ENROLLED SENATE
BILL NO. 718

By: Wilkerson of the Senate

and

Askins of the House

An Act relating to criminal procedure; amending Section 1, Chapter 359, O.S.L. 1997 (22 O.S. Supp. 2000, Section 471), which relates to the Oklahoma Drug Court Act; modifying references; amending Section 2, Chapter 359, O.S.L. 1997 (22 O.S. Supp. 2000, Section 471.1), which relates to authorization of drug court programs; prohibiting blind plea or split sentence in drug court; prohibiting misdemeanor offense in drug court; providing exception for domestic violence case in certain situation; requiring traditional prosecution when certain treatment is required; authorizing the court to request certain assistance; modifying language; requiring traditional prosecution for certain offenders; amending Section 3, Chapter 359, O.S.L. 1997 (22 O.S. Supp. 2000, Section 471.2), which relates to eligibility for drug court; clarifying language; prohibiting blind plea; prohibiting suspended and split sentences in plea agreement for drug court; prohibiting treatment in a correctional facility or jail as part of plea agreement for drug court; modifying reference; amending Section 11, Chapter 359, O.S.L. 1997 (22 O.S. Supp. 2000, Section 471.10), which relates to implementation of the Oklahoma Drug Court Act; authorizing the Department of Mental Health and Substance Abuse Services to select existing assessment instrument for use by all courts; requiring the Department of Mental Health and Substance Abuse Services in consultation with the Administrative Office of the Courts to promulgate rules, procedures and forms; directing the Department of Mental Health and Substance Abuse Services to develop a training manual with certain assistance; requiring each district court to publish an operational manual; authorizing employment of personnel subject to funds available; amending 63 O.S. 1991, Section 2-503.2, as last amended by Section 2, Chapter 53, O.S.L. 1998 (63 O.S. Supp. 2000, Section 2-503.2), which relates to mandatory assessment for certain violations; prohibiting waiver of certain assessment; providing for assessment in event court fails to set specific amount; making certain amount payable by monthly installments; prohibiting limitation of collection time period for admission to certain program; directing the Office of

the State Auditor and Inspector to require a compliance audit annually of certain funds; requiring audit report be distributed to certain persons; changing name of certain fund; expanding use of certain funds; authorizing the Department of Mental Health and Substance Abuse Services to set salaries and employ personnel for specialty courts; defining term; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 1, Chapter 359, O.S.L. 1997 (22 O.S. Supp. 2000, Section 471), is amended to read as follows:

Section 471. Sections ~~1~~ 471 through ~~12~~ 471.11 of this ~~act~~ title shall be known and may be cited as the "Oklahoma Drug Court Act".

SECTION 2. AMENDATORY Section 2, Chapter 359, O.S.L. 1997 (22 O.S. Supp. 2000, Section 471.1), is amended to read as follows:

Section 471.1 A. For purposes of this act, "drug court", "drug court program" or "program" means an immediate and highly structured judicial intervention process for substance abuse treatment of eligible felony offenders which expedites the criminal case, and requires successful completion of the plea agreement in lieu of incarceration; provided, however, that no blind plea or suspended or split sentence shall be allowed for purposes of participating in the Oklahoma Drug Court Act, except as provided in Section 471.8 of this title.

B. Each district court of this state is authorized to establish a felony drug court program pursuant to the provisions of ~~this act~~ the Oklahoma Drug Court Act, subject to availability of funds. No misdemeanor offense may be processed through the Oklahoma Drug Court Act, unless such offense was plead in conjunction with an eligible felony offense. Juvenile drug courts may be established based upon the provisions of this act; provided, however, juveniles shall not be held, processed, or treated in any manner which violates any provision of Title 10 of the Oklahoma Statutes.

C. Drug court programs shall not apply to any violent criminal offense, except domestic violence as provided in Section 471.2 of this title. Eligible offenses may further be restricted by the rules of the specific drug court program. Nothing in ~~this act~~ the Oklahoma Drug Court Act shall be construed to require a drug court to consider every offender with a treatable condition or addiction, regardless of the fact that the controlling offense is eligible for consideration in the program. Traditional prosecution shall be required ~~where~~ when an offender is determined not appropriate for the drug court program or when an offender requires treatment in any

correctional facility or jail or any other restrictive housing facility.

