



Drug Court Policy 10

Offences committed by participants

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1 Purpose

The purpose of this policy is:

- To outline an appropriate response to offences committed by participants, with a view to protecting the public and maintaining public confidence in the Drug Court.
- To reinforce the requirement of participants on a Drug Court program to remain of good behaviour.

2 Definitions

Term	Definition
Act	means the <i>Drug Court Act 1998</i>
Community Corrections Officer	means a Community Corrections officer assigned to a participant.
Drug Court	means the Drug Court of NSW
Drug Court program	means the conditions that a participant has accepted under section 7(3)(a) of the Act.
Drug Court team	means a Drug Court Judge, the Registrar, the Legal Aid NSW (LA) solicitor, the solicitor from the Office of the Director of Public Prosecutions (ODPP), the Police Prosecutor, the Community Corrections Court Coordinator, the Aboriginal Casework Coordinator and the Justice Health NSW clinician attached to the Drug Court, and/or the alternate delegates for each.
Highly Suitable Treatment plan	means a plan for therapeutic intervention to address an offender’s drug dependency and related health needs.
Participant	means a person dealt with under sections 7(2) and (3) of the Act.

3 Scope

This policy applies to offences committed by participants of the Drug Court of New South Wales program.

4 Policy statement

4.1 Procedure on notification of an offence to the court

- 4.1.1 When informed that a participant has been issued with a Court Attendance Notice (CAN) for an offence, the Court will ask the Legal Aid solicitor to advise the court if the participant intends to:
- Admit or deny that the charge has been filed.
 - Admit or deny that the offence has been committed.
 - Ask that the charge be dealt with at the Drug Court or elsewhere.
- 4.1.2 If the participant intends to plead guilty, the Legal Aid solicitor should arrange for the new charge/s to be brought before the Drug Court as soon as practicable.
- 4.1.3 The Court will conduct whatever inquiry is necessary to determine on the balance of probabilities whether the participant has failed to comply with their program because of the commission of or being charged before a court with an offence.
- 4.1.4 When satisfied that a participant has failed to comply with his or her program because of the commission of, or being charged before a court with, an offence
- referred to in s 5(2), or
 - involving serious harm or the risk of serious harm to a member of the community, or
 - the repetition of an offence of a similar nature to an offence for which the participant was referred to the Drug Court, the Court **will** conduct a hearing to consider the question of “unacceptable risk” to the community of re-offending.
- 4.1.5 When satisfied that a participant has failed to comply with his or her program because of the commission of (an offence) other than an offence mentioned in 4.1.4 above, the Court, on its own motion, or on application of a member of the Drug Court Team, **may** conduct a hearing to consider the question of “unacceptable risk” under s10 (1)(b).
- 4.1.6 While awaiting an “unacceptable risk” hearing the Court may either
- refuse bail on the fresh charge (if referred to Drug Court),
 - require the participant to be held in custody serving any sanctions, or
 - allow the participant to continue his or her program, either unchanged, or with added conditions (such as more intensive supervision).

4.2 Sanction proceedings for breach of program by commission of criminal offence

- 4.2.1 The imposition of a sanction where a Drug Court Program has been breached by the commission of an offence does not create a situation where the law of “double jeopardy” would prevent the subsequent imposition of a penalty at law for the offence. The Court does not regard a decision in sanction proceedings to be a “decision of a court in proceedings for a criminal offence”.
- 4.2.2 Generally, the Court will impose sanctions as soon as possible after the commission of any offence committed on a program.

4.3 Special considerations

If the Court does not find the risk unacceptable, despite the commission of an offence on program, it may include in the participant’s program a condition that a further offence, or further offence of a particular type, will demonstrate that offender’s further participation in the program poses an unacceptable risk to the community. If such an order is made and a further offence is committed, the participant’s program may be terminated without further hearing.

