

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO. 2-73.3

**IN RE: EXPANSION AND MODIFICATION OF POLK COUNTY BEHAVIORAL
HEALTH COURT**

WHEREAS, the Polk County Mental Health Court was created by Administrative Order No. 2-73.0 on September 26, 2007; and

WHEREAS, in an effort to lessen the stigma of the title “Mental Health Court” on program participants, pursuant to Administrative Order No. 2-73.1 the name of the program was changed from “Mental Health Court” to the “Polk County Behavioral Health Court” (BHC); and

WHEREAS, specialized courts such as the Polk County Behavioral Health Court can enhance the expediency, effectiveness, and quality of judicial administration; and

WHEREAS, in view of the nature of mental illness and developmental disability, it is in the public interest and in the interest of justice that a new strategy be implemented to address persons who are mentally ill or developmentally disabled, and who have been found to have committed criminal offenses; and

WHEREAS, the Court, in the interest of justice, strives to balance the need for mentally ill and developmentally disabled defendants, who are qualified, to participate in the Polk County Behavioral Health Court by diverting them from jail and into the mental health system without compromising the safety of the public;

It is, therefore, **ORDERED**:

1. BHC shall be operational within the Polk County Court Criminal Division as a program for cases involving defendants who are suffering from a mental disorder or a developmental disability and who are charged with misdemeanor offenses or alleged to have violated probation previously imposed for a misdemeanor offense. A County Court Judge (BHC Judge) shall be appointed by the Administrative Judge of the County Court to preside over BHC. BHC will follow a post-adjudicatory model. BHC will offer services within the program as part of a suspended sentence or delayed disposition after a defendant enters a plea of guilty or nolo contendere. Further, BHC may offer services within the program as a condition of probation.
2. Recommendations for reassignment of case(s) to BHC may be made *sua sponte* by any Court, Court Services, the Polk County Jail, Pre-trial Services, the BHC coordinator, the State Attorney’s Office, the defense counsel, law enforcement, mental health providers, or by any other interested person. All recommendations for reassignment shall be directed to the BHC coordinator.

3. Immediately upon receipt of a recommendation for reassignment, the BHC coordinator shall notify the attorney of record, if one has been retained or appointed.
4. When a defendant whose case(s) have been recommended for reassignment to BHC wishes to be considered for admission, defense counsel shall make all necessary arrangements to have the eligibility of the defendant evaluated. If the defendant is not represented by counsel, the BHC coordinator shall arrange the evaluation.
5. The criterion for admittance into BHC requires diagnosis by a mental health expert of (1) a current Axis I mental disorder, as set forth by the Diagnostic and Statistical Manual IV-Tr, including schizophrenia, bipolar disorder, major depressive disorders, or post-traumatic stress disorder, or other psychotic disorders of an unspecified nature or (2) a developmental disability as defined in section 393.063(9), Florida Statutes, including mental retardation and autism.
6. Defendants whose case(s) are recommended for transfer to and who are found eligible for participation in BHC, shall have their case(s) transferred to BHC as follows:
 - i. Prior to or following entry of a plea of guilty or nolo contendere to the pending charge(s) in the originating court, the case(s) shall be transferred to BHC for disposition. Defendants who are considering BHC, and are present for a BHC session, may enter a plea in BHC prior to their case being transferred to BHC, as long as all parties are present and are in agreement.
 - ii. Following entry of an admission to a violation of probation, the court may modify the original terms of probation to include participation in BHC, revoke the original probation and impose a new term of probation with BHC as a condition, or defer disposition during active participation in BHC.
7. Defendants accepted into BHC will attend court hearings as ordered by the BHC Judge, based on each defendant's needs. After acceptance into BHC, the defendant will participate in continued assessment and treatment and engage in discharge planning. The defendant's participation will end upon successful completion of the discharge plan or unsuccessful termination from the program. In the event of unsuccessful termination from the program, the defendant's case(s) will be returned to the originating court, unless a deferred or suspended sentence has already been pronounced. In that event, the deferred or suspended sentence will be imposed immediately.
8. In the event a defendant violates the conditions of BHC as outlined in the defendant's contract, the defendant shall appear before the BHC Judge to address said violation. Unless the provisions of paragraph 7 apply, the case shall be transferred back to the original criminal division if the BHC Judge finds, after considering input from treatment providers and case managers, that the defendant has failed to successfully participate in and complete BHC.

9. A probationer's case may also be terminated from BHC if the BHC Judge finds, after considering input from treatment providers and case managers, that the probationer violated the conditions of BHC as outlined in the probationer's contract. The case shall be transferred back to the original criminal division for arraignment if a new violation of probation affidavit is filed.
10. At any hearing where a defendant is alleged to have violated conditions of the BHC contract, upon being satisfied that the defendant committed the violation(s) as alleged, the court, in its discretion, may take one or more of the following actions:
 - a. Continue or extend the defendant's participation in BHC;
 - b. Impose special treatment or supervision conditions;
 - c. Order the defendant as a therapeutic consequence, to county jail for a specified period of time; and/or
 - d. Remove defendant from BHC.

However, the court is aware of the difficulties in establishing and maintaining sobriety and in establishing and maintaining other treatment regimens for mental illness, and will work with defendants on achieving and maintaining sobriety and stability. Violations will not automatically result in termination from BHC.

11. The public is entitled to access to judicial records; however, patient treatment records are an exception to this rule and are deemed confidential by Florida law pursuant to sections 395.3025(7) and 393.13, Florida Statutes. In the event a treatment record or report is placed in the court file of a BHC participant, the BHC Judge will determine whether such report is a confidential patient record exempt from public access under Florida law. If the BHC Judge finds the record exempt, the records will be sealed. Access to the sealed document will be limited to those persons authorized under sections 395.3025 and 393.13, Florida Statutes, or by court order.
12. All defendants currently in Behavioral Health Court under Administrative Order No. 2-73.0 or Administrative Order No. 2-73.1 will continue under the terms and conditions of the contract they have executed.
13. Administrative Order No. 2-73.2 entered on May 31, 2011, is hereby SUPERSEDED.
14. This Order shall have effect upon entry.

DONE and ORDERED on this 7th day of November, 2011.

WM. BRUCE SMITH, Chief Judge