

NO SUCH PLACE AS “AWAY:”

WHY BANISHMENT IS A WRONG TURN ON THE PATH TO BETTER AND SAFER CITIES

A White Paper

**by the
American Bar Association Commission on Homelessness & Poverty**



AMERICAN BAR ASSOCIATION

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INTRODUCTION

In February 2007 the American Bar Association House of Delegates approved Recommendation 106¹ which opposes the enactment of, and supports the repeal of, laws and policies that punish persons experiencing homelessness for carrying out otherwise non-criminal life-sustaining practices or acts in public spaces, such as eating, sitting, sleeping, or camping, when no alternative private spaces are available; as well as those that punish persons for providing food, shelter, or other critical assistance to people who are homeless. The ABA Commission on Homelessness & Poverty utilized the policy as the foundation for an initiative aimed at educating communities about the negative effects of criminalizing homelessness and highlighting best practices and alternatives to criminalization efforts. As one part of the Alternatives to the Criminalization of Homelessness Initiative, the Commission examined the practice of banishing homeless people and drafted this White Paper to highlight the harmful practice of banishment as well as effective alternative solutions.

The Commission thanks Tulin Ozdeger, a Commission member and attorney at the National Law Center on Homelessness & Poverty for drafting the White Paper.

¹ The full text of the policy is available at <http://new.abanet.org/homeless/Pages/abapolicypositions.aspx>.

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SUMMARY

In their quest to address homelessness and public order, some cities have taken a wrong turn by adopting and implementing a variety of banishment practices that criminalize individuals’ otherwise lawful presence in essential areas.

For people who are poor or homeless, banishment only exacerbates and prolongs their poverty and homelessness. The policies burden the most vulnerable members of the community, placing substantial obstacles along the path to housing, health and self-sufficiency. While the effects on those banished are often debilitating and long-lasting, the alleged benefits are ephemeral. Banishment provides, at best, temporary and extremely localized movement, with marginalized persons shunted from block to block, or sent through a short, repeating cycle of arrest, detention and release. Furthermore, the criminal processes that enforce banishment orders create a significant drain on city resources while exacerbating the very conditions that banishment is intended to send “away.”

Banishment stems from the faulty belief that if the experience of homelessness or extreme poverty is made painful enough, then individuals targeted will (1) choose to stop being homeless and become self-sufficient; or (2) choose to relocate to an area that is less hostile to their peace and survival. Yet research documents that virtually no one chooses extreme poverty or homelessness, and those that are homeless rarely have the wherewithal to relocate away from essential support services located in areas from which they have been banished. Rather than helping address the cause or even effects of homelessness, banishment merely adds criminal sanctions to the burdens of an extremely vulnerable population.

BANISHMENT PRACTICES

Trespass Admonishments combine a city’s police power with the supposed financial interests of the business district. In many cities, such as Seattle, Dallas, Portland, OR, Goldsboro, NC, Aurora, IL, and St. Petersburg, FL, local police encourage private business owners to designate local police officers as their agents, authorizing these public officials to banish “unauthorized” individuals from private property. Officers typically exercise unfettered discretion in banishing individuals from places for up to one year. If the person banished returns, she is subject to arrest, prosecution, and conviction. Under Seattle’s system, neighboring private business owners are urged first to give police permission to order “undesirable” individuals to stay away from private property that is normally open to the public. Businesses are then grouped together to form trespass groups, which extend an order to stay away from one establishment to all other businesses in that group. These

² Unless otherwise stated, the views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy or position of the American Bar Association.

trespass groups include food markets, pharmacies, banks and other shops. Trespass admonishments are also used to bar people from a wide array of public and semi-public places, including the public transportation system, hospitals and religious institutions, libraries and recreation centers, neighborhood stores, and social service agencies.

Parks Exclusion Orders, commonly issued in cities such as Portland and Ashland, Oregon and Seattle and Tacoma, Washington, give local police officers discretionary, summary authority to banish individuals observed engaging in a prohibited activity (not limited to criminal acts) within a park for up to one year. The exclusion may apply not only to additional parks in the city and park facilities such as public restrooms, but may also include the surrounding public sidewalk and adjoining bus stops. Anecdotal evidence suggests that Parks Exclusion Orders for alcohol and sleeping infractions are primarily issued against those who appear to the officers to be homeless.

