

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
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4

As Engrossed: H3/17/03

A Bill

HOUSE BILL 2353

5 *By: Representatives Pritchard, Hathorn, Borhauer, Berry, Fite, Parks, Medley, Bledsoe, Lamoureux,*
6 *Blair, Bolin, Rosenbaum, Harris, Childers, Key, Hutchinson, Nichols, Thyer, Bennett, Walters, Dickinson,*
7 *Bright, C. Taylor, Green*
8 *By: Senators Altes, Baker, G. Jeffress, Madison, Critcher, Hendren*
9

For An Act To Be Entitled

12 THE ARKANSAS DRUG COURT ACT.

Subtitle

15 THE ARKANSAS DRUG COURT ACT.

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

20 SECTION 1. This act shall be known as the "Arkansas Drug Court Act".

22 SECTION 2. Definitions.

23 For purposes of this act;

24 (1) "Drug court program" means an highly structured judicial
25 intervention process for substance abuse treatment of eligible offenders
26 which requires successful completion of the Drug Court Program treatment in
27 lieu of incarceration; and

28 (2) "Drug court team" means a circuit judge, a prosecuting attorney, a
29 defense attorney, and an addiction counselor.

31 SECTION 3. Drug court programs authorized.

32 (a) Each judicial district of this state is authorized to establish a
33 drug court program under this act, which may be preadjudication or
34 postadjudication subject to availability of funds.

35 (b)(1) Drug court programs shall not be available to any defendant
36 having a pending violent criminal charge against them.



1 (2) Eligible offenses may further be restricted by the rules of
2 the specific drug court program.

3 (3) Nothing in this act shall require a drug court to consider
4 or accept every offender with a treatable condition or addiction, regardless
5 of the fact that the controlling offense is eligible for consideration in the
6 program.

7 (4) Any offender who is determined not appropriate for the drug
8 court program shall be prosecuted as provided by law.

9 (c)(1) Drug court programs shall require a separate judicial
10 processing system differing in practice and design from the traditional
11 adversarial criminal prosecution and trial systems.

12 (2) A drug court team shall be designated consisting of a circuit
13 judge to administer the program, a prosecuting attorney, a defense attorney,
14 and an addiction counselor who shall have appropriate understanding of the
15 goals of the program and of the appropriate treatment methods for the various
16 conditions and any other individual(s) determined necessary by the Drug Court
17 Judge.

18 (3) The assignment of any person to the drug court team shall
19 not preclude the assigned person from performing other duties required in the
20 course of his or her office or employment.

21 (4) The administrative judge of the judicial district or an
22 agreement of a majority of the circuit judges in the judicial district, shall
23 designate one or more judges to administer the drug court program.

24 (d) The originating criminal case file shall remain open to public
25 inspection.

26 (e)(1) The drug court judge may request assistance from the Department
27 of Health and the Department of Human Services which shall be the primary
28 agencies to assist in developing and implementing a drug court program or
29 from any state or local agency in obtaining the necessary treatment services
30 which will assure maximum opportunity for successful treatment, education,
31 and rehabilitation for offenders admitted to the program.

32 (2) All participating state and local agencies are directed to
33 coordinate with each other and cooperate in assisting the circuit court in
34 establishing a drug court program.

35 (f) Each drug court program shall ensure, but not be limited to:

36 (1) Strong linkage between participating agencies;

1 (2) Access by all participating parties of a case to information
2 on the offender's progress;

3 (3) Vigilant supervision and monitoring procedures;

4 (4) Random substance abuse testing;

5 (5) Provisions for noncompliance, modification of the treatment
6 plan, and revocation or termination;

7 (6) Availability of residential treatment facilities and
8 outpatient services;

9 (7) Payment of court costs, treatment costs, supervision fees,
10 and program user fees by the offender, as ordered by the Drug Court Judge;

11 (8) Methods for measuring application of disciplinary sanctions,
12 including provisions for:

13 (A) Increased supervision;

14 (B) Drug testing, including urinalysis testing;

15 (C) Intensive treatment, including in-patient residential
16 treatment;

17 (D) Short-term confinement at the discretion of the drug
18 court judge;

19 (E) Recycling the offender into the program after a
20 disciplinary action for a minimum violation of the treatment plan;

21 (F) Reinstating the offender into the program after a
22 disciplinary action for a major violation of the treatment plan; and

23 (G) Revocation or termination from the program

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

26 (g) All drug court programs shall be required to keep reliable data on
27 recidivism, relapse, restarts, sanctions imposed, and incentives given.

