Summary Report of
Committee on Police/Homeless Issues
to the Metropolitan Homelessness Commission

February 10, 2011

Charles Strobel

Origin of the Committee

The Police/Homeless Issues Committee was created by the Homelessness Commission on March 13, 2009, to address the interaction between the homeless and the police on the ground level. At that meeting Steve Reiter gave the following public comments as reflected in the minutes:

> *"**Steve Reiter** – reported that he met with Commander Huggins to talk about citations of homeless people who are sitting at the Riverfront Park. He asked that police, prosecutor and public defender get together to address the issue of 'loitering in a public park,' which has been an ongoing issue for years. Mr. Reiter stated that being in a public park is not against the law."*

Reiter specifically cited events on February 20 and 23, 2009, when homeless were arrested for obstruction of a passageway and invading the space of tourists. He then said that a similar incident occurred on July 4th, 2008, when an individual was transferred from Nashville to Brentwood to Franklin, then arrested (with personal belongings confiscated) as part of a "sweep" over the holiday weekend. Afterwards, Reiter went on to say that these instances are indicative of a larger number of homeless arrests occurring in the downtown area.

Reiter also reported that a common perception among the homeless is that interactions with the police are increasing, as are subsequent arrests. As a result, there is an increase of homeless cases within all levels of the judicial system. Furthermore, questions arise as to what exactly are "Quality of Life" ordinances, for they seem to make it difficult for the homeless to avoid the justice system. **For a more detailed description of Mr. Reiter's concerns, see Appendix C to this Report for his article entitled "A Case of Social Profiling in Nashville, TN."**

Because of these questions, the Commission established the Police/Homeless Issues Committee to facilitate open discussions by representatives of the criminal justice system and others about the impact of law enforcement policies on the homeless. Commissioner Charles Strobel was appointed chair of the Committee, and he invited representatives from the District Attorney's office, the Public Defender's office, the Sheriff's office, the Police Department, the Homeless Power Project and the homeless themselves to participate. Since mid 2009, the Police/Homeless Issues Committee has been meeting regularly, with the following individuals in attendance: Dawn Deaner, the Public Defender; Jeff Blum, with the Sheriff's Office; Rosemary Sexton, Assistant District Attorney General; Commander Damien Huggins and/or other police representatives; Chairman Eric Cole; Clifton Harris, the Director of the Homelessness Commission; Steve Reiter; and other interested advocates or homeless individuals. Hershell Warren from Mayor Dean's office and Chief Ronal Serpas were copied on all minutes of the meetings.

Committee Deliberations and Developments

Initial Discussions

In the initial rounds of meetings, the Committee spent a great deal of time discussing the general perception across agencies that the criminal justice system had become one of the primary mechanisms for how our community deals with the "problem" of homelessness. All acknowledged that the police and the jail have served as the largest "social service" agency for many of the homeless in Nashville. This trend leads some to conclude that there is an increasing "criminalization" of homelessness. Others maintain that the lack of affordable housing and appropriate social service programs creates circumstances requiring intervention and remediation by the judicial system. There was also extended discussion about homeless individuals who are chronically coming into contact with the criminal justice system due to other challenges they face, most often related to untreated mental illness or chemical dependency.

From these initial discussions, the Committee found consensus on the following:

1. Each part of criminal justice system (defense, prosecutors, courts, jails, and police) needs to be represented and involved in creating a better system.

2. Those outside the criminal justice system with an interest in improving how homeless individuals are treated within the system – such as homeless advocates, social service agency representatives, communities of faith, and homeless individuals themselves -- need to be included in the development of systemic reform initiatives.

3. The Committee cannot address situations involving truly criminal behavior, such as assaults, robbery, breaking and entering, etc.

4. Each part of the system—police, public defender, prosecution, and courts—wants to do its job fairly, consistently and accurately.

5. Discussion about anecdotal incidents is helpful to driving discussion, but not instructive for purposes of systemic reform absent reliable data that supports conclusions about how the system is operating in fact.

6. All homeless individuals in the downtown area cannot, and should not, be lumped into a single "category" and labeled a "problem." Many homeless individuals never have any encounters with police in the downtown area. Some encounter police only in connection with "quality of life" offenses, such as urinating in public, drinking an alcoholic beverage in public, or sleeping on a park bench. Others are arrested and jailed chronically, with all in the group agreeing that these individuals almost always face overwhelming problems in addition to their homelessness – primarily mental illness and drug abuse/addiction.

7. We have a criminal justice system that is trying hard to solve a problem that can't be solved without affordable housing and adequate social service resources. While those systems have been failing to assist our homeless population, police and the criminal justice system have become the default manager of the "homeless problem" downtown.

