

Supreme Court of Kentucky

2022-50

ORDER

In Re: Amendments to the Rules of Administrative Procedure AP Part XIII Procedures for Specialty Courts

Pursuant to Section 116 of the Constitution of Kentucky, the Rules of Administrative Procedure, AP Part XIII, are hereby replaced in their entirety as follows:

Section 1. Authority, Scope, and Mission

- (1) These rules are adopted pursuant to the authority granted to the Supreme Court under Section 116 of the Kentucky Constitution.
- (2) No local rules shall be approved regarding any drug court. No local practices, procedures, orders, or policies may conflict with or controvert these rules of administrative procedure.
- (3) The mission of specialty courts is to restore lives and reduce recidivism through judicial oversight and behavior modification.

Section 2. Definitions

As used in these sections, unless the context otherwise requires:

- (1) “Administrative discharge” means the discharge of a participant from drug court due to the participant’s inability to complete drug court through no fault of their own.
- (2) “Agreement of Participation” means the form prescribed for use by a drug court, which is the written agreement required to be signed by all potential drug court participants prior to their admission into drug court.
- (3) “Administrative Office of the Courts (AOC)” means the administrative arm of the Kentucky Court of Justice and the agency authorized by the Kentucky Supreme Court to support specialty courts and administer and

oversee their funding.

- (4) “Best Practice Standards” means the standard elements necessary to create desired outcomes in specialty courts that are published by the National Association of Drug Court Professionals (NADCP) as posted in the Kentucky Court of Justice Specialty Courts SharePoint site.
- (5) “Case plan” means a written document created in collaboration with AOC Specialty Courts staff that outlines a participant’s goals, objectives, and actions to achieve goals. Referrals to complimentary treatment and social services are a vital part of a case plan.
- (6) “Certification Board” means the eleven (11) members of the KCOJ that are appointed by the Chief Justice of the Supreme Court as set forth in Section 27 of these rules.
- (7) “Certification pilot program” means a pilot program implemented by the Department of Specialty Courts and Certification Board for the purpose of ensuring consistent and uniform evidence-based practices are followed by specialty courts statewide.
- (8) “Certification staff assessments” means observations made by Specialty Courts certification staff that are recorded on certification documents (such as site visit forms, etc.).
- (9) “Department of Specialty Courts (AOC Specialty Courts)” means the department within the AOC that supports specialty courts and administers and oversee their funding.
- (10) “Drug court” means a specialty court authorized by the Kentucky Supreme Court and administered by the AOC, which provides an alternative to conviction and/or incarceration for eligible defendants. A drug court shall combine supervision, drug testing, case management, judicial interaction, and treatment for drug court participants.
- (11) “Drug court graduation” means the ceremony, public or private, acknowledging the successful completion of drug court.
- (12) “Drug court judge” means a judge who, in addition to their regular judicial duties, volunteers to conduct drug court sessions and staffings,

monitors and reviews the participants' progress in drug court, imposes sanctions and incentives, and facilitates other components of drug court. The drug court judge has the ultimate decision-making authority.

- (13) "Drug court participant" means a defendant who has been admitted into a drug court.
- (14) "Drug court session" means the scheduled appearance of the participant before the drug court judge, during which the progress of the participant is reviewed on the record and incentives may be granted or sanctions may be imposed.
- (15) "Drug court staffing" means a meeting held by the drug court team, in person or electronically, for the purpose of discussing the participants' admission, progress, and/or termination.
- (16) "Drug court team" means the non-adversarial group of individuals who promote public safety while acting in the best interest of the public and the participant and determine the appropriate responses for a participant's compliance or non-compliance with drug court requirements. While the drug court team determines appropriate responses for participant compliance or non-compliance, the drug court judge has the ultimate decision-making authority. The drug court team shall be comprised of the drug court judge, and Specialty Courts staff, law enforcement, prosecutor(s), defense counsel, and treatment provider(s). Optional members with each drug court may be representatives from the office of probation and parole, the circuit court clerk's office, the community, and other ancillary agencies. A quorum is not required for a staffing to proceed.
- (17) "Eligibility assessment" means a standardized tool used by Specialty Courts staff to evaluate a defendant's risk and needs for purposes of determining whether a defendant is eligible for admission into a drug court.
- (18) "Home visit" means the on-site appearance of Specialty Courts staff who are accompanied by either a law enforcement officer or another party,

such as a probation and parole officer, peer support, another Specialty Courts staff, or others, at the participant's home for the purposes of identifying the participant's unmet needs.

