

FILED  
02-01-2023  
Clerk of Circuit Court  
Brown County, WI  
2022CV001027

STATE OF WISCONSIN

CIRCUIT COURT

BROWN COUNTY

**ANTRELL THOMAS, MELVIN CLEMONS, CHRISTIAN PITTMAN, CHANCE KRATOCHVIL, KELSIE MCGESHICK, JEROME BROST, DWIGHT MOORE, SEBASTIAN POPOVICH, MELINDA MESHIGAUD, ELMORE ANDERSON, CASHUN DRAKE, TERRY JOHNSON, TIMOTHY WILLIAMS, WILLIAM LOWE, TIVON WELLS, DAVADAE BOBBITT, DONALD JUECK, and CORY HANSEN**, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

**ANTHONY S. EVERS**, in his official capacity as the Governor of Wisconsin; **KELLI THOMPSON**, in her official capacity as the Wisconsin State Public Defender; **JAMES M. BRENNAN**, in his official capacity as Chair of the Wisconsin Public Defender Board; **JOHN J. HOGAN**, and in his official capacity as Vice Chair of the Wisconsin Public Defender Board; **ELLEN THORN**, in her official capacity as Secretary of the Wisconsin Public Defender Board; **ANTHONY COOPER, SR.**, in official capacity as a member of the Wisconsin Public Defender Board; **REGINA DUNKIN**, in her official capacity as a member of the Wisconsin Public Defender Board; **PATRICK J. FIEDLER**, in his official capacity as a member of the Wisconsin Public Defender Board; **INGRID JAGERS**, in her official capacity as a member of the Wisconsin Public Defender Board; **JOSEPH MIOTKE**, in his official capacity as a member of the Wisconsin Public Defender Board; and **MAI NENG XIONG**, in her official capacity as a member of the Wisconsin Public Defender Board.

Case No. 2022-CV-1027

Hon. Thomas J. Walsh

Defendants.

**DECLARATION OF SEAN H. SUBER IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

I, Sean H. Suber, declare as follows:

1. I am a partner at Winston & Strawn LLP and I, along with my co-counsel, represent Plaintiffs in this matter. I submit this declaration in support of Plaintiffs' Motion for Class Certification (the "Motion"). The following facts are based on my personal knowledge and, if called upon to do so, I could and would competently testify thereto.

2. On March 17, 2021, the Special Public Safety Committee of the Brown County Board of Supervisors found that there were currently "350 cases in Brown County" which needed SPD representation and that, of those, "17 defendants have been in custody over 100 days." A true and correct copy of the Proceedings of the Brown County Board of Supervisors is attached as **Exhibit A**.

3. On March 15, 2022, the Office of Governor Tony Evers, the Governor for Wisconsin, issued a press release announcing "more than \$50 million investment in community safety, including nearly \$19 million for local and tribal law enforcement agencies as well as funding to help alleviate the pandemic-related backlog of criminal cases through additional public defender and assistant district attorney support." The press release is publicly available at <https://content.govdelivery.com/accounts/WIGOV/bulletins/30ec88b#:~:text=Tony%20Evers%20today%20announced%20a,and%20assistant%20district%20attorney%20support>. A true and correct copy of the Press Release is attached as **Exhibit B**.

4. On or about April 17, 2022, Kelli Thompson, the State Public Defender for Wisconsin conducted an interview with *ABC 12 WISN* in which she stated, among other things, that Wisconsin's public defender shortage "is a statewide problem" and that "it's going to take years" to clear the backlog of cases. The interview and article are publicly available at <https://www.wisn.com/article/upfront-recap-top-public-defender-years-needed-to-clear-35000-case-backlog/39738972>. A true and correct copy of the article with a transcript of the interview is attached as **Exhibit C**.

5. On January 15, 2022, Barry J. Widera of Court Data Technologies LLC, provided a report in which he conducted a random sample of 100 of the cases identified in Plaintiffs' Exhibit A to the Amended Complaint and determined that, of his random sample, 38 defendants were eligible and desiring of SPD representation, 33 defendants were not eligible or not desiring SPD representation, and 29 cases were undetermined. A true and correct copy of Mr. Widera's report is attached as **Exhibit D**.

6. On or about October 23, 2018, the *Green Bay Press-Gazette* published an article entitled "Attorney pay, number of cases cause gridlock; Public defenders' rate, cut in 1995 hasn't risen." In that article, and per Randy Kraft, Communications Director for the SPD, about 140,000 defendants statewide need a public defender each year, yet there are under 1,000 private defense attorneys in the state certified for public defender appointments; of those 1,000 attorneys, almost 20% did not take a single appointment in 2017. A true and correct copy of the article is attached as **Exhibit E**.

7. On or about August 27, 2019, the *Sheboygan Press* published an article entitled "Attorney shortage hardest on poor; Defendants relying on public defense remain jailed as cases stall." In the article, Suzanne O'Neill, Regional Attorney Manager for the SPD in Wasau and Stevens Point noted that many clients plead out after sitting in jail for weeks waiting for an attorney. A true and correct copy of the article is attached as **Exhibit F**.

8. On or about December 8, 2022, *NBC 13 WEAU* published an article entitled "Shortage in public defense attorneys delay court proceedings for defendants." In the article, Adam Plotkin, the Legislative Liaison for the SPD, says the state's public defenders are stretched thin across offices. A true and correct copy of the article is attached as **Exhibit G**.

9. On or about August 24, 2022, the *Journal Times* published an article entitled "In court without an attorney, an increasingly common sight that's part of a statewide legal logjam." In the article, Adam Plotkin noted that a snapshot of caseloads in 2019 showed an open caseload of 32,000

cases, while a similar snapshot in 2022 showed an open caseload of 64,000 cases. A true and correct copy of the article is attached as **Exhibit H**.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: February 1, 2023

By: /s/ Sean H. Suber

Sean H. Suber  
*An Attorney for Plaintiffs  
and the Putative Class*

**CERTIFICATE OF SERVICE**

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed Declaration of Sean H. Suber in Support of Plaintiffs' Motion for Class Certification with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Date: February 1, 2023

/s/ Marc L. Krickbaum  
MARC L. KRICKBAUM

# **EXHIBIT A**

**BOARD OF SUPERVISORS***Brown County*

305 E. WALNUT STREET  
P. O. BOX 23600  
GREEN BAY, WISCONSIN 54305-3600  
PHONE (920) 448-4015 FAX (920) 448-6221

**PUBLIC SAFETY COMMITTEE**

Keith Deneys, Chair,  
Dave Kaster, Vice Chair, Devon  
Coenen, Tom Lund, Randy Schultz

**SPECIAL**  
**PUBLIC SAFETY COMMITTEE MEETING**  
**WEDNESDAY, MARCH 17, 2021**  
**6:30 PM**  
**RESCH EXPO**  
**820 Armed Forces Drive, Green Bay, WI**  
**2nd Floor Mezzanine**

**Note: IN PERSON MEETING**

**NOTICE IS HEREBY GIVEN THAT THE COMMITTEE MAY TAKE ACTION ON  
ANY ITEMS LISTED ON THE AGENDA**

- I. Call Meeting to Order.
- II. Approve/Modify Agenda.
- III. Approve/Modify Minutes of March 2, 2021.

**Resolutions**

1. Resolution Requesting the State of Wisconsin Take Action to Address the Public Defender Crisis in Brown County.

**Other**

2. Such other matters as authorized by law.
3. Adjourn.

Keith Deneys, Chair

Notice is hereby given that action by the Committee may be taken on any of the items which are described or listed in this agenda. Please take notice that it is possible additional members of the Board of Supervisors may attend this meeting, resulting in a majority or quorum of the Board of Supervisors. This may constitute a meeting of the Board of Supervisors for purposes of discussion and information gathering relative to this agenda.

**PROCEEDINGS OF THE BROWN COUNTY**  
**PUBLIC SAFETY COMMITTEE**

Pursuant to Section 19.84 Wis. Stats., a regular meeting of the **Brown County Public Safety Committee** was held on March 2, 2021 at the Brown County Sheriff's Office, 2684 Development Drive, Green Bay, Wisconsin.

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**Present:** Chair Deneys, Supervisor Coenen, Supervisor Kaster, Supervisor Schultz, Supervisor Lund  
**Also Present:** Judge Zuidmulder, Judge Hock, Court Commissioner Paul Burke, District Attorney David Lasee, Clerk of Circuit Courts John Vander Leest, Public Safety Communications Director Cullen Peltier, Emergency Management Director Lauri Maki, Sheriff Todd Delain, Director of Administration Chad Weininger, County Board Chairman Pat Buckley, other interested parties

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**I. Call meeting to order.**

The meeting was called to order by Chair Deneys at 6:01 pm.

**II. Approve/Modify Agenda.**

**Motion made by Supervisor Lund, seconded by Supervisor Kaster to approve. Vote taken. MOTION CARRIED UNANIMOUSLY**

**III. Approve/Modify Minutes of February 2, 2021.**

**Motion made by Supervisor Schultz, seconded by Supervisor Kaster to approve. Vote taken. MOTION CARRIED UNANIMOUSLY**

**Comments from the Public** – None.

**1. Review Minutes of:** None.

**Circuit Courts, Commissioners, Probate**

**2. Presentation by Judge Zuidmulder Regarding Treatment Courts.**

A handout was provided, a copy of which is attached. Judge Zuidmulder informed he started the first Drug Treatment Court in 2009 and it has been his practice to appear before this committee and the Human Services Committee to provide updates regarding the status of the treatment courts since the County Board handles the budget which funds these courts. He appreciates the support he has received from the County Board over the years for these programs.

There are five treatment courts – Heroin, OWI, Drug, Mental Health and Veterans. Judge Zuidmulder is the judge for the Mental Health Court. Brown County is recognized in the state as the leader in treatment courts and has more treatment courts than any other county. Judge Zuidmulder finds that people are generally very enthusiastic about the treatment courts because they really believe people need these kinds of programs.

Treatment court participants are non-violent offenders whose involvement in the criminal justice system is driven by some engine that is explainable and can be addressed. Heroin Court is one of the largest courts and is a result of the opiate epidemic. This came to Judge Zuidmulder's attention in a very startling way when he was trying a Len Bias case. He explained when people's prescriptions to opiates are pulled, people find the free market system and turn to heroin which is much cheaper than oxycontin. These are the people that are typically in the heroin court.

Mental Health Court participants are those who have been diagnosed with chronic mental health conditions and engage in criminal behavior as a result of their condition. The OWI Court is for people who have had 3 or more OWI



offenses and have BACs of .15 or more. Veterans Court is for people who have served their country and have an offense that is connected to their service. Drug Court participants are people that have been in jail or prison and are on probation but continue to engage in addictive behaviors.

Judge Zuidmulder continued that when people are put in the treatment courts, they may have dual diagnoses, so they try to get the people in the most appropriate court. One of the biggest strengths of the treatment courts is the one-on-one contact, but COVID has made this a struggle. They have been holding court virtually and are keeping up, but he is looking forward to when the treatment courts can meet in person again.

