

**DISTRICT COURT OF THE VIRGIN ISLANDS
INTERAGENCY AGREEMENT
FOR THE CREATION OF A REENTRY COURT PROGRAM
FOR HANDLING OF SUPERVISED RELEASE AND PROBATION VIOLATIONS**

Reentry Court Committee: Hon. Curtis V. Gómez, Thurston T. McKelvin, Ronald Sharpe, George Pace, Denise L. Donadelle-DeCosta, Rupert O'Bryan, III, and Brian Smith

Mission Statement: In a cooperative effort of the Court, Federal Public Defenders Office, U.S. Attorney's Office, and the U.S. Probation/Pretrial Services Office, we are committed to providing a Reentry Court Program for individuals on supervision. This program will offer a creative combination of treatment, employment and educational assistance, and sanction alternatives to effectively address the offender's behavior, rehabilitation, and the safety of our communities.

Introduction: According to the U.S. Department of Justice, Office of Justice Programs, nearly 650,000 people are released from state and federal prison yearly and return to the communities nationwide. The Bureau of Justice Statistics indicated over 50 percent of those released from incarceration will be in some form of legal trouble within three years. In the District of the Virgin Islands U.S. Probation/Pretrial Services Office, as of December 31, 2009, 161 persons were under post-conviction supervision. They were convicted of the following offenses: violence-25; drugs-84; immigration-4; firearms-16; sex offenses-2; property-17; public order-2; escape/obstruction-2; and other-9. (Federal Probation System, Caseload Table E-3, December 31, 2009) At present, many of the offenders on supervision require assistance with issues that could lead them to reoffend. These issues include a lack of education, employment and/or job skills training, and substance abuse addiction.

The reentry courts are specialized in helping to reduce recidivism and improve public safety through the use of judicial oversight. The responsibilities generally assigned to reentry courts include: (1) review offenders' reentry progress and problems; (2) order offenders to participate in various treatment and reintegration programs; (3) use substance abuse testing and other checks to monitor compliance; (4) apply graduated sanctions to offenders who do not comply with treatment requirements; (5) provide modest incentive rewards for sustained negative drug tests and other positive behaviors. Studies have shown that reentry courts are successful. As indicated in a May 2004 report of the Bureau of Justice Assistance, National Court Institute, drug courts which are a form of reentry courts provide numerous benefits to the government, the participants, and the community as a whole. The National Institute of Justice's 2003 study found that of 17,000 drug court graduates nationwide, only 16.4% have been re-arrested or charged with a felony offense. Additionally, the reentry courts save money. In 2003, the Center for Court Innovation found the State of New York saved \$254 million in incarceration costs by diverting 18,000 non-violent drug offenders into treatment as part of its drug court.

In addition, the U.S. District Court in Oregon began its drug court in 2005, and had its first graduation in February 2006. As indicated in their 2005-2006 study, the participants in the drug court showed significantly lower rates of drug use, and were more open about their drug use. The participants were more successful in paying off restitution obligations, and suffered fewer formal violations.

In President George W. Bush 2004 State of the Union Address, he promoted the implementation of offenders' reentry initiatives. As stated by President Bush, "America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life." In summary, that is the mission of the Reentry Court Program in the District Court of the Virgin Islands – to pave the way for offenders to have an improved and productive life. Finally, on April 9, 2008, President Bush signed the Second Chance Act into law. This legislation authorizes various grants to government agencies and nonprofit groups to provide employment assistance, substance abuse treatment, housing, family programming, mentoring, victims support, and other services that can help reduce re-offending and violations of post-conviction supervision.

Key Components to a Successful Reentry Court Program

The key components identified below are required for a successful reentry court. These components were identified by The National Association of Drug Court Professionals as key components for successful drug courts, which is a form of reentry court. The parties agree these elements are essential, and strive to incorporate them as principles underlying the reentry court program in the District Court of the Virgin Islands.

1. Reentry court integrates substance abuse treatment and other related services with the justice system case processing.
2. Using a non-adversarial approach, prosecution and the defense counsel promote public safety while protecting participants' due process rights.
3. Eligible participants are identified early and promptly placed in the reentry court program.
4. Reentry court provides access to a continuum of education, employment, substance abuse and other related treatment and rehabilitation services.
5. Abstinence is monitored by frequent drug testing.
6. A coordinated strategy governs reentry court responses to participants' compliance with the rules.
7. Ongoing judicial interaction with each reentry court participant is essential.
8. Monitoring and evaluation measure the achievement of the program goals and gauge effectiveness.
9. Continuing interdisciplinary education promotes effective reentry court planning, implementation, and operations.
10. Forging partnerships among public agencies, and community-based organizations generates local support and enhances reentry court program effectiveness.

