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# The Homeless Court Program: Taking the Court to the Streets

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*Bringing the law to the streets, the court to the shelters  
and the homeless back into society.*

**American Bar Association Commission on Homelessness & Poverty  
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To obtain additional copies of *The Homeless Court Program: Taking the Court to the Streets*, please call 202-662-1694.

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The contributions of all mentioned have saved me from all forms of embarrassment; in the end, all errors in the manual are of my own responsibility.

I thank my daughters, Kelsey and Leah, who have inspired me for all of their 19 and 16 ½ years.

For those who have yet to experience the HCP, may you all find opportunity, hope and life at the end of the rainbow. There's no place like home.

## EXECUTIVE SUMMARY

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The Homeless Court Program (HCP) makes concrete the promise of our democracy to provide justice for all. Through a vibrant partnership forged between the county court system, shelter providers and homeless defendants, homeless people are given the opportunity to build a new life out of past mistakes and problems. Successful HCP initiatives currently exist in California, where the judiciary and the bar have recognized their significant contribution to the justice system and the community. This manual guides other jurisdictions and advocates who seek to replicate San Diego's HCP as a way of helping homeless men and women achieve self-sufficiency.

San Diego's HCP relies on nontraditional approaches to adjudicating cases, including holding court in the shelter where the defendants reside. It utilizes the progressive plea bargain, that is, it acknowledges that the defendants have already complied with the court's order before a sentence is imposed; positive efforts undertaken by the defendant are recognized in court orders. Defendants are 'sentenced to' and given credit for time 'served' in educational activities, substance abuse rehabilitation programs, medical care, volunteer and paid work, and other life-building steps.

Trust imbues the HCP with life. The court relies on the shelter providers' testimony to a defendant's recent efforts to embrace a new life. The court and providers believe that the defendant will make good on this promise to rejoin the community. Homeless participants have faith that a system, from which they have been excluded by their indigence and crimes, will help them achieve new goals of reliability and stability.

Establishing an HCP is not easy, and cooperation among 'unusual suspects' is mandatory. A judiciary that seeks to expand access to justice is essential as is a shelter system designed to support homeless residents in their efforts to make the difficult transition off the streets. On the other hand, the benefits to a county that has instituted a successful HCP are extraordinary. HCPs bring about significant reductions in the number of hearings necessary to resolve cases. HCPs lower costs associated with homeless misdemeanants, and significantly raise rates of successful completion of sanctions without incarceration. Recidivism is much lower, and the bulk of the cases handled by an HCP (80% to 90%) are dismissed.

Recently, San Diego's HCP launched its Non-Custodial Parent Program, to bring back into the working class through employment and training, homeless parents who are obligated to support their children. This project will provide parents with the chance to support their children and the opportunity to establish basic parental relationships with them. Through this initiative, homeless parents can build positive and mutually beneficial interactions with their children.

Holding court in the shelter gives judges and attorneys easy access to a defendant's character witnesses and others who can describe the individual's commitment to change. It allows homeless people to participate at a less stressful level than a formal court hearing room fosters. Perhaps most important, though, it illustrates the extent to which the justice system is capable of reaching out to disenfranchised citizens and creating avenues back into the community.

However, the strongest recommendation for creating an HCP is that it is a key element in reintegrating into our society people who have lived long in its shadows. Anecdotes and statistics show that 'graduates' of HCP have the confidence, skills and 'clean slate' that enables them to look for permanent housing (46%), apply for a driver's license (39%) and seek employment (38%). Several participants have commented: "I feel better about myself" and "I feel more positive about the future." That is the gift of the HCP and the strongest reason for launching one.

Laid out in this volume are directions, suggestions and examples of approaches that have worked in San Diego. Testimonies from judges and court personnel as well as from shelter providers and defendants illustrate the benefits of the HCP's components. If you have questions or concerns about establishing an HCP, please contact the ABA Commission on Homelessness and Poverty, in Washington, DC.

## **ABA COMMISSION ON HOMELESSNESS & POVERTY**

The ABA Commission on Homelessness and Poverty, which consists of 13 members appointed by the ABA President, is charged with the following tasks:

- 1) encouraging and assisting in the development of bar and law school *pro bono* programs which provide legal and other services to homeless and near homeless people;
- 2) educating members of the bar and the public to legal and other problems of poor and homeless people and ways in which lawyers can assist in solving or ameliorating them;
- 3) training lawyers in areas needed to provide *pro bono* legal assistance to homeless and near homeless people;
- 4) working with all ABA entities on issues arising in their jurisdiction that affect poor and homeless people; and
- 5) engaging in such further activities as may be necessary and proper for the fulfillment of these responsibilities, including working with state and federal executive branches and legislative bodies concerning matters relating to the poor and homeless.

### **Policy-based Advocacy**

In 1986 the ABA resolved to “encourage public and private initiatives to increase the supply of habitable low-cost housing in the United States; and ... encourage lawyers to assist the homeless and to help implement this recommendation.” The Commission on Homelessness and Poverty, in association with the ABA Governmental Affairs Office, uses its policy as a foundation to lobby Congress for increased support of programs aimed at addressing homelessness and poverty in America. The Commission also educates lawyers about homelessness, trains them in relevant areas, and helps bar associations create programs where lawyers, law students and law firms can donate legal assistance. There are now about 80 programs offering pro bono legal help directly to homeless clients or donating business or real estate law services to organizations developing low-income housing. Nationwide, more than 5,000 lawyers and law students volunteer through these programs.

The ABA has policy protecting the due process rights of public housing tenants threatened with eviction (August 1990). Other policy supports community reinvestment programs in financial institutions and placing funds in banks with outstanding or satisfactory programs (February 1991). The ABA adopted policy supporting the Social Security Outreach Act (August 1991), which requires SSA to go to shelters and soup kitchens and help eligible homeless people apply for disability benefits. In 1992 the ABA adopted policy opposing cuts in welfare payments to poor people and any linkage of public assistance to needy persons which infringe upon the right to travel. In 1993 the ABA enunciated its support of efforts that would ensure the participation of homeless people in the electoral process. The recommendation stated that laws, regulations, and policies should not hinder or prevent registration and voting by homeless persons or those residing in non-traditional abodes who are otherwise qualified to vote.

In August 1994 the ABA adopted policy supporting provision of free legal representation to low-income tenants and homeowners facing eviction. It also urged the creation of programs to give

poor families information about social and financial resources available to them to prevent eviction and, ultimately, homelessness.

In 1995 the ABA adopted policy that encourages development of creative and comprehensive measures to address homelessness by eliminating illegal residential segregation, increasing the availability of affordable transitional housing, improving the accessibility of such housing to employment, schools, transportation and human services, and building affordable housing in integrated communities through measures such as density bonuses and incentive zoning, reaffirming in principle policy adopted in 1972.

In 1996 the ABA adopted policy that supports legislative and administrative actions to preserve the earned income tax credit.

In 1998 the ABA adopted policy that recommends that all jurisdictions provide adequate resources to ensure representation by counsel for indigent defendants, at their initial judicial appearance where bail is set. In October 1998, the ABA filed an *amicus curiae* brief in *Anderson v. Roe*, a case before the U.S. Supreme Court, which involved a constitutional challenge to California's limiting the welfare benefits available to new California residents during their first year of residency in the state. On May 17, 1999, the Supreme Court ruled in favor of the position taken by the ABA.

At the 1999 Annual Meeting, the ABA adopted policy that encourages support for utilizing various housing and economic development initiatives to promote self-reliance and sustainability in low- and moderate-income communities.

In 2001, the ABA adopted policy that encourages support for legislation and initiatives to establish and support technology-based access to justice, including free and reduced cost legal services, self-help materials, and other legal resources. This policy addresses the "digital divide" by calling for increased access to technology and technology skills for underserved communities. The ABA also adopted policy calling for due process protections for TANF recipients, particularly notice and an opportunity to be heard before the imposition of financial sanctions against families for noncompliance with program requirements. Finally, the ABA adopted policy supporting the amendment of Title IV-E of the Social Security Act to provide direct access to foster care and adoption services for Native American children.

At the ABA Annual Meeting in 2002, the ABA adopted policy that urges for the creation of federal legislation to curb abusive, deceptive and fraudulent mortgage lending practices employed by predatory lenders.

## **Publications**

The Commission has developed several resources designed to help lawyers who represent homeless and impoverished clients. These publications and films target issues that either affect homeless people or prevent homelessness, and include a videotape series devoted to the production of decent low-income housing, and manuals on microenterprise development, that is, the lawyer's role in representing very small businesses or the nonprofit organizations that offer technical and financial assistance to microentrepreneurs. The Commission has also written a book on the Community Reinvestment Act, federal law that seeks to ensure that low-income and minority borrowers have fair access to home mortgages and other credit programs. In May 1998

the Commission published a second manual on microenterprise law, *A Legal Guide to Microenterprise Development: Battling Poverty through Self-Employment*. Given recent developments in the field, the Commission plans to release a revised version of the guide in January 2003.

In a joint effort between the Commission and the Steering Committee on the Unmet Legal Needs of Children, the ABA released *NIMBY: A Primer for Lawyers and Advocates*. The primer is designed to help lawyers and advocates working with housing or social service organizations that seek to house organizations that provide services to the homeless or poor in residential neighborhoods.

Most recently, the Commission released *Representing the Poor and Homeless: Innovations in Advocacy*. The book is a compilation of articles written by law professors and advocates that examine a number of issues related to homelessness and poverty, including: the causes of homelessness, affordable housing, microenterprise development, access to health care, etc.

The Commission is proud to release *The Homeless Court Program: Taking the Court to the Streets*, and looks forward to reaching out to advocates across the country to encourage the development of similar collaborative courts aimed at providing access to justice for the most underserved people.

For more information about the ABA Commission on Homelessness and Poverty and its publications, please contact Amy Horton-Newell at (202) 662-1693 or [hortona@staff.abanet.org](mailto:hortona@staff.abanet.org).

# **I. HISTORY OF SAN DIEGO'S HOMELESS COURT**

## **Stand Down: The First Homeless Court Program for Homeless Veterans**

In military parlance, "Stand Down" is the removal of exhausted combat soldiers from battle to provide them with an opportunity to rest and recover in a place of relative safety and security. That term is applied to an event held in San Diego annually since 1988 to help homeless veterans doing battle on the streets.

Jon Nachison and Robert Van Keuren, Vietnam veterans and founders of Stand Down, recognized that homeless veterans required immediate relief from the trauma and isolation of homelessness and access to the basic needs of life before they could begin their reintegration into society. The primary emphasis for Stand Down is to create a community to transform the despair and immobility of homelessness into the momentum necessary to reconnect with the community. At Stand Down, homeless veterans are treated with respect and given the opportunity to relax, interact, and form ties with peers and volunteers while receiving vital services.<sup>1</sup> The Stand Down event provides comprehensive services to homeless veterans, including physical and mental health treatment, access to housing and job training, assistance with applying for public benefits, legal aid, and numerous other social services.

Jon Nachison explains, "in order to fit into the mainstream again, the table needs to be set to begin work on getting off of the street. Taking a shower and wearing clean clothes help, these are the first steps. Getting your head in the right place to leave the streets comes next. If you are homeless for any length of time, you take on the culture of the streets, you need a re-entry period."

Robert Van Keuren defines the original goals which shaped the Stand Down event. Homeless veterans had specific needs, which were:

- 1) Immediate relief from trauma.
- 2) Access to short term resources: food and shelter.
- 3) Access to long-term resources: recovery programs and legal advice.
- 4) Raise community and national awareness of the issue.
- 5) Replication of effort in other communities.

Immediate relief from trauma and the isolation of being homeless was achieved through the bringing together of the participants in a safe, secure environment. The organizers assured the participants that no one would arrest them, steal from or hurt them at Stand Down. Relaxation and much needed relief from the streets allowed the participants to feel safe while their basic needs were being met.

The homeless veterans of Stand Down in San Diego were the first to identify the problem of outstanding criminal cases. At the conclusion of the first Stand Down in 1988, 116 of 500

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<sup>1</sup> Jon Nachison, Robert Van Keuren & Dick Talbott, Vietnam Veterans of San Diego, Stand Down, Step by Step Procedural Manual, U.S. Department of Health and Human Services, 2, 1995.

homeless veterans stated that their greatest need was to resolve outstanding bench warrants.<sup>2</sup> In 1989, criminal agencies began informal proceedings to include court and other necessary legal services to homeless people in an effort to resolve cases and prevent further involvement in the justice system.

In 1989, the San Diego Superior Court set up a special court at Stand Down. The Stand Down court resolved 4,895 cases between 1989 and 1992 for 942 homeless veterans.<sup>3</sup> Because of the success and increased demand for a special Homeless Court Program (HCP), court sessions have expanded from annual sessions in 1989, to quarterly sessions in 1995, and are now held every month.

### **The Program Expands**

The success of San Diego's Homeless Court fostered the program's growth. Over the years, the HCP expanded to serve battered and homeless women (1990), residents at the city sponsored cold weather shelter (1994), and the general homeless population served at local shelters (1995).

In 1999, the San Diego County Public Defender's Office received a grant (for 18 months) from the Bureau of Justice Assistance (BJA) to create a monthly "HCP" to be conducted at local homeless shelters in San Diego. When the grant funding ended, each participant group incorporated the costs of the program into their annual budget.

San Diego's HCP has received requests for technical assistance from courts across the nation. In July 2000, the Superior Court of California for the County of Ventura started a pilot project Homeless Court where 17 defendants addressed 55 cases. At the conclusion of the nine-month pilot project, the Ventura Superior Court decided to make their Homeless Court an official court program.

Other jurisdictions have replicated the HCP. The Alameda County Superior Court coordinated a three county effort to help homeless veterans resolve cases at their Stand Down in August 2000. The Los Angeles Superior Court recently celebrated the second year of its Homeless Court. The Fresno Superior Court held its first Homeless Court in April 2002. In March of 2002--- after three years of holding court at its annual Stand Down event --- the presiding judge in Bakersfield approved the expansion of its Homeless Court to the general homeless population.

Courts in New Mexico, Florida and Michigan are presently studying the feasibility and logistics for creating a Homeless Court in their communities.

Removing legal obstacles to integration into society provided the philosophical background for Stand Down. That devotion to people experiencing homelessness led to the creation of the HCP and the subsequent implementation of the Non-Custodial Parent Program.

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<sup>2</sup> Stand Down, Veterans Administration Survey, 1988.

<sup>3</sup> San Diego Superior Court Reports, 1992.

## Amnesty Programs

Although the San Diego HCP had its origins in Stand Down, using an alternative type of justice program has its roots in other areas of law. For those who find themselves hopelessly in debt, there is bankruptcy court where a debtor is released from personal liability after filing for certain types of bankruptcy.<sup>4</sup> After apartheid, South Africa created Truth and Reconciliation Courts to promote the spirit of national unity and reconciliation. The Truth and Reconciliation Court sought full disclosure of crimes when granting amnesty to those who admitted their past human rights violations.<sup>5</sup> The Truth and Reconciliation Courts:

- established a way to record the past crimes and put them in their historical context;
- facilitated amnesty to those who made a full disclosure of their crimes; and
- assisted the victims of the crimes and restored their civil rights and human dignity by allowing them to describe their pain and suffering.

San Diego Superior Court Judge Roger Krauel analogizes homeless court to bankruptcy court. In the HCP the participants pay their debt through participation in the necessary programs rather than paying with cash. “The HCP sentence of program activities is a different form of “currency,” in the words of Judge David J. Danielsen.

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<sup>4</sup> Public Information Series of the Bankruptcy Judges Division, December 1998. Some types of debts are not dischargeable.

<sup>5</sup> Justice Center Web Site, Truth and Reconciliation in South Africa, University of Alaska, 1997-2001.

## II. WHY A HOMELESS COURT?

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*The Homeless Court Program brings law to the streets by bringing the court to the shelters and the homeless back into society.*

### **A. What is a Homeless Court and Why Have One?**

The Homeless Court Program is a community working together; finding opportunity in adversity. The Homeless Court Program enables homeless individuals who are engaging in an organized program or living in a shelter to participate in a court session at a homeless shelter. The court recognizes the difficulty homeless people face in legal situations and allows the efforts these individuals have made to count for fines and community service sanctions.

