

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 576

By: Cain

COMMITTEE SUBSTITUTE

[drug courts - procedures and eligibility - Oklahoma
Drug Court Act -

effective date]

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

SECTION 1. 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.

B. Each district court of this state is authorized to establish a drug court program pursuant to the provisions of this act, subject to availability of funds. 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. Eligible offenses may further be restricted by the rules of the specific drug court program. Nothing in this 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 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. ~~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 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 2. 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 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;

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~~ or the drug court team, if designated, shall make a recommendation to the drug court judge. Upon the filing of the request form by the offender, the district attorney or the drug court team, 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 3. AMENDATORY 22 O.S. 2001, Section 471.3, is amended to read as follows:

Section 471.3 A. At the initial hearing for consideration of an offender for a drug court program, the district attorney or the drug court team, if designated, shall determine whether or not:

1. The offender has approval to be considered for the drug court program;

2. The offender has been admitted to the program within the preceding five (5) years; and

3. Any statutory preclusion, other prohibition, or program limitation exists and is applicable to considering the offender for the program.

The district attorney may object to the consideration of an offender for the drug court program at the initial hearing.

B. If the offender voluntarily consents to be considered for the drug court program, has signed and filed the required form requesting consideration, and no objection has been made by the district attorney, the court shall refer the offender for a drug court investigation as provided in Section ~~5~~ 471.4 of this ~~act~~ title, and set a date for a hearing to determine final eligibility for admittance into the program.

C. Upon any objection of the district attorney for consideration of an offender for the program, the court shall ~~deny~~ determine consideration of the offender's request for participation in the drug court program at an initial hearing. If the court determines that the offender is eligible for drug court, it shall refer the offender for a drug court investigation as provided in Section 471.4 of this title, and set a date for a hearing to determine final eligibility for admittance to the program. Upon denial for consideration in the drug court program at the initial hearing, the criminal case shall proceed in the traditional manner. An objection by the district attorney and the subsequent denial of consideration of the offender for the program shall not preclude any future consideration of the offender for the drug court program ~~with the approval of the district attorney~~.

SECTION 4. AMENDATORY 22 O.S. 2001, Section 471.4, is amended to read as follows:

Section 471.4 A. When directed by the drug court judge, the supervising staff for the drug court program shall make an investigation of the offender under consideration to determine whether or not the offender is a person who:

1. Would benefit from the drug court program; and
2. Is appropriate for the drug court program.

B. The drug court investigation shall be conducted through a standardized screening test and personal interview. A more comprehensive assessment may take place at the time the offender enters the treatment portion of the program and may take place at any time after placement in the drug court program. The investigation shall determine the original treatment plan which the offender will be required to follow, if admitted to the program. Any subsequent assessments or evaluations by the treatment provider, if the offender is admitted to the program, may be used to determine modifications needed to the original treatment plan. The investigation shall include, but not be limited to, the following information:

1. The person's age and physical condition;
2. Employment and military service records;
3. Educational background and literacy level;
4. Community and family relations;
5. Prior and current drug and alcohol use;
6. Mental health and medical treatment history, including substance abuse treatment history;
7. Demonstrable motivation; and
8. Other mitigating or aggravating factors.

C. The drug court investigation shall be conducted after the initial hearing for consideration and before the hearing for final determination of eligibility for the drug court program. When an offender is appropriate for admittance to the program, the supervising staff shall make a recommendation for the treatment program or programs that are available in the jurisdiction and which would benefit the offender and accept the offender. The investigation findings and recommendations for program placement shall be reported to the drug court judge, the district attorney,

the offender, and the defense attorney prior to the next scheduled hearing.

D. The district attorney and the defense attorney for the offender shall independently review the findings and recommendations of the drug court investigation report. For an offender to remain eligible for consideration in the program, both the district attorney ~~and~~ or the defense attorney must accept the recommended treatment plan, and shall negotiate the terms of the written plea agreement with all punishment provisions specified before the scheduled hearing date for determining final eligibility. Upon failure of the district attorney and defense attorney to negotiate the written plea agreement, ~~the criminal case shall be withdrawn from the drug court program and processed in the traditional manner~~ the drug court shall determine final eligibility for the drug court program. The punishment provisions of the written plea agreement shall emphasize reparation to the victim, community, and state.

