

Homeless Courts

An Alternative to the Criminalization of the Homeless

By George B. Cauthen and Jennifer P. Wilson

It is a cold, overcast afternoon, and a man with no money and no place to stay, carrying his belongings in a plastic garbage bag, walks down the sidewalk of a city in South Carolina. As it starts to rain, the man ducks under an awning of a store in order to stay dry. The store owner, for whatever reason, does not like that the apparently “homeless” man is taking up space under the awning. The store owner calls the police. The police respond and cite the man for trespassing.

Up until now that man had three options: appear in court and be fined an amount he could not pay, appear in court and be sentenced up to 30 days in jail, or choose not to attend court and risk having a bench warrant issued for his arrest. However, now there is a fourth option for a man like this who is homeless—Homeless Court.

In the beginning

In 1989, Steve Binder was work-

ing as a deputy public defender in the misdemeanor arraignment department of the San Diego Office of the Public Defender. At the time, misdemeanor offenses accounted for 80 percent of the criminal caseload of the department.

When people who are homeless appeared in court on misdemeanor charges, they explained to the judge about the circumstances that took them from their homes and put them on the street. In most cases they pled guilty to the charge and left court with a fine to pay, public service to perform, or time served, and a legal burden to add to their other problems.

The public defender, prosecutor, judges, even the police, were uncomfortable and frustrated with the futility of this revolving-door approach to law enforcement. They came to realize that a person who cannot afford a place to live cannot afford to pay a fine for committing a crime that occurred because they

were homeless. The criminal justice system had a routine procedure. Unfortunately, that procedure did not adequately meet the needs of the homeless population.

Binder joined a group of criminal justice practitioners who were trying to find an answer to the problem. At one of the meetings a survey compiled by the Veterans Administration was discussed. The survey indicated that one in five veterans who were homeless requested help to resolve their legal problems.

This request for help became the foundation for the San Diego Homeless Court. The first Homeless Court session was held on the outdoor handball court at San Diego High School as part of Stand Down, an annual event held by the Veterans Administration to relieve the isolation of veterans who are homeless and to assist them in overcoming barriers to being housed. There are now over



50 Homeless Courts operating in 21 states including three in South Carolina: Columbia, Charleston and Myrtle Beach. Chief Municipal Judge Debra Jackson of Florence is forming an organizational committee for a possible Homeless Court in her city.

Why a Homeless Court?

The theory behind the Homeless Court concept is that people who are homeless, given their living situation, come into contact with law enforcement more often than other individuals. As a result, they are issued more citations, and at a subsequent court hearing—if they attend—they express their inability to pay the fines associated with those citations. If they do not attend, which is often, a bench warrant may be issued for their arrest.

There are a number of valid reasons why people who are homeless do not attend their court hearings. Attendance at court, or any mainstream agency appointment, requires planning and resources. For many individuals who are

homeless, their day is spent trying to survive—searching for food, clothing, shelter, and employment. They may have no place to store their belongings or are too embarrassed by their lack of personal hygiene and proper clothes to attend court. Still others may not understand the need to attend.

However, the greatest single factor that prevents individuals who are homeless from attending a traditional court hearing is fear. They fear a system that in general has not treated them well in the past. They fear their inability to pay the fines imposed on them. They fear incarceration, especially when they are working or in some type of treatment program and incarceration means starting over at square one upon release. Other than providing temporary housing, incarceration of the homeless does nothing to benefit the homeless or the community. Yet, court attendance is the only way to resolve legal issues.

Homeless Court seeks to address this dilemma that perpet-

uates a cycle of homelessness by “bringing the court to the streets.” It enables individuals who are living in a shelter or participating in a treatment program to attend court at a homeless shelter and gives them perhaps their first positive experience with the legal system.

Bringing the court to the streets allows the Homeless Court to improve access to justice for individuals who are homeless. As a consequence of this improved access, individuals can be directed to vital services that will help get them off the streets and into stable housing arrangements.

In addition to the obvious benefits to the homeless population, Homeless Courts are beneficial in other ways. Homeless Courts benefit the criminal justice system by reducing court and jail costs. They build community collaboration between homeless shelters and service agencies and save agency resources by preventing individuals from having to work a program, become incarcerated and then start the program over again. Homeless

Courts also benefit the community by engaging people who are homeless in productive activity and moving them out of parks and other gathering places where they are unwanted by many and susceptible to arrest. Taken in toto, these benefits build a more inclusive justice system and a stronger community.

The ABA steps in

In 2003, the American Bar Association (ABA), through the efforts of the ABA Commission of Homelessness and Poverty, adopted a policy in support of the development of Homeless Courts. Through that policy, the ABA urged state, local and territorial courts to facilitate the development of Homeless Courts as treatment-oriented diversionary proceedings. The goal was dismissal of misdemeanor offenses in recognition of completion of shelter/service agency activities prior to the court appearance, as a means to foster the movement of people experiencing homelessness from the streets through a shelter program to self-sufficiency.

