



**Homeless/Community** (\*included in workbook)

1. *\*Community Court Principles: A Guide for Planners*, John Feinblatt and Greg Berman, Center for Court Innovation and Bureau of Justice Assistance Think Piece, 1997  
A discussion of the principles underlying community courts.
2. *Community Courts: An Evolving Mode*, Eric Lee. Bureau of Justice Assistance, U.S. Department of Justice, October 2000  
Profiles of community courts around the country.
3. *Community Courts: A Brief Primer*, John Feinblatt and Greg Berman U.S. Attorneys' Bulletin Vol. 49, No.1 (January 2001)  
A discussion of the history of community courts and the principles that guide them.
4. *\*San Diego's Homeless Court Program*  
The history, core elements, objectives, process, budget considerations, evaluation and contacts for San Diego's Homeless Court
5. *Community Court Research: A Literature Review*, Dana Kralstein, Center for Court Innovation, 2005



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# Community Court Principles

A Guide for Planners

**BJA**

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# A Guide for Planners

## Introduction

For too long, something has been missing from the criminal justice system. While courts, police and prosecutors have become increasingly modernized in recent years, they have often failed to meet the needs of the criminal justice system's primary consumers — the neighborhoods that experience crime and its consequences on a daily basis.

This problem was first recognized by advocates of community policing, who argued that police officers could address neighborhood crime and disorder more effectively if they established closer relationships with community residents and neighborhood groups. From this starting point, the idea of “community justice” has now spread to other branches of the criminal justice system, including probation departments, prosecutors, correction offices and now courts.

What is community justice? It can take many forms, but at its core, community justice is about partnership and problem-solving. It's about creating new relationships, both within the justice system and with outside stakeholders like residents, merchants, churches and schools. And it's about testing new and aggressive approaches to public safety.

This manual is intended to be a guide for community justice planners, particularly those interested in court reform. Using New York's Midtown Community Court as a case study, it seeks to build a set of common principles for community courts. In providing this information, this manual is designed to be neither a recipe nor a prescription, but rather a starting point for further planning efforts.

The Midtown experiment was born of a profound frustration with quality-of-life crime in the neighborhood — prostitution, vandalism, low-level drug offenses and such. These conditions may not be what fuel community courts in other places. Community courts are not designed to be cookie-cutter models; in a perfect world, each would be specifically tailored to reflect the needs of the neighborhood in which it is housed. With that in mind, this manual concludes with some practical advice for community court planners, including a frank discussion of the obstacles that their efforts are likely to encounter.

## Midtown Community Court

In concept, New York City's Midtown Community Court, which opened for business in October of 1993, differs dramatically from the way that lower courts have operated in the city for many years. At the same time, it reflects a return to an old idea.

In 1962, New York City closed down a network of neighborhood magistrate's courts that handled intake for the city's court system, arraigning defendants and disposing of low-level offenses without forwarding them to any higher tribunal. Under the new system, intake and arraignment duties were shifted to lower court judges in centralized courthouses serving each of the city's five boroughs. The change was intended to increase efficiency, and to an extent it succeeded. The cost was remoteness — courts were removed from the communities they were intended to serve.

As caseloads increased in the centralized courts, felony cases naturally began to claim more and more attention. Fewer resources were devoted to "quality-of-life" misdemeanors like shoplifting, prostitution and subway-fare cheating. Judges were under tremendous pressure to dispose of such cases quickly. All too often, defendants arrested for low-level offenses were sent on their way after being sentenced to "time served" in jail while awaiting their court appearance, or perhaps to a fine that might or might not be paid, or community service that might or might not be performed.

Mindful of these problems, the planners of the Midtown Community Court project sought to re-create a neighborhood-based intake and arraignment court along the lines of the old magistrate's courts, but with a number of 1990s updates. The hope was that such a court could focus on the quality-of-life crimes that erode a community's morale. The plan for the Court coincided with the New York City Police Department's new emphasis on community policing, as well as with a growing interest in community-oriented justice on the part of prosecutors, probation offices and corrections agencies nationwide.

## Honoring the Idea of Community

Planners found a location for the Court near Times Square on the West Side of Manhattan, an area teeming with quality-of-life crimes. Renovated for use as the Midtown Community Court, the 1896 building, which had once been a magistrate's court, featured clean, bright holding rooms secured with glass panels rather than bars, a pointed contrast to squalid downtown holding pens. The new courthouse also included a full floor of office space for social workers to assist offenders referred by the judge in the courtroom a few floors below. And the building was wired for an innovative computer system that would allow the judge, attorneys and social service workers to keep in touch with each other and access a defendant's full record at the click of a mouse.

