

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 2881

By: West (Josh)

AS INTRODUCED

An Act relating to drug courts; amending 22 O.S. 2011, Sections 471.1, 471.2, as amended by Sections 1 and 2, Chapter 222, O.S.L. 2016, 471.3, 471.4, 471.6, as last amended by Section 1, Chapter 393, O.S.L. 2016, 471.7 and 471.9, as amended by Section 2, Chapter 393, O.S.L. 2016 (22 O.S. Supp. 2017, Sections 471.1, 471.2, 471.6 and 471.9), which relate to the Oklahoma Drug Court Act; modifying and deleting certain eligibility requirements for potential drug court participants; increasing time limitation for drug court reviews; providing notice requirement for offenders seeking drug court consideration; clarifying content of statements provided in drug court eligibility forms; removing and modifying recommendation requirements for initial drug court program hearings; authorizing court referrals to drug court despite objections by district attorneys; modifying time limitation for conducting drug court investigations; deleting mandatory eligibility requirement and plea agreement negotiation conditions; removing plea agreement requirement for final eligibility determinations; authorizing courts to determine sentence for offenders revoked from drug court program; deleting requirement that prohibits judges from amending written plea agreements; clarifying manner in which criminal cases are resolved after successful completion of drug court program; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 22 O.S. 2011, Section 471.1, as
2 amended by Section 1, Chapter 222, O.S.L. 2016 (22 O.S. Supp. 2017,
3 Section 471.1), is amended to read as follows:

4 Section 471.1 A. For purposes of this act, "drug court", "drug
5 court program" or "program" means an immediate and highly structured
6 judicial intervention process for substance abuse treatment of
7 eligible offenders which expedites the criminal case, and requires
8 successful completion of the plea agreement.

9 B. Each district court of this state is authorized to establish
10 a drug court program pursuant to the provisions of this act, subject
11 to availability of funds. Juvenile drug courts may be established
12 based upon the provisions of this act; provided, however, juveniles
13 shall not be held, processed, or treated in any manner which
14 violates any provision of Title 10A of the Oklahoma Statutes.

15 C. Drug court programs shall not apply to any violent criminal
16 offense. Eligible offenses may further be restricted by the rules
17 of the specific drug court program. Nothing in this act shall be
18 construed to require a drug court to consider every offender with a
19 treatable condition or addiction, regardless of the fact that the
20 controlling offense is eligible for consideration in the program.
21 Traditional prosecution shall be required where an offender is
22 determined not appropriate for the drug court program.

23 D. Drug court programs shall require a separate judicial
24 processing system differing in practice and design from the

1 traditional adversarial criminal prosecution and trial systems.
2 Whenever possible, a drug court team shall be designated consisting
3 of a judge to administer the program, a district attorney, a defense
4 attorney, and other persons designated by the drug court team who
5 shall have appropriate understanding of the goals of the program and
6 of the appropriate treatment methods for the various conditions.
7 The assignment of any person to the drug court team shall not
8 preclude the assigned person from performing other duties required
9 in the course of their office or employment. The chief judge of the
10 judicial district, or if the district has more than one chief judge
11 than the presiding judge of the Administrative Judicial District,
12 shall designate one or more judges to administer the drug court
13 program. The assignment of any judge to a drug court program or the
14 designation of a drug court docket shall not mandate the assignment
15 of all substance abuse related cases to the drug court docket or the
16 program; however, nothing in this act shall be construed to preclude
17 the assignment of all criminal cases relating to substance abuse or
18 drug possession as provided by the rules established for the
19 specific drug court program.

