

Date of Hearing: April 19, 2022

ASSEMBLY COMMITTEE ON JUDICIARY

Mark Stone, Chair

AB 2220 (Muratsuchi) – As Amended March 24, 2022

As Proposed to be Amended

SUBJECT: HOMELESS COURTS PILOT PROGRAM

KEY ISSUE: SHOULD A HOMELESS COURTS PILOT PROGRAM BE ESTABLISHED AND ADMINISTERED BY THE JUDICIAL COUNCIL TO PROVIDE GRANTS TO ELIGIBLE APPLICANTS PROVIDING COMMUNITY-BASED SERVICES TO HOMELESS INDIVIDUALS CHARGED WITH INFRACTIONS, MISDEMEANORS, OR FELONIES?

SYNOPSIS

Beyond simply seeing the growing number of tent encampments and unhoused people living on the streets, the most recent data on homelessness makes clear that California has a massive problem that, despite significant spending and efforts to reduce, continues to grow. Unhoused individuals not only need housing, but many suffer from other issues that are exacerbated by homelessness, including physical and mental health disorders, and substance abuse disorders. Moreover, these individuals are more likely to be involved with the criminal justice system, many for minor infractions based on being homeless.

One option to address both an individual's criminal justice system involvement and their underlying comorbidities is a homeless court. Homeless courts generally work with low-level offenders and offer community-based treatment and rehabilitation services rather than jail time to resolve citations and misdemeanors often the result of poverty and homelessness. Chief Justice Tani Cantil-Sakauye's recent Work Group on Homelessness found homeless courts to be a cost-effective model for the courts, with savings for the courts exceeding costs, and encouraged courts to pursue funding for them, including through grants administered by the Judicial Council.

To better address the needs and issues of unhoused individuals who have been charged with crimes, this bill requires the Judicial Council to establish the Homeless Courts Pilot Program. The grant program would run through 2026 and would administer grants to establish or expand homeless courts to provide comprehensive community-based services to achieve stabilization for, and address the specific legal needs of, chronically homeless individuals involved with the criminal justice system. As proposed to be amended, the Judicial Council would be required to provide an evaluation of the program before the end of the pilot so that the Legislature can understand how the pilot performed, how it can be improved, if it should be renewed, and, if so, with what changes.

SUMMARY: Establishes, until January 1, 2027, the Homeless Courts Pilot Program administered by the Judicial Council. Specifically, **this bill:**

- 1) Establishes, until January 1, 2027, the Homeless Courts Pilot Program administered by the Judicial Council as a grant pilot program for eligible applicants to provide comprehensive community-based services to achieve stabilization for, and address the specific legal needs of, chronically homeless individuals involved with the criminal justice system.

- 2) Requires the Judicial Council to award grants on a competitive basis to applicants that will provide support and services to defendants charged with infractions, misdemeanors, or felonies who are experiencing homelessness. Requires the Judicial Council to develop guidelines to administer the grant program and award grants to programs that will provide, at a minimum, all of the following program components:
 - a) A diversion program enabling participating defendants to have their infraction, misdemeanor, or felony charges dismissed upon completion of the program.
 - b) Provision of a public defender for the entire program.
 - c) Regular court appearances enabling participating defendants to work with and have access to all service providers in one location. The program and services shall be in a location that is readily accessible to participating defendants.
 - d) The provision of supportive housing, as defined, to the participating defendant during the entire program.
 - e) A county representative to assist a defendant with long-term housing goals and processes, identifying long-term mental health and substance abuse concerns, and answer any questions and facilitate any necessary conversations between a housing agency and the defendant to enable the defendant to be successfully housed after participation in the program.
 - f) Mental health services, including mental health evaluations by county behavioral health departments and referrals to full service partnership programs, as needed.
 - g) Substance abuse and alcohol detoxification and treatment, as needed.
 - h) Criminal record clearing services through partnerships with a public defender's office, legal aid, or other city or county services for criminal history record clearing and infraction citation clearing.
- 3) Requires the Judicial Council, in awarding the grants, to give preference to programs that will provide the following services:
 - a) A minimum of weekly follow-up with mental health and substance abuse counseling services in between court dates.
 - b) Job training or placement services.
 - c) Court conditional releases from custody into residential narcotic and drug abuse programs, as defined.
 - d) Participation of a licensed medical practitioner to prescribe and administer medication for program participants related to substance abuse recovery or mental health treatment, if agreed to by the defendant.
- 4) Sets forth what an application for a grant must contain. Requires that any funding awarded to an applicant must be used in accordance with the approved plan.