Homeless Court is a special Superior Court session for homeless defendants to resolve outstanding misdemeanor offenses and warrants. Several jurisdictions in California have instituted Homeless Court Programs (HCP). San Diego County began the first HCP in the country in 1989. Similar programs were subsequently created in Ventura County, which received the Kleps Award in 2002, and Sacramento County, which received the Chief Justice Award for courtroom efficiency and promoting access to the courts for its Homeless Court in 1997.

HCPs reduce court and jail costs, build community collaboration, improve access to court, and assist homeless people in accessing vital services and jobs. Access to court for people who are homeless is improved by bringing the court to the community. Court sessions are held at local shelters or agencies that serve this population. Many of the homeless have received multiple citations for public disturbance offenses such as illegal lodging, drinking in public, and loitering. This frequent contact with police perpetuates the cycle of homelessness. Others have engaged in more serious misdemeanor offenses such as petty theft, being under the influence of a controlled substance or driving under the influence.

“*Why don't they come to court?*” For many homeless people, their day is consumed with a search for food, clothing and shelter. For others, they cannot attend court due to mental health issues. And, if they came to the courthouse, where would they leave their belongings? Who would watch their bundles of clothing or shopping carts filled with their possessions? Lastly, and perhaps the most oft-cited reason why homeless people do not show up in court, is fear. Fear of their inability to pay a fine. Fear of incarceration. Fear of the system. There is no single answer as to why homeless people sometimes fail to appear in court. Rather, there are a number of common sense explanations for their absence --- all of which are a result of their condition of being homeless. Yet, court is the only place to resolve these matters, a necessary prerequisite to begin reintegration into society.

When court is held at homeless shelters or service agencies, it helps build trust and confidence in government systems among the population being served. The HCP does not distinguish between people whose offenses contributed to their homelessness or people whose offenses are the result of homelessness. The HCP relies on the homeless service agencies to address the underlying problems homelessness represents, whether they are drugs or alcohol abuse, health problems

(physical or mental illness) or economic calamity. Homeless people voluntarily sign up in the shelters --- the first step in taking responsibility for their offense(s). By taking the initiative of signing up, the participants of the HCP search for justice and a way to reconcile their past with their future. In the HCP, participants integrate their activities in homeless shelters and service agencies with the adjudication of their criminal cases.

Homeless Courts have quickly discovered that many homeless people did not attend court until the court came to them. Ronald M. George, Chief Justice of the California Supreme Court, has made increased access to justice a primary goal. He states:

“Courts, to be successful in performing their mission of providing fair and accessible justice, must be sensitive to the public they serve and its diverse make-up and needs. For our system of justice, that means at a minimum that our courts must be open and accessible to all the constituent parts of our state’s population. And that requires a cooperative, collaborative approach to improving the administration of justice and a broader view of what courts must do to accommodate those needing their services.”<sup>6</sup>

### **HCP Depends on Collaboration and Organizations**

The HCP builds on partnerships between the court, local shelters and service agencies, and the prosecutor and public defender. It attempts to resolve the problems that homelessness represents with practical solutions. Initial referrals to Homeless Court originate in shelters and service agencies. The prosecution and defense review the cases before the court hearing, both to make sure the offense is eligible for disposition through HCP, and to create appropriate alternative sentencing. Alternative sentencing substitutes participation in agency programs for fines and custody. The HCP is designed for efficiency: cases are heard and resolved, and people are sentenced, in one hearing.

### **Benefits of HCP**

Homeless Court helps the community by engaging homeless people in gainful activity, thereby removing them from the doorways, parks and gathering places where they are unwanted and susceptible to arrest. It helps homeless defendants move back into productive lives because the sentence is most often participation in a work and counseling program that offers help with overcoming social problems, enhancing job seeking skills and locating employment opportunities and affordable housing. In the words of Charles Campbell, past Presiding Judge of the Ventura Superior Court, “Other than providing temporary housing, incarceration of the homeless does nothing to benefit the homeless or the community.” Referrals to specialized alcohol and drug treatment programs, mental health services and training or searching for employment help the community to tackle the problem of homelessness in a meaningful and practical way.

People who are homeless want to participate in society. They say as much when they ask local agencies for help with outstanding criminal cases. They are looking for opportunity, not a handout.

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<sup>6</sup> State of the Judiciary Address published in the November-December 2000 Edition of *Court News*.

For some of the dispossessed, living on the streets has become a series of bad choices offering no way out. Others have hit hard times. Some lack badly needed resources. All lack a permanent place to call home.

When homeless people request help with criminal cases, they seek justice and respect. They want to take responsibility while looking for opportunity. While the continued problem homelessness represents is discouraging and frustrating, it is important to remember: it is the *condition* of homelessness that is undesirable, *not* the people.

We, the participants in the San Diego Homeless Court Program and the members of the American Bar Association Commission on Homelessness and Poverty, hope this manual has information and guidelines that your community finds useful.

## **B. The Innovative Approach of San Diego's HCP**

San Diego's HCP, with its progressive plea bargaining system, alternative sentence structure, assurance of "no custody" and proof of program activities, addresses the full range of misdemeanor offenses. Most offenses occur because, as Jon Nachison, psychologist and veteran, explains, "homeless people live in a different area of society. What we do in private, homeless people must do in public."

### **Contrasting Approaches: The Differences Between the Traditional Court System and San Diego's HCP**

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.

## **Progressive Plea Bargain**

The HCP offers a different plea structure from the traditional court proceeding. The HCP plea agreement responds to the cases/offenses the homeless participants receive due to their condition and status: living on the streets. Additionally, the HCP agreement acknowledges the efforts the participants undertake before their appearance in court. The plea agreement takes into consideration the fact that the participant has followed/met the requirements of the court order before the court imposes sentence. The participant has performed the program activities without the threat of custody or a larger fine. The participant completed the order before it was given because that is what he/she needed to do to make a move from the streets, through the shelter program, to self-sufficiency.

## **Alternative Sentencing**

The HCP “sentences” participants to activities in the shelter program. The alternative sentencing structure is not coercive or punitive in nature, but rather designed to assist homeless participants with reintegration into society. With alternative sentencing, the HCP gives “credit for time served” for the participants’ 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 HCP sentence strengthens and advances the efforts of the participant and agency representatives.

When the participant works 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. He/she may submit proof of activities from agencies outside the HCP.

## **No One Goes Into Custody**

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.

## **Proof of Activities/Advocacy Letters**

The HCP developed guidelines for alternative sentencing with service providers to ensure meaningful and successful court hearings. Participants stand before the court with advocacy letters (written by agency representatives) and certificates, proof of their activities, accomplishments, and aspirations. The HCP is strongest when participants have detailed advocacy letters and certificates.

Advocacy letters should include: a description of the service provider and its program, the client's start date and accomplishments, programs completed or in progress, insight into the client's efforts and demeanor, and long-term goals. Some examples of positive steps that show affirmative efforts to address the homeless condition are: staying sober, attention to personal hygiene, use of education and job training resources, treatment (physical or mental), completed assessments, obtaining identification card or a driver's license while remaining in shelters or participating in programs.

The guidelines recognize that while many letters follow the same format, the absence of personalized information dilutes their effectiveness. Judges appreciate defendants who appear before the court with personalized letters of recommendation and who are ready to explain their circumstances and current successes. The court cannot fully resolve cases in one hearing when there is a lack of specific information. While generally, more information is better, efforts should also be made to protect a participant's privacy.

With advocacy letters in hand, the court has verification of a participant's activities and can address the particular needs of the person who appears. The court reviews this documentation and, in most cases, sentences the person to ongoing and previously completed activities in his/her shelter program.

Ideally, the court will have the framework to pronounce a sentence and terms and conditions of probation, with "credit for time served." In San Diego's HCP, it is rare when the court continues a case for additional proof of a participant's program activities.

## **C. Program Goals**

The founders of the HCP recognized the difficulty of implementing an alternative justice program. The HCP key players established a list of goals to prepare a smooth transition from irregular quarterly to monthly court sessions. The initial goals of the HCP program were to:

- Conduct outreach sessions to inform potential participants of the program;
- Implement and operate a monthly court hearing for at least ten individuals;
- Resolve a minimum of 20 cases per month;
- Develop alternative sentencing options for program participants;
- Improve homeless individuals' overall satisfaction with the court process;
- Reduce the number of hearings required to resolve cases;
- Reduce costs associated with homeless misdemeanants; and
- Improve rates of successful completion of sanctions without incarceration.

The key to meeting these goals is the HCP builds on the working relationship between the shelter staff and the homeless participants. The judge recognizes that the case managers are most familiar with the participants, their needs, goals, and strengths, and rely on them to provide a basis for fashioning an order tailored to the individual. Participation in the program is the "currency" that fulfills the court order and resolves cases. One of the many reasons why this system is preferable to the traditional sentencing structure is because alternative sentencing involves substantive activities, not just busy work.

When participants stand before the court, they are one more step toward leaving the past behind and moving on with their plans and dreams for the future.

#### **D. Challenges Faced by Homeless People in the Existing Court System**

Attendance at a court hearing requires time, planning and financial resources. A court hearing consumes the better part of a day. Numerous hearings are necessary to protect a defendant's rights, explore legal and factual questions, and verify compliance with terms and conditions of probation. Homeless defendants often fail to appear not because of disregard for the court system, but due to their status and condition. They struggle daily for food, clothing, and shelter. Some may not be able to adhere to short-term guidelines, do not carry calendars and lack transportation. Without counsel, most homeless persons are not in a position to fight the procedural or substantive issues a case presents. Furthermore, they often lack the proper documentation and resources to defend themselves.

Many homeless litigants are aware that the courts require a decent appearance. They are sensitive to the decorum of the institution. Not wanting to make a bad first impression, a homeless person who lacks access to hygiene facilities or without a place to store his or her belongings may choose not to appear in court at all. Moreover, homeless people are understandably reluctant to attend court given the uncertainty of court proceedings, their inability to pay fines, and the threat of custody.

Unprocessed cases clog the court calendars. These cases are an obstacle to an individual's reintegration to society as well because they deter (and sometimes preclude) the use of social services and impede access to employment. Homeless people are forced to function outside the realm of conventional society concentrating almost exclusively on finding enough to eat and a safe place to sleep. Their integration into society requires the cooperation of many different organizations, including the courts when altercations with the law create obstacles to moving out of homelessness.

#### **E. How the HCP Can Benefit Homeless People in the Community**

The court hearing is an opportunity for the defendant to separate the past, as represented by the cases before the court, with the present (and future) by presenting the accomplishments described in the advocacy letters along with plans and pledges for future improvement. When the client successfully participates in the HCP, the court hearing is the point where the old way on the streets is discarded for new opportunities.

## **Improving Access to Court**

Improving access to the court system for homeless people accounts for its unusual locations. Many people who are homeless have received multiple citations for loitering and illegal lodging. These offenses are not serious, but once a ticket is received, interaction with the justice system begins.

Homeless people live in constant fear of being picked up because of these warrants; they fear doing jail time and losing all of their belongings. They fear they will get into more trouble if they go to court, yet court is the only place to clear their records and get them back into society. When court is held at the homeless shelters there is greater trust and comfort. Homeless people voluntarily sign up in the shelters asking to take responsibility for their past by resolving their legal problems.

The HCP:

- Improves access to court for people experiencing homelessness;
- Provides a critical service;
- Builds community collaboration;
- Reduces court and jail costs; and
- Assists homeless people in accessing vital services and jobs.

The HCP helps get the homeless back into productive lives because the sentence is most often participation in programs that offer help with overcoming social problems, enhancing job seeking skills, finding employment and housing. This, combined with having a clean record, is often the boost a homeless person needs to get off the streets.

## **Making a Difference: Impact and Effect of the HCP**

The benefits of the HCP program extend beyond the process of clearing up outstanding warrants or cases. The evaluation on the HCP conducted by the San Diego Association of Governments (SANDAG) reports, “individuals who participate in HCP are likely to make changes in their behavior that will help them reintegrate faster into society. Their fear of arrest is reduced or eliminated. They feel less apprehensive in filling out applications for employment or obtaining a drivers’ license. Most participants said this fear constrained them in the past. They would have waited until they were arrested to handle their case(s) had the HCP program not been available.”

Overall, the SANDAG report elaborates, the HCP program exceeded its expected benefits to participants. A substantial number of outstanding cases were resolved, access to courts was improved, participants reported a reduced fear of law enforcement, and collaboration was high among court personnel, the community, and the defendants.

As a result of the successful implementation of HCP, a deputy public defender with the San Diego County Public Defender’s Office and a case manager from the Vietnam Veterans of San Diego (VVSD) were awarded the *Unsung Hero Award from the National Coalition of Homeless Veterans* in March of 2001. Later that year, the American Bar Association Government and Public Sector Lawyers Division presented the *Hodson Award* for outstanding service by a

government agency to the San Diego County Public Defender's Office for the HCP. In July 2002, the National Association of Counties presented San Diego County the NACo Award for the HCP as an "innovative program which contributes to and enhances government."

The following are excerpts from the SANDAG evaluation of the HCP:

### **Impact on Participants**

During the HCP hearings held in 2000, all defendants were asked to complete a brief interview with SANDAG research staff. Fifty-nine (59) of the 97 defendants who appeared during these months agreed to participate in the interview process. The following findings related to the impact of the HCP program on participants are based on these interviews.

### **Satisfaction with the Court Processes**

Does participation in the program improve homeless individuals' overall satisfaction with court processes?

HCP participants affirmed in interviews that HCP participation changed their attitude about the court system. All but three respondents answered affirmatively. When questioned further as to "How has your attitude changed?" the most often repeated comment was that their "fear" of the court system was reduced or eliminated. Respondents also provided a variety of other statements such as the following:

- "It has taken away my fear of going to court."
- "I feel like I can now believe more in the system--- it works."
- "It's good that the court system helps us folks out. I mean, we have nothing."
- "I can't believe that the court system would come to the shelter; it must mean that they care."

### **Attitudes Towards Law Enforcement**

To determine if participation in the HCP program impacted respondent's attitudes toward law enforcement, respondents answered a series of questions about their knowledge of their outstanding cases, and the impact of that knowledge on their behavior. In addition, respondents were asked if their participation in the program would affect their attitude toward law enforcement.

The interviewer asked, "Prior to coming here today, were you aware of your outstanding warrants or criminal cases?" If they responded affirmatively, respondents were also asked, "Did knowing you had outstanding warrants or cases cause you to..."

- be afraid of the police; or
- run from the police?

Sixty-one percent (36 respondents) said their outstanding cases *did* cause them to be afraid of the police. Most said they were afraid of "being arrested." Similarly, 51 percent (30 respondents) said that knowing about their outstanding cases caused them to *run from the police* when they encountered them on the street.

Later in the interview, respondents whose cases were resolved through the HCP were also asked to complete the following sentence: "As a result of my participation in HCP, my fear of police officers..."

- remains the same;
- has increased, or;
- has been reduced

Of the 57 respondents whose cases had been resolved, 75 percent (43 respondents) indicated a reduced incidence of fear due to HCP participation. Data collected from survey responses suggests that individuals' participation in the program may improve their attitude toward law enforcement.

### **Behavioral Changes**

To compare respondents' behavior prior to and after their participation in the HCP program, interviewers asked a series of questions about their knowledge of their outstanding cases and the impact of that knowledge on their actions. Respondents also answered whether they expected to make any changes in their behavior as a result of HCP participation.

Respondents were first asked, "Prior to coming here today, were you aware of your outstanding warrants, or criminal cases?" If they responded affirmatively, respondents were also asked, "Did knowing that you have outstanding warrants..."

- cause you to lose a job;
- cause you to lose your place of residence;
- prevent you from filling out an application for a place to live; or
- prevent you from filling out an application for a job?

Only one respondent said that knowing he had outstanding cases did cause him to lose a job or a place to live. However, nearly all respondents said that knowing they have outstanding cases did prevent them from filling out applications for either a place to live or employment. One respondent explained, "Of course I didn't fill out an application; I was afraid the cops would find me."

A gentleman named Arnold completed an intensive treatment program with VVSD. He went through HCP as well. After graduation, he received a high paying job. He was able to apply for the job after attending the HCP. For two to three years before his HCP appearance, he was afraid to address the issues in the warrant and lived on the street. Afterwards, he participated in a HCP panel presentation at a California State Bar conference.

Bernice could be *the* success story for the Stand Down program. This outspoken black veteran began coming to every Stand Down. In the beginning, she was a drug addict. She came to the Stand Downs every year. After eight years of attending Stand Down, she came clean and sober. She found an apartment to rent. She returned to Stand Down the following year as a volunteer. She is now a valuable member of the central planning committee for Stand Down.

