

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 436

Short Title: Drug Treatment Court Act/AB.

(Public)

Sponsors: Representatives Richardson, Justus; Adams, Blue, Brawley, W. Brown, Culpepper, Cunningham, Easterling, Fitch, Hurley, Justus, Kiser, Lemmond, Linney, McAllister, McCrary, Mercer, Nye, Pulley, Redwine, Sexton, Shaw, Sutton, Thompson, Wainwright, Warner, and Yongue.

Referred to: Judiciary II.

March 9, 1995

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

4 The General Assembly of North Carolina enacts:

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

7 **"ARTICLE 19A.**

8 **"NORTH CAROLINA DRUG TREATMENT COURT PROGRAM ACT.**

9 **"§ 7A-233. Short title.**

10 This Article shall be known and may be cited as the 'North Carolina Drug Treatment
11 Court Program Act of 1995'.

12 **"§ 7A-234. Purpose.**

13 The General Assembly recognizes that there is a critical need in this State for
14 programs within the criminal justice system that will reduce the incidences of drug
15 addiction and crimes committed as a result of drug addiction. It is the intent of the
16 General Assembly by this Article to create a program to facilitate the creation of drug
17 treatment courts in all prosecutorial districts and to fund pilot programs in a minimum of

1 two prosecutorial districts. The General Assembly intends further by this Article to
2 encourage and assist prosecutorial districts in developing programs that will provide
3 intensive treatment for drug users and addicts, reduce the repeat offenses committed by
4 the potential drug abuse population, and expedite the movement of certain felonies and
5 misdemeanors through the court system.

6 **"§ 7A-235. Definitions.**

7 The following definitions apply in this Article:

- 8 (1) Drug treatment court. A session of district court created under this
9 Article to provide a court-operated rehabilitation program as an
10 alternative to prosecution.
- 11 (2) Drug treatment court judge. The district court judge who is assigned the
12 special duty of presiding over the drug treatment court.
- 13 (3) Drug offense. A violation of the Controlled Substances Act, Article 5
14 of Chapter 90 of the General Statutes, as set out in G.S. 90-95.
- 15 (4) Post-plea sentence deferral program. A drug treatment court program in
16 which a defendant must enter a plea of guilty to the charges before
17 entering the program.
- 18 (5) Pre-plea diversion program. A drug treatment court program that a
19 defendant may enter before entering any plea to the charges.
- 20 (6) State Drug Treatment Court Program Director. The person employed
21 by the Judicial Department to monitor and coordinate the operation and
22 evaluation of the North Carolina Drug Treatment Court Program.

23 **"§ 7A-236. Establishment of program.**

24 The North Carolina Drug Treatment Court Program is established in the Judicial
25 Department to facilitate the creation of drug treatment court programs and the funding of
26 pilot drug treatment court programs. All drug treatment court programs shall operate
27 pursuant to this Article and the guidelines developed by the State Drug Treatment Court
28 Management Committee. However, nothing in this Article prohibits or limits any
29 prosecutorial district from establishing a local drug treatment court program regardless of
30 source of funding.

31 **"§ 7A-237. Fund administration.**

32 The Drug Treatment Court Program Fund is established in the Judicial Department
33 and administered by the Director of the Administrative Office of the Courts in
34 consultation with the State Drug Treatment Court Management Committee established in
35 G.S. 7A-239. This Fund shall provide grants awarded by the Director of the
36 Administrative Office of the Courts to prosecutorial districts that submit the most
37 comprehensive and feasible plan for the implementation of either a post-plea sentence
38 deferral program or a pre-plea diversion program in that prosecutorial district. The grant
39 money shall be awarded according to the recommendation of the Director of the
40 Administrative Office of the Courts and the State Drug Treatment Court Management
41 Committee established in G.S. 7A-239. Grants shall be awarded to at least two
42 prosecutorial or judicial districts based upon the general guidelines set forth in this

1 Article and any further requirements established by the Director of the Administrative
2 Office of the Courts.

3 **"§ 7A-238. Drug treatment court model.**

4 The Director of the Administrative Office of the Courts, in conjunction with the State
5 Drug Treatment Court Management Committee established in G.S. 7A-239, shall develop
6 criteria for eligibility and other procedural and substantive guidelines for models of both
7 a pre-plea diversion program and a post-plea sentence deferral program.

8 **"§ 7A-239. State Drug Treatment Court Management Committee.**

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

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

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

23 **"§ 7A-239.1. Local drug treatment court management committee.**

24 Each district choosing to establish a drug treatment court or applying to participate in
25 a funded pilot program shall form a local drug treatment court management committee
26 consisting of the following persons appointed by the district attorney for that district:

- 27 (1) A district court judge.
- 28 (2) A district attorney or assistant district attorney.
- 29 (3) A public defender, assistant public defender, or member of the private
30 criminal defense bar.
- 31 (4) A clerk of superior court.
- 32 (5) A representative of the local community college.
- 33 (6) A representative of treatment providers.
- 34 (7) The local program director.
- 35 (8) Any other person selected by the local management committee.

