

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 HOUSE BILL 2934

 By: Walke and **West (Josh)**

7 AS INTRODUCED

8 An Act relating to criminal procedure; creating the
9 Oklahoma Mental Health Court Act; defining term;
10 authorizing district courts to establish a mental
11 health court program; authorizing juvenile mental
12 health courts; prohibiting inclusion of violent
13 offenses; authorizing further limitation of offenses;
14 requiring separate judicial processing; providing for
15 certain team members; directing administration by
16 judge; establishing the Department of Mental Health
17 and Substance Abuse Services as primary agency;
18 authorizing assistance and cooperation from state
19 agencies; providing certain components of program;
20 requiring data to be kept; allowing for establishment
21 of mental health court for misdemeanor offenses;
22 directing certain review for eligibility; requiring
23 completion of eligibility form; providing contents of
24 eligibility form; providing procedure to request
 consideration; providing for hearing and notice;
 directing the district attorney to make certain
 determinations; allowing for objections by district
 attorney; providing for investigation and testing;
 providing for treatment plan; requiring report of
 investigation findings and recommendations; requiring
 written plea agreement; providing time for hearings;
 defining term; prohibiting use of certain
 information; authorizing admissibility of certain
 information; directing photographic records be kept;
 requiring hearing for final eligibility; providing
 for denial of acceptance; requiring exoneration of
 bail; stating program duration; authorizing fees;
 providing for collection of costs and fees; allowing
 for stay of actions against driving privileges;
 requiring progress reports and periodic review;

1 directing notice and hearing; granting access to
2 court information; providing for disciplinary
3 sanctions and incentives; providing for revocation
4 from program; authorizing modification of the
5 treatment plan; prohibiting modification of written
6 plea agreement; authorizing program as disciplinary
7 sanction for parolee or probationer under certain
8 condition; providing for disposition of case;
9 directing filing of disposition; prohibiting use of
10 program participation for denial of employee
11 benefits; authorizing judicial discretion to waive
12 fines and costs; directing certain state agencies to
13 develop standardized testing instrument; directing
14 the Administrative Office of the Courts to promulgate
15 rules; directing the Department of Mental Health and
16 Substance Abuse Services to develop training and
17 implementation manual; directing all participating
18 agencies to promulgate necessary rules; construing
19 authority for certain treatment under deferred
20 prosecution program; repealing 22 O.S. 2011, Section
21 472, as amended by Section 1, Chapter 180, O.S.L.
22 2014 (22 O.S. Supp. 2019, Section 472), which relates
23 to the Anna McBride Act; providing for codification;
24 and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 473 of Title 22, unless there is
created a duplication in numbering, reads as follows:

Sections 1 through 12 of this act shall be known and may be
cited as the "Oklahoma Mental Health Court Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 473.1 of Title 22, unless there
is created a duplication in numbering, reads as follows:

1 A. For purposes of the Oklahoma Mental Court Act, "mental
2 health court", "mental health court program" or "program" means an
3 immediate and highly structured judicial intervention process for
4 mental health treatment of eligible offenders which expedites the
5 criminal case, and requires successful completion of the plea
6 agreement.

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

14 C. Mental health court programs shall not apply to any violent
15 criminal offense. Eligible offenses may further be restricted by
16 the rules of the specific mental health court program. Nothing in
17 this act shall be construed to require a mental health court to
18 consider every offender with a treatable condition. Traditional
19 prosecution shall be required if an offender is determined not
20 appropriate for the mental health court program.

21 D. Mental health court programs shall require a separate
22 judicial processing system differing in practice and design from the
23 traditional adversarial criminal prosecution and trial systems.
24 Whenever possible, a mental health court team shall be designated,

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

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

1 the criminal case record when the offender appears eligible for
2 consideration for the program. The information may be amended as
3 necessary when an offender is denied admittance into the mental
4 health court program or for other purposes as provided in Section
5 304 of Title 22 of the Oklahoma Statutes. Any person arrested upon
6 a warrant for his or her arrest shall not be eligible for the mental
7 health court program without the approval of the district attorney.
8 Any criminal case which has been filed and processed in the
9 traditional manner shall be cross-referenced to a mental health
10 court case file by the court clerk, if the case is subsequently
11 assigned to the mental health court program. The originating
12 criminal case file shall remain open to public inspection. The
13 judge shall determine what information or pleadings are to be
14 retained in the mental health court case file, which shall be closed
15 to public inspection.