E. The hearing to determine final eligibility shall be set not less than three (3) work days nor more than seven (7) work days from the date of the initial hearing for consideration, unless extended by the court.

F. For purposes of this act, "supervising staff" means a Department of Corrections employee assigned to monitor offenders in the drug court program, a community provider assigned to monitor offenders in the program, a state or local agency representative or a certified treatment provider participating in the program, or a person designated by the judge to perform drug court investigations.

SECTION 5. AMENDATORY 22 O.S. 2001, Section 471.7, is amended to read as follows:

Section 471.7 A. The designated drug court judge shall make all judicial decisions concerning any case assigned to the drug court docket or program. The judge shall require progress reports and a periodic review of each offender during his or her period of

participation in the drug court program or for purposes of collecting costs and fees after completion of the treatment portion of the program. Reports from the treatment providers and the supervising staff shall be presented to the drug court judge as specified by the treatment plan or as ordered by the court.

B. Upon the written or oral motion of the treatment provider, the district attorney, the defense attorney, the defendant, or the supervising staff, the drug court judge shall set a date for a hearing to review the offender, the treatment plan, and the provisions of the performance contract. Notice shall be given to the offender and the other parties participating in the drug court case three (3) days before the hearing may be held.

C. The judge may establish a regular schedule for progress hearings for any offender in the drug court program. The district attorney shall not be required to attend regular progress hearings, but shall be required to be present upon the motion of any party to a drug court case.

D. The treatment provider, the supervising staff, the district attorney, and the defense attorney shall be allowed access to all information in the offender's drug court case file and all information presented to the judge at any periodic review or progress hearing.

E. The drug court judge shall recognize relapses and restarts in the program which are considered to be part of the rehabilitation and recovery process. The judge shall accomplish monitoring and offender accountability by ordering progressively increasing sanctions or providing incentives, rather than removing the offender from the program when relapse occurs, except when the offender's conduct requires revocation from the program. Any revocation from the drug court program shall require notice to the offender and other participating parties in the case and a revocation hearing. At the revocation hearing, if the offender is found to have violated

the conditions of the plea agreement or performance contract and disciplinary sanctions have been insufficient to gain compliance, the offender shall be revoked from the program and sentenced for the offense as provided in the plea agreement.

F. Upon application of any participating party to a drug court case, the judge may modify a treatment plan at any hearing when it is determined that the treatment is not benefiting the offender. The primary objective of the judge in monitoring the progress of the offender and the treatment plan shall be to keep the offender in treatment for a sufficient time to change behaviors and attitudes. Modification of the treatment plan requires a consultation with the treatment provider, supervising staff, district attorney, and the defense attorney in open court.

G. The judge ~~shall be prohibited from amending~~ may amend the written plea agreement to a lesser penalty after an offender has been admitted to the drug court program. Nothing in this provision shall be construed to limit the authority of the judge to remove an offender from the program and impose the required punishment stated in the plea agreement after application, notice, and hearing.

SECTION 6. AMENDATORY 22 O.S. 2001, Section 471.8, is amended to read as follows:

Section 471.8 The drug court program may be utilized as a disciplinary sanction for a violation of a condition of parole related to substance abuse for eligible offenses, or in a case where the offender has been tried for an eligible offense in the traditional manner, given either a deferred or suspended sentence, and has violated a condition of the sentence. ~~The judge shall not order an offender into treatment within the scope of any drug court program without prior approval from the designated drug court team, or the district attorney if no team is designated.~~ Any judge having a criminal case assigned where drug court processing appears to be more appropriate for the offender, may request a review of the case

by the drug court team, or if no team is designated, a review by the district attorney ~~and~~ or the defense attorney. If ~~both~~ the district attorney ~~and~~ or the defense attorney ~~or offender agree~~ agrees that the case is appropriate for transfer, the case may be transferred to the drug court program with the approval of a designated drug court judge. After a case has been transferred to the drug court docket, it shall continue with the designated drug court judge until the offender is revoked or released from the program. The offenders whose cases have been transferred from a traditional criminal case docket to the drug court docket shall be required to have a drug court investigation and complete the drug court process prior to placement in any treatment program authorized by ~~this act~~ the Oklahoma Drug Court Act.

SECTION 7. This act shall become effective November 1, 2003.

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