

2019 Wisconsin Frequent Sobriety Testing Pilot Program (FSTPP)

Annual Report

Bureau of Justice Information and Analysis
Wisconsin Department of Justice



2019 Wisconsin Frequent Sobriety Testing Pilot Program (FSTPP)

Purpose of Report

The purpose of this report is to provide the annual update on the status of the Frequent Sobriety Testing Pilot Program (FSTPP) as designated by Wis. Stat. §165.957. This statute requires the Wisconsin Department of Justice (DOJ) to analyze the information it receives as part of the project and report to the legislature annually. This is the fourth annual report produced by DOJ.

Frequent Sobriety Testing Overview

The FSTPP provides monitoring for individuals convicted of multiple Operating While Intoxicated (OWI) offenses to ensure they are not consuming alcohol or controlled substances, with an immediate sanction if a violation occurs. Participants are under constant (24 hours a day, 7 days a week) monitoring while on the program, which can take the form of reporting to a location twice per day to test for the presence of alcohol, utilizing another means of continuous testing for alcohol (e.g. a 24/7 Secure Continuous Remote Alcohol Monitoring bracelet), or reporting on a schedule to test for the presence of drugs. A positive test for alcohol or drugs results in an immediate sanction tailored to the individual, such as twelve hours in jail. Failure to appear for testing also results in immediate consequences.

Under Wis. Stat. §165.957, participants are individuals with two or more OWI or related convictions, and they enter the program either: (1) by order of a judge or the Wisconsin Department of Corrections as a condition of bond, probation, deferred prosecution, release to parole, or release to extended supervision to refrain from using alcohol or controlled substances; or, (2) individuals could agree to refrain from the use of alcohol or controlled substances while released on bond, probation, deferred prosecution, parole, or extended supervision. To be eligible for the program, participants must agree to one of the testing options provided in the designated county.

Composition of the Pilot Project

DOJ selected five counties for a pilot project, as allowed by Wis. Stat. §165.957(2). Counties were selected using a stratified sampling method. First, the counties were divided based on population into large (over 150,000 population), medium (between 30,000 and 150,000 population) and small (less than 30,000 population). Population was used to ensure that the program outcomes could be evaluated and compared in different size counties across Wisconsin. Counties were then further divided based on whether they had a drug/alcohol related treatment court (i.e. Adult Drug Court, OWI Court, Adult Hybrid Court). This was done to address the likelihood that the implementation of the 24/7 program will differ if the county has a specialty court program that may also accept and monitor the activities of OWI

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offenders. All large counties have some version of a drug/OWI court. Therefore, five groups were created, rather than six, and one county was selected from each group.

Counties were then assigned random numbers, and the lowest value was used in the selection of one county per group. All five selected counties initially agreed to participate in the pilot project and are listed below, along with the population, average OWI arrest rate for the years (2011-2015), and the average percent of repeat (two or more) OWI convictions for the years (2011-2014).

County	Selection Grouping	Population	OWI Arrest Rate	% Repeat Offender OWI Convictions
		2015 Census Est.	Avg. 2011-2015	Avg. 2011-2014
Green Lake	Small, no treatment court	18,856	491.5	44%
Washburn	Small, treatment court	15,552	537.6	37%
Manitowoc	Medium, no treatment court	79,806	445.5	38%
Oneida	Medium, treatment court	35,567	564.1	42%
Racine	Large	195,080	344.3	31%

For the above data, the population is based on the 2015 U.S. Census Bureau population estimates for each county. Treatment court information by county was cross-referenced through multiple sources including information maintained by the Office of Court Operations, and a 2016 DOJ survey of counties and tribes to gather information on their treatment courts and diversion programs. Arrest data is based on reported arrests by Wisconsin law enforcement agencies under the Uniform Crime Reporting (UCR) program. The arrest rate per 100,000 persons is used to account for population differences across counties. OWI conviction data, based on the percent of offenders with two or more convictions for the listed time period, was provided by the Wisconsin Department of Transportation.

Program History and Status

Participation in the program is voluntary for counties. In 2017, DOJ held in-person meetings with each participating county team to discuss program implementation and expectations. These meetings also included training on the data collection software to be used to track participant progress. DOJ staff worked with the counties after these meetings to identify who would need access to the data collection software and shared resources to assist in implementation of the programs.