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

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1 cooperate in assisting the district court in establishing a mental
2 health court program.

3 G. Each mental health court program shall ensure, but not be
4 limited to:

5 1. Strong linkage between participating agencies;

6 2. Access by all participating parties of a case to information
7 on the progress of the offender;

8 3. Vigilant supervision and monitoring procedures;

9 4. Random substance abuse testing;

10 5. Provisions for noncompliance, modification of the treatment
11 plan and revocation proceedings;

12 6. Availability of residential treatment facilities and
13 outpatient services;

14 7. Payment of court costs, treatment costs, supervision fees
15 and program user fees by the offender;

16 8. Methods for measuring application of disciplinary sanctions,
17 including provisions for:

18 a. increased supervision,

19 b. urinalysis testing,

20 c. intensive treatment,

21 d. short-term confinement not to exceed five (5) days,

22 e. recycling the offender into the program after a
23 disciplinary action for a minimum violation of the
24 treatment plan,

1 f. reinstating the offender into the program after a
2 disciplinary action for a major violation of the
3 treatment plan, and

4 g. revocation from the program; and

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

7 H. All mental health court programs shall be required to keep
8 reliable data on recidivism, relapse, restarts, sanctions imposed
9 and incentives given.

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

19 SECTION 3. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 473.2 of Title 22, unless there
21 is created a duplication in numbering, reads as follows:

22 A. The opportunity for review of an offender for a mental
23 health court program shall occur at any time prior to disposition of
24 the case and sentencing of the offender, including sentencing on a

1 petition to revoke a suspended sentence or any probation violation.
2 When a mental health court is established, the following information
3 shall be initially reviewed by the sheriff or designee, if the
4 offender is held in a county jail, or by the chief of police or
5 designee, if the offender is held in a city jail:

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

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

16 3. The offender has committed a felony offense; and

17 4. The offender:

18 a. admits to having a mental health disorder,

19 b. appears to have a mental health disorder,

20 c. has been diagnosed with a mental health disorder, or

21 d. the arrest or charge is based upon an offense eligible
22 for the mental health court program.

23 B. If it appears to the reviewing officer that the offender may
24 be potentially eligible for the mental health court program based

1 upon a review of the information in subsection A of this section,
2 the offender shall be given an eligibility form which may be
3 voluntarily completed by the offender, and the reviewing officer
4 shall file the criminal case record within the time prescribed in
5 Section 2 of this act. The offender shall not automatically be
6 considered for the program based upon this review. The offender
7 must request consideration for the mental health court program as
8 provided in subsection C of this section and shall have approval
9 from the district attorney before being considered for the mental
10 health court program. The eligibility form shall describe the
11 mental health court program for which the offender may be eligible,
12 including, but not limited to:

13 1. A full description of the mental health court process and
14 investigation;

15 2. A general explanation of the roles and authority of the
16 supervising staff, the district attorney, the defense attorney, the
17 treatment provider, the offender and the judge in the mental health
18 court program;

19 3. A clear statement that the mental health court judge may
20 decide after a hearing not to consider the offender for the mental
21 health court program and in that event the offender will be
22 prosecuted in the traditional manner;

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1 4. A clear statement that the offender is required, before
2 consideration in the program, to enter a guilty plea as part of a
3 written plea agreement;

4 5. A clear statement that the plea agreement shall specify the
5 offense to which the guilty plea will be entered and shall state any
6 penalty to be imposed for the offense, both in the event of a
7 successful completion of the mental health court program and in the
8 event of a failure to complete the program;

9 6. A clear statement that the offender must voluntarily agree
10 to:

- 11 a. waive the right to a speedy trial,
- 12 b. waive the right to a preliminary hearing,
- 13 c. the terms and conditions of a treatment plan, and
- 14 d. sign a performance contract with the court;

