

# HOUSING NOT HANDCUFFS 2019

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Ending the Criminalization of  
Homelessness in U.S. Cities

December 2019

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**NATIONAL LAW CENTER  
ON HOMELESSNESS & POVERTY**



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# ABOUT THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY



The National Law Center on Homelessness & Poverty (Law Center) is the only national organization dedicated to using the power of the law to end and prevent homelessness. The Law Center works to expand access to affordable housing, meet the immediate and long-term needs of those who are homeless or at risk, and strengthen the social safety-net through policy advocacy, public education, impact litigation, and legal training and support.

Our vision is for an end to homelessness in America. A home for every family and individual will be the norm and not the exception, a right and not a privilege. For more information about the Law Center and to access publications such as this report, please visit its website at [www.nlchp.org](http://www.nlchp.org).

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## EXECUTIVE SUMMARY



**H**ousing is a human right. While three-quarters of Americans agree that housing is a human right, and an increasing number of elected officials are addressing it as such, our country has not put in place the policies to ensure that right, and as a consequence, millions of Americans experience homelessness in a national crisis that gets worse each year. Many people experiencing homelessness have no choice but to live outside, yet cities routinely punish or harass unhoused people for their presence in public places. Nationwide, people without housing are ticketed, arrested, and jailed under laws that treat their life-sustaining conduct—such as sleeping or sitting down—as civil or criminal offenses. In addition, cities routinely displace homeless people from public spaces without providing any permanent housing alternatives.

This report—the only national report of its kind—provides an overview of laws in effect across the country that punish homelessness. With the assistance of the law firms Dechert LLP, Sullivan & Cromwell, and Kirkland & Ellis, the Law Center examined the city codes of 187 urban and rural cities across the country. Through online research, we identified laws that restrict or prohibit different categories of conduct performed by homeless people, including sleeping, sitting or lying down, and living in vehicles within public space. We refer to these policies and their enforcement collectively as the “criminalization of homelessness,” even though these laws are punishable as both criminal and civil offenses.

The ordinances from our research group of 187 cities are listed in our Prohibited Conduct Chart in Appendix A. While the chart catalogues the existence of these laws in different cities, actual enforcement of them may vary widely. Punishments also

vary: some laws subject homeless people to as much as six months in jail, while some result in expensive fines, fees, and/or displacement from public space. Threats of enforcement are also used to harass homeless people and to displace them from location to location. It is important to note that these 187 cities are only a sampling; criminalization ordinances exist in many more municipalities than just the ones covered here.

In addition to our survey of policies in force across the country, this report describes trends in criminalization laws and tracks the significant growth of these laws since we began tracking them thirteen years ago, and since the release of *Housing Not Handcuffs*, our last report on the criminalization of homelessness in 2016.<sup>1</sup> This report also describes why criminalization policies are ineffective, harmful, expensive to taxpayers, and often even illegal.

Because our end goal is not to protect the right to live on the streets, but rather to ensure that people need not live without housing in the first place, we also offer constructive alternative approaches to preventing and ending homelessness. Included in our recommendations are model policies for federal, state, and local governments to address homelessness in a cost-effective, humane, and legal way.



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<sup>1</sup> NAT'L L. CTR. ON HOMELESSNESS & POVERTY, *HOUSING NOT HANDCUFFS: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES* (2016), <https://nlchp.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf>.

## BACKGROUND

# THE AFFORDABLE HOUSING CRISIS AND THE GROWTH OF HOMELESSNESS

**Rising rents, stagnant wages, historically low rental vacancy rates, and the severe decline of federally subsidized housing have led to a critical shortage of affordable housing units.** There is simply not enough affordable and available housing for America's millions of low-income renters, leaving them at risk of homelessness. Nationwide, there are only 35 units that are affordable and available for every 100 extremely poor renter households in need. The affordable housing gap is even more severe in many of the nation's large metropolitan areas. The result is that low-income renter households are housing cost burdened, meaning they are forced to pay more than they can sustainably afford toward rent.

### **Housing cost burdens and eviction cause homelessness.**

Recent studies have demonstrated the strong connection between rental costs, housing cost burdens, and homelessness. For example, one study predicted that homelessness in New York City would increase by over 6,000 people if rents increase by 10%. Unaffordable rents result in evictions for non-payment of rent, even after a single late or missed payment. Eviction is not only a direct cause of homelessness, a record of eviction can also bar someone from becoming rehoused.

### **Housing cost burdens and eviction have contributed to grossly disproportionate rates of homelessness among people of color.**

People of color make up the majority of housing cost burdened renters at risk of eviction, and once housing is lost, racist housing practices prevent people from becoming rehoused. It is thus unsurprising that there is a heavy overrepresentation of people of color in the homeless population. According to HUD's most recent point-in-time count, Black people make up 40% of the homeless population yet only 13% of the general population. Latinx, Native American, and Pacific Islander rates of homelessness are also disproportionately high. In total, people of color constitute over 60% of the nation's homeless population even though they make up only a third of the general U.S. population.

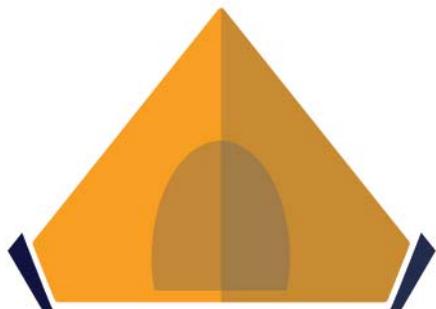
**People without housing lack options for meeting their basic human needs for rest and shelter.** Many communities treat emergency shelters as the answer to systemic shortages of permanent housing, and they often justify enforcement of criminalization laws based on alleged availability of emergency shelter beds. But emergency shelters are not available in every community with unhoused people, and even where shelters exist, they are generally full and routinely turn people away at the front door. Moreover, emergency shelters offer only temporary shelter—sometimes only for a single night at a time—and frequently require that people separate from their families, beloved pets, and/or their property upon entry, or subject themselves to religious proselytizing. Shelters may also discriminate on the basis of sexual orientation or gender identity, and/or fail to accommodate disability needs.

**KEY FINDING: The criminalization of homelessness is on the rise.** The results of our research show that the criminalization of homelessness is prevalent across the country and has increased in every measured category since 2006, when the Law Center began tracking these policies nationwide. We also found a growth in laws criminalizing homelessness since the release of our last Housing Not Handcuffs report, released in 2016.



Punishing homelessness has increased over the last 13 years.

Of the 187 cities measured by the Law Center, we found:



72% of cities have at least one law prohibiting camping in public.

### LAWS PROHIBITING CAMPING IN PUBLIC

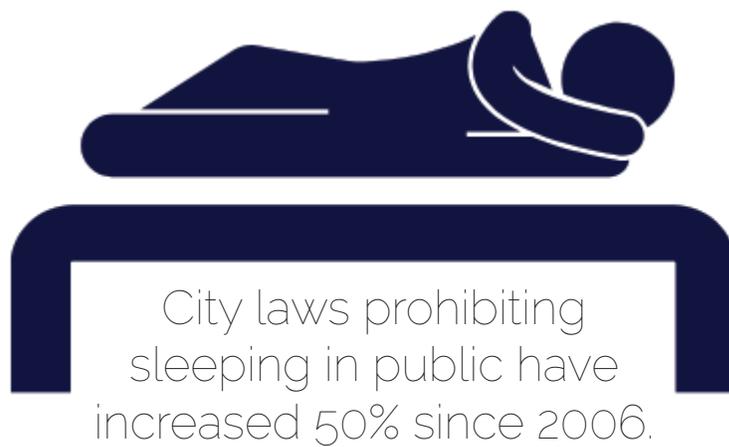
“Camping” bans are often written to cover a broad range of activities, including merely sleeping outside. They also often prohibit the use of any “camping paraphernalia” which can make it illegal for unhoused people to use even a blanket. **In 2019, 72% of our 187 surveyed cities have at least one law restricting camping in public.** Among our surveyed cities:

- 37% of cities have one or more laws prohibiting camping citywide.
- 57% of cities have one or more laws prohibiting camping in particular public places.
- *Both categories have significantly increased over the past 13 years:*
  - Since 2006, 33 new laws prohibiting camping citywide were enacted, representing a 92% increase. Since we released our last national report on the criminalization of homelessness in 2016, nine such laws were enacted, representing an increase of 15%.
  - Since 2006, 44 new laws prohibiting camping in particular places were enacted, representing a 70% increase. Since 2016, 14 such laws were enacted, representing a 15% increase.

### LAWS PROHIBITING SLEEPING IN PUBLIC

Sleeping bans outlaw sleep, which cannot be foregone by any human being. **In 2019, 51% of our 187 surveyed cities have at least one law restricting sleeping in public.** Among our surveyed cities:

- 21% of cities have one or more laws prohibiting sleeping in public citywide.
- 39% of cities have one or more laws prohibiting sleeping in particular public places.
- *Both categories have significantly increased over the past 13 years:*
  - Since 2006, 13 new laws prohibiting sleeping citywide were enacted, representing a 50% increase. Since we released our last national report on the criminalization of homelessness in 2016, six such laws were enacted, representing an increase of 18%.
  - Since 2006, 16 new laws prohibiting sleeping in particular places were enacted, representing a 29% increase. Since 2016, 22 such laws were enacted, representing a 44% increase.



## **LAWS RESTRICTING SITTING AND LYING DOWN IN PUBLIC**

Although every human being must occasionally rest, laws restricting sitting and lying down in public punish people experiencing homelessness for doing so. Of the 187 cities surveyed for this report, our 2019 research reveals that:

- 55% of cities have one or more laws prohibiting sitting and/or lying down in public.
- *Such laws have significantly increased over the past 13 years:*
  - Since 2006, 45 new laws prohibiting sitting and/or lying down in public were enacted, representing a 78% increase. Since we released our last national report on the criminalization of homelessness in 2016, 15 such laws were enacted, representing a 17% increase.

## **LAWS PROHIBITING LOITERING, LOAFING, AND VAGRANCY**

Similar to historical Jim Crow, Anti-Okie, and Ugly laws, these modern-day versions of those discriminatory ordinances grant police a broad tool for excluding visibly poor and homeless people from public places.

- 35% of cities have one or more laws prohibiting loitering, loafing, and/or vagrancy citywide.
- 60% of cities have one or more laws prohibiting loitering, loafing, and/or vagrancy in particular public places.
- *Such laws have significantly increased over the past 13 years:*
  - Since 2006, 33 new laws prohibiting loitering, loafing, and/or vagrancy citywide were enacted, representing a 103% increase. Since we released our last national report on the criminalization of homelessness in 2016, six such laws were enacted, representing an increase of 10%.

There has been a 103% increase in city laws prohibiting loitering, loafing, and/or vagrancy since 2006.



- Since 2006, 25 new laws prohibiting loitering, loafing, and/or vagrancy in particular places were enacted, representing a 28% increase. Since 2016, 13 such laws were enacted, representing a 13% increase.

## **LAWS PROHIBITING BEGGING**

In the absence of employment opportunities or other sources of income, begging may be a homeless person's best option for obtaining the money that they need to purchase food, public transportation fare, medication, or other necessities. **In 2019, 83% of our 187 surveyed cities have at least one law restricting begging in public.** Among our surveyed cities:

- 38% of cities have one or more laws prohibiting begging citywide.
- 65% of cities have one or more laws prohibiting begging in particular public places, making it the most common type of criminalization law.
- *Such laws have significantly increased over the past 13 years:*
  - Since 2006, 36 new laws prohibiting begging citywide were enacted, representing a 103% increase. Since we released our last national report on the criminalization of homelessness in 2016, 21 such laws were enacted, representing an increase of 42%.
  - Since 2006, 14 new laws prohibiting begging

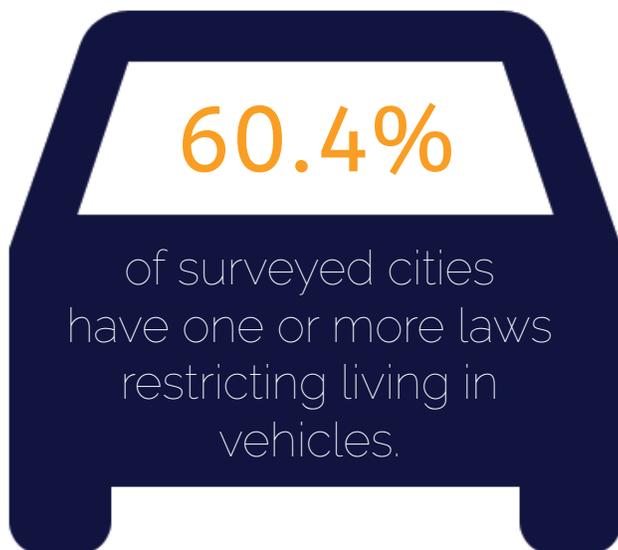
in particular places were enacted, representing a 13% increase. Since 2016, eight such laws were enacted, representing a 7% increase.

## **LAWS RESTRICTING LIVING IN VEHICLES**

Sleeping in one's own vehicle is often a last resort for people who would otherwise be forced to sleep on the streets. Laws restricting living in vehicles often outlaw that activity outright, but it is also common for these laws to take the form of parking regulations that leave no lawful place for people who live in their vehicles to park.

- 50% of cities have one or more laws restricting living in vehicles.
- *Such laws have significantly increased over the past 13 years:*
  - Since 2006, 64 new laws restricting living in vehicles were enacted, representing a 213% increase. Since we released our last national report on the criminalization of homelessness in 2016, 22 such laws were enacted, representing an increase of 31%.

In addition to categories of prohibited conduct studied by the Law Center since 2006, **we have more recently tracked additional categories of prohibited conduct.** Our research shows that the following categories of laws are also prevalent in our 187 surveyed cities:



## **LAWS RESTRICTING FOOD SHARING**

9% of cities prohibit or restrict sharing free food in public. People experiencing homelessness often lack reliable access to food, in part due to a lack of any place to refrigerate or store food supplies. Despite the fact that food access is extremely limited for homeless people, a growing number of cities have restricted free food sharing. Since 2016, five new laws restricting food sharing were enacted, representing an 42% increase.

## **LAWS PROHIBITING PROPERTY STORAGE**

55% of cities prohibit storing property in public places. People experiencing homelessness often have no private place to secure their personal possessions. Laws that prohibit storing property in public space leave homeless people at constant risk of losing their property, including property needed for shelter, treatment of medical conditions, and proof of identity.

## **LAWS PROHIBITING PUBLIC URINATION AND DEFECACTION**

83% of cities prohibit public urination and defecation. People experiencing homelessness often lack access to toilets, yet all human beings must expel bodily waste when nature calls—often multiple times each day. Despite this, the vast majority of cities prohibit public urination and defecation even in the absence of public toilets. While cities have a legitimate interest in preventing the accumulation of urine and feces in public space, such interests cannot be met by criminalizing unavoidable bodily functions. If people do not have regular access to toilets, they will expel their human waste in areas other than toilets—they have no choice.

## **LAWS PROHIBITING SCAVENGING**

76% of cities prohibit rummaging, scavenging, or “dumpster diving.” People experiencing homelessness are under resourced, and they may turn to scavenging in trash bins or other refuse for items of value, such as usable clothing or edible food. Yet, three in four cities prohibit scavenging.

**KEY FINDING: Laws criminalizing homelessness are rooted in prejudice, fear, and misunderstanding, and serve businesses and housed neighbors over the needs of unhoused neighbors.** It is critical

for lawmakers, policy advocates, and other key stakeholders to understand the fundamental roots of laws criminalizing homelessness: ignorance of the causes of homelessness and deep-seated prejudice against and fear of people experiencing it. The inaccurate belief that homelessness is a result of poor life choices, mental illness, and/or drug addiction motivates public calls for punitive approaches to homelessness. Businesses and commercial entities also drive criminalization policies by lobbying for such laws and even by enforcing them with private security personnel.



**KEY FINDING: The effects of criminalization are devastating to people and communities.** Criminalization of homelessness contributes to mass incarceration and racial inequality, as homelessness is a risk factor for incarceration, and incarceration makes it more likely that a person will experience homelessness. Over-policing of homeless people, who are disproportionately people of color, also exacerbates racial inequality in our criminal justice system. Indeed, unhoused people of color are more likely to be cited, searched, and have property taken than white people experiencing homelessness. Those with multiple marginalized identities, like LGBTQ+ people of color, are even more vulnerable to homelessness and laws criminalizing homelessness.

**Criminalization of homelessness results in fines and fees that perpetuate the cycle of poverty.** Financial obligations, such as from fines for using a tent or vehicle to shelter oneself, can prolong the amount of time that a person will experience homelessness, and can also leave homeless people less able to pay for food, transportation, medication, or other necessities. Civil and court-imposed fines and fees can also prevent a person from being accepted into housing, or even result in their incarceration for failure to pay them.

**Criminalization of homelessness harms public safety.** Criminalization policies divert law enforcement resources from true street crime, clog our criminal justice system with unnecessary arrests, and fill already overcrowded jails. They also erode trust between homeless people and police, heightening the risk of violent confrontations between police and unhoused people, and leaving homeless people more vulnerable to private acts of violence without police protection. This is why the federal Department of Justice has filed statement of interest briefs and issued guidance arguing against the enforcement of criminalization ordinances in the absence of adequate alternatives.

**Criminalization of homelessness and encampment evictions harm public health.** City officials frequently cite concerns for public health as reason to enforce criminalization laws and/or to evict homeless encampments, a practice often referred to as a "sweep." But such practices threaten public health by dispersing people who have nowhere to discard food waste and trash, to expel bodily waste, or to clean themselves and their belongings to more areas of the city, but with no new services to meet their basic sanitation and waste disposal needs. Moreover, sweeps often result in the destruction of homeless people's tents and other belongings used to provide some shelter from the elements, cause stress, and cause loss of sleep, contributing to worsened physical and mental health among an already vulnerable population. Due to these harms, the American Medical Association and American Public Health Association have both condemned criminalization and sweeps in policy resolutions.



**HOMELESSNESS  
COST SANTA  
CLARA COUNTY  
\$520 MILLION  
ANNUALLY FROM  
2007 TO 2012**

**KEY FINDING:** Criminalization isn't just harmful, it is ineffective, costly, and often illegal. Laws punishing homelessness are ineffective at reducing homelessness—they do not address underlying causes of homelessness like the lack of affordable housing. Instead, criminalization laws exacerbate homelessness by creating barriers to housing, employment, and services needed and these barriers to income and housing can prolong a person's homelessness or even make it permanent.

**Criminalization also wastes taxpayer dollars, taking away resources that could be used on real solutions.** While cities often claim that proposed criminalization measures will have no fiscal impact, the truth is that the public costs of punitive approaches to homelessness are staggering. A 2019 study of Santa Clara County, California, estimated that homelessness cost Santa Clara County \$520 million annually from 2007 to 2012 (not including spending on accommodation and direct services), and 34% of those costs were for criminal justice related expenditures, such as probation, custody mental health care, and jail/court costs. Sweeps are also incredibly expensive—Los Angeles, for example, spends \$30 million a year on sweeps.

**A growing number of courts have found that laws criminalizing homelessness violate the Constitution and anti-discrimination laws.** In April 2019, the U.S. Court of Appeals for the Ninth Circuit issued an opinion in *Martin v. City of Boise*<sup>2</sup>—a case filed by the Law Center, Idaho Legal Aid, and Latham & Watkins—affirming that the Eighth Amendment of the U.S. Constitution prohibits enforcement of laws criminalizing sleeping, sitting, and lying down outside against people with no access to indoor shelter. In deciding the merits of the case, the Court concluded:

*"[A]s long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter."*<sup>3</sup>

Criminalization policies and sweeps have also been condemned by courts as violating Fourth Amendment property rights, Fourteenth Amendment due process rights, and First Amendment speech rights. Some state courts have found that criminalization laws similarly violate analogous rights under state constitutions. Criminalization policies and sweeps may also violate other federal laws, including the Americans with Disabilities Act.