20 E. When a drug court program is established, the arresting
21 officer shall file the criminal case record for potentially eligible
22 offenders with the district attorney within four (4) days of the
23 arrest. The district attorney shall file an information in the case
24 within twenty-four (24) hours of receipt of the criminal case record

1 ~~when the offender appears eligible for consideration for the~~
2 ~~program.~~ The information may be amended as necessary when an
3 offender is denied admittance into the drug court program or for
4 other purposes as provided in Section 304 of this title. ~~Any person~~
5 ~~arrested upon a warrant for his or her arrest shall not be eligible~~
6 ~~for the drug court program without the approval of the district~~
7 ~~attorney.~~ Any criminal case which has been filed and processed in
8 the traditional manner shall be cross-referenced to a drug court
9 case file by the court clerk, if the case is subsequently assigned
10 to the drug court program. The originating criminal case file shall
11 remain open to public inspection. The judge shall determine what
12 information or pleadings are to be retained in the drug court case
13 file, which shall be closed to public inspection.

14 F. The court may request assistance from the Department of
15 Mental Health and Substance Abuse Services which shall be the
16 primary agency to assist in developing and implementing a drug court
17 program or from any state or local agency in obtaining the necessary
18 treatment services which will assure maximum opportunity for
19 successful treatment, education, and rehabilitation for offenders
20 admitted to the program. All participating state and local agencies
21 are directed to coordinate with each other and cooperate in
22 assisting the district court in establishing a drug court program.

23 G. Each drug court program shall ensure, but not be limited to:

24 1. Strong linkage between participating agencies;

- 1 2. Access by all participating parties of a case to information
- 2 on the progress of the offender;
- 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 proceedings;
- 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;
- 11 8. Methods for measuring application of disciplinary sanctions,
- 12 including provisions for:
 - 13 a. increased supervision,
 - 14 b. urinalysis testing,
 - 15 c. intensive treatment,
 - 16 d. short-term confinement not to exceed five (5) days,
 - 17 e. recycling the offender into the program after a
 - 18 disciplinary action for a minimum violation of the
 - 19 treatment plan,
 - 20 f. reinstating the offender into the program after a
 - 21 disciplinary action for a major violation of the
 - 22 treatment plan, and
 - 23 g. revocation from the program; and
 - 24

1 9. Methods for measuring performance-based effectiveness of
2 each individual treatment provider's services.

3 H. All drug court programs shall be required to keep reliable
4 data on recidivism, relapse, restarts, sanctions imposed, and
5 incentives given.

6 I. Nothing in this section shall prohibit any county from
7 establishing a drug court for misdemeanor offenses. Such
8 misdemeanor drug courts shall follow the rules and regulations of
9 felony drug courts except that the penalty for revocation shall not
10 exceed one (1) year in the county jail or the maximum penalty for
11 the misdemeanor allowed by statute, whichever is less. The
12 Department of Mental Health and Substance Abuse Services shall
13 provide technical assistance to the counties that establish
14 misdemeanor drug courts.

15 SECTION 2. AMENDATORY 22 O.S. 2011, Section 471.2, as
16 last amended by Section 2, Chapter 222, O.S.L. 2016 (22 O.S. Supp.
17 2017, Section 471.2), is amended to read as follows:

18 Section 471.2 A. The ~~initial~~ opportunity for review of an
19 offender for a drug court program shall occur ~~within four (4) days~~
20 ~~after the arrest and detention or incarceration of the offender in~~
21 ~~the city or county jail, or if an immediate bond release program is~~
22 ~~available through the jail, the initial opportunity for review shall~~
23 ~~occur in conjunction with the bond release program~~ at any time prior
24 to disposition of the case and sentencing of the offender. When a

1 drug court is established, the following information shall be
2 initially reviewed by the sheriff or designee, if the offender is
3 held in a county jail, or by the chief of police or designee, if the
4 offender is held in a city jail:

5 1. The offender's arrest or charge does not involve a crime of
6 violence against any person, unless there is a specific treatment
7 program in the jurisdiction designed to address domestic violence
8 and the offense is related to domestic violence and substance abuse;

9 2. The offender has no prior felony conviction in this state or
10 another state for a violent offense within the last ten (10) years,
11 except as may be allowed in a domestic violence treatment program
12 authorized by the drug court program. It shall be sufficient for
13 this paragraph that a criminal history records name search was
14 conducted and indicated no apparent violent offense;

