

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1626

By: Pittman

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5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2001, Sections 471.1, as amended by Section 1,
9 Chapter 37, O.S.L. 2008, 471.2, 471.3, 471.4 and
10 471.6, as amended by Section 1, Chapter 202, O.S.L.
11 2006 (22 O.S. Supp. 2008, Sections 471.1 and 471.6),
12 which relate to the Oklahoma Drug Court Act; updating
13 statutory references; deleting certain eligibility
14 restrictions; modifying initial hearing procedures;
15 authorizing drug court team to make certain
16 eligibility determination; authorizing judge to refer
17 offenders to drug court program despite objections
18 made by the district attorney; authorizing court to
19 determine punishment when certain negotiations fail;
20 and providing an effective date.

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

22 SECTION 1. AMENDATORY 22 O.S. 2001, Section 471.1, as
23 amended by Section 1, Chapter 37, O.S.L. 2008 (22 O.S. Supp. 2008,
24 Section 471.1), is amended to read as follows:

25 Section 471.1 A. For purposes of ~~this act~~ the Oklahoma Drug
26 Court Act, "drug court", "drug court program" or "program" means an
27 immediate and highly structured judicial intervention process for
28 substance abuse treatment of eligible offenders which expedites the

1 criminal case, and requires successful completion of the plea
2 agreement in lieu of incarceration.

3 B. Each district court of this state is authorized to establish
4 a drug court program pursuant to the provisions of this act, subject
5 to availability of funds. Juvenile drug courts may be established
6 based upon the provisions of this act; provided, however, juveniles
7 shall not be held, processed, or treated in any manner which
8 violates any provision of Title 10 of the Oklahoma Statutes.

9 C. Drug court programs shall not apply to any violent criminal
10 offense. Eligible offenses may further be restricted by the rules
11 of the specific drug court program. Nothing in this act shall be
12 construed to require a drug court to consider every offender with a
13 treatable condition or addiction, regardless of the fact that the
14 controlling offense is eligible for consideration in the program.
15 Traditional prosecution shall be required where an offender is
16 determined not appropriate for the drug court program.

17 D. Drug court programs shall require a separate judicial
18 processing system differing in practice and design from the
19 traditional adversarial criminal prosecution and trial systems.
20 Whenever possible, a drug court team shall be designated consisting
21 of a judge to administer the program, a district attorney, a defense
22 attorney, and other persons designated by the drug court team who
23 shall have appropriate understanding of the goals of the program and
24 of the appropriate treatment methods for the various conditions.

1 The assignment of any person to the drug court team shall not
2 preclude the assigned person from performing other duties required
3 in the course of their office or employment. The chief judge of the
4 judicial district, or if the district has more than one chief judge
5 than the presiding judge of the Administrative Judicial District,
6 shall designate one or more judges to administer the drug court
7 program. The assignment of any judge to a drug court program or the
8 designation of a drug court docket shall not mandate the assignment
9 of all substance abuse related cases to the drug court docket or the
10 program; however, nothing in this act shall be construed to preclude
11 the assignment of all criminal cases relating to substance abuse or
12 drug possession as provided by the rules established for the
13 specific drug court program.

14 E. When a drug court program is established, the arresting
15 officer shall file the criminal case record for potentially eligible
16 offenders with the district attorney within four (4) days of the
17 arrest. The district attorney shall file an information in the case
18 within twenty-four (24) hours of receipt of the criminal case record
19 when the offender appears eligible for consideration for the
20 program. The information may be amended as necessary when an
21 offender is denied admittance into the drug court program or for
22 other purposes as provided in Section 304 of this title. ~~Any person~~
23 ~~arrested upon a warrant for his or her arrest shall not be eligible~~
24 ~~for the drug court program without the approval of the district~~

1 ~~attorney.~~ Any criminal case which has been filed and processed in
2 the traditional manner shall be cross-referenced to a drug court
3 case file by the court clerk, if the case is subsequently assigned
4 to the drug court program. The originating criminal case file shall
5 remain open to public inspection. The judge shall determine what
6 information or pleadings are to be retained in the drug court case
7 file, which shall be closed to public inspection.

