

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 983

By: Newhouse

AS INTRODUCED

An Act relating to drug courts; amending 22 O.S. 2011, Sections 471.1, as amended by Section 1, Chapter 222, O.S.L. 2016, 471.2, as last amended by Section 1, Chapter 253, O.S.L. 2018, 471.3, as amended by Section 2, Chapter 253, O.S.L. 2018 and 471.4, as amended by Section 3, Chapter 253, O.S.L. 2018 (22 O.S. Supp. 2018, Sections 471.1, 471.2, 471.3 and 471.4), which relate to authorization of drug court programs, eligibility, initial hearing and investigation; prohibiting certain restriction by drug court program; requiring certain screening of all nonviolent felony offenders; establishing procedures for certain investigation; deleting method for certain offenders to request consideration for drug court program; modifying procedures for initial hearing under certain circumstances; modifying certain authority of district attorney; modifying requirements for certain referral; modifying requirements for determination of final eligibility for drug court programs; updating statutory references; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 471.1, as amended by Section 1, Chapter 222, O.S.L. 2016 (22 O.S. Supp. 2018, Section 471.1), is amended to read as follows:

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

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

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

23 D. Drug court programs shall require a separate judicial
24 processing system differing in practice and design from the
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1 traditional adversarial criminal prosecution and trial systems.
2 Whenever possible, a drug court team shall be designated consisting
3 of a judge to administer the program, a district attorney, a defense
4 attorney, and other persons designated by the drug court team who
5 shall have appropriate understanding of the goals of the program and
6 of the appropriate treatment methods for the various conditions.
7 The assignment of any person to the drug court team shall not
8 preclude the assigned person from performing other duties required
9 in the course of their office or employment. The chief judge of the
10 judicial district, or if the district has more than one chief judge
11 than the presiding judge of the Administrative Judicial District,
12 shall designate one or more judges to administer the drug court
13 program. The assignment of any judge to a drug court program or the
14 designation of a drug court docket shall not mandate the assignment
15 of all substance abuse related cases to the drug court docket or the
16 program; however, nothing in ~~this act~~ the Oklahoma Drug Court Act
17 shall be construed to preclude the assignment of all criminal cases
18 relating to substance abuse or drug possession as provided by the
19 rules established for the specific drug court program.

20 E. When a drug court program is established, the arresting
21 officer shall file the criminal case record for potentially eligible
22 offenders with the district attorney within four (4) days of the
23 arrest. The district attorney shall file an information in the case
24 within twenty-four (24) hours of receipt of the criminal case record

1 when the offender appears eligible for consideration for the
2 program. The information may be amended as necessary when an
3 offender is denied admittance into the drug court program or for
4 other purposes as provided in Section 304 of this title. Any person
5 arrested upon a warrant for his or her arrest shall not be eligible
6 for the drug court program without the approval of the district
7 attorney. Any criminal case which has been filed and processed in
8 the traditional manner shall be cross-referenced to a drug court
9 case file by the court clerk, if the case is subsequently assigned
10 to the drug court program. The originating criminal case file shall
11 remain open to public inspection. The judge shall determine what
12 information or pleadings are to be retained in the drug court case
13 file, which shall be closed to public inspection.

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

23 G. Each drug court program shall ensure, but not be limited to:

24 1. Strong linkage between participating agencies;

2. Access by all participating parties of a case to information on the progress of the offender;
3. Vigilant supervision and monitoring procedures;
4. Random substance abuse testing;
5. Provisions for noncompliance, modification of the treatment plan, and revocation proceedings;
6. Availability of residential treatment facilities and outpatient services;
7. Payment of court costs, treatment costs, supervision fees, and program user fees by the offender;
8. Methods for measuring application of disciplinary sanctions, including provisions for:
 - a. increased supervision,
 - b. urinalysis testing,
 - c. intensive treatment,
 - d. short-term confinement not to exceed five (5) days,
 - e. recycling the offender into the program after a disciplinary action for a minimum violation of the treatment plan,
 - f. reinstating the offender into the program after a disciplinary action for a major violation of the treatment plan, and
 - g. revocation from the program; and

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

3 H. All drug court programs shall be required to keep reliable
4 data on recidivism, relapse, restarts, sanctions imposed, and
5 incentives given.

6 I. Nothing in this section shall prohibit any county from
7 establishing a drug court for misdemeanor offenses. Such
8 misdemeanor drug courts shall follow the rules and regulations of
9 felony drug courts except that the penalty for revocation shall not
10 exceed one (1) year in the county jail or the maximum penalty for
11 the misdemeanor allowed by statute, whichever is less. The
12 Department of Mental Health and Substance Abuse Services shall
13 provide technical assistance to the counties that establish
14 misdemeanor drug courts.

