



Federal Problem Solving Court In-District Consultation
District of New Jersey Pretrial Opportunity Program

Final Report

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I. INTRODUCTION

In May 2015, the United States District Court for the District of New Jersey launched the Pretrial Opportunity Program (POP) which offers defendants an opportunity to receive a reduction in sentence if they successfully fulfill all program requirements. The program targets defendants charged with low level property or narcotics offenses who have a substance use disorder. Program participants must enter a guilty plea, enroll in substance abuse treatment, and comply with intensive supervision by the two presiding judges of the program and pretrial services officers. To complete the program, participants must demonstrate that they are prepared to function as productive and lawful citizens. To date, all successful participants have received non-custodial sentences.

In May 2018, the two district judges who preside over the program (Hon. Katharine Hayden and Hon. Esther Salas) and the chief U.S. pretrial services officer (Christine Dozier) requested technical assistance from the Federal Judicial Center to conduct an assessment of their program. The Federal Judicial Center (FJC) is the research and education agency of the judicial branch of the U.S. government. Part of its education component focuses on problem-solving courts that are increasingly populating the federal court landscape. FJC staff and their expert consultants work with problem-solving courts to promote evidence-based, and evidence-informed practices and policies.

The technical assistance provided by the FJC to the District of New Jersey consisted of 1) a written, comprehensive survey of POP's population, assessment and treatment practices, and legal and interim sanctions and incentives (completed by the chief pretrial services officer); 2) on-site observation of a POP staffing meeting with all team members; 3) a briefing the following day with

the team; and 4) this report, which summarizes our observations and offers recommendations for program enhancement.

II. PROBLEM SOLVING COURT SURVEY

Team Composition: The POP team comprises two judges (referenced above), two assistant U.S. attorneys, two federal public defenders, the chief U.S. pretrial services officer, three U.S. pretrial services officers, and two U.S. probation officers. Both judges and the chief pretrial services officer planned and implemented the program and have led the team for the past three years.

Eligibility: Eligible participants are typically individuals charged with lower level narcotics and property offenses and present no violent criminal history. The most prevalent charge is conspiracy to distribute a controlled substance. In most cases, defendants are facing 47 – 51 months in prison under normal prosecution practice. They must present with a documented substance use disorder and be willing to enter treatment, as well as comply with all program requirements.

Assessment: Community-based treatment providers conduct comprehensive assessments of legally eligible individuals. The assessment uses validated tools (ex.: LSIR, ASI) and covers a wide range of factors, including demographics, substance use history, trauma, post-traumatic stress symptoms, and other mental health disorders. Using the PTRS (Pretrial Services Risk Assessment tool), Pretrial Services officers conduct a thorough bail investigation to determine risk of re-arrest and/or non-appearance. Together, these assessments are used to determine:

- the treatment service plan and the appropriate provider;
- mental health services;
- education, employment, and housing needs; and,
- frequency of case management at the outset of program participation

Legal Outcomes: POP requires a guilty plea for program participation. Once a guilty plea is entered, proceedings are suspended until completion of the program or termination. Successful completion of the program results in a felony conviction with a non-custodial sentence. The Court can impose a custodial sentence but, thus far, has not done so. The prosecution can withdraw the plea and divert or dismiss charges but has done so in only one case. In unsuccessful cases, the Court will sentence the participant immediately to jail or prison. POP participants are not told, prior to program participation, the precise legal consequences of successful completion or termination. Instead, the federal defender and the pretrial services officer communicate to them that, if successful, they will receive special consideration at sentencing and that, although all cases thus far have received non-custodial sentences, they are not entitled to a reduction in sentence. Similarly, the Court does not indicate specific consequences for failure to complete POP. Rather, defense counsel will advise their clients of the sentencing guideline ranges they face if sentenced without participating successfully in POP.

Admission to POP: Participants must sign a “Pretrial Opportunity Program Consent Form” which outlines what they can expect from the court and Pretrial Services, and in turn, what is expected of them during program participation. Participants do not receive any further documentation that lays out POP’s policies and procedures.

