

America's New Criminal Justice System Diversion Program, the Community Acceptance Program



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on a local, state, and national level, for purposes of immediate and long-term criminal justice system reform, organizers behind the development of this CAP looked to the US's existing youth-led and volunteer-driven youth justice diversion program called youth/teen/student/peer court and peer jury, established over 25 years ago and now in more than 1,800 local communities in 48 states, the District of Columbia, and at least 10 tribes. This innovative youth-led youth justice diversion program is not only a textbook example of a local grassroots movement in America, but

Despite decades of unanimous support, advocacy, funding, and justification for more criminal justice system diversion programs in the United States, there have been few new authentic diversion programs established, and none of them have proven to be scalable on a state or national level. Unlike specialized courts such as drug court, authentic diversion programs are not a court, and they can be established locally in lieu of arrest, bail, jail, or conviction, and used to avoid a criminal record.

Recognizing the need for criminal justice system reform, and the absence of a sustainable, affordable, and scalable criminal justice system diversion program, efforts began five years ago to remedy this situation. In 2014, conceptualization, development, and design began on a new front-end local criminal justice system diversion program to be called the "Community Acceptance Program" (CAP). The CAP will be for adults age 18 and older who have committed minor crimes, offenses, and violations. Local communities will determine if an adult offender is eligible to proceed in the CAP for a second or even third time, based on the criteria they establish for this criminal justice system diversion program.

Modeled on Existing Youth-Led Diversion Programs

Recognizing the considerable benefits a viable diversion program could have

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it also has spread to 10 other countries, and is referred to as an excellent example of “access to justice” and “people-centered justice.” Just like in America, adults from the legal community outside America are driving the local expansion of these youth-led diversion programs, which is commonly referred to as the Global Youth Justice Movement.

Despite no federal support, and little state support over the past 25 years, these local youth/teen/student/peer court and peer jury diversion programs have rapidly been expanding across the US, and have emerged as the most replicated juvenile justice diversion program in the US since the first juvenile court in Cook County, Illinois, in 1899. Just like youth/teen/student/peer court and peer jury diversion programs, the CAP will utilize the same volunteer-driven programmatic design, which is affordable, scalable, and sustainable. There is considerable interest in implementing the CAP in many of the communities already operating a youth/teen/student/peer court and peer jury, which will likely fuel the rapid local expansion of the CAP in America.

Structure and Benefits of the Community Acceptance Program

Local communities will determine if the CAP will be a voluntary or an involuntary criminal justice system diversion program. The CAP will not be a specialized court or docket, but rather a local community diversion program operated by public and/or private organizations in collaboration. Local community officials and leaders will decide which agency or organization will administer the CAP. It may be a nonprofit, police department, bar association, district attorney office, court, probation office, or another agency or organization.

The CAP will handle low- to mid-level crimes and misdemeanors, and possibly even some nonviolent and other types of felonies. Narcotic distribution and serious violations of federal and state laws will not be eligible for the CAP. Local communities operating within state and federal laws will determine what types of crimes, offenses, and violations will be adjudicated in a local CAP.

The CAP will address multiple issues and problems to include reducing court dockets, expenses of court proceedings, expenses for law enforcement activities, and the alarmingly high arrest and incarceration rates in the communities, as well as improving the credibility of our courts and justice system through active citizen participation. The CAP will involve volunteer adults who successfully complete a multiweek training program, including former offenders and retired and senior citizens wishing to stay active in community affairs—and such participation will enhance overall the sense of community involvement in promoting the welfare and public safety of the entire community. The CAP will salvage individuals’ lives by reducing future criminal activity, and encourage these individuals to become contributing citizens to the community, even after completing their assigned peer sanction.

The CAP will be a new voluntary program alternative to arrest, conviction, and incarceration for adult offenders ages 18 and up. In several states like New York, a 16- or 17-year-old may be eligible for the CAP if there is no other diversion program available. Adult offenders, as determined by local communities within applicable laws, who have been either formally arrested or formally apprehended with an arrest pending are eligible to be referred to the CAP for alternative sentencing and disposition by volunteer adults serving in roles ranging from judges, attorneys, clerks, and bailiffs to jury members.

An admission of guilt is required for acceptance into the CAP. Therefore, the CAP operates as a sentencing hearing, as opposed to a trial, which would have been utilized to determine guilt or innocence. The CAP is a program and *not* a legally authorized court by state statute or constitution or the US Constitution. Adult community leaders determine allowable sentences the volunteer adults can impose based on one or more crimes, offenses, and violations. Most often, it will be a range of mandated community service hours, such as 1-50 hours, in addition to other requirements such as classes, drug testing, restitution, and other reasonable imposed sanctions by a jury of their peers.

The CAP sentencing hearing will likely take place in local courtrooms across the US when they are not in use during the evening. A convenient location already paid for with taxpayer funding that is safe and friendly to public transportation would be most desirable and is available in most communities. Just like youth/teen/student/peer court and peer jury diversion programs, it is likely only necessary for the CAP to have one or two full-time and/or part-time staff.

