

## **Memorandum of Understanding**

The U.S. District Court for the District of Rhode Island (“USDRI”), by and through Chief Judge William E. Smith, and the Rhode Island Superior Court (“Superior Court”), by and through Presiding Justice Alice B. Gibney (collectively referred to as the “Courts”), hereby agree as follows:

1. The USDRI has established a Deferred Sentencing Program (“DSP” or “Program”) to enable certain defendants (typically youthful and nonviolent) to avoid prison and earn an alternative non-prison sentence by participation in an intensive, highly-supervised program for a defined period of time. *See* Exhibit A.
2. There are certain defendants who may qualify for the Program, by virtue of their federal charge, but who also have a related state court proceeding. (For example, a defendant’s federal charge may constitute a probation violation on a prior state conviction, or a defendant may have an outstanding warrant on a prior state charge.)
3. The Courts agree that if a defendant is considered a good candidate for the DSP, it would be counterproductive for him or her to complete the Program and receive the agreed-to reduced sentence in federal court, only to then be prosecuted and potentially incarcerated on the pending state charge. Such an outcome would frustrate the primary goal of the Program, which is to assist defendants in obtaining employment in the community, as well as mental health and substance abuse treatment, so that they have the tools to be productive and law-abiding members of the community.
4. Therefore, in order to avoid such a situation, the Courts have agreed to employ a cooperative approach to potential DSP-eligible defendants with involvement in both the state and federal trial courts, as follows:

- a. When a federal defendant is identified as a potential candidate for the DSP and has a state charge or matter that could affect his or her participation, the presiding federal judge (currently, Chief Judge William E. Smith or Judge John J. McConnell) will notify one of the state trial justices assigned by Presiding Justice Gibney to handle these cases (currently, Associate Justice Luis M. Matos and Associate Justice Kristin E. Rodgers).
- b. The defendant's state defense attorney will be advised to file a Miscellaneous Petition before one of the designated Superior Court justices, which will bring the matter before the Superior Court. The justice will then confer with state and/or federal counsel for the defendant and the state and/or federal prosecutor(s). During this meeting, the parties will have the opportunity to present information to the justice bearing on whether the defendant would be a good candidate for participation in the Program.
- c. Once the Superior Court justice has heard from the interested parties in Superior Court, the judges and justices of both Courts (*viz.*, Chief Judge Smith and Judge McConnell from USDRI and Associate Justices Matos and Rodgers from the Superior Court, or their respective successors) will confer and jointly determine whether the defendant should be admitted into the DSP.
- d. If the Courts agree to admit the defendant into the DSP, both Courts will both agree in writing to impose a non-prison (or other alternative) sentence upon the defendant's successful completion of the Program; it is anticipated that the judges and justices may, on occasion, sit jointly to facilitate this arrangement.

- e. The Courts will share such information as necessary to carry out their arrangement, which will include, but is not limited to, the following:
- i. The Presentence Investigation Report prepared by U.S. Probation for the District of Rhode Island (“U.S. Probation”) will be shared with the Superior Court justices before the Courts collectively consider a defendant for the DSP; and
  - ii. USDRI will share U.S. Probation’s periodic reviews with the Superior Court justices, including any information about violations of the terms of the DSP, regardless of whether they are technical or major violations.
- f. The Courts may modify this MOU from time to time as necessary to accomplish the goals of the DSP and the needs of the respective Courts.

DATED: December 15, 2016

/s/ William E. Smith  
William E. Smith  
Chief Judge  
U.S. District Court for the District of Rhode Island

/s/ Alice B. Gibney  
Alice B. Gibney  
Presiding Justice  
Rhode Island Superior Court

## **Deferred Sentencing Program of the United States District Court for the District of Rhode Island**

The United States District Court for the District of Rhode Island has established a Deferred Sentencing Program (the “Program”). The Program is designed to offer an alternative to traditional conviction, sentencing, and incarceration by providing eligible defendants with a framework of supervision and services in lieu of incarceration to help them make informed decisions, engage in positive behavior, and reduce the risk of recidivism.

