

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
IN AND FOR INDIAN RIVER, MARTIN OKEECHOBEE,  
AND ST. LUCIE COUNTIES, STATE OF FLORIDA

**ADMINISTRATIVE ORDER 2019-01**

**RE: MENTAL HEALTH COURT PROGRAM**

**WHEREAS**, the Florida Legislature through Chapter 394, has encouraged the creation of mental health courts to align policy initiatives in the criminal justice and mental health systems to ensure implementation of the most effective resources available within our communities and to coordinate the shared needs of adults who have a mental illness and who are in or at risk of entering the criminal justice system; and

**WHEREAS**, specialized courts have enhanced the expediency, effectiveness, and quality of judicial administration; and

**WHEREAS**, since courts and jails have not historically been able to adequately address the treatment needs of the mentally ill and developmentally disabled, a centralized mental health court program would be beneficial to the administration of justice, increase the efficiency of the criminal justice system, best protect public safety, reduce recidivism and help those mentally ill or intellectually disabled persons build successful lives; and

**WHEREAS**, through cooperation and assistance of the counties within the Circuit, state attorney and public defender, a Mental Health Court program has successfully operated in St. Lucie County since June 6, 2006, in Martin County since October 31, 2007, in Indian River County since January 15, 2015, and in Okeechobee County since January 10, 2018;

**NOW, THEREFORE**, pursuant to the authority vested in me as Chief Judge of the Nineteenth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.215, it is hereby **ORDERED** as follows:

**A. MENTAL HEALTH COURTS IN THE CIRCUIT**

Mental Health Court shall be operational as a subdivision within the Criminal Divisions of the Circuit and County Courts of each county in which a judge is assigned to Mental Health Court in the annual judicial assignment order. The same judge shall be assigned to handle the cases arising from the criminal divisions of both circuit and county courts unless otherwise specified in the annual judicial assignment order.

**B. ASSESSMENT/IDENTIFICATION REQUIREMENTS**

Admission into Mental Health Court requires an assessment or identification by a mental health professional of either: (1) a mental illness; or (2) a developmental disability.

## **C. CATEGORIES OF CASES ACCEPTED INTO MENTAL HEALTH COURT**

### **1. Defendants Adjudicated Incompetent to Proceed or Not Guilty by Reason of Insanity**

Any defendant who is adjudicated incompetent to proceed or not guilty by reason of insanity and who has been placed on conditional release shall be transferred to Mental Health Court. Any defendant committed to a forensic facility for competency restoration or treatment for insanity may be transferred to the Mental Health Court upon agreement of the assigned judge, state attorney and defense counsel. All reports mandated by Fla. R. Crim. P. 3.212 and section 916.13, Florida Statutes (and any subsequent renumbering of the rule and statute) shall be filed with the trial/committing court and a copy provided to the Mental Health Court. Upon transfer to Mental Health Court, the Mental Health Court may consider violations of conditional release, requests for status modification, reprimands or other monitoring as may be appropriate, including review and monitoring upon return from a forensic hospital. Upon a determination of competency, the case shall be immediately transferred back to the referring court, except with the approval of the state attorney, defendant, and the Mental Health Court judge, the case may be disposed of within Mental Health Court.

### **2. Defendants Entering as a Pretrial Diversion**

- a. Pursuant to section 948.08(8), Florida Statutes, a defendant charged with a felony, is eligible for entry into Mental Health Court, as a pretrial diversion case based upon the clinical needs of the defendant, upon motion of either party, or the Court's own motion if:
  - (1) The defendant is identified as having a mental illness;
  - (2) The defendant has not been convicted of a felony; and
  - (3) The defendant is charged with:
    - (a) A nonviolent felony;
    - (b) Resisting an officer with violence, if the officer and state attorney consent;
    - (c) Battery on a law enforcement officer, if the officer and state attorney consent; or
    - (d) Aggravated assault, if the victim and state attorney consent.
- b. Pursuant to section 948.16(3), Florida Statutes, a defendant who is charged with only misdemeanor offense(s) and is identified as having a mental illness, is eligible for voluntary admission into Mental Health Court, as a pretrial diversion case, upon motion of either party or the court's own motion.
- c. Any defendant who is not eligible for Mental Health Court as provided in paragraph a or b of this subsection, but who is charged with a criminal offense and otherwise eligible pursuant to paragraph B above may be transferred to Mental Health Court as a

pretrial diversion if the defendant and state attorney agree to the transfer. The state attorney shall seek input from the victim when appropriate. The decision of the state attorney's office to disapprove a defendant's admission into the Mental Health Court under this subsection may not be challenged by any defendant, the Mental Health Court, or any other court and does not create a right of review in any court.