The location, architecture and technology were reflective of a larger strategy. The Court sought to honor the idea of community by making justice restorative. Offenders would be sentenced to pay back the community through work projects in the neighborhood — caring for street trees, getting rid of graffiti, cleaning subway stations and sorting recycled cans and bottles. At the same time, wherever possible, the Court would use its legal leverage to link offenders with social services — drug treat-

ment, health care, education — to help them address their problems. In these ways, Midtown sought to stem the chronic offending that demoralizes law-abiding residents.

By 1997, the Court was arraigning an average of 65 cases per day for an annual total of over 16,000 cases. This volume made Midtown one of the busiest arraignment courts in the city. In addition, sentenced offenders were performing the equivalent of \$175,000 worth of community service work per year. Midtown's emphasis on immediacy — offenders must report to the Court's community service or social service center immediately after sentencing — has improved compliance rates. Nearly 75 percent complete their community service sentences as mandated, the highest rate in the city.

## Principles

The Midtown Community Court's success has stirred the interest of prosecutors, judges, court administrators and neighborhood groups elsewhere who hope to make intake and arraignment courts more community-oriented and more effective in dealing with quality-of-life offenses. Achieving those objectives begins with an understanding of certain principles:

- Restoring the community;
- Bridging the gap between communities and courts;
- Knitting together a fractured criminal justice system;
- Helping offenders deal with problems that lead to crime;
- Providing the courts with better information; and
- Building a physical courthouse that reflects these ambitions.

Each is described below.

### Restoring the Community

**Recognize that communities are victims.** Quality-of-life crime damages communities, often more so than individuals. If left unaddressed, low-level offenses erode communal order, leading to disinvestment and neighborhood decay and creating an atmosphere where more serious crime can flourish. A community court acknowledges this reality.

**Use punishment to pay back the community.** Standard sentences — jail, fines, probation — may punish offenders, but they do little to restore the damage caused by crime. A community court requires offenders to compensate neighborhoods through community service.

**Combine punishment with help.** Encouraging offenders to deal with their individual problems honors a community's ethical obligation to people who break its laws because they have lost control of their lives. Social service programs also have practical crime control value as they can permanently alter the behavior of chronic offenders.



**Give the community a voice in shaping restorative sanctions.** A community court can open a dialogue with its neighbors, enlisting them in the effort to develop appropriate community service projects. A community advisory board can offer residents an institutionalized mechanism for interacting with the judge and court administrators.

**Make social services at the court open to residents.** Defendants are not the only ones in a community who could benefit from educational, job training and counseling programs. A community court can be a resource for anybody who needs assistance, opening its doors for Alcoholics Anonymous groups or English-as-a-second-language classes, for example.

**Bridging the Gap  
Between Courts  
and Communities**

**Make justice visible.** A community court puts offenders to work in places where neighbors can see what they are doing, outfitting them in ways that identify them as offenders performing community service. It also publicizes its social service and treatment accomplishments. Success stories give community residents and organizations tangible evidence that the criminal justice system is accountable to the community.

**Make justice accessible.** A community court welcomes observers and visitors. Calendars and other information about courtroom activities are available to the public on computer terminals in the lobby. The courthouse staff is prepared to answer questions and give tours. Community members are thus able to see justice in action.

**Make justice proactive.** Court administrators monitor crime conditions in the community and look for opportunities to involve the community in addressing crime-related problems as they develop. Mediators attempt to solve simmering community disputes before they erupt into criminal matters.

**Reach out to victims.** A community court can be a safe haven for victims, offering them both assistance and a voice in the criminal justice process. Because it is based in the neighborhood where victims live, a community court may be able to provide access to services quicker and in a less intimidating setting than larger, centralized courts.

**Knitting Together  
the Criminal  
Justice System**

**Use the authority of the court to link criminal justice agencies.** Too often, criminal justice agencies work in isolation, moving cases from street to court to cell and back again without communicating with one another or taking the time to problem-solve. Because of its role as a central hub in the justice process, a community court can play an important coordinating function.

**Don't reinvent the wheel.** Courts cannot be expected to solve difficult neighborhood problems by themselves. As courts look to play a more aggressive role in addressing complicated issues like quality-of-life crime, they must also look for new partners. Social service providers — both non-profits and government agencies — can provide valuable expertise, including counseling, job training, drug treatment and mediation skills.

**Make social service providers and criminal justice professionals work together.** Judges in a community courthouse can consult with treatment professionals on individual cases. Police can alert counselors to defendants who may be open to receiving help. Clerks can help link individual victims to assistance. Physical proximity makes possible closer and more coordinated working relationships.

**Explore crossing jurisdictional lines.** The problems faced by citizens often do not conform to the narrow jurisdictional boundaries imposed by modern court systems. Criminal defendants may also be involved in a landlord-tenant dispute or a small claims matter. Handling all of these cases in the same place may enhance the court's ability to address a defendant's underlying problems.

