

# Alternatives to Incarceration in the Eastern District of New York

The Pretrial Opportunity Program  
and  
The Special Options Services Program



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 a report to the Board of Judges about these two programs. It is intended to serve six purposes. First, the Court has received many inquiries about these programs from judges, Pretrial Services and Probation officers, prosecutors, and defense lawyers around the country. While our *ad hoc* efforts to inform them and assist them in deciding whether and how to establish their own alternative to incarceration programs have been worthwhile, we hope this report will be both a more efficient and more effective means of informing and assisting others.

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 in their infancy in the federal system. There are only a handful, and they are briefly identified and described in Section Five of this report. Communication among the districts with such programs (and other districts that will establish them 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 provides our initial set of data on these 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.



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

Third, even though the “jury is still out” on the long-term merits of alternative to incarceration programs in the federal system, 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. But our report would be incomplete if it left out those who have failed, so some of their stories are also included.

Fourth, other districts have also created alternative to incarceration programs. Taken together with the two programs in this district, they constitute a series of laboratories. For example, the Central District of California has a two-track program that closely resembles the POP and SOS programs in terms of the types of defendants who become participants, but the structure is fundamentally different. In our district, Pretrial Services determines whether a defendant is appropriate for the POP or SOS programs. In the Central District of California, the Conviction and Sentence Alternatives (“CASA”) interagency agreement establishes an intake

committee consisting of a judge, a Pretrial Services officer, an Assistant United States Attorney and an Assistant Federal Defender. In SOS and POP the participants do not know what effect, if any, their successful participation will have on their sentence until the time for sentencing; in CASA the outcome of the case (assuming successful completion) is set forth in writing upon entry into the program. And unlike those in POP, SOS and CASA, the participants in the Central District of Illinois' Pretrial Alternatives to Detention Initiative ("PADI") all cooperate with the government and receive "substantial assistance" motions.

This report contains brief descriptions of the eight presentence alternative to incarceration programs we are aware of. It also describes two intensive pretrial supervision programs for high-risk offenders that are closely related in structure and purpose to alternative to incarceration programs. The information 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 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. One section of this report is therefore devoted to briefly describing our STAR Courts, and another 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 preliminary conclusions regarding these programs and makes some recommendations.

## 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 drug offenders in their criminal justice systems over the last few decades. The use of drug courts to divert substance-abusing defendants from prison has produced positive results in the states. They have enhanced the efficacy of treatment and lowered recidivism rates. They have also produced cost savings, 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 alternative to incarceration 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 even 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 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 the POP and SOS programs. In order to complete the POP program successfully, a participant must remain drug-free and participate in the monthly meetings for twelve consecutive months. In addition, if the participant does not have a high school diploma or a GED, he or she is required to get a GED, and all participants are expected to seek and obtain appropriate employment.



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

POP participants in our Brooklyn courthouse have had 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 judge who will ultimately decide their cases. 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. That has occurred in one case thus far. Two other participants have had felony charges reduced to misdemeanors. In most cases, however, 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, particularly if the sentence does



The Central Islip POP Team: (from left) Magistrate Judge Gary Brown, Judge Joanna Seybert, and Pretrial Services Officer Arthur Bobyak

not include a term of incarceration. 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. Called the

Relapse Accountability and Prevention (“REAP”) program, it provides post-sentence supervision that is coordinated with the POP program. Indeed, though not all successful POP participants are required to attend the monthly meetings of the REAP program, some are (and all are welcome), and those meetings occur together with the monthly POP program meetings. As a result, 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, who, along with several Pretrial Services officers, 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 GED 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, a single officer, Amina Adossa-Ali, has supervised all of the defendants in the SOS program, up to 25 at a time. She provided periodic status reports to the assigned district judge and attended scheduled court hearings involving the SOS participant; there was no other judicial interaction with the SOS Program.

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, Magistrate Judges Joan M. Azrack and Cheryl L. Pollak. The judges now hold monthly meetings with 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



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

program, and the Pretrial Services officer responsible for supervising the defendant would advise the sentencing judge of the defendant's progress. In the newly restructured SOS program, Magistrate Judges Azrack and Pollak provide additional insight regarding the defendants' efforts and accomplishments to the assigned district judges during the course of supervision and at the

time of sentencing. Given the added supervision and input of the magistrate judges, the United States Attorney's Office has assured the Court that it will consider, on a case-by-case basis, requests by defense counsel for reduced charges or outright dismissal where exceptional SOS candidates have demonstrated by their participation and growth in the program that they have turned their lives around and become productive members of the community. 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 sets forth information our Pretrial Services office has gathered about the POP and SOS program participants. We acknowledge the limitations on the usefulness of any data set based on a sample of 47 defendants. However, we also believe that any broader-based analysis or evaluation of alternative to incarceration programs will need to take into account such factors as the demographic characteristics of the participants, their substance abuse histories, the current charges against them and their criminal histories, their degree of compliance with program requirements, the ultimate dispositions of their cases and the cost savings achieved by employing alternatives to incarceration. Over time, additional information will also be necessary, including data regarding the long-term effectiveness of treatment, and recidivism rates. In short, what follows is our initial effort to collect and report the kinds of information that, in our view, all programs like POP and SOS ought to be collecting and reporting. We fully expect to improve and refine our data-collection efforts, perhaps in consultation with other courts that have such programs, in the years ahead.

The evaluation period for the POP program began in January 2012, when that program was instituted. It began for the SOS program in March 2013, when the program was restructured to provide for monthly meetings presided over by judicial officers. The evaluation period for both programs ended, for purposes of this report, on January 31, 2014.

#### *A. Demographic Characteristics and Educational Levels*

Table One below sets forth the demographic characteristics of the participants in the two programs and the educational levels they have achieved. A total of 47 defendants actively participated in either the POP program (19) or the SOS program (28) during the relevant periods.

The POP participants were 52.6% male; the SOS participants were 82.1% male. The POP participants were 73.7% non-Hispanic White, 15.7% Hispanic, and 10.5% Black; the SOS participants were 3.5% non-Hispanic White, 71.4% Hispanic, and 25% Black. Nearly 80% of POP participants were 26 years old or older, with 63.2% falling within the 26-40 range. Pursuant to the program requirements, all of the SOS participants were under 26. More than three-quarters of all participants in the combined programs were unmarried and without a partner. The POP participants were better educated than their younger SOS counterparts; only 26.3% did not have a high school diploma or a GED, as compared to 64.2% of SOS participants.

<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>	28	59.5%	19	40.5%	47	100%
<b>Gender</b>						
<i>Male</i>	23	82.1%	10	52.6%	33	70.2%
<i>Female</i>	5	17.9%	9	47.4%	14	29.8%
<b>Race / Ethnicity</b>						
<i>White, Non-Hispanic</i>	1	3.5%	14	73.7%	15	31.9%
<i>Hispanic</i>	20	71.4%	3	15.7%	23	48.9%
<i>Black</i>	7	25%	2	10.5%	9	19.2%
<b>Age</b>						
<i>Ages 18 – 25</i>	28	100%	4	21%	32	68.1%
<i>Ages 26 – 40</i>	-	-	12	63.2%	12	25.6%
<i>Ages 41 – 55</i>	-	-	2	10.5%	2	4.2%
<i>Ages 56 +</i>	-	-	1	5.2%	1	2.1%
<b>Marital Status</b>						
<i>Cohabiting</i>	4	14.3%	2	10.5%	6	12.7%
<i>Divorced</i>	-	-	2	10.5%	2	4.3%
<i>Married</i>	-	-	5	26.3%	5	10.6%
<i>Single</i>	24	85.7%	10	52.7%	34	72.4%
<b>Education (Highest Level Attained)</b>						
<i>Less than a GED</i>	18	64.2%	5	26.3%	23	48.9%
<i>GED</i>	2	7.1%	1	5.2%	3	6.4%
<i>High School Diploma</i>	8	28.5%	9	47.3%	17	36.3%
<i>Some Vocational</i>	-	-	-	-	-	-
<i>Vocational</i>	-	-	-	-	-	-
<i>Some College</i>	-	-	3	15.7%	3	6.3%
<i>College Graduate</i>	-	-	1	5.2%	1	2.1%
<i>Post Graduate</i>	-	-	-	-	-	-

