

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1075

By: Crain

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5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2001, Sections 471.2 and 471.6, as amended by
9 Section 1, Chapter 2002, O.S.L. 2006 (22 O.S. Supp.
10 2008, Section 471.6), which relates to drug court
11 programs; modifying requirement for certain review;
12 modifying time period for certain court monitoring;
13 amending 47 O.S. 2001, Section 18-101, as last
14 amended by Section 31, Chapter 16, O.S.L. 2006 (47
15 O.S. Supp. 2008, Section 18-101), which relates to
16 report of convictions; modifying certain reporting
17 requirement; and providing an effective date.

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

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

21 Section 471.2 A. The initial opportunity for review of an
22 offender for a drug court program shall occur within four (4) days
23 after the arrest and detention or incarceration of the offender in
24 the city or county jail, or if an immediate bond release program is
available through the jail, the initial opportunity for review shall
occur in conjunction with the bond release program. When a drug
court is established, the following information shall be initially

1 reviewed by the sheriff or designee, if the offender is held in a
2 county jail, or by the chief of police or designee, if the offender
3 is held in a city jail:

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

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

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

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

18 5. The offender:

19 a. admits to having a substance abuse addiction,

20 b. appears to have a substance abuse addiction,

21 c. is known to have a substance abuse addiction, or

22 d. the arrest or charge is based upon an offense eligible
23 for the drug court program.

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1 B. If it appears to the reviewing officer that the offender may
2 be potentially eligible for the drug court program based upon a
3 review of the information in subsection A of this section, the
4 offender shall be given an eligibility form which may be voluntarily
5 completed by the offender, and the reviewing officer shall file the
6 criminal case record within the time prescribed in subsection E of
7 Section 2 of this act. The offender shall not automatically be
8 considered for the program based upon this review. The offender
9 must request consideration for the drug court program as provided in
10 subsection C of this section and shall have approval from the
11 district attorney before being considered for the drug court
12 program. The eligibility form shall describe the drug court program
13 for which the offender may be eligible, including, but not limited
14 to:

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

17 2. A general explanation of the roles and authority of the
18 supervising staff, the district attorney, the defense attorney, the
19 treatment provider, the offender, and the judge in the drug court
20 program;

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

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

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

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

- 11 a. waive the right to a speedy trial,
- 12 b. waive the right to a preliminary hearing,
- 13 c. the terms and conditions of a treatment plan, and
- 14 d. sign a performance contract with the court;

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

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

- 21 a. fail to comply with the terms of the agreements,
- 22 b. be convicted of a misdemeanor offense which reflects a
23 propensity for violence,
- 24 c. be arrested for a violent felony offense, or

1 d. be convicted of any felony offense,
2 the offender may be required, after a court hearing, to be revoked
3 from the program and sentenced without trial pursuant to the
4 punishment provisions of the negotiated plea agreement; and

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

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

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

21 b. after release of the offender from incarceration, the
22 offender must sign and complete the eligibility form
23 and file it with the district attorney or the court,
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1 prior to or at the time of either initial appearance
2 or arraignment.

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

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

15 D. When an offender has filed a voluntary request to be
16 considered for a drug court program on the appropriate form, the
17 district attorney shall indicate his or her approval of the request
18 by filing the form with the drug court judge. Upon the filing of
19 the request form by the district attorney, an initial hearing shall
20 be set before the drug court judge. The hearing shall be not less
21 than three (3) work days nor more than five (5) work days after the
22 date of the filing of the request form. Notice of the hearing shall
23 be given to the drug court team, or in the event no drug court team
24 is designated, to the offender, the district attorney, and to the

1 public defender. The offender shall be required to notify any
2 private legal counsel of the date and time of the hearing.

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

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

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

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

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

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

22 5. Any information relevant to determining eligibility;
23 provided, however, an offender shall not be denied admittance to any
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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~~ not to exceed one (1) year, unless
14 otherwise ordered by the court.

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

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

7 | SECTION 3. AMENDATORY 47 O.S. 2001, Section 18-101, as
8 | last amended by Section 31, Chapter 16, O.S.L. 2006 (47 O.S. Supp.
9 | 2008, Section 18-101), is amended to read as follows:

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

20 | B. Within ten (10) days after:

21 | 1. The conviction of any person holding a Class D driver
22 | license; or

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

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

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

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

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

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

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

8 1. The name, address, sex, and date of birth of the person
9 charged;

10 2. The traffic citation number;

11 3. The driver license number, if any, of the person charged,
12 and the state or jurisdiction from which the license is issued;

13 4. The license plate number, make, and model of the vehicle
14 involved;

15 5. The nature and date of the offense, the date of hearing, the
16 plea, the judgment, or, if bail was forfeited, the amount of the
17 fine or forfeiture; and

18 6. The name of the court and whether it is a municipal or
19 district court.

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

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

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

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