

Mental Health Courts – Overview and Standards

In Saskatchewan, Mental Health Courts help address the overrepresentation of people with mental illness and/or cognitive deficits in the criminal justice system by focusing on underlying problems that often contribute to repeated criminal behaviour.

Mental Health Courts operate using a collaborative model. The judge, Crown prosecutor, and Legal Aid duty counsel and other defence counsel work with the participant, community, and mental health agencies to gather information to understand a participant's underlying condition and develop a Participant Plan which is designed to stabilize the participant in the community. Such plans address community safety needs and criminal justice accountability of individuals with mental illness and/or cognitive deficits who are charged with criminal or provincial offences.

Target Group

The Mental Health Court is available for adults who have been charged with certain provincial or criminal offences which appear to be linked to ongoing mental health challenges, psychiatric disorders, brain injuries, Fetal Alcohol Spectrum Disorder (FASD), or other cognitive issues that affects or impairs judgment.

Eligibility and the Referral Process

Referrals come from the Court, prosecutors, Legal Aid and other defence counsel, police, Community Corrections, and community/health agencies and are made to a designated Crown prosecutor.

The designated Crown prosecutor is the gatekeeper for referrals to the program. In assessing a case for referral to Mental Health Court, the designated prosecutor will consider the nature of the charges, criminal history, risk to community safety, and whether there is a reasonable basis to believe there is a relevant connection between the mental health condition of the accused and the offences they are charged with. In addition, the accused must be prepared to accept responsibility for their offences by entering a guilty plea to some or all of the offences. Lastly, the accused must consent and be prepared to participate in the Mental Health Court and have their sentence delayed.

Mental Health Court is not for:

Individuals who are facing sexual offences, serious personal injury offences, offences with mandatory minimum penalties, driving offences, or offences for which the Crown will be seeking a penitentiary sentence.

Deferred Sentencing Model

Participants are strongly encouraged to retain legal counsel to assist them. The Court operates on a deferred sentencing model. After guilty pleas have been entered, sentencing of the participant is delayed to allow the participant to stabilize in the community by adhering to a Participant Plan. The Court will require the participant to appear before the Court from time to time over a period of time ranging from approximately six months to one year. The Court will receive updates as to how the participant is doing on their Participant Plan. Success with the Plan will be taken into account by the Crown and the Court during sentencing and may result in a reduced sentence.

Mental Health Courts work most effectively when they bring together mental health professionals, social services professionals, and criminal justice professionals. Together, these professionals work to gather information about the participant and their needs/challenges and provide that information to the Court. This increased access to information provides an additional tool for the Court and justice partners so that support and supervision of participants can take place safely in the community. Information that is gathered may include comprehensive mental health assessments, formal case management plans, less formal participant plans, and information about community-based services available to address the needs of the individual.

This process provides an effective, more individualized model that assists in managing participants who commit crimes because of their mental health, FASD, or cognitive issues. A Participant Plan is designed to assist participants to reduce or eliminate criminal behaviour and maintain a healthier lifestyle. It uses connections with community and health agencies to break down barriers and encourage participants to connect with appropriate services. The benefit to this approach is an increased capacity for assessment and improved access to mental health services and resources for participants, and reduced interaction with the criminal justice system.

Court

Court sits regularly – at least twice per month.

Before Court, there is a judicially led pre-court meeting. The purpose of the meeting is to initially gather information about participants and availability of programming/supervision/treatment to address those needs and to connect participants with those available community resources. At the time when guilty pleas are entered before the Court a Participant Plan will be provided to the participant and the Court. Thereafter, pre-court meetings will be a time to obtain updated information as to how the participant is doing on the Participant Plan.

Pre-court will be attended by: Judge; designated Crown prosecutor; Legal Aid duty counsel and other defence counsel; community/Health Authority resources who may be working with the participant; and Community Corrections (Probations).

Court will be attended by all of the above and the participant, when required by the Judge.

During court the Judge will attempt to interact in a meaningful way with each participant and encourage them to comply with their Plan.

A dedicated Judge/Crown/Legal Aid duty counsel/defence counsel ensures consistency of approach and safeguards protection of *Charter* rights.

Court dockets are smaller than regular docket courts and proceed at a slower pace.

The participant must agree to participate in the Mental Health Court process and to the sharing of information about their needs and assessment/program participation. They must agree to attend appointments for assessments or other services or community programs as may be directed by the Court. Participant Plans will be developed and monitored based on an assessment of needs.

Length of time in the Mental Health Court will vary depending on the needs of individual participants and progress with the Participant Plan that was developed.

When imposing sentence, the Mental Health Court Judge will take into account adherence to the Participant Plan, their stability in the community, public safety, accountability, and progress made by the participant while in the court.