

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ORDER NO. 07-23

(Mental Health Diversion Program)

WHEREAS, an increasing number of seriously mentally ill individuals, as well as mentally ill defendants with serious co-occurring substance abuse disorders, has challenged the Superior Court's Criminal Division and led to a rise in the number of mentally ill persons incarcerated at the District of Columbia Jail; and

WHEREAS, the Superior Court has decided to develop a one-year pilot mental health diversion program with the support of the District of Columbia Pretrial Service Agency, the United States Attorney's Office, the Criminal Justice Act bar, the Public Defender Service and the District of Columbia Department of Mental Health; and

WHEREAS, in order to implement the pilot diversion program, an additional calendar will need to be added to the Criminal Division of the Superior Court:

NOW, THEREFORE, it is hereby

ORDERED that an additional criminal calendar, Misdemeanor Calendar 11 (the Mental Health Diversion Court), be and hereby is established; and it is further

ORDERED that all judges presiding over Misdemeanor Calendars 1 through 7, involving misdemeanor cases prosecuted by the United States Attorney's Office, may certify cases to the Diversion Court; and it is further

ORDERED that the Mental Health Diversion calendar shall be administered in accordance with the attached memorandum, which provides a detailed description of the pilot diversion program.

SO ORDERED.

BY THE COURT

Date: Oct. 15, 2007

/s/
Rufus G. King, III, Chief Judge

Copies to:
All Judges
Magistrate Judges
Executive Officer
Clerk of the Court
Division Directors
Attorney Advisor
Librarian

Mental Health Diversion Program for Misdemeanor Calendars

(October 12, 2007)

Introduction

In the last several years, an increasing number of seriously mentally ill individuals, as well as mentally ill defendants with serious co-occurring substance abuse disorders, has challenged the Criminal Division in the Superior Court of the District of Columbia. Many judges and city officials have noted the increasing criminalization of the mentally ill, as well as the rise in the number of mentally ill persons incarcerated at the D.C. Jail, and some internal and external observers have proposed that our Court develop a specialized mental health court that would focus on criminal defendants diagnosed with a mental illness, or with mental illness and co-occurring substance abuse disorders. After considering the matter, the Court recently committed to develop a mental health diversion program as part of the Criminal Justice Coordinating Council's Substance Abuse Treatment and Mental Health Services Integration Taskforce's Strategic Plan for 2009-2015. The Court proposes that the diversion program begin as a one-year pilot program in October 2007, and be modeled in part on the current mental health diversion which is ongoing in the East of the River Community Court.

The pilot program would involve certifications from the judges presiding over the Criminal Division's seven U.S. misdemeanor calendars (Misdemeanor Calendars I - VII), involving misdemeanor cases prosecuted by the United States Attorney's Office (USAO). It would be patterned on the existing mental health diversion in the Court's East of the River Community Court, utilizing Deferred Prosecution Agreements (DPA) supervised by the

Pretrial Services Agency's (PSA) Specialized Supervision Unit (SSU), with the full participation of the USAO and PSA.

Eventually, in the second phase of our pilot program, the Diversion Court would accept certifications from all of the misdemeanor calendars (except for domestic violence cases), including the three Traffic and DC calendars (Misdemeanor Calendars VIII-X), handling those cases prosecuted by the Office of the Attorney General (OAG). The pilot program will only include U.S. misdemeanor cases initially since these cases are supported by PSA through supervision, monitoring and linkages to services and programs, all of which are critical parts of the program. Eventually, we expect to have both mental health services and drug abuse treatment intake services available at the courthouse through on-site representatives from the Department of Mental Health (DMH) and the Addiction Prevention Recovery Administration (APRA). At that time, OAG cases should be appropriate for certification to the Diversion Court, as DMH and APRA have made a commitment to connect the target population to community services. The Diversion program's success will be in part dependent on the linkage of participants to services and programs and the quality of the treatment programs available in the District of Columbia.

