



# ROLE OF DEFENSE ATTORNEY IN TREATMENT COURTS

WI SPD ANNUAL CONFERENCE | PANEL DISCUSSION

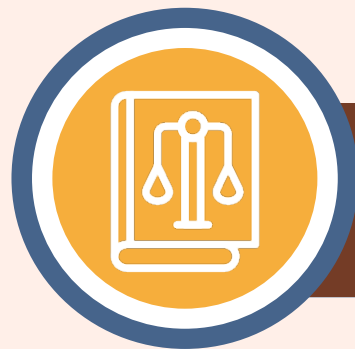
# WELCOME



**Bradley Schraven, Regional Attorney Manager**



**Jennifer Kelley, Appleton Trial ASPD**

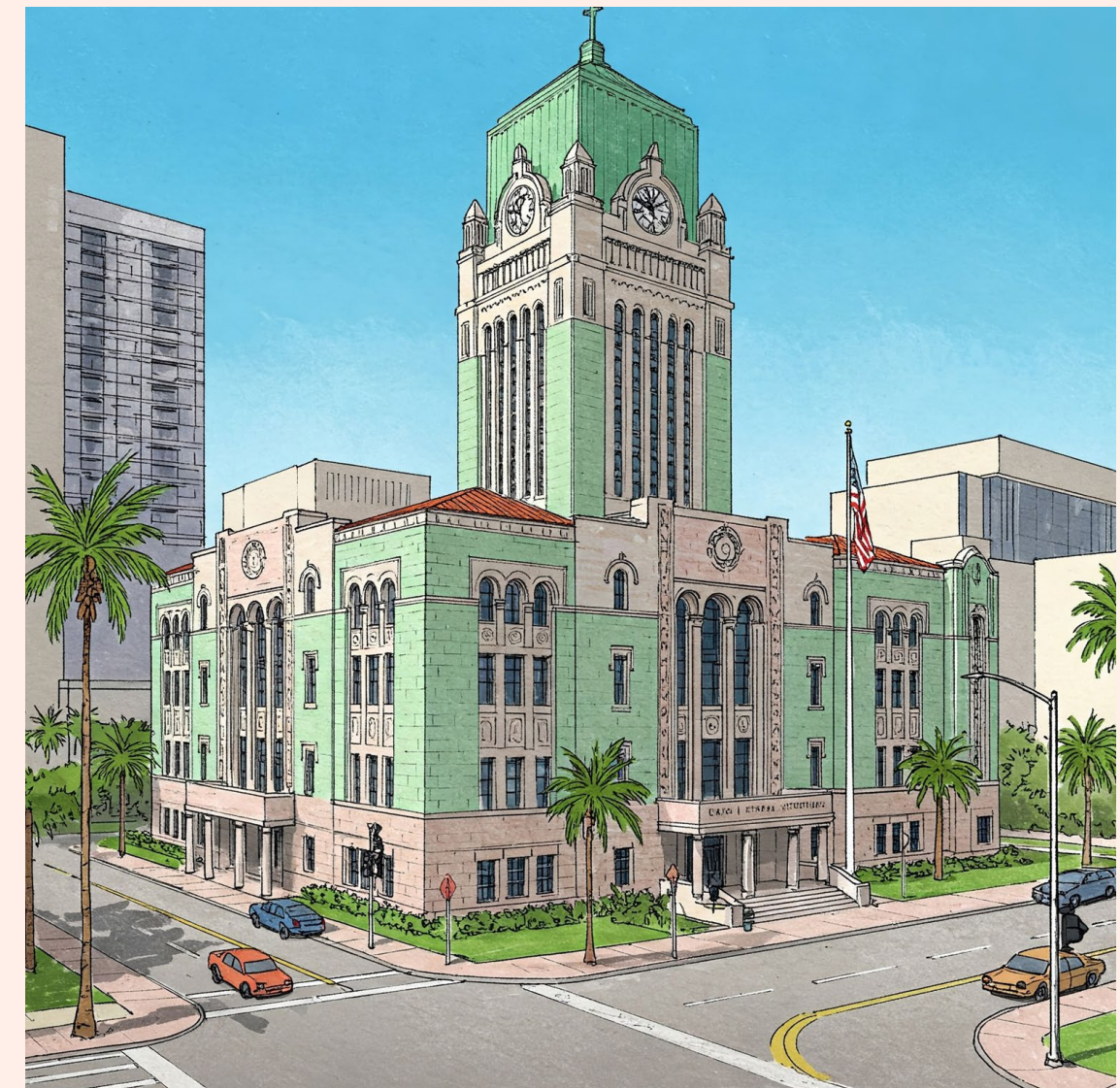


**Liesl Nelson, Hudson Trial ASPD**

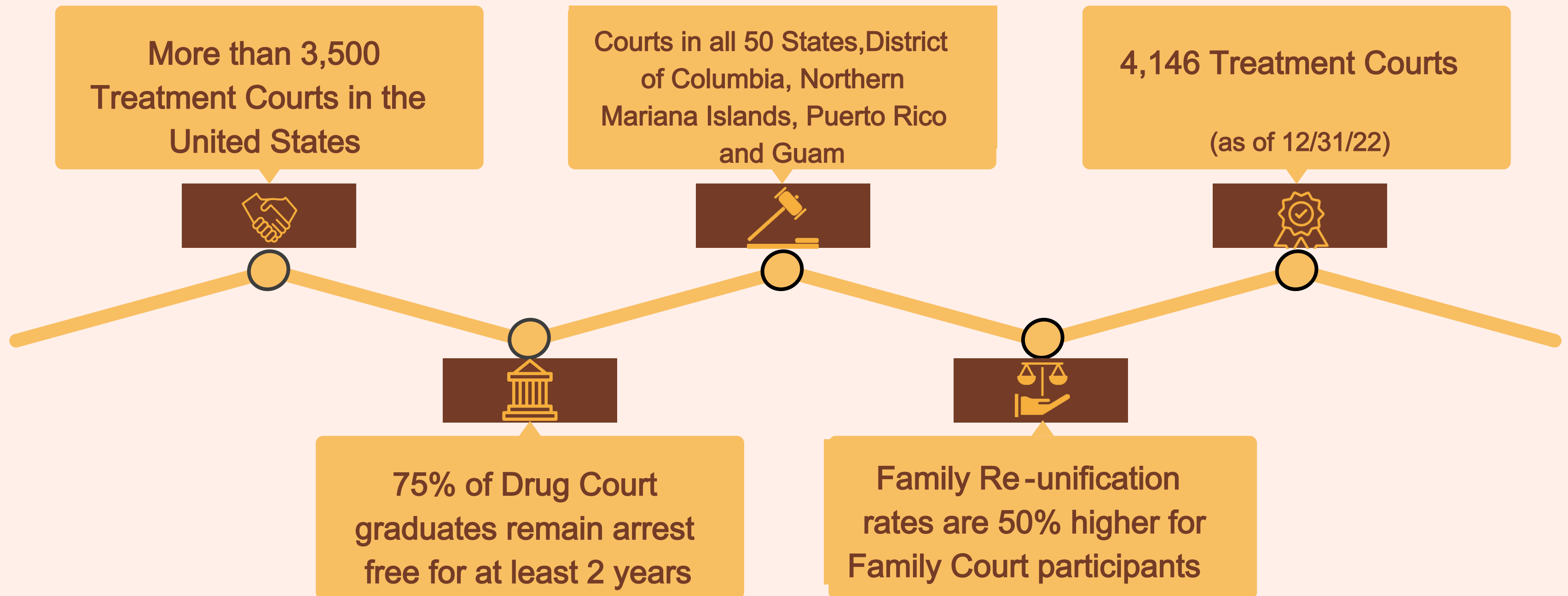
# History of Treatment Courts

- *First Drug Court*. Miami, 1989 - Judge Stanley Goldstein
  - *First Mental Health Court*. Broward, 1997 - Judge Ginger Lerner-Wren
  - *First Veterans Treatment Court*. Buffalo, NY, 2008 - Judge Robert Russell
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- 54% of State Prisoners have reported mental health concerns
  - 49% of State Prisoners have Substance Use Disorders

The first Drug Court and the first Mental Health Courts were started in South Florida

