

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

AUGUST 9-10, 2021

RESOLUTION

RESOLVED, That the American Bar Association adopts the principles dated August 2021, for Homeless Court Programs (“HCPs”).

Homeless Court Program Principles

1. HCPs, in their foundational documents, should acknowledge:
 - a. That convictions and traditional sentences (e.g. fines, supervision, jail), particularly when poverty is an underlying factor, rarely lead to better public safety outcomes;
 - b. That sustained economic hardship results in poorer physical, psychological, and cognitive functioning, increasing the likelihood of criminal justice system entanglement beyond typical status offenses;
 - c. That further justice system entanglement and attendant collateral consequences deepen or perpetuate poverty;
 - d. That it can be an arduous process to address and overcome the root causes of poverty, particularly those related to institutionalized racism and the criminalization of poverty which disproportionately affects people of color;
 - e. That services addressing the root causes of a person's poverty, and the resulting trauma or stigma and risk of criminal justice system entanglement, result in better public safety outcomes, and that service providers are the experts in providing those services; and
 - f. That promoting an individual's agency and dignity throughout the HCP process is imperative.
2. In determining action plans, the HCP should rely on community-based service providers to establish criteria for evaluating an individual's service needs, to screen and refer individuals pursuant to those criteria, and determine criteria for the addition or removal of HCP-approved service providers.
3. In determining case eligibility, prosecutors, courts, and defense counsel should heed input from providers, referral agencies, and those with lived experience with respect to all the ways poverty and trauma manifest in one's personal, community, and behavioral histories.
4. With respect to relief offered, the HCP should:
 - a. Recognize and accept the services obtained through an approved provider or the completion of approved activities in satisfaction of all fines, supervision, community service, and custody, and in the case of unadjudicated matters, dismissal;

- b. For more serious charges, consider dismissal or reduction of charges when their underlying cause is being addressed by the individual's participation in appropriate service(s), particularly in the case of behavioral health issues or where there is a relationship between conditions of homelessness and the charged offense; and
 - c. Consider post-conviction relief of adjudicated cases (including, but not limited to the reopening of prior cases, expungement, sealing, access to records, vacatur, etc.) that impose collateral consequences impeding an individual's progress out of homelessness.
- 5. With respect to process, the HCP should:
 - a. Adopt a services-first and action-first model, where individuals obtain services from community-based providers or complete approved activities recommended by referring agencies, who then bring them to the court for recognition of their accomplishments;
 - b. For individuals with active cases, consider adjourning their cases without supervision or conditional bond, with sufficient time for individuals to connect with an approved service provider of their choosing or referral agency, complete services or activities, and be referred to the HCP docket;
 - c. Not require a guilty plea or permanent waiver of any due process protection to participate;
 - d. Ensure time for meaningful review of the cases and consultation with counsel prior to disposition in HCP; and
 - e. Adopt a consensus-oriented decision-making process that incorporates the perspectives of all HCP stakeholders when determining admission and relief in HCP.
- 6. With respect to evaluating efficacy, the HCP should:
 - a. Not binarily consider recidivism a negative outcome, as some recidivism can be a normal part of an individual's path out of poverty; and
 - b. Endeavor, if resources are available, to use the following metrics to quantify success:
 - i. Reduction of individual frequency of recidivism for HCP graduates;
 - ii. Reduction of individual usage rates of emergency services, shelter, and other poverty-related services;

- iii. Improvement in health, self-sufficiency, reconnection to prosocial networks, and other factors linked to lower criminogenic risk.

REPORT

I. Purpose

In August 2006, the ABA House of Delegates adopted a policy outlining principles for homeless court programs.¹ At the time, there were 27 homeless court programs nationwide plus sessions held during annual Stand Down events. Since, this policy has allowed for the proliferation of and improvement on the homeless court program model nationally. The ABA has been instrumental in helping communities establish homeless court programs through the provision of technical assistance, and there are now nearly 70 programs across the country.² To continue this trend and further assist in the effective replication of homeless courts, this resolution provides a necessary update to the 2006 Homeless Court Principles. The 2006 Homeless Court Principles established common goals and due process protections for homeless court programs. This resolution enhances their effectiveness by reconciling the broad differences in process and relief granted across programs nationwide, establishing a standard evaluation protocol, and facilitating understanding of defendants' circumstances. In turn, this resolution will also allow the ABA to provide better technical assistance and ensure increased awareness and understanding of best practices.

