

# Youth Justice

Your Guide to Cops and Court in NSW

4th Edition

Macquarie Legal Centre

Jane Sanders

*Youth Justice – Your Guide to Cops and Court in NSW* is an ongoing project of Macquarie Legal Centre. This edition was produced in partnership with Shopfront Youth Legal Centre.

THE FEDERATION PRESS  
2010

Published in Sydney by  
The Federation Press  
PO Box 45, Annandale NSW, 2038.  
71 John St, Leichhardt, NSW, 2040.  
Ph (02) 9552 2200. Fax (02) 9552 1681.  
E-mail: [info@federationpress.com.au](mailto:info@federationpress.com.au)  
Website: <http://www.federationpress.com.au>

National Library of Australia  
Cataloguing-in-Publication entry

Youth justice : your guide to cops and court in New South Wales / Macquarie Legal Centre.

4th ed  
Includes index.  
ISBN 978 186287 812 9 (pbk)

Juvenile justice, Administration of - New South Wales.  
Juvenile delinquency - New South Wales.  
Child welfare - New South Wales.  
Youth - Legal status, laws, etc - New South Wales.  
Children - Legal status, laws, etc - New South Wales.  
Teenagers - Counselling of.

364.3609944

© Macquarie Legal Centre 2010.  
This publication is copyright. Other than for the purposes of and subject to the conditions prescribed under the Copyright Act, no part of it may in any form or by any means (electronic, mechanical, microcopying, photocopying, recording or otherwise) be reproduced, stored in a retrieval system or transmitted without prior written permission. Enquiries should be addressed to the publisher.

Typeset by The Federation Press, Leichhardt, NSW.  
Printed by Ligare Pty Ltd, Riverwood, NSW.

# Drug Courts and other special programs

---

## Introduction

There are now a number of diversionary or intervention programs available at court. Many of these are aimed at people whose offending is linked to drugs or other personal problems.

There are also programs aimed at particular groups of people, such as circle sentencing for Aboriginal offenders, traffic offender programs for people charged with driving offences, or *youth conduct orders* for under 18s charged with offences involving *anti-social* behaviour.

## The adult Drug Court

A Drug Court is a special court for people whose offending is linked to a serious drug problem. There is one adult Drug Court in NSW, located at Parramatta. It is an open court, so the public can sit in and see how it operates.

---

### BACKGROUND TO THE DRUG COURT

#### ***The NSW Drug Court is experimental***

– sourced from the NSW Bureau of Crime Statistics and Research website at [www.lawlink.nsw.gov.au/bocsar](http://www.lawlink.nsw.gov.au/bocsar).

The adult Drug Court was set up in February 1999 on a trial basis to provide an alternative to incarceration for offenders with a drug problem. After an initial evaluation in early 2002 by the NSW Bureau of Crime Statistics and Research (BOCSAR) and the Centre for Health Economics Research and Evaluation (CHERE) the Drug Court has undergone significant changes. These include a more flexible sanction system, police having a greater role in screening for eligibility, the threshold for program termination being reduced and the introduction of closer monitoring of participants, including more intensive urine testing.

In 2008 BOCSAR re-evaluated the effectiveness of the Drug Court, and found that participants in the NSW Drug Court were 17 per cent less likely to be reconvicted for any offence, 30 per cent less likely to be reconvicted for a violent offence and 38 per cent less likely to be convicted for a drug offence than offenders given conventional sanctions. In light of this success and despite the costs of running the court, the report concluded by recommending that more Drug Courts be set up in NSW.

---

## Who can get into the Drug Court program?

To be eligible for the adult Drug Court program you must:

- be over 18
- be charged with an offence (but not an offence of supplying a commercial quantity of a drug, or an offence involving violence or sexual assault)
- be highly likely to get a prison sentence for the charge
- plead guilty to the charge
- appear to be dependent on a prohibited drug (people who are dependent on alcohol only are not eligible)
- be willing to participate in the Drug Court Program, and
- not be suffering from any mental condition that could prevent or restrict you from active participation in the Drug Court Program.

You must also either:

- live in one of the following Local Government (council) areas: Auburn, Bankstown, Baulkham Hills, Blacktown, Campbelltown, Fairfield, Hawkesbury, Holroyd, Liverpool, Parramatta or Penrith, or
- have charges listed in one of the following courts: the Local Court at Bankstown, Blacktown, Burwood, Campbelltown, Fairfield, Liverpool, Parramatta, Penrith, Richmond, Ryde and Windsor, or the District Court at Campbelltown, Parramatta or Penrith.

