

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1519

By: Leftwich

AS INTRODUCED

An Act relating to criminal procedure; creating the Oklahoma Mental Health Intervention Court; providing short title; defining terms; authorizing each district court to establish certain court subject to funding; expressing certain intent of act; providing for court intervention in criminal case where mental illness exists; construing act; stating certain intent of act; providing for alternative sentencing and treatment for certain offenders; reserving traditional prosecution for offenders not eligible for certain interventions; authorizing assistance from the Department of Mental Health and Substance Abuse Services; directing the Department to provide technical assistance; directing collaboration and cooperation from certain agencies; requiring a separate judicial processing system for certain criminal cases; allowing formation of a team of qualified personnel; setting minimal requirement for certain team members; providing for administration by a judge; directing appointment by chief judge; providing alternative appointment authority under certain circumstance; requiring separate docketing of certain cases; prohibiting public access to certain information; directing court clerk make certain notation in criminal case file; allowing public inspection of certain criminal case; authorizing the district attorney to request special case processing; providing for amendment of criminal information; requiring certain cross-reference of certain case by court clerk; allowing sheriff to request immediate intervention of certain arrestees; providing for certain notice to district attorney and judge; allowing period of observation and evaluation; limiting period of involuntary commitment; providing for sheriff to retain custody after observation unless bail is allowed; setting minimal standards for certain court; directing collection of certain data; requiring certain form be given to offender; stating contents of certain form; authorizing consultation with legal counsel; providing certain discretion to district attorney to seek intervention under certain circumstance; giving final discretion to judge to accept offender into certain program; authorizing court hearings; providing for notice, review of records and ex parte orders; allowing deferred prosecution agreements; allowing any combination of misdemeanor and felony offenses to be eligible upon certain conditions; providing confidentiality of certain information from court hearings and statements; allowing admissibility of certain evidence from certain sources; proving for

photographic record of certain evidence for certain purpose; directing return of certain property; prohibiting acceptance into certain intervention program under certain circumstance; providing for certain objections by the district attorney; giving the court final authority to deny or accept offender into certain program; directing exoneration of bail upon certain condition; limiting period of participation; making exception to certain limitation for supervision or monitoring; requiring certification of treatment providers; requiring certain evaluations; authorizing payment of certain fees and costs; allowing a payment schedule; directing how costs are set and paid; allowing program participation fee; setting maximum amount of certain fee; directing the court clerk to collect certain costs and fees; directing deposit of certain money in certain fund; providing term for enforcement of payment orders; authorizing disciplinary sanctions; setting criteria for sanctions; providing procedure for final disposition orders in certain cases; providing for criminal sentence to be entered in certain cases; directing certain records be sealed; allowing access to sealed records by certain persons; providing for destruction of certain records after certain period of time; construing certain license authority following completion of certain program; directing certain collaboration and promulgation of rules by certain agencies; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472 of Title 22, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 14 of this act shall be known and may be cited as the "Oklahoma Mental Health Intervention Court Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

For purposes of this act, "mental health court", "mental health intervention court" or "mental health intervention process" means an immediate and highly structured judicial intervention process utilizing specially trained court personnel which expedites a criminal case and provides an alternative to criminal sentencing for

offenders diagnosed with a mental illness, emotional disorder, developmental disability or co-occurring mental illness and substance abuse disorder. The judicial intervention process requires substantial compliance with negotiated agreements, treatment and court orders in lieu of traditional criminal prosecution and incarceration.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Each district court of this state is authorized to establish a mental health intervention court pursuant to the provisions of this act, subject to availability of funds. Mental health intervention courts may intervene as provided in this act in any criminal case at any time when the offender is known to have or is subsequently diagnosed with a mental illness, emotional disorder, developmental disability or co-occurring mental illness and substance abuse disorder, subject to the rules promulgated by the court. Nothing in this act shall be construed to require any mental health intervention court to consider every offender with a mental illness, emotional disorder, developmental disability or co-occurring mental illness and substance abuse disorder who has been arrested or prosecuted for a criminal offense; provided, however, it is the intent of this act to provide alternative criminal case processing and alternatives to incarceration for those offenders having treatable or controllable conditions. Traditional prosecution and sentencing shall be required for eligible offenders not accepted into a mental health intervention court.

