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OP-ED CONTRIBUTOR

Is It Now a Crime to Be Poor?

By BARBARA EHRENREICH

IT'S too bad so many people are falling into poverty at a time when it's almost illegal to be poor. You won't be arrested for shopping in a Dollar Store, but if you are truly, deeply, in-the-streets poor, you're well advised not to engage in any of the biological necessities of life — like sitting, sleeping, lying down or loitering. City officials boast that there is nothing discriminatory about the ordinances that afflict the destitute, most of which go back to the dawn of gentrification in the '80s and '90s. "If you're lying on a sidewalk, whether you're homeless or a millionaire, you're in violation of the ordinance," a city attorney in St. Petersburg, Fla., said in June, echoing Anatole France's immortal observation that "the law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges."

In defiance of all reason and compassion, the criminalization of poverty has actually been intensifying as the recession generates ever more poverty. So concludes a new study from the National Law Center on Homelessness and Poverty, which found that the number of ordinances against the publicly poor has been rising since 2006, along with ticketing and arrests for more "neutral" infractions like jaywalking, littering or carrying an open container of alcohol.

The report lists America's 10 "meanest" cities — the largest of which are Honolulu, Los Angeles and San Francisco — but new contestants are springing up every day. The City Council in Grand Junction, Colo., has been considering a ban on begging, and at the end of June, Tempe, Ariz., carried out a four-day crackdown on the indigent. How do you know when someone is indigent? As a Las Vegas statute puts it, "An indigent person is a person whom a reasonable ordinary person would believe to be entitled to apply for or receive" public assistance.

That could be me before the blow-drying and eyeliner, and it's definitely Al Szekely at any time of day. A grizzled 62-year-old, he inhabits a wheelchair and is often found on G Street in Washington — the city that is ultimately responsible for the bullet he took in the spine in Fu Bai, Vietnam, in 1972. He had been enjoying the luxury of an indoor bed until last December, when the police swept through the shelter in the middle of the night looking for men with outstanding warrants.

It turned out that Mr. Szekely, who is an ordained minister and does not drink, do drugs or curse in front of ladies, did indeed have a warrant — for not appearing in court to face a charge of "criminal trespassing" (for sleeping on a sidewalk in a Washington suburb). So he was dragged out of the shelter and put in jail. "Can you imagine?" asked Eric Sheptock, the homeless advocate (himself a shelter resident) who introduced me to Mr. Szekely. "They arrested a homeless man in a shelter for being homeless."

The viciousness of the official animus toward the indigent can be breathtaking. A few years ago, a group called Food Not Bombs started handing out free vegan food to hungry people in public parks around the

nation. A number of cities, led by Las Vegas, passed ordinances forbidding the sharing of food with the indigent in public places, and several members of the group were arrested. A federal judge just overturned the anti-sharing law in Orlando, Fla., but the city is appealing. And now Middletown, Conn., is cracking down on food sharing.

If poverty tends to criminalize people, it is also true that criminalization inexorably impoverishes them. Scott Lovell, another homeless man I interviewed in Washington, earned his record by committing a significant crime — by participating in the armed robbery of a steakhouse when he was 15. Although Mr. Lovell dresses and speaks more like a summer tourist from Ohio than a felon, his criminal record has made it extremely difficult for him to find a job.

For Al Szekely, the arrest for trespassing meant a further descent down the circles of hell. While in jail, he lost his slot in the shelter and now sleeps outside the Verizon Center sports arena, where the big problem, in addition to the security guards, is mosquitoes. His stick-thin arms are covered with pink crusty sores, which he treats with a regimen of frantic scratching.

For the not-yet-homeless, there are two main paths to criminalization — one involving debt, and the other skin color. Anyone of any color or pre-recession financial status can fall into debt, and although we pride ourselves on the abolition of debtors' prison, in at least one state, Texas, people who can't afford to pay their traffic fines may be made to "sit out their tickets" in jail.

Often the path to legal trouble begins when one of your creditors has a court issue a summons for you, which you fail to honor for one reason or another. (Maybe your address has changed or you never received it.) Now you're in contempt of court. Or suppose you miss a payment and, before you realize it, your car insurance lapses; then you're stopped for something like a broken headlight. Depending on the state, you may have your car impounded or face a steep fine — again, exposing you to a possible summons. "There's just no end to it once the cycle starts," said Robert Solomon of Yale Law School. "It just keeps accelerating."

By far the most reliable way to be criminalized by poverty is to have the wrong-color skin. Indignation runs high when a celebrity professor encounters racial profiling, but for decades whole communities have been effectively "profiled" for the suspicious combination of being both dark-skinned and poor, thanks to the "broken windows" or "zero tolerance" theory of policing popularized by Rudy Giuliani, when he was mayor of New York City, and his police chief William Bratton.

Flick a cigarette in a heavily patrolled community of color and you're littering; wear the wrong color T-shirt and you're displaying gang allegiance. Just strolling around in a dodgy neighborhood can mark you as a potential suspect, according to "Let's Get Free: A Hip-Hop Theory of Justice," an eye-opening new book by Paul Butler, a former federal prosecutor in Washington. If you seem at all evasive, which I suppose is like looking "overly anxious" in an airport, Mr. Butler writes, the police "can force you to stop just to investigate why you don't want to talk to them." And don't get grumpy about it or you could be "resisting arrest."

There's no minimum age for being sucked into what the Children's Defense Fund calls "the cradle-to-prison pipeline." In New York City, a teenager caught in public housing without an ID — say, while visiting a friend or relative — can be charged with criminal trespassing and wind up in juvenile detention, Mishi Faruqee, the director of youth justice programs for the Children's Defense Fund of New York, told me. In just the past few months, a growing number of cities have taken to ticketing and sometimes handcuffing teenagers found on

the streets during school hours.

In Los Angeles, the fine for truancy is \$250; in Dallas, it can be as much as \$500 — crushing amounts for people living near the poverty level. According to the Los Angeles Bus Riders Union, an advocacy group, 12,000 students were ticketed for truancy in 2008.

Why does the Bus Riders Union care? Because it estimates that 80 percent of the “truants,” especially those who are black or Latino, are merely late for school, thanks to the way that over-filled buses whiz by them without stopping. I met people in Los Angeles who told me they keep their children home if there’s the slightest chance of their being late. It’s an ingenious anti-truancy policy that discourages parents from sending their youngsters to school.

The pattern is to curtail financing for services that might help the poor while ramping up law enforcement: starve school and public transportation budgets, then make truancy illegal. Shut down public housing, then make it a crime to be homeless. Be sure to harass street vendors when there are few other opportunities for employment. The experience of the poor, and especially poor minorities, comes to resemble that of a rat in a cage scrambling to avoid erratically administered electric shocks.

And if you should make the mistake of trying to escape via a brief marijuana-induced high, it’s “gotcha” all over again, because that of course is illegal too. One result is our staggering level of incarceration, the highest in the world. Today the same number of Americans — 2.3 million — reside in prison as in public housing.

Meanwhile, the public housing that remains has become ever more prisonlike, with residents subjected to drug testing and random police sweeps. The safety net, or what’s left of it, has been transformed into a dragnet.

Some of the community organizers I’ve talked to around the country think they know why “zero tolerance” policing has ratcheted up since the recession began. Leonardo Vilchis of the Union de Vecinos, a community organization in Los Angeles, suspects that “poor people have become a source of revenue” for recession-starved cities, and that the police can always find a violation leading to a fine. If so, this is a singularly demented fund-raising strategy. At a Congressional hearing in June, the president of the National Association of Criminal Defense Lawyers testified about the pervasive “overcriminalization of crimes that are not a risk to public safety,” like sleeping in a cardboard box or jumping turnstiles, which leads to expensively clogged courts and prisons.

A Pew Center study released in March found states spending a record \$51.7 billion on corrections, an amount that the center judged, with an excess of moderation, to be “too much.”

But will it be enough — the collision of rising prison populations that we can’t afford and the criminalization of poverty — to force us to break the mad cycle of poverty and punishment? With the number of people in poverty increasing (some estimates suggest it’s up to 45 million to 50 million, from 37 million in 2007) several states are beginning to ease up on the criminalization of poverty — for example, by sending drug offenders to treatment rather than jail, shortening probation and reducing the number of people locked up for technical violations like missed court appointments. But others are tightening the screws: not only increasing the number of “crimes” but also charging prisoners for their room and board — assuring that they’ll be released with potentially criminalizing levels of debt.

Maybe we can't afford the measures that would begin to alleviate America's growing poverty — affordable housing, good schools, reliable public transportation and so forth. I would argue otherwise, but for now I'd be content with a consensus that, if we can't afford to truly help the poor, neither can we afford to go on tormenting them.

Barbara Ehrenreich is the author, most recently, of "This Land Is Their Land: Reports From a Divided Nation."

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