

Drug diversion programs Queensland

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The Queensland criminal justice system provides a myriad of diversionary avenues and alternative court procedures for drug offenders. The courts are concerned with diverting offenders from the criminal justice system, and providing information and education to empower and inform drug users and offenders.

This article addresses some of the alternative avenues for people charged with drug offences, including police drug diversion, court-ordered drug diversion and Drug and Alcohol Assessment Referral (DAAR) courses.

What is drug diversion?

Drug diversion programs aim to address offenders' drug use and divert offenders (particularly youthful or first-time offenders) away from the criminal justice system.

There are two types of drug diversion:

1. police drug diversion; and
2. court-ordered drug diversion.

What is police drug diversion?

Police drug diversion is a program that police can offer eligible defendants arrested for minor drug offences. It aims to help defendants who make admissions to their offending address their drug use and offending.

Eligible offences include:

- possession of 50 grams of less of cannabis; or
- possession of a thing that is used or has been used for smoking cannabis.

You also must not have not committed an indictable offence (a serious criminal offence) related to the minor offence referred to above. For example, you must not have been charged with both possession of 50 grams or less of cannabis and also trafficking in cannabis.

You will also be ineligible for police drug diversion if you have previously been convicted of an offence involving violence against another person.

What happens at police drug diversion sessions?

The session is run by Queensland Health and involves an assessment of your offending and drug use, and an education and counselling session.

You learn about the legal consequences of drug use and how it affects your health. The program provider works with you to develop a plan to stop smoking cannabis. They may also refer you to further information and treatment for drug dependence.

Police drug diversion offers many benefits as a diversionary alternative to prosecution). You will not be charged with a criminal offence, nor will you have to attend court.

Gilshenan and Luton can make submissions to police for referral to drug diversion on your behalf. ##

What is court-ordered drug diversion?

Court-ordered drug diversion is a penalty imposed by the court when you plead guilty to an eligible drug offence. It is designed to be rehabilitative in nature. It is not available if you plead not guilty to your charges and take your matter to trial.

It aims to address offenders' drug use and divert defendants from the criminal justice system and reduce further drug-related offending.

Court drug diversion involves a one-off information and education session. You must attend and satisfactorily participate in this session. You may attend in person or by telephone.

You may be eligible for court drug diversion if you plead guilty to one or more of the following offences:

- Possessing a dangerous drug— if the drug was for personal use and is prescribed in, and of a quantity less than the amount prescribed in, schedule 1 of the Penalties and Sentences Regulation 2015;

- Possess anything used in connection with the commission of a crime under Part 2 of the Drugs Misuse Act 1986—if the thing was for personal use;
- Possess things used for the administration, consumption or smoking of a dangerous drug;
- Fail to take reasonable care of a syringe; and/or
- Fail to dispose of a syringe.

You will **not be eligible** if you have previously been given two diversion alternatives. This includes police drug diversions. You must also not have any pending charges or convictions for sex offences, certain drug offences dealt with on indictment, or offences involving violence against another person.

Gilshenan and Luton can assist in assessing your eligibility for court drug diversion, and making submissions to the court on your behalf.

Call for advice and assistance: 07 3361 0222

The primary difference between police drug diversion and court-ordered drug diversion

The key difference between court-ordered and police drug diversion is that police drug diversion is an alternative to prosecution, whereas court-ordered drug diversion forms part of a penalty imposed by the court once a defendant pleads guilty.

If police agree to refer a defendant to drug diversion, and the person satisfactorily attends and participates in the session, the prosecution for the drug charges will be discontinued.

If you do not attend, police may charge you with the original drug offences, or recommence their prosecution if you were already charged.

What is Drug and Alcohol Assessment Referral?

Drug and Alcohol Assessment Referral (‘DAAR’) is a course which operates in a similar manner to drug diversion, in that it is focused on education and rehabilitation.

DAAR is an educational course available to any defendant who identifies substance abuse as a contributing factor to their offending, except if you have been referred to DAAR twice in a five-year period. You may be referred to DAAR as a condition of your bail, or as part of your sentence.

It is immaterial that the substance abuse may not amount to an addiction or dependency. However, if during the DAAR course, you are assessed as being drug or alcohol dependent, the program can refer you to avenues for further treatment and support.

DAAR is more widely accessible than drug diversion and provides a welcome diversionary option for drug offenders.

What are the differences between drug diversion and DAAR?

The main difference between drug diversion (both police and court-ordered) and DAAR is the eligibility criteria.

You may be referred to DAAR for any offence, as long as your drug or alcohol use contributed to your offending. DAAR referrals are not subject to the stringent quantity criteria of drug diversion programs.

Consider this scenario

Let's say that a person is charged with possession of 2.0 grams of methamphetamine. The person has a drug addiction and the methamphetamine was for personal use.

Because the quantity exceeds that specified in the *Penalties and Sentences Act,* (for methamphetamine, 1.0 gram for personal use) they could **not** be referred to a court-ordered or police drug diversion program.

However, provided there was a sufficient connection between the drug use/addiction and the offending, they would be eligible for a referral to the DAAR program.

Let's say that person was further charged with fraud, in circumstances where they used a stranger's debit card that they found unattended on the ground to make a withdrawal from an ATM to buy illicit drugs. This fraud charge is eligible for a referral to DAAR as the offender's drug use contributed to the offending.

Magistrates look very favourably upon defendants who have completed the DAAR program prior to sentence and take this into account when sentencing. DAAR is an excellent option for a significant number of defendants.

To discuss your eligibility further, contact us on 07 3361 0222

Which program is better suited to my circumstances?

This essentially boils down to the stage of your matter, the nature of your matter, and your previous criminal history.

If you have not yet been charged but have been arrested in relation to a minor drug offence, police drug diversion may be the best option for you.

If your matter is proceeding to sentence for an eligible quantity of an illicit drug for personal use, and you do not have any exclusionary criminal convictions, court-ordered drug diversion may be appropriate.

The DAAR course encompasses a far wider range of offences and offenders and may be suitable for you if you have a criminal history and you are charged with **any** offence in which your drug use plays a part.

Will a conviction be recorded against me?

If your matter proceeds by way of police drug diversion, you will not have to go to court and a conviction will not be recorded against you.

DAAR and court-ordered drug diversion form part of a sentence. Generally, no conviction will be recorded in these circumstances.

Gilshenan and Luton can help you assess the appropriate strategy for your matter.

Contacting a Gilshenan &Luton criminal lawyer

07 3361 0222 (24/7)

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.