

1 INTERIM STUDY PROPOSAL 2011-158

2 State of Arkansas

As Engrossed: H3/11/11 H3/18/11

3 88th General Assembly

A Bill

4 Regular Session, 2011

HOUSE BILL 1994

5
6 By: Representative McLean

7 Filed with: Interim House Committee on Judiciary
8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9
10 AN ACT TO CREATE A DRIVING WHILE INTOXICATED COURT
11 PROGRAM; AND FOR OTHER PURPOSES.

Subtitle

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15 TO CREATE A DRIVING WHILE INTOXICATED
16 COURT PROGRAM.

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18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20
21 *SECTION 1. Arkansas Code Title 16 is amended to create a new chapter*
22 *to read as follows:*

23 *Chapter 99 Treatment for Alcohol Abuse*

24 *Subchapter 1 – General Provisions*

25 *[Reserved]*

26 *Subchapter 2 – Arkansas Driving While Intoxicated Court Program Act*

27 *16-99-201. Title.*

28 *This subchapter shall be known and may be cited as the "Arkansas*
29 *Driving While Intoxicated Court Program Act".*

30
31 *16-99-202. Purpose and intent.*

32 *(a) There is a critical need for judicial intervention and support for*
33 *effective treatment programs that reduce the incidence of alcohol abuse,*
34 *alcohol addiction, impaired-driving incidents, and family separation due to*
35 *parental alcohol abuse and alcohol-related crimes.*

1 (b) It is the intent of the General Assembly for this subchapter to
2 enhance public safety by facilitating the creation, expansion, and
3 coordination of driving-while-intoxicated court programs.

4 (c) The goals of the driving-while-intoxicated court programs in this
5 state shall be consistent with the standards adopted by the United States
6 Department of Justice and recommended by the National Association of Drug
7 Court Professionals and the National Center for Driving While Intoxicated
8 (DWI) Courts and shall include the following key components:

9 (1) Integration of substance abuse treatment with justice system
10 case processing;

11 (2) Use of a nonadversarial approach in which prosecution and
12 defense promote public safety while protecting the right of the accused to
13 due process;

14 (3) Early identification of eligible participants and prompt
15 placement of eligible participants;

16 (4) Access to a continuum of treatment, rehabilitation, and
17 related services;

18 (5) Frequent testing for alcohol and illicit drugs;

19 (6) A coordinated strategy among the judge, prosecution,
20 defense, and treatment providers to govern offender compliance;

21 (7) Ongoing judicial interaction with each participant;

22 (8) Monitoring and evaluation of the achievement of program
23 goals and effectiveness;

24 (9) Continuing interdisciplinary education to promote effective
25 planning, implementation, and operation; and

26 (10) Development of partnerships with public agencies and
27 community-based organizations to generate local support and enhance driving
28 while intoxicated court effectiveness.

29 (d)(1) Driving while intoxicated (DWI) court programs are specialized
30 court dockets within the existing structure of the Arkansas court system.

31 (2) The programs offer judicial monitoring of intensive
32 treatment and strict supervision of addicts in alcohol and alcohol-related
33 cases.

34 (3) The implementation of a driving while intoxicated (DWI)
35 court and the creation of a driving while intoxicated (DWI) court docket
36 shall be at the discretion of the district judge and may be made a part of

1 the District Court Rules as part of the plan required by Supreme Court
2 Administrative Order No. 18.

3
4 16-99-203. Driving while intoxicated (DWI) court programs authorized.

5 (a)(1) Each district court and juvenile division of circuit court of
6 this state may implement a driving while intoxicated (DWI) court program
7 under this subchapter.

8 (2) The structure, method, and operation of each program may
9 differ and should be based upon the specific needs of and resources available
10 to the district where the program is located.

11 (b)(1) A program may incorporate services from the Office of Alcohol
12 and Drug Abuse Prevention of the Department of Human Services, and the
13 Administrative Office of the Courts.

14 (2) Subject to an appropriation, funding, and position
15 authorization, both programmatic and administrative, the district court and
16 juvenile division of circuit court may:

17 (A) Provide positions for persons to serve as probation
18 officers, alcohol counselors, and administrative assistants;

19 (B) Provide for alcohol and drug testing for program
20 participants;

21 (C) Provide for intensive outpatient treatment for program
22 participants; and

23 (D) Provide for intensive short-term and long-term
24 residential treatment for program participants.

