

New Amendments To Leandra's Law



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Those of you who remember our last article may distinctly remember our dire warning to DWI practitioners about several new DMV regulations which could have drastic consequences on our clients and which were enacted with minimal notice under most of our (and the voting public's) respective noses. Once again, the New York State Legislature and Governor have passed an amendment to Leandra's Law, effective November 1, 2013, of which many of us may not even be aware. So in the spirit of spreading governmental transparency and enlightening our fellow DWI practitioners, be advised of the following modifications to the New York Vehicle and Traffic Laws:

- **N.Y. V.T.L. §511(3)(a)(iv):** As many of you are aware, Aggravated Unlicensed Operation (AUO) may be the most notorious of all VTL provisions for being frequently violated. In essence, this crime involves operating a motor vehicle while your license or privileges have been suspended for some reason. There are three levels of AUO (2 Misdemeanor Levels and 1 Felony Level) depending (among other things) on the number of scofflaws or the reason for the suspension/revocation on your client's driver's license. However, a key provision was that one needed a suspension or revocation of their driver's license, without a valid hardship or conditional license, in order to trigger a violation of these provisions. Before these regulations, if one had a valid conditional license and operated a motor vehicle intoxicated, even while driving within the conditions of their conditional license, they could only be charged with a traffic offense. Now, as a result of the new amendment to Leandra's Law, if one is charged with any alcohol or drug-related driving offense while driving on a conditional license, they can also be charged with First Degree, E Felony Level AUO, and could face a potential four years' incarceration. The statute specifically states "conditional license," and not a "hardship license" so a potential loophole seems to exist here. As a practical matter, a client who would otherwise qualify for a pre-conviction conditional license, who is presently operating under a hardship license, may want to hold off purchasing the pre-conviction conditional license, especially if you believe your client may have a potential for recidivism.
- **N.Y. V.T.L. §1193(1)(b)(ii), (c)(iii):** One of the biggest changes to the existing law with the passage of Leandra's Law was the imposition of an Ignition Interlock Device (IID) on any automobile that was owned or operated by a person found guilty of a misdemeanor or felony alcohol or drug-related driving offense. However, as we stated in our last article, the administration of these provisions has been a nightmare for practitioners. In an effort to clarify, the legislature made three significant changes regarding a mandatory IID for qualifying alcohol or drug-related driving offenses:
 1. The Legislature clarified that youthful offenders must have IIDs installed.
 2. The Legislature increased the minimum term for an IID from six months to one year; however, the sentencing court could terminate the imposition of an IID upon submission of proof to the court that these provisions have been complied with for a period of six months.
 3. The Legislature has defined the period of imposition of the IID from the earlier of the date of sentencing or the date an IID was installed, if it was prior to sentencing. It should be noted as a warning to practitioners, though the DMV and sentencing court may require an IID for a set period of time, we have found that the Probation Department has mandated the IID for a longer period of time (the entire length of the probation sentence) in certain circumstances.

While this probation mandate is pursuant to their internal guidelines, it is something that practitioners should understand. We have had success in the past at modifying this provision at the time of sentencing with the sentencing judge. However, you must alert your client to the possibility of an extended IID installation if a term of probation is a condition of the sentence.

- **N.Y. V.T.L. §1193(4)(a):** Once again, in an effort to clarify the administration of the IID provisions, the Legislature has defined an opt-out provision for drivers who are mandated to install an IID who do not own or operate any vehicles. Since the passage of Leandra's Law, we found that many of our clients would have to install an IID and either could not afford the IID or had no legal ability to drive because they did not qualify for a hardship or conditional license. Many times we would advise these clients to sell their automobile before sentencing. However, many courts were confused as to how to handle these clients. Some would require written affidavits that they no longer own or operate a vehicle, and others

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would have our clients deal directly with the Erie County Stop DWI program to administer the IID. As a result of these amendments, a client can now testify under oath at sentencing that they neither own nor operate a vehicle in order to comply with the statute in good faith. However, should our clients obtain or operate a vehicle within the period an IID would have been mandated, they must have an IID installed on that vehicle or they could be subject to re-sentencing on the original offense. Practitioners need to exercise caution in advising their clients on the IID mandates, as we have found many pitfalls to the practitioner in this area. [B]