

**ARTICLE 36: KANE COUNTY DRUG REHABILITATION COURT RULES
AND PROCEDURES**

(a) Mission: The Illinois General Assembly has recognized that there is a critical need for a criminal justice program that will reduce the incidence of drug use, drug addiction, and crimes committed as a result of drug use and drug addiction. It is the mission of the Kane County Drug Rehabilitation Court, established here under the provisions of 730 ILCS 166/1 et seq., to accomplish these goals through an immediate and highly structured judicial intervention process for substance abuse treatment of eligible defendants that brings together substance abuse professionals, local social programs and intensive judicial monitoring in accordance with the nationally recommended 10 key components of drug courts. (Appendix G) The Kane County Drug Rehabilitation Court is a post-plea program in that only defendants who have pleaded guilty will be admitted to the program.

(b) Ethical Considerations

(1) The National Drug Court Institute's Ethical Considerations for Judges and Attorneys in Drug Court is adopted as a guide for lawyers and Judges in the KCDRC to the extent that it is not inconsistent with the Illinois Rules of Professional Conduct (Article VIII Supreme Court Rules) or the Code of Judicial Conduct (Supreme Court Rules 61 et seq.)

(2) No provision of these Rules and Procedures affects the duty or obligation, if any, of counsel of record to attend post-plea proceedings.

(c) Definitions

(1) "Drug Court Professional" means a Judge, prosecutor, defense attorney, probation officer, or treatment provider involved with the drug court program.

(d) Eligibility

(1) Only Defendants who apply for admission to the Kane County Drug Rehabilitation Court (herein referred to as "KCDRC") will be considered for admission.

(2) No applicant will be admitted without the agreement of the prosecution and the approval of the Court.

(3) No defendant shall be admitted to the KCDRC unless he or she is a resident of Kane County. Once admitted, continued Kane County residency is required unless the KCDRC Judge orders otherwise.

(4) A defendant shall be excluded from KCDRC if any one of the following apply:

(A) The crime is a crime of violence as set forth in clause (D) of this subsection (4).

(B) The defendant denies his or her use of or addiction to drugs.

(C) The defendant does not demonstrate a willingness to participate in a treatment program.

(D) The defendant has been convicted of a crime of violence within the past 10 years excluding incarceration time, including, but not limited to: first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, armed robbery, aggravated arson, arson, aggravated kidnapping, kidnapping, aggravated battery resulting in great bodily harm or permanent disability, stalking, aggravated stalking, or any offense involving the discharge of a firearm.

(E) The defendant has previously completed or has been discharged from a drug court program.

(5) No defendant shall be admitted to the KCDRC if, at the time of plea of guilty, felony charges are pending alleging a crime which would make the defendant ineligible to enter the KCDRC under paragraph (4)(D).

(e) Procedure

(1) The Chief Judge shall establish the format of operation of the KCDRC, including, but not limited to, scheduling and the approval of forms.

(2) The Chief Judge shall assign one Judge to preside over all KCDRC cases. No defendant shall be permitted to enter the KCDRC or remain in the KCDRC under the supervision of any other Judge, unless the Chief Judge so orders. This does not apply to those cases in which the defendant is also being monitored or treated by the drug court of another Circuit or another county.

(3) KCDRC proceedings shall be of record as may be required by applicable Supreme Court Rules and statutes, including but not limited to, waiver of counsel, guilty plea, sanction hearings resulting in imprisonment, motions to reconsider sanctions, and discharge hearings.

(4) When a defendant appearing in open Court or counsel on his or her behalf requests admission to the KCDRC and appears to meet the eligibility requirements set forth in Section (d) above, such case or cases shall immediately be transferred to the KCDRC for formal application.

(5) No application for admission to the KCDRC shall be considered when the defendant is not represented by counsel unless:

(A) the defendant waives counsel pursuant to S.Ct. Rule 401, and

(B) the defendant is further advised by the Court that:

(i) if the defendant chooses to represent himself or herself that the defendant would be at a disadvantage without a lawyer and that the outcome of the case could be affected in a way detrimental to the defendant as a direct result, and

(ii) the defendant may change his or her mind at any time and hire a lawyer, or if he or she cannot afford to hire a lawyer, request that a lawyer be appointed to represent him or her at which time the court will appoint a lawyer if eligible.

(6) The Judge of the KCDRC shall order an eligibility screening and an assessment of the defendant by an agent designated by the State of Illinois to provide assessment services for the Illinois Courts. The KCDRC Judge may order that the screening and assessment be conducted in an inpatient or outpatient facility. An assessment need not be ordered if the court finds a valid assessment related to the present charge pending against the defendant has been completed within the previous 60 days.

(7) The Judge shall inform the defendant if the defendant fails to meet the conditions of the drug court program, eligibility to participate in the program may be revoked and the defendant may be sentenced as provided in the Unified Code of Corrections for the crime or crimes to which the defendant has pleaded guilty, or, if the defendant has been sentenced to probation, that the probation may be revoked and the defendant resentenced as provided in the Unified Code of Corrections for the crime or crimes of which the defendant stands convicted.

(8) The defendant shall execute an application form (Appendix A). If a defendant is applying for admission to the KCDRC in more than one case, he or she shall execute an application form for each case.

(9) If accepted, the defendant shall execute a written agreement (Appendix B) in which he or she agrees to all of the terms and conditions of the program, including but not limited to the possibility of sanctions or incarceration for failing to abide or comply with the terms of the program. If the defendant is admitted to the KCDRC in more than one case, he or she shall execute a written agreement for each case.

