



**King County**

**KING COUNTY DRUG DIVERSION COURT SERVICES**

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**I. KING COUNTY DRUG DIVERSION COURT (DDC): SCREENING, REFERRAL AND ELIGIBILITY (revised September 2024)**

- A. Screening:** The King County Prosecuting Attorney's Office (KCPAO) screens all police referrals for DDC eligibility.
- B. Referral:** When the KCPAO determines a defendant to be DDC eligible, the case is filed directly into DDC for arraignment. A deviation from this direct file policy will be made in VUCSA Delivery or Possession with Intent to Deliver (PWI) cases in which the drugs have an unpackaged weight of under 10 grams where law enforcement objects, at time of filing, to a defendant's participation in DDC. The basis for the objection shall be made in writing and be authorized by a law enforcement official familiar with the case. The written objection will be made part of the Discovery packet provided to defense counsel so as to put all parties on notice. A defendant whose case is filed mainstream under this policy deviation may petition the DDC Judge to transfer the case into DDC. Law enforcement and the KCPAO will be given an opportunity to respond to the transfer request. The reasons for which the objection is made may be sufficient basis to exclude an otherwise eligible defendant. The Court will make the ultimate determination regarding eligibility when admission under this policy deviation has been raised.
- C. Transfer Request:** Defendants whose cases have been filed mainstream may ask to have the case reviewed again by the KCPAO. Defense attorneys are to provide a completed transfer request and any supporting documents to the Drug Court Deputy Prosecuting Attorney (DPA) for their review. A copy of the transfer request should also be provided to the Drug Court DPA's paralegal. If a defendant is initially filed into DDC and chooses to go mainstream at the time of arraignment, they will still have the opportunity to request a transfer to DDC at a later date.
- D. Rules Regarding Eligibility:**
1. The eligibility criteria are published, not open to discretion by the defense bar, the KCPAO's office or the Court (except as noted specifically in this document) and will be adhered to strictly. Criteria were agreed upon by the DDC Executive Committee (which includes Superior Court, the defense bar, the KCPAO, substance use disorder experts, and law enforcement).
  2. The Court will not make exceptions to eligibility criteria. In cases where the KCPAO has deemed a defendant to be ineligible, a defendant may petition the Court for acceptance to the program. In making a determination on the defendant's request, the Court will consider only if the DDC eligibility criteria was appropriately applied.
  3. There must be a reasonable basis to believe the defendant can successfully complete the DDC program after taking into consideration factors such as: The defendant's mental and/or physical health, past performance in DDC, presence of

a substance use disorder and need for treatment. The Court will make the ultimate determination regarding eligibility when a "reasonable basis" for successful completion is in question.

4. Prior participation in DDC for the same case (a defendant who opted out of DDC after arraignment) may be considered at the discretion of the KCPAO.

## **E. Eligibility Criteria**

### **1) VUCSA**

- a) Delivery / PWI/ Forged Prescription/ Manufacturing
  - i) VUCSA cases involving fentanyl will not be automatically disqualified from DDC.
  - ii) Any VUCSA case linked to a homicide will not be eligible for DDC.
  - iii) Law enforcement may object to the following VUCSA cases:
    - (1) Cocaine/Heroin/Methamphetamine/Bunk cases over 10 grams or when the cumulative value of drugs sold, possessed, and cash on person (excluding police buy money) exceed \$1,000.
    - (2) Prescription Medication when the number of pills exceed 50 or cumulative value of drugs sold, possessed and cash on person (excluding police buy money) cannot exceed \$1,000.

### **2) Class B & C Felonies**

- a) Eligible Crimes
  - i) Assault 3 (with victim approval)
  - ii) Burglary 2
  - iii) Cheating 1
  - iv) Criminal Impersonation 1
  - v) Escape 2.
  - vi) Failure to Return Rented or Leased Property
  - vii) Forgery
  - viii) Felony Harassment (with victim approval)
  - ix) Identity Theft 1 or 2
  - x) Malicious Mischief 1 or 2
  - xi) Organized Retail Theft 1 or 2
  - xii) Possession of Stolen Mail
  - xiii) Possession of Stolen Property in the 1 or 2
  - xiv) Possession of Stolen Vehicle
  - xv) Retail Theft with Special Circumstances 1, 2 or 3 with approval from the Retail Crimes DPA or ECU Chair
  - xvi) Taking a Motor Vehicle Without Permission 1 or 2
  - xvii) Theft 1 or 2, including Theft from a Person
  - xviii) Theft of Mail
  - xix) Theft of Motor Vehicle
  - xx) Theft of Rental Property
  - xxi) Theft with Intent to Resell 1 or 2 with approval from the Retail Crimes DPA or ECU Chair
  - xxii) Trafficking in Stolen Property 1 or 2
  - xxiii) Unlawful Issuance of Bank Checks
  - xxiv) Felony Vehicle Prowl 1 or 2
  - xxv) Domestic Violence (DV) property crimes and certain Felony Violation of a No Contact Order (two prior) and Felony Harassment cases are eligible

for drug court only upon recommendation of DV Supervisor and with victim approval. Law enforcement may object at the time of filing or when a transfer request is received.

