

# Alternatives to Incarceration in the Eastern District of New York

The Pretrial Opportunity Program  
and  
The Special Options Services Program



Second Report to the Board of Judges  
United States District Court  
Eastern District of New York  
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## I. Introduction

The United States District Court for the Eastern District of New York has instituted two programs that are designed to provide alternatives to incarceration for certain criminal defendants who are prosecuted in this district. One is the Pretrial Opportunity Program (“POP”), which is a drug court. POP was created in January 2012 under the direction of the Board of Judges. The second is the Special Options Services (“SOS”) program, which provides intensive supervision for certain youthful offenders. Though the SOS program was created in 2000, a major structural change was implemented in 2013 – two magistrate judges began regular meetings with the participants in the program. Thus, like POP, SOS is a form of presentence supervision with direct, regular judicial involvement.

This is the second report to the Board of Judges about these programs. It was prepared by the judges, Pretrial Services Officers and Probation Officers involved in them, with the assistance of the judges and Probation Officers involved in our two reentry drug courts. Those judges and officers are identified in Sections Two and Six of this report.

The report is intended to serve six purposes. First, the Court has received many inquiries about these programs. In addition, over the past year we have been visited by judges, Pretrial Services and Probation officers, Department of Justice officials (including both the Attorney General and the Deputy Attorney General), and defense attorneys from around the country. They have come to the Eastern District of New York to observe our programs in action, to ask us about them, and to consult with us about establishing their own alternative to incarceration (“ATI”) programs. We hope this report will be a helpful resource for them and others interested in these innovative and effective programs.

Second, although a substantial body of data has been gathered as a result of programs similar to POP and SOS in the states, such programs are still relatively new in the federal system. There are a rapidly increasing number of them, however, and they are briefly identified and described in Section Five of this report. Communication among the districts that have established them (and



*From left: Chief Judge Carol B. Amon, Chief Pretrial Services Officer Roberto Cordeiro, and Chief Probation Officer Eileen Kelly*

other districts that will do so in the future) is essential to determining which practices are most effective in judge-involved supervision programs. And data collection is critical to an objective, long-term analysis of whether programs that seem to offer better, more cost-effective ways of handling certain defendants are in fact better and more cost-effective. This report therefore updates the data with respect to our two programs. It includes the characteristics of the participants, the nature of the charges against them and violations they have committed, the types of services available to them, and an estimate of the cost savings achieved by the programs.

Third, behind the data are real people, and a number of defendants in this district have taken full advantage of our programs to turn their lives and the lives of their families around. Their stories are inspiring, and so some of them are set forth here.

Fourth, this report catalogs the ATI programs in other districts in the federal system. In the past year alone, the number of such programs has nearly tripled. The information set forth here has been provided by the districts themselves, and we are grateful for their cooperation. To

the extent they have shared with us estimated cost savings, we have set forth that information as well.

Fifth, although the principal focus of this report is on *presentence* programs – POP and SOS – those programs are closely related in spirit, purpose and effort to our Court’s STAR (Supervision to Aid Re-entry) Courts, which are reentry drug courts. Indeed, the program judges and staff of the POP and SOS programs work closely with their counterparts in our STAR Courts. Section Six of this report briefly describes our STAR Courts, and Section Seven describes the joint efforts we have made to educate ourselves so our presentence and reentry courts can be as effective as possible.

Finally, the report sets forth some conclusions regarding these programs and makes some recommendations. Specifically, we call upon the Sentencing Commission to amend the Guidelines to encourage such programs and to take steps to inform the federal courts around the country about them. We call upon Congress to assist us in gathering data about them with an eye toward evaluating and improving them.

## II. The Alternative to Incarceration Programs in the Eastern District of New York

### A. *The Pretrial Opportunity Program*

The Pretrial Opportunity Program (“POP”) was established under the direction of the Board of Judges in January 2012. The program description and consent form are set forth in the Appendix. POP was inspired by sentencing reforms in the states, which have turned to drug courts to help cope with the rising tide of substance-abusing offenders in their criminal justice systems over the last few decades. The use of drug courts to divert such defendants from prison has produced positive results in the states. They have enhanced the efficacy of treatment and lowered recidivism rates. Drug courts have also produced cost savings, in part because defendants who successfully complete drug court programs are diverted from prison. Indeed, in many places defendants are diverted from the criminal justice system entirely because the charges against them are dismissed upon successful completion of the drug court program.

Another source of inspiration for POP was the large number of reentry drug courts in the federal system. Our late colleague in this district, Chief Judge Charles P. Sifton, created the first federal reentry drug court in 2002. Participation in these courts, which now operate throughout much of the federal system, occurs post-sentence, after a defendant has served his or her prison term or has been sentenced to probation. The benefit offered to a defendant participating in a reentry drug court (apart from the rehabilitative program itself) is early termination of the supervised release term. The direct cost savings to the system accrue from the shortened length of supervision and any reduction in recidivism rates among the participants. Though this report focuses principally on the Court’s presentence ATI programs, our reentry courts today – known as STAR (Supervision to Aid Re-entry) Courts – are discussed further in Section Six.

We concluded that if the drug court model produces benefits in the reentry context, it has the potential to produce far greater benefits if it is moved up into the *presentence* phase. The incentive to the participants at that stage is much stronger: they can avoid (or at least shorten) a prison term, and perhaps avoid a conviction altogether. And the cost savings are potentially much greater because expensive prison terms may be avoided or significantly shortened. Participants instead return to their families and communities with the ability to contribute to both, and with their addictions under control.

POP, like other drug courts, is founded on the premise that many substance abusers are arrested for behavior that is grounded in their drug or alcohol addictions and, but for those addictions, they might lead law-abiding lives. POP provides a framework for more intensive supervision of these defendants, combining judicial involvement with the efforts of Pretrial Services officers and treatment providers throughout a defendant's term of pretrial supervision. Drug courts have demonstrated that judicial involvement in the rehabilitative process can greatly influence a defendant's success in treatment.

In addition to their more frequent sessions with their drug counselors and Pretrial Services officers, all of the participants meet monthly with the judges and Pretrial Services officers assigned to the program. In our Brooklyn courthouse, they meet with District Judge John Gleeson, Chief Magistrate Judge Steven M. Gold, and Pretrial Services Officer Laura Fahmy-Tranchina. In our Central Islip courthouse, they meet with Senior District Judge Joanna Seybert, Magistrate Judge Gary Brown, and Pretrial Services Officer Arthur Bobyak. These group meetings address each participant's progress and problems during the preceding month and goals for the upcoming month. The participants support and strengthen each other in these



meetings, and the hands-on involvement of the judges is an important additional source of support and motivation.

Although most participants have entered pleas of guilty by the time they enter the program, a guilty plea is not a prerequisite to participation. All participants do agree, however, to adjourn all further proceedings (that is, trial and/or sentencing) for at least a year while they participate in the program. All such adjournments have occurred with the consent of the United States Attorney's Office, which fully supports both of our ATI programs. Indeed, thanks to the leadership and support of former United States Attorney Loretta Lynch, who is now Attorney



The Brooklyn POP Team: (from left) Judge John Gleeson, Probation Officer Clare Kennedy, Pretrial Services Officer Laura Fahmy-Tranchina, and Chief Magistrate Judge Steven M. Gold

General of the United States, both programs have achieved a level of success that is beyond our expectations when we first sought her support of them nearly four years ago.

In order to complete the POP program successfully, participants must remain drug-free and participate in the monthly meetings for at least twelve consecutive months. In addition, the participants are required to obtain a high school equivalency certificate if they do not already have one, and they are expected to seek and obtain appropriate employment as well. Finally, the participants must comply with all of the conditions of their in-patient or out-patient drug treatment programs.

POP participants in our Brooklyn courthouse have their cases reassigned to Judges Gleeson and Gold. Studies of drug courts in the states have shown that there is value in having

drug court participants meet monthly with the same judges who will ultimately decide their cases. Judge Gold presides over any proceedings that follow violations. The sanctions he imposes vary widely, ranging from, for example, admonitions at the monthly meetings, to more stringent treatment conditions, to setting back the projected date of graduation from the program, to periods of custody.

On the other hand, not all the POP participants in our Central Islip courthouse have had their cases reassigned to Judges Seybert and Brown. When the case is assigned to a judge other than Judge Seybert, Officer Bobyak prepares a report to the sentencing judge about the defendant's participation in POP.

When a participant's rehabilitative program is nearing successful completion and the sentencing date approaches, defense counsel negotiate with the government. Consistent with Rule 11(c)(1) of the Federal Rules of Criminal Procedure, these negotiations occur only between defense counsel and the government. The program description explicitly contemplates the possibility that the rehabilitation of the participating defendant might be sufficiently extraordinary that outright dismissal of the charges on the motion of the United States



Attorney would be appropriate. The government has agreed to such dismissals in three cases thus far. Two other participants have had their felony charges reduced to misdemeanors. In the other cases, the benefit to the participants (apart from the significant benefits that flow from successful drug treatment, education and employment opportunities) has been the consideration

of POP participation in determining whether (and, if so, for how long) the participant will be sentenced to prison.

As the initial POP participants neared their successful completion of the program, the judges and Pretrial Services officer involved in the program became concerned about the lack of continuity in supervision after these participants were sentenced. This district has separate Pretrial Services and Probation Departments, and the concern was that the handoff of an intensively-supervised POP program graduate to an unknown Probation officer might disrupt the rehabilitation of the participant.

In response to that concern, the Probation Department, in consultation with Pretrial Services, created a post-sentence supervision program for POP program graduates. It provides post-sentence supervision that is coordinated with the POP program. Though not all post-sentence POP participants are required to attend the monthly meetings, some are, and all are welcome. In all events, POP participants get to know their post-sentence supervising Probation officer long before they are sentenced, and the transition to supervision by that officer is seamless. Probation Officer Clare Kennedy is assigned to the post-conviction supervision of POP participants.

#### *B. The Special Options Services Program*

In January of 2000, this Court established the Special Options Services (“SOS”) program. The program was the brainchild of Judge Jack B. Weinstein. Along with several Pretrial Services officers, Judge Weinstein believed that instead of pretrial detention, many youthful offenders might benefit more from intensive supervision and access to education, job training, and counseling. SOS targets juvenile and young adult defendants between the ages of 18 and 25

who are charged with nonviolent crimes and who may benefit from the structure and direction of intensive supervision. Through a wide variety of community, educational, vocational, and volunteer resources, Pretrial Services officers are able to help SOS participants obtain a high school equivalency certificate or admission to college, enroll in technical schools or job training programs, and obtain mental health or drug treatment counseling that may have been unavailable to them prior to their arrest. The guidance and services offered as part of the SOS program are designed to serve as the foundation for these youthful offenders to lead law-abiding lives in the future.

For many years, SOS operated solely under the auspices of the Pretrial Services Department. Participants were directed to participate in the program's intensive supervision as a condition of pretrial release, and they reported to and worked closely with Pretrial Services officers who developed individualized programs and goals. In recent years, Officer Amina Adossa-Ali, has supervised all of the defendants in the SOS program, up to 30 at a time. She has provided periodic status reports to the assigned district judge and attended scheduled court hearings involving each SOS participant.



The SOS Team: (from left) Probation Officer Yara Suarez, District Judge Joan M. Azrack, Magistrate Judge Cheryl Pollak, and Pretrial Services Officer Amina Adossa-Ali

Inspired by the success of the district's POP and STAR programs, the SOS program was modified in 2013 to include the participation of two judicial officers, District Judge Joan M. Azrack and Magistrate Judge Cheryl L. Pollak. The judges hold monthly meetings with Officer Adossa-Ali and the SOS participants, at which each participant's progress and problems during the preceding month are addressed. The judicial

involvement is designed to enhance participants' support system and to provide additional encouragement not just to comply with the conditions of the program, but to effect real change in their lives.

Unlike POP, SOS as originally conceived did not contemplate negotiations between defense counsel and the government following a defendant's participation in the program. Instead, at sentencing, defense counsel typically would argue for leniency based on the defendant's success in the program, and the Pretrial Services officer responsible for supervising the defendant would advise the sentencing judge of the defendant's progress. The restructured SOS program, however, mirrors the POP program in that, upon successful completion, the participant's counsel negotiates with the prosecutor over the ultimate disposition of the case. In recent months the government has agreed to dismiss entirely the drug trafficking charges against two SOS defendants. Where sentencing is necessary, Judges Azrack and Pollak provide additional insight regarding the defendants' efforts and accomplishments to the assigned district judges at the time of sentencing.

Like their POP counterparts, SOS participants who are sentenced to a term of probation may also be ordered to continue post-conviction participation in the SOS program under the supervision of the Probation Department. Probation Officer Yara Suarez is assigned to the SOS program for that purpose. Officer Suarez also works in one of our STAR courts, and on occasion she also supervises former SOS participants in that context.

The SOS program description is set forth in the Appendix.

### III. The Data

This section reviews the cumulative data of program participants since the inception of the Pretrial Opportunity Program in January 2012, and the Special Options Services program in March 2013. The evaluation period ended on January 31, 2015. Information is provided on 57 participants including demographics, current charge, risk assessment category, prior criminal record, and case disposition. A cost-benefit analysis focuses solely on the amount of imprisonment defendants are likely to face at sentencing. There are many other significant cost factors that are not measured in our valuation. For example, the costs related to recidivism and administration of justice, public health, social welfare, and loss of employment and productivity ought to be considered when estimating the potential savings of ATI programs.

