

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2828

By: Blancett

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5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2021, Sections 471.1, 471.2 and 471.3, as
9 amended by Sections 1, 2, and 3, Chapter 277, O.S.L.
10 2022 (22 O.S. Supp. 2022, Sections 471.1, 471.2 and
11 471.3), which relate to the Oklahoma Drug Court Act;
12 defining terms; authorizing drug court teams to
13 recommend program participants; authorizing court to
14 overrule or sustain objections made by the district
15 attorney; and providing an effective date.

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

17 SECTION 1. AMENDATORY 22 O.S. 2021, Section 471.1, as
18 amended by Section 1, Chapter 277, O.S.L. 2022 (22 O.S. Supp. 2022,
19 Section 471.1), is amended to read as follows:

20 Section 471.1 A. For purposes of the Oklahoma Drug Court Act,
21 "drug court":

22 1. "Drug court", "drug court program" or "program" means an
23 immediate and highly structured judicial intervention process for
24 substance abuse treatment of eligible offenders which expedites the
25 criminal case and requires successful completion of the plea
26 agreement; and

1 2. "Drug court team" means a team consisting of:

2 (a) a judge who presides over the drug court judicial
3 process,

4 (b) a district attorney,

5 (c) a defense attorney,

6 (d) a drug court coordinator, and

7 (e) any other person designated by the drug court team who
8 shall have an appropriate understanding of the goals
9 of the program and treatment methods for various
10 conditions.

11 B. Each district court of this state is authorized to establish
12 a drug court program pursuant to the provisions of the Oklahoma Drug
13 Court Act, subject to availability of funds.

14 C. Eligible offenses may be restricted by the rules of the
15 specific drug court program. Nothing in the Oklahoma Drug Court Act
16 shall be construed to require a drug court to consider every
17 offender with a treatable condition or addiction even if the
18 controlling offense is eligible for consideration in the program.
19 Traditional prosecution shall be required where an offender is
20 determined not appropriate for the drug court program. Juvenile
21 drug courts may be established based upon the provisions of the
22 Oklahoma Drug Court Act; provided, however, a juvenile shall not be
23 held, processed, or treated in any manner which violates any
24 provision of Title 10A of the Oklahoma Statutes.

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

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

22 F. The court may request assistance from the Department of
23 Mental Health and Substance Abuse Services which shall be the
24 primary agency to assist in developing and implementing a drug court

1 program or from any state or local agency in obtaining the necessary
2 treatment services which will assure maximum opportunity for
3 successful treatment, education and rehabilitation for offenders
4 admitted to the program. All participating state and local agencies
5 are directed to coordinate with each other and cooperate in
6 assisting the district court in establishing a drug court program.

7 G. Each drug court program shall apply recognized best
8 practices including but not limited to:

- 9 1. Strong linkage between participating agencies;
- 10 2. Access by all participating parties of a case to information
11 on the progress of the offender;
- 12 3. Vigilant supervision and monitoring procedures;
- 13 4. Random substance abuse testing;
- 14 5. Provisions for noncompliance, modification of the treatment
15 plan and revocation proceedings;
- 16 6. Availability of residential treatment facilities and
17 outpatient services;
- 18 7. Payment of court costs, treatment costs, supervision fees
19 and program user fees by the offender;
- 20 8. Methods for measuring application of disciplinary sanctions
21 including provisions for:
 - 22 a. increased supervision,
 - 23 b. urinalysis testing,
 - 24 c. intensive treatment,

- 1 d. short-term confinement not to exceed five (5) days,
- 2 e. recycling the offender into the program after a
- 3 disciplinary action for a minimum violation of the
- 4 treatment plan,
- 5 f. reinstating the offender into the program after a
- 6 disciplinary action for a major violation of the
- 7 treatment plan, and
- 8 g. revocation from the program; and

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

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

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

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

10 SECTION 2. AMENDATORY 22 O.S. 2021, Section 471.2, as
11 amended by Section 2, Chapter 277, O.S.L. 2022 (22 O.S. Supp. 2022,
12 Section 471.2), is amended to read as follows:

13 Section 471.2 A. The opportunity for review of an offender for
14 a drug court program shall occur at any time prior to disposition of
15 the case and sentencing of the offender including sentencing on a
16 petition to revoke a suspended sentence or any probation violation.

17 B. When a drug court is established, the following information
18 shall be initially reviewed by the sheriff or designee, if the
19 offender is held in a county jail, or by the chief of police or
20 designee, if the offender is held in a city jail:

21 1. The offender has no prior felony conviction in this state or
22 another state for a domestic violence offense within the last ten
23 (10) years, except as may be allowed in a domestic violence
24 treatment program authorized by the drug court program. It shall be

1 sufficient for this paragraph that a criminal history records name
2 search was conducted and indicated no apparent domestic violence
3 offense. An offender admitted to the drug court program for a crime
4 which requires the offender to attend a batterers' intervention
5 program certified by the Attorney General's office shall be required
6 to undergo such treatment as a condition of drug court;

7 2. The offender's charge does not involve a violation of the
8 Trafficking In Illegal Drugs Act;

9 3. The offender has committed a felony offense or a misdemeanor
10 offense where a misdemeanor drug court is authorized; and

11 4. The offender:

- 12 a. admits to having a substance abuse addiction,
- 13 b. appears to have a substance abuse addiction,
- 14 c. is known to have a substance abuse addiction,
- 15 d. the arrest or charge is based upon an offense eligible
16 for the drug court program, or
- 17 e. is a person who has had an assessment authorized by
18 Section 3-704 of Title 43A of the Oklahoma Statutes or
19 drug court investigation and the assessment or
20 investigation recommends the drug court program.

