

THE HOUSE OF REPRESENTATIVES
Tuesday, February 24, 2009

House Bill No. 1741

HOUSE BILL NO. 1741 - By: PETERS of the House.

An Act relating to children; creating the family drug court program; authorizing court to establish a family drug court program; requiring Department of Mental Health and Substance Abuse Services to assist in the establishment of family drug courts; providing procedural guidelines for drug court; authorizing assessment requirements in certain circumstances; providing deadline for eligibility determinations; requiring participants to submit to jurisdiction of court; requiring certain documents upon acceptance into program; requiring participation in program for certain period of time; requiring treatment providers be certified by the Department of Mental Health and Substance Abuse Services; providing guidelines and authority for eligibility assessments; providing for periodic review of participant compliance with drug court program; providing penalties for noncompliance with drug court program; authorizing court to order certain fees and costs; authorizing creation of family drug court revolving fund; providing for appropriation and expenditure of revolving fund; specifying requirements of claims against revolving fund; authorizing State Auditor to develop forms and procedures for the administration of fund; specifying the use of certain costs; providing for codification; and providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 7009-1.1 of Title 10, unless there is created a duplication in
3 numbering, reads as follows:

4 A. Each district court is hereby authorized to establish a family drug court for the
5 purpose of treating children adjudicated as deprived and their families in cases where
6 the parent, parents or legal guardian has a substance abuse disorder. The Department

1 of Mental Health and Substance Abuse Services shall assist in the establishment of
2 family drug courts.

3 B. At the adjudicatory or dispositional hearing in a deprived case, the court may
4 determine whether there are any statutory preclusions, other prohibitions, or program
5 limitations that exist and are applicable to considering the family for participation in the
6 drug court program.

7 C. A family drug court assessment shall be ordered by the court, upon the motion of
8 the state, the child's attorney, parent, legal guardian or upon the court's own motion,
9 once the requirements of subsection B of this section have been met.

10 D. The court shall set a date for a hearing to determine final eligibility for
11 admittance into the program which shall not exceed thirty (30) days after the
12 dispositional hearing.

13 E. Upon denial for consideration in the family drug court program at the initial
14 hearing, the case shall proceed as authorized by the Children's Code.

15 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 7009-1.2 of Title 10, unless there is created a duplication in
17 numbering, reads as follows:

18 A. When directed by the district court, the treatment staff for the family drug court
19 program shall make an assessment of the deprived child and the family under
20 consideration to determine whether:

21 1. Reunification is a viable permanency plan for the child and that reunification
22 with the parent, parents or legal guardian is in the best interest of the child; and

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 2. The alcohol or substance abuse of the parent, parents or legal guardian is a
2 substantial contributing condition to the adjudication of a child as deprived.

3 B. 1. The family drug court assessment shall be conducted through a standardized
4 screening test and personal interview. A more comprehensive evaluation may take place
5 at the time the family enters the treatment portion of the program and may take place at
6 any time after placement in the program.

7 2. The assessment or evaluation shall determine the elements of the treatment
8 plan which the parent, parents or legal guardian shall be required to comply with if
9 admitted to the program. Any subsequent assessments or evaluations by the treatment
10 provider may be used to determine modifications needed to the original treatment plan.

11 3. The assessment shall include, but not be limited to, the following information:

- 12 a. the age and physical condition of the child,
- 13 b. family employment,
- 14 c. educational background and literacy level,
- 15 d. community and family relations,
- 16 e. prior and current drug and alcohol use,
- 17 f. behavioral health and medical treatment history,
- 18 g. demonstrable motivation of the family, and
- 19 h. other mitigating or aggravating factors.

20 C. When a family is determined to be appropriate for admittance to the program,
21 regardless of whether the child is in the custody of the Department of Human Services,

1 the treatment staff shall make a recommendation for the treatment program or programs
2 that are available in the jurisdiction and which would benefit the family and child.

