

## **The District of Arizona’s Incarceration and Conviction Alternatives Network (“ICAN”) Program**

### **Frequently Asked Questions**

#### **1. Does the ICAN program have the appropriate resources to address the applicant’s underlying problem(s) that substantially contributed to his/her criminal conduct?**

An assessment of the applicant’s suitability for the ICAN program starts with whether the applicant has a problem that the ICAN program can address with its available resources. The ICAN program often addresses addiction problems and, to some degree, mental health problems. For instance, in most cases, the applicant may have an on-going addiction problem that substantially contributed to his/her underlying criminal conduct. The applicant may also have a documented mental health issue, such as a bipolar disorder or clinical depression, that manifested itself before the commission of the underlying crime and substantially contributed to the underlying crime. Please be aware, however, that the ICAN program’s limited resources are not suitable to address severe mental health issues. In the great majority of ICAN cases, it is anticipated that the mental health problem will exist as an adjunct to a drug dependency problem. For applicants relying on a substantial mental health issue for admission into the ICAN program, please support the claim by including a mental health evaluation.

The ICAN program also accepts individuals whose criminal conduct was motivated by a life skills deficit. However, this basis for admittance is narrow. Such applicants will typically be younger (25-years-old or less), have little to no criminal history, and have grown-up in a fractured family environment where issues of drug abuse, domestic violence, and poor family and parental guidance existed. As such, applicants who have a criminal history (beyond limited misdemeanor convictions) should refrain from applying on this basis.

The ICAN program also encourages Veterans to apply for possible admission into the program. The Veteran need not have an on-going addiction problem, mental health issue, or life skills deficit that substantially contributed to his/her underlying criminal conduct; however, the Veteran must otherwise qualify for the program as to eligible offense(s), criminal history, and residency in Southern Arizona. Additionally, the ICAN Committee will look to whether eligible Veterans may benefit from participation in the program by receiving ongoing support, such as referrals to employment, housing, and other public benefits and Veteran resources.

#### **2. Are Out-of-District or Northern Arizona applicants eligible?**

The ICAN program is based in Tucson, Arizona. As a general rule, applicants should reside in Southern Arizona so that Pretrial Services may appropriately supervise applicants and provide access to resources as part of the program. Applicants who reside out-of-state will not be accepted into the ICAN Program. Applicants are strongly discouraged from moving to Southern Arizona simply to seek participation in the program. The ICAN program strongly disfavors applicants uprooting their support systems, housing, jobs, and other considerations, which would run counter to the goals of the program.

#### **3. How is ICAN different from Deferred Prosecution or other diversion programs?**

The creation of the ICAN program in 2018 did not replace Deferred Prosecution or the possibility of other diversion participation (e.g., Veteran’s Court or a diversion agreement outside of the ICAN program).

Deferred Prosecution or non-ICAN diversion continues to exist separate from ICAN and may be appropriate for defendants who do not otherwise qualify for the ICAN program because they do not have a problem that the ICAN program seeks to address (i.e., a drug addiction, mental health issue, or life skill deficit that substantially contributed to their criminal conduct). For example, when trial counsel has a defendant for whom counsel believes that defendant should have an opportunity to avoid a federal felony conviction because the defendant committed a lower-level federal offense, has little to no criminal history, and no drug addiction issue, that defendant may be appropriate for Deferred Prosecution or other programs in limited circumstances. That defendant is not appropriate for the ICAN program because s/he lacks a problem that the ICAN program is able to address.

The ICAN team does not evaluate applicants for Deferred Prosecution or other diversion programs. Defense counsel should speak to the assigned AUSA as part of plea negotiations if they believe a client should be considered for Deferred Prosecution or diversion outside of the ICAN program.

4. **What type of applicant is typically admitted into ICAN? What type of applicant is typically denied?**

The typical ICAN admittee is a lower-level participant in criminal activity who has a drug addiction problem that significantly contributed to the offense. Large scale fraud or narcotics distribution offenses for which the defendant had more than minor involvement are precluded from ICAN. Although alien smuggling defendants are not precluded from the program, aggravating factors such the presence of a firearm, high-speed flight from law enforcement, or other conduct creating a substantial risk of serious bodily injury or death to others will weigh heavily against admission into the program.