The follow-up period after pretrial defendants move on to post-conviction supervision is also important to evaluate. Specifically, information related to re-arrests, sobriety, and employment are key outcomes that can help assess the long-term effectiveness of an ATI program. Of the 19 participants who successfully completed their pretrial release, only one incurred a new arrest while on post-conviction supervision. He was arrested for a misdemeanor drug offense which was later dismissed. All participants have maintained employment throughout their period of post-conviction supervision. Two have successfully completed their sentences and one participant satisfied the requirements of a deferred prosecution agreement, resulting in the dismissal of the original charge. At this time, the ability to measure a participant's recidivism and success rate after he or she exits the criminal justice system is rather limited.

*A. Demographic Characteristics and Educational levels*

Table One describes the two programs with regard to gender, race and ethnicity, age, marital status, and education at the time of the arrest. Hispanics constitute the majority of overall participants (47.4%), while non-Hispanic Whites account for approximately one third (31.6%), and Blacks make up the remaining 21%. The majority of the SOS participants are male (78.8%), and of single marital status (71.9%). An eligibility criterion of the SOS program requires all participants to be under 25 years of age. The POP participants were largely male (58.3%), and two thirds (66.7%) were in the age range of 26 to 40 years old. Like the SOS defendants, more than half of the POP participants were not married. With respect to the level of education, 50% of the POP participants have some college experience or vocational training, while 45% of SOS participants have no high school degree or high school equivalency certificate.

<b>Table 1 Demographic Characteristics of SOS and POP Participants</b>						
	<b>SOS (since March 2013)</b>		<b>POP (since January 2012)</b>		<b>Totals</b>	
	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%
<b>Number of Program Participants</b>	33	57.8%	24	42.2%	57	100%
<b>Gender</b>						
<i>Male</i>	26	78.8%	14	58.3%	40	70.2%
<i>Female</i>	7	21.2%	10	41.7%	17	29.8%
<b>Race / Ethnicity</b>						
<i>White, Non-Hispanic</i>	1	3%	17	70.8%	18	31.6%
<i>Hispanic</i>	22	66.7%	5	20.8%	27	47.4%
<i>Black</i>	10	30.3%	2	8.4%	12	21%
<b>Age</b>						
<i>Ages 18 - 25</i>	33	100%	5	20.8%	38	66.7%
<i>Ages 26 - 40</i>	-	-	16	66.7%	16	28.1%
<i>Ages 41 - 55</i>	-	-	2	8.3%	2	3.5%
<i>Ages 56 +</i>	-	-	1	4.2%	1	1.7%
<b>Marital Status</b>						
<i>Cohabiting</i>	5	15.1%	2	8.3%	7	12.3%
<i>Divorced</i>	-	-	3	12.5%	3	5.3%
<i>Married</i>	-	-	6	25%	6	10.5%
<i>Single</i>	28	84.9%	13	54.2%	41	71.9%
<b>Education (highest level attained at start of program)</b>						
<i>Less than High School Equivalency</i>	15	45.5%	4	16.7%	19	33.4%
<i>High School Equivalency</i>	6	18.2%	1	4.1%	7	12.3%
<i>High School Diploma</i>	10	30.3%	7	29.2%	17	29.8%
<i>Some Vocational</i>	-	-	-	-	-	-
<i>Vocational</i>	-	-	2	8.3%	2	3.5%
<i>Some College</i>	2	6%	8	33.4%	10	17.5%
<i>College Graduate</i>	-	-	2	8.3%	2	3.5%
<i>Post Graduate</i>	-	-	-	-	-	-

### *B. Substance Abuse and Mental Health History*

Table Two illustrates the participants' self-reported primary drug of choice and treatment histories related to substance abuse and mental health conditions. Nearly thirty-three percent of POP participants indicated prescription opiates to be their primary drug of choice, followed by heroin (29.2%), cocaine (20.8%), alcohol (12.5%), and cannabinoids (4.2%). Five SOS participants (15.2%) reported no history of drug use, while the remaining participants (84.8%) reported use of cannabinoids or alcohol. All of the POP participants attended substance abuse



treatment involving some form of detoxification, inpatient, and/or outpatient services. Only 15% of SOS participants had received drug treatment.

A history of or current illicit drug use by family members is common to both groups (approximately 9% for SOS and 12% for POP participants). The current drug use in the participants' families is 10.5%, while 26.3% reported a family history of alcohol and drug use. Approximately 9% of all program participants were diagnosed with a mental health condition and a substance use disorder, and 7% were prescribed psychotropic medication. Thirty percent of SOS participants required only mental health services and were not clinically diagnosed with a co-occurring disorder.

<b>Table 2</b>						
<b>Mental Health and Substance Abuse History</b>						
	<b>SOS</b>		<b>POP</b>		<b>Totals</b>	
	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%
<b>Number of Program Participants</b>	33	57.8%	24	42.2%	57	100%
<b>Primary Drug of Choice</b>						
<i>Alcohol</i>	4	12.1%	3	12.5%	7	12.3%
<i>Cannabinoids</i>	24	72.7%	1	4.2%	25	43.9%
<i>Cocaine</i>	-	-	5	20.8%	5	8.8%
<i>Heroin</i>	-	-	7	29.2%	7	12.3%
<i>Prescription Opiates</i>	-	-	8	33.3%	8	14%
<i>No History of Drug Use</i>	5	15.2%	-	-	5	8.7%
<b>Drug Treatment History</b>						
<i>Detox Inpatient</i>	-	-	6	25%	6	10.5%
<i>Inpatient</i>	2	6%	10	41.6%	12	21%
<i>Outpatient</i>	3	9%	8	33.4%	11	19.3%
<b>Mental Health Factors</b>						
<i>Co-Occurring Disorders</i>	2	6%	3	12.5%	5	8.7%
<i>Psychotropic Medications</i>	2	6%	2	8.3%	4	7%
<i>Mental Health Services (Only)</i>	10	30.3%	-	-	10	17.5%
<b>Other Family Factors</b>						
<i>Current Drug Use in Family</i>	3	9%	3	12.5%	6	10.5%
<i>Family Drug History</i>	9	27.3%	6	25%	15	26.3%

### *C. Charges, Criminal History, and Risk Assessment*

Table Three sets forth the program participants' type of current charge, criminal background histories, and pretrial risk assessment categories. With only two exceptions, our participants have been prosecuted for drug trafficking offenses. The charged drug offenses involved cocaine (45.7%), prescription opiates (26.4%), heroin (21%), cannabinoids (1.7%), and other drugs (3.5%). The SOS participants were more likely to be charged with offenses involving cocaine (63.6%), while POP participants were mostly charged with offenses involving prescription opiates (62.5%).

Twenty-one percent of all program participants had a prior felony arrest, and half of those arrests resulted in convictions. When the Pretrial Services Risk Assessment ("PTRA") tool<sup>1</sup> was applied, the majority of defendants were in categories three (49.1%) and four (24.6%); five (8.7%) scored in the highest risk category.

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<sup>1</sup> The PTRA is an actuarial risk assessment instrument that predicts the risk of failure to appear, new criminal arrests, and technical violations of defendants while on pretrial release. The PTRA's final score assessment falls into one of five categories of risk (1 being lowest). There are several factors that influence the final score: felony convictions; pending felonies or misdemeanors; prior failures to appear; seriousness of current charge; employment; substance abuse; age; citizenship; education level; and home ownership. There are other data factors related to a defendant's foreign ties and alcohol problems that are collected but not scored.

<b>Table 3</b>							
<b>Prior Criminal History, Offense Charged, and Pretrial Risk Assessment Category</b>							
	<b>SOS</b>		<b>POP</b>		<b>Totals</b>		
	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%	
<b>Number of Program Participants</b>	33	57.8%	24	42.2%	57	100%	
<b>Felonies</b>							
<i>Arrests</i>	8	24.2%	4	16.6%	12	21%	
<i>Convictions</i>	4	12.1%	2	8.3%	6	10.5%	
<b>Misdemeanors</b>							
<i>Arrests</i>	4	12.1%	8	33.3%	12	21%	
<i>Convictions</i>	3	9%	3	12.5%	6	10.5%	
<b>Offense Charged</b>							
<i>Drugs</i>	<i>Cocaine</i>	21	63.6%	5	20.8%	26	45.7%
	<i>Cannabinoids</i>	-	-	1	4.2%	1	1.7%
	<i>Heroin</i>	11	33.4%	1	4.2%	12	21%
	<i>Opiates (prescription)</i>	-	-	15	62.5%	15	26.4%
	<i>Other Drug</i>	-	-	2	8.3%	2	3.5%
<i>Robbery</i>	1	3%	-	-	1	1.7%	
<b>Pretrial Risk Assessment</b>							
<i>Category 1</i>	-	-	3	12.5%	3	5.3%	
<i>Category 2</i>	3	9%	4	16.6%	7	12.3%	
<i>Category 3</i>	17	51.6%	11	45.8%	28	49.1%	
<i>Category 4</i>	8	24.2%	6	25%	14	24.6%	
<i>Category 5</i>	5	15.2%	-	-	5	8.7%	

#### *D. Program Termination*

A total of 27 out of 57 participants were terminated from the POP and SOS programs. As noted in Table Four, 19 defendants successfully ended their pretrial release supervision, while eight were unsuccessfully terminated. Of those with favorable outcomes, 26% (2 SOS and 3 POP participants) received a deferred prosecution and dismissal agreement, 63% received sentences that did not include incarceration, and 10.5% received a lighter prison term. Three defendants had their original felony charges reduced to misdemeanors. The unsuccessful terminations were primarily the result of re-arrests (37.5%) and technical violations (50%).

<b>Table 4</b>						
<b>Successful and Unsuccessful Program Termination</b>						
	<b>SOS</b>		<b>POP</b>		<b>Totals</b>	
	N	%	N	%	N	%
<b>Number of Program Participants</b>	33	57.8%	24	42.2%	57	100%
<b>Total Number of Departures</b>	10	30.3%	17	70.8%	27	47.3%
<b>Successful Termination</b>	6	55.5%	13	76.4%	19	69.2%
<i>Deferred Prosecution / Dismissed</i>	2	33%	3	23%	5	26.3%
<i>Term of Non-Incarceration</i>	3	50%	9	69.3%	12	63%
<i>Term of Incarceration</i>	1	17%	1	7.7%	2	10.5%
<b>Unsuccessful Termination</b>	4	40%	4	23.6%	8	30.8%
<i>Re-Arrest(s)</i>	-	-	3	75%	3	37.5%
<i>Technical Violations</i>	3	75%	1	25%	4	50%
<i>Other</i>	1	25%	-	-	1	12.5%

#### *E. Cost Savings*

The estimated financial savings noted in Table Five is calculated by determining the cost of imprisonment of the recommended sentence and by deducting the actual prison cost of the prison time actually served, if any. For the purpose of this valuation, the “probable” sentence is the median guideline range or mandatory minimum faced by each defendant who successfully completed the terms of the POP and SOS programs. So far, the savings is reported to be more than \$2.1 million, the equivalent of 839 months of imprisonment.<sup>2</sup>

<sup>2</sup> This calculation does not consider “good time” credit. After a defendant’s first year of imprisonment, the Bureau of Prisons may award 54 days of good time per year. *See* 18 U.S.C. § 3624(b).

**Table 5  
Case Disposition and Cost Savings of Participants Who Successfully Completed the POP and SOS Programs  
(updated August 2015)**

Participant	Disposition						Mandatory Minimum or Median Sentence Guideline Range (# Months)	Imprisonment Cost if Recommended Sentence Imposed (# of months * \$2,552)**	Actual Prison Cost	Cost Savings	Offense Type
	Prison (# Months)	TSR (# Months)	Probation (# Months)	Pretrial Diversion	Dismissed	Acquitted					
<b>SOS Cases</b>											
R.D.	-	-	60	-	-	-	27	\$ 68,904	\$ 0	\$ 68,904	Drugs
A.P.	-	-	36	-	-	-	27	\$ 68,904	\$ 0	\$ 68,904	Drugs
R.V.	-	-	48	-	-	-	78	\$ 199,056	\$ 0	\$ 199,056	Drugs
E.C-P	-	-	-	Yes	-	-	57	\$ 145,464	\$ 0	\$ 145,464	Drugs
J.C.	12	36	-	-	-	-	27	\$ 68,904	\$ 30,624	\$ 38,280	Drugs
L.C.	-	-	-	Yes	-	-	52	\$ 132,704	\$ 0	\$ 132,704	Drugs
<b>POP Cases</b>											
P.C.	-	-	36	-	-	-	42	\$ 107,184	\$ 0	\$ 107,184	Drugs
L.D.	12	36	0	-	-	-	52	\$ 132,704	\$ 30,624	\$ 102,080	Drugs
E.L.	-	-	-	Yes	-	-	42	\$ 107,184	\$ 0	\$ 107,184	Drugs
I.M.	-	-	24	-	-	-	3	\$ 7,656	\$ 0	\$ 7,656	Drugs
S.P.	-	-	60	-	-	-	37	\$ 94,424	\$ 0	\$ 94,424	Drugs
A.S.	2*	36	-	-	-	-	24	\$ 61,248	\$ 5,104	\$ 56,144	Drugs
E.W.	-	-	36	-	-	-	97	\$ 247,544	\$ 0	\$ 247,544	Drugs
R.P.	-	-	-	Yes	-	-	97	\$ 247,544	\$ 0	\$ 247,544	Drugs
W.B.	-	-	36	-	-	-	51	\$ 130,152	\$ 0	\$ 130,152	Drugs
T.C.	1*	36	-	-	-	-	33	\$ 84,216	\$ 2,552	\$ 81,664	Drugs
M.C.	5*	36	-	-	-	-	33	\$ 84,216	\$ 12,760	\$ 71,456	Drugs
G.P.	-	-	-	Yes	-	-	41	\$ 104,632	\$ 0	\$ 104,632	Drugs
P.P.	1*	36	-	-	-	-	52	\$ 132,704	\$ 2,552	\$ 130,152	Drugs
<b>Total</b>							<b>839</b>	<b>\$ 2,225,344</b>	<b>\$ 84,216</b>	<b>\$2,141,128</b>	

\* Time served

\*\*Administrative Office of the U.S. Courts, Cost of Community Supervision, Detention and Incarceration Fiscal Year 2014 (Memorandum June 27, 2015)

## IV. Profiles of Selected Participants

In our first report, we included profiles of several POP and SOS participants. As we noted then, we strive to base and evaluate our programs on the best available practices and on data, not on anecdotes. We also recognize, though, that our success stories are inspirational reminders of how significant these programs can be to the individuals participating in them. Below are updates on some of the participants we wrote about in our original report as well as profiles of some of our newer participants.

