

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 36*
Committee Substitute Favorable 3/3/94

Short Title: Drug Court Program Funds.

(Public)

Sponsors:

Referred to:

February 8, 1994

A BILL TO BE ENTITLED
AN ACT TO CREATE THE NORTH CAROLINA DRUG TREATMENT COURT
PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Subchapter IV of Chapter 7A of the General Statutes is amended
by adding a new Article to read:

"ARTICLE 19A.

"NORTH CAROLINA DRUG TREATMENT COURT PROGRAM ACT.

"§ 7A-233. Short title.

This Article shall be known and may be cited as the 'North Carolina Drug Treatment
Court Program Act of 1994'.

"§ 7A-234. Purpose.

The General Assembly recognizes that a critical need exists in this State for
programs within the criminal justice system that will reduce the incidence of drug use
and drug addiction and crimes committed as a result of drug use and drug addiction. It
is the intent of the General Assembly by this Article to create a program to facilitate the
creation of drug treatment courts in all prosecutorial districts and to fund pilot programs
in a minimum of two prosecutorial districts. The General Assembly intends further by
this Article to encourage and assist prosecutorial districts in developing programs that
will provide intensive treatment for drug users and addicts, reduce the repeat offenses
committed by the potential drug abuse population, and expedite the movement of
certain felonies and misdemeanors through the court system. The General Assembly
recognizes that successful drug treatment court programs have certain common

1 characteristics. It is the intent of the General Assembly that these critical elements, set
2 forth below, be incorporated into each drug treatment court program established under
3 this Article:

4 (1) Program Planning and Support.

- 5 a. Strong and consistent leadership from the court administrator,
6 chief judge, prosecutor, and public defender to maintain support
7 for the program and ensure adherence to the drug treatment
8 court's procedures and guidelines.
- 9 b. Good relations with the media and community, fostered as early
10 as possible in the planning process, to help maximize
11 understanding and support of the drug treatment court's goals.
- 12 c. Fixed assignment to the drug treatment court for six months to
13 one year of judge, assistant district attorney, and public
14 defender (or appointed attorney) to allow staff to develop
15 expertise about antidrug enforcement, felony drug cases, drug
16 abuse, and drug treatment and help to establish a mutually
17 productive courtroom atmosphere.
- 18 d. Ongoing communication among the drug treatment court,
19 judge, prosecutor, and public defender (or appointed attorney)
20 to identify problems as they arise.
- 21 e. Implicit or explicit agreement to abide by the procedural rules
22 of court. Interagency cooperation should be facilitated to the
23 greatest extent possible. All participants must 'buy into' the
24 drug treatment court concept for it to achieve its goals.

25 (2) Procedural Elements.

- 26 a. Have a strong and respected judge, who is dedicated to the
27 principles of the drug treatment court, knowledgeable about
28 drug abuse and drug treatment, and supported by the presiding
29 judge and court administrator.
- 30 b. Channel all eligible felony drug cases into the drug treatment
31 court as early in the adjudication process as feasible.
- 32 c. Implement a system of full and early discovery.
- 33 d. Expedite production of laboratory reports and distribute the
34 results to the prosecutor and to the defense as soon after arrest
35 as possible.
- 36 e. Rotate staff at least once a year to prevent burnout and provide
37 incentives to attract and retain quality staff.

38 (3) Management Information System Support.

- 39 a. Establish computerized management information system
40 support dedicated exclusively to the drug treatment court. The
41 case tracking and monitoring system can be housed on a
42 personal computer or be part of the court's mainframe case
43 tracking system.

- 1 b. Share data on program operations with all relevant agencies,
2 including treatment and public health as well as criminal justice
3 agencies.
- 4 c. Establish ongoing monitoring of the drug treatment court by the
5 judiciary, court administrator, and/or executive branch. The
6 number of cases adjudicated, number of cases pending, time to
7 disposition, types of disposition, and sentences should be
8 compiled and reported regularly. Treatment program services
9 and client performance should be monitored by the drug
10 treatment court judicial staff or the agency responsible for
11 supervising drug court defendants (such as probation). The
12 jurisdiction should also develop the capability of evaluating the
13 impact and long-term effects of the drug treatment court, either
14 using in-house research staff or using an outside contract
15 evaluator.