4.4 Penalties for offences committed in breach of program

- 4.4.1 The commission of an offence by a participant is a serious breach of conditional liberty.
- 4.4.2 Section 15(3) of the Act enables the Drug Court to impose a consecutive sentence for any offence committed by a person whilst on a program.
- 4.4.3 In sentencing a person following the termination of a program, the Court is required to take into consideration the nature of the person’s participation on the program and any sanctions imposed on the participant during the program (s 12(2)).
- 4.4.4 The Court will ordinarily backdate the final sentence to reflect custodial sanctions served and will take other forms of sanction into consideration.

5 Arrest procedures for participants

Participants may be wanted by police officers for offences committed on program, or for offences committed prior to commencing the program. Where possible, contact with the participant in relation to being wanted by police for questioning will be made through Legal Aid.

If any Drug Court Team member becomes aware that police are seeking contact with a participant, then the Drug Court Prosecutor and Legal Aid are to be notified as soon as possible.

5.1 Arrest for pre-program offences

- 5.1.1 The Drug Court Police Prosecutor is to take steps to encourage police to notify the Drug Court Police Prosecutor when a Drug Court participant is wanted by police. Arrests for ‘pre-program’ matters may jeopardise the progress of a participant’s Highly Suitable Treatment plan and can result in missed pharmacotherapy dosing or other appointments. For this reason, it is appropriate for the Drug Court Team, in certain circumstances, to advocate that participants *NOT* be arrested by police but be dealt with as outlined in paragraphs 5.1.2 to 5.2.3.
- 5.1.2 Upon notification by police, the Drug Court Police Prosecutor will notify Legal Aid of the details of the allegations and possible charges, the informant’s name and station.
- 5.1.3 Legal Aid will obtain instructions as to whether the participant wishes to be interviewed by police.
- 5.1.4 Where the participant **does not** wish to be interviewed, or wishes to record a refusal to be interviewed, Legal Aid will provide written confirmation of this to the Drug Court Police Prosecutor and the informant
- 5.1.5 In the above circumstances, the Drug Court Police Prosecutor will contact the informant and recommend proceeding by way of Future Court Attendance Notice (FCAN).
- 5.1.6 If this recommendation is accepted, an appointment will be made for the participants to attend at the informants’ police station for service of the FCAN on the participant. The time of this appointment will be agreed after consultation between the informant, the Drug Court Police Prosecutor, the Legal Aid Solicitor and the participant.
- 5.1.7 Where the participant **does** wish to attend to be interviewed by police, an appointment will be made for the participant’s attendance at the informant’s police station. The time of this appointment will be agreed after consultation between the informant, the Drug Court Police Prosecutor, the Legal Aid Solicitor and the participant.

5.2 Arrest for on program offences

- 5.2.1 If the Drug Court Police Prosecutor becomes aware that a participant is wanted by police for an “on program” offence, the Drug Court Police Prosecutor may recommend to the police informant that the procedure outlined in 5.1 be followed (i.e., the recommended procedure for pre-program allegations) as an alternative to arrest.
- 5.2.2 When making such a recommendation, the Drug Court Police Prosecutor will take into consideration the seriousness of the alleged offence, the

participant’s current progress on the program, the likelihood of bail, and the risk of contamination of the investigation.

5.2.3 If a Drug Court participant is arrested or charged with an offence, without prior notification to the Drug Court Police Prosecutor, either for an on program or pre-program offence, the Drug Court Police Prosecutor will notify Legal Aid immediately if possible and the procedure set out in section 4.1 will then be followed.

6 Related legislation/regulation and other documents

- [Drug Court Act 1998](#)

7 Document information

Document name	Drug Court Policy 10 – Offences committed by participants
Applies to	All Drug Courts of New South Wales
Policy administrator	Senior Judge of the Drug Court of NSW
Approval	Senior Judge Mottley, June 2024

8 Version and review details

Version	Effective date	Reason for amendment	Due for review
1	10/06/2024	Policy reviewed, updated and re-formatted.	10/06/2026
1.1	18/11/2024	Section 5.2.3 wording updated.	18/11/2026