Banishment orders are often issued and/or enforced without regard for whether the order will bar the individual from her home or workplace, or obstruct her commute or access to services. There is no effective method of appealing the police-issued Trespass Admonishments. In Seattle, while Parks Exclusion Orders have an appeals process, the phone number to call for an appeal has long been disconnected. There are no appeals procedures even specified for admonishments outside the parks.

BANISHMENT EXACERBATES AND PROLONGS POVERTY AND HOMELESSNESS.

Like other criminalization measures implemented against those experiencing poverty or homelessness, banishment is counterproductive, exacerbating the effects of homelessness rather than alleviating poverty and facilitating movement out of homelessness.

- **Banishment practices disrupt access to necessities for individuals experiencing homelessness or living in poverty.** Banishment practices separate vulnerable persons from basic necessities, including food, housing, jobs and job training, physical and mental health services, drug treatment programs, distribution of clothing and toiletries, and other various supportive social services. Downtown areas, which are frequently included in trespass admonishments, are hubs for essential services to the everyday life and survival of vulnerable populations. Knowledge of a particular neighborhood, and the resources and services available there, are powerful draws for individuals who defy banishment orders and avoid relocating to unfamiliar areas. Many individuals rely on the food, clothing and hygiene kits distributed at local parks or downtown sites, and risk arrest to secure these basic necessities.

For example:

- A man who was homeless could not live in housing offered to him by a social services organization because he was banished from the area.
- A man was trespassed from an area where he had previously accessed day jobs.
- Several individuals have been barred from using the entire public transportation system for drinking at a bus stop, or being asleep on a bus.
- A man must travel several blocks from his home, past local businesses, to complete basic shopping errands because he was banished from nearby businesses.

Banishment can lead to criminal records, which become barriers to individual's movement out of homelessness and poverty. When banished individuals are arrested for their otherwise lawful presence in an area, they may acquire criminal records for behavior that is not criminal. This is particularly odious because most exiling orders are issued without an adjudication of guilt. Access to housing, employment, and job training programs is hampered when the applicant has a criminal record. Furthermore, arrests for violation of the banishment orders lead to absences from employment and training services which, in turn, can result in termination of employment or dismissal from training programs. Obstructing individuals' access to legal employment and job training opportunities can push some to pursue, or return to, illicit methods of earning an income.

For example:

- One-strike laws for public and assisted housing residents mean an individual living in poverty can become homeless for any "criminal activity," even an arrest that does not result in a conviction can be grounds for eviction.

Banishment practices interfere with individuals' physical and mental health treatment. Mental or physical illness or addiction frequently contribute to homelessness and poverty, and access to treatment is, in turn, dependent on access to services in downtown areas – areas which are often included in banishment orders. Progress in treatment is imperiled by interruptions caused by banishment. Situations that might be minor setbacks to individuals less vulnerable become major complications for those whose well-being is already compromised or made precarious by the mental, physical, and financial stressors of homelessness and poverty.

For example:

- A veteran who was homeless was trespassed from all federal buildings, including the Veteran's Administration Building providing medical services.
- A recovering heroin addict relapsed when he was trespassed from the methadone clinic for sleeping under their carport.

Banishment increases the isolation and vulnerability of individuals experiencing homelessness and poverty. Individuals experiencing homelessness, or who are at risk of homelessness because of living in extreme poverty, are extraordinarily vulnerable to a variety of harms. Informal social networks and personal relationships form between otherwise isolated individuals, providing emotional support and serving to ensure the safety of the group members. Living without established or secure shelter can leave people exposed to harsh weather and hostile interactions. Finding a location that provides some defense against the elements and a community that can provide vital mental as well as physical support can be very difficult, and persons forced to abandon a known safe haven are at increased risk of harmful exposure and attack.

For example:

- Several individuals relate that they defy their banishment orders because being near others who know them protects them from random crime or hate-motivated attacks.
- Using a Trespass Admonishment, police regularly roust a mentally ill man from his shelter under a bridge.

