



***PRETRIAL OPPORTUNITY PROGRAM***

***UNITED STATES PRETRIAL SERVICES AGENCY***

***DISTRICT OF NEW JERSEY***

***June 2015***

## 1. Introduction

The District of New Jersey Pretrial Opportunity Program (POP) described herein is established under the direction of United States Senior District Judge Katharine S. Hayden and United States District Judge Esther Salas.

Drug courts in various forms have been used widely at the state level for several years, with great success in terms of high treatment retention rates, low recidivism rates and significant cost savings. There are also many effective post-sentence reentry and specialty courts operating in this and other federal districts. However, only recently have there been efforts to make similar courts available at the pretrial stage of federal cases. While little data exists regarding the effectiveness of pretrial specialty courts, many programs have been implemented nationally in the federal pretrial system and are showing promising results. In recognition of this, and in the belief that a drug court at any stage in the criminal process can offer potential rewards for society, the community and defendants who struggle with drug or alcohol addiction, this pretrial program was created.

Volume 8, Part C of the *Guide to Judiciary Policy* provides the philosophy by which pretrial supervision is administered in our system. It envisions and thus provides a model wherein “pretrial services is the front door to the federal criminal justice system and has a unique opportunity to lay the foundation for each defendant's success, not only during the period of pretrial services supervision, but even beyond that time. Officers strive to work with each defendant in such a manner that this contact with the criminal justice system will be the defendant's last, thereby preventing the front door of the system from becoming a revolving door.”<sup>1</sup>

Our pretrial services system continues to strive toward developing practices that enhance defendant success. Indeed, our *Strategic Plan for the Incorporation of Evidenced-Based Practices in the U.S. Pretrial Services System* encourages “a culture that is committed to continuous improvement, experimentation, informed practice and long-term learning”.<sup>2</sup> It is possible for pretrial services to benefit from research conducted for community corrections to supplement pretrial services specific legal and evidence based decision making and practices.<sup>3</sup>

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<sup>1</sup>Guide to Judiciary Policy, Volume 8, Part C: Supervision of Federal Defendants, Chapter 1, Section 140.

<sup>2</sup>Administrative Office of the U.S. Courts, Probation and Pretrial Services Office, April 2010.

<sup>3</sup>VanNostrand, M., Ph.D., and Crime and Justice Institute, 2007. *Legal and Evidence-Based Practices: Applications of Legal Principles, Laws, and Research to the Field of Pretrial Services*. Washington, DC: U.S. Department of Justice, National Institute of Corrections.

The program is founded on the premise that many substance abusers are arrested for behavior related to their drug or alcohol addictions, and but for those addictions, they may have lived a law-abiding life. Substance abusers also tend to recommit the same or similar offenses, thereby increasing recidivism rates. A pretrial drug court can provide the framework for more intensive supervision, relying heavily on the involvement of the judge along with the efforts of the pretrial services officer and treatment provider throughout a defendant's term of pretrial supervision. This collaborative process educates the judge on the personal factors that affect the particular defendant's addiction and simultaneously provides a greater level of enforcement and support from the judge who will eventually sentence the defendant. It further provides support by way of the peer pressure of similarly situated co-participants, similar to group therapy, which has been found to be incentivizing. The success of drug courts at both the state and federal levels has demonstrated that the judge's involvement in the rehabilitative process can greatly influence a defendant's compliance with treatment mandates and may justify a significant reduction in the otherwise appropriate custodial sentence, the imposition of a non-custodial sentence, or even the dismissal of charges.

There is also a movement under way as part of programs such as the Department of Justice's Smart on Crime initiative which seeks to identify alternatives to incarceration. In his recent visit to the Eastern District of New York's Pretrial Opportunity Program (POP) and Special Options Services (SOS) Program, the United States Attorney General lauded their success and expressed support for these programs nationally.

It is in the spirit of these efforts that many "front end" programs at the pretrial and presentence stage of the system are being developed. The early success that is being demonstrated in terms of cost savings and custodial alternatives is worth both emulating and evaluating for future policy considerations. By offering effective treatment alternatives coupled with supportive services and intensive supervision techniques, the court gives defendants an opportunity to engage in productive behavior, achieve a drug-free and law-abiding lifestyle, and prove to the court and the community that an otherwise appropriate sentence of imprisonment is unnecessary, in whole or in part. The incentive for defendants at this stage of the process is often much stronger, and success with these programs can produce exponentially greater benefits to our system and our communities.

## **II. Legal Authority**

Section 3154 of Title 18, United States Code gives pretrial services officers the authority to provide for the custody, care, counseling, treatment or other necessary social services to defendants released under pretrial supervision. The objective of support services for defendants on pretrial release is to ensure the safety of the community and to provide defendants with the structure and stability necessary to reasonably assure their appearance in court as required. Treatment and other supportive services provide the judge with alternatives to pre-trial and pre-sentence detention for those defendants who require close supervision and behavior monitoring.

### III. Program Format

#### A. Referrals

Defendants can be referred for the Pretrial Opportunity Program by any judicial officer, Assistant United States Attorney (AUSA), defense counsel, or pretrial services officer. After consideration of eligibility criteria, a defendant will be determined acceptable for the program after consensus is reached among Pretrial Services, the Office of the United States Attorney, and the Pretrial Opportunity Program judges. Formal acceptance into the program will occur following agreement with the defendant and defense counsel and the execution of the Pretrial Opportunity Program (POP) Consent Form.

