



WILLIAM C. MCCONICO
CHIEF JUDGE

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LOCAL ADMINISTRATIVE ORDER 2020-08

**STATE OF MICHIGAN
36TH DISTRICT COURT**

SUBJECT: ESTABLISHMENT OF A MENTAL HEALTH COURT PROGRAM

This administrative order is issued in accordance with MCL 600.1090, *et seq.* The purpose of this order is to establish a mental health court program (MHC) in 36th District Court upon approval by the State Court Administrative Office (SCAO). All policies and procedures comply with the statute and are consistent with the *10 Essential Elements of a Mental Health Court* promulgated by the Bureau of Justice Assistance (see Attachment A).

IT IS ORDERED THAT:

1. The Court has entered into a Memorandum of Understanding with each participating prosecuting attorney in the district court, a representative or representatives of the community mental health services programs, a representative of the criminal defense bar, and a representative or representatives of community treatment providers and other key parties pursuant to MCL 600.1091. The Memorandum of Understanding describes the role of each party and is attached (see Attachment B).
2. A multidisciplinary group of stakeholders shall participate in the planning and program design of the mental health treatment court.
3. Team members shall familiarize themselves with the operations of an existing mental health court(s) and cross-train between mental health and judicial systems.
4. The MHC has established eligibility criteria that are consistent with MCL 600.1093 through MCL 600.1095. Criteria, both legal and clinical, are clearly defined for admission.

5. In compliance with MCL 600.1093(3), no participant shall be admitted until a complete preadmission screening and an evaluation assessment are completed. Policies that facilitate timely participant identification, referral, and admission into the mental health court have been developed.
6. All participants shall sign a written agreement to participate in the program in conformance with MCL 600.1094(1)(c). Policies and procedures describing the program length, level of supervision, treatment plan development, requirements for successful completion, expulsion criteria, case disposition whether successful or unsuccessful completion of the program, sanctions, incentives, and other key program components are developed and will be explained to eligible participants as part of the terms of participation.
7. The MHC shall provide consistent and close monitoring of the participant as required by MCL 600.1096. Policies and procedures on the methods and frequency in which the responsible individuals will monitor participant compliance with the program requirements have been developed.
8. The Court shall maintain case files in compliance with the General Records Retention and Disposal Schedule #13 - Michigan Trial Courts, and the Michigan Case File Management Standards. The court has established procedures to ensure substantial compliance with Part 2 of Title 42 of the Code of Federal Regulations and the Health Insurance Portability and Accountability Act (HIPAA) to safeguard the confidentiality of participants' medical records.
9. Pursuant to MCL 600.1099, the coordinating court shall provide the SCAO with the minimum standard data established by the SCAO for each individual applicant and participant of the mental health court.
10. The Court shall use the Drug Court Case Management Information System (DCCMIS) to maintain and submit the minimum standard data as determined by the SCAO.
11. In order to begin or continue operation of the mental health court, the 36th District Court will become certified by the State Court Administrative Office under MCL 600.1091.

Dated: 6-11-2020

William C. McConico
William C. McConico
Chief Judge

Date Approved by SCAO: 6-15-2020

ATTACHMENT A

The 10 Essential Elements of a Mental Health Court

Essential Element #1 – Planning and Administration

Essential Element #2 – Target Population

Essential Element #3 – Timely Participant Identification and Linkage to Services

Essential Element #4 – Terms of Participation

Essential Element #5 – Informed Choice

Essential Element #6 – Treatment Supports and Services

Essential Element #7 – Confidentiality

Essential Element #8 – Court Team

Essential Element #9 – Monitoring Participant Progress

Essential Element #10 – Sustainability

Memorandum of Understanding

36th District Court - Mental Health Treatment Court

A. Program Description/Introduction

This Memorandum of Understanding hereafter referred to as (MOU) is entered between the 36th District Court, hereinafter referred to as (the Court) and Central City Integrated Health hereinafter referred to as (CCIH) the Detroit Wayne Integrated Health Network, hereinafter referred to as (DWIHN); the City of Detroit Law Department and Defense Counsel. For purposes of brevity, Law Enforcement Agencies representing the Mental Health Court, hereinafter referred to as (MHC) team are not included in this MOU, as they are represented on an ad hoc basis, based on availability of officers.

