



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 1

TO: MEMBERS OF THE STUDY COMMITTEE ON PROBLEM-SOLVING COURTS,
ALTERNATIVES, AND DIVERSIONS

FROM: Laura Rose, Deputy Director

RE: Options for Committee Discussion

DATE: August 13, 2014

This Memo summarizes options for committee discussion presented during the June 25, and July 22, 2014 meetings of the Study Committee on Problem-Solving Courts, Alternatives, and Diversions. It also summarizes options submitted to committee staff after those meetings. It reflects a preliminary list of options for substantive changes within the study committee's charge.

In addition, a bill draft, LRB-2614, was drafted for, but not introduced into, the 2013-14 Legislative Session. The draft makes several revisions to the Treatment Alternatives and Diversions (TAD) program. Two versions of this draft, LRB-2614/P1 and LRB-2614/P4, are referenced in various sections of this Memo. Both versions are attached to this Memo for your reference.

TREATMENT COURT COORDINATORS

Background

Currently, a statewide treatment court coordinator is located within the Director of State Courts office. The funding for the position will expire in 2015. The statewide treatment court coordinator has the following responsibilities:

- Coordinate efforts of Wisconsin treatment courts.
- Provide technical assistance to Wisconsin treatment courts.

- Notify local communities of treatment court funding opportunities.
- Assist communities with grant writing to obtain funding for local courts.
- Develop programs that meet local needs for training, research, and networking.
- Attend national meetings to learn how other jurisdictions are implementing evidence-based practices in treatment courts.
- Assist in the evaluation process for treatment courts.
- Advocate for treatment courts to open up more opportunities for funding and to heighten public awareness and support.
- Set statewide standards for all treatment courts in accordance with evidence-based practices.

Additionally, some larger counties have local treatment court coordinators to assist all of the treatment court professionals (prosecutors, defense attorneys, judges, treatment professionals) in coordinating their efforts to provide treatment court services to offenders. Many smaller counties do not have local treatment court coordinators.

Options

- Provide permanent state funding for the statewide treatment court coordinator.
- Provide state funding for local treatment court coordinators.

CRIMINAL JUSTICE COORDINATING COUNCILS

Background

Governor Walker created the Wisconsin Criminal Justice Coordinating Council (State CJCC) by Executive Order #65 on April 9, 2012. The 20-member State CJCC is co-chaired by the Secretary of the Department of Corrections (DOC) and the Attorney General (AG); staffed by various state, county, and local stakeholders; and supported by the Department of Justice (DOJ). The State CJCC analyzes the state criminal justice system and makes recommendations for its improvement.

Among other things, the executive order charges the State CJCC with:

[A]ssisting the Governor in directing, collaborating, and coordinating the services of state and local governmental agencies and non-governmental entities in the criminal justice system to increase efficiencies, effectiveness, and public safety. In the performance of these duties, the Council shall conduct planning, research, and evaluation activities and make recommendations to improve the criminal justice system policy, operation, and outcomes. [Executive Order No. 65, p. 1 (April 9, 2012).]

Specifically, the State CJCC must, among other assigned tasks:

[I]nvestigate and disseminate information about effective and innovative criminal justice related programs employed at the county level, including treatment alternatives, diversion initiatives, and specialty courts. [*Id.*]

In accordance with this direction, the State CJCC established the Problem-Solving Courts Subcommittee, to coordinate with the Director of State Courts Office and support local CJCCs. The State CJCC assists in establishing treatment courts to meet the needs of county court systems, as well as making federal grants under the Byrne Justice Assistance available to local CJCCs. These grants provide partial funding for the local CJCCs.

Local CJCCs have been developed to initiate improvements in local criminal justice systems such as establishing problem solving courts, utilizing risk assessment tools in decision-making and offender placement, and creating community services programs.¹ The CJCCs in Wisconsin operate at varying levels of formality, funding, and activity. Currently, in Wisconsin, approximately 50 of the state's 72 counties operate county CJCCs.

Options

- Codify the State CJCC into statute to ensure permanent status. [See LRB-2614/P4, attached, SECTIONS 1 and 5.]
- Create a position within the Director of State Courts office to help additional counties start CJCCs.

ADHERENCE TO EVIDENCE-BASED PRACTICES: INFORMATION CLEARINGHOUSE AND CERTIFICATION PROCESS

Background

Research has documented that treatment courts that adhere to the 10 “key components” identified by the National Association of Drug Court Professionals (NADCP) have a greater likelihood of positive outcomes for treatment court participants. The 10 “key components” are outlined in Staff Brief 2014-01, *Problem-Solving Courts, Alternatives, and Diversions*, p. 6 (June 18, 2014).