- 5) Requires the Judicial Council to establish performance-based outcome measures appropriate for each participating homeless court that, at a minimum, must include information relating to demographics of participants, services provided, services ordered but not provided, housing placements of all participants, permanent housing success, continued treatment beyond the diversion program, services available beyond the diversion program, successful substance use disorder treatment rates, detentions and other Lanterman-Petris-Short Act involvement during and following the diversion program, additional criminal justice involvement during and following the diversion program, deaths during and following the diversion program, and a subjective survey of the individuals served. Requires participating courts to provide the required data, including individual offender level data, on a quarterly basis to the Judicial Council.
- 6) Requires the Judicial Council, on or before July 1, 2026, to compile the data reported in 5) and prepare a full evaluation of each of the programs funded pursuant to the grant program and the success and challenges of those programs in addressing the needs of chronically homeless individuals, along with recommendations for improving the programs.
- 7) Appropriates the sum of \$_____ from the General Fund to the Judicial Council for the purpose of administering the Homeless Courts Pilot Program.

EXISTING LAW:

- 1) Provides generally for the establishment of the Superior Courts. (California Constitution, Article VI, Section 4.)
- 2) Requires the Judicial Council to adopt guidelines for a comprehensive plan regarding collection of court-imposed fees, and for the superior courts and counties to implement those guidelines. (Penal Code Section 1463.010.)
- 3) Requires the Judicial Council to establish a task force to evaluate criminal and traffic-related court-ordered debt imposed against adult and juvenile offenders. (Penal Code Section 1463.02.)
- 4) Creates a court diversion program for those charged with certain drug offenses. (Penal Code Section 1000 *et seq.*)
- 5) Creates a court diversion program for those with “mental disorders,” as defined. (Penal Code Section 1001.35 *et seq.*)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Beyond simply seeing the growing number of tent encampments and unhoused people living on the streets, the most recent data on homelessness makes clear that California has a massive problem that, despite significant spending and efforts to reduce, continues to grow. Unhoused individuals not only need housing, but many suffer from other issues that are exacerbated by homelessness, including physical and mental health disorders, and substance abuse disorders. Moreover, these individuals are more likely to be involved with the criminal justice system, many for minor infractions based on being homeless.

One option to address both an individual's criminal justice system involvement and their underlying comorbidities is a homeless court. Homeless courts generally work with low-level offenders and offer community-based treatment and rehabilitation services rather than jail time to resolve citations and misdemeanors often the result of poverty and homelessness. Chief Justice Tani Cantil-Sakauye's recent Work Group on Homelessness found homeless courts to be a cost-effective model for the courts, with savings for the courts exceeding costs, and encouraged courts to pursue funding for them, including through grants administered by the Judicial Council.

To better address the needs and issues of unhoused individuals who have been charged with crimes, this bill requires the Judicial Council to establish the Homeless Courts Pilot Program. The grant program would run through 2026 and would administer grants to establish or expand homeless courts to provide comprehensive community-based services to achieve stabilization for, and address the specific legal needs of, chronically homeless individuals involved with the criminal justice system. As proposed to be amended, the Judicial Council would be required to provide an evaluation of the program before the end of the pilot so that the Legislature can understand how the pilot performed, how it can be improved, if it should be renewed, and, if so, with what changes.

In support of the bill, the author states:

AB 2220 looks to build on the success of such programs as those seen in San Diego and Redondo Beach. By building out a model that provides a tried rubric for success while providing participating counties the flexibility to tailor their homeless court program to their specific region and community's needs.

For participants, a Homeless Court hearing that provides the wrap around services guaranteed in AB 2220, is an opportunity to make amends for past transgressions and move forward to reentry into society and healing that ultimately leads to a stable roof over their heads and the resources they need to regain full agency and become better integrated into their communities.

For the community, AB 2220 engages people in a gainful process, removing homeless people from doorways, parks, and gathering places. These people can then rebuild their lives by addressing the legal issues that often create barriers to accessing housing, employment, public assistance, and treatment programs.

