



Drug Court Policy 8

Mental health of offenders and participants

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1 Purpose

The purpose of this policy is:

- To clarify both pre-program and on program procedures for dealing with offenders and participants who are, or may be, suffering from a mental condition, illness or disorder.

2 Definitions

Term	Definition
Act	means the <i>Drug Court Act 1998</i>
Drug Court	means the Drug Court of NSW
Drug Court program	means the conditions that a participant has accepted under section 7(3)(a) of the Act.
Drug Court team	means a Drug Court Judge, the Registrar, the Legal Aid NSW (LA) solicitor, the solicitor from the Office of the Director of Public Prosecutions (ODPP), the Police Prosecutor, the Community Corrections Court Coordinator, the Aboriginal Casework Coordinator and the Justice Health NSW clinician attached to the Drug Court, and/or the alternate delegates for each.
Highly Suitable Treatment Plan	means a plan for therapeutic intervention to address an offender’s drug dependency and related health needs.
Offender	means a person referred to the Drug Court under section 6 of the <i>Drug Court Act 1998</i> but not yet sentenced under section 7 of the Act.
Participant	means a person dealt with under sections 7(2) and (3) of the Act.
Registrar	means the Registrar of the Drug Court of NSW.
Treatment provider	means the offender’s principal ongoing treatment provider – e.g., Local Health District (LHD), residential rehabilitation, supported accommodation.

3 Scope

This policy applies to the mental health of offenders and participants of the Drug Court of New South Wales program.

4 Policy statement

- 4.1 Every offender who is referred to the Drug Court will be assessed by Justice Health to determine whether the person is suffering from a mental condition that could prevent or restrict the person's active participation in a Drug Court program (Drug Court Regulation 2020, 4(b)).
- 4.2 Every offender who is referred to the Drug Court will be screened by the Drug Court Police Prosecutor for any information held by the NSW Police Force that may assist in determining whether an offender is suffering from a mental condition that could prevent or restrict the person's active participation on the Drug Court Program. Any such information will be provided to the DPP Solicitor and the Justice Health NSW clinician.
- 4.3 It is the responsibility of the Justice Health NSW clinician and the DPP solicitor on the Drug Court team to identify any offender who may be suffering from such a mental condition, illness or disorder that could prevent or restrict the person's active participation in a Drug Court program.
- 4.4 When such an offender is identified, it is the responsibility of the DPP solicitor to request that a Justice Health psychiatrist provide an independent report to the Court for the purpose of assisting the Court to determine whether the person does suffer from such a mental condition. The reporting doctor should be asked to refer to any relevant medication regime, the likelihood that the offender will comply with that regime, and the likely consequences should the person fail to comply with the regime.
- 4.5 Every participant should have access to psychiatric assessment and ongoing treatment for any mental health needs through Justice Health and/or their treatment provider.
- 4.6 A participant's treatment provider is responsible for identifying and notifying the Drug Court of any mental condition which could be affecting the participant's performance on their Drug Court program, and for obtaining any necessary consent to the sharing of such information with the Court.
- 4.7 The Drug Court Police Prosecutor is to inform the Drug Court Team of any incidents that come to the attention of the NSW Police Force that involve a participant, and which suggest the person is suffering a mental condition, and which suggest the participant may have become a danger to themselves, or to the community.
- 4.8 When a participant fails to comply with the recommended mental health treatment, the participant's Highly Suitable Treatment plan will be reviewed. The review will be conducted so as to assist the participant to fully comply with his or her recommended mental health treatment. Where possible, the treatment review ought to occur in the community

with the treatment provider, so the participant doesn't need to return to custody.

- 4.9 If a participant remains non-compliant with treatment, or if the non-compliance raises issues of the safety of the community or the participant, it is the responsibility of the participant's treatment provider and Justice Health to notify the DPP solicitor on the Drug Court team. If considered necessary, the DPP solicitor may request a termination hearing.

5 Related legislation/regulation and other documents

- [Drug Court Regulation 2020](#)

6 Document information

Document name	Drug Court Policy 8 – Mental health of offenders and participants
Applies to	All Drug Courts of New South Wales
Policy administrator	Senior Judge of the Drug Court of NSW
Approval	Senior Judge Mottley, June 2024

7 Version and review details

Version	Effective date	Reason for amendment	Due for review
1	10/06/2024	Policy reviewed, updated and re-formatted.	10/06/2026