New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Oversight of Persons Convicted of Driving While Intoxicated

Queens County District Attorney's Office

Report 2015-N-2 July 2016

Executive Summary

Purpose

To determine whether the Queens County District Attorney's Office (Office) provided proper oversight of persons convicted of Driving While Intoxicated. Significant emphasis was placed on the Office's administration of the Ignition Interlock Device Program (Program). Our audit covers the period August 15, 2010 through June 25, 2015.

Background

In New York, Driving While Intoxicated (DWI) is a serious crime that may be adjudicated as a misdemeanor or felony, depending on the specific circumstances. Convicted offenders are subject to a range of sanctions including, but not limited to, license suspension or revocation, significant fines, and possible jail time. The Child Passenger Protection Act (Act), signed into law on November 18, 2009, requires all persons sentenced for DWI on or after August 15, 2010 to install and maintain an ignition interlock device (IID) in any vehicle they own or operate. An IID connects to the vehicle's ignition system and measures a driver's Blood Alcohol Concentration (BAC). If the operator's BAC exceeds the allowable level preset into the IID (.025 in New York State), the IID will send an alert to the device manufacturer and prevent the driver from starting the car. Once the vehicle is running, drivers will be prompted to blow into the tube periodically to ensure that they have not been drinking while driving (rolling test). The IID vendor is to notify the monitoring entity of any unsuccessful start-up or rolling tests.

In New York City, persons convicted of DWI whose sentence includes a period of probation are monitored by the New York City Department of Probation (Probation), while those sentenced to a conditional discharge are monitored by the Queens County District Attorney's Office (Office). A grant contract between the Office and the New York State Department of Criminal Justice Services (DCJS), the New York Codes, Rules and Regulations (Regulations), and the New York City Plan (Plan) detail the specific monitoring tasks that the Office is required to perform.

Key Findings

- Although 9,604 offenders overseen by the Office received court orders to install IIDs, only 1,952 offenders (20.3 percent) did. By borough, IID installation rates ranged from 9 percent in Brooklyn to 30 percent in Staten Island. Generally, offenders who did not install IIDs signed court affidavits stating that they would not drive a motor vehicle during the period of conditional discharge unless it had an IID;
- There was material noncompliance with the Office's protocols to minimize the risk that offenders would drive vehicles without IIDs. Specifically, the Office often did not perform all required quarterly DMV vehicle ownership checks and/or refer stipulated IID violation alerts to the appropriate courts, district attorneys, and rehabilitation programs in accordance with the governing Regulations and the New York City Plan for compliance with the Act.
- For July 2015, we selected a judgmental sample of 27 reports (detailing 55 alerts) to determine if the alerts met one of the referral requirements, and if so, were the referrals made. We concluded that 36 (65 percent) of the 55 reported alerts met one or more of the criteria. However, only 13 (36 percent) of those 36 alerts were referred as required. The remaining 23 alerts (64 percent),

resulting from IID lockouts and multiple failed start-up attempts, were not referred.

- The regulations and Plan prescribe the circumstances under which an offender should be referred to the sentencing court and other pertinent parties. These circumstances include IID alerts of a BAC of .05 or higher. Alerts for BACs between .025 and .05, however, were not referred. Also, the Office did not refer offenders with other violations because those violations were not included in the offenders' court orders.
- The Office did not refer offenders with violations to their designated alcohol treatment and safe driver programs, as such program referrals also were not listed on court orders.

Key Recommendations

- Perform all required DMV checks to verify that offenders who disclaim vehicle ownership do not have vehicles registered in their names. Ensure that all offenders who are registered vehicle owners, or those who acknowledge the use of someone else's vehicle, install an IID as required.
- Work with the appropriate courts of jurisdiction to ensure that the court documents accompanying DWI offenders assigned to the Office cite all relevant violations outlined in the State IID Regulations and the NYC Plan.
- Refer all stipulated alerts pursuant to the State Regulations and Plan to all appropriate parties, including the sentencing court, the applicable district attorney, and the offender's alcohol treatment provider and safe driver program, as required.

