

***IN THE SUPREME COURT, STATE OF WYOMING***

*April Term, A.D. 2024*

***In the Matter of Adoption of the*** )  
***Adult Diversion Court Rules*** )

# ORDER ADOPTING ADULT DIVERSION COURT RULES

**The Behavioral Health Committee of the Wyoming Judicial Council** has recommended the Court adopt the proposed Adult Diversion Court Rules. This Court finds the proposed rules should be adopted. It is, therefore,

**ORDERED** that the proposed Adult Diversion Court Rules, attached hereto, are hereby adopted by the Court to be effective July 1, 2024; and it is further

**ORDERED** that this order and the attached rules shall be published in the advance sheets of the Pacific Reporter; the attached rules shall be published in the Wyoming Court Rules Volume; and that this order and the rules shall be published online at the Wyoming Judicial Branch’s website, <http://www.courts.state.wy.us>, on the “Rule Amendments” page. The rules shall also be recorded in the journal of this Court.

**DATED** this 23<sup>rd</sup> day of April, 2024.

**BY THE COURT:**

/s/

**KATE M. FOX**  
**Chief Justice**

## **Adult Diversion Court Rules**

### **Rule 1. Scope and Purpose of Rules.**

These rules shall govern practice and procedure in adult diversion courts in Wyoming. All diversion courts in Wyoming may operate only by order of the Wyoming Supreme Court and shall comply with these rules. All diversion courts shall adopt a practices and procedures handbook approved by the Wyoming Supreme Court.

### **Rule 2. Definitions.**

- (a) “Case manager” means the diversion court team member responsible for the case management of diversion court participants and maintenance of case management files.
- (b) “Participant” means a person who has been referred to and accepted into a behavioral health diversion court program.
- (c) “Peer mentor” means an individual certified to provide peer support to a participant and assists a participant in navigating public behavioral health and medical services systems and the diversion court process.
- (d) “Treatment plan” means a plan that addresses a participant’s behavioral health issues by: identifying the participant’s strengths and needs through assessment; defining goals and objectives based on identified need; and establishing the services to be sought to assist with achieving the stated goals and objectives. The diversion court shall require the participant to follow and complete the plan.
- (e) “Treatment provider” means the individual or entity that provides clinical and when appropriate social services to a participant.
- (g) “Serious Mental Illness (SMI)” means schizophrenia, schizoaffective disorder, bipolar disorder, major depression, and post-traumatic stress disorder (PTSD).

### **Rule 3. Eligibility for Participation.**

To participate in diversion court, an individual must meet all the following criteria:

- (a) Legal. The incident or arrest must involve a non-violent misdemeanor. Persons with a history of violent crimes may participate only upon consent of the prosecutor.
- (b) Clinical. The individual must be diagnosed with a primary diagnosis of schizophrenia, schizoaffective disorder, bipolar disorder, major depression, or PTSD.
- (c) Criminogenic. The individual must be identified as moderate, high, or very high risk/need as determined by empirically validated screening and assessment tools.
- (d) Voluntary. The individual must agree to participation. This agreement includes consent to behavioral health or co-occurring treatment and services, random drug screening, waiver of the right to a speedy trial, and diversion court team member access to confidential medical and treatment records.
- (e) Residency. The participant must be a resident of the state of Wyoming.

### **Rule 4. Screening Process.**

To determine eligibility and the appropriate level of treatment, support services, and community supervision, each participant shall be assessed regarding mental health, substance use, and criminogenic risks and needs.

(a) Preliminary Mental Health Screen. Law enforcement officers responding to individuals with suspected mental health needs, or detention center staff at the earliest opportunity in the booking process, shall screen individuals using the Brief Jail Mental Health Screen (Form A in the Appendix of Forms) or a comparable screening instrument. If the screening indicates an individual may suffer from SMI, the officer or detention center staff shall not only immediately refer the individual for a more thorough evaluation but also actively facilitate the evaluation by a qualified community health provider. The officer or detention center staff will notify the diversion court case manager and the prosecutor, either city or state, when a person is referred for a clinical evaluation. If the screening does not indicate SMI, the individual shall follow the traditional criminal justice track.

