

**AMERICAN BAR ASSOCIATION**

**ADOPTED BY THE HOUSE OF DELEGATES  
February 10-11, 2003**

RESOLVED, That the American Bar Association supports the development of 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.

FURTHER RESOLVED, That the American Bar Association urges state, local and territorial courts to adopt Homeless Court Programs as treatment-oriented diversionary proceedings that may result in the dismissal of misdemeanor offenses upon completion of shelter/service agency activities, as a means to foster the movement of people experiencing homelessness from the streets through a shelter program to self-sufficiency.

FURTHER RESOLVED, That the American Bar Association urges state, local and territorial bar associations to facilitate the development of Homeless Court Programs.

## REPORT

### **I. Background**

Every night in America, there are approximately 895,000 men, women and children that go homeless. According to the National Coalition for the Homeless, at least 3.5 million Americans will experience homelessness this year. 4.9 million people in America live in substandard housing and are at risk of becoming homeless --- these are the “near homeless” of our society. The fastest growing segment of the homeless population is families with children. Of the 3.5 million people who will experience homelessness this year, it is estimated that 1.35 million will be children. That means almost 40 percent of the entire homeless population this year will be children.

Homeless people are routinely issued citations for such minor offenses as illegal lodging, blocking the sidewalk, jaywalking, drinking in public and urinating in public, misappropriation of a shopping cart, and riding the trolley/bus/subway without paying. In their daily struggle for food, clothing and shelter, the homeless population typically has no means for making reparations to the criminal justice system for misdemeanor criminal conduct. Consequently, misdemeanor citations and infractions are often not handled, compounding the problem by generating warrants and additional fines. The Homeless Court Program (HCP) was created to offer homeless individuals an opportunity to resolve their outstanding criminal cases by substituting participation in treatment programs and other shelter programs for fines, community service, and custody.

The Homeless Court Program focuses on what the defendant has accomplished on his or her road to recovery and self-sufficiency rather than penalizing him or her for mistakes made in the past. The HCP is fundamentally different from a traditional criminal court due primarily to the fact that participants voluntarily surrender themselves to the court for prosecution without knowledge of all the pending charges (if any exist)<sup>1</sup>. Additionally, defendants come before the judge at the Homeless Court having already completed a substantial portion of their “sentence.” As a result, no further hearings are necessary to verify compliance with a court order.

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

### **II. San Diego’s Homeless Court Program**

#### **A. History**

The Homeless Court Program originated in San Diego, California. The Homeless Court Program in San Diego was an outgrowth of Stand Down, an annual three-day event held in the City of San Diego since 1988. The event was created by Vietnam War veterans to provide a myriad of services, including housing, health and employment, to homeless veterans. Participants in the 1988 event indicated on the exit survey that their greatest need was assistance

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

with minor criminal misdemeanor offenses. As a result, informal court services were offered at subsequent Stand Down events.

In 1999, the San Diego County Public Defender's Office received funding from the Bureau of Justice Assistance (BJA) to create a monthly "Homeless Court" to be conducted at local homeless shelters in San Diego.

## **B. Program Overview and Process**

The Homeless Court Program is an innovative response to legal hurdles faced by homeless people. The Homeless Court Program allows people experiencing homelessness a means to resolve their misdemeanor cases in a timely and efficient manner and exchange their fines, restitution, and custody orders for participation in services or treatment programs that will address the underlying problems that contributed to their offenses such as substance abuse, unemployment, and mental illness.

Homeless Court is a unique criminal court convened monthly at a homeless shelter. Participation in Homeless Court is voluntary; homeless defendants always retain the right to pursue their cases in the traditional court setting. The Homeless Court Program strives to move homeless people from the streets through a shelter program to self-sufficiency. Participants stand before the court with advocacy letters and certificates, proof of activities, accomplishments, and aspirations. The court reviews this documentation and "sentences" participants to activities in a shelter program. These include: life-skills, chemical dependency or AA/NA meetings, computer training or literacy classes, training or searching for employment, counseling or volunteer work.

San Diego's Homeless Court Program uses the following steps to ensure for successful participation and results:

### **1. Outreach**

The public defender holds outreach sessions at homeless shelters to fully explain the program to shelter/service providers and potential participants. The public defender spends time speaking to potential participants individually in an effort to establish trust and dispel any fears the participants may have concerning the program and the criminal justice system in general.

### **2. Interest List**

After learning about the program through an outreach session or from shelter staff, shelter residents sign-up to participate in the Homeless Court Program on the "Interest List." Potential participants provide their name (including aliases), date of birth, gender and ethnicity for purposes of identification. The shelter staff provide contact information (agency name, case manager, and contact person's phone number) and submits the Interest List to the San Diego Superior Court at least two weeks prior to the next hearing for a search of open case files.