Supervisor Kaster asked if judges rotate through the treatment courts they oversee. Judge Zuidmulder responded that judges do not rotate because national studies show one of the biggest factors that influence changes in behavior is a positive relationship with an authority figure. In a sense, judges become somewhat like a parent and participants generally do not want to disappoint the judge because of the ongoing relationship between the participant and the judge.

Supervisor Coenen noted she virtually attended a recent Mental Health Court graduation and was very impressed with how the participants looked up to the judge and did not want to disappoint him. Judge Zuidmulder said he finds great satisfaction being involved in the Mental Health Court because these are people that do not really have criminal thinking; they have a mental health condition.

Judge Zuidmulder also talked about the recidivism rate as outlined on the handout. The average recidivism rate in the traditional criminal justice system is 35% - 68%, but the recidivism rate for those who have gone through a treatment court is way below those numbers.

Chair Deneys shared that he had a relative that went through Drug Court and it really turned this individual around and helped him become a model citizen. He thanked Judge Zuidmulder and the other treatment court judges for everything they do.

*No action taken.*

### **3. Presentation Regarding Difficulty Getting Public Defenders Appointed as Referenced in October 13, 2020 Criminal Justice Coordinating Board Minutes.**

Judge Hock, District Attorney David Lasee and Court Commissioner Paul Burke addressed the committee. Judge Hock spoke to a PowerPoint regarding Appointed Attorneys, a copy of which is attached. She noted that Attorney Manager at the State Public Defenders Office, Jeff Cano, was going to appear at this meeting as well, but was prohibited from doing so by the state.

Lasee informed staff attorneys within the State Public Defenders (SPD) office take cases until they reach a quota that is given to them every year and is based in part on American Bar Association standards. Conflicts of interest are a primary concern and often prevent in-house SPD attorneys from taking a case, so those cases all have to go out to a private bar attorney who is appointed through the SPD if they qualify.

This issue is being brought to the committee's attention because there is great difficulty getting attorneys appointed through the SPD to take cases in Brown County. Currently the SPD needs to appoint on 350 cases in Brown County. It was indicated that Outagamie has to appoint on 50 cases which they think is a dire situation.

Court Commissioner Paul Burke explained the problem with getting a public defender appointed happens at the beginning of a case, or in some instances, if a defendant fires their attorney. Someone who is arrested will make their initial appearance soon after their arrest. Felony charges are more difficult to appoint out for a number of reasons, one being that more experienced attorneys are necessary for these cases. Burke continued that after an initial appearance, if bond is set at \$500 or more and a defendant remains in custody, they are supposed to have a preliminary hearing within 10 days. If the bond is less than \$500 or a defendant is not in custody, they are supposed to have a preliminary hearing within 20 days. Court Commissioners handle both the initial appearance and the preliminary hearing and ideally cases should be out of their bailiwick within 20 – 30 days. One of the things that is done at the initial appearance is determine the status of counsel. At the time of the initial appearance, the SPD would have interviewed pretty much everyone who is making an appearance and are able to say who qualifies

for a public defender and who does not. For those who qualify, it becomes the SPD's task to appoint an attorney. Ideally then the defendant has their initial appearance and would be out of the Commissioner's Court within 10 days to 3 weeks, but this is not what is happening right now. Defendants have statutory rights to have their preliminary hearings held timely, but they also have a constitutional right to be represented by an attorney.

Judge Hock informed that right now if a defendant comes in without an attorney, the initial appearance is adjourned for about 6 weeks and often when the adjourned initial appearance date comes up, the defendant is still in custody and still does not have an attorney. Related concerns are that defendants remain in custody for months without representation. As of January 28, 2021, approximately 17 defendants have been in custody over 100 days and approximately 27 defendants have been in custody between 30 – 100 days.

Burke added that people who are not in custody also have a right to be timely represented as well. He hears from the SPD that they have contacted anywhere between 100 – 400 lawyers and are unable to find anyone to take a case. The SPD contacts attorneys outside of Brown County and it is not unusual to have attorneys from Kenosha or Milwaukee handling public defender cases in Brown County. Burke referred to the case law outlined in the PowerPoint and said these types of things are concerns in Brown County.

Lasee added there is currently a very serious case pending in Brown County where the defendant sat in custody for more than 300 days without having an attorney appointed. The defendant did have an attorney temporarily appointed to the case, but the defendant had a speedy trial demand and the attorney was not able to accommodate that due to her personal and work schedule. Ultimately an attorney was appointed after more than 300 days and as the case was getting ready for a jury trial, the defendant's attorney filed a motion when the Lee case came down. Similar motions have been filed on several other cases and one of them recently resulted in the dismissal of a case where someone was in jail for over a year without an attorney. This case was able to be refiled, but that creates a lot of work for the entire criminal justice system. Lasee feels the Court of Appeals may clarify their ruling and take into consideration some of the practical consequences the Lee decision had, but they very well may grant Butler's motion to dismiss in Brown County and Lasee is very concerned this will lead to a flood of cases being dismissed and the DA's office having to start all over on these cases.

Responding to Supervisor Lund's question as to whether there is any money in the Governor's budget for court reform, Director of Administration Chad Weininger said he has reviewed the Governor's budget and there is a proposal to increase the salary for public defenders as well as some other proposed pay increases. Weininger recalled at the last meeting it was suggested that legislators or staff attend this meeting and said he talked to someone today who did not have a clue this was an issue in Brown County and informed Weininger that they would be more than willing to assist in the budget process to look at this.

Burke informed that at some point someone could raise the issue of a constitutional speedy trial and a case could be dismissed that cannot be refiled. Lasee agreed and added that one of the reasons he raised this issue is because it is a matter of fundamental fairness and these people are entitled to have attorneys constitutionally, but there are also significant impacts to crime victims who have to keep going to court every 6 weeks to find out the case is still dragging on. Defendants are also being held in custody and cannot begin to do anything substantive on their case until they have a lawyer and Lasee is very concerned that there could be a case out there where something happens within the significant delayed time period, such as an essential witness dying or a piece of evidence being destroyed or something similar. There is caselaw that says delays of more than a year can potentially trigger a constitutional speedy trial violation and that would result in a dismissal with prejudice which means the case cannot be refiled. Lasee does not want to end up with a significant negative impact on a serious case, in addition to the impact the crime victims are already feeling.

County Board Chair Patrick Buckley said this is a state issue and it is disappointing that nobody from the state is at this meeting even though they knew this was going to come up. That is not good government by the state and leaves the county to try to come up with solutions for a state problem. Buckley said at the CJCB meeting earlier in the day Cano indicated there were 350 cases waiting for appointments. If the SPD is down 3 attorneys, and each attorney could handle approximately 100 cases, hiring 3 attorneys could handle a big chunk of these cases. Buckley feels the processes at the SPD need to be looked at first before the county should be asked to step up to commit dollars to a state function. CJCB has looked at a lot of different areas in the criminal justice process from the time someone is arrested all the way through the time someone goes to prison but has not really looked much at the SPD portion. He would like to see this committee put together a resolution to send to the state to address this

issue. Buckley recalled that Weininger said there are state representatives who are willing to look into this but did not know it was an issue. He is very disappointed that the state did not have anybody come to this meeting to help find solutions.

Judge Hock referred to the impact of delays in Brown County as outlined in the PowerPoint and added that there are likely other impacts as well. She feels it is wise to address why there are greater delays in Brown County than in other counties. She has heard from the SPD that this is not an issue in Dane or Milwaukee. Brown County is the fourth largest county in the state and some of the reasons this may be a problem here is lack of attorneys to take appointments, attorneys not wanting to take cases at \$70 an hour and vacancies in the SPD office, as well as challenges to retain experienced attorneys. Burke added that the local SPD covers Door and Kewaunee County as well as Brown County. Currently, the second most experienced attorney in the office covering Brown County has 7 - 8 years of experience. Hiring attorneys in the SPD would help, but they need to hire experienced attorneys.

Lasee informed the local SPD office takes between 18 – 20% of the Class A, B & C felonies, which means 80% of the serious cases have to be farmed out to private bar lawyers and it is very difficult to find a lawyer to take a second degree sexual assault or armed robbery case. The SPD has standards and those cases have to go to experienced trial lawyers which presents a real challenge. This is not something that is going to be resolved anytime soon as the local SPD staff is quite young.

This is all being brought to the committee so they can start thinking about what can be done to help with this. Lund feels one of the things to look at is increasing the pay for private attorneys that take the high-level felonies. A workable pay structure should be looked at. Judge Hock noted the pay rate was just raised to \$70. The rate before that was \$40 an hour and it took 20 years to get it raised to \$70. Burke added that the \$70 rate is statutory, so that is all the agency is allowed to pay on any case.

Supervisor Kaster asked about hour caps. Judge Hock explained that if it is determined someone is eligible for a court appointed attorney and an attorney is paid for with county dollars, there are caps on how many hours can be billed. The caps are very antiquated and were established long before things like dash cams and body cams and other technology that creates a lot of electronic discovery were used. The court is not finding the same kind of difficulty the SPD is having; if someone is eligible for a court appointed attorney, they are usually able to find someone to appoint. It is the SPD appointments at \$70 an hour that they cannot find attorneys to take. Burke added that a judge can increase the cap in complex cases when necessary.

For cases where the defendant is eligible for a public defender but one cannot be appointed, Lasee has asked the SPD if they would reimburse the county \$70 per hour if the court appoints an attorney at \$100 an hour but he has been told there is a state policy against this. If a Dean appointment is done and the county pays for it, the defendant is obligated to reimburse the county so now an indigent defendant who is eligible for a SPD has to reimburse the fees and that is problematic. Lasee asked Weininger to bring this up with the legislators to see if they can change the rules so that if a county does appoint, the SPD at least has to reimburse the \$70 an hour that they know they have to pay. Judge Hock added that she is not willing to order someone to reimburse the county when they have been found indigent and should be provided an attorney by the state. Weininger responded that the hard part is fixing a problem when the people responsible for the problem are not willing to sit down and discuss it.

Buckley feels this is a slippery slope and noted the county has already added attorneys to the DA's office, the state is not going to reimburse the county for housing state prisoners in the jail and now we are supposed to pick up the cost for public defenders? These things are not Brown County's responsibility – they are the responsibility of the state. Once judges start appointing attorneys as public defenders, Buckley questions why any attorney would step up to take the public defender cases – why not just wait to be appointed by the court? It is wrong for the state to put this on the county and then not even show up to help find a solution to the problem. Buckley reiterated he would like this committee to put together a resolution to send to the state and make sure the representatives from this area are copied in on it.

Lund feels a meeting should be held prior to the next County Board meeting to approve a resolution so it can get to the state before they start talking about the budget. He would like to refer this to the Chair to put something together and then approve it at a special meeting. Lund also asked why Milwaukee and Dane County do not have similar issues. Burke speculated that young attorneys may want to live in Milwaukee and Madison and added that a

lot of northern counties are having similar problems as Brown County. Lasee added that Milwaukee and Dane County also have a greater number of attorneys than Brown County does.

Weininger feels it would also be helpful to set up a conference call with the DA, Judge Hock and Commissioner Burke to talk to the legislators on this to make them aware of the seriousness of the issue so they can start moving on it.

