

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
GENERAL ORDER 19-34
effective December 19, 2019

AMENDING LOCAL COURT RULES

ARTICLE 23.03: ELIGIBILITY

FILED _____
ENTERED _____
2019 DEC 19 A 11:46
THOMAS M. HARTWELL
CIRCUIT COURT CLERK
KANE COUNTY, ILL.

WHEREAS, by a majority vote of the Sixteenth Judicial Circuit Court Judges, the current version of Article 23.03 has been updated.

IT IS HEREBY ORDERED that the attached Article 23.03 (Eligibility) is adopted in and for the Sixteenth Judicial Circuit, effective December 19, 2019. These updates amend and supersede the prior versions of Article 23.03.

Entered this 19th day of December, 2019



Clint Hull, Chief Judge

A true copy of the original of this document is on file in my office
Attest: Dec. 19th, 20 19
Thomas M. Hartwell
Circuit Court Clerk, Kane County, Illinois
By: Thomas M. Hartwell
Deputy Clerk

Kane County Local Rules

ARTICLE: 23: KANE COUNTY DRUG REHABILITATION COURT RULES AND PROCEDURES

23.00 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 Illinois Supreme Court Problem-Solving Courts Standards. The Kane County Drug Rehabilitation Court (hereinafter referred to as "KCDRC") is a post-adjudicatory program for defendants who have admitted guilt or have been found guilty and agree to enter a drug court program as part of the defendant's sentence.

23.01 ETHICAL CONSIDERATIONS

The KCDRC team shall utilize a non-adversarial, collaborative approach and maintain professional integrity and accountability. Each member of the Problem-Solving Court Team shall adhere to the ethical standards and Codes of their profession.

23.02 DEFINITIONS

The KCDRC "Team" shall include a Judge, prosecutor(s), defense attorney(s), probation officers, licensed treatment provider(s), coordinator and law enforcement representatives. A "Participant" is a defendant who has been admitted into the KCDRC program.

23.03 ELIGIBILITY

- (a) Only defendants who apply for admission to the KCDRC will be considered for admission.
 - (b) 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.
 - (c) A defendant shall be excluded from KCDRC if any one of the following apply:
 - (1) The crime is a crime of violence as set forth in 23.03 (c) (4) of this subsection.
 - (2) The defendant denies his or her use of/or addiction to drugs.
 - (3) The defendant does not demonstrate a willingness to participate in a treatment program.
 - (4) The defendant has been convicted of a crime of violence within the past ten (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,
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arson, aggravated kidnapping, kidnapping, aggravated battery resulting in a great bodily harm or permanent disability, stalking, aggravated stalking, or any offense involving the discharge of a firearm.

- (5) The prosecutor does not agree to the admission of the defendant who:
- (A) Is charged with a Class 2 or greater felony violation of:
 - i. Section 401, 401.1, 405, or 405.2 of the Illinois Controlled Substances Act;
 - ii. Section 5.5.1 or 5.2 of the Cannabis Control Act;
 - iii. Section 15, 20, 25, 30, 35, 40, 45, 50, 55, 56 or 65 of Methamphetamine Control and Community Protection Act.
 - (B) Has previously, on three (3) or more occasions, completed a drug court program, been discharged from a drug court program, or been terminated from a drug court program.
- (6) The defendant is not moderate-high to high criminogenic risk or does not have high behavioral health treatment needs as determined by the use of validated risk assessment tools and clinical assessment tools.
- (7) The defendant has been charged with drug dealing offenses primarily for purposes of financial gain and not to support their addiction.
- (8) 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 23.03 (c) (4) of this local rule.

