



## WISCONSIN LEGISLATIVE COUNCIL

### PROBLEM-SOLVING COURTS, ALTERNATIVES, AND DIVERSIONS

Large Conference Room  
Legislative Council

October 29, 2014  
10:00 a.m. – 12:30 p.m.

[The following is a summary of the October 29, 2014 meeting of the Study Committee on Problem-Solving Courts, Alternatives, and Diversions. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.wisconsin.gov/lc>.]

#### Call to Order and Roll Call

Chair Bies called the meeting to order. The roll was called and a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Garey Bies, Chair; Rep. Evan Goyke, Vice Chair; Sen. Robert Wirth; Rep. Chris Taylor; and Public Members Carol Carlson, Troy Cross, Tony Gibart, Matthew Joski, Jane Klekamp, Elliott Levine, Joann Stephens, Kelli Thompson, and Michael Waupoose.

COMMITTEE MEMBERS EXCUSED: Reps. Dale Kooyenga and Warren Petryk; and Public Member Mary Triggiano.

COUNCIL STAFF PRESENT: Laura Rose, Deputy Director; and Melissa Schmidt, Senior Staff Attorney.

**\*ATTENTION:** This was the final meeting of the Study Committee on Problem-Solving Courts, Alternatives, and Diversions. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.

#### Approval of the Minutes of the Special Committee's September 17, 2014 Meeting

*Public Member Joann Stephens moved, seconded by Public Member Kelli Thompson, to approve the minutes of the September 17, 2014 meeting. The motion passed on a unanimous voice vote.*

## **Description of Materials Distributed and Discussion of Committee Assignment**

Chair Bies welcomed committee members and explained that this was the committee's last meeting. He said that the plan for the meeting was to review the drafts listed on the agenda and if there was consensus to move forward with any draft, it would be combined with other drafts for a final vote by mail ballot. He stated that the plan was to package as many drafts as possible into one or two bill drafts for a final vote by mail ballot.

### **WLC: 0001/P2, relating to occupational license minimum waiting periods for participants in a treatment court**

Melissa Schmidt, Senior Staff Attorney, Legislative Council, provided a brief explanation of the draft, as amended from the last meeting. She explained that the draft removes the requirement that a person with two or more operating while intoxicated (OWI) convictions wait 45 days before becoming eligible for an occupational driver's license if the person is a participant in a treatment court project. She explained that under the draft, the person would still be subject to the 15-day waiting period applicable to any person. Ms. Schmidt explained that because this draft changes Wisconsin's occupational driver's licensing requirements, if it is enacted the Department of Transportation (DOT) will have to request the U.S. Department of Transportation (USDOT) to recertify that Wisconsin is in compliance with federal law and able to receive highway transportation funds. Nate Yahn, Legislative Advisor, DOT, explained that the draft would require DOT to submit a letter to USDOT, requesting recertification.

*Public Member Troy Cross moved, seconded by Public Member Matthew Joski, to approve the draft. The motion was approved by a unanimous voice vote.*

### **WLC: 0007/P2, relating to treatment court access to ignition interlock device reports**

Ms. Schmidt provided a brief explanation of the draft, as amended from the last meeting. She stated that at the last meeting the committee requested further information about ignition interlock devices (IID) and DOT rules regarding IID reports submitted to law enforcement. She stated that this draft reflects changes made after a conference call with DOT, an IID service provider representative, and Public Member Judge Elliott Levine, who requested this draft. She explained that everyone participating in the conference call thought that the best approach was to have DOT promulgate rules related to the process of providing IID service reports to law enforcement and the courts. Ms. Schmidt also explained that there was a drafting error and that on page 3, line 6, the word "failure" should be inserted before the phrase, "bypass or violation resets."

Mr. Cross raised concerns about whether DOT would promulgate rules to give effect to the draft. Ms. Schmidt explained that DOT was currently reviewing ch. Trans. 313, Wis. Adm. Code, and intends to update the chapter to be consistent with current law. She also said that if the committee was concerned about the timeframe within which DOT should promulgate rules related to the process by which courts must receive IID service reports, the committee could amend the draft to include a deadline for rule promulgation.