15 7. A clear statement that the offender, if accepted into the
16 mental health court program, shall not be incarcerated for the
17 offense in a state correctional institution or jail upon successful
18 completion of the program;

19 8. A clear statement that, during participation in the mental
20 health court program, should the offender fail to comply with the
21 terms of the agreement the offender may be sanctioned to serve a
22 term of confinement of six (6) months in an intermediate revocation
23 facility operated by the Department of Corrections. An offender
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1 shall not be allowed to serve more than two separate terms of
2 confinement in an intermediate revocation facility;

3 9. A clear statement that, during participation in the mental
4 health court program, should the offender:

- 5 a. fail to comply with the terms of the agreements,
- 6 b. be convicted of a misdemeanor offense which reflects a
7 propensity for violence,
- 8 c. be arrested for a violent felony offense, or
- 9 d. be convicted of any felony offense,

10 the offender may be required, after a court hearing, to be revoked
11 from the program and sentenced without trial pursuant to the
12 punishment provisions of the negotiated plea agreement; and

13 10. An explanation of the criminal record retention and
14 disposition resulting from participation in the mental health court
15 program following successful completion of the program.

16 C. 1. The offender may request consideration for the mental
17 health court program as follows:

- 18 a. if the offender is incarcerated, the offender must
19 sign and complete the eligibility form and return it
20 to the sheriff if the offender is held in the county
21 jail, or to the chief of police if the offender is
22 held in a city jail. The sheriff or chief of police,
23 upon receipt of the eligibility form, shall file the
24 form with the district attorney at the time of filing

1 the criminal case record or at any time during the
2 period of incarceration when the offender completes
3 the form after the criminal case record has been
4 filed, or

5 b. after release of the offender from incarceration, the
6 offender must sign and complete the eligibility form
7 and file it with the district attorney or the court,
8 prior to or at the time of either initial appearance
9 or arraignment.

10 2. Any offender desiring legal consultation prior to signing or
11 completing the form for consideration in a mental health court
12 program shall be referred to the defense attorney of the mental
13 health court team, or a public defender if the offender is indigent,
14 or allowed to consult with private legal counsel.

15 3. Nothing contained in the provisions of this subsection shall
16 prohibit the mental health court from considering any offender
17 deemed eligible for the program at any time prior to sentencing
18 whose case has been prosecuted in the traditional manner, or upon a
19 violation of parole or probation conditions relating to substance
20 abuse, upon recommendation of the district attorney as provided in
21 Section 9 of this act.

22 D. When an offender has filed a voluntary request to be
23 considered for a mental health court program on the appropriate
24 form, the district attorney shall indicate his or her approval of

1 the request by filing the form with the mental health court judge.
2 Upon the filing of the request form by the district attorney, an
3 initial hearing shall be set before the mental health court judge.
4 The hearing shall be not less than three (3) workdays nor more than
5 five (5) workdays after the date of the filing of the request form.
6 Notice of the hearing shall be given to the mental health court team
7 or, in the event no mental health court team is designated, to the
8 offender, the district attorney and to the public defender. The
9 offender shall be required to notify any private legal counsel of
10 the date and time of the hearing.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 473.3 of Title 22, unless there
13 is created a duplication in numbering, reads as follows:

14 A. At the initial hearing for consideration of an offender for
15 a mental health court program, the district attorney shall determine
16 whether or not:

17 1. The offender has approval to be considered for the mental
18 health court program;

19 2. The offender has been admitted to the program within the
20 preceding five (5) years; provided, having been admitted to a mental
21 health court program within the previous five (5) years shall not
22 make the offender ineligible for consideration; and
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1 A. When directed by the mental health court judge, the
2 supervising staff for the mental health court program shall make an
3 investigation of the offender under consideration to determine
4 whether or not the offender is a person who:

5 1. Would benefit from the mental health court program; and

6 2. Is appropriate for the mental health court program.

