



# OPCA

## Implementing the Child Passenger Protection Act or “Leandra’s Law” in New York State

**NYS Division of Criminal Justice Services**  
**Tuesday, August 24, 2010**  
**1:30 PM – 2:30 PM**

**Robert M. Maccarone**  
**Deputy Commissioner**  
**and Director**

1

## Implementing Leandra’s Law in New York State

- Authority: November 18, 2009 —Governor David Paterson signs Chapter 496 of the Laws of 2009 :
  - Effective December 18, 2009-
  - New Class E Felony Offense-Enhanced Penalties for Persons who Operate a Motor Vehicle while Intoxicated with a Child passenger under 16 years of age, with penalty of up to 4 years in state prison
  - Also 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 imprisonment, respectively.

2

## Implementing Leandra's Law in New York State

- Section 5 of Chapter 496 of the Child Passenger Protection Act or Leandra's Law
  - Effective August 15, 2010
  - Requires that persons convicted of having committed VTL Section 1192 Misdemeanor or Felony DWI Offenses, on or after the date of enactment, (November 18, 2009 ) and sentenced on or after August 15, 2010, be sentenced to a term of probation or conditional discharge, in addition to any sentence of imprisonment or payment of any fine imposed, and have an Ignition Interlock Device installed in any motor vehicle they "own or operate" . Ignition Interlock must be installed for a minimum period of 6 months.

3

## Implementing Leandra's Law in New York State

New York State joins 9 other states as "first offender states" implementing statewide mandatory use of Ignition Interlock Devices including Alaska, Arizona, Colorado, Hawaii, Louisiana, Nebraska, New Mexico, Utah and Washington.

Illinois and Arkansas have implemented non-mandatory programs

California has implemented a limited pilot program

Alcohol Ignition Interlocks are a proven tool to effectively reduce impaired driving, protect the public and support long-term risk reduction among drunk drivers according to a study by The Traffic Injury Research Foundation, February 2010

\*Offender Monitoring—essential program component for success

4

## Implementing Leandra's Law in New York State

- Which agency is statutorily authorized to lead? Chapter 496 of the Laws of 2009, Section 4 (g)
- § 4. Subdivision 1 of section 1193 of the vehicle and traffic law is
- amended by adding a new paragraph (g) to read as follows:
- (g) The division of probation and correctional alternatives shall
- promulgate regulations governing the monitoring of compliance by persons
- ordered to install and maintain ignition interlock devices to provide
- standards for monitoring by departments of probation, and options for
- monitoring of compliance by such persons, that counties may adopt as an
- alternative to monitoring by a department of probation.

5

## Implementing Leandra's Law in New York State

- Statutory provision and requirement to address “unaffordability”
- Chapter 496 Section 5
- (a) The cost of installing and maintaining the ignition interlock
- device shall be borne by the person subject to such condition unless the
- court determines such person is financially unable to afford such cost
- whereupon such cost may be imposed pursuant to a payment plan or waived.
- In the event of such waiver, the cost of the device shall be borne in
- accordance with regulations issued under paragraph (g) of subdivision
- one of section eleven hundred ninety-three of this article or pursuant
- to such other agreement as may be entered into for provision of the
- device.

6

## Implementing Leandra's Law in New York State

### Who are the stakeholders?

- Governor, Legislature, Judiciary
- Counties/Agencies—County Leaders/County Boards, Probation, STOP-DWI, DDP, TASC, etc.
- Prosecutors, Defense Counsel, Police, NYSP, Sheriffs,
- Statewide Associations—NYSAC, STOP-DWI Coordinators,
- NYS Drinking Driver Programs, Traffic Safety Programs
- State Agencies—Governor's Counsel, DOH, DMV, OGS, OSC, OAG, OASAS, DCJS, Parole, DOCS, DOB
- ITSMR-Institute for Traffic Safety Management and Research
- Ignition Interlock Device Manufacturers
- Motor Vehicle Operators and the Public

7

## Implementing Leandra's Law in New York State

- DPCA Promulgated Statewide Emergency Regulations
  - DPCA promulgated Statewide Emergency Regulations on April 23, 2010 as Part 358 of 9 NYCRR; and again on July 21, 2010
  - Formal Rulemaking (SAPA)—45 day comment through Sept 18th
  - DPCA involved all state and local stakeholders in the development and review of multiple drafts of the regulations.
  - Draft regulations shared with governors counsel, legislature, judiciary, state agencies (DMV, SCOC, DOCS, Parole, DCJS, OASAS) counties/probation departments, prosecutors, defense counsel, NYSAC, county executives and managers, stop-dwi and drinking driver programs, ignition interlock manufacturers, etc.