**The criminalization of homelessness is also a matter of serious concern under international law.** Criminalization of homelessness is discriminatory and constitutes **cruel and inhuman treatment**, which violates our obligations under the Convention Against Torture and the International Covenant on Civil & Political Rights. Further, the criminalization of homelessness has a disparate racial impact, in violation of the International Convention on the Elimination of All Forms of Racial Discrimination.

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2 The Ninth Circuit issued its original opinion in *Martin v. City of Boise* on September 4, 2018. The City of Boise then filed a petition for rehearing en banc, which was denied in April 2019.

3 *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. September 4, 2019), amended by *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. Apr. 1, 2019). The City of Boise has petitioned the U.S. Supreme Court for certiorari review.

# HALL OF SHAME

The Law Center recognizes that communities struggle with difficult policy choices over how to reduce homelessness and often pursue a combination of good (*constructive*) and bad (*destructive*) policies. Rather than call out individual governments for being the best or worst, we have identified particularly bad policies and/or practices of certain governments to include in our **Hall of Shame**.

This year, the Law Center has identified seven especially harmful policies, enacted by: **Ocala, Florida; Sacramento, California; Wilmington, Delaware; Kansas City, Missouri; Redding, California; the State of Texas; and the United States federal government.**

These policies—ranging from food sharing to involuntary detention to forced punitive measures—all encapsulate the misuse of policies that only lead to cyclical homelessness and poverty.

## OCALA, FL: AGGRESSIVE ANTI-HOMELESSNESS POLICING

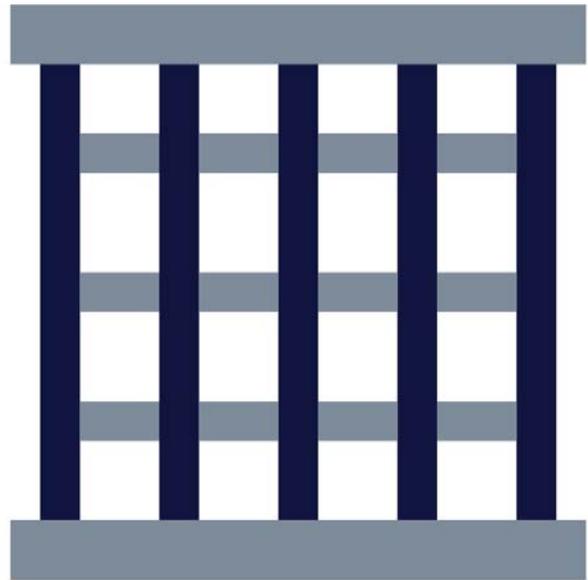
In Ocala, Florida, homeless people are strictly policed in accordance with Ocala's draconian anti-homeless ordinances. It is illegal to rest in the open on public property, which has been heavily enforced by the city. The city's "Operation Street Sweeper" and aggressive policing have even led to a federal lawsuit on behalf of three unhoused residents. These three plaintiffs have collectively spent 210 days in jail and been assessed over \$9,000 in fines, fees, and costs due to enforcement of the trespass and unlawful lodging ordinance.<sup>4</sup>

<sup>4</sup> Complaint, *McArdle v. Ocala*, Case No. 5:19-cv-461 (M.D. Fla. 2019).

## SACRAMENTO, CA: AGGRESSIVE SWEEPS AND BANISHMENT OF HOMELESS PEOPLE

The City of Sacramento consistently engages in practices that seek to isolate and disperse homeless people, even in the absence of adequate housing alternatives or available shelters. The City has seized and destroyed encampment residents' personal property and caused some of the residents' personal injury; it has even filed its own lawsuit seeking to declare certain homeless individuals as public nuisances and to have them banned from public space.<sup>5</sup>

210 days in jail  
\$9,000+ in fines, fees, and costs



For three unhoused residents under Ocala's "Trespass and unlawful lodging" ordinance.

<sup>5</sup> Sam Stanton et al., *Drugs, Thefts, Assaults: Sacramento Wants to Ban 7 People from Prominent Business Corridor*, THE SACRAMENTO BEE (Aug. 16, 2019, 11:48 AM), <https://www.sacbee.com/news/local/article234082757.html>.

## WILMINGTON, DE: IMPROPER USE OF NO CONTACT / STAYAWAY ORDERS

Wilmington has engaged in practices with the intention of keeping its homeless residents away from certain parts of town by seeking a “no contact” order with the entire city as a condition of bail. In Wilmington, the police have requested that judges issue “no contact” orders prohibiting direct or indirect contact with the entire City of Wilmington, the “alleged victim.” Vulnerable residents are thus forced to choose between agreeing to unreasonable conditions of release or remaining in jail until their case is resolved.

**In November 2018, Health department officials in Kansas City, MO, poured bleach on food given to homeless people.**



## KANSAS CITY, MO: FOOD-SHARING REGULATIONS

Health department officials in Kansas City poured bleach on chili, soup, and sandwiches being offered to homeless residents by the organization Free Hot Soup. Then-mayor Sly James posted on Twitter in support of the actions conducted by the health department officials.<sup>6</sup>

## REDDING, CA: PROPOSED INVOLUNTARY DETENTION OF HOMELESS PEOPLE

Redding Mayor Julie Winter requested a state of emergency over homelessness and calling for the ability to, “hold [homeless] individuals accountable” by, “[requiring] mental health treatment for the severely mentally ill, up to and including conservatorship until such time as the individual has demonstrated the ability to care for themselves including managing their finances.”<sup>7</sup> Mayor Winter also wishes to build a shelter where she can force people experiencing homelessness to stay for up to 90 days.

“[It] might be a low-security facility, but it’s not a facility you could just leave because you wanted to...You need to get clean, you need to get sober, you need to demonstrate self-sufficiency. And once you do that, you’re free to go.”<sup>8</sup>

6 @MayorSlyJames, TWITTER (Nov. 5, 2018), <https://twitter.com/MayorSlyJames/status/1059549161945743375>

7 Letter from Julie Winter, Mayor of City of Redding, to Honorable Gavin Newsom, Governor of State of California, CITY OF REDDING (Nov. 19, 2019), available at <https://drive.google.com/file/d/1I0RONSzB4B-Hr-SZHWuqYg8Vvlnug17ug/view>.

8 Emma Ockerman, *This California City Wants to Build a Homeless Shelter That’s Basically a Jail*, VICE (Nov. 22, 2019, 4:39 PM), [https://www.vice.com/en\\_us/article/mbmz94/a-california-mayor-wants-to-build-a-homeless-shelter-thats-basically-a-jail](https://www.vice.com/en_us/article/mbmz94/a-california-mayor-wants-to-build-a-homeless-shelter-thats-basically-a-jail).

## STATE OF TEXAS: FORCING PUNITIVE APPROACHES TO HOMELESSNESS

Austin amended its camping ordinance in June 2019, and Texas Governor Greg Abbott rebuked Austin for the positive law changes and threatened to intervene if the city did not return to the more draconian version of the ban. Governor Abbott warned that “all state-imposed solutions” were on the table, and then ordered Texas Department of Transportation staff to sweep homeless encampments from underneath highways in the Austin area.<sup>9</sup> The sweeps have continued on a weekly basis since the Governor first ordered them to begin on November 4, 2019.

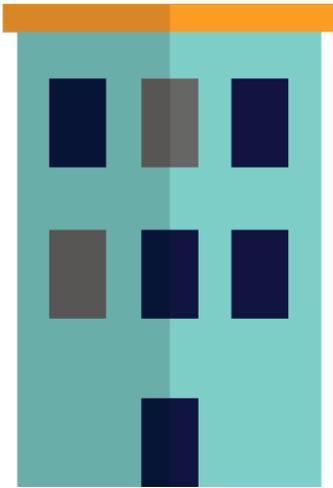


## THE U.S. GOVERNMENT: CREATING AND WORSENING THE NATION'S HOMELESS CRISIS

Dramatic cuts to federal funding for subsidized housing led to the modern homeless crisis, and today funding is so inadequate that only one in four people who are eligible for housing supports actually receives it. In September 2019, the Trump Administration's Council of Economic Advisors released a white paper claiming that homeless people remain so because they are “too comfortable” living on the streets, and calling for policing as a tool, “to help move people off the street and into shelter or housing...”<sup>10</sup>

<sup>9</sup> @GregAbbott\_TX, TWITTER (July 1, 2019), [https://twitter.com/GregAbbott\\_TX/status/1145930019451146245](https://twitter.com/GregAbbott_TX/status/1145930019451146245)

<sup>10</sup> COUNCIL OF ECON. ADVISORS, THE STATE OF HOMELESSNESS IN AMERICA (2019), <https://www.whitehouse.gov/wp-content/uploads/2019/09/The-State-of-Homelessness-in-America.pdf>.



HOUSING FIRST

There are constructive policy alternatives to criminalization that will solve, not punish, homelessness.

Criminalization is not an effective solution for cities that are concerned about homelessness. There are sensible, cost-effective, and humane solutions

to homelessness, which a number of communities have pursued. The Law Center recommends the following policy and program solutions to homelessness, and highlights examples where these policies have been implemented, at least in part. These include long-term solutions that must be taken to end homelessness, as well immediate and intermediate term approaches for helping to reduce harm for the high numbers of people currently living in unsheltered conditions and encampments:

## BEST LONG-TERM SOLUTIONS

### HOUSING FIRST AND PERMANENT SUPPORTIVE HOUSING

**Housing is a proven solution to homelessness.** Housing First is premised on the idea that pairing people with immediate access to their own apartments – without barriers and without mandated compliance with services - is the best way to sustainably end their homelessness. One form of Housing First, Permanent Supportive Housing (PSH), which combines affordable housing assistance with voluntary support services demonstrates significant reductions in criminal justice involvement, with corresponding reduced costs. In fact, PSH always produces gross savings for chronically homeless populations.

*Four communities have effectively ended chronic homelessness:* In 2017, Bergen County, New Jersey, became the first, joined since then by Rockford, Illinois,

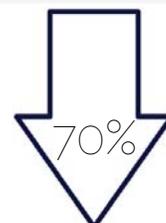
Lancaster, Pennsylvania, and the jurisdictions in the Southwest Minnesota Continuum of Care.

- 78 communities and three states have effectively ended veteran homelessness: New Orleans, Louisiana, was the first city in 2014, Virginia was the first state in 2015.
- Since 2017, Marin County, California, has reduced chronic homelessness by an impressive 28% and overall homelessness by 7% using a system-wide Housing First approach.
- In Charlotte, North Carolina, permanent supportive housing reduced arrests of residents by 82%.
- A study of Housing For Health, a division of the Los Angeles County Department of Health Services found that the PSH program not only saved over \$6.5 million by the second year of its implementation, but it also reduced emergency room visits by 70% and kept people off of the streets.
- A 2015 report on permanent supportive housing in Massachusetts showed that using a Housing First model saved an average of \$9,339 per formerly homeless person.
- A study of chronically homeless individuals in Seattle, Washington, found that costs decreased by 60% per individual after one year in housing—even after factoring in the cost of housing and supportive services.

Charlotte, NC: Permanent supportive housing reduced arrests of residents.

Los Angeles County, CA: Permanent supportive housing reduced emergency room visits.

Seattle, WA: Costs decreased per individual after one year in housing.



## USING VACANT AND SURPLUS PROPERTY FOR HOUSING AND SERVICES

Governments should use their vacant and surplus property in their community to provide housing and needed services to homeless people. All levels of government own real property that is vacant and/or surplus to their governmental needs. These unused assets can be turned to productive use if they are made available to provide needed housing, shelter, and services to people experiencing homelessness.

- The federal Title V program, authorized under the McKinney-Vento Homeless Assistance Act, grants states, local governments, and 501(c)(3) non-profit organizations with a right of first refusal to free federal surplus property for homeless housing and services. More than two million Americans in 30 states are served by Title V property conveyances, which have provided access to approximately 500 buildings on nearly 900 acres of land in 30 states across the country.

## DEDICATED FUNDING FOR HOUSING AND SERVICES

Local governments are dedicating funding to housing and services to people without housing. Examples include:

- In November 2018, **San Francisco, California**, voters approved Proposition C, which places an average 0.5% gross receipts tax on companies earning in excess of \$50 million each year to fund homeless housing and emergency services. The voter measure is estimated to raise as much as \$300 million each year for housing, mental health, and emergency services from as many as 400 companies.
- Measure H, a sales tax approved by **Los Angeles, California**, voters in 2017, raises sales tax by one-quarter of a cent, and it is expected to raise about \$355 million annually for ten years to fund homeless services, including health care and job training.

More than  
2 million  
Americans  
  
in 30 states  
are served  
by Title V

- The **Miami-Dade County, Florida's** Homeless and Domestic Violence Tax in Miami-Dade County, FL, imposes a 1% tax on all food and beverage sales by establishments licensed by the state to serve alcohol on the premises, excluding hotels and motels. 85% of the tax receipts go to the Miami-Dade County Homeless Trust, and it raises some \$20 million a year to fund emergency, supportive, and transitional housing in Miami-Dade County.

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## BEST INTERMEDIATE-TERM PRACTICES

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### TINY HOME IN-FILL

Tiny homes, while not a total solution to homelessness, are a rapidly implementable method of providing people experiencing homelessness with immediate access to private, indoor space. Accessory dwelling units (“ADUs”), one type of tiny home, are independent living units sited on the property of a single-family home. In addition to providing an affordable housing option, ADUs can also increase access to high-quality neighborhoods near to educational and employment opportunities and public transportation.



- The BLOCK Project in **Seattle, Washington**, is a good example of an ADU model that takes a community-building approach to homeless housing by placing a pre-fabricated tiny home on single-family residential lots. The tiny homes are 125 square feet and designed to be self-sufficient, including a kitchen, bathroom, sleeping area, solar-panels, greywater system, and composting toilet. The BLOCK project relies on volunteer homeowners, and uses a questionnaire to match hosts and residents and provides ongoing support through a social worker. Residents have an indefinite rental contract, allowing them to take as much time as they need to transition to other housing, or to stay if they need to. Residents pay 30% of their income on rent, divided between the host family, a maintenance program, and reinvestment into building new homes.



*“The BLOCK Project builds communities of compassion throughout Seattle, engaging individuals and their neighborhoods to welcome someone experiencing homelessness into their lives.”*

-The BLOCK Project

## TINY HOME VILLAGES

Tiny home “villages” are another housing model that can provide at least temporary housing and/or shelter to people who lack it. These villages offer residents spaces that are often more comfortable and private than traditional shelters, can often better accommodate persons with disabilities who cannot live in congregate shelters, are more flexible to construct, significantly less expensive, and require less land.

- **Seattle, Washington**, maintains nine villages of tiny homes as part of a multifaceted partnership with faith-based organizations, building trade organizations, and the Low Income Housing Institute. These villages allow the City of Seattle to house 283 homeless residents and they boast exit rates to permanent housing comparable to other shelter programs.
- In October 2019, **Denver, Colorado**, unanimously voted to allow 70 square foot tiny home communities as a matter of right in industrial, commercial, and mixed-use areas. Church parking lots and residential areas can also host a village, and permits can be renewed yearly at the same location for up to four years, after which they village must move to a new location.



## BEST IMMEDIATE STEPS TO REDUCE HARM

### TEMPORARY SHELTER FACILITIES

Many cities have downtowns with commercial spaces that are vacant while they await new renters or remodeling. Private owners can donate these spaces for use as shelter while they are vacant in order to help alleviate unsheltered homelessness, and cities can help facilitate the process.

- **Portland-Multnomah County, Oregon**, is working with local businesses to facilitate using temporarily vacant commercial spaces for immediate sheltering purposes. The city works with businesses that have vacant space available for at least a few months to inspect and evaluate the property and make any modifications necessary to safely house at least 100 people experiencing homelessness at a time.

### TEMPORARY ENCAMPMENTS

Temporary authorized encampments can help people experiencing homelessness enjoy a secure, private place to shelter themselves and cities manage their public spaces. It is critical that temporary encampments should only be undertaken with an explicit plan for how people living in the encampment will eventually be placed into permanent housing.

Encampments are not fully adequate housing, and we should not accept the existence of permanent encampments as part of the American cityscape. It is also critical that the existence of authorized encampments not be used as an excuse to criminalize those for whom they may not be appropriate. That said, authorized encampments can help bring order and services to otherwise unorganized unsheltered homelessness, benefiting both its temporary residents and housed residents in the surrounding community. A full set of case studies and best practices can be found in our Tent City USA report.<sup>11</sup>

<sup>11</sup> NAT’LL. CTR. ON HOMELESSNESS & POVERTY, TENT CITY, USA: THE GROWTH OF AMERICA’S HOMELESS ENCAMPMENTS AND HOW COMMUNITIES ARE RESPONDING 8 (2017), [http://nlchp.org/wp-content/uploads/2018/10/Tent\\_City\\_USA\\_2017](http://nlchp.org/wp-content/uploads/2018/10/Tent_City_USA_2017).

For cities interested in establishing temporary outdoor encampments as an interim solution to homelessness, the Law Center developed a set of guiding principles for addressing temporary encampments (available at Appendix B), based on case studies and nationally recognized best practices. The U.S. Interagency Council on Homelessness has also released guidance that can help cities to regulate temporary outdoor encampments as an interim solution to unsheltered homelessness.<sup>12</sup>

- The Mesilla Valley Community of Hope in **Las Cruces, New Mexico**, hosts a permanent encampment with a co-located service center, providing expanded shelter capacity and a safe space for a self-governing encampment.
- **Washington State** permits religious organizations to temporarily host encampments on their property and places limits on the number of restrictions municipalities can impose.

pdf [hereinafter TENT CITY, USA].

<sup>12</sup> See *Ending Homelessness for People Living in Encampments: Advancing the Dialogue*, UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, <https://www.usich.gov/tools-for-action/ending-homelessness-for-people-in-encampments/> (Aug. 13, 2015); *Caution is Needed When Considering "Sanctioned Encampments" or "Safe Zones"*, UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, <https://www.usich.gov/tools-for-action/caution-is-needed-when-considering-sanctioned-encampments-or-safe-zones/> (May 25, 2018).



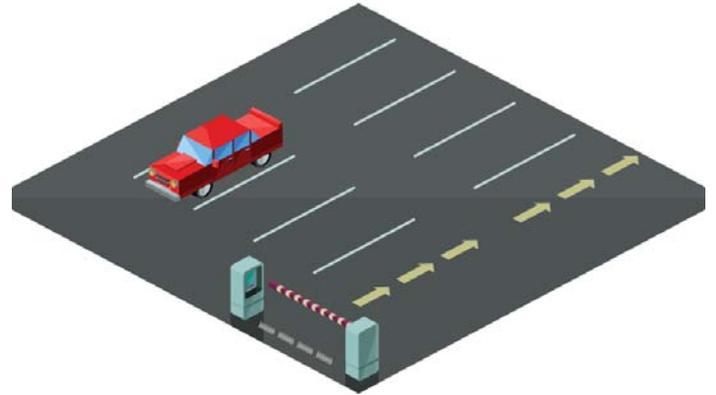
## Seattle houses 283 homeless residents through tiny homes

### CLEAR PROCEDURES FOR CLOSING ENCAMPMENTS THROUGH HOUSING

Understanding the need for communities to regulate public spaces, encampments should only be removed through clear processes, with adequate notice, and a requirement that the affected persons be provided adequate alternative housing. Putting into law the commitment to closing encampments through housing the individuals living there encourages communities to take an approach that will permanently end the need for the encampments.

- Settlements in **Orange County, California**, helped resolve an 800-person encampment through rehousing and sheltering rather than arrests. Permanent features of the settlement limit anti-camping and loitering enforcement against homeless people until cities within Orange County establish sufficient shelter space to meet their needs. The offered shelter beds must be available within the same zone of the county as where the person subject to enforcement lives, and the offers must be appropriate to the individual's medical needs, otherwise the encampment can remain in place. The settlement also sets forth countywide standards for shelters, including a grievance process.

