

FREQUENTLY ASKED QUESTIONS (FAQs)

Conviction Alternatives Program (CAP, formerly ATIP) and - Leading Emerging Adults to Develop Success (LEADS) PILOT PROGRAM

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1. What are the CAP and LEADS Programs?

The Conviction Alternatives Program (CAP) and the Leading Emerging Adults to Develop Success (LEADS) are sentencing alternative programs. CAP is designed to serve defendants who pose a higher risk to commit a new crime as a result of distinct personal risk factors, such as youth, early onset of substance abuse or delinquency, prior attempts at treatment or rehabilitation, or prior felony convictions. LEADS is designed to serve younger defendants, ages 18–26, who pose a low to moderate risk to commit a new crime as a result of distinct personal risk factors and who may benefit in an outsized way from community services and support programming. LEADS is composed of two tracks. Track I is designed to serve defendants who are low risk while Track II is for defendants who pose a low to moderate risk.

The Program components and interventions for both CAP and LEADS, including intensive supervision and ongoing judicial oversight, are intended to help participants learn from their mistakes, make better choices, and engage in productive behavior. Successful program outcomes include a reduced likelihood of program participants committing a new crime and the expenditure of fewer public resources as a result of decreased incarceration costs.

2. How do the CAP and LEADS Programs Work?

CAP and LEADS provide a higher level of supervision, programming, and judicial oversight for participants through a collaborative team approach which involves defense attorneys, prosecutors, pretrial services officers, treatment providers, and judges.

In CAP, the Court incentivizes higher risk and higher needs defendants to participate in a more intensive level of supervision than they would normally be subject to while participating in community supervision. Defendants are required to participate in programs that attempt to address their maladaptive behaviors (i.e., committing crimes, violating conditions of release, and abusing substances). Such programs include substance-abuse treatment (in-patient and/or outpatient), mental-health treatment, vocational and educational programs, and cognitive behavior restructuring programs. Participants are also required to maintain sobriety and remain crime-free. A defendant who successfully completes all phases of the program and graduates will receive any incentives that may have been promised in a plea agreement or consideration by the sentencing judge (e.g., a non-custodial sentence, dismissal of mandatory minimum charges or sentencing-enhancing allegations, an agreement to recommend a lower sentence, or dismissal) for their post-arrest rehabilitation.

2.1. Who are the court officials who participate in the program?

The CAP teams in each venue are made up of the following individuals:

San Francisco – Judge William Orrick, Judge Jacqueline Corley, Pretrial Services Officer Sheri Broussard (Supervisor Richard Sarlatte), Assistant Federal Public Defender Gabriela Bischof, Assistant United States Attorney Cynthia Stier, and Federal Collaborative Courts Coordinator Wyatt Lim-Teppe.

Oakland – Judge Haywood Gilliam, Judge Kandis Westmore, Pretrial Services Officer-In-Charge (Oakland) Kalisi Kupu, Assistant United States Attorney Cynthia Stier, and Assistant Federal Public Defender Angela Hansen.

San Jose – Judge Edward Davila, Judge Virginia DeMarchi, Pretrial Services Officers Gustavo Rangel (Supervisor Anthony Granados), Assistant United States Attorney Cynthia Stier, and Assistant Federal Public Defender Severa Keith.

LEADS includes the assigned pretrial services officer, the Assistant US Attorney assigned to the case, the defense attorney, the presiding district judge, and possibly a magistrate judge—if assigned by the presiding judge.

2.2. What are the roles of the court officials who participate in the program?

In CAP, all court officials and team members operate as a team. The U.S. Pretrial Services Agency (PSA) assesses individual defendants for suitability for CAP. The judge administers the program with the assistance of the other team members. The PSA supervises participants and provides supervision progress reports at agreed upon intervals (e.g., bi-weekly, monthly, or quarterly) to each of the team members. The PSA also recommends rewards and sanctions for good or poor performance on the part of the participants.

In LEADS, PSA administers the individualized treatment and Individualized Success Plan created with input from the PSA, the USAO, and defense counsel. The PSA supervises participants and provides supervision progress reports to each of the team members at agreed upon intervals (e.g., bi-monthly, monthly, or quarterly). The PSA can recommend rewards and sanctions—even without a court appearance.