36 The local drug treatment court management committee shall promulgate guidelines,
37 not inconsistent with State guidelines, necessary for the operation and evaluation of the
38 local drug treatment court.

39 **"§ 7A-239.2. Plan for evaluation.**

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

1 **"§ 7A-239.3. Approval of district attorney.**

2 Within the general guidelines of the drug treatment court models established pursuant
3 to G.S. 7A-238, the district attorney in each prosecutorial district establishing a local drug
4 treatment court program regardless of source of funding shall have the right to approve or
5 reject, at all times before entry, a defendant's entry into the drug treatment court program.

6 In determining eligibility of a defendant for entry into the program, the district
7 attorney shall consider whether the defendant has any other outstanding arrest warrants,
8 prior or pending restraining orders, significant prior incidents of failing to appear, or a
9 violent prior criminal history.

10 **"§ 7A-239.4. Limited jurisdiction in district court for guilty pleas.**

11 In any prosecutorial district participating in a program established under Article 19A
12 of the General Statutes as set out in this Article, the district court shall have concurrent
13 jurisdiction with the superior court for the limited purpose of accepting pleas of guilty or
14 no contest from defendants who have been accepted into the drug treatment court
15 program and have agreed by written agreement and written transcript of plea to enter the
16 program, and of entering judgment accordingly, with respect to any Class H or I felony.
17 Entry of the plea and disposition in the district court shall be accomplished pursuant to
18 either a bill of information or a bill of indictment. Before accepting the plea, the court
19 shall determine that both the State and the defendant consent to entry of the plea and
20 disposition in the district court, and neither party may withdraw consent once the court
21 accepts the plea.

22 The chief district judge of each district court district and the senior resident superior
23 court judge for the district shall jointly establish by local rules the procedure for
24 disposing of felonies under this section. The rules shall provide for verbatim recordation,
25 in a manner approved by the Administrative Office of the Courts, of proceedings related
26 to the felonies, including proceedings that are usually recorded in the superior court.

27 The judgment entered in the district court division shall be final as with judgments in
28 the superior court division, and any appeal authorized shall be to the appellate division.
29 Any proceedings that arise from the disposition of the case, including probation
30 revocation hearings, termination of drug treatment court program hearings, and
31 sentencing hearings, shall be handled under the jurisdiction of the district court similarly
32 to the practice and procedure in superior court, and the action of the district court shall be
33 final, including any appeal to the appellate division.

34 **"§ 7A-239.5. Admission of guilt and stipulation.**

35 In a pre-plea program, the defendant shall sign a confession of guilt to the charge and
36 stipulations as required by the district attorney.

37 **"§ 7A-239.6. Guilty plea.**

38 In a post-plea sentence deferral program, the defendant shall plead guilty before being
39 accepted into the drug treatment court program.

40 **"§ 7A-239.7. Withdrawal and restoration of rights.**

41 In a pre-plea diversion program case, the defendant has 30 calendar days from the
42 signing of the drug treatment court agreement to withdraw from the drug treatment court
43 program. The defendant shall notify the presiding judge in open court of the decision to

1 withdraw from the program and the decision to be tried on the original charge or charges.
2 Upon the judge's finding of withdrawal, all previously waived rights are restored to the
3 defendant and the defendant shall be given a date for trial or probable cause hearing.

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

8 **"§ 7A-239.8. Cost and fees.**

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

12 **"§ 7A-239.9. Restitution to victim.**

13 In any case in which a victim has suffered a monetary loss as a result of the acts for
14 which the defendant is charged, the drug treatment court judge shall order the defendant
15 to pay into the court money as restitution for the use and benefit of the victim. The
16 payment of restitution shall take precedence over the payment of the costs of treatment
17 and court costs. The clerk shall pay restitution to the victim as that restitution is paid into
18 the office of the clerk of superior court.

19 **"§ 7A-239.10. Disposition of charges against defendant completing program.**

20 Upon the defendant's successful completion of a pre-plea diversion program, the
21 district attorney shall dismiss the charge against the defendant.

22 Upon the defendant's successful completion of a post-plea sentence deferral program,
23 the judge shall allow the defendant to withdraw the plea and the district attorney shall
24 dismiss the case.

25 **"§ 7A-239.11. Report to the General Assembly.**

26 The Director of the Administrative Office of the Courts and the State Drug Court
27 Management Committee shall review all program evaluations and make
28 recommendations to the General Assembly regarding continued funding for drug
29 treatment courts in North Carolina.

