

**ESB 1075**

**THE HOUSE OF REPRESENTATIVES**  
**Wednesday, April 8, 2009**

**ENGROSSED**  
**Senate Bill No. 1075**  
**As Amended**

ENGROSSED SENATE BILL NO. 1075 - By: CRAIN of the Senate and SULLIVAN of the House.

( criminal procedure - drug court programs - report of convictions -  
effective date )

1 SECTION 1. AMENDATORY 22 O.S. 2001, Section 471.2, is amended to read  
2 as follows:

3 Section 471.2 A. The initial opportunity for review of an offender for a drug court  
4 program shall occur within four (4) days after the arrest and detention or incarceration of  
5 the offender in the city or county jail, or if an immediate bond release program is  
6 available through the jail, the initial opportunity for review shall occur in conjunction  
7 with the bond release program. When a drug court is established, the following  
8 information shall be initially reviewed by the sheriff or designee, if the offender is held in  
9 a county jail, or by the chief of police or designee, if the offender is held in a city jail:

10 1. The offender's arrest or charge does not involve a crime of violence against any  
11 person, unless there is a specific treatment program in the jurisdiction designed to

1 address domestic violence and the offense is related to domestic violence and substance  
2 abuse;

3 2. The offender has no prior felony conviction in this state or another state for a  
4 violent offense within the last ten (10) years, except as may be allowed in a domestic  
5 violence treatment program authorized by the drug court program. It shall be sufficient  
6 for this paragraph that a criminal history records name search was conducted and  
7 indicated no apparent violent offense;

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

10 4. The offender has committed a felony offense; and

11 5. The offender:

- 12 a. admits to having a substance abuse addiction,
- 13 b. appears to have a substance abuse addiction,
- 14 c. is known to have a substance abuse addiction, or
- 15 d. the arrest or charge is based upon an offense eligible for the drug court  
16 program.

17 B. If it appears to the reviewing officer that the offender may be potentially eligible  
18 for the drug court program based upon a review of the information in subsection A of this  
19 section, the offender shall be given an eligibility form which may be voluntarily  
20 completed by the offender, and the reviewing officer shall file the criminal case record  
21 within the time prescribed in subsection E of Section 2 of this act. The offender shall not  
22 automatically be considered for the program based upon this review. The offender must

1 request consideration for the drug court program as provided in subsection C of this  
2 section and shall have approval from the district attorney before being considered for the  
3 drug court program. The eligibility form shall describe the drug court program for which  
4 the offender may be eligible, including, but not limited to:

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

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

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

12 4. A clear statement that the offender is required, before consideration in the  
13 program, to enter a guilty plea as part of a written plea agreement;

14 5. A clear statement that the plea agreement will specify the offense to which the  
15 guilty plea will be entered and will state any penalty to be imposed for the offense, both  
16 in the event of a successful completion of the drug court program, and in the event of a  
17 failure to complete the program;

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

19 a. waive the right to a speedy trial,

20 b. waive the right to a preliminary hearing,

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

22 d. sign a performance contract with the court;

1           7. A clear statement that the offender, if accepted into the drug court program, may  
2 not be incarcerated for the offense in a state correctional institution or jail upon  
3 successful completion of the program;

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

- 6           a. fail to comply with the terms of the agreements,
- 7           b. be convicted of a misdemeanor offense which reflects a propensity for  
8 violence,
- 9           c. be arrested for a violent felony offense, or
- 10          d. be convicted of any felony offense,

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

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

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

- 18          a. if the offender is incarcerated, the offender must sign and complete the  
19 eligibility form and return it to the sheriff, if the offender is held in the  
20 county jail; or to the chief of police, if the offender is held in a city jail.  
21 The sheriff or chief of police, upon receipt of the eligibility form, shall  
22 file the form with the district attorney at the time of filing the criminal

1 case record or at any time during the period of incarceration when the  
2 offender completes the form after the criminal case record has been  
3 filed, or

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

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

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

17 D. When an offender has filed a voluntary request to be considered for a drug court  
18 program on the appropriate form, the district attorney shall indicate his or her approval  
19 of the request by filing the form with the drug court judge. Upon the filing of the request  
20 form by the district attorney, an initial hearing shall be set before the drug court judge.  
21 The hearing shall be not less than three (3) work days nor more than five (5) work days  
22 after the date of the filing of the request form. Notice of the hearing shall be given to the

1 drug court team, or in the event no drug court team is designated, to the offender, the  
2 district attorney, and to the public defender. The offender shall be required to notify any  
3 private legal counsel of the date and time of the hearing.