B. *Substance Abuse and Mental Health History*

Table Two sets forth the substance abuse and mental health histories of the program participants. In POP, which is a drug court, the participants’ principal drugs of choice were cocaine (15.8%), heroin (31.6%), and prescription opiates (36.9%). Their drug treatment histories included inpatient detoxification (31.6%), inpatient treatment (42.1%), and outpatient treatment (31.6%).<sup>1</sup>

<b>Table 2: Substance Abuse and Mental Health 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>	28	59.5%	19	40.5%	47	100%
<b>Primary Drug of Choice</b>						
<i>Alcohol</i>	3	10.7%	2	10.5%	5	10.6%
<i>Cannabinoids</i>	17	60.7%	1	5.2%	18	38.3%
<i>Cocaine</i>	-	-	3	15.8%	3	6.3%
<i>Heroin</i>	-	-	6	31.6%	6	12.7%
<i>Prescription Opiates</i>	-	-	7	36.9%	7	14.9%
<b>Drug Treatment History</b>						
<i>Detox Inpatient</i>	-	-	6	31.6%	6	12.7%
<i>Inpatient</i>	1	3.6%	8	42.1%	9	19.1%
<i>Outpatient</i>	3	10.7%	6	31.6%	6	12.7%
<b>Mental Health Factors</b>						
<i>Co-Occurring Disorders</i>	2	7.1%	3	15.7%	5	10.6%
<i>Psychotropic Medications</i>	1	3.5%	2	10.5%	3	6.3%
<i>Mental Health Services (only)</i>	7	25%	0	-	7	14.8%
<b>Other Family Factors</b>						
<i>Current Drug Use in Family</i>	4	14.2%	3	15.7%	7	14.8%
<i>Family Drug History</i>	6	21.4%	9	47.3%	15	31.9%

A family history of drug use was more prevalent among POP participants (31.9%) than SOS participants (21.4%). However, current drug use by immediate family members was almost identical, and averaged 14.8%. Approximately ten percent of all program participants (three

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<sup>1</sup> Although 71.4% of SOS participants reported having experimented with or used recreational drugs and alcohol, none reported cocaine, heroin, or prescription opiates as the primary drug of choice. Instead, most (60.7%) reported using marijuana, and 10.7% reported alcohol use. The drug treatment histories of the SOS participants were dramatically different from the POP participants; none of the SOS participants reported inpatient detoxification. Only 3.6% reported inpatient treatment and 10.7% had received outpatient treatment.



POP participants and two SOS participants<sup>2</sup>) were diagnosed with a mental health disorder and a substance abuse problem, often referred to as dual diagnoses or co-occurring disorders. Twenty-five percent of SOS participants attended mental health counseling services but were not diagnosed with substance dependence.

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

Table Three relates to the criminal histories of the program participants, their current charges, and their pretrial risk assessments. All of the participants in both programs were charged with drug trafficking offenses which were relatively minor or in which they played minor roles (or both). The offenses involved cocaine (48.9%), heroin (21.3%), and prescription opiates (27.7%). Twelve percent had a prior felony conviction and more than 23% had previously been arrested and charged with a felony offense. The Pretrial Services Risk Assessment (“PTRA”)<sup>3</sup> tool placed 48.9% of the combined program participants in category three (moderate risk), while 34.1% were in categories four and five.

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<sup>2</sup> One of these participants was only in the SOS Program for a few weeks.

<sup>3</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: 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>	28	59.5%	19	40.5%	47	100%
<b>Felonies</b>						
<i>Arrests</i>	7	25%	4	21%	11	23.4%
<i>Convictions</i>	4	14.2%	2	10.5%	6	12.7%
<b>Misdemeanors</b>						
<i>Arrests</i>	3	10.7%	7	36.8%	10	21.2%
<i>Convictions</i>	2	7.1%	3	15.7%	5	10.6%
<b>Current Charge (all participants were charged with drug offenses)</b>						
<i>Cocaine</i>	18	64.3%	5	26.3%	23	48.9%
<i>Heroin</i>	10	35.7%	-	-	10	21.3%
<i>Cannabinoids</i>	-	-	1	5.2%	1	2.1%
<i>Opiates (prescription)</i>	-	-	13	68.5%	13	27.7%
<b>Pretrial Risk Assessment</b>						
<i>Category 1</i>	-	-	3	15.7%	3	6.4%
<i>Category 2</i>	2	7.1%	3	15.7%	5	10.6%
<i>Category 3</i>	15	53.5%	8	42.1%	23	48.9%
<i>Category 4</i>	6	21.4%	5	26.3%	11	23.5%
<i>Category 5</i>	5	17.8%	-	-	5	10.6%

#### D. Program Violations and Dispositions

Though sanctions are imposed in both POP and SOS for violations of bail conditions or program rules, a violation does not necessarily result in revocation of release or termination from the program. Table Four summarizes the program violations and dispositions. The most frequent reason for technical violations in both programs was new illicit drug use. The rate of technical violations was higher among SOS participants (39.2%) than POP participants (26.3%). Three of the SOS participants were re-arrested for felony offenses, while one was charged with a misdemeanor. Two of the POP participants were rearrested; the charge was a misdemeanor in one case and a felony in the other. No participant in either program has fled.

Thus far, four participants have had their bail revoked or were otherwise unsuccessfully terminated from the programs.

It is too early to measure the rate of recidivism among program graduates. However, none of the nine POP or SOS defendants who successfully completed the programs has been arrested for a new offense.

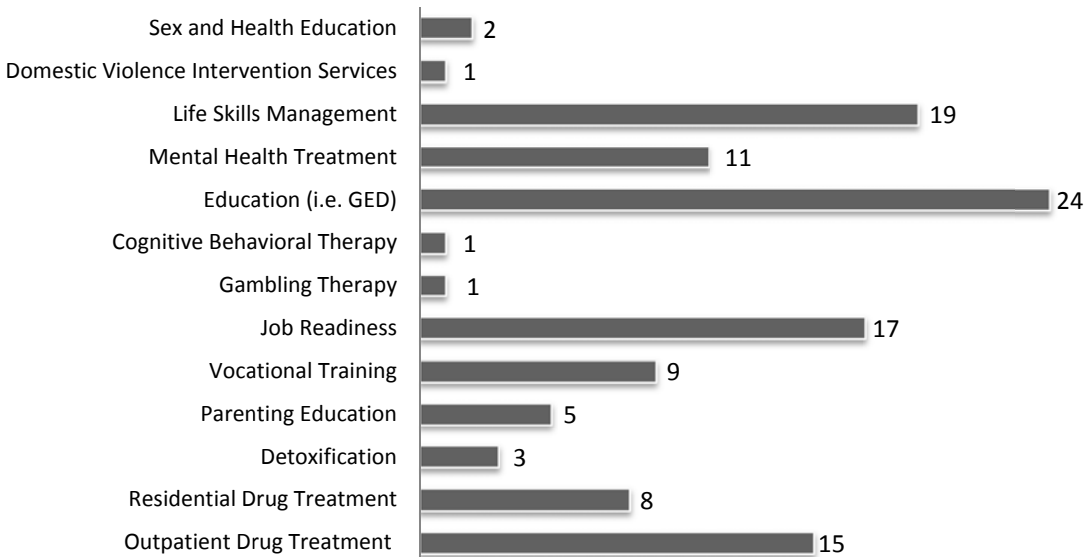
<b>Table 4: Program Violations and Dispositions Summary</b>						
	<b>SOS</b>		<b>POP</b>		<b>Totals</b>	
	N	%	N	%	N	%
<b>Number of Program Participants</b>	28	59.5%	19	40.5%	47	100%
<b>Case Dispositions</b>	3	10.7%	7	36.8%	10	21.2%
<b>Program Terminations</b>						
<i>Successful</i>	3	10.7%	6	31.5%	9	19.1%
<i>Unsuccessful and/or Bail Revoked</i>	1	3.5%	3	15.7%	4	8.5%
<b>Types of Violations</b>						
<i>Re-Arrest(s)</i>	4	14.2%	2	10.5%	6	12.8%
<i>Technical Violations</i>	11	39.2%	5	26.3%	16	34%

E. *Support Services Available to Program Participants*

1. *Through Pretrial Services*

All program participants take part in at least one of various types of available support services. Apart from drug and mental health treatment, the most frequently used services include GED preparation classes, life skills management, and job readiness training. The goal is to engage participants in a lifestyle that supports their sobriety and produces a steady reintegration into society. Officers are continuously assessing the risk and needs of defendants, applying an individualized and evolving supervision plan with attainable goals. Table Five depicts the types of available support services and the number of POP and SOS participants who have received them.

