

Minutes
Municipal Courts Task Force
May 25, 2016
County Legislature Chambers

Present: Ray Schlather, Elizabeth Thomas, Glenn Galbreath, Jason Leifer, Gwen Wilkinson, Mark Solomon, Scott Miller

Excused: Betty Poole

Staff Present: Joe Mareane, Marcia Lynch

Mr. Schlather opened the 22nd meeting of the Task Force at 4:35 p.m. He said the goal of the meeting is to discuss the remainder of the un-discussed items, and then get into the report in greater detail, including updates of the individual sections.

The minutes of the May 11 meeting were moved by Mr. Galbreath, seconded by Ms. Thomas, and unanimously approved.

There were no comments from the public.

In his Chair's report, Mr. Schlather noted that a new draft of the main body of the report has been circulated that substantially incorporates the work Mr. Miller has presented regarding establishing a DWI part, included in Section 3A. There have been changes to Mr. Miller's language that the two have discussed. He noted that no one has approved any of the language in the draft; that the draft is a way of piecing together in a constructive and transparent way the results of the group's analysis and discussion. The draft was sent by email at 4:20 this afternoon. Second, Mr. Schlather has received some feedback already, and is pleased to include any corrections that are submitted.

There was no staff report.

Mr. Schlather referenced Mr. Galbreath's list, and Mr. Schlather's email from earlier in the week regarding the Law Enforcement Assisted Diversion that has been adopted in Albany based on a model from Seattle, Santa Fe, and England. He would like to include a discussion of LEAD today in the context of the limited range of changes that can be imposed on the system. However, there are recommendations that can lighten the load of town and village courts, such as creating a separate DWI part in Supreme Court and by implementing something like the LEAD program. This would divert many low level cases from local courts, serving the courts and a societal purpose by taking people in need to services that address their need. Youth Court and Mental Health Court could have a similar impact of reducing cases, thereby making it easier for justice courts to be reduced in terms of justices, staff, and number of courts (e.g., consolidation of two jurisdictions.)

Mr. Solomon said the LEAD program comes to the group late in the process, but that it is intriguing and interesting enough to merit consideration by the task force. Aside from cost, which is important, he asked about the County's ability to implement the LEAD program based on current statute.

Ms. Wilkenson said she'd become aware of LEAD when co-chairing the Mayor's Drug Policy Committee, and has recently traveled to Albany to talk with Chief Cox about that city's program, which just began a month ago. She said she and several members of the Mayor's Committee, as well as Legislator Peter Stein, have developed a certain amount of expertise in the program. She said the program does not require statutory changes. At the front line, it is a matter of a police officer having the discretion to divert a person pre-booking. An individual for whom probable cause to arrest exists, and charge is written up, but can be diverted to the LEAD program. A case manager is assigned and an assessment is quickly done (24-48 hours) to determine needs. Services are offered with input from the would-be defendant and range from housing, medical, substance abuse treatment, food, etc. Individual would generally be people who have committed crimes due to addiction. In Santa Fe, prostitution is included. It includes people whose substance abuse is driven by mental health issues. The process must be front-loaded by organizational work because there is no "king of LEAD." It is managed by committee, consisting of a large group of people including police, the DA, city and county, etc. It begins with an inventory of service providers (27 have been identified in Tompkins, including Catholic Charities, CARS, many others.) In Santa Fe, LEADS has helped reduce number of people injected into criminal justice system (and jail.) It is too soon to say what the long-term effects on recidivism will be, but she believes it is better than what exists now. She said this is a good time for the task force to weigh in on the decision, as the County is beginning to consider LEADs and Re-Entry and it's a good time to start thinking about how this will look. She has met with the City Police Chief, and knows that the Sheriff is on board. She has provided the Chief and Mayor the operational guidelines in place in Albany, including documents and forms they use. It is something we know a fair amount about, but it is important to get buy-in from rank and file police officers—something the Chief is working on.

