

A REPORT BY
THE 2014-2015 CONTRA COSTA COUNTY GRAND JURY
725 Court Street
Martinez, California 94553

Report 1510

COMMUNITY COURTS

Unburdening the Traditional Court System

APPROVED BY THE GRAND JURY:

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JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1510

COMMUNITY COURTS

Unburdening the Traditional Court System

TO: The Contra Costa County District Attorney and the City Councils for the following cities: Antioch, Brentwood, Clayton, Concord, Danville, El Cerrito, Hercules, Lafayette, Martinez, Moraga, Oakley, Orinda, Pinole, Pittsburg, Pleasant Hill, Richmond, San Ramon, San Pablo, Walnut Creek

SUMMARY

Community Court is a voluntary court-alternative program designed to give individuals arrested or cited for certain qualifying offenses an opportunity to resolve their matter outside the traditional court system.

The cities of Walnut Creek, Concord, Pittsburg and San Ramon currently conduct community court hearings for people who are arrested for certain misdemeanors in their jurisdictions. Each city has determined what crimes will be eligible to be heard in its community court. The types of cases referred to community court include low-level misdemeanors and infractions, such as petty theft, public intoxication, vandalism, minor accidental non-injury vehicle hit-and-run collisions, and “malicious mischief: other.”

If a person agrees to participate in the community court process, an independent hearing officer hears the case in the city’s police department. The hearing officer has the authority to issue a directive, which may require the participant to pay a fine or restitution, perform community service, and/or attend counseling. Completion of the directive will prevent formal criminal charges from being brought against the participant, but in most cases does not remove the arrest from the participant’s record.

In Contra Costa County, participating cities, the DA, the traditional court system, and participants all benefit from the community court option. Those Contra Costa cities not

currently utilizing community courts could benefit by establishing this program in their communities.

METHODOLOGY

The Grand Jury

- Interviewed employees of the Walnut Creek, Concord, and Pittsburg police departments
- Interviewed an independent Hearing Officer
- Attended a Community Court hearing
- Reviewed applicable State Law authorizing Community Courts
- Reviewed Community Court handouts and visited the Community Court Services website (<http://www.californiacommunitydisputeservices.com/-big-idea-.html>)

BACKGROUND

Community Court is a program that resolves low level criminal matters including petty thief, malicious mischief, vandalism, excessive noise, and alcohol related complaints, as well as other infractions and misdemeanors. These cases in the past would have been filed with the Contra Costa County District Attorney and may have been prosecuted in superior court.

Four cities in Contra Costa County currently use Community Courts Services (CCS), a private company, to operate the Community Court program in its city: Concord, Walnut Creek, San Ramon and Pittsburg.

DISCUSSION

History of Community Courts in California

In 1972, San Francisco instituted a program to mediate conflicts underlying misdemeanors, civil complaints, and civil suits. That program became known as Community Courts. Accused offenders were identified and given an opportunity to resolve their legal matters in their own neighborhoods and avoid formal prosecution. Trained, independent hearing officers conducted the hearings. The fines and actions ordered by hearing officers served to punish violators as well as to eliminate the cause of the behavior.

Community Court project was operated by California Community Dispute Services (CCDS), a 501(c)(3) nonprofit corporation. The program succeeded in San Francisco and was extended to Walnut Creek and Richmond. The programs in both San Francisco and Contra Costa counties were originally funded by grant monies and donations as well as participant fees for service.

In 1992, the California Legislature enacted Penal Code Sections 14150-14156. These code sections, along with the filing authority of the District Attorney, formally grant counties the right to establish Community Court in California. In enacting the above Penal Code sections, the legislature found that criminal cases, including misdemeanor filings, have increased faster than any other type of filing in California courts and the misdemeanor cases add to the workload straining the California court system.

In Richmond, the community court process was used for neighborhood “barking dog” cases; however, Richmond no longer participates in the program. The City of Walnut Creek continues to use Community Court. During the twelve years of its existence, the emphasis in Walnut Creek has been to use Community Court for intoxicated-in-public cases.

CCDS stopped receiving government grants and charitable funding after it changed its status in 2011 - 2012 from a 501(c)(3) non-profit organization to a for-profit company. It now relies on fees collected from participants and volunteer involvement. CCDS is no longer active in San Francisco and Community Court is now administered by the San Francisco District Attorney’s Office. Community Court Services (CCS), a division of CCDS, currently operates courts in Walnut Creek, Concord, Pittsburg and San Ramon.