While each Homeless Court in the country operates independently and creates a process designed to meet the needs of those in the community who are homeless, all Homeless Courts adhere to the ABA policy outlining the key principles for Homeless Courts¹:

- Prosecutors, defense counsel and the court should agree on which offenses may be resolved in the Homeless Court Program, and approve the criteria for individual participation, recognizing that defendant participation in Homeless Court Programs shall be voluntary.
- Community-based service providers should establish criteria for individual participation in the Homeless Court Program and screen individuals pursuant to these criteria.
- The Homeless Court Program shall not require defendants to waive any protections afforded by due process of law.
- All Homeless Court Program participants shall have time for meaningful review of the cases

and issues prior to disposition.

- The Homeless Court Program process and any dispositions therein should recognize homeless participants' voluntary efforts to improve their lives and move from the streets toward self-sufficiency, including participation in community-based treatment or services.
- Participation in community-based treatment or services shall replace traditional sanctions such as fines, public work service and custody.
- Defendants who have completed appropriate treatment or services prior to appearing before the Homeless Court shall have minor charges dismissed, and, where appropriate, may have more serious misdemeanor charges before the court reduced or dismissed. Where charges are dismissed, public access to the record should be limited.

The Homeless Court process

As previously mentioned, each Homeless Court across the country has developed its program through a partnership involving law enforcement, the judicial system, service providers, and the needs of the participants. However, in general, participants voluntarily sign up with their homeless service agency to participate in Homeless Court. By taking the initiative to sign up, participants seek justice and a way to reconcile their past with their accomplishments in order to reclaim their lives and build a future. Each Homeless 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 offenses. Alternative sentencing substitutes participation in agency programs for fines and custody. These activities may include: life-skills, chemical dependency or Alcoholics Anonymous/Narcotics Anonymous meetings, counseling, education, and training or searching for employment.

When a participant has met the goals of his or her treatment

plan, the participant meets with a defense attorney to review the criminal aspects of the case. The conversation then moves to the program activities that will help the participants transform their lives for the better. Together, they focus on treatment, their accomplishments, and establishing a strong support system. Participants appear before a judge at a hearing held in a homeless shelter. As each case is called, terms for resolution are presented. The court then reconciles the participant's accomplishments against their offenses and pronounces judgment, clearing the slate for a return to the community as a valued citizen.

Homeless Courts in South Carolina

Columbia

In 2013, issues related to homelessness received a vast amount of media attention in the city of Columbia. Nelson, Mullins, Riley, and Scarborough LLP partner and future president of the ABA (2014-2015) William Hubbard was familiar with the ABA Commission on Homelessness and Poverty and its work on Homeless Courts. Hubbard suggested to the City Council that Chief Municipal Judge Dana Turner and former ABA Commissioner on Homelessness and Poverty and Nelson Mullins partner George Cauthen work together to create a Homeless Court in Columbia. The Columbia Homeless Court Committee was formed as a result. The committee—chaired by Cauthen—was comprised of judges, solicitors, public defenders, the Columbia chief of police, local service providers, and attorneys in private practice. It was formed to help people who were homeless and who may be facing a criminal record for a minor offense without the ability to pay the fines associated with that offense.

The committee investigated and researched other Homeless Court programs around the country. Using those models, it worked to create a court that would best fit with the population and systems already existing so that the court

could address and promote treatment and rehabilitation for people in Columbia who were homeless. In addition, Nelson Mullins adopted homeless courts as a pro bono project and has provided ongoing funding and manpower for training, printing brochures, committee lunches, etc., for Columbia and other sites in South Carolina as well.

The Columbia Homeless Court began on January 27, 2015, conducting its very first hearings at Transitions, a local homeless shelter, before the Honorable Dana Turner. Early in the process, Judge Turner set the tempo by leading the crowd in applause for the successful defendants who completed the process. The Columbia Homeless Court continues to be fully operational and successful. Judge Turner retired from the bench in July 2018 and stated: “Homeless Court was the most rewarding thing I did as Chief Administrative Judge.”

Charleston

The establishment of a Homeless Court in Columbia reignited

interest in establishing a Homeless Court in Charleston. Two events coincided to start the development of the court. In September 2015, Cauthen contacted Jeff Yungman at One80 Place Legal Services about starting a Homeless Court in Charleston. At about the same time, Yungman was present in the City of Charleston Municipal Court when three homeless individuals appeared before Judge Alesia Rico Flores. One individual was charged with trespassing and the other two with shoplifting food. Following the hearings, Yungman sent information about homeless courts to Judge Rico Flores. She read the material and responded that she was very interested in establishing a Homeless Court in Charleston. With the assistance of Judge Flores, the nucleus of an implementation committee was formed.

