

THE RISE PROGRAM

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

District of Massachusetts

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

The RISE Program was created by the United States District Court for the District of Massachusetts and its Probation Office. In developing the Program, the Court consulted with the United States Attorney's Office, the Federal Public Defender's Office, and members of the Criminal Justice Act panel. Defendants accepted into the Program are given a year prior to their sentencing to address the issues that led to their committing crimes. Participants who make significant strides toward becoming sober, law-abiding, and employed citizens who can contribute to their communities will have their participation in the Program taken into consideration at sentencing. Participants are required to make fundamental changes in their behavior in order to dramatically reduce the possibility of recidivism. The Program aims to promote productive behavior and rehabilitation, increase acceptance of responsibility for the offense(s) of conviction, manage wisely taxpayer funds, and enhance public safety.

Participants are granted access to the Program by their assigned district judge soon after their plea hearing. Their sentencing dates are extended to permit participation in the Program. RISE participants are closely supervised by Probation and must meet high expectations for their conduct while in the Program. Each participant works toward achieving an individualized set of goals. Program requirements may include finding and maintaining employment, enhancing job skills, seeking out opportunities for education, acquiring stable housing, participating in mental health and drug treatment, acting responsibly toward family and community, participating in cognitive behavioral therapy, and taking part in a restorative justice program.

Defendants who successfully complete the RISE Program are entitled to no specific benefit. The only guarantee is that the district judge will consider all aspects of the defendant's participation in the Program at sentencing.

This document is intended to advance the purposes of the RISE Program. It is not to be construed as a statute or regulation. It is a tool for district judges in the exercise of their broad individual discretion in addressing supervision and sentencing matters. Nothing in this document establishes an enforceable legal right, nor should this document be the subject of additional written submissions to the district court unless the individual judge determines that he or she would be assisted by such written submissions and expressly solicits them.

The United States District 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 and Acceptance into the Program

Candidates for the RISE Program are expected to apply within ninety days of arraignment and to enter a prompt guilty plea thereafter. Each month Probation will identify those defendants who have applied to be in the Program and who meet 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(s); representatives of the Probation Office; a representative of the United States Attorney's Office (USAO); a representative of the Federal Public Defender's Office (FPD); and other judicial officers or persons designated by the chief judge will review defendants for possible participation in the RISE Program.¹ The committee aims to reach consensus on the recommendations it makes; however, the decision as to whether a defendant may participate rests at all times with the assigned district judge.²

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

- 1) Defendant is on pretrial release;
- 2) Defendant satisfies either of the following two conditions:
 - a. Defendant has a serious history of substance abuse as reflected in the information available to Probation, which abuse substantially contributed to the commission of the charged offense; or
 - b. Defendant's history reflects significant deficiencies in family support, education, employment, decision-making, or pro-social peer networks as a result of which the defendant would benefit from a structured program under the close supervision of Probation. The requirements, tailored to each participant's needs, will include a 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 the dissolution of other barriers to a sober, employed, law-abiding life (e.g.,

¹ For each defendant not represented by the FPD, in advance of the meeting to review their potential admissibility to the Program, Probation will seek the consent of the defendant's attorney for the FPD representative to review 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 sending to defense counsel, via email, a description of the RISE Program along with a consent form. In the event counsel does not consent, the FPD representative will not review the materials regarding that defendant or participate in any discussion of the defendant's suitability for the Program.

² The Committee may defer making a recommendation to the district judge if a defendant is deemed not stable enough for participation, or if the committee requires more information before making a recommendation. In either case, the committee may recommend to the district judge that the committee's recommendation on participation await one or more of the following: entry of a guilty plea; review of the USAO's Rule 11 statement of what the United States would prove if the matter went to trial; preparation and review of an initial presentence report; or an assessment of defendant's performance on pretrial release for a further period of time.

obtaining health insurance, procuring a driver's license, paying child support, working on financial literacy, improving parenting skills, etc.)³;

- 3) Nothing in the defendant's history or pending charges makes the defendant 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.

Factors that the committee considers important in deciding whether a defendant will be admitted to the Program include: the promptness of the defendant's application and guilty plea; the defendant's efforts to rehabilitate him or herself on pretrial release prior to admission to the Program; and the readiness and ability of the defendant to adhere to the rules of the Program.

The committee anticipates that some successful participants will receive probation in lieu of a prison 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 result.

For each defendant identified as eligible, the committee will create an individualized list of program requirements, to supplement release conditions, tailored to the needs of each defendant. Each participant will complete a restorative justice program that (a) fosters an appreciation for the harm caused by the charged offense and (b) seeks to motivate the defendant to repair, at least in part, the harm from the offense. Participants who have issues regarding drug abuse shall submit to drug testing and drug treatment.

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 recommended for a particular defendant. The court will not punish a defendant for electing not to participate.

If the assigned district judge approves a defendant's participation in the RISE Program, the court will schedule a sentencing date approximately one year from the date of the defendant's acceptance into the 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.

After the defendant's plea, Probation will conduct the presentence investigation and prepare the PSR, per standard practice, however, the PSR will not be disclosed until closer to the extended sentencing date. When the final PSR is issued to the parties and the court, a RISE participation summary report will be submitted with the PSR.

III. The Program

³ "White collar defendants" who have a substantial work history, education, and other resources are not eligible for participation.

Probation will supervise participants during their time in the Program. In advance of each RISE court session, Probation will advise the court of any pertinent information concerning the participants.

