2019 ASSEMBLY BILL 1006


AN ACT to repeal 165.95 (2r), 165.95 (3) (a), 165.95 (3) (d), (e) and (f), 165.95 (3)
j and 165.95 (5m); to renumber and amend 165.95 (3) (i), 165.95 (5) (a) and
165.95 (5) (b); to amend 20.455 (2) (em) (title), 20.455 (2) (kn) (title), 20.455 (2)
(kv) (title), 165.95 (title), 165.95 (2), 165.95 (3) (b), 165.95 (3) (c), 165.95 (3) (g),
165.95 (3) (h), 165.95 (3) (k), 165.95 (6), 302.43, 950.04 (1v) (g), 961.472 (5) (b),
967.11 and 973.155 (1m); and to create 20.455 (2) (ej), 165.95 (1) (ac), 165.95
(3) (ae), 165.95 (3) (ag), 165.95 (3) (bd), 165.95 (3) (cm) 2. and 165.95 (3m) of the
statutes; relating to: providing grants to certain county or tribal treatment
alternatives and diversion programs and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill provides additional funding for and makes changes to the treatment
alternatives and diversion (TAD) grant program administered by the Department of
Justice.

Under current law, DOJ awards grants to counties that have established
qualifying TAD programs for persons who are or may be charged with, or who are
convicted of, offenses related to the person’s use or abuse of alcohol or other drugs.
Under current law, a TAD program is intended to offer alternatives to prosecution
or incarceration for offenders with substance abuse problems in order to reduce recidivism, promote public safety, and reduce prison and jail populations.

Under current law, in order to qualify for a TAD grant, a county’s program must meet certain criteria, including offering treatment alternatives for the offender’s substance use, and coordinating with other specialists, including mental health treatment providers, social services providers, and case workers in order to provide intensive case management. Each qualifying program must be developed in collaboration with representatives from the judicial system, law enforcement and corrections, social and welfare service providers, and mental health and substance abuse treatment providers. Further, under current law, each county that receives a TAD grant creates an oversight committee with representatives from those agencies or services to administer and evaluate the program.

Under current law, a TAD program that receives a grant is subject to state audits and each county that receives a TAD grant must submit an annual report to DOJ and to the oversight committee that details its progress in promoting public safety, reducing recidivism and lowering costs, and meeting the treatment and other needs of program participants.

Current law allows counties to administer a TAD program jointly and requires any county that receives a grant to provide matching funds that are equal to 25 percent of the amount of the grant. Eligible programs must require participants to pay a reasonable amount for their treatment within the program.

This bill makes several changes to the TAD grant program. Under the bill, a program funded by a TAD grant need not focus solely on alcohol and other drug treatment, but must employ evidence-based practices and must be designed to promote effective criminal justice policies to reduce prosecution and incarceration costs, reduce recidivism, and enhance justice and public safety.

The bill requires each program to be designed to integrate and coordinate services from several providers, including a participant’s behavioral health treatment providers, case managers, and compliance monitors. The bill requires each program to use eligibility criteria based on risk, need, and responsivity assessments and to tailor its services to the needs of each participant or target population.

The bill allows, but does not require, an eligible program to require participants to pay an amount towards their treatment. The bill eliminates the 25 percent matching funds requirement.

Under the bill, DOJ must consult with the Criminal Justice Coordinating Council to establish eligibility criteria and to determine which county or tribe programs meet the eligibility requirements. The bill requires each county or tribe to establish a criminal justice oversight committee to develop and implement the program design and advise the county or tribe in administering and evaluating its program.

Under the bill, a program must specify whether or not certain violent offenders will be allowed to participate. If so, there must be a victim advocate on the program’s oversight committee, if such an advocate exists in the program’s county. If the
program includes domestic abuse offenders, the oversight committee must consult with a batterers’ treatment provider.

This bill provides $10,000,000 in funding to support TAD grants and administration.

Finally, under the bill, the Criminal Justice Coordinating Council is required to study and report on all of the following:

1. The case load and distribution of criminal cases across the state and the distribution of assistant district attorneys, public defenders, and circuit court judges.
2. The impact of treatment courts, deferrals, and diversions on attorney time spent on a case and the length of time that a case stays open.
3. The recidivism rates of participants in a TAD program compared to the recidivism rates of similarly situated individuals who do not participate in a TAD program.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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**Section 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

20.455 Justice, department of

(2) Law enforcement services

(ej) Alternatives to prosecution and incarceration; administration

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**Section 2.** 20.455 (2) (ej) of the statutes is created to read:

20.455 (2) (ej) Alternatives to prosecution and incarceration; administration.

