

# **ALTERNATIVE SENTENCING PROGRAMS IN THE NORTHERN DISTRICT OF CALIFORNIA**

## **DIVERSION, CONVICTION ALTERNATIVES PROGRAMS, AND LEADING EMERGING ADULTS TO DEVELOP SUCCESS**

### **AGREEMENT AMONG STAKEHOLDERS**

#### **I. PURPOSE OF AGREEMENT**

The Northern District of California offers Diversion, Leading Emerging Adults to Develop Success (LEADS), Conviction Alternatives Programs (CAP, formerly ATIP) including CAP and CAP-Focus, a Veterans Court, and a pre and post-conviction Restorative Justice Program for appropriate qualifying defendants.

The Court also has a post-sentence Reentry Court for those persons on supervised release, who are high risk, high needs, especially as related to substance abuse issues.

#### **USAO Diversion**

The United States Attorney's Office (USAO) will continue to offer diversion to appropriate defendants through a Pre-trial Diversion Agreement, which typically results in dismissal of the charge(s), or through a Post-Plea Diversion Agreement, which may result in dismissal of all or some of the charges or sentence-enhancing allegations or result in a recommendation to a lesser sentence than would otherwise have been recommended.

#### **Leading Emerging Adults to Develop Success (LEADS)**

In the LEADS program, the USAO may offer a plea agreement to qualifying defendants ages 18 to 26, allowing them the opportunity to participate in the LEADS program. LEADS Track I plea agreements may be offered to low-risk defendants, generally in Criminal History Category I, and may result in dismissal of the charge(s) for successful completion of the program. LEADS Track II plea agreements may be offered to any risk level of defendant and generally result in a non-custodial sentence, including dismissal of mandatory minimum charges or sentencing-enhancing allegations. LEADS is only available pursuant to a plea agreement.

#### **Conviction Alternatives Program (CAP)**

CAP is available to qualifying defendants, pre-conviction, and post-conviction who suffer from substance abuse and addictions. Upon successful completion of CAP, the defendant will receive

any incentives that may have been promised in a plea agreement for consideration by the sentencing judge (e.g., dismissal of the underlying charge(s), a non-custodial sentence, dismissal of mandatory minimum charge(s) or sentence-enhancing allegations, an agreement to recommend a lower sentence, or dismissal) for post-arrest rehabilitation.

### **CAP-Focus**

The CAP-Focus program is designed for those individuals who may otherwise have been eligible for CAP because of their substance abuse and mental health disorder(s), but who have already been addressing these problems on their own. If it is determined by the Pretrial Services Agency (PSA) and the USAO, that a person is deemed eligible for CAP-Focus, the USAO may offer a plea agreement allowing qualifying defendants both pre and post-conviction to participate in various individualized programs. This may include some of the same types of services and programs offered by CAP. Focus Track I plea agreements may be offered to low risk defendants in CH Category I, and may result in dismissal of the charge(s) for successful completion of the program. Focus Track II plea agreements may be offered to any risk level of defendant and can result in the benefits set forth in the plea agreement that may include a non-custodial sentence.

### **Veterans Court**

In the Veterans Court program, the USAO may offer a plea agreement to qualifying defendants who are confirmed veterans of U.S. Armed Services, allowing them the opportunity to participate in the program. Veterans Court Track I plea agreements may be offered for low to moderate risk defendants and generally result in dismissal of the charge(s) for successful completion of the program. Veterans Court Track II plea agreements may be offered to any risk level of defendant and generally result in a non-custodial sentence, including dismissal of mandatory minimum charges or sentencing-enhancing allegations. Veterans Court is only available pursuant to a plea agreement, though programming may be available for veterans on supervised release who did not participate in a Veterans Court to support their reentry during the term of supervised release.

### **Restorative Justice**

The Restorative Justice program is for both pre- and post-conviction defendants on supervised release, and those persons already in any of our Alternative Court programs, including post-sentence Reentry Court. To be eligible for a sentencing reduction upon successful completion of the Restorative Justice program, defendants must take responsibility for their actions pursuant to a Plea Agreement with the USAO in all pre-sentencing cases. If appropriate, participating defendants must be in good standing in one of the Court's Alternative Programs or otherwise approved by the USAO and Pretrial Services. Participants are given the opportunity to



understand the impact of their behavior on victims and the community. Victims, in turn, have a chance to express how the offense affected them emotionally, physically, and psychologically.

Successful completion of the program results in a downward variance from the sentencing guidelines for pre-conviction defendants. Post-conviction defendants may receive a reduction in the term of supervision of at least one year.

