Disproportionate involvement in criminal and civil justice systems

A recent report entitled The Poor Get Prison by Karen Dolan noted that “Poor people, especially people of color, face a greater risk of being fined, arrested, and even incarcerated for minor offenses than other Americans. A broken taillight, an unpaid parking ticket, a minor drug offense, sitting on a sidewalk, or sleeping in a park can result in jail time.” In other word, poverty is often treated as a criminal offense.

A tragic real life example of this reality is the recent death of Walter Scott in North Charleston, South Carolina. By all accounts Walter Scott was a devoted father of four. Still, he could not pay his mandated child support. One of his brothers told the local newspaper that Scott probably ran away from a routine traffic stop because he owed child support. Scott spent months incarcerated years ago for missed child support payments and had told his family he was not going back to jail. In South Carolina up to 16% of the total jail population are serving time for missing child support payments, 67% of inmates serving time for missed child support payments are African-American, and over 75% of those held in contempt in Family Court for failure to pay testified that they were previously unemployed or having difficulty finding work. As Walter Scott ran he was shot and killed by the police officer who made the traffic stop.

Over the years, the ABA has taken policy positions and sponsored position papers focused on the various issues involved with this topic. These policies and positions are based on the knowledge and intellectual work product of lawyers who could be in a unique position to strengthen community-based efforts to address the disproportionate involvement of the poor in the criminal justice system. Lawyers can work shoulder-to-shoulder with stakeholders including community-based entities, providers/advocates, academic communities, foundations/funders, politicians, program users/beneficiaries, and the general public.

The ABA Commission on Homelessness & Poverty has complied for informational purposes only—and without any intended endorsement—the following issues and potential strategies for consideration as each community develops its own unique local plan of action for eliminating legal and justice system related policies, practices, and procedures that unfairly perpetuate or worsen the harmful effects of poverty, particularly those that entrap the poor in the criminal justice system. The Commission is equipped to offer technical assistance in identifying and convening community stakeholders for roundtable discussion to develop strategic plans for local community action.
ISSUE: FINING OR JAILING THOSE WHO CANNOT PAY FEES OR FINES

People making less than $10,000 a year or with no reported income account for 70% of the total child support debt owed. These parents are unlikely to ever pay off their obligation. The overhanging debt spawns obstacles for those trying to find work including loss of their driver’s license and incarceration for nonpayment resulting in loss of a job and accumulation of more debt.

STRATEGIES:

- Encourage representatives at the local, county, and state levels to reduce or eliminate fees, fines, and lengthy incarcerations assessed against criminal defendants who are poor or homeless.
- Work with state and local governments to stop the inequitable practice of imprisoning the poor for offenses that those with money who commit the same offense are allowed to post bail and go free.
- Update child support enforcement strategies acknowledging that the majority of unpaid child support is owed by the very poor, not “deadbeat dads.”
- Urge the enforcement of Bearden v. Georgia (“Debtors can be incarcerated only if the act of not paying their debt (including child support) or restitution was willful.”
- Support debt forgiveness as an incentive to pay child support (child support debt will be significantly reduced if an individual starts making on-time payments).
- Oppose the arresting of the poor for criminal justice debt before a debt hearing can take place to determine one’s ability to pay.
- Work with legislature and judges to reduce criminal court fees.
- Hold probation companies to high standards regarding supervision fee schedule, interest, revenue received, etc.

The ABA is collaborating with the Department of Veterans Affairs and the Department of Health and Human Services through its Office of Child Support Enforcement to resolve child support issues for Veterans who are homeless or at risk of being homeless. Outstanding child support obligations serve as barriers to benefits, employment, and housing. The Veterans Child Support Initiative addresses the child support issues of veterans in a matter that will allow the veteran to stay connected to ongoing rehabilitation and support services, while at the same time taking steps to meet their child support obligations. (See the ABA’s Commission on Homelessness and Poverty’s Homeless Veterans Justice Initiative).
• Encourage government to end the practice of child support arrearage accumulating while a parent is incarcerated for not being able to pay child support.

**ISSUE: FINING PEOPLE WHO ARE HOMELESS FOR BEING HOMELESS**

Criminalizing homelessness is costly, ineffective, and infringes on human rights. The revolving door of arrest, court hearings, incarceration and release with a return to the streets frustrates not only people who are homeless, but police, judges, and the business community as well. Penalizing people experiencing homelessness tends only to exacerbate mental and physical health problems, create or increase criminal records (thus creating barriers to benefits, employment, housing, treatment and services), and may result in the loss of key personal documents that can make it even harder for people to access the services they need to exit homelessness.

**STRATEGIES:**

• Develop legal strategies to combat criminalization using Constitutional claims and human rights theories.

• Advocate against passage of or for the repeal of local ordinances that result in criminalization of “quality of life” activities (begging, lying, sleeping, feeding).

• Work with local and state legislatures to pass a homeless bill of rights (such as the Rhode Island Homeless Bill of Rights).

• Create Homeless Courts that replace traditional court sanctions and such as fees, fines, and incarceration with voluntary participation in treatment and services aimed at addressing the root cause of homelessness.

**ISSUE: TAKING POOR PEOPLE’S PROPERTY THROUGH ASSET FORFEITURE SEIZURES**

A report from the ACLU indicates that asset forfeiture is often done through racial profiling, disproportionately affects low-income individuals, and is a threat to both civil liberties and property rights.

