

LANCASTER COUNTY ADULT DRUG COURT



Administered by the
Lancaster County Department of Community Corrections

Judicial Oversight by the
Lancaster County District Court

www.lancaster.ne.gov
keyword: drug court

COUNSEL'S GUIDE

Last Revised: September, 2019

Table of Contents

What are Drug Court and Intensive Supervision Diversion?	1
Our Mission	1
Eligibility Criteria for Participation in Drug Court.....	2
Formal Application Process.....	7
Application Format	9
Screening	10
Substance Use Evaluation, Intake, and Bonding In	12

What are Drug Court and Intensive Supervision Diversion?

Drug Court is a program within the criminal justice system designed to address the recidivism occasioned by drug-related and drug-motivated crimes through the treatment and intensive supervision of the participant.

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

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

Part of what makes Drug Court effective is the early identification of appropriate participants and their prompt placement in Drug Court. **It is important that a person eligible for Drug 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 Drug Court.

Intensive Supervision Diversion (ISD) is a less restrictive way to support individuals charged with a felony offense related to substance use but who would otherwise be over supervised in a Drug Court program. Individuals interested in ISD must first complete an application through the Adult Drug Court program. All applications made to the Adult Drug Court program will be considered for both Adult Drug Court and ISD. The Problem Solving Court Coordinator will make a recommendation to the County Attorney's Office for a final determination of which cases are ISD eligible. Applicants that are not referred for ISD will automatically be considered for the Adult Drug Court program.

In order for a case to be ISD eligible, that case must be in County Court, and so remain, for the duration of the ISD program. The case must also meet all other eligibility requirements of Drug Court, with the exception of their risk/need level. For further information regarding ISD eligibility, please contact the Problem Solving Court Coordinator.

Our Mission

The mission of Drug Court is to increase public safety by providing a program that facilitates access to treatment, implements intensive case management, decreases substance use, and returns law-abiding, productive, and responsible citizens to their families and the community.

In order to be eligible for participation in Drug 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 Drug Court Coordinator at (402) 441-8122.)

I. Eligibility Criteria

- A. In order for a defendant to be eligible for Drug Court, the applicant must be found guilty of a crime which is a felony and not an excluded offense listed below. In addition, they 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 Drug 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 01.19.003.ADC.II.D(2), 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 01.19.003.ADC.II.D;
 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 Drug Court, may be accepted into the Drug Court with permission from the County Attorney's Office. The applicant must also have pled guilty and have been determined eligible for Drug 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 Drug Court, may be accepted into the Drug Court with permission from the County Attorney's Office. The applicant must also have pled guilty and have been determined eligible for Drug 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 Drug Court responsibilities.

- B. Defendants are excluded from entering Drug Court on the following offenses:
1. Crimes of violence, including but not limited to murder, manslaughter, motor vehicle homicide, robbery, felony assault, domestic violence, strangulation, kidnapping, false imprisonment, stalking, sexual assault, felony child abuse, felony arson, felony weapons offenses, firearm offenses, or felony explosives offenses, or charged with aiding, abetting, conspiring to commit, attempting to commit, or being an accessory before the fact to a violent offense;
 2. Pending misdemeanor charge(s) involving physical violence directed toward another person so as to evidence a danger to staff, law enforcement, other participants, and/or the public (as determined by the Problem Solving Court Team);
 3. Driving under the influence, fleeing to avoid arrest, leaving the scene of an injury accident, and/or operating a motor vehicle during a 15-year suspension;
 4. Any felony to which habitual criminal allegations are attached;
 5. A controlled substance offense for which the penalty classification is higher than a class II felony. A class ID felony pursuant to Neb. Rev. Stat. §§28-416(4)(a)(ii) or Neb. Rev. Stat. §§28-416(4)(a)(iii) may be eligible for the program if the charge(s) are reduced to a class II or lower felony;
 6. Delivery of a controlled substance or possession of a controlled substance with intent to deliver, if the County Attorney establishes probable cause, as determined by the Drug Court Judge, that the person delivered or possessed with intent to deliver the controlled substance for reasons other than to support their personal habit;
 7. Manufacturing, or attempted manufacturing, methamphetamine pursuant to Neb. Rev. Stat. §§ 28-416, 28-451, 28-457 and 28-201, however, a person charged pursuant to § 28-452 is eligible;
 8. Delivering a controlled substance to a person less than 19 years of age and;
 9. A crime in which medication is altered, substituted, or withheld from a patient in a manner that jeopardizes a patient or potential patient from receiving proper medical care.