- (19) "Incentives" means tangible or intangible rewards earned by participants for positive steps taken toward attaining a drug-free, crime-free lifestyle, and engaging in prosocial activities. Incentives may include, but are not limited to, promotion to the next phase, certificates and tokens, decreased supervision, increased privileges and responsibilities, praise from the drug court judge and team, and other individual incentives approved by the drug court team.
- (20) "Involuntary termination" means the termination of a participant from drug court by the drug court judge due to the participant's non-compliance with the drug court's requirements, rules, or conditions.
- (21) "Justice system case processing" means the manner in which a case is processed within the Kentucky Court of Justice , as reflected in the current Kentucky Court of Justice case management system.
- (22) "KCOJ" means the Kentucky Court of Justice.
- (23) "Kentucky Specialty Courts Quality Assurance and Fidelity Model" means the AOC Standard utilized by Specialty Courts certification staff to ensure a drug court encompasses the ten key components contained in Section 3 of these rules and operates within the standards of a specialty court.
- (24) "Notice of Defendant Referral Status" means the form provided to the referring judge following the defendant's assessment wherein a determination of eligibility or ineligibility for admission to drug court has been made.
- (25) "Phase" means a set of minimum and distinct criteria required of a drug court participant.
- (26) "Prosocial activities" means events, actions, or behaviors that provide an opportunity for participants to engage in healthy, supportive activities.
- (27) "Recovery support program" means the nonclinical services that support

individuals in recovery, including but not limited to mutual aid support groups.

- (28) “Referring judge” means the judge who refers a defendant to drug court.
- (29) “Sanctions” means the range of consequences imposed for the participant’s failure to comply with the requirements or other conditions of drug court, which are appropriate, individualized, consistent and immediately applied. Sanctions may include, but are not limited to, admonishments from the judge, community service, home incarceration, imprisonment in a detention facility, or termination from drug court.
- (30) “Sentencing judge” means the judge who sentences the defendant in the underlying court case; they may also be the referring judge.
- (31) “Specialty court” means the generic term for a treatment court operated under the umbrella of AOC Specialty Courts and does not refer to a specific type of treatment court, such as drug court, veteran’s treatment court, or mental health court.
- (32) “Specialty Courts certification staff” means personnel employed by AOC Specialty Courts who are responsible for overseeing the certification process of specialty courts.
- (33) “Specialty Courts staff” means personnel employed by AOC Specialty Courts who perform the daily operations of a specialty court, including but not limited to, conducting eligibility reviews and assessments, providing case management for participants, attending drug court staffings and sessions, and coordinating drug testing.
- (34) “Suspended status” means a temporary stay of participation in the drug court program imposed by the drug court judge if the participant cannot meet the drug court requirements and/or it becomes impracticable for a participant to be supervised by Specialty Courts staff.
- (35) “Treatment plan” means an individualized written document created by a licensed or certified treatment provider, in collaboration with the drug court participant, that outlines the proposed goals, plan, and methods of therapy.

- (36) “Treatment provider” means an individual or agency licensed or certified to provide substance use or mental health treatment and counseling as recognized by Specialty Courts and under agreement or memorandum of understanding (MOU) with the AOC to provide such treatment and counseling to drug court participants. Mutual aid support groups are not “treatment providers” under these rules.

Section 3. Key Components of a Drug Court

All drug courts shall include the following key components, as defined and required by the U. S. Department of Justice, Office of Justice Programs:

- (1) Drug courts integrate alcohol and other drug treatment services, along with mental health and co-occurring disorders treatment, with justice system case processing;
- (2) Prosecution and defense counsel, in a non-adversarial manner, promote public safety while protecting participants’ due process rights;
- (3) Eligible participants are identified early and promptly placed in the drug court;
- (4) Drug courts provide a continuum of alcohol, drug, and other treatment and rehabilitative services;
- (5) Participants are subject to frequent alcohol and other drug testing to monitor compliance with treatment plans;
- (6) A coordinated strategy governs drug court responses to participants’ compliance;
- (7) Ongoing judicial interaction with each drug court participant is essential;
- (8) Monitoring and evaluation of the drug court measure the achievement of program goals and gauge effectiveness;
- (9) Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations; and,
- (10) Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances

drug court effectiveness.

Section 4. Administrative Office of the Courts to Oversee Funding and Establish Policies for Drug Courts

- (1) The AOC shall support drug courts statewide and administer and oversee funding of all certified drug courts.
- (2) AOC Specialty Courts shall establish policies relating to drug courts. AOC Specialty Courts shall develop and maintain the Drug Court Participant Handbook, which provides general guidelines of programmatic operations to drug court participants.

Section 5. Referral for Drug Court Eligibility Review and Assessment

A written referral for an eligibility review and assessment for drug court may be made at any time; however, no person may be referred for an eligibility review and assessment to a drug court for civil contempt charges under KRS 222.430 – 222.480 (Casey’s Law) and KRS 202A.0811 – 202A.0831 (Tim’s Law).

Section 6. Eligibility Review and Assessment Process for Drug Court

- (1) If a defendant was referred for an eligibility review and assessment consistent with Section 5 of these rules, drug court staff shall thoroughly explain the drug court process and the Agreement of Participation to the defendant. The defendant may be required to sign the Agreement of Participation with or without the presence of their attorney. If a defendant refuses to sign the Agreement of Participation, drug court staff shall notify the referring judge. Initial refusal by the defendant to sign the Agreement of Participation may render them ineligible for participation in drug court.
- (2) Upon execution of the non-waiver portions of the Agreement of Participation, drug court staff shall complete an assessment. After completing the assessment, drug court staff shall complete a Notice of

Referral Status. The assessment, Notice of Referral Status, and any other pertinent information regarding the defendant shall be completed and submitted to the drug court team prior to the defendant's next scheduled court appearance.

