

**PROCEEDINGS OF THE BROWN COUNTY
CRIMINAL JUSTICE COORDINATING BOARD**

Pursuant to Section 19.84 Wisconsin Statutes, a regular meeting of the Brown County Criminal Justice Coordinating Board was held on January 15, 2019 at 8 am in the Karen H. Dorau Memorial Conference Room at the Brown County District Attorney's Office, 300 East Walnut Street, Green Bay, Wisconsin.

Members Present: Judge William Atkinson
Human Services Committee Rep. Joan Brusky
Sheriff Todd Delain
Public Defender Representative Tara Teesch
Health and Human Svc. Exec. Director Erik Pritzl
Public Safety Committee Chair Pat Buckley
District Attorney David Lasee
Citizen Rep. Tim McNulty
Citizen Rep. Bob Srenaski
Division of Probation and Parole Eastern
Region Chief Aaron Sabel

Others Present: Treatment Court Sup. Mark Vanden Hoogen
Family Services Rep./Vice President Angela Steuck
Clerk of Courts John Vander Leest
District Court Administrator Tom Schappa
Intern Kelli Lemmens

1. Call Meeting to Order.

This meeting was called to order by Chair Judge Atkinson at 8:00 am.

2. Approve/modify Agenda.

Motion made by Supervisor Brusky, seconded by Erik Pritzl to approve. Vote taken. **MOTION CARRIED UNANIMOUSLY.**

3. Approve/modify Minutes of November 8, 2018.

Motion made by Joan Brusky, seconded by David Lasee to approve, to modify the November 8, 2018 minutes under her request to amend membership of the CJCB, specifically in the middle of the last paragraph, by reiterating she feels "that having a treatment court judge as a voting member of the criminal justice court unit and board is a good idea." Vote taken. **MOTION CARRIED UNANIMOUSLY**

4. Proposed Criminalization of OWI First - Effect on Courts, DA, Public Defender & Jail Population.

Judge Atkinson started with a general description of what a First Offense OWI actually is. That being, specifically, a forfeiture action, or something that is comparable to a speeding ticket in which hearings can be held in municipal courts and there is no possibility of jail time. These hearings, he went on to add, are very much different from criminal hearings in such that you are not entitled to an attorney as a constitutional right, nor is there necessary representation from the public defender's office. He also added that the burden of proof differs in a forfeiture action, which entails, satisfactory and convincing evidence, to that of beyond reasonable doubt which would be the burden of proof in any other case. He also noted that municipal courts tend to handle these cases faster than the circuit courts because of reasons, such as a defense attorney not being present. He reiterated that he was not opinionated toward either side in terms of if the state should pass or not but the ramifications should be considered nonetheless.

He then went on to consider if the law was changed to a criminal First Offense OWI. Everything in the above paragraph would be pushed up to circuit courts from municipal and there is a constitutional right to an attorney or a public defender which the state may have to appoint, they have right to counsel which all may culminate in a jury trial if it gets to that point. He notes that this is a whole series of changes and a large amount of people affected if the current system is to be modified.

Public Safety Chair Pat Buckley enters meeting at 8:06 AM.

Judge Atkinson then proceeded to ask District Court Administrator Tom Schappa for some estimates as to how many cases would be converted from municipal court to circuit court on an annual basis in Brown County specifically. After some discussion it was agreed there would be, roughly, 760-780 cases annually brought up from municipal court to circuit court for First Offense OWI. He also explained how he got those numbers which he pulled from the Wisconsin Department of Transportation and Municipal Courts websites, respectively. He wanted to iterate two points of caution with respect to the reliability of these numbers. The first being Green Bay, for instance, have OWIs linked with traffic violations which could create a bit of a discrepancy in terms of exactness. Second, municipal courts are not required to report their numbers, they are highly encouraged to but that does not necessarily mean they do.

Judge Atkinson then referenced the 200 cases that already come through the circuit court annually that had been talked about within the 780 number that includes both the circuit court and municipal court numbers. He mainly wanted to point out that those specific cases are treated differently in terms of jury size (6 members) and not necessitating a unanimous verdict to convict in comparison to a criminal case. This also leads to a faster, streamlined process in terms of the trial process, but he added a word about the amount of time it does take to get all these resources in place to go forth with this process.