3 D. 1. Any statement made by the parent or legal guardian to any supervising staff
4 during the course of any drug court assessment and subsequent to the admission of the
5 parent or legal guardian to the family drug court program, as well as any report of
6 findings and recommendations, shall not be admissible in any other case pending against
7 the parent or legal guardian, nor shall such be grounds for the revocation of a parent or
8 legal guardian from the program.

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

11 SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma
12 Statutes as Section 7009-1.3 of Title 10, unless there is created a duplication in
13 numbering, reads as follows:

14 A. The family drug court judge shall conduct a hearing to determine final eligibility
15 of the family for the family drug court program by considering:

16 1. Whether the child and family are appropriate for placement in drug court, as
17 provided in Section 2 of this act;

18 2. The findings and recommendations of the family drug court assessment;

19 3. Whether there is an appropriate treatment program available to the family and
20 whether there is a recommended treatment plan; and

1 4. Any information relevant to determining eligibility. A family shall not be denied
2 admittance to any family drug court program based upon the inability of the family to
3 pay court costs or other costs or fees.

4 B. The judge shall require the family to demonstrate support for participation in
5 the program. In order for the family to be admitted to the program, every person
6 responsible for the health or welfare of the child shall accept the personal jurisdiction of
7 the court. Any adult who establishes a permanent residence in the home where the child
8 resides after the child has been admitted to the program shall also accept the personal
9 jurisdiction of the court. Failure of an adult responsible for the health or welfare of the
10 child, or an adult who resides in the home with the child to accept personal jurisdiction of
11 the court shall result in either the family's dismissal from the drug court program,
12 contempt of court proceedings for the adult, removal of the child from the home, or any
13 combination thereof.

14 C. When the court accepts the treatment plan, the child and family shall be ordered
15 immediately into the program and the person responsible for the health or welfare of the
16 child shall have voluntarily signed the necessary court documents before the child and
17 family may be admitted to treatment. The court documents shall include:

18 1. A written treatment plan, which is subject to modification at any time during the
19 program, as set forth in Section 2 of this act;

20 2. A statement requiring the child and family to enter the treatment program as
21 directed by the court and to participate until completion, withdrawal, or removal by the
22 court; and

1 3. A statement signed voluntarily by the person or persons responsible for the
2 health or welfare of the child that such person shall comply with the orders of the court
3 and any conditions of the treatment program and supervising staff for as long as the
4 family participates in the family drug court program.

5 D. If admission into the family drug court program is denied, the case shall be
6 returned to the traditional juvenile docket and shall proceed as provided for any other
7 juvenile case.

8 E. At the time a child and family is admitted to the family drug court program, any
9 bond, bail or undertaking on behalf of the child or family shall be exonerated.

10 F. 1. A family shall actively participate in treatment for a period of not less than
11 six (6) months while participating in the family drug court program.

12 2. All participating treatment providers shall be certified by the Department of
13 Mental Health and Substance Abuse Services and shall be selected and evaluated for
14 performance-based effectiveness annually by the Department of Mental Health and
15 Substance Abuse Services. Treatment programs shall be designed to be completed
16 within twelve (12) months and shall have relapse prevention and evaluation components.

17 SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma
18 Statutes as Section 7009-1.4 of Title 10, unless there is created a duplication in
19 numbering, reads as follows:

20 A. The family drug court judge shall make all judicial decisions concerning any case
21 assigned to the family drug court docket or program. The judge shall require progress
22 reports and a periodic review of each family during their period of participation in the

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

5 B. The judge may establish a regular schedule for progress hearings for any family
6 in the drug court program. The district attorney, the child or family, the attorney for the
7 child or family, and the treatment provider shall be required to attend regular progress
8 hearings, and shall be required to be present upon the motion of any party to a drug
9 court case.

10 C. The treatment provider, the supervising staff, the district attorney, and the
11 attorney for the child and family shall be allowed access to all information in the drug
12 court case file of the child and all information presented to the judge at any periodic
13 review or progress hearing.