2.3. What is the role of the US Attorney's Office (USAO)?

CAP may be offered by the USAO to eligible defendants pursuant to a plea agreement. The sentencing recommendation, or motion for dismissal, for successful completion of CAP will be set forth in the plea agreement. A representative AUSA will attend CAP sessions as a part of the CAP Team.

LEADS may be offered by the USAO to eligible defendants pursuant to a plea agreement. The sentencing recommendation for successful completion of LEADS Track I is generally dismissal and will be set forth in the plea agreement. For LEADS Track II, the sentencing recommendation for successful completion is generally a non-custodial sentence and will be set forth in the plea agreement. The assigned AUSA will attend LEADS court status appearances.

2.4. How long do these programs last?

CAP is intended to be a one-year program; however, some participants may take as many as 18 months to complete the program. LEADS is intended to be a one-year program; however, some participants may take as many as 24 months to complete the program.

2.5 How many phases are the programs?

Both CAP and LEADS consist of four phases, with each phase taking a minimum of three months to complete. Some participants will stay in a particular phase longer than others based on their performance or particular needs. A participant must complete all four phases to successfully graduate from the program.

2.6. What occurs during each phase of the programs?

CAP: All phases of the program include the following components: at least twice monthly court appearances before the CAP team, drug and/or alcohol testing at least twice weekly, frequent office visits to PSA, participation in a cognitive behavior restructuring program (such as The Courage to Change), employment workshop (as necessary), individual therapy, and group therapy (as necessary). The phases of the program are as follows:

One: Early Recovery

Two: Understanding and Taking Responsibility

Three: Healthy Decision Making

Four: Relapse Prevention Planning

LEADS: Defendants must complete an individualized program Success Plan and adhere to the goals set in the plan, which may include: Accountability and restorative justice reflection essays, Cognitive Behavioral Group Therapy such as Courage to Change, DBT, or other CBT-based program as prescribed; attending school or vocational training full-time; achieving or make significant progress toward a high school or general equivalency diploma; finding and maintaining gainful employment; individual counseling; participation in a mentorship program; participation in pro-social support group; medication compliance; participation in treatment as appropriate including mental health, substance-use, life skills, anger management, parenting, self-sufficiency program (depending on availability); and community service. All phases of the program require the defendant to appear before the Judge at agreed upon intervals (e.g., bi-monthly, monthly, quarterly) for progress status conferences.

The phases of the program are as follows:

One: Engagement and Assessment

Two: Stability and Accountability

Three: Wellness and Community Connection

Four: Program Transition

2.7. What if someone violates pretrial release while in CAP or LEADS?

CAP: With input from the CAP Team, the CAP judge addresses the violation with a series of available sanctions or consequences—some of which include termination from the program, temporary incarceration, community service, additional assignments, or loss of credit toward phase completion. Appropriate consequences are to be imposed on defendants immediately following noncompliance.

For termination from CAP, if participation was pursuant to a plea agreement, the case is adjudicated pursuant to the terms of the plea agreement or determined by the assigned judge. Defendants who do not successfully complete CAP may not receive the benefits promised in the plea agreement for successful completion.

LEADS: Between status hearings, with or without an intervention, a participant may be assessed for a different level of treatment or supervision by the PSA. The judge may impose additional sanctions after hearing from the participant, counsel, and PSA.

For termination from LEADS, the case is adjudicated pursuant to the terms of the plea agreement.

2.8. What does someone need to do to graduate?

To graduate, participants in CAP must complete all four phases successfully within 12 to 18 months and LEADS participants must complete all four phases of the program successfully within 12 to 24 months.

2.9. Can a CAP or LEADS participant decline to participate at any time during program enrollment?

Both CAP and LEADS are completely voluntary. A participant may choose to discontinue participation in the program at any time. If participation was the result of a plea agreement, the participant will likely not benefit from the incentives in the plea agreement.