### A. *Pretrial Opportunity Program*

#### 1. *Updates on Participants Profiled in Our Original Report*

As predicted in our original report, the charges against E.L. were dismissed upon her successful completion of her term of deferred prosecution. E.L. remains sober and gainfully employed as a bus driver, and she continues to support her disabled husband and their three children. Although she is under no obligation to do so, E.L. frequently attends our monthly meetings and provides encouragement, verbally and by example, to our newer participants.

I.M. has not been under supervision for some time. He continues to hold a responsible position at a bank. And although he is no longer subject to testing, our understanding is that he has remained drug-free.

A.S. also remains sober and has found steady employment.

As indicated in our original report, W.B. was permitted to plead guilty to a misdemeanor in exchange for dismissal of the felony charge on which he was arrested. W.B. was sentenced to three years of probation with continued participation in the program as a special condition.

W.B. remains on methadone maintenance and certain prescription medications, but is otherwise sober and drug-free. He continues to participate in mental health treatment and remains productively self-employed as a painter.

R.P. continues to succeed as well. She is now the mother of two healthy children and is in a stable relationship with their father, who is employed and supports the family. R.P. has also maintained a good relationship with her mother, who assists in caring for R.P.'s two young children. At the time of our original report, R.P. was awaiting a decision by the United States Attorney about how her case would be resolved. The government has since agreed to dismiss the charges against her entirely. R.P. remains sober, attends our monthly meetings on a regular basis, and looks forward to completion of her deferred prosecution term and final dismissal of the charges against her. She is also planning to attend college.

## *2. Profiles of Some of the Newer Participants*

### *a. S.D.*

S.D. was arrested on July 2, 2013. She was 33 years old, 34 weeks pregnant, and the mother of a seven-year-old daughter at the time of her arrest. S.D. was also addicted to opiates, using five bags of heroin intravenously and ten oxycodone pills orally on a daily basis. S.D. acknowledged seven years of addiction, and her parents refused to serve as sureties for her unless she agreed to enter an in-patient drug treatment program.

After approximately six weeks in custody, S.D. was released to a residential drug treatment program. She was discharged from the program three months later for drug use and for engaging in sexual relations at the facility. S.D. lost custody of her newborn after giving birth.

Rather than seek an order remanding S.D., Pretrial Services arranged for her transfer to a different residential treatment program. Her attitude improved. S.D.'s newborn was permitted to spend weekends with her at the residential program. After a period of sobriety and compliance with program rules, S.D. was invited to join POP on January 30, 2014.

S.D. adapted well to her new residential treatment placement and undertook efforts to regain custody of her daughters. She was released from residential treatment in September 2014 after finding full-time employment as a sales representative. S.D. moved in with her parents at that time, and obtained legal custody of her older daughter, and joint custody (with the birth father) of her younger child.

S.D. lost her job in November of 2014, apparently because she was missing too much work to attend court proceedings. She quickly found other work at a restaurant, although that position too was short-lived due to lack of business. S.D. went through a period of unemployment, but recently found a new job that will allow her to work some of her hours at home with her children.

After an extended period of methadone use, S.D. weaned herself off the drug. S.D. has remained sober since her relapse in November of 2013. She is now in a stable relationship and living in a suburban home with her boyfriend.

As indicated above, S.D. has had her ups and downs during her participation in POP. Although she relapsed and violated program rules at her first inpatient program, she thrived at her second. She quickly found employment, but she lost jobs twice. While her attitude was excellent when she first joined POP, she went through a period where she seemed discouraged and disengaged. She now seems to be back on track, with more than eighteen months of



sobriety, new employment, a new and stable relationship, and custodial rights over both of her daughters.

We have learned from S.D. the importance of a measured response to relapses and other negative behaviors. While more severe sanctions may ultimately be required, we have seen several participants succeed if given a stern warning, a deferral of their eligibility to graduate, and a second chance, particularly when reassigned to a new treatment facility.

The pending charges against S.D. are acquiring oxycodone by fraud and conspiring to distribute oxycodone. She is looking forward to graduating from POP and a decision by the United States Attorney about whether she will be permitted to plead guilty to reduced charges or offered a deferred prosecution.

*b. C.J.*

C.J. was arrested on September 4, 2013 and charged with distributing oxycodone. At that time, she was 27 years old. Despite growing up in a middle-class home with supportive parents, C.J. had been abusing heroin and prescription pain medications for a decade. She had been through multiple detoxification and treatment programs but failed to remain drug-free.

After almost three months of pretrial detention, C.J. was released to a residential treatment program. One month later, on December 9, 2013, C.J. joined POP. She quickly relapsed, however, testing positive for heroin in January 2014. C.J. was permitted to continue her in-patient treatment. Moreover, when she participated in our monthly meetings, C.J. seemed disengaged and unable to muster a positive attitude. In September 2014, C.J. was discharged from the treatment program to which she was originally assigned for violating its rules.

Pretrial Services Officer Fahmy-Tranchina continued to work with C.J. Arrangements were made for her to continue her residential treatment at another facility, and she thrived there. The change in C.J.'s attitude was readily apparent at the monthly POP meetings, where she became much more vocal, sincere about her struggles, and encouraging of the other program participants. In January of 2015, with a year of sobriety behind her, C.J. secured full-time employment as an office manager.

C.J. completed residential treatment in March of 2015. She has remained drug-free and productively employed. C.J. resides with her mother, but is quickly developing the financial security to rent her own apartment.

C.J. graduated from POP this past June. Both of her parents attended her graduation and were deeply moved by the progress she has made. C.J. will continue to attend our monthly meetings for at least as long as her criminal case remains pending. Like S.D., C.J. is awaiting a decision by the United States Attorney about whether she will be permitted to plead guilty to reduced charges or offered a deferred prosecution.

*c. V.P.*

V.P. was arrested on September 13, 2013 and charged with distributing Methylone. V.P., a veteran, was 25 years old when he was arrested. He had been abusing alcohol and marijuana since his teenage years, and pain medication and cocaine for about two years.

V.P. was released on bail and directed to participate in outpatient drug treatment. While in treatment, however, he abused alcohol and opiates. V.P. admitted himself to a residential drug treatment program, committed himself to recovery, and completed residential treatment in May of 2014.

V.P. joined POP in November of 2014. He has remained drug-free and thrived. He is an upbeat, supportive participant at our monthly meetings. Although he endured a frustrating period of unemployment, he remained persistent and has obtained a position as a peer counselor for a non-governmental agency providing assistance to veterans, among others, in need of housing, mental health treatment and other social services. He is scheduled to begin community college in the fall.

V.P. entered a plea of guilty to one of the felony charges pending against him. He is nevertheless hopeful that the United States Attorney may permit him to withdraw his guilty plea and permit him to enter a plea to a misdemeanor or offer him a deferred prosecution.

#### *B. Special Options Services*

##### *1. Update on Participants Profiled in Our Original Report*

In the original report, we profiled three SOS program participants who had received sentences of probation as a consequence of their success in the SOS program. All three defendants continue to do well under the supervision of the Probation Department.

##### *a. A.P.*

A.P., who continues to attend the monthly SOS meetings, experienced a number of financial challenges shortly after the last report. A.P., who lives with his mother and young daughter, was employed but his hours varied depending on the time of year. When his Section 8 housing rent was raised by \$500 a month, he was unable to pay the increase on his then current salary. With the help of an attorney from Gibson Dunn, he has been working to get that amount reduced. However, A.P. faced additional financial pressures to pay tuition arrears for an online course at Monroe College, and he decided to drop out because he was finding it too difficult to

focus on the online courses while working, looking for new employment, and caring for his daughter. A.P. has since made arrangements to pay off the amounts owed to Monroe and hopes to re-enroll in a different college in the fall. A.P. also learned that he is the father of another child, to whom he provides financial support. A.P. obtained his driver's license in July 2014 and, after diligently searching for a full-time job, he was recently hired by Dr. Pepper Snapple as a driver. Although A.P. was arrested with some friends and faced charges of reckless driving and possession of a small amount of marijuana and untaxed cigarettes, the charges were dropped in favor of a deferred prosecution.

In June 2014, A.P. received the Mayor's "New York City Fatherhood Initiative's Dads Matter Award" and was honored by Mayor DeBlasio "for being a dedicated father and positive role model for his daughter."

*b. R.V.*

R.V., who was sentenced to a term of probation, continues to remain part of the SOS program, and attends all monthly meetings. He continues to do well in the program and is fully compliant with all conditions. He completed vocational training at TCI and secured his driver's license. At the time of the last report, he was working part-time as an overnight employee at Kohl's and he was recently promoted to a full-time supervisor. He is considering obtaining his CASAC (Credentialed Alcoholism and Substance Abuse Counselor) certificate.

*c. R.D.*

R.D. was referred to the STAR reentry program upon sentencing because of his prior substance abuse issues. In the STAR program, R.D. has been supervised by the Honorable Dora

Irizarry. He performed well in the STAR program and was granted an early release from probation after a period of 18 months.

*d. J.L.*

Since the last report, J.L. continues to work part-time at Pet Smart while also attending classes at La Guardia Community College. She has become more interested in improving her health and her living conditions. She purchased a bicycle, is trying to eat healthier foods, and made major renovations to clean up her living space. She continues to do well in the program and has been helping others in it, including referring another SOS participant for a job at Pet Smart and providing him with the opportunity to rent a room in the basement of her mother's home.

*e. A.D.*

A.D. continues to be a work in progress. He obtained his high school equivalency certificate in August 2014 and was accepted as a student at St. Francis College in Brooklyn as part of the College's Criminal Justice Diversion and Higher Education Opportunities Program. He also obtained employment as a manager at the Doe Fund in October 2014. Despite the concerns of the program judges, A.D. believed he could handle a full-time job and keep up with a rigorous college class schedule. As a full-time employee of the Doe Fund, he was expected to move out into his own housing, which he also found stressful, having never lived on his own before. He soon learned that it was impossible to keep up with both his job and his studies, and his grades and attendance at college began to suffer. When he was unable to maintain passing grades, A.D. took the semester off. He eventually lost his job at Doe as well in large part due to attendance problems. In May 2015, he secured employment at Schipper's Restaurant and is taking a free class over the summer at St. Francis with the hope of continuing his studies either at

St. Francis or a community college. On a high note, A.D. received the Doe Fund's Student of the Year Award for educational effort and, after being separated from his daughter for a time, he recently gained unsupervised visitation rights with the help of the *pro bono* lawyers who provide assistance to the participants in the program.

*f. E.H.*

E.H. continues in the SOS program. Although he was doing well at the time of the last report, attending college and working full time at AT&T, he experienced a series of compliance problems, including curfew violations, failure to report, and lack of honesty with the Pretrial Services officer about his whereabouts and his activities. He failed to obtain a job promotion that he was hoping for and became depressed and lost motivation. He decided that he wanted to take time off from school to concentrate on a new business venture. It was subsequently learned that E.H. had quit his position at AT&T and had lied to his supervising officer about his employment status. A hearing was held before the district judge in May 2015 to address E.H.'s noncompliance issues and his lack of honesty. It is hoped that this will be a wake-up call for this young man who is extremely bright and capable, but immature at the same time. Just recently, E.H. secured a job with First Data Merchant Services and is waiting to enroll in a CUNY school for the fall semester.

*g. L.D.C.*

At the time of the last report, L.D.C. was working hard to obtain a college degree, to care for her two young sons, and to search for employment. Shortly after the report, however, she began to struggle with the rules of the program. Her grades began to slip, she experienced attendance problems in college, and she stopped taking her older son to his school. She violated curfew on numerous occasions, at times staying out all night and lying about her whereabouts

despite the fact that she was wearing a location monitoring device. Following a violation hearing, she was removed from the program, bail was revoked, and she served six months in custody prior to receiving a sentence of time served. She continues to have compliance problems under Probation Department supervision. Although she was residing with her mother for a time, she is now living in a halfway house.

## *2. Current Participants - Newly Reviewed*

Since the last report, there have been a number of SOS participants who have experienced significant achievements in the program and whose progress merits mention.

### *a. R.I.*

R.I. was arrested on August 13, 2012 on cocaine trafficking charges. He was released on a \$50,000 bond and entered a plea of guilty in May 2013. When R.I. appeared before the judge for sentencing in December 2013, the judge thought R.I. could benefit from the structure offered by the SOS program and offered R.I. the opportunity to earn a reduced sentence. R.I. experienced a rough start in the program, claiming that he had a learning disability and reacting with a negative attitude to virtually all of the suggestions made by Officer Adossa-Ali. He was finally persuaded to enroll in on-line business classes and successfully obtained certificates in Critical Thinking and Professional Leadership Management. Also with the encouragement and Pretrial Services, he worked hard to reduce his credit card debt. Although his initial reaction to the program was hostile and resistant, he has now committed himself to obtaining the full benefit the program.