4 SECTION 2. AMENDATORY 22 O.S. 2001, Section 471.6, as amended by  
5 Section 1, Chapter 202, O.S.L. 2006 (22 O.S. Supp. 2008, Section 471.6), is amended to  
6 read as follows:

7 Section 471.6 A. The drug court judge shall conduct a hearing as required by  
8 subsection E of Section 471.4 of this title to determine final eligibility by considering:

- 9 1. Whether or not the offender voluntarily consents to the program requirements;
- 10 2. Whether or not to accept the offender based upon the findings and  
11 recommendations of the drug court investigation authorized by Section 471.4 of this title;
- 12 3. Whether or not there is a written plea agreement, and if so, whether the terms  
13 and conditions of the written negotiated plea between the district attorney, the defense  
14 attorney, and the offender are appropriate and consistent with the penalty provisions  
15 and conditions of other similar cases;
- 16 4. Whether or not there is an appropriate treatment program available to the  
17 offender and whether or not there is a recommended treatment plan; and
- 18 5. Any information relevant to determining eligibility; provided, however, an  
19 offender shall not be denied admittance to any drug court program based upon an  
20 inability to pay court costs or other costs or fees.

21 B. At the hearing to determine final eligibility for the drug court program, the  
22 judge shall not grant any admission of any offender to the program when:

- 1           1. The required treatment plan and plea agreement have not been completed;
- 2           2. The program funding or availability of treatment has been exhausted;
- 3           3. The treatment program is unwilling to accept the offender;
- 4           4. The offender was ineligible for consideration by the nature of a violent offense at
- 5 the time of arrest, and the charge has been modified to meet the eligibility criteria of the
- 6 program; or
- 7           5. The offender is inappropriate for admission to the program, in the discretion of
- 8 the judge.

9           C. At the final eligibility hearing, if evidence is presented that was not discovered  
10 by the drug court investigation, the district attorney or the defense attorney may make  
11 an objection and may ask the court to withdraw the plea agreement previously  
12 negotiated. The court shall determine whether to proceed and overrule the objection, to  
13 sustain the objection and transfer the case for traditional criminal prosecution, or to  
14 require further negotiations of the plea or punishment provisions. The decision of the  
15 judge for or against eligibility and admission shall be final.

16           D. When the court accepts the treatment plan with the written plea agreement, the  
17 offender, upon entering the plea as agreed by the parties, shall be ordered and escorted  
18 immediately into the program. The offender must have voluntarily signed the necessary  
19 court documents before the offender may be admitted to treatment. The court documents  
20 shall include:

- 21           1. Waiver of the offender's rights to speedy trial;

1           2. A written plea agreement which sets forth the offense charged, the penalty to be  
2 imposed for the offense in the event of a breach of the agreement, and the penalty to be  
3 imposed, if any, in the event of a successful completion of the treatment program;  
4 provided, however, incarceration shall be prohibited when the offender completes the  
5 treatment program;

6           3. A written treatment plan which is subject to modification at any time during the  
7 program; and

8           4. A written performance contract requiring the offender to enter the treatment  
9 program as directed by the court and participate until completion, withdrawal, or  
10 removal by the court.

11           E. If admission into the drug court program is denied, the criminal case shall be  
12 returned to the traditional criminal docket and shall proceed as provided for any other  
13 criminal case.

14           F. At the time an offender is admitted to the drug court program, any bail or  
15 undertaking on behalf of the offender shall be exonerated.

16           G. The period of time during which an offender may participate in the active  
17 treatment portion of the drug court program shall be not less than six (6) months nor  
18 more than twenty-four (24) months and may include a period of supervision not less than  
19 six (6) months nor more than one (1) year following the treatment portion of the program.

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

1 Substance Abuse Services. Treatment programs shall be designed to be completed  
2 within twelve (12) months and shall have relapse prevention and evaluation components.

3 H. The drug court judge shall order the offender to pay court costs, treatment costs,  
4 drug testing costs, a program user fee not to exceed Twenty Dollars (\$20.00) per month,  
5 and necessary supervision fees, unless the offender is indigent. The drug court judge  
6 shall establish a schedule for the payment of costs and fees. The cost for treatment, drug  
7 testing, and supervision shall be set by the treatment and supervision providers  
8 respectively and made part of the court's order for payment. User fees shall be set by the  
9 drug court judge within the maximum amount authorized by this subsection and payable  
10 directly to the court clerk for the benefit and administration of the drug court program.

11 Treatment, drug testing, and supervision costs shall be paid to the respective providers.  
12 The court clerk shall collect all other costs and fees ordered. The remaining user fees  
13 shall be remitted to the State Treasurer by the court clerk for deposit in the Department  
14 of Mental Health and Substance Abuse Services' Drug Abuse Education and Treatment  
15 Revolving Fund established pursuant to Section 2-503.2 of Title 63 of the Oklahoma  
16 Statutes. Court orders for costs and fees pursuant to this subsection shall not be limited  
17 for purposes of collection to the maximum term of imprisonment for which the offender  
18 could have been imprisoned for the offense, nor shall any court order for costs and fees be  
19 limited by any term of probation, parole, supervision, treatment, or extension thereof.  
20 Court orders for costs and fees shall remain an obligation of the offender with court  
21 monitoring ~~until fully paid~~ not to exceed one (1) year, unless otherwise ordered by the  
22 court.

