

THE STATE SENATE  
Monday, February 22, 2010

Committee Substitute for  
Senate Bill No. 2153

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2153 - By: Leftwich of the Senate and Holland of the House.

[ criminal procedure - mental health courts - effective date ]

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

SECTION 1. AMENDATORY Section 1, Chapter 285, O.S.L. 2002, as amended by Section 1, Chapter 76, O.S.L. 2003 (22 O.S. Supp. 2009, Section 472), is amended to read as follows:

Section 472. A. This section shall be known and may be cited as the "Anna McBride Act".

B. Any district or municipal court of this state ~~may~~ shall establish a mental health court ~~pilot program~~ pursuant to the provisions of this section, subject to the availability of funds.

C. 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 mental health court ~~pilot program~~.

D. For purposes of this section, "mental health court" means a judicial process that utilizes specially trained court personnel to expedite the case and explore alternatives to incarceration for

1 offenders charged with criminal offenses other than a crime listed  
2 in paragraph 2 of Section 571 of Title 57 of the Oklahoma Statutes  
3 who have a mental illness or a developmental disability, or a co-  
4 occurring mental illness and substance abuse disorder. The district  
5 attorney's office may use discretion in the prosecution of those  
6 offenders specified in this subsection subject to the restrictions  
7 provided in subsection E of this section.

8 E. The court shall have the authority to exclude from mental  
9 health court any offender arrested or charged with any violent  
10 offense or any offender who has a prior felony conviction in this  
11 state or another state for a violent offense. Eligibility and entry  
12 by an offender into the mental health court program is dependent  
13 upon prior approval of the district attorney. Eligible offenses may  
14 further be restricted by the rules of the specific mental health  
15 court program. The court also shall have the authority to exclude  
16 persons from mental health court who have a propensity for violence.

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

20 Mental health court programs shall require a separate judicial  
21 processing system differing in practice and design from the  
22 traditional adversarial criminal prosecution and trial systems.  
23 When a mental health court program is established, the arresting

1 officer shall file the criminal case record for potentially eligible  
2 offenders with the district attorney within four (4) days of the  
3 arrest. The district attorney shall file an information in the case  
4 within twenty-four (24) hours of receipt of the criminal case record  
5 when the offender appears eligible for consideration for the  
6 program. The information may be amended as necessary when an  
7 offender is denied admittance into the mental health court program.

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

11 A. Each mental health court program shall:

12 1. Implement therapeutic jurisprudence;

13 2. Decrease recidivism and increase treatment utilization for  
14 program participants;

15 3. Protect the public through means of court supervised  
16 treatment that supports accountability and responsibility of  
17 participants;

18 4. Provide individualized, trauma-informed, co-occurring, and  
19 recovery-based treatment services;

20 5. Assist participants with reaching long-term recovery goals  
21 using a team approach;

- 1           6. Limit the use of sanctions and other coercive techniques,  
2 relying on the use of incentives as primary means of supporting  
3 behavior change;
- 4           7. Reduce the stigma associated with mental illness in the  
5 criminal justice system;
- 6           8. Educate the community about the importance of community-  
7 based diversion programs;
- 8           9. Provide methods for measuring application of disciplinary  
9 sanctions, including provisions for:
- 10           a. increased supervision,  
11           b. urinalysis testing,  
12           c. intensive treatment,  
13           d. short-term confinement not to exceed five (5) days,  
14           e. recycling the offender into the program after a  
15           disciplinary action for a minimum violation of the  
16           treatment plan,  
17           f. reinstating the offender into the program after a  
18           disciplinary action for a major violation of the  
19           treatment plan, and  
20           g. revocation from the program; and
- 21           10. Provide methods for measuring performance-based  
22 effectiveness of each individual treatment provider's services.

1           B. All mental health court programs shall be required to keep  
2 reliable data on recidivism, relapse, restarts, sanctions imposed,  
3 and incentives given.

4           C. Nothing in this section shall prohibit any county from  
5 establishing a mental health court for misdemeanor offenses. Such  
6 misdemeanor mental health courts shall follow the rules and  
7 regulations of felony mental health courts except that the penalty  
8 for revocation shall not exceed one (1) year in the county jail or  
9 the maximum penalty for the misdemeanor allowed by statute,  
10 whichever is less. The Department of Mental Health and Substance  
11 Abuse Services shall provide technical assistance to the counties  
12 that establish misdemeanor mental health courts.

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

16           A. Eligibility and exclusionary criteria for each mental health  
17 court program shall be in accordance with Section 472 of Title 22 of  
18 the Oklahoma Statutes. Each mental health court shall identify  
19 eligibility and exclusionary criteria to minimally address an  
20 offender's history and propensity for violence, diagnosis and  
21 criminal record.

22           B. Discharge from a mental health court program can occur  
23 through successful completion of program requirements or in

1 terminations. Mental health courts shall have policy and procedures  
2 in place which minimally describe:

- 3 1. Successful program discharge;
- 4 2. Case disposition;
- 5 3. Processes for graduation;
- 6 4. Terminations from program;
- 7 5. Case disposition;
- 8 6. Behaviors which could result in termination;
- 9 7. Participant's access to legal counsel; and
- 10 8. Address participants whom the court is not able to contact  
11 (AWOL).