28
29 SECTION 4. Eligibility and request for drug court program.

30 (a)(1) The initial opportunity for review of an offender for a drug
31 court program shall occur within forty-five (45) days after the arrest,
32 detention, or incarceration of the offender.

33 (2) When a drug court is established, the following information
34 shall be initially reviewed by the prosecuting attorney.

35 (A)(i) The offender's arrest or charge does not involve a
36 crime of violence against any person;

1 (ii) It shall be sufficient that a criminal history
2 records name search was conducted and indicated no apparent violent offense.

3 (B) The offender has committed a felony offense; and

4 (C) The offender:

5 (i) Admits to having a substance abuse addiction;

6 (ii) Appears to have a substance abuse addiction;

7 (iii) Is known to have a substance abuse addiction;

8 or

9 (iv) The arrest or charge is based upon an offense
10 eligible for the drug court program.

11 (3)(A) If it appears to the prosecuting attorney that the
12 offender may be potentially eligible for the drug court program, the offender
13 shall be given an eligibility form which may be voluntarily completed by the
14 offender, and the prosecuting attorney shall file the criminal case record
15 within the time prescribed.

16 (B) The offender shall not automatically be considered for
17 the program based upon this review.

18 (C) The offender must request consideration for the drug
19 court program and shall have approval from the prosecuting attorney before
20 being considered for the drug court program.

21 (D) The eligibility form shall describe the drug court
22 program for which the offender may be eligible, including, but not limited
23 to:

24 (i) A full description of the drug court process and
25 investigation;

26 (ii) A general explanation of the roles and
27 authority of the supervising staff, the prosecuting attorney, the defense
28 attorney, the treatment provider, the offender, and the circuit judge in the
29 drug court program;

30 (iii) A clear statement that the offender is
31 required, before consideration in the program, to enter a guilty plea as part
32 of a written plea agreement in a postadjudication program, or is willing to
33 stipulate the facts of the arrest and other materials in police reports and
34 other documents provided by the prosecutor and attached to the transfer order
35 in the event the defendant is terminated from a preadjudication program;

36 (iv) A clear statement that the plea agreement will

1 specify the offense to which the guilty plea will be entered and will state
2 any penalty to be imposed for the offense, both in the event of a successful
3 completion of the drug court program, and in the event of a failure to
4 complete the program in a post-adjudication program or is willing to allow
5 the prosecutor to introduce the stipulated facts into evidence at a criminal
6 trial without any objection at any trial of a defendant terminated from a
7 preadjudication program;

8 (v) A clear statement that the offender must
9 voluntarily agree to:

10 (a) Waive the right to a speedy trial;

11 (b) Waive the right to a preliminary hearing;

12 (c) The terms and conditions of a treatment
13 plan; and

14 (d) Sign a performance contract with the
15 court;

16 (vi) A clear statement that the offender, if
17 accepted into the drug court program, shall not be incarcerated for the
18 offense in a state correctional institution or jail upon successful
19 completion of the program, but may have the charges dismissed; in a
20 preadjudication drug court or expunged in a post adjudication drug court

21 (vii) A clear statement that during participation in
22 the drug court program should the offender:

23 (a) Fail to comply with the terms of the
24 agreements;

25 (b) Plead guilty, nolo contendere, or be found
26 guilty of a misdemeanor offense which reflects a propensity for violence;

27 (c) Have charges filed for a violent felony
28 offense, or

29 (d) Plead guilty, nolo contendere, or be found
30 guilty of any felony offense the offender may be required, after a court
31 hearing, to be removed from the program and sentenced without trial under the
32 provisions of the negotiated plea agreement in a post adjudication drug court
33 or tried under the original charges filed with the prosecutor having the
34 option of using the stipulated facts in a preadjudication drug court; and

35 (ix) An explanation of the criminal record retention
36 and disposition resulting from participation in the drug court program

1 following successful completion of the program.