- (3) Eligibility of a defendant referred to drug court shall be based on the following:
 - (a) Empirical evidence indicating which types of offenders can be treated safely and effectively in drug court, using evidence-based assessment tools and procedures; and
 - (b) Ensuring individuals who have historically experienced sustained discrimination or reduced social opportunities because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion, or socioeconomic status receive the same opportunities as other individuals to participate and succeed in the drug court.
- (4) Consequences of successful completion of drug court will be detailed prior to the defendant's admission into drug court and noted on the assessment form.

Section 7. Process for Admission of Defendant into Drug Court

Upon receipt of the assessment, Notice of Defendant Referral Status, and other pertinent information regarding the defendant, the drug court team shall provide input into the decision for an offer of admission; however, the drug court judge shall have the final decision-making authority concerning the offer of admission of an eligible defendant into drug court. To determine whether to make an offer of admission, the drug court judge and team:

- (1) Shall evaluate the current charge(s)/conviction(s);
- (2) Shall evaluate past criminal conviction(s), if any;
- (3) Shall evaluate the results of the assessment, or risk/needs screening if held separately from assessment;

- (4) May evaluate information regarding the victim(s), or obtained through victim(s) conferencing, if any; and
- (5) May evaluate other relevant information as identified by the drug court judge and team.

Section 8. Admission of Defendant into Drug Court

Upon an offer of admission into drug court and upon the defendant's acceptance of the offer to enter drug court, the referring judge shall complete an Order of Admission to Drug Court admitting the defendant. If the individual is facing criminal charges and has yet to enter a guilty plea, then his or her admission into drug court is conditioned upon the prosecution's recommendation of diversion or an alternative sentence in lieu of incarceration. The case shall remain with or be assigned to a judge who conducts drug court in the circuit or district where the defendant's underlying court case is pending. The defendant shall be required to sign the Agreement of Participation. The Order of Admission to Drug Court will require the defendant to report to the assigned circuit or district court judge who will conduct drug court.

Section 9. Transfers Between Drug Courts

- (1) A defendant or participant may request a transfer of venue to participate in a drug court outside of the circuit or district where their underlying court case is pending if the defendant has been sentenced to serve an alternative sentence in lieu of incarceration or has entered a guilty plea as part of a pretrial diversion program in the underlying court case.
- (2) The defendant or participant may request the transfer at the time of referral for eligibility review and assessment to the drug court or after admission into a drug court.
- (3) If a transfer is requested, the Specialty Court staff in the county where the underlying court case is pending will initiate an informal conference

with the Specialty Courts staff in the transfer county to inquire about the possibility of transferring the case to that drug court and to identify any barriers that may hinder the transfer.

- (4) Transfer of venue for the purpose of drug court participation shall be authorized under the following conditions:
 - (a) The drug court team in the county where the defendant or participant requests to transfer venue has agreed to accept the defendant or participant;
 - (b) The defendant or participant has filed a Motion for Transfer, which was docketed before the referring judge; and
 - (c) The referring judge has entered an order transferring venue of the defendant's or participant's court case.
- (d) The defendant's or participant's case will be assigned to a circuit or district court judge who conducts drug court in the county where venue has been transferred.
- (e) Upon a participant's successful completion, administrative discharge, or termination from drug court, an order transferring venue of the court case back to the county where the case originated shall be entered and all further proceedings shall be placed on the next available court docket in that county.

Section 10. Drug Court Participant Requirements

- (1) Drug court shall consist of five (5) phases as follows:
 - (a) Phase I – stabilization;
 - (b) Phase II – treatment stabilization;
 - (c) Phase III – social development;
 - (d) Phase IV – self-motivation; and
 - (e) Phase V – continuing care.

The five (5) phases shall take a minimum of eighteen months (18) for felony defendants or fifteen (15) months for misdemeanor defendants to

complete.

(2) Drug court participants shall adhere to the following minimum requirements during each phase:

(a) For Phase I, the participant shall:

- i. Provide on average two (2) random urine drug/alcohol screens per week;
- ii. Complete treatment assessment and begin treatment plan, as directed by the treatment provider;
- iii. Create a case plan with the drug court team and begin working case plan;
- iv. Attend all required court sessions;
- iv. Obtain and/or maintain court-approved housing;
- v. Attend at least one (1) weekly individual contact with drug court staff;
- vi. Indicate an initial understanding of substance use disorder treatment;
- vii. Attend a recovery support program; and
- viii. Remain free from the nonmedically indicated use of intoxicating or addictive substances, including alcohol, cannabis (marijuana), and prescription medications, regardless of the licit or illicit status of the substance, for at least thirty (30) consecutive days before being considered for promotion to the next phase.

