



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

<p>2015 Wisconsin Act 389 [2015 Assembly Bill 839]</p>	<p>Participation in a 24-7 Sobriety Program</p>
---	--

BACKGROUND

Federal Grants for 24-7 Sobriety Programs

Under federal law, the U.S. Department of Transportation (U.S. DOT) may award grants to states that adopt and implement either: (1) effective programs to reduce operating while intoxicated (OWI) incidents; or (2) alcohol ignition interlock laws. States may use grant money for certain authorized activities, including costs associated with a 24-7 sobriety program. Federal law defines a “24-7 sobriety program” as a program that authorizes a court or state agency, as a condition of sentence, probation, parole, or work permit, to require an individual who plead guilty or was convicted of an OWI-related offense to do both of the following:

- Totally abstain from alcohol or drugs for a period of time.
- Subject to testing for alcohol or drugs at least twice per day, by continuous transdermal alcohol monitoring via an electronic monitoring device, or by an alternate method as authorized by the U.S. DOT.

Wisconsin’s Pilot 24-7 Sobriety Program

2015 Wisconsin Act 55 (Budget Act 55) established a pilot project¹ for a voluntary frequent sobriety testing program, commonly referred to as a “24-7 sobriety program.” Budget Act 55 authorized the Department of Justice (DOJ) to designate up to five counties to participate in a pilot 24-7 sobriety program to monitor certain OWI offenders. Among the various requirements

¹ The pilot project sunsets on June 30, 2021.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

that Budget Act 55 placed upon a pilot 24-7 sobriety program is the requirement that participation be limited to a person who has two or more suspensions, revocations, or other convictions related to an OWI offense and to whom one of the following applies:

- The person is ordered by a judge or by the Department of Corrections (DOC) as a condition of probation or deferred prosecution, release to parole, or release to extended supervision (ES), to refrain from using alcohol or a controlled substance, and whose participation in the program is ordered by the judge or by DOC as a condition of probation, release to parole, or release to ES.
- The person agrees to refrain from using alcohol or a controlled substance while he or she is on probation, participating in a deferred prosecution agreement, or on parole or ES and volunteers to participate in the program even though his or her participation is not ordered by a judge or by DOC as a condition of probation or deferred prosecution or release to parole or to ES.

Another requirement placed upon a pilot 24-7 sobriety program is that the program must require participants to be tested for the use of alcohol, at least twice daily, at approximately 12-hour intervals, or for the use of a controlled substance as frequently as practicable. However, if this creates an unreasonable hardship for the county administering the program, the program may utilize an alternative to the testing standard, as established by DOJ rule.

Installation of Ignition Interlock Devices

State law requires a court to order that a person's operating privilege for the operation of a "Class D" vehicle be restricted to operating vehicles that are equipped with an ignition interlock device (IID) and, in general, 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 IID if either of the following applies:

- The person improperly refused to take a preliminary breath screening test.
- The person has a total of one or more prior convictions, suspensions, or revocations for a homicide by intoxicated use of a vehicle or injury by intoxicated use of a vehicle in the person's lifetime, and other OWI-related convictions, suspensions, and revocations, counted as required under current law.

The one exception to this court-ordered IID requirement is for a situation where equipping each motor vehicle with an IID would cause an undue financial hardship. In such situations, the court may order that one or more vehicles for which the person's name appears on the vehicle's certificate of title or registration not be equipped with an IID.

If the court orders that a person's operating privilege be restricted with an IID, the court must order this restriction for a period of not less than one year, nor more than the maximum operating privilege revocation period permitted for the preliminary breath screening test refusal or OWI-related violation. However, if the maximum operating privilege revocation period is less than one year, the court must restrict the operating privilege for one year.

