



DUI COURT

LANCASTER COUNTY, NEBRASKA

Administered by the
District 3A Probation Office

In partnership with the
Lancaster County Attorney's Office,
Lancaster County Public Defender's Office,
Lancaster County Community Corrections,
and the Lancaster County Sheriff's Office,

Judicial Oversight by the
Lancaster County District Court

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COUNSEL'S GUIDE

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What is DUI Court?

DUI Court is a program within the criminal justice system designed to address the recidivism of repeat DUI alcohol and DUI drug related offenses through the treatment and intensive supervision of the participant.

DUI Court uses a combination of treatment, intensive supervision, and frequent drug testing to encourage the participant to address their substance use problem.

DUI Court is about learning to live not only an alcohol and drug-free life, but also a responsible one. Participants will learn to demonstrate their ability to live responsibly **and** sober.

Part of what makes DUI Court effective is the early identification of appropriate participants and their prompt placement in DUI Court. **It is important that a person eligible for DUI Court apply as soon as possible after their arrest.** The County Attorney's Office has agreed to expedite the release of law enforcement reports for clients applying for DUI Court.

DUI Court will accept 3rd offense refusal and 4th offense DUI or DUI – drug felony cases. There is no diversion program for misdemeanor DUI offenses in Lancaster County.

Our Mission

The mission of the DUI Court is:

- A. To increase public safety by providing a program that facilitates access to treatment and implements intensive case management;
- B. To decrease substance use;
- C. To return law-abiding productive, and responsible citizens to their families and community;
- D. To reduce direct societal cost by diverting participants from the correctional system and by allowing the participants to continue to support their families and learn how to live with their addiction.
- E. To eliminate indirect societal cost by eliminating harm to potential future victims and their families, and the families of the participants.

In order to be eligible for participation in DUI Court, the defendant must be charged with a felony in the Lancaster County District Court and meet the following eligibility criteria:

(If you have any questions on the eligibility of a participant or general questions on the program please contact the DUI Court Coordinator at (531) 220-6031)

I. Introduction

DUI Court uses a structured screening process to determine eligibility. When an application for DUI Court is received, the Problem Solving Court Coordinator shall be responsible for tracking the application throughout the screening process. Defendants will not be automatically disqualified from DUI Court because of a co-occurring mental health or medical conditions or because they have been prescribed psychotropic or addiction medication. Eligibility criteria are non-discriminatory in intent and impact and do not restrict access for historically disadvantaged groups.

II. Eligibility Criteria

A. In order for a defendant to be eligible for DUI Court, the applicant must be charged with a felony third or fourth offense DUI or third or fourth offense refusal of chemical test and have been found guilty of the underlying DUI or refusal offense. If the defendant successfully completes the program, the State agrees not to seek felony enhancement of the underlying DUI or refusal and the court will sentence the defendant on the underlying DUI or refusal to a third offense DUI (Class W Misdemeanor). Defendants are not eligible for DUI Court if the offense involved bodily injury or death. In addition, the defendant must meet the following criteria:

1. Have a history of substance use and/or a moderate to severe substance use disorder which is supported by her or his score on an approved screening tool;
2. Have used an illicit substance within 6 months of completing the applicant's screening appointment. Exceptions may be made if the applicant was incarcerated, participating in pre-trial release, or involved in a residential treatment facility in the 6 months prior to the screening appointment;
3. Be unable to address a substance use disorder issue without the resources of DUI Court;
4. Have no criminal history of sexual assault;
5. Have no significant criminal history of child abuse or neglect;
6. Have no history of a felony crime of violence that resulted in death or serious bodily injury;
7. Have no criminal history of a felony crime of violence, as defined in 01.20.003.DC.II.C(2), (see page 4) within the last five years prior to the filing of the application or within five years from the release from incarceration for a crime of violence, whichever is later;
8. Have no significant criminal history of assaultive behavior, as defined in 01.20.003.DC.II.C; (see page 4)
9. Have no other history or incidents of assaultive behavior so as to evidence a danger to staff, law enforcement, other participants, and/or the public (as determined by the Problem Solving Court Team);

