

ADMINISTRATIVE ORDER
NO. 2017-03

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE AND OSCEOLA
COUNTIES, FLORIDA

**ORDER GOVERNING MENTAL HEALTH COURT,
NINTH JUDICIAL CIRCUIT**

WHEREAS, 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; and

WHEREAS, pursuant to the chief judge's constitutional and statutory responsibility for administrative supervision of the courts within the circuit and to create and maintain an organization capable of effecting the efficient, prompt, and proper administration of justice for the citizens of this State, the chief judge is required to exercise direction, *see* Fla. R. Jud. Admin. 2.215(b)(2), (b)(3); and

WHEREAS, this Circuit has recognized that the creation of problem solving courts has enhanced the expediency, effectiveness and quality of judicial administration; and

WHEREAS, it is essential that a strategy be implemented in view of the unique nature of mental health conditions, to isolate and focus upon individuals arrested for non-violent misdemeanor and felony offenses who have untreated mental health conditions, and the need for appropriate treatment; and

WHEREAS, there is a recognized need for the Court to expedite those with mental health conditions through the criminal justice system into the most appropriate treatment environment while ensuring community protection and safety for all citizens; and

WHEREAS, it is necessary that this Circuit utilize available community resources and support, to establish an individualized judicial process that will, where appropriate, tailor treatment rather than punishment for the defendants with mental health conditions; and

WHEREAS, the proper implementation of a mental health court program authorized by section 394.47892, Florida Statutes, would provide a valuable alternative to traditional prosecution in appropriate cases;

NOW, THEREFORE, I, Frederick J. Lauten, in order to facilitate the efficient operation of the administration of justice, and pursuant to the authority vested in me as Chief Judge of the Ninth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.215, hereby order the following, **effective immediately**, to continue until further order and superseding any provisions in prior Administrative Orders which may be inconsistent:

A. Mental Health Court Programs hereinafter referred to as “MHC” were approved and are currently operating in both Orange and Osceola counties.

B. MHC is a non-adversarial team approach to case processing designed to address the unique needs of criminal justice involved individuals with mental health conditions by providing appropriate treatment services.

C. The team may consist of the following entities depending on the county in which the court resides: Judge, Prosecutor, Defense Attorney, Orange County Corrections Health Services (CHS) staff, Orange and Osceola County Corrections and Pretrial Services, Forensic Social Worker, Mental Health Specialist, Community Corrections Division (CCD) Supervising Officer, Florida Department of Corrections and the Problem Solving Court (PSC) program office (Program Office).

D. Potential MHC participants may be identified and referred to MHC at any time in the judicial process. The referral of a defendant to MHC may be made by any of the judicial divisions with no plea taken, and may be made by Defense Counsel, the State Attorney’s Office, the Court, the Program Office, Mental Health Pre-Trial Release (MHPTR), Corrections Health Services staff (CHS) or any other interested party.

E. No participant will be contacted, assessed, pre-screened or screened by PSC staff for MHC without the prior approval of the participant's defense attorney. Participation in MHC is voluntary. In order to participate, the defendant must waive their right to a speedy trial prior to being court ordered in to MHC. If speedy trial has not been waived prior to a defendant's initial status review date in MHC, execution of a MHC agreement shall serve as a waiver of speedy trial.

F. To initiate the referral, the referring entity must complete a MHC referral form and submit the referral form to the Program Office.

G. After receipt of a referral form, the Program Office shall confirm with defense counsel that they would like the case considered for MHC if the referral came from another interested party. The Program Office shall screen referrals for program eligibility based on the criteria set forth in this Administrative Order.

H. Each individual will be provided with a treatment plan by a qualified professional as defined in section 394.455(38), Florida Statutes, or Mental Health Counselor as defined by section 394.455(26), Florida Statutes, or MHC team member licensed under sections 491.005 and 491.006, Florida Statutes, a Clinical Social Worker as defined in section 394.455(7), Florida Statutes, or Forensic Social Worker prior to admission in to MHC.

a. Individuals with co-occurring disorders may require a period of detoxification and stabilization prior to discussing a treatment plan and/or referral to the MHC.

b. The treatment plan will include:

i. Treatment options (Mental Health Pretrial Release – MH-PTR; Florida Assertive Community Treatment – FACT; Clinical Case Management – CCM; other licensed community based treatment programs)

- ii. Assigned Clinical Case Manager and/or PSC Case Manager
- iii. Housing Arrangements
- iv. Appointments for Assessment, if required
- v. Treatment follow-up schedule and medications.
- vi. Discharge plan that would go into effect upon the offender's completion of MHC.

c. MHPTR staff (if the defendant is on MHPTR supervision), the Forensic Social Worker, Supervising Probation Officer and Program Office staff will be required to give information to the team at all status hearings concerning the defendant's adherence to the MHC treatment plan.

I. After screening, the referral package shall be forwarded to the State Attorney's office to include the referral form, documentation from a mental health professional that the defendant suffers from a mental illness as defined in section 394.455(28), Florida Statutes, and a copy of the proposed treatment plan.

a. For the purposes of this Administrative Order, a "mental health professional" may include a qualified professional as defined in section 394.455(38), Florida Statutes, a Clinical Social Worker as defined in section 394.455(7), Florida Statutes, a Mental Health Counselor as defined by 394.455(26), Florida Statutes, or a MHC team member licensed under sections 491.005 and 491.006, Florida Statutes, who is appropriately licensed to make a determination of the existence of a mental illness.