#### B. Criteria for Eligibility

The program is designed primarily for non-violent defendants with a *documented* history of drug or alcohol addiction. A defendant must pose no known danger to the community and must exhibit a willingness to participate in treatment and to comply with the stringent conditions of the program. Defendants best suited for the program include those charged with lower level property or narcotics charges, while those not typically suited for the program include those (a) subject to removal by immigration authorities; (b) charged in child exploitation offenses, including possession or distribution of child pornography; (c) charged with leadership roles in large scale fraud or narcotics distribution; or (d) charged with acts of violence.

Defendants will generally fall into the moderate to higher risk scores on the Pretrial Risk Assessment (PTRA), although it is not a requirement. It is anticipated that most participants in the program (like most defendants generally) will plead guilty, but that is also not required for admission. Other common factors shared by potential participants in the program may include:

- Prior drug- or alcohol-related arrests/convictions
- Prior participation in substance abuse treatment
- Mental health history
- Limited education, vocational skills and/or employment history
- Lack of support system
- Victim of abuse or domestic violence
- Removal of children and/or prior or pending family services cases

#### C. Supervision and Case Management

The supervision of defendants in the Pretrial Opportunity Program will be multi-dimensional and more intensive, requiring the collaboration and flexibility of the court, the pretrial services officer, the treatment provider, and the defendant. Defendants will be supervised by a senior pretrial services officer trained in substance abuse and mental

health treatment modalities as well as cognitive behavioral therapy (CBT). These modalities assist defendants in recognizing and avoiding triggers to problematic behavior and in making better choices.

Once accepted into the program, the defendant will meet with the assigned judge and pretrial services officer on a regular basis. The defendant will be required to report to the Pretrial Services Agency and treatment provider as directed. The pretrial services officer will maintain frequent contact with each defendant, his or her family members or significant others and the treatment provider, and will provide the judge with status reports documenting the defendant's attendance and progress in treatment. The pretrial services officer will also verify on a regular basis the defendant's residence and employment, if applicable, as well as his or her means of financial support. Research demonstrates that federal defendants who are unemployed at the time of arrest are 21% more likely to fail under pretrial supervision without intervention.<sup>4</sup> Thus, defendants in need of educational or vocational training or gainful employment will participate in the Pretrial Services Workforce Development Program as directed. Criminal record checks will be conducted regularly, and defendants will be tested frequently for illicit drug and alcohol use.

The defendant's conferences with the judge and pretrial services officer will focus on the defendant's progress in drug treatment as well as other factors that may affect compliance with release conditions. Obstacles to a defendant's ability to accomplish treatment objectives and personal goals will also be addressed. A defendant may request that relatives or friends be present at any conference. The attorneys for the government and the defense are welcome to participate in the meetings, but are not required to do so. Thus, unlike traditional court proceedings, the judge may hear from a pretrial services officer in the absence of defense counsel, and the defendant will be expected to freely discuss his or her treatment and all other circumstances related to their rehabilitation with the judge.

Non-compliance with program goals will be reported to the judge and could result in a full array of sanctions, such as more frequent court appearances, geographic or association restrictions, an increase in treatment services, a stricter treatment modality, a curfew, travel restrictions, electronically monitored restrictions, and community service, to name a few. Sanctions are designed to encourage consequential thinking, to prompt the defendant to reflect on his or her behavior and to stay away from people and places that constitute negative influences, and to motivate the defendant to become more involved in the community. Furthermore, non-compliance could result in termination from the program. The judge will not terminate anyone from the program without giving counsel the right to be heard. In addition, a bail violation hearing may be held and, provided the violation is admitted or proven, the defendant may face reconsideration of conditions of release, including possible revocation of release.

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<sup>4</sup>VanNostrand, M., Ph.D. and the Office of the Federal Detention Trustee. Pretrial Risk Assessment in the Federal Court, 2009.

In order to successfully complete the program, a defendant must remain drug and alcohol free for a minimum of twelve months. If a defendant participating in the program tests positive for drugs or alcohol, or fails to report for a scheduled drug test without an approved excuse, the Court has the discretion to terminate participation, re-start the twelve-month period, or make some other modification. Where applicable and as appropriate, the defendant must also participate in the Pretrial Services Workforce Development Program, wherein he/she is obligated to obtain gainful employment and/or participate in an educational or vocational training program until gainfully employed.

The judge and the Pretrial Services Agency will determine if and when a defendant has successfully completed the POP program, and will have the authority to terminate an unsuccessful defendant's participation. Neither determination is subject to appellate review.

#### **IV. Communication with the Judges / Status Reports**

The pretrial services officer will attend all court appearances and will provide the judge with written or oral status reports documenting the defendant's progress in treatment and compliance with release conditions. Status reports will also be provided to the government and to defense counsel. The pretrial services officer will always be available to discuss a defendant's adjustment to supervision as a member of the Pretrial Opportunity Program at the request of the judge, the government or defense counsel.

#### **V. Data Collection**

The pretrial services officer maintains a statistical database for each defendant who participates in the drug court program, which includes the case specifics, demographic data and case outcomes. On an annual basis, a report will be provided to the Chief Judge and the Chief Pretrial Services Officer detailing the progress and accomplishments of the Pretrial Opportunity Program and of its participants.