

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1452

Short Title: Drug Treatment Court Act.

(Public)

Sponsors: Senator Odom.

Referred to: Judiciary II.

May 25, 1994

A BILL TO BE ENTITLED

AN ACT TO CREATE THE 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 there is a critical need in this State for programs within the criminal justice system that will reduce the incidences of drug addiction and crimes committed as a result of 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.

**"§ 7A-235. Definitions.**

The following definitions apply in this Article:

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

16 **"§ 7A-236. Establishment of program.**

17       The North Carolina Drug Treatment Court Program is established in the Judicial  
18 Department to facilitate the creation of drug treatment court programs and the funding  
19 of pilot drug treatment court programs. All drug treatment court programs shall operate  
20 according to this Article and the guidelines developed by the State Drug Treatment  
21 Court Management Committee. However, nothing in this Article prohibits or limits any  
22 prosecutorial district from establishing a local drug treatment court program regardless  
23 of source of funding.

24 **"§ 7A-237. Fund administration.**

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

37 **"§ 7A-238. Drug treatment court model.**

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

42 **"§ 7A-239. State Drug Treatment Court Management Committee.**

43       The State Drug Treatment Court Management Committee is established to monitor  
44 the drug treatment court program statewide. The Committee shall be chaired by the

1 Director of the Administrative Office of the Courts or the Director's designee and shall  
2 consist of the following persons or their designees:

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

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

13 **"§ 7A-239.1. Local drug treatment court management committee.**

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

- 18 (1) A district court judge.
- 19 (2) A district attorney or assistant district attorney.
- 20 (3) A public defender, assistant public defender, or member of the private  
21 criminal defense bar.
- 22 (4) A clerk of superior court.
- 23 (5) A representative of the local community college.
- 24 (6) A representative of treatment providers.
- 25 (7) The local program director.
- 26 (8) Any other person selected by the local management committee.

27 The local drug treatment court management committee shall promulgate guidelines,  
28 not inconsistent with State guidelines, necessary for the operation and evaluation of the  
29 local drug treatment court.

30 **"§ 7A-239.2. Plan for evaluation.**

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

35 **"§ 7A-239.3. Approval of district attorney.**

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

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

1 **"§ 7A-239.4. Limited jurisdiction in district court for guilty pleas.**

2 In any prosecutorial district participating in a program established under Article 19A  
3 of the General Statutes as set out in this Article, the district court shall have concurrent  
4 jurisdiction with the superior court for the limited purpose of accepting pleas of guilty  
5 or no contest from defendants who have agreed by written agreement and written  
6 transcript of plea to enter a drug treatment court program, and of entering judgment  
7 accordingly, with respect to any Class H, I, or J felony. Entry of the plea and  
8 disposition in the district court shall be accomplished according to either a bill of  
9 information or a bill of indictment. Before accepting the plea, the court shall determine  
10 that both the State and the defendant consent to entry of the plea and disposition in the  
11 district court, and neither party may withdraw consent once the court accepts the plea.

12 The chief district judge of each district court district and the senior resident superior  
13 court judge for the district shall jointly establish by local rules the procedure for  
14 disposing of felonies under this section. The rules shall provide for verbatim  
15 recording, in a manner approved by the Administrative Office of the Courts, of  
16 proceedings related to the felonies, including proceedings that are usually recorded in  
17 the superior court.

18 The judgment entered in the district court division shall be final as with judgments in  
19 the superior court division, and any appeal authorized shall be to the appellate division.  
20 Any proceedings that arise from the disposition of the case, including probation  
21 revocation hearings, termination of drug treatment court program hearings, and  
22 sentencing hearings, shall be handled under the jurisdiction of the district court similarly  
23 to the practice and procedure in superior court, and the action of the district court shall  
24 be final, including for the purpose of any appeal to the appellate division.

25 **"§ 7A-239.5. Admission of guilt and stipulation.**

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

28 **"§ 7A-239.6. Guilty plea.**

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

31 **"§ 7A-239.7. Withdrawal and restoration of rights.**

32 In a pre-plea diversion program case, the defendant has 30 calendar days from the  
33 signing of the drug treatment court agreement to withdraw from the drug treatment  
34 court program. The defendant shall notify the presiding judge in open court of the  
35 decision to withdraw from the program and the decision to be tried on the original  
36 charge or charges. Upon the judge's finding of withdrawal, all previously waived rights  
37 are restored to the defendant and the defendant shall be given a date for trial or probable  
38 cause hearing.

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

43 **"§ 7A-239.8. Cost and fees.**

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

4 **"§ 7A-239.9. Restitution to victim.**

5 In any case in which a victim has suffered a monetary loss as a result of the acts for  
6 which the defendant is charged, the drug treatment court judge shall order the defendant  
7 to pay into the court money as restitution for the use and benefit of the victim. The  
8 payment of restitution shall take precedence over the payment of the costs of treatment  
9 and court costs. The clerk shall pay restitution to the victim as that restitution is paid  
10 into the office of the clerk of superior court.

11 **"§ 7A-239.10. Disposition of charges against defendant completing program.**

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

14 Upon the defendant's successful completion of a post-plea sentence deferral program,  
15 the judge shall allow the defendant to withdraw the plea and the district attorney shall  
16 dismiss the case."

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

18 "(c) In any prosecutorial district participating in a drug treatment court program  
19 established under Article 19A of the General Statutes as set out in G.S. 7A-233 et seq.  
20 and entitled 'The North Carolina Drug Treatment Court Program Act of 1994', the  
21 district court shall have concurrent jurisdiction with the superior court for the limited  
22 purpose of accepting pleas of guilty or no contest from defendants who have agreed by  
23 written agreement and written transcript of plea to enter a drug treatment court program,  
24 and of entering judgment accordingly, with respect to any Class H, I, or J felony. Entry  
25 of the plea and disposition in the district court shall be accomplished according to either  
26 a bill of information or a bill of indictment. Before accepting the plea, the court shall  
27 determine that both the State and the defendant consent to entry of the plea and  
28 disposition in the district court, and neither party may withdraw consent once the court  
29 accepts the plea.

30 The chief district judge of each district court district and the senior resident superior  
31 court judge for the district shall jointly establish by local rules the procedure for  
32 disposing of felonies under this section. The rules shall provide for verbatim  
33 recording, in a manner approved by the Administrative Office of the Courts, of  
34 proceedings related to the felonies, including proceedings that are usually recorded in  
35 the superior court.

36 The judgment entered in the district court division shall be final as with judgments in  
37 the superior court division, and any appeal authorized shall be to the appellate division.  
38 Any proceedings that arise from the disposition of the case, including probation  
39 revocation hearings, termination of drug treatment court program hearings, and  
40 sentencing hearings, shall be handled under the jurisdiction of the district court similarly  
41 to the practice and procedure in superior court, and the action of the district court shall  
42 be final, including for the purpose of any appeal to the appellate division.

43 The costs of court for district court shall apply in a case disposed of in the district  
44 court under this section unless the defendant has entered a plea in the superior court.

1 Once the defendant enters a plea in the superior court, the costs of superior court shall  
2 attach for the case, even if the case is disposed of in district court and the defendant has  
3 withdrawn the plea in the superior court."

4 Sec. 3. G.S. 15A-641(b) reads as rewritten:

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

9 Sec. 4. G.S. 15A-644(b) reads as rewritten:

10 "(b) An information must contain everything required of an indictment in  
11 subsection (a) except that the accusation is that of the prosecutor and the provisions of  
12 subdivision (a)(5) do not ~~apply~~-apply, and the name of the district court shall be used in  
13 place of the superior court as to a case disposed of in the district court under G.S. 7A-  
14 272(c). The information must also contain or have attached the waiver of indictment  
15 pursuant to G.S. 15A-642(c)."

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

17 "(a) Prosecution on Information or Indictment. – The pleading in felony cases and  
18 misdemeanor cases initiated in the superior court division must be a bill of indictment,  
19 unless there is a waiver of the bill of indictment as provided in G.S. 15A-642. If there is  
20 a waiver, the pleading must be an information. Either an indictment or an information  
21 may serve as the pleading for a felony disposed of in the district court under G.S. 7A-  
22 272(c). A presentment by the grand jury may not serve as the pleading in a criminal  
23 case."

24 Sec. 6. Funds to implement the provisions of this act shall be allocated from  
25 the reserve created in Section 41 of Chapter 150 of the 1993 Session Laws.

26 Sec. 7. This act becomes effective July 1, 1994, and expires June 30, 1996.