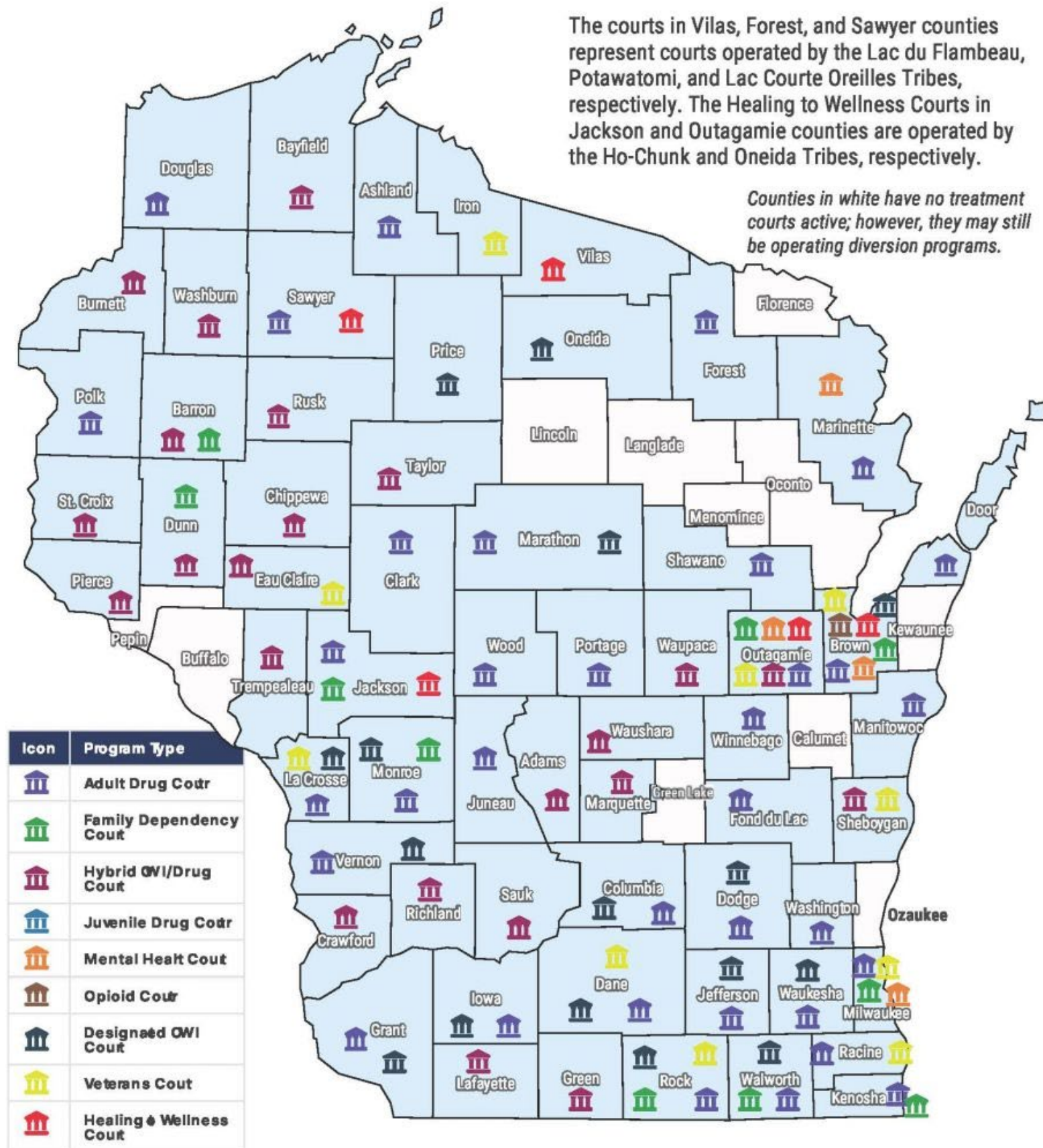


# Treatment Courts by the Numbers





# 2024 Wisconsin Treatment Courts



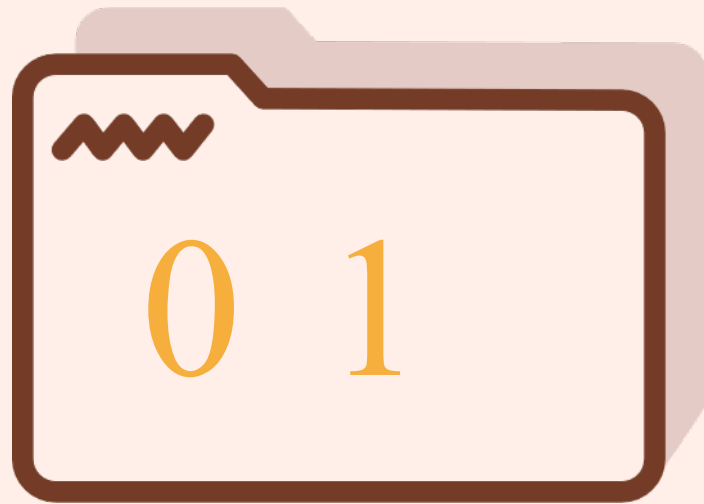
Wisconsin has approximately  
61 Treatment Courts

WATCP established in 2004  
to promote the missions of  
treatment courts and support all of  
the team members.

