

## Cuyahoga County Common Pleas Court Local Rules

### 30.1 ASSIGNMENT OF CRIMINAL CASES TO THE MENTAL HEALTH & DEVELOPMENTAL DISABILITY DOCKETS

**(A) Purpose**

The Mental Health and Developmental Disability (MHDD) docket(s) are established in order to stabilize severe mental illnesses or neurodevelopment/neurocognitive disorders and reduce recidivism by utilizing treatment and community control alternatives through a multi-disciplinary approach. The MHDD Court docket(s) utilizes a risk assessment tool and mental health and substance use assessment to appropriately identify risk to recidivate, functional impairment, and level of care needs. The totality of these assessments determines the eligibility and placement into each specific MHDD Court docket based on target population requirements. **Appendage A** defines clinical eligibility and outlines current target population for each MHDD Court docket(s) for which an offender may be placed.

**(B) Appointment of judges to preside over the MHDD Court docket(s)**

The Administrative Judge will select a Common Pleas Court General Division judge(s) for the MHDD Court docket(s). The judge(s) will serve for a period of three years from the date of appointment. Upon approval of the Administrative Judge, the judge(s) may be reappointed to successive terms.

**(C) Eligibility for the MHDD Court docket programs.**

The MHDD Court docket(s) will be available to offenders who are arrested for or plead guilty to:

**(1) Legal Criteria**

- a. Any misdemeanor or felony offense eligible for Community Control Sanctions with the appropriate clinical eligibility.
- b. Any charge determined eligible for diversion, per the Cuyahoga County Prosecutor's Office with the appropriate clinical eligibility;
- c. Any offender eligible Intervention in lieu of Conviction (ORC 2951.041) or other diversionary programs with the appropriate clinical eligibility;
- d. Any offender given Community Control Sanctions with appropriate clinical eligibility;
- e. Any offender in violation of Community Control Sanctions with appropriate clinical eligibility;
- f. Any offender eligible for Judicial Release appropriate clinical eligibility;
- g. Any offender with pending felony charges in another jurisdiction will be reviewed on a case-by-case basis to verify the potential offender's ability to comply with the MHDD Court conditions;
- h. Per Supreme Court Specialized Docket Commission standards, (Sup. R. Appendix I, Standard 3, (C)(1)&(2)), the specialized/specialty judge has discretion to decide the admission into the specialized docket in accordance with written criteria. Further, the written and clinical criteria do not create a right to participate in a specialized/specialty docket;

(2) Clinical Criteria

- a. Severe Mental Illness or Neurodevelopment/neurocognitive Disorder with significant functional impairment as determined by the Court Psychiatric Clinic (Defined in **Appendage A**);
- b. An offender must volunteer to participate in the MHDD Court docket(s) and comply with treatment planning and the MHDD Court conditions;
- c. An offender must be capable of participating and completing all MHDD Court conditions;

(3) Diversionary and Non-Diversionary Tracks

The MHDD Court docket(s) has two tracks, one diversionary and one non-diversionary. Offenders on both tracks will receive the benefit of enhanced treatment resources through a multi-disciplinary team and stakeholders. Unless the Prosecutor's Office assents to Diversionary status prior to the offender's plea of guilty to the underlying offense, the offender shall be on the non-diversionary track.

- a. Diversionary Track
  - i. If the offender is placed on the diversionary track, the Court shall accept the offender's plea of guilty and waiver of the right to a speedy trial, a preliminary hearing, and the time period within which a grand jury may indict. The guilty verdict shall be held in abeyance as the participant completes the program.
  - ii. Every participant will be reviewed for placement for the diversionary track by the Cuyahoga County Prosecutor's Office. A participant may have prior felony convictions and be eligible for this track.
- b. Non-Diversionary Track
  - i. The offender shall have their guilty plea accepted and a finding of guilt entered, in accordance with Ohio Rule of Criminal Procedure 11.

(D) **Transfer of Cases to the MHDD Court docket(s)**

In cases where it has been determined an offender meets legal and clinical eligibility and has volunteered to enter into the appropriate docket, the assigned courtroom will be notified and may apply to the Administrative Judge when a case has been granted diversion or is prepared to plea and/or in accordance with Section (C) of this rule.