15 3. The offender's arrest or charge does not involve a violation
16 of the Trafficking In Illegal Drugs Act;

17 4. The offender has committed a felony offense; and

18 5. The offender:

- 19 a. admits to having a substance abuse addiction,
- 20 b. appears to have a substance abuse addiction,
- 21 c. is known to have a substance abuse addiction,
- 22 d. the arrest or charge is based upon an offense eligible
- 23 for the drug court program, or
- 24

1 ~~f.~~ e. is a person who has had an assessment authorized by
2 Section 3-704 of Title 43A of the Oklahoma Statutes or
3 drug court investigation and the assessment or
4 investigation recommends the drug court program.

5 B. If it appears to the reviewing officer that the offender may
6 be potentially eligible for the drug court program based upon a
7 review of the information in subsection A of this section, the
8 offender shall be given an eligibility form which may be voluntarily
9 completed by the offender, and the reviewing officer shall file the
10 criminal case record within the time prescribed in subsection E of
11 Section 471.1 of this title. The offender shall not automatically
12 be considered for the program based upon this review. The offender
13 must request consideration for the drug court program as provided in
14 subsection C of this section and shall ~~have approval from the~~
15 ~~district attorney~~ provide notice to the drug court judge before
16 being considered for the drug court program. The eligibility form
17 shall describe the drug court program for which the offender may be
18 eligible, including, but not limited to:

19 1. A full description of the drug court process and
20 investigation;

21 2. A general explanation of the roles and authority of the
22 supervising staff, the district attorney, the defense attorney, the
23 treatment provider, the offender, and the judge in the drug court
24 program;

1 3. A clear statement that the drug court judge may decide after
2 a hearing not to consider the offender for the drug court program
3 and in that event the offender will be prosecuted in the traditional
4 manner;

5 4. A clear statement that the offender is required, before
6 consideration in the program, to enter a guilty plea as part of a
7 written plea agreement or to be subject to sentencing by the court
8 without a plea agreement;

9 5. A clear statement that the plea agreement will specify the
10 offense to which the guilty plea will be entered and will state any
11 penalty to be imposed for the offense, both in the event of a
12 successful completion of the drug court program, and in the event of
13 a failure to complete the program, or if there is no plea agreement,
14 that the offender will be subject to a penalty to be determined by
15 the court in the event of a successful completion of the drug court
16 program, and in the event of a failure to complete the program. Any
17 penalty shall emphasize reparation to the victim, community and
18 state;

19 6. A clear statement that the offender must voluntarily agree
20 to:

- 21 a. waive the right to a speedy trial,
- 22 b. waive the right to a preliminary hearing,
- 23 c. the terms and conditions of a treatment plan, and
- 24 d. sign a performance contract with the court;

1 7. A clear statement that the offender, if accepted into the
2 drug court program, may not be incarcerated for the offense in a
3 state correctional institution or jail upon successful completion of
4 the program;

5 8. A clear statement that during participation in the drug
6 court program should the offender fail to comply with the terms of
7 the agreement, the offender may be sanctioned to serve a term of
8 confinement of six (6) months in an intermediate revocation facility
9 operated by the Department of Corrections. An offender shall not be
10 allowed to serve more than two separate terms of confinement in an
11 intermediate revocation facility;

12 9. A clear statement that during participation in the drug
13 court program should the offender:

- 14 a. fail to comply with the terms of the agreements,
- 15 b. be convicted of a misdemeanor offense which reflects a
16 propensity for violence,
- 17 c. be arrested for a violent felony offense, or
- 18 d. be convicted of any felony offense,

19 the offender may be required, after a court hearing, to be revoked
20 from the program and sentenced without trial pursuant to the
21 punishment provisions of the negotiated plea agreement, or if no
22 plea agreement, to a sentence to be determined by the court; and
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24

1 10. An explanation of the criminal record retention and
2 disposition resulting from participation in the drug court program
3 following successful completion of the program.

