



RESOLUTION # 59-3/21

TO: HONORABLE MEMBERS OF THE LA CROSSE COUNTY BOARD OF SUPERVISORS

ITEM # 3-30

**BOARD ACTION**

Adopted:   
For: 29  
Against: 0  
Abstain: 0  
Abs/Excd: 0  
Vote Req: \_\_\_\_\_  
Other Action: \_\_\_\_\_

**JUDICIARY AND LAW COMMITTEE ACTION**

Adopted: yes  
For: 5  
Against: 0  
Abstain: 0  
Abs/Excd: 0

**RE: SUPPORT FOR AMENDMENTS TO 2019 WISCONSIN ACT 106 AND WIS. STATS. §343.31(1m)(b) REGARDING OPERATING WHILE INTOXICATED (OWI) OFFENSES**

**WHEREAS**, 2019 WISCONSIN ACT 106 was enacted on February 28, 2020 to amend 346.65(2)(am)5 of the statutes, relating to commission of a fifth or sixth offense of operating a motor vehicle while intoxicated; and,

**WHEREAS**, §346.65(2)(am)5 reads as follows: "The court shall impose a bifurcated sentence under s. 973.01, and confinement portion of the bifurcated sentence imposed on the person shall be not less than one year and 6 months. The court may impose a term of confinement that is less than one year and 6 months if the court finds that the best interests of the community will be served and the public will not be harmed and if the court places its reasons on the record."; and,

**WHEREAS**, pursuant to s. 973.01(2), "A bifurcated sentence is a sentence that consists of a term of confinement in prison followed by a term of extended supervision under s. 302.113." and pursuant to s. 973.01(2)(b), "The portion of a bifurcated sentence that imposes a term of confinement in prison may not be less than one year..."; and,

**WHEREAS**, in October 2020, the Wisconsin Department of Justice (WI DOJ) issued an opinion stating that, for an offense under Act 106, the court must impose a bifurcated sentence with at least 1 year of initial confinement; and,

**WHEREAS**, the WI DOJ further opined that, by requiring that a court 'shall impose a bifurcated sentence' with a confinement portion that is spelled out in the statutes, the Legislature created a mandatory minimum sentence that a court must impose and that, under the decisions in *State v. Lalicata* and *State v. Williams*, a court may not impose and stay that sentence and order probation; and,

**WHEREAS**, under the law as amended, 5<sup>th</sup> and 6<sup>th</sup> Offense OWI offenders would have no incentive to participate in a Treatment Court program, which would address both underlying criminogenic and substance abuse needs, because prison is required; and,

**WHEREAS**, treatment courts have been restoring lives and families for more than three decades and have been shown to be one of the most successful justice system interventions in our nation's history, and significantly improve substance use disorder treatment outcomes, substantially reduce addiction and related crime, and do so at less expense than any other criminal justice strategy; and,

**WHEREAS**, the Wisconsin Legislature has recognized the importance and positive impact of treatment courts in Wisconsin and has significantly supported treatment courts through legislation such as Treatment Alternatives and Diversion (TAD); and,

**WHEREAS**, La Crosse County advocates for changes to 2019 WISCONSIN ACT 106 to allow for participation in treatment courts for a 5<sup>th</sup> or 6<sup>th</sup> OWI offense; and,

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**WHEREAS**, additionally, under §343.31(1m)(b) if the number of convictions for OWI equals 4 or more and the 4<sup>th</sup> conviction occurs within 15 years of the previous conviction, the Department of Transportation shall revoke the person's operating privilege permanently; and,

**WHEREAS**, individuals who successfully complete a treatment court program which addresses their underlying criminogenic and behavioral health needs, under court supervision, should have the opportunity to reinstate their driver's license. Such incentive would encourage other individuals to participate in treatment courts to obtain these services, which ultimately, improves public safety.

**NOW THEREFORE BE IT RESOLVED** that La Crosse County Board of Supervisors does hereby implore the Wisconsin legislature to amend ACT 106 to allow, at sentencing for 5<sup>th</sup> and 6<sup>th</sup> offense OWI convictions, the option to impose and stay a sentence and to place the defendant on probation in order to participate in and complete a treatment court program.

**BE IT FURTHER RESOLVED** that the La Crosse County Board of Supervisors does hereby further implore the Wisconsin legislature to amend Wis. Stats. §343.31(1m)(b) to allow for reinstatement of an individual's operating privileges upon successful completion of a treatment court.

**BE IT FURTHER RESOLVED** that the County Clerk be authorized and directed to send a copy of this resolution to Governor Evers, Attorney General Kaul, State Courts Director Randy Koschnick, members of the State Assembly, members of the Wisconsin State Senate, and the Wisconsin Counties Association

**FISCAL NOTE:** Amendments to ACT 106 are anticipated to result in overall cost savings to various public systems through improving substance abuse disorder treatment outcomes. There is no direct spending of funds authorized in this resolution. Treatment court program costs will continue to be funded by La Crosse County Human Services Department.

Date: March 9, 2021  
[Signature]  
**COMMITTEE CHAIR**

Date: March 9, 2021  
[Signature]  
**RECORDING CLERK**

	Reviewed Only	Recommended	Not Recommended	
Co. Admin.		<u>80</u>		Requested By: Mandy Bisek Date Requested: February 22, 2021 Drafted By: Corporation Counsel
Fin. Director	<u>[Signature]</u>			
Corp. Counsel	<u>[Signature]</u>			
Board Chair	<u>[Signature]</u>			

Adopted by the La Crosse County Board this 18 Day of March, 2021

STATE OF WISCONSIN  
COUNTY OF LA CROSSE  
I, Ginny Dankmeyer, County Clerk of La Crosse County do hereby certify that this document is a true and correct copy of the original resolution required by law to be in my custody and which the County Board of Supervisors of La Crosse County adopted at a meeting held on the 18<sup>th</sup> day of March 2021.

[Signature]  
Ginny Dankmeyer, La Crosse County Clerk