

APPENDIX C

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**NW HIDTA/DASA Washington State
Drug Court Evaluation Project**

APPENDIX C1

**KING COUNTY DRUG COURT
ELIGIBILITY CRITERIA**

Legal Criteria

The Prosecutors Office is responsible for initial screening. The Drug Court Prosecutor is the primary gatekeeper of Drug Court admissions.

The first level criteria for drug court admission include:

- Arrest for possession of Schedule I or II drugs with no evidence of intent to sell
- Arrest for prescription drug offenses (including forged prescriptions) with no evidence of intent to sell
- Drug related property crimes may be considered

Other legal criteria include:

- No other pending felony charges
- No prior adult conviction for sex offenses
- No prior adult conviction for violent offenses

The King County Drug Court program has developed the flexibility to accept some individuals with a history of **misdemeanor** domestic violence. These decisions are made on a case-by-case basis at the discretion of the Drug Court Judge.

Clinical Criteria

The individual must be diagnosed as chemically dependent. While it is uncommon, treatment agencies can recommend against drug court entry, usually on the basis of a history of non-compliance with treatment. When this occurs, the Drug Court Judge in consultation with the Drug Court team makes the final decision about the defendant's participation in the program.

APPENDIX C2

PIERCE COUNTY DRUG COURT ELIGIBILITY CRITERIA

Legal Criteria

The prosecutor's office is responsible for screening defendants for potential Drug Court legal eligibility. The offenses eligible for Drug Court consideration have evolved over time. Currently, eligible offenses include:

- Unlawful Possession of a Controlled Substance (UPCS) (except PCP),
- Prescription Forgery
- Malicious Mischief 2
- Possession of Stolen Property 2 (except guns)
- Theft 2 (except guns)
- Unlawful Issuance of Checks or Drafts
- Vehicle Prowl 1
- Taking a Motor Vehicle Without Permission
- Unlawful Manufacture of Marijuana (with certain restrictions)
- Eluding (attempting to elude) police (with certain restrictions)
- Unlawful Use of a Building for Drug Purposes (this offense was added in the spring of 1999).

In addition to the above, the following must also be true for a defendant to be eligible for Drug Court::

- There must not be a violent misdemeanor arising out of the same incident.
- Restitution at the time of entry into Drug Court shall not exceed \$1,500.
- Defendants cannot have been in possession of a firearm at the time of arrest unless they had a valid permit to carry the firearm at that time.
- There must be no evidence of drug dealing by the defendant, with an exception for those "middling" a drug deal in order to obtain drugs to support their habit.
- The defendant must have no prior adult or juvenile criminal history of violent or sex offenses.
- There must be no verifiable evidence of gang association or affiliation within one year of the arrest.
- The defendant must be a U.S. citizen.
- The defendant must relinquish all firearms and permits to carry firearms.
- The defendant must not have previously participated in the drug court program.

(Pierce County Office of Prosecuting Attorney, 1999)

Clinical Criteria

In addition to meeting legal eligibility requirements as defined above, potential Drug Court clients must be assessed by PCA to be drug or alcohol addicted or dependent and not mentally ill to the degree that such illness would render them unamenable to treatment.

APPENDIX C3

SPOKANE COUNTY DRUG COURT ELIGIBILITY CRITERIA

Legal Criteria

An individual may qualify for the program if:

- Charged in Superior Court with Possession of Schedule 1, 11, or 111 Controlled Substances; or Forged Prescriptions; or Conspiracy to Possess Controlled Substances; or Conspiracy to Deliver Controlled Substances. Evidence of intent to sell will be presumed if the offender is in possession of more than the following amounts:

Heroin	1 gram
Cocaine	10 grams
Crack Cocaine	2 grams
Methamphetamine	10 grams
LSD	10 dose units
Marijuana	90 grams
- Arrested for Possession with Intent to Deliver, but CHARGED in Superior Court with Possession of a Controlled Substance, if offender opts in prior to setting of a trial date and/or amending the charge. The prosecutor may opt the offender out, within 7 days, if quantities exceed the above amounts.
- Charged with Possession of a Controlled Substance with Intent to Deliver (small amount and detective agrees) will be considered on a case-by-case basis.
- Charged in Superior Court with Felony Theft, Possession of Stolen Property, Trafficking in Stolen Property (all in the first or second degree); Forgery; Unauthorized Issuance of a Bank Check; and Taking a Motor Vehicle without the Owner's Permission, and the offender petitions for admission into Drug Court prior to setting a trial date.