8

## Implementing Leandra's Law in New York State

- What are the 9 essential components of implementation?
  - Establish Workgroup (December 2009)
  - Promulgate Emergency Regulations (April 23, 2010)
  - Request for Applications by Manufacturers (May 12, 2010)
  - Contract Development and Execution—(July 15, 2010)
  - County Plans (Submission Deadline 6/15/10)
  - Promulgate Statewide Forms (June 3, 2010)
  - Statewide Training—NYPTI, Magistrates, Judicial Webinars, Law Enforcement (DCJS)
  - Statewide Public Education and Media Campaign
  - Strong Leadership & Commitment to the Goals of Legislation

9

## Implementing Leandra's Law in New York State

- Request for Manufacturer Applications
  - Manufacturers Roundtable Held March 8, 2010
  - Request for Applications –Proposals Returnable May 12, 2010
    - 7 manufacturers submit applications to be designated as “qualified” to do business on and after August 15, 2010—6 manufacturers contract
    - service availability —available to all DWI operators within 50 miles
    - Regulation compliance (DPCA Part 358 of and DOH Part 59)
    - intent to service 1-4 regions within NYS—regional approach attracts multiple vendors and new vendors, ensuring a quality product and service at a competitive price (affordability)
    - Set initial fee/charge structure ceiling —competition drives pricing
    - Qualified Manufacturers must provide Court ordered “payment plan” or IID’s to operators deemed unable to afford them —assume 10% statewide “unaffordability” rate (not indigency)

10

## Implementing Leandra's Law in New York State

### DPCA Regulations & Manufacturer IID specifications:

- IID set point of .025% BAC (NHTSA Standard is .020--.030)
- Start-Up Test: if failure--a Start-Up Retest within 5-15 minutes (continues)
- Start-Up Test: if successful--Initial Rolling Test within a random interval ranging from 5-15 mins. If Initial Rolling Test is successful, subsequent Rolling Tests at random intervals not to exceed 30 mins. If unsuccessful (failed or missed Rolling Test): Rolling Retest promptly within 1-3 minutes. Failed or missed Rolling Retest causes vehicle horn to sound & IID to emit sound prompting operator to pull over and shut off vehicle.
- IID lockout mode: one failed or missed "start-up retest", one failed or missed "rolling retest" within one service period, or one missed service visit. Operator must return to service center for data download and IID reset within 5 business days or the motor vehicle becomes inoperable (will not start)
- All events, including failed start-up tests, failed rolling tests are recorded and reported to monitors. Lockout mode: monitors must report to DA and Court.

11

## Implementing Leandra's Law in New York State

### DPCA regulations required counties (and NYC) to submit implementation plans by June 15, 2010

- Designate monitoring agency for CD cases (default is probation). Counties have designated 29 probation, 14 Stop-DWI, 7 DA, 5 Sheriff, 5 other
- Acknowledge agreement with statewide regulations: monitoring agencies for CD cases to determine Class of Instrument; probation to determine Class and features; and operators to select model and manufacturer of IID
- Procedure for equitable distribution of payment plan and "waived" IID units
- Procedure for distribution of any available funding to support monitoring
- Procedure for Court notification to monitoring agencies w/in 5 business days
- Procedure for advanced notification of operators released from incarceration
- Procedure for monitors to report failed tasks/tests/lockouts to DA and Courts

12

## Implementing Leandra's Law in New York State

### DPCA Regulations requirements for monitoring:

- Monitor shall receive court notification of order for IID within 5 business days
- Installation/service provider shall install within 7 business days of request—  
Operators required to have IID installed w/in 10 business days of Court Order
- Operator shall provide proof of installation within 3 business days to Court, County Probation Department and any designated monitor
- Operator shall submit to service visits within 30 calendar days. For detachable handheld units, submit to 30-day visits, followed by 60-day visits
- Monitor shall notify the appropriate court and district attorney, within 3 business days of following: 1) operator failure to install IDD, 2) operator has not complied with required service visit, 3) any report of alleged tampering or circumvention of IDD, or 4) any report of lockout mode, and/or any report of a failed test or retest where BAC is .05% or higher

13

## Implementing Leandra's Law in New York State

- Metrics--DWI Convictions in New York State
- 2008 Data
  - 65,000 arrests for DWI
  - 25,000 convictions (felony and misdemeanor)
  - 20,000 result in violations (DWAI)
  - 25,000 convictions (felony and misdemeanor)
    - 9,000 (40%) sentenced to probation
    - 16,000 (60%) other dispositions including prison (300-400), jail and large majority pay fine
      - 50-70% of first-time offenders do not return
      - 30% are second and repeat offenders.

