HOMELESS COURTS: TAKING THE COURT TO THE STREET

In 1989, San Diego established the first Homeless Court Program (HCP) in the nation, a special voluntary Superior Court session held at local homeless service agencies for homeless defendants to resolve misdemeanor criminal cases. In 2003, the American Bar Association adopted policy in support of the development Homeless Courts—a comprehensive, systemic approach to addressing the needs of homeless misdemeanant defendants through multidisciplinary strategies that include coordination among the criminal justice, health, social service and education systems, and the community. Through that policy, the ABA urged state, local, and territorial courts to facilitate the development of Homeless Court Programs as treatment-oriented diversionary proceedings with the goal being the dismissal of misdemeanor offenses in recognition of completion of shelter/service agency activities prior to the court appearance, as a means to foster the movement of people experiencing homelessness from the streets through a shelter program to self-sufficiency.

In 2006, the American Bar Association adopted additional policy outlining the following key principles for Homeless Court Programs:

(1) Prosecutors, defense counsel, and the court should agree on which offenses may be resolved in the Homeless Court Program, and approve the criteria for individual participation, recognizing that defendant participation in Homeless Court Programs shall be voluntary.

(2) Community-based service providers should establish criteria for individual participation in the Homeless Court Program and screen individuals pursuant to these criteria.

(3) The Homeless Court Program shall not require defendants to waive any protections afforded by due process of law.

(4) All Homeless Court Program participants shall have time for meaningful review of the cases and issues prior to disposition.

(5) The Homeless Court Program process and any disposition therein should recognize homeless participants’ voluntary efforts to improve their lives and move from the streets toward self-sufficiency, including participation in community-based treatment or services.

(6) Participation in community-based treatment or services shall replace traditional sanctions such as fines, public work service and custody.

(7) Defendants who have completed appropriate treatment or services prior to appearing before the Homeless Court shall have minor charges dismissed, and, where appropriate, may have more serious misdemeanor charges before the court reduced or dismissed. Where charges are dismissed, public access to the record should be limited.
Local homeless service agencies—not law enforcement—are the gateway for participants to voluntarily enter this Court. Prospective participants work with a shelter caseworker to design a plan to move towards self-sufficiency prior to appearing in court. To counteract the effect of criminal cases pushing homeless defendants further outside society, Homeless Courts combine a progressive plea bargain system, alternative sentencing structure, assurance of “no custody” and proof of program activities to address a full range of offenses. Alternative sentencing substitutes participation in agency programs for fines and custody. These activities include: life-skills, chemical dependency or AA/NA meetings, computer or English literacy classes, training or search for employment, counseling and education—programming aimed at helping the participant improve their situation. The court agreement of “no custody” acknowledges the participant’s efforts in their program activities to satisfy Court requirements. The shelter representatives write advocacy letters for each client. The advocacy letter is symbolic of the relationship between the client and the agency and includes a description of the program, the client’s start date, accomplishments, programs completed and insight into the client’s efforts.

Participants voluntarily sign up with their homeless service agency to participate in Homeless Court. By taking the initiative to sign up, participants seek justice and a way to reconcile their past with their future. Homeless Court enables homeless individuals who are actively engaged in an organized program to address their outstanding legal issues by participating in a court session at the agency—where the goal is to dismiss charges.

Court clerks research cases for participants referred into the Homeless Court. They prepare the calendar, Designating each case as an active (un-adjudicated) case or a further proceeding (with terms and conditions of probation owing). The prosecution reviews the cases and presents the defense with discovery and a proposal for disposition of the cases. The defense attorney meets with the participant in advance of the court hearing to review the criminal aspects of their case and then moves the conversation to the program activities that will help transform their lives for the better. Together, they focus on treatment, their accomplishments in services, and establishing a strong foundation of support systems to promote the achievement of fullest potential and self-sufficiency.

Participants appear before a judge, standing face to face within arms-reach of one another, as each case is called, terms for resolution presented and court orders pronounced. The court reviews the participant’s advocacy letter and pronounces judgment, reconciling their accomplishments against their offense, clearing their slate, freeing them to reclaim their lives and return to the community as valued citizens. More than 90% of the cases are dismissed. When participants enter a plea of guilty, they receive “credit for time served” in program activities to satisfy the terms and conditions of their plea. Typically, participants and their cases are addressed and resolved in one hearing.

The ABA Supports the Development of Homeless Courts
The ABA Commission on Homelessness & Poverty has developed a series of educational resources and provides free technical assistance in an effort to foster replication of the Homeless Court model across the country.

For more information on Homeless Courts, please visit ambar.org/homeless and contact Amy Horton-Newell, Director, ABA Commission on Homelessness & Poverty at (202) 662-1693 or Amy.Hortonnewell@americanbar.org.