- a. Determination of the appropriate MHDD Court docket will be determined based on the offender's clinical need and risk to recidivate and communicated to the Court and parties by the MHDD Court Coordinators;
- b. A Participation Agreement must be signed by the offender;
- c. Preference is to transfer the case pre-plea with a mutually agreed upon mark by the parties. Cases may transfer following sentencing in accordance with Section (C) of this rule.
- d. Once a case is transferred to the MHDD Court docket, the assigned MHDD Court judge shall acquire full jurisdiction over the transferred case;

- e. If a defendant is deemed ineligible for the MHDD Court docket(s) prior to the plea or directly following sentencing, the transferred case shall be returned to the active docket of the originally assigned judge.
- f. If the offender chooses not to enter the MHDD docket, the case will remain on the assigned Judge's caseload and assigned to a risk-based unit within the Adult Probation Department if sentenced to Community Control Sanctions.

**(E) Incompetent to Stand Trial, Unrestorable or Not Guilty by Reason of Insanity Transfers**

- a. In cases where it is determined the offender is found Incompetent to Stand Trial, Unrestorable (ISTU) or Not Guilty by Reason of Insanity (NGRI), a Court may apply to transfer the case only after it has been concluded and is subject to the continuing jurisdiction of the Court.

**(F) Successful Completion of the MHDD docket(s)**

Once an offender completes all court ordered conditions and phasing requirements of the MHDD Court docket program they may apply for graduation.

- a. An offender who successfully completes the diversionary track of the MHDD Court docket(s) shall have their proceedings dismissed and the Court shall order the sealing of records pursuant to R.C. 2953.52. The case shall be without adjudication of guilt, and is not a criminal conviction for purposes of any disqualification or disability imposed by law and/or upon conviction of a criminal offense.
- b. An offender who successfully completes the non-diversionary track of the MHDD Court docket(s) will have their Community Control sanctions successfully terminated.

## Appendage A

Appendage A outlines current clinical eligibility and target population for each MHDD Court docket(s) for which an offender may be placed given Community Control Sanctions. The MHDD Court docket(s) addresses offenders with severe mental illnesses or neurodevelopment/neurocognitive disorders by utilizing treatment and community control alternatives through a multi-disciplinary approach. The MHDD Court dockets utilize a risk assessment tool and mental health and substance use assessments to appropriately identify risk to recidivate, functional impairment and level of care needs. The totality of these assessments determines the eligibility and placement into each specific MHDD Court docket based on target population requirements.

Therefore, it is important for the Cuyahoga County Common Pleas Court to tailor each of the MHDD Court docket(s) to target diverse behavioral health disorders in an effort to treat each offender's need safely and effectively based on best practice standards.

The MHDD Court docket funding is often provided by federal or state grants and therefore target population for each of the dockets may be revised over time based on community needs and growing research. Appendage A will be updated whenever a target population is modified or changed.

### 1. Clinical Criteria

To obtain clinical eligibility for the MHDD Court docket(s), an offender shall qualify based on a **current** eligible diagnosis that is causing **significant functional impairment**.

A "current" condition is defined as one that is considered chronic and persistent, acute and active at the time of evaluation, and/or has been present since the start of the offender's current case.

"Significant functional impairment" is defined as a significant reduction in a person's ability to function normally, as evidenced by the impairments in important areas of functioning (e.g. social, occupational, personal domains).

- a. **Severe mental illness (per the DSM-5-TR):** "A mental disorder other than a substance use disorder that results in serious functional impairment substantially limiting or interfering with major life activities." May include the following (among others), given evidence of substantial functional impairment:
  - i. Schizophrenia
  - ii. Schizoaffective disorder
  - iii. Bipolar disorder
  - iv. Other mood disorders (e.g., major depressive disorder and psychotic disorders)
  - v. Posttraumatic stress disorder
  
- b. **Neurodevelopmental disorder (per the DSM-5-TR):** "Neurodevelopmental disorders are a group of conditions with onset in the developmental period. The disorders are typically manifest early in development, often before the child enters school, and are characterized by developmental deficits or differences in brain processes that produce impairments of personal, social, academic, or occupational functioning. The range of developmental deficits or differences varies from very specific limitations of learning or control of executive functions

to global impairments of social skills or intellectual ability. Once thought to be categorically defined, more recent dimensional approaches to measurement of the symptoms demonstrate a range of severity, often without a very clear boundary with typical development. Diagnosis of a disorder thus requires the presence of both symptoms and impaired function.” May include the following (among others):