*b. J.R.*

J.R. was 18 years old at the time of his April 2014 arrest on Hobbs Act robbery charges related to the theft of iPhones, iPads, and Galaxy wireless phones from a store in Queens, and he entered a plea of guilty on June 27, 2014. These charges would normally render a defendant ineligible for SOS, but after a period of review by Pretrial Services an exception was made with the support of the assigned AUSA, and J.R. was accepted into the SOS program in December 2014. Since he has been attending the monthly meetings, J.R. has obtained his High School Diploma and enrolled in La Guardia Community College. He was working at Coldstone Creamery at the time of his arrest and continues there today. J.R. is working to obtaining his Food Handler's License in order to receive a promotion. His employer has described him as one of his best workers.

*c. A.T.*

A.T. was arrested and charged with conspiracy to distribute heroin on March 13, 2012. He was living with his father and stepmother at the time and working as an unlicensed barber in various shops in Brooklyn. In June 2012 he was placed in the SOS program, and he was generally compliant with the conditions from the outset. However, it was a struggle to motivate A.T. to enroll in high school equivalency classes or undertake anything other than his work in the barber shop. In September 2013, A.T. obtained his high school equivalency certificate and was sent to the HOPE Program's job readiness program. He secured a part-time job at Dress for Success. He also received his OSHA card and in January 2014 he enrolled in the HVAC training program at TCI while continuing to work part-time at Dress for Success. When he strained his back at work, he began looking for a new job, and in September 2014 he was offered a full-time position by the HOPE Program as Facilities Manager. After much planning, he moved with his



fiancee to their own studio apartment. Because of his poise and enthusiasm for the HOPE Program, A.T. was asked to attend numerous fundraising and speaking engagements on behalf of the program. He currently has two more semesters to complete before graduating from TCI.

*d. L.C.*

L.C. was 19 years old at the time of her arrest on June 5, 2012. Born in Texas, she is estranged from her parents and lived in the Dominican Republic between 2009 and the date of her arrest. Since her release into the SOS program, she has been residing with her cousin, but there was initially a lot of tension in the home due to L.C.'s immaturity. She had also suffered from and been treated for depression in the past, and she was referred to mental health counseling upon entry into the SOS program.

When she joined the SOS program, L.C. took high school equivalency classes at a school near her home and tried for months to find work without success. She was referred to the HOPE Program, where she participated in the job readiness program. L.C. initially struggled with the program's requirements of punctuality and strict attendance, and she violated curfew on several occasions in the beginning of her time on supervision. However, as she continued to participate in the HOPE Program, and was sent out on internship interviews, she began to mature. In the summer of 2013, she experienced a series of setbacks, including suspension from an internship for lateness and for using the company phone to call her boyfriend. She was placed in home detention.

In September 2013 L.C. returned to the HOPE Program and she obtained employment at a shoe store the following month. She advanced to the position of store manager, opened up a bank account, and began to contribute to the household expenses. Because her work schedule

was part-time, she obtained a job at Bally's Total Fitness as a front desk manager. L.C. is also currently working as a hostess at Ruth's Chris Steakhouse.

Through the efforts of her attorneys, she had her documents from the Dominican Republic translated and she received her high school equivalency certificate. She applied for college and in January 2014 she was accepted at Hudson Community College in New Jersey, where she currently attends classes. This past semester, she received A's in four of her subjects.

L.C. entered the SOS program facing numerous problems, stemming largely from her lack of maturity and focus. Through SOS, she has gained skills, experience, and therapy that have allowed her to mature into a productive, hard-working citizen with goals for the future. On July 24, 2015, L.C. was offered a deferred prosecution by the government in recognition of the progress she has made in the SOS program.

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As the data set forth in Section Two illustrate, not all of our program participants are success stories. A recent example is E.G. E.G., a young mother of a one-year-old, became a participant in the SOS program shortly after her December 2013 arrest on charges of importing cocaine into the United States. Although she thrived in the program for a period, E.G. continually violated the conditions of her intensive supervision. She was placed on location monitoring and a curfew, and in early to mid-2015 she continually violated the curfew, leading Officer Adossa-Ali to conclude that she was not amenable to supervision. In July of 2015, E.G. was sentenced to an 18-month period of incarceration, which she is currently serving.

## V. Alternative to Incarceration Programs in Other Districts

Our programs are hardly alone. As set forth below, numerous other districts have presentence ATI and other similar programs. We describe these various initiatives below, with thanks to the various courts for providing us with the information.

### *A. The Central District of California -- Conviction and Sentence Alternatives Program*

The Central District of California's Conviction and Sentence Alternatives ("CASA") program is a presentence diversion program. Upon successful completion of the program, some participants are diverted from the criminal justice system entirely by dismissal of the charges; others are diverted from prison through probationary sentences (agreed-upon under Federal Rule of Criminal Procedure 11(c)(1)(C)). CASA is jointly administered by the court, Pretrial Services, the United States Attorney's Office, and the Federal Defender's Office.

CASA has two tracks. Track One includes defendants with minimal criminal histories charged with relatively minor crimes. It is not limited to youthful offenders, but otherwise Track One participants resemble those in our SOS program. Track Two consists of defendants (even those with serious criminal histories) whose criminal conduct appears to be motivated primarily by substance abuse or similar issues, and who may be diverted from future criminal activity by treatment under court supervision. Thus, Track Two defendants are virtually identical to the population of defendants in our POP program. Upon successful completion of the program, Track One participants have their charges dismissed; Track Two participants obtain an agreed-upon sentence of probation.

Since the program began in June 25, 2012, 97 defendants have been selected to participate in the CASA program – 73 in Track One and 24 in Track Two. Thirty-four have graduated – 26 from Track One and 8 from Track Two. Only four have been unsuccessfully terminated from the program.

The court estimates that in just the first year following their graduation, CASA will have saved taxpayers \$984,232 on those 34 graduates alone; the savings on those same 34 graduates over four years is estimated to be \$3.94 million.

*B. The Central District of Illinois -- Pretrial Alternatives to Detention Initiative*

The Central District of Illinois has been operating the Pretrial Alternatives to Detention Initiative (“PADI”) for more than ten years. PADI defendants are referred by the United States Attorney’s Office and are evaluated by a substance abuse treatment provider and Pretrial Services. Pretrial Services and the treatment provider make a joint recommendation to the United States Attorney on whether the defendant is appropriate for the program, and the United States Attorney then decides if the defendant should be allowed entry into the program. As of October 30, 2014, 104 participants (out of a total of 126) had successfully completed the program, and 12 more were currently in it. Eleven more were on the waiting list as of that date. Of the 104 successful participants, 35 received sentences of diversion (dismissal of the charges pending completion of a diversion supervision term), 57 received “time-served” sentences, and five had their cases dismissed outright. In October 2014 the Court estimated that the program cost savings attributable solely to the 57 time-served sentences was \$11,960,880, and that an additional estimated \$1,024,800 was saved as a result of the other 35 cases. These savings, the

court observed, pale in comparison to the value of the positive changes in the participating defendants' lives.

The first PADI graduate has gone on to complete her second college degree and is now a licensed substance abuse counselor. Another graduate helped solve a local murder case at great personal risk and has been drug free, employed, and paying taxes for several years now. Another successful graduate of the program, who was facing ten years to life imprisonment, became employed at a local Subway restaurant. The owners were so impressed by her work ethic and positive attitude they made her a general manager of eleven Subway stores they own in the Peoria, Illinois area. This defendant, in turn, has hired other PADI graduates to work at Subway.

### *C. The District of South Carolina -- The BRIDGE Program*

The BRIDGE program is a presentence drug court. It began in the Charleston Division on November 29, 2010. Since May 2015, it has been available in the Greenville, Columbia, and Florence Divisions as well. The BRIDGE program accepts defendants whose criminal conduct and histories are more attributable to substance abuse and addiction than independent criminal motive. It efficiently relies on existing Probation Department resources and has effectively assimilated the volunteerism of the local medical and business communities into the program's rehabilitation efforts. The program is committed to evidence-based practices. It has been privileged, in recent years, to host Attorney General Eric H. Holder, Jr., the members of the Criminal Law Committee of the Judicial Conference, and numerous United States Attorneys and associated staff from around the country. As of August 2015, 72 participants had entered the BRIDGE program; 27 had graduated, and 22 remained active in the program. Twenty-three participants have either voluntarily withdrawn or have been dismissed from the program.

BRIDGE has spent approximately \$120,416 on treatment and testing since its inception. The program's estimated net savings for its 27 graduates is approximately \$1,071,615. This amount is a "marginal" savings calculation. In other words, it conservatively estimates savings by basing the evaluation only on the additional expense to the taxpayer for the Bureau of Prisons to incarcerate one additional inmate. However, when the total fixed costs of incarceration are considered (\$29,027 per inmate per year), along with the fixed expense of judicial personnel resources, the total savings achieved by the BRIDGE program is approximately \$2,848,811. Only two of the 27 graduates had been rearrested as of August 2015.

*D. The District of Connecticut -- The Support Court*

The District of Connecticut has offered a post-release reentry drug court since 2009, and began offering presentence participation in early 2013. About 50% of those admitted to Support Court eventually graduate; graduates receive either up to one year off their supervision term or favorable consideration at sentencing. The experience with presentence defendants has been especially encouraging: thirteen presentence graduates (with Guidelines imprisonment ranges of 12-18 up to 78-97 months) have been sentenced and each received a sentence of either time-served or probation. The cost savings from this ATI program is estimated to be about \$1 million. To date, no presentence Support Court graduate has been rearrested or revoked.

*E. The Western District of Washington -- The DREAM Program*

In late 2012, the Western District of Washington established, in collaboration with the United States Attorney's Office and the Federal Defender, the DREAM Program, a presentence drug court. The program contemplates the vacatur of participants' convictions upon successful completion. It produced its first two graduates in December 2013 and two more since then. The

court reports that, assuming the four graduates would have been sentenced at the bottom of their applicable Guidelines ranges, over 130 total months of incarceration have been avoided, not to mention the savings associated with the social costs to those four graduates and their families had they gone to prison.

*F. The Southern District of California -- Alternative to Prison Sentence Diversion Program*

The Southern District of California's Alternative to Prison Sentence ("APS") program consists of a twelve-month intensive period of supervision that focuses on youthful offenders charged with immigration or drug trafficking offenses. The United States Attorney's Office is responsible for selecting the program participants and requires them to accept responsibility for their actions. The program is one of the largest diversion programs in the federal system with more than 397 participants since its inception in November 2010. The success rate of the APS program is higher than 90% and it is estimated to have saved more than \$5.5 million dollars in incarceration expenses.

*G. The District of New Hampshire -- The LASER Court*

On April 9, 2010, the District of New Hampshire authorized the creation of the LASER program, a rehabilitative program for the defendants whose qualifying crimes and criminal histories are attributable to drug abuse or addiction. A collaborative effort by the court, the United States Attorney's Office, the Probation Department, and the criminal defense bar, the program requires that participants adapt to law-abiding, sober, employed and responsible lifestyles ("L-A-S-E-R").

Successful participants require a minimum of 12 months to complete the four-phase program. Each phase entails specific goals with a number of distinct, achievable expectations consistent with each stage of recovery. Participants gain an understanding of the process of addiction, recognize triggers and patterns of use and abuse, and appreciate the impact of their addictions on themselves, their families, and their communities. They accept responsibility for their conduct and acquire the tools necessary to achieve a sober, law-abiding, and employed lifestyle. Participants are required to develop a community-based sober support network and a comprehensive relapse prevention plan as a condition of LASER graduation.

While graduates of the program cannot normally expect dismissal of their criminal charges, they may be eligible to receive (a) a downward departure (or a variance) from the applicable Guidelines range based on their post-conviction rehabilitation; (b) a reduction in charge to a lesser offense, at the United States Attorney's Office's discretion; or (c) a reduction in the term of supervised release or probation.

Since its inception, 21 defendants have participated in LASER. Fifteen have been pretrial participants; the remaining six have been on post-conviction supervision. Of the 15 pretrial participants, seven (54%) have successfully graduated, six (46%) have been terminated, and two are actively participating.

The potential period of incarceration to which the LASER pretrial graduates were exposed (measured by reference to the low end of the applicable Guidelines range) varied between 8 and 57 months, with the average being 33 months. The court estimates cost savings associated with the program graduates at \$493,000.



#### *H. The District of Massachusetts -- The Repair Invest Succeed Emerge Program*

The Repair Invest Succeed Emerge (“RISE”) program was created by the United States District Court for the District of Massachusetts and its Probation Office in consultation with the United States Attorney, the Federal Public Defender, members of the Criminal Justice Act panel, and treatment providers.

Defendants are considered for the program if they are on pretrial release and have either (a) a serious history of substance abuse or addiction that substantially contributed to the commission of the charged offense; or (b) a history that reflects significant deficiencies in full-time productive activity, decision making (*i.e.*, criminal thinking in addition to the charged offenses), or pro-social peer networks as a result of which the defendant would benefit substantially from a structured pretrial program under the close supervision of the Court and Probation. The program includes a tailored combination of full-time productive activity (school, employment or community service), cognitive behavioral therapy to address criminal thinking, development of new social or peer networks, and efforts to surmount other barriers to a sober, employed, law abiding life.

The RISE program offers closer supervision, establishes higher expectations for a defendant’s conduct, requires participation in treatment, and delays the defendant’s sentencing to permit participation. The program aims to promote productive behavior, rehabilitation, acceptance of responsibility for the offense(s) of conviction as well as their consequences. It seeks to manage wisely taxpayer funds, including by reducing recidivism.

