to ensure that the problem is corrected, as it may stem from issues with communications (e.g. incorrect e-mail address etc.), issues with a device which may continue to cause problems unless it is serviced, or failure of the manufacturer to comply with the requirements of Part 358. If the manufacturer does not rectify the issue or it continues to occur on a regular basis the monitor can submit an Ignition Interlock Program Complaint Form, a fillable form that can be found on the Integrated Justice Portal (See Appendix D). Positive BACs indicated on IID should be reported to the operator's treatment provider, in addition to any sanctions by probation/monitor.

## **IV. Responding to Failed or Missed Retests and other reportable events**

A positive test indicates that a person who is being monitored attempted to drink and drive again. As noted in the above sections, monitors are required to report to the sentencing court and the District Attorney any failed or missed retests and other events that are covered under

Title 9 NYCRR Part 358, regardless of any other action the monitor may take. In addition to reporting it to the court and District Attorney, a monitor may take a number of other steps in response to failed tests:

- Notifying the treatment provider and seeing if an increase in treatment is recommended
- Increasing reporting days
- Increasing drug/alcohol testing
- Increasing the supervision level
- Implementing other graduated sanctions
- File for a violation of conditional discharge or probation

The officer/monitor will need to review the case carefully to determine which course of action is most appropriate. Regardless of the decision made, the officer/monitor should include this in their notice to the Court and District Attorney.

## **Section XIII. DWI Supervision Technology**

There are many new technologies emerging which can assist probation officers and CD monitors in their DWI supervision/IID monitoring duties. Many of these technologies can provide access to information about substance use, traffic infractions, the location of the offender, the availability of vehicles to the offender, and more.

### **I. Substance Use Detection Technologies:**

Most probation departments include as a condition of probation that a probationer is not to use alcohol or other drugs. Almost every department therefore uses some type of substance use detection technologies. In most cases, a probationer will attend substance abuse treatment at some time during their supervision period. Coordinating with the treatment provider can ensure that both parties are apprised of tests results, but also can allow regular random drug testing at a lower cost to each agency.

#### **a. Drug Tests:**

Drug tests or screens are any tests that can return confirmation that a person is either currently under the influence of a substance or has used a substance in the recent past. Drug tests may include:

- Blood tests
- Urine tests
- Oral fluid tests
- Hair tests

The type of test will determine what drugs can be tested for and the window of detection for time of use. Blood tests can accurately determine current levels of a substance in the body, urine tests can accurately determine recent use (through the presence of metabolites) and hair testing tends to have the longest window of detection, but

accurately pinpointing date of use is difficult. Departments select the type of tests to utilize based on the following criteria:

- Cost of test
- What is being tested for
- Where the tests will be administered
- Who will be administering the tests

Blood tests obviously require a medical professional and, therefore, are more expensive and cannot be administered in the field. They can, however, provide accurate levels of current intoxication. Urine tests are less expensive and can be administered in the field, but require a same-sex officer to be present if the test is to be observed. Oral Fluid tests cost more, but can be administered in the field by any officer, regardless of gender.

Specimen collection for any of the above tests is recommended to be observed. It is more difficult for a probationer to provide a false or adulterated sample of blood, hair, or oral fluids, but there are many ingenuous ways that have been devised to attempt to adulterate urine samples or provide samples of “clean” urine. Most commonly probationers will either try to add something to their urine (such as water from the toilet or tap, or soap) or will try to bring in a sample of either someone else’s urine or their own urine from prior to their substance use. Regardless of whether or not a test is to be observed, a thermometer strip on the sample collection cup is vital. Urine should leave the body at body temperature, 96-99 degrees Fahrenheit. If a sample tests otherwise, it is likely to have been either adulterated with another fluid or carried in a container outside the body. Also, regardless of whether or not a test will be observed, it is highly recommended that a probationer be asked to remove their coat or other outerwear and leave any bags or purses outside the bathroom and turn out their pockets before entering the bathroom. This will reduce the number of places a false specimen may be hidden.

There are many ways that probationers have devised to surreptitiously submit false samples for testing in order to attempt to avoid detection. During the sample collection, the probation officer should pay attention to any strange or seemingly unnecessary movements the probationer engages in prior to or during urinating. The officer may also request that the probationer engage in the “Start-Stop-Start” method. The probationer is directed to urinate, stop completely, and then begin to urinate again, this time providing the sample. This will eliminate the ability to use a bag, bottle or other container to submit a false sample. Regardless of observation, most tests, including dip stick tests and laboratory confirmation tests, provide adulteration results to indicate if the specimen has been diluted.

**b. Breath Testing:**

Breath testing is a quick and easy way to detect the presence of alcohol in a probationer’s system at that moment in time. Breath tests may administered by using

simple, handheld screening devices, or large, wall-mounted devices. Most probation departments have at least one handheld device they use to test probationers at office visits and home contacts. Police departments may have access to larger wall-mounted devices, which can be used for evidentiary purposes. If your agency has a breath-testing unit that you will be using, it is recommended that you complete any training offered by the manufacturer.

Probationers may also be assigned a portable device or a home unit attached to their phone lines. These may be useful in providing information on offenders who do not have IIDs installed, used as graduated responses, or in other scenarios where deemed appropriate. While such technologies are useful in monitoring an offender for alcohol use, they should not be considered a replacement for an IID, as they will not interrupt the ignition or operation of a motor vehicle.

## **II. Transdermal Alcohol Monitors (TAM):**

Alcohol is partially metabolized through our sweat glands and that makes it possible to measure alcohol use across the skin. Transdermal alcohol monitors (most common brand name is SCRAM

<http://www.scramsystems.com> ) are usually worn as an ankle monitor device that continually measures for the presence of alcohol. Some devices require the probationer to be near a home base (usually kept next to the probationer's bed) to transmit data, while other devices can transmit at any time. Some TAM devices, also have a built-in Global Positioning System (GPS) or location technology, which provides additional monitoring features for the supervising agency.

## **III. GPS Technology:**

GPS use a receiver, which is usually located within an electronic device, to communicate with a satellite to provide a location. GPS can be used in supervision to provide an agency either with the current location of a probationer, or with the history of their movements. This information may be used to determine if a probationer is visiting prohibited locations, such as bars or locations outside of the supervising court's jurisdiction without a travel permit. In cases in which a probationer absconds, the location can be used to track them.

## **IV. Ignition Interlock Devices:**

The NYS Class II and III ignition interlock devices provide GPS tracking. Some manufacturers provide continuous positioning via their real-time reporting sites, others provide locations at the time of each test. Since tests are done at start up and then at least every 30 minutes thereafter, most offender vehicles will always be within 40 miles of the offender's last test. IIDs can only provide the location of a vehicle; it is no guarantee that the offender is with the vehicle.

## **V. Ankle Monitors:**

In certain situations, offenders may be monitored with GPS ankle monitors. Such devices may or may not have a transdermal alcohol testing capability in addition to the GPS options. These devices can provide assurance of the actual physical location of the probationer.

## **VI. Roadside Stop:**

In May of 2013, New York State implemented “Roadside Stop”- Phase 1 – an initiative through which local police and New York State Police (NYSP) inquiries for Department of Motor Vehicles (DMV) information resulted in simultaneous inquiries to the Computerized Case History File (CCH) and Integrated Probation Registrant System (IPRS) to identify probable matches that the subject of the inquiry was also under probation supervision. Roadside Stop also advises such police officers of individuals under the supervision of the NYS Department of Corrections and Community Supervision (DOCCS). Since 2013, Roadside Stop has provided invaluable information to police officers in NYS making roadside stops concerning the supervision status of individuals and has resulted in the police contacting the supervising probation department to advise them of their contact with the probationer. For purposes of this initiative the term “probationer” also includes those under interim probation supervision.

In January of 2015, “Roadside Stop”- Phase 2 II became operational, offering electronic notification to probation departments of roadside stops involving probationers when requested by police. Accordingly, when a police agency makes an inquiry for DMV information through the eJusticeNY Portal (IJP), the police officer will have the option to have a notification sent to the IJP inbox of the supervising probation department by Originating Agency Identifier (ORI) that such inquiry was made. This notification was designed as an option, as such police officers may make inquiries for DMV information of a confidential nature (e.g. running a license plate in a narcotics investigation), where no roadside stop or other contact with the subject has occurred.

Notifications provided through “Roadside Stop” are not based on fingerprints, but on probable matches from a comparison of DMV and IPRS data. Upon receipt of a Roadside Stop notification, the supervising probation department should contact the police agency listed on the notice for confirmation that the person stopped is in fact the probationer and to obtain additional information regarding the nature of the stop. Since these queries are not fingerprint-based, the results returned to police include a disclaimer that the subject should not be searched, detained, or arrested based solely on that information. Further, the disclaimer requests that the police contact the supervising agency if the subject is arrested for a new offense. Police may contact the supervising agency in stops not resulting in arrests, should they elect to do so.

“Roadside Stop”- Phase II notifications by local police and the NYSP and the related follow-up communications provide probation departments with salient information which enhance community supervision efforts, including identifying various probationer behaviors (e.g., curfew

violation, unauthorized travel, alleged traffic or other criminal offense(s)) that may be indicative of violating the terms and conditions of the individual's release under probation supervision. Roadside Stop notifications provide invaluable information to the police officer who has stopped a motorist, thereby improving officer safety, while expanding the information returned to the supervising probation department – enhancing supervision efforts and improving public safety.

## **VII. DMV Data Systems:**

Supervision of DWI offenders, including surveillance, can be particularly difficult since their crimes are mobile in nature. There are many technologies available that can provide monitors information regarding changes in license status, traffic tickets, traffic convictions, vehicle registration, and driving records. These records can be useful in identifying the vehicles a probationer may be driving that are not equipped with the required IID. In addition, these records may providing information that reveals an offender's participation in illegal or prohibited activities, such as a driving a vehicle without an IID, or other noncompliant behavior, such as leaving the county without a travel permit.

### **a. License Event Notification System (LENS):**

LENS <http://dmv.ny.gov/vpass> is a notification system hosted by the New York State DMV that can be used to obtain ongoing reporting regarding activities related to the driver's license of any persons entered into the system. The account options allow a user to select the types of actions that will generate a notification, such as traffic tickets (available to probation departments and district attorney offices only), convictions for traffic offenses, approval for relicensing, loss of license due to suspension or revocation and completion of a driver improvement course. The ticket notifications can be very useful for supervision, as these events may be non-fingerprintable offenses, which would not otherwise result in notification to probation. LENS is available to any government agency or private agency for fleet management purposes. Authorized public agencies can receive access to LENS at no cost, while private entities will be charged for such access. LENS requires that a user provide an e-mail address for contact. The e-mails received from LENS are encrypted for data security and require a password to open. Agencies may choose to use a single LENS account for the department, or to have each officer assigned their own account. As discussed earlier, IID monitors are required to use LENS (or a similar system), where available, under current IID Program contracts. To apply for a new LENS account: [https://transact.dmv.ny.gov/lenxforms/prereg\\_cust/preg\\_main.cfm](https://transact.dmv.ny.gov/lenxforms/prereg_cust/preg_main.cfm).

There are private vendors that utilize LENS data to generate reports. Among them is Probation Monitor (formerly License Monitor) <http://www.licensemonitor.com>. The reports generated use the same data, but are considered to be more user-friendly by some probation professionals.

### **b. DMV Common Portal for Access to Search Services (COMPASS) / Dial-In:**

NYS DMV has provided electronic access to driver records to authorized users for several years. Probation professionals may be aware of DMV's Dial-In system,

<http://dmv.ny.gov/dial-in>, which has provided a way for users to search for driver's licenses and vehicle registrations. The program is being phased out for government use, but some probation officers may still have a dial-in account and private agencies can still create a new account. The program provides a basic way to search for the license status or vehicle registration for anyone being monitored for an IID condition. Searches in Dial-in require the first 5 letters of the last name, first 3 letters of the first name and middle initial exactly as they appear on the motorist's record. This may make searching difficult if a driver's license were not available to be copied prior to the search. You can also search for a title if you have the VIN for a specific motor vehicle.

The new system that DMV has developed for government agencies, including probation, is called Common Portal for Access to Search Services (COMPASS), which can be accessed at <http://dmv.ny.gov/vpass>. COMPASS provides a more user-friendly system to search for license and registration data. COMPASS supports wild cards in searching for a name, so the exact spelling is not required which will return more possibilities than Dial-In. COMPASS also will allow a title search using a VIN number. COMPASS permits a user to produce a certified abstract of driving record immediately, at the user's location. The abstract produced via COMPASS is not a lifetime abstract; those can be requested from the DMV using a Request for DMV Records Form, MV-15 found here: <http://dmv.ny.gov/forms/mv15f.pdf>

To apply for a Dial-In or COMPASS account: <http://www.dmv.ny.gov/forms/mv15d.pdf>. Please note that COMPASS is not currently available to non-governmental entities.

**c. Integrated Justice Portal (IJP):**

The Integrated Justice Portal (IJP) <https://www.ejusticenyny.gov/> provides a number of search tools for law enforcement officials to search records on anything from stolen property to orders of protection. IJP replaces and integrates the NYSPIN and eJusticeNY systems. Through the IJP, an authorized user can search for vehicle registration and driver's license information in New York, as well as other states and Canada. Special searches can also be run on registrations by address or by business. This can be very useful in determining the vehicles of a person who is being monitored for an IID condition. IJP access can be obtained by requesting it from your agency's Terminal Access Coordinator (TAC).

**d. MY DMV:**

My DMV <https://my.dmv.ny.gov/CRM/> is a free online service available to all drivers in New York State. This program allows anyone to access information on their driver's license status, registration and to order replacements of these documents online for a fee. Drivers can also download and print a certified abstract immediately for a fee, but this is not a lifetime abstract. Some drivers who have had their license revoked (not suspended) can process their reinstatement request online. Drivers can also register to vote, change their address and list themselves as organ donors via My DMV. It may be useful to refer

persons being monitored to this program in order to speed up the process for them to provide documentation to their monitor.

