
From: Michael.Burton@courts.mo.gov <Michael.Burton@courts.mo.gov>

Sent: Sunday, March 21, 2021 9:48:39 PM

To: Bell, Wesley

Cc: Fogelberg, Julia; Alton, Sam; Draper, Chelsea; Sidel, Doug; Whirley, Sheila; Stewart, Richard; Julian, Megan; Davis, Mary; John.Buck@courts.mo.gov; Whitehead, Hope

Subject: Alternative Treatment Court

Hello Wes. This email follows up on the conversations that we had last month about setting up a meeting to talk about the state of our treatment courts. Some of the issues we would like to address are:

Declining Alternative Court Referrals from Prosecuting Attorney's Office. With the exception of Mental Health Court, Alternative Court referrals from your office have steadily declined for all treatment courts since 2019. Unfortunately, based on the experiences of the judges, probation officers, professional counselors and law enforcement partners, dangerous substance abuse is dramatically increasing. Many of the people appearing in our courts desperately need the services provided by our treatment courts. Although initially challenged by the pandemic, the Alternative Courts are successfully treating and graduating participants using virtual technology.

Nevertheless, our Alternative court programs are underutilized. We need the St. Louis County Prosecuting Attorney's Office to be a more willing partner in delivering these services. For example, in budget year 2019 the alternative courts returned \$37,799.01 of unused federal funds, and in budget year 2020 the treatment courts returned \$45,678.26 of unused federal funds, for a total of \$83,477.27. We consider the returned funds as missed opportunities to help as many people as possible. To help these individuals, it is necessary that your office efficiently identify and refer appropriate cases.

Questions Concerning the Prosecuting Attorney's Office Diversion Program. Many of our judges have asked questions and expressed concerns about your diversionary program. Some of their questions and concerns range as follows:

1. What are the evaluation criteria and process?
2. When are cases identified (it seems many cases languish on our dockets, waiting for a decision on whether the defendant will be offered diversion)?
3. What is the level of due process afforded defendants?
4. Are victims notified? Must they consent?
5. What are the timeline and length of the program?
6. How are cases tracked?
7. What is the level of recidivism?

Unfortunately, I cannot answer any of the judges' questions about your program. It would be extremely helpful if you could provide more information on this program.

Recently, we have created a "screening docket" for purposes of identifying and screening potential cases for our Alternative Court programs. We asked our judges to refer both pending or probation cases for screening, to at least determine whether a defendant is eligible. We

assumed that some cases would be identified as diversion cases and would be removed from our dockets. This effort has not been embraced by your office and there doesn't seem to be an urgency in identifying the appropriate cases for treatment court.

I am very excited for the additional resources provided through your office's diversionary program. However, our judges are seeing people they believe could truly benefit from Alternative Court, but are not being referred.

I appreciate your time and consideration, however, time is of the essence. Because of the declining referrals from your office, our Alternative Courts are on pace to return an additional \$54,000.00 of unused funds for budget year 2021. Please work with us so that we can utilize this resource to serve these vulnerable members of our community.

I would like to meet sometime in the next two weeks. Let me know if any of these times work for you: Tuesday, March 30th at 12:00; Wednesday, March 31st at 12:00; and Friday, April 2nd at 12:00. Let me know as soon as possible so that I can send out a WebEx invitation.

Michael D. Burton
Presiding Judge
St. Louis County Circuit Court, Division 16
St. Louis County Courthouse
105 S. Central Ave.
Clayton, Mo 63105
(314) 615-1516
Michael.burton@courts.mo.gov

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

Begin forwarded message:

From: "Bell, Wesley" <WesleyBellPA@stlouisco.com>
Date: March 25, 2021 at 4:27:48 PM CDT
To: "Burton, Michael" <Michael.Burton@courts.mo.gov>
Cc: "Bertelson, Christine" <Christine.Bertelson@courts.mo.gov>
Subject: Re: Alternative Treatment Court

Judge Burton,

I appreciate you bringing the concerns of the judges to my attention. Maintaining an open flow of communication and feedback is always welcome. I have a few thoughts regarding the issues

you've raised.

