



2018 Annual Conference

Niagara Falls, New York

Ignition Interlock Device Violations:
What Must be Reported and How to Respond

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Presented by:

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1.0 MCLE Law Practice Management

This program has been approved for credit in New York State
for all attorneys including those who are
Newly Admitted (less than 24 months) and administered by
the Onondaga County Bar Association.

Thomas J. Carr is the Judicial Outreach Liaison in the Office of Justice Court Support at OCA. Having graduated from college and Law School at the National University of Ireland, Galway, Tom started his career in the Brooklyn District Attorney's Office in 1997, and subsequently worked in the Delaware County District Attorney's office as the DWI Prosecutor and Rensselaer County District Attorney's office. After a term at the New York State Assembly as Associate Counsel and later Deputy Legislative Director, Tom worked as a Partner and Director of Legal Services for a large multi-state law firm, concentrating his practice in criminal defense including traffic and DWI matters. Most recently, Tom served as Town Justice for the Town of Berlin, Rensselaer County.

Present: Hon. _____

The People of the State of New York
vs.

Orders and Conditions of Probation or Conditional Discharge Related to Ignition Interlock Device (IID)

AKA(s): _____

Docket / Indictment / SCI Number: _____

Address: _____

CJTN: _____

Phone: _____

NYSID: _____

Sex: Male Female

DOB: _____

YO: Yes No

Defendant having been convicted of Vehicle and Traffic Law § _____ OR adjudicated a Youthful Offender and sentenced to:

- A Conditional Discharge for a period of: one year [misdemeanor] OR three years [felony]
- Probation for a period of: [misdemeanor] two three year(s) or _____ term to expire on: _____
[felony] three four five year(s) or _____ term to expire on: _____
- A period of incarceration of _____ days months years and a sentence of probation or conditional discharge, as ordered above, which shall be served consecutively to the period of incarceration.

Upon review of the Financial Disclosure Report, the Court has determined, and it is hereby **ORDERED** that:

- The defendant is able to afford the fees/charges associated with the installation and maintenance of an Ignition Interlock Device(s) (IID), and shall enter into a written agreement with the selected IID Vendor for **FULL PAYMENT**.
- The defendant shall make **PARTIAL PAYMENT** of all fees associated with the installation, maintenance and any other subsequent fees of the approved ignition interlock device(s) and shall enter into a written agreement with the selected IID Vendor and such written agreement shall be provided to the IID monitoring authority as follows:

Installation fees:	<input type="radio"/> 25% or <input type="radio"/> 50% or <input type="radio"/> 75% or <input type="radio"/> _____ % of total amount; or Set amount of \$ _____ in monthly installments of \$ _____ until paid in full; or Set amount of \$ _____ to be paid in full by _____ Other: _____
Monthly fees:	<input type="radio"/> 25% or <input type="radio"/> 50% or <input type="radio"/> 75% or <input type="radio"/> _____ % of total amount; or Set amount of \$ _____ in monthly installments of \$ _____ until paid in full; or Set amount of \$ _____ to be paid in full by _____ Other: _____
Subsequent fees:	<input type="radio"/> 25% or <input type="radio"/> 50% or <input type="radio"/> 75% or <input type="radio"/> _____ % of total amount; or Set amount of \$ _____ in monthly installments of \$ _____ until paid in full; or Set amount of \$ _____ to be paid in full by _____ Other: _____

- The defendant is NOT able to afford the fees/charges associated with the installation and maintenance of an IID, and all such fees/charges are **WAIVED**.

The Ignition Interlock Device(s) shall be installed for a minimum of twelve months or _____ months years.

- The IID restriction may be terminated prior to the end of the twelve-month period, if the defendant submits proof to the IID monitoring authority and that is acceptable to the Court that an IID has been installed and successfully maintained in the vehicle(s) listed below for at least six months from (i) the date of sentence; or (ii) a date in advance of sentencing where an IID was installed at the direction of the Court and monitored in accordance with the County Ignition Interlock Program Plan; whichever is earlier.

The Class of Ignition Interlock Device(s) to be installed shall be determined in accordance with the **County Ignition Interlock Program Plan**.