## The Drug Court process

### Getting referred to the Drug Court

Your case starts in the Local Court or District Court, where your lawyer talks to you about the Drug Court. If you are eligible (see above), if there is a place available and if you agree, your case goes to the Drug Court.

If the magistrate or judge refuses to give you bail, you are kept in the Drug Court Detox Centre overnight. If you get bail, you must go to the Drug Court the next morning.

A nurse sees you (either at the Detox Centre or at the Drug Court) to assess whether you have a drug dependency.

## On your first day at the Drug Court

At the Drug Court, you see a Legal Aid lawyer who represents you. The people at the Drug Court take a team approach. This means that your lawyer, the nurse, and the police prosecutor talk about your case and what they think is best for you. You are involved in these discussions and it is important that you tell them what you think is best for you. In the courtroom your lawyer and the judge discuss whether you are eligible for the Drug Court (see above).

You might not get a place in the Drug Court program. If there are not enough beds available at the Detox Centre, you might miss out on a place and have to go back to the original court for normal sentencing.

If there is a bed available, you go straight to the Drug Court Detox Centre. It is very important to realise that you are detained immediately if you are accepted into the program.

## Going to the Drug Court Detox Centre

The Drug Court Detox Centre is at the Metropolitan Remand and Reception Centre (MRRC) of Silverwater Prison. Participants are separated from the main prison inmates and the centre is especially secured to keep drugs out.

After you have detoxed, you and the staff design a treatment plan. There are several choices including methadone programs and residential rehab. You are involved in deciding what treatment is best for you. You then have to go back to the Drug Court to see the judge.

## Suspended sentence

You cannot get into the Drug Court program unless the original court was likely to send you to prison. The Drug Court judge will give you a prison sentence for the crime you committed but will then suspend the sentence while you take part in the Drug Court program. See *What is a suspended sentence?* on page 365.

The judge will reconsider your suspended sentence when you leave or complete the Drug Court program. See *At the end of a Drug Court program* on page 311.

Before the judge suspends your sentence and accepts you into the program, you must sign an undertaking (an agreement).

## Signing a Drug Court undertaking

The undertaking you sign is very detailed and very intrusive. It includes the details of your *treatment plan*. It also gives the court a lot of control over your life and it requires a strong commitment from you. You should think carefully before you agree to it.

## The treatment program

There are three phases to the program:

- In Phase 1 you are urine tested once a week and attend the court once a week. To pass phase 1 and move on to phase 2 you must attend courses and be drug free for a significant period. Phase 1 should last about 3 months but takes longer if you relapse.
- In Phase 2 you must give weekly urine samples and attend court once every 2 weeks. You get less counselling and you must look for work or have full time work or education. Phase 2 should last about 3 months but it can take longer or they might send you back to Phase 1 if you relapse.
- Phase 3 should last about another 6 months. You have fewer urine tests and you attend court once a month. By now you should be in full-time work or training.

## Rewards and punishments

If you do well, they may modify your treatment plan to give you more freedom. There are other rewards during the program if you do well, including congratulatory applause from the court or benefits like free haircuts or free tickets to football matches.

If you break the undertaking, the court punishes you. Punishments range from a few days in prison to writing an essay to read to the court. If you keep breaking the undertaking the judge can end your program if they think there is no useful purpose in you continuing (see *At the end of the Drug Court program* below).

## At the end of the Drug Court program

At the beginning of the program, the judge gave you a suspended prison sentence for the offence. When you complete a Drug Court program, the judge reconsiders your suspended sentence.

If you have successfully completed all three phases of the program, you don't go to prison, but you might have to do some community service or be supervised by the Probation and Parole Service.

If you don't finish the program, you have to serve your prison sentence. The judge reduces your prison sentence if you completed part of the Drug Court program. You don't get an extra sentence for failing to finish the program.

## More information

Log onto the website at [www.lawlink.nsw.gov.au/drugert](http://www.lawlink.nsw.gov.au/drugert).

Please note: pages 312-319 have been removed as they contained out-of-date information.

## Other special programs

For many years, some Local Courts have been sending offenders to programs including community aid panels and traffic offender programs.

More recently, programs such as MERIT, CREDIT and circle sentencing have become available at several Local Courts.

### MERIT program

The MERIT (Magistrates' Early Referral Into Treatment) program arose from the recommendations of the 1999 Drug Summit.