Defendants successfully completing the program are entitled to no specific or guaranteed benefit other than that the Court will consider all aspects of the defendant's participation at sentencing. We anticipate that successful completion will be considered favorably at sentencing.

*I. The Southern District of Ohio -- The Special Options Addressing Rehabilitation Program*

The Special Options Addressing Rehabilitation ("SOAR") program was created in the Southern District of Ohio as an alternative to incarceration. The program was piloted in the Dayton division in 2012. SOAR targets youthful, non-violent adult defendants, and gives discretion to the Court when a sentence of incarceration may not serve the best interests of the defendant or society. Once a defendant enters the program, long and short term goals are established and the defendant is referred for educational or vocational programs, and any substance abuse or mental health needs are addressed. Participants are expected to meet at least weekly with a Pretrial Services Officer, and to develop community and familial relationships to maximize their potential for success.

*J. The District of Oregon -- The Court Assisted Pretrial Supervision Program*

Based on the success of its own and other districts' re-entry courts, the District of Oregon asked its Pretrial Services Office to explore options to incorporate the principles of a reentry court into the pretrial supervision of defendants. The result of that request has been the Court Assisted Pretrial Supervision ("CAPS") program, a special condition of release for certain high-risk defendants. All participants are required to participate in monthly meetings with the program judge, a Pretrial Services officer, and defense counsel. The Assistant U.S. Attorney

also participates when appropriate and when requested by the Court. Substance abuse and mental health case workers are utilized as well as an array of professional service providers.

Since 2011, 51 defendants have participated in CAPS. The number is evenly split between defendants placed on CAPS at their initial appearance (22) and those who were placed on CAPS after violating traditional conditions of release (22). The remaining defendants (7) were placed on CAPS during subsequent reviews of detention.

The Federal Pretrial Risk Assessment (PTRA) was used in each case. The PTRA is a tool used to predict risk of failure to appear, new criminal arrests, and revocations due to technical violations. There are five risk categories, one being the lowest risk and five being the highest risk. Since October 1, 2012, CAPS cases have averaged a PTRA risk category of 3.9, considerably higher than the 2.8 average PTRA score in the district. The majority of CAPS participants were charged with firearm offenses (23), followed closely by drug charges (17).

Nineteen defendants have successfully completed CAPS, and 19 defendants had their release revoked. Thirteen cases are currently active. Of the 19 successful defendants, seven received probation and one was placed on diversion. The other successful defendants were sentenced to a total of 208 months, well below the low end of their Guidelines ranges, which totaled 928 months.

While not designed as an alternative to incarceration program, CAPS appears to have become one. When applying the same cost analysis used by several such programs (cost of incarceration, using the low end of the Guideline ranges), CAPS cases saved the Government 720 months of incarceration so far, equal to \$1,837,440. This does not include the savings that flow from avoiding pretrial detention.

*K. The Eastern District of Missouri –The Sentencing Alternatives Improving Lives Program*

The Eastern District of Missouri’s Sentencing Alternatives Improving Lives (“SAIL”) program began in March 2015. Patterned after the CASA program in the Central District of California, SAIL is a post-plea, pre-sentence diversion program, administered collaboratively by the court, Pretrial Services, the United States Attorney’s Office and the Federal Public Defender’s Office. The program aims to divert defendants who are otherwise likely to serve prison sentences from serving any time in prison.

Participation in the program is voluntary and must be approved by the judge presiding over the defendant’s case. The Pretrial Services Office and the United States Attorney’s Office also must agree to the participation. Referrals may come from any source. Participation is not limited to those with particular offenses, issues, or criminal histories, although some categories of offenses are excluded, such as immigration and sex offenses. Rather, the team attempts to identify those individuals who have issues that the team believes contributed to the defendants’ involvement in the criminal justice system, and which can be addressed by intensive supervision.

SAIL has two tracks. Upon successful completion, Track One defendants have their charges dismissed; Track Two defendants receive probation or supervised release. Most participants will be in Track One. Those terminated from the program are sentenced by the SAIL district judge pursuant to the terms of the plea agreement.

A participant in SAIL enters a guilty plea that requires participation in the program and specifies the benefit to be received upon successful completion. Each participant is subject to intensive supervision that includes regular court appearances before the SAIL Program Team, as well as participation in programs designed to address the causes of the defendant’s criminal

conduct (substance abuse and/or mental health treatment programs, employment/education services, etc.). Program participation is in three phases, and lasts for 12 to 18 months. Currently, there are eight participants, and new participants are under review.

*L. The Western District of Virginia -- The Veterans Treatment Court*

The Veterans Treatment Court (“VTC”) program in the Western District of Virginia, established in 2011, is a collaborative effort of the United States District Court, the United States Probation Office, the United States Attorney, the Federal Public Defender, and the Salem, Virginia, Veterans Affairs Medical Center. Over the years prior to the creation of the VTC, the court had encountered many veterans charged with nonviolent misdemeanors who faced challenges in their lives as a result of struggles with substance abuse and mental health issues. In such cases, traditional legal remedies such as incarceration, fines, and Probation monitoring did not address the root causes of the criminal conduct. The VTC was implemented to tackle these underlying causes by combining the resources of the court and the Veterans Affairs Medical Center. Through a formal program of pretrial diversion (and occasionally probation supervision), the VTC facilitates the provision of tailored treatment services at the medical center to veterans who commit federal misdemeanors.

*M. The District of Utah -- The Basin Program*

The mission of the Basin Program is to offer offenders an effective and supportive program to transition back into their community. The program promotes, cultivates, and supports the whole person through healing and wellness using the community, a collaborative effort from service providers and other tribal agencies. This multifaceted approach results in the reduction of substance abuse, incarceration, and social and family problems related to addiction.

The program increases connection to family and community, as well as overall quality of life, and implements structure that requires accountability and integrity while providing comprehensive services to substance abusing offenders.

The Basin Program focuses on offenders, especially those testing positive for illicit drugs and alcohol, by using a strict, evidence-based approach to address probation violations. Similar to the Hawaii Opportunity Probation with Enforcement (“HOPE”) model, which involves swift and immediate sanctions for each violation of supervision, the Basin Program will decrease drug use, new arrests, and revocations within Indian Country. This program is designed to meet the needs of the AI/AN people and the communities in which they reside. The Basin Program interprets all policies and procedures related to the unique cultural and historical traditions of the tribal land people while maintaining justice and fairness.

While this is currently a reentry program, the court anticipates adding a Pretrial/ Diversion component in 2016.

*N. The Western District of Texas – The Adelante Program*

Early in 2015, the Western District of Texas implemented the Adelante program, a diversion program for defendants whose cases appear to have been the result of substance abuse issues or other underlying causes that are amenable to treatment. The goals of the program are to reduce incarceration and the impact of felony convictions.

The program lasts 18 months, but it can be extended up to 24 months. While under supervision, the participants receive a variety of services, including varying levels and modalities of substance abuse treatment, to address the underlying causes of their criminal conduct. They

also attend regular court sessions with the judge, defense counsel, the prosecutor, and Pretrial Services officer. Participants in the program enter a plea of guilty and their sentences are postponed. They must follow the rules of the program and have at least six months of continuous sobriety in order to complete the program. Upon successful completion of the program, the plea of guilty is withdrawn and the charges are dismissed. The program is in its very early stages.

*O. The Eastern District of California - Better Choices Court (“BCC”)*

The Better Choices Court (“BCC”) program in the Eastern District of California selects high-risk defendants who are considered less likely to comply with traditional supervision. These include youthful offenders, offenders with lengthy criminal histories and/or histories of poor adjustment to supervision, and offenders with addiction problems. The program includes the cooperation of the Court, Pretrial Services, the Federal Defender, and the United States Attorney’s office, and its primary goal is to address behavior and rehabilitation through program meetings, including monthly meetings with an assigned magistrate judge, and intensive supervision. The program has been in existence for four years and currently has nine participants. Thus far, a total of ten participants have graduated from the program.

## VI. The Eastern District STAR Courts

This district has long been committed to post-sentence drug courts, now known as STAR (Supervision to Aid Re-entry) Courts. The late Chief Judge Charles P. Sifton established the first such court over a dozen years ago, and several judges have continued to preside over them in the interim. Presently, Judge Dora Irizarry has a STAR Court, assisted by Probation Officers Christopher Wodzinski and Yara Suarez, as does Magistrate Judge Robert Levy, who is assisted by Probation Officer Robert Anton. Each Star Court is staffed by attorneys from the Eastern District of New York's Federal Defender's Office, which represents and assists the participants, along with the social workers employed by that office. Presently, Len Kamdang, Esq. assists in Judge Irizarry's Star Court and Mildred Whalen, Esq. assists in Judge Levy's Star Court. The social workers are Vivianne Guevara and Danielle Azzarelli.

Although our two STAR Courts have some differences, both are committed to assisting supervisees with documented histories of substance abuse in reentering their communities at the conclusion of a prison term. While some STAR Court participants enter the program upon release from prison as a condition of their supervised release, many participants receive probation or other sentences that do not require terms of incarceration. Each of these defendants is provided with a form of intensive supervision designed to better their chances of leading drug-free, productive lives. For various defendants whose cases have been assigned to Judge Irizarry (who has conducted her STAR Court for a decade), the STAR program constitutes an alternative to incarceration at sentencing. Judge Irizarry also accepts into her STAR program defendants whose cases were before other judges who believe that these defendants could benefit from participating in the STAR program.



STAR Courts offer persons with drug or alcohol problems more assistance, stricter accountability and greater rewards for completing their supervision successfully. The program was founded on the belief that too often substance abusers are jailed for behavior directly related to the abuse, and they are not given sufficient help in controlling their addictions while incarcerated and after their release. As a result, they repeatedly commit similar offenses.



By participating in a STAR Court, defendants place themselves under the intensive supervision of the Court. If they are able to complete the program, they benefit from better treatment, health and welfare services, educational and vocational placement services, family counseling and, at the court's discretion, a reduction in the length of their terms of supervision.

STAR Court participation is more intense than regular supervised release. Participants are screened for acceptance into this voluntary program and an individualized treatment plan is put in place. Participants meet with the judge, probation officer, social worker from the Federal Defender's Office and defense attorney every month. They are required to attend a weekly group counseling session with fellow program participants for one hour on Saturday mornings, in addition to their regular individual drug and/or mental health treatment sessions. Participants also report to their assigned probation officer as often as necessary and are tested for drugs and alcohol frequently.

At the court meetings, the probation officer, judge, defense attorney, and participants discuss their problems and progress. If the participant violates the conditions of supervision, the participant is held accountable. As originally formulated, STAR Court only required attendance in treatment, sobriety, and successful participation in the program. However, using evidence based-practices the STAR Court now uses cognitive behavior therapy, which has proven to be the best treatment modality for preventing recidivism and changing offenders. These offenders are higher risk, face a multitude of challenges and obstacles, and are in need of more services. Additionally, the judge uses a graduated system of sanctions to address violations. The judge may issue a reprimand, require the participant to appear in court more often, impose a curfew, order more intensive drug and/or mental health treatment, including residential drug treatment, require the participant to perform community service, spend a weekend or more in jail, be placed



The other EDNY STAR Court Team: Magistrate Judge Robert Levy and Probation Officer Robert Anton

in a residential re-entry center or otherwise be held accountable for his or her actions. Serious violations ultimately may result in the revocation of supervised release and imprisonment. These sanctions are designed to help the participants by encouraging them to reflect on their behavior, stay away from people, places and things that get them into trouble, and help them instead to become involved in their communities in positive ways.

In order to graduate from the program, a participant must remain alcohol and drug free and satisfy all the conditions of supervision for at least twelve months. If the participant tests positive for drugs or alcohol or misses a scheduled test without an acceptable excuse, the twelve-month clock begins anew. The participant also must, if practicable, be employed, enrolled in

school or otherwise be productively involved in his or her community for six months and have a stable residence and finances.

If the participant completes the program, the probation officer recommends that the term of supervision be terminated. Normally, such terminations occur earlier than the initial supervision termination date. That recommendation is given great weight, but the judge ultimately decides whether supervision should terminate early.

The STAR Court program participants, like their SOS and POP program counterparts, are committed to working hard at making positive life changes, to obtaining jobs and an education, to reuniting their families, paying taxes, overcoming addictions, ending patterns of poor judgments, and becoming productive members of society. In addition to facing their addictions and accomplishing all these goals, they face, among other things, homelessness, domestic violence, child support/family court proceedings, tax arrears, licensing problems, and outstanding fines and judgments. These obstacles can become overwhelming, leading to mental health issues and derailing them from their positive goals.

Guided by Matthew Benjamin, a litigation associate at Gibson, Dunn & Crutcher, LLP (“Gibson Dunn”), attorneys from Gibson Dunn began providing *pro bono* legal services to our program participants in areas where they had been unserved. The results have been life-changing for some of the program participants.

Mr. Benjamin and his colleagues regularly attend our POP, SOS, and STAR Court sessions, and they have assisted at least 17 participants in our programs with family court/child support issues, housing, financial aid, employment policy inquiries to avoid adverse consequences, identity theft, immigration matters, Medicaid and Social Security benefits, a

registered nurse license renewal, a name change, emergency housing in a domestic violence situation, a corporate asset sale and bankruptcy proceedings. They were not only able to stop eviction proceedings against a mother of three children in Judge Irizarry's STAR program, but they obtained a grant to pay the arrears.

