

**IN THE THIRTEENTH JUDICIAL CIRCUIT
HILLSBOROUGH COUNTY, FLORIDA**

**ADMINISTRATIVE ORDER S-2010-013
(Supersedes Administrative Order S-2003-077)**

DRUG COURT

It is well established and generally recognized that the illegal use of drugs fuels much crime and the provision of drug treatment to criminal defendants reduces the likelihood of defendants engaging in further criminal behavior. Section 397.334, Florida Statutes, codifies the Florida Legislature's intent to implement treatment-based drug court programs in each judicial circuit. The choice to participate in the drug court model is a privilege rather than a right.

The criminal division Drug Court, a specialized section of the Criminal Justice Division to handle drug cases, has been established since 1992. It is necessary for the proper and efficient operation of the Thirteenth Judicial Circuit to update the procedures in Drug Court.

By the power vested in the chief judge under Florida Rule of Judicial Administration 2.215(b)(2), it is therefore **ORDERED**:

1. Purpose

The purpose of the drug court division is to provide a non-adversarial forum, in addition to the pre-trial intervention program, whereby an individual who meets the eligibility criteria and wishes to avail himself or herself of the benefits of drug court treatment may do so by pleading guilty and entering into a drug court treatment program as determined by the judge presiding in the drug court division.

2. Definitions

For purposes of this administrative order, the following terms have the following meanings:

A. **"Co-defendant case"** - means two or more defendants charged, in the same case, with at least one drug offense (*e.g.* constructive possession of a controlled substance).

B. **"Community sanctions"** - means probation, drug offender probation, community control, or community control II.

C. **"Drug court model"** - means a case management system for drug offenses in which court supervised drug treatment is used rather than litigation (*i.e.*, no trials or pre-trial motions). The treatment may include, but is not limited to, community sanctions, varying levels of drug treatment, and incarceration pursuant to the Criminal Punishment Code. The drug court model applies a protocol which includes the use of in-court substance abuse evaluators to aid the presiding judge in fashioning appropriate substance abuse treatment, conditions of community sanctions, and case reviews every four to six weeks as needed.

- D. **“Drug offense”** - means a felony violation of chapter 893, Florida Statutes.
- E. **“Drug treatment”** - means outpatient, intensive day-night, residential, or in-jail treatment programs.
- F. **“Felony”** - has the same meaning as provided in section 775.08(1), Florida Statutes.
- G. **“Forcible felony”** - means any felony listed in section 776.08, Florida Statutes.
- H. **“Guilty plea”** - means a plea of guilty to a criminal charge pursuant to Florida Rules of Criminal Procedure 3.170(a) and 3.172(d) in which the defendant either acknowledges his or her guilt or acknowledges that he or she feels the plea to be in his or her best interest.
- I. **“Non-violent felony”** – means a third degree felony violation of chapter 810 or any other felony offense that is not a forcible felony.
- J. **“Standard division”** - means any of the following divisions of the Criminal Justice Division: “A,” “B,” “C,” “D,” “E,” “F,” “G,” and “I.”
- K. **“Violent felony”** – means any forcible felony except a third degree felony violation of chapter 810.
- L. **“VOP”** - means violation of probation, violation of drug offender probation, violation of community control, or violation of community control II.

3. Division “W” - Pre-Trial Intervention

Drug Court Division “W” will continue to be the pre-trial intervention program division available to defendants who have been charged with a third degree felony drug offense but who have not been previously adjudicated guilty of a felony. Defendants will be required to enter into an agreement for treatment, but will not be required to enter a plea of guilty or *nolo contendere* to the charges that caused them to be assigned to drug court. Successful completion of the drug treatment program will result in dismissal of the charge(s) against the defendant. *See* § 948.08, Fla. Stat. (2003).

4. Division “Y” - Drug Court Model

Drug Court Division “Y” will continue to be the single drug court division handling eligible drug offenses. These drug offenses will be strictly managed by the presiding judge according to the traditional drug court model. Division “Y” will handle all eligible cases through final disposition, including VOPs.

