

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT, IN
AND FOR BROWARD COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO. III-03-S-1

IN RE:

CREATION OF A MENTAL HEALTH
COURT SUBDIVISION WITHIN THE
CIRCUIT CRIMINAL DIVISION

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In accordance with the authority vested in the Chief Judge by Rule 2.050, Florida Rules of Judicial Administration:

WHEREAS, this Circuit has recognized that the creation of "specialized courts" within other divisions of the Court has enhanced the expediency, effectiveness and quality of Judicial Administration;

WHEREAS, the rapidly increasing number of felony cases involving mentally ill, mentally retarded, or autistic defendants has contributed to congesting and overburdening the court dockets in the Circuit Court Criminal Division, and,

WHEREAS, a centralized Mental Health program would increase the efficiency of the criminal court system in this Circuit, and

IT IS NOW THEREFORE;

ORDERED that:

Effective November 3, 2003, for a period of one year, a part time Felony Mental Health Subdivision shall be operational within the Circuit Court Criminal Division to preside over cases deemed eligible in this Order.

I. ELIGIBILITY

A. MENTALLY ILL, MENTALLY RETARDED OR AUTISTIC AND PROBATION ELIGIBLE

- 1 . Defendants formally charged with non-violent third degree felonies (wherein “violent” offenses include those enumerated in Florida Statutes, Section 775.084) and who score Any Non-State Prison under the Florida Sentencing Guidelines/Criminal Punishment Code, who are mentally ill, mentally retarded, or autistic, and who desire to be considered for admission into said division, shall be transferred by the Clerk of Court to the Felony Mental Health Division upon the filing of a written transfer order, unless excluded pursuant to paragraph I.A.2. below.
- 2 . Defendants charged with criminal traffic related offenses, defendants whose sentence includes a minimum mandatory sentence pursuant to Florida Statute, and defendants whose cases are qualified for and assigned to the Career Criminal/Habitual Offender Section pursuant to Administrative Order No. III-99-I-1 or the Domestic Violence Court pursuant to Administrative Order No. II-01-H-4A, or subsequent related orders governing said section and court, are not eligible for the Felony Mental Health Division pursuant to paragraph I.A.1. Above.

**B. MENTALLY ILL, MENTALLY RETARDED OR AUTISTIC
AND SEEKING A DOWNWARD DEPARTURE**

- 1 . Defendants whose sentence, if convicted, mandates prison under the Florida Sentencing Guidelines/Criminal Punishment Code, who are mentally ill, mentally retarded, or autistic, and who desire to be considered for admission into said division, who move for a downward departure, pursuant to Florida Statutes, Section 921.0016(4)(d) or Section 921.0026(2)(d), shall be transferred by the Clerk of Court to the Felony Mental Health Division for said hearing, upon the filing of a written motion for downward departure and transfer order, unless excluded pursuant to paragraph I.B.2. below. If said motion for downward departure is denied by the Felony Mental Health Division Judge, the defendant shall be deemed ineligible for said division.

- 2 . Defendants charged with criminal traffic related offenses, defendants whose sentence includes a minimum mandatory sentence pursuant to Florida Statute, and defendants whose cases are qualified for and assigned to the Career Criminal/Habitual Offender Section pursuant to Administrative Order No. III-99-I-1 or the Domestic Violence Court pursuant to Administrative Order No. II-01-H-4A, or subsequent related orders governing said section and court, are not eligible for the Felony Mental Health Division pursuant to paragraph I.B.1. above.