Each month the RISE magistrate judge will convene a RISE court session. At the session, each participant will appear and report on his or her performance over the past month. The court will review with the defendant his or her performance over the past month. The USAO representative and FDO representative will ordinarily attend each monthly session. While the FPD representative will raise any potential Fifth Amendment or other issues that may affect 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 and Probation, adjust the required objectives for a participant in the course of his or her participation in the Program.

IV. Sanctions

Sanctions will be imposed for violation of conditions of release or failure to meet Program requirements. Sanctions may include, but are not limited to, termination from the Program, time in custody, the imposition of a curfew or electronic monitoring, a requirement that the participant reside in a halfway house, or an adjustment of the participant's Program requirements or conditions of release.

Actions that constitute violations of conditions of release serious enough to warrant revocation of release will result in termination from the Program. Participants who merely abide by their conditions of release but do not make progress toward meeting the additional requirements of the RISE Program will also be terminated. Participants who have positive drug tests will be required to reassess their treatment needs and adhere to treatment recommendations. A participant's failure to engage in drug treatment as recommended may result in termination from the Program. A single positive drug test will generally result in a sanction of at least a temporary revocation of release and some period of time in custody.

Adjustments of bail conditions, including revocation of release, will occur at formal bail review hearings as determined by the RISE magistrate judge. At such hearings, a participant will be represented by his or her own attorney.

V. Completion of or Termination from the Program

A. Completion of the Program

A participant successfully completes the Program by completing or making substantial progress toward his or her goals prior to the sentencing hearing. Prior to the participant's sentencing hearing, Probation will prepare a report on behalf of the RISE committee addressed to the district court judge outlining the participant's work in RISE. The defendant's attorney and the AUSA assigned to the case will receive a copy. The report will not recommend a sentence to be imposed. The report will address the following factors:

- The degree to which the participant fulfilled the RISE requirements set for him or her (including consideration of degree of difficulty of the requirements).

- If requirements were not met, what the circumstances were.
- If the participant had setbacks, how well he or she responded to and overcame them.
- Whether the participant's views and decision making were positively affected by participation in Program; whether the participant has demonstrated that they have internalized change.
- The degree to which the participant showed any extra effort, i.e., doing things beyond what the Program required.
- The degree to which the participant demonstrated acceptance of responsibility and made efforts to give back to the community.

B. Termination of a RISE Participant

As set out above, participants may be terminated for failure to comply with conditions of release or failure to meet expectations of the Program. If appropriate, prior to considering termination, the magistrate judge and the RISE committee may meet with the participant and his or her attorney to address any issues.

If the RISE magistrate judge is considering termination of a participant from the Program, the magistrate judge will hold a hearing at which the participant will be represented by counsel. If the magistrate judge decides to recommend termination, the judge will send a brief written recommendation to the district court judge. A copy of the recommendation will be given to defense counsel and the AUSA assigned to the case, along with a notice that the participant may file an objection with the sentencing judge if he or she wishes to do so. There will be an entry on the docket that the magistrate judge has recommended termination. The district court judge may hold a hearing and give the defendant an opportunity to be heard on the matter. The district court judge will then make the final decision whether the participant should remain in the Program. If the district court judge decides that the participant should be terminated from the Program, the district court judge will then set a schedule for sentencing, taking into account the preparation of the PSR and other scheduling issues.

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.

Probation or any other party may provide the assigned district judge any information regarding the decision to terminate a defendant's continued participation.

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

Once a participant has been terminated from the Program, the case will no longer be assigned to the RISE magistrate judge and will be reassigned to the original magistrate judge.

Neither a defendant's unsuccessful participation in nor 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 district court judge may consider all facts regarding the defendant's participation in the RISE Program at sentencing.

VI. The RISE Program and Sentencing

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

The USAO will base its recommendation on factors including: (1) the promptness with which the participant pled guilty and applied to RISE; (2) the extent to which the participant corrected fundamental problems and deficiencies while in RISE (e.g., drug addiction, lack of education, lack of employment, criminal thinking); and (3) the participant's ability to achieve the RISE requirements set by the RISE Committee.

At sentencing, the district judge will consider the defendant's participation in the Program, giving it whatever weight the judge deems appropriate under the applicable law and in light of any factual determinations made by the judge. Successful participation in the Program may result in a more favorable disposition for the defendant than had the defendant not participated; however, participation entitles the defendant to no particular benefit.

THE RISE PROGRAM

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

DIVISION District of
Massachusetts 2017

I, _____, have received a copy of the RISE Program description. In addition, the program has been explained to me by a Probation Officer. I have spoken to my attorney about the program.

I would like to be considered for acceptance into the program. I understand that the Program Selection Committee will look at my application and decide whether to accept me. The Program Selection Committee includes the Chair of the Court's Committee on Reentry, Diversion and Alternatives to Incarceration, the U.S. Magistrate Judge assigned to RISE, representatives of the Probation Office, a representative from the U.S. Attorney's Office, a representative of the Federal Public Defender Office and other persons designated by the Chief Judge to be on the committee.

I agree that a representative from the Federal Public Defender Office can review material regarding me for the purpose of considering my participation in the program. I understand that the Federal Public Defender representative will be excused from reviewing my application if conflicts are identified.

I understand that as part of the application process to be admitted into the program, I am required to participate in risk assessment and drug use assessments administered by the Probation Office. I understand that the results of these risk assessments will be reviewed by the Court and Probation Office when the committee is reviewing my application.

I understand that my acceptance into the program is not guaranteed.

Defendant

Date

Counsel

Date