## **II. OBJECTIVES OF PROGRAMS AND RESPONSIBILITIES OF PARTIES**

### **Pretrial Diversion (a/k/a Pre-Plea Diversion) Program**

The USAO has a Pretrial Diversion Program. The USAO can offer Pretrial Diversion during plea negotiations, or the U.S. Pretrial Services Agency (PSA) or defense counsel may refer candidates to the USAO for consideration. Pretrial Diversion does not require a guilty plea; however, each participating defendant must agree to a Speedy Trial Act exclusion and may be required by the USAO to agree to a statement of facts supporting the underlying offense. Participants in the Pretrial Diversion Program are supervised by the PSA for an agreed period, typically six (6) months to twelve (12) months. If the participant successfully completes the program (as determined by the USAO), the USAO will take whatever action is set forth in the Pretrial Diversion Agreement, which typically includes dismissal of the charges. This Program is one that is left to the discretion of the USAO as to the whether a case should be dismissed.

### **Post-Plea Diversion Program**

The USAO has also offered Post-Plea Diversion in the past and will continue to do so when appropriate. The USAO can offer Post-Plea Diversion during plea negotiations, or the PSA or defense counsel may refer candidates to the USAO for consideration. In addition, the possibility of Post-Plea Diversion may be raised by the Court but, in order to avoid violating Rule 11(c) of the Federal Rules of Criminal Procedure, the Court may do so only after the defendant has entered a guilty plea. The USAO and the defendant may thereafter agree to Post-Plea Diversion.

Post-Plea Diversion involves the entry of a guilty plea pursuant to a plea agreement, with sentencing postponed during the diversionary period. Participants in the Post-Plea Diversion Program will be required to participate for an agreed upon period, typically one (1) year to eighteen (18) months. The Post-Plea Diversion agreement and/or plea agreement then typically provides that upon successful completion of the Program, the defendant may move to withdraw the guilty plea or otherwise seek the benefits of the agreement, and the USAO will move to dismiss all or some of the charges or sentence-enhancing allegations or will recommend a lesser sentence than it would otherwise have recommended.

## **Conviction Alternative Court (CAP)**

The USAO may offer a plea agreement to defendants found suitable for CAP by the PSA. Potentially eligible candidates are initially assessed within 30 and up to 60 days from their initial appearance. The parties may request the PSA to conduct a full assessment (final assessment) to determine a defendant's suitability for the program. This assessment can take up to 60 additional days.

Within 30 days after receiving the final assessment that includes a recommendation for CAP, the USAO will schedule a meeting with the defendant and defendant's counsel and if the USAO deems it appropriate, may tender a CAP Plea Agreement that may include incentives (e.g., a non-custodial sentence, dismissal of mandatory minimum charges or sentence-enhancing allegations, an agreement to recommend a lower sentence, or dismissal) for their post-arrest rehabilitation. After a defendant pleads guilty pursuant to the plea agreement, the final assessment will be provided to the Court, and the parties will have an opportunity to advocate to the Court as to whether and why this person is or is not appropriate for CAP.

After entry of a plea, defendants found suitable by the Court will be referred to the CAP team (which includes a district judge, magistrate judge, pretrial services officer, clinician, AUSA, and assistant federal defender) in the appropriate court division. If the defendant is accepted, his or her case will be transferred for all purposes to the CAP district judge in that division.

For successful completion, the defendant will receive the benefit of the incentives in the plea agreement, that could include dismissal of the charges, or a time served sentence. Those defendants who are rejected from CAP or do not successfully complete CAP will not benefit from incentives generally offered by the USAO in a plea agreement and their case will revert to the original assigned Judge.

## **CAP-Focus**

The USAO may offer a plea agreement to defendants found suitable for CAP-Focus by the PSA. Potentially eligible candidates are initially screened within 30 and up to 60 days from their initial appearance. The parties may request the PSA to conduct a full assessment (final assessment) to determine a defendant's suitability for the program. This assessment can take up to 60 additional days. CAP-Focus is for those defendants who may have been eligible for CAP because of their substance abuse and mental health disorder(s), but who have already been addressing these problems on their own and may not be as high risk or high needs as other CAP participants.

Within 30 days after receiving the final assessment, the USAO will schedule a meeting with the defendant and their counsel and may offer a plea agreement with incentives (e.g., a



non-custodial sentence, dismissal of mandatory minimum charges or sentence-enhancing allegations, an agreement to recommend a lower sentence, or dismissal) for their post-arrest rehabilitation. The USAO will agree to a defendant's acceptance into CAP-Focus only with a signed plea agreement.

Defendants will plead guilty pursuant to their plea agreement, and the assessment will be provided to the Court. Defendants will be required to appear at agreed upon intervals (e.g., weekly, bi-monthly, monthly, quarterly) before the presiding judge (or a designated magistrate judge) who reviews a defendant's progress at status conferences. The status conferences will be attended by the defendant, their counsel, the AUSA, and the PSA.