8 F. The court may request assistance from the Department of
9 Mental Health and Substance Abuse Services which shall be the
10 primary agency to assist in developing and implementing a drug court
11 program or from any state or local agency in obtaining the necessary
12 treatment services which will assure maximum opportunity for
13 successful treatment, education, and rehabilitation for offenders
14 admitted to the program. All participating state and local agencies
15 are directed to coordinate with each other and cooperate in
16 assisting the district court in establishing a drug court program.

17 G. Each drug court program shall ensure, but not be limited to:
18 1. Strong linkage between participating agencies;
19 2. Access by all participating parties of a case to information
20 on the progress of the offender;
21 3. Vigilant supervision and monitoring procedures;
22 4. Random substance abuse testing;
23 5. Provisions for noncompliance, modification of the treatment
24 plan, and revocation proceedings;

1 6. Availability of residential treatment facilities and
2 outpatient services;

3 7. Payment of court costs, treatment costs, supervision fees,
4 and program user fees by the offender;

5 8. Methods for measuring application of disciplinary sanctions,
6 including provisions for:

7 a. increased supervision,

8 b. urinalysis testing,

9 c. intensive treatment,

10 d. short-term confinement not to exceed five (5) days,

11 e. recycling the offender into the program after a
12 disciplinary action for a minimum violation of the
13 treatment plan,

14 f. reinstating the offender into the program after a
15 disciplinary action for a major violation of the
16 treatment plan, and

17 g. revocation from the program; and

18 9. Methods for measuring performance-based effectiveness of
19 each individual treatment provider's services.

20 H. All drug court programs shall be required to keep reliable
21 data on recidivism, relapse, restarts, sanctions imposed, and
22 incentives given.

23 I. Nothing in this section shall prohibit any county from
24 establishing a drug court for misdemeanor offenses. Such

1 misdemeanor drug courts shall follow the rules and regulations of
2 felony drug courts except that the penalty for revocation shall not
3 exceed one (1) year in the county jail or the maximum penalty for
4 the misdemeanor allowed by statute, whichever is less. The
5 Department of Mental Health and Substance Abuse Services shall
6 provide technical assistance to the counties that establish
7 misdemeanor drug courts.

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

10 Section 471.2 A. The initial opportunity for review of an
11 offender for a drug court program shall occur within four (4) days
12 after the arrest and detention or incarceration of the offender in
13 the city or county jail, or if an immediate bond release program is
14 available through the jail, the initial opportunity for review shall
15 occur in conjunction with the bond release program. When a drug
16 court is established, the following information shall be initially
17 reviewed by the sheriff or designee, if the offender is held in a
18 county jail, or by the chief of police or designee, if the offender
19 is held in a city jail:

20 1. The offender's arrest or charge does not involve a crime of
21 violence against any person, unless there is a specific treatment
22 program in the jurisdiction designed to address domestic violence
23 and the offense is related to domestic violence and substance abuse;

24

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

7 3. The offender's arrest or charge does not involve a violation
8 of the Trafficking In Illegal Drugs Act, ~~Section 2-414 et seq. of~~
9 ~~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
16 for the drug court program.

17 B. If it appears to the reviewing officer that the offender may
18 be potentially eligible for the drug court program based upon a
19 review of the information in subsection A of this section, the
20 offender shall be given an eligibility form which may be voluntarily
21 completed by the offender, and the reviewing officer shall file the
22 criminal case record within the time prescribed in subsection E of
23 Section ~~2~~ 471.1 of this ~~act~~ title. The offender shall not
24 automatically be considered for the program based upon this review.