21 C. If it appears to the reviewing officer that the offender may
22 be potentially eligible for the drug court program based upon a
23 review of the information in subsection B of this section, the
24 offender shall be given an eligibility form which may be voluntarily

1 completed by the offender, and the reviewing officer shall file the
2 criminal case record within the time prescribed in subsection E of
3 Section 471.1 of this title. The offender may request consideration
4 for the drug court program as provided in subsection D of this
5 section. The eligibility form shall describe the drug court program
6 for which the offender may be eligible including, but not limited
7 to:

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

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

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

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

21 5. A clear statement that the plea agreement will specify the
22 offense to which the guilty plea will be entered and will state any
23 penalty to be imposed for the offense, both in the event of a
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1 successful completion of the drug court program, and in the event of
2 a failure to complete the program;

3 6. A clear statement that the offender must voluntarily agree
4 to:

- 5 a. waive the right to a speedy trial,
- 6 b. waive the right to a preliminary hearing,
- 7 c. the terms and conditions of a treatment plan, and
- 8 d. sign a performance contract with the drug court;

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

13 8. A clear statement that during participation in the drug
14 court program should the offender fail to comply with the terms of
15 the agreement, the offender may be sanctioned to serve a term of
16 confinement of six (6) months in an intermediate revocation facility
17 operated by the Department of Corrections. An offender shall not be
18 allowed to serve more than two separate terms of confinement in an
19 intermediate revocation facility;

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

- 22 a. fail to comply with the terms of the agreements,
- 23 b. be convicted of a misdemeanor offense which reflects a
24 propensity for violence,

- c. be arrested for a violent felony offense, or
 - d. be convicted of any felony offense,
- the offender may be required, after a court hearing, to be revoked from the program and sentenced without trial pursuant to the punishment provisions of the negotiated plea agreement; and

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

D. 1. The offender may request consideration for the drug court program as follows:

- a. if the offender is incarcerated, the offender must sign and complete the eligibility form and return it to the sheriff, if the offender is held in the county jail; or to the chief of police, if the offender is held in a city jail. The sheriff or chief of police, upon receipt of the completed eligibility form, shall file the form with the drug court coordinator who shall forward the form to the district attorney and the judge assigned to the offender's case, or
- b. after release of the offender from incarceration, the offender must sign and complete the eligibility form and file it with the drug court coordinator or the court, prior to or at the time of either initial

1 appearance or arraignment. The drug court coordinator
2 shall forward the form to the district attorney and
3 the judge assigned to the offender's case.

4 2. Any offender desiring legal consultation prior to signing or
5 completing the form for consideration in a drug court program shall
6 be referred to the defense attorney of the drug court team, or a
7 public defender, if the offender is indigent, or allowed to consult
8 with private legal counsel.

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

16 E. When an offender has filed a request to be considered for a
17 drug court program, an initial hearing shall be set before the drug
18 court judge. The hearing shall be not less than three (3) work days
19 nor more than five (5) work days after the date of the filing of the
20 request form. Notice of the hearing shall be given to the drug
21 court team, or in the event no drug court team is designated, to the
22 offender, the district attorney, and to the public defender. The
23 offender shall be required to notify any private legal counsel of
24 the date and time of the hearing.

1 SECTION 3. AMENDATORY 22 O.S. 2021, Section 471.3, as
2 amended by Section 3, Chapter 277, O.S.L. 2022 (22 O.S. Supp. 2022,
3 Section 471.3), is amended to read as follows:

4 Section 471.3 A. At the initial hearing for consideration of
5 an offender for a drug court program, the ~~district attorney~~ drug
6 court team shall determine whether:

7 1. The offender has approval to be considered for the drug
8 court program; and

9 2. Any statutory preclusion, other prohibition, or program
10 limitation exists and is applicable to considering the offender for
11 the program.

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

14 B. If the offender voluntarily consents to be considered for
15 the drug court program and has signed and filed the required form
16 requesting consideration, and no objection has been made by the
17 district attorney, the court may refer the offender for a drug court
18 investigation as provided in Section 471.4 of this title, and set a
19 date for a hearing to determine final eligibility for admittance
20 into the program.

21 C. Upon any objection of the district attorney for
22 consideration of an offender for the program, the court ~~shall deny~~
23 ~~consideration of the offender's request~~ may overrule the objection
24 or sustain the objection of the district attorney. If the court

1 overrules the objection and determines that the offender is eligible
2 for participation in the drug court program, the court shall refer
3 the offender for a drug court investigation as provided in Section
4 471.4 of this title, and set a date for a hearing to determine final
5 eligibility for admittance into the program. ~~Upon denial for~~
6 ~~consideration~~ If the court sustains the objection of the district
7 attorney and denies the offender's request for participation in the
8 drug court program at the initial hearing, the criminal case shall
9 proceed in the traditional manner. A denial of consideration of the
10 offender for the program shall not preclude any future consideration
11 of the offender for the drug court program with the approval of the
12 ~~district attorney~~ drug court team.

13 SECTION 4. This act shall become effective November 1, 2023.

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