Program Participation: The court holds judicial status hearings once per month during the first three months of participation. Officers and treatment staff conduct drug tests, on average, about four times per month during the first three months of participation. Both agencies provide case management. Pretrial and Probation conduct random home visits. POP’s interim incentives and sanctions are typical of many treatment courts. Incentives include judicial praise, courtroom applause, phase advancement, and tokens or certificates. Sanctions range from judicial

admonishment to curfews to electronic monitoring to jail. If the court receives a report of non-compliance, the timing of the sanction will vary from immediate response to waiting until the next court date. The court has not developed a written sanction schedule. Accordingly, POP participants do not know which sanctions are associated with which forms of non-compliance. In addition, the team has not developed a policies and procedures manual or a participant handbook.

Treatment Strategies: POP sends all of its participants (100%)¹ to residential drug treatment, often for three to 12 months. Participants who are sent initially to outpatient drug treatment programs typically spend 12 months in that modality, attending one- to two-hour sessions for three to five days per week. POP offers treatment services that accommodate work or school schedules.

POP reports that their treatment providers follow manualized treatment protocols, engage in cognitive behavioral therapy, address special populations, and conduct frequent supervision meetings with line staff.

Pretrial and probation officers are trained in Motivational Interviewing (MI) and Staff Training Aimed at Reducing Re-arrest (STARR). Officers are beginning to deliver Thinking for a Change, an intervention designed to address criminal thinking. POP links participants to the following additional treatment and services:

- gender specific treatment
- treatment for mental health disorders
- housing assistance
- vocational services
- job readiness and/or job placement
- GED or adult education classes
- Parenting classes

¹ Data updated in 12/4/2018.

Team Training: Both judges and Probation and Pretrial Services officers have received training on the following topics:

- Pharmacology of addiction
- Mental health disorders
- Best practices utilizing incentives and sanctions
- Best practices in supervising defendants and offenders
- Trauma assessment and/or trauma-informed therapy
- Science of medication assisted treatment

Team Collaboration: The team holds monthly staffing meetings to review individual cases and policy and program review meetings at least quarterly. Judges, probation and pretrial services officers, prosecution, and defense counsel are well-represented at these sessions. Substance use and mental health disorder treatment providers do not participate in either of these meetings.

Program Timeline: For a participant to qualify for POP, he or she must typically achieve a long period of abstinence, successfully participate in substance use disorder treatment, and generally demonstrate the ability and motivation to lead a productive, lawful life. Thus, the average time between arrest and referral is 52 weeks. Admission to POP can take an additional 4 weeks. Although the minimum number of months to graduate is 15, the average time to complete is 2 years pretrial and another 1-2 years post-conviction.

Data Summary:

Individuals referred to POP:	40 (estimate)
Individuals admitted to POP:	25
Current participants:	15
Graduates:	8
Terminated:	2
Drugs of choice:	
Alcohol	8%
Cocaine	8%
Heroin*	48%

Prescription opioids*	24%
Methamphetamine	12%

*Program staff reported that very few participants receive Medication Assisted Treatment

Felony charges:

Drug trafficking or sales	84%
Financial (wire fraud, burglary, bank fraud)	12%
Obtaining CDS by fraud (pharmacist)	4%

Gender:

Male	15
Female	10

III. SITE VISIT

On July 11 -12, 2018 Christina Ruffino of the FJC and consultant Valerie Raine facilitated a site visit to the Pretrial Opportunity Program at the U.S. District Court for the District of New Jersey in Newark, New Jersey. At the site visit, the two facilitators observed a staffing meeting, followed by a compliance calendar. On the following morning, the facilitators met with the POP team to provide feedback on their observations and discuss how POP practices aligned with what research has established as best practice standards for drug treatment courts.² As a general matter, these standards should inform problem-solving court (PSC) practices, not dictate them. Some standards do not fit easily within a particular legal framework. Some require treatment and staffing resources that a jurisdiction cannot support. Others may simply require more time than a problem

² Marlowe, D. B., & Fox, C. L. (2013). Adult drug court best practice standards. Alexandria, VA: National Association of Drug Court Professionals. <http://www.nadcp.org/standards/>

solving court can afford to offer. However, the standards do provide a reference point for program development. Following are both specific and general observations by the facilitators.