7 B. The mental health court investigation shall be conducted
8 through a standardized screening test and personal interview. A
9 more comprehensive assessment may take place at the time the
10 offender enters the treatment portion of the program and may take
11 place at any time after placement in the mental health court
12 program. The investigation shall determine the original treatment
13 plan which the offender will be required to follow, if admitted to
14 the program. Any subsequent assessments or evaluations by the
15 treatment provider, if the offender is admitted to the program, may
16 be used to determine modifications needed to the original treatment
17 plan. The investigation shall include, but not be limited to, the
18 following information:

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

20 2. Employment and military service records;

21 3. Educational background and literacy level;

22 4. Community and family relations;

23 5. Prior and current drug and alcohol use;

24 6. Mental health and medical treatment history;

1 7. Substance abuse treatment history;

2 8. Whether the person shows demonstrable motivation; and

3 9. Other mitigating or aggravating factors.

4 C. The mental health court investigation may be conducted
5 before or after the initial hearing for consideration but shall
6 occur before the hearing for final determination of eligibility for
7 the mental health court program. When an offender is appropriate
8 for admittance to the program, the supervising staff shall make a
9 recommendation for the treatment program or programs that are
10 available in the jurisdiction and which would benefit the offender
11 and accept the offender. The investigation findings and
12 recommendations for program placement shall be reported to the
13 mental health court judge, the district attorney, the offender and
14 the defense attorney prior to the next scheduled hearing.

15 D. The district attorney and the defense attorney for the
16 offender shall independently review the findings and recommendations
17 of the mental health court investigation report. For an offender to
18 remain eligible for consideration in the program, both the district
19 attorney and the defense attorney must accept the recommended
20 treatment plan, and shall negotiate the terms of the written plea
21 agreement with all punishment provisions specified before the
22 scheduled hearing date for determining final eligibility. Upon
23 failure of the district attorney and defense attorney to negotiate
24 the written plea agreement, the criminal case shall be withdrawn

1 from the mental health court program and processed in the
2 traditional manner. The punishment provisions of the written plea
3 agreement shall emphasize reparation to the victim, community and
4 state.

5 E. The hearing to determine final eligibility shall be set not
6 less than three (3) business days nor more than seven (7) business
7 days from the date of the initial hearing for consideration, unless
8 extended by the court.

9 F. For purposes of the Oklahoma Mental Court Act, "supervising
10 staff" means a Department of Corrections employee assigned to
11 monitor offenders in the mental health court program, a community
12 provider assigned to monitor offenders in the program, a state or
13 local agency representative or a certified treatment provider
14 participating in the program, or a person designated by the judge to
15 perform mental health court investigations.

16 SECTION 6. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 473.5 of Title 22, unless there
18 is created a duplication in numbering, reads as follows:

19 A. 1. Any statement, or any information procured therefrom,
20 made by the offender to any supervising staff, which is made during
21 the course of any mental health court investigation conducted by the
22 supervising staff pursuant to Section 5 of this act, and any report
23 of the supervising staff's findings and recommendations to the
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1 court, the district attorney or the defense counsel shall not be
2 admissible in the criminal case pending against the offender.

3 2. Any statement, or any information procured therefrom, with
4 respect to the specific offense for which the offender was arrested
5 or is charged, which is made to any supervising staff subsequent to
6 the granting of admission of the offender to the mental health court
7 program shall not be admissible in the pending criminal case nor
8 shall such be grounds for the revocation of an offender from the
9 program.

10 3. In the event that an offender is denied admission to the
11 mental health court program or is subsequently revoked from the
12 program, any information gained from the mental health court
13 investigation, any statements or information divulged during the
14 mental health court investigation or any treatment session shall not
15 be used in the sentencing of the offender for the original criminal
16 offense.

17 4. The restrictions provided in this subsection shall not
18 preclude the admissibility of statements or evidence obtained by the
19 state from independent sources.

20 B. 1. The offender, as consideration for entering the mental
21 health court program, must consent to a full and complete
22 photographic record of property which is to be used as evidence in
23 the pending criminal case. The photographic record shall be
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1 competent evidence of such property and admissible in any criminal
2 action or proceeding as the best evidence.