23.04 PROCEDURE

- (a) The Chief Judge shall establish the format of operation of the KCDRC, including but not limited to, scheduling and the approval of forms.
- (b) The Chief Judge shall assign a Judge to preside over all KCDRC cases. No defendant shall be permitted to 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.
- (c) KCDRC shall maintain written policies and procedures that comply with The Illinois Supreme Court Problem-Solving Court Standards. All policies and procedures shall comply with applicable state and federal laws, applicable Supreme Court policies and procedures, and the policies and procedures of the Sixteenth Judicial Circuit, Kane County, Illinois. Policies and procedures shall incorporate interventions and approaches consistent with evidence-based practices and principles.
- (d) KCDRC shall maintain a written handbook which will be provided to each participant which sets forth all KCDRC requirements. The handbook will include, among all other
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requirements, the participant's responsibilities, the program phases and requirements for phase advancement, the use and administration of incentives, sanctions and therapeutic adjustments, the drug and alcohol testing requirements and the possible program outcomes; the requirements for successful completion; the procedures for neutral discharge, voluntary withdrawal and unsuccessful discharge from the program; and the participant's rights at a hearing on a petition to terminate from KCDRC or to revoke probation.

- (e) Successful and neutral discharge decisions shall be made by the KCDRC team collaboratively. Prior to unsuccessful discharge, the participant shall be served with a petition to terminate the participant from KCDRC or to revoke probation which shall set forth the claimed violations of the program. The KCDRC judge shall ensure that a participant is advised of and accorded all rights set forth in Supreme Court Rule 402, including, but not limited to, the right to counsel and a hearing. At a hearing on a petition to terminate a participant from KCDRC or to revoke probation, the KCDRC judge shall not consider any information obtained through team staffing's, status review hearings or otherwise, unless newly received evidence at the hearing. The KCDRC judge should disqualify himself/herself under the circumstances listed in Supreme Court Rule 63C. A participant retains the right to move for substitution of judge pursuant to section 114-5(d) of the Code of Criminal Procedure.

23.05 SUBSTANCE ABUSE TREATMENT

- (a) The KCDRC shall maintain a network of licensed treatment providers. A licensed treatment provider may be a person who individually holds, or a person who is a qualified staff member of an entity that holds, a currently valid license or certification from the appropriate United States or State of Illinois governmental department or agency to provide substance abuse treatment, mental health treatment, behavioral health treatment, medical treatment and/or related services.
- (b) 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.

23.06 VIOLATIONS, SANCTIONS, TERMINATION, DISCHARGE

- (a) Incentives, sanctions, and therapeutic adjustments shall be administered to motivate a person to comply with KCDRC program requirements. The KCDRC team shall have input into the decision of what constitutes an appropriate response to a participant's behavior with the final decision to be made by the judge. Prior to the administration of any sanction, incentive or therapeutic adjustment, the judge shall advise the participant in open court of the team's recommendation and the participant shall be permitted to address the court about the matter before the judge's final decision.
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- (b) 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 ([LINK](#)) and shall sign it. Upon being presented with a signed voluntary termination form, the KCDRC Judge shall, without delay, transfer the case to the originally assigned felony courtroom.
- (c) If the KCDRC Judge finds from the evidence presented at a hearing on a petition to revoke defendant's probation or to terminate defendant from KCDRC;
- (1) The defendant is not performing satisfactorily in the assigned program;
 - (2) The defendant is not benefiting from education, treatment, or rehabilitation;
 - (3) The defendant has engaged in criminal conduct rendering him or her unsuitable for the KCDRC program; or
 - (4) The defendant has otherwise violated the terms and conditions of the KCDRC program or his or her sentence, then KCDRC Judge may revoke defendant's probation and terminate defendant from KCDRC and the matter shall proceed to a sentencing hearing in accordance with the Unified Code of Corrections.
- (d) A neutral discharge may be allowed for a participant who has been substantially compliant with the KCDRC program rules, but, after having exhausted reasonable efforts, is unable to successfully complete program requirements to qualify for a successful discharge. A neutral discharge shall terminate the defendant's sentence and discharge the defendant from further proceedings in the original prosecution. Successful and neutral discharge decisions shall be made by KCDRC team collaboratively.
- (e) Upon successful completion of the terms and conditions of the KCDRC program, the Court may, with the State's agreement, vacate defendant's plea and the judgment of conviction 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 of twelve (12) consecutive months without the use of prohibited substances.
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