II. Homeless Court Basics

Why?

People experiencing homelessness 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. Caught up in a daily struggle for food, clothing and shelter, a homeless person typically has few resources to draw upon to respond properly to the criminal justice system. Consequently, misdemeanor citations and infractions are often not dealt with, compounding the problem as warrants are issued and additional fines assessed, which often preclude homeless people from accessing desperately needed services such as public benefits and mental health and/or substance abuse treatment—not to mention employment and housing.

In 1989, San Diego established the nation's first collaborative justice/problem-solving court in the nation with the Homeless Court Program: a special monthly Superior Court session held at local shelters for homeless defendants to resolve outstanding misdemeanor criminal cases. To counteract the effect of criminal cases pushing homeless defendants further outside society, this court combines a

¹ Resolution 06A108A, American Bar Association, https://www.americanbar.org/content/dam/aba/directories/policy/annual-2006/2006_am_108a.pdf.

² Homeless Court Directory, American Bar Association, https://www.americanbar.org/groups/public_interest/homelessness_poverty/initiatives/homeless-courts/homeless-court-directory/.

progressive plea bargain system, an alternative sentencing structure, and proof of community-based program activities to address a range of misdemeanor offenses and serious misdemeanor charges, as service providers address the behavior and circumstances given rise to these offenses. Left unresolved, these charges remain obstacles to individual reintegration into the community. Homeless courts expand access to justice, reduce court costs, and help homeless people reintegrate into society and lead productive lives. 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.

Who and What?

The Homeless Court Program is a collaboration of all the traditional criminal justice practitioners and homeless service/treatment providers. They must agree on the parameters of which cases should be heard in the Homeless Court hearing and how cases should be resolved. Service providers address the behaviors, challenges, and trauma of individuals. In addition, the providers challenge and guide participants in developing individual skills and self-reliance to reclaim their lives. The overriding goal of the Homeless Court Program is resolution of cases and the removal of obstacles, of the charges and convictions, which preclude the homeless participant's reintegration into the community. One of the guiding principles of the Homeless Court Program is to provide the participants a fresh start and promote access to additional services and reintegration into the community. This fresh start reconciles each participant's successful completion of program activities against their outstanding cases.

Community-based service providers establish criteria for individual participation in the Homeless Court Program and screen individuals pursuant to these criteria. Each homeless service agency addresses the complexities homelessness represents in accordance with their mission, access, and level of services. The homeless service agency performs assessments to determine the individual's social history and needs, their abilities and motivation. Each homeless service provider knows the participant from ongoing daily interaction. They develop trust that comes from working together to identify and address each client's greatest needs and accomplishments. Working together, the homeless service agency representatives and the person who experienced homelessness build a relationship and confidence to strive for resolve to life's obstacles. The wide array of homeless service agencies differ in the level, approach, and intensity of services.

The service providers address the basic needs of their clients. While these agencies vary in the mission, access, and delivery of services, they focus on services such as life-skills classes, chemical dependency or AA/NA meetings, computer and literacy classes, training, or assistance in searching for employment and/or housing, medical care (physical and mental), and counseling. The Homeless Court Program acknowledges the participants' accomplishments and accepts proof of these activities in community-based services to replace the

traditional court sentence options of fines, public work service and custody, which can be coercive, punitive, and costly.

Unlike a traditional court, the judge communicates more often with the defendant than with the defense attorney. 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 prosecution about the offer for disposition and, in most cases, the charges, warrants, and penalties are formally dropped as previously agreed. On average, more than 90% of the Homeless Court cases are new cases that are dismissed, or fines and fees satisfied on previously pled cases. All Homeless Court Program participants – including defendants who are homeless or at risk of becoming homeless, defense and prosecution attorneys, court clerks and judges – shall have time for meaningful review of the cases and issues prior to disposition.

The HCP key players (judges, prosecutors, defense attorneys, and homeless shelter/service agencies) agree that 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.

Where?

Held monthly in the community, instead of in a formal courthouse, the Homeless Court Program brings the law to the streets, the court to the shelters and individuals experiencing homelessness back into society. The Homeless Court Program provides access to court for homeless defendants, working with services, holding proceedings at community providers, and recognizing individual effort for purposes of sentencing. The Homeless Court Program’s greatest achievement is the contribution of the provider and homeless participants building a more inclusive criminal justice system and stronger community.

