



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

# Perth Drug Court Guidelines



***The purpose of this document is to detail the operating processes and procedures for the Perth Drug Court, which operates within the Magistrates Court of Western Australia. The document does not in any way limit the capacity of Drug Court magistrates in exercising their judicial discretion. The processes outlined in these guidelines are indicative of how most participants entering the Perth Drug Court will be managed. As a solution focused court, the judiciary will continue to seek ways of managing participants in order to achieve the best possible outcomes for offenders, victims of crime and other associated parties.***

**We acknowledge and pay respect to the traditional custodians of the lands upon which we operate across Western Australia.**

Revised in 2020

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## **1. INTRODUCTION AND OVERVIEW**

The Perth Drug Court was established as part of a range of strategies developed at a State and national level, intended to promote a coordinated and relevant approach to the difficulties created within the community as a result of illicit drug use.

The Perth Drug Court deals with offenders who have committed offences and have drug related problems. The court aims to reduce re-offending and imprisonment by addressing drug related problems in an innovative and culturally appropriate way. Successful completion of the program results in positive lifestyle changes for the participant and a reduced risk of offending for the community. These outcomes are reflected in the final penalty imposed by the court.

The Perth Drug Court applies processes of solution focused courts that incorporate the principles of therapeutic jurisprudence, including court processes which can promote offender rehabilitation and respect for the law. This is done by supervising offenders who become Perth Drug Court participants, supporting them and encouraging them to make lifestyle changes that will enable them to choose to stop using drugs, to stop offending and to lead happy and constructive lives in the community.

The Perth Drug Court is comprised of a magistrate who leads a collaborative, multi-agency team consisting of Court Assessment and Treatment Services (CATS) Officers (from Adult Community Corrections in the Department of Justice), a Drug Court lawyer (from the Legal Aid Commission of WA), a WA Police Force prosecutor, treatment agency staff and support officers who work with the participant in a primarily non-adversarial framework. Judicial and team case management is comprehensive, intensive, individualised and treatment focused.

A CATS Officer assesses the participant's risk and needs, and works with the participant in identifying and setting up appropriate treatment and supports, including housing and education, to give the participant an opportunity to complete the Perth Drug Court program. CATS officers directly monitor participants' compliance and progress, and report back to the Perth Drug Court.

A Drug Court model operates in both the Perth Magistrates Court and the Perth Children's Court. These guidelines describe the processes of the Perth Drug Court, which operates at the Perth Magistrates Court.

The Perth Drug Court deals with all adult referrals. Currently offenders are assessed, placed on a treatment program and case managed for a period of up to 24 months. The Court follows the same process when dealing with participants who go before the District Court or Supreme Court. The superior courts ultimately determine whether an applicant will be allowed to participate, the length of the participant's program and subsequent sentence.

The Department of Justice is responsible for the administration of the Perth Drug Court and the Mental Health Commission directly supports the operation of the court by coordinating the provision of treatment and support services used by Perth Drug Court participants.

## 2. DEFINITIONS

<b>Arrest Warrant:</b>	A warrant giving the Police authority to arrest a participant if they fail to attend the court and the court makes an order for their apprehension. An arrest warrant can also be issued following an application to the court alleging that bail conditions have been breached.
<b>Assessment Period:</b>	An opportunity for the participant to demonstrate suitability for inclusion on a Perth Drug Court program through satisfactory performance and compliance over a period of generally four to six weeks. During this period, persons assessing for a Drug Court program are directly case managed by CATS, with judicial oversight. At the court's discretion, the initial assessment period may be extended if it is considered that those persons are not sufficiently stable to be formally placed on a Drug Court program that is judicially case managed.
<b>Bail:</b>	Bail is a process whereby the participant undertakes to attend court when required and abide by any conditions of the bail that have been imposed. A bail undertaking is a legal document signed by the participant that records the details of the bail granted and the undertaking given.



<b>CATS:</b>	Court Assessment & Treatment Service CATS is a specialist Adult Community Corrections team directly and exclusively supporting the operation of the Perth Drug Court. CATS officers assess and refer participants to appropriate treatment and support services. They are specifically involved in facilitating and monitoring participants' engagement with treatment and support services and general monitoring of compliance requirements as stipulated by the Court, including drug screen urine tests.
<b>CBO:</b>	<p>A Community Based Order is an order under which the participant may be compelled to perform community work/service and may include a program or supervision requirement.</p> <p>A CBO must contain at least one of the following requirements:</p> <ul style="list-style-type: none"> <li>• a supervision requirement</li> <li>• a program requirement,</li> <li>• a community service requirement</li> </ul>
<b>Conditional Drug Court Regime:</b>	The Conditional Drug Court Regime is a program for participants who are not eligible for a Pre-Sentence Order. Participants undertaking this program are managed while on conditional bail for periods of up to six months, after entering the plea of guilty, to allow the participant the opportunity to participate in the Perth Drug Court. Participants who are recommended for the conditional DCR are usually facing serious charges, have criminal records and have a history of illicit substance use. They are considered by the court to require more intensive support and monitoring than can be offered by other diversion programs.

<b>Creatinine Level:</b>	A scientific reading which measures the concentration of urine. By Australian standards, if a person's urine sample is below the acceptable creatinine level it indicates that the sample may not be valid.
<b>CRO:</b>	<p>A Conditional Release Order is a form of 'good behaviour bond', allowing for the conviction and release of an offender from the court on the condition the offender commit no further offences during a nominated timeframe. If so, then no further penalty applies. Should the offender commit a further offence inside the period of this order, then the offender will be brought back before the court to be resented on the original matter.</p> <p>A court may sentence an offender under a CRO only if the court considers:</p> <ul style="list-style-type: none"> <li>• there are reasonable grounds for expecting that the offender will not reoffend during the term of the CRO; and</li> <li>• that the offender does not need supervising by a Community Corrections Officer during the term of the CRO.</li> </ul>
<b>Curfew:</b>	This is a bail condition made by the Court stating that a participant must remain at their nominated residence between set times.
<b>Home Detention Bail:</b>	This is a bail order made by the Court allowing a participant to live at a nominated address which is monitored 24 hours per day. This means that the participant will generally be electronically monitored or receive phone calls and/or visits from Adult Community Corrections (ACC) and/or security services used by ACC to ensure compliance.

<b>Indicated Sentence:</b>	An indicated sentence is what a participant would normally receive as a sentence if there were no Perth Drug Court and the participant had not participated in any program. If a participant successfully completes the Drug Court program, it is likely they will receive a reduced sentence.
<b>ISO:</b>	An Intensive Supervision Order is similar to a CBO except the ISO must contain elements of supervision and is considered to be a more serious imposition than the CBO.
<b>Over the Counter Medication:</b>	Any drugs or medicine which can be purchased from a pharmacy without the need for a doctor's prescription.
<b>Prescription Medication:</b>	Any medication you receive from a doctor on prescription.
<b>Probationary Drug Court Regime:</b>	A Probationary Drug Court Regime refers to the management of participants who have been accepted onto any of the Perth Drug Courts programs but are waiting for ratification from the District Court or Supreme Court where their matters must be dealt with.
<b>Protective Bail Condition:</b>	A special condition imposed on a granting of bail to safeguard the safety, welfare or property of any person. If a protective bail condition is breached it becomes a serious offence. By way of definition, Protective Bail Conditions are conditions imposed for a purpose mentioned in clause 2(2)(c) or (d) of Part D of Schedule 1 of the Bail Act.

**PSO:** A Pre-Sentence Order is an order that the participant is placed on and adjourned to a later date for sentencing. A PSO may be imposed if a court is sentencing a person for one or more imprisonable offences at a time when the person is neither serving, nor is liable to serve, a term of imprisonment for another offence and where imprisonment is not mandatory. Participants are closely monitored and supervised while subject to a PSO.

**Residential Placement:** Drug rehabilitation services where the participant 'lives-in' while engaged with the service.

**Treatment Modality:** Treatment modality refers to the form of treatment a participant is engaged in at any point of time.

The four treatment modalities utilised within the Perth Drug Court include:

- detoxification (Detox) - a medically supervised treatment aimed at ridding the body of addictive or intoxicating substances;
- pharmacotherapy - a medically supervised treatment for addiction involving the administration of specific drugs aimed at replacing the chemical activity of toxic substances and reducing their physical dependence;
- non-residential treatment - this treatment involves counselling and support while residing and functioning within the community; and
- residential treatment – this treatment involves participants residing in a closed, drug free community.

### **3. ABOUT THE PERTH DRUG COURT**

#### **3.1 What is the history of Drug Courts?**

Drug Courts are not new. Five Australian States have established Drug Courts, with NSW being the first. They were first introduced in the United States in the late 1980s and similar problem-solving and solution focused courts now exist in many different forms around the world. The Perth Drug Court was convened for the first time on 4 December 2000.

#### **3.2 What are the goals of the Perth Drug Court?**

The Perth Drug Court is a specialty court which deals with offenders who have a drug related problem. The goal of the court is to encourage these offenders to take on a treatment program so as to lead a stable and crime-free lifestyle.

Successful completion of a drug court program will be reflected in the sentence imposed by the magistrate after hearing final sentencing submissions of the defence and prosecution. Upon successful completion by District Court and Supreme Court participants, CATS submits a report reflecting the achieved outcomes which may be taken into consideration in sentencing.

#### **3.3 Who are the Perth Drug Court team?**

The Perth Drug Court team consists of a magistrate who leads a collaborative, multi-agency team consisting of CATS officers, a Drug Court lawyer, police prosecutor, treatment agency staff and support officers who work with the participant in a primarily non-adversarial framework. Many other services are accessed by the Perth Drug Court team to assist participants. The team will work together on an individual program to suit participant needs.

##### **a) The Participant**

It is the participant's responsibility to take an active role and be a responsible member of the team. This means the participant must fully commit to all Perth Drug Court responsibilities. The participant will need to trust the team, accept their assistance and ask for any additional help as required. The participant must be honest and truthful at all times no matter what the possible consequences may be. The team will make every effort to support a participant as long as there is a continued demonstration that efforts are being made to help themselves.

### **b) Drug Court Magistrate**

The Perth Drug Court Magistrate will decide if the participant can be assessed for a Drug Court treatment program, set bail conditions (where bail is granted) and make decisions about the participant's progress throughout the program. The magistrate will also decide what penalty will be imposed in relation to the charges. If the participant's matters are before the District or Supreme Court, the magistrate will case-manage the participant's program on behalf of the District or Supreme Court.

