

Homeless say booming cities have outlawed their right to sleep, beg and even sit

By **Justin Jouvenal** June 2, 2016

SARASOTA, Fla. — David Cross had been such a fixture at Five Points Park, a patch of green in the prospering heart of this city, that residents dubbed the homeless man “the mayor.”

But that was before the city removed the park bench where he held court. Before a new panhandling ordinance made it illegal to ask for money in most places. Before he was given a written infraction for sleeping outside.

So the 66-year-old did what an increasing number of homeless people across the country are doing: He sued, claiming that the city had virtually regulated away his right to sleep and scratch together an existence. He and others in similar suits argue that homelessness has been effectively criminalized in some cities.

The lawsuits are, in part, a byproduct of the dazzling renewal of many downtowns, where new residents, tourists and businesses have come into conflict with the homeless as once-blighted corners have gained a fresh cachet.

Cities have enacted a wave of crackdowns and new laws against panhandling, camping and other activities associated with homelessness. They say such efforts help preserve the renewed vitality, curbing crime, health problems and behaviors that bother residents and disrupt business.

Between 2011 and 2014, the National Law Center on Homelessness & Poverty found that bans on sleeping in cars shot up 119 percent, citywide camping prohibitions jumped 60 percent, anti-loitering laws increased 35 percent and anti-begging laws increased 25 percent in a survey of 187 cities.

The push includes controversial measures such as bans on distributing food to the homeless, making it illegal to sit or lie in public and, in one city, a ban on using blankets outdoors. The latter law was reversed after an outcry.

Cross and some advocates argue that the approach is cruel, aimed at making the homeless disappear rather than addressing the issue. To them, it is another sign of the growing gap between America’s rich and poor.

“It’s not illegal to be homeless,” Cross said.

Sarasota, dubbed the “Meanest City in America” by advocates a decade ago for its ordinances, has been the scene of one of the fiercest and most anguished battles over homelessness in an era of urban renaissance.

The city’s balmy weather has drawn a large homeless population. On the streets, the contrast between panhandlers shaking cups and shoppers clutching bags from upscale boutiques is jarring.

City officials deny the allegations in Cross’s lawsuit and say that the city has moved to a progressive approach on homelessness in recent years. Officials have created teams to engage the homeless, adopted a comprehensive plan to deal with homelessness and are looking to create new housing.

“We still have work to do but are making gradual progress,” City Manager Tom Barwin wrote in an email.

A nationwide fight

Similar legal fights are playing out across the nation as the homeless challenge anti-panhandling ordinances, anti-camping laws and the seizure of their belongings in sweeps.

In Virginia, more than a dozen homeless alcoholics represented by the Legal Aid Justice Center sued the state’s prosecutors in March, claiming Virginia’s “habitual drunkard” law criminalizes addiction among those on the street and violates their constitutional rights.

The law allows prosecutors to ask the courts to designate someone a “habitual drunkard” if they have been shown to have a drinking problem. After the designation, the person can be jailed if they are caught with alcohol. Prosecutors say the law keeps drunks off the street. They have used the designation in more than 1,200 cases in recent years.

In Honolulu, a group of homeless people sued the city last fall, after what the mayor called a “war on homelessness” prompted by complaints from residents and tourists. The city passed a law banning sitting and lying on sidewalks, closed parks at night and dismantled one of the nation’s largest homeless encampments.

The lawsuit accused the city of illegally trashing medicine, identification papers and food storage during the sweep, leaving homeless children hungry. A settlement was recently reached that forbids the city from seizing certain items.

The homeless have also challenged broad anti-panhandling laws in Springfield, Ill., Oklahoma City and Sacramento County, Calif., on grounds it violates freedom of speech. Some locales have altered their laws in response.

The increase in laws targeting the homeless, and the legal battles surrounding those efforts, have drawn the attention of the Obama administration.

Last August, the Justice Department filed a brief in a Boise, Idaho, lawsuit challenging that city's camping ordinance. The case was dismissed over an issue of standing, but the federal officials argued that it was unconstitutional for police to cite the homeless for sleeping outdoors when there is insufficient shelter space.

And last fall, the Department of Housing and Urban Development announced that it would consider whether a municipality has implemented a strategy to prevent the criminalization of homelessness when awarding some grants.

Where to go?

Cross said he was a successful machinist before the recession hit and he lost his job and home. He still remembers the day he became homeless: June 5, 2008.

Cross eventually staked out a regular spot on the bench in Five Points Park, near an opera house and luxury condominiums. But after complaints about the homeless, the city removed the benches in 2011.

Cross said it was the start of a tougher time for the homeless in Sarasota, crystallized by headline-grabbing interactions between police and the homeless.

