



Government of **Western Australia**  
Department of **Justice**

# **Intellectual Disability Diversion Program (IDDP) Court Guidelines**

Revised August 2020

We acknowledge and pay respect to the Traditional Custodians of the lands upon which we operate across Western Australia

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## 1. Definition and Mission Statement

The Intellectual Disability Diversion Program Court (“IDDP Court”) seeks to address the overrepresentation of people with an intellectual disability (“ID”), cognitive disability (“CD”) or autism spectrum disorder (“ASD”) within the criminal justice system by addressing their offending behaviour and support arrangements.

## 2. Principles of IDDP Court

IDDP Court adopts the core therapeutic values and practices of:

- Self-determination which recognises that if an individual chooses action personally meaningful to them they are likely to have a greater motivation to achieve it;
- Promotion of procedural fairness by:
  - Ø The IDDP Court Magistrate acting independently with compassion and empathy;
  - Ø Giving the individual the opportunity to be heard, especially when a decision affects them;
  - Ø Acknowledging that the individual's own views about their life are important; and
  - Ø Treating everyone in IDDP Court with dignity and respect, acknowledging that individuals who are more satisfied with the process and believe they have been treated fairly are more likely to comply with orders and have respect for the court; and
- Where appropriate, implementing evidence-based processes and strategies to promote compliance with the Program, engaging individuals in goal-setting and supporting them through the change process.

## 3. Rationale

People with ID, CD or ASD are at significantly higher risk of interaction with the criminal justice system for a number of reasons:

1. Vulnerability to the influence or exploitation of others,
2. Increased vulnerability to the effects of alcohol or other drugs,
3. Difficulties managing emotions, and
4. Difficulties understanding or complying with societal norms.

People with ID, CD and ASD are also at increased risk for a number of other factors:

- Higher rates of health conditions that may not have been adequately diagnosed or treated,
- Higher rates of mental health issues,
- Psychosocial disadvantage,
- Disadvantage upon contact with the criminal justice system, and
- Vulnerability within the prison system.

## **4. Target Participants of IDDP Court**

The target participants for IDDP Court may have one or more of the following three diagnoses:

1. Intellectual Disability,
2. Cognitive Disability,
3. Autism Spectrum Disorder.

### ***Intellectual Disability***

An individual with ID is eligible to receive funding or services from the Department of Communities (Disability Services) or from the National Disability Insurance Scheme (NDIS) according to their relevant diagnostic criteria.

### ***Cognitive Disability***

Cognitive Disability includes a range of impairments that lead to an enduring functional disability causing measurable deterioration in social and occupational functioning, with a decline from an individual's previous levels of ability and functioning.

Such an individual *may* be eligible to receive funding or services from the Department of Communities (Disability Services) or from the National Disability Insurance Scheme (NDIS) according to their diagnostic criteria, but need not necessarily be the case.

### ***Autism Spectrum Disorder***

An individual may be diagnosed with ASD according to the criteria within Diagnostic and Statistical Manual of Mental Disorders 5 (DSM 5).

There is no list of prescribed offences for which an accused person can be referred to IDDP Court (subject to the criteria for eligibility for referral set out at Part 8(a)(i) and (ii)). However, an individual charged with indictable-only offences cannot be accepted onto the IDDP Court Program.

Regardless of the nature of offending behaviour IDDP Court must ensure that the response is proportionate. For example, an accused person who has committed a relatively minor offence, and who is assessed as suitable for the Program, should be involved with the Program for a shorter period and with less intensity.

## **5. Goals of IDDP Court**

IDDP Court aims to work with participants who reside in the community in a manner that is safe, culturally sensitive, dignified and respectful in order to:

- Reduce their future contact with the criminal justice system and thereby improve community safety;
- Increase their access to positive behaviour support with a focus on skill building and goal setting;
- Identify undiagnosed or untreated disability or impairment as well as physical and/or mental health issues; and

- Achieve an outcome in respect of their charge/s that is proportionate, fair and appropriate to the circumstances of the offence and their disability or impairment.