III. Updated Homeless Court Principles

Traditional punitive sentencing in misdemeanor cases is typically ineffective at reducing crime and recidivism.³ With respect to non-violent misdemeanors, a recent working paper found that the non-prosecution of an offense led to large reductions in likelihood of new criminal complaints over the next two years without any indications of increase in local crime rates.⁴

This is because punitive sentencing, particularly when coupled with defendants in poverty, functions to increase, not decrease, criminogenic risk.⁵ Incarceration, even for just one day, impairs individuals' livelihoods and mental health, sending ripple effects that threaten their families' housing, mental health, and children's performance in school.⁶ Money fines, particularly when assessed without consideration of ability to pay, are equally detrimental. One study of Seattle's homeless population found that individuals "with legal fine debt experienced 22.9 months of additional homelessness after considering the effects of race, age, and gender".⁷ The long-term effect of a sentencing regime of jail and unaffordable fines is deepening poverty and making an even harder path to self-sufficiency.⁸

³ See generally Alexandra Natapoff, *Punishment Without Crime*, (2018).

⁴ See Amanda Y. Agan, Jennifer L. Doleac, & Anna Harvey, *Misdemeanor Prosecution*, NATIONAL BUREAU OF ECONOMIC RESEARCH, March 2021, <https://www.nber.org/papers/w28600>

⁵ D. A. Andrews & James Bonta, *The Psychology of Criminal Conduct (5th Ed)*, 2010. Functional sentencing targets the Central Eight criminogenic risk factors which are: (1) established history of criminal behavior; (2) antisocial personality pattern; (3) antisocial cognition; (4) antisocial associates; (5) substance abuse problems (and often concomitantly untreated mental or physical health); (6) employment (or income/resources) instability; (7) low engagement in prosocial leisure pursuits; (8) family/marital problems (reconnection with social networks); Quinn Cooper, et al., *Assessing the Cost: Criminal fines, court costs, and procedure versus practice in Tulsa County*, University of Tulsa College of Law, 2014, <http://law.utulsa.edu/wp-content/uploads/sites/3/2014/12/Final-Report-Assessing-the-Cost.pdf>.

⁶ John W. Lynch, et al., *Cumulative Impact of Sustained Economic Hardship on Physical, Cognitive, Psychological, and Social Functioning*, 337 N. ENGL J MED 1889-1805, (1997); Megan Comfort, *A Twenty-Hour-a-Day Job: The Impact of Frequent Low-Level Criminal Justice Involvement on Family Life*, ANNALS OF AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, vol. 665, no. 1 (2016), 67-68; David Murphey & P. Mae Cooper, *Parents Behind Bars: What Happens to Their Children?*, CHILD TRENDS (2015).

⁷ Jessica Mogk, et al., *Court-imposed fines as a feature of the homelessness-incarceration nexus: a cross-sectional study of the relationship between legal debt and duration of homelessness in Seattle, Washington, USA*, JOURNAL OF PUBLIC HEALTH, (2019), <https://academic.oup.com/jpubhealth/advance-article/doi/10.1093/pubmed/fdz062/5510723?guestAccessKey=731bcf6d-8859-4a21-b784-9ac3f057db98>, ("Individuals with legal fine debt experienced 22.9 months of additional homelessness after considering the effects of race, age, and gender."); NO SAFE PLACE: *The Criminalization of Homelessness in U.S. Cities*, National Law Center on Homelessness & Poverty, July 16, 2014, http://www.nlchp.org/documents/No_Safe_Place; Kaaryn Gustafson, *The Criminalization of Poverty*, JOURNAL OF CRIM. LAW & CRIMINOLOGY, 99 J. Crim. L. & Criminology 643 (2009); "Municipal Violations", segment, Last Week Tonight with John Oliver, aired March 22, 2015, <https://www.youtube.com/watch?v=0UjpmT5noto>, caution strong language; *What If Courts Were Designed to Provide Opportunity Instead of Punishment*, Street Democracy (2018), <https://drive.google.com/file/d/1CqtXaKvF8I89NXY-VaVKCZL3XKztVY8z/view> (finding 60% of those under 150% of FPG ordered to money fines experienced housing instability).

⁸ Robert DeFina & Lance Hannon, *The Impacts of Mass Incarceration on Poverty*, CRIME AND DELINQUENCY, Volume 59 Issue 4, 562-586, (2013).

