Homeless Patrons and Libraries: Legal Issues

Tuesday, September 17, 2013

No:
- Sleeping
- Oversize bags
- Begging ....

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Legal Disclaimer

Legal information

Not legal advice!
Agenda

1. Overview and Legislative Update
2. Library Ethics and the Poor
3. Library Policy Framework : FEND
   - Rules based on Speech (NO, usually)
   - Rules based on Behavior (YES, usually)
1. Overview and Legislative Update

http://www.nlchp.org/view_report.cfm?id=366

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY
Lawyers Working to End Homelessness

NLCHP Publications

Criminalizing Crisis

The Criminalization Of Homelessness In U.S. Cities

With poverty at record levels and as many as 3.5 million people homeless each year, this report by the National Law Center on Homelessness & Poverty shows that more and more cities are making it illegal to be homeless.

Criminalizing Crisis analyzes local policies in 234 cities and demonstrates the startling trend toward criminalizing basic acts necessary for homeless persons’ survival, including eating and sleeping in public.

Of the 234 cities surveyed, the report shows that:

- 40 percent prohibit sleeping in public places;
- 33 percent prohibit sitting/lying in public places;
- 56 percent prohibit loitering in public places; and
- 53 percent prohibit begging in public places.

Among the 188 cities reviewed for both this report and the Law Centers 2009 report, major trends include the following:

- 7 percent increase in prohibitions on begging or panhandling;
- 7 percent increase in prohibitions on sleeping; and
- 10 percent increase in prohibitions on loitering.
California AB 5
The Homeless Person’s Bill of Rights and Fairness Act.

Right to move freely, rest, eat, share, accept or give food or water

Solicit donations in public spaces

Right to sleep, lie down, rest in public spaces

Public employees shall not be retaliated against by employer for offering available public resources to such as food, blankets, water

http://www.asmdc.org/members/a17/2013-legislation
On hold until January 2014

May 2013

*Passed Assembly Judiciary Committee

*Appropriations Committee put on hold $300 million hygiene centers

*Advocates vow to continue; say saves more than it costs

California AB 652
Child Abuse and Neglect Reporting Act: homeless children

Homeless child is not sufficient basis to report child abuse or neglect

“hard to imagine a youth desiring to be taken into police custody or returned by police to a home the youth has fled”

- Assemblyman Ammiano

http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0651-0700/ab_652_bill_20130912_enrolled.pdf
Are California Librarians Mandated Reporters?

California Penal Code lists mandated reporters PC Sect. 11165.7

Under specific circumstances, it’s possible:
(a)(4) public school
(a)(8) if supervising children, perhaps in a reading program
(a)(41) post-secondary school

Anyone is “permissible reporter”

Great training resources at http://mandatedreporterca.com

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

Source: email from California Department of Social Services (CDSS), Office of Child Abuse Prevention (OCAP)
Library Ethics and the Poor

The American Library Association promotes equal access to information for all persons, and recognizes the urgent need to respond to the increasing number of poor children, adults, and families in America.

...combination of limitations, including illiteracy, illness, social isolation, homelessness, hunger, and discrimination, which hamper the effectiveness of traditional library services.

...crucial that libraries have concrete programs of training and development are needed to sensitize and prepare library staff to identify poor people’s needs and deliver relevant services.

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http://www.ala.org/offices/sites/ala.org.offices/files/content/olos/toolkits/poorhomelessFINAL.pdf
Policies

Library policies can often differ in the way of providing equitable, accessible, and safe environments. Developing effective policies can help improve the quality of library services and help staff maintain a space that is beneficial for all users. When developing policies on sensitive topics, consider:

- Does the policy respect the rights of individuals under the First Amendment?
- Do library staff and patrons understand the policy and its impact on their behavior?

Use of Materials and the Internet

The library’s collections are available for borrowing or use in the library. The library provides a free, convenient, and safe environment for the community. Use of the Internet is subject to the rules and policies of the library. Any user who uses the Internet may be subject to the library’s policies.

- Does the library require the use of a filter?
- Does the library have Internet access?

