

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               1st Session of the 58th Legislature (2021)

4   ENGROSSED SENATE  
5   BILL NO. 38

                              By: Thompson and **Jech** of the  
                              Senate

6   and

7   Echols of the House

8  
9  
10       An Act relating to drug courts; amending 22 O.S.  
11       2011, Section 471.1, as amended by Section 1, Chapter  
12       222, O.S.L. 2016, and 471.6, as last amended by  
13       Section 1, Chapter 393, O.S.L. 2016 (22 O.S. Supp.  
14       2020, Sections 471.1 and 471.6), which relate to  
15       authorization of drug court programs and final  
16       eligibility hearing; extending judicial immunity to  
17       certain duties; establishing drug court funds;  
18       stating purpose of certain fund; making funds  
19       nonfiscal; stating source of revenue; establishing  
20       procedures for expenditure of certain funds;  
21       directing deposit of certain costs and fees;  
22       clarifying language; updating statutory references;  
23       providing an effective date; and declaring an  
24       emergency.

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:

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~~7~~ 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~~7~~ 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~~7~~  
19 ~~regardless of the fact that~~ even if the controlling offense is  
20 eligible for consideration in the program. Traditional prosecution  
21 shall be required where an offender is determined not appropriate  
22 for the drug court program.

23       D. Drug court programs shall require a separate judicial  
24 processing system differing in practice and design from the

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~~ then the presiding judge of the Administrative Judicial  
12 District, shall designate one or more judges to administer the drug  
13 court program. The assignment of any judge to a drug court program  
14 or the designation of a drug court docket shall not mandate the  
15 assignment of all substance ~~abuse-related~~ abuse-related cases to the  
16 drug court docket or the program; however, nothing in ~~this act~~ the  
17 Oklahoma Drug Court Act shall be construed to preclude the  
18 assignment of all criminal cases relating to substance abuse or drug  
19 possession as provided by the rules established for the specific  
20 drug court program. Judicial immunity shall extend to any duty  
21 required by law to be performed by a judge of a drug court.

22 E. When a drug court program is established, the arresting  
23 officer shall file the criminal case record for potentially eligible  
24 offenders with the district attorney within four (4) days of the

1 arrest. The district attorney shall file an information in the case  
2 within twenty-four (24) hours of receipt of the criminal case record  
3 when the offender appears eligible for consideration for the  
4 program. The information may be amended as necessary when an  
5 offender is denied admittance into the drug court program or for  
6 other purposes as provided in Section 304 of this title. Any person  
7 arrested upon a warrant for his or her arrest shall not be eligible  
8 for the drug court program without the approval of the district  
9 attorney. Any criminal case which has been filed and processed in  
10 the traditional manner shall be cross-referenced to a drug court  
11 case file by the court clerk, if the case is subsequently assigned  
12 to the drug court program. The originating criminal case file shall  
13 remain open to public inspection. The judge shall determine what  
14 information or pleadings are to be retained in the drug court case  
15 file, which shall be closed to public inspection.

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

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

2 1. Strong linkage between participating agencies;

3 2. Access by all participating parties of a case to information  
4 on the progress of the offender;

5 3. Vigilant supervision and monitoring procedures;

6 4. Random substance abuse testing;

7 5. Provisions for noncompliance, modification of the treatment  
8 plan, and revocation proceedings;

9 6. Availability of residential treatment facilities and  
10 outpatient services;

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

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

15 a. increased supervision,

16 b. urinalysis testing,

17 c. intensive treatment,

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

19 e. recycling the offender into the program after a  
20 disciplinary action for a minimum violation of the  
21 treatment plan,

22 f. reinstating the offender into the program after a  
23 disciplinary action for a major violation of the  
24 treatment plan, and

1           g.     revocation from the program; and

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

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

7           I.   All funds received by a drug court, in its capacity as a  
8 drug court, shall be credited to and accounted for in the county  
9 treasurer's office in a special cash fund to be known as the "Drug  
10 Court Fund". Each drug court fund shall be a continuing fund, not  
11 subject to fiscal year limitations, and shall be dedicated to the  
12 operation of the drug court as authorized by law. The expenditures  
13 of any funds received by a drug court program and deposited with the  
14 county treasurer shall be made only upon sworn itemized claims  
15 approved by the county clerk, filed with the county treasurer and  
16 paid by cash voucher drawn by the county treasurer from the funds.