- **Charleston, South Carolina**, ensured adequate time for planning, outreach, housing and services to close a 100-person encampment through housing most of its residents, without a single arrest.
- **Indianapolis, Indiana**, adopted an ordinance requiring residents be provided with adequate alternative housing before an encampment can be evicted, and mandates at least 15 days' notice of planned evictions to encampment residents and service providers.
- **Charleston, West Virginia**, settled litigation by adopting an ordinance requiring that encampment evictions cannot proceed unless residents are provided with adequate alternative housing or shelter, and providing 14 days' notice to encampment residents and service providers of planned evictions, and that storage facilities will be made available for homeless individuals.



## SAFE PARKING LOTS

**Governments should establish safe and accessible places for people to park vehicles used as shelter.** To accommodate the growing number of people residing in vehicles, some communities have taken initial steps to provide safe, legal lots for people living in vehicles to park them.

- **Eugene, Oregon**, allows public and private entities to host up to six vehicles for overnight parking. Each site must ensure availability of sanitary facilities, garbage disposal services, and a storage area for campers to store any personal items so that they are not visible from any public street.
- In June 2019, **Oakland, California**, established the first Safe Lot for RVs in the Bay Area. The new city-sponsored lot will host as many as 50 RVs for up to six months, and it provides hookups for electricity and water. It also has on-site toilets and security.

Encampments should only be removed through clear processes, with adequate notice



## PREVENT HOMELESSNESS BEFORE IT HAPPENS

**Cities should prevent homelessness by expanding protections for low-income renters.** While many communities across the country are working to end homelessness, inflows into homelessness exceed the pace at which homeless people become rehoused. To end our homelessness crisis, we must prevent housing loss before it happens. Strong renters' rights can be immediately implemented to reduce housing instability, remove barriers to housing access, and prevent homelessness.

- In many states, renters in privately owned rental housing may be evicted after their lease has expired, even if they are responsible tenants. In February 2019, the **Oregon** state legislature enacted Senate Bill 608—the first statewide just cause and rent stabilization law in the country. The bill limits rent increases to 7% each year, and it requires landlords to have good cause for evicting renters. Just cause eviction laws limit the

reasons by which renters may be legally evicted from their housing, and they are most effective when paired with rent stabilization policies which limit annual rent increases to a reasonable amount.

- In late 2017, **New York City, New York**, became the first city to guarantee a right to counsel for low-income tenants in housing court. Reversing a trend in favor of evictions, with counsel, 84% of tenants remain in their homes. Moreover, a study done on behalf of the New York City Bar Association's Pro Bono and Legal Services Committee found that providing free legal counsel to low-income tenants at risk of eviction would result in a net savings to the city of \$320 million each year.

With state and local budgets stretched to their limit, rational, cost-effective policies are needed—not ineffective, punitive measures that waste precious taxpayer dollars. Local and state governments should redirect resources currently spent on criminalizing homelessness toward proven solutions to homelessness.



# INTRODUCTION

Homelessness is a national crisis that affects communities in all parts of the country. But we can solve it. There is ample and growing evidence that **housing is the solution** to the national crisis of homelessness. Housing people who lack it saves public money. It improves public health. It improves public safety. And, it improves the lives—or even saves the lives—of people who would otherwise struggle for survival in shared public space for lack of any other options.

Even though we know what solves homelessness, and despite the success of at least 78 communities and three states in effectively ending local veteran homelessness through housing and supportive services, all levels of government have failed to invest in housing solutions. Instead, a growing number of cities have taken punitive approaches to homelessness that fail to reduce the number of people living on the streets, waste limited taxpayer dollars, compromise public health and safety, and cause acute human suffering in the process. Policies that punish homeless people for living outside—even when they have no other place to live—reflect the worst of our prejudices and fears. Moreover, the policies wholly fail to address the systemic causes of homelessness that have driven the crisis and, if corrected, can solve it.

This report discusses a thirteen-year trend in laws that criminally or civilly punish homelessness, using data from 187 cities across the country.<sup>13</sup> It also describes common practices aimed at displacing, or even banishing, homeless people from public space. We discuss why this troubling legal trend harms cities, exacerbates racial and other social inequities, and wastes money and energy on cruel, often illegal, policies that are doomed to fail.

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<sup>13</sup> The 187 cities featured in our research were chosen in 2006 based on their geographic diversity (e.g. they include urban and rural communities in all regions of the country), and the availability of the cities' municipal codes online.

## HOMELESSNESS IS A LARGE AND GROWING CRISIS

The U.S. Department of Housing and Urban Development (HUD) estimates that roughly 553,000 people experienced homelessness in 2018,<sup>14</sup> with over one third of those living in an unsheltered environment.<sup>15</sup> This represents a growth in overall homelessness, and the third year in a row that unsheltered homelessness has increased nationwide. Most of the largest increases in unsheltered homelessness were reported in Western states. Indeed, between 2015 and 2017, California and Washington together accounted for over half of all people sleeping unsheltered in the country.<sup>16</sup>

Even these stark numbers significantly understate the problem. Obtaining an accurate count of the number of homeless people in America has proven to be a nearly impossible task due to multiple factors—including inconsistent local implementation of the count methodology and the failure to count homeless people in places where they may be living.<sup>17</sup> Homeless people who are incarcerated, for example, are excluded from most official counts of people experiencing homelessness which can severely compromise count data in an era of increasing criminalization of homelessness and mass incarceration. The Continuum of Care (CoC) for Houston, Texas, performed an “expanded” Point-in-Time count in 2017 which included homeless individuals in county jails. Including the incarcerated homeless population increased the total number of homeless individuals counted

by 57%.<sup>18</sup> These shortcomings warn against relying on HUD data to present a realistic picture of the homeless crisis, or even to demonstrate trends.<sup>19</sup>

Other data sets present a more accurate view of the size and nature of the homelessness crisis. According to the U.S. Department of Education,<sup>20</sup> almost 1.4 million school children experienced homelessness during the 2016-2017 school year.<sup>21</sup> Some of these children were among the estimated 4.4 million poor people in 2017 who were temporarily sleeping on the floors or couches of family or friends because they could not afford their own housing.<sup>22</sup> A 2001 study using administrative data collected from homeless service providers estimated that the annual number of homeless individuals is 2.5 to 10.2 times greater than can be obtained using a Point in Time count.<sup>23</sup>

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14 U.S. DEP’T OF HOUS. & URBAN DEV., THE 2018 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 4 (2018), <https://www.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf> [hereinafter AHAR]. The point-in-time (“PIT”) count is conducted for one night during the last ten days of January each year, with the goal of estimating the number of people experiencing homelessness as well as within particular populations. *Id.* at 6.

15 *Id.* at 10. HUD defines unsheltered homelessness as “people whose primary nighttime location is a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for people (for example, the streets, vehicles, or parks).” *Id.* at 3.

16 *Exploring the Crisis of Unsheltered Homelessness*, NAT’L ALLIANCE TO END HOMELESSNESS (June 20, 2018), <https://endhomelessness.org/exploring-crisis-unsheltered-homelessness/>.

17 See generally NAT’L L. CTR. ON HOMELESSNESS & POVERTY, DON’T COUNT ON IT: HOW THE HUD POINT-IN-TIME COUNT UNDERESTIMATES THE HOMELESSNESS CRISIS IN AMERICA (2017), <https://nlchp.org/wp-content/uploads/2018/10/HUD-PIT-report2017.pdf> [hereinafter DON’T COUNT ON IT].

18 *Id.* at 12.

19 *Id.* at 6; see also Kim Hopper et al., *Estimating Numbers of Unsheltered Homeless People Through Point-Capture and Postcount Survey Methods*, 98 AM. J. PUB. HEALTH 1438, 1442 (2008), <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2005.083600>; Maria Foscariis, *Homeless Problem Bigger than Our Leaders Think: Column*, USA TODAY (Jan. 16, 2014, 7:35 PM), <http://www.usatoday.com/story/opinion/2014/01/16/homeless-problem-obama-america-recession-column/4539917/>.

20 The U.S. Department of Education uses a different definition of homelessness than HUD.

21 *National Overview*, NAT’L CTR. FOR HOMELESS EDUC., <http://profiles.nche.seiservices.com/ConsolidatedStateProfile.aspx> (last visited Nov. 19, 2019).

22 *State of Homelessness*, NAT’L ALL. TO END HOMELESSNESS, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-report/> (last visited Nov. 19, 2019).

23 Stephen Metraux et al., *Assessing Homeless Population Size Through the Use of Emergency and Transitional Shelter Services in 1998: Results from the Analysis of Administrative Data from Nine US Jurisdictions*, 116 PUB. HEALTH REP. 344 (2001).

## THE GAP BETWEEN INCOMES AND THE COST OF HOUSING IS A PRIMARY CAUSE OF HOMELESSNESS

Rising rents,<sup>24</sup> historically low rental vacancy rates,<sup>25</sup> and the decline of federally subsidized housing<sup>26</sup> have led to a critical shortage of affordable housing units.<sup>27</sup> This affordability crisis is further exacerbated as wages remain relatively stagnant alongside skyrocketing housing costs. In Santa Clara County, California, for example, household incomes at 30% of area median income grew by 15%, while rental prices in the least expensive quartile of units grew by 36%.<sup>28</sup>

According to the National Low Income Housing Coalition, which publishes an annual report on the affordable housing gap, there are only 35 available, affordable housing units for every 100 extremely low income (“ELI”) renter households.<sup>29</sup> This housing gap is even more severe in many of the nation’s large and growing metropolitan areas. In Los Angeles, California, for example, there are only 17 affordable and available units for every 100 ELI renter



**There are only 10  
affordable and  
available homes for  
every 100 ELI  
renters in  
Las Vegas, NV**

households. In Las Vegas, Nevada, that number drops to only 10 affordable and available homes.<sup>30</sup>

The private market has not been a source for solutions; in fact, local incentives are further skewing the market. Las Vegas, which already has a dearth of affordable housing, is funding development incentives that resulted in 100% of new apartment developments in 2017 being high-end, luxury units, rather than affordable housing.<sup>31</sup> This is in line with national statistics that close to 78% of new units constructed in 2017 and 87% of new units in 2019<sup>32</sup> were luxury units.

Paying market rents is a difficult-to-impossible task.<sup>33</sup> A full-time worker earning the federal minimum wage of \$7.25 would need to work approximately 103 hours per week for all 52 weeks of the year—the equivalent of two and a half full-time jobs—just to afford a one-bedroom home at the national average fair market rent.<sup>34</sup> There is no state, metropolitan area, or county where a worker earning minimum wage can afford market rents by working a

30 *Id.* at 9. These numbers only count households that are currently renting and therefore do not account for persons experiencing homelessness.

31 *8 Out of 10 New Apartment Buildings Were High-End in 2017, Trend Continues in 2018*, RENT CAFE BLOG (Sept. 21, 2018), <https://www.rentcafe.com/blog/rental-market/luxury-apartments/8-out-of-10-new-apartment-buildings-were-high-end-in-2017-trend-carries-on-into-2018/>.

32 *Id.*

33 As rents have risen, wages of low-income American workers have declined. From 1979 to 2013, while the hourly wages of high-wage workers rose 40.6% and those of middle-wage workers grew 6.1%, the wages of low-wage workers fell 5.3%, according to the Economic Policy Institute. ELISE GOULD, ECON. POLICY INST., *WHY AMERICA’S WORKERS NEED FASTER WAGE GROWTH—AND WHAT WE CAN DO ABOUT IT* 4 (2014), <https://www.epi.org/files/2014/why-americas-workers-need-faster-wage-growth-final.pdf>.

34 NAT’L LOW INCOME HOUS. COAL., *OUT OF REACH* 1 (2019), [https://reports.nlihc.org/sites/default/files/oor/OOR\\_2019.pdf](https://reports.nlihc.org/sites/default/files/oor/OOR_2019.pdf) [hereinafter *OUT OF REACH*].

24 The U.S. average rent is \$1,465 as of June 2019, increasing 2.6% since the beginning of the year. At the end of 2018, the national average rent was \$1,419, a 3.1% increase from the year prior. Drastic rent increases are not confined to major cities such as New York and San Francisco; small cities experienced the most rent fluctuation in 2018, with double digit rent increases in Odessa, TX, Midland, TX, and Reno, NV. Balazs Szekeley, *2018 Year End Rent Report*, RENT CAFE BLOG (Dec. 13, 2018), <https://www.rentcafe.com/blog/rental-market/2018-year-end-rent-report/>.

25 Low vacancy rates keep rents high. The national vacancy rate dropped to 4.4% for both owner-occupied and rental units in 2018, the lowest point since 1994. JT. CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *THE STATE OF THE NATION’S HOUSING* 1, 27 (2019), [https://www.jchs.harvard.edu/sites/default/files/Harvard\\_JCHS\\_State\\_of\\_the\\_Nations\\_Housing\\_2019.pdf](https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf) [hereinafter *STATE OF THE NATION’S HOUSING*].

26 Since the mid-1980’s, our nation has lost subsidized housing units at a rate of approximately 10,000 per year. Ed Gramlich, *Public Housing*, NAT’L LOW INCOME HOUS. COAL. (2017), [https://nlihc.org/sites/default/files/AG-2017/2017AG\\_Ch04-S04\\_Public-Housing.pdf](https://nlihc.org/sites/default/files/AG-2017/2017AG_Ch04-S04_Public-Housing.pdf). We cannot recover from the homelessness crisis without significant reinvestment in federally subsidized housing for low-income people.

27 See e.g., *Freddie Mac: Rapidly Growing Metros are Losing Affordable Housing at Alarming Rates*, FREDDIE MAC, <https://freddiemac.gcs-web.com/news-releases/news-release-details/freddie-mac-rapidly-growing-metros-are-losing-affordable-housing> (last visited Nov. 27, 2019).

28 BAY AREA ECON. INST., *BAY AREA HOMELESSNESS: A REGIONAL VIEW OF A REGIONAL CRISIS* 22 (2019).

29 Households defined as extremely low income (“ELI”) have incomes at or below the Poverty Guideline or 30% of AMI, whichever is higher. NAT’L LOW INCOME HOUS. COAL., *A SHORTAGE OF AFFORDABLE HOMES* 2 (2018), [https://reports.nlihc.org/sites/default/files/gap/Gap-Report\\_2018.pdf](https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2018.pdf).



## Nearly half of the entire U.S. renter population is cost burdened

standard 40-hour per week job.<sup>35</sup> People who are on fixed incomes, such as retired seniors and people with disabilities, are also priced out of the market.

Millions of renters pay more than they can afford to keep a roof over their heads, and are at risk of homelessness.<sup>36</sup> According to a June 2019 report by the Joint Center for Housing Studies at Harvard University, nearly half of the entire U.S. renter population is “cost burdened”, meaning that they pay more than 30% of their incomes toward housing costs.<sup>37</sup> While housing cost burdens affect renters of multiple income levels, our nation’s poorest renters feel housing cost burdens most acutely. Indeed, renters are considered severely cost-burdened when they spend more than 50% of their incomes on housing.<sup>38</sup> Today, 71% of ELI households are severely cost burdened.<sup>39</sup>

Housing cost-burdened renters are left with little income for other necessities like food, medicine, child care, and transportation. They have no financial

35 *Id.* at 2. This statistic is for 2-bedroom units at fair market rent.

36 The majority of renter households are low-income, with 53% of all renter households earning less than \$35,000 annually, and 60% of those earning less than \$15,000 each year. JT. CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *AMERICA’S RENTAL HOUSING 1* (2017), [https://www.jchs.harvard.edu/sites/default/files/harvard\\_jchs\\_americas\\_rental\\_housing\\_2017\\_0.pdf](https://www.jchs.harvard.edu/sites/default/files/harvard_jchs_americas_rental_housing_2017_0.pdf).

37 STATE OF THE NATION’S HOUSING, *supra* note 26, at 4.

38 *The Gap: A Shortage of Affordable Rental Homes*, NAT’L LOW INCOME HOUSING COALITION, <https://reports.nlihc.org/gap/about> (last visited Nov. 19, 2019).

39 *Id.*

cushion against emergencies or sudden interruptions in income from job loss, divorce, or other destabilizing life events. Meanwhile, federal housing subsidies have shrunk dramatically in recent decades, and only 24% of people eligible for housing assistance receive it.<sup>40</sup> In this environment, low-income renters face a constant risk of housing loss and homelessness.

People of color are especially harmed by the affordable housing gap. Approximately half of all renters in this country are people of color. According to the 2019 Harvard Report, the cost-burdened share is highest among Black renters at 54.9%, followed closely by Hispanics at 53.5%.<sup>41</sup> The rates for Asians and other minorities are lower at 45.7%, but still above the white share of 42.6%. Among homeowners, 30.2% of Blacks, 29.6% of Hispanics, and 27.3% of Asian/others were cost burdened in 2017, compared with 20.4% of White homeowners.<sup>42</sup>

A growing body of research demonstrates the causal link between unaffordable rental housing and homelessness. A recent study from UCLA found that housing costs are a significant factor in California’s homeless crisis.<sup>43</sup> The study compared homeless rates and housing costs in all 50 states and Washington, DC, and found that, in general, states with higher housing costs have higher homeless rates. The study also found that states with higher incomes and more housing supply had lower rates of homelessness.

A similar study, *Dynamics of Homelessness in Urban America*, examined the relationship between housing costs and homelessness in the 25 largest U.S. metropolitan areas, drawing on data from the U.S. Census Bureau, HUD, and the housing website Zillow.<sup>44</sup> The study found a strong correlation between homelessness and rental costs. The study also predicted marked increases in homelessness with rising rental costs. For example, the study predicted over 6,000 more people would experience homelessness in New York City if rents increased by 10%; in Los Angeles, the increase would be over 4,000 more

40 Erika C. Poethig, *One in Four: America’s Housing Assistance Lottery*, URB. INST. (May 28, 2014), <https://www.urban.org/urban-wire/one-four-americas-housing-assistance-lottery>.

41 STATE OF THE NATION’S HOUSING, *supra* note 26, at 32.

42 *Id.*

43 Andrew Khouri, *High Cost of Housing Drives Up Homeless Rates, UCLA Study Indicates*, L.A. TIMES (June 13, 2018, 5:00 AM), <https://www.latimes.com/business/la-fi-ucla-anderson-forecast-20180613-story.html>.

44 CHRIS GLYNN & EMILY B. FOX, *DYNAMICS OF HOMELESSNESS IN URBAN AMERICA 1* (July 28, 2017).

people.<sup>45</sup> Unaffordable rents result in evictions for non-payment of rent, which is a direct cause of homelessness. The Boston Bar Association Task Force on the Civil Right to Counsel reported that 45% of households that enter the Massachusetts shelters gave eviction as the reason they were homeless or at risk of homelessness.

A study of Washington State found similar results and described how quickly housing can be lost; over half of renters facing eviction in Seattle, Washington's largest city, owed less than one month's rent before receiving eviction notices.<sup>46</sup> Smaller communities in Washington State are in a similar predicament. A 2017 survey conducted by St. Martin's University also found eviction to be a leading cause of homelessness in Puyallup, Washington—a small community with no year-round emergency shelter.<sup>47</sup> Eviction is not only a direct cause of homelessness; it also triggers a flood of other problems that increase the risk of homelessness.<sup>48</sup> The scramble to find replacement housing can force people to pay more than they can afford, often for substandard housing in worse neighborhoods. An eviction on someone's record can also bar them from becoming rehoused. Private landlords and even some public housing authorities deny admission and assistance to tenants with histories of eviction.

