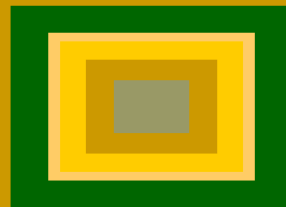




# **King County Drug Diversion Court**



Policy and  
Procedure Manual

This manual for the King County Adult Drug Diversion Court is designed to structure, but not to eliminate, decision making for all those individuals who seek to join the program as well as those who participate in it. The court reserves the right, in each individual case, to make discretionary decisions consistent with the law and public policy.

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## I. INTRODUCTION

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The late Norm Maleng and then King County Superior Court Judge Ricardo Martinez started the King County Drug Diversion Court (DDC) Program in August 1994. At the time of its founding, DDC was the twelfth drug court in the country. Currently, there are drug courts in every state and more than 3,000 nationwide.

The DDC provides eligible participants charged with felony drug and property crimes the opportunity for substance use disorder and mental health treatment and access to other ancillary services such as housing, transportation and job skills training. Eligible participants can elect to participate in the program or proceed with traditional court processing. After choosing to participate in the program, participants come under the court's supervision and are required to attend treatment sessions, undergo random urinalysis, and appear before the DDC judge on a regular basis. If participants meet the requirements of each of the five phases of DDC, they graduate from the program and their charges are dismissed. If participants fail to make progress, they are terminated from the program and sentenced on their original charge.

**Mission:** The DDC program seeks to ensure community safety and empower participants to rebuild their lives by combining the resources of the criminal justice system, substance use treatment, and other community service providers.

**Goals:**

- Reduce substance use and related criminal activity
- Enhance community safety
- Reduce reliance on incarceration and criminal justice resources for non-violent felony offenses
- Provide resources and support to assist drug court participants in the acquisition of skills necessary for recovery
- Reward positive life changes while maintaining accountability
- Encourage drug court participants to give back and connect with their communities.

## II. ORGANIZATION

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### King County Drug Diversion Court (DDC) Organization

1. **DDC Executive Committee:** The DDC Executive Committee provides oversight of the program. The committee is comprised of representatives from superior court, judicial administration, prosecutor's office, public defense, county council, county executive, adult detention, law enforcement and treatment. The Executive Committee is responsible for setting major policy regarding the DDC.
2. **DDC Judge:** The DDC judge determines the focus and direction of the DDC program through effective leadership and collaboration with the DDC team. The DDC judge:
  - a) provides support, encouragement, rewards and sanctions as necessary as the DDC participant progresses through the program;
  - b) makes final decisions;
  - c) leads pre-court staffing meetings;
  - d) promotes DDC policies, rules and procedures; and
  - e) serves as the central figure in a team effort that focuses on promoting recovery and accountability as the primary goals for DDC participants.
3. **DDC Team:** The DDC Team is comprised of the judge, prosecutor, public defender, DDC Services administrative and treatment staff, police liaison, and the treatment providers. The DDC team works in a cooperative and non-adversarial manner toward a common goal of assisting DDC participants to break the cycle of substance use disorders and criminal behavior. DDC Team meetings are held each morning prior to the DDC calendar to review cases to be heard that day. The DDC team meets weekly to discuss more difficult cases in-depth. During the team meetings, the DDC team strives to reach consensus regarding next steps while also providing information and proposals to the court. The court then hears from the participant, at the next scheduled hearing, and renders a decision.
4. **DDC Defense Attorney:** The role of the DDC defense attorney is to represent and advocate for the participant and to protect the participant's legal and constitutional interests in accordance with the attorney's professional obligations under the Rules of Professional Conduct. The defense attorney advises the participant regarding the legal system, legal rights and options. The attorney additionally advises and assists the participant regarding treatment options, program conditions and resources, and additionally supports the participant's engagement and success and ensures that appropriate treatment and other services are being provided. To facilitate this support, the defense attorney should be knowledgeable in the areas of substance use disorders and related disciplines and able to apply that knowledge to help the team respond to the participant's needs in a therapeutically appropriate way. The defense attorney works collaboratively as a DDC team member by

educating the team about relevant defense considerations, including equity and social justice impacts of actions, participating in staffings and participating in operational and policy efforts.

5. **DDC Prosecutor:** The role of the DDC prosecutor is to protect public safety by ensuring that each candidate is appropriate for the program and complies with all DDC requirements. When appropriate, the DDC prosecutor will participate in staffing and assist in removing institutional barriers to treatment, and encourage participants' success and ask for accountability when participants are not compliant. The DDC prosecutor will work closely to examine procedures and eligibility requirements to allow DDC to adapt and evolve to address community needs and public safety concerns; making the participation of a prosecutor vital to the program's success. The DDC Prosecutor will effectively communicate with crime victims, court staff, law enforcement, case managers and defense attorneys.
6. **DDC Program Manager:** The DDC program manager is responsible for the administrative, financial, and contractual aspects of the program; public relations; collaboration with other criminal justice and community agencies; and facilitating monthly business meetings and retreats. The DDC program manager supervises DDC Services staff.
7. **DDC Services (DDCS):** DDCS provides services for DDC participants including program orientation and referrals to treatment, housing, employment, education and peer services. Ongoing case management is provided by treatment and housing case managers, a resource specialist and on-site contracted peer services specialist.

DDC Services administrative staff and case managers serve as the conduit for the exchange of information between the court, treatment, and other service providers. Housing case managers manage DDC housing and assist participants with locating permanent housing. Treatment case managers report on the progress of participants and recommended next steps to the DDC Services team prior to each hearing. DDC Services administrative staff input data into a web-based case management system and the DDC Services program analyst maintains program and participant data and program statistics, and provides data to multiple funders and the DDC team. The DDC Services treatment manager manages the clinical and treatment facets of the program and serves as lead for the treatment case managers.

8. **DDC Contracted Treatment Agencies:** DDC contracts with geographically diverse, community-based treatment agencies—including culturally-specific agencies—that provide outpatient and residential treatment as well as medications for opioid use disorder.
9. **Non-Contracted Treatment Agencies:** Under certain circumstances, participants may attend a non-contracted treatment agency. This is acceptable provided that participants arrange for payment of treatment and work with DDC Services staff to ensure that the treatment agency meets the DDC treatment and reporting requirements.

10. **DDC Participant:** DDC participants are those eligible defendants who are referred to DDC. DDC participants are expected to adhere to the court's orders and directives, to follow DDC rules and requirements, and attend all scheduled and required meetings including DDC hearings.

### III. ELIGIBILITY

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#### **King County Drug Diversion Court Screening, Referral and Eligibility (revised 10/9/19)**

- A. **Screening:** The King County Prosecuting Attorney's Office screens all police referrals for DDC eligibility.
- B. **Referral:** When the Prosecutor determines a defendant to be DDC eligible, the case is filed directly into DDC for arraignment. A deviation from this direct file policy will be made in VUCSA Delivery or Possession with Intent to Deliver cases in which the drugs have an unpackaged weight of under 10 grams where law enforcement objects, at time of filing, to a defendant's participation in DDC. The basis for the objection shall be made in writing and be authorized by a law enforcement official at the rank of Lieutenant or higher. The written objection will be made part of the Discovery packet provided to defense counsel so as to put all parties on notice. A defendant whose case is filed mainstream under this policy deviation, may petition the DDC Judge to transfer the case into DDC. Law enforcement and the King County Prosecutor will be given an opportunity to respond to the transfer request. The reasons for which the objection is made may be sufficient basis to exclude an otherwise eligible defendant. The Court will make the ultimate determination regarding eligibility when admission under this policy deviation has been raised.
- C. **Transfer Request:** Defendants whose cases have been filed mainstream may ask to have the case reviewed again by the Prosecutor. Defense attorneys are to provide a completed transfer request and any supporting documents to the DDC Prosecutor for his/her review. A copy of the transfer request should also be provided to the DDC Prosecutor's paralegal.
- D. **Rules Regarding Eligibility:**
1. The eligibility criteria are published; not open to discretion by the defense bar, the prosecutor's office or the court (except as noted in Section I D, 4) and will be adhered to strictly. Criteria were agreed upon by the Superior Court, the defense bar, the prosecuting attorney, chemical dependency experts, and law enforcement.
  2. The court will not make exceptions to eligibility criteria. In cases where the prosecutor has deemed a defendant to be ineligible, a defendant may petition the court for acceptance to the program. In making a determination on the defendant's request, the court will consider only if the DDC eligibility criteria was appropriately applied.
  3. There must be a reasonable basis to believe the defendant can successfully complete the DDC program after taking into consideration factors such as: The defendant's mental and/or physical health, past performance in DDC and living situation. The court will make the ultimate determination regarding eligibility when a "reasonable basis" for successful completion is in question.
  4. Juvenile history may be considered at the discretion of the court.
- E. **Eligibility Criteria**
1. **VUCSA**
    - a. Possession