## 6. Outline of Process for Referrals and Participation

- Referral from other courts and application stage
- Assessment for inclusion
- Acceptance to Program
- Judicial case management on Program
- Early exit from the Program
- Completion of the Program and sentencing

## 7. The IDDP Court Team

### *IDDP Court Magistrate*

The IDDP Court Magistrate's role is to decide if the participant is eligible for assessment and acceptance to the Program, set bail conditions and encourage and monitor the participant's progress throughout the Program.

The IDDP Court Magistrate listens to the input of the other team members, compiles information and renders the final decision about the participant's compliance in the Program and what penalty will be imposed in relation to the charges.

### *Court staff*

The Specialist Court Coordinator manages and coordinates the IDDP Court, providing support and assistance to the IDDP Court Magistrate, Senior Court Officer and Judicial Support Officer. They develop and implement strategies and procedures to review, monitor and improve the quality of service delivery of the Program as well as maintaining statistical data.

The Senior Court Officer coordinates the physical and human resources for the IDDP Court within the Magistrates Court of WA Perth Registry and provides an advisory service in relation to the Court's practices and procedures.

The Judicial Support Officer prepares and maintains the court list and client files for IDDP Court and provides support services to the IDDP Court Magistrate in and out of court. They generate bail and other paperwork for accused persons and participants in IDDP Court.

### ***Court security***

The Court Security/Court Orderly coordinates the IDDP Court appearances, security and relevant paperwork associated with running the IDDP Court on a daily basis. They liaise with accused persons/participants, clinicians, legal representatives, the Police Prosecutor, Judicial Support Officer and other court users who are appearing before or attending the IDDP Court.

### ***Police Prosecutor***

The Police Prosecutor's role is to prosecute criminal charges listed in IDDP Court, liaise with investigating officers in order to clarify disputed issues raised by participants and liaise with victims of offences where appropriate. The Police Prosecutor has the opportunity to make submissions to the IDDP Court Magistrate about whether an accused person is eligible for the Program, appropriate bail conditions, the appropriate sentencing outcome and, if there are issues with non-compliance or new offending, whether a participant should be exited early from the Program.

### ***Duty Lawyer***

The Legal Aid Duty Lawyer Service offers legal advice and/or legal representation to prospective and current participants. Where appropriate the Service can also assist in making applications for grants of Legal Aid. In some circumstances other legal practitioners can brief the Duty Lawyer to appear via the appropriate channels. The Duty Lawyer also appears on behalf of participants at Progress Checks.

### ***Adult Community Corrections***

The role of Adult Community Corrections within the IDDP Court is to assess an accused person for suitability for the Program, case manage participants on the

Program, provide progress reports and pre-sentence reports for the IDDP Court Magistrate and liaise with Disability Services–Justice Coordinator for the purpose of performing all of these tasks.

## **8. Case Processing**

### ***(a) Referral from other courts and application stage***

#### **i. How referrals can be made**

An accused person can be referred to the IDDP Court in Perth Magistrate's Court by a Magistrate in any metropolitan court (including Northam and Mandurah in some cases). Referral can be made upon the request of the accused person, their lawyer, the Prosecutor, a Community Corrections Officer, a medical or mental health practitioner, supporting agency, carer or family member or upon the instigation of the Magistrate if:

- The accused person consents to the matter being referred to IDDP Court;
- The Magistrate is satisfied there is information before the court to suggest the eligibility criteria at Part 8(a)(ii) are likely to be fulfilled; and
- The Magistrate is satisfied there is not another less restrictive option open to the court in dealing with the accused person.

The accused person should be remanded to a Monday at Perth Magistrates Court for application for IDDP Court.

#### **ii. Eligibility criteria**

An accused person will be considered eligible for IDDP Court if:

- They have been diagnosed with an ID, CD or ASD by a suitably qualified person or they are likely to be so diagnosed if assessed by a suitably qualified person;
- They have entered or are likely to enter a plea/pleas of guilty to at least a significant proportion of their charges;



- They are suitable for conditional bail; and
- They consent to participate in the IDDP Court Program.