2 (b) The offender may request consideration for the drug court
3 program as follows:

4 (A)(i) If the offender is incarcerated, the offender must
5 sign and complete the eligibility form and return it to the sheriff, if the
6 offender is held in the county jail, or to the chief of police, if the
7 offender is held in a city jail; and

8 (ii) The sheriff or chief of police, upon receipt of
9 the eligibility form, shall file the form with the prosecuting attorney at
10 the time of filing the criminal case record or at any time during the period
11 of incarceration when the offender completes the form after the criminal case
12 record has been filed; or

13 (B)(i) After release of the offender from incarceration,
14 the offender must sign and complete the eligibility form and file it with the
15 prosecuting attorney or the court, prior to or at the time of either initial
16 appearance or arraignment; and

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

22 (C) Nothing contained in this subsection (b) shall
23 prohibit the drug court from considering any offender deemed eligible for the
24 program at any time prior to sentencing whose case has been prosecuted as
25 provided by law, upon recommendation of the prosecuting attorney.

26 (c)(1) When an offender has filed a voluntary request to be considered
27 for a drug court program on the appropriate form, the prosecuting attorney
28 shall indicate his or her approval of the request by filing the form with the
29 drug court judge.

30 (2) Upon the filing of the request form by the prosecuting
31 attorney, an initial hearing shall be set before the drug court judge, at the
32 drug court judge's discretion, unless waived by the prosecutor and the
33 defendant.

34 (3) The hearing shall be held not less than three (3) working
35 days nor more than five (5) working days after the date of the filing of the
36 request form.

1 (4) Notice of the hearing shall be given to the drug court team,
2 or in the event no drug court team is designated, to the offender, the
3 prosecuting attorney, and to the public defender.

4 (5) The offender shall be required to notify any private legal
5 counsel of the date and time of the hearing.

6
7 SECTION 5. Initial hearing.

8 (a) At the initial hearing for consideration of an offender for a drug
9 court program, the prosecuting attorney shall determine whether or not:

10 (1) The offender has approval to be considered for the drug
11 court program;

12 (2) The offender has been admitted to the program within the
13 preceding five (5) years; and

14 (3) Any other prohibitions, or program limitation exists and
15 which are applicable to considering the offender for the program.

16 (b) The prosecuting attorney may object to the consideration of an
17 offender for the drug court program at the initial hearing.

18 (c) If the offender voluntarily consents to be considered for the drug
19 court program, has signed and filed the required form requesting
20 consideration, and no objection has been made by the prosecuting attorney,
21 the drug court judge shall refer the offender for a drug court assessment and
22 set a date for a hearing to determine final eligibility for admittance into
23 the program.

24 (d)(1) Upon any objection of the prosecuting attorney for
25 consideration of an offender for the program, the drug court judge shall deny
26 consideration of the offender's request for participation in the drug court
27 program.

28 (2) Upon denial for consideration in the drug court program at
29 the initial hearing, the criminal case shall proceed as provided by law.

30 (3) An objection by the prosecuting attorney and the subsequent
31 denial of consideration of the offender for the program shall not preclude
32 any future consideration of the offender for the drug court program with the
33 approval of the prosecuting attorney.

34
35 SECTION 6. Drug court assessment.

36 (a) When directed by the presiding judge, the supervising staff for

1 the drug court program shall make an assessment of the offender under
2 consideration to determine whether or not the offender is a person who:

3 (1) Would benefit from the drug court program; and

4 (2) Is appropriate for the drug court program.

5 (b)(1) The drug court investigation shall be conducted through a
6 thorough screening test and extensive personal interview with members of the
7 treatment team and the offender.

8 (2) The investigation shall determine the original
9 treatment plan which the offender will be required to follow, if admitted to
10 the program.

11 (3) Any subsequent assessments or evaluations by the
12 treatment team provider, if the offender is admitted to the program, may be
13 used to determine modifications needed to the original treatment plan.

14 (4) The investigation shall include, but not be limited to, the
15 following information:

16 (A) The person's age and physical condition;

17 (B) Employment and military service records;

18 (C) Educational background and literacy level;

19 (D) Community and family relations;

20 (E) Prior and current drug and alcohol use;

21 (F) Mental health and medical treatment history, including
22 substance abuse treatment history;

23 (G) Demonstrable motivation; and

24 (H) Other mitigating or aggravating factors.