**Table 5: Types of Services and Defendant Participation**



## 2. Through Pro Bono Counsel

The participants in the POP and SOS programs face an array of challenges in addition to their criminal cases and (particularly for POP participants) their addictions. Some of those challenges are legal in nature but unrelated to their criminal cases, and on occasion they pose barriers to successful rehabilitation.

In January 2014, the New York office of a large national law firm, which had been providing *pro bono* legal services for clients outside the criminal justice system, began providing the same services to participants in the POP, SOS, and STAR programs. Lawyers from the firm attend the regular meetings of the program participants (which are held in courtrooms and open to the public) and are available for consultation and assistance as needed. The Federal Defender serves as the conduit between and among the participants, their criminal defense attorneys, and *pro bono* counsel.

Though this dimension of the programs is new, it has already produced benefits. A STAR Court participant was recently in arrears on her rent and was facing eviction. *Pro bono* counsel met with her the day before the eviction hearing was to take place, obtained a postponement of the hearing, and has since been able to arrange for a reduction in the participant's monthly rent based on her circumstances. Counsel is also helping the participant secure a grant from the New York City Department of Homeless Services to help reduce the remaining rent obligation.

Recently, the Youth Represent organization has begun to provide additional legal services to the SOS program participants. It has been instrumental in helping an SOS participant to adjust his child support obligations so the payments more accurately reflect his limited income. Youth Represent is also trying to obtain assistance to help the SOS participant resolve past child support arrears and eventually allow his driver's license restrictions to be lifted.

#### F. *Cost-Benefit Analysis*

The data set forth in Table Six includes the defendants who successfully completed the POP program since its inception in January 2012. It also includes SOS participants who participated with the program judges, joined SOS in March 2013, and remained on pretrial release until sentencing. In all, eight participants have been sentenced and one has had her charges dismissed (contingent on her compliance with certain conditions for 18 months). Of the eight defendants sentenced, six received probation, one was sentenced to two months of time already served and a term of supervised release, and the remaining defendant was sentenced to 12 months of imprisonment and a term of supervised release. If those defendants had received prison terms at the mid-point of their advisory Guidelines ranges, the total cost of their

incarceration would have been \$800,893. The monthly cost of supervision by pretrial services officers is \$220.29, and the cost of probation supervision is \$278.95. Thus, assuming they would otherwise have been sentenced at the mid-point of their applicable ranges, the significantly reduced sentences after their successful participation in the POP program immediately saved the government \$767,120. Even if their sentences would otherwise have been at the bottom of the ranges, the cost savings would have been \$704,400. Each time a defendant avoids a thirty-six month prison sentence and instead receives probation for a period of three years, the savings is approximately \$77,000 (or 89%).<sup>4</sup>

**Table 6: Case Disposition and Cost Savings of Cases Who Successfully Completed the POP and SOS Programs**

Participant	Disposition						Mandatory Minimum or MedIAN Sentence Guideline Range (# Months)	Imprisonment Cost if Recommended Sentence Imposed (# of months x \$2,412.33)*	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	\$65,132.91	\$0	\$65,132.91	Drugs
A.P.	-	-	36	-	-	-	27	\$65,132.91	\$0	\$65,132.91	Drugs
W.B.	-	-	48	-	-	-	78	\$188,161.74	\$0	\$188,161.74	Drugs
<b>POP Cases</b>											
P.C.	-	-	36	-	-	-	42	\$101,317.86	\$0	\$101,317.86	Drugs
L.D.	12	36	0	-	-	-	52	\$125,441.16	\$28,947.96	\$96,493.20	Drugs
E.L.	-	-	-	Yes	-	-	42	\$101,317.86	\$0	\$101,317.86	Drugs
I.M.	-	-	24	-	-	-	3	\$7,236.99	\$0	\$7,236.99	Drugs
S.P.	-	-	60	-	-	-	37	\$89,256.21	\$0	\$89,256.21	Drugs
A.S.	2	36	-	-	-	-	24	\$57,895.92	\$4,824.66	\$53,071.26	Drugs
<b>Total</b>								<b>\$800,893.56</b>	<b>\$33,772.62</b>	<b>\$767,120.94</b>	

\*Administrative Office of the U.S. Courts, Cost of Incarceration and Supervision (May 17, 2013)

Our efforts to quantify the cost savings produced by these alternative to incarceration programs are admittedly incomplete, and a more precise calculation will require both greater

<sup>4</sup> As noted, the SOS Program has been in existence since 2000, but most of that time it operated without the participation of judicial officers. Before that change, there were over 100 program participants. Statistics were not kept in the same manner during that period, so it is not possible to provide the same data for those participants. However, we do know that of the 85 SOS participants for whom statistics were kept prior to March 2013, 58.8% were male, with 12% non-Hispanic White, 58% Hispanic, and 30% Black. There were 35 females, of whom 45.7% were Hispanic and 54.3% were Black. The vast majority – 88.2% – were charged with narcotics offenses, and 67% received a sentence of time served or probation. Many of those who did receive sentences of imprisonment were sentenced below their applicable Guidelines ranges based on their progress in the program. We have not attempted to set forth here the cost savings resulting from the SOS program during that period, but it is obvious from the foregoing that they were substantial.

expertise and information that is not yet available. For example, our cost savings calculation does not include the costs that the government would have incurred caring for participants' families had they been incarcerated, or the loss of tax revenue resulting from the fact that they would have been imprisoned rather than employed. Similarly, assuming that our judge-involved alternatives to incarceration reduce recidivism rates (as they have been proven to do in the states), significant savings will accrue as a result of that as well.

On the other side of the ledger, we have not refined our effort to capture the true costs (public and private) of the intensive supervision and assistance the participants in these programs receive. Pretrial and Probation officers assigned to the programs cannot carry the same caseloads as other officers due to the intensive supervision they are called upon to provide, for example. The cost of the judges' additional time spent with the participants has also not been included.

As discussed below in our Conclusions and Recommendations section, these and other issues bearing on the cost and effectiveness of presentence drug courts and intensive supervision courts in the federal system create a need for systemic support and study.



## IV. Profiles of Selected Participants

Our alternative to incarceration programs are based squarely on the best available practices, and we will continue to rigorously examine those programs over time to ensure that they in fact constitute a better way of handling the criminal cases of the participating defendants. However, we also never lose sight of the fact that each participant in the POP and SOS programs is an individual, and the overarching goal of both programs is to establish a more constructive way of handling individual cases than sending the defendant off to serve needless and expensive prison terms. We acknowledge that policy should not be driven by anecdotes, but the success stories in the POP and SOS programs are both inspirational and tangible reminders of why we established these programs. We therefore set forth a few of them here alongside a few less successful examples that we might also learn from.

