

Criminal Defendants Can DREAM in Western Washington

“Those of us who have the incredible responsibility of imposing a sentence on another human being will tell you that it is the most difficult charge we perform.”



Committee Chair Ricardo S. Martinez is a district judge in Seattle

For several years, there was a misconception that defendants in the federal courts face charges too serious to consider alternatives to incarceration. In a February 2013 order, District Judge John Gleeson of the Eastern District of New York corrects that misconception:

“[A]nyone who believes that the federal system deals only with ‘the most serious drug and violent’ offenders isn’t familiar with the federal docket. The makeup of the federal prison population bears this out. In 2011 only 7.6 percent of federal prisoners were incarcerated for violent crimes. The bulk of the federal prison population is made up of drug offenders; in 2011, about half of all federal prisoners were incarcerated for drug offenses. And they are mainly nonviolent, low level offenders. In 2011, roughly 84 percent of drug defendants had no weapon involved in the offense, and more than half of drug defendants or 53 percent had a criminal history category

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Eastern District of California Hosts Settlement Week

Early in 2013, Chief Judge Morrison C. England, Jr., of the United States District Court for the Eastern District of California, issued a notice to civil litigants that their cases were eligible to participate in a settlement week of June 10-14, 2013. A settlement week changes the focus of the courthouse from facilitating litigation to facilitating settlement. For one week, the courtrooms and every available space are dedicated to resolution of pending cases through a combination of mediation sessions and settlement conferences.

The court’s search for settlement week cases began in earnest in March 2013 when ADR Program Director Sujean Park contacted counsel in civil cases more than three years old. An email sent through the electronic case management system provided information about settlement week and invited

parties to contact Ms. Park if they were interested in participating. Ms. Park also notified Senior Assistant Attorney General Jon Wolff, in the Correctional Law Section, that settlement slots were available. Mr. Wolff asked each deputy attorney general in his unit to find at least one case to include in settlement week. Chambers staff for the district and magistrate judges also identified potential cases and issued minute orders, inviting parties to participate.

Altogether, 40 cases were set for mediation sessions and settlement conferences during the Eastern District’s Settlement Week. The settlement sessions were conducted by district judges, magistrate judges, and volunteer mediators from the court’s Voluntary Dispute Resolution Program, or VDRP, panel.

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Courthouses in Fresno and Sacramento were filled with parties engaged in settling cases, and no court funds were expended during the week-long event.

Number of Cases Mediated and Settlement Rates

Of the 40 cases scheduled for settlement week, 27 were prisoner civil rights cases and 13 were regular civil cases. The prisoner settlement conferences were hosted by a combination of nine magistrate judges and one district judge. The settlement rate for the prisoner cases was 58 percent, with one case continued for a second settlement session.

Seven volunteer mediators from the Eastern District VDRP panel conducted one mediation session each, and one district judge, along with four magistrate judges held settlement conferences in the other six cases. Four of the civil cases settled completely, and one resulted in a partial settlement. Seven cases did not settle, resulting in a 38 percent settlement rate.

One settlement week success story involved a prisoner's inadequate medical care case. After receiving the notice of settlement week, the attorneys representing the California Department of Corrections and Rehabilitation, or CDCR, requested that the prisoner's case be set for a settlement conference. The parties were still engaged in discovery in the medical case, and they discovered a second case filed by the same prisoner. The cases were referred to District Judge Kimberly J. Mueller who appointed pro bono counsel for the prisoner for the limited purpose of preparing for and attending the settlement conference. During the settlement conference, Judge Mueller became aware that the prisoner had filed a third case, alleging the use of excessive force. There was a summary judgment motion pending in this third case, and the parties agreed to include it in the settlement conference. Judge Mueller was able to contact the senior assistant attorney general in the Correctional Law Section who obtained settlement authority for the third case. The attorneys, parties, and CDCR officials were able to successfully resolve three cases during a half-day settlement conference with Judge Mueller.

In order to recognize the pro bono work of the volunteer mediators and limited purpose attorneys for the prisoners, the Eastern District of California invited them to attend the Court's Night to Honor Service held annually in Sacramento and Fresno. Their names were added to a roster of pro bono volunteers in the Eastern District.

Benefits of Settlement Week

Magistrate Judge Kendall J. Newman, chair of the Eastern District's ADR Committee, said that although the judges and volunteer mediators conduct settlement proceedings throughout the year, the district court found a concentrated settlement week to be very beneficial. The participating judges were able to block off a full or partial week on their calendars to engage in settlement conferences. Because the Eastern District operates under an overwhelming caseload, the judges are not always able to conduct in-person status conferences in civil cases during which ADR options can be fully explored. Therefore, settlement week focused the judges' efforts on selecting cases which could benefit from a settlement conference.

Mr. Wolff, the senior assistant attorney general of the Correctional Law Section, also appreciated the opportunity for the lawyers in his section to review their cases and select at least one for a settlement conference. He felt that the attorneys in his section benefitted from analyzing which cases were most appropriate for mediation. Court staff also felt involved in the settlement process and better understood the court's role in resolving cases. Most significantly, almost 50 percent of the referred cases settled, thereby making a dent in the court's over-burdened docket.

The District of Nevada also hosted settlement weeks in Reno and Las Vegas during 2013. The District of Idaho led the way with its settlement week in 2012.