25 (c)(1) The drug court investigation shall be conducted before the
26 final determination of eligibility for the drug court program.

27 (2) When an offender is appropriate for admittance to the
28 program, the supervising staff shall make a recommendation for the treatment
29 program or programs that are available in the jurisdiction and which would
30 benefit the offender and accept the offender.

31 (3) The investigation findings and recommendations for
32 program placement shall be reported to the presiding judge, the prosecuting
33 attorney, the offender, and the defense attorney prior to the next scheduled
34 hearing.

35 (d)(1) The prosecuting attorney and the defense attorney for the
36 offender may independently review the findings and recommendations of the

1 drug court investigation report.

2 (2)(A) For an offender to remain eligible for consideration in
3 the program, both the prosecuting attorney and the defense attorney must
4 accept the recommended treatment plan, and shall negotiate the terms of the
5 written plea agreement with all punishment provisions specified or sign
6 written factual stipulations regarding the charged offenses before the
7 scheduled hearing date for determining final eligibility, in a
8 postadjudication drug court or agree to the introduction of stipulated facts
9 without objection in a trial of a terminated defendant in a preadjudication
10 drug court program.

11 (B) The punishment provisions of the written plea
12 agreement if applicable shall emphasize reparation to the victim, community,
13 and state.

14 (3) Upon failure of the prosecuting attorney and defense
15 attorney to negotiate the written plea agreement or stipulated facts
16 regarding the charged offenses, the criminal case shall be withdrawn from the
17 drug court program and processed as provided by law.

18 (e) The hearing to determine final eligibility shall be set not less
19 than three (3) working days nor more than seven (7) working days after the
20 date of the initial hearing for consideration, unless extended by the drug
21 court judge.

22
23 SECTION 7. Admissibility of statements or evidence.

24 (a) Any statement, or any information procured from any statement made
25 by the offender to any supervising staff, which is made during the course of
26 any drug court investigation conducted by the supervising staff and any
27 report of the supervising staff's findings and recommendations to the drug
28 court judge, the prosecuting attorney, or the defense counsel shall not be
29 admissible in the criminal case pending against the offender.

30 (b) Any statement, or any information procured from any statement with
31 respect to the specific offense for which the offender was arrested or is
32 charged, which is made to any supervising staff subsequent to the granting of
33 admission of the offender to the drug court program, shall not be admissible
34 in the pending criminal case nor shall such be grounds for the revocation of
35 an offender from the program.

36 (c) In the event that an offender is denied admission to the drug

1 court program or is subsequently removed from the program, any information
2 gained from the drug court investigation, any statements or information
3 divulged during the drug court investigation or any treatment session shall
4 not be used in any portion of the criminal matter of the offender for the
5 original criminal offense.

6 (d) The restrictions provided in this section shall not preclude the
7 admissibility of statements or evidence obtained by the state from
8 independent sources.

9 (e)(1) The offender, as consideration for entering the drug court
10 program, must consent to a full and complete photographic record of property
11 which is to be used as evidence in the pending criminal case.

12 (2) The photographic record shall be competent evidence of the
13 property and admissible in any criminal action or proceeding as the best
14 evidence.

15 (3) After the photographic record is made, the property shall be
16 returned as follows:

17 (A) Property, except that which is prohibited by law,
18 shall be returned to its owner after proper verification of title;

19 (B) The return of the property to the owner shall be
20 without prejudice to the state or to any person who may have a claim against
21 the property; and

22 (C) When a return of the property is made to the owner,
23 the owner shall sign, under penalty of perjury, a declaration of ownership,
24 which shall be retained by the person in charge of the property at the police
25 department or sheriff's office.

26
27 SECTION 8. Final eligibility hearing – Acceptance into a treatment
28 program – Duration of participation – Costs and fees.