A report will be prepared by CATS for the judge, based on the participant's progress through the Perth Drug Court program. The magistrate will take an interest in the participant's progress through the program and will ask questions in court to determine how the participant is progressing.

### **c) Prosecuting Authority**

The Prosecuting police officer will represent the interests of the community for summary matters and may act on instructions from the Director of Public Prosecutions for indictable matters.

### **d) Drug Court Lawyer**

The Perth Drug Court lawyer will interview and represent the participant in court. The lawyer may also provide legal advice in relation to possible sentencing outcomes and Perth Drug Court issues and represent clients on instruction from private counsel from time to time. The Perth Drug Court lawyer also attends and participates in case review meetings. The Perth Drug Court lawyer is provided by Legal Aid Western Australia.

### **e) Court Assessment & Treatment Service (CATS) Officer**

CATS officers conduct assessments of risks and criminogenic needs. They access and link the participant with appropriate treatment and support services. They maintain contact with those services to ensure that the participant's needs are being properly met. CATS will also monitor the participant's treatment and compliance as required by the Drug Court. This involves urine tests and various other requirements set by the court. The participant's CATS officer will also provide written or verbal reports to the magistrate or judge based on the participant's progress in the Perth Drug Court. These reports will be in similar format to a pre-sentence report.

#### **f) Treatment Agencies**

Treatment providers engage with participants to provide treatment and support services for offenders through a variety of treatment modalities as referred to by CATS officers.

#### **g) Others**

A Judicial Support Officer provides administrative support to the Drug Court magistrate.

A court orderly ensures courtroom order and etiquette is maintained.

### **3.4 Who can be referred to the Perth Drug Court?**

To be referred to the Perth Drug Court the offender must:

- be facing charges in a court
- request a referral from the Magistrate or Judge presiding at any of these courts. The request may be refused or adjourned to a later date depending on the capacity of the Perth Drug Court
- give an indicated plea of guilty
- have a demonstrable drug related problem
- be willing and able to participate in drug treatment
- be willing and able to move to Perth for the duration of their time in the Perth Drug Court if the participant is from the country
- have all outstanding legal issues resolved and be ready to plead and commit to intensive treatment and counselling

If an offender is granted a referral, the charges for that person will be remanded to the next Tuesday sitting of the Perth Drug Court, allowing for four whole business days to elapse. The offender will be required to attend at 9am for the compulsory Drug Court Information Session on their first appearance in the Perth Drug Court.

### **3.5 What may exclude a person from the Perth Drug Court?**

The nature of the intervention of the Perth Drug Court program is personal and therapy-orientated. A number of agencies and service providers are engaged by the courts. There are restrictions for safety reasons, primarily on people entering residential facilities and

patient services, which require the Perth Drug Court to have a list of precluded offences. There is however discretion with the court to still make the referral despite the commission of one or more of the precluded offences. Given the concerns of the treating agencies, it may be difficult to access an appropriate program where there is demonstrated violence in the offending behaviour.

An offender may be excluded if his or her circumstances fit within the following categories:

- the offences being faced involve actual violence
- the offences are sex offences or there is a history of sex offences
- the offences include the manufacture or attempted manufacture of drugs
- the offences are of a sophisticated drug trafficking nature
- the offences relate to armed robbery
- the offences relate to stealing a motor vehicle and driving recklessly
- the offender has outstanding matters that are subject to a not guilty plea

### **Serious Drug Offences**

The following should be considered when exercising discretion when referring offenders to the Perth Adult Drug Court:

- is the offending so organised and sophisticated that the inference would be that the person is a drug dealer rather than a drug user?
- is the type of offence and the history of the drug offender such that the offender's participation in the Perth Drug Court program may disrupt other Drug Court participants?
- is the offence the type of offence that shows a causal connection to a profit motive rather than a drug addiction?

### **Violent Offences**

All other violent offences may be referred at the discretion of the referring magistrate. The following will be considered when exercising discretion:

- whether there is serious actual violence
- is the offence so premeditated and sophisticated that it would not be consistent with being committed to finance drug addiction?



- is the offence part of a course of conduct of other offences that would make the offender ineligible for the Perth Drug Court?
- was a weapon used in the commission of the offence?

### **3.6 What will exclude a person from the Perth Drug Court?**

Offenders who are facing any of the following charges may be ineligible for consideration for a Drug Court program.

#### **Criminal Code**

- S68 Going armed in public so as to cause terror.
- CH28 Homicide.
- S294 Act intended to cause grievous bodily harm or prevent arrest.
- S297 grievous bodily harm.
- S281 Unlawful assault causing death.
- S338 Threat to kill.
- S338E Stalking.
- S401 The following circumstances for aggravated burglary:
  - (iv) cause bodily harm to any person
  - (v) threatens to kill or injure any person
  - (vi) detains any person
 Any other circumstances of aggravation for aggravated burglary may be referred.

#### **Road Traffic Act**

- s59 Dangerous driving causing grievous bodily harm/death.

Offenders in the following circumstances are also ineligible for consideration in a Drug Court Program:

- Declared drug traffickers
- Facing a declaration as a declared drug trafficker
- Being a member or a nominee of an outlaw motorcycle gang
- Facing mandatory imprisonment

- In breach of a higher court Conditional Suspended Imprisonment Order or a Suspended Imprisonment Order.

### **3.7 What will occur on the first appearance?**

On the first appearance of the offender, the Perth Drug Court magistrate will decide whether the offender should be assessed to see if they are suitable for a Perth Drug Court treatment program.

If the participant's charges are to be dealt with by the District Court or the Supreme Court, upon referral by a sentencing judge or justice, the magistrate will case manage the participant's progress on behalf of the District Court or Supreme Court. For the protocols for referral from superior courts, please see sections 7.2 and 7.3 of this document.

If the participant is suitable for assessment and is on bail, he/she will be remanded for between four and six weeks to allow assessment to occur. Strict bail conditions will be imposed. If the participant is granted assessment while in custody, the period of the remand will usually be for 21 days.

If the participant is to be released on bail, the following bail conditions are likely to apply:

- requirement to report directly to the CATS office after bail papers have been signed
- need to comply with the lawful directions of a CATS officer
- need to provide urine samples, initially typically three times each week so that they can be tested for drugs
- live at a specified address ( bail condition)
- abide by a curfew – usually between 9pm to 6am daily (bail condition)
- any other conditions – e.g. not to engage in pawnbroking; not to associate with certain people; provide a surety; not to drive a motor vehicle without a valid motor driver's licence; to carry photographic ID.

### **3.8 What is the Assessment Process?**

Participation in the Perth Drug Court requires a broad range of assessments and possible inclusion in services intended to assist participants. The assessment process will begin as

soon as possible. Officers from CATS will conduct the assessment. The CATS office is located at 30 Moore St, East Perth. During assessment the participant will need to demonstrate their commitment to changing their lifestyle and their commitment to the Perth Drug Court. If the participant is on bail, he/she will have to attend a number of appointments.

The assessment phase gives participants the opportunity to demonstrate to themselves, their families and the court that they are serious about addressing their drug-related problems and getting their lives back on track. During the assessment period the participant is allocated a CATS officer. The CATS officers co-ordinate the assessment of the participant, carry out a risk/need assessment and develop a treatment plan with the participant. They submit a report to the Perth Drug Court magistrate as to their suitability for a Perth Drug Court program at the end of the assessment period. The report aids the Perth Drug Court magistrate in determining the participant's suitability for the Perth Drug Court and which program is suitable and available relative to the participant's needs. Participants will have a say in what treatment and support services may assist them.

The CATS officer will organise a comprehensive and inclusive assessment of a participant's situation during this period. This will include a variety of appointments such as, but not limited to, psychological screening, supervision with CATS officers, counselling and the provision of urine samples three times a week. It may also include an assessment for victim mediation.

In addition, the Perth Drug Court Team will research the participant's previous and current court records and arrange to have matters such as breached community orders brought before the court. If there are outstanding charges in other courts in Western Australia, the team will assist in having those charges remanded to the Perth Drug Court on a specified date. This will not include matters that have been listed for trial. If the participant has outstanding police matters that have not yet been lodged with a court, the participant is encouraged to let the team know about the pending charges and the prosecution will arrange to have these matters brought before the Perth Drug Court. This may also involve enquiries with the Fines Enforcement Registry in relation to outstanding fines, time to pay arrangements or conversion to a work order, or a combination of both.

For those who are in custody during the assessment phase and are assessed as suitable, a program will be put in place so that they may be considered for release directly into a residential/treatment facility. Those in custody may be considered for home detention bail during assessment.

If the participant performs well they will have a good chance of being accepted onto a Perth Drug Court program. If the participant does not perform well during this time, they could be arrested for breaching a condition of their bail and returned to the Perth Drug Court before the four weeks has passed. If the participant does not do what the Perth Drug Court Magistrate has ordered, or has chosen not to participate further, the participant will be sentenced and their matters along with their Drug Court engagement will be finalised.

### **3.9 What happens when the assessment is completed?**

At the completion of the participant's assessment, the CATS officer will provide a report to the Perth Drug Court team. The report will outline the participant's progress during the assessment period and will indicate whether the participant is suitable to be placed onto a Perth Drug Court program. If the participant is not suitable, it may be due to the participant's non-compliance during the assessment or that the participant has chosen to no longer participate in a program. In this situation, the participant will be adjourned to the non-Drug Court sentencing list on a suitable Thursday where the matters will be finalised through sentencing. Accepting placement into a Perth Drug Court program is not the penalty for the charges being faced; it is an opportunity for the participant to change their lifestyle.

Where a participant is recommended as suitable for a Perth Drug Court program and the participant accepts being placed onto the program, the participant will be given an indicated sentence. An indicated sentence is what an offender would normally receive if there was no Perth Drug Court in place.

It is the practice of the Perth Drug Court to impose appropriate disqualifications of drivers licences at the indicated sentence hearing rather than at the final sentence hearing. This practice is viewed as supporting the participant in that the disqualification period can be imposed at the earliest possible opportunity and can start running while the participant is in

the supportive environment of the Drug Court and can potentially graduate from the program having completed or substantially completed the disqualification period.

### **3.10 What happens if the participant does not do what is agreed?**

If the participant does not attend appointments, provide urine on request or live at the address that the participant has supplied to the court, a Perth Drug Court team member can request that the prosecutor apply to the Drug Court magistrate for a warrant to be issued for the participant's arrest before their next court appearance.

