

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

ADMINISTRATIVE ORDER NO. 2-73.9

**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, pursuant to § 394.47892(2), Florida Statutes, “mental health court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.345, postadjudicatory mental health programs as provided in ss. 948.01 and 948.06, and review of the status of compliance or noncompliance of sentenced defendants through a mental health court program”; 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, which includes the Veterans treatment docket, 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 are accused of or 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; and

WHEREAS, in accordance with the authority vested in the Chief Judge under article V, section 2(d), Florida Constitution; section 43.26, Florida Statutes; and Florida Rule of General Practice and Judicial Administration 2.215(b)(2); and

It is, therefore, **ORDERED** that the following procedures shall apply to BHC:

1. Target Population

BHC, presided over by the judge assigned to the F8 Division, shall be operational within the Polk County Court Criminal Division as a voluntary pretrial diversion and postadjudicatory (post-sentence) program for cases involving defendants who are suffering from a mental disorder or a developmental disability and who are charged with

misdemeanor offenses, felony offenses, and/or violation(s) of probation previously imposed for a misdemeanor or felony offense.

2. Program Eligibility

- a. Each participating defendant must be an adult, aged 18 or older, have a primary behavioral health diagnosis which may be accompanied by a substance abuse disorder, and not have a significant history of crimes of violence.
- b. Admittance into BHC requires diagnosis by a mental health expert of either: (1) a mental disorder as set forth by the Diagnostic and Statistical Manual, Fifth Edition (DSM-5), including but not limited to, schizophrenia spectrum and other psychotic disorders, bipolar and related disorders, depressive disorders, anxiety disorders, obsessive-compulsive and related disorders, trauma- and stressor-related disorders, and dissociative disorders; or (2) a developmental disability as defined in § 393.063(11), Florida Statutes, including intellectual disability and autism or autism spectrum.
- c. Pretrial Diversion: entry into the BHC Program as pretrial diversion must be based on the following:
 - i Assessment of the defendant's criminal history by the sentencing court;
 - ii Mental health screening outcome;
 - iii Defendant's amenability to the services of the program;
 - iv Recommendation of the state attorney and the victim, if any; and
 - v Defendant's agreement to enter the program.
- d. Pursuant to § 394.47892(4)(a), Florida Statutes, entry into the BHC Program as a condition of probation or community control must be based upon the following:
 - i Assessment of the defendant's criminal history by the sentencing court;
 - ii Mental health screening outcome;
 - iii Defendant's amenability to the services of the program;
 - iv Total sentencing points (as applicable);
 - v Recommendation of the state attorney and the victim, if any; and
 - vi Defendant's agreement to enter the program.

3. Referral Process

- a. Referrals for consideration into the BHC program may be made at any stage of the criminal prosecution process, including as early as arraignment.
- b. Referrals for consideration into the BHC Program may be made to Problem Solving Court staff by any Court, court service, Polk County Jail, Pre-Trial Services (PTS), the State Attorney's Office (SAO), defense counsel, law enforcement, mental health provider, or any other interested person. All referrals for consideration into BHC will be forwarded to the SAO and defense counsel.

- c. Problem Solving Court staff may also identify, screen, and refer defendants at any stage of the criminal prosecution process for participation into the BHC Program.

4. Screening

Once referred for participation in the BHC Program, the Problem Solving Court staff will prescreen defendants and will refer a defendant for a full assessment to determine if the defendant meets the appropriate DSM-5 criteria for participation in the BHC Program.

5. Division Designation

Once a defendant has been accepted into and enters the BHC Program, the Clerk shall change the case division designation to the F8 Division. Thereafter, the case designation shall only be changed again by court order.