Staffing Observation:

- Staffing Session Observed - July 11, 2018:
 - Number of cases discussed: 12 cases
 - Compliant Cases: 11
 - Noncompliant Cases: 1
 - New Cases: 0
 - Minutes per case: 2.7 minutes*
- Decision-Making:
 - Decision made in noncompliant cases: 0 of 1
 - Judicial interaction recommended: 2 of 12

General Observations: Present at the staffing were the two judges, two assistant U.S. attorneys, two federal defenders, pretrial and probation officers, and the chief pretrial officer. The team engaged in a lengthy discussion about the one non-compliant participant who has been detained since April due to positive drug screen, denial of use, and apparent lack of engagement in the process. At the end of the discussion, it remained unclear what the next steps would be regarding this participant. The team received updates on the rest of the participants, primarily from the pretrial and probation officers. The judges decided that one participant was due to graduate from the program and they intended to communicate the good news during the compliance calendar.

Court Observation:

- Session Observed = July 11, 2018
 - Length of session: 79 minutes
 - Number of appearances: 11 appearances

- Avg. Minutes per appearance: 7.2 minutes
 - 0 - 2 minutes: 0 cases
 - 3 - 6 minutes: 5 cases
 - 7 + minutes: 6 cases
- Session Participation:
 - Judge: 11
 - Prosecutor: 1
 - Defense: 1
 - Pretrial Services: 5
- Number of Positive Reports = 11
 - Positive Incentives given: Applause, praise, challenge coin
- Number of Noncompliant Reports = 0
- Sanctions Imposed: N/A

General Observations: The compliance calendar is conducted at a large rectangular table in the well of the courtroom. The judges and POP team members sit on one side of the table and the participants on the other side. The judges, who do not wear robes, lead the session. The overall dynamic is informal with each participant given an opportunity to update the team on their accomplishments and challenges over the last month. At the observed session, all participants were doing relatively well and generally were in compliance with POP requirements. The participant who was seriously out of compliance was in jail. His hearing was held earlier in the day in another courtroom. As was decided at the staffing, the judges announced that one participant had successfully completed the program and would no longer be required to return to court.

Using a semi-structured observation tool developed by researchers at the Center for Court Innovation³, the facilitators rated the judges on factors associated with procedural justice. Both

³ <https://www.courtinnovation.org/areas-of-focus/treatment-courts>

judges received the highest rating on all factors which include regular eye contact with participants, speaking directly to participants rather than through an attorney, asking probing questions, and imparting of instructions or advice. The participants appeared forthcoming, at ease, and satisfied with the process.

IV. AREAS FOR PROGRAM ENHANCEMENT

The Pretrial Opportunity Program team members have developed an extremely impressive treatment court that features strong leadership, a cohesive team, skilled pretrial services staff, and a keen understanding of procedural justice in the courtroom. Since starting the program three years ago, the two judges and pretrial services staff who launched the program have continued to learn from experience and make adjustments to improve outcomes for participants and the community (Standard VIII: Multidisciplinary Team). In addition to staffing meetings, they hold regular (at least quarterly) policy meetings to reflect on program operation and address any challenges (Standard VIII: Multidisciplinary Team). The staffing and compliance calendar reflect a team that is well-informed about the participants and appears genuinely concerned about their well-being. Team members are respectful of one another and appear comfortable sharing information and expressing their opinions (Standard VIII: Multidisciplinary Team). Pretrial services and probation staff deliver timely and reliable information about participant progress (Standard VIII: Multidisciplinary Team). As noted in observations of the compliance calendar, both judges demonstrate all the hallmarks of procedural justice – respect, interest, and concern towards the participants. They, in turn, respond to the judges’ behavior with respect and forthright communication. Notably, most of the areas where this team excels are those that are the most difficult to teach (Standard III: Roles and Responsibilities of the Judge).

