

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

INTERAGENCY AGREEMENT

**PLEA ALTERNATIVES TO CONVICTION AND
SENTENCE “PACS” PROGRAM**

1. *Parties:* The parties to this interagency agreement are the following federal agencies for the Northern District of Mississippi: United States District Court (the Court), United States Probation Service (Probation Service), United States Attorney’s Office (USAO), and Federal Public Defender’s Office (FPD), all of whom by executing this agreement have committed to providing to selected individuals who agree to a Conviction and Sentence Alternatives (PACS) program that will offer a creative blend of treatment, sanction alternatives, and incentives to effectively address offender behavior, rehabilitation, and the safety of the community.

2. *Agreement Regarding Underlying Principles:* The National Association of Drug Court Professionals has identified the following ten key components for successful programs that provide alternatives to a standard conviction and sentence. The parties agree that these key components are essential and will be incorporated as principles underlying their participation in implementing the PACS program:

- (a) For those participants with substance abuse issues, the program integrates alcohol and drug treatment services with justice system case processing.
- (b) Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants’ due process rights.
- (c) Eligible participants are identified early and promptly placed in the program.
- (d) For those participants with substance abuse issues, the program provides access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- (e) For those participants with substance abuse issues, abstinence is monitored by frequent alcohol and drug testing.
- (f) A coordinated strategy governs the program’s responses to participants’ compliance and non-compliance.
- (g) Ongoing judicial interaction with each program participant is essential.
- (h) Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

- (i) Continuing interdisciplinary education promotes effective program planning, implementation, and operations.
- (j) Forging partnerships among the program's agency participants, other public agencies, and community-based organizations generates local support and enhances the program's effectiveness.

3. *PACS Program Overview:* Before beginning participation in the PACS program, PACS participants (Participants) will be required to: (a) enter into a PACS Program Contract pursuant to which they agree to participate in the program and abide by the governing terms of the program as set forth in the PACS Program Contract; and have received diversion or a sentence of probation which includes the requirement to attend the PACS program. Successful Participants will be involved in the PACS program for at least 12 months, though the term of involvement may be extended as necessary to a maximum of no more than 24 months. During their time in the PACS program, Participants will engage in a variety of programs to address underlying causes of their criminal conduct, and will attend regularly scheduled PACS program proceedings that will include reports on their progress in the program. Participants with substance abuse issues will also engage in varying levels and modalities of treatment to address those issues. Failure to abide by the mandates of the PACS program may result in a Participant being terminated from the program without receiving the benefits for successful completion of the PACS program.

4. *Criteria for Participation in the PACS Program:* To be eligible to participate in the PACS program, Participants must have engaged in criminal conduct that appears motivated by substance abuse issues or other underlying causes that appear amenable to treatment or rehabilitation through programs available as part of the PACS program.

5. *Selection of Participants:* Participants will be selected as follows:

- (a) Initial identification of prospective participants will be done by the Probation Service, the USAO, and the attorney representing the prospective Participant. If both the USAO and the prospective Participant's attorney agree, a prospective Participant will be referred to the PACS Team for possible selection as a Participant.
- (b) Initial selection of Participants will be done by the PACS Team (PACS Team), which will consist of the PACS Program Judicial Officer, Probation Service Officer, Assistant Federal Public Defender, and Assistant United States Attorney, or their designated substitutes.
- (c) Once the PACS Program Team has identified a prospective Participant, the attorney representing the prospective Participant will be approached to obtain a speedy trial waiver for the time necessary for the prospective Participant to complete all steps necessary to be accepted as a PACS program Participant. Once a speedy trial waiver is obtained, it will be filed with the court. The speedy trial waiver is attached as **Exhibit 1A**. The

prospective participant will also grant consent to institute a presentence investigation and disclose the report prior to a plea of guilty.

(d) Selection Process

- i. Participants on Diversion: Once the PACS Team has selected a prospective Participant, pending a Pretrial Diversion Report, the Participant will receive diversion including the condition that the individual participate in the PACS program. **Exhibit 1.**
- ii. Participants on Probation: Once the PACS Team has selected a Participant, and the Originating District Judge has approved, the participant will be sentenced to a period of probation which includes participation in the PACS program. An order is attached as **Exhibit 1B.**

(e) A participant will be represented by outside counsel for purposes of deciding whether to enter the PACS Program. Once a Participant's begins the PACS program, the PACS Program Judicial Officer will appoint the Federal Public Defenders Office to represent the Participant for purposes of the PACS program, including advising the Participant. A form order to accomplish the appointment of the Federal Public Defender's Office is attached as **Exhibit 2.**

