

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
ADMINISTRATIVE ORDER 16-09**

Mental Health Community Court (MHCC) Case Management Plan

WHEREAS, the 2013-2017 Strategic Plan of the District of Columbia Courts, *Open to All, Trusted by all, Justice for All*, seeks to promote timely case resolution by implementing performance standards, case management plans, and other best practices; and

WHEREAS, performance standards for all Superior Court operating divisions were adopted in 2009 and revised in 2012; and

WHEREAS, a case management plan serves as a management tool to promote achievement of performance standards; and

WHEREAS, consistent with the mission of the Criminal Division as defined by the District of Columbia Code and the Criminal Rules of the Superior Court of the District of Columbia the Court has developed a Case Management Plan for the Mental Health Community Court;

NOW, THEREFORE, it is, by the Court,

ORDERED, that the case management plan for the Mental Health Community Court, which is attached hereto, is effective June 1, 2016; and it is further

ORDERED, that this order shall remain in effect until further order of the Court.

SO ORDERED.

DATE:

Lee F. Satterfield
Chief Judge

Copies to:

All Judicial Officers
Executive Officer
Clerk of the Court
Division Directors
Librarian

District of Columbia Superior Court Mental Health Community Court (MHCC) Case Management Plan

Purpose:

The DC Superior Court Mental Health Community Court (MHCC) is a voluntary treatment court for people who have been diagnosed with serious and persistent mental illness, who are charged with certain misdemeanor or low-level felony offenses, and who otherwise qualify for the MCHH program. If you believe that you are eligible to have your case(s) transferred to the MHCC you can use the following information to help you understand how to get to MHCC and what will happen there once your case(s) is/are transferred to MHCC.

Location of the MHCC in the Moultrie Courthouse:

The DC Superior Court MHCC is located in Courtroom 211 on the 2nd floor of the Moultrie Courthouse. The Moultrie Courthouse is at 500 Indiana Avenue, N.W. (near the Judiciary Square Metro stop).

Filing Documents:

Pleadings, motions, and other documents may be filed in the Criminal Division Clerk's Office, 500 Indiana Avenue, N.W., Room 4000. The Clerk's Office is open from 8:30-5:30 p.m., Monday through Friday. In addition, there is a location for after-hours filing next to the Information Desk on the Indiana Level of the courthouse.

Getting an Attorney:

If you are charged with a criminal offense, you have a right to have an attorney. If you cannot afford an attorney, the court will appoint an attorney to represent you if you qualify under the guidelines established by the Court's Criminal Justice Act plan. If you feel that you are not able to pay for an attorney you should bring copies of your last two pay checks, or other proof of your employment status. This information will assist the Criminal Justice Act Office in determining if you are eligible to receive a court appointed attorney.

If you wish to hire your own attorney, you may do so. If you hire your own attorney, he/she must notify the court that he/she represents you by filing a notice of appearance with the court known as a "praecipe."

If you do not hire an attorney, there will be a stand-in attorney available in the courtroom on your arraignment date to give you legal advice for that hearing only.

What is Mental Health Community Court (MHCC)?

The MHCC is a specialized court that focuses on criminal defendants diagnosed with a serious and persistent mental illness, or with mental illness and co-occurring substance

abuse disorders. The MHCC was established in 2007 by [Administrative Order No. 07-23](#).

Who is eligible for MHCC?

Your case may be transferred, or certified, to the MHCC from a US Misdemeanor Community Court criminal calendar or a felony 2 criminal calendar if the United States Attorney's Office (USAO) finds that you are eligible and offers you the opportunity to participate. You and your lawyer must then decide if it is in your best interest to participate in the program. As part of the program, you must be willing to participate in mental health treatment, and drug treatment if necessary.

