

Do Criminalization Efforts Work?

I. What are measures that ‘criminalize’ homelessness?

Laws that make it illegal to do things that people experiencing homelessness must do as a result of their homeless status or other measures that target homeless persons, such as:

- Laws that prohibit sleeping, sitting, or storing personal belongings in public spaces

Example: Orlando, FL, has an anti-camping law which prohibits camping on all public property without authorization. Camping is defined as sleeping or otherwise being in a temporary shelter out-of-doors, sleeping out-of-doors, or cooking over an open flame or fire out-of-doors. Orlando, Fla., Code § 43.52 (2006).

Example: St. Petersburg, FL, passed a law in January 2008 that prohibits storing any personal property on public property. While the law includes a notice period in which a person may remove the property to avoid confiscation, moving the property to another place on public property will not be considered removing the item from public property.

- “Sweeps” performed by cities aimed at removing homeless people and their belongings from particular areas of the city

Example: For a number of years, the City of Fresno engaged in a campaign of sweeps of areas where homeless people were living, frequently destroying important personal property of those individuals, including medicine, identification documents, clothing, and personal effects with sentimental value.

- Laws that prohibit begging or panhandling

Example: Nashville, TN, passed an anti-panhandling law in January 2008 that prohibits verbally asking for money at night or at any bus stop; any sidewalk café; any area within 25 feet in any direction of an automatic teller machine or entrance to a bank; any public or private school; and within 10 feet of a point of entry to or exit from any building open to the public, including commercial establishments.

- Laws that indirectly impact homeless persons by penalizing groups that share food with homeless persons in public spaces

Example: Las Vegas passed a law in 2006 that prohibits sharing food with “indigent” persons in public parks. An “indigent” person, as defined by the law, is a person whom a reasonable ordinary person would believe to be entitled to apply for or receive public assistance. Las Vegas, Nev., Mun. Code § 13.36.055(A)(6) (2006).

II. What are policy problems with criminalization measures?

Criminalization measures do not address the root causes of homelessness, frequently make it more difficult for people to move out of homelessness, and are not cost effective.

- As many of these measures apply to downtown areas of cities, they tend to move people away from services and resources in downtown areas and can disrupt existing outreach efforts.

Example: An organization that provides outreach and services to homeless individuals in a particular neighborhood of Washington, DC, found one day that many of the people they were regularly working with on the street were gone. After some investigation, the outreach workers found out the police had “swept” the area, moving people to other areas of the city. This sweep defeated months of outreach work and relationship building the service provider had accomplished.

- Creates barriers for people in obtaining employment and housing.

Example: Many public housing authorities around the country will exclude from federally-assisted housing people who have been charged with misdemeanors or who even simply have an arrest record.

- Burdens the criminal justice system.

Example: As part of a larger effort evaluating the effectiveness of a downtown Minneapolis public safety initiative, the Hennepin County Criminal Justice Coordinating Committee (HCCJCC) tracked 33 homeless individuals who had four or more police contacts in the city’s newly established Safe Zone during the period of April 17, 2005, through June 17, 2005, and reflected disproportionately high expenditures for minimal desirable outcomes. Upon closer examination, HCCJCC estimated that cumulative costs specific to the criminal justice expenditures for those **33 individuals** included the following estimated costs as of September 2005:

- \$876,741 for Hennepin County Jail Costs Since 1994
- \$184,200 for Hennepin County Law Enforcement Costs Since 1994
- \$140,251 for Hennepin County Court Costs Since 1985
- \$2,651,732 Total Criminal Justice Related Costs (including \$829,790 in Minnesota State Prison Costs Since 1991)

- Inefficiently allocates costs

Example: According to a 2004 nine-city survey, jail costs are two to three times higher than permanent supportive housing.

III. What are some of the legal problems with criminalization measures?

- Courts have found some anti-begging measures violate the First Amendment right to free speech.

See Loper v. NYCPD, 999 F.2d 699 (2d Cir. 1993).

The court found that a blanket ban on begging throughout the city violated the First Amendment right to free speech.

But see Gresham v. Peterson, 225 F.3d 899 (7th Cir. 2000).

