

**Frequently Asked Questions for Those Considering the District of
Arizona's Incarceration and Conviction Alternatives Network ("ICAN") Program**

1. Does the applicant have an underlying problem that substantially contributed to his/her criminal conduct that the ICAN program can help address?

An 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. 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 has limited resources to address such issues; severe mental health issues cannot be addressed by ICAN. In the great majority of cases with which the ICAN program works, it is anticipated that the mental health problem exists 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 persons 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 from the Phoenix area may be suitable for the program if they have adequate transportation and the ability to attend ICAN Court in person every two weeks during the program. Applicants who reside out-of-state will not be accepted into the ICAN Program, and applicants are strongly discouraged from moving to Southern Arizona simply to seek participation in the program. The ICAN program strongly disfavors applicants from 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?

The creation of the ICAN program in 2018 did not replace deferred prosecution. Deferred prosecution 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 drug addiction, mental health issue, or life skill deficit that substantially contributed to their criminal conduct. For example, a defendant may have no criminal history, no drug addiction issue, and have committed a lower-level federal offense; trial counsel may believe that the defendant should have an opportunity to avoid a federal felony conviction. Such a defendant may be appropriate for deferred prosecution in limited circumstances but is not appropriate for ICAN because s/he lacks the requisite personal history/trait factors.

The ICAN team does not evaluate deferred prosecution applicants. Defense counsel should speak to the assigned AUSA as part of plea negotiations if they believe a client should be considered for deferred prosecution.

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 and has little to no criminal history. DOJ policy prevents admission into the program if the applicant has more than one prior felony conviction. 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 violent crimes, national security violations, drug distribution offenses involving over 400 grams of fentanyl, 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 to Track One, Two, or Three is made at the time of his/her admission to ICAN. The factors considered when making the determination 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. The review process requires at least 30 days. Submission of an application close to an impending trial date 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 and 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. 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.