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April 2016

Mark C. Poloncarz, County Executive
Members of the Legislature
Erie County
95 Franklin Street, 16th Floor
Buffalo, NY 14202

Report Number: S9-15-5

Dear Mr. Poloncarz and Members of the Legislature:

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

In accordance with these goals we conducted an audit of six counties throughout New York State. The objective of our audit was to determine if the applicable county departments were adequately monitoring the State's Ignition Interlock Program to ensure proper use and compliance. We included Erie County (County) in this audit. Within the scope of this audit, we examined the county departments' policies and procedures and reviewed the record of actions taken to comply with monitoring requirements of the Ignition Interlock Program for the period January 1, 2010 through April 24, 2015. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This report of examination letter contains our findings and recommendation specific to the County. We discussed the findings and recommendation with County officials and considered their comments, which appear in Appendix A, in preparing this report. Except as indicated in Appendix A, County officials generally agreed with our recommendation and indicated they planned to initiate corrective action. Appendix B includes our comment on an issue raised in the County's

response. At the completion of our audit of the six counties, we prepared a global report that summarizes the significant issues we identified at all of the counties audited.

Summary of Findings

Department and Stop DWI officials generally monitored the ignition interlock device (IID) installations and negative activities of offenders as required. However, of 60 IID installations ordered for individuals who owned or operated a vehicle or court paperwork indicated they did, 17 were installed on average 12 days late, while 12 were not installed at all. The monitors also reported late installations in a timely manner in only two of the 29 instances. In addition, the monitors did not report any of the 23 cases with negative activity[1] among the 48 completed installations, including missed service visits, failed tests due to BAC levels, missed start-ups and an IID lockout, to the courts and district attorney.

Background and Methodology

Erie County is governed by an 11-member County Legislature (Legislature) and has a population of approximately 920,000. The County's fiscal year 2015 budgeted appropriations totaled $1.4 billion. The County's Probation Department (Department) monitors the installation and activity of court-ordered ignition interlock devices (IIDs), for individuals on probation, using 16 probation officers as monitors. The installation and activity of court-ordered IIDs, for conditional discharge cases, is monitored by the County's Stop DWI using its staff of three. As of April 21, 2015, the County was monitoring 2,691 open cases[2] that required an IID installation.

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

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

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

[2] Composed of 1,191 probation cases and 1,500 conditional discharge cases

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

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

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

responsible for monitoring court-ordered IIDs for individuals sentenced to probation and those sentenced to conditional discharge are monitored by the County's Stop DWI.[6] Probation cases with an IID order requirement are generally assigned to one of 16 probation officers, who specialize in various levels of DWI sentencing. Conditional discharge cases are assigned to staff of Stop DWI. Monitoring is a key component for ensuring that a vehicle operator is complying with a court order and for protecting the safety of the public.

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

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

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

To complete our audit objective, we conducted interviews with Department and Stop DWI personnel and reviewed policies/procedures. We also reviewed court orders and information that the Department and Stop DWI maintained for the IID records we sampled. We examined communications to ensure that appropriate monitoring actions were taken and tested records to confirm compliance. We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix D of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented

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

[7] See 9 NYCRR Section 358.7.

concerning the value and/or size of the relevant population and the sample selected for examination.

Audit Results

The County's Probation Department and Stop DWI are responsible for monitoring court-ordered IIDs for individuals sentenced to probation and those sentenced to conditional discharge, respectively.

Department and Stop DWI officials generally monitored the IID installations and negative activities of offenders as required. However, of 60 IIDs ordered for individuals who owned or operated a vehicle, or court paperwork indicated they did, during the IID order period, 17 were installed an average of 12 days late and 12 were not installed at all. The monitors also reported only two of the 29 violations in a timely manner. In addition, the monitors failed to report all 23 cases with negative activity to the courts and district attorney. These cases included missed service visits, failed tests due to BAC levels, missed start-ups and an IID lockout.

IID Installations – We selected 201 court orders[8] requiring IID installation for offenders sentenced to probation or conditional discharge to determine if the Department and Stop DWI adequately monitored the installations and notified the court of violations as required. In 141 cases the individuals indicated that they did not own or operate a vehicle. We tested and confirmed that none of the 141 had a registered vehicle during the IID order period. However, 29 of the 60 remaining IID orders (45 percent) were either not installed or installed after the required 10 business days. Seventeen of the 29 were installed on average 12 days late, while 12 were not installed at all even though court paperwork indicated a vehicle was owned or operated. The monitor reported 15 of the IID installation violations to the court, but not for the other 14 IID orders (all installed late). Further, the monitor's reports were timely in only two instances. The monitors attributed the lack of reporting to the volume of cases and use of processing notifications in batches.

