

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

*Administrative Order 2021-61-Crim*

**FELONY MENTAL HEALTH COURT  
PRETRIAL DIVERSION PROGRAM**

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(a) Pursuant to Article V, section 2(d) of the Florida Constitution, and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and the power to do everything necessary to promote the prompt and efficient administration of justice.

(b) Florida Rule of General Practice and Judicial Administration 2.215(b)(3) states the chief judge “shall, considering available resources, ensure the efficient and proper administration of all courts within [this] circuit.”

(c) Section 394.47892, Florida Statutes, permits the creation of mental health court programs under which a defendant in the justice system assessed with a mental illness shall be processed in such a manner as to appropriately address the severity of the identified mental illness through treatment services tailored to the individual needs of the participants.

(d) The creation of specialized problem solving courts designed to offer an alternative to the traditional adversarial setting by connecting eligible participants to a variety of therapeutic services and support networks enhances the effectiveness, expediency, and quality of judicial administration, and improves the quality of life for the participants’ return to the community, reduce recidivism, and increase public safety.

(e) In accordance with the authority vested in the Chief Judge by Article V, section 2(d) of the Florida Constitution, section 43.26, Florida Statutes, and Florida Rule of General Practice and Judicial Administration 2.215, it is hereby **ORDERED, EFFECTIVE NOVEMBER 1, 2021:**

(1) The Felony Mental Health Court Pretrial Diversion Program (hereinafter referred to as the “Program”) is created within the Seventeenth Judicial Circuit.

## **I. ELIGIBILITY**

A. A defendant is eligible for voluntary admission into the Program, upon motion of either party or the Court's own motion if:

1. The defendant is identified as having a serious mental illness.
2. The defendant is charged with a second or third degree felony, excluding any burglary dwelling or firearm charges.
3. The defendant has no more than three (3) prior non-violent felony offenses.

B. Defendants who do not meet the eligibility criteria in A.2 or A.3 may be considered for admission to the Program, subject to the agreement of the State Attorney.

C. Defendants who are and continue to be adjudicated incompetent to proceed are not eligible for admission to the Program until such time as they are adjudicated competent, provided they voluntarily agree to mental health treatment and services and otherwise satisfy the criteria listed herein.

D. Notwithstanding any provision herein, the Court has the ultimate discretion to determine a defendant's eligibility for the Program consistent with this Administrative Order and section 948.08, Fla. Stat.

E. Prior to entering into the Program, all eligible defendants will be required to waive their right to a speedy trial and their right to discovery, except for the limited purpose of a restitution hearing if requested, until such time as they successfully complete the Program or they are terminated from the Program.

## **II. PROGRAM ADMITTANCE**

Defendants eligible for participation in the Program may be admitted to the Program by:

A. Referral.

1. The Broward Sheriff's Office of Pretrial Services and/or its contracted medical provider will interview and assess the in-custody arrestee. Within two (2) days, the Broward Sheriff's Office or its contracted provider will

make a preliminary determination if the arrestee meets the Program eligibility criteria.

2. Upon an initial determination that an arrestee may be eligible for the Program, the Broward Sheriff's Office or its contracted provider will inform Broward Behavioral Health Coalition, Inc. (BBHC) or its contracted provider, and forward all necessary information and paperwork.
3. Alternatively, the attorney for the defendant, with documentation that the arrestee meets the Program eligibility criteria, may also forward all necessary information and paperwork to BBHC for preliminary review.

#### B. BBHC Review.

Within two (2) business days of receipt of a referral, BBHC or its contracted provider will determine if the individual suffers from a serious mental illness. BBHC or its contracted provider will then send the information to the Office of the Public Defender, the Office of Criminal Conflict and Civil Regional Counsel, and/or private defense counsel, if known.

#### C. Defense Review.

1. The attorney for the defendant shall coordinate the completion of any and all releases required for further evaluation of the arrestee by BBHC or its contracted provider.
2. If the defendant wishes to participate in the Program, defense counsel will notify the State Attorney and BBHC or its contracted provider.