Coenen referenced Lasee's earlier comment that he has asked the SPD to reimburse the county at the rate of \$70 an hour when the county appoints an attorney to someone who is eligible for a public defender and asked if that is statutory or a policy decision. Lasee feels it is a policy and Judge Hock added that she thinks the state takes that position as well. Coenen is concerned about this and feels we need to come up with something quickly before severe cases are dismissed. Lasee is also very concerned about this and said his office has started to take the very unusual step of writing letters to the judge explaining the situation that a defendant is pending without a lawyer and asking the judge to help. He would like to get the attention of the SPD in short order so the SPD can put a short-term fix in place, but he does not have any authority to tell them how to do their job. Judge Hock added that there is not a lot of incentive for the SPD to do something that is going to avoid their case being dismissed with prejudice. Coenen asked if there is anything the County Board can do about this. Judge Hock feels putting pressure on the state legislature to make sure they are aware of the issue would be appropriate and she hopes that will get them to take steps to resolve this.

Other than the statutory change to \$70 an hour and hiring more public defenders, Supervisor Schultz asked if Lasee, Burke or Judge Hock had any suggested long-term solutions. Judge Hock responded that if the way to attract more private attorneys to take cases is to pay a higher rate, it seems that would be a way to resolve the problem long-term. Burke added that they could also alter the rates for different types of cases. The legislature could do something like that, but the incentives currently are perverse because there is not a lot of incentive to take the harder cases.

Other than hoping to get state legislators to hold the state accountable for what they are not currently being accountable for, Schultz asked if there is any other angle Brown County can take to hold a candle to the state and make them accountable for their responsibilities. Burke responded that they are taking the public defender at their word that they will not contribute \$70 to the court appointed cases and perhaps Corporation Counsel could provide a legal opinion on this. Schultz also asked what the difference is to have a public defender appointed versus having an attorney appointed by the court. Lasee explained it is a cut off of the income rate - court appointments are designed for people that have jobs but do not have the money to go out and pay an attorney a large retainer while the public defender appointments are for those defendants who do not have jobs.

Deneys thanked Burke, Lasee and Judge Hock for the presentation and informed he would like to have a conference call scheduled and if a resolution is necessary it can be drafted to bring forward to the County Board.

**Motion made by Supervisor Lund, seconded by Supervisor Coenen to refer this to Chairman Deneys to draw up a resolution on this and have a special meeting prior to the March County Board meeting. Vote taken. MOTION CARRIED UNANIMOUSLY**

**4. Director's Report.**

**a) COVID-19 Update – *Standing Item.***

Judge Hock informed some significant progress has been made with the docket in that they are having more hearings and trials which is positive. There are some issues regarding the impact of COVID on the budget. Some of these issues include a change in the policy for juror meals and not utilizing bailiffs the way they used to. They have been having a very hard time getting and maintaining bailiffs as typically that is a job that is done by the older population, but a lot of that population is not comfortable coming into the courthouse right now. In addition, they do not pay the bailiffs very well and they are looking at ways to raise the bailiff wage. Judge Hock informed they wanted to carry over some funds from last year and apply them to the bailiff wage, but that request was denied.

**Motion made by Supervisor Evans, seconded by Supervisor Schultz to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY**

**District Attorney****5. District Attorney Report.****a) COVID-19 Update – *Standing Item.***

Lasee informed his office remains very busy. He referenced the two-week homicide trial that was held recently and acknowledged the outstanding job Assistant DA Wendy Lemkuil and Assistant DA Caleb Saunders did putting the case together and also acknowledged DCI Agent Jay Yerges and Sgt. Roman Aronstein of the Sheriff's Office for their great work on the case. It was very satisfying to bring justice to the family and the trial was a big part of what the office has been doing the last several weeks.

Lasee continued that the Office Manager position has been filled with an internal candidate, Jacque Tilot, who has worked as a paralegal in the private sector as well as the last 9 years in various positions in the DA's office.

**Motion made by Supervisor Coenen, seconded by Supervisor Kaster to receive and place on file. Vote taken.  
MOTION CARRIED UNANIMOUSLY**

**Clerk of Courts****6. Clerk of Courts Report.****a) COVID-19 Update – *Standing Item.***

Clerk of Courts John Vander Leest provided a handout, a copy of which is attached. He commented that overall the court system is very busy and they are doing a lot of rescheduling of cases which is keeping his staff very busy. He outlined the items in the handout and added that this is a busy time of year with taxes being intercepted to be applied to debts and noted that they have been sending out a lot of restitution checks to crime victims

Regarding COVID, Vander Leest said his staff has been fully back in the office since mid-June. Currently they are using a combination of Zoom hearings and in-person hearings and this seems to be more work because staff is spending a lot of time with parties trying to explain Zoom and keeping track of which hearings are in-person and which are via Zoom. They are moving in the direction of more in-person hearings and Vander Leest hopes to be back to all in-person by summer. He also noted that currently there is only one entrance open into the courthouse, and it is on Walnut Street. The entrance is staffed and everyone who enters is screened for COVID. This is currently being funded by the county out of the Clerk of Courts budget. They are paying staff \$14 an hour to do the screening and there are 2.5 positions doing the work and these people are also doing cleaning and sanitizing in the courtrooms and common areas. This amounts to roughly \$1,500 - \$1,600 per week. Deneys asked if there is some sort of sunset plan to phase out the screenings and what the future of the one entrance model may be. Vander Leest said having one entrance has worked out well. Deneys said this can be taken into consideration when the security of the courthouse is brought up. Vander Leest informed the committee could have a meeting in the courthouse to see how things are working and Deneys felt a meeting could be held there sometime this summer.

**Motion made by Supervisor Coenen, seconded by Supervisor Schultz to receive and place on file. Vote taken.  
MOTION CARRIED UNANIMOUSLY**

**Public Safety Communications****7. Director's Report.****a) COVID-19 Update – *Standing Item.***

Director of Public Safety Communications Cullen Peltier reported the backup test he mentioned at the last meeting had to be rescheduled due to a snow event. Regarding staffing, they are currently down 2 positions and getting applicants has been an ongoing struggle. This is the first time in several years they have not had anyone on the eligibility list. They have done a number of things to bring in applicants and Peltier noted that after a quick screening, about 90% of applicants move on to the testing program, but only about 25% of those actually pass the test and only about 25% of those that are interviewed are placed on the eligibility list. Peltier also noted their Office Manager recently resigned and they are currently recruiting for that position as well.

Regarding CAD, good progress is being made and most of the large issues have been resolved. There are some slight nuisance issues remaining and they are still working on those. Budget-wise, the year has been closed out and they ended up with a surplus.

Peltier continued that they continue to take all the precautions they have been taking since COVID began and there were only 2 employees out in February, and one of those turned out to be negative. He feels they need to work with Health and Administration to determine when they can start scaling back on some of things that have been done as more and more people are being vaccinated and cases are trending down.

Deneys mentioned the next meeting being held at the jail and noted it would be nice to also see the Communication Center. Peltier said the committee could view the center through the viewing area, but they are not doing tours at this time.

**Motion made by Supervisor Kaster, seconded by Supervisor Schultz to receive and place on file. Vote taken.**  
**MOTION CARRIED UNANIMOUSLY**

### **Emergency Management**

#### **8. Director's Report.**

##### **a) COVID-19 Update – *Standing Item.***

Emergency Management Director Lauri Maki informed they are continuing grant requirements for the grant year which ends in September. Maki and his Coordinator are attempting to complete their CEMs this year which is the process to be state certified EM Managers but there are not any classes being held in-person, so they are trying to find appropriate classes needed to finish the process. They have also completed the EOC binder and training course and are happy about that. They need some guinea pigs to put through the course to make sure it makes sense and who it is appropriate for. Maki continued that the All Hazards Mitigation Plan is complete and he is working on forming a committee which will consist of himself, a couple members from Planning and EM's from the municipalities throughout the county. The goal will be to combine with the All Hazards Committee and have the EM's from around the county bring any mitigation projects they are working on.

Maki continued that FEMA did two virtual open houses at the center last week, each of which was attended by about 30 people. It was a great set up and questions in six different categories were answered. He also recently attended the National Weather Service Spring Outlook webinar. The National Weather Service is still saying there is an average risk of flooding with the caveat that it depends on what precipitation we get. Water is still high, but down from where it was last year. Even though things look okay now, EM will start putting out messages on social media and recreating the flyer that has been done in the past to remind people of the simple steps they can take to alleviate any potential issues they may face. Maki's office also continues to work on the regional VOAD and Operation Community Cares who applied for a grant through the state to get a VOAD coordinator and they were awarded the grant which is great news for Brown County.

Lastly Maki said they continue to work with Public Health on COVID and are still sending out PPE surveys to community partners and are responding to PPE surveys for vaccination clinics. They are also still submitting requests to the state when needed on behalf of Public Health. With the approval of the Johnson & Johnson vaccine Maki is anticipating possibly more work supporting Public Health.

**Motion made by Supervisor Lund, seconded by Supervisor Coenen to receive and place on file. Vote taken.**  
**MOTION CARRIED UNANIMOUSLY**

### **Medical Examiner**

#### **9. Medical Examiner's Report.**

##### **a) COVID-19 Update – *Standing Item.***

*No report, no action taken.*

### **Sheriff**

#### **10. Update re: Jail Addition – *Standing Item.***

Sheriff Delain informed jail construction is continuing and they are currently in the process of remodeling a couple pods. There are currently 28 beds in two different pods that are unavailable. They will be getting some beds back this week and the rest should be done within the month. There have been some issues with materials coming in,

specifically some bunk issues and doors and they are working through that. Delain said the project will be done at the end of April or the beginning of May. Once the keys are received, the pod needs to be operated for about 2 weeks without any inmates before they receive approval from the jail inspector to move inmates in.

*Standing item; no action taken.*

**11. Discussion regarding Annual Jail inspection.**

Delain said doing the annual jail inspection in May would be ideal and then would be followed by the committee meeting. Deneys would also like to have a tour of the Medical Examiner's Office and he will check to see when that can happen.

**12. Sheriff's Report.**

**a) COVID-19 Update – *Standing Item.***

Delain informed that nearly every officer that wanted the COVID vaccine has now had it.

Delain recalled talking in the past about the county housing inmates who have been sentenced to prison but remain in the Brown County Jail because the state is unwilling or unable to receive these inmates. Last month there were about 60 inmates in Brown County that were waiting to go to prison. As of today, there are 74 inmates in jail that are waiting to go to prison. Delain explained that when the state was receiving inmates, they would take 4 every other week and then it changed to take 4 inmates each week. The jail is gaining approximately 3 inmates per week that should be in prison and this is causing overcrowding and has resulted in 10 inmates being shipped out to Oconto County. This is obviously a concern and using the average of \$51.46 per day per inmate, the cost to Brown County in February to house inmates that should be in prison was \$94,737.86.