6. BHC Program Components

- a. The BHC Court will monitor the defendant's case(s) while in the BHC Program until the defendant is no longer active in the program.
- b. Once assessed, assessment staff will develop the therapeutic rationale, make recommendations for an individualized treatment plan, and determine expected clinical outcomes. The BHC Program will provide case management services to participating defendants, some of which include orientation, intervention, individual care planning, education, and step-down services. Participating defendants will be afforded crisis intervention and be expected to follow and attend recommended treatment modalities. The BHC Program will monitor the progress of the client in treatment, and also the participant's degree of compliance with the rules and regulations of the BHC Program. Participants will be subject to scheduled and random drug screens to monitor any alcohol or substance abuse. The program will work to develop participants' cognitive, behavioral, coping, and social skills.
- c. As a part of the BHC program, the BHC Court may include services provided by the Veterans Administration (VA) whenever a participating defendant qualifies for such services.
- d. Pretrial Diversion: As part of their BHC contract, participating defendants will be enrolled in the BHC Program for a period of up to six (6) months (or until successful completion of the program) for misdemeanor charges and of up to 12 months (or until successful completion of the program) for felony charges.
- e. Postadjudicatory (Post-Sentence): Unless otherwise discharged or modified by the BHC Court, as a condition of probation or community control, participating defendants will be enrolled in the BHC Program for a period of up to six (6) months for misdemeanor charges and of up to 12 months for felony charges. The Department of Corrections and/or County Probation shall continue supervising defendants on probation or community control in regard to their compliance with conditions of

probation or community control. In the event that a defendant violates probation or community control, the Department of Corrections and/or County Probation shall file a violation of probation affidavit(s) as appropriate.

7. Violations

- a. At any hearing where a defendant is alleged to have violated the conditions of the BHC Program or the defendant's BHC contract, upon being satisfied that the defendant committed the violation(s) as alleged, the BHC Court, in its discretion, may take one or more of the following actions:
 - i Continue, extend, or restore the defendant's participation in BHC; and/or
 - ii Impose a special condition of inpatient or residential treatment; and/or
 - iii Order a therapeutic consequence, which may include county jail for a specified period of time; and/or
 - iv Modify or rescind existing conditions of probation, impose additional appropriate special treatment conditions, or impose additional supervision conditions; and/or
 - v Remove defendant from BHC and transfer case back to original criminal division. In such a case, the defendant's right to a speedy trial and formal discovery may be reinstated upon written demand.
- b. "A defendant who is sentenced to a postadjudicatory mental health court program and who, while a mental health court program participant, is the subject of a violation of probation or community control under s. 948.06 shall have the violation of probation or community control heard by the judge presiding over the postadjudicatory mental health court program. After a hearing on or admission of the violation, the judge shall dispose of any such violation as he or she deems appropriate if the resulting sentence or conditions are lawful." § 394.47892(4)(b), Fla. Stat. However, if the violation of probation or community control is as a result of a new law violation, the BHC Judge, on their own motion, or upon the motion of either party, may transfer the violation of probation or community control matter to the criminal division that the new law offense has been assigned.
- c. Violations will not automatically result in termination from BHC.

8. Confidentiality of Patient Treatment Records

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, pursuant to Rule 2.420, Florida Rules of Judicial Administration, and upon proper motion, the BHC Judge will determine whether such report or record is a confidential patient record exempt from public access under Florida law. If the BHC Judge finds the record exempt, the record(s) 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.

9. Superseded

Administrative Order No. 2-73.8, entered on September 19, 2019, is hereby VACATED and SUPERSEDED by this Order. However, all defendants currently in the BHC Program under prior administrative orders will continue under the terms and conditions of the contract they have executed.

10. Effective Date

This Order shall be effective upon entry.

DONE and ORDERED on this 21st day of March, 2024.

s/JAMES A. YANCEY, Chief Judge

Original:

Polk County Clerk of Courts

Copies:

All Circuit Judges

All County Judges

Trial Court Administrator

Polk County Clerk of Courts

Office of the Public Defender

Office of the State Attorney

Office of Criminal Conflict and Civil Regional Counsel (Second District)

Problem Solving Courts

Electronic Bar Mailing