

Date: March 21, 2022

To: Members of the Joint Committee on
Finance

From: Charlotte Gibson
Administrator, Division of Legal Services

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Services

Subject: Report on 2020 and 2021 Activities of DOJ's drug prosecutor team
pursuant to Wis. Stat. § 165.25(11).

2017 Wisconsin Act 261, section 13 created two Assistant Attorney General project positions intended to (1) assist the Division of Criminal Investigation field offices in Wausau and Appleton and (2) assist district attorneys with the prosecution of drug-related offenses. We submit this report to describe the activities of our assistant attorneys general in those positions and to assess their effectiveness for the 2020 and 2021 calendar years, pursuant to Wis. Stat. § 165.25(11).

1. Activities of these attorneys

The attorneys perform a variety of functions related to investigations and prosecutions of heroin, other opioids/opiates, and methamphetamine trafficking. They work on cases including conspiracies of drug trafficking organizations and first-degree reckless homicide (“Len Bias”) charges against traffickers responsible for the delivery of drugs that have resulted in fatal drug overdoses. The attorneys provide guidance and assistance to law enforcement agencies and District Attorneys’ offices in the regions of the state covered by the Department of Justice – Division of Criminal Investigation (DCI) field offices in Wausau and Appleton, and occasionally to areas of the state outside of those geographic regions. They assist the District Attorneys’ offices with criminal prosecutions in an assist capacity pursuant to Wis. Stat. § 978.05(8) and occasionally handle cases as special prosecutions pursuant to Wis. Stat. § 978.045.

The regular duties of the attorneys fall into three primary categories: (1) training and consultation, (2) investigation, and (3) prosecution.

a. Training and Consultation

One important function of the regional drug prosecutor program is serving as a resource for law enforcement officers and prosecutors across the state. The regional bases of the attorneys make them accessible to officers and prosecutors in their regions and allow them to build productive working relationships that result in efficient, thorough, and successful investigations and prosecutions.

The attorneys have developed training materials and standards for drug investigations and prosecutions. These training materials and standards for both prosecutors and law enforcement officers focus on high-level drug trafficking and Len Bias investigations and prosecutions with an emphasis on identifying and aggressively prosecuting the most culpable offenders. Despite limitations caused by the COVID-19 pandemic, the attorneys developed and presented virtual training sessions for law enforcement officers and prosecutors during the 2020 and 2021 calendar years. The training sessions covered a variety of topics, including overdose investigations and prosecutions, drug conspiracy investigations and prosecutions, and handling cases involving confidential informants.

In addition to formal presentations, the attorneys regularly perform case consultations for prosecutors and law enforcement officers, including DCI special agents within the regional offices, investigators with local drug units, and officers from local sheriff's offices and police departments. These consultations help assess cases that are under investigation, have been referred for criminal charges, or have already been filed. The attorneys make recommendations on case and investigation strategy and address questions on many legal topics, including search warrant forms.

b. Investigation

An important benefit of the attorneys' regional locations is their ability to collaborate with law enforcement during the early stages of criminal investigations on major cases such as drug overdose deaths and complicated drug conspiracies. That early involvement has repeatedly resulted in more thorough and comprehensive investigations, improved information sharing between agencies, better compliance with legal requirements, and ultimately, more successful prosecutions. The attorneys draft and review various types of search warrants, advise on the legality of investigations, help develop and brainstorm investigative strategies, and identify follow-up investigative tasks, all with the purpose of building legally sound and prosecutable criminal cases. The attorneys work with law enforcement to identify the most culpable offenders by working up the drug chain of supply and distinguishing drug users from drug dealers.

c. Prosecution

The majority of the attorneys' caseloads are criminal prosecutions handled as DOJ assists pursuant to Wis. Stat. § 978.045(8). Assist cases are assigned upon the request of the applicable district attorney and approval of the Attorney General or his designee. Assist cases remain under the authority of the district attorney. The district attorney's office assigns a prosecutor from the local office to remain on the case with the Assistant Attorney General. This structure allows the DOJ attorneys to provide valuable caseload assistance to district attorney's offices and offer a level of expertise in drug conspiracy and overdose death prosecutions. The attorneys help mentor and train prosecutors, providing specific tools and strategies prosecutors can implement for future investigations and prosecutions.