If the participant is having difficulties complying with his/her bail conditions or treatment program, the participant must inform a CATS Officer or the Perth Drug Court lawyer. By doing this, a bail variation application can be made to make it easier for the participant to carry out his/her treatment program. If the participant has to move address due to unforeseen circumstances the participant must contact a CATS Officer or the Perth Drug Court lawyer immediately and attend the Perth Drug Court to have their bail varied.

If the participant continues to breach the requirements of the program, the court may suspend the participant's further participation in the Perth Drug Court and proceed to sentencing.

### **3.11 Can the participant leave the program?**

A participant is free to leave the program at any time. If the participant's charge/s is before the Magistrates Court then the magistrate will sentence them and take into account their participation to that point. If the participant's charge/s is before the District or Supreme Court and the participant chooses to leave the program, the participant will be remanded to that court for sentencing. Participants are advised to speak with their CATS Officer or a Perth Drug Court lawyer before making a definite decision. If a participant is absent from a Drug Court Program and contact with the participant is lost for more than two weeks, the participant will lose their position on the program and will need to make application to the Drug Court magistrate for re-inclusion. The participant will then be required to attend another information session.

### **3.12 What does the Perth Drug Court expect of participants?**

The Perth Drug Court team expects participants to work hard towards changing their lifestyle, to address their drug related problems and to stop committing crime. At the start of the program, the Perth Drug Court magistrate will ask the participant what he/she wants to achieve by way of goals and strategies on the Perth Drug Court and how the participant plans to reach those goals. The Perth Drug Court team will help and support participants during their attendance on a treatment program and in the achievement of their goals and work with the participant to prepare a plan to help participants cope in the future.

To do this a participant must:

- be honest with themselves and with the Perth Drug Court team, as honesty is the single most important criterion expected of Perth Drug Court participants
- keep all appointments and turn up on time
- work hard at addressing personal issues through counselling
- attend court on time when required

Where a service provider charges a fee for a missed appointment, participants are expected to make good that payment.

### **3.13 What is the Breach Point System?**

If a participant is placed on a Drug Court regime, or PSO program, the participant will be subjected to the breach point system.

This system is similar to the demerit point system. When 12 demerit points are lost, a person loses their licence for three months. In the Perth Drug Court, a participant may be suspended or removed from the program following any breach of the program. Unlike demerit points, compliance with the agreed treatment program allows breach points to be deducted until the participant reaches zero points.

The maximum allowable number of points a participant subject to a PSO or indicated sentence may accrue is 10 points. If a participant reaches the breach point limit on the first occasion, a custody sanction of seven days is applied. After serving this period of time the participant returns to the Drug Court Program with a breach point tally of three. If a participant reaches the breach point limit for the second occasion, a custody sanction of seven days is

also applied but at the end of that period, the matters are listed in court and arguments for and against termination from the Drug Court are heard.

Maintaining a zero point score indicates that a participant is doing well on the program. A participant will be removed from the program if he/she subverts or tampers with urine tests. A participant may also be removed if he or she is considered to be “playing with their points”.

### **3.14 Is a medical certificate needed if the participant is unwell?**

Breach points for failing to provide a urine sample or for missing an appointment will be given unless a satisfactory medical report is provided to the magistrate. A medical report provided to the Perth Drug Court must say that the doctor is aware that the participant is currently on a Drug Court program and why the participant was unable to provide a urine sample or attend an appointment. A medical report that does not provide this information will not be accepted and the breach points will apply.

### **3.15 Does the Perth Drug Court do urine tests?**

Participants' urine will be tested for all legal and illegal drugs. Participants are on a Perth Drug Court program to make changes in their lives and to stop relying on substances. This means if a participant continues to test positive for alcohol the participant will have to speak to the Drug Court and CATS about it and may be asked to attend different counselling sessions. Participants will accrue breach points for alcohol readings.

Any subverting or tampering with urine tests will result in the immediate removal from any of the Perth Drug Court programs. If three consecutive urine tests are missed an arrest warrant may be issued.

### **3.16 Can a participant use cannabis/benzodiazepines/psychostimulants while on Perth Drug Court?**

A participant's urine will also be tested for cannabis, benzodiazepines and various psychostimulants that may be legitimately prescribed. In order to participate in a Drug Court program, participants are expected to stop using these substances. The Drug Court team will support participants in engaging with appropriate practitioners and treatment to help a participant to cut down and then stop using those substances and medications. For personal

safety, it is important that participants who are using significant quantities of those substances decrease and detoxify from that use under medical management.

If it is medically impractical or medically inappropriate to cease use of benzodiazepines or other substances that may be subject to misuse or abuse, the Drug Court will likely deem the person as unsuitable for continued assessment or inclusion in a Drug Court program. In those instances, the individuals are encouraged to continue in treatment for their own wellbeing but are unable to do this under the auspices of the Perth Drug Court.

After consultation with the Drug Court team a cannabis and/or benzodiazepines end date will be set by the magistrate. Use of cannabis or benzodiazepines after the end date will incur breach points and continued use may affect the ability of the participant to continue in the Perth Drug Court.

A participant will expect to incur a half breach point for continued use of cannabis or benzodiazepines after the end date. If the participant tests positive to other illicit substances, they can expect to incur one point as opposed to the half point.

If the participant tests clear for cannabis and/or benzodiazepines and then begins to use either of these substances again, they can expect to incur one full breach point.

### **3.17 What is the benefit of having a low point score compared to a high one?**

#### **a) Low Point Score**

Finishing the program with a low or zero point score indicates to the court and the participant that he/she is able to follow court orders and has made serious changes to his/her lifestyle.

The court may decide that the participant's indicated sentence is no longer appropriate and that a lesser sentence has become more appropriate. In most such cases a lesser sentence than the indicated sentence will be imposed by the court.

Participants must have a zero point score before they can move from one phase to the next.



### **b) High Point Score**

Finishing with a high point score indicates to the court and to the participant that he/she may not have performed as well in the Perth Drug Court as may have been expected. It does not represent failure and it could mean that the participant's life is too chaotic to cope with a treatment program. In most cases the indicated sentence or a sentence close to the indicated sentence will be imposed.

### **c) Key to the Point System**

<b>ACTION</b>	<b>EXPECT</b>
Continued cannabis and/or benzodiazepines use after the end date	+1/2 point
Cannabis and/or benzodiazepines use after previously testing clear of these substances	+ 1 point
Low creatinine levels in urine (1 <sup>st</sup> offence)	Warning
Subsequent low creatinine levels in urine	+1 Point
Positive return of alcohol in urine	+1 Point
Positive Urine	+1 Point
Submitting a cold urine	+ 3 Points
Missing an Appointment	+1 Point
Failing to attend to provide a urine sample	+2 Points
Attending, but failed to provide a urine sample (3 chances)	+1 Point
All appointments & clean urine tests	-2 Points

Breach Curfew (No Police Charge)	+1 Point
Breach Bail	Charges and/or +1 Point
Subverting or Tampering With Urines	Automatic Removal from Perth Drug Court

### 3.18 What are the Perth Drug Court Treatment Principles?

The Perth Drug Court provides an opportunity and structure for persons experiencing drug related problems to engage in a comprehensive treatment process to address their drug use. The Perth Drug Court takes a collaborative approach, working with the participant in the formulation of a treatment plan.

The aim is to empower the participant. Direct involvement of the participant in discussions affecting them is encouraged at every point. The Perth Drug Court works closely with a broad range of specialist drug and alcohol treatment services and other treatment and support services to assist participants to access and engage with appropriate treatment and support relevant to their needs at any given time. The Perth Drug Court team will assist and support the participant in their efforts in treatment; however, the onus remains on the individual participant to apply themselves to engaging with services that would be appropriate to their treatment, irrespective of their involvement with the Perth Drug Court. The structure and case management provided by the Perth Drug Court is able to provide the participant with a coordinated and intensive approach to treatment that will contribute to the opportunity for the participant to establish and maintain long term strategies of avoiding problematic illicit substance use and criminal offending.

The Perth Drug Court assists participants in identifying treatment and support opportunities through a comprehensive assessment undertaken by CATS in consultation with treatment and support service providers. Consistent with best treatment and case management practice, the treatment and supports are monitored by the Perth Drug Court team, including

the individual participant, with assessment an ongoing process to promote optimum treatment outcomes.

### **3.19 Drug Court Graduations**

Successful completion of Phase 3 of the program on zero points will result in graduation from the Drug Court. Ordinarily, the final sentencing, followed by the graduation ceremony, will take place at the same time. Graduations are likely to be called first in the list so that others in court can share in the success of the program. Participants are very welcome to invite family, friends and other supporters to this occasion. Usually an official photograph of the participant with the magistrate and other members of the Drug Court team is taken to record the moment, however the taking of photos by family or other members of the public is not permitted.

### **3.20 Couples or Co-Accused**

Generally the Drug Court team will be hesitant to manage couples or co-accused within the Drug Court environment. While not a criteria to exclude potential participants, the discretion to manage couples or co-accused within the Drug Court lies with the Drug Court magistrate in consideration of the recommendations made by the supervising CATS officers. Individuals within a relationship are required to focus upon their own individual needs during their Drug Court engagement and this becomes problematic when the need to support a partner arises during the same period.

It becomes problematic for the duty lawyer when co-accused are appearing in the Drug Court because each participant requires separate counsel. This is a resourcing issue for Legal Aid within the Drug Court.

These issues will be considered by the Drug Court Magistrate when determining whether couples or co-accused may jointly participate in a Drug Court program.

### **3.21 Waitlist Policy**

#### **Intent**

The Perth Drug Court seeks to engage with as many suitable participants as it can within its given resources. For instances where the available resources of the Perth Drug Court dictate that the court has reached its case management capacity, an open and accountable method of prioritising, maintaining and engaging potential participants who have been referred to the

Perth Drug Court is required. The intent of a waitlisting policy is to ensure that participants are managed in a transparent and informed manner when the Drug Court is operating at its capacity.

This policy does not restrict the ability of the Perth Drug Court Magistrate in exercising judicial discretion in prioritising access to the Perth Drug Court. CATS management may, at their discretion, manage offenders beyond the recognised case management capacity.

### **Scope**

The waitlisting policy applies to all referred participants to the Perth Drug Court who cannot immediately be assessed due to capacity restraints. The policy includes referrals from all magistrates courts as well as the superior courts.

