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RORY L. PERRY II, CLERK
U.S. District Court
Southern District of West Virginia

SOUTHERN DISTRICT OF WEST VIRGINIA
ALTERNATIVE TREATMENT COURT (ATC)

MEMORANDUM OF UNDERSTANDING

Program Overview:

This memorandum establishes an Alternative Treatment Court (ATC) in the United States District Court for the Southern District of West Virginia for certain individuals who have been charged with a violation of federal law. ATC is a collaborative partnership between the U.S. District Court, the U.S. Probation Office, the U.S. Attorney's Office, the Federal Public Defender's Office, and various community-based treatment providers and organizations. The ATC will initially be offered in the Charleston Division 2 (Headquarters) within the Southern District of West Virginia. However, participants in the other divisions may also be selected to participate in the ATC. The ATC Team will consist of one representative from the U.S. District Court, U.S. Probation Office, U.S. Attorney's Office, and the Federal Public Defender's Office, and will be responsible for ongoing engagement with each other. They will also provide reinforcement and accountability in a non-adversarial manner that protects participants' rights.

Mission Statement:

The mission of the ATC is to provide an alternative to conviction or imprisonment and to provide a blend of treatment that focuses on drug and mental health treatment, alternative sanctions to effectively address offender behavior, rehabilitation, and education and job skills training. Based on the results from other federal and state judicial systems, we believe the ATC has the potential to improve participation compliance with conditions of bond, reduce recidivism, help make society safer from crime, and reduce costs for the criminal justice system in terms of investigation, prosecution, and incarceration.

Legal Authority:

Title 18 U.S.C. § 3154 gives pretrial services officers the authority to provide for the custody, care, counseling, treatment, or other necessary social services to defendants released under pretrial supervision. The objective of support services for defendants on pretrial release is to ensure the safety of the community, and to provide defendants with the structure and stability necessary to reasonably assure their appearance in court as required. Treatment and other supportive services provide the judge with alternatives to pretrial and presentence detention for those defendants who require close supervision and behavior monitoring.

Criteria for Participating in the ATC:

To be considered for acceptance into the ATC, potential participants must have been charged by the U.S. Attorney's Office in the Southern District of West Virginia with a federal crime(s) carrying a maximum sentence that exceeds one year in prison. Potential participants must be individuals whose criminal conduct is believed to be motivated by substance abuse issues,

mental health, or other underlying causes that appear to be amenable to treatment through programs available as part of the ATC.

Potential participants must be in good standing with the U.S. Probation Office. Individuals generally excluded from participation in the ATC include those:

- With a history of violent offenses;
- Subject to removal by immigration authorities;
- Involved in child exploitation offense(s);
- Whose instant offense(s) involves a more than minor role in either large-scale fraud or large-scale narcotics distribution;
- Whose instant offense(s) involved either an act of violence against another person or threat of violence against another person; or
- Whose instant offense(s) has a statutory mandatory minimum sentence and is not safety valve eligible.

Potential participants who are being considered to participate in the ATC will be required to enter a guilty plea pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure to one or more of the offenses with which they have been charged before entering the ATC.

Participants will participate in the ATC for at least 12 months, and generally no more than 18 months, but may be required to participate for up to 24 months. The program has two tracks. Participants who are admitted to the ATC as Track One participants (dismissal with prejudice after successful completion) or Track Two participants (placed on a term of probation). Once a participant enters the ATC, he/she will not be permitted to move between tracks (that is from Track One to Track Two). The decision whether to admit a participant to Track One or Track Two is made at the time of their admission into the ATC and is based on factors including, but not limited to, the nature of the underlying offense(s), the amount of controlled substances involved if a drug offense(s), the applicant's role in the charged offense(s), record of participation in other treatment programs, and the potential participant's prior criminal history.

Selection of Participants:

ATC participants will be selected as follows:

Initial identification of prospective participants will be done by the U.S. Probation Office, the U.S. Attorney's Office, and the attorney representing the prospective participant. If the U.S. Probation Office, U.S. Attorney's Office, and the prospective participant's attorney agree, a prospective participant may be referred to the Originating District Judge for possible selection as an ATC participant.

Initial selection of prospective participants referred for consideration will be done by the following members of the ATC Team: U.S. Probation Officer, Assistant U.S. Attorney, Assistant Federal Public Defender, or their designated substitutes.

Once the ATC Team selects a prospective participant, the Assistant U.S. Attorney will approach the attorney representing the prospective participant to obtain an executed plea agreement. Once an executed plea agreement is obtained, the United States will file a motion to set a plea hearing. After the plea hearing, the ATC Team will request the Originating District Judge to refer the participant to the ATC. A form requesting consideration in the ATC is attached as **Exhibit 1**. If the Originating District Judge approves the referral, the Originating District Judge will execute an order referring the participant's case to the ATC Team. A proposed order is attached as **Exhibit 2.**

Once accepted into the ATC, participants will meet on a monthly basis with the following members of the ATC Team: U.S. Magistrate Judge, U.S. Probation Officer, Assistant U.S. Attorney, Assistant Federal Public Defender, or their designated substitute, and community service providers. The participant will be required to report to the U.S. Probation Office.

Responsibilities and Expectations of Participating Parties:

All participating parties agree to the terms set forth in this Memorandum of Understanding and to the basic operating process set forth in the ATC Contract. All participating parties further agree to assist in the ongoing development and administration of the ATC.

All participating parties agree to make their best efforts to enlist and retain the support of community service providers who will be essential to expanding opportunities for participants in the ATC.

Each participating party agrees to respect other parties' roles and responsibilities within the collaborative team process for engaging each participant in the ATC. The parties' understanding of each other's principal roles with respect to the ATC are as follows:

U.S. District Court:

Approve participants for the ATC in accordance with the criteria set forth herein and provided in the ATC Contract.

