

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 4009

By: Wallace

4
5
6 AS INTRODUCED

7 An Act relating to drug courts; amending 22 O.S.
8 2011, Sections 471.1, as amended by Section 1,
9 Chapter 222, O.S.L. 2016 and 471.6, as last amended
10 by Section 1, Chapter 393, O.S.L. 2016 (22 O.S. Supp.
11 2019, Sections 471.1 and 471.6), which relate to the
12 Oklahoma Drug Court Act; specifying name of certain
13 act; establishing Drug Court Fund; stating purpose of
14 fund; exempting funds from fiscal year limitations;
15 establishing procedures for expenditure of certain
16 funds; directing deposit of costs and fees into
17 certain fund; providing an effective date; and
18 declaring an emergency.

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

20 SECTION 1. AMENDATORY 22 O.S. 2011, Section 471.1, as
21 amended by Section 1, Chapter 222, O.S.L. 2016 (22 O.S. Supp. 2019,
22 Section 471.1), is amended to read as follows:

23 Section 471.1 A. For purposes of ~~this act~~ the Oklahoma Drug
24 Court Act, "drug court", "drug court program" or "program" means an
immediate and highly structured judicial intervention process for
substance abuse treatment of eligible offenders which expedites the
criminal case, and requires successful completion of the plea
agreement.

1 B. Each district court of this state is authorized to establish
2 a drug court program pursuant to the provisions of ~~this act~~ the
3 Oklahoma Drug Court Act, subject to availability of funds. Juvenile
4 drug courts may be established based upon the provisions of ~~this act~~
5 the Oklahoma Drug Court Act; provided, however, juveniles shall not
6 be held, processed, or treated in any manner which violates any
7 provision of Title 10A of the Oklahoma Statutes.

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

17 D. Drug court programs shall require a separate judicial
18 processing system differing in practice and design from the
19 traditional adversarial criminal prosecution and trial systems.
20 Whenever possible, a drug court team shall be designated consisting
21 of a judge to administer the program, a district attorney, a defense
22 attorney, and other persons designated by the drug court team who
23 shall have appropriate understanding of the goals of the program and
24 of the appropriate treatment methods for the various conditions.

1 The assignment of any person to the drug court team shall not
2 preclude the assigned person from performing other duties required
3 in the course of their office or employment. The chief judge of the
4 judicial district, or, if the district has more than one chief judge
5 ~~than,~~ then the presiding judge of the Administrative Judicial
6 District, shall designate one or more judges to administer the drug
7 court program. The assignment of any judge to a drug court program
8 or the designation of a drug court docket shall not mandate the
9 assignment of all substance abuse related cases to the drug court
10 docket or the program; however, nothing in ~~this act~~ the Oklahoma
11 Drug Court Act shall be construed to preclude the assignment of all
12 criminal cases relating to substance abuse or drug possession as
13 provided by the rules established for the specific drug court
14 program.

15 E. When a drug court program is established, the arresting
16 officer shall file the criminal case record for potentially eligible
17 offenders with the district attorney within four (4) days of the
18 arrest. The district attorney shall file an information in the case
19 within twenty-four (24) hours of receipt of the criminal case record
20 when the offender appears eligible for consideration for the
21 program. The information may be amended as necessary when an
22 offender is denied admittance into the drug court program or for
23 other purposes as provided in Section 304 of this title. Any person
24 arrested upon a warrant for his or her arrest shall not be eligible

1 for the drug court program without the approval of the district
2 attorney. Any criminal case which has been filed and processed in
3 the traditional manner shall be cross-referenced to a drug court
4 case file by the court clerk, if the case is subsequently assigned
5 to the drug court program. The originating criminal case file shall
6 remain open to public inspection. The judge shall determine what
7 information or pleadings are to be retained in the drug court case
8 file, which shall be closed to public inspection.

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

18 G. Each drug court program shall ensure, but not be limited to:
19 1. Strong linkage between participating agencies;
20 2. Access by all participating parties of a case to information
21 on the progress of the offender;
22 3. Vigilant supervision and monitoring procedures;
23 4. Random substance abuse testing;

24

1 5. Provisions for noncompliance, modification of the treatment
2 plan, and revocation proceedings;

3 6. Availability of residential treatment facilities and
4 outpatient services;

5 7. Payment of court costs, treatment costs, supervision fees,
6 and program user fees by the offender;

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

9 a. increased supervision,

10 b. urinalysis testing,

11 c. intensive treatment,

12 d. short-term confinement not to exceed five (5) days,

13 e. recycling the offender into the program after a
14 disciplinary action for a minimum violation of the
15 treatment plan,

16 f. reinstating the offender into the program after a
17 disciplinary action for a major violation of the
18 treatment plan, and

19 g. revocation from the program; and

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

22 H. All drug court programs shall be required to keep reliable
23 data on recidivism, relapse, restarts, sanctions imposed, and
24 incentives given.