Jon Nachison said, "We want to get across the message that everyone has value --- no one should be cast away. We do not care if the same people come back year after year as participants; we are patient and our volunteers are devoted. More and more formerly homeless people come back to volunteer. The true measure of success at Stand Down is the return of people who were once homeless and return as tent leaders. They stand as proof for everyone that you *can* make it."

When HCP participants resolved a case, they were asked if participation in the program impacted the following issues: as a result of "clearing their warrants or cases," 46 percent said they would now look for a permanent place to live; 38 percent said they would now look for a job. 39 percent said that after clearing their cases, they would now apply to get a driver's license (if they did not already have one). Other comments include the following:

- "I feel better about myself."
- "I feel more positive about the future."
- Only two respondents agreed that as a result of participating in the HCP program, they felt "no different than before."

### **Impact on the Criminal Justice System**

*Are defendants able to achieve a high rate of resolution of their court cases?*

Overall, 96 percent of cases were resolved between October 1999 and February 2001. Seven hundred and four cases of the seven hundred and thirty six cases presented were resolved at HCP during this time. At over half of the hearings, 100 percent of the cases presented were resolved. Resolution for the other cases came about when the defendant provided documentation to the court of their participation in treatment programs, voluntary service or counseling.

### **Cost-Benefit of Using Alternative Sentencing**

HCP provides a cost-benefit to the criminal justice system, although the actual cost savings may be difficult to calculate monetarily. HCP participants indicated they would not have voluntarily surrendered themselves to the court for prosecution unless the police detained them and then booked them into custody. Thus, the cost of law enforcement booking the defendants into jail (average daily cost in San Diego: \$72.84) does not happen, and the cost of housing a defendant in jail for several days is not incurred. In addition, resolving a large number of cases for multiple defendants in one setting reduces the number of court appearances and therefore reduces court cost and court time.

When comparing participants of the HCP to those with criminal charges who utilized the traditional court system, the SANDAG study concluded that the recidivism rate for the HCP participants showed less interaction with police and peace officers after the court proceedings.<sup>7</sup>

Without the use of alternative sentences, persons living in the shelters would not be able to resolve their cases. Having an outstanding case can preclude homeless individuals from receiving federal or state government financial support. This lack of support can exacerbate their homeless condition. HCP participants (homeless individuals and agencies) believe that resolving their criminal record in exchange for participation in treatment services will reduce criminal conduct and reduce costs to the criminal justice system. Recidivism data collected show that those who appeared for hearings, compared to those who did not, were less likely to have contact with law enforcement 90 days after the hearing. A greater portion of those individuals have no post-hearing criminal activity 90 days after the hearing.<sup>8</sup>

### **Resolving Cases**

Factored into this cost savings is the effective resolution of court cases. Sixty percent of those who participated in HCP had at least one case involving their failure to purchase a valid pass or ticket before riding the trolley. Typically, these types of cases are handled through traffic court or payment made to the City Treasurer. However, given that most homeless individuals are not employed, these fines usually are not paid, which will then result in a bench warrant.

- Over 700 cases were resolved between October 1999 and February 2000.
- Fewer cases are set for a continuance in HCP compared to traditional court. Advance negotiations between prosecutors and defense attorneys account for this decrease.
- Creative alternative sentencing encompasses treatment instead of incarceration and fines. Ninety-six percent of the HCP were resolved through creative alternative sentencing. The alternative sentences require the defendant's participation in programs designed to address the underlying issues likely to be associated with their conduct and offense; that is, unemployment, mental illness, and substance abuse.
- Lower cost of law enforcement and incarceration.
- Higher rate of cases resolved.
- Lower recidivism.
- Greater participation in and satisfaction with the court process.

### **Summary of Participant Impact**

The benefits of the HCP program extend beyond the process of clearing up outstanding cases or warrants. According to the data gathered, individuals who participate in HCP are also willing to make changes that will help them reintegrate back into society. First, because their fear of being arrested is reduced or eliminated, they feel less apprehensive in filling out applications for employment or to obtain a drivers' license. Most participants said fear constrained them in the past, and that without HCP they would have waited to be arrested to handle their cases.

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<sup>7</sup> Nancy Kerry & Susan Pennell, San Diego Homeless Court Program: A Process and Impact Evaluation, San Diego Association of Governments, 60, 2001.

<sup>8</sup> Nancy Kerry & Susan Pennell, San Diego Homeless Court Program: A Process and Impact Evaluation, San Diego Association of Governments, 60, 2001.

Second, respondents indicated that they would be more likely to handle any future criminal charges through a traditional court. This will reduce the possibility of additional penalties and warrants. Respondents concluded that their opinion of the court process has been improved as a result of their participation in the program.

In addition, there was an unexpected benefit for a large percentage of the individuals. About one-third (29 percent) of those who submitted themselves to the court learned that they did not have any pending charges or warrants. A sigh of relief could be heard from these individuals.

#### *Demographics of an average participant (San Diego)*<sup>9</sup>

- The average age of those who participated in HCP was 43 years, and most (85 percent) of the participants were men.
- A little more than half (54 percent) of the participants were White, more than a third (34 percent) were Black, eight percent were Hispanic, and four percent were Asian.
- Most (92 percent) of the participants had prior experience with the court.
- Participants came to HCP to resolve a variety of offenses. Nearly two thirds (60 percent) had at least one case dealing with an unresolved citation for riding the San Diego Trolley or loitering in the trolley station without a valid ticket. One in five had cases only dealing with vehicle code violations. The remaining proportion had various other case types; penal code violations (eight percent), health and safety code violations (six percent), or municipal code and business and professions code violations (eight percent).
- Most participants had one (41 percent) or two (22 percent) cases. Overall, the average number of cases was 2.77 (range from 1 to 26).

#### **F. The HCP: A Method to Collect Delinquent Child Support**

After conducting numerous sessions of the Homeless Court, it came to the attention of the HCP participants that many of the homeless defendants shared a similar problem: they were delinquent in their payment of child support.

Due to the success of HCP program, case managers and shelter staff from the Vietnam Veterans of San Diego (VVSD), the San Diego Office of the Public Defender, and the San Diego Volunteer Lawyer Program approached the San Diego Department of Child Support Services (DCSS) to find a solution to the problem of homeless persons who were delinquent in their child support payments. Andre Simpson, Community Reintegration Director at VVSD has found that “Many homeless veterans who obtain work do so by working under the table. The average salary

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<sup>9</sup> Nancy Kerry & Susan Pennell, San Diego Homeless Court Program: A Process and Impact Evaluation, San Diego Association of Governments, 60, 2001.

of these veterans is \$7 to \$9 per hour. The primary reason for working under the table is to prevent the government from garnishing what little money that person is making. Many of these veterans want to resolve their financial obligations by obtaining legitimate work. These veterans find they cannot provide for themselves when faced with the cost of rent and the amount taken by the government to pay child support and their arrears.”

The Non-Custodial Parent Program, which began in March 2001, brings another segment of the homeless population back into the working class through employment/training programs, treatment services, and acceptance of financial responsibility.

The Non-Custodial Parent Program was developed to offer homeless parents a chance to provide financial support for their children. Participants must live in a shelter, attend treatment programs, enroll at the Employment Development Department and seek full-time employment. The DCSS agreed to reduce the amount of the arrearages to a payment of about \$50 per month, develop a payment schedule based on current income, and reinstate (or not suspend) the drivers licenses for those who had one.

“The objective of this program,” says certified family law specialist, Kate Yavenditti, senior staff attorney with the San Diego Volunteer Lawyer Program, “is to help non-custodial parents become more financially and emotionally involved in their children’s lives, while allowing the homeless veterans to become more independent and achieve job success.” This program allows homeless veterans to mend their past and move forward through positive interaction with their children. The VVSD program is modeled after the “Father’s Program,” a successful Los Angeles endeavor.

The VVSD Non-Custodial Parent Program requires the participants to obtain full-time employment after completing vocational training or Phase 1 of the treatment program. VVSD’s treatment program is divided into three phases:

- Phase I develops a personal recovery plan for the participant and assigns clients with psychological issues to therapy.
- Phase II emphasizes employment, job training and other skills required to lead a self-supporting life.
- Phase III enables the client to successfully transition from program living to independent living accommodations.

Thus far, 71 cases have been referred to the Department of Child Support Services. According to Andre Simpson of VVSD, 32 cases have resulted in signed stipulation agreements, and 12 cases have resulted in parent/child reunification.

## **G. Taking the HCP to Ventura County, California**

Tina Rasnow, Self Help Legal Access Center Coordinator for the Superior Court of Ventura County, explains, “I saw the *And Justice for All* video, and brought the video, and the concept of HCP, back to Ventura County. We were fortunate to have a supportive judge, deputy district attorney, and deputy public defender willing to give HCP a try. Our deputy district attorney who

handles the HCP calendar served in Vietnam and understands many of the special needs and issues within the homeless veteran community. Working with him, and with the other “founders” of our HCP, has been a wonderful experience. Most of the cases handled in HCP fall within the stipulated categories, however special cases are sometimes included after discussion between the prosecution, defense and the judge.”

“This program is connected with the pulse of the community and the community sees the direct benefits of the program. Everyone connected with the program works together, from the public defender to the prosecutor.”

“One of the HCP defendants had accumulated 32 prior cases. If he went before a judge in regular court he would have been ordered to pay thousands of dollars in fines, which being unemployed and homeless, he could not afford to pay. Instead, with the HCP option, he attended AA meetings seven days a week and performed community service. He continues to attend AA meetings even after his cases were cleared. The court recognized that this person was able to stay clean and sober, get transitional housing, and was making great strides to improve his life. Rather than taking the easy way out by clearing the fines and fees through jail time, this individual was willing to examine his life, try and solve his homeless problem, and contribute back to his community. The HCP recognizes that criminalizing acts that are due to living circumstances does not benefit society or the homeless individual being penalized.”

“The key Ventura County HCP players include: Judge John Dobroth, awarded Judge of the Year for his participation in HCP; Michael Planet, the court’s executive officer, and its former executive officer, Sheila Gonzalez; the former presiding judge, Charles Campbell, who encouraged his colleagues to give HCP a try; and the current judges and commissioner who support the HCP. The Office of the Public Defender and Office of the District Attorney, and each of the deputy public defenders and deputy district attorneys who assist with the HCP calendar, make the program possible. Often public defenders seek constructive alternatives to incarceration, but in order for the HCP to work, the District Attorney must be invested in the program as well. Law enforcement, including the chiefs of police of the participating cities, was supportive, as were the city attorneys. It was important to get a “buy-in” from community leaders and representatives at the outset, so they were included in early discussions before the program was instituted. Some Ventura merchants started out antagonistic, but others saw the benefits of the HCP, and now all appear to support it.”

“In its first two years of HCP, Ventura County’s HCP defendants volunteered an additional 5,897 hours above the amount required to resolve their outstanding fines and fees. HCP allows the court system to move from a revolving door of justice to a problem-solving mechanism, building upon interpersonal connections among its stakeholders, including social workers, homeless defendants, prosecutors, defense attorneys, judges and court staff.”

“HCP cannot eliminate homelessness or alone resolve quality of life/social issues caused by homelessness. It can, however, work together with other charitable organizations, governmental institutions, and social service agencies to ensure that homeless defendants have a means of resolving their legal issues that might otherwise serve as an impediment to getting them out of homelessness. For example, in Ojai, California, the public restrooms in the park are locked at night depriving homeless individuals of any facilities to use. Faith-based organizations petitioned

the city to unlock the restrooms or provide alternative facilities. This solution is necessary, not just providing community service opportunities to defendants charged with urinating in public.”

“A HCP is most effective in a community that has come to terms with the causes of homelessness, and the resulting failures of otherwise law-abiding citizens to obey the law. If basic human needs such as food, shelter, showers, restrooms, clothes, and medical or dental services are not met, then the homeless will be unlikely to find work or a way out of their situation, forcing them to remain homeless. Frequently the burden of providing basic needs falls on social service agencies and charitable organizations because elected officials generally represent constituencies hostile to the needs of the homeless, and homeless people usually do not vote.”

“The positive impact of the HCP is felt in a variety of ways. Cases that once clogged court calendars and languished in the collections unit are now cleared. Penalties on fines and fees cease mounting. Those who are not a threat to society can use their time productively to contribute to their community, rather than wasting resources sitting in jail. After resolving their outstanding court cases, people can move on with their lives, including finding housing, employment, and reunification with children and family members. Rather than self-medicating with alcohol and illegal drugs, prescribed medication and treatment become viable options through creative sentencing and linkage with appropriate social service programs. As homeless individuals reduce the number of negative contacts with their neighbors and local law enforcement, tolerance for their presence in communities may increase, which, in time, may turn into actual compassion for their plight. Communities may even develop a sense of outrage that a nation, state, and county as wealthy as ours would permit homelessness to exist at all, and then turn that outrage into positive social action.”

### **III. THE PROBLEM OF HOMELESSNESS**

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#### **A. San Diego**

The City of San Diego is home to an estimated 8,000 urban homeless.<sup>10</sup> There are 2,734 emergency and transitional shelter beds available to house them on any given night.<sup>11</sup> The cost of an emergency shelter bed is \$5.00 a night. According to the City of San Diego, the average transitional shelter bed with support services is \$40.00 a day. Incarceration in the city jail costs \$72.00 a night. If mental health services are required, the cost of incarceration exceeds \$400.00 a day. The San Diego Police Department reported 1,433 illegal lodging citations and arrests of homeless individuals in 2001.<sup>12</sup> An illegal lodging citation is a four by seven-inch piece of pink paper that demands bail payment of \$135.00 and threatens a maximum penalty of six months incarceration and a \$500.00 fine.<sup>13</sup> If the fines are not paid, a warrant is issued and the homeless person cannot access governmental resources until the matter is resolved. This means that there can be no government sponsored help until the legal matter is addressed: no public housing, no treatment for substance and alcohol abuse, no food stamps. The homeless person becomes even more marginalized.

INFO-LINE, the San Diego County Emergency Shelter hotline, reported that a total of 4,653 people were aided with referrals to shelters in fiscal year 1996-1997. However, 8,464 people were denied shelter during this time. Twice as many persons are left to sleep outdoors each night as are sheltered in emergency and transitional beds.<sup>14</sup>

Being able to rent an apartment is replacing the dream of home ownership. In San Diego, the Fair Market Rent for a one-bedroom apartment is \$809.00 and a two-bedroom is \$1,012.00.<sup>15</sup> The number of renters in San Diego rose 8.14 percent in the past decade, from 409,839 to 443,216 renters.<sup>16</sup> The income necessary to support a one-bedroom apartment is \$32,360.00, and \$40,480.00 for a two-bedroom apartment in San Diego. A minimum wage earner makes only \$13,000.00/year.

#### **B. California**

In California, a minimum wage worker earning \$6.25/hour can afford a monthly rent of no more than \$325.00, while the fair market rent for a one bedroom apartment is \$736.00.<sup>17</sup> In California, a worker earning minimum wage and supporting a family must work 118 hours per week to afford a two-bedroom apartment at the fair market rent.<sup>18</sup> In California, a worker would need to

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<sup>10</sup> Regional Task Force on the Homeless, San Diego County.

<sup>11</sup> Profiles of the Homeless, January 2002.

<sup>12</sup> San Diego Police Department, letters 1989-2002.

<sup>13</sup> Penal Code Section 647Subd.(j), commonly known as illegal lodging, defines disorderly conduct, a misdemeanor, as anyone "who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control thereof."

<sup>14</sup> Profiles of the Homeless, January 2002.

<sup>15</sup> National Low Income Housing Coalition, *Out of Reach: America's Growing Wage-Rent Disparity*, 2001.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

earn \$14.16 per hour to be able to afford a one-bedroom apartment, and \$18.10 per hour for a two-bedroom apartment. For minimum wage workers, home ownership is a dream, not possible without help from other sources besides a job alone.

### **C. National**

According to the National Coalition for the Homeless, there are approximately 895,000 men, women and children that go homeless on any given night in America. And, at least 3.5 million Americans will experience homelessness this year. Forty-five percent of these people are employed, and the fastest growing segment of the homeless population is families with children. In fact, of the 3.5 million people who will experience homelessness this year, it is estimated that 1.35 million will be children.<sup>19</sup>

According to the National Low Income Housing Coalition's annual study, a full-time minimum wage earner cannot afford the fair market rent in any jurisdiction in the country.<sup>20</sup>

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<sup>19</sup> See generally [www.nationalhomeless.org](http://www.nationalhomeless.org). Visited August 19,2002.

