

# An Act

ENROLLED SENATE  
BILL NO. 38

By: Thompson and Jech of the  
Senate

and

Echols, Manger and Fugate  
of the House

An Act relating to drug courts; amending 22 O.S. 2011, Section 471.1, as amended by Section 1, Chapter 222, O.S.L. 2016, and 471.6, as last amended by Section 1, Chapter 393, O.S.L. 2016 (22 O.S. Supp. 2020, Sections 471.1 and 471.6), which relate to authorization of drug court programs and final eligibility hearing; extending judicial immunity to certain duties; establishing drug court funds; stating purpose of certain fund; making funds nonfiscal; stating source of revenue; establishing procedures for expenditure of certain funds; directing deposit of certain costs and fees; clarifying language; updating statutory references; providing an effective date; and declaring an emergency.

SUBJECT: Drug courts

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. 2020, Section 471.1), is amended to read as follows:

Section 471.1. A. For purposes of ~~this act~~ the Oklahoma Drug 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.

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

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

D. Drug court programs shall require a separate judicial processing system differing in practice and design from the traditional adversarial criminal prosecution and trial systems. Whenever possible, a drug court team shall be designated consisting of a judge to administer the program, a district attorney, a defense attorney, and other persons designated by the drug court team who shall have appropriate understanding of the goals of the program and of the appropriate treatment methods for the various conditions. The assignment of any person to the drug court team shall not preclude the assigned person from performing other duties required in the course of their office or employment. The chief judge of the judicial district, or if the district has more than one chief judge ~~than~~ then the presiding judge of the Administrative Judicial District, shall designate one or more judges to administer the drug court program. The assignment of any judge to a drug court program or the designation of a drug court docket shall not mandate the assignment of all substance ~~abuse-related~~ abuse-related cases to the drug court docket or the program; however, nothing in ~~this act~~ the Oklahoma Drug Court Act shall be construed to preclude the

assignment of all criminal cases relating to substance abuse or drug possession as provided by the rules established for the specific drug court program. Judicial immunity shall extend to any duty required by law to be performed by a judge of a drug court.

E. When a drug court program is established, the arresting officer shall file the criminal case record for potentially eligible offenders with the district attorney within four (4) days of the arrest. The district attorney shall file an information in the case within twenty-four (24) hours of receipt of the criminal case record when the offender appears eligible for consideration for the program. The information may be amended as necessary when an offender is denied admittance into the drug court program or for other purposes as provided in Section 304 of this title. Any person arrested upon a warrant for his or her arrest shall not be eligible for the drug court program without the approval of the district attorney. Any criminal case which has been filed and processed in the traditional manner shall be cross-referenced to a drug court case file by the court clerk, if the case is subsequently assigned to the drug court program. The originating criminal case file shall remain open to public inspection. The judge shall determine what information or pleadings are to be retained in the drug court case file, which shall be closed to public inspection.

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

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

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

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

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

I. All funds received by a drug court, in its capacity as a drug court, shall be credited to and accounted for in the county

treasurer's office in a special cash fund to be known as the "Drug Court Fund". Each drug court fund shall be a continuing fund, not subject to fiscal year limitations, and shall be dedicated to the operation of the drug court as authorized by law. The expenditures of any funds received by a drug court program and deposited with the county treasurer shall be made only upon sworn itemized claims approved by the county clerk, filed with the county treasurer and paid by cash voucher drawn by the county treasurer from the funds.