After initial site selection, the project was on hold for a significant period of time due to pending legislative and Department of Administration (DOA) approval, preventing the full implementation of the program in each county, and the final implementation of the data collection software. Expenditure

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authority to implement and operate the program was not provided when the program was established. In 2017, DOJ submitted two requests for expenditure authority under Wis. Stat. § 16.515. The expenditure authority was approved in November 2017, for one year, although the request was originally for multiple years. DOJ, therefore, had to complete a new request for expenditure authority each year.

After DOJ was able to resolve these issues, it again contacted the five counties that previously agreed to participate in the pilot in an effort to move the project forward. In response, Washburn, Racine, and Manitowoc counties decided not to participate in the project. In early 2019, DOJ created a survey that was sent to all Wisconsin counties asking about their capacity and interest in participating in the FSTPP. DOJ received responses showing interest from a total of three counties (Bayfield, Washington, and Dunn). In January 2020, DOJ reached out to these three counties, in addition to Green Lake (one of the original remaining counties) to assist them with the implementation process. Green Lake and Washington Counties were the only two counties to continue to express interest in January 2020.

Primarily due to the lack of continued overall county interest, DOJ has no plans to continue pursuing implementation of the pilot project. The lack of funding to implement the program at the county level may have played a role in the counties' level of interest. In addition, many Wisconsin counties also have treatment and diversion initiatives they are already working on through the Treatment Alternatives and Diversion (TAD) grant program. A final report, as required by Wis. Stat. §165.957(7)(c), including a recommendation on further implementation, is due to the legislature by January 15, 2021. Since the timeline for this pilot project is now very short, conducting a program evaluation and providing a statewide recommendation on additional implementation with only two participating counties and an extremely short data collection period is not practical. Also, continued work on the pilot project is not fiscally responsible for DOJ. The only revenue generated by the project is from participant program and testing fees. It would take time to recoup the money needed for the data collection software and server and the resources needed by the individual programs. DOJ informed both Green Lake and Washington counties that the pilot project would not be moving forward. Both counties indicated they understand and have no objections to discontinuing the pilot project.

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Appendix I

Wisconsin Stat. §165.957

Frequent testing for use of alcohol or a controlled substance; pilot program.

- (1) In this section:
 - (a) “Controlled substance” has the meaning given in s. [961.01 \(4\)](#).
 - (b) “Testing” means a procedure for determining the presence and level of alcohol or a controlled substance in an individual’s blood, breath, or urine, and includes any combination of the use of breath testing, drug patch testing, urinalysis, or continuous or transdermal alcohol monitoring.
- (2) The department of justice may designate up to 5 counties to participate in a voluntary frequent sobriety testing program. If a county opts not to participate in the program, the department of justice may designate another county to replace it.
- (3) The department of justice may, by rule, establish the following:
 - (a) A standard for frequent testing for the use of alcohol or a controlled substance that is an alternative to the testing described in sub. [\(4\) \(b\) 1](#). This paragraph does not apply to testing required pursuant to an order under s. [343.301 \(1g\) \(am\) 2](#), that a court imposes on a person who meets the criteria under s. [343.301 \(1g\) \(a\) 2. b](#).
 - (b) A standard for setting fees that counties may collect under sub. [\(4\) \(d\)](#). The standard may include a component that allows the department of justice to recoup its costs under this section, and as provided in sub. [\(5\) \(a\)](#).
 - (c) A timeline and procedure for counties to submit to the department of justice the information required under sub. [\(6\)](#).
- (4) Each frequent sobriety testing program shall meet all of the following criteria:
 - (a) The program limits participation to persons whose number of convictions under ss. [940.09 \(1\)](#) and [940.25](#), plus the total number of suspensions, revocations, and other convictions counted under s. [343.307 \(1\)](#) equals 2 or more, and to whom one of the following applies:
 1. The person is ordered by a judge or by the department of corrections as a condition of bond, release under s. [969.01 \(1\)](#), probation or deferred prosecution, release to parole, or release to extended supervision, to totally abstain from using alcohol or a controlled substance, and whose participation in the program is ordered by the judge or by the department of corrections as a condition of bond, release under s. [969.01 \(1\)](#), probation, release to parole, or release to extended supervision.