### **Policy**

If the Perth Drug Court is operating at its current indicative capacity of 90 participants, the court will continue to accept referrals from all referral sources until such point as the Drug Court team considers the size of the waitlist unmanageable, at which point all referrals will be suspended.

For offenders who are referred to the Perth Drug Court where no immediate opportunity for placement on a program exists, offenders will be remanded on a fortnightly basis to appear in the Perth Drug Court on Tuesdays. For the purpose of clarity, such offenders are waitlisted pending an opportunity to gain access to a Drug Court program. During that period, the offender will not be managed within the Perth Drug Court environment and bail will be set (if granted) outside of the case management process. If bail is not granted pending assessment for suitability to the Perth Drug Court, remands will be for one week, and as necessary, continued on a weekly basis while on the waitlist. Such appearances will be by video link. As Drug Court is a voluntary program, offenders retain the right to opt not to be retained on a waitlist and proceed to standard court case processing outside of the Drug Court.

The Perth Drug Court waitlist will be managed by the Drug Court JSO who will email the Drug Court Team with the status of the list each Tuesday whilst the list is in operation. The current

CATS case load is emailed to the Drug Court Magistrate every Friday in order to gauge what, if any, places are available for new applicants during the following week.

The waitlist does not operate solely on a first come basis. Priority is given to engaging offenders on the waitlist as follows;

**Priority 1 (Defendants in Custody)**

Those defendants who are in custody regardless of referral source, depending on the applicant's risk and needs circumstances.

**Priority 2**

All other referrals on a first-come basis, depending on the applicant's risk and needs circumstances.

Prospective participants placed on a waitlist may choose to withdraw their application for the Drug Court program and proceed to sentencing within standard case processing. An offender who does not return to court when required or breaches their bail may be removed from the waitlist and no longer considered for an assessment at that time as to suitability for a Drug Court Program and must re-apply.

## **4. PROGRAMS OFFERED BY THE PERTH DRUG COURT**

### **4.1 Conditional Drug Court Regime - DCR**

The Conditional Drug Court Regime is a program for offenders who are not eligible for a PSO. Offenders undertaking this program are managed while on conditional bail for periods of up to six months after entering pleas into their matters.

Participants who are recommended for this program are usually facing serious charges, have criminal records and have a history of drug related problems. Under a DCR, sentencing is delayed for up to six months after the plea of guilty to allow the participant the opportunity to participate in the Perth Drug Court.

The Conditional Drug Court Regime involves the following:

- a signed contract for a six month program
- the participant setting goals and strategies for his/her time in the Perth Drug Court and presenting them to the Court
- to abide by strict bail conditions including residence and curfew
- appearances in the Perth Drug Court each week or as instructed by the magistrate
- urine testing each week as directed by a CATS Officer
- attendance at counselling sessions as directed by a CATS Officer
- compliance with the directions of a CATS Officer and the Perth Drug Court team. If a participant has charges before the District Court or the Supreme Court, a CATS officer will provide a report to the judge outlining the participant's progress in the Perth Drug Court.

#### **4.2 Probationary Drug Court Regime - PDCR**

The Probationary Drug Court Regime refers to the management of participants who have been accepted onto any one of the Perth Drug Court programs but who are awaiting ratification from the District or Supreme Courts before which the charges must be dealt.

#### **4.3 Pre-Sentence Order - PSO**

Participants who are placed on a PSO have pleaded guilty to charges for which a term of imprisonment would otherwise be imposed. A PSO allows the court to delay sentencing for up to two years to allow the participant to address factors which have contributed to criminal behaviour. Compliance with, and good progress on, a PSO, may allow the court not to impose a term of imprisonment.

A Perth Drug Court PSO is generally 12 months long and strict bail conditions are imposed upon participants during this time. The PSO consists of three phases with decreasing frequency of court appearances, urine testing, counselling and curfew.

Participants in **Phase One** of a PSO (Action Phase) will typically be required to:

- reside at a nominated address
- attend weekly court appearances
- undertake urine testing three times a week (Monday, Wednesday and Friday)
- weekly counselling as directed by CATS

- weekly supervision by CATS
- abide by a 9pm - 6am curfew that is regularly and randomly checked for compliance

Phase One participants are generally working towards stabilising their situation and beginning to abstain from illicit substances.

Participants in **Phase Two** of a PSO (Growth Phase) will typically be required to:

- attend the Perth Drug Court on a fortnightly basis
- undertake urine testing twice a week
- continue to undergo counselling as directed by CATS
- continue to abide by a curfew from 11pm
- have other bail conditions re-considered

The emphasis for Phase Two participants is on education, vocation and personal development.

Participants in **Phase Three** of a PSO (Stability Phase) will typically be required to:

- attend the Perth Drug Court on a three weekly basis
- maintain general health and wellbeing
- address any major life issues

The emphasis for Phase Three participants is on maintaining stability and abstinence within the community. As with the Perth Drug Court, the Perth Drug Court team will hold case review meetings prior to each participant's Drug Court appearance.

In the event a participant pleads guilty to a charge involving re-offending while on a PSO the matter may proceed to a termination argument. In the event of the PSO being imposed by a superior court the participant will be committed back to the superior court to enable the sentencing judge to consider whether it is appropriate to cancel the PSO or to permit continuation on the Drug Court program.

At the conclusion of the PSO (usually on the nominated sentencing date) a CATS officer will provide a report to the court that imposed the PSO outlining the progress made by the participant.

## 5. PERTH DRUG COURT TIMETABLE

Monday	Tuesday	Wednesday	Thursday	Friday
<b>10.00am</b> Returns of Assessment	<b>9.00am</b> Information Session  <b>10.00am</b> Application Day	<b>9.00am</b> Drug Court Team Case Management Review Mtg  <b>11.00am</b> General Review List and Graduations  <b>2.15pm</b> Afternoon List	Non-Drug Court Sentencing List	<b>9.00am</b> Drug Court Team Case Management Review Mtg  <b>11.00am</b> General Review List and Graduations  <b>2.15pm</b> Reserved to accommodate participants who work

### Notes

- General reviews have the status of court listings in the Perth Drug Court. Attendance is compulsory and reviews will begin at the listed time.
- Perth Drug Court operates on boundaries and judicial case management. In case reviews and administrative meetings, matters are conducted on a first name basis wherever appropriate. Participants are not to refer to the Drug Court Magistrate by their first name at any time. Participants must address the Drug Court Magistrate as “Your Honour”.



## 6. PROFESSIONAL GUIDELINES

### 6.1 Admission

#### **a) First Appearance - Referring Court**

- An accused may ask to be referred to the Perth Drug Court if he or she satisfies the following basic criteria. He or she must :
  - have an illicit drug dependency
  - indicate an intention to plead guilty to all matters
  - be willing to participate in treatment
  - not be precluded from applying as outlined within section 3.6 of this document
- If the accused is likely to satisfy these basic criteria, they should be remanded on all matters to Perth Drug Court on the next Tuesday, allowing for four clear business days where they will be required to attend the information session, primarily run by CATS staff, which begins at 9am sharp in Court 35.
- 
- If the referral is not made from a court in the Magistrates Court at Perth the matter should be placed on the 'transfer in' list.
- Existing bail or a remand in custody need not be reconsidered by the referring court unless a change of circumstance has arisen. A referral to the Perth Drug Court is not a change of circumstance nor an exceptional circumstance that may trigger a reconsideration of bail.

#### **b) Until the Applicant is Formerly Accepted onto a Regime – Perth Drug Court**

- All applications for assessment for the Perth Drug Court will be determined by the Drug Court magistrate after hearing all parties. The Perth Drug Court will be adversarial for this first appearance. The prosecution can make submissions in relation to the suitability of the applicant for the Perth Drug Court. Defence counsel can make submissions as to why the applicant should be offered the opportunity to take part in the Perth Drug Court and as to the prosecution's objections.

If the application is successful the participant will be placed on assessment.

- All parties may make submissions in relation to bail. If bail is not granted assessment will take place in custody and the participant will generally be remanded for 4 to 5 weeks to allow an in custody assessment to be made.
- If bail is granted, assessment will occur in the community and the participant will generally be remanded for four to five weeks to allow the assessment to be conducted by CATS. The conditions of bail (if appropriate) will be:
  - residential and curfew (9pm–6am) conditions
  - report directly to CATS after court
  - provide urine for analysis as directed by CATS
  - comply with all lawful directions of CATS
  - carry photo ID at all times
  - not to drive without a valid driver's licence
  - not to engage in pawnbroking or second-hand dealing without first obtaining the permission of the Drug Court prosecution sergeant; and
  - other conditions as required.
- If the participant fails to comply with the conditions of bail that are set, the prosecution will bring the matter before the Perth Drug Court as per a form 6 application or by way of charge under s51 of the *Bail Act 1982*.
- If in the assessment period the participant fails to indicate any motivation or intention to comply with the conditions that are set by CATS then they will not be eligible for a further assessment for the Perth Drug Court program for that period unless exceptional circumstances apply.

### **c) Other Matters Relevant to Admission to the Perth Drug Court**

- The Perth Drug Court operates out of the Perth Magistrates Court. As such, a participant must be willing and able to relocate to the metropolitan area.
- A participant must indicate a plea of guilty to each charge that is being referred. This means for:
  - *summary matters*: an endorsement of an undertaking to plead guilty must be noted on each prosecution notice. The plea must be entered as early as

possible, however a plea entered after legal advice/negotiation with the prosecution will be considered to be an appropriate guilty plea

- *indictable matters*: an undertaking to enter a plea of guilty must be given and noted on the prosecution notice. The sentence mention date should not be set; it will be set when the participant appears in the Perth Drug Court. Referral protocols for Supreme Court and District Court are detailed in sections 7.2 and 7.3 of this document.

- A participant must have an illicit drug dependency.
- There is no requirement for a direct connection between the use of illicit drugs and the facts of the offence under consideration.
- Schedule 2 *Bail Act* offenders are not precluded.
- It is Perth Drug Court practice **not** to accept referrals where the only appropriate or available option is a CSI, i.e. where all referral offences were committed while the offender was on a parole, home detention, work release or re-entry release order, or during the suspension period of a suspended term of imprisonment imposed for another offence (excluded offences).

A referral **may** be accepted if the individual circumstances suggest that a Conditional DCR may adequately address the participant's needs. Where an applicant for Drug Court also presents with referral offence/s which were not committed in excluded circumstances a PSO may be considered if sentencing for the excluded offences is not problematic.

