

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

Post Guilty Plea/Presentence Diversion Court Program

There is a small, but not insignificant, number of nonviolent criminal defendants charged with one or more federal offenses in the Eastern District of Wisconsin who are facing a likely sentence of imprisonment, but for whom intensive, court-supervised treatment in the community may obviate the need for imprisonment. These criminal defendants if qualified, may benefit from participation in this district's Post Guilty Plea/Presentence Diversion Court program.

Post Guilty Plea/Presentence Diversion Court as **one** solution:

A Post Guilty Plea/Presentence Diversion Court program will allow the United States Attorney's Office (USAO) and counsel for a defendant, with the acquiescence of the assigned district judge, to agree to resolve the particular case by having the defendant participate in the presentence diversion court treatment program which, if successfully completed, could result in an agreed sentence of probation, a reduced term of incarceration or dismissal of the charges to avoid a felony conviction. A participant in the program will have to enter a guilty plea with the benefits of the program memorialized in the plea agreement. The court will either have to accept or reject the plea agreement under Fed. R. Crim. P 11(c)(1)(C). The plea agreement will specify that completion of the program will result in the agreed sentence. The presentence diversion court treatment program, which could last for up to 18 months, will engage participants in programs specifically designed to address the underlying causes of their criminal conduct, such as heroin addiction or other substance abuse or mental health issues. As part of their treatment program, participants will meet on a regular basis with the Post Guilty Plea/Presentence Diversion Court Team to discuss treatment and other issues and to review their progress in the program. The diversion court team consists of a designated district judge or magistrate judge, a designated assistant U.S. Attorney, a designated Associate Federal Defender and the U.S. Probation Officers supervising specific participants. The Post Guilty Plea/Presentence Diversion Court program is not a substitute for other existing pretrial diversion programs.

Summary Outline of the Post Guilty Plea/Presentence Diversion Court Process:

To begin the process post indictment, counsel for the defendant will send a letter to the USAO recommending that the defendant's case be handled in the Post Guilty Plea/Presentence Diversion Court. If the USAO agrees, then the U.S. Probation Office (USPO) will conduct a brief assessment and submit a memorandum with its opinion as

to whether the defendant is amenable to a treatment regime addressing a problem that has led to his or her criminal conduct. The parties will draft a plea agreement incorporating the benefits to be received for successful completion of the diversion court treatment program. The plea agreement will be submitted to the assigned district judge along with the USPO's memorandum. The district judge then will either accept or reject the plea agreement under Fed. R. Crim. P. 11(c)(1)(C). If the district judge declines to accept the plea agreement, the case will proceed in the normal fashion. If the district judge accepts the plea agreement, the defendant will enter a guilty plea and the case will be set over for sentencing. The case then is referred to the Post Guilty Plea/Presentence Diversion Court. Over the course of the next 12 to 18 months, participants in the diversion court treatment program will attend regular sessions with the diversion court team which will be conducted in accordance with developing treatment court processes. The sessions will consist of treatment to address underlying causes of criminal conduct, incentives that include positive feedback for accomplishments, and proscribed swift, certain and fair sanctions, such as "flash incarceration," for violations. Upon successful completion of the diversion court treatment program, the case will be set for sentencing and, in accordance with the terms of the plea agreement, the defendant will be sentenced or the case will be dismissed. Failure to comply with diversion court treatment program requirements may result in a participant being terminated from the program and sentenced without receiving the benefits of successful completion of the program.

Anticipated Outcomes:

- 1) A reduction in the number of offenders sentenced to prison.
- 2) A reduction in criminality of offenders whose criminal conduct results from issues like substance abuse addiction, unresolved mental health issues or underlying causes that appear amenable to treatment in the Post Guilty Plea/Presentence Diversion Court Program.