Appendix A: PSI Report

PreSentence Investigation Report

<b>County</b> TEST		<b>PRESENTENCE INVESTIGATION REPORT FACESHEET</b>				<b>Probation PIN</b> 1000739		<b>Defendant Photo</b>
<b>Primary Court Case #</b> 2015-12345		<b>Court</b> Test County Court				<b>Investigation Case #</b> CCI-2015-12345		
<b>Agency Code</b> NY056013G		<b>Inv Probation Officer</b> User Demo		<b>Date Ordered</b> 10/13/2014		<b>Date Completed</b> 10/27/2014		
<b>A. PERSONAL INFORMATION</b>								
<b>Name (Last, First, Middle)</b> Example, John Quincy			<b>Maiden Name</b>			<b>Aliases</b>		
<b>Present Address/Mailing Address</b> 80 S Swan Street, Test, NY 12345				<b>Telephone Number</b> (555)555-5555			<b>Total # in home</b> 2	
<b>Date Of Birth</b> 06/12/1981	<b>Age</b> 34	<b>Sex</b> Male	<b>Height</b> 6'2"	<b>Weight</b> 205	<b>Eyes</b> Hazel	<b>Hair</b> Black	<b>Marital Status</b> Divorced	
<b>Social Security</b> 123-45-6789		<b>Military Service</b> Non-Veteran		<b>Ethnic Origin</b> Not Hispanic			<b>Race</b> White	
<b>Place of Birth</b> Test, NY		<b>Citizenship</b> USA		<b>English Speaking</b> Yes		<b>ICE Status</b> US Born		<b>Immigration #</b>
<b>Annual Income</b> \$35,000.00		<b>Employment Status</b> Full-Time Employed		<b>Employer</b> State University				
<b>Education Level</b> High School Diploma		<b>School Status</b>		<b>School</b>				
<b>B. PRESENT COURT PROCEEDING</b>								
<b>Judge</b> Test Judge				<b>Prosecuting / Presentment Attorney</b> Janet Smith				
<b>Counsel / Law Guardian Name and Address</b> Imyour Attorney - Legal Defense Way, Legaltown, NY								
<b>Court Case #</b>	<b>CJTN</b>	<b>Offense Date</b>	<b>Arrest Date</b>	<b>Info / Indict / Petition Date</b>			<b>Conviction / Adjudication Date</b>	
2015-12345	TEST1234	8-29-14	08/29/2014				10/13/2014	

## PreSentence Investigation Report

Court Case #	Info / Indict Charges / Nature of Petition	Final Conviction / Adjudication Charges	By
2015-12345	VTL 1192 E F 0 - DWI: Alcohol Or Drugs - 2nd Offense - 1 ct(s)  VTL 0600 01A I 0 - Operator Leaves Scene Of Property Damage Accident - 1 ct(s)  VTL 1194 01B I 0 - Refusal To Take Breath Test - 1 ct(s)  VTL 1120 0A I 0 - Failure To Keep Right:Two Lane Road - 1 ct(s)  VTL 1163 0A I 0 - Unsafe Turn Or Failure To Give Appropriate Signal - 1 ct(s)  VTL 1180 0E I 0 - Speed Violation:Unreasonable Speed/Special Hazards - 1 ct(s)	VTL 1192 E F 0 - DWI: Alcohol Or Drugs - 2nd Offense - 1 ct(s)	Plea

### C. LEGAL INFORMATION

NYSID 12345678L	Local Client ID	FBI Number
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Court Case #	Status of Defendant / Respondent	Detention Date
2015-12345	None	

Designated Felon Predicate Felon                      No Domestic Incident Report            No Domestic Violence                      No DNA Status*                              Required DNA Collection Required*            Yes DNA Collection Date* Fingerprintable Offense                Yes SORA Registerable Case*              No Juvenile Offender                        No *Not applicable, if adjudicated YO	Youthful Offender Eligible                                      Not Applicable Recommended                              No  Certificate of Relief from Disabilities by Court Eligible                                        Yes Recommended                                Defer
Scheduled Sentence / Disposition Date 11/24/2014	Actual Sentence/Disposition Date
Sentence / Disposition	

Court Case #	Drugs Used at Offense	Alcohol Used at Offense	BAC	BAC Test Refused	Personal Injury or Fatality
2015-12345	No	Yes	.18	No	No

## PreSentence Investigation Report

Number of Other Pending Charges / Petitions	0
Number of Prior Court Convictions / Adjudications	1

Prior DWI / DWAI Convictions	Number of DWI / DWAI Convictions in Last 5 Years	Drivers License #
1	1	123456789

D. CO-DEFENDANTS / CO-RESPONDENTS				
Court Case #	Name	Age	Address	NYSID

E. PARENTS AND/OR SPOUSE (INCLUDES STEP-FAMILY)					
Name	Relation	Age	Address	Occupation	Comment
Example, Laura	Mother	58	80 S Swan Street, Test, NY 12345	Nurse	
Smith, Alexis	Ex-Spouse	31	1450 Western Avenue, Test, NY 12345	Teacher	

F. SIBLINGS AND CHILDREN (INCLUDES STEP-FAMILY)					
Name	Relation	Age	Address	Occupation	Comment

G. VERIFICATIONS						
	Verified	In File	Method	Source	By Whom	Date
Date of Birth	Yes	Yes	Viewed	NYS License	Demo, User	10/27/2014
Citizenship	Yes	Yes	Viewed	Birth Certificate	Demo, User	10/27/2014
Legal History	Yes	Yes	Viewed	DCJS Records	Demo, User	10/27/2014
Present Offense/Conviction	Yes	Yes	Viewed	Court Records	Demo, User	10/27/2014
Current Address	Yes	Yes	Interviewed	Spoke with Mother and Defendant and viewed defendant's NYS license	Demo, User	10/27/2014
Employment and Salary	Yes	Yes	Viewed	Pay Stub	Demo, User	10/27/2014
Mental Health	No	No				
Physical Health	No	No				
Treatment Provider	No	No				
Education/Training	No	No				

## PreSentence Investigation Report

Victim's Damages/Losses	Yes	Yes	Viewed	Estimate of damage by county public services	Demo, User	10/27/2014
Military	No	No				
Other						
Other						

### H. PROFESSIONAL LICENSES

Type	License Number	Granted By

### I. FIREARM LICENSES

Type	License Number	Granted By

### J. VEHICLES

Owner	Make	Model	Color	License Plate	VIN	License State
Offender	Jeep	Sport Utility	Silver	abc1234	1234567890123456	NY

### K. IDENTIFICATION MARKS

Location	Description
Eyes	Crescent shaped scar next to right eye

### LEGAL HISTORY

Date	Court Case #	Court	Disposition Date	Disposition	Comment
08/29/2014	2015-12345	Test County Court		Instant Offense	
Arrest: VTL 1192 E F 0 - DWI: Alcohol Or Drugs - 2nd Offense - 1 ct(s) Arrest: VTL 0600 01A I 0 - Operator Leaves Scene Of Property Damage Accident - 1 ct(s) Arrest: VTL 1194 01B I 0 - Refusal To Take Breath Test - 1 ct(s) Arrest: VTL 1120 0A I 0 - Failure To Keep Right:Two Lane Road - 1 ct(s) Arrest: VTL 1163 0A I 0 - Unsafe Turn Or Failure To Give Appropriate Signal - 1 ct(s) Arrest: VTL 1180 0E I 0 - Speed Violation:Unreasonable Speed/Special Hazards - 1 ct(s) Conviction: VTL 1192 E F 0 - DWI: Alcohol Or Drugs - 2nd Offense - 1 ct(s)					

## PreSentence Investigation Report

LEGAL HISTORY					
Date	Court Case #	Court	Disposition Date	Disposition	Comment
03/15/2011		Test	05/20/2011	Pled guilty to Operating a Motor Vehicle With .08 of 1% Alcohol or More in Blood: 1st Offense, Unclassified Misdemeanor.	Fined \$500 (Paid) and sentenced to a Conditional Discharge.
Conv/Adj: VTL 1192 03 U M 0 - Driving While Intoxicated- 1st Offense Conv/Adj: VTL 1192 2-AA U M 0 - Aggravated DWI:Per Se-BAC .18 Of 1% Or More Alcohol In Blood-No Priors Conv/Adj: - Operating a Motor Vehicle With .08 of 1% Alcohol Or More In Blood: 1st Offense, Unclassified Misdemeanor; Conv/Adj: VTL 1163 0A 1 0 - Unsafe Turn Or Failure To Give Appropriate Signal					

### ANALYSIS OF LEGAL HISTORY

The present offense is the defendant's second conviction for operating a motor vehicle while under the influence of alcohol as he was previously convicted of a misdemeanor level offense in 2011 for which he was fined and sentenced to a Conditional Discharge. In regards to this prior conviction, the defendant advised that the Conditional Discharge required installation of an Ignition Interlock Device (IID). However, he reported that he did not own any motor vehicles at that time. A review of this department's records confirms that installation of an IID was ordered via the CD, but a device was not installed due to the defendant's non-ownership of any vehicles.

### DESCRIPTION OF PRESENT OFFENSE

The defendant was arrested on August 29, 2014 by the Test City Police and charged with the following: Driving While Intoxicated: Previous Conviction of Designated Offense Within 10 Years, a Class E Felony; Operator Leaves Scene of Property Damage Accident, an Infraction; Refusal to Take Breath Test, an Infraction; Failure to Keep Right: Two Lane Road, an Infraction; Unsafe Turn or Failure to Give Appropriate Signal, an Infraction; and Speed Violation: Unreasonable Speed / Special Hazards, an Infraction. The matter was transferred to the Test County Court by Superior Court Information, dated September 19, 2014 where he was arraigned for the crime of Driving While Intoxicated: Previous Conviction of Designated Offense Within 10 Years, a Class E Felony. The defendant pled guilty to this charge on October 13, 2014. Judge Test Judge adjourned sentencing to November 24, 2014.

## PreSentence Investigation Report

### ARRESTING OFFICER'S STATEMENT

In a phone interview with this Writer, Officer Goodlaw of the Test City Police department advised that on August 29, 2014 around 8:33 P.M., the defendant was operating a 2004 Jeep Liberty when the motor vehicle exited the roadway at the intersection of Lark Street and State Street. The motor vehicle damaged the sidewalk and a street sign on State Street. Parts of the defendant's motor vehicle, along with the license plate, were found at the scene. After this occurred, the defendant then drove his motor vehicle to his residence on South Swan Street. Upon investigation by the Test City Police Department, the defendant's motor vehicle was observed in the driveway of his house with the engine still being warm. The defendant approached an officer and made an admission that he was responsible for the damage done to the sidewalk and sign. While being interviewed, the defendant disclosed that he consumed multiple beers at a local restaurant prior to operating his motor vehicle. He confessed to fleeing the scene because of a prior misdemeanor conviction for operating a motor vehicle while under the influence of alcohol. During the interview by the arresting officer, it was observed that the defendant exhibited watery eyes; had a strong odor of alcohol coming from his breath; and he was tipsy and swaying. The defendant failed the Horizontal Gaze Nystagmus, Walk and Turn, and One Leg Stand field sobriety tests. He refused to submit to an alco-sensor or breathalyzer test to determine his Blood Alcohol Content. Law enforcement were able to confirm with a bartender at the restaurant that the defendant began consuming beer around 3:00 P.M. and was personally served four 20-ounce beers and had a total of eight 20-ounce beers on his bill when he cashed out.

### DEFENDANT'S / RESPONDENT'S STATEMENT

The defendant reported to the Test County Probation Department on October 27, 2014 to participate in the pre-sentence investigation interview. The defendant reports that he did not consume any alcoholic beverages prior to driving his motor vehicle to the restaurant. He estimates he arrived at the restaurant around 3:45 P.M. with the purpose of having something to drink and eat while watching football games. The defendant believes he consumed approximately ten 20-ounce beers. According to the defendant, he left the restaurant around 8:00 P.M. and began to drive his motor vehicle toward his residence. He states he traveled on Madison Ave to Lark Street and then turned onto State Street. As he was approaching the turn for State Street, he indicates he almost went past it, turned quickly and ended up driving his motor vehicle up on to the sidewalk which caused damage.

## PreSentence Investigation Report

### VICTIM INFORMATION / STATEMENT

A Victim Impact Statement was sent to the City of Test seeking information pertaining to restitution. Included as an attachment to this pre-sentence investigation report is the completed Victim Impact Statement with the estimation of repairs prepared by Test City Office of General Service for the Test County Court's review.

Restitution is requested in the amount of \$246.63. If ordered, restitution should be disbursed as follows:

Test City Treasurer  
24 Eagle Street, Room 109  
Test, NY 12345  
Phone: (555) 555-5555

If restitution is to be collected by the Test County Probation Department, a 5% surcharge of \$12.33 must be included making the total amount due \$258.96.

### SOCIAL CIRCUMSTANCES

#### Family and Environment

The defendant is the only child born to Michael and Laura Example. He was born in Test, NY and has resided in Test County throughout his life. The defendant's parents separated when he was around eight years old, at which time he resided with his mother. The defendant was married to Alexis Smith in 2005. He reports that the marriage began to have problems in 2010 and he moved out of their shared home in 2012. Defendant states that the divorce was finalized last year. He denies having any children of his own. He denies being in a relationship currently.

The defendant states that his relationship with his mother continues to be positive and that she enjoys having him home to help her with things around the house. He also reports his relationship with his father was positive. According to the defendant, his father passed away after battling kidney cancer. In regards to any family history of criminal justice involvement, the defendant states his father had at least two arrests for operating a motor vehicle while under the influence of alcohol.

A home contact was conducted on October 20, 2014 confirming the defendant's residency in the address listed on the facesheet of this report. During that contact, he stated that the commission of the present offense will not have any impact on his ability to remain in his mother's home. The defendant further reports that his mother owns the home outright.

## PreSentence Investigation Report

### SOCIAL CIRCUMSTANCES Education, Employment, and Military

The defendant graduated from Test High School in 1999 and then began working for a local landscaping company. The defendant reports that he worked for a number of landscaping companies before a friend helped him get a job with the State University. The defendant reports he has worked there for the last 10 years as a grounds keeper. The defendant is uncertain if his conviction will impact his employment as he is required to have a valid license in order to operate the grounds keeping trucks. At the time of this pre-sentence investigation interview, the defendant reports his direct manager is aware of his arrest and was notified of the Plea Memorandum, however he is uncertain if his manager is aware the conviction is for a felony level offense. The defendant is uncertain if the Human Resources Department is aware of his legal involvement at this time.

The defendant has never served in the United States military.

### SOCIAL CIRCUMSTANCES Physical and Mental Health

The defendant reports he is in good physical condition with no restrictions placed on him by a medical provider. He states that he has been diagnosed with mild asthma, and takes inhaled Albuterol twice a day. The defendant states that this prescription manages his Asthma very well.

The defendant denies ever participating in mental health treatment

## PreSentence Investigation Report

### SOCIAL CIRCUMSTANCES

#### Drugs and Alcohol Usage / Treatment History

The defendant reports he first experimented with alcohol and marijuana around age 16. He states he used to consume alcoholic beverages on weekends with his friends during his high school years. When attending college, his alcohol consumption was sporadic during the first two years. Upon turning age 21, the defendant reports he would consume "a few" alcoholic beverages a night and often go out to drink alcohol on the weekends. The defendant reflects that there were a few nights where he consumed too much alcohol resulting in black outs. During this time period, he also used marijuana sporadically. After college, the defendant describes his alcohol consumption as occurring at his apartment, with associates from work, or while playing golf. The defendant states that prior to the present offense he was drinking once or twice a week with friends or while watching sports on TV. He states that he would drink between 8-12 beers and denies that this caused him any problems other than the present offense. Aside from his two arrests for operating a motor vehicle while under the influence of alcohol, he states there was only one other occasion where his alcohol consumption was problematic. According to the defendant he consumed too much alcohol one night before he was scheduled to work. This resulted in him waking up late, around 12:00 P.M., and missing several hours of work. He denies that alcohol caused any problems in his marriage or with his family. The defendant reports his last consumption of alcohol was on the evening of the present offense.

The defendant denies ever being treated or evaluated for substance abuse issues in the past, and states he does not feel that he needs it now. In regards to his self-assessment of his alcohol use over the past twelve months, he rates his alcohol problem as "considerable", but does not believe it is important to engage in substance abuse treatment to address this issue. However, he did state that he will comply with any and all requirements of the court and/or probation including attending an evaluation for treatment.

During interview with the defendant, the Test County Probation Department conducted a Texas Christian University (TCU) Drug Screen II assessment for additional substance abuse information. This screen serves to briefly identify individuals with a history of heavy drug use or dependency based on the Diagnostic and Statistical Manual (DSM) and the National Institute for Mental Health (NIMH) Diagnostic Interview Schedule. Any score above a three is indicative of a relatively severe substance abuse problem. The defendant's final TCU score is a three.

## PreSentence Investigation Report

### SOCIAL CIRCUMSTANCES

#### Other

The defendant reports that he has many friends both from his place of employment and from school that he gets together with every weekend. He stated that they will go play golf when the weather is nice, watch sports on TV, or go out to a local bar to socialize. He also reported that occasionally they will go see a concert together or go to the movies.