(b) For Phase II, the participant shall:

- i. Provide on average two (2) random urine drug/alcohol screens per week;
- ii. Follow all treatment recommendations, as directed by the treatment provider;
- iii. Create a case plan with the drug court team and begin working case plan;
- iv. Attend all required court sessions;

- v. Obtain court-approved full-time employment, training, education, community service, or court-approved community engagement activities when ordered by the court;
 - vi. Maintain court-approved housing;
 - vii. Attend at least one (1) individual contact with drug court staff per week;
 - viii. Indicate an appropriate understanding of recovery principles;
 - ix. Attend a recovery support program; and
 - x. Remain free from the nonmedically indicated use of intoxicating or addictive substances, including alcohol, cannabis (marijuana), and prescription medications, regardless of the licit or illicit status of the substance, for the at least forty-five (45) consecutive days before being considered for promotion to the next phase.
- (c) For Phase III, the participant shall:
- i. Provide on average two (2) random urine drug/alcohol screens per week;
 - ii. Follow all treatment recommendations, as directed by the treatment provider;
 - iii. Create a case plan with the drug court team and begin working case plan;
 - iv. Attend all required court sessions;
 - v. Maintain court-approved full-time employment, training, education, community service, or court approved community engagement activities when order by the court;
 - vi. Maintain court-approved housing;
 - vii. Make arrangements to satisfy court costs, fees, or fines;
 - viii. Attend at least one (1) individual contact with drug court staff per week;
 - ix. Indicate an appropriate understanding of recovery;

- x. Begin criminal thinking curriculum through the treatment provider;
 - xi. Establish prosocial activities – e.g. hobbies related to sports, exercise, art/music, reading, gardening, etc.;
 - xii. Establish a recovery support system; and
 - xiii. Remain free from the nonmedically indicated use of intoxicating or addictive substances, including alcohol, cannabis (marijuana), and prescription medications, regardless of the licit or illicit status of the substance, for sixty (60) consecutive days, before being considered for promotion to the next phase.
- (d) For Phase IV, the participant shall:
- i. Provide on average two (2) random urine drug/alcohol screens per week;
 - ii. Follow all treatment recommendations, as directed by the treatment provider;
 - iii. Create a case plan with the drug court team and begin working case plan;
 - iv. Attend all required court sessions;
 - iv. Maintain court-approved full-time employment, training, education, community service, or court approved community engagement activities when ordered by the court;
 - v. Maintain court-approved housing;
 - vi. Continue to satisfy court costs, fees, or fines;
 - vii. Attend at least one (1) individual contact with drug court staff every other week;
 - viii. Indicate an appropriate understanding of substance use disorder treatment;
 - ix. Engage in prosocial activities – e.g. hobbies related to sports, exercise, art/music, reading, gardening, etc.;
 - x. Attend a recovery support program; and

- xi. Remain free from the nonmedically indicated use of intoxicating or addictive substances, including alcohol, cannabis (marijuana), and prescription medications, regardless of the licit or illicit status of the substance, for a total of ninety (90) consecutive days before being considered for promotion to the next phase.
- (e) For Phase V, the participant shall:
- i. Provide on average two (2) random urine drug/alcohol screens per week;
 - ii. Follow all treatment recommendations, as directed by the treatment provider;
 - iii. Create a case plan with the drug court team and begin working case plan;
 - iv. Attend all required court sessions;
 - v. Maintain court-approved full-time employment, training, education, community service, or court approved community engagement activities when ordered by the court;
 - v. Maintain court-approved housing;
 - vi. Continue to satisfy court costs, fees, or fines;
 - vii. Attend at least one (1) individual contact with drug court staff each month;
 - viii. Development of continuing care plan through treatment provider;
 - x. Maintain a recovery lifestyle;
 - xi. Maintain prosocial activities – e.g. hobbies related to sports, exercise, art/music, reading, gardening, etc.;
 - xii. Maintain a recovery support program; and
 - xiii. Remain free from the nonmedically indicated use of intoxicating or addictive substances, including alcohol, cannabis (marijuana), and prescription medications, regardless of the licit or illicit status of the substance, for at

least ninety (90) to one hundred eighty (180) consecutive days in Phases 4 and 5 before program completion.

- (3) Drug court participants, if ordered to do so, shall comply with additional requirements, such as support services, medical and/or mental health referrals, and subsequent treatment recommendations.

Section 11. Prosocial Activities & Strength-Based Approaches

- (1) Prosocial activities shall be integrated into programming to align with the expectations outlined in Section 10. Prosocial activities shall be individualized to meet the needs of each participant.
- (2) Examples of prosocial activities may include, but are not limited to, yoga, meditation, praying, exercising, volunteer work, cooking, coaching, engaging in outdoor sport activities, playing a musical instrument, joining a support group, and chairing self-help meetings.
- (3) Strength-based approaches, such as those that focus on an individual's self-determination and strength, shall be used in case management. Specialty Courts staff shall adhere to the following components of strength-based case management:
 - (a) Utilizing strengths-based assessments to identify a participant's abilities and strengths;
 - (b) Coordinating community resources to address the individual needs of the participant;
 - (c) Person-centered planning, emphasizing the participant's focused goal(s) to elicit buy-in; and
 - (d) Building a strong professional relationship for collaboration.
- (4) Examples of strength-based approaches may include, but are not limited to, utilizing person-centered or recovery-centered language, focusing on relationship building and collaboration, building capacity based on individual strengths, creating and sustaining familial support, practicing

transparency and honesty, intentionally focusing on inclusion and diversity, etc.