Model Programs

Baltimore County (Mary.) Public Library
http://www.bpl.org/community/streetcard

In cooperation with the Baltimore County Public Library, the Baltimore County Commissions for the Homeless, the Street Card provides information and assistance to the homeless.

Denver (Colo.) Public Library
http://www.denverlibrary.org

The Denver Public Library’s Street Card program provides library services to homeless individuals.

Pima County (Ariz.) Public Library
http://www.library.pima.gov/community/guides/homeless.php

The Pima County Public Library provides information and resources for homeless individuals.

San Francisco (Calif.) Public Library
http://www.sffpl.org

The San Francisco Public Library provides information and resources for homeless individuals.

Queens (N.Y.) Library
http://www.queenslibrary.org

The Queens Library provides information and resources for homeless individuals.

OLOS Resources for Libraries
http://www.ala.org/offices/sites/ala.org.offices/files/content/olos/toolkits/poorhomeless_FINAL.pdf

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About Us
Saturday October 17, 2009

In 1990, the American Library Association adopted Policy 61, Library Services for the Poor.

This “Poor People’s Policy” was developed to ensure that libraries are accessible and useful to low-income citizens and to encourage a deeper understanding of poverty’s dimensions, its causes, and ways it can be ended.

In 1996, members of the Social Responsibilities Round Table (SRRT) formed the Hunger, Homelessness & Poverty Task Force to promote and implement Policy 61 and to raise awareness of poverty issues.

Since then, the task force has …

- mounted major conference programs
- secured policy-support from ALA Presidential candidates
- initiated a SRRT resolution on poverty-related subject headings
- distributed resource information
- encouraged the ALA Office for Literacy & Outreach Services (OLOS) Advisory Committee to create a Poverty Subcommittee
- published a first-ever statement on class and libraries in American Libraries
- inspired the publication of Poor People and Library Services (McFarland, 1998), edited by former task force chair Karen Ventura
- and coordinated poverty-focused surveys of ALA units and members in 2007.
Infopeople Webinar

WHAT DO I DO NOW?:  [May 2013]

Handling **Challenging Situations** with Mentally Ill and Homeless Library Users

Karen Strauss

Kathleen Lee

Leah Esguerra

San Francisco Public Library

http://infopeople.org/training/what_do_i_know_part_2

Positive approach on partnerships, effective limits and kindness
3. Library Policy Framework

- Free Speech
  - tread carefully
- Equal Enforcement
- Notice
- Due Process (Appeals)

FEND off lawsuits
Free Speech or Behavior?

Library can set behavior rules

Check with attorney before restricting speech

Rule: No bare feet

Free Speech or Behavior?

Library can set behavior rules

Check with attorney before restricting speech

No bare feet is behavior not speech

Speech Outside of Library

Does the public have a right to solicit funds and leaflet outside the library?

Arguments for Restrictions

- Not purpose of library
- Captive audience
- ... separate “free speech zone”

COURT: Free Speech Rights

Sidewalks are public forums, unlike inside the library (limited public forum)

Public has right to solicit funds, at least with regard to future donations

Public has right to leaflet

Fact specific – plenty of room to enter/exit library

More Speech

Does public have a right to offensive coarse utterances, gestures or displays, abusive language towards another?


Does public have a right to offensive coarse utterances, gestures or displays, abusive language towards another?

YES. Vague. Constitutionally protected speech.

Panhandling Update

Several lawsuits

Most Recent: Michigan Anti-Begging Statute

Sign: “Cold and Hungry, God Bless.”

Ask a person on the street: “Can you spare a little change?”

See also http://lawprofessors.typepad.com/conlaw/2013/08/sixth-circuit-begging-protected-by-first-amendment.html
Begging is Free Speech. Protected by the Constitution (6th Cir.)

Ensure Procedural Safeguards

May not leave it to “whim of administrator” – objective standards

*Equal* Enforcement

*Notice*

*Due* Process (appeals)
Enforced Equally

- Sit-in at Audubon Regional Library (Clinton, LA)
- Violation of state breach of peace law

Supreme Court:
Law violated Equal Protection in U.S. Constitution

Brown v Louisiana, 383 U.S. 131 (1966)
... I had a back pack and a sleeping bag with me - both nearly brand new and completely out of people's way, a security guard came by with a measuring tape - measured both bags - and declared that their total length exceeded limitations and that I'd have to take them out of the library.