Other Related Audit/Report of Interest

New York City Department of Probation: Oversight of Persons Convicted of Driving While Intoxicated (2014-N-4)

State of New York
Office of the State Comptroller

Division of State Government Accountability

July 29, 2016

Honorable Richard A. Brown
District Attorney
Queens County District Attorney's Office
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Kew Gardens, NY 11415

Dear Mr. Brown:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Queens County District Attorney's Office entitled *Oversight of Persons Convicted of Driving While Intoxicated*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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Background

In New York, Driving While Intoxicated (DWI) is a serious crime that may be adjudicated as a misdemeanor or felony, depending on the specific circumstances. If convicted of DWI under Section 1192 of the Vehicle and Traffic Law, offenders are subject to a range of sanctions including, but not limited to, license suspension or revocation, significant fines, and possible jail time. When imposing sentence, the judge considers the driver's age, blood alcohol concentration (BAC) level when arrested, and the number of prior similar offenses.

The Child Passenger Protection Act (Act), also known as Leandra's Law, was signed into law on November 18, 2009. The Act created a new aggravated DWI offense for anyone who operates a vehicle while intoxicated by alcohol or drugs with a child passenger in the vehicle. The Act also requires all persons sentenced for DWI on or after August 15, 2010 to install and maintain an ignition interlock device (IID) in any vehicle they own or operate. An IID connects to the vehicle's ignition system and measures a driver's BAC. To start a vehicle with an IID, the driver must blow into a tube for several seconds. If the operator's BAC exceeds the allowable level preset into the IID (.025 in New York State), the IID will send an alert to the device manufacturer and prevent the driver from starting the car. Once the vehicle is running, drivers will be prompted to blow into the tube periodically to ensure that they have not been drinking while driving (rolling test). The IID vendor is to notify the monitoring entity of any unsuccessful start-up or rolling tests. Convicted drivers bear the cost of IID installation and IID removal costs; however, the Act provides for fee waivers for persons who cannot afford such costs.

The Act also requires the Department of Motor Vehicles (DMV) to add an "ignition interlock restriction" to a sentenced offender's driver's license. In November 2013, the law was amended to extend the IID restriction period from six months to 12 months, and to require offenders who claim to not own a vehicle to state under oath that they will not operate a motor vehicle without an IID during the restriction period. Generally, offenders who did not install IIDs signed court affidavits stating that they would not drive a motor vehicle during the period of conditional discharge unless it had an IID. The Act further requires each county in New York and New York City to develop a plan (Plan) to monitor offender compliance with the Act. The Plan details when certain IID alerts should be referred to the courts.

In 2009, the New York State Office of Probation and Correctional Alternatives (OPCA) reported that the State averaged 25,000 drunken driver convictions annually, with about 4,000 of them occurring in New York City. According to the DMV, the number of alcohol-related traffic accidents in New York City has averaged about 1,200 annually in recent years. In New York City, persons convicted of DWI whose sentence includes a period of probation are monitored by the Department of Probation (Probation), while those sentenced to a conditional discharge are monitored by the Queens County District Attorney's Office (Office). An offender who is granted a conditional discharge avoids incarceration and/or probation. In addition to the New York Codes, Rules and Regulations (Regulations) and the Plan, a grant contract between the Office and the State Department of Criminal Justice Services (DCJS) details the specific tasks that the Office is required to perform to effectively monitor offenders who are conditionally discharged.

In October 2015, the Office of the State Comptroller issued Report 2014-N-4, addressing Probation's Oversight of Persons Convicted of Driving While Intoxicated. The report covered the period August 15, 2010 to May 19, 2015 and found very low IID installation rates and noncompliance with required monitoring procedures. The report was cited by the State Legislature, which passed a bill to amend Penal Law §65.15 by increasing the amount of time DWI offenders are required to maintain an IID while under government supervision.

Audit Findings and Recommendations

Although 9,604 offenders who were overseen by the Office received court orders to install IIDs, only 1,952 offenders (20.3 percent) did. By borough, IID installation rates ranged from 9 percent in Brooklyn to 30 percent in Staten Island. Generally, offenders who did not install IIDs signed affidavits stating that they would not drive a motor vehicle unless it had an IID. However, we identified material noncompliance with the Office's protocols to minimize the risk that offenders would drive vehicles without IIDs during their periods of conditional discharge. Specifically, the Office often did not perform quarterly DMV vehicle ownership checks of offenders and/or refer stipulated IID alerts to the appropriate courts, district attorneys, and rehabilitation programs.

