

*Reentry Court
Interagency
Agreement*

*Adopted
June 22, 2011*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
INTERAGENCY AGREEMENT
GOVERNING REENTRY COURT OPERATION**

Mission Statement: In a cooperative effort of the U.S. District Court, U.S. Probation Office, Office of the Federal Public Defender, and Office of the U.S. Attorney, we are committed to providing an evidence-based Reentry Court Program for individuals on federal supervision. This Program shall offer incentives, treatment, and sanctions designed to change Participants' behaviors, encourage rehabilitation, and improve the safety of our communities.

History: The District of Oregon Reentry Court was established in 2005 in order to reduce recidivism among drug-involved offenders. A staggering increase in substance abuse during the previous decade drove the development of a new, treatment-based and judicially involved approach to supervision. Heroin, methamphetamine, and cocaine addiction were prevalent, and methamphetamine abuse reached an epidemic level. In 2004, Oregon treated more people for methamphetamine addiction per capita than any other state in the union.¹

The federal judiciary in Oregon was adversely affected by these alarming trends. Well over 60% of the offenders in the District of Oregon were sentenced for drug offenses, firearms violations, robbery, and violent offenses in 2004.² The majority of these offenders had past histories of substance abuse. This District had one of the highest revocation rates for a district of its caseload size, and there was a very high correlation between substance abuse and violations of supervision. These trends placed a significant burden on the workload of the Court, the U.S. Attorney's office, and the Federal Public Defender's office. Because of the limited sentencing alternatives, revocation was often the only option. Thus, offenders were incarcerated for ongoing drug abuse, a practice that is costly to the community and a burden to the already overcrowded prison system.

Prompted by these circumstances and mindful of the particular demands presented by serial prosecution of drug involved offenders in the District of Oregon, the agencies represented in this Agreement resolved to create a post-conviction Reentry Court (then known as a Drug Court) to provide evidence-based interventions designed to encourage Participants to desist from crime and substance use. The District of Oregon Reentry Court was the second program of its kind in federal system when it began operating in 2005 and has since served as a resource in the development of reentry courts in judicial districts nationwide. Concurrent with the establishment of the District of Oregon Reentry Court and during the

¹ STEVE SUO, Unnecessary Epidemic, THE OREGONIAN (Oct. 3, 2004).

² Federal Probation System, Table E (September 30, 2004).

following five years, a number of federal agencies³ endorsed the use of evidence-based practices in criminal justice interventions as a means to protect public safety and reduce recidivism.⁴

Consistent with the endorsement by the Judicial Conference Committee on Criminal Law of evidence-based practices in offender supervision, the District of Oregon Reentry Court implements evidence-based interventions to promote behavioral change and sobriety in its Participants. The District of Oregon Reentry Court is committed to evaluating the effectiveness of the model and to integrating new, empirically tested principles as they become available.

Key Components to a Successful Drug Court Program: The National Association of Drug Court Professionals has identified ten key components for successful drug courts. The parties agree these elements are transferable to the Reentry Court context for drug-involved Participants, and strive to incorporate them, together with the complement of evidence-based principles endorsed by the Administrative Office of the U.S. Courts Office of Probation and Pretrial Services, into the Reentry Court Program in the District of Oregon.

- A. Drug courts integrate alcohol and other drug treatment services with justice system case processing.
- B. Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- C. Eligible participants are identified early and promptly placed in the drug court program.