- i. Cocaine/Heroin/Methamphetamine: 3-10 grams, cumulative value of drugs possessed and cash on person cannot exceed \$1000; amounts over 10 grams may be referred to DDC upon the discretion of the Prosecutor and with Law Enforcement input.
    - ii. Prescription Pills: 50-100 pills
    - iii. MDMA: 20-50 pills
  - b. Delivery
    - i. Cocaine/Heroin/Methamphetamine/Bunk
      - (i) Drugs sold are between 0-10 grams AND
      - (ii) Cumulative value of drugs sold, possessed, and cash on person (excluding police buy money) cannot exceed \$1000
    - ii. Prescription Medication
      - (i) Number of pills sold cannot exceed 50 AND
      - (ii) Cumulative value of drugs sold, possessed, and cash on person (excluding police buy money) cannot exceed \$1000
    - iii. MDMA
      - (i) Number of pills sold cannot exceed 20 AND
      - (ii) Cumulative value of drugs sold, possessed, and cash on person (excluding police buy money) cannot exceed \$1000
  - c. Forged Prescription – Consistent with prosecutor felony standards

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

- a. Eligible Crimes
  - i. UIBC, Unlawful Issuance of Bank Checks
  - ii. Possession of Stolen Property in the 1st or 2nd degree
  - iii. Forgery (9A.60.020)
  - iv. Organized Retail Theft
  - v. Theft 1 & 2, including Theft from a Person
  - vi. Failure to Return Leased Property
  - vii. Trafficking in Stolen Property 1 & 2
  - viii. Burglary 2
  - ix. Identity Theft 1 & 2
  - x. Possession of Stolen Vehicle
  - xi. Theft of Motor Vehicle
  - xii. Felony Vehicle Prowl in the Second Degree and Vehicle Prowl in the First Degree
  - xiii. Domestic violence property crimes and certain Felony Violation of a No Contact Order (two prior) and Felony Harassment cases are eligible for DDC only upon recommendation of DV EPU, victim approval, and law enforcement approval.
    - (i) A defendant whose current Felony Violation of No Contact Order charge falls under the two prior conviction prong involving

consensual or invited contact may be eligible depending on a full review of the available domestic violence history.

- (ii) A defendant whose current Felony Harassment case involves a parent/child relationship or siblings may be eligible depending on a full review of the available domestic violence history.

xiv. Escape 2 if committed while under the supervision of DDC.

xv. A defendant charged with an eligible Class B Felony or Class C Felony, who is also charged with a Driving While Under the Influence/Physical Control arising out of the same criminal fact pattern, may bring that DUI/Physical Control to DDC.

xvi. Residential Burglary:

- (i) Those charged with Residential Burglary shall be eligible provided that no weapon or assaultive behavior was involved in the offense by any co-defendant and the victim was not present inside the dwelling during the commission of the burglary. (A burglary that is interrupted by the victim is likewise not eligible.) A defendant charged with Residential Burglary or Burglary in the Second Degree will not be eligible for DDC if a firearm is stolen during the burglary.
- (ii) A defendant who is in any phase of DDC on a Residential Burglary, who is charged with any felony that is alleged to have been committed during the defendant's enrollment in DDC, will be set for immediate termination. The newly committed felony will not be eligible for DDC and The Prosecutor will file the new case mainstream.

### **3. Factors that Disqualify Defendant**

- a. The combined restitution owed on all of the defendant's pending cases may not exceed \$2,000, unless the Prosecutor is in agreement with the case/cases being transferred to DDC. IF THE AMOUNT IS ABOVE \$2000, the defendant will be required to sign a restitution order for THE TOTAL AMOUNT OF RESTITUTION OWED as a condition to being accepted into DDC. \$2000 of the financial obligation must be paid in accordance with DDC protocol AS A CONDITION OF GRADUATION. A defendant whose restitution order exceeds \$2000 will still be required to pay the \$2000 prior to graduation. However, a defendant whose restitution exceeds \$2000 and who is not able to fully pay it prior to meeting all other graduation requirements, will still graduate DDC once all other non-restitution conditions are completed, however rather than the case being dismissed, the defendant will agree to plead guilty to a gross misdemeanor with an agreed two year deferred sentence recommendation. The only condition of the deferred sentence will be to pay the outstanding balance of the original restitution order.

- b. Evidence that defendant manufactured IDs or targeted vulnerable victims or abused position of trust to get financial information or defendant used/possessed more than three (3) victims' financial information or defendant opened more than three (3) accounts in a victim's name or the crime represents a significant breach of fiduciary duty. This disqualification may be waived with agreement of KCPA.
- c. Evidence that the defendant is a major player in car theft: Defined as having had four (4) or more pending felony car theft charges and/or convictions resulting in four (4) or more points. Vehicle Prowl, and felony charges that stem from a vehicle prowl, are to be included in the scoring and shall each be weighted one third (1/3) point. A HIPRO designated defendant is not eligible for DDC. This disqualification may be waived with agreement of KCPA and law enforcement.
  - i. Felony car theft offenses include the following: TMV 1, TMV 2, PSV, Theft of a Motor Vehicle, and Theft 1, 2, PSP 1, 2 (if the charges are predicated upon a stolen car.). These offenses are to be weighted one (1) full point.
  - ii. Defendant's criminal history (as outlined in Section 4).

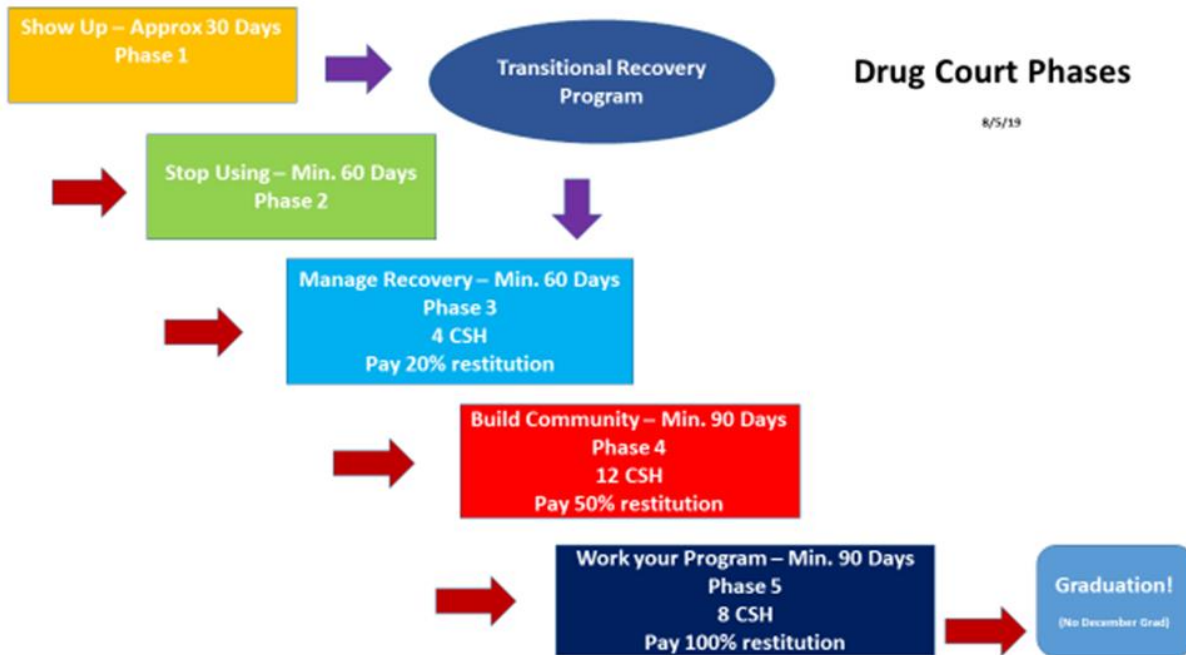
**4. Disqualifying Criminal History:**

- a. No prior sex misdemeanor or sex felony, nor violent felony offenses, nor felony assault, no matter how old, in the defendant's criminal history, as defined in RCW 9, unless specifically exempted in these standards.
  - i. A robbery in the second degree conviction will not automatically disqualify an otherwise eligible defendant from being offered DDC if the conviction is greater than five years old and did not involve the use of a weapon. Referral of cases to DDC, with robbery priors, is subject to the prosecutor approval after a review of the facts of the underlying conviction. The Prosecutor may direct file these cases into DDC.
  - ii. A conviction for Assault in the Third Degree will not automatically disqualify an otherwise eligible defendant from being offered DDC if the conviction is greater than five years old. Referral of cases to DDC, with the above conviction history, is subject to prosecutor and law enforcement approval after a review of the facts of the underlying convictions (e.g. Assault 3 that involves the use of a firearm will not be eligible). The Prosecutor may direct file these cases into DDC.
- b. A conviction for Violation of the Uniform Firearm Act or Theft Second Degree of a Firearm will not automatically disqualify an otherwise eligible defendant from being offered DDC if the conviction is greater than ten years old. Referral of cases to DDC, with the above conviction history is subject to prosecutor approval after a review of the facts of the underlying conviction. The prosecutor may direct file these cases into DDC.

- c. The 5/10 year bar described above should be measured from the time that the defendant finished serving his sentence on the underlying crime (probation/supervision time is not included) until the date of the new offense. The commission of other non-violent offenses does not “reset” this washout period.
- d. The current offense cannot involve a weapon.
- e. No Promoting Prostitution.
- f. A maximum of 4 prior Domestic Violence offenses in the defendant's criminal history in the past ten (10) years, misdemeanor or felony.
- g. A maximum of two Driving While Under the Influence convictions, including deferred prosecutions, within the past ten (10) years.
- h. No pending felony non-DDC eligible cases.
- i. An offender is ineligible for DDC if the current offense was originally filed as an expedited felony and the offender rejected the expedited offer.
- j. An offender is ineligible if they are currently on a DOSA sentence UNLESS the current offense predates the imposition of the DOSA and the offender is otherwise eligible.