### A. *Pretrial Opportunity Program*

#### 1. *E.L.*

E.L. is now 30 years old. She has lived in Brooklyn her entire life. Her parents separated when she was four years old due to her father's addiction to alcohol, marijuana, and crack cocaine. After the separation, her father returned to his native Guyana. He did not visit E.L. or financially provide for her. Her mother, who suffered from alcoholism and died in 2002 from cirrhosis, raised E.L. in poor economic circumstances.

E.L. has been in a relationship with her fiancé since 2001; they have three children together. At the time of E.L.'s offense in 2011 the children were ages 10, 7, and 3.

E.L. has an extensive history of substance abuse. She began smoking marijuana daily at age 11. Following her mother's death in 2002, she became addicted to cocaine as well. She snorted it daily, spending approximately \$200 per week on the drug. She stole from her fiancé to

support her habit. In 2007 and again in 2008, E.L. underwent outpatient treatment for her addictions at her fiancé's request, but both times the treatment was unsuccessful.

In 2011 E.L. went to Guyana with her children in an attempt to reconcile with her father, who continues to abuse crack. While there, her youngest child fell ill, requiring E.L. to change the date of their return flight. She could not afford to pay the fees associated with changing the flight. A man who learned of her situation offered to pay those fees and an additional amount if E.L. agreed to transport luggage back to the United States. E.L. agreed, knowing that the luggage would contain drugs.

On July 27, 2011, E.L. arrived at John F. Kennedy ("JFK") International Airport. Customs and Border Protection officers discovered cocaine embedded in the sides of the luggage and in rum bottles and food cans inside the luggage. The net weight of the seized cocaine was 13.2 kilograms.

E.L. was arrested and charged with importing cocaine. She was released that day on conditions that included returning to court two days later with sureties to sign her bond. She returned to court on July 29, 2011 under the influence of drugs. Chief Magistrate Judge Steven M. Gold remanded her. On February 3, 2012 she pled guilty to importing cocaine.

E.L. was released on August 12, 2011 on the condition that she report directly to long-term residential drug treatment at Samaritan Village in Queens, New York. In January 2012 she became one of the charter members of the POP program. She remained at Samaritan Village until July 2012, when she commenced outpatient drug treatment at the same facility. While in treatment, E.L. participated in individual and group counseling. She also completed an intensive treatment course, which uses cognitive behavioral therapy to promote positive change while in treatment. E.L. was discharged from treatment on November 14, 2012.

As she was getting her drug problem under control, E.L. proceeded to get the rest of her life on track as well. Determined not to go home until she was ready to care for her three children, she took a parenting course in September 2011. She studied for her GED test in December 2011, but failed. She studied harder, took the test again in March 2012, and passed.

E.L. studied for and passed the four-part written test for a Commercial Driver's License in March 2012. In May 2012 she took the road test and passed that as well. She got a job in June 2012 driving a bus, only to get fired a month later. She took the setback in stride, and looked for and found another job driving a bus. For about a year, while she saved to buy a car, she commuted by subway and bus two hours each way to her job on the border of Queens and Nassau County. In February of 2014 she purchased a car, and now has considerably more time for her family.

E.L. was a critical member of her monthly POP meetings. She still attends almost all the meetings more than a year after completing the program. She encourages her colleagues in the program, offers them advice, and sometimes chastises them. She has taught them by example how to deal with disappointments without relapsing. Though her drug problem is under control, she regularly attends Narcotics Anonymous and Alcoholics Anonymous meetings.

E.L. was the first graduate of the POP program, after which her case was called for sentencing on February 14, 2013. Her advisory range under the United States Sentencing Guidelines was 37-46 months. However, instead of proceeding to sentencing, the government informed the sentencing judge that, in light of E.L.'s extraordinary rehabilitation, she would be permitted to withdraw her plea of guilty, and the charges against her would be dismissed entirely if she complied with the terms of a deferred prosecution agreement for 18 months. The charges are expected to be dismissed this summer.

## 2. *I.M.*

I.M., who is now 36 years old, grew up in a stable, loving, two-parent home in Staten Island. He attended parochial schools and then graduated from college with a degree in computer science. He got married and has two healthy young children. He succeeded professionally, eventually becoming a Senior Vice President in the technology department of a major bank, where he supervised 80 employees and various outside consultants.

Despite these outward signs of success, in his mid-20s I.M. developed a corrosive drug habit. Following back injuries in 2004 and again in 2007, he turned to opiate painkillers, and by 2008 he was taking multiple Vicodin or Percocet pills on a daily basis. In late 2009, he moved on to oxycodone, which he began taking daily, purchasing the drug on the street. I.M. attempted to wean himself off of oxycodone on several occasions, receiving prescriptions for Suboxone, but he relapsed each time.

In 2011 I.M. became involved with a group of individuals who obtained oxycodone prescriptions from physicians by either duping or corrupting them. I.M. purchased oxycodone pills from one of these individuals, typically purchasing 15 pills at a time on a bi-weekly basis.

I.M. was arrested on June 23, 2011 for conspiring to distribute oxycodone. He was released on the day of his arrest and entered outpatient drug treatment shortly thereafter. He completed that treatment successfully in February 2012, one month after joining the newly-created POP program.

I.M. faced significant obstacles on his road to recovery. His arrest cost him his job and his marriage. But he worked in construction with his father, remained active in the lives of his children during a turbulent period for them, and fought for months to get his job back. To the extent he felt comfortable discussing these personal issues in the monthly POP meetings, I.M.

did so. He found support in fellow POP participants, and the maturity and determination he demonstrated throughout the program was an example for them.

Five months into I.M.'s participation in the POP program, the United States Attorney agreed to dismiss the felony charge in exchange for I.M.'s plea of guilty to a misdemeanor possession charge. With the assistance of his attorney, I.M. was then able to resume his position at the bank. He was subsequently sentenced to a term of probation. If I.M. had been convicted on the conspiracy charge he pled guilty to, his advisory Guidelines range would have been 18-24 months.

### 3. *A.S.*

A.S. was arrested on August 16, 2011 and charged with conspiracy to import marijuana. A.S. was released on a bond and directed, among other things, to submit to random drug testing and treatment for substance abuse. A.S., 45 years old at the time of his arrest, was raised in a two-parent, middle-income household in Brooklyn and enjoyed a good relationship with his parents and siblings. However, A.S. dropped out of high school after repeated suspensions for fighting, and in short order he acquired a significant criminal record. At age 15, A.S. was convicted on his plea of guilty to first degree robbery. Burglary and larceny charges followed at ages 17 and 23, respectively. At age 27, A.S. had his first conviction for dealing narcotics; at 35, he entered a plea of guilty to a possession charge. Additional burglary charges, brought when A.S. was 38 and 40, were apparently reduced to misdemeanors in exchange for guilty pleas.

At the time of his arrest, A.S. reported an 18-year history of daily marijuana and cocaine abuse, but he also claimed eight years of sobriety. He was released on a bond secured in part by his wife's signature, but a few months later he relapsed by using cocaine. A.S.'s wife reported the drug use to the Court on November 9, 2011, and asked to be removed from A.S.'s bond.

A.S. voluntarily surrendered the next day and was remanded for two months pending placement in a residential drug treatment program. A.S. was released to such a program on January 11, 2012 and completed it three weeks later, shortly before entering the POP program. He was then referred by Pretrial Services for outpatient counseling, which he successfully completed on August 9, 2012.

A.S. is married and has a young daughter. He has been a devoted father not only to his daughter but to his wife's 11-year-old son. A.S. also has two adult children from a prior relationship, and he maintains a good relationship with both.

While in POP, A.S., who had already earned a GED, obtained his Commercial Driver's License. He failed the test the first few times he took it, but with the encouragement and support of his fellow POP program participants and his supervising officer he kept at it and finally passed the test on December 12, 2012. Finding steady employment has been A.S.'s greatest challenge. He has found temporary construction work from time to time, but despite his participation in various vocational programs, he continues to endure periods of unemployment. A.S. has remained drug-free, however, and when he is not working he is directly involved in the care of his daughter and stepson.

