



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2614/P1
PJH:kjf:jm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 165.95 (1) (a), 165.95 (1) (b), 165.95 (2r), 165.95 (3) (a), 165.95
2 (3) (d), 165.95 (3) (e), 165.95 (3) (f), 165.95 (3) (j), 165.95 (5m), 165.95 (7m) and
3 165.95 (9); *to amend* 165.95 (1) (intro.), 165.95 (2), 165.95 (3) (intro.), 165.95
4 (3) (b), 165.95 (3) (c), 165.95 (3) (g), 165.95 (3) (h), 165.95 (3) (i), 165.95 (3) (k),
5 165.95 (4), 165.95 (5) (a), 165.95 (5) (b), 165.95 (6), 165.95 (7), 165.95 (8), 302.43,
6 961.472 (5) (b), 967.11 (1) and 973.155 (1m); and *to create* 15.257 (3), 165.95
7 (1) (ag), 165.95 (1) (am), 165.95 (3) (ag), 165.95 (3) (bd), 165.95 (3) (cm), 165.95
8 (3m) and 165.95 (7r) of the statutes; **relating to:** providing grants to certain
9 county or tribal criminal justice projects.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

1 **SECTION 1.** 15.257 (3) of the statutes is created to read:

2 **15.257 (3) TREATMENT ALTERNATIVES AND DIVERSION COUNCIL.** There is created
3 in the department of justice a treatment alternatives and diversion council
4 consisting of persons appointed by the attorney general for staggered 3-year terms.
5 Members shall include at least one each of representatives of law enforcement,
6 judiciary, district attorneys, public defenders or criminal defense counsel,
7 corrections, and use disorder treatment service providers. The council may consist
8 in whole or in part of members of the criminal justice coordinating council.

 ****NOTE: Under current law, s. 15.01 (4) defines a “council” as “a part-time body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government[.]” I thought that this was the proper place for the advisory committee described in the materials forwarded to me, although generally the statutorily created councils have a specified number of members.

 ****NOTE: I couldn’t find a reference to the “criminal justice coordinating council” in current law. Is this council known by another name? If so, I think this section should cross-reference the statute under which that council operates.

9 **SECTION 2.** 165.95 (1) (intro.) of the statutes, as affected by 2013 Wisconsin Act
10 20, is amended to read:

11 165.95 (1) (intro.) In this section, ~~“violent offender” means a person to whom~~
12 ~~one of the following applies:~~

13 **SECTION 3.** 165.95 (1) (a) of the statutes, as affected by 2013 Wisconsin Act 20,
14 is repealed.

15 **SECTION 4.** 165.95 (1) (ag) of the statutes is created to read:

16 165.95 (1) (ag) “Research-based” means consistent with current criminal
17 justice research, standards, and practices, as determined by government agencies
18 concerned with criminal justice and corrections, and by private entities concerned
19 with the delivery of criminal and social justice.

 ****NOTE: The draft, in several places, requires practices or services to be “research-based.” In light of that, I believe the term should be defined. I created this

definition based on some of the side-notes provided in the materials forwarded to me. Please let me know if it reflects your intent. I think the definition is a bit vague, particularly with regards to the “private entities concerned with the delivery of criminal and social justice,” so please let me know if you have alternative wording.

1 **SECTION 5.** 165.95 (1) (am) of the statutes is created to read:

2 165.95 (1) (am) “Tribe” has the meaning given in s. 165.91.

3 **SECTION 6.** 165.95 (1) (b) of the statutes, as affected by 2013 Wisconsin Act 20,
4 is repealed.

5 **SECTION 7.** 165.95 (2) of the statutes, as affected by 2013 Wisconsin Act 20, is
6 amended to read:

7 165.95 (2) The department of justice shall make grants to counties and to tribes
8 to enable them to establish and operate ~~programs~~ projects, including suspended and
9 deferred prosecution ~~programs~~ projects and ~~programs based on principles of~~
10 restorative justice, projects that operate on a continuum from intervention to
11 pre-release reentry programs that provide alternatives to prosecution and,
12 incarceration, or both, for criminal offenders ~~who abuse alcohol or other drugs~~. The
13 department of justice shall make the grants from the appropriations under s. 20.455
14 (2) (em), (kn), and (kv). The department of justice shall collaborate with the
15 departments of corrections and, health and family services ~~in establishing this grant~~
16 program, and any other department or agency as it determines is necessary to
17 maximize the impact of the programs funded by grants awarded under this section.

