

FAQs



The Violent Offender Prohibition in Tribal Healing to Wellness Courts

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1. What is a Tribal Healing to Wellness Court?

Tribal treatment courts, commonly known as Tribal Healing to Wellness Courts (THWCs), were originally funded in 1997 in coordination with the U.S. Department of Justice (DOJ), Office of Justice Programs, Drug Courts Program Office.¹ THWCs are collaborative approaches that incorporate treatment concepts in Tribal court settings.² These approaches include connecting participants to treatment services, emphasizing cooperation between departments, and using local Tribal practices for a higher level of accountability.³

THWCs encourage partnership within the Tribe while abiding by Federal grant requirements. One grant requirement THWCs monitor closely is the “violent offender” prohibition.⁴

2. What is the “violent offender” prohibition?⁵

The “violent offender” prohibition is outlined in [34 U.S.C. §§ 10612 and 10613](#) and prohibits certain Federally funded programs from permitting participation by a “violent offender.”⁶



¹ *Healing to Wellness Courts: A Preliminary Overview of Tribal Drug Courts*, Drug Courts Program Office (July 1999), page 1. Available at: <https://www.tribal-institute.org/download/heal.pdf>.

² *Tribal Healing to Wellness Courts: The Key Components*, 2nd Edition (May 2014), page ix. Available at: https://www.home.tlpi.org/files/ugd/1af47f_de68a7e9072e485e8ac397368688ad05.pdf.

³ *Id.*

⁴ This requirement applies to some drug court funds. Please contact your grant manager to determine applicability.

⁵ The Adult Tribal Healing to Wellness Court “violent offender” prohibition differs from the Juvenile/Youth Healing to Wellness Court “violent offender” prohibition set out in [34 U.S.C. § 10613\(b\)](#).

⁶ *FAQs: Violent Offender Prohibition*, Bureau of Justice Assistance (Mar. 2023), page 1. Available at: <https://bja.ojp.gov/funding/atc-violent-offender-prohibition-faq.pdf>.

3. Who is a “violent offender”?

The definition of “violent offender” is set out in [34 U.S.C. § 10613](#). For the purposes of THWCs, the term “violent offender” means a person “who—

- (1) is charged with or convicted of an offense that is punishable by a term of imprisonment exceeding one year, during the course of which offense or conduct —
 - A. the person carried, possessed, or used a firearm or dangerous weapon;
 - B. there occurred the death of or serious bodily injury to any person; or
 - C. there occurred the use of force against the person of another, without regard to whether any of the circumstances described in subparagraph (A) or (B) is an element of the offense or conduct of which or for which the person is charged or convicted; or
- (2) has 1 or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.”⁷



4. Which funding sources are affected by the “violent offender” prohibition?

The “violent offender” prohibition applies to THWCs funded through the Bureau of Justice Assistance (BJA) Adult Treatment Court (ATC) Program. This applies to adult drug courts (including THWCs) that are funded under BJA’s drug court specific solicitations. Starting in FY 2025, THWCs funded under CTAS (Coordinated Tribal Assistance Solicitation) Purpose Area 5 (BJA’s Adult Tribal Treatment Court Program) are allowed to use up to 10% of the award to serve “violent offenders” as long as the intention was declared at the time of application and the expenses are tracked separately (see question 13). THWCs funded prior to FY 2025 under CTAS Purpose Area 3 (BJA’s Tribal Justice Systems Program), however, are not subject to the “violent offender” prohibition. Please contact your grant manager to determine applicability.

5. Does the “violent offender” prohibition apply to the Veterans Treatment Court Discretionary Grant Program?

The “violent offender” prohibition does not apply to grants awarded with Veterans Treatment Court (VTC) Discretionary Grant Program funds. Grantees for that program are required to follow the *Ten Key Components of Veterans Treatment Courts*, which include targeting the correct level of risk, need, safety considerations, and impact on treatment for all VTC participants.⁸

⁷ [34 U.S.C. § 10613\(a\)](#).

⁸ See *The Ten Key Components of Veterans Treatment Courts*. Available at: <https://ntcrc.org/wp-content/uploads/2022/02/Ten-Key-Components-of-Veterans-Treatment-Courts.pdf>.

6. Does the “violent offender” prohibition apply to current charges or convictions?

For the purposes of adult criminal treatment court, the “violent offender” prohibition applies to both prior convictions and current charges or convictions of an adult THWC candidate.⁹ This provision differs from Youth Healing to Wellness Courts (YHWCs), where the “violent offender” prohibition applies only to a YHWC candidate’s juvenile/adult criminal history.¹⁰

7. How does the “violent offender” prohibition apply to *current* Tribal court charges or convictions?

The specific application of the “violent offender” prohibition to the current Tribal court charge or conviction generally hinges on whether the Tribe has enacted enhanced sentencing provisions under the 2010 Tribal Law and Order Act (TLOA),¹¹ that is, the “violent offender” prohibition generally does not apply to the current charge or conviction in Tribal court, unless:

- (1) the Tribe has adopted TLOA enhanced sentencing authority;¹²
- (2) the maximum term of imprisonment for the current charge or conviction under Tribal law is more than one year; *and*

- (3) the offense includes the statutory elements of [34 U.S.C. § 10613\(a\)](#) (e.g., used a firearm, death of or serious bodily injury occurred, use of force occurred).

Generally, then, the “violent offender” prohibition does not apply to the current Tribal court charge or conviction unless the Tribe has adopted TLOA enhanced sentencing since the prohibition applies to adults who have been “charged with or convicted of an offense that is punishable by a term of imprisonment exceeding one year.”¹³ Tribes that have not adopted TLOA enhanced sentencing are prohibited by the Indian Civil Rights Act (ICRA) from imposing a term of imprisonment exceeding one year.¹⁴ Consequently, current charges or convictions by Tribes that have not adopted TLOA enhanced sentencing are by definition not “punishable by a term of imprisonment exceeding one year.”¹⁵



⁹ [34 U.S.C. § 10613\(a\)](#).