C. COMPETENCY AND INSANITY

- 1 . Any defendant adjudged incompetent to proceed by the referring court, contesting competency or commitment, found not guilty by reason of insanity, returned from forensic commitment for either competency restoration or treatment for insanity, on conditional release after commitment for competency restoration, or on conditional release after being found not guilty by reason of insanity, shall have his or her case transferred, upon filing of a transfer order, by the Clerk of Court to the Felony Mental Health Division for the determination of placement and/or commitment.
- 2 . The above provisions shall not divest other Circuit Criminal Courts of their authority to enter orders of competency and forensic commitment in non-contested cases. However, any defendant who does not meet the criteria for forensic commitment, or who contests commitment as stated in paragraph I.C.1., shall be transferred, upon filing of a transfer order, to Felony Mental Health Court for commitment hearing and order of commitment or the formulation and imposition of a conditional release order.
- 3 . Any defendant committed to a forensic facility for competency restoration or treatment for insanity, or on conditional release on the date this order is effective is eligible for the Felony Mental Health Division. The Clerk of Court shall transfer, upon filing of a transfer order, those cases to Felony Mental Health Division upon the filing of any violation of conditional release, requests for status, modification or reprimands, or upon return of the defendant from a forensic hospital.

- 4 . Upon a determination of competency, the Felony Mental Health Division Judge shall utilize the above criteria to determine whether the case should remain in the Felony Mental Health Division. If it is determined that the case does not qualify for the Felony Mental Health Division, it shall be transferred, upon filing of a transfer order, back to the original division.
- 5 . Defendants whose cases are qualified for and assigned to the Career Criminal/Habitual Offender Section pursuant to Administrative Order No. III-99-I-1 or the Domestic Violence Court pursuant to Administrative Order No. II-01-H-4A, or subsequent related orders governing said section and court, are not eligible for the Felony Mental Health Division pursuant to paragraph I.C.1., I.C.2. and I.C.3. above.

II. FELONY MENTAL HEALTH PROBATION

- 1 . Any defendant on Felony Mental Health Probation, as set forth in Administrative Order III-02-N-1A or subsequent related orders governing Felony Mental Health Probation, at the time of the effective date of this order, shall immediately be transferred by the Clerk of Court to the Felony Mental Health Division.
- 2 . If the defendant qualifies for Felony Mental Health Probation, the criteria set forth in Administrative Order III-02-N-1A or subsequent related orders governing Felony Mental Health Probation shall be complied with.
- 3 . Due to the limited mental health resources in the community, Felony Mental Health Probation, as set forth in Administrative Order No. III-02-N-1A, will only be used

for the monitoring and supervision of defendants eligible for the Felony Mental Health Division, except as provided in section II.5. below. The Felony Mental Health Division Judge will preside over all status, reprimand and violation hearings for defendants who are on Felony Mental Health Probation, except as provided in section II.5. below.

- 4 . Due to the limited mental health resources in the community, defendants ineligible for the Felony Mental Health Division, as set forth above, shall not be transferred to the Felony Mental Health Division for monitoring or supervision by any other criminal court.
- 5 . Defendants whose cases are qualified for and assigned to the Career Criminal/Habitual Offender Section pursuant to Administrative Order No. III-99-I-1 or the Domestic Violence Court pursuant to Administrative Order No. II-01-H-4A, or subsequent related orders governing said section and court may, if the presiding judge in that section/court deems it appropriate and such is a legally permissible sentence, be sentenced to Felony Mental Health Probation, so long as the criteria set forth in Administrative Order III-02-N-1A or subsequent related orders governing Felony Mental Health Probation is complied with. The monitoring and supervision of such probation shall then be handled by the Career Criminal/Habitual Offender Section or Domestic Violence Court judge who placed the defendant on Felony Mental Health Probation.

III. DISQUALIFICATION

- 1 . If a defendant is not mentally ill, mentally retarded, or autistic; indicates that he or she no longer desires to participate in the Felony Mental Health Division; or at any time demands a trial or hearing on a motion to determine legal issues unrelated to mental health, he or she is no longer eligible for the Felony Mental Health Division.
- 2 . If the Court determines that the defendant is no longer sufficiently participating in or benefiting from the Felony Mental Health Division; or that the defendant poses a great threat to public safety, he or she is no longer eligible for the Felony Mental Health Division.
- 3 . If the defendant is arrested for or charged with any new offense, the defendant is no longer eligible for the Felony Mental Health Division without the consent of the Felony Mental Health Division Judge and the State as to any or all of the defendant's cases.
- 4 . If the defendant was admitted pursuant to section IV. of this order, and the State determines that the defendant is no longer sufficiently participating in or benefiting from the program, he or she is no longer eligible for the Felony Mental Health Division and will be transferred, upon the filing of a transfer order, back to the original division upon notice of revocation filed by the State.
- 5 . If a defendant is determined to be ineligible for the Felony Mental Health

Division, the case shall be transferred, by the filing of a transfer order, back to the original division. Thereupon, the defendant's right to a speedy trial and formal discovery may be reinstated upon a written demand.

