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09/10/2014

1 **AN ACT** *to repeal* 110.10 (4) and (5); *to renumber* 110.10 (1) (intro.), (2), (3) and
2 (4m); and *to create* 110.10 (2m) (a), (b) and (c), 340.01 (72p), (72t) and (72x) and
3 343.301 (3m) (a) and (b) of the statutes; **relating to:** treatment court access to
4 ignition interlock device reports.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the Joint Legislative Council's Study Committee on Problem-Solving Courts, Alternatives, and Diversions.

Background

Current law requires a court to order that a person's operating privileges for the operation of a "Class D" vehicle be restricted to operating vehicles that are equipped with an ignition interlock device and, unless the court finds doing so will cause undue financial hardship, the court must also order that each motor vehicle for which the person's name appears on the vehicle's certificate of title or registration be equipped with an ignition interlock device if either of the following applies:

- The person improperly refused to take a chemical test for intoxication while driving or operating a motor vehicle.
- The person has violated prohibitions on operating under the influence of an intoxicant or other drug (OWI), homicide by intoxicated use of a vehicle, or injury by intoxicated use of a vehicle, and either of the following applies:
 - The person had an alcohol concentration of 0.15% or more at the time of the offense.
 - The person is a repeat OWI offender.

The Department of Transportation (DOT) is required to promulgate rules to provide for the implementation of an ignition interlock device program that will be conveniently available to persons throughout this state. The rules must include provisions that include the following:

- Requiring ignition interlock device providers operating in this state to provide the department and law enforcement agencies designated by the

department with installation, service, tampering and failure reports in a timely manner.

- Requiring ignition interlock device providers to notify the department of any ignition interlock device tampering, circumvention, bypass or violation resets, including all relevant data recorded in the device's memory. Upon receiving notice described in this subsection, the department must immediately provide the notice and data to the assessment agency that is administering the violator's driver safety plan.

DOT rules currently require an ignition interlock service provider (service provider) to provide a certificate of installation or removal to the customer. The rules require the customer to present a copy of the certificate to DOT as a condition of obtaining a license and require the service provider to provide a copy of the certificate to the sheriff of the county where the customer resides. DOT rules also require that a service provider be responsible for all of the following:

- Following the manufacturer's specifications for service and repair.
- Reporting to the sheriff of the county where the customer resides when any failure to report for required servicing occurs. All devices shall be scheduled for service at intervals not to exceed 60 days.
- Each time a device is serviced, reviewing the data recorded in the device's memory and retain a copy of the data in the customer's file. Any tampering, circumvention, bypass or violation resets must be immediately reported to the sheriff in the county where the customer resides.

Bill Draft:

This draft repeals the requirement that DOT promulgate rules that require service providers do the following: (1) provide DOT and law enforcement agencies with installation, service, tampering, and failure reports in a timely manner; and (2) notify DOT with device tampering, circumvention, bypass or violation resets, including all relevant data recorded in the device's memory, which must then be immediately sent to the assessment agency that is administering the violator's driver safety plan. The draft replaces these rule promulgation requirements with requirements that apply directly to service providers. Specifically, the draft requires service providers to do both of the following:

- Provide installation, service, tampering, and failure reports to DOT in a timely manner.
- Immediately provide reports of any tampering, circumvention, bypass or violating resets, including all relevant data recorded in the device's

memory, to law enforcement agencies designated by DOT and treatment courts. In order for the treatment court to receive the reports, the draft requires the treatment court to submit a request to the service provider.

This draft also requires a treatment court project participant under an order regarding an ignition interlock device to provide a copy of the ignition interlock device certificate installation to a treatment court upon installation of the device or entrance into the treatment court project, whichever is later. The treatment court that has jurisdiction over a treatment court project participant ordered to comply with ignition interlock device requirements must submit to the service provider who provided the treatment court project participant with the certificate of installation a request to immediately receive reports of any tampering, circumvention, bypass or violating resets, including all relevant data recorded in the ignition interlock device's memory.

1 **SECTION 1.** 110.10 (1) (intro.), (2), (3) and (4m) of the statutes are renumbered (1) (a),
2 (b), (c), and (d).

3 **SECTION 2.** 110.10 (2m) (a), (b) and (c) of the statutes are created to read:

4 110.10 (**2m**) (a) In this section:

5 1. "Service provider" means an approved dealer, distributor, supplier, or service center
6 of an ignition interlock device.

7 2. "Treatment court" means a treatment court as defined in s. 340.01 (72p).

8 (b) Service providers operating in this state shall provide installation, service,
9 tampering, and failure reports to the department in a timely manner.

10 (c) Service providers operating in this state shall immediately provide reports of any
11 tampering, circumvention, bypass or violating resets, including all relevant data recorded in
12 the device's memory to law enforcement agencies designated by the department, and any
13 treatment court that submits a request for such reports to the service provider under s. 343.301
14 (3m).

