

## Mental Health Court FAQs

The following information is for adults with serious mental illness who have been arrested and will be going to court on criminal charges that may result in jail or prison time. ***It is not legal advice and is presented here for information purposes only. Anyone with legal questions about their case(s) should seek the advice of an attorney.***

### 1. What are mental health courts?

Mental health courts are specialty courts that were established to improve the response to individuals with serious mental illnesses who have come into contact with the criminal justice system.

### 2. What are the goals of mental health courts?

To reduce the incarceration and recidivism of individuals with serious mental illnesses. Recidivism means committing more crimes. One of the major goals of mental health courts is to provide individuals with the help and services they need so that they won't offend again. Some of the ways they do this is by:

- a. Linking offenders with serious mental illnesses to local behavioral health service providers. Individual treatment plans will be developed that serve the offenders and the community.
- b. Intensive supervision by the courts.
- c. Expectations for adherence to all conditions and requirements.

### 3. Who qualifies for mental health court?

Each of the mental health courts have specific medical and legal criteria that have to be met in order to qualify for participation in their courts. There may be other criteria as noted below.

- a. **Medical Criteria:** will generally include a primary diagnosis of schizophrenia, bipolar disorder, or schizoaffective disorder (also known as Axis 1 disorders).
  - i. Some courts will accept individuals who have other Axis I disorders, such as depression or PTSD, as their primary diagnosis.
  - ii. Some courts **exclude** individuals who don't have an Axis I disorder as their primary diagnosis or **exclude** certain personality disorders if they are the main driving force in someone's behavior.
  - iii. Some courts may **exclude** individuals with co-existing developmental disorders or traumatic brain injuries because they don't have the resources to help them.
- b. **Legal Criteria:**
  - i. You **must** live in the same county as the mental health court.
  - ii. Some counties have a list of crimes that will automatically exclude someone from participating in mental health court. Even if a crime is not automatically excluded the prosecutors will still look at the facts of each case before making a determination as to whether someone will be accepted into the mental health court. The following is a list of crimes that **may** result in **exclusion** from mental health court:
    1. DUIs (driving under the influence)—either a pending charge or currently on probation for a DUI. A prior history of a DUI conviction may also

exclude someone from participating depending on the nature of the charge and how much time has elapsed.

2. Sexual offenses are usually always excluded. Any sexual offense that involves a crime against another person such as sexual assault, molestation, etc. **will be excluded**. A prior conviction for such crimes will also disqualify someone from participating. Prosecutors **may** be willing to look at some lewdness charges that occur within the context of the mental illness.
  3. Exceedingly violent crimes that result in significant bodily injury.
- c. **Other Criteria:** Most of the mental health courts require that you receive all of your mental healthcare from the local behavioral health authority (i.e. Weber Human Services in Weber County; Bear River Mental Health in Cache and Box Elder counties, etc.). ***Some of these clinics only take clients who are on Medicaid.*** Therefore, even if you meet the medical and legal criteria you may not be able to participate in mental health court unless you are on Medicaid or are Medicaid eligible.
- i. Consult with your attorney regarding this requirement. The coordinator for the mental health court can also provide you with this information.
  - ii. **Veterans** who have established care with a behavioral healthcare provider(s) at the VA may be allowed to continue to receive their care through the VA. Consult with your attorney or the coordinator for the mental health court as noted above.

#### 4. How do I get into mental health court?

- a. Talk to your attorney, if you have one. If you can't afford an attorney the judge will order that an attorney be assigned when you make your first court appearance on the charges (if you qualify). You may also tell the judge that you would like to have your case considered for mental health court. However, your attorney is the one who will have you sign the appropriate forms and will process the paperwork, including making sure it gets to the right places.
  - i. A release of information form will be required for each provider who has treated you for your mental illness including primary care physicians, psychiatrists, therapists, and hospitals.
  - ii. If you have never seen a provider for your illness your attorney can request an assessment by the therapist from the local behavioral health clinic that collaborates with the mental health court. This commonly only occurs when the individual is still being held in jail on the charges.
  - iii. Your records will be reviewed by the clinical staff member from the local behavioral health clinic that collaborates with the court. You may be asked to attend a screening appointment with this person as well.
- b. If the therapist determines that you meet the medical criteria for acceptance into the mental health court your file will be forwarded to the District Attorney's (DA's) office for review. Prosecutors will review the charges, police report(s) and other evidence, victims' statements (including victims' input concerning diversion of the case to mental health court), and prior criminal convictions in making their determination as to

whether your case(s) will be accepted into the mental health court. ***Please note that the District Attorney's office (or local prosecutor's office for Justice Court cases) has the final say as to whether or not you are accepted into the mental health court.*** Your attorney will be notified of this decision.

- c. The prosecutor's office will then offer you a plea deal through your attorney.

#### 5. What is the significance of the plea deal?

A plea deal is an agreement between a prosecutor and a defendant where the defendant agrees to plead guilty in exchange for a "concession" from the prosecutor. Potential concessions could be a reduction in the number or severity of the charges or could be a reduction in how long the sentence will be. In order to get into mental health court ***you must plead guilty*** to the charges offered in the plea deal from the DA's office.

