



Drug Court Policy 9

Drug and alcohol use by participants

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1 Purpose

The purpose of this policy is:

- To ensure early detection of participant drug use and a swift response by the Drug Court to such use.
- To promote program compliance and reduce the health risk to which each participant is exposed.
- To reduce the risk to the community of participant criminal conduct.
- To ensure accuracy and consistency in testing for participant drug use.

2 Definitions

Term	Definition
Act	means the <i>Drug Court Act 1998</i>
Community Corrections Officer	means the 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.
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.
Registrar	means the Registrar of the Drug Court of NSW.
Testing nurse	means a nurse employed by the Court or by a treatment provider to conduct and supervise testing for drug or alcohol use.
Treatment provider	means a participant’s principal treatment provider – e.g., Local Health District (LHD), residential rehabilitation, supported accommodation.

3 Scope

This policy applies to drug and alcohol use by participants of the Drug Court of New South Wales program.

4 Policy statement

4.1 Undertaking about any drug use

4.1.1 At the commencement of their Drug Court program, each participant is to undertake to the Court that they will:

- Not use or possess any prohibited drug.
- Not use or possess any synthetic drug.
- Not drink alcohol at all in Phase One of the Drug Court program.
- Not use alcohol or any other legal drug in a manner which may interfere with his or her ability to fully participate in a Drug Court program.
- Provide his or her urine, breath, sweat or saliva for analysis as and when directed to do so.
- Not use any prescribed medication unless it is prescribed for them by a doctor.
- Admit to using any prescribed or non-prescribed medication at the next drug test.
- Bring to the drug test location the packet/bottle and a copy of the prescription.
- Seek to avoid using or being prescribed any pain relief medication which contains codeine.
- Obtain a letter from any doctor or dentist who has prescribed codeine-based medication that no other pain relief medication would be appropriate.
- Admit to the use of pain relief medication at the time of drug testing even if this medication has NOT been prescribed. (In all cases, the taking of medication must be discussed with a participant's treatment provider and when requested a participant will provide the treatment provider with the name and contact of the prescribing Doctor. Treatment providers will discuss, where necessary, the use of medication with the Community Corrections Officer).
- At the first opportunity, report any breaches of his or her program to the Drug Court, the Community Corrections Officer and the treatment provider.

4.1.2 The Drug Court may require a participant not to use a legal drug, including a drug prescribed for the participant by a doctor.

4.1.3 The Court regards a blood alcohol concentration of in excess of 0.05 as indicating the participant is consuming alcohol in a manner that may interfere with his or her ability to fully participate in a Drug Court program.

- 4.1.4 The Drug Court may also require a participant to undertake not to use any alcohol beyond Phase One of the program.
- 4.1.5 Prior to commencing Phase Two of the program, the participant must discuss with his or her counsellor responsible alcohol consumption, i.e., “controlled drinking”.

4.2 The manner and frequency of testing

- 4.2.1 The Drug Court may use any reliable means to detect drug use, including urine, breath, sweat, saliva or hair testing that is appropriate in the circumstances of the participant.
- 4.2.2 If directed by the Drug Court or the Registrar, the participant may be required to undertake an instant drug test. The instant test may be referred to the laboratory for confirmation.
- 4.2.3 A participant may be tested for any prohibited drug, synthetic drug and/or alcohol use on a random and/or a regular basis.
- 4.2.4 Generally, participants are to undergo supervised testing during:
- Phase One: A minimum of three times per week, on a pre-programmed basis, which minimises the gap between tests.
 - Phases Two and Phase Three: A minimum of two times per week, on a programmed basis, which minimises the gaps between tests.
 - The final four weeks of Phase Three: This testing will include testing for traces of drugs.
- 4.2.5 The Court may vary the frequency and/ or nature of testing where appropriate, depending on the level of the participant’s compliance with his or her program.
- 4.2.6 Testing for drug use is to be supervised to prevent the provision of a false sample. Where possible, supervision is to be by means of direct personal observation.
- 4.2.7 When a participant is unable to attend for a drug test, or the participant has attended and cannot provide a sample, the Registrar or the Community Corrections Officer can approve alternate arrangements, which may include a drug test being taken by the treatment provider, Community Corrections Officer or a medical practitioner, or attending the registry between 9:00am and 10:00am the next day.
- 4.2.8 Failure to attend for drug testing as required, approved, or directed is a breach of program.