Delain continued that he has had conversations with legislators throughout Brown County and has explained the situation to them. Representative Shae Sortwell sits on the Corrections Committee and he as well as another Representative and two Senators have drafted legislation geared towards fixing this issue. Delain continued that State Statute 302.33 sets forth that when law enforcement arrests someone and brings them to the county jail, the county is responsible to cover the expenses through the Sheriff's budget. It goes on to say that after the individual is convicted, it is still the county's responsibility up until the time that inmate is received by the DOC. This makes sense, if it is done in a reasonable time. Delain explained the paperwork that needs to be done after someone is convicted and said it typically takes about 10 days and then the DOC receives the inmate. When Delain talked to a Representative, the concern was that the amount of time that it is currently taking to get someone out of the jail is no longer reasonable and Delain agrees. Prior to COVID-19 it was not uncommon to have 8 – 12 inmates in the jail waiting to go to prison. It is not normal to have 74 inmates in the jail waiting to go to prison. Delain has reached out to several legislators to express his concerns and they have been very supportive, and he is hopeful something will happen as we move forward to rectify this.

Delain continued that COVID may be one of the reasons the DOC is not able to receive inmates, but every County Sheriff is also dealing with COVID and Delain does not have a choice but to continue to take in inmates every single day. The DOC has noted they have staffing issues and there are some housing units at the prisons that are shut down because they do not have enough staff. If this situation does not change, there will be a very negative impact on the Sheriff's budget and overall, with the county budget. Delain is happy to see things moving forward and is hopeful things will change. If the relief package is approved, there may be an opportunity to make some adjustments to get the county paid. This is something that absolutely needs to be addressed and as a matter of good policy and law, it is important that this bill go through and the DOC be required to receive inmates sentenced to prison in a reasonable amount of time. Delain feels that is what would be fair to Brown County and the taxpayers and he will continue to keep this committee updated regarding this on a monthly basis.

Deneys asked if Delain had any feel for how well the pending legislation is being received by both sides at the state and whether he would like committee members or other Supervisors to make some phone calls on this. Delain responded that it is very well supported in Brown County and he feels that will also be the case for the representatives and senators throughout northeast Wisconsin. He added that there is obviously overwhelming support for this from Sheriffs throughout the state and they will likely all be reaching out to their representatives to

tell them this needs to happen. Delain also feels WCA will be a strong supporter of this as it has a significant impact on counties throughout the state.

Schultz asked if anyone from the state or DOC has ever mentioned staffing issues or COVID issues and asked if the county can house the prisoners on behalf of the DOC or if it seems that the state is just blatantly walking away from their responsibilities. Delain responded that no one has contacted him about willingness to pay for the county holding these inmates. The state has contracts with some county jails to house inmates, but not in Brown County. He has not been contacted to transfer inmates who should be in prison to those jails the state has contracts with. If that would be presented, Delain would load them up and transfer them as quickly as possible. Schultz sympathizes with Delain having to deal with this and the taxpayers having to pay for this. The DOC has indicated that this is happening because of COVID, but they have not given significant reasons as to how COVID is impacting them. Delain noted some counties are being impacted more significantly than others. Here in Brown County there is already a crowding issue which is the reason the new pod is being built, so when you add this problem to the other crowding problems, it becomes significant. Milwaukee County currently is housing more than 200 inmates that should be in prison and Dane County is housing 70 – 75 inmates that should be in prison. Some counties can absorb this, and other counties cannot. Delain appreciates the support of the committee on this and urged them to bring this forward with any legislators they may be speaking with.

Coenen asked when the last time was that the DOC paid the county for housing the inmates. Delain did not know exactly how many invoices the DOC has paid but they have said they will pay for the month of January and Delain expects they will do so until February 1. Coenen appreciates Delain's hard work on this and said it is concerning that the state is dropping the ball on the whole system and she does not find this appropriate or acceptable.

Regarding the body cameras, Delain said they have seen several demos since the last meeting and are working on moving ahead with an RFP. He continued that he talked to the Chief in Ashwaubenon who advised Delain that they have selected Axon, as did the City of Green Bay. Brown County will continue through the RFP process, but he wanted the committee to be aware that the big agencies in the county have all decided what direction they are going to go. Delain's goal is to have this done sometime this summer so he has an idea of what this will cost as he goes into the budget process.

Delain concluded by saying he will be bringing forward an agreement next month that will need to be reached between the Sheriff and the County Board regarding staffing for the jail to double bunk. He would like this item placed on the next agenda and informed that what has been approved in the county budget is going to be what the agreement is; he is not asking for anything different, it just needs to be put in writing and brought forward according to statutes.

**Motion made by Supervisor Lund, seconded by Supervisor Schultz to receive and place on file. Vote taken.  
MOTION CARRIED UNANIMOUSLY**

**Communications** – None.

**Resolutions**

**13. Resolution Approving Budget Carryover Requests from 2020 Budget to 2021 Budget.**

**Motion made by Supervisor Lund, seconded by Supervisor Coenen to approve. Vote taken. MOTION CARRIED UNANIMOUSLY**

**Other**

**14. Audit of bills.**

**Motion made by Supervisor Schultz, seconded by Supervisor Lund to approve the audit of the bills. Vote taken.  
MOTION CARRIED UNANIMOUSLY**

**15. Such other matters as authorized by law.**

The April meeting will include a tour of Jail as well as an overview of Public Safety Communications from the viewing area.



**16. Adjourn.**

**Motion made by Supervisor Schultz, seconded by Supervisor Lund to adjourn at pm. Vote taken. MOTION CARRIED UNANIMOUSLY**

Respectfully submitted,

Therese Giannunzio  
Administrative Specialist

March 17, 2021

TO THE HONORABLE CHAIRMAN AND MEMBERS  
OF THE BROWN COUNTY BOARD OF SUPERVISORS

Ladies and Gentlemen:

**RESOLUTION REQUESTING THE STATE OF WISCONSIN TAKE ACTION  
TO ADDRESS THE PUBLIC DEFENDER CRISIS IN BROWN COUNTY**

**WHEREAS**, the State of Wisconsin funds the Wisconsin State Public Defender's Office (the "SPD"), an executive-branch state agency tasked with ensuring that Wisconsin meets its constitutional requirement of providing legal representation to the indigent, and which operates in all of Wisconsin's 72 counties through its 37 local trial offices and two appellate offices. The SPD utilizes staff attorneys, as well as contract private attorneys, who handle conflict and overflow criminal cases; and

**WHEREAS**, the SPD local trial office that serves Brown County, Kewaunee County and Door County is located in Green Bay, WI, and there are approximately 350 defendants in Brown County which currently need SPD representation, 17 of which have been in custody and sought representation for over 100 days, a situation which, if it persists, may soon result in potential civil rights violations and/or the dismissal of such criminal charges; and

**WHEREAS**, on 01-20-2021, the District 3 Wisconsin Court of Appeals dismissed a criminal case originating in Marathon County after the defendant there was held in custody for 101 days without counsel while the SPD searched for an attorney willing and able to represent him, and did not have a preliminary hearing until 113 days after his initial appearance; and

**WHEREAS**, recently in Brown County a defendant's criminal case was dismissed without prejudice after the defendant went for hundreds of days without having counsel appointed by the SPD. That case was promptly refiled, causing much additional work for the entire criminal justice system, and resulting in otherwise unnecessary apprehension for the victims involved. If a delay

caused by a case being filed, dismissed and then refiled again lasts long enough, then it could potentially result in the unavailability of witnesses and evidence; and

**WHEREAS**, swift and appropriate action needs to be taken by the Governor and State Legislators to remedy the current Public Defender Crisis in Brown County before more criminal cases result in dismissal due to lack of appointment of attorneys by the SPD, and before constitutional rights such as the *Right to a Speedy Trial* are violated.

**NOW, THEREFORE, BE IT RESOLVED**, that the Brown County Board of Supervisors hereby requests that the Governor and State Legislators address and remedy the above described Public Defender Crisis in Brown County by taking one or more of the following actions:

1. Create Regional Response Offices on a temporary or permanent basis, to be staffed with experienced SPD employees or with experienced SPD contracted attorneys, to provide Public Defender representation in counties such as Brown County that have a significant backlog of criminal cases where defendants are and remain in need of representation for extended periods of time, and operate and maintain such Regional Response Offices until the Public Defender Crisis currently being experienced in many Wisconsin counties is brought under control; and/or
2. Pass legislation to bring parity between the rate the SPD is allowed to pay contracted attorneys, and the rate Courts are authorized to pay contracted attorneys; and

**BE IT FURTHER RESOLVED**, that a copy of this Resolution shall be sent via email to the Governor of the State of Wisconsin, and to the Brown County Legislative Delegation.

*Fiscal Note: This resolution does not require an appropriation from the general fund, as it will be sent via email to the Governor and the Brown County Legislative Delegation.*

Respectfully submitted,

PUBLIC SAFETY COMMITTEE

Approved By:

\_\_\_\_\_  
 Troy Streckenbach  
 COUNTY EXECUTIVE

Date Signed: \_\_\_\_\_

21-020R

Authored by: Corporation Counsel at the direction of the Public Safety Committee

Approved by: Corporation Counsel

BOARD OF SUPERVISORS ROLL CALL # \_\_\_\_\_

\_\_\_\_\_

Motion made by Supervisor \_\_\_\_\_

Seconded by Supervisor \_\_\_\_\_

SUPERVISORS	DIST. #	AYES	NAYS	ABSTAIN	EXCUSED
SIEBER	1				
DE WANE	2				
CHU	3				
DORFF	4				
JACOBSON	5				
LEFEBVRE	6				
FRIBERG	7				
BORCHARDT	8				
EVANS	9				
VANDER LEEST	10				
BUCKLEY	11				
LANDWEHR	12				
DANTINNE, JR	13				

SUPERVISORS	DIST. #	AYES	NAYS	ABSTAIN	EXCUSED
BRUSKY	14				
MURPHY	15				
KASTER	16				
VAN DYCK	17				
HOPKINS	18				
ERICKSON	19				
COENEN	20				
SCHULTZ	21				
PETERS	22				
SUENNEN	23				
SCHADEWALD	24				
LUND	25				
DENEYS	26				

Total Votes Cast \_\_\_\_\_

Motion:      Adopted \_\_\_\_\_      Defeated \_\_\_\_\_      Tabled \_\_\_\_\_

## CORPORATION COUNSEL

*Brown County*

305 EAST WALNUT STREET  
P.O. BOX 23600  
GREEN BAY, WISCONSIN 54305-3600



**David P. Hemery**  
Corporation Counsel

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**RESOLUTION/ORDINANCE SUBMISSION TO COUNTY BOARD**

DATE: 03-11-2021  
REQUEST TO: **SPECIAL** Public Safety Committee Meeting  
MEETING DATE: **03-17-2021 at 6:30 pm**  
REQUEST FROM: Dave Hemery, at direction of Public Safety Committee/Chair  
Corp Counsel  
REQUEST TYPE:  New resolution  Revision to resolution  
 New ordinance  Revision to ordinance

TITLE: **RESOLUTION REQUESTING THE STATE OF WISCONSIN TAKE ACTION TO ADDRESS THE PUBLIC DEFENDER CRISIS IN BROWN COUNTY**

**ISSUE/BACKGROUND INFORMATION:**

SPD needs to appoint attorneys on a timely basis to avoid dismissal of charges/cases and constitutional rights violations, and Governor and Legislature need to act

**ACTION REQUESTED:**

Consideration and approval

**FISCAL IMPACT:**

**NOTE:** This fiscal impact portion is initially completed by requestor, but verified by the DOA and updated if necessary.

