

OPCA



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

Onondaga Bar Association
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DWI HISTORY IN NEW YORK

- STOP-DWI or Special Traffic Options Program– Driving While Intoxicated” Program established in NY in 1981 by the State Legislature
- Program is a financially self-sustaining impaired driving program
- Program components in law enforcement, prosecution, probation, rehabilitation, education and public information.

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KEY LEGISLATION

- 1982 – Legal drinking age raised to 19
- 1986 – Legal drinking age raised to 21
- 1988 – Repeat offender administrative license revocation law implemented
- 1990 – NY State Police begin first toll-free drunk driver reporting hotline in the US
- 1994 – Administrative license revocation law expanded to include all alcohol offenders' driving privileges suspended pending prosecution

KEY LEGISLATION

- 1996 – Zero-Tolerance law for underage youth (0.02 BAC) enacted
- 2003 – 0.08 BAC law enacted
- 2006 – Aggravated DWI law passed for BAC's at or above 0.18 BAC and repeat offenders – penalties strengthened to include ignition interlock

KEY LEGISLATION

- 2007 – Legislation enacted creating the crimes of aggravated vehicular assault and aggravated vehicular homicide
- November 18, 2009 – LEANDRA’S LAW
 - Felony for any DWI conviction with a child 16 or under in the vehicle (December 18, 2009)
 - Mandatory ignition interlock for a minimum of 6 months for all misdemeanor and felony DWI convictions (August 15, 2010)

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- Metrics--DWI Convictions in New York State
- 2008 Data
 - 65,000 arrests for DWI (consistent over years)
 - 25,000 convictions (felony and misdemeanor)
 - 20,000 violations (DWAI)

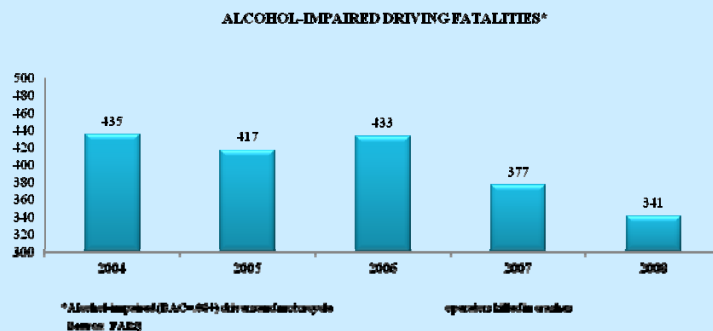
 - 25,000 convictions (felony and misdemeanor)
 - 9,000 (40%) sentenced to probation
 - 16,000 (60%) other dispositions including prison, jail and large majority pay fine

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- Binge Drinking—Nearly one in four high school students and one in seven adults binge-drink according to the CDC Director Thomas Freidman
- 428,000 people who responded to two surveys used to compile the data said they had an average of eight (8) drinks during a binge drinking session
- CDC found that 15% of adults or 33 million Americans binge-drink—a constant rate for 15 yrs
- Binge Drinking is defined as a male drinking 7 drinks/female drinking 5 drinks continuously to intoxication of BAC .08

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Fatalities Leveled Off



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- Governor David A. Paterson signs Chapter 496 of the Laws of 2009 :
 - Effective December 18, 2009-New section VTL §1192-2a(b)
 - 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.

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- Effective August 15, 2010-VTL§1198 amends VTL § 1192(2), (2a), or (3)
 - 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” . Law requires that the IID be installed for a **minimum of six months.**

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- VTL §1198 (9)(a)—Class A Misdemeanor—no person whose driving privilege is restricted to operate a motor vehicle only with an IID, pursuant to the VTL or PL, shall not request, solicit, or allow any other person to blow into an IID
- VTL §1198(9)(b)—Class A Misdemeanor—no person shall blow into an IID or start a motor vehicle equipped with an IID for the purpose of providing an operable motor vehicle to a person whose driving privilege is so restricted
- VTL §1198 (9)(c)—Class A Misdemeanor—No person shall tamper with or circumvent an otherwise operable IID
- VTL §1198 (9)(d)—Class A Misdemeanor—No person subject to a court ordered IID shall operate a motor vehicle without such a device