Participants are not eligible to be referred or considered for suitability if:

- Their primary issue is a mental health issue; or
- There is no prospect of them being sentenced other than to an immediate term of imprisonment.

An accused person may be referred more than once to IDDP Court.

### **iii. Declining to be assessed for the Program**

Participation by an accused person in IDDP Court at all stages is voluntary. An accused person may choose at any time not to participate further.

If an accused person chooses not to participate at a point prior to assessment they can be remanded back to the general list to have their charge/s dealt with or they can request the IDDP Court Magistrate deal with their charge/s.

### **iv. Referrals from higher courts**

An accused person who has an indictable charge which has been committed to the District Court can still be considered for suitability to participate in the Program.

The procedure to be followed is outlined in the protocol at Appendix 2.

Protocol: District Court Referrals to IDDP Court – Appendix 2

## ***(b) Assessment for inclusion***

### **i. Request for assessment**

At the appearance in IDDP Court, an accused or their lawyer may request an assessment report to be prepared by the Adult Community Corrections Officer.

## **ii. Discussion of eligibility**

When an accused person is seeking to be assessed for the Program, the IDDP Court Magistrate needs to be satisfied that they are eligible.

In court the IDDP Court Magistrate, the Prosecutor and the Adult Community Corrections Officer have the opportunity to ask questions and provide information about the existence and nature of an accused person's disability or impairment.

If an accused person has previously been referred to IDDP Court or another specialist court, the Adult Community Corrections Officer may also provide information about the outcome of a previous referral. This may include information about their level of prior engagement with the Program or any behavioural, risk or compliance issues that arose in respect of an accused person during their prior engagement with the Program.

The Prosecutor can raise any issues about a participant's eligibility, particularly in terms of their likelihood of imprisonment.

The accused person or their lawyer will have the opportunity to respond to the information and submissions provided to the IDDP Court Magistrate about their eligibility.

## **iii. Entering pleas**

Before ordering an assessment report, the IDDP Court Magistrate will require the accused person to enter a plea or pleas of guilty to at least a significant proportion of their charges.

The IDDP Court Magistrate can take into account any negotiations that have been, or are planned to be, undertaken by a lawyer on behalf of an accused person with the prosecution prior to a plea being entered when deciding if an accused person is eligible for an assessment report. However, if an accused person faces a single charge which is still the subject of negotiation they will

not progress to an assessment report until the negotiations are complete and a plea of guilty is entered.

#### **iv. Identification and communication of risk issues**

At this stage there may be an initial review of an accused person as to their potential risk to others. This will occur with input from the Adult Community Corrections Officer and/or from the Prosecutor, where a relevant risk is known.

Relevant information can include any history of violence or sexual offences or behaviour. If such information suggests an ongoing serious risk to the safety and wellbeing of the IDDP Court staff or other IDDP Court participants, the IDDP Court Magistrate may refuse the request for an assessment report. If risk issues are identified they will be summarised in court in the presence of the accused person and their lawyer (or the duty lawyer) and a reasonable opportunity will be given to all parties to seek advice on the information provided to the court.

The IDDP Court Magistrate will give the parties an opportunity to make submissions in court about the information prior to making a decision to refuse or allow the request for an assessment report.

Risk issues in respect of an accused person may be raised at any stage of the process by any party to the proceedings.

#### **v. Assessment interview**

If the IDDP Court Magistrate orders an assessment report, the accused will be remanded to a future court date with an assessment interview to be scheduled by the Adult Community Corrections Officer at another specified time and place.

Family members and/or carers are also encouraged to attend this assessment interview.

The IDDP Court Magistrate may also order other reports such as a neuropsychological report or psychiatric report to assist in determining an accused person's eligibility for the Program and appropriate treatment and referrals if accepted on to the Program.

#### vi. Consent Form

If an accused person wishes to proceed to be assessed for the Program, at the assessment interview they will be required to sign a Consent Form which allows for the sharing of information about them with and by the Adult Community Corrections Officer. This information includes their criminal record, the statement of facts for the charge/s, health records and Community Corrections records.