10. Not be on parole, or be in another Problem Solving Court (with the exception of a Family Drug Treatment Courts or the Lancaster County Juvenile Drug Court);
11. Have no other criminal matter pending in this or any other jurisdiction at the time of formal bond in (unless such matter can be reasonably resolved without a significant impact on the applicant's participation);
12. Have no immigration hold or status in this or any other jurisdiction rendering them unable to participate in program requirements;
13. Have no other matter pending in this or any other jurisdiction rendering them unable to participate in program requirements;
14. Misdemeanor cases filed in Lancaster County, which are not attached to a felony case but are otherwise eligible for DUI Court, may be accepted into the DUI Court with permission from the County Attorney's Office. The applicant must also have pled guilty and have been determined eligible for DUI Court on at least one other felony charge;
15. Misdemeanor charges involving a crime of violence that are filed in Lancaster County, regardless if they are attached to a felony case but are otherwise eligible for DUI Court, may be accepted into the DUI Court with permission from the County Attorney's Office. The applicant must also have pled guilty and have been determined eligible for DUI Court on at least one other felony charge;
16. Have no outstanding warrant in this or any other jurisdiction at the time of the application review meeting (unless such warrant can be reasonably resolved without a significant impact on the applicant's participation);
17. Have reached a plea agreement by the time of the application review meeting or intend to plead as charged;
18. Reside in Lancaster County or be willing to reside in Lancaster County prior to formal bond in; and
19. Not be cooperating with law enforcement in a manner that would prevent the participant from fulfilling their DUI Court responsibilities.

B. An applicant who previously participated in a Problem Solving Court Program, and was discharged within 6 months of the program start date is eligible to apply for the program, provided that at least 3 years have passed between the discharge date and the date the application is received.

An applicant who previously participated in a Problem Solving Court for 6 months or more, is eligible to apply for the program, provided that at least 5 years have passed between the discharge date and the date the application is received.

An applicant who graduated from a Lancaster County Problem Solving Court Program within 5 to 10 years prior to the date an application is received, the applicant or the applicant's attorney must submit a letter, within 10 days from when the application is received, showing significant changes exist, to the satisfaction of the Problem Solving Court Team, which would make them likely to benefit from additional participation in the a Problem Solving Court.

An applicant who has graduated from the program more than 10 years prior to the date an application is received, is eligible to apply for the program.

An applicant who previously participated in a Family Drug Treatment Court or a Juvenile Court program may apply at any time.

- C. “Significant criminal history” and “crime of violence” defined:
1. A significant criminal history of assaultive behavior means having been found guilty of three or more offenses originally charged as crimes of violence, as defined in 01.20.003.DC.II.C(2), with at least two convictions having occurred within five years prior to the submission of an application or within five years from the release from incarceration for a crime of violence, whichever is later.
 2. “Crime of violence” means:
 1. An offense that has as an element with the use, attempted use or threatened use of physical force against another person or against the property of another, where the act of the physical force against the property of another was intended to threaten another person, or
 2. Any other offense that is a felony and that, by its nature, involves a substantial risk of physical force against another person or against the property of another, where the act of the physical force against the property of another was intended to threaten another person, may be used in the course of committing the offense.
- D. A person’s juvenile court history may be considered at the discretion of the DUI Court Judge.
- E. The County Attorney may make a plea agreement conditional on there being no application to DUI Court.
- F. The DUI Court will not decline a referral based on driving privilege status. All driving privilege eligibility is established and monitored through the Nebraska Department of Motor Vehicles (DMV) and the DUI Court will defer all driver’s licensing eligibility and permits to the Nebraska DMV. The DUI Court will seek to overcome transportation barriers for participants whom do not have a valid license, through use of alternative means of transportation such as rideshare services and public transportation.

III. Application for DUI Court:

If a defendant meets the eligibility criteria and would like to make an application for DUI Court, a written application must be submitted to the Problem Solving Court Coordinator by the defendant’s counsel.

An application must be filed no later than 130 days from the case being filed in County Court or direct filed in District Court on the oldest case of any case(s) included in the application. With respect to all probation revocation motions an application must be filed not later than 60 days from the first date scheduled for a preliminary hearing or the filing of a waiver of a preliminary hearing, whichever occurs first.

If defense counsel believes good cause exists for not filing an application within the appropriate time frame set forth herein, they must submit a written request to the Problem Solving Court Coordinator, with a copy to the DUI Court County Attorney, for an extension of the applicable deadline, setting forth, with specificity, the reason(s) for an extension and a deadline for an extension. If desired, the County Attorney may file a written response, to be delivered to the Problem Solving Court Coordinator, with a copy to the defendant’s counsel, within 10 days. The written materials will be submitted to the DUI Court Judge(s) by the Problem Solving Court Coordinator and a decision will be made on whether to permit an extension. If an extension is permitted, it will be to a date certain. If an extension is not permitted, the application will be rejected.