Reentry Court Program Overview

The District Court of the Virgin Islands Reentry Court Program is voluntary for its participants. The program requires its participants to enter into a contract for participation, and abide by the contract terms (See Attachment 1). Successful participants will be involved in the program for at least one year. During this one year or more, participants will be referred to various sources to assist with supervision issues; i.e. substance abuse treatment, businesses or employment agencies, education programs and/or other rehabilitation services. The program also involves regularly scheduled court appearances in order to report on participants' progress. Additionally, failures to abide by the mandates of the program may result in the participants being terminated from the program and returning to traditional supervision.

Participants

The District Court of the Virgin Islands Reentry Court Program will serve only people who were previously convicted and sentenced in the District Court of the Virgin Islands or a United States District Court, and who are serving a term of supervision. The program will have five participants from the St. Thomas division and five from the St. Croix division, for a total of 10 participants. The participants will be offenders who are struggling with supervision issues identified by the probation office. The participants will be educated about the various aspects of the Reentry Court Program, and will opt to voluntarily participate in the program.

Control Group

In addition to the 5 active participants in the Reentry Court Program, 5 other supervisees will be identified by the probation office as the Reentry Court control group. The control group will be created for analysis and research purposes. The other supervisees will parallel the active participants in their current status on supervision, and will be tracked by the probation office over a one-year period. Neither the supervisees nor the supervising probation officer will know the supervisees are members of the Reentry Court control group. This data will be maintained by the Deputy Chief Probation Officer. The data collected on this control group will be used to offer a comparison between the success rates of participants in the Reentry Court Program and those on traditional supervision.

Criteria for Participation in the Reentry Court Program

To be eligible to participate in the Reentry Court Program, participants must be on supervision and experience some sort of challenge with resolving supervision issues.

Selection of Participants

The participants will be selected by the Reentry Court Probation Officer with input from the parties to this agreement.

Reentry Court Contract

The participants' involvement in the Reentry Court Program will be confirmed by a written contract signed by the participant, the Probation/Pretrial Services Office, the United States Attorney's Office, the Federal Public Defender's Office, and the Court. The contract, as set forth in Attachment I, explains the expectations and obligations of all participants and parties involved in the Reentry Court Program.

The Role of the Court

The active involvement of the Court with participants in the Reentry Court Program is essential. When participants are excelling in the program, the Court will provide encouragement. When participants are in noncompliance with the Reentry Court Program or in violation of supervision, the Court, after receiving the recommendation of the Reentry Court team, will make a determination as to the appropriate sanction based on the nature of the participant's noncompliant behavior. If appropriate, sanctions should be progressive in terms of severity. When the parties determine that the participant has exhausted his/her opportunities to continue in the program, the Court will make the final decision to terminate the participant from the Reentry Court Program. The participant will then return to traditional supervision.

At least once a month all participants will appear before the same federal judge. In an effort to ensure continuity, a single Probation Officer, Assistant U.S. Attorney and an Assistant Federal Public Defender will be involved in the Reentry Court, and each will appear for the Reentry Court docket. The order of the participants' appearances on the docket should provide for those who are in compliance with the program to proceed first, while the participants struggling with the program wait until last.

Probation Officer Duties

The Reentry Court Probation Officer (PO) is responsible for making appropriate treatment referrals with contract and appropriate noncontract treatment agencies, and to other resources based on the needs of the individual. In preparation for the Reentry Court appearances, the PO will prepare reports in order to inform the Court of the Participants' struggles and achievements. In an effort to expedite the reporting process, avoid overworking the PO, and to create continuity in reporting; a form entitled "Reentry Court Progress Report," Attachment 2, will be utilized. The PO will work closely with the providers; i.e. treatment services, employers, Department of Labor, Adult Education, who are assisting in addressing the supervision issues to

ensure effective communication between those providers and the Reentry Court. In the Reentry Court Program, the Federal Public Defender's Office will be permitted to have access to the providers' records.