Since its inception in 2002, there have been a total of 176 participants in the STAR Courts. As of July 31, 2015, 119 have graduated, a 68% success rate. The program participants included 147 males and 29 females, ranging in age from 21 to 68 years old, with the majority being males in their late twenties to thirties. All participants have had a long history of addiction to substances, many with a history of poly-substance abuse, including but not limited to alcohol, methamphetamines, cocaine, heroin, and marijuana. The Criminal History Categories of the participants have ranged from I to VI. The Probation Department conservatively has estimated that the STAR Courts have produced savings of approximately \$1,559,272 in Bureau of Prisons costs by curtailing recidivism and savings of approximately \$991,366 in supervision costs due to early termination of supervision, for a total approximate savings of \$2,550,638. As with the ATI programs, we cannot measure other, equally significant cost factors: the costs associated with recidivism and the administration of justice, public health, social welfare, and loss of employment and productivity. Most importantly, it is impossible to place a value on a person saved from a life of addiction and crime and made into a productive, law abiding, tax paying, and family supporting member of society.

A STAR Court consent form is set forth in the Appendix.

## VII. Educating Ourselves

### *A. The Eastern District Drug Court/SOS Summit Meetings*

We have learned that it is one thing to create alternative to incarceration programs and reentry courts and another thing to conduct them effectively. There is ample evidence that judge-involved courts like our POP, SOS, and STAR programs are effective in reducing recidivism, but judges receive no training for the task of presiding over the regular meetings with the participants. In part for that reason, and also to promote better communication generally among the programs and throughout the Court, we hold regular meetings of the various judicial, Pretrial Services and Probation Department participants in the POP, SOS, and STAR programs.

That led to our monthly “Eastern District Drug Court/SOS Summit Meetings.” All courthouse employees are invited, as are the lawyers in the United States Attorney’s office and the lawyers and the social workers in the Federal Defender’s office. The typical summit meeting includes approximately 20-30 people, including judges, Pretrial Services and Probation officers, law clerks, prosecutors and defenders.

Most of the summit meetings involve guest speakers. They have included drug treatment experts, representatives of job training programs, programs for workforce development and fatherhood training, reentry specialists, health care providers, and the judge and staff of an innovative state court program that combines family court, criminal court and housing court in a Brooklyn neighborhood. Meetings without guests have consisted of discussions about the practices used in our various programs. For example, the topic of one meeting was the different approaches we take in responding to relatively minor or technical violations. Another meeting

focused on the best practices recommended by the National Association of Drug Court Professionals.

## VIII. Road Trips

Unlike the summit meetings, which occur at the lunch hour on the last Wednesday of each month, trips to visit other courts or programs are more time-consuming and therefore more difficult to arrange. However, following up on a successful visit in 2012, the summit participants arranged for another visit to the Red Hook Community Justice Center, an innovative state court initiative that combines Housing, Family, and Criminal Courts in one community-based facility. In June 2015, 80 members of the Eastern District community, including judges, court personnel, prosecutors and defenders, observed the enormously successful, judicially-supervised community court in action. They learned first-hand about treatment modalities, strategies for dealing with violations, the approach to the punishment of those who “fail out,” and efforts to make the court more responsive to the needs of the community.

In addition, the judges and officers involved in all of our programs – POP, SOS, and the STAR reentry courts – attended the annual meeting of the National Association of Drug Court Professionals in July 2015, learning from the wide array of educational offerings at that conference. Finally, the judges from the POP program in Brooklyn visited one of the inpatient drug treatment facilities in upstate New York that a number of program participants have lived in, and the Central Islip POP judges made a similar visit to another such facility. The monthly meetings of the POP participants often involve discussions of the various stages and difficulties of long-term residential treatment away from families and loved ones. These visits enhanced the judges’ understanding of that environment and made them better able to contribute to those discussions.

## IX. Conclusions and Recommendations

We have no doubt that our presentence ATI programs –POP and SOS – have been successful. The same is true with regard to our STAR courts. The eight judges directly involved in the programs are firm in their belief that the programs provide a better way to deal with the defendants in them. The programs save substantial financial resources, and on a human level they help the defendants and their families without endangering the community or undermining the purposes of punishment. The full support of the United States Attorney suggests that the judges’ belief is well-founded.

However, much more work is required before ATI programs like POP and SOS, and the other programs in our sister districts around the country, can be fully and properly evaluated. These programs raise many questions that individual districts are hard-pressed to answer by themselves. What types of alternative to incarceration programs should federal courts have? What defendants should be eligible for such programs? What are the best practices with respect to support services, intensity of supervision, dealing with violations, and conducting the monthly meetings? Will the federal defendants who successfully complete these programs have lower recidivism rates over time? Do the ways the participating judges interact with the participants affect the efficacy of the programs? Can judges be trained to be more effective?

The criminal caseload in the federal courts is different from that in the state courts, and as a result the proportion of defendants who should be considered for ATI programs is certainly lower in the federal system. Nonetheless, the Department of Justice has explicitly acknowledged that there are meaningful numbers of low-level offenders in the federal system for whom sanctions other than incarceration may be appropriate. It has also recognized that the potential



for system-wide federal cost savings is great. Our programs and the closely analogous CASA program in the Central District of California include approximately four percent of the combined caseload of the districts. If programs like these can responsibly avoid the need to incarcerate just four percent of the national defendant population that otherwise would receive prison terms, the savings achieved in prison expenditures alone would be enormous. The social costs avoided would be harder to measure but no doubt be even more important. For those and other reasons, former Attorney General Eric H. Holder, Jr. spoke repeatedly in support of presentence drug courts, including during his moving visit to our programs on October 30, 2014.

It remains true, however, that any particular federal alternative to incarceration program will not likely include large numbers of defendants, even in the more populous districts like ours and the Central District of California. The numbers of participants discussed above make that clear. As a result, if there is to be a serious, scientific assessment of such programs, there needs to be more centralized encouragement, support, and study of them.

Finally, we have not lost sight of the fact that our alternative to incarceration programs provide support services and attention that are largely unavailable to law-abiding members of the same communities our participants are from. There is at least probable cause to believe every participant in the POP and SOS programs has committed a federal felony, and most have admitted to doing so, yet they receive drug treatment, educational assistance, job training and hands-on supervision of which many others outside our criminal justice system are more deserving. We acknowledge this unfairness. As a Court, we also recognize the limitations on our authority, and our views regarding social problems and social services outside the criminal justice system are insufficiently relevant to set forth here. However, the fact that we cannot help all the members of the communities we serve is no justification for refusing to help some of

them. Once defendants enter our system, we have an obligation to dispose of their cases pursuant to policies that, to borrow from the Sentencing Reform Act of 1984, “assure the meeting of the purposes of sentencing as set forth in” 18 U.S.C. § 3553(a)(2), “avoid[] unwarranted disparities among” similarly situated defendants “while maintaining sufficient flexibility to permit individualized sentences,” and “reflect, to the extent possible, advancement in knowledge of human behavior as it relates to the criminal justice process.” 18 U.S.C. § 991(b). In addition, in an environment in which the rising costs of incarceration are an ever-present topic of discussion, we are persuaded that fiscal considerations alone warrant the careful consideration and evaluation of ATI programs. The fact that the participants in such programs receive advantages that some law-abiding members of the community need but cannot obtain is unfortunate, but it can never, in our view, justify walking away from these programs.

Though we are optimistic about our ATI programs, we are keenly aware of the difference between policies and programs that feel right, as POP and SOS do, and ones that have been proven right. POP, SOS, and other similar programs in the federal system will only be proven right if more districts are encouraged to create and attempt to perfect such programs, generating sufficient data for reliable evaluation.

To that end, we call upon the Sentencing Commission to amend the Guidelines to encourage such programs and to take steps to inform the federal courts around the country about them. We call upon Congress to assist us in gathering data about them with an eye toward evaluating and improving them. We elaborate briefly on these recommendations below.

The way to encourage ATI programs is to amend the Sentencing Guidelines to establish an approved downward departure to a sentence that does not include incarceration for successful

participants in judge-involved intensive supervision programs. Given the established success of such programs in the states and the excellent track records they have thus far in the federal system, the Commission should immediately amend the Guidelines to authorize such a departure.

The way to inform the federal courts of these programs is to create a page on the Commission's website for alternative to incarceration programs in the federal system. There should be a place where an interested judge, prosecutor, defender or probation officer can find not only this report but also the documents establishing our two programs and the various programs described in Section Five of this report. We have received hundreds of inquiries from such persons about our programs, and we have hosted more than a dozen visits by delegations from around the country that have come to our district to see our programs in action. The Commission's website is a logical repository for all information about federal ATI programs.

Finally, data collection is critical to an objective, long-term analysis of whether our programs and others like them are in fact better, more cost-effective ways of handling certain defendants, as we believe they are. Our data collection effort is set forth here, but we are the first to admit that we need professional assistance in gathering and evaluating data. Congress should appropriate the funds necessary for the establishment of federal ATI program and for retaining qualified social scientists to engage in the long term collection, study and evaluation that these programs deserve.

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PRETRIAL OPPORTUNITY PROGRAM

UNITED STATES PRETRIAL SERVICES AGENCY  
EASTERN DISTRICT OF NEW YORK

(Last Updated August 2014)

## **I. Introduction**

The Pretrial Opportunity Program described here is established for the Pretrial Services Agency in the Eastern District of New York under the direction of the Board of Judges. While drug courts in various forms have been used widely at the state level, and there are admirable and effective post-sentence drug courts in operation in this district and elsewhere in which probation departments partner with judges, there have not been sufficient efforts to make such courts available at the pre-sentence stage of federal cases. 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.

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 in 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. 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.

Tough but compassionate approaches to non-violent drug-addicted felons in drug courts have yielded positive results. *See, e.g.*, Twentieth Annual Report of the Brooklyn District Attorney's Drug Treatment Alternative-To-Prison (February 2011). Such drug courts have not only maintained high treatment retention rates and low recidivism rates, they have also produced enormous cost savings by sentencing defendants who successfully complete the drug court program to non-custodial sentences or by dismissing the charges. By offering effective treatment alternatives and other forms of supervision during the pre-sentence phase, 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. Indeed, this program envisions that the United States Attorney might agree in some cases that the case should be dismissed entirely.

## 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 support services provide the judge with alternatives to 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. However, Pretrial Services, in conjunction with the participating judges, will decide whether a defendant meets the criteria for eligibility in the program.

### 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 not pose a danger to the community and must exhibit a willingness to participate in treatment and to comply with the stringent conditions of the program. It is expected that most participants in the program (like most defendants generally) will plead guilty, but that is not required for admission. Other common factors shared by potential participants in program include:

- Prior drug- or alcohol-related arrests/convictions
- Prior participation in drug treatment
- Mental health history
- Victim of rape, incest, molestation or domestic violence
- Lack of support system
- Removal of children and/or prior or pending Administration of Child Services (ACS) cases
- Lack of education; lack of vocational skills; lack of employment

### *C. Supervision and Case Management*

The supervision of defendants in the Pretrial Opportunity Program is multi-dimensional. It is more intense and requires the collaboration and flexibility of the court, the pretrial services officer, the treatment provider, and the defendant.

Defendants accepted into the program will meet with the sentencing judge, a participating magistrate judge, and a pretrial services officer on a regular basis or as otherwise directed by the judges. In addition, 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 the defendant, his or her family members or significant others and treatment providers, and will provide the judges 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. 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 judges 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. The defendant will be expected to freely discuss his or her treatment and all other circumstances related to the rehabilitation of the defendant with the judges. Obstacles to the 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 conferences will be recorded, and defense counsel shall attend unless he or she has been excused from appearing by the court. The prosecutor may attend as well, but is not required to.

Violations of any type will be immediately reported to the judges. Provided the violation at issue is admitted or proven, the defendant is subject to the full array of sanctions provided by law. These include more frequent court appearances, geographic or association restrictions, an increase in treatment services, a stricter treatment modality, a decision not to count the month in which the violation occurred as one of the twelve sober months required for program completion, regardless of whether the violation involved substance abuse; a curfew, community service, a weekend jail term or even revocation of release. In addition, the defendant's participation in the program may be terminated. 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. The judges will not sanction a defendant in the absence of counsel, who will, along with the defendant, have an opportunity to be heard.



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 a viable excuse, the twelve-month period will begin again. Twelve months of consecutive sober participation in the program is necessary, but not sufficient, for successful completion. Where applicable and as appropriate, the defendant must also remain employed, enroll in school or attend vocational training. Even after successful completion, a defendant must continue to attend the regularly scheduled meetings with the judges up until the time you are sentenced. The judges and the Pretrial Services Agency will determine if and when a defendant has successfully completed the program, and will have the authority to terminate an unsuccessful defendant's participation in the program. 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 to the judges written or oral status reports documenting a 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 judges, 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.

**United States Pretrial Services Agency  
Eastern District of New York  
Pretrial Opportunity Program - Consent Form**

Name: \_\_\_\_\_ Case Number: \_\_\_\_\_

You have been selected to participate in the Pretrial Opportunity Program. We believe in your ability to succeed in this program and look forward to working with you in overcoming your drug or alcohol addiction. By signing this form, you agree to participate in this intensive supervision program.

**Read this form carefully before you sign it and speak with your attorney if you have any questions.** Your sentencing will be deferred during your participation in the program. If you are able to complete the program, you *may*, in the sentencing judge's discretion, be afforded a reduction in sentence. However, the final determination of your sentence, including whether or not any such reduction is appropriate, will not be made until your sentencing proceeding is held. Since post-arrest rehabilitation is only one of many factors to be considered at your sentencing, the successful completion of the program does not *entitle* you to a reduction in sentence.