³ The use of evidence-based practices to reduce recidivism and promote public safety has been endorsed in each branch of federal government. In the Legislative Branch, the Second Chance Act established mechanisms for directing federal funds to evidence-based programs and for creating a clearinghouse of information about effective interventions. The Second Chance Act of 2007: Community Safety Through Recidivism Prevention, Pub. L. 110-199, 122 Stat. 657, 110th Cong., 2d sess. (codified at 42 U.S.C.A. §§ 3797q to 3797q-6, 3797s to 3797s-6, 3797w-2, 3797dd, 3797dd-1, 17501 to 17504, 17511, 17521, 17531 to 17534, 17541, and 17551 to 17555, amending 18 U.S.C.A. §§ 3621, 3624, 3672, and 4042, 42 U.S.C.A. §§ 3793, 3796ff-1, 3796ff-3, 3797u-2, 3797w, 13702, 13708, and 15606, and enacting provisions set out as notes under 42 U.S.C.A. §§ 3797u-1 and 3797u-2) (Apr. 9, 2008). In the Executive Branch, Attorney General Holder has authorized the participation of AUSAs in reentry courts nationwide. U.S. Department of Justice, Office of the Deputy Attorney General, Memorandum for All United States Attorneys, Guidelines for Participation by United States Attorneys' Offices in Post-Incarceration Reentry Programs, Jan. 19, 2011. In the Judicial Branch, evidence-based principles underlie Post-Conviction Risk Assessment, which is used nationwide, and in reentry courts, which operate in the majority of federal districts. Charles Robinson and Mark Sherman, Federal Reentry Courts in an Evidence-Based Context, Presentation to National Association of Drug Court Professionals Conference, June 12, 2009.

⁴ The types of interventions made available in reentry courts (e.g., cognitive-behavioral treatment, support for obtaining employment and training, sobriety treatment) have been shown to reduce recidivism. See Steve Aos, Marna Miller, and Elizabeth Drake, Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates, p. 9, Ex. 4 Olympia: Washington State Institute for Public Policy (2006).

- D. Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- E. Abstinence is monitored by frequent alcohol and other drug testing.
- F. A coordinated strategy governs drug court responses to participants' compliance.
- G. Ongoing judicial interaction with each drug court participant is essential.
- H. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
- I. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
- J. Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

Reentry Court Program Overview

The District of Oregon Reentry Court Program is voluntary for its Participants. The Program requires 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 year or more, drug-involved Participants will engage in varying levels and modalities of treatment to address issues of substance abuse. All Participants will also engage in efforts to accomplish goals set forth in individual reentry supervision plans. The Program requires attendance by the Team and Participants at regularly scheduled court appearances in order to assess and encourage Participant progress. Failures to abide by the mandates of the Program may result in the Participant being terminated from the Program and returned to traditional supervision.

Participants

The District of Oregon Reentry Court will serve only people who were previously convicted and sentenced in a United States District Court and who are serving a term of supervision. Referrals to Reentry Court come from a variety of sources, and participating agencies, including judges and attorneys, are encouraged to refer appropriate candidates for consideration. Admission is based on number of factors, including but not limited to a candidate's history and characteristics, the extent of his or her need for treatment and services, Reentry Court Team members' knowledge of the candidate from previous interactions, the subjective opinions of Reentry Court Team members concerning the candidate's suitability, information from those who refer the candidate to the Program, as well as a participant's risk assessment score. In most cases, candidates for Reentry Court will be supervisees whom the Post-Conviction Risk Assessment evaluation has categorized as moderate (10-12) or high (13+) risk, though supervisees with lower risk scores may be admitted when the totality of considerations indicate that the supervisee would benefit fully from the Program. Although most eligible supervisees are likely to be drug-involved, the Program is open to supervisees who do not have drug treatment needs. Supervisees convicted of sex crimes (*e.g.*, 18 U.S.C. §§ 2241-44) and individuals under the jurisdiction of the Parole Commission are not eligible for Reentry Court. Supervisees with severe mental illness may be ineligible where treatment needs preclude participation in Reentry Court.

Reentry Court Contract

Each Participant's involvement in the Reentry Court Program will be confirmed in a written contract to be signed by the Participant, representatives from the Probation Office, United States Attorneys Office, the Federal Defenders Office, and the Reentry Court Judge. The contract, as set forth in Attachment 1, articulates expectations and obligations of all Participants and parties to this Reentry Court Program.