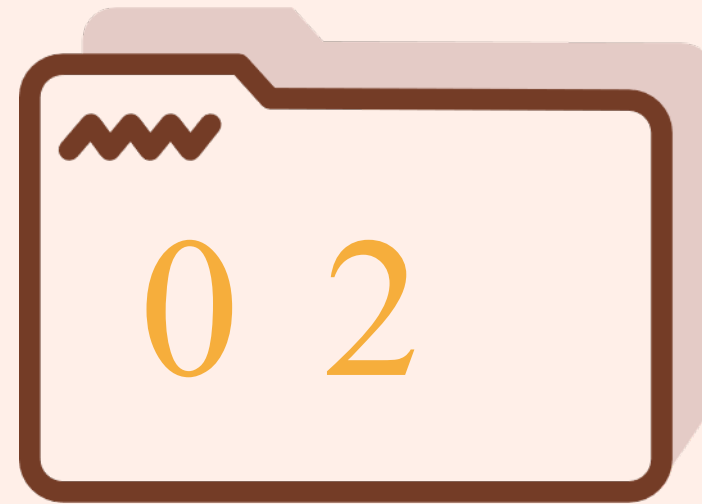
Defense Attorneys play a vital role.

In fact, they serve several roles.

## 3 SEPARATE AND DISTINCT ROLES:



Member of Stakeholder  
Planning &  
Development and  
Oversight Team



Member of  
Treatment Court  
Team



Adversary Counsel for  
Clients considering  
participating in or  
being terminated from  
Treatment Court