Negative IID Activity – We reviewed the reported negative IID activity from the vendor for all 60 cases with IID installation orders, which included 97 negative events[9] in 23 cases, and found that the monitor did not notify the court or district attorney of any of the negative events. The events included missed service visits, failed tests due to BAC levels, missed start-ups and an IID lockout. The monitor attributed the lack of notification to reducing the amount of paperwork sent to and handled by the court and told us that the courts are only notified of conditional discharge case IID violations with patterns of negative activity. Further, the monitor sends the notifications to the courts but not to the district attorney.

While the IIDs potentially stop individuals from starting and driving their vehicle with a BAC higher than 0.025 percent,[10] courts rely on county monitoring to ensure an individual is following sentencing conditions and to protect the public. A failure to adequately monitor the IID Program and report violations could prevent a court from knowing about noncompliance and from deciding

[8] See Appendix D for methodology.

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

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

whether an individual's sentence needs to be modified or revoked to keep the county roadways safe.

Recommendation

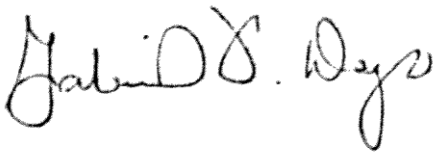
1. County officials should address the causes of monitors' late or missed reporting of IID Program violations to the court and district attorney, and institute procedures, as necessary, to help ensure that all violations are reported in a timely manner.

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

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

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

Sincerely,



Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

RESPONSE FROM COUNTY OFFICIALS

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

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

October 15, 2015

Mr. Gabriel F. Deyo
Deputy Comptroller
Division of Local Government and School Accountability
110 State Street
Albany, NY 12236

Re: **Audit of Erie County's Ignition Interlock Program, Report Number S9-15-5**

Dear Mr. Deyo,

The Erie County Executive's Office is in receipt of the September, 2015, draft report pertaining to the County's monitoring of New York State's Ignition Interlock Program for the period January 1, 2010 through April 24, 2015. We would like to thank the Comptroller's audit team for their courtesy and professionalism while they conducted this audit, and we are grateful for the opportunity to provide a response to the draft report.

Please be advised that this audit response will also serve as our Corrective Action Plan. We are generally in agreement with the audit's findings (STOP-DWI notes one disagreement in its response in the Negative IID Activity section).

As noted in the report, monitoring of the Ignition Interlock Program is conducted by two separate agencies of County government: STOP-DWI, which is a component of Central Police Services and monitors IID use by those offenders given Conditional Discharges, and the Probation Department, which monitors the use of offenders sentenced to probation. Given that they are separate departments and monitor two distinct classes of offender, separate responses will be provided by each through the body of this response.

We take the enforcement of NYS DWI laws very seriously and are committed to meeting NYS mandates in the supervision of DWI offenders. We look on this audit as a chance to review and strengthen our practices and to increase the safety of the citizens of Erie County.

Sincerely yours,

Mark C. Poloncarz
Erie County Executive

IID Installations

AUDITOR'S FINDING:

Auditors selected 201 court orders requiring installation of IID for offenders sentenced to probation or conditional discharge to determine of the Department and STOP-DWI adequately monitored the installations and notified the court of violations as required. In 141 cases, the individuals indicated that they did not own or operate a vehicle. However, 29 of the 60 remaining ordered IIDs were either not installed or installed after the required 10 business days. Seventeen of the 29 were installed an average 12 days late, while 12 were not installed at all even though court paperwork indicated a vehicle was owned or operated. The monitor reported 15 of the IID installation violations to the court, but not the other 14 (all installed late). Monitor's reports were timely in only two instances.

STOP-DWI response:

There were 60 IID installation cases selected for review during the audit. Thirty-one cases were installed in accordance with statutes. Of the remaining 29 cases, 27 fell under the purview of STOP-DWI. There were 10 cases for which no installation occurred, and 17 cases in which the IID was installed after the allowable 10 day period.

