



Legislative Fiscal Bureau

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February 4, 2016

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 657: Treatment Alternatives and Diversion Program

Assembly Bill 657 (AB 657) was introduced on January 7, 2016, and referred to the Joint Committee on Finance. The bill provides the Department of Justice (DOJ) an additional \$2,000,000 GPR annually during the 2015-17 biennium to make grants under the treatment alternatives and diversion (TAD) grant program. On February 2, 2016, Assembly Amendment 1 to AB 657 was introduced. On February 2, 2016, Assembly Substitute Amendment 1 to AB 657 was introduced.

BACKGROUND

Initially created under 2005 Act 25 in the Department of Administration's Office of Justice Assistance (OJA), the TAD program provides grants to counties to establish and operate programs, including suspended and deferred prosecution programs and programs based on principles of restorative justice, which provide alternatives to prosecution and incarceration for criminal offenders who abuse alcohol and other drugs. Projects supported by the TAD program typically follow one of two models: pre-trial diversion or adult drug court. Grants are awarded on a calendar year basis.

Since its inception, funding for the TAD program has grown and statutory regulations associated with the program have been modified. Initially, the TAD program supported six projects in Rock County, Dane County, Milwaukee County, Wood County, Washington County, and a joint project between Burnett and Washburn Counties and the St. Croix Tribe. The TAD program was supported by a continuing program revenue appropriation that received funds generated from the following sources: (a) a portion of the drug abuse program improvement surcharge (DAPIS), a 75% surcharge on the fine and penalty surcharge imposed for certain violations of the uniform controlled substances act (Chapter 961 of the statutes); and (b) a \$10 drug offender diversion surcharge (DODS) that is assessed for property crime convictions under Chapter 943 of the statutes. In addition, OJA utilized federal Byrne Justice Assistance Grant (JAG) funding to support the program.

Under 2009 Act 28, the Legislature reduced the annual expenditure authority of the TAD program's PR appropriation from \$755,000 to \$7,500 due to insufficient revenues from DAPIS and DODS. In its place, Act 28 specified that a portion of the \$21.50 justice information system (JIS) surcharge (imposed with a court fee for the commencement of certain court proceedings) be allocated to a PR appropriation in OJA for the TAD program. As a result, under Act 28, annual amounts appropriated for the TAD program included \$705,000 PR from the JIS surcharge and \$7,500 PR from DAPIS and DODS. In addition to the PR funding, OJA utilized \$371,200 FED from the JAG program to support a grant for the Milwaukee County TAD project.

Due to declining JAG funding, under 2011 Act 32, the Legislature provided OJA an additional \$333,900 PR annually from the JIS surcharge to support the TAD grant to Milwaukee County. Act 32 also provided OJA \$39,500 PR from the JIS surcharge to support the administration of the TAD program. Finally, Act 32 required that any county receiving a grant under the TAD program must provide matching funds equal to 25% of the amount of the grant. As a result of these changes, annual funding for the TAD program totaled \$1,078,400 PR from the JIS surcharge and \$7,500 PR from DAPIS and DODS during the 2011-13 biennium. Further, savings from the 25% match requirement were utilized to support a TAD grant for a joint project between Ashland and Bayfield Counties, beginning January 1, 2012.

Funding for the TAD program was significantly increased during the 2013-15 biennium. Under 2013 Act 20, OJA was dissolved and several of its responsibilities, including administration and funding for the TAD program, were transferred to DOJ. Act 20 also provided DOJ \$1,000,000 GPR annually to support grants under the TAD program. Subsequently, under 2013 Act 197, the Legislature provided DOJ an additional \$1,500,000 GPR annually to support grants under the TAD program. Acts 20 and 197 also provided DOJ new evaluative responsibilities. Act 20 required that DOJ evaluate the TAD program every two years. Further, Act 197 required that the Department analyze monthly data received from the counties and prepare an annual progress report that evaluates the effectiveness of the TAD program. The annual report must be made available to the public. Moreover, every five years, DOJ must analyze both the data it receives from the counties and its own annual progress reports and prepare a comprehensive report on the TAD program that includes a cost-benefit analysis. The Department's five-year comprehensive report must be submitted to the Legislature.

In addition to expanding the TAD program, 2013 Act 20 provided DOJ \$500,000 GPR annually to establish a county drug court grant program. Even though the drug court grant program supports similar projects to that of the TAD program, the drug court grant program is statutorily separate from the TAD program. The county drug court grant program provides funding to counties to establish and operate drug courts. The Department may only provide this funding to counties that have not established drug courts.