(b) Clinical Evaluation. Within twenty-four hours of referral, the designated community health provider shall evaluate the individual in the detention center or another location if more appropriate. If the evaluation results in a qualifying diagnosis, the provider shall notify the diversion court case manager and the prosecutor and refer the individual for a criminogenic risk assessment and actively facilitate the assessment. If the screening does not indicate SMI, the individual shall follow the traditional criminal justice track.

(c) Criminogenic Risk Assessment. The individual shall undergo a criminogenic risk assessment within twenty-four hours of referral, or if the referral is made on a weekend, within a reasonably prompt timeframe that allows the diversion court to enroll the candidate within 72 hours of any arrest. The assessor shall use the Ohio Risk Assessment Tool or a comparable assessment tool. The assessor shall notify the diversion court case manager of the assessment results. If the assessment validates a very high, high, or moderate risk/need category, the individual shall be considered for the diversion court track. If the assessment shows a low risk/need category, the individual shall follow the traditional criminal justice track.

## **Rule 5. Enrollment.**

(a) Notification. Upon receiving notice of an eligible criminogenic risk assessment, the diversion court director shall notify the diversion court team of the referral. The director shall also notify the prosecutor of the referral.

(b) Evaluation. The diversion court team shall meet in person, hold a conference call, or communicate electronically to review the referral. As part of this review, the diversion court team shall confirm the candidate meets all program criteria, sufficient resources exist to admit the candidate to diversion court, and the prosecutor does not object under the grounds and within the timeline stated in these rules.

(c) Prosecutor Review. The prosecutor, either state or city, may object to an individual's enrollment in diversion court only on grounds that the person has communicated a serious threat of physical violence to a reasonably identifiable victim and the person has the apparent intent and ability to carry out such a threat; that the person has communicated a serious threat to destroy reasonably identifiable property and the person has the apparent intent and ability to carry out such a threat; or that the person has a history of known physical violence. The prosecutor must object to enrollment within 60 hours of the preliminary mental health screen. Nothing in this rule shall prohibit the prosecutor from subsequently moving for an enrolled participant's termination from diversion court due to noncompliance with a treatment or case plan.

(d) Invitation. If the candidate meets all program criteria, resources suffice, and the prosecutor does not object under the grounds and within the timeline stated in these rules, the diversion court

will invite the person to participate in diversion court. The diversion court will extend this invitation as soon as reasonably possible and within 72 hours of the arrest.

(e) Acceptance. To accept the invitation, the person must consent to behavioral health or co-occurring treatment and services, random drug screening, waiver of the right to a speedy trial, and team member access to confidential medical and treatment records. If the individual so accepts, the prosecutor shall agree to hold any charges in abeyance contingent on compliance with the diversion court requirements, including completion of individualized treatment plan.

#### **Rule 6. Diversion Court Team Members and Roles.**

The diversion court team shall consist of the diversion court judge, a prosecutor, defense counsel, treatment provider, case manager, law enforcement representative, and a certified peer mentor.

(a) Judge. The judge shall preside over diversion court proceedings and has final authority to rule on motions and other legal issues in a case. The judge has authority to impose treatment and case plans based on input from team members and authority to terminate a participant from diversion court for noncompliance with the plans. Based on input from the team, the judge shall determine when a participant is eligible for graduation from the program.

(b) Prosecutor. The prosecutor shall represent the interests of the State, or municipality, and victims in screening cases, evaluating an individual's eligibility to participate in diversion court, and providing input on treatment and case plans. The prosecutor has authority to deny an individual's enrollment in diversion court based on the public safety grounds identified in these rules. The prosecutor may move for a participant's termination from diversion court for noncompliance with a treatment or case plan. The prosecutor shall provide input concerning the participant's progress in the program, and the participant's termination or graduation from the program.

(c) Defense Counsel. Defense counsel assists a participant in understanding the diversion court proceedings by explaining program requirements and benefits, the legal ramifications of participation, and possible consequences of noncompliance. Defense counsel assists a participant in making informed decisions about the program, and understanding waivers and agreements the participant must execute. Defense counsel shall provide input concerning the participant's progress in the program, and the participant's termination or graduation from the program.

(d) Treatment Provider. The treatment provider performs assessments of the participant, determines the appropriate treatment, and furnishes that treatment, including the prescribing of medication. Clinical treatment may be for behavioral health, substance abuse, or general health, and may be provided in individual or group settings. Where appropriate, the treatment provider may connect the participant to a certified peer mentor and may extend treatment to include social services in areas such as education, vocational training, employment, transportation, and housing. Treatment providers submit progress and compliance reports and recommendations to other team members at intervals directed by the judge. The treatment provider shall provide input concerning the participant's progress in the program, and the participant's termination or graduation from the program.