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2. The person agrees to totally abstain from using alcohol or a controlled substance while he or she is released on bond, on release under s. [969.01 \(1\)](#), on probation, participating in a deferred prosecution agreement, or on parole or extended supervision and agrees to participate in the program even though his or her participation is not ordered by a judge or by the department of corrections as a condition of bond, release pursuant to s. [969.01 \(1\)](#), probation or deferred prosecution, or release to parole or to extended supervision. This subdivision does not apply to any person who meets the criteria under s. [343.301 \(1g\) \(a\) 2. b.](#) and who is subject to an order under s. [343.301 \(1g\) \(am\) 2.](#)

(b)

1. Except as provided in subd. [2.](#) or [2m.](#), the program requires 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.
 2. If the standard for frequent testing described in subd. [1.](#) creates an unreasonable hardship for the county administering the program, the program may utilize the standard established by the department of justice under sub. [\(3\) \(a\)](#). This subdivision does not apply to any person who meets the criteria under s. [343.301 \(1g\) \(a\) 2. b.](#) and who is subject to an order under s. [343.301 \(1g\) \(am\) 2.](#)
- 2m.** Any person who meets the criteria under s. [343.301 \(1g\) \(a\) 2. b.](#) and who is subject to an order under s. [343.301 \(1g\) \(am\) 2.](#) shall be tested as required under [23 USC 405](#) (d) (7) (A) (ii) and regulations adopted thereunder.

- (c) The program informs a participant that, if he or she fails to appear for a scheduled test or if his or her test results indicate that the participant used alcohol or a controlled substance, he or she may be placed under immediate arrest and referred to the department of corrections and to the appropriate prosecuting agency for violating a condition of his or her bond, release under s. [969.01 \(1\)](#), probation or deferred prosecution, or of his or her release to parole or extended supervision.

- (d) The program requires participants to pay a fee, except that a county may allow a participant to pay a reduced fee or no fee, subject to the participant's ability to pay. Each county may establish fees that are consistent with any standard established under sub. [\(3\) \(b\)](#) and that the county determines are sufficient to fund its frequent sobriety testing program. Except as provided in sub. [\(5\)](#), the county may retain the fees it collects pursuant to this paragraph to administer its program.

(5)

- (a) The department of justice may enter into an agreement with each designated county that requires the county to pay a portion of the fees the county collects under sub. [\(4\) \(d\)](#) to the department of justice to pay the actual costs of performing the analysis and reporting under sub. [\(7\)](#).

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- (b) The department of justice shall deposit in the state treasury for deposit into the general fund all moneys it collects under this subsection. These moneys shall be credited to the appropriation account under s. [20.455 \(2\) \(gu\)](#).
- (6) Each county that establishes a frequent sobriety testing program after being designated by the department of justice under sub. [\(2\)](#) shall, annually, provide the following information to the department of justice:
- (a) The number of participants in the program.
 - (b) The costs associated with the program.
 - (c) The failure or dropout rate of participants.
 - (d) Other information requested by the department of justice.
- (7)
- (a) Not later than June 30, 2016, the department of justice shall provide to the legislature under s. [13.172 \(2\)](#) a list of counties it designated under sub. [\(2\)](#). For each county it designates, the department of justice shall inform the legislature of the reasons it chose the county for participation. If the department of justice designated a county to replace a different county, the department of justice shall include that information in the report.
 - (b) Beginning January 15, 2017, and annually thereafter until January 15, 2021, the department of justice shall analyze the information it receives pursuant to sub. [\(6\)](#) and shall submit a report to the legislature under s. [13.172 \(2\)](#). The report shall include all of the following information relating to the prior year's frequent sobriety testing programs:
 - 1. A list of counties designated under sub. [\(2\)](#) that established a frequent sobriety testing program.
 - 2. The number of participants in each county's frequent sobriety testing program.
 - 3. A description of each county's frequent sobriety testing program.
 - 4. The recidivism rates for participants in each county's frequent sobriety testing program.
 - (c) By January 15, 2021, the department of justice shall submit a final report to the legislature under s. [13.172 \(2\)](#) that includes all of the information required under par. [\(b\)](#) and contains a recommendation as to whether the frequent sobriety testing programs should be continued, discontinued, or modified.
- (8) The department of justice may use the emergency rules procedure under s. [227.24](#) to promulgate rules specified in sub. [\(3\)](#). Notwithstanding s. [227.24 \(1\) \(a\)](#) and [\(3\)](#), the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the

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preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this section.