All third degree felony drug offenses and all second degree felony purchase or possession of a controlled substance cases, except co-defendant cases, will be initially filed

in Drug Court Division “Y.” Except for co-defendant cases, all third degree felony drug offenses and second degree felony purchase or possession of a controlled substance cases along with any accompanying non-violent felony offenses, including misdemeanor offenses, will initially be filed in Drug Court Division “Y.”

If a defendant is eligible for the drug court pre-trial intervention program and the state attorney consents, the defendant’s case(s) will be transferred to Drug Court Division “W.”

All other drug offenses, including all co-defendant cases, will be filed in a standard division according to the assignment procedures in the Criminal Justice Division.

5. Drug Court Eligibility

In order for a case to remain pending in Drug Court Division “Y” after the initial filing, a defendant must (a) qualify for either community sanctions under the Criminal Punishment Code or sentencing under the Florida Youthful Offender Act; (b) wish to participate in the drug court model; (c) not have any violent felony offense pending; (d) never have been previously adjudicated guilty of a violent felony; (e) not have any offense pending that is greater than a third degree felony; (f) not have any offense pending that is dealing or selling of controlled substances; and (g) not wish in any way to contest the criminal charges.

6. Arraignments in Drug Court Division “Y”

A. Information Provided to Defendant

At arraignment, all police reports and Criminal Punishment Code scoresheets, including relevant prior criminal history, shall be provided by the Office of the State Attorney to the defendant to afford the defendant a meaningful opportunity to discuss options with counsel, to be verified for eligibility, and to be evaluated by a court substance abuse evaluator if desired.

B. Verification of Eligibility

At arraignment, the presiding judge in Drug Court Division “Y” will verify that all cases meet the eligibility criteria for Drug Court Division “Y.” If any case does not meet the eligibility criteria for Drug Court Division “Y,” the judge will direct the clerk to transfer the case to a standard division for disposition.

C. Defendant’s Decision

For those cases meeting the eligibility criteria for Drug Court Division “Y,” at arraignment the defendant will either: (a) decide to contest the charges; (b) decide to participate in the drug court model; or (c) request more time to decide whether to contest the charges or to participate in the drug court model.

i. Decision to Contest Charges

If, at arraignment, the defendant decides to contest the charges, then the presiding judge in Drug Court Division “Y” will direct the clerk to transfer the case to a standard division for disposition.

ii. Decision to Participate in the Drug Court Model

If, at arraignment, the defendant decides to participate in the drug court model, the defendant must enter a guilty plea and then be set for sentencing.

iii. Request More Time for Decision

If, at arraignment, the defendant requests more time to decide whether to contest the charges or to participate in the drug court model, then the presiding judge in Drug Court Division “Y” may set a subsequent date to accept a plea. The subsequent date should be no more than 21 days from the date of arraignment, absent good cause shown. During this period, no pre-trial motions will be heard other than motions for pre-trial release or bond reductions.

a. Not Guilty Plea & Transfer of Case

If, on the plea date, the defendant decides to contest any charge and plead not guilty, then the judge will direct the clerk to transfer the case to a standard division for disposition.

b. Guilty Plea & Participation in the Drug Court Model

If, on the plea date, the defendant decides to participate in the drug court model, the defendant must enter a plea of guilty and then be set for sentencing.

7. Sentencing in Drug Court Division “Y”

The defendant’s sentence will be imposed by the presiding judge in Drug Court Division “Y” after the defendant is assessed at sentencing by a court substance abuse evaluator to determine appropriate treatment options. Except as provided in section 8 of this administrative order, any defendant sentenced in Drug Court Division “Y” will remain in Division “Y” until final disposition of the case.

8. VOP in Drug Court Division “Y”

A. Technical VOP

If a VOP arises as a result of any violation that does not involve a new criminal charge, the presiding judge in Drug Court Division “Y” will handle the VOP in accordance with the drug court model to final disposition.

B. Violent Felony Charges

If a VOP arises as a result of a new violent felony charge, the new charge and corresponding VOP will be transferred from Drug Court Division “Y” to a standard division for disposition.