- For a veteran who is homeless and primarily lives in an isolated camp in the woods, regularly sharing the space of the parks he is legally banished from has a rehabilitative effect combating his anti-social tendencies.
- A Native American man states that he connects with his ethnic community, and the support that affords, by frequenting a park from which he is excluded.
- Many individuals who are homeless report that the areas they are banished from are essentially their homes, the only areas and lives that they know, and leaving is inconceivable.
- Banishment has exiled individuals from immediate family members, relatives and extended community, threatening ethnic and religious supportive ties.

BANISHMENT PRACTICES UNNECESSARILY AND EXCESSIVELY FINANCIALLY BURDEN TAXPAYERS.

The criminal justice system is an expensive and unwieldy tool to use in pursuit of such a limited result as shunting persons from one neighborhood to another. Because essential services and destinations are frequently within off-limits areas, individuals do not, or cannot, comply with the orders and maintain access to resources, services and support structures. Thus many, if not most, individuals who are banished are caught in the revolving door of the jailhouse. Any one individual in this cycle may cost taxpayers tens of thousands of dollars for repeated arrests and prosecutions for the “crime” of being in a public place. Where arrest and prosecution are directed against those who are mentally ill, the expense is even less justified, because the individuals banished often do not have the capacity to understand or obey the orders. A 2004 nine-city survey of the costs of jail, shelter, and supportive housing found that, on average, the costs to jail individuals are two to three times the costs of providing supportive housing or shelter.

For example:

- In 2005 the Seattle Police Department sent 1,947 criminal trespass arrests to the City Attorney’s office. Most of those arrests resulted in at least one day in jail awaiting an initial hearing, at which 67% were charged. Researchers estimate that these forms of banishment resulted in 10,070 days in jail in Seattle alone that year.
- Individuals under any type of trespass order are commonly arrested and prosecuted multiple times during the life of the order, generating expenses in the courts and detention facilities each time.
- Seattle repeatedly arrests many mentally ill individuals it considers “chronic trespassers” who seem unable to understand or comply with trespass orders. One officer expressed the opinion that a man arrested for his presence on the grounds of a medical facility didn’t understand the trespass warnings, and would likely return to the facility as soon as was feasible.
- Emergency hospitalizations for an addict who relapsed when banished from his drug treatment program cost a county approximately \$30,000.

ALTERNATIVES TO BANISHMENT PRACTICES PROVIDE DIRECT BENEFITS TO LOCAL BUSINESSES, INDIVIDUALS EXPERIENCING HOMELESSNESS OR POVERTY, AND THE COMMUNITY AT LARGE.

Business groups can play a positive role in helping to address the issue of homelessness. Instead of participating in trespass admonishment measures, business groups can put resources toward solutions to homelessness. Some business groups and cities have created programs that address both the concerns of local businesses and the needs of people who are homeless. When cities and the business community work with people who are homeless and advocate for solutions to homelessness, instead of punishing those who are homeless or poor, everyone benefits.

*Example: **Washington, D.C.*** Faced with an increasing number of people forced to live on the streets, the downtown business community in Washington, D.C., decided to create a day center for people who are homeless and who may not have anywhere to go during the day when shelters are closed. Through the Downtown D.C. Business Improvement District, business owners started and funded a day center that can serve up to 260 people per day, with indoor seating, laundry, showers, and a morning meal. The center also partnered with local service providers who come on site once or twice a week to provide medical, psychiatric, legal, and employment services, as well as housing counseling, substance abuse treatment, and case management. Business owners in D.C. financed the day shelter through a 1-cent tax for each square foot of property owned by a business. Although the center has been closed due to a sale of the property, the downtown BID is currently seeking another location for a day center.

*Example: **Daytona Beach, Florida*** In order to reduce the need for panhandling, a coalition of service providers, business groups, and the City of Daytona Beach began a program that provides participants who are homeless with jobs and housing. While in the Downtown Street Team program, participants are hired to clean up downtown Daytona Beach and are provided initially with shelter and subsequently with transitional housing. A number of participants have moved on from the program to other full-time jobs and housing.