#### Vehicle Information:

New York State Department of Motor Vehicles records indicate that the defendant has a 2004 Silver Jeep Liberty currently registered in his name. The defendant further reported to operate vehicles owned by the State University during the course of his employment. If sentenced to a period of supervision per the plea agreement, this information should be considered in determining any vehicle (s) which will require installation of an Ignition Interlock Device, or may be considered for exemption from such by the monitor under the employer owned vehicle provisions of the State IID regulation. .

### ASSESSMENT INFORMATION

Type	Score	Instrument	Supervision Level	Criminogenic Needs
Initial	Medium	COMPAS	Medium Risk	Attitudes, Employment/Free Time, Family, Social Engagement, Substance Abuse
Reassessment	3	TCU		Alcohol, Drug

## PreSentence Investigation Report

### EVALUATIVE ANALYSIS

The defendant is a 33 year old male awaiting sentencing in the Test County Court after being convicted of Driving While Intoxicated: Prior Conviction of Designated Offense Within 10 Years, a Class E Felony. The present offense involved the defendant causing, and fleeing from the scene of a motorvehicle property crash while in an intoxicated state. The present offense is the defendant's second conviction for operating a motor vehicle while under the influence of alcohol as he was previously convicted of a misdemeanor level offense in 2011 for which he was fined and sentenced to a Conditional Discharge. While the defendant offered that his use of alcohol was not problematic in his marriage or family, it is noteworthy that his prior arrest and conviction for DWI coincided with the reported deterioration, and eventual end of his marriage. The defendant reported to have many friends, however, it appears that he would benefit from participation in social activities which support a sober lifestyle. The defendant described his alcohol use as "considerable", yet still minimized the impact that his abuse of alcohol has had on his life. The defendant's statement that his late father had "at least two" alcohol related driving arrests suggests a family history of alcohol abuse. Since his divorce, the defendant has resided with his mother. This arrangement appears stable, but should be monitored to assess the level of support available to the defendant. The defendant presented as personable, and generally expressed a willingness to comply with the court's directives.

#### NYCOMPAS (New York Correctional Offender Management Profiling for Alternative Sanctions)

NYCOMPAS is an evidence-based assessment instrument that scores an offender's level of risk in the areas of violence, recidivism, and failure to appear as being low, medium or high. The NYCOMPAS also summarizes the offender's criminogenic needs, thereby identifying areas to address through programs and services. This compilation of information informs the PSI in order to assist the court in sentencing decisions, and helps to guide supervision activities in community corrections.

NYCOMPAS reveals the defendant's overall risk potential is low in the category of Violent Recidivism Risk, and medium in the category of general risk of Recidivism. He also scores in the low range in the categories of Criminal Involvement; History of Non-Compliance; and History of Violence. The defendant's scores are highly probable in the categories of Resentful / Mistrust; Family Criminality; and Life Goals / Idleness.

The results of the COMPAS assessment are based on statistical predictions for a broad group of offenders having relatively the same characteristics. COMPAS does not, by itself, reliably predict risk for offenders engaging in Driving While Intoxicated crimes. Due to the varied and diverse factors underlying this type of offending behavior, it is necessary to supplement the COMPAS risk assessment with other assessment instruments that have been developed exclusively for these populations.

## PreSentence Investigation Report

### RECOMMENDATION

It is respectfully recommended that the defendant be sentenced to six months incarceration followed by a period of five years probation supervision, and be fined pursuant to the plea agreement.

New York State law requires that as a condition of probation or conditional discharge, the court shall order the defendant to install and maintain an Ignition Interlock device on any motor vehicle owned or operated by the defendant within ten days of sentencing or release from incarceration, and that such device must remain installed for no less than twelve months. It is the recommendation of this Officer that as a condition of probation that the defendant be ordered to install an IID on any vehicle(s) he owns or will operate for the duration of the period of supervision. This requirement will promote public safety by preventing the defendant from drinking and driving, while providing him with the opportunity to demonstrate his ability to operate a motor vehicle without being under the influence of alcohol.

It is further recommended that the order and conditions of probation require that the defendant undergo evaluation for alcohol/substance abuse and participate in any recommended treatment, attend a DWI Victims Impact Panel, and if an IID is not installed within ten days of sentence or release from incarceration due to vehicle non-ownership that the defendant submit to monitoring through a Secure Continuous Remote Alcohol Monitor (SCRAM) for a period of six months.

The defendant's conviction of Driving While Intoxicated: Prior Conviction of Designated Offense Within 10 Years, a Class E Felony falls within the provisions of the DNA Index Requirement, Article 49-B of the Executive Law which requires that he provide a DNA sample for testing after sentencing. If the defendant is sentenced to a term of probation, a condition of probation requiring compliance with DNA testing is required.

Recommended Order and Conditions of probation accompany this report for the court's consideration.

### RECOMMENDED CONDITIONS

### CERTIFICATE OF RELIEF FROM DISABILITIES

As this is the defendant's first conviction of a felony level offense, he is eligible for a Certificate of Relief from Disabilities. This Officer defers recommendation regarding the Issuance of a Certificate of Relief at this time. The defendant may apply for such relief in the future if so desired.

### REQUEST TO EXEMPT PORTIONS OF REPORT FROM DISCLOSURE

Respectfully Submitted,  
User Demo 8/13/2015

Approved By

PreSentence Investigation Report

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*Liser Demo*

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Probation Officer

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Supervising Probation Officer

Date

Address

Dear XXX:

Recently you pled guilty to VTL 1192 (03) Driving While Intoxicated: Previous Conviction of a Designated Offense Within 10 Years, a Class E Felony in the XXXXXX County Court. Judge XXXXXX adjourned the matter and ordered the completion of a pre-sentence investigation. I have been assigned to conduct this investigation.

An appointment has been scheduled for you on XXXX at XXXXX. If this appointment conflicts with an already scheduled obligation, please call me immediately so we can discuss rescheduling this appointment. Allow for up to two hours for this appointment. At the time of your appointment please bring the following documents:

- Enclosed questionnaire, completed
- Description of the present offense in writing
- Photo Identification
- Birth Certificate
- Social Security card
- Verification of educational background
- Verification of employment (pay stub)
- Verification of prior military service

Due to the nature of your offense, it would be advisable to contact an alcohol counseling service to arrange for a series of evaluation sessions. The information obtained would be helpful in completing your pre-sentence investigation. For your convenience, the following agencies would be able to assist you in this matter. XXXXX [Treatment Agency] XXX-XXXX [Phone Number] or XXXXX [Treatment Agency] XXX-XXXX [Phone Number]. It is recommended that you schedule an appointment with one of these agencies prior to meeting with me.

It is important to be aware that according to XXXXX County Local Law, weapons are not allowed in any XXXXX County building. You may be subject to search of your person or property which may include the use of a metal detector.

Please contact me at (XXX) XXX-XXXX if you have any questions.

Respectfully,

XXXX XXXXX  
Probation Officer

Enclosure

XXXXX County

Court of the State Of New York

Part

County

XXXXX

XX-XXXX

Index/Docket No./Year

XXXXXXXXXX

CJTN

Defendant XXXXXXXXX. having been convicted of VTL 1192 03 E F 0 – Driving While Intoxicated: Previous Conviction Of Designated Offense Within 10 Years, a Class E Felony is this day ORDERED sentenced to probation for a period of five years, unless terminated by the Court prior to the expiration of this sentence. While on probation, said defendant is ORDERED to comply with the following conditions and any others which the Court may impose at a later date and to follow the instructions of the probation officer as to the way in which these conditions are to be carried out:

**GENERAL CONDITIONS:**

1. Report to a probation officer as directed by the Court or the probation officer and permit the probation officer to visit him/her at his/her place of abode or elsewhere.
2. Remain within the jurisdiction of the Court unless granted permission to leave by the Court or the probation officer.
3. Answer all reasonable inquiries by the probation officer and notify the probation officer prior to any change in address or employment.

**SPECIAL CONDITIONS**

1. Obey all Federal, State and Local laws and notify the supervising probation officer immediately if questioned or arrested by a law enforcement agency or if convicted of a new offense.
2. Either be employed or be engaged in a course of study directed toward employment.
3. Attend and participate in any treatment programs deemed appropriate by the Probation Department.
4. Submit to searches of your person or premises by the probation officer for the purpose of monitoring probation conditions.
5. "Submit to the appropriate DNA testing by providing a DNA sample suitable for testing for the Convicted Offender Index, as mandated by Executive Law 995-c for designated offenders OR provide a DNA sample suitable for testing for the Subject Index as authorized by Title 9 NYCRR Part 6192."

6. Obtain a substance abuse evaluation with a certified / approved counselor or counseling agency and provide the results of the evaluation to the supervising probation officer.

A. Sign all releases necessary for the counseling agency to communicate with the Probation Department.

B. Participate in any treatment recommended in the evaluation and provide verification of said participation when requested by the supervising probation officer.

C. Successfully complete any and all recommended treatment programs and provide verification of said completion to the supervision probation officer within 30 days of completion.

7. Do not possess or use any drugs or mind-altering substances, legal or illegal, either natural or synthetic, without a verifiable prescription from a physician.

8. Do not possess or consume alcoholic beverages.

9. Do not enter establishments where alcohol is sold for on premise consumption unless granted prior permission by the supervising probation officer.

10. Submit to periodic testing designed to detect use of alcohol and/or drugs and be responsible for any fees charged. Said tests may be administered by Probation personnel, law enforcement personnel, or treatment personnel. A refusal of any test may be considered a violation of probation.

11. Do not apply for a motor vehicle operator's license or a conditional license for the duration of the probation sentence without the written approval of the Probation Department and the Court of jurisdiction.

12. Participate in the Secure Continuous Remote Alcohol Monitoring (SCRAM) program at the XXXXX County Department of Probation and Community Justice as deemed necessary by the supervising Probation Officer and the Court.

13. Attend a Victim Impact Panel as directed by the supervising Probation Officer.

14. Complete 240 hours of community service via the XXXXX County Probation Department's Service Work Alternative Program within

12 months of this sentence unless sentenced to a period of incarceration as an additional penalty under Vehicle & Traffic Law, Section 1193(1-a).

15. Pay restitution in the amount of \$XXXXX as indicated in the attached Order for Collection

**LEANDRA'S LAW CONDITIONS:**

1. The defendant is not permitted to own or operate a motor vehicle without an ignition interlock device installed therein. The device(s) shall be installed for a minimum of 12 months. .
2. An ignition interlock device shall be installed in the below-described vehicle(s) within 10 business days of this sentence or release from incarceration. Defendant is not permitted to operate any motor vehicle until defendant's privilege to drive is restored and a fully functioning IID is installed on the vehicle, with the exception of an employer exemption in limited instances. The vehicle(s) listed are owned or operated by the defendant. If the vehicle is not owned by the defendant, written and notarized permission for the ignition interlock installation must be completed by the vehicle's titled owner.

3. Where applicable, pursuant to NYS Vehicle and Traffic Law §1193(1-a) (c), the device(s) shall be installed during the period of license revocation and upon termination for any additional period specified herein ( \_\_\_\_\_ ) as the court may determine, on each of the following vehicles:

**Vehicle #1**

**Vehicle #2**

Owner: XXXXXXXXXX

Owner: \_\_\_\_\_

Vehicle Make: XXXXX

Vehicle Make: \_\_\_\_\_

Model: XXXXX

Model: \_\_\_\_\_

Year: 2005

Year: \_\_\_\_\_

Color: Black

Color: \_\_\_\_\_

V.I.N.: XXXXXXXXXXXXXXXXXX

V.I.N.: \_\_\_\_\_

Plate Number: XXXXXXX

Plate Number: \_\_\_\_\_

Insurance Company: XXXXX

Insurance Company: \_\_\_\_\_

At the time of sentencing, the defendant provided sufficient proof that he or she did not own or operate any motor vehicles.

4. The probationer shall provide proof of installation of each device to the court and the probation department within 3 (three) business days of installation.
5. The probationer shall notify the probation officer immediately if any changes occur in the above information.
6. **Full Payment**--Unless otherwise indicated below, the defendant shall be responsible for the **Full Payment** of all fees associated with the ignition interlock device (s) including installation, monthly maintenance, de-installation, etc.
7. The Court has reviewed the Financial Disclosure Report filed with the Court and has determined the defendant shall be responsible for: (select one)

**Partial Payment (Payment Plan)**—Defendant is ordered to make **Partial Payment** of all fees associated with the installation, maintenance and any other subsequent fees of the approved ignition interlock device(s) as follows:

Installation fees:       25%    50%    75%    \_\_\_\_%

Monthly fees:             25%    50%    75%    \_\_\_\_%

Subsequent fees:     25%    50%    75%    \_\_\_\_%

All fees are waived

8. The defendant shall deliver the vehicle(s) identified above and equipped with the ignition interlock device to the installer for the inspection and calibration checks as required by the installer or directed by the court or the monitoring authority in a manner consistent with DCJS Rules and Regulations 9 NYCRR Part 358.
9. The defendant shall not request, solicit or allow any other person(s) to blow into the ignition interlock device, or start the motor vehicle with the device, for the purpose of providing the defendant with an operable motor vehicle.
10. The defendant shall not tamper with or attempt to circumvent an otherwise operable ignition interlock device. Such tampering is a Class A Misdemeanor under Section 1198 of New York State Vehicle and Traffic Law.
11. The defendant shall notify the court and the monitoring authority of his/her intention to operate his/her employer's vehicle within the scope of his/her employment for business purposes only and shall provide written permission from the employer, to be carried on his/her person and shown to the court or the monitoring authority, indicating that the employer is aware that the driving privilege of the probationer has been restricted, and permits operation of the business vehicle within the scope of his/her employment without the ignition interlock device. If the business entity is all or partly owned by the probationer or the probationer has a controlling interest in that business entity, the business vehicles are not exempt from having Ignition Interlock Device(s) installed.
12. VIOLATIONS of the Ignition Interlock Program include: failure to have device installed on required vehicle(s); failure to comply with a service visit requirement; inspection or device reports any attempt or actual tampering or circumvention of the IID device; a device reports a LOCK-OUT mode—a failed start-up or missed retest or failed rolling or missed retest; a device indicates a failed test or re-test where the BAC was .05% or higher; any violation of any other conditions of the sentence.

Dated: \_\_\_\_\_

\_\_\_\_\_

Honorable XXXXXX XXXXXX

XXXXX County Court

*The defendant has been fingerprinted, if applicable, as a result of the current arrest and the associated CJTN (Criminal Justice Tracking Number) is indicated above.*

**ACKNOWLEDGEMENT**

I have read and received a copy of the above Order and Conditions of Probation and agree to comply with them. I understand the conditions and that the Court may, at any time prior to the expiration or termination of the period of probation, modify or enlarge the conditions or, if I violate a condition or commit an additional offense other than a traffic infraction, revoke the sentence.