### 3. Records Search

Using the information provided on the Interest List, the Deputy Clerk of the San Diego Superior Court conducts a criminal history search for open cases, warrants, and pending civil assessment penalties. Persons with active cases within the jurisdiction of the San Diego City Attorney's Office are placed on the next Homeless Court calendar.

The court clerk records each case number onto the Interest List and indicates whether or not the defendant has had previous cases before the court. The completed Interest List and prepared court calendars are sent back to the originating shelter and the public defender's office. The court calendar is also forwarded to the city attorney's office for review and plea negotiations.

### 4. Plea Offers and Negotiations

The city attorney's office reviews the case files of the defendants who are placed on the court calendar and generates an offer for disposition of the cases to the public defender. The prosecutor makes offers for resolution of the cases based on criminal history, impact of criminal behavior on the community, and the number of outstanding cases. Progress made by defendants in their respective treatment programs is also considered once it is provided by the public defender.

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, an agreement is reached. The cases for which no agreement can be reached are reserved for sentencing and resolution by the judge.

### 5. Active Cases Set for Hearing

The San Diego Superior Court clerk prepares a court calendar/docket for the Homeless Court hearing based on the individuals who signed up on the Interest List and who were determined to have outstanding active cases with the court. The court calendar/docket lists each defendant, all of their open cases, warrants, fines, civil assessment penalties, and any other pertinent information. The calendar is forwarded 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.

### 6. Defense Attorney Consultations

One week prior to the hearing, the public defender schedules a meeting at the host shelter and asks that shelter case managers notify each defendant who has open cases to come to the meeting so that they can review their case(s) and the offer(s) from the prosecution. The public defender discusses the case(s) with the client and learns about his/her participation in substance abuse classes, counseling, volunteer service,

and other activities which may be offered to the court as an alternative sentence to a fine, 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 to show proof of their participation in classes, counseling, and community service.

## 7. The Hearing

The hearings are alternately held each month at one of the two largest shelters in San Diego to accommodate the defendants, shelter staff, court personnel, and visitors. Due to advanced planning by all involved parties, the hearing moves rather quickly. In an effort to generate an atmosphere similar to traditional court, both the California and American flags are placed in the front of the room, the sheriff calls the court to order as the judge enters the room in traditional dress, the oath is administered, and the judge greets the courtroom as he or she is seated.

The defense attorney formally calls each defendant to come before the judge. The public defender states the agreement, presents the advocacy letters, and states whether the recommendation is a dismissal or a plea. 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 defendants than with the public defender assigned to represent them. The judge asks the defendant about the situation that brought them to the court, as well as their participation in programs, counseling, or classes, to improve their lifestyle, education, substance abuse, or other such conditions which may have contributed to their homelessness. The judge consults the prosecutor with respect to an offer for disposition and, in most cases, the charges, warrants, and penalties are formally exchanged for the alternative sentences that have already been completed.

Similar to a traditional court, the judge may continue a case until the appropriate documentation is provided to the court to satisfy the alternative sentence agreement (such as advocacy letters). Cases with defendants who fail to appear for the hearing are taken 'off calendar,' and any agreements that have been negotiated between the prosecutor and public defender are withdrawn.

## 8. Dispositions

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

The public defender records the following information onto the Interest List: whether or not the defendant appeared, whether or not the case was satisfactorily resolved, and whether or not the defendant was counseled by the public defender prior to the hearing.

### **III. Benefits of the Homeless Court Program**

#### **A. Access to Courts**

The Homeless Court Program improves access to the courts for homeless persons. Without the availability of the Homeless Court, nearly all of the participants interviewed in San Diego stated that they would not have gone to court on their own.<sup>2</sup> *“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).

#### **B. Cost Benefits of Resolving Cases**

The Homeless Court Program provides a venue for homeless participants to resolve outstanding warrants and misdemeanor criminal cases that otherwise would remain unresolved. Although actual cost savings may be difficult to calculate, there is a cost benefit to the criminal justice system for resolving cases through the Homeless Court Program. Homeless Court participants indicated that they would not have surrendered themselves to the traditional court for prosecution unless picked up by law enforcement, placed into custody, and brought before a judge. Thus, the costs associated with booking and housing a defendant in jail for several days are not incurred. Secondly, resolving a large volume of cases for multiple defendants in one setting reduces the number of court appearances, thereby reducing costs to the court.

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<sup>2</sup> SAN DIEGO HOMELESS COURT PROGRAM: A PROCESS AND IMPACT EVALUATION, Nancy Kerry and Susan Pennell, June 2001.