(e) Case Manager. The case manager shall facilitate, coordinate, and monitor the provision of treatment and resources to the participant and communicate with team members concerning the treatment and resources and the participant's cooperation and compliance. In instances where the treatment provider does not connect the participant to a certified peer mentor and does not provide or facilitate access to social services related to matters such as education, vocational training,

employment, transportation, and housing, the case manager will connect the participant to a certified peer mentor and social services. The case manager shall maintain a case management file of all records held concerning a participant, including printed and electronic information regardless of the source of the information. The case manager shall provide input concerning the participant's progress in the program, and the participant's termination or graduation from the program.

(f) Law Enforcement Representative. The law enforcement representative shall represent the interests of law enforcement and provide input on treatment and case plans, the participant's progress in the program, and the participant's termination or graduation from the program.

(g) Peer Mentor. A peer mentor provides peer support to a participant and assists a participant in navigating public behavioral health and medical services systems. The peer mentor may provide support to the participant during hearings, meetings, and treatment as requested by the participant and the team. A peer mentor promotes wellness by sharing personal experiences with a participant and the team.

#### **Rule 7. Establishment of Criteria.**

The diversion court is authorized to establish written and individualized criteria that define successful completion of diversion court and grounds for termination or graduation from diversion court.

#### **Rule 8. Termination.**

If a participant voluntarily withdraws from participation, or the diversion court, after a hearing, finds the participant to be materially and consistently noncompliant with diversion court requirements, the court may terminate the participant from diversion court and return the participant to the traditional criminal justice track.

#### **Rule 9. Due Process.**

A participant shall not be terminated from diversion court without (1) notice of the reasons for the termination, and (2) an opportunity to be heard on the matter by the presiding diversion court judge. The prosecutor shall prove the grounds for termination by a preponderance of the evidence, unless the participant voluntarily admits the grounds for termination.

#### **Rule 10. Confidentiality.**

Team members and diversion court staff shall comply with all laws governing the confidentiality of a participant's information. Confidential information regarding a participant shall not be placed in a court file that is open to examination by members of the public. All pre-enrollment communications between a potential participant and a team member or diversion court staff shall remain confidential.

#### **Rule 11. Voluntariness of Participation.**

The diversion court shall advise the participant that by participating in diversion court, the participant consents to behavioral health or co-occurring treatment and services, random drug

screening, waiver of the right to a speedy trial, and team member access to confidential medical and treatment records. The judge shall determine on the record that the participant's consent is knowing, intelligent, and voluntary at the first hearing following the participant's enrollment.

**Rule 12. Ex Parte Communications.**

Other than between treatment team members or as may occur in staffing sessions, the presiding judge shall not engage in ex parte communications or contacts, and shall immediately report to the parties any unsolicited ex parte contacts. The judge shall not initiate factual or legal inquiries without the consent of all parties.

**Rule 13. Personal Involvement.**

- (a) Presiding judges may attend and participate in diversion court functions, community events, and other out-of-court gatherings of a public nature.
- (b) No presiding judge shall enter into a relationship with a participant apart from that established by and confined to the diversion court proceedings.

**Rule 14. Professional Advice.**

No judge shall give psychological or substance abuse counseling advice to any participant or team member.

**Rule 15. Reporting Criminal Activity.**

No presiding judge or team member has an obligation to report criminal activity by a participant that is disclosed during diversion court proceedings, nor does a judge or team member have an obligation to report criminal activity or diversion court violations observed or learned in an extra-judicial manner, except as may otherwise be required by law.

**Rule 16. Fundraising Efforts and Activities.**

No presiding judge shall participate in fundraising efforts or activities on behalf of a court supervised diversion court program.

**Rule 17. Codes of Conduct.**

The Wyoming Code of Judicial Conduct, as revised or amended from time to time, shall govern the conduct of the diversion court judge, except as otherwise specified herein. The Rules of Professional Conduct for Attorneys at Law, as revised or amended from time to time, shall govern the conduct of attorneys of the diversion court team, except as otherwise specified herein.

**Rule 18. Deadlines.**

All deadlines in these rules are calendar days and shall include weekends and holidays.

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