3. How are people selected to participate in the program?

CAP: Participation in the program ultimately depends on a favorable CAP eligibility assessment. At the pre-conviction stage, the defense may negotiate a plea agreement. At the post-conviction stage, the presiding judge may make a referral for a deferred sentencing placement into the program. The CAP judges, in consultation with their respective team members, make the final determination regarding acceptance to the program.

LEADS: Participation depends on a favorable LEADS eligibility assessment and a  plea agreement.

3.1. Are there disqualifying offenses or disqualifying factors?

Defendants generally excluded from participation in CAP and LEADS include those:

- Defendants charged with a sex offense;
- Defendants in immigration custody.

3.2. What are the Prognostic Risk Factors that indicate a higher likelihood of recidivism that Pretrial Services considers for participation?

PSA assesses whether an individual possesses multiple personal risk factors which make them more likely to continue to commit crimes in the future and not respond to traditional supervision interventions. Those factors include, but are not limited to, as follows:

- Under age 26 at the time the instant offense was committed;
- Early onset of delinquency;
- Early onset of substance abuse;
- Prior treatment or rehabilitation failures (e.g., multiple attempts at inpatient and/or outpatient substance abuse or mental health treatment without sustained sobriety or stability);
- History of criminal arrests and convictions which may be related to other distinct personal factors, such as drug abuse or mental illness, poverty, familial history of crime or addiction, victim of violence, influence of anti-social peers or associates (e.g., criminal or substance abuse associations);
- History of violence;
- Criminal or substance abuse associations;
- Anti-Social Personality Disorder (confirmed through clinical diagnosis); and
- Psychopathy or Sociopathy (confirmed through clinical diagnosis).

3.3. What are the factors that make someone need a program like CAP or LEADS?

For CAP, the following Criminogenic Need factors are considered:

- Substance abuse disorder or addiction (clinically diagnosed severity: moderate to severe);
- Chronic medical condition (e.g., Diabetes, Hepatitis C, HIV);
- Functional impairments (e.g., limited skills, illiteracy, and/or limited education).

For LEADS, Pretrial Services will screen candidates for the presence of deficiencies in three key areas, including skill development, family and financial support, and pro-social attitudes, beliefs, and orientation. The screening questions are based on a validated screening tool that measures the risks and needs of late adolescent and adult offenders. The categories assessed include the following:

- Education/Employment
- Financial Status & Support
- Family or Marital Support
- Accommodations
- Leisure & Recreation
- Companions
- Alcohol and/or Drug Problems
- Emotional & Personal Composition
- Attitude & Orientation

3.4. How does U.S. Pretrial Services Agency assess whether someone will benefit from CAP or LEADS?

In addition to the screening criteria described in 3.2 and 3.3, PSA assesses each candidate's actuarial risk for non-compliance utilizing the Pretrial Risk Assessment (PTRA), a twice validated actuarial tool developed for the Federal Pretrial Services and Probation system. PTRA measures the likelihood that a candidate may, while under supervision, be involved in a new criminal activity, suffer technical violations, and/or fail to appear as required. The PTRA categories range from one (low risk) to five (high risk).

3.5. How long does an assessment/evaluation take?

The initial PSA screening can take up to 60 days (in complex cases, the initial assessment may take longer). The final assessment can take up to 60 additional days. Although the final assessment by PSA typically takes 60 days to complete, several factors may delay the process, such as a delay in obtaining a clinical assessment on the defendant or a delay in receiving records vital to the assessment (e.g., prior assessments, treatment records, or juvenile records, etc.).

3.6. Will U.S. Pretrial Services Agency complete assessments for CAP and LEADS on defendants who have been detained by the Court or are in immigration custody?

PSA will not conduct assessments on individuals who have been detained by the Court as a risk of flight or a danger to the community or are in immigration custody. The assessment is not intended for purposes of bail determination. Parties wishing to have an incarcerated defendant assessed for either CAP or LEADS must first successfully re-address the issue of bail with the assigned Magistrate Judge.

3.7. Need defense counsel be present for the assessment/evaluation?

Defense counsel need not be present during meetings PSA conducts with a defendant to obtain information needed to complete the initial screening and final assessment. Much of the information needed for the screening and assessment is obtained through records and information gathered during the bail investigation and supervision of the defendant. Any additional information needed for these purposes can typically be obtained over the course of several regularly scheduled office visits or telephone contacts with the defendant.