Installation Rates

According to New York Codes, Rules and Regulations (NYCRR) Title 9, Section 358.4, New York City Criminal and Supreme Court staff are to notify the Office within five business days after a New York City resident is issued a conditional discharge for driving while intoxicated. Offenders who own or operate a motor vehicle have ten business days from their sentencing date to install an IID by an authorized service provider. The IID service provider and the offender are both required to notify the Office of an IID installation within three business days of the installation date.

Upon sentencing, offenders charged with a conditional discharge are asked to attest whether they will have access to a motor vehicle during the period of the conditional discharge and that they will not drive any vehicle without an IID. According to Office and OPCA records, the majority of offenders (80 percent) assigned to the Office and responsible for installing IIDs did not install them. Specifically, for the period August 15, 2010 through June 30, 2015, the Office received 9,604 orders for IID installations. However, only 1,952 devices (20.3 percent) were installed. Although the Office's offender IID installation rate was higher than that of Probation (5 percent), it was lower than the statewide average IID installation rate (27.3 percent) at that time. Generally, offenders who did not install IIDs signed court affidavits stating that they would not drive a motor vehicle during the period of conditional discharge unless it had an IID.

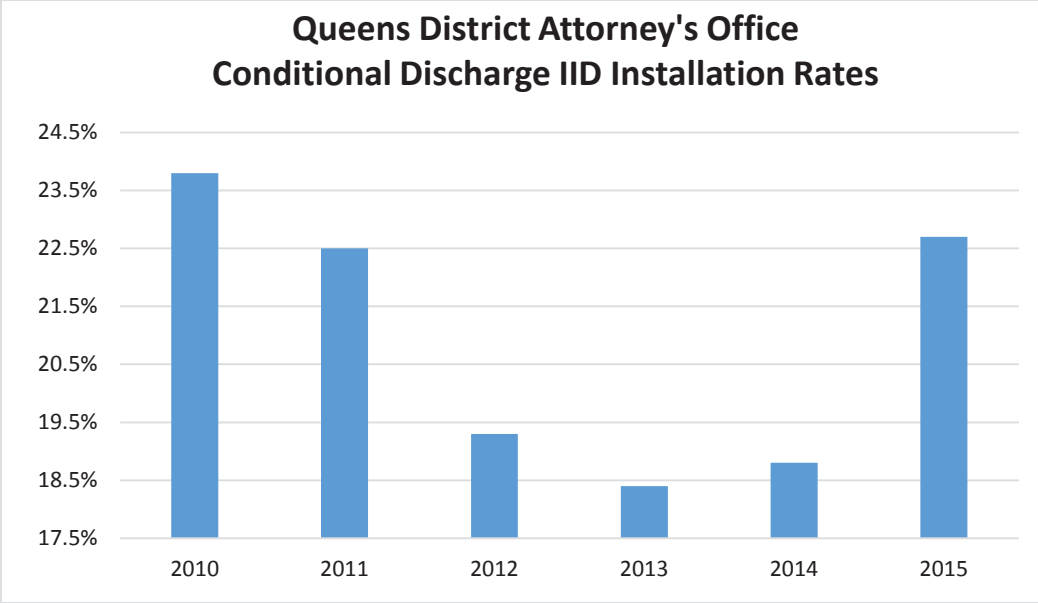
The following table and bar chart illustrate the annual IID installation rates, per information on file with DCJS, for offenders assigned to the Office.