Mr. Solomon asked for confirmation that this does not require statutory changes or formal consent by the police agencies, and wants to know how this would get done as a matter of law. He speculated that the principal party in the process is the DA, because someone is getting arrested for a crime, and all will be deferred for a matter of time while it's determined what services will be used. At the end of the process, all goes away if all goes well. Mr. Schlather said there is no arrest or booking. They are brought to police station, but there is no booking. Ms. Wilkenson confirmed that the charge does go away. Certain kinds of re-offending and failure to engage in the assessment/intake can bring the charge back. Mr. Solomon said that as a practical matter, the programs must be in place first to ensure that people can be directed to services. As a legislative matter, there is nothing required. Mr. Schlather said he was at a meeting recently where it was said that there are over 600 not for profit agencies in the County, so there are plenty of providers. He said the critical element is to have ready access to the case managers. Ms. Wilkenson said the case managers would come on board soon after the organization is put in place. She said there have to be parameters on participation. In Albany, for example, nobody previously convicted of murder or manslaughter is allowed in, so there are some limits on participation. On the other side, Albany looks for people whose criminal behavior is triggered by extreme poverty, drug

addiction, etc. Mr. Schlather asked what kinds of crimes would be considered. Ms. Wilkenson said the program is open to all non-violent misdemeanors and some drug-related felonies (CPCS7, for example). Albany prohibits individuals with prior weapons charges. Mr. Miller asked how this fits into the charge and prior work of the task force, including the likelihood of the County embracing LEAD. Ms. Wilkenson said LEAD speaks to the efficiency of the justice court caseload, such as petty larcenies occurring at the mall and downtown. She believes it will reduce caseloads and recidivism. Mr. Miller suggested the report note that the committee has become aware of LEAD, sees its promise, and encourages more exploration. He said there may be other task forces that take the leadership in this matter. Ms. Wilkenson spoke of the many organizations in the community looking at this, and suggested the task force simply put its imprimatur on the concept to show support. Mr. Schlather asked if there were any quantitative results of the program. Ms. Wilkenson is not aware of any. She said the Albany chief expects 30 people to be in the program at any given time. Mr. Schlather said the avoidance of involving people in the criminal justice system and the stigma of a record for such petty crimes is very appealing to him. He said the key will be the training for police, who will ultimately make the call. He envisions a situation in which the police tell a person that they aren't going to be arrested, but must check in with a case manager within a certain period of time. He said it would be best if the officer doesn't even have to write something up. Ms. Wilkenson noted that there will have to be paperwork completed. Mr. Schlather agreed with Mr. Miller's point that the task force is not the group to design the program, but should decide whether it's a program that makes sense and put its imprimatur on it. Mr. Solomon suggested the group go beyond endorsing further study of the concept, and instead say that the committee finds merit in the concept and that it is something that should be done. Mr. Miller said he is comfortable in saying we should have a LEAD program. Mr. Galbreath asked if there have been downsides in areas where it has been applied. Ms. Wilkenson noted that there has been an attitude toward crime and criminals in the US, including the War on Drugs, that has made it difficult for such programs to be implemented until recently. Ms. Thomas said that although the LEAD program came to the group late, it is something worthy of recommendation.

All agreed that a recommendation on the LEAD program should be included in the report. Ms. Wilkenson will write the paragraphs for the report that relate to the program.

Mr. Schlather asked for a discussion about Mr. Miller's work on the DWI Part. Mr. Miller reviewed his findings about creating a DWI Part. He said it is possible to create a misdemeanor DWI court without any involvement from the State. The statutory scheme exists in Judiciary Law 211 (check). In the early 2000's, Chief Judge Kaye came up with the idea of integrated domestic violence courts. Essentially, the IDV court takes misdemeanor domestic violence cases (assault 3rd, harassment 2nd, menacing, etc.) that are under the jurisdiction of a local court, but that often overlap with a family court matter or divorce, and brings them into a single IDV court under the auspices of State Supreme Court. Judge Rowley earlier spoke about how well the IDV model works. A Supreme Court judge informs the local court that the IDV court wants jurisdiction over a case. A signed order is provided, and the case is transferred to a Supreme Court judge who will hear all of the related cases in a single process. This avoids the need for an indictment for a misdemeanor that would otherwise be required to have a Supreme Court consider a

misdemeanor. Initially, no one was certain that the IDV was legal (including not indicting a misdemeanor). It has since been held constitutional.