25 (3) Subject to appropriation, funding, and position
26 authorization, both programmatic and administrative, the Department of Human
27 Services may:

28 (A) Provide positions for persons to serve as drug and
29 alcohol counselors and administrative assistants in delinquency cases,
30 dependency-neglect cases, and family in need of services cases;

31 (B) Provide for alcohol testing or drug testing, or both,
32 for program participants in delinquency cases, dependency-neglect cases, and
33 family in need of services cases;

34 (C) Provide for intensive outpatient treatment for program
35 participants in delinquency cases, dependency-neglect cases, and family in
36 need of services cases;

1 (D) Provide for intensive short-term and long-term
2 residential treatment for program participants in delinquency cases,
3 dependency-neglect cases, and family in need of services cases;

4 (E) Certify and license treatment providers and treatment
5 facilities that serve program participants;

6 (F) Provide and oversee residential beds for programs;

7 (G) Oversee catchment area facilities for programs;

8 (H) Act as a liaison between the courts and program
9 participants; and

10 (I) Oversee performance standards for residential and
11 long-term facilities providing services to programs.

12 (4) Subject to appropriation, funding, and position
13 authorization, both programmatic and administrative, the Administrative
14 Office of the Courts may:

15 (A) Provide state-level coordination and support for
16 driving while intoxicated (DWI) court judges and their programs;

17 (B) Administer funds for the maintenance and operation of
18 local programs;.

19 (C) Provide training and education to driving while
20 intoxicated (DWI) court judges and other professionals involved in the
21 programs; and

22 (D) Operate as a liaison between driving while intoxicated
23 (DWI) court judges and other state-level agencies providing services to
24 programs.

25 (c)(1) A program shall not be available to a defendant who:

26 (A) Has a pending violent criminal charge against him or
27 her;

28 (B) Has been convicted of a violent felony offense or
29 adjudicated delinquent as a juvenile of a violent felony offense; or

30 (C)(i) Is required to register under the Sex Offender
31 Registration Act of 1997, § 12-12-901 et seq.

32 (ii) The exclusion under subdivision (c)(1)(C)(i) of
33 this section does not apply to the offense of prostitution, § 5-70-102.

34 (2) Eligible offenses may be further restricted by the rules of
35 a specific program.

1 (3) This subchapter does not require a driving while intoxicated
 2 (DWI) court judge to consider or accept every offender with a treatable
 3 condition or addiction, regardless of the fact that the controlling offense
 4 is eligible for consideration in the program.

5 (4) A defendant who is denied entry to a program shall be
 6 prosecuted as provided by law.

7 (d)(1) Programs may require a separate judicial processing system
 8 differing in practice and design from the traditional adversarial criminal
 9 prosecution and trial systems.

10 (2) A driving while intoxicated (DWI) court team shall be
 11 designated by a district judge or a judge from the juvenile division of
 12 circuit court assigned to manage the driving while intoxicated court docket
 13 and may include:

14 (A) A district judge;

15 (B) A prosecuting attorney;

16 (C) A public defender or private defense attorney;

17 (D) One (1) or more addiction counselors;

18 (E) One (1) or more probation officers;

19 (F) One (1) or more private treatment provider
 20 representatives; and

21 (G) Any other individual or individuals determined
 22 necessary by the driving while intoxicated court judge.

23 (e) Each district court may develop a training and implementation
 24 manual for programs with the assistance of the:

25 (1) Department of Human Services;

26 (2) Department of Education;

27 (3) Department of Career Education;

28 (4) Department of Community Correction; and

29 (5) Administrative Office of the Courts.

30 (f)(1) A Division of Driving While Intoxicated (DWI) Court Programs is
 31 created within the Administrative Office of the Courts.

32 (2) The position of driving while intoxicated (DWI) court
 33 coordinator and duties associated with the position shall be included within
 34 the division, and the court coordinator may: (A) Provide

35 assistance, counsel, and advice to the Arkansas District Judges Council DWI
 36 Courts Committee;

1 (B) Serve as a coordinator among driving while intoxicated
 2 (DWI) court judges, the Department of Community Correction, the Office of
 3 Alcohol and Drug Abuse Prevention, private treatment provider
 4 representatives, and public health advocates;

5 (C) Establish, manage, and maintain a uniform statewide
 6 information system to track information and data on driving while intoxicated
 7 court program participants, to be reviewed by the committee;

8 (D) Train and educate driving while intoxicated (DWI)
 9 court judges and driving while intoxicated (DWI) court staff in those
 10 judicial districts maintaining a program;

11 (E) Provide staff assistance to the Arkansas Drug Court
 12 Professionals Association;

13 (F) Oversee the disbursement of funds appropriated to the
 14 Administrative Office of the Courts for the maintenance and operation of
 15 local programs based on a formula developed by the Administrative Office of
 16 the Courts and reviewed by the committee; and

17 (G) Develop guidelines to be reviewed by the committee to
 18 serve as a framework for developing effective local programs and to provide a
 19 structure for conducting research and evaluation for program accountability.

