

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
INTERAGENCY AGREEMENT FOR THE CREATION OF A RE-ENTRY COURT**

OBJECTIVE

This memorandum establishes a re-entry court program in the Northern District of California for certain individuals on federal post-conviction supervision. Specifically, a presiding judge – with the aid of an assistant federal public defender and an assistant United States attorney – assists United States Probation with the supervision of participants by conducting regular court sessions attended by all participants in the program. At the court session, the judge reviews and responds to the achievements and failures of each participant. Based on the results from similar programs in the federal and state judicial systems, we believe that the program has the potential to reduce the number of revocation proceedings before district judges, improve participants' compliance with conditions of supervision, facilitate rehabilitation, and decrease recidivism.

The conduct and activities supervised by the program are those typically handled by United States Probation without judicial support. The program adds the following: (1) regular oversight of a defendant by a judge; (2) early judicial intervention so that problems are addressed before they develop into violations; and (3) a swift judicial response to each failure by a participant. The program also offers a blend of treatment, education and job skills training, and sanction alternatives to effectively address participant behavior, rehabilitation, and the safety of our communities. Participants must agree to participate and be accepted into the program. The program lasts at least one year, and successful completion results in a one-year reduction of the term of supervision.

This program is modeled on programs in other federal and state courts, including those in the District of Massachusetts, the Western District of Michigan, the District of Oregon, and the Eastern District of Pennsylvania. The program is a cooperative effort of the Court, the United States Probation Office, the United States Attorney's Office, and the Federal Public Defender's Office.

APPROACH

Certain supervisees have risk factors that increase the likelihood of recidivism while on supervision. The risk factors include youth, early onset of substance abuse or delinquency, prior felony convictions, and previous unsuccessful attempts at treatment or rehabilitation. These supervisees face significant challenges in employment, substance abuse, and support networks. The risk factors and challenges are related to an increased likelihood of recidivism, but they also can be addressed through effective intervention. The interventions may include substance abuse and mental health treatment, education and literacy training, and employment and job skills training. The target participants for the re-entry program are supervisees with these high-risk factors who would benefit from effective intervention to address their risk factors and challenges. "High risk," as used in this agreement, means only "a high risk related to re-offending on supervision" and does not mean "dangerous" or "a high risk to society."

The program expects success from participants and does not automatically expel a participant for failure. As with any supervision case, sanctions for violations keep the participant in the community whenever possible. Also, many participants in the high-risk categories have failed at many

programs and have low expectations of themselves. The program is designed to continue to expect success and provide resources for success, even if repeated attempts are made. Accordingly, the program addresses participant behavior with incentives and sanctions. Sanctions are imposed with the goal of keeping the high-risk supervisees engaged in the treatment process until they achieve success. Once successful behavior has been achieved over a time period of at least 12 months, data suggests that the change is well-integrated and supported. This changed behavior best serves the interests and safety of the community.

The program utilizes a philosophy adopted by drug courts: regular contact with the judge is instrumental in bringing about change. Ordinarily, a judge's role ends after sentencing, but in a re-entry court, the judge directly supervises the person's return to the community and uses the court's authority to impose graduated sanctions, give positive reinforcement, and marshal resources to support the person's reintegration. The judge's engagement in the ongoing process is a significant force in a positive outcome that includes better lives and decreased recidivism for participants (and thus enhanced community safety). *See Model Program Guide Version 2.4*, United States Department of Justice, Office of Juvenile Justice & Delinquency Prevention (2004).¹

The program draws on evidence-based practices associated with successful re-entry. *See What Works and Why: Effective Approaches to Re-entry*, American Correctional Association (2005); *Key Components to a Successful Drug Court Program*, National Association of Drug Court Professionals. Among the practices are the following:

1. Participants will be selected using risk predictors that target high-risk, high-needs individuals.
2. Participants will be identified early and placed promptly in the program, when possible.
3. Case plans will be developed to address participants' individual risk and recidivism factors.
4. Participants' time will be highly structured to achieve accountability. Full-time work or education will be required (absent disability or child/elder care responsibilities).
5. Substance abuse and mental health services (including cognitive-behavioral treatment methods) will be integrated where appropriate.
6. Education and job skills programs will be provided.
7. The entire team (judge, probation officer, prosecutor, and federal defender) will provide positive reinforcement and accountability in a non-adversarial manner that protects participants' rights.
8. The program enlists support from external communities: employers, teachers, family, mentors, public agencies, service providers, and community-based organizations.