(f) Each prospective Participant's voluntary consent to involvement in the PACS program will be confirmed in a written PACS Program Contract to be signed by the prospective Participant, as well as each member of the PACS Team. The PACS Program Contract, in the form attached as **Exhibit 3**, will articulate expectations and obligations of the prospective Participant and the other members of the PACS Team. All of the parties to this agreement recognize that an essential component of the PACS Program is every Participant's complete candor with the PACS Program Judicial Officer and the other members of the PACS Team. Accordingly, the USAO agrees that the PACS Program Contract will include a provision that statements made and documents and other information provided by a Participant during a formal PACS program proceeding conducted by the PACS Program Judicial Officer or another member of the PACS Team shall not be used by the USAO in its case in chief in any criminal prosecution it may subsequently bring against the Participant.

(g) Crucial to maximizing each Participant's possibility for success in the PACS Program is that all members of the PACS Team have access to full information regarding successes and failures in any program, including any treatment program, to which the Participant is referred as part of the PACS Program. Accordingly, as an adjunct to the PACS Program

Contract, each prospective Participant will be required to execute a waiver authorizing access to program information by the PACS Program Judicial Officer, Probation Officer, Assistant Federal Public Defender, and Assistant United States Attorney, as well as any research partner working with Probation Service to evaluate the PACS program and the United States Probation Office. A form waiver for this purpose is attached as **Exhibit 4**. The USAO acknowledges that its access to this treatment program information is only for the purpose of participating in the monitoring and evaluating of a Participant's progress while participating in the PACS Program.

- (h) Once a prospective Participant and all other members of the PACS Team have executed the PACS Program Contract; the prospective Participant has executed a waiver authorizing access to treatment program information by the PACS Team; and the prospective Participant, his or her attorney, and the USAO have all executed PACS Program Documents based on participation in the PACS program.
 - i. If the court accepts and agrees to be bound by the plea agreement, the Originating District Judge will accept the prospective Participant's guilty plea and sentence the prospective Participant to a period of probation to include participation in the PACS program. Once this occurs, the prospective Participant will become a Participant in the PACS program and the PACS Program Judicial Officer will handle all further proceedings in the criminal case.
 - ii. If the USAO accepts and agrees to be bound by the terms of the diversion agreement, the prospective Participant will become a Participant in the PACS program and PACS Program Judicial Officer will handle all further proceedings in the case.

6. *Role of the PACS Program Judicial Officer:* The active involvement of the PACS Program Judicial Officer with Participants in the PACS program is essential. When Participants are excelling in the program, the PACS Program Judicial Officer will provide encouragement. When Participants are in non-compliance with the PACS program or in violation of the terms of their diversion, the PACS Program Judicial Officer, after receiving the recommendation of the other members of the PACS Team, will make a determination as to the appropriate sanction based on the nature of the Participant's non-compliant behavior. If appropriate, sanctions should be progressive in terms of severity. When the PACS Team determines that a Participant has exhausted that Participant's opportunities to continue in the PACS program, the PACS Program Judicial Officer will make the final decision to terminate the Participant from the PACS program.

7. *Role of the PACS Program Probation Service Officer:* The PACS Program Probation Service Officer (USPO) will be charged with overseeing supervision of Participants and making appropriate treatment referrals with contract and appropriate noncontract treatment and other program agencies based on the needs of individual Participants as determined by the PACS Team. In addition:

- (a) In preparation for PACS program appearances, the USPO will oversee the preparation of reports to inform the parties of Participants' struggles and achievements. To expedite the reporting process, avoid overworking the USPO, and create continuity in reporting, a standardized "PACS Program Progress Report," in the form attached as **Exhibit 5**, will be used. The PACS Program Progress Report will not be filed, and is intended only for use in planning for and conducting PACS program appearances. For each Participant, the USPO will distribute a PACS Program Progress Report to the PACS Team before each scheduled PACS program appearance. Scheduling of PACS program appearances will be by the PACS Team, bearing in mind the need to facilitate the USPO's time to work with treatment and other program providers and prepare PACS Program Progress Reports with information as current as possible.
- (b) The USPO will work with treatment and other program providers to ensure effective communication between the treatment and other program providers and the PACS Team.
- (c) The USPO will maintain a PACS Program File within each Participant's Probation Service file for each Participant. This PACS Program File will include the Participant's PACS Program Contract, all PACS Program Progress Reports for the Participant, treatment and other program records for the Participant, results of drug testing for the Participant, and all other records relating to the Participant's progress through the PACS program. The PACS Program File for any Participant will be made available to the PACS Team as necessary for implementation of the PACS program, and to any research partner working with Probation Service to evaluate the PACS Program. The PACS Program File for each Participant will remain a part of the Participant's Probation Service file and will be available to the Judge as needed.