10 cases in which no installation occurred

Of the vehicles identified for installation at the time of sentencing; 4 were taken off the road by surrendering plates, 2 were damaged in the crash for which the DWI arrest was made and unrepairable - plates surrendered; 2 defendants, at sentencing, identified the vehicle they were driving at the time of arrest, the vehicles were not owned nor registered to the client, so even though the referral reads that the client had a vehicle on which to install, this was not the case; 2 clients simply didn't install and the court was notified.

All plate surrender transactions are verified with copies of receipts in client files.

17 Cases of Installation beyond the 10 days allowable

In 8 of the 17 cases the client installed within 14 days of sentencing, 4 days late. Case notes reveal contact with the client and appointments verified with installers to install the IID device. In this case the court was eventually notified that the client had violated the 10 day limit but had subsequently installed IID. No action was taken by the court in these instances.

Of the 9 remaining cases, 1 was managed with the advice of the court to allow time for financial reasons, 8 others eventually installed. Some of these clients install after the required ten days when our notification to the court results in a new court date.

Failure to Notify Court or DA

Notification to courts is processed in batches and sometimes this means the notification to the court falls outside the timely advice regulation of the statute. All courts are notified of defendants who don't install and it falls to the court to address the notice when it arrives.

The IID notification system attempts to protect court sensitivity to important communications. This includes notification of "Violations" that will be resolved before the violation notice is received by the court.

Probation Department response:

2 cases of installation beyond 10 days allowable

Case #1: The probationer was undecided as to whether or not he would keep his car, and did not act to have the IID installed while trying to make up his mind. The Probation Officer stayed on him and finally forced the issue, whereupon the probationer decided he would keep the car and installed the IID.

Case #2: During her initial report to her Probation Officer, the probationer stated that she planned to turn over the lease to her car. A week later, she reported to her PO that she was unable to do so and would therefore have to keep the car, and the IID was installed.

Failure to Notify Court or DA

Neither of these cases was reported to the court or the DA. At that time, department policy called for cases such as these to be conferenced between the POs and their Supervisors, who would then make a decision about how to proceed.

Unlike STOP-DWI, the Probation Department does not process court notifications in batches- individual POs are responsible for ensuring that pertinent communications are filed on a timely basis with the courts. However, like STOP-DWI, the Department is wary of overwhelming the courts and DA with violation notices, especially given that the violations are often resolved or accounted for by the time the court receives the communication.

Negative IID Activity

AUDITOR'S FINDING:

Auditors reviewed the reported negative IID activity from the vendor for all 60 cases with IID installation orders, which included 97 negative events in 23 cases, and found that the monitor did not notify the court or district attorney of any of the negative events.

STOP-DWI response:

We agree with the findings of the audit. The audit found that IID clients were monitored as required and also identified cases where reporting occurred outside of designated timeframes. A list of the cases selected for inspection was inspected and we have included information from STOP-DWI case management files to further inform the circumstances.

Reporting of Violations - 23 Cases

There were 23 clients for which a "negative event", a violation of some kind, was recorded and not reported to court as required by statute. In 13 of the 23 instances, the client attempted to start the vehicle with a Blood Alcohol Concentration (BAC) above the limit permitted by the device. In each instance, the vehicle did not start, the client was not permitted to drive, and the vehicle remained stopped until a sober breath sample was obtained from the client. All verified by camera.

Why weren't these violations reported? They weren't reported because experience has taught monitors that initially, clients are learning the sensitivity of the device, and that alcohol takes time to leave the

body. None of these 13 clients repeated the attempt and, at the time of the violation, were prohibited from driving, and drove only after waiting sufficient time to supply a sober, camera verified test.
In all 13 of these cases, the event occurred one time only, and in the first month of installation. CD clients are not prohibited from drinking. So clients that continue to drink learn that they must abstain or control and separate this activity from driving. In all 13 of these cases, it was the only BAC violation of their entire time on the device. In 5 other cases, the client had two instances of a BAC above the limit in a twelve month period. They had the same result: vehicle didn't start and they were prohibited from driving until sober and verified by camera.
In the five remaining cases; one event was a contaminant, mouth wash, easily identifiable by blow patterns and camera; another was a low battery signal which can sometimes be confused for tampering; two others were "missed tests" that happen when a client starts his car in the morning to warm it up, and is not back in the vehicle when a second running re-test is requested. In this instance the vehicle is shut off and a new blow test is required to start the vehicle. All is camera verified.