Reentry Court Team Members

The Role of the Court

The active involvement of the Court⁵ with Participants in the Reentry Court Program is essential. When Participants excel in the Program, the Court will provide encouragement. When Participants fail to comply with the Reentry Court Program or violate their terms 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. When possible, sanctions should be swift, proportional, and progressive in terms of severity. When the parties determine that the Participant has exhausted his or 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 then will return to traditional supervision.

The District of Oregon may establish more than one Reentry Court group. All Participants in a single Reentry Court group will appear at least monthly before the same federal judge. To ensure continuity, a single Probation Officer, U.S. Attorney, and Federal Public Defender will be involved in a Reentry Court Team, and each will appear for the Reentry Court Docket.

Probation Officer Duties

The reentry court probation officer (PO) is charged with making appropriate treatment referrals with contract and appropriate noncontract treatment agencies based on the needs of the individual. In preparation for Reentry Court appearances, the PO will prepare reports in order to inform the Court of the

⁵ In determining how to handle the judicial aspects of the Reentry Court, the parties agree that it would be most advantageous to have a limited number of judges involved in a single reentry court participant group. While we do not believe it is essential to have only one judge, we do believe it is essential for continuity in the judicial role. With respect to the judicial role, pursuant to 28 U.S.C. § 636 and 18 U.S.C. §§ 3401(h), 3583(e), supervised release revocation – and therefore Reentry Court function – can be delegated to a magistrate judge with the consent of the parties. *United States v. Sanchez-Sanchez*, 333 F.3d 1065 (9th Cir. 2003). And while a defendant can not similarly consent to a magistrate conducting a probation violation hearing, *United States v. Colacurcio*, 84 F.3d 326, 329 (9th Cir. 1996) (magistrate has authority to conduct a probation revocation proceeding only if defendant's conviction was for a misdemeanor, defendant consented to trial before a magistrate, and defendant was initially sentenced by a magistrate judge), since the proceedings in Reentry Court are not a revocation, but rather a form of intensive supervision, a Magistrate Judge may similarly preside over probationers involved in Reentry Court so long as any order or modification of sentence is in the form of Findings and Recommendations and approved by an Article III judge.

Participants' struggles and achievements. In order to expedite the reporting process, avoid overworking the PO, and create continuity in reporting, a form called "Reentry Court Progress Report" will be utilized. See Attachment 2. The PO will work with the treatment providers to ensure effective communication between the treatment providers and the Reentry Court. In the Reentry Court Program, the Federal Public Defenders Office will be permitted to have access to the treatment provider and treatment records.

When serious problems in supervision arise, the PO will work with the Assistant Federal Public Defender, the Assistant United States Attorney, and treatment provider in order to intervene immediately and address issues with the Participant. The team efforts will be delineated in the 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 United States Attorney, and the Assistant Federal Public 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 treatment providers and prepare the Reentry Court Progress Reports with information as current as possible.

The PO's official file shall contain a separate section for Reentry Court Participants. In this clearly identified section, all Reentry Court documents will be retained, including the Contract for Participation, progress reports, treatment records, and 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 decisions about program planning both when the Participant is succeeding and when he or she is struggling.

Assistant Federal Public Defender Duties

The Assistant Federal Public Defender (AFPD) is available to assist the PO in encouraging Program Participants to succeed in treatment, discourage bad decisions and disinterest in the Reentry Court Program at their first sign, and to participate in Reentry Court decisions about proper punishments for Participants struggling with the Program's requirements. The AFPD role is less adversarial than in non-reentry court supervision cases.

Treatment Provider Duties

A Treatment Provider affiliated with the Reentry Court Program who is familiar with Participants' treatment needs and progress attends Reentry Court hearings. As a condition of participation in the Reentry Court Program, Participants will have waived confidentiality concerning communications between treatment providers and the other members of the Reentry Court Team. See Attachment 1 and attached Authorizations to Release Information. The Treatment Provider consults with the Reentry Court Probation Officer concerning participants' progress between scheduled hearings to help inform the PO's "Reentry Court Progress Report." At the hearing, the Treatment Provider assists the rest of the Reentry Court Team by adding encouragement and by participating in Team decisions about treatment strategies and appropriate sanctions.