**Helping  
Defendants**

**Put problems first.** Beyond focusing on case processing and punishment, a community court looks for ways that sentences can help defendants change their lives. Drug treatment, medical services, educational programs, and counseling all can be incorporated into sentences.

**Use the court as a gateway to treatment.** The crisis of arrest may prompt a defendant to seek help. A court can use its coercive power to reinforce that impulse.

**Remain involved beyond disposition of the immediate case.** The judge can monitor offenders' experiences in treatment, using the court's authority to reward progress and impose new sanctions for failure.

**Providing Better  
Information**

**Make available as much information as possible at the defendant's first appearance.** This allows the judge to act as a practical problem-solver as well as an imposer of sanctions, matching the defendant with treatment or community service programs.

**Make information available to everyone at the same time.** Entering new data into a central database simultaneously accessible by the judge, prosecutors, defense attorneys and social service staff allows all parties to share information as soon as it is available. Simultaneous access helps disparate agencies work together and limits "gaming" of the system by attorneys who take advantage of information delays.

**Use current information to enhance accountability.** Updates on a defendant's progress allow the court to monitor compliance with sentences. They also permit early recognition of problems and rapid responses to remedy them.

## Designing the Courthouse

**The courthouse should be a physical expression of the court's goals and values.** A community court should communicate its mission in every facet of its design. All elements of the courthouse — holding cells, public entryways, and office space — should reflect a sense of fundamental respect for the legal process and for all who participate in it, including defendants, victims and the general public.

**A community court should be more than just a courtroom.** Beyond holding pens, a courtroom, judge's chambers and a clerk's office, it must accommodate social service workers, victim advocates and community service managers; it also needs room to house community service workshops and to provide conference rooms for treatment sessions and classes. After hours, the courthouse can become a community resource for tenant groups, block associations and others who want to hold public meetings.

**Put everything under one roof.** Locating social services side by side with the legal process serves the needs of the community court by making it easier for a judge to craft sentences that combine punishment and help. It also serves the needs of social work and public health by bringing services to a center of need.

## Obstacles

Developing a community court is a complex undertaking. By definition, community courts embrace a variety of stakeholders. These include not only the usual suspects like judges, police and prosecutors, but also tenant groups, victims organizations, businesses, schools and block associations. Reaching outside the walls of the justice system to involve new players and create new partnerships complicates both planning and implementation.

In particular, shifting the focus of criminal justice from case processing to community-mending is easier said than done. While a community's quality of life is eroded by waves of smaller offenses, the justice system does its work one case at a time. That tends to obscure neighborhood-specific patterns. Furthermore, communities are understandably reluctant to accept arrested offenders back onto their streets. While supporting the benefits of community service, neighbors worry that an impersonal justice system won't be sensitive to their concerns about supervision.

Local residents are not the only ones who will have concerns about a community court. While the need to bridge the gap between communities and courts seems obvious, some judges, attorneys and police may believe that greater involvement with the community will compromise their objectivity. In an effort to maintain impartiality, judges have traditionally insulated themselves from the communities and victims affected by the issues they adjudicate, while prosecutors and police have restricted the

discretion of front-line attorneys and officers on the beat. In addition, most criminal justice professionals feel too overwhelmed by the daily pressures of their jobs to reach out to the community. They are reluctant to take on new responsibilities when they are unsure they will receive the tools they need to get the job done.

Criminal justice agencies may also be uncomfortable working with social service providers. After all, the underlying assumptions and guiding philosophies of law enforcement and social work differ in fundamental ways. Criminal justice professionals are used to a system of escalating sanctions in which defendants are punished more severely each time they fail; criminal courts are not comfortable giving offenders a second chance. Treatment professionals, on the other hand, expect relapses and consider it critical that clients remain in treatment regardless. Addicts may have to hear the same message several times over before it finally sinks in. A community court's approach can work only if criminal justice and social service professionals are willing to adjust their outlooks and work in a coordinated way.

Providing timely and accurate information may also prove problematic. Although many criminal justice agencies are automated, their computers are rarely designed for courtroom use. Information managers typically organize and track transactions after they occur, rather than using information to improve the quality of decision-making as it takes place. In addition, courtroom decisions often hinge on information maintained by different agencies — police, the probation department, social service providers, the court — whose computer hardware and software may not be compatible.

Finally, community court planners can expect to confront architectural obstacles. Architectural innovation doesn't come easily. The space needs of the various criminal justice agencies are often in conflict; correction authorities, police, attorneys, court officers, and judges each have special needs for physical space. The planning of a new courthouse is sure to enliven these ongoing conflicts. And the need to accommodate outsiders, such as community groups and treatment and education professionals, further complicates the process.

While such obstacles shouldn't be minimized, they can be overcome if all parties have a commitment to the process and share an understanding of goals and principles. The Midtown experience suggests a number of practical strategies that can assist in the development of any community court project.

## Outreach

Before launching the Midtown Court, organizers met with scores of block associations, business groups and local political leaders. These early meetings made it possible for court planners to identify stakeholders, define existing quality-of-life problems in the neighborhood and articulate specific goals.

From these early meetings, organizers built a corps of supporters willing to donate resources, including community service supervision, social service staff time and supplies like paint and plantings. The early outreach also made it possible to recruit the Court's community advisory board, which helps identify crime patterns in

the neighborhood and potential community service projects while providing feedback on the Court's relationship with the neighborhood.

Victims are a particularly important stakeholder group for any community court. Victims expect a lot from courts. They want to see justice done, but what this means depends upon the individual victim. For some, "justice" may mean having their pain acknowledged by the offender, the court system or the community. Others may want courts to rehabilitate the offender and make a concentrated effort to improve the neighborhood conditions that lead to crime. Still others may want offenders to express remorse and take responsibility for the harm they have caused. And some victims will want all of these things. Community court planners will want to make special efforts to understand victim issues. In so doing, they can insure that the community court provides constructive channels for victim involvement and that it offers victims both information and services.

## Government Support

Even with the endorsement of local residents and victims groups, a community court project won't get very far unless it enjoys enthusiastic support at the highest levels of both the executive and judicial branches of state and local government. Community court planners can expect to invest significant time and energy explaining the idea and its merits to the governor's office and leaders of the state court system, to the mayor's office, to the local district attorney and the head of the public defenders' office, as well as to judges and the local bar association.

Fundraising efforts for the court should take advantage of its capacity to make a visible difference in community life, appealing to local businesses and non-profit groups who stand to benefit directly. Foundations might also welcome the opportunity to help a promising program likely to demonstrate the value of innovation.

In addition, community courts can attract a new audience of potential funders: those interested in economic development. After all, meaningful and lasting economic development rarely takes place in areas where residents, merchants and employees fear for their safety. By addressing neighborhood blight, improving public safety and providing social services, a community court can be a valuable addition to economic development efforts. Businesses, government agencies and foundations with a stake in neighborhood economic development are a crucial constituency for community court planners.

As are police. Unfortunately, police — and community groups — lose heart in fighting low-level crime when they lack any reliable way to measure progress. Besides the traditional work of caseload and sentencing outcome analysis, research staff at the Midtown Community Court study problems raised by police officers and neighbors. The Court's researchers monitor patterns of prostitution and drug-dealing, as well as street sanitation. They have developed neighborhood-specific computer software to map arrests, complaints, and other quality-of-life indicators: the mapping helps both neighbors and police target resources.

Where the research confirms success, a community court should be ready to make it known. A court can create its own newsletter and Internet web site. It can also promote media coverage to ensure a regular flow of feedback to the community.

## Alternative Sanctions

Communities won't be comfortable with community service, and judges and prosecutors won't utilize it, without some attention to risk assessment. Common sense dictates that violent felony offenders are probably not good candidates for community service. At the Midtown Community Court, only misdemeanor offenders are sentenced to community service. Work projects are classified as high, medium or low supervision. Each offender is matched to the appropriate level of supervision based on a review of his or her criminal history, background and crime of arrest. Offenders with more extensive criminal histories and those considered less likely to complete their sentences are assigned to projects that take place in the courthouse (building maintenance, staffing a bulk-mailing operation); those considered lesser risks are assigned to more visible outdoor projects (cleaning graffiti, painting fire hydrants and streetlights).

A community court's social service program will require similar attention: long-term drug treatment alone is not enough. In fact, in-patient drug treatment may not be an option for many. Since many criminal court defendants are low-level offenders who face little or no jail time, the court must set up punishments that are proportional to the defendant's record and crime. The Midtown Court created an array of short-term interventions that take place in the courthouse itself. They include:

**A four day "treatment readiness" group** It introduces defendants without serious records to drug treatment and prepares them for long-term help.

**Counseling group sessions for prostitutes** The short course includes basic health screening and a meeting with an outreach counselor who offers support for women who want to escape their pimps and life on the streets.

**Job readiness sessions** They put chronically unemployed defendants together with employment counselors who make them aware of job training or placement programs.

While the immediate goals of these short-term interventions are modest, the Midtown Court has already seen hundreds of defendants use them as stepping stones toward changing their lives, many of them returning voluntarily for continued counseling after completing their sentences.