1. You are eligible to have your case(s) transferred to the MHCC if you have the following charges:
 - a. US misdemeanor offenses, for example, simple drug possession, low level drug distribution, possession of drug paraphernalia, threats to do bodily harm, sexual solicitation/prostitution, unlawful entry, simple assault, assaulting a police officer, illegal dumping, destruction of property under \$200, and theft in the second degree.
 - b. Certain non-violent felony offenses, for example, drug distribution, possession with intent to distribute, escape, bail reform act violation, receiving stolen property, unauthorized use of a vehicle, threats to do bodily harm, destruction of property, and first degree theft.
2. Other requirements for eligibility established by the USAO and the DC Pretrial Services Agency (PSA) are:
 - a. The Office of the United States Attorney must approve your participation;
 - b. PSA must screen and approve you for supervision by the Specialized Services Unit (SSU), which is responsible for pre-trial supervision of people with diagnosed mental illness;
 - c. You must have a verified serious and persistent mental illness as defined in [D.C. Code § 21-501](#);
 - d. You must be connected to mental health treatment;
 - e. You must receive drug testing and treatment, if necessary, at the direction of PSA;
 - f. You must test negative for drugs, including marijuana;
 - g. You must be "competent" to proceed, pursuant to [D.C. Code § 24-531.01\(1\)](#).
 - h. You must enter a Deferred Prosecution Agreement (DPA), Deferred Sentencing Agreement (DSA), or in cases where there is a felony charge, an Amended Sentencing Agreement (ASA) as determined by the USAO.

Who might be Ineligible for MHCC?

Although the USAO and PSA decide who may be eligible for participation in MHCC on an individualized basis, the following may be reasons why you would not be approved:

1. You have pending domestic violence or dangerous and violent felony charges.
2. You have certain convictions in the past 10 years, or are currently on parole, probation or supervised release for any dangerous or violent felony charge.
3. You are in jail or prison.
4. You are unwilling to participate in mental health or substance use treatment.
5. You are incompetent to stand trial.
6. You are ineligible for SSU supervision.
7. You have previously had the benefit of going through MHCC.

If I am Accepted into MHCC, How Long Will the Program Last?

After your case is transferred to the MHCC, you must show the judge that you are linked to and actively engaged in receiving mental health services, you must test negative for drugs including marijuana and alcohol, and only then will you will be offered the opportunity to enter into a “diversion” agreement with the government. After you enter the agreement, you must do what it says and participate in the MHCC program for at least four months to get the promised benefit. You will be required to appear before the MHCC judge approximately every 30 days, or more often if the judge believes this will help you successfully complete the program.

What are the Benefits of Being in MHCC?

There are three types of “diversion” agreements that you may be offered: [\(1\) a Deferred Prosecution Agreement \(DPA\)](#), [\(2\) a Deferred Sentencing Agreement \(DSA\)](#) and [\(3\) an Amended Sentencing Agreement \(ASA\)](#). Conditions of the agreement may include staying connected to and fully participating in mental health and drug treatment, avoiding rearrest, being drug free, and reporting to your PSA worker.

If you enter into a DPA, you will not have to enter a guilty plea in order to participate, and if you successfully complete the program, your case(s) will be dismissed. If you enter into a DSA, you will have to enter a guilty plea to your charge(s), and then, if you satisfy all conditions of the agreement, your plea will be vacated and your case will be dismissed. If you enter an ASA, you must plead guilty to your felony charge, and if you satisfy all conditions of the agreement, your felony charge will be reduced to a lesser charge and you will be sentenced for the lesser charge.

In the case of a DSA or ASA, if you fail to satisfy the conditions of the agreement, the government will ask that your agreement be revoked and that your case proceed to sentencing. You will be sentenced by the MHCC judge. If you fail to satisfy the conditions of a DPA, your case will be returned to the calendar from which it originally was sent to MHCC, and you must then decide whether to enter a plea of guilty or to proceed to a trial.

What are the Steps I Must Follow if I Want to Enter the MHCC?

