

1 ENGROSSED HOUSE
2 BILL NO. 2881

By: West (Josh) of the House

3 and

4 Treat of the Senate

5
6 [drug courts - providing for the review of drug
7 court investigations - effective date]
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11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. AMENDATORY 22 O.S. 2011, Section 471.2, as
13 last amended by Section 2, Chapter 222, O.S.L. 2016 (22 O.S. Supp.
14 2017, Section 471.2), is amended to read as follows:

15 Section 471.2 A. The ~~initial~~ opportunity for review of an
16 offender for a drug court program shall occur ~~within four (4) days~~
17 ~~after the arrest and detention or incarceration of the offender in~~
18 ~~the city or county jail, or if an immediate bond release program is~~
19 ~~available through the jail, the initial opportunity for review shall~~
20 ~~occur in conjunction with the bond release program~~ at any time prior
21 to disposition of the case and sentencing of the offender, including
22 sentencing on a petition to revoke a suspended sentence or any
23 probation violation. When a drug court is established, the
24 following information shall be initially reviewed by the sheriff or

1 designee, if the offender is held in a county jail, or by the chief
2 of police or designee, if the offender 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;

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

16 5. The offender:

17 a. admits to having a substance abuse addiction,

18 b. appears to have a substance abuse addiction,

19 c. is known to have a substance abuse addiction,

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

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

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

17 1. A full description of the drug court process and
18 investigation;

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

23 3. A clear statement that the drug court judge may decide after
24 a hearing not to consider the offender for the drug court program

1 and in that event the offender will be prosecuted in the traditional
2 manner;

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

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

11 6. A clear statement that the offender must voluntarily agree
12 to:

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

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

21 8. A clear statement that during participation in the drug
22 court program should the offender fail to comply with the terms of
23 the agreement, the offender may be sanctioned to serve a term of
24 confinement of six (6) months in an intermediate revocation facility

1 operated by the Department of Corrections. An offender shall not be
2 allowed to serve more than two separate terms of confinement in an
3 intermediate revocation facility;

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

- 6 a. fail to comply with the terms of the agreements,
- 7 b. be convicted of a misdemeanor offense which reflects a
8 propensity for violence,
- 9 c. be arrested for a violent felony offense, or
- 10 d. be convicted of any felony offense,

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

14 10. An explanation of the criminal record retention and
15 disposition resulting from participation in the drug court program
16 following successful completion of the program.

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

- 19 a. if the offender is incarcerated, the offender must
20 sign and complete the eligibility form and return it
21 to the sheriff, if the offender is held in the county
22 jail; or to the chief of police, if the offender is
23 held in a city jail. The sheriff or chief of police,
24 upon receipt of the eligibility form, shall file the

1 form with the district attorney at the time of filing
2 the criminal case record or at any time during the
3 period of incarceration when the offender completes
4 the form after the criminal case record has been
5 filed, or

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

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

16 3. Nothing contained in the provisions of this subsection shall
17 prohibit the drug court from considering any offender deemed
18 eligible for the program at any time prior to sentencing whose case
19 has been prosecuted in the traditional manner, or upon a violation
20 of parole or probation conditions relating to substance abuse, upon
21 recommendation of the district attorney as provided in Section 471.8
22 of this title.

23 D. When an offender has filed a voluntary request to be
24 considered for a drug court program on the appropriate form, the

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

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

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

16 1. The offender has approval to be considered for the drug
17 court program;

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

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

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

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

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

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

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

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

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

- 17 1. The person's age and physical condition;
- 18 2. Employment and military service records;
- 19 3. Educational background and literacy level;
- 20 4. Community and family relations;
- 21 5. Prior and current drug and alcohol use;
- 22 6. Mental health and medical treatment history, including
23 substance abuse treatment history;
- 24 7. Demonstrable motivation; and

1 8. Other mitigating or aggravating factors.

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

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

1 The punishment provisions of the written plea agreement shall
2 emphasize reparation to the victim, community, and state.

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

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

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

14 Passed the House of Representatives the 13th day of March, 2018.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ____ day of _____, 2018.

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Presiding Officer of the Senate

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