A.S.'s involvement in the monthly POP meetings was particularly impressive. He is older than most of the other participants. Although fairly quiet at first, A.S. spoke up regularly in the monthly discussions once he became more comfortable speaking in front of the group. As others in the program discussed the challenges they faced over the previous month, A.S. offered helpful and insightful words of encouragement and, when warranted, warnings. After a year without relapsing or violating any of the program rules, A.S. graduated from POP on February

28, 2013. When he was sentenced on August 16, 2013, the court determined A.S.'s Guidelines range to be 21 to 27 months and sentenced A.S. to time served and three years of supervised release.

Having been sentenced and thus no longer subject to pretrial supervision, A.S. was directed to participate in REAP (the post-sentence supervision program for POP members who have received non-custodial sentences). A.S. remains drug free and frequently attends NA meetings to help himself stay that way. His family remains intact. A.S. continues to participate actively and thoughtfully in our monthly meetings and provides guidance to younger, less mature program participants.

#### 4. *W.B.*

W.B. has been plagued not only by an extensive and serious history of substance abuse, but also by anxiety, a gambling compulsion, and obsessive-compulsive disorder. Despite this, and despite financial and other stresses he experienced during his participation in POP, he successfully completed the program without a violation of the program's rules.

W.B. was arrested on June 6, 2012, and charged in a complaint with conspiring to distribute oxycodone. At the time of his arrest, W.B. was 31 years old, married, and operating a small painting business. He was raised by financially stable parents and had a happy childhood, but he reported at the time that he was estranged from them and his siblings.

When interviewed by Pretrial Services, W.B. exhibited tremors, which he attributed to substance abuse. He related a history of abusing LSD, heroin, cocaine, ecstasy and oxycodone going back to his teenage years. W.B. stated that he had participated in a methadone



maintenance program for four years. He further reported that he had been under the care of a psychiatrist and was receiving treatment for bipolar and panic disorders.

Approximately 10 days after his arrest, W.B. was released on bond. He then entered a hospital-based detoxification program, and he began outpatient treatment after his release from the hospital. He joined the POP program on October 18, 2012.

Almost immediately upon joining the program, W.B. became one of its most vocal and outgoing participants. At every monthly meeting he added levity and insight. He repeatedly reminded the other program participants to be grateful to be in the POP program; as W.B. frequently put it, “it is better to be on the outside looking in than on the inside looking out.” He has also shared, with deep sadness, the fact that one of his sisters died as a result of a drug overdose in 2003. W.B. has re-established a close relationship with his parents, who attended his graduation from the POP program.

During his time in the program, W.B. faced serious additional challenges. Among other things, W.B.’s wife lost her job and his father became seriously ill. Despite the stresses caused by these events, W.B. remained drug-free. During one of the monthly POP meetings, he acknowledged a gambling problem. He immediately began treatment for it (at his own expense), and he also continued sessions with his psychiatrist. W.B. also returned to work as a painter, and found less expensive housing after his wife lost her job.

After a full year of participation in POP, and with almost 18 months of sobriety, W.B. graduated from the program in November of 2013. Although he is under no obligation to do so, W.B. continues to attend the monthly POP meetings and offers his encouragement to the current participants. The government has informed W.B. that it has decided, in light of his exemplary

efforts at rehabilitation, to allow him to plead guilty to a misdemeanor in exchange for the dismissal of the felony charge on which he was arrested.

5. *R.P.*

R.P. was arrested on March 3, 2012. According to the complaint filed in her case, R.P. was arrested in a hotel room where agents also seized hundreds of prescriptions filled out in various names and more than 20 fraudulent identification and Medicaid cards. R.P. was subsequently indicted and charged with conspiracy to distribute oxycodone and acquiring oxycodone by fraud.

R.P. was 28 years old at the time of her arrest. She had been in a relationship for four years with one of her co-defendants. She had no employment history and was being supported by her boyfriend and his mother (and likely by the criminal activity described in the charges). R.P. was estranged from her father, but she was in contact with her mother and siblings. When a Pretrial Services officer reached R.P.'s sister, the sister advised that R.P. had struggled with drug use for several years and that it would be better for R.P. to "detox in custody."

R.P. herself reported a substantial history of oxycodone and marijuana abuse as well as periodic abuse of heroin, cocaine, ecstasy and other substances. She described smoking marijuana on a daily basis from age 15 and ingesting at least four oxycodone pills per day. R.P. also revealed that she had been seeing a psychiatrist, sporadically, since age 15, when she tried to commit suicide by slitting her wrists.

R.P. was detained for about eight weeks and released directly to a long-term residential drug treatment program at Samaritan Village. She entered POP on July 19, 2012. Though her treatment started well, during the fall of 2012 R.P. was found in possession of an unauthorized

cell phone provided to her by a codefendant's family member. On another occasion during the same time period, R.P. was assigned to escort another resident but left her unattended; the other resident then used drugs and required psychiatric care as a result. Finally, R.P. engaged in an inappropriate relationship with another resident of the program. Despite these violations of program rules, her drug tests were all negative.

Rather than ask the Court to impose a sanction, R.P.'s Pretrial Services officer arranged for her to be transferred on January 15, 2013 to another Samaritan Village facility, one that has stricter supervision of its residents. On February 13, 2013, R.P. was tested and found to have used suboxone. Confronted with the test results, she admitted her drug use.

In light of R.P.'s repeated violations of program rules and her substance abuse, her Pretrial Services officer requested a bail violation hearing, which was held on February 22, 2013.

The court found that R.P. had violated a condition of her release and was unlikely to abide by her conditions of release, and thus remand was warranted under 18 U.S.C. § 3148(b). In addition, the POP judges agreed that R.P. would likely benefit from a brief period in custody. R.P. herself consented to such sanctions upon entry into the program. Her consent form provided in pertinent part as follows:

The judges will hold you accountable. If a violation of 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 sanctions, among others: more frequent court appearances; increased treatment services; a stricter treatment modality; restrictions on where you can go and with whom you may associate; a curfew; a community service obligation; a weekend jail term or even the revocation of your release.

R.P. was remanded at the hearing on February 22, 2013. On February 28, 2013, after expressing through counsel a renewed desire to participate in the POP program, R.P. was released for

continued residential treatment directly to the Samaritan Village facility she had been residing in when she was remanded.

R.P. was thereafter involved in yet another series of infractions involving a cell phone and another resident. (As noted below, it would later be revealed that R.P. became pregnant due to her relationship with the other resident.) Rather than remand her again, the Court and her Pretrial Services officer conditioned R.P.'s continued participation in POP on starting her year over, deferring her anticipated graduation date to March 2014. R.P. agreed, and since that moment she has made excellent progress. By August of 2013, R.P. was described by the treatment professionals at Samaritan Village as actively engaged in all clinical functions and a peer leader. R.P.'s change in attitude was apparent from her participation in the monthly POP sessions; she changed from a surly, reluctant participant to one who is proud of her own accomplishments, hopeful about her future and genuinely concerned about the progress and well-being of the other program participants.

R.P. became pregnant in the spring of 2013 and was transferred to a residential treatment facility for young mothers on July 10, 2013. She has remained drug free and her attitude has consistently been excellent. While still in residential treatment, she availed herself of parenting and stress management classes. R.P. was discharged from residential drug treatment on December 16, 2013. Her son was born in January of 2014, and R.P. is now living in an apartment with him and the baby's father, and she has the support of her mother and sister.

R.P. entered pleas of not guilty to the charges in the indictment at arraignment. A decision by the United States Attorney about whether she will be offered the opportunity to plead to reduced charges or obtain a deferred prosecution remains pending.