An accused person will have an opportunity to seek legal advice about the Consent Form and the Consent Form should be signed in the presence of a witness **[Appendix 1]**.

#### vii. Conditional bail

When ordering an assessment report and remanding an accused person to the future court date, the IDDP Court Magistrate will add a condition to the accused person's bail requiring them to *"comply with all lawful directions of a community corrections officer including to attend assessments and appointments as directed"*.

#### viii. Assessment screening

Relevant suitability considerations can be divided into *fixed* and *discretionary* criteria.

*Fixed* criteria include the eligibility criteria as listed at Part 8(a)(ii) such that if an accused person does not meet all the eligibility criteria, they will not be eligible for inclusion in the Program.

It is at this stage the Adult Community Corrections Officer will assess whether an accused person consents and whether that consent is informed, knowing and understood.

*Discretionary* criteria are applied so that no single factor is necessarily determinative, and all the factors will be considered and weighed relative to each other and an accused person's circumstances. They include:

- Any risk issues as determined by accessing information from the accused person's criminal record, history with Department of Justice and/or Department of Communities records;
- The nature of the offence/s with which the accused person has been charged and their prior performance under supervision;
- Court/Program resource issues which may include consideration of the adequacy of any current treatment or disability support the accused person may already be undertaking or receiving and/or the availability or existence of appropriate treatment or support;
- The accused person's ability and willingness to engage in positive behaviour support, skill building and goal setting;
- Whether, as a consequence of participating in the Program, the accused person's risks and needs are likely to be impacted.

The Adult Community Corrections Officer will consider these factors and make a final determination about whether the accused person will be recommended for participation in the Program and an assessment report will be prepared for the IDDP Court Magistrate prior to the future court date.

#### **ix. Assessment report**

The assessment report will set out this recommendation and, if the accused person is recommended as suitable, outline what would be proposed for them as a participant on the Program and the likely approximate length of time they will be participating in the Program ("support plan"). The assessment report will also set out how regularly judicial case management should occur and what type of judicial case management is likely to have the greatest impact in light of the accused person's disability or impairment.

Possible recommendations for the support plan are:

- To engage with a disability service provider in respect of disability support or psychosocial needs;
- To engage in and comply with treatment with a GP, medical specialist, Community Mental Health Service, or private psychiatrist;
- To attend an assessment or review with a medical specialist, psychiatrist or neuropsychologist for diagnostic clarification or medication review;
- To engage in psychological counselling;
- To engage in alcohol and other drug misuse counselling;
- To provide samples for urinalysis;
- To engage in other forms of intervention directed to issues such as family violence, gambling or finances;

#### **x. When an accused is not eligible for IDDP Court**

If the IDDP Court Magistrate decides an accused person is not eligible for the Program, they can choose to remain in IDDP Court to have their charge/s dealt with unless the IDDP Court Magistrate considers it would be inappropriate to do so due to issues of risk management or practicability for the court or the accused person.

If there is information to suggest an accused person may be eligible for another specialist court, and the accused person consents to a referral to that court, the IDDP Court Magistrate may remand them for an application in that court.

### ***(c) Acceptance to the Program***

#### **i. Discussion of Assessment Report**

The assessment report and recommendations will be discussed at the future court date in front of the IDDP Court Magistrate, giving the lawyer and prosecutor an opportunity to dispute or challenge any aspects of the report or provide additional information for the Adult Community Corrections Officer to consider.

If appropriate, the IDDP Court Magistrate, prosecutor, accused person or their lawyer can request an updated Assessment Report, taking into account the additional information.

## **ii. Acceptance to Program by Magistrate**

The IDDP Court Magistrate will exercise judicial discretion in deciding whether an accused person will be accepted on to the Program. In doing so, they will independently consider all information before the court relevant to both the formal and informal criteria listed in Part 8(b)(vii), including the Assessment Report and recommendation.

## **iii. Declining to participate in the Program**

An accused person may decline to participate in the Program at any time and may voluntarily exit at any point during the Program.