Dated: \_\_\_\_\_

\_\_\_\_\_

Defendant's Name and Address

Witnessed By: \_\_\_\_\_

**Appendix B: Release of Information**

See <https://www.oasas.ny.gov/mis/forms/trs/documents/TRS-49eng.pdf>

NEW YORK STATE  
OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES

**CONSENT TO RELEASE OF INFORMATION  
CONCERNING  
CHEMICAL DEPENDENCE TREATMENT  
FOR CRIMINAL JUSTICE CLIENTS**

Client's New York State Identification Number (NYSID)

<b>Referring Entity Type</b>	[ ] Parole - General
[ ] District Attorney	[ ] Parole - Release Shock
[ ] Court	[ ] Parole - Release Willard
[ ] Probation	[ ] Parole - Release Resentence

Client's Last Name	First	MI
Referring Entity's Staff Member's Name:		
_____		
Referring Entity's Name & Address		
_____		
_____		

**INSTRUCTIONS:** 1) SEND A COPY OF THIS COMPLETED FORM TO THE CLIENT'S TREATMENT PROVIDER;  
2) ADD A COPY OF THIS COMPLETED FORM TO THE CLIENT'S CRIMINAL JUSTICE FILE; AND  
3) PROVIDE A COPY OF THIS COMPLETED FORM TO THE CLIENT/DEFENDANT

1) I, the undersigned, Client/Defendant, hereby **CONSENT** and authorize communication between the above named **Referring Entity**, my Chemical Dependence Treatment Provider: \_\_\_\_\_ and the following: \_\_\_\_\_

I **CONSENT** to **DISCLOSURE OF INFORMATION** concerning my current and past individual assessment or evaluation, intake summary, diagnosis, treatment recommendation, date of admission, and status as a patient including course and level of treatment (i.e. residential, community based, individual, or group), my progress and compliance including but not limited to: my attendance or lack of attendance at treatment, dates and results of toxicology/urinalysis, cooperation with my treatment program, prognosis, treatment completion or reason(s) for termination, date of discharge, discharge status, and discharge plan.

Such disclosure is for the **PURPOSE** of enabling the entities listed above to communicate as to my treatment needs, activities, history and attitude towards my evaluation and treatment for purposes of monitoring the terms and conditions of treatment, release, case management purposes, and for carrying out other official duties; **AND**

2) I further **CONSENT** and authorize communication between and among the above named **Referring Entity** and the New York State Office of Alcoholism and Substance Abuse Services (**OASAS**); and OASAS to **DISCLOSE INFORMATION** to the New York State Division of Criminal Justice Services (**DCJS**), concerning admission and discharge data for the **PURPOSE** of research and program evaluation activities. I understand that any reports or studies compiled from my records disclosed pursuant to this release will not include personally identifiable information which will remain confidential and protected from further re-disclosure.

I, the undersigned, have read the above and authorize the staff of the above named disclosing entities to disclose, obtain and share such information as herein specified. I understand that, unless otherwise specified, this consent will remain in effect and cannot be revoked by me until there has been a formal and effective termination or revocation of my release from confinement, interim probation supervision, probation, parole, post-release supervision, or local conditional release or other proceeding or determination by a releasing authority under which I was referred to or otherwise agreed to treatment.

I also understand that any disclosure of any identifying information is bound by Title 42 of the Code of Federal Regulations 42 CFR Part 2, governing the confidentiality of alcohol and drug abuse patient records, as well as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) 45 C.F.R. Pts. 160 & 164; and that redisclosure of such information to a party other than those designated above is forbidden without additional written authorization on my part.

**NOTE:** Any information released through this form **MUST** be accompanied by the form **Prohibition on Redisclosure of Information Concerning Chemical Dependence Treatment Patient (TRS-1)**

I understand that generally the program may not condition my treatment on whether I sign a consent form, but that in certain limited circumstances I may be denied treatment if I do not sign a consent form. I have received a copy of this form, as recognized by my signature below.

\_\_\_\_\_  
(Print Name of Client)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Client)

## Appendix C: Pertinent Laws, Rules and Regulations

- Part 349 Interstate and Intrastate Transfer of Probation Supervision for Adults and Juveniles: <http://www.criminaljustice.ny.gov/opca/349.htm>
- Part 350 Investigations and Reports: <http://www.criminaljustice.ny.gov/opca/pdfs/350.pdf>
- Part 351 Probation Supervision: <http://www.criminaljustice.ny.gov/opca/pdfs/351.pdf>
- Part 352: Graduated Sanctions and Violations of Probation: <http://www.criminaljustice.ny.gov/opca/pdfs/352r.pdf>
- 
- Part 358 - Handling of Ignition Interlock Cases Involving Certain Criminal Offenders: <http://www.criminaljustice.ny.gov/opca/pdfs/358.pdf>

**Appendix D: Ulster County Relicensing Guidelines** Ulster County has provided this guidelines as a sample of the types of relicensing guidelines a county may choose to develop.

### **DWI Relicensure Guidelines Effective July 2011**

These guidelines apply to cases under supervision of Ulster County probation due to a DWI, DWAI, AUO, 1st or alcohol/drug related driving offenses where the driver's license is suspended or revoked. Probationers convicted of vehicular manslaughter, criminally negligent homicide or vehicular assault will not be recommended for relicensure or early discharge during their period of supervision. Probation Officers will make the recommendation for relicensure by preparing the appropriate department forms and providing a summary of progress to the court. The following criteria must be met prior to preparation of the documents for the court. Nothing in these guidelines shall require a Probation Officer to make a recommendation to the court if in the officer's judgement the probationer is NOT an appropriate candidate for relicensure.

\_\_\_1. The minimum period of relicensure will be determined by the number of DWI or DWAI offenses in their entire history. For offenders for which the current offense is their only DWAI offense, the minimum waiting period shall be 6 months from sentencing. Previous history will be taken into consideration and may increase waiting period, (generally 6 months additional for each prior). Review with supervisor.

Felony=Minimum 18

Misd=Minimum 6m

\_\_\_2. Probationer must demonstrate a record of compliance with Conditions of Probation. If there has been a VOP or violatable conduct for use of drugs or alcohol, consideration for relicensure should be postponed for one year from incident of conduct. If the VOP of violatable conduct is for an offense not related to substance use, such as unauthorized driving, consideration should be postponed for 6 months in addition to minimum requirement.

\_\_\_3. Probationer must have successfully completed treatment at an OASAS approved clinic for alcohol/drug abuse and completed any other mental health treatment deemed necessary. Treatment at a non OASAS clinic program may be approved by a supervisor on a case by case basis. OASAS clinic programs are offered at UCMH, Step One and Bridgeback. If the completion date is more than a year old, the probationer must be reevaluated and an updated DS 449 secured and forwarded to DMV.

\_\_\_4. Probationer must demonstrate under supervision (may include Pretrial supervision) at least one year of continuous abstinence from alcohol or other drugs, illegal drugs or drugs not prescribed to them. There should be no use of narcotic drugs and abuse of prescription drugs. If there is a history of more than one high BAC (over .20) the minimum period of abstinence should be 18 months.

\_\_\_5. If any relapses occur they should be handled with the appropriate treatment response.

\_\_\_6. Probationer has an appropriate attitude, is cooperative and working productively towards positive goals.

- \_\_\_7. The home environment is favorable, not highly conducive to renewed drinking or drugging.
- \_\_\_8. Probationer is expected to be fully employed, actively seeking employment or meaningfully occupied (such as in full time school). If the probationer is disabled, physically or emotionally, documentation should be provided and the individual occupied to the extent the disability permits.
- \_\_\_9. Probationer should be involved in AA/NA meetings or probation approved sober support network. Although AA and NA are never a condition of probation or relicensure, it should be encouraged.
- \_\_\_10. At least one positive HV should be made in the month prior with a drug and alcohol test. The officer should observe the areas in and around the home for contraband.
- \_\_\_11. Probationer must attend a session of the DWI Impact Panel once at the beginning of supervision and again just prior to relicensure after all other eligibility requirements are met.
- \_\_\_12. Supervision fees must be up to date or the appropriate waiver should be in place.
- \_\_\_13. All DWI court fees and fines must be paid in full.
- \_\_\_14. At least one ETG test should be given at a time likely to indicate if the individual has been drinking within the three days prior (i.e. a Monday or a day following a holiday, Jan. 2 etc.).
- \_\_\_15. A current Driver's ALL and rap sheet should be obtained to make sure no criminal or driving behavior has occurred during supervision.
- \_\_\_16. Upon relicensing any offender subject to IID condition must have approved IID installed in accordance with law and/or Condition of Probation.

**DWI Probationer Relicensing Information**

The following information is for probationers whose license is suspended or revoked due to DWI, DWAI or AUO, 1<sup>st</sup> or other alcohol/drug related driving offense.

Many probationers begin their probation wanting to get their license back. Due to both DMV regulations and the \_\_\_\_\_ County Probation Department procedures, relicensing can be a lengthy process. This is a brief list of things to do to get you started. It is not a complete list. Your Probation Officer will guide you along the way. When you have completed the necessary requirements and the PO determines you are ready, the officer will prepare the paperwork for the Court. The final decision rests with your sentencing Judge. Even if you are eligible through DMV, you cannot obtain a license or drive until your conditions of probation permit you to.

1. There will be a minimum waiting period which is calculated by 1 year plus 6 months for every prior DWI or DWAI. If this is your first and only DWI, the minimum period is 6 months.
2. No unauthorized driving. Driving is a violation of your conditions of probation and can cause you to be sanctioned which could include being violated.
3. You must enter and complete an OASAS substance abuse treatment program and follow all recommendations for treatment. If you are recommended for rehab and complete it, you will still have to complete the outpatient aftercare component.
4. You must remain abstinent from the use of alcohol or drugs and not abuse prescription medications. Urinalysis and breath testing will be used to verify this.
5. You must have an appropriate home environment which does not allow for drinking or drug use. You must have a good attitude about remaining abstinent from substance use.
6. You must be employed or in school, actively seeking employment or meaningfully occupied.
7. You will attend the DWI Impact Panel when you are first sentenced. You will attend a second time just prior to relicensure.
8. You must have all supervision fees paid up to date and all fines must be paid.
9. You must comply with IID requirements as specified in your Conditions of Probation.
10. You must write a letter advising the court of why you require your license which will be submitted for to the court for review.

**NOTICE**

Those clients convicted under **Article 31 of the Vehicle and Traffic Law** and sentenced by the courts to Probation will be charged an Administrative or Supervision Fee. This involves cases for DWI (felony or misdemeanor) and DWAI-Drugs (felony and misdemeanor).

Local Law \_\_\_ of \_\_\_\_\_ County in \_\_\_\_\_ states this Department can impose a fee of \_\_\_\_\_ per month, unless documentation can be provided to show financial hardship.

Each month you are required to pay on the date provided by your Probation Officer.

-----  
I have been given a copy of the information for relicensing and the Notice for payment of supervision fees.

\_\_\_\_\_  
Probationer signature

\_\_\_\_\_  
Probation Officer signature

\_\_\_\_\_  
Date

## Appendix E: Ignition Interlock Program Complaint Form



**Division of Criminal  
Justice Services**

**ANDREW M. CUOMO**  
Governor

**MICHAEL C. GREEN**  
Executive Deputy Commissioner

**ROBERT M. MACCARONE**  
Deputy Commissioner and Director

### **IGNITION INTERLOCK PROGRAM COMPLAINT FORM**

This form is for use by monitors to report any issues or problems related to Ignition Interlocks. Please fill out all applicable sections in detail. The form should be e-mailed to Shaina Kern at [Shaina.Kern@dcjs.ny.gov](mailto:Shaina.Kern@dcjs.ny.gov)

<b>Name of person filing complaint:</b>	Click here to enter your name.	<b>Date:</b>	Click here to add today's date.
<b>Client/Operator:</b>	Enter name of client.	<b>Client ID #:</b>	Client ID #
<b>Agency:</b>	Click here to enter agency reporting issue.		
<b>Agency Address:</b>	Click here to enter agency address.		
<b>Agency Phone:</b>	Click here to enter agency phone.		
<b>Email:</b>	Click here to enter your email address.		
<b>Manufacturer:</b>	Choose a manufacturer from the drop-down menu.		
<b>Device Name &amp; Class:</b>	Click here to enter device name and class.		
<b>Installation Center:</b>	Click here to enter installation center.		
<b>Description of the problem:</b>	Click here to enter description of the problem.		
<b>Remedies Attempted:</b>	Click here to enter remedies attempted.		
<b>Frequency of the problem:</b>	Click here to enter frequency of the problem.		

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80 South Swan Street, Albany, New York 12210 | 518-485-2395 | [www.criminaljustice.ny.gov](http://www.criminaljustice.ny.gov)

*Updated May 21, 2015*

## CHAPTER 169

AN ACT to amend the vehicle and traffic law, in relation to driving while intoxicated and ignition interlock devices

Became a law July 26, 2013, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraph (iii) of paragraph (a) of subdivision 3 of section 511 of the vehicle and traffic law, as amended by chapter 746 of the laws of 2006, is amended and a new subparagraph (iv) is added to read as follows:

(iii) commits the offense of aggravated unlicensed operation of a motor vehicle in the third degree as defined in subdivision one of this section; and is operating a motor vehicle while under permanent revocation as set forth in subparagraph twelve of paragraph (b) of subdivision two of section eleven hundred ninety-three of this chapter[-]; or

(iv) operates a motor vehicle upon a public highway while holding a conditional license issued pursuant to paragraph (a) of subdivision seven of section eleven hundred ninety-six of this chapter while under the influence of alcohol or a drug in violation of subdivision one, two, two-a, three, four, four-a or five of section eleven hundred ninety-two of this chapter.

§ 2. Paragraphs (b) and (c) of subdivision 1 of section 1193 of the vehicle and traffic law, as amended by chapter 496 of the laws of 2009, are amended to read as follows:

(b) Driving while intoxicated or while ability impaired by drugs or while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs; aggravated driving while intoxicated; misdemeanor offenses. (i) A violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article shall be a misdemeanor and shall be punishable by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment. A violation of paragraph (a) of subdivision two-a of section eleven hundred ninety-two of this article shall be a misdemeanor and shall be punishable by a fine of not less than one thousand dollars nor more than two thousand five hundred dollars or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment.

(ii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of, or adjudicated a youthful offender for, a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a [period] term of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section eleven hundred ninety-two of this article and in no event for a period of less than [six] twelve months; provided, however, 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 by this subparagraph and specified in such order. The period of interlock restriction shall commence from the earlier of the date of sentencing, or the date that an ignition interlock device was installed in advance of sentencing. Provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked pursuant to the provisions of this section.

(c) Felony offenses. (i) A person who operates a vehicle (A) in violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article after having been convicted of a violation of subdivision two, two-a, three, four or four-a of such section or of vehicular assault in the second or first degree, as defined, respectively, in sections 120.03 and 120.04 and aggravated vehicular assault as defined in section 120.04-a of the penal law or of vehicular manslaughter in the second or first degree, as defined, respectively, in sections 125.12 and 125.13 and aggravated vehicular homicide as defined in section 125.14 of such law, within the preceding ten years, or (B) in violation of paragraph (b) of subdivision two-a of section eleven hundred ninety-two of this article shall be guilty of a class E felony, and shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(ii) A person who operates a vehicle in violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article after having been convicted of a violation of subdivision two, two-a, three, four or four-a of such section or of vehicular assault in the second or first degree, as defined, respectively, in sections 120.03 and 120.04 and aggravated vehicular assault as defined in section 120.04-a of the penal law or of vehicular manslaughter in the second or first degree, as defined, respectively, in sections 125.12 and 125.13 and aggravated vehicular homicide as defined in section 125.14 of such law, twice within the preceding ten years, shall be guilty of a class D felony, and shall be punished by a fine of not less than two thousand dollars nor more than ten thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(iii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of, or adjudicated a youthful offender for, a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a period of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section eleven hundred ninety-two of this article and in no event for a period of less than

~~[six]~~ twelve months; provided, however, 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 a ignition interlock device for a longer period as authorized by this subparagraph and specified in such order. The period of interlock restriction shall commence from the earlier of the date of sentencing, or the date that an ignition interlock device was installed in advance of sentencing. Provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked pursuant to the provisions of this section.