The following conditions must also be met:

- Documented history of heroin, methamphetamine, cocaine or other controlled substance addiction.
- A verified sworn statement from the offender documenting a causal connection between the addiction and the felony property offenses.
- The offender must execute a promissory note and a Confession of Judgement for the full amount of restitution payable to all victims. The total amount of restitution cannot exceed \$2500.00.
- There must be a reasonable basis to believe the offender can successfully complete the Drug Court Program.
- The offender must petition the court for entry into the program prior to setting a trial date.
- Have no other pending felony charges at arrest.
- Have no prior adult or juvenile sex or violent offenses as defined by RCW 9.94A.030 (31) and (36), (1994).
- Case-by-case consideration of people charged with the gang unit.
- The Prosecutor may opt the offender out of Drug Court, within 14 days, if law enforcement requests exclusion for public safety reasons.
- Have no hold from another jurisdiction (Washington or another state).
- Prior program participation candidates considered on a case-by-case basis.
- Have demonstrable Spokane area residence (job, school, family).
- Willingness to participate in an intensive treatment, education, and closely monitored program.
- No felony charges for crimes against property or persons committed while an active participant in Drug Court.
- Participation in the Felony Drug Court program will not bar prosecution for any other current offenses.
(Spokane County Prosecuting Attorney, 1999)

APPENDIX C4

THURSTON COUNTY DRUG COURT ELIGIBILITY CRITERIA

Legal Criteria

Two groups of offenders are considered legally eligible for Drug Court admission. The group with highest admission priority includes individuals who are charged solely with:

- Felony possession of a controlled or counterfeit controlled substance or forged prescription, whose offense did not involve the use of a firearm or other deadly weapon and who have no history of a serious violent offense (as defined in RCW 9.94A.030(31) and RCW 9.94A/030(38)) or an adult sex offense (as defined in RCW 9.94A.030(33)) ; or history of delivery or intent to deliver or manufacture of a controlled substance.

The second group includes individuals charged with any of the following offenses:

- theft in the first or second degree
- possession of stolen property in the first or second degree
- forgery
- unlawful issuance of bank checks
- trafficking in stolen property in the second degree
- taking a motor vehicle without owner's permission, who meet the following criteria in addition to those of no previous history of violent, sex, or delivery, intent to deliver or manufacture offenses.

Other conditions that must be met include:

- No pending, non-eligible offenses that would result in a prison term if convicted
- Able to pay restitution in full within the time frame of the Program
- Evidence of a significant drug abuse problem evidenced by treatment records, drug convictions, medical records, or other reliable evidence
- A reasonable and rational nexus between the alleged offense and the drug abuse problem.

Individuals who meet the legal criteria must also agree to the following terms as a condition of entry into the Drug Court program.

- Satisfactory completion of a clinical treatment evaluation by the treatment agency for the development of a treatment program.
- Compliance with all the rules and regulations of the treatment agency as well as the conditions and requirements ordered by the Court.
- Completion of the treatment program as ordered and to the satisfaction of the Court and the treatment agency.
- No use or possession of alcohol or controlled substances or association with any person using or possessing alcohol or control substance.
- Request, whenever possible, that any prescribed medication be non-narcotic and obtain treatment agency approval for any use of over- the-counter or prescribed medication.
- Submission to witnessed urinalysis tests as required by the Court or treatment agency.
- Keep the Court and treatment agency advised of address and place of employment.
- Appearance at all Court hearings.
- Obedience to all laws while participating in the program.
- Sign all releases necessary to facilitate treatment, including access to diagnostic and treatment information.
- Make regular payments toward the cost of treatment based on ability to pay as determined by the Court.
- Make monthly payments set by the Court to the Thurston County Office of Assigned Counsel if represented by the Office at any time while participating in the program.

- Pay full restitution to the victim, if it is owned, prior to graduation from Drug Court.
- Any statement made by the defendant related to the purpose of the program may not be used against the defendant in a subsequent criminal proceeding. (Unsolicited statements in open court or statements made in treatment about criminal activity other than the Drug Court crime are not protected communication.)
- Acknowledgement that the Court alone determines program completion and ability to graduate.
- Participant can withdraw from the program during the first two weeks following admission and return to regular processing as if the Drug Court contract had never been agreed to.
- Failure to abide by all terms of the contract or any new violation of the law will be subject to Court ordered sanctions including jail time and termination from the program.
- Agreement to waive the following:
 - Right to a speedy trial
 - Right to a jury trial
 - Right to call witnesses or to hear and question any witness
 - Right to testify.
- If a defendant is terminated, the Court will determine guilt on the pending charge(s) solely on the existing evidence that constitute the basis for prosecution of the pending charge(s).
- Waive the right to challenge the legality of the existing evidence and stipulation to the facts presented in the existing evidence.
- Upon graduation from the Drug Court program, the pending charge(s) will be dismissed and cannot be prosecuted in the future.

