

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
350 WEST FIRST STREET, SUITE 4311
LOS ANGELES, CALIFORNIA 90012-4565



CHAMBERS OF
DOLLY M. GEE
UNITED STATES DISTRICT JUDGE

**WRITTEN STATEMENT OF DOLLY M. GEE
UNITED STATES DISTRICT JUDGE
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

March 24, 2017

To Members of the United States Sentencing Commission:

Thank you for providing the Central District of California with an opportunity to showcase its Conviction And Sentence Alternatives (“CASA”) program, which celebrates its five-year anniversary this year. The CASA program is a “no-entry” post-guilty plea, presentence diversion program. As will be explained in greater detail below, it diverts some participants from the criminal justice system entirely by dismissal of the charges, and steers others away from prison through probationary sentences agreed upon under Federal Rule of Criminal Procedure 11(c)(1)(C)—contingent on successful completion of the program.

I. INTRODUCTION

Launched in 2012, the CASA program was developed through a year-long collaborative discussion and negotiation between key representatives of the District Court, the United States Attorney, the Federal Public Defender, and the Pretrial Services Agency in our District. Each of these stakeholders executed an Interagency Agreement setting forth the basic contours of the program. Although inspired by certain re-entry programs, including one in our own District, CASA is not based directly on any other state or federal program, because it was the first of its kind in the federal system.

Our District operates a separate post-sentence re-entry program (the Substance Abuse Treatment And Reentry Program, aka “STAR”) that focuses solely on individuals who have served their sentence but have significant substance abuse

issues. While no social scientist was directly involved in the development of CASA, the basic program model borrowed many concepts from STAR which, in turn, had been established using the key elements and standards published by the National Association of Drug Court Professionals (NADCP). In the earlier days of STAR, team members also participated in group trainings presented by the Federal Judicial Center (in Washington, D.C., Virginia and Utah), wherein various examples of reentry and drug courts were reviewed. Many of the team members involved in the STAR program were also instrumental in implementing CASA. It is important to recognize, however, that CASA is not a drug court.

CASA's goals are to: (a) identify criminal offenders who committed their offenses for specific and identifiable reasons capable of remedy; (b) provide intensive supervision and resources tailored to each individual participant to address the underlying basis for his or her criminal conduct; and (c) lower rates of recidivism and substance abuse, at lower costs, than through the traditional sentencing and incarceration model. CASA participants typically have substance abuse problems, mental health disorders, medical concerns, life skill deficits (educational problems, lack of a steady job), or family members or partners who drew them into criminal conduct. We use a combination of outside service providers, court resources, and one-on-one and group meetings to address these issues.

II. HOW THE PROGRAM WORKS

The CASA Team – Four district judges in various parts of the Central District preside over the CASA Program. There are two judges who preside over the program in the Western Division (Los Angeles—André Birotte and Dolly Gee); one judge oversees the program in the Southern Division (Santa Ana—Josephine Staton); and one judge supervises the program in the Eastern Division (Riverside—Jesus Bernal). Each of these district judges is part of a separate “team”: the CASA Teams consist of one district judge, one or two magistrate judges, and representatives from the United States Attorney’s Office (“USAO”), the Office of the Federal Public Defender (“FPD”), and the Pretrial Services Agency (“PSA”). All team members volunteer their time and receive no additional compensation or relief from their existing workload.

Track 1 or Track 2 – CASA participants are designated as “Track 1” or “Track 2” at the time of their acceptance into the program.

Typically, Track 1 participants are those who have minimal criminal histories, and whose criminal conduct appears to be an aberration that could appropriately be addressed by a one-year period of supervision with terms including:

- restorative penalties such as restitution and community service and, where appropriate,
- programs intended to address any contributing causes for the aberrational criminal conduct, such as substance abuse, behavioral issues, lack of education or employment training, or unhealthy associations

Track 2 participants tend to have more serious criminal histories or had a role in the underlying criminal offense that cannot be described as minor. Their criminal conduct appears to be motivated primarily by substance abuse, mental illness, or the negative influence of more culpable co-defendants. Track 2 CASA participants have Criminal History Categories ranging from I through VI, but the CASA Team has determined through the vetting process that future criminal behavior can be deterred by a one to two-year period of intensive supervision accompanied by drug or mental health treatment and other penalties and resources similar to those mentioned above as to Track 1 participants.