## Staffing

A community court necessarily requires a larger, more diverse staff than a traditional courthouse. In addition to clerks and security officers, community courts may need

social workers, victim advocates, job developers and managers for community service work projects, along with additional research and public information officers. For example, community outreach — introducing the court to local merchants, community groups and elected officials, and managing the court's on-going relationships with its community service partners — may require a full-time ombudsman. A court that installs a computerized data-sharing system may need a technician to install the necessary hardware and software and adapt them for the court's particular needs. A mediation service, should the court decide to offer one, would require a staff of its own. The court's need for current information about a defendant's legal and social service status requires a staff of interviewers who are able to compile basic data quickly.

These new staff people need not be court employees, however. At the Midtown Court, planners convinced several social service providers — both non-profit organizations and government agencies — to out-station personnel at the courthouse. The reasoning was simple: service providers should bring resources to where the problem is, rather than vice versa. Every day, the Court has physical custody of dozens of people who are in dire need of services. These are the same people who drug treatment providers, GED programs and health care providers aim to serve.

The Midtown Community Court also grew to depend on a new party to the legal process: the resource coordinator. His job is to keep track of the range of available sentencing options and help the judge and attorneys match each defendant with the right program. The resource coordinator links criminal justice and social service professionals together. Sitting in the well of the courtroom, he is integrated into the case processing system. At the same time, he is part of the Court's clinical team, aware of treatment issues and the risks of success and failure. Over time, lawyers and judges have come to rely on the resource coordinator and trust his recommendations.

## **Beyond the Courtroom**

Many quality-of-life problems in a community are not violations of the law and do not come to the attention of the police or courts. The Midtown Community Court has sought to address these problems in three ways:

First, it established a mediation service to resolve neighborhood disputes — for example, the opening of an adult movie house or the operating hours of a noisy auto repair shop — before they escalated to legal battles. In addition to helping the community deal with such problems, the service conveys the Court's commitment to the community and its quality of life.

Second, the Court set up a street outreach unit — staffed by police officers and case workers from the court — to enroll potential clients in court-based social service programs before they get into trouble with the law. Five mornings a week, the outreach teams comb the neighborhood, engaging likely clients — prostitutes, substance abusers, the homeless — in conversation and encouraging them to come in for help voluntarily.

Finally, the Court launched Times Square Ink, an on-the-job training program for ex-offenders who have "graduated" from community service. Participants in the program learn job skills by staffing a copy center that does copying work for local businesses and non-profits. By providing ex-offenders with job training and assisting them in finding jobs, Times Square Ink seeks to address the related problems of unemployment and crime.

## Conclusion

There is no such thing as a generic model for a community court; ideally, each one will reflect the particular nature of its neighborhood. For that reason, this discussion has focused on principles and advice rather than on a universal definition or formula. The principles, however, are well worth pursuing; a court that realizes them well becomes a powerful investment in the future of neighborhoods and the credibility of law.



**Notes**

### **Center for Court Innovation**

The winner of an Innovations in American Government Award from the Ford Foundation and Harvard's John F. Kennedy School of Government, the Center for Court Innovation is a unique public-private partnership that promotes new thinking about how courts can solve difficult problems like addiction, quality-of-life crime, domestic violence and child neglect. The Center functions as the New York State Unified Court System's independent research and development arm, creating demonstration projects that test new approaches to problems that have resisted conventional solutions. The Center's problem-solving courts include the nation's first community court (Midtown Community Court), as well as drug courts, domestic violence courts, youth courts, family treatment courts and others.

Nationally, the Center disseminates the lessons learned from its experiments in New York, helping courts across the country launch their own problem-solving innovations. The Center contributes to the national conversation about justice by convening roundtable conversations that bring together leading academics and practitioners and by contributing to policy and professional journals. The Center also provides hands-on technical assistance, advising court and criminal justice planners throughout the country about program and technology design.

For more information, call 877 373 7300 or e-mail [info@courttinnovation.org](mailto:info@courttinnovation.org).

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# **SAN DIEGO'S HOMELESS COURT PROGRAM**

**Established 1989**

## **Homeless Court Description**

Homeless Court Program (HCP) is a special Superior Court session for homeless defendants --- convened in a homeless shelter --- to resolve outstanding misdemeanor offenses and warrants. The HCP builds on partnerships between the court, local shelters and service agencies, and the prosecutor and public defender. It works 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. 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.

## **History**

In 1989, San Diego started the first Homeless Court Program in the nation, a special Superior Court session held at local shelters for homeless defendants to resolve outstanding misdemeanor criminal cases. The Homeless court responded to a survey where one in five homeless veterans requested help with the criminal justice system.

Following this first Homeless Court, the San Diego Court reported 130 defendants had 451 cases adjudicated through Stand Down in 1989. The following year, 237 homeless veterans addressed 967 cases. Between 1989 and 1992, 942 homeless veterans resolved 4,895 cases in Stand Down courts. The continued large numbers of homeless people participating in the Homeless Court Program, coupled with their efforts to overcome the obstacles their condition represents, fostered the program's expansion from an annual, to a quarterly, then a monthly schedule. Over the years, the Homeless Court 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 HCP started holding monthly sessions, alternating between two shelters (St. Vincent de Paul and Vietnam Veterans of San Diego), with a grant from the Bureau of Justice Assistance/Department of Justice.

