

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 55th Legislature (2016)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2753

By: Peterson

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to criminal procedure; amending 22
10 O.S. 2011, Sections 471.1 and 471.2, as amended by
11 Section 2, Chapter 228, O.S.L. 2012 (22 O.S. Supp.
12 2015, Section 471.2), which relate to the Oklahoma
13 Drug Court Act; modifying certain definition;
14 modifying certain eligibility criteria; amending 22
15 O.S. 2011, Section 988.2, as amended by Section 1,
16 Chapter 331, O.S.L. 2015 (22 O.S. Supp. 2015, Section
17 988.2), which relates to the Oklahoma Community
18 Sentencing Act; modifying certain definition; and
19 providing an effective date.

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1 successful completion of the plea agreement ~~in lieu of~~
2 ~~incarceration.~~

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

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

17 D. Drug court programs shall require a separate judicial
18 processing system differing in practice and design from the
19 traditional adversarial criminal prosecution and trial systems.
20 Whenever possible, a drug court team shall be designated consisting
21 of a judge to administer the program, a district attorney, a defense
22 attorney, and other persons designated by the drug court team who
23 shall have appropriate understanding of the goals of the program and
24 of the appropriate treatment methods for the various conditions.

1 The assignment of any person to the drug court team shall not
2 preclude the assigned person from performing other duties required
3 in the course of their office or employment. The chief judge of the
4 judicial district, or if the district has more than one chief judge
5 than the presiding judge of the Administrative Judicial District,
6 shall designate one or more judges to administer the drug court
7 program. The assignment of any judge to a drug court program or the
8 designation of a drug court docket shall not mandate the assignment
9 of all substance abuse related cases to the drug court docket or the
10 program; however, nothing in this act shall be construed to preclude
11 the assignment of all criminal cases relating to substance abuse or
12 drug possession as provided by the rules established for the
13 specific drug court program.

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

1 attorney. Any criminal case which has been filed and processed in
2 the traditional manner shall be cross-referenced to a drug court
3 case file by the court clerk, if the case is subsequently assigned
4 to the drug court program. The originating criminal case file shall
5 remain open to public inspection. The judge shall determine what
6 information or pleadings are to be retained in the drug court case
7 file, which shall be closed to public inspection.

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

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

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

1 6. Availability of residential treatment facilities and
2 outpatient services;

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

5 8. Methods for measuring application of disciplinary sanctions,
6 including provisions for:

7 a. increased supervision,

8 b. urinalysis testing,

9 c. intensive treatment,

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

11 e. recycling the offender into the program after a
12 disciplinary action for a minimum violation of the
13 treatment plan,

14 f. reinstating the offender into the program after a
15 disciplinary action for a major violation of the
16 treatment plan, and

17 g. revocation from the program; and

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

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

23 I. Nothing in this section shall prohibit any county from
24 establishing a drug court for misdemeanor offenses. Such

1 misdemeanor drug courts shall follow the rules and regulations of
2 felony drug courts except that the penalty for revocation shall not
3 exceed one (1) year in the county jail or the maximum penalty for
4 the misdemeanor allowed by statute, whichever is less. The
5 Department of Mental Health and Substance Abuse Services shall
6 provide technical assistance to the counties that establish
7 misdemeanor drug courts.

8 SECTION 2. AMENDATORY 22 O.S. 2011, Section 471.2, as
9 amended by Section 2, Chapter 228, O.S.L. 2012 (22 O.S. Supp. 2015,
10 Section 471.2), is amended to read as follows:

11 Section 471.2 A. The initial opportunity for review of an
12 offender for a drug court program shall occur within four (4) days
13 after the arrest and detention or incarceration of the offender in
14 the city or county jail, or if an immediate bond release program is
15 available through the jail, the initial opportunity for review shall
16 occur in conjunction with the bond release program. When a drug
17 court is established, the following information shall be initially
18 reviewed by the sheriff or designee, if the offender is held in a
19 county jail, or by the chief of police or designee, if the offender
20 is held in a city jail:

21 1. The offender's arrest or charge does not involve a crime of
22 violence against any person, unless there is a specific treatment
23 program in the jurisdiction designed to address domestic violence
24 and the offense is related to domestic violence and substance abuse;

1 2. The offender has no prior felony conviction in this state or
2 another state for a violent offense within the last ten (10) years,
3 except as may be allowed in a domestic violence treatment program
4 authorized by the drug court program. It shall be sufficient for
5 this paragraph that a criminal history records name search was
6 conducted and indicated no apparent violent offense;

7 3. The offender's arrest or charge does not involve a violation
8 of the Trafficking In Illegal Drugs Act, ~~Section 2-414 et seq. of~~
9 ~~Title 63 of the Oklahoma Statutes;~~

10 4. The offender has committed a felony offense; and

11 5. 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, ~~or~~

15 d. the arrest or charge is based upon an offense eligible
16 for the drug court program, or

17 f. is a person who has had an assessment authorized by

18 Section 3-704 of Title 43A of the Oklahoma Statutes

19 and the assessment recommends the drug court program.