B. Mission Statement

The Mission Statement of the 36th District MHC reads as follows:

The Mission of the MHC is to divert persons who suffer from mental illness from jail and prevent them from cycling through the criminal justice system by connecting them with the treatment (mental health and or co-occurring substance abuse treatment) they need to maintain stability. The MHC seeks to help individuals establish a solid support system and develop healthy coping skills to live a productive life in their community.

C. Provisions

Each agency agrees to participate by coordinating and/or providing the following:

36th District Court agrees to:

1. Assign a Judge to preside over the MHC. The Presiding Judge of the MHC will participate in regular team staffing meetings. Make final decisions regarding incentives and sanctions and program continuation.
2. Assign a Program Director who will ensure the MHC program has all operational needs and is in compliance with state and federal guidelines per grant funding and other statutes as they apply, and oversee the day-to-day operations of the MHC
3. Assign a MHC coordinator who will attend staffing meetings, answer inquiries from prosecution and defense attorneys on possible eligibility, enter data into DCCMIS system, serve as liaison with treatment providers and drug testing contractor (if applicable) and residential treatment facilities.
4. Assign a Case Manager who will screen referrals to the MHC, assist in the development of a treatment plan, monitor clients for compliance with treatment and special conditions of supervision, prepare reports for the judge as needed, and participate in team treatment status meetings.

Wayne County Probate Court agrees to:

1. Accept petitions alleging individuals require treatment and hospitalization or combined treatment.
2. Provide legal representation and protect the due process rights of individuals pursuant to the Mental Health Code.

Central City Integrated Health agrees to:

1. Attend staffing meetings and review hearings.
2. Conduct Assessments.
3. Report on progress of participants.
4. Manage delivery of treatment services.
5. Administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes.
6. Offer insight and suggestions on the treatment plans of individuals in the program.
7. Provide and/or enter data into DCCMIS.

Detroit Wayne Integrated Health Network agrees to:

3. Be responsible for oversight of treatment providers that provide a continuum of care for participants.
4. Advocate on behalf of the clients and for the integrity of the MHC;
5. Ensure that all treatment providers provide timely client information by utilizing SCAO's Michigan Drug Court Case Management Information System (DCCMIS).

City of Detroit Law Department agrees to:

1. Provide legal screening of eligible participants.
2. Attend staffing meetings and review hearings.
3. Represent the interests of the prosecutor and law enforcement.
4. Advocate for public safety.
5. Advocate for victim interest.
6. Hold participants accountable for meeting their obligations.
7. May help resolve other pending legal cases that impact participants' legal status or eligibility.

Defense Counsel agrees to:

1. Identify and refer eligible clients to the MHC;
2. Review and ensure understanding of the requirements of the MHC Order/Contract with prospective participants prior to placement into the MHC;
3. Attend all proceedings related to MHC, including staffing, review and status hearings;
4. Provide feedback during MHC Team meetings regarding program progress, concerns and potential barriers.
5. Comply with all MHC policies and procedures that have been previously agreed upon by all parties;
6. Attend MHC conferences and training seminars, based on availability of funding.