Conversely, a rehabilitation-centric criminal justice response—like that championed by homeless courts—is demonstrably better at reducing recidivism.⁹ To establish and maintain a successful homeless court program, it is imperative to understand the circumstances in which participants find themselves and the context and limitations of the punitive justice system. In addition to the aforementioned 2006 Homeless Court Policy, this understanding is also supported by ABA Formal Opinion 490 on the ethical obligations of judges to consider a defendant's ability to pay,¹⁰ as well as the ABA's 2018 Ten Guidelines on Court Fines and Fees.¹¹ The first principle of this resolution outlines these concepts to establish a foundation of understanding for homeless court programs from which communities can effectively implement and operate homeless court processes.

The Commission has provided technical assistance to both communities with a homeless court program and those contemplating development. Through this, the Commission has observed two key trends. First, the majority of the technical assistance centers around explanation of homeless court process generally. Second, because the aforementioned homeless court conceptual framework is not clearly translated into process—which is elemental to the program efficacy—, there exists significant variation across the country, with many courts simply borrowing processes from existing specialty courts. The second through fifth principles acknowledge this need for an enumeration of best practices for homeless court programs in light of these observations, particularly with respect to the following areas: participant action plans, case eligibility determination, relief offered, and process generally. Fidelity across each of these process areas is crucial to achieving the most effective results: satisfying charges without using fines, fees, or traditional punitive sentencing methods; ensuring access to homeless court programs; reducing recidivism and creating better outcomes for participants and communities; and increasing overall effectiveness. Principles two through five facilitate this fidelity by providing detailed structure and outlining the best practices necessary to create an appropriate understanding of proper role of each stakeholder in the homeless court process.

The sixth principle seeks to establish a uniform evaluation protocol that best applies to the problem of homelessness and best measures the efficacy of the homeless court process. Because poverty is a chronic and wicked problem, i.e., one of complex interdependencies and incomplete, contradictory, and changing underlying conditions, it is necessary to help courts understand how to measure progress in a manner that comports to the full context of the problem. The absence of a uniform evaluation protocol may result in the adoption of improper measures or cause communities to abandon the program prematurely. Moreover, a uniform

⁹ Francis T. Cullen, *Rehabilitation: Beyond Nothing Works*, 42 CRIME & JUST. 299 (2013); Natti Ronel and Dana Segev (eds.), *Positive Criminology*, (2015).

¹⁰ See Formal Opinion 490, *Ethical Obligations of Judges in Collecting Legal Financial Obligations and Other Debts*, American Bar Association, March 24, 2020, [aba_formal_opinion_490.pdf](https://www.americanbar.org/files/other_publications/supplemental_opinions/pdf/aba_formal_opinion_490.pdf) (americanbar.org).

¹¹ See Ten Guidelines on Court Fines and Fees, American Bar Association, August 2018, [ls_sclaid_ind_10_guidelines_court_fines.pdf](https://www.americanbar.org/files/other_publications/supplemental_opinions/pdf/ls_sclaid_ind_10_guidelines_court_fines.pdf) (americanbar.org).

evaluation protocol will assist in the collection of good data across courts, allowing for the Commission to add a comparative data analysis to our continual work reevaluating best practices and to better serve communities interested in establishing or improving upon a homeless court.

The Commission on Homelessness and Poverty has provided virtual or live technical assistance to over one hundred communities across the country over the last decade, which has earned national recognition, received prominent media coverage, and facilitated state-level action.¹² The adoption of these principles will better-position the Commission to continue providing this assistance by laying improved foundational standards from which communities can build and operate homeless court programs.

III. Conclusion

This resolution improves upon the ABA's 2006 Homeless Court Principles by facilitating understanding of and elaborating on homeless court program best practices. This will result in better, more measurable outcomes for participants and communities, assist existing programs in increasing effectiveness, and help the ABA in its provision of technical assistance to communities looking to establish new homeless court programs across the country.