Examples of criminal offenses to which CASA participants have pled guilty include, for example, narcotics distribution (the most common offense), bank robberies not involving a firearm or violence, embezzlement, credit card fraud, identity theft, mail theft, and tax fraud.

Participant Selection – Defense lawyers and, on occasion, prosecutors, judges, and Pretrial Services Officers recommend defendants for the program. CASA Team members review the criminal history and written submissions of proposed participants and often meet with them in person to determine their suitability for admission. Certain types of criminal cases generally preclude participation in CASA—for example, crimes involving child exploitation (including possession or distribution of child pornography), national security, crimes of violence, and more than minor involvement in large scale fraud or narcotics distribution. The admission screening process involves collaborative discussions between CASA Team members representing the USAO, FPD, and PSA. These discussions center on not only whether the defendant is suitable for admission into CASA, but also the Track to which the defendant will be designated. Each CASA Team member has the ability to veto participation. Applicants who have consensus support are presented to both the CASA judge and the judge presiding over the defendant’s criminal case (“the originating judge”) for acceptance into and transfer to the CASA program. The CASA judge and the originating judge can veto participation or change the Track to which the defendant is designated.

Plea – If approved for acceptance into the CASA program, the defendant signs a detailed contract explaining the terms of the CASA program. The individual also enters into a written plea agreement with the government to resolve the underlying action, which contains an explication of the relevant advisory sentencing guidelines calculations for the base offense level and the amount of restitution, if applicable. The criminal case is transferred from the docket of the originating district judge to one of the CASA judges. The defendant pleads guilty to the charged offense before the CASA judge. The Court orders the Probation Office to prepare a modified presentence investigation report consisting of criminal history only, but sentencing is deferred until the completion of the CASA program. If a CASA participant is in custody, the CASA judge sets release terms (bond, drug rehabilitation, mental health treatment, etc.). Pretrial supervision is transferred to a specific CASA Pretrial Services officer. A CASA Deputy Federal Public Defender becomes the defendant's lawyer during the pendency of his or her participation in CASA (even if another DFPD, appointed counsel, or private lawyer provided initial representation).

Pre-Meetings – Immediately before each CASA session, the CASA Team meets for one to two hours to discuss the status of each participant. Participants are expected to call the assigned PSA officer weekly by a designated time to report any changes, problems, or law enforcement contacts. The purpose of the pre-meetings is to allow the CASA Team to candidly assess each participant's progress and to confer regarding any issue or problem that may have arisen during the course of the week or were reported in the participant's weekly call-in report, and to decide upon a specific course of action to address the problem.

Meetings – Following the guilty plea, CASA participants meet weekly, bi-weekly, or monthly (depending on the court division and circumstances of each case) with the CASA Team in the district judge's courtroom. These CASA sessions can touch upon a wide range of topics, including analytical conversations on ethical questions and hypothetical criminal scenarios, sharing of homework assignments, or specific discussion of issues that participants face. We also regularly invite outside speakers to present to the group regarding employment search skills and interviewing techniques, financial literacy, health, nutrition, stress management, and other issues of common interest. On occasion, enthusiastic CASA alumni return to speak with current participants about their experiences. In addition to the meetings, some participants are required to complete moral reconnection therapy, parenting class, anger management counseling, and community-based drug abuse programs or mental health counseling, as needed.

Expectations and Consequences – The CASA program places a great deal of emphasis on honesty and integrity. It is incorporated into the CASA Agreement signed by each participant, stressed at the outset of the defendant’s participation, and reinforced directly and indirectly throughout the course of the program. In addition, each CASA participant is expected to attend the weekly or biweekly meetings (without excessive absenteeism), do periodic homework assignments, and be constructively occupied for at least 40 hours per week with employment, job search, schooling, substance abuse treatment, mental health treatment and counseling, community service, child care, or a combination of the aforementioned activities. There are consequences for all forms of non-compliance. For example, absences, tardiness, or failure to do homework or keep appointments can result in extra CASA sessions or an additional homework assignment; repeated non-compliance may result in a one-on-one counseling session with the CASA Team; positive drug tests or infractions may result in the imposition of location monitoring, flash incarceration, or an intensified treatment regimen; dishonesty or new criminal conduct will result in termination from the program. Court hearings for the purpose of program termination are always conducted during the CASA sessions in order that all participants may witness the proceedings.