14

## Implementing Leandra's Law in New York State

- 25,000 convictions
  - Nationally, fewer than 10% (7-8%) of operators required to have ignition interlock devices installed on their vehicles ever violate.
  - Ignition Interlock Technology is invasive, sensitive and effective—it works and so.... let the technology work!
  - Important to distinguish probation and non-probation (CD) cases and to manage them differently (do not “widen the net”)
  - Impact Example: Orange County—829 DWI Convictions in 2008
    - 211 (24%) sentenced to probation/102 felonies & 109 misdemeanors—fewer than 21 offenders will violate
    - 618 (66%) jail, prison or fine—majority paid fine will be granted conditional discharge and monitored—fewer than 61 offenders will violate

15

DWI in NYS 2008						
County	DWI Convictions 2008			DWI Sentenced to Probation 2008		
	Felony	Misdemeanor	Total DWI Convictions	Felony	Misdemeanor	Total DWI Sentenced
Albany	105	468	573	71	58	129
Allegany	10	74	84	17	25	42
Bronx	64	829	893	46	100	146
Broome	71	384	455	53	37	90
Cattaraugus	62	193	255	42	17	59
Cayuga	12	88	100	10	44	54
Chautauque	65	262	327	53	147	200
Chemung	63	198	262	62	44	106
Chenango	24	55	79	16	12	28
Clinton	54	142	196	35	34	69
Columbia	34	80	114	21	13	34
Cortland	21	70	91	17	34	51
Delaware	23	74	97	21	6	27
Dutchess	76	569	645	71	158	229
Erie	341	1,038	1,379	264	214	478
Essex	31	78	109	23	23	46
Franklin	12	83	95	18	41	59
Fulton	30	86	116	8	12	20
Genesee	62	170	232	34	30	64
Greene	27	58	85	17	23	40
Hamilton	2	10	12	1	1	2
Herkimer	34	88	122	27	17	44
Jefferson	42	178	220	24	33	57
Kings	101	974	1,075	71	95	166
Lewis	14	20	34	12	4	16
Livingston	47	153	200	41	30	71
Madison	25	108	133	12	22	34
Monroe	264	1,332	1,596	183	415	598
Montgomery	33	68	101	26	3	29
Nassau	272	1,948	2,220	154	960	1,114
New York	70	566	636	35	68	103
Niagara	48	342	391	53	98	151
Oneida	89	293	382	55	63	118
Onondaga	109	452	561	59	132	191
Ontario	74	317	391	41	31	72
Orange	162	667	829	102	108	210
Orleans	12	63	75	5	30	35
Oswego	39	160	199	21	67	88
Otsego	17	90	107	12	6	18

DWI in NYS 2008						
County	DWI Convictions 2008			DWI Sentenced to Probation 2008		
	Felony	Misdemeanor	Total DWI Convictions	Felony	Misdemeanor	Total DWI Sentenced
Putnam	30	131	161	23	67	90
Queens	110	1,298	1,408	156	216	372
Rensselaer	34	117	151	28	46	74
Richmond	12	362	374	21	47	68
Rockland	78	249	327	51	31	82
St. Lawrence	30	162	192	34	29	63
Saratoga	99	306	405	72	64	136
Schenectady	30	176	206	22	27	49
Schoharie	16	38	54	13	10	23
Schuyler	25	29	54	18	14	32
Seneca	33	90	123	23	21	44
Stauben	65	190	255	61	26	87
Suffolk	595	2,746	3,341	254	1,731	1,985
Sullivan	51	155	206	32	39	71
Tioga	26	85	110	14	6	20
Tompkins	33	149	182	25	50	75
Ulster	78	320	398	43	54	97
Warren	47	177	224	31	24	55
Washington	23	76	99	12	27	39
Wayne	73	197	270	70	30	100
Westchester	162	1,080	1,242	91	277	368
Wyoming	17	85	102	20	32	52
Yates	14	39	53	14	8	22
Statewide	4,326	21,091	25,417	2,961	6,130	9,091