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

SECTION 2. AMENDATORY 22 O.S. 2011, Section 471.6, as last amended by Section 1, Chapter 393, O.S.L. 2016 (22 O.S. Supp. 2020, Section 471.6), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

court documents before the offender may be admitted to treatment. The court documents shall include:

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

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

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

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

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

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

G. The period of time during which an offender may participate in the active treatment portion of the drug court program shall be not less than six (6) months nor more than twenty-four (24) months and may include a period of supervision not less than six (6) months nor more than one (1) year following the treatment portion of the program. The period of supervision may be extended by order of the court for not more than six (6) months. No treatment dollars shall be expended on the offender during the extended period of supervision. If the court orders that the period of supervision shall be extended, the drug court judge, district attorney, the attorney for the offender, and the supervising staff for the drug court program shall evaluate the appropriateness of continued supervision on a quarterly basis. All participating treatment providers shall be certified by the Department of Mental Health and Substance Abuse Services and shall be selected and evaluated for

performance-based effectiveness annually by the Department of Mental Health and Substance Abuse Services. Treatment programs shall be designed to be completed within twelve (12) months and shall have relapse prevention and evaluation components.

H. The drug court judge shall order the offender to pay court costs, treatment costs, drug testing costs, a program user fee not to exceed Twenty Dollars (\$20.00) per month, and necessary supervision fees, unless the offender is indigent. The drug court judge shall establish a schedule for the payment of costs and fees. The cost for treatment, drug testing, and supervision shall be set by the treatment and supervision providers respectively and made part of the court's order for payment. User fees shall be set by the drug court judge within the maximum amount authorized by this subsection and payable directly to the court clerk for the benefit and administration of the drug court program. Treatment, drug testing, and supervision costs shall be paid to the respective providers. The court clerk shall collect all other costs and fees ordered and deposit such costs and fees with the county treasurer in a drug court fund created and administered pursuant to subsection I of Section 471.1 of this title. The remaining user fees shall be remitted to the State Treasurer by the court clerk for deposit in the Department of Mental Health and Substance Abuse Services' Drug Abuse Education and Treatment Revolving Fund established pursuant to Section 2-503.2 of Title 63 of the Oklahoma Statutes. Court orders for costs and fees pursuant to this subsection shall not be limited for purposes of collection to the maximum term of imprisonment for which the offender could have been imprisoned for the offense, nor shall any court order for costs and fees be limited by any term of probation, parole, supervision, treatment, or extension thereof. Court orders for costs and fees shall remain an obligation of the offender until fully paid; provided, however, once the offender has successfully completed the drug court program, the drug court judge shall have the discretion to expressly waive all or part of the costs and fees provided for in this subsection if, in the opinion of the drug court judge, continued payment of the costs and fees by the offender would create a financial hardship for the offender. Offenders who have not fully paid all costs and fees pursuant to court order but who have otherwise successfully completed the drug court program shall not be counted as an active drug court participant for purposes of drug court contracts or program participant numbers.



I. Notwithstanding any other provision of law, if the driving privileges of the offender have been suspended, revoked, cancelled or denied by the Department of Public Safety and if the drug court judge determines that no other means of transportation for the offender is available, the drug court judge may enter a written order requiring the Department of Public Safety to stay any and all such actions against the Class D driving privileges of the offender; provided, the stay shall not be construed to grant driving privileges to an offender who has not been issued a driver license by the Department or whose Oklahoma driver license has expired, in which case the offender shall be required to apply for and be found eligible for a driver license, pass all examinations, if applicable, and pay all statutory driver license issuance or renewal fees. The offender shall provide proof of insurance to the drug court judge prior to the judge ordering a stay of any driver license suspension, revocation, cancellation, or denial. When a judge of a drug court enters a stay against an order by the Department of Public Safety suspending or revoking the driving privileges of an offender, the time period set in the order by the Department for the suspension or revocation shall continue to run during the stay. When an offender has successfully completed the drug court program, the drug court judge shall maintain jurisdiction over the offender's driving privileges for one (1) year after the date on which the offender graduates from the drug court program.

SECTION 3. This act shall become effective July 1, 2021.

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

Passed the Senate the 9th day of March, 2021.

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Presiding Officer of the Senate

Passed the House of Representatives the 21st day of April, 2021.

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Presiding Officer of the House  
of Representatives

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: \_\_\_\_\_