



Referring eligible persons to Drug Court

The Drug Court sits at Parramatta, Sydney and Hunter and Dubbo where it supervises the intensive community-based rehabilitation of eligible drug dependent offenders ('eligible persons') as an alternative to full-time imprisonment.

Local Courts and District Courts have a **statutory duty** to make inquiries and refer persons who appear eligible and willing to the Drug Court. From 12 January 2023, this duty will apply to all Local Courts and District Courts in NSW.

This document outlines this duty, the relevant eligibility criteria, and the referral process.

Note: References throughout this document are to the *Drug Court Act 1998* or *Drug Court Regulation 2020*, unless otherwise specified.

Statutory duty to make inquiries and refer

It is the duty of a court dealing with a person charged with an offence or to which a sentence is appealed:

- To make inquiries to ascertain whether a person appears to be an **eligible** person, and
- If so, to ascertain whether the person is **willing** to be referred to the Drug Court to be dealt with for the offence, and
- If so, to **refer** the person to the Drug Court to be dealt with for the offence: [s 6](#).

From 12 January 2023, this duty will apply to all Local Courts and District Courts in NSW.

Who is an eligible person?

To be eligible for the Drug Court program, a person must:

- Have pleaded guilty or indicated a plea of guilty to an eligible offence
- Be highly likely to be sentenced to full-time imprisonment
- Be dependent on the use of illicit drugs
- Be 18 years of age or over
- Have the mental capacity to actively participate
- Be willing to participate in a program
- Reside in one of the following Local Government Areas:
Canterbury-Bankstown, City of Blacktown, City of Campbelltown, City of Cessnock, City of Fairfield, City of Hawkesbury, City of Lake Macquarie, City of Liverpool, City of Maitland, City of Newcastle, City of Parramatta, City of Penrith, City of Sydney, Cumberland, Dubbo Regional (from 12 January 2023), Port Stephens or Hills Shire: [s 5](#); [cl 4](#).

From 12 January 2023, any Local Court or District Court is permitted to refer an eligible person to the Drug Court, so long as the person usually resides within one of the above LGAs.

The referring court need only be satisfied of the persons' **apparent eligibility** against the above criteria. Eligibility and appropriateness will be further scrutinized once the matter is referred to the Drug Court.



Which offences are eligible?

Only persons who have pleaded guilty or indicated a plea of guilty to an eligible offence may be referred. An eligible offence includes all State offences, except those involving violent conduct, sexual assault, or strictly indictable drug offences: s 5(2). Commonwealth offences are excluded: s 7A(3).

It is common for persons who may be the subject of a referral to be charged with a combination of eligible and ineligible offences. Where the offending is of a relatively minor nature, usually the matter can be finalised before the person commences on their program.

A person can only be sentenced and released on a Drug Court program in relation to eligible offences. However, the Drug Court may sentence a person in the ordinary jurisdiction of the Local Court and District Court for an ineligible offence: s 7D. Where possible, the Drug Court would encourage the finalisation of ineligible offences in the Local Court or District Court prior to the referral being made.

How is a referral made?

Once a person who appears to be eligible and willing is identified, the judicial officer at the referring court should make orders:

- Referring the matter to the Drug Court closest to where the person resides and marking the papers '*referred to Drug Court ballot at [specify location]*'.
- Adjourning the matter for mention at the referring court on the next available sitting day on or after the Drug Court ballot day (Mondays (Hunter and Dubbo) and Thursdays (Parramatta and Sydney)).
- Dealing with bail in the usual way.

The Court Officer must contact the Drug Court registry closest to where the person resides to provide the details of the referral by the following **cut-off times**.

- Parramatta and Sydney Drug Courts – by 12pm each Wednesday (for Thursday ballot)
- Hunter and Dubbo Drug Courts – by 12pm each Friday (for Monday ballot)

These details are then added to the 'ballot'.

Note: Matters are retained at the referring court pending the outcome of the referral. Court papers should not be sent to the Drug Court at this point.

What happens after a referral is made?

The 'ballot day'

Program places at the Drug Court are limited. Where there are more referrals than available program places, a randomised ballot is conducted. The Drug Court registry will notify the referring court of the outcome of the referral after 1pm on the 'ballot day' (Mondays (Hunter and Dubbo) and Thursdays (Parramatta and Sydney)).



When notified of a successful referral, the referring court should adjourn the matter to the Drug Court location on the date specified in the notification. Bail is to be determined in the usual way by the referring court.

When notified of an unsuccessful referral, the matter remains at the referring court to be dealt with.

After the ballot

Following success in the ballot, the Drug Court will determine the issue of eligibility and appropriateness. Where necessary, the matter will be listed for an eligibility and appropriateness hearing.

Once found to be eligible and appropriate, an initial sentence date is set by the Drug Court. The eligible person is remanded into custody to complete mandatory detoxification and assessment at the specialist Drug Court Program Unit at the Metropolitan Remand and Reception Centre (males) or Silverwater Women's Correctional Centre (females). An individually tailored treatment plan is developed while the person is in custody and provided to the Drug Court.

Following completion of the above steps, the eligible person appears before the Drug Court to confirm a plea of guilty. The Drug Court then imposes an initial sentence of imprisonment and makes orders for the sentence to be suspended: s 7A. The person is then released from custody to undertake their treatment plan, subject to the conditions imposed by the court.

Matter may also be returned after successful referral

It is possible for a successful referral to be returned to the referring court prior to the initial sentence where subsequent issues as to eligibility or appropriateness arise, where a highly suitable treatment plan is not available, or where the offender withdraws from the program.

Should this occur the Drug Court will adjourn the matter back to the referring court.

Further information

For further information about referrals, contact the Drug Court Registry at:

✉ Drug.Court.Registry@justice.nsw.gov.au

☎ Parramatta Drug Court 02 8688 4525

☎ Sydney Drug Court 02 9287 7305

☎ Hunter Drug Court 02 4935 8338

☎ Dubbo Drug Court 02 6885 7680

General information about the Drug Court is also available at www.drugcourt.nsw.gov.au