Returning Home . . .

to Homelessness:
San Diego’s Homeless Court Program Models Ways to Help

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Editor’s Note: The ABA Commission on Homelessness and Poverty is dedicated to establishing homeless courts and legal services at Stand Down events for homeless veterans. It offers free technical assistance. For more information, e-mail Commission Director Amy Horton-Newell at amy.hortonnewll@americanbar.org. or call her at (202) 662-1693.
In 1989, it was not unusual for a homeless person in San Diego to carry a pocketful of 20 or more citations. One could also find a handful of people on the streets with 50 to 100 warrants for “disturbing the peace.” The citations issued by police came to be seen as an indirect invitation to get out of town. In practice, the police and the homeless were engaged in a game of cat and mouse. The police would conduct a sweep of the streets in downtown San Diego, issue citations, and force the homeless into Balboa Park. In an effort to clear out the park, police would issue a new round of citations. And another round-robin of citations and movement would ensue.

The Regional Task Force on Homelessness for San Diego County estimates the City of San Diego is residence to more than 9,600 homeless people, fewer than half of whom are sheltered. And the Department of Housing and Urban Development (HUD) and the Department of Veterans Affairs (VA) estimate that nearly 42 percent of our nation’s homeless veterans are located in the San Diego area. The cost of housing people in an emergency shelter bed is $5 a night for an average transitional shelter bed, while support services cost $40 a day. The cost of incarceration in the county jail is an estimated $90 a night. If mental health services are required, the cost of incarceration exceeds $400 a day.

By the late eighties, the police complained that the people they arrested were released after serving a few days in custody. Judges were frustrated with the backlog of cases and warrants that accumulated when defendants failed to appear for court. These same judges realized the futility of handing out sentences and issuing orders that would not be obeyed.

Homeless defendants often fail to appear in court, not because of a disregard for the court system, but because of their status and condition. They struggle daily for food, clothing, and shelter. They are not in a position to adhere to short-term guidelines. Not only does the daily struggle to survive inhibit participation in court, but the participants are also scared. The court orders and sentences result in fines they cannot pay and custody that ends with their release back to the streets in the same condition in which they started. Custody leaves them, society, and the court no better off than before they went in.

When homeless people did appear in court, they tried to explain to the judge the sorry set of circumstances that had taken them from families, homes, and jobs to sleeping in the dirty bedrolls that lay beside them in court. Some were articulate and educated and some were even working. Yet they still were unable to afford a rent deposit or a room. They would come before the court and walk away with a sentence that required them to pay a fine, perform public service work, or spend time in custody. They picked up their court orders at the clerk’s office and walked back to the streets, adding legal burdens on top of their other troubles.

Not only did this approach affect the people experiencing homelessness, but the prosecutors, judges, and even the police were uncomfortable and frustrated with the futility of this revolving-door approach. A person who cannot afford a room to rent cannot afford a fine for being homeless. At the time, there were no alternatives. The criminal justice system had an established routine that unfortunately did not adequately meet the needs of this population with special issues.

All Rise: The First Homeless Court Session for Veterans

Early one Saturday morning in July 1989, three gray, concrete handball court walls housed justice. They were located on San Diego High School’s athletic field. Desert military camouflage netting sheltered the court from the sun. The United States flag was anchored in one corner, the State of California’s in the other. The defendants appearing before this outdoor court were veterans living on the streets of San Diego, but for three days they were sheltered in tents (each a community unto itself), and they received employment counseling, housing referrals, medical care, and other social services.

These services were supplied under the auspices of Stand Down, San Diego’s annual three-day tent city designed to relieve the isolation of homeless veterans.
while assisting their reentry into society. “Stand down” as a military term signifies the process of pulling exhausted soldiers from the field of battle and moving them to a place of relative safety to rest and recover before returning to fight. The yearly event provides comprehensive services for homeless veterans, including those related to employment, housing, medical needs, legal services needs (civil and criminal), physical and mental health treatment, and numerous other matters. But the event is more than a collection of services. Stand Down, founded by Vietnam veterans Jon Nachison and Robert Vankeuren and sponsored by Veterans Village of San Diego, concentrates on building community and developing the strengths of the participants as members of that community. The Stand Down slogan reads, “A Hand Up, Not a Handout.”