Graduation – CASA participation may last from 12 to 24 months, depending on the defendant’s progress. Graduation from CASA is not automatic. Rather, participants must hold a job or make progress toward an educational goal, be substance free (for at least six months, but preferably more), pay restitution (if applicable), and show stability in their lives. Additionally, the CASA Teams look for a solid and realistic life plan that convinces us that each participant is ready for graduation and is not likely to reoffend in the future. This can involve, for example, resolving outstanding fines or warrants, paying off debts, taking responsibility for child care and child support, obtaining affordable housing, and/or disassociating from negative influences.

Sentencing and Dismissal – Track 1 graduates have their criminal convictions dismissed – resulting in no felony record – and are subject to no supervision following graduation. Track 2 individuals typically have a prior criminal record or committed significant offenses. Track 2 graduates are sentenced at a formal hearing to a term of probation in accordance with their binding plea agreement. Whether Track 1 or 2, CASA graduates are not sentenced to time in federal prison.

Termination from CASA – A handful of participants have been discharged from the program before graduation for misconduct (e.g., committing offenses while on release, persistent failure to comply with CASA requirements, and/or engaging in

dishonesty toward the CASA Team). Pursuant to the terms of the original CASA plea agreement, those individuals are sentenced based on their underlying criminal conviction. The CASA judge – who typically has had considerable interaction with the defendant during the course of program – sentences the defendant at a traditional, adversarial proceeding. The CASA judge refers to the Sentencing Guidelines calculation in the defendant’s plea agreement, reviews a modified presentence report from the Probation Office, and considers written submissions from the parties as part of the typical sentencing.

III. CASA PARTICIPANT STATISTICS

A chart reflecting CASA participant statistics as of March 2017 is attached hereto. To date, 222 defendants have been accepted into the CASA program. Of these, 52 are currently participating in the program, 137 graduated successfully, 18 were terminated from the program for cause, and nine did not participate (usually because the originating judge did not approve participation in and transfer to the CASA program). Track 1 participants comprise approximately 73% of the graduates, whereas about 27% of the graduates were in Track 2. Comparing the graduation rate to the termination rate of those who at least started participation in the program and are now no longer in the program, 88% have graduated, whereas 12% were terminated prior to completion of the program.

IV. METRICS OF SUCCESS AND POST-GRADUATION TRACKING

In the short term, CASA measures success by graduation, as discussed above. In the long term, success will be gauged mainly by cost-savings and recidivism rates.

According to the Bureau of Prisons (“BOP”), the *average* annual per capita cost of incarceration in a federal correctional facility in fiscal year 2014 was \$27,744.¹ Assuming that each CASA graduate would have received a one-year sentence, the estimated savings solely in terms of incarceration cost are \$3,800,928 for 137 graduates. This is, of course, a very rough and conservative estimate because, based upon the Sentencing Guidelines and the nature of the offense and criminal history category (the most common offense being for drug distribution),

¹ See https://www.bop.gov/foia/fy14_per_capita_costs.pdf. Since the CASA program commenced in 2012, the average annual per capita cost of incarceration has gradually increased during the relevant period of 2012 through 2016. We use the 2014 figure as a middle point for purposes of illustration.

many CASA participants, even those with a Criminal History Category I, likely would have received considerably more than a one-year prison term.

Although CASA participants have received approximately \$612,613 in PSA services for substance abuse and/or mental health treatment from June 2012 through March 2017, these PSA funds or the equivalent likely would have been used for these individuals even if they had not been accepted into CASA. These are services commonly provided to defendants on pretrial release, federal custodies, and individuals sentenced to a term of probation or supervised release. The same principle applies to the cost of the volunteers who comprise the CASA Teams – the judges, the prosecutors, the public defenders, and the PSA officers are paid from existing resources and would be paid the same amount even in the absence of the CASA program. Since its inception, CASA has used approximately \$35,000 in grants received from the Central District of California's Attorney Admissions Fund to cover outlays for graduation ceremonies, transportation costs, and other miscellaneous incidental costs. Whether or not these negligible costs are deducted from the estimated savings, it is clear that the benefits far outweigh the costs of the CASA program.