The growing problem of homelessness in California. Beyond simply seeing the growing number of tent encampments and unhoused people living on the streets, the most recent data on homelessness makes clear that California has a massive problem that, despite significant spending and efforts to reduce, continues to grow. The most recent single-night count from January 2020 (a count was made in 2022, but data has not yet been released) found that California had 28 percent of the nation's homeless population – over 160,000 – of which 70.4 percent were unsheltered, both of which are the highest rates in the nation. (California Senate Housing Committee, *Fact Sheet: Homelessness in California* (updated May 2021), available at <https://shou.senate.ca.gov/sites/shou.senate.ca.gov/files/Homelessness%20in%20CA%202020%20Numbers.pdf>.) More than half of the unsheltered in the United States are in California. (*Ibid.*) More veterans are homeless in California than anywhere else in the United States, representing 31 percent of the nation's total. (*Ibid.*) Likewise, California is home to 15 percent of the nation's homeless children. (*Ibid.*) By comparison, California has just 11.9 percent of the nation's population, according to the most recent census data. (U.S. Census Bureau, *Resident Population*

for the 50 States, the District of Columbia, and Puerto Rico: 2020 Census, available at <https://www2.census.gov/programs-surveys/decennial/2020/data/apportionment/apportionment-2020-table02.pdf>.) In addition, California experienced the largest increase in homelessness in the nation from 2018 to 2019 (6.8 percent increase) and the second largest from 2007 to 2020 (45.8% increase). (*Ibid.*)

While there are many causes of homelessness, the high cost of housing in California is a significant contributor. (Legislative Analyst's Office, *California's Homelessness Challenges in Context*, Presentations to Assembly Budget Subcommittee No. 6 (Feb. 13, 2020).) Wages have not kept pace with housing costs, particularly for low-income households. (*Ibid.*)

A significant portion of California's unhoused population has multiple comorbidities. While not all aligned perfectly, the data available on unhoused individuals in Los Angeles and throughout California make clear that many are suffering from multiple comorbidities. A Los Angeles Times review of the 2019 point-in-time homelessness count for Los Angeles County found that 76 percent of individuals living outside on the streets reported being, or were observed to be, affected by mental illness, substance abuse, poor health or a physical disability. (Doug Smith and Benjamin Oreskes, *Are many homeless people in L.A. mentally ill? New findings back public perception*, Los Angeles Times (Oct. 7, 2019).) Those included 51 percent who either reported or were observed to be affected by mental illness, 46 percent by substance abuse, and 67 percent by either. (*Id.*) A study from the University of California's California Policy Lab linking Los Angeles County Department of Mental Health records to its Street Outreach data found that 20 percent of Street Outreach clients had been diagnosed with a serious mental illness within the previous 12 months. (Nathan Hess, *et al.*, *Unsheltered in Los Angeles: Insights from Street Outreach Service Data* (Feb. 24, 2021) California Policy Lab.) That study also found that homeless clients of the Street Outreach program waited, on average, 101 days for interim housing, 112 days for rapid re-housing, and 188 days for permanent housing. (*Ibid.*)

According to the 2019 annual point-in-time count, 23 percent of California's homelessness population is severely mentally ill and 17 percent has a chronic substance abuse disorder. (Legislative Analyst's Office, *California's Homelessness Challenges in Context*, *supra*, citing the U.S. Department of Housing and Urban Development's 2019 point-in-time homelessness count.)

State Auditor finds that the current approach to helping reduce homelessness is uncoordinated and lacks effectiveness. The California State Auditor reviewed California's approach to addressing homelessness and determined that its disjointed approach has likely, in part, led to California's largest in the nation homeless population. (State Auditor, *Homelessness in California: The State's Uncoordinated Approach to Addressing Homelessness has Hampered the Effectiveness of its Efforts* (Feb. 2021), p. 1.) Instead of a single state entity responsible for overseeing California's efforts to address homelessness, "at least nine state agencies administer and oversee 41 different programs that provide funding for purposes related to homelessness." (*Ibid.*) The State Auditor found that the Homeless Coordinating and Financing Council (Homeless Council) created in 2017 to, among other things, coordinate funding, establish partnerships to develop strategies to end homelessness, and create a statewide data system, has not lived up to its promise of coordinating the state's response to homelessness, and major gaps in services remain. The State Auditor recommends:

Given the magnitude of the homelessness crisis in California and the amount of funding the state and federal governments are committing to combat this crisis, the State needs to ensure that its system for addressing problems at both the [Continuum of Care] and the state level is coherent, consistent, and effective. Centralizing performance data collection from service providers and tracking federal and state funds dedicated to combating homelessness is a critical step toward that goal. By investing added responsibility and authority in the [H]omeless [C]ouncil to coordinate the State's response to homelessness, the Legislature can ensure that decision makers have the ability to clearly assess the State's efforts, successes, and challenges and to make informed decisions in the fight to reduce homelessness. (*Id.* at 4.)