C. Non-violent Felony Charges

If a VOP arises as a result of a new non-violent felony charge, the presiding judge in Drug Court Division “Y” will handle the VOP in accordance with the drug court model unless the defendant wishes to contest the new substantive charge. If the defendant decides to contest only the new substantive charge, then the presiding judge in Drug Court Division “Y” will direct the clerk to transfer the new substantive charge and corresponding VOP to a

standard division for disposition. Otherwise, all VOPs will remain in Drug Court Division “Y.”

9. Defendant’s Involvement in the Dealing and Selling of Drugs in Drug Court Division “Y”

If the state attorney believes that the facts and circumstances of an otherwise eligible case pending in Drug Court Division “Y” suggest the defendant’s involvement in the dealing and selling of controlled substances, the court will hold an eligibility hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in the dealing or selling of controlled substances, the court may order that such defendant’s case be transferred to a standard division pursuant to the assignment procedures in the Criminal Justice Division.

10. Co-Defendant Cases

All co-defendant cases will be initially filed in a standard division according to the assignment procedures in the Criminal Justice Division. *See* Administrative Order S-2009-119 (*Criminal Justice Division Procedures*) or any subsequent administrative order.

A. Discretionary Transfer to Drug Court Division “Y”

Any defendant in a co-defendant case may be transferred to Drug Court Division “Y” by the presiding judge in a standard division if such defendant (a) qualifies for either community sanctions under the Criminal Punishment Code or sentencing under the Florida Youthful Offender Act; (b) wishes to participate in the drug court model; (c) does not have any violent felony offense pending; (d) has never been previously adjudicated guilty of a violent felony; (e) does not have any offense pending that is a violent felony; (f) does not have any offense pending that is dealing or selling of controlled substances; and (g) does not desire in any way to contest the criminal charges. If the presiding judge in a standard division decides to allow an eligible defendant in a co-defendant case to be transferred to Drug Court Division “Y,” the case will be transferred to Drug Court Division “Y” for acceptance of a guilty plea and sentencing.

B. Disposition of Remaining Cases in Standard Division

Any defendant in a co-defendant case who (a) does not qualify for either community sanctions under the Criminal Punishment Code or sentencing under the Florida Youthful Offender Act; (b) does not wish to participate in the drug court model; (c) has a violent felony offense pending; (d) has been previously adjudicated guilty of a violent felony; (e) has an offense pending that is dealing or selling of controlled substances; or (f) desires in any way to contest the criminal charges will not be eligible for transfer to Drug Court Division “Y” and will remain in the standard division for disposition.

C. Co-defendant Case in Separate Divisions

If any co-defendant case involves at least one defendant who is transferred to Drug Court Division “Y” and at least one defendant who remains in a standard division, the clerk will use her best efforts to ensure the court file is in the appropriate courtroom whenever a hearing occurs involving one of the respective defendants.

11. Transfer of Case from another Division to Drug Court Division "Y"

A. Transfers Generally

If at any time the presiding judge in another division determines that a defendant (a) qualifies for or is already serving either community sanctions under the Criminal Punishment Code or a sentence under the Florida Youthful Offender Act; (b) wishes to participate in the drug court model; (c) does not have any violent felony offense pending; (d) has never been previously adjudicated guilty of a violent felony; (e) does not have any offense pending that is dealing or selling of controlled substances; and (f) does not wish in any way to contest the criminal charges, the judge may transfer the case to Drug Court Division "Y," subject to the limitation in section 12 of this administrative order. If a judge decides to transfer such a case in which a defendant has not entered a plea or has not been adjudicated for the pending criminal charge, the presiding judge will direct the clerk to transfer the case to Drug Court Division "Y" for acceptance of a guilty plea and sentencing.