***What you can expect from the U.S. Pretrial Services Agency:***

1. You will be thoroughly assessed and a comprehensive treatment plan will be generated to aid you in your rehabilitation process and sobriety. The plan will be discussed during the first meeting and signed by you, your pretrial services officer and a judge. The plan may require your participation in a de-toxification program, a regular or intensive outpatient drug treatment program, or short- or long-term residential drug treatment program.
2. Your pretrial services officer will work with you to identify problems you are facing and to secure necessary referrals and resources.
3. You will receive intense personal supervision from your pretrial services officer.

***What you can expect from the sentencing judge:***

1. The sentencing judge will offer you individual attention at regularly scheduled meetings. Those meetings may also be attended by a magistrate judge who agrees to participate in the program. The judge or judges at your meeting will discuss your progress and address any concerns you and your pretrial services officer may have, and will expect you to discuss those concerns as well.
2. The judges will encourage you when doing well.

3. The judges will hold you accountable. If a violation the conditions of the program (or of your pretrial release generally) is admitted or proven at a hearing with your attorney present, you may be reprimanded and/or subjected to one or more of the following additional sanctions, among others: more frequent court appearances; increased treatment services; a stricter treatment modality; a decision not to count the month in which the violation occurred as one of the twelve sober months required for program completion, regardless of whether the violation involved substance abuse; restrictions on where you can go and with whom you can associate; a curfew; a community service obligation; a weekend jail term or even the revocation of your release.
4. Your sentencing judge will have the authority to consider all information obtained during the course of your participation in the Pretrial Opportunity Program in determining the appropriate sentence.

***What we will expect from you:***

1. You must refrain from illicit drug or alcohol use.
2. You must appear on time for your regularly scheduled meetings with the judges. Though you will be expected to be open and honest about your behavior, agreeing to participate in the program does not affect your right to remain silent. You retain the right to remain silent if an answer to the judges' or the officer's questions may tend to incriminate you.
3. You must report to Pretrial Services as directed.
4. You must report for drug testing and treatment as directed.
5. You must comply with all standard conditions of your release.
6. You must provide verification of address and employment and/or income on a regular basis.
7. You must believe in your ability to succeed. We believe in you and if you believe in yourself you will succeed.

Completion of the program requires, at a minimum, twelve consecutive months of participation without any use of drugs or alcohol. Twelve months of sober participation in the program is necessary, but not sufficient, for successful completion. The decision about whether you have successfully completed the program will be made jointly by the judges and Pretrial Services. Even after successful completion, you must continue to attend the regularly scheduled meetings with the judges up until the time you are sentenced.

The judges, Pretrial Services, and your attorneys will make every effort to work with you to ensure that you participate successfully in the program. However, if you violate the terms of the program, you may be terminated from further participation. By signing this agreement, you waive any right you might otherwise have to appellate review of a decision that you have failed to complete the program or a decision terminating you from the program. In addition, you have the right to withdraw from the program at any time for any reason, provided you notify the supervising officer of your desire to do so.

I have read this form and understand it. I have consulted with counsel before signing it. By signing, I agree to participate in and abide by the rules of the Pretrial Opportunity Program, and that compliance with all of its requirements will be an additional condition of release in my case. I further understand that participation in the program will delay the resolution of my case, and that any such delay is hereby requested by me so I may avail myself of the potential benefits of the program.

Defendant: \_\_\_\_\_

I agree it is appropriate for my client to participate in the Pretrial Opportunity Program and I have advised my client accordingly. I agree to attend the monthly meetings with the judges unless I have been excused by the court. I understand that participation in the program will delay the resolution of the case; any such delay is hereby requested, and my client and I agree it is warranted in the interest of justice.

Attorney for the Defendant: \_\_\_\_\_

Participation in the Pretrial Opportunity Program in the Eastern District of New York is hereby approved. The defendant shall appear for all scheduled meetings between the judges, the pretrial services officer, and the defendant in the United States District Courthouse located at 225 Cadman Plaza East, Brooklyn, New York, or 200 Federal Plaza, Central Islip, New York. The judges' staffs will be responsible for scheduling and notifying all parties of any meetings scheduled.

Pretrial Services Officer: \_\_\_\_\_

**SO ORDERED.**

**Dated:** \_\_\_\_\_  
United States District/Magistrate Judge



SPECIAL OPTIONS SERVICES PROGRAM  
UNITED STATES PRETRIAL SERVICES AGENCY  
EASTERN DISTRICT OF NEW YORK

February 4, 2013

## **I. Introduction**

The Special Options Services (SOS) Program was established in the Eastern District of New York in January 2000 as an alternative to pretrial detention for juvenile and young adult defendants. The SOS Program is designed primarily for non-violent juvenile and young adult defendants between the ages of 18 and 25. Older defendants may be considered for the Program on a case-by-case basis.

The SOS Program is founded on the premise that many young offenders may go on to lead law-abiding lives when provided with appropriate support and access to opportunities for education, training, and counseling that may have been unavailable to them prior to their arrest. The Program gives the Court the discretion to offer this benefit of supervision and services to certain defendants in cases where pre-trial detention or a jail sentence may not serve the best interests of the defendant or society. The supervision techniques employed by the Program include frequent contact with the defendant to monitor conduct and to provide direction, advice, and counseling; regular communication with family members, treatment providers, and counselors; verification of residence and employment; random drug testing; and frequent criminal record checks.

The Program also recognizes that the collaborative involvement of a Judge (the “Program Judge”) in the supervision of youthful offenders may enhance a defendant’s support system and greatly encourage compliance with the goals of the Program. Defendants accepted into the Program will attend judicial meetings with the Program Judge and a Pretrial Officer. The meetings are designed to inform the Program Judge about the defendant’s progress and about the personal factors that affect the defendant’s behavior. As a result, the Program Judge is in a position to provide encouragement and support where appropriate and to hold a participant accountable where warranted.

Judicial meetings will generally be held on a monthly basis, but the Court has the discretion to schedule meetings more or less frequently depending upon the needs of the participant. Defense counsel shall attend and the prosecutor may, but is not required to, attend as well. The Pretrial Officer will submit progress reports to the assigned district judge, the Program Judge, defense counsel, and the government, which will address issues such as attendance, attitude and behavior, drug testing results, and participation and cooperation in all required programs, including the participant’s employment. Written reports will be provided to the Probation Department at the time of the preparation of the Presentence Report with copies to the assigned district judge, Assistant U.S. Attorney, and defense attorney prior to sentencing. The Pretrial Officer will always be available to discuss a defendant’s adjustment and participation in the SOS Program at the request of the assigned district judge, the U.S. Attorney’s Office, or defense counsel.

By providing young defendants with the framework of supervision and services that they need, the Program seeks to help defendants learn from their mistakes, make better choices, engage in productive behavior, and reduce the risk of recidivism. Successful completion of the Program

may justify, but does not guarantee, a significant reduction in the otherwise appropriate custodial sentence, or the imposition of a non-custodial sentence. The Program Judge will also be in a position to offer insights to the assigned district judge with respect to the defendant's accomplishments while participating in the Program.

## **II. Legal Authority**

A. Title 18 U.S.C. §§ 3154 (4), (6) and (7) authorizes Pretrial Officers to operate or contract for the operation of appropriate facilities for the purpose of providing custody, care, counseling, treatment or other necessary social services to released defendants. Pretrial Officers may serve as coordinators for other local agencies which are eligible to serve as custodians, and they may assist defendants in obtaining employment, medical attention, and placement in programs or social services.

B. Title 18 U.S.C. § 3142(c)(B) provides that, in order to reasonably assure the appearance of a defendant as required by the Court, a judicial officer may impose upon a pretrial defendant specific conditions, which may include requiring the defendant to:

- remain in the custody of a designated person;
- seek and maintain employment;
- maintain or commence an education program;
- abide by specific restrictions on personal associations, place of abode or travel;
- avoid contact with alleged victims;
- report on a regular basis to a designated agency;
- comply with a specified curfew;
- refrain from possessing a weapon and from use of alcohol or drugs; and
- undergo available medical, psychological, or psychiatric treatment.

C. Title 18 U.S.C. § 3154 requires Pretrial Officers to inform the Court of all apparent violations of release conditions. The statute does not specify a timeline for notifying the Court of non-compliance, and this process will be determined by the Pretrial Office's internal practices. Instances of non-compliance will be addressed on a case-by-case basis depending on the situation and circumstances of the alleged violation.

### **III. Program Format**

#### **A. Criteria for Eligibility**

Factors considered to determine eligibility for the Program include:

- Drug use history and current drug addiction;
- Mental health history;
- Victim of rape, incest, or molestation;
- Loss of parent(s) or guardian;
- Victim of child abuse, abandonment or neglect;
- Incarceration of parent(s);
- Defendant must not pose a danger to the community; and
- Defendant exhibits a willingness to participate in the Program and to abide by the stringent conditions of the Program.

#### **B. Identifying Eligible SOS Participants**

1. Pretrial Officers conducting bail investigations should be familiar with the eligibility criteria and should be able to make an initial assessment and recommendation to the Court as to a defendant's eligibility and suitability for the SOS Program.

2. A Judicial Officer, defense attorney, or Assistant U.S. Attorney may recognize a defendant as a potential SOS participant after reviewing the Pretrial Report or based on some other previously unknown or undisclosed information.

3. A defendant may be identified as a potential SOS participant by the Pretrial Officer at the post-release interview with the defendant or family members or at any time during the pretrial supervision process.

4. Although defendants can be referred for the SOS Program by any judicial officer, Assistant United States Attorney (AUSA), defense counsel, or pretrial services officer, Pretrial Services will decide whether a defendant meets the criteria for eligibility in the Program. There is no legal right to participate in the SOS Program, and the failure to be admitted is not a decision that is subject to judicial review.

5. Once a defendant is referred to the Program, the District Judge or Magistrate Judge must include on the bond an Order requiring the defendant's participation in the Program as a special condition of release. Defendants are advised that post-arrest rehabilitation is only one of the many factors considered at sentencing, and the successful completion of the Program does not entitle them to a reduction of sentence.



#### **IV. The Supervision Process**

##### **A. The Post-Release Interview**

Pretrial Officers will determine the supervision needs of a defendant based on the information detailed in the Pretrial Report and ascertained during the post release interview process.

- During the post release interview, Pretrial Officers will review and expand upon the data in the Pretrial Report as necessary.
- Pretrial Officers will explain the purpose, practices and goals of the SOS Program to the defendant, the defense attorney and any accompanying family members or significant others.
- Pretrial Officers will also discuss with the defendant the release conditions that will be imposed and any other Program restrictions and requirements applicable to the defendant.

##### **B. The Imposition of Release Conditions**

Release conditions are always tailored to address the specific needs and goals of individual defendants. The following conditions – many of which are standard conditions of release – aim at promoting stability and providing direction for defendants:

- Report as instructed to the Pretrial Officer;
- Curfew and/or travel restrictions (as deemed appropriate based on conditions and circumstances of the case);
- Mental health counseling and treatment;
- Drug testing, counseling, and treatment;
- Vocational and educational counseling or training;
- Life skills, parenting, or child-rearing classes;
- Anger management or stress management classes or counseling;
- Sex education, sexuality, and relationship counseling; and
- Participation in Judicial Meetings.

Other requirements or additional restrictions may be imposed.

##### **C. Case Management & Monitoring Defendant Compliance**

Supervision of the SOS defendant is a dynamic process that requires flexibility by the Pretrial Officer. Case management activities may be tailored to reasonably ensure a defendant's

compliance with Program goals and conditions. The Pretrial Officer will engage in intensive monitoring of the defendant's activities and will respond immediately to any violations. Supervision practices may include:

- Frequent personal and telephonic contacts with the defendant to monitor conduct and to provide direction, advice, and counseling;
- Regular contact with family members or significant others;
- Regular contact and communication with treatment providers, counselors, or collateral contacts;
- Verification of residence and employment;
- Random drug testing; and
- Frequent criminal record checks.

A wide variety of community, educational, and vocational resources are used by the Pretrial Officer to manage the caseload and provide services to defendants. These resources are offered through non-profit organizations, governmental agencies and programs, or community and social service agencies such as:

- The New York City Department of Youth & Community Development (employment assistance);
- The Fortune Society;
- The New York Center for Neuropsychology & Forensic Behavioral Science;
- New York State Department of Education, Office of Vocational & Educational Services for Individuals with Disabilities [VESID] (education and vocational training and employment assistance);
- Center for Community Alternatives (health education, parenting skills, life skills counseling, drug counseling and vocational training for juvenile & young adult mothers with substance abuse histories);
- Homeless Rights Project (assistance to homeless defendants with families);
- Urban Justice Center (assistance related to welfare, food stamps, Medicaid and housing eviction); and
- The Hope Program (job readiness and training).

## **V. Addressing Non-Compliance**

### **A. Guidelines for Managing Non-Compliance**

Where a defendant who has enrolled in the SOS Program fails to comply with the conditions of his or her release, the Pretrial Officer will address the defendant's non-compliance as necessary. The Pretrial Officer's methods may include:

1. Interviewing the defendant and other relevant third parties (i.e., family, friends or police) to determine the facts and any possible explanations;
2. Issuing a reprimand if appropriate;
3. Discussing the matter with defense counsel and/or Assistant U.S. Attorney;
4. Conducting NCIC checks or obtaining relevant court documents, if required; and
5. Notifying the Court, with a recommendation as to appropriate action to be taken.

### **B. Reporting Non-Compliance**

Certain incidents of non-compliant behavior, such as failure to appear when ordered to do so, re-arrest or threatening a witness, juror, or court officer, require immediate notification to the Court. Other non-compliant behaviors, such as failure to report or failure to participate in drug or mental health treatment, require intervention by the Pretrial Officer before notifying the Court. The assigned Pretrial Officer can provide recommendations for reporting these types of behavior to the Court.