*Mr. Cross moved, seconded by Ms. Thompson, to amend the draft to: (1) require DOT to promulgate rules consistent with the draft within two years of the effective date of the draft; and (2) to include the term*

*“failure” on page 3, line 6; and to approve the draft as amended. The motion was approved by a unanimous voice vote.*

**WLC: 0028/1, relating to creating the criminal justice coordinating council, providing grants to certain county or tribal criminal justice projects, and making appropriations**

Laura Rose, Deputy Director, Legislative Council, explained this draft, as amended from the last meeting. She stated that this draft: (1) added the Secretary of Veterans Affairs to the Criminal Justice Coordinating Council (CJCC) that is created by the draft; (2) deleted the term “substance abuse”; (3) required the CJCC to take into account the racial and demographic disparities in treatment court participation and to examine and make recommendations to the Governor on this issue; and (4) required treatment alternatives and diversions (TAD) grants to specify whether the project will allow certain violent offenders to participate in the project.

*Representative Evan Goyke moved, seconded by Public Member Jane Klekamp, to approve the draft. The motion was approved by a unanimous voice vote.*

**WLC: 0033/P2, an amendment to WLC: 0028/1**

Ms. Rose explained WLC: 0032/P2, an amendment to WLC: 0028/1. She explained that this amendment was prepared in response to concerns raised by the Department of Corrections (DOC). She stated that DOC raised concerns that DOC’s Council on Offender Reentry should be repealed because WLC: 0028/1 creates the CJCC, and assigns to it the purpose and duties of the Council on Offender Reentry.

*Representative Goyke moved, seconded by Mr. Cross, to approve the draft amendment to WLC: 0028/1. The motion was approved by a unanimous voice vote.*

**WLC: 0034/P2, an amendment to WLC: 0028/1**

Ms. Rose explained this draft amendment to WLC: 0028/1. She stated that it was prepared in response to a request made by Public Member Tony Gibart. Mr. Gibart explained his concerns about needing a victim advocate’s perspective in the design of a county treatment court project that allows certain violent offenders to participate in a treatment court project. Specifically, he was concerned about a violent offender, who in a pending case, is charged or convicted of a domestic abuse offense or a serious sex offense.

Mr. Gibart also stated that lines 15-16 on page 1, which requires the project to be designed to achieve an evidenced-based outcome that promotes the safety of victims, was redundant because victim safety concerns were also included in provisions found on page 2 of the draft.

In response to committee discussions, Mr. Gibart explained that requiring victim advocates to participate in the design of a treatment court that allows certain violent offenders to participate is different from the constitutional and statutory rights afforded to victims. He said that victims’ rights require that victims receive notices regarding court hearings and to have a voice at sentencing. Mr. Gibart stated that the list of victims’ rights does not require victim advocates to have a voice in the planning and design of a treatment court project.

Representative Chris Taylor stated that this amendment was necessary to ensure that victims are protected. Ms. Klekamp and Judge Levine raised concerns that not all counties have the capacity to include an advocate for victims of violent crime on the criminal justice oversight committee. Committee members also discussed the fact that batterers' treatment providers are more commonly located in urban counties; concerns were raised that requiring such a provider to be included on a county's criminal justice oversight committee might prevent a county from including certain violent offenders from a treatment court project, even though the offenders would otherwise be appropriate based upon current research. Therefore, it was suggested that a project's criminal justice oversight committee be required to consult with a batterers' treatment provider if a domestic abuse offender is eligible to participate in the project.

*Mr. Gibart moved, seconded by Judge Levine, to approve the draft amendment to WLC: 0028/1 with the following changes: (1) require the project to include at least one representative of an organization that advocates for victims of violent crimes, if such an advocate exists in the county; (2) require a project's oversight committee to consult with a batterers' treatment provider if the project determines that domestic abuse offenders will be eligible to participate; and (3) delete lines 15-16 on page 1, which requires the project to be designed to achieve an evidence-based outcome that promotes the safety of victims; and moved to approve the draft as amended. The motion passed by a voice vote.*

**WLC: 0005/1, relating to designating funds for evaluation of treatment court programs**

Ms. Rose explained the draft, as amended from the last meeting. She explained that the draft was amended to allow the Department of Justice (DOJ) to either contract with an independent entity to perform evaluations of the TAD program, or to be able to perform the evaluation itself.

*Mr. Joski moved, seconded by Representative Taylor, to approve the draft. The motion approved by a unanimous voice vote.*

**WLC: 0032/P1, relating to creating a family treatment court grant program in the department of children and families and making an appropriation**

Ms. Rose explained the draft, which creates a grant program within the Department of Children and Families (DCF) to provide funding for family treatment courts. She explained that the draft requires DCF to provide grants to counties for the establishment and operation of a treatment court program that provides new dispositional alternatives for children whose parents have problems related to the use of alcohol beverages, controlled substances, mental health needs, or both. She explained that the draft also requires DCF to provide grants to counties for the establishment and operation of treatment court programs related to juveniles in the juvenile justice system who have these problems as well.