Public Defender Rep. Tara Teesch added what the public defender agencies' position would be which would constitute more staff in the district attorneys' office and more clerical staff to accommodate the extra cases that this would cause.

Public Safety Committee Chair Pat Buckley added that he spoke with a Municipal Court Judge Hansen and there were 339 cases last year in municipal court in Green Bay alone, 80% of which went uncontested. This brings up a concern for him in terms of the District Attorney's office's ability to adjudicate more cases considering the backlog they have already on hand. He also stated the city of Green Bay puts forth \$100,000 to support their court already; therefore we should be aware of the effect altering this law would have on municipalities' budget allocation. He also additionally wanted to point out that many of the other states that have OWI as a first offense criminal offense have an alternative to jail time which are informative classes that, upon completion, bring the severity of the crime down to more of a misdemeanor. Poses the question of does this really alter the process or, rather, does it just introduce a more cumbersome process?

Judge Atkinson followed up by adding that since there is no jail time possible for this crime, very few cases are indeed contested as jail is the most worrisome punishment for most defendants. He believes more will be contested if these crimes do come up to the circuit court. He also went on to say there are certain guidelines to follow for judges in OWI cases and if jail time is added to this list there is inevitably going to be more active defense attorneys and more contests of these crimes.

Buckley pointed out the jail may need another pod to accommodate.

Clerk of Courts John Vander Leest stated that he talked with some legislators and the information he gathered didn't convince him resources would be devoted towards this proposal. He points out that many people don't pay for their first OWI itself and there is rarely any follow up as to if an interlock device has been placed in their vehicle. He would like this loophole closed, meaning some real follow up from legislation as to this being installed for first offense OWIs. Vander Leest does not believe it will end up passing in the long run. The people he talked with who received multiple OWIs in a short time frame were just, in a word, shocked after their first OWI but not much more than that; the second OWI stuck with them mainly because they had to spend the day in jail and that has a negative enough impact that they really don't want to have to return again.

Buckley wanted to add the statistics presented by Judge Zuidmulder relative to OWI court that he presented in the Public Safety Committee meeting and pointed to the drop-off in terms of repeat offenders after each offense and note worthily, after the first offense it falls off significantly.

Teesch stated that if this stays at the municipal court level there will never be jail time after the first offense.

District Attorney David Lasee then went on to point out that it would have a very significant impact on their office because this would, in fact, double the amount of OWI offenses that come through their office on a yearly basis up from somewhere around 600 cases to 1400 or so cases. He notes that these first offense cases will be among the most litigated cases because these individuals will be extremely inclined to keep their records as clean as possible. Added, for example, that every application these individuals fill out in the future if this is changed from a forfeiture offense will have the "have you ever been convicted of a crime?" box checked. He then stated that the position of the Wisconsin District Attorney's office always has been that if this law were to pass then there need to be significant resources devoted to the entire system all the way up through the jail to accommodate everything it entails and causes. Therefore, there is a large dollar sign attached to this bill. He went on to note he is not entirely sure how far this bill will get but the idea of this becoming a crime does indeed have the support of the governor.

Citizen Rep. Bob Srenaski added here the necessity to realize the issue of the insufficient state resourcing being put towards the District Attorney's office and the public defender's office which is very prevalent in Brown County but this is an opportune time to make this issue realized at the state level.

Teesch pointed to the fact that the public defender's office has a legislative liaison that communicates with legislature and informing them of what is necessary for them to operate smoothly. Been an ongoing conversation for a couple years in reference to the issue of resources if this eventually passes because this is not the first time this bill has been proposed.

Judge Atkinson asked the question as to if this bill was proposed due to the recent change in government, namely, governor. He asked, specifically, if Governor Walker was opposed to approving a first OWI being deemed criminal and if it was introduced now because it had a higher likelihood of passing.

Teesch was not entirely sure either.