At the inception of the TAD program, OJA, in collaboration with the Department of Corrections and the Department of Health Services, entered into a contract with the University of Wisconsin (UW) Population Health Institute under which the Institute would evaluate the TAD program and assist the participating counties and tribes in the implementation and operation of TAD projects. This contract existed from 2006 through 2014. On November 12, 2014, the Joint

Committee on Finance granted DOJ 5.0 GPR positions (2.0 research analysts, 2.0 program and policy analysts, and 1.0 grants specialist) so that DOJ could terminate the contract with the Institute and assume the responsibilities of evaluating the TAD program and providing the participating counties and tribes with assistance. The Committee did not provide DOJ additional funding to support the five GPR positions. Rather, the Committee directed the Department to eliminate 5.0 GPR position vacancies within DOJ and utilize the cost savings to support the 5.0 TAD positions.

Current grant funding for the TAD program totals \$3,538,900 annually, comprised of \$2,500,000 GPR and \$1,038,900 PR from the JIS surcharge. In addition, \$500,000 GPR annually is appropriated for the county drug court grant program. According to DOJ, funding and position authority to administer the TAD program totals \$109,500 PR, as well as 0.35 PR position (a program and policy analyst) and 5.0 GPR positions (2.0 research analysts, 2.0 program and policy analysts, and 1.0 grants specialist). Program revenue for the administration of the TAD program is comprised of \$39,500 from the JIS surcharge and \$70,000 from the penalty surcharge. The Department indicates that the 5.0 GPR positions are not supported by TAD administrative resources. Rather, DOJ utilizes base GPR resources from other activities within its law enforcement services program to support these positions. The 5.0 GPR positions provide the primary support for the administration of the TAD program, however the positions have additional duties within DOJ. In addition to the resources discussed above, DOJ has identified additional resources within the Department which are utilized to support the TAD program, including: (a) multiple state-funded staff, including management within the Division of Law Enforcement Services and staff within DOJ's Bureau of Budget and Finance and the Training and Standards Bureau; (b) approximately \$350,000 for information technology (IT) contracts to develop a web-based reporting system to track participant-level data and program outcomes; and (c) \$200,000 from a federal discretionary grant used to develop and deliver training on evidence-based practices and effective local administration of treatment courts.

The TAD program now supports 30 projects involving 32 counties and three tribes. [In addition, the county drug court grant program supports four projects involving four counties and one tribe. Since the TAD program and the county drug court grant program support similar programs, it is occasionally stated that the TAD program supports 34 projects.] The table below identifies the counties and tribes that will receive a TAD grant for calendar year 2016, as well as the grant award. [Note that the grant award identified in the table does not include the projects' 25% match requirement.] The table distinguishes between the projects that were initially supported by the TAD program and those projects that received a TAD grant after the program's expansion under 2013 Acts 20 and 197. Projects that received grant funding as a result of the expansion under Act 20 generally began operation in January, 2014. Projects that received grant funding as a result of the expansion under Act 197 generally began operation in June, 2014. It should be noted that staff for new TAD projects typically spend the initial months after a project's inception planning and developing future operations.

Counties and Tribes Receiving a TAD Grant, Calendar Year 2016 (Grant Award)

<u>Initial TAD Projects</u>	<u>Projects Initiated After 2013 Act 20</u>	<u>Projects Initiated After 2013 Act 197</u>
Ashland and Bayfield Counties, jointly* (\$176,250)	Dodge County (\$140,800)	Brown County (\$139,006)
Burnett and Washburn Counties and the St. Croix Tribe, jointly (\$165,358)	Eau Claire County (\$132,326)	Chippewa County (\$91,236)
Dane County (\$115,820)	Kenosha County (\$86,873)	Fond du Lac County (\$46,807)
Milwaukee County (\$333,900)	Marinette County (\$124,502)	Grant County (\$101,840)
Rock County (\$110,931)	Pierce County (\$82,120)	Iowa County (\$60,648)
Washington County (\$92,635)	St. Croix County (\$74,584)	Jackson and Monroe Counties and the Ho-Chunk Nation, jointly (\$98,439)
Wood County (\$104,006)	Trempealeau County (\$58,303)	La Crosse County (\$147,268)
	Walworth County (\$157,609)	Marquette County (\$112,171)
	Waukesha County (\$142,883)	Menominee Tribe of Wisconsin (\$148,710)
		Outagamie County (\$157,825)
		Ozaukee County (\$95,120)
		Racine County (\$92,494)
		Rusk County (\$122,436)
		Taylor County (\$86,000)

*The Ashland and Bayfield County TAD project began on January 1, 2012.

**In addition to the TAD projects identified above, the following projects are supported by the county drug court grant program: (a) Columbia County; (b) Jefferson County; (c) Lac du Flambeau Tribe and Vilas County; and (d) Waushara County.

