DRUG COURT OF NEW SOUTH WALES

|  |  |
| --- | --- |
| ***Policy 9*** | **Drug and Alcohol use by Participants** |
| ***Last Reviewed*** | **July 2023** |

**1. PURPOSES OF POLICY**

1.1 To ensure early detection of participant drug use and a swift response by the Drug Court to such use. To promote program compliance and reduce the health risk to which each participant is exposed. To reduce the risk to the community of participant criminal conduct.

1.2 To ensure accuracy and consistency in testing for participant drug use.

**2. DEFINITIONS**

***Act*** means the Drug Court Act 1998.

***Case manager*** means the Community Corrections Officer assigned to a participant.

***Drug Court program*** means the conditions that a person has accepted, having been dealt with under section 7A, 7B and 7C of the Act.

***Participant*** means a person dealt with under sections 7A, 7B and 7C of the Act

***Testing Nurse***means a nurse employed by the Court or by a treatment provider to conduct and supervise testing for drug or alcohol use.

***Treatment provider*** means a participant’s principal treatment provider.

**3. POLICY**

**3.1 Undertaking about any drug use**

* + 1. At the commencement of his or her Drug Court program, each participant is to undertake to the Court that he or she:

1. will not use or possess any prohibited drug,
2. will not use or possess any synthetic intoxicating drug,
3. will not drink alcohol at all in Phase One of the Drug Court Program,
4. will not use alcohol or any other legal drug in a manner which may interfere with his or her ability to fully participate in a Drug Court program,
5. will provide his or her urine, breath, sweat or saliva for analysis as and when directed to do so,
6. will not use any prescribed medication unless it is prescribed for him or her by a doctor,
7. will admit to using any prescribed or non-prescribed medication at the next drug test.
8. will bring to the drug test location the packet/bottle and a copy of the prescription.
9. will seek to avoid using or being prescribed any pain relief medication which contains codeine.
10. will obtain a letter from any doctor or dentist who has prescribed codeine-based medication that no other pain relief medication would be appropriate.
11. will admit to the use of pain relief medication at the time of drug testing even if this medication has NOT been prescribed. In all cases, the taking of medication must be discussed with a participant’s treatment provider and when requested a participant will provide the treatment provider with the name and contact of the prescribing Doctor. Treatment providers will discuss, where necessary, the use of medication with the Case Manager.
12. will, at the first opportunity, report any breaches of his or her program to the Drug Court, the case manager and the treatment provider.
    * 1. The Drug Court may require a participant not to use a legal drug, including a drug prescribed for the participant by a doctor.
      2. The Court regards a blood alcohol concentration of in excess of 0.05 as indicating the participant is consuming alcohol in a manner that may interfere with his or her ability to fully participate in a Drug Court program.
      3. The Drug Court may also require a participant to undertake not to use any alcohol beyond Phase One of the program.

3.1.5 Prior to commencing Phase Two of the program, the participant must discuss with his or her counsellor responsible alcohol consumption, ie, “controlled drinking”.

**3.2 The manner and frequency of testing**

3.2.1 The Drug Court may use any reliable means to detect drug use, including urine, breath, sweat, saliva or hair testing that is appropriate in the circumstances of the participant.

3.2.2 If directed by the Drug Court or the Registrar, the participant may be required to undertake an instant drug test. The instant test may be referred to the laboratory for confirmation.

3.2.3 A participant may be tested for any prohibited drug, synthetic intoxicating drug and/or alcohol use on a random and/or a regular basis.

* + 1. Generally, participants are to be tested:

1. During Phase One - a minimum of three times per week, on a pre-programmed basis, which minimises the gap between tests.
2. During Phases Two and Phase Three - a minimum of two times per week, on a programmed basis, which minimises the gaps between tests.
3. During the final four weeks of Phase Three – this testing will include testing for traces of drugs.

3.2.5 The Court may vary the frequency and/ or nature of testing where appropriate, depending on the level of the participant’s compliance with his or her program.

3.2.6 Testing for drug use is to be supervised to prevent the provision of a false sample. Where possible, supervision is to be by means of direct personal observation.

3.2.7 When a participant is unable to attend for a drug test, or the participant has attended and cannot provide a sample, the Registrar or the case manager can approve alternate arrangements, which may include a drug test being taken by the treatment provider, case manager or a medical practitioner, or attending the registry between 9am and 10am the next day.

3.2.8 Failure to attend for drug testing as required, approved, or directed is a breach of program.

**3.3 Response to drug use**

* + 1. Drug use is a breach of program, and the Drug Court will respond in a therapeutic way to that drug use at the earliest opportunity (see paragraph 3.4 below).
    2. Drug use, or failure to provide a sample for testing, is a breach of program, and will result in a sanction or sanctions being imposed.

3.3.3 A substantially increased sanction will be imposed for any drug use detected which has not been admitted to a treatment provider, case manager and to the Court at the earliest opportunity.

3.3.4 Providing a false sample, tampering with a sample, or attempting to manipulate the taking or administration of any form of drug testing is a very serious breach of program and may result in the termination of the participant’s Drug Court program.

3.3.5 When a participant admits a drug use to a case manager or treatment provider, or fails to provide a sample for testing when required, the case manager and treatment provider are to liaise as soon as possible, and determine and apply the appropriate therapeutic response. The person to whom the admission is made is to include all such admissions in the report to the Court, and the participant must be directed to attend court within 7 days of the admission. The Registrar is to be informed immediately of any direction given to attend court.

3.3.6 When a participant admits a drug use to a testing nurse, or fails to provide a sample for testing when required, the nurse is to ensure the admitted drug use or failure to provide is recorded on the participant’s Declaration Form. If the next court date for the participant is more than seven days from the drug use, the participant is to be directed to inform the CCO and counsellor of the drug use and to attend court immediately (if court is sitting) or the next sitting date after the drug test.

3.3.7 If a participant fails to attend for drug testing when required, the testing nurse is to ensure the failure to attend is recorded on the participant’s Declaration Form for the information of the Court.

* + 1. If a participant is detected or suspected of:

1. providing a false sample or attempting to do so, or
2. tampering with the testing mechanism or sample, or,
3. if a drug use is detected which has not been admitted at the earliest opportunity,

the person supervising the test is to notify the Registrar immediately of the circumstances of the incident, and the Registrar will direct the participant to attend court immediately, or the next sitting day.

3.3.9 If a participant misses two consecutive drug tests, or has used illicit drugs and is not due to return to Court for 7 days or more, then the participant is to be directed to attend court immediately, or the next sitting day. The case manager, the treatment provider or the Registrar, upon becoming aware of such circumstances, may make such a direction.

**3.4 Therapeutic response to drug use**

* + 1. The following principles are to be applied:

1. If the drug use indicates a participant who is in physical danger because of a relapse into drug use, immediate action is required.
2. If the intoxication is significant immediate medical intervention should be the highest priority.
3. If the drug use is indicative of a participant’s ongoing struggle with addiction, then support in treatment is the most therapeutic approach.
4. If the drug use is indicative of the failure of the present treatment plan, then the Court’s intervention in treatment is warranted.
5. If the drug use is indicative of someone accepting their level of drug use, or whose drug use could put the participant or the community at risk, the court’s early intervention is warranted.
6. If alcohol use is indicated via a Ethyl Glucuronide (EtG) test, the court may request:

* increased random breath tests, both at the Drug Court Registry and at home visits
* increased counselling sessions to discuss alcohol use and safe alcohol use
* increased weekend/after hours home visits with random breath tests conducted

- - - -