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ABOUT THIS MANUAL

Jailbirds in the Sunshine State: Defending Crimes of Homelessness examines common laws used to arrest and jail homeless people for conduct essential to their survival and provides detailed analysis of constitutional and other legal defenses specific to representing homeless clients charged with such crimes. The target audience for this training manual is public defenders and pro bono criminal

defense lawyers in the state of Florida, although the manual contains information that may be useful to civil lawyers in bringing lawsuits to protect the rights of homeless clients. Because the target audience is lawyers in Florida, there is a primary focus on legal precedent from Florida and the Federal Eleventh Circuit. This manual is not intended as a substitute for legal advice.



Introduction

Instead of investing in proven solutions to end homelessness, Florida leads the nation in using the criminal justice system to punish homeless people for conduct they need to do to survive such as sleeping, camping, bathing, public urination, trespass, sitting/lying down, loitering, storage of belongings, and asking for money. These charges clog court dockets across the state as some of our most vulnerable residents, often charged with patently unconstitutional ordinances, face an endless cycle of arrest, jail, and homelessness. These misguided policies come at tremendous cost to taxpayers, and create barriers to accessing the very things needed to exit homelessness—housing, jobs, and public benefits—due to lengthy arrest records and criminal debt.

Public defender's offices find themselves on the front lines of this misguided war against homeless people. This training manual is designed to provide needed reinforcements to the lawyers who are the last line of defense in stopping this cycle of arrest, jail, and the streets (repeat). This manual examines common laws used to arrest and jail homeless people in Florida and provides detailed analysis of constitutional and other legal defenses specific to representing homeless clients charged with such crimes. It is not intended as a treatise on constitutional law, for example, but instead examines constitutional doctrines from the perspective of how they apply to the legal and factual circumstances of homeless people.

Chapter 1 (“Homeless & Hungry, Please Help!”) is a detailed analysis of First Amendment jurisprudence as it relates to panhandling (or soliciting employment, or engaging in street performance), which is protected speech. Recent developments out of the Supreme Court have led to a reexamination of panhandling ordinances and many are being struck down by the courts as unlawful content-based restrictions on speech. This line of cases is essential knowledge for any public defender's office as similar laws, with similar constitutional deficiencies, are on the books in every judicial circuit in Florida.

Chapter 2 (“Sleeping Like A Criminal”) analyzes the legal implications of criminalizing the basic, life-sustaining conduct of sleep which is an unavoidable part of the condition of being human. This chapter discusses Eighth Amendment jurisprudence related to prohibitions against status crimes and recent legal filings by the U.S. Department of Justice arguing that sleeping ordinances, as applied to homeless persons who have no alternative to sleeping outside, violate the Eighth Amendment's proscription against cruel or unusual punishment. Also in this chapter is a discussion of the necessity defense and its application when defending homeless people charged with sleeping or other conduct essential to survival.

Chapter 3 (“Move Along ... Move Along”) discusses violations of a homeless person's freedom of movement, including an analysis of the

fundamental right to intrastate travel in Florida and the constitutionality of loitering laws.

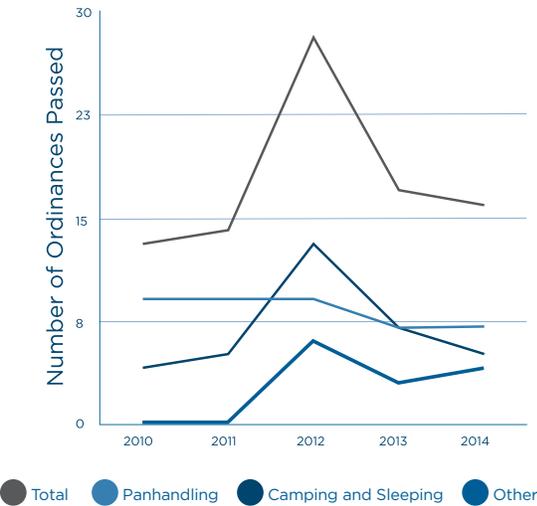
Chapter 4 (“No Rest for the Weary”) analyzes potential legal challenges to “Sit/Lie” ordinances including vagueness, First Amendment, Substantive Due Process, Right to Travel, Equal Protection, and the Eighth Amendment. This chapter also includes a discussion of potential violations of the Americans with Disabilities Act caused by “Sit/Lie” ordinances.

