

The Failed Criminalization of Homelessness: The Need for New Interventions and the Implementation of Salt Lake City's Kayak Court

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Abstract—Criminalization creates sizable barriers to housing and perpetuates the cycle of homelessness. Not only does criminalization leave people on the streets and in shelters indefinitely, it also unnecessarily costs the taxpayers. Homelessness is a growing issue throughout the world and criminalizing these human beings is a violation of basic human rights. While ending the criminalization of homelessness may seem like an insurmountable obstacle, there is something that can be done while fighting that battle. While they are under researched as a whole, specialty courts, specifically homeless courts, are a growing vessel that can address some of the barriers associated with criminalization. They divert individuals away from jail while connecting them to services that will help their situation instead of hindering it. The model being used in Salt Lake City, while similar to others throughout the United States, stands alone in its outreach efforts, and should be paving the way for the rest of the world. The following will look at criminalization and different ways of addressing it, and, finally, Salt Lake City's current operations, including the unique outreach court: Kayak Court.

Keywords—Barriers to housing, criminalization, cycle of homelessness, homeless court, diversion, Kayak Court.

I. INTRODUCTION

HOMELESSNESS is not a problem circumscribed to Salt Lake City. It is a prolonged issue throughout the State of Utah, the United States, and the world. Communities become frustrated with the lack of compassion and implementation of human rights for their unsheltered neighbors, while also forging the desire to keep their streets safe and clean for everyone. The costs of living and housing continue to rise while wages remain virtually stagnant. The criminalization of homelessness continues to create more barriers to housing and perpetuates the cycle of homelessness.

When homelessness grows, the social stratification inequality grows along with it. Not only is homelessness on the rise in the United States, it is also on the rise in Australia, New Zealand, and Europe. A recent study showed that homelessness is increasing in every European Union state except for Finland [1].

Criminalization creates a condition of dependency on the welfare state of the central government [1]. The homeless either adhere to the reformation required by the state or are embedded in the perpetuity of the cycle of homelessness. In a country and world where resources are abundant for some, it is absurd that anyone suffers from a lack of basic human rights. The solutions

are obvious: affordable housing, both supportive and not. Once the politicians and the communities that follow (sometimes, albeit blindly) look past the politicization of this issue, we can start implementing the easy solutions. In the meantime, specialty courts can help ameliorate some of the barriers associated with criminalization. Different homeless court models have developed across the United States, but it is not enough. We need more courts with less barriers to participating in these programs.

II. THE CRIMINALIZATION OF HOMELESSNESS

Laws and the enforcement thereof are inherently punitive in nature. Involvement in the criminal justice system in the United States is difficult to navigate, even for people that live in houses. It can also be extremely traumatizing. Unfortunately, people experiencing homelessness are 11 times more likely to become entrenched in this system than the rest of the community [2]. Furthermore, people that have been in jail or prison are 10 times more likely to become or remain homeless than the general public [3]. Criminalizing homelessness merely puts a band-aid on a deep wound for a small sect of society that wants individuals experiencing homelessness to be held accountable and punished. It temporarily appeases the people making complaints while doing nothing to actually address the systemic problems. Criminalization continues to increase in every category that is tracked by the National Law Center on Homelessness & Poverty (NLCHP) [3]. Society lends itself to an essential permanency instead of finding a conclusive answer.

A criminal record negatively impacts the ability to obtain housing and contributes to the cycle of homelessness and recidivism. People who are visibly poor have been targeted for centuries [1]. This institutionalizes them as an easy target for the police. Sleeping outside, the homeless are naturally easier targets as they are exposed to policing more frequently. They do not have the access to privacy that others take for granted. There are often no public toilets. They often carry weapons because of the danger associated with living on the streets. People who are dependent on substances have nowhere to hide their belongings, as they have nowhere to store belongings. All these concerns are linked to higher rates of criminality [4]. The key findings of the 2019 Housing Not Handcuffs survey were that laws on sleeping, loitering and vagrancy, asking/begging for help, and scavenging create prejudice and misunderstanding

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while disregarding the needs of the unhoused [3].

A. Common Crimes Targeting the Homeless

As previously stated, most crimes associated with the criminalization of homelessness are unavoidable and impossible to follow. This literally takes away one's basic right to freedom and reduces one's self-determination. To utter a previously stated analogy, expecting someone to adhere to a law that is impossible to obey is like saying someone who is starving to death has food but is choosing to not to eat [5]. Punishing people for the following crimes is inhumane and should be perceived as an embarrassment to the municipalities that enforce them.

"Sleeping laws" punish the homeless on the streets for a basic biological necessity. Everyone needs to sleep and if shelter is not an option, either due to bed shortages, mental health concerns, a substance use disorder, or any other reason, there is nowhere else to sleep. Camping bans criminalize the use of a tent or any other structure in a public space. Some municipalities take it even further, prohibiting sleeping at any time of day [2]. 50% of cities also have laws that prohibit sleeping in vehicles. 72% of U.S. cities surveyed in 2019 had a law banning public camping. In the same survey, 51% of the cities had at least one law banning or restricting sleeping in public. These laws have increased significantly since the survey in 2006 by the NLCHP [3]. Sleeping is an inevitable part of human life. When legal sleeping options are not attainable, unsheltered individuals have no other option than to sleep outside.

"Loitering and vagrancy laws" punish the homeless for merely existing in a certain location. These laws give law enforcement a large amount of discretion on whether to issue citations which leads to discrimination to those who are visibly poor. The NLCHP survey found that 35% of cities have at least one law on loitering, loafing, and/or vagrancy citywide and 60% had them in public spaces [3]. Allowing discretion when enforcing a law can easily lead to enforcement based on personal feelings. Discretion-based law enforcement is inherently unjust.

Asking/begging for help are another set of laws that criminalize the homeless. Some individuals are unable to work or secure income in any way other than asking for it and the money is often needed for medication, transportation, or food. 35% of cities have begging laws citywide and 65% have them in public spaces [3]. The Supplemental Nutrition Assistance Program (formerly known as Food Stamps) and Medicaid are typically an option for food and healthcare, but the applications are convoluted and confusing which makes them difficult to complete, let alone following up with eligibility interviews and receiving the actual EBT card. This leaves homeless individuals without case managers at a disadvantage and a need to obtain financial assistance in a different way.

Scavenging laws prohibit people from taking items from dumpsters and trash cans, even when these items are food or clothing. These laws exist in 76% of cities [3]. When someone is unable to get public assistance, and it is illegal for them to ask for help, and they are not allowed to take someone else's

trash, they lack the means to eat and be clothed.

Public urination/defecation laws, while targeting public health concerns, punish the homeless for engaging in another unavoidable biological action. 83% of cities have these laws on the books [3].

All of the previous crimes are low-level, non-violent crimes that have no victim. They are often civil infractions that receive a citation. When these citations go unpaid, they turn into warrants which can then lead to more fines or jail time [2]. These non-violent crimes targeted at the homeless population do nothing but perpetuate the cycle of homelessness and should be removed from lawbooks.

B. Barriers Created by Criminalization

The very nature of homelessness is rooted in poverty and lack of an affordable, acceptable place to live. The solutions to those baseline issues are obtaining income and housing. The homeless are often accused of having no desire to work, which is simply untrue. Around 50% of homeless adults work and 90% of the other half want to work. The anti-homeless laws make obtaining and maintaining a job much more difficult [6], which is the easiest way to climb out of poverty. Adding more obstacles to an already impossible situation is pointless. No one benefits. Imprisonment makes it even more difficult. According to one survey, 79% of prisoners were either ineligible, or simply denied housing upon re-entry into the community [3]. Releasing someone from jail or prison directly into homelessness is nonsensical and can only be viewed as perpetuating the cycle of homelessness.

Warrants are another hinderance. With low-level citations often turning into warrants, homeless individuals can become ineligible for housing subsidies and be turned down by both private landlords and larger property management organizations. Warrants showing up on background checks can also result in being turned down employment. [3].

There are significant boundaries to climbing out of homelessness. Shelter beds are extremely limited. Permanent Supportive Housing (PSH) waitlists are long. Public housing is scarce. All of these factors make it easier for housing authorities and landlords to be stricter, as there are more options for tenants [2]. Again, and this cannot be emphasized enough: these barriers make a seemingly impossible task that much more difficult.

C. Law Reform and the Homeless Bill of Rights

In general, the homeless lack constitutional protection [6]. Society expects people to overcome insurmountable obstacles while they are being targeted legally and lacking basic human rights. The concept of the homeless bill of rights originated in Puerto Rico in 2007, where a bill was passed. Subsequently, Rhode Island, Connecticut, Illinois, California, Hawaii, Oregon, Vermont, Missouri, and Massachusetts have attempted to adopt a homeless bill of rights, however only Rhode Island, Connecticut, and Illinois successfully passed a law enacting one officially [7].

The Rhode Island bill of rights is as follows:

1. the right to use and move freely in public spaces in the same

- manner as any other person
2. the right to equal treatment by all state and municipal agencies
3. the right not to face discrimination while seeking or maintaining employment due to his or her lack of permanent mailing address, or his or her mailing address being that of a shelter or social service provider
4. the right to emergency medical care free from discrimination based on his or her housing status
5. the right to vote, register to vote, and receive documentation necessary to prove identity for voting without discrimination due to his or her housing status
6. the right to protection from disclosure of his or her records and information provided to homeless shelters and service providers to state, municipal and private entities without appropriate legal authority
7. the right to a reasonable expectation of privacy in his or her personal property to the same extent as personal property in a permanent residence [7].

The European Federation of National Organisations Working with the Homeless (FEANTSA) created their own version aimed at opposing the criminalization of homelessness and protecting the basic human rights of people experiencing homelessness. The FEANTSA bill was designed for local municipalities as opposed to a central government. The local authorities are better apt to address the issues of criminalization that the bill is attempting to address, and it is easier to pass a new bill at the city level as opposed to national. FEANTSA is a non-governmental organization so their bill has no legal standing, but it has been adopted by a few cities in the European Union [7]. The FEANTSA bill is as follows:

1. Right to exit homelessness
2. Right to access to decent emergency accommodation
3. Right to use public space and to move freely within it
4. Right to equal treatment for all, without discriminating against those who do not have a home
5. Right to an effective postal address
6. Right to access basic sanitary facilities
7. Right to emergency services
8. Right to vote
9. Right to data protection
10. Right to privacy
11. Right to carry out practices necessary to survival within the law [7]

The most noteworthy difference between the two is the "Right to Exit Homelessness" in the European bill. This is acknowledging that housing is a fundamental human right. The right to public spaces is addressed in both, but the right to basic sanitary facilities is not. These are two that address many criminal charges that the homeless face. Laws protecting the homeless instead of criminalizing them would be a big step in addressing this public health crisis.

III. COST OF HOMELESSNESS

Not only does the criminalization of homelessness create barriers to getting out of homelessness, but it also costs the taxpayers more than it would to house every single one of them.

Individuals who are chronically homeless can cost their communities as much as \$83,000 per person per year [3]. This is mostly due to the laws previously discussed.

Jails are also expensive. A 2019 study found that the average cost to incarcerate one person is \$47,057 per year, and that a week in jail can be equivalent to a month or more of rent for a small apartment [3].

Sweeps or abatements are when cities go into encampments and clean the area, forcing the homeless individuals to move from their location and often discarding their belongings. This can cost over \$30 million per year, as seen in Los Angeles [3]. Obviously, Los Angeles has a larger number of homeless than the rest of the United States cities, but this is still a staggering number, especially when sweeps do nothing to address the problem. Instead, they simply move it to another location, and essentially chase the individuals around the city, from location to location, throwing money in the trash along with the personal property of the homeless.

As of 2019, the Los Angeles homeless plan costed about \$100 million annually, with \$87 million of that spent on law enforcement. That leaves just \$13 million for housing and other services [3]. That is \$87 million that mostly perpetuates homelessness instead of fixing the problem.

Experiencing homelessness is also costly for the biological body as well. Homeless individuals are five times more likely to go to the hospital [3]. This ties up emergency room medical professionals and, since the homeless likely have Medicaid or no insurance at all, the taxpayers are responsible for funding those visits.

The cost of the criminalization of homelessness is exorbitant. It is very apparent that criminalization is not working. Otherwise, we would not see homelessness continuously increasing. The solution is housing, specifically PSH. Not only does PSH improve quality of life and increase the likelihood of staying housed, but also saves money when compared to criminalization. A report on PSH in Massachusetts found that the state saved a yearly average of \$9,330 per person [3]. In Seattle, they found that costs decrease by 60% per person. This is after factoring in all of the supportive services that go along with PSH. In Central Florida, the cost of law enforcement per homeless individual per year is estimated to be \$31,000, [3] while PSH with case managers would be only about \$10,000. That would save the region around \$149 million over a ten-year span. In Charlotte, a study showed that just 85 PSH units saved taxpayers \$2 million in one year, while reducing 78% of arrests and 450 less emergency room visits [3]. People often say homelessness is a complex problem with a complex solution that nobody can figure out. The solution is quite simple: PSH.

IV. SOLUTIONS TO CRIMINALIZATION

With issues like homelessness, in bipartisan American political culture, the solutions often become highly politicized, creating a major barrier to enacting the solution. Politicians, and the voters that often blindly vote based on their affiliation with a political party, are unwilling to work together to find a solution. This, in turn, can exacerbate and perpetuate the problem. With people experiencing homelessness often

accumulating numerous charges, court becomes an important factor for these individuals getting out of homelessness. These individuals are struggling every day to survive, in search of food, clothing, and shelter. It can be a difficult task to simply know what day it is, so attending court can be impossible at times. They often have previous court experience that was negative and potentially traumatizing and have consistently been let down by the authorities. They know returning to court will likely result in fines they cannot afford to pay or jail time [8]. There is also a fear of general embarrassment over their appearance and homeless status [10]. The normal criminal justice system is not working. It does nothing to make the problem of homelessness better, it simply makes it worse. Changes are needed to address this perpetuation of the cycle of homelessness.

Without reform, the cycle will persist. The already existing racial disparities will worsen [2]. It creates an unsafe environment for both the homeless population and the surrounding community. Specialty courts target specific populations and focus on diversion from incarceration. Incarceration has been proven to be an ineffective solution to treating homelessness, mental health, and substance use disorders. It does not address the criminogenic needs of the unique subsets of the population. A punitive response is simply ineffective and needs to be replaced by effective treatment in the community [9].

Problem solving courts focus on solving the problem. The factors leading to recidivism come from generic criminogenic responses which categorize offenders by risk level as opposed to distinctive status characteristics. Problem-solving specialty courts instead identify those characteristics in attempt to rehabilitate rather than punish. Individualized treatment targets the underlying problems contributing to the crime in question. Judges have discretion that lends to collaboration with the defendant and social service providers. The offenders may share a common problem, but the treatment needs to be individualized. There is typically a principle of accountability in these courts which will hold a punitive threat over the head of the participant. This can be looked at as a failsafe mechanism and can return the defendant to the normal court system [9]. This can be viewed from two different perspectives. For those that may not respond to the treatment, some may say they need to be punished and held accountable. The other view is that returning them to the normal system puts them back into the perpetual cycle instead of continuing to look for a solution.

The most important aspect of problem-solving courts is that they must be more effective than the traditional system. In a generalized manner, they have been proven to reduce spending and recidivism while literally saving lives at the same time by using an evidence-based approach [9]. They look at the issue through the lens of a human rights approach that strays away from an impersonal approach [7]. As of 2021, there were around 70 diversion programs across the United States that were set up to divert people experiencing homelessness out of the traditional court system for nonviolent offenses, some of which being anti-homeless laws, under the guise of rehabilitation instead of incarceration [6].

A. Specialty Courts

The three problem solving courts that aid the homelessness issue are mental health court, drug court, and homeless court. With prisons and the homeless often being a revolving door [2], these courts should be in high demand and being created and implemented in every city. The rates of mental health conditions are far more prevalent among people experiencing homelessness due to factors like sleep deprivation [3] and ineffective mental health services [2]. Mental health courts have been evaluated to show positive outcomes. Drug courts have been shown to reduce recidivism. Unfortunately, there is very little research on the efficacy of homeless court, but to implement on a large-scale, they need not be driven by research and criminological theory, but by local concerns and interests [9].

The homeless population's needs are not able to be met by the traditional criminal justice system. Homeless court allows homeless individuals to resolve misdemeanor charges that are often from anti-homeless lifestyle crimes. These types of cases engulf an already overwhelmed court system. The first homeless court was developed in San Diego in 1989. The court developed alternative sentencing and set up court outside. Homeless court in San Diego was able to resolve backlogged cases while assuring the defendants they would not be taken into custody. The court identified that many of the crimes were simply a result of being homeless. The alternative sentencing used services to aid the defendants. To become involved in the San Diego homeless court, the individual had to be involved in a shelter or other homeless services program, with each program determining their own requirements [8].

The San Diego homeless court started a trend that has since expanded throughout the country. The American Bar Association (ABA) has developed best practices for homeless court which include being held in a shelter and resolving misdemeanor offenses and warrants. The ABA continues to recommend that court should be operated in conjunction with defense attorneys, prosecutors, shelters, and other service providers, and cases are resolved by participation with agency programs [11]. The ABA discusses the need for a progressive plea-bargaining system, "assurance of no custody", and an alternative sentencing program to take the place of fines [12]. The guarantee of no arrests and no fines is paramount to this process, as many homeless individuals neglect their court appearance requirements for fear of being locked up. The ABA also discusses the need for participants to work with caseworkers to develop a plan before attending homeless court. They say that participants who are "actively engaged in an organized program" will be referred, and then the court clerks will select participants [12].

In Nashville, TN, people need to engage with a local service provider, but there is no requirement to complete a program [13]. In Spartanburg, SC, there is a possibility of case dismissal if the individual completes rehabilitation or treatment programs [14]. They can apply to participate in homeless court only if they demonstrate that they are on the path to change in a treatment program in Florence, SC [15]. The homeless person needs to have a plan-of-action program with a case manager,

and complete that plan-of-action within three months in St. Joseph, MO. Failure to do so results in dismissal from homeless court [16]. In Detroit, MI, homeless court is described in a three-step process. First is an action plan that addresses the underlying cause of the individual's homelessness. Next, the individual will begin working on the plan. Once adequate process has been made, the individual is referred to homeless court. The court will dismiss the case and waive the fines if they are satisfied with the participant's progress, and they are eligible. The court credits the success of their program to only accepting clients that are "ready" [17]. Bernalillo County, NM works with individuals engaged in life-improvement activities with service providers, who then refer the client to the court to review eligibility [18]. In Springfield, MO, homeless court is transformed into a treatment court and is conducted outside of a courthouse in a more friendly atmosphere. While referrals are required, they can be done by homeless service providers, police officers, probation officers, judges, and attorneys, with no other requirement [19].

The majority of these examples have a prerequisite for becoming a participant in homeless court. While these guidelines are a great start, they still have barriers to attending. Many homeless individuals are not able to get into a shelter because of bed availability or mental health concerns, and a court that requires them to be involved in a program ends up underserving the homeless population unfairly. Many homeless individuals have negative previous court experiences which create a fear of returning [6]. There should be no referral process or any other requirements to have cases heard at homeless court.

V. SALT LAKE CITY

Homeless court in Salt Lake City was established in 2004 [10]. Judge Baxter initially started this part of the court. Currently, the homeless court hears misdemeanors in the Salt Lake City Justice Court and non-violent felonies with the 3rd District Court (when a felony judge is available). Homeless court is typically held three times per month in three different locations: the Weigand Center (homeless day shelter), resource fairs (usually held at a park downtown), and at Kayak Court (outreach court along the Jordan River). Homeless court in Salt Lake City guarantees no fines or arrests.

The highlight of Salt Lake City's Homeless Court model is Kayak Court. Homeless individuals at the shelters in Salt Lake City are engaged with case managers who can assist them through the court process, preferably at one of the homeless court locations. Many homeless courts neglect the unsheltered. Kayak Court is an attempt to solve that problem. One day, Salt Lake City Justice Court Judge Robison and social worker Kim Russo were kayaking on the river and came up with the idea and Kayak Court was born. Judge Robison reports the goal is to solve an "access to justice issue for an underserved population" and "resolve cases to move towards self-sufficiency to reduce recidivism" [20].

Social workers, outreach workers, judges, and defense attorneys paddle canoes up the Jordan River, which is a busy area for unsheltered encampments. There are also people that

go on bikes on the trail that runs alongside the river. The outreach and social workers engage with the homeless first and gauge the interest of the individuals. Fortunately, many of them are familiar with the process and the court has earned their trust. If the individual is interested in engaging with the court, they then meet with the defense attorney. The prosecutor is then consulted with, and they offer a deal. If the individual wants to accept the deal, the judge then hears the case. There is also a stationary location in a nearby park where people can go to address cases.

Homeless court in Salt Lake City has no requirements whatsoever for participation other than being homeless or in a transitional housing program. They do not need a referral and do not need to be engaged in treatment. A common outcome for minor offenses is a plea and abeyance, where the individual will plead guilty to a charge. They then meet with a social worker to complete a needs assessment and then their case is dismissed. The social worker can connect them to services, however there is no requirement to complete any program or treatment. It should be noted that homeless court in Salt Lake City does not meet the best practices requirements to be considered a problem-solving court, as there is no ongoing component [20].

The court model being used is reliant on a trauma-informed approach. The social worker, Kim Russo, works with the court while in progress to ensure that it runs smoothly, sometimes adapting the order of defendants based on mental health needs [20].

A diversion program, Familiar Faces, was developed to aide repeat offenders with multiple non-violent, ongoing legal charges. Any violent crime, or history thereof, is an automatic disqualifier for the program. The client is referred to a care team with a judge, prosecutor, and defense attorney. Two case managers are available as well. The goal is to address personal needs such as housing, mental health, and substance use issues. Familiar Faces is held every week in the Salt Lake City Justice Court, with one case typically being dismissed per week, and is, on average, a five-week process [21].

Future plans for Salt Lake City involve Salt Lake City's Homeless Engagement and Response Team (HEART) working with the court to develop a comprehensive community service program. In this program, participants will partake in activities that will help them get a job when they complete their community service. Another part of this program may be having the participants clean the area they are camping in. So, if they live in an encampment along the Jordan River, they could clean that section of the river, benefitting their own situation as well as the community. The team is still collaboratively working on the program internally, with service providers, and the homeless individuals themselves in order to make it as beneficial as possible.

A limitation of the Salt Lake City Homeless Court program is that it is restricted to the city itself. With homeless service providers, including shelters, as well as the unsheltered population, spilling over into other cities throughout Salt Lake County, there is a need for the program to expand. Unfortunately, the surrounding cities are reluctant to join. Some of them look at the program as a "slap on the wrist" instead of

a tool to combat homelessness. Currently, West Valley City, which neighbors Salt Lake City, allows SLC Justice Court judges to recall warrants and schedule court dates, but have not yet participated in hearing cases. The barrier to other cities participating is not always because the city disagrees with the concept. Sometimes it is simply a matter of scheduling, according to Judge Robison. Sometimes a judge agrees it is a good program while the prosecutor does not or is unable to find the time or vice versa [20].

Judge Robison credits their success to the collaboration between all entities of homeless court, from the judges, prosecutors, and defense attorneys to the service providers and social workers. All those things need to line up perfectly to execute court, and many of those people are volunteering their time without pay. Another key to success is the personal connection between the judge and the participant. Judge Robison told a story of a 3rd District Court judge that was participating in Kayak Court on a bike in a rain storm. The judge fell off the bike and was bleeding but continued to hear cases. There was a defendant whose case was unable to be resolved at that moment, so an in-person court date was scheduled for a person that had a bad track record for attending court dates. To the court's surprise, the individual showed up to the court appearance, crediting that to the personal experience with that judge. Case managers are also vitally important [21]. Within Salt Lake City, there are three homeless shelters as well as outreach workers. These case managers spread the word and get clients to homeless court.

VI. CONCLUSION

The criminalization of homelessness is a failed mechanism at addressing a growing problem. This is not to say that the homeless are always innocent. Sometimes they commit crimes that need to be addressed by the police. But non-violent, anti-homeless crimes only cost the community financially. It fails to do what the people calling for criminalization want. The people advocating against the homeless, it can be argued, are a major part of the problem, as they demand resources that financially take away from housing. The criminalization of homelessness needs to stop. Homelessness should not be a political issue, but society has made it into one. Unfortunately, that means a political solution is needed. An immediate intervention of criminalization is homeless court. The majority of homeless courts operating in the United States fail to include the most vulnerable subset of the homeless population: the unsheltered. Salt Lake City has done a great job narrowing that gap, and with more diversion programs, it will continue to do so.

ACKNOWLEDGMENT

An acknowledgment should be made of every court official, attorney, social worker, and homeless service provider that takes part in any homeless court. A special acknowledgment should be made to the Salt Lake City Justice Court, especially Judge Robison, and social worker Kim Russo, for developing a unique outreach version of homeless court which is reaching a previously neglected part of society.

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