8. *Role of the PACS Program Assistant United States Attorney:* The role of the PACS Program Assistant United States Attorney is to participate in a team effort with the PACS Program Judicial Officer and Assistant Federal Public Defender and the USPO to encourage each Participant's success in the PACS program, discourage bad decisions and disinterest in the PACS program at their first sign, and participate in PACS program decisions about proper punishments for Participants struggling with the program's requirements. The Assistant United States Attorney should be involved in decisions about program planning both when a Participant is succeeding and when a Participant is struggling, may be called on to report on a Participant's progress during a PACS program appearance, and should be prepared to provide assistance to the

other members of the PACS Team in determining whether a Participant's continued participation in the PACS program is or is not warranted. The Assistant United States Attorney's role is expected to be less adversarial than in non-PACS program cases.

9. *Role of the PACS Program Assistant Federal Public Defender:* The role of the PACS Program Assistant Federal Public Defender is to participate in a team effort with the PACS Program Judicial Officer, the Assistant United States Attorney, and the USPO to encourage each Participant's success in the PACS program, discourage bad decisions and disinterest in the PACS program at their first sign, and participate in PACS program decisions about proper punishments for Participants struggling with the program's requirements. The Federal Public Defender should be involved in decisions about program planning both when a Participant is succeeding and when a Participant is struggling, may be called on to report on a Participant's progress during a PACS program appearance, and should be prepared to provide assistance to the other members of the PACS Team in determining whether a Participant's continued participation in the PACS program is or is not warranted. The Federal Public Defender's role is expected to be less adversarial than in non-PACS program cases.

10. *PACS Program Proceedings:* All Participants will appear at least monthly before the PACS Team. The order of Participant appearances at each PACS program session will be set by the PACS Program Judicial Officer as deemed most beneficial to the Participants, with the understanding that, ordinarily, absent being excused by the PACS Program Judicial Officer, Participants will be expected to remain through the appearances of at least some of the other Participants at the particular PACS program session. To effectuate the parties' intent that the PACS program be less adversarial and provide as much support as possible to Participants, all parties agree that conduct that might otherwise constitute a violation of the terms of supervision or of the PACS program rules may be handled informally. In particular:

- (a) all conduct that might be considered a violation will be presented to the PACS Program Judicial Officer, the other members of the PACS Team, and the Participant through the USPO's regular PACS Program Progress Report, or a status report to the PACS Program Judicial Officer filed on an expedited basis if the circumstances so warrant;
- (b) absent a determination that termination from the PACS program is justified in accordance with paragraph 15(B)(2) below, any sanction for such a violation, so long as it is within the range of sanctions set forth in paragraph 11 below, will be handled through (i) a directive issued by the PACS Program Judicial Officer at a regular PACS program session in a non-adversarial setting or (ii) if the PACS Team all agree to a particular sanction or treatment intervention, on an expedited basis before the Participant's next scheduled PACS program appearance by means of a modification executed by the Participant and the PACS Team.

For each Participant, after each PACS Program appearance, the PACS Program Judicial Officer will issue a PACS Program Status Report, in the form attached as **Exhibit 6**, reflecting actions

taken and scheduling that Participant's next PACS Program appearance. PACS Program Status Reports will be electronically filed.

11. *PACS Program Sanctions:* Non-compliant behavior by a Participant will result in sanctions. The range of possible sanctions has been drafted broadly to insure that some level of sanction is available for every type of violation. Factors that will influence the type of sanction employed include the seriousness of the violation, the number of violations, and the amount of time the Participant has remained compliant, either before a first violation, or between violations. In addition, an important factor will be whether the Participant voluntarily discloses the violation. Dishonesty on the part of the Participant will result in enhanced sanctions. Depending on these factors, any of the sanctions listed below - including termination from the PACS program - will be available. As a general rule, when there are repeat violations, more serious sanctions will be applied incrementally. Sanctions may include, but are not limited to:

- Judicial reprimand delivered during PACS program proceedings in front of other PACS program Participants
- Order to attend and observe pre-determined PACS program proceedings
- Order to submit written assignment
- Curfew restriction for up to 30 days
- Increase in frequency of progress hearings before the PACS Program Judicial Officer
- Order to participate in community service as part of the PACS Program
- Order to complete a term of home confinement (with conditions that may include alcohol monitors and standard location monitoring with GPS)
- Order to complete a term of up to 30 days at a residential reentry center
- Order to complete a term at a residential substance abuse treatment facility
- Order to spend up to 7 days in jail¹
- Termination from PACS Program **Exhibit 8**

¹ The 7-day limit applies only to orders for jail time, and does not limit the PACS Program Judicial Officer's ability to order a longer period of time in home confinement, a residential reentry center, or a residential drug treatment facility. Nor does it limit the USPO's ability to place a Participant in a residential reentry center for transitional purposes. While the perceived need for a sanction of more than 7-day jail time will ordinarily result in termination from the PACS program, with a Participant's written waiver and the consent of all members of the PACS Team, sanctions of more than 7 days in jail may be imposed by the PACS Program Judicial Officer in a non-adversarial setting with the understanding that the Participant will continue participating in the PACS program.

These sanctions are intended to take a creative approach to altering behavior, while cutting the costs associated with first resorting to a traditional “days in jail” sanction. Sanctions imposed should be completed by the Participant’s next PACS program appearance, unless the PACS Program Judicial Officer allows more time, and the Participant may be required to report on performance of the sanction at the next PACS program appearance. The USPO will monitor compliance with imposed sanctions and report on compliance in a regular PACS Program Progress Report, or, if circumstances warrant, in a status report to the PACS Team filed on an expedited basis. If appropriate, any or all of the available sanctions may be ordered more than once during the course of a Participant’s progress through the PACS program.

12. *Adversarial Hearings:* Recognizing that circumstances may arise in which a Participant is alleged to have violated a term of supervision and/or the PACS program rules and the Participant believes that he or she is innocent in fact of the alleged conduct constituting the violation, the parties agree that a request for an adversarial hearing on whether the Participant in fact committed the alleged conduct will not automatically result in termination from the PACS program. Such adversarial hearings are, however, to be conducted only to determine the question of whether the Participant in fact committed the alleged conduct, and not as an opportunity for the Participant to offer a proffered explanation for admitted or undisputed conduct.

13. *PACS Program Benefits:* Whether a Participant has successfully completed the PACS program shall be determined by the PACS Program Judicial Officer in consultation with the other members of the PACS Team. A Participant who is determined to have successfully completed the PACS program will receive the benefits specified in the Participant’s agreement, which may include: (a) successful completion of diversion (b) termination of, or favorable modification of the terms of probation.

14. *PACS Program Graduation:* PACS program graduation will take place at the Participant’s final, regularly scheduled PACS program appearance. In addition to Participants, Originating District Judges, family members, sponsors, and friends will be invited to attend the graduation. The PACS Program Judicial Officer will present graduating Participants with a Certificate of Completion, and other articles of recognition as determined by the PACS Program Judicial Officer and the other members of the PACS Team.

15. *Termination Procedures:* A PACS program Participant may be terminated as successful or unsuccessful as follows:

- (a) **Successful Termination:** Participants who successfully complete the PACS program will be given a Certificate of Completion, which will close the PACS Program File section of the Participant’s Probation Service file. A form order for successful termination, which will be electronically filed, is attached as **Exhibit 7**.
- (b) **Unsuccessful Termination:** In recognition of the reality of relapse as a part of recovery from drug or alcohol addiction and/or in addressing underlying causes of criminal activity, every effort should be made to

continue to work with Participants. All parties realize, however, that there will be some circumstances in which it is appropriate to terminate a Participant from the PACS program as unsuccessful. Unsuccessful termination may be either voluntary or involuntary and, in either circumstance, will result in the Participant not receiving the benefits provided for successful completion of the PACS program in the Participant's agreement. The Originating District Judge will have access to the Participant's PACS Program File, which will document all successes, failures, and sanctions that occurred during the PACS program. Circumstances giving rise to involuntary termination of this type may include:

- i. New law violations;
- ii. Repeated drug use;
- iii. A chronic pattern of refusal to cooperate with the USPO;
- iv. A chronic pattern of refusal to cooperate with a treatment or other program provider;
- v. Repeated refusals to cooperate with the PACS Program's sanctions or to participate in the PACS program in a meaningful manner.

Upon unsuccessful termination, the PACS Program Judicial Officer will issue an order terminating participation in the PACS program. A form order for unsuccessful termination, which will be electronically filed, is attached as **Exhibit 8**.