Section 12. Incentives, Sanctions, and Therapeutic Adjustments

- (1) Incentives, sanctions, and therapeutic adjustments shall be administered by the drug court judge. The judge will be assisted by the drug court team who will advise the judge from their areas of expertise. Discussion of incentives, sanctions, and therapeutic adjustments occur during the drug court staffing. Judicial oversight must ensure that:
 - (a) Consequences are predictable, individualized, fair and consistent. Positive behaviors should result in incentives, with praise and encouragement from the judge. Negative behaviors should result in graduated sanctions based on the participant's current ability to comply. Sanctions should be accompanied by appropriate therapeutic adjustments which are distinct from sanctions and should be suggested by a licensed treatment provider.
 - (b) Participants shall receive positive and negative consequences that are equivalent to those received by other participants in the same phase of the program who are engaged in comparable conduct. Participants receive positive and negative consequences without regard to their gender, race, ethnicity, nationality, socioeconomic status, or sexual orientation.
 - (c) Consequences are communicated in advance. Policies and procedures for incentives and sanctions may be specified in writing in the Drug Court Participant Handbook and shall be communicated with participants and the drug court team members in advance. Policies shall provide a clear indication of behaviors that result in an equitable range of incentives or sanctions based on the unique needs of the participant.

- (d) The drug court judge and drug court team may reserve a reasonable degree of discretion to individualize consequences considering circumstances presented in each case.
 - (e) Participants shall be allowed an opportunity to explain their perspectives pertaining to situations which result in the imposition of incentives, sanctions, and therapeutic adjustments. A clear justification for the positive, negative, or therapeutic adjustment imposed will be explained by the judge during the drug court session.
 - (f) Communications with participants are delivered by the judge in the drug court session in a professional manner. Participants shall not be shamed, and consequences shall be presented without anger, ridicule, foul or abusive language, or comparison.
- (2) Drug courts shall seek to place emphasis on incentivizing productive and positive behaviors in accordance with Best Practice Standards. Incentives should occur at a ratio of at least 4:1 compared to sanctions. The following shall be considered when responding to participant's positive behaviors:
- (a) Opportunities for praise, rewards and encouragement should accompany positive improvements, even if other sanctions are administered in the same session. Small and incremental changes in behavior should be rewarded and encouraged as well as major achievements.
 - (b) "Proximal" goals, within the current ability of the participant to comply, are rewarded, with the eventual ("distal") goal of increasing participant involvement in productive activities such as abstinence, employment, and prosocial activities.
 - (c) Incentives may include small, tangible rewards provided by the drug court team, a temporary decrease in drug court requirements, and an increase or advancement in phase. Praise and encouragement from the judge are the most effective

incentives.

- (d) Cash cannot be used as incentives. General funds cannot be used to purchase incentives other than as set forth in the KCOJ Reimbursement for Justices' and Judges' Administrative Expenses policy or other applicable court rule or procedure.
- (3) Failure to comply to the requirements and other conditions established by the drug court may result in the imposition of sanctions upon a participant. Sanctions shall be applied with certainty and immediacy where possible by the drug court judge with input from the drug court team. The following shall be considered when responding to participant noncompliance:
- (a) As participants move through the phases, the consequences for infractions may increase accordingly. Progressive sanctions shall be utilized for continuous noncompliance along with recommended therapeutic response(s).
 - (b) For goals that are difficult for participants to accomplish, the sanctions may increase slowly but progressively in magnitude over successive infractions.
 - (c) For goals that are relatively easy for participants to accomplish, higher magnitude sanctions may be administered after only a few infractions.
 - (d) Consequences are imposed for the nonmedically indicated use of intoxicating or addictive substances, including alcohol, cannabis (marijuana) and prescription medications, regardless of the licit or illicit status of the substance. The drug court team relies on expert medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether nonaddictive, nonintoxicating, and medically safe alternative treatments are available.
 - (e) Incarceration is imposed judiciously and sparingly. Unless a participant poses an immediate risk to public safety, jail sanctions

are administered only after less severe consequences have been ineffective at deterring infractions. Jail sanctions are definite in duration and typically last a short time. Jail sanctions over three to five days are discouraged.

- (f) Participants may be terminated from the drug court if they no longer can be managed safely in the community or if they fail to comply with treatment or supervision requirements. Participants are not terminated from the drug court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are nonamenable to the treatments that are reasonably available in their community.
- (4) Participants do not receive punitive sanctions if they are otherwise compliant with their treatment and supervision requirements but are not responding to the current treatment interventions. Under such circumstances, the treatment provider may reassess the individual and adjust the treatment plan accordingly. The following shall be considered when making therapeutic adjustments:
 - (a) Adjustments to treatment plans shall be based on the recommendations of duly trained treatment professionals.
 - (b) The drug court judge, with input from the treatment provider, may order these therapeutic adjustments resulting in additional referrals for services or treatment.

Section 13. Suspended Status

- (1) In the event a situation arises in which it becomes impracticable for a participant to meet drug court requirements and/or be supervised by Specialty Courts staff, the drug court judge shall issue an order placing the defendant on suspended status and releasing Specialty Courts staff from supervision responsibilities. Examples of impracticability may include but are not limited to, contagious or infectious disease, short-

term medical care for a family member, or any other reason that would cause a temporary inability to meet drug court requirements or to be supervised by Specialty Courts staff. Once the defendant has the ability to resume participation in the drug court program and be supervised by Specialty Courts staff, the drug court judge shall enter an order resuming active status and returning the participant to drug court supervision.