- a. You should discuss all of your options with your attorney if you haven't already done so. Make sure that you know what the benefits and risks are of each option. Don't be afraid to ask questions! Participation in mental health court is voluntary and there are requirements that you will have to meet. There are also significant benefits to participating. More information is provided below. Carefully consider your options before making your decision.
- b. If you decide against mental health court your case(s) will stay in regular court. If you decide to proceed with mental health court you will be asked to come to 1-2 court sessions for orientation.
- c. Once you have been oriented you will be asked to plead in. The judge makes sure that you know what rights you are giving up and the facts of the case are read. You will be asked what your plea is, to which you must respond "guilty" if you want to be in mental health court. (If you change your mind at this point your case will be sent back to regular court).
- d. The judge accepts the guilty plea and sentences the participant to jail/prison according to the standard sentencing for the crime. The sentence is **immediately suspended** on the condition that all of the requirements of mental health court are met.
- e. Suspending the sentence means that you will be out of jail/prison and allowed to live in the community under the supervision of the court as long as you continue to meet mental health court requirements.

#### 6. What are the requirements of mental health court?

- a. You must follow the treatment plan developed by the psychiatrist and behavioral health team at the clinic. This means that you must:
  - i. Take all medications as prescribed.
  - ii. Attend and participate in all treatment sessions including counseling and group sessions (if assigned).
  - iii. Refrain from using any medications (including over-the-counter medications) that have not been prescribed for you. Any medications that you take, including over-the-counter medications, must first be approved by the treatment team.
- b. You must come to court once a week to report to the judge. This may decrease to once every other week, and then once per month, depending on multiple factors including

whether your mental health has been stable and if you've been compliant with court orders.

- c. You must follow standard probation conditions, which include not using alcohol or any illegal drugs. There must not be any alcohol or illegal drugs in the home where you are living even if they belong to other people living in the household. Likewise, there must not be any weapons in the home. Probation officers must approve where you live and you must agree to allow them to search the premises without a warrant. You must also follow all of the rules associated with that residence whether it's a landlord, group residence, or family residence, so that you remain in a stable living environment. (Note that these same probation conditions would apply if you were on probation in a regular court. In other words, they are not unique to mental health court. Every person on probation must follow these conditions).
- d. You must undergo random drug testing.

#### **7. What happens if I get tired of following all the requirements?**

Sometimes it can feel difficult to do everything you're supposed to do over a long period of time. You may have time periods where you get discouraged or feel like giving up. The team is always willing to listen to your concerns and make adjustments if indicated or appropriate. You will be encouraged to stick it out because it will be worth it in the end (see section 9 below).

In addition, a system of graded incentives and sanctions are used to reward desired behaviors and discourage inappropriate or illegal behaviors. Incentives can range from things as simple as everyone clapping when your name is called, being on the "honor roll" of participants who get called up first and don't have to stay for the entire court session, candy bars, gift cards, and the potential for early graduation. Sanctions may include "being called up last", writing a letter to the judge about how you plan on improving, community service hours, or some jail time, depending on the nature of the non-compliance.

However, there is also no escaping the harsh reality that you have been convicted of a crime and your continued compliance with mental health court is expected. Although you will be given chances to comply, deliberate and repeated non-compliance can lead to the judge imposing the original sentence (i.e. the sentence you received after pleading guilty).

#### **8. What happens if I change my mind after I'm in mental health court?**

Presumably you took the plea deal to come into mental health court because you didn't want to go to regular court. Mental health court is not a "get out of jail free" option. Once you've pled into mental health court there is no going back to regular court on these charges. The only exception is if some of the cases were kept open (i.e. you had charges from multiple arrests and you didn't plead to all of them when you came into mental health court). Carefully consider the consequences of leaving mental health court. Remember that you took the plea deal to get in which means that you pled guilty and were given a suspended sentence. That sentence can be re-imposed so you will be facing jail or prison time as a result.

#### **9. So, what are the benefits of mental health court?**

- a. The required treatment is designed to help you achieve and maintain the stability of your mental illness. The goal is that you will continue to utilize these skills even after mental health court is completed so that you do not get arrested again!
- b. The mental health court team will help you to access supportive services for which you qualify. This includes applying for disability benefits, general assistance, vocational rehabilitation services, and housing (housing is not guaranteed however).\*
- c. There is an understanding that individuals with serious mental illnesses will have relapses and may struggle at times to comply with court requirements. The team will identify potential strategies to help you. This is also why graded incentives and sanctions are part of mental health court.
- d. Although you have been convicted of a crime you are allowed to be in the community under the supervision of the court and your probation officer. If you abide by all the requirements and conditions you will not have to spend another day in jail or prison for these charges.
- e. The plea deals to get into mental health court oftentimes may include a one-step reduction in the charges upon graduation. That means that a 3<sup>rd</sup> degree felony conviction will record as a Misdemeanor A on the person's record (once mental health court is successfully completed). Some plea deals may be offered as a "plea in abeyance" that will result in the charge(s) being totally dismissed if mental health court is successfully completed. Your criminal record will follow you and anything that you can do to improve it is a significant benefit.

**10.** The information provided on this page is general information that is meant to answer some of the questions you may have about mental health courts. The mental health court in your county may have conditions and requirements that differ from what is noted above. We recommend that you consult with your attorney for the specifics of the mental health court in your area.

\*Although housing is a key component of achieving stability, the court cannot guarantee that housing will be found for each and every participant. This is impacted by the availability of subsidized housing in each county, whether the participant has any source of income to contribute towards rent including disability benefits, participants' criminal histories that may preclude landlords from renting to them, and local "Good Landlord" laws.