

MENTAL HEALTH JAIL DIVERSION – WCPO POLICY

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From: William J. Heaphy, Jr.
Deputy Chief, Diversion and Pre-Exams

I. OVERVIEW

The term “Mental Health Jail Diversion” (MHJD) describes a group of programs that are meant to identify and refer for treatment criminal offenders who can benefit from community mental health treatment for mental illness, emotional disturbance or developmental disability as an alternative to incarceration and/or a more traditional term of probation.

This office’s principal effort in the field of Jail Diversion is called the “Behavioral Health / Expedited Plea” program; the primary goals of the program are to:

- Ensure that mentally ill defendants are referred for treatment in lieu of incarceration and thus reduce jail overcrowding.
- Stabilize mentally ill defendants and reduce the short-term risk of illicit behavior.
- Reduce the risk of long-term recidivism.
- Reduce the overall costs to society created by “revolving door” jails for the mentally ill.

II. PROCEDURE

The identification and referral of targeted defendants is integrated into the normal process of criminal litigation. Special plea offers are made to defendants who are deemed eligible for the Jail Diversion program. In exchange for a guilty plea, defendants agree to undergo a mental health assessment and to follow recommend treatment as a condition of probation.

A. Referral

Referrals for potential MHJD participants can originate from assistant prosecutors, defense attorneys, or the court. Most referrals, however, come from the jail itself. Ideally, potential participants are identified during

their initial screening at the jail. The referral and plea offer are then prepared in anticipation of the Pre-Exam Conference (for cases arising in the City of Detroit) or the Arraignment on the Information (for cases arising Out-County.)

B. Clinical Eligibility

Clinical Eligibility (whether or not a particular defendant is in need of mental health services) is made by medical staff within the jail.

C. Criminal Eligibility

Criminal Eligibility (whether or not a particular defendant is appropriate for a special plea offer) is determined by Senior Assistant Prosecuting Attorneys

This decision is based on a defendant's suitability for community supervision rather than incarceration. The evaluation begins with the charged offense(s) and the Sentencing Guidelines. Most MHJD cases involve Controlled Substance Offenses and Crimes Against Property. In these categories, most straddle cell cases, and all "0" guideline cases are eligible.

Crimes Against Person are generally considered only in "0" guideline cases, and only when the consent of the victim(s) has been obtained.

Other factors that might be considered include: underlying conduct described in police reports or witness statements; the defendant's past criminal history; evidence of past violent or assaultive conduct; adjustment to past sentences of probation and/or mandatory treatment; and feedback from victims, the police, and/or the defendant's family.

D. Plea and Sentence

Once a defendant is deemed eligible, mandatory treatment is made part of a plea offer. In consideration for agreeing to treatment, various incentives can be made part of the offer. These might include reduced charges, dismissed charges, or dismissal of Habitual Offender sentence enhancements. The most important incentive, however, is the guaranty of a sentence of probation, rather than a sentence of incarceration.

The defendant is then free to accept the offer and plead guilty (or no contest), or reject the offer and proceed to trial. At the plea hearing, the defendant waives his right to a trial by jury, and all rights incident to a trial as guaranteed by the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution.

If the plea is accepted, an appropriate treatment provider is then located by the Case Differentiation Unit and the Jail. On the sentence date (usually ten days to two weeks after the plea) the court imposes the condition of mandatory treatment as part of a sentence of probation.

E. Post-Sentence

The terms of the court's order are enforced by the probation department. Failure to comply with the terms of probation (including mandatory treatment) can result in an amendment to the Order of Probation or any sanction up to and including incarceration in the Wayne County Jail or the Michigan Department of Corrections.

III. MENTAL HEALTH JAIL DIVERSION AND PRE-TRIAL DIVERSION

Despite sharing the word "Diversion" in their titles, the two programs are fundamentally different.

A. What is the Difference?

Mental Health Jail Diversion seeks to divert mentally ill defendants from the jail and into community based treatment. Pre-Trial Diversion seeks to divert eligible offenders away from the criminal process entirely.

Mental Health Diversion is available for incarcerated, probation-eligible defendants with a diagnosed behavioral health problem; it usually results in a conviction and sentence of probation. Pre-Trial Diversion is available for low-level, first-time offenders and results in dismissal of the charge(s) against the defendant.

B. Can a Defendant Qualify for Both Programs?

Yes, but such cases are relatively rare. The principal goal of the Mental Health Program is to ensure that the County Jail does not function as a psychiatric hospital or homeless shelter of last resort. Under the terms of its funding, the services offered by the Mental Health Program are meant for the jail population exclusively. At the same time, defendants eligible for Pre-Trial Diversion (first-time offenders charged with low-level property offenses) are almost never incarcerated by the time their cases are bound over. As a result, there is very little overlap between the two programs.

IV. MENTAL HEALTH COURT

The Mental Health Court (MHC) is the most ambitious program operating within Mental Health Jail Diversion. Participants in the Mental Health Court receive extra supervision and assistance from the Mental Health Court Judge and Case Manager.

A. Pilot Status

The Mental Health Court is currently operating on a pilot basis, with funding available for only the Director and two Case Managers. The current carrying capacity is one or two new referrals per week. The Prosecutor's Office and the Court are attempting to focus on offenders with lengthy criminal histories, but no history of violent or assaultive behavior.

B. Post-Sentence

MHC participants are required to appear in court for on regular basis, so the judge can review their progress based on reports from the probation department, the service provider, and the MHC caseworker.

V. FURTHER INFORMATION

For more information about these programs, please contact:

William J. Heaphy, Jr.
Deputy Chief, Diversion and Pre-Exams
313-224-2887
wheaphy@co.wayne.mi.us

For case referral you can also contact:

Ray Bennett
Case Differentiation Unit
734-624-4195
rbennett@co.wayne.mi.us

Andrea Ramus
Case Differentiation Unit
248-953-5473
aramus@co.wayne.mi.us