At the conclusion of the first Stand Down in 1988, 116 of 500 homeless veterans (one in five) said their greatest need was to resolve outstanding criminal cases. The Homeless Court Program (HCP) evolved in response. It is a special session of the San Diego Superior Court held at Stand Down events for homeless veterans and in community rooms at local homeless service agencies to resolve criminal cases of participants already engaged in program rehabilitative activities. Initial referrals of participants to homeless court originate from homeless service agencies. The prosecution and defense review the cases before the court hearing. The court order for sentencing substitutes participation in agency programs for fines and custody. The HCP is designed for efficiency: the majority of cases are heard and resolved, and people are sentenced, in one hearing. The HCP combines 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 and bring the individuals back into society.

In 1989, at the first HCP session on that warm Saturday in July, a lone man and his attorney stood before the judge. Together, they presented his cases and an advocacy packet of his accomplishments. The judge reviewed the packet. He asked a few questions of the participant. The judge resolved all his cases, reconciling his offenses with his accomplishments, ruling that the defendant had fulfilled all requirements of the court. At that moment, an audible gasp emanated from the assembled crowd filled with fellow participants, service providers, and the founders of Stand Down. Free to go, the veteran returned to the community.

The audible gasp was a collective recognition that the court had, not only the power to bring order to the streets, but also the power to affirm hard-fought accomplishments in treatment services that reclaim lives. After the first group of HCP participants returned to the larger encampment, a deluge of homeless veterans rushed the court to seek resolution of their cases. Before, they had feared the police arresting them and believed the hearing was staged for a sweep. Now, they approached the HCP voluntarily, seeking redemption from their past and their criminal cases.

Following this first homeless court, the San Diego court reported 130 defendants with 451 cases adjudicated through Stand Down. In the next 20 years, the HCP served an average of 196 veterans annually with 832 cases adjudicated each year. Those totals—3,920 veterans and 16,640 cases—speak to the power of the court to affect change, as well as to the deep-rooted desire and commitment of homeless veterans to fully participate in our communities.

Because of participants’ increased demand, the HCP expanded beyond Stand Down. In 1990, it began to serve battered and homeless women; in 1994, it included residents at the city-sponsored cold-weather shelter; and by 1995, it encompassed the general homeless population served at local San Diego shelters. It went from a court that convened once a year at Stand Down to meeting quarterly, and since 1999, it has held monthly sessions. In addition to the session held at the annual Stand Down event for homeless veterans, the court alternates between two shelters (St. Vincent de Paul and Veterans Village of San Diego) in order to resolve outstanding misdemeanor criminal cases.

Currently, the HCP has been replicated across the United States at annual Stand
Down events, as well as monthly calendars in communities across the nation, including Ann Arbor and Detroit, Michigan; Albuquerque and Santa Fe, New Mexico; Houston, Texas; New Orleans, Louisiana; Phoenix and Tucson, Arizona; and one-third of the California courts.

**Coordinating Homeless Court at Stand Down**

Practically speaking, the HCP process at Stand Down is relatively straightforward. In the weeks leading up to the event, homeless service providers encourage homeless veterans to sign up for participation. The court clerks research and pull each participant’s misdemeanor cases for review by the prosecution and ready the docket for resolution of these cases on site during the Stand Down event.

On the day before the actual court session at Stand Down, the prosecution and defense attorneys commence the disposition of cases at 8:30 a.m. When the participants arrive on the handball court to address their misdemeanor case or cases, the court clerks check them in, pull their cases, and deliver the court file to the defense. Due to budget constraints, participants are not able to sign up for court on site. However, defense attorneys counsel Stand Down participants to dispose of their case or cases and to sign an alternative sentencing agreement, directing them to the next day’s HCP calendar. The court clerks generate court calendars to ensure a smooth court session the following day.

