



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-1060/P3
MJW:kms/cjs/skw

DOA:.....Schmidt, BB0135 - Treatment Alternatives and Diversion

FOR 2023-2025 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

JUSTICE

Treatment alternatives and diversion grant program

Under current law, DOJ, in collaboration with DOC and DHS, awards grants to counties and tribes that have established qualifying treatment alternatives and diversion (TAD) programs that offer substance abuse or mental health treatment services as alternatives to prosecution or incarceration 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 or tribe's program is required to match 25 percent of the grant and to charge participants a fee to participate. A county or tribe that receives a TAD grant must create an oversight committee to administer and evaluate its program. DOJ is required to make grants available to any county or tribe on a competitive basis every five years. At the end of the five-year grant cycle, DOJ is required to prepare a comprehensive report on the grant program based on annual reports and other data it collects from the counties and tribes.

Under current law, one of the appropriations used to fund the TAD grant program provides that DOJ may use that appropriation to provide a TAD grant to counties that were not a recipient of a TAD grant as of September 23, 2017.

The 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 targeted to the population served by the program. The bill changes the match requirement from 25 percent to 10 percent and changes the competitive grant process to a four-year cycle. The bill allows, but does not require, an eligible program to charge participants a fee for their treatment. The bill also eliminates certain requirements pertaining to exposure of genitals during drug testing. The bill also provides that the appropriation that was formerly limited to providing a TAD grant to a county that had not received one as of September 23, 2017, may be used to provide a TAD grant to a county that is not a recipient of a TAD grant on the effective date of the bill.

Under current law, when a person pleads or is found guilty of certain drug offenses, the court is required to order a substance use assessment. Under current law, the court does not have to order an assessment if the person is already covered by such an order, has recently completed an assessment under such an order, or is participating in a TAD program. The bill specifies that if a person is participating in any evidence-based substance use disorder treatment program as determined by DOJ, regardless of its status relating to the TAD program, the court does not need to order an assessment.

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:

SECTION 1. 20.455 (2) (ek) of the statutes is repealed.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 2. 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.*

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 3. 20.455 (2) (jd) of the statutes is amended to read:

20.455 (2) (jd) *Alternatives to prosecution and incarceration grant program.*

The amounts in the schedule to provide grants under s. 165.95 (2) to counties that are not a recipient of a grant under the alternatives to incarceration grant program on ~~September 23, 2017~~ the effective date of this paragraph [LRB inserts date].

All moneys transferred under [2017 Wisconsin Act 59](#), section [9228 \(15t\)](#), and [2023](#)

Wisconsin Act (this act), section 9227 (1), shall be credited to this appropriation account.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

***NOTE: This is reconciled s. 20.455 (2) (jd). This SECTION has been affected by drafts with the following LRB numbers: -1060/P2 and -1062/P1.

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.*

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 5. 20.455 (2) (kr) of the statutes is repealed.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 6. 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.*

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 7. 165.95 (title) of the statutes is amended to read:

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

SECTION 8. 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 9. 165.95 (2) of the statutes 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

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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 department of corrections and the department of health services in establishing this grant program.

SECTION 10. 165.95 (2r) of the statutes is amended to read:

165.95 (2r) Any county or tribe that receives a grant under this section on or after January 1, 2012, shall provide matching funds that are equal to ~~25~~ 10 percent of the amount of the grant.

SECTION 11. 165.95 (3) (a) of the statutes is repealed.

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

165.95 (3) (ag) The county's or tribe's program operates within the continuum from arrest to discharge from supervision and provides an alternative to prosecution, revocation, or incarceration through the use of pre-charge and post-charge diversion programs or treatment courts and 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) (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 16. 165.95 (3) (d) of the statutes is amended to read:

165.95 (3) (d) Services provided under the program are consistent with evidence-based practices ~~in substance abuse and mental health treatment, as determined by the department of health services,~~ and the program provides intensive case management.

SECTION 17. 165.95 (3) (e) of the statutes is amended to read:

165.95 (3) (e) The program uses graduated sanctions and incentives to promote ~~successful substance abuse treatment~~ success.

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~~ who use evidence-based practices in the delivery of services and, where applicable, who 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 A 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 to pursue and uses use 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 amended to read:

165.95 (3) (j) The program is developed with input from, and implemented in collaboration with, one or more circuit court judges, the district attorney, the state public defender, local and, if applicable, tribal law enforcement officials, county agencies and, if applicable, tribal agencies responsible for providing social services, including services relating to ~~alcohol and other drug addiction~~ substance use disorder, child welfare, mental health, and the Wisconsin Works program, the departments of corrections, children and families, and health services, private social services agencies, and substance ~~abuse~~ use disorder treatment providers.

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 to promote the objectives listed in pars. (a) and (b) this subsection.

SECTION 23. 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 department of corrections and department of health services, a representative from private social services agencies, a representative of substance abuse behavioral health treatment providers, and other members ~~to be determined by the county or tribe~~ the oversight committee determines are appropriate for the program.

SECTION 24. 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 (f).

SECTION 25. 165.95 (5m) of the statutes is repealed.

SECTION 26. 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 27. 165.95 (7) of the statutes is amended to read:

165.95 (7) Grants provided under this section shall be provided on a calendar year basis beginning on January 1, 2007. ~~If the department of justice decides to make a grant to a county or tribe under this section, the department of justice shall notify the county or tribe of its decision and the amount of the grant no later than September 1 of the year preceding the year for which the grant will be made.~~

SECTION 28. 165.95 (7m) of the statutes is amended to read:

165.95 (7m) Beginning in fiscal year ~~2012-13~~ 2023-24, the department of justice shall, every ~~5~~ 4 years, make grants under this section available to any county or tribe on a competitive basis. A county or tribe may apply for a grant under this

subsection regardless of whether the county or tribe has received a grant previously under this section.

SECTION 29. 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 30. 961.472 (5) (b) of the statutes is amended to read:

961.472 (5) (b) The person is participating in a an evidence-based substance abuse 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 (1) of the statutes is amended to read:

967.11 (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).

SECTION 32. 967.11 (2) of the statutes is amended to read:

967.11 (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 person participating in an the approved ~~substance abuse treatment~~ program to submit to surveillance and monitoring technology or a day reporting program as a condition of participation.

SECTION 33. 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 9227. Fiscal changes; Justice.

(1) TRANSFER OF MONEYS FOR GRANTS FOR ALTERNATIVES TO PROSECUTION AND INCARCERATION. There is transferred the unencumbered balance in the appropriation account under s. 20.455 (2) (kr), 2021 stats., to the appropriation account under s. 20.455 (2) (jd) on the effective date of this subsection.

SECTION 9327. Initial applicability; Justice.

(1) TREATMENT ALTERNATIVES AND DIVERSIONS. The treatment of s. 165.95 (1) (ac), (2), (2r), (3) (a), (ag), (b), (bd), (cm) 2., (d), (e), (g), (h), (i), (j), and (k), (5) (a) and (b),

(5m), (6), (7), and (7m) first applies to grants awarded under s. 165.95 (2) on the effective date of this subsection.

(END)