Chapter 5 (“Homeless Prohibited”) is devoted to trespass, which is a particularly harmful use of the criminal justice system because it involves banning physical presence. At a certain point, homeless people have no right to exist, simply because there is no place where they can lawfully be. This chapter discusses the use of trespass warnings to exclude homeless people from public places (such as city parks), examines common factual defenses to trespass charges, and provides tips on preparing a defense.

Chapter 6 (“The Good Samaritan Goes to Jail”) highlights a new twist in the government's quest to eliminate the visibility of homelessness from public space: criminalizing the efforts of people who wish to share food with homeless people in public spaces either as political protest, as an act of charity, or as an exercise of their religion. This chapter discusses the evolving caselaw in this area.



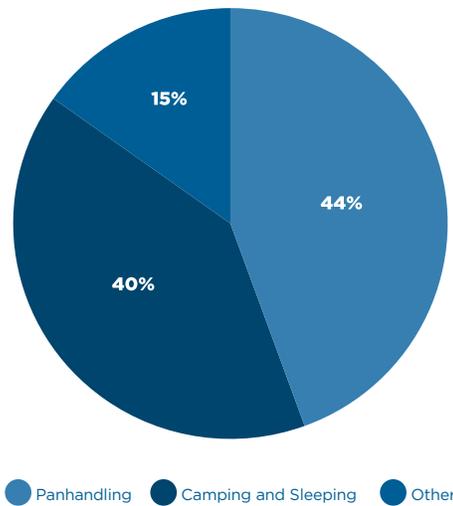
Anti-Homeless Ordinances Per Year



Florida, County, and Municipality Ordinances, 2010-2014

From 2010-2014, 79 new anti-homeless ordinances were passed. These ordinances were classified as either anti-panhandling, anti-camping/sleeping, or other. Here it is shown how many of each type of ordinance passed in a given year.

Anti-Homeless Ordinances



Florida, County, and Municipality Ordinances, 2010-2015

88 new anti-homeless ordinances were passed by Florida counties and municipalities from January 2010- September 2015. The majority of the ordinances dealt primarily with camping/sleeping and panhandling/soliciting with the remaining ordinances prohibiting public urination/defecation, sitting/lying down, public feedings, and obstruction of sidewalks.

Chapter 7 (“Home, Sweet Home”) provides an explanation of the tenancy rights of nontransient motel residents. Although legal advocacy regarding tenancy rights is traditionally the domain of civil lawyers, it has important intersections with criminal law in the areas of Fourth Amendment privacy rights, and whether arrests for trespass or as “undesirable guests” under Chapter 509 of the Florida Statutes are lawful.

Chapter 8 (“Hands Off My Property”) is dedicated to the Fourth Amendment and unreasonable searches as applied to homeless people, their personal property, and the places where they tend to reside. This chapter contains a detailed discussion of a homeless person’s expectation of privacy in personal effects, tents, housing shared

with others, hotels/motel rooms, homeless shelters, and cars. This chapter also provides information about unlawful seizures that do not involve searches, and avenues for redressing permanent destruction of property rights.

Chapter 9 (“Prohibition Era Revisited”) discusses defenses to open container and possession of alcohol charges. This chapter also analyzes the connection between alcoholism and homelessness, and the implications for the criminal justice system.

Chapter 10 (“Homes, Not Handcuffs”) provides policy advocacy talking points and resources for use in advocating for constructive solutions to end homelessness (homes) rather than destructive policies of arrest and incarceration (handcuffs).

In addition to providing this manual to public defender’s offices and pro bono criminal defense lawyers in the state of Florida, Southern Legal Counsel’s Ending Homelessness Project is available to provide technical assistance and training in developing strategies, defenses, and constitutional challenges similar to the ones described in this manual. The criminalization of homelessness thrives on expedient disposition of cases, ensuring the facts and legal grounds of such charges are never challenged in court. Our organization is ready to stand with you to convince communities that our clients need homes, not handcuffs. And if we cannot convince them, we will fight together to defend our clients’ rights in court.