The attorneys handle some cases as special prosecutions pursuant to Wis. Stat. § 978.045. Cases are assigned as special prosecutions upon the request of the applicable district attorney(s) and approval of the Attorney General. The attorneys are assigned cases as special prosecutions under limited circumstances, including when criminal conduct of a defendant spans multiple counties. In special prosecution cases, the Department of Justice is solely responsible for the prosecution, including all decisions related to settlement.

In both assist and special prosecution cases, the attorneys remain assigned through resolution by plea agreement or trial, as well as any trial-level post-conviction motions.

2. Caseload Statistics

The following is a breakdown of cases assigned to the attorneys as either assists or special prosecutions during the 2020 and 2021 calendar years. The cases are categorized by their primary charge(s). Some cases were determined to have primary charges that fit into multiple categories. Cases that were pending during both 2020 and 2021 are included in the counts for each year.

2020

Total: 64
First Degree Reckless Homicide (Len Bias): 30
Methamphetamine Distribution: 16
Heroin/Fentanyl Distribution: 14
Other (First Degree Homicide / Murder,
Aggravated Battery, and False Imprisonment): 11

2021

Total: 63
First Degree Reckless Homicide (Len Bias): 28
Methamphetamine Distribution: 18
Heroin/Fentanyl Distribution: 11
Other (First Degree Homicide / Murder,
Aggravated Battery, and False Imprisonment): 9

3. Review of the program for 2020 and 2021

Both qualitatively and quantitatively, we believe that the program has been very valuable in helping investigate and prosecute serious drug-related offenses in the target counties. The value of these positions is demonstrated by comments from District Attorneys in the supported regions.

Wood County District Attorney Craig Lambert:

AAG Cass Cousins and the Wisconsin DOJ have assisted Wood County in 2021 with the prosecution of six people. [Three] were all successfully prosecuted for their participation in delivery of heroin and reckless homicides. . . . [Three others] were all successfully prosecuted for their participation in delivery of amphetamine, with [two individuals] also being convicted of violent crimes. . . . Wood County is capable of prosecuting these cases; however, the assistance of AAG Cousins and the Wisconsin DOJ provided much needed case relief for my ADAs and the experience and resources of AAG Cousins and the Wisconsin DOJ contributed greatly to the successful prosecution of these cases.

Oneida County District Attorney Mike Schiek:

Our office has recently enlisted the assistance of Assistant Attorney General Cass Cousins in a reckless homicide case, and his assistance has been invaluable. We believe and are attempting to prove that the Defendant sold the heroin that took the life of a young Oneida County resident in 2019. The case involves a variety of technical evidence from cell phone locations, warrants for social media accounts and DNA and other crime lab testing. As you can imagine, the expertise necessary to understand these issues well enough to explain them to a jury and the family of the victim is considerable. AAG Cousins, because he specializes in these prosecutions, has saved

our staff countless hours of research and study on these technical issues. AAG Cousins has also assisted with pre-filing review of the discovery to prepare the criminal complaint, and helped us to prepare an appropriate offer for a plea agreement that may resolve the case and spare the victim's family a public trial.

Price County District Attorney Karl Kelz:

When I assumed my office in January 2021, my office was already prosecuting 3 defendants for Reckless Homicide concerning one victim. AAG Cousins has been the lead prosecutor. The benefit of having AAG Cousins working these cases is immeasurable. Over the past 11 months, I have greatly appreciated the knowledge, experience and dedication he brings to the cases. AAG Cousins has maintained clear and open communications with my office which has greatly assisted my office. As a DA in a small county, it is difficult to maintain the daily caseload when I am the only full-time prosecutor in the office. Without the assistance of AAG Cousins or the AG office, I do not know how I could maintain the functionality of my office.