Following are three general areas for program enhancement, each with specific components and recommendations. The team should consider them for discussion and determine whether the proposed actions fit within their model. Where relevant, the document will cite the applicable Best Practice Standard. The Standards can be found at: <http://www.nadcp.org/standards/>

1. Procedural Justice

1a. Program Documentation: Participants are not told the legal consequences of successful completion or termination from POP either before or after admission to the program. Currently, pretrial services officers and defense counsel inform the defendants that they will receive favorable consideration at sentencing and that, thus far, all successful participants have received non-custodial sentences. Defense counsel also informs clients of the sentencing ranges that they would face under traditional prosecution. The lack of specificity extends to other policies and procedures that would typically be included in a policies and procedures manual, e.g. legal and clinical eligibility criteria, the assessment process, frequency and type of drug testing, an incentives and sanctions scheme. The Pretrial Opportunity Program’s “Consent Form” lays out much of what a “Participant Handbook” would contain but is not in a format that is easily accessible to reference.

Enhancement 1a: The team may want to memorialize the program’s policies, procedures, and protocols in what is commonly called a “Policies and Procedures Manual”. The manual typically outlines the path of a case and details the components of each stage in the process, including length and requirements of each phase. The manual can also include the program’s incentives and sanctions scheme, or it can stand alone. The incentives and sanctions scheme should not be formulaic but rather offer a range of responses to specific behaviors or incidents of compliance or non-compliance. For participants, knowing, at least generally, which behaviors will prompt which

types of responses reduces the potential for learned helplessness⁴ (Standard IV: Incentives, Sanctions, and Therapeutic Adjustments). The manual can be shared with all stakeholders and with the participants. The manual serves multiple purposes. It provides overall transparency of the program. It helps guide the team when faced with complex and challenging cases, e.g., “Dennis” case. It promotes objective and equitable management of cases. Finally, the process of creating the document(s) is, in and of itself, an opportunity for the team to reflect on their practices and make adjustments to the program.

1b. Specific Goals for Participants: For the most part, each participant’s progress was discussed at the pre-court staffing, but the team did not consistently decide how the judges would respond at the compliance hearing nor did the team set specific actions and goals for each participant. As a result, the judges supported and encouraged the participants in court but did not indicate what they expected of them at their next court appearance.

Enhancement 1b: At the staffing, the team should set a specific plan for each participant that includes exactly what is expected of them over the next month. In cases where the plan is simply to continue what they have already been doing, the team should still specify the activities that they expect the participant to accomplish. At the court hearing, the judges would then lay out those specific expectations and remind them of the consequences of compliance, e.g., phase advancement, or non-compliance, e.g., delay in moving towards program completion. Explanations should not just be given at the time consequences are imposed. Providing the participant with explicit behavioral instructions, the range of sanctions for noncompliance and the

⁴ Based on Martin Seligman’s 1975 classic work in psychology, “learned helplessness” is the theory that when individuals come to understand (or believe) that they have no control over what happens to them, they begin to think, feel, and act as if they are helpless. See Miller, W. R. & M.E.P. Seligman. 1975. “Depression and Learned Helplessness in Man.” *Journal of Abnormal Psychology* 84:228-238.

rewards for achievement can avoid a helplessness syndrome where the participant becomes defiant, despondent, or drops out when consequences are imposed.⁵

1c. Preparation for Program Departure: At staffing, the team decided to announce that one of the participants would be told he had completed the program and no longer needed to report to Pretrial Services or the Court. He had successfully participated in POP for three years and demonstrated that he was prepared to lead a lawful and productive life. He had not been previously informed of this decision. When the participant was informed of this decision in court, he was clearly surprised and possibly unsettled.

Enhancement 1c: The team should engage in a process that prepares a participant for successful program departure. Participants can become overly dependent on the support provided by the judge, pretrial supervision, and the lawyers. Although participants ultimately want to be released from intensive supervision, they frequently require a period of transition where they can test out “living on their own” but retain the support offered by the POP team. This transition period can become even more critical given the length of time that participants spend under this Court’s supervision. Additionally, in the facilitators’ experience, graduation ceremonies are almost universally celebratory events that highlight the participants’ achievements and provide an opportunity for participants to share their success with family and loved ones. Graduation ceremonies are also opportunities for the team to reflect on their positive work, and for current participants to gain motivation as they observe the accomplishments of their peers.