Participation in the Deferred Sentencing Program is at the discretion of the presiding judge. The Court will place defendants in the program on a case-by-case basis after a careful analysis to determine suitability for the program.

The Court has intentionally left the eligibility criteria flexible. There are no absolute requirements for entry into the Program. The typical candidate, however, will possess the following qualities: little or no prior criminal history; supportive family, strong community connections, or other positive influences; and motivated to effect change in his or her life.

The Court will adhere to the following process in deciding whether a defendant will be accepted into the Program:

- After a defendant enters a guilty plea, U.S. Probation (“Probation”) prepares and files the First Disclosure of the Presentence Investigation Report (PSR).
- Within 14 days of the First Disclosure of the PSR filing, counsel for the defendant or the government may request that the presiding judge consider a defendant for the Program. This request shall be set forth in a letter to the presiding judge, with a copy of the letter provided to the other party and Probation. Any objection to the First Disclosure of the PSR should be filed concurrently with this request, unless counsel has received leave for an extension from the Court. Submitting a request for consideration in the Program does not, in itself, toll time to respond to the First Disclosure.

- While preparing the First Disclosure of the PSR, Probation will also look at each defendant to determine whether he or she is a good candidate for the Program. In appropriate cases, Probation will submit a confidential memorandum to the presiding judge recommending a defendant for the Program. The parties will be informed if such a recommendation is made.
- After receiving a request or recommendation that the Court consider a defendant for the Deferred Sentencing Program, the presiding judge shall schedule a chambers conference. The government, counsel for the defendant, and Probation will be invited to the conference. At the conference, the parties and Probation will have the opportunity to advocate for or against the defendant's acceptance into the program and to provide the presiding judge with any and all information they deem relevant to the Court's decision.
- After the conference, the presiding judge will schedule a hearing to meet with the defendant, with all counsel and Probation present, to discuss the parameters of the Program and his or her motivation to participate.
- The Court may confer with the parties and Probation, and hear directly from the defendant, before accepting a defendant into the Deferred Sentencing Program. The Court may deny a defendant at any point in this process.
- If the presiding judge chooses to accept the defendant, a deferred sentencing hearing will be scheduled as soon as practicable. At this hearing, the Court shall begin the sentencing hearing; however, rather than sentencing the defendant, the Court will establish the Sentencing Guidelines range and thereafter continue the sentencing hearing for a specified period (the duration of the defendant's time in the program, typically one year).
- If a request or recommendation for a defendant to participate in the Deferred Sentencing Program is denied or not adopted, the Court will notify the parties orally or in writing as soon as practicable. U.S. Probation will then consider any objections to the First Disclosure of the PSR in the normal course and file the Final Disclosure of the PSR. Sentencing will take place in the normal course.

- The above process is advisory. At any time before a defendant is sentenced, the presiding judge also may choose, sua sponte, to consider a defendant for the Program. Regardless of the timing, however, both parties and Probation will be afforded the opportunity to provide information to the presiding judge, as well as to advocate for or against inclusion in the Program.

The presiding judge may accept a defendant into the Deferred Sentencing Program for a period ranging from six months to two years. Sentencing is postponed until successful completion of the program or such time as a defendant demonstrates an inability or unwillingness to complete the program.

During this period, a team of individuals consisting of the presiding judges, prosecutor, defense counsel, and probation officers will participate in monthly meetings with the program participants to monitor conduct and to provide direction, advice, and counseling. Generally, the defendant will begin the Program on home confinement and with a GPS tracking device. As a defendant demonstrates compliance with the conditions of release, the Court will lift restrictions. The Court may impose sanctions for failure to comply with the conditions of release. The defendant will also meet with his or her probation officer on a weekly basis. This collaborative process of supervision provides a greater level of support and understanding of the personal factors that affect a particular defendant. Upon successful completion of the Deferred Sentencing Program, the presiding judge will impose a reduced, typically non-custodial, sentence.