16 **"§ 7A-235. Definitions.**

17 Unless the context requires otherwise, the following definitions apply throughout
18 this Article:

- 19 (1) 'Drug treatment court' means either a session of district court, in the
20 case of a preplea diversion program, or a session of superior court, in
21 the case of a postplea sentence deferral program, created pursuant to
22 this Article to provide a court-operated rehabilitation program as an
23 alternative to prosecution.
- 24 (2) 'Drug court judge' means the superior or district court judge who is
25 assigned the special duty of presiding over a drug treatment court.
- 26 (3) 'Drug offense' means a violation of the Controlled Substances Act,
27 Article 5 of Chapter 90 of the General Statutes, as set out in G.S. 90-
28 95.
- 29 (4) 'Postplea sentence deferral program' means a drug treatment court
30 program in superior court in which a defendant must enter a plea of
31 guilty to the charges before entering the program.
- 32 (5) 'Preplea diversion program' means a drug treatment court program in
33 district court which a defendant may enter prior to entering any plea to
34 the charges.
- 35 (6) 'State Drug Treatment Court Program Director' means the person
36 employed by the Administrative Office of the Courts to monitor and
37 coordinate the operation and evaluation of the North Carolina Drug
38 Treatment Court Program.

39 **"§ 7A-236. Establishment of program.**

40 The North Carolina Drug Treatment Court Program is established in the
41 Administrative Office of the Courts to facilitate the creation of drug treatment court
42 programs and the funding of pilot drug treatment court programs. All drug treatment
43 court programs shall operate pursuant to this Article and the guidelines developed by
44 the State Drug Treatment Court Management Committee. However, nothing in this

1 Article shall prohibit or limit any prosecutorial district from establishing a local drug
2 treatment court program regardless of source of funding.

3 **"§ 7A-237. Fund administration.**

4 The Drug Treatment Court Program Fund is created in the Administrative Office of
5 the Courts and administered by the Director of the Administrative Office of the Courts
6 in consultation with the State Drug Treatment Court Management Committee
7 established in G.S. 7A-239. This Fund shall provide grants awarded by the Director to
8 prosecutorial districts that submit the most comprehensive and feasible plan for the
9 implementation of either a postplea sentence deferral program or a preplea diversion
10 program in that prosecutorial district. The grant money shall be awarded according to
11 the recommendation of the Director and the State Drug Treatment Court Management
12 Committee established in G.S. 7A-239. Grants shall be awarded to at least two
13 prosecutorial districts based upon the general guidelines set forth in this Chapter and
14 any further requirements established by the Director.

15 **"§ 7A-238. Drug treatment court model.**

16 The Director of the Administrative Office of the Courts, in conjunction with the
17 State Drug Treatment Court Management Committee established in G.S. 7A-239, shall
18 develop criteria for eligibility and other procedural and substantive guidelines for
19 models of both a preplea diversion program and a postplea sentence deferral program.
20 The criteria established for admission into a drug treatment court program shall provide
21 at a minimum that:

22 (a) A defendant is eligible for consideration for entry into the drug treatment
23 court program only when:

- 24 (1) The defendant is charged with a misdemeanor or felony carrying a
25 possible maximum penalty of 10 years or less imprisonment and which
26 misdemeanor or felony was committed as a result of drug use or drug
27 addiction, except as provided in (b) below;
- 28 (2) The defendant acknowledges a personal chemical dependency or
29 history of substance abuse including alcohol;
- 30 (3) The defendant is 16 years of age or older;
- 31 (4) The defendant is a resident of the county or prosecutorial district in
32 which the model program exists;
- 33 (5) If there are known victims of the defendant's charged offense, each
34 known victim has been notified in person, by subpoena, or by mail of
35 the possible diversion of the defendant's case to the drug court
36 program and further has been given an opportunity to be heard or has
37 failed to respond;
- 38 (6) The defendant has not participated in a drug court diversion program
39 previously;
- 40 (7) The district attorney, the defendant, and the court have each approved
41 the defendant's entry into the drug court program; and
- 42 (8) Any other requirement set forth by the State or local committee.

43 (b) A defendant is specifically excluded from participation in a drug court
44 treatment program if:

- 1 (1) Charged with or has entered a guilty plea to misdemeanor traffic
2 offenses or misdemeanor DWI;
- 3 (2) Charged with or has entered a guilty plea to felony DWI, felony death
4 by motor vehicle, or involuntary manslaughter; or
- 5 (3) Charged with the sale, delivery, transportation, or manufacture of a
6 controlled substance, unless the district attorney determines that the
7 offense occurred in furtherance of a defendant's addiction and that
8 placement in the program is appropriate.

