

AMERICAN BAR ASSOCIATION**ADOPTED BY THE HOUSE OF DELEGATES****August 7-8, 2006****RECOMMENDATION**

RESOLVED, That the American Bar Association adopts the following principles for Homeless Court Programs to the extent appropriate for each jurisdiction:

- (1) Prosecutors, defense counsel, and the court should agree on which offenses may be resolved in the Homeless Court Program, and approve the criteria for individual participation recognizing that defendant participation in Homeless Court Programs shall be voluntary.
- (2) Community-based service providers should establish criteria for individual participation in the Homeless Court Program and screen individuals pursuant to these criteria.
- (3) The Homeless Court Program shall not require defendants to waive any protections afforded by due process of law.
- (4) All Homeless Court Program participants shall have time for meaningful review of the cases and issues prior to disposition.
- (5) The Homeless Court Program process and any disposition therein should recognize homeless participants' voluntary efforts to improve their lives and move from the streets toward self-sufficiency, including participation in community-based treatment or services.
- (6) Participation in community-based treatment or services shall replace traditional sanctions such as fines, public work service and custody.
- (7) Defendants who have completed appropriate treatment or services prior to appearing before the Homeless Court shall have minor charges dismissed, and, where appropriate, may have more serious misdemeanor charges before the court reduced or dismissed. Where charges are dismissed, public access to the record should be limited.

REPORT

Introduction

In February 2003, the ABA House of Delegates adopted a policy urging state, local and territorial courts to adopt Homeless Court Programs as treatment-oriented diversionary proceedings as a means to foster the movement of people experiencing homelessness from the streets through a shelter program to self-sufficiency (see Report No. 116). At the time, 7 Homeless Court Programs were in existence. To date, the State of California alone has 14 Homeless Court Programs. There are another 13 across the nation and others held during annual Stand Down events.

In light of the recent proliferation of Homeless Court Programs following ABA adoption of policy in 2003, the proposed policy recommendation provides jurisdictions; guidance in their practice and purpose of that policy, achieving common goals of such programs, and allow flexibility for jurisdictions to innovate based on their unique challenges. The proposed policy recommendation recognizes the recent growth of Homeless Court Programs across the country and reflects the common goals and due process protections all Homeless Court Programs share. While all claim San Diego as their model, the development and implementation of these Homeless Court Program varies in form and practice. While these Homeless Courts all share common goals and principles, these Homeless Courts strive to make do with limited resources. The Homeless Court principles link all these programs, sets forth guiding principles and basic tenets to clarify any confusion of implementation and practice with other problem solving courts.

Homeless Court Programs

Homeless people are routinely issued citations for such minor offenses as illegal lodging, blocking the sidewalk, jaywalking, drinking in public and urinating in public, misappropriation of a shopping cart, and riding the trolley/bus/subway without paying. Caught up in a daily struggle for food, clothing and shelter, a homeless person typically has few resources to draw upon in order to respond properly to the criminal justice system. Consequently, misdemeanor citations and infractions are often not dealt with, compounding the problem as warrants are issued and additional fines assessed, which often preclude homeless people from accessing desperately needed services such as public benefits and mental health and/or substance abuse treatment—not to mention employment and housing.

In 1989, San Diego established the nation's first Homeless Court Program: a special monthly Superior Court session held at local shelters for homeless defendants to resolve outstanding misdemeanor criminal cases. To counteract the effect of criminal cases pushing homeless defendants further outside society, this court combines a progressive plea bargain system, an alternative sentencing structure, and proof of community-based shelter program activities to address a range of misdemeanor offenses. Homeless courts expand access to justice, reduce court costs, and help homeless people reintegrate into society and lead productive lives.

The Homeless Court Program focuses on what the defendant has accomplished on his or her road to recovery and self-sufficiency rather than penalizing him or her for mistakes made in the past.

The HCP is fundamentally different from a traditional criminal court due primarily to the fact that participants voluntarily surrender themselves to the court for prosecution without knowledge of all the pending charges (if any exist)¹. Additionally, defendants come before the judge at the Homeless Court having already completed a substantial portion of their “sentence.” As a result, no further hearings are necessary to verify compliance with a court order. The Homeless Court Program allows people experiencing homelessness a means to resolve their misdemeanor cases in a timely and efficient manner and exchange their fines, restitution, and custody orders for participation in services or treatment programs that will address the underlying problems that contributed to their offenses such as substance abuse, unemployment, and mental illness.

