

# THE RISE PROGRAM

U.S. District Court  
U.S. Probation & Pretrial Services

District of Massachusetts  
2015

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## **Purpose:**

The RISE Program is designed for individuals who have pled guilty and are under pretrial supervision prior to sentencing. These individuals must apply for admission to the program and be accepted into the program by the Court. Goals of the program include:

- Promoting rehabilitation
- Promoting productive behavior
- Participants' accepting responsibility for offense(s) of conviction and their consequences
- Reducing recidivism
- Managing taxpayer funds/resources wisely

## **Eligibility Criteria:**

Individuals meeting all three of the following criteria will be considered for the RISE Program:

- Individual is on pretrial release;
- Individual satisfies either of the following two conditions:
  - a) Serious history of substance abuse or addiction as reflected in information available to Probation, which abuse or addiction substantially contributed to the commission of the charged offense; or
  - b) History reflects significant deficiencies in full-time productive activity, decision making (i.e., criminal thinking in addition to charged offenses), or prosocial peer networks, as a result of which the defendant would benefit substantially from a structured pretrial program under the close supervision of the Court and Probation. The program requires a tailored combination of full-time productive activity (school, employment or community service), cognitive behavioral therapy to address criminal thinking (e.g., MRT program), development of new social or peer networks and removing other barriers to a sober, employed, law-abiding life (e.g., health insurance, driver's license, child support, financial literacy, parenting skills etc.);
- Nothing in history or pending charges makes the individual ineligible for the program such as (but not limited to) ineligibility for necessary or appropriate supervision or treatment programs or a pending sex offender charge.

Individuals will attend a RISE Program Court session each month and will complete the program by satisfying all identified goals and participating in the program successfully for a period of up to 12 months. Individuals who successfully complete the RISE Program are entitled to no specific or guaranteed benefit other than that the Court will consider all aspects of the defendant's participation in the RISE Program at sentencing. In other words, successful completion may be considered favorably at sentencing.

## USDC – MASSACHUSETTS RISE PROGRAM

### I. Overview

This RISE Program is a program created by the United States District Court for the District of Massachusetts and its Probation Office. In the course of developing the program, the Court has consulted with the United States Attorney's Office, the Federal Public Defender Office, members of the Criminal Justice Act panel and treatment providers.

For eligible defendants whose participation the assigned district judge approves at the prompt plea hearing, the RISE Program offers closer supervision, establishes higher expectations for a defendant's conduct, requires participation in treatment and delays the defendant's sentencing to permit participation. The Program aims to promote productive behavior by the defendants in the program, promote rehabilitation, increase acceptance of responsibility for the offense(s) of conviction as well as their consequences, manage wisely taxpayer funds, and reduce recidivism.

Defendants successfully completing the RISE Program are entitled to no specific or guaranteed benefit other than that the Court will consider all aspects of the defendant's participation in the RISE Program at sentencing. We anticipate that successful completion will be considered favorably at sentencing.

This document will be interpreted to advance the purposes of the RISE Program. It is not meant to be construed as a law, statute or regulation. Rather it is meant to be a tool for District Judges in the exercise of their broad individual discretion in addressing supervision and sentencing matters. Accordingly, nothing in this document establishes an enforceable legal right. Nor should any of the form of words in the document be the subject of additional written submissions unless the individual judge determines that the exercise of informed discretion would be assisted by such written submissions and expressly solicits them.

The Court approved the RISE Program as a three year pilot commencing on July 1, 2015, with annual review by the Court, and automatic expiration at the end of the three years absent an express decision by the Court to continue the RISE Program.

### II. Identification of Participants

Each month Probation will identify those defendants, released the prior month, meeting the eligibility requirements for the Program. A Committee consisting of the Chair of the Court's Committee on Reentry, Diversion and Alternatives to Incarceration, the RISE Magistrate Judge, representatives of the Probation Office, a representative from the United States Attorney's Office, a representative of the Federal Public Defender's Office and such other judicial officers or persons designated by the Chief

Judge will review the released defendants for possible participation in the RISE Program.<sup>1</sup> The Committee will endeavor to reach consensus on all the recommendations it makes; however, the decision as to whether a defendant may participate as well as the terms governing the defendant's participation rests with the district judge to whom the defendant's case is assigned.

Defendants meeting all three of the following criteria will be considered for the RISE Program:

- (a) Defendant is on pretrial release;
- (b) Defendant satisfies either of the following two conditions
  - a. Defendant has a serious history of substance abuse or addiction as reflected in the information available to Probation which abuse or addiction substantially contributed to the commission of the charged offense; or
  - b. Defendant's history reflects significant deficiencies in full-time productive activity, decision making (i.e. criminal thinking in addition to the charged offenses), or pro-social peer networks as a result of which the defendant would benefit substantially from a structured pretrial program under the close supervision of the Court and Probation requiring a tailored combination of full-time productive activity (school, employment or community service), cognitive behavioral therapy to address criminal thinking (e.g. Probation's MRT program), development of new social or peer networks and resolving other barriers to a sober, employed law abiding life (e.g. health insurance, driver's license, child support, financial literacy, parenting skills etc.)<sup>2</sup>;
- (c) Nothing in the defendant's history or pending charges makes the person ineligible for the program such as (but not limited to) ineligibility for necessary or appropriate supervision or treatment programs or a pending sex offender charge.

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<sup>1</sup> For each defendant not represented by the FPD, in advance of the meeting, Probation will seek the consent of each defendant's attorney to the FPD representative reviewing the material regarding the defendant (e.g. bail report and criminal record) solely for the purpose of considering the defendant's participation in the program. Ordinarily, Probation will do this by emailing defense counsel a description of the RISE Program along with a consent form. In the event counsel does not consent, then the FPD will not review the materials regarding that defendant or participate in any discussion.

<sup>2</sup> The "white collar defendants" whose history reflects substantial work history, education, and resources are, by the criteria established in text, ineligible for participation.

The Committee anticipates that some successful defendants will receive probation in lieu of a jail sentence, others may receive a shorter sentence of imprisonment and occasionally the USAO might determine a dismissal or reduction to a misdemeanor is appropriate. However, successful participation carries with it no guaranteed or promised result.

For each defendant identified as eligible, the Committee will create an individualized specific list of supplemental release conditions and program requirements tailored to the needs of the defendant. Both the CARE type and RESTART types of defendants shall complete both Probation's MRT program and restorative justice activities that (a) foster an appreciation for the harm caused by the charged offense(s) and (b) repair, at least in part, the harm from the offense(s). In addition, CARE type defendants, shall submit to drug testing, at a minimum, at a frequency similar to that applicable in CARE, drug treatment, and, for successful completion of the program, a minimum of twelve months of successful participation with seven months of consecutive sobriety concluding the participation. For RESTART type defendants, the list shall include, at a minimum, a list of objectives to accomplish and, for successful completion of the program, a minimum of twelve months of full-time productive activity.

Within seven days after the Committee makes a recommendation for participation, Probation will notify the assigned district judge and both counsel of the defendant's eligibility as well as the specific requirements for this defendant. The Court will not punish a defendant for electing not to participate. Defendants' electing to participate in the program must, within ninety days of arraignment, file a motion requesting the Court schedule a Rule 11 hearing. The Motion must also state that the defendant elects to participate in the RISE Program, whether the Committee recommended (or not) the defendant's participation and whether the Government assents, objects or takes no position on the defendant's participation. Unless the Committee has recommended defendant's participation, the defendant shall have the opportunity to explain the basis for its position before the assigned district judge renders a decision. Unless the Government assents, it shall have the opportunity to explain the basis for its position before the assigned district judge renders a decision. The assigned district judge shall state his or her decision approving or rejecting the defendant's participation prior to taking the defendant's plea. There is no requirement to do so; however, before the plea hearing. A delay in filing the motion for plea hearing and stating the defendant's election shall not preclude the defendant's participation, provided the defendant sought, from the assigned district judge, an extension in the ninety day deadline, before its expiration, due to the delay in receipt of substantial automatic discovery materials or an equivalent basis. Early participation in the RISE Program will promote successful results; however, the defendant must also receive a reasonable period of time to evaluate the discovery

before making the election to participate and the ninety day period ordinarily accomplishes both objectives.

After taking a plea<sup>3</sup> in the case of a defendant whose participation in the RISE Program the assigned district judge approves, the Court will not schedule a sentencing date, but rather note the defendant's referral to the RISE Program. The district judge will also (1) amend the defendant's release conditions to include the requirement of "Successful Participation in the RISE Program including compliance with all Program Rules" and (2) reassign the defendant's case, solely for purposes of the RISE Program and supervision of release conditions to the RISE Magistrate Judge, from the previously assigned Magistrate Judge. The RISE Magistrate Judge will provide a brief update to each district judge regarding the status of each of the judge's defendants in the RISE Program every April 1st, August 1st and December 1st.

Probation will commence the preparation of the PSR, in the ordinary course, up to the point of disclosure to the parties. Upon the defendant's conclusion of the RISE Program, Probation will require five weeks until sentencing during which time it will release the draft PSR including a summary of defendant's participation, receive and respond to objections and disclose the final PSR.

Defendants may not begin formal participation in the program until after pleading guilty; however, defendants may, prior to plea, observe the RISE Court session and otherwise begin to perform under the plan developed for the defendant. However, the required 12 month periods do not commence until formal participation in the program begins.

### III. The Program

Probation will supervise the defendant's release including all of the additional conditions and requirements.

Each month the RISE Magistrate Judge will convene a RISE Court session. At each session, each defendant must report on his or her performance the prior month discussing each of the tasks/objectives/requirements applicable to this defendant including a recommendation as to whether or not he/she satisfied any of the objectives or

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<sup>3</sup> Unsuccessful participation in (or a failure to complete) the RISE Program is neither a basis to withdraw a plea the Court has accepted nor a basis to oppose acceptance of a plea previously offered. The prompt acceptance of responsibility and the prompt final resolution of the pending charges are important purposes served by the requirement that the defendant plead guilty within the ninety day deadline.

earned credit for the month in terms of sobriety or gainful full-time activity. Probation will advise the Court of any additional applicable information and make its own recommendation. The Court will review with the defendant his/her performance and determine which, if any, requirements are satisfied and whether the month qualifies as a sober or employed month. Sanctions in the form of program requirements, e.g. essays, no credit, redo a requirement, etc may be imposed in the Court session without further process. Adjustments of bail conditions including temporary or permanent revocation of release, imposition of a curfew, a period in the half way house etc will occur only in a formal bail review hearing pursuant to Title 18 and the Federal Rules of Criminal Procedure which may occur during the monthly session or at another time as determined by the RISE Magistrate Judge. The USAO representative and FPD representative on the Committee will ordinarily attend each monthly session. While the FPD representative will raise potential Fifth Amendment or other issues of concern possibly affecting an individual defendant, the FPD representative does not appear as a counsel for any defendant.

The RISE Magistrate Judge may, in consultation with the Committee adjust the required objectives for the defendant in the course of his participation in the program, provided the assigned district judge approves.

In the event of misconduct warranting a possible immediate adjustment to a defendant's release conditions, e.g. a positive drug test, a failure to engage in productive activity as required or another similar matter in Probation's judgment, Probation may (a) secure defendant's agreement to an adjustment of the bail conditions, provided counsel for the defendant agrees and the RISE Magistrate Judge approves or (b) seek an adjustment to the defendant's release conditions by requesting from the Court a bail modification or revocation hearing.

#### IV. Completion of or Termination from the Program

A defendant completes the program successfully by satisfying all of his/her goals and completing the minimum period of sobriety or productive activity after which the RISE Magistrate Judge will notify the assigned district judge and request the scheduling of sentencing pursuant to the ordinary schedule. Probation will proceed to prepare the PSR. The defendant will continue to participate in the RISE Program until his actual sentencing.

The RISE Magistrate Judge may recommend to the assigned district judge the defendant's termination from the RISE Program whenever, in the judgment of the RISE Magistrate Judge, further participation in the program by the defendant is not warranted. The defendant may object to this recommendation. The assigned district

judge terminates the defendant's participation by accepting the recommendation, scheduling sentencing pursuant to the ordinary scheduling and notifying Probation to prepare the PSR.

Either the Government or Probation may seek the defendant's termination at any time in which case the RISE Magistrate Judge will either issue the recommendation described above or issue a recommendation of continued participation noting the objection of Probation and/or the Government. The assigned district judge will either reject the objection to continued participation or terminate the defendant's participation by proceeding as described above.

The assigned district judge may, at any time, terminate the defendant's participation in the RISE Program by scheduling the sentencing and directing Probation to complete the PSR.

Any party or Probation may provide the assigned district judge any information regarding the decision to terminate or not a defendant's continued participation.

A defendant may withdraw or quit the RISE Program at any time by requesting the assigned district judge to proceed to sentencing. The Court shall not punish the defendant for the decision to withdraw or quit.

Neither a defendant's unsuccessful participation in or a failure to complete the RISE Program is a basis to withdraw a plea the Court has accepted nor a basis to oppose acceptance of a plea previously offered.

The Court may consider all facts regarding the defendant's participation in the RISE Program at sentencing.

#### V. The RISE Program and Sentencing

Upon the conclusion of the defendant's participation in the RISE Program, the assigned district judge will schedule sentencing no less than five weeks from completion of the program to allow for disclosure of the draft PSR and the objection period.

The USAO will consider the significance of the defendant's participation and performance in the RISE Program in making its sentencing recommendations to the Court and in determining whether to make any different charging decisions after the conclusion of the defendant's participation in the RISE Program. Nothing about the RISE Program or a defendant's participation in it creates any obligations upon the USAO or requires any reports from the USAO beyond the ordinary statements and filings it makes as part of a sentencing process in any event.

At sentencing, the assigned district judge will consider the defendant's participation in the program giving it the appropriate weight under the applicable law and in light of any factual determinations made by the Court.

Presumably, successful participation in the program may result in a more favorable disposition for the defendant than had the defendant not participated at all; however, participation entitles the defendant to no particular benefit.