

NSW Drug Court

Pre-Ballot Exclusion

OR

How to get your client to the first hurdle.....

The selection of which of the offenders (Applicants) referred to the Drug Court by a Local or District Court are to go into the Drug Court ballot is governed by Drug Court Policy 12:

http://www.drugcourt.lawlink.nsw.gov.au/agdbasev7wr/_assets/drgcrt/m40700113/policy%2012.pdf)

That policy provides guidelines which affect participant selection by either:

1. Controlling the **number of places** available to applicants, or
2. Controlling the **type of applicants** going into the ballot.

Number of Places:

Theoretically the Parramatta Drug Court has a maximum number at any time of 160 participants. The Hunter Drug Court is allowed 80 participants, and the proposed new Sydney Drug Court will be limited to 40 participants initially. There is a steady natural attrition of numbers as existing participants graduate or are terminated from the program, so each week the registrar can determine how many new participants can be taken.

Policy 12.2.1 talks in terms of numbers of male places available, and the number of female places available. Generally, there are many more male program participants/applicants on the program than females, and from time to time the weekly determination will be to take ALL the eligible female applicants, and the blokes will go through the ballot process.

Policy 12.3.2 appears to provide an unlikely-sounding system for selective ATSI-identifying applicants, which purports to provide one additional place for each such applicant (effectively suggesting that the Drug Court will take ALL eligible Aboriginal applicants). I've never seen that policy applied in practice, at least not as described in 12.3.2., but it's there and in theory available.

MORAL:

- (i) **Don't be shy to send female applicants across-we need more of them,**
- (ii) **If at all possible, ensure that ATSI identifying applicants are noted as such on the Bench papers or Charge Sheets.**

Type of Applicants:

1. Policy 12.2.1 states that "the names of apparently eligible applicants will be placed in the ballot", which really needs to be read as : "The names of apparently **ineligible** applicants will **not** be placed in the ballot." The Registrar will not place in the ballot persons who:

- (a) have been referred ONLY on ineligible offences (e.g. matters of violence, indictable supply etc. as per s5 *Drug Court Act 1998* attached)
- (b) have been referred to the Drug Court from a Local or District Court that is not a "Referring Court" (as per Reg 6, *Drug Court Regulation 2005* attached).
- (c) appear to reside in locations not within the specified catchment areas. (as per Reg. 4 *Drug Court Regulation 2005* attached)

MORAL: To avoid having the Registrar taking your client's name out of the ballot before it is even run:

(i) It is essential that at least one (but ideally most) of the referred offences is eligible. Non-eligible additional offences can from time to time "tag along" with the eligible offences, but not if the non-eligible matters are the main event.

(ii) The Registrar WILL take out matters referred by a "non-referring Court". If your client wants to go to Drug Court and he otherwise appears to be eligible, then it is entirely appropriate to adjourn his matters to join up with other matters which are presently at a "referring Court". But note Policy 12.2.5.....

(iii) If your client tells you that he resides in the Drug Court catchment area, but the Charge Sheet/Facts Sheet gives some other address then get it changed to his proper address-preferrably type written. The DPP here at the Drug Court are not silly, and they will notice if the address change is hastily scribbled in by a referring Magistrate, and particularly so if the ink is still wet when it arrives.....

2. The DPP conduct a very comprehensive screening of all offenders referred to the Drug Court, and Policy 12.2.8-12.2.17 provides for the DPP to advise the Registrar (and Legal Aid) of an applicant who appears clearly to be either ineligible or inappropriate. The Judge is then provided by the DPP with the Applicant's Bail Report and a copy of the Fact Sheets of any problematic matters in his/her crim history. The Judge will invite submissions from the Prosecution and Defence on the question of whether the matter should remain in the ballot, or not. Each Thursday morning problematic matters are raised with the Judge in this manner and having heard from the DPP and from ourselves the Judge makes a decision as to whether the client's name goes in the ballot, or alternatively goes back to the referring Court.

Moral: There's no moral in this one. You can't do much to rectify a client's history of violence. But you can let them know that there is some very reasonable prospect that they'll bounce back from the Drug Court if they have significant recent violence on their record.

Martin Dalitz
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Appendix

DRUG COURT ACT 1998

Section 5: Definition of “eligible person”

- (1) A person is an [eligible person](#) if:
- (a) the person is charged with an offence, other than an offence referred to in subsection (2), and
 - (b) the facts alleged in connection with the offence, together with the person’s antecedents and any other information available to the [court](#), indicate that it is highly likely that the person will, if convicted, be required to serve a sentence of full-time imprisonment, and
 - (c) the person has pleaded guilty to, or indicated that he or she intends to plead guilty to, the offence, and
 - (d) the person appears to be dependent on the use of prohibited drugs (within the meaning of the [Drug Misuse and Trafficking Act 1985](#)) or other drugs prescribed by the regulations, and
 - (e) the person satisfies such other criteria as are prescribed by the regulations.
- (2) A person is not an [eligible person](#) if the person is charged with:
- (a) an offence punishable under Division 2 of Part 2 of the [Drug Misuse and Trafficking Act 1985](#) , not being an offence that (under Chapter 5 of the [Criminal Procedure Act 1986](#)) is capable of being dealt with summarily, or
 - (b) an offence involving violent conduct or sexual assault, or
 - (c) any other offence of a kind prescribed by the regulations.

DRUG COURT REGULATION 2010 - REG 4

Reg.4- Eligible persons

For the purposes of [section 5](#) (1) (e) of [the Act](#), the following criteria are prescribed as criteria that a person must satisfy in order to be an eligible person within the meaning of [the Act](#):

- (a) the person’s usual place of residence must be within one of the following local government areas:
Auburn, Bankstown City, Blacktown City, Campbelltown City, Cessnock City, Fairfield City, Hawkesbury City, Holroyd City, Lake Macquarie City, Liverpool City, Maitland City, Newcastle City, Parramatta City, Penrith City, Port Stephens, The Hills Shire,
- (b) the person must not be suffering from any mental condition that could prevent or restrict the person’s active participation in a program under [the Act](#),
- (c) the person must be of or above the age of 18 years,

(d) criminal proceedings against the person for the offence with which the person is charged must not be criminal proceedings that are within the Children's Court's jurisdiction to hear and determine.

Note: at this stage it appears likely that the proposed Sydney Drug Court will only include in its catchment area residents of Sydney Local Government Area.

DRUG COURT REGULATION 2010

Reg.6- Referring courts-referral during proceedings

For the purposes of [sections 6](#) (1) and [7](#) (1) (b) of [the Act](#), the following courts and proceedings are prescribed:

- (a) the District Court, in respect of all criminal proceedings brought before it in its sittings at Campbelltown, East Maitland, Liverpool, Newcastle, Parramatta or Penrith,
- (b) the Local Court, in respect of all criminal proceedings brought before it in its sittings at Bankstown, Belmont, Blacktown, Burwood, Campbelltown, Cessnock, Fairfield, Kurri Kurri, Liverpool, Maitland, Mount Druitt, Newcastle, Parramatta, Penrith, Raymond Terrace, Richmond, Ryde, Toronto or Windsor.

Note: at this stage it appears likely that the proposed Sydney Drug Court will accept referrals from the following Courts: Sydney District Court, and Newtown, Waverly, Central and Downing Centre Local Courts