- (9) This section does not apply after June 30, 2021.

Appendix II

Chapter Jus 19 FREQUENT SOBRIETY TESTING PILOT PROGRAM

- [Jus 19.01](#) Purpose.
- [Jus 19.02](#) Applicability.
- [Jus 19.03](#) Definitions.
- [Jus 19.04](#) Program participation and enrollment.
- [Jus 19.05](#) Agency agreement with the department.
- [Jus 19.06](#) Conditions of bond or pretrial release.
- [Jus 19.07](#) Conditions of deferred prosecution.
- [Jus 19.08](#) Conditions post-conviction.
- [Jus 19.09](#) Volunteers.
- [Jus 19.10](#) Testing.
- [Jus 19.11](#) Compliance and sanctions.
- [Jus 19.12](#) Fees.
- [Jus 19.13](#) Reporting requirements and data collection system.
- [Jus 19.14](#) Reimbursement for lost or damaged equipment.
- [Jus 19.15](#) Discharge from the program.
- [Jus 19.16](#) Repeat participant.

Note: Chapter [Jus 19](#) was created by emergency rule, [EmR1805](#), effective February 6, 2018 through July 5, 2018.

Jus 19.01 Purpose. The purpose of this chapter is to establish, as required by s. [165.957 \(3\)](#), Stats., standards, timelines, and procedures for a frequent sobriety testing pilot program in the state of Wisconsin, and to effectuate the purpose of s. [165.957](#), Stats.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.

Jus 19.02 Applicability. This chapter applies to the department of justice, the department of corrections, participating counties, circuit courts, and district attorneys, and participants in the frequent sobriety testing pilot program.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.

Jus 19.03 Definitions. In this chapter:

- (1) “Agency” means a sheriff’s office or an entity designated by a sheriff of a county selected by the department to participate in the frequent sobriety testing pilot program.
- (2) “Alcohol concentration” means the alcohol content of blood, breath, or urine by weight.
- (3) “Breath test” means the collection of a breath sample to measure breath alcohol concentration.
- (4) “Continuous monitoring” means breath or transdermal testing for the presence of alcohol that is conducted at least once every hour.
- (5) “Controlled substance” has the meaning given in s. [961.01 \(4\)](#), Stats.
- (6) “Court” means a circuit court in the state of Wisconsin.