§ 3. Paragraph (a) of subdivision 4 of section 1198 of the vehicle and traffic law, as amended by chapter 496 of the laws of 2009, is amended to read as follows:

(a) Following imposition by the court of the use of an ignition interlock device as a condition of probation or conditional discharge it shall require the person to provide proof of compliance with this section to the court and the probation department or other monitor where such person is under probation or conditional discharge supervision. If the person fails to provide for such proof of installation, absent a finding by the court of good cause for that failure which is entered in the record, the court may revoke, modify, or terminate the person's sentence of probation or conditional discharge as provided under law. Good cause may include a finding that the person is not the owner of a motor vehicle if such person asserts under oath that such person is not the owner of any motor vehicle and that he or she will not operate any motor vehicle during the period of interlock restriction except as may be otherwise authorized pursuant to law. "Owner" shall have the same meaning as provided in section one hundred twenty-eight of this chapter.

§ 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law and shall apply to violations committed on and after such date; provided, however, that the amendments to paragraph (a) of subdivision 4 of section 1198 of the vehicle and traffic law made by section three of this act shall not affect the repeal of such section and shall be deemed repealed therewith.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS  
Temporary President of the Senate

SHELDON SILVER  
Speaker of the Assembly

## Appendix G: Ignition Interlock Acknowledgement from Employer Form

### IGNITION INTERLOCK ACKNOWLEDGEMENT FROM EMPLOYER

\_\_\_\_\_, is currently serving a (probation) (conditional discharge)  
(FULL NAME OF OPERATOR)  
sentence in \_\_\_\_\_ County to expire on \_\_\_\_\_.

This letter is to confirm that the Employer has been notified of the restricted nature of the driver's license held by \_\_\_\_\_ requiring installation and maintenance of  
(FULL NAME OF OPERATOR)

an ignition interlock device in any motor vehicle he/she owns or operates in accordance with New York State Vehicle and Traffic Law Article 31. Pursuant to Vehicle and Traffic Law Section 1198(8), on behalf of the employer, I hereby give permission that \_\_\_\_\_ may operate the  
(FULL NAME OF OPERATOR)

Employer's vehicle(s) without such a device only in the course and scope of his/her employment for business purposes. The Employer's motor vehicle(s) is/are not owned, or partly owned, or controlled by the Operator.

This statement of acknowledgement must be in his/her possession while operating the Employer's vehicle.

Employer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Employer (print name): \_\_\_\_\_

Company/Business: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

#### Vehicle Information

Year/Make/Model: \_\_\_\_\_

License Plate: \_\_\_\_\_

V.I.N.: \_\_\_\_\_

Monitoring Authority: \_\_\_\_\_

Phone: \_\_\_\_\_

**(ATTACH INFORMATION RELATED TO ADDITIONAL VEHICLES IF APPLICABLE)**

3 COPIES: ONE TO EMPLOYER, ONE TO EMPLOYEE, ONE TO MONITORING AGENT

DPCA-535EA-IID

VERSION DATE: 6/03/10

# Appendix H: OPCA IID Reports

New York State Total Program Report														
August 15, 2010 - March 31, 2015														
County/Agency	# Orders Rec'd.	IID Not Installed	Total % Not Installed	Installed by Class				Total Installed	Total % Installed	Payment Ordered			Total Payments	% Waived on Installed Only
				1	2	3	Full Payment			Payment Plan (Partial Payment)	Waived Payment			
Albany Probation	2,037	1,384	68%	165	167	321	653	32%	615	20	18	653	3%	
Albany STOP-DWI	512	259	51%	0	0	253	253	49%	241	1	14	253	6%	
Allegany Probation	260	184	71%	0	17	59	76	29%	60	6	10	76	13%	
Broome Probation	505	440	87%	39	1	25	65	13%	57	4	4	65	6%	
Broome District Att. & STOP-DWI	1,031	483	47%	526	22	0	548	53%	491	7	50	548	9%	
Cattaraugus Probation	711	493	69%	2	50	166	218	31%	169	10	39	218	18%	
Cayuga Probation	280	263	94%	1	0	16	17	6%	17	0	0	17	0%	
Cayuga Counseling	231	119	52%	4	28	80	112	48%	111	0	1	112	1%	
Chautauqua Probation	313	246	79%	1	22	44	67	21%	49	16	2	67	3%	
Chautauqua Sheriff	481	363	75%	0	30	88	118	25%	117	1	0	118	0%	
Chemung Probation	354	290	82%	0	12	52	64	18%	61	0	3	64	5%	
Chemung STOP-DWI	726	465	64%	1	68	192	261	36%	253	3	5	261	2%	
Chenango Probation	323	236	73%	38	23	26	87	27%	50	19	18	87	21%	
Clinton Probation	942	679	72%	244	0	19	263	28%	150	61	52	263	20%	
Columbia Probation	333	224	67%	91	1	17	109	33%	89	7	13	109	12%	
Cortland Probation	406	268	66%	72	0	66	138	34%	112	14	12	138	9%	
Delaware Probation	165	130	79%	9	11	15	35	21%	18	7	10	35	29%	
Delaware Sheriff	35	17	49%	18	0	0	18	51%	13	0	5	18	28%	
Dutchess Probation	910	807	89%	38	10	55	103	11%	98	1	4	103	4%	
Dutchess DDP	1,279	674	53%	319	162	124	605	47%	598	1	6	605	1%	
Erie Probation	1,718	1,566	91%	100	53	13	166	10%	157	4	1	166	1%	
Erie STOP-DWI	2,978	1,707	57%	1,127	72	72	1,271	43%	1,253	12	6	1,271	0%	
Essex Probation	208	139	67%	24	19	26	69	33%	61	2	6	69	9%	
Franklin Probation & STOP-DWI	314	288	92%	0	8	18	26	8%	14	9	3	26	12%	
Fulton Probation	352	278	79%	0	20	54	74	21%	40	15	19	74	26%	
Genesee Probation	342	278	81%	0	19	45	64	19%	53	2	9	64	14%	
Genesee Justice	434	200	46%	31	34	169	234	54%	205	14	15	234	6%	
Greene Probation	199	183	92%	0	5	11	16	8%	14	2	0	16	0%	
Greene Sheriff	130	64	49%	15	11	40	66	51%	46	4	16	66	24%	
Hamilton Probation	27	20	74%	1	3	3	7	26%	7	0	0	7	0%	
Herkimer Probation	343	257	75%	7	29	50	86	25%	78	7	1	86	1%	
Jefferson Probation	864	540	63%	51	80	193	324	38%	201	19	14	324	4%	
Lewis Probation	79	61	77%	1	7	10	18	23%	18	0	0	18	0%	
Lewis District Attorney	104	64	62%	0	16	24	40	38%	35	0	5	40	13%	
Livingston Probation	733	392	53%	59	35	247	341	47%	281	12	48	341	14%	
Madison Probation	118	110	93%	0	0	8	8	7%	8	0	0	8	0%	
Madison District Att.	300	181	60%	0	17	102	119	40%	118	1	0	119	0%	
Monroe Probation	2,322	1,967	85%	0	68	287	355	15%	345	3	7	355	2%	
Monroe TASC	3,676	1,923	52%	334	156	1,263	1,753	48%	1,499	79	175	1,753	10%	
Montgomery Probation	151	150	99%	0	1	0	1	1%	1	0	0	1	0%	
Montgomery DA	171	99	58%	1	13	58	72	42%	63	4	5	72	7%	
Nassau Probation	6,048	5,037	83%	59	0	952	1,011	17%	942	49	20	1,011	2%	
Nassau AIM	664	467	70%	0	0	197	197	30%	179	9	9	197	5%	
NYC Probation	2,289	2,173	95%	9	42	65	116	5%	92	15	9	116	8%	
NYC Dist Att. (Queens)	9,083	7,245	80%	327	251	1,260	1,838	20%	1,793	4	41	1,838	2%	
Niagara Probation/Lockport PD	1,010	682	68%	308	19	1	328	32%	308	9	11	328	3%	
Oneida Probation	1,474	1,011	69%	14	143	306	463	31%	424	13	26	463	6%	
Onondaga Probation	1,169	1,085	93%	35	1	48	84	7%	83	0	1	84	1%	
Onondaga STOP-DWI	1,030	669	65%	353	0	8	361	35%	360	0	2	361	1%	
Ontario Probation & STOP-DWI	1,441	829	58%	105	197	310	612	42%	507	50	55	612	9%	
Orange Probation	2,766	1,925	70%	180	218	443	841	30%	762	35	44	841	5%	
Orleans Probation	238	167	70%	1	7	63	71	30%	44	5	22	71	31%	
Oswego Probation	634	519	82%	25	21	69	115	18%	91	8	16	115	14%	
Otsego Probation	191	135	71%	37	1	18	56	29%	49	5	2	56	4%	
Otsego Catholic Charities	131	81	62%	49	0	1	50	38%	35	9	6	50	12%	
Putnam Probation	576	416	72%	123	4	33	160	28%	157	1	2	160	1%	
Rensselaer Probation & STOP-DWI	772	382	49%	33	121	237	391	51%	361	14	16	391	4%	
Rockland Probation	909	641	71%	15	97	156	268	29%	264	1	3	268	1%	
St Lawrence Probation	248	233	94%	8	2	5	15	6%	4	7	4	15	27%	
St Lawrence STOP & DWI	420	268	64%	80	31	41	152	36%	101	30	21	152	14%	
Saratoga Probation	1,501	1,010	67%	0	151	340	491	33%	466	6	19	491	4%	
Schenectady Probation	775	535	69%	15	53	172	240	31%	217	6	17	240	7%	
Schoharie Probation	98	82	84%	0	10	6	16	16%	10	0	2	16	13%	
Schoharie CASA	75	44	59%	0	1	30	31	41%	29	2	0	31	0%	
Schuyler Probation	208	140	67%	2	7	59	68	33%	52	3	8	68	12%	
Seneca Probation	468	258	55%	201	0	9	210	45%	191	14	5	210	2%	
Steuben Probation	254	230	91%	24	0	0	24	9%	24	0	0	24	0%	
Steuben Sheriff	456	250	55%	142	61	3	206	45%	176	12	18	206	9%	
Suffolk Probation	10,010	8,114	81%	0	0	1,896	1,896	19%	1,815	10	71	1,896	4%	
Sullivan Probation	287	265	92%	0	6	16	22	8%	22	0	0	22	0%	
Sullivan District Att.	396	217	55%	2	42	135	179	45%	143	15	21	179	12%	
Tioga Probation	121	89	74%	2	8	22	32	26%	27	1	4	32	13%	
Tioga Sheriff	252	120	48%	3	31	98	132	52%	122	1	9	132	7%	
Tompkins Probation & STOP-DWI	822	486	59%	274	19	43	336	41%	262	33	41	336	12%	
Ulster Probation & STOP DWI	1,495	1,088	73%	397	0	10	407	27%	332	27	48	407	12%	

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1	<b>New York State Total Program Report</b>													
2	<b>August 15, 2010 - March 31, 2015</b>													
3					<b>Installed by Class</b>						<b>Payment Ordered</b>			
4	<b>County/Agency</b>	<b># Orders Rec'd</b>	<b>IID Not Installed</b>	<b>Total % Not Installed</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>Total Installed</b>	<b>Total % Installed</b>	<b>Full Payment</b>	<b>Payment Plan (Partial Payment)</b>	<b>Waived Payment</b>	<b>Total Payments</b>	<b>% Waived on Installed Only</b>
80	Warren Probation	257	225	88%	0	3	29	32	12%	31	0	1	32	3%
81	Warren District Att.	272	185	68%	10	30	47	87	32%	81	1	5	87	6%
82	Washington Probation	319	230	72%	0	2	87	89	28%	67	18	4	89	4%
83	Wayne Probation	1,162	732	63%	1	151	278	430	37%	285	49	96	430	22%
84	Westchester Probation	3,011	1,975	66%	889	0	143	1,032	34%	969	9	58	1032	6%
85	Wyoming Probation	244	186	76%	24	0	34	58	24%	53	2	3	58	5%
86	Yates Probation	292	168	58%	24	36	64	124	42%	98	7	19	124	15%
87	<b>TOTALS</b>	<b>81,265</b>	<b>59,075</b>		<b>7,090</b>	<b>3,056</b>	<b>12,045</b>	<b>22,191</b>		<b>19,984</b>	<b>847</b>	<b>1,355</b>		
88			72.7%		8.7%	3.8%	14.8%			90.1%	3.8%	6.1%		
89					<b>Total</b>	<b>22,191</b>					<b>22,186</b>			
90					<b>Installed</b>	<b>27.3%</b>								
91	<b>County/Agency</b> = The monitoring authority submitting the Quarterly Report. In some counties, both monitors report on the same form.													
92														
93	<b># Orders Rec'd</b> = The number of pre-sentence/sentencing orders requiring IID installation received by the monitoring authority.													
94	<b># IID Class</b> = The OPCA Class of IID that is required to be installed by the offender.													
95	<b># Full Pay Units</b> = The number of devices for which the offender was ordered to pay all IID fees.													
96	<b># Payment Plan Units</b> = The number of devices for which the court ordered the offender to pay a portion of the IID fees.													
97	<b># Cost Waived</b> = The number of devices for which the court ordered that IID fees be waived by the manufacturer.													
98	The total number of all Payment Types Ordered may not match the total number of IID Class 1, 2, and 3 assignments because there may be multiple vehicles on one order.													
99	Note: The following counties have had changes to their county plans since implementation: Albany, Delaware, Niagara, Otsego, Schoharie, and Ontario.													
100	Albany Probation-effective April 19, 2011 assumed responsibility of CD cases; Delaware Probation-effective April 1, 2012 assumed responsibility of CD cases;													
101	Niagara Probation-effective May 31, 2012 assumed responsibility for CD cases; Otsego Probation-effective July 1, 2012 transferred monitoring responsibilities of CD cases to Catholic													
102	Charities; Schoharie Probation- effective January 1, 2014 assumed responsibility of CD cases; Ontario Probation- effective October 1, 2014 transferring monitoring responsibilities of													
103	CD cases to STOP-DWI.													
104														

**IID Negative Event Counts by County  
January thru December 2013 Year**

NYS Local Jurisdiction	Missed Service Visit	Failed/Missed Start-up Re-test	Failed Start-up Re-test: BrAC Range $\geq 0.08$	Failed/Missed Rolling Re-test	Failed Rolling Re-test: BrAC Range $\geq 0.08$	Lock-outs Initiated	Vehicles Disabled	Attempted Circumvention or Tampering
	2013 YTD	2013 YTD	2013 YTD	2013 YTD	2013 YTD	2013 YTD	2013 YTD	2013 YTD
Albany	246	538	153	135	13	399	50	11
Allegany	12	13	6	14	1	24	3	1
Bronx	79	251	78	121	11	176	14	6
Broome	30	180	38	52	2	159	14	85
Cattaraugus	56	203	51	92	3	130	25	4
Cayuga	7	67	9	21	0	57	1	0
Chautauqua	12	84	14	14	3	59	4	0
Chemung	19	231	43	24	0	181	18	1
Chenango	43	43	25	4	2	45	18	8
Clinton	19	61	23	31	0	57	6	2
Columbia	12	34	4	6	1	53	0	2
Cortland	87	79	58	29	2	80	12	2
Delaware	3	25	4	3	2	15	0	4
Dutchess	190	400	88	112	10	350	30	7
Erie	331	2209	245	611	16	936	183	43
Essex	6	42	6	5	0	33	1	1
Franklin	10	50	6	8	0	27	3	3
Fulton	18	31	12	10	2	37	8	0
Genesee	16	111	27	31	2	87	12	1
Greene	0	51	7	8	0	27	3	0
Hamilton	0	1	0	0	0	1	0	0
Herkimer	4	107	11	9	1	58	3	0
Jefferson	98	174	84	36	3	125	26	2
Kings	80	131	49	60	3	114	13	3
Lewis	2	62	7	8	0	38	1	0
Livingston	88	125	72	42	3	74	19	9
Madison	18	75	14	12	1	49	1	0
Monroe	403	1246	331	343	28	901	156	17
Montgomery	15	44	13	1	0	21	2	0
Nassau	703	1742	272	520	67	1901	64	16
New York	189	378	114	174	5	322	46	7
Niagara	16	172	23	33	12	86	12	4
Oneida	31	360	45	77	19	251	10	1
Onondaga	205	335	90	209	13	327	21	1
Ontario	85	288	73	68	5	205	21	6
Orange	248	411	113	133	5	377	50	9
Orleans	14	18	7	7	0	16	2	3
Oswego	53	104	16	20	1	90	8	0
Otsego	7	100	27	7	1	53	11	0