At your first appearance before a judge, the USAO and/or the Pretrial Services Agency (PSA) will say whether you are possibly eligible for the MHCC. Before the next scheduled court appearance in your case, you will need to provide a negative drug test and be screened by PSA for supervision by its Specialized Services Unit, which is responsible for pre-trial supervision of people with diagnosed mental illness. At the next scheduled court appearance, the USAO will inform you whether it is offering you the opportunity to enter the MHCC. At this time the USAO will inform you whether this offer is conditioned on your entering into a Deferred Prosecution Agreement (DPA), Deferred Sentencing Agreement (DSA) or Amended Sentencing Agreement (ASA). If you enter the MHCC, this will be an alternative to having a trial on your charges.

The USAO has the right to offer or not offer you the opportunity to enter the MHCC as a way of resolving your case, and makes its decision whether to offer the MHCC based on an individualized review of each case. The factors that may play a role in the USAO's consideration include your criminal history, the nature of your pending charge(s), whether you are on probation, supervised release or parole, and public safety concerns. To participate in the MHCC you may not be detained in jail, prison, or an inpatient treatment facility, although placement in a halfway house may be permitted in some situations.

If you are eligible to participate in MHCC, the Criminal Calendar judge will certify the case to MHCC following your release under PSA supervision and your connection to mental health services, usually through a Core Service Agency associated with DC Department of Behavioral Services. If you are entering into a DSA or an ASA, you will enter a guilty plea before the MHCC judge after your case is transferred to the MHCC. The pretrial release order will require that you maintain mental health services as directed by PSA and drug program placement (drug testing, assessment or treatment) as directed by PSA. If the case is certified to the MHCC, the first hearing date in the MHCC will be scheduled within 30 days.

MHCC Admission Hearing:

At the first hearing in the MHCC, called the "MHCC Admission Hearing," the judge will welcome you to the MHCC and explain how the MHCC works. You will be provided with the MHCC participant brochure.

The judge will ask you questions to make sure you understand that:

1. The MHCC will not be setting your case for trial and the judge will not be deciding your guilt or innocence of the charge(s);
2. The MHCC will assist you in getting access to, and the benefit of, mental health treatment, starting with getting you connected to mental health services, if you are not already linked to a mental health provider, and also help you address any substance use issue you may have;

3. If you achieve stability in mental health treatment in the community, and show that you are drug free, the USAO will be willing to treat the case(s) favorably in court;
4. Once you are linked to and actively engaged in receiving mental health services and test negative for drugs including marijuana and alcohol, you will be given the opportunity to enter into a DPA, DSA, or an ASA which will last at least four months, and if all conditions of the agreement are met, then you will get the benefit promised in your diversion agreement.

At the first hearing in the MHCC the judge will ask the USAO to state what type of diversion agreement – DPA, DSA or ASA – you are eligible for.

Sometimes the MHCC Judge may not admit you into the MHCC at the initial admission hearing. This may occur where, for example, PSA reports a question about your MHCC eligibility or if you have not been placed in the Pretrial Services Agency SSU yet, or if you seem uninterested in actually pursuing mental health treatment services or stopping drug use. In that circumstance, your case may be continued for a further admission hearing at which the judge will decide whether you will be admitted, and will check on the progress you have made towards qualifying to enter into a diversion agreement.

Admission Orientation:

After the admissions hearing, you will meet with the MHCC Coordinator, a licensed social worker and court employee. The Coordinator is located outside the courtroom and will provide you with an orientation to the program. The Coordinator will help you understand the requirements of the program and, if you do not understand, will explain them further. The Coordinator will also address any questions you or your lawyer have about the MHCC and will complete an intake form which collects some basic information about you. The information required for the [Intake Form](#) includes your name, date of birth, mental health provider, educational history, occupational history, family history, housing history, and substance use history. In addition, the Coordinator will inquire about whether you need assistance finding housing, a new mental health provider, health insurance, childcare, transportation assistance, and/or a referral for employment, educational or vocational rehabilitation services.