Judge Atkinson returned to the jail time for first offense topic and stated that Wisconsin would, most likely, look at all other states and since it is, in fact, criminal in all other states and jail time is present in most our state would also present a guideline for prosecutors asking for jail time in these cases as well. This would inevitably increase the jail population. Very high number of suppression motions on these cases and, thus, significant resources put towards these cases up to the criminal court level. Not taking a position one way or another, by any means, but just stating don't dare do this while lacking sufficient funds in the District Attorney's office and the public defender's office. He also adds with the additional court case load there will be a lot more pressure on the courthouse itself and there are a lot of negative aspects to it as it's proposed. Suggests the group take a position to not whether the bill gets passed or not but, rather, to make sure the bill does not go through without significant funding for multiple parties including the District Attorneys' office, the public defenders' office among others.

Buckley adds, funding not the only important aspect, planning is crucial as well. For instance, jail is already maxed out, more judges probably necessary, more staff at the jail and even more necessary to consider.

Judge Atkinson then said that he thinks there's support from the general population because Wisconsin is the only state that does not have this as a crime and for that reason of being an outlier people may feel that we should.

Vander Leest then pointed out that it would be helpful to have some concrete numbers and facts to point out to the population that this is how much it will actually cost the county due to needing additional DA's, public defenders, impact on the jail and so on. This, he says, should all be put together and sent in to legislation so they are aware of these facts prior to anything happening. What he gathered from legislation didn't give him the impression it was going anywhere but sending in the fiscal impact on the county may be a good idea. This knowledge may prevent them putting another unfunded mandate on the county. He reiterated that it would be difficult to complete without additional resources based on that very impact.

Judge Atkinson continued, over the years legislation has constantly increased the OWI penalties bit by bit. Recently it was passed that a 4th OWI constitutes lifetime revocation.

Vander Leest wanted to add one more finding with respect to first offense OWIs, something in the vicinity of 1/3rd of those convicted actually end up with a warrant for failing to pay or appear at the payment hearing. These individuals never take care of their first obligation and subsequently end up with a second OWI shortly thereafter. Could possibly integrate a way to hold them more accountable for that first OWI then they may be less inclined to get that second OWI altogether.

Srenaski reiterated this is an opportunity to raise awareness of insufficient funding to operate efficiently within the system.

Lasee wanted to point out that multiple entities including the courts, public defenders offices, among others are all lobbying together to acknowledge to legislature the fact that they are all significantly underfunded. May need to attach a note describing the tremendous workload this bill would add to these entities on top of being severely overtaxed. Asks Judge Atkinson if he wanted to have a specific motion that asks the County Board to write a letter to legislature saying if they want to convert First Offense OWI into a criminal offense a significant fiscal note must be attached.

Sheriff Todd Delain wanted to note that some of the punishments for OWIs are feel good things and aren't necessarily feasible in practice. Like the lifetime revocation option after multiple offenses, he points out that it would be remiss to believe that people are never going to drive again. This will inevitably lead to a run in with officers in the future, it'll bog down the DA's office, they'll get in front of a judge, be presented with fines they can't pay.... This is just one example in which more problems for officers, and the entire system for that matter, are created.

Lasee proposed that he get some information to corp. counsel so that they can see the data behind First Offense OWIs. The resolution would include details about the white paper issue and add the issue about OWIs to it additionally. It also was suggested that he add Vander Leese's information about the financial and workload impact this bill would incur on Brown County. As long as Lasee receives concrete information and stats in time before the public safety committee meeting on February 4th he will add that to the resolution as well.

Motion made by Pat Buckley, seconded by Bob Srenaski, to have Dave work with corp. counsel to draft a resolution for the Public Safety Committee in reference to the above discussion. Vote taken. MOTION CARRIED UNANIMOUSLY.

5. Jail Population Numbers (Sheriff).

Sheriff Delain reported there are currently 14 inmates shipped up in Oconto County and the jail is at approximately 94% capacity. All of the direct supervision pods are close to full and in the downtown facility there are literally inmates sleeping on the floor in a particular section. They may have to start shipping out inmates to other facilities relatively soon.