Referrals of Cases to Community Courts

Local law enforcement agencies, after making an arrest, usually file the case with the County’s District Attorney’s Office. The DA reviews the case and decides whether or not it will file a complaint in criminal court. A conviction results in a fine, jail time, and/or probation.

Cities that have decided to use Community Court determine with the approval of the District Attorney’s Office what types of cases are suitable for adjudication in Community Court. Only infractions and certain misdemeanors are eligible for Community Court. The police department refers appropriate cases from its arrest files to Community Court, while the remaining cases are sent to the DA. The opportunity to participate in Community Court is usually limited to first time offenders.

Community Court is a voluntary program. Offenders whose cases are eligible for Community Court are given the option of participating. Participants are able to opt out of the process at any time, including after being informed of the hearing officer’s directive. If a participant opts out, the case is then sent or returned to the District Attorney to determine whether a criminal complaint will be filed.

Involvement of Cities in Community Courts

Concord sends letters to accused offenders offering them the opportunity to participate

in the Concord Community Court program. The cities of Walnut Creek and Pittsburg provide CCS with a list of those accused offenders eligible to participate. CCS then sends out letters to persons on the list informing them of the option to participate in the program. To participate, recipients of the letters typically must respond within ten days. All the cities give CCS the participants' case files prior to the hearings.

Accused offenders in Concord contact the Concord Police Department directly to schedule their appointments for Community Court. Participants in Walnut Creek and Pittsburg call CCS to schedule their appointments. They are given an appointment time so as to minimize their wait time.

In Walnut Creek, 68% of those receiving letters informing them that they have been selected for Community Court chose to respond to the letter. Of those choosing to respond, 60% attended the Community Court hearing and 90% of those paid the fine. In Concord, 49% of those receiving letters responded to the letter. Of those responding 98% attended the hearing and 95% of those completed the directive. Since the inception of the Pittsburg Community Court, 100 persons have received notices that they are eligible for the program and 30% of those receiving the notices have participated in the program.

Community Court is held in Walnut Creek once a month on Thursdays between 9:00 and 11:00 a.m. The hearing officer hears between eight and sixteen cases each month. Walnut Creek makes a police department conference room available for the hearings. The types of cases heard in Walnut Creek include public intoxication and petty theft, as well as other misdemeanors.

The Concord Community Court has been in operation for approximately three years. Hearings are held twice a month, on Thursdays from 9:00 to 11:00 a.m. The Concord Police Department schedules seven to ten cases per session. The types of cases heard in Concord include petty theft, public intoxication, and minor hit and run accidents, as well as other misdemeanors. Juvenile cases are heard in the Concord Community Court. Parents of a juvenile meet with the hearing officer prior to the juvenile's hearing. The hearings take place in a conference room at the Concord Police Department.

Pittsburg implemented its Community Court program in early 2014. The hearings are held on the fourth Thursday of each month from 9:00 to 11:00 a.m. The Hearing Officer hears an average of three cases per session. Cases heard in Pittsburg include petty theft, minor accident hit and runs, vandalism, and other misdemeanors. The Pittsburg Community Court is held in a conference room at the Pittsburg City Hall.

San Ramon recently began a community court program. Its first hearing took place on April 24, 2015. The San Ramon Community Court meets on the fourth Friday of each month. San Ramon plans on using the Community Court to hear juvenile cases.

Community Courts Hearing Process

The four cities all use Community Court Services (CCS). CCS employs two hearing officers, both of whom are lawyers with experience in criminal law and have defense backgrounds. CCS does not charge the cities for its services; it receives revenue from a \$100 fee paid by each program participant. CCS also uses volunteers to assist with the administration of the program.

Participants attend an informal hearing at which the hearing officer summarizes the incident report. The participant is given an opportunity to respond, by making a statement. The hearing officer makes no judgement as to the guilt or innocence of the accused offender. If the accused offender indicates that he or she wants to plead “not guilty,” the hearing officer recommends that the participant withdraw the case from Community Court. In that case, the report will be referred to the District Attorney. If the offender proceeds with the community court process, the hearing officer discusses the incident with the participant and then the hearing officer issues his or her directive. Hearings usually take 10 to 20 minutes. The hearing officer will have a counselor available for the participant to meet with following the hearing.