It started as a pilot at a few courts, and is gradually being expanded to cover most Local Courts in NSW. At this stage it is not available in the Children's Court.

MERIT is available to people who are dependent on illegal drugs. It is not usually available for people whose main problem is with alcohol, except in areas where there is a Rural Alcohol Diversion or Alcohol MERIT pilot program.

### Differences between MERIT and Drug Court

The MERIT program aims to address drug-related offending at an early stage. In some ways it is similar to the Drug Court, but there are some important differences.

- 8 First, to be on the MERIT program, you do not need to plead guilty to the charge – in fact, the MERIT referral is usually made before a plea is entered. This is important and the program is designed so that becoming involved in MERIT is not seen as an admission of guilt for the charges(s) you are facing.

- Secondly, MERIT is only available for offences that can be dealt with in the Local Court.
- Thirdly, you don't have to be facing a prison sentence.
- Finally, the MERIT program is shorter and less intensely supervised than the Drug Court.

## Eligibility

The magistrate may refer you for a MERIT assessment if you appear to be eligible for the program. To be eligible for MERIT you must:

- be an adult
- have an illicit drug problem (this does not include alcohol as the primary problem)
- be on bail (or suitable for release on bail), and
- wish to take part in the program.

If you are involved in an offence which relates to significant violence or sexual assault, or one that is to be heard in the District Court, you unfortunately cannot take part in the program.

## Assessment and referral

If you are referred for assessment, you will be interviewed by your local MERIT team who will decide on a treatment program for you.

The MERIT team will then report back to the magistrate, who will decide whether to formally refer you to the MERIT program.

The MERIT program lasts for about 3 months. Your case will be first adjourned for 6 weeks. The court will get a progress report and, if you are doing well, your case will be adjourned for another 6 weeks to allow you to complete the program.

## Treatment program

The MERIT team will create a drug treatment program which suits you and your needs. Your program may include:

- residential rehabilitation
- home detox
- methadone
- counselling and group work
- welfare support or assistance
- help with accommodation if you need it.

You will be given a case worker and will need to be in regular contact with him or her during the program.

## Completion of MERIT

Successful completion of the MERIT program will usually mean a more lenient sentence if you plead guilty.

## More information

To find out more about the MERIT program you can log onto their website at [www.lawlink.nsw.gov.au/merit](http://www.lawlink.nsw.gov.au/merit) or contact your nearest Local Court and ask them to put you in touch with the MERIT team.

## Court Referral of Eligible Defendants into Treatment (CREDIT)

The CREDIT program is currently being piloted at Burwood and Tamworth Local Courts.

## Aims of CREDIT

Like MERIT, the program is voluntary and can be entered before you enter a plea. CREDIT uses a problem-solving approach to address the underlying issues which contributed to your offending, with the aim of reducing the likelihood of you reoffending.

The program aims to give you the support you need to access a broad range of treatments, programs and services. A case worker will support you in accessing services including:

- accommodation
- financial counselling
- income support
- education, training or employment support
- mental health assessment
- suicide counselling
- domestic violence or sexual assault support
- alcohol and other drug assessment and treatment
- disability services.

## Eligibility

To be eligible for CREDIT you must be charged with an offence that can be dealt with by the Local Court and you must be out on bail.

If you are charged with a sexual offence, have been convicted of a sexual offence in the past 5 years, are currently being supervised by Probation and Parole or have been refused bail you are unfortunately not eligible.

You can refer yourself to the program by approaching a CREDIT case worker, or can be referred by a magistrate, police officer, solicitor, court staff, support workers or friends and family.

The length of the CREDIT program depends on your particular needs but usually runs for between 2 to 6 months. If you end up pleading guilty (or being found guilty) your case worker will prepare a report which tells the magistrate of the steps you have taken during the program.

## More information

For more information on the CREDIT program, contact one of the case workers at Burwood or Tamworth Local Court, or log onto the Crime Prevention Division website at [www.lawlink.nsw.gov.au/cpd](http://www.lawlink.nsw.gov.au/cpd).

## Forum sentencing

*Forum sentencing* is an initiative that gives victims of crime a say in how offenders are punished. It has some similarities to youth justice conferencing, but is available only to adult offenders.

There is an important difference between youth justice conferencing and forum sentencing: while a youth justice conference is diversionary and will result in the charge being dismissed if successfully completed, forum sentencing is only one step in the court process, and it is up to the magistrate to impose a sentence after the forum or conference is held.

