

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3744

By: Lowe (Jason)

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5  
6 AS INTRODUCED

7 An Act relating to drug courts; amending 22 O.S.  
8 2021, Sections 471.1, 471.2, 471.3 and 471.4, which  
9 relate to the Oklahoma Drug Court Act; deleting  
10 certain eligibility restrictions; modifying initial  
11 hearing procedures; authorizing drug court team to  
12 make certain eligibility determination; authorizing  
13 court to refer offenders to drug court program  
14 despite objections made by district attorney;  
15 authorizing court to determine punishment when  
16 certain negotiations fail; updating reference to  
17 named act; and providing an effective date.

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

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

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

B. Each district court of this state is authorized to establish  
a drug court program pursuant to the provisions of the Oklahoma Drug

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

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

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

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

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

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

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

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

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

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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. All funds received by a drug court, in its capacity as a  
24 drug court, shall be credited to and accounted for in the county

1 treasurer's office in a special cash fund to be known as the "Drug  
2 Court Fund". Each drug court fund shall be a continuing fund, not  
3 subject to fiscal year limitations, and shall be dedicated to the  
4 operation of the drug court as authorized by law. The expenditures  
5 of any funds received by a drug court program and deposited with the  
6 county treasurer shall be made only upon sworn itemized claims  
7 approved by the county clerk, filed with the county treasurer and  
8 paid by cash voucher drawn by the county treasurer from the funds.

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

18 SECTION 2. AMENDATORY 22 O.S. 2021, Section 471.2, is  
19 amended to read as follows:

20 Section 471.2 A. The opportunity for review of an offender for  
21 a drug court program shall occur at any time prior to disposition of  
22 the case and sentencing of the offender, including sentencing on a  
23 petition to revoke a suspended sentence or any probation violation.  
24 When a drug court is established, the following information shall be

1 initially reviewed by the sheriff or designee, if the offender is  
2 held in a county jail, or by the chief of police or designee, if the  
3 offender is held in a city jail:

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

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

14 3. The offender's arrest or charge does not involve a violation  
15 of the Trafficking In Illegal Drugs Act;

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

17 5. The offender:

18 a. admits to having a substance abuse addiction,

19 b. appears to have a substance abuse addiction,

20 c. is known to have a substance abuse addiction,

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

23 e. is a person who has had an assessment authorized by

24 Section 3-704 of Title 43A of the Oklahoma Statutes or

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

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

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

18 1. The offender has approval to be considered for the drug  
19 court program;

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

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

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

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

13 C. Upon any objection of the district attorney for  
14 consideration of an offender for the program, the court shall ~~deny~~  
15 determine consideration of the offender's request for participation  
16 in the drug court program at the initial hearing. If the court  
17 determines that the offender is eligible for participation in the  
18 drug court program, the court shall refer the offender for a drug  
19 court investigation as provided in Section 471.4 of this title, and  
20 set a date for a hearing to determine final eligibility for  
21 admittance into the program.

22 D. Upon denial for consideration in the drug court program at  
23 the initial hearing, the criminal case shall proceed in the  
24 traditional manner. An objection by the district attorney ~~and the~~

1 ~~subsequent denial of consideration of the offender for the program~~  
2 shall not preclude any future consideration of the offender for the  
3 drug court program ~~with the approval of the district attorney.~~

4 SECTION 4. AMENDATORY 22 O.S. 2021, Section 471.4, is  
5 amended to read as follows:

6 Section 471.4 A. When directed by the drug court judge, the  
7 supervising staff for the drug court program shall make an  
8 investigation of the offender under consideration to determine  
9 whether or not the offender is a person who:

- 10 1. Would benefit from the drug court program; and
- 11 2. Is appropriate for the drug court program.

12 B. The drug court investigation shall be conducted through a  
13 standardized screening test and personal interview. A more  
14 comprehensive assessment may take place at the time the offender  
15 enters the treatment portion of the program and may take place at  
16 any time after placement in the drug court program. The  
17 investigation shall determine the original treatment plan which the  
18 offender will be required to follow, if admitted to the program.  
19 Any subsequent assessments or evaluations by the treatment provider,  
20 if the offender is admitted to the program, may be used to determine  
21 modifications needed to the original treatment plan. The  
22 investigation shall include, but not be limited to, the following  
23 information:

- 24 1. The person's age and physical condition;

- 1        2. Employment and military service records;
- 2        3. Educational background and literacy level;
- 3        4. Community and family relations;
- 4        5. Prior and current drug and alcohol use;
- 5        6. Mental health and medical treatment history, including
- 6 substance abuse treatment history;
- 7        7. Demonstrable motivation; and
- 8        8. Other mitigating or aggravating factors.

9        C. The drug court investigation may be conducted before or  
10 after the initial hearing for consideration but shall occur before  
11 the hearing for final determination of eligibility for the drug  
12 court program. When an offender is appropriate for admittance to  
13 the program, the supervising staff shall make a recommendation for  
14 the treatment program or programs that are available in the  
15 jurisdiction and which would benefit the offender and accept the  
16 offender. The investigation findings and recommendations for  
17 program placement shall be reported to the drug court judge, the  
18 district attorney, the offender, and the defense attorney prior to  
19 the next scheduled hearing.

20        D. The district attorney and the defense attorney for the  
21 offender shall independently review the findings and recommendations  
22 of the drug court investigation report. For an offender to remain  
23 eligible for consideration in the program, both the district  
24 attorney and the defense attorney must accept the recommended

1 treatment plan, and shall negotiate the terms of the written plea  
2 agreement with all punishment provisions specified before the  
3 scheduled hearing date for determining final eligibility. Upon  
4 failure of the district attorney and defense attorney to negotiate  
5 the written plea agreement, the court shall determine the  
6 appropriate punishment, or order the criminal case ~~shall~~ be  
7 withdrawn from the drug court program and processed in the  
8 traditional manner. The punishment provisions of the written plea  
9 agreement shall emphasize reparation to the victim, community, and  
10 state.

11 E. The hearing to determine final eligibility shall be set not  
12 less than three (3) work days nor more than seven (7) work days from  
13 the date of the initial hearing for consideration, unless extended  
14 by the court.

15 F. For purposes of ~~this act~~ the Oklahoma Drug Court Act,  
16 "supervising staff" means a Department of Corrections employee  
17 assigned to monitor offenders in the drug court program, a community  
18 provider assigned to monitor offenders in the program, a state or  
19 local agency representative or a certified treatment provider  
20 participating in the program, or a person designated by the judge to  
21 perform drug court investigations.

22 SECTION 5. This act shall become effective November 1, 2022.  
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24 58-2-9388 GRS 12/21/21