3 2. After the photographic record is made, the property shall be
4 returned as follows:

5 a. property, except that which is prohibited by law,
6 shall be returned to its owner after proper
7 verification of title,

8 b. the return to the owner shall be without prejudice to
9 the state or to any person who may have claim against
10 the property, and

11 c. when a return is made to the owner, the owner shall
12 sign, under penalty of perjury, a declaration of
13 ownership, which shall be retained by the person in
14 charge of the property at the police department or
15 sheriff's office.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 473.6 of Title 22, unless there
18 is created a duplication in numbering, reads as follows:

19 A. The mental health court judge shall conduct a hearing as
20 required by subsection E of Section 5 of this act to determine final
21 eligibility by considering:

22 1. Whether or not the offender voluntarily consents to the
23 program requirements;

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1 2. Whether or not to accept the offender based upon the
2 findings and recommendations of the mental health court
3 investigation authorized by Section 5 of this act;

4 3. Whether or not there is a written plea agreement and, if so,
5 whether the terms and conditions of the written negotiated plea
6 between the district attorney, the defense attorney and the offender
7 are appropriate and consistent with the penalty provisions and
8 conditions of other similar cases;

9 4. Whether or not there is an appropriate treatment program
10 available to the offender and whether or not there is a recommended
11 treatment plan; and

12 5. Any information relevant to determining eligibility;
13 provided, however, an offender shall not be denied admittance to any
14 mental health court program based upon an inability to pay court
15 costs or other costs or fees.

16 B. At the hearing to determine final eligibility for the mental
17 health court program, the judge shall not grant any admission of any
18 offender to the program if:

19 1. The required treatment plan and plea agreement have not been
20 completed;

21 2. The program funding or availability of treatment has been
22 exhausted;

23 3. The treatment program is unwilling to accept the offender;
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1 4. The offender is ineligible for consideration by the nature
2 of a violent offense at the time of arrest, and the charge has been
3 modified to meet the eligibility criteria of the program; or

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

6 C. At the final eligibility hearing, if evidence is presented
7 that was not discovered by the mental health court investigation,
8 the district attorney or the defense attorney may make an objection
9 and may ask the court to withdraw the plea agreement previously
10 negotiated. The court shall determine whether to proceed and
11 overrule the objection, to sustain the objection and transfer the
12 case for traditional criminal prosecution, or to require further
13 negotiations of the plea or punishment provisions. The decision of
14 the judge for or against eligibility and admission shall be final.

15 D. When the court accepts the treatment plan with the written
16 plea agreement, the offender, upon entering the plea as agreed by
17 the parties, shall be ordered and escorted immediately into the
18 program. The offender must have voluntarily signed the necessary
19 court documents before the offender may be admitted to treatment.

20 The court documents shall include:

- 21 1. Waiver of the offender's right to a speedy trial;
- 22 2. A written plea agreement which sets forth the offense
23 charged, the penalty to be imposed for the offense in the event of a
24 breach of the agreement, and the penalty to be imposed, if any, in

1 the event of a successful completion of the treatment program;
2 provided, however, incarceration shall be prohibited if the offender
3 completes successfully the treatment program;

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

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

9 E. If admission into the mental health court program is denied,
10 the criminal case shall be returned to the traditional criminal
11 docket and shall proceed as provided for any other criminal case.

12 F. At the time an offender is admitted to the mental health
13 court program, any bail or undertaking on behalf of the offender
14 shall be exonerated.

15 G. The period of time during which an offender may participate
16 in the active treatment portion of the mental health court program
17 shall be not less than six (6) months nor more than twenty-four (24)
18 months and may include a period of supervision of not less than six
19 (6) months nor more than one (1) year following the treatment
20 portion of the program. The period of supervision may be extended
21 by order of the court for not more than six (6) months. No
22 treatment dollars shall be expended on the offender during the
23 extended period of supervision. If the court orders that the period
24 of supervision shall be extended, the mental health court judge,

1 district attorney, the attorney for the offender and the supervising
2 staff for the mental health court program shall evaluate the
3 appropriateness of continued supervision on a quarterly basis. All
4 participating treatment providers shall be certified by the
5 Department of Mental Health and Substance Abuse Services and shall
6 be selected and evaluated for performance-based effectiveness
7 annually by the Department of Mental Health and Substance Abuse
8 Services. Treatment programs shall be designed to be completed
9 within twelve (12) months and shall have relapse prevention and
10 evaluation components.