Source: NYS DPCA IPRS as of 3/15/2009 and CCH as of 1/20/10  
 Provided by: NYS DCJS QJRP 3/2/2010

16



## Implementing Leandra's Law in New York State

- Issues for Counties—Costs of Monitoring and Supervision
  - DPCA has submitted a statewide grant application in an amount up to \$3 million to the Governor's Traffic Safety Committee (GTSC)—Start Date 10/1/10 (federal fiscal year)
  - If awarded, funds will be distributed to counties and the City of New York based on their percentage of 2008 DWI convictions
  - Grant term: October 1, 2010-Sept. 30, 2011
  - Federal Funds regarded as seed money and not sustaining
  - OPCA and DMV working with NHTSA to secure continued funding.

17

## Implementing Leandra's Law in New York State

- Multiple Manufacturers to serve 25,000 offenders
  - NYS divided into four (4) regions (consistent with COPA) to ensure that the service is available to all localities (avoid “cherry-picking”); regulations require installation sites within 50 miles
  - Manufacturers may request to be qualified by DPCA to do business in 1,2, 3 or all 4 regions, provided they meet DPCA, DOH regulations and the 50-mile service requirement
  - Open competitive and continuous solicitation will spur statewide competition ensuring quality product and service at a fair price
  - NYS Manufacturer Application Process—Open and Continuous
  - Monitoring agencies determine the class of ignition interlock device for CD's and probation will determine class and features for probationers. Operator shop model and manufacturer

18

## Implementing Leandra's Law in New York State

- **Regions of New York State for IID Service Operation.** New York State has been divided into four regions for the provision of ignition interlock services. A qualified manufacturer designated to conduct business in a given region must provide interlock services to every county in the region. Counties included in each of the four regions are as follows:

**Region 1:** Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates;

**Region 2:** Broome, Chenango, Clinton, Cortland, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, and Tompkins;

**Region 3:** Albany, Columbia, Delaware, Dutchess, Greene, Montgomery, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, and Washington; and

**Region 4:** Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester.

19

## Implementing Leandra's Law in New York State

- The New York State Division of Probation and Correctional Alternatives classifies all certified ignition interlock devices into categories based upon features of the devices. This classification system and subsequent device classification is subject to change by the Division as new information becomes available. The Division will classify ignition interlock devices utilizing the following system:
- **CLASS I:** This CLASS contains the following features:
  - Meets all New York State Department of Health and National Highway Traffic Safety Administration Regulations and Standards, Utilizes fuel cell technology,
- Reporting capabilities, Capabilities for storage of data, Programmable Re-Test Sequences, Data download, inspection and re-calibration service, and
- Anti-tampering and anti-circumvention features.

20

## Implementing Leandra's Law in New York State

- **CLASS II:** This CLASS has all the features of CLASS I and contains the following additional features:
- Photographic positive identification capability (camera or biometric facial recognition).
- **CLASS III:** This CLASS has all the features of CLASSES I and II and contains one or more of the following additional features:
- GPS location of vehicle capability, Real time data reporting, Infra-red or other low-light camera capability for night use, Hum Tone Detection, Infra-red sensor that detects heat and proximity to verify human breath, Keys enabling service codes to be entered, Early recall system if a fuel cell fails-uses split cell technology, Restricted drive time capabilities, Unlock code to minimize towing due to lockouts, Voice instruction, Probation/Judicial Internet Access for Real-Time Monitoring 24/7, 911 Emergency Response, target tracking, subject must be in photo to take test.