The hearing officer imposes directives that include fines, restitution, community service, diversion and/or counseling. However, the hearing officer does not impose fines on juveniles. The participant must complete any directive, including paying the imposed fine, within two months of the hearing. Successful completion of the directive prevents formal charges from being brought, but usually does not remove the record of the arrest. If the participant either decides to not complete the directive or is unable to do so, the case will be referred back to the District Attorney for a criminal filing decision. No information about the offender participating in Community Court is disclosed to the District Attorney.

Costs and Benefits of Community Courts

The costs of the program to the cities include a minimal amount of police department staff time and making a room available for hearings. Pittsburg estimates its police officers devote approximately two hours per month to the program. Concord estimates its personnel spend from one to ten hours a week on the program. Walnut Creek estimates its police officers put two hours per month into the program. Two police department clerks for Walnut Creek also spend a minimal amount of time processing cases. Concord and Walnut Creek also use volunteers to assist with the program.

The cities receive income from the program by collecting fines ordered by the hearing officer. Each participating city agrees with CCS to a range of fines for the different offenses. The City of Walnut Creek receives approximately \$80,000 per year in fines. The fines collected in 2014 by Concord totaled \$28,529 and participants completed 205 hours of community service. Pittsburg has collected \$7,000 in fines since the inception

of its program, which it has deposited into the city's general fund. The City of Concord reinvests the money it receives from fines back into the program.

FINDINGS

- F1. Participants in Community Court benefit by resolving their issues outside of the traditional court system and avoiding having a criminal record.
- F2. The city benefits by receiving income from fines imposed on Community Court participants.
- F3. The city benefits from Community Court participants providing compulsory community service hours.
- F4. The District Attorney's Office and Superior Court both benefit from Community Court due to the reduction in misdemeanor cases that each must process.
- F5. The hearing officer for Community Court issues directives that include fines, restitution, community service, diversion programs, and/or counseling.
- F6. The city does not have a Community Court program.

RECOMMENDATIONS

- R1. The city should consider establishing a Community Court.

REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Contra Costa County District Attorney Office	4	
City of Antioch	6	1
City of Brentwood	6	1
City of Clayton	6	1
City of Concord	1,2,3,5	
City of Danville	6	1
City of El Cerrito	6	1
City of Hercules	6	1
City of Lafayette	6	1
City of Martinez	6	1
City of Moraga	6	1
City of Oakley	6	1
City Orinda	6	1
City of Pinole	6	1
City of Pleasant Hill	6	1
City of Pittsburg	1,2,3,5	
City of Richmond	6	1
City of San Pablo	6	1
City of San Ramon	1,2,3,5	
City of Walnut Creek	1,2,5	

APPENDIX

Cal. Penal Code §14150

The Legislature hereby finds and declares:

(a) Over the last 10 years, criminal case filings, including misdemeanor filings, have been increasing faster than any other type of filing in California's courts. Between 1981 and 1991, nontraffic misdemeanor and infraction filings in municipal and justice courts increased by 35 percent.

(b) These misdemeanor cases add to the workload which is now straining the California court system. In addition, many of these cases are ill-suited to complete resolution through the criminal justice system because they involve underlying disputes which may result in continuing conflict and criminal conduct within the community.

(c) Many victims of misdemeanor criminal conduct feel excluded from the criminal justice process. Although they were the direct victims of the offenders' criminal conduct, the process does not currently provide them with a direct role in holding the offender accountable for this conduct.

(d) Community conflict resolution programs utilizing alternative dispute resolution (ADR) processes such as mediation and arbitration have been effectively used in California and elsewhere to resolve conflicts involving conduct that could be charged as a misdemeanor. These programs can assist in reducing the number of cases burdening the court system. By utilizing ADR processes, these programs also provide an opportunity for direct participation by the victims of the conduct, thereby increasing victims' satisfaction with the criminal justice process. In addition, by bringing the parties together, these programs may reduce conflict within the community by facilitating the settlement of disputes which are causing repeated misdemeanor criminal conduct and may increase compliance with restitution agreements by encouraging the offender to accept personal responsibility.

