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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 15, 2017

Ms. Ana M. Bermúdez
Commissioner
New York City Department of Probation
33 Beaver Street
New York, NY 10004

Re: Oversight of Persons Convicted of
Driving While Intoxicated
Report 2016-F-30

Dear Ms. Bermúdez:

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, we have followed up on the actions taken by officials of the New York City Department of Probation to implement the recommendations contained in our prior audit report, *Oversight of Persons Convicted of Driving While Intoxicated* (2014-N-4).

Background, Scope, and Objective

In New York State, Driving While Intoxicated (DWI) is a serious crime. If a person is convicted of DWI, the offender is subject to a range of sanctions, including license suspension or revocation, significant fines, and possible jail time. Pursuant to the Child Passenger Protection Act, as prescribed by Section 1192 of the Vehicle and Traffic Law, persons sentenced for DWI on or after August 25, 2010 must install an Ignition Interlock Device (IID) in any vehicle they own or operate. In addition, the Department of Motor Vehicles (DMV) adds an "ignition interlock restriction" to their operator's license.

In New York City, persons convicted of DWI are monitored by either the Queens District Attorney's Office or the New York City Department of Probation (Probation), as determined by the sentencing judge. The IID connects to the vehicle's ignition system, and the vehicle operator must blow into the device before the vehicle can be started. If the operator's blood alcohol concentration (BAC) exceeds the allowable level preset into the IID (.025), the IID will notify Probation and prohibit the driver from starting the car. For the period from January 1, 2015 to December 31, 2016, the courts ordered the installation of 1,084 IIDs for offenders under Probation's supervision.

IID installation logs provided by Probation showed that for 2015 and 2016, there was an installation rate of 5.17 percent for the 1,084 IIDs ordered. The following table shows the number of IID court orders for offenders supervised by Probation and the number of IIDs actually installed by calendar year.

Year	Number of IIDs Ordered by the Courts	Number of IID's Actually Installed	Percentage of Court-Ordered IIDs Actually Installed
2010*	98	7	7.14
2011	703	52	7.40
2012	465	29	6.24
2013	441	15	3.40
2014	459	8	1.74
2015	507	22	4.34
2016	577	34	5.89
Total	3,250	167	5.14

*Partial year (August 15 through December 31)

Our initial audit report, which was issued on October 7, 2015, examined the oversight of persons convicted of DWI by Probation. Significant emphasis was placed on Probation's administration of the IID program. We found that only a small percentage of the court-ordered IIDs were installed in the cars of persons cited for alcohol-related motor vehicle violations and that Probation Officers (POs) often did not provide sufficient oversight of DWI offenders. We also found that referral of probation violators were not made to the appropriate courts and District Attorneys as required.

The objective of our follow-up review was to assess the extent of implementation, as of February 24, 2017, of the four recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that Probation officials made considerable progress in correcting the problems we identified. However, additional improvements are still needed. Of the initial report's four audit recommendations, two were implemented and two were partially implemented.

Follow-up Observations

Recommendation 1

Develop and implement processes and procedures to ensure that DWI offenders install IIDs in any vehicle(s) they own or have permission to operate, as ordered by the courts.

Status – Implemented

Agency Action – Probation adopted Caseload Explorer as its new automated client tracking system on July 3, 2015, and issued its “IID/DWI Citywide Plan Memo” dated December 11, 2015. This memo provides instructions for POs to follow when entering offender (client) information into Caseload Explorer at intake and during the period of supervision. POs are required to closely supervise their assigned clients. The Caseload Explorer system will display a pop-up warning whenever a PO opens a case file with indicators of required client follow-up actions. At intake, POs complete a Level of Service Inventory – Revised survey and a risk assessment tool for each client, and they provide employment information as well. In addition, POs perform DMV checks to determine if a client has any cars registered in his/her name. Also, clients report to Probation monthly, either to a kiosk pool supervised by a PO or directly to a PO, depending on their level of risk. POs then perform DMV checks to ensure that the clients are following the conditions set forth by the terms of their probation. As a result, POs can readily track the installation of IIDs for those clients who own a vehicle.

