

Douglas County
Behavioral Health Court



Behavioral Health Court Policies and Procedures

BHC Policies and Procedures (June 2018)

INTRODUCTION

In June 2016, the Douglas County Behavioral Health Court (BHC) was established to more effectively address the increasing number of defendants with a mental illness who cycle through local court and mental health systems and the adult detention center. The BHC is funded by Douglas County, Kansas as approved by the Douglas County Commission.

The BHC is a specialized docket designed to address the unique needs of offenders with mental illness. The structure, function, and goals of the BHC are based upon the empirical evidence for applying a philosophy of therapeutic jurisprudence within the context of a problem-solving court that serves adults with mental health problems (see Major References). The BHC serves individuals who are charged with a criminal offense in the Douglas County Adult Court and whose psychological problems contributed significantly to the behaviors that lead to the offense. The BHC works to connect these individuals with appropriate services in the community. Some defendant's cases will be transferred from Municipal Court to District Court to facilitate their involvement in the BHC. The BHC will identify and oversee defendants' involvement in supportive services aimed at reducing their return to custody.

MISSION

The mission of the Behavioral Health Court of Douglas County is to connect defendants with community support services and reduce criminal involvement of defendants who suffer from serious mental illness and co-occurring disorders thereby enhancing public health and safety.

GOALS

The primary goals of the Behavioral Health Court are to:

1. Connect or re-connect persons with mental illness with needed mental health and other supportive services,
2. Improve coordination between the mental health and criminal justice systems,
3. Reduce incarceration events and repeated interactions with the criminal justice system for persons with mental illness,
4. Improve the quality of life for people with mental illness and co-occurring disorders.

ELIGIBILITY FOR BEHAVIORAL HEALTH COURT

1. Defendants who have a severe mental illness, as determined through State-approved criteria.
2. Defendants who have a severe mental illness with a co-occurring substance use disorder may be eligible.
3. Defendants with misdemeanor, nonviolent charges. The eligibility of those with felony and/or violent charges will be considered on a case-by-case basis. Individuals with murder and sex crime charges are not eligible for participation in the BHC.
4. Defendants must agree to remain in the program for at least 12 months.
5. Defendant must be a Douglas County resident.
6. Participation in the BHC is voluntary and the participant must be willing to engage in treatment services in the community. The participant must sign a release of information for details pertaining to his or her mental

health treatment, substance use, legal status, and criminal and treatment history, for consideration by the BHC team for the purpose of treatment planning and supervision.

Participation in the BHC is limited to those whose criminal involvement results from an existing mental illness or co-occurring disorder. The BHC team will rely on clinical assessments to make this determination. These assessments may include interviewing the defendant as well as reviewing records including mental health treatment records and police reports. One BHC goal is to enroll defendants who will benefit from additional treatment for their mental conditions and, when indicated, will benefit from additional supports including assertive reengagement into services. The BHC strives to slow or stop the “revolving door” between the criminal justice and mental health systems by identifying justice-involved defendants with mental illnesses and linking them to essential community treatment and supports.

The BHC team must agree on the acceptance of the defendant into the BHC. The defendant’s consent to participate will be conditioned on discussion(s) with his/her defense attorney and the creation of an agreement to participate in the BHC.

REFERRALS TO BEHAVIORAL HEALTH COURT

1. Prosecutors and defense attorneys, jail staff and treatment providers, police and probation officers, and Municipal and District Court Judges can refer potential participants based on the eligibility criteria defined above.
2. Referral forms can be found online at <https://www.douglascountyks.org/depts/district-attorney/behavioral-health-court-information> or picked up in the District Attorney’s or Division II office. The District Attorney’s office completes the initial review. The review process requires the provision of the defendant’s name, DOB, and contact information as well as an explanation why it is believed the incident is the primary result of the defendant’s mental illness or co-occurring disorder.
3. The D.A.’s office will review the legal information, including the potential participant’s history of violence and escape. Once reviewed by the D.A. and determined acceptable for participation, the participant’s information will be forwarded to the BHC Clinical Coordinator to determine clinical eligibility. The Clinical Coordinator will ask the potential participant to sign a release of information allowing his/her mental health information to be shared with the BHC team.
4. Once the Clinical Coordinator (or other assigned qualified QMHP) determines clinical eligibility, the defendant’s information will be brought to the entire BHC team for further review and determination of acceptance into the BHC. If the BHC team identifies the need for more information (e.g., criminal charge information, violence risk assessment, service needs) before a decision can be made, the referral is placed on a pending status until the team receives and evaluates the needed information.
5. Once the DA has approved the defendant’s participation in the BHC, the BHC Judge makes the final determination whether or not to accept the defendant into the program. If approved for the BHC, the client and defense attorney will be contacted with an initial court date for the defendant’s first appearance in the BHC.
6. The BHC is held on Thursday afternoons in Division II.