B. Each mental health intervention court may request assistance from the Department of Mental Health and Substance Abuse Services which shall be the primary agency to provide technical assistance for the mental health intervention courts within this state. All participating state and local agencies are directed to collaborate

with each other and cooperate with the district court in establishing effective mental health intervention courts to reduce recidivism and incarceration of persons with mental illness, emotional disorders, developmental disabilities or co-occurring mental illness and substance abuse disorder.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472.3 of Title 22, unless there is created a duplication in numbering, reads as follows:

A mental health intervention court shall require a separate judicial processing system differing in practice and design from the traditional adversarial criminal prosecution and sentencing options. Whenever possible, a mental health intervention court team shall be designated to consist of qualified persons who understand the goals and methods for managing various mental illnesses, emotional disorders, developmental disabilities or co-occurring mental illness and substance abuse disorder and viable alternatives for criminal case processing and sentencing. A district, associate, or special judge shall administer the mental health intervention court within the district court system. The judge shall be appointed by the chief judge of the judicial district, or if the district has more than one chief judge, then the appointment shall be made by the presiding judge of the Administrative Judicial District. The assignment of any judge or person to a mental health intervention court team shall not preclude the assigned judge or person from performing other duties as may be required in the course of their office or employment.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472.4 of Title 22, unless there is created a duplication in numbering, reads as follows:

Each mental health intervention court shall maintain a separate confidential docket for all cases accepted. The docket shall be cross-referenced to any pending criminal case file against the same

offender. The public shall not have access to any mental health intervention court docket or any related mental health orders or information, except a notation may be made by the court clerk on any pending criminal case file that such case has been transferred to a mental health intervention court. Upon disposition of each mental health intervention court case, the disposition order shall be entered by the court clerk on the cross-referenced criminal case file against the same person and such order shall be available for public inspection from the original criminal case file.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472.5 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. When a mental health intervention court is established, the district attorney may request a criminal case processed by the mental health intervention court for potentially eligible offenders at any time. The criminal information may be amended as necessary when an offender is denied admittance into the mental health intervention court or for other purposes as provided in Section 304 of Title 22 of the Oklahoma Statutes. Any criminal case which has been filed and processed in the traditional manner shall be cross-referenced to the mental health intervention court case by the court clerk, if the case is subsequently accepted by the mental health court. The originating criminal case file shall remain open to public inspection.

B. Upon the arrest of any person for a criminal offense, the sheriff may request that the offender be referred immediately to the mental health intervention court if the person exhibits mental illness, emotional disorders, developmental disabilities or co-occurring mental illness and substance abuse disorder. The sheriff shall immediately notify the district attorney and the mental health intervention court judge that a period of observation and evaluation may be necessary for the person. Within twenty-four (24) hours of

the notice to the district attorney and the judge, the person may be ordered and transferred to a mental health facility for observation and evaluation or may be observed and evaluated while detained in the county jail; provided, however no person may be involuntarily placed in any mental health facility for more than seventy-two (72) hours without a court hearing. If a person is transferred to a mental health facility for observation and evaluation, the person shall be returned to the sheriff, unless bail has been properly made, and in such case the person shall be released following observation and evaluation according to any conditions of bail.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472.6 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Each mental health intervention court shall provide:

1. Strong linkage between participating agencies;
2. Access by all participating parties of the mental health intervention court case and information on the offender's progress;
3. Vigilant supervision and monitoring procedures;
4. Provisions for noncompliance, modification of the treatment plans, and revocation proceedings;
5. Availability of residential treatment facilities and outpatient services;
6. Payment of court costs, treatment costs, supervision fees, and program participation fees by the offender;
7. Methods for disciplinary sanctions, including provisions for:
 - a. increased supervision,
 - b. intensive treatment,
 - c. short-term confinement in the county jail not to exceed five (5) days,
 - d. relapse of the offender while in treatment or on medication,

e. involuntary commitment in a hospital or mental health facility, and

f. revocation from the program; and

8. Methods for continued or long term treatment, including medication control and supervision as may be medically necessary.

B. All mental health intervention courts shall keep reliable data on recidivism and offender adjustments following intervention and treatment.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472.7 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. When an offender is potentially eligible for treatment in a mental health intervention court, the offender, or if the offender is deemed unable to understand the nature of the alternative criminal case processing offered through mental health intervention court, then a parent, spouse, relative, or other person, shall be given a form describing the nature and methods of the intervention process, including, but not limited to:

1. A full description of the authority of the mental health intervention court;

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 mental health intervention court;

3. A statement that the judge may decide after a hearing not to consider the offender for mental health intervention processing, and in that event the offender will be prosecuted and sentenced in the traditional manner;

4. A statement that the offender is required, in order to be considered for the mental health intervention process, to enter a guilty plea as part of a written negotiated plea agreement or as part of a deferred prosecution agreement;