With regard to recidivism among CASA graduates, there is currently only anecdotal information. To date, the anecdotal evidence has been very positive as there have been few reports of recidivism among CASA graduates during the past five years. We are aware of only one Track 1 graduate who may have reverted to substance abuse, though there has been no law enforcement contact and only periodic communications from her mother. No CASA judges report having had probation revocation proceedings for Track 2 graduates. Although Track 1 graduates are not supervised, many maintain contact with CASA Team members or return as guest speakers. Plans are currently afoot to obtain privacy waivers from graduates, current participants, and incoming participants in order to enable the PSA to conduct at least biannual criminal record checks for up to five years after a participant's graduation date to determine if any new arrests or convictions have been sustained. That information will be used anonymously for research and statistical analysis.

Although CASA has not devised a methodology to measure the growth of human potential or the indirect impact of the program on participants' family members, employers, the criminal justice system, and society as a whole, there can be no doubt among those of us who work with the CASA participants that the ripple effect of their successful integration into society as responsible citizens has had immense tangible and intangible benefits.

Nonetheless, our District is committed to evidence-based practices and recognizes that anecdotal evidence cannot take the place of rigorous and reliable statistical and data-driven analysis. Thus, in or about January 2016, the Central District of California requested the Federal Judicial Center (“FJC”) to conduct a process-descriptive empirical evaluation of the CASA program. The evaluation will identify, define, and empirically measure the components of the program. The goals are to (1) identify areas that may affect the efficacy of the program; (2) better inform the District as to the relationship between the program’s stated goals and any observed program outcomes; and (3) provide a stronger basis for any follow-up evaluation to assess the program’s impact. That evaluation is ongoing and is expected to be completed in 2017.

V. THE ROLE OF THE SENTENCING GUIDELINES AND SECTION 3553

Many CASA participants face considerable prison sentences under the relevant guidelines for their offenses (typically involving drug trafficking, fraud, bank robbery, theft, or regulatory crimes). The plea agreements uniformly include a calculation of the base offense level, but the precise guidelines range is contingent upon a number of variables, including the calculation of the defendant’s Criminal History Category and the defendant’s ability to successfully complete the CASA program. Our successful Track 2 participants have a sentencing hearing at which the judge calculates and announces the guidelines range, but imposes the probationary sentence and other terms and conditions that the parties have agreed upon in their binding plea agreement. The end result of all successful CASA cases is no prison term – either dismissal of the charged offense or a probationary sentence. Individuals who are terminated from CASA before graduation (discussed above) are subject to traditional criminal sentencing based on consideration of the advisory Guidelines and Section 3553(a) factors.

VI. AWARDS AND ACCOLADES

In remarks made to the American Bar Association’s Annual Convention on August 12, 2013, then United States Attorney General Eric Holder said:

By targeting the most serious offenses, prosecuting the most dangerous criminals, directing assistance to crime ‘hot spots,’ and pursuing new ways to promote public safety, deterrence, efficiency, and fairness – we can become both smarter *and* tougher on crime.

(Emphasis in original.)

In August 2013, the United States Department of Justice (“DOJ”) issued a publication at the direction of then Attorney General Holder entitled “Smart on Crime: Reforming the Criminal Justice System for the 21st Century.” In it, the DOJ stated that it intended to issue a “best practices” memorandum to United States Attorney offices encouraging more widespread adoption of diversion programs when appropriate. *Id.* at 4. Cited as an example of such a “best practice” was the Central District of California’s CASA program. *Id.*

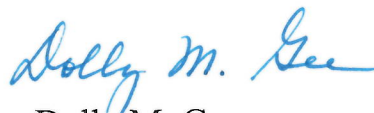
In October 2014, both Attorney General Holder and then California Attorney General Kamala Harris (now a United States Senator from California) attended a CASA graduation. State Attorney General Harris was so impressed with the CASA program that she awarded it one of her Department’s “Smart on Crime” awards in 2015.²

Since that time, many representatives from Districts across the country have come to observe CASA in action. Many have adopted their own unique programs and have used CASA as a model. We are encouraged by the development of these programs, but they are still too few in number. We hope to see more in the future.