Potential Systemic Improvements to the Criminal Justice System

After initial discussions, Committee members presented different proposals for how the criminal justice system could improve the way it handles some of the challenges presented by homelessness. Those ideas included:

1. "Single point of entry" model: homeless individuals in need of assistance either self-initiate or are referred by police to a single location where assessment and referrals took place.
2. Homeless Court: homeless individuals facing minor criminal charges voluntarily commit to addressing their social problems in a positive way, and upon successfully doing so, find "amnesty" for their charges.
3. Court Diversion: homeless individuals in jail who are facing minor criminal charges are given the option – in lieu of extended jail stays -- to participate in a 60 day intensive treatment program at Room In the Inn.
4. Enhanced Sentencing: individuals identified as "chronic offenders" (those who are arrested most often in the Central Precinct, all of whom are homeless) are "flagged" at the time of arrest and given the maximum possible sentences upon conviction for the crimes charged, with the hope that they will receive the benefit of treatment programs in the jail that will remedy their problems.
5. Guest House Services: began in 1991 at the initiative of the General Sessions Judges, this plan offers a safe alternative to jail for homeless individuals who are intoxicated in public. Once sober, individuals are offered the opportunity to remain with the Campus for Human Development for longer term treatment services.

A more in depth discussion of each proposal is contained in Appendix A to this report. While some might assume there is a clear "best practices" model, the Committee did not find that to be the case. While each model discussed had the potential to address some problems, none appeared to address all issues in a manner satisfactory to everyone in the group. As a result, the only consensus the Committee was able to reach on this issue was that Nashville needs its own creative and integrative combination of initiatives to address the many stress-related problems that the homeless face within the judicial process.

NOTE: Despite the lack of consensus to recommend the "Enhanced Sentencing" proposal for use, the Metropolitan Police Department, in collaboration with the District Attorney General's Office, implemented a slightly modified version of that program on January 1, 2011. The Committee members were not notified of this decision in advance of its implementation, and many of them expressed disappointment in this development given the lack of consensus regarding the propriety of this program. Since then, members of the Committee have encountered at least one situation in which extensive efforts made by social services agencies to place a homeless individual in housing were temporarily thwarted by that individual's arrest and labeling as a "chronic offender." This person was charged with public intoxication, which typically results in a person being held for a few hours, then released from jail without court involvement. Since this person was labeled as a "chronic offender" by the arresting police officer, he was instead detained in jail on an arrest warrant for 5 days before making a court appearance. On that day (when he was scheduled to enter housing), he was offered only a guilty plea with the maximum jail sentence allowed by law – 30 days to serve. It was only after outcry

by members of the Committee, and behind the scenes work by several members of this Committee and the social services agency assisting the man with housing, that he was able to obtain his early release from jail - two days after he was originally scheduled to enter housing. Many members of the Committee are very concerned about the unfair and adverse impact this "program" could have upon members of the downtown homeless community.

Evaluation of Police Interactions with Homeless Individuals in Downtown Area

In more recent meetings, the Committee has returned its attention to the initial impetus for our creation – Steve Reiter's allegation that police were unfairly and increasingly citing and/or arresting homeless individuals in the downtown area for "quality of life" offenses. This conversation began with the Committee's review of the American Bar Association's (ABA) formal Recommendation regarding how local governments treat homeless individuals under their laws and municipal ordinances. **See Appendix B for a copy of the Recommendation**. After discussion, the Committee agreed that the ABA Recommendations were reasonable, and that Nashville should work towards compliance with the standards outlined therein.

Along these lines, the Committee also reviewed data related to arrests for what can be considered "quality of life" offenses. Based upon that data, there appears to be an increase in police arrests for certain offenses, with a grossly disproportionate impact upon homeless individuals. The Committee obtained data from the Criminal Justice Planning Department of the Metropolitan Government comparing arrest data from 2004 through 2009 for the following criminal offenses:

Disorderly conduct	Indecent exposure
Littering	Obstructing a passageway
Public indecency	Public intoxication
Criminal trespass.	

From that data, the following trends appeared:

1. From 2004 through 2009, the number of physical arrests by police for obstructing a passageway increased by approximately 500% (from 102 in 2004 to 520 in 2009). For each of the included individuals, homeless individuals made up at least 60%, and as much as 81%, of the defendants arrested.

2. From 2004 through 2009, the number of physical arrests by police for public intoxication more than doubled (from 2029 in 2004 to 5,031 in 2009). Each year, the percentage of those defendants who were homeless steadily increased (from 39% in 2004 to 54% in 2009).

3. Across the board, an increasing percentage of individuals physically arrested for the listed offenses were homeless. In 2004, the percentage of physical arrests made for these 7 offenses combined involved homeless individuals 36% of the time. In 2009, that number was 50%. Increased percentages of homeless arrests were consistent for each individual offense except for disorderly conduct (which only dropped by 3%).

4. As physical arrests of homeless individuals for the listed offenses were increasing between 2004 and 2009, the number of State Citations[1] issued during that same period of time drastically reduced. In 2004 police issued 6,072 citations for the 7 listed offenses. In 2009, police issued only 2,515 citations for those same 7 offenses. The percentage of individuals receiving citations who were homeless also declined. In 2004, 34% of the citations issued for these 7 offenses were homeless. By 2009, that number had dropped to 25%, which some years in between even lower than that.