The ABA strongly supports the repeal of laws and policies that punish people who are homeless for living a non-criminal life or sustaining practices or acts in public places, such as eating, sitting, sleeping, or camping when no alternative private spaces are available. The decriminalization of homelessness can be successful if local bar associations work in cooperation with courts, lawmakers, law enforcement, advocates and service providers to revise laws and recognize the problems faced by individuals who are homeless. (See the ABA policy on Decriminalization of Homelessness-February 2007).
STRATEGIES:

- Urge local courts and legislatures to end civil asset forfeiture by law enforcement agencies in all states.
- Lobby for passage of the Fifth Amendment Integrity Restoration Act (FAIR Act) that would amend the federal criminal code to require the government to show a substantial connection between seized property and the offense in a forfeiture proceeding and to prove its case with “clear and convincing evidence” before seizing property.

ISSUE: SCHOOL-TO-PRISON PIPELINE

The damaging effects of the school-to-prison pipeline include: 2 million children sent to juvenile detention every year, 70% of the students are Black or Latino, 75% are jailed for non-violent offenses, and 66% of those detained never return to school. Reform of K-12 education policies is critical to reverse the school-to-prison pipeline. Reconsider the use of local police officers as school security to handle incidents like disrupting class that were formerly handled by school administrators.

STRATEGIES:

- Adjust the “zero tolerance” policies in schools, which combined with local police security has a greater negative impact on poor students.
- Develop guidelines to ensure school discipline policies are in line with federal civil rights laws.
- Utilize local pro bono programs to represent youth being pushed out of school.
- Partner with local mental health centers to provide counseling for students and their families.

ISSUE: HYPER CRIMINALIZATION OF PETTY INFRACTIONS

Criminal records—even a minor criminal record or an arrest without conviction—can serve as an absolute obstacle to housing, despite the fact that an array of studies finds that criminal history is not predictive of successful tenancy. A criminal record also serves as a barrier to Governments are urged to increase funding and amend their current laws and policies for programs under the Runaway and Homeless Youth Act in order to effectively intervene and end homelessness for those ages 12-24. Assisting local communities in establishing plans to end youth homelessness should include an increase in coordination among HUD, HHS, and the Justice system. The ABA suggests a spectrum of community based services including: outreach as a gateway to shelter, housing, prevention and early intervention to divert youth from deepening family conflict, crisis intervention, and youth housing models. (See the ABA policy on Runaway and Homeless Youth Act-February 2010).
employment. Having an arrest during one’s lifetime decreases employment opportunities more than any other employment-related stigma, such as long-term unemployment, receipt of public assistance, or having a GED instead of a high school diploma.

**STRATEGIES:**

- Work with businesses to “ban the box” (remove the arrest/conviction question from employment applications to aid in re-entry) and to follow Title VII of the Civil Rights Act that bars employer practices that have a racially disparate impact, unless those practices are job related and justified as a business necessity.

- Encourage housing authorities to reform overly restrictive eligibility policies and grant admission to people with criminal records when appropriate so that no housing applicant will be automatically barred from receiving housing assistance because of his or her criminal background.

- Coordinate with staff in jails and prisons to develop workable transition planning including plans for re-entry housing and re-entry employment.

- Allow job applicants and housing applicants to explain their prior arrests.

- Create a collaboration and cross-training between law enforcement and social service providers resulting in tailored police intervention through a police outreach program.

- Educate law enforcement to be sensitive to the needs of people experiencing homelessness and to collaboratively develop procedures with service providers/outreach staff to follow during contacts with people who are homeless in a way that affirms that homelessness is not a crime.

- Consider making petty crimes (open container, urinating in public) civil instead of criminal offenses.

- Work with state legislature to expand offenses eligible for expungements.

- Work with local police departments to implement juvenile justice reform by creating diversion programs that do

The Homeless Court was created to counteract the effect of criminal cases pushing homeless defendants further outside society. The ABA has laid out specific principles to follow in the implementation of these courts including the active participation of community-based service providers. 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 misdemeanor offenses. The Courts recognize participants’ voluntary efforts to improve their lives and move from the streets toward self-sufficiency. (See the ABA policy on Principles for Homeless Courts-August 2006).
not criminalize juvenile status offenses such as truancy and curfew violations.

**ISSUE: BROADER CROSS-DISCIPLINARY COLLABORATIONS AND PUBLIC AWARENESS**

Policies that criminalize the poor are costly and consume substantial community resources. To create new policies that are effective and efficient requires not only alternative strategies, such as problem solving courts that focus on the underlying causes of criminal activity, but also both a response from all providers that addresses both the legal and the non-legal obstacles that impede an individual’s ability to break free from the criminal justice system and an increased community awareness of services that are available.

- Implement alternative justice system strategies through problem-solving courts such as homeless court, mental health court, drug court, veterans treatment court, and child support initiatives.

- Develop a partnership between legal service providers and social service providers to reach individuals with legal needs and insure the provision of holistic services.

- Develop media campaigns to create awareness among low income individuals who lack knowledge about their legal rights and the availability of legal services.

- Work with the state judiciary to establish an Access to Justice Commission or become an active member of an Access to Justice Commission.

- Develop valid, persuasive data and analysis in order to document the inequities in the criminal defense system, the impact of holistic defense, and to monitor criminal defense organization and performance.

- Champion efforts to improve public safety by aligning the juvenile justice system with the latest research in youth development and by addressing racial and ethnic disparities within the juvenile justice system.

The ABA is an advocate for the development of a new set of court proceedings for veterans with service-related injuries as well as mental health and substance abuse disorders. These Veterans Treatment Courts focus on treatment-oriented proceedings in lieu of imprisonment for criminal offenses. This alternative system would counteract the effects of the current court system that pushes veterans further outside society. It applies principles of therapeutic, collaborative, and restorative justice in which community-based treatment options are used to achieve the goals of true rehabilitation, recovery, and reintegration into the community. (See the ABA policy on Principles for Veterans Treatment Courts-February 2010).