D. Drug court programs shall require a separate judicial processing system differing in practice and design from the traditional adversarial criminal prosecution and trial systems. Whenever possible, a drug court team shall be designated consisting of a judge ~~to administer the program~~, a district attorney, a defense attorney, and other persons designated by the drug court team who shall have appropriate understanding of the goals of the program and of the appropriate treatment methods for the various conditions. The assignment of any person to the drug court team shall not preclude the assigned person from performing other duties required in the course of their office or employment. The chief judge of the judicial district, or if the district has more than one chief judge ~~than~~ then the presiding judge of the Administrative Judicial District, shall designate one or more judges to administer the drug court program. The assignment of any judge to a drug court program or the designation of a drug court docket shall not mandate the assignment of all substance abuse related cases to the drug court docket or the program; however, nothing in ~~this act~~ the Oklahoma Drug Court Act shall be construed to preclude the assignment of all criminal cases relating to substance abuse or drug possession as provided by the rules established for the specific drug court program.

E. When a drug court program is established, the arresting officer shall file the criminal case record for potentially eligible offenders with the district attorney within four (4) days of the arrest. The district attorney shall file an information in the case within twenty-four (24) hours of receipt of the criminal case record when the offender appears eligible for consideration for the program. The information may be amended as necessary when an offender is denied admittance into the drug court program or for other purposes as provided in Section 304 of ~~Title 22 of the Oklahoma Statutes~~ this title. Any person arrested upon a warrant for his or her arrest shall not be eligible for the drug court program without the approval of the district attorney. Any criminal case which has been filed and processed in the traditional manner shall be cross-referenced to a drug court case file by the court clerk, if the case is subsequently assigned to the drug court program. The originating criminal case file shall remain open to public inspection. The judge shall determine what information or pleadings are to be retained in the drug court case file, which shall be closed to public inspection.

F. The court may request assistance from the Department of Mental Health and Substance Abuse Services which shall be the primary agency to assist in developing, administering, and implementing a drug court program or from any state or local agency in obtaining the necessary treatment services which will assure maximum opportunity for successful treatment, education, and rehabilitation for offenders admitted to the program. All participating state and local agencies are directed to coordinate with each other and cooperate in assisting the district court in establishing a drug court program.

G. Each drug court program shall ensure, but not be limited to:

1. Strong linkage between participating agencies;

2. Access by all participating parties of a case to information on the offender's progress;

3. Vigilant supervision and monitoring procedures;

4. Random substance abuse testing;

5. Provisions for noncompliance, modification of the treatment plan, and revocation proceedings;

6. Availability of residential treatment facilities and outpatient services;

7. Payment of court costs, treatment costs, supervision fees, and program user fees by the offender;

8. Methods for measuring application of disciplinary sanctions, including provisions for:

a. increased supervision,

b. urinalysis testing,

c. intensive treatment,

d. short-term confinement not to exceed five (5) days,

e. recycling the offender into the program after a disciplinary action for a minimum violation of the treatment plan,

f. reinstating the offender into the program after a disciplinary action for a major violation of the treatment plan, and

g. revocation from the program; and

9. Methods for measuring performance-based effectiveness of each individual treatment provider's services.

H. All drug court programs shall be required to keep reliable data on recidivism, relapse, restarts, sanctions imposed, and incentives given.

SECTION 3. AMENDATORY Section 3, Chapter 359, O.S.L. 1997 (22 O.S. Supp. 2000, Section 471.2), is amended to read as follows:

Section 471.2 A. The initial opportunity for review of an offender for a drug court program shall occur within four (4) days after the arrest and detention or incarceration of the offender in the city or county jail, or if an immediate bond release program is available through the jail, the initial opportunity for review shall

occur in conjunction with the bond release program. When a drug court is established, the following information shall be initially reviewed by the sheriff or designee, if the offender is held in a county jail, or by the chief of police or designee, if the offender is held in a city jail:

1. The offender's arrest or charge does not involve a crime of violence against any person, unless there is a specific treatment program in the jurisdiction designed to address domestic violence and the offense is related to domestic violence and substance abuse;

2. The offender has no prior felony conviction in this state or another state for a violent offense, except as may be allowed in a domestic violence treatment program authorized by the drug court program. It shall be sufficient for this paragraph that a criminal history records name search was conducted and indicated no apparent violent offense;

3. The offender's arrest or charge does not involve a violation of the Trafficking In Illegal Drugs Act, Section 2-414 et seq. of Title 63 of the Oklahoma Statutes;

4. The offender has committed a felony offense; and

5. The offender:

a. admits to having a substance abuse addiction,

b. appears to have a substance abuse addiction,

c. is known to have a substance abuse addiction, or

d. the arrest or charge is based upon an offense eligible for the drug court program.