#### D. State Attorney Review.

1. The State Attorney shall review the defendant's criminal history and charges to ensure Program eligibility.
2. The State Attorney shall ensure the victim(s) of the offense, if any, are consulted and given an opportunity to provide input with respect to the defendant's participation in the Program.
3. After review, the State Attorney will notify BBHC and defense counsel of the defendant's eligibility for the Program.

E. Treatment Plan.

Upon completion of all releases and consent, BBHC or its contracted provider shall assess the defendant and provide a report to the Court as to, *inter alia*, whether the defendant suffers from a serious mental illness. If BBHC or its contracted provider determine the defendant suffers from a serious mental illness, it will prepare a report to the Court setting forth a comprehensive treatment plan.

F. Acceptance Letter.

Upon agreement by all parties as to the terms of the treatment plan, the Court will issue an acceptance letter for entry into the Program.

G. Transfer Order.

Upon acceptance into the Program, a transfer order may be entered by the assigned division judge, within six (6) months of the case being filed, or upon agreement of all parties, provided the defendant satisfies the eligibility criteria listed herein.

### **III. PROGRAM PROCEDURAL REQUIREMENTS**

A. The defendant must voluntarily agree to mental health or co-occurring treatment and services.

B. The defendant must make full restitution to any person or entity, including an insurance carrier or investigative agency, who suffered monetary loss as a direct or indirect result of the commission of an offense in order to successfully complete the Program. If the defendant cannot afford to make restitution upon entry into the Program, the defendant shall file a full financial affidavit, and the amount of restitution shall be converted to a civil lien. If the defendant is determined indigent, no financial affidavit is needed.

C. If the restitution amount cannot be agreed upon by the parties, the Mental Health Court judge shall conduct a restitution hearing prior to entry into the Program.

D. Restitution is non-refundable in the event the defendant is unable to successfully complete the Program. However, the defendant will be given credit at sentencing for any amount of restitution already paid.

E. The defendant must participate in the Program for a period of one (1) year, however the time may be extended at the Court's discretion.

F. At the end of the Program, the Court shall consider the recommendation of the provider and the State Attorney as to disposition of the pending charge(s). The Court shall determine, by written finding, whether the defendant has successfully completed the Program.

G. If the Court finds that the defendant has not successfully completed the Program, the Court may order the defendant to continue in education and treatment, which may include a mental health program offered by a licensed service provider, as defined in section 394.455, Fla. Stat., or order the defendant return to the assigned division judge for normal channels of prosecution.

#### **IV. DISCHARGE FROM PROGRAM**

A. The Court shall dismiss the charge(s) upon a finding that the defendant has successfully completed the Program.

B. A defendant's participation in the Program may be terminated at the discretion of the Court for any of the following reasons:

1. There is an outstanding capias for a period of six (6) months for an individual participating in the Program;
2. New felony criminal charges are filed against the defendant, other than those qualifying offenses encompassed within the provisions of section 948.08(8), Florida Statutes, unless the State Attorney agrees to the defendant's continued participation in the Program. The Program judge, and not the division judge, may hear the new charge, unless the State Attorney objects, and/or the defendant requests a trial;
3. The defendant violates probation, the basis for which is a new law violation that is an offense that is not encompassed within the provisions of section 948.08(8), Florida Statutes. The Program judge, and not the division judge, will hear the new charge.
4. The Court determines that there is no suitable treatment for the defendant or the defendant is not amenable to services; or
5. The defendant requests a trial.

This Administrative Order supersedes and vacates Administrative Orders III-03-S-1, III-03-S-2, and III-05-S-3A.

**DONE AND ORDERED** in Chambers, Fort Lauderdale, Broward County, Florida, on this 19th day of October, 2021.

/s/ Jack Tuter

Jack Tuter, Chief Judge