B. Transfer of Eligible Departure Sentences

For offenses committed on or after July 1, 2009, if a defendant's offense is a non-violent felony, the defendant scores 52 points or fewer on the Criminal Punishment Code scoresheet, and the presiding judge determines that the defendant is amenable to the services of a post-adjudicatory treatment-based drug court, the judge may transfer the case to Drug Court Division "Y," subject to the limitation in section 12 of this administrative order. If a judge decides to transfer such a case to Drug Court Division "Y," the case will be transferred to Division "Y" for acceptance of a guilty plea and sentencing.

C. Transfer of Eligible VOP cases from Division "K"

For any VOP case pending in Criminal Justice Division "K" in which the underlying offense was committed on or after July 1, 2009 and the violation is only a failed or suspect substance abuse test, the judge may transfer the VOP to Drug Court Division "Y," subject to the limitation in section 12 of this administrative order, if (1) a defendant's underlying offense is a non-violent felony; (2) the defendant scores 52 points or fewer on the Criminal Punishment Code scoresheet; and (3) the presiding judge in Division "K" determines that the defendant is amenable to the services of a post-adjudicatory treatment-based drug court. If the Division "K" judge decides to transfer such a case to Drug Court Division "Y," the case will be transferred to Division "Y" for acceptance of a guilty plea and sentencing.

D. Transfer of Certain Probation-Sentenced Cases

If the presiding judge in another division determines that a defendant who has been sentenced to probation for a non-violent felony is particularly amenable to the services of a post-adjudicatory treatment-based drug court and the presiding judge in Drug Court Division "Y" consents to the transfer of the case, the presiding judge in the other division may transfer the supervision of probation to Drug Court Division "Y."

12. Transfer of Case from Drug Court Division "Y" to a Standard Division

If a case is transferred from Drug Court Division "Y" to a standard division for any reason, such case will not be transferred back to Drug Court Division "Y" except with the consent of the presiding judge in Drug Court Division "Y."

All cases transferred from Drug Court Division "Y" to a standard division will be reassigned a standard division as provided in section 8 of Administrative Order S-2009-119 (*Criminal Justice Division Procedures*), unless the case originated from a standard division. If a case is transferred into Drug Court Division "Y" from a standard division (*see* sections 10 and 11 of this administrative order) and is subsequently transferred out of Drug Court Division "Y," such case will be reassigned back to the standard division from which the case originated.

For any case transferred from Drug Court Division "Y," the clerk will provide notification in open court of the standard division to which the case is reassigned.

13. Acting County Court Judge

The judge assigned to Drug Court Division "Y" is appointed as an acting county court judge for the purpose of presiding over misdemeanor charges as specified in this administrative order.

14. Drug Court Oversight Committee

The Drug Court Oversight Committee will continue to oversee drug court operations in order to ensure proper training of court personnel and correct implementation of the drug court model. The committee is charged with recommending strategies to maintain the quality and effectiveness of drug court and to ensure that the many treatment options now available for drug court remain viable. The Drug Court Oversight Committee is comprised of representatives from the Public Defender's Office, State Attorney's Office, Administrative Office of the Courts, Community Corrections' Office of the Department of Corrections, Hillsborough County Sheriff's Office, treatment providers, and judicial representatives as determined by the chief judge.

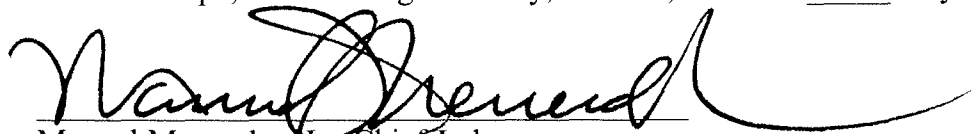
15. Previous Administrative Order Superseded

This administrative order supersedes Administrative Order S-2003-077 (*Drug Court*).

16. Effective Date

This administrative order is effective February 1, 2010.

It is ORDERED in Tampa, Hillsborough County, Florida, on this 25th day of January, 2010.


Manuel Menendez, Jr., Chief Judge

Original to: Pat Frank, Clerk of the Circuit Court
Copy to: All Criminal Justice Division Judges
Julianne Holt, Public Defender
Mark A. Ober, State Attorney
Gail Reddick, Department of Corrections