

1 **SENATE FLOOR VERSION**

2 April 6, 2016

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 2753

By: Peterson, Sherrer and
Hoskin of the House

and

Shaw and **Brooks** of the
Senate

8
9 **[criminal procedure - Oklahoma Drug Court Act -**
10 **eligibility criteria - Oklahoma Community Sentencing**
11 **Act - effective date]**

12
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 22 O.S. 2011, Section 471.1, is
15 amended to read as follows:

16 Section 471.1 A. For purposes of this act, "drug court", "drug
17 court program" or "program" means an immediate and highly structured
18 judicial intervention process for substance abuse treatment of
19 eligible offenders which expedites the criminal case, and requires
20 successful completion of the plea agreement ~~in lieu of~~
21 ~~incarceration.~~

22 B. Each district court of this state is authorized to establish
23 a drug court program pursuant to the provisions of this act, subject
24 to availability of funds. Juvenile drug courts may be established

1 based upon the provisions of this act; provided, however, juveniles
2 shall not be held, processed, or treated in any manner which
3 violates any provision of Title 10A of the Oklahoma Statutes.

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

12 D. Drug court programs shall require a separate judicial
13 processing system differing in practice and design from the
14 traditional adversarial criminal prosecution and trial systems.
15 Whenever possible, a drug court team shall be designated consisting
16 of a judge to administer the program, a district attorney, a defense
17 attorney, and other persons designated by the drug court team who
18 shall have appropriate understanding of the goals of the program and
19 of the appropriate treatment methods for the various conditions.
20 The assignment of any person to the drug court team shall not
21 preclude the assigned person from performing other duties required
22 in the course of their office or employment. The chief judge of the
23 judicial district, or if the district has more than one chief judge
24 than the presiding judge of the Administrative Judicial District,

1 shall designate one or more judges to administer the drug court
2 program. The assignment of any judge to a drug court program or the
3 designation of a drug court docket shall not mandate the assignment
4 of all substance abuse related cases to the drug court docket or the
5 program; however, nothing in this act shall be construed to preclude
6 the assignment of all criminal cases relating to substance abuse or
7 drug possession as provided by the rules established for the
8 specific drug court program.

9 E. When a drug court program is established, the arresting
10 officer shall file the criminal case record for potentially eligible
11 offenders with the district attorney within four (4) days of the
12 arrest. The district attorney shall file an information in the case
13 within twenty-four (24) hours of receipt of the criminal case record
14 when the offender appears eligible for consideration for the
15 program. The information may be amended as necessary when an
16 offender is denied admittance into the drug court program or for
17 other purposes as provided in Section 304 of this title. Any person
18 arrested upon a warrant for his or her arrest shall not be eligible
19 for the drug court program without the approval of the district
20 attorney. Any criminal case which has been filed and processed in
21 the traditional manner shall be cross-referenced to a drug court
22 case file by the court clerk, if the case is subsequently assigned
23 to the drug court program. The originating criminal case file shall
24 remain open to public inspection. The judge shall determine what

1 information or pleadings are to be retained in the drug court case
2 file, which shall be closed to public inspection.

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

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

- 13 1. Strong linkage between participating agencies;
- 14 2. Access by all participating parties of a case to information
15 on the progress of the offender;
- 16 3. Vigilant supervision and monitoring procedures;
- 17 4. Random substance abuse testing;
- 18 5. Provisions for noncompliance, modification of the treatment
19 plan, and revocation proceedings;
- 20 6. Availability of residential treatment facilities and
21 outpatient services;
- 22 7. Payment of court costs, treatment costs, supervision fees,
23 and program user fees by the offender;

1 8. Methods for measuring application of disciplinary sanctions,
2 including provisions for:

- 3 a. increased supervision,
- 4 b. urinalysis testing,
- 5 c. intensive treatment,
- 6 d. short-term confinement not to exceed five (5) days,
- 7 e. recycling the offender into the program after a
8 disciplinary action for a minimum violation of the
9 treatment plan,
- 10 f. reinstating the offender into the program after a
11 disciplinary action for a major violation of the
12 treatment plan, and
- 13 g. revocation from the program; and

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

16 H. All drug court programs shall be required to keep reliable
17 data on recidivism, relapse, restarts, sanctions imposed, and
18 incentives given.

19 I. Nothing in this section shall prohibit any county from
20 establishing a drug court for misdemeanor offenses. Such
21 misdemeanor drug courts shall follow the rules and regulations of
22 felony drug courts except that the penalty for revocation shall not
23 exceed one (1) year in the county jail or the maximum penalty for
24 the misdemeanor allowed by statute, whichever is less. The

1 Department of Mental Health and Substance Abuse Services shall
2 provide technical assistance to the counties that establish
3 misdemeanor drug courts.

4 SECTION 2. AMENDATORY 22 O.S. 2011, Section 471.2, as
5 amended by Section 2, Chapter 228, O.S.L. 2012 (22 O.S. Supp. 2015,
6 Section 471.2), is amended to read as follows:

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

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

21 2. The offender has no prior felony conviction in this state or
22 another state for a violent offense within the last ten (10) years,
23 except as may be allowed in a domestic violence treatment program
24 authorized by the drug court program. It shall be sufficient for

1 this paragraph that a criminal history records name search was
2 conducted and indicated no apparent violent offense;

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

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

7 5. The offender:

8 a. admits to having a substance abuse addiction,

9 b. appears to have a substance abuse addiction,

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

11 d. the arrest or charge is based upon an offense eligible
12 for the drug court program, or

13 f. is a person who has had an assessment authorized by
14 Section 3-704 of Title 43A of the Oklahoma Statutes
15 and the assessment recommends the drug court program.

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

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

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

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

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

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

19 5. A clear statement that the plea agreement will specify the
20 offense to which the guilty plea will be entered and will state any
21 penalty to be imposed for the offense, both in the event of a
22 successful completion of the drug court program, and in the event of
23 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 fail to comply with the terms of
13 the agreement, the offender may be sanctioned to serve a term of
14 confinement of six (6) months in an intermediate revocation facility
15 operated by the Department of Corrections. An offender shall not be
16 allowed to serve more than two separate terms of confinement in an
17 intermediate revocation facility;

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

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

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

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

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

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

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

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

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

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

1 SECTION 3. AMENDATORY 22 O.S. 2011, Section 988.2, as
2 amended by Section 1, Chapter 331, O.S.L. 2015 (22 O.S. Supp. 2015,
3 Section 988.2), is amended to read as follows:

4 Section 988.2 A. For purposes of the Oklahoma Community
5 Sentencing Act:

6 1. "Local community sentencing system" means the use of public
7 and private entities to deliver services to the sentencing court for
8 punishment of eligible felony offenders under the authority of a
9 community sentence;

10 2. "Community sentence" or "community punishment" means a
11 punishment imposed by the court as a condition of a deferred or
12 suspended sentence for an eligible offender;

13 3. "Continuum of sanctions" means a variety of coercive
14 measures and treatment options ranked by degrees of public safety,
15 punitive effect, and cost benefit which are available to the
16 sentencing judge as punishment for criminal conduct;

17 4. "Community sentencing system planning council" or "planning
18 council" means a group of citizens and elected officials specified
19 by law or appointed by the Chief Judge of the Judicial District
20 which plans the local community sentencing system and with the
21 assistance of the Community Sentencing Division of the Department of
22 Corrections locates treatment providers and resources to support the
23 local community sentencing system;

1 5. "Incentive" means a court-ordered reduction in the terms or
2 conditions of a community sentence which is given for exceptional
3 performance or progress by the offender;

4 6. "Disciplinary sanction" means a court-ordered punishment in
5 response to a technical or noncompliance violation of a community
6 sentence which increases in intensity or duration with each
7 successive violation;

8 7. "Division" means the Community Sentencing Division within
9 the Department of Corrections which is the state administration
10 agency for the Oklahoma Community Sentencing Act, the statewide
11 community sentencing system, and all local community sentencing
12 systems;

13 8. "Eligible offender" means a felony offender who has been
14 convicted of or who has entered a plea other than not guilty to a
15 felony offense and who upon completion of a Level of Services
16 Inventory or another assessment instrument has been found to be in a
17 range other than the low range, who has been convicted of at least
18 one prior felony, and who is not otherwise prohibited by law;
19 provided, or is a person who has had an assessment authorized by
20 Section 3-704 of Title 43A of the Oklahoma Statutes and the
21 assessment recommends community sentencing. Provided, however, that
22 no person who has been convicted of or who has entered a plea other
23 than not guilty to an offense enumerated in paragraph 2 of Section
24 571 of Title 57 of the Oklahoma Statutes, as an exception to the

1 definition of "nonviolent offense" shall be eligible for a community
2 sentence or community punishment unless the district attorney or an
3 assistant district attorney for the district in which the offender's
4 conviction was obtained consents thereto. The district attorney may
5 consent to eligibility for an offender who has a mental illness or a
6 developmental disability or a co-occurring mental illness and
7 substance abuse disorder and who scores in the low range on the LSI
8 or has an assessment authorized by Section 3-704 of Title 43A of the
9 Oklahoma Statutes or another assessment instrument if the offender
10 is not otherwise prohibited by law. Any consent by a district
11 attorney shall be made a part of the record of the case; and

12 9. "Statewide community sentencing system" means a network of
13 all counties through their respective local community sentencing
14 systems serving the state judicial system and offering support
15 services to each other through reciprocal and interlocal agreements
16 and interagency cooperation.

17 B. For the purposes of the Oklahoma Community Sentencing Act,
18 if a judicial district does not have a Chief Judge or if a judicial
19 district has more than one Chief Judge, the duties of the Chief
20 Judge provided for in the Oklahoma Community Sentencing Act shall be
21 performed by the Presiding Judge of the Judicial Administrative
22 District.

SECTION 4. This act shall become effective November 1, 2016.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
April 6, 2016 - DO PASS AS AMENDED