VII. CONCLUSION

The Central District of California and its CASA Team members are pleased to have had the opportunity to share our information and data about CASA with the members of this Commission. We welcome your insights regarding how our program can be improved and look forward to working with you to expand the development of programs like CASA in the federal system and to engender more broad-based support for their implementation.

Sincerely,



Dolly M. Gee

Attachment

² See <https://oag.ca.gov/smartoncrimeawards>.

CONVICTION AND SENTENCING ALTERNATIVES PROGRAM FIGURES
MARCH 2017

TOTAL DOCUMENTED REFERRALS: 578

TOTAL ACCEPTED: 222

TOTAL TRACK 1: 138

TOTAL TRACK 2: 83

TRACK UNKNOWN: 1 (DEFENDANT DID NOT PARTICIPATE)

TOTAL ACCEPTED BUT DID NOT PARTICIPATE: 9

TOTAL GRADUATES: 137 (TRACK 1 - 101; TRACK 2 - 36)

CURRENT NUMBERS: 52

PENDING ENTRY: 6

JUDGE	GRADUATES	TRACK 1	TRACK 2
GEE	39	25	14
PREGERSON/ ABRAMS	41	31	10
PHILLIPS/ BERNAL	31	23	8
STATON	26	22	4

CASA RELEASE TO PARTICIPATE: 17

JUDGE	TOTAL	SUCCESSFUL
GEE	9	7
PREGERSON/ABRAMS	2	2
BERNAL	2	1
CARNEY/STATON	4	3

CASA TERMINATIONS: 18

JUDGE	TOTAL	TRACK 1	TRACK 2
GEE	6	3	3
ABRAMS BIROTTE	3	2	1
PHILLIPS/ BERNAL	5	4	1
CARNEY/STATON	4	2	2

CURRENT NUMBERS: 52

JUDGE	TOTAL	TRACK 1	TRACK 2
BIROTTE/ ABRAMS	18	4	14
BERNAL	10	4	6
GEE	17	7	10
STATON	7	4	3

CASA STATISTICS

OVERALL PARTICIPANT POPULATION

FEMALE: 112 (50.45%)

MALE: 110 (49.55%)

AVERAGE AGE

FEMALE: 34.41

MALE: 35.99

ETHNIC BACKGROUND

ASIAN, 21 (9.5%) BLACK, 31 (13.96%)
WHITE, 66 (29.73%) WHITE HISPANIC, 104 (46.85%)

CITIZENSHIP

U.S.: 180 (81.08%) NATURALIZED: 25 (11.26%)
PERM. RESIDENT: 15 (6.8%) ILLEGAL ALIEN: 1 (0.45%)
*DEFERRED ACTION FOR CHILDHOOD ARRIVAL: 1 (0.45%)

SUBSTANCE ABUSE HISTORY

NO ISSUES: 83 (37.39%) CANNABINOIDS: 54 (24.32%)
METHAMPHETAMINE: 55 (24.77%) ALCOHOL: 12 (5.41%)
COCAINE: 8 (3.6%) PRESCRIPTION OPIATES: 4 (1.8%)
HEROIN: 3 (1.35%)

MENTAL HEALTH

NO ISSUES: 134 (60.36%) MOOD DISORDERS: 45 (20.27%)
ANXIETY: 20 (9.0%) SCHIZOPHRENIA: 3 (1.35%)

EDUCATION LEVEL

NO HS/GED: 67 (30.18%) GED: 21 (9.5%)
HS: 70 (31.53%) SOME COLLEGE: 25 (11.26%)
VOCATIONAL: 9 (4.1%) AA: 10 (4.5%)
BA/BS: 15 (6.76%) MA/MS: 4 (1.8%)
PHD: 1 (0.45%)

*MOST COMMON CASES (MAJORITY) ACCEPTED INTO THE PROGRAM CONTINUE TO BE THOSE CHARGED WITH NARCOTICS-RELATED OFFENSES.

*AS OF MARCH 2017, APPROXIMATELY \$612,612.91 SPENT ON SERVICES FOR SUBSTANCE ABUSE, MENTAL HEALTH SERVICES AND CO-OCCURRING DISORDERS.