The amounts in the schedule to administer the grant program under s. 165.95, including to perform quality assurance, data collection, reporting, and technical assistance.

**Section 3.** 20.455 (2) (em) (title) of the statutes is amended to read:
20.455 (2) (em) (title) Alternatives Grants for alternatives to prosecution and incarceration for persons who use alcohol or other drugs; presentencing assessments.

SECTION 4. 20.455 (2) (kn) (title) of the statutes is amended to read:

20.455 (2) (kn) (title) Alternatives to prosecution and incarceration for persons who use alcohol or other drugs; justice information fee.

SECTION 5. 20.455 (2) (kv) (title) of the statutes is amended to read:

20.455 (2) (kv) (title) Grants for substance abuse treatment programs for criminal offenders alternatives to prosecution and incarceration programs.

SECTION 6. 165.95 (title) of the statutes is amended to read:

165.95 (title) Alternatives to prosecution and incarceration; grant program.

SECTION 7. 165.95 (1) (ac) of the statutes is created to read:

165.95 (1) (ac) “Evidence-based practice” means a practice that has been developed using research to determine its efficacy for achieving positive measurable outcomes, including reducing recidivism and increasing public safety.

SECTION 8. 165.95 (2) of the statutes, as affected by 2019 Wisconsin Act 9, is amended to read:

165.95 (2) The department of justice shall make grants to counties and to tribes to enable them to establish and operate programs, including suspended and deferred prosecution programs and programs based on principles of restorative justice, that provide alternatives to prosecution and incarceration for criminal offenders who abuse alcohol or other drugs. The department of justice shall make the grants from the appropriations under s. 20.455 (2) (ek), (em), (jd), (kn), and (kv). The department of justice shall collaborate with the departments of corrections and health and family services in establishing this grant program criminal justice coordinating council in
order to maximize the impact of the program funded by grants awarded under this
section.

SECTION 9. 165.95 (2r) of the statutes is repealed.

SECTION 10. 165.95 (3) (a) of the statutes is repealed.

SECTION 11. 165.95 (3) (ae) of the statutes is created to read:

165.95 (3) (ae) 1. The program specifies whether a violent offender is eligible
to participate in the program.

2. If the program specifies that a violent offender is eligible to participate in the
program, the program shall do all of the following:

a. Include at least one representative of an organization that advocates for
victims of violent crime on the criminal justice oversight committee specified in par.
(cm), provided such an advocate exists in the program’s county.

b. If a violent offender who, in a pending case, has been charged or convicted
of a domestic abuse offense, as defined in s. 968.075 (1) (a), is allowed to participate
in the program, the criminal justice oversight committee specified in par. (cm) shall
consult with a batterers’ treatment provider and define how batterers’ treatment will
be used to treat these violent offenders.

c. At the request of the victim, have the district attorney make a reasonable
attempt to provide the victim with notice of the date, time, and place of scheduled
court proceedings that are held in connection with the violent offender’s
participation in the program.

SECTION 12. 165.95 (3) (ag) of the statutes is created to read:

165.95 (3) (ag) The program operates within the continuum from arrest to
discharge from supervision and provides an alternative to prosecution or
incarceration, including suspended and deferred prosecution or community-based corrections.

**SECTION 13.** 165.95 (3) (b) of the statutes is amended to read:

165.95 (3) (b) The program employs evidence-based practices and is designed to promote and facilitate the implementation of effective criminal justice policies and practices that maximize justice and public and victim safety, reduce prison and jail populations, reduce prosecution and incarceration costs, and reduce recidivism, and improve the welfare of participants’ families by meeting the comprehensive needs of participants.

**SECTION 14.** 165.95 (3) (bd) of the statutes is created to read:

165.95 (3) (bd) The program identifies each target population served by the program and identifies the evidence-based practices the program employs for each target population it serves.

**SECTION 15.** 165.95 (3) (c) of the statutes is amended to read:

165.95 (3) (c) The program establishes eligibility criteria for a person’s participation. The criteria shall specify that a violent offender is not eligible to participate in the program, including criteria based on validated risk, needs, and responsivity assessments.

**SECTION 16.** 165.95 (3) (cm) 2. of the statutes is created to read:

165.95 (3) (cm) 2. If the program is administered by a tribe, the criminal justice oversight committee shall consist of a representative of the judiciary, a representative of criminal prosecution and criminal defense, a social services provider, a behavioral health treatment provider, a law enforcement officer, a representative of corrections, and other members that the oversight committee determines are appropriate to the program.
SECTION 17. 165.95 (3) (d), (e) and (f) of the statutes are repealed.