To counteract the effect of criminal cases pushing homeless defendants further outside society, this court 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 them back into society.

## **Core Elements**

### Voluntary Program

Homeless participants voluntarily sign up for the HCP. The participant voluntarily enters his/her homeless shelter/agency. The HCP does not order participants into a program. If a participant who has signed up for Homeless Court decides to challenge his/her case, be it through a trial or motion, the case is set for a date certain in the courthouse. The HCP homeless participant is entitled to all protections afforded by due process of law. No one gives up the right to go to trial or pursue motions challenging the allegations against him/her.

### Addresses Full Range of Misdemeanor Offenses

The HCP addresses a broad spectrum of misdemeanor offenses, including, under the influence of a controlled substance, theft, and driving under the influence charges. The HCP recognizes people can overcome great obstacles, and serious misdemeanor offenses, and that these cases represent but one part of their lives, not the whole of the individual. Participants who appear in Homeless Court with serious misdemeanor cases submit proof of completion in significant program activities. In many circumstances, the participants program activities voluntarily exceed the demands a court might order for treatment for low term felony cases (eg. certain drug ant theft charges).

### 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 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.

### Alternative Sentencing

The HCP “sentences” participants to activities in the shelter program. Local homeless shelters and agencies are the gateway for participants to enter this court. Homeless persons who want to appear before this must sign up through one of a number of local shelters.

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 participant’s 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 Homeless Court recognizes that each shelter has its own requirements and guidelines to allow resident's access to the Homeless Court. 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 Homeless Court through a variety of means. These agencies will address the Homeless Court as an option after the homeless person has completed a certain course, phase, or activity. The Homeless Court does not interfere with the shelter requirements. Requirements vary from program to program.

The shelters perform the assessments of clients, 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. The shelter is in the best position to evaluate the client's needs and design a plan with attainable goals and benefits. 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 client's seeking to access benefits, counseling, group meetings, or an identification card, clean clothing and a meal. Clients who actively select their services and goals are more likely to benefit from the program. The Homeless Court and shelters share the desire to empower the individual and enable that person to overcome the adversity that fosters or causes homelessness.

The shelter representatives write advocacy letters for each client. The advocacy letter is symbolic of the relationship between the client and the agency while including a description of the program, the clients start date, and accomplishments, programs completed and insight into the client's efforts. The HCP sentence strengthens and advances the efforts of the participant and agency representatives.

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 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. Rather, the participant is encouraged to participate in a program that will best meet his/her needs.

#### 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.

#### **Distinctions between the Traditional Court and Homeless Court**

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.

## **Objectives**

The Homeless Court Program brings the law to the streets, the court to the shelters and the homeless back into society. The Homeless Court Program provides access to court for homeless defendants, working with shelter services, holding proceedings in shelter community rooms and recognizing individual effort for purposes of sentencing. The Homeless Court Program’s greatest achievement is the contribution of the shelter and homeless participants building a more inclusive criminal justice system and stronger community.

## **Process**

### Overview of the HCP Process

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

Initially, 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", "Agreement to Appear" 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." 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 participant has a future court date.

#### 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 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. Cases outside the City of San Diego are negotiated between the deputy public defender and deputy district attorney on a case by case basis.

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

#### 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. Cases from the County of San Diego, in the jurisdiction of the District Attorney, are addressed on the HCP calendar when negotiations are final. No felony charges are calendared for HCP. However,

attorneys with the Office of the Public Defender coordinate the surrender of felony clients into the courthouse as referrals from the Homeless Court Program with proof of participation in program activities.

#### 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.

#### 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 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 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 Village 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. The judge takes the bench, either standing at a podium or seated at 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. On average, 90% of the Homeless Court cases are dismissed.

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.

#### **Budget Considerations**

In July 1999, ten years after starting with Stand Down, the Homeless Court received a grant from the Department of Justice/Bureau of Justice Assistance to hold monthly court sessions. This grant funded all the key agencies that comprise the Homeless Court; the Office of the Public Defender, City Attorney of San Diego, San Diego County Superior Court, Vietnam Veterans of San Diego, St. Vincent de Paul, and an evaluation by SANDAG (San Diego Association of Governments). In April 2001, at grants end, all the key players integrated funding of the monthly court sessions into their regular budget.

The Homeless Court Program developed a number of materials to foster growth and replication of the court. These materials include:

- “And Justice for All...” a half hour documentary video on the Homeless Court was released in November 1999.