30 The Director of the Administrative Office of the Courts shall make a full and
31 complete report to the General Assembly by March 1, 1997."

32 Sec. 2. G.S. 7A-272 is amended by adding a new subsection to read:

33 "(c) In any prosecutorial district participating in a drug treatment court program
34 established under Article 19A of the General Statutes as set out in G.S. 7A-233 et seq.
35 and entitled 'The North Carolina Drug Treatment Court Program Act of 1995', the district
36 court shall have concurrent jurisdiction with the superior court for the limited purpose of
37 accepting pleas of guilty or no contest from defendants who have agreed by written
38 agreement and written transcript of plea to enter a drug treatment court program, and of
39 entering judgment accordingly, with respect to any Class H or I felony. Entry of the plea
40 and disposition in the district court shall be accomplished according to either a bill of
41 information or a bill of indictment. Before accepting the plea, the court shall determine
42 that both the State and the defendant consent to entry of the plea and disposition in the
43 district court, and neither party may withdraw consent once the court accepts the plea.

1 The chief district judge of each district court district and the senior resident superior
2 court judge for the district shall jointly establish by local rules the procedure for
3 disposing of felonies under this subsection. The rules shall provide for verbatim
4 recording, in a manner approved by the Administrative Office of the Courts, of
5 proceedings related to the felonies, including proceedings that are usually recorded in the
6 superior court.

7 The judgment entered in the district court division shall be final as with judgments in
8 the superior court division, and any appeal authorized shall be to the appellate division.
9 Any proceedings that arise from the disposition of the case, including probation
10 revocation hearings, termination of drug treatment court program hearings, and
11 sentencing hearings, shall be handled under the jurisdiction of the district court similarly
12 to the practice and procedure in superior court, and the action of the district court shall be
13 final, including any appeal to the appellate division.

14 The costs of court for district court shall apply in a case disposed of in the district
15 court under this subsection unless the defendant has entered a plea in the superior court.
16 Once the defendant enters a plea in the superior court, the costs of superior court shall
17 attach for the case, even if the case is disposed of in district court and even though the
18 defendant has withdrawn the plea in the superior court."

19 Sec. 3. Article 26 of Chapter 15A of the General Statutes is amended by
20 adding a new section to read:

21 **"§ 15A-534.5. Detention of participants in drug treatment court program.**

22 In all cases in which the defendant is participating in a pre-plea diversion program or
23 a post-plea deferral program established under Article 19A of the General Statutes, the
24 drug treatment court judge may impose the following conditions upon finding that the
25 defendant has violated the terms and agreements of the the drug treatment court
26 agreement:

27 (1) That the defendant be incarcerated in or committed to an inpatient
28 residential treatment program or the custody of the sheriff of the county
29 for confinement in the county jail for a period of time as needed as a
30 treatment alternative. The total time for these incarcerations shall not
31 exceed 60 days per year. For purposes of this subdivision, a year is
32 calculated from the date of entry into the program.

33 (2) Any other conditions as established by G.S. 15A-535 or by the State
34 Drug Treatment Court Management Committee established in G.S. 7A-
35 239."

36 Sec. 4. G.S. 15A-641(b) reads as rewritten:

37 "(b) An information is a written accusation by a prosecutor, filed with a superior
38 court, or filed with a district court as to a defendant entering a plea of guilty or no contest
39 in the district court under G.S. 7A-272(c), charging a person represented by counsel with
40 the commission of one or more criminal offenses."

41 Sec. 5. G.S. 15A-644(b) reads as rewritten:

42 "(b) An information must contain everything required of an indictment in
43 subsection (a) except that the accusation is that of the prosecutor and the provisions of

1 subdivision (a)(5) do not ~~apply.~~ apply, and the name of the district court shall be used in
2 place of the superior court as to a case disposed of in the district court under G.S. 7A-
3 272(c). The information must also contain or have attached the waiver of indictment
4 pursuant to G.S. 15A-642(c)."

5 Sec. 6. G.S. 15A-923(a) reads as rewritten:

6 "(a) Prosecution on Information or Indictment. – The pleading in felony cases and
7 misdemeanor cases initiated in the superior court division must be a bill of indictment,
8 unless there is a waiver of the bill of indictment as provided in G.S. 15A-642. If there is a
9 waiver, the pleading must be an information. Either an indictment or an information may
10 serve as the pleading for a felony disposed of in the district court under G.S. 7A-272(c).
11 A presentment by the grand jury may not serve as the pleading in a criminal case."

12 Sec. 7. Funds to implement the provisions of this act shall be allocated from
13 the reserve created in Section 41 of Chapter 150 of the 1993 Session Laws.

14 Sec. 8. Sections 1 through 6 of this act become effective July 1, 1995, and
15 expire June 30, 1997. The remainder of this act becomes effective July 1, 1995.