The court found that a nighttime ban on oral panhandling and in certain geographical areas of the city was narrowly tailored to meet a significant government interest (the safety and convenience of city residents on public streets), and left open alternative channels for communication.

- Courts have found some anti-camping/sleeping measures violate the 8th Amendment right to be free from cruel and unusual punishment if no shelter space is available for homeless persons to use.

See Jones v. City of Los Angeles, 444 F.3d 1118 (9th Cir. 2006) *vacated* 505 F.3d 1006 (9th Cir. 2007); *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992).

The courts in these cases found that arresting homeless people for sleeping or resting in public when no shelter space was available violated their Eighth Amendment right to be free from cruel and unusual punishment. (The *Jones* decision was vacated per a settlement agreement.)

See also Joel v. City of Orlando, 232 F.3d 1353 (11th Cir. 2000).

The court found that arrests of plaintiff for violating Orlando's anti-camping law did not violate his 8th Amendment right to be free from cruel and unusual punishment, since shelter space was available in Orlando.

- Courts have found some anti-loitering and vagrancy measures void for vagueness.

See City of Chicago v. Morales, 527 U.S. 41 (1999).

The Supreme Court found Chicago's loitering law void for vagueness, as it did not give people fair notice of prohibited behavior and encouraged arbitrary enforcement by police officers. The law defined loitering as remaining in any one place with no apparent purpose.

See also Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).

The Supreme Court found Jacksonville's archaic vagrancy law void for vagueness as it did not give people fair notice of prohibited conduct and encouraged arbitrary enforcement by police officers.

- Sweeps/seizures and destruction of property of homeless persons can violate their Fourth Amendment right to be free from unreasonable searches and seizures and due process rights.

See Pottinger v. Miami, 810 F. Supp. 1551 (S.D. Fla. 1992).

The court found the practice of seizing and destroying homeless persons' property or forcing homeless persons to abandon property at arrest sites violated the Fourth Amendment, as such practices amounted to unreasonable searches and seizures.

See also Kincaid v. Fresno, 2006 WL 3542732 (E.D. Cal. 2006).

The court found that without effective and adequate pre- or post-deprivation process, the seizure and immediate destruction of homeless people's personal property violated the Fourteenth Amendment's Due Process Clause.

See also Justin v. City of Los Angeles, 2000 WL 1808426 (C.D. Cal. Dec. 5, 2000).

- Restrictions on food sharing or provision of other services to homeless persons can violate the right to free speech, the right to freely exercise one's religion, equal protection or can be unconstitutionally vague.

See First Vagabonds Church of God v. City of Orlando, 2008 WL 4381668 (M.D. Fla. 2008).

The court found a law that restricts groups sharing food with 25 or more people to two times a year in city parks violated the First Amendment rights to free speech and free exercise of religious beliefs.

See Sacco v. City of Las Vegas, 2007 WL 2429151 (D. Nev. 2007).

The court granted a permanent injunction to enjoin the city from enforcing an ordinance that prohibited sharing food with "indigent" people in public parks, finding that the ordinance is unconstitutionally vague and violated the Equal Protection Clause of the Fourteenth Amendment. However, the court did not find the ordinance violated plaintiffs' right to freely exercise their religious beliefs or right to free speech.

See also Fifth Avenue Presbyterian Church v. City of New York, 177 Fed. Appx. 198 (2d Cir. 2006), cert. denied, 127 S. Ct. 387 (2006).

The court found the city could not move homeless persons off the steps of the church, as providing that shelter for homeless persons was a sincere exercise of the church's religious beliefs.

IV. What are some more constructive approaches to homeless persons living in public spaces?

Some cities have instituted measures that address homeless persons living in public spaces in a more constructive way to address the root causes of homelessness.

Broward County, Florida - Outreach Teams

The Taskforce for Ending Homelessness, Inc., a not-for-profit agency that provides outreach, education, and advocacy services for the homeless population in Broward County, has partnered with the Ft. Lauderdale Police Department to help homeless persons get off the street. The partnership formed the Homeless Outreach Team, which was incorporated in 2003 to provide direct outreach services to homeless people. The team consists of two full-time Fort Lauderdale Police officers, two part-

time officers, and a civilian partner who is formerly homeless. The team informs chronically homeless individuals of social services available in the community and encourages them to access those services. Repeated visits are often necessary to build rapport, trust, and confidence between the workers and homeless individuals.

