

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

Administrative Order 2023-30-Crim

FELONY MENTAL HEALTH COURT

(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, which may include pretrial intervention programs, as provided in s. 948.08, 948.16 and 985.345, Florida Statutes; post-adjudicatory mental health court programs, pursuant to s. 948.01 and 984.06, Florida Statutes and review of the status of compliance or non-compliance of sentenced defendants through a mental health court program

(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:**

PRETRIAL DIVERSION PROGRAM

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 or developmental disability as defined by s. 393.063(12), Florida Statutes.
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.

V. DOWNWARD DEPARTURE

- (1) Defendants whose sentence, if convicted, mandates prison under the Florida Sentencing Guidelines/Criminal Punishment Code, who have documented mental illness or developmental disability, and who desire to be considered for admission into Felony Mental Health Court, should file a motion seeking a downward departure pursuant to s. 921-0026(2)(d), Florida Statutes, shall be transferred by the clerk of Court of Felony Mental Health Court for a hearing (unless otherwise excluded), after:
 - a. The defendant has pled guilty or no contest before the assigned 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 Court Judge,
 - c. A written motion for downward departure has been filed; and
 - d. A written transfer order has been filed.
- (2) If the motion for downward departure is denied by the Felony Mental Health Court Judge, the defendant shall still be sentenced by the Felony Mental Health Court Judge, acting in his or her capacity as a Circuit Court Judge, in accordance with the laws of the State of Florida.

VI. COMPETENCY AND INSANITY

- (1) Any defendant adjudged incompetent to proceed, contesting competency or commitment, found not guilty by reason of insanity, that has 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 signed by the Judge stating the reasons for the transfer. The Clerk of Court shall assign the case to the Felony Mental Health Court for the determination of placement and/or commitment. Should the defendant in Felony Mental Health Court have a misdemeanor pending in another division, the misdemeanor case shall also be assigned to Felony Mental Health Court.
- (2) Upon a determination of competency, the Felony Mental Health Court Judge shall determine whether the case should remain in Felony Mental Health Court. If it is determined the case does not qualify for Felony Mental Health Court, it shall be transferred, upon filing of a transfer order, back to the original division.
- (3) Defendants whose cases are qualified for and assigned to Adult Drug Court pursuant to Administrative Order 2021-34-Crim and who are declared to be incompetent to proceed are eligible for 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 Court, upon filing of a transfer order, to Felony Mental Health Court 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 Felony Mental Health Court to resolve his or her case.

VII. FELONY MENTAL HEALTH PROBATION

- (1) A defendant in the Felony Mental Health Court Division may be placed on Felony Mental Health Probation if he or she is adjudged competent and eligible to enter into the Program.
- (2) A defendant with a serious mental health diagnosis or developmental disability, as defined by s. 393.063(12), Florida Statutes in another circuit criminal division may be transferred to Felony Mental Health Court for Felony Mental Health Probation if:

- a. The Felony Mental Health Court Judge accepts the defendant for Felony Mental Health Probation,
 - b. The defendant scores prison, and has been sentenced to prison or probation, and
 - c. A written transfer order has been filed.
- (3) The Clerk of Court shall immediately transfer any eligible defendant on Felony Mental Health Probation to Felony Mental Health Court.
- (4) The Felony Mental Health Court Judge will preside over status, reprimand and violation hearings for defendants who are on Felony Mental Health Probation.

VIII. FELONY DOMESTIC VIOLENCE CASES

(1) Felony domestic violence cases where competency is being contested, or where the defendant has been found incompetent to proceed, may be transferred from Division FV to Division FZ in accordance with Administrative Order 2021-64-Crim for a determination of competency, at the discretion of the Court.

(2) Upon a finding of competence, or if the case is resolved by mental health probation, the case shall then be returned to Division FV, unless both parties agree to resolve the case in Felony Mental Health Court.

IX. DISQUALIFICATION

(1) A competent defendant is no longer eligible for Felony Mental Health Court if:

- a. The defendant is not mentally ill or developmentally disabled,
- b. The defendant indicates that he or she no longer desires to participate in Felony Mental Health Court,
- c. The defendant is competent to proceed and demands a trial,
- d. The Court determines that the defendant is no longer sufficiently participating in or benefiting from Felony Mental Health Court, or

e. The defendant poses a great threat to public safety, and the presiding judge determines Felony Mental Health Court is no longer proper for the defendant to participate.

(2) If a competent defendant is charged with any new offense, the defendant is no longer eligible for Felony Mental Health Court without the consent of the Felony Mental Health Court Judge and the State Attorney as to any or all of the defendant's cases.

(3) If a competent defendant is determined to be ineligible for Felony Mental Health Court, the case shall be transferred, by the filing of a transfer order, back to the original division.

X. TRANSFER OF CASES

(1) Motions for transfer into Felony Mental Health Court 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.

(2) If the Felony Mental Health Court Judge determines that a defendant has a mental illness, or is developmentally disabled and meets the eligibility criteria as outlined herein, the defendant is eligible for Felony Mental Health Court.

(3) If a defendant is eligible for Felony Mental Health Court, all of the defendant's eligible felony cases, as well as all of the defendant's eligible misdemeanor cases, including violations of probation or community control, shall be evaluated, consolidated and transferred, by the filing of a transfer order, by the Clerk of Court to the assigned Felony Mental Health Court Judge.

(4) Upon entry into Felony Mental Health Court, appropriate waivers of confidentiality and consent forms shall be signed and provided for purposes of placement and treatment.

(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 Felony Mental Health Court, without first meeting the criteria for eligibility, or without an agreement of the parties.

(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 Felony Mental Health Court, without first meeting the criteria for eligibility and obtaining an evaluation addressing competency that is dated within six (6) months of the transfer order, or upon agreement of the parties.

(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 Felony Mental Health Court, without first meeting the criteria for eligibility, or upon agreement of the parties.

This Administrative Order supersedes and vacates Administrative Order III-06-S-1A, Administrative Order 2021-61-Crim and 2016-39-Crim.

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida, on this 20th day of October, 2023.

/s/ Jack Tuter
Jack Tuter, Chief Judge