If an accused person chooses not to participate at a point after assessment they can choose to remain in IDDP Court to have their charge/s dealt with unless the IDDP Court Magistrate considers it would be inappropriate to do so due to issues of risk management or practicability for the court or the accused person.

## **iv. Conditional bail**

After the participant is accepted to the Program the IDDP Court Magistrate will remand them to a progress check on a future court date with the same bail condition as in paragraph 8(b)(vii).

# **9. Confidentiality**

Issues relating to confidentiality within IDDP Court are generally regulated by the use of the Consent Form (Appendix 1) but are always subject to the ethical obligations of professionals working within the court to disclose information pursuant to a duty of care.

Assessment and progress reports generated within IDDP Court are subject to the usual restrictions of publication of pre-sentence reports.

If a party to court proceedings is seeking release of IDDP Court reports ordered by the IDDP Court Magistrate in the current proceedings (including neuropsychological or psychiatric reports) to an agency, department or organisation for another purpose, the IDDP Court Magistrate must be provided evidence that the individual who is the subject of such reports agrees to the release and that the writer of the report agrees to the release. This evidence can be in writing or given orally and recorded in court.

If a party to court proceedings is seeking release of reports ordered in the context of earlier proceedings (including neuropsychological or psychiatric reports) to an agency, department or organisation for another purpose, the IDDP Court Magistrate must be provided evidence that the individual who is the subject of such reports agrees to the release **and** that the writer of the report agrees to the release. This evidence can be in writing or given orally and recorded in court.

The sharing and use of confidential information about a participant by and with Department of Communities (Disability Services) is governed by the Consent Form (Appendix 1) and any other procedures/policies to which a participant consents.

## **10. Progress checks**

### ***(a) Purpose and format of progress checks***



Judicial case management hearings are held at regular intervals throughout a participant's involvement in the Program and are referred to as progress checks.

Once accepted on to the Program, a participant will be remanded on bail to attend court on a Monday. This will occur for a period of usually 4-6 months depending on;

- A participant's progress on the support plan identified by the Adult Community Corrections Officer and
- The circumstances of the participant, the seriousness of their offence/s and their willingness to continue to engage in the Program.

Prior to or on the day of the progress check, the IDDP Court Magistrate will be provided with a progress report by the Adult Community Corrections Officer. The participant will have the opportunity to meet with their lawyer prior to appearing in court before the IDDP Court Magistrate.

In court the IDDP Court Magistrate may discuss with the participant and their lawyer:

- How the participant has progressed on their support plan since the last progress check; and
- What is planned for the participant to achieve or work on until the next progress check and in the longer term.

The IDDP Court Magistrate will also be advised of any results of urinalysis if that is a condition of bail.

The IDDP Court Magistrate can do any of the following at a participant's appearance at progress check:

- Set specific goals for the participant to achieve prior to the next progress check and if appropriate give a warning the participant is at risk of early exit for non-compliance if they do not achieve the goals set;
- Apply the process set out in Part 12; or

- Where a participant has made substantial progress in their support plan, sentence the participant or set a sentencing date in accordance with Part 13(a).

The IDDP Court Magistrate may then remand the participant to the next progress check (or sentencing) date. Progress checks generally occurs every 4-8 weeks, however, the frequency is subject to their progress and compliance in the Program.

### ***(b) Risk management at check-in***

If a participant presents at a progress check in a manner that suggests to a member of the IDDP Court team or to another court user that they may pose a risk to themselves or any member of the IDDP Court then the Court Security Officer, Judicial Support Officer, Prosecutor and Adult Community Corrections Officer should be notified by the relevant team member or court user before the participant is called to appear before the IDDP Court Magistrate.

If, in the opinion of the Adult Community Corrections Officer or Prosecutor, the presentation or behaviour of a participant at a progress check is of such a nature that the risk they pose may render them unsuitable to continue on the Program, the participant's lawyer or the duty lawyer should be notified before the participant is called to appear before the IDDP Court Magistrate.