The defense attorneys review cases with participating veterans, formalize plea bargains, suggest or recommend terms and conditions of probation, and set matters for trial as appropriate. Problem cases (e.g., felonies, threat of custody, domestic violence) are counseled for a court date in the downtown courthouse. Those who may participate sign up for on-site programs designated for alternative sentencing, which facilitates compliance with the disposition of cases.

The participants who will have all of their cases dismissed and are not entering a plea to any charge or case move to the on-site “bail office” to receive a court minute order. On the day of the court session, the on-site proceedings are held from 9 a.m. until noon. The disposition of cases continues while court is in session.

The court clerks prepare cases (negotiated pleas and further proceedings) for court and walk the participants into the handball court while the homeless court is in session. The court clerks set a future hearing/follow-up calendar in the courthouse for complicated cases and cases not heard during this Saturday session.

**Why a Specialized Court for the Homeless?**

To effect real change, we must meet people where they are. When you step outside the traditional judicial boundaries, you have more tools, greater access, and stronger responses from treatment providers, clients, and the community at large. When you reach out to the community, the community responds. There is great power in accentuating the positive.

The HCP is a positive antidote to the overall frustration and despair in our justice system and the sense that it is not working. For people who experience homelessness in particular, the sense is amplified that the system most certainly does not work for them and that it is not in place to help them improve their lives; rather, the sense is that it pushes them further outside of society. The HCP recognizes that homelessness is a deplorable condition and that it is the condition that is deplorable, not the person. A person participates voluntarily in reclaiming his or her life via job training, learning computer skills, or attending AA or NA meetings. He or she actively works to rejoin society. We may find it hard to change the world, but we can change one person’s world in the course of HCP proceedings. Opening the door of justice and returning people to our communities promotes the individual and public safety.

HCP sessions have been held for 25 years. It is apparent that, when participants work with agency representatives to identify and overcome the causes of their homelessness, they are in a stronger position to successfully comply with court orders. The quality, not the quantity, of the participant’s time spent in furtherance of the program is of paramount importance for the participant, the court, and society in general. Reliance on convictions and incarceration to solve social problems overlooks our collective
ability to overcome trauma through treatment, which is an HCP endeavor that ultimately enhances public safety by conducting review hearings and monitoring to ensure people respond to the challenges in their program activities.

The HCP challenges criminal justice practitioners, treatment providers, and participants to view their roles and behaviors in a different light. Stepping outside the adversarial system of the traditional court, these collaborative partners understand the value of working together as equal partners to address the underlying problems homelessness represents. The realities underlying any given criminal offense challenge us to grasp the complexities that led an individual to this act. The court order creates a nexus to an offense. The homeless service agency can reach beyond the offense, conduct assessments of the individual’s social history, develop an action plan, and challenge each person to resolve the underlying problems that lead to interaction with the criminal justice system. And so, the initial criminal charge is actually a headline to a greater story.

Conclusion
While the ongoing problems homelessness represents are discouraging and frustrating, it is important to remember that it is the condition of homelessness that is undesirable, not the people who are homeless. Homeless participants who successfully complete the HCP are living examples that people can overcome hardship and challenges, address problems that led to homelessness, and reclaim their lives. The HCP strengthens community and brings law to the streets, the court to providers, and homeless people back into society.

Distinctions between a Traditional Court and Homeless Court

In San Diego, the traditional court sentence for a public nuisance offense is a fine of $300. A defendant receives a $50 “credit” against a fine for every day spent in custody. The defendant who spends two days in custody receives credit for a $100 fine. To satisfy a fine of $300, the court requires that a defendant spend six days in custody. Thirty days in custody is the equivalent of a $1,500 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. A defendant convicted of being under the influence of a controlled substance for the first time 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 sessions (biweekly for three months, 15 minutes each), drug testing, weekly self-help meetings, and an exit conference.

By the time typical participants stand before an HCP judge, they have already been in a homeless service program for at least 30 days (from the initial point of registration to the hearing date). By this point, their level of activities in the program or a service agency exceeds the requirements of the traditional court order. While the program activities vary from one agency to another, they usually involve a greater time commitment than traditional court orders and greater introspection on the part of their participants. Program staff ensure that 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.