Table 1

Year	Number of Court-Ordered IIDs	Number of IIDs Actually Installed	Percentage of IIDs Actually Installed
2010*	442	105	23.8
2011	2,221	500	22.5
2012	1,906	368	19.3
2013	2,029	374	18.4
2014	1,983	373	18.8
2015**	1,023	232	22.7
Totals	**9,604**	**1,952**	**20.3**

*Partial year (August 15 through December 31)
**Partial year (January 1 through June 30)

Graph 1



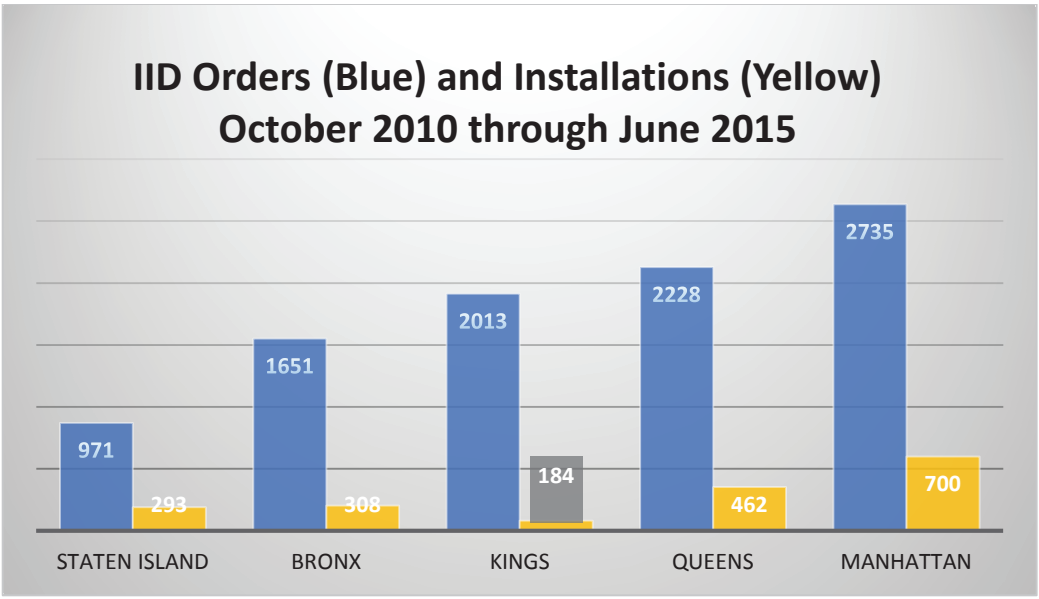
As the table and graph indicate, New York City's installation rates decreased from 23.8 percent in 2010 to 18.4 percent in 2013. Installation rates then increased in 2014 and reached 22.7 percent in 2015.

Further, we determined that IID installation rates varied greatly among the five boroughs from the fourth quarter of 2010 through the second quarter of 2015. Specifically, at 30 percent, Staten Island had the highest installation rate, while Brooklyn had the lowest at 9 percent. The installation rate for the Bronx was 19 percent; Manhattan's was 26 percent; and Queens' rate was 21 percent.

The following bar graph illustrates the numbers of IID orders and installations by borough for the period.

Graph 2

IID Installations by Borough*



*Data provided by the Queens County District Attorney's Office.

According to Office officials, the availability of public transportation is a factor that affects IID installation rates, along with license suspensions and revocations. In addition, the cost of IID installation could also affect installation rates. However, as noted previously, the Act provides for waivers of installation fees for offenders who cannot afford them.

More importantly, given the wide range in installation rates among the boroughs and the relatively low overall rate for New York City, it is imperative that the Office complies with the prescribed monitoring protocol to help ensure that offenders who drive during their periods of conditional discharge have IIDs installed in their vehicles. As detailed subsequently in this report, however, there were material deficiencies in the Office's monitoring efforts.

Monitoring Responsibilities

Offenders assigned to the Office receive less extensive supervision than those assigned to Probation. The Office's monitoring responsibilities are basically limited to: performing quarterly checks with the DMV to ensure that an offender does not have a motor vehicle registered in his/her name, and following up on IID alerts of potential violations by referring them to the applicable district attorneys, courts, and conditional discharge programs (e.g., safe driving courses).