B. *Special Options Services*

1. *A.P.*

On July 2, 2012, A.P., a lifelong resident of the Bronx, was arrested at the age of 21, after returning to the United States from the Dominican Republic. He was charged with the importation of 70 pellets of cocaine, which he had ingested. At the time of his arrest, he lived with his mother, brother, aunt and his two-year-old daughter, of whom he had voluntary custody. He had dropped out of high school, and prior to his arrest he had been earning approximately \$2,000 a month as a self-employed driver of an unlicensed cab. At the time of his arrest, A.P. was smoking marijuana twice a week.

A.P. was initially released on a bond and placed under the supervision of Pretrial Services, which placed him into the SOS program. During his first few months in the program, he violated several of his conditions of supervision with a positive drug test, a new arrest for driving with a suspended license, and a violation of his curfew. He was also dismissed from his GED program for poor attendance. Following a bail revocation hearing and warnings from the district judge, A.P. was continued in the SOS program.

A.P. was referred to the HOPE program for job readiness training, and he began classes on January 14, 2013. He learned how to appear more professional for job interviews. He also attended GED classes, eventually obtaining his GED in April 2013. He was able to secure an internship through the HOPE program, working at a Key Foods grocery store. He successfully completed the HOPE program's eight-week Grocery Works intensive job training and ultimately became an ambassador for the HOPE program, advising new or potential students about the resources and expectations of the program.

Through HOPE, A.P. obtained a job with the Indiana Marketing and Catering Company, working full time and overtime, and was granted an extension of his curfew when the manager of the company contacted Pretrial Services to report that A.P. was a trusted and valued member of the team. He was subsequently promoted to Production Supervisor at the company. He continued to work with the HOPE program to obtain his food preparation license. He is now working more than 40 hours a week and oversees two employees.

After some drug counseling, A.P. has remained drug free since August 2012. He continues to have primary custody of his daughter, making arrangements for her to attend school and assuming responsibility for her care whenever he is not at work. He has opened a bank account and is now pursuing an associate's degree in hospitality management, taking courses online.

Since he began his participation in the SOS program, A.P. has demonstrated that he is serious about accomplishing the long-term goal of being a good role model for his daughter. He now appreciates how his poor decisions could have a detrimental effect on her, and he has matured a great deal since his initial arrest. On June 20, 2013, he was sentenced to a three-year term of probation and required to continue his participation in the SOS Program. He continues to make great strides in improving his education and employment opportunities.

## 2. *R.V.*

R.V. was arrested on drug trafficking charges on February 24, 2009. At the time of his arrest, R.V., who lived his entire life on Staten Island, was 20 years old, living with his mother and several siblings in his mother's home. He was unemployed, had dropped out of high school in the 10<sup>th</sup> grade, and admitted to smoking marijuana several times a day and taking

ecstasy on occasion. He had a prior arrest for possession of narcotics when he was 18 and he had received mental health treatment when he experienced problems in school.

R.V. was released on a bond co-signed by his girlfriend, who at the time was three months pregnant with R.V.'s child. He was initially placed in the SOS program, put on electronic monitoring, and given a curfew.

Like many other youthful offenders, R.V.'s initial adjustment to supervision was difficult. He violated his location monitoring condition and tested positive for the use of drugs. After an admonition from the district judge, R.V. became compliant with his conditions of release, and the location monitoring condition was eventually replaced by a voice verification requirement.

After prodding and encouragement from his Pretrial Services officer, R.V. took GED classes and passed all the subjects except math on his first try. In December 2011, he finally obtained his GED. Thereafter, he enrolled in vocational training, studying Heating, Ventilation, Air Conditioning and Refrigeration Technology. R.V. began part-time work at Kohl's Department Store while searching for more permanent employment.

On July 18, 2013, R.V. was sentenced to a four-year term of probation, with a condition that he continue his participation in the SOS program. He remains dedicated to his fiancée (to whom he proposed only after obtaining her father's permission) and their daughter. He opened a bank account and is currently attempting to get his driver's license to enhance his job opportunities. He remains employed by Kohl's and he continues to attend vocational training five days a week.

3. *R.D.*

R.D. was arrested in July 2012 at John F. Kennedy Airport. He had just arrived from the Dominican Republic and a search revealed cocaine pellets in his stomach. Prior to his arrest, R.D. had been renting a basement room, but upon his release on a bond he moved in with his sister. While he is not legally married to his girlfriend, he has taken on the role of stepfather of her seven-year-old son.

R.D.'s supervision had a rocky start. On September 1, 2012, he was arrested with an open container of alcohol in the presence of his younger brother, and he failed to disclose the arrest to his Pretrial Services officer for two weeks. Then R.D. was arrested again, this time for assault based on events arising out of an argument with his sister (who was also arrested). At a bail revocation hearing on November 20, 2012, R.D. was informed by the district judge that he would have one final opportunity to get his life in order. The judge modified R.D.'s conditions of release to require that he participate in the SOS Program, reside with his mother, be subject to location monitoring, and participate in substance abuse treatment, as there was reason to believe his noncompliance stemmed from increased use of alcohol. R.D. also began receiving mental health treatment in conjunction with his drug treatment in order to deal with his anger management issues.

The bail hearing proved to be the wake-up call R.D. needed, as he then made an exceptional adjustment to the requirements of the SOS Program. He completed a 12-week job readiness training program, began dealing with his anger issues in meetings with mental health professionals, and began an internship performing clean-up duties and minor repairs for Brooklyn Community Services. He also successfully completed drug treatment therapy, and



cognitive behavioral therapy resulted in an increased level of motivation. In May 2013, R.D. secured employment as a porter/dishwasher.

On June 3, 2013, R.D. was sentenced to a five-year term of probation, with conditions that he continue under strict supervision in a STAR program, be subject to six months of location monitoring, continue with substance abuse treatment, and maintain full-time employment or education/vocational training. Location monitoring was removed in August 2013 based on R.D.'s compliance with the STAR program requirements. He currently works full time at Brooklyn Community Services, where he interned while at the HOPE Program, and he is working towards an Associate's Degree at Bronx Community College. He resides with his parents and remains involved in his stepson's life.

*4. J.L.*

J.L. is a lifelong resident of New York City, residing primarily in Queens. She was arrested on June 11, 2012, at the age of 18, after she returned from the Dominican Republic with 2,294 grams of cocaine in her suitcase. With her was her boyfriend/co-defendant, who had over 2,600 grams of cocaine in his suitcase.

At the time of her arrest, J.L. resided with her mother, her younger brother and her boyfriend. She had her high school diploma but she was essentially unemployed. She abused alcohol, marijuana, and ecstasy, and she had previously seen a therapist for anger management issues following an assault on her mother.

At the arraignment, J.L. was released on a bond signed by her mother; her boyfriend was detained. As a condition of her release, J.L. was ordered to attend drug treatment and mental health counseling. Violations occurred in July 2012, December 2012, and February 2013, after

J.L. tested positive for marijuana, cocaine and benzodiazepines, respectively. After a hearing in January 2013, she was placed on electronic monitoring and given a curfew. J.L. was placed in the SOS program in February 2013.

Pretrial Services determined that J.L.'s problems stemmed in large part from the absence of any structure at home. Her mother allowed transient individuals, who were suspected of engaging in illegal behavior, to take shelter in the home. In numerous therapy sessions and office visits, J.L. expressed the desire to have her mother act more like a parent and less like a friend, and she also expressed concern regarding the care of her younger brother.

After being placed in the SOS program, J.L. continued to struggle with drug use and the need to sever her connection with her boyfriend/co-defendant. She made great progress in other areas of her life, completing job training with the HOPE program and obtaining an internship at a dog spa. Shortly thereafter, J.L. obtained part-time employment at a retail pet care store and was offered the opportunity to attend grooming school. She has expressed a long term goal of becoming a veterinarian.