(1) A defendant whose current Felony Violation of No Contact Order charge falls under the two prior conviction prong involving consensual or invited contact may be eligible depending on a full review of the available DV history and DV Supervisor approval and with victim approval.

xxvi) A defendant charged with an eligible Class B Felony or Class C Felony, who is also charged with a Driving While Under the Influence (DUI) or Physical Control arising out of the same criminal fact pattern, may bring that DUI/Physical Control to DDC. DUIs in DDC will be resolved with a lesser charge and not a complete dismissal.

xxvii) Residential Burglary:

i. (1) Those charged with Residential Burglary shall be eligible provided that no weapon (actually or constructively possessed by the defendant) or assaultive behavior was involved in the offense by any defendant or co-defendant. A Residential Burglary with the victim present inside the dwelling during the commission of the burglary or a burglary interrupted by the victim shall be eligible provided there is no contact with the victim and there is victim approval. A defendant charged with Residential Burglary or Burglary in the Second Degree will not be eligible for DDC if a firearm is used or stolen during the burglary.

(2) A defendant who is in any phase of DDC on a Residential Burglary, who is charged with any felony that is alleged to have been committed during the defendant's enrollment in DDC, will be set for immediate termination. The newly committed felony will not be eligible for DDC and the KCPAO will file the new case mainstream.

xxviii) Robbery 2 cases are not per se ineligible. Some Robbery 2 cases may be eligible to *transfer* into KCDDC on a case-by-case basis under KCPAO's discretion depending on the facts and circumstances of the case.

### 3) Factors that Disqualify Defendant

- a) The **combined restitution** owed on all of the defendant's pending cases may not exceed \$10,000 unless the KCPAO is in agreement with the case/cases being transferred or filed into DDC. IF THE AMOUNT IS ABOVE \$10,000 the defendant will be required to sign a restitution order for THE TOTAL AMOUNT OF RESTITUTION OWED as a condition to being accepted into DDC. For any restitution order above \$2,000, the defendant must pay \$2,000 of the financial obligation in accordance with DDC protocol AS A CONDITION OF GRADUATION. However, a defendant whose restitution exceeds \$10,000 and who is not able to fully pay it prior to meeting all other graduation requirements, will still graduate DDC after paying \$2,000 and once all other non-restitution conditions are completed. However rather than the case being dismissed, the defendant will agree to plead guilty to a gross misdemeanor with an agreed two-year deferred sentence recommendation. The only condition of the deferred sentence will be to pay the outstanding balance of the original restitution order.
- b) Evidence that the defendant manufactured IDs or targeted vulnerable victims or abused a position of trust to get financial information or that the defendant used/possessed more than three (3) victims' financial information or that the defendant opened more than three (3) accounts in a victim's

name or that the crime represents a significant breach of fiduciary duty. This disqualification may be waived with agreement of the KCPAO.

- c) Evidence that the defendant is a **High Impact Priority Repeat Offender (HIPRO)**: HIPRO is defined as having one or more of the criteria present: (1) the defendant has been sentenced to a prison term at least twice for crimes related to car theft, and/or burglary; (2) The defendant has a total of 5 convictions for car thefts and/or burglaries combined; (3) the defendant committed the referred offense(s) (burglary or car theft) while on community custody for a Drug Offender Sentencing Alternative (DOSA) for a burglary or car theft related crime; (4) the defendant committed a new car theft or burglary offense while on pre-trial release for a car theft or burglary offense, and has at least one prior felony conviction for a similar offense. A HIPRO designated defendant is not eligible for DDC. This disqualification may be waived with agreement of the HIPRO KCPAO prosecutor and the DDC DPA. Law enforcement may object at the time of filing or when the transfer request is received.
- d) Any evidence that the defendant actually or constructively possessed a firearm or explosive device would be grounds for exclusion. Any evidence that the defendant used or threatened the use of a firearm (real or otherwise) or other weapon would be grounds for exclusion.
- e) No pending felony non-DDC eligible cases.
- f) A defendant is ineligible if they are currently on a DOSA unless the KCPAO agrees.

#### **4) Disqualifying Criminal History**

- a) Participants would not be excluded from DDC for felony convictions that are allowable under the Therapeutic Court Statute (RCW 2.30) if they have not been convicted of a violent offense (RCW 9.94A.030(58)) or sex offenses (RCW 9.94A.030(47)) and have been in the community for at least *5 years*.
  - i. A Robbery 2 conviction will not automatically disqualify an otherwise eligible defendant from being offered DDC. However, KCPAO has the discretion to consider a Robbery 2 conviction within the past 5 years as a disqualifier.

#### **5) Post-Disposition Track**

- a) KCPAO will accept some cases with charges that would not otherwise be eligible in the pre-dispositional DDC track (for example, some Robbery 2 cases and/or elude cases). This would be done at the discretion of the KCPAO.
- b) For a defendant to enter DDC on the post-disposition track:
  - i. The assigned KCPAO early plea unit (EPU) DPA must agree to the transfer into DDC.
  - ii. After negotiations an agreement on either a felony or misdemeanor plea with the EPU DPA, defense counsel will schedule a transfer hearing on the DDC calendar.
  - iii. After Phase One of DDC the Drug Court case manager would recommend an appropriate Opt-In time for the defendant.

- iv. At the Opt-in hearing, the defendant will sign (1) the Waiver and Agreement, (2) plead guilty to the crime(s), and (3) execute a waiver of speedy sentencing.
  - v. At the Opt-in hearing, the State will (1) recommend that the defendant enter into DDC and (2) through the Waiver and Agreement will make a sentencing recommendation consistent with the agreement of the parties (typically credit for time served and no additional jail time if the defendant successfully completes DDC). The State will recommend an exceptional sentence below the standard range as needed in order to effectuate the agreement of the parties.
- c) Outcomes of the post-disposition track will be outlined and negotiated prior to transferring the case into Drug Court and agreements will be filed with the Court.
- d) Termination from Drug Court: If the defendant does not successfully complete DDC, the State will be free to recommend any sentence allowable by law (subject to any limitations in the agreement of the parties) and other conditions authorized by law.