11 H. The mental health court judge shall order the offender to
12 pay court costs, treatment costs, drug testing costs, a program user
13 fee not to exceed Twenty Dollars (\$20.00) per month, and necessary
14 supervision fees, unless the offender is indigent. The mental
15 health court judge shall establish a schedule for the payment of
16 costs and fees. The cost for treatment, drug testing and
17 supervision shall be set by the treatment and supervision providers
18 respectively and made part of the court's order for payment. User
19 fees shall be set by the mental health court judge within the
20 maximum amount authorized by this subsection and shall be payable
21 directly to the court clerk for the benefit and administration of
22 the mental health court program. Treatment, drug testing and
23 supervision costs shall be paid to the respective providers. The
24 court clerk shall collect all other costs and fees ordered. Court

1 orders for costs and fees pursuant to this subsection shall not be
2 limited for purposes of collection to the maximum term of
3 imprisonment for which the offender could have been imprisoned for
4 the offense, nor shall any court order for costs and fees be limited
5 by any term of probation, parole, supervision, treatment, or
6 extension thereof. Court orders for costs and fees shall remain an
7 obligation of the offender until fully paid; provided, however, once
8 the offender has successfully completed the mental health court
9 program, the mental health court judge shall have the discretion to
10 expressly waive all or part of the costs and fees provided for in
11 this subsection if, in the opinion of the mental health court judge,
12 continued payment of the costs and fees by the offender would create
13 a financial hardship for the offender. Offenders who have not fully
14 paid all costs and fees pursuant to court order but who have
15 otherwise successfully completed the mental health court program
16 shall not be counted as active mental health court participants for
17 purposes of mental health court contracts or program participant
18 numbers.

19 I. If the driving privileges of the offender have been
20 suspended, revoked, cancelled or denied by the Department of Public
21 Safety, pursuant to Section 1115.5 of Title 22 of the Oklahoma
22 Statutes and if the mental health court judge determines that no
23 other means of transportation for the offender is available, the
24 mental health court judge may enter a written order requiring the

1 Department of Public Safety to stay any and all such actions against
2 the Class D driving privileges of the offender; provided, the stay
3 shall not be construed to grant driving privileges to an offender
4 who has not been issued a driver license by the Department or whose
5 Oklahoma driver license has expired, in which case the offender
6 shall be required to apply for and be found eligible for a driver
7 license, pass all examinations, if applicable, and pay all statutory
8 driver license issuance or renewal fees. The offender shall provide
9 proof of insurance to the mental health court judge prior to the
10 judge ordering a stay of any driver license suspension, revocation,
11 cancellation or denial. When a judge of a mental health court
12 enters a stay against an order by the Department of Public Safety
13 suspending or revoking the driving privileges of an offender, the
14 time period set in the order by the Department for the suspension or
15 revocation shall continue to run during the stay. When an offender
16 has successfully completed the mental health court program, the
17 mental health court judge shall maintain jurisdiction over the
18 offender's driving privileges for one (1) year after the date on
19 which the offender graduates from the mental health court program.

20 SECTION 8. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 473.7 of Title 22, unless there
22 is created a duplication in numbering, reads as follows:

23 A. The designated mental health court judge shall make all
24 judicial decisions concerning any case assigned to the mental health

1 court docket or program. The judge shall require progress reports
2 and a periodic review of each offender during his or her period of
3 participation in the mental health court program or for purposes of
4 collecting costs and fees after completion of the treatment portion
5 of the program. Reports from the treatment providers and the
6 supervising staff shall be presented to the mental health court
7 judge as specified by the treatment plan or as ordered by the court.

8 B. Upon the written or oral motion of the treatment provider,
9 the district attorney, the defense attorney, the defendant or the
10 supervising staff, the mental health court judge shall set a date
11 for a hearing to review the offender, the treatment plan and the
12 provisions of the performance contract. Notice shall be given to
13 the offender and the other parties participating in the mental
14 health court case three (3) days before the hearing may be held.

