

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2433

By: Lowe (Jason)

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6 AS INTRODUCED

7 An Act relating to drug courts; amending 22 O.S.  
8 2021, Sections 471.1, 471.2 and 471.3, as amended by  
9 Sections 1, 2 and 3, Chapter 277, O.S.L. 2022 (22  
10 O.S. Supp. 2022, Sections 471.1, 471.2 and 471.3),  
11 which relate to the Oklahoma Drug Court Act; deleting  
12 certain eligibility restriction and recommendation  
13 requirements; authorizing court to overrule or  
14 sustain objections made by the district attorney; and  
15 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", "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.

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

4 C. Eligible offenses may be restricted by the rules of the  
5 specific drug court program. Nothing in the Oklahoma Drug Court Act  
6 shall be construed to require a drug court to consider every  
7 offender with a treatable condition or addiction even if the  
8 controlling offense is eligible for consideration in the program.  
9 Traditional prosecution shall be required where an offender is  
10 determined not appropriate for the drug court program. Juvenile  
11 drug courts may be established based upon the provisions of the  
12 Oklahoma Drug Court Act; provided, however, a juvenile shall not be  
13 held, processed, or treated in any manner which violates any  
14 provision of Title 10A of the Oklahoma Statutes.

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

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

16 E. When a drug court program is established, the arresting  
17 officer shall file the criminal case record for potentially eligible  
18 offenders with the district attorney within four (4) days of the  
19 arrest. The district attorney shall file an information in the case  
20 within twenty-four (24) hours of receipt of the criminal case record  
21 when the offender appears eligible for consideration for the  
22 program. The information may be amended as necessary when an  
23 offender is denied admittance into the drug court program or for  
24 other purposes as provided in Section 304 of this title. ~~Any person~~

1 ~~arrested upon a warrant for his or her arrest shall not be eligible~~  
2 ~~for the drug court program without the approval of the district~~  
3 ~~attorney.~~ Any criminal case which has been filed and processed in  
4 the traditional manner shall be cross-referenced to a drug court  
5 case file by the court clerk if the case is subsequently assigned to  
6 the drug court program. The originating criminal case file shall  
7 remain open to public inspection. The judge shall determine what  
8 information or pleadings are to be retained in the drug court case  
9 file, which shall be closed to public inspection.

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

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

- 21 1. Strong linkage between participating agencies;
- 22 2. Access by all participating parties of a case to information  
23 on the progress of the offender;
- 24 3. Vigilant supervision and monitoring procedures;

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

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1 H. All drug court programs shall be required to keep reliable  
2 data on recidivism, relapse, restarts, sanctions imposed and  
3 incentives given.

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

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

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

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

8 B. When a drug court is established, the following information  
9 shall be initially reviewed by the sheriff or designee, if the  
10 offender is held in a county jail, or by the chief of police or  
11 designee, if the offender is held in a city jail:

12 1. The offender has no prior felony conviction in this state or  
13 another state for a domestic violence offense within the last ten  
14 (10) years, except as may be allowed in a domestic violence  
15 treatment program authorized by the drug court program. It shall be  
16 sufficient for this paragraph that a criminal history records name  
17 search was conducted and indicated no apparent domestic violence  
18 offense. An offender admitted to the drug court program for a crime  
19 which requires the offender to attend a batterers' intervention  
20 program certified by the Attorney General's office shall be required  
21 to undergo such treatment as a condition of drug court;

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

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

3 4. The offender:

- 4 a. admits to having a substance abuse addiction,
- 5 b. appears to have a substance abuse addiction,
- 6 c. is known to have a substance abuse addiction,
- 7 d. the arrest or charge is based upon an offense eligible  
8 for the drug court program, or
- 9 e. is a person who has had an assessment authorized by  
10 Section 3-704 of Title 43A of the Oklahoma Statutes or  
11 drug court investigation and the assessment or  
12 investigation recommends the drug court program.