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- (7) “Data collection system” means a computer application providing for the entry of specific, structured variables into a database to track key data elements for analysis and reporting.
- (8) “Deferred prosecution agreement” means a written agreement between a criminal defendant and a district attorney in which the district attorney agrees to suspend the prosecution for a specified period provided that the defendant complies with conditions included in the agreement.
- (9) “Department” means the department of justice.
- (10) “District attorney” means the district attorney of a county participating in the program who has jurisdiction over the prosecution of a participant.
- (11) “Drug patch” means any type of device affixed to a person's skin to test for the presence of controlled substances in the person's body.
- (12) “Non-OWI offense” means an offense that is not an OWI offense.
- (13m) “OWI conviction” means a conviction under s. [940.09 \(1\)](#) or [940.25](#), Stats., or a suspension, revocation, or other conviction as enumerated in s. [343.307 \(1\)](#), Stats.
- (14m) “OWI offense” means a violation of s. [940.09 \(1\)](#) or [940.25](#), Stats., or the statutes, laws, and local ordinances enumerated in s. [343.307 \(1\)](#), Stats.
- (15) “Participant” means an adult person who has been ordered by a court or the department of corrections to refrain from using alcohol or controlled substances, or both, as a condition of release and has been ordered by a court or the department of corrections to participate in the program. “Participant” also means an adult person who has agreed to participate in the program as a condition of a deferred prosecution agreement or who volunteers to participate in the program.
- (16) “Participation agreement” means an agreement between a participant and an agency in which the participant agrees to comply with the program requirements.
- (17) “Program” means the frequent sobriety testing pilot program, which requires a participant to abstain from the use of alcohol or a controlled substance, or both, for a specified period of time, during which the participant shall submit to twice-a-day or continuous testing of the participant's blood, breath, urine, or other bodily substance, in order to determine if alcohol or a controlled substance, or both, is present in the participant's body.
- (18) “Sanction” means a consequence imposed for a violation of the participation agreement and may include arrest.
- (19) “Testing” has the meaning given in s. [165.957 \(1\) \(b\)](#), Stats.
- (20) “Testing site” means the facility designated by the agency and approved by the department where the program shall be administered including testing, installation of remote transdermal alcohol monitoring equipment, collection of fees from participants, and entry of participant information into the data collection system. An agency may designate more than one testing site.
- (21) “Transdermal alcohol monitoring” means the use of a device to detect alcohol in a person's body by measuring ethanol vapors released through the skin.
- (22) “Twice-a-day testing” means testing a participant for the use of alcohol at least twice daily, with testing times approximately 12 hours apart.
- (23) “Urinalysis testing” means collecting and analyzing urine specimens to detect the presence of alcohol or controlled substances, or both.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.; correction in (13), (14) made under s. [13.92 \(4\) \(b\) 7](#), Stats., and renum. (13) and (14) to (14m) and (13m) under s. [13.92 \(4\) \(b\) 1](#), Stats., [Register April 2019 No. 760](#).

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Jus 19.04 Program participation and enrollment.

- (1) Before commencing participation in the program, a participant shall sign a written participation agreement with the agency using a form approved by the department. The agreement shall include the initial duration of the person's participation in the program as ordered by the court or department of corrections, or provided in a deferred prosecution agreement, and shall include all of the following:
 - (a) The type and frequency of testing.
 - (b) The location of the testing site.
 - (c) Fee schedule, listing fee types enumerated in s. [Jus 19.12 \(1\) \(a\)](#) and amount of each fee.
 - (d) Payment procedures, including time within which each type of fee shall be paid.
 - (e) The participant's obligations and responsibilities.
 - (f) Potential sanctions for the participant's noncompliance, up to and including termination, as determined by the agency.
- (2) A participant shall sign the agreement in the presence of a person designated by the agency, acknowledging and agreeing to the terms and conditions imposed by the court or department of corrections or provided in a deferred prosecution agreement. The agency shall deliver a copy of the signed participation agreement to the participant.
- (3) In conjunction with the participation agreement, the participant shall sign a consent form allowing the release of personal and testing information to the agency and department for enforcement and reporting purposes. The personal information may include name, date of birth, state identification number, address, telephone, and other information deemed necessary or appropriate by the agency and department and outlined in the consent form. The format of the consent form shall be approved by the department. The participant shall receive a copy of the signed consent form.
- (4) A participant shall be enrolled in the program for a minimum initial enrollment period of 90 days and a maximum initial enrollment period of 365 days except when ordered as a condition of pretrial release.
- (5) Program participation may be extended beyond the initial enrollment period at the discretion of the court, the department of corrections, or the district attorney, according to whether program participation is a pretrial, postconviction, or deferred prosecution condition. Before an individual's program participation may be extended, the individual shall sign an amended written participation agreement using a form approved by the department. An individual's participation in the program may not exceed 18 months.
- (6) A participant may not be enrolled in the program while in physical custody.
- (7) A person on work release may be ordered to participate in the program or may volunteer to participate in the program.
- (8) Participation in the program may not replace a participant's statutory obligations or any other condition imposed by the court or the department of corrections or as part of a deferred prosecution agreement.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.

Jus 19.05 Agency agreement with the department.

- (1) Each agency participating in the program shall sign a written agreement with the department outlining the respective responsibilities of the agency and the department.
- (2) By signing the agreement, the agency agrees to abide by this chapter and any other guidelines and procedures established by the department for the administration of the program.
- (3) The agreement shall require the agency to provide an accounting to the department of all fees, costs, and other payments collected from participants, in a manner directed by the department.