Recommendation

The proposed recommendation sets forth key principles for Homeless Court Programs, recognizing that administration of the programs will differ depending on the particular needs, goals and challenges of a jurisdiction. Each jurisdiction varies in the level of court and homeless agency services available to implement a Homeless Court Program. Some jurisdictions utilize district attorney’s to prosecute cases while others depend on city attorneys. Some utilize public defenders while others depend on contract or private attorneys. The homeless service agencies in any given community across the country, vary in their mission, access and level of services.

The Homeless Court Program is a collaboration of all the traditional criminal justice practitioners. They must agree on the parameters of which cases will be heard in the Homeless Court hearing and how cases will be resolved. The overriding goal of the Homeless Court Program is resolution of cases and the removal of obstacles, of the charges and convictions, which preclude the homeless participant’s reintegration into the community. One of the guiding principles of the Homeless Court Program is to provide the participants a fresh start. This fresh start reconciles each participant’s successful completion of program activities against their outstanding cases.

The HCP removes another obstacle to the individual’s participation in society while providing the community, with proof of accomplishments and greater assurance the recidivism is not as likely to recur. While the vast majority of cases fall within the scope of public disturbance offenses, the HCP has long addressed the full realm of misdemeanor offenses. The vast majority of HCP cases and offenses on calendar before the court correlate easily with the individual’s condition of homelessness. However, there are numerous other cases that reflect this condition too. The nexus of offenses which stem from poverty reaches across the spectrum of numerous offenses. Sadly, some people commit an offense when they cannot make their way off the streets to obtain food and shelter in the custody setting.

Prosecutors and defense counsel, working with the court, agree on which offenses, in general, may be disposed of in the Homeless Court Program, recognizing that defendant participation in Homeless Court Programs shall be voluntary. The participants enter their referral into the Homeless Court from their homeless service agency. This ensures their participation in the HCP is voluntary. People who enter their homeless service agency are in a stronger position to

¹ A small number of homeless individuals that sign up to participate in the Homeless Court Program discover that they actually do not have any charges pending.

overcome the obstacles their criminal case represents. They address the underlying cause of their homelessness represents and are in a stronger position to focus on reclaiming the rest of their lives.

Community-based service providers establish criteria for individual participation in the Homeless Court Program and screen individuals pursuant to these criteria. Each homeless service agency addresses the complexities homelessness represents in accordance with their mission, access and level of services. The homeless service agency performs assessments to determine the individual's social history and needs, their abilities and motivation. Each homeless service provider knows the participant from ongoing daily interaction. They develop trust that comes from working together to identify and address ones greatest needs and accomplishments. Working together, the homeless service agency representatives and the person who experienced homelessness build a relationship and confidence to strive for resolve to life obstacles. The wide array of homeless service agencies differ in the level, approach and intensity of services. The needs of the people who access their services vary too.

The Homeless Court Program does not require defendants to waive any protections afforded by due process of law. One week before the court hearing, the defense attorney meets with the defendant to review his/her case(s). During the counseling session, the defense attorney explains the Homeless Court process, that each defendant still holds all his/her due process rights to challenge their case, whether pursuing a motion or trial by jury. The defense attorney presents each individual case(s) and proposed plea agreement as the worst-case scenario to help the participant face his/her greatest fears about the judicial process.

The defense attorney learns about the individual's participation in a shelter or other type of program, (i.e. community college, technical school rehabilitation, and outside medical treatment) which the court can use as an alternative sentence to fines, community service, probation, or in some cases, custody. During the consultation, the public defender also explains the importance of the advocacy letters each participant is required to bring to court. These letters show proof of participation in classes, counseling, and community service. These letters highlight individual accomplishments with specific information including the total number of hours that the defendant participated in treatment, counseling, or volunteer service as well as the type of programs. The defense attorney also explains the history of the Homeless Court Program. The defense attorney uses the shelter programs and the recovery process to get clients involved in successful court hearings. The defense attorney tells the clients to bring back proof of program activities and advocacy letters to ensure a successful resolution to the individual cases. The HCP consultation provides the public defender with important information to negotiate a settlement with the prosecutor.