In 2012, Sarasota police arrested a homeless man for "theft of utilities" for charging his cellphone in an outlet at a city park. A judge dismissed the charge. The same year, the American Civil Liberties Union obtained messages between officers who described themselves as "bum hunters."

And last year, the department put an officer on administrative leave after video surfaced of him tossing peanuts into the mouth of a handcuffed homeless man, like a person might feed a dog.

Cross reached his breaking point one night last August. He said he was roused by a police officer about 4 a.m. outside the city's main library, which he said was his refuge from heat, robberies on the street and harassment by police.

Cross was given an infraction for lodging outdoors on a night that he said the officer told him there was no room at Sarasota's only homeless shelter. Cross said he wondered: Where was he supposed to go?

He sought out the ACLU, which filed the lawsuit on behalf of Cross and five other plaintiffs. The suit claims that Cross's experience is common.

The city criminally prosecuted 882 individuals in 2013 and 2014 under its lodging ordinance and another that prohibits trespassing in parks after dark, according to the lawsuit. On many of those nights, the lawsuit alleges, the Salvation Army shelter was at or above its zoned capacity, which includes 260 beds and dozens of mats on the floors of a cafeteria and hallways.

Sarasota has more than 800 homeless people, including most of the approximately 180 who are chronically on the streets in the city and the surrounding county.

The plaintiffs argue that it is a violation of the Eighth Amendment's ban on cruel and unusual punishment to cite the homeless for sleeping outdoors on nights when the shelter is full.

Even if the shelter had more room, Cross said the city's expanded anti-panhandling law made it difficult to raise the nightly fee for a bed. The law enacted in 2013 bars soliciting at bus stops, cafes, parks, garages and a host of other locations. The lawsuit argued that the ordinance was a violation of free-speech rights.

Michael Barfield, vice president of the ACLU of Florida, said the city's approach has made it tougher for people such as Cross to get off the street. Arrests and convictions can make it more difficult to get a job and housing, and can lead to the loss of a driver's license.

"This is perpetuating the cycle of homelessness," Barfield said.

An 'evolving' approach

Sarasota officials reject the claim that the city is criminalizing homelessness, saying that the lodging ordinance and others are necessary and are enforced legally and humanely.

The Sarasota Police Department's "policy and practice is to offer a shelter bed to the homeless individual prior to any consideration of warnings, tickets or enforcement," Barwin wrote of the lodging ordinance.

Barwin said many chronically homeless people refuse to go to the city's only shelter or accept other services. He said the Salvation Army always finds room for the homeless, despite the crowding on some nights.

Barwin said the ordinances arose out of problems, not from an effort to make the homeless go away. He said encampments have created large volumes of unsanitary waste and trash. And crime has posed dangers for the homeless and city residents alike.

In recent years, one homeless man decapitated another in a camp during a fight over spilled food. Another stabbed a man at a library, and a merchant and a homeless man went hurtling through a window during an altercation on a downtown street. Sarasota police say homeless-related issues are one of their most common calls for service.

Barwin said the city has "evolved" on homelessness in recent years, moving away from simple crackdowns. He pointed to a multi-pronged plan adopted last year that includes a jobs program, an initiative that puts the homeless into apartments and more mental-health caseworkers.

Among the centerpieces of this new approach are Homeless Outreach Teams, joint patrols of police officers and social workers who engage the homeless on the street and try to get them into services. Police said they made 5,300 such contacts in two years and got about 150 people into a shelter, although they say it is too soon to say how many have stayed off the streets permanently.

Cross and the other plaintiffs won one concession. In response to the lawsuit and a Supreme Court ruling, the city recently revised its panhandling law to allow solicitation in more places.

Some in Sarasota think a tough approach is exactly what is needed — at least toward some homeless people.

Ron Soto, who owns a downtown eyewear store and is president of the local merchants association, blames a hard-core minority of the homeless people that he calls “vagrants” for disrupting business, drinking in public and scaring tourists.

Soto has created a series of signs, one of which reads: “DON’T GIVE IN TO PANHANDLING...93% OF THE MONEY YOU GIVE GOES TO DRUGS & ALCOHOL.”

Some businesses display the signs, and Soto said he is planning to pay people to hand out anti-panhandling fliers in hot spots for homelessness. He also plans to collect money to give to established programs that help the homeless.

“We are one of the most enabling towns in Florida,” Soto said.

Win or lose, Cross said he hopes his lawsuit spurs Sarasota officials to action.

He would like the city to build a downtown emergency shelter, which a consultant recommended the city do in 2013. The project got bogged down in politics over where to locate it, as well as other issues.

“It’s getting the city to do something,” Cross said of the lawsuit.

Magda Jean-Louis contributed to this report.