## IV. KING COUNTY DRUG DIVERSION COURT PHASES AND REQUIREMENTS

DDC divides a participant's progress into phases. Participants advance to the next phase of DDC after meeting the requirements of each phase. The court may impose additional requirements such as more frequent court appearances, increased sober support meetings, more frequent UAs, etc.



### Phase 1: Show Up (pre-opt-in)

Defendants deemed eligible for the program are scheduled for arraignment in DDC. If a case is not filed directly into DDC, a defendant can petition the prosecutor for transfer into the program. At the initial hearing, the DDC judge briefly describes the conditions and expectations of DDC. At that hearing, defendants have three primary options:

1. Enter a guilty plea and be sentenced by the DDC judge,
2. Plead not guilty and request that the case be transferred out of DDC, or
3. Participate in DDC orientation and intake, assessment, and referral to treatment, proceeding to Phase 1 of the program.

Phase 1 is the time period between DDC arraignment or transfer and formal entry into the DDC program or "opt-in." During this period, the prospective participant engages in activities designed to inform the participant about the requirements of DDC and the consequences of noncompliance before waiving trial and other rights at opt-in. The participant's ability to adhere to the program is also evaluated by the DDC team during Phase 1. Phase 1 is approximately 30 days.

### Activities in Phase 1 include:

1. Attendance at a DDC orientation. At the orientation, DDC case managers provide participants with information regarding resources, court and treatment expectations, and a copy of the DDC Participant Handbook, which details the requirements of DDC. The case manager collects preliminary information from the participant regarding their social, criminal, medical, and mental health histories, and the extent and nature of their substance use and treatment. The case manager screens each participant using a Risk and Needs Assessment Tool (RANT) screen to determine the level of structure and amount of treatment recommended for optimal participation in DDC.
2. Based on the information gathered in step 1, the case manager schedules an intake and assessment appointment for the participant at a DDC contracted treatment agency to occur as quickly as possible. The treatment agency develops an Individual Service Plan (ISP) within the first 30 days of assessment.
3. Participants are required to sign a Release of Information (ROI) to allow DDC Services to coordinate participant care. Information regarding a defendant's participation in substance use disorder treatment may be disclosed per the ROI.

### **Phase 1 Requirements**

In order to advance to Phase 2, and formally opt-in to the program participants must meet these minimum requirements:

1. Attend Orientation & Intake (O&I) and complete RANT screening<sup>1</sup>
2. Undergo a comprehensive intake/assessment appointment at a treatment agency
3. Take a urinalysis drug test (UA)
4. Attend status hearings (the first status hearing is set approximately two weeks after the arraignment or transfer hearing)
5. Meet with defense counsel
6. Attend weekly Check Ins
7. Attend Legal Question & Answer (Q&A) session
8. Read Participant Handbook
9. Apply for Medicaid/Washington Apple Healthcare if eligible
10. Attend Alcohol & Drug Information School (ADIS) only if required
11. Sign the DDC Waiver and Agreement (see appendix A)

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<sup>1</sup> The Risk and Needs Triage (RANT) is an evidence-based 19-question screening tool designed to assist with matching participants with the most effective level of supervision and clinical services. Participants are assessed for risk (the likelihood that more intensive supervision and treatment services are needed) and need (the level of substance use, mental health and other daily needs). Participants are screened into one of four quadrants: 1) high risk/high needs 2) high risk/low needs 3) low risk/high needs 4) low risk/low needs. Drug court program requirements may differ depending on a participant's risk/needs quadrant. RANT screenings are completed at the program start and may be revisited as more information becomes available.

In Phase 1, participants are also expected to meet these additional requirements, which may not prevent a participant from opting in:

1. Attend ongoing treatment sessions (group and individual counseling)
2. Minimum two random, observed UAs per week
3. If High Needs: Attend three per-week sober support meetings.
4. If Low Needs: Develop a plan with DDC case manager for three per-week Healthy Social Activities (HSA) to begin in Phase 2.

## Phase 2: Stop Using

Phase 2 is a minimum of 60 days. Participants in Phase 2 must:

1. Attend hearings and bring Sober Support slips /Healthy Social Activity (HSA)<sup>2</sup> logs
2. Attend all treatment sessions
3. Minimum two random, observed UAs per week
4. Sober Support Meetings / Healthy Social Activity attendance
  - a. High Needs participants: 3 per-week Sober Support meetings
  - b. Low Needs participants: 3 per-week HSA (approved by DDC case manager)
5. 60 consecutive days sanction-free (immediately prior to promotion to Phase 3)
6. 30 consecutive days of abstinence (immediately prior to promotion to Phase 3)
  - a. No restitution owed for promotion to next phase
  - b. No community service hours owed

Fix-It Tickets<sup>3</sup> available (for missed appointments) = two per reporting period (the time between hearings).

Participants who choose to enter the 60-day in-custody Transitional Recovery Program (TRP) during Phase 1 may be eligible to skip Phase 2 and promote to Phase 3 if they successfully graduate the TRP and meet the following criteria:

7. Complete all other Phase 1 requirements
8. No bench warrants after TRP completion
9. No positive UAs after TRP completion
10. Additionally, for Work Release participants: no return to secure detention

## Phase 3: Manage Recovery

Phase 3 is a minimum of 60 days. Participants in Phase 3 must:

1. Attend Hearings and bring Sober Support slips / Healthy Social Activities logs

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<sup>2</sup> **Healthy Social Activities:** Activities that are positive, prosocial, and meaningful to participants. This could be art classes; exercise; yoga; spiritual, cultural or religious activities; recovery support; book clubs; etc. The goal of HSAs is to build positive social connections and attachments, and relationships centered on healthy activities.

<sup>3</sup> **Fix-it Ticket:** Allows participants to avoid sanctions in two situations: 1) arriving late to an appointment or 2) missing an appointment due to a last minute, unplanned situation. Fix-It Tickets **cannot** be used for missed UAs or behavior issues.

2. Attend all treatment sessions
3. Minimum two random, observed UAs per week
4. Sober Support Meetings / Healthy Social Activity attendance:
  - a. High Needs participants: One Sober Support & two HSAs (approved by DDC case manager) per week
  - b. Low Needs participants: three per week HSAs (approved by DDC case manager)
5. Attend Empowerment Class by next hearing after promotion to Phase 3 (about 30 days later)
6. Meet with Resource Specialist to create Empowerment Plan with own goals. Present Empowerment Plan to the court. Must include plan for 20 hours per week of productive activity (such as employment, vocational training, school, parenting or volunteering) to begin by the first day of Phase 5.
7. Complete Empowerment Plan follow-up items as suggested by the Judge
8. Attend a Graduation Ceremony
  - a. Complete four community service hours
  - b. Pay 20% of total restitution owed
  - c. 60 consecutive days sanction free (immediately prior to promotion to Phase 4)
  - d. 60 consecutive days of abstinence (immediately prior to promotion to Phase 4)

Fix-It Tickets available (for missed appointments) = one per reporting period (the time between hearings).

#### **Phase 4: Build Community**

Phase 4 is a minimum of 90 days. Participants in Phase 4 must:

1. Attend Hearings:
  - a. Bring Sober Support slips/Healthy Social Activity logs
  - b. Bring Empowerment Plan and be prepared to discuss with Judge
2. Complete Empowerment Plan follow-up items as suggested by the Judge
3. Attend all treatment sessions
4. Complete Moral Reconciliation Therapy (MRT) as required
5. Minimum two random, observed UAs per week
6. Sober Support Meetings/Healthy Social Activity attendance:
  - a. High Needs participants: One Sober Support & two Healthy Social Activities (approved by DDC case manager) per week
  - b. Low Needs participants: three per-week HSAs (approved by DDC case manager)
7. Complete 12 additional community service hours
8. Pay 50% of total restitution owed
9. Must be ready to begin 20 hours per week of productive activity (such as employment, vocational training, school, parenting or volunteering) on the first day of Phase 5
10. 90 consecutive days sanction-free free (immediately prior to promotion to Phase 5)
11. 90 consecutive days of abstinence free (immediately prior to promotion to Phase 5)

Fix-It Tickets available (for missed appointments) = one during the entire Phase 4.

### Phase 5: Work Your Program

Phase 5 is a minimum of 90 days. Participants in Phase 5 must:

1. Attend Hearings:
  - a. Bring Sober Support slips / Healthy Social Activity logs
  - b. Bring Empowerment Plan and be prepared to discuss with Judge
2. Complete Empowerment Plan follow-up items as suggested by the Judge
3. Attend all treatment sessions. Full-time employment *may* be able to replace groups and individual treatment sessions with DDC case manager recommendation and court approval
4. Minimum two random, observed UAs per week
5. Two Healthy Social Activities (approved by DDC case manager) per week
6. Prove 20 hours per week engagement in Productive Activity (such as employment, vocational training, school, parenting, or volunteering) as identified within Empowerment Plan.
7. Complete Grad 101 (including Continuing Care Plan) with DDC Peer Services Specialist
8. Complete eight additional community service hours
9. Pay 100% of total restitution owed
10. 90 days consecutive sanction-free (immediately prior to graduation)
11. 90 days of consecutive abstinence (immediately prior to graduation). However, following a relapse that was not pre-disclosed/self-reported, the presumption is that six months of abstinence will be required prior to graduation. After 90 days of abstinence, participants may petition the court to graduate earlier.
12. Attend own graduation ceremony

Fix-It Tickets available (for missed appointments) = none.