To verify whether the instructions in the memo were implemented, we selected a random sample of 25 clients with IIDs ordered between October 1, 2015 and September 30, 2016. Based on our review of their case files, we determined that POs have been updating and supervising cases on a regular basis. There is evidence in the case files reviewed that POs are: notifying clients that IIDs must be installed in borrowed vehicles if they are to be driving; conducting monthly DMV checks to identify vehicles registered under a client’s name; and reviewing the alerts logs. All of the aforementioned activity is documented under the “Events” section of Caseload Explorer.

Although Probation officials have implemented processes and procedures to ensure that DWI offenders, as appropriate, install IIDs as ordered by the courts, we found the IID installation rate remains low at 5.9 percent, despite increasing since 2014. We also note that of the 25 IID court orders reviewed in our sample, only 2 resulted in a device being installed. (Note: As part of their probation agreements, offenders sign a statement that they will not operate a motor vehicle without an IID during the probation period.)

Recommendation 2

Require POs to make and document all required DMV checks and home visits, as well as pertinent follow-up actions, when appropriate.

Status – Partially Implemented

Agency Action – The IID/DWI Citywide Plan Memo mandates that as part of their supervisory responsibilities, POs are to conduct client DMV checks through the e-justice portal at intake and for every month of supervision. In Caseload Explorer, POs are required to verify that this check was done and to indicate if there were any changes in the last 30 days. For clients that were deemed low-risk at intake, a quarterly DMV check is required.

We found that the required DMV checks were performed at intake on all 25 clients in our sample. However, only 14 clients had monthly DMV checks performed while under supervision. Five clients were assessed as medium-risk, but did not have DMV checks performed each month as required. Six clients were considered low-risk, but of those, only two had required quarterly DMV checks performed.

Under case management procedures, POs are required to conduct one positive home visit on medium- and high-risk clients during the first 45 days of initial contact. In our sample, six of the eight medium- and high-risk clients had the required initial home visit. For the other two clients, who were both assessed as medium-risk, neither of their files indicated that an initial home visit occurred. One of those two clients had a home visit only after he was arrested on another charge while on probation, and his risk level was reassessed to high. The remaining 17 clients were assessed as low-risk and did not require home visits.

We saw some evidence that POs followed up on clients when required, such as when a client did not provide the required documentation at intake or failed to show up for an appointment.

Recommendation 3

Ensure that POs promptly follow up on no-show offenders, absconders, and those who attempt to circumvent their court-ordered IID installation requirement.

Status – Implemented

Agency Action – POs have kept close track of no-show clients and absconders. Case files for six of the clients in our sample (five no-shows and one absconder) contained evidence that POs properly followed up and filed timely Violation of Probation reports or warrants for arrest as appropriate.

Recommendation 4

When offenders violate the terms of their probation, make referrals to the appropriate courts and DAs, as warranted.

Status – Partially Implemented

Agency Action – We analyzed New York City’s alert logs from June 1, 2015 to December 31, 2016 and found a total of 91 device alerts for this time period. From this population, we selected a random sample of 20 alerts of active IID clients and attempted to obtain a copy of the relevant court referrals from Caseload Explorer. However, those referrals were not available. Probation officials explained that the Department is still migrating the documents from the prior Reusable Case Management System (RCMS) to Caseload Explorer, and those particular documents had not yet been transferred to the new system. Probation officials were only able to provide us with hard copies for 8 notifications to

the courts and written explanations from the supervising POs as to the resolution of the remaining 12 alerts. Based on our review of the sampled 20 alerts, there were an additional 4 cases that warranted a court referral. In one of the four cases, a court notification was never filed for the client while they were on probation, and in the other three, court notifications were eventually filed for other dates, and not for the instance we selected. In the case of the client who never had a court notification filed, she had a failed BAC start-up re-test with a reading of .056 and a rolling test six minutes later with a reading of .071, a clear violation of the terms of her probation.

Major contributors to this report were Saviya Crick, Margarita Ledezma, and Jean Cineas.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of the New York City Department of Probation for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Michael Solomon
Audit Manager

cc: C. Harris, Probation
G. Davis, Mayor's Office