12 Discharge and termination criteria must be available in writing  
13 to all program participants.

14 C. The number of participants a mental health court shall serve  
15 at one time shall not exceed twenty-five. Courts developed as  
16 double programs shall serve no more than fifty participants.

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

20 A Mental Health Court Team shall be the operational entity of  
21 the program. The team shall consist of the following members with  
22 their subsequent roles:

1           1. Judge. The judge plays an active role in participants'  
2 progress through the mental health court program. This shall  
3 include, but is not limited to, making referrals to the program,  
4 participating in team staffing, frequently reviewing progress and  
5 compliance with phase requirements, and making final decisions over  
6 administrative processes. The judge shall develop a working  
7 relationship with participants by responding to personal successes  
8 as well as violations of court orders. The judge shall equally  
9 respond to treatment-related, supervision-related, and personal  
10 issues without losing judicial authority;

11           2. Member or members of the district attorney's office. The  
12 district attorney's representative shall assist in making referrals  
13 to the program, participating in team staffing, and in reviewing  
14 cases for eligibility for mental health court. The district  
15 attorney's primary responsibilities are to ensure compliance with  
16 the law, ensure that cases do not represent an unacceptable risk to  
17 the public, and ensure eligibility decisions are in compliance with  
18 jurisdictional criteria;

19           3. Defense representative or representatives. The defense  
20 representative shall assist in making referrals and negotiating plea  
21 agreements into the program. This member's primary role is to  
22 assure the legal rights of participants, especially if the

1 participant faces sanctions or termination from the mental health  
2 court;

3 4. Liaison/coordinator. The liaison/coordinator is a full-time  
4 employee who shall dedicate a minimum of eighty percent (80%) of  
5 their time to the operations of the mental health court program.  
6 The liaison/coordinator shall manage the daily operations of the  
7 mental health court program, including communication with all  
8 members of the team, serving as one point of contact for court  
9 information. This member shall regularly participate in meetings  
10 with treatment providers to keep team apprised of participants'  
11 progress toward recovery goals as well as coordinate referral  
12 processes and staff training. The liaison/coordinator shall oversee  
13 monthly completion of data entry into the Department's Mental Health  
14 Court Web-Based Reporting System. The liaison/coordinator shall not  
15 provide treatment services to program participants;

16 5. Treatment provider or providers. Treatment providers shall  
17 be representatives of the facilities that provide treatment services  
18 to program participants. The providers shall make referrals to the  
19 program, provide eligibility assessments, make recommendations to  
20 the team regarding treatment needs, and advocate to and educate the  
21 team regarding areas of expertise. Treatment providers shall  
22 communicate with other team members to provide efficient access to  
23 services; and

1           6. Optional members. Law enforcement, jail personnel,  
2 advocates, peer support, and other members the team feels  
3 appropriate for participation.

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

7           Mental health court teams shall have the expectation that many  
8 participants will have co-occurring disorders, and plan policy and  
9 procedures for treatment and supervision accordingly. Drug testing  
10 and monitoring shall be used as tools to support recovery and not  
11 solely as a means to support sanctions. Mental health court  
12 programs shall have policies and procedures in place which minimally  
13 identify:

- 14           1. Random drug testing, when clinically indicated;
- 15           2. Drug monitoring, when clinically indicated;
- 16           3. Costs to participant associated with drug testing and  
17 monitoring;
- 18           4. Costs to program associated with drug testing and  
19 monitoring;
- 20           5. Providing decrease in drug testing frequency as participants  
21 progress through the program;
- 22           6. Providing the participant with lab confirmation of test  
23 results upon request;

1           7. Providing the participant with support from defense  
2 representative upon positive test results;

3           8. Procedures which describe how the court will address  
4 positive drug tests to minimally include:

5           a. review of treatment plan for needed services prior to  
6 implementation of sanctions, and

7           b. review of supportive services and mitigating or  
8 aggravating circumstances prior to implementation of  
9 sanctions.

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

13           A. Incentives shall be awarded to mental health court  
14 participants for exhibiting desired behaviors, commendable acts,  
15 phase promotions, or any other behavior the mental health court team  
16 wants to encourage the participant to continue. Incentives shall  
17 include, but not be limited to, gift certificates, certificates of  
18 accomplishments, recognition from the judge, reduction of fines,  
19 reductions of supervision meetings, extended travel privileges,  
20 extended curfews, and graduation from the program.

21           B. Sanctions shall be implemented to discourage participant  
22 behavior. Sanctions shall include, but not be limited to, judicial  
23 reprimands, essays presented in court, increase in status hearings,

1 increase of supervision requirements, changes in travel and curfew  
2 restrictions, community service hours, and daily reporting. Jail is  
3 not recommended for use as a routine sanction.

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

7 The mental health court programs described in this act shall be  
8 subject to the availability of funds as determined by the Board of  
9 Mental Health and Substance Abuse Services.

10 SECTION 9. This act shall become effective November 1, 2010.

11 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-17-10 - DO  
12 PASS, As Amended and Coauthored.