



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2015 Assembly Bill 839

Assembly Amendment 2

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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

¹ The pilot project sunsets on June 30, 2021.

counties to participate in a pilot 24-7 sobriety program to monitor certain OWI offenders. Among the various requirements that Budget Act 55 placed upon a pilot 24-7 sobriety program is the requirement that participation be limited to a person whose number of suspensions, revocations, and other convictions related to an OWI related offense equals two or more and 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 ignition interlock device 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 maximum refusal or 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 ASSEMBLY BILL 839

Under Assembly Bill 839 (the bill), a court may order a person who would otherwise be required to install an IID in his or her vehicle, and whose operating privileges 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 program, as described above. If the court enters such an order, the court must also order that when the person completes or otherwise does not participate in the program: (1) 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 (2) 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 vehicle not be equipped with an IID.

The bill specifies that the time period during which a person participates in a 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 the refusal of a preliminary breath test or OWI-related violation.

ASSEMBLY AMENDMENT 2

Assembly Amendment 2 makes the following changes to the bill:

- Specifies that a court may order a person to participate in a pilot 24-7 sobriety program as a condition of bail.
- Clarifies 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.
- 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, requires the person to **agree** to participate in the program and to **totally abstain** from using alcohol or a controlled substance while participating in the program. Under Budget Act 55, the participant must **volunteer** to participate and **refrain** from using alcohol or a controlled substance while participating in the program.

- Requires any person who is under a court order to participate in a 24-7 sobriety program that meets the federal definition, not a pilot 24-7 sobriety program, to comply with the testing requirements specified under both the federal statutes and the regulations adopted by U.S. DOT.
- Allows a court to order one or **both** of the following, if a person would otherwise be required to install an IID in his or her vehicle, and whose operating privileges would be restricted to vehicles so equipped: (1) that the person's operating privilege be restricted to operating vehicles equipped with an IID; or (2) that the person participate in a pilot 24-7 sobriety program or a 24-7 sobriety program that meets the federal definition of such program. Under the bill, a court must order **one** of these options.
- Amends the timing of when a court must order a person's operating privileges be restricted to vehicles equipped with an IID. Assembly Amendment 2 requires that the court enter such an order and specify the duration of the order, when the person either completes the 24-7 sobriety program or otherwise does not participate in the program. Assembly Amendment 2 also requires the court to notify the Department of Transportation (DOT) of this order. Under the bill, the court is not necessarily required to enter this order when the person completes or otherwise does not participate in a 24-7 sobriety program.
- Requires the court to notify DOT of the date that the person's participation ended and the duration of the order that restricts his or her operating privilege with an IID.

BILL HISTORY

Representative Schraa introduced Assembly Amendment 2 on February 16, 2016. On February 18, 2016, the Assembly voted to adopt Assembly Amendment 2, and pass the bill, as amended, on voice votes.

MS:jal