D. Confidentiality

1. A mental health court's performance of, or request for, an assessment of chemical dependency of a mental health court participant, or a referral to treatment, places the MHC within the parameters of 42 CFR, Part 2. All parties agree to abide by the following:
 - a. Confidential treatment court information and records may not be used to initiate or to substantiate any criminal charges against a participant or to conduct any investigation of a participant. (42 CFR, Part 2)
 - a. In accordance with above, any statement or other information obtained as a result of participating in a preadmission screening and evaluation assessment is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.
 - b. State law may neither authorize nor compel any disclosure prohibited by the federal regulations, but where state law prohibits disclosure that would be permissible under the federal regulations, the stricter standard applies.
 - c. Treatment courts may receive or release information or records of participants only with the specific knowledge, voluntary, and written consent of the participant, or under certain very limited exceptions. (42 CFR, Sections 2.22 and 2.31(a))
 - i. The consent must include (42 CFR, Sections 2.14-2.35):
 - a. The specific name or general designation of the program or person permitted to make the disclosure.
 - b. The name of the participant permitting disclosure.
 - c. The name or title of the individual(s), to which (re)disclosure is to be made. Although the recipient should not be as general as an entire agency or department, it need not be as specific as the name of an individual. Instead, the consent form may describe the recipient's job title and/or job functions.
 - d. A statement that when using a general designation in the "To Whom" section of the consent form patients has a right to obtain, upon request, a list of entities to which their information has been disclosed pursuant to the general designation.
 - e. The purpose of the (re)disclosure. The purpose should be narrowly described and should correspond with the information to be released. The purpose should never be as broad as "for all client care."
 - f. How much and what kind of information is to be disclosed. Federal regulations require that the scope of the disclosures be limited to the information necessary to carry out the purpose of the disclosures. (42 CFR, 2.13(a)) The information should be described as exactly and narrowly as possible considering the purpose of the release. Releases for "any and all pertinent information" are not valid. Team members share information on a "need to know" basis.
 - g. The participant's signature and the signature of a person authorized to give consent for a minor.
 - h. The date on which consent is signed.
 - i. The date, event, or condition upon which the consent will expire. The date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

- ii. A statement that the consent is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third-party payer. A consent for a patient referred by the criminal justice system, however, may be made irrevocable for a period, but the time or occurrence upon which consent becomes revocable may be no later than the final disposition of the conditional release or other action in connection with which consent was given. (42 CFR section 2.35).
 - iii. The participant must be advised, orally and in writing, that federal law protects the confidentiality of treatment records. The notice must cite Section 290dd-2 and the implementing regulations (Sections 2.1 through 24 of Title 42 of the code of Federal Regulations), and must state the following:
 - a) Treatment information is ordinarily kept confidential;
 - b) It is a crime to violate this confidentiality requirement, which the participant may report to appropriate authorities, [insert name and phone number of appropriate attorney general's office];
 - c) Notwithstanding this confidentiality requirement, covered information may be released under specified circumstances [insert list of specific circumstances], and may include medical emergency, crimes on the premises, crimes against staff, administration/qualified service providers working with MHC, and outside auditors, central registries and researchers); and
 - d) Federal law does not protect information relating to the abuse or neglect of a child, state child abuse laws, court orders signed pursuant to 42 CFR Part 2 for release of specific information, state laws relating to cause of death and duty to protect others, and to warn of serious imminent harm.
 - iv. Any documented treatment information distributed based on the treatment participant's consent should be accompanied by a Notice of Prohibition Against Redisclosure. The prohibition on redisclosure only applies to information that would identify, directly or indirectly, an individual as having been diagnosed, treated, or referred for treatment for a substance use disorder, such as indicated through standard medical codes, descriptive language, or both, and allows other health-related information shared by the part 2 program to be redisclosed, if permissible under other applicable laws. (42 CFR, Section 2.32)
 - v. Confidential records should be kept in a secure room and locked container. Access to confidential records must be limited to authorized individuals. (42 CFR, Section 2.16)
- B. The Health Insurance Portability and Accountability Act (HIPAA) is a federal law that protects confidentiality and the security of protected health information. While it does not directly apply to mental health courts, HIPAA does apply to the treatment agencies partnering with mental health courts, so mental health courts must also comply with HIPAA.
- C. MHC team members shall be familiar with relevant federal and state laws and regulations to develop or modify appropriate policies and procedures regarding confidentiality.
- D. All file storage systems shall include procedures for limiting access to records after the participant's consent expires or is revoked. Thus, paper records that can be accessed by all MHC personnel during the duration of the participant's consent are transferred to a

more restricted storage facility as soon as the consent is terminated. Records on computers are sealed by changing the password or other access.

