



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