29 (a) The presiding judge shall conduct a hearing as required to
30 determine final eligibility by considering:

31 (1) Whether or not the offender voluntarily consents to the
32 program requirements;

33 (2) Whether or not to accept the offender based upon the
34 findings and recommendations of the drug court assessment;

35 (3) Whether or not there is a written plea agreement, and if so,
36 whether the terms and conditions of the written negotiated plea between the

1 prosecuting attorney, the defense attorney, and the offender are appropriate
2 and consistent with the penalty provisions and conditions of other similar
3 cases;

4 (4) Whether or not there is an appropriate treatment program
5 available to the offender and whether or not there is a recommended treatment
6 plan; and

7 (5)(A) Any other information relevant to determining
8 eligibility;

9 (B) An offender shall not be denied admittance to any drug
10 court program based upon an inability to pay court costs or other costs or
11 fees.

12 (b) At the hearing to determine final eligibility for the drug court
13 program, the presiding judge shall not grant any admission of any offender to
14 the program when:

15 (1) The required treatment plan and plea agreement or stipulated
16 facts have not been completed;

17 (2) The program funding or availability of treatment has been
18 exhausted;

19 (3) The treatment program is unwilling to accept the offender;

20 (4) The offender was ineligible for consideration by the nature
21 of a violent offense at the time of arrest, and the charge has been modified
22 to meet the eligibility criteria of the program; or

23 (5) The offender is inappropriate for admission to the program,
24 at the discretion of the presiding judge.

25 (c)(1) At the final eligibility hearing, if evidence is presented that
26 was not discovered by the drug court assessment, the prosecuting attorney or
27 the defense attorney may make an objection and may ask the presiding judge to
28 withdraw the plea agreement if previously negotiated.

29 (2)(A) The drug court judge shall determine whether to:

30 (i) Overrule the objection and proceed;

31 (ii) Sustain the objection and transfer the case for
32 criminal prosecution as provided by law; or

33 (iii) Require further negotiations of the plea or
34 punishment provisions, if applicable.

35 (B) The decision of the drug court judge for or against
36 eligibility and admission shall be final.

1 (d)(1) When the drug court judge accepts the treatment plan with the
2 written plea agreement or stipulated facts, the offender, upon entering the
3 plea as agreed by the parties, shall be ordered and escorted immediately into
4 the program.

5 (2) The offender must have voluntarily signed the necessary
6 court documents before the offender may be admitted to treatment.

7 (3) The court documents shall include:

8 (A) Waiver of the offender's rights to speedy trial;

9 (B)(i) A written plea agreement which sets forth the
10 offense charged, the penalty to be imposed for the offense in the event of a
11 breach of the agreement, and the penalty to be imposed, if any, in the event
12 of a successful completion of the treatment program in the event of a
13 revocation in a postadjudication drg court or stipulated facts that may be
14 used in the event of a criminal trial of a terminated defendant in a
15 preadjudication drug court;

16 (ii) However, incarceration shall be prohibited when
17 the offender completes the treatment program;

18 (C) A written treatment plan which is subject to
19 modification at any time during the program; and

20 (D) A written performance contract requiring the offender
21 to enter the treatment program as directed by the presiding judge and
22 participate until completion, withdrawal, or removal by the presiding judge.

23 (4) If admission into the drug court program is denied, the
24 criminal case shall be returned to the regular criminal docket and shall
25 proceed as provided by law.

26 (e) At the time an offender is admitted to the drug court program, any
27 bail, or undertaking on behalf of the offender, shall at the discretion of
28 the drug court judge be exonerated.

29 (f)(1) The period of time during which an offender may participate in
30 the active treatment portion of the drug court program shall be not less than
31 six (6) months nor more than twenty-four (24) months and may include a period
32 of supervision not less than six (6) months nor more than one (1) year
33 following the treatment portion of the program.

34 (2) All participating treatment providers shall be certified by
35 the Department of Health or the Department of Human Services and any
36 substance abuse services shall be selected and evaluated for performance-

1 based effectiveness annually by the Department of Health or the Department of
2 Human Services.

3 (3) Treatment programs shall be designed to be completed within
4 twelve (12) months and shall have relapse prevention and evaluation
5 components.

6 (g)(1) The drug court judge shall order the offender to pay court
7 costs, treatment costs, drug testing costs, a program user fee not to exceed
8 twenty dollars (\$20.00) per month, and necessary supervision fees including
9 any applicable residential treatment fees.

10 (2)(A) The drug court judge shall establish a schedule
11 for the payment of costs and fees.