1. What is the amount of the fiscal impact? \$ \_\_\_\_\_
2. Is it currently budgeted?  Yes  No  N/A (if \$0 fiscal impact)
  - a. If yes, in which account? \_\_\_\_\_
  - b. If no, how will the impact be funded? \_\_\_\_\_
  - c. If funding is from an external source, is it one-time  or continuous?
3. Please provide supporting documentation of fiscal impact determination.

**COPY OF RESOLUTION OR ORDINANCE IS ATTACHED**

# **EXHIBIT B**

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## Press Release: **\*\*CORRECTED\*\* Gov. Evers Announces More Than \$50 Million Investment in Community Safety**

Email Address

Example: name@domain.com

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e.g.

State of Wisconsin sent this bulletin at 03/15/2022 10:40 AM CDT



# Tony Evers

Office of the Governor | State of Wisconsin

**FOR IMMEDIATE RELEASE:** March 15, 2022

Contact: [GovPress@wisconsin.gov](mailto:GovPress@wisconsin.gov)

### **\*\*CORRECTED\*\* Gov. Evers Announces More Than \$50 Million Investment in Safer Communities Across Wisconsin**

*New investments to address reckless driving, expand pre-trial GPS supervision, while supporting evidence-based crime prevention strategies, local and tribal law enforcement agencies, and alleviating court backlogs*

MILWAUKEE — Gov. Tony Evers today announced a more than \$50 million investment in community safety, including nearly \$19 million for local and tribal law enforcement agencies as well as funding to help alleviate the pandemic-related backlog of criminal cases through additional public defender and assistant district attorney support. The package contains investments throughout the criminal justice system, providing both the opportunity to return to pre-pandemic levels and fund evidence-based initiatives aimed at keeping Wisconsinites safe. Today's announcement brings the governor's overall investment into violence prevention and public safety to more than \$100 million, including a [\\$45 million investment](#) announced last year to support violence prevention efforts and crime victims.

"Last October, I was proud to announce a \$45 million investment into addressing the cycle of violence and crime that for too long has gone uninterrupted. But I said then and I'll say it again today that violence is not a foregone conclusion. It is not inevitable. There is more we can do, and this is another public health crisis that deserves our attention and our action," said Gov. Evers. "So, today, we're building on the investments we announced last fall and investing more than \$50 million in grants to support local and tribal public safety agencies, to bolster crime prevention strategies, and to help alleviate the pandemic-related backlog of criminal cases across Wisconsin.

"Today, I'm announcing we're investing nearly \$19 million for local and tribal law enforcement agencies in every corner of the state. Whether it's training, recruitment bonuses, community policing needs, or technology, these funds will help our local and tribal law enforcement agencies address their community's specific public safety needs. At the end of the day, folks, from investing in mental health support and diversion to getting folks a fair and speedy trial, to bolstering re-entry programming, we're going to follow the science and use evidence-based, data-driven strategies to build a safer, fairer Wisconsin for *everyone*."

The nearly \$19 million law enforcement program will provide an allocation to every local and tribal law enforcement agency in Wisconsin, enabling agencies to address the unique needs facing their communities, including training, recruitment bonuses, community policing needs, and technology investments. The determination of an agency's amount is a formula based on the population served and includes a violent crime add-on for locations where violent crime exceeds the statewide average. Local and tribal law enforcement agencies will receive no less than \$7,000, regardless of the population served. A breakdown of the allocations can be found [here](#). Additionally, \$1 million will be provided to the Wisconsin Technical College System in an effort to support part-time police academy programs in Wisconsin.

Almost \$20 million will be provided to Milwaukee County and the city of Milwaukee for criminal justice system initiatives and community safety projects. The largest investment is more than \$14 million for Milwaukee County to expand their courthouse operations to dramatically reduce the backlog of cases in their criminal division. The funding will increase the number of criminal cases that are able to be heard by supporting staffing for the Milwaukee County District Attorney's Office, the State Public Defender, the Milwaukee Clerk of Courts, and the Milwaukee County Sheriff's Office. Cases alleging violent behavior will be prioritized.

Other Milwaukee-specific investments include funding to:

- Integrate licensed mental health clinicians into the city of Milwaukee's 911 dispatch center;
- Prevent reckless driving through environmental design and upgrades to local roads;
- Expand pretrial GPS supervision staffing to ensure 24/7/365 monitoring on existing GPS units;
- Establish a pilot program that would expand the operations of two court rooms into the evening hours one to two days a week;
- Formalize Milwaukee County's Mental Health Treatment Court; and
- Provide employment and vocational preparedness programs at the Milwaukee County House of Correction.

Share Bulletin



Finally, more than \$16 million will go toward reducing the pandemic-related backlog of criminal cases statewide. This investment includes \$5.5 million for the State Public Defender to establish ‘roving teams’ that can provide assistance where it is needed most and \$5.7 million to ensure sufficient resources to fill Assistant District Attorney positions quickly and for [additional Assistant District Attorney positions](#), which will be allocated based on caseload and estimated dispositional backlog. Finally, \$5 million will be provided to the State Crime Lab to outsource testing associated with controlled substance and DNA cases and training for firearm examiners so analysts can continue to participate in jury trials across the state.

These allocations are funded through the state’s American Rescue Plan Act funds. For updates on other recovery-related grant opportunities, sign up for the [Badger Bounceback update list](#).

An online version of this release is available [here](#).

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Office of the Governor • 115 East Capitol, Madison, WI 53702

Press Office Email: [GovPress@wisconsin.gov](mailto:GovPress@wisconsin.gov)



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# **EXHIBIT C**

**‘UPFRONT’ recap: Top public defender: Years needed to clear 35,000-case backlog****A shortage of public defenders statewide is delaying cases****Updated: 9:52 AM CDT Apr 17, 2022****Matt Smith**

**MILWAUKEE** — Wisconsin State Public Defender Kelli Thompson said it will take several years to clear a backlog of roughly 35,000 cases because of a shortage of public defenders.

“It is a statewide problem,” Thompson said on WISN’s ‘UPFRONT’ which is produced in partnership with WisPolitics.com. “It’s something that we all have to be talking about.”

Thompson, who leads the state agency, said the pandemic exacerbated a problem that was already forming beforehand.

“We have hindering people’s rights to a speedy trial,” she said. “We have individuals sitting in custody waiting for their day in court. We have individuals whose family members are impacted because they’re not home with their families.”

Thompson said the agency is currently down 17-20% of its typical attorneys.

“We’re seeing this across the economy,” Thompson said. “Every business has shortages. Everyone is looking for employees. We’re looking for public defenders. We’re looking for staff.”

Thompson said the agency is working with lawmakers and already looking ahead to the next budget cycle.

“This is a budgetary issue,” Thompson said. “We’re working, we’re constantly talking with our legislators. We’ve been fortunate in Wisconsin. I think our legislators recognize the important work public defenders, prosecutors, our criminal justice stakeholder members are doing.”

Turning to politics, Thompson, the daughter of former Gov. Tommy Thompson, said he has not told her whether he will seek another term.

“I think he really wanted to take some time and think about what his next steps are,” she said. “He can’t even think about the word retirement, and so he has to find out what his next passion might be. He certainly loves politics. I don’t think anybody would argue with that, but I really think he has to sit down, and I think as a family we have to sit down and have some discussions about this.”

Milwaukee Bucks chaplain Pastor Kenneth Lock II said he’ll continue resisting the pressure to preach politics from the pulpit as his church undergoes a major expansion in Milwaukee.

“Every pastor is urged to be political,” Lock said. “You have your donors, you’ve got people here who say we believe this is what you should be telling people. I’m just not going to be moved by the popular opinion, and for sure I’m never going to be moved by somebody buying me off.”

Evolve Church, where Lock is senior pastor, is constructing a new facility on Milwaukee's northwest side that will include a community center for youth and families complete with mentoring and tutoring for at-risk youth and mental health resources and programs for families across the region.

"About 80% of our church three years ago were in no one's church," Lock said. "It's not that they didn't want to explore faith. It was just more so they didn't find a place that spoke to them or a space that made sense for them and their families in their own personal journeys."

Former MLB commissioner Bud Selig recalled a poignant story involving a former U.S. Senator as Friday marked the 75th anniversary of Jackie Robinson breaking the color barrier.

"Herb Kohl and I went to Chicago," Selig said. "Jackie's first game at Wrigley Field – May of 1947 and what a day that was. You couldn't get in the ballpark. We finally got three seats in the upper deck, and what a great experience that was."

Selig, in an interview at his downtown Milwaukee office, called Robinson one of the most important people in the 20th century as the league continues addressing diversity.

"I think Jackie would give us a C, C+," Selig said. "We've done alright, but we can do much better."

Selig holds the title of commissioner emeritus and continues teaching classes at UW-Madison, Marquette Law School and Arizona State University.

More retirements were announced this past week in the state Legislature.

As of Friday, six state senators and 22 members of the Assembly have said they are either planning to retire, resign or seek another office.

"With all these Assembly Republicans leaving, there are a lot of primaries coming up, potential primaries coming up to fill those seats," said J.R. Ross, editor of WisPolitics.com. "Those are largely safe Republican seats. That opens the door to a segment of the base that is adamant about Donald Trump's claims to win more seats in the Assembly, more people who are not fans of Robin Vos to become part of the caucus. That makes the caucus potentially more difficult to govern."

### **INTERVIEW TRANSCRIPT:**

Adrienne: I am adrienne pedersen. Today on "upfront," a shortage of public defenders. The growing crisis statewide, and the impact on some of the most serious criminal cases in wisconsin. Kelli Thompson: everyone is looking for employees. We are looking for public defenders. Adrienne: kelli Thompson, the state's public defender, is standing by to respond. and it's easter sunday. The political and religious divide. And a pastor building a church to bring in a community. The brewers are back. So, too, is the team's economic impact. A rare interview with former mlb commissioner bud selig, and the sry to about a former u.s. senator you've likely never heard. And near record retirements. Ne w analysis on what it means for the state legislature. Taking on the issues important to Wisconsin, this is "UpFront," with your host, Adrienne Pedersen. Adrienne: Hello, and thank you for joining us. Right now, some criminal cases across wisconsin are on hold,