In addition, the outreach team has partnered with local shelters to ensure access to beds and services. Those accepting shelter assistance receive priority, entering the program if a bed is open. They are also provided with dinner, breakfast, a hot shower, laundry facilities, and a safe night's sleep. In its first five years of operation, the Homeless Outreach Team had over 23,000 contacts with homeless individuals and has placed 11,384 people in shelters. Estimates suggest that there are at least 2,400 fewer arrests each year as a result of the Homeless Outreach Team.

The Taskforce for Ending Homelessness also has partnered with the Fort Lauderdale Police Department to develop a 2-hour course entitled "Homelessness 101." The course is designed to raise police officers' awareness of the reality of homelessness, its causes, and the most effective ways to address this prevalent social problem.

Washington, DC – Day Center

Faced with an increasing number of people forced to live on the streets, the downtown business community in Washington, D.C., decided to create a day center for homeless people who may not have anywhere to go during the day when shelters are closed. Through the Downtown D.C. Business Improvement District (BID), business owners started and funded a day center that could serve up to 260 people per day, with indoor seating, laundry, showers, and a morning meal. The BID also has partnerships with local service providers who would come on site once or twice a week to provide medical, psychiatric, legal, and employment services, as well as housing counseling, substance abuse treatment, and case management. Business owners in D.C. finance the day shelter through a 1-cent tax for each square foot of property owned by a business.

The day center recently closed due to the property owner selling the property. However, the BID is currently in negotiations with the city to open two day centers in two different downtown locations. Funding for the centers will come from the BID, the city, and private sources.

Portland, OR – Outreach to Connect People to Housing

As part of its ten year plan to end homelessness, the City of Portland has funded an initiative, called "Key Not a Card," that enables outreach workers at various agencies to immediately offer people living on the street permanent housing. Four different service provider agencies participate in the program. The funding from the city for housing is flexible in that it can be used to pay rent, back rent, security deposits, and can vary in the level of subsidy. The goal is to get people housed for 1 to 2 years while they can secure permanent subsidies, public benefits, or employment, as appropriate.

In the first 14 months of operation, 224 people living on the streets were placed into permanent housing. At 12 months after placement, 90 percent of those placed remained in stable housing. The City has thus far provided \$2 million dollars in pilot

funding for this program and is seeking permanent annual funding of \$3 million dollars.

Various cities – working with homeless persons living outside and cleaning public property

A number of cities have instituted protocols for cleaning up public property where homeless persons are living. Recently, a couple cities have pursued some positive approaches to homeless persons living outside. In areas where homeless people have set up an encampment, these cities have worked with local providers to help those individuals access permanent housing.

Washington, DC – In the fall of 2007, the District of Columbia reached out to key local service providers when attempting to clean out an area where homeless people were living near an expressway in the city. The City worked with the providers and located permanent affordable housing units for each of the individuals at the encampment.

In addition, the District of Columbia voluntarily established a formal procedure for disposition of property in public spaces through a Memorandum of Understanding (MOU) between various city agencies. According to the MOU, 14 days prior to cleaning a public area, the agency responsible for the area must post a conspicuous notice in the immediate vicinity of the area to be cleaned. The notice must contain information about the designated location to be cleaned, the date the cleaning will take place, the site where any remaining property in the location will be stored, the process for claiming any confiscated property, and the contact information of two service providers. All property deemed to be valuable is to be stored for a period of no less than 45 days.

Baltimore, MD - The City of Baltimore also recently approached the issue of encampments in a very positive way. In December 2007, the City of Baltimore notified local advocates and service providers of its desire to clean up an encampment in the city where the fire department had identified some potential fire hazards. The City worked with local providers to come up with a positive approach to the issue that did not involve drawing in law enforcement officials. Outreach workers went out to the site and the City offered shelter or 30-day hotel stays, in addition to Section 8 vouchers, to the group of individuals living at the encampment.

For more information, contact Tulin Ozdeger, Civil Rights Director, at the National Law Center on Homelessness & Poverty at 202-638-2535 or at tozdeger@nlchp.org.