Putnam	51	191	44	51	8	129	17	17
Queens	247	723	160	220	18	564	89	18
Rensselaer	152	198	76	92	5	176	22	6
Richmond	28	103	26	33	0	56	7	0
Rockland	32	190	47	44	4	130	7	3
St. Lawrence	13	39	17	26	0	34	8	4
Saratoga	98	337	79	87	1	245	17	7
Schenectady	93	192	62	29	2	148	25	4
Schoharie	18	29	7	6	0	28	3	1
Schuyler	0	40	13	7	0	31	4	0
Seneca	31	60	6	18	0	81	2	0
Steuben	0	100	13	15	2	68	10	2
Suffolk	486	1815	268	460	61	1425	87	21
Sullivan	10	72	14	13	1	51	3	1
Tioga	43	93	20	15	2	71	9	1
Tompkins	64	139	42	37	0	117	24	12
Ulster	187	244	83	114	4	254	39	7
Warren	5	110	9	21	5	78	5	0
Washington	7	91	21	14	0	55	3	2
Wayne	8	229	44	39	6	127	8	1
Westchester	703	1655	261	515	25	1116	161	44
Wyoming	15	24	25	13	2	14	3	1
Yates	10	36	10	13	1	23	3	0
<b>Total</b>	<b>5756</b>	<b>17286</b>	<b>3605</b>	<b>4972</b>	<b>384</b>	<b>12962</b>	<b>1427</b>	<b>411</b>

## **Appendix I: Compendium of Probation Conditions from Various Local Probation Departments**

Probation Departments are advised to select specific conditions tailored to the individual needs of the person under supervision.

### **1. Treatment**

- You shall undergo, at your expense, a substance abuse evaluation with an OASAS-certified provider.
- You shall participate in, at your expense, and successfully complete any course of treatment recommended by a treatment program approved by the probation department and OASAS.
- You will be responsible for the cost of any treatment and/or tests associated with treatment, including drug testing.
- You will sign an appropriate treatment release form to allow the unrestricted exchange of information between the probation department and the treatment provider.
- If an increase in treatment is recommended by the approved treatment provider for any reason (including, but not limited to, relapse with substances), you will comply with the increased level of care.
- You must attend one or more DWI Victim Impact sessions as directed by your probation officer.

### **2. Motor Vehicle Use**

- You shall not drive any motorized vehicle until you have been granted a minimum of a conditional license by the court.
- You shall not apply for a Driver's License in this or any other state without the permission of both the probation department and the court.
- You shall not drive any motorized vehicle that does not have an IID installed.
- You shall notify probation of your intent to drive a new vehicle (even temporarily) prior to doing so and will provide them with the Make, Model and Plate number of any vehicle you will be driving.
- You will not operate any motorized vehicle that cannot have an IID installed such as a motorcycle, ATV, boat or snowmobile.
- You shall comply with the following Ignition Interlock Device (IID) conditions:
  - Install and maintain an approved Ignition Interlock system within 10 business days of sentence, or in advance of sentence, or release from incarceration on the attached Vehicle Information Sheet and on any other motor vehicle owned or operated by you and for a period deemed appropriate by the Probation Department and approved by the Court, or as required by law, and in no event less than twelve months.
  - Upon installation, provide written confirmation to the Court and the Probation Department, within three business days that said IID has been installed in the required motor vehicle.
  - Do not request, solicit or allow another person to blow into said IID or start a motor vehicle so equipped for the purpose of providing you with an operable motor vehicle.

- Do not tamper with or attempt to circumvent an otherwise operable IID. Such tampering is a Class A Misdemeanor under Section 1198 of New York State Vehicle and Traffic Law.
- Abide by all terms of the installation agreement, including, but not limited to, installation, payment, and scheduled monitoring checks of said vehicle in accordance with the terms of the installation agreement and contract.
- Notify the Probation Officer immediately if any changes occur in any vehicle(s) you own or operate.
- Notify the Probation Officer within 24 hours if you have not complied with the service requirement, have experienced a lock-out mode, failed a test or re-test, missed a test, or registered a BAC of .05 percent or higher.
- Once you are approved and obtain a driver's license, you will drive only the motor vehicle equipped with the IID, except if you are required to operate a motor vehicle in the course and scope of your employment. You must notify your employer of your restriction and provide written acknowledgement of same to the probation department and court. If the business entity is all or partly owned by the probationer or the probationer has a controlling interest in that business entity, the business vehicles are not exempt from having IID(s) installed.
- Regardless of license status, you may not operate any vehicle within or outside New York State without an IID. Doing so constitutes a Class A Misdemeanor under Section 1198 of the New York State Vehicle and Traffic Law. The only exception is in reference to employment, as stated above.
- If at any point, either at start up or while driving, you take a test and are advised your blood alcohol content (BAC) is above the set point, a retest will be initiated. You must take the retest when advised to do so by the machine. Failure to take the retest will be considered confirmation of a positive BAC.

### **3. Travel**

- You shall remain within the jurisdiction of the court unless otherwise granted permission to leave by the court or the probation officer [New York State Penal Law §65.10 (3) (b)].
- You shall not travel outside the jurisdiction of the probation department without prior written approval from your probation officer.
- For any travel for the purposes of employment, treatment or any other reason, you shall obtain prior written approval from your probation officer that sets forth the details the approved travel schedule including dates, times, locations and routes.

### **4. Residence (Daily Living)**

- You shall reside in \_\_\_\_\_ County unless otherwise authorized by the court or the probation department.
- You shall provide the probation department with the address at which you will reside during the period of your probation.
- You shall provide the probation department with written notice at least \_\_\_\_ days in advance of any change in your address during the period of your probation.
- You shall not change your address without the prior written approval of the probation department.

- You shall inform the probation department prior to a new person moving into your home with you (including roommates), and will advise the probation department of any and all vehicles that person has titled or registered. .

## **5. Social Behavior**

- You shall not linger, loiter or spend time at locations where alcohol is served, including bars, the bar portion of restaurants, liquor stores or other such establishments.
- You shall not engage in activities where alcohol or drug use are significant components of the activity, such as participating in sports where alcohol is being consumed (e.g., a bowling league).
- You shall not socialize with another person, including direct family members, while they are actively drinking or consuming other drugs.
- You shall abide by a curfew requiring you to remain within your approved residence between the hours of \_\_\_\_PM and \_\_\_\_AM, or as otherwise directed by your probation officer or the court.

## **6. Work - Paid and Volunteer Positions**

- You must advise your probation officer of your employment. If so instructed by the supervising probation officer, your employer must be informed of the nature of your offense and the conditions of your probation.
- If vehicle use will be required for employment, then the employer must be notified of the IID conditions of your probation and must sign the notification form.
- You shall not participate in any volunteer or other uncompensated activity without the prior written approval of your probation officer or the Court.
- You shall work faithfully at verifiable employment, attend school or pursue a course of study or vocational training that can lead to suitable employment.

## **7. Alcohol / Drugs/ Weapons**

- You shall not purchase, possess or consume alcoholic beverages or alcoholic products. You shall submit to breath testing, urinalysis or any other recognized method to determine alcohol use as requested by the probation department.
- You shall not abuse prescription or over the counter drugs. You shall submit to urinalysis or any other recognized method to determine drug use as requested by the probation department.
- You shall notify the probation office within one business day of any new prescription medications order by your doctor.
- You shall sign a release of information for all doctors you currently see so that the probation department may confirm any prescriptions issued to you and the need for such.
- You shall not purchase, possess or use illegal and/or regulated substances. You shall submit to urinalysis testing or any other recognized method to determine drug use as requested by the probation department.
- You shall not possess or purchase a firearm, rifle, shotgun, or any other weapon, including but not limited to those defined in Section 265.00 of the New York State Penal Law, and shall

surrender any such firearm, rifle, shotgun or other weapon immediately to a police department, sheriff or other peace officer.

- You shall not own, have in possession, residence or motor vehicle any weapon as defined in Section 265.00 of the Penal Law. Further you shall not possess or own any instrument construed to be a weapon.
- You shall submit to any alcohol and/or substance abuse testing as required by the probation department, at your expense.

## **8. Search / Seizure**

- You shall submit to search in accordance with the Order and Conditions of Probation and of your person, areas in plain view and under your immediate control without prior notification.

## **9. Disclosure**

- You shall agree to sign appropriate release forms to ensure the information regarding your participation in any and all treatment programs required to be attended, pursuant to this Order, is readily available to the court, the probation department, and therapist or any other agency authorized by the court.
- You shall disclose the nature of your offense to your family and employer, as determined appropriate by the court and/or probation officer.
- You shall inform all persons with whom you have a significant relationship, with whom you have a close affiliation, or with whom you reside of your current conviction and driving restrictions, as well as the penalties to them for assisting you in circumventing those restrictions.
- You shall provide your probation officer with a copy of your NYS Driver's License and the registrations of any and all vehicles owned and/or operated by you or to which you have access.
- You shall notify your probation officer immediately, but no later than within 1 business day of any contact, questioning or arrest by a police agency or any law enforcement officer.
- You shall agree to sign any medical, treatment or programmatic release of information required by any agency to which the defendant is referred for services for purposes of probation obtaining attendance, participation and communicating as to services performed.

## **11. Electronic Monitoring**

- You shall submit to alcohol monitoring by wearing an ankle monitor device and/or using a home or portable breathalyzer device and fully cooperating with the monitoring process as directed by the probation department.
- You shall participate in the Electronic Monitoring Program as directed by the probation department for a period of \_\_\_\_ months, at your own expense. The fee is payable in full to the probation department at the time of sentencing, or billed in accordance with the probation department's guidelines. .

- You agree to all the instructions and requirements of the Electronic Monitoring Program as established by the probation department, a written copy of which will be provided to you.

## Appendix J: DWI Offenders Released from DOCCS



ANDREW M. CUOMO  
Governor

MICHAEL C. GREEN  
Executive Deputy Commissioner

ROBERT M. MACCARONE  
Deputy Commissioner and Director

### **STATE DIRECTOR'S MEMORANDUM #2015-4**

**TO:** Probation Directors/Commissioners and Ignition Interlock Device Monitors

**FROM:** Robert M. Maccarone, Deputy Commissioner and Director, Probation and Correctional Alternatives *R.M.M.*

**DATE:** June 11, 2015

**SUBJECT:** "Leandra's Law"—Ignition Interlock Device (IID) Monitoring of DWI-Related Offenders Released from DOCCS

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The following is the protocol to be used for individuals convicted of DWI and/or other alcohol-related crimes or adjudicated Youthful Offenders with respect to any such crimes, who have been ordered to install an ignition interlock device (IID) in their motor vehicles following their release from state incarceration, as a separate condition of probation or conditional discharge imposed by a court as a result of Chapter 496 of the Laws of 2009 or "Leandra's Law" and/or its 2013 statutory amendment. These individuals are under the supervision of the New York State (NYS) Department of Corrections and Community Supervision (DOCCS) and IID monitors-- either local probation departments or other monitoring entities, as applicable.

This protocol is intended to facilitate communication and collaboration with DOCCS field staff (parole officers) and IID Monitors with the mutual goal of enhancing offender accountability and community safety. Effective August 15, 2010, any person sentenced as to a VTL § 1192 Misdemeanor or Felony DWI Offense and/or alcohol-related crime committed on or after November 18, 2009, is required to have an IID installed in any motor vehicle they "own or operate" and the sentence must include, in addition to any other sanction, a sentence of probation or conditional discharge.

- Offenders convicted of, or adjudicated Youthful Offenders for the Penal Law crimes of Vehicular Assault, Aggravated Vehicular Assault, Vehicular Manslaughter or Aggravated Vehicular Homicide, or a Vehicle and Traffic Law (VTL) §1192 crime are required to install an IID in any vehicle they "own or operate" as a condition of probation or conditional discharge, in addition to any other fine or imprisonment which the court may have imposed. VTL §1192 crimes include: VTL §1192(2) Driving While Intoxicated (DWI); Per Se (BAC of .08 or greater); VTL §1192(2) (2-a) (a) or (b) specifically, Aggravated DWI (which may be due to a BAC greater than 0.18, or having a child 15 years or younger in the vehicle); or

VTL§1192(3) DWI-operating a vehicle in an intoxicated condition. Offenders include those who have been granted Youthful Offender status.

- DOCCS will check the files of prospective parolees for their conviction type and applicability to “Leandra’s Law” provisions to ensure that those with an IID requirement are identified prior to his or her release from state incarceration.
- Upon receiving an Order of Probation or Conditional Discharge, which includes an ignition interlock condition pursuant to “Leandra’s Law” for a person who has been sentenced to a period of imprisonment, it is recommended that the monitoring entity promptly enter the offender in the VINE system at [www.vinelink.com](http://www.vinelink.com). Such entry will facilitate the monitor’s notification of the offender’s release from incarceration, at which time the period of probation or Conditional Discharge then commences.
- On a monthly basis, the DOCCS Information Technology Staff will provide the Division of Criminal Justice Services’ (DCJS)-- Office of Probation and Correctional Alternatives (OPCA) staff with a list of all offenders supervised by DOCCS who have been convicted of VTL §1192 crimes and other crimes which include the DWI crime.. The list will be sorted by the county of release and will be posted to DCJS’ Integrated Justice Portal (IJP) at Resources-> Reference Library-> Probation->Ignition Interlocks under the “Reports” heading. IID monitors with IJP access should check the list at least monthly to ensure they are aware of all cases to be monitored. The May 2015 edition of this report has been posted at this location and is now available for review by persons with access to the Probation section of the IJP. A sample of the report format appears in the following screenshot:

5/11/15  
RPT1

NYS DEPARTMENT OF CORRECTIONAL SERVICES  
OFFENDERS CURRENTLY UNDER PAROLE SUPERVISION  
WITH QUALIFYING IGNITION INTERLOCK CRIME  
CONVICTED IN ██████████ COUNTY

PAGE 14

NAME	NYSID	CONVICTION CRIME	RELEASE DATE	PAROLE MAXIMUM EXPIRATION DATE	SUPERVISION STATUS
██████████	██████████	DWI 3RD/SUBSEQUENT OFFENSE	2014-03-17	2016-02-02	REPORTING
CURR ADDR: ██████████			ADDRESS START DATE: ██████████		2015-01-01
██████████	██████████	DWI 2ND OFFENSE	2014-11-10	2015-11-11	REPORTING
CURR ADDR: ██████████			ADDRESS START DATE: ██████████		2014-11-10
██████████	██████████	DWI 2ND OFFENSE	2015-03-25	2016-03-25	REPORTING
CURR ADDR: ██████████			ADDRESS START DATE: ██████████		2015-03-25
██████████	██████████	DWI 2ND OFFENSE	2014-12-16	2018-03-02	REPORTING
CURR ADDR: ██████████			ADDRESS START DATE: ██████████		2014-12-16
██████████	██████████	DWI 2ND OFFENSE	2014-01-21	2016-03-19	REPORTING
CURR ADDR: ██████████			ADDRESS START DATE: ██████████		2015-04-28
██████████	██████████	DWI 2ND OFFENSE	2014-10-01	2016-11-15	REPORTING
CURR ADDR: ██████████			ADDRESS START DATE: ██████████		2014-10-28
██████████	██████████	DWI 3RD/SUBSEQUENT OFFENSE	2014-03-06	2016-03-06	REPORTING
CURR ADDR: ██████████			ADDRESS START DATE: ██████████		2014-03-10
COUNTY TOTAL	7				

- Individuals sentenced to DOCCS with an IID requirement are required to comply with the court order immediately upon release from state incarceration. Accordingly, they must have an IID installed in any vehicle they own or operate within 10 days of release from state

incarceration. The requirement to comply with the probation or conditional discharge sentence IID condition will be discussed with the parolee as part of pre-release planning by a DOCCS Offender Rehabilitation Coordinator (ORC). A “*DWI Offenders Released from DOCCS Advisory Form*” has been developed to inform the prospective parolee of his/her obligations under the law. Please refer to the sample form which is attached.