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

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

9 2. A general explanation of the roles and authority of the
10 supervising staff, the district attorney, the defense attorney, the
11 treatment provider, the offender, and the judge in the drug court
12 program;

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

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

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

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

- 3 a. waive the right to a speedy trial,
- 4 b. waive the right to a preliminary hearing,
- 5 c. the terms and conditions of a treatment plan, and
- 6 d. sign a performance contract with the court;

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

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

- 13 a. fail to comply with the terms of the agreements,
- 14 b. be convicted of a misdemeanor offense which reflects a
15 propensity for violence,
- 16 c. be arrested for a violent felony offense, or
- 17 d. be convicted of any felony offense,

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

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

24

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

3 a. if the offender is incarcerated, the offender must
4 sign and complete the eligibility form and return it
5 to the sheriff, if the offender is held in the county
6 jail; or to the chief of police, if the offender is
7 held in a city jail. The sheriff or chief of police,
8 upon receipt of the eligibility form, shall file the
9 form with the district attorney at the time of filing
10 the criminal case record or at any time during the
11 period of incarceration when the offender completes
12 the form after the criminal case record has been
13 filed, or

14 b. after release of the offender from incarceration, the
15 offender must sign and complete the eligibility form
16 and file it with the district attorney or the court,
17 prior to or at the time of either initial appearance
18 or arraignment.

19 2. Any offender desiring legal consultation prior to signing or
20 completing the form for consideration in a drug court program shall
21 be referred to the defense attorney of the drug court team, or a
22 public defender, if the offender is indigent, or allowed to consult
23 with private legal counsel.
24

1 3. Nothing contained in the provisions of this subsection shall
2 prohibit the drug court from considering any offender deemed
3 eligible for the program at any time prior to sentencing whose case
4 has been prosecuted in the traditional manner, or upon a violation
5 of parole or probation conditions relating to substance abuse, upon
6 recommendation of the district attorney as provided in Section 9
7 471.8 of this ~~act~~ title.

8 D. When an offender has filed a voluntary request to be
9 considered for a drug court program on the appropriate form, the
10 district attorney ~~shall indicate his or her approval of the request~~
11 ~~by filing the form with~~ or the drug court team shall make a
12 recommendation to the drug court judge. Upon the filing of the
13 ~~request form~~ recommendation by the district attorney or the drug
14 court team, an initial hearing shall be set before the drug court
15 judge. The hearing shall be not less than three (3) work days nor
16 more than five (5) work days after the date of the filing of the
17 request form. Notice of the hearing shall be given to the drug
18 court team, or in the event no drug court team is designated, to the
19 offender, the district attorney, and to the public defender. The
20 offender shall be required to notify any private legal counsel of
21 the date and time of the hearing.

22 SECTION 3. AMENDATORY 22 O.S. 2001, Section 471.3, is
23 amended to read as follows:
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1 Section 471.3 A. At the initial hearing for consideration of
2 an offender for a drug court program, the district attorney or the
3 drug court team shall determine whether or not:

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

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

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

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

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

20 C. Upon any objection of the district attorney for
21 consideration of an offender for the program, the court shall ~~deny~~
22 determine consideration of the offender's request for participation
23 in the drug court program at an initial hearing. If the court
24 determines that the offender is eligible for participation in the

1 drug court program, the court shall refer the offender for a drug
2 court investigation as provided in Section 471.4 of this title, and
3 set a date for a hearing to determine final eligibility for
4 admittance into the program.

5 D. Upon denial for consideration in the drug court program at
6 the initial hearing, the criminal case shall proceed in the
7 traditional manner. An objection by the district attorney and the
8 subsequent denial of consideration of the offender for the program
9 shall not preclude any future consideration of the offender for the
10 drug court program ~~with the approval of the district attorney.~~

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

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

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

19 B. The drug court investigation shall be conducted through a
20 standardized screening test and personal interview. A more
21 comprehensive assessment may take place at the time the offender
22 enters the treatment portion of the program and may take place at
23 any time after placement in the drug court program. The
24 investigation shall determine the original treatment plan which the

1 offender will be required to follow, if admitted to the program.
2 Any subsequent assessments or evaluations by the treatment provider,
3 if the offender is admitted to the program, may be used to determine
4 modifications needed to the original treatment plan. The
5 investigation shall include, but not be limited to, the following
6 information:

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

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

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

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

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

22 F. For purposes of this act, "supervising staff" means a
23 Department of Corrections employee assigned to monitor offenders in
24 the drug court program, a community provider assigned to monitor

1 offenders in the program, a state or local agency representative or
2 a certified treatment provider participating in the program, or a
3 person designated by the judge to perform drug court investigations.

