

**PROPOSAL FOR A
PILOT RE-ENTRY PROGRAM**

EASTERN DISTRICT OF PENNSYLVANIA

MAY 2007

I. Summary

This memorandum proposes establishing an experimental pilot prisoner re-entry program in this District, in which a re-entry court judge would assist the Probation Office with the supervision of certain defendants.¹ Specifically, the judge would conduct a bi-weekly court session attended by all defendants in the program, at which the judge would review and respond to the achievements and failures of each participant. Based on the experience of several such courts operating in the federal and state judicial systems, the program has the potential to reduce the number of revocation proceedings before District Judges, improve the participants' compliance with conditions of supervised release, and decrease recidivism.

The target population for this program, further described below, would be Philadelphia residents originally sentenced in this District. They would be selected by Probation from defendants with a moderate to serious score on the Probation Office's Risk Prediction Index (RPI)² who are unemployed, underemployed, or could benefit from judicial supervision in some other way. Participants would sign a consent form agreeing to the program's terms.

The conduct and activities supervised by the program would be those that are typically handled by the Probation Office without judicial support. The program would add to present practices: (1) the regular bi-weekly oversight of a defendant by a judicial officer; (2) early judicial intervention so that problems are addressed before developing into violations; and (3) a swift response to each failure by a defendant.

This proposal is modeled after programs implemented in other courts including the Western District of Michigan, the Eastern District of New York, the District of Massachusetts, and a number of courts in state and local jurisdictions.

II. Why Start This Program

¹ Prisoner re-entry "includes all activities and programming conducted to prepare ex-convicts to return safely to the community and to live as law abiding citizens." Petersilia, J. (2003). *When Prisoners Come Home: Parole and Prisoner Reentry*. New York: Oxford University Press.

² The RPI evaluates the potential dangerousness of federal supervised releasees on a scale of 0 to 9 according to a number of criteria, including age, prior record, use of a weapon, employment, substance abuse, education, family ties, and history of absconding from supervision.

The City of Philadelphia is currently fighting an upsurge in violent street crime. The destabilizing presence of ex-offenders in many of the communities most affected by violence is one of the substantial contributing factors identified by city officials. Ex-offenders with multiple risk factors are particularly at risk to be the perpetrators or victims of violence, and present a danger to the community. Addressing the re-entry of these supervised releasees and the supervision violations they commit presents an ongoing challenge for the Federal Probation Office and Philadelphia neighborhoods with the largest concentrations of ex-offenders. By providing more judicial supervision and earlier intervention, this program offers the Probation Office an additional effective resource that may lead to better results and a smaller number of revocation hearings.³

Re-entry courts began operating in a number of jurisdictions in the early 2000s. The courts' mission was described in a 2003 law review article as follows:

Among the most significant of the new [reentry] proposals is the "reentry court" experiment, based on the drug court model, which would cast judges as "reentry managers." Whereas, the role of the judiciary typically ends after sentencing, the reentry court model would move the court system into a "sentence management" role, overseeing the convicted person's eventual return to the community.

A reentry court is a court that manages the return to the community of individuals being released from prison, using the authority of the court to apply graduated sanctions and positive reinforcement and to marshal resources to support the prisoner's reintegration, much as drug courts do, to promote positive behavior by the returning prisoner.⁴

The Department of Justice's Office of Juvenile Justice & Delinquency Prevention has made the following observations about re-entry courts:

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

⁴ S. Maruna, T. LeBel, "Welcome Home? Examining the "Reentry Court" Concept from a Strengths-based Perspective," *Western Criminology Review* 4(2), 91-107 (2003) (citations omitted).

Reentry courts ... help 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 drug and alcohol 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 clean drug tests and other positive behaviors.

The traditional responsibility of the court to an offender ends when a defendant is sentenced by a judge. Judges typically have no role in the broad array of activities that carry out the terms of the sentence, the preparation of the offender for release, or the transition of the offender back into the community. Nevertheless, a combination of trends in sentencing, incarceration, and post-release supervision is affording the opportunity for courts to become the principal force behind these activities. For instance, widely recognized increases in incarceration rates over the past 20 years have led to record numbers of prisoners. Accompanying the increases in incarceration are increases in the amount of time served, primarily due to truth-in-sentencing laws and the shift away from discretionary release.⁵

Preliminary evaluations show that re-entry court participation results in better lives and significantly less recidivism among ex-offenders. Richland County, Ohio has had a re-entry court since 2001 for all prisoners returning to the county and has reported significantly reducing the parole failure and new crime rates, as follows:

One Hundred Ninety-one (191) offenders were supervised in 2004 under the joint supervision of the Richland County Common Pleas Court and the Adult Parole Authority. ... Of these, 150 complied with the community reintegration program, 50 successfully graduated (28%) and only 41 (22%) failed. ... This reduced failure rate with a new crime rate of only 9%, demonstrates its effect on the reduction in felony crime in our community.⁶

⁵ OJJDP Model Program Guide Version 2.5 (2004).