- (2) During the time in which the participant is suspended, no credit shall be earned toward the completion of the drug court phases.
- (3) In the event that the suspended status is the result of the participant receiving in-patient rehabilitation in a facility approved by the drug court and the participant successfully completes rehabilitation, after the participant has resumed standard drug court participation for thirty (30) days, it shall be at the discretion of the drug court judge to determine whether any credit should be given toward the completion of a drug court phase(s) for the time spent in the approved rehabilitation program.

Section 14. Administrative Discharge

- (1) If a drug court participant cannot complete drug court through no fault of their own, they may be administratively discharged. If the drug court team determines that administrative discharge is appropriate, the Specialty Courts staff shall complete a Notice of Administrative Discharge to provide to the drug court judge. The Notice of Administrative Discharge shall be filed in the official court record and the case shall be assigned to the appropriate circuit or district court judge or venue shall be transferred as provided in Section 9.
- (2) An administrative discharge does not preclude future eligibility for drug court.

Section 15. Voluntary Termination

Participants may request voluntary termination from drug court utilizing a Request for Voluntary Termination. Drug court participants have the right to consult with their attorney. If the drug court judge determines that the request is knowingly and voluntarily made, the drug court judge shall grant the request. Upon entry of the Notice of Voluntary Termination, the case shall be assigned to the appropriate circuit or district court judge or venue shall be transferred as provided in Section 9.

Section 16. Involuntary Termination

- (1) The Specialty Courts staff or drug court team may make a verbal recommendation to the drug court judge to terminate a participant due to the participant's non-compliance. If the drug court judge agrees to review the recommendation of termination, Specialty Courts staff shall complete an Affidavit of Violations, requesting the drug court judge terminate the participant from drug court. If the drug court judge decides termination is appropriate, a Notice of Termination shall be completed. The participant shall be notified of their termination during the drug court session, unless the participant has absconded as provided in subsection (2) of this Section.
- (2) If a participant has absconded for a period of at least fifteen (15) days, the drug court judge may sign a Notice of Termination without the participant being notified and present during the drug court session.
- (3) Upon entry of the Notice of Termination, the case shall be assigned to the appropriate circuit or district court judge or venue shall be transferred as provided in Section 9 for further proceedings.
- (4) The Notice of Termination shall be filed in the official record.
- (5) All participants listed as "suspended-absconded" shall be reviewed monthly with the drug court judge and drug court team.

Section 17. Successful Completion of Drug Court

- (1) A participant shall be determined to have successfully completed drug court when they have:
 - (a) Completed all five (5) drug court phases;
 - (b) Paid all restitution owed, unless the participant is unable to pay restitution in full while in drug court, in which case the drug court team may require a reasonable amount be paid;
 - (c) No criminal charges pending against them; and
 - (d) Paid all court costs, fines, and/or fees owed pursuant to KRS 533.030 before graduation if required to do so by the drug court judge after consultation with the drug court team.
- (2) Upon successful completion of drug court, the sentencing judge may:
 - (a) Dismiss the underlying charge(s) if the participant was on diversion but only when restitution, if any, has been paid in full;
 - (b) Modify the probated sentence to be conditionally discharged, but only when restitution, if any, has been paid in full; or
 - (c) Enter an order resolving, dismissing, or disposing of a contempt charge.
- (3) A drug court graduation should be held within ninety (90) days of the participant's successful completion of all five (5) phases of drug court, or at the discretion of the drug court judge.

Section 18. Drug Court Staffings

- (1) The drug court judge and Specialty Courts staff shall attend staffings prior to drug court sessions. The prosecutor, defense attorney, and other drug court team members are encouraged to attend these staffings. Drug court staffings shall be confidential and non-team members shall not attend absent extraordinary circumstances. If there is an extraordinary need for a non-team member to attend, upon approval by the drug court judge, the non-team member shall be allowed to attend

the staffing, but only after signing a confidentiality agreement.

- (2) At a drug court staffing, the drug court team shall discuss the following:
 - (a) Whether to admit potential participants into drug court;
 - (b) Appropriate behavior modification responses for violations by current participants;
 - (c) Achievements and phase advancement of participants who will be attending the drug court session; and
 - (d) Other pertinent issues relating to drug court participants.

Section 19. Drug Court Sessions

- (1) A drug court judge shall conduct drug court sessions as follows:
 - (a) One (1) drug court session per week, unless weekly sessions are not possible, then a drug court judge shall conduct at least two (2) drug court sessions per month; and
 - (b) May be conducted in person, virtually, or a combination thereof.
- (2) Drug court judges shall maintain an official court record of all drug court sessions through written or recorded means.

Section 20. Confidentiality

- (1) Drug court proceedings, including drug court staffings and sessions, shall be confidential, and all proceedings shall be closed unless otherwise authorized by the drug court judge.
- (2) Documents contained in a participant's drug court case file shall be confidential, not subject to disclosure, and maintained separately from the underlying court case file, except for those documents specified in Section 21 of these rules.
- (3) In accordance with federal regulations regarding substance abuse treatment programs, drug court team members shall sign a confidentiality agreement.
- (4) Drug court team members shall comply with state and federal

confidentiality laws regarding treatment information.