- An accused who must receive a sentence of immediate imprisonment regardless of completion of a Perth Drug Court program will not be admitted. (e.g. a third-strike offender)
- An accused who has serious psychopathology or very serious personality problems and psychiatric issues that require ongoing intensive psychiatric or psychological intervention will not be admitted.
- An accused who has a criminal history of actual violence or sexual assaults that would indicate that the offender is unsuitable for residential treatment or pose a risk to the safety of any member of the Perth Drug Court Team or its service providers will not be admitted.

- A participant of the Perth Drug Court cannot participate in another specialist court regime while remaining in the Perth Drug Court.
- The Perth Drug Court requires that all existing charges that a Drug Court participant is facing be before the court at the time of the application in order to properly consider eligibility for participation.
- The Perth Drug Court will deal with summary traffic charges at the time when a participant is placed on a Drug Court program or is sentenced for other matters. Sentencing may be deferred if the performance on the Perth Drug Court program will directly impact on the appropriate penalty for the summary traffic matter e.g. breaches of existing CBOs, ISOs or suspended terms of imprisonment.

#### **d) Additional charges should be referred to the Perth Drug Court**

The Perth Drug Court needs to know about all of the charges that a Drug Court participant is facing to ensure that no re-offending is occurring while the participant is on the program. Therefore, all new charges should be referred directly to the Perth Drug Court even if they do not fit within the Drug Court criteria. If it is inappropriate for the Perth Drug Court to deal with the charge then the matter will be referred back to the referring court. This will ensure that the Perth Drug Court is aware of all matters.

If in its discretion a metropolitan or regional court considers it to be inappropriate to refer an existing complaint to the Perth Drug Court, then the judicial support officer of the metropolitan or regional court should advise the Drug Court Listings personnel at the Perth Magistrates Court of the charge so that the Perth Drug Court is aware of all of the matters relating to the participant.

## **6.2 Protocols for Referral of Matters by the Supreme Court to the Perth Drug Court**

The following protocols set out the procedure to be followed where an accused with indictable matters before the Supreme Court wishes to take part in the programs offered by the Perth Drug Court.

It is not intended to fetter the discretion of the sentencing judge in any way.

### **a) Referral for Assessment**

It is necessary for an accused who wishes to participate in the programs offered by the Perth Drug Court to first be assessed by that court to see if they are suitable for inclusion in those programs.

An accused may be referred from the Supreme Court to the Perth Drug Court for assessment if the following conditions are satisfied:

- the accused must plead guilty or give a clear indicated plea of guilty as early as possible in the proceedings to all charges. Referral is not open to persons convicted after trial or persons wishing to plead not guilty to some charges
- the accused must request a referral to the Perth Drug Court for assessment of their suitability for inclusion in the Perth Drug Court program
- there should be no precluded charges before the court. (see section 3.6 of this document)
- an accused should not be referred to the Perth Drug Court unless the imposition of a sentence other than immediate imprisonment could realistically be considered as appropriate by the sentencing judge following successful completion of the Perth Drug Court program.

### **b) Referral Procedure**

An accused can initiate a request for a Perth Drug Court assessment by asking to have the matter adjourned to the Perth Drug Court at the earliest possible time, having regard to their need to take proper advice as to the charges.

- The request should be made in the first instance to the presiding magistrate at the Stirling Gardens Magistrates Court or to the Judge in the sentencing list.
- If the basic conditions for referral listed above are satisfied the presiding judge or magistrate may refer the matter to the Perth Drug Court for assessment. The DPP must be given the opportunity to be heard as to whether admission to Perth Drug Court is opposed before the charges are referred.

- When a matter is referred the prosecution notice/s should be marked 'referred to Drug Court for PSR-Assessment' and all charges should be adjourned to the Perth Drug Court on the following Tuesday at 9am but allowing for four clear business days.
- The DPP should arrange for the Drug Court magistrate to be provided with transcripts and other relevant materials as soon as possible.
- If the accused is not in custody and going to reside at a private residence then bail should be set to include the following conditions:
  - to report and comply with all conditions set by the Perth Drug Court Magistrate and other specific conditions, such as a non-contact condition, that were bail conditions prior to the PSO being imposed
- If the accused is not in custody and going to reside at a residential facility then bail should be set to include the following conditions:
  - to report and comply with all conditions set by the Perth Drug Court Magistrate
  - any other specific conditions, such as a non-contact condition, that were bail conditions prior to the PSO being imposed

### **c) Assessment Process and Acceptance onto the Perth Drug Court**

The accused will undergo Drug Court assessment on bail or in custody as soon as an assessment place is available. At the end of the assessment period (generally four to six weeks) a comprehensive report will be provided to the Drug Court magistrate who will determine whether the accused is to be accepted onto the Perth Drug Court. The accused and the DPP (through the WA Police Prosecutor) will be given the opportunity to be heard.

If the accused is accepted onto the Perth Drug Court they will be given a place and be closely monitored by the court in the usual way, pending the formalisation of the PSO by the Supreme Court. This means that the breach point system will apply and a case management plan will be prepared. The applicant will be required to attend Perth Drug Court weekly. In the interim a remand date will be set in the Supreme Court so that the judge can give consideration to making a PSO to be supervised by the Perth Drug Court.

If the accused is not accepted, the Drug Court Magistrate will discontinue the assessment process and remand the accused back to the Supreme Court for sentence.

#### **d) After Assessment - Subsequent Appearances before the Supreme Court**

When the accused next appears before the Supreme Court, the Court will have before it a written assessment report from CATS (Court Assessment and Treatment Service), which will include details of urinalysis history, any psychological screening and any other matters affecting the accused's suitability for participation in the Perth Drug Court.

The judge will determine whether a PSO to be supervised by the Perth Drug Court is appropriate, or whether some other disposition is required.

The judge may:

- place the accused on a PSO
- remand the matter further for an update from the Perth Drug Court before determining whether a PSO is appropriate;
- sentence the accused in the usual way

If the accused is placed on a PSO the judge sets a sentencing date and orders the accused to comply with the program conditions of the Speciality Court (Drug Court) pursuant to section 33G(2) of the *Sentencing Act 1995*. There should be a further condition that the accused appear in the Perth Drug Court on 'x' day and thereafter as ordered by the Drug Court magistrate. Bail should also be set in the conditions as set out earlier in this section.

The judge may choose to also set PSO review dates for the accused before the Supreme Court pursuant to s33C (2) *Sentencing Act 1995*

The DPP will forward a copy of the transcript of proceedings to the Perth Drug Court.

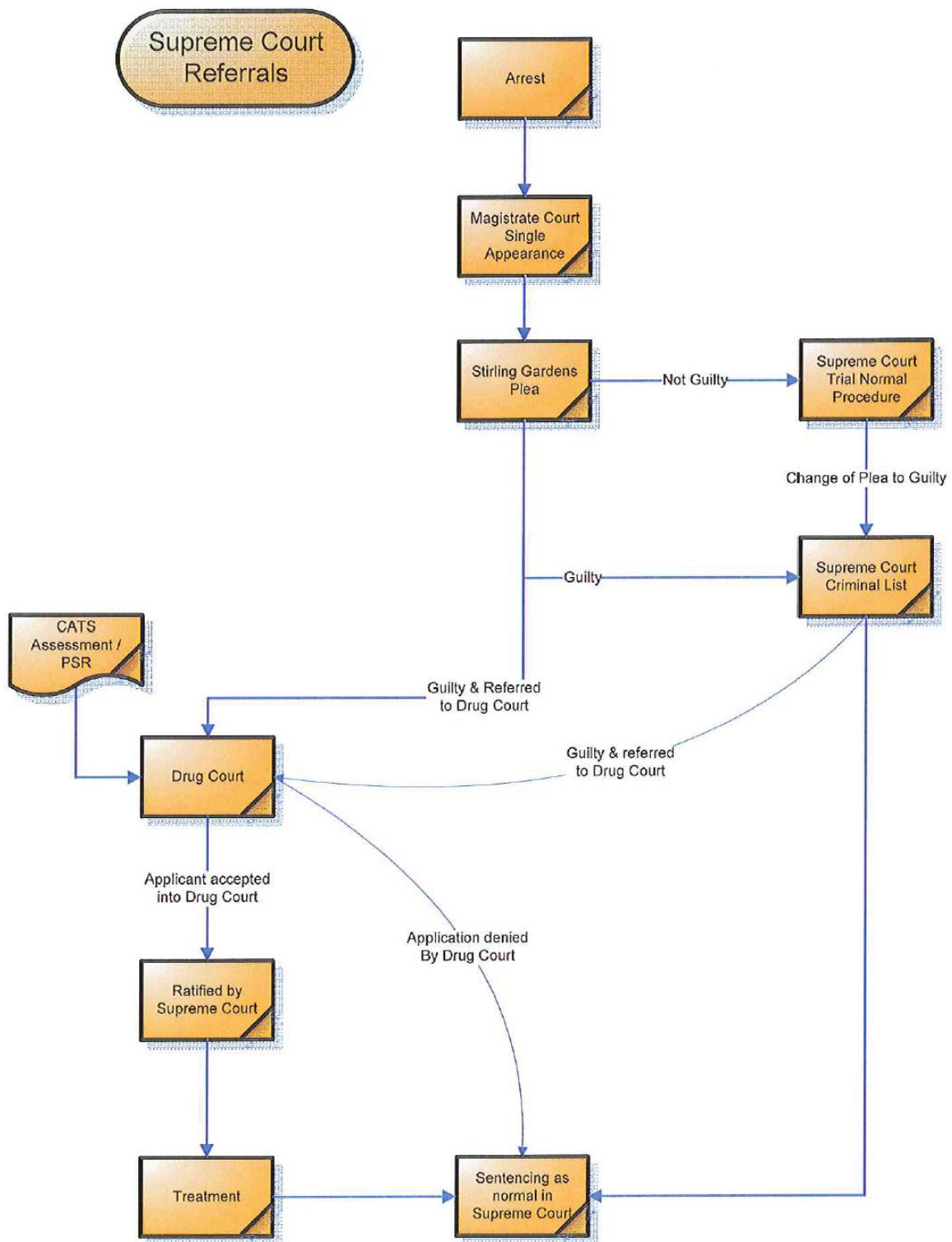
#### **e) Report from the Court Assessment and Treatment (CATS) Officer**

A CATS officer will write a report for the Supreme Court judge on appearance dates in that jurisdiction in order to indicate the progress of the participant in Drug Court and indicate whether ongoing engagement in the program is supported. A copy of that report will be

provided to the Prosecution (DPP and Drug Court police prosecution), the Drug Court magistrate as well as the Drug Court duty lawyer.