Evictions can result in job loss.<sup>49</sup> In Milwaukee, displaced renters were 20% more likely to lose their jobs.<sup>50</sup>

Evictions also carry serious health and education consequences. In Matt Desmond's Pulitzer Prize winning book *Evicted*, he reveals that mothers who experienced a recent eviction are over twice as likely to report poor health in their children, as well as higher rates of depression.<sup>51</sup> Moreover, an eviction can affect a child's ability to succeed in school.<sup>52</sup> Not only does their ability to attend school become tenuous, it is also "difficult for children to concentrate at school when they have lost their clothes and toys and do not know where they will sleep that night."<sup>53</sup> This contributes to poorer school performance and lower graduation rates of homeless students compared to their housed classmates—problems that can limit their options and have profound effects throughout their entire lives.<sup>54</sup> Once housing is lost, it can be difficult to replace. In addition to a competitive rental market where affordable units are few and far between, low-income renters must also contend with multiple housing policies that discriminate against them. Landlords may have policies that automatically exclude prospective renters with eviction records, criminal records, or a lack of recent rental history due to homelessness. These policies may apply even when the underlying events are old, wholly unrelated to the prospective renter's ability to pay rent or abide by reasonable lease terms, or even when the record at issue is inaccurate. In addition, landlords may refuse to rent to tenants based on their source of income, such as a Section 8 voucher, or based on other prejudices. These barriers all diminish the choices of low-income renters, forcing them into worse housing at higher costs. Once a renter is trapped in this cycle, homelessness becomes more and more likely.

There are other contributors to homelessness beyond the lack of affordable housing. Trauma and violence, for example, are highly correlated with homelessness. More than 80% of women with children who experience homelessness have experienced domestic violence. Nearly half of women

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45 *Id.* at 21.

46 Heidi Groover & Vernal Coleman, *Evictions in Seattle, Often Over a Month's Rent or Less, Add to Homeless Crisis, Report Finds*, THE SEATTLE TIMES (Sept. 21, 2018, last updated Sept. 24, 2018), <https://www.seattletimes.com/seattle-news/homeless/evictions-in-seattle-often-over-a-months-rent-or-less-add-to-homeless-crisis-report-finds/>.

47 Emily F. Coyle, *Experiencing Homelessness in Puyallup* (2017) (unpublished study, Saint Martin's University), available at <https://www.stmartin.edu/news-events/saint-stories/hearing-homeless>. Also, Puyallup, Washington was added to our Hall of Shame in our *Housing Not Handcuffs* report released in 2016. See NAT'L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 29 (2016), <https://nlchp.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf>.

48 NAT'L L. CTR. ON HOMELESSNESS & POVERTY, PROTECT TENANTS, PREVENT HOMELESSNESS 17 (2018), <http://nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf> [hereinafter PROTECT TENANTS, PREVENT HOMELESSNESS].

49 See Breezy Schmidt, *North Dakota Case Study: The Eviction Mill's Fast Track to Homelessness*, 92 N.D. L. REV. 595 (2017), available at [https://law.und.edu/\\_files/docs/ndlr/pdf/issues/92/3/92ndlr595.pdf](https://law.und.edu/_files/docs/ndlr/pdf/issues/92/3/92ndlr595.pdf).

50 Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, 22-2015 Fast Focus 5 (2015).

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51 MATTHEW DESMOND, *EVICTED: POVERTY & PROFIT IN THE AMERICAN CITY*, 298 (2016).

52 NAT'L L. CTR. ON HOMELESSNESS & POVERTY, NO BARRIERS: A LEGAL ADVOCATE'S GUIDE TO ENSURING COMPLIANCE WITH THE EDUCATION PROGRAM OF THE MCKINNEY-VENTO ACT 10 (2d ed. 2016), <https://nlchp.org/wp-content/uploads/2018/10/NoBarriers-1.pdf>.

53 Breezy Schmidt, *North Dakota Case Study: The Eviction Mill's Fast Track to Homelessness*, 92 N.D. L. REV. 595, 619 (2017), available at [https://law.und.edu/\\_files/docs/ndlr/pdf/issues/92/3/92ndlr595.pdf](https://law.und.edu/_files/docs/ndlr/pdf/issues/92/3/92ndlr595.pdf).

54 NAT'L L. CTR. ON HOMELESSNESS & POVERTY, NO BARRIERS: A LEGAL ADVOCATE'S GUIDE TO ENSURING COMPLIANCE WITH THE EDUCATION PROGRAM OF THE MCKINNEY-VENTO ACT 10 (2d ed. 2016), <https://nlchp.org/wp-content/uploads/2018/10/NoBarriers-1.pdf>.

with a history of homelessness also experienced childhood sexual abuse.<sup>55</sup>

Our broken mental health system,<sup>56</sup> inadequate addiction treatment options,<sup>57</sup> mass incarceration,<sup>58</sup> and climate change<sup>59</sup> have also contributed to the current crisis. But it is important to note that while fixing these issues can help ease homelessness rates, any solutions to homelessness must address its primary cause: a lack of affordable, available, and adequate housing.

## PEOPLE OF COLOR FACE DISPROPORTIONATE HOUSING COST BURDENS, EVICTION, AND HOMELESSNESS

A long, inglorious history of housing and zoning policies creating racial and socioeconomic segregation has led to disproportionate representation of people of color among the nation's homeless population. Laws that are discriminatory or have discriminatory impact, as well as discrimination in real estate and lending practices, have resulted in neighborhood segregation along racial lines and concentrated poverty. Today, 70% of poor Blacks and 63% of poor Hispanics live in high-poverty communities as compared with only 35% of poor Whites.<sup>60</sup>

Concentrated poverty contributes to impoverished social networks. Poor individuals and families whose social networks are similarly impoverished may lack the ability to live, even temporarily, with others because their friends and family lack the resources to accommodate them.<sup>61</sup>

Poor families of color, particularly Black women with children, have been the subject of disproportionately high rates of eviction. And once housing is lost, racist practices prevent people from becoming rehoused. According to data from HUD, people of color are shown fewer rental units and are more often denied leases based on credit history compared to White people. Black and Hispanic renters are also quoted higher rental prices than White renters and told less frequently that deposits and other move-in costs can be negotiated.<sup>62</sup>

With fewer options, people of color are also more likely to have worse housing and to pay more for it. Data from the National Housing Survey revealed that Black people are 24% less likely to live in safe, adequate housing than white people. Hispanic people are 12% less likely.<sup>63</sup> Racist housing policies contribute to disproportionate rates of homelessness among people of color, even when controlling for poverty.<sup>64</sup> Black people make up 40% of the homeless population, yet only 13% of the general population. Latinx, Native American, and Pacific Islander rates of homelessness are also disproportionately high. In total, people of color constitute over 60% of the nation's homeless population even though they make up only a third of the general U.S. population.

Many communities  
treat temporary  
emergency shelters  
as the answer

55 DEPT. OF HEALTH & HUMAN SERVICES, FAMILY & YOUTH SERVICES BUREAU, DOMESTIC VIOLENCE AND HOMELESSNESS STATISTICS (2016), <https://www.acf.hhs.gov/fysb/resource/dv-homelessness-stats-2016>.

56 One-third of the U.S. homeless population is comprised of individuals with untreated psychiatric illnesses. Anthony H. Normore et al., *The Defragmentation of Mental Health Services, Police, and the Homeless*, 10 POLICING 134, 135 (2015).

57 See *id.* at 137 (discussing the complex relationship between substance use treatment and mental health conditions).

58 LUCIUS COULOUTE, PRISON POLICY INITIATIVE, NOWHERE TO GO: HOMELESSNESS AMONG FORMERLY INCARCERATED PEOPLE, <https://www.prisonpolicy.org/reports/housing.html>.

59 In January 2018, 3,900 people were staying in sheltered locations specifically for people displaced by presidentially declared national disasters. AHAR, *supra* note 15, at 1; see generally Brodie Ramin & Tomislav Svoboda, *Health of the Homeless and Climate Change*, 86 J. URB. HEALTH 654 (2009).

60 STATE OF THE NATION'S HOUSING, *supra* note 26, at 16.

61 JEFFREY OLIVET ET AL., CENTER FOR SOCIAL INNOVATION, SUPPORTING PARTNERSHIPS FOR ANTI-RACIST COMMUNITIES: PHASE ONE STUDY FINDINGS

12 (2018), <https://center4si.com/wp-content/uploads/2016/08/SPARC-Phase-1-Findings-March-2018.pdf>.

62 PROTECT TENANTS, PREVENT HOMELESSNESS, *supra* note 49, at 13; see also Shaila Dewan, *Discrimination in Housing Against Nonwhites Persists Quietly, U.S. Study Finds*, N.Y. TIMES (June 11, 2013), <http://www.nytimes.com/2013/06/12/business/economy/discrimination-in-housing-against-nonwhites-persists-quietly-us-study-finds.html> ("Taking into account fees, deposits, and rents, apartments were more likely to cost whites slightly less in the first year of rental than Blacks might pay.").

63 PROTECT TENANTS, PREVENT HOMELESSNESS, *supra* note 49, at 13 (citing Kusum Mundra & Amarendra Sharma, *Housing Adequacy Gap for Minorities and Immigrants in the U.S.: Evidence from the 2009 American Housing Survey* (2014), <https://kmundra.newark.rutgers.edu/files/2013/11/MS-HousingQualityRevJHRJune102014.pdf>).

64 See George R. Carter III, *From Exclusion to Destitution: Race, Affordable Housing, and Homelessness*, 13 CITYSCAPE 33 (2011), [https://www.huduser.gov/portal/periodicals/cityscape/vol13num1/Cityscape\\_March2011\\_from\\_exclusion.pdf](https://www.huduser.gov/portal/periodicals/cityscape/vol13num1/Cityscape_March2011_from_exclusion.pdf).

## PEOPLE WITH DISABILITIES ARE ALSO DISPROPORTIONATELY HOMELESS

People experiencing homelessness are significantly more likely to have disabilities compared to either the U.S. population or individuals living in poverty.<sup>65</sup> 1 in 85 adults with disabilities experienced sheltered homelessness compared to 1 in 344 adults without disabilities.<sup>66</sup> Among adults in families with children in shelters, nearly 22% have a disability. Disability rates are also 8% higher among children and youth experiencing homelessness compared to their peers.

While people with disabilities may qualify for certain income supports, they often face challenges when applying for them.<sup>67</sup> Moreover, disability income supports, like SSI, are too low to pay for market rate housing in many American cities. Indeed, the national average rent for a modest one-bedroom apartment is equal to 113% of the average SSI disability benefit for a single individual.<sup>68</sup>

**“You can’t solve the housing issue on private terms. As long as there is a price on shelter, it will be inaccessible to millions of people. Compound that with the federal government’s resistance to public housing, and you end up in a situation where a significant portion of the population can never be adequately housed. When it’s just left up to the market to determine the floor on housing prices, it will go as high as humanly possible. That’s what we’re experiencing now—historically high rents, historically high levels of housing insecurity.” - Keeanga-Yamahtta Taylor**

65 U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *HOMELESSNESS IN AMERICA: FOCUS ON INDIVIDUAL ADULTS 6* (2018), [https://www.usich.gov/resources/uploads/asset\\_library/HIA\\_Individual\\_Adults.pdf](https://www.usich.gov/resources/uploads/asset_library/HIA_Individual_Adults.pdf) [hereinafter FOCUS ON INDIVIDUAL ADULTS].

66 *Id.*

67 *Housing and Homelessness as a Public Health Issue*, AM. PUB. HEALTH ASS’N (2017), <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2018/01/18/housing-and-homelessness-as-a-public-health-issue> (“People experiencing homelessness face many challenges when applying for disability benefits, including inconsistent treatment, difficulty in locating medical records, lack of a stable address or telephone number for contact with Social Security, and difficulty in understanding complex and fragmented application processes.”).

68 FOCUS ON INDIVIDUAL ADULTS, *supra* note 65, at 6.

## PEOPLE EXPERIENCING HOMELESSNESS HAVE INSUFFICIENT OPTIONS FOR MEETING THEIR BASIC HUMAN NEEDS

Once a person becomes homeless, they have exceedingly limited options for meeting their basic human needs, like the need for shelter from the outdoor elements. Only a few jurisdictions guarantee a right to shelter, and even these communities struggle with unsheltered homelessness because shelter alone does not end homelessness.<sup>69</sup> Two-thirds of people experiencing chronic homelessness are staying outdoors, in abandoned buildings, or other locations not suitable for human habitation.

Many communities treat temporary emergency shelters as the answer to systemic shortages of permanent housing, but this is misguided and harmful. Because homelessness is driven by a large and critical shortage of affordable housing, many individuals and families need help not just for one or two nights, but for longer periods of time. Indeed, exits to permanent housing from emergency shelters are abysmally low—the majority of people who enter into shelter from streets and jails exit right back to the streets. For example, an investigative report of the Pinellas Safe Harbor shelter in Pinellas County, Florida, found that only 7% of shelter residents transitioned into permanent housing. In contrast, 70% of shelter residents ended up at another shelter or an “unknown location.”<sup>70</sup>

Nonetheless, emergency shelters are an important part of the crisis response to homelessness. Yet, even this limited resource is overstretched. Nationwide, shelters are operating at or near maximum capacity. Indeed, homeless service providers are only able to offer temporary beds to approximately 70% of people experiencing homelessness captured in the (significantly underinclusive) Point-in-Time count.<sup>71</sup> This problem is faced not only by large, urban

69 New York, Massachusetts, West Virginia, and Washington DC guarantee a right to shelter to certain homeless individuals. The right to shelter, however, has not ended homelessness in those communities. The New York State Supreme Court ruling in *Callahan v. Carey* led New York City to build shelters for 95% of the its homeless population, but “this shelter capacity has helped to create the nation’s largest concentration of homelessness in New York City.” BAY AREA ECON. INST., *supra* note 29, at 29.

70 Arthur Delaney, *A Traveling Consultant Helps America Hide the Homeless*, HUFFINGTON POST (Mar. 9, 2015, 9:12 PM), [https://www.huffpost.com/entry/robert-marbut\\_n\\_6738948](https://www.huffpost.com/entry/robert-marbut_n_6738948).

71 *State of Homelessness*, NAT’L ALL. TO END HOMELESSNESS, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-report/> (last visited Nov. 19, 2019).

communities and states with relatively high homeless populations; it is widespread and affects states in every corner of the nation.

Some cities expand emergency shelter capacity during inclement weather months, but even these “overflow” beds are routinely at capacity. As a result, emergency shelters routinely turn people away and back into public space in cities across the country. Indeed, in many cities, there are long waiting lists even for overnight emergency shelter in crowded rooms that offer only an overnight mat on the floor.



Even when shelter beds are open, they may be functionally unavailable to people living outside. A broad range of practical barriers make emergency shelters inaccessible or inappropriate settings for homeless people. Some key barriers to emergency shelter access, even when beds are technically open, are:

- **Gender:** Most emergency shelters serve only a single gender, most often single adult males. This poses a problem for women, who have fewer options for shelter, and for gender non-conforming people who may be excluded from shelters entirely.
- **Age:** Most emergency shelters serve only adults. Adults with minor children have far fewer shelter options; unaccompanied youth have the fewest of all.
- **Identification Requirements:** Restrictive ID requirements prevent people from accessing shelters. Maintaining identification documents is difficult for unhoused people who have no place to store their personal property.
- **Family Composition:** Most shelters serve single adults and generally separate members of the opposite sex. As a result, adult married couples or parents of adult

children (or even teenaged male children) may be separated when entering shelter.

- **Addiction:** Most shelters do not accommodate people who are under the influence of a controlled substance.
- **Lack of Storage:** Most emergency shelters do not have capacity to store their clients’ personal possessions. Thus, someone entering shelter must find a secure place to store their property or risk losing it while they are in the shelter overnight.
- **Lack of Stability:** Many shelters do not commit to providing clients with a bed for more than one night at a time, and those wishing to claim beds must line up hours in advance. This creates challenges for those trying to maintain employment, and forces people experiencing homelessness to “choose” between the possibility of a bed and simply maintaining their own ability to shelter themselves. Where they cannot do both, the rational “choice” may be to remain unsheltered.
- **Pet Ownership:** Most shelters do not accommodate pets or even service animals.
- **Lack of Autonomy:** Many shelters have strict rules governing curfew, the freedom to come and go during shelter hours, and/or even use of personal property, such as cell phones.
- **Lack of Privacy:** Most emergency shelters are in congregate settings, and they are often crowded.
- **Physical Disability:** Many shelters exclude people who have mobility issues or other physical disabilities.
- **Mental Health:** Many shelters exclude people with severe mental illness or impose rules or conditions that people with mental health disabilities cannot reasonably follow. For example, people with Post Traumatic Stress Disorder are often unable to access shelter as a result of that condition.
- **Religion:** A large number of emergency shelters are offered as part of religious ministries, and the religious environment may exclude homeless people with conflicting beliefs.



this is important for controlling ambient temperature and protecting oneself from the rain, sun, wind, bugs, and rats. Tents and vehicles also offer privacy and autonomy—such as the freedom to stay together with family and friends—that congregate shelter settings do not offer.

Beyond the unmet need for shelter, homeless people often struggle to meet other basic human needs. Examples of unmet needs include:

- **Lack of access to water:** Homeless people often lack access to clean water to use for drinking, washing, and bathing. According to a report by the Safe Water Alliance, Environmental Justice Coalition for Water, and the International Human Rights Law Clinic at the University of California at Berkeley, homeless people are dramatically affected by lack of water access. The report noted that cities contribute to this problem by closing or restricting the hours of public restrooms and capping drinking fountains in parks:

“As a result, homeless people are either left without access to water or are forced to use unsafe sources, such as river water, which can cause diarrhea and other health impacts. This is especially difficult for homeless people with disabilities because the limited sources of potable water may be located miles away from the encampment where they reside.”<sup>74</sup>

- **LGBTQ+ Identity:** Some shelters exclude people who identify as LGBTQ+.
- **Immigration Status:** In an era of increasing ICE raids, immigrants have good reason to fear contact with emergency homeless shelters.<sup>72</sup> Indeed, despite guidance indicating enforcement should not be undertaken at sensitive locations like shelters, ICE raids at shelters have been reported in a number of cities.<sup>73</sup>
- **Sanitation Concerns:** Overcrowded conditions at emergency shelters contribute to disease transmission between shelter residents. Bed bug and other infestations are common.
- **Safety Concerns:** Property theft and violence between shelter residents deter people from using emergency shelter.

As a result of these real and practical barriers to shelter access, shelters are not necessarily adequate alternatives to unhoused people’s tents and/or vehicles. Moreover, most emergency shelter beds are available only overnight, and thus provide only temporary shelter. Tents and vehicles, on the other hand, can be accessed both day and night—

<sup>72</sup> David F. Brand, *Cities Take Steps to Protect Homeless Immigrants from Immigration Agents*, PROGRESSIVE (May 23, 2018), <https://progressive.org/dispatches/cities-protect-homeless-immigrants-from-ICE-180523/>.

<sup>73</sup> See, e.g., Tanvi Misra, *Lessons from New York’s Immigration Raids*, CITYLAB (July 23, 2018), <https://www.citylab.com/equity/2018/07/lessons-from-new-yorks-immigration-raids/565847/>.

<sup>74</sup> SAFE WATER ALLIANCE, BARRIERS TO ACCESS TO SAFE AND AFFORDABLE WATER FOR DISADVANTAGED COMMUNITIES IN CALIFORNIA 7 (2015) (submission to the United Nations Universal Periodic Review of United States of America), <https://www.law.berkeley.edu/wp-content/uploads/2015/04/Shadow-Report-on-Right-to-Water-JS25-150511.pdf>.