Section 21. Filing of Drug Court Documents

Upon utilization of any of the following documents, the document(s) shall be filed by the Specialty Courts staff with the appropriate court clerk for inclusion in the court record of the underlying court case file:

- (1) Order Referring for Assessment to Drug Court;
- (2) Drug Court Notice of Defendant Referral Status;
- (3) Order of Admission;
- (4) Motion for Transfer;
- (5) Order Transferring;
- (6) Order Designating Temporary Inactive Status;
- (7) Order Resuming Active Status;
- (8) Defendant's Motion to Extend Probation for Completion;
- (9) Order Extending Probation;
- (10) Notice of Voluntary Termination;
- (11) Notice of Violations (shall only be filed when the violations result in termination);
- (12) Notice of Termination; and
- (13) Acknowledgement of Successful Completion or Notice of Administrative Discharge.

Section 22. Collection of Fees

- (1) Specialty Courts staff shall not collect any fees, fines, or other costs from participants at any time.
- (2) Drug court judges shall not impose financial sanctions of any kind.
- (3) No drug court judge or Specialty Courts staff shall collect monies for use by the drug court through forfeiture, plea agreements, sanctions, fees, fines or other costs, other than those referred to herein.

Section 23. Drug Testing

- (1) Drug testing is a vital component of drug courts.
- (2) The following procedures shall apply to all drug courts.
 - (a) Drug testing shall be administered to all participants on a frequent and random basis. Participants in all phases will be randomly tested at least two (2) times per week.
 - (b) Drug tests performed by individuals other than the Specialty Courts staff, the drug court team, or a drug testing vendor under contract or MOU with the AOC shall not be admissible in drug court.
 - (c) All participants shall be required to make daily telephone contact, utilizing a toll-free telephone number, wherein a recording announces phase(s) and times for specimen collections for each drug court.
 - (d) Instant, laboratory, and other drug tests supplied by the drug court shall be utilized for drug court participants only. Inventory of supplies shall be audited on a random basis.
 - (e) Trauma informed practices, for the purpose of drug testing, shall be clearly identified and followed. Training will be provided to all Specialty Courts staff.

Section 24. Monitoring and Evaluation of Drug Courts

Drug courts are committed to ensuring fidelity to Best Practice Standards and will measure their effectiveness through the following practices:

- (1) Reviewing drug court outcomes by monitoring participant enrollment in and attendance to scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, in-program technical violations, and new arrests;
- (2) Monitoring recidivism rates, including new arrests, new convictions, and new incarcerations, for at least two years following each participant's exit

- from the drug court;
- (3) Participating in independent evaluations of adherence to best practices and participant outcomes, and developing and implementing remedial action plans based on the recommendations of the evaluator, in order to address deficiencies with fidelity;
 - (4) Continually monitoring admission rates, services delivered, and outcomes achieved for members of groups that have historically experienced discrimination;
 - (5) Creating remedial action plan(s) to correct disparities and examine the success of the remedial actions; and
 - (6) Maintaining an electronic database, known as the Management Information System (MIS), to track participant engagement, program outcomes, and provide real-time program statistics.

Section 25. Authorization for Drug Court Judges and New Drug Courts

- (1) Before presiding over a drug court, a judge shall submit a request to SPCrequest@kycourts.net for approval by the Chief Justice of the Kentucky Supreme Court. If approved, the Chief Justice shall enter an order establishing the judge's jurisdictional authority.
- (2) AOC Specialty Courts shall provide appropriate training to the drug court judge and Specialty Courts staff.

Section 26. Drug Court Team Training

- (1) Drug court teams shall attend a formal pre-implementation training before starting a new drug court. Training shall include, but is not limited to, information on Best Practice Standards and the roles and responsibilities of the drug court team members.
- (2) Drug court team members who are asked to join an existing team shall attend an orientation where they will be introduced to the drug court model and receive training on local practices, if any. New drug court

team members, including judges, will receive training that includes, but is not limited to, information on Best Practice Standards and the roles and responsibilities of the drug court team members.

- (3) Drug court team members, including judges, shall attend continuing education training at least once a year to ensure they have the most up-to-date knowledge about best practices on topics including substance use disorder and mental health treatment, complementary treatment and social services, behavior modification, community supervision, team decision making, and constitutional and legal issues in drug courts.