Public Member Judge Mary Triggiano, who participated via telephone, stated that she thought that this draft would help fund family treatment courts and juvenile treatment courts that address problems related to substance abuse and mental health.

The committee discussed whether or not a treatment court that receives a grant created under the bill should be required to utilize providers certified by the Department of Health Services (DHS). Judge

Triggiano and Mr. Gibart raised concerns about this requirement. Mr. Gibart stated that there are many types of treatment providers that DHS does not certify.

*Chair Bies moved, seconded by Public Member Michael Waupoose, to amend WLC: 0032/P1 by deleting the phrase "utilize providers certified by the department of health services" on page 2, lines 6-7; and to approve the draft, as amended. The motion was approved by a unanimous voice vote.*

**WLC: 0006/1, relating to permitting defendants to be assigned to treatment courts outside of the county of residence as a condition of probation**

Ms. Rose explained the draft, as amended from the last meeting. Ms. Rose explained that this draft deleted the requirements that a defendant who is not a resident of the county where the treatment court is located be admitted to the treatment court if: (1) the treatment court project consents to the nonresident defendant's admission to the program; and (2) the nonresident defendant's county of residence agrees to reimburse the treatment court project for costs that are not paid by the nonresident defendant. She said that this bill draft also amends deferred prosecution statutes to include the provisions related to equal access to treatment courts.

The committee discussed whether this would effectuate any change to current law. Representative Taylor raised concerns that this draft would not change current law. Judge Levine raised concerns that the language was overly narrow and that it would be difficult to determine the appropriate language to help make sure non-county residents were permitted to participate in a county treatment court program. The committee also discussed the concern that, because state funding for treatment courts is minimal, this draft might discourage some counties from developing treatment courts if their residents could participate in another county treatment court.

Representative Goyke explained that he proposed this draft based upon his experience representing a defendant who was prohibited from participating in a treatment court because he did not reside in the county where the treatment court was located. Judge Levine responded that the issue of equal access to a treatment court is more appropriately a question for the courts to address.

Based upon consensus of the committee, Chair Bies stated that the committee would not move forward with this draft.

**WLC: 0010/P2, relating to judicial authority to order home detention as a condition of probation**

Ms. Schmidt explained the draft, as amended from the last meeting. Ms. Schmidt explained that the draft was amended to allow the court to order the probationer to serve the either entire remainder of home detention, or a portion thereof, in a county jail, if the probationer fails to comply with the terms of the condition of probation. She said that the draft was also amended to allow any court to require, as a condition of probation, that the person be confined in a county jail or be placed in home detention, or both. She explained that the bill also reflects some stylistic changes that were suggested by a drafter in the Legislative Reference Bureau.

*Public Member Judge Elliot Levine moved, seconded by Representative Goyke, to approve the draft. The motion was approved by a unanimous voice vote.*

### **Draft Letter to Senator Robert Cowles and Representative Samantha Kerkman, Co-Chairs, Joint Legislative Audit Committee**

Ms. Schmidt described the draft letter to the co-chairs of the Joint Legislative Audit Committee. She explained that this draft letter requests an audit of TAD projects to determine whether racial, demographic, or other disparities exist between treatment court participants and individuals denied participation from TAD projects.

In response to questions, Ms. Schmidt explained that the scope of the audit request is consistent with the requirement in WLC: 0028/1 that the CJCC conduct an audit on racial disparities. The committee discussed whether there was enough data to conduct analysis on racial and other disparities. Committee members raised concerns that the first seven years of data collection contains data that might not be thorough enough for robust data analysis.

The committee also discussed the scope of the audit request. Senator Robert Wirch stated that he thought the letter was sufficient in scope and content. Ms. Klekamp raised concerns that the scope of request to audit TAD programs was too narrow because the scope of the committee is to review and examine all treatment courts.

*Ms. Klekamp moved, seconded by Senator Wirch, to amend the scope of the audit request to request an audit of all treatment courts, and moved to approve the draft as amended. The motion passed by a unanimous voice vote.*

### **Other Business**

There was no other business brought before the committee.

### **Plans for Future Meetings**

Chair Bies thanked committee members for their participation on the committee and informed them that Legislative Council staff will combine the various drafts that the committee approved into two drafts to be distributed to committee members for approval by a mail ballot.

### **Adjournment**

The meeting was adjourned at 12:30 p.m.

MS:ty