- C. 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 the Lancaster County Adult Drug 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.

- D. "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 01.19.003.ADC.II.D(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.

- E. A person's juvenile court history may be considered at the discretion of the Drug Court Judge.
- F. The County Attorney may make a plea agreement conditional on there being no application to Drug Court.

If a defendant appears to meet these criteria and would like to apply to Drug 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 Drug 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 (402) 441-8122.

Formal Application Process

An application to Drug 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 Drug 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 Drug 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 Drug 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 Drug 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 Drug 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 Drug 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 Drug 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 Drug Court.**

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

Application Format

In order to process defendants within the necessary time frame, the following information, in like format, must be provided in the body of the written application:

- Legal name and aliases;
- Date of birth;
- Social Security Number;
- Whether or not currently incarcerated;
- Reason for incarceration (if currently incarcerated);
- Local residence, including street address and zip code;
- Telephone number;
- Email address (if available);
- Primary language;
- Whether or not applicant is a veteran;
- List of known mental health diagnoses;
- Legal charge(s);
- Docket number(s);
- Status of case(s);
- Next court date(s);
- Presiding Judge(s);
- Prosecuting Attorney(s); and
- Other legal involvement

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 Drug Court.

The address for the Drug Court Coordinator is as follows:

Drug Court Coordinator
Lancaster County Adult Drug Court
605 S. 10th St. Suite B131
Lincoln, NE 68508

Applications can also be faxed to (402) 441-3606 or emailed to lparks@lancaster.ne.gov.

When an application is received from defense counsel on behalf of their client, Drug 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 Drug Court, they must also be screened. When Drug Court receives an application, defense counsel will be contacted by Drug 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 Drug 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 Drug Court Coordinator immediately at (402) 441-8122 to schedule a screening appointment.**

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

Risk and Needs Triage (RANT)

- HR/HN – Target population.
- HR/LN and LR/HN – Applicant is eligible for Drug Court if they are denied for Diversion Services after being screened. An Individual Program Plan will be developed to reflect the risk/need level of the applicant.
- LR/LN – Applicant is not eligible for Drug Court and will be considered for ISD instead.

Simple Screening Instrument (SSI)

- Applicant must score a 4 or above to be eligible for Drug 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 and Adverse Childhood Experience

- Information obtained through the MHSF-III and the ACE are 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 Drug 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 Drug 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 Drug 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

Drug Court screening meetings are held at 3:00 p.m. on the last Thursday 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 Drug Court Judge at the date and time indicated in the letter sent. Once a defendant has been approved for participation in the Drug Court program, and signed a preliminary Drug 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 Drug 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. *(Note: If a participant is identified at a risk and need level of high risk/ low need, low risk/ high need or has a recommendation level of Outpatient Treatment, they will only be considered for Drug Court after a denial for Diversion Services. If an applicant is accepted into the Drug Court program under these conditions, an Individual Program Plan will be developed to reflect the risk/need level of the applicant. Low risk/low need applicants are not eligible for the program but will be considered for ISD.)*
5. Complete an intake appointment;
6. Plead to all charges for which they are applying to Drug Court on; and
7. 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 Drug 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 Drug 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 Drug Court), and ordered to appear for future Drug Court hearings. **Failure to show for these appointments could disqualify a defendant from bonding in to Drug Court.**