4 C. 1. The offender may request consideration for the drug
5 court program as follows:

6 a. if the offender is incarcerated, the offender must
7 sign and complete the eligibility form and return it
8 to the sheriff, the attorney for the offender or the
9 judge, if the offender is held in the county jail; or
10 to the chief of police, the attorney for the offender
11 or the judge, if the offender is held in a city jail.
12 The sheriff or chief of police, upon receipt of the
13 eligibility form, shall file the form with the
14 ~~district attorney~~ drug court clerk at the time of
15 filing the criminal case record or at any time during
16 the period of incarceration when the offender
17 completes the form after the criminal case record has
18 been filed, or

19 b. after release of the offender from incarceration, the
20 offender must sign and complete the eligibility form
21 and file it with the ~~district attorney or the court,~~
22 ~~prior to or at the time of either initial appearance~~
23 ~~or arraignment~~ drug court clerk.

1 2. Any offender desiring legal consultation prior to signing or
2 completing the form for consideration in a drug court program shall
3 be referred to the defense attorney of the drug court team, or a
4 public defender, if the offender is indigent, or allowed to consult
5 with private legal counsel.

6 3. Nothing contained in the provisions of this subsection shall
7 prohibit the drug court from considering any offender deemed
8 eligible for the program at any time prior to sentencing whose case
9 has been prosecuted in the traditional manner, or upon a violation
10 of parole or probation conditions relating to substance abuse, ~~upon~~
11 ~~recommendation of the district attorney~~ as provided in Section 471.8
12 of this title.

13 D. When an offender has filed a voluntary request to be
14 considered for a drug court program on the appropriate form, the
15 district attorney shall indicate his or her approval or disapproval
16 of the request by filing the form with the drug court judge. Upon
17 the filing of the request form by the district attorney, an initial
18 hearing shall be set before the drug court judge. The hearing shall
19 be not less than three (3) work days nor more than five (5) work
20 days after the date of the filing of the request form. Notice of
21 the hearing shall be given to the drug court team, or in the event
22 no drug court team is designated, to the offender, the district
23 attorney, and to the public defender. The offender shall be
24

1 required to notify any private legal counsel of the date and time of
2 the hearing.

3 SECTION 3. AMENDATORY 22 O.S. 2011, Section 471.3, is
4 amended to read as follows:

5 Section 471.3 A. At the initial hearing for consideration of
6 an offender for a drug court program, the district attorney shall
7 determine whether or not:

8 1. ~~The offender has approval to be considered for the drug~~
9 ~~court program;~~

10 2. The offender has been admitted to the program within the
11 preceding five (5) years; and

12 3. ~~2.~~ Any statutory preclusion, ~~other prohibition, or program~~
13 ~~limitation~~ exists and is applicable to considering the offender for
14 the program.

15 The district attorney may object to the consideration of an
16 offender for the drug court program at the initial hearing as a
17 factor to be considered by the judge.

18 B. If the offender voluntarily consents to be considered for
19 the drug court program, has signed and filed the required form
20 requesting consideration, and ~~no~~ the court has considered any
21 ~~objection has been made~~ by the district attorney, the court ~~shall~~
22 may refer the offender for a drug court investigation as provided in
23 Section ~~5~~ 471.4 of this ~~act~~ title, and set a date for a hearing to
24 determine final eligibility for admittance into the program.

1 C. ~~Upon any objection of the district attorney for~~
2 ~~consideration of an offender for the program, the court shall deny~~
3 ~~consideration of the offender's request for participation in the~~
4 ~~drug court program.~~ Upon denial by the court for consideration in
5 the drug court program at the initial hearing, the criminal case
6 shall proceed in the traditional manner. ~~An objection by the~~
7 ~~district attorney and the subsequent denial~~ Denial of consideration
8 of the offender for the program shall not preclude any future
9 consideration of the offender for the drug court program with the
10 approval of the ~~district attorney~~ drug court judge.

11 SECTION 4. AMENDATORY 22 O.S. 2011, Section 471.4, is
12 amended to read as follows:

13 Section 471.4 A. When directed by the drug court judge, the
14 supervising staff for the drug court program shall make an
15 investigation of the offender under consideration to determine
16 whether or not the offender is a person who:

17 1. Would benefit from the drug court program; and

18 2. Is appropriate for the drug court program.