⁶ Richland County Court Services website (<http://richlandcountycourtservices.com/programs/reentrycourt-ashlandstudy.htm>).

Similarly, the re-entry court in Allen County/Fort Wayne, Indiana “has helped two-thirds of its initial 152 ex-offenders steer clear of arrest or imprisonment.”⁷ Among its successes was an ex-offender who had served two years for a drug-related robbery, but was returned for an additional eight-year term after violating parole immediately upon release. With the re-entry court’s help, he obtained a good job at which he had worked for two years at the time of the report, and his marriage and family were intact.⁸

Most federal re-entry courts have been begun operation during the last several years. The federal programs take one of two approaches: enrolling candidates based on their risk to the community, which is the approach of this proposal, or enlisting candidates with drug or alcohol addictions.

The risk-to-the-community model has been operating in a branch of the Western District of Michigan since October 1, 2005 and takes offenders with high RPI scores (6 - 9). In the two years prior to establishment of the re-entry court, seventeen such offenders were released to the area, and half had their supervision revoked for noncompliance. Since inception of the re-entry court, nine offenders have been enrolled for more than one year, and one has had his supervision revoked. While these numbers are small, they indicate that the program is beneficial. The District Court has voted to expand the project to the entire district.

Because a large part of their goal is to deter their members from using drugs or alcohol, federal re-entry courts for addicted individuals measure success in ways other than just recidivism. The Eastern District of New York’s program, started in 2002, reported that thirty-three percent of their members were “clean” after one year, a significantly higher percentage than the non-re-entry court population. In addition, that court recently voted to expand the program. In Boston, Massachusetts, the re-entry court re-entry judge reported the following anecdotes from his program, which began in early 2006:

A 52 yr old 30 yr heroin addict came out of BOP after 10 years (career offender drug dealer), relapsed, failed treatment, revoked, joined the program 5/3, tested positive 5/8 and skipped treatment on 5/8. I sent him to jail on 5/10 for the day followed by inpatient treatment. He has been sober and compliant without any incidents since 5/10/06. He graduated the program and is now in training with them to become an outreach counselor. Several other defendants, closer to your model defendant, are compliant and employed after never having had a meaningful job in the past. These people did not get jobs on their own, but only after

⁷ “A Better Deal for our Ex-offenders?,” National Academy of Public Administration, 12/28/03 (http://www.napawash.org/resources/peirce/Peirce_12_28_03.html).

⁸ Id.

substantial pressure from me including requiring full time community service until obtaining a job.

Although re-entry programs are a relatively new endeavor for courts, this proposal is not unique. It is based on statistical and anecdotal evidence that re-entry courts are beneficial to the participants, have success in reducing recidivism, and are cost-effective.

III. Origin of the EDPA Proposal

In mid-2006, the idea of establishing a pilot re-entry court in the Eastern District of Pennsylvania was suggested by Chief Judge Harvey Bartle III after a meeting with a small group of criminal justice system principals.⁹ Chief Judge Bartle requested that Judge Anita Brody, Criminal Business Committee Chairperson, explore with the group the issue of how a pilot re-entry program would operate in the district.

Judge Brody convened a number of meetings of the working group to discuss how a re-entry court would operate, who should participate, and related issues. Working group members conferred with their counterparts in jurisdictions where re-entry courts currently operate, including Massachusetts, New York, Michigan, and York, Pennsylvania. They also visited certain programs, including the federal drug re-entry court in Boston, Massachusetts.

This document sets forth the unanimous recommendations of the working group.

IV. Proposed Re-entry Program Protocol

A. Target Population

⁹ These included Chief Federal Probation Officer Daniel Blahusch, Magistrate Judge Timothy R. Rice, Supervisory Assistant Federal Defenders Felicia Sarner and Leigh Skipper, and United States Attorney's Office Criminal Chief Linda Dale Hoffa and re-entry coordinator Maureen Barden. Chief Deputy United States Marshal Dennis Matulewicz and Supervisory Deputy United States Marshal Tricia Ashford later joined the working group.