<sup>20</sup> National Low Income Housing Coalition, *Out of Reach: America's Growing Wage-Rent Disparity*, 2001.

## IV. KEY PLAYERS

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### A. The Homeless Participants in San Diego

Local homeless shelters and service agencies are the gateway for participants to enter the HCP. Homeless persons who want to appear before the Homeless Court must sign up for it through one of a number of local shelters.

Participating in the HCP requires a great deal of introspection. Walking into a shelter program is not an easy thing to do; facing up to vulnerabilities or mistakes and actively working to regain a place in society require patience and perseverance.

The participants in the HCP have varied backgrounds and accomplishments. The following are examples of some of the many (names have been changed to protect their privacy) participants who have successfully resolved their cases during the monthly sessions:

Homeless for five years, Nancy completed community college with honors and plans to major in social work at a state university. After the prosecution moved to dismiss her offense, in recognition of the advances listed in her advocacy letter, she left court in tears of joy.

Hugh, ten years on the streets, struggling with mental illness, and facing four misdemeanor cases, developed plans with his program to move from his van into an apartment. His success in the program, addressing his illness and finding employment, helped to resolve his cases.

Feeling empowered by the successful resolution of his three cases, Robert sought a referral to another program's literacy classes.

George faced charges for driving under the influence of a controlled substance. He had spent more than seven months in his program, successfully completed the chemical dependency classes, attended over 150 AA/NA meetings, and was in an employment-training program.

Facing ten cases, Sara escaped an abusive relationship when her boyfriend was incarcerated for four years. Following his arrest, she spent 20 consecutive days contacting INFO-LINE, the local emergency hotline, trying to gain access to a shelter bed. Battling physical and mental illness, she completed the Challenge To Change course at SVdPV and is pursuing a basic education program.

Different segments of the homeless population present varied responses to the HCP. Residents from the local shelters come to the HCP with a distinctly different response than the Stand Down participants. Stand Down participants are seeking to take their first step off the street. While most are looking for a way out of the daily struggles from the streets, a number of the Stand Down participants approach the attorneys at their counseling session asking to be taken into custody. These veterans are tired and have given up on themselves. The monthly HCP participants who are already actively involved and vested in a program come to court with a pronounced fear of custody. During one session, the defense attorney counseled the participants at the defense table, on one side of the room. The attorney then moved 15 feet, to the other side

of the room, to share their advocacy letters with the prosecution. The attorney looked up to find all of the people who were sitting on the other side of the room had followed the defense attorney to the prosecution side to listen to their negotiations. They crossed the room to follow the progress of their case. The attorney came to realize that their nervousness stems from a fear of losing their home in the shelter and being back on the streets. Custody would mean a loss of the progress they had gained and send them back the streets at terms' end. These participants saw a future. They had plans and did not want them interrupted or cut short. The court session provided them with an opportunity when their cases were resolved.

The Stand Down event illustrates that even the most tired and desperate of the homeless population can be reached. The underlying force of Stand Down, and the HCP, is the building of community and commitment to reach out to the best aspects of the individual. This requires patience. It builds trust with the homeless agencies, the court, and society.

“They are so happy [with HCP], even three or four weeks later, that they are still sharing their experience with others coming to court,” said Andre Simpson, Community Reintegration Director at Vietnam Veterans of San Diego.

When a homeless person enters a shelter, he/she is overcoming the isolation of the streets. Shelter representatives ensure participants' success in court.

## **B. The Shelter/Service Providers**

The homeless shelters and service agencies (shelters) are a fundamental component of the HCP. They are the gateway for participants to enter the HCP. The monthly HCP receives all of its referrals from the shelters. The shelters perform the assessments of clients and 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. 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 clients seeking to access benefits, counseling, group meetings, or an identification card, clean clothing and a meal. The shelter is in the best position to evaluate the client's needs and design a plan with attainable goals and benefits. Clients who actively select their services and goals are more likely to ultimately benefit from the program. The HCP and shelters share the desire to empower the individual and enable that person to overcome the adversity that fosters or causes homelessness. In the HCP, the quality, not the quantity, of the time spent in furtherance of the assessment plan and court order is of paramount importance.

The HCP relies on the shelters' myriad of services to build their clients' path to reintegration back into society. These services include: life skills, chemical dependency or AA/NA meetings, literacy classes, computer training, job training or searching for employment, attention to medical needs, counseling and volunteer work. The shelters have no need to add services or “busy work” to what is already offered to satisfy court sentences. However, when an individual presents a specialized need, the shelters can tailor their programs to accommodate that need. The shelters may also subcontract or refer clients to another agency.

The shelters are committed to seeing each participant reach his/her fullest potential. It is the commitment of the shelters to motivate each person, to build the trust necessary to successfully

work together, to ensure their work is done, and monitor their efforts. The shelter staff knows more about their people than the court. The shelter staff knowledge of an individual's effort provides valuable insight for the court, synonymous with the role of probation officers. The agency representative insight and feedback for each person's effort serves as the foundation for court orders.

Shelters need to familiarize new staff with the HCP. New staff members should attend a court session, become familiar with the timetable for each monthly court session, understand the importance of follow-through with participants and how crucial it is for the service provider to furnish defendants with certificates or letters testifying to their participation in rehabilitative programs. Additionally, periodic meetings are helpful to receive feedback from staff and find out what is and is not working.

### *Allow Shelters to Determine Requirements*

The HCP recognizes that each shelter has its own requirements and guidelines to allow residents access to the HCP. 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 HCP through a variety of means. The clients may be introduced to the HCP throughout the course of their work in the agency. Some agencies introduce the HCP as one of many services offered in the continuum of care. Other agencies will address the HCP as an option after the homeless person has completed a certain course, phase or activity. The HCP does not interfere with the shelter requirements. Some programs require participants to quit their jobs until an introductory phase of the program is completed. This allows the individual an opportunity to concentrate on the recovery process which may include becoming sober and clearing court records. The bottom line is this: Requirements vary from program to program, and the HCP does not interfere with the autonomy of the shelters.

While the program activities vary from one agency to another, they usually involve a greater time commitment and introspection for their participants than the traditional court requirements. Additionally, the HCP participant is involved in an environment and programs that are all encompassing. The following are examples of HCP agencies:

**Vietnam Veterans of San Diego (VVSD)** offers the Phase 1 program, which is 90 days and includes a full day of activities. Starting at 6:00 a.m., with medication and breakfast, the participants move through AA meetings, chores and exercise, a dual diagnosis group (drug and mental health treatment), progress in recovery meetings, case management and study, group and in-house meetings, dinner at 4:30 p.m., and additional meetings afterward.

**St. Vincent de Paul Village's (SVdPV)** participants attend Challenge To Change for three weeks (Monday-Friday for three hours a day), for individual goal setting tools, to take control of their lives. Chemical Dependency, a four-phase course, takes nine months to one year to complete. The first phase is 36 sessions of education, three group sessions a week and three outside AA meetings a week.

**San Diego Rescue Mission (SDRM)** offers numerous activities, including a 16-week Drug Education/Relapse Prevention course (daily meeting and weekly

random testing), Life Skills for five weeks (four days a week for one and a half hours daily), Personal Growth (a 14-week class at City College), Math and English for 14 weeks (three days a week for two hours a day), and computer classes (20 hours).

These are some of the programs and activities available to participants of the HCP. The HCP has illustrated that participants already in a shelter program are in an ideal position to comply with court orders.

Hector Sanchez is the Resource Coordinator from St. Vincent de Paul Village (SVdPV), a HCP shelter. Sanchez explains, "Clients at St. Vincent de Paul have a defined program and initial orientation. The ten-day orientation includes TB testing, explanation of the SVdPV facilities, and proof of income verification. I do orientation for all the clients. There are more than fifty services offered on site at SVdPV. They include career services, job development, computer training, GED classes and its specially designed program entitled "Challenge to Change." SVdPV also helps clients receive a California identification card, school transcripts, birth certificates, SSI and veteran benefits. Familiarizing clients with the public transportation system in San Diego is also part of orientation."

"After they complete their orientation, clients must attend assessments. An assessment is a three-step process consisting of, 1) oral interview, 2) written interview, and 3) the case plan. The assessment includes a three-week, 15-day class, setting all the goals in order to be signed-up for the HCP. In addition to the basic food, clothes, and showers, SVdPV offers other programs such as: Chemical Dependency Treatment Programs, NA/AA meetings and a new culinary arts training facility."

Shelter staff are key to preparing participants for the HCP hearing, making sure participants are engaged in their program and marking milestones of progress, building trust in order to open the door to discuss the participant's criminal background, informing participants what to expect at the HCP counseling and court session, writing advocacy letters on their client's behalf, and ensuring that they arrive with advocacy letters in hand.

The challenge to encouraging participation in the HCP comes with the ability to convince potential participants that the court program is designed to be a positive experience in their lives, without the usual threats of fines and custody. When the shelters offer access to the HCP, it strengthens their ability to serve their clients and ensures the clients' work is not interrupted by the setback of custody or the depletion of funds saved for the first month's rent on an apartment or work clothes.

All of the key HCP agencies --- from shelter staff to the public defender --- must first earn the trust of the homeless individuals. The HCP could not exist without cooperation from the shelters. One fundamental element of the program is to assure everyone that no homeless participant with misdemeanor charges will be taken into custody. The HCP adds to the continuum of care for shelters and programs aiding homeless individuals. The HCP builds on the expertise of shelter staff to identify the participants' greatest needs, create a plan of action and motivate the positive internal forces. In the end, it is the individual homeless person who must begin his/her life over again, full of resolve to stay off the streets and out of trouble.

The shelters' work to stabilize people in housing and employment would be undermined when a client successfully exits their program only to be picked up (and incarcerated) on an outstanding warrant, forcing everyone to start again from the beginning. The HCP allows participants to move from the streets to self-sufficiency by providing homeless people with outstanding warrants with a forum in which they may handle their legal problems and move toward complete reintegration into society. Service providers appreciate the fact that the HCP offers an additional benefit to homeless individuals participating in their programs, given the fact that so many of the homeless people accessing their services have outstanding warrants.

### **C. The Public Defender**

The defense attorney in the Public Defender's Office is the focal point for all of the preset weekly dates for the monthly HCP in San Diego. To meet the key objectives of the HCP, the defense attorney must coordinate with all of the HCP partners. The defense attorney collects the shelter "Interest List" for all of the agencies referring clients to the HCP and delivers the shelter "Interest List" to the prosecution and court. The defense attorney receives and reviews the prosecution list of cases and proposed plea agreements for each participant. The week before the court session, the defense attorney counsels participants, first as a group, and then individually. Finally, the defense attorney arrives at the host shelter on the court date.

The HCP partners must collaborate in order to accomplish the numerous steps involved during the course of the month's activities. These include: 1) obtaining the list of interested participants; 2) researching case files; 3) generating the court docket; and 4) conducting the hearing. The HCP program partners speak to each other several times a week to learn about new programs offered at the shelters, review data, and discuss what works and what does not. These discussions facilitate understanding in the program and cultivate working relationships among program partners.

### **Outreach/Road Show**

The San Diego Public Defender's Office conducts outreach outside the course of the monthly HCP dates to inform the shelter staff and potential participants of the HCP protocol, its program procedures and expected benefits, along with the program history. The Public Defender's Office calls this outreach meeting the "road show." The road show typically takes place at the shelter community or staff room. The settings and number of attendees vary. The defense attorney may sit at a table introducing or reviewing the program with the head of the agency, or he or she may stand, speaking before a group of shelter case managers. Sometimes the defense attorney meets separately with shelter staff and with potential participants. At other times, they may all meet together in the agency community room.

The attorney starts each outreach presentation with a general introduction and overview of the program and then presents a half-hour documentary video, "*And Justice For All; Taking the Court to the Streets*," to help participants visualize the process and to introduce them to the people who comprise the HCP. The attorney presents the Office of the Public Defender published handout, an 8 1/2 by 11 tri-fold pamphlet, "*Is it a Crime to Be Homeless?*," to explain what the participant should do to access the HCP.

Before a shelter refers participants to the first court session, it is important for the defense attorney to introduce the HCP to that agency. The defense attorney must generate interest in the HCP. The attorney cultivates clients' trust in the program. To alleviate the fear factor, the attorney addresses the participants' concerns of going into custody, which would cause him/her to lose his/her home at the shelter, and the progress he/she may have made in turning his/her life around. The defense attorney explains why the court session is held at the shelter, the status of their case(s) and that the court credits their participation in program activities against their cases. Finally, the HCP defense attorney promises that no one is going into custody. The defense attorney explains that meeting one-week before the court hearing helps the participants prepare for court. They will face their greatest fears, review their case(s) and plea agreement as a worst case scenario, and prepare for a successful hearing by gathering advocacy letters, certificates, and other support documentation.

The outreach serves two important objectives. It informs the shelter staff about the purpose, process, and proof necessary to ensure that everyone prepares for a successful hearing. The attorney presents a folder (which includes a contact list of key HCP representatives) to the shelter with the protocol developed to support monthly HCP sessions. The protocol folder includes a monthly color-coded calendar, the sign up "Interest List," and the client's "Agreement to Appear" form. These forms inform agency staff and participants of the dates of the weekly steps and the date when the shelter submits the "Interest list" through the court hearing date.

The attorney explains the protocol of how the calendar marks the weekly steps of the HCP, when the interest list is to be delivered to the Office of the Public Defender (starting on the last Wednesday of the month), when the case list and plea bargain are delivered by the prosecution (the following week), the date set for counseling with the defense attorney at the host shelter (the next week), and the court session (the week thereafter). The public defender explains that shelter representatives prepare the "Interest List" and present each participant an "Agreement to Appear" form marked with the dates of the counseling and court sessions. This ensures that each participant receives the date, time and location for the counseling and court hearing. (See Appendix)

The attorney informs shelter staff that the target population is misdemeanor defendants who are taking successful steps in their activities, reviews the color coded calendar with monthly steps, Interest List, and Agreement to Appear, the expected benefits (another service in the continuum of care, clearing outstanding warrants and cases), and how the shelter can help generate interest among the people in their programs.

## **Administration**

The public defender's office is the chief administrator of the HCP in San Diego. A few days before the due date, the defense attorney calls shelter personnel to gauge the numbers signed up for the "Interest List" and receive feedback on the previous month's session. The attorney calls the prosecuting attorney to review the proposed plea bargains before and after the counseling session. The attorney meets with the court clerks to discuss or identify calendar and procedural questions. The attorney then meets with new personnel (court clerk, prosecutor, judge, or shelter representative) to discuss the differences between the traditional and HCP hearings before the court hearing.

## **Counseling**

A deputy public defender goes to the host shelter one week before the actual court session to prepare the participants for court. Meeting with the group first, then with each person individually, the defense attorney introduces the process, what has transpired since they signed-up for the HCP weeks earlier, what will be covered during the counseling session, explains how the shelter community room becomes a real courtroom and how it will look, and tells them that the judge will talk directly to them asking questions about their program participation (without delving into private matters). The attorney explains that they maintain their constitutional rights when they sign up for the HCP. If they decide to exercise these rights, an attorney will be appointed to pursue relevant motions or a jury trial in the courthouse.

The attorney then introduces each participant to his/her case(s) and plea agreement. This helps him/her to anticipate what will happen in court and mentally prepare to face the judge. Finally, counseling addresses the participant's activities in his/her chosen shelter and outside appointments and classes. The attorney asks each person to list his/her most meaningful or helpful activities and accomplishments as well as his/her plans for the future.

Most clients start each counseling session by saying they do not have the money to pay fines. They talk of fear of ending up in custody. When the attorney asks each person what he/she is doing in his/her program, most respond, "nothing." For the participants, it is hard to believe their activities are worthwhile, or that the court will recognize or acknowledge their program activities as credit for court orders or as a basis for the prosecution to dismiss their case.

The attorney instructs each person to return to the next week's court session with advocacy letters, certificates and proof of other accomplishments and explains why it is helpful to have copies of key documents to present to the court. Asking participants to bring documentation to court ensures that they are active and vested in the court session. This strengthens their participation and chances for success in court. It also lets them know they can make a difference in the court process.

After the counseling session, the attorney may call the prosecuting attorney to review plea agreements and negotiate for a better disposition on behalf of a particular client. Additionally, the attorney may contact the shelter to speak with a case manager and highlight an individual or issue that requires greater attention. In some instances, the attorney may request that a case manager appear at court to advocate for an individual in person.