2. Court Supervision

2a. Informality of Court Session: The informality of the court session yields obvious benefits but can act to the detriment of both participants and POP team members. With the virtual elimination

⁵ Douglas B. Marlowe & Kimberly C. Kirby, Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research, 2 Nat’l Drug Ct. Inst. Rev. 1, 1-31 (1999).

of tangible boundaries, participants can lose the perception of the significant leverage that the Court possesses. Research has established that greater legal leverage is associated with increased compliance⁶. Moreover, research consistently has found that the judge is the most influential team member, due in large measure to his or her authority (Standard III: Roles and Responsibilities of the Judge) . To the extent that the informality of the court session diminishes the role of the judge, participant compliance can be negatively impacted. Lastly, the informality is less an issue when participants are doing well. However, when the judge responds to a non-compliant participant, feelings of personal conflict, resentment, and even a sense of betrayal can emerge on the part of the entire participant group as well as the individual participant, because informality has led them to view the judge as a peer and a confidant.

Enhancement 2a: This recommendation is more of a balancing act than a specific prescription. The team may want to discuss this issue and determine if slight changes in the courtroom dynamic could underscore the authority of the judge without losing the very positive trust and respect that the informality creates. There is no “right way” to structure the court hearings. Each team needs to find their own comfort level while being mindful that blurring boundaries to too great an extent can cause problems down the road. Examples of small changes include a more formal call to order, or the judges making opening remarks at each session reminding participants that while the dynamic is informal, this remains a court proceeding.

2b. Frequency of Court Appearances: The court sees participants only once a month during the first three months of participation which would usually be considered too infrequent (Standard III: Roles and Responsibilities of the Judge). However, participants have typically engaged in

⁶ The Multi-site Adult Drug Court Evaluation: Executive Summary, by Rossman S.B., J. Roman, J.M. Zweig, M. Rempel, C. Lindquist. Urban Institute, June 2011. <https://www.ncjrs.gov/pdffiles1/nij/grants/237108.pdf>

treatment and other services for a long period of time before they enter POP. The intense pre-POP regimen probably lessens the importance of frequent court supervision at the start of the program. *Enhancement 2b:* Scheduling more frequent court appearances may not be feasible or necessary. Perhaps, Pretrial Services can conduct more frequent visits by the assigned pretrial services officer during the first three months of POP.

3. Community Supervision and Treatment Strategies

3a. Risk/Need/Responsivity Principles: In the survey, Pretrial Services reports that they use an evidence-based tool, the PTRAs, to determine risk levels for re-arrest and/or non-appearance. They further state that they use the PTRAs and clinical assessment to determine, amongst other factors, the frequency of case management at the outset of program participation. However, they then indicate that they do not vary initial program requirements based on risk levels. Additionally, the PTRAs do not take into account criminogenic risk (i.e. factors that an individual can change through the evidence-based supervision process), but rather, static risk factors. Thus, the instrument does not provide a measure on which to base treatment plans.

Enhancement 3a: This enhancement is probably more one of clarification. The risk principle, confirmed in multi-site studies of drug courts specifically⁷ and offender interventions generally,⁸ holds that intensive interventions are ideally suited for moderate-risk or high-risk offenders. On the other hand, ordering low-risk offenders to such interventions can backfire, increasing their recidivism rates by exposing them to negative peer influences during group treatment sessions; interfering with their employment or school commitments; or unnecessarily labeling them as

⁷ See Rossman, S. B., Roman, J. K., Zweig, J. M., Rempel, M., and Lindquist, C. H., eds. *The Multi-Site Adult Drug Court Evaluation*. Washington, DC: The Urban Institute; and Fielding, J. E., G. Tye, P. Ogawa, I. J. Imam, A. M. Long. 2002. "Los Angeles County Drug Court Programs." *Journal of Substance Abuse Treatment* 23: 217-224.

⁸ For example, see Lowenkamp, C.T., E.J. Latessa, and A.M. Holsinger. 2006. "The Risk Principle in Action: What Have We Learned from 13,676 Offenders and 97 Correctional Programs?" *Crime & Delinquency* 52: 77-92.