delayed in part because of a shortage of public defenders. The impact now being seen and heard in courtrooms statewide. Kelli Thompson is the state's public defender, overseeing the state agency that provides legal representation across the state. She joins us from Madison. We appreciate you begin with us to talk about this, frankly, big issue. If you want to start by putting it into perspective for us, what does the shortage look like across the state, and do you know how many public defenders you are down right now? Kelli Thompson: thank you for having me. This is important to many people around the state of Wisconsin. We are down about 70% 20% of our attorneys statewide. Anytime the attorney and public defender decides to leave, those cases then have to be taken on by other attorneys. We have our conflict and overflow cases, wonderful business partners, and they are overwhelmed as well because of the backlog in cases. Adrienne: Do you have a ballpark range of how many cases this is impacting? Kelli Thompson: the number fluctuates, but we have seen a backlog of about 35,000 cases, so pretty significant. We have to remember that backlog can start at the mutual appointment of the case. It can happen, delays in discovery, information involving the case. It can happen down the road finding witnesses for the case, you can have, in Milwaukee County, 10, 15, 20 in one courtroom, other cases have to be adjourned, and that can impact the backlog. We have, because of issues that come up circumstances where attorneys leave, we have got to get that reappointed to someone else. There are multiple reasons for backlogs, but those, every time there is another adjournment, a shortage of staff anywhere -- you have to remember, this is anywhere in the court system, it impacts that delay. Adrienne: It can hinder people's rights to a speedy trial, it sounds like. Kelli Thompson: absolutely. Hindering people's rights to a speedy trial to we have individuals sitting in custody, waiting for their day in court. We have family members impacted because they are not home with their families. We have people who, because of these delays, get to take longer and longer. You know, there are always people who are delaying to make decisions for all of these will impact. Adrienne: There are several sides to the coin. You want the defendant to have a speedy trial, but there is also the side of concern, if someone gets out who may be should not be out. Kelli Thompson: again, there are concerns, the witness concerns, people concerned about victims, about the case moving in forward, concerned about the collateral consequences. We are concerned about people who are innocent until proven guilty. That impacts our economy. People are not working. People are not able to take care of their children. The impact we have seen throughout our communities, that is why we talk about, this is, you know, a statewide problem. It is a statewide problem. It is something will have to be talking about. Adrienne: I understand the pandemic has even more severe effects on this whole system. But this has been going on for several years. I think people would say, other businesses are up and running, and they are able to get things done, so why can't your office have more or public defenders we need them? Kelli Thompson: we are running thousands of cases through our criminal justice system, and probably somewhere between 80% of our cases are appointed within the first 10 days of a case. So we are talking about a minority of the cases, a small percentage of the cases that are taking longer, and, again, it can be finding attorneys, and I think we are seeing this across the economy, every business has shortages. Everyone is looking for employees. We are looking for public defenders, for staff. Adrienne: What do you need from the state legislature and maybe from the federal government? Kelli Thompson: well, I think, you know, there are funds we are able to access, which is important. We will be able to hire new people. This is a budgetary issues where we are working, we are constantly talking to our legislators. I think our legislators understand the important work, our prosecutors, our stakeholders, our criminal justice members are doing. We work really closely to say, this is critically important work. We need to be able to retain these individuals. If I am constantly having to, you know, lose people, all

those pieces have to be taken up by someone. Adrienne: Do you see a light at the end of the tunnel? How long do you think it will take to get on track? Kelli Thompson: I feel like, because I do think people are working together. We are hiring people. A lot of them are new attorneys, so it will take them to some time to get up to speed. Our private bar business partners have been terrific. You know, if cases get completed, people can take on new cases. We are seeing some of that. But it is going to take years. Adrienne: "years," years, I mean -- Kelli Thompson: I believe years, yeah. Adrienne: Do you mean two years, five years, 10 years? Kelli Thompson: let's not go 10 years. let's go between two years and five years. But it could go faster than that. We are looking at, certainly, a couple of years. And, again, everybody talking, everybody working together -- we have got to think outside the box in the criminal justice system. Adrienne: I do want to ask you, switching gears, though, about your dad, former Governor Tommy Thompson. Has he told you if he is running for governor again? Kelli Thompson: he says not. I am so busy with the public defender side, I have not got into the political side at all. He just finished up not too long ago in his position as the system president. I think he really wanted to take some time and think about what his next steps are. This is not somebody who -- he cannot even think about the word "retirement," or she has to really find what is next passion might be. He certainly loves politics. I don't think anybody would argue with that. But I think he has to sit down, and as a family, we would have to sit down and have some discussions about this. Adrienne: Thank you so much for your time. We really appreciate it. Kelli Thompson: thank you so much.

# **EXHIBIT D**



COURT DATA TECHNOLOGIES, LLC  
301 South Bedford St., Suite 7A  
Madison WI 53703-4005  
(608) 442-0600  
<http://www.courtdatatech.com>

January 15, 2023

Plaintiffs' Counsel in Brown County Case Number 2022CV001027  
Antrell Thomas et al vs. Anthony S. Evers et al

Dear Counsel,

At your request we have researched the attorney representation of defendants in open criminal cases statewide for case years 2021 and 2022, and the eligibility of those defendants desiring State Public Defender (SPD) representation.

We extracted the court case data from the Consolidated Courts Automation Program (CCAP) for the Wisconsin Circuit Court utilizing their Representational State Transfer (REST) interface, an XML based standard for exchange of information in a decentralized, distributed environment. This interface defines the framework, rules, and conventions for interpreting the large quantity of data that can be retrieved from CCAP under this subscription service.

Court Data Technologies LLC subscribes to the REST interface and specializes in research and services related to the open records data available from CCAP. We have been in business since September, 2003. Our data and research has been accepted in arguments at all levels of the Wisconsin Court System, as well as the United States Court of Appeals for the Seventh Circuit.

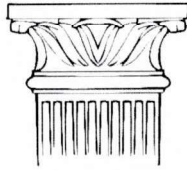
### **METHODOLOGY AND RESULTS**

The following methodology was used to compile and calculate your data.

Data was extracted from CCAP via REST on December 11, 2022. The data included all felony, misdemeanor, and criminal traffic cases statewide filed in case years 2021 and 2022 with an Open case status, to date. The data was a snapshot of court records on December 11, 2022. We tabulated the number of criminal cases where the defendant did not have an attorney listed as counsel in the CCAP record on December 11, 2022, nor persistently for a period of 14 days prior to December 11, 2022. We excluded the case if the defendant was on an active warrant or returned from warrant during the period examined. If the defendant previously had an attorney who withdrew, the withdrawal date must be prior to the 14 day period examined.

The total number of defendants without counsel for 14 days prior to December 11, 2022 was 11,149. This is the initial dataset.

Subsequent to this research, you requested a random sample of 100 cases from the initial dataset be examined to determine how many defendants were both eligible for and desiring of SPD representation. We randomized the initial dataset using MYSQL functions and selected 100



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Plaintiffs' Counsel in Brown County Case Number 2022CV001027  
January 15, 2023

cases. On December 29, 2022 we extracted court docket history for the 100 random cases via REST.

We manually reviewed the docket text during the period December 29 to January 10, 2023 and evaluated each case with the assistance of counsel using the following criteria:

- A defendant is considered **eligible for and desiring of SPD representation** if the docket contained an entry showing: 1) the SPD was actively looking for counsel, or 2) the SPD appointed counsel between December 11, 2022 and January 10, 2023, or 3) an SPD staff attorney appeared with the defendant.
- A defendant is considered **not SPD eligible or not desiring SPD representation** if the docket contains an entry showing: 1) the SPD found the defendant not eligible, or 2) the charge was amended to a forfeiture prior to disposition, or 3) a deferral agreement was entered into at disposition, or 4) the defendant hired a private bar attorney, or 5) the defendant waived his/ her right to counsel, or 6) the court found the defendant incompetent and not likely to regain competency, or 7) the defendant chose not to apply to the SPD.
- A defendant status is considered **undetermined** if the docket does not contain information showing the SPD evaluated the defendant, or if the docket showed: 1) the defendant was referred to the SPD but there is no subsequent entry regarding eligibility, or 2) the initial appearance has yet to be held, or 3) the defendant appeared with a private bar attorney who represents the defendant on unrelated cases but has not filed a notice of retainer with the court.

**Our findings are that, out of the 100 randomly sampled cases, 38 defendants were eligible and desiring of SPD representation, 33 defendants were not eligible or not desiring SPD representation, and 29 cases were undetermined.**

If you have any questions regarding our research, please feel free to contact us.

Sincerely,

Barry J. Widera  
Court Data Technologies LLC  
[bwidera@courtdatatech.com](mailto:bwidera@courtdatatech.com)



# **EXHIBIT E**

## **Attorney pay, number of cases cause gridlock; Public defenders' rate, cut in 1995, hasn't risen**

Green Bay Press-Gazette (Wisconsin)

October 23, 2018 Tuesday

1 Edition

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**Section:** NEWS; Pg. A4

**Length:** 1326 words

**Byline:** By, Shelby Le Duc, Green Bay Press-Gazette

### **Body**

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GREEN BAY - It's not unusual these days for an indigent defendant in Brown County Circuit Court to sit in jail for weeks as the State **Public Defender's** office searches for a lawyer willing to take the case.

In some instances, the office contacted more than 100 lawyers before one signed on.

Lee Schuchart, a former assistant state **public defender** who is now in private practice, said he knows of at least one defendant who went through 300 lawyers before one agreed to represent them.

Lawyers and judges say it's a statewide problem driven largely by a pay rate for **public defender** work that hasn't been changed in more than two decades and is the lowest in the nation. In many cases, the \$40-an-hour rate paid for lawyers to represent indigent defendants doesn't even cover a lawyer's overhead costs.

That's led to a dwindling number of lawyers willing to take such cases, a **shortage** that is exacerbated by other factors, including:

Fewer lawyers accepting **public defender** cases: The number of lawyers who are certified to take **public defender** appointments is down, but so are the number of certified lawyers who are actively accepting **public-defender** cases. For most, taking on cases to help out the **Public Defender's** Office simply doesn't make financial sense.

A disparity between pay for **public defenders** and court-appointed lawyers: Both serve the same population, but court appointments, which only happen after an unsuccessful attempt to find a **public defender**, will soon pay more than twice as much, making **public-defender** work less appealing.

A changing caseload: Each year counties are prosecuting more felony cases. With more cases comes a need for more lawyers - especially when a case involves multiple defendants who cannot be represented by the same lawyer because it would create a conflict of interest.

Brown County Circuit Court Judge William Atkinson said the challenge of finding representation for defendants who can't afford their own lawyer prolongs the court process and creates a backlog in the courts. The delays, he said, can leave defendants sitting in jail longer than necessary and make it harder for the court to meet defendants' constitutional rights to adequate representation and a speedy trial.

"That's the biggest fear," he said.

Stagnant pay

Attorney pay, number of cases cause gridlock; Public defenders' rate, cut in 1995, hasn't risen

equals a growing need

Schuchart, now an attorney with the Law Office of Travis A. Crowell LLC in Green Bay, receives an email every day with a list of up to 50 people from various counties seeking lawyers for **public-defender** cases.

**Public defenders** represent defendants who meet financial eligibility guidelines based on income, assets and family size and the type of criminal charge. Generally, an individual making less than \$12,000 a year without many assets qualifies.

Randy Kraft, communications director for the State **Public Defender's** Office in Madison, said about 140,000 defendants statewide need a **public defender** each year, yet there are just under 1,000 private defense attorneys in the state certified for **public-defender** appointments.

That number of attorneys has fallen more than 15 percent in the last five years. Making matters worse, almost 20 percent of those on the certification list last year did not take a single **public-defender** appointment.

If the trend continues, Kraft said, the state will find itself in a "crisis situation."

He said there are a number of factors for the decrease in these attorneys, but compensation is the underlying issue.

State-funded **public defenders** are paid a baseline amount of \$40 an hour for each appointment they take. The rate was imposed by state Legislature in 1995 - when it reduced the rate from \$50 - and has not changed since.