15 C. The judge may establish a regular schedule for progress
16 hearings for any offender in the mental health court program. The
17 district attorney shall not be required to attend regular progress
18 hearings, but shall be required to be present upon the motion of any
19 party to a mental health court case.

20 D. The treatment provider, the supervising staff, the district
21 attorney and the defense attorney shall be allowed access to all
22 information in the offender's mental health court case file and all
23 information presented to the judge at any periodic review or
24 progress hearing.

1 E. The mental health court judge shall recognize relapses and
2 restarts in the program which are considered to be part of the
3 rehabilitation and recovery process. The judge shall accomplish
4 monitoring and offender accountability by ordering progressively
5 increasing sanctions or providing incentives, rather than removing
6 the offender from the program when relapse occurs, except when the
7 offender's conduct requires revocation from the program. Any
8 revocation from the mental health court program shall require notice
9 to the offender and other participating parties in the case and a
10 revocation hearing. At the revocation hearing, if the offender is
11 found to have violated the conditions of the plea agreement or
12 performance contract and disciplinary sanctions have been
13 insufficient to gain compliance, the offender shall be revoked from
14 the program and sentenced for the offense as provided in the plea
15 agreement.

16 F. Upon application of any participating party to a mental
17 health court case, the judge may modify a treatment plan at any
18 hearing when it is determined that the treatment is not benefiting
19 the offender. The primary objective of the judge in monitoring the
20 progress of the offender and the treatment plan shall be to keep the
21 offender in treatment for a sufficient time to change behaviors and
22 attitudes. Modification of the treatment plan requires a
23 consultation with the treatment provider, supervising staff,
24 district attorney and the defense attorney in open court.

1 G. The judge shall be prohibited from amending the written plea
2 agreement after an offender has been admitted to the mental health
3 court program. Nothing in this subsection shall be construed to
4 limit the authority of the judge to remove an offender from the
5 program and impose the required punishment stated in the plea
6 agreement after application, notice and hearing.

7 SECTION 9. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 473.8 of Title 22, unless there
9 is created a duplication in numbering, reads as follows:

10 The mental health court program may be utilized as a
11 disciplinary sanction for a violation of a condition of parole
12 related to eligible offenses or, in a case where the offender has
13 been tried for an eligible offense in the traditional manner, given
14 either a deferred or suspended sentence, and has violated a
15 condition of the sentence. The judge shall not order an offender
16 into treatment within the scope of any mental health court program
17 without prior approval from the designated mental health court team,
18 or the district attorney if no team is designated. Any judge having
19 a criminal case assigned where mental health court processing
20 appears to be more appropriate for the offender, may request a
21 review of the case by the mental health court team or, if no team is
22 designated, a review by the district attorney and the defense
23 attorney. If both the district attorney and the defense attorney or
24 offender agree, the case may be transferred to the mental health

1 court program with the approval of a designated mental health court
2 judge. After a case has been transferred to the mental health court
3 docket, it shall continue with the designated mental health court
4 judge until the offender is revoked or released from the program.
5 The offenders whose cases have been transferred from a traditional
6 criminal case docket to the mental health court docket shall be
7 required to have a mental health court investigation and complete
8 the mental health court process prior to placement in any treatment
9 program authorized by the Oklahoma Mental Court Act.

10 SECTION 10. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 473.9 of Title 22, unless there
12 is created a duplication in numbering, reads as follows:

13 A. When an offender has successfully completed the mental
14 health court program, the criminal case against the offender shall
15 be dismissed if the offense was a first felony offense.

16 B. If the offender has a prior felony conviction, the
17 disposition shall be as specified in the written plea agreement.