Additionally, without the use of alternative sentences employed by the Homeless Court Program, persons living in shelters would not likely resolve their cases. This would preclude them from receipt of public assistance or access to treatment, thereby possibly extending their homelessness. The Homeless Court Program illustrates that restoring their criminal record in exchange for participation in treatment services will ultimately reduce criminal conduct, thereby reducing costs to the criminal justice system.<sup>3</sup>

### **C. Community Collaboration and Benefits**

The Homeless Court Program builds on partnerships between the court, local shelters and service agencies, and the prosecutor and public defender. This team works together to address the legal problems of the homeless participant while at the same time providing the participant with services and treatment that will equip him or her with a greater opportunity to move from the shelter to self-sufficiency.

Homeless Court benefits 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. 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.

### **D. Changing Lives**

Perhaps the most important result of the Homeless Court Program is the fact that it changes lives. By providing homeless persons with an opportunity to resolve outstanding warrants and criminal misdemeanor cases, the program removes barriers to vital services such as housing, mental health and/or substance abuse treatment, public benefits, job training and employment, while at the same time linking them to such services.

In July of 2002, the National Coalition for Homeless Veterans held a conference in celebration of the success of Stand Down events across the country. The Homeless Court Program --- which is an outgrowth of Stand Down --- was credited with providing an important foundation for homeless men and women to change their lives. At the conference, a number of formerly homeless gentlemen who participated in the Homeless Court Program at the Vietnam Veterans of San Diego shelter spoke about how they have become more than self-sufficient as a result of the program and services. One gentleman who suffered from Post Traumatic Stress Disorder as

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<sup>3</sup> Recidivism data collected show that those who appeared before the Homeless Court Program compared to those who did not were less likely to have contact with law enforcement 90 days after the hearing. In fact, 80% of those who appeared before the Homeless Court had no post-hearing criminal activity 90 days after the hearing. SAN DIEGO HOMELESS COURT PROGRAM: A PROCESS AND IMPACT EVALUATION, Nancy Kerry and Susan Pennell, June 2001.

a result of his tour of duty in Vietnam explained that he had lived on the streets of San Diego as a homeless heroin addict for nearly 20 years. As a result of participating in the Homeless Court Program and the treatment services offered by the shelter, he presently has a good job with benefits, his own apartment, and a car. People who work with homeless persons recognize what an amazing achievement it is to have a chronically homeless person avail themselves of services, much less transition off the streets to self-sufficiency. This man's story is not an isolated success story. His story does, however, serve as an inspiration to the judges, prosecutors, public defenders, shelter workers and homeless participants that continue to hold monthly court sessions as a means to bring the law to the streets, the court to the shelters, and the homeless back into society.

#### IV. The Role of Bar Associations

A successful homeless court program, at a minimum, requires the full cooperation of the judiciary, the prosecutor, the public defender, the homeless shelters/service providers, and perhaps most importantly, the homeless participants. State and local bar associations can play a critical role in fostering the collaboration of these individuals to promote the development of homeless court programs in the following ways: (1) showcasing the success of homeless courts at conferences or meetings where the legal community can openly discuss the possibility of creating such an innovative program in their jurisdiction; (2) convening group discussions or strategy sessions for the key players to examine the possibility of creating a Homeless Court Program; and (3) spearheading the development of a Homeless Court Program through the bar association.

#### V. ABA Policy

The ABA has adopted a number of policy resolutions concerning homeless persons and access to justice. The ABA has also adopted policy resolutions in support of specialized courts.<sup>4</sup> The ABA has not, however, adopted a policy concerning specialized courts for homeless people.

The ABA has a history of supporting initiatives and legislation concerning homeless people and access to justice, including policy in support of an increase in the availability of affordable transitional and permanent housing (*housing and community economic development*, 1999 Annual Meeting; *affordability and availability of housing*, 1995 Annual Meeting; and *funding for public housing*, 1992 Annual Meeting), as well as policy in support of access to justice and legal aid for indigent people (*legal representation for indigent defendants*, 1998 Annual Meeting; *access to justice*, 1995 Midyear Meeting; *free legal representation to those at risk of becoming homeless*, 1994 Annual Meeting; *indigent defense services*, 1991 Midyear Meeting; *equal access to justice*, 1990 Annual Meeting).

At the 1994 Midyear Meeting, the ABA adopted a policy in support of the creation of specialized drug courts as a comprehensive, systemic approach to addressing the underlying issues of defendants with drug and alcohol problems. This policy emphasized the importance of coordination among the criminal justice, health, social service and education systems, and the

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<sup>4</sup> The ABA has adopted policy resolutions in support of specialized drug courts (1994 Midyear Meeting) and unified children and family courts (1994 Annual Meeting).

community in order to effectively resolve the drug related cases while at the same time linking the defendant to much needed treatment services. The Homeless Court Program as proposed in this report and resolution embraces a similar approach.