Mr. Miller said the same administrative procedure can be used to create a comprehensive DWI part. Former Chief Judge Lippmann said a comprehensive DWI part is important, and they have been created in City and County Courts. (That has raised questions about why justice courts are not included in the comprehensive DWI courts.) Without a referendum or change in law, the Court of Appeals has said the Chief Judge, after consultation with the Chief Administrative Judge and Court of Appeals, promulgates an administrative regulation to create a part, that is legal. All of the misdemeanor DWI cases could leave the justice courts and be brought to a superior court, which must be a Supreme Court. (County courts cannot hear misdemeanors without an indictment.) Mr. Miller recommends pursuing this course.

With respect to judicial staffing to carry this additional caseload, Mr. Schlather noted that the number of County judges in Tompkins County has not risen with our population, and that we therefore have a good argument, independent of the task force's work, that Tompkins County is entitled to a third County judge. He said he is trying to determine how to make the group's recommendations cost effective. He said it will cost about \$650,000 to add a County court judge. He suggested that if we can shift all City Court DWI cases to Supreme Court, City Court staff could shift to the Supreme Court and handle the DWI caseload with no net increase in cost. He noted, too, that the local courts generate \$1.3 million in fines and give the State about \$950,000. Therefore, State funding of the third judge could be handled with the fees generated by local courts. He noted that savings can be demonstrated in a variety of areas that would offset the cost of a new judicial office. He asked whether we are prepared to say that this may be a recommendation that will cost more local money, not less, but promote a higher quality of service.

Mr. Galbreath noted that the additional cost for a County Court judge would be a State cost, not a local cost. Mr. Mareane confirmed that it would be a State expense. Mr. Solomon asked whether there is an intersection between LEAD and the misdemeanor DWI program, for example, an intoxicated young person is picked up—wouldn't the person be eligible for the LEAD diversion. Ms. Wilkenson said this would wipe out the predicate offense, and would raise problems if it occurred again. Mr. Solomon said a huge component of a diversion arises from the relationship between the underlying pathology vs. a crime of intention, and a 17 year old who has had three beers can be as driven by substance abuse and pathology in the household as anyone else picked up for petit larceny. Mr. Galbreath said some crimes will not go into diversion because of the violence factor. Drunk driving is more akin to attempted violence (not intentional) and the impact can be more dramatic than someone who has spray painted a mailbox. It is a tough sell to provide a diversion to someone who's putting lives at real risk. This doesn't mean open container violations, etc. but does apply to drunk driving. Mr. Leifer said the State has excluded DWI from the diversion stream, such as drug court. Mr. Miller said the State courts have singled out DWIs as something different, and set off from other offenses.

Mr. Schlather returned to the issue of financing the County Court judge. Mr. Miller noted that we will not get another Supreme Court seat. A County Court judge, after serving 2 years, can serve as an Acting Supreme Court judge, which then supports the recommendation for a DWI part. He said we heard from

a lot of town justices, including a majority of them who suggested the DWI part would allow them to be more efficient and concentrate on other cases. He said two-thirds of DWIs are town and village cases. If those cases are sent to Supreme Court, caseload reductions may make consolidation of town and town/village courts more feasible. Mr. Schlather said the more cases are shifted out of local courts, the more reasonable it will appear to the local municipalities to make changes such as going from two judges to one, or consolidating local courts. That fits within Albany's push to consolidate, and is therefore a strong political argument.

Mr. Solomon favors the creation of a DWI part, notwithstanding that it may not be cost neutral. He believes there may be savings, but that compelling equity and criminal justice arguments have been made in support of the proposal by many, including Judge Miller and the late Wes McDermott. It is critically important on equitable and justice grounds to divest from the justice courts at least those cases most consequential in the lives of defendants who are not being tried by a lawyer judge. On those grounds, the DWI court is a very good idea. There are few crimes, the consequences of which are more draconian to the lives of ordinary people. If we can't divert such people to a program like LEADS, then we have an obligation to make sure their rights are preserved and the adjudication of their cases are handled with the highest standards of justice.