Respectfully submitted,

Jayesh Patel, Chair
Commission on Homelessness and Poverty

August 2021

¹² The United States Interagency Council on Homelessness 2020 Extra Mile Recognition Ceremony recognized the Commission in December, 2020, https://www.americanbar.org/news/abanews/aba-news-archives/2020/12/aba_s-work-on-homeless-courts-to-receive-government-recognition-/; *For low-level offenders, this Boston court provides a second chance*, PBS NEWSHOUR, Jan. 16, 2019, <https://www.pbs.org/newshour/show/this-boston-court-hopes-to-break-the-cycle-of-homelessness-and-crime>; Florence Homeless Court Program Order, The Supreme Court of South Carolina, Sept. 16, 2019, <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2413>.

General Information Form

Submitting Entity: Commission on Homelessness and Poverty

Submitted By: Jayesh Patel, Chair, Commission on Homelessness and Poverty

1. Summary of Resolution.

This resolution adopts Homeless Court Program Principles.

2. Indicate which of the ABA's Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.

Goal 4: Advance the Rule of Law. This resolution does this by working for just laws, including human rights, and a fair legal process.

3. Approval by Submitting Entity.

Commission on Homelessness and Poverty, April 30, 2021

Criminal Justice Section, May 5, 2021

Section of Civil Rights and Social Justice, April 30, 2021

Senior Lawyers Division, May 3, 2021

Standing Committee on Legal Aid and Indigent Defense, April 30, 2021

4. Has this or a similar Resolution been submitted to the House or Board previously?

No.

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

This resolution updates [06A108 Homeless Court Principles](#).

The following policies support this resolution:

[18A114 Ten Guidelines on Court Fines and Fees](#)

[18M113 Court Context to Address Special Needs of Youth and Young Adults Experiencing Homelessness](#)

[17A112F Criminal Justice Section](#)

[17A112G Criminal Justice Section](#)

[07M106 Decriminalization of Homelessness](#)

[07A104C Status Offense Diversion](#)

[05A112 Access to Mail Delivery for People Who are Homeless](#)

[03M116 Homeless Court Program](#)

[97M108 Criminal Justice Section](#)

[94M100 Drug Court](#)

[91M03 Criminal Justice Section](#)

6. If this is a late Report, what urgency exists which requires action at this meeting of the House?

N/A

7. Status of Legislation (if applicable).

N/A

8. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Commission on Homelessness and Poverty will work with the Governmental Affairs Office in advocacy, and with homeless court program stakeholders through the provision of technical assistance, to facilitate the use of the best practices outlined in the policy in the implementation of homeless court programs.

9. Cost to the Association (both indirect and direct costs).

This resolution does not require the dedication of ABA funds. Minor indirect costs, supported by the Commission's program support fund, would result from staff time devoted to implementation of the policy as part of overall substantive responsibilities.

10. Disclosure of Interest.

None

11. Referrals.

Children and the Law
 Criminal Justice Section
 Commission on Racial & Ethnic Diversity in the Profession
 Commission on Women in the Profession
 Commission on Youth at Risk
 Commission on Domestic and Sexual Violence
 Government and Public Sector Lawyers Division
 Diversity and Inclusion Center
 Family Law Section
 Center for Human Rights
 Young Lawyers Division
 Law Student Division
 Section of Civil Rights and Social Justice
 Section of Litigation
 Judicial Division
 Standing Committee on Gun Violence
 Standing Committee on Legal Aid and Indigent Defense
 International Law Section
 Commission on Sexual Orientation and Gender Identity
 Commission on Hispanic Legal Rights and Responsibilities
 State and Local Government Law Section
 Senior Lawyers Division

12. Name and Contact Information. (Prior to the Meeting. Please include name, telephone number and e-mail address.) *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

Jayesh Patel
 Chair, Commission on Homelessness and Poverty
jayesh@streetdemocracy.org
 313-355-4460

13. Name and Contact Information. (Who will present the Resolution with Report to the House? Please include best contact information to use when on-site at the meeting.) *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

Steve Binder
 Founder, Homeless Court Program
 Special Advisor, Commission on Homelessness and Poverty
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 858-504-3111

Executive Summary1. Summary of the Resolution.

This resolution adopts homeless court program principles.

2. Summary of the issue that the Resolution addresses.

The issues this resolution addresses are the lack of uniformity in homeless court program procedures and lack of understanding of homeless court programs and the circumstances of their participants.

3. Please explain how the proposed policy position will address the issue.

This policy addresses these issues by providing structure for homeless court program processes, outlining appropriate partnership between stakeholders, and outlining the circumstances of program participants.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

The Commission on Homelessness and Poverty is not aware of existing opposition to this resolution.