3.8. What can defense counsel do to ensure that PSA has sufficient information for its evaluation?

Defense counsel should encourage his or her client to be candid and honest with PSA during the evaluation period. A lack of honesty will disqualify candidates from consideration. Records and/or information from collateral sources that contradict the information provided by the defendant can slow down the evaluation process and could adversely affect the outcome of the evaluation. It is helpful if defense counsel shares any records in their possession that may be relevant to the evaluation process, including past rehabilitation or treatment efforts (e.g., substance abuse or mental health), medical or mental health diagnoses (e.g., clinical/psychological assessments, HIV/AIDS diagnosis reports), juvenile or foster care records, or records relating to past trauma experienced by the defendant (e.g., police reports, civil court records, etc.).

3.9. Is a report prepared that can be reviewed by defense counsel/ government counsel after the evaluation?

Both defense counsel and counsel for the government are provided a completed copy of the final assessment upon its completion. Because the final assessment contains very personal and sensitive information on a potential candidate, it is not to be further disseminated to any other parties without the permission of the Court, is to remain confidential, and may only be used for purposes related to CAP or LEADS.

3.10. Who gets to see the final assessment?

At the pre-conviction stage, only defense counsel and the AUSA are privy to the final assessment. It is not provided to the presiding judge at any time prior to a guilty plea or a conviction unless the United States Attorney's Office has agreed to support the defendant's participation in CAP or LEADS through promises outlined in a plea agreement. Furthermore, the parties cannot discuss the outcome of the evaluation with the presiding judge at any time during the pre-conviction stage, except as described above.

The assessment may not be disseminated to any other parties (e.g., other defense attorneys, government agents, witnesses, informants, etc.) without the Court's permission. For CAP, the team members will see all CAP assessments for program participants in their venue.

3.11. Is this assessment provided to Probation prior to sentencing?

The assigned Presentence Report writer in the Probation Office is provided a copy of the assessment prior to sentencing.

3.12. When will the assessment be done?

Within 60 days of the defendant's first appearance in court PSA will do an initial internal screening on defendants placed under its supervision who present with certain risk factors and personal characteristics (e.g., youthful, lengthy criminal record, reported history of drug use or abuse, and/mental illness) and convey to the AUSA and defense attorney whether the individual meets the initial qualifiers for CAP or LEADS. The information will be conveyed to all parties in a letter that may contain case-sensitive information. The initial screening will not be provided to the court pre-conviction.

Defense attorneys representing individuals released by the court without PSA supervision may contact PSA to request a screening for CAP or LEADS if they believe their client may meet the criteria described in Sections 3.2 and 3.3. Attorneys must make the request in writing to the appropriate Pretrial Services supervisor or manager (San Francisco – Richard Sarlatte; San Jose – Anthony Granados; Oakland – Kalisi Kupu) outlining the reasons he or she believes their client is appropriate for screening. Based on the information provided, PSA may or may not conduct an initial screening of their client (notice will be provided to attorneys). PSA cannot complete final assessments for CAP and LEADS on defendants who are not ordered by the court to submit to its supervision. Therefore, a positive initial screening will require a bond modification to add PSA supervision for the defendant if further assessment is desired.

A complete assessment will be done at the pre-conviction stage.

If the government and defense do not reach agreement that a qualifying defendant enter CAP, then only after a post-conviction referral by the presiding judge will PSA prepare a complete CAP assessment of the defendant for a deferred sentencing referral to CAP. The parties will receive a copy of the CAP evaluation.

For LEADS, if defense counsel believes their client is appropriate for the LEADS Program, and their client was not screened by PSA within 60 days of their release, counsel may contact PSA to request a screening. However, a plea agreement is necessary for acceptance to LEADS.

4. Pre-Conviction v. Post-Conviction Selection—Evaluation and Placement

4.1. Who can recommend people for the program?

At the *pre-conviction stage*, both defense counsel and the AUSA may recommend to PSA (but not to the presiding judge) that a defendant be evaluated for placement in CAP or LEADS. Similarly, PSA may recommend to defense counsel and the AUSA (but not to the presiding judge) that a defendant be evaluated for placement in the program.