- **Lack of access to food:** A U.S. Conference of Mayors Hunger and Homelessness survey found that in nearly half of all surveyed cities, emergency kitchens and food pantries had to reduce the amount of food given to each individual and nearly a third of cities had to limit the number of visits to local food pantries to try to stretch their resources.<sup>75</sup> Despite these tactics, 47% of cities had to turn hungry people away.<sup>76</sup>
- **Lack of access to places to store personal property:** Homeless people lack places to store their property. The lack of any space to secure needed personal belongings—such as clothing, medication, and legal documents—is a daily stressor that leaves homeless people in constant risk of losing their few possessions. This property loss can result in serious and enduring harm, yet few cities offer any form of free storage. For example, only 11% of cities have policies requiring property storage after an encampment has been swept.<sup>77</sup>
- **Lack of access to toilets, shower, and laundry:** Homeless people lack regular access to toilets—a significant public health problem that has contributed to the spread of disease, such as hepatitis A. Indeed, a June 2018 Issue Brief from The Network for Public Health law reported that the U.S. is in the midst of the “worst multistate hepatitis A outbreak” in over two decades due to a nationwide shortage of public toilet, hand washing, shower, and laundry facilities accessible to people experiencing homelessness.
- **Lack of access to trash services:** Homeless people lack trash services, leading to the accumulation of trash, food waste, and other debris in and around places where homeless people live. Rather than provide regular trash services, most cities wait until the accumulation of trash has become a public health problem to remove the debris—and often homeless people’s property with it.



**We must  
prevent  
housing  
loss before  
it happens**

<sup>75</sup> U.S. CONFERENCE OF MAYORS, A STATUS REPORT ON HOMELESSNESS AND HUNGER IN AMERICA’S CITIES (2016), <https://endhomelessness.atavist.com/mayorsreport2016>.

<sup>76</sup> *Id.*

<sup>77</sup> TENT CITY, USA, *supra* note 12, at 8

# THE GROWTH OF LAWS PUNISHING HOMELESSNESS



Despite a lack of affordable housing and emergency shelter space, and perhaps directly because of the growth of highly visible unsheltered homelessness, many cities have chosen to criminally or civilly punish people living on the street for doing what any human being must do to survive. Cities continue to threaten, arrest, and ticket homeless people for living in public space.

With the assistance of the law firms Sullivan & Cromwell, Dechert, and Kirkland & Ellis, the Law Center examined the city codes of 187 cities across the country, which are listed in our Prohibited Conduct Chart in Appendix A. Through online research, we identified laws that restrict or prohibit multiple different categories of conduct disproportionately performed by homeless people, including sleeping, sitting or lying down, and living in vehicles within public space. It is important to note that while the chart notes the existence of these laws in different cities, actual enforcement may vary widely.

While incarceration for criminal offenses is arguably the most severe punishment faced by homeless people struggling for survival in public, some of the policies discussed in this report result in harsh, purely civil punishments such as expensive fines. Sometimes enforcement of these policies results in the destruction of outdoor encampments and/or displacement of homeless people from public space, and in some cases threats of enforcement are used to harass and cause homeless people to “move on” from their current location. We refer to these policies and practices collectively as the “criminalization of homelessness.”

The Law Center has tracked the same 187 cities since 2006 to determine the relative increase or decrease of criminalization laws over time. Our research reveals that laws punishing the life-sustaining conduct of homeless people have increased in every measured category since that time, and in some cases dramatically so.

Since the release of our last report in 2016, rates of growth in criminalization policies has been large despite mounting

court victories and expanding federal and grassroots pressure to end criminalization policies and practices. This growth in criminalization is correlated with a growth in unsheltered homelessness nationwide.

Proponents of criminalization often base their support on the premise that criminalization methods will effectively reduce visible homelessness; however, they cannot point to any studies which actually show that criminalization enforcement has an impact on economic activity. In contrast, advocates for housing can point to numerous studies showing the cost-effectiveness of housing first solutions in permanently resolving homelessness.

The following is a review of laws prohibiting life-sustaining conduct in public space, along with a description of how these laws have grown over the past ten years.

## CAMPING BANS

One common form of criminalization measure is to prohibit “camping” in public. These laws are often written broadly to encompass a wide range of living arrangements, and they punish people for using any resource to protect themselves from the outdoor elements, no matter the weather. Indeed, these laws often prohibit merely sleeping in public space.

- **Of the 187 cities surveyed for this report, our 2019 research reveals that:**
  - 72% of cities have at least one law restricting camping in public.
  - 37% of cities have one or more laws prohibiting camping citywide.
  - 57% of cities have one or more laws prohibiting camping in particular public places.
- *Both categories have significantly increased over the past 13 years:*
  - Since 2006, 33 new laws prohibiting camping citywide were enacted, representing a 92% increase. Since we released our last national report on the criminalization of homelessness in 2016, nine such laws were enacted, representing an increase of 15%.

- Since 2006, 44 new laws prohibiting camping in particular places were enacted, representing an 70% increase. Since 2016, 14 such laws were enacted, representing an 15% increase.

Camping bans typically prohibit sheltering oneself in a tent or other temporary structure. In Minneapolis, MN, it is unlawful to use a tent or other temporary structure as a shelter on, “any public street or on any public or private premises or street in the city.”<sup>78</sup>

Camping bans are also often written so broadly that they make it unlawful to use any resource to protect oneself from the outdoor elements. In Eugene, Oregon, unlawful camping is defined as simply using a blanket.<sup>79</sup>

Camping bans may also prohibit even just sleeping outside. In Columbia, South Carolina, it is unlawful to sleep “in a single place for any substantial prolonged period of time” under the city’s citywide camping ban.<sup>80</sup>

Even when laws are not written as sleeping bans, they may be enforced as such. The Law Center and the ACLU of Colorado issued a report in 2018, *A Year Without Sleep*, that analyzed camping citations issued in Durango, Colorado between August 2017 and July 2018.<sup>81</sup> Our research revealed that Durango police consistently enforced its no-camping ordinance against people sleeping outside without any form of shelter.

During the twelve-month period, police issued only three citations to individuals taking cover beneath a tarp or in a tent. In contrast, 45 citations (46% of total) were issued to people who were sleeping under a blanket or in a sleeping bag, and 32 citations (33% of total) were issued to people sleeping on the ground without any cover whatsoever.

We also noted a clear pattern of police waking people up who were peacefully sleeping in an open space or park to tell them that “sleeping” outdoors is illegal in Durango city

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78 MINNEAPOLIS, MINN. CODE § 244.60(a) (2013).

79 EUGENE, OR. CODE §§ 4.815(1)(b), 4.816 (2013).

80 COLUMBIA, S.C. CODE § 14-105(a)(1) (2007).

81 ACLU COLO. & NAT’L L. CTR. ON HOMELESSNESS & POVERTY, *A YEAR WITHOUT SLEEP: THE CRIMINALIZATION OF SLEEP IN DURANGO, COLORADO 2* (2018), <https://acluco-wpengine.netdna-ssl.com/wp-content/uploads/2018/12/A-YEAR-WITHOUT-SLEEP-web.pdf>.

limits. Durango police would then either order the individual to move on or ticket that person for “camping.”<sup>82</sup>

Sometimes camping bans are so vague that it is up to officers in their individual, often unguided discretion to determine whether a violation occurred. This allows for selective enforcement against people who appear homeless or who have been complained about for appearing homeless. In Tulsa, Oklahoma, it is unlawful to “take up one’s abode” upon any public property within the city.<sup>83</sup> Whether this provision will be enforced to forbid someone from simply resting temporarily in public space is left to an individual officer’s interpretation of the ordinance’s vague restriction.

Camping bans can cover both public and private property, leaving literally no place for homeless people to lawfully rest. 9% of cities have laws that prohibit “camping” or sleeping on all public and private property. In Glendale, Arizona it is a misdemeanor to “camp upon any public or private land.”<sup>84</sup> These camping bans interfere with the freedom of faith-based organizations and other private citizens to use their own property to provide homeless people with a safe place to camp. These laws may even subject consenting private property owners to fines and other legal penalties for allowing homeless people to camp on their property.

The problems associated with camping bans have led to two presidential candidates condemning them, and even lobbying against a then-proposed, but now enacted, camping ban in Las Vegas, Nevada, which makes it illegal to camp or sleep downtown and in residential areas.<sup>85</sup>

First, Democratic candidate and former HUD Secretary Julian Castro attended a protest outside the Las Vegas City Hall and said, “To some people it may seem that if you get homeless folks out of sight, and perhaps out of mind, that that’s an improvement. But that’s a lie,” he said.

He continued to explain why some people experiencing homelessness in Las Vegas would not be able to seek shelter in the city’s Courtyard Homeless Resource Center, which is an outdoor facility serving as a temporary shelter.<sup>86</sup> “There are people that are afraid to stay in the courtyard. There are people with other needs that compel them not to go to that homeless courtyard,” Castro said. “You shouldn’t treat them like criminals. You should continue to work with them so they get their needs met.”<sup>87</sup>

Later, Democratic Presidential candidate and Massachusetts Senator Elizabeth Warren also denounced the proposed Las Vegas camping ban, saying that it, “caters to the interests of business groups rather than our families and our communities.”<sup>88</sup> She went on to point out that,

*“[t]hese measures disproportionately harm communities of color and LGBTQ+ people, who as a result become further entangled in the justice system and face more barriers to finding supportive housing...We must focus on investing in affordable housing and supporting programs that will connect people experiencing homelessness with the tools and services they need to get back on their feet.”<sup>89</sup>*

Cities should not rely upon large, congregate shelters to justify camping ban enforcement. While these shelters may be helpful to some, particularly if there is a low barrier to entry, they are not always adequate or even accessible shelter options for people experiencing homelessness.<sup>90</sup>

Moreover, some emergency shelters operate essentially as jails, employing harsh punishments against shelter residents for minor rule violations. Pinellas County Safe Harbor, an emergency shelter operating in an old jail building next

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82 *Id.*

83 TULSA, OKLA. CODE § 1800(A)(2) (2018).

84 GLENDALE, ARIZ. CODE art. VIII § 25-90(a) (2018)

85 Brenda Richardson, *Las Vegas Adopts a Controversial Ban on Homeless Camping or Sleeping in Public Areas*, FORBES (Nov. 7, 2019, 8:19 AM), <https://www.forbes.com/sites/brendarichardson/2019/11/07/las-vegas-adopts-a-controversial-ban-on-homeless-camping-or-sleeping-in-public-areas/#74f12b004536>.

86 Briana Erickson, *Homeless Join Advocates Protest Proposed Las Vegas Camping Ban*, LAS VEGAS REVIEW-JOURNAL (Oct. 2, 2019, 9:05 AM), <https://www.reviewjournal.com/news/politics-and-government/las-vegas/homeless-join-advocates-protest-proposed-las-vegas-camping-ban-1861720/>.

87 *Id.*

88 Briana Erickson, *Elizabeth Warren Slams Las Vegas Homeless Ordinance*, LAS VEGAS REVIEW-JOURNAL (Oct. 23, 2019, 5:25 PM), <https://www.reviewjournal.com/news/politics-and-government/elizabeth-warren-slams-las-vegas-homeless-ordinance-1876986/>.

89 *Id.*

90 See e.g. *Bloom v. City of San Diego*, 2018 WL 9539239 (S.D. Cal. Aug. 21, 2018).

to the Pinellas County Jail, is one example.<sup>91</sup> Safe Harbor provides spaces for 470 to sleep, but some of those spaces are located in an outdoor, asphalt courtyard.<sup>92</sup> The outdoor location, referred to as “Pod 6” is where people who have broken minor rules, such as using a cell phone are sent to sleep for days at a time.<sup>93</sup>

According to residents, people are required to sleep at that location even during inclement weather. “It floods, that whole area’s flooded and you still got to sleep out there,” said one resident in an interview with *HuffPost*.<sup>94</sup>

## EVICIONS OF ENCAMPMENTS (“SWEEPS”)

Cities have relied on camping bans to authorize evictions of homeless encampments of all sizes, often with little or no advance notice. These evictions, or homeless “sweeps”, not only displace homeless people from public space, but they often result in the loss or destruction of homeless people’s few possessions.

The loss of these items can be devastating, as homeless people affected by sweeps often lose survival gear, identification and/or other important legal documents, medications, and irreplaceable mementos. The Boston Police Department, for example, was criticized in August, 2019 for destroying the functional wheelchairs of homeless residents as part of “Operation Clean Sweep.”<sup>95</sup> Bystanders witnessed officers seizing three wheelchairs and crushing them in the back of a garbage truck before ordering their homeless owners away from the Boston Medical Center.<sup>96</sup>

These losses can cost a person their last remaining possessions, their dignity, or even their lives. Avoiding those harms can become a central feature of a homeless person’s

life, even motivating her to avoid needed medical treatment and social service appointments to avoid being separated from her property.<sup>97</sup>

Moreover, these sweeps are often conducted by governments with no plan to house or adequately shelter displaced encampment residents. Instead, homeless people are merely dispersed to different public places, leading to the inevitable reappearance of outdoor encampments. Displacement also disrupts homeless people’s access to social and health services, leading to worsened health and lapsed benefits.<sup>98</sup> Sweeps can also cause the loss of employment or even access to available housing – the very things that people need to avoid “camping” outside in the first place.<sup>99</sup>

In addition to being harmful and ineffective, sweeps are expensive. Honolulu, Hawaii, for example, spends \$15,000 per week sweeping people living in homeless encampments, many of whom simply move around the corner during the sweep and then return a day later.<sup>100</sup> Los Angeles, with the largest unsheltered homeless population in the country, spends \$31 million on sweeps annually.<sup>101</sup>

In recognition of these harms, the U.S. Interagency Council on Homelessness published guidance in 2015 for cities entitled *Ending Homelessness for People Living in Encampments*. The guidance emphasized that “forced dispersal of people from encampment settings is not an appropriate solution or strategy, accomplishes nothing toward the goal of linking people to permanent housing opportunities, and can make it more difficult to provide such lasting solutions to people who have been sleeping and living in the encampment.”<sup>102</sup>

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97 CHRIS HERRING, AMERICAN SOCIOLOGICAL REVIEW, COMPLAINT-ORIENTED POLICING: REGULATING HOMELESSNESS IN PUBLIC SPACE 23 (2019), [https://static1.squarespace.com/static/5b391e9cda02bc79baffebb9/t/5d73e7609b56e748f432e358/1567876975179/complaint-oriented+policing\\_ASR.pdf](https://static1.squarespace.com/static/5b391e9cda02bc79baffebb9/t/5d73e7609b56e748f432e358/1567876975179/complaint-oriented+policing_ASR.pdf).

98 *Id.*

99 *Id.*

100 Allyson Blair, *Nearly 95 Percent of Personal Items Taken During Honolulu Homeless Sweeps End Up Destroyed*, HAW. NEWS NOW (Sept. 29, 2017, 7:40 PM), <https://www.hawaiinewsnow.com/story/36489341/nearly-95-percent-of-items-taken-during-honolulu-homeless-sweeps-end-up-destroyed/>.

101 Gale Holland, *L.A. Takes More Heat for Spending Millions of Dollars Cleaning Up Homeless Camps*, L.A. TIMES (Apr. 5, 2019, 7:00 AM), <https://www.latimes.com/local/lanow/la-me-ln-homeless-camp-protest-20190405-story.html>.

102 U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, ENDING HOMELESSNESS FOR PEOPLE LIVING IN ENCAMPMENTS 2 (2015), [https://www.usich.gov/resources/uploads/asset\\_library/Ending\\_Homelessness\\_for\\_People\\_Living\\_in\\_Encampments\\_Aug2015.pdf](https://www.usich.gov/resources/uploads/asset_library/Ending_Homelessness_for_People_Living_in_Encampments_Aug2015.pdf).

91 Arthur Delaney, *How a Traveling Consultant Helps America Hide the Homeless*, HUFFPOST (Mar. 9, 2015, 9:12 PM, last updated Dec. 6, 2017), [https://www.huffpost.com/entry/robert-marbut\\_n\\_6738948](https://www.huffpost.com/entry/robert-marbut_n_6738948). Pinellas County Safe Harbor is premised on a model conceived by Robert Marbut, a consultant to cities on homelessness, who rejects the evidence-based Housing First philosophy and who instead encourages punitive approaches to homelessness.

92 *Id.*

93 *Id.*

94 *Id.*

95 *Boston Police Destroy Wheelchairs of Homeless Residents*, DEMOCRACY NOW! (Aug. 8, 2019), [https://www.democracynow.org/2019/8/8/headlines/boston\\_police\\_destroy\\_wheelchairs\\_of\\_homeless\\_residents](https://www.democracynow.org/2019/8/8/headlines/boston_police_destroy_wheelchairs_of_homeless_residents).

96 *Id.*

In 2017, we released our report on governmental approaches to encampments, *Tent City, USA*. We reviewed our data set of 187 cities for policies governing the clearing or authorizing of encampments. We found that only a few municipalities follow federal guidance to allow encampments to be cleared only if specified alternative shelter or housing is available for those who are to be removed from the encampments.

Indeed, only 11% have ordinances or formal policies requiring notice prior to clearing encampments, with some requiring as little as 24 hours' notice before encampments are evicted.<sup>103</sup> Only 11% of cities require storage of displaced people's property, typically for between 30 and 90 days.<sup>104</sup> Even worse, only 3% have some requirement that alternative housing or shelter be offered when a sweep of an encampment is conducted<sup>105</sup>—and even this provision is little guarantee that residents of homeless encampments will actually receive it.

"Most individuals residing on the streets considered property destruction the greatest threat to their survival; this always involved either a police presence, the threat of police being called, or leveraging anti-homeless ordinances to provide legal cover for property confiscation. This fear pervaded daily routines. In the camps I resided in, people would rotate leaving the camp to work, attend appointments, gather food or supplies, or go to the toilet, leaving their belongings under the watch of fellow campers. However, when a camp clearance occurred, we were limited in the amount of property we could salvage, as sanitation workers and police would prevent us from packing more than we could carry in a single trip, and they sometimes barred us from taking items that were not our own."

– Chris Herring

<sup>103</sup> An additional 26 cities provided some notice informally, including two providing more than a month. *TENT CITY, USA*, *supra* note 12, at 8.

<sup>104</sup> *Id.* at 8–9.

<sup>105</sup> *Id.* at 8.

Indianapolis, Indiana, for example, enacted one of the nation's first encampment policies requiring an offer of alternative transitional or permanent housing before evicting people from certain homeless encampments. Unfortunately, the city has routinely used the emergency exception to the housing offer requirement, sometimes on dubious grounds.<sup>106</sup>

## SLEEPING BANS

Human beings must sleep in order to survive. It is a biological fact. The effects of sleep deprivation are awful and even recognized as a form of torture.<sup>107</sup> Yet, many cities outlaw sleep when it is conducted in public space.

**Since 2006, 13  
new laws  
prohibiting  
sleeping  
citywide were  
enacted**

- Of the 187 cities surveyed for this report, our 2019 research reveals that:
  - 51% of cities have at least one law prohibiting sleeping in public.
  - 21% of cities have one or more laws prohibiting sleeping in public citywide.
  - 39% of cities have one or more laws prohibiting sleeping in particular public places.

<sup>106</sup> Maureen C. Gilmer, *City Ousts Homeless From Camps Under Bridges, Citing 'Risk to Public Safety'*, *INDYSTAR* (Aug. 10, 2017, 5:41 PM), <https://www.indystar.com/story/news/2017/08/10/city-ousts-homeless-camps-under-downtown-bridges-citing-risk-public-safety/555889001/>.

<sup>107</sup> Jacqueline Stroka, *There's a Reason Why Sleep Deprivation is Classified as a Form of Torture*, *HUFFPOST* (Sept. 24, 2015, last updated Dec. 7, 2017), [https://www.huffpost.com/entry/theresa-reason-why-sleep-deprivation-is-classified-as-a-form-of-torture\\_b\\_8188090](https://www.huffpost.com/entry/theresa-reason-why-sleep-deprivation-is-classified-as-a-form-of-torture_b_8188090).

- Both categories have significantly increased over the past 13 years:

- Since 2006, 13 new laws prohibiting sleeping citywide were enacted, representing a 50% increase. Since we released our last national report on the criminalization of homelessness in 2016, six such laws were enacted, representing an increase of 18%.
- Since 2006, 16 new laws prohibiting sleeping in particular places were enacted, representing a 29% increase. Since 2016, 22 such laws were enacted, representing a 44% increase.