6. Treatment Court Participants.

Treatment court supervisor Mark Vanden Hoogen reported there are about 89 active participants in treatment court and 66 in the diversion program which totals about 165 individuals undergoing some form of treatment. He gave the dates of the next 3 graduations which will actually occur on the next 3 Fridays this week on January 18th 2019, for Heroin Court it will be at 10 am in branch 2. The following week on January 25th 2019 there will be 3 graduations held at 2:30 pm in branch 5. The week after that on February 2nd 2018 there will be 3 graduations held at Veterans Court at 9 am.

Human Services Committee Rep. Joan Brusky asked when the OWI court started specifically and how many participants there were exactly. Vanden Hoogen replied that the first meeting for it was held back in June 2018 and they are at 16 individuals on that court right now which would indicate rapid growth.

Judge Atkinson then asked for the trend in numbers. Vanden Hoogen responded with the trend existing in OWI court while the other courts have relatively cooled off. OWI court has taken in 3 5th offense participants with the rest being 4th offense participants.

7. Status of County Board action concerning subcommittee.

Judge Atkinson informed everyone that he spoke with Corp. Counsel Dave Hemery who informed him that it is entirely up to the County Board. Judge Atkinson then suggested that they hold on this particular issue until it is passed by the County Board. If it passes Hemery will contact Judge Atkinson regarding a resolution.

Brusky stated that it should pass.

8. Supervisor Brusky's request to amend membership of the CJCB (Supervisor Brusky).

Specific Proposed Membership list handed out by Judge Atkinson at the meeting is attached to these minutes.

Judge Atkinson started off with a reminder that Corp. Counsel Hemery wanted them also to clean up the membership by changing some old position designations and things of that nature. The first being, Assistant Public Defender which is now referred to as State Public Defender Regional Office Manager. Another one being, a change from the old statute stating the Presiding Judge to Special Chief Deputy Judge. There are some others that have old designations that need to be cleaned up, including Probation and Parole. Supervisor Brusky's request to put a Treatment Court Judge on would fall under this category as well as would Clerk of Courts John Vander Leest's request to be put on. There was also a conversation in the past about putting on the Division of Criminal Justice Manager when the position is filled that was noted here.

Health and Human Services Executive Director Erik Pritzl requested that the Health and Human Services Director be placed as a member also after looking at membership over time and the on and off nature of said membership. Would be normal for someone from that department to be there, he notes, due to youth justice and the treatment and alternative work done by that department.

Family Services Rep. /Vice President Angela Steuck voiced that she would love the opportunity to become an official member as well. She points out that Family Services is the largest human service organization here in the community and they do a lot of reentry and criminal justice related programs.

It was asked how many community members are currently on the board and if they are all filled. The response was there are 3 current filled positions with 1 being open. There was a discussion as to whether the County Board was to fill the position but Buckley pointed out that they were waiting to see what changes in terms of what the committee decides in terms of changing membership status' and so forth.

Brief discussion as to how community membership works after Citizen Rep. Tim McNulty's recent reappointment was congratulated.

Probation Parole Chief Aaron Sabel requested that title be changed omitting Eastern and go to Division of Community Corrections Region Chief.

Public Defender Rep. Tara Teesch stated that the title of State Public Defender Regional Office Manager or Designee should be changed to a representative of the Public Defenders' that can regularly attend the meetings or keep it at just Regional Office Manager or Designee.

Sheriff Delain questioned the inclusion of the Department of Sheriff's Office Accountant on the board. There are a lot of accountants throughout all departments in the county and the question referred to why the Sheriff's office accountant is the only one that needs to be present. Brief discussion followed as to why and it was decided it could have been requested while the jail was being built. Sheriff Delain then requested he be taken off. He ensured that if he needs to be present or the feeling is he should be present Sheriff Delain will simply ask him to come.

Buckley wondered if it would make sense to have somebody representing the municipalities present. He says this for example because some of the lower level cases may be able to simply be adjudicated in the municipal court versus going through a long, possibly unnecessary process. Considering issues such as the jail and things of that regard coming up it may make sense to have a municipality there.

Lasee asked if municipalities have any type of meeting or organization. It was responded that there is an association that meets once a year which they are not required to be a part of. Municipal clerks meet roughly quarterly meetings which are usually regarding administrative issues.