Additionally, Standard 1 of WATCP's treatment court standards² provides that treatment courts must demonstrate commitment to evidence-based principles in the design and delivery of the services, referrals to services, and the development of policies and

¹ *Effective Justice Strategies in Wisconsin: A Report of Findings and Recommendations*, National Center for State Courts, p. 58 (2013).

² *Wisconsin Treatment Court Standards*, A Wisconsin Association of Treatment Court Professionals, p. 6 (April 2014).

procedures. The eight evidence-based principles for offender supervision in treatment courts are as follows:³

- Assess actuarial risks and needs of offenders at the time of program admission, using standardized assessment tools such as COMPAS.
- Enhance intrinsic motivation of treatment court participants, by helping participants see the necessity of changing their behavior and discovering why behavior changes would have a positive impact on their lives.
- Target interventions to offenders based on their risk and needs assessment.
- Train staff in cognitive behavioral therapy.
- Increase positive reinforcement to ensure that the ratio of incentives to sanctions is 4 to 1.
- Engage support from family members as a reinforcement for participants.
- Measure treatment court participant outcomes and processes used to achieve outcomes
- Use data collected from participant outcomes to determine program effectiveness.

Options

- Create a state-administered certification process whereby problem-solving courts can be certified as adhering to recognized evidence based standards.
- Establish a state level clearinghouse, or multiple clearinghouses at the judicial district level, for counties to access information on evidence-based practices.

STATEWIDE TRAINING OF TREATMENT COURT PERSONNEL

Background

Counties with treatment courts gain access to training opportunities in different ways. The ability of court staff to attend trainings varies based upon funding availability, training person availability, and having the time to leave their regular duties. The National Center for State Courts reports that in Wisconsin, most treatment court teams have at least one team member with extensive training, but only a few have more than one team member who has received sufficient training. It often falls upon the treatment court coordinator, if one exists in the county, to train other team members. Another way to access training is to request training from other counties, courts who have longstanding and successful treatment courts, and establish a “mentor” relationship with that court.⁴

³ *Ibid.*, footnote 1., page 49.

⁴ *Id.*, at page 45.

The Wisconsin Treatment Court Standards, established in 2014 by the Wisconsin Association of Treatment Court Professionals (WATCP), emphasize the importance of training. The WATCP standard states that every court should provide implementation training before starting the court; define requirements for continuing education of each team member; and establish and maintain a viable continuing education plan. The WATCP hosts an annual statewide training conference and two-day coordinator and case manager training conference. Currently, the special projects manager in the Director of State Courts office provides some support for training activities throughout the state.

Options

- Maintain the special projects manager position in the Director of State Courts office to support training efforts for county treatment court personnel.
- Provide additional statewide funding to enable treatment court personnel to attend trainings, and to defray training program costs.

EVALUATION OF TREATMENT COURTS

Background

The NADCP key components require monitoring and evaluation of treatment courts to measure the achievement of program goals and gauge effectiveness. The WATCP treatment court standards also require treatment courts to engage in ongoing data collection and evaluation to assess whether the treatment court is adhering to the 10 key components, evidence based practices, and specific program goals and objectives.

The original legislation that created the Treatment Alternatives and Diversion (TAD) program in Wisconsin required an evaluation of the program and provided a five-year timeframe for the assessment of participant outcomes.

2013 Wisconsin Act 20 (the 2013-15 Biennial Budget Act) provides for an evaluation of TAD every two years. Prior to Act 20, evaluations were funded from TAD revenue other than the justice information surcharge. Act 20 eliminated the restriction on the funding source for the evaluation.

Options

- Continue funding TAD program evaluations, especially in light of TAD program expansion.
- Provide funding for the evaluation of other existing and pending treatment courts.

VIOLENT OFFENDER ELIGIBILITY

Background

Current law prohibits participation of violent offenders in TAD programs. Current law defines “violent offender” as a person to whom one of the following applies:

- The person has been charged with or convicted of an offense in a pending case and, during the course of the offense, the person carried, possessed, or used a dangerous weapon, the person used force against another person, or a person died or suffered serious bodily harm.
- The person has one or more prior convictions for a felony involving the use or attempted use of force against another person with the intent to cause death or serious bodily harm.

