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THE STATE SENATE
Thursday, March 25, 2010

ENGROSSED
House Bill No. 3158
As Amended

ENGROSSED HOUSE BILL NO. 3158 - By: Osborn, Faught and Sherrer of the House and Justice of the Senate.

[criminal procedure - Oklahoma Drug Court Act - extension of supervision period - effective date]

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 471.6, as last amended by Section 2, Chapter 290, O.S.L. 2009 (22 O.S. Supp. 2009, Section 471.6), is amended to read as follows:

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

- 1. Whether or not the offender voluntarily consents to the program requirements;
- 2. Whether or not to accept the offender based upon the findings and recommendations of the drug court investigation authorized by Section 471.4 of this title;
- 3. Whether or not there is a written plea agreement, and if so, whether the terms and conditions of the written negotiated plea between the district attorney, the defense attorney, and the

1 offender are appropriate and consistent with the penalty provisions
2 and conditions of other similar cases;

3 4. Whether or not there is an appropriate treatment program
4 available to the offender and whether or not there is a recommended
5 treatment plan; and

6 5. Any information relevant to determining eligibility;
7 provided, however, an offender shall not be denied admittance to any
8 drug court program based upon an inability to pay court costs or
9 other costs or fees.

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

13 1. The required treatment plan and plea agreement have not been
14 completed;

15 2. The program funding or availability of treatment has been
16 exhausted;

17 3. The treatment program is unwilling to accept the offender;

18 4. The offender was ineligible for consideration by the nature
19 of a violent offense at the time of arrest, and the charge has been
20 modified to meet the eligibility criteria of the program; or

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

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

10 D. When the court accepts the treatment plan with the written
11 plea agreement, the offender, upon entering the plea as agreed by
12 the parties, shall be ordered and escorted immediately into the
13 program. The offender must have voluntarily signed the necessary
14 court documents before the offender may be admitted to treatment.
15 The court documents shall include:

- 16 1. Waiver of the offender's rights to speedy trial;
- 17 2. A written plea agreement which sets forth the offense
18 charged, the penalty to be imposed for the offense in the event of a
19 breach of the agreement, and the penalty to be imposed, if any, in
20 the event of a successful completion of the treatment program;
21 provided, however, incarceration shall be prohibited when the
22 offender completes the treatment program;

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

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

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

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

12 G. The period of time during which an offender may participate
13 in the active treatment portion of the drug court program shall be
14 not less than six (6) months nor more than twenty-four (24) months
15 and may include a period of supervision not less than six (6) months
16 nor more than one (1) year following the treatment portion of the
17 program. The period of supervision may be extended by order of the
18 court. If the court orders that the period of supervision shall be
19 extended, the drug court judge, district attorney, the attorney for
20 the offender, and the supervising staff for the drug court program
21 shall evaluate the appropriateness of continued supervision on a
22 quarterly basis. All participating treatment providers shall be
23 certified by the Department of Mental Health and Substance Abuse

1 Services and shall be selected and evaluated for performance-based
2 effectiveness annually by the Department of Mental Health and
3 Substance Abuse Services. Treatment programs shall be designed to
4 be completed within twelve (12) months and shall have relapse
5 prevention and evaluation components.

6 H. The drug court judge shall order the offender to pay court
7 costs, treatment costs, drug testing costs, a program user fee not
8 to exceed Twenty Dollars (\$20.00) per month, and necessary
9 supervision fees, unless the offender is indigent. The drug court
10 judge shall establish a schedule for the payment of costs and fees.
11 The cost for treatment, drug testing, and supervision shall be set
12 by the treatment and supervision providers respectively and made
13 part of the court's order for payment. User fees shall be set by
14 the drug court judge within the maximum amount authorized by this
15 subsection and payable directly to the court clerk for the benefit
16 and administration of the drug court program. Treatment, drug
17 testing, and supervision costs shall be paid to the respective
18 providers. The court clerk shall collect all other costs and fees
19 ordered. The remaining user fees shall be remitted to the State
20 Treasurer by the court clerk for deposit in the Department of Mental
21 Health and Substance Abuse Services' Drug Abuse Education and
22 Treatment Revolving Fund established pursuant to Section 2-503.2 of
23 Title 63 of the Oklahoma Statutes. Court orders for costs and fees

1 pursuant to this subsection shall not be limited for purposes of
2 collection to the maximum term of imprisonment for which the
3 offender could have been imprisoned for the offense, nor shall any
4 court order for costs and fees be limited by any term of probation,
5 parole, supervision, treatment, or extension thereof. Court orders
6 for costs and fees shall remain an obligation of the offender until
7 fully paid. Offenders who have not fully paid all costs and fees
8 pursuant to court order but who have otherwise successfully
9 completed the drug court program shall not be counted as an active
10 drug court participant for purposes of drug court contracts or
11 program participant numbers.

12 I. Notwithstanding any other provision of law, if the driving
13 privileges of the offender have been suspended, revoked, cancelled
14 or denied by the Department of Public Safety and if the drug court
15 judge determines that no other means of transportation for the
16 offender is available, the drug court judge may enter a written
17 order requiring the Department of Public Safety to stay any and all
18 such actions against the Class D driving privileges of the offender;
19 provided, the stay shall not be construed to grant driving
20 privileges to an offender who has not been issued a driver license
21 by the Department or whose Oklahoma driver license has expired, in
22 which case the offender shall be required to apply for and be found
23 eligible for a driver license, pass all examinations, if applicable,

1 and pay all statutory driver license issuance or renewal fees. The
2 offender shall provide proof of insurance to the drug court judge
3 prior to the judge ordering a stay of any driver license suspension,
4 revocation, cancellation, or denial.

5 SECTION 2. This act shall become effective November 1, 2010.

6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-23-10 - DO
7 PASS, As Amended.