15 **SECTION 3.** 110.10 (4) and (5) of the statutes are repealed.

NOTE: SECTION 3 repeals statutes that require DOT to promulgate rules requiring ignition interlock device providers operating in this state to provide DOT and law enforcement agencies with installation, service, tampering, and failure reports in a timely manner. It also repeals the requirement that DOT promulgate a rule requiring ignition interlock device providers to notify DOT with device tampering, circumvention, bypass or violation resets, including all relevant data recorded in the device's memory, which must then be immediately sent to the assessment agency that is administering the violator's driver safety plan.

Instead, SECTION 2 requires service providers to provide: (1) installation, service, tampering, and failure reports to DOT in a timely manner; and (2) reports of any tampering, circumvention, bypass or violating resets, including all relevant data recorded in the device's memory to law enforcement agencies designated by DOT and treatment courts, provided immediately. Also, in order for the treatment court to receive the reports, the treatment court must submit a request to the service provider.

COMMENT: SECTION 2 replaces the current statutory requirement requiring DOT to promulgate rules regarding ignition interlock device reports with statutory requirements about what information is to be included in the reports. In doing so, it also adds the requirement that treatment courts be immediately provided with the same reports as law enforcement agencies. These reports are mailed and typically take a couple of business days to be received. Does this achieve the committee's intent?

Also, SECTION 3 repeals the requirement that DOT promulgate a rule regarding reports submitted to assessment agencies, but does not replace this with a statutory requirement. These reports are currently not being prepared. Does the committee want to repeal this rule promulgation requirement?

1 **SECTION 4.** 340.01 (72p), (72t) and (72x) of the statutes are created to read:

2 340.01 **(72p)** "Treatment court" means a court that has jurisdiction over a treatment
3 court project participant.

4 **(72t)** "Treatment court project" means a county or tribal project that operates within the
5 continuum from arrest to discharge from supervision and provides alternatives to prosecution,
6 incarceration, or both, for criminal offenders, including suspended and deferred prosecution
7 projects or community-based corrections.

1 **(72x)** "Treatment court project participant" means a criminal offender who is under the
2 supervision of a treatment court.

NOTE: This SECTION creates definitions of a treatment court, a treatment court project, and a treatment court project participant.

COMMENT: The definitions are based upon language used to describe a project that may be eligible for a TAD grant under LRB-2614/P4, SECTIONS 12 and Section 17. The definition of a "treatment court project" does not require that the project meet all of the TAD grant eligibility requirements included in LRB-2614/P4, such as being evidence-based. Does the committee like this definition? Does the committee want the definition to be tied to all of the TAD eligibility requirements?

Also, the definition of "treatment court project participant" clarifies that the participant is the "criminal offender" and not other persons involved in the treatment court project. Using the phrase "criminal offender" could potentially exclude OWI first offenders that are convicted of a civil forfeiture because there is no statutory definition of a criminal offender. Does the committee want to allow the possibility of a first OWI offender? Does the committee want to clarify that a participant is a repeat OWI offender?

3 **SECTION 5.** 343.301 (3m) (a) and (b) of the statutes are created to read:

4 343.301 **(3m)** (a) A treatment court project participant to whom an order under sub. (1g)
5 applies must provide a copy of the ignition interlock device certificate installation to a
6 treatment court upon installation of the device or entrance into the treatment court project,
7 whichever is later.

8 (b) A treatment court that has jurisdiction over a treatment court participant to whom
9 an order under sub. (1g), applies must submit to the service provider, as defined in s. 110.10
10 (2m) (a) 1., who provided the certificate of installation to the treatment court project
11 participant, a request to immediately receive reports of any tampering, circumvention, bypass
12 or violating resets, including all relevant data recorded in the ignition interlock device's
13 memory.

NOTE: This SECTION requires a treatment court project participant, who is under an order restricting his or her operating privilege to be restricted to vehicles equipped with an ignition interlock device, to provide a copy of the ignition interlock device certificate of installation to the treatment court. The copy of the certificate must be provided either upon installation of the device or entrance into the treatment court project, whichever is later. This SECTION also requires a treatment court to submit a request to the service provider who provided the treatment court project participant with the certificate of installation to immediately receive reports of any tampering, circumvention, bypass or violating resets, including all relevant data recorded in the device's memory.

COMMENT: This SECTION does not clarify whether the court must receive and retain its own copy of the certification of installation. The statutes do not regulate what this certificate looks like, or how many copies the service provider must give to the customer. It is unclear whether the customer would be provided with a separate copy of the certificate of installation for the court to retain for its own file. Does the committee want to require that the treatment court be given a copy to retain for its own file?