An Act

ENROLLED HOUSE
BILL NO. 2753

By: Peterson, Sherrer, Hoskin and Goodwin of the House

and

Shaw and Brooks of the Senate

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

SUBJECT: Sentencing

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 471.1, is amended to read as follows:

Section 471.1 A. For purposes of this act, "drug court", "drug court program" or "program" means an immediate and highly structured judicial intervention process for substance abuse treatment of eligible offenders which expedites the criminal case, and requires successful completion of the plea agreement ~~in lieu of incarceration~~.

B. Each district court of this state is authorized to establish a drug court program pursuant to the provisions of this act, subject

to availability of funds. Juvenile drug courts may be established based upon the provisions of this act; provided, however, juveniles shall not be held, processed, or treated in any manner which violates any provision of Title 10A of the Oklahoma Statutes.

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

D. Drug court programs shall require a separate judicial processing system differing in practice and design from the traditional adversarial criminal prosecution and trial systems. Whenever possible, a drug court team shall be designated consisting of a judge to administer the program, a district attorney, a defense attorney, and other persons designated by the drug court team who shall have appropriate understanding of the goals of the program and of the appropriate treatment methods for the various conditions. The assignment of any person to the drug court team shall not preclude the assigned person from performing other duties required in the course of their office or employment. The chief judge of the judicial district, or if the district has more than one chief judge than the presiding judge of the Administrative Judicial District, shall designate one or more judges to administer the drug court program. The assignment of any judge to a drug court program or the designation of a drug court docket shall not mandate the assignment of all substance abuse related cases to the drug court docket or the program; however, nothing in this act shall be construed to preclude the assignment of all criminal cases relating to substance abuse or drug possession as provided by the rules established for the specific drug court program.

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

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

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

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

1. Strong linkage between participating agencies;

2. Access by all participating parties of a case to information on the progress of the offender;

3. Vigilant supervision and monitoring procedures;

4. Random substance abuse testing;

5. Provisions for noncompliance, modification of the treatment plan, and revocation proceedings;

6. Availability of residential treatment facilities and outpatient services;

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

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

a. increased supervision,

b. urinalysis testing,

c. intensive treatment,

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

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

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

g. revocation from the program; and

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

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

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

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

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

county jail, or by the chief of police or designee, if the offender is held in a city jail:

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

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

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

4. The offender has committed a felony offense; and

5. The offender:

a. admits to having a substance abuse addiction,

b. appears to have a substance abuse addiction,

c. is known to have a substance abuse addiction, ~~or~~

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

f. is a person who has had an assessment authorized by Section 3-704 of Title 43A of the Oklahoma Statutes and the assessment recommends the drug court program.

B. If it appears to the reviewing officer that the offender may be potentially eligible for the drug court program based upon a review of the information in subsection A of this section, the offender shall be given an eligibility form which may be voluntarily completed by the offender, and the reviewing officer shall file the criminal case record within the time prescribed in subsection E of Section 471.1 of this title. The offender shall not automatically be considered for the program based upon this review. The offender must request consideration for the drug court program as provided in

subsection C of this section and shall have approval from the district attorney before being considered for the drug court program. The eligibility form shall describe the drug court program for which the offender may be eligible, including, but not limited to:

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

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

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

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

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

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

a. waive the right to a speedy trial,

b. waive the right to a preliminary hearing,

c. the terms and conditions of a treatment plan, and

d. sign a performance contract with the court;

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

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

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

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

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

b. after release of the offender from incarceration, the offender must sign and complete the eligibility form

and file it with the district attorney or the court, prior to or at the time of either initial appearance or arraignment.

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

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

D. When an offender has filed a voluntary request to be considered for a drug court program on the appropriate form, the district attorney shall indicate his or her approval of the request by filing the form with the drug court judge. Upon the filing of the request form by the district attorney, an initial hearing shall be set before the drug court judge. The hearing shall be not less than three (3) work days nor more than five (5) work days after the date of the filing of the request form. Notice of the hearing shall be given to the drug court team, or in the event no drug court team is designated, to the offender, the district attorney, and to the public defender. The offender shall be required to notify any private legal counsel of the date and time of the hearing.

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

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

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

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

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

4. "Community sentencing system planning council" or "planning council" means a group of citizens and elected officials specified by law or appointed by the Chief Judge of the Judicial District which plans the local community sentencing system and with the assistance of the Community Sentencing Division of the Department of Corrections locates treatment providers and resources to support the local community sentencing system;

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

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

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

8. "Eligible offender" means a felony offender who has been convicted of or who has entered a plea other than not guilty to a felony offense and who upon completion of a Level of Services Inventory or another assessment instrument has been found to be in a range other than the low range, who has been convicted of at least one prior felony, and who is not otherwise prohibited by law~~; provided~~, or is a person who has had an assessment authorized by Section 3-704 of Title 43A of the Oklahoma Statutes and the assessment recommends community sentencing. Provided, however, that no person who has been convicted of or who has entered a plea other than not guilty to an offense enumerated in paragraph 2 of Section 571 of Title 57 of the Oklahoma Statutes, as an exception to the definition of "nonviolent offense" shall be eligible for a community

sentence or community punishment unless the district attorney or an assistant district attorney for the district in which the offender's conviction was obtained consents thereto. The district attorney may consent to eligibility for an offender who has a mental illness or a developmental disability or a co-occurring mental illness and substance abuse disorder and who scores in the low range on the LSI or has an assessment authorized by Section 3-704 of Title 43A of the Oklahoma Statutes or another assessment instrument if the offender is not otherwise prohibited by law. Any consent by a district attorney shall be made a part of the record of the case; and

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

B. For the purposes of the Oklahoma Community Sentencing Act, if a judicial district does not have a Chief Judge or if a judicial district has more than one Chief Judge, the duties of the Chief Judge provided for in the Oklahoma Community Sentencing Act shall be performed by the Presiding Judge of the Judicial Administrative District.

SECTION 4. This act shall become effective November 1, 2016.

Passed the House of Representatives the 7th day of March, 2016.

Presiding Officer of the House of Representatives

Passed the Senate the 20th day of April, 2016.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 21st day of April, 2016, at 3:23 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 27th day of April, 2016, at 2:44 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 27 day of April, 2016, at 3:00 o'clock P. M.

By: