

Date of Hearing: March 21, 2023

ASSEMBLY COMMITTEE ON JUDICIARY
Brian Maienschein, Chair
AB 67 (Muratsuchi) – As Amended March 13, 2023

SUBJECT: HOMELESS COURTS PILOT PROGRAM

KEY ISSUE: SHOULD CALIFORNIA ADOPT A HOMELESS COURTS PILOT PROGRAM TO BE ADMINISTERED BY THE JUDICIAL COUNCIL SUBJECT TO AN APPROPRIATION BY THE LEGISLATURE?

SYNOPSIS

There is little question that California's ongoing homelessness crisis continues to be one of the most pressing issues facing state policymakers. Despite numerous proposals to provide needed housing and social services to the homeless, far too frequently, unhoused persons are treated as criminals or mental health threats to the community. Too often this results in unhoused persons be cited or arrested and forced into the criminal justice system, where few resources exist to handle the diverse and multifaceted set of conditions that lead a person into homelessness and eventually the criminal justice system. This modest measure proposes, upon appropriation by the Legislature, to create the Homeless Courts Pilot Program to be administered by the Judicial Council that would provide some wrap-around services for unhoused persons facing relatively minor charges in the criminal justice system. The measure would guarantee a person legal counsel, counseling services, and the ability to develop housing plans with the idea of moving people off the streets.

This measure is supported by several local governments, public defenders, and some homeless advocates. While recognizing that additional social services are critical to truly tackling the homelessness crisis, the proponents of this bill highlight the support this measure would provide to unhoused persons should they be forced to deal with the criminal justice system. Disability Rights California expressed concerns regarding this measure, most notably that the bill ignores the need for new social services and may perpetuate the criminalization of homelessness. Despite these concerns and given the widespread, and present, practice of criminalizing unhoused individuals, this measure at least provides meaningful services to unhoused Californians in the criminal justice system. This measure has no formal opposition and was previously heard and was approved by the Committee on Public Safety by a unanimous vote.

SUMMARY: Establishes a pilot program to be administered by the Judicial Council to provide a diversion program for unhoused persons who are charged with infractions, misdemeanors, or low-level, non-violent felonies. Specifically, **this bill:**

- 1) Requires the Judicial Council to establish and administer a 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, homeless individuals involved with the criminal justice system.
- 2) Provides that the Judicial Council is to award grants on a competitive basis to applicants that will provide support and services to defendants charged with infractions or misdemeanors, or

with the consent of the prosecuting agency, provide support and services to defendants charged with specified low-level felonies, who are experiencing homelessness.

- 3) Permits a defendant to participate in a Homeless Court Pilot Program funded diversion program at any stage in criminal proceedings, including by entering into a preplea diversion agreement with the consent of the prosecuting agency, or with the consent of the court, as otherwise authorized by existing law.
- 4) 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 misdemeanor and infraction diversion program that will require dismissal of charges upon completion;
 - b) Representation by a public defender;
 - c) A location where the defendant can access all service providers;
 - d) Supportive housing during the course of the program;
 - e) A representative to assist the defendant with developing a temporary and permanent long-term housing plan, identifying long-term mental health and substance use disorder concerns, and answering any questions and facilitating any necessary conversations between a housing agency and the defendant to enable the defendant to obtain temporary, time-limited, or permanent housing while participating in the program;
 - f) Provision of mental health evaluation and services;
 - g) Substance abuse disorder and withdrawal treatment; and,
 - h) Criminal record clearing services.
- 5) States that the Judicial Council must give preference to programs that provide:
 - a) Weekly mental health and substance abuse counseling services;
 - b) Job training or placement services;
 - c) Conditional custody release into specified substance abuse programs; and,
 - d) Participation of licensed medical practitioners for medication purposes, upon consent of the defendant.
- 6) Requires applicants to include in their application details regarding staffing activities, services delivered and how the grant will cover such costs.
- 7) Mandates the Judicial Council, in consultation with subject-matter experts to establish performance-based outcome measures that at a minimum include:
 - a) Demographic information;

- b) Services ordered but not provided;
 - c) Housing information;
 - d) Detention and conservatorship information;
 - e) Successful substance use treatment rates;
 - f) Deaths of participants during and after the diversion program; and,
 - g) Subjective surveys from participants.
- 8) Prohibits a person from participating in a Homeless Court Pilot Program funded diversion program if the person has been charged with any of the following classifications of felonies:
- a) A violent felony, as defined;
 - b) A serious felony, as defined; or
 - c) An offense that, upon conviction, requires registration as a sex offender.
- 9) Defines “eligible applicant” as either of the following:
- a) Cities, with the approval of the county and local superior court; or
 - b) Counties, with the approval of the local superior court.
- 10) Provides that the bill becomes operative only upon an appropriation by the Legislature.
- 11) Requires the Judicial Council to compile all data and prepare a report to the Legislature outlining the outcomes of the program by July 1, 2027.
- 12) Sunsets the pilot program on January 1, 2029.

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.*)

- 6) Establishes the Community Assistance, Recovery, and Empowerment (CARE) Act to establish a process whereby persons with severe mental illness can enter into the CARE court process to potentially gain access to mental health treatment and shelter. (Welfare & Institutions Code Section 7950 *et seq.*)
- 7) Defines violent felony as any of the following:
 - a) Murder or voluntary manslaughter;
 - b) Mayhem;
 - c) Rape;
 - d) Forcible Sodomy;
 - e) Forcible oral copulation;
 - f) Lewd or lascivious acts, as specified;
 - g) Any felony punishable by death;
 - h) Robbery;
 - i) Arson;
 - j) Attempted murder;
 - k) Kidnapping;
 - l) Specified assaults;
 - m) Continuous sexual abuse of a child;
 - n) Carjacking, as specified;
 - o) Extortion, as specified;
 - p) Threats to victims or witnesses; and
 - q) Specified burglaries. (Penal Code Section 667.5 (c).)
- 8) Defines the 42 separate offenses that may constitute a “serious felony.” (Penal Code Section 1192.7.)
- 9) Outlines the offenses that, upon conviction, require a person to register as a sex offender. (Penal Code Section 290.)

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

COMMENTS: The inability to address the state’s growing homeless population has plagued California for the better part of a decade. Unfortunately, California’s unhoused population not only needs housing, but many unhoused individuals also suffer from other issues that are exacerbated by them being unhoused, including physical and mental health disorders, and substance abuse disorders. As a result of these secondary issues, and the brutal reality of needing to survive on the streets, many unhoused Californians enter the criminal justice system, even for minor infractions. To address the issues of unhoused Californians in the criminal justice system, this bill would task the Judicial Council with developing a Homeless Courts Pilot Program to create a diversion program whereby unhoused persons would be provided with services and treatments in lieu of fines or incarceration. In support of this measure, the author states:

AB 67 builds upon the success of homeless courts as seen in San Diego and Redondo Beach by creating a statewide homeless court grant program. This funding will allow other jurisdictions to apply for their own homeless court which will incorporate components of other successful models, but also provides flexibility to tailor their program to their specific region and community’s needs. For participants, homeless courts provide access to wraparound services such as housing, employment, public assistance, and treatment

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

Homelessness continues to plague California. The unhoused population in California has grown dramatically over the last decade. According to the United States Department of Housing and Urban Development’s 2022 “Point-in-Time” count of unhoused persons in California 171,521 persons were considered homeless as of January 2022.

(<https://www.hudexchange.info/programs/coc/coc-homeless-populations-and-subpopulations-reports/>.) This number reflects a growth of nearly 20,000 individuals since 2019. (*Ibid.*) Many of these unhoused individuals have been living on the streets for prolonged periods of time. For example, the 2022 “Point-in-Time” count in Sacramento County determined that approximately half of the county’s homeless population could be considered chronically homeless.

(<https://sacramentostepsforward.org/continuum-of-care-point-in-time-pit-count/2022-pit-count/>.)