What Happens if Things do not Work Out in MHCC Before You Enter into a Diversion Agreement?

If you are unable to enter into a diversion agreement, or if the MHCC judge determines that you are not a good candidate for the MHCC, your case will be certified back to the Criminal Calendar to which your case was originally assigned. At that time you will probably be asked to decide if you want to proceed to trial or if you want to enter a guilty plea.

What Happens at Future Status Hearings?

The MHCC holds regular status hearings, usually every 30 days, or more frequently if the judge believes it will help you successfully complete the program. At a status hearing the focus will be on how you are progressing in qualifying for entry into a DPA or DSA, or if you already have entered into an agreement, monitoring your compliance with the agreement. The MHCC judge will receive a status report before each hearing from the Pretrial Services Officer supervising your compliance with the MHCC program. Your lawyer will be provided a copy of the report.

Entering a DPA, DSA or ASA:

1. Deferred Prosecution Agreement (“DPA”):

A DPA is an agreement between you and the USAO. Once defense counsel has presented the agreement, signed by you, your lawyer and the prosecutor, the judge will make sure that your lawyer has had a chance to go over the agreement with you, will review the agreement with you to be sure you understand what it requires you to do, and will ask you questions so that the judge can determine that you are voluntarily agreeing to its terms.

The terms of a typical DPA include, as the judge will explain:

- a. A DPA lasts at least four months;
- b. You must continue mental health treatment services, remain drug free (and drug test as PSA requires), continue reporting to SSU as scheduled, and must not be rearrested on any charge;
- c. You must abide by all other conditions, for example a stay away order or restitution requirement, or other condition depending on the case.
- d. If you comply fully with agreement, the case(s) will be dismissed at the end of the term stated in the agreement;
- e. On the other hand, if you violate the agreement, the USAO has the right to revoke the Agreement and pursue prosecution of your charge(s).

2. Deferred Sentencing Agreement (“DSA”):

A DSA is also an agreement between you and the USAO, but is different from a DPA because it requires you to enter a guilty plea to the offense you are charged with. Once defense counsel has presented the agreement, signed by you, your lawyer and the

prosecutor, the judge will inform you of the requirements of the DSA, which may be any or all of the conditions described above that are included in a DPA.

- a. **The Questions the Judge Will Ask:** Pleas of guilty are governed by Superior Court Criminal Rule 11, although the judge will decide what specific questions he/she will ask of you when you are pleading guilty. The judge must determine that you are entering your guilty plea knowingly, intelligently and voluntarily. A list of the typical questions asked during a guilty plea is attached in [Form A](#).
- b. **The Factual Proffer:** As part of the plea, the court will ask the Assistant United States Attorney to state the facts describing what you did in committing the offense you are pleading to. After the AUSA has given this information to the judge, you will be asked to say whether what the AUSA has presented is true. If you deny the facts that show you committed the crime, the judge cannot accept a guilty plea.
- c. The judge will inform you that if you complete all the terms of the agreement, at the end of four months your plea will be vacated and your case will be dismissed. The judge will inform you that if you violate the DSA, the USAO has the right to revoke the Agreement and have the case proceed straight to sentencing before the MHCC judge.

3. Amended Sentencing Agreement (“ASA”):

If you have a felony case that is transferred to MHCC, the USAO will likely offer you an Amended Sentencing Agreement (ASA). An ASA requires a person to plead guilty to the felony charge with the agreement that if you comply with the agreement for at least four months, the felony charge will be reduced to a misdemeanor charge and you will immediately be sentenced for the misdemeanor. At the time the Agreement is offered, the AUSA will identify both the felony you must plead to and the misdemeanor charge that your charge will be reduced to at the completion of the program. The judge will advise you that after successful completion of the terms of an ASA, you may receive a sentence of probation on the misdemeanor conviction, during which probation you would be under the supervision of the CSOSA Mental Health Unit. The judge will also advise you that if you violate your agreement, you will be sentenced for your felony charge.