In court the Adult Community Corrections Officer or Prosecutor should inform the IDDP Court Magistrate of the nature of the presentation or behaviour, the risk posed and why it may render them unsuitable to continue on the Program.

After hearing from the Adult Community Corrections Officer or Prosecutor and the participant's lawyer (or the participant personally if they are not represented and if it is appropriate in the circumstances), the IDDP Court Magistrate will decide whether the participant will be exited from the Program.

## 11. Early Exit from the Program

### *(a) Effect of new offending or non-compliance*

A participant may be exited from the Program in response to alleged new offending by the participant while on the Program. The IDDP Court Magistrate will make this decision, taking into account any submissions from the prosecutor and a lawyer on behalf of the participant (or the participant themselves if they are unrepresented), and any information from the Adult Community Corrections Officer.

Particular weight will be given to:

- The nature and number of the alleged new offences;
- The length of time the participant has been on the Program prior to alleged new offending;
- The strength of the prosecution case in respect of the alleged new offending; and
- The level of compliance and engagement the participant has already demonstrated while on the Program.

A participant may also be exited from the Program if they are non-compliant with bail conditions, in particular if they:

- Fail to attend one or more progress checks or consistently attending late with no reasonable explanation provided;
- Fail to comply with one or more conditions of bail, such as providing samples for urinalysis;
- Fail to attend one or more appointments as directed by the Adult Community Corrections Officer; or
- Consistently demonstrate behaviour that is disruptive or offensive to the court, other participants, court security or to the staff or clients of IDDP or external service providers.

Where a participant is attending for a progress check but not complying with one or more conditions of bail, the Prosecutor may apply for the IDDP Court

Magistrate to revoke or vary their bail. Where a participant does not attend for the progress check the Prosecutor may apply for an arrest warrant to issue.

The Adult Community Corrections Officer will attempt to distinguish whether a participant is non-compliant or non-responsive. Non-compliance is defined as a wilful disregard for supervision mandates, whereas non-responsiveness may be an issue relating to impairment requiring revision of the participant's support plan or level of support.

For example, if a participant chooses to stay up late and then sleeps in and misses an appointment, it is likely to be described as an incident of non-compliance. If a participant feels overwhelmed about catching the bus to an appointment and decides not to attend, it could be described as non-responsiveness and issues surrounding the participant's concern about using public transport could be addressed by the support plan. Where the participant is exited from the Program their matter/s will be listed for sentencing in IDDP Court on a convenient future court date in accordance with the procedure at Part 13(a) and (b).

### ***(b) By choice of participant***

The participant is able to voluntarily exit the Program at any time. Their matter/s will be listed for sentencing in IDDP Court on a convenient future court date in accordance with the procedure at Part 13(a).

## **12. Sentencing**

### ***(a) Procedure for sentence***

When a participant is listed for sentence the IDDP Court Magistrate may order a pre-sentence report (verbal or written) or progress report from the Adult Community Corrections Officer. Other information can also be requested, such as a report from a psychologist or from another service provider. The participant

or their lawyer can also provide any further information to the IDDP Court Magistrate relevant to sentencing.

On the sentencing date the participant will be sentenced in the normal manner, taking into account any additional material before the court.

### ***(b) Effect of Program on sentencing outcome***

The IDDP Court Magistrate has the same sentencing options available to them as any other Magistrate under the *Sentencing Act 1995*.

Participation in the Program is a relevant factor to be taken into account at sentencing when determining a proportionate sentence for a participant.

In considering factors in mitigation of sentence the IDDP Court Magistrate will have regard to:

- The participant's attendance at progress checks;
- The participant's engagement with the Adult Community Corrections Officer and their support plan;
- The length of time of their participation, as well as any bail conditions to which the participant has been subject;
- Whether their risk of future contact with the criminal justice system has been reduced;
- Whether there has been improvement in their health or overall wellbeing; and
- Whether any other risk factors have been addressed or minimised as a result of their participation in the Program.

## **13. Annual Review of Guidelines**

These Guidelines will be reviewed annually by the IDDP Court Operational Group.