Reentry Court Proceedings

Incentives

Consistent with evidence-based principles endorsed by the Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, the Reentry Court Team employs incentives to encourage positive behavioral change in Participants. The reward for successful completion of the Reentry Court Program is a one-year reduction in the term of supervision. Additional incentives are awarded on an as-deserved basis to reward compliant behavior, honesty, progress in a Participant's reentry plan, successes in recovery, and development of risk-management skills.

Types of incentives include, but are not limited to:

- specific statements from Reentry Court Team members in the presence of other Participants that acknowledge a problem that the Participant has confronted and demonstrate praise for choosing a pro-social or sobriety-supporting course of action;
- giving applause and congratulations when a Participant has remained compliant and achieved treatment and other reentry goals between Reentry Court hearings;
- issuing small rewards for periods of compliance and sobriety;
- offering a handshake when an accomplishment has been achieved;
- encouraging praise from other Participants;
- acknowledging success upon completion of a sanction or after a treatment setback; and
- decreasing frequency of reporting upon sustained demonstration of compliance and sobriety.

As noted above, Participants who successfully complete the Reentry Court Program earn a one-year reduction in their term of supervision. This one year is vested at the time the Participant completes the Program. Understanding that some Participants may have well over one year left on their supervision, those Participants must still adequately comply with all terms of supervision.

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 18 U.S.C. § 3583(e)(1).

The Reentry Court Graduation will take place at the Participant's final, regularly scheduled court appearance. In addition to Participants, family members, sponsors, and friends are invited to attend the Graduation. The Court will present graduating Participants with a Certificate of Completion, and other articles of recognition as determined by the Reentry Court Team.

Waivers and Hearings

To effectuate the intent of the Reentry Court Program to create a non-adversarial system and provide support to the Participants, all parties agree conduct which would otherwise constitute a supervision violation will be handled in an informal manner. Except as noted below, 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 Progress Report to the Court, or a status report to the Court filed on an expedited basis if the circumstances so warrant. Any "sanction" on such violation, short of a term of incarceration, will be handled through a court directive issued at the Reentry Court session in a non-adversarial setting. Any Team member who becomes aware of a matter requiring immediate action (except for matters involving attorney-client privilege) between scheduled Reentry Court hearings shall collaborate with the rest of the Team regarding any interim measures that should be taken. When the Participant, the PO, the AUSA, and the AFPD agree to a particular sanction or treatment intervention, the matter can 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 insure that some level of sanction is available for every violation. Factors that will influence the type of sanction employed 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:

- Participant receives a judicial reprimand;
- Participant is ordered to increase the frequency of support group attendance;
- Participant is ordered to research a topic related to his or her recovery or reentry plan and present his or her findings to the Reentry Court Judge, or at a hearing;
- Participant is ordered to provide an explanation for his/her noncompliant behavior, either in writing or some other means (such as why Participant failed to attend treatment or tested positive, or about the thing that most often causes Participant to relapse and why, or about what Participant will do differently this time so that Participant will not fail again, or about someone Participant admires and why);
- Participant is ordered to participate in community service (the site of which will be left to the discretion of the Court and hopefully the Court will discuss with the Participant his or her interests and select a community service activity that they may find they actually enjoy, thus encouraging service not as a sanction, but as a fulfilling activity);
- Participant is ordered to comply with curfew restrictions or home confinement with electronic monitoring;
- Participant is ordered to participate in a day reporting program;
- Participant is ordered to complete a term at a residential reentry center;
- Participant's term of reentry court is extended;
- Participant is ordered to spend up to 7 days in jail (see 18 U.S.C. §§ 3563(c), 3583(e));
- Participant is terminated from the Program with or without filing of a formal violation.