Unfortunately, many unhoused individuals, especially those experiencing chronic homelessness, also face mental health concerns or suffer from substance abuse disorders. While such factors, particularly substance abuse, may increase a person’s propensity to commit some crimes, a 2018 study noted that the increased rate of crime associated with unhoused persons largely stems from “homeless status offenses” such as trespassing or vagrancy. (Burton B, Pollio DE, North CS. *A longitudinal study of housing status and crime in a homeless population.* (2018) *Ann. Clin. Psychiatry*, at pp. 280-288.) Regardless of the underlying cause, research indicates that unhoused persons are more likely to face interactions with law enforcement and the court system than their housed peers. (*Ibid.*)

The prior Chief Justice tasked California courts with studying how courts can be part of the solution to the state’s homelessness crisis. In 2020, then-Chief Justice Tani Cantil-Sakauye established a Work Group on Homelessness within the courts to determine how and if the courts could play a role in reducing homelessness. One of the critical findings of that working group was that homelessness itself reduced access to justice for unhoused persons. (Judicial Council, *Report to the Chief Justice: Work Group on Homelessness* (2021) at p. 21.) For example, lacking adequate transportation made it difficult for unhoused persons to attend court hearings in both the civil and criminal contexts. (*Id.* at p. 3.) Although the majority of the recommendations simply supported proposals already endorsed by the Judicial Council, including the increased use of remote appearances in as many circumstances as possible and new funding for self-help centers, the report also noted the benefit of diversionary programs in some circumstances. (*Id.* at p. 22.) What is far less clear, however, is the extent to which the Judicial Council has moved to implement the diversionary program recommendations proposed by the working group as none of the 32 Budget Change Proposals submitted by the judicial branch in 2022, nor any of the 15 Budget Change proposals submitted in 2023, contain requests to directly fund these programs.

This bill. Building upon modest programs for “Homeless Courts” operating in Redondo Beach and San Diego County, this bill would adopt a statewide Homeless Courts Pilot Program. The bill would allocate an unspecified sum of money, subject to Legislative appropriation, to the Judicial Council to provide grants to local courts establishing homeless court programs. The bill would make unhoused individuals charged with a crime eligible for the program so long as the person were not charged with a violent felony, serious felony, or a crime requiring registration as

a sex offender upon conviction. Notably, a local homeless court must provide a diversion program for unhoused persons, a public defender for unhoused persons charged with crimes, substance abuse treatment when appropriate, as well as supportive housing and mental health services. The bill would require the Judicial Council to establish performance measures to gauge the success of the pilot program, and require the Judicial Council to report to the Legislature regarding the program's success prior to the 2029 sunset of the bill's provisions.

Several existing court services and programs already serve the state's unhoused population.

Although there are only two current examples of collaborative court programs designed specifically for unhoused persons, California's courts currently operate over 450 collaborative courts, including the two existing homeless courts, that "provide rehabilitation services and housing to individuals in need." (*Report to the Chief Justice: Work Group on Homelessness, supra*, at p. 19.) These programs include drug courts, reentry courts, mental health courts, homeless courts, and veterans' treatment courts. Indeed, many of these specialized collaborative courts appear to cater to groups that disproportionately make up California's homeless population, including those with substance abuse, veterans, and those with mental health concerns.

Additionally, in 2022, the Legislature enacted another specialized court process known as the CARE court program. (SB 1338 (Umberg) Chap. 319, Stats. 2022). This program is designed to try, albeit without guaranteeing housing of any kind, to steer persons with severe mental health issues into treatment. That program is slated to begin later this year and the Judicial Council is presently seeking \$72.4 million this year and over \$100 million in ongoing funds to deploy that program. (Budget Change Proposal 0250-107-BCP-2023-GB.) Given the broad array of diversionary programs already in existence that may assist unhoused court users, and the significant investment of funds likely to be granted to the CARE program, it is unclear if there will be sufficient resources to deploy the pilot program envisioned by this bill in a meaningful way. Indeed, a substantially similar measure, AB 2220 (Muratsuchi, 2022), was held in the Assembly Committee on Appropriations last May. Nonetheless, given that this bill seeks to provide resources not provided in the CARE program, despite its costs, this bill appears to envision a worthy pilot program to help California courts serve as a critical actor in the ongoing efforts to combat homelessness.