B. If it appears to the reviewing officer that the offender may be potentially eligible for the drug court program based upon a review of the information in subsection A of this section, the offender shall be given an eligibility form which may be voluntarily completed by the offender, and the reviewing officer shall file the criminal case record within the time prescribed in subsection E of Section ~~2~~ 471.1 of this ~~act~~ title. The offender shall not automatically be considered for the program based upon this review. The offender must request consideration for the drug court program as provided in subsection C of this section and shall have approval from the district attorney before being considered for the drug court program. The eligibility form shall describe the drug court program for which the offender may be eligible, including, but not limited to:

1. A full description of the drug court process and investigation;

2. A general explanation of the roles and authority of the supervising staff, the district attorney, the defense attorney, the treatment provider, the offender, and the judge in the drug court program;

3. A clear statement that the drug court judge may decide after a hearing not to consider the offender for the drug court program and in that event the offender will be prosecuted in the traditional manner;

4. A clear statement that the offender is required, before consideration in the program, to enter a guilty plea as part of a written plea agreement for the felony offense, but may not enter a blind plea;

5. A clear statement that the plea agreement will specify the offense to which the guilty plea will be entered and will state any penalty to be imposed for the offense, both in the event of a successful completion of the drug court program, and in the event of a failure to complete the program, but the plea agreement shall not require any suspended or split sentence or any treatment provision to be served in a correctional facility, jail or restrictive housing facility as part of the plea agreement for drug court participation;

6. A clear statement that the offender must voluntarily agree to:

a. waive the right to a speedy trial,

b. waive the right to a preliminary hearing,

c. the terms and conditions of a treatment plan, and

d. sign a performance contract with the court;

7. A clear statement that the offender, if accepted into the drug court program, ~~may~~ shall not be incarcerated for the offense in a state correctional institution or jail as part of the treatment option for drug court participation or upon successful completion of the program;

8. A clear statement that during participation in the drug court program should the offender:

a. fail to comply with the terms of the agreements,

b. be convicted of a misdemeanor offense which reflects a propensity for violence,

c. be arrested for a violent felony offense, or

d. be convicted of any felony offense,

the offender may be required, after a court hearing, to be revoked from the program and sentenced without trial pursuant to the punishment provisions of the negotiated plea agreement; and

9. An explanation of the criminal record retention and disposition resulting from participation in the drug court program following successful completion of the program.

C. 1. The offender may request consideration for the drug court program as follows:

a. if the offender is incarcerated while pending trial, the offender must sign and complete the eligibility form and return it to the sheriff, if the offender is held in the county jail; or to the chief of police, if the offender is held in a city jail. The sheriff or chief of police, upon receipt of the eligibility form, shall file the form with the district attorney at the time of filing the criminal case record or at any time during the period of incarceration when the offender completes the form after the criminal case record has been filed, or

b. after release of the offender from incarceration while pending trial, the offender must sign and complete the eligibility form and file it with the district attorney or the court, prior to or at the time of either initial appearance or arraignment.

2. Any offender desiring legal consultation prior to signing or completing the form for consideration in a drug court program shall be referred to the defense attorney of the drug court team, or a public defender, if the offender is indigent, or allowed to consult with private legal counsel.

3. Nothing contained in the provisions of this subsection shall prohibit the drug court from considering any offender deemed eligible for the program at any time prior to sentencing whose case has been prosecuted in the traditional manner, or upon a violation of parole or probation conditions relating to substance abuse, upon recommendation of the district attorney as provided in Section ~~9~~ 471.8 of this ~~act~~ title.

D. When an offender has filed a voluntary request to be considered for a drug court program on the appropriate form, the district attorney shall indicate his or her approval of the request by filing the form with the drug court judge. Upon the filing of the request form by the district attorney, an initial hearing shall be set before the drug court judge. The hearing shall be not less than three (3) ~~work~~ business days nor more than five (5) ~~work~~ business days after the date of the filing of the request form. Notice of the hearing shall be given to the drug court team, or in the event no drug court team is designated, to the offender, the district attorney, and to the public defender. The offender shall be required to notify any private legal counsel of the date and time of the hearing.

SECTION 4. AMENDATORY Section 11, Chapter 359, O.S.L. 1997 (22 O.S. Supp. 2000, Section 471.10), is amended to read as follows:

Section 471.10 A. For purposes of ~~this act~~ the Oklahoma Drug Court Act, the following state agencies shall jointly develop a standardized ~~testing~~ assessment instrument with an appropriate scoring device, or the Department of Mental Health and Substance

Abuse Services shall select an existing assessment instrument, for use by all the district courts in this state in implementing the Oklahoma Drug Court Act:

1. The Department of Corrections;

2. The Administrative Office of the Courts;

3. The Department of Mental Health and Substance Abuse Services;

4. The State Department of Health;

5. The State Department of Education;

6. The Office of Juvenile Affairs; and

7. The Oklahoma Department of ~~Vocational~~ Career and ~~Technical~~ Technology Education.

B. The Department of Mental Health and Substance Abuse Services in consultation with the Administrative Office of the Courts shall promulgate rules, procedures, and forms necessary to implement the Oklahoma Drug Court Act to ensure statewide uniformity ~~in procedures and forms~~. The Department of Mental Health and Substance Abuse Services is directed to develop a training and implementation manual for drug court programs with the assistance of ~~the State Department of Health, the State Department of Education, the Oklahoma Department of Vocational and Technical Education, the Department of Corrections, the Office of Juvenile Affairs, and the Administrative Office of the Courts~~ other state agencies as necessary for effective operation of drug court programs. The Department of Mental Health and Substance Abuse Services shall provide oversight and technical assistance to the district courts in implementing drug court programs.

C. ~~All participating agencies shall promulgate rules as necessary to comply with the provisions of this act.~~ Each district court shall ~~establish rules~~ publish an operational manual for ~~their~~ its jurisdiction upon implementation of a drug court program, pursuant to the provisions of ~~this act~~ the Oklahoma Drug Court Act.

D. Contingent upon the availability of funds, the Department of Mental Health and Substance Abuse Services is authorized to employ personnel to implement and administer drug court programs, and to set the salaries of such personnel.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 2-503.2, as last amended by Section 2, Chapter 53, O.S.L. 1998 (63 O.S. Supp. 2000, Section 2-503.2), is amended to read as follows:

Section 2-503.2 A. Every person convicted of a violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, or the Trafficking In Illegal Drugs Act, Section 2-414 et seq. of this title, shall be assessed for each offense a sum of not less than One Hundred Dollars ($100.00) nor more than Three Thousand Dollars ($3,000.00). The assessment shall be

mandatory and in addition to and not in lieu of any fines, restitution costs, other assessments, or forfeitures authorized or required by law for the offense. The assessment required by this section shall not be subject to any order of suspension and shall not be waived. The court shall order either a lump sum payment or establish a payment schedule. When the court fails to specify the assessment amount, the assessment order required by this section shall be Five Hundred Dollars ($500.00), payable in monthly installments. Failure of the offender to comply with ~~the~~ any payment schedule shall be considered contempt of court. For purposes of collection, the assessment order shall not expire until paid in full, nor shall the assessment order be limited by the term of imprisonment prescribed by law for the offense, nor by any term of imprisonment imposed against the offender, whether suspended or actually served, nor by admission of the offender to a drug court program authorized by the Oklahoma Drug Court Act.

B. The assessment provided for in subsection A of this section shall be collected by the court clerk as provided for collection of fines and costs. When assessment payments are collected by the court clerk pursuant to court order, the funds shall be forwarded to the State Treasurer for deposit to the Department of Mental Health and Substance Abuse Services' Drug Abuse Education and Treatment Revolving Fund. The court clerk shall be authorized to retain two percent (2%) of any user fees collected pursuant to the Oklahoma Drug Court Act and deposit such amount in the Court Clerk's Revolving Fund pursuant to the provisions of Section 220 of Title 19 of the Oklahoma Statutes. The Office of the State Auditor and Inspector shall require a compliance audit to be conducted annually to determine whether the mandatory assessment fee required by this section in each district court is being ordered and collected. A report of whether a district court is in compliance shall be sent to the Administrative Director of the Courts, the Department of Mental Health and Substance Abuse Services, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Governor.

C. There is hereby created in the State Treasury a revolving fund for the Department of Mental Health and Substance Abuse Services to be designated the "Oklahoma Drug ~~Abuse Education and Treatment~~ Court Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of assessments collected pursuant to this section, grants, gifts and other money accruing to the benefit of said fund and the Oklahoma Drug Court Act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Department of Mental Health and Substance Abuse Services for treatment and drug testing of indigent substance abusing offenders and administration expenses, including but not limited to personnel expenses, pursuant to the Oklahoma Drug Court Act, and for substance abuse prevention and education. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of State Finance for approval and payment. Monies expended from this fund shall not supplant other local, state, or federal funds.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 473 of Title 22, unless there is created a duplication in numbering, reads as follows:

Subject to funding available, the Department of Mental Health and Substance Abuse Services is authorized to set salaries and employ personnel to implement and administer any specialty court authorized by law that requires the services of the Department.

The term "specialty court" means drug courts, domestic violence courts, mental health courts, reentry courts, and any specially designed court process that relies on treatment and monitoring in lieu of institutional placement or incarceration or provides services as an aftercare component of such placement.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 22nd day of May, 2001.

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Presiding Officer of the Senate

Passed the House of Representatives the 24th day of May, 2001.

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Presiding Officer of the House
of Representatives