

# Mental Health Court Program Overview

The Nova Scotia Mental Health Court Program is a voluntary offender-based program for adults (persons 18 years of age and older) who have been charged with a criminal offence and have a mental disorder but are competent to participate in the criminal justice system. For this program, "**mental disorder**" means a recognized, significant and persistent mental illness. Examples of a significant mental illness include schizophrenia or other psychotic disorders, bi-polar disorders, major depression, or other mental illnesses that affect or impair judgement.

The Mental Health Court will consider individuals with developmental delay, organic (acquired) brain injury or head trauma, on a case by case basis. Also considered will be individuals with co-occurring mental health and substance use disorders where the mental disorder is the primary disorder.

## **What are the requirements?**

- That an accused has been charged with an offence under the Criminal Code of Canada and/or the Controlled Drugs and Substances Act and the charges are within the jurisdiction of the Provincial Court and either have occurred in the Halifax Regional Municipality (HRM) or have been transferred there from another area of the Province because the accused has a substantial connection to the HRM. In the opinion of the Crown Attorney there must also be a reasonable prospect of conviction should the matter proceed to trial;
- That the accused has a mental disorder as defined above;
- There must be a connection between the criminal behaviour and the mental disorder. This means that there is a reasonable probability the mental disorder played a significant role in the commission of the offence(s);
- That the accused voluntarily undergo a clinical screening to determine whether a mental disorder is present and what, if any, affect the disorder had in the commission of the offence;
- That the accused must acknowledge responsibility for the act or omission that forms the basis for the offence(s) that is/are alleged to have occurred;
- That the Crown Attorney for the Nova Scotia Mental Health Court consents to the accused's participation.

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## **The Mental Health Court Team**

A Judge of the Provincial Court presides over the Nova Scotia Mental Health Court.

The Mental Health Court Team consists of a Crown Attorney, a Defence Counsel (N.S. Legal Aid), a Probation officer and two Mental Health Clinicians. Private Defence Counsel can also appear in the Court on behalf of an accused.

Each member has a role to play in ensuring the administration of justice, public safety, the development of individualized support plans, case co-ordination and to facilitate access to mental health and community services for the participant.

## **What is the process?**

The Mental Health Court Program consists of four phases. Each phase involves court processes and requires the participant to attend court and to comply with court orders and directions.

- Appearance Phase
- Screening Phase
- Assessment Phase
- Program Phase

### **• Appearance Phase**

An accused may be identified as a potential participant for the Mental Health Court Program upon their first appearance in Court (arraignment) or at a subsequent appearance. Identification of a potential participant can originate from a number of sources including, but not limited to, the accused themselves, the Crown Attorney, Defence Counsel, Sheriff Services, Police Agencies, Probation Services, community service providers, and/or the Judge.

## **Referral**

The identification of a potential participant for the Nova Scotia Mental Health Court is to be communicated to the Judge presiding in the 'originating' court through the Crown Attorney or Defence Counsel, and the presiding Judge may refer the matter to the Nova Scotia Mental Health Court.

A matter can be transferred to the Nova Scotia Mental Health Court for a screening to determine eligibility at any time in the judicial process, if the accused has been identified as having a mental disorder or presents as exhibiting signs of a mental disorder and is prepared to accept responsibility for their actions or omissions.

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The accused will be given a court date for the Nova Scotia Mental Health Court and an information brochure about the Court.

The presiding Judge will make the formal referral to the Nova Scotia Mental Health Court, and the referral will be endorsed on the back of the Information by the presiding judge.

The matter will be adjourned for about two weeks from the Originating Court into the Nova Scotia Mental Health Court.

### **Adjournment**

During this time the accused person will have an opportunity to meet with a Legal Aid Lawyer (or private counsel) for the purpose of obtaining additional information on the requirements for participation in the Nova Scotia Mental Health Court including but not limited to, the voluntary component of the program, the necessity of consent forms and releases to allow the Nova Scotia Mental Health Court Team access to criminal and medical records, and the screening to determine eligibility.

### **Documents**

The Nova Scotia Mental Health Court Program requires that information about participants be collected and shared throughout the entire court process.