Schuchart said lawyers need to charge about \$43 an hour just to break even.

He said the low reimbursement makes it especially difficult for defendants facing more serious charges.

He suspects many attorneys certified to take **public defender** appointments might look at the rate in conjunction with the time they'd need to devote to defending a complicated case and decide not to accept it because it doesn't make sense financially.

He added he struggles with the fact that defendants are told it's in their best interest to get a lawyer, yet their access to representation is so limited.

"We have to remember that these individuals are presumed innocent," Schuchart said.

The pay rate really started causing problems in Brown County within the last year, said Jeffrey Cano attorney and manager for the **Public Defender's** Office in Green Bay.

He said that as the pay has become more and more unappealing, the **Public Defender's** Office is burdened with making hundreds of phone calls to find people legal counsel.

He said more defendants are ending up with attorneys from Milwaukee County, Dane County and counties even farther away.

And the farther lawyers are from their clients, the harder it is for lawyers to schedule meetings and court hearings, and to establish trusting relationships with their clients.

A disparity in compensation

If the **public defender's** office can't find a lawyer, the court steps in and appoints a lawyer at the county's expense.

In May, the **Wisconsin** Supreme Court raised the pay for court-appointed lawyers from \$70 an hour to \$100 an hour beginning in 2020.

Attorney pay, number of cases cause gridlock; Public defenders' rate, cut in 1995, hasn't risen

Joan Brusky, a Brown County supervisor for Allouez and member of The **Wisconsin** Counties Association's Judicial & **Public** Safety Steering Committee, said that change in pay, coupled with frozen pay for **public defenders**, could make it even harder for defendants to find a **public defender**.

That's because lawyers could be less likely to take on **public defender** appointments knowing they could make substantially more if they wait and take an appointment by the court, she said.

If that happens, it would increase the county's costs.

Brown County Clerk of Courts John Vander Leest said the increase in pay for court-appointed attorneys could cost the county an extra \$150,000 to \$200,000 annually based on current caseloads.

In response, Brusky introduced a resolution in September calling on the Legislature to increase **public defender** pay by an unspecified amount.

Brusky expects the County Board to vote on the resolution in December.

"It's a no-brainer," she said.

Similar advisory resolutions, all based on a resolution backed by the **Wisconsin** Counties Association, have been passed in at least 20 counties, including Outagamie, Door and Winnebago. Ten other counties are considering a version of the resolution, Kraft said.

The Legislature has not acted on previous attempts to adjust the pay scale. Most recently, a bill died in committee this year that would have increased the pay rate to \$55, \$60, or \$70 per hour, based on the type of case.

A changing caseload

An increasing number of investigations leading to multiple arrests, most commonly drug-distribution cases, further challenge the **public-defender** system, Brown County District Attorney David Lasee said.

"There have been cases with 30 or more co-conspirators, for example," he said. "And when that happens it creates a conflict of interest for the entire **public defender's** office."

Cano said that as soon as one defendant in a multi-defendant case gets representation from the **public defender's** office, the office cannot represent any of the other people charged in the case and must seek outside lawyers for the others.

That's why fixing the current problems is a matter of increasing the pool of lawyers willing to take on **public-defender** cases rather than adding more to his office's staff of about a dozen lawyers.

Schuchart still takes on some **public defender** appointments. It's a job he realizes not all attorneys - even those who have gone through the certification process - are willing to do.

"It's a part of being a former **public defender**," he said. "I feel some obligation (to accept **public defender** appointments). I would like to take more of them, and for others to do so, too, but there is one theme to the problem and that is that the legislature needs to step up."

## Graphic

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Deputy District Attorney Dana Johnson looks on during bond hearings Sept. 17 at the Brown County Courthouse in Green Bay.

Attorney pay, number of cases cause gridlock; Public defenders' rate, cut in 1995, hasn't risen

Adam Wesley/USA TODAY NETWORK-**Wisconsin**

A bond hearing takes place on Sept. 17 at the Brown County Courthouse in Green Bay.

Adam Wesley/USA TODAY NETWORK-**Wisconsin**

**Load-Date:** November 5, 2019

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# **EXHIBIT F**

## **Attorney shortage hardest on poor; Defendants relying on public defense remain jailed as cases stall**

The Sheboygan Press (Wisconsin)

August 27, 2019 Tuesday

1 Edition

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**Section:** NEWS; Pg. A1

**Length:** 1502 words

**Byline:** By, Karen Madden, **Wisconsin** Rapids Daily Tribune

### **Body**

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"I don't know that we're the worst, but I would say that Marathon County is one of the most severely hit by this state private bar **shortage**."

Suzanne O'Neill,

Regional attorney manager for state **public defender's** offices

WAUSAU - On a Friday afternoon, when most activity in the Marathon County Courthouse had slowed, Court Commissioner Douglas Bauman sat on a judge's bench and looked at a television monitor.

The courtroom was empty except for a clerk and a USA TODAY NETWORK-**Wisconsin** reporter. The hallways outside the doors were nearly vacant, as other courthouse staff prepared to head home for the weekend.

The monitor showed a stark room with the camera centered on a lone table and chair. A metal door in the wall behind the table had a window. The setup, similar to those found in courtrooms across the state, allows Marathon County inmates to make some court appearances by video from jail as a **public** safety measure.

The defendants appearing before Bauman by video in the Sara Quirt-Sann Memorial Courtroom weren't there to learn if they could post bond, to hear the charges against them, to enter a plea, or to face a sentencing. The group of men who filed into the tight jail room one at a time, to sit in the chair behind the table and get a few moments of Bauman's time, were there to find out when they'd ever get a real day in court.

All of the men brought before Bauman qualified for a **public defender**, but they were without an attorney. The defendants, all held on a cash bond they couldn't pay, were feeling the effects of a **shortage** of attorneys who will take cases for the state **public defender's** office.

Some defendants wait for weeks, even months, to get assigned an attorney, Bauman said. In the meantime, they sit in jail - not knowing when they'll be released or when their cases will move forward.

It's known as dead time, said Suzanne O'Neill, regional attorney manager for the state **public defender's** offices in Wausau and Stevens Point. The defendants are held in jail and nothing productive happens.

"I don't know that we're the worst, but I would say that Marathon County is one of the most severely hit by this state private bar **shortage**," O'Neill said.

Attorney shortage hardest on poor; Defendants relying on public defense remain jailed as cases stall

The farther defendants get away from Dane and Milwaukee counties, the more difficult it is to find lawyers willing to take **public defender** cases, said Randy Kraft, communications director with the **Wisconsin Public Defenders** Office. The more serious the felony, the more difficult it is to get someone willing to take the case.

The **shortage** of attorneys is affecting court calendars, county budgets and crime victims who have to wait longer for justice.

**Public defenders** are seeing long wait times in the northeastern part of the state, said Jeffrey Cano, regional manager for the state's offices in Green Bay and Appleton.

"Every day, when we go to lockups, there's a pile of cases that have not gone to our office," Cano said.

In Marinette and Shawano counties, especially, very few private attorneys take **public defender** cases to help with the load, he said.

The problem is exacerbated by inmates who have been arrested multiple times. The state cannot represent two defendants charged in the same incident because it would be a conflict of interest.

A system in crisis

The current rate paid to attorneys taking on cases for the state is the lowest in the country at \$40 an hour. The state Legislature and Gov. Tony Evers agreed to raise it to \$70 an hour starting in January but have not yet approved money to add to the 375 state attorneys who handle trial and appeals work across **Wisconsin**.

For now, the state finds itself begging lawyers to defend people who are poor.

"It's about the cost of doing business," said Peter Rotter, a criminal defense attorney in Wausau. "There aren't a lot of attorneys willing to take **public defender** cases."

Rotter calls the situation a crisis.

It's a crisis that has been long in the making: The \$40 hourly rate hadn't been changed since 1995, and that was the year the state cut it from \$50, said David Carroll, executive director of the Sixth Amendment Center.

The Sixth Amendment Center, named for the U.S. Constitution's guarantee of defendants' rights, published a report that concluded the hourly cost of overhead for attorneys is \$41.79 an hour. Private attorneys lose money on **public** cases.

Many clients "plead out" after sitting in jail for weeks waiting for an attorney, O'Neill said. Their freedom is more important to them than the felony record they will have by pleading guilty, she said.

The frustration among the men who sit in the Marathon County Jail waiting for an attorney is apparent in their meeting with Bauman. Defendants who qualify for a **public defender** but have none are scheduled for hearings every other week to review their cases.

During the brief hearings, if the defendant still doesn't have an attorney, Bauman decides that's a good reason to postpone the next court appearance and schedules another review hearing in two weeks.

'I have a right to be heard'

Travis Bell, 44, of Wausau, has been sitting in jail on a \$10,000 cash bond since March 3 for three domestic abuse charges.

Bell attended six review hearings with Bauman before getting an attorney in May, two months after his arrest. During a hearing April 19, he repeatedly questioned whether the courts were violating his right to "due process." The court commissioner patiently explained that Bell could have a good argument for that. He said Bell's best option was to write a letter to the judge overseeing his case.



Attorney shortage hardest on poor; Defendants relying on public defense remain jailed as cases stall

Bell demanded a speedy trial - "I have a right to be heard," he said - and Bauman explained that his attorney could make that request after the preliminary hearing. In the meantime, the commissioner scheduled another review in two weeks.

In a recent interview with USA TODAY NETWORK-**Wisconsin**, Bell said he waited 58 days to get his attorney. He went in front of a judge with his newly appointed attorney May 1, and the judge lowered Bell's bond from \$10,000 cash to a \$9,000 signature bond and \$1,000 cash.

On the day Bell was interviewed, he had been in jail for 90 days without being convicted. Although he can't pay the \$1,000 cash bond, he believes his case would have been concluded by June if he had an attorney earlier.

"I'd have been home for Mother's Day," Bell said.

Bell, who was charged with battery, disorderly conduct and criminal damage to property, all as a domestic abuse incident, is scheduled for a plea hearing Oct. 29.

On that particular Friday of review hearings in April, Bauman was repeatedly asked about rights violations. He explained to defendants that he wasn't authorized to change bond amounts and that prosecutors couldn't attend the hearing because it would be unethical, as no defense attorney was present.

Coping with 'dead time'

Deon Smith, 37, of Wausau, was arrested March 12. On May 28, he still was waiting for an attorney, after one who had been appointed earlier withdrew from the case.

"We're in here fighting for our freedom," Smith said. "To be stuck without an attorney, you don't know what's going on with you."

Smith said he can't post his \$5,000 cash bond, which a judge ordered because he was charged with using a computer to facilitate a child sex crime, felony bail jumping and misdemeanor bail jumping.

He wrote a letter asking the judge to appoint an attorney. The judge responded by saying officials would do what they can when they can, Smith said.

"It's almost like you're kidnapped in a way," he said.

Marathon County Jail Administrator Sandra La Du-Ives said she checks regularly to see who has been locked up for 200 days or more without a conviction, and she looks into the progress of their cases.

Meanwhile, she said, the county tries to keep the defendants productive by allowing them to participate in programs such as a blueprint-reading class and a welding class. Kiosks in the cell blocks allow inmates to access the Job Center and the technical college and other helpful sites online.