On October 6, 2015, the Charleston Homeless Court committee met for the first time with Cauthen at Nelson Mullins in Charleston. Over the next 11 months, the committee—chaired

by Mary Vosburgh of One80 Place—met regularly, adding additional members. The committee visited the Columbia Homeless Court, determined what offenses would be addressed by the court and where the court would be held, developed a process for the court, and created the metrics to be used to determine the success of the court.

In September 2016, the committee submitted a petition to establish the Charleston Homeless Court to the South Carolina Access to Justice Commission. The Commission approved the petition and forwarded it the Supreme Court of South Carolina, which issued an order granting the petition and establishing the court. On March 23, 2017, the Charleston Homeless Court held its first session at One80 Place. Like the Columbia court, the Charleston Homeless Court remains fully operational and successful. Thus far, not one participant who successfully completed the Charleston Homeless Court program has been cited for another offense.

Myrtle Beach

Judge Jennifer Wilson, Chief City Judge of the Myrtle Beach Municipal Court, learned about the success of the Homeless Courts in Columbia and Charleston. She was experiencing the same issues with individuals who were homeless that appeared before her that Judge Turner and Judge Rico Flores experienced in their areas. Judge Wilson was convinced that a Homeless Court in Myrtle Beach would provide a valuable alternative to fines or incarceration.

Judge Wilson contacted Cauthen for advice on how to start a Homeless Court. With his advice, Judge Wilson formed a committee consisting of city officials, court staff, law enforcement, and service providers, including New Directions, the local homeless shelter. She then invited Cauthen, Steve Binder, and Jeff Yungman, all three associated with the ABA Commission on Homelessness and Poverty, to speak to the committee about the principles and process of Homeless Court.

The Myrtle Beach Homeless Court held its first sessions at New Directions in March 2019.

The future of Homeless Courts

A Homeless Court Summit was held in San Diego in November 2018. The purpose of the Summit was to celebrate 30 years of Homeless Courts and to chart a course for further expansion of the Homeless Court program, including the development of regional sites, like South Carolina, that would serve as a resource for other jurisdictions interested in implementing a Homeless Court.

As part of the summit, Cauthen and Judge Rico Flores represented South Carolina on a panel entitled, “Trends, Gaps, Strengths, and Opportunities: Updates from Homeless Courts Across the Country.” In her remarks, Judge Rico Flores provided an example that illustrates just what a positive impact Homeless Court can have on an individual’s life:

One of my favorite success stories from Homeless Court involved

“Faith”—a homeless woman trying to return to her country of origin, but with a pending trespassing charge that might have interfered with her traveling.

Faith found herself homeless after her serious mental health conditions kept her from working. Her “trespassing” charge came about from sleeping on the grounds of a downtown church, which she believed was allowed since she sometimes attended that church. Faith was literally living “on the streets.” She was referred to Homeless Court and was able to enter the Family Center at One80 Place. The plan was for Faith to receive mental health treatment and to arrange for her return to her supportive family in New Zealand. The One80 Place Legal Services team communicated with the Australian Embassy on Faith’s behalf to assure them of her participation in Homeless Court and the likelihood that her criminal charge would be dismissed. Faith successfully completed her treatment plan for

Homeless Court. A church member helped her with purchasing an airline ticket to fly home, and a Homeless Court hearing was held in her absence with the trespassing charge being dismissed.

Faith wrote to us after arriving in New Zealand and settling on her family's farm. She expressed how appreciative she was of this second chance that Homeless Court afforded her. Without Homeless Court Faith likely would have remained in a cycle of homelessness and criminal citations, never gaining ground to overcome the challenges that prevented her from a stable life.

Every Homeless Court in the country has similar stories to tell, with many more to come.

The ABA Commission on Homelessness & Poverty has developed a series of educational resources and provides free technical assistance in an effort to foster replication of the Homeless Court model across the country. For more information on Homeless Courts, please visit americanbar.org/homeless or contact Kelly Russo, director, ABA Commission on Homelessness & Poverty at (202) 662-1699 or Kelly.Russo@americanbar.org. If you would like to start a Homeless Court in your municipality, contact George Cauthen of Nelson Mullins at 803-255-9425 or george.cauthen@nelsonmullins.com.

George B. Cauthen is a partner at Nelson Mullins Riley & Scarborough, L.L.P. and works in the Columbia office as a bankruptcy lawyer. Jennifer P. Wilson is the Chief Judge of the Myrtle Beach Municipal Court since January 2000 and has served as chairman of the Homeless Court Committee since February 2018.

Endnotes

¹ American Bar Association, Resolution 108 A, adopted by the House of Delegates August 7-8, 2006, available at www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crim-just_policy_am06108a.pdf.