- The IID requirement will be monitored by the probation department where the parolee is subject to a period of probation supervision. The probation department or alternative entity, depending on the County/City of New York IID Plan, will be responsible for monitoring where the IID requirement has been imposed pursuant to a conditional discharge. To determine who the monitoring entity should be, a Parole Officer (PO) should check the court order to determine if probation or conditional discharge has been ordered. A current list of monitors by county is attached and can also be found at:

- Probation IID Monitors:

<http://www.criminaljustice.ny.gov/opca/pdfs/probation-supervision-monitors.pdf>

- Conditional Discharge IID Monitors:

<http://www.criminaljustice.ny.gov/opca/pdfs/conditional-discharge-monitors.pdf>

- IID Monitors may determine who the assigned Parole Officer is by using the DOCCS Parolee Look-up found at: <http://www.parole.ny.gov/lookup.html>
- The DOCCS ORC will advise prospective parolees with the IID requirement to contact their IID monitor immediately upon release. A majority of such parolees will have a parole condition prohibiting the operation of a motor vehicle. DOCCS has agreed to have the assigned Parole Officer contact and advise the appropriate monitor if the parolee's conditions of parole/release prohibit operation of a motor vehicle or application for a driver's license.
- The monitor should determine, after consultation with the Parole Officer, if the parolee owns or operates a vehicle, and is therefore required to have an IID installed. The legal requirement to install the IID in any vehicle the parolee owns is independent of the parolee's license to operate a motor vehicle. *A parolee who owns (titled and/or registered) a motor vehicle is still required to install an IID in his/her vehicle even though he/she might not be permitted to operate the vehicle by laws governing license suspension or revocation, NYS Department of Motor Vehicle restrictions, and/or specific conditions of parole, probation and/or conditional discharge(CD).* In the event that a parolee is released to a county other than that in which he was sentenced, the intrastate transfer of the probation case or transfer of monitoring of the CD case which includes the IID condition will be necessary.

- If a parolee has an IID installed, he/she shall submit proof of installation to the court, their Probation or CD monitor, and their Parole Officer within three (3) business days of installation.
- Regardless of the parolee's IID installation status, the monitor is required to monitor for the period of time specified in the condition of probation or conditional discharge, unless the IID requirement has been terminated upon submission of proof that the offender has installed and maintained an IID for at least 6 months, except where the court has ordered a longer period of installation. For repeat offenders who have had their license revoked, the IID remains installed during the period of license revocation and upon termination, for an additional period as determined by the court. For installed IIDs, this includes monitoring the IID data obtained from NY's qualified interlock manufacturers. Where available, the appropriate monitor shall enter all offenders ordered to install an ignition interlock device as a condition of probation or conditional discharge into the DMV License Event Notification System (LENS) or comparable system.
- For parolees who have not installed IIDs, the monitor will make inquiries to NYS DMV at least once per quarter to ensure that no vehicles are registered or titled to the parolee. For vehicles found registered or titled to those parolees ordered to install an IID pursuant to "Leandra's Law," but who have not had such device installed because of the parolee's claim he/she does not own or operate any motor vehicle(s), the applicable monitor must promptly notify the court and the district attorney and consider instituting violation actions consistent with public safety. The applicable monitor should notify the Parole Officer as well.
- The monitor must notify the court of jurisdiction, the district attorney, and the Parole Officer within three business days as to reports of any failed tasks or failed tests. Such reporting shall include the following events: : (i) where a parolee has failed to install the IID on his/her own vehicle(s); or vehicles which he/she operates or has titled or registered; (ii) where the parolee has not complied with a service visit requirement; (iii) any report of alleged tampering with or circumventing an IID or an attempt thereof; (iv) any report of a lock-out mode; and/or (v) any report of a failed test or re-test where the BAC is .05 percent or higher.
- Effective November 1, 2013, all IIDs installed in NYS are equipped with a camera and many also have Global Positioning Satellite (GPS) and real-time data reporting features as well. Parole Officers may request information from IID monitors regarding a parolee's ignition interlock data.
- DOCCS has agreed that the Parole Officer will also notify Probation or the CD monitor, as applicable, of any warrant action taken by the Parole Officer including incarceration or release from incarceration of the parolee, completion/release from parole or community supervision, any instances of the parolee owning or driving a vehicle without an IID installed, tampering or circumventing an IID, and any other major issues which the Parole Officer feels the monitor should be aware of concerning the offender.

This information should assist probation departments and other IID monitors, as well as supervising Probation Officers in their efforts to effectively monitor the conditions of IID compliance for parolees after their release from state incarceration.

If you have any questions, please contact Gary Govel, Community Corrections Representative 3, at (518) 457-4336 or [Gary.Govel@dcjs.ny.gov](mailto:Gary.Govel@dcjs.ny.gov).

## **“Leandra’s Law”--DWI-Related Offenders Released from DOCCS Ignition Interlock Advisory Form**

The NYS Vehicle and Traffic Law requires all persons convicted of a DWI and/or other alcohol-related crimes or adjudicated a Youthful Offender with respect to any such crime(s) to install an Ignition Interlock Device (IID) following their release from imprisonment as a separate condition of probation or conditional discharge imposed by a court as a result of Chapter 496 of the Laws of 2009—“Leandra’s Law” and/or its 2013 statutory amendment. These requirements pertain to the individual regardless of other sentencing elements, including incarceration in local jail or state prison and post release supervision by the Department of Corrections and Community Supervision (DOCCS).

It is important to note that pursuant to NYS Penal Law §60.21, a sentence of probation or conditional discharge runs consecutive to any period of incarceration and commences immediately upon release from imprisonment as does the requirement to install an IID.

All persons released from DOCCS with an IID requirement are mandated to follow the requirements of their IID order immediately upon release from prison. This means they must have an IID installed in any vehicle they own or will operate within 10 days of release from prison. Parolees with an IID condition are directed to do the following on release:

- Contact their court ordered conditional discharge or probation monitor (see below for how to determine contact information).
- If with the knowledge and consent of DOCCS, the parolee registers, titles or leases any vehicles in his/her name, he/she must promptly advise their IID monitor as well as the sentencing court of this fact.
- If the parolee does have any vehicle(s) titled, leased or registered in his/her name, an IID must be installed in such vehicle(s) within 10 business days of release from incarceration.
- The assigned IID monitor will advise the parolee on the required class and features (probation cases) or only the required class (conditional discharge case) of IID he/she must have installed and will provide the individual with a list of qualified manufacturers and installation/service providers for IID’s.
- During the period ordered by the court for IID installation (which starts upon release from incarceration *not* from sentencing) parolees cannot own or operate (drive) any vehicle that does not have an IID installed in it, with limited exception as may be authorized in Vehicle and Traffic Law §1198(8) with respect to an employer’s vehicle operated in the scope of his/her employment. Operating a motor vehicle without an installed IID may result in a new misdemeanor charge, in addition to a violation of parole, and probation or conditional discharge, as applicable. Additionally, any person who knowingly rents, leases, or lends a motor vehicle to a person known to have their driving privileges restricted to motor vehicles with an installed IID may also be charged with a misdemeanor. Further, circumvention of an interlock device, which includes tampering and other specific unlawful behavior, by the operator or another individual is a Class A misdemeanor. Such crimes are specified in NYS Vehicle Traffic Law §1198 (7) and (9).

- Importantly, having an IID installed does *not* provide a parolee permission to drive if he/she does not have a current driver's license or his/her condition of parole, probation or conditional discharge prohibit such person from driving. Compliance with the requirement to install the IID is independent of the authority/license to operate a motor vehicle. Likewise, not having a valid driver's license does not remove the requirement to install an IID in any motor vehicle that the individual continues to own.

The IID requirement is monitored by the probation department where the operator is subject to a period of probation supervision, or by probation or alternative for monitoring where an IID has been imposed pursuant to a conditional discharge. To determine the appropriate monitoring entity, check the court order. A current list of monitors by county can also be found at:

Probation IID Monitors:

<http://www.criminaljustice.ny.gov/opca/pdfs/probation-supervision-monitors.pdf>

Conditional Discharge IID Monitors:

<http://www.criminaljustice.ny.gov/opca/pdfs/conditional-discharge-monitors.pdf>

I attest that I have been made aware of the above information:

\_\_\_\_\_  
Print Parolee's Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Parolee's Signature

\_\_\_\_\_  
Print Witness' Name

\_\_\_\_\_  
Witness' Signature

## Appendix K: Summary of Substance Abuse Treatment Research

According to the Century Council's publication entitled "The National Hardcore Drunk Driver Project":

- Although treatment is sometimes given short shrift, on average, education and treatment have a significant positive influence in reducing drunk driving, resulting in a 7 to 9 percent reduction in DWI recidivism and alcohol-related crashes. Although the reduction might appear somewhat small, the benefits are similar to the deterrence effects of other strategies to address drunk driving and other traffic safety measures as well: 6–9 percent for administrative license revocation; and 6–8 percent for .08 BAC per se limit laws.
- Most programs report using cognitive-behavioral and relapse prevention models as the foundation of treatment. In the broadest sense, the primary goals of treatment are for individuals to take responsibility for their behaviors, develop the necessary skills and techniques that will prevent them from using drugs or alcohol in the future, and lead productive and pro-social lives.
- Treatment should be individualized. Although several components are common to all individuals entering treatment, interventions should be designed to meet the specific needs of clients. This requires that specialized assessments be conducted to inform treatment for each participant. It is important to use specialized research-based tools that explore not only general mental health needs and personality functioning, but also assess substance abuse variables, such as history of use and patterns of use, because of their association with recidivism risk. When focusing specifically on the assessment of risk of relapse for adults or youth, practitioners should use instruments that have been designed for those populations. Whenever possible, practitioners should use instruments that have a demonstrated predictive validity. Ideally, assessments are the means by which levels of risk are determined and needs are identified so that individualized, meaningful and effective treatment plans can be developed. The use of some specialized and highly regarded DWI risk and need assessments require time, sometimes upwards of an hour or more to complete, but they can provide valuable information to the supervising probation officer who will need to manage the individual for periods of up to five years. This initial investment in time can be very helpful to the probation officer and inform the supervision plan, resulting in more successful outcomes.

The Substance Abuse and Mental Health Services Administration (SAMHSA) released a report in July 2014 on "Types of Services Provided by Programs for Driving Under the Influence or Driving While Impaired Clients". This report found that:

- DUI/DWI programs that combine educational programs with evidence-based therapeutic approaches, such as cognitive-behavioral therapy, motivational interviewing, and relapse prevention, are effective in facilitating and maintaining behavioral change.
- There were 10,144 outpatient-only substance abuse treatment facilities in 2012, 37% of which offered a specially designed program intended to address the needs of DUI/DWI clients.

- The evidence-based approaches used most commonly were substance abuse counseling, relapse prevention, and cognitive-behavioral therapy.
- The majority of outpatient-only facilities also provide discharge planning and aftercare services, which can facilitate post-treatment stability and recovery and reduce recidivism.

Research has also found that follow-up or aftercare treatment improves outcomes. People who participate in aftercare programs show an increase in positive outcomes and a reduction in the number of relapses. A person who is no longer drinking is a person who is not driving drunk. Interventions that address the criminogenic aspect of driving while intoxicated are very important, but interventions that stop a person from even taking that first drink should be considered equally important.

## Appendix L: Ignition Interlock Laws in New York State

On November 18, 2009, Chapter 496 of the Laws of 2009, commonly referred to as “Leandra’s Law” was signed into law. It included two effective dates with respect to implementation of key provisions. The first date was December 18, 2009, at which point the following provision became effective:

- VTL §1192(2a) (b) New Class E Felony Offense for driving while intoxicated with a child. No person shall operate a motor vehicle in violation of subdivision two, three, four, four or four-a of this section while a child who is fifteen years of age or less is a passenger in such vehicle. Violators may face a penalty of up to 4 years in state prison.
- VTL§1193(1)(c) enhances penalties for driving while intoxicated and causing the death or serious injury to any child(ren) passenger under 16 years of age. Operators convicted of Aggravated Vehicular Assault (Class C Felony) and Aggravated Vehicular Homicide (Class B Felony) offenses are subject to state imprisonment up to 15 and 25 years, respectively.
- VTL §1192(12) (b) Where a law enforcement officer alleges a violation of paragraph (b) of subdivision two-a of this section and the operator of the vehicle is a parent, guardian, or custodian of, or other person legally responsible for, a child aged fifteen years or less who is a passenger in such vehicle, then the officer shall report or cause a report to be made, if applicable, in accordance with Article 6 of the Social Services Law.

In summary, this first component of the law increased crime classification and penalties for a person who drives under the influence with a child in a motor vehicle. It also required police not only take legal action for the crime, but to also contact Child Protective Services to ensure that the child’s general safety is reviewed by social services.

The second effective date of the law was August 15, 2010. There was a delay in the implementation of this portion of the law to allow for regulations to be developed regarding how the law would be enforced. The following components became effective on that date:

- VTL §1192 (2), (2-a), or (3) Sanctions -VTL §1193(1) (b) (ii) and (c) (iii). Operators committing VTL §1192 (2), (2-a), (3) misdemeanor or felony DWI crimes, on or after the date of enactment, (November 18, 2009) and sentenced on or after August 15, 2010 must be sentenced to a period of probation or conditional discharge, in addition to any sentence of imprisonment or payment of any fine or penalty imposed, and be ordered to install an Ignition Interlock Device in any motor vehicle they “own or operate” for a minimum period of 6 months<sup>2</sup> The term of probation or conditional discharge shall run consecutive to any term of imprisonment. The Ignition Interlock Device condition appears on the NYS Driver’s License (“Ignition Interlock”) and the Driver’s License File.

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<sup>2</sup> This was increased to 12 months following the passage of Chapter 169 of the Laws of 2013 “Leandra’s Law” Reform. See Appendix F for more information.

Leandra's Law operators also became subject to the following provision.