### Graduation Requirements

Before graduation, participants must meet the following cumulative requirements:

1. Generally, participants must be abstinent from drugs and alcohol for a minimum of 6 months.
2. Prove 20 hours per week of engagement in productive activity (such as employment, vocational training, school, parenting or volunteering) as identified within Empowerment Plan
3. Pay restitution in full unless a special agreement has been made with the prosecutor at opt-in. See Restitution section V.H. for more information.
4. Complete 24 hours of community service
5. Attend a graduation ceremony
6. Complete the Grad 101 graduation packet

## Community Service Hours (CSH)

Before graduating from the program participants are required to perform 24 hours of community service at a not-for-profit agency. Participants must provide proof of completion on letterhead stationery from the agency. The letter should specify the number of hours and the date(s) completed.

The hours may be completed prior to phase promotion/graduation while in the program and be “banked” for use later. Community Service Hours completed for a required DDC sanction or as a chosen Healthy Social Activity cannot be double counted as hours towards the promotion/graduation requirement. The CSH hours must be completed as follows:

| Community Service Hours     | # Hours to Completed | Total Hours Completed |
|-----------------------------|----------------------|-----------------------|
| In order to move to Phase 4 | 4                    | 4                     |
| In order to move to Phase 5 | 12                   | 16                    |
| In order to graduate        | 8                    | 24                    |

## Restitution

If a participant owes \$2,000 or less in restitution on their DDC case(s) at the time of opt-in, the participant must pay as follows:

|                                       |   |
|---------------------------------------|---|
| To promote from Phase 3 to Phase 4    | Payment of 20% of the total restitution owed  |
| To promote from Phase 4 to Phase 5    | Payment of 50% of the total restitution owed  |
| To graduate from Drug Diversion Court | Payment of 100% of the total restitution owed |

If a participant owes more than \$2,000 in restitution at the time of opt-in, they are required to pay a minimum of \$2,000 according to the schedule above prior to graduating. Prior to graduation, the participant will plead guilty to a gross misdemeanor and be sentenced to an agreed two-year deferred sentence where the only condition is to pay the outstanding balance of the restitution order.

## V. PROGRAM AND OPERATIONAL COMPONENTS

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### Hearings

#### 1. Review Hearings

- a. The review hearing provides an opportunity for the judge and other DDC team members to assess a participant's progress in meeting DDC requirements, to administer appropriate sanctions and rewards, and to provide encouragement and support in a structured and formal setting.
  - b. **Frequency/Scheduling:** Hearings are generally scheduled every two weeks during Phases 1 through 3 and every four to six weeks during Phases 4 and 5. The Court has the discretion to set hearings more or less frequently depending upon the needs of the participant. At each hearing, participants are notified in writing of their next court hearing. This is the only notice participants will receive. If participants lose the hearing notice, they can call DDCS at 206-477-0788 to determine their next hearing date. If participants have a scheduling conflict, they must call their attorney before the day of the hearing to ask permission to reschedule the hearing.
  - c. **Progress Reports:** The DDC contracted treatment agencies provide progress reports to DDC Services. The progress reports are to address all issues of treatment including: urinalysis results, attendance at sober support meetings, attendance at individual and group counseling sessions, and a participant's attitude and behavior. This information is relayed to the Court at least one day prior to the hearing.
  - d. **Bench Warrants:** Upon the Court's discretion, a bench warrant will likely issue if participants do not appear for scheduled hearings. Calls made the day of the hearing do not excuse an absence unless there is a verifiable emergency. If participants receive a bench warrant, it is their responsibility to address it. Participants may appear at a DDC calendar and request to quash the bench warrant. The Court may or may not quash the warrant, but it is always more likely the warrant will be quashed if participants appear voluntarily instead of waiting to be arrested on the warrant. If participants are arrested on the bench warrant, they will remain in custody until the next "in-custody" calendar.
2. **Rapid Response Calendar:** The DDC case manager, the DDC prosecutor, the DDC defense attorney, a treatment counselor, or participants themselves may request to have their hearing accelerated to discuss compliance issues with the Court. If participants are notified of an accelerated hearing date, they must appear for the hearing. A failure to appear for an accelerated hearing may result in the Court issuing a warrant for their arrest.
  3. **To Be Determined (TBD) Hearings:** After participants opt into DDC, hearings will generally have a result of "Express" (100% compliance) or "Sanction" (a response or assignment given by the court to address non-compliance). Occasionally the court will agree to a TBD finding and will allow the result to be decided at the next hearing instead. When a TBD finding occurs, participants are expected to complete the assignment by the next hearing and be in full

compliance in order to avoid a higher magnitude sanction. The court will not typically allow more than one TBD hearing in a row.

## Urinalysis (UA) Testing

UA testing is central to the court's monitoring of participant compliance. Participants are responsible for ensuring that they are testing in accordance with DDC Phase requirements.

1. Participants agree that the court may generally rely on a presumptive chemical test result (UA results). A participant may request a further confirming test of any positive UA, but the participant agrees that if the confirming test comes back positive, the magnitude of the participant's sanction will likely increase or termination from the program may be considered based on dishonesty.
2. DDC treatment case managers may direct a participant to produce a UA at any time.
3. A missed UA will result in a sanction and will typically lengthen a participant's time in the program. To lessen the sanction, participants can contact their DDC case manager immediately after missing a UA and ask to be scheduled for a UA the next morning.
4. After providing a urine sample, it is important that participants tighten the lid on the collection cup properly so that it does not spill during transit. Any specimen that is unable to be tested due to leaking in transit will be considered an abnormal UA result and an act of dishonesty.
5. Participants must not ingest or absorb any substance that can produce a positive UA such as:
  - a. alcohol or any food or products containing alcohol;
  - b. Kratom, marijuana or other cannabis products;
  - c. poppy seeds in any form (no poppy seed cake, bread, muffins, salad dressing, mustard, etc.);
  - d. any mood-altering substances;
  - e. any prescription medication without medical verification;
  - f. any over-the-counter medications, such as Nyquil or Sudafed, without prior approval from participant's DDC case manager; or
  - g. "natural" or "herbal" remedies or supplements or substances such as those commonly sold in health food stores or smoke shops.
6. If a participant receives a positive UA result because of digestion or absorption of a substance producing a positive UA without prior approval, they will receive a sanction and/or may be terminated from the program.
7. Out-of-Range (OOR) UAs: DDC UAs measure participant's fluid intake as well as the presence of drugs/alcohol in urine. Excessive fluid intake prior to a UA can lead to an OOR urine sample, which interferes with the validity of the test. An OOR UA at any phase will result in a formal OOR warning; any additional OOR UA(s) will be treated as a positive UA and will result in a sanction.
8. Dilute/Fake/Adulterated UA Tests: A dilute UA is one that meets the federal standard for dilution and is considered purposeful over-hydration. An adulterated UA is one where a foreign substance is added to the urine sample. A dilute or adulterated UA is viewed as an attempt to avoid the Court's detection of substance use and as an act of dishonesty. After opt-in, acts of

dishonesty, including dilute or adulterated UAs, will result in a high magnitude sanction that may include up to six days jail and/or termination from the program.

### Therapeutic Interventions (TIs)

Participants can utilize TIs to avoid a sanction for substance use by pre-disclosing use. Pre-disclosing use means notifying staff of the substance use in one of the following ways: 1) in writing on the UA form or 2) in person or via phone to their treatment counselor or DDC case manager. The disclosure must occur by midnight on the day of the scheduled UA. If the participant is unable to reach their counselor or case manager, they can leave a voicemail by midnight on the day of the scheduled UA to qualify for a TI. Therapeutic Interventions allow sanctions to be avoided but the abstinence clock still restarts when the use is pre-disclosed. TIs are available on every phase, subject to suspension with ongoing use. Honesty is essential to recovery and success in DDC. TIs are intended to encourage and reward upfront honesty that supports sobriety.

### Incentives and Sanctions

1. **Incentives.** Participants are rewarded and encouraged by the Court through incentives which are provided when participants are an “Express” in Court (in full compliance and working on achieving goals). Incentives include:
  - a. verbal praise;
  - b. a chance to draw from the fishbowl in the courtroom and receive tangible rewards, such as gift cards, pens, candy, etc.;
  - c. promotion to the next DDC phase if all other requirements are met;
  - d. placement in a special "express" group whose cases are heard earlier on the calendar; and
  - e. dismissal of felony case(s) if all other requirements are met.
2. **Sanctions.** Participants may be sanctioned or terminated from DDC if they behave in a manner contrary to the rules and regulations of DDC. DDC utilizes Contingency Management, an evidence-based approach to changing behaviors and treating substance use disorders. If participants fail to follow DDC requirements, they will receive a sanction. Sanctions are individualized and are utilized in a therapeutic way, aimed at changing behavior. DDC employs different responses to noncompliance based on the nature of the infraction and the participant’s behavior in relation to the infraction. The Court’s response will typically be therapeutic if the lack of compliance is related to drug or alcohol use or scheduling challenges which are considered “distal” in the earlier stages of sobriety. However, if the non-compliance is related to a “proximal” behavior that can be directly correlated to an increase in criminogenic risk, the Court’s response will typically be higher magnitude in nature. A participant’s response to a situation factors into whether the sanction will be a high or low magnitude sanction; acceptance of responsibility is taken into account. Incentivizing honesty and engagement is at the core of the program and sanctions are crafted thoughtfully to promote insight and forward progress for each individual. Sanctions include, but are not limited to:
  - a. in-court “jury box observation”;
  - b. community service hours;

- c. Community Center for Alternative Programs (CCAP);
- d. Work Education Release (WER);
- e. Community Work Program (CWP);
- f. other: peer-to-peer accountability meeting, attendance at a court-sponsored class, written assignments, increased attendance at sober support meetings;
- g. return to a prior DDC phase;
- h. jail; and
- i. termination from the DDC program.