Pilot Program Description

1. Goals

- To reduce the criminal justice involvement of program participants, and improve the mental health of program participants by connecting them with appropriate services in the community and monitoring their progress in the Diversion program.

- To reduce crime in the community and protect public safety by reducing the re-arrest rates of mentally ill defendants.
- To increase treatment engagement on the part of program participants. This is not limited to treatment compliance alone, but focuses also on the location of where treatment is received, i.e. outpatient treatment in the community as compared with inpatient hospitalization, and integrated treatment for mental illness and substance abuse disorders.
- To reduce the rate of jail detention and involuntary forensic hospitalization for program participants, thus reducing overall costs in the Criminal Justice System (the cost of one day in jail is \$115.00 and \$650.00 for one forensic inpatient day at Saint Elizabeths Hospital).

2. The Referral Process for the Pilot Program

PSA's SSU shall notify the USAO of a defendant's apparent eligibility for diversion at least two days prior to the initial status hearing before the Criminal Calendar judge, to obtain the government's decision regarding the defendant's eligibility for diversion at the hearing. In the event defense counsel independently learns of the defendant's potential eligibility for diversion, counsel may ask PSA, the USAO or the court to evaluate the defendant for certification to the Diversion Court.

The Criminal Calendar judge will certify the case to the Diversion Court calendar during the pretrial phase of the criminal case, following the defendant's release under PSA supervision and his or her connection to mental health services (usually at DMH) through the PSA's SSU. The pretrial release order

should reflect that the defendant maintain mental health services as directed by PSA and drug program placement (drug testing, assessment or treatment) as directed by PSA. The Criminal Calendar judge may certify the case to the Diversion Court at the initial status hearing, if PSA has confirmed that the defendant has been linked to mental health services at that time and has expressed an interest in receiving treatment and if PSA indicates that the preliminary eligibility criteria for placement in the Diversion program have been met. Preliminary eligibility means that PSA has reviewed the defendant's criminal history and the USAO has no objection to the defendant's referral to the diversion program. If the Criminal Calendar judge certifies the case to the Diversion Court judge, s/he shall schedule the next hearing date before the Diversion Court within 30 days.

If the case is not certified to the Diversion Court at the initial status hearing, the Criminal Calendar judge shall schedule a second status hearing approximately 30 days later. This second status hearing will allow the defendant a period of time to be connected to treatment services and stabilized with the assistance of the SSU.

The defendant generally will enter into a Deferred Prosecution Agreement before the Diversion Court judge after the Criminal Calendar judge has certified the case to the Diversion Court. (A copy of a proposed Deferred Prosecution Agreement is attached.) At the time the Deferred Prosecution Agreement is entered into between the defendant and the AUSA, the Court shall issue a new release order, restating the condition that the defendant maintain mental health

services as directed by PSA and drug program placement as directed by PSA. This new release order will be separate from and in addition to the terms of the Deferred Prosecution Agreement and shall reference that the defendant has entered into a Deferred Prosecution Agreement. A copy of the Deferred Prosecution Agreement must be provided to PSA either by directly handing a copy to the PSA Court Representative or by facsimile to the SSU within one business day.

The defendant will be certified back to the Criminal Calendar judge on whose calendar the case originated if the Deferred Prosecution Agreement cannot be utilized or is not appropriate in the case (such as when the defendant is not able to, or refuses to, be connected to services).

3. Diversion Supervision

The Diversion Court will be presided over by Magistrate Judge Joan L. Goldfrank, the Chair of the Superior Court Commission on Mental Health, who will hold hearings on Mondays and Wednesdays starting at 1:00 p.m. in Hearing Room 206 beginning in October.

After the Diversion Court accepts the case at the first hearing before it, an evaluation would be performed by PSA's SSU (if such has not already occurred) in order to determine if the defendant is receiving the full array of necessary support services and social services. Thereafter, SSU will make necessary referrals. SSU will monitor compliance with the mental health and other treatment-related conditions and report to the Diversion Court.