## **Court Hearing**

The key to the HCP's success is thorough preparation of its participants and open communication between the partners. The attorney meets the participants an hour before the start of the HCP session to confirm the plea agreement, collect advocacy letters, answer questions, review the court process again and highlight changes in their plea or program activities. The attorney shares these advocacy letters with the prosecuting attorney before court starts. In advance, the attorney has: 1) negotiated with the prosecution; 2) counseled the participants; 3) reviewed the court cases prior to the hearing (including putting cases in calendar order); and 4) paid attention to last minute changes, to ensure that the actual court session runs smoothly and quickly. Everyone involved knows what will transpire during the court session.

There are few --- if any --- surprises. The goal is to resolve all questions before the court session begins.

On the morning of the court session, the deputy public defender goes to the clerk's office to review all of the cases set on the afternoon calendar. With cases in the order of the court calendar, the attorney makes certain the prosecution's case list and offer sheet correspond with the court's, reviews court docket entries in the case file, makes notation of special court orders in cases with further proceedings, and coordinates last minute arrangements (such as car pooling, or judicial assignments) before leaving for the afternoon session.

When court convenes, the deputy public defender proceeds through a number of steps that address each client and his/her cases: 1) Standing before the bench, the defense attorney calls each case on the calendar and introduces each participant to the court; 2) The attorney recites the plea agreement, states whether the prosecution moves to dismiss or the participant pleads guilty to a charge, and delivers a copy of the advocacy letters to the prosecution and judge, highlighting program activity the participant has found most beneficial; 3) The attorney makes sure that all participants remain in court after their appearances to collect the court docket for their records. The clients' collection of the court paperwork helps ensure their understanding of the process, reinforces that it is a real court hearing and serves as another paper of accomplishment, similar to other certificates of success from the shelter; 4) On rare occasions, the defense attorney asks to continue the participant or case to a future date to negotiate better dispositions or seek additional proof of shelter activities.

The following was taken from an interview with Stan Jones, deputy public defender with the San Diego Office of the Public Defender

“In 1989, as a deputy public defender, I was appalled and frightened by the specter of so many disadvantaged people in the arraignment courts who seemed to be there for capricious reasons: illegal lodging, jay-walking, littering, bottles on the beach, urinating in public, etc. The life that was being lived on the street corners of San Diego was similar to beggars in Calcutta. We were not comfortable with the homeless as a sector of our population. The homeless were a result of economic and social conditions and not a personal choice. The laws are designed to deal with transgressions committed by the citizenry of a different order. The law presupposed that a person had a home address, telephone number, community contacts, a bank account and a driver's license – acceptable means of identification. A segment of my clients simply did not have these things.”

“There was a schism between the law and reality. I realized, until we developed a way to deal with the reality of these clients, these people, at that point, became victims of justice.”

“If you are told to pay a fine and you do not have the money or means to work it off, a warrant for your arrest is going to be issued and you will end up in jail. You lose all of your possessions and any contacts you have in the community. An endless cycle is created.”

“I was frustrated.”

“It felt like I was part of the cycle, not part of the solution. I felt sympathy and anger, for both the legal system and my clients. It was obvious that the problem was not going to go away and that some sort of solution was necessary.”

“Two years after I began working at the arraignment court, I had my first glimpse of a solution, a way to break the cycle. I realized that we defense attorney’s could work with prosecuting agencies and the courts to use justice for the sake of justice, rather than as an obstacle, for resolution of deeper problems.”

“I saw a court (at Stand Down) where homeless veterans could appear and, for the most part, wipe the slate clean. The court was part of a larger community helping these veterans in every way imaginable.”

“Justice became part of this tapestry. I remember a Pete Seeger song: ‘A golden thread and a needle so fine that you could weave a tapestry of rainbow design.’”

“I participated in the legal portion of a larger rehabilitation effort. The particular needs of my clients were now being addressed. There was no prejudice against them for the fact that they may have had several warrants for matters they had not gone to court for, or fines they had not paid, because of their condition of homelessness. The court and the prosecution expected that they would have a complicated and convoluted legal history. We got down to the business of dealing with their misdemeanor cases that were keeping them from getting jobs or benefits and otherwise, participating in the community.”

“There is a certain level of pride that is instilled in a client when he or she is given the chance to start over. This is an important step in breaking that cycle.”

“Later, I was assigned to a branch office in Chula Vista, a community near the Mexican boarder. The overt homeless problem you could see in downtown San Diego was not as apparent there. The problem was at least as critical, if not as visible. I approached the presiding judge of the court in Chula Vista with the idea of instituting a similar program there. The judge called me into his chambers: “Mr. Jones, how can I help you today?” I responded, “Judge, you can help me and a whole bunch of people today.” I explained the process of the court at Stand Down. He agreed that homeless veterans could appear before the court in Chula Vista and identify themselves as a part of the Stand Down rehabilitation program and they would get all of their criminal matters taken care of. This was the first spread of the HCP concept outside of the Stand Down event.”

“To my colleagues, I dare say to dream. You can be effective. You can create a positive change, to your client’s lives and the criminal justice system. It makes us all better people: prosecutors, judges, defenders and clients.”

“The hardest part was to convince myself this could be done. It is not as hard as you think to get started. It is a decent thing to do and most people want to do the decent thing. They just have to be shown how.”

## **D. The Prosecution**

The HCP would not exist without the cooperation and endorsement of the prosecutor. The San Diego HCP is fortunate to have had an enthusiastic and cooperative partner with the San Diego City Attorney's Office, the entity that prosecutes misdemeanors within the city.

When the San Diego Public Defender's office first initiated the HCP program, the judges and the prosecutors were concerned that the plea bargains were too lenient. Prosecutors are not normally inclined to dismiss charges against defendants and they are under pressure from some elements in the community to take a "tough" stand against homeless people. Deputy City Attorney Chandani Flinn explains: "The community gets mad sometimes if I dismiss charges for urinating in public or other public nuisance offense. The police get sick of the chronic offenders. So I have to have a good reason if I dismiss the charges." The key for her is knowing these defendants are actively working to turn their lives around. "When I see someone who has been rehabilitated, I see what a benefit that will be for the community as well as for the individual," she explains, "but it's also important that people are holding themselves accountable by being involved in a program. Otherwise, I'd ask for custody. The effectiveness of the court really depends on the effectiveness of rehabilitation (shelter) programs."

As Marcella Ordorica, Deputy City Attorney for the City of San Diego, explains, "I've never really enjoyed dismissing cases as much as I do here [in the HCP]. It's great because your typical Homeless Court candidate has done just above and beyond, phenomenally so much more than your typical arraignment court person, who would maybe show up and on a first time drunk-in-public and get credit for time served, maybe pay a fine, be ordered to do some classes, but not really have any kind of life change going on or have any experiences which are really going to perhaps prevent future visits to the court."

"We kind of see it as an after the fact sort of reward for these people who, again, are in programs, are in classes. They're getting treatment, they're really actually contributing to the shelters where they're living and they're working and we just see it as sort of helping them kind of get back on an even playing field."

Occasionally, Chandani Flinn, Deputy City Attorney for the City of San Diego, has invited police officers to attend an HCP session so they can see the process first-hand. "Not everyone knows what the different parts of the system are doing," she says. "They may not believe that these people can change. So they come and see for themselves."

"I hadn't seen homeless people before I got to San Diego," said Mary Foster, clerk for the San Diego City Attorney. "I was surprised. Taking the trolley, I saw people sleeping on the street. At some stops, there were two-dozen people living in cars, boxes, and on the ground. I felt concerned but there was not much I could do. I had just gotten separated, and as a single parent it was difficult supporting my family. I was a legal assistant for the City Attorney's Office, and just getting on my feet, living paycheck-to-paycheck, not that far from being homeless myself."

"One day in 1989, the City Attorney's Office got a flyer asking for volunteers to assist with getting cases ready for a HCP at Stand Down. I got the names of the cases of defendants who had signed up to have their cases heard. They were all veterans. There were lots of cases, and I got the interns together and we organized a box of things we needed: pens, Post-It notes, and office

supplies. We alphabetized the cases and put them in big blue bins. Volunteers throughout the office carried the heavy boxes to San Diego High School.”

“There, lots of people were gathered. Homeless veterans were lining up at the medical tent, barber shop, job tent, and chow line. We set up four prosecution tables and arranged the files, made sure we had the proper forms.”

“It was a very, very, very, very hot day. They put camouflage nets up to give shade, but the shifting shadows made you dizzy.”

“I’m smiling just remembering it. It was fun. The public defenders and the prosecutors, who have an adversarial relationship working together.”

Prosecutors are used to taking an adversarial approach with the public defender in the regular court setting; in the HCP, both sides work together to establish a more cooperative relationship. To ensure the continuation of the relationship, it is important for the outgoing prosecutor to explain the program to a prosecutor who is just joining the HCP for the first time.

### **Prosecution Guidelines**

A Deputy City Attorney attends the proceedings whether the calendar is held at the courthouse or at an off-site location. The plea/sentence bargain considers the defendant's willingness to voluntarily clear all warrants and open cases as well as the specifics of the defendant's individualized recovery program.

The Deputy City Attorney handling the HCP Calendar generally follows the steps listed below:

- 1) Receive the “Interest List” of names (including: a.k.a., date of birth, and Social Security number) from the Public Defender's Office. In San Diego, all open cases within the City Attorney's jurisdiction are pulled, whether active or through a warrant.
- 2) Consult with the clerical supervisor regarding which clerical person will assist in this research and making copies of discovery material. The clerical support person will run the criminal history for each person and print all DA10's and DA11's and MC22 computer screens.<sup>21</sup>
- 3) Review the criminal history as provided on the DA10's, DA11's, and MC22 screens. Address each open infraction (including envelopes) and misdemeanor for all horizontal unit cases regardless of whether the case is tracked to Traffic Court (“A” Court),

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<sup>21</sup> A description of the screens:

DAO-9 lists name and all felony and misdemeanors

MC-21S lists infractions, envelopes use the name match the birth date and it pulls up criminal history.

MA10- Use a code and initials to clear warrants

MA03- tell if cases are still open or have been dismissed.

Misdemeanor Arraignment Court ("M" Court), Pre-Arraignment, Trial Setting Department or Presiding. Consult with the head deputy of any vertical unit for possible disposition of a vertical unit case. If a case is currently tracked to Drug Court, consult with the Drug Court deputy before making an offer. Offers may take into consideration the defendant's current program at the homeless shelter (including length of drug/alcohol treatment and sobriety) and may follow the Stand Down offer guidelines. There may not be open cases for all of the names provided by the Public defender's Office, be sure to let the public defender know so he/she can inform the HCP participant. The clerk should make sure to follow all of the time-lines provided in the letter from the Public Defender's Office.

- 4) Plea/sentence bargain offers to the court and public defender's office on the standard five-part "offer sheet calendar," except those offers for Stand Down which are made on the Stand Down offer sheet which are supplied by the court. Note any further proceedings on the offer sheet. Note eligibility for Penal Code section 1000 diversion/deferred entry of judgment and Drug Court. It is anticipated that the participating defendants will all be released on their own recognizance. If revocation of own recognizance (OR) status or immediate execution of sentence is expected, this should be noted at the bottom of the offer sheet.
- 5) Prepare a list/letter for the court with each defendant name and the case number.
- 6) Divide the NCR five-part "calendar" offer sheets to the instructions on the bottom of each sheet. The Court will receive its copies of the "calendar" with a copy of the Interest List. Send the packet via a discovery run to a specified court clerk in the Superior Court. The public defender's Office will receive its copy of the "calendar," discovery on each case and a copy of the Interest List. Address the packet to the deputy in charge of the homeless calendar and deposit in the public defender's discovery run bin on the 7th floor near reception.
- 7) Negotiate all of the cases with a deputy from the public defender's office prior to the date for the Homeless Calendar.
- 8) Prepare for Homeless Calendar appearance taking into consideration the location of the appearance, at court or an off-site location such as St. Vincent de Paul.
- 9) Arrive early at the court proceedings for final negotiations and to review any documentation provided by the defendants. Pay special attention to the documentation of the defendant's program/treatment and whether the program may qualify/delete a term of probation i.e. no narcotics/cocaine/alcoholics anonymous classes.

## **E. The Court Clerks**

Court clerks are critical to the success of the HCP and are among its most enthusiastic supporters in San Diego. San Diego's first Stand Down was able to take place only because the lead clerk had the confidence to believe that it would be possible for his department to actually conduct court on a handball court. Clerks continue to make extra efforts to pull cases, follow up when cases are resolved, ensure warrants are recalled, and undertake the myriad of other tasks that make the HCP possible. The Clerk's Office of the San Diego Superior Court is responsible for the milestones of the HCP calendar that culminate with a hearing at the homeless shelter.

The court clerks recognized that, although the benefits to the defendants are obvious, the court benefits as well. Because of fear and intimidation by the courthouse environment, the only venue available to the homeless defendant in the past was to await arrest and detention. Although having their matters resolved in a custodial setting was reasonably effective, it frequently deterred or derailed their efforts to get off the streets resulting in a high recidivism rate. Coupled together with the costs of detention both pre and post hearing, another forum was called for. Since the HCP is limited to defendants who are actively involved in programs and is offered only when they have made substantial progress, their recidivism rate is low. Cases, which in the past have churned through the system repeatedly, are resolved with finality, ultimately resulting in savings to the court.

Melissa Shoop, the Court Operations Manager, describes the clerks perspective of the HCP. "Our unit is in charge of preparing the calendar in the traditional court setting. We process court calendars when defendants either walk in to be placed on calendar or are picked up on the street and are placed on a custody court calendar."

"It takes about eight hours a month for us to have the entire HCP calendar prepared. We have one clerk who prepares these calendars. If we were doing these same cases in the traditional court setting, whether as a walk-in or as a person that's in custody (put on a special custody calendar), it would take us far longer than eight hours a month to get those cases on a calendar. The HCP saves the court clerks time and staffing resources. The defendants that sign up for the HCP typically are already in programs. The staff at VVSD and St. Vincent de Paul's have already matched them up with the resources they need. This eliminates the need for the court to order them into programs.'

"More important though than the economic benefits to the court are the benefits to the participants. By participants, I am referring not only the homeless defendants, but the court and agency staff that pull together each month to make this happen. The HCP serves the criminal justice system to provide a human face in the community, as well as make the court uniformly accessible to all social strata of the community."

"We find that the HCP defendants have a very low recidivism rate. Their cases are taken care of when they come into court. This saves the court from constantly adding them on to probation violations. Our clerical staff volunteer to learn how to set up the HCP calendars. At Stand Down we have too many volunteers that want to participate in these programs so it really has brought the court and the community together. The HCP has given us an opportunity to see successful defendants rather than many in violation of probation.

Nelda Morgan, Court Operations Supervisor, states, “The Misdemeanor Calendar Department is responsible for the monthly update, generation, and assembly of the HCP calendar. I get a list of the people, averaging from 20 to 30 defendants with anywhere from 50 to 150 cases, depending on how many cases each individual has. Many of them, as you probably would guess, have ten or 12 cases and there’s much less stress to putting those cases together on a calendar when we have little time to do it. The role of my department in the HCP is to:

- Research and assemble the cases after receipt of the offers from the prosecution
- Schedule and update the cases for appearance
- Generate a court calendar
- Prepare the calendar for hearing
- Provide a Judicial Officer, Courtroom Clerk, Court Support Clerk, Bailiff and supplies for the on-site hearing
- Update the cases post-hearing
- Maintain and update statistics

“I have a staff of 13 people. We support four courtrooms plus the Homeless Court. Every day, I have two people assigned full-time just to address the walk-ins that are coming into our courtroom. We also have five other staff to handle the custody cases. When I dedicate one person to spend eight hours on a court that’s pre-planned, not only is it a very rewarding experience for the clerks and an easy way to help build up the self-esteem of the HCP defendant. The clerks enjoy doing the work. They enjoy giving back to the community.”

“It’s kind of a tangible feeling to see a box of cases leave to go to the court wherever it’s going to be and the next day, or that afternoon it comes back and those cases are all settled. It’s a good feeling for everybody involved.”