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- (4) The agreement shall list the data collection and reporting requirements outlined in s. [Jus 19.13](#) and s. [165.957 \(6\)](#), Stats.
- (5) The agreement shall direct the agency to remit to the department a portion of all program fee amounts collected from its participants. The department shall use these payments to recoup its expenditures for administering the program and installing, maintaining, and administering the data collection system. The department shall return to the agency any fees paid under the agreement not used to support the program.
History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.

Jus 19.06 Conditions of bond or pretrial release. The court may require a defendant to participate in the program as a condition of bond or pretrial release if any of the following apply:

- (1) The defendant has 2 or more OWI convictions and is currently charged with a non-OWI offense.
- (2) The defendant is charged with a 3rd or subsequent OWI offense.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.

Jus 19.07 Conditions of deferred prosecution. A district attorney may require a defendant to participate in the program as a condition of a deferred prosecution agreement if the defendant has 2 or more OWI convictions and the deferred prosecution agreement is based on a non-OWI offense.

Note: Under s. [967.055 \(3\)](#), Stats., a prosecutor may not place a person in a deferred prosecution program if the person is accused of or charged with an OWI offense. Neither s. [165.957](#), Stats., nor this rule allow the use of deferred prosecution agreements in OWI cases.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.

Jus 19.08 Conditions post-conviction. The court or department of corrections may order a defendant convicted of an offense to participate in the program as a condition of probation, parole, or extended supervision if any of the following applies:

- (1) The defendant is being or has been sentenced for a 2nd or subsequent OWI offense.
- (2) The defendant has 2 or more OWI convictions and is being or has been sentenced for a non-OWI offense.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.

Jus 19.09 Volunteers. A defendant with 2 or more OWI convictions may voluntarily participate in the program. A voluntary participant shall agree to abstain from alcohol and controlled substances while released on bond, on release under s. [969.01 \(1\)](#), Stats., on probation, while participating in a deferred prosecution agreement, or on parole or extended supervision. Volunteers shall adhere to all program requirements.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.

Jus 19.10 Testing.

- (1) Testing may include any combination of breath testing, drug patch testing, blood testing, urinalysis, or transdermal alcohol monitoring, provided that the method selected supports either continuous monitoring or twice-a-day testing. Other testing methods or schedules may be used if approved by the agency and the department. The testing methods at each testing site shall be determined by the agency in collaboration with the department.
- (2) An ignition interlock device, as defined in s. [340.01 \(23v\)](#), Stats., is not an acceptable testing method for the program.

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- (3) The agency shall provide the testing equipment and may enter into a contract with a private vendor to obtain the equipment needed to carry out the program.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.

Jus 19.11 Compliance and sanctions.

- (1) ENROLLMENT. The court, department of corrections, or district attorney's office shall inform the agency when a participant is ordered to participate in the program as a pretrial or postconviction condition or agrees to participate in the program under a deferred prosecution agreement. A new participant shall contact the agency, within a time specified by the court, department of corrections, or district attorney, to enroll in the program. Enrollment commences when the participant signs the participation agreement and consent form as provided in s. [Jus 19.04 \(1\)](#) to [\(3\)](#). If the participant fails to enroll, the agency shall notify the court, the department of corrections, or the district attorney, according to whether program participation is a pretrial, postconviction, or deferred prosecution condition. A court may issue a bench warrant directing law enforcement to take the participant into custody and ordering the participant to appear before the court. Volunteers may enroll by contacting a testing site.
- (2) FAILING A TEST.
- (a) A test that reveals the presence of alcohol or a controlled substance is a violation of the participation agreement and shall result in a sanction.
- (b) If a test reveals the presence of alcohol or a controlled substance, the agency may conduct a confirmation test.
- (c) If a test reveals the presence of alcohol or a controlled substance, the agency may take the participant into custody for a violation of the participation agreement.
- (d) According to whether program participation is a pretrial, postconviction, or deferred prosecution condition, the agency shall immediately notify the court, the department of corrections, or the district attorney that the participant has violated the participation agreement by failing a test.
- (3) MISSING OR BEING LATE FOR A TEST.
- (a) Missing a test at a designated time at the designated testing site without the agency's approval is a violation of the participation agreement and may result in a sanction. The agency may consider a participant who is late for on-site testing in violation of the participation agreement and may impose a sanction.
- (b) If a participant fails to appear for a scheduled test, the agency shall immediately notify the court, the department of corrections, or the district attorney, according to whether program participation is a pretrial, postconviction, or deferred prosecution condition. A court may issue a bench warrant directing law enforcement to take the participant into custody and ordering the participant to appear before the court.
- (c) Unless prior arrangements have been made between the participant and the agency, a test at a nondesignated testing site is a violation of the participation agreement.
- (d) At the discretion of the agency, a participant who must travel outside the area of the designated testing site may be tested at an alternative location with advance written approval from the agency.
- (e) The agency may excuse a participant from a scheduled test based upon exigent circumstances, including inclement weather, emergency, or documented health problems.
- (f) The agency shall record in the data collection system a participant's failure to appear for a test or a participant's excused absence from a test.
- (4) TAMPERING WITH A TEST.
- (a) The agency shall impose a sanction on a participant who tampers with a test.