Failure to complete the CAP will result in stricter consequences when the case is referred back to the criminal justice agency or court of origin. Like youth/teen/student/peer court and peer jury diversion programs, this swift and more severe approach within the rule of law will result in offenders having exceptionally high completion rates of their peer-imposed sanctions. This will reduce the court backlog every time an offender successfully completes the CAP. Law enforcement referral of cases directly to the CAP where an official arrest did not take place pending successful program completion further reduces paperwork and added financial costs to the court and community—not to mention the considerable benefits to the adult offenders who made a foolish mistake they hopefully will learn from having done. A goal of the CAP is to not create a burdensome diversion program, but rather to blend in and assist with the processing of cases for improved efficiency and effectiveness where improvement is needed. The CAP will do both, while strengthening a commitment and personal responsibility to the community and its citizens.

The CAP will improve and enhance the community by: (1) reducing the backlog and case docket of adult criminal

cases; (2) providing an alternative to arrest, conviction, and incarceration; (3) offering a civic approach to a fair process for imposing an additional sanction other than more formal criminal justice involvement; (4) reducing the economic disparity associated with the disproportionate confinement of indigents and minorities; (5) reducing the effects of a negative stigma individuals often acquire after being labeled a convicted criminal and/or experiencing confinement; (6) sending a message that every crime will result in a consequence; and (7) increasing satisfaction of local law enforcement given that their arrests are not plea bargained out with little or no sanction imposed.

Moreover, the CAP will address some of our society's upcoming demographic challenges. People are living longer, and with that we need to be prepared for more senior citizens entering America's criminal justice system. A senior citizen may be suffering from dementia and forgetfulness, and pay for some items but forget to pay for one or two other items put in a shopping bag or elsewhere on his or her person. Such behavior may result in apprehension and/or arrest. The forgetfulness may be genuine, and thus there is no intent to steal or commit larceny. Such an individual should not be subject to an unlawful theft accusation but should get treatment for the mental deficiency or take the precaution of going shopping with another individual, which would protect the senior citizen from picking up objects and forgetting that he or she has them. Further, to the extent that medical assistance is necessary or medication to deal with the mental deficiency is required, that should be provided rather than subjecting the individual to a criminal conviction. These types of crimes will almost certainly increase in America in the coming years, and these types of crimes are an excellent type of referral to the CAP.

Caveat

The situations described in this article are not intended to be exhaustive but merely illustrative of the need for a new approach to designing a criminal justice system diversion program that is scalable, sustainable, affordable, practical, volunteer-driven, and left up to the local community to modify to meet its needs and resources. The CAP would provide multiple benefits, including reduced court dockets, and improve the credibility of our courts and criminal justice system through active citizen participation. It would prevent the overcriminalization of a large portion of our society in the United States.

In addition to drug addiction or dependency requiring intensive treatment, there is another cautionary concern we must have in running such a diversion program—that is, the questioning of the participant in the program should not involve other matters to an extent as to violate that person's right against self-incrimination under the Fifth Amendment. If there are other unsolved crimes which come to light, that person's right to counsel must be respected as to any mat-

ter other than what brought that individual to the attention of the CAP. It is normally presumed that the individual is a first-time offender, and if the offender starts talking about other unsolved crimes and such information starts to be disclosed, the administrator of the CAP program should cease questioning the individual and advise that individual to seek counsel and disclose no further details or incriminate himself or herself in the unsolved crime. Ideally, that person should be referred to a public defender office or legal aid office that handles potential criminal matters or can refer that individual to a resource to talk with counsel in an attorney-client relationship in confidence.

With reservations as to these two conditions, the CAP should be a most effective means of improving the quality of our criminal justice system in this nation, result in more effective usage of law enforcement personnel, improve police community relations with its population, and improve the quality of community life free from crime and threats to public safety, at less cost to the supporting taxpayers of that community. It should bring law enforcement personnel and community citizens closer together in mutual respect and improve the quality of life in that entire community.

What's Next for the US's Community Acceptance Program in 2020?

1. In early 2020, organizers of the CAP will convene a meeting in Washington, D.C., comprised of leaders from criminal justice agencies and organizations, criminal justice policy and research professionals, and foundations for purposes of designing a US strategy on this new criminal justice system diversion program.
2. In mid to late 2020, organizers of the CAP will announce a call for applications for at least 10 CAP demonstration sites from the US's 50 states, five territories, the District of Columbia, and Native American/Alaskan native tribes and councils.
3. At the end of 2020, the demonstration CAP sites will be announced, along with the dates and times for the first CAP two-day implementation training for teams of five adults from each of the demonstration sites.

CAP Contact Information

The CAP website, www.CommunityAcceptanceProgram.org, will launch in mid-2020. A Twitter account @AdultJusticeCAP has been launched and has passed 11,500 followers. Any questions, comments, interests in becoming involved, and requests for additional information on CAP may be emailed to CAP@CommunityAcceptanceProgram.org. You may also contact Scott Peterson, who is leading the US's strategy for the CAP, at (202) 468-3790. ■