¹ It also is cost-effective. As of May 2007, it cost \$24,443.08 per year to incarcerate an offender in federal prison, and \$3,535.18 per year for supervision by probation officers. Memorandum, Administrative Office of the United States Courts, May 9, 2007.

9. Regular feedback is provided to participants both in court and by probation.
10. Data regarding interventions and progress will be measured against a control group.

THE RE-ENTRY COURT TEAM

Each re-entry court will have a team that consists of a presiding judge, a United States Probation Officer (“USPO”), an assistant federal public defender (“AFPD”), and an assistant United States attorney (“AUSA”). The team also will solicit input from designated service providers (such as treatment providers or halfway house managers) who will function as team members if possible. Depending on the focus of a particular re-entry court, the number of participants may vary.

The team members will collaborate on all significant issues, including selecting the appropriate incentives or sanctions for participants and determining whether a participant has succeeded in or should be terminated from the program. The focus of all team members will be to encourage success in the program, discourage bad decisions, and determine graduated sanctions for participants struggling with the program’s requirements.² If, however, the team cannot reach a consensus, the presiding judge shall make the final decision.

Additional responsibilities of individual team members are described in the next sections.

The Presiding Judge³

As outlined in the preceding two sections, the presiding judge holds regular hearings with participants, which is the significant force supporting lasting rehabilitation and reduced recidivism. As a result, continuity in the judicial role is important, and the parties thus agree that only a limited number of judges should be involved in the program. Generally, each re-entry team will have one presiding judge who also will function as the team leader. In other districts, re-entry judges operate their calendars on different days, one in the morning and one in the afternoon, thereby providing backup to each other, some flexibility to participants (with probation officer approval) due to

² The contemplated collaboration is non-adversarial, but as described in sections regarding the team members’ roles, the program protects participants’ due process rights.

³ Other districts have concluded, and the Administrative Office of the Courts (“AO”) has confirmed, that the presiding judge may be a magistrate judge. Under 28 U.S.C. § 636 and 18 U.S.C. §§ 3401(h), 3583(e), supervised release revocation – and therefore re-entry court function – can be delegated to a magistrate judge with the consent of the parties. *See United States v. Sanchez-Sanchez*, 333 F.3d 1065 (9th Cir. 2003). And while a defendant similarly cannot consent to a magistrate judge’s conducting a probation violation hearing unless the underlying conviction is a misdemeanor, *see United States v. Colacurcio*, 84 F.3d 326, 329 (9th Cir.1996), a magistrate judge may preside over probationers in a re-entry court so long as any order or modification is made in a report and recommendation to the federal district judge, and that judge approves the recommendation in a written order. Generally, it is the AO’s determination that the defendant’s consent forms the basis for jurisdiction in re-entry courts.

unforeseen work or other commitments, and continuity over the course of the year. Such an approach may be employed in this district.

The presiding judge is the ultimate authority in the re-entry court. While the presiding judge will work collaboratively with the other re-entry court team members in assessing matters such as the appropriate incentives or sanctions for participants and determining whether a participant has succeeded in or should be terminated from the program, the judge is the ultimate decisionmaker on these and all other matters before the re-entry court.

The U.S. Probation Officer (USPO)

The USPO will identify potential participants, interview them, and make an assessment regarding eligibility based on the objective criteria established for a specific re-entry court.

In addition to the USPO's normal responsibilities supervising a supervisee (including day-to-day supervision, immediate interventions when necessary, and developing a case plan to address treatment, employment, education, finances, housing, supervisee objectives, and compliance with terms of supervision), the USPO will prepare an individual "Re-entry Progress Report" (*see* Attachment 2) for each participant and distribute it to team members at least 24 hours before each re-entry court appearance. After the court session, the USPO will add to the report a summary of what happened in court and the participant's goals for the next session.

In addition, the USPO will facilitate effective communication between treatment and services providers and the team. Upon request, the USPO may provide HIPPA-protected medical records to the AFPD. The probation officer will encourage members of a participant's support network to attend re-entry court hearings, including employers, teachers, mentors, family members, significant others, treatment specialists, and other service providers.

The USPO will maintain a separate clearly-identified section in a participant's file for all re-entry court documents including the participant's agreement to participate, progress reports, and other records relating to the re-entry program.

Assistant United States Attorney (AUSA)

In addition to participating as a team member at pre-court conferences and appearing at court hearings, the AUSA will assist with presentation of evidence (if necessary) at the re-entry court hearing in the same manner as at a normal revocation hearing. Generally that level of formality will not be necessary: most violation information will be reported on the Progress Report or a status report to the Court.