During the most recent competitive expansion of the TAD program under 2013 Act 197, eight projects applied for a TAD grant but did not receive funding. The projects that were denied grant funding under the latest expansion include: Barron County; Dunn County; Forest County Potawatomi Community; Green Lake County; Manitowoc County; Polk County; Price County; and Winnebago County. In addition to these projects, DOJ indicates that, "there were other counties that DOJ had communication with that were interested in TAD, but were not ready at that time to formally apply for TAD funding. It is anticipated that additional new counties/tribes will be in a position to apply for a new competitive round for CY17."

As noted above, TAD grants are awarded on a calendar year basis. Every five years, grants are available on a competitive basis. According to DOJ, the next competitive grant cycle for all TAD projects will begin on January 1, 2017. As a result, all counties and tribes seeking a TAD grant during the upcoming five-year cycle, including those counties and tribes that currently receive a TAD grant, will compete for an award during 2016.

SUMMARY OF BILL

Assembly Bill 657. The bill would provide DOJ an additional \$2,000,000 GPR annually for the TAD program during 2015-17, to provide grants to counties that establish alternatives to

prosecution and incarceration for criminal offenders.

Assembly Amendment 1 to AB 657. The amendment provides that a county may be eligible for a TAD grant if, in addition to other current law criteria, the county's program does not prohibit a person from beginning or continuing participation in the program because he or she uses a medication that is approved by the federal food and drug administration for the treatment of his or her substance abuse disorder, subject to the requirements below. The program must also allow a participant to use medication that is approved by the federal food and drug administration if all of the following are true: (a) a licensed health care provider, acting in the scope of his or her practice, has examined the person and determined that the person's use of the medication is an appropriate treatment for the person's substance use disorder; (b) the medication was appropriately prescribed by a person authorized to prescribe medication in the state; and (c) the person is using the medication as prescribed as part of treatment for a diagnosed substance use disorder.

Assembly Substitute Amendment 1 to AB 657. Assembly Substitute Amendment 1 provides that \$2,000,000 PR is transferred from the institutional operations and charges annual PR appropriation in the Department of Health Services to the Department of Justice's GPR appropriation for the TAD program in 2016-17 on a non-continuing basis.

FISCAL EFFECT

The provisions of AB 657 appropriate \$2,000,000 GPR annually during 2015-17 for the TAD program. As a result, the total fiscal impact of the bill is \$4,000,000 GPR over the 2015-17 biennium. Further, base funding for the TAD program would be increased by \$2,000,000 GPR annually.

If AB 657 were enacted, prior to making grant awards, DOJ would solicit applications for grants, review those applications, and make a final award determination. The next competitive grant cycle for TAD grants will begin in January, 2017. If the TAD program was expanded, DOJ has expressed that it intends to award the expanded grants in 2017 so that all TAD grant recipients would be on a uniform grant cycle. Therefore, it is unclear if any funds appropriated under AB 657 in 2015-16 would be utilized to support additional grants under the TAD program.

On February 2, 2016, the Department of Justice submitted a fiscal estimate for AB 657. In the estimate, DOJ indicated that additional resources would be required to administer and monitor additional TAD grants. Specifically, the Department estimates costs of \$230,500 GPR and 3.0 GPR positions as follows: (a) \$78,100 GPR and 1.0 GPR research analyst-advanced position to assist in the evaluation of the TAD program; (b) \$78,100 GPR and 1.0 GPR program and policy analyst-advanced position to provide technical assistance to counties and tribes statewide; and (c) \$74,300 GPR and 1.0 GPR grants specialist-advanced position to coordinate fiscal functions for the TAD program.

The Department has indicated that current funding and position authority to administer the TAD program totals \$109,500 PR, as well as 0.35 PR position (a program and policy analyst) and 5.0 GPR positions (2.0 research analysts, 2.0 program and policy analysts, and 1.0 grants specialist). According to DOJ, the 5.0 GPR positions are not supported by TAD administrative

resources. Rather, DOJ utilizes base GPR resources from other activities within its law enforcement services program to support these positions. It should be noted that on November 12, 2014, the Joint Committee on Finance, under s. 13.10 of the statutes, provided DOJ the 5.0 GPR positions to administer the TAD program, and directed DOJ to eliminate 5.0 GPR position vacancies and utilize the cost savings to support the 5.0 GPR TAD positions.

In addition to the resources discussed above, DOJ has identified additional resources within the Department which are utilized to support the TAD program, including: (a) multiple state-funded staff, including management within the Division of Law Enforcement Services and staff within DOJ's Bureau of Budget and Finance and Training and Standards Bureau; (b) approximately \$350,000 for IT contracts to develop a web-based reporting system to track participant-level data and program outcomes; and (c) \$200,000 from a federal discretionary grant used to develop and deliver training on evidence-based practices and effective local administration of treatment courts.

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