### **C. Violation Hearings**

The presiding Judge may, in his or her discretion, refer the violation to the Program Judge for hearing. Provided the violation at issue is admitted or proven, the defendant is subject to the full array of sanctions provided by law. These include more frequent court appearances, geographic or association restrictions, an increase in treatment services, a curfew, community service, a weekend jail term, or revocation of release. Hearings will be held on the record, with counsel present, and both counsel and defendant will be afforded an opportunity

# Eastern District of New York

## Special Options Services Program (SOS)

### Participant Agreement

Participant Name: \_\_\_\_\_

You have been selected by the Court to participate in the Special Options Services (SOS) Program as a condition of your pretrial release. By signing this form, you agree to participate in this intensive supervision program.

As a participant in the SOS Program, you will receive support from the Program Judge and your Pretrial Officer. If you successfully complete the program, you may receive a shorter jail sentence, or a sentence that does not require you to spend time in jail. But a sentence reduction is not guaranteed.

You may also get access to necessary services such as job training, employment assistance, health education, drug counseling, and welfare assistance.

#### **As a participant in the SOS Program, I promise to:**

- Report to Pretrial Services in-person or by telephone as directed.**
- Allow random drug testing and/or treatment as directed.**
- Have a mental health evaluation and/or participate in treatment as directed.**
- Allow for random visits to my home, work, and any of my programs.**
- Follow my curfew as directed.**
- Participate in educational and other programs as directed.**
- Avoid contact with anyone who I know is participating in illegal activity.**
- Not leave New York City and Long Island unless I get special permission.**
- Go to all my meetings at the Court.**
- Follow the instructions of Pretrial Services.**

## **Participant**

By signing my name to this form, I acknowledge that the SOS Program has been explained to me, and that I have been given a copy of this form. I know that I must follow the rules of the SOS Program during my time in supervision. If I violate any of the rules, it will be a violation of my pretrial release conditions – this means that I could be forced to follow additional rules or could have my bail revoked, so that I have to go to jail until I receive my sentence.

By signing this form, I also acknowledge that, even when I complete the SOS Program, it does not mean that my sentence will be automatically reduced. Ultimately, it is up to the Judge to decide what sentence I get.

Defendant's signature: \_\_\_\_\_ Date: \_\_\_\_\_

Defendant's name: \_\_\_\_\_ Date: \_\_\_\_\_

## **Attorney**

I have explained to my client, \_\_\_\_\_, the benefits and drawbacks of participating in the SOS Program. I understand that as a part of my client's pretrial release order, I am required to accompany my client to all SOS program judicial meetings, unless I have been excused by the Court.

Defense Attorney signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **Pretrial Services Officer**

Pretrial Services Officer signature: \_\_\_\_\_ Date: \_\_\_\_\_



**EASTERN DISTRICT OF NEW YORK  
STAR PROGRAM  
CONSENT FORM**

Name: \_\_\_\_\_ Case Number: \_\_\_\_\_

Drug court target termination date: \_\_\_\_\_ Regular termination date: \_\_\_\_\_

You have been selected to participate in the Eastern District of New York's STAR (Supervision to Aid Re-entry) Program. We believe you have the ability to succeed in this program; that was one of the main criteria used to select you. By signing this form, you agree to participate in this intensive supervision program.

Read this form carefully before you sign it. If you have any questions, ask your attorney. By agreeing to participate in this program, you put yourself under the intensive supervision of the Court. If you are able to complete the program, you may, at the court's discretion, benefit from better treatment, health and welfare services, educational and vocational placement, family counseling and a significant reduction in your term of supervision.

**HISTORY OF THE EASTERN DISTRICT OF NEW YORK DRUG SUPERVISION PROGRAM**

In 2002, Senior U.S. District Judge Charles P. Sifton asked the Probation Department to develop a post-sentence judge-supervised program in order to offer persons with drug or alcohol problems more assistance, stricter accountability and greater rewards for completing their supervision successfully. The program is founded based upon a recognition (1) that there is greater likelihood of recidivism among addicts and (2) of the difficulties addicts face avoiding criminal conduct. Too often addicts and alcoholics are jailed for behavior directly related to drug or alcohol abuse and not given sufficient help in controlling their addictions while incarcerated and after release. As a result, they repeatedly commit similar offenses. This program is based on the belief that, if offenders with substance abuse problems are offered the right type of assistance and held accountable, they may stand a better chance of leading a drug-free and law-abiding life than would otherwise be the case.

The judges of the Eastern District of New York who participate in this program do so voluntarily, because they believe that it may help you, your family, the community and the criminal justice system.

## **HOW THE PROGRAM WORKS**

The STAR Program is more intense than regular supervised release. You will meet with the judge, your probation officer, and your attorney every month and will be required to attend a weekly group therapy session with your fellow program participants, in addition to your regular individual drug and/or mental health treatment sessions. You will report to your probation officer as often as he/she feels is necessary. You will be tested for drugs and alcohol frequently.

At the court meetings, the probation officer, the judge, your attorney, and you will discuss your progress. If you have violated the conditions of supervision, the judge may require you to appear in court more often, intensify your drug and/or mental health treatment, observe a curfew, perform community service, spend a weekend in jail, be placed in a community corrections center or otherwise be held accountable for your actions. These sanctions are designed to help you by encouraging you to reflect on your behavior, stay away from people, places, and things that get you into trouble and help you become involved in your community in a positive, meaningful way.

As would be the case at any time during your regular supervision period, if the probation officer requests that the Court consider a violation action against you and you feel that you are innocent, you may request a formal hearing with the assistance of counsel. You will not be penalized for requesting a hearing. The hearing will be limited to determining whether you violated the conditions of supervision or not. Excuses usually will be handled at the less formal monthly hearings.

In order to graduate from the program, you must remain alcohol and drug free and observe all the conditions of supervision for at least twelve months. If you test positive for drugs or alcohol or miss a scheduled test without a viable excuse, the twelve months of your STAR Program will begin again. (In no case will you be required to participate in the STAR Program for a period longer than your original supervised release term, unless you violate the conditions of supervision, for example, by committing a new criminal offense.) You also must satisfy all of the conditions of your supervised release. At a minimum, if practicable, you must be employed, enrolled in school or otherwise be productively involved in your community for six months and have a stable residence and finances.

If you complete the program, your probation officer will recommend that your supervision be terminated, regardless of the original court-ordered term of supervision. The probation officer's recommendation will be given great weight, but the court ultimately will decide whether supervision should terminate early.

## **WHAT YOU CAN EXPECT FROM THE U.S. PROBATION DEPARTMENT**

1. You will be thoroughly assessed and an appropriate treatment plan put in place. The plan will be discussed during the first meeting and signed by you, your attorney, and your probation officer and approved by the judge.

2. Your probation officer will work with you to identify problems that you are facing and propose referrals and resources.
3. You will receive intense personal attention from your probation officer and possibly a forensic case manager and/or social worker assigned to the Federal Defender's Office.
4. If you successfully complete the program, your probation officer, with the U.S. Probation Department Deputy Chief's approval, will ask that the court terminate your supervised release term early.

### **WHAT YOU CAN EXPECT FROM THE COURT**

1. The judge will be familiar with your case and will give you personal attention at regular meetings. The judge will discuss your progress and address any concerns you, your attorney or the probation officer may have.
2. The judge will encourage you when you are doing well.
3. The judge will hold you accountable. If you violate the conditions of the program, after hearing from your probation officer, you and your attorney, the judge may impose one or more of the following sanctions, among others:
  - a. Judicial reprimand (a formal disapproval of your conduct);
  - b. More frequent court appearances;
  - c. Curfew;
  - d. More intensive drug and/or mental health treatment, including residential drug treatment
  - e. Geographic and associational restrictions, limiting the places that you may go or persons you may associate with;
  - f. Community service, if you make insufficient efforts to find employment or enroll in and attend an educational or vocational training program;
  - g. Weekend incarceration (when your violation of the program's conditions is extremely serious);
  - h. Community corrections center placement, for those who consistently violate the rules, have unstable living arrangements, and/or are at risk of being expelled from the program;
  - i. Revocation of supervised release, and imprisonment.
4. If you violate the conditions of the program, you may request a formal hearing. A formal violation report will be prepared by your probation officer and a formal hearing will be held by the judge, attended by an Assistant U.S. Attorney, you and your attorney. If you are found guilty, any of the sanctions listed in paragraph #3 immediately above may be imposed by the judge.

### **WHAT WE WILL EXPECT FROM YOU**

1. You must adhere to the basic and special conditions of supervision;
2. You must stay free of drugs and alcohol;



3. You must stay in touch with your probation officer and provide current contact information;
4. You must show up for the monthly meetings with the judge and group sessions and be open and honest about your behavior;
5. You must stay in touch with your attorney and let him or her know when you are having trouble with the program or other life issues that may affect your progress in the program;
6. You must complete at least twelve consecutive months without a positive or missed drug or alcohol test;
7. You must be employed full time, enrolled in school or a vocational training program full time (or a combination of employment and training) or be productively involved with your community in some other way;
8. You must have a stable residence and finances at the time of graduation;
9. You must comply fully with any other conditions of supervised release specific to your situation; and,
10. ***You will succeed! We believe in you! You need to believe in yourself!***

## **HOW THIS PROGRAM AFFECTS YOUR RIGHTS**

Under the Fifth and Sixth Amendments to the United States Constitution, you have the right not to incriminate yourself, to have the effective assistance of an attorney at every critical stage of a criminal proceeding and to have a judge who is fair and impartial and not influenced by facts outside the record. You will not have to give up these rights in order to participate in the STAR Program.

The STAR Program is unlike a traditional adversarial court or probation hearing. Your probation officer, your attorney, the judge and you will be working together informally to find the treatment and support you need to stay drug-free and out of trouble.

### **Your attorney will appear at every hearing**

You have a right to have your attorney appear at all traditional court proceedings. Your attorney will be at your monthly meetings with the judge. If the probation officer believes that you are not complying with the program and suggests that you be sanctioned, the judge may schedule a hearing with you, your attorney, the probation officer and the United States Attorney if you request a formal hearing. Otherwise, sanctions may be imposed informally in graduating severity as described above at the monthly meeting before the court. However, the judge will not sanction you without your attorney being present. Moreover, it is important for you to understand that your attorney will not be present to assist you at every meeting you have with your probation officer and/or forensic case manager. You may call your attorney whenever you feel you need help, and your attorney can contact the probation officer, the United States Attorney and the court. You will not be penalized for consulting with your attorney.

### **The hearings will be recorded**

All court sessions will be recorded by an official court stenographer. The minutes of those sessions, and of any violation hearing held may be transcribed if you, the judge, the United States Attorney, your attorney, or the probation officer so wish.

### **The hearings will be conducted in open court**

All STAR proceedings are open to the public. You may request that your relatives, friends, or the general public be present at any conference.

### **The judge will know more about you**

In a traditional court hearing, the judge only knows what the United States Attorney, probation officer and your attorney submit in their papers and say in court. Communications between the United States Attorney or probation officer without an opportunity for your attorney to respond (“*ex parte* communications”) are forbidden. In the STAR Program, the judge may hear from your probation officer without your attorney present. You also will be requested to say more to the judge about yourself than you normally might. Finally, the Federal Rules of Evidence, which restrict the types of information that the judge can consider, will not apply. This means that the judge will better understand your situation and may be better able to help you complete the program. It also means that you may be more vulnerable to sanctions should you violate the conditions of the program.

### **You will be expected to speak openly and honestly**

Under the United States Constitution, you have a right to remain silent when accused of a crime or of violating the conditions of supervision. Agreeing to participate in this program does not affect your right to remain silent and you will not be sanctioned for exercising that right.

### **You may be punished for violations of the conditions of the program**

The goal of the STAR Program is to help you get the treatment you need so that you can stay sober and live without court supervision. If you violate the program conditions (for example, by testing positive for drugs or alcohol), you may be disciplined. The court and its personnel will make every effort to work with you to ensure that you stay and succeed in the program. However, if you repeatedly or seriously violate the conditions of the program, you may face formal violation charges, prison time or other punishment.

### **You have the right to withdraw from the drug court program at any time**

You may withdraw from the STAR Program at any time for any reason. If you withdraw, you will be returned to traditional supervision. The time you have spent in the STAR Program will be credited against your remaining supervision term.

**SIGNATURES**

I have read this form with the assistance of my attorney and understand it. By signing, I agree to participate in the Eastern District of New York STAR Program and to abide by its rules.

Participant's Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature \_\_\_\_\_

I agree that it is appropriate for the above individual to participate in the Eastern District of New York STAR Program and am aware of my responsibilities under the program.

Probation Officer's Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature \_\_\_\_\_

I have reviewed this consent form with my client and answered any questions s/he had about the form and the STAR Program. I agree that it is appropriate for the above individual to participate in the Eastern District of New York STAR Program and am aware of my responsibilities under the program.

Defense Attorney's Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature \_\_\_\_\_

\_\_\_\_\_'s participation in the Eastern District of New York's STAR Program is hereby approved. The participant must appear for the next scheduled meeting before the Court, with the participant's probation officer and attorney on \_\_\_\_\_ in Courtroom # 4A South of the United States District Courthouse located at 225 Cadman Plaza East, Brooklyn, New York.

\_\_\_\_\_  
Dora L. Irizarry  
U.S. District Judge  
Eastern District of New York

SO ORDERED.

DATED: Brooklyn, New York  
, 20\_\_\_\_



**Photos (front and back covers) by Douglas Palmer, Clerk of Court**