13 C. If it appears to the reviewing officer that the offender may  
14 be potentially eligible for the drug court program based upon a  
15 review of the information in subsection B of this section, the  
16 offender shall be given an eligibility form which may be voluntarily  
17 completed by the offender, and the reviewing officer shall file the  
18 criminal case record within the time prescribed in subsection E of  
19 Section 471.1 of this title. The offender may request consideration  
20 for the drug court program as provided in subsection D of this  
21 section. The eligibility form shall describe the drug court program  
22 for which the offender may be eligible including, but not limited  
23 to:

- 1        1. A full description of the drug court process and  
2 investigation;
- 3        2. A general explanation of the roles and authority of the  
4 supervising staff, the district attorney, the defense attorney, the  
5 treatment provider, the offender, and the judge presiding over the  
6 cases in the drug court program;
- 7        3. A clear statement that the drug court judge may decide after  
8 a hearing not to consider the offender for the drug court program  
9 and in that event the offender will be prosecuted in the traditional  
10 manner;
- 11       4. A clear statement that the offender is required, before  
12 consideration in the program, to enter a guilty plea as part of a  
13 written plea agreement;
- 14       5. A clear statement that the plea agreement will specify the  
15 offense to which the guilty plea will be entered and will state any  
16 penalty to be imposed for the offense, both in the event of a  
17 successful completion of the drug court program, and in the event of  
18 a failure to complete the program;
- 19       6. A clear statement that the offender must voluntarily agree  
20 to:
  - 21           a. waive the right to a speedy trial,
  - 22           b. waive the right to a preliminary hearing,
  - 23           c. the terms and conditions of a treatment plan, and
  - 24           d. sign a performance contract with the drug court;

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

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

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

- 14           a. fail to comply with the terms of the agreements,
  - 15           b. be convicted of a misdemeanor offense which reflects a  
16           propensity for violence,
  - 17           c. be arrested for a violent felony offense, or
  - 18           d. be convicted of any felony offense,
- 19           the offender may be required, after a court hearing, to be  
20           revoked from the program and sentenced without trial  
21           pursuant to the punishment provisions of the negotiated  
22           plea agreement; and

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

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

6           a. if the offender is incarcerated, the offender must  
7 sign and complete the eligibility form and return it  
8 to the sheriff, if the offender is held in the county  
9 jail; or to the chief of police, if the offender is  
10 held in a city jail. The sheriff or chief of police,  
11 upon receipt of the completed eligibility form, shall  
12 file the form with the drug court coordinator who  
13 shall forward the form to the district attorney and  
14 the judge assigned to the offender's case, or

15           b. after release of the offender from incarceration, the  
16 offender must sign and complete the eligibility form  
17 and file it with the drug court coordinator or the  
18 court, prior to or at the time of either initial  
19 appearance or arraignment. The drug court coordinator  
20 shall forward the form to the district attorney and  
21 the judge assigned to the offender's case.

22           2. Any offender desiring legal consultation prior to signing or  
23 completing the form for consideration in a drug court program shall  
24 be referred to the defense attorney of the drug court team, or a

1 public defender, if the offender is indigent, or allowed to consult  
2 with private legal counsel.

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

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

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

22 Section 471.3 A. At the initial hearing for consideration of  
23 an offender for a drug court program, the district attorney shall  
24 determine whether:

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

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

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

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

15 C. Upon any objection of the district attorney for  
16 consideration of an offender for the program, the court ~~shall deny~~  
17 ~~consideration of the offender's request~~ may overrule the objection  
18 or sustain the objection of the district attorney. If the court  
19 overrules the objection and determines that the offender is eligible  
20 for participation in the drug court program, the court shall refer  
21 the offender for a drug court investigation as provided in Section  
22 471.4 of this title, and set a date for a hearing to determine final  
23 eligibility for admittance into the program. Upon denial for  
24 ~~consideration~~ If the court sustains the objection of the district

1 attorney and denies the offender's request for participation in the  
2 drug court program at the initial hearing, the criminal case shall  
3 proceed in the traditional manner. A denial of consideration of the  
4 offender for the program shall not preclude any future consideration  
5 of the offender for the drug court program ~~with the approval of the~~  
6 ~~district attorney.~~

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

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