20
 21 16-99-204. Cost and fees.

22 (a) The driving while intoxicated (DWI) court judge may order the
 23 offender to pay:

24 (1) Court costs as provided in § 16-10-305;

25 (2) Treatment costs;

26 (3) Drug testing costs;

27 (4) A program user fee; and

28 (5) Necessary supervision fees, including any applicable
 29 residential treatment fees.

30 (b)(1) The driving while intoxicated (DWI) court judge shall establish
 31 a schedule for the payment of costs and fees.

32 (2) The cost for treatment, drug testing, and supervision shall
 33 be set by the treatment and supervision providers respectively and made part
 34 of the order of the driving while intoxicated (DWI) court judge for payment.

35 (3) Program user fees shall be set by the driving while
 36 intoxicated (DWI) court judge.

1 (4) Treatment, testing, and supervision costs or fees may be
2 paid directly or indirectly to the respective providers.

3 (5)(A) All court costs and program user fees assessed by the
4 driving while intoxicated (DWI) court judge shall be paid to the court clerk
5 or his or her designee for remittance to the county treasury under § 14-14-
6 1313.

7 (6) All court costs shall be credited to the county
8 administration of justice fund and distributed under § 16-10-307.

9 (7) All program user fees shall be credited to a fund known as
10 the Driving While Intoxicated (DWI) Court Program Fund and appropriated by
11 the quorum court for the benefit and administration of the program.

12 (8) Court orders for costs and fees shall remain an obligation
13 of the offender with court monitoring until fully paid.

14
15 16-99-205. Collection of data.

16 (a) A driving while intoxicated (DWI) court program shall collect and
17 provide data on applicants, participants, and the entire program as required
18 by the Division of Driving While Intoxicated (DWI) Court Programs within the
19 Administrative Office of the Courts under the rules promulgated under § 16-
20 98-307.

21 (b) The data collected for evaluation purposes under subsection (a) of
22 this section shall:

23 (1) Include a minimum standard data set developed and specified
24 by the division; and

25 (2) Be maintained in the court files or be otherwise accessible
26 by the courts and the division.

27 (c)(1) As directed by the division, after an individual is discharged
28 either upon completion or termination of a program, the program shall
29 conduct, as much as practical, follow-up contacts with and reviews of former
30 driving while intoxicated court participants for key outcome indicators of
31 alcohol use, recidivism, and employment.

32 (2)(A) The follow-up contacts with and reviews of former
33 participants shall be conducted as frequently and for a period of time as
34 determined by the programs based upon the nature of the driving while
35 intoxicated court program and the nature of the participants.

1 (B) The follow-up contacts with and reviews of former
2 participants are not extensions of the driving while intoxicated (DWI)
3 court's jurisdiction over the participants.

4 (d) For purposes of standardized measurement of success of programs
5 across the state, the Division of Driving While Intoxicated (DWI) Court
6 Programs in consultation with other state agencies and subject to the review
7 of the District Judges Council DWI Court Committee shall adopt an operational
8 definition of terms such as "recidivism", "retention", "relapses",
9 "restarts", "sanctions imposed", and "incentives given" to be used in any
10 evaluation and report of the programs.

11 (e) Each program shall provide to the division all information
12 requested by the division.

13 (f) The division, the Office of Alcohol and Drug Abuse Prevention, and
14 the Arkansas Crime Information Center shall work together to share and make
15 available data to provide a comprehensive data management system for the
16 state's programs.

17 (g)(1) The Administrative Office of the Courts shall:

18 (A) Develop a statewide evaluation model to be reviewed by
19 the committee; and

20 (B) Conduct ongoing evaluations of the effectiveness and
21 efficiency of all the programs.

22 (2) A report of the evaluations of the Administrative Office of
23 the Courts shall be submitted to the General Assembly by July 1 of each year.

24
25 /s/McLean
26

27 Referred by the Arkansas House of Representatives

28 Prepared by: BPG/VJF

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