- i. Intellectual developmental disorder (intellectual disability)
  - ii. Autism spectrum disorder
- c. **Neurocognitive disorder (per the *DSM-5-TR*):** “The neurocognitive disorder (NCD) category encompasses the group of disorders in which the primary clinical deficit is in cognitive function, and that are acquired rather than developmental. Although cognitive deficits are present in many if not all mental disorders (e.g., schizophrenia, bipolar disorders), only disorders whose core features are cognitive are included in the NCD category. The NCDs are those in which impaired cognitive has not been present since birth or early life, and thus represents a decline from a previously attained level of functioning.” May include the following (among others):
- i. Mild or major neurocognitive disorder
  - ii. Traumatic brain injury
  - iii. Alzheimer’s disease (dementia)

## **2. Ineligible Criteria**

- a. An offender shall be found ineligible for the MHDD Court docket(s) when the condition is exclusively substance or medication induced, when functional impairment is solely the result of substance use, or the condition is brief or characterized by having short duration, or the functional impairment has not resulted within the last twelve (12) months.

## **3. MHDD Docket Description**

The following descriptions define the target population for each MHDD Court docket(s) based on an offender’s clinical eligibility, functional impairment, needs, and risk to recidivate.

### **a. Mental Health Court (RISE) docket criteria:**

This docket is established for offenders with severe mental illness and moderate to high risk. The docket will work closely with area behavioral health agencies and probation officers to ensure access to services and cognitive behavioral health interventions, along with regular judicial interaction.

- i. Severe mental illness as defined in Section (1)(a);
- ii. Low to High ORAS Assessment;
- iii. Mild or no substance use disorders;
- iv. Participation Agreement required.

### **b. Mental Health – Adult Drug Court docket (MH-ADC) criteria:**

This docket is established for offenders with significant risk to reoffend, severe mental illness and significant substance use disorders. The multidisciplinary team of counselors, case managers, peer support and probation officers work closely with offenders through

consistent and regular judicial interaction to create a culture of support and accountability utilizing many aspects of the drug court model.

- i. Severe mental illness as defined in Section (1)(a);
- ii. Moderate to severe substance use disorders;
- iii. Moderate to High Risk ORAS Assessment
- iv. Participation Agreement required.

c. **Forensic Assertive Community Treatment (FACT) docket criteria:**

This docket is established for offenders with severe mental illness through utilizing the Assertive Community Treatment (ACT) Model. The multidisciplinary team of counselors, case managers, psychiatrist, and peer support work closely with the offenders through a community setting to provide integrated approach to community mental health service delivery to reduce unneeded hospitalizations and criminal justice involvement while providing the offender with the ability to become independent and integrated into the community. Judicial interaction is utilized parsimoniously, as probation officer(s) will monitor compliance. This docket offers two tracks based on risk to recidivate.

**Track One – Community Track**

- i. Severe mental illness as defined in Section (1)(a);
- ii. Significant functional deficits in daily life, history of psychiatric crises, homeless cycling, and poor engagement in traditional services;
- iii. Low/Moderate ORAS Assessment;
- iv. Participation Agreement required.

**Track Two – Enhanced Track**

- i. Severe mental illness as defined in (1)(a);
- i. Significant functional deficits in daily life, history of psychiatric crises, homeless cycling, and poor engagement in traditional services;
- ii. High Risk ORAS Assessment;
- iii. Participation Agreement required.

d. **ADAPT Docket criteria:**

This docket is established for offenders with eligible neurodevelopment/neurocognitive disorders with functional impairments. The multidisciplinary team of Cuyahoga County Board of Developmental Disability professionals, behavioral health professionals, and probation officers will work closely with offenders in concrete and sustainable goals while working with the offender to create adaptable services through technology, employment supports, and ancillary services. Concrete and regular judicial interaction will assist with accountability and support.

- i. Eligible neurodevelopment/neurocognitive disorders as defined in Section (1)(b-c);
- ii. Low – High ORAS Assessment;
- iii. Participation Agreement required.

*In cases where an offender may meet criteria under both clinical eligibility categories (severe mental illness and neurodevelopment/neurocognitive disorders), the evaluation measures assist the team in determining the most appropriate docket placement.*