At the *post-conviction stage*, a defense attorney may recommend to the presiding judge that a defendant be considered for placement in CAP. The presiding judge may also request that PSA do a full assessment.

At the *post-conviction stage*, because a defendant may only participate in LEADS through a plea agreement, neither defense counsel nor PSA may recommend to the presiding judge that a defendant be considered for placement in LEADS.

4.2. At what point in plea negotiations can someone enter the program?

Both CAP and LEADS are post-conviction programs. Only those eligible defendants approved by PSA and the Court who are in post-conviction status will be allowed to enter CAP. Only those eligible defendants with a plea agreement will be considered for placement in LEADS.

4.3. Can a defense attorney refer someone to be evaluated for CAP or LEADS without input from an AUSA?

For CAP, yes, but only after conviction and if a defendant has met the initial screening criteria may a defense attorney request that the Court refer a defendant to PSA for a full assessment. The defense attorney will need the presiding judge's permission to delay the sentencing date, if necessary, as a result of the CAP assessment.

For purposes of conserving judiciary resources, a CAP final assessment will not be completed on a defendant if he or she does not meet the initial screening criteria for the program.

If defense counsel believes a participant is appropriate for the LEADS Program, and their participant was not screened by PSA within 60 days of their release, counsel may contact PSA to request a screening. However, a plea agreement is necessary for acceptance to LEADS.

4.4. May a judge refer someone to be evaluated for CAP without input from an AUSA?

Yes. While the presiding judge may not refer a defendant to be evaluated for CAP at any time during the pre-conviction stage of the case, after conviction the presiding judge may refer a defendant to PSA for a final assessment for CAP or based on an existing final assessment, refer the defendant to CAP.

4.5. What are the possible outcomes of a person with a mandatory minimum charge entering CAP or LEADS post-guilty plea without the approval of an AUSA?

A defendant subject to a statutory mandatory minimum sentence attempting entry into CAP without the support of the AUSA will not be accepted into CAP unless the defendant is safety valve eligible. The USAO is

not obligated to renegotiate the sentencing outcome even after successful completion for a defendant who is not safety valve eligible. With USAO support, a defendant with a mandatory minimum charge is eligible for CAP pursuant to the terms of the plea agreement.

With USAO support, a defendant with a mandatory minimum charge is eligible for LEADS pursuant to the terms of the plea agreement.

4.6. If accepted into CAP or LEADS, is the defendant's case transferred to a different judge?

For CAP, the case is transferred to the judge presiding over that venue's program.



For LEADS, the case remains with the presiding judge.

5. Successful Post-CAP and LEADS Offense Resolution

5.1. Who will be the defense attorney for sentencing?

The defendant's assigned or retained defense attorney will represent the defendant at sentencing.

5.2. Will the CAP and LEADS evaluation be made available to probation for PSR preparation?

Yes. A copy of the assessment and all progress reports will be made available to the Probation Office.

5.3. Will CAP and LEADS performance be made available to parties for consideration during sentencing?

At the discretion of the judge, the parties will be provided a general summary of the defendant's performance in CAP and LEADS for purposes of sentencing. In LEADS, the assigned AUSA and defense counsel are expected to appear at all status conferences and should generally be aware of progress made by the defendant while in the program.

5.4. Will parties be made aware of sanctions given while on CAP and LEADS prior to sentencing?

At the discretion of the judge, the parties may be provided a general summary of the defendant's performance in CAP and LEADS for purposes of sentencing. In LEADS, the assigned AUSA and defense counsel are expected to appear at all status conferences and should generally be aware of sanctions given to the defendant while in the program.

5.5. Will notes or communications of treatment providers be made available to parties prior to sentencing?

Notes or communications relating to a defendant's treatment while in CAP and LEADS will not be made available to the parties for sentencing purposes.

6. Unsuccessful Post-CAP and LEADS Resolution

6.1. Which judge will sentence someone who does not successfully complete CAP and LEADS?

The CAP judge will sentence a defendant if s/he does not successfully complete CAP.