17          J.   Nothing in this section shall prohibit any county from  
18 establishing a drug court for misdemeanor offenses. Such  
19 misdemeanor drug courts shall follow the rules and regulations of  
20 felony drug courts except that the penalty for revocation shall not  
21 exceed one (1) year in the county jail or the maximum penalty for  
22 the misdemeanor allowed by statute, whichever is less. The  
23 Department of Mental Health and Substance Abuse Services shall  
24

1 provide technical assistance to the counties that establish  
2 misdemeanor drug courts.

3 SECTION 2. AMENDATORY 22 O.S. 2011, Section 471.6, as  
4 last amended by Section 1, Chapter 393, O.S.L. 2016 (22 O.S. Supp.  
5 2020, Section 471.6), is amended to read as follows:

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

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

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

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

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

22 5. Any information relevant to determining eligibility;  
23 provided, however, an offender shall not be denied admittance to any  
24

1 drug court program based upon an inability to pay court costs or  
2 other costs or fees.

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

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

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

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

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

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

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



1 D. When the court accepts the treatment plan with the written  
2 plea agreement, the offender, upon entering the plea as agreed by  
3 the parties, shall be ordered and escorted immediately into the  
4 program. The offender must have voluntarily signed the necessary  
5 court documents before the offender may be admitted to treatment.  
6 The court documents shall include:

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

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

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

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

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

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

1       G. The period of time during which an offender may participate  
2 in the active treatment portion of the drug court program shall be  
3 not less than six (6) months nor more than twenty-four (24) months  
4 and may include a period of supervision not less than six (6) months  
5 nor more than one (1) year following the treatment portion of the  
6 program. The period of supervision may be extended by order of the  
7 court for not more than six (6) months. No treatment dollars shall  
8 be expended on the offender during the extended period of  
9 supervision. If the court orders that the period of supervision  
10 shall be extended, the drug court judge, district attorney, the  
11 attorney for the offender, and the supervising staff for the drug  
12 court program shall evaluate the appropriateness of continued  
13 supervision on a quarterly basis. All participating treatment  
14 providers shall be certified by the Department of Mental Health and  
15 Substance Abuse Services and shall be selected and evaluated for  
16 performance-based effectiveness annually by the Department of Mental  
17 Health and Substance Abuse Services. Treatment programs shall be  
18 designed to be completed within twelve (12) months and shall have  
19 relapse prevention and evaluation components.

20       H. The drug court judge shall order the offender to pay court  
21 costs, treatment costs, drug testing costs, a program user fee not  
22 to exceed Twenty Dollars (\$20.00) per month, and necessary  
23 supervision fees, unless the offender is indigent. The drug court  
24 judge shall establish a schedule for the payment of costs and fees.

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

1 costs and fees provided for in this subsection if, in the opinion of  
2 the drug court judge, continued payment of the costs and fees by the  
3 offender would create a financial hardship for the offender.

4 Offenders who have not fully paid all costs and fees pursuant to  
5 court order but who have otherwise successfully completed the drug  
6 court program shall not be counted as an active drug court  
7 participant for purposes of drug court contracts or program  
8 participant numbers.

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

1 enters a stay against an order by the Department of Public Safety  
2 suspending or revoking the driving privileges of an offender, the  
3 time period set in the order by the Department for the suspension or  
4 revocation shall continue to run during the stay. When an offender  
5 has successfully completed the drug court program, the drug court  
6 judge shall maintain jurisdiction over the offender's driving  
7 privileges for one (1) year after the date on which the offender  
8 graduates from the drug court program.

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

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

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15 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 03/30/2021 - DO PASS,  
16 As Coauthored.

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