During this period of supervision, the defendant is further **ORDERED** to comply with all conditions of Probation or Conditional Discharge, as well as the following conditions and any others the Court may impose at a later date and to follow the instructions of the IID monitoring authority as to how these conditions are to be carried out;

1. The defendant shall install and maintain an IID in any motor vehicle owned, operated, leased or rented by the defendant for the period listed above. Failure to install and maintain such device(s) will subject the defendant to incarceration for violation of the Court's Order. Further, if the defendant operates a motor vehicle without the Court-ordered IID, he/she may be arrested and charged with a new crime pursuant to VTL § 1198, a Class A misdemeanor.
2. Report as directed by the Court to the IID monitoring authority.
3. Answer all reasonable inquiries by the IID monitoring authority.
4. Notify the IID monitoring authority prior to any change in address vehicle ownership or access for operation.
5. **An Ignition Interlock device shall be installed in the below-described vehicle(s) within 10 business days of the conditional discharge, or sentence of probation, or release from incarceration.** 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.

6. Where applicable, pursuant to NYS Vehicle and Traffic Law § 1193(1-a), the device(s) shall be installed during the period of license revocation and its termination, and for each additional period as the Court may determine.
7. The defendant shall provide proof of installation of each device to the IID monitoring authority within three (3) business days of installation.
8. The defendant shall immediately notify the IID monitoring authority if any changes occur in vehicle-related information or if he/she purchases, leases or rents any new or additional vehicles.
9. The defendant shall be responsible for the entire cost of the installation and maintenance of approved ignition interlock device(s), unless associated fees and charges are waived by the Court.
10. The defendant shall deliver the vehicle(s) identified below to the installer/service provider for ignition interlock device inspection and calibration checks as required by the installer/service provider or as directed by the Court or the IID monitoring authority in a manner consistent with DCJS Rules and Regulations (9NYCRR Part 358).
11. 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.
12. The defendant shall notify the Court and the IID monitoring authority of his/her intention to operate an 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 and the IID monitoring authority indicating that the employer is aware that the driving privilege of the defendant has been restricted, and permits operation of the business vehicle within the scope of employment without the ignition interlock device. If the business entity is fully or partly owned by the defendant or the defendant has a controlling interest in that business entity, the business vehicles are not exempt from IID installation.
13. The defendant shall comply with all IID service visit requirements and shall not tamper with or circumvent the IID or attempt to do so. Such a violation is a Class A Misdemeanor under Section 1198 of the New York State Vehicle and Traffic Law.

14. OTHER CONDITIONS (only applicable if checked):

- The defendant shall not attempt to start or operate a motor vehicle, resulting in a failed start-up or re-test, when the defendant's blood alcohol concentration (BAC) is (check one only):
 - .05% or higher, or .06% or higher, or .08% or higher, or _____ % or higher.
- If treatment has been recommended by the OASAS certified/approved Alcohol and Substance Abuse Treatment Provider that conducted your evaluation for alcohol abuse and dependency, you must attend treatment appointments and cooperate with your treatment plan until successfully completed. A report of satisfactory attendance and cooperation must be received by the Court on or before _____. You are responsible for the cost of the treatment and for ensuring that the Court receives all required reports.
- Attend a Victim Impact Panel on _____.
- Enroll in and complete the Drinking Driver Program, if eligible.
- OTHER (specify): _____

<input type="checkbox"/> NO vehicle	Vehicle #1	Vehicle #2	Vehicle #3	Vehicle #4
Owner				
Make				
Model				
Year				
Color				
VIN #				
Plate #				
Insurance Co				

- Vehicle registration #(s) _____ attached to form in lieu of above vehicle information.
- Defendant has affirmed under oath that he/she does not own a motor vehicle, as defined by VTL § 128, and will not operate any motor vehicle during the IID restriction period.

Dated: _____

Judge/Justice

DEFENDANT ACKNOWLEDGEMENT: I have read or have had read to me and am in receipt of a copy of the above **Orders and Conditions of Probation or Conditional Discharge Related to Ignition Interlock Device (IID)**. I understand the conditions and agree to comply with them. I understand that the Court may modify or enlarge the conditions at any time prior to the expiration or termination of the period of probation/conditional discharge, and if I violate a condition or commit an additional offense other than a traffic infraction, the Court may revoke the sentence.

Dated: _____

Defendant

Ignition Interlock Installation Information for Defendants (provided by court)

You are required to install an Ignition Interlock Device on all vehicles you own and operate within **10 business days** of the date it was mandated. You must further provide written notice of installation to the monitoring agency of the installation within **3 business days** of the installation.