- E. All team members shall abide by the attached 36th District Court MHC policy and procedures regarding sharing or distribution of confidential information which regulates and controls access to and use of written and electronic confidential records. Written procedures include requests for access to confidential information by the public, attorneys, or any interested party outside the treatment court team, and formal policies and procedures addressing security, including sanitization of associated media, for both paper and electronic records. (42 CFR section 2.16)
- F. Electronic data that is subject to confidentiality standards shall be protected by security walls and password-protected. Access shall be limited, and disclosure/redisclosure is subject to approval by the treatment court judge and team.
- G. The MHC team shall decide if pre-court staffing meetings will be closed to participants and the public and describe its policy in the participant agreement. If the staffing is open to visitors, the participant must be provided the name of the visitor(s) and must consent in writing. All visitors shall be required to sign an agreement that they adhere to the confidentiality provisions of the law (and particularly as to the rule against redisclosure) and the other requirements of the 36th District Court MHC MOU.
- H. The parties, including each party's employees and other agents, shall maintain the confidentiality of all records generated during the term of this MOU in accordance with all applicable state and federal laws and regulations, including, but not limited to, 42 CFR Part 2.
- I. In order to begin or continue operation of the mental health court, the 36th District Court will become certified by the State Court Administrative Office under MCL 600.1091.

F. Fiscal Terms

This MOU does not involve an exchange of funds. The parties instead, agree to participate in an exchange of services as specified in Item C, Provisions.

G. Terms and Conditions

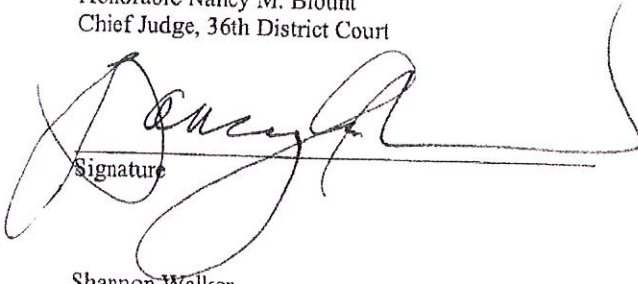
This Memorandum is effective on date of full execution and automatically renews each year in the absence of objection by any of the parties to this agreement. All terms and conditions of the Agreement are subject to the continuation of MHC funding.

Signatures of Parties to this Agreement

The parties have entered into this agreement as evidenced by their signatures below. A certified copy of the agreement shall be provided to each signatory to the agreement. The original agreement shall be filed with the Court Administrator for the 36th District Court.

Honorable Nancy M. Blount
Chief Judge, 36th District Court

Honorable Nancy M. Blount
Chief Judge, 36th District Court


Signature

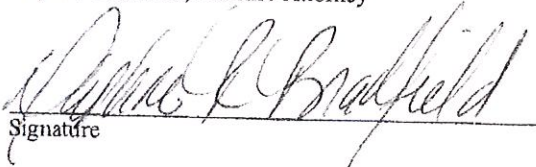
12-9-2019
Date

Shannon Walker
Assistant Corporation Counsel Supervisor, City of Detroit


Signature

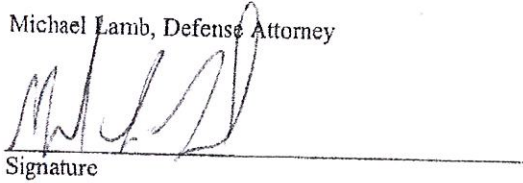
12-1-19
Date

Daphne Bradfield, Defense Attorney


Signature

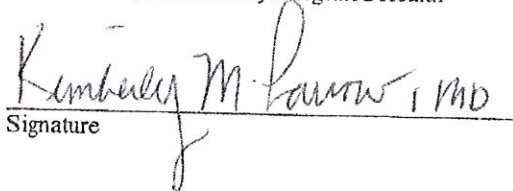
12/2/2019
Date

Michael Lamb, Defense Attorney


Signature

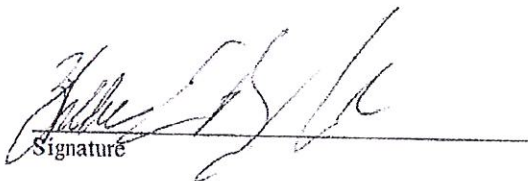
12/2/2019
Date

Kimberly Farrow
Interim CEO, Central City Integrated Health


Signature

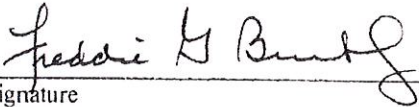
12/5/19
Date

Willie Brooks
CEO, Detroit Wayne Integrated Health Network


Signature

12-2-2019
Date

Honorable Freddie G. Burton
Chief Judge, Wayne County Probate Court



Signature

12-9-19

Date