Assistant Federal Public Defender (AFPD)

In addition to participating as a team member, the AFPD will assure that an individual participant's rights are protected, provide any necessary legal advice at any time, and represent a participant in re-entry court. If a participant is unable to complete the re-entry program successfully, and there is a

subsequent revocation or modification proceeding, the AFD, another AFD, or a panel attorney (as appropriate) may represent the participant in the other proceedings.

Treatment Provider Liaisons

In addition to participating as a team member, where possible, the treatment provider liaisons will provide input on appropriate evidence-based treatment modalities and provide screening, assessment, diagnosis, individual treatment plans, and referrals for additional treatment services as needed.

PARTICIPANTS

Candidates for the program will be supervisees on supervised release or probation in the Northern District of California who are identified by U.S. Probation at the time of re-entry as high-risk supervisees. While participation in the program immediately upon re-entry is optimal, participants also may be able to join the program during the course of their supervision. In order to identify high-risk supervisees, the probation office will use risk predictor indexes developed by the Federal Judicial Center or the Administrative Office of the United States Courts. The supervisee's criminal history and background information in the presentence report also will be used to identify potential participants. Risk factors include the number of prior arrests, whether a weapon was used in the underlying offense, employment history, the supervisee's age and gender, history of alcohol or substance abuse, level of education, employment history, and influence of antisocial peers or affiliations, among other factors. Candidates generally will be unemployed, underemployed, or able to benefit from the program in some specific way.

Different re-entry courts may be established to address different problems faced by supervisees and thus may involve different criteria for participation. For example, one re-entry court may focus on individuals with documented struggles with substance abuse. Another might focus on high-risk supervisees with an identified score on a risk prediction index or who otherwise are at high risk of violating the conditions of supervision. Depending on the focus of the particular re-entry court, the specific criteria for participation may vary. The parties jointly will establish objective eligibility criteria for each re-entry court, and supervisees meeting those criteria will be randomly selected as participants.

The Probation Office will screen candidates for eligibility using the objective criteria established for the specific re-entry court at issue. This screening process generally will occur either at the halfway house before release or at the first visit to Probation, but Probation may screen candidates at any time during their supervision. The USPO will advise an eligible candidate about the program and obtain the participant's agreement to participate in the program. Before signing the agreement, a candidate will consult with the AFD assigned to the program. A candidate who is deemed eligible and who agrees to participate in the program will be accepted into the program if there is space available. If there are fewer spaces available in the program than there are eligible candidates, participants will be selected randomly from the pool of eligible candidates who have agreed to participate in the program. Probation will maintain a waiting list so that eligible participants may join the program if spaces become available.

Because entry into the program is determined by objective criteria, recommendations by a judge to enroll a candidate in the program will have no effect on a candidate's eligibility for, or admission into, the program.

THE RE-ENTRY PROGRAM

Length of Participation

Participation will last for a total of 12 months of satisfactory performance. Re-entry courts focusing on substance abuse may require 52 consecutive weeks of sobriety. Otherwise, the 12 months need not be consecutive. The way the 12 months is calculated is as follows. The re-entry court judge will give a participant credit toward the twelve months for every two-week period of satisfactory performance. A participant will not get credit for any two-week period of unsatisfactory performance, although sometimes it will be possible to earn back that credit. To graduate from the program, a participant needs a total of 52 weeks of satisfactory performance (and 52 consecutive weeks of sobriety if that is a requirement of the re-entry program).

After 12 months' satisfactory performance, participants will graduate from the program. At that time, before they advance to general supervision, the re-entry court judge will recommend that the sentencing judge reduce the total term of supervised release by 12 months.

Pre-Court Conferences

Before each hearing, the team members will review the progress reports of the participants.

Court Appearances

Court will be held regularly and no less frequently than monthly. The courtroom will be open to the public, and the proceedings will be recorded but generally will not be transcribed. All participants will be present for the entire session so that everyone sees the presiding judge encouraging positive behavior, affirming the value of individual efforts, and sanctioning any non-compliance with the program's goals. Family members, mentors, employers, teachers, service providers, and other persons in a participant's support network will be encouraged to attend.

Participants will address the court individually. One approach is to have participants who are doing well go first to set a positive example.

Participants' statements will not be used against them in a separate federal revocation proceeding (though the statements may be grounds for judicial or probation action in the re-entry court). The Probation Office or any law enforcement authority may conduct an independent investigation based on a participant's admissions, and evidence developed as a result of that investigation may be used in any separate proceeding, including a separate federal revocation proceeding.