¹⁰ [34 U.S.C. § 10613\(b\)](#).

¹¹ See *Enhanced Sentencing Authority: Tribal Law and Order Act* (Jan. 2024). Available at: https://www.home.tlpi.org/files/ugd/3fb28d_5acbb1f34cc44d5b965d0833a98d9ae.pdf.

¹² *Id.* at page 15 (showing only 17 Tribes however have adopted the TLOA enhanced sentencing as of January 2024).

¹³ [34 U.S.C. § 10613\(a\)\(1\)](#).

¹⁴ Indian Civil Rights Act (ICRA). Available at: <https://www.law.cornell.edu/uscode/text/25/chapter-15/subchapter-I>.

¹⁵ [34 U.S.C. § 10613\(a\)\(1\)](#).

8. How does the “violent offender” prohibition apply to *prior* Tribal court convictions?

The specific application of the “violent offender” prohibition to prior Tribal court convictions generally hinges on whether the Tribe has enacted enhanced sentencing provisions under the 2010 Tribal Law and Order Act (TLOA),¹⁶ that is, the “violent offender” prohibition generally does not apply to prior Tribal court convictions unless:

- (1) the Tribe adopted TLOA enhanced sentencing authority prior to the conviction;¹⁷
- (2) the conviction was for “a felony crime of violence;”¹⁸ *and*
- (3) the conviction involved “the use or attempted use of force against a person with intent to cause death or serious bodily harm.”¹⁹

Generally, then, the “violent offender” prohibition would not apply to prior Tribal convictions unless the Tribe has adopted TLOA enhanced sentencing before the conviction and the conviction was for “a felony crime of violence.” Federal law provides that a felony constitutes any offense punishable by death or imprisonment for a term exceeding one year.²⁰ Tribes that have not adopted TLOA enhanced sentencing are prohibited by ICRA from imposing a term of imprisonment exceeding one year.²¹ Consequently, convictions by Tribes that have not adopted TLOA enhanced sentencing are by definition not “felony-level offenses” unless the Tribal code specifically designates the offense as a felony.

9. How does the “violent offender” prohibition apply to a *state* or *Federal court* conviction?

The “violent offender” prohibition does apply to prior convictions from Federal court and/or state/county courts.²² This gives rise to the need to undertake criminal history background checks and to determine whether the THWC candidate is a “violent offender” based on the laws of the jurisdiction that convicted the candidate.

10. Would the “violent offender” prohibition indicated under 34 USC 10613(a)(1) and 34 USC 10613(a)(2) apply to a potential THWC participant that committed the offense as a juvenile?

Any juvenile adjudication, no matter how violent the offense charged, is immaterial in determining whether an individual is a “violent offender.” Only charges or convictions in a criminal (i.e., adult) court are of significance in making those determinations.

11. Does an individual’s entire criminal history contribute to the determination of the “violent offender” status?

When analyzing whether a person is disqualified under 34 USC § 10613(a)(2), a grantee would have to take into account an individual’s entire criminal history, regardless of how much time has lapsed since that conviction.

¹⁶ *Supra* note 11.

¹⁷ 34 U.S.C. § 10613(a)(1).

¹⁸ 34 U.S.C. § 10613(a)(2).

¹⁹ *Id.*

²⁰ 18 U.S. Code § 3559(a).

²¹ Indian Civil Rights Act (ICRA). Available at: <https://www.law.cornell.edu/uscode/text/25/chapter-15/subchapter-I>.

²² Or Tribal courts that have adopted TLOA enhanced sentencing.

12. What if we are not sure if the “violent offender” prohibition applies?

Due to varying legal definitions, the BJA suggests that it is more appropriate for the grantee to determine application based on local laws and circumstances. If the grantee has concerns about a certain charge or conviction as being potentially disqualifying, but after diligent analysis reasonably determines that that charge or conviction does not disqualify the potential participant, then BJA recommends that the grantee maintain that analysis with grant files to show compliance with the grant conditions.²³

13. Can an Adult Treatment Court (ATC) funded THWC provide services to a program participant using non-ATC funds if they have deemed that participant as a “violent offender,” as set forth in the statute (34 U.S.C. § 10613)?

Under the Adult Treatment Court (ATC) Program statutory authorization, ATC funds may not be used to serve persons who meet the definition of “violent offender.” This prohibition applies only to activities that are funded by the ATC grant award, including any match funds contributed by the THWC grantee. Grantees who intend to serve “violent offenders” with non-ATC funds must track these expenses to ensure separation of funds.

Such grantees must maintain documentation that demonstrates the separation of ATC-funded expenses and services from non-ATC funded expenses and services.

In the case of salaries for individuals who may serve both types of participants—nonviolent offenders who are eligible for services with ATC funds, and violent offenders who are not—the recipient must ensure that those individuals accurately track the percentage of time worked with participants in both situations and document that the ATC funds are expended only for the percentage of time working with nonviolent offenders.²⁴

For more information concerning Tribal Healing to Wellness Courts, please visit www.WellnessCourts.org.

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²³ FAQs: Violent Offender Prohibition, Bureau of Justice Assistance (Mar. 2023), page 1. Available at: <https://bja.ojp.gov/funding/atc-violent-offender-prohibition-faq.pdf>.

²⁴ Adult Drug Court Programs: Factors related to Eligibility and Acceptable of Offers to Participate in DOJ Funded Adult Drug Courts, United States Government Accountability Office (Feb. 2023), page 14. Available at: <https://www.gao.gov/assets/gao-23-105272.pdf>.