SECTION 18. 165.95 (3) (g) of the statutes is amended to read:

165.95 (3) (g) The program is designed to integrate all mental health services provided to program participants by state and local government agencies, tribes, and other organizations. The program shall require regular communication and coordination among a participant’s substance abuse treatment providers, other service providers, the case manager, and any person designated under the program to monitor the person’s compliance with his or her obligations under the program, and any probation, extended supervision, and parole agent assigned to the participant.

SECTION 19. 165.95 (3) (h) of the statutes is amended to read:

165.95 (3) (h) The program provides substance abuse and mental health treatment services through providers that employ evidence-based practices in the delivery of services and, where applicable, that are certified by the department of health services or licensed to provide the services approved under the program.

SECTION 20. 165.95 (3) (i) of the statutes is renumbered 165.95 (3d) and amended to read:

165.95 (3d) The program requires that receives a grant under this section may require participants to pay a reasonable amount for their treatment, based on their income and available assets, and pursues and uses all possible resources available through insurance and federal, state, and local aid programs, including cash, vouchers, and direct services.

SECTION 21. 165.95 (3) (j) of the statutes is repealed.

SECTION 22. 165.95 (3) (k) of the statutes is amended to read:
165.95 (3) (k) The county or tribe complies with other eligibility requirements established by the department of justice, in consultation with the criminal justice coordinating council, to promote the objectives listed in pars. (a) and (b) this subsection.

SECTION 23. 165.95 (3m) of the statutes is created to read:

165.95 (3m) The department of justice shall consult with the criminal justice coordinating council to determine which programs meet the specifications set forth in sub. (3) and will receive a grant under this section.

SECTION 24. 165.95 (5) (a) of the statutes is renumbered 165.95 (3) (cm) (intro.) and amended to read:

165.95 (3) (cm) (intro.) A county or tribe that receives a grant under this section shall create an The program identifies a criminal justice oversight committee to develop and implement the program design and advise the county or tribe in administering and evaluating its program. Each The membership of each criminal justice oversight committee shall be as follows:

1. If the program is administered by a county, or by a county and a tribe pursuant to sub. (6), the criminal justice oversight committee shall consist of a circuit court judge, the district attorney or his or her designee, the state public defender or his or her designee, a local law enforcement official, a representative of the county, a representative of the tribe, if applicable, a representative of each other county agency and, if applicable, tribal agency responsible for providing social services, including services relating to child welfare, mental health, and the Wisconsin Works program, representatives of the departments of corrections and health and family services, a representative from private social services agencies, a representative of substance abuse behavioral health treatment providers, and other members to be
SECTION 24. The oversight committee determines are appropriate for the program.

SECTION 25. 165.95 (5) (b) of the statutes is renumbered 165.95 (5) (ag) and amended to read:

165.95 (5) (ag) A county or tribe that receives a grant under this section shall comply with state audits and shall submit an annual report to the department of justice and to the criminal justice oversight committee created under par. (a) identified in sub. (3) (cm) regarding the impact of the program on jail and prison populations and its progress in attaining the goals specified in sub. (3) (b) and (d).

SECTION 26. 165.95 (5m) of the statutes is repealed.

SECTION 27. 165.95 (6) of the statutes is amended to read:

165.95 (6) A county or tribe may, with one or more other counties or tribes, jointly apply for and receive a grant under this section. Upon submitting a joint application, each county or tribe shall include with the application a written agreement specifying each tribe’s and each county department’s role in developing, administering, and evaluating the program. The criminal justice oversight committee established under sub. (5) (a) identified in sub. (3) (cm) shall consist of representatives from each county or tribe that participates in the program.

SECTION 28. 302.43 of the statutes is amended to read:

302.43 Good time. Every inmate of a county jail is eligible to earn good time in the amount of one-fourth of his or her term for good behavior if sentenced to at least 4 days, but fractions of a day shall be ignored. An inmate shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4). An inmate who violates any law or any regulation of the jail, or neglects or refuses to perform any duty lawfully required of him or her, may be deprived by
the sheriff of good time under this section, except that the sheriff shall not deprive
the inmate of more than 2 days good time for any one offense without the approval
of the court. An inmate who files an action or special proceeding, including a petition
for a common law writ of certiorari, to which s. 807.15 applies shall be deprived of
the number of days of good time specified in the court order prepared under s. 807.15
(3). This section does not apply to a person who is confined in the county jail in
connection with his or her participation in a substance abuse treatment program
that meets the requirements of s. 165.95 (3), as determined by the department of
justice under s. 165.95 (9) and (10).