Candidates for the program will be men and women living in Philadelphia, originally sentenced in this district, beginning supervised release, and scoring 5, 6 or 7 on Federal Probation's Risk Prediction Index (RPI).¹⁰ Clients will also be unemployed, underemployed, or able to benefit from the program in some other specific way.¹¹ Probation will screen all candidates for suitability. Eventually, the program may expand to include offenders with higher RPI scores.

After candidates are screened by the Probation Office, the re-entry court judge will review their information with the assigned probation officer. Before the candidate is placed into the program, the U.S. Attorney's Office and the Federal Defender's Office will be solicited for information, observations, or objections.

When possible, the probation officer will meet with each candidate at the halfway house prior to release, advise the candidate of the program and its benefits, and present the candidate with the program acknowledgment and consent form. If the candidate does not have a halfway house stay, this will occur at the first visit to the Probation Office. In either case, the candidate will be scheduled to appear at the first court session following release.

B. Re-entry Court Team

The team will include the assigned re-entry court judge; the probation officer designated by the Chief Federal Probation Officer; two counsel (an AUSA and assistant federal defender named by their offices); and the DOJ re-entry coordinator. The AUSA and assistant federal defender will be present for each client's first court appearance, and after that if requested by the client or the court.

C. Duration of Re-entry Court Participation

¹⁰ For the period 2004-2006, offenders with scores of 5, 6, or 7 accounted for more than 30 percent of revocations of supervised release in this district.

There are currently 91 such individuals on supervised release in the Eastern District of Pennsylvania, not all of whom would meet the additional criteria for participation in the program. The Probation Office anticipates that the number of clients will be manageable, particularly since they will come out of federal prison at different times. At the beginning, the population will be small, growing to approximately two to three dozen participants.

¹¹ This screening criterion is consistent with the Probation Office's emphasis on employment for supervised releasees. For example, one probation officer is now an employment specialist and a committee of probation officers meets regularly to discuss employment issues, mentoring, and other important elements of successful re-entry.

Clients will participate in re-entry court for a total of 12 months. This period will be tolled for any violations resulting in re-incarceration or for unsatisfactory performance. In order to graduate from the program, a client will require 52 weeks of satisfactory performance, which need not be consecutive. For example, a client may not receive credit for a two-week period in which he or she commits an infraction (e.g., a positive drug test), but may receive credit for two-week periods before and after that.

After 12 months' satisfactory performance, clients will graduate from the program. At that time, before they advance to general supervision, the re-entry court judge will make a recommendation to the sentencing judge to reduce the total term of supervised release by up to 12 months.¹² Early termination is the most significant incentive to gain an offender's participation.

D. Court Appearances

Court will be held twice a month in the late afternoon.¹³ The courtroom will be open to the public. All clients will be present for the entire session, so that everyone sees the court encouraging positive behavior, affirming the value of individual efforts, and, when necessary, sanctioning non-compliance with the program's goals. Family members and mentors will be encouraged to attend.

Clients will be called up individually to address the judge from the lectern. A court security officer will be present and a Deputy United States marshal will be on call. The proceedings will be recorded but not ordinarily transcribed. Clients' statements to the re-entry court judge will not be used against them in a future revocation proceeding. (The Probation Officer may, however, conduct an independent investigation based on clients' admissions.)

The re-entry court judge may make referrals to any programs or services that will assist the client with his or her re-entry. These may include job training, education, counseling, and substance abuse treatment.¹⁴

A progress report will be filled out after each session by the probation officer or the DOJ re-entry coordinator summarizing what occurred and the client's goals for the next session.

E. Consent to Participate

¹² Existing programs emphasize the importance of rewarding a successful client's achievement at the time of graduation from the program.

¹³ Based on other courts' experience, the sessions will last for less than an hour.

¹⁴ Any client requiring substance abuse treatment who does not already have such treatment as a special condition of supervised release will have that special condition added.

At clients' first court appearance, the re-entry court judge will welcome them, explain how the court works, and review the program and the acknowledgment form with the client and counsel. Many clients will have signed the acknowledgment when presented with it by the probation officer. If a client refuses to sign the program acknowledgment and does not wish to be involved in the program, he or she may be referred to the sentencing judge to explain the reasons for refusal.¹⁵ The district court's willingness to schedule a hearing in such a situation, and to endorse the value of the re-entry program, will be critical to its success. However, the final decision about whether to participate will be the client's.