19 B. The drug court investigation shall be conducted through a
20 standardized screening test and personal interview. A more
21 comprehensive assessment may take place at the time the offender
22 enters the treatment portion of the program and may take place at
23 any time after placement in the drug court program. The
24 investigation shall determine the original treatment plan which the

1 offender will be required to follow, if admitted to the program.

2 Any subsequent assessments or evaluations by the treatment provider,
3 if the offender is admitted to the program, may be used to determine
4 modifications needed to the original treatment plan. The
5 investigation shall include, but not be limited to, the following
6 information:

7 1. The person's age and physical condition;

8 2. Employment and military service records;

9 3. Educational background and literacy level;

10 4. Community and family relations;

11 5. Prior and current drug and alcohol use;

12 6. Mental health and medical treatment history, including
13 substance abuse treatment history;

14 7. Demonstrable motivation; and

15 8. Other mitigating or aggravating factors.

16 C. The drug court investigation ~~shall~~ may be conducted before
17 or after the initial hearing for consideration and but shall occur
18 before the hearing for final determination of eligibility for the
19 drug court program. When an offender is appropriate for admittance
20 to the program, the supervising staff shall make a recommendation
21 for the treatment program or programs that are available in the
22 jurisdiction and which would benefit the offender and accept the
23 offender. The investigation findings and recommendations for
24 program placement shall be reported to the drug court judge, the

1 district attorney, the offender, and the defense attorney prior to
2 the next scheduled hearing.

3 D. The district attorney ~~and the~~, defense attorney for the
4 offender and the drug court team shall independently review the
5 findings and recommendations of the drug court investigation report.
6 ~~For an offender to remain eligible for consideration in the program,~~
7 ~~both the district attorney and the defense attorney must accept the~~
8 ~~recommended treatment plan, and shall negotiate the terms of the~~
9 ~~written plea agreement with all punishment provisions specified~~
10 ~~before the scheduled hearing date for determining final eligibility.~~
11 ~~Upon failure of the district attorney and defense attorney to~~
12 ~~negotiate the written plea agreement, the criminal case shall be~~
13 ~~withdrawn from the drug court program and processed in the~~
14 ~~traditional manner. The punishment provisions of the written plea~~
15 ~~agreement shall emphasize reparation to the victim, community, and~~
16 ~~state.~~

17 E. The hearing to determine final eligibility shall be set not
18 less than three (3) work days nor more than seven (7) work days from
19 the date of the initial hearing for consideration, unless extended
20 by the court.

21 F. For purposes of this act, "supervising staff" means a
22 Department of Corrections employee assigned to monitor offenders in
23 the drug court program, a community provider assigned to monitor
24 offenders in the program, a state or local agency representative or

1 a certified treatment provider participating in the program, or a
2 person designated by the judge to perform drug court investigations.

3 SECTION 5. AMENDATORY 22 O.S. 2011, Section 471.6, as
4 last amended by Section 1, Chapter 393, O.S.L. 2016 (22 O.S. Supp.
5 2017, Section 471.6), is amended to read as follows:

6 Section 471.6 A. The drug court judge shall conduct a hearing
7 as required by subsection E of Section 471.4 of this title to
8 determine final eligibility by considering:

9 1. Whether or not the offender voluntarily consents to the
10 program requirements;

11 2. Whether or not to accept the offender based upon the
12 findings and recommendations of the drug court investigation
13 authorized by Section 471.4 of this title;

14 3. Whether or not there is a written plea agreement, and if so,
15 whether the terms and conditions of the written negotiated plea
16 between the district attorney, the defense attorney, and the
17 offender are appropriate and consistent with the penalty provisions
18 and conditions of other similar cases;

19 4. Whether or not there is an appropriate treatment program
20 available to the offender and whether or not there is a recommended
21 treatment plan; and

22 5. Any information relevant to determining eligibility;
23 provided, however, an offender shall not be denied admittance to any
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1 drug court program based upon an inability to pay court costs or
2 other costs or fees.