If the applicant has a pending probation revocation, defense counsel must get the approval of the sentencing Judge before the applicant will be considered by the Problem Solving Court Team.

If an application is withdrawn after being submitted, the applicant will be ineligible from applying to DUI Court on the same charge in the future unless the application is refiled no later than 130 days from the case being filed in County

Court or direct filed in District Court on the oldest case of any case(s) included in the application. With respect to all probation revocation motions, an application must be refiled not later than 60 days from the first date scheduled for a preliminary hearing or the filing of a waiver of a preliminary hearing, whichever occurs first.

A defendant cannot reapply to DUI Court after being denied, unless the new application is made on entirely new charges not previously considered, and the person meets the eligibility criteria in place at that time. In probation revocation cases where the original case was determined not eligible, the applicant may reapply if the person meets the eligibility criteria in place at the time of the application on the probation revocation.

Instructions for submitting an application shall be written in detail in the Counsel's Guide to Application and kept current by the Problem Solving Court Coordinator.

IV. Screening Procedure

When an application is received from defense counsel on behalf of their client, DUI Court collects the applicant's criminal history and court records for the applicant's file.

In order to determine whether a defendant is eligible for DUI Court, they must also be screened. When DUI Court receives an application, Defense Counsel will be contacted by the DUI Court with a screening appointment. Defense Counsel has the responsibility to ensure the applicant knows the screening appointment date and time. Any applicant who fails to be screened will not be accepted. Attempts to reschedule missed screening appointments will be attempted by the Problem Solving Court Coordinator based on available time and resources. During the screening interview, DUI Court Staff will use the current evaluation tools and measures to assist in determining the applicant's appropriateness for the DUI Court program. The evaluation tools will at all times comply with the Standardized Model Rule of the Supreme Court of the State of Nebraska. If an applicant does not score within a predetermined range on an approved screening tool, the applicant will be determined not eligible. (e.g. Simple Screening Instrument must be higher than a 3).

If it is revealed during the screening process that the applicant has previously received substance use treatment or had a mental health evaluation, release forms must be signed to make this information available to DUI Court if requested. If it is learned that the applicant falsified or failed to disclose material information during the application or screening process the applicant may be determined not eligible solely on that basis.

The following information for each applicant is sent to the DUI Court members responsible for discussing new applicants: name, sex, date of birth, incarceration status, case number(s), charge(s), presiding judge, prosecuting attorney, defense counsel, screening results, and any concerns or objections with the application or the applicant's status. The applicant's counsel shall follow identified screening procedures as outlined in the Counsel's Guide to Application.

V. Eligibility Determination:

An application review meeting is held once a month, unless otherwise specified by the Lancaster County Attorney. The Lancaster County Attorney and the Problem Solving Court Coordinator attend the meeting. The group discusses eligibility, objections, administrative determinations of ineligibility by the Problem Solving Court Coordinator, and other issues related to the applications. A decision is made as to whether the applicant is accepted or denied. If determined acceptable for the DUI court program, the application is then forwarded to the DUI Court team for discussion on acceptance into the program. If there is no consensus on an application, the DUI Court Judge makes the final decision to accept or deny an applicant. If there are more eligible applicants than there is room to accommodate, those accepted will be determined by a random drawing system.

Any individuals who are eligible and who are not selected in the drawing will not be permitted to reapply in the future on the same case(s). After an applicant is accepted into the DUI Court program, they are required to meet the following criteria prior to formal bond in to remain eligible for the program.

1. Have a current moderate to severe substance use disorder which is supported by a recent substance use evaluation;
2. Have a recommendation of Intensive Outpatient Treatment or higher as determined on a

substance use evaluation;

3. Have a high risk for criminogenic recidivism and a high need for treatment as demonstrated on an approved screening tool or unless otherwise determined by additional collateral information;
4. Complete an intake appointment;
5. Plead to all charges in which they are applying to DUI Court on; and
6. Have no other criminal matter pending in this or any other jurisdiction at the time of formal bond in (unless such matters can be reasonably resolved without a significant impact on the applicant's participation).

If a defendant appears to meet these criteria and would like to apply to DUI Court, a written application shall be submitted to the Problem Solving Court Coordinator by the defendant's legal counsel. Instructions for submitting an application for DUI Court and the application process begin on the next page. If you have any questions, feel free to contact the Problem Solving Court Coordinator at (531)-220-6031.

