



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

Room 114 East, State Capitol
PO Box 7857
Madison WI 53707-7857
(608) 266-1221
TTY 1-800-947-3529

January 14, 2021

SENT VIA EMAIL

Michael Queensland, Senate Chief Clerk
(c/o email erin.gillitzer@legis.wisconsin.gov)

Kay Inabnet, Assembly Assistant Chief Clerk
(c/o email julie.martyn@legis.wisconsin.gov)

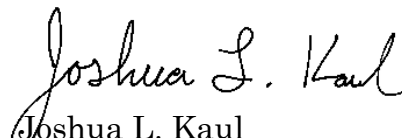
Re: Annual Wisconsin Frequent Sobriety Testing Pilot Program

Dear Chief Clerk Queensland and Assistant Chief Clerk Inabnet:

Pursuant to Wis. Stat. § 165.957(7)(b)(c), enclosed is the 2020 Wisconsin Frequent Sobriety Testing Pilot Program Report for 2019. This is the fifth, and final, annual report produced by the Wisconsin Department of Justice.

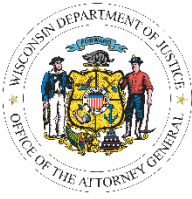
If you have any questions, please feel free to contact Tina Virgil, Administrator of Division of Law Enforcement Services at (608) 267-2791.

Sincerely,


Joshua L. Kaul
Attorney General

JLK:DJS:alm

Enclosure



2020 Wisconsin Frequent Sobriety Testing Pilot Program (FSTPP)

Final Report

Bureau of Justice Information and Analysis
Wisconsin Department of Justice

2020 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 fifth and final annual report produced by DOJ.

Frequent Sobriety Testing Overview

The FSTPP is intended to provide a high level of monitoring to participants 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, 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 appropriate to the individual, such as 12 hours in jail. Failure to appear for testing also results in immediate consequences.

Based on Wis. Stat. §165.957, participants would be individuals with two or more OWI or related convictions, and they could enter the program one of two ways. Individuals could be ordered by 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. Individuals could also voluntarily agree to refrain from the use of alcohol or controlled substances while released on bond, probation, deferred prosecution, parole, or extended supervision. By entering the program, participants would have to agree to one of the testing options provided in the designated county.

Program History and Status

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 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

2020 Wisconsin Frequent Sobriety Testing Pilot Program (FSTPP)

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 the gap in work being done on the project due to legislative processes, DOJ reached back out to counties in an effort to move the project forward. At this time, Washburn, Racine, and Manitowoc 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 in order to gain more participation. DOJ received responses showing interest from a total of three counties (Bayfield, Washington, and Dunn). In January 2020, DOJ reached out to these three new interested counties, in addition to Green Lake, one of the original remaining counties, to get them started 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 in implementing this pilot project, DOJ decided to no longer pursue the project. The lack of funding to implement the program at the county level could have played a role in counties being uninterested in pursuing this project. 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. Identifying additional resources and where a program like FSTPP would fit within the architecture of TAD also likely added to the lack of county interest. Given the timeline and the past program status, the pilot project was not in the best financial interest of DOJ to proceed.

DOJ informed the two remaining interested counties that the pilot project would not be moving forward. Both counties understood and had no concerns. Given this project was not fully implemented, there is no data to report for this final report required by Wis. Stat. §165.957 (7)(c) and DOJ recommends discontinuing the project.

2020 Wisconsin Frequent Sobriety Testing Pilot Program (FSTPP)

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

2020 Wisconsin Frequent Sobriety Testing Pilot Program (FSTPP)

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.

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.

2020 Wisconsin Frequent Sobriety Testing Pilot Program (FSTPP)

(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).
- (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.

2020 Wisconsin Frequent Sobriety Testing Pilot Program (FSTPP)

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 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.