If participants fail to complete a sanction in time, they will receive an additional sanction.

If the DDC case manager recommends a sanction and the participant wants to contest it, the primary responsibility falls on the participant to make contact with their attorney to provide additional information.

### **Drug Diversion Court Waiver and Agreement**

If participants request to move to Phase 2 (opt into the program) and the Court grants their request, participants do not plead guilty. However, participants will be required to sign the DDC Waiver and Agreement. (See Appendix A on page 30.) By signing the Waiver and Agreement, participants give up certain rights, including the right to resolve their case mainstream, as well as the right to have a trial or present evidence regarding their guilt or innocence on the underlying charge. Failure to abide by all of the terms in the DDC Waiver and Agreement may result in termination from the program. By opting in and signing the Waiver and Agreement, participants agree the case(s) will be resolved in DDC and participants cannot take their case(s) mainstream.

### **Sober Birth Date**

Participants are expected to keep track of their sober birth date because it is an important part of recovery. The sober birth date is the day following the last time a participant used alcohol or any unauthorized drugs. Each time participants come to court, they must report their sober birth date on an information update form. Providing a false sober birth date will result, at a minimum, in a jail sanction.

### **Residential Treatment**

When therapeutically appropriate, DDC participants may be required to attend residential treatment. If participants enter residential treatment ordered by DDC, they must complete the treatment as directed by the treatment center. If participants leave treatment against the advice of the treatment center, they will typically be sanctioned to a minimum of six (6) days in jail and/or terminated from the DDC program.

### **Accelerated DDC Model**

Participants that successfully complete a long-term inpatient treatment (LTIPTX) program (minimum six months) may be eligible for an accelerated DDC model. In order to qualify, participants must:

1. Successfully graduate from the LTIPTX program;
2. Resume outpatient substance use disorder treatment in the community upon completion of the LTIPTX program. (At a minimum, participants must be providing UAs and attending sober support meetings and/or healthy social activities.); and
3. Maintain 100% compliance for a period of 4 consecutive months.

The accelerated DDC model is as follows:

1. Upon successful completion of LTIPTX (and if outpatient attendance conditions are met), participants will begin at Phase 4.
2. Phase 4 is 60 consecutive days of full compliance.
3. Phase 5 is 60 consecutive days of full compliance.
4. Graduation occurs on the next available graduation day after 60 days on Phase 5.
5. Full participation and compliance is expected through graduation.

A sanction at any point eliminates the accelerated model as an option and participants will return to the traditional DDC model. If participants are moved from the accelerated model to the traditional model, they will be placed at the beginning of whichever phase they were in prior to entering the LTIPTX program.

Regardless of the phase participants were in when they entered LTIPTX, participants must still complete a minimum of 4 consecutive, sanction-free months after LTIPTX prior to being eligible to graduate.

### **Prescription Medications**

As a general rule, participants are expected to be drug and alcohol free, including the use of mood-altering prescription medications. However, DDC fully supports Medications for Opioid Use Disorder (MOUD) in the form of Methadone, Buprenorphine or Naltrexone prescribed by a doctor and used as prescribed as a part of a participant's DDC treatment plan.

DDC participants with chronic pain or other conditions requiring repeated use of prescription medication which is opioid, amphetamine, benzodiazepine or marijuana/cannabis-based may not be able to participate in the DDC program.

If participants opt into DDC and then experience an episode of acute pain or other condition requiring a prescription medication, they must have the DDC prescription form completed by their medical provider. The medical provider will be asked to indicate on the form that they are aware that participant is in DDC and that participants are expected to remain drug-free except in extreme instances.

Participants will also be required to complete a release of information (ROI) allowing DDCS to talk to their medical provider. A new prescription form and a new ROI will be required each time participants obtain a new prescription or have a prescription filled by a new medical provider.

The Court has the discretion to rule that a participant's legally prescribed medication is inconsistent with the court's ability to monitor program compliance.

Use of prescription drugs, other than psychotropics and antibiotics, may impact a participant's abstinence clock and their progress in DDC.

### **Bench Warrants**

Noncompliance with DDC requirements may result in the issuance of a bench warrant. Participants arrested on a DDC bench warrant may be held in-custody for several days before appearing before the DDC judge; hearings will be scheduled at the court's discretion. Participants on warrant can request to address a bench warrant at the end of any DDC calendars, time permitting.

### **Other Requirements**

1. Honesty is essential to success in DCC. Participants will be rewarded for honesty and sanctioned for dishonesty. Dishonesty will result in a high magnitude sanction and may result in termination from the program.
2. A participant cannot leave the state without first obtaining permission from the court.
3. Possession, use, or ownership of any firearms is prohibited.
4. A participant cannot reside where a firearm is present.
5. Participants cannot knowingly associate with any person possessing or using illegal drugs.
6. Threatening, assaultive, disrespectful or disruptive behavior of any kind in DDC, at treatment, or in the community at large will not be tolerated and may be grounds for immediate termination from the program.
7. Verifying Sober Support meetings: Court will not accept meeting hall phone numbers on Sober Support verification sheets and will require the phone number of the person who signed the form. The meeting chair or secretary are the only signatures/phone numbers the court will accept for verification of attendance.

### **Policy on Missed Groups and Individual Counseling Sessions and Fix-It Tickets**

1. Participants will typically be able to reschedule treatment appointments for good cause (such as a conflicting social security or medical appointment) if they call significantly in advance and provide proper documentation.
2. Groups and individual counseling sessions missed without making advance arrangements may result in a sanction. However, depending on their DDC phase, participants may be eligible for a "fix-it ticket," allowing them to avoid a sanction if they arrive late to an appointment or miss an appointment due to a last minute, unplanned situation. To be eligible for a fix-it ticket, participants should call their DDC case manager or treatment counselor (and leave a voicemail if they are unavailable) to report the missed appointment. Participants must make the call no later than midnight on the date of the missed appointment. The DDC case managers will give participants a time sensitive assignment they can complete to "fix" the missed appointment and get back into compliance. It is a participant's responsibility to follow-up with their DDC case manager to get a fix-it ticket assignment as soon as possible.
3. The DDC case manager will be given discretion to approve or disapprove the missed appointment and allow a fix-it ticket.

4. The number of fix-it tickets varies by DDC phase as follows:
  - a. Phase 1 = none.
  - b. Phase 2 = two per reporting period (the time between hearings).
  - c. Phase 3 = one per reporting period (the time between hearings).
  - d. Phase 4 = one during the entire Phase 4.
  - e. Phase 5 = none.
5. Failure to complete the assignments associated with a Fix-It Ticket will result in a sanction.
6. Participants do not need to use a Fix-It Ticket if they call significantly in advance to reschedule the treatment session and provide proper documentation. Fix-it tickets are intended to cover appointments missed for reasons that could not be anticipated. They are not intended to be used for intentionally sleeping in or choosing to skip appointments. Fix-it tickets are up to the discretion of the court and are subject to suspension if they are used repetitively or inappropriately.

## Termination

Due to many factors, there are instances when a participant's continuation in the DDC program is unproductive for the participant, the program, or both.

Termination from DDC may be voluntary or involuntary. A participant may decide to terminate from the program because the program can no longer serve the needs of the participant (voluntary), or the state or case management may at any time during the program, recommend that a participant be terminated from the program due to non-compliance or breach of any of the rules of DDC (involuntary).

An involuntary termination will be addressed through traditional motion practice. The termination hearing will be heard by the sitting DDC judge unless that judge recuses himself, in which case, the termination will be heard by the other sitting DDC judge. The decision to terminate should be based on what is in the record. Rulings that have been made remain the law of the case and are not subject to relitigation. When necessary, the court will review the recording of prior DDC hearings. Unless the court authorizes, witnesses will not be subpoenaed to testify. The burden of proof is on the state to prove, by a preponderance of the evidence, that the participant has violated the Waiver and Agreement. Considering the established violation(s), the court will then determine if termination is the appropriate remedy.

In making the decision to terminate a participant from the DDC, the Court shall consider a participant's past efforts regarding compliance and progress in the program. If the motion for termination is granted, a stipulated trial and sentencing, if appropriate, will follow.

The following violations may result in termination. Please note this list is not exclusive.