9 **"§ 7A-239. State Drug Treatment Court Management Committee.**

10 The State Drug Treatment Court Management Committee is established to monitor
11 the drug court treatment program statewide. The Committee shall be chaired by the
12 Director of the Administrative Office of the Courts or the Director's designee and shall
13 consist of the following persons or their designees:

- 14 (1) The Chief Justice of the North Carolina Supreme Court;
- 15 (2) The Attorney General;
- 16 (3) The President of the Conference of District Attorneys;
- 17 (4) The Chief Appellate Defender;
- 18 (5) The President of the North Carolina Community College System;
- 19 (6) The Secretary of the Department of Human Resources;
- 20 (7) A representative of the North Carolina Clerks of Superior Court;
- 21 (8) The State Drug Treatment Court Program Director; and
- 22 (9) Any other person later selected by this Committee.

23 The Committee shall promulgate guidelines for the operation and evaluation of the
24 North Carolina Drug Treatment Court Program.

25 **"§ 7A-239.1. Local drug treatment management committee.**

26 Each prosecutorial district choosing to establish a drug treatment court or applying
27 to participate in a funded pilot program shall form a local drug court management
28 committee consisting of:

- 29 (1) A superior court judge, where the district has established postplea
30 sentence deferral program, or a district court judge, where the district
31 has established a preplea diversion program;
- 32 (2) A district attorney or assistant district attorney;
- 33 (3) A public defender, assistant public defender, or member of the private
34 criminal defense bar;
- 35 (4) A clerk of superior court;
- 36 (5) A representative of the local community college;
- 37 (6) A representative of the treatment providers;
- 38 (7) The local program director; and
- 39 (8) Any other person selected by the local management committee.

40 The local drug treatment court management committee shall promulgate guidelines,
41 not inconsistent with the State guidelines, necessary for the operation and evaluation of
42 the local drug treatment court.

43 **"§ 7A-239.2. Plan for evaluation.**

1 Each grant application for the pilot programs requesting funding shall contain a
2 method for evaluating the pilot program's effectiveness. Additionally, the State Drug
3 Treatment Court Program Director shall be responsible for developing an evaluation
4 model on the State level to compare the effectiveness of all the pilot programs.

5 **"§ 7A-239.3. Admission of guilt and stipulation.**

6 In a preplea program, the defendant shall sign a confession of guilt to the charge and
7 stipulations as required by the district attorney.

8 **"§ 7A-239.4. Guilty plea.**

9 In a postplea sentence deferral program, the defendant shall plead guilty before
10 being accepted into the drug court treatment program.

11 **"§ 7A-239.5. Withdrawal and restoration of rights.**

12 In a preplea diversion program case, the defendant has 30 calendar days from the
13 signing of the drug treatment court agreement to withdraw from the drug treatment
14 court program. The defendant shall notify the presiding judge in open court of the
15 decision to withdraw from the program and the decision to be tried on the original
16 charge or charges. Upon the judge's finding of withdrawal, all previously waived rights
17 are restored to the defendant and the defendant shall be given a date for trial or probable
18 cause hearing.

19 In a postplea sentence deferral program, the defendant has 30 calendar days from the
20 signing of the transcript of plea to appear in open court and withdraw the plea. Upon
21 the judge's finding of withdrawal, all previously waived rights shall be restored to the
22 defendant and the defendant shall be given a date for trial or probable cause hearing.

23 **"§ 7A-239.6. Cost and fees.**

24 Each defendant shall pay the proportionate cost of the defendant's drug treatment
25 court program. The drug court judge shall determine the amount and schedule of
26 payment after considering the defendant's income and ability to pay.

27 **"§ 7A-239.7. Restitution to victim.**

28 In any case in which a victim has suffered a monetary loss as a result of the acts for
29 which the defendant is charged, the drug court judge shall order the defendant to pay
30 into the court money as restitution for the use and benefit of the victim. The payment of
31 restitution shall take precedence over the payment of the costs of treatment. The clerk
32 shall pay restitution to the victim as the restitution is paid into the office of the clerk of
33 superior court.

34 **"§ 7A-239.8. Disposition of charges against defendant completing program.**

35 Upon the defendant's successful completion of a preplea diversion program, the
36 district attorney shall dismiss the charge against the defendant.

37 Upon the defendant's successful completion of a postplea sentence deferral program,
38 the judge shall allow the defendant to withdraw the plea and the district attorney shall
39 dismiss the case."

40 Sec. 2. There is appropriated from the General Fund to the Drug Treatment
41 Court Program Fund established in the Judicial Department the sum of eight hundred
42 thousand dollars (\$800,000) for the 1994-95 fiscal year to implement and evaluate the
43 pilot programs established in the North Carolina Drug Treatment Court Program Act.

1 Sec. 3. Section 1 of this act becomes effective May 1, 1994, and expires June
2 30, 1996. The remainder of this act becomes effective July 1, 1994.