ACCEPTANCE PROCESS INTO BEHAVIORAL HEALTH COURT

1. If accepted into the BHC Program, the prosecutor will notify the participant's attorney.
2. The participant's attorney will advise and provide the participant with information about the BHC (including a Participant Manual) and explain the conditions of participation and the defendant's legal rights in the BHC. If the defendant agrees to participate, the defense attorney will file a motion with the Court asking to have the case transferred to the BHC docket.
3. If the case is transferred from the Lawrence Municipal Court, the District Attorney will file charges in District Court and the charges in Municipal Court will be dismissed. The participant will then be assigned to the BHC docket.
4. A BHC first-appearance date will be scheduled for not more than two weeks after the defendant's acceptance of the offer to participate in the BHC. A full mental health assessment will be completed prior to the individual's first appearance. The BHC supervision officer will complete the BHC intake form. The defense attorney will inform the participant of the BHC first-appearance date.
5. The Mental Health Clinical Coordinator will send a copy of the mental health assessment and treatment recommendations to the BHC team prior to the court date.
6. At the participant's first appearance on the BHC docket the Court shall modify his/her supervision conditions if needed to facilitate compliance with all orders of the BHC. The defendant shall sign a participation agreement and a rights' advisory. The BHC agreement outlines the basic intent of the program as well as specific expectations required of the program participant. The BHC agreement documents the participant's voluntary consent for participation and serves as the basic contract with the BHC.

PARTICIPANT ASSESSMENT and TREATMENT PROCESS

Acceptance into the BHC program requires participation in mental health treatment. The BHC treatment provider is Bert Nash Community Mental Health Center. Bert Nash provides outpatient and community based mental health services for Douglas County residents. In some cases a participant may be permitted to continue receiving mental health services from a current provider. However, because treatment compliance and progress will be monitored by Bert Nash, any participant permitted to see a non-Bert Nash provider will also have to enroll as an active client of Bert Nash and sign a release of information, allowing the BHC to communicate with the outside provider and to receive updates as requested.

1. All participants accepted for the BHC will be required to develop an individualized treatment plan prior to their first appearance on the BHC docket. Treatment plans are flexible and adjusted based on the participant's individual needs and goals. Treatment plans take into account the individual's baseline functioning, capabilities, strengths and holistic needs including physical, mental, and spiritual interests. Treatment plans are regularly updated to reflect the participant's progress.
2. The Mental Health Clinical Coordinator and/or Case Manager are responsible for making all referrals for support and services indicated on the treatment plan.
3. The Mental Health Clinical Coordinator and/or Case Manager ensures all services are provided according to the treatment plan and that the participant is engaged in treatment by following up with the participant and treatment providers regularly.

4. The Mental Health Clinical Coordinator and Case Manager work closely with Criminal Justice Services and communicate progress in treatment.

5. The Mental Health Clinical Coordinator and/or Case Manager will participate in weekly staffings and provide the court with weekly Clinical Progress Reports. These progress reports will include a summary of progress for each client scheduled for court that week. The clinician will provide overall status updates and offer recommendations as to the appropriateness of sanctions and/or incentives for the BHC Team to review.

SUBSTANCE ABUSE TREATMENT

Program participants whose behaviors are related to their substance use and/or to the presence of a co-occurring disorder are required to participate in substance abuse assessment and treatment services. If the initial mental health assessment suggests the need for further substance abuse assessment, the court will order an assessment and require the participant to follow through with recommendations for treatment.

CRIMINAL JUSTICE SERVICES SUPERVISION

1. Once confirming the defendant-applicant has been pre-approved by the District Attorney for participation in BHC, the defendant-applicant reports to the Clinical Coordinator to complete the clinical assessment needed to determine the his/her acceptance into the BHC.

2. Once accepted into the BHC, the participant will report to the BHC supervision officer as directed by the Judge, for monitoring. Relevant case information will be entered into the Full Court records system.

