

RESOLUTION #R – 13 – 21

SUPPORT FOR AMENDMENTS TO STATUTORY CHANGES EFFECTED BY 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 Wis. Stats., §346.65(2)(am)5, relating to commission of a fifth or sixth offense of operating a motor vehicle while intoxicated and providing for penalties; and,

WHEREAS, Wis. Stats., § 346.65(2)(am)5 reads as follows: “The court shall impose a bifurcated sentence under [Wis. Stats., §] 973.01, and the 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 Wis. Stats., § 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 [Wis. Stats., §] 302.113.” and pursuant to Wis. Stats., § 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, 5th and 6th 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, Marathon County has successfully operated an evidence based OWI treatment court, primarily serving high risk fifth and sixth offenders since 2011; and,

WHEREAS, OWI treatment courts support a wide variety of initiatives aimed at providing alternatives to incarceration with a focus on reducing recidivism, lowering prison and jail population, providing comprehensive support to participants, and improving public safety; and,

WHEREAS, OWI 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

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, Marathon County advocates for a changes to 2019 WISCONSIN ACT 106 to allow for participation in treatment courts for a 5th or 6th OWI offenses; and,

WHEREAS, additionally, under Wis. Stats., §.343.31(1m)(b) if the number of convictions for OWI equals 4 or more and the 4th 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 Marathon County does hereby urge the Wisconsin legislature to amend statutory changes effected by ACT 106 to allow, at sentencing for 5th and 6th 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 Marathon 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 Wisconsin State Assembly, members of the Wisconsin State Senate and the Wisconsin Counties Association.

Dated this 25th, day of February, 2021.

PUBLIC SAFETY COMMITTEE

/S/ Matt Bootz, Chair /S Brent Jacobson, Vice Chair /S/ Bruce Lamont

/S/ Arnold Schlei /S/ Jenifer Bizzotto /S/ Jean Maszk /S/ Allen Opall

Fiscal Impact: At this time the fiscal impact is unknown. In 2021 the tax levy amount allocated to the OWI treatment court is \$165,000. Impacts of the termination of the OWI treatment court are difficult to assess. Many offenders would, undoubtedly, be transferred to the Wisconsin state prison system, arguably reducing County jail population. However, it is likely these individuals would remain in local jails awaiting transfer to the state prison system. Additionally, without these treatment services, additional financial burdens would be placed on other areas within the criminal justice system.