Joe Mann, the court clerk assigned to prepare the HCP calendar in the scheduling department explains, “There is about a 30-day time delay between when a ticket is given and when a warrant is issued. Once a ticket is issued, there is a 10-day period before the court appearance. If the person doesn’t show up, a Failure to Appear (FTA) notice is issued, after two weeks these turn into warrants. During this calendar session, I noticed there were a lot of warrants. This means that the homeless who received tickets have stayed out of trouble, because once you have a warrant and interact with the police, you get picked up and sent to jail. So even if you have warrants, if you stay out of trouble, you do not get picked up. To me, this means they are doing something right because they are staying out trouble and not getting picked up. This program helps clear warrants, I’m all for that.”

One court clerk spoke of the trust all the key players hold in the HCP saying, “It is the clients; you have to have people who are willing to take the chance that this court will not confirm their worst fears, that it will not be a repeat of past experiences with the (criminal justice) system. You have to create that trust, and have the ability to make it a positive experience.”

## Clerk Preparation

In many respects, the court clerks, like the other partners of the HCP, perform their traditional tasks with modification for court hearings outside the trappings of the courthouse. When the court clerks appear at the shelter for a HCP session, they leave their desks, support staff, supplies, computers, a large counter and a plexi-glass divider between themselves and the public. The following list details the necessary clerk preparation for an off site homeless court.

### ✓ *Research/Pulling Cases*

In the San Diego court system, the supervisor delivers the prosecution offer sheets that indicate which cases are to be calendared. These must be received no later than the Tuesday prior to the calendar date in San Diego.

Immediately upon receipt of offers, research each case to determine location (West Wing, Intake, etc.) and request them.

Order cases from West Wing/Traffic via fax, no later than Tuesday prior to the hearing. Mark on the sheets "homeless calendar" so that priority will be given. Call to verify the fax has been received. Attach verification of fax transmittal to original. Make sure to have a current list of fax numbers and email addresses for the smooth running of the program.

### ✓ *Updating the Computer*

By the Friday prior to the hearing or 3 working days before the hearing, update all cases with the future date that the Homeless Calendar is to be heard SDMHCP @ 1:00 PM. All cases MUST be updated at least three days prior to the hearing date in order to be printed on the calendar. When updating envelopes (a court file of direct issue citations, from the police to the court, a six by nine-inch envelope), be sure to put the calendar date in line 2 if there is presently an entry in line 1. If you use line 1 it will cause the case to be referred for a second time to Civil Assessment (CAP) when the case is updated.

Receive cases from West Wing by Friday prior to the hearing.

### ✓ *Missing Cases*

Make a print out (DA10 & 11 or MC22) and place it in a plastic outboard so the case is accounted for.

### ✓ *Preparing the Calendar*

Calendar:	prepared as usual
Dockets:	prepared as usual
Offer Sheets:	place in order of the calendar and number accordingly

✓ *Copying and Distribution*

Make and distribute six copies of the calendars are as follows:

Calendar:	6 copies	
Distribution:	1	Judge
	Original	First Chair
	1	Second Chair
	1	Bailiff
	1	Deputy City Attorney
	1	Public defender

Offer Sheets:	1 copy	
Distribution:	Original	Judge
	Copy	First Chair

✓ *Court Hearing*

Judge's Clerk and Homeless Calendar Clerk do first and second chair. Make entries as needed on the calendar. Judge and Clerk complete time sheets at the hearing.

✓ *Supplies*

Make sure the supply box is well stocked. The San Diego HCP stores the basic supplies in an empty milk crate, with everything needed for the court proceedings. The box contains all of the supplies needed for the off-site meetings. Supply box essentials:

1. Dockets
2. Referral forms
3. Judge's stamps
4. Stamp pad and ink
5. Pens
6. Calculator
7. Calendar
8. Future Date Homeless Calendar
9. Time Sheets (prepare in advance for judge and judge's clerk)

✓ *Disposition of Cases*

Recall warrants immediately (same day) upon return to court.

1. Enter disposition as usual and distribute
2. Handle "no shows" (defendant not appearing)  
Delete future dates on envelopes. Locate appropriately.  
Vacate (034) on juris matters. Locate appropriately.
3. Return original calendar, offers and time sheets to the supervisor.

✓ *Contacts*

Include the names of key personnel and make available to participants in case of questions or concerns. Contacts include: court clerks, public defenders, city attorneys, and homeless shelter staff.

✓ *Locations of the HCP*

St. Vincent de Paul  
1501 Imperial Avenue  
San Diego, California

Vietnam Veterans of San Diego  
4141 Pacific Highway  
San Diego, California

✓ *Miscellaneous*

Getting to the offsite location: Make sure that the participants have directions to the HCP location.

1. Ride with the judge/clerk/bailiff
2. Contact Steve Binder for a ride
3. Drive yourself

Time sheets

Account for all time spent (Judges and clerks)

Add-Ons to the Calendar

If the DCA or PD request to "add on" to the calendar - the clerk must check the original interest list (supervisor has this). If the defendant's name is not on the interest list they cannot be added on.

Cases continued from one Homeless Calendar to another HCP are updated and delivered to the supervisor. Be sure to ask the supervisor for any other cases scheduled for the current calendar. Notify the DCA and PD by phone of any additional defendants being added to the calendar because their case was continued. If the case has not been disposed of, add a copy of the offer in the file to the current batch of offers. If the case was continued for proof only, no offer is needed.

The court clerk's preparation and handling of cases for the HCP contains the same basic steps and functions of the traditional court calendar. The court clerks must, and do, plan for any exigency that may arise when handling a court hearing off site, at a local homeless shelter. With great attention to detail and organization, commitment to the process and the follow-up of cases, the court clerks ensure the efficient disposition of cases at HCP.

## **F. The Judges**

A number of judges have presided over Stand Down and the HCP throughout the years, helping to build and define the program. The contributions of these judges have built the HCP that is a model for other HCPs across the country. The judges speak about what the program means to them:

### **Honorable Judge Leo Valentine, San Diego Superior Court**

“One of many jobs I worked before law school, included working as a clerk in a liquor store. The store was located on the outskirts of downtown San Diego, in a low-income neighborhood. Though we catered to customers from a wide spectrum of the economic backgrounds, the majority of our customers were Hispanic and African-American, many of whom were alcoholics. These were down-to-earth common people with nothing to hide. Late one night, it was slow and I was doing my calculus homework and Gino, a Caucasian alcoholic with who I had developed a casual relationship came in to purchase a bottle of white port. He asked what I was doing, and I told him. Already partially intoxicated, Gino demanded, give me any two numbers and I will calculate faster than your calculator. He did it over and over, with two numbers and then three. Amazed, I asked him how he could do this so fast. Tears welled up in his eyes as he explained that he had been a math professor at the University of Kentucky. He had been so dedicated and committed to his work he neglected the needs of his family. His wife left him and took their two daughters. Gino never recovered and he had never been the same since. This incident reminded me, that we have to be very careful before drawing conclusions about people. It is important for those of us who work in the judicial system to understand that many people who find themselves in the system are just in a phase of their life, and the incident which brings them before the court does not reflect their entire life. Many of our homeless have contributed to society, and perhaps for all these individuals, the best is yet to come.”

### **The Honorable Judge E. Mac Amos, Jr., Superior Court San Diego Judicial District**

“I was the presiding judge of the San Diego Municipal Court in 1989. Initially, I recall receiving a call from the court administrator who said a group of attorneys wanted to see me about participating in something called Stand Down. I had no idea what Stand Down was about, but I agreed to meet with a group of four or five. They explained the concept to help out veterans attempting to solve a number of problems. They told me they wanted to establish a court as part of the program, and that this court would be held on a handball court.”

“My initial reaction was, wait a minute, I'm not so sure this is where I want to go. What is the public perception going to be when the whole court is on a handball arena, and what will that do to the formalities and dignity of the court?”

“I wasn't overly enthusiastic. I thought to myself, ‘this is going to be a logistical nightmare and create more problems than it's going resolve.’”

“I probably said something like: ‘Well, we'll have to give it some thought and determine if we can work out the logistics,’ a non-committal response. I could appreciate their goal, whether or not it was an appropriate part of the program was another question. I was impressed by their

enthusiasm. They had done a substantial amount of work. They had talked to the court administrator, to the public defenders, touched based with the city attorney's office, and no one had given them a flat, 'No.' So, that told me, 'maybe I should take a look at this thing.'"

"Homelessness had been a problem in San Diego since the early 1980s. The municipal court judges were very aware of the problem. I was cognizant of homelessness, but I didn't think of veterans. Nobody had seemed to come up with a feasible solution. A lot of people recognize the problem. Periodically, local merchants put pressure on the city council and police to remove the homeless from their business area. You would see a sweep for a while, which would raise the number of cases in court. Local government had not been actively involved in trying to solve this problem."

"So I'm in this room. I listened more than I talked. First they started to outline what they had in mind."

"The basic concept was we'd hold court in this handball arena and attempt to resolve some of the outstanding warrants in minor cases."

"I asked: 'Can't we accomplish the same thing by having them appear here in the court and set up some sort of special calendar?'"

"The idea of a Stand Down was to have one area where the vets could solve the problems. If vets had to come down to the courthouse, vets wouldn't be as receptive."

"I sat down with the court administration and said, 'could we do this? Do our clerks want to go out and put on this effort? How long to go out there? Do we take the files? It would require a lot of extra time and effort.'"

"The administrator said it appeared to be feasible. The willingness and enthusiasm among the clerical staff surprised him."

"There were several meetings before we gave the okay. We had representatives of the clerks, public defenders and the city attorney--all the players. We talked about what kind of cases are we going to resolve. We're not going to take a paddy wagon to put people in custody. I had a question for the city attorney: Did they think this was a good idea? Had they thought about what kind of cases were going to be resolved up there and what kind of offers would be made?"

"I didn't want to participate if this was solely a publicity gimmick and there wasn't going to be anything accomplished. If we were going to resolve things and the court could participate in a meaningful way, it was good for the court. I was concerned how this would play out. I didn't want my picture on the front page: 'Look at this flaky Judge in the handball court dismissing a lot of cases. Maybe he'd come down to our playground and take care of our cases.'"

"We made progress. Clerks said it could be done. They could develop a system of communication. A number of clerks were enthusiastic."

"The City Attorney reported back. Susan Heath said they thought it was a good idea. I wanted to make sure they were on board. We considered the limitations of what it could not do."

“It began to gel. Momentum increased. Enthusiasm grew. It appeared that the benefits might outweigh the risks. ‘Let's do it.’”

“Before we could hold court, a substantial amount of preliminary work had to be done. I went up there during Stand Down to check it out. I showed up Friday afternoon. I was impressed. Files were up there. Attorneys were negotiating. I remember thinking these vets are people who need some help. There was not only food and shelter-- psychological help, benefits and employment. It was quite an organization. It was obvious people had done a lot of work, and there were a lot of veterans--here.”

“Where's the court?” I asked. They showed it to me. The next day I got up. I had taken my robe home and I came over early in the morning and talked with bailiffs to make sure the clerks had the cases. I also talked briefly with the attorneys. Then we started. There was no formal entrance. We were all just sort of there.”

“Once we were all ready, I put on my robe. The bailiff announced the San Diego Municipal Court was now in session.”

“I sat at a table with my back to the handball court's wall. Counselors sat at two tables facing me. We had a podium set up.”

“Individuals came forward to the podium. It was an interesting day, a real feeling of accomplishment, a lot of satisfaction in resolving these problems. What you had, most of these people didn't just have one or two cases. They were homeless and had a string of six to eight cases. So what had happened, they were afraid to appear in court because of all these warrants. There was no apparent light at the end of the tunnel. They didn't know where to turn, and this was an opportunity to resolve a number of their legal problems.”

“There were 40 to 60 cases. What happened was that most cases were for low-grade misdemeanors. Cases for which fines would normally be imposed so that the city attorney had agreed to dismiss all but one or two charges with most of the cases settled in lieu of a fine. I agreed to sentence these people to community or public service. In many instances, this service was to be done at the veteran's facility. Defense counsel had come up with some organizations where the men could do community service. The sentence imposed was a short-term period of probation and community service and remaining charges were dismissed.”

“In that group we saw that day, there were four or five cases where charges of a more serious nature required an appearance at the downtown courthouse.”

“There were some newspaper reporters there. I was concerned about the feedback we would receive.”

“When I left, I thought it was a success. I was happy that we had decided to participate.”

“Looking back now, 10 years later, I'm delighted we decided to participate. All the publicity we received was beneficial. The community response was positive, and we had clerks who had not been involved the first year who were anxious to participate in future programs.”

“I think the court should take a close look at programs of this nature and not be afraid to take what might be perceived as a risk or even, on occasion, something which someone might think might be inappropriate for a court to engage in. From the standpoint of the court, everyone who participated had some satisfaction. It helped the court's image at a time when judges and judicial officers weren't always held in the highest esteem. It helped clear a lot of outstanding cases, and in many instances the overall program made it possible to have a better life and avoid future citations and appearances in court.”

“Cautions: You need to take a careful look at logistics, how it's going to be handled. You need an agreement between the court and the attorneys of both sides how a majority of cases is going to be disposed of. If you have a strong disagreement, it would be a waste of time.”

“You need to determine the limitations and the types of cases. If you don't have some general type of agreement on how to handle the cases, it won't work.”

“You want to avoid rainy days.”

### **The Honorable Judge Michael B. Orfield, Superior Court San Diego Judicial District**

“When I became presiding judge, Steve Binder of the Public Defender Office came and said, ‘There is this tremendous program called “Stand Down” and I would like to extend the concept to homeless defendants.’”

“I had never been a part of Stand Down but I had heard tremendous feedback about it. The program is to bring Vietnam veterans back into society. Not all veterans need it, of course, but for those who have become homeless, it was an opportunity to recover from problems that the war had created and put together their lives. It was an opportunity to reintegrate the homeless back into society.”

“When the public defender came up with the concept about extending this to another group of individuals who were equally disadvantaged --- who had lost homes, who had emotional and drug problems, who had been stripped of their physical belongings and found themselves on the streets --- I thought he presented a unique opportunity for the courts to assist our homeless community in the same way the courts had assisted Vietnam veterans. It hit me strongly and quickly, ‘Sure,’ I answered ‘It sounds like a great idea. Let's explore it.’ I didn't need a prospectus; we already had a prototype in Stand Down. We're only taking the same machinery and extending it to another class of individuals.”

“I got together with the court administrator to start to implement it. We had in mind a calendar that would begin in the next 30 days. The public defender was to go to the shelters and screen people. I had a personal commitment to make sure it would happen. As a new presiding judge, I wanted to turn words into action.”

“The next time we met was for the first HCP. I sat as the presiding judge and in my courtroom we had a sparsely populated group of 10 to 15 people plus the attorneys. This was less than I expected.”

“As I looked into the courtroom, I saw people who could have been in any court session. I saw in the faces of the people there, a certain degree of apprehension. People who had come off the streets into a shelter were off the streets into a courtroom; they didn't know what to expect from me or from the prosecution.”

“What they received was a quick packaging of their tickets, warrants for arrest, and a resolution that, in most cases, required some volunteer work.”

“For example, a man has three tickets, for riding a trolley without paying and a loitering ticket and a couple of warrants for his arrest. In a normal presiding, we might have asked this man to pay a \$100 fine and then turn it over to the collection agency if he did not pay. In a homeless calendar, we weren't going to do anything different, that is, dismiss more cases than otherwise.”

“But there was a psychological desire to help put these people back on their feet. So I cleared his warrants, got an agreement from the prosecution to dismiss his trolley tickets, and ordered him to do 10 hours of volunteer work at a Saint Vincent De Paul Shelter. My motivation was to not set him up for failure, returning to the system, which clogs the court, but to put his legal affairs in order and make him a better candidate for a job. The rationale for the HCP is to cast your net, bring them in, and take care of their legal problems en masse. So you could move more people back into the community, looking for jobs. Because of their homeless condition and inability to keep their papers in place and because of their transportation problems to court, their legal problems would linger. They go for a job, employer does a background check and finds warrants. No job. These people stay on the streets unable to pay for their basic needs.”

“I'm a very fortunate individual who has never had to struggle for the basics of living. That day allowed me to connect with a group of people who had never known the kind of prosperity I had and to give them a little bit of help to get them back on their feet and enjoy some of the pleasure of knowing you've got enough security to live more than day-to-day. One of the crushing mental pressures is not knowing where they're going to be in a week; not being able to care for a child or a spouse.”

“I felt that I was helping them, through legal means, to have security beyond hand to mouth existence.”

“The benefit to the court in the future, as these programs grow, is to help clear the large backlog of warrants that are clogging the system. A high level of warrants mocks the system of justice.”