12 (B) The cost for treatment, drug testing, and supervision
13 shall be set by the treatment and supervision providers respectively and made
14 part of the drug court judge's order for payment.

15 (3) User fees shall be set by the drug court judge within the
16 maximum amount authorized by this subsection and payable directly to the
17 court clerk for the benefit and administration of the drug court program.

18 (4) Treatment, drug testing, and supervision costs shall be paid
19 to the respective providers.

20 (5) The court clerk shall collect all other costs and fees
21 ordered.

22 (6)(A) The remaining user fees shall be remitted to the
23 Treasurer of State by the court clerk for deposit in the MAG Drug Court Fund
24 which is a special revenue fund created and established on the books of the
25 Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State.

26 (B) The MAG Drug Court Fund shall consist of user fees and
27 any other moneys provided by law.

28 (7) Court orders for costs and fees under this
29 subsection shall not be limited for purposes of collection to the maximum
30 term of imprisonment for which the offender could have been imprisoned for
31 the offense, nor shall any court order for costs and fees be limited by any
32 term of probation, parole, supervision, treatment, or extension thereof.

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

35
36 SECTION 9. Monitoring of treatment progress.

1 (a)(1) The designated drug court judge shall make all judicial
2 decisions concerning any case assigned to the drug court docket or program.

3 (2) The drug court judge shall require progress reports and a
4 periodic review of each offender during his or her period of participation in
5 the drug court program or for purposes of collecting costs and fees after
6 completion of the treatment portion of the program.

7 (3) Reports from the treatment providers and the supervising
8 staff shall be presented to the drug court judge as specified by the
9 treatment plan or as ordered by the drug court judge.

10 (b)(1) Upon the written or oral motion of the treatment provider, the
11 prosecuting attorney, the defense attorney, the defendant, or the supervising
12 staff, the drug court judge shall set a date for a hearing to review the
13 offender, the treatment plan, and the provisions of the performance contract.

14 (2) Notice shall be given to the offender and the other
15 parties participating in the drug court case not less than two (2) days
16 before the hearing may be held.

17 (c) The drug court judge may establish a regular schedule for progress
18 hearings for any offender in the drug court program.

19 (d) The treatment provider, the supervising staff, the prosecuting
20 attorney, and the defense attorney shall be allowed access to all information
21 in the offender's drug court case file and all information presented to the
22 drug court judge at any periodic review or progress hearing.

23 (e)(1) The drug court judge shall recognize relapses and restarts in
24 the program which are considered to be part of the rehabilitation and
25 recovery process.

26 (2) The drug court judge shall accomplish monitoring and
27 offender accountability by ordering progressively increasing sanctions or
28 providing incentives, rather than removing the offender from the program when
29 relapse occurs, except when the offender's conduct requires revocation from
30 the program.

31 (3)(A) Any revocation or termination from the drug court program
32 shall require notice to the offender and other participating parties in the
33 case at a revocation hearing.

34 (B) At the revocation, if the offender is found to have
35 violated the conditions of the plea agreement and disciplinary sanctions have
36 been insufficient to gain compliance, the offender shall be removed from the

1 program and sentenced for the offense as provided in the plea agreement in a
2 postadjudication drug court or in the event of a termination in a
3 preadjudication drug court the defendant will stand trial as per normal
4 procedure with the prosecutor having the option of introducing the previously
5 stipulated facts without objection from the defendant.

6 (f)(1) Upon application of any participating party to a drug court
7 case, the drug court judge may modify a treatment plan at any hearing when it
8 is determined that the treatment is not benefiting the offender.

9 (2) The primary objective of the drug court judge in monitoring
10 the progress of the offender and the treatment plan, shall be to keep the
11 offender in treatment for a sufficient time to change behaviors, attitudes,
12 and life style.

13 (3) Modification of the treatment plan requires a consultation
14 with the treatment provider, supervising staff, prosecuting attorney, and the
15 defense attorney in open court.

16 (g)(1) The drug court judge shall be prohibited from amending
17 the written plea agreement after an offender has been admitted to the drug
18 court program in a postadjudication program.

19 (2) Nothing in this provision shall be construed to limit
20 the authority of the drug court judge to remove an offender from the program
21 and impose the required punishment stated in the plea agreement after notice
22 and hearing or to terminate a defendant in preadjudication drug court and set
23 the matter for trial.