1. Dishonesty to the court
2. Positive UA or Breath Analysis
3. Missing UAs or treatment sessions
4. Missing required sober support meetings or healthy social activities
5. Non-compliance with required treatment program

6. Presenting falsified UAs, or falsified documentation of community service, or sober support group meetings to the Court or to treatment personnel
7. Failure to abide by the terms of the DDC agreement or mandates in the handbook
8. Threatening, assaultive, disrespectful or disruptive behavior of any kind in DDC, at treatment or in the community at large
9. Arrest for a new offense (see new offense grid, Section VII B)
10. Using prescription drugs or over the counter drugs without first obtaining the approval of treatment and DDC
11. Failure to pay restitution
12. Willful failure to appear at hearings
13. Inability of the participant to regularly participate in required treatment, including urinalysis testing, treatment sessions, sober support group meetings, and/or review hearings with the court

## VI. SPECIAL POLICIES

### In Custody Treatment Program / Transitional Recovery Program (TRP)

The TRP is a 60-day in-custody treatment program. DDC may require participation in TRP as a condition of a participant remaining in the DDC program.

Requirements for successful TRP completion:

1. Participants will remain in custody or be remanded no less than six business days prior to their TRP intake date.
2. Participants will be UA'd at TRP intake. Participants will be required to wait until they can provide a negative UA in order to start attending the program.
3. Drug use is unacceptable in TRP. UAs will be performed during the program.
4. Disruptive behavior or failure to follow group rules (including drug use) may result in permanent or temporary removal from the TRP.
5. All missed treatment due to behavior issues or substance use must be made up (if participants are permitted to remain in the program).

Participants who choose to enter the TRP during Phase 1 may be eligible to skip Phase 2 and promote to Phase 3 if they successfully graduate the TRP and meet the following criteria:

1. Complete all other Phase 1 requirements
2. No bench warrants after TRP completion
3. No positive UAs at TRP or after completion
4. Additionally, for work release participants: no return to secure detention

The DDC Team will staff a participant's case midway through their time in the TRP to plan for an appropriate release mode (which may include 15 to 30 days in Work Release, at a minimum). Temporary releases from TRP will not be authorized unless there is a verified emergency.

### New Offenses

| Status/Type of New Offense  | Phase I   | Phase II  | Phase III   | Phase IV   | Phase V |
|---|---|---|---|--|---------|
| <b>New offense is eligible for DDC under current KC DDC Eligibility Criteria.</b> | Case may come into DDC.<br>Decided on a case-by-case basis. | Case may come into DDC.<br>Decided on a case-by-case basis. | Case may come into DDC.<br>Decided on a case-by-case basis. | Presumption is new case will not come into DDC.<br>A finding of probable cause on the new eligible case may also affect the participant's status in DDC in regard to the current DDC case(s) and may result in:*<br><ul style="list-style-type: none"><li>• Termination</li><li>• Requirement that defendant restart the DDC program</li><li>• Modification of treatment requirements.</li></ul> |         |

| Status/Type of New Offense  | Phase I  | Phase II  | Phase III   | Phase IV   | Phase V |
|---|--|---|---|--|---------|
|   |  |   |   | <ul style="list-style-type: none"> <li>• Incarceration pending resolution of case.</li> </ul> <p>* List is not exclusive</p> |         |
| <p><b>New offense is <u>non-eligible</u> for DDC under current KC DDC Eligibility</b></p> | <p>All pending cases will be handled mainstream. The court might consider allowing the eligible DDC case to return to DDC if the non-eligible case is resolved mainstream.</p> | <p>New non-eligible case(s) will be handled mainstream.</p> <p>Continued DDC involvement will be decided on a case-by-case basis.</p> <p>The court might consider allowing the eligible DDC case to return to DDC if the non-eligible case is resolved mainstream</p> | <p>New non-eligible case(s) will be handled mainstream.</p> <p>The presumption is that a finding of probable cause on the new ineligible case will result in termination from DCC after staffing.</p> |  |         |
| <p><b>Violent or Sex Offense as Defined by SRA (misd. or felony)</b></p>                  | <p>Presumption is all pending cases will be handled mainstream.</p> <p>Court may consider the facts of a non-sexually motivated assault 4 on a case-by-case basis.</p>         | <p>Strong presumption of termination. Presumption may be based on police report or certification of probable cause. Conviction is not required.</p> <p>Court may consider the facts of a non-sexually motivated assault 4 on a case-by-case basis.</p>                |   |  |         |
| <p><b>Domestic Violence Offense (misd. or felony)</b></p>                                 | <p>Presumption is all pending cases will be handled mainstream.</p> <p>Court may consider the facts of a non-sexually motivated assault 4 on a case-by-case basis.</p>         | <p>Strong presumption of termination. Presumption may be based on police report or certification of probable cause. A charge is not required.</p> <p>Court may consider the facts of a non-sexually motivated assault 4 on a case-by-case basis.</p>                  |   |  |         |

| Status/Type of New Offense | Phase I   | Phase II  | Phase III | Phase IV | Phase V |
|----------------------------|---|---|-----------|----------|---------|
| <b>DUI<br/>misd.</b>       | <p>Decided on a case-by-case basis.</p> <p>Presumption that all pending cases will be handled mainstream. Presumption may be based on police report or certification of probable cause for Physical Control, and Driving Under the Influence. A charge is not required.</p> <p>If case enters DDC, at minimum, standard DUI conditions will be imposed.</p> | <p>Strong presumption of termination. Presumption may be based on an arrest and a police report or certification of probable cause for Physical Control, and Driving Under the Influence. A charge is not required.</p> |           |          |         |

### Graduation

Graduation from DDC is marked by a specially set hearing. An Order of Dismissal of the Charge(s) is presented to graduates by the DDC judge. If a Stay Out of Drug Area (SODA) Order has been entered, that order is rescinded upon graduation.

### Re-entry to DDC Following Graduation

Participants who receive a new DDC eligible charge following graduation from DDC will be allowed to re-enter DDC.

## VII. YOUNG ADULT TRACK (YAT)

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DDC participants between the ages of 18 and 25 who score as High Risk and High Needs per the Risk and Needs Triage tool (RANT) are referred to the Young Adult Track (YAT), designed to support progress and stability for this population.

Developmentally, young adults have different needs than their older adult counterparts, and benefit from specialized treatment, resources and engagement strategies. Young adults require a person-centered approach aimed at addressing needs such as housing, education, vocation and employment, mental health, substance use disorder treatment and life skills.

As part of the YAT, young adults present a written life history to the DDC judge, reflecting on their individual story, family and cultural influences, motivating factors and personal goals. Emphasis is on accurately identifying needs, and developing and continuously revisiting and revising an individualized plan of action. Participants focus on long and short-term goals as they progress from one phase of DDC to another. The YAT can be completed in as few as 8 months after DDC program opt-in, whereas the standard adult model takes a minimum of 10 months. The YAT is designed to increase each participant's intrinsic motivation and engender a sense of empowerment.

# VIII APPENDICES

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## APPENDIX A: Drug Diversion Court Waiver and Agreement

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THE COUNTY OF KING

STATE OF WASHINGTON,

Plaintiff

NO.

vs.

DRUG DIVERSION COURT

WAIVER AND AGREEMENT

Defendant

CCN

CLERK'S ACTION REQUIRED (AG)

### DRUG DIVERSION COURT WAIVER OF RIGHTS AND AGREEMENT OF THE PARTIES

1. I have been informed and fully understand that I have the following important rights. I understand that I give up the following important rights by entering Drug Diversion Court.

- (A) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (B) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (C) The right at trial to testify and to hear and question the witnesses who testify against me;
- (D) The right to have witnesses testify for me at trial. These witnesses can be made to appear at no expense to me.

2. I have been informed and fully understand that I have the right to representation by a lawyer and if I cannot afford to pay for a lawyer, one will be provided at no expense to me.

3. I understand and agree that if I do not comply with the conditions of this agreement:

- (A) A hearing will be held to determine whether I should be terminated from Drug Court. If it is found I should be terminated, then a trial by a judge will be held to determine my guilt or innocence beyond a reasonable doubt with respect to this/these charge/charges.
- (B) This trial will be limited to the judge reviewing the State's evidence including the discovery and the results of any scientific testing. I stipulate to the admissibility of any scientific

testing in the discovery. This stipulation is not an admission of guilt and is not sufficient, by itself to warrant a finding of guilt.