21

New York State  
Office of Probation and Correctional Alternatives

### IGNITION INTERLOCK DEVICE AVAILABILITY AS OF AUGUST 15, 2010

Manufacturer	Device Model	Class	Install Fee (other fees apply)	Monthly Fee (other fees apply)	GPS location	Real- Time Data Report	Infra- red/low light camera	Infra- red sensor	Keyabi- le Service Codes	Voice Instruc- tion	Intern- et Real- Time Moni- toring	Target Track- ing	Hum Tone Detect- ion	Class III Features					
														Fuel Cell Fail Recall	Restrict- ed Drive Time	Unlock Code	911 Emergency Response		
Consumer Safety Technology, Inc. Intoxalock	1001A	I	\$80.00	\$69.50															
Consumer Safety Technology, Inc. Intoxalock	1001A w/Advanced Wireless Technology	III	\$110.00	\$87.50	X	X	X						X	X	X	X	X	X	X
1A Smart Start, Inc.	SSI-1000	I	\$0.00	\$74.95															
1A Smart Start, Inc.	2020	III	\$0.00	\$74.95			X										X	X	
Interceptor Ignition Interlocks, Inc.	M-1	III	\$125.00	\$90.00	X	X	X			X	X								X
National Interlock Service (NY), Ltd.	FC 100 (no camera)	I	\$70.00	\$75.00															
National Interlock Service (NY), Ltd.	FC 100 (w/camera)	III	\$95.00	\$92.00			X						X						
Draeger Safety Diagnostics, Inc.	XT (Aug. 15, 2010)	III	\$85.00	\$80.00			X												
Alcohol Countermeasure Systems Corp.	WR2	I																	
Alcohol Countermeasure Systems Corp.	WR3	I																	
Tempo-O Lock of America, LLC	FR8000	I	\$100.00	\$85.00															

22

## Implementing Leandra's Law in New York State

### Matching operator with Class of Ignition Interlock Device

- Distinguish first time convicted offender from repeat offender--conditional discharges from probation cases
- 25,000 convictions>>>>9,000 probation cases
- Utilizing all classes of instruments will lower cost to operator, increase affordability and decrease need for payment plans and consideration of waived costs
- Consider monitoring costs associated with real time reporting and resources required for real time response, including forwarding to 911 response

23

## Implementing Leandra's Law in New York State

- “Unaffordability” v. Indigency
  - OPCA strives to provide best information to Judges and develops statewide Financial Disclosure Report available at [www.dpca.state.ny.us](http://www.dpca.state.ny.us) (Spanish Version Available in September)
  - Applicant required to complete and submit three copies to court
  - FDR Form captures offender's income, assets and expenses, including monthly service for cell phone, cable/satellite television
  - Affordability>>> Payment Plan>>> Waiver Considerations
  - Manufacturers required to comply with Court authorized payment plan or waiver
  - Manufacturers agreements with NYS-OPCA assume a maximum of 10% statewide rate of “unaffordability” before renegotiation is considered—discuss experiences in other states

24

## Implementing Leandra's Law in New York State

- Issues for Counties—Payment Plans and Judicial Waivers “unaffordability”
  - Cost will be borne by drunk drivers and **not** taxpayers and localities
  - Statute provides for “payment plans” judicially “waived” fees and costs for IID’s for operators determined by sentencing courts unable to afford the cost. This is **not** “legal indigency”. Monthly lease fee equates to “gallon of gasoline a day”.....
  - OPCA will regularly monitor “unaffordability” determinations, number and percent of waiver units ordered and provide opportunity for manufacturers to adjust pricing
  - Use of statewide FDR is an important training issue

25

## Implementing Leandra's Law in New York State

DPCA500-IID-FDR\_Financial Disclosure Report (dpc.state.ny.us)  
 DPCA-10PRO-IID\_Order and Conditions of Adult Probation  
 DPCA- DPCA-DMV680\_Notice of Change in Order/Conditions of Probation  
 DPCA-10CD-IID\_Order and Conditions of Conditional Discharge  
 DPCA-510-IIN\_Notification of Ignition Interlock Order  
 DPCA-530OAI-IID\_Owner Authorization to Install IID  
 DPCA-520VAL-IID\_Vehicle Access and Operation by Owners  
 DPCA-535EA-IID\_Ignition Interlock Acknowledgment from Employer  
 DPCA-10OBV-IID\_Special Conditions-Offender Owned Business Vehicle  
 DPCA-133CR-IID\_Notification to Court and District Attorney  
 DPCA-550DA-IID\_Authorization to De-Install-DMV

26

## Implementing Leandra's Law in New York State

### Next Steps

- Promulgate application for new manufacturers to reflect open and continuous solicitation
- Promulgate application for existing “qualified” manufacturers to introduce new certified IID’s and/or new features for use with currently certified IID’s
- Establish Workgroup to determine content and format of manufacturer and probation/monitoring agency reports to state agencies for monitoring and evaluation; and statewide uniform manufacturer reports for use with counties
- Monitor implementation of Leandra’s Law and re-assess statewide regulations (9 NYCRR Part 358).

27

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Thank You for Your Attention.  
Questions

28