Laws banning sleeping in public create the same problems as camping bans, and they may be written to prohibit that biological activity outright at any time of day. In Atlanta, Georgia, it is unlawful to sleep—or even to make preparations to sleep—on any public street, sidewalk, or right of way.<sup>108</sup>

Other sleeping bans limit when sleep may occur. In Louisville, Kentucky, the city’s disorderly conduct law includes a prohibition against sleeping in public “during the hours of darkness.”<sup>109</sup> While this law does not technically prohibit a homeless person from sleeping at some point each day, it does force human beings, who are diurnal by nature, to sleep during the day or not sleep at all—a physically impossible task.



## BANS ON SITTING AND LYING DOWN

Bans on sitting or lying down in public, sometimes called “sit/ lie” laws, are another common form of criminalization ordinances. Although every human being must occasionally rest, laws restricting sitting and lying down punish homeless people for resting in various public places.

- **Of the 187 cities surveyed for this report, our 2019 research reveals that:**
  - 55% of cities have one or more laws prohibiting sitting and/or lying down in public.
- Such laws have significantly increased over the past 13 years:
  - Since 2006, 45 new laws prohibiting sitting and/or lying down in public were enacted, representing a 78% increase. Since we released our last national report on the criminalization of homelessness in 2016, 15 such laws were enacted, representing a 17% increase.

Sometimes these laws are written to explicitly restrict the acts of sitting or lying down. About 7% of our surveyed cities prohibit sitting or lying down *anywhere* in public space.

In Honolulu, Hawaii it is unlawful to “sit or lie” on public sidewalks in multiple locations throughout the city during the hours of 5am to 11pm.<sup>110</sup> A person who lacks regular access to indoor space cannot possibly avoid violating such a law, since it is impossible to sustain perpetual movement.

Bans on sitting and lying down are also enforced under laws prohibiting “obstructions” of public space. In Richmond, Virginia, it is unlawful to “sit or lie upon” any public place so as to obstruct the “normal flow” of pedestrian traffic.<sup>111</sup> While these laws can serve legitimate purposes, they are vague enough to allow for selective enforcement and authorize citations and arrests of homeless people who are occupying, but not actually obstructing, pedestrian traffic.

108 ATLANTA, GA. CODE § 106-12 (2017)

109 LOUISVILLE-JEFFERSON CTY., KY. CODE § 132-03(A)(18) (2018)

110 HONOLULU, HI CODE § 29-15A.

111 RICHMOND, VA. CODE § 19-110 (2004).

Proponents of sit/lie laws argue that such laws are necessary to protect or improve economic activity in parts of the city where visibly homeless people are present. However, a study done by University of California Berkeley Law's Policy Advocacy Clinic found that a sit/lie ban had no effect on economic activity, but instead cost public money in implementation and enforcement of the law.<sup>112</sup>

## RESTRICTIONS ON LIVING IN VEHICLES

Sleeping in one's own vehicle is often a last resort for people who would otherwise be forced to sleep on the streets. A dramatically growing number of cities across the nation, however, have chosen to impose criminal or civil punishments on people who live in their own vehicles, despite their lack of housing options.

- **Of the 187 cities surveyed for this report, our 2019 research reveals that:**
  - 50% of cities have one or more laws restricting living in vehicles.
- Such laws have significantly increased over the past 13 years:
  - Since 2006, 64 new laws restricting living in vehicles were enacted, representing a 213% increase. Since we released our last national report on the criminalization of homelessness in 2016, 22 such laws were enacted, representing an increase of 31%.

The cost of housing has forced a growing number of individuals and families into vehicles as a last resort before living on the streets. In Los Angeles, one third of the estimated 39,000 people who are unsheltered within the County's Continuum of Care live in vehicles—nearly double the amount of those who live in tents and other encampments. 50% of all children who are unhoused in Los Angeles County live in vehicles.<sup>113</sup> Similarly, people who live in vehicles make up 53% of unsheltered people in King County, Washington.<sup>114</sup>

Vehicles offer privacy, security, and a level of stability not available in temporary emergency shelters, tents, or other makeshift shelters. Yet individuals living in their vehicles can be at constant risk of losing their vehicle-homes because of laws restricting their use as shelter. 51% of laws prohibiting living in vehicles explicitly prohibit using a vehicle as shelter. In San Antonio, Texas, it is unlawful to use a vehicle "for living accommodation" in "any public place."<sup>115</sup>

Other laws do not explicitly ban living in vehicles, but instead make doing so practically impossible by preventing people who live in vehicles from lawfully parking them anywhere within a city. 35% of laws restricting living in vehicles are parking regulations that make it difficult or impossible to lawfully reside in one's vehicle. In San Diego, California, it is unlawful to park RVs or other oversized vehicles, commonly used for shelter by people who cannot afford housing, anywhere on public property between the hours of 2am and 6am.<sup>116</sup>

Other laws limit parking in one place beyond a specified time period. In Seattle, Washington, it is unlawful to leave a vehicle parked in a single location for more than 72 hours, and violation of that law carries a hefty fine and the risk of losing one's vehicle to impoundment. In addition to having nowhere to sustainably move to, compliance with this law can be especially difficult for extremely poor people who are more likely to own older, less functional vehicles and who have fewer resources to repair them when they become inoperable.

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112 See Joseph Cooter, et al., *Will Berkeley's "Measures" Increase Economic Activity and Improve Services to Homeless People?*, BERKELEY L. POLICY ADVOCACY CLINIC 2 (2012), available at [https://www.researchgate.net/publication/272300620\\_Does\\_Sit-Lie\\_Work\\_Will\\_Berkeley's\\_Measure\\_S\\_Increase\\_Economic\\_Activity\\_and\\_Improve\\_Services\\_to\\_Homeless\\_People](https://www.researchgate.net/publication/272300620_Does_Sit-Lie_Work_Will_Berkeley's_Measure_S_Increase_Economic_Activity_and_Improve_Services_to_Homeless_People).

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113 W. CTR. ON LAW & POVERTY, *TOWED INTO DEBT: HOW TOWING PRACTICES IN CALIFORNIA PUNISH POOR PEOPLE* 19 (2019), <https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf>.

114 ALL HOME, *COUNT US IN* 77 (2018), <http://allhomekc.org/wp-content/uploads/2018/05/FINALDRAFT-COUNTUSIN2018REPORT-5.25.18.pdf>.

115 SAN ANTONIO, TEX. CODE § 21-28 (2005).

116 SAN DIEGO, CAL. CODE § 86.0139(a) (2016).

## BEGGING BANS

Enforcement of laws restricting living in vehicles can result in arrest and incarceration. In Las Vegas, Nevada, it is a misdemeanor punishable by up to six months in jail to “take up temporary or permanent residence” in a vehicle.<sup>117</sup>

Enforcement may also include expensive tickets and related fines and fees, which can increase in cost after they remain unpaid for a period of time. Unpaid fines can result in a number of negative consequences, including driver’s license suspension, inability to lawfully register the vehicle, or even vehicle tow and impoundment.

Everyone loses when vehicle shelters are towed. The cost of retrieving a vehicle after a tow is unaffordable to many, and this can result in the permanent loss of the vehicle and any personal property it contained.<sup>118</sup> This loss makes it likely that people will end up living with less adequate shelter on the streets. Indeed, a recent study by the Economic Roundtable in Los Angeles found that vehicle tows result in a likelihood that people will end up living in a tent after a year of living in their vehicle.<sup>119</sup> Moreover, the loss of a vehicle for transportation can interfere with employment and access to education and medical care.<sup>120</sup>

Taxpayers are also harmed when vehicle shelters are towed. An analysis of thousands of vehicle tows and lien sales in multiple California cities suggests that this practice costs more than cities recoup in tickets or revenue flowing from sales of impounded vehicles.<sup>121</sup>

In the absence of employment opportunities or other sources of income, begging may be a homeless person’s best option for obtaining the money that they need to purchase food, public transportation fare, medication, or other necessities.

- **Of the 187 cities surveyed for this report, our 2019 research reveals that:**
  - 83% of cities have at least one law restricting begging in public.
  - 38% of cities have one or more laws prohibiting begging citywide.
  - 65% of cities have one or more laws prohibiting begging in particular public places, making it the most common type of criminalization law.
- *Both categories have significantly increased over the past 13 years:*
  - Since 2006, 36 new laws prohibiting begging citywide were enacted, representing a 103% increase. Since we released our last national report on the criminalization of homelessness in 2016, 21 such laws were enacted, representing an increase of 42%.
  - Since 2006, 14 new laws prohibiting begging in particular places were enacted, representing a 13% increase. Since 2016, eight such laws were enacted, representing a 7% increase.

Some panhandling laws prohibit begging outright, while others place strict limitations on how the action is performed. In Baltimore, Maryland, it is unlawful to request “an immediate donation of money or other thing of value from another or others in person” within ten feet of ATM machines, at public transportation stops, and in other locations.<sup>122</sup>

Laws prohibiting “aggressive panhandling” are another common version of panhandling ban. Though these laws are purportedly aimed at curbing threatening or intimidating

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117 LAS VEGAS, NEV. CODE § 10.82.020 (1986)

118 The average price an individual must pay after a debt-collection tow is over \$1,100. W. CTR. ON LAW & POVERTY, *supra* note 113, at 4.

119 W. CENTER ON L. & POVERTY, *TOWED INTO DEBT: HOW TOWING PRACTICES IN CALIFORNIA PUNISH POOR PEOPLE* (2019), <https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf>.

120 *Id.* Loss of a vehicle can also severely limit employment options, potentially prolonging or even cementing someone’s homelessness. Today, less than half of all Americans live within a quarter mile of any sort of public transit stop. As a result, vehicles are critical to transportation needed to get to and from employment, or to use as a form of employment through ride share, delivery, or other opportunities for earning an income. Indeed, one study indicated that car ownership plays a bigger role in getting a job than having a high school diploma. *Id.* at 16 (internal citation omitted).

121 *Id.* at 12.

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122 BALT. MD. POLICE ORDINANCE § 47 (1976).

behavior that may accompany panhandling, some laws are designed to ban even innocuous and inherently harmless behavior. In Lafayette, Louisiana, it is considered unlawful “aggressive” begging if a person asks for “money or anything of value” within “an arm’s length” of passersby without their consent.<sup>123</sup>

Even where cities have chosen to limit their prohibition of panhandling to particular places, the impact can be as great as that of a city-wide ban. This is because commercial and tourist districts, the areas where panhandling is most likely to be prohibited, are often the only places where homeless people have regular access to passersby and potential donors. Some laws only restrict begging within 25 feet of parking meters, ATMs, or bus stops, but these “buffer zones” collectively add up to effectively banning the practice in the entire city.

Sue Wells, a currently homeless member of the Homeless Union of Greensboro, North Carolina, explained, “We don’t panhandle because we want to. We do it because all of us need to put food in our stomachs. Most of the time, people are just trying to pay rent, or pay a bill or get bus fare.”

## BANS ON LOITERING, LOAFING, AND VAGRANCY

Laws prohibiting loitering, loafing, or vagrancy are common throughout the country. Because the definitions of these actions can be very broad, these ordinances grant police a lot of discretion to exclude visibly poor and homeless people from public places.<sup>124</sup>

- **Of the 187 cities surveyed for this report, our 2019 research reveals that:**
  - 35% of cities have one or more laws prohibiting loitering, loafing, and/or vagrancy citywide.
  - 60% of cities have one or more laws prohibiting loitering, loafing, and/or vagrancy in particular public places.
- *Both categories have significantly increased over the past thirteen years:*
  - Since 2006, 33 new laws prohibiting loitering, loafing, and/or vagrancy citywide were enacted, representing a 103% increase. Since we released our last national report on the criminalization of homelessness in 2016, six such laws were enacted, representing an increase of 10%.
  - Since 2006, 25 new laws prohibiting loitering, loafing, and/or vagrancy in particular places were enacted, representing a 28% increase. Since 2016, 13 such laws were enacted, representing an 13% increase.

<sup>123</sup> LAFAYETTE, LA. CODE § 62-71 (2007).

<sup>124</sup> See JAVIER ORTIZ & MATTHEW DICK, THE WRONG SIDE OF HISTORY: A COMPARISON OF MODERN AND HISTORICAL CRIMINALIZATION LAWS (Sara Rankin ed., 2015), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2602533](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2602533).

Loitering laws are often written to capture a wide range of innocent activities under vague descriptions of prohibited conduct. In Toledo, OH, loitering is defined to mean, “remaining idle in essentially one location and includes the colloquial expression ‘hanging around.’”<sup>125</sup>

Under this law, it is illegal to “loiter” in a way that creates an, “unreasonable annoyance to the comfort and repose of any person.” This vague language gives little guide to law enforcement about when a person is innocently present in public space versus when they are violating the law. Without adequate guidance, there is risk of selective enforcement against people who are disfavored simply because they appear to be poor and homeless.

## RESTRICTIONS ON FOOD SHARING

Cities across the country have restricted sharing free food in public. People experiencing homelessness often lack reliable access to food, in part due to a lack of any place to refrigerate or store food supplies. Despite the fact that food access is extremely limited for homeless people, a growing number of cities have restricted free food sharing.

- **Of the 187 cities surveyed for this report, our 2019 research reveals that:**
  - 9% of cities have one or more laws restricting food sharing.

While the Law Center has not collected data on this category for as long as the categories of laws listed above, our research shows a 42% increase since the release of our last report on the criminalization of homelessness in 2016.

Many cities have chosen to restrict homeless people’s access to food under the flawed premise that providing homeless people with free food encourages them to remain homeless. But this theory is not founded on evidence or on common sense. Restricting access to free, safe food will do nothing to end homelessness, which is rooted in a lack of access to affordable housing; instead restrictions on sharing drive hungry people to search for food in unsanitary places or causes them to spend their meager income on food rather than saving it for housing.

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<sup>125</sup> Toledo Municipal Code - CHAPTER 509 - Disorderly Conduct and Peace Disturbance - Sec. 509.08.-Loitering

## OTHER COMMON CRIMINALIZATION LAWS

The Law Center has not consistently tracked laws prohibiting the following conduct since 2006, but we surveyed our set of 187 cities for such laws in 2019.

### *Storing personal property in public*

Our research reveals that 55% of cities restrict storing property in public space. In Sacramento, California, it is unlawful to “store personal property, including camp paraphernalia” on any public property.<sup>126</sup> “Personal property” under this law is undefined, allowing for broad officer discretion in enforcement, particularly since “store” is defined to include merely placing an item on public property, e.g., setting down a purse or backpack.

These laws can have an extremely harmful impact on people experiencing homelessness who lack access to a housing or affordable storage options. Without adequate space to store belongings, people experiencing homelessness are at risk of losing property needed for survival, such as warm clothing, camping gear, or even medications and medical equipment. Lost property may also include irreplaceable mementos, like family pictures or wedding rings. It is also common for people to lose critical legal documents, like birth certificates, passports and/or photo identification, and social security cards. The loss of these documents leaves people unable to prove identity, citizenship or legal status, and/or residency, and it can prevent them from accessing public benefits, housing, and employment. Moreover, it can be very difficult to replace identification documents once they are lost — costs may be prohibitive, and often one form of ID is required in order to replace another. If a person has lost everything due to lack of storage options, it can be impossible to obtain a new ID.

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<sup>126</sup> SACRAMENTO, CAL. CODE § 12.52.040

## Urination/Defecation

83% of cities prohibit public urination and/or defecation. In Glendale, Arizona, it is a class I misdemeanor punishable by jail to do so.<sup>127</sup>

In many cities, public restrooms are not available overnight or not available at all. In other cities, the few public toilets that are available are not enough to meet the demand. In Skid Row in Los Angeles, for example, there are only five portable toilets—which are frequently locked or out of order—to serve approximately 15,000 unhoused people living in the area;<sup>128</sup> this is 382 toilets short of meeting the United Nations minimum for refugee camps.<sup>129</sup>

Lack of access to toilets can be especially problematic for people with medical conditions that cause incontinence. Some studies also suggest that people are likelier to skip doses of necessary medication if the side effects include frequent urges to use the restroom.<sup>130</sup>

Women are disparately impacted by lack of access to toilets. Women's toilet facilities are subject to longer lines than toilets available to males, as women take about 50% longer to use the bathroom than men do.<sup>131</sup> Some of this increased length is due to factors like the accompaniment of children on trips to the bathroom, which may include changing diapers or breast feeding. Women who are menstruating need access to toilets, as do pregnant women who are subject to increased urges to urinate. Moreover, women forced to expose themselves to urinate or defecate may have an increased risk of sexual assault.

Trans women, who are nearly four times as likely to experience extreme poverty than cisgender women, have even fewer options for using toilets. Indeed, recent years has seen the enactment of laws that, "enforce restroom segregation by gender assigned at birth."<sup>132</sup>

A collateral consequence of the lack of adequate public restrooms is that in some cases, homeless people forced to urinate or defecate in public are also charged with public

exposure or public indecency. These may be charged as sex crimes which can come with sex offender registration requirements as well as bans from living in broad areas of many cities.<sup>133</sup> Once forced into this system, finding available housing may be nearly impossible. Again, this is counter-productive, because it only prolongs these individuals' homelessness and ensures they will urinate and defecate in public again.

Without any other options, people experiencing homelessness are forced to use public spaces to defecate and urinate. While cities have a legitimate interest in preventing the accumulation of urine and feces in public space, such interests cannot be met by criminalizing unavoidable bodily functions. If people do not have regular access to toilets, they will expel their human waste in areas other than toilets—they have no choice.

## Rummaging/Scavenging/Dumpster Diving

76% of cities prohibit rummaging, scavenging, or dumpster diving.

In Boston, Massachusetts, for example, a person cannot rummage through any rubbish or refuse that is on public property. If someone violates this law, they are subject to a hefty fine that perpetuates a vicious cycle of poverty and homelessness.

While cities do have a legitimate interest in prohibiting these activities for public health reasons, they must also recognize that when people experiencing homelessness resort to these activities, it is an act of desperation. Many people experiencing homelessness rummage, scavenge, or dumpster dive for basic necessities such as food, clothes, and shelter materials.

127 GLENDALE, ARIZ. CODE § 26-72 (1989).

128 Natalie Shure, *The Politics of Going to the Bathroom*, NATION (May 23, 2019), <https://www.thenation.com/article/toilet-urination-disability-access/>.

129 *Id.*

130 *Id.*

131 *Id.*

132 *Id.*

133 BANISHED, <https://www.themarshallproject.org/2018/10/03/banished> (last visited Nov. 25, 2019).

## LAWS CRIMINALIZING HOMELESS YOUTH

## Status Offenses

An estimated 4.2 million youth and young adults up to age 24 experience homelessness each year in the United States, usually due to problems within their families. Approximately half of youth experience homelessness for the first time because they were asked to leave home by a parent or caregiver, sometimes due to the youth's sexual orientation. Indeed, some 40% of homeless youth identify as LGBTQ+, and many cite their families' disapproval as a cause of their homelessness. Physical abuse also contributes to youth homelessness, with approximately a quarter of youth citing family violence as the reason they left home.<sup>134</sup> Most do not have the option to return home.

Homeless youth and children are subject to liability under criminalization ordinances applicable to all age groups as well as ordinances that apply uniquely to them, such as status offenses. Schools also play a role in entangling homeless children and youth with the juvenile and criminal justice systems through harsh, zero-tolerance school discipline policies.

Status offenses are acts that are criminal only because the perpetrator is a minor—running away from home, skipping school, staying out past a city or county curfew, and consumption of alcohol or tobacco. The Law Center has surveyed state level (rather than municipal level) status offense laws affecting unaccompanied homeless youth; the numbers below reflect these state policies. It is important to note that many municipalities may also criminalize these behaviors, but these are not captured in this data set.