If you have any questions or comments about the Eastern District Settlement Week, please contact Judge Newman at (916) 930-4710 /knewman@caed.uscourts.gov, or Ms. Park, at (916) 930-4278 /spark@caed.uscourts.gov. ●

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of I, signifying a minor or no criminal history. And only 6 percent of drug defendants could be classified as managers or leaders, *i.e.* individuals occupying the highest rungs of a drug enterprise.”

Judge Gleeson observes that our prisons are repositories for the addicted and formerly addicted, at a monthly cost of \$2,407.78 per offender, including the nonviolent and victimless offenders.

State drug courts, in contrast, have raised treatment retention rates and lowered recidivism rates among criminal offenders. There are currently more than 2,750 state drug courts in existence in the United States, attesting to the fact that drug courts work at protecting the community and saving money.

This type of proven track record was the inspiration for the drug court program in the Western District of Washington. Thanks to the willingness, support and progressive vision of U.S. Attorney Jenny A. Durkan, of the Western District of Washington, a small committee was formed to investigate a drug court program in federal court. Two years of intensive effort, including successfully lobbying the Department of Justice, culminated in the creation of the pilot program known as the Drug Re-Entry Alternative Model or DREAM.

On August 9, 2012, representatives of the U.S. District Court for the Western District of Washington, the offices of the U.S. Attorney and Federal Public Defender for the Western District, and the court’s Probation and Pretrial Services Offices gathered in the chambers of Chief District Judge Marsha J. Pechman to sign an Interagency Agreement, creating the DREAM program. DREAM is the first program of its kind in the Western District of Washington and one of the very few federal court drug diversion programs in the entire nation.

DREAM participants have a history of substance addiction that has contributed to their criminal behavior. Potential candidates are those for whom it is believed a period of intensive supervision, coupled with programs intended to address the root causes of their criminal conduct, will be more effective than a criminal conviction and sentence in decreasing the likelihood of



The DREAM team: from left, Assistant U.S. Attorney Robert Westinghouse, Assistant Federal Public Defender Michael Filipovic, Chief District Judge Marsha J. Pechman, District Judge Ricardo S. Martinez, U.S. Attorney Jenny Durkan, Assistant U.S. Attorney Kerry Keefe and Assistant Federal Public Defender Jennifer E. Wellman. Not pictured: Chief Probation Officer Connie Smith.

recidivism. The specific eligibility criteria can be found in a referral form available at the district court’s website.

An Executive Review Team conducts a confidential review of every application. Applicants with more than two prior felony convictions or a criminal history containing sex offenses or serious violent crimes are not eligible for the program. The team places a high value on the participant’s willingness and motivation to be part of the drug court program. Its decisions are final and not appealable.

A participant in the DREAM program enters a guilty plea and sentencing is then held in abeyance during the program. It is anticipated that participants will stay in the program for at least 12 months, although the term may be extended up to 24 months. The program is intended to be flexible, working at each individual’s pace, with an understanding that recovery and stability take time.

Program participants appear in court monthly. Probation and pretrial services officers report on the participant’s progress. DREAM team members and the presiding judge provide individual praise for the

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participants who accomplish goals and maintain sobriety. Small tokens, such as pins, bus tickets or movie passes, may be handed out in recognition of achieving certain milestones. If a participant is not in compliance with his program goals, the presiding judge will determine appropriate sanctions. Progressively more severe sanctions are designed to motivate and encourage positive behavior and not simply to punish the participant. The most severe sanction includes custodial time. The underlying philosophy of the program is that addiction is best addressed by a holistic team approach, rather than the usual individual advocacy present in the typical courtroom revocation procedures.

Following each court appearance, all of the participants meet in an informal setting with probation officers assigned to the program. These moderated group meetings address specific issues of interest to individuals or the group as a whole. Participants are asked to focus on progress or problems during the preceding months and to set goals for the upcoming month. Participants form bonds, and support and strengthen each other in these meetings.

Successful completion of the DREAM program leads to the withdrawal of the guilty plea and a complete dismissal of the charge(s). If a participant fails to satisfactorily complete the program, the district judge overseeing the program will sentence the participant pursuant to the previously entered plea. One additional benefit, even for those that ultimately fail the DREAM program, is that all positive effort displayed while involved in the program will be taken into account at the sentencing.

The federal judiciary has continually voiced its support for expanding alternatives to incarceration. Although incarceration serves legitimate sentencing purposes, it also negatively impacts individuals, families, and our community. The need is present both from a policy perspective and as a matter of cost savings—both fiscal and human. Reduction of the federal prison population will occur only if we find tools to make our criminal justice system more efficient and effective.



The DREAM program certificate of completion

Are programs like DREAM the answer? We will soon find out. As the program progresses we will collect and analyze data. We will use the results of our analysis to adjust our methods to maximize better outcomes, reduce recidivism, and avoid unnecessary incarceration. This is just one small step, but for the first time a select number of criminal defendants in the Western District of Washington will be allowed to DREAM.

Application forms and other DREAM materials are available online from the Office of the Federal Public Defender, <http://www.waw.fd.org>, under "litigation support," and from the court's Pretrial Services Office, <http://pretrial.wawd.uscourts.gov/>. ●

Committee Website and Newsletter Archive

www.ce9.uscourts.gov/committees/adr/



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