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- (b) A participant who damages any equipment in the course of tampering with a test shall reimburse the agency for the cost of the damaged equipment.
- (c) The agency shall record the tampering as a violation of the participation agreement in the data collection system.
- (5) STANDING ORDER. A court may issue a standing order establishing procedures for taking into custody participants who have violated a participation agreement in any way, including using alcohol or any controlled substance, failing a test, missing a test, being late for on-site testing, or tampering with a test.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19; correction in (1) made under s. [35.17](#), Stats., [Register April 2019 No. 760](#).

Jus 19.12 Fees.

(1)

- (a) Except as provided in par. (b), the agency shall collect program fees from participants, including administrative fees, testing or daily monitoring fees according to test type, and installation and deactivation fees for remote transdermal alcohol monitoring devices.
- (b) According to whether program participation is a pretrial, postconviction, or deferred prosecution condition, the court, the department of corrections, or the district attorney may recommend a reduction or waiver of fees for a participant. However, the agency shall make the final determination on a fee reduction or waiver. The agency may decline to enroll a person in the program if any fees were reduced or waived without the agency's consent. An agency that agrees to reduce or waive a fee shall, in making payments to the department under s. [Jus 19.05 \(5\)](#), remit to the department the amount it would have remitted without the reduction or waiver.
- (2) The department shall determine all fee amounts in consultation with the participating agencies. The fee amounts shall reflect the program costs to the agency and the department. The department shall provide a standard fee schedule to each agency. The fee schedule shall be reviewed and updated annually as necessary to reflect actual program costs.
- (3) The department may, upon request of an agency, approve a fee modification on a showing by the agency that a higher fee is necessary to cover program costs.

(4)

- (a) The agency may use the fees collected for any of the following:
 1. To pay a vendor for any test administered.
 2. Other testing costs.
 3. Administrative program costs.
 4. Costs associated with program support services.
 5. Equipment maintenance and replacement costs.
 6. Program compliance costs.
 7. To make the payments to the department required under s. [Jus 19.05 \(5\)](#).
- (b) The agency shall report to the department how the fees are expended annually or as requested by the department.
- (5)
 - (a) Except as provided in par. (b), the agency may not administer a test before the testing fee is paid. The participant may pay the testing fee only with cash or a money order. The agency shall provide a receipt to the participant. The agency may accept advance payment from a participant.
 - (b) In its discretion, an agency may administer a test without prior payment based upon exigent circumstances.

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- (6) The agency shall refund any positive balance to a participant who has successfully completed the program. The agency may not refund any positive balance to a participant who is terminated from the program.
- (7) The agency shall report a participant's failure to pay any required program fees to the court, the department of corrections, or the district attorney, according to whether program participation is a pretrial, postconviction, or deferred prosecution condition.
- (8) A participant's failure to pay fees may result in termination from the program at the recommendation of the agency, the court, the department of corrections, or the district attorney, according to whether program participation is a pretrial, postconviction, or deferred prosecution condition.
- (9) The agency may terminate a voluntary participant for failure to pay required program fees.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.