Consequently, it is important that Office staff consistently follow the Office's monitoring protocol

to help prevent offenders from driving while intoxicated again and potentially harming themselves as well as others. We determined, however, that seven of our sampled offenders, who were initially overseen by the Office, were subsequently assigned to Probation because of additional DWI arrests. One of these offenders was not listed on Office records as a registered vehicle owner, although the offender had a vehicle registered in his name, and another offender was arrested while driving a friend's car. The remaining five offenders had installed IIDs, but were sentenced to Probation after multiple IID test failures.

Department of Motor Vehicles Checks

The Office was awarded a grant from DCJS, in the amount of $996,245, covering the period October 2012 through September 2015. Pursuant to the grant, Office staff are required to perform quarterly DMV checks to determine whether offenders, who state upon their conditional discharge that they did not own or operate a motor vehicle, nonetheless have vehicles registered in their names. Since most IID conditional discharges are for a period of one year, the Office is required to conduct four DMV checks for most offenders. We selected a judgmental sample of 50 offender files to determine whether Office staff were performing the quarterly DMV checks as required. As 10 of the offenders in our sample acknowledged vehicle ownership upon their conditional discharge and had IIDs installed in their vehicles, we focused on the remaining 40 offenders.

Although 38 of the 40 offender files had evidence of one or more DMV checks during the periods of conditional discharge, none of the files had evidence that all four quarterly DMV checks were performed. When queried, Office employees stated that, as a practice, they only perform DMV checks upon intake and before an offender's case is closed. However, we found that only 22 sampled files (of the 38 with evidence of DMV checks) had documentation that these two DMV checks were performed. The remaining 16 offenders had only one DMV check performed, and in certain instances, the checks were not performed at the time the offenders were assigned, upon intake, to the Office. As previously noted, we identified an offender who was not listed on Office records as an owner of a registered vehicle, although there was in fact a vehicle registered in his name. Subsequent to referral to the Office, this offender was arrested for another DWI violation.

Follow-Up on Alerts

According to the Regulations and the New York City Plan, IID service providers (Providers) are to electronically forward monthly reports to the Office detailing: the date and time an offender with an IID attempts to start his/her authorized vehicle; the BAC test result; and the time the ignition is turned off. Providers are required to notify the Office within three business days of test failures, device lockouts (e.g., offender prevented from starting the vehicle due to test failure), and instances of attempted circumvention or tampering. In turn, the Office is to notify the sentencing court, the applicable district attorney, and the offender's alcohol treatment provider and safe driver program within three days of one of the following violations or occurrences:

- Failure of an offender who will be driving during the conditional discharge period to install an IID;
- Failure of an offender who has installed an IID to attend a scheduled IID service visit;
- Attempt to tamper with or circumvent the IID;
- Three unsuccessful offender start-up tests or two unsuccessful rolling tests;
- Any report of an IID lockout;
- A failed test, or failed re-test where the BAC is .05 percent or higher; and
- Any other information relayed by the Provider, or otherwise known to Office staff, that would seriously jeopardize the operator's successful completion of his/her conditional discharge.

According to available reports, Office staff received 486 IID alerts from Providers during July 2015. For that month, we selected a judgmental sample of 27 reports (detailing 55 alerts) to determine whether the alerts met one of the aforementioned referral requirements, and if so, whether referrals were made as required. We concluded that 36 (65 percent) of the 55 reported alerts met one or more of the referral criteria. However, only 13 (36 percent) of those 36 alerts were actually referred as required, and therefore, the remaining 23 alerts (64 percent) were not referred. These 23 alerts included instances of IID lockouts and multiple failed start-up attempts (due to BAC levels above the .025 IID pre-set limit). Thus, there was significant risk that material numbers of IID alerts were not referred, as otherwise required.

Each offender referred to the Office is accompanied by a court order requiring the installation of an IID during the conditional discharge period and requiring the Office to refer any IID alerts with a BAC of at least .05 to the applicable courts and district attorneys. As such, Office officials believed that tests or re-tests with BACs of .025 to less than .05 do not have to be referred. Also, the court orders generally did not specifically reference any of the other aforementioned reasons for referral. It was unclear to Office staff why a BAC of .05 was the only violation cited by the courts and why the other violations outlined in the Regulations and Plan were not.