At the judge's discretion, a court security officer may be present, and a deputy United States marshal will be on call.

Participants' Consent to Participate

At the first court appearance, the re-entry court judge will welcome the participants, explain how the court works, and review the program and the agreement to participate. *See* Attachment 1. The USPO and the AFDPD will meet with the participants before the hearing to facilitate this process.

By signing the agreement to participate – which is co-signed by the entire team – participants consent to participate in the program, seek employment or education, meet their personal and financial obligations, and abide by the sanctions available to the re-entry court judge. They also agree to allow the Probation Office to check their criminal histories for up to three years after they graduate from the program to facilitate an evaluation of the program's effectiveness. *See* Attachment 1.

Incentives

The primary incentive for participation in the program is the chance for reduced supervision. In addition, clients who are fulfilling their obligations may have their re-entry court appearances reduced to one a month. Participant successes also are publicly acknowledged by the re-entry judge. Other rewards and incentives, such as graduation certificates, may be used.

Sanctions

Sanctions available to the re-entry court judge include those that fall within the statutory authority of the Probation Office under the standard conditions of supervised release, such as increased reporting or more frequent drug testing. One of the most effective sanctions is to refuse credit toward the 52 weeks of the program for any two-week period that the participant has committed an infraction.

In addition, by consenting to participate in the program, the participants agree to accept imposition of a curfew, community service, home or community confinement, or imprisonment up to seven days. *See* Attachment 1 (participant agreement includes examples of non-compliant behavior and possible sanctions). Participants retain the right to refuse the sanction. Their actions then may form the basis for a revocation petition filed by the USPO with the sentencing judge.

The program makes no changes to revocation procedures or proceedings regarding criminal conduct by program participants. That conduct will be addressed as follows:

1. In all cases involving criminal conduct, the USPO will notify the district court judge with jurisdiction to resolve the underlying issue. Unless a participant is detained for the underlying conduct or the district court revokes supervision, the participant shall continue to attend the regular re-entry court sessions unless otherwise ordered by the district judge or the re-entry program judge.
2. For Grade A and B violations, as defined in U.S.S.G. § 7B1.1, that is, conduct punishable by more than one year in prison:

- A. The sanction for any such conduct will be determined by the district judge, and not the re-entry court judge. The re-entry judge retains discretion to impose sanctions for other conduct that arises during the participant's involvement in the re-entry program.
 - B. A participant shall receive no weekly credit toward completion of the re-entry program's 12-month term pending resolution of the underlying criminal charges and the revocation petition. If the participant continues to attend the court sessions and maintains satisfactory progress in the re-entry program pending resolution of the underlying criminal charges, the participant will have credit restored if the district judge or probation office determine that no criminal conduct occurred.
 - C. At the re-entry judge's discretion, a participant may reenter the program upon release from any sentence imposed for the Grade A or B violation and remain in the program until he successfully completes a total of 12 months and is transferred to regular supervision.
3. For Grade C violations, as defined in U.S.S.G. § 7B1.1, that is, conduct punishable by one year or less in prison:
- A. If the participant accepts responsibility for the underlying criminal conduct and admits the conduct, the re-entry court judge will impose an appropriate sanction allowed by this agreement and the participant's Agreement to Participate. No further punishment shall be imposed for the conduct, and the USPO will not recommend revocation to the district judge. During the term of any sanction, the participant shall not earn weekly credit toward the re-entry program's 12-month term.
 - B. If the participant contests the underlying criminal conduct, the participant will receive no weekly credit toward completion of the re-entry program's 12-month term. If the participant continues to attend the court sessions and maintains satisfactory progress during the pendency of the underlying criminal charges, the participant will have credit restored if the district judge or probation office determine that no criminal conduct occurred. Otherwise, restoration of credit is at the discretion of the re-entry court judge.
4. A participant's failure to comply with the standard conditions of supervision that require candor to the Probation Office and timely reporting of law enforcement contact is grounds for imposition of a separate, additional sanction by the re-entry court judge.

Control Group and Program Evaluation

The Re-Entry Court Subcommittee of the Criminal Justice Working Group will review the program annually for effectiveness and report to the Chief Judge.

In addition, the Probation Office will work with a trained researcher and statistician at an outside university to identify additional similarly-situated supervisees to serve as a control group. Using

that control group and other generally-accepted means, the outside researcher will evaluate the re-entry program. The control group and the participants will be tracked for at least a three-year period. The supervising probation officer and the control group supervisees will not know that they are members of the control group.