If a participant is dishonest in their dealings with any member of the Perth Drug Court Team their participation in the Perth Drug Court may be discontinued. The most serious form of dishonesty in the Perth Drug Court remains the act of subverting or tampering with the process of urine testing. If a participant has subverted or tampered with a urine sample, then participation in the Perth Drug Court will be discontinued so as not to undermine the ongoing integrity of the urinalysis process.





### **6.3 Protocols for the referral of matters by the District Court to the Perth Drug Court**

The following protocols are intended to set out the procedure to be followed where an accused with indictable matters before the District Court wishes to take part in the programs offered by the Perth Drug Court. It is not intended to in any way fetter the discretion of the sentencing judge. It is necessary for an accused who wishes to participate in the programs offered by the Perth Drug Court to first be assessed by that court to see if they are suitable for inclusion in those programs. An accused subject to sentencing in the District Court may be considered for referral to a Perth Drug Court program either by:

- application within the Magistrates Court prior to being remanded to the District Court for sentencing; or
- initial referral for assessment by the Perth Drug Court instigated directly by the District Court judge at a sentencing hearing. Alternatively, in a case where an accused has pleaded not guilty in the Magistrates' Court and is committed for trial to the District Court but pleads guilty in the District Court and requests a referral to the Perth Drug Court for assessment.

Referral is not open to persons convicted after trial or persons wishing to plead not guilty to some charges that are either new to or currently in the justice system. Referral is also not open to persons breaching a conditional suspended imprisonment order or suspended imprisonment order.

#### **a) Referrals for Assessment**

To be referred from the District Court to the Perth Drug Court as a result of a sentence mention date appearance an accused must satisfy the following conditions:

- the accused must plead guilty in the Magistrates Court so that a sentence mention date is set
- the accused must request a referral to the Perth Drug Court for assessment of his or her suitability for inclusion in the Drug Court program
- there should be no precluded charges before the Court. (see section 3.6 of this document)
- an accused should not be referred to the Perth Drug Court unless the imposition of a sentence other than immediate imprisonment could realistically be considered as

appropriate by the sentencing judge following successful completion of the Perth Drug Court program

**b) Bail during the period prior to the committal for sentence date**

During the remand period before the sentence mention date, the accused may be remanded in custody or released on bail. If released on bail then:

- if the accused faces both indictable and summary charges, then the usual bail conditions will be set with a remand back to the Perth Drug Court on the summary matters. A bail undertaking with a surety requirement (if appropriate) is set for the District Court matters.

The standard bail conditions are set out as follows:

- to report and comply with all conditions set by the Perth Drug Court Magistrate
  - any other specific conditions, such as a non-contact condition, that were bail conditions prior to the referral
- 
- if the accused is not in custody and going to reside at a residential facility then bail should be set to include the following conditions:
    - to reside (*insert name of residential facility*) and not to leave the facility unless under authorised instruction from a CATS officer or instruction of the Perth Drug Court
    - in addition, to report and comply with all conditions set by the Perth Drug Court magistrate
    - any other specific bail conditions, such as a non-contact condition, that were bail conditions prior to the referral

(If the accused is remanded in custody then a bring-up order for the Perth Drug Court remand date should be made).

- If the accused only has indictable charges then the Perth Drug Court bail conditions will attach to those charges. The bail conditions will be reconsidered on each appearance in the Perth Drug Court prior to the appearance in the higher court for arraignment.

### **c) Obligations during the remand period prior to the sentence mention date**

The accused will undergo Drug Court assessment on bail or in custody. If the accused is deemed suitable, the Perth Drug Court will place the accused on a probationary Drug Court contract until the sentence mention date appearance. This means that a breach point limit will be set and a case management plan will be started. The applicant will be required to attend court weekly.

If the accused is deemed unsuitable, the Perth Drug Court will discontinue the assessment process and remand the accused to the sentence mention date for sentence.

### **d) Sentence mention date appearance**

The accused will appear before the District Court in a sentence mention list. The court will have before it a written assessment report from CATS which will include details of urinalysis history, any psychological screening and any other matters affecting the accused's suitability for participation in the Perth Drug Court.

At the sentence mention date the matter will be adjourned before a judge for sentence. The judge will determine whether a PSO to be supervised by the Perth Drug Court is appropriate, or whether some other disposition is required.

The judge may:

- place the accused on a PSO
- adjourn the matter further for an update from the Perth Drug Court before determining whether a PSO is appropriate
- sentence the accused in the usual way

If the accused is placed on a PSO the judge sets a sentencing date for typically 12 months' time and orders the accused to comply with the program conditions of the Speciality Court (Drug Court) pursuant to section 33G(2) of the *Sentencing Act 1995*. Charges that may be dealt with summarily should remain in the Perth Drug Court so that conditions of residence, curfew and court dates can be set. There should be a further condition that the accused appear in the Perth Drug Court on 'x' day and thereafter as ordered by the Drug Court magistrate.

The judge may choose to also set PSO review dates for the accused before the District Court pursuant to s33C (2) of the *Sentencing Act 1995*.

#### **e) Referrals to the Perth Drug Court instigated by the District Court**

For matters where referrals to the Perth Drug Court are instigated by the District Court without the accused having been previously considered within the committal for sentence system, it remains necessary for an accused who wishes to participate in the programs offered by the Perth Drug Court to first be assessed by that court to see if they are suitable for inclusion in those programs

#### **f) Referral Procedures**

An accused can initiate a request for a Perth Drug Court assessment by asking to have their charges adjourned for a Pre-Sentence Report for the District Court. The report will be prepared by CATS after the accused has undergone a Perth Drug Court assessment as to suitability for the Perth Drug Court. The accused will return to the Perth Drug Court at the earliest possible time having regard to their need to take proper advice as to the charges.

- The request should be made in the first instance to the presiding Judge
- If the basic conditions for referral listed above are satisfied the presiding Judge may refer the matter to the Perth Drug Court for assessment by way of a request for a pre-sentence report. The DPP must be given the opportunity to be heard as to whether admission to the Perth Drug Court is opposed before the charges are referred.
- When a matter is referred the indictment file should be marked 'referred to Drug Court for 'PSR - Assessment' and all bail should be set to the Perth Drug Court on the following Tuesday at 9am. A District Court remand date of at least 6 weeks from that date should also be set to enable the Court to receive the Perth Drug Court assessment report.
- If the accused is not in custody and intends to live at a private residence then bail should be set to include the following conditions:
  - to report and comply with all conditions set by the Perth Drug Court Magistrate
  - any other specific conditions, such as a non-contact condition that were bail conditions prior to referral

- If the accused is remanded in custody then a video-link order for the Perth Drug Court remand date should be made

### **g) Assessment Process and Acceptance onto the Perth Drug Court**

The accused will undergo Drug Court assessment on bail or in custody as soon as an assessment place is available. At the end of the assessment period a comprehensive report will be provided to the Drug Court magistrate who will determine whether the accused is to be accepted onto the Perth Drug Court. The accused and the DPP (through the WA Police prosecutor) will be given the opportunity to be heard.

If the accused is accepted onto the Perth Drug Court they will be given a place and be closely monitored by the court in the usual way pending the formalisation of conditional bail by the District Court. This means that the breach point system will apply and a case management plan will be prepared. The applicant will be required to attend Perth Drug Court weekly. In the interim a remand date will be set in the District Court so that the judge can give consideration to making a PSO to be supervised by the Perth Drug Court.

If the accused is not accepted the Drug Court Magistrate will discontinue the assessment process and remand the accused back to the District Court for sentence.

If a participant is dishonest in their dealings with any member of the Perth Drug Court team their participation in the Perth Drug Court may be discontinued. The most serious form of dishonesty in the Perth Drug Court remains the act of subverting or tampering with the process of urine testing. If a participant has subverted or tampered with a urine sample, then participation in the Perth Drug Court will be discontinued so as not to undermine the ongoing integrity of the urinalysis process.

### **h) Subsequent Appearances before the District Court**

Whether referral is instigated via the sentence mention date system or directly by the District Court, when the accused next appears before the District Court the Court will have before it a written assessment report from CATS which will include details of urinalysis history, any psychological screening and any other matters affecting the accused's suitability for participation in the Perth Drug Court.

The judge will then determine whether a PSO to be supervised by the Perth Drug Court is appropriate, or whether some other disposition is required.

The judge may:

- place the accused on a PSO
- adjourn the matter further for an update from the Perth Drug Court before determining whether a PSO is appropriate
- sentence the accused in the usual way

If the accused is placed on a PSO the judge sets a sentencing date for typically 12 months' time and orders the accused to comply with the program conditions of the Speciality Court (Drug Court) pursuant to section 33G(2) of the *Sentencing Act 1995*. Charges that may be dealt with summarily should remain in the Perth Drug Court so that conditions of residence, curfew and court dates can be set. There should be a further condition that the accused appear in the Perth Drug Court on 'x' day and thereafter as ordered by the Drug Court magistrate.

The judge may choose to also set PSO review dates for the accused before the District Court pursuant to s33C (2) of the *Sentencing Act 1995*.

If the matter is adjourned for further consideration without sentence then bail should include the following requirements for persons residing in a private residence:

- to report and comply with all conditions set by the Perth Drug Court magistrate;  
and
- any other specific conditions, such as a non-contact condition, that were bail conditions prior to referral

The DPP will forward a copy of the transcript of proceedings to the Perth Drug Court.