Later that same day, a couple kids with cello cases came rolling into the library, right past the guards, and the guards said nothing to them about their oversized items.
Library Cards and Shelter Addresses

Consent Order Settlement Agreement

Patrons with temporary residences treated equally
(had been limited to 2 items)

Doe v. Worcester Public Library, Case No. 06-40133, Dist. MA, Consent Order, Dec. 21, 2006

Notice to Patrons

–Written, posted
–Not vague

“Unwritten rules lend themselves to a myriad of problems, none the least of which is proof of its existence…”

**Kreimer case**
Patrons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building...


**Armstrong case**
Objectionable appearance (barefooted, bare-chested, body odor, filthy clothing, etc.) ... or if his or her appearance "interferes with the orderly provision of library services."

Hygiene Policies
Two Outcomes

Kreimer case
Patrons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building.


Library won

Armstrong case
Objectionable appearance (barefooted, bare-chested, body odor, filthy clothing, etc.) can legally, if his or her appearance "interferes with the orderly provision of library services."


Patron won
Library Rule:
Patrons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building.

New Jersey Nuisance Law
"anything that unduly interferes with the exercise of the common right"

“Nuisance” is objective legal term.
Patron dress and personal hygiene shall conform to the standard of the community for public places. This shall include the repair or cleanliness of garments.

Objectionable appearance (barefooted, bare-chested, body odor, filthy clothing, etc.) ... or if his or her appearance "interferes with the orderly provision of library services."

**END - “Etc.”** depends on interpretation, no instructions to guards, no appeals process

**Enforcement, Notice, Due Process**
Sample Notification

Violators will receive a warning from and an opportunity to cease.

Repeat violations may result in suspension of Library privileges.

Appeal requests may be made in writing to the Library Director.

Further appeals may be made to the Library Board.
Due Process (Appeals)

Courts look at

- *Liberty and First Amendment interests* in using libraries
- Risk of error
- Administrative burden

Bottom Line: Offer appeals
Two hour suspension

Library sued by patron suspended for two hours

Two hour suspension

Library sued by patron suspended for two hours

Court: minimal intrusion outweighed by library’s interest in safe and efficient operation

How much Due Process?

Woman complained man following her around, staring at her, making her uncomfortable

Banned for two years.

Sued Library over Due Process

Court: Public interest in immediate intervention

No pre-deprivation hearing required. Immediate intervention to prevent criminal behavior.

Post-deprivation, patron given:
- Immediate notice of charges
- Opportunity to see all evidence
- Opportunity for hearing with ultimate decision maker and even
- Right to be represented by counsel

Patron claimed right to confront accusers and right to jury

Court: Not required


Library wins

see also docs.justia.com/cases/federal/district-courts/ohio/ohsdce/3:2007cv00003/112491/65/0.html
May city destroy property left by homeless persons?

Nine homeless individuals sued when city seized and destroyed personal possessions left on sidewalk

City ordinance “no person shall leave personal property on any parkway or sidewalk”

*Lavan v. City of Los Angeles* (9th Cir. 2012) 693 F.3d 1022, *cert. denied*, 2013
Court: Not without DUE PROCESS

Absent objectively reasonable belief property is abandoned, presents immediate threat to public health or safety, is evidence of a crime or contraband

Must give prominent NOTICE and OPPORTUNITY TO BE HEARD

Maintain in secure location for 90 days

Lavan v. City of Los Angeles (9th Cir. 2012) 693 F.3d 1022, cert. denied, 2013
Summary

F - Free Speech  
tread carefully

E - Equal Enforcement

N - Notice

D - Due Process (Appeals)
Pending case

Patron claims guard would not let him in with his wet cart:
1½ x 1 x 3 ft paper bags, plastic bottle plus three plastic grocery bags

Claims: First Amendment
        Equal Protection
        Due Process

Court thus far:
   survived motion to dismiss
   “His complaint states a plausible First Amendment claim. Lu has a First Amendment right to access the Library.”

Recap

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Questions?

Comments?
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