## VI. Conclusion

In summary, Homeless Court is a unique program aimed at a segment of society that typically has no means for making reparations to the criminal justice system for misdemeanor criminal conduct. As a result, misdemeanor citations and infractions are often not attended to by these individuals. Unfortunately, this compounds the problem by generating warrants and additional fines. The Homeless Court Program was created to offer homeless persons an opportunity to clear their criminal record by exchanging fines, community service, and custody for their participation in shelter/service provider programs.

San Diego's Homeless Court Program has been successfully replicated in a number of jurisdictions including: Los Angeles, Ventura, Bakersfield, and Albuquerque. Overall, the Homeless Court Program has been applauded for making a positive impact on the participants and the criminal justice system by clearing the docket and changing lives.

Our nation's promise of equal justice under law cannot be fulfilled unless there is unfettered access to our justice system for all people regardless of their station in life. The American Bar Association has a long history of promoting access to justice through policy based advocacy on behalf of homeless and/or impoverished people; through urging for increased funding for legal services organizations; through educating members of the bar as to the plight of homeless and impoverished people and encouraging the legal community to make a commitment to providing pro bono legal services; and through supporting innovative court programs designed to address the underlying problems that are the root cause of criminal conduct, such as drug courts. The ABA's support of the Homeless Court Program will reaffirm its commitment to *defending liberty and pursuing justice*.

Respectfully submitted,

William H. Hoch, Chair

February 2003

GENERAL INFORMATION FORM

Submitting Entity: Commission on Homelessness and Poverty

Submitted By: William H. Hoch, Chair

1. Summary of Recommendation(s).

The recommendation states the American Bar Association's support of the development of a comprehensive, systemic approach to addressing the needs of homeless misdemeanor defendants through multidisciplinary strategies that include coordination among the criminal justice, health, social service and education systems, and the community, and urges courts to adopt Homeless Court Programs as treatment-oriented diversionary proceedings that result in the dismissal of misdemeanor offenses upon completion of shelter/service agency activities, as a means to foster the movement of people experiencing homelessness from the streets through a shelter program to self-sufficiency. The recommendation also urges state, local and territorial bar associations to facilitate the development of Homeless Court Programs.

2. Approval by Submitting Entity.

Approved by the Commission on Homelessness and Poverty on November 8, 2002.

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

No.

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

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At the 1994 Midyear Meeting, the ABA adopted a policy in support of the creation of specialized drug courts as a comprehensive, systemic approach to addressing the underlying issues of defendants with drug and alcohol problems. This policy emphasized the importance of coordination among the criminal justice, health, social service and education systems, and the community in order to effectively resolve the drug related

cases while at the same time linking the defendant to much needed treatment services. The Homeless Court Program as proposed in this report and recommendation embraces a similar approach to that of the drug court policy. The approval of this recommendation would further enhance the ABA's commitment to access to justice by supporting the Commission on Homelessness and Poverty as it educates state and local bar associations about the benefits of developing treatment-oriented court programs for homeless people.

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

As the number of homeless men, women and children continues to increase, communities are becoming exasperated as to how to address the problem of homelessness. Many communities employ criminalization efforts that ultimately result in blanketing homeless people with citations for "quality of life" misdemeanor offenses. The inability of homeless people to pay fines coupled with the fear of incarceration results in their failure to appear in court, which further compounds the fines and custody issues. Treatment-oriented homeless courts alleviate the caseload difficulties and use scarce resources more efficiently by linking homeless people to desperately needed services and treatment programs. Through our network of state and local bar associations, the ABA can play an instrumental role in encouraging the development of innovative programs to

6. Status of Legislation. (If applicable.)

N/A

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

There is no direct cost to the Association.

8. Disclosure of Interest. (If applicable.)

N/A

9. Referrals.

The recommendation has been referred to the following ABA entities:

- Steering Committee on the Unmet Legal Needs of Children (Approved 11/9/02)
- Criminal Justice Section
- Standing Committee on Pro Bono and Public Service
- Standing Committee on Legal Aid and Indigent Defendants (Approved 11/16/02)
- Standing Committee on the Delivery of Legal Services
- Government and Public Sector Lawyers Division
- Judicial Division
- Standing Committee on Substance Abuse
- Commission on Mental and Physical Disability Law (Approved 11/16/02)
- Standing Committee on Legal Assistance to Military Personnel
- Commission on Domestic Violence
- Young Lawyers Division

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

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

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