In the event serious problems in supervision arise, the PO will work with the Assistant Federal Public Defender and the Assistant United States Attorney in order to intervene immediately and address issues with the participant. The team efforts will be delineated in the monthly Reentry Court Progress Report. The Reentry Court Progress Reports are to be distributed by the PO, along with any attachments, to the Court, the Assistant U.S. Attorney, and the Assistant Federal Public Defender or the Federal Defender a full 24 hours before the participant's scheduled court appearance. Scheduling of court appearances will be worked out by the parties to this agreement and may be spread out so that the PO has time to work with the various providers in order to prepare the progress report with information as current as possible.

The participant's official file shall contain a separate section for the Reentry Court. In this identified section, all Reentry Court documents will be retained, including the contract for participation, progress reports, and providers' records including results of drug testing.

Assistant United States Attorney Duties

The role of the Assistant U.S. Attorney (AUSA) is unique in the Reentry Court Context. The AUSA's role is to participate in a team effort with the Assistant Federal Public Defender and the PO to encourage the participant's success in the program. The AUSA may report on the participant's progress during the Reentry Court appearance. The AUSA should be involved in the decisions about program planning both when the participant is succeeding and when he/she is struggling.

Assistant Federal Public Defender Duties

The assistant Federal Public Defender (AFPD) is available to assist the PO in encouraging the participants to succeed in addressing the supervision issues, discourage unacceptable behaviors and disinterest in the Reentry Court Program at their first sign, and to participate in the Reentry Court's decisions about proper punishments for participants struggling with the program's requirements. The AFPD's role will be less adversarial than in non-reentry court supervision cases.

Waivers and Hearings

To effectuate the intent of the Reentry Court Program to make it a less adversarial system and provide more support to the participants, all parties agree conduct which would otherwise constitute a supervision violation will be handled in an informal manner. However, all conduct that could otherwise be considered a violation and lead to a supervision hearing will be presented to the Court and the participant through the PO's monthly progress report to the

Court, or a status report to the Court filed on an expedited basis if the circumstances so warrant. Additionally, any “sanction” on such violation will be handled through a court directive issued at the monthly Reentry Court session in a non-adversarial setting. When the participant, the PO, the AUSA, and the AFPD agree to a particular sanction or treatment intervention, the matter can also be resolved before the participant’s next scheduled Reentry Court appearance by a modification executed by the participant on an expedited basis.

Reentry Court Sanctions

Noncompliant behavior by the participant will result in sanctions. The range of possible sanctions has been drafted broadly to ensure that some level of sanction is available for every violation. The factors which will influence the type of sanction include the seriousness of the violation, the number of violations, and the amount of time the participant has remained compliant, either before a first violation, or between violations. In addition, an important factor will be whether the participant voluntarily discloses the violation. Dishonesty on the part of the participant will result in enhanced sanctions. Depending on these factors, any of the sanctions listed below, including termination from the program is available. As a general rule, when there are repeat violations, more serious sanctions will be applied incrementally. Sanctions may include, but are not limited to the following:

1. Participant receives a judicial reprimand in open court;
2. Participant is ordered to return to court and to observe proceedings for a half or full day (referred to as “sit sanction”);
3. Participant is ordered to provide an explanation for his/her noncompliant behavior, either in writing or some other means ;
4. Participant is ordered to participate in community service (the site will be left to the discretion of the Court);
5. Participant is ordered to comply with curfew restrictions or home confinement with electronic monitoring; and
6. Participant is terminated from the program with or without the filing of a formal violation.

The above sanctions are designed to take a creative approach to altering unacceptable behavior. The sanctions must be completed by the next court appearance, unless the Court allows more time. Whenever an assignment is imposed by the Court, it should be turned in to the PO. If appropriate, all sanctions may be ordered more than once during the course of the program. In addition, a participant has the option of requesting termination from the Reentry Court Program and have the matter handled consistent with the dictates of 18 U.S.C. §§ 3565 and 3583, violation of probation and supervised release. If that is the choice of the participant, the Court will enter the appropriate order.

Adversarial Hearings

There are circumstances where a participant is alleged to have violated supervision and the participant believes he/she is innocent of the alleged conduct. The parties agree that a request for an adversarial hearing on the guilt/innocence question will not automatically result in termination from the Reentry Court Program. However, such hearings are limited to the question of guilt/innocence in the “I did not do it” sense, rather than an opportunity to offer an explanation for admitted conduct.