4.3 Response to drug use

- 4.3.1 Drug use is a breach of program, and the Drug Court will respond in a therapeutic way to that drug use at the earliest opportunity (refer to section 4.3.4 below).
- 4.3.2 Drug use, or failure to provide a sample for testing, is a breach of program, and will result in a sanction or prospect of sanctions being imposed.
- 4.3.3 A substantially increased sanction will be imposed for any drug use detected which has not been admitted to a treatment provider, Community Corrections Officer and to the Court at the earliest opportunity.
- 4.3.4 Providing a false sample, tampering with a sample, or attempting to manipulate the taking or administration of any form of drug testing is a very serious breach of program and may result in the termination of the participant's Drug Court program.
- 4.3.5 When a participant admits a drug use to a Community Corrections Officer or treatment provider or fails to provide a sample for testing when required, the Community Corrections Officer and treatment provider are to liaise as soon as possible and determine and apply the appropriate therapeutic response. The person to whom the admission is made is to include all such admissions in the report to the Court, and the participant must be directed to attend court as soon as practicable since the admission. The Registrar is to be informed immediately of any direction given to attend court.
- 4.3.6 When a participant admits a drug use to a testing nurse or fails to provide a sample for testing when required, the nurse is to ensure the admitted drug use or failure to provide is recorded on the participant's Declaration Form. If the next court date for the participant is more than seven days from the drug use, the participant is to be directed to inform the Community Corrections Officer and counsellor of the drug use and to attend court immediately (if court is sitting) or the next sitting date after the drug test.
- 4.3.7 If a participant fails to attend for drug testing when required, the testing nurse is to ensure the failure to attend is recorded on the participant's Declaration Form for the information of the Court.
- 4.3.8 If a participant is detected or suspected of:
- providing a false sample or attempting to do so, or
 - tampering with the testing mechanism or sample, or
 - if a drug use is detected which has not been admitted at the earliest opportunity, the person supervising the test is to notify the Registrar immediately of the circumstances of the incident, and the Registrar

will direct the participant to attend court immediately, or the next sitting day.

4.3.9 If a participant misses two consecutive drug tests or has used illicit drugs and is not due to return to Court for 7 days or more, then the participant is to be directed to attend court immediately, or the next sitting day. The Community Corrections Officer, the treatment provider or the Registrar, upon becoming aware of such circumstances, may make such a direction.

4.4 Therapeutic response to drug use

4.4.1 The following principles are to be applied:

- If the drug use indicates a participant who is in physical danger because of a relapse into drug use, immediate action is required.
- If the intoxication is significant immediate medical intervention should be the highest priority.
- If the drug use is indicative of a participant’s ongoing struggle with addiction, then support in treatment is the most therapeutic approach.
- If the drug use is indicative of the failure of the present Highly Suitable Treatment plan, then the Court’s intervention in treatment is warranted.
- If the drug use shows that the current Highly Suitable Treatment plan is not working, the court will intervene.
- If the drug use is indicative of someone accepting their level of drug use, or whose drug use could put the participant or the community at risk, the court’s early intervention is warranted.
- If alcohol use is indicated via an Ethyl Glucuronide (EtG) test, the court may request:
 - increased random breath tests, both at the Drug Court Registry and at home visits
 - increased counselling sessions to discuss alcohol use and safe alcohol use
 - increased weekend/after-hours home visits with random breath tests conducted.

5 Document information

Document name	Drug Court Policy 9 – Drug and alcohol use 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

6 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