



King County

KING COUNTY DRUG DIVERSION COURT SERVICES

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I. KING COUNTY DRUG DIVERSION COURT: SCREENING, REFERRAL AND ELIGIBILITY (revised 1/11/19)

A. Screening: The King County Prosecuting Attorney's Office screens all police referrals for DDC eligibility.

B. Referral: When the Prosecutor determines a defendant to be DDC eligible, the case is filed directly into DDC for arraignment. A deviation from this direct file policy will be made in VUCSA Delivery or Possession with Intent to Deliver cases in which the drugs have an unpackaged weight of under 10 grams where law enforcement objects, at time of filing, to a defendant's participation in Drug Court. The basis for the objection shall be made in writing and be authorized by a law enforcement official at the rank of Lieutenant or higher. The written objection will be made part of the Discovery packet provided to defense counsel so as to put all parties on notice. A defendant whose case is filed mainstream under this policy deviation, may petition the Drug Court Judge to transfer the case into Drug Court. Law enforcement and the King County Prosecutor will be given an opportunity to respond to the transfer request. The reasons, for which the objection is made, may be sufficient basis to exclude an otherwise eligible defendant. The Court will make the ultimate determination regarding eligibility when admission under this policy deviation has been raised.

C. Transfer Request: Defendants, whose cases have been filed mainstream, may ask to have the case reviewed again by the Prosecutor. Defense attorneys are to provide a completed transfer request and any supporting documents to the Drug Court Prosecutor for his/her review. A copy of the transfer request should also be provided to the Drug Court Prosecutor's paralegal.

D. Rules Regarding Eligibility:

1. The eligibility criteria are published; not open to discretion by the defense bar, the prosecutor's office or the court (except as noted in Section I D, 4) and will be adhered to strictly. Criteria were agreed upon by the Superior Court, the defense bar, the prosecuting attorney, chemical dependency experts, and law enforcement.
2. The court will not make exceptions to eligibility criteria. In cases where the prosecutor has deemed a defendant to be ineligible, a defendant may petition the court for acceptance to the program. In making a determination on the defendant's request, the court will consider only if the drug court eligibility criteria was appropriately applied.
3. There must be a reasonable basis to believe the defendant can successfully complete the DDC program after taking into consideration factors such as: The defendant's mental and/or physical health, past performance in DDC and living

situation. The court will make the ultimate determination regarding eligibility when a "reasonable basis" for successful completion is in question.

4. Juvenile history may be considered at the discretion of the court.

E. Eligibility Criteria

1) VUCSA

- a) Possession
 - i) Cocaine/Heroin/Methamphetamine: 3- 10 grams, cumulative value of drugs possessed and cash on person cannot exceed \$1000; amounts over 10 grams may be referred to drug court upon the discretion of the Prosecutor and with Law Enforcement input.
 - ii) Prescription Pills: 50-100 pills
 - iii) MDMA: 20-50 pills
- b) Delivery
 - i) Cocaine/Heroin/Methamphetamine/Bunk
 - (1) Drugs sold are between 0-10 grams AND
 - (2) Cumulative value of drugs sold, possessed, and cash on person (excluding police buy money) cannot exceed \$1000
 - ii) Prescription Medication
 - (1) Number of pills sold cannot exceed 50 AND
 - (2) Cumulative value of drugs sold, possessed, and cash on person (excluding police buy money) cannot exceed \$1000
 - iii) MDMA
 - (1) Number of pills sold cannot exceed 20 AND
 - (2) Cumulative value of drugs sold, possessed, and cash on person (excluding police buy money) cannot exceed \$1000
- c) Forged Prescription – Consistent with prosecutor felony standards

2) Class B & C Felonies

- a) Eligible Crimes
 - i) UIBC, Unlawful Issuance of Bank Checks
 - ii) Possession of Stolen Property in the 1st or 2nd degree
 - iii) Organized Retail Theft
 - iv) Theft 1 & 2, including Theft from a Person
 - v) Failure to Return Leased Property
 - vi) Trafficking in Stolen Property 1 & 2
 - vii) Burglary 2
 - viii) Identity Theft 1 & 2
 - ix) Possession of Stolen Vehicle
 - x) Theft of Motor Vehicle
 - xi) Felony Vehicle Prowl in the Second Degree and Vehicle Prowl in the First Degree
 - xii) Domestic violence property crimes and certain Felony Violation of a No Contact Order (two prior) and Felony Harassment cases are eligible for drug court only upon recommendation of DV EPU, victim approval, and law enforcement approval.