#### **i) Report from the Court Assessment and Treatment Service (CATS) Officer**

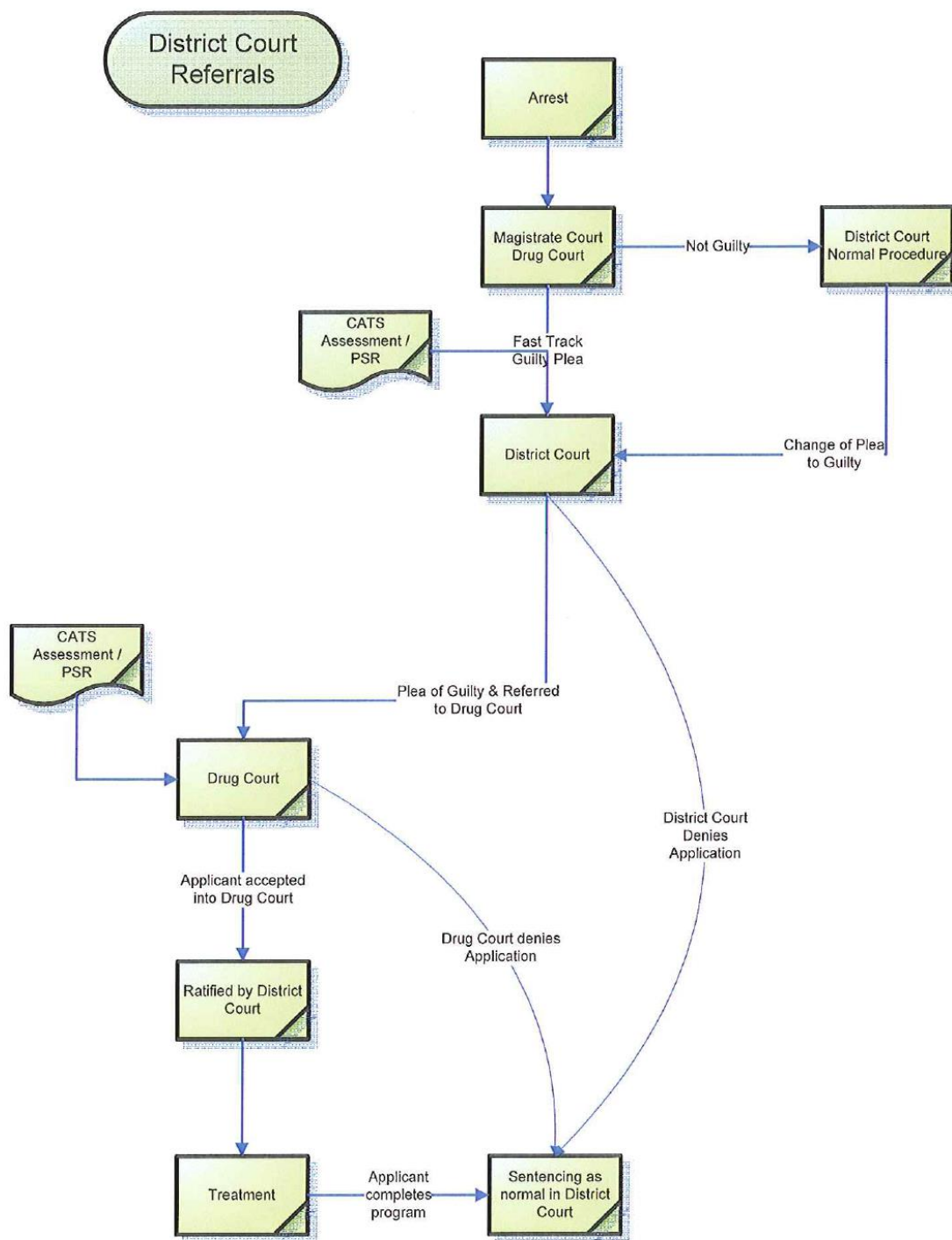
A CATS officer will write a report for the District Court judge on appearance dates in that jurisdiction in order to indicate the progress of the participant in Drug Court and indicate whether ongoing engagement in the program is supported. A copy of that report will be

provided to the Prosecution (DPP and Drug Court police prosecution), the Drug Court Magistrate as well as the Drug Court duty lawyer.

**j) Summary Matters**

Whenever possible, where related summary matters are running alongside District Court matters, it is requested that those matters be managed by the Drug Court magistrate on conditional bail within the summary jurisdiction.





## **6.4 DPP Guidelines**

As of November 2013, the DPP no longer supports the Drug Court through the appearances of articulated clerks on application days or in adversarial matters involving Drug Court matters for indictable matters. As of 28 July 2017, the Drug Court Police Prosecutor may exercise appropriate prosecutorial discretion in relation to a solely indictable prosecution. However, when the DPP takes over the conduct of a prosecution, the DPP retains discretion as to the charges upon which it proceeds and the factual basis alleged in relation to those charges.

The responsibilities of the Drug Court Police Prosecutor for participants with indictable offences are as follows:

### **a) Application for Drug Court (APDRUG)**

The first appearance in the Perth Drug Court will determine whether the accused is remanded for assessment for a treatment program.

- The Drug Court Police Prosecutor makes submissions as to the suitability for assessment for a drug treatment program for APDRUG referrals with indictable matters.
- A sentence mention date is set on the APDRUG appearance or if the offender has breached a higher court order an appearance in that court.
- If granted assessment in custody the remand will be for three to four weeks to a Monday return date. If a home detention report is requested from Adult Community Corrections, a 10 day remand in custody is likely. All persons remanded in custody will appear either in-person or by video link in the Perth Drug Court.
- If granted assessment on bail the remand will generally be for four to six weeks to a Monday return date.

### **b) Assessment (ASSESS)**

On the day of the assessment appearance, CATS will provide a report to the court based on the offender's performance during the remand period. The report will determine three outcomes for the offender being suitability for a Perth Drug Court program, requirement of further assessment, or deemed not suitable for Perth Drug Court.

- The DPP will receive a copy of the CATS report from the Drug Court prosecutor.
- The Drug Court prosecutor will make submissions regarding the outcome of the CATS report.

### **c) Treatment Program**

Once the accused has been assigned to a Perth Drug Court Program, the DPP will provide the Drug Court Prosecutor with guidance as to representing the DPP.

### **d) Sentence Mention Date (District Court Appearances)**

The DPP will make appropriate submissions to the judge in relation to the progress of the accused while on a Perth Drug Court program.

The supervising CATS Officer will submit a report to the District Court judge either verbally or in writing.

### **e) Sentencing in District Court**

The DPP will provide submissions to the District Court judge if necessary, based on the reports and final updates from the Drug Court Police Prosecutor.

## **6.5 Role Definitions**

It is important to note that the roles of all team members are not limited to the functions traditionally performed by their agencies. Accordingly, many other functions other than those noted below are performed on an “as needs” basis.

### **a) Court Staff**

#### **Judicial Officer**

A dedicated magistrate administers the Drug Court located in the Magistrates Court of WA at Perth. The magistrate has the primary responsibility:

- to make the final decision regarding the offenders eligibility for any program
- to make the final decision regarding the participant’s termination from the program
- to make the final decision regarding sentencing of summary offenders accepted into the Perth Drug Court
- to chair the Case Management Review team meetings and make final decisions regarding treatment
- to preside in all hearings of the Perth Drug Court and to interact with Perth Drug Court participants and all others involved in Perth Drug Court hearings

## **b) Legal Personnel**

### **Police**

- provision of the statement of material facts for matters before the court and information regarding criminal records, prior offences and outstanding charges to the court
- provision of information from operational police about participants to the court
- provide assistance in the preparation of matters, particularly in regard to the identification of outstanding offences and warrants, and to appear for the prosecution on all matters
- seeking of ancillary orders on matters such as compensation for victims, seizure of property from pawnbrokers, destruction of drug exhibits and violence restraining orders
- to monitor participants compliance with curfew orders
- participation in team meetings and in particular, to put to the team any relevant material from arresting police, victims and or family members of participants
- provision of information to the Offender Information Bureau about results of matters dealt with in the Perth Drug Court
- liaison between participants, treatment providers, case managers and police officers regarding outstanding offences, warrants, disposal of property held by police, and problems or complaints regarding individuals or particular areas of enforcement; and
- to provide training to police officers on functions and expected outcomes in relation to the Perth Drug Court

## **Director of Public Prosecutions**

The role of the Director of Public Prosecutions is outlined above in the section dealing with superior court protocols. In addition to those responsibilities, the DPP will ensure that appropriate bail conditions are set in superior courts and facilitate the flow of information from superior court proceedings to the Drug Court Police Prosecutor and other Drug Court agencies.

## **Drug Court Duty Lawyer**

The Drug Court lawyer is supplied to the Perth Drug Court by Legal Aid Western Australia.

The Drug Court Duty Lawyer fulfils the following role:

- to advise and represent clients in accordance with professional and ethical obligations. These obligations include:
  - to act in accordance with client instructions
  - to act in the client's best interests
  - to maintain the client's confidence
  - to assist the Court
  - to act as on officer of the court
- to advise and represent clients in a manner that is appropriate to the nature of the appearance (i.e. whether it is an **adversarial** or **non-adversarial** appearance.)
- to provide continuity in representation for the benefit of the client and the court and have knowledge of a client's background, treatment service providers and other referral agencies
- to liaise with private counsel where appropriate and to assist with Legal Aid applications

## ***Adversarial appearances***

- adversarial appearances will include the initial application for entry to Perth Drug Court, appearances during the assessment phase where inclusion in the court is not recommended, appearances for new charges, contested bail applications, breach of bail allegations, return of current warrants and applications for discontinuing in the Perth Drug Court

- an adversarial appearance requires that all issues concerning the client be raised and decided in open court, rather than being discussed by the Perth Drug Court team and agreed upon
- the lawyer must pursue issues in a manner which is consistent with the client's instructions and in their best interests. The personal views of the lawyer or other interested parties such as family, friends or other members of the Perth Drug Court team cannot dictate how the issues are presented unless they are consistent with the client's instructions
- the application of the lawyer's professional obligations in this setting may result in a conflict with the views of other members of the team, particularly relating to issues of appropriate accommodation and appropriate bail conditions (For example, CATS officers and police may have views which do not support the client's release on bail to a particular address, although the lawyer has been clearly instructed to apply for bail to that address).

### ***Non-adversarial appearances***

- in a non-adversarial setting, such as during regular appearances in court for Perth Drug Court participants and during team discussions, the focus is predominantly on treatment. As issues relating to bail and penalty are not being considered, the lawyer's role shifts towards the promotion and protection of the client's interests in the treatment context. This includes advocating for breach points not to be imposed or for their removal, asking for the re-testing of urine samples and presenting information to the team to assist in the overall management of the client's treatment
- as these issues generally do not affect the issues of bail or sentence, it is possible to maintain professional obligations without running into conflict with team members who have client treatment and rehabilitation as their primary focus
- be alert to issues of confidentiality and the extent to which, if any, client instructions may be shared with team members. This will usually only arise where instructions from the client contain potentially damaging information. While honesty with the team is encouraged, such information can only be disclosed to the team with the client's authority.

