

## **Treatment Alternative and Diversion (TAD) Program Violent Offender Definition**

The purpose of this document is to provide guidance to the TAD sites regarding the application of the violent offender restriction based on the applicable section from Wis. Stat. § [165.95](#).

Wis. Stat. § [165.95](#) Alternatives to incarceration; grant program.

(1) In this section, "violent offender" means a person to whom one of the following applies:

- (a) The person has been charged with or convicted of an offense in a pending case and, during the course of the offense, the person carried, possessed, or used a dangerous weapon, the person used force against another person, or a person died or suffered serious bodily harm.
- (b) The person has one or more prior convictions for a felony involving the use or attempted use of force against another person with the intent to cause death or serious bodily harm.

### **Violent Offender Considerations:**

Teams should establish written eligibility criteria and should ensure that the violent offender restriction is part of their eligibility criteria for the TAD program under section Wis. Stat. § [165.95\(3\)\(c\)](#).

- Teams should incorporate the language of the statute and guidance provided in this document into the eligibility criteria.
- A copy of the eligibility criteria should be provided to the Department of Justice (DOJ) as part of the grant application process.
- Decisions on individual cases and whether they meet the violent offender restriction should be decided as a team at the local level as part of the eligibility determination process.
- Ultimately, the decision to admit an individual to the program is up to each county or tribe. The decision should be consistent with the local eligibility criteria that have been established.
- The reason for denial should be documented for all cases, but in particular for those where the violent offender restriction is part of the decision.
- If there are questions within the team on an individual decision, counties or tribes should seek guidance from their local corporation counsel on a particular case as it relates to the application of the eligibility criteria and the statutory language.
- In terms of grant funding, the expectation is that programs align with the statute through their eligibility criteria and admission process. DOJ is requesting documentation of this process, rather than focusing on the decisions made in individual cases.

- Wis. Stat. § [165.95\(1\)\(a\)](#) applies to the crimes for which the offender is seeking admittance to an alternative to incarceration program, and Wis. Stat. § [165.95\(1\)\(b\)](#) applies to prior convictions. See the “TAD Violent Offender Decision Tree” for additional assistance.
  - Wis. Stat. § [165.95\(1\)\(a\)](#) refers to the *current offense(s)* (charged with or convicted of in a pending case).
    - The individual would typically be ineligible as a “violent offender” if a dangerous weapon was used, carried, or possessed during the offense, *or* force was used against another person, *or* serious bodily harm or death was involved, regardless of whether the charge is a misdemeanor or felony.
    - “Charged with” refers to charges being issued and a criminal complaint being filed by the prosecutor, not just an arrest or citation.
    - Depending on the status of the current case, if the person was charged with one or more offenses that would make them ineligible as a “violent offender” they should be excluded even if the charges are later dismissed.
    - If there are new charges with an Alternative to Revocation (ATR) admission, then the individual should be ineligible if those charges meet the “violent offender” criteria listed above.
    - This exclusion would apply even if the program would allow for a reduction or dismissal of charges after the program is successfully completed.
    - Programs can refer to the definition of “dangerous weapon” from Wis. Stat. § [939.22 \(10\)](#).
    - Additional criminal cases pending at the same time as the case for offense that is bringing the person into the program should be considered when determining their program eligibility, as such cases would also be a “pending case” within the meaning of subsection (a). Therefore, an additional pending case involving a dangerous weapon, use of force, bodily harm, etc., would make the individual ineligible for the program.
  - Wis. Stat. § [165.95\(1\)\(b\)](#) refers to *previous convictions*.
    - Programs can refer to the definition of criminal intent from Wis. Stat. § [939.23](#).
    - For convictions, the statute only applies if the conviction charge was a felony that involved the use or attempted use of force against another person with the intent to cause death or serious bodily harm.
    - There is no time limit in the statute for prior convictions. The statute applies regardless of how long ago the conviction occurred.
    - The previous convictions apply even if the individual is coming in as an Alternative to Revocation (ATR).
    - The previous convictions are specific to those what involved a felony conviction with the use or attempted use of force. If charges were dismissed but read-in
    - This subsection of the statute applies to felony convictions. A misdemeanor conviction would not make a person ineligible under this section, even if the original issued charge was a felony. For example, if the original charge was felony battery and involved force, but the charge was reduced to misdemeanor disorderly

conduct prior to conviction, this section of the statute would not preclude the individual's participation in the program.