The week before the counseling session, the prosecuting attorney reviews the case files of the defendants on the court calendar. The prosecuting attorney generates a list of cases, relevant discovery and an offer (plea bargain) for resolution of the cases. The prosecutor makes offers for resolution of the cases based on criminal history, impact of criminal behavior on the community, and the number of outstanding cases. The prosecuting attorney offers a plea bargain, in anticipation of proof, and an acknowledgement of each participant's involvement in his or her respective program.

The defense attorney formally calls each defendant to come before the judge. The defense attorney, prosecutor, and defendant stand in front of the room. The judge takes the bench, either standing at a podium or seated at a fold out table. The defense attorney states the agreement, says whether the recommendation is a dismissal or a plea and presents the letters. The court clerks give the case files to the judge and the defense attorney asks that advocacy letters be formally entered into evidence.

Unlike a traditional court, the judge communicates more often with the defendant than with the defense attorney. The judge asks the defendant about what brought him/her to the court, his/her participation in programs, counseling, or classes. The judge consults the prosecution about the offer for disposition and, in most cases, the charges, warrants, and penalties are formally dropped as previously agreed. The defendant's record is clean. On average, 90% of the Homeless Court cases are dismissed.

All Homeless Court Program participants – including defendants who are homeless or at risk of becoming homeless, defense and prosecution attorneys, court clerks and judges – shall have time for meaningful review of the cases and issues prior to disposition.

The Homeless Court Program process and any disposition recognize homeless participants' voluntary efforts to improve their lives and move from the streets toward self-sufficiency. Those efforts may include participation in community-based services to the extent available.

With alternative sentencing, the HCP gives "credit for time served" for the participant's accomplishments in shelter activities. These activities include life-skills, chemical dependency or AA/NA meetings, computer and literacy classes, training or searching for employment, medical care (physical and mental), counseling and volunteer work. These activities replace the traditional court sentence options of fines, public work service and custody.

The Homeless Court recognizes that each shelter has its own requirements and guidelines to allow resident's access to the Homeless Court. Some shelters require a resident to complete an assessment, an initial phase of the program or attend specified meetings. The shelters introduce potential participants to the Homeless Court through a variety of means. These agencies will address the Homeless Court as an option after the homeless person has completed a certain course, phase, or activity. The Homeless Court does not interfere with the shelter requirements. Requirements vary from program to program.

The shelters perform the assessments of clients, provide for their basic needs (food, clothing and shelter), while building the motivation and support that leads clients to the services which, in turn, fulfill the court orders for alternative sentencing. The shelter is in the best position to evaluate the client's needs and design a plan with attainable goals and benefits. Most shelters offer emergency and transitional beds for their clients. Some provide independent living for clients who successfully complete their program. Other shelters provide basic services or support for client's seeking to access benefits, counseling, group meetings, or an identification card, clean clothing and a meal. Clients who actively select their services and goals are more likely to benefit from the program. The Homeless Court and shelters share the desire to

empower the individual and enable that person to overcome the adversity that fosters or causes homelessness.

The shelter representatives write advocacy letters for each client. The advocacy letter is symbolic of the relationship between the client and the agency while including a description of the program, the clients start date, and accomplishments, programs completed and insight into the client's efforts. The HCP sentence strengthens and advances the efforts of the participant and agency representatives.

When participants work with agency representatives to identify and overcome the causes of their homelessness, they are in a stronger position to successfully comply with court orders. The quality, not the quantity, of the participant's time spent in furtherance of the program is of paramount importance for a successful HCP experience. A person who signs up for the HCP is not limited to the sentencing alternatives provided by the homeless agency that referred him/her to court. Rather, the participant is encouraged to participate in a program that will best meet his/her needs.

Homeless service agencies address the basic needs of their clients. While these agencies vary in the mission, access and delivery of services, they focus on services such as life-skills classes, chemical dependency or AA/NA meetings, computer and literacy classes, training or assistance in searching for employment and/or housing, medical care (physical and mental), and counseling. The Homeless Court Program acknowledges the participants accomplishments and accepts proof of these activities to replace the traditional court sentence options of fines, public work service and custody. Participation in community-based services replaces coercive, punitive or costly sanctions such as fines, public work service and custody.

The unfortunate reality is, homeless service agencies are not able to address the demands of all the people who seek their services. In short, more people are turned away from services than those able to access services. The Homeless Court Program recognizes, people should not be forced into services they otherwise cannot access voluntarily.