The following is an example of an IID violation that should have been referred, but was not. An offender or an accomplice failed a start-up test with a BAC of .088 (well over the BAC limit of .025) and then failed a re-test a few minutes later with a BAC of .058. Several hours later, the offender (or accomplice) failed yet another attempted start-up with a BAC of .042 (still significantly above the limit of .025). However, Office personnel did not refer any of these alerts as required, because the second re-test (at .042) was below the court-prescribed .05 BAC limit. In another case, an offender registered an initial BAC of .028 with re-tests of .032 and .027, causing an IID lockout. However, these alerts also were not referred.

Further, when Office staff followed up and referred alerts to the appropriate court and district attorneys, they generally did not notify the alcohol treatment provider or officials of the safe driving program the offender was required to attend. We noted that the court orders received by the Office did not list offenders' alcohol treatment and safe driver programs among the required contacts. Thus, according to Office officials, it was not their responsibility to monitor these elements of an offender's conditional release and make the corresponding notifications. Under these circumstances, we conclude that there is an increased risk that efforts to rehabilitate

offenders will fail and contribute to an offender's DWI recidivism. We noted that 34 offenders assigned to the Office during our audit period were eventually sentenced to Probation for subsequent DWI infractions.

Recommendations

1. Perform all required DMV checks to verify that offenders who disclaim vehicle ownership do not have vehicles registered in their names. Ensure that all offenders who are registered vehicle owners, or those who acknowledge the use of someone else's vehicle, install an IID as required.

2. Work with the appropriate courts of jurisdiction to ensure that the court documents accompanying DWI offenders assigned to the Office cite all relevant alerts outlined in the State IID Regulations and NYC Plan.

3. Refer all stipulated alerts pursuant to the State Regulations and NYC Plan to all appropriate parties, including the sentencing court, the applicable district attorney, and the offender's alcohol treatment provider and safe driver program, as required.

Audit Scope and Methodology

The objective of our audit was to determine whether the Office was providing effective oversight of persons convicted of driving while intoxicated and sentenced to a conditional discharge during the period August 1, 2010 to June 25, 2015.

To accomplish our objective, we reviewed the statutes and regulations governing the Ignition Interlock Device Program (Program) and the grant contract between the Office and DCJS that details the Office's monitoring requirements. We interviewed Office officials to gain an understanding of the Program and the underlying controls. We also selected a judgmental sample of 50 case files (10 offenders in each borough) to review for the required DMV checks and to determine whether all IID violations were referred to the appropriate parties as required.

We conducted our performance audit in accordance with generally accepted government auditing standards. 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 objective. We believe that the evidence we obtained during this audit provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational

independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

Reporting Requirements

We provided a draft copy of this report to Office officials for their review and formal comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of this report. In their response, Office officials indicated that the Office and its law enforcement partners have done much to enhance citizens' safety while increasing the accountability of offenders. Officials also indicated that they welcome the opportunity for further enhancements and improvements to their ongoing efforts, and they generally concurred with our recommendations.

Within 90 days after final release of this report, we request that the Queens District Attorney report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

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Vision

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Agency Comments

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June 15, 2016

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Dear Mr. Patone:

Thank you for the thorough review and thoughtful insight by you and your team into the operation of the New York Citywide monitoring process for New York City's Ignition Interlock Program.

As you know, the Office of the Queens Country District Attorney took on the role of Citywide Monitor for all five New York City Counties with regard to Conditional Discharge sentences for Driving while Intoxicated (DWI) offenses and is deeply committed to meeting all the obligations of the Ignition Interlock Program as outlined in both the Regulations under Title 9 NYCRR Part 358 and the New York City Plan.

We believe that our efforts, in conjunction with those of New York City Department of Probation, which serves as Ignition Interlock monitor for all New York City probationary sentences in DWI matters; our colleague District Attorney's Offices, which handle the related prosecutions in their respective jurisdictions; the New York State Division of Criminal Justice Services (DCJS) and the New York State Department of Motor Vehicles, who oversee efforts statewide; and other partner agencies, have done much to enhance the safety of our citizens while increasing the accountability of offenders in these serious matters. We welcome, however, the opportunity for further enhancements and improvements to our ongoing efforts and are appreciative of your input in this regard.

