

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 SENATE BILL 1746

By: Brooks

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6 AS INTRODUCED

7 An Act relating to the Oklahoma Drug Court Act;
8 amending 22 O.S. 2021, Section 471.1, which relates
9 to authorization of drug court programs; removing
10 certain eligibility requirement; amending 22 O.S.
11 2021, Section 471.2, which relates to eligibility and
12 request for drug court program; removing certain
13 approval; amending 22 O.S. 2021, Section 471.3, which
14 relates to initial hearing; requiring court to make
15 certain determination; and providing an effective
16 date.

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

18 SECTION 1. AMENDATORY 22 O.S. 2021, Section 471.1, is
19 amended to read as follows:

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

25 B. Each district court of this state is authorized to establish
26 a drug court program pursuant to the provisions of the Oklahoma Drug
27 Court Act, subject to availability of funds. Juvenile drug courts

1 may be established based upon the provisions of the Oklahoma Drug
2 Court Act; provided, however, juveniles shall not be held, processed
3 or treated in any manner which violates any provision of Title 10A
4 of the Oklahoma Statutes.

5 C. Drug court programs shall not apply to any violent criminal
6 offense. Eligible offenses may further be restricted by the rules
7 of the specific drug court program. Nothing in the Oklahoma Drug
8 Court Act shall be construed to require a drug court to consider
9 every offender with a treatable condition or addiction even if the
10 controlling offense is eligible for consideration in the program.
11 Traditional prosecution shall be required where an offender is
12 determined not appropriate for the drug court program.

13 D. Drug court programs shall require a separate judicial
14 processing system differing in practice and design from the
15 traditional adversarial criminal prosecution and trial systems.
16 Whenever possible, a drug court team shall be designated consisting
17 of a judge to administer the program, a district attorney, a defense
18 attorney and other persons designated by the drug court team who
19 shall have appropriate understanding of the goals of the program and
20 of the appropriate treatment methods for the various conditions.
21 The assignment of any person to the drug court team shall not
22 preclude the assigned person from performing other duties required
23 in the course of their office or employment. The chief judge of the
24 judicial district, or if the district has more than one chief judge

1 then the presiding judge of the Administrative Judicial District,
2 shall designate one or more judges to administer the drug court
3 program. The assignment of any judge to a drug court program or the
4 designation of a drug court docket shall not mandate the assignment
5 of all substance abuse-related cases to the drug court docket or the
6 program; however, nothing in the Oklahoma Drug Court Act shall be
7 construed to preclude the assignment of all criminal cases relating
8 to substance abuse or drug possession as provided by the rules
9 established for the specific drug court program. Judicial immunity
10 shall extend to any duty required by law to be performed by a judge
11 of a drug court.

12 E. When a drug court program is established, the arresting
13 officer shall file the criminal case record for potentially eligible
14 offenders with the district attorney within four (4) days of the
15 arrest. The district attorney shall file an information in the case
16 within twenty-four (24) hours of receipt of the criminal case record
17 when the offender appears eligible for consideration for the
18 program. The information may be amended as necessary when an
19 offender is denied admittance into the drug court program or for
20 other purposes as provided in Section 304 of this title. ~~Any person~~
21 ~~arrested upon a warrant for his or her arrest shall not be eligible~~
22 ~~for the drug court program without the approval of the district~~
23 ~~attorney.~~ Any criminal case which has been filed and processed in
24 the traditional manner shall be cross-referenced to a drug court

1 case file by the court clerk if the case is subsequently assigned to
2 the drug court program. The originating criminal case file shall
3 remain open to public inspection. The judge shall determine what
4 information or pleadings are to be retained in the drug court case
5 file, which shall be closed to public inspection.

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

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

- 16 1. Strong linkage between participating agencies;
- 17 2. Access by all participating parties of a case to information
18 on the progress of the offender;
- 19 3. Vigilant supervision and monitoring procedures;
- 20 4. Random substance abuse testing;
- 21 5. Provisions for noncompliance, modification of the treatment
22 plan and revocation proceedings;
- 23 6. Availability of residential treatment facilities and
24 outpatient services;

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

3 8. Methods for measuring application of disciplinary sanctions
4 including provisions for:

- 5 a. increased supervision,
- 6 b. urinalysis testing,
- 7 c. intensive treatment,
- 8 d. short-term confinement not to exceed five (5) days,
- 9 e. recycling the offender into the program after a
10 disciplinary action for a minimum violation of the
11 treatment plan,
- 12 f. reinstating the offender into the program after a
13 disciplinary action for a major violation of the
14 treatment plan, and
- 15 g. revocation from the program; and

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

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

21 I. All funds received by a drug court, in its capacity as a
22 drug court, shall be credited to and accounted for in the county
23 treasurer's office in a special cash fund to be known as the "Drug
24 Court Fund". Each drug court fund shall be a continuing fund, not

1 subject to fiscal year limitations, and shall be dedicated to the
2 operation of the drug court as authorized by law. The expenditures
3 of any funds received by a drug court program and deposited with the
4 county treasurer shall be made only upon sworn itemized claims
5 approved by the county clerk, filed with the county treasurer and
6 paid by cash voucher drawn by the county treasurer from the funds.