The typical ICAN applicants who are *not* admitted into the program are those with a substantial criminal history, arrests or convictions for violent crime or firearms offenses, significant ties to or leadership roles in criminal organizations, or those who engaged in large-scale drug distribution activity or offenses involving violence. The ICAN program **does not accept** persons accused of offenses involving violent crimes or crimes resulting in serious bodily injury or death; national security violations; brandishing or use of a firearm or other deadly weapon; violations of public trust by a public official or former public official; drug distribution offenses involving over 400 grams of fentanyl; engaging in a significant managerial role in a large-scale criminal organization or in a violent gang; or sex-related crimes.

Please also verify your client's immigration status before applying to ICAN. USAO guidelines specifically state that persons "subject to removal" may not participate in deferred prosecution or diversion programs such as ICAN. Please confirm that the applicant has reliable transportation to and from the ICAN Court and any treatment-based facilities that may be required by the ICAN program.

5. **What are the ICAN "tracks"? Who gets into the various tracks? When is it decided?**

ICAN is a post-plea diversion program that diverts defendants from the advisory Federal Sentencing Guidelines and 18 U.S.C. § 3553 sentencing factor analysis. All persons admitted to ICAN must plead guilty "up front," pursuant to a Rule 11(C)(1)(C) binding plea agreement, before entering the ICAN program.

The ICAN program has three distinct tracks, and the U.S. Attorney's Office determines which track the participant will be offered under the terms of the plea agreement. Some persons are admitted to ICAN as "Track One" participants (potential dismissal after successful completion); others are admitted as "Track Two" participants (potential probation with no jail time after successful completion); and, lastly, there is

a newly added option for “Track Three” participants (potential misdemeanor conviction with no additional supervision or jail time). The decision whether to admit a person into Track One, Two, or Three is made as part of the admission process into ICAN. The participant will be offered a plea that specifies the contemplated track. The factors considered when making the determination of the track include: the nature of the underlying offense (for example, in a drug offense, the weight of drugs involved), the applicant’s role in the charged offense, record of participation in other treatment programs, and the person’s previous criminal history. Previous criminal history considered may extend beyond convictions to include any activity that can be substantiated by readily available facts. Once a person begins ICAN, it should not be generally expected that the participant will be able to move between tracks (that is, from Track 2 to Track 1 or Track 3, etc.). The length of participation in the ICAN Program is at least 12 months and up to 24 months. The ICAN Committee monitors the applicant’s progress on a case-by-case basis to determine when an applicant’s participation will terminate within the 12-to-24-month program, and whether termination will be deemed “successful” or “unsuccessful.”

If an applicant in Track One successfully completes the ICAN Program, his/her case is dismissed upon motion by the U.S. Attorney’s Office. For Track Two applicants, the case is set for a sentencing hearing before the District Court Judge who presides over ICAN, and a Pre-Sentence Investigation Report is prepared by the U.S. Probation Office. If the applicant is successful, the applicant is sentenced accordingly to a term of probation without any jail time. Successful applicants in Track Three will be sentenced to a misdemeanor by the U.S. Magistrate Judge assigned to ICAN, and the relevant, related felony charge(s), if any, will be dismissed accordingly. Unsuccessful applicants who fail out of the ICAN Program will be set for sentencing before the ICAN District Court Judge and will be sentenced under the terms of their original plea agreement.

#### **6. When should a defendant apply to ICAN? How is the application process initiated?**

Please apply to ICAN well in advance of the trial date and before entering into a plea agreement. The review process requires at least 30 days. Submission of an application once substantive pretrial litigation has begun, or close to an impending trial date, or if the applicant is already pending sentencing through pre-trial resolution, means that the application will *not* be considered. ICAN applications cannot be rushed through committee review.

The ICAN process begins with the [ICAN Program Application Form](#) which must be completed by defense counsel. The application should be as complete as possible and may include attachments such as a recent mental health evaluation and/or letter from the applicant that focuses on the applicant’s goals and reasons for wanting to participate in ICAN. Please transmit the application and any supporting documents to the U.S. Attorney’s Office ICAN email address at [USAAZ-ICAN@usa.doj.gov](mailto:USAAZ-ICAN@usa.doj.gov). There may be additional information requested from defense counsel during the application process.

You may also wish to discuss the matter with your client’s assigned Pretrial Services officer if your client is on pretrial supervision. Applications are considered by the ICAN Committee comprised of members from the Federal Public Defender’s Office, Pretrial Services, and the U.S. Attorney’s Office. Ultimately, the U.S. Attorney’s Office determines whether an ICAN plea agreement will be extended to ensure that all DOJ and USAO guidelines are followed.