### **3. Defendants Placed in Mental Health Court as a Condition of Probation**

Pursuant to section 394.47892, Florida Statutes, entry into Mental Health Court as a condition of probation must be based upon:

- a. The sentencing court's assessment of the defendant's:
  - (1) Criminal history;
  - (2) Mental health screening outcome;
  - (3) Amenability to the services of the program; and
  - (4) Total sentence points
- b. The recommendation of the state attorney and the victim, if any; and
- c. The defendant's agreement to enter the program.

Pursuant to sections 948.01(8), 948.06(2)(j), and 394.47892(4), Florida Statutes, notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2016, the originating court may place a defendant, who is otherwise eligible under paragraph B above, into Mental Health Court as a condition of probation if:

- The offense is a nonviolent felony or any misdemeanor;
- The term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08;
- Defendants charged with resisting an officer with violence under s. 843.01, battery on a law enforcement officer under s. 784.07, or aggravated assault may participate in the Mental Health Court program if the court so orders after the victim is given his or her right to provide testimony or written statement to the court as provided in s. 921.143;
- The defendant is amenable to mental health treatment, including taking prescribed medications;
- The defendant is fully advised of the purpose of Mental Health Court and the defendant agrees to participate;
- The defendant is otherwise qualified under s. 394.47892(4); and
- The satisfactory completion of Mental Health Court is made a condition of the defendant's probation or community control.

### **4. Defendants Released from Custody with Charges Pending/Pretrial Condition**

Any defendant who is charged with a criminal offense and who is eligible for Mental Health Court under paragraph B above may be supervised by Mental Health Court as a condition of bond, release, or pretrial supervision upon order of the trial court, or first appearance judge, or the judge signing a warrant, while awaiting disposition of case. Jurisdiction of the case will remain with the trial/originating court and Mental Health Court will provide services to and supervision

of the defendant while the case is pending. Any new law violations, including positive drug tests, shall be reported to the trial/originating court and the state attorney and may include recommendations from the Mental Health Court team.

#### **D. PROCEDURES FOR ENTRY INTO MENTAL HEALTH COURT**

1. When a defendant enters Mental Health Court under paragraph C1 of this order, the trial court shall proceed pursuant to Fla. R. Crim. P. 3.212 and Chapter 916, Florida Statutes (and any subsequent renumbering of the rule and statute) prior to transferring supervision to the Mental Health Court. All subsequent reporting requirements of Fla. R. Crim. P. 3.212 and Section 916.13, Florida Statutes shall be provided to the trial court with a copy to the Mental Health Court.
2. Eligible defendants with a felony case, who desire to enter into Mental Health Court as a pretrial diversion under paragraph C2 of this order and who are not incompetent or who do not qualify as not guilty by reason of insanity at the time of the offense, must enter a plea of No Contest or Guilty to the pending charge(s) either prior to the transfer to Mental Health Court or in Mental Health Court, unless otherwise agreed by the state and defense. Upon completion of the Mental Health Court program, the defendant will be permitted to withdraw his/her plea and the state attorney and/or Mental Health Court judge shall dismiss the charges against the defendant.

Eligible defendants charged solely with misdemeanor offenses, who desire to enter Mental Health Court under paragraph C2 of this order, will not be required to enter a plea of No Contest or Guilty to their charges. Upon satisfactory completion of the Mental Health Court program, the defendant's misdemeanor charges will be dismissed.

Any pre-plea transfer of a defendant to Mental Health Court, unless specifically objected to by defense counsel, except when transferred pursuant to paragraph C4 above, shall be deemed a waiver of the defendant's right to a speedy trial and formal discovery. Post-plea transfers shall be deemed a waiver of the right to be sentenced by the judge who accepts a plea of Guilty or No Contest to the charge(s).

3. Pursuant to sections 948.01(8) and 948.06(2)(j), Florida Statutes, regarding cases transferred to Mental Health Court as a condition of probation under paragraph C3 above, the original sentencing court shall relinquish jurisdiction of the defendant's case to Mental Health Court until:
  - a. The defendant is no longer active in the program;
  - b. The case is returned to the sentencing court due to the defendant's termination from the program for failure to comply with the terms thereof; or
  - c. The defendant's sentence is completed.
4. Upon a defendant's acceptance into Mental Health Court, appropriate waivers of confidentiality and releases of information shall be obtained from the defendant.

