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AS AMENDED

BILL NO. 2881

By: West (Josh) of the House

and

Treat of the Senate

An Act relating to drug courts; amending 22 O.S. 2011, Sections 471.1, 471.2, as amended by Sections 1 and 2, Chapter 222, O.S.L. 2016, 471.3, 471.4, 471.6, as last amended by Section 1, Chapter 393, O.S.L. 2016, 471.7 and 471.9, as amended by Section 2, Chapter 393, O.S.L. 2016 (22 O.S. Supp. 2017, Sections 471.1, 471.2, 471.6 and 471.9), which relate to the Oklahoma Drug Court Act; modifying and deleting certain eligibility requirements for potential drug court participants; increasing time limitation for drug court reviews; providing notice requirement for offenders seeking drug court consideration; clarifying content of statements provided in drug court eligibility forms; removing and modifying recommendation requirements for initial drug court program hearings; authorizing court referrals to drug court despite objections by district attorneys; modifying time limitation for conducting drug court investigations; deleting mandatory eligibility requirement and plea agreement negotiation conditions; removing plea agreement requirement for final eligibility determinations; authorizing courts to determine sentence for offenders revoked from drug court program; deleting requirement that prohibits judges from amending written plea agreements; clarifying manner in which criminal cases are resolved after successful completion of drug court program; and providing an effective date.

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

2 SECTION 1. AMENDATORY 22 O.S. 2011, Section 471.2, as
3 last amended by Section 2, Chapter 222, O.S.L. 2016 (22 O.S. Supp.
4 2017, Section 471.2), is amended to read as follows:

5 Section 471.2 A. The ~~initial~~ opportunity for review of an
6 offender for a drug court program shall occur ~~within four (4) days~~
7 ~~after the arrest and detention or incarceration of the offender in~~
8 ~~the city or county jail, or if an immediate bond release program is~~
9 ~~available through the jail, the initial opportunity for review shall~~
10 ~~occur in conjunction with the bond release program~~ at any time prior
11 to disposition of the case and sentencing of the offender, including
12 sentencing on a petition to revoke a suspended sentence or any
13 probation violation. When a drug court is established, the
14 following information shall be initially reviewed by the sheriff or
15 designee, if the offender is held in a county jail, or by the chief
16 of police or designee, if the offender 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;

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

6 5. The offender:

7 a. admits to having a substance abuse addiction,

8 b. appears to have a substance abuse addiction,

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

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

12 ~~f.~~ e. is a person who has had an assessment authorized by
13 Section 3-704 of Title 43A of the Oklahoma Statutes or
14 drug court investigation and the assessment or
15 investigation 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 2. AMENDATORY 22 O.S. 2011, Section 471.3, is
2 amended to read as follows:

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

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

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

17 B. If the offender voluntarily consents to be considered for
18 the drug court program, has signed and filed the required form
19 requesting consideration, and no objection has been made by the
20 district attorney, the court shall refer the offender for a drug
21 court investigation as provided in Section ~~5~~ 471.4 of this ~~act~~
22 title, and set a date for a hearing to determine final eligibility
23 for admittance into the program.
24

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

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

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

17 1. Would benefit from the drug court program; and

18 2. Is appropriate for the drug court program.

19 B. The drug court investigation shall be conducted through a
20 standardized screening test and personal interview. A more
21 comprehensive assessment may take place at the time the offender
22 enters the treatment portion of the program and may take place at
23 any time after placement in the drug court program. The
24 investigation shall determine the original treatment plan which the

1 offender will be required to follow, if admitted to the program.
2 Any subsequent assessments or evaluations by the treatment provider,
3 if the offender is admitted to the program, may be used to determine
4 modifications needed to the original treatment plan. The
5 investigation shall include, but not be limited to, the following
6 information:

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

16 C. The drug court investigation ~~shall~~ may be conducted before
17 or after the initial hearing for consideration ~~and~~ but shall occur
18 before the hearing for final determination of eligibility for the
19 drug court program. When an offender is appropriate for admittance
20 to the program, the supervising staff shall make a recommendation
21 for the treatment program or programs that are available in the
22 jurisdiction and which would benefit the offender and accept the
23 offender. The investigation findings and recommendations for
24 program placement shall be reported to the drug court judge, the

1 district attorney, the offender, and the defense attorney prior to
2 the next scheduled hearing.

3 D. The district attorney and the defense attorney for the
4 offender shall independently review the findings and recommendations
5 of the drug court investigation report. For an offender to remain
6 eligible for consideration in the program, both the district
7 attorney and the defense attorney must accept the recommended
8 treatment plan, and shall negotiate the terms of the written plea
9 agreement with all punishment provisions specified before the
10 scheduled hearing date for determining final eligibility. Upon
11 failure of the district attorney and defense attorney to negotiate
12 the written plea agreement, the criminal case shall be withdrawn
13 from the drug court program and processed in the traditional manner.
14 The punishment provisions of the written plea agreement shall
15 emphasize reparation to the victim, community, and state.

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

20 F. For purposes of this act, "supervising staff" means a
21 Department of Corrections employee assigned to monitor offenders in
22 the drug court program, a community provider assigned to monitor
23 offenders in the program, a state or local agency representative or
24

1 a certified treatment provider participating in the program, or a
2 person designated by the judge to perform drug court investigations.

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

4 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
5 April 9, 2018 - DO PASS AS AMENDED
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