Provide judicial officers to oversee ATC Team meetings, to conduct sessions with participants, and to encourage collaboration among all participating parties.

Participate in the design and continued development of the ATC process and outcome evaluations.

Participate in the development and review of operational standards and policies for the ATC in conjunction with other participating parties.

U.S. Probation Office:

Identify and recommend participants for the ATC in accordance with the criteria set forth herein and provided in the ATC Contract.

Provide probation officers to actively supervise ATC participants and to regularly report on participant progress to the ATC Team. Will also be responsible for making appropriate treatment referrals based on the needs of the individual participants. The U.S. Probation Officer(s) assigned to the ATC Team will maintain frequent contact with each participant, his or her family members or significant others, and the treatment provider. For each participant, the U.S. Probation Office will provide an ATC progress report prior to each ATC meeting that summarizes the participant's attendance, progress in treatment, and ATC goals. These progress reports need not be formalized and may be provided by phone and/or email communications. These progress reports are intended only for use in planning and conducting ATC appearances. Criminal record checks will be conducted regularly, and participants will be tested frequently for illicit drugs and alcohol use. The U.S. Probation Officer(s) assigned to the ATC Team will provide a formal written report to all ATC Team members outlining any violations of the ATC.

Participate in the design and development of operational standards and policies for the ATC in conjunction with other participating parties.

Maintain records for purposes of tracking all participants' progress and for overall measurement and evaluation of the ATC activities.

U.S. Attorney's Office:

Identify and recommend the selection of participants for the ATC in accordance with the criteria set forth herein and in the ATC Contract.

Provide one representative to attend all ATC meetings and sessions and to participate as a full team member.

Participate in the development and review of operational standards and policies for the ATC in conjunction with other participating parties.

Federal Public Defender:

Identify and recommend the selection of participants for the ATC in accordance with the criteria set forth herein and in the ATC Contract.

Provide one representative to attend all ATC meetings and sessions and to participate as a full team member.

Provide information on the nature and purpose of the ATC to potential participants and help ensure that an individual participant's rights are protected.

It is recognized that the involvement of the Federal Public Defender's Office (FPDO) in the ATC does not create an attorney-client relationship with ATC participants, and that FPDO employees may provide general advice and counsel to a participant both publicly and confidentially notwithstanding the absence of an attorney-client relationship. If the participant is unable to complete the ATC successfully and there is a subsequent court proceeding, the

participant's appointed or retained counsel will continue to represent the participant in those proceedings.

Act as a liaison between the ATC Team and participants' counsel of record.

Participate in the development and review of operational standards and policies for the ATC in conjunction with other participating parties.

Treatment Provider Liaison:

Where possible, the treatment provider liaisons will provide input on appropriate evidence-based treatment modalities and provide screening assessment, diagnosis, individual treatment plans, and referrals for additional treatment services as needed.

Duration:

This Memorandum of Understanding shall remain effective for the duration of the ATC.

Amendment:

This Memorandum of Understanding may be amended upon written agreement by all parties. This document, in its entirety, shall be reviewed annually.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed by their duly authorized officers.

By:_____ Date 8/26/21
Thomas E. Johnston, Chief U.S. District Judge

By:_____ Date 8/31/2021
Omar J. Aboulhosn, U.S. Magistrate Judge

By:_____ Date 8/25/2021
Troy A. Lanham, Chief U.S. Probation Officer

By:_____ Date 08/25/2021
Lisa G. Johnston, Acting U.S. Attorney

By:_____ Date 8/25/2021
Wesley P. Page, Federal Public Defender

Exhibit 1

ATC REFERRAL FORM

(To be completed for every Defendant being referred for consideration)

Defendant's Name: _____

Case Number: _____

District Judge: _____

Prosecuting Attorney: _____

Defense Attorney: _____

Charge(s): _____

Date of Next Scheduled Court Appearance: _____

Type of Hearing Scheduled: _____

Date: _____

_____
Signature of Referring Party

Printed Name and Contact Information of Referring Party:

_____

_____

_____

Phone: _____

Email: _____

Please email completed Referral Form and Questionnaire to

WVSD_ATC@wvsd.uscourts.gov

DEFENDANT QUESTIONNAIRE

Why should you be accepted into this ATC program?_____

_____

_____

_____

_____

_____

If admitted into ATC, how do you envision the program assisting you in improving aspects of your life?_____

_____

_____

_____

_____

_____

What obstacles or challenges do you anticipate in improving these aspects of your life? _____

_____

_____

_____

_____

_____

Please email completed Referral Form and Questionnaire to

WVSD_ATC@wvsd.uscourts.gov

Exhibit 2

The Court reserved acceptance of the plea agreement until the Court is informed that the defendant has successfully completed the requirements for the Alternative Treatment Court (ATC) or has had an opportunity to review the defendant's presentence report.

The Court directed the Clerk to refer defendant's case to the Alternative Treatment Court (ATC) for all future purposes, except the Court directed the probation officer to notify the Court and counsel once _____ successfully completes the ATC. The Court will then proceed to entertain both a motion to withdraw defendant's plea and dismiss the Indictment against him/her (Track One) or set the matter for sentencing at which time defendant will be sentenced to a term of probation (Track Two). If _____ does not successfully complete the requirements of the ATC, the probation officer shall thus inform the Court and counsel, and the United States will proceed to schedule a sentencing hearing with the Court. At that time, the Court will direct that a presentence report be prepared.

The defendant was released on a previously executed bond or a $10,000 unsecured bond if previously detained with the standard conditions and with the additional ATC conditions imposed. The Court further found that if there is a conflict between the ATC conditions and the bond conditions, the ATC conditions will prevail.