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

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

10 1. Whether or not the offender voluntarily consents to the
11 program requirements;

12 2. Whether or not to accept the offender based upon the
13 findings and recommendations of the drug court investigation
14 authorized by Section 471.4 of this title;

15 3. Whether or not there is a written plea agreement, and if so,
16 whether the terms and conditions of the written negotiated plea by
17 the court or between the district attorney, the defense attorney,
18 and the offender are appropriate and consistent with the penalty
19 provisions and conditions of other similar cases;

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

23 5. Any information relevant to determining eligibility;
24 provided, however, an offender shall not be denied admittance to any

1 drug court program based upon an inability to pay court costs or
2 other costs or fees.

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

6 1. The required treatment plan and plea agreement have not been
7 completed;

8 2. The program funding or availability of treatment has been
9 exhausted;

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

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

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

16 C. At the final eligibility hearing, if evidence is presented
17 that was not discovered by the drug court investigation, the
18 district attorney or the defense attorney may make an objection and
19 may ask the court to withdraw the plea agreement previously
20 negotiated. The court shall determine whether to proceed and
21 overrule the objection, to sustain the objection and transfer the
22 case for traditional criminal prosecution, or to require further
23 negotiations of the plea or punishment provisions. The decision of
24 the judge for or against eligibility and admission shall be final.

1 D. When the court accepts the treatment plan with the written
2 plea agreement, the offender, upon entering the plea as agreed by
3 the parties, shall be ordered and escorted immediately into the
4 program. The offender must have voluntarily signed the necessary
5 court documents before the offender may be admitted to treatment.

6 The court documents shall include:

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

8 2. A written plea agreement which sets forth the offense
9 charged, the penalty to be imposed for the offense in the event of a
10 breach of the agreement, and the penalty to be imposed, if any, in
11 the event of a successful completion of the treatment program;
12 provided, however, incarceration shall be prohibited when the
13 offender completes the treatment program;

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

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

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

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

1 G. The period of time during which an offender may participate
2 in the active treatment portion of the drug court program shall be
3 not less than six (6) months nor more than twenty-four (24) months
4 and may include a period of supervision not less than six (6) months
5 nor more than one (1) year following the treatment portion of the
6 program. All participating treatment providers shall be certified
7 by the Department of Mental Health and Substance Abuse Services and
8 shall be selected and evaluated for performance-based effectiveness
9 annually by the Department of Mental Health and Substance Abuse
10 Services. Treatment programs shall be designed to be completed
11 within twelve (12) months and shall have relapse prevention and
12 evaluation components.

13 H. The drug court judge shall order the offender to pay court
14 costs, treatment costs, drug testing costs, a program user fee not
15 to exceed Twenty Dollars (\$20.00) per month, and necessary
16 supervision fees, unless the offender is indigent. The drug court
17 judge shall establish a schedule for the payment of costs and fees.
18 The cost for treatment, drug testing, and supervision shall be set
19 by the treatment and supervision providers respectively and made
20 part of the court's order for payment. User fees shall be set by
21 the drug court judge within the maximum amount authorized by this
22 subsection and payable directly to the court clerk for the benefit
23 and administration of the drug court program. Treatment, drug
24 testing, and supervision costs shall be paid to the respective

1 providers. The court clerk shall collect all other costs and fees
2 ordered. The remaining user fees shall be remitted to the State
3 Treasurer by the court clerk for deposit in the Department of Mental
4 Health and Substance Abuse Services' Drug Abuse Education and
5 Treatment Revolving Fund established pursuant to Section 2-503.2 of
6 Title 63 of the Oklahoma Statutes. Court orders for costs and fees
7 pursuant to this subsection shall not be limited for purposes of
8 collection to the maximum term of imprisonment for which the
9 offender could have been imprisoned for the offense, nor shall any
10 court order for costs and fees be limited by any term of probation,
11 parole, supervision, treatment, or extension thereof. Court orders
12 for costs and fees shall remain an obligation of the offender with
13 court monitoring until fully paid.

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

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

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

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