1 I. All funds received by a drug court, in its capacity as a
2 drug court, shall be credited to and accounted for in the office of
3 the county treasurer in a special cash fund to be known as the "Drug
4 Court Fund". Each Drug Court Fund shall be a continuing fund, not
5 subject to fiscal year limitations, and shall be dedicated to the
6 operation of the drug court as authorized by law. The expenditures
7 of any funds received by a drug court program and deposited with the
8 county treasurer shall be made only upon sworn itemized claims
9 approved by the judge of the drug court or other county employee
10 designated by the drug court judge or drug court team, filed with
11 the county treasurer and paid by cash voucher drawn by the county
12 treasurer from the funds.

13 J. Nothing in this section shall prohibit any county from
14 establishing a drug court for misdemeanor offenses. Such
15 misdemeanor drug courts shall follow the rules and regulations of
16 felony drug courts except that the penalty for revocation shall not
17 exceed one (1) year in the county jail or the maximum penalty for
18 the misdemeanor allowed by statute, whichever is less. The
19 Department of Mental Health and Substance Abuse Services shall
20 provide technical assistance to the counties that establish
21 misdemeanor drug courts.

22 SECTION 2. AMENDATORY 22 O.S. 2011, Section 471.6, as
23 last amended by Section 1, Chapter 393, O.S.L. 2016 (22 O.S. Supp.
24 2019, Section 471.6), is amended to read as follows:

1 Section 471.6 A. The drug court judge shall conduct a hearing
2 as required by subsection E of Section 471.4 of this title to
3 determine final eligibility by considering:

4 1. Whether ~~or not~~ the offender voluntarily consents to the
5 program requirements;

6 2. Whether ~~or not~~ to accept the offender based upon the
7 findings and recommendations of the drug court investigation
8 authorized by Section 471.4 of this title;

9 3. Whether ~~or not~~ there is a written plea agreement, and if so,
10 whether the terms and conditions of the written negotiated plea
11 between the district attorney, the defense attorney, and the
12 offender are appropriate and consistent with the penalty provisions
13 and conditions of other similar cases;

14 4. Whether ~~or not~~ there is an appropriate treatment program
15 available to the offender and whether ~~or not~~ there is a recommended
16 treatment plan; and

17 5. Any information relevant to determining eligibility;
18 provided, however, an offender shall not be denied admittance to any
19 drug court program based upon an inability to pay court costs or
20 other costs or fees.

21 B. At the hearing to determine final eligibility for the drug
22 court program, the judge shall not grant any admission of any
23 offender to the program when:

24

1 1. The required treatment plan and plea agreement have not been
2 completed;

3 2. The program funding or availability of treatment has been
4 exhausted;

5 3. The treatment program is unwilling to accept the offender;

6 4. The offender was ineligible for consideration by the nature
7 of a violent offense at the time of arrest, and the charge has been
8 modified to meet the eligibility criteria of the program; or

9 5. The offender is inappropriate for admission to the program,
10 in the discretion of the judge.

11 C. At the final eligibility hearing, if evidence is presented
12 that was not discovered by the drug court investigation, the
13 district attorney or the defense attorney may make an objection and
14 may ask the court to withdraw the plea agreement previously
15 negotiated. The court shall determine whether to proceed and
16 overrule the objection, to sustain the objection and transfer the
17 case for traditional criminal prosecution, or to require further
18 negotiations of the plea or punishment provisions. The decision of
19 the judge for or against eligibility and admission shall be final.

20 D. When the court accepts the treatment plan with the written
21 plea agreement, the offender, upon entering the plea as agreed by
22 the parties, shall be ordered and escorted immediately into the
23 program. The offender must have voluntarily signed the necessary
24

1 court documents before the offender may be admitted to treatment.

2 The court documents shall include:

3 1. Waiver of the offender's rights to speedy trial;

4 2. A written plea agreement which sets forth the offense
5 charged, the penalty to be imposed for the offense in the event of a
6 breach of the agreement, and the penalty to be imposed, if any, in
7 the event of a successful completion of the treatment program;
8 provided, however, incarceration shall be prohibited when the
9 offender completes the treatment program;

10 3. A written treatment plan which is subject to modification at
11 any time during the program; and

12 4. A written performance contract requiring the offender to
13 enter the treatment program as directed by the court and participate
14 until completion, withdrawal, or removal by the court.

15 E. If admission into the drug court program is denied, the
16 criminal case shall be returned to the traditional criminal docket
17 and shall proceed as provided for any other criminal case.