SECTION 29. 950.04 (1v) (g) of the statutes is amended to read:
950.04 (1v) (g) To have reasonable attempts made to notify the victim of
hearings or court proceedings, as provided under ss. 165.95 (3) (ae) 2. c., 302.113 (9g)
(g) 2., 302.114 (6), 938.27 (4m) and (6), 938.273 (2), 971.095 (3) and 972.14 (3) (b).

SECTION 30. 961.472 (5) (b) of the statutes is amended to read:
961.472 (5) (b) The person is participating in an evidence-based substance
use disorder treatment program that meets the requirements of s. 165.95 (3),
as determined by the department of justice under s. 165.95 (9) and (10).

SECTION 31. 967.11 of the statutes is amended to read:
967.11 Alternatives to prosecution and incarceration; monitoring
participants. (1) In this section, “approved substance abuse treatment program”
means a substance abuse treatment program that meets the requirements of s.
165.95 (3), as determined by the department of justice under s. 165.95 (9) and (10).

(2) If a county establishes an approved substance abuse treatment program
and the approved program authorizes the use of surveillance and monitoring
technology or day reporting programs, a court or a district attorney may require a
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person participating in an approved substance abuse treatment program to submit to surveillance and monitoring technology or a day reporting program as a condition of participation.

SECTION 32. 973.155 (1m) of the statutes is amended to read:

973.155 (1m) A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody as part of a substance abuse treatment program that meets the requirements of s. 165.95 (3), as determined by the department of justice under s. 165.95 (9) and (10), for any offense arising out of the course of conduct that led to the person’s placement in that program.

SECTION 33. Nonstatutory provisions.

(1) STUDY AND REPORT BY CRIMINAL JUSTICE COORDINATING COUNCIL. No later than July 1, 2021, the criminal justice coordinating council shall study and report on all of the following:

(a) The case load and distribution of criminal cases across the state and the distribution of assistant district attorneys, public defenders, and circuit court judges. The report shall include recommendations for adjustments to the assignment process or distribution of district attorneys, public defenders, and circuit court judges.

(b) The impact of treatment courts, deferrals, and diversions on attorney time spent on a case and on the length of time that a case stays open.

(c) The recidivism rates of participants in a treatment alternatives and diversion program compared to the recidivism rates of similarly situated individuals who do not participate in a treatment alternatives and diversion program.

SECTION 34. Fiscal changes; alternatives to prosecution and incarceration.
(1) In the schedule under s. 20.005 (3) for the appropriation to the department of justice under s. 20.455 (2) (em), the dollar amount for fiscal year 2020-21 is increased by $2,000,000 to expand capacity within programs that are funded by grants under s. 165.95 (2) on the effective date of this subsection.

(2) In the schedule under s. 20.005 (3) for the appropriation to the department of justice under s. 20.455 (2) (em), the dollar amount for fiscal year 2020-21 is increased by $1,000,000 to provide grants under s. 165.95 (2) for the creation or expansion of programs that address mental health, mental health courts, or diversion or deferral programs addressing mental health.

(3) In the schedule under s. 20.005 (3) for the appropriation to the department of justice under s. 20.455 (2) (em), the dollar amount for fiscal year 2020-21 is increased by $500,000 to provide grants under s. 165.95 (2) for the creation or expansion of programs that are designed to divert cases before criminal charges are filed.

(4) In the schedule under s. 20.005 (3) for the appropriation to the department of justice under s. 20.455 (2) (em), the dollar amount for fiscal year 2020-21 is increased by $500,000 to provide grants under s. 165.95 (2) for the creation or expansion of programs that are designed to incorporate restorative justice practices into diversion or deferred prosecution programs.

(5) In the schedule under s. 20.005 (3) for the appropriation to the department of justice under s. 20.455 (2) (em), the dollar amount for fiscal year 2020-21 is increased by $5,000,000 to provide grants under s. 165.95 (2) for programs that provide in-patient or out-patient substance use disorder treatment, housing for individuals in recovery, transportation, or transitional jobs.

SECTION 35. Initial applicability.
(1) TREATMENT ALTERNATIVES AND DIVERSIONS. The treatment of s. 165.95 first applies to grants awarded on July 1, 2020.