These sanctions are designed to take a creative approach to altering behavior, while cutting the costs associated with first resorting to a traditional “days in jail” sanction. The sanctions must be completed by the next court appearance unless the Court allows more time. Assignments are turned in to the PO. If appropriate, all sanctions may be ordered more than once during the course of the Program.

Sanctions of up to seven (7) days’ incarceration per finding of noncompliant behavior will be handled in the same, nontraditional manner. A Participant will, however, have the option of requesting termination from the Reentry Court Program and having the matter handled consistent with the dictates of 18 U.S.C. § 3583 if he or she chooses. The Court will enter the appropriate order.

While the perceived need for a sanction of more than 7 days will ordinarily result in termination from the Reentry Court Program, sanctions of more than 7 days’ incarceration⁶ may be imposed by the Reentry Court Judge in a non-adversarial setting with the understanding that the Participant will continue participating in the Reentry Court Program with Participant’s written waiver and the consent of all parties.

Adversarial Hearings

Recognizing that circumstances will arise in which a Participant is alleged to have violated a term of supervision and the Participant believes that he or she is innocent in fact 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. Such hearings are, however, to be limited to the question of guilt/innocence in the “I didn’t do it” sense, rather than an opportunity to offer an explanation for admitted conduct.

Termination Procedures

The Reentry Court Participant may be terminated as successful (at graduation) or unsuccessful.

1. **Successful Termination (Graduation):** Participants who complete the Program will be given a Certificate of Completion, which will close the Reentry Court section of his or her supervision file. The Participant will then be transferred to traditional supervision and to the caseload of a non-Reentry Court Probation Officer. In addition, a supervisee facing a violation hearing who is referred to Reentry Court may obtain a suspension of the disposition of the violation during participation in the program, and upon successful completion of the Reentry Court Program, the violation is dismissed.
2. **Unsuccessful Termination:** In recognition of the reality of relapse as a part of recovery from drug or alcohol addiction, every effort should be made to continue to work with Program Participants. All parties realize, however, that 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:

⁶ This 7-day limit will not apply to orders of participation within a program of community corrections and does not preclude the ability of the PO to place a Participant in a residential reentry center for transitional purposes.

- i) Termination With Return to Regular Supervision – Termination may result from a Participant revoking his interest in the program, or by a joint decision that although the Participant has not committed a serious violation of the supervision or Program rules, the program is not working. This type of termination from Reentry Court occurs simply with a transfer to a supervision caseload without a violation charge or a hearing.

- ii) 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 terminate 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. A chronic pattern of refusal to cooperate with the supervising Probation Officer;
 - 4. A chronic pattern of refusal to cooperate with a treatment provider;
 - 5. Repeated refusal to cooperate with the Court’s sanction or participate in a meaningful manner.

If the Participant was referred to Reentry Court while supervision violation allegations were pending with the understanding that such allegations would be dismissed upon successful completion of the Reentry Court Program, and the Participant failed to complete the Program, the Participant will be referred for proceedings on the supervision violation allegations at termination.

As set forth in this section, upon termination from the Reentry Court Program the Probation Office may file a formal violation charge. It will be the policy of the Probation Office not to allege as a formal violation conduct that occurred during the Reentry Court Program and which was previously addressed. Termination from Reentry Court after *new* violations have been alleged does not mean those violations have been “previously addressed,” and thus formal violations may proceed as alleged. After the supervisee is outside 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 Reentry Court.

By signing below, the following agency representatives approve the foregoing Interagency Agreement Governing Reentry Court Operation:

Ann Aiken 20th day of June, 2011.
Ann Aiken
Chief Judge, United States District Court for the District of Oregon

Eric Suing 21st day of June, 2011.
Eric Suing
Chief Probation Officer, District of Oregon

Stephen Wax 22nd day of June, 2011.
Stephen Wax
Federal Public Defender, District of Oregon

Dwight Holton 23rd day of June, 2011.
Dwight Holton
Acting United States Attorney, District of Oregon