2015 WISCONSIN ACT 389

2015 Wisconsin Act 389 (the Act) authorizes a court to order a person who would otherwise be required to install an IID in his or her vehicle, and whose operating privileges for “Class D” vehicles would be restricted to operating vehicles so equipped, to participate in a pilot 24-7 sobriety program or a 24-7 sobriety program that meets the federal definition of such a program, as described above. Specifically, under the Act, if a person improperly refused to take a preliminary breath screening test, or has a total of one or more prior convictions, suspensions, or revocations for a homicide by intoxicated use of a vehicle or injury by intoxicated use of a vehicle in the person’s lifetime, and other OWI-related convictions, suspensions, and revocations, counted as required under current law, then a court must order **one or more** of the following:

- The person’s operating privilege for the operation of “Class D” vehicles be restricted to vehicles that are equipped with an IID and that each motor vehicle for which the person’s name appears on the vehicle’s certificate of title or registration be equipped with an IID.
- The person participate in either: (1) a pilot 24-7 sobriety program; or (2) a 24-7 sobriety program that meets the federal definition of such program, as described above, as well as any applicable federal regulations.

If a court enters an order for the person to participate in one of these two 24-7 sobriety program options, then **when the person either completes or otherwise does not participate in the program**, the court must also order that the person’s operating privilege for the operation of a “Class D” vehicle be restricted to operating vehicles that are equipped with an IID and each motor vehicle for which the person’s name appears on the vehicle’s certificate of title or registration be equipped with an IID, unless equipping each motor vehicle with an IID would cause an undue financial hardship, in which case, the court may order that one or more vehicles not be equipped with an IID.

The Act also specifies the minimum and maximum time period for which a person may be ordered to participate in either type of 24-7 sobriety program, and subsequently have his or her operating privilege restricted to operating a vehicle equipped with an IID. The time period during which a person participates in the 24-7 sobriety program, combined with the time period during which the person’s operating privilege is restricted to operating a vehicle equipped with an IID, must be **at least one year, but not more than the maximum revocation period permitted** for either the refusal of the preliminary breath screening test or OWI-related violation.

With respect to a court order for a person to participate in either type of 24-7 sobriety program discussed above, the Act also specifies the following:

- The time period for which the person’s operating privilege is to be restricted begins on the date that DOT issues any operator’s license.

- The court may order the person to install an IID immediately after his or her participation in the program ends or while the person completes the program and for the additional period of time as required above.
- The court must notify DOT of the date the person's participation in a 24-7 program ended, as well as the duration of the order restricting the person's operating privilege.
- A person subject to an order requiring the installation of an IID must, within two weeks after the date on which installation is required under the order, submit proof to the sheriff in his or her county of residence that an IID has been installed in each motor vehicle to which the order applies.

The Act also makes various changes applicable only to a pilot 24-7 sobriety program, which include the following:

- Specifying that a court may order a person to participate in a pilot 24-7 sobriety program as a condition of bond release from jail.
- Clarifying that the alternative to the sobriety testing standard established by DOJ rule is applicable only to a pilot 24-7 sobriety program. As previously mentioned, if the standard for frequent testing (twice daily in 12-hour intervals) creates an unreasonable hardship for a county administering a pilot 24-7 sobriety program, it may utilize the standard established by DOJ rule.
- Requiring a person to **totally abstain** from using alcohol or a controlled substance while participating in a pilot 24-7 sobriety program. Under Budget Act 55, the participant was required to **refrain** from doing so. Also, with respect to a person participating in a pilot 24-7 sobriety program when he or she is not ordered by a judge or DOC to do so, the Act specifies that the person must **agree** to participate and **totally abstain**. Budget Act 55 required such participant to **volunteer** to participate and **refrain**.

The Act first applies to violations commenced or refusals occurring on the effective date of the Act, but does not preclude the counting of other violations, convictions, suspensions, or revocations for purposes of administrative action by DOT, sentencing by a court, or revocation or suspension of motor vehicle operating privileges.

Effective date: October 2, 2016

Prepared by: Melissa Schmidt, Senior Staff Attorney

May 2, 2016

MS:mcm;ksm