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| Formal Application Process |
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An application to DUI Court must be submitted in writing (email, fax, or hard copy) to the Problem Solving Court Coordinator by the defendant's counsel. **(There is no need to send a copy to the DUI Court Judge or the County Attorney).**

An application must be filed no later than 130 days from the case being filed in County Court or direct filed in District Court on the oldest case of any case(s) included in the application. With respect to all probation revocation motions an application must be filed not later than 60 days from the first date scheduled for a preliminary hearing or the filing of a waiver of a preliminary hearing, whichever occurs first.

If defense counsel believes good cause exists for not filing an application within the appropriate time frame set forth herein, they must submit a written request to the Problem Solving Court Coordinator, with a copy to the DUI Court County Attorney, for an extension of the applicable deadline, setting forth, with specificity, the reason(s) for an extension and a deadline for an extension. If desired, the County Attorney may file a written response, to be delivered to the Problem Solving Court Coordinator, with a copy to the defendant's counsel, within 10 days. The written materials will be submitted to the DUI Court Judge(s) by the Problem Solving Court Coordinator and a decision will be made on whether to permit an extension. If an extension is permitted, it will be to a date certain. If an extension is not permitted, the application will be rejected.

If the applicant has a pending probation revocation, defense counsel must get the approval of the sentencing Judge before the applicant will be considered by the Problem Solving Court Team.

If an application is withdrawn after being submitted, the applicant will be ineligible from applying to DUI Court on the same charge in the future unless the application is refiled no later than 130 days from the case being filed in County Court or direct filed in District Court on the oldest case of any case(s) included in the application. With respect to all probation revocation motions, an application must be refiled not later than 60 days from the first date scheduled for a preliminary hearing or the filing of a waiver of a preliminary hearing, whichever occurs first.

A defendant cannot reapply to DUI Court after being denied, unless the new application is made on entirely new charges not previously considered, and the person meets the eligibility criteria in place at that time. In probation revocation cases where the original case was determined not eligible, the applicant may reapply if the person meets the eligibility criteria in place at the time of the application on the probation revocation.

New applications are considered by the DUI Court Team on the last Thursday of the month. In order for an applicant to be considered at that time, the client's application must be received by the DUI Court Office **before the first day of the same month.**

Defense counsel will be notified in writing or through email, of all of the dates associated with the applications, as well as confirmation that it was received. A time for a screening will also be sent to the defense counsel. **It is the defense counsel's obligation to inform their client of the date and time of the screening appointment. If a client fails to appear for a screening, they could be determined ineligible for DUI Court.**

Eligible defendants may be accepted into DUI Court if there are openings or slots available. There is no guarantee that an eligible defendant will be accepted into DUI Court.

Defendants accepted for participation will sign a preliminary bond on the Thursday following the screening meeting and, if in custody, released on the following Monday. Defendants will formally bond in to DUI Court on the third Thursday of the month in which they are approved, giving two weeks for the participant to get a feeling for the program, pleas to be entered and/or cases to be bound over. Defense counsel, or a representative thereof, shall be present during the bond-in process.

A person who applied for DUI Court and was determined not eligible, for whatever reason, may not reapply on the same charges at a later time. Similarly, they may not apply on any other charges that were pending at the time the original application was reviewed. An applicant may reapply following a motion to revoke probation and may reapply with respect to charges filed after the original application was denied.

There is no review, administrative or otherwise, of a decision to reject an application.

In order to process defendants within the necessary time frame, the participant must provide the Application Packet which is located within in the Lancaster County DUI Court Participant Manual.

Failure to provide all of the above information may result in the screening request being returned to the defendant's counsel and the application process being set aside until the appropriate information in the correct format has been received.

A separate application shall be submitted in writing for each defendant applying for DUI Court.

The address for the DUI Court Coordinator is as follows:

DUI Court Coordinator
Lancaster County DUI Court
605 S. 10th St. Suite B100
Lincoln, NE 68508

Applications can also be faxed to (402) 441-6067 or emailed to dean.rohwer@nebraska.gov.

When an application is received from defense counsel on behalf of their client, DUI Court collects the applicant's criminal history and court records for the applicant's file.