Because an ASA requires a guilty plea to the charge, the judge will ask you [questions](#) in order to determine that you are entering your guilty plea knowingly, intelligently and voluntarily:

The USAO generally requires that, to be eligible for entry into an ASA, you be in substantial compliance with the rules of the MHCC within 60 days after the admission hearing. You can show compliance by demonstrating engagement with mental health treatment services, fulfilling any drug testing requirements or participation in drug treatment when required, weekly check-in with the Pretrial Services Agency, and avoiding re-arrest. If you are not in substantial compliance after 60 days the USAO may

not permit you to enter an ASA. If you are not in substantial compliance within 60 days of the admission hearing, the case may be certified back to the Felony 2 judge's calendar, and set for trial.

If after entering an ASA, you violate the agreement, the USAO may revoke it, and the MHCC judge would proceed to sentence you on the felony charge. As with any felony sentencing, the judge will order a Pre-Sentence Investigation Report (PSI), which requires that sentencing be scheduled eight weeks from the date of the revocation of the ASA. At the time of the revocation, the court will determine whether you will remain on release in the community until sentencing.

4. After Entry of a DPA, DSA or ASA:

After entry of a DPA, DSA, or ASA, the PSA representative in the MHCC courtroom will prepare a new release order stating the terms of the agreement and conditions you must follow for at least a four-month period. A "Diversion Review" hearing date will be scheduled approximately one month later. If the case does not include drug charges, and you have not tested positive for drugs recently, at this point the MHCC judge may allow you to reduce drug testing obligations to a random or "spot" testing requirement.

Drug Testing Requirements in MHCC:

If you have a drug related charge or have a recent prior history of a positive drug tests, you will be required to submit 3 consecutive weeks of negative drug tests before being permitted to enter an Agreement. If you miss a drug test without being excused, the MHCC will generally require that you restart the series of three consecutive tests. If you have no indication of drug abuse, a single "full screen" drug test (including marijuana and alcohol) will be required before you are permitted to enter into a DPA or DSA or ASA. If you later test positive for drugs on a spot test, the MHCC may reinstate weekly drug testing, and PSA may reevaluate the need for substance abuse treatment referrals.

Drug Treatment in MHCC:

If you are testing positive for illegal drugs, the judge will urge you to accept PSA's recommended treatment placement following an Addiction Severity Index Assessment (ASI). Participation in drug treatment is voluntary in MHCC. You will be allowed further time and additional status hearings to comply with drug treatment and to submit negative drug tests. In the event that you fail to do so, the MHCC judge may decide to discharge you from MHCC and certify the case(s) back to the original court calendar, for lack of progress on the MHCC. The length of time that a person will be permitted to attempt to make progress in treatment and to stop using illegal drugs is within the discretion of the judge. The judge will consider whether you are progressing and making efforts towards compliance, and whether your drug use has significantly impeded progress toward full mental health treatment engagement.

Graduation from MHCC:

Upon your completion of any DPA, DSA or ASA, that is, when it appears from the PSA case worker's report that you have substantially complied with the agreement you will be eligible to graduate from the program. Once PSA notifies the judge that you are eligible to graduate, the judge will ask the USAO its position. If the government agrees that you have satisfied the agreement, you will get the benefit stated in the agreement.

In the case of a misdemeanor DPA, the case will be dismissed. In the case of a DSA, the government will agree that the guilty plea may be withdrawn and then dismiss the case. In the case of an ASA, the government will permit the court to convert the felony charge to which you have pleaded guilty to a lesser charge, and then the court will proceed to sentencing on the lesser charge.

After this, the court will conduct a graduation ceremony in the courtroom. During the graduation, the judge will step down from the bench and congratulate you for successful completion of the program. You and your counsel are permitted to make comments at the graduation.