3. If the participant is in custody or is remanded to custody the BHC supervision officer will see the participant at the Douglas County jail. A report date card with the officer's contact information will be given to the participant with reporting instructions.

4. Once the participant is officially accepted and enters the BHC program, supervision commences on all phases of the BHC program.

5. The supervision officer supervises the participants while in the community to ensure compliance with program requirements.

6. Random drug and/or alcohol testing on persons placed into the BHC program is part of the program. Participants are expected to remain drug/alcohol free in the BHC program.

7. The supervision officer works closely with the Mental Health Clinical Coordinator and the Case Manager to assist in developing the Treatment Plans and ensure that participants are following treatment recommendations. The supervision officer communicates regularly with the participants' mental health and substance abuse treatment providers to ensure participants are in compliance with treatment.

8. The supervision officer participates in weekly staffings and provides the court with weekly Supervision Progress Reports. The supervision officer will provide overall status updates and offer recommendations as to the appropriateness of sanctions and/or incentives for the BHC Team to review.

BEHAVIORAL HEALTH COURT HEARING PROCESS

New Participants:

1. The District Attorney's office will provide a list of new preliminarily approved referrals weekly at the BHC team meeting. If available the results of their clinical mental health assessments will be discussed and the team will determine the participants' admission into the BHC program.
2. Defendants placed in the BHC program will be placed on the next regularly-scheduled BHC docket. The BHC docket is held weekly on Thursday afternoons in Division II.
3. The Judge will explain the requirements of the BHC program and, with the participant's consent, will formally accept the participant into the BHC. The participant will sign the BHC agreement and rights advisory. All paperwork will be prepared for court by the D.A.'s office and the participant's attorney.
4. The BHC Phase I begins on the first day of entry into the BHC program. The Court tells participants at the initial hearing and at every hearing thereafter of the requirements to be met as part of the BHC program.

Regular status hearings are a central feature of the BHC. Participants appear regularly before the Judge who reviews their progress. During the status hearing, the Court is provided with any additional status reports from the Clinical Coordinator and the Supervision Officer. Participants interact directly with the Judge during status hearings.

Review Hearings:

1. The Court schedules hearings in accord with the participant's current phase in the program.
2. Each Thursday, the BHC Team staffing will occur for each participant set for court that day. The staffing occurs prior to the participant appearing before the Judge.
3. Initially, participants will be seen every week in Phase I of the program. As participants progress in the BHC program, they graduate to the next Phase, which, in general, results in a reduction in the number of required court appearances.
4. Review hearings will be conducted with all available team members present.
5. The BHC Judge may issue a bench warrant when a participant fails to appear.
6. The BHC Judge will issue sanctions and rewards to participants when appropriate, with input from all members of the BHC treatment team.

INCENTIVES AND SANCTIONS

Incentives are used to assist the defendant in achieving treatment goals. The Judge determines incentives based upon recommendations from the BHC Team. Sanctions are used to assist clients in reaching treatment and public safety goals. (see Appendix VI: Behavioral Health Court Participant Handbook for levels of incentives and sanctions).

PROGRAM REQUIREMENTS

The BHC program requirements are developed on a case-by-case basis and designed to best meet the needs of each participant. Each client is referred to a case manager and supervision officer specifically assigned to the BHC for treatment planning, monitoring, accountability, and coordination. These professionals also provide information to the Court at weekly team meetings and court reviews.

General program requirements include the following:

1. Engagement in mental health treatment and groups, as recommended by the treatment providers.
2. Adherence to psychotropic medication, if prescribed.
3. Compliance with drug and alcohol testing by the supervision officer. Referrals for substance abuse treatment will be made as needed.
4. Initiation of Social Security Disability/Insurance (SSDI/SSI) application or acquisition of public assistance including Medicaid, if appropriate,.
5. Compliance with all BHC conditions.
6. Attendance at regular court appearances.
7. Evidence of productive use of time (obtain a job, volunteer community service, education, etc.).
8. Progress toward completion of any community service obligations.
9. Absence of criminal behaviors.

OTHER PARTICIPATION ISSUES

Only individuals who are deemed mentally competent to assist in their defense are eligible for participation in the BHC.