Judge Atkinson stated that he believes that most municipalities that have municipal courts like to have their offices write their citations to their courts due to the source of income it provides to those courts. He does not think there would be a situation where these courts are dumping cases to circuit court.

Lasee added that the circuit court would most likely take the cases but there is some discrepancy as to where is the threshold and a consistency issue as well in certain cases in terms of which ones to take and which ones to not. He uses the example of retail theft cases where Green Bay may take the first 3 whereas Ashwaubenon may send it over on the first one. Some other municipalities may have a \$100 threshold where they take any cases under \$100. Says it can be fixed with some guidelines sent out to these municipalities.

Judge Atkinson then wanted to go down the list of proposed membership.

Motion made by David Lasee, seconded by Todd Delain to change Special Chief Deputy Judge to Brown County Circuit Court Presiding Judge; District Attorney to Brown County District Attorney or Designee; Sheriff to Brown County Sheriff or Designee; State Public Defender to State Public Defender Regional Office Manager or Designee; Jail Captain to Jail Captain or Designee; Division of Probation and Parole Eastern Region Chief to Division of Community Corrections Region Chief or Designee. Vote taken. MOTION CARRIED UNANIMOUSLY.

It was asked that Designees have voting authority, which was deemed true.

Motion made by Joan Brusky, seconded by Tara Teesch to add the Health and Human Services Executive Director. Vote taken. MOTION CARRIED UNANIMOUSLY.

Motion made by Todd Delain, seconded by Pat Buckley, to remove Brown County Sheriff's Department Accountant. Vote taken. MOTION CARRIED UNANIMOUSLY.

Motion made by David Lasee, seconded by Todd Delain, to add Brown County Clerk of Court or Designee. Vote taken. MOTION CARRIED UNANIMOUSLY.

Motion made by Joan Brusky, seconded by Tim McNulty, to add Division of Criminal Justice Manager or Designee. Vote taken. MOTION CARRIED UNANIMOUSLY.

This position Atkinson notes has not been filled yet but it has been created with the expectation of being filled with interviews starting Friday February 1, 2019.

Judge Atkinson questioned whether there was a need to add Family Services Vice President because at some point there are too many members on the committee. Srenasky suggested that the Department of Family Services can attend this meeting as a non-committee member at any time due to the meeting being open publicly. Brusky suggested it be a citizen member. Lasee agreed and added that one of the citizen members be required to be of a human service advocacy or group within Brown County so that they have actual representation from one of those organizations.

Motion made by David Lasee, seconded by Pat Buckley, to require one citizen member of the committee to be of a human service advocacy within Brown County. Vote taken. MOTION CARRIED UNANIMOUSLY.

Delain asked whether this would be an additional committee member but it was ensured it would be one of the four current members and no additional member would be added.

Some discussion followed as to why there was only 3 currently on the committee and it was determined it was due to the completion of the term on December 31st of Citizen Rep. Kathy Johnson which this new committee member would fulfill that vacancy respectively.

Judge Atkinson stated that they spoke about this at their judges meeting and the judges are not supportive of adding a Treatment Court Judge. Treatment Court judges, he notes, are always welcome at every one of the meetings if they have issues of any kind relative to the treatment courts. Brusky questioned whether this was a unanimous decision which it was not.

Motion by Joan Brusky, seconded by Bob Srenaski, to add a Treatment Court Judge to the Criminal Justice Coordinating Board. Vote Taken. Ayes: Brusky Nays: Atkinson, Delain, Teesch, Buckley, Lasee, McNulty, Srenaski, Pritzl. MOTION FAILED 1 to 8.

Brusky felt as though a Treatment Court Judge has important knowledge that is relevant to this particular board that a Circuit Court Judge does not. She likened this to her knowledge of nursing because this is what her actual training is in versus her relatively superficial knowledge in obstetrics because she never actually did it. She also liked the input the Treatment Court Judges put forth to the board in the past.