J.L. enrolled in classes at LaGuardia Community College and obtained good grades in the five classes that she attended during her first semester, while continuing to work part time. Her increased maturity was tested in the summer of 2013. Her mother was hospitalized for several weeks after experiencing a psychotic episode in which she hit J.L.'s younger brother, and after her release from the hospital the mother left for a vacation. The main responsibility for the day-to-day care of her brother fell on J.L. Despite the absence of any adult supervision, she stayed out of trouble during that summer and did not return to drug use.

During her time in the SOS program, J.L., who is a current participant, has blossomed into a responsible, mature young woman with hopes and dreams for a productive future.

5. *E.H.*

E.H. was 22 years old when he was charged on August 13, 2012, along with three co-defendants, with transporting drugs from the Dominican Republic. Born in Queens, E.H. resided with his mother at the time of the arrest and he was released on the condition that he participate in the SOS program.

E.H. was initially resistant to the intense supervision offered by the SOS Program. He complained that the curfew “would not work for him” and made statements that prompted his suretor to threaten to remove himself from the bond.

Although E.H. was working as a sales representative at a major corporation at the time of his arrest, he had not finished high school or gotten his GED. As part of his supervision, he took the GED exam and passed it in March 2013. Beginning in September 2013, E.H. enrolled in part-time classes at DeVry University, having been awarded a Career Catalyst Scholarship that provides \$20,000 toward his overall tuition.

E.H. continues to work full time at his sales job and attend classes at DeVry. His self-confidence has increased, along with his motivation and his desire to plan for the future. At the same time, there has been a marked change in his attitude; he is less cynical and less arrogant and more willing to take suggestions and accept constructive criticism. Given his work and school schedule, his reporting requirements have been reduced.

\* \* \* \* \*

As the data set forth in Section Two illustrate, not all of our program participants are success stories. Two examples are described below.

G.P. was arrested at John F. Kennedy International Airport on April 19, 2011, attempting to smuggle 1.8 kilograms of heroin into the United States from Bogota, Colombia. G.P. was 28 years old at the time of his arrest, and it was his first offense. He was raised in New Rochelle, New York, and his parents divorced when he was three years old. G.P. has two children: a daughter living with her mother, G.P.'s wife, in Mexico, and a son born to another woman, living in New Mexico, with whom he has had no contact.

When interviewed by Pretrial Services after his arrest, G.P. acknowledged a history of cocaine and alcohol abuse, and admitted as well that he snorted cocaine and had several drinks on the day before his arrest. G.P.'s alcohol abuse dates back to when he was 13 years old. Despite his lengthy history of substance abuse, G.P. had not participated in any treatment prior to his arrest.

G.P. was released on bail so he could participate in the POP program. He is one of three participants who have been terminated from the program.

While on bail, G.P. lived with his mother and brother and found work delivering pizza. Problems soon developed, however. He failed to provide verification of employment, missed outpatient treatment sessions, and failed to enroll in GED classes. Although his attitude and conduct improved the following month – he enrolled in GED classes, produced verification of his employment, and attended treatment more regularly – the improvement was short-lived. G.P. missed eight treatment sessions and at least two appointments with his Pretrial Services officer

between May and June of 2012. When he did finally appear, he revealed that he had stopped attending GED classes. A drug test administered on June 20, 2012 revealed that G.P. had used cocaine.

As a result of these failures to comply with the conditions of his participation in POP, G.P. was remanded on June 29, 2012. On August 10, 2012, he was released from detention after his request for a second chance to participate in POP was granted. Once again, however, G.P. failed to follow through. On August 19, 2012, he got drunk in a restaurant and was arrested for punching someone in the face. On September 11, 2012, G.P. was both removed from POP and remanded, and a sentencing date was set.

G.P.'s advisory Guidelines range was 30 to 37 months. He was sentenced on October 10, 2012 to a 22-month term of incarceration and three years of supervised release.

SOS participants also stumble. E.N. is 21 years old. He was born and raised in modest circumstances in the Bronx until age 15, when he and his parents moved to the Dominican Republic. His mother has been collecting disability benefits since being hit by a car in 2005; his father developed blood poisoning in 2007 from working in a factory and has worked only sporadically since that time. E.N. has three older maternal half-siblings with whom he is close.

E.N.'s mother suspects he has a learning disability. He has a documented history of depression and anger management problems; even before the move to the Dominican Republic, E.N. received counseling for a year while in junior high school.

E.N. began smoking marijuana daily at age 13. Prior to his arrest, he would spend approximately \$400 every two weeks purchasing one to two ounces of marijuana. He would buy it with money provided to him by his mother for other purposes. E.N. was smoking up to ten

times per day in the months prior to his arrest. He attempted to stop on multiple occasions, without the benefit of drug treatment, and failed each time.

In December 2010, when E.N. was 18 and a high school student in the Dominican Republic, he wanted to return to New York to visit family and friends. His mother refused to grant him permission to go or to pay for the trip. E.N. decided he would go anyway, and he arranged alternate financing: he agreed to transport a drug trafficker's suitcase to New York. The suitcase contained two and one-half kilograms of cocaine. E.N. was arrested at the airport and released on a secured bond six days later. On April 5, 2011 he pled guilty to importing cocaine.

E.N.'s early participation in the SOS Program was rocky. He enrolled in GED classes and vocational training. He also began receiving mental health treatment to address his depressive symptoms and anger management issues. At the same time, E.N. tested positive for marijuana on two occasions and exhibited difficulty complying with restrictions on his travel. His attitude was combative and defensive.

By the time of his sentencing two years later, E.N. had turned his life around. He completed his GED studies and sat for the GED test in July 2012. He failed, but, undeterred, he re-enrolled in GED classes. He sat for the test again in November 2012 and passed. He obtained several vocational certifications, including in solar paneling and electrical trouble shooting. At his sentencing on January 25, 2013, E.N.'s advisory Guidelines range was 30-37 months. In lieu of incarceration, E.N. was sentenced to a term of probation.

Following sentencing, E.N.'s supervision was transferred to the Southern District of New York based on his residence, and he failed to build on the progress he had made in the SOS

program. Over the course of the next ten months of supervision, E.N. violated several of the mandated conditions of supervision imposed at sentence. While on supervision, he tested positive for marijuana on six occasions, and failed to report to the Probation Department on seven occasions. E.N. also failed to attend four of his scheduled appointments for mental health treatment, and, finally, he failed to pay the balance of his Special Assessment even though he was employed at the time.

On December 13, 2013, a Violation of Supervised Release Report (“VOSR”) was filed with the court and a conference was held before the sentencing judge on February 19, 2014. At that time, it was agreed that E.N.’s supervision would be transferred back to the Eastern District of New York where he would resume his participation in the post-sentence component of the SOS Program; in the meantime the VOSR will be held in abeyance.

## V. Alternative to Incarceration Programs in Other Districts

Our programs are not alone. As set forth below, eight other districts have presentence alternative to incarceration programs. Two have intensive pretrial supervision programs for high-risk offenders that are closely related in structure and purpose to such programs. We describe these various initiatives below, with thanks to the various courts for providing us with the information.

### A. *Conviction and Sentence Alternatives (“CASA”) – the Central District of California*

The Central District of California’s Conviction and Sentence Alternatives (“CASA”) is a presentence diversion program. It diverts some participants from the criminal justice system entirely by dismissal of the charges, and others from prison through probationary sentences (agreed-upon under Federal Rule of Criminal Procedure 11(c)(1)(C)) upon successful completion of the program. 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 deterred 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 CASA program, Track One participants have their charges dismissed; Track Two participants obtain an agreed-upon sentence of probation.



Since 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. Pretrial Alternatives to Detention Initiative (“PADI”) – the Central District of Illinois*

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 November 6, 2013, 87 participants (out of a total of 93) had successfully completed the program, and 16 more were currently in it. Of the 87 successful participants, 28 received sentences of diversion (dismissal of the charges pending completion of a diversion supervision term), 40 received “time-served” sentences, and four had their cases dismissed outright. In November 2013 the Court estimated that the program cost savings attributable solely to the 40 time-served sentences was \$7,929,709, and that an additional estimated \$736,512 was saved as a result of the other 28 cases. These savings, the court observed, pale in comparison to the value of the positive changes in the participating defendants’ lives.