I have worked close with AAG Cousins concerning the 3 cases. He provides extensive prosecution expertise as we head into the first trial. The three cases not only include the individual directly involved with the death of the victim but also the supplier of the lethal drug. It is my opinion having AAG Cousins litigate these cases for my office makes Price County a safer place and I certainly hope his and other AAGs assistance will continue in the future.

Marathon County District Attorney Theresa Wetzsteon:

I am writing this letter on behalf of the Marathon County District Attorney's Office to express our appreciation for the assistance of the Regional Drug Prosecutors. I am the elected District Attorney and I have been a prosecutor in Marathon County for over 20 years. Marathon County has been significantly impacted by the drug epidemic and is the headquarters for the Central Wisconsin Narcotics Task Force. The effective prosecution of cases associated with drug trafficking is vitally important to the safety of our residents.

Regional Prosecutor AAG Cass Cousins has provided invaluable assistance in our overdose homicide prosecutions and large-scale drug trafficking cases. Our Office does not have sufficient prosecutorial staff and we have struggled to retain experienced prosecutors. The majority of our prosecutors have very minimal prosecution experience. AAG Cousins has been a crucial resource for these complex cases. He has

valuable experience from his prosecutions across the region and provides insight into considerations for offers to resolve these cases. AAG Cousins also brings a fresh perspective at all stages of these cases – investigations, search warrants, pretrial motion litigation, and trial strategy. Our prosecutors report that cases with AAG Cousins’ assistance have resulted in resolutions that are considerate of both the victims’ families and the Defendants. AAG Cousins has also demonstrated by example his skills in communicating with victims, and he makes himself available to meet with victims to explain the status of the case and possible resolution. He also has made himself available for conference calls with law enforcement and defense counsel.

On behalf of the Marathon County District Attorney’s Office, thank you for your continued support of the Wisconsin Department of Justice Regional Drug Prosecutors. This resource has had a significant positive impact on the effective prosecution of drug trafficking related cases and thereby a significant positive impact on the safety of our residents.

Outagamie County District Attorney Melinda Tempelis:

AAG Hahn is an excellent resource to the Outagamie County District Attorney’s Office. He has worked with Assistant District Attorneys who are assigned a drug caseload to develop cases and train on best practices and strategies for prosecuting Len Bias and other drug distribution cases. In 2021 alone, AAG Hahn assisted on trying Len Bias homicide cases to a jury; prepared cases to be tried; and assisted with negotiating a resolution of, and navigated complex issues for, a multiple county settlement of drug cases. He is an essential resource and a dedicated prosecutor, who constantly makes himself available to prosecutors and law enforcement to answer questions and consult on cases and mentor newer drug prosecutors.

Marinette County District Attorney DeShea Morrow:

We are extremely grateful for the regional drug prosecutor program. AAG Peter Hahn has been a tremendous asset to local law enforcement and the Marinette County District Attorney’s Office in dealing with the significant drug crimes in our community. This program is extremely valuable to smaller counties like Marinette County where resources are less available. AAG Hahn assisted us in the prosecution of two individuals for 1st Degree Reckless Homicide (Len Bias). One of the cases went to trial in 2021, and AAG Hahn’s exceptional work was key in getting convictions on all counts. AAG Hahn is currently assisting our office and law enforcement with the prosecution of two individuals for conspiracy to deliver methamphetamine in

Marinette and surrounding counties. He is also ready and willing to assist whenever we have questions about investigations or case strategy. This program and AAG Hahn are a great benefit to Marinette County and Northeast Wisconsin.

4. *Conclusion*

The regional drug prosecutors have benefitted the safety and security of Wisconsin residents. The positions, originally created as part of the HOPE agenda, will expire, absent legislative action, on April 10, 2023. In the face of an ever-evolving drug epidemic, it would be a grave mistake to allow these positions to expire. Their expertise and value support both local law enforcement and DCI agents in large-scale drug trafficking and Len Bias overdose homicide investigations and result in more successful prosecutions. We will be asking the Legislature to continue these roles and convert them to permanent positions at DOJ.

Please let us know if you have questions or thoughts. We are proud of our staff's great work in these vital areas and thankful for the opportunity to provide support in the fight against Wisconsin's drug epidemic.