Options

- Eliminate the violent offender prohibition from the current TAD statute. [See LRB-2614/P1, SECTION 2.]
- Modify the violent offender prohibition to include only the first provision in current law: “violent offender” means a person who has been charged with or convicted of an offense in a pending case and, during the course of the offense, the person carried, possessed, or used a dangerous weapon, the person used force against another person, or a person died or suffered serious bodily harm.” [See LRB-2614/P4, SECTION 10.]

OCCUPATIONAL LICENSES FOR OPERATING WHILE INTOXICATED (OWI) TREATMENT COURT PARTICIPANTS

Background

A person convicted of a second or subsequent OWI offense must wait varying lengths of time before being eligible for an occupational license. Factors affecting the waiting period include the number of prior offenses, and the timeframe within which the offenses occurred. Typically, treatment courts require frequent court appearances, random drug and alcohol testing multiple times per week, and weekly probation and substance abuse counseling sessions. Participants are closely supervised for compliance with all program rules. All these activities generally require transportation.

Option

- Allow OWI treatment court participants, who might not otherwise be eligible, to acquire an occupational license upon entry into a treatment court. As part of this proposal, current requirements for obtaining an occupational license would remain in place, including installing an ignition interlock device, completing an assessment, and being in compliance with any driver safety plan. This privilege would be granted by a judge, presiding over a treatment court recognized by the Supreme Court.

AUTHORITY TO ORDER ELECTRONIC MONITORING AS A CONDITION OF PROBATION

Background

In *State v. Eastman*, 220 Wis. 2d 330, 582 N.W.2d 749 (Ct. App. 1998), the Wisconsin Court of Appeals held that if a trial court places a defendant on probation after a conviction for OWI, it cannot order the defendant to serve time on electronic monitoring as a condition of probation in order to satisfy the mandatory minimum sentence requirements of the OWI statute. The court also stated in a footnote that the sheriff would have authority to place a defendant on electronic monitoring under s. 302.425 (2), Stats., which allows the sheriff to “place in the home detention program any person confined in jail.” Although the court did not explicitly state it, the statute’s use of the term “confined,” as opposed to “sentenced” or some other term, may mean that the sheriff still has the authority to place an inmate on electronic monitoring in such situations.

Option

- Provide the authority for a court to order a defendant to serve time on electronic monitoring, rather than confinement, as a condition of probation.

IGNITION INTERLOCK DEVICE INFORMATION

Background

Current law requires an ignition interlock device (IID) to be installed for most persons convicted of an OWI. The companies that provide these devices are currently only required to send violation information to sheriff departments. Section 110.10 (4), Stats., requires IID providers operating in this state to provide DOT and law enforcement agencies designated by DOT with installation, service, tampering, and failure reports in a timely manner. Section Trans 313.10 (4) (d), Wis. Adm. Code, requires the service provider to provide a copy of the certificate to the sheriff of the county where the person with the IID resides. The certificate must be in the format provided by DMV.

Option

- Allow treatment courts to receive IID installation information from service providers.

INTEGRATED DATA SYSTEM

Background

Currently, the Director of State Courts office and DOJ are collaborating on the development of an integrated data system. The system will integrate the databases for TAD, the Director of State Courts performance measures, and certain federally funded programs.

Options

- Support the Director of State Courts and DOJ in developing an integrated web-based data system for the collection of participant-level data from Wisconsin projects focusing on diversion and alternatives to incarceration. DOJ should solicit input from key stakeholders (including local TAD staff) during the development, pilot testing, and implementation of the system to assure fidelity to evidence-based practices. Ongoing data quality monitoring should occur to ensure data accuracy and integrity. The data should then be used to provide frequent program improvement feedback to local sites, and could be used for program evaluation and meeting statutory reporting requirements.

INCIDENT-BASED REPORTING

Background

The National Incident-Based Reporting (IBR) System, provides for collecting data about crime incidents that come to the attention of law enforcement, including types of offenses, victim and offender characteristics, types and value of property stolen and recovered, and characteristics of arrestees. The IBR is an expansion and enhancement of the Uniform Crime Reporting (UCR) program, which has been in use by law enforcement agencies at the federal, state, county and local levels for several decades. In Wisconsin, it is estimated that approximately 40% of law enforcement agencies currently use IBR, while the remaining agencies still use the UCR.

It has been suggested that statewide implementation of IBR will assist treatment courts in more precisely classifying offenders to determine which offenders are most effectively placed in treatment courts.

Option

- Pursue statewide implementation of IBR to enable better data collection on arrestees and offenders.