“criminal”. POP appropriately admits only moderate to high risk defendants, based on PTRAs score. Pretrial Services staff may want to reassess how they are using identified risk levels to inform supervision and treatment requirements, particularly at the early stages of participation (Standard: I Target Population). The Standards, Appendix A offers a list of assessment tools that have been validated with adult drug court populations, and is a starting point to explore enhancing the assessment process.

It is important to note that this is a universal area of concern in the federal pretrial problem-solving court programs as the Post-Conviction Risk Assessment (PCRA), the criminogenic risk assessment tool, is only available to officers working in Probation, and not accessible to pretrial services officers. Making the PCRA available to Pretrial Services officers is not a recommendation that any one district can implement as it must be made available through the Administrative Office of the U.S. Courts, Probation and Pretrial Services Office.

3b. Team Participation by Treatment Providers: Treatment providers do not appear to be represented at either staffing or the court compliance calendar. Since most, if not all, POP participants have completed their treatment programs by the time they enter POP, treatment participation may be less important than it is in a more traditional treatment court model. Nonetheless, POP participants are in recovery and may benefit from a clinical presence when they relapse or grapple with temptations to use.

Enhancement 3b: The POP team may wish to explore the possibility of securing the presence of treatment at staffing and the compliance calendar, particularly in cases where the participants is actively using or struggling with his or her sobriety (Standard VIII: Multidisciplinary Team).

3c. Medication Assisted Treatment: The survey reports that 48% of POP participants are heroin users and 24% are dependent on prescription opioids. At the site visit, the team indicated that relatively few participants are receiving medication assisted treatment (MAT).

Enhancement 3c: With such a high rate of opioid use disorder among POP participants, the team may wish to explore why MAT is infrequently prescribed by treatment providers. As the team knows, MAT operates to normalize brain chemistry, block the euphoric effects of opioids, relieve physiological cravings, and stabilize body functions without the negative effects of the short-acting drugs of abuse. Dozens of studies have shown that medication-assisted treatment reduces drug use, disease rates, overdose deaths, and criminal activity among opioid addicted persons (Standard V: Substance Abuse Treatment).⁹

3d. Mutual Support Groups: At the court compliance calendar, the court directed at least one participant to find an AA/NA meeting to attend regularly and report back on progress at the next court date.

Enhancement 3d: The POP team is aware of the consensus, by both state and federal courts, that the AA/NA, traditional 12 Step model is fundamentally religious in nature and cannot be mandated by the courts. The court may want to ensure that it makes clear to participants that they may access secular mutual support groups. Numerous alternatives are available, including: Women for

⁹ See The Pew Charitable Trusts, “Fact Sheet: Medication-Assisted Treatment Improves Outcomes for Patients with Opioid Use Disorder” <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/11/medication-assisted-treatment-improves-outcomes-for-patients-with-opioid-use-disorder> (accessed Sept. 5, 2018); U.S. Department of Health & Human Services, Substance Abuse and Mental Health Services Administration, “Medication and Counseling Treatment,” <https://www.samhsa.gov/medication-assisted-treatment/treatment#medications-used-in-mat> (accessed September 5, 2018); U.S. Department of Health & Human Services, National Institute on Drug Abuse, “Effective Treatments for Opioid Addiction,” <https://www.drugabuse.gov/publications/effective-treatments-opioid-addiction/effective-treatments-opioid-addiction> (accessed Sept. 5, 2018).

Sobriety <https://womenforsobriety.org>, Smart Recovery <https://www.smartrecovery.org>, and Secular Organizations for Sobriety <http://www.sossobriety.org>.

V. CONCLUSION

The facilitators appreciate the team's time and energetic participation in all components of the assessment process. The POP program is run by a dedicated and skilled team, and its achievements are due to their commitment and hard work. This report outlines the program's operations based on the survey, the facilitator's observations, and conversations with team members. The report also identifies areas where the team might consider making enhancements. The facilitators remain available to the team should they wish to discuss this report, or if they have any additional thoughts related to the project.