Mr. Galbreath said he favors the proposal, but that not all magistrates are supportive and there will be some opposition to any divestiture of jurisdiction. Mr. Miller noted the same thing happened when IDV cases were divested. However, the caseload relief is now welcomed.

A question arose about whether there are two recommendations (a new County Court Judge and a DWI part) or if they are linked in a single recommendation. Mr. Schlather said they are linked.

Ms. Thomas noted there will be a little sympathy among local government for the shifting of costs to the State, given the State's history of shifting costs and burdens to local governments.

Mr. Miller clarified that the DWI part would include both drunk and drugged driving.

Mr. Schlather turned to recommended policies, where the goodwill of participants in the system. He spoke of the DA's policies being posted on the webpage. Ms. Wilkenson said there is a posting already regarding traffic tickets, and how to get a reduction. There isn't a policy posted about penal law misdemeanors. Mr. Schlather asked if there is a policy published on DWIs. Mr. Miller and Ms. Wilkenson said that would be a tough policy to post. Mr. Schlather asked about "common wisdom" policies regarding BAC levels and pleas. Ms. Wilkenson said there are internal approaches, but are not posted. A discussion ensued about various approaches taken to DWI cases, including potential non-jail approaches to deterring repeat offenses.

Mr. Schlather returned to the concept of the "black box of justice" in which people charged with manageable crimes and violations should be able to resolve those things in a way that's fair, equitable, predictable, and inexpensive. If policies are published--e.g., for a first offense without aggravating

circumstances and the BAC is a certain level, the DA will accept a DWAI--then the individual should be able to go into court, plead to the DWAI, and be done with it.

Mr. Miller said that the fear of the unknown, and having to hire someone to shepherd them through the process, creates an added layer of mystery, and creates another layer of deterrence. It's hard to computerize that. With DWIs, he believes punching someone in the nose early on, where they just get a bloody nose, is something they will always remember. It is a quick wake-up call that can help save lives. A judge has to be involved to have a conversation with defendants, and enforce the measures intended to reduce chance of recurrence. He doesn't see the "black box" replacing that role.

Mr. Solomon suggested the DA recommending community service that assists the LEAD program.

Mr. Schlather asked if V&T policies are fully presented on the DA's website. Ms. Wilkenson believes so, and also is careful to note that she cannot compel a judge to accept the DA's recommendations. She encouraged the committee to critique her website.

Mr. Solomon asked to revisit the question of whether defense attorneys get a copy of their client's rap sheet. There remains disagreement about what a judge is allowed to do, with Mr. Galbreath believing that there are restrictions on sharing the information and Mr. Miller believing that CPL allows distribution of the rap sheets. Mr. Galbreath will check the Resource Center to find the basis of the rule, which is hammered into the heads of magistrates, that the rap sheet can't be copied. Mr. Miller cited CPL to say that the rap sheet must be made available. Mr. Solomon asked that Mr. Galbreath and Mr. Miller take a joint look at this. Mr. Miller said he would write something up on this.

Mr. Schlather asked if there are other issues to be discussed, and encouraged members look carefully at the language of the draft report and make sure all agree. He does anticipate that in Section 4 (the future) there will be disagreement about where we want to go. He envisions the statement of a recommendation, an acknowledgement of disagreement, and a statement of the different opinions. Ms. Thomas suggested that if a position is supported by a majority, but not by all, it should still be included as a recommendation, with an opportunity for minority opinions to be expressed. Mr. Schlather agreed, but expressed hope that all of the recommendations in Section 3 would be unanimously supported.

For the next meeting, which will be on June 14 at 4 PM, Mr. Schlather believes we will have a relatively complete draft to work through.

All agreed the meeting added value.

The meeting adjourned at 6 PM.