J. Upon receipt of the referral package, the State Attorney's office shall determine whether the defendant is eligible to participate in MHC, shall indicate this information on the referral form, and shall forward the referral form back to the Program Office.

a. The State Attorney's office has sole discretion on approvals for the diversion track of MHC.

b. If a referral is denied for the MHC program by the State Attorney's office for any track other than diversion, the defense attorney may file a motion for reconsideration directly to the MHC judge with proper notice to the assigned MHC Prosecutor and the matter will be placed on the next MHC docket for final determination of appropriateness for participation in the post-adjudicatory track of the MHC program.

K. The Program Office will forward the final completed referral form to the Clerk of Court's office to have the case placed on the next MHC docket for the defendant to sign their participation agreement and be court ordered into the MHC program by the MHC judge. A copy of the final completed referral form shall also be forwarded to the assigned trial judge, defense counsel and the State Attorney's Office.

L. At the defendant's first court date, if the defendant is approved for the diversion track of the MHC program, the defendant shall sign the MHC agreement as agreed to by the State and be entered into the MHC program. If the defendant is approved for the post adjudicatory track of the MHC program, the defendant shall enter a plea and shall sign the MHC agreement and be entered into the MHC program as a condition of probation or community control pursuant to section 948.01(8)(a), Florida Statutes. At that time, MHPTR may be removed by the judge as a condition of release.

M. Only defendants ordered to participate in MHC as a condition of probation will be supervised by County or State Probation. These defendants will be required to pay all County or State Probation drug testing and supervision fees unless waived by the supervising department.

N. If the defendant in any track elects not to participate in MHC at their first MHC date, then the case shall be returned to the original trial subdivision.

O. The defendant may be unsuccessfully discharged from MHC and returned to normal channels for prosecution for failure to comply with the treatment plan or orders of the court.

P. MHC shall hear cases involving defendants arrested for misdemeanors or felonies who:

a. Suffer from a mental illness as defined in section 394.455(28), Florida Statutes, as documented by a qualified professional as defined in section 394.455(38), Florida Statutes, Clinical Social Worker as defined in section 394.455(7), Florida Statutes or Mental Health Counselor as defined by section 394.455(26), Florida Statutes, or MHC team member licensed under sections 491.005 and 491.006, Florida Statutes;

b. Are amenable to mental health treatment (including taking prescribed medications);

c. Have documented access to housing, medication and follow-up care in the community either through MHPTR or a provider in the community that must be adequately documented prior to admission in to MHC in a treatment plan.

d. Are willing and able to sign the MHC participation agreement;

e. Do not have any current charges or prior convictions of any forcible felonies as defined by section 776.08, Florida Statutes, except aggravated assault;

f. Have waived speedy trial;

g. Reside in Orange or Osceola county (some exceptions for other counties that are contiguous to the Ninth Judicial Circuit); and qualify for one of the tracks of MHC.

Q. The State Attorney has absolute and sole discretion over admittance to the diversion track of the MHC program. The offender must meet the following qualifications to be considered for the diversion track of the MHC program:

a. The defendant volunteers for admission in to the MHC program;

b. The defendant has never been convicted of a felony; and the defendant is charged with: a misdemeanor; or a non-violent felony that includes a third degree felony violation of chapter 810 or any other felony offense that is not a forcible felony as defined in section 776.08, Florida Statutes; or resisting officer with violence under section 843.01, Florida Statutes, if the law enforcement officer and state attorney consent to the defendant's participation; or battery on a law enforcement officer under section 784.07, Florida Statutes, if the law enforcement officer and state attorney consent to the defendant's participation; or aggravated assault, if the victim and state attorney consent to the defendant's participation.

i. Upon successful completion of the MHC program diversion track the State Attorney shall issue a nolle prosequi on the case. If the defendant does not successfully complete the diversion track, the court may order that the charges revert to normal channels for prosecution or the matter may be resolved on the MHC docket based on the recommendation of the State Attorney.

ii. The offender must meet the following qualifications for the post adjudicatory track of the MHC program:

1. The defendant qualifies for the program pursuant to section 948.01(8)(a) or 948.06, Florida Statutes: the offense is a non-violent felony (a third degree felony under chapter 810 or any other felony offense that is not a forcible felony as defined in section 776.08, Florida Statutes.
2. Defendants charged with resisting an officer with violence under section 843.01, Florida Statutes, battery on a law

enforcement officer under section 784.07, Florida Statutes, or aggravated assault may participate in the post-adjudicatory track of the MHC 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 section 921.143, Florida Statutes; and

3. The defendant is otherwise qualified under section 394.47892(4), Florida Statutes.
4. Entry into a post-adjudicatory MHC program as a condition of probation must be based upon the MHC's assessment of the defendant's criminal history, mental health screening outcome, amenability to the services of the program, and total sentence points; the recommendation of the state attorney and the victim, if any; and the defendant's agreement to enter the program.
5. A defendant who is sentenced to a post-adjudicatory MHC program who, while a MHC program participant, is the subject of a violation of probation or community control under section 948.06, Florida Statutes, shall have the violation heard by the judge presiding over the MHC program. After a hearing on, or admission of the violation, the judge shall dispose of any such violation as he or she deems appropriate.

- iii. All misdemeanors will remain in MHC for a minimum of 6 months. All felonies will remain in MHC for a minimum of 12 months.

Administrative Order 2000-08-02 is vacated and set aside and has been incorporated and/or amended herein. The provisions of Administrative Order 2003-39-24 relating only to Section II, E and Attachment F are vacated. Vacating an Administrative Order that vacates a prior Order does not revive the prior Order.

DONE AND ORDERED at Orlando, Florida, this 28th day of March, 2017.

_____/s/_____
Frederick J. Lauten
Chief Judge

Copies provided to:

Clerk of Courts, Orange County
Clerk of Courts, Osceola County
General E-Mail Distribution List
<http://www.ninthcircuit.org>