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Feature Article
How Chicago is Criminalizing Homelessness

Anthony Wadas

Chicago passed an ordinance banning “aggressive panhandling,” and the definition is rather broad, providing no clear definition of what constitutes “aggressive.”¹ The ordinance outright bans panhandling in certain locations, such as within ten feet of any CTA bus stop, “L” entrance, ATMs, or certain businesses including currency exchanges, banks, and outdoor cafes.² Additionally, individuals are prohibited from soliciting people in vehicles for donations.³ Further, it prohibits soliciting in a manner that a reasonable person would find intimidating.⁴

Faced with these efforts to criminalize the homeless condition, individuals living on the streets face additional struggles when trying to escape poverty. People with criminal records are not eligible for government-subsidized housing.⁵ Additionally, a criminal record makes it even more difficult to find a job.⁶ When their property is discarded, especially when they lose identifying documents, it can become more difficult to obtain services or employment.⁷ Burdened with excessive court fees, it can become impossible to save money to obtain housing.⁸ Through criminalization, the legal-justice system itself is perpetuating this cycle of poverty. Herein, I will examine this criminalization and a proposed court-alternative to this pattern.

¹ See Municipal Code of Chicago, 8-4-025.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Joy Diaz, *Withholding HUD Funds a Possibility For Cities That Criminalize Homelessness*, KUT, Sept. 10, 2015. <http://kut.org/post/withholding-hud-funds-possibility-cities-criminalize-homelessness>.

⁶ The American Constitution Society Loyola & National Lawyers Guild Loyola Chapter, *Criminalization of Poverty & Homelessness*, October 13, 2015

⁷ *Id.*

⁸ Telephone Interview with Rene Heybach, Senior Counsel, Chicago Coalition for the Homeless (Oct. 13, 2015)

STREET SWEEPS: HOMELESS CONTROL IN CHICAGO

The city has used street cleanings as a primary method of controlling the homeless population in Chicago.⁹ In the process of these street sanitation sweeps, homeless people often end up losing blankets, clothing, medicine and important documents critical to both their short-term survival and long-term chances of regaining a footing in society.¹⁰ The Chicago Coalition for the Homeless, acting on behalf of Chicago's homeless population, reached a settlement with Chicago in February 2015 that affords additional protections for the property rights of these individuals.¹¹

Under the terms of the settlement, homeless individuals are allowed to keep portable personal possessions defined as a "sleeping bag or bedroll, not more than two coats, not more than two pairs of shoes or boots, not more than five blankets, and not more than three bags or suitcases, and such contents as may be contained in said bags or suitcases."¹² Individuals are allowed an additional sleeping bag and blankets during the winter.¹³ Additionally, the City is required to tag unattended belongings and come back for them a week later instead of throwing the items away immediately.¹⁴

Though these terms offer homeless individuals more protections to safeguard their property from confiscation from the City, the terms of the settlement currently only protect the homeless encampments on Lower Wacker Drive and under the Lake Shore Drive viaduct on Wilson Ave.¹⁵ The settlement does provide for the Chicago Coalition for the Homeless to work with the City to identify additional areas that should receive similar protections.¹⁶

There have been reports, however, that while the City has begun providing notice of impending street sweeps in those areas and allowed those individuals who are present to keep their belongings, unattended items are still being thrown away without first being tagged.¹⁷ Furthermore, it is not always an

⁹ Mark Brown, *City Agrees to be More Respectful of Homeless Belongings*, CHICAGO SUN-TIMES, Feb. 11, 2015, <http://chicago.suntimes.com/news/7/71/362639/city-agrees-respectful-homeless-belongings>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Brown, *supra* note 9.

¹⁶ *Id.*

¹⁷ The American Constitution Society Loyola & National Lawyers Guild Loyola Chapter, *supra* note 6.

option for these individuals to remain with their belongings all day. Residents may have to leave to use the restroom, or to make appointments with social workers, or in some cases, the individual does have to go to their job.¹⁸ Ironically, those who are making the most effort to get off the streets are often the ones who are punished the most by these street cleanings.

There are also instances where business owners also participate in the criminalizing process. According to Rene Heybach, Senior Counsel at the Chicago Coalition for the Homeless, business owners sometimes participate in criminalizing homelessness by calling the police on individuals who appear to be homeless and requesting charges for criminal trespass.¹⁹ The police will then arrive and remove the individual from the establishment, which frequently results in the arrest of the individual.²⁰

Often, the individual is not harming or harassing anyone. Rather, his or her presence makes the business owner or other patrons uncomfortable.²¹ Homeless individuals are also often charged with disorderly conduct and failure to obey a police orders when they refuse to disperse from an encampment.²² They can then be arrested and held because they are not able to make bail.²³

REASONS FOR CRIMINALIZING

Cities around the country have cited several reasons for criminalization. After Madison, Wisconsin declared the homeless a protected class and attempted to provide more services for that community, the city claimed that they saw a surge in homelessness.²⁴ Additionally, proponents of criminalization cite to economic reasons, stating that panhandling can deter tourism.²⁵ With proposed cuts to mental health services, Chicago and other communities within Illinois may face an increased burden with homelessness, and they may

¹⁸ *Id.*

¹⁹ Heybach, *supra* note 8.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Daniel Bendston, *What Happens When Cities Crack Down on the Homeless*, DESERET NEWS INTERNATIONAL, Oct. 12, 2015, <http://national.deseretnews.com/article/6354/what-happens-when-cities-crack-down-on-the-homeless.html>.

²⁵ *Id.*

feel increased pressure to criminalize the homeless condition.²⁶ There is also some public perception that many of the homeless choose that lifestyle, and that if they are punished for it, they will then choose to get a job and leave the streets.²⁷

However, courts are limiting cities' ability to criminalize certain homeless activities. Many anti-panhandling ordinances have been challenged in court, and recently in a case from Springfield, Illinois, the Seventh Circuit overturned a panhandling ban on First Amendment grounds.²⁸ In *Norton v. City of Springfield*, a city ordinance prohibited panhandling in its "downtown historic district"—less than 2% of the City's area but containing its principal shopping, entertainment, and governmental areas, including the Statehouse and many state-government buildings.²⁹ The Court initially affirmed the district court's decision that the ordinance was constitutional because it did not draw lines based on the content of the speech.³⁰

When the Seventh Circuit reexamined *Norton* in light of the Supreme Court's decision in *Reed v. Town of Gilbert, Ariz.*, it held that "regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed."³¹ In *Norton*, the Seventh Circuit stated that *Reed* effectively abolished any distinction between content regulation and subject-matter regulation, and any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification.³² Under this framework, the Seventh Circuit found the panhandling ban ordinance to be an unconstitutional violation of the First Amendment.³³

THE HOMELESS COURT PROGRAM

One such solution to address criminalization proposed by the Chicago Coalition for the Homeless and its partners is to implement a "homeless

²⁶ See Ellyn Fortino, 'Bare-Bones' Illinois Mental Health System Can't Afford Further Cuts, *Advocates Say*, PROGRESS ILLINOIS, May 30, 2015. <http://www.progressillinois.com/posts/content/2015/05/29/bare-bones-illinois-mental-health-system-cant-afford-further-cuts-advocates>.

²⁷ The American Constitution Society Loyola & National Lawyers Guild Loyola Chapter, *supra* note 6.

²⁸ *Norton v. City of Springfield, Ill.*, 612 Fed. Appx. 386 (7th Cir. 2015).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Norton*, 612 Fed. Appx. at 387, citing *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2222 (2015).

³² *Norton*, 612 Fed. Appx. at 387.

³³ *Id.*

court.”³⁴ The American Bar Association defines a “homeless court” as a special court, often held at local shelters, for homeless defendants to resolve outstanding misdemeanor criminal cases.³⁵ At least twenty-six jurisdictions have already implemented some variation of the homeless court, including San Diego, California and Detroit, Michigan.³⁶ Cook County also has precedent for specialized court systems: the jurisdiction already has specialized courts for veterans and the mentally ill.³⁷

To counteract the effect of criminal cases pushing homeless defendants further outside society, this Court combines a progressive plea bargain system, an alternative sentencing structure, assurance of “no custody” and proof of program activities to address a full range of misdemeanor offenses and bring homeless individuals back into society.³⁸ Alternative sentencing substitutes participation in agency programs for fines and custody.³⁹ These activities include life-skills, chemical dependency or AA/NA meetings, computer or English literacy classes, training or search for employment, counseling, or volunteer work.⁴⁰

The court agreement of “no custody” acknowledges the participant’s efforts in their program activities to satisfy Court requirements.⁴¹ As implemented by jurisdictions such as Detroit, Michigan, the homeless court is “opt-in” and local homeless shelters and agencies are the gateway for participants to enter this Court.⁴²

Homeless persons who want to appear before this Court, rather than go through the normal court procedures, must sign up through one of a number of local shelters.⁴³ Prospective participants work with a shelter caseworker to design a plan to move towards self-sufficiency.⁴⁴ The shelter representatives write advocacy letters for each client.⁴⁵ The advocacy letter is symbolic of the

³⁴ Heybach, *supra* note 8.

³⁵ *Homeless Courts*, THE AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/public_services/homelessness_poverty/initiatives/homeless_courts.html. (last visited Nov. 11, 2015)

³⁶ *Id.*

³⁷ Heybach, *supra* note 8.

³⁸ ABA, *supra* note 35.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ ABA, *supra* note 35.

⁴⁵ *Id.*

relationship between the client and the agency while including a description of the program, the client's start date, and accomplishments, programs completed and insight into the client's efforts.⁴⁶

While homeless court programs have helped to address some homeless issues in jurisdictions where they have been implemented, planning for such a court in Chicago is still preliminary.⁴⁷ The Chicago Coalition for the Homeless is still conducting research in an effort to create a model that will address the specific needs of the City of Chicago, its homeless population, and other interested parties.⁴⁸ However, the ultimate goal of the Coalition is to introduce and implement a model which connects homeless individuals to services, houses them, and helps them to avoid criminal consequences that perpetuate the cycle of poverty.⁴⁹

CONCLUSION

A homeless court can only do so much to address homeless individuals' issues. The homeless court only tackles the court end of criminalization; it does not address the treatment of homeless individuals by police, streets and sanitation workers, or other city officials who are still the front end of the legal-justice system.

It is admirable and beneficial to connect individuals to the services they need, but so long as mental health and other services in Illinois continue to be overburdened and under-resourced, they may be unable to take on additional, and now court-mandated clients. Service providers in Chicago already lack the resources to assist all homeless individuals. In order for a homeless court to be successful in Chicago, it needs to be accompanied by new or expanded programs to meet the needs of the City's homeless population.

⁴⁶ *Id.*

⁴⁷ Heybach, *supra* note 8.

⁴⁸ *Id.*

⁴⁹ *Id.*