- (C) I give up the right to contest and object to any evidence presented against me and to present evidence on my own behalf as to my guilt or innocence. I retain the right to object to sufficiency of the evidence to prove my guilt beyond a reasonable doubt.
4. I agree to complete the treatment program as ordered by the Court.
  5. I agree to sign a waiver allowing the treatment provider to release treatment information to the Court, defense counsel, the prosecuting attorney, and Drug Diversion Court Services staff. This information shall be used only to monitor compliance in this case and for no other purpose.
  6. I agree that as part of Drug Court procedure, that prior to hearings the judge will meet regularly with a group consisting of my attorney, the prosecutor, law enforcement, treatment staff and case managers to discuss my case. I will not be present during these meetings, they will not be recorded, and they will not be open to the public. The judge will not make any decisions at these meetings and will give me the opportunity to provide input at a subsequent hearing before making a decision in my case.
  7. I understand and agree that I am responsible for obtaining a Participant Handbook from the Court and for knowing all of the rules and procedures contained in it. Written notice of any amendments will be posted in the courtroom. I am responsible for knowing those amendments. I am expected to be familiar with the King County Drug Diversion Court Policy and Procedures Manual and any appendices posted. The King County Drug Diversion Court Policy and Procedures Manual and Appendices are available in the Drug Diversion Court courtrooms or on the King County Drug Diversion Court website. The website address is: <http://www.kingcounty.gov/courts/DrugCourt.aspx>.
  8. I agree that I will not knowingly associate with any person possessing or using illegal drugs. I also agree that if ordered by the court, I will stay out of specific areas associated with drug trafficking.
  9. I understand and agree that I may not possess or use any firearm while I am in Drug Diversion Court.
  10. I agree that I will not work with any police agency on any criminal cases or on any case where I may come into contact with illegal drugs.
  11. I agree that to graduate from Drug Diversion Court I must complete 24 hours of community service according to the schedule laid out in the Drug Diversion Court Participant Handbook.
  12. I agree to pay any and all restitution owing as a result of the crimes encompassed in these case number(s). I understand that I will not be allowed to graduate from Drug Court or have my case(s) dismissed or reduced, unless restitution in the amount of \$2000 is paid in full. I further understand that my progress in Drug Court will be affected by my progress in restitution payments. I acknowledge and accept that I may be terminated from Drug Court if I do not satisfy my restitution obligation of \$2000 in a timely manner, whether the failure to pay is willful or not. If I have restitution in an amount that exceeds \$2000 my case will not be dismissed unless the entire amount owing is paid in full. If I am unable to pay the entire amount in full, but

have met all other conditions in Drug Court, my case will be reduced to a gross misdemeanor, I will plead guilty to that reduced charge and the parties will jointly request a deferred sentence. The only condition of the deferred sentence will be to pay the remaining balance within a 24 month timeline. If I pay the balance, I can ask the judge to set aside the guilty plea and dismiss the charge. If I am still unable to pay the entire amount after a 24 month timeline my case will remain a gross misdemeanor and the guilty finding will not be dismissed as part of the deferral.

- No restitution owed     Restitution order attached

13. I understand and agree that any violation of Drug Court requirements such as positive, dilute, or adulterated urinalysis tests, missed treatment sessions, any failure to abide by the terms of this agreement, or commission of a new crime, may result in modification of the treatment program, imposition of a sanction, revocation of my conditional release, and/or termination from the program.

14. In considering the consequences of my entry into this waiver and agreement I understand that if I am terminated from Drug Diversion Court and found guilty beyond a reasonable of the following charges then:

**COUNT I** \_\_\_\_\_

The crime with which I am charged carries a sentencing range of \_\_\_to\_\_\_ months with a maximum penalty of five/ten/twenty (5/10/20) years in prison and a \$10,000/\$20,000/\$25,000/\$50,000 fine.

- Disputed**                       **Nondisputed**

**COUNT II** \_\_\_\_\_

The crime with which I am charged carries a sentencing range of \_\_\_to\_\_\_ months with a maximum penalty of five/ten/twenty (5/10/20) years in prison and a \$10,000/\$20,000/\$25,000/\$50,000 fine.

- Disputed**                       **Nondisputed**

**COUNT III** \_\_\_\_\_

The crime with which I am charged carries a sentencing range of \_\_\_to\_\_\_ months with a maximum penalty of five/ten/twenty (5/10/20) years in prison and a \$10,000/\$20,000/\$25,000/\$50,000 fine.

- Disputed**                       **Nondisputed**

- a. The standard sentence range is based on the crime(s) charged and my criminal history in the Appendix B attachment. Defense retains the right to object to out of state convictions. Criminal history includes prior convictions and juvenile adjudications or convictions,

whether in this state, in federal court, or elsewhere. The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions. If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, this agreement is binding on me and I cannot change my mind even though the standard sentencing range and prosecuting attorney's recommendation may increase.

- b. The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the State or I can appeal the sentence.
- c. The sentences imposed on counts \_\_\_\_\_ will run concurrently unless there is a finding of substantial and compelling reasons to do otherwise.
- d. In addition to sentencing me to confinement, the judge will order me to pay \$500 to a victim's compensation fund assessment and a \$100 DNA fee. If this crime is a felony drug violation of RCW 69.50, the judge will impose an additional fine of \$1000 (\$2000 if this is not my first such conviction) unless the judge finds that I am indigent. If this crime is a violation of RCW 69.50.401 relating to synthetic cannabinoid, the judge will impose an additional fine of at least \$10,000 pursuant to RCW 69.50.430, unless the judge finds that I am indigent. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, and incarceration, lab, and attorney fees and place other restrictions and requirements upon me. Furthermore, the judge may place me on community custody.
- e. Because this crime involves the manufacture, delivery, or possession with intent to deliver methamphetamine, including its salts, isomers, and salts of isomers or amphetamine, including its salts isomers and salts of isomers, and if a fine is imposed, \$3000 of the fine may not be suspended. RCW 69.50.401(2)(b). If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.
- f. Government assistance may be suspended during any period of confinement.
- g. In addition to confinement, if the total period of confinement ordered is 12 months or less, the judge may impose up to one year of community custody for a crime against a person under RCW 9.94A.411 or a felony violation of chapter 69.50 or 69.52 or an attempt, conspiracy or solicitation to commit such a crime. If the total period of confinement ordered is more than 12 months, the judge will sentence me to the following period of community custody, unless the judge finds substantial and compelling reasons to do otherwise:

For crimes committed prior to July 1, 2000: for a drug offense, one year.

For crimes committed on or after July 1, 2000, and prior to August 1, 2009, as follows:  
crimes against person or violation of RCW 69.50 or 69.53: a range of 9 to 12 months.

For crimes committed on or after August 1, 2009, as follows: crimes against persons or violations of RCW 69.50 or 69.52: 12 months.

During the period of community custody, I may be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions being imposed.

- h. The judge may sentence me as a first time offender instead of imposing a sentence within the standard range if I qualify under RCW 9.94A.650. This sentence may include as much as 90 days of confinement plus all of the conditions listed in paragraph (14)(d). The judge also may require me to undergo treatment, to devote time to as specific occupation, and to pursue a prescribed course of study or occupations training. In addition, I may be sentenced to up to 6 months or, if treatment is ordered, 12 months of community custody.
- i. The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under former RCW 9.94A.120(6) (for offenses committed before July 1, 2001) or RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range or 12 months, whichever is greater, and community custody of at least one-half of the midpoint of the standard range, plus all of the other conditions described in paragraph (14)(d). The judge could impose a residential-based DOSA alternative that would include three to six months of residential chemical dependency treatment and 24 months of community custody, plus all the other conditions described in paragraph 14(d). During confinement and community custody under either alternative, I will be required to participate in substance abuse evaluation and treatment, not to use illegal controlled substance and to submit to testing to monitor that, and other restrictions and requirements will be placed on me.
- j. The judge may sentence me under the parenting sentencing alternative if I qualify under RCW 9.94A.655. A sentence under that alternative would consist of a period of 12 months of community custody, plus all of the other conditions described in paragraph 14(d). During community custody, I will be required to follow conditions imposed by the court and the Department of Corrections.
- k. A finding of guilt under RCW 46.20.285 (3) or (4), will result in the revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge if this paragraph applies to me.
- l. I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds I used a motor vehicle in the commission of this felony.
- m. If this crime involves a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency virus (HIV).
- n. If I am not a citizen of the United States, I understand that a finding of guilty to an offense(s) punishable as a crime under State law may be and for some crimes is grounds for deportation, exclusion from admission to the U.S., or denial of naturalization pursuant

to the laws of the United States.

- o. If found guilty, I will be required to provide a biological sample for purposes of DNA identification analysis.
  - p. If found guilty, I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.
  - q. If found guilty, I will be ineligible to vote until that right is restored in a manner provided by the law. If I am registered to vote, my voter registration will be cancelled.
  - r. If am found guilty of a violation of the state drug laws, I understand that my eligibility for state and federal food stamps, welfare, housing, and education benefits will be affected. 20 U.S.C. 1091 (r) and 21 U.S.C. 862a.
15. I knowingly, freely and voluntarily enter into this agreement.
16. No one has threatened to harm me or any other person to get me to enter into this agreement.
17. No person has promised me anything to get me to sign this agreement except as written in this document.
18. Upon successful completion of Drug Court, including the full satisfaction of any restitution obligation, all criminal charges pending against me under this (these) cause number(s) will be dismissed with prejudice.

My lawyer and I have reviewed and discussed all of the above paragraphs 1 through 18. I understand everything contained in these paragraphs and do hereby knowingly give up these rights and enter into this agreement with the State.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_  
Defendant Attorney

\_\_\_\_\_  
Defendant

I am fluent in the \_\_\_\_\_ language, and I have translated this entire document for the Defendant from English into that language. The Defendant has acknowledged his/her understanding of both the translation and the subject matter of this document. I certify under penalty of Perjury, under the laws of the State of Washington, that the foregoing is true and correct.

\_\_\_\_\_  
Interpreter

## APPENDIX B: Washington State Drug Court Legislation

### Chapter 2.30 RCW - THERAPEUTIC COURTS

#### Sections

- 2.30.010 Findings—Scope of therapeutic court programs.
  - 2.30.020 Definitions.
  - 2.30.030 Therapeutic courts authorized—Establishment of processes—Determination of eligibility—Persons not eligible—Use of best practices—Dependency matters—Foreign law limitations.
  - 2.30.040 Funding—Federal funding—Use of state moneys.
  - 2.30.050 Courts authorized to work cooperatively.
  - 2.30.060 Authorization for therapeutic courts existing on July 24, 2015.
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#### RCW 2.30.010

##### **Findings—Scope of therapeutic court programs.**

(1) The legislature finds that judges in the trial courts throughout the state effectively utilize what are known as therapeutic courts to remove a defendant's or respondent's case from the criminal and civil court traditional trial track and allow those defendants or respondents the opportunity to obtain treatment services to address particular issues that may have contributed to the conduct that led to their arrest or other issues before the court. Trial courts have proved adept at creative approaches in fashioning a wide variety of therapeutic courts addressing the spectrum of social issues that can contribute to criminal activity and engagement with the child welfare system.