Despite concerns that this bill may further criminalize homelessness, this bill would at least provide new and meaningful services to unhoused persons interacting with the criminal justice system. Although not in opposition to this measure, Disability Rights California expressed concerns to this Committee that this measure may further criminalize homelessness. Of note, Disability Rights California expressed the following:

This approach does not effectively address the root causes of homelessness. While homeless courts appear to resolve a current legal issue, most of the time the legal issues are a result of being homeless, such as fines and warrants for charges under quality of life laws – e.g. anti-camping ordinances, excessive property, loitering, or panhandling. These charges are often the only low-level offenses that qualify for eligibility into homeless court diversion programs. This only perpetuates the criminalization of homelessness. DRC and other community partners have witnessed law enforcement state that they are citing or charging unhoused people to get them help. By treating homelessness as a legal issue rather than a social issue, homeless court may contribute to the stigmatization of individuals experiencing homelessness and reinforce negative stereotypes.

The expansion of homeless court could lead to unintended consequences, such as increased policing of individuals experiencing homelessness, and the increase of law enforcement harassment and civil rights violations advocates have discussed with law enforcement. Instead, the more effective approach would be to provide supportive services and housing to individuals experiencing homelessness, rather than subjecting them to the criminal justice system.

All of the concerns expressed by Disability Rights California are legitimate. Indeed, as noted in the Judicial Council's working group, homelessness unfortunately results in an increased interaction with the justice system. However, it is highly speculative that this bill will increase these interactions. First, given potential funding constraints and the pilot nature of this measure, it is unlikely to become so widely known as to prompt rank and file law enforcement to increase the rates with which they arrest the unhoused solely to try and provide services. Thus, this bill will likely not increase or decrease the use of border-line tactics by law enforcement to handle homelessness. Secondly, unlike the existing hodgepodge of collaborative programs currently operated by the courts, this pilot program will clearly provide tangible benefits for unhoused persons including increased access to services and public defenders in infractions matters. Additionally, nothing in this bill precludes additional measures to provide the social supports called for by Disability Rights California. Finally, and most importantly, unlike several prior measures related to the unhoused, it should be noted that this bill does not lessen or curtail the constitutional rights of the unhoused. Thus, although the expressed concerns are valid, given the preexisting and widespread treatment of homelessness as a legal issue, this bill's attempt to provide a modicum of additional legal support and services to the unhoused makes it worthy of this Committee's consideration and approval.

ARGUMENTS IN SUPPORT: This bill is supported by homeless advocates and those representing the accused in the criminal justice system. Of note, the California Public Defenders Association (CPDA) writes in support of this measure:

CPDA has long supported programs intended to decriminalize and treat poverty, mental illness, and homelessness, and is encouraged by programs like this, which recognize that imprisoning our most vulnerable citizens instead of addressing the root causes of their offense is inefficient, costly, and cruel... we applaud the use of grant funding and innovative thinking to address poverty and mental-health related crimes.

Additionally, the Friends Committee on Legislation of California writes:

Decriminalizing poverty, including homelessness, mental illness and crimes related to addiction. Incarceration further harms these individuals and their families, fails to address human need, and are unduly applied to people of color and the poor. If we've learned anything from the punitive mindset of the "tough on crime era" it is that incarceration should be used sparingly. Conversely, providing wraparound services is humane and is more likely to produce favorable policy outcomes as opposed to the current practice of people cycling in and out of the justice system without ever receiving the help they need.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association
California Public Defenders Association
City of Long Beach
City of Santa Monica
Friends Committee on Legislation of California
New Livable California

Opposition

None on file

Concerns

Disability Rights California

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