The second a youth walks out the door without the intent to return, they may be committing an offense. It is a status offense in 11 states for youths to run away from home—even those who may be fleeing homes where they have been physically, sexually, or emotionally abused.<sup>135</sup> Likewise, those trying to help these youth may be committing a crime simply by letting them in their doors: 20 states criminalize harboring a runaway youth or concealing a minor, making it difficult for shelters, friends, and even relatives to take in an unaccompanied homeless youth.<sup>136</sup>



## Curfew Laws

Curfew laws prohibit anyone under the age of 18 from being in public spaces past a certain time at night. Many states explicitly authorize curfews at the state level, and many more cities and localities have them on their books. Compliance with this law may be impossible for children and youth experiencing homelessness with no ability to go inside at night, particularly in communities with no shelters where youth can go on their own (which is the case in many communities).

134 U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *HOMELESSNESS IN AMERICA: FOCUS ON YOUTH 10–11* (2018), [https://www.usich.gov/resources/uploads/asset\\_library/Homelessness\\_in\\_America\\_Youth.pdf](https://www.usich.gov/resources/uploads/asset_library/Homelessness_in_America_Youth.pdf) [hereinafter FOCUS ON YOUTH].

135 NAT'L L. CTR. ON HOMELESSNESS & POVERTY, *ALONE WITHOUT A HOME: A NATIONAL REVIEW OF STATE LAWS AFFECTING UNACCOMPANIED YOUTH 11* (2019), <http://nlchp.org/wp-content/uploads/2019/04/AWAH-report.pdf>.

136 TRUE COLORS FUND & NAT'L L. CTR. ON HOMELESSNESS & POVERTY, *STATE INDEX ON YOUTH HOMELESSNESS 3* (2018), <https://drive.google.com/file/d/14hCgF6gwxF7At2kanWLulciE1NPN-Z5C/view>.

## Truancy Laws

Truancy laws prohibit school-aged children from being out of school. In seven states, truancy is a status offense that can lead to fines or even jail time for parents or youth.<sup>137</sup> For homeless children, regular access to school may be difficult, and the reason for being out of school may be partly or completely attributable to their homelessness. Under the federal McKinney-Vento Act, schools are required to actively identify homeless students and ensure their enrollment and participation. Some districts, however, fail to allow homeless students to enroll or fail to provide adequate transportation, making it impossible for students to comply with truancy laws.

Laws criminalizing homeless youth restrict their rights, limit their opportunities for education, housing, and employment, and often put further barriers between them and a safe and secure lifestyle. Moreover, these laws, policies, and practices often entangle otherwise law-abiding youth with the juvenile and criminal justice systems. Rather than punishing them for behavior they often cannot avoid, states and localities should find ways to divert homeless youth to social supports and services, minimize civil or criminal court involvement, and foster positive school climates to keep homeless youth safe at school.



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<sup>137</sup> *Id.*



# ENFORCEMENT OF CRIMINALIZATION POLICIES



Enforcement of criminalization laws takes many forms. Many policies prescribe criminal punishments that may result in arrest, incarceration—sometimes for as long as six months in jail per violation—probation, and court-imposed costs and fees. Sometimes enforcement results in purely civil penalties, at least initially, such as unaffordable tickets and other fines. These civil penalties may result in collateral consequences, such as damage to credit, driver’s license suspensions, and/or towing and impoundment of one’s vehicles. They also often open the door to criminal punishments, such as for failure to pay fines, which can be the basis for criminal liability on its own, and/or for failure to appear in court to explain why the fines are unpaid, which can result in warrants for arrest.

*Some common methods of criminalization law enforcement are:*

## ARREST AND INCARCERATION

Criminalization laws contribute to grossly disproportionate rates of arrest and incarceration among homeless people. Nationwide, a person experiencing homelessness is up to 11 times more likely to be arrested than a housed person. In 2016, one in six arrest bookings in Los Angeles, California, were of homeless people.<sup>138</sup> In 2017 in Portland, Oregon, homeless people made up nearly 50% of all people arrested or cited, even though they only comprise 3% of the city’s population. In 2018, data collected from the Seattle Police Department showed similar disproportionality: 20% of arrest bookings were homeless people, who make up only 1% of the general population.<sup>139</sup>

138 Gale Holland & Christine Zhang, *Huge Increase in Arrests of Homeless in L.A.—But Mostly for Minor Offenses*, L.A. TIMES (Feb. 4, 2018, 8:20 AM), <https://www.latimes.com/local/politics/la-me-homeless-arrests-20180204-story.html>.

139 David Croman, *In Seattle, 1 in 5 People Booked into Jail Are Homeless*, CROSSCUT (Feb. 19, 2019), <https://crosscut.com/2019/02/seattle-1-5-people-booked-jail-are-homeless>.



Disproportionate arrests of homeless people contribute to the problem of mass incarceration, the criminalization of poverty, and racial inequality.<sup>140</sup> Today more than 700,000 people are released each year from jails and prisons into their communities, a tenfold increase since 1980.<sup>141</sup> Indeed,

*“[a]s annual funding for public housing plummeted from \$27 billion in 1980 to \$10 billion at the decade’s end, corrections funding surged from nearly \$7 billion to \$26.1 billion transforming the U.S. prison system into the primary provider of affordable housing and many of its jails into the largest homeless shelters in town.”<sup>142</sup>*

The boom in jail and prison populations has been disproportionately experienced by poor communities of color. A 2018 nationwide survey of misdemeanor

140 A non-refundable cash extraction of \$6,157,093 was withdrawn from community in exchange for pre-trial freedom for those booked by Metro from 2012-2017. ISAAC BRYAN ET AL., MILLION DOLLAR HOODS, THE LOS ANGELES POLICE DEPARTMENT’S METROPOLITAN DIVISION (2019), [http://milliondollarhoods.org/wp-content/uploads/2019/04/LAPD\\_Metropolitan\\_Division\\_Final\\_revised\\_4-8-19.pdf](http://milliondollarhoods.org/wp-content/uploads/2019/04/LAPD_Metropolitan_Division_Final_revised_4-8-19.pdf).

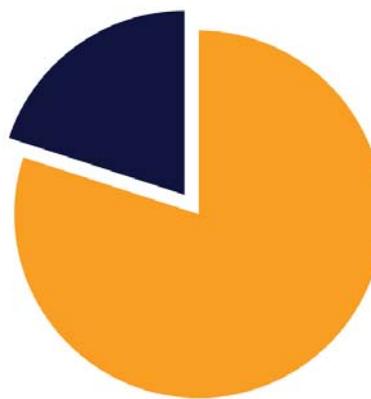
141 Danya E. Keene et al., *Navigating Limited and Uncertain Access to Subsidized Housing After Prison*, 28 HOUSING POL’Y DEBATE 199, 199 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5894879/pdf/nihms920887.pdf>.

142 Chris Herring et al., *Pervasive Poverty: How the Criminalization of Poverty Perpetuates Homelessness*, SOC’Y FOR THE STUD. OF SOC. PROBS. 1, 2 (2019), <https://static1.squarespace.com/static/5b391e9cda02bc79baffe9/t/5cc1c0569140b7fb43b1af44/1556201561950/Pervasive+Penalty+social+problems+%281%29+%281%29.pdf>.

prosecutions found that racial disproportionality in enforcement of misdemeanors is large and has remained constant since 1980, especially for offenses with greater discretion in enforcement.<sup>143</sup> The Black arrest rate for offenses like vagrancy, for example, is at least twice as high as the White arrest rate.<sup>144</sup>

We see these disparities in local arrest data. In Los Angeles, CA, Black residents make up 46% of all area arrests and bookings.<sup>145</sup> Homeless people accounted for 19% of all metro arrests.<sup>146</sup> A study in San Francisco, CA, showed similar results: Black people, Native Americans, Asian/Pacific Islanders, and other people of color are cited, searched, and have property taken at higher rates than White people.<sup>147</sup> People with mental disabilities are also approached by police at disproportionate rates.<sup>148</sup>

In this way, criminalization of homelessness policies contribute directly to racial inequity in the criminal justice system. And, because a conviction on one’s record—even for misdemeanors—can make a person ineligible for employment, housing, and services, it also can bar homeless people—who are already disproportionately people of color, people with disabilities, and members of other marginalized groups—from becoming rehoused. One nationwide survey found that 79% of returning prisoners were denied housing or deemed ineligible for it at some point upon re-entry.<sup>149</sup>



**79%** of returning prisoners were denied housing or deemed ineligible for it at some point upon re-entry.

143 Megan T. Stevenson & Sandra G. Mayson, *The Scale of Misdemeanor Justice*, 98 B.U. L. Rev. 731 (2018).

144 *Id.* at 759.

145 BRYAN ET AL., *supra* note 140.

146 *Id.*

147 Herring et al., *supra* note 142, at 7.

148 *Id.* at 9.

149 Brentin Mock, *Should People With Criminal Histories Be Banned From Public Housing?*, CITYLAB (Sept. 18, 2015), <https://www.citylab.com/equity/2015/09/should-people-with-criminal-histories-be-banned-from-public-housing/406015/>.

## FINES, FEES, AND DEBTORS PRISON

The issuance of tickets or other civil penalties, including the towing and impoundment of homeless people's vehicles, is another common method of law enforcement.<sup>150</sup> There is no comprehensive data on the extent of criminal justice debt owed by poor people, but experts estimate that these fines amount to billions of dollars.<sup>151</sup> These fines, if unpaid, can result in incarceration, even though so-called debtor's prisons have been ruled unconstitutional by the U.S. Supreme Court.<sup>152</sup>

People who are homeless as a symptom of their poverty lack the means to pay tickets they receive, which can result in a cascade of harmful consequences including increased fines, driver's license suspensions, poor credit, warrants for arrest, or even criminal liability and incarceration for failing to pay. It also results in extreme financial hardship among people who already struggle to pay for food, medication, or transportation, causing them to trade necessities to try and avoid the harms of leaving fines unpaid. Among the harmful consequences is a prolonged period of homelessness. Indeed, legal financial obligations can significantly prolong the time a person experiences homelessness.<sup>153</sup>

## WARRANTS

People without a mailing address often do not, or even cannot, receive notice of court dates requiring their attendance, which will typically result in warrants for arrest. In addition to the lack of regular access to mail, lack of transportation, lack of any place to store belongings, and fear of property loss, and other barriers can keep unhoused people from attending mandatory court hearings.

Many citations received by homeless people result in warrants. According to data from the Downtown Austin Community Court, for example, nearly six in 10 citations issued for sitting or lying down, camping, or panhandling resulted in the issuance of warrants.<sup>154</sup>

Police may enter into encampments and emergency shelters to find people with warrants, which can prevent people from seeking the community or services that they need.

Warrants also directly hinder solutions to homelessness because warrants disqualify people from subsidized housing, and even drug and mental health treatment.<sup>155</sup> Warrants also can result in the suspension of benefits. And, because they typically show up in background checks, they can disqualify someone from needed private market housing and/or employment.

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150 See Chris Herring, Dilara Yarbrough, and Lisa Marie Altorre, *Pervasive Penalty: How Criminalization of Poverty Perpetuates Homelessness*, *Social Problems* 5 (2019), <https://academic.oup.com/socpro/advance-article/doi/10.1093/socpro/spz004/5422958>. "As several recent studies have revealed, the ubiquitous policing of marginal groups has impacts on the policed beyond incarceration and these effects are not captured in official statistics of the state (Desmond and Valdez 2013; Goffman 2014; Rios 2011). Most closely related to the homeless/penal nexus are recent studies carried out by Beckett and Herbert (2011) on municipal ordinances of banishment in Seattle, Stuart's (2016) study of hyper-policing on LA's Skid Row, and the work of Robinson (2017), and of Langegger and Koester (2017) on the policing of homelessness in Denver." *Id.*

151 Matthew Shaer, *How Cities Make Money by Fining the Poor*, *N.Y. TIMES* (Jan. 8, 2019), <https://www.nytimes.com/2019/01/08/magazine/cities-fine-poor-jail.html>.

152 See e.g., MYESHA BRADEN AT AL., *LAW. COMMITTEE FOR C. R. UNDER L., TOO POOR TO PAY: HOW ARKANSAS'S OFFENDER-FUNDED JUSTICE SYSTEM DRIVES POVERTY & MASS INCARCERATION 2* (2019), [https://adobeindd.com/view/publications/f3b39ab5-1da5-409e-97a6-a0b060d2f578/1/publication-web-resources/pdf/FINAL\\_ARReport\\_Draft1\\_031419.pdf](https://adobeindd.com/view/publications/f3b39ab5-1da5-409e-97a6-a0b060d2f578/1/publication-web-resources/pdf/FINAL_ARReport_Draft1_031419.pdf).

153 Jessica Mogk et al., *Court-Imposed Fines as a Feature of the Homelessness-Incarceration Nexus: A Cross-Sectional Study of the Relationship Between Legal Debt and Duration of Homelessness in Seattle, Washington, USA*, *J. OF PUB. HEALTH* (2019), <https://academic.oup.com/jpubhealth/advance-article/doi/10.1093/pubmed/fdz062/5510723>.



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154 Andrew Weber, *Most Tickets for Homelessness Result in Arrest Warrants. That Can Make Finding Housing Hard.*, *KUT 90.5* (June 20, 2019), <https://www.kut.org/post/most-tickets-homelessness-result-arrest-warrants-can-make-finding-housing-hard>.

155 Herring et al., *supra* note 142, at 13

## ORDERS TO “MOVE ALONG” FROM PUBLIC SPACE

Data on citations, arrests, and incarceration underrepresent the experience of homeless people in enforcement of anti-homeless laws. It is also common for enforcement to come in the form of a so-called “move along” order, or threat of enforcement without any citation or arrest ever being made. A survey of homeless people in San Francisco, California, found that nearly nine in 10 people living on the streets reported being forced to “move” at least once in the prior year; the same was true for eight in 10 people who live in their vehicles.<sup>156</sup>

The lack of paper trail often associated with move-along orders means that this form of punishment is often “invisible” to lawmakers and harder for advocates to track and study. Orders to “move on” are seen as non-punitive alternatives to arresting or citing homeless people. Still, the reality is that orders to move on—with no housing or stable shelter to move to—create a “pervasive penalty” that produces significant harm.<sup>157</sup>

Move along orders communicate to homeless people that they are outlaws simply for being present in public space, even when that space is open to the general public and/or the person ordered to “move on” is doing nothing inherently threatening, dangerous, or different from what other people in the same public space are doing. This creates and exacerbates trauma and stress and also leads to other, numerous harms.

“Move along” orders may result in the loss of homeless people’s few personal possessions. It may also destroy their communities; interrupt their relationships; create new barriers to employment, housing, and/or treatment; and displace homeless people into more dangerous areas and situations.<sup>158</sup> Moreover, the constant displacement of people through move-along orders provokes conflict among individuals struggling for survival in public space. It undermines their trust in government and the public at large.<sup>159</sup>

156 *Id.* at 7.  
157 *See id.* at 2.  
158 *Id.* at 7.  
159 *Id.* at 16.

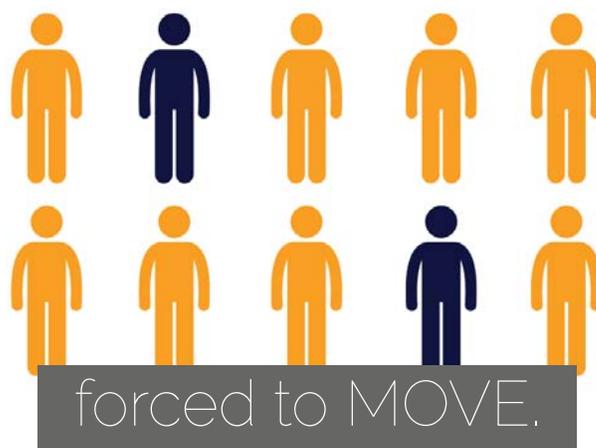
## STAY AWAY ORDERS AND BANISHMENT FROM PUBLIC SPACE

Enforcement of criminalization policies can also result in banishment from some or all public space within a given city, often as a term of pre-trial release bond and/or court-ordered probation.

These orders may cover vast amounts of public space or even an entire community. In Wilmington, DE, people accused of panhandling are given a “no contact” order – typically reserved for crimes with a specific victim, such as a robbery or an assault – requiring them to have “no contact” with the entire city. The police have been arresting homeless residents for misdemeanor crimes such as loitering and aggressive panhandling, argued the victim of these crimes is the City of Wilmington, and requested a judge issue a no contact order with the City of Wilmington accordingly.

These no contact orders prohibit the accused from direct or indirect contact with the City of Wilmington, the “alleged victim.” Vulnerable residents are thus forced to choose between agreeing to conditions such as these no contact orders, or remaining in jail until their case is resolved. Furthermore, police enforced violations of these no contact orders with further arrests.

A related, but distinct, tactic was used in Sacramento, CA, when the city filed a lawsuit against seven homeless individuals arguing that the men are public nuisances that should be excluded from a large section of town – at all times and for all purposes.<sup>160</sup>



160 Michelle Wiley, *Why is Sacramento Trying to Ban 7 Men From Entering 1 Neighborhood?*, KQED (Aug. 26, 2019), <https://www.kqed.org/news/11769864/why-is-sacramento-trying-to-ban-7-men-from-entering-1-neighborhood>.

## PRIVATIZATION OF PUBLIC SPACE

Public space is increasingly becoming privatized as a result of business improvement districts. Business improvement districts (“BIDs”) are private entities, often concentrated in downtown business areas, funded by local property assessments, including from public properties.<sup>161</sup> These compulsory assessments can produce millions in revenue.

In California, for example, the state’s approximately 200 BIDs collect hundreds of millions of dollars each year.<sup>162</sup> An in-depth study of 11 such BIDs revealed that BIDs use their revenue for a number of anti-homeless activities—including by lobbying for new or harsher criminalization laws, which may help to explain the strong correlation between the growth of BIDs and the marked increase in laws criminalizing homelessness.<sup>163</sup>

BIDs often coordinate closely with police to increase law enforcement activity in the BID area, and they may even use revenue raised from mandatory property assessments to pay for extra police patrol hours. BIDs also participate directly in criminalization law enforcement through private security personnel, who may be off-duty police officers and who are tasked with excluding or removing visibly homeless people from their business districts.<sup>164</sup> BIDs and state level Chambers of Commerce have also opposed proposed state bills in California, Oregon, and Colorado to prohibit the criminalization of homelessness.

While most BIDs promote short-sighted punitive approaches to homelessness, at least one has taken a more constructive approach. In Washington, DC, the Downtown DC BID has helped to develop and fund housing first approaches. The BID partners with Pathways to Housing DC, along with other non-profit and public agencies, to provide outreach, food services, and housing to people experiencing homelessness in DC.

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161 Jeffrey Selbin et al., *Homeless Exclusion Districts: How California Business Improvement Districts Use Policy Advocacy and Policing Practices to Exclude Homeless People from Public Space*, UC BERKELEY PUB. L. & LEGAL THEORY (2019), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3221446](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3221446).

162 *Id.*

163 *Id.*

164 *Id.*

To date, the BID has helped to move at least 114 people into permanent supportive housing.<sup>165</sup> It also manages DC’s Downtown Day Services Center, which will serve at least 100 people per day with meals, showers, laundry facilities, and access to computers.<sup>166</sup> But even within DC this sentiment is unfortunately the exception rather than the rule.

Business groups have also filed lawsuits to encourage punitive approaches to homelessness. In Olympia, Washington—the state’s capital city—local businesses filed a lawsuit against the city for opening a sanctioned encampment for unhoused people rather than aggressively enforcing the city’s trespassing and nuisance laws.<sup>167</sup>

Moreover, business groups have taken steps to limit constructive alternatives to criminalizing homelessness. In San Francisco, two business groups and an anti-tax organization filed a lawsuit to oppose Proposition C, a voter approved measure to tax the city’s biggest corporations in order to fund housing and homelessness services.

