



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 to be heard.