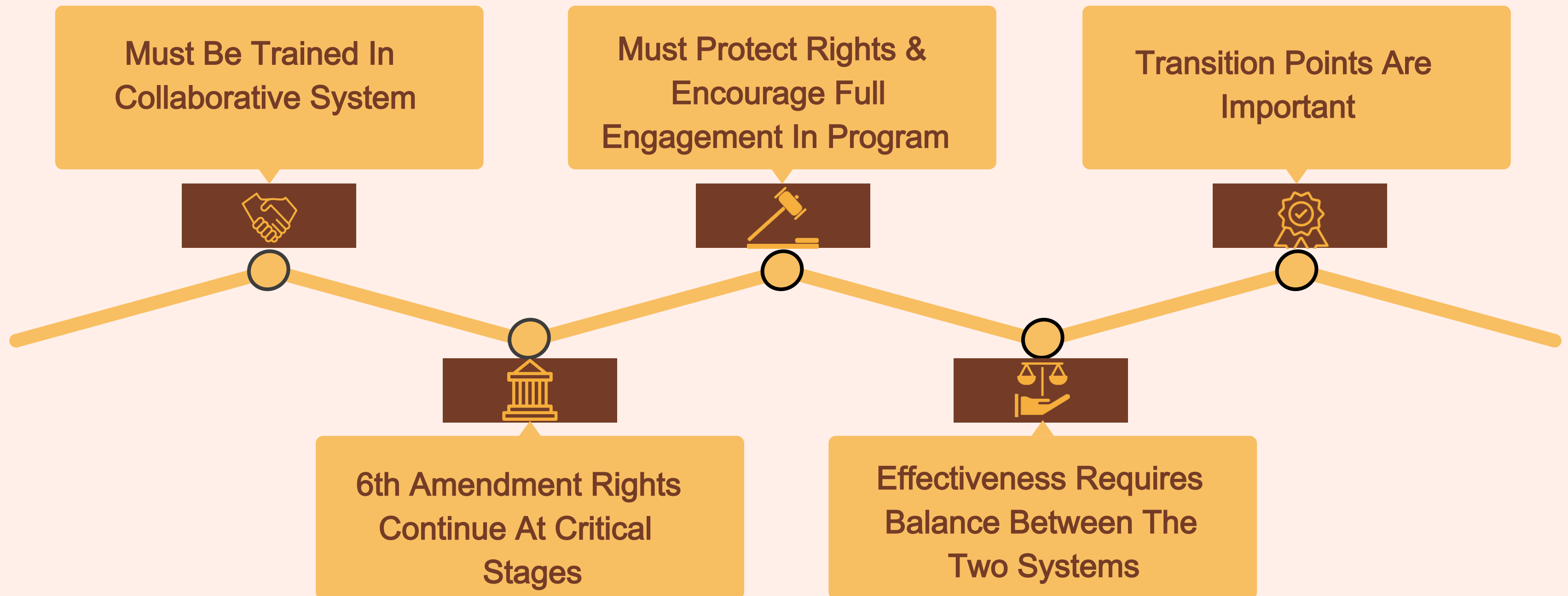
## Role 1

# DEFENSE ATTORNEY AS MEMBER OF PLANNING/DEVELOPMENT & OVERSIGHT TEAM

- Should ideally be a stakeholder with policy making ability and treatment court training
- Collaborative and non -adversarial
- Allegiance is to fidelity of the program and serving participants
- Advocate for fairness and adherence to the best outcome practices for participants
- Planning committee should continue after implementation for oversight



# DEFENSE ATTORNEYS ARE THE BRIDGE BETWEEN ADVERSARIAL AND COLLABORATIVE SYSTEMS





# ADVOCATE FOR THE DEVELOPMENT OF PROCEDURAL FAIRNESS



EQUAL  
PROTECTION



DUE  
PROCESS



CONFIDENTIALITY

- Selection/Admission Criteria & Process
- Policy & Procedure Manuals
- Contracts
- Waivers: Confidentiality, Attorney, Ex Parte Communication, Due Process
- Discharge/Expulsion Procedure Including Notice & The Right To Adversary Counsel

# ADVOCATE ADHERENCE TO BEST PRACTICES



- Incentives/Sanctions
- Drug Testing
- Treatment modalities
- Court procedures
- Cultural competency/disparate impact
- Training
- Program Assessment

## Role 2

# DEFENSE ATTORNEY AS MEMBER OF A TX COURT TEAM



- Non-traditional role for defense attorney
- Collaborative, inclusive solutions
- Not representing individual participants but promoting their interests
- Advocate for adherence to treatment principles, due process, standards and best practices
- Monitor efficacy and availability of Treatment Courts including disparate impacts
- Non adversarial does not mean non -advocacy

# RESPONSIBILITIES OF DEFENSE ATTORNEY AS MEMBER OF ATXCOURT TEAM

## LEARN

Learn and stay up -  
to-date on best  
practices for TX  
Courts & local  
treatment  
resources and  
modalities

## ATTEND

Attend pre -court  
staffing and court  
sessions,  
advocate allegiance to  
the model

## ADVOCATE

Advocate for  
interests of  
participants  
recognizing  
barriers and  
challenges