5. Despite the decline in the number of citations being issued, homeless individuals still receive an overwhelming number of the citations issued for obstructing a passageway. In 2009, 257 citations were issued charging that offense, and 48% of those charged were homeless. A similar percentage existed in 2007 and 2008.

6. Homeless individuals are also arrested in disproportionate numbers for the other six offenses examined. The most glaring example of this trend (secondary to the obstructing a passageway charge) is the offense of criminal trespass. In 2009, homeless individuals constituted 48% of all physical arrests for criminal trespass, and received 28% of all citations issued for that offense.

The Committee also briefly discussed current police practices related to Metro citations, also known as "green tickets." These tickets are issued by police for alleged violations of Metro ordinances, such as having an open container of alcohol in public or a park, indecent exposure, bathing or undressing in a public area/park, and disorderly conduct in a park (which includes lying "upon any wall, fence, shelter, seat, . . . or other structure"). In his initial remarks in March 2009, Steve Reiter reported a perceived increase in these citations to homeless individuals, and during the Committee's review of this issue, the Tennessean published an article about the "increased" police patrols in downtown park areas to "crack down" on these ordinance violations. The Committee has not obtained data related to the number of these citations being issued between 2004 and 2009. The Committee has been told, however, that such data may be available through the Metropolitan Police Department.

Although the violation of the Metro Ordinances listed is punishable only by a small fine, these tickets have become an even bigger concern for homeless individuals and advocates due to rumors that the Metropolitan Government, which prosecutes these alleged offenses in Environmental Court, intended to start requesting arrest warrants against any individual who failed to appear in court to answer the citation. During one Committee meeting, then Commander Huggins confirmed that this idea was under consideration, and something he and his officers felt was appropriate for repeat offenders. However, homeless individuals have been told for years – including by the officers issuing the citations – that no consequences could come to them if they did not appear in court.

Based upon these sources, it appears there has been an increase in the volume and nature of police interactions with homeless individuals in the downtown area over the past several years. What is less clear is whether anything can – or should -- be done about that. The members of the

[1] A State Citation charges the individual with a criminal offense, but does not include a physical arrest. Instead, the defendant appears in court to be booked, and is not required to post bail as part of the process.

Committee agreed that anyone who feels as though he or she has been mistreated by police or falsely arrested should contact the Police Department's Office of Professional Accountability. However, many acknowledged that homeless individuals may not always feel comfortable doing that, knowing they will face the same police officer out on the street later that night. Beyond this remedy, no clear cut recommendations emerged from the Committee's discussions. This may not be surprising, as this is largely an issue of policy. The agencies participating in this Committee each have their own Missions to follow, and each has a very different approach to the criminal justice system. One suggestion was made to create a Civilian Review Board, which could evaluate police actions and practices. At this point, the Committee can only recommend that the Commission consider ways in which it can influence policy decisions within the Metropolitan Government to advance the "best practices" outlined in the ABA's Recommendation.

Final Considerations

As noted, the Committee has been unable to resolve the issues of concern regarding how homeless individuals are treated by our criminal justice system. Nevertheless, we are presenting this report for the Commission's consideration in how to create a better system for helping homeless individuals face the justice system. Additionally, the Committee voted unanimously to recommend the following actions by the Homelessness Commission:

1. That the Homelessness Commission officially endorse and advocate to state and local officials the adoption and enactment of the American Bar Association's Commission on Homelessness and Poverty Recommendation (contained in Appendix B), which proposes 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 spaces [reasonable for the persons circumstances] are available." This also includes laws and policies that are enforced against homeless persons to a greater extent than non-homeless persons, and laws and policies which punish persons who provide food, shelter, and other necessary assistance to homeless persons. In Nashville these laws include, but are not necessarily limited to: Obstructing a passageway; Public indecency and/or Indecent exposure (while urinating or defecating when no public bathrooms are readily available); and Criminal trespass (on public property for the purpose of sleeping and/or resting).

2. That the Homelessness Commission officially endorse and advocate the practice by police officers who encounter homeless individuals subject to arrest for public intoxication to take such individuals to Room in the Inn's Guest House, rather than jail, as long as the Guest House has space available and Guest House staff feels capable of caring for the individual.

Beyond these specific recommendations, the Committee believes the Commission should continue to work towards solutions that reduce homelessness and treat individuals facing that condition with compassion, dignity, and respect. Towards that end, the Committee believes the Commission has a responsibility to take actions within its authority, and to recommend action to others when action is beyond its authority, to minimize the role of the criminal justice system as the place of first resort for dealing with the "problem" of homelessness.

Appendices

A – Summaries of System Improvement Proposals
B – ABA Recommendation
C -- Steve Reiter's Perspective: A Case of Social Profiling in Nashville, TN
D – National Law Center Article on Homelessness and Poverty: Addressing Street Homelessness and Do Criminalization Efforts Work