5. A statement that the negotiated plea agreement or deferred prosecution agreement must specify the offense to which the guilty plea is entered and must state all penalties and alternatives to those penalties being offered for the offense in the event of a successful completion of the mental health court, and in the event of a failure to complete the program;

6. A 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. accept the terms and conditions of a mental health treatment plan, and
- d. sign a performance contract with the court to abide with the treatment plan and orders of the court and to keep the terms and conditions of the negotiated plea agreement or deferred prosecution agreement;

7. A statement that the offender, if accepted into the mental health intervention court, shall not be incarcerated for the offense in any state correctional institution or jail upon successful completion of or during the program, except for short term disciplinary sanctions in a jail or halfway house, and that the offender shall not be subject to any future revocation on the current offense to prison or jail upon successful completion of the program;

8. A statement that during participation in mental health intervention court should the offender:

- a. consistently fail to comply with the terms of the agreements or fail to take any medically necessary medication,
- b. be convicted of any offense which reflects a propensity for violence to self or others, or
- c. be convicted of a new felony offense,

the offender may be required, after a court hearing, to be revoked from the mental health intervention court and without trial or additional sentencing hearings be immediately ordered to begin serving those punishment provisions of the negotiated plea agreement or in the case of a deferred prosecution agreement to have charges filed and the guilty plea entered of record as provided in the deferred prosecution agreement; and

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

B. Any offender desiring legal consultation prior to signing or completing the form for consideration in a mental health intervention court shall be referred to a defense attorney or public defender, if the offender is indigent, or allowed to consult with private legal counsel. If the offender is deemed unable to understand the nature of the alternative criminal case processing offered through mental health court, then a parent, spouse, relative, or other person desiring legal consultation may consult a public defender, defense attorney or private counsel on behalf of the offender.

C. When an offender is deemed by the court to be unable to understand the nature of the mental health intervention court process or to legally sign a contract, the district attorney shall have discretion to request processing by the mental health intervention court by filing a request for intervention form with the judge. Nothing shall be construed to prohibit the district attorney from consulting with a parent, spouse, relative, or other person legally responsible for the offender. Upon the filing of a request form by the district attorney, the judge shall decide whether to accept the person into the mental health intervention court as an alternative to traditional criminal case prosecution and sentencing.

D. The mental health intervention court shall hold hearings as necessary to effect the intent of this act and monitor the progress of all offenders. Notice of all hearings must be given to all parties and their attorneys not less than three (3) days before any hearing. The mental health intervention court judge may review a case file or treatment report at any time with or without the offender present. The judge may issue an ex parte order at any time when an offender is deemed an immediate risk to self or others when testimony attesting to such risk is given by a sheriff, law enforcement officer, parent, spouse, relative, supervising staff, or a treatment provider.

E. Criminal charges need not be filed prior to consideration of a potentially eligible offender. A mental health intervention court may accept deferred prosecution agreements without charges having been filed. Any misdemeanor, felony or combination misdemeanor and felony offenses may be considered for alternative criminal case processing and alternative sentencing as the court deems appropriate if the offender admits to the criminal allegation.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472.8 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. 1. Any statement made by, or any information procured from an offender to any supervising staff, which is made during the course of any mental health intervention court hearing, or treatment, and any report of the supervising staff's findings and recommendations to the court, the district attorney, or the defense counsel shall not be admissible in the criminal case pending against the offender.

2. Any statement with respect to the specific offense for which the offender was arrested or is charged which is made to any supervising staff subsequent to the granting of admission of the offender to the mental health intervention court, shall not be

admissible in the pending criminal case against the offender nor shall such be grounds for the revocation of an offender from a mental health intervention court.

3. In the event that an offender is denied admission to a mental health intervention court or is subsequently revoked from such program and any information gained from the mental health intervention court and any statements or information divulged during a court proceeding or any treatment session shall not be used in the sentencing of the offender for the original criminal offense.

4. The restrictions provided in this section shall not preclude the admissibility of statements or evidence obtained by the state from independent sources.

B. 1. The offender, as consideration for entering a mental health intervention court, must consent to a full and complete photographic record of property which was to be used as evidence in the pending criminal case. The photographic record shall be competent evidence of such property and admissible in any criminal action or proceeding as the best evidence.