3 B. At the hearing to determine final eligibility for the drug
4 court program, the judge shall not grant any admission of any
5 offender to the program when:

6 1. The required treatment plan ~~and plea agreement have~~ has not
7 been completed;

8 2. The program funding or availability of treatment has been
9 exhausted;

10 3. The treatment program is unwilling to accept the offender;

11 4. The offender was ineligible for consideration by the nature
12 of a violent offense at the time of arrest, and the charge has been
13 modified to meet the eligibility criteria of the program; or

14 5. The offender is inappropriate for admission to the program,
15 in the discretion of the judge.

16 C. At the final eligibility hearing, if evidence is presented
17 that was not discovered by the drug court investigation, the
18 district attorney or the defense attorney may make an objection and
19 may ask the court to withdraw ~~the~~ any plea agreement previously
20 negotiated. The court shall determine whether to proceed and
21 overrule the objection, to sustain the objection and transfer the
22 case for traditional criminal prosecution, ~~or to require further~~
23 ~~negotiations of the plea or punishment provisions.~~ The decision of
24 the judge for or against eligibility and admission shall be final.

1 D. When the court accepts the treatment plan with ~~the~~ any
2 written plea agreement, the offender, upon entering the plea as
3 agreed by the parties, shall be ordered and escorted immediately
4 into the program. The offender must have voluntarily signed the
5 necessary court documents before the offender may be admitted to
6 treatment. The court documents shall include:

7 1. Waiver of the offender's ~~rights~~ right to a speedy trial;

8 2. A Any written plea agreement that has been entered into
9 which sets forth the offense charged, the penalty to be imposed for
10 the offense in the event of a breach of the agreement, and the
11 penalty to be imposed, if any, in the event of a successful
12 completion of the treatment program; provided, however,
13 incarceration shall be prohibited when the offender completes the
14 treatment program;

15 3. A written treatment plan which is subject to modification at
16 any time during the program; and

17 4. A written performance contract requiring the offender to
18 enter the treatment program as directed by the court and participate
19 until completion, withdrawal, or removal by the court.

20 E. If admission into the drug court program is denied, the
21 criminal case shall be returned to the traditional criminal docket
22 and shall proceed as provided for any other criminal case.
23
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1 F. At the time an offender is admitted to the drug court
2 program, any bail or undertaking on behalf of the offender shall be
3 exonerated.

4 G. The period of time during which an offender may participate
5 in the active treatment portion of the drug court program shall be
6 not less than six (6) months nor more than twenty-four (24) months
7 and may include a period of supervision not less than six (6) months
8 nor more than one (1) year following the treatment portion of the
9 program. The period of supervision may be extended by order of the
10 court for not more than six (6) months. No treatment dollars shall
11 be expended on the offender during the extended period of
12 supervision. If the court orders that the period of supervision
13 shall be extended, the drug court judge, district attorney, the
14 attorney for the offender, and the supervising staff for the drug
15 court program shall evaluate the appropriateness of continued
16 supervision on a quarterly basis. All participating treatment
17 providers shall be certified by the Department of Mental Health and
18 Substance Abuse Services and shall be selected and evaluated for
19 performance-based effectiveness annually by the Department of Mental
20 Health and Substance Abuse Services. Treatment programs shall be
21 designed to be completed within twelve (12) months and shall have
22 relapse prevention and evaluation components.