****NOTE: Please note that the materials submitted to me added, as an alternative to grants, “or any other [funding] mechanism identified by the legislature”. I did not put that in this draft, however, because the rest of the statute still refers only to “grants,” and because if the legislature identifies and approves another funding mechanism, it would be necessary to amend this statute and the applicable appropriations to include those other mechanisms.

****NOTE: Under this draft, the department of justice is still determining eligibility for grants and is still determining how much funding to grant to the approved projects. I am not sure what this language you provided to me means: “[the department] shall have fiscal administration of this grant”. Do you want the department of justice to have continued involvement in the fiscal management of the projects that it funds, instead of

the grant recipients? If it simply means that DOJ issues the grants, then that is already in current law. Please clarify.

****NOTE: Additionally, I am not sure what is intended by the submitted language that states that the department of justice shall consult with the departments of corrections and health services “in order to have programmatic oversight over this grant program.” Do you want DOJ, DOC, and DHS to oversee the projects that receive grants? I didn’t think that was the goal, so I drafted to require DOJ to consult with DOC, DHS, and any other agency or department it thinks is necessary to maximize the impact of the programs funded by grants. I’m not sure whether that reflects your intent; perhaps you mean for DOJ, DOC, and DHS to have shared responsibility for deciding which projects to fund with the grants? Please let me know if the language I added to the draft does not reflect your intent.

****NOTE: Please also note that the language in the materials submitted to me that refers to eligibility criteria for receiving a grant (such as being research-based), to requirements for grant recipients to provide results date, and to requirements as to how the department evaluates success have been placed in different parts of the statute. I tried, in this section, to simply identify the program and the kinds of projects it will fund. Please let me know if this is not acceptable.

****NOTE: I made other changes in the language submitted in order to comply with drafting standards. Let me know if you would like further clarification of any of the changes I made.

1 **SECTION 8.** 165.95 (2r) of the statutes, as affected by 2013 Wisconsin Act 20, is
2 repealed.

3 **SECTION 9.** 165.95 (3) (intro.) of the statutes, as affected by 2013 Wisconsin Act
4 20, is amended to read:

5 165.95 (3) (intro.) A county or tribe shall be eligible for a grant under sub. (2)
6 if all of the following apply:

****NOTE: Please note that I included the language submitted regarding the continuum of services and the research-based nature of eligible projects in a separate section and simply repealed s. 165.95 (3) (a) (formerly 16.964 (12) (c) 1.).

7 **SECTION 10.** 165.95 (3) (a) of the statutes, as affected by 2013 Wisconsin Act 20,
8 is repealed.

9 **SECTION 11.** 165.95 (3) (ag) of the statutes is created to read:

10 165.95 (3) (ag) The project provides an alternative to prosecution,
11 incarceration, or both, including deferred prosecution or community-based
12 corrections.

1 **SECTION 12.** 165.95 (3) (b) of the statutes, as affected by 2013 Wisconsin Act 20,
2 is amended to read:

3 165.95 (3) (b) The ~~program project~~ is research-based and is designed to
4 promote and facilitate the implementation of effective criminal justice policies and
5 practices that maximize justice and public safety, reduce prison and jail populations,
6 ~~reduce prosecution and incarceration costs, and~~ reduce recidivism, ~~and improve the~~
7 welfare of participants' families by meeting the comprehensive needs of participants.

8 **SECTION 13.** 165.95 (3) (bd) of the statutes is created to read:

9 165.95 (3) (bd) The project identifies each offender group served by the project
10 and identifies the research-based practices the project employs for each offender
11 group it serves.

 ****NOTE: This paragraph may be redundant; please let me know if you think it
should be removed.

12 **SECTION 14.** 165.95 (3) (c) of the statutes, as affected by 2013 Wisconsin Act 20,
13 is amended to read:

14 165.95 (3) (c) The ~~program establishes~~ project uses research-based eligibility
15 criteria for ~~a person's~~ an offender's participation. ~~The criteria shall specify that a~~
16 ~~violent offender is not eligible to participate in the program, including a validated~~
17 risk, needs, and responsivity assessment instrument, to determine which offenders
18 are eligible for participation in the project.

19 **SECTION 15.** 165.95 (3) (cm) of the statutes is created to read:

20 165.95 (3) (cm) The project targets interventions based on each offender's risk,
21 needs, and responsibility assessment and uses universal screening, intrinsic
22 motivation, and use dosage and treatment principles, and provides skills training

1 with directed practice and positive reinforcement, and an ongoing support in natural
2 communities.