IV. EXCEPTIONS AND VICTIM CONSENT

- 1 . Defendants who do not meet any of the above criteria may be admitted only with the consent of the Felony Mental Health Division Judge, the State, the victim and the defendant.
- 2 . The defendant or the defendant's immediate family may not personally contact the victim or the victim's immediate family to acquire the victim's consent.

V. TRANSFER OF CASES

- 1 . Motions for transfer into the Felony Mental Health Division may be made sua sponte by any court or ore tenus, with the defendant present if feasible, by the Defense or the State accompanied by documentation, testimony, or any other specific evidence that would convince the court in support thereof. After transfer by the referring court, the case will be heard by the Felony Mental Health Division Judge, who shall make the final determination of a defendant's eligibility.
- 2 . Any motion or notice to transfer a defendant into the Felony Mental Health Division, unless specifically objected to by defense counsel, shall be deemed a waiver of the defendant's right to a speedy trial and formal discovery, other than providing documentation relating to defendant's mental health status and all

available statements and police reports.

- 3 . If the Felony Mental Health Judge determines that a defendant is mentally ill, mentally retarded or autistic and meets the criteria as set forth in sections I.A., I.B., I.C. or IV., the defendant is eligible for the Felony Mental Health Division. If a defendant is eligible for the Felony Mental Health Division, all of the defendant's eligible felony cases as well as all of the defendant's misdemeanor cases eligible for the Mental Health Subdivision within the County Criminal Division pursuant to Administrative Order VI-00-I-1 or subsequent related orders governing said division, including violations of probation or community control, shall be consolidated and transferred, by the filing of a transfer order, by the Clerk of Court to the assigned Felony Mental Health Division Judge.
- 4 . Prior to a defendant being accepted into the Felony Mental Health Division, appropriate waivers of confidentiality shall be obtained.

VI. ADMINISTRATION

IT IS FURTHERMORE ORDERED that Judge Mark A. Speiser is hereby designated as the Judge assigned to this specialized court. In that capacity, Judge Speiser will be responsible for administering the Felony Mental Health Division and coordinating the role of the judiciary with the functions of the Department of Children and Family Services, Henderson Mental Health Center, Nova Southeastern Outpatient Care Clinic, private mental health care providers, Department of Corrections, County Court Probation, Broward County Court Alternatives, Pretrial Services Program and Broward Regional Health Planning Council. In that Judge Speiser has proven himself to be learned in the field of

mental health and possesses a unique understanding with respect to the needs of the mentally ill, and handles said cases accordingly, without compromising the safety of the public, the Office of the State Attorney concurs in the assignment of Judge Speiser, and if for some reason Judge Speiser ceases to preside over said division, any judicial replacement is subject to consultation with the Office of the State Attorney, the Office of the Public Defender and the criminal defense bar.

IT IS FURTHERMORE ORDERED that the Honorable Ginger Lerner-Wren shall serve as Judge Speiser's alternate, and for such purpose is hereby appointed as an acting Circuit Court Judge in order to enter orders which are necessary, fit and proper, and/or as required by law. For the purpose of presiding over the above-mentioned misdemeanor cases, Judge Speiser is hereby appointed as an acting County Court Judge in order to enter orders which are necessary, fit and proper, and/or as required by law.

IT IS FURTHERMORE ORDERED that this order supercedes any conflicting language in any previous administrative orders concerning mental health in these criminal courts.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida on this the 17th day of October, 2003.

/s/DALE ROSS
DALE ROSS, CHIEF JUDGE