Section 27. Kentucky Court of Justice Specialty Courts Certification Board

- (1) **Statement of Purpose and Scope.** The Certification Board shall:
 - (a) Establish and oversee all aspects of the specialty courts certification process as set forth in Section 28 of these rules, including but not limited to, the establishment of certification requirements and criteria consistent with the Best Practice Standards, submission of certification requests or applications and timeframes for courts that require an improvement plan;
 - (b) Conduct an annual review of these rules, the Court of Justice Rules of Administrative Procedure, AP Part XIII, Procedures for Specialty Courts, and recommend any necessary updates or revisions to the Supreme Court;
 - (c) Assess certification observation procedures, processes, and forms developed and implemented by AOC Specialty Courts;
 - (d) Establish a communication plan for the specialty courts certification process with local court jurisdictions, the court system, and if appropriate, the public;
 - (e) Define timelines for the ongoing assessment and review procedures for certified specialty courts;

- (f) Submit local jurisdiction certification recommendations to the Chief Justice for final approval;
 - (g) Provide to the Chief Justice a list of those jurisdictions that are on improvement plans, as well as the timelines for future certification review and consideration; and
 - (h) Other matters as directed by the Chief Justice.
- (2) **Certification Board Members.** The eleven (11) member Kentucky Court of Justice Specialty Courts Certification Board shall be appointed by the Chief Justice of the Supreme Court and shall serve up to a 3-year term. Members may be reappointed by the Chief Justice to the Certification Board for one additional 3-year term.
- The Certification Board will consist of nine (9) members of the Judiciary, one (1) Circuit Court Clerk, and the AOC Director or designee. The nine (9) members of the Judiciary shall consist of the following:
- (a) Three (3) current drug court judges (at least one (1) from circuit court and one (1) from district court);
 - (b) One (1) current veterans treatment court judge;
 - (c) One (1) current mental health court judge;
 - (d) One (1) current family recovery court judge;
 - (e) One (1) current juvenile recovery court judge;
 - (f) One (1) retired judge with experience presiding over a specialty court; and
 - (g) One (1) “at large” judge (from circuit, district or family courts).
- (3) **Designation of a Certification Board Chair and Vice-Chair.** The Chief Justice will select one (1) board member to serve as the Certification Board Chair and one (1) additional board member to serve as the Certification Board Vice-Chair. The Chair or Vice-Chair may be responsible for setting the agenda, calling the meeting to order and adjourning the meeting, and designating the date, time, and location of meetings.

- (4) **Quorum.** Six (6) board members shall constitute a quorum in order to transact business. All determinations shall be made by a majority of board members in attendance. Board members may attend meetings via in-person, video, or telephone conference. Board members shall recuse from any business before the Certification Board involving a specialty court over which they preside.
- (5) **Records.** Pursuant to KRS 26A.200, all records received, generated, kept, or maintained by or on behalf of the Certification Board shall be the property of the KCOJ and are subject to the control of the Supreme Court of Kentucky. All records created for or generated by the Certification Board shall not be considered Administrative Records of the AOC as defined by AP Part XVII.
- (6) **Staff Support.** The AOC will provide staff support to the Certification Board.

Section 28. Drug Court Certification Process

- (1) Drug courts participating in the certification pilot program shall fulfill all certification requirements established by the Certification Board.
- (2) No drug court may be certified unless it is recommended for certification by the Certification Board.
- (3) Each drug court judge participating in the certification pilot program will submit a certification application for review of local program operations. This will include all components referenced within the Kentucky Specialty Courts Quality Assurance and Fidelity Model.
 - (a) If a judge seeks to participate in the certification pilot program, Specialty Courts certification staff will work in tandem with the judge to complete the application process, to identify opportunities, and to identify and overcome any barriers.
 - (b) If a drug court participating in the certification pilot program is not yet certified and/or has new judicial leadership, Specialty Courts

certification staff will consult with the drug court judge and drug court team to discuss their intent to apply for certification and the application process.

- (c) If a certified drug court undergoes new judicial leadership, Specialty Courts certification staff will consult with the drug court judge and drug court team to discuss their intent to maintain certification, pending the next certification review.
- (4) Specialty Courts certification staff will initiate a meeting with the drug court judge and Specialty Courts staff to obtain necessary information after an application is submitted.
- (5) Specialty Courts certification staff shall provide a final report to the Certification Board for review and consideration in support of certification. The final report shall include:
 - (a) A review of the drug court's compliance with these rules, Memorandums of Agreement (MOAs), Memorandums of Understanding (MOUs), and various fiscal considerations, such as, drug testing, treatment supports, and Medicaid/insurance applications;
 - (b) A summary of Best Practice Standards implemented by the drug court;
 - (c) Any specialty court highlights, innovative approaches, and/or exemplary practices;
 - (d) All areas of concern regarding Best Practice Standards established by these rules;
 - (e) Recommendations for technical assistance, training, and areas of improvement;
 - (f) A summary of the observation tool findings; and
 - (g) Any additional observations or recommendations.
- (6) The Certification Board will review the Final Report and submit a recommendation to the Chief Justice.
- (7) The Chief Justice will make a determination of certification.

- a. If approved, the Chief Justice will issue an order of certification;
 - b. If an improvement plan is necessary, the Specialty Courts certification staff will collaborate with the drug court judge and Specialty Courts staff to develop the plan and resubmit for certification.
- (8) Compliance with these rules, certification criteria, and the Best Practice Standards shall be reviewed every three (3) years through internal mechanisms including peer reviews and Specialty Courts certification staff assessments. Information gleaned from those reviews and assessments will be used to assist with evaluations of local specialty court outcomes. A report of all drug court certification reviews will be compiled and provided to the Certification Board.

This Order shall be effective March 1, 2023, and until further Order of this Court.

Entered this 25th day of October 2022.

All sitting; all concur.


CHIEF JUSTICE