****NOTE: Please note that this paragraph uses a lot of undefined terms. I do not know, for example, what “use dosage and treatment principles,” “universal screening,” “directed practice and positive reinforcement,” or “natural communities” means. These terms may need to be defined in the statutes.

3 **SECTION 16.** 165.95 (3) (d) of the statutes, as affected by 2013 Wisconsin Act 20,
4 is repealed.

5 **SECTION 17.** 165.95 (3) (e) of the statutes, as affected by 2013 Wisconsin Act 20,
6 is repealed.

7 **SECTION 18.** 165.95 (3) (f) of the statutes, as affected by 2013 Wisconsin Act 20,
8 is repealed.

****NOTE: Please note that I simply repealed s. 165.95 (3) (d) (previously 16.964 (12) (c) 4.) rather than amend it, because the amended materials forwarded to me were redundant. The other paragraphs developed in this draft that set forth the requirements for a project to be eligible for a grant cover the same ground. Please let me know if you disagree, or if I missed any criteria.

9 **SECTION 19.** 165.95 (3) (g) of the statutes, as affected by 2013 Wisconsin Act 20,
10 is amended to read:

11 165.95 (3) (g) The ~~program project~~ is designed to integrate all mental health
12 services provided to ~~program project~~ participants by state and local government
13 agencies, ~~tribes~~, and other organizations. The ~~program project~~ shall require regular
14 communication among ~~a participant’s substance abuse treatment providers, other~~
15 ~~an offender’s~~ service providers, the case manager, and any person designated under
16 the ~~program project~~ to monitor the person’s ~~offender’s~~ compliance with his or her
17 obligations under the ~~program project~~, and any probation, extended supervision, and
18 parole agent assigned to the ~~participant offender~~.

19 **SECTION 20.** 165.95 (3) (h) of the statutes, as affected by 2013 Wisconsin Act
20 is amended to read:

1 165.95 (3) (h) ~~The program project provides substance abuse and mental health~~
2 ~~treatment services through providers that~~ use research-based practices in the
3 delivery of services and that are certified by the department of health services or
4 licensed as required by state law to provide the services approved under the project.

5 **SECTION 21.** 165.95 (3) (i) of the statutes, as affected by 2013 Wisconsin Act 20,
6 is amended to read:

7 165.95 (3) (i) ~~The program requires participants~~ project may require offenders
8 to pay a reasonable amount for their treatment, based on their income and available
9 assets, and pursues and uses all possible resources available through insurance and
10 federal, state, and local aid programs, including cash, vouchers, and direct services.

11 **SECTION 22.** 165.95 (3) (j) of the statutes, as affected by 2013 Wisconsin Act 20,
12 is repealed.

13 **SECTION 23.** 165.95 (3) (k) of the statutes, as affected by 2013 Wisconsin Act
14 20, is amended to read:

15 165.95 (3) (k) The county or tribe complies with other eligibility requirements
16 established by the department of justice to promote the objectives listed in ~~pars. (a)~~
17 ~~and (b)~~ this subsection.

18 **SECTION 24.** 165.95 (3m) of the statutes is created to read:

19 165.95 (3m) The department of justice shall, in determining which projects will
20 receive a grant under this section, consider the project's design specifications,
21 targeted offender group, and projected goals, and the extent to which the goals of
22 each project may be measured.

****NOTE: This subsection contains some of the criteria DOJ must consider when
deciding which projects to fund. If you have other criteria that DOJ must use, I can draft
those criteria into this subsection.

1 **SECTION 25.** 165.95 (4) of the statutes, as affected by 2013 Wisconsin Act 20,
2 is amended to read:

3 165.95 (4) In implementing a ~~program~~ project that meets the requirements of
4 sub. (3), a county department or a tribe may contract with or award grants to a
5 religious organization under s. 59.54 (27).