24
25 SECTION 10. Use of program as disciplinary sanction.

26 (a) The drug court program may be utilized as a disciplinary sanction
27 for a violation of a condition of parole related to substance abuse for
28 eligible offenses, or in a case where the offender has been tried for an
29 eligible offense as provided by law, given either a deferred or suspended
30 sentence, and has violated a condition of the sentence.

31 (b) The drug court judge shall not order an offender into treatment
32 within the scope of any drug court program without prior approval from the
33 designated drug court team, or the prosecuting attorney if no team is
34 designated.

35 (c) Any drug court judge having a criminal case assigned where drug
36 court processing appears to be more appropriate for the offender, may request

1 a review of the case by the drug court team, or if no team is designated, a
2 review by the prosecuting attorney and the defense attorney.

3 (d) If the prosecuting attorney and the defense attorney or offender
4 agree, the case may be transferred to the drug court program with the
5 approval of a designated drug court judge.

6 (e) After a case has been transferred to the drug court docket, it
7 shall continue with the designated drug court judge until the offender is
8 removed or released from the program.

9 (f) The offenders whose cases have been transferred from a regular
10 criminal case docket to the drug court docket shall be required to have a
11 drug court investigation and complete the drug court process prior to
12 placement in any treatment program authorized by this act.

13
14 SECTION 11. Successful completion of program.

15 (a) When an offender has successfully completed the drug court
16 program, the criminal case against the offender shall be dismissed in a
17 preadjudication drug court or the charges shall be expunged in a post
18 adjudication drug court.

19 (b) The final disposition order for a drug court case shall be filed
20 with the drug court judge assigned to the case, and shall indicate the
21 sentence or disposition specified in the written drug court agreement.

22 (c) A copy of the final disposition order for the drug court case
23 shall also be filed in the original criminal case file under the control of
24 the court clerk which is open to the public for inspection.

25 (d) Original criminal case files which are under the control of the
26 court clerk and which are subsequently assigned to the drug court program
27 shall be marked with a pending notation until a final disposition order is
28 entered in the drug court case.

29 (e) After an offender completes the program, the drug court case file
30 shall be sealed by the drug court judge and may be destroyed after ten (10)
31 years.

32 (f) The prosecuting attorney shall have access to sealed drug court
33 case files without a court order.

34 (g) A record pertaining to an offense resulting in a successful
35 completion of a drug court program shall not, without the offender's
36 consent in writing, be used in any way which could result in the denial

1 of any employee benefit.

2
3 SECTION 12. Implementation of act.

4 (a) For purposes of this act, the following state agencies shall
5 jointly develop a standardized testing instrument with an appropriate
6 scoring device for use by all the circuit courts in this state in
7 implementing the Arkansas Drug Court Act:

8 (1) The Department of Correction;

9 (2) The Department of Community Correction;

10 (3) The Administrative Office of the Courts;

11 (4) The Department of Human Services;

12 (5) The Department of Health;

13 (6) The Department of Education; and

14 (7) The Department of Workforce Education.

15 (b) The Administrative Office of the Courts shall promulgate rules,
16 procedures, and forms necessary to implement the Arkansas Drug Court Act to
17 ensure statewide uniformity in procedures and forms.

18 (c)(1) The Department of Health is directed to develop a training and
19 implementation manual for drug court programs with the assistance of the
20 Department of Human Services, the Department of Education, the Department of
21 Workforce Education, the Department of Correction, the Department of
22 Community Correction, and the Administrative Office of the Courts.

23 (2) The Department of Health shall provide technical assistance
24 to the circuit courts in implementing drug court programs.

25 (d) All participating agencies shall promulgate rules as necessary to
26 comply with the provisions of this act.

27 (e) Each circuit court shall establish rules for their jurisdiction
28 upon implementation of a drug court program.

29
30 SECTION 13. Any existing drug courts shall be given priority in
31 receiving any funds dispersed from the MAG Drug Court Fund.

32
33 SECTION 14. The provisions of this act shall only apply to those
34 courts and drug court programs which receive funding in whole or in part from
35 the MAG Drug Court Fund.

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