## **14. Appendices**

Appendix 1 -IDDP Court Consent Form

Appendix 2 -Protocol: District Court Referrals to IDDP Court



## Intellectual Disability Diversion Program

### Authority to Release Information

Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

This gives consent for the Department of Justice – Adult Community Corrections to contact and liaise with the following agencies:

- ☐ **Disability Services:** \_\_\_\_\_
- ☐ **NDIS/A:** \_\_\_\_\_
- ☐ **Centrelink:** \_\_\_\_\_
- ☐ **Medical:** \_\_\_\_\_
- ☐ **Mental Health:** \_\_\_\_\_
- ☐ **Employment agencies:** \_\_\_\_\_
- ☐ **Service providers:** \_\_\_\_\_
- ☐ **Family:** \_\_\_\_\_

**Any other services involved in my care/treatment:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, \_\_\_\_\_ provide authority for the above agencies to share information about me in order for me to participate in the Intellectual Disability Diversion Program.

I am aware that this information may include details of psychological testing, reports (including Court ordered reports) or any other information.

I am aware that this information will be used to aid the individuals working with me so they can help reduce my risk of reoffending and improve my daily life.

I am aware that any information provided by external agencies may be provided to Court in particular Court ordered reports.

I, \_\_\_\_\_ consent for information to be released until \_\_\_\_\_

Offender's signature: \_\_\_\_\_

Date: \_\_\_\_\_

Community Correction Officers signature: \_\_\_\_\_

Date: \_\_\_\_\_

Guardian signature: \_\_\_\_\_

Date: \_\_\_\_\_



**THE DISTRICT COURT  
OF  
WESTERN AUSTRALIA**

**PROTOCOL OF DISTRICT COURT  
REFERRALS TO THE  
INTELLECTUAL DISABILITY  
DIVERSION PROGRAM  
(IDDP) COURT**

**2020**



## PROTOCOL

### DISTRICT COURT REFERRALS TO INTELLECTUAL DISABILITY DIVERSION PROGRAM (IDDP) COURT

#### 1. Purpose

- 1.1 The following protocols set out the procedure to be followed when an offender appearing before the District Court is potentially suitable to take part in the IDDP Court Program ("the Program").
- 1.2 The terms and conditions are to facilitate communication between the two jurisdictions. It is not intended to in any way fetter the discretion of the Sentencing Judge.

#### 2. Responsibility

##### ELIGIBILITY GUIDELINES

- 2.1 In the circumstances described in paragraph 1.1, referral can occur when:
  - a) the offender has been diagnosed with an Intellectual Disability, Cognitive Disability (which might include FASD) or Autism Spectrum Disorder by a suitably qualified person or they are likely to be so diagnosed if assessed by a suitably qualified person,
  - b) the offender has pleaded guilty,
  - c) the Sentencing Judge might impose a sentence other than immediate imprisonment, if the Program is successfully completed by the offender, and
  - d) the offender is not remanded in custody.

##### REFERRAL PROCESS PURSUANT TO 1.1

- 2.2 The offender must first be assessed by IDDP Court Adult Community Corrections for their suitability for the Program.
- 2.3 If suitability has not already been addressed in a PSR, the Sentencing Judge should order a PSR to specifically address suitability for the Program.
- 2.4 The offender should only be referred to participate in the Program if the PSR deems them suitable to participate.
- 2.5 If the offender is deemed suitable, the Sentencing Judge should set a future District Court date before the same Sentencing Judge ("future Court date"), **a minimum of 8 weeks after the date of referral.**

The bail conditions for the future Court date should include the following:

**"To report to Perth IDDP Court on the date as directed by the District Court and thereafter to comply with all lawful directions of the Perth IDDP Court"**

- 2.6 The offender should be directed to attend the IDDP Court Perth **on a Monday within no less than 5 working days** from the date of referral, at 10am. The Sentencing Judge should order that the District Court PSR and any relevant specialist assessments be released to the IDDP Court Magistrate and Prosecutor.
- 2.7 The Associate to the Sentencing Judge should enter the following results into ICMS:

- **Remanded** to the future Court date (with at least the bail condition in paragraph 2.5) and an order that the District Court PSR and any relevant specialist assessments be released to the IDDP Court team,
- and,
- **Adjourned** to Magistrates Court Perth on a nominated Monday (at 10am) with an appearance outcome of "Application for IDDP Court".