- “Is it a crime to be homeless?” a tri-fold pamphlet that describes how to access and prepare for Homeless Court.
- In September 2002, the American Bar Association/Commission on Homelessness and Poverty published “Taking the Court to the Streets” (a Homeless Court Program, how to manual).
- Released in September 2003, a second half hour video, “Taking the Court to the Streets” highlights participant’s efforts and accomplishments to prepare for Homeless Court.

## **Evaluation**

The greatest measure of the Homeless Court Programs success is the ongoing and increasing participation of homeless defendants. Their involvement with the Homeless Court Program illustrates the participant’s confidence for and the value these proceedings have in resolving a critical component from their past and need to overcome the obstacle of their criminal cases to move from the streets through the shelter to self-sufficiency.

In 2003, 574 defendants applied for Homeless Court. The court resolved 918 cases during this period. Between January and December 2002, over 300 defendants applied for Homeless court. In 2002, monthly sessions settled 564 cases. Between January and December 2000 (the first calendar year of monthly hearings), 198 homeless defendants resolved 507 cases, reports San Diego Association of Governments evaluation of the Homeless Court Program. The researchers concluded “the most significant factor as to whether or not a participant appeared at the hearing was whether or not they met with the public defender one week prior to the hearing.”

The San Diego Superior Court reports, 188 homeless veterans resolved 454 cases at the three-day annual Stand Down event in 2002. In 2003, with budget constraints eliminating on site registration for court, 155 homeless veterans resolved 400 cases.

In June 2001, the San Diego Association of Government (SANDAG) issued a 79 page report with appendix entitled “San Diego Homeless Court Program: A Process and Impact Evaluation” authored by Nancy Kerry and Susan Pennell. Address: SANDAG; 401 B St., Ste. 800, San Diego, CA. 92101, phone: (619) 595-5300.

SANDAG reported 209 participants resolved 704 cases through monthly Homeless Court sessions between October 1999 and February 2001. The SANDAG evaluation found 80% of these participants had no post-hearing criminal activity.

Homeless Court participants affirmed in interviews that Homeless Court participation changed their attitude about the court system. All but three respondents answered affirmatively. When questioned further at to "How has your attitude changed?" the most often repeated comment was that their "fear" of the court system was reduced or eliminated.

When Homeless Court 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. Thirty-nine percent (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).

The SANDAG study, comparing participants of the Homeless Court to those with criminal charges who utilized the traditional court system, the recidivism rate for the Homeless Court participants showed less interaction with police and peace officers after the court proceedings. Over 700 cases were resolved between October 1999 and February 2000.

Fewer cases are set for a continuance in Homeless Court 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 Homeless Court 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.

The benefits of the Homeless Court Program extend beyond the process of clearing up outstanding cases or warrants. According to the data gathered, individuals who participate in Homeless Court are also willing to make changes in their behavior 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 Homeless Court they would have waited to be arrested to handle their cases.

### **Non-Custodial Parent Program**

The Non-Custodial Parent Program (NCPP) program is modeled on the HCP. The NCPP addresses homeless veterans owing child support. This program offers a wide variety of supportive services, such as information & referrals, life skills training, money management, assistance with credit repair and employment/training opportunities to assist program participants reach self-sufficiency. The participants are homeless veterans who have been living on the streets, in emergency shelters, sober housing or primary care facilities. To participate, these veterans must address other issues such as medical, substance abuse and/or psychological needs. All clients enrolled in the Non-Custodial Parent Program will be in some form of case-management.

This program assists the non-custodial parent become more financially and emotionally involved in their children's lives, while assisting the homeless veteran achieve his/her highest level of independence by alleviating the financial barriers that have prevented them from obtaining and maintaining employment.

The Vietnam Veterans of San Diego found that many homeless veterans who obtain work do so under the table. The average salary of the veterans working under the table is \$7.00 - \$9.00 per hour. The primary reason given for working under the table is to prevent the Department of Child Support Services from garnishing what little money that individual is earning. These veterans feel trapped. They would like to find legitimate employment and satisfy their child

support obligations. With the high cost of rent, these veterans find that they cannot provide for themselves and satisfy the obligation owed in child support, taken by wage garnishment by the Department of Child Support Services.

This program assists homeless veterans clean up the wreckage of their past and move forward to re-connect with their children. The homeless veteran is in a better position take financial responsibility for him/herself and child without the fear of having the majority of their check garnished.

### **Lessons Learned**

In January 2000, The Institute on Crime, Justice and Corrections at George Washington University, issued a report from a site visit conducted by Dr. Kelly Johnson. The Institute evaluation stated, "A key challenge to encouraging participation in the Homeless Court lies in the ability to convince potential defendants that the court program is designed to be a positive experience in their lives." This is resolved through word of mouth, from clients who have successfully resolved their case during the Homeless Court hearing. Additionally, the shelter staff has developed a high level of trust with their residents. More than a year passed before the staff at a woman's shelter referred their participants to Homeless Court. The staff expressed concern that their relationship and trust with clients would be jeopardized if a client was incarcerated. The trust between the shelter staff and the participant is transferred to the Homeless Court. This is fundamental to the continued operation of the Homeless Court.