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

16 SECTION 2. AMENDATORY 22 O.S. 2021, Section 471.2, is
17 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
24

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:

17 1. A full description of the drug court process and
18 investigation;

19 2. A general explanation of the roles and authority of the
20 supervising staff, the district attorney, the defense attorney, the
21 treatment provider, the offender, and the judge in the drug court
22 program;

23 3. A clear statement that the drug court judge may decide after
24 a hearing not to consider the offender for the drug court program

1 and in that event the offender will be prosecuted in the traditional
2 manner;

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

6 5. A clear statement that the plea agreement will specify the
7 offense to which the guilty plea will be entered and will state any
8 penalty to be imposed for the offense, both in the event of a
9 successful completion of the drug court program, and in the event of
10 a failure to complete the program;

11 6. A clear statement that the offender must voluntarily agree
12 to:

- 13 a. waive the right to a speedy trial,
- 14 b. waive the right to a preliminary hearing,
- 15 c. the terms and conditions of a treatment plan, and
- 16 d. sign a performance contract with the court;

17 7. A clear statement that the offender, if accepted into the
18 drug court program, may not be incarcerated for the offense in a
19 state correctional institution or jail upon successful completion of
20 the program;

21 8. A clear statement that during participation in the drug
22 court program should the offender fail to comply with the terms of
23 the agreement, the offender may be sanctioned to serve a term of
24 confinement of six (6) months in an intermediate revocation facility

1 operated by the Department of Corrections. An offender shall not be
2 allowed to serve more than two separate terms of confinement in an
3 intermediate revocation facility;

4 9. A clear statement that during participation in the drug
5 court program should the offender:

- 6 a. fail to comply with the terms of the agreements,
- 7 b. be convicted of a misdemeanor offense which reflects a
8 propensity for violence,
- 9 c. be arrested for a violent felony offense, or
- 10 d. be convicted of any felony offense,

11 the offender may be required, after a court hearing, to be revoked
12 from the program and sentenced without trial pursuant to the
13 punishment provisions of the negotiated plea agreement; and

14 10. An explanation of the criminal record retention and
15 disposition resulting from participation in the drug court program
16 following successful completion of the program.

17 C. 1. The offender may request consideration for the drug
18 court program as follows:

- 19 a. if the offender is incarcerated, the offender must
20 sign and complete the eligibility form and return it
21 to the sheriff, if the offender is held in the county
22 jail; or to the chief of police, if the offender is
23 held in a city jail. The sheriff or chief of police,
24 upon receipt of the eligibility form, shall file the

1 form with the district attorney at the time of filing
2 the criminal case record or at any time during the
3 period of incarceration when the offender completes
4 the form after the criminal case record has been
5 filed, or

6 b. after release of the offender from incarceration, the
7 offender must sign and complete the eligibility form
8 and file it with the district attorney or the court,
9 prior to or at the time of either initial appearance
10 or arraignment.

11 2. Any offender desiring legal consultation prior to signing or
12 completing the form for consideration in a drug court program shall
13 be referred to the defense attorney of the drug court team, or a
14 public defender, if the offender is indigent, or allowed to consult
15 with private legal counsel.

16 3. Nothing contained in the provisions of this subsection shall
17 prohibit the drug court from considering any offender deemed
18 eligible for the program at any time prior to sentencing whose case
19 has been prosecuted in the traditional manner, or upon a violation
20 of parole or probation conditions relating to substance abuse, upon
21 recommendation of the district attorney as provided in Section 471.8
22 of this title.

23 D. When an offender has filed a voluntary request to be
24 considered for a drug court program on the appropriate form, the

1 district attorney shall indicate his or her approval of the request
2 by filing the form with the drug court judge. Upon the filing of
3 the request form by the district attorney, an initial hearing shall
4 be set before the drug court judge. The hearing shall be not less
5 than three (3) work days nor more than five (5) work days after the
6 date of the filing of the request form. Notice of the hearing shall
7 be given to the drug court team, or in the event no drug court team
8 is designated, to the offender, the district attorney, and to the
9 public defender. The offender shall be required to notify any
10 private legal counsel of the date and time of the hearing.

11 SECTION 3. AMENDATORY 22 O.S. 2021, Section 471.3, is
12 amended to read as follows:

13 Section 471.3. A. At the initial hearing for consideration of
14 an offender for a drug court program, the district attorney shall
15 determine whether or not:

16 1. The offender has approval to be considered for the drug
17 court program;

18 2. The offender has been admitted to the program within the
19 preceding five (5) years; provided, having been admitted to a drug
20 court program within the previous five (5) years shall not make the
21 offender ineligible for consideration; and

22 3. Any statutory preclusion, other prohibition, or program
23 limitation exists and is applicable to considering the offender for
24 the program.

1 The district attorney may object to the consideration of an
2 offender for the drug court program at the initial hearing.

3 B. If the offender voluntarily consents to be considered for
4 the drug court program, has signed and filed the required form
5 requesting consideration, and no objection has been made by the
6 district attorney, the court shall refer the offender for a drug
7 court investigation as provided in Section 471.4 of this title, and
8 set a date for a hearing to determine final eligibility for
9 admittance into the program.

10 C. Upon any objection of the district attorney for
11 consideration of an offender for the program, the court shall ~~deny~~
12 ~~consideration of the~~ determine whether the offender's request for
13 participation in the drug court program will be granted. Upon
14 denial for consideration in the drug court program at the initial
15 hearing, the criminal case shall proceed in the traditional manner.
16 An objection by the district attorney and the subsequent denial of
17 consideration of the offender for the program shall not preclude any
18 future consideration of the offender for the drug court program with
19 the approval of the district attorney.

20 SECTION 4. This act shall become effective November 1, 2022.

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