The HCP key players (judges, prosecutors, defense attorneys, and homeless shelter/service agencies) agree, "No one goes into custody against his or her will." This does not mean that the prosecution gives up its power to ask for custody, nor does the court relinquish its authority to incarcerate. Rather, this agreement acknowledges both that the participants have committed offenses and have met court requirements through their work in their programs. This agreement respects the relationship and trust the homeless service agencies hold with the participants who appear before the HCP, and acknowledges that time spent working with these agencies is equivalent to, and more constructive than, "time" spent in custody.

Distinctions between the Traditional Court and Homeless Court

In San Diego, the traditional court sentence for a municipal code violation is a fine of \$300. In the traditional court setting, a defendant will receive \$50.00 "credit" against a fine for every day spent in custody. The defendant who spends two days in custody receives credit for a \$100.00

fine. To satisfy a fine of \$300.00, the court requires a defendant spend 6 days in custody. Thirty days in custody is the equivalent of a \$1,500.00 fine.

The court might convert this fine to six days of public service work or the equivalent time in custody. The traditional punishment for a petty theft is one day in custody (for book and release), \$400 in fines, victim restitution, and an eight-hour shoplifter course. When someone is convicted of being under the influence of a controlled substance for the first time, he/she faces a mandatory 90 days in custody or the option of completing a diversion program. The diversion program includes an enrollment orientation, 20 hours of education (two hours a week for 10 weeks), individual session (biweekly for three months, 15 minutes each), drug testing, weekly self-help meetings, and an exit conference.

Typically, the HCP participant has *already* been in a shelter program for at least 30 days (from the initial point of registration to the hearing date) when standing before the judge at the shelter for Homeless Court. By this point, their level of activities in the shelter or a service agency *exceeds* the requirements of the traditional court order. While the program activities vary from one shelter to another, they usually involve a greater time commitment than traditional court orders and introspection for their participants. Program staff ensures the homeless participants are already successful in their efforts to leave the streets before they enter the courtroom. These individuals are on the right track before they meet the judge at the HCP.

The Homeless Court Program brings the law to the streets, the court to the shelters and the homeless back into society. The Homeless Court Program provides access to court for homeless defendants, working with shelter services, holding proceedings in shelter community rooms and recognizing individual effort for purposes of sentencing. The Homeless Court Program's greatest achievement is the contribution of the shelter and homeless participants building a more inclusive criminal justice system and stronger community.

Defendants who have completed appropriate services prior to appearing before the Homeless Court shall have minor charges dismissed, and, where appropriate, may have more serious misdemeanor charges before the court reduced or dismissed. The Homeless Court Program resolution of a defendant's case(s) reconciles the accomplishments of his/her program activities against the criminal offense. There is no formula or precise number to portray the movement from the streets through homeless service agency activity to self-sufficiency. Every person is different. They share one common goal, to find opportunity in adversity and overcome the obstacle their time in homelessness represents. The Homeless court removes the obstacles of the past when it moves to reduce or dismiss the participant's case(s).

ABA Policy

The ABA has a history of supporting initiatives and legislation concerning homeless people and access to justice, including policy in support of an increase in the availability of affordable transitional and permanent housing (*housing and community economic development*, 1999 Annual Meeting; *affordability and availability of housing*, 1995 Annual Meeting; and *funding for public housing*, 1992 Annual Meeting), as well as policy in support of access to justice and legal aid for indigent people (*legal representation for indigent defendants*, 1998 Annual

Meeting; *access to justice*, 1995 Midyear Meeting; *free legal representation to those at risk of becoming homeless*, 1994 Annual Meeting; *indigent defense services*, 1991 Midyear Meeting; *equal access to justice*, 1990 Annual Meeting).

The ABA has also adopted policy resolutions in support of specialized courts – including policy in support of homeless courts, drug courts, and unified children and family courts.² The proposed recommendation enhances the Association’s policy by establishing common goals and due process protections for Homeless Court Programs.

Conclusion

The Homeless Court Program is an innovative and effective means for homeless people to address outstanding criminal misdemeanor offenses by exchanging fines, community service, and custody for their participation in shelter/service provider programs.