2. After the photographic record is made, the property shall be returned as follows:

- a. property, except that which is prohibited by law, shall be returned to its owner after proper verification of title,
- b. the return to the owner shall be without prejudice to the state or to any person who may have a claim against the property, and
- c. when a return is made to the owner, the owner shall sign, under penalty of perjury, a declaration of ownership, which shall be retained by the person in charge of the property at the police department or sheriff's office.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472.9 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The mental health intervention court judge shall determine whether the eligibility provisions of this act have been met and shall not grant admission to any offender into a mental health intervention court when:

1. The required treatment plan and plea agreement or deferred prosecution agreement have not been completed;

2. The alternative sentencing provisions and the sentencing provision in the event of revocation are not written in the plea agreement or deferred prosecution agreement;

3. The program has insufficient funding or inappropriate treatment for the offender's condition;

4. The treatment program is unwilling to accept the offender;
or

5. The offender is inappropriate for admission to the program, in the discretion of the judge.

B. If evidence is presented that was not known by the district attorney at the time of admission to mental health intervention court, the district attorney or the defense attorney may object to the admission of the offender into the mental health intervention court and ask the court to withdraw the plea agreement or deferred prosecution agreement previously negotiated. The court shall determine whether to proceed and overrule the objection, to sustain the objection and transfer the case for traditional criminal prosecution or sentencing, or to require further negotiations of the agreement. The decision of the judge for or against eligibility and admission shall be final.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472.10 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. At the time an offender is admitted to a mental health intervention court, any bail or undertaking on behalf of the offender shall be exonerated.

B. The period of time during which an offender may participate in mental health intervention court shall be not less than three (3) months nor more than thirty-six (36) months; provided, however, a period of supervision or monitoring may be ordered as necessary to provide continued treatment or medication control as determined by the court based on the nature of the illness, disorder or disability.

C. All participating treatment providers shall be certified by the Department of Mental Health and Substance Abuse Services and shall be evaluated for performance-based effectiveness annually by the Department of Mental Health and Substance Abuse Services.

D. The mental health intervention court judge may order the offender to pay court costs, treatment costs, a program participation fee not to exceed Twenty Dollars (\$20.00) per month, and necessary supervision fees based upon the circumstances of the offender and the ability to pay. The judge may establish a payment schedule. The cost for treatment and supervision shall be set by the treatment and supervision providers respectively. Program participation fees shall be set by the judge within the maximum amount authorized by this subsection and payable directly to the court clerk for the benefit and administration of the mental health intervention court. Treatment, and supervision costs, if ordered to be paid by the offender, shall be paid directly to the respective providers. The court clerk shall collect all other court-ordered costs and fees. The program participation fee when collected shall be remitted to the State Treasurer by the court clerk for deposit in the court fund. Enforcement of court orders for costs and fees pursuant to this subsection shall not be limited for purposes of collection to the maximum term of imprisonment for which the

offender could have been imprisoned for the offense or by any term of probation, parole, supervision, treatment, or extension thereof. Court orders for costs and fees shall remain an obligation of the offender with court monitoring until fully paid.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472.11 of Title 22, unless there is created a duplication in numbering, reads as follows:

The mental health intervention court judge may use disciplinary sanctions and incentives to gain compliance with necessary treatment and conditions of alternative sentencing. In no event shall confinement in a jail be more than five (5) days per sanction. The use of involuntary commitment to a hospital or mental health facility is authorized when the offender is deemed an immediate risk to self or others or when medication is not being properly administered and cannot be adjusted in an outpatient setting. The judge is authorized by this act to make findings of record and order whatever treatment or involuntary commitment is deemed necessary and beneficial to the offender to address immediate treatment and public safety needs to satisfy the alternative criminal case processing and sentencing.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472.12 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. When an offender has successfully completed the mental health intervention court, the final disposition order shall be filed with both the mental health intervention court case and in the original criminal case. The final order shall indicate the sentence specified in the written agreement including, but not limited to, a standing order for continued treatment when necessary.

B. After an offender completes the mental health intervention court, the mental health court case file shall be sealed by the judge and may be destroyed after ten (10) years. A district

attorney shall have access to sealed court case files without a court order.

C. A record pertaining to an offense resulting in a successful completion of a mental health intervention court shall not, without the offender's consent in writing, be used in any way which could result in the denial of any employee benefit.

D. Successful completion of a mental health intervention court shall not prohibit any administrative agency from taking disciplinary action against any licensee or from denying a license or privilege as may be required by law.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472.13 of Title 22, unless there is created a duplication in numbering, reads as follows:

The district court in collaboration with the Department of Mental Health and Substance Abuse Services shall promulgate rules as necessary to implement the provisions of this act.

SECTION 15. This act shall become effective July 1, 2002.

SECTION 16. 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.

48-2-2460

NP

6/12/2015 11:03:45 AM