Information will be shared in a way that protects participants' confidentiality rights as clients of the mental health system, their constitutional rights as accused persons, and solicitor client privilege.

To comply with confidentiality requirements, the Nova Scotia Mental Health Program ensures that participants provide their written consent to release information.

### **• Screening Phase**

This Phase starts with an accused's first appearance in the Nova Scotia Mental Health Court. At this time, the Judge will ask the accused if they want to continue in the Nova Scotia Mental Health Court Program and if they have met with counsel. If they have not met with counsel, and are consenting to continue in this phase, time will be provided to allow the accused to meet with either the Legal Aid lawyer or private counsel. The matter will be adjourned for about two weeks.

If the accused does not wish to continue in the Nova Scotia Mental Health Court Program, the matter will be adjourned back into the Originating Court.

If the accused is represented by a lawyer and has previously received information about the requirements, consent forms will be signed, and arrangements will be made through



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the Nova Scotia Mental Health Court Program administrative assistant to set up a time with a Team clinician to start the screening process.

The assessment serves as both a screening tool for eligibility and the basis of an individualized Support Plan for participation in the Nova Scotia Mental Health Court Program.

Once the screening is completed the Crown Attorney and Defence Counsel meet to review the matter and determine whether the accused meets the eligibility criteria for the Nova Scotia Mental Health Court NS MHC Program. The Crown Attorney has the authority to determine that the accused is not a suitable candidate for the Nova Scotia Mental Health Court NS MHC, and if this happens, the matter will be returned to the Originating Court.

If the accused is considered eligible for the Nova Scotia Mental Health Court Program they will appear in the Nova Scotia Mental Health Court at which time the Judge will ask if the accused person is agreeing to voluntarily participate in the Nova Scotia Mental Health Court. It is at this stage that the individual accused is invited to become a participant in the Program.

The matter is adjourned to allow for an assessment of the participant's needs.

If the Mental Health Court Judge finds that the accused is not a suitable candidate, or the accused decides that he or she does not want to participate in the Nova Scotia Mental Health Court the matter will be adjourned to the Originating Court. An accused will be offered an exit interview with the mental health clinician to provide information and assist them in making application and referral to community-based programs/services..

### **• Assessment Phase**

It is at this Phase that the accused will sign the Participation Agreement and meet with a Nova Scotia Mental Health Court Clinician to complete their assessment of needs. Consent must be informed and voluntary.

### **• Program Phase**

It is at this Phase that a Support Plan is created and follow-up appointments are made with a Nova Scotia Mental Health Court Clinician.

### **Frequency**

A participant's attendance in the Nova Scotia Mental Health Court will be decided by the Judge based, in part, upon recommendations of the Nova Scotia Mental Health Court

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Program Team. The frequency of court appearances may fluctuate depending on the complexity of the Support Plan and the participant's progress.

### **Outstanding and Subsequent Charges**

There is no limit to the number of charges that will be dealt with for any given participant, subject to an overriding public safety concern that may be raised by the Crown Attorney.

Any offences committed by a participant while they are involved in the Program will not automatically lead to expulsion from the Program. All new charges will be reviewed and screened on a case by case basis..

### **Breach and Sanction**

The Undertaking, or Order of Release, will not provide details of the Support Plan but will contain other conditions of release that in the event of a breach will be dealt with by the Police and the Crown Attorney in the normal course. However, where possible, any additional charges may be transferred to the Nova Scotia Mental Health Court if they meet the eligibility criteria and the participant consents.

The consequences of a failure to adhere to the Support Plan may result in the participant being ordered by the Judge to return to Nova Scotia Mental Health Court and have additional conditions and/or sanctions imposed.

Sanction for breaches may include, but are not limited to:

- an increase of frequency in court appearances;
- closer supervision;
- a change in curfew and/or reporting requirements to Probation;
- a change in the Support Plan;
- termination from the Mental Health Court; and
- in rare circumstances, may result in a period of detention.

Disposition may include but is not limited to:

- Crown Attorney withdrawing the charge or charges completely;
- Absolute or Conditional Discharge;
- Probation;
- Community Service;
- Fine;
- Peace Bond;
- Conditional Sentence or
- A period of detention.