The Diversion Court will hold regular status hearings, usually every 30 days; however, it may determine that another frequency of review would be appropriate, based on the circumstances of a particular case. The Diversion Court shall retain jurisdiction for a period of up to four months, which may be extended up to an additional two months, depending on the particular case. If a defendant was already compliant with mental health services prior to entering into a Deferred Prosecution Agreement, the Diversion Court may consider that period in determining the end date of the agreement. The Diversion Court will receive a status report before each hearing from an SSU representative.

At the last diversion status hearing, upon receipt of the SSU compliance report, the Diversion Court shall determine whether the defendant has successfully completed the program, meaning that the defendant has remained in substantial compliance with mental health treatment, and drug abuse treatment where applicable, and has remained arrest free. (In certain circumstances, the USAO may determine that a re-arrest may not require termination of the Deferred Prosecution Agreement). If the Diversion Court determines that the defendant has successfully completed the program, the charges will be nolle, that is dismissed with prejudice, by the government. The Diversion Court shall determine whether the defendant has successfully completed the program. If the defendant fails to complete the program successfully, the Diversion Court shall terminate the Deferred Prosecution Agreement, and the case will be certified back to the Criminal Calendar judge on whose calendar the case originated to proceed with the case.

The Diversion Court generally will not hold a defendant in contempt of court, or order detention of the defendant as a sanction for violations of court orders. The Diversion program is not intended to be a sanction-based program. PSA will provide compliance reports to the Diversion Court while the case is pending before that Court, and will not provide such reports to the Criminal Calendar judge during this period.

If a defendant fails to appear for a hearing before the Diversion Court, the Court may issue a bench warrant for the defendant. It is understood that a defendant's failure to appear for a court hearing may be related to a treatment issue, requiring a change in the court's monitoring and a change in the intensity of treatment services. The USAO may reserve its bench warrant rights, depending on the circumstances of the particular case. If the Diversion Court issues a bench warrant, the defendant, upon arrest, shall be returned to the Diversion Court. A hearing on the bench warrant return shall be held before the Diversion Court on Monday, Wednesday or Friday in Courtroom 214, which has a lockup, unlike Hearing Room 206. A back-up judge(s) shall be designated to cover any bench warrant return on Tuesday or Thursday. If the defendant is detained on the bench warrant and has new criminal charges, the USAO will decide whether it will seek to terminate the Deferred Prosecution Agreement based on the new charges.

If a defendant violates his release conditions as set forth in the Court order and the Diversion Court terminates the Deferred Prosecution Agreement, the matter will be set before the Criminal Calendar judge on whose calendar the

case originated. The release conditions will typically remain in effect until the defendant appears before the Criminal Calendar judge. The Diversion Court will set the matter before the Criminal Calendar judge on the next business day, and the calendar judge will address the release conditions.

4. Eligibility Criteria

- Current charges must involve only misdemeanors. Eligible charges can include any misdemeanors, except domestic violence misdemeanors, subject to the USAO's approval.
- Eligible defendants may have prior criminal convictions but generally may not have any dangerous or violent felony convictions within the last five years. They may not be on probation, parole or supervised release relating to any dangerous or violent felony conviction. They may not have any pending charges for dangerous or violent felonies.
- The defendant must have a diagnosis of mental illness as defined in the Ervin Act (D.C. Code § 21-501 – “A psychosis or other disease which substantially impairs the mental health of a person.”). (Once a person is connected to DMH he has, by the fact of the enrollment for DMH services, a diagnosis of mental illness.) The person may also have a co-occurring substance abuse disorder.
- A person does not have to admit criminal responsibility for the charged conduct prior to acceptance in the diversion program. A person must, however, acknowledge that there is sufficient evidence for the government to proceed to prosecute the case prior to acceptance in the diversion program.