- VTL §1198 (9)
  - (a) No person whose driving privilege is restricted pursuant to this article or the penal law shall request, solicit or allow any other person to blow into an ignition interlock device, or to start a motor vehicle equipped with the device, for the purpose of providing the person so restricted with an operable motor vehicle.
  - (b) No person shall blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is so restricted.
  - (c) No person shall tamper with or circumvent an otherwise operable ignition interlock device.
  - (d) No person subject to a court ordered ignition interlock device shall operate a motor vehicle without such a device.
  - (e) In addition to any other provisions of law, any person convicted of a violation of paragraph (a), (b), (c) or (d) of this subdivision shall be guilty of a Class A misdemeanor.

The law requires that any operator of a motor vehicle convicted of driving while intoxicated be sentenced to probation or conditional discharge and install an ignition interlock device on any motor vehicle he or she "owns or operates" for a minimum of six months (this minimum period was extended by Chapter 169 of the Laws of 2013 as explained below), in addition to any other penalty or fine or period of incarceration. The period of IID installation is determined by the sentencing judge and can be ordered for the entire period of supervision, up to five years for probation supervision. Regardless of duration, the IID period commences on the day of sentencing, or from the date of pre-sentence installation for those operators ordered to install in advance of sentence. Where a person is sentenced to a period of incarceration in a local jail or state prison, the term of probation supervision or conditional discharge shall run consecutive to the incarceration. The IID term associated with the CD or probation also begins upon the offender's release from incarceration.

### How Ignition Interlock Devices Work

An ignition interlock device (IID) is a breath testing machine that is installed in a person's motor vehicle and linked the ignition system requiring them to undergo a breath alcohol test in order to start their vehicle. The device is connected to the ignition of the car, and in New York State, devices are required to be calibrated so the vehicle will not start if a person breathes into the device with a breath alcohol content of .025 or higher. All IID's used in New York State must be certified by the NYS Department of Health to test at required levels. National Highway Traffic Safety Association (NHTSA) specifications require devices to be certified at a set point of .020 BAC beginning in May 2014. The certification level does not alter the testing set point of .025 BAC. Also, according to NHTSA standards, a person is required to provide a breath sample of 1.5 liters in order to ensure an accurate test. Operators with breathing troubles such as Chronic Obstructive Pulmonary Disease (COPD) may have difficulty with producing this volume. There is currently no option to reduce the required volume for an IID test as volumes below that level may not result in an accurate test, although DCJS is considering including a provision in its Part 358 Rules that will allow an operator to submit to a lowered breath test volume, provided there is medical documentation to support the request.

If a test at start-up is positive at a BAC above the set point, the vehicle will not start and the offender will be prompted to take a re-test within five to +15 minutes. If the re-test also yields a positive test at or above the set point, the offender will not be able to start their vehicle, and this will constitute a failed test. A positive re-test usually indicates proof of alcohol consumption by an offender. Some things like mouthwash or breath spray that contain alcohol can cause a positive reading on the initial test, however an offender has a five to 15 minute window prior to the start-up retest in order to rinse any contaminants out of their mouth. Typically, positive tests due to foreign material will show a dramatic reduction in BAC on the re-test. Operators are strongly advised not to eat or drink immediately prior to using the IID and to avoid all products containing alcohol, including mouthwash and breath spray. Such precautions and prohibitions are common in the instructions provided to operators by the manufacturers/installation/ service providers. If an operator fails the re-test or does not provide a breath sample for the re-test (a missed retest) then the vehicle will trigger a lock-out. The lock-out requires the offender to bring the vehicle to a manufacturer approved installation/service provider within five days or the vehicle will become inoperable. There may be a cost associated with this service visit.

If an operator takes the start-up test and provides a sample with a BAC below the set point, they will be able to start their vehicle. After passing an initial rolling test within a randomly variable interval ranging from five to 15 minutes, New York State IID's are required to re-test operators randomly at intervals no greater than 30 minutes. This means that operators will be required to take a second test while driving the vehicle to prevent them from starting the car and then drinking and subsequently driving. This is called a rolling test. If an operator tests above the set point for a rolling test, they will have a one to three minute window before they are required to take a rolling re-test. If the re-test is also positive above the set point, the IID will advise the operator to pull over and shut the vehicle off. An IID cannot shut a vehicle down once it is running, since this

could create a serious safety issue. If an operator fails or misses a rolling re-test, when they do shut off the vehicle, the IID will go into lock out mode and require a service visit.

Some important notes about IIDs:

- IIDs draw a charge off of a vehicle's battery and can run a battery down if a vehicle is not started regularly. Therefore, operators who have an IID installed should be sure to at least start the vehicle every few days, even if they do not move it.
- IID manufacturers in New York will not install an IID on a motorcycle. The combination of cold winter months and increased danger to the safety and security of the IID unit in an unsecured vehicle like a motorcycle have made manufacturers all chosen against it in New York.

### **Ignition Interlock Device Classes**

In New York State, there are three classes of approved IIDs.<sup>xv</sup> For probation cases, probation departments select the class and features of the device required, and the operator can then choose from qualified manufacturers which meet those requirements. For Conditional Discharge cases, the CD monitor selects the class of device required and the operator can then choose from qualified manufacturers which meet those requirements. In the case of presentence cases, the monitor selects the class type and the defendant may select the manufacturer. The revised classification of devices, effective November 1, 2013, is as follows:

**CLASS I:** This class contains the following minimum features:

- Meets all the New York State Department of Health and National Highway Traffic Safety Administration Regulations and Standards.
- Utilizes fuel cell technology-*Fuel Cell technology is a way of measuring breath alcohol content that uses a piece of platinum inside the device, when alcohol touches the platinum it begins to oxidize which creates a current. The device measures the current and this is how the BAC is calculated.*
- Reporting capabilities.
- Capabilities for storage of data.
- Programmable Re-Test sequences-*Allows the manufacturer to determine how frequently a retest occurs.*
- Data download, inspection and re-calibration service-*Provided by installation/service providers trained by the manufacturer.*
- Anti-tampering and anti-circumvention features.
- Camera-Photographic positive identification capability.
- Photo of the operator will be taken every time operator is prompted to take a test.
- Infra-red or other low light camera capability for night use.
- Breath sample validity features.
- 24/7 access to operator data by monitors.

- Voice or visual instruction-*Cues provided to the operator either by a verbal instruction from the device or a display on the device.*

**Optional features** for consideration under Class I:

- Keys enabling service codes to be entered.
- Early recall system, if a fuel cell fails-uses split cell technology.
- Restricted drive time capability.
- Unlock code to minimize towing due to lockouts –*A code used by installation/service providers to service the vehicle in lock out at the vehicle’s location without having to move it to an installation/service providers.*

**CLASS II:** This class has all the minimum, required features of Class I and contains the following additional features:

- Global Positioning System location of vehicle – *Provides the location of the vehicle at the time of testing, but some manufacturers can provide the location of the device (and therefore the vehicle) at any point in time even between tests.*
- Real time data reporting – *Tests are uploaded to the manufacturer’s website immediately as completed, unless the operator is out of cell transmission zones, and then the data will be transmitted once they re-enter cell service.*

**CLASS III:** This class has all the minimum, required features of Classes I and II and contains the following additional feature:

- Emergency Response Program – Police Notification Rolling Re-Test failure. Some jurisdictions coordinate with the manufacturers and local police so that when a rolling retest of .06 BAC or greater is registered, and the subsequent retest is also a .06 BAC or greater or is missed or insufficient, the manufacturer notifies the police.

When deciding on device class/features, a county should consider:

- Do monitors need to be able to identify the location of the vehicle at the times tests are taken? This can be a useful feature, should the department wish to utilize the data, such as responding to GPS data which indicates that an offender has gone to a location they should not be at (e.g. a bar).
- Do monitors need to be able to review the results of tests immediately after they are taken? This can be a very useful feature for departments that utilize IID’s as off hours or weekend breathalyzers. Some monitors will call offenders randomly and ask them to go out and start their cars, which can serve as a breathalyzer without the travel to obtain one.
- Will the increase in cost to operators be balanced by increase in public safety? If the features are not used in order to correct behaviors in offenders, then their use may not outweigh increased costs.

## Appendix N: Resources

DWI Resources for Probation Officers and CD Monitors:

Training Opportunities:

- Intoximeter Online Certified Training and printable operator's manual: Available to all departments with an Intoximeter device which allows operators to become certified online. Recommended by the Office of Public Safety for all operators and includes calibration training for supervisors. <http://training.intox.com/asfst/>
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- APPA Training Page which includes a free online training on Community Supervision Strategies for Hardcore Drunk Drivers. <https://appa.cequick.com/>

Statistics:

- TIRF: Provides research on a number of DWI related issues. <http://tirf.ca/index.php>
- Institute for Traffic Safety Management Research (ITSMR): Provide publications on numerous topics including impaired driving: <http://www.itsmr.org/Reports%20and%20Publications.htm>
- AAA Foundation provides research and data on different driving issues which include unlicensed drivers, teens, seniors and impaired driving: <https://www.aaafoundation.org/>
- Governor's Traffic Safety Committee (GTSC) provides state wide and county specific data regarding crashes in New York including alcohol or drug related crashes. <http://www.safeny.ny.gov/>
- NYS DMV Statistics provides DMV collected data on crashes: <http://www.dmv.ny.gov/stats.htm>

Informational Guides:

- Female Drunk Driving Offenders: A publication from the Traffic Injury Research Foundation (TIRF) on current research regarding female drunk drivers and effective interventions and supervision. [http://www.tirf.ca/publications/PDF\\_publications/summary\\_state\\_of\\_knowledge\\_female\\_impaired\\_drivers\\_13.pdf](http://www.tirf.ca/publications/PDF_publications/summary_state_of_knowledge_female_impaired_drivers_13.pdf)
- Chronic Traffic Offenders: Guides regarding the traditional repeat DWI Offender characteristics and supervision strategies:
  - <http://www.nhtsa.gov/people/injury/research/pub/Alcohol-ImpairedDriving.html#characteristics>
  - [http://cspl.uis.edu/ILLAPS/Research/documents/Recognizing\\_Managing\\_and\\_Containing\\_the\\_Hard\\_Core\\_Drinking\\_Driver.pdf](http://cspl.uis.edu/ILLAPS/Research/documents/Recognizing_Managing_and_Containing_the_Hard_Core_Drinking_Driver.pdf)
  - <http://www.mdt.mt.gov/safety/docs/ToDrinkisToDrive.pdf>
- APPA Guide for DWI offender supervision: <http://www.appa-net.org/eweb/docs/appa/pubs/DWI.pdf>

- Century Council Guide on Hardcore Drunk Driving Offender Supervision: <http://www.centurycouncil.org/sites/default/files/materials/HCDD-Community-Supervision-Guide.pdf>
- APPA guide on underage drinking: <http://www.appa-net.org/eweb/docs/appa/pubs/UDIIPPGCC.pdf>

Other Resources:

- NYS Association of Chiefs of Police provide podcasts and videos on different topics for police officers, but many overlap with probation such as DWI and “Leandra’s Law”: [http://www.nychiefs.org/apb\\_podcast.php](http://www.nychiefs.org/apb_podcast.php)
- STOP DWI NY: Provides a variety of public information on the topic of DWI:
  - <http://stopdwi.org/>
  - Vimeo Site: <http://vimeo.com/stopdwi>

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<sup>i</sup> Karen L. Dunlap , Tracy G. Mullins, and Marilyn Stein, *Guidelines for the Community Supervision of DWI Offenders*, (American Association of Probation and Parole, 2007)<http://www.appa-net.org/eweb/docs/appa/pubs/DWI.pdf>

<sup>ii</sup> New York State Division of Probation and Correctional Alternatives, "Summary of Alcohol-Related Risk Assessment Instruments." May 2008. ????. Didn't OPCA recently issue a new summary document in the past two years? Recollect reviewing another summary of assessment instruments prepared by OPCA. If so, recommend replace.

<sup>iii</sup> According to Part 351 of Title 9 NYCRR, the term “collateral contact” means, “a contact to objectively verify information regarding the probationer with someone or some source other than the probationer, including the probationer’s compliance with conditions of probation and progress toward achieving the case plan goals. Such contacts can be in person, by mail, by telephone, or by electronic means.”

<sup>iv</sup> Roth, Richard. “IGNITION INTERLOCKS How To Use Them Effectively to Reduce Drunk Driving.” *Roth Interlock Research Data* (blog), April 14, 2013. [www.rothinterlock.org/denverroth.ppt](http://www.rothinterlock.org/denverroth.ppt)

<sup>v</sup> Fell, James C, A. Scott Tippetts, and Elizabeth Langston. "An Evaluation of the Three Georgia DUI Courts." *US Department of Transportation National Highway Traffic Safety Administration*. (March 2011). [http://www.dwicourts.org/sites/default/files/nadcp/Georgia\\_Final\\_Study.pdf](http://www.dwicourts.org/sites/default/files/nadcp/Georgia_Final_Study.pdf)

<sup>vi</sup>New York State Department of Motor Vehicles (NYS DMV) “The Drinking Driver Program

Alcohol & Drug Rehabilitation Program” [http://dmv.ny.gov/sites/default/files/legacy\\_files/broch/c40.pdf](http://dmv.ny.gov/sites/default/files/legacy_files/broch/c40.pdf)

<sup>vii</sup> New York State Department of Motor Vehicles (NYS DMV) “Conditional licenses & the Drinking Driver Program” <http://dmv.ny.gov/tickets/conditional-licenses-drinking-driver-program>

<sup>viii</sup> New York State Department of Motor Vehicles “Penalties for multiple offenders”

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<http://dmv.ny.gov/tickets/penalties-multiple-offenders>

<sup>ix</sup> Crowe, Ann. *Underage drinking Intervention Principles and Practice Guidelines for Community Correction*. The American Probation and Parole Association, 2011. <http://www.appa-net.org/eweb/docs/appa/pubs/UDIPPGCC.pdf>

<sup>x</sup> <http://dmv.ny.gov/tickets/penalties-alcohol-or-drug-related-violations>

<sup>xi</sup> Robertson, Robyn, Kyla Marcoux, Erin Holmes, and Ward Vanlaar. *State of Knowledge: Female Drunk Drivers*. Ottawa, Ontario: Traffic Injury research Foundation (TIRF), 2011.

[http://www.tirf.ca/publications/PDF\\_publications/summary\\_state\\_of\\_knowledge\\_female\\_impaired\\_drivers\\_13.pdf](http://www.tirf.ca/publications/PDF_publications/summary_state_of_knowledge_female_impaired_drivers_13.pdf)

<sup>xii</sup> Rood, Debra H *New York State Alcohol-Related Motor Vehicle Crashes 2012*. Albany, NY: The Institute for Traffic Safety Management and Research (ITSMR), October 2013 <http://www.itsmr.org/Reports%20and%20Publications.htm>

<sup>xiii</sup> *New York State Fact Sheet on DWI Recidivism 1999, 2009 and 2012* Albany, NY: The Institute for Traffic Safety Management and Research (ITSMR), [http://www.itsmr.org/pdf/Recidivism%201999%202009%202012%20\(July%202013\).pdf](http://www.itsmr.org/pdf/Recidivism%201999%202009%202012%20(July%202013).pdf)

<sup>xiv</sup> *Title 9 NYCRR Part 358 - Handling of Ignition Interlock Cases Involving Certain Criminal Offenders*. Albany, NY DCJS' Office of Probation and Correctional Alternatives [http://www.criminaljustice.ny.gov/opca/pdfs/part358\\_3nov10.pdf](http://www.criminaljustice.ny.gov/opca/pdfs/part358_3nov10.pdf)

<sup>xv</sup> *New York State Ignition Interlock Classification System*. Albany, NY Office of Probation and Correctional Alternatives November 1, 2013 <http://www.criminaljustice.ny.gov/opca/pdfs/nys-ignition-interlock-classification-system-effective-11-1-2013.pdf>