In order to determine whether a defendant is eligible for DUI Court, they must also be screened. When DUI Court receives an application, defense counsel will be contacted by DUI Court with a screening appointment. **Defense counsel has the responsibility to ensure the applicant knows the screening appointment date and time.** Time slots for screening appointments are limited, so it is very important that applicants keep their appointments and arrive on time. Any applicant who fails to be screened will not be accepted. Attempts to reschedule missed screening appointments will be made by the Problem Solving Court Coordinator based on available time and resources.

If the defendant is incarcerated at the time of application to DUI Court, arrangements will be made to meet with the applicant while incarcerated. **If the defendant is incarcerated at the time the application is made and is subsequently released prior to being considered for the program, the defendant's counsel must contact the DUI Court Coordinator immediately at (531) 220-6031 to schedule a screening appointment.**

During the screening interview, DUI Court staff will use the current evaluation tools and measures to assist in determining the applicant's appropriateness for the DUI Court program. The following screening tools are currently being used:

Risk and Need Triage DUI (RANT-DUI)

- High Risk/High Needs – Target Population
- High Risk/Low Needs & Low Risk/High Needs – Applicant may be eligible based on other risk factors (ex. mental health factors)
- Low Risk / Low Needs – Applicant is not eligible for DUI Court or any other county diversion programs for DUI offenses.

Level of Service/Case Management Inventory

- High Risk – Target Population
- Medium Risk – will consider based on mental health factors
- Low Risk – will consider based on mental health factors

Simple Screening Instrument (SSI)

- Applicant must score a 4 or above to be eligible for DUI Court.

Drug Use History

- An applicant must have used an illicit substance within 6 months of completing the applicant's screening appointment. Exceptions may be made if the applicant was incarcerated, on pre-trial release, or involved in a residential treatment facility in the 6 months prior to the screening appointment.

Mental Health Screening Form III Information obtained through the MHSF-III is collected for the purpose of assessment and are not used in determining eligibility.

If an applicant does not score within a predetermined range on an approved screening tool, the applicant will be determined not eligible for DUI Court.

If it is revealed during the screening process that the applicant has previously received substance use treatment or had a mental health evaluation, release forms must be signed to make this information available to DUI Court. If it is learned that the applicant falsified or failed to disclose material information during the application or screening process, the applicant may be determined ineligible solely on that basis.

The following information for each applicant is sent to the DUI Court members responsible for discussing new applicants: name, sex, date of birth, incarceration status, case number(s), charge(s), presiding judge, prosecuting attorney, defense counsel, screening results, and any concerns or objections with the application or the applicant's status.

Substance Use Evaluation, Intake, & Bonding In

DUI Court screening meetings are held at 4:00 p.m. on the third Tuesday of each month in the Judge's Jury Room, unless otherwise specified in the letter sent. All applicants who are out on bond shall appear in front of the DUI Court Judge at the date and time indicated in the letter sent. Once a defendant has been approved for participation in the DUI Court program, and signed a preliminary DUI Court bond, there will be two weeks during which pleas are to be entered and/or cases to be bound over.

After an applicant is accepted into the DUI Court program, they are required to meet the following criteria prior to formal bond in to remain eligible for the program.

1. Have a current moderate to severe substance use disorder which is supported by a recent substance use evaluation;
2. Have a recommendation of Intensive Outpatient Treatment or higher as determined on a substance use evaluation;
3. Have a high risk for criminogenic recidivism and a high need for treatment as demonstrated on an approved screening tool or unless otherwise determined by additional collateral information;
4. Complete an intake appointment;
5. Plead to all charges for which they are applying to DUI Court on; and
6. Have no other criminal matter pending in this or any other jurisdiction at the time of formal bond in (unless such matters can be reasonably resolved without a significant impact on the applicant's participation).

During the intake appointment, each approved applicant will receive a copy of the **Participant's Handbook**. Copies can be obtained through the DUI Court Supervision Office or on-line. (Note: The handbook is subject to change. Counsel should obtain copies of the current Participant's Handbook from the website at <https://drugcourt.us/>.)

During the DUI Court hearing at which a participant signs a preliminary bond, each approved applicant will be given an appointment with the date and time of her/his intake, substance use evaluation (if one completed within the previous six months has not been submitted to DUI Court), and ordered to appear for future DUI Court hearings. **Failure to show for these appointments could disqualify a defendant from bonding in to DUI Court.** Defense Council are not expected to attend further court hearings while the defendant is involved in DUI Court as the Lancaster County Public Defender's Office is an active team member and has agreed to participate in the DUI Court.