Judge Atkinson respectfully pointed out that judges themselves attend the board or committees voluntarily and the branch of government that makes decisions to add judges to the board is a separate branch of the government. This very branch of government should not be adding judges to committees without the approval from the judges first and that is the judges' position. This particular motion would be asking the County Board to appoint a judge without that very approval and thus, against their will. Every Judge, he added, including treatment court judges are welcome at any time to attend. He also noted that this committee has been around since 1992 and the judges on committees change over time, so there may not be a Treatment Court Judge on the committee right now but in the future there inevitably will be. He respectfully asked that everyone on the committee vote no for this motion.

Citizen Rep. Tim McNulty reiterated the point that Sheriff Delain made with his accountant, that if they would like a Treatment Court Judge present then they may simply ask for one and they will be present. Judge Atkinson ensured that would be the case.

Brusky questioned if the Judges asked to be put on particular committees back when it started in 1992 and Judge Atkinson said that they had. Specifically, the judges had been asked if they would be willing to be put on the ordinance to preside in these meetings and the judges agreed to it. County Board did not just place a Judge on the committee. They had asked permission first before they passed a resolution. Brusky then asked what the vote specific count was and Judge Atkinson responded with the reminder that the Judges are not required to disclose this information to the public.

Sheriff Delain stated that he would not support the motion to honor the request of the judges. Felt as though they already have a representative of the treatment court via the Criminal Justice Manager and he is confident that if they need a treatment court Judge present they would attend.

Lasee stated that he understands Brusky's position but he has some concerns. He thought that they work better as a group when they have some agreement from the judges. He didn't want to be in a position where they are forcing the Judges to do something they are not on board with therefore he cannot support the motion either.

Buckley noted that Judge Zuidmulder attends the Public Safety committee regularly and anytime they ask he has been put on the agenda. He felt as though it would be the same thing here and every time he asks for something he has always been very responsive therefore he felt as though it is not necessary to add him to the board. Therefore he was not supportive of this motion either.

Teesch stated that she is not supportive either because any information that she would like to receive will come voluntarily from the judges. There are other ways to get what Brusky would like to receive without adding a Treatment Court Judge to the board.

Brusky ensured that she respected all of their points of view but she pointed out the fact that in recent months none of the treatment court judges that had been there regularly in the past have been there and they have been missed. If they just simply invite them, how often are they going to actually attend?

Srenaski asked whether what was discussed at the September meeting still held true regarding the conduction of all 8 branches in criminal courts. Judge Atkinson ensured it is still indeed taking place. He then asked the Sheriff whether it is required for 2 deputies to be in attendance at criminal courts.

Sheriff Delain responded with the fact that there will be a deputy with the defendant regardless and depending upon who is going to be in court and the seriousness of the crime there may be an additional one somewhere in the courtroom. Discussion ensued regarding seriousness of cases and which ones do not need security. No problems with this yet according to Judge Atkinson. He raised this point because back when they were trying to get authorization one of the objections was the cost of the additional deputies. Public Defender's office is already under resourced, is this stretching their resources even further?

9. **Future Agenda Items, if any. NONE.**
10. **Other such matters as authorized by law. NONE.**
11. **Adjourn.**

Motion made by Todd Delain, seconded by Tim Mc Nulty to adjourn at 9:06 am. Vote taken. MOTION CARRIED UNANIMOUSLY

Respectfully submitted,

Cayden Lasecki
Administrative Assistant

Proposed Membership

1. Chairperson of Public Safety Committee or Designee;
2. Chairperson of Human Services Committee or Designee;
3. Brown County Circuit Court Presiding Judge or Designee;
4. State Public Defender Regional Office Manager or Designee;
5. Brown County District Attorney or Designee;
6. Brown County Sheriff or Designee;
7. Brown County Executive or Designee;
8. Jail Captain or Designee;
9. Green Bay Police Chief;
10. Division of Community Corrections Region Chief or Designee;
11. Citizen Representative No. 1;
12. Citizen Representative No. 2.;
13. Citizen Representative No. 3;
14. Citizen Representative No. 4;
15. Brown County Sheriff Department's Accountant;
16. Brown County Clerk of Court or Designee; and
17. Division of Criminal Justice Manager.