

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2206

By: Roach

AS INTRODUCED

An Act relating to drug courts; amending 20 O.S. 2001, Section 91.2, which relates to court dockets; providing for the establishment of maternal drug court dockets; amending 22 O.S. 2001, Sections 471, 471.1 and 471.2, which relate to the Oklahoma Drug Court Act; authorizing establishment of separate maternal drug court program docket; defining term; modifying eligibility qualifications for maternal drug court offenders; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 20 O.S. 2001, Section 91.2, is amended to read as follows:

Section 91.2 A. To facilitate the trial and disposition of cases, actions filed in the district court shall be assigned to various dockets by the clerk of the court pursuant to the direction and supervision of the presiding judge of the district. Until changed by order of the Supreme Court, only the following dockets are established: a civil docket, a criminal docket, a traffic docket, a probate docket, a juvenile and family relations docket, and a small claims docket.

B. Whenever a district court establishes a drug court program pursuant to the provisions of ~~Sections 1 through 12 of this act~~ the Oklahoma Drug Court Act, the judge having authority over the program shall cause to be established a drug court docket. Whenever a district court that has a drug court program establishes a maternal drug court program pursuant to Section 471.1 of Title 22 of the Oklahoma Statutes, the judge having authority over the program shall

cause to be established a maternal drug court docket. In those cases assigned to the drug court docket or maternal drug court docket, the judge shall determine what information or pleadings are to be maintained in a confidential case file which shall be closed to public inspection. The originating criminal case file shall remain open to public inspection. Nothing in this section shall prohibit the district attorney, defense attorney, or the victim-witness coordinator from advising any victim or other person regarding the assignment or disposition of a drug court or maternal drug court case.

SECTION 2. AMENDATORY 22 O.S. 2001, Section 471, is amended to read as follows:

Section 471. Sections ~~4~~ 471 through ~~12~~ 471.11 of this ~~act~~ title shall be known and may be cited as the "Oklahoma Drug Court Act".

SECTION 3. AMENDATORY 22 O.S. 2001, Section 471.1, is amended to read as follows:

Section 471.1 A. For purposes of ~~this act~~ the Oklahoma Drug Court Act, "drug court", "drug court program" or "program" means an immediate and highly structured judicial intervention process for substance abuse treatment of eligible offenders which expedites the criminal case, and requires successful completion of the plea agreement in lieu of incarceration. A "maternal drug court program" means a drug court program for a pregnant person.

B. Each district court of this state is authorized to establish a drug court program pursuant to the provisions of ~~this act~~ the Oklahoma Drug Court Act, subject to availability of funds. Juvenile drug courts may be established based upon the provisions of ~~this act~~ the Oklahoma Drug Court 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. Each district court that establishes a drug court program pursuant to the provisions of the Oklahoma Drug Court Act may establish a separate docket for a

maternal drug court program, subject to the availability of funds.  
References in the Oklahoma Drug Court Act to drug court programs  
shall include maternal drug court programs, unless otherwise  
provided.

C. Drug court programs shall not apply to any violent criminal offense. 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 an offender is determined not appropriate for the drug court program.

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 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 and implementing a drug court program, a maternal 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 and a maternal 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 4. AMENDATORY 22 O.S. 2001, 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, unless being considered for a maternal drug court program, has committed a felony offense; ~~and~~

5. The offender, if being considered for a maternal drug court program, has committed a misdemeanor or felony offense; and

6. 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;

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;

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 not be incarcerated for the offense in a state correctional institution or jail 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, 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, 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 days nor more than five (5) work 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 5. This act shall become effective July 1, 2002.

SECTION 6. 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.

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