 ****NOTE: Please note that I added “a tribe” to this subsection. Please let me know
if you do not want that change.

6 **SECTION 26.** 165.95 (5) (a) of the statutes, as affected by 2013 Wisconsin Act 20,
7 is amended to read:

8 165.95 (5) (a) A county or tribe that receives a grant under this section shall
9 ~~create~~ identify an oversight committee to develop and implement the project design
10 and advise the county or tribe in administering and evaluating its ~~program~~ project.
11 Each committee shall consist of a circuit court judge, the district attorney or his or
12 her designee, the state public defender or his or her designee, a local law enforcement
13 official, a representative of the county, a representative of each other county agency
14 responsible for providing social services, including services relating to child welfare,
15 mental health, and the Wisconsin Works program, representatives of the
16 departments of corrections and health and family services, a representative from
17 private social services agencies, a representative of ~~substance abuse~~ use disorder
18 treatment providers, a representative of mental health treatment providers, and
19 other members ~~to be determined by the county~~ the oversight committee determines
20 are appropriate to the project.

 ****NOTE: I am not sure I understand the intent behind requiring a committee to
help develop and implement the project design, given that the requirement is for counties
or tribes that have already received a grant. Perhaps it would make more sense to simply
keep current language about “administering and evaluating” and amend it to read
something like “an oversight committee to advise the county or tribe in administering,
evaluating, and modifying” its project.

****NOTE: Please also note that at least some of the requirements for the members of the committee seem to apply only to counties. Please let me know if you want to change or add any member as it would apply to a tribe. For example, instead of a county representative, the draft could require a tribe to appoint a tribal representative and/or a representative from the county where the tribal lands are located.

****NOTE: Please note that current law already requires a “representative from [a] county agency responsible for providing ... services relating to ... mental health.” The materials forwarded to me added a requirement that a “representative of mental health treatment providers” be a member of the committee. I added that to this draft, but one or the other requirement may be redundant.

1 **SECTION 27.** 165.95 (5) (b) of the statutes, as affected by 2013 Wisconsin Act 20,
2 is amended to read:

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

****NOTE: This paragraph requires an annual report to DOJ and to the oversight committee. The submitted materials also contained a requirement that each county or tribe provide a monthly report to an independent evaluator. As explained in the notes to section 34 of the draft, current law no longer has a provision for contracting with an independent evaluator. You will have to either recreate that provision or, alternatively, amend this section to require grant recipients to provide monthly (or quarterly) reports to DOJ.

****NOTE: You may also want to tie the reporting requirements for the grant recipients to the data that you want DOJ (or an outside evaluator) to evaluate: cost/benefit analysis, impact on targeted groups, rates of recidivism, etc.

8 **SECTION 28.** 165.95 (5m) of the statutes, as affected by 2013 Wisconsin Act 20,
9 is repealed.

10 **SECTION 29.** 165.95 (6) of the statutes, as affected by 2013 Wisconsin Act 20,
11 is amended to read:

12 165.95 (6) ~~Two or more counties~~ A county or tribe may, with one or more other
13 counties or tribes, jointly apply for and receive a grant under this section. ~~If counties~~
14 ~~submit~~ Upon submitting a joint application, ~~they~~ each county or tribe shall include
15 with ~~their~~ the application a written agreement specifying each tribe's and each

1 county department's role in developing, administering, and evaluating the program
2 project. The oversight committee established under sub. (5) (a) shall consist of
3 representatives from each county or tribe that participates in the project.

****NOTE: I reworded this subsection to comply with drafting standards. Please let
me know if you would like any changes.

4 **SECTION 30.** 165.95 (7) of the statutes, as affected by 2013 Wisconsin Act 20,
5 is amended to read:

6 165.95 (7) Grants provided under this section shall be provided on a calendar
7 year basis beginning on January 1, 2007. If the department of justice decides to make
8 a grant to a county under this section, the department of justice shall notify the
9 county or tribe of its decision and the amount of the grant no later than September
10 1 of the year preceding the year for which the grant will be made.

****NOTE: I did not amend the January 1, 2007, date because the draft still requires
grants to be made on a calendar basis. If the draft had changed that to, say, a fiscal year
basis, then I would have amended the beginning year as well. There is no change in the
law requiring the grants, beginning in 2007, to be made on a calendar basis.

****NOTE: As indicated in an earlier note, I did not add "or other funding as
authorized by the legislature," because if other funding is authorized by the legislature,
the statute will need to be amended to specify the type of funding authorized.

****NOTE: The materials forwarded to me deleted the word "preceding" in this
subsection and substituted the word "proceeding." I believe "preceding" is correct, so I
did not include that change. If you believe "proceeding" is correct, please let me know.

11 **SECTION 31.** 165.95 (7m) of the statutes, as affected by 2013 Wisconsin Act 20,
12 is repealed.

****NOTE: Drafting conventions require that we either repeal or repeal and recreate
any statutory unit that we wish to strike in its entirety and replace with new language.