Jus 19.13 Reporting requirements and data collection system.

- (1) An agency shall use the data collection system designated by the department to track participant information, to record testing data, and to monitor fees collected.
- (2) The agency shall enter all of the following information about a participant into the data collection system:
 - (a) Enrollment information.
 - (b) Demographic information.
 - (c) Type, frequency, and duration of program participation.
 - (d) Compliance with enrollment procedures.
 - (e) Execution of participation agreement and consent form.
 - (f) Testing results.
 - (g) Discharge information.
 - (h) Fees and other money due and collected.
 - (i) Additional information requested by the department.
- (3) Data collection shall occur on an ongoing basis as participants are enrolled in or discharged from the program and as tests are completed. All data shall be entered or uploaded in the data collection system as soon as possible, within 48 hours whenever possible, after being gathered or received by the agency.
- (4) All information in the data collection system shall be kept current and confidential as required by law. The accuracy and completeness of the data is the responsibility of the agency.
- (5) The department shall, in order help monitor data quality and program progress, communicate with agencies on at least a quarterly basis about key statistics and performance metrics. Agencies shall address and respond to any data quality issues identified through this process.
- (6) The department shall use the data provided by the agencies to evaluate program outcomes and effectiveness as required by s. [165.957 \(7\)](#), Stats.
- (7) The department may require participating agencies, courts, the department of corrections, and district attorneys to provide specific information on program functioning and operations as part of the evaluation process required by s. [165.957 \(7\) \(b\)](#) and [\(c\)](#), Stats.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.

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Jus 19.14 Reimbursement for lost or damaged equipment.

- (1) A participant who loses or intentionally damages any testing equipment shall reimburse the agency for the lost or damaged equipment.
- (2) Any amount owed by the participant as reimbursement for lost or damaged equipment shall be assessed to the participant and paid to the participating county's frequent sobriety testing pilot program fund.
- (3) The agency shall report any failure by a participant to pay an assessed reimbursement to the court, or the department of corrections, or the district attorney, according to whether program participation is a pretrial, postconviction, or deferred prosecution condition. A participant who fails to pay the reimbursement may be taken into custody or a court may issue an arrest warrant for the participant.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.

Jus 19.15 Discharge from the program.

- (1) A participant shall be discharged from the program when any of the following occurs:
 - (a) The participant has successfully completed the program.
 - (b) The participant is terminated from the program by the court, the department of corrections, or the district attorney, according to whether program participation is a pretrial, postconviction, or deferred prosecution condition, due to the participant's violation of program requirements.
 - (c) The participant is administratively discharged from the program because the court, the department of corrections, or the district attorney, according to whether program participation is a pretrial, postconviction, or deferred prosecution condition, has determined that the participant is no longer required to participate in the program or the participant is unable to continue program participation.
- (2) A participant completes the program when he or she has complied with the program requirements for the duration specified in the participation agreement and:
 - (a) If in the program as a condition of bond or other pretrial release, there has been a final disposition of the criminal charge, including acquittal or conviction and imposition of sentence.
 - (b) If in the program on a deferred prosecution agreement, the participant has met the requirements of the deferred prosecution agreement and there has been a final disposition of the criminal charge.
 - (c) If in the program as a condition of probation, parole, or extended supervision, the participant has served the time and satisfied the conditions set by the court in the order of probation, parole, or extended supervision.
- (3) When a participant is discharged from the program, the court, department of corrections, or district attorney, according to whether program participation is a pretrial, postconviction, or deferred prosecution condition, shall inform the agency.
- (4) The agency shall enter the participant's discharge from the program into the data collection system upon notification that the participant has completed the program, has been terminated from the program, or has been administratively discharged.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.

Jus 19.16 Repeat participant. The court, department of corrections, or district attorney, with concurrence of the agency, may authorize a participant to participate in the program no more than 2 additional times after the participant has been discharged from the program.

History: [EmR1805](#): emerg cr., eff. 2-6-18; [CR 18-068](#): cr. [Register April 2019 No. 760](#), eff. 5-1-19.