“Our community has a serious homeless problem, and I think our community is less than it can be by ignoring this problem and pretending it doesn't exist. Our community can't achieve its potential by ignoring such a serious problem. It's so easy to ignore these people. They are faceless and out of sight.”

“When a community reaches into itself and takes people who are on the periphery, who might be forever loathed and does something positive and protective to bring them back in to the community --- not just a check in an envelope--then that community has to seize that opportunity.”

“I so highly recommend the HCP because it is a chance to see immediate results and have an immediate impact on a population of individuals who come into your court. So many of us on the criminal side of the bench see people in our court on a daily basis who can no longer be reached, whose criminal records prescribe jail or prison sentences. Those judges who sit in those kind of courts and who merely spend a great deal of time deciding how long someone should be in custody have a very real opportunity to deal with a population that can so easily be reached and helped through some very straightforward, low cost, manageable procedures which you can find in this manual.”

“After two or three of these proceedings with no more than 20 defendants per proceeding, the public defender and I talked about a psychological barrier about people being afraid to come down to court, afraid of what that judge is going to do.”

“So we decided we would hold a court session at one of the homeless shelters. Administratively, the clerks did a fantastic job of transferring the San Diego Municipal Court from a downtown courtroom facility to a meeting hall in the shelter. This cemented the commitment of the San Diego Court to a HCP program. I wanted the homeless to appreciate our commitment to making justice serve their needs by going into the shelter.”

### **Honorable Judge David J. Danielsen, Superior Court San Diego Judicial District**

“The HCP process is the opposite of regular court. In a regular court setting the defendant pleads guilty and then we expect him to do certain things. For HCP, the defendant has already made a commitment to a program, has done volunteer work, in effect created a currency for the work you want them to do. At court, they are done; you congratulate them and use the currency to settle accounts. In a regular court setting, the attitude is, you owe me and after the court session, the currency still needs to be created.”

“The benefit of the HCP is that you are dealing with alienated people, people who don’t trust us to have their best interests at heart. They need positive reinforcement and immediate payback for the good work that they have done.”

“Judges get cynical --- we see way too much failure. Sometimes, judges need to recharge and have successes. HCP is a win-win situation: judges get immediate results and defendants leave feeling like the system respects them. Judges get tired of everybody failing --- judges need victories too; the HCP balances out the negativity.”

“We need to do something that speaks to the heart and gives us emotional satisfaction. The HCP does not offer power, prestige, money --- it just gives those involved a good feeling.”

“Just look at how many people are at odds with the criminal justice system --- check the number of outstanding warrants --- if you do this and go no further, it is just punishment, maybe amnesty programs are the way to go. You need to be able to think in broader terms. You never know...”  
“The HCP targets a population that has taken affirmative steps, has made a commitment to do something positive and has followed through. They need to have currency available so that the

Judge feels free to make something good happen. The clients need to be ready --- HCP is one of the later pieces in the puzzle of reintegration.”<sup>22</sup>

### **Honorable Judge Leo Valentine, Superior Court San Diego Judicial District**

“The day-to-day issues in the homeless community are at the heart of the justice system. These are really quality-of-life issues, the ones that have no *mens rea*, no intent. Meaning there is no criminal thinking about illegal lodging, it is a lifestyle or life situation offense.”

“By the time an individual gets to HCP through the shelters and rehabilitation centers, the person has done everything the court would require them to do. HCP rewards them for the steps already taken to get back on their feet and to regain control of their lives. In essence, the court is providing retroactive support and attempting to tailor the terms and conditions of sentencing to further the rehabilitation that these homeless individuals are participating in.”

“At the beginning of each HC session, the judge should make a declaration about not sending anyone to jail. The court’s objective is to tailor the terms and conditions to address each particular situation. The alternative sentencing should be related to community service where the participants continue in the same environment that brought them to the HCP, the shelter programs and service providers, instead of imposing impossible sentences. The homeless may not be able to pay the minimum in restitution fines. In fact, judges should be given the discretion to find ‘unusual circumstances’ and substitute community service for fines when determined appropriate.”

“HCP should not handle felonies, except for perhaps probation offenses. HCP could become multi-jurisdictional if the system becomes paperless. This would make it easier to clear all records, especially those of homeless people who appear in one court and who have misdemeanors in other jurisdictions.”

“HCP is more perfunctory--the homeless who appear have done all of the hard work. The providers who helped folks get to where they are at are the ones who do the hard work.”

“HCP makes a difference. Many of these people wouldn’t be in the system if the government did what it should be doing. This is the real quality of life issue.”

“It is important that the HCP judge is flexible to relax the court stringent protocol when necessary. Once, a judge asked me if HCP reduces the dignity of the bench. I informed him that many of the homeless are veterans who have placed their lives on the line for this country and have genuine and utmost respect for our flag and our courts. Though, if he’d walk through the neighborhood he’d see the streets filled with many of these same individuals. What dignity exists there? This is not about the dignity of the courts. HCP needs judges who are sensible.”

“I always started HCP with the flag ceremony. It is important to remind ourselves that we are part of and partaking in something bigger than we as an individual, the spirit that created our country.”

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<sup>22</sup> Kelly Deddel Johnson, The Institute on Crime, Justice and Corrections, George Washington University, 2000.

“No matter who the person is, no matter what they have done, they always deserve to be treated with respect.”

“When the clients get here, they are already well on their way to ‘turning the corner,’ which is good to begin with. The HCP simply serves to recognize their hard work, and to clean up their court cases.”<sup>23</sup>

### **Honorable Judge Bonnie Dumanis, Superior Court San Diego Judicial District**

After the court session, Judge Dumanis spoke about Mr. Helms, a former homeless court defendant.

“He's getting back on his feet, clean and sober, and he's taking personal responsibility for his past behavior. He turned himself in on a warrant, not knowing if he'd be taken into custody. That takes a lot of courage.”

“The programs we deal with here and the certification certificates they present have far more substance than in the regular courtroom. They show practical skills, budget skills, reading, and math.”

“I'm trying to get across to the defendants, we're proud of you. Anyone can be down on your luck, but not everybody picks themselves up and starts over again.”

“We're recognizing or rewarding their achievements, which is something many of these people never had before.”

“This is building community partnerships. These programs are doing a community service for all of us, and by working with these community programs the courts are reaching out beyond traditional boundaries; the four corners of the courthouse are expanding to the community. We are reinforcing positive behaviors.”

“I'm awed at the fact that these people, who've had so many problems being homeless, down on their luck, care enough to take care of their legal responsibility and most of these cases are related to the experience of being down on their luck.”

“It reaffirms my belief that there are many good people who get caught up in bad situations. And they sometimes do bad things, but that doesn't necessarily mean they're bad people. Teaching them to be responsible for their behaviors and holding them accountable is the job of this court. They don't get anything here for nothing. They have to put give into their program, their community, or their self-development before they have a case dismissed.”

“To my colleagues on the bench, coming out here is a dose of reality. You see people in the environment in which they have to live. Although the shelter is a wonderful facility, it's not a great way to spend the rest of your life. Sometimes, when we see people in court, we have kind

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<sup>23</sup> Kelly Deddel Johnson, *The Institute on Crime, Justice and Corrections*, George Washington University, 2000.

of sheltered view--you don't know much about where the person comes from and what's going on--like the lady who is living in a doorway who took the trouble to get the permission of the owner and take the right steps as minimal as they may be to survive. She, who lives in a doorway, came in to take care of her legal matters, and that means she has to take responsibility for her actions and her life.”

“Moving the courts into the community is one more step in the community-oriented problem solving that law enforcement has adopted and which has proven so successful in reducing the crime rate and making the quality of life in these communities much better. The court is doing its part in meeting the homeless half way.”

### **Honorable Judge Peter Deddeh, Superior Court San Diego Judicial District**

“The HCP requires the client to do something up front before he/she receives a benefit from the court system. HCP is structured so that it forces people to address their substance abuse issues and, the process moves them in the right direction and rewards their successes. From a judge’s perspective, HCP is very satisfying. Typically we deal with people’s failures and punish them *accordingly*. During a HCP session however the atmosphere is completely different. The clients have already made great strides toward sobriety and the judge can verbally reward and compliment people who are successful.”

“The HCP success is not just about being clean and sober. The by-product of the recovery is the enhanced self-esteem of the participants, which leads to success in other areas of their lives. For example, several HCP graduates have brought in some incredible artwork to court. These are extremely talented people. For some, they cannot achieve their professional goals until they commit to sobriety. The HCP’s informal format allows these truly amazing painting and drawings to be displayed and appreciated by all.”

“Finally, while many courtroom formalities are observed, there are opportunities for the client and judge to converse about an individual’s successes. With the judge standing at a podium, face-to face with the HCP graduate, the proceedings are somewhat like an awards ceremony rather than a staid, tense sentencing hearing. This informality is an important aspect for the HCP concept, because it allows an authority figure to officially and publicly recognize the achievements of those who have worked so hard to gain sobriety and self-respect.”

### **Honorable Judge Robert Coates, Superior Court San Diego Judicial District**

“It costs us almost nothing. We have a court clerk, a bailiff, a judge, and we bring the case files and they provide an auditorium and the deals are made and essentially, I mean, what’s the judicial assignment? Chat with folks, stare in their eyes, give them a little hope, and say, ‘it is so ordered.’ It’s really a rather simple mechanism it seems to me. It’s easy for me to say that, but it seems just breathtakingly simple.”

## **Honorable Judge D. Ronald Hyde, Alameda Superior Court Judicial District**

“In 2000, we conducted our first HCP. We combined three jurisdictions into one event, Alameda, Contra Costa and San Francisco Counties. It was the first multiple jurisdiction court. We would go to the tents and find people. There were two chairs, one for the clerk and one for the judge. The DA and the PD were in adjoining tents conducting sessions, when there was a break I would wrap up traffic matters, which would go to the DMV and the records would then be cleared. HCP is a very wonderful thing to do--it is not a hand out it is a hand up. Homeless people with warrants are reluctant to try and obtain social services. If they try and clear up warrants by going to court, they may lose and then all of their belongings will be confiscated when they go to jail. They will have to start all over.”

“For our Stand Down, students from JFK law school act as interviewers as part of the HCP process. They do the interviews and need to fill out the forms (the homeless have bad handwriting). The PD and DA from each county need to have a lead person to receive faxes and to distribute the “corpus” and DMV warrants. Runners gather files and deliver them to directly to the judges. We have clerks on site but no marshals-no badges, guns, uniforms-they are not allowed on federal lands.”

“There were veterans from 13 different counties. I would write a letter to different judges explaining what happened at our Stand Down event and ask for the misdemeanors or infractions in their jurisdictions be expunged. I received an affirmative response from a judge in San Mateo. The system is working.”

“I think judges should have statewide jurisdictions over infractions. That way if a homeless person comes before me, I can help him or her with the record from another part of the state.”

“This year, we are having another HCP session at Stand Down --- we invited eight counties and are waiting to hear back from three of them. After Stand Down this year, we will have 60 new beds ready for people who want to stop being homeless.”

“We had one couple renew their marriage vows in front of everyone. Leo was dying and May did not think he would make it till the next one.”

“We made a video, and I hear it is up for an award.”

## **Honorable Judge John E. Dobroth, Ventura Superior Court**

“Consistent with the discretion the courts, the police and other agencies exercise in dealing with low-level offenders, we have instituted a court for homeless citizens who often have medical, addictive and emotional problems.”

“We hope to discover if this approach will decrease recidivism as well as the police and court resources expended on these cases.”

“While court outreach and restorative justice programs are important, that consideration is secondary to the simple practical advantage of finding alternatives to the traditional cycle of arrest/jail/reoffense for those the society must serve in some way.”

“When I got involved”, one judge remarked, “I realized in this setting how insignificant the Judge is. This program will not work if it is judge-driven. It is the work of the defense attorney and the cooperation and tremendous buy-in of the prosecutor. From there the Judge’s work is easy.”<sup>24</sup>

## **G. Courtroom Security**

The HCP is structured like a regular court with a judge, bailiff, clerks, public defender, and prosecutor. The physical arrangement is the same as a regular courtroom, except the HCP is held on the handball court at Stand Down or the shelter community room at one of two local shelters.

Deputy Marshall, Dennis Edgecomb, states, “I have been with the court at Stand Down for 12 of the 14 years. I have been present at a number of the HCP sessions at the local shelters. I always wear a uniform. I wear all of the traditional gear, including a gun. I have never drawn my weapon. We have never had a single security incident at Stand Down. The participants at Stand Down show respect for my position. Their respect makes it easier for me to keep a low profile.”

There are two bailiffs at Stand Down. “More than two bailiffs would be too many,” says Egdecomb. “I stay close to the judge, sometimes, visual contact is sufficient. We do not need to be visible. We do not interfere with the community event of Stand Down. We appear at the HCP with the attitude that we are there to help, not make arrests. We do not look for problems. We do not take law enforcement action.”

“To have a successful HCP,” Edgecomb states, “other courts need to educate their communities to the benefits of the program. The ground rules are simple:

- No arrests – No jail
- There is no need to instill fear to gain respect for authority figures
- There are no problems if everything is planned correctly
- Participants should be free to talk with the bailiff
- It is important to thank all who participate”

At the HCP, the security frame of mind should be, “if you want it to work, it will work.”

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<sup>24</sup> Kelly Deddel Johnson, The Institute on Crime, Justice and Corrections at the George Washington University, 2000.

## V. SAN DIEGO'S HOMELESS COURT PROGRAM, STEP-BY-STEP

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Each month staff from the public defender's and city attorney's offices, various shelters, and the San Diego Superior Court carry out a series of synchronized steps which ultimately culminate in the HCP hearing.

### **Step One: Outreach/Roadshow**

To help staff and case managers understand and visualize the HCP, an attorney from the Office of the Public Defender visits local shelters and service agencies to explain the HCP purpose and process. In turn, the case managers introduce their clients to the HCP. The case managers' challenge is to encourage participation in the HCP. They use their ability to convince potential defendants that this program is designed to be a positive experience in their lives. The case managers use examples of successful participants to illustrate the importance of clearing one's record and being able to access government services.

The outreach program begins with a viewing of the HCP half hour documentary video, "*And Justice for All: Taking Courts to the Street*." The video shows the frustration and despair on the streets of San Diego. It explains how the HCP started and shows the HCP in action at the shelters. The public defender presents the video, explains how to use the monthly calendar, "Interest List", and "Agreement to Appear" (See Appendix), and answers questions or responds to issues raised during the session. When possible, a representative from one of the host shelters joins the outreach meetings.

### **Step Two: Interest List**

After learning about the program through an outreach session or from the shelter staff, shelter residents sign-up on a "HCP Interest List." (See Appendix). Potential participants provide their name (including aliases), date of birth, gender, and ethnicity for purpose of identification. The agency fills out contact information (agency name, case manager, and contact person's phone number) and forwards the list to the Office of the Public Defender hearing for a search of case files. The Office of the Public Defender coordinates the participation of those whose names appear on the interest list, delivering the list to the prosecution and court. Participants receive an agreement to appear calendar, which acts as an organizing device for those who cannot afford day planners. This also serves as a notice to show the police that the pending case is being handled.<sup>25</sup>

### **Step Three: Plea Offers and Negotiations**

The city attorney reviews the case files of the defendants on the court calendar. The city 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

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<sup>25</sup> For homeless individuals, any interaction with the police can be a traumatic and frightening experience. If the interaction occurs after the homeless person begins the HCP process, the piece of paper allows the homeless person safe passage and no fear of incarceration.

criminal behavior on the community, and the number of outstanding cases. The city attorney offers a plea bargain, in anticipation of proof, and an acknowledgement of each participant's involvement in his or her respective program.

The public defender may negotiate further with the prosecutor after learning more about the defendant's individual situation during a pre-hearing consultation. In most instances, these negotiations end with an agreement reached. In the rare instance when the prosecution and defense do not reach an agreement, the case is presented for sentencing and resolution by the Judge.

#### **Step Four: Records Search**

Using the information on the Interest List, the Deputy Clerk of the San Diego Superior Court conducts a criminal history search for open cases, further proceeding, warrants, and pending civil assessment penalties. Active cases are placed on the next HCP calendar if they are criminal cases within the jurisdiction of the San Diego City Attorney's Office (i.e., persons cited for misdemeanors committed in the City of San Diego) with outstanding warrants. No felony charges or offenses committed outside the San Diego City courts are calendared for HCP.<sup>26</sup>

The court clerk records each case number onto the Interest List and indicates whether or not the defendant has any prior cases. The clerk sends back the completed Interest List and prepares court calendars for the originating shelter, the public defender's office, and to the city attorney's office for review and plea negotiations.