23 H. The drug court judge shall order the offender to pay court
24 costs, treatment costs, drug testing costs, a program user fee not

1 to exceed Twenty Dollars (\$20.00) per month, and necessary
2 supervision fees, unless the offender is indigent. The drug court
3 judge shall establish a schedule for the payment of costs and fees.
4 The cost for treatment, drug testing, and supervision shall be set
5 by the treatment and supervision providers respectively and made
6 part of the court's order for payment. User fees shall be set by
7 the drug court judge within the maximum amount authorized by this
8 subsection and payable directly to the court clerk for the benefit
9 and administration of the drug court program. Treatment, drug
10 testing, and supervision costs shall be paid to the respective
11 providers. The court clerk shall collect all other costs and fees
12 ordered. The remaining user fees shall be remitted to the State
13 Treasurer by the court clerk for deposit in the Department of Mental
14 Health and Substance Abuse Services' Drug Abuse Education and
15 Treatment Revolving Fund established pursuant to Section 2-503.2 of
16 Title 63 of the Oklahoma Statutes. Court orders for costs and fees
17 pursuant to this subsection shall not be limited for purposes of
18 collection to the maximum term of imprisonment for which the
19 offender could have been imprisoned for the offense, nor shall any
20 court order for costs and fees be limited by any term of probation,
21 parole, supervision, treatment, or extension thereof. Court orders
22 for costs and fees shall remain an obligation of the offender until
23 fully paid; provided, however, once the offender has successfully
24 completed the drug court program, the drug court judge shall have

1 the discretion to expressly waive all or part of the costs and fees
2 provided for in this subsection if, in the opinion of the drug court
3 judge, continued payment of the costs and fees by the offender would
4 create a financial hardship for the offender. Offenders who have
5 not fully paid all costs and fees pursuant to court order but who
6 have otherwise successfully completed the drug court program shall
7 not be counted as an active drug court participant for purposes of
8 drug court contracts or program participant numbers.

9 I. Notwithstanding any other provision of law, if the driving
10 privileges of the offender have been suspended, revoked, cancelled
11 or denied by the Department of Public Safety and if the drug court
12 judge determines that no other means of transportation for the
13 offender is available, the drug court judge may enter a written
14 order requiring the Department of Public Safety to stay any and all
15 such actions against the Class D driving privileges of the offender;
16 provided, the stay shall not be construed to grant driving
17 privileges to an offender who has not been issued a driver license
18 by the Department or whose Oklahoma driver license has expired, in
19 which case the offender shall be required to apply for and be found
20 eligible for a driver license, pass all examinations, if applicable,
21 and pay all statutory driver license issuance or renewal fees. The
22 offender shall provide proof of insurance to the drug court judge
23 prior to the judge ordering a stay of any driver license suspension,
24 revocation, cancellation, or denial. When a judge of a drug court

1 enters a stay against an order by the Department of Public Safety
2 suspending or revoking the driving privileges of an offender, the
3 time period set in the order by the Department for the suspension or
4 revocation shall continue to run during the stay. When an offender
5 has successfully completed the drug court program, the drug court
6 judge shall maintain jurisdiction over the offender's driving
7 privileges for one (1) year after the date on which the offender
8 graduates from the drug court program.

9 SECTION 6. AMENDATORY 22 O.S. 2011, Section 471.7, is
10 amended to read as follows:

11 Section 471.7 A. The designated drug court judge shall make
12 all judicial decisions concerning any case assigned to the drug
13 court docket or program. The judge shall require progress reports
14 and a periodic review of each offender during his or her period of
15 participation in the drug court program or for purposes of
16 collecting costs and fees after completion of the treatment portion
17 of the program. Reports from the treatment providers and the
18 supervising staff shall be presented to the drug court judge as
19 specified by the treatment plan or as ordered by the court.

20 B. Upon the written or oral motion of the treatment provider,
21 the district attorney, the defense attorney, the defendant, or the
22 supervising staff, the drug court judge shall set a date for a
23 hearing to review the offender, the treatment plan, and the
24 provisions of the performance contract. Notice shall be given to

1 the offender and the other parties participating in the drug court
2 case three (3) days before the hearing may be held.

3 C. The judge may establish a regular schedule for progress
4 hearings for any offender in the drug court program. The district
5 attorney shall not be required to attend regular progress hearings,
6 but shall be required to be present upon the motion of any party to
7 a drug court case.