See Note 1 Page 12

The final case is the only one in dispute; our records for one client show no violations of any kind.
Why not just report all violations like the statute requires? The CD monitoring system was devised with the guidance and consent of our judge partners who, like us, want notification of dangerous behavior as soon as possible. Reporting early-on, one- time events, like those above, can clutter the attention of courts and desensitize them to important notices of dangerous behavior that need immediate court attention. We also limit notifications to manage resources. We have typically 1000 such instances per month, most of the nature described above. The postage bill alone would approach $500 per month and consume staff time better directed to other monitoring functions.

Probation Department Response:
We also agree with the findings of the audit. As stated previously, Probation Officers conferred on negative events and alerts with their supervisors, wherein a course of action would be determined. Available options included the PO investigating further; notifying the court and DA; or filing a Violation of Probation. In our experience the courts and DA do not welcome the indiscriminate sending of violation reports. As stated by STOP DWI, this would result in a high volume of paperwork for them to deal with.

Corrective Action Plan

Erie County STOP-DWI and Probation Department
Erie County Ignition Interlock Program Examination
Audit Report Number S9-15-5

AUDIT RECOMMENDATION:

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

IMPLEMENTATION PLAN OF ACTION:

STOP-DWI

Effective immediately the District Attorney's Office will receive notice of all violations of every kind, within the three day notification period. These violations will be deposited to an email account, at the District Attorney's office, created for this purpose.

Similarly, email notification of all violations of every kind will be sent to the ordering court within the timely advice limits of the statute. We are currently talking with our court partners, the capacity of which varies widely, to receive their guidance on how best to achieve this notification and in a form most useful to them. We expect to have a system in place by November 13, 2015.

Probation Department

Immediately upon the conclusion of the audit, the Probation Department began informing the courts and DA of all applicable negative IID activity via hard copy notifications. The Department will join our partners in STOP-DWI in the use of electronic notification of the DA, and of the courts once the email system is in place.

IMPLEMENTATION DATE:

The bulk of the action plan has already been implemented. Implementation will be complete by November 13, 2015.

PERSON RESPONSIBLE FOR IMPLEMENTATION:

STOP-DWI: John Sullivan
Probation Department: Brian McLaughlin

Signed:

Mark Poloncarz
Erie County Executive

October 15, 2015
Date

APPENDIX B

OSC COMMENT ON THE COUNTY'S RESPONSE

Note 1

According to County Stop DWI Department records reviewed during our audit fieldwork, this case had a missed service visit violation notification. The vendor's "Violation Report: Failure to Appear" document states: "This Report indicates that the subject vehicle has failed to appear for scheduled service and no data from its interlock can be obtained to indicate whether a violation or suspected tampering has occurred. Manufacturer recommends that you take immediate action, as the information may indicate that a lock-out device has been bypassed."

After we received the County's response letter, the Director of Stop DWI told us (on November 5, 2015) that the individual changed appointment dates, from November 25 to December 2, 2014, which triggered the missed service visit notification; and that, therefore, the missed service visit would not be reported. Nonetheless, an operator's non-compliance with a service visit requirement must be reported to the court and district attorney by the monitor.

APPENDIX C

CERTAIN DEFINITIONS AND MONITORING REQUIREMENTS [11]

Definitions

"Ignition Interlock Device" – any blood alcohol concentration equivalence measuring device which connects to a motor vehicle ignition system and prevents a motor vehicle from being started without first determining through a deep lung breath sample that the operator's equivalent blood alcohol level does not exceed the calibrated setting on the device as required by standards of the department of health.

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

Monitoring Requirements

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

- Any monitor shall receive notification pursuant to its county plan of all operators which it has responsibility to monitor within five business days of the sentencing court's order imposing the condition of an ignition interlock device and of an operator's release from imprisonment. Such monitor shall obtain proof of installation by the operator and installation/service provider.

- Every operator shall have installed and maintain a functioning ignition interlock device in any vehicle(s) he owns or operates within 10 business days of the condition being imposed by the court or if sentenced to imprisonment upon release from imprisonment, whichever is applicable; within three business days of installation, submit proof of installation to the court, county probation department, and any other designated monitor.