1 I. Notwithstanding any other provision of law, if the driving privileges of the  
2 offender have been suspended, revoked, cancelled or denied by the Department of Public  
3 Safety and if the drug court judge determines that no other means of transportation for  
4 the offender is available, the drug court judge may enter a written order requiring the  
5 Department of Public Safety to stay any and all such actions against the Class D driving  
6 privileges of the offender; provided, the stay shall not be construed to grant driving  
7 privileges to an offender who has not been issued a driver license by the Department or  
8 whose Oklahoma driver license has expired, in which case the offender shall be required  
9 to apply for and be found eligible for a driver license, pass all examinations, if applicable,  
10 and pay all statutory driver license issuance or renewal fees. The offender shall provide  
11 proof of insurance to the drug court judge prior to the judge ordering a stay of any driver  
12 license suspension, revocation, cancellation, or denial.

13 SECTION 3. AMENDATORY 47 O.S. 2001, Section 18-101, as last amended by  
14 Section 31, Chapter 16, O.S.L. 2006 (47 O.S. Supp. 2008, Section 18-101), is amended to  
15 read as follows:

16 Section 18-101. A. Every magistrate or judge of a court shall keep or cause to be  
17 kept a record of every traffic complaint, traffic citation, or other legal form of traffic  
18 charge deposited with or presented to the court or its traffic-violations bureau, and shall  
19 keep a record of every official action by the court or its traffic-violations bureau,  
20 including, but not limited to, a record of every conviction, forfeiture of bail, judgment of  
21 acquittal, and the amount of fine or forfeiture resulting from every traffic complaint,

1 citation or other legal form of traffic charge deposited with or presented to the court or  
2 traffic-violations bureau.

3 B. Within ten (10) days after:

4 1. The conviction of any person holding a Class D driver license; or

5 2. The conviction, as defined in subsection A of Section 6-205.2 of this title, of any  
6 person holding a Class A, B or C driver license; or

7 3. The forfeiture of bail of a person;

8 upon a charge of violating any law regulating the operation of vehicles on highways every  
9 magistrate of the court or clerk of the court of record, in which the conviction was had or  
10 bail was forfeited, shall prepare and immediately forward to the Department of Public  
11 Safety an abstract of the record covering the case in which the person was convicted or  
12 forfeited bail, which shall be certified by the person required to prepare the abstract to be  
13 true and correct.

14 C. A report shall not be made of any conviction:

15 1. Involving the illegal parking or standing of a vehicle;

16 2. Rendered by a nonlawyer judge, unless, within a period not to exceed the  
17 preceding reporting period for Mandatory Continuing Legal Education, the judge has  
18 completed courses held for municipal judges which have been approved by the Oklahoma  
19 Bar Association Mandatory Legal Education Commission for at least six (6) hours of  
20 continuing judicial education credit, and the Department of Public Safety receives  
21 verification of such attendance, from the judge. In the case of attendance of a continuing

1 judicial education course, verification may be made by a statement of attendance signed  
2 by the course registration personnel; or

3 3. Involving a ~~felony drug~~ any offense for which the offender is eligible for  
4 participation in an approved drug court program. However, if the offender does not  
5 successfully complete the drug court program, the abstract of the record shall be  
6 forwarded as provided in subsection B of this section.

7 D. The abstract shall be made upon a form furnished by the Department and shall  
8 include:

- 9 1. The name, address, sex, and date of birth of the person charged;
- 10 2. The traffic citation number;
- 11 3. The driver license number, if any, of the person charged, and the state or  
12 jurisdiction from which the license is issued;
- 13 4. The license plate number, make, and model of the vehicle involved;
- 14 5. The nature and date of the offense, the date of hearing, the plea, the judgment,  
15 or, if bail was forfeited, the amount of the fine or forfeiture; and
- 16 6. The name of the court and whether it is a municipal or district court.

17 E. Every court of record shall also forward a like report to the Department upon the  
18 conviction of any person of manslaughter or other felony in the commission of which a  
19 vehicle was used.

20 F. The failure, refusal or neglect of any judicial officer to comply with any of the  
21 requirements of this section shall constitute misconduct in office and shall be ground for  
22 removal.

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

1 SECTION 4. This act shall become effective November 1, 2009.

2 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04-07-09 - DO PASS,  
3 As Amended.