## **E. PROGRAM COMPONENTS**

1. Upon transfer into Mental Health Court, a needs assessment will be conducted. The assessor will develop the therapeutic rationale, make recommendations for an individualized treatment plan, and determine the expected clinical outcomes.
2. Mental Health Court will monitor the progress of the defendant in treatment, and the degree of compliance with the rules and regulations of the Mental Health Court program. Defendants will be subject to scheduled and random drug screens to monitor any alcohol, or illegal and non-prescribed drug use. Mental Health Court will work to develop defendants' cognitive, behavioral, coping, and social skills. Defendants shall attend regular court hearings as ordered by the Court, participate in continued assessment and treatment, engage in discharge planning, and do such other things as directed by the mental health coordinator, team and/or Court.
3. Mental Health Court will provide incentives and order sanctions to Defendants, as appropriate.
4. The duration of Mental Health Court will be at least six months for defendants charged with a misdemeanor(s) and at least one year for defendants charged with a felony.

## **F. DISQUALIFICATION AND/OR VIOLATION**

1. If, after entry into Mental Health Court, the Mental Health Court judge determines that the defendant does not have a mental illness or developmental disability, or has demanded a trial or other hearing which would preclude continued participation in Mental Health Court, then the defendant is no longer eligible for the Mental Health Court and shall be transferred back to the referring court.
2. If the Court determines that the defendant is no longer sufficiently participating in or benefiting from the Mental Health Court or that the defendant is no longer eligible for the Mental Health Court, the defendant shall be transferred back to the originating court or set for disposition with the Mental Health Court Judge, as appropriate under the circumstances.
3. If the defendant is arrested or charged with any new offense while participating in Mental Health Court, the defendant may no longer be eligible for Mental Health Court. After receiving input from the Mental Health Court team, the presiding Mental Health Court judge shall make the decision as to whether the defendant will be permitted to remain in Mental Health Court.
4. Pursuant to section 394.47892, Florida Statutes, a defendant who is **participating** in Mental Health Court under paragraph C3 above and becomes the subject of a violation of probation or community control, shall have the violation of probation or community control heard by the Mental Health Court presiding judge. After a hearing on or

admission of the violation, the presiding Mental Health Court judge shall dispose of the violation as he or she deems appropriate and lawful.

Upon the filing of a violation of supervision affidavit regarding a defendant who is participating in Mental Health Court as a condition of probation or community control, the Probation Officer shall submit the violation affidavit to the Mental Health Court judge, and the Clerk of the Court shall set the violation in Mental Health Court in front of the Mental Health Court judge.

## **G. TRANSFER TO OTHER PROBLEM SOLVING COURTS**

If, after entry into Mental Health Court, it is determined by the Mental Health Court team that the defendant's needs would be better served in another problem solving court within the Nineteenth Judicial Circuit, the presiding judge shall transfer the case as appropriate.

## **H. ADMINISTRATION**

1. The above provisions shall not divest any other Circuit or County judge of their authority to enter orders concerning pretrial release, bond conditions, competency and forensic commitment and/or to hear motions for downward departure.
2. The Administrative Judge of Mental Health Court shall be responsible for administering the Mental Health Court program and coordinating the role of the judiciary with the functions of the Mental Health Court program, Department of Children and Family Services, Agency for Persons with Disabilities, and other public and private providers of mental health services.
3. For the purpose of presiding over cases assigned to Mental Health Court, any judge assigned to or presiding over Mental Health Court cases is hereby appointed as an Acting County Court Judge and/or Acting Circuit Judge accordingly.
4. The public is entitled to access to judicial records, however, patient treatment records are deemed confidential pursuant to §§ 395.3025(7) and 393.13, Florida Statutes. In the event a treatment record or report is placed in the court file of a Mental Health Court defendant, the Mental Health Court judge will determine whether such report is confidential and exempt from public access under Florida law. If the Mental Health Court judge finds the record is exempt, the records will be sealed pursuant to Rule 2.420(f), Rules of Judicial Administration.
5. All Mental Health Court hearings shall be recorded electronically.
6. Defendants participating in Mental Health Court may be required to pay fee(s) and the Clerk(s) of Court are authorized to accept any participation fee or other funds collected incidental to a defendant's participation in Mental Health Court.

7. The Circuit's Mental Health Court shall be maintained subject to the availability of adequate funding and staffing for its operation.

Administrative Order 2014-11 is hereby replaced and superseded by this order.

**SIGNED and ORDERED** in Chambers at Stuart, Martin County, Florida on January 3, 2019.



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ELIZABETH METZGER  
Chief Judge