In regards to this procedure there are some things you need to understand:

- A business day is defined as any Monday through Friday that is not a federal holiday.

- Failure to notify the monitoring agency in writing within the time noted above may lead to a violation of the terms of your Conditional Discharge or Probation which may result in the court issuing a warrant for your arrest and you being subjected to a term of incarceration as allowed by law.

In order to determine what class of device you must install and where you can have it installed you must immediately contact the monitoring agency. They will assist you in identifying local installation sites that are able to install the proper device. You are responsible for contacting the installation site and making arrangements to have the device installed. Unless the court specifically waives the cost you are responsible for all fees and cost for the installation, operation, maintenance, and removal of ignition interlock device(s).

At the time of installation, the installation site will provide operational training to all individuals who need to operate the vehicle after the installation of the device. This training will be done at the time of installation and you must ensure that all the individuals who are going to operate the vehicle are present at the time of installation.

In _____ County the _____ has been determined to be the monitoring agency. It is recommended that you contact them **immediately** as you have only 10 business days to get the device installed. Here is their contact information:

Prior to the installation of the Ignition Interlock Device you will need to provide the installation / service provider **AND** the monitoring agency the following:

- Your photo identification or license for examination purposes;
- The name and policy number of your motor vehicle insurance (bring your insurance card);
- The vehicle identification number (VIN) of all motor vehicles you own or will operate;
- A statement disclosing the names of all other individuals who operate the motor vehicle(s) that the Ignition Interlock Device(s) are going to be installed on;
- A notarized affidavit from the registered owner of the vehicle granting permission to install the device(s) if the vehicle is not registered to you;

Upon the installation of the Ignition Interlock device the {insert monitoring agency} will be monitoring your vehicle(s). They will provide you with instructions as to how and when to communicate with them during the period of time that the device(s) are installed.

The devices must be installed for a minimum of 12 months and may not be removed without authorization from the court or the monitoring agency which in _____ County is the {insert monitoring agency} . The Court will not automatically contact the NYS Department of Motor Vehicle, it is your responsibility to petition this Court.

Failure to comply with all instructions may lead to a violation of the terms of your Conditional Discharge or Probation. This may lead to the court issuing a warrant for your arrest and you being subjected to a term of incarceration as may be allowed by law. These instructions include but are not limited to the following instructions:

- The courts instructions as shown in your terms and conditions of your Conditional Discharge or Probation,
- The instructions provided to you by the monitoring agency,
- The installation site which will provide you operational and maintenance instructions from the device manufacturer,
- The device manufacturer which may provide you with written and/or Internet based operational and maintenance instructions.

As these time limits are somewhat short if you have any questions or trouble with this process it is highly recommended that you immediately contact your attorney or lawyer for advice as to how to proceed.

MONITOR NOTIFICATION OF IGNITION INTERLOCK ORDER

(Please forward to applicable probation department and/or monitoring authority within 5 business days of sentence)
(Strike that in bold which is inapplicable, and complete information in shaded areas.)

_____ Court of the State Of New York
Part _____ County _____

Index/Docket No./Year

CJTN

TO: _____ **(County Probation Department)(designated monitoring authority)**

Defendant, _____, DOB: _____ NYSDL#: _____
residing at _____ Cellular #: _____
having been convicted of Driving While Intoxicated – related crime(s) as a **(Misdemeanor) (Felony)** has this day been ORDERED sentenced to:

(Initial as applicable)	
{	A Conditional Discharge for a period of (one) (three) years to expire on _____ . Within 10 business days of the commencement of sentence, Ignition Interlocks are to be installed in each motor vehicle owned or operated by the defendant for a period of _____ months.
	Probation for a period of (three) (five) years to expire on _____ . Within 10 business days of the commencement of sentence, Ignition Interlocks are to be installed in each motor vehicle owned or operated by the defendant for a period of _____ months.
{	A period of incarceration of _____ (days) (months) (years) in the custody of the (NYS Department of Corrections and Community Supervision) (local jail authority) and the probation or conditional discharge, as ordered above, which shall be served consecutively to the period of incarceration.

The court has determined, and it is, therefore, **ORDERED** that:

{ The defendant **is able** to afford the immediate fees/charges associated with the installation and maintenance of an Ignition Interlock Device(s), and shall enter into a written agreement to that effect with the selected Ignition Interlock Device Vendor.