#### **Step Five: Active Cases Set for Hearing**

The San Diego Superior Court clerk prepares a court calendar/docket for the HCP hearing. This docket includes those who signed up on the Interest List and who were found to have outstanding active, non-felony, city of San Diego cases with the court. The court calendar lists each defendant and all of his/her open cases, warrants, fines, civil assessment penalties, and any other pertinent information. The county clerk forwards the calendar to the city attorney's office, the public defender's office, the host shelter, and any other shelters that submitted a list of potential participants and wish to see the docket.<sup>27</sup>

#### **Step Six: Defense Attorney Consultations**

One week prior to the hearing, the public defender meets participants at the host shelter. Case managers notify each defendant who has open cases to come to the meeting so that they can review his/her case(s) and prepare for next week's court hearing.

The public defender meets with the defendant to review his/her case(s). The public defender 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 public defender learns

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<sup>26</sup> No outside cases are handled at the present time due to jurisdictional constraints, although there are future plans to allow outlying cities' cases to be cleared.

<sup>27</sup> For a homeless individual, the quick resolution of all issues at one time is extremely beneficial-there are no more court appearances and no threat of incarceration. Public benefits can now be accessed as well.

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 public defender also explains the history of the HCP 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 one-week lapse between the initial interview and the court session allows the attorney time to confirm the participants' activities and highlights (identifies) difficult cases.

The consultation meeting between the public defender and the defendant a week before the HCP hearing is unlike the process in a traditional misdemeanor court. Usually in a traditional misdemeanor court the public defender only meets with the defendant just prior to an appearance in court. The HCP consultation provides the public defender with important information to negotiate a settlement with the prosecutor. If the defendant cannot attend the initial meeting a phone counseling can be arranged during that week. Occasionally, the defendant and the public defender meet on the HCP day. The pre-hearing case review is an unusual and unique feature of the HCP program.

### **Step Seven: The Hearing**

The hearing is scheduled for the third Wednesday of each month. Hearings are alternately held at one of the two largest shelters in the San Diego area (St. Vincent de Paul or Vietnam Veterans of San Diego) to accommodate the defendants, shelter staff, court personnel, and visitors. Due to advanced planning efforts by all involved parties, the hearing moves rather quickly. The California and American flags are placed in the front of the room. The sheriff calls the court to order as the judge --- dressed in traditional court attire --- enters the room. This careful preparation generates an atmosphere similar to the "traditional courtroom."

The defense attorney formally calls each defendant to come before the judge. The public defender, prosecutor, and defendant stand in front of the room; while, the judge is seated at a below eye level bench which is also used as 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 public defender asks that advocacy letters be formally entered into evidence.

Unlike a traditional court, the judge communicates more often with the defendant than with the public defender. 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 city attorney 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.

As in traditional court, the judge may continue a case until the defendant provides appropriate documentation to satisfy the alternative sentence agreement (such as advocacy letters). If a defendant fails to appear for the hearing, the case is taken 'off-calendar' and any agreements that have been negotiated between the prosecutor and public defender are withdrawn.

### **Step Eight: Follow-Up**

The deputy court clerk transfers the case disposition information written on court calendar at the hearing into the court's database, files the advocacy letters, and closes the case files if necessary. Defendants who fail to appear are not automatically placed on the HCP calendar for the following month. They must begin the process again at step one, signing up with the public defender.

### **San Diego's Homeless Court Program Calendar**

The monthly HCP responds to the shelter list of participants who are seeking assistance in putting their criminal cases behind them. Shelter representatives must deliver their "Interest List" of participants seeking access to the HCP to the public defender (the last Wednesday of the month). The shelter must ensure that the prosecution and court obtains this information and that it is legible and complete. The correct spelling and dates of birth are essential to locating the participant's cases in the court computers. The monthly color-coded calendar marks the weekly steps of the HCP to ensure everyone knows the time, date and location of the counseling and court dates. Before DOJ/BJA funding, the shelter lists were produced on a sporadic basis, averaging four per year. With the production of each list, the court clerks, prosecution, and defense attorneys would meet to discuss the time deadlines and dates for the court hearing. The HCP would then set the dates for the counseling session and the court hearing. These dates were relayed to the shelter, which passed it to their residents.

The Vietnam Veterans of San Diego (founders of Stand Down) and St. Vincent de Paul Village (San Diego's largest shelter) host HCP hearings on alternate months. The list of shelters where a homeless person can sign up for HCP include, but are not limited to: San Diego Rescue Mission, Salvation Army, Vet Center, County Medical Services, Rachel's Women's Center, and Episcopal Community Services/Friend To Friend.

#### *Monthly Calendar*

On the first Wednesday of the month, the public defender receives a list of referrals from the shelter and homeless program staff. The public defender gives the list of names to the prosecution who runs a check of the offenses in the target geographic area.

On the second Wednesday of the month, the public defender meets with the clients at the shelter to discuss the cases which appeared on the list and to see if other offenses need to be added.

On the third Wednesday of the month, the public defender counsels the clients before the official court session. The court session is usually held on the third Wednesday of the month, unless there are five Wednesdays and then the schedule is moved back a week.

On the fourth Wednesday of the month, the public defender compiles statistics and touches base with all of the HCP participants to ensure the smooth running of the program.

## **VI. PLEA AGREEMENT & ALTERNATIVE SENTENCING**

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### **Plea Agreement**

The HCP's plea agreement recognizes the challenges brought to the criminal justice system when homeless people appear as defendants. In the traditional court setting, the criminal justice system challenges homeless people with obstacles that push them further outside society. The homeless defendant is still homeless after being sentenced to pay a fine or serve time in custody. The court, prosecution and defense become frustrated with the system's inability to address the problems homelessness represents. Some see homeless people who repeatedly return to court as unresponsive and social misfits. They misinterpret their lack of response to court orders as disrespect for the court and society. They see their accumulation of cases, the type of offenses they acquire, and their failure to appear in court as character flaws and disrespect for the court and society.

The court, prosecution and defense feel frustration and despair in their own lack of effectiveness. The court can "get tough" and increase the defendant's fine or time in custody. However, a court ordered \$100 fine is as insurmountable as a \$500 or \$1,000 fine for a homeless person who lacks money for food, clothing and shelter. The court increases punishment to send a strong signal that continued criminal behavior is not tolerated. Although the threat of custody provides the shelter and meals not otherwise available to someone living on the streets, it does nothing to substantively address the plight of the homeless individual. After the traditional court hearing, the homeless defendants pick up their court orders from the clerk's office and head back to the streets. The message is lost to a homeless person who has nothing to lose, who has already lost everything, and is imprisoned to the streets.

After an appearance in the traditional court setting, the homeless defendant is in no better position to find housing, lead a full productive life, or remain law abiding. In fact, if the homeless defendant leaves the courthouse with a newly tarnished record, he/she is in a worse position to access much needed public assistance, substance abuse and/or mental health treatment, and employment.

The HCP offers a different plea structure from the traditional court proceeding. This plea structure acknowledges the fact that homeless people with criminal records are often precluded from accessing vital services.

The HCP plea agreement responds to the cases/offenses the homeless participants receive due to their condition and status: living on the streets. Additionally, the HCP agreement acknowledges the efforts the participants undertake before their appearance in court. The plea agreement recognizes the participant has completed the court order before the court imposes sentence. The participant has performed the program activities without the threat of custody or a larger fine. The participant completed the order before it was given because that is what he/she needed to do to make a move from the streets, through the shelter program, to self-sufficiency.

The HCP plea agreement responds to these problems when it:

- 1) Promotes access/Encourages use of the court process
- 2) Clears court dockets
- 3) Saves time and money
- 4) Is efficient
- 5) Is effective

The HCP addresses a full range of misdemeanor cases. “We have all kinds of cases,” says Marcella Ordorica. Marcella Ordorica, a deputy prosecuting attorney for the City of San Diego, says the plea agreement takes into account what the offender has done while exchanging fines and the traditional sentencing options for rehabilitation and restorative justice. The agreement recognizes the contribution participants make “after the fact” of their offense. The HCP “participants create their own probation.” According to Ordorica, we are getting far more from the HCP participants than the typical offender. The HCP participants do more than the typical misdemeanor offender does.

Ms. Ordorica states, “We want what is better for the community. We reward the positive efforts they have made, efforts that indicate they are less likely to re-offend.” Ms. Ordorica continues, “They give *more* than traditional court participants. It is not that we expect or ask more from them. It is not because we have asked for their rehabilitative efforts. Their incentive to participate in the program activities is their own, not from the court. For example, a traditional court defendant facing a petty theft charge may receive a sentence for three years of summary probation, a \$300 fine, an 8 hour shoplifter anonymous class, a stay away order, and told to pay restitution to the victim. We do not want *to always request* fines from people who do not have money.”

“The HCP plea agreement recognizes the proactive hands on rehabilitation,” said Ms. Ordorica, “like the Challenge To Change course at St. Vincent de Paul, is more likely to prevent a homeless defendant from committing other offenses. The HCP is addressing the real issues. The HCP gives the prosecution more flexibility and creativity. The person appearing with their advocacy letters and supporting documentation becomes more human. The HCP is super effective in clearing cases. In the traditional court, we order them to become active after the court hearing. In the HCP, we know that they have been proactive *before* they appear in court.”

### Graduated Sanctions

San Diego has no formal written policy on returning to HCP. Participants who return to the HCP with new cases will face greater review before their cases are addressed. This review will evaluate, in part, their past appearance asking how long ago it was, how many new cases they have, and in what current program activities are they participating. The San Diego HCP will closely monitor return clients depending on the individual merits of each case.

In recognition that the symptoms of homelessness are difficult to cure in one clean shot, the Ventura HCP instituted guidelines for repeat offenders. In Ventura, repeat offenders will be given increased sanctions if they reoffend and then choose to participate in the HCP program again. Reoffenders are limited to three repeat offenses in a 12-month period. A second referral within a one-year period will result in doubling of the community service sanction. For the third

offense, the sanction is tripled and the defendant is barred from participating in the HCP program for a 365-day period.

Referral agencies, the Office of the Public Defender, the Office of the District Attorney, and the court's criminal/traffic unit will track repeat offenders in determining eligibility for calendaring cases. A recipient's repeated failure to reduce recidivism may be considered in determining whether the alternative sentencing that the HCP provides should be replaced with traditional incarceration.

### **Felony Charges**

The HCP does not address felony charges. However, if a homeless person has felony charges, the public defender can help coordinate the surrender of a defendant in the courthouse proper, indicating that he or she has come from the HCP. The few participants who have felony cases are usually charged with offenses such as petty theft with a prior or a drug offense. There are typically two benefits to voluntarily surrendering to the court. Primarily, the court tends to look favorably on those individuals who walk in voluntarily, believing that he/she will cooperate with the court process. Furthermore, when the court sees that the homeless person is actively involved in positive treatment and activities, the court is less likely to interrupt that process by taking that person into custody.

### **Parking Tickets**

The HCP does not have jurisdiction to help with parking tickets since parking tickets do not bring a threat of custody. However, a large percentage of homeless people live in their automobiles, and many are not able to afford registration or parking meter fees. The accumulation of unpaid parking tickets can result in the impoundment of their vehicles, ultimately forcing people to live on the street.

### **Alternative Sentencing**

The HCP "sentences" participants to activities in the shelter program. The alternative sentencing structure is not coercive or punitive in nature, but designed to assist homeless participants with reintegration into society. With alternative sentencing, the HCP gives "credit for time served" for the participants' accomplishments in shelter activities. These activities include, but are not limited to: 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. When the participant works 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. It is important to note that 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. He/she may submit proof of activities from agencies outside the HCP.

The HCP is strongest when participants come to court prepared with detailed advocacy letters, certificates, and other support documentation. The advocacy letter is symbolic of the

relationship between the client and the agency. The advocacy letter should include: (1) a description of the service provider and its program, (2) the client's start date and accomplishments, (3) programs completed or in progress, (4) insight into the client's efforts and demeanor, and (5) long-term goals. Examples of positive steps that show affirmative efforts are: staying sober, remaining in shelter programs, attention to personal hygiene, use of education and job training resources, treatment (physical or mental health), and volunteer work. While generally, more information is better, efforts are made to protect a participant's privacy. The central component to the HCP's success is the participant's level of preparation.

The advocacy letter is also an important source of information for the court. It is independent verification of the individual's efforts and progress. With advocacy letters in hand, the court has concrete evidence that the participant is working hard in his/her program. This eliminates doubts the court might have concerning the ability of the participant to complete tasks and whether its orders will be satisfied.

The HCP has proven that the court does not have to threaten participants with custody to ensure compliance with its orders. The advocacy letter precludes the need for review hearings. The participant's motivation is internalized and does not require external threats. When the HCP acknowledges and honors an individual's efforts described in the advocacy letter, the court strengthens his/her self-esteem and resolve while making it more likely he/she will continue independent of the court process. The advocacy letters generally contain some elements of traditional probation conditions; the HCP difference is that the participant presents his/her accomplishments at the first hearing, not the last.

## **VII. FREQUENTLY ASKED QUESTIONS**

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### **Why a homeless court?**

The homeless in any community have enough barriers to becoming successful members of society. We want to remove one barrier and encourage the progress each individual homeless person make.

### **Why meet at a shelter? Doesn't that show disrespect to the court?**

The HCP meets at the shelters to ensure access to the court system by the shelter participants. Transportation and the costs involved in getting around add up, and we strive to ensure that the homeless participants can make it to the court.

The judges who preside over the HCP enjoy seeing the defendants in a positive environment. The judges who preside over the HCP also relish the sense of success that it breeds. It is not an everyday occurrence for a judge to see a defendant proud of being able to purchase a trolley pass or show off her artwork. Judges feel a sense of accomplishment in the HCP. Instead of punishing people, the judges are acknowledging and rewarding them for their successes.

### **The HCP seems more relaxed --- is it a real court?**

The HCP is a fully recognized legal proceeding. The judge wears a robe and the bailiff is present, though no security measures have ever needed to be taken. However, the HCP is more informal than a traditional courtroom; the judge and the clerks sit at a table and the judge carries on a dialogue with the defendants about their progress and participation in different programs.

### **Are program staff able to utilize HCP as a platform to educate and inform other court jurisdictions about the needs of the homeless misdemeanor population?**

Numerous courts around the state program have requested information about the HCP. At the 2001 California Judicial Administration Conference, located in San Diego, California, prosecutors, program staff, and HCP defendants participated in a panel discussion about the program. Approximately 50 California judges expressed interest in starting similar programs.

The HCP's ability to inform and educate other communities can be seen through replication efforts throughout the state. There are programs in the following California counties: Alameda, Los Angeles, and Ventura. The success of the HCP program caught the attention of local and national media (both print and television), although the total number of newspaper articles and news stories that have been written or otherwise produced is unknown. Conference presentations as well as the media coverage of the program have enabled the HCP program staff to inform other jurisdictions about the needs of the homeless misdemeanor population and the benefits of the HCP.

## **How can I start my own HCP?**

Although there is no one way or first step that will be universal for all cities, here's a list of suggestions to guide you as you develop a Homeless Court in your area:

- 1. Assess the needs of your community.**

How many people are homeless in your community? What are the greatest needs of those people who are experiencing homelessness? What kinds of legal problems do they have?

- 2. Approach all of the “key players” --- the judges, clerks, public defenders, prosecutors, shelter/service providers and the homeless clients that they serve.**

In order to create a successful Homeless Court Program, it is critical that you engage each of the key players during the initial planning stages. Furthermore, it is important to establish trust and confidence with the shelter/service providers and their clients. Finally, advocates have been supportive of San Diego's HCP largely due to the fact that the program is voluntary and not punitive in nature.

- 3. Contact jurisdictions that have already established Homeless Courts, and ask for guidance.**

In addition to San Diego's Homeless Court Program, a number of other jurisdictions have created similar programs, including: Ventura County, CA; Los Angeles, CA; Bakersfield, CA; and Bernalillo County, NM.

We highly recommend that you start a program to meet the legal needs of homeless people in your community. If you have questions, please contact the San Diego Homeless Court Program through the ABA Commission on Homelessness and Poverty at (202) 662-1693 or via e-mail at [homeless@abanet.org](mailto:homeless@abanet.org).