- A defendant's failure in a diversion program at an earlier point in time involving other criminal charges would not preclude their referral in connection with new charges, if the USAO exercises its discretion to permit placement into this mental health diversion program.
- The person must be competent to participate in the program, i.e. have an understanding of what participation in the Diversion Court involves. If the person would not be competent to stand trial, D.C. Code § 24-531.01, then he would generally not be competent to decide to enter the Diversion Court.
- Incarcerated persons cannot participate in the diversion program.

5. Termination Criteria

- a. Rearrest on probable cause for any criminal offense.
- b. Continuous noncompliance for at least 30 days with the diversion program requirements. (It must be recognized that decompensation and other setbacks in treatment are common occurrences for people under treatment for mental illness and that it may take some time for the most appropriate treatment to be identified and provided for the individual. In some instances, noncompliance should be handled by adjustments in services rather than a termination from the diversion program.)
- c. Loss of contact with PSA's SSU or a service provider for at least 30 days. In such a situation, PSA will provide immediate notice to the Court and the USAO, and recommend termination of the Diversion Prosecution Agreement and the defendant's return to the Criminal Calendar judge.

Evaluation of Program

The Court has contracted with the Urban Institute to study the pilot program. The Urban Institute will develop performance measures to determine the program's effectiveness, recommend how to collect the necessary information to measure the suggested performance standards, develop recommendations regarding improvements to the pilot program and the feasibility of permanency, help develop procedures and identify the necessary services to provide wrap-around services to the program participants, and gather and analyze data regarding the costs of inpatient treatment compared to the costs of outpatient treatment.

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division**

UNITED STATES OF AMERICA

v.

:
:
:
:

Criminal No. _____

**MENTAL HEALTH DIVERSION PROGRAM
DEFERRED PROSECUTION AGREEMENT**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the Defendant agree to defer the prosecution of this case for a period of up to four months, that is, until _____. This Agreement may be extended up to an additional two months if deemed necessary for the Defendant to receive continuing treatment in the Program. The case will be referred from the Misdemeanor Calendar to the Mental Health Diversion Calendar. The defendant's compliance with the Program will be monitored by the judicial officer assigned to the Diversion Calendar. At the conclusion of this period, if the Defendant successfully completes the Program requirements, the Government will dismiss the charges in this case with prejudice. The Court will determine whether the Defendant has successfully completed the Program requirements.

PROGRAM REQUIREMENTS

1. Defendant acknowledges that there is sufficient evidence for the government to proceed with the case.
2. Defendant complies with mental health treatment and any drug test reporting or drug treatment services as directed by Pretrial Services Agency.

TERMINATION OF AGREEMENT

The defendant may terminate this agreement at any time. The United States may terminate this agreement if:

1. The Defendant violates any law or is rearrested on probable cause.
2. The Defendant is in continuous noncompliance with Program Requirements for thirty (30) days.
3. The Defendant loses contact with Pretrial Service Agency's (PSA) Specialized Supervision Unit (SSU) or a service provider for thirty (30) continuous days.

If this agreement is terminated, the case will return to the Misdemeanor Calendar. Neither this Agreement nor the Defendant's statements relating to this Agreement will be used against the Defendant.

Date

Assistant United States Attorney

ACCEPTANCE

I have read, or have had read to me, this Deferred Prosecution Agreement and I have discussed it with my attorney. I fully understand this Agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me. I am not under the influence of anything that could interfere with my ability to understand this Agreement fully.

I acknowledge that there is sufficient evidence for the government to proceed with the case.

I understand that the Sixth Amendment to the United States Constitution gives me the right to a speedy trial. I hereby request a delay of the trial in the above-referenced case for the above-referenced period because I wish to enter into this Agreement. For this period of time, I choose not to exercise my right to a speedy trial.

I affirm that absolutely no promises, agreements, understandings, or conditions have been made except those set forth in this Agreement.

I am satisfied with the legal services provided by my attorney in connection with this Deferred Prosecution Agreement and matters related to it.

Date

Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read each of the pages constituting this Agreement, reviewed them with my client, and discussed the provisions of the Agreement with my client fully. These pages accurately and completely set forth the entire Agreement.

Date

Attorney for the Defendant