The LEADS presiding judge will sentence a defendant if s/he does not successfully complete LEADS. This judge will be the judge that was initially assigned to the case.

6.2. Who will be the defense attorney for sentencing?

The originally assigned or retained counsel will be the attorney for sentencing for CAP and LEADS. For CAP, the CAP team may provide the parties with feedback regarding the defendant's participation if appropriate. For LEADS, the defendant's attorney will be present at the status hearings during defendant's participation in LEADS.

6.3. Will the CAP and LEADS final assessment be made available to probation for PSR preparation?

Yes.

6.4. Will CAP and LEADS performance be made available to parties for consideration during sentencing?

See 5.3 and 5.4.

6.5. Will parties be made aware of sanctions given while on CAP and LEADS prior to sentencing?

See 5.4.

6.6. Will notes or communications of treatment providers be made available to parties prior to sentencing?

No. See 5.5.

6.7. If a defense attorney relies upon a client's successes during CAP and LEADS, may an AUSA bring up the violations as part of a presentation of §3553(a) factors?

Yes.

7. What other courts have successful programs similar to CAP?

Problem-solving courts based on the drug court model have been in operation in several federal jurisdictions for many years. The Eastern District of New York and the Central District of California offer programs similar to CAP, and the Southern District of New York and the Eastern District of New York offer programs similar to LEADS. A long-term study of the Eastern District of New York program identified a number of successful outcomes, including a considerable monetary savings resulting from fewer defendants being sent to prison. A multi-district study of alternatives to incarceration courts completed in 2018, including this District's alternative court programs (CAP and ATIP), identified a number of successful outcomes from program participation. Copies of both studies are available through Pretrial Services upon request.

8. How does CAP and LEADS differ from diversion programs?

The CAP program objectives focus on attempting to reduce recidivism for higher risk and higher need individuals who, without targeted programming, are likely to continue to commit crimes or violate conditions of release in the future. The program also seeks to conserve public resources by reducing the cost of incarceration, which far exceeds the cost of community supervision. Furthermore, unlike traditional diversion, successful completion of CAP will result in a non-custodial sentence but not necessarily dismissal of the charges pending.

The LEADS program also focuses on attempting to reduce recidivism for low to moderate risk individuals who, owing to a combination of factors including youth, may prove uniquely amenable to intervention and community services. Upon successful completion, the charges will generally be dismissed for LEADS Track I and the defendant will generally be subject to a non-custodial sentence for Track II.

9. How is CAP and LEADS different from Reentry Court?

CAP and LEADS are sentencing alternative programs administered by PSA at the pre-sentence stage of the criminal justice process.

Reentry is a post-sentence program whose participants may have already served a term of incarceration.

One objective of both CAP and LEADS is to divert individuals from prison by providing them incentives to commit to long-term, positive changes in their behavior and way of thinking. As with Reentry Court, CAP and LEADS are based on the drug court model; however, the possible incentives that can be offered to CAP and LEADS participants are far greater than those that can be offered to reentry participants. Thus, CAP has the potential to encourage higher risk and higher need defendants to participate in valuable programs they otherwise may not have been willing to participate in. LEADS has the potential to encourage low to moderate risk individuals to take advantage of programming the successful completion of which might not have been assured absent the incentives of a non-custodial sentence or dismissal of the charges against them.

10. How is the presentence investigation process affected by a defendant's CAP and LEADS participation?

CAP and LEADS participants should not be referred for a Pre-Sentence Report (PSR) until they have reached the fourth phase of the program or been terminated from the program due to unsuccessful performance.

CAP and LEADS participants receiving the benefit of a dismissal of some but not all of their charges pursuant to a plea agreement or CAP participants who entered through a deferred sentencing referral by the presiding judge, will be referred by the judge for preparation of a PSR and a sentencing date will be scheduled.

10.1. Should the presiding judge refer a defendant in post-conviction status for preparation of a presentence report while the defendant is awaiting completion of the CAP final assessment?

A presiding judge referring a defendant at the post-conviction stage for a CAP final assessment should consider delaying the referral for preparation of a PSR until the final decision regarding the defendant's eligibility for the program is made.