(10) In addition to any conditions authorized under the Pretrial Services Act (725 ILCS 185/0.1 et seq.) and the Unified Code of Corrections (730 ILCS 5/5-6-3),

the court may order the defendant to complete substance abuse treatment in an outpatient, inpatient, residential, or jail-based custodial treatment program. Any period of time a defendant shall serve in a jail-based treatment program may not be reduced by the accumulation of good time or other credits and may be for a period of up to 120 days.

(11) The KCDRC rules and procedures include the regimen of graduated requirements and rewards, sanctions, and procedures as set forth in Appendix B, as now constituted and as may be amended by way of Administrative/General Order by the Chief Judge. The Presiding Judge of the KCDRC is authorized to prepare a participant handbook for use by KCDRC participants. In the event any provisions of such handbook conflict with any statute, Supreme Court Rule, case law, or Local Rule, then such laws will take precedence over the handbook.

(f) Substance Abuse Treatment

(1) The KCDRC shall maintain a network of substance abuse treatment programs representing a continuum of graduated substance abuse treatment options commensurate with the needs of defendants.

(2) Any substance abuse treatment program to which defendants are referred must meet all of the rules and governing programs in Parts 2030 through 2060 of Title 77 of the Illinois Administrative Code

(3) The KCDRC Judge may, at his or her discretion, employ additional services or interventions, as he or she deems necessary on a case by case basis.

(g) Violations, Sanctions, Termination, Discharge

(1) If the KCDRC Judge finds from the evidence presented, including, but not limited to, the reports or proffers of proof from a prosecutor, defense attorney, probation officer, or treatment provider involved with the KCDRC program that:

(A) the defendant is not performing satisfactorily in the assigned program;

(B) the defendant is not benefiting from education, treatment, or rehabilitation;

(C) the defendant has engaged in criminal conduct rendering him or her unsuitable for the KCDRC program; or

(D) the defendant has otherwise violated the terms and conditions of the KCDRC program or his or her sentence or is for any reason unable to participate, the KCDRC Judge may impose reasonable sanctions under prior written agreement of the defendant (Appendix B), including but not limited to imprisonment or dismissal of the defendant from the KCDRC

program and the Court may reinstate sentencing proceedings against him or her before a Judge designed by the Chief Judge to hear such matters, or, if the defendant has already been sentenced, may proceed under Section 5-6-4 of the Unified Code of Corrections (730 ILCS 5/5-6-4) for a violation of probation, conditional discharge, or supervision hearing before a Judge designated by the Chief Judge to hear such matters.

(2) Hearsay is admissible. The Judge shall weigh the circumstances of the making of the statement along with all other relevant factors in determining what weight to give the evidence. Proffers may be oral or written, but if oral, must be based upon information reduced to writing.

(3) In determining what constitutes a reasonable sanction the Court shall consider the nature of the violation, the treatment history of the defendant, the need to protect the public, the need to protect the defendant, and any other reliable information that is relevant.

(4) The defendant may file a motion to reconsider the sanction. Such motion shall be heard within 5 court days of its filing unless delay is occasioned by the defendant, which delay shall toll the 5 day period. The defendant has the right to be represented by counsel at the hearing. Failure to hold the hearing as set out herein shall result in the release of the defendant from custody on the sanction if he or she is being held in custody on the sanction. The Court shall inform the defendant of these rights at the time the sanction is imposed and shall serve the defendant with a copy of the motion to reconsider form (Appendix E).

(5) After arrest, upon appearance before the Bond Call Judge, a defendant arrested on a warrant ordered by the KCDRC Judge shall be taken before the KCDRC Judge, or the Judge sitting in his or her stead, within 3 court days.

(6) Incarceration sanctions shall not exceed 180 days in the aggregate, excluding good time credit. When a defendant's sanction time reaches 180 days, the KCDRC Judge shall call Paragraph 7-4 of the Participation Agreement to the defendant's attention. A defendant may waive the 180 day limit if he or she files a written request (Appendix C). The request must be initiated by the defendant without prompting from any drug court professional other than defendant's attorney. The waiver may be for a period not to exceed 14 days. The defendant may request additional waivers which shall not exceed five additional waivers per any consecutive 12 month period. No waiver may exceed 14 days.

(7) A defendant admitted to the KCDRC may, at any time, move orally or in writing to voluntarily terminate his or her participation in the KCDRC. If the request is oral, the defendant shall be provided with a written voluntary termination form (Appendix D) and shall sign it. Upon being presented with a signed voluntary termination form, the KCDRC Judge shall, without delay, transfer the case to the Judge who is designated by the Chief Judge to preside over

sentencing hearings of defendants whose participation in the KCDRC has been terminated for sentencing pursuant to Section 5-4-1 of the Unified Code of Corrections (730 ILCS 5/5-4-1). If the defendant entered the KCDRC as a condition of probation, the case shall be transferred to the Judge designated by the Chief Judge to preside over probation violation matters for probation violation hearing pursuant to Section 5-6-4 of the Unified Code of Corrections (730 ILCS 5/5-6-4).

(8) Upon successful completion of the terms and conditions of the KCDRC program, the Court may vacate defendant's plea and the finding and judgment of guilty and dismiss the original charges against the defendant or successfully terminate the defendant's sentence or otherwise discharge him or her from any further proceedings against him or her in the original prosecution. No order of successful discharge from the KCDRC shall enter unless, immediately prior to the date of discharge, the defendant has completed a minimum 12 consecutive months without the use of prohibited substances.

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