On the day La Du-Ives was interviewed for this story, nearly half of the Marathon County Jail's 354 inmates were awaiting trial, she said. Those who also are still waiting for an attorney are frustrated and afraid, she said, because they don't know how long they'll be sitting in jail, or what's happening with their loved ones.

The state **public defender's** office is optimistic that the pay increase for private attorneys will encourage more to take these cases, said Adam Plotkin, the department's legislative liaison.

"That said, there are areas of the state, particularly rural and northern, for which a rate increase is only part of the answer," he said.

Those are the places where there's a **shortage** of attorneys in general.

"We won't be able to fully appreciate the effect of the increase until after (it takes effect) Jan. 1," Plotkin said.

Attorney shortage hardest on poor; Defendants relying on public defense remain jailed as cases stall

"I don't know that we're the worst, but I would say that Marathon County is one of the most severely hit by this state private bar **shortage**."

Suzanne O'Neill,

Regional attorney manager for state **public defender's** offices

**Load-Date:** August 27, 2019

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# **EXHIBIT G**

# Shortage in public defense attorneys delay court proceedings for defendants

By [Daniel Gomez](#)

*Published: Dec. 8, 2022 at 5:42 PM CST*

2/1/23, 3:22 PM Shortage in public defense attorneys delay court proceedings for defendants

<https://www.weau.com/2022/12/08/shortage-public-defense-attorneys-delay-court-proceedings-defendants/> 2/5

EAU CLAIRE, Wis. (WEAU) - There is a shortage of public defenders in Wisconsin that affects the entire state, including the Chippewa Valley.

Adam Plotkin, a managing attorney with the Wisconsin State Public Defense Office, says public defense lawyers are stretched thin.

"The Eau Claire office, which has 12 staff attorneys when its fully staffed, provides representation in Eau Claire County, Buffalo, Pepin and Chippewa County," said Plotkin. He oversees 40 offices, including the Eau Claire office.

The dozen lawyers have had 5,277 appointments between the four counties.

Plotkin says the workload increases more over time as well. "There's been an increase of assistant district attorneys state wide, which has increased the amount of cases that is being charged," said Plotkin. "A relatively simple misdemeanor case that 15 years ago would've taken a simple 15.... 20 hours to handle now may take 30 or 35 hours."

A spokesperson for the Eau Claire County District Attorney Peter Rindal said: "Due to the State Public Defender shortage, criminal defendants are waiting significantly longer now than ever before for appointment of an attorney to represent them. For the District Attorney's Office, the net result is criminal cases staying open longer, saddling already stretched-thin prosecutors with larger open caseloads. The shortage has also resulted in prolonged delays of justice for crime victims and defendants.

The entire Criminal Justice System suffers because of the State Public Defender shortage. State Public Defenders are just one part of the underfunded and understaffed Criminal Justice System, though. Without adequate investment in all parts of the Criminal Justice System, criminal cases will languish and the community will continue to be underserved." The Dunn County District Attorney Andrea Amidon Nodolf said the shortage is not good for anyone involved.

"It's not good for anyone. Our system needs to have fairness, have representation." She even points out a shortage of prosecutors as well in her jurisdiction. This shortage is something he has not seen in her law career. "I've been a prosecutor for 12... 11 years, and this is the first time where we've been short attorneys in all areas."

Nodolf said compensation could be a factor in not being able to fill vacancies. "State benefits and the pay was competitive. It's just not anymore." Both sides of the courtroom say the shortage is harmful for everyone awaiting their day in court and for the prosecution eager to make that happen.

"When that gets drawn out, it makes their case more difficult in the future," said Plotkin. "There's too many defendants and not enough attorneys," said Nodolf. Plotkin said in order to be eligible for a free public defender, you have to make less than \$12,800 a year. If you make more than that, a private attorney could be assigned, but that is up to the discretion of the county.

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# **EXHIBIT H**

## *In court without an attorney, an increasingly common sight that's part of a statewide legal logjam*

The Journal Times (Racine, WI)

August 24, 2022 Wednesday

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**Section:** LOCAL

**Length:** 1458 words

**Byline:** Dee Hölzel

### **Body**

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RACINE There was a familiarity to the preliminary hearing held in Racine County Circuit Court on Wednesday.

Zontell Junior, 15, charged with first-degree intentional homicide for the Aug. 12 killing of 16-year-old Quentin Smith, was escorted in for his preliminary hearing and after a few minutes was escorted out again because he had not been assigned a **public defender**.

It could be months before a defendant is assigned an attorney not just in Racine but across the state. And the problem has been ongoing for years.

In response, on Tuesday, a lawsuit was filed against Gov. Tony Evers and the nine members of the board that oversees the **Wisconsin Public Defender's** Office claiming the Constitutional rights of indigent defendants is violated by the long wait for representation.

#### Lawsuit

The lawsuit does not seek monetary damages. Rather, it seeks to have the court rule that the long wait for representation violates the Constitutional rights of indigent clients.

The defendants are seeking a cap of 14 days for attorneys to be appointed.

The first hurdle the lawsuit faces is having the court certify that defendants without attorneys represent a class of people necessary for a class-action lawsuit.

Some of the defendants named in the lawsuit have been in custody for months waiting for counsel to be appointed.

The situation is the same in Racine, where it is not uncommon for officials to make hundreds and sometimes more than a thousand calls to attorneys who might take on a case, and be turned down after every single call.

As one example, Xavier Jackson, 18, who was arrested in April and charged with first-degree intentional homicide, sat in the Racine County Jail for four months before local attorney Laura Walker agreed to take the case.

Jamauel A. Ford, 23, charged July 22 with attempted first-degree intentional homicide, has been waiting a month to be assigned an attorney.

#### Bail

In court without an attorney, an increasingly common sight that's part of a statewide legal logjam

One of the issues that defendants without legal representation face is that of bail. Without an attorney, there isn't anyone to address issues of bail, including signature bonds. Thus, if they don't have representation and don't want to defend themselves in court, they will be stuck in jail without bail until they get an attorney.

Those critical of the cash bail system note while defendants sit in jail waiting to get an attorney, they could lose their jobs and in some cases child custody issues could also arise.

Jamie McClendon, a local defense attorney who previously was a **public defender**, noted the issue of bail has simply gone unaddressed in the **public** discourse about the issue.

"There is clearly a problem with people languishing in our jails while waiting for attorneys to be appointed to their cases," she said. "However, I think directing the problem at the **public defender's** office is misplaced."

Based on case counts from this summer in 25 counties and documented in the lawsuit the number of cases where the defendant has no attorney could be in the thousands.

"Our justice system," McClendon said, "should look into evidence-based alternatives that focuses on protecting the community instead of our current cash bond system that punish people for being poor."

### **Public defenders**

According to Wilson Medina, spokesperson for the **Wisconsin public defender's** office, the Racine office is not necessarily short staffed.

However, there is a **shortage** in southeastern **Wisconsin**, namely the Kenosha **Public Defender's** Office.

The Racine **Public Defender's** Office hired seven new attorneys in the last two years to bring the staffing level to 17, located on 420 Sixth Street.

### **Backlog**

Adam Plotkin, legislative liaison for the **Wisconsin State Public Defender's** Office, told The Journal Times there were a number of factors that are causing a backlog in cases chief among them the COVID-19 pandemic so that cases continued to come in before existing cases were resolved.

He said a snapshot taken of the caseloads of the state's **public defenders** in 2019 showed an open caseload of 32,000 cases. A similar snapshot taken in 2022 showed an open caseload of 64,000 cases.

While caseloads became overburdened because cases were not being heard and trials were being delayed, there were other factors contributing to the problem.

Plotkin noted when prosecutors and defense attorneys meet in court, there is simply more communication that occurs surrounding the resolution of cases. When attorneys were not meeting due to COVID restrictions, fewer cases were being resolved through negotiated settlements.

However, there are other factors besides the pandemic contributing to the slowdown of cases through the system, including the increase of video evidence.

Attorneys working in Racine County Circuit Court frequently comment about the time that goes into reviewing body cam evidence, as one example. However, security camera footage from private homes has also become more prevalent.

"There are definitely areas outside of our control that have a direct impact on how we're able to do our work," Plotkin said.

### **Private attorneys**



In court without an attorney, an increasingly common sight that's part of a statewide legal logjam

Typically, the state **public defender's** office either has its own staff provide legal representation or hires private attorneys, but it can be tough to get private attorneys to take indigent cases.

There have been two recent cases in the Racine County Circuit Court where the judge has told an unrepresented defendant the court has contacted over 1,000 attorneys without success.

The legislature raised the rate private attorneys were paid to take cases from the **public defender's** office from \$40/hour to \$70/hour in 2020. The average hourly rate for private criminal law attorneys in **Wisconsin** is \$168, the lawsuit claims.

In order to sweeten the request, the **Wisconsin Public Defender's** Office intends to seek another increase in pay for private attorneys who take criminal cases for the **public defender's** office when it submits its budget request in September.

McClendon agreed the compensation should be increased to "make these appointments more competitive with what an attorney would receive if the attorney was privately retained."

It is simply not cost effective, she explained, for "solo practitioners to take those cases" at the current rates because of the amount of time and work necessary on cases where the defendant is charged with a serious felony.

If an attorney in private practice takes a case with an indigent client through the court, known as a county attorney, the pay is \$100/hour.

While the pay of a county attorney is less than they would normally make, it is substantially more than taking a case through the **public defender's** office.

#### Budget cycle

If it seems like the government is sometimes slow to respond when issues occur, the reality is budgets are set in advance, and needs may arise a year or more before the legislature meets again for a new budget cycle. The current biennial state budget is to remain in effect into summer 2023.

According to Plotkin, the **public defender's** office was able to offset some of the issues that arose during the pandemic with American Rescue Plan Act funds.

He said one of the steps the office took was to hire support staff, which made "a huge impact on helping attorneys."

The state office also made the decision to process bills from private attorneys who took cases for the **public defender's** office before the cases concluded.

This step was taken because cases were not concluding in a reasonable time period, creating a hardship for private-practice attorneys.

Plotkin said the state **public defender's** office "has done a lot to try and remove barriers" for those in private practice to take cases "within the boundaries of what we were authorized to do."

As one example, the state office provided additional legal support for private attorneys working on cases for the **public defender's** office, such as a paralegal.

#### Attorneys

The eight Brown County defendants bringing lawsuit are represented by John Birdsall, of Milwaukee, and Henry Schultz, of Forest County, who are joined by the National Association of Criminal Defense Lawyers; the Center on Race, Inequality and the Law at New York University School of Law; and a team of lawyers from the Chicago office of a national law firm, Winston & Strawn LLP.

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A widespread inability to quickly appoint lawyers often leads to cases going uninvestigated and unresolved, denying a fair process to defendants and the victims of crimes, said John Birdsall, an attorney who filed the lawsuit for the **Wisconsin** Association of Criminal Defense Lawyers.

"The situation is rapidly deteriorating," Birdsall said. "At stake are people's freedom, **public** safety and the community's ability to have faith in its government institutions."

Reporting from Lucas Robinson of Lee Newspapers is included in this report.

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