15 SECTION 2. AMENDATORY 22 O.S. 2011, Section 471.2, as
16 last amended by Section 1, Chapter 253, O.S.L. 2018 (22 O.S. Supp.
17 2018, Section 471.2), is amended to read as follows:

18 Section 471.2. A. The opportunity for review of an offender
19 for a drug court program shall occur at any time prior to
20 disposition of the case and sentencing of the offender, including
21 sentencing on a petition to revoke a suspended sentence or any
22 probation violation. When a drug court is established, the
23 following information shall be initially reviewed by the sheriff or
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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 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~~ Any non-violent felony offender shall be screened for a substance
17 abuse or mental health disorder. If the offender is found to meet
18 eligibility criteria prescribed in subsection A of this section, the
19 offender shall be given the opportunity, prior to a preliminary
20 hearing and with the offender's consent, to undergo an investigation
21 to determine suitability for the drug court program or another
22 treatment program intended to divert offenders from incarceration.
23 The offender shall be considered for the appropriate alternative
24 court docket or diversion program unless the offender chooses to

1 return to the traditional case processing system rather than
2 undergoing the investigation. The district attorney may deny an
3 investigation for any offender who does not meet the criteria
4 specified in paragraph 1, 2 or 3 of subsection A of this section.
5 Prior to an investigation, the offender shall be advised of and
6 agree to the following:

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

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

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

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

20 5. A clear statement that the plea agreement will specify the
21 offense to which the guilty plea will be entered and will state any
22 penalty to be imposed for the offense, both in the event of a
23 successful completion of the drug court program, and in the event of
24 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~~ undergoing an investigation for suitability for
3 ~~consideration in~~ a drug court program shall be referred to the
4 defense attorney of the drug court team, or a public defender, if
5 the offender is indigent, or allowed to consult with private legal
6 counsel.

7 ~~3.~~ 2. Nothing contained in the provisions of this subsection
8 shall prohibit the drug court from considering any offender deemed
9 eligible for the program at any time prior to sentencing whose case
10 has been prosecuted in the traditional manner, or upon a violation
11 of parole or probation conditions relating to substance abuse, upon
12 recommendation of the district attorney as provided in Section 471.8
13 of this title.

14 D. When an offender has ~~filed a voluntary request to be~~
15 ~~considered for a drug court program on the appropriate form, the~~
16 ~~district attorney shall indicate his or her approval of the request~~
17 ~~by filing the form with the~~ met eligibility criteria in subsection A
18 of this section and investigation has deemed the offender suitable
19 for a drug court judge. ~~Upon the filing of the request form by the~~
20 ~~district attorney program,~~ an initial hearing shall be set before
21 the drug court judge. The hearing shall be not ~~less than three (3)~~
22 ~~work days nor~~ more than five (5) work days after the date of the
23 filing of the request form. Notice of the hearing shall be given to
24 the drug court team, or in the event no drug court team is

1 designated, to the offender, the district attorney, and to the
2 public defender. The offender shall be required to notify any
3 private legal counsel of the date and time of the hearing.

4 SECTION 3. AMENDATORY 22 O.S. 2011, Section 471.3, as
5 amended by Section 2, Chapter 253, O.S.L. 2018 (22 O.S. Supp. 2018,
6 Section 471.3), is amended to read as follows:

7 Section 471.3. A. At the initial hearing for consideration of
8 an offender for a drug court program, the district attorney ~~shall~~
9 ~~determine whether or not~~ may object to such consideration if:

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

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

16 3. 2. ~~Any statutory preclusion, other prohibition, or program~~
17 ~~limitation~~ exists and is applicable to considering the offender for
18 the program.

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

21 B. If the offender meets the eligibility criteria as provided
22 in Section 471.2 of this title, voluntarily consents to ~~be~~
23 ~~considered for the drug court program, has signed and filed the~~
24 ~~required form requesting consideration~~ undergo a drug court

1 investigation, and no objection has been made by the district
2 attorney, the court shall refer the offender for a drug court
3 investigation as provided in Section 471.4 of this title, and set a
4 date for a hearing to determine final eligibility for admittance
5 into the program.

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

16 SECTION 4. AMENDATORY 22 O.S. 2011, Section 471.4, as
17 amended by Section 3, Chapter 253, O.S.L. 2018 (22 O.S. Supp. 2018,
18 Section 471.4), is amended to read as follows:

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

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

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

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

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

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

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

3 F. For purposes of ~~this act~~ the Oklahoma Drug Court Act,
4 "supervising staff" means a Department of Corrections employee
5 assigned to monitor offenders in the drug court program, a community
6 provider assigned to monitor offenders in the program, a state or
7 local agency representative or a certified treatment provider
8 participating in the program, or a person designated by the judge to
9 perform drug court investigations.

10 SECTION 5. This act shall become effective November 1, 2019.

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