Judicial Council report on homelessness recommends, among other things, the creation of more homeless courts. In 2020 Chief Justice Tani Cantil-Sakauye established a Work Group on Homelessness to “evaluate how court programs, processes, technology, and communications might be improved to better serve people who are without housing or are housing insecure.” (Judicial Council, *Report to the Chief Justice: Work Group on Homelessness* (2021) p. 1.) In addition, the Work Group was to “consider how the judicial branch might appropriately work with the executive and legislative branches to reduce homelessness.” (*Ibid.*) The Work Group found:

Lack of affordable housing is a major cause of homelessness: experts estimate that California is at least 3 million housing units short of current need. Eviction, foreclosure, conviction, incarceration, civil commitment, debt, increased medical or mental health deterioration or trauma, and loss of a driver's license or transportation are some of the circumstances of homelessness that may flow from the underlying causes. Being without housing can expose a person to legal consequences—such as punishment for loitering, indecent exposure, trespassing, or a failure to appear in court—creating a cycle that is difficult to escape.

Systemic inequality and discriminatory housing practices also significantly contribute to homelessness. Studies show that homelessness disproportionately affects those who have already been marginalized or are highly vulnerable, such as people of color, members of the LGBTQIA+ community, youth, foster youth, the elderly, military veterans, and people who have been incarcerated or convicted. Moreover, although it is illegal to discriminate in housing sales, rentals, and lending, equal opportunity does not exist for all. Information gathered by the work group indicates that explicit and implicit biases and systemic disparities continue to exist and affect housing access and retention. (*Id.* at 2 (footnotes omitted).)

The Work Group also found, quite obviously, that homelessness is itself a barrier that impedes access to justice. To tackle the immense problems of homelessness in California, the Work Group made a number of recommendations to improve unlawful detainer proceedings to reduce homelessness and promote housing stability; reduce barriers to housing, and help identify housing resources; utilize technology and improve court procedures, communications, and information to increase access to justice for court users regardless of their housing circumstances; and strengthen education, outreach, and civic engagement on issues pertaining to homelessness. Of particular relevance to this bill, the Work Group recommended establishing a “homeless court program in more counties to reduce barriers to housing stability by clearing fines, fees, warrants, and outstanding cases after treatment and rehabilitation” and “benefit[ing] from economies of scale by increasing the funding and caseload capacity for existing collaborative courts, ensur[ing] that the largest number of cases possible are processed through

collaborative courts, and implement[ing] new collaborative court programs in appropriate jurisdictions.” (*Id.* at 4.)

Homeless and collaborative court in California today. According to the Work Group, California has over 450 collaborative courts and homeless courts that “provide rehabilitation services and housing to individuals in need.” (*Id.* at 19.) Collaborative courts generally use a team-based approach to try and address the underlying issues that led an individual to become involved with the criminal justice system. Teams can include judges, attorneys, probation officers, social workers, service providers, and others. In addition to homeless courts, collaborative courts include such courts as drug courts, reentry courts, mental health courts, and veterans treatment courts.

The first homeless court was created in San Diego in 1989 to specifically address issues facing homeless veterans. Homeless courts generally work with low-level offenders and offer community-based treatment and rehabilitation services rather than jail time to resolve citations and misdemeanors often the result of poverty and homelessness. Homeless courts use “an action-first model that requires participants to achieve individualized treatment, rehabilitation, or other goals before appearing in homeless court. Homeless courts are often convened once a month, and participants resolve their legal issues or cases in a single court appearance.” (*Id.* at 20 (footnotes omitted).)

Work Group on Homelessness recommends expanding funding for, and use of, homeless courts. The Work Group made a number of recommendations for expanding the use of collaborative and homeless courts. To expand the use of homeless courts particularly, the Work Group recommended:

- Courts in more jurisdictions should establish homeless court programs to reduce barriers to housing stability by clearing fines, fees, warrants, and outstanding cases after treatment and rehabilitation.
- Courts should ensure that their homeless court eligibility criteria are as expansive as feasible and should include cases involving higher-level offenses, when appropriate. (*Id.* at 20.)

The Work Group found homeless courts to be a cost-effective model for the courts, with savings for the courts exceeding costs, and encouraged “courts to pursue available outside funding to supplant these costs, such as applicable grants administered by the Judicial Council or competitive grants offered through state and federal funding agencies.” (*Id.* at 21.)

More generally on collaborative courts, the Work Group recommended:

- Collaborative courts should be expanded throughout the state by increasing the funding and caseload capacity of existing programs. Courts should ensure that their collaborative court eligibility criteria are as expansive as feasible to enable as many appropriate cases as possible to be processed through the collaborative court programs.
- Courts should implement new collaborative court programs in appropriate jurisdictions. (*Id.* at 22.)

