

An Act

ENROLLED HOUSE
BILL NO. 2881

By: West (Josh) and Lowe of the
House

and

Treat and Sharp of the
Senate

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; increasing time limitation for drug court reviews; modifying eligibility requirements for potential drug court participants; modifying recommendation requirements for initial drug court program hearings; modifying time limitation for conducting drug court investigations; and providing an effective date.

SUBJECT: Drug courts

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 occur in conjunction with the bond release program~~ at any time prior to disposition of the case and sentencing of the offender, including sentencing on a petition to revoke a suspended sentence or any

probation violation. When a drug court is established, the following information shall be initially reviewed by the sheriff or designee, if the offender is held in a county jail, or by the chief of police or designee, if the offender is held in a city jail:

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

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

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

4. The offender has committed a felony offense; and

5. The offender:

a. admits to having a substance abuse addiction,

b. appears to have a substance abuse addiction,

c. is known to have a substance abuse addiction,

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

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

B. If it appears to the reviewing officer that the offender may be potentially eligible for the drug court program based upon a review of the information in subsection A of this section, the offender shall be given an eligibility form which may be voluntarily completed by the offender, and the reviewing officer shall file the criminal case record within the time prescribed in subsection E of Section 471.1 of this title. The offender shall not automatically

be considered for the program based upon this review. The offender must request consideration for the drug court program as provided in subsection C of this section and shall have approval from the district attorney before being considered for the drug court program. The eligibility form shall describe the drug court program for which the offender may be eligible, including, but not limited to:

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

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

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

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

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

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

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

7. A clear statement that the offender, if accepted into the drug court program, may not be incarcerated for the offense in a

state correctional institution or jail upon successful completion of the program;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The drug court investigation shall be conducted through a standardized screening test and personal interview. A more

comprehensive assessment may take place at the time the offender enters the treatment portion of the program and may take place at any time after placement in the drug court program. The investigation shall determine the original treatment plan which the offender will be required to follow, if admitted to the program. Any subsequent assessments or evaluations by the treatment provider, if the offender is admitted to the program, may be used to determine modifications needed to the original treatment plan. The investigation shall include, but not be limited to, the following information:

1. The person's age and physical condition;
2. Employment and military service records;
3. Educational background and literacy level;
4. Community and family relations;
5. Prior and current drug and alcohol use;
6. Mental health and medical treatment history, including substance abuse treatment history;
7. Demonstrable motivation; and
8. Other mitigating or aggravating factors.

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

D. The district attorney and the defense attorney for the offender shall independently review the findings and recommendations of the drug court investigation report. For an offender to remain eligible for consideration in the program, both the district attorney and the defense attorney must accept the recommended

treatment plan, and shall negotiate the terms of the written plea agreement with all punishment provisions specified before the scheduled hearing date for determining final eligibility. Upon failure of the district attorney and defense attorney to negotiate the written plea agreement, the criminal case shall be withdrawn from the drug court program and processed in the traditional manner. The punishment provisions of the written plea agreement shall emphasize reparation to the victim, community, and state.

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

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

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

Passed the House of Representatives the 1st day of May, 2018.

Presiding Officer of the House
of Representatives

Passed the Senate the 24th day of April, 2018.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____