Fighting The Criminalization of Unhoused People with Disability Rights

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Training Agenda

• Introduction
• The Growing Population of Unhoused People
• Impact of Criminalization
• Relevant Disability Rights and Federal Laws
• Overview of Cases
• Questions?
Criminalization of Unhoused People
**Question:** How did we get here?

**Answer:** Greed over Need

**Rising cost of housing/lack of affordable housing**
- In 2021, sale price of a home increased 17%
- Single Family Home:
  - rent increased over 13% = average of $2,496

**Stagnant wages**
- From 1985 to 2020, the national median rent price rose 149%, while overall income grew 35%
- People with disabilities may be getting subminimum wages or a meager SSI/SSD.

**6% increase in homelessness nationwide**
- Unsheltered population increased 20%
- From 2007-2017, encampments have increased by 1,342%
California Stats

- Population of Black Residents: 5.5%
  - Percentage of the Unhoused: 25%
- Population of Unhoused People over 50 years of age: 45%
- Population of Unhoused People with Disability: 45%
- Los Angeles: Varying estimates indicates as much as 76% of the unhoused population, have a disability, including substance abuse, or poor health.
- Problems exacerbated with inaccessible shelters.
Criminalizing Homelessness

• No correlation exists between the growth of encampments and increase crime, other than the crime of being unhoused.

• Common Laws Criminalizing Homelessness
  • Banning sleeping, camping, and storing items.
    • LA: Cannot impede passage, as provided by ADA
  • Banning panhandling
  • Banning living in vehicles or RVs
  • Quality of Life Laws

• Some laws are done in the name of health & safety or disability rights.
Impact of Criminalization

• Since September 2021, California tore down approximately 100 encampments a month and removed a total of 1,213 tons of “trash”.

• It costs about $31,000 a year to criminalize a person.

• It cost approximately $10,000 a year to provide supportive housing.

• Unsheltered people are more likely to be victims of police violence, particularly if they are black.
Relevant Laws & Cases
Federal Law

- Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.
- Fair Housing Amendments Act, 42 U.S.C § 3601 et seq.
- 8th Amendment, Cruel and Unusual Punishment & Excessive Fines
- 4th Amendment, Illegal Search and Seizures
- 14th Amendment
  - Due Process
  - Equal Protection
  - State-Created Danger
- Right to Travel
Disability Law

• Title II of the ADA provides that: "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

• A public entity may not, directly or through contractual or other arrangements, deny a qualified individual with a disability the opportunity to participate in or benefit from the program, or use criteria or methods of administration that have the effect of discriminating on the basis of disability. 28 C.F.R. §§ 35.130(b)(1)(i),(3)(i).

• Public entities are required to “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7)(i).
Problematic Use of Disability Law

• Some business, NIMBYs, and people with competing interests use disability law to clear encampments and cause other harms.

• *Tozer v. Portland*
  - Lawsuit brought to clear encampments from sidewalks.
  - Based on violations of ADA and Section 504
    - Denial of benefits of services, programs, or activities.
  - Does not seek any meaningful help for unhoused people.
Where do we go Berkeley v. Caltrans (9th Cir.)?

- Lawsuit challenged 72 hour encampment clearing notice and brought ADA claims against Caltrans for not providing more time as a reasonable accommodation to move from an encampment.

- **Court Ruling:** Allowed clearing of encampments in Berkeley and Emeryville.
  - No need to provide alternative housing.
  - 6 month delay = fundamental alteration of the work of Caltrans

- **Positive Outcomes:**
  - Court did not require individualized assessment of each person’s disability.
  - Acknowledged group as having disability
  - ADA covers public entity’s program to clear encampments.
  - Right to reasonable accommodations for encampment clearings.
Reed v. Town of Gilbert (SCOTUS)

• Gilbert, Arizona passed an ordinance that put greater restrictions on signs advertising religious services.

• Court Held: Cannot restrict content of a sign and to do so will be held to strict scrutiny.

• This case has been successfully used to challenge panhandling laws.

• Norton v. City of Springfield
  • Seventh Circuit held that that an ordinance restricting oral requests for donations was content based and presumptively unconstitutional.
**Martin v. City of Boise (9th Cir.)**

- Boise ticketed six individuals for sleeping in public spaces. The City also closed a shelter, thus the individuals had no other options.

- **Court Held:** Criminalizing sleeping, sitting, etc. in public spaces is cruel and unusual punishment when people have no other option (i.e. no shelter beds).

- Only applies to criminalization (civil penalties may be ok)

- Cannot have total prohibition on being outside, but certain limitations would be ok.
**Glover v. City of Laguna Beach**

- City ordinance prohibited sleeping, camping, in public spaces, like beaches and parks.

- Local shelter was inaccessible to people with disabilities.

- Brought Claims under ADA, Section 504 of the Rehabilitation Act, 8th Amendment, 14th Amendment, California Constitution Section 7 and 17

**Settlement:**
- Process for reasonable modifications and appeal process if denied.
- Training to help people with disabilities.
- Pilot program for separate sleeping facilities based on disability.
- Wheelchair lifts in vehicles
- Police officers training
Navarro v. City of Mountain View (N.D. CAL.)

- City passed ordinance effectively banning RVs and other oversized vehicles from “narrow streets” for purposes of health and safety.

- Brought claims under ADA, 14th Amendment, 8th Amendment

- Settlement: Designated three miles of parking available to RVs without overnight restrictions, process for reasonable modifications, map showing available parking locations, and notice prior to towing.
Vannucci v. County of Sonoma (N.D. CAL.)

- City Passed Anti-Camping Ordinance, leading to the forced removal of several people with disabilities.
- Plaintiffs made reasonable accommodations request to postpone the planned sweep of an encampment, until adequate alternative shelter was available.
- The complaint alleged disparate impact claims and failure to accommodate,
- On July 12, 2019, the Northern District of California entered a stipulated preliminary injunction.
- **Court Held:** Before the City or County takes an enforcement action against an unhoused individual, they must first give reasonable notice and make an offer of adequate shelter.
- Adequate shelter based on a variety of factors, including an individual’s specific, disability-related needs, their having a service animal or pet, their gender, among others.
Questions? Comments?