Upon review of the defendant's Financial Disclosure Report or other financial documentation filed with the court, the court has determined, and it is, therefore, **ORDERED** that:

{ The defendant enter into a **specific payment plan** with the Ignition Interlock Device vendor, and such written plan/agreement shall be provided to the above-referenced monitoring entity;
Installation fees: 25% 50% 75% _____%
Monthly fees: 25% 50% 75% _____%
Subsequent fees: 25% 50% 75% _____% **OR**

{ The defendant **is NOT able** to afford the full or partial fees/charges associated with the installation and maintenance of an Ignition Interlock Device. All such fees/charges are hereby waived.

The defendant has been advised to submit proof of all Ignition Interlock installations within three (3) business days of installation to this court, as well as the above-referenced probation department and monitoring authority (where not probation).

Dated _____ Judge/Clerk _____

Direction to Monitoring Agency:

If the subject of this notification has been sentenced to a term of imprisonment, and if this procedure is consistent with the County Ignition Interlock Device Plan, the monitoring agency should register with VINE (Victim Information and Notification Everyday) so as to obtain notification when the offender will be released from either the local jail or the state facility.

Register with VINE with the following procedure:

1. Go to www.vinelink.com
2. Click on the picture of New York on the national map
3. Click the "Search and Register for Offenders" button
4. Enter the offender's NYSID # or name and DOB in the space indicated
5. Click on the offender you wish to register against
6. Click on the e-mail notification button and then enter your e-mail address

You will receive a confirmation notice on the screen that your registration was successful.

THE PEOPLE OF THE STATE OF NEW YORK

-against-

**Motor Vehicle Ownership
Affidavit**

Defendant.

_____ swears under the penalty of perjury as follows:
(Defendant)

1. (Choose one)

_____ I do not currently own, have title to or have registered in my name any motor vehicle, nor do I operate any motor vehicle.

-- OR --

_____ I currently own, have title to, and/or have registered in my name, and/or operate the following motor vehicle(s):

NO vehicle	Vehicle #1	Vehicle #2	Vehicle #3	Vehicle #4
Owner				
Make				
Model				
Year				
Color				
VIN				
Plate #				
Insurance Co.				

_____ 2. I understand that if I operate a motor vehicle without an ignition interlock device, I can be charged with a class A misdemeanor and, in addition, be charged with violating the terms and conditions of my conditional discharge/probation subjecting me to a possible maximum sentence of up to two (2) years in a local correctional facility.

_____ 3. I understand that if a third person allows me to drive a motor vehicle without an ignition interlock device, that person may be charged with a class A misdemeanor subjecting them to a possible maximum sentence of one (1) year in a local correctional facility.

_____ 4. I understand that I have a continuing duty and obligation during the term of my conditional discharge/probation to report to the Court, the IID monitoring agency for Conditional Discharges/ Department of Probation any changes with regards to the information provided herein. Thus, if I purchase motor vehicle, register or title a motor vehicle in my name, or intend to operate a motor vehicle subsequent to the date of this Affidavit, I will immediately notify the Court, the IID monitoring agency for Conditional Discharges/ Department of Probation.

- ___ 5. I understand that if I have falsely concealed or misrepresented any information contained in this affidavit that I could be charged with *a crime* subjecting me to possible imprisonment in a state and/or local correctional facility.
- ___ 6. The motor vehicle information contained in this affidavit is provided to _____ Court, so that the Court can issue a conditional discharge/probation order in compliance with Leandra's Law and the IID monitoring agency for Conditional Discharges/ Department of Probation can monitor the ignition interlock device (if ordered by the Court) to be installed on my vehicle(s).
- ___ 7. I understand that this affidavit will be filed in the official record of my criminal file in the _____ Court and relied thereon by the _____ Court, agencies charged with the task of monitoring my ignition interlock compliance, a District Attorney or Court having jurisdiction over my interlock restrictions, and law enforcement agencies.
- ___ 8. I ___ have informed or ___ will inform all members of my household and my family who own, lease or operate a motor vehicle, including but not limited to my spouse, girlfriend/boyfriend/partner, parents, grandparents, brothers and sisters and children, that I cannot operate a motor vehicle without an ignition interlock device.

Signature of Defendant

State of New York)
County of _____) ss.:

On the ___ day of _____ in the year 20___ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in her/his capacity, and that by her/his Signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public