TREATMENT COURT COLLABORATION, AND CONTINUATION OF TAD ADVISORY COMMITTEE

Background

The TAD program has an advisory committee which consists of law enforcement, judicial officers, elected officials, treatment providers, and local government representatives, among others. Members of the TAD Advisory Committee have collaborated to provide a multi-jurisdictional forum for communication about TAD, and have assisted in the development, implementation, and evaluation of the TAD projects. The committee has also disseminated evaluation findings and concepts within their local communities, to the state Legislature, and statewide.

Further, on the local level, TAD programs are comprised of professionals from many different entities, including the judiciary, law enforcement, public defender, district attorney, and treatment professionals. Their collaboration ensures a coordinated treatment court program for participating offenders.

Option

- Continue the TAD Advisory Committee, and ensure the continued collaboration among local, county, state, and national partners that has been the foundation of TAD, and other treatment court successes.

TREATMENT COURT SYSTEM RESOURCES

Background

Currently, judicial branch personnel, district attorneys, public defenders, and DOJ, are participating in TAD and other treatment court programs in addition to other statutorily required work. This may result in inadequate time to properly prepare for, and follow up on, treatment court responsibilities to participating offenders. This may, in turn, jeopardize the effectiveness of these programs by compromising the intensity of program interventions.

It was also noted in testimony before the committee that rural counties face unique challenges in implementing treatment courts. These challenges include lack of treatment providers, transportation barriers, and unavailability of specialized treatment court personnel, such as a treatment court coordinator.

In addition, many counties face a deficit of affordable housing and sober living facilities for treatment court participants.

Option

- Analyze the availability of resources available both to treatment court programs and participants, which may hamper the long term effectiveness of treatment court programs, and recommend resource improvements.

EQUAL ACCESS TO TREATMENT COURTS

Background

Currently, approximately 25 counties in Wisconsin do not offer treatment court services. Comments made at committee meetings, both by committee members and by persons testifying before the committee, pointed out that principles of fairness dictate that all offenders in the state who meet eligibility requirements for a treatment court program should be able to have access to a treatment court.

Option

- Ensure equal access to treatment courts, either by ensuring that adequate treatment court programs exist in every county, or by permitting offenders who reside in or commit crimes in counties lacking treatment courts, to receive treatment court services in counties which have these courts.

REVISIONS TO TAD

Background

Bill draft, LRB-2614, was drafted for, but not introduced into, the 2013-2014 Legislative session. This draft makes several revisions to the TAD program. Some of the revisions from different versions of the bill draft have been referenced elsewhere in this Memo. Remaining revisions not mentioned elsewhere include the following:

- Creating a definition for the term “research-based” (LRB-2614/P1) or “evidence-based” (LRB-2614/P4):
 - LRB-2614/P1: “Research-Based” means consistent with current criminal justice research, standards, and practices, as determined by government agencies concerned with criminal justice and corrections, and by private entities concerned with the delivery of criminal and social justices.
 - LRB-2614/P4: “Evidence-Based” means using research to determine how effective a practice is at achieving positive measurable outcomes, including reducing recidivism and increasing public safety.
- Providing for tribes, in addition to counties, to receive TAD grants.
- Providing for DOJ to collaborate with other agencies (or, the CJCC, in LRB-2614/P4) to maximize the impact of funded projects.
- Expanding the populations serviced by TAD, by repealing the limitation in current law that the program “is designed to meet the needs of a person who abuses alcohol or other drugs and who may be or has been charged with or who has been convicted of a crime in that county related to the person’s use or abuse of alcohol or other drugs.” This would allow TAD to include mental health courts and other types of treatment courts.
- Requiring use of a validated risk, need, and responsivity assessment instrument to determine who is eligible for participation in the project.
- Requiring a county or tribe that receives a TAD grant to submit data requested by DOJ each month. Further, require DOJ to annually analyze the data and prepare a progress report, which it shall submit to the CJCC and make available to the public.

- Requiring DOJ to prepare a comprehensive report every five years on the TAD program, and allow it to enter evaluation contracts, funded by moneys appropriated for the program, with not more than 10% of the amount awarded as grants.

Options

- Recommend some or all of the remaining revisions of the TAD program (listed above) in LRB-2614/P1 and LRB-2614/P4 that are not mentioned elsewhere in the Memo.
- In addition to these revisions, provide additional staff within DOJ for technical assistance and program support to TAD program sites, especially in light of recent expansion.

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Attachments