- i. A defendant whose current Felony Violation of No Contact Order charge falls under the two prior conviction prong involving consensual or invited contact may be eligible depending on a full review of the available domestic violence history.
 - ii. A defendant whose current Felony Harassment case involves a parent/child relationship or siblings may be eligible depending on a full review of the available domestic violence history.
- xiii) Escape 2 if committed while under the supervision of Drug Court.
- xiv) A defendant charged with an eligible Class B Felony or Class C Felony, who is also charged with a Driving While Under the Influence/Physical Control arising out of the same criminal fact pattern, may bring that DUI/Physical Control to Drug Court.
- xv) Residential Burglary:
 - i. Those charged with Residential Burglary shall be eligible provided that no weapon or assaultive behavior was involved in the offense by any co-defendant and the victim was not present inside the dwelling during the commission of the burglary (A burglary that is interrupted by the victim is likewise not eligible.) A defendant charged with Residential Burglary or Burglary in the Second Degree will not be eligible for Drug Court if a firearm is stolen during the burglary.
 - ii. A defendant who is in any phase of Drug Court on a Residential Burglary, who is charged with any felony that is alleged to have been committed during the defendant's enrollment in Drug Court, will be set for immediate termination. The newly committed felony will not be eligible for Drug Court and The Prosecutor will file the new case mainstream.

3) Factors that Disqualify Defendant

- a) The **combined restitution** owed on all of the defendant's pending cases may not exceed \$2,000, unless the Prosecutor is in agreement with the case/cases being transferred to Drug Court. IF THE AMOUNT IS ABOVE \$2000, the defendant will be required to sign a restitution order for THE TOTAL AMOUNT OF RESTITUTION OWED as a condition to being accepted into Drug Court. \$2000 of the financial obligation must be paid in accordance with Drug Court protocol AS A CONDITION OF GRADUATION. A defendant whose restitution order exceeds \$2000 will still be required to pay the \$2000 prior to graduation. However, a defendant whose restitution exceeds \$2000 and who is not able to fully pay it prior to meeting all other graduation requirements, will still graduate Drug Court once all other non-restitution conditions are completed, however rather than the case being dismissed, the defendant will agree to plead guilty to a gross misdemeanor with an agreed two year deferred sentence recommendation. The only condition of the deferred sentence will be to pay the outstanding balance of the original restitution order.

- b) Evidence that defendant manufactured IDs or targeted vulnerable victims or abused position of trust to get financial information or defendant used/possessed more than three (3) victims' financial information or defendant opened more than three (3) accounts in a victim's name or the crime represents a significant breach of fiduciary duty. This disqualification may be waived with agreement of KCPA.
- c) Evidence that the defendant is a **major player in car theft**: Defined as having had four (4) or more pending felony car theft charges and/or convictions resulting in four (4) or more points. Vehicle Prowl, and felony charges that stem from a vehicle prowling, are to be included in the scoring and shall each be weighted one third (1/3) point. A HIPRO designated defendant is not eligible for drug court. This disqualification may be waived with agreement of KCPA and law enforcement.
 - i. Felony car theft offenses include the following: TMV 1, TMV 2, PSV, Theft of a Motor Vehicle, and Theft 1, 2, PSP 1, 2 (if the charges are predicated upon a stolen car.). These offenses are to be weighted one (1) full point.
 - ii. Defendant's criminal history (as outlined in Section 4).

4) Disqualifying Criminal History

- a. No prior sex misdemeanor or sex felony, nor violent felony offenses, nor felony assault, no matter how old, in the defendant's criminal history, as defined in RCW 9, unless specifically exempted in these standards.
 - i. A robbery in the second degree conviction will not automatically disqualify an otherwise eligible defendant from being offered drug court if the conviction is greater than five years old and did not involve the use of a weapon. Referral of cases to Drug Court, with robbery priors, is subject to the prosecutor approval after a review of the facts of the underlying conviction. The Prosecutor may direct file these cases into Drug Court.
 - ii. A conviction for Assault in the Third Degree will not automatically disqualify an otherwise eligible defendant from being offered Drug Court if the conviction is greater than five years old. Referral of cases to Drug Court, with the above conviction history, is subject to prosecutor and law enforcement approval after a review of the facts of the underlying convictions (e.g. Assault 3 that involves the use of a firearm will not be eligible). The Prosecutor may direct file these cases into Drug Court.
- b. A conviction for Violation of the Uniform Firearm Act or Theft Second Degree of a Firearm will not automatically disqualify an otherwise eligible defendant from being offered Drug Court if the conviction is greater than ten years old. Referral of cases to Drug Court, with the above conviction history is subject to prosecutor approval after a review of the facts of the underlying conviction. The prosecutor may direct file these cases into Drug Court.
- c. The 5/10 year bar described above should be measured from the time that the defendant finished serving his sentence on the underlying crime (probation/supervision time is not included) until the date of the new offense. The commission of other non-violent offenses does not "reset" this washout period.
- d. The current offense cannot involve a weapon.

- e. No Promoting Prostitution.
- f. A maximum of 4 prior Domestic Violence offenses in the defendant's criminal history in the past ten (10) years, misdemeanor or felony.
- g. A maximum of two Driving While Under the Influence convictions, including deferred prosecutions, within the past ten (10) years.
- h. No pending felony non-DDC eligible cases.
- i. An offender is ineligible for Drug Court if the current offense was originally filed as an expedited felony and the offender rejected the expedited offer.
- j. An offender is ineligible if they are currently on a DOSA sentence UNLESS the current offense predates the imposition of the DOSA and the offender is otherwise eligible.