8 D. The treatment provider, the supervising staff, the district
9 attorney, and the defense attorney shall be allowed access to all
10 information in the offender's drug court case file and all
11 information presented to the judge at any periodic review or
12 progress hearing.

13 E. The drug court judge shall recognize relapses and restarts
14 in the program which are considered to be part of the rehabilitation
15 and recovery process. The judge shall accomplish monitoring and
16 offender accountability by ordering progressively increasing
17 sanctions or providing incentives, rather than removing the offender
18 from the program when relapse occurs, except when the offender's
19 conduct requires revocation from the program. Any revocation from
20 the drug court program shall require notice to the offender and
21 other participating parties in the case and a revocation hearing.
22 At the revocation hearing, if the offender is found to have violated
23 the conditions of the plea agreement or performance contract and
24 disciplinary sanctions have been insufficient to gain compliance,

1 the offender shall be revoked from the program and sentenced for the
2 offense as provided in the plea agreement or if there is no plea
3 agreement, to a sentence to be determined by the court.

4 F. Upon application of any participating party to a drug court
5 case, the judge may modify a treatment plan at any hearing when it
6 is determined that the treatment is not benefiting the offender.
7 The primary objective of the judge in monitoring the progress of the
8 offender and the treatment plan shall be to keep the offender in
9 treatment for a sufficient time to change behaviors and attitudes.
10 Modification of the treatment plan requires a consultation with the
11 treatment provider, supervising staff, district attorney, and the
12 defense attorney in open court.

13 ~~G. The judge shall be prohibited from amending the written plea~~
14 ~~agreement after an offender has been admitted to the drug court~~
15 ~~program.~~ Nothing in this provision shall be construed to limit the
16 authority of the judge to remove an offender from the program and
17 impose ~~the required~~ punishment ~~stated in the plea agreement~~ within
18 the law after application, notice, and hearing.

19 SECTION 7. AMENDATORY 22 O.S. 2011, Section 471.9, as
20 amended by Section 2, Chapter 393, O.S.L. 2016 (22 O.S. Supp. 2017,
21 Section 471.9), is amended to read as follows:

22 Section 471.9 A. When an offender has successfully completed
23 the drug court program, the criminal case against the offender shall
24 be:

1 1. Dismissed if the offense was a first felony offense; or

2 2. If the offender has a prior felony conviction, the
3 disposition shall be as specified in the written plea agreement if
4 one exists, or determined by the court.

5 B. The final disposition order for a drug court case shall be
6 filed with the judge assigned to the case, and shall indicate the
7 sentence specified in the written plea agreement. A copy of the
8 final disposition order for the drug court case shall also be filed
9 in the original criminal case file under the control of the court
10 clerk which is open to the public for inspection. Original criminal
11 case files which are under the control of the court clerk and which
12 are subsequently assigned to the drug court program shall be marked
13 with a pending notation until a final disposition order is entered
14 in the drug court case. After an offender completes the program,
15 the drug court case file shall be sealed by the judge and may be
16 destroyed after ten (10) years. The district attorney shall have
17 access to sealed drug court case files without a court order.

18 C. A record pertaining to an offense resulting in a successful
19 completion of a drug court program shall not, without the offender's
20 consent in writing, be used in any way which could result in the
21 denial of any employee benefit.

22 D. Successful completion of a drug court program shall not
23 prohibit any administrative agency from taking disciplinary action
24

1 against any licensee or from denying a license or privilege as may
2 be required by law.

3 E. When the offender has successfully completed the drug court
4 program, the drug court judge shall have the discretion to expressly
5 waive all or part of the court costs and fees, driver license
6 reinstatement fees, if applicable, and fines associated with the
7 criminal case if, in the opinion of the drug court judge, continued
8 payment of the court costs, fees and fines by the offender would
9 create a financial hardship for the offender, including specifically
10 the discretion to waive any requirement that fines and costs be
11 satisfied by a person prior to that person being eligible for a
12 provisional driver license pursuant to Section 6-212 of Title 47 of
13 the Oklahoma Statutes.

14 SECTION 8. This act shall become effective November 1, 2018.

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