*C. The BRIDGE Program – the District of South Carolina*

The BRIDGE program is a pilot drug court that officially began on November 29, 2010. This presentence program created a unique way of dealing with defendants whose criminal histories suggest prolonged substance abuse. As of late August 2013, 37 participants had entered the BRIDGE program; nine had graduated and 16 remained in the program at that time. Twelve participants have either voluntarily withdrawn from the program or have been terminated. The court's estimated savings for those nine participants alone is \$691,105.52. None of the nine graduates had been rearrested as of August 2013.

*D. The Support Court – the District of Connecticut*

In early 2013 the District of Connecticut expanded its reentry drug court into the presentence phase. The Support Court is jointly administered by the court, the United States Marshal, the United States Attorney's Office, and the Federal Defender's Office. Since the program was expanded, 15 pretrial participants have been accepted into the Support Court. Two of the 15 have graduated and are awaiting sentencing.

*E. The DREAM Program – the Western District of Washington*

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. *Alternative to Prison Sentence (“APS”) Diversion Program – the Southern District of California*

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 LASER Court – the District of New Hampshire*

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 necessary tools 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 \$492,810.78.

#### H. *The Pre-Start Program – the District of Massachusetts*

This presentence program was established in the Springfield courthouse in 2013, and it is modeled on our court's POP program. It currently has only two participants.

### *I. Intensive Supervision Programs for High-Risk Offenders*

The programs described above are judge-involved, presentence initiatives created to provide alternatives to incarceration for certain defendants. Two additional programs that have come to our attention involve judicial participation in intensive pretrial supervision. We describe them here for that reason, although our understanding of the programs is that they were designed not as alternatives to incarceration but rather as initiatives to help high-risk defendants succeed while on pretrial supervision in federal court.

#### *1. Court Assisted Pretrial Supervision (“CAPS”) - the District of Oregon*

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. After reviewing several presentence programs from other districts, the court concluded, based on concerns such as confidentiality, the presumption of innocence, and the need for the prosecuting attorney and defense counsel to shed their traditional roles and work together as a team, that the traditional team approach model appropriate for pretrial diversions was not a viable option in most pending federal cases.

Instead, the court created the Court Assisted Pretrial Supervision (“CAPS”) program, a special condition of release for certain high-risk defendants. It provides them with intensive and individualized supervision. Although any defendant can be ordered to participate in the program, the objective is to select participants who are more likely to be detained or those who were released but violated the terms of traditional pretrial supervision. All defendants are required to participate in monthly meetings with the program judge, Pretrial Services, and defense counsel. The Assistant U.S. Attorney also participates when appropriate and when requested by the court.

Since the start of the program in 2011, twenty-four defendants have been ordered into the CAPS program, and eight have successfully transitioned to post-conviction or traditional pretrial supervision.

2. *Better Choices Court (“BCC”) – the Eastern District of California*

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 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.

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. In addition, many STAR Court participants receive probation or other sentences that do not require terms of incarceration, and those defendants are provided with a form of supervision designed to better their chances of leading drug-free, productive lives. Finally, for various defendants whose cases have been assigned to Judge Irizarry (who has conducted her STAR Court for almost a decade), the STAR program constitutes an alternative to incarceration at sentencing.

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.



EDNY STAR Court Team: Judge Dora Irizarry and Probation Officer Christopher Wodzinski

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 meet with the judge, probation officer, and defense attorney every month and are required to attend a weekly group counseling session with fellow program participants for one hour on Saturday mornings. 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 judge may require the participant to appear in court more often, observe a curfew, perform community service, spend a weekend(s) in jail, be placed in a residential re-entry center or otherwise be held accountable for his or her actions. These orders are designed to help the participants by encouraging them to reflect on their behavior, stay away from people and places that get them into trouble and instead become involved in their communities in positive ways.



In order to graduate from the program, a participant must remain alcohol and drug free and observe all the conditions of supervision for twelve months. If the participant tests positive for drugs or alcohol or misses a scheduled test without an acceptable excuse, the twelve-month



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

clock begins anew. The participant must also, 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.

As of mid-February 2014, 101 defendants had graduated from our STAR Courts. The Probation Department has estimated that they have produced a total savings (based solely prison terms that were shortened or avoided and on supervised release terms that were shortened) of more than \$2,000,000.

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's 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, it was decided more than a year ago that there be 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 worker 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 (including one who focused solely on cognitive behavioral therapy), representatives of job training programs, programs for workforce development and fatherhood training, 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.

### *B. 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, the summit participants arranged for a visit to the Red Hook Community Justice Center, the innovative state court initiative referred to above. More than two dozen people attended, including several judges, court personnel, prosecutors and defenders, and they were able to observe a successful, ten-year-old, judicially supervised alternative to incarceration model 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. Subject to time constraints imposed by attending to the work of the Court, similar visits will be arranged this year.

In addition, the judges involved in 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. The Central Islip POP judges made a similar visit to a Phoenix House 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.

## VIII. Conclusions and Recommendations

Even at this early juncture, we are confident that our presentence alternative to incarceration courts – the POP and SOS programs – 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 not only save substantial financial resources, but – on a human level – 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 alternative to incarceration 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 alternative to incarceration 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 five percent of the combined caseload of the districts. If programs like these can responsibly avoid the need to incarcerate just five 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, the Attorney General has repeatedly spoken in support of presentence drug courts, including during his November 2013 visit to the PADI program in the Central District of Illinois.

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 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, once defendants enter our system, we feel 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 alternative to incarceration programs. The fact that the participants in such programs receive advantages that some law-abiding members of the community need but cannot obtain does not, in our view, justify walking away from the programs.

In sum, we are optimistic about our presentence alternative to incarceration programs. But 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, in our view, if more districts are encouraged to create and attempt to perfect such programs, generating sufficient data for reliable evaluation.

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PRETRIAL OPPORTUNITY PROGRAM

UNITED STATES PRETRIAL SERVICES AGENCY  
EASTERN DISTRICT OF NEW YORK

January 2012



## **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 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. Where applicable and as appropriate, the defendant must also remain employed, enroll in school or attend vocational training. 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.** 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; 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.

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.

**I.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.

## II.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.

**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 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 intensive supervision of the Court. If you are able to complete the program, you may, in 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 group session with your fellow program participants, your attorney and probation for one hour immediately before your session with the judge. 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, 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 orders are designed to help you by encouraging you to reflect on your behavior, stay away from people and places that get you into trouble and 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 will usually 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 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 must also, if practicable, 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 will ultimately 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, your probation officer and 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.

4. If you successfully complete the program, your probation officer will, with the U.S. Probation Department Deputy Chief's approval, ask that the court terminate your sentence of supervised release early.

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

1. The judge 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, the judge may, after holding a formal hearing at which you will be assisted by your attorney, if you request a formal hearing, 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. Geographic and associational restrictions, limiting the places that you may go or persons you may associate with;
  - e. Community service, if you make insufficient efforts to find employment or education;
  - f. Weekend incarceration, when your violation of the program's conditions is extremely serious;
  - g. Community corrections center placement, for those who consistently violate the rules and are at risk of being expelled from the program;
  - h. Revocation of supervised release, and imprisonment.

### **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 consecutive twelve 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 be productively involved with your community in some other way;
8. You must have a stable residence and finances at the time of graduation; and,
9. *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 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 most traditional court hearings. 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 with the probation officer, the United States attorney and the court. You will not be penalized for consulting 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**

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 will also be required 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.

**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 conditions of the program (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 in the program. However, if you repeatedly or seriously violate the conditions of the program, you may face additional 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: \_\_\_\_\_ Date:

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: Christopher Wodzinski: \_\_\_\_\_ Date:

