

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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SENATE BILL 36*

Short Title: Drug Court Program Funds.

(Public)

Sponsors: Senators Cooper, Soles; Walker, Kerr, Gunter, Allran, Forrester, Cochrane, Smith, Kincaid, Hartsell, Carpenter, Codington, Blackmon, Shaw, Johnson, Winner of Mecklenburg, Kaplan, Tally, Ward, Odom, Plexico, Gulley, Plyler, Conder, Harris, Lucas, Martin of Guilford, Edwards, Warren, Albertson, Perdue, Daniel, Lee, Sands, Marshall, Seymour, Parnell, and Sherron.

Referred to: Courts.

February 9, 1994

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA DRUG 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 COURT PROGRAM ACT.

"§ 7A-233. Short title.

This Article shall be known and may be cited as the 'North Carolina Drug 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 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 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 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.

1 **"§ 7A-235. Definitions.**

2 Unless the context requires otherwise, the following definitions apply throughout
3 this Article:

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

21 **"§ 7A-236. Establishment of program.**

22 The North Carolina Drug Court Program is established in the Department of Justice
23 to facilitate the creation and funding of programs to reduce the incidence of drug
24 addiction and crimes committed as a result of drug addiction.

25 **"§ 7A-237. Fund administration.**

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

38 **"§ 7A-238. Drug court models.**

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

43 **"§ 7A-239. State Drug Court Management Committee.**

1 The State Drug Court Management Committee is established to monitor the drug
2 court program statewide. The Committee shall be chaired by the Attorney General or
3 the Attorney General's designee and shall consist of the following persons or their
4 designees:

- 5 (1) The Chief Justice of the North Carolina Supreme Court;
- 6 (2) The President of the Conference of District Attorneys;
- 7 (3) The Chief Appellate Defender;
- 8 (4) A representative of the North Carolina Community College System;
- 9 (5) A representative of the Department of Human Resources, Division of
10 Mental Health, Developmental Disabilities, and Substance Abuse
11 Services;
- 12 (6) The State Drug Court Program Director; and
- 13 (7) Any other person later selected by this Committee.

14 The Committee shall promulgate guidelines for the operation and evaluation of the
15 North Carolina Drug Court Program.

16 **"§ 7A-239.1. Local drug court management committee.**

17 Each district selected to participate in a pilot drug court program shall form a local
18 drug court management committee consisting of:

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

27 The local drug court management committee shall promulgate guidelines necessary
28 for the operation and evaluation of the local pilot program.

29 **"§ 7A-239.2. Plan for evaluation.**

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

34 **"§ 7A-239.3. Approval of district attorney.**

35 Within the general guidelines of the drug court models established pursuant to G.S.
36 7A-238, the district attorney in each prosecutorial district selected to participate in a
37 pilot drug court program shall at all times have the right to approve or reject a
38 defendant's entry into the drug court program.

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

43 **"§ 7A-239.4. Guilty plea.**

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

3 **"§ 7A-239.5. Withdrawal and restoration of rights.**

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

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

14 **"§ 7A-239.6. Cost and fees.**

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

18 **"§ 7A-239.7. Restitution to victim.**

19 In any case in which a victim has suffered a monetary loss as a result of the acts for
20 which the defendant is charged, the drug court judge shall order the defendant to pay
21 into the court money as restitution for the use and benefit of the victim. The payment of
22 restitution shall take precedence over the payment of the costs of treatment. The clerk
23 shall pay restitution to the victim as that restitution is paid into the office of the clerk of
24 superior court.

25 **"§ 7A-239.8. Disposition of charges against defendant completing program.**

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

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

31 Sec. 2. There is appropriated from the General Fund to the Drug Court
32 Program Fund established in the Department of Justice the sum of eight hundred
33 thousand dollars (\$800,000) for the 1994-95 fiscal year to implement and evaluate the
34 program established in this act.

35 Sec. 3. Section 1 of this act becomes effective May 1, 1994, and expires June
36 30, 1996. The remainder of this act is effective July 1, 1994.