1. If there is a question about an individual's competency, a competency evaluation should be ordered prior to the defendant being considered for participation in the BHC. A referral to the BHC can be made once competency has been restored.
2. Individuals who meet the criteria for psychiatric hospitalization (risk to self, risk to others or self-care failure) will not be accepted into the program until their symptoms and status have stabilized. They can be reassessed at a later date for inclusion in the program.
3. Generally, BHC participation is required for a minimum of one year. The duration of the program is determined by individual needs and progress made while in the BHC program.
4. Upon the graduation of a participant, the case will be dismissed with prejudice.
5. A participant who is re-arrested or charged with a new offense or repeated technical violations will be reevaluated for continued participation in the BHC. Re-arrests, new charges, and other violations are grounds for removal from the program, unless the Court and the BHC team determine otherwise.

TEAM DECISION MAKING

The BHC team meets each week to review all cases set to appear in court that day. The BHC Team meets to review the clinical report provided by the Mental Health Clinical Coordinator and the compliance report provided by the Supervision Officer. This team meeting is also used to assess the status of complex cases in which current treatment and supervision strategies do not appear to be working. Decisions are typically made by consensus. The general team approach is non-adversarial. Additionally, in this meeting the team addresses administrative matters pertaining to program planning and administration, treatment and service delivery, training, policies and procedures, data collection, and special projects, and issues that have arisen since the prior meeting. To ensure ongoing collaboration and service coordination, team members may also meet periodically outside of the team meetings to address changes in treatment plans, community needs, funding and/or legislative processes, and to respond to emergent problems.

THE BEHAVIORAL HEALTH COURT TEAM

JUDGE

The BHC Judge leads the collaborative treatment team. In this capacity, the Judge regularly reviews case status reports detailing each participant's progress and adherence with the treatment plan. During regularly scheduled court appearances, the Judge may administer graduated sanctions and incentives (see Appendix VI: Behavioral Health Court Participant Handbook) to increase each participant's accountability and to enhance the likelihood of the participant's treatment engagement and long-term success in the community. The Judge determines, with input from the BHC team, when a participant has completed the program. The Judge also determines when a participant is non-compliant and will be removed from the program.

DISTRICT ATTORNEY

In the BHC, all parties and counsel share the common goal of helping participants successfully comply with treatment services in the community. The prosecutor reviews new cases concerning eligibility, pursuant to the guidelines herein. The eligibility assessment includes a review of the defendant's criminal history, legal eligibility, and appropriate dispositions upon the defendant's entry into the BHC. As a member of the collaborative BHC team, the prosecutor monitors participant progress and makes recommendations regarding incentives, sanctions and continued participation in the BHC. If a participant is re-arrested, the prosecutor investigates the new case and assesses the appropriateness of the individual's continued participation in the BHC.

DEFENSE COUNSEL

The defense counsel informs the defendant about the defendant's rights as a defendant and mental health consumer and represents and advises the defendant in all court proceedings. The defense counsel uses a non-adversarial approach with a focus on protecting defendants' constitutional rights and promoting their success in treatment which is aimed at enhancing the defendant's health and well-being. In cooperation with the BHC team, the defense counsel seeks to find treatment solutions for the defendant that minimize the defendant's exposure to incarceration, reduce the risk of re-arrest or new charges, and mitigate the consequence of a criminal conviction.

MENTAL HEALTH CLINICAL COORDINATOR

A Qualified Mental Health Professional (QMHP) employed by Bert Nash Mental Health Center provides mental health assessments, clinical oversight and care coordination for BHC participants. The clinical coordinator develops the treatment plan and makes referrals to interventions needed to address the mental health symptoms that led to the participant's criminal charge(s). The clinical coordinator makes recommendations to the Court regarding the progress in treatment and adherence to treatment and supportive service related to conditions

SUBSTANCE ABUSE CLINICIAN

A licensed addictions counselor employed by DCCCA will provide substance abuse assessments, clinical oversight and care coordination for BHC participants. The clinician develops the treatment plan and makes referrals to services needed to address substance abuse. The clinician makes recommendations to the Court regarding the progress in treatment and adherence to treatment and supportive service related to bond conditions

SUPERVISION OFFICER

A Specialized Bond Supervision Officer oversees a predominantly or exclusively BHC caseload. The Supervision Officer works closely with participants who are under community supervision and provides updates to the team and the Court regarding compliance with the terms and conditions of their supervision. The Supervision Officer focuses on community involvement, including meeting with participants in the field, interacting with treatment and supportive service providers and overseeing the payment of restitution in whatever form it is ordered.

