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March 3, 2021

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 38

By: Thompson of the Senate

and

Echols 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.

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

1 immediate and highly structured judicial intervention process for
2 substance abuse treatment of eligible offenders which expedites the
3 criminal case~~7~~ and requires successful completion of the plea
4 agreement.

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

12 C. Drug court programs shall not apply to any violent criminal
13 offense. Eligible offenses may further be restricted by the rules
14 of the specific drug court program. Nothing in ~~this act~~ the
15 Oklahoma Drug Court Act shall be construed to require a drug court
16 to consider every offender with a treatable condition or addiction~~7~~
17 ~~regardless of the fact that~~ even if the controlling offense is
18 eligible for consideration in the program. Traditional prosecution
19 shall be required where an offender is determined not appropriate
20 for the drug court program.

21 D. Drug court programs shall require a separate judicial
22 processing system differing in practice and design from the
23 traditional adversarial criminal prosecution and trial systems.
24 Whenever possible, a drug court team shall be designated consisting

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

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;

- 1 2. Access by all participating parties of a case to information
- 2 on the progress of the offender;
- 3 3. Vigilant supervision and monitoring procedures;
- 4 4. Random substance abuse testing;
- 5 5. Provisions for noncompliance, modification of the treatment
- 6 plan, and revocation proceedings;
- 7 6. Availability of residential treatment facilities and
- 8 outpatient services;
- 9 7. Payment of court costs, treatment costs, supervision fees,
- 10 and program user fees by the offender;
- 11 8. Methods for measuring application of disciplinary sanctions,
- 12 including provisions for:
 - 13 a. increased supervision,
 - 14 b. urinalysis testing,
 - 15 c. intensive treatment,
 - 16 d. short-term confinement not to exceed five (5) days,
 - 17 e. recycling the offender into the program after a
 - 18 disciplinary action for a minimum violation of the
 - 19 treatment plan,
 - 20 f. reinstating the offender into the program after a
 - 21 disciplinary action for a major violation of the
 - 22 treatment plan, and
 - 23 g. revocation from the program; and
 - 24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 D. When the court accepts the treatment plan with the written
24 plea agreement, the offender, upon entering the plea as agreed by

1 the parties, shall be ordered and escorted immediately into the
2 program. The offender must have voluntarily signed the necessary
3 court documents before the offender may be admitted to treatment.

4 The court documents shall include:

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

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

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

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

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

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

23 G. The period of time during which an offender may participate
24 in the active treatment portion of the drug court program shall be

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

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

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

1 offender would create a financial hardship for the offender.
2 Offenders who have not fully paid all costs and fees pursuant to
3 court order but who have otherwise successfully completed the drug
4 court program shall not be counted as an active drug court
5 participant for purposes of drug court contracts or program
6 participant numbers.

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

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

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

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

12 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
13 March 3, 2021 - DO PASS AS AMENDED
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