In 1999, during the implementation of the monthly court sessions, a breakdown in the communication process for clients interested in attending court occurred between the shelters, participants and the Public Defenders Office. Originally, the shelter case manager was instructed to fax the participant interest list to the host shelter that would then forward this list to the Public defender's Office. This process raised several problems: missed faxes, difficult to read second generation faxes and misspelled names or dates of birth. To remedy this problem, the shelters were instructed to fax this list directly to the Public Defenders Office, call to confirm its receipt, and include the name and phone number of the shelter contact person.

### **Success Stories**

The participants in the HCP appear from varied backgrounds, hardships and accomplishments. The following participants successfully resolved their cases:

Homeless for five years, one woman 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 for the advances listed in her advocacy letter, she left the court in tears of joy.

One man, 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.

Illiterate, one participant sought a referral to another program's literacy classes after successfully resolving his three cases.

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

Facing ten cases, one woman 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 and pursued a basic education program.

### **Awards/Recognition**

- Finalist, 2004 Innovations in Government Awards, Ash Institute for Democratic Governance and Innovation/Kennedy School of Government - Harvard University
- Community Service Award, San Diego County Bar Association, 2004
- 2004 Innovations in Government Awards, one of the "Top 50" programs selected by the Ash Institute for Democratic Governance and Innovation/Kennedy School of Government - Harvard University
- 2003 Presidents Pro Bono Service Award (Government)/State Bar of California
- NACo Award, presented to the County of San Diego for the Homeless Court Program, 2002
- "Stan Conant Award," The Board of Directors of Federal Defenders and Appellate Defenders, 2002
- "Hodson Award," presented to the Office of the Public Defender for the Homeless Court, Am. Bar Assn. Gov't and Public Sector Lawyers Div., 2001.
- "Unsung Hero Award," National Coalition for Homeless Veterans, March 2000.
- "Community Service Award," Public Defender Association, 1999.
- "Volunteer Attorney of the Year," Vietnam Veterans of San Diego, 1990.

### **Media**

- "Lifting Hurdles as the Homeless Rebound" New York Times, December 29, 2004
- "Traveling Court Aids Homeless with Records" Associated Press, December 2004 (published in more than 60 newspapers)
- "Court Program Helps Homeless," San Diego Union-Tribune, August 19, 2004
- "No One Goes To Jail," San Diego Lawyer, May/June 2001
- "Homeless Courts Seek Out Needy for last Chance," LA Daily Journal, November 30, 2000.
- KGTV/Channel 10, November 24, 2000
- NBC Nightly News, June 20, 2000.

- “Homeless Court Offers New Hope for the Down and Out,” Los Angeles Times, May 1, 2000.
- “The New Cuckoo’s Nest,” California Lawyer, September 1999.
- “Homeless Court Serves Both The Homeless And The Courts,” San Diego Transcript, June 17, 1999.

## **Future**

The most significant shortcoming for the Homeless Court Program is its difficulty in consistently addressing all the misdemeanor criminal cases participants face throughout the county. Currently, the Homeless Court addresses misdemeanor cases within the City of San Diego. The Homeless Court is currently working with the District Attorney to extend the courts jurisdiction and address misdemeanor cases throughout San Diego County.

The Homeless Courts inability to address the defendant’s cases throughout the county precludes full resolution of all cases. The judge is not able to review the entire criminal history of each defendant, review all the cases an individual carries nor fashion a comprehensive court order and sentence. The defendant is forced to travel long distances, attend numerous hearings and appear before judges unfamiliar with the Homeless Court guidelines. Additionally, when defendants are forced to attend numerous court hearings they are unable to participate in shelter activities. The shelters voice and contribution is diluted when its staff spends time attending numerous court hearings and is drawn away from shelter activities. The prosecution and defense attorney’s from the Homeless Court are not in a position to travel across the county and attend to hearings in other jurisdictions. When the courts hold hearings across the county, prosecutors and defense attorneys to expend additional time to familiarize themselves with each defendant and shelter programs incurring additional court time and expense.

## **Replication**

The San Diego HCP is poised to assist other develop and replicate a Homeless Court Program in their community. We welcome any questions or concerns you may have. The San Diego HCP challenges other communities to reach out, find opportunity in adversity, and meet homeless participants in life transition and build a larger community for justice.

“Recall the face of the poorest and the weakest man whom you may have seen, ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny?” Mahatma Gandhi, 1947

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