Again, the Work Group found that these courts saved money, but required dedicated funding to allow caseload to increase, and encouraged “courts to pursue applicable grants administered by the Judicial Council and competitive grants offered through state and federal funding agencies.” (*Id.* at 23.)

This bill, as proposed to be amended, seeks to implement many of the recommendations of the Work Group on Homelessness in a pilot program. This bill directs the Judicial Council to create the Homeless Courts Pilot Program as a grant pilot program for eligible applicants to provide comprehensive community-based services to achieve stabilization for, and address the specific legal needs of, chronically homeless individuals involved with the criminal justice system. According to the terms of the bill, the pilot will sunset on January 1, 2027. The Judicial Council is required to award grants, on a competitive basis, to applicants that will provide support and services to unhoused defendants charged with infractions, misdemeanors, or felonies. As proposed to be amended, programs must offer certain minimal requirements, including:

- A diversion program enabling participating defendants to have their infraction, misdemeanor, or felony charges dismissed upon completion of the program.
- A public defender for the entire program.
- Regular court appearances enabling participating defendants to work with and have access to all service providers in one accessible location.
- The provision of supportive housing, as defined in the Health & Safety Code, to the participating defendant during the entire program to ensure that the defendant gets actual housing with wrap-around services.
- A county representative to assist a defendant with *long-term* housing goals and processes, and identifying long-term mental health and substance abuse concerns.
- Mental health services, including mental health evaluations by county behavioral health departments and referrals to full service partnership programs, as needed.
- Substance abuse and alcohol detoxification and treatment, as needed.
- Criminal record clearing services through partnerships with a public defender’s office, legal aid, or other city or county services for criminal history record clearing and infraction citation clearing.

In addition, the Judicial Council is required to give preference to programs that will provide other services, including:

- A minimum of weekly follow-up with mental health and substance abuse counseling services in between court dates.
- Job training or placement services.
- Court conditional releases from custody into residential narcotic and drug abuse programs.

- Participation of a licensed medical practitioner to prescribe and administer medication for program participants related to substance abuse recovery or mental health treatment, if agreed to by the defendant.

Since the program is a pilot, the bill as proposed to be amended requires Judicial Council to perform a thorough evaluation to help the Legislature understand how the program is performing, how it can be improved, if it should be renewed, and, if so, with what changes. Information required to be reported includes demographics of participants, services provided, services ordered but not provided, housing placements of all participants, permanent housing success, continued treatment beyond the diversion program, services available beyond the diversion program, successful substance use disorder treatment rates, detentions and other Lanterman-Petris-Short Act involvement during and following the diversion program, additional criminal justice involvement during and following the diversion program, deaths during and following the diversion program, and a subjective survey of the individuals served. The report is due to the Legislature by July 1, 2026, which will give the Legislature sufficient time to considering extending the pilot if warranted.

Obviously, these homeless courts grants require funding. The bill contains a blank appropriation for that purpose, which the author will have to replace with a dollar figure as costs are better understood.

Pending Related Legislation: SB 1427 (Ochoa Bogh) would, among other things, establish the Homeless and Mental Health Court Grant Program administered by the Board of State and Community Corrections that would, subject to an appropriation by the Legislature, provide grants to counties for the purpose of establishing or expanding homeless courts and mental health courts. That bill passed the Senate Public Safety Committee and is now awaiting hearing in the Senate Appropriations Committee.

Prior Related Legislation: HR 13 (Williams), 2013, in which the Assembly would have resolved to encourage county governments to find ways to make homeless courts more accessible, such as allowing people to bring multiple cases to court per year instead of limiting them to one, and allowing fines to be recalled from collection by the county or collections agencies. That resolution was not heard.

AB 2899 (Migden), 2002, would have created a "Homeless Court Pilot Project" in no more than four counties, to be administered by the Judicial Council. It was vetoed by Governor Gray Davis, who wrote:

Actions or cases related to homeless people are already within the responsibility of the established court system. It is not clear that further delineation of areas of responsibility within the court is necessary, and such delineation could result in inefficiencies and duplication of efforts.

In addition, establishing the program proposed by this bill would result in General Fund costs of more than \$1 million over 3 years and a reimbursable State-mandated local program. Given the State's \$24 billion deficit, I cannot reasonably justify the use of General Fund resources at this time. It is my hope that the State's Trial Courts attempt to fund a pilot project using existing resources.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Leora Gershenzon / JUD. / (916) 319-2334