The American Bar Association has a long history of promoting access to justice through policy based advocacy on behalf of homeless and/or impoverished people; through urging for increased funding for legal services organizations; through educating members of the bar as to the plight of homeless and impoverished people and encouraging the legal community to make a commitment to providing pro bono legal services; and through supporting innovative court programs designed to address the underlying problems that are the root cause of criminal conduct, such as homeless court programs and drug courts. Support of the proposed policy resolution will supplement the Association’s current policy on homeless courts and reaffirm its commitment to replicating the innovative program across the country.

Respectfully submitted,

Steve Binder, Chair
Commission on Homelessness & Poverty

August 2006

² The ABA has adopted policy resolutions in support of specialized drug courts (1994 Midyear Meeting), unified children and family courts (1994 Annual Meeting), and homeless courts (2003 Midyear Meeting).

GENERAL INFORMATION FORM

Submitting Entity: Commission on Homelessness and Poverty

Submitted By: Steve Binder, Chair

1. Summary of Recommendation(s).

The recommendation endorses a number of principles for Homeless Court Programs recognizing that administration of the programs will differ depending on the particular needs, goals and challenges of a jurisdiction. Specifically, the recommendation states the following: who determines which offenses may be resolved; who establishes entry criteria; that due process protections are in place; that time is allowed for meaningful review; that participation in community-based services replaces traditional court sanctions; and, that minor charges are dismissed upon completion of services.

2. Approval by Submitting Entity.

Approved by the Commission on Homelessness and Poverty on May 8, 2006.

3. Has this or a similar recommendation been submitted to the House or Board previously?

In February 2003, the ABA House of Delegates adopted a policy urging state, local and territorial courts to adopt Homeless Court Programs as treatment-oriented diversionary proceedings as a means to foster the movement of people experiencing homelessness from the streets through a shelter program to self-sufficiency (see Report No. 116, 2003 Midyear Meeting).

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The ABA has adopted policy resolutions in support of specialized courts – including policy in support of homeless courts (2003 Midyear Meeting), drug courts (1994 Midyear Meeting), and unified children and family courts (1994 Annual Meeting). The proposed recommendation enhances the Association's policy by establishing common goals and due process protections for Homeless Court Programs.

The ABA also has a history of supporting initiatives and legislation concerning homeless people and access to justice, including policy in support of an increase in the availability of affordable transitional and permanent housing (*housing and community economic development*, 1999 Annual Meeting; *affordability and availability of housing*, 1995 Annual Meeting; and *funding for public housing*, 1992 Annual Meeting), as well as policy in support of access to justice and legal aid for indigent people (*legal representation for indigent defendants*, 1998 Annual Meeting; *access to justice*, 1995 Midyear Meeting; *free legal representation to those at risk of becoming homeless*, 1994

Annual Meeting; *indigent defense services*, 1991 Midyear Meeting; *equal access to justice*, 1990 Annual Meeting).

The approval of this recommendation would further enhance the ABA's commitment to access to justice by supporting the Commission on Homelessness and Poverty's continued efforts to foster the development of Homeless Court Programs across the country.

5. What urgency exists which requires action at this meeting of the House?

In light of the recent proliferation of Homeless Court Programs following ABA adoption of policy in 2003, the proposed recommendation is intended to give jurisdictions greater necessary guidance in their formation of programs that maintain the spirit of that policy and the common goals of such programs, while allowing flexibility for jurisdictions to innovate based on their unique challenges. The proposed recommendation sets forth guiding principles and basic tenets to clarify any confusion of implementation and practice with other problem solving courts.

6. Status of Legislation. (If applicable.)

N/A

7. Cost to the Association. (Both direct and indirect costs.)

There is no direct cost to the Association.

8. Disclosure of Interest. (If applicable.)

N/A

9. Referrals.

The recommendation has been referred to the following ABA entities:

- Commission on Domestic Violence
- Commission on Effective Criminal Sanctions
- Commission on Mental and Physical Disability Law
- Criminal Justice Section
- Government and Public Sector Lawyers Division
- Judicial Division
- Standing Committee on the Delivery of Legal Services
- Standing Committee on Legal Aid and Indigent Defendants
- Standing Committee on Legal Assistance to Military Personnel
- Standing Committee on Pro Bono and Public Service
- Standing Committee on Substance Abuse
- Steering Committee on the Unmet Legal Needs of Children
- Young Lawyers Division

10. Contact Person. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the House.)

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