The program started off as a pilot at Tweed Heads and Liverpool Local Courts in 2005 and was called *Community Conferencing for Young Adults*. It has now been expanded across the State to more Local Courts, and has been renamed *Forum Sentencing*.

## Eligibility

As an offender you are only eligible for this program if you have pleaded guilty (or have been found guilty) and there is a real chance that you will receive a prison sentence. Forum sentencing is only available for certain offences and the court must also be satisfied that you are likely to be respectful towards the victim during the forum process.

You **cannot** take part in forum sentencing if you:

- have been previously sentenced to a term of imprisonment (including a suspended sentence)
- have been convicted of murder or manslaughter
- have been convicted of certain personal violence offences
- have been convicted of certain drug offences, or
- have a conviction for a serious firearms or weapons offence.

### What does forum sentencing involve?

The *forum* includes you (the offender), the victim, their support persons, a police officer and a trained facilitator.

During the forum, the impact of the crime on the victim is discussed. A draft *intervention plan* is developed with the intention of repairing harm to the victim and community. For example, if you broke into a person's home to steal items to buy drugs, the intervention plan may require you to apologise to the victim, repair the damage and complete a drug rehab program.

The intervention plan is then submitted to the court. The court may adjourn the proceedings to allow you to complete the intervention plan, or may sentence you and include the intervention plan as a condition of a bond or suspended sentence.

If the court adjourns the case for you to complete the intervention plan, and you do not complete it, this will make it difficult for you to get a lenient sentence. If the intervention plan is imposed as a condition of an order such as a bond or suspended sentence, failure to complete it will result in breach action and possible imprisonment.

### More information

For more information, log onto the forum sentencing website at [www.lawlink.nsw.gov.au/forumsentencing](http://www.lawlink.nsw.gov.au/forumsentencing) or see the online fact sheet at [www.lawlink.nsw.gov.au/lawlink/local\\_courts/ll\\_localcourts.nsf/vwFiles/forum\\_sentencing\\_factsheet.pdf/\\$file/forum\\_sentencing\\_factsheet.pdf](http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/vwFiles/forum_sentencing_factsheet.pdf/$file/forum_sentencing_factsheet.pdf).

## Circle sentencing

*Circle sentencing* originated in Canada as an alternative way of sentencing indigenous offenders. It is now being piloted for Aboriginal offenders at some Local Courts in regional and rural NSW.

### How does circle sentencing work?

Circle sentencing gets community members involved in sentencing instead of leaving the decision solely up to the judge or magistrate.

The *sentencing circle* includes the offender, the victim, the magistrate, prosecutor, defence lawyer, police, and community elders. Friends and relatives of the offender and the victim, professionals such as alcohol and drug workers, and members of the local community may also participate.

Participants discuss the offence, the reasons for it, the impact on victims and on the community, what must be done to heal the victim and for the offender's rehabilitation, and what the community can do to prevent similar crimes. Participants develop a sentence plan which is then imposed by the court.

### More information

For more information, see the circle sentencing fact sheet at [www.lawlink.nsw.gov.au/lawlink/cpd/ll\\_cpd.nsf/vwFiles/APU\\_Circle\\_Sentencing\\_Jan10\\_Webversion.pdf/\\$file/APU\\_Circle\\_Sentencing\\_Jan10\\_Webversion.pdf](http://www.lawlink.nsw.gov.au/lawlink/cpd/ll_cpd.nsf/vwFiles/APU_Circle_Sentencing_Jan10_Webversion.pdf/$file/APU_Circle_Sentencing_Jan10_Webversion.pdf).

## Traffic offender programs

There are several traffic offender programs operating in NSW. When you plead guilty to a traffic offence (eg drink driving, unlicensed driving) the Local Court may refer you to one of these programs and adjourn the sentencing until you have completed it.

Most traffic offender programs run for 6 weeks, one evening per week. Participants attend classes on various topics including road safety, first aid, alcohol and other drugs, and traffic laws. They must also hand in written assignments. If a participant has attended all sessions and performed well in the assignments, they can expect to receive a good report from the program and a more lenient sentence from the court.

For some offenders, successful completion of a traffic offender program can make a big difference to the outcome. However, it is no guarantee that you won't be punished or disqualified.

For more information, see the Traffic Offenders Intervention Program Register at [www.lawlink.nsw.gov.au/lawlink/local\\_courts/ll\\_localcourts.nsf/pages/lc\\_traffic\\_offenders](http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/pages/lc_traffic_offenders).