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- New York State joins 9 other states as “first offender states” requiring mandatory use of Ignition Interlock Devices
- Alcohol Ignition Interlocks are a proven tool to effectively reduce impaired driving, protect the public and support long-term risk reduction among drunk drivers—93% compliance
Numerous Studies including those by The Traffic Injury Research Foundation, February 2010
- Research indicates that offender behavior reverts when the IID is removed—longer periods of time for IID
- Encourage Court ordered conditions for use of ignition interlock devices for longer periods of time
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- Statute requires OPCA to promulgate regulations and address “unaffordability” (270-day timeframe)

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.

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- Establish statewide workgroup
- Plan and conduct manufacturer roundtable
- Promulgate statewide regulations –9 NYCRR Part 358
- Request for Applications—open and continuous
- *Require county planning process/define stakeholders
- Develop statewide uniform templates/forms
- Implement statewide training of judiciary, prosecutors and law enforcement
- Establish media campaign and press conference
- Develop statewide monitoring reports

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Who are the statewide stakeholders? Working Group?

- Governor, Legislature, Judiciary
- Counties/Agencies—Probation, STOP-DWI, DDP, TASC, etc.
- Prosecutors and Defense Counsel
- Law Enforcement-NYSP, Sheriffs, Police
- 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

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County Planning Process--regulations require counties to submit implementation plans by June 15, 2010

- Define required local/county stakeholders in county plan application
- Designate monitoring agency for CD cases (default is probation)
- 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 "waived" IID units
- Procedure for distribution of any available funding to support monitoring
- Court notification to monitoring agencies within 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

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- Request for Manufacturer Applications
 - Compliance with DPCA and Department of Health Regulations (DPCA regulations include IID Specifications)
 - Service 1-4 regions within NYS (consistent with COPA regions)
 - regional approach attracts multiple vendors and new vendors, ensuring a quality product and service at a competitive price (affordability)
 - Classify ignition interlock devices into 3 categories
 - Establish initial fee structure ceiling —competition drives pricing
 - Enter into multi-year (3-year) agreements with manufacturers
 - Obligate manufacturers to provide Court ordered “payment plans” or IID’s to operators deemed unable to afford them —assume 10% statewide “unaffordability” rate (not legal indigency)

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- Multiple Manufacturers to serve 25,000 offenders
 - Importantly, State Regulations provide that Operators will shop manufacturer (model) but probation and monitoring agencies will determine the class of ignition interlock device and probation will determine class and features

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IID classified into three (3) distinct classes:

- 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.

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- 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.

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DPCA Regulations require manufacturer IID specifications:

- IID set point of .025% BAC
- 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 variable interval ranging from 5-15 mins. If Rolling Test 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 high pitch shrill 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

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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

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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

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- “Unaffordability” v. Indigency
 - OPCA develops statewide Financial Disclosure Report available at www.dpca.state.ny.us (English and Spanish Versions)
 - Operator /Applicant required to complete/submit 3 copies to court
 - FDR Form captures offender's income, assets and expenses, including monthly service for cell phone, cable/satellite television
 - **Progression of Cost Considerations: Affordability>>>> Payment Plan>>>> Waiver Considerations**
 - Manufacturers agreements with NYS-OPCA assume a maximum of 10% statewide rate of “unaffordability” before renegotiation is considered—discuss experiences in other states

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- **Monitoring and Offender Accountability –Touchstone of Effective Ignition Interlock Programs --Harm Reduction**
 - Impact on Localities for Monitoring and Supervision
 - OPCA applies to NYS Governor's Traffic Safety Committee (GTSC) and receives \$3 million in NHTSA funds
 - Start Date 10/1/10
 - NHTSA funds to be distributed to localities based on number of convictions where IID is ordered and installed
 - Grant term: 1, 2010-Sept. 30, 2011
 - Federal Funds regarded as seed money and not sustaining

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- **Thank you. Questions and Answers?**
- **Contact Information:**
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