(e) As of the effective date of this section, the San Francisco and Contra Costa district attorney offices refer between 1,000 and 1,500 cases per year involving conduct which could be charged as a misdemeanor to California Community Dispute Services, which provides ADR services. Between 70 and 75 percent of these cases are successfully resolved through the ADR process, and the rate of compliance with the agreements reached is between 80 and 93 percent.

(f) The State of New York has developed a substantial statewide alternative dispute resolution program in which 65 percent of the cases using the services are of a criminal nature. These cases are referred to arbitration, conciliation, and mediation. Of the criminal misdemeanor cases that were mediated, 82 percent reached an agreement through the mediation process.

(g) It is in the public interest for community dispute resolution programs to be established to provide ADR services in cases involving conduct which could be charged as a misdemeanor and for district attorneys and courts to be authorized to refer cases to these programs.

CAL. PEN CODE § 14151

The district attorney may establish a community conflict resolution program pursuant to this title to provide alternative dispute resolution (ADR) services, such as mediation, arbitration, or a combination of both mediation and arbitration (med-arb) in cases, including those brought by a city prosecutor, involving conduct which could be charged as a misdemeanor. The district attorney may contract with a private entity to provide these services and may establish minimum training requirements for the neutral persons conducting the ADR processes. 14152. (a) The district attorney may refer cases involving conduct which could be charged as a misdemeanor to the community conflict resolution program. In determining whether to refer a case to the community conflict resolution program, the district attorney shall consider, but is not limited to considering, all of the following:

- (1) The nature of the conduct in question.
 - (2) The nature of the relationship between the alleged victim and the person alleged to have committed the conduct.
 - (3) Whether referral to the community conflict resolution program is likely to help resolve underlying issues which are likely to result in additional conduct which could be the subject of criminal charges.
- (b) No case where there has been a history of child abuse, sexual assault, or domestic violence, as that term is defined in Section 6211 of the Family Code, between the alleged victim and the person alleged to have committed the conduct, or where a protective order, as defined in Section 6218 of the Family Code, is in effect, shall be referred to the community conflict resolution program.

Cal. Penal Code §14152

(a) The district attorney may refer cases involving conduct which could be charged as a misdemeanor to the community conflict resolution program. In determining whether to refer a case to the community conflict resolution program, the district attorney shall consider, but is not limited to considering, all of the following:

- (1) The nature of the conduct in question.

(2)The nature of the relationship between the alleged victim and the person alleged to have committed the conduct.

(3)Whether referral to the community conflict resolution program is likely to help resolve underlying issues which are likely to result in additional conduct which could be the subject of criminal charges.

(b)No case where there has been a history of child abuse, sexual assault, or domestic violence, as that term is defined in Section 6211 of the Family Code, between the alleged victim and the person alleged to have committed the conduct, or where a protective order, as defined in Section 6218 of the Family Code, is in effect, shall be referred to the community conflict resolution program.

Cal. Penal Code §14153

Both the alleged victim and the person alleged to have committed the conduct shall knowingly and voluntarily consent to participate in the ADR process conducted by the community conflict resolution program.

Cal. Penal Code §14154

In a county in which the district attorney has established a community conflict resolution program, the superior court may, with the consent of the district attorney and the defendant, refer misdemeanor cases, including those brought by a city prosecutor, to that program. In determining whether to refer a case to the community conflict resolution program, the court shall consider, but is not limited to considering, all of the following:

(a)The factors listed in Section 14152.

(b)Any other referral criteria established by the district attorney for the program.

The court shall not refer any case to the community conflict resolution program which was previously referred to that program by the district attorney.

Cal. Penal Code §14155

(a)If the alleged victim or the person alleged to have committed the conduct does not agree to participate in the community conflict resolution program or the case is not resolved through the ADR process provided by that program, the community conflict resolution program shall promptly refer the case back to the district attorney or to the court that made the referral for appropriate action.

(b) If the community conflict resolution program determines that a case referred to it prior to the filing of a complaint has been resolved through that referral, the program shall recommend to the district attorney that the case not be prosecuted.

(c) If a case referred to the community conflict resolution program after the filing of a complaint but prior to adjudication is resolved through that referral, the court may dismiss the action pursuant to Section 1378 or 1385.

Cal. Penal Code §14156

It is the intent of the Legislature that neither this title nor any other provision of law be construed to preempt other precomplaint or pretrial diversion programs. It is also the intent of the Legislature that this title not preempt other post trial diversion programs.