

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

ADMINISTRATIVE ORDER NO.: III-06-S-1A

IN RE:

MENTAL HEALTH COURT
SUBDIVISION WITHIN THE
CIRCUIT CRIMINAL DIVISION

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

IT IS ORDERED that effective January 17, 2006, Administrative Order No. III-03-S-1, which created the Mental Health Court Subdivision within the Circuit Criminal Division, is hereby amended as follows:

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 unless excluded pursuant to paragraph I.A.2. below, after:
 - a. The Defendant has pled guilty or no contest before the trial judge,
 - b. The Defendant has waived his or her right to be sentenced by the assigned trial judge and expressed a desire to be transferred and sentenced by the Felony Mental Health Division Judge,

- c. A certificate of eligibility has been filed by a mental health court placement coordinator, and
 - d. A written transfer order has been filed.
- 2. Defendants charged with criminal traffic related offenses, defendants whose sentence includes a minimum mandatory, unless eligible for a youthful offender 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, unless excluded pursuant to paragraph I.B.2. below, after:
 - a. The Defendant has pled guilty or no contest before the trial judge,
 - b. The Defendant has waived his or her right to be sentenced by the assigned trial judge and expressed a desire to be transferred and sentenced by the Felony Mental Health Division Judge,
 - c. A certificate of eligibility has been filed by a mental health court placement coordinator,

- d. A written motion for downward departure has been filed, and
 - e. A written transfer order has been filed.
2. If said motion for downward departure is denied by the Felony Mental Health Division Judge, the defendant shall still be sentenced by the Felony Mental Health Division Judge, acting in his capacity as a Circuit Court Judge, in accordance with the laws of the State of Florida.
 3. Defendants charged with criminal traffic related offenses, defendants whose sentence includes a minimum mandatory, unless eligible for a youthful offender 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 incompetency and forensic commitment in uncontested cases. After a

finding that a Defendant has been declared incompetent to proceed and requires forensic commitment, the case shall be transferred by the Clerk of the Court, upon filing of a transfer order, to the Felony Mental Health Division, until such time as the Defendant is restored to competency.

3. However, any defendant who contests their competency, or who does not meet the criteria for forensic commitment, or who contests commitment as stated in paragraph I.C.1., shall be transferred:
 - a. With at least two competency evaluations that are not older than ninety (90) days, and
 - b. Upon filing of a transfer order,
to Felony Mental Health Court for a competency hearing, placement hearing and order of commitment or the formulation and imposition of a conditional release order.
4. The only time a case may be transferred to the Felony Mental Health Division by the Clerk of the Court, upon filing of a transfer order, without at least two competency evaluations, in compliance with paragraph I.C.3., is when a defense attorney has ordered confidential competency evaluations and the Defendant declines to release those reports to the Court.
5. 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.

- 6 . 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.
- 7 . 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., I.C.3., I.C.4. and I.C.5. above.
8. Defendants whose cases are qualified for and assigned to the Drug Court, pursuant to Administrative Order No.: III-05-E-3A, or subsequent related orders governing said court, who are declared to be incompetent to proceed, are deemed eligible for the Felony Mental Health Court. After a finding that a Defendant has been declared incompetent to proceed, the case shall be transferred by the Clerk of the Court, upon filing of a transfer order, to the Felony Mental Health Division, until such time as the Defendant is restored to competency. Once the Defendant is restored to competency, the case shall be transferred, upon filing of a transfer order, back to the Drug Court Division, unless the Defendant elects to remain in the Felony Mental Health Division to resolve his or her case.

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 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 . A defendant is no longer eligible for the Felony Mental Health Division if:
 - a. The defendant is not mentally ill, mentally retarded, or autistic,
 - b. The defendant indicates that he or she no longer desires to participate in the Felony Mental Health Division.
 - c. The defendant demands a trial or hearing on a motion to determine legal issues unrelated to mental health.

This section, (paragraph III.1.), shall not apply to paragraph I.B.2.

- 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.
5. If a Defendant is currently on Mental Health Probation and is charged with a new felony offense, the new case(s) shall not automatically be transferred to the Felony Mental Health Division, without first meeting the criteria for eligibility pursuant to paragraphs I.A., I.B. or I.C.
6. If a Defendant is currently on conditional release due to incompetency, and is charged with a new felony offense, the new case(s) shall not automatically be transferred to the Felony Mental Health Division, without first meeting the criteria for eligibility pursuant to paragraph I.C. and obtaining competency evaluations that are dated within ninety (90) days of the date of the transfer order.

7. If a Defendant is currently on conditional release due to a finding of not guilty by reason of insanity, and is charged with a new felony offense, the new case(s) shall not automatically be transferred to the Felony Mental Health Division, without first meeting the criteria for eligibility pursuant to paragraphs I.A., I.B. or I.C.

VI. ADMINISTRATION

IT IS FURTHERMORE ORDERED that Judge Martin Bidwill is hereby designated as the Judge assigned to this specialized court. In that capacity, Judge Bidwill 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 Bidwill 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 Bidwill, and if for some reason Judge Bidwill 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 Mark A. Speiser shall serve as Judge Bidwill's alternate. For the purpose of presiding over the above-mentioned misdemeanor cases, Judge Bidwill 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 January, 2006.

/s/DALE ROSS
DALE ROSS, CHIEF JUDGE

[Crim. Disk #67]