Specifically, we have reviewed the findings and recommendations in your agency's audit report entitled " Oversight of Persons Convicted While Intoxicated" and submit the following responses and comments:

1. With regard to your findings and recommendations related to instituting quarterly checks of DMV records to verify that offenders who disclaim vehicle ownership do not have registered or subsequently register vehicles in their names, in view of the network of other safeguards we have

undertaken to minimize the risk that offenders would drive vehicles without Ignition Interlock Devices (IID's) mandated as part of conditional discharge sentencing, we disagree with your finding of material non-compliance with regulations. Going forward, however, we agree with your recommendation to initiate quarterly checks.

* Comment 1

By way of background, as we noted during the audit, in lieu of quarterly checks, we instituted a number of other safeguards. Along those lines, a minimum of two DMV checks were conducted in all cases, with additional checks conducted on a case by case basis. Checks were and continued to be routinely conducted at the outset of monitoring of offenders and prior to the completion of monitoring periods in all cases. Efforts were also made and continue to be made to ensure that no offender was ever issued a certificate of completion without a DMV check being conducted. In addition, no cases were closed in instances where we discovered that a defendant had a vehicle registered in his or her name; in such cases, a violation was immediately submitted to the respective parties. We also note that since every IID defendant is registered with the License Event Notification System (LENS), the assigned monitor in this Office routinely receives and reviews alerts in all cases. This serves as an additional measure to ensure offender compliance.

This Office also instituted a system whereby the Citywide Monitor receives alerts when a defendant being monitored is arrested for any VTL charge within the five boroughs. This alert system, while not required by the State regulations or the County Plan, has proven to be an additional valuable tool in effectively monitoring defendants and discovering non-compliance with the regulations and guidelines.

That said, we agree that additional checks of DMV records on a quarterly basis will be an additional enhancement and, in going forward, the Office has already put into place a process whereby all New York State DMV records of all offenders who have been ordered to install the Ignition Interlock but have disclaimed vehicle ownership initially, are checked at quarterly intervals to determine if any vehicles are registered to the individual offender.

As discussed during the audit, however, we note that at this juncture all of these checks must be done manually checking DMV databases and we urge that DCJS and DMV move forward in developing and enhancing computer linkages that can generate automatic real time alerts from DMV to the monitor when an offender registers a vehicle. We believe this would be a great step forward and greatly enhance the monitoring process.

One additional clarification and correction: As to your finding that there was only a 20.3% installation rate Citywide for offenders overseen by the court and ordered to install IID's on their vehicles, we note that in those instances no IID's were required to be installed unless the offender had a vehicle registered in his or her name. As noted in the report, offenders who did not install IID's were required by the courts to sign affidavits stating that they would not drive a motor vehicle during the period of conditional discharge unless it had an IID. As a result, compliance is substantially higher than the 20.3% reported in the audit.

* Comment 2

*See State Comptroller's Comments, Page 19.

2. With regard to your second finding that only 36% of 36 alerts meeting one or more of the criteria were referred as required, we note, that, as we discussed at length during the audit, there were substantially differing interpretations by this Office and your agency of the regulations and County plan requirements.

I think both our agencies can agree that the Regulations as written are admittedly confusing and subject to our differing interpretations – ours that alerts were required in cases with blood alcohol (BAC) readings of .05 or above or in instances where an offender failed to attend a service visit, failed to install the device, or tampered with or circumvented the device, and yours that alerts were also required in instances of BAC readings of .025 and above, where it resulted in a temporary lock-out. As a result, with regard to your finding that 23 of 36 alerts were not appropriately referred, we note that all of these 23 fell below the .05 threshold we were utilizing as our guideline, as well as what was indicated in the court order.

* Comment 3

Despite this confusion, we agree with your recommendation going forward and have advised the assigned monitor to refer all such alerts and offenders with BAC's .025 or above demonstrating a repeated pattern of behavior to the Sentencing Court, District Attorney's Office and Treatment Programs where applicable.