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

1 criminal case record within the time prescribed in subsection E of
2 Section 471.1 of this title. The offender shall not automatically
3 be considered for the program based upon this review. The offender
4 must request consideration for the drug court program as provided in
5 subsection C of this section and shall have approval from the
6 district attorney before being considered for the drug court
7 program. The eligibility form shall describe the drug court program
8 for which the offender may be eligible, including, but not limited
9 to:

10 1. A full description of the drug court process and
11 investigation;

12 2. A general explanation of the roles and authority of the
13 supervising staff, the district attorney, the defense attorney, the
14 treatment provider, the offender, and the judge in the drug court
15 program;

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

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

23 5. A clear statement that the plea agreement will specify the
24 offense to which the guilty plea will be entered and will state any

1 penalty to be imposed for the offense, both in the event of a
2 successful completion of the drug court program, and in the event of
3 a failure to complete the program;

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

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

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

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

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

- 23 a. fail to comply with the terms of the agreements,

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- b. be convicted of a misdemeanor offense which reflects a 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.

C. 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 eligibility form, shall file the form with the district attorney at the time of filing the criminal case record or at any time during the period of incarceration when the offender completes the form after the criminal case record has been filed, or

1 b. after release of the offender from incarceration, the
2 offender must sign and complete the eligibility form
3 and file it with the district attorney or the court,
4 prior to or at the time of either initial appearance
5 or arraignment.

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

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

18 D. When an offender has filed a voluntary request to be
19 considered for a drug court program on the appropriate form, the
20 district attorney shall indicate his or her approval of the request
21 by filing the form with the drug court judge. Upon the filing of
22 the request form by the district attorney, an initial hearing shall
23 be set before the drug court judge. The hearing shall be not less
24 than three (3) work days nor more than five (5) work days after the

1 date of the filing of the request form. Notice of the hearing shall
2 be given to the drug court team, or in the event no drug court team
3 is designated, to the offender, the district attorney, and to the
4 public defender. The offender shall be required to notify any
5 private legal counsel of the date and time of the hearing.

6 SECTION 3. AMENDATORY 22 O.S. 2011, Section 988.2, as
7 amended by Section 1, Chapter 331, O.S.L. 2015 (22 O.S. Supp. 2015,
8 Section 988.2), is amended to read as follows:

9 Section 988.2 A. For purposes of the Oklahoma Community
10 Sentencing Act:

11 1. "Local community sentencing system" means the use of public
12 and private entities to deliver services to the sentencing court for
13 punishment of eligible felony offenders under the authority of a
14 community sentence;

15 2. "Community sentence" or "community punishment" means a
16 punishment imposed by the court as a condition of a deferred or
17 suspended sentence for an eligible offender;

18 3. "Continuum of sanctions" means a variety of coercive
19 measures and treatment options ranked by degrees of public safety,
20 punitive effect, and cost benefit which are available to the
21 sentencing judge as punishment for criminal conduct;

22 4. "Community sentencing system planning council" or "planning
23 council" means a group of citizens and elected officials specified
24 by law or appointed by the Chief Judge of the Judicial District

1 which plans the local community sentencing system and with the
2 assistance of the Community Sentencing Division of the Department of
3 Corrections locates treatment providers and resources to support the
4 local community sentencing system;

5 5. "Incentive" means a court-ordered reduction in the terms or
6 conditions of a community sentence which is given for exceptional
7 performance or progress by the offender;

8 6. "Disciplinary sanction" means a court-ordered punishment in
9 response to a technical or noncompliance violation of a community
10 sentence which increases in intensity or duration with each
11 successive violation;

12 7. "Division" means the Community Sentencing Division within
13 the Department of Corrections which is the state administration
14 agency for the Oklahoma Community Sentencing Act, the statewide
15 community sentencing system, and all local community sentencing
16 systems;

17 8. "Eligible offender" means a felony offender who has been
18 convicted of or who has entered a plea other than not guilty to a
19 felony offense and who upon completion of a Level of Services
20 Inventory or another assessment instrument has been found to be in a
21 range other than the low range, who has been convicted of at least
22 one prior felony, and who is not otherwise prohibited by law;
23 provided, or is a person who has had an assessment authorized by
24 Section 3-704 of Title 43A of the Oklahoma Statutes and the

1 assessment recommends community sentencing. Provided, however, that
2 no person who has been convicted of or who has entered a plea other
3 than not guilty to an offense enumerated in paragraph 2 of Section
4 571 of Title 57 of the Oklahoma Statutes, as an exception to the
5 definition of "nonviolent offense" shall be eligible for a community
6 sentence or community punishment unless the district attorney or an
7 assistant district attorney for the district in which the offender's
8 conviction was obtained consents thereto. The district attorney may
9 consent to eligibility for an offender who has a mental illness or a
10 developmental disability or a co-occurring mental illness and
11 substance abuse disorder and who scores in the low range on the LSI
12 or has an assessment authorized by Section 3-704 of Title 43A of the
13 Oklahoma Statutes or another assessment instrument if the offender
14 is not otherwise prohibited by law. Any consent by a district
15 attorney shall be made a part of the record of the case; and

16 9. "Statewide community sentencing system" means a network of
17 all counties through their respective local community sentencing
18 systems serving the state judicial system and offering support
19 services to each other through reciprocal and interlocal agreements
20 and interagency cooperation.

21 B. For the purposes of the Oklahoma Community Sentencing Act,
22 if a judicial district does not have a Chief Judge or if a judicial
23 district has more than one Chief Judge, the duties of the Chief
24 Judge provided for in the Oklahoma Community Sentencing Act shall be

1 performed by the Presiding Judge of the Judicial Administrative
2 District.

3 SECTION 4. This act shall become effective November 1, 2016.
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5 COMMITTEE REPORT BY: COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS,
6 dated 02/24/2016 - DO PASS, As Amended.
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