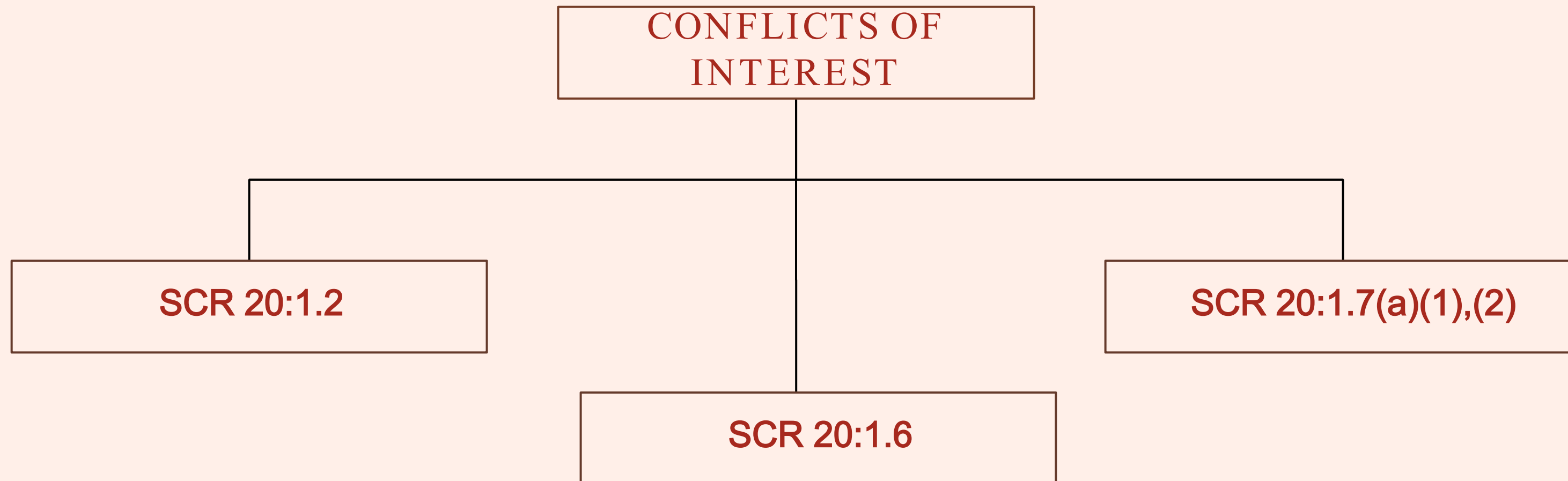
## COMMUNITY

Community  
outreach  
&  
Educate  
peers/colleagues



## BEST PRACTICE:

DO NOT SERVE DUAL ROLE ON TX COURT TEAM AND ADVERSARY COUNSEL



- If representing someone as adversary counsel, transfer case upon admission to TX court or upon referral to TX court
- Inform your client about what is happening
- Do not disclose any confidential information to TX court team

# BEST PRACTICE:

## VOTING ON ADMISSION/DISCHARGE OF COLLEAGUE'S CLIENT

### BEST PRACTICE: CONSENSUS

- Best practice is to do this by consensus, not by vote – promote change to best practice

### IF YOU DO VOTE:

- No one should get a vote who hasn't gone to training
- SCR 20:1.8(b), (k) – very tricky – abstain?



## BEST PRACTICE:

AVOID COMMUNICATION WITH PARTICIPANTS  
ABOUT UNDERLYING OR PENDING CASE

- Participants should be encouraged to communicate with their adversary counsel about the original case, or the content/details of any pending case
- SCR 20:4.2



## Role 3

# DEFENSE ATTORNEY AS ADVERSARY COUNSEL FOR POTENTIAL TREATMENT COURT PARTICIPANTS



## ATTORNEY RESPONSIBILITY?

- What responsibility does an attorney have when treatment court is an option in their jurisdiction? SCR 20:1.1 – SCR 20:1.4
- Attorney needs to be an expert on treatment court as a dispositional option for clients



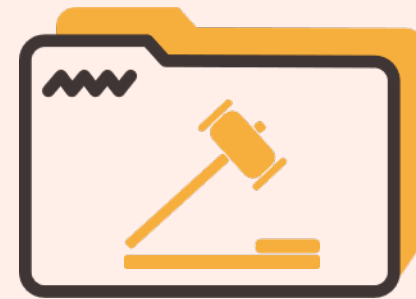


# ADVERSARY COUNSEL:

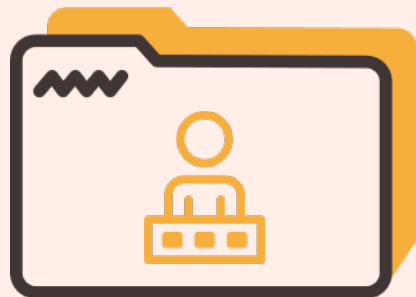
## ADVISING CLIENT ON ENTERING TX COURT



Attorney will have core competencies in the treatment courts available in their jurisdiction



Attorney will assist client in making an informed decision and waiver of rights



Attorney will engage client in best practice attorney -client consultation about treatment court option



SCR 20:1.0(f);  
SCR 20:1.1;  
SCR 20:1.4



# ADVERSARY COUNSEL:

CLIENT IN TREATMENT COURT, NOW WHAT?



Traditionally, WI  
SPD requires attorney  
to  
keep case open for 60  
days, then close if  
everything is OK



WI SPD will appoint  
adversary counsel for  
discharge/termination  
hearings



A few WI jurisdictions  
provide both an SPD  
representative on the  
treatment court team  
and an SPD attorney as  
adversary counsel at  
each court session

# RESOURCES

- Shared Google Drive “Treatment Courts”
- SPD Treatment Court Resource Guide (Google Drive)
- SPD Treatment Court Listserv
- Critical Issues for Defense Attorneys (Google Drive)



# COMPASSION FATIGUE & BURNOUT

- Wisconsin Lawyers Assistance Program - State Bar
- Well Wisconsin - State of WI and WebMD





THANK YOU!