14 D. 1. The drug court judge shall recognize relapses and restarts in the program
15 which are considered to be part of the rehabilitation and recovery process.

16 2. The family drug court judge shall order progressively increasing sanctions or
17 provide incentives, rather than removing the family from the program when relapse
18 occurs, except when the conduct of the child or family requires removal from the
19 program.

20 3. Any removal from the drug court program shall require notice to the child and
21 family and other participating parties in the case and a hearing.

1 4. At any family drug court hearing, if the child or an adult responsible for the
2 health and welfare of the child is found to have violated the conditions of the treatment
3 plan and disciplinary sanctions have been insufficient to gain compliance, the child and
4 family shall be removed from the program, the child shall be returned to the regular
5 juvenile court docket and set for redispotion or permanency hearing.

6 E. Upon application of any participating party to a drug court case, the judge may
7 modify a treatment plan at any hearing when it is determined that the treatment is not
8 beneficial to the child. The primary objective of the judge in monitoring the progress of
9 the child, the family and the treatment plan shall be to keep the child and family in
10 treatment for a sufficient time to change behaviors and attitudes. Modification of the
11 treatment plan requires a consultation with the treatment provider, supervising staff,
12 district attorney, the attorney for the child and the attorney for the family in open court.

13 F. The family drug court judge shall be authorized to modify the treatment plan of
14 any person responsible for the health and welfare of the child and any adult residing
15 with the child, for noncompliance with any condition established by the court. The
16 family drug court judge is also authorized to sanction the person responsible for the
17 health and welfare of the child or any adult residing with the child, for noncompliance of
18 such person with any condition established in the court.

19 SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma
20 Statutes as Section 7009-1.5 of Title 10, unless there is created a duplication in
21 numbering, reads as follows:

1 A. 1. The family drug court judge may order the family, or a member of the family,
2 to pay court costs, treatment costs, drug-testing costs, and supervision fees. The family
3 drug court judge may order an adult member or members of the family responsible for
4 the health or welfare of the child to pay a program user fee, not to exceed Twenty Dollars
5 (\$20.00) per month.

6 2. The family drug court judge may establish a schedule for the payment of costs
7 and fees.

8 B. There shall be created with the county treasurer of each county within this state
9 a cash fund to be designated as the "Family Drug Court Revolving Fund".

10 1. The fund shall be a continuing fund, not subject to fiscal year limitations, and
11 shall consist of all monies received and any other monies designated by law for deposit
12 into the fund.

13 2. All monies accruing to the credit of the fund are hereby appropriated and shall
14 be expended by the family drug court coordinator for the benefit and administration of
15 the family drug court program.

16 3. Claims against the fund shall include only expenses incurred for the
17 administration of the family drug court program and payment may be made after the
18 claim is approved by the family drug court team.

19 4. The necessary forms and procedures to account for the monies shall be developed
20 and implemented by the Office of the State Auditor and Inspector.

21 C. 1. The cost for treatment, drug testing, and supervision fees shall be set by the
22 family drug court team and shall reflect actual expenses or rates established by the

1 Department of Mental Health and Substance Abuse Services and made part of the court's
2 order for payment.

3 2. The costs for drug testing and supervision fees shall be paid to the family drug
4 court coordinator for deposit into the county Family Drug Court Revolving Fund.

5 3. The costs for treatment shall be paid to the respective family drug court
6 treatment provider or providers.

7 4. The court clerk shall collect all other costs and fees ordered.

8 D. 1. No court order for costs and fees shall be limited by any term of supervision,
9 treatment, or extension thereof.

10 2. Court orders for costs and fees shall remain an obligation of the adult member or
11 members of the family responsible for the health or welfare of the child with court
12 monitoring until fully paid.

13 SECTION 6. This act shall become effective November 1, 2009.

14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-23-09 - DO PASS.