(2) The legislature further finds that by focusing on the specific individual's needs, providing treatment for the issues presented, and ensuring rapid and appropriate accountability for program violations, therapeutic courts may decrease recidivism, improve the safety of the community, and improve the life of the program participant and the lives of the participant's family members by decreasing the severity and frequency of the specific behavior addressed by the therapeutic court.

(3) The legislature recognizes the inherent authority of the judiciary under Article IV, section 1 of the state Constitution to establish therapeutic courts, and the outstanding contribution to the state and local communities made by the establishment of therapeutic courts and desires to provide a

general provision in statute acknowledging and encouraging the judiciary to provide for therapeutic court programs to address the particular needs within a given judicial jurisdiction.

(4) Therapeutic court programs may include, but are not limited to:

- (a) Adult drug court;
- (b) Juvenile drug court;
- (c) Family dependency treatment court or family drug court;
- (d) Mental health court, which may include participants with developmental disabilities;
- (e) DUI court;
- (f) Veterans treatment court;
- (g) Truancy court;
- (h) Domestic violence court;
- (i) Gambling court;
- (j) Community court;
- (k) Homeless court;
- (l) Treatment, responsibility, and accountability on campus (Back on TRAC) court.

[\[2015 c 291 § 1.\]](#)

**NOTES: Conflict with federal requirements—2015 c 291:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [\[2015 c 291 § 14.\]](#)

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[RCW 2.30.020](#)

### **Definitions.**

**The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.**

(1) "Emerging best practice" or "promising practice" means a program or practice that, based on statistical analyses or a well-established theory of change, shows potential for meeting the

evidence-based or research-based criteria, which may include the use of a program that is evidence-based for outcomes other than those listed in this section.

(2) "Evidence-based" means a program or practice that: (a) Has been tested in heterogeneous or intended populations with multiple randomized, or statistically controlled evaluations, or both; or one large multiple site randomized, or statistically controlled evaluation, or both, where the weight of the evidence from a systemic review demonstrates sustained improvements in at least one outcome; or (b) may be implemented with a set of procedures to allow successful replication in Washington and, when possible, is determined to be cost-beneficial.

(3) "Government authority" means prosecutor or other representative initiating action leading to a proceeding in therapeutic court.

(4) "Participant" means an accused person, offender, or respondent in the judicial proceeding.

(5) "Research-based" means a program or practice that has been tested with a single randomized, or statistically controlled evaluation, or both, demonstrating sustained desirable outcomes; or where the weight of the evidence from a systemic review supports sustained outcomes as described in this subsection but does not meet the full criteria for evidence-based.

(6) "Specialty court" and "therapeutic court" both mean a court utilizing a program or programs structured to achieve both a reduction in recidivism and an increase in the likelihood of rehabilitation, or to reduce child abuse and neglect, out-of-home placements of children, termination of parental rights, and substance abuse and mental health symptoms among parents or guardians and their children through continuous and intense judicially supervised treatment and the appropriate use of services, sanctions, and incentives.

(7) "Therapeutic court personnel" means the staff of a therapeutic court including, but not limited to: Court and clerk personnel with therapeutic court duties, prosecuting attorneys, the attorney general or his or her representatives, defense counsel, monitoring personnel, and others acting within the scope of therapeutic court duties.

(8) "Trial court" means a superior court authorized under this title or a district or municipal court authorized under Title [3](#) or [35](#) RCW.

[[2018 c 201 § 9001](#); [2015 c 291 § 2](#).]

**NOTES: Findings—Intent—Effective date—2018 c 201:** See notes following RCW 41.05.018.

**Conflict with federal requirements—2015 c 291:** See note following RCW 2.30.010.

**Therapeutic courts authorized—Establishment of processes—Determination of eligibility—Persons not eligible—Use of best practices—Dependency matters—Foreign law limitations.**

(1) Every trial and juvenile court in the state of Washington is authorized and encouraged to establish and operate therapeutic courts. Therapeutic courts, in conjunction with the government authority and subject matter experts specific to the focus of the therapeutic court, develop and process cases in ways that depart from traditional judicial processes to allow defendants or respondents the opportunity to obtain treatment services to address particular issues that may have contributed to the conduct that led to their arrest or involvement in the child welfare system in exchange for resolution of the case or charges. In criminal cases, the consent of the prosecutor is required.

(2) While a therapeutic court judge retains the discretion to decline to accept a case into the therapeutic court, and while a therapeutic court retains discretion to establish processes and determine eligibility for admission to the therapeutic court process unique to their community and jurisdiction, the effectiveness and credibility of any therapeutic court will be enhanced when the court implements evidence-based practices, research-based practices, emerging best practices, or promising practices that have been identified and accepted at the state and national levels. Promising practices, emerging best practices, and/or research-based programs are authorized where determined by the court to be appropriate. As practices evolve, the trial court shall regularly assess the effectiveness of its program and the methods by which it implements and adopts new best practices.

(3) Except under special findings by the court, the following individuals are not eligible for participation in therapeutic courts:

- (a) Individuals who are currently charged or who have been previously convicted of a serious violent offense or sex offense as defined in RCW [9.94A.030](#);
- (b) Individuals who are currently charged with an offense alleging intentional discharge, threat to discharge, or attempt to discharge a firearm in furtherance of the offense;
- (c) Individuals who are currently charged with or who have been previously convicted of vehicular homicide or an equivalent out-of-state offense; or
- (d) Individuals who are currently charged with or who have been previously convicted of: An offense alleging substantial bodily harm or great bodily harm as defined in RCW [9A.04.110](#), or death of another person.

(4) Any jurisdiction establishing a therapeutic court shall endeavor to incorporate the therapeutic court principles of best practices as recognized by state and national therapeutic court organizations in structuring a particular program, which may include:

- (a) Determining the population;

- (b) Performing a clinical assessment;
- (c) Developing the treatment plan;
- (d) Monitoring the participant, including any appropriate testing;
- (e) Forging agency, organization, and community partnerships;
- (f) Taking a judicial leadership role;
- (g) Developing case management strategies;
- (h) Addressing transportation, housing, and subsistence issues;
- (i) Evaluating the program;
- (j) Ensuring a sustainable program.

(5) Upon a showing of indigence under RCW [10.101.010](#), fees may be reduced or waived.

(6) The health care authority shall furnish services to therapeutic courts addressing dependency matters where substance abuse or mental health are an issue unless the court contracts with providers outside of the health care authority.

(7) Any jurisdiction that has established more than one therapeutic court under this chapter may combine the functions of these courts into a single therapeutic court.

(8) Nothing in this section prohibits a district or municipal court from ordering treatment or other conditions of sentence or probation following a conviction, without the consent of either the prosecutor or defendant.

(9) No therapeutic or specialty court may be established specifically for the purpose of applying foreign law, including foreign criminal, civil, or religious law, that is otherwise not required by treaty.

(10) No therapeutic or specialty court established by court rule shall enforce a foreign law, if doing so would violate a right guaranteed by the Constitution of this state or of the United States.

[\[2018 c 201 § 9002; 2015 c 291 § 3.\]](#)

**NOTES: Findings—Intent—Effective date—2018 c 201:** See notes following RCW 41.05.018.

**Conflict with federal requirements—2015 c 291:** See note following RCW 2.30.010.

## RCW 2.30.040

### **Funding—Federal funding—Use of state moneys.**

Jurisdictions may seek federal funding available to support the operation of its therapeutic court and associated services and must match, on a dollar-for-dollar basis, state moneys allocated for therapeutic courts with local cash or in-kind resources. Moneys allocated by the state may be used to supplement, not supplant other federal, state, and local funds for therapeutic courts. However, until June 30, 2016, no match is required for state moneys expended for the administrative and overhead costs associated with the operation of a therapeutic court authorized under this chapter.

[[2015 c 291 § 4.](#)]

**NOTES: Conflict with federal requirements—2015 c 291:** See note following RCW 2.30.010.

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## RCW 2.30.050

### **Courts authorized to work cooperatively.**

Individual trial courts are authorized and encouraged to establish multijurisdictional partnerships and/or interlocal agreements under RCW [39.34.180](#) to enhance and expand the coverage area of the therapeutic court. Specifically, district and municipal courts may work cooperatively with each other and with the superior courts to identify and implement nontraditional case processing methods which can eliminate traditional barriers that decrease judicial efficiency.

[[2015 c 291 § 6.](#)]

**NOTES: Conflict with federal requirements—2015 c 291:** See note following RCW 2.30.010.

## RCW 2.30.060

### **Authorization for therapeutic courts existing on July 24, 2015.**

Any therapeutic court meeting the definition of therapeutic court in RCW [2.30.020](#) and existing on July 24, 2015, continues to be authorized.

[[2015 c 291 § 7.](#)]

**NOTES: Conflict with federal requirements—2015 c 291:** See note following RCW 2.30.010.