18 C. The final disposition order for a mental health court case
19 shall be filed with the judge assigned to the case, and shall
20 indicate the sentence specified in the written plea agreement. A
21 copy of the final disposition order for the mental health court case
22 shall also be filed in the original criminal case file under the
23 control of the court clerk which is open to the public for
24 inspection. Original criminal case files which are under the

1 control of the court clerk and which are subsequently assigned to
2 the mental health court program shall be marked with a pending
3 notation until a final disposition order is entered in the mental
4 health court case. After an offender completes the program, the
5 mental health court case file shall be sealed by the judge and may
6 be destroyed after ten (10) years. The district attorney shall have
7 access to sealed mental health court case files without a court
8 order.

9 D. A record pertaining to an offense resulting in a successful
10 completion of a mental health court program shall not, without the
11 offender's consent in writing, be used in any way which could result
12 in the denial of any employee benefit.

13 E. Successful completion of a mental health court program shall
14 not prohibit any administrative agency from taking disciplinary
15 action against any licensee or from denying a license or privilege
16 as may be required by law.

17 F. When the offender has successfully completed the mental
18 health court program, the mental health court judge shall have the
19 discretion to expressly waive all or part of the court costs and
20 fees, driver license reinstatement fees, if applicable, and fines
21 associated with the criminal case if, in the opinion of the mental
22 health court judge, continued payment of the court costs, fees and
23 fines by the offender would create a financial hardship for the
24 offender, including specifically the discretion to waive any

1 requirement that fines and costs be satisfied by a person prior to
2 that person being eligible for a provisional driver license pursuant
3 to Section 6-212 of Title 47 of the Oklahoma Statutes.

4 SECTION 11. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 473.10 of Title 22, unless there
6 is created a duplication in numbering, reads as follows:

7 A. For purposes of the Oklahoma Mental Court Act, the following
8 state agencies shall jointly develop a standardized testing
9 instrument with an appropriate scoring device for use by all the
10 district courts in this state in implementing the Oklahoma Mental
11 Health Court Act:

- 12 1. The Department of Corrections;
- 13 2. The Administrative Office of the Courts;
- 14 3. The Department of Mental Health and Substance Abuse
15 Services;
- 16 4. The State Department of Health;
- 17 5. The State Department of Education;
- 18 6. The Office of Juvenile Affairs; and
- 19 7. The Oklahoma Department of Vocational and Technical
20 Education.

21 B. The Administrative Office of the Courts shall promulgate
22 rules, procedures and forms necessary to implement the Oklahoma
23 Mental Health Court Act to ensure statewide uniformity in procedures
24 and forms. The Department of Mental Health and Substance Abuse

1 Services is directed to develop a training and implementation manual
2 for mental health court programs with the assistance of the State
3 Department of Health, the State Department of Education, the
4 Oklahoma Department of Career and Technology Education, the
5 Department of Corrections, the Office of Juvenile Affairs and the
6 Administrative Office of the Courts. The Department of Mental
7 Health and Substance Abuse Services shall provide technical
8 assistance to the district courts in implementing mental health
9 court programs.

10 C. All participating agencies shall promulgate rules as
11 necessary to comply with the provisions of the Oklahoma Mental Court
12 Act. Each district court shall establish rules for their
13 jurisdiction upon implementation of a mental health court program,
14 pursuant to the provisions of this act.

15 SECTION 12. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 473.11 of Title 22, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Nothing in the Oklahoma Mental Court Act shall preclude the
19 establishment of mental health treatment programs in support of a
20 deferred prosecution program authorized by Section 305.1 of Title 22
21 of the Oklahoma Statutes. Any such program established after
22 November 1, 2020, or in existence on November 1, 2020, may be known
23 as a mental health court program, provided the program is not
24 contrary to public interest or provision of law.

1 B. Any mental health court program established and in existence
2 prior to November 1, 2020, which is not limited to treatment
3 programs in support of deferred prosecution programs, shall be
4 considered a mental health court program as defined in Section 2 of
5 this act, for all purposes of the Oklahoma Mental Health Court Act.

6 SECTION 13. REPEALER 22 O.S. 2011, Section 472, as
7 amended by Section 1, Chapter 180, O.S.L. 2014 (22 O.S. Supp. 2019,
8 Section 472), is hereby repealed.

9 SECTION 14. This act shall become effective November 1, 2020.

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11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/06/2020 - DO
12 PASS, As Coauthored.

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