* Comment 3

We do note, however, that during the period covered by your review, substantial safeguards were in place. In all instances where an offender had a BAC of .05 or higher, or failed to attend a service visit, or failed to install the device, or tampered with or circumvented the device, violations were automatically filed and all parties were notified about these violations together with any and all "alerts" associated with that particular offender. In addition, even in cases below the .05 BAC threshold we were using, we have always routinely notified and submitted all summary reports, including all alerts of every offender to the respective District Attorney's Offices for their review and any actions they deemed appropriate.

* Comment 3

Furthermore, in your findings, you cited to one example of an offender who failed a start-up test with a BAC of .088 and then failed a re-test a few minutes later with a BAC of .058 and several hours failed again with a BAC of .042 and was not referred. We seek to clarify and note that the individual who was observed on camera and who failed these tests was not the offender being monitored by the court nor did we know his identity. The monitor did not have jurisdiction over that individual and could not file a violation.

* Comment 4

3. With regard to your finding and recommendation that this Office should have informed the offender's alcohol treatment provider of all alerts and violations, we first note that the Regulations themselves do not require notifications to treatment providers. And although the County Plan provides for such notification, we note that, currently, court orders from all five counties fail to identify treatment programs which would allow the monitor to make such notifications at this time and there is currently no mechanism in place for the various counties to provide such information to the Monitor.

* Comment 5

We also note that unlike probationary matters which typically involve longer term treatment programs, the conditional discharge population which we oversee is typically sentenced conditionally to shorter term programs such as the Impaired Driver Program (IDP) (formerly Drunk Driver Program), which requires 16 hours for completion, or Victim Impact Panel (VIP), which is only a one day session. As a result, typically, even if the monitor receives the information in a timely matter, reporting to the treatment provider would most often arrive after treatment has concluded.

* Comment 5

This Office, however, agrees and supports any efforts to create a mechanism to allow the monitor to know the program in which the offender is enrolled. Going forward, therefore, as an additional step, we now ask the defendant to identify any treatment program he or she is enrolled, but look forward to assistance from DCJS in hopefully instituting a more regular means of communicating this information to the monitor and ensuring that court orders include all relevant information.

Overall, we are pleased to be moving forward in making these enhancements to our efforts and remain proud of the work this Office has undertaken in this important area. We take our role as Citywide Ignition Interlock Program Monitor in New York City very seriously and appreciate your input and recommendations.

We thank you and your team for all your efforts and professionalism.

Sincerely,

Karen Rankin
Bureau Chief of Narcotics Trials and Supervisor of
Citywide Ignition Interlock Program

State Comptroller's Comments

1. Based on the deficiencies detailed on pages 9 – 12 of our report, we maintain that there was material noncompliance with the prescribed monitoring protocol, including the New York City Plan, as also referenced in the report. Further, we are pleased that Office officials will implement our recommendation pertaining to quarterly checks.
2. The 20.3 percent in question pertains to the rate of IID installations and not general compliance with the applicable statute, including the receipt of affidavits from offenders stating that they would not drive a motor vehicle without an IID. Further, as noted in this audit and our related audit of the New York City Department of Probation, offenders sometimes drove vehicles without IIDs although they previously signed the affidavits obligating them to not do so.
3. As stated in our report, we acknowledge that the Office referred certain alerts stipulated in court orders for the offenders it monitored. However, our findings of noncompliance were based on the requirements of the applicable Regulations and the New York Plan, which prescribed the alerts that should be referred to the courts, district attorneys, and other effected parties. Further, we are pleased that the Office intends to refer all such required alerts in the future.
4. If an alert is initiated from an offender's vehicle, whether caused by the offender or another person, it should be of significant concern to the Office. If someone other than the offender blows into an IID, it could be indicative of an effort to circumvent the IID control process (and a violation of the terms of conditional discharge), which may put the offender and others at risk. Consequently, we would maintain that an alert, resulting from actions taken by someone other than the offender, should nonetheless be referred to the appropriate authorities and/or affected parties.
5. As noted in Comment 3, we acknowledge that the Office followed the stipulations of offenders' court orders as opposed to referring all alerts noted in the Regulation and Plan. Again, we are pleased that the Office intends to refer all such required alerts in the future.