Reentry Court Rewards

Participants who successfully complete the Reentry Court Program earn up to one year reduction in their term of supervision. This one year is vested at the time the participant completes the program. It is understood that some participants may have over one year left on their supervision. However, those participants must still adequately comply with all terms of supervision. If the participant’s supervision, after successfully completing the Reentry Court Program, is revoked for other reasons, he/she will be subject to revocation and incarceration, but any term of supervision imposed following the term of incarceration will be reduced by one year.

The participant’s eligibility to receive a one year reduction in supervision will not preclude additional considerations for reduction in the supervision based on the factors set forth in 18 U.S.C. §§ 3564(c) and 3583(e) (1).

The Reentry Court graduation will take place at the participant’s final, regularly scheduled court appearance. In addition to the participants, family members, sponsors, and friends are invited to attend the graduation. The Court will present the graduates with a Certificate of Completion, and other articles of recognition as determined by the Reentry Court Committee.

Termination Procedures

The Reentry Court participant may be terminated as successful or unsuccessful.

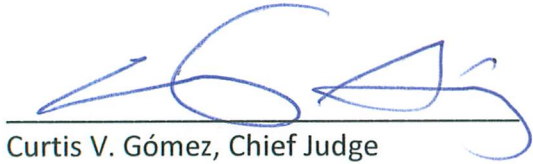
1. *Successful Termination:* Participants who complete the program will be given a Certificate of Completion, which will close the Reentry Court section of his/her probation file. The participant will then be transferred to traditional supervision.
2. *Unsuccessful Termination:* There will be some circumstances in which it is appropriate to terminate as unsuccessful a participant from the program. Unsuccessful termination may be of two types:

- A. Termination With Return to Regular Supervision – Termination may result from a participant revoking his/her interest in the program, or by a joint decision that although the participant has not committed a serious violation of supervision or program rules, the program is not working. This type of termination from the Reentry Court Program occurs with a transfer to a traditional supervision caseload without a violation charge or hearing.
- B. Termination With A Formal Violation Charge – Termination may result from serious or chronic misconduct by the participant. The Court will make the ultimate decision that a participant must be terminated from the program. Under these circumstances, the participant will be terminated from the Reentry Court Program, return to a traditional supervision caseload, and may appear before a non-Reentry Court judge for a hearing on the misconduct. Such circumstances may include:
1. New law violations, as ultimately determined by the Court;
 2. Repeated drug use;
 3. Chronic pattern of refusal to cooperate with the Probation Officer;
 4. Chronic pattern of refusal to cooperate with a treatment provider; and
 5. Repeated refusal to cooperate with the Court's sanctions or participate in a meaningful manner.

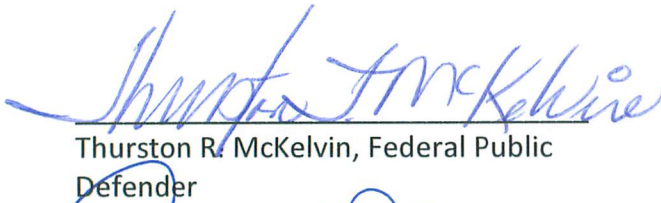
Upon termination from the Reentry Court Program, the Probation/Pretrial Services Office may file a formal violation charge. However, it will be the policy of the Probation/Pretrial Services Office not to formally violate a participant for conduct that occurred during the Reentry Court Program, which was previously addressed. After the supervisee is no longer a part of the Reentry Court Program, the Court presiding over the violation hearing will be advised of all conduct that has taken place during the period of supervision, including successes, failures, and sanctions that occurred during the Reentry Court Program.

This endeavor will serve as a pilot project for the first year in the St. Thomas district where there will be five active participants and five participants in the control group.

SIGNATURES TO DISTRICT COURT OF THE VIRGIN ISLANDS REENTRY COURT PROGRAM


Curtis V. Gómez, Chief Judge

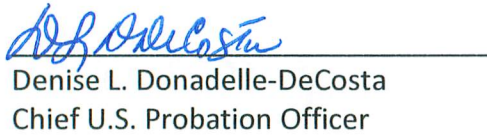
7/29/10
Date


Thurston R. McKelvin, Federal Public
Defender

7/29/10
Date


Ronald Sharpe, U.S. Attorney

7/29/10
Date


Denise L. Donadelle-DeCosta
Chief U.S. Probation Officer

7/29/10
Date