

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 2881

By: West (Josh)

COMMITTEE SUBSTITUTE

An Act relating to drug courts; amending 22 O.S. 2011, Sections 471.2, as last amended by Section 2, Chapter 222, O.S.L. 2016, 471.3 and 471.4 (22 O.S. Supp. 2017, Section 471.2), which relate to the Oklahoma Drug Court Act; removing time limitation for reviewing offenders for drug court; providing for the review of drug court investigations; providing for the consideration of previously admitted drug court participants; updating statutory reference; modifying procedures for conducting drug court investigations; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 471.2, as last amended by Section 2, Chapter 222, O.S.L. 2016 (22 O.S. Supp. 2017, Section 471.2), is amended to read as follows:

Section 471.2 A. The ~~initial~~ opportunity for review of an offender for a drug court program shall occur ~~within four (4) days after the arrest and detention or incarceration of the offender in the city or county jail, or if an immediate bond release program is available through the jail, the initial opportunity for review shall~~

1 ~~occur in conjunction with the bond release program~~ at any time prior
2 to disposition of the case and sentencing of the offender, including
3 sentencing on a petition to revoke a suspended sentence or any
4 probation violation. When a drug court is established, the
5 following information shall be initially reviewed by the sheriff or
6 designee, if the offender is held in a county jail, or by the chief
7 of police or designee, if the offender is held in a city jail:

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

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

18 3. The offender's arrest or charge does not involve a violation
19 of the Trafficking In Illegal Drugs Act;

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

21 5. The offender:

- 22 a. admits to having a substance abuse addiction,
- 23 b. appears to have a substance abuse addiction,
- 24 c. is known to have a substance abuse addiction,

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

3 ~~f.~~ e. is a person who has had an assessment authorized by
4 Section 3-704 of Title 43A of the Oklahoma Statutes or
5 drug court investigation and the assessment or
6 investigation recommends the drug court program.

7 B. If it appears to the reviewing officer that the offender may
8 be potentially eligible for the drug court program based upon a
9 review of the information in subsection A of this section, the
10 offender shall be given an eligibility form which may be voluntarily
11 completed by the offender, and the reviewing officer shall file the
12 criminal case record within the time prescribed in subsection E of
13 Section 471.1 of this title. The offender shall not automatically
14 be considered for the program based upon this review. The offender
15 must request consideration for the drug court program as provided in
16 subsection C of this section and shall have approval from the
17 district attorney before being considered for the drug court
18 program. The eligibility form shall describe the drug court program
19 for which the offender may be eligible, including, but not limited
20 to:

21 1. A full description of the drug court process and
22 investigation;

23 2. A general explanation of the roles and authority of the
24 supervising staff, the district attorney, the defense attorney, the

1 treatment provider, the offender, and the judge in the drug court
2 program;

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

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

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

15 6. A clear statement that the offender must voluntarily agree
16 to:

- 17 a. waive the right to a speedy trial,
- 18 b. waive the right to a preliminary hearing,
- 19 c. the terms and conditions of a treatment plan, and
- 20 d. sign a performance contract with the court;

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

1 8. A clear statement that during participation in the drug
2 court program should the offender fail to comply with the terms of
3 the agreement, the offender may be sanctioned to serve a term of
4 confinement of six (6) months in an intermediate revocation facility
5 operated by the Department of Corrections. An offender shall not be
6 allowed to serve more than two separate terms of confinement in an
7 intermediate revocation facility;

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

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

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

18 10. An explanation of the criminal record retention and
19 disposition resulting from participation in the drug court program
20 following successful completion of the program.

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

- 23 a. if the offender is incarcerated, the offender must
24 sign and complete the eligibility form and return it

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

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

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

20 3. Nothing contained in the provisions of this subsection shall
21 prohibit the drug court from considering any offender deemed
22 eligible for the program at any time prior to sentencing whose case
23 has been prosecuted in the traditional manner, or upon a violation
24 of parole or probation conditions relating to substance abuse, upon

1 recommendation of the district attorney as provided in Section 471.8
2 of this title.

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

15 SECTION 2. AMENDATORY 22 O.S. 2011, Section 471.3, is
16 amended to read as follows:

17 Section 471.3 A. At the initial hearing for consideration of
18 an offender for a drug court program, the district attorney shall
19 determine whether or not:

20 1. The offender has approval to be considered for the drug
21 court program;

22 2. The offender has been admitted to the program within the
23 preceding five (5) years; provided, having been admitted to a drug
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1 court program within the previous five (5) years shall not make the
2 offender ineligible for consideration; and

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

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

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

15 C. Upon any objection of the district attorney for
16 consideration of an offender for the program, the court shall deny
17 consideration of the offender's request for participation in the
18 drug court program. Upon denial for consideration in the drug court
19 program at the initial hearing, the criminal case shall proceed in
20 the traditional manner. An objection by the district attorney and
21 the subsequent denial of consideration of the offender for the
22 program shall not preclude any future consideration of the offender
23 for the drug court program with the approval of the district
24 attorney.

1 SECTION 3. AMENDATORY 22 O.S. 2011, Section 471.4, is
2 amended to read as follows:

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

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

9 B. The drug court investigation shall be conducted through a
10 standardized screening test and personal interview. A more
11 comprehensive assessment may take place at the time the offender
12 enters the treatment portion of the program and may take place at
13 any time after placement in the drug court program. The
14 investigation shall determine the original treatment plan which the
15 offender will be required to follow, if admitted to the program.
16 Any subsequent assessments or evaluations by the treatment provider,
17 if the offender is admitted to the program, may be used to determine
18 modifications needed to the original treatment plan. The
19 investigation shall include, but not be limited to, the following
20 information:

- 21 1. The person's age and physical condition;
- 22 2. Employment and military service records;
- 23 3. Educational background and literacy level;
- 24 4. Community and family relations;

1 5. Prior and current drug and alcohol use;

2 6. Mental health and medical treatment history, including
3 substance abuse treatment history;

4 7. Demonstrable motivation; and

5 8. Other mitigating or aggravating factors.

6 C. The drug court investigation ~~shall~~ may be conducted before
7 or after the initial hearing for consideration ~~and~~ but shall occur
8 before the hearing for final determination of eligibility for the
9 drug court program. When an offender is appropriate for admittance
10 to the program, the supervising staff shall make a recommendation
11 for the treatment program or programs that are available in the
12 jurisdiction and which would benefit the offender and accept the
13 offender. The investigation findings and recommendations for
14 program placement shall be reported to the drug court judge, the
15 district attorney, the offender, and the defense attorney prior to
16 the next scheduled hearing.

17 D. The district attorney and the defense attorney for the
18 offender shall independently review the findings and recommendations
19 of the drug court investigation report. For an offender to remain
20 eligible for consideration in the program, both the district
21 attorney and the defense attorney must accept the recommended
22 treatment plan, and shall negotiate the terms of the written plea
23 agreement with all punishment provisions specified before the
24 scheduled hearing date for determining final eligibility. Upon

1 failure of the district attorney and defense attorney to negotiate
2 the written plea agreement, the criminal case shall be withdrawn
3 from the drug court program and processed in the traditional manner.
4 The punishment provisions of the written plea agreement shall
5 emphasize reparation to the victim, community, and state.

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

10 F. For purposes of this act, "supervising staff" means a
11 Department of Corrections employee assigned to monitor offenders in
12 the drug court program, a community provider assigned to monitor
13 offenders in the program, a state or local agency representative or
14 a certified treatment provider participating in the program, or a
15 person designated by the judge to perform drug court investigations.

16 SECTION 4. This act shall become effective November 1, 2018.

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