

## **Criminalization Undermines Real Solutions**

Reflecting the frustration of business owners, community residents, and civic leaders who feel that street homelessness infringes on the safety, attractiveness and livability of their cities, some communities around the country are using, or considering using, the criminal justice system to minimize the visibility of people experiencing homelessness. In these instances, formal and informal law enforcement policies are adopted to limit where individuals who experience homelessness can congregate, and punish those who engage in life-sustaining or natural human activities in public spaces. Examples of such criminalization strategies include the following:<sup>5</sup>

- Legislation that makes it illegal to sleep, sit, or store personal belongings in public spaces ;
- Ordinances that punish people for begging or panhandling in order to move people who are poor or homeless out of a city or downtown area;
- Local measures which ban or limit food distribution in public places in an attempt to curb the congregation of individuals who are homeless;
- Sweeps of areas in which people who are homeless are living in order to drive them out of those areas;
- Selective enforcement of neutral laws such as jaywalking, loitering, and open container laws against people who are homeless;
- Public health ordinances related to public activities and hygiene (e.g. public urination) regardless of whether public facilities are available

These law enforcement measures do not solve the underlying causes of the problem. These measures punish people who currently live on the street and do nothing to reduce the factors contributing to homelessness. Rather than helping people to regain housing, obtain employment, or access needed treatment and services, criminalization creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.<sup>6</sup> Sweeps can also result in the destruction of the personal property of people experiencing homelessness, including identification documents and medication. It can be much more difficult to secure employment, benefits, and housing with a criminal record. Many of these measures include criminal penalties for their violation; therefore, they actually exacerbate the problem by adding additional obstacles to overcoming homelessness.<sup>7</sup> In addition, these measures are costly, using critical public resources for law enforcement activities.

Class actions brought on behalf of individuals experiencing homelessness and service providers have successfully challenged criminalization ordinances and food sharing prohibitions in federal court. For example, ordinances that place restrictions on begging have been in some cases found to violate the individual's First Amendment right of expression or speech. Homeless individuals who have been forced to leave an area or whose belongings have been confiscated by law enforcement during sweeps of homeless encampments have successfully brought civil rights challenges on the grounds that law

enforcement violated their Fourth Amendment rights to be free from unreasonable search and seizure and their due process rights. The Fourth Amendment also serves as a basis to challenge government actors who confiscate an individuals' property during sweeps and either destroy, or fail to provide meaningful procedures to reclaim seized property.<sup>8</sup> Laws imposing criminal penalties for engaging in necessary life activities when there are no other public options that exist have been found to violate the Eighth Amendment.<sup>9</sup> Certain loitering and vagrancy measures have also been struck down for vagueness. In addition to violating domestic law, criminalization measures may also violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights.<sup>10</sup> Therefore, enforcement of these laws can open jurisdictions to extended and costly litigation.

<sup>5</sup>The National Law Center on Homelessness and Poverty and the National Coalition for the Homeless, *Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities*, (July 2009).

<sup>6</sup>Caterina Roman and Jeremy Travis, *Taking Stock: Housing, Homelessness and Prisoner Reentry*, The Urban Institute, (March 2004).

<sup>7</sup>The National Law Center on Homelessness and Poverty and the National Coalition for the Homeless, *Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities*, (July 2009).

<sup>8</sup>See, e.g., *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992) (holding that sweeps and ensuing property destruction violated homeless individuals due process and Fourth Amendment rights); *Johnson v. Board of Police Comm'rs*, 351 F. Supp. 2d 929 (E.D. Mo. 2004) (enjoining the intimidation, arrest, and relocation of homeless individuals who were lawfully in public areas as part of efforts to "clean up" downtown St. Louis); *Kincaid v. Fresno*, 2006 WL 3542732 (E.D. Cal. Dec. 8, 2006) (holding that seizing and immediately destroying property of homeless individuals arrested in parks violated their due process rights).

<sup>9</sup>J.M. Charles. "America's lost cause: The unconstitutionality of criminalizing our country's homeless population." (Public Interest Law Journal: 2009) 18, 315-346, available at

<http://www.bu.edu/law/central/jd/organizations/journals/pilj/vol18no2/documents/18-2CharlesNote.pdf>

<sup>10</sup>The National Law Center on Homelessness and Poverty and the National Coalition for the Homeless, *Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities*, (July 2009). p. 26

See International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976 [hereinafter "ICCPR"]; Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

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