18 F. At the time an offender is admitted to the drug court
19 program, any bail or undertaking on behalf of the offender shall be
20 exonerated.

21 G. The period of time during which an offender may participate
22 in the active treatment portion of the drug court program shall be
23 not less than six (6) months nor more than twenty-four (24) months
24 and may include a period of supervision not less than six (6) months

1 nor more than one (1) year following the treatment portion of the
2 program. The period of supervision may be extended by order of the
3 court for not more than six (6) months. No treatment dollars shall
4 be expended on the offender during the extended period of
5 supervision. If the court orders that the period of supervision
6 shall be extended, the drug court judge, district attorney, the
7 attorney for the offender, and the supervising staff for the drug
8 court program shall evaluate the appropriateness of continued
9 supervision on a quarterly basis. All participating treatment
10 providers shall be certified by the Department of Mental Health and
11 Substance Abuse Services and shall be selected and evaluated for
12 performance-based effectiveness annually by the Department of Mental
13 Health and Substance Abuse Services. Treatment programs shall be
14 designed to be completed within twelve (12) months and shall have
15 relapse prevention and evaluation components.

16 H. The drug court judge shall order the offender to pay court
17 costs, treatment costs, drug testing costs, a program user fee not
18 to exceed Twenty Dollars (\$20.00) per month, and necessary
19 supervision fees, unless the offender is indigent. The drug court
20 judge shall establish a schedule for the payment of costs and fees.
21 The cost for treatment, drug testing, and supervision shall be set
22 by the treatment and supervision providers respectively and made
23 part of the court's order for payment. User fees shall be set by
24 the drug court judge within the maximum amount authorized by this

1 subsection and payable directly to the court clerk for the benefit
2 and administration of the drug court program. Treatment, drug
3 testing, and supervision costs shall be paid to the respective
4 providers. The court clerk shall collect all other costs and fees
5 ordered and deposit such costs and fees with the county treasurer in
6 a Drug Court Fund created and administered pursuant to subsection I
7 of Section 471.1 of this title. The remaining user fees shall be
8 remitted to the State Treasurer by the court clerk for deposit in
9 the Department of Mental Health and Substance Abuse Services' Drug
10 Abuse Education and Treatment Revolving Fund established pursuant to
11 Section 2-503.2 of Title 63 of the Oklahoma Statutes. Court orders
12 for costs and fees pursuant to this subsection shall not be limited
13 for purposes of collection to the maximum term of imprisonment for
14 which the offender could have been imprisoned for the offense, nor
15 shall any court order for costs and fees be limited by any term of
16 probation, parole, supervision, treatment, or extension thereof.
17 Court orders for costs and fees shall remain an obligation of the
18 offender until fully paid; provided, however, once the offender has
19 successfully completed the drug court program, the drug court judge
20 shall have the discretion to expressly waive all or part of the
21 costs and fees provided for in this subsection if, in the opinion of
22 the drug court judge, continued payment of the costs and fees by the
23 offender would create a financial hardship for the offender.
24 Offenders who have not fully paid all costs and fees pursuant to

1 court order but who have otherwise successfully completed the drug
2 court program shall not be counted as an active drug court
3 participant for purposes of drug court contracts or program
4 participant numbers.

5 I. Notwithstanding any other provision of law, if the driving
6 privileges of the offender have been suspended, revoked, cancelled
7 or denied by the Department of Public Safety and if the drug court
8 judge determines that no other means of transportation for the
9 offender is available, the drug court judge may enter a written
10 order requiring the Department of Public Safety to stay any and all
11 such actions against the Class D driving privileges of the offender;
12 provided, the stay shall not be construed to grant driving
13 privileges to an offender who has not been issued a driver license
14 by the Department or whose Oklahoma driver license has expired, in
15 which case the offender shall be required to apply for and be found
16 eligible for a driver license, pass all examinations, if applicable,
17 and pay all statutory driver license issuance or renewal fees. The
18 offender shall provide proof of insurance to the drug court judge
19 prior to the judge ordering a stay of any driver license suspension,
20 revocation, cancellation, or denial. When a judge of a drug court
21 enters a stay against an order by the Department of Public Safety
22 suspending or revoking the driving privileges of an offender, the
23 time period set in the order by the Department for the suspension or
24 revocation shall continue to run during the stay. When an offender

1 has successfully completed the drug court program, the drug court
2 judge shall maintain jurisdiction over the offender's driving
3 privileges for one (1) year after the date on which the offender
4 graduates from the drug court program.

5 SECTION 3. This act shall become effective July 1, 2020.

6 SECTION 4. It being immediately necessary for the preservation
7 of the public peace, health or safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

10

11 57-2-9750 GRS 01/14/20

12

13

14

15

16

17

18

19

20

21

22

23

24