MENTAL HEALTH CASE MANAGER

The case manager, supervised by the Clinical Coordinator, provides community based services as indicated on the treatment plan. If a participant is already working with a community-based case manager and wishes to continue with that person, the BHC QMHP will assign or provide extra support as needed, for the primary case manager.

CONFIDENTIALITY

All health and relevant personal legal information is shared in a way that protects participants' as well as potential participants' confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of the participants' treatment program or services should be safeguarded in the event that participants are returned to traditional court processing.

1. All proposed participants will be required to sign the "Douglas County Criminal Justice Multi-Agency Authorization for Release of Confidential Information" form in order to be considered for the BHC. This can be done at the initial mental health screening. This form allows the mental health provider (a covered entity under the Health Insurance Portability and Accountability Act - HIPAA) to share medical information with the BHC team. If the individual has a guardian, the guardian must consent to treatment, releases of information and for financial information.
2. Proposed participants should not be asked to sign the release of information forms until competency issues, if raised, have been resolved.

3. Treatment information recorded in the BHC files will not be a matter of public record. The files will be treated as confidential treatment records, and access to them will be limited to the BHC Team.

4. The staffing sessions will be limited to BHC Team members and persons who may not be on the team but who are identified in the release of information. All matters considered in the staffing are confidential, and will not be discussed or disclosed by the team members outside of the staffing, except as required by agency supervisors, other team members unable to attend the session or providers, as necessary for treatment purposes.

TERMINATION

Termination of the participant from the BHC can be initiated by the Judge, prosecuting attorney, or the supervision officer. These requests will be reviewed by the BHC Team. All BHC motions to terminate shall be heard on the same BHC dockets. A determination will be made as to whether to:

1. Withdraw the motion and continue the defendant in the program;
2. Continue the motion so that the defendant's case can be monitored for an additional period of time determined by the District Attorney, defense attorney and Judge; or
3. Go forward with the motion and request that the Judge sustain the motion.

OPTING OUT

The participant can opt out of BHC at any time and be returned to the original criminal court for case processing.

GRADUATION

Each participant's involvement in the court is individualized to their particular circumstances, needs, progress through treatment, and compliance with supervision. However, typically, when the participant has been in the Program for eleven (11) months, the BHC Team will review the participant's case for eligibility and readiness for graduation. To qualify for graduation, the BHC participant must:

1. Be in compliance with all the terms and conditions set out by the BHC,
2. Complete all phase requirements as deemed possible by the BHC Team,
3. Be fully engaged in treatment and support services, 30 days sanction-free, and have all pending court matters (e.g., restitution, court fees, or community service) resolved,
4. Have an aftercare plan with Bert Nash.

If in compliance, the BHC Team will recommend to the Judge that the participant's case be placed on the graduation docket. The participant must continue to comply with the terms and conditions of the program until the Judge sets a date of graduation from the BHC and the participant has graduated.

On graduation day, the participant will graduate from the program (unless non-compliance has occurred between the time of the last court date and the graduation date). The graduate's case will be dismissed with prejudice and noted successful completion of Douglas County BHC.

MAJOR REFERENCES

- Council of State Governments. (2008). *Mental health courts: A primer for policymakers and practitioners*. Washington, DC.
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- Frailing, K. (2010). How mental health courts function: Outcomes and observations. *International Journal of Law and Psychiatry*, 33(4), 207-213.
- National Center for State Courts. (2010). *Mental health court performance measures: Implementation & user's guide*. Williamsburg, VA.
- Redlich, A. D., & Han, W. (2014). Examining the links between therapeutic jurisprudence and mental health court completion. *Law and Human Behavior*, 38(2), 109-118.
- Redlich, A. D., Steadman, H. J., Monahan, J., Robbins, P. C., & Petrila, J. (2006). Patterns of practice in mental health courts: A national survey. *Law and Human Behavior*, 30(3), 347-362.
- Thompson, M., Osher, F., & Tomasini-Joshi, D. (2008). *Improving responses to people with mental illnesses: The essential elements of a mental health court*. New York.

APPENDICES

- I. Douglas County Criminal Justice Multiagency Authorization for Release of Information
- II. Douglas County BHC Referral Form
- III. Adult Psychiatric Rehabilitation Service (SMI) Eligibility Form
- IV. Behavioral Health Court Flowchart
- V. Behavioral Health Court Participation Agreement
- VI. Behavioral Health Court Participant Handbook
- VII. BHC Rights Advisory
- VIII. BHC Participation Agreement