### **c) Court Assessment and Treatment Service (CATS)**

CATS officers are Senior Community Corrections Officers within the adult jurisdiction and Senior Youth Justice Officers within the juvenile jurisdiction, respectively. While the role of CATS is to directly support the operation of the Perth Drug Court, the specialist role is in the context of standard operational processes and requirements of the Department of Justice, Adult Community Corrections.

CATS carry out the initial assessment of offenders and makes recommendations to the court regarding suitability for inclusion in the Perth Drug Court and the appropriate intervention level. The initial CATS assessment includes all the functions of pre-sentence reports, with additional assessment advice specific to the requirements of the Perth Drug Court. Similarly, while the offender remains under assessment for inclusion in a Perth Drug Court case managed program, subsequent assessment reports prepared by CATS fulfil the “PSR Update” function, irrespective of the format of the CATS report to court.

If the Perth Drug Court denies an offender’s application for assessment for inclusion in a Perth Drug Court program, the Perth Drug Court magistrate applies standard case processing procedures that are required or applicable to any criminal court. If the Perth Drug Court magistrate accedes to the application to be assessed for inclusion in a Perth Drug Court program, the assessment is referred to CATS. The assessment includes the collection and collation of a broad range of relevant antecedent information pertinent to the offender, as applies with all PSRs. The assessment phase also includes the offender commencing a monitoring regime, inclusive of drug use screening via urinalysis. As part of the assessment process, case planning and interventions are started and /or maintained.

In considering the CATS assessment and any other information that has been provided to the court, the Drug Court magistrate makes a determination whether the applicant will be included in a Perth Drug Court program. If not, normal case processing and sentencing practices are applied. If the applicant is granted inclusion in a Perth Drug Court program, the participant progresses from the adversarial court processes to the collaborative judicial case management model that differentiates drug courts from traditional courts.

CATS directly support the judicial case management of the Perth Drug Court by retaining the primary responsibility for continued direct management of participants as begun within the assessment phase. It is expected that CATS facilitate and maintain management of negotiated services and programs for individual participants, monitor and advise the broader Perth Drug Court team of the participant's adherence to and progress with the court's requirements.

While providing a specialist service within a specialist court, CATS' role can generally be described as commensurate with the roles of Community Correction and Youth Justice Officers in the broader division, those being:

- direct service to the Perth Drug Court
- case manage offenders referred by the Perth Drug Court
- manage within the requirements of the organisation and particularly CYJ requirements
- maintain a high level of specialist knowledge and appropriate liaison with treatment and other service providers so as to provide an optimum level of service and advice to the range of stakeholders, not least of all, the offender and the community

#### **d) Community Treatment and Support Services**

In addition to the services provided above, the Perth Drug Court works closely with a broad range of community-based treatment and support services that afford specialist treatment and assistance to participants.

The specialist drug and alcohol treatment services include a number of agencies that ensure participants can access a treatment modality relevant to their needs in a timely manner. Other support services are provided by various agencies to address the needs of clients, consistent with the Perth Drug Court's holistic approach to treatment.

The agencies and services utilised by the Perth Drug Court provide services to all members of the community. The uniqueness of the Perth Drug Court is characterised by the breadth



of the case management provided, encompassing medical, psychological, social and economic considerations.

The co-ordinated approach of the Perth Drug Court is dependent on the capacity of treatment and support services to work closely with the Perth Drug Court team in establishing and maintaining protocols, practices and procedures relevant to the Perth Drug Court and its participants.

The treatment and support services are an integral part of the Perth Drug Court team. Service providers work closely with participants, ensure appropriate feedback and advice is provided to the team, and may attend court and case reviews to directly participate in team discussions and case management decisions.

#### **e) Victim Offender Mediation Unit**

The role of the Victim Offender Mediation Unit within the Perth Drug Court is to ensure that the Perth Drug Court recognises the rights of the victims of crime in accordance with the *Victims of Crime Act* (1994) when participants are dealt with by the Perth Drug Court.

The Victim Offender Mediation Unit specifically encourages participants to:

- accept responsibility for their crimes
- demonstrate sincere remorse for the consequences of their crimes
- demonstrate a respectful attitude toward the victims of their crimes and to the issues arising for victims as a consequence of those crimes
- consider options for involvement in mediation with the victim(s) of their crime(s) with the view to offering them an apology/explanation and appropriate reparation

The Victim Offender Mediation Unit also strives to give victims of crime:

- an opportunity for active involvement in the criminal justice process
- through mediation, an opportunity to discuss with a Drug Court participant the circumstances around the crime(s) committed against them and to explain the various impacts arising from that offending behaviour

The Victim Offender Mediation Unit will, when appropriate, contact victims of crime.

#### **f) Parent and Family Drug Support Line**

The Parent and Family Drug Support Line is part of the Alcohol and Drug Support Service at the Mental Health Commission and is a confidential 24-hour telephone counselling referral and information service designed specifically to meet the needs of parents and families of people who use alcohol or other drugs.

Parents and family members can receive information on drug use, its effects, appropriate responses, communication strategies, treatment services and local referral options, and talk confidentially to a professional counselor or a trained Parent Peer Volunteer who has experienced a child who has used drugs.

The Parent and Family Drug Support Line is a statewide service. Parents in regional areas are encouraged to call for immediate support through the toll-free line.

Drug Court Parent Peer Volunteers attend the Perth Drug Court during information sessions which are held on Tuesdays between 9-9.30am at the Drug Court. Drug Court Parent Peer Volunteers stay for the duration of the Drug Court session and are available to support parents and family members who may be at court in a supportive role to a significant other.

Any member of the Perth Drug Court team can refer a parent or family member of Perth Drug Court participants to the Parent and Family Drug Support Line.

<p><b>Parent and Family Drug Support Line</b> <b>9442 5050 /Toll Free (country) 1800 653 203</b></p>
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## **6.6 Parent and Family Drug Support Protocols and Procedures**

### **a) Referral Protocols**

- The Drug Court Parent Peer Volunteer will attend the Adult Drug Court Information sessions that are held on Tuesday mornings between 9am and 9.30am. It is expected the Drug Court Parent Peer Volunteer will stay for the duration of the Drug Court session and be available to support parents and family members. This may take three hours
- In the general information session, the Drug Court presenter may introduce the Drug Court Parent Peer Volunteer to the participants and their families, and invite people to take the opportunity to seek support and information
- The magistrate may introduce the Drug Court Parent Volunteer to the court room at the commencement of court proceedings and invite people to take the opportunity to seek support and information
- The Drug Court Parent Peer Volunteer can utilize the time after the information session between 9.30am and 10am to approach families and offer support. Parents and family members may be located in the waiting area outside Court 35 (Drug Court), within the Drug Court itself, or directly outside
- Drug Court Parent Peer Volunteers are reminded to be sensitive to the needs of others, and allow people privacy if support is not required
- If a family member requires support the Drug Court Parent Peer Volunteer may invite people to talk in private in the room directly outside Court 35 (Drug Court). If this room is not available, then the Drug Court Parent Peer Volunteer may take people into the Drug Court before the session starts
- If required, the Drug Court Parent Peer Volunteer may sit with family members while the Drug Court is in session and be supportive during the proceedings
- The Drug Court Parent Peer Volunteer may also give the parent or family member a wallet card so that they can call the service at a later time

### **b) Confidentiality**

- Parent and Family Drug Support is confidential and does not provide reports or keep identifying records of people accessing the service. The Drug Court Parent Peer Volunteers are required to obtain the consent of their clients before releasing identifying information
- Drug Court Parent Peer Volunteers will be trained in Drug Court Parent Peer Volunteer duties and expectations and sign a declaration of confidentiality before being placed on the Drug Court Parent Peer Volunteer's roster

### **c) Information Sharing**

- Drug Court Parent Peer Volunteers can offer information in regards to the purpose, process and the history of the WA Adult Drug Court. Rules, regulations and expectations of the court process may also be discussed.
- Drug Court Parent Peer Volunteers cannot provide legal information or legal advice to family members.
- Drug Court Parent Peer Volunteers may assist parents or significant caregivers to write a letter to the Drug Court magistrate.
- A parent or carer forwards this letter to the JSO who in turn provides copies to the magistrate and to the Drug Court participant. This may occur at any time while the participant is involved in a Drug Court program.

### **d) Court Support**

- Drug Court Parent Peer Volunteers can meet the parents, carers or extended family at the court on the day of court proceedings. Drug Court Parent Peer Volunteers can also sit with families in the public gallery and explain the Drug Court process.
- If required, Drug Court Parent Peer Volunteers may use a dedicated room in the courthouse to offer privacy and support families.

### **e) Expectations of Drug Court Parent Peer Volunteers**

- Respect court decisions: Drug Court Parent Peer Volunteers will respect the rules and regulations and not interfere in the process or decisions made by the court.
- Court Safety: Drug Court Parent Peer Volunteers are required to prioritise their own safety and are encouraged to use court security if feeling threatened or at risk of harm.

- Identification in court: Drug Court Parent Peer Volunteers are required to wear identifying Parent and Family Drug Support badges when in the Drug Court.
- Debriefing: Drug Court Parent Peer Volunteers are encouraged to call the Parent and Family Drug Support Line if they have concerns or wish to discuss a contact with a parent or family member. If more formal debriefing is required, the Parent and Family Drug Support Co-ordinator is able to provide a referral to the Employees Assistance Program offered through the Mental Health Commission.

#### **f) Referral from the Court Assessment and Treatment Service**

CATS Officers can refer any parent or family member requiring support in relation to a significant other's alcohol or other drug use to the Parent and Family Drug Support Line (94425050 or 1800 653 203 for country callers).

- At the first point of contact with a family (by telephone or in person), CATS officers assess whether a referral to the Parent and Family Drug Support Line is desirable and whether contact with a counsellor or a Parent Peer Volunteer is preferred
- The CATS officer can transfer the parent straight through to the Parent and Family Drug Support Line in order to facilitate immediate contact or invite the family member to call the service at another time
- CATS officers can complete a "Request for Call-Back" form to request a call back from a counsellor or Parent Peer Volunteer if the family member would like to receive a call-back from the service at later time
- On telephoning the Parent and Family Drug Support Line, the caller can opt to speak to a professional counselor or request to be transferred directly through to the Parent Peer Volunteer.