- Qualified manufacturers notify the monitor and county probation department when an ignition interlock device has been installed on an operator's vehicle(s) within three business days of installation. Where a monitor learns that the operator no longer owns or operates a motor vehicle in which an IID has been installed, the monitor may issue letter of de-installation directly to the installation/service

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

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

- Upon learning of the following events: (i) that the operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates; (ii) that the operator has not complied with service visits requirements; (iii) a report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof; (iv) a report of a failed start-up re-test; (v) a report of a missed start-up re-test; (vi) a report of a failed rolling re-test; (vii) a report of a missed rolling re-test; and/or (viii) a report of a lockout mode; the applicable monitor shall take appropriate action consistent with public safety. Where under probation supervision, the county probation department shall adhere to Part 352. With respect to any operator sentenced to conditional discharge, the monitor shall take action in accordance with the provisions of its county ignition interlock program plan. At a minimum, any monitor shall notify the appropriate court and district attorney, within three (3) business days, where an operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates, where the operator has not complied with a service visit requirement, any report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof, any report of a lock-out mode, and/or any report of a failed test or re-test where the BAC is 0.05 percent or higher. The monitor may recommend a modification to the operator's sentence or release whichever is applicable as otherwise authorized by law, including an extension to the IID period, a requirement that the operator attend alcohol and substance abuse treatment and/or drinking driver program, referral to the Department of Motor Vehicle to determine whether the department may suspend or revoke the operator's license, or recommend revocation of sentence or release. Where the operator is under the supervision by the Division of Parole, the monitor shall coordinate monitoring with the Division and promptly provide the parole agency with reports of any failed tasks or failed tests.

- Any monitor may disseminate relevant case records, including failed tasks or failed reports not otherwise sealed or specifically restricted in terms of access by state or federal law to, among others, appropriate law enforcement authorities. In all such instances, those to whom access has been granted shall not secondarily disclose such information without the express written permission of the monitor that authorized access.

- Every operator shall submit to service visits within thirty (30) calendar days of prior installation or service visits for the collection of data from the ignition interlock device and/or for inspection, maintenance, and recalibration purposes where the device does not automatically transmit data directly to the monitor; and submit to

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

Chapter 169 of the Laws of 2013

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

- Extending the period of interlock restriction to a minimum of 12 months (from 6 months) for individuals convicted of certain alcohol-related offenses.[13]

- Authorizes imposition of IIDs to be installed prior to sentencing as a preventive measure. The period of IID restriction will commence from the earlier of the sentencing date, or installation date in advance of sentencing.

- Establishing that a court can waive the installation of an IID only where the defendant asserts under oath that he/she is not the owner of any motor vehicle and that he/she will not operate any motor vehicle during the period of interlock restrictions, except as may be otherwise authorized pursuant to law.

- Ensuring that youth adjudicated as Youthful Offenders of DWI and/or other alcohol related offenses will be subject to Leandra's Law provisions, including the IID requirement.

- Expanding upon the Class E felony, Aggravated Unlicensed Operation 1st Degree to capture operators who were given the benefit of a conditional license after a DWI and/or alcohol-related offense and then drive impaired again.

- Clarifies that operators provide proof of installation compliance with the IID requirement to the court and the probation department or other monitor where such person is under probation or conditional discharge supervision.

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

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

APPENDIX D

AUDIT METHODOLOGY AND STANDARDS

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

To determine if the Department and Stop DWI are monitoring the IID Program for both conditional discharge and probation cases, we obtained the list of individuals who were sentenced to install an IID from each. To verify reliability, we compared these lists, which were pulled from the County Probation Department's computer system and Stop DWI quarterly reports,[14] to the New York State Office of Court Administration (Unified Court System) records showing required IIDs.

We first sampled 200 of 1271 cases reported by the County from 2014 through 2015[15] for conditional discharge and probation cases to focus on current impact to the public. We kept the lists separate for conditional discharge and probation cases and sorted each by oldest to newest sentencing date, selecting every sixth case for conditional discharge cases and every fifth case for probation. Two of the court cases selected for conditional discharge sentences were identified as probation cases during testing. Therefore, two more conditional discharge cases were selected for testing. The two cases identified as probation cases were added to the probation testing. However, one of the cases was already selected, making the total cases sampled for both probation and conditional discharge cases 201. We reviewed documentation in each individual file (hardcopy and electronic formats when available) to determine timing of installation of an IID and communications between the monitor and the courts/district attorney. Further, we met with County staff to understand the actions taken for negative activity related to a case.

For the same cases sampled that were identified by court documentation as not having a vehicle and where no IID was installed, we used software tools to determine if the individual had any vehicle registered.[16]

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

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

[15] The data provided for 2015 was cutoff for conditional discharge cases on March 19 and April 13 for probation cases.

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