13 **SECTION 32.** 165.95 (7r) of the statutes is created to read:

14 165.95 (7r) The department of justice shall annually review and assess, on
15 performance and participation in project evaluation and monitoring activities, each
16 project funded under this section. A county or tribe that receives a grant under this

1 section shall submit a new and complete application for a grant under this section
2 every 5 years following its receipt of an initial grant.

****NOTE: The materials forwarded to me required “project sponsors” to submit the application; I changed that to “a county or tribe” because “project sponsors” is not a phrase used elsewhere in the draft. Please let me know if that should be changed.

****NOTE: This subsection sets forth two sets of requirements: one for DOJ to review and assess each project on an annual basis, and one for the grant recipients to submit a new application every 5 years. I recommend splitting those two requirements into two separate subsections, and setting forth the criteria for DOJ to evaluate the effectiveness (cost-benefit analysis, reduction in recidivism, etc.) in one of them.

3 **SECTION 33.** 165.95 (8) of the statutes, as affected by 2013 Wisconsin Act 20,
4 is amended to read:

5 165.95 (8) The department of justice shall assist a county or tribe receiving a
6 grant under this section in obtaining funding from other sources for its ~~program~~
7 project.

8 **SECTION 34.** 165.95 (9) of the statutes, as affected by 2013 Wisconsin Act 20,
9 is repealed.

****NOTE: Please note that the statute requiring the office of justice assistance to enter into a contract for the purpose of evaluating the grant program was significantly amended in Act 20, so that current law (s. 165.95 (10) simply reads: “The department of justice shall evaluate every 2 years, the grant program established under this section.” The statute requiring the office of justice assistance to submit a report to the legislature (s. 16.964 (12) (k)) has been repealed. In light of these changes, I am not sure how much of the old statutes you want to recreate in this draft.

****NOTE: For example, if you wish to require DOJ to have a contract with an outside evaluator of the grant program, you will need to recreate that statutory section and the funding mechanism for those contracts.

10 **SECTION 35.** 302.43 of the statutes, as affected by 2013 Wisconsin Act 20, is
11 amended to read:

12 **302.43 Good time.** Every inmate of a county jail is eligible to earn good time
13 in the amount of one-fourth of his or her term for good behavior if sentenced to at
14 least 4 days, but fractions of a day shall be ignored. An inmate shall be given credit
15 for time served prior to sentencing under s. 973.155, including good time under s.

1 973.155 (4). An inmate who violates any law or any regulation of the jail, or neglects
2 or refuses to perform any duty lawfully required of him or her, may be deprived by
3 the sheriff of good time under this section, except that the sheriff shall not deprive
4 the inmate of more than 2 days good time for any one offense without the approval
5 of the court. An inmate who files an action or special proceeding, including a petition
6 for a common law writ of certiorari, to which s. 807.15 applies shall be deprived of
7 the number of days of good time specified in the court order prepared under s. 807.15
8 (3). This section does not apply to a person who is confined in the county jail in
9 connection with his or her participation in a substance abuse treatment program
10 that meets the requirements of s. 165.95 (3), as determined by the department of
11 justice under s. 165.95 ~~(9) and (10)~~.

12 **SECTION 36.** 961.472 (5) (b) of the statutes, as affected by 2013 Wisconsin Act
13 20, is amended to read:

14 961.472 (5) (b) The person is participating in a substance abuse treatment
15 program that meets the requirements of s. 165.95 (3), as determined by the
16 department of justice under s. 165.95 ~~(9) and (10)~~.

17 **SECTION 37.** 967.11 (1) of the statutes, as affected by 2013 Wisconsin Act 20,
18 is amended to read:

19 967.11 (1) In this section, “approved substance abuse treatment program”
20 means a substance abuse treatment program that meets the requirements of s.
21 165.95 (3), as determined by the department of justice under s. 165.95 ~~(9) and (10)~~.

22 **SECTION 38.** 973.155 (1m) of the statutes, as affected by 2013 Wisconsin Act 20,
23 is amended to read:

24 973.155 (1m) A convicted offender shall be given credit toward the service of
25 his or her sentence for all days spent in custody as part of a substance abuse

1 treatment program that meets the requirements of s. 165.95 (3), as determined by
2 the department of justice under s. 165.95 ~~(9)~~ and (10), for any offense arising out of
3 the course of conduct that led to the person's placement in that program.

4 (END)