2.8 The Associate to the Sentencing Judge should send an email marked "Attention IDDP Court Coordinator" to [perthmagistratescourt@justice.wa.gov.au](mailto:perthmagistratescourt@justice.wa.gov.au) detailing the referral, attaching relevant transcript and outlining any other instructions.

## **PROGRAM**

- 2.9 In IDDP Court, once the offender is formally accepted into the Program, they will be judicially case managed and required to attend IDDP Court as often as directed by the IDDP Court Magistrate. The IDDP Court Magistrate will request a copy of any transcript of proceedings in IDDP Court be sent to the Sentencing Judge.
- 2.10 If the Sentencing Judge places the offender on a PSO at the future Court date, the Sentencing Judge should order PSO Review Reports in the usual manner, requesting they be prepared by IDDP Court Adult Community Corrections. IDDP Court Adult Community Corrections will complete these reports.
- 2.11 When remanding the offender to future Court dates, the same bail conditions in paragraph 2.5 should be imposed.
- 2.12 Notification should be given to IDDP Court of any future Court dates by the process set out in paragraph 2.8, including when a final sentencing date is set.
- 2.13 When a final sentencing date is set, the Sentencing Judge should order a PSO Sentencing Report, requesting it be prepared by IDDP Court Adult Community Corrections. IDDP Court Adult Community Corrections will complete this report.
- 2.14 At the completion of the Program and when notified that a final sentencing date has been set in the District Court, the IDDP Court Magistrate will strike the matter from the list and direct the offender to answer their bail at the final sentencing date set by the Sentencing Judge.

## **NON COMPLIANCE**

- 2.15 If an offender, during their participation in IDDP Court during the process described in paragraph 1.1;
- fails to comply with lawful directions of IDDP Court Adult Community Corrections;
  - fails to attend IDDP Court as directed;
  - fails to comply with the conditions of a PSO;
  - commits further offences, or
- if there is concern for their safety or wellbeing, or the safety or wellbeing of others, the IDDP Court Magistrate may exit the offender from the Program.
- 2.16 The IDDP Court Prosecutor will advise the DPP of the non-compliance and, if the non-compliance consists of a breach of bail conditions, request an application be made to the District Court for the revocation of bail. The IDDP Prosecutor will also advise the IDDP Court Duty Lawyer of the non-compliance.
- 2.17 Once the IDDP Court Magistrate is satisfied the DPP have been advised, and if there are no Magistrate Court charges listed in IDDP Court, any remaining matters will be struck from the list.
- 2.18 If an offender is placed on a PSO by a Sentencing Judge during the process described in paragraph 1.1 and fails to comply with a condition of the PSO such that the CEO (Corrections) issues a Warrant for non-compliance, Adult Community Corrections will send an email marked "Attention

IDDP Court Coordinator" to [perthmagistratescourt@justice.wa.gov.au](mailto:perthmagistratescourt@justice.wa.gov.au) attaching a copy of the Warrant, Certificate of Breach and Progress Report (if applicable).

- 2.19 When the offender is apprehended on the Warrant and after they have appeared before the General Duties Judge, the offender will be required to appear before the Sentencing Judge. The Associate to the Sentencing Judge should send an email marked "Attention IDDP Court Coordinator" to [perthmagistratescourt@justice.wa.gov.au](mailto:perthmagistratescourt@justice.wa.gov.au) detailing the outcome of the appearance and any future court dates, attaching relevant transcript and outlining any other instructions.

Dated 17 August 2020

Her Honour Judge Julie Wager  
Chief Judge of the District Court

Magistrate Felicity Zempilas  
Magistrates Court of Western Australia