For successful completion, the defendant will receive the benefit of the incentives in the plea agreement, that could include dismissal of the charges, or a time served sentence.

### **Leading Emerging Adults to Develop Success (LEADS)**

The USAO may offer a plea agreement to defendants between the ages of 18 to 26 found suitable for the LEADS program by Pretrial Services. The assessment process begins with the PSA identifying potentially eligible candidates within 30 days from their initial appearance. The USAO will schedule a meeting with the defendant and their counsel and may offer a plea agreement.

A LEADS Track I plea agreement may be offered to defendants with a Criminal History Category I and generally promises dismissal of the charges after successful completion of the program. A LEADS Track II plea agreement generally promises a non-custodial sentence.

Defendants will plead guilty pursuant to their plea agreement, after which the assessment will be provided to the Court. Defendants will be required to appear at agreed upon intervals (e.g., weekly, bi-monthly, monthly, quarterly) before the presiding judge (or a designated magistrate judge) who reviews a defendant's progress at status conferences. The status conferences will be attended by the defendant, their counsel, the AUSA, and the PSA.

For successful completion, defendants will receive the benefit of the incentives in the plea agreement.

## **Veterans Court**

The USAO may offer a plea agreement to defendants who have served in the U.S. armed forces for a period of 12 months or more and are found suitable for the Veterans Court program. The assessment process begins with the PSA identifying potentially eligible candidates within 30 days from their initial appearance. If identified as potentially eligible, the parties may request the PSA to conduct a full assessment (final assessment) to determine if a defendant is suitable for the program or the parties may rely on the initial assessment. The full assessment can take up to 60 additional days. Within 30 days after receiving the final assessment, the USAO will schedule a meeting with the defendant and their counsel and may offer a plea agreement.

A Veterans Court Track I plea agreement may be offered to defendants and generally promises dismissal. A Veterans Court Track II plea agreement generally promises a non-custodial sentence.

Defendants will plead guilty pursuant to their plea agreement and the assessment will be provided to the Court. Defendants will be required to appear at agreed upon intervals (e.g., bi-monthly, monthly, quarterly) before one of the Veterans Court judges who reviews a defendant's progress at status conferences. The status conferences will be attended by the defendant, their counsel, the AUSA, and the PSA.

For those veterans who did not participate in Veterans Court prior to sentencing, programming may still be available to support their reentry during the term of supervised release. The parties will coordinate with the other stakeholders and program providers to fashion whatever programming might be appropriate and available to supplement the reentry court options for the veteran.

For successful completion, defendants will receive the benefit of the incentives in the plea agreement.

## **Restorative Justice**

Restorative Justice is a voluntary program bringing together those who have committed crimes, victims, and community members to reduce recidivism, conserve resources, repair harm, and facilitate healing and accountability. Those in the court's existing Alternative Court Programs as well as those in post-guilty plea status and approved by the USAO and PSA are eligible to participate.

A Plea Agreement with the USAO that includes the resolution of any outstanding Form 12 violations is required to be considered for this program for anyone not in our Alternative Court

Programs. Those on postconviction supervision who are not part of Reentry Court may be eligible if Probation and the USAO approve their participation.

Restorative Justice has four stages including an orientation, two back-to-back restorative in-person workshops, and two educational programs, each lasting up to five weeks. Participating defendants must defer their sentencing for approximately six months to complete the program and participate in any additional programming that addresses their needs (including drug and mental-health counseling and treatment), and work with their supervising Pretrial Services or Probation officer on employment, education, housing, financial literacy, and other needs.

Successful completion for those on pretrial supervision and not otherwise in one of our Alternative Court programs requires completion of the four Restorative Justice programs. Defendants will receive the benefit of a variance of three levels from the offense level in the agreed to sentencing guidelines in the plea agreement.

For those on post-conviction supervision, successful participants may receive a further reduction in their term of supervised release of at least one year.

At a future date, programming may be available for defendants in custody.

### III. STAKEHOLDERS' REVIEW OF PROGRAMS

PSA and the Reentry Court subcommittee of the Criminal Justice Working Group will review the programs annually for effectiveness and report as needed to the Chief Judge USAO and FPD. In addition, the PSA will work with a trained researchers to evaluate the programs.



RICHARD SEEBORG  
Chief United States District Judge for the  
Northern District of California

12/23/2024

Date



SILVIO LUGO  
Chief United States Pretrial Services Officer  
Northern District of California

12/20/2024

Date



CHRIS CARRUBBA-KATZ  
Chief United States Probation Officer  
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12/20/2024

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Date



JODI LINKER  
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12/20/2024

Date