1. Without knowing more about how the funding for treatment courts is allocated, it's difficult for me to speak on whether there is, in fact, a population of missed opportunities. I have received feedback from the private bar and public defender's office suggesting that sometimes alternative court is cost-prohibitive for their clients. So, it is disappointing to learn there were funds available and underutilized, especially when some of the current participants are struggling to find housing and access to treatment and have been told the court cannot help. If you are suggesting that our office is to blame for this funding being returned, I think you are mistaken and would welcome a more inclusive discussion of this matter.

2. When I entered office, we changed the parameters for which cases are eligible for treatment courts to include individuals who are high-risk, high-need. This change was met with great enthusiasm on your end, and we have attempted to get more individuals who need the high level of supervision of the alternative courts into those programs. Recently, I have allocated three additional attorneys to work on the Diversion Team, each assigned to manage one of the Alternative Court dockets. It is my hope with the more inclusive standards and this recent change in our staffing, we will be able to send a higher volume of cases as we are able to process the screenings more efficiently. The last thing we want to see is wasted resources for those who are in need of help. However, as you are well aware, the screening process for treatment courts is arduous. We often do not have the requisite documents – such as medical records or mitigating information from defense counsel – to complete the process. There are a number of reasons out of our control that can slow the screening process down, and we often have to make multiple requests for information to conduct a proper screening. Again, if you are laying blame on our office, you are oversimplifying a complex reality that deserves a more inclusive review of the facts and challenges. Of course, as you know, the pandemic has also slowed down the entire process and also made placement of those in need increasingly difficult.

3. It is my understanding that our Director of Diversion and Special Programs reached out several weeks, if not months, ago asking to present to the Court En Banc meeting to answer to questions surrounding diversion programming. As of now, the court has not taken benefit of her offer. Had you accepted that offer, perhaps this exchange would not have been necessary. We are still happy to facilitate such a presentation, if the judges are interested. We are also hosting a series of in-house education for our line attorneys – who are not all entirely familiar with the nuances of Deferred Prosecution (pre-plea) and Post-Plea Treatment Courts – in an effort to encourage them to conduct their own evaluations of cases. I believe the bottleneck that can delay the screening of cases will be greatly improved by this education series, as attorneys can refer their own cases rather than waiting for defense counsel or the courts to do so.

4. We staff the Division 68 screening docket every Monday. When these dockets were created, they were not described as a potential referral stream for diversion cases. In fact, this message from you is the first our Diversion Team learned that was their purpose. They were originally told the screening docket would evolve while "we figure out what to do with it." Rather, it was explained that every judge/division seems to have a different mechanism of referring cases to Alternative Court, and to streamline Alternative Court screenings while all the stakeholders, including Probation & Parole, are present. We do endeavor to remove Deferred Prosecution

cases from Circuit dockets as soon as an agreement is reached. If there are specific suggestions about how to make the screening docket more efficient, we are happy to listen to suggestions and make accommodations as our resources allow.

5. Regarding our diversion programming, the questions from the bench seem to imply that we are not careful about which cases are admitted or that the program is doomed for failure. Perhaps that wasn't the judges' intent. I can assure you the position of the victim is weighed in the decision of every case involving a victim, and the participants are monitored and criminal histories tracked throughout the program. I cannot speak to the specific reporting requirements of every case, because our program is not one-size-fits-all. Research and empirical evidence heavily suggest the suggest of treatment and diversion programs generally is heavily dependent on an individualized approach. This also contributes to the length of the screening process (see above re: larger education for our line attorneys to better assist with this process). Your message convinces me that the court would benefit from the presentation on our Diversion Program that has been offered but not as yet accepted. You can advise whether we include that in the meeting that you requested or whether that is a separate meeting.

In closing, we are deeply concerned about offering healing and treatment rather than punishment for eligible defendants. Any missed opportunities in this regard should be owned collectively by all stakeholders in the circuit, and we should work together toward better solutions and more success.

Thank you,

Wes