(Thurston County Implementation Plan)

APPENDIX C5

SKAGIT COUNTY DRUG COURT ELIGIBILITY CRITERIA

Legal Criteria

The county prosecutor's office is responsible for determining legal eligibility criteria for Drug Court participation. Criteria are discussed among the Drug Court team but the prosecutor is the final "gatekeeper" and exercises his discretion when determining eligibility. The offenses eligible for Drug Court participation have evolved over time.

Eligible offenses include:

- Unlawful Possession of a Controlled Substance (UPCS) of less than one ounce
- Single count delivery cases or intent to deliver cases of less than one ounce and not involving co-defendants
- Prescription forgery
- Manufacturing of marijuana of less than ten plants
- Non-violent property crimes
- Not currently charged with or previously convicted of a violent crime, sexual offense or weapons charge as defined by statute

(OJP Implementation Grant Proposal, April 9, 1998)

If a client meets the above criteria he or she will likely be allowed into Drug Court. However, since the new prosecutor took office in January of 1999, eligibility criteria have broadened on a case-by-case basis. Currently, those charged with distribution of drugs may also be eligible for Drug Court depending on the amount of drugs present and other circumstances surrounding the crime. In addition, delivery offenses may be eligible if the defendant benefited by obtaining drugs to support his or her habit as opposed to profiting financially from the delivery. There is currently no hard and fast rule regarding the amount of drugs that may be present for a possession, distribution or delivery charge to qualify for Drug Court consideration. This is a judgement call on the part of the prosecutor, with input from the Drug Court team, the arresting officer(s) and the Skagit County Interlocal Drug Enforcement Unit. (The Skagit County Interlocal Drug Enforcement Unit is a countywide task force consisting of undercover officers from various local police departments.) Under no circumstances may a defendant be offered Drug Court participation if his or her drug charge involved the operation of a methamphetamine lab.

Defendants with misdemeanor assault charges may be allowed into Drug Court on a case-by-case basis, depending on circumstances and the approval of the arresting officer(s). An example of this might be misdemeanor assault in which there were mutual combatants without injury. Those with domestic violence charges of any kind are never considered for Drug Court. Individuals arrested for crimes in which a weapon was used are strictly prohibited from Drug Court. However, those arrested for an eligible offense who were in possession of a weapon at the time of the crime may be considered for Drug Court as long as the weapon was not used in the crime. Likewise, those arrested for theft of a weapon in order to support a drug habit may be offered Drug Court participation if the prosecutor can obtain the consent of the victim(s) and arresting officer(s) and if there are no prior weapons offenses in the defendant's criminal history.

Clinical Criteria

In addition to meeting legal eligibility requirements as defined above, potential Drug Court clients must be assessed by the SRC to be drug or alcohol addicted or dependent and not mentally ill to the degree that such illness would render them unable to successfully participate in treatment.

APPENDIX C6

KITSAP COUNTY DRUG COURT ELIGIBILITY CRITERIA

Legal Criteria

The legal offenses eligible for drug court consideration include:

- Possession of controlled substances
- Prescription/legend drug offenses (including forged prescriptions)
- Drug-related property crimes (theft, forgery, etc.)
- Probation violations (if based on the defendant's substance abuse)

Offenses not eligible for drug court include:

- Prior or pending violent or sex offenses
- Delivery of a controlled substances
- Manufacture of a drug, including marijuana and methamphetamine
- Possession of drugs with intent to deliver
- Firearms present at the time of arrest
- Prior or pending burglary offense (presumptive exclusion only – Prosecutor studies the facts of each case and may admit defendants with a prior burglary charge at his discretion)
- Any violence involved with the current offense.

(OJP Implementation Grant Proposal, April 7, 1998)

The Prosecutor's Office is responsible for screening all potential Drug Court participants. As a part of this process, the Prosecutor may contact the local drug task force and/or the arresting agency to determine if the defendant is a "person of interest" for additional charges.

Clinical Criteria

The participant must be diagnosed with a chemical dependency or addiction. In addition, the participant must want to participate in treatment and there must be adequate services available to address the needs of the participant.