By signing the acknowledgment form, clients will consent to participate in the program, seek employment, meet their personal and financial obligations, and abide by the graduated sanctions available to the re-entry court. They will also agree to allow the Probation Office to check their criminal histories for up to three years after they graduate from the program, so that its effectiveness can be evaluated.

F. Pre-court Conferences

Earlier on the day of the court session, the re-entry judge, probation officer, and re-entry coordinator will meet to review each client's status. Before each client's first appearance, counsel will also be present at the meeting.

G. Incentives

The primary incentive for cooperation with the program will be the chance for reduced supervised release. In addition, clients who are fulfilling their obligations may have their re-entry court appearances reduced to one a month. The DOJ re-entry coordinator will facilitate clients' access to community services through the Mayor's Office for the Re-entry of Ex-offenders (M.O.R.E.)¹⁶ and other sources. Clients' successes will be noted by the court and publicly acknowledged. Other rewards, such as graduation certificates, may be added.

H. Sanctions

Sanctions available to the re-entry court judge will include all of those that fall within the existing authority of the Probation Office under the standard conditions of supervised release, such as increased reporting or more frequent drug testing. One of the most effective sanctions,

¹⁵ The experience of the Western District of Michigan has been that all clients sign the form. To date, none have been referred to the district court. While some clients are initially reluctant, they agree to participate after discussion with the court and/or counsel.

¹⁶ M.O.R.E. is the City of Philadelphia's two-year-old re-entry program, which is funded by the City and operates a "one-stop" re-entry center at 58th Street and Woodland Avenue to help ex-offenders with job training, education, employment, and other issues.

in the experience of other programs, is refusal to give a client credit toward the 52 weeks of the program for any two-week period in which he or she has committed an infraction.

In addition, by consenting to participate in the program, clients agree to accept imposition of a curfew, community service, home or community confinement, or imprisonment up to a maximum of seven days.¹⁷ Clients retain the right to refuse to accept a sanction. However, their actions may then form the basis of a revocation petition filed by the probation officer with the district court.

The program makes no change to revocation proceedings. Grade A & B violations will be handled according to the Probation Office's normal procedures and adjudicated by the sentencing court. A client may remain in the program pending the revocation hearing, at the re-entry court judge's discretion. A client who is sent back to prison will re-enter the program upon release, and remain in the program until he or she successfully completes a total of 12 months and is transferred to general supervision.

I. Program Evaluation

The Chief Judge will review the program annually for effectiveness and revisions. If the Chief Judge directs, the working group is willing to meet every three months to assess the status of the program.

V. Jurisdictional Issues

A. Authority To Impose Sanctions

The consent of the defendant forms the basis for this authority. Many of the sanctions fall within the existing authority of the Probation Office under the standard conditions of supervised release such as increased reporting or more frequent drug testing. Curfews, electronic monitoring and placement in a Community Correction Facility are all potential sanctions within the program that Probation already imposes, provided the defendant consents. On the same principle, clients will be asked to consent to accept the imposition of a brief term of

¹⁷ According to the Magistrate Judge and team that conduct the Boston program, the availability of a brief jail term as a sanction is important and necessary to the success of the program. It is not a violation sentence, but a sanction to which the client consents. Seven days is the maximum number that may be imposed on one client over the life of the program. In Boston's experience, the jail sanction is used sparingly. However, the magistrate judge noted that "to [his] surprise, defendants who have recently done ... years in federal prison are very unhappy about being placed in cuffs by the marshals during court even though the sanction is just until the end of the day."

imprisonment, with the understanding that any client who declines to consent may be the subject of a petition by the Probation Office to the district judge.

B. Authority for Magistrate Judge to Preside

A magistrate judge may be designated by the district court to preside over a re-entry court pursuant to 28 U.S.C. § 636(b)(3), and to conduct hearings to modify, revoke, or terminate supervised release pursuant to 18 U.S.C. § 3401(i). These statutes are further discussed in Re-entry Judge Timothy R. Rice's May 24, 2006 memorandum to Chief Judge Bartle and Judge Brody.

VI. Pilot Program Name

The proposed name of the program is Supervision to Aid Re-entry, or STAR.

VII. Conclusion

The goals of this pilot program are modest – to enhance and intensify the supervision of a small number of federal ex-offenders to help them re-enter the Philadelphia community – but its impact can be significant. As observed by the federal re-entry judge overseeing the re-entry drug court program in Massachusetts, “whatever we do or do not do, Probation has under its supervision many defendants posing difficult challenges. Closer supervision with greater judicial oversight for those most difficult people seems sensible,” cost-effective, and compatible with the role of the court in the administration of criminal justice.