

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 1976

By: Gumm

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6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22  
8 O.S. 2001, Sections 471.1, as last amended by Section  
9 131, Chapter 234, O.S.L. 2009, 471.2, as amended by  
10 Section 1, Chapter 290, O.S.L. 2009, and 471.3 (22  
11 O.S. Supp. 2009, Sections 471.1 and 471.2), which  
12 relate to drug court programs; requiring certain team  
13 to make specified determination and approval;  
14 requiring district attorney to file certain form  
15 under specified circumstances; modifying certain  
16 determination; granting certain team authority to  
17 admit offender to certain program; modifying  
18 procedures upon certain denial; and providing an  
19 effective date.

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

26 SECTION 1. AMENDATORY 22 O.S. 2001, Section 471.1, as  
27 last amended by Section 131, Chapter 234, O.S.L. 2009 (22 O.S. Supp.  
28 2009, Section 471.1), is amended to read as follows:

29 Section 471.1 A. For purposes of this act, "drug court", "drug  
30 court program" or "program" means an immediate and highly structured  
31 judicial intervention process for substance abuse treatment of  
32 eligible offenders which expedites the criminal case, and requires  
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1 successful completion of the plea agreement in lieu of  
2 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 10A 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, as determined  
17 by the drug court team established pursuant to subsection D of this  
18 section.

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

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

16 E. When a drug court program is established, the arresting  
17 officer shall file the criminal case record for potentially eligible  
18 offenders with the district attorney within four (4) days of the  
19 arrest. The district attorney shall file an information in the case  
20 within twenty-four (24) hours of receipt of the criminal case record  
21 when the offender appears eligible for consideration for the  
22 program. The information may be amended as necessary when an  
23 offender is denied admittance into the drug court program or for  
24 other purposes as provided in Section 304 of this title. Any person

1 arrested upon a warrant for his or her arrest shall not be eligible  
2 for the drug court program without the approval of the ~~district~~  
3 ~~attorney~~ drug court team. Any criminal case which has been filed  
4 and processed in the traditional manner shall be cross-referenced to  
5 a drug court case file by the court clerk, if the case is  
6 subsequently assigned to the drug court program. The originating  
7 criminal case file shall remain open to public inspection. The  
8 judge shall determine what information or pleadings are to be  
9 retained in the drug court case file, which shall be closed to  
10 public inspection.

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

20 G. Each drug court program shall ensure, but not be limited to:

- 21 1. Strong linkage between participating agencies;
- 22 2. Access by all participating parties of a case to information  
23 on the progress of the offender;
- 24 3. Vigilant supervision and monitoring procedures;

- 1 4. Random substance abuse testing;
- 2 5. Provisions for noncompliance, modification of the treatment  
3 plan, and revocation proceedings;
- 4 6. Availability of residential treatment facilities and  
5 outpatient services;
- 6 7. Payment of court costs, treatment costs, supervision fees,  
7 and program user fees by the offender;
- 8 8. Methods for measuring application of disciplinary sanctions,  
9 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 9. Methods for measuring performance-based effectiveness of  
22 each individual treatment provider's services.

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

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

13 SECTION 2. AMENDATORY 22 O.S. 2001, Section 471.2, as  
14 amended by Section 1, Chapter 290, O.S.L. 2009 (22 O.S. Supp. 2009,  
15 Section 471.2), is amended to read as follows:

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

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

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

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

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

17 5. The offender:

18 a. admits to having a substance abuse addiction,

19 b. appears to have a substance abuse addiction,

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

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

23 B. If it appears to the reviewing officer that the offender may  
24 be potentially eligible for the drug court program based upon a

1 review of the information in subsection A of this section, the  
2 offender shall be given an eligibility form which may be voluntarily  
3 completed by the offender, and the reviewing officer shall file the  
4 criminal case record within the time prescribed in subsection E of  
5 ~~Section 2 of this act~~ 471.1 of this title. The offender shall not  
6 automatically be considered for the program based upon this review.  
7 The offender must request consideration for the drug court program  
8 as provided in subsection C of this section and shall have approval  
9 from the district attorney before being considered for the drug  
10 court program. The eligibility form shall describe the drug court  
11 program for which the offender may be eligible, including, but not  
12 limited to:

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

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

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

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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~~ 471.8 of this title.

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~~ file the form with the drug court judge. Upon the filing  
19 of the request form by the district attorney, an initial hearing  
20 shall be set before the drug court judge. The hearing shall be not  
21 less than three (3) work days nor more than five (5) work days after  
22 the date of the filing of the request form. Notice of the hearing  
23 shall be given to the drug court team, or in the event no drug court  
24 team is designated, to the offender, the district attorney, and to

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

3 SECTION 3. AMENDATORY 22 O.S. 2001, Section 471.3, is  
4 amended to read as follows:

5 Section 471.3 A. At the initial hearing for consideration of  
6 an offender for a drug court program, the district attorney shall  
7 determine whether ~~or not~~:

8 1. The offender ~~has approval to be considered~~ is statutorily  
9 eligible for the drug court program;

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

12 3. Any statutory preclusion, other prohibition, or program  
13 limitation exists and is applicable to considering the offender for  
14 the program.

15 The district attorney may object to the consideration of an  
16 offender for the drug court program at the initial hearing; however,  
17 the final decision as to whether an offender is admitted to the  
18 program shall rest with the drug court team through a majority vote  
19 of the team in favor of admitting the offender.

20 B. If the offender voluntarily consents to be considered for  
21 the drug court program, has signed and filed the required form  
22 requesting consideration, and no objection has been made by the  
23 district attorney, the court shall refer the offender for a drug  
24 court investigation, as provided in Section 5 of this act 471.4 of

1 this title, and set a date for a hearing to determine final  
2 eligibility for admittance into the program.

3 C. Upon ~~any objection of the district attorney for~~  
4 ~~consideration~~ rejection of an offender ~~for~~ by the ~~program~~ drug court  
5 team, the court shall deny consideration of the offender's request  
6 for participation in the drug court program. Upon denial for  
7 consideration in the drug court program ~~at the initial hearing~~, the  
8 criminal case shall proceed in the traditional manner. ~~An objection~~  
9 ~~by the district attorney and the subsequent denial~~ Denial of  
10 consideration of the offender for the program shall not preclude any  
11 future consideration of the offender for the drug court program with  
12 the approval of the ~~district attorney~~ drug court team.

13 SECTION 4. This act shall become effective November 1, 2010.

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