## HOSTILE ARCHITECTURE AND LANDSCAPING

Cities also spend tens or hundreds of thousands of dollars on fences, bars, rocks, spikes, other “hostile” or “aggressive” architecture, deliberately making certain areas of their community inaccessible to homeless persons without shelter. A spokesperson for the California Department of Transportation (DOT), which placed large boulders in locations where people experiencing homelessness were known to camp, admitted that it uses, “fencing and landscaping elements to prevent and discourage... illegal encampments.”<sup>168</sup>

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165 *Downtown Business Improvement District Champions Innovative Homeless Housing Initiatives*, DOWNTOWN DC (Oct. 13, 2008), [https://www.downtowndc.org/press\\_release/downtown-business-improvement-district-champions-innovative-homeless-housing-initiatives/](https://www.downtowndc.org/press_release/downtown-business-improvement-district-champions-innovative-homeless-housing-initiatives/).

166 *Mayor Bowser Announces \$1.7 Million Grant for Downtown Day Services Center to Support Individuals Experiencing Homelessness*, OFFICE OF THE MAYOR (Aug. 23, 2018), <https://mayor.dc.gov/release/mayor-bowser-announces-17-million-grant-downtown-day-services-center-support-individuals>.

167 Nadia Romero, *Businesses Sue City of Olympia for How it Handles Homeless Problem*, Q13 FOX (June 4, 2019, 5:43 PM), <https://q13fox.com/2019/06/04/businesses-sue-city-of-olympia-for-how-it-handles-homeless-problem/>.

168 Rick Paulas, *Photos of the Most Egregious ‘Anti-Homeless’ Architecture*, VICE (June 25, 2019, 12:00 PM), [https://www.vice.com/en\\_us/article/kzm53n/photos-of-the-most-egregious-anti-homeless-architecture](https://www.vice.com/en_us/article/kzm53n/photos-of-the-most-egregious-anti-homeless-architecture).



As with criminalization policies, hostile architecture and landscaping does nothing to address the underlying causes of homelessness, yet it costs taxpayers significant sums of money that could be better spent on housing and services. Spokane, WA, for example, spent \$150,000 to install rocks under the city's overpasses. City Council President, Ben Stuckart later apologized for the expensive tactic, stating,

*"I chose an expedient and strong-armed solution instead of the collaborative and holistic approach... the homeless citizens relocated from their community deserved an outstretched hand from their elected officials instead of a hammer and a bunch of rocks."*



Other cities, like Chicago, Illinois, have fenced off areas under bridges to prevent homeless persons from sheltering there, and even redesigned sidewalks to make them less accessible.

Sometimes the hostile environment takes audio form. The City of West Palm Beach, FL, made headlines when it blared the ubiquitous children's tune, "Baby Shark," on repeat outside of an event center to deter people from sleeping in the area at night.<sup>169</sup> Other cities have been reported to use high-pitched beeping, recordings of chain saws, or even high-frequency sounds to make being in the area intolerable.<sup>170</sup>



Baby shark  
doo doo doo  
doo doo

<sup>169</sup> Nicholas Bogel-Borroughs, *A Playlist to Deter the Homeless: 'Baby Shark' and 'Raining Tacos'*, NEW YORK TIMES (July 18, 2019), <https://www.nytimes.com/2019/07/18/us/baby-shark-homeless.html>.

<sup>170</sup> *Id.*

## COMPLAINT ORIENTED POLICING

No matter whether criminalization policies are enforced by arrest, a fine, or an order to “move along”, it is likely to be triggered by a complaint about homeless people’s visible presence.<sup>171</sup>

Citizen complaints generate tremendous pressure on cities to use police and other public resources to resolve complaints about homelessness, even if the strategies for doing so will clearly fail to address the underlying problems driving the complaints. And, while a rise in complaints is often thought to correlate with a rise in homelessness, that is not always the case. In San Francisco, for example, police dispatches for “homeless concerns” increased by 72% between 2013 and 2017, even though the unsheltered homeless population remained the same over the same period.<sup>172</sup>

In addition to driving enforcement of criminalization policies, citizen complaints also contribute to the enactment of new punitive policies—even when governments attempt to move away from punitive approaches to homelessness. In August 2018, after a federal court enjoined San Francisco from enforcing its vehicle habitation ban pursuant to litigation filed by the Law Center and others<sup>173</sup>, the city council unanimously repealed that law.<sup>174</sup> Shortly thereafter, the city received numerous complaints from community residents who claimed that the number of people living in vehicles near the expensive beach areas of the city had created a public safety and sanitation crisis.<sup>175</sup>

Demands from other governmental agencies can also trigger enforcement. Government personnel responsible for street cleaning or park management often draw heavily on police resources during routine cleaning activities, and/or during evictions of homeless encampments.<sup>176</sup> There are even examples of other branches of government encouraging criminalization policies and practices.

For example, heads of the Washington State House and Senate transportation committees submitted a joint letter in May 2019 to the head of the Washington State Department of Transportation (WSDOT) and the Washington State Patrol to “strongly encourage” them to sweep homeless encampments along state highways.<sup>177</sup>

The letter pointed to Washington state law and WSDOT’s guidelines regarding illegal encampments as providing “ample authority to take immediate action to address situations where activity poses a clear emergency as an imminent threat to public health and safety alongside active highway operations”, which, per the letter, include “any right-of-way area deemed unsafe by a WSDOT Regional Administrator.”<sup>178</sup> Millions of state tax dollars were approved for this purpose.

Complaints from business interests, homeowner associations, and other organizations also drive criminalization law enforcement. Between 2013 and 2018 in San Francisco, for example, BIDs accounted for as much as 32% of all 911 dispatches related to homelessness, even though the City’s BIDs cover only 5% of its land area.<sup>179</sup>

Pressure to respond to complaints is harmful to homeless people, and also frustrating to many police who recognize that homeless people need housing and services, not temporary stints in jail or tickets that they cannot afford to pay. Instead, it involves police officers in a perpetual game of moving homeless people from the location where the complaint was generated to another where a future complaint awaits them.

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171 See Herring, *supra* note 97.

172 *Id.* at 3.

173 *Bloom v. City of San Diego* is being litigated by the Law Center, Disability Rights California, Disability Rights Advocates, Fish & Richardson, [BFFB], and the Dreher Law Firm on behalf of a putative class of people who live in vehicles in the City of San Diego.

174 David Garrick, *Judge Orders San Diego to Stop Ticketing Homeless Living in Vehicles*, THE SAN DIEGO UNION-TRIBUNE (Aug. 22, 2018, 5:00 PM), <https://www.sandiegouniontribune.com/news/politics/sd-me-homeless-vehicle-20180822-story.html>.

175 David Garrick, *Repeal of Vehicle Habitation Law Prompts Outcry Among San Diego’s Beach Residents*, THE SAN DIEGO UNION-TRIBUNE (Feb. 26, 2019, 3:50 PM), <https://www.sandiegouniontribune.com/news/politics/sd-me-homeless-car-beach-20190226-story.html>.

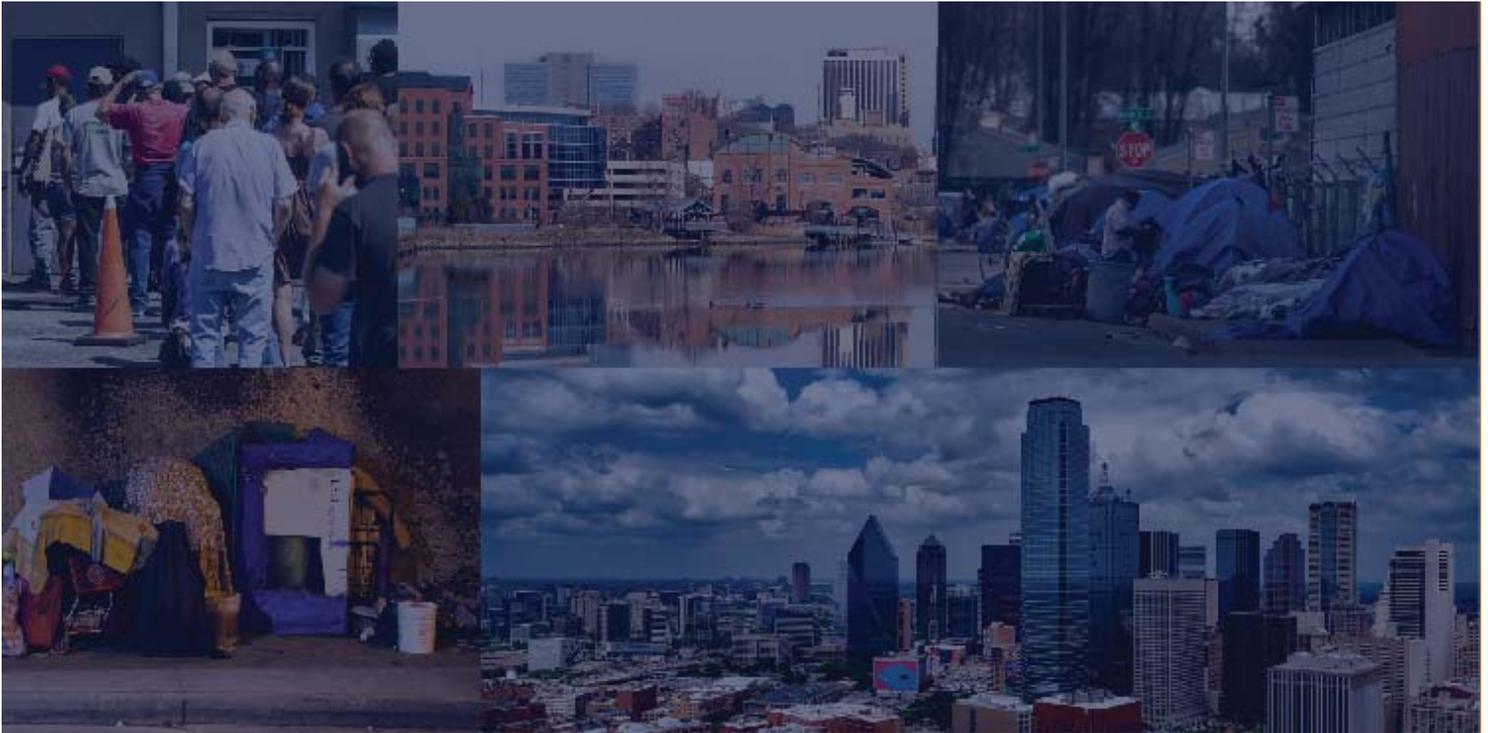
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176 See Herring, *supra* note 97.

177 Matt Markovich, ‘We Have to Take a Proactive Approach’: State Moves to Clear Highway Homeless Camp, KOMO NEWS (May 22, 2019), <https://komonews.com/news/project-seattle/decision-on-who-removes-highway-homeless-camps-in-seattle>.

178 *Bipartisan Letter Encouraging WSDOT Property Cleanup*, KOMO NEWS (May 8, 2019), [https://www.scribd.com/document/411050216/Bipartisan-letter-encouraging-WSDOT-property-cleanup#from\\_embed](https://www.scribd.com/document/411050216/Bipartisan-letter-encouraging-WSDOT-property-cleanup#from_embed).

179 Herring, *supra* note 97, at 13.



The Law Center recognizes that communities struggle with difficult policy choices over how to reduce homelessness and often pursue a combination of good (constructive) and bad (destructive) policies. Rather than call out individual governments for being the best or worst, we have identified particularly bad policies and/or practices of certain governments to include in our Hall of Shame.

### OCALA, FL: AGGRESSIVE ANTI-HOMELESSNESS POLICING

In Ocala, Florida, homeless people are strictly policed in accordance with Ocala’s strict anti-homeless ordinances and the explicit directives of Mayor Guinn, who promotes “broken windows” policing,<sup>176</sup> a discredited policing model which asserts that open signs of disorder such as broken windows invite further crimes when left unaddressed.<sup>177</sup>

Mayor Quinn explicitly considers panhandling a broken window in need of redress.<sup>178</sup> Under Ocala’s “Trespass and unlawful lodging” ordinance, it is illegal to “rest while awake or sleep” in the open on public property. Ocala seeks to enforce this law through deployment of a “vagrant patrol” that aggressively enforces the city’s anti-homeless laws with the intent of driving homeless people out of the city. These aggressive police tactics led to “Operation Street Sweeper,” a city-sponsored police patrol that has made over 200 “quality-of-life” arrests between December 3, 2018 and April 1, 2019.<sup>179</sup> According to a federal lawsuit filed by Southern Legal Counsel, merely three of the City’s unhoused residents, who are named plaintiffs in the action, have collectively spent 210 days in jail and been assessed over \$9,000 in fines, fees, and costs due to enforcement of the trespass and unlawful lodging ordinance alone.<sup>180</sup>

176 Mayor Kent Guinn: “Broken Windows” Policing in Ocala, Ocala <https://www.ocalafl.org/Home/Components/News/News/9072/> (Sep. 25, 2018, 3:52 PM).

177 What is Broken Windows Policing, CENTER FOR EVIDENCE-BASED

CRIME POLICY, <https://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/broken-windows-policing/> (last visited Nov. 25, 2019).

178 Mayor Kent Guinn: “Broken Windows” Policing in Ocala, Ocala <https://www.ocalafl.org/Home/Components/News/News/9072/> (Sep. 25, 2018, 3:52 PM).

179 Andy Fillmore, *Homeless Advocates Sue Ocala in Federal Court*, Ocala (Sep. 19, 2019, 10:47 AM), <https://www.ocala.com/news/20190919/homeless-advocates-sue-ocala-in-federal-court>.

180 Complaint, *McArdle v. Ocala*, Case No. 5:19-cv-461 (M.D. Fla.

## SACRAMENTO, CA: AGGRESSIVE SWEEPS AND BANISHMENT OF HOMELESS PEOPLE

The City of Sacramento consistently engages in practices that seek to isolate and disperse homeless people, even in the absence of adequate housing alternatives or even available shelters.<sup>181</sup> According to a federal lawsuit filed by Legal Services of Northern California, Sacramento “dewployed a fleet of Sheriff’s Deputies, some of whom were outfitted with batons and riot gear, and at least 15 Sheriff vehicles” to displace over 100 residents of a homelessness encampment.<sup>182</sup> In doing so, the City of Sacramento seized and destroyed encampment residents’ personal property, and caused some of the residents personal injury.<sup>183</sup> Worse yet, Sacramento filed its own lawsuit seeking to declare certain homeless individuals as public nuisances and have them banned from a large amount of public space.<sup>184</sup>

## WILMINGTON, DE: IMPROPER USE OF NO CONTACT / STAYAWAY ORDERS

Wilmington, Delaware, has engaged in practices with the intention of keeping its homeless residents away from certain parts of town, but instead of physically removing them, it seeks a “no contact” order with the entire city as a condition of bail.<sup>185</sup> In Wilmington, the police have arrested homeless residents for misdemeanor crimes such as loitering and aggressive panhandling, and requested that judges issue “no contact” orders prohibiting the accused from direct or indirect contact with the entire City of Wilmington, the “alleged victim.”<sup>186</sup> Vulnerable residents are thus forced to choose between agreeing to unreasonable conditions of release or remaining in jail until their case is resolved. Furthermore, police enforced violations of these no

contact orders with further arrests.<sup>187</sup> Wilmington Mayor Mike Purzycki has since called for repeal of Wilmington’s panhandling ban, however that repeal has not yet happened.

## KANSAS CITY, MO: FOOD-SHARING REGULATIONS

Health department officials in Kansas City, Missouri came under fire in November 2018 for pouring bleach on food being given to homeless people.<sup>188</sup> Health department officials stated their purpose for soaking chili, soup, and sandwiches being offered to homeless residents by the organization Free Hot Soup in bleach was to deter people from eating food it considered to be a safety hazard. However, these actions simply caused hungry residents to eat the bleach-covered food instead. Then-mayor Sly James posted on Twitter in support of the actions conducted by the health department officials.<sup>189</sup> While the Law Center is not aware of this highly publicized incident being repeated, its especially egregious nature has landed Kansas City, Missouri, in our Hall of Shame.

## REDDING, CA: PROPOSED INVOLUNTARY DETENTION OF HOMELESS PEOPLE

Redding, California, is a rural community in northern California’s Shasta County, which is home to some 827 homeless people, and far fewer emergency shelter beds. In response to rising homelessness, Redding Mayor Julie Winter sent a letter to California Governor Gavin Newsom asking for him to declare a state of emergency over homelessness and calling for the ability to, “hold [homeless] individuals accountable” by, “[requiring] mental health treatment for the severely mentally ill, up to and including conservatorship until such time as the individual has demonstrated the ability to care for themselves including managing their finances.”<sup>190</sup> In an interview with Jefferson Public Radio about the letter, Mayor Winter elaborated by

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2019).

181 Responding to Homelessness in the County of Sacramento, SACRAMENTO COUNTY, <https://www.saccounty.net/Homelessness/Pages/default.aspx> (last visited Nov. 25, 2019).

182 Complaint, *Rios v. County of Sacramento*, Case No. 2:10-cv-00922-KJM-DB (E.D. Cal. 2019).

183 *Id.*

184 Sam Stanton et al., *Drugs, Thefts, Assaults: Sacramento Wants to Ban 7 People from Prominent Business Corridor*, THE SACRAMENTO BEE (Aug. 16, 2019, 11:48 AM), <https://www.sacbee.com/news/local/article234082757.html>.

185 Christina Jedra, *Loitering, Panhandling Can Get You Banned from Wilmington*, DELAWARE ONLINE (Dec. 5, 2018, 2:11 PM), <https://www.delawareonline.com/story/news/2018/12/05/accused-loiterers-and-panhandlers-getting-banned-wilmington/2190018002/>.

186 *Id.*

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187 *Id.*

188 Alexandra Klausner, *Health Department Poured Bleach on Food Meant for the Homeless*, NY POST (Nov. 12, 2018, 4:41 PM), <https://nypost.com/2018/11/12/health-department-poured-bleach-on-food-meant-for-the-homeless/>.

189 @MayorSlyJames, TWITTER (Nov. 5, 2018), <https://twitter.com/MayorSlyJames/status/1059549161945743375>.

190 Letter from Julie Winter, Mayor of City of Redding, to Honorable Gavin Newsom, Governor of State of California, CITY OF REDDING (Nov. 19, 2019), available at <https://drive.google.com/file/d/11-RONSzB4B-Hr-SZHWuqYg8Vlnug17ug/view>.

saying she wishes to build a shelter where she can force people experiencing homelessness to stay for up to 90 days: “[It] might be a low-security facility, but it’s not a facility you could just leave because you wanted to...You need to get clean, you need to get sober, you need to demonstrate self-sufficiency. And once you do that, you’re free to go.”<sup>191</sup>

## STATE OF TEXAS: FORCING PUNITIVE APPROACHES TO HOMELESSNESS

Austin, TX amended its ordinances against camping in June 2019.<sup>192</sup> While the amendment allowed police to enforce the city’s camping ordinance against unhoused people even in the absence of adequate alternatives, it required that police first determine that the camping presented an actual public health or safety risk.<sup>193</sup> Texas Governor Greg Abbott rebuked Austin for the positive law changes, and threatened to intervene if the city did not return to the more draconian version of the ban.<sup>194</sup> Governor Abbott warned that “all state-imposed solutions are on the table including eliminating local sovereign immunity for damages and injuries” allegedly caused by Austin’s “reckless homeless policy.”<sup>195</sup> Political pressure from Governor Abbott contributed to Austin’s decision to again amend its camping ban to reduce the standard for illegal camping and to ban sitting and lying down in a large swath of Austin’s public space. The Governor then ordered Texas Department of Transportation staff to sweep homeless encampments from underneath state-owned highways, despite a lack of alternative places to go. The sweeps have continued on a weekly basis since the Governor first ordered them to begin on November 4, 2019.<sup>196</sup>

191 Emma Ockerman, *This California City Wants to Build a Homeless Shelter That’s Basically a Jail*, VICE (Nov. 22, 2019, 4:39 PM), [https://www.vice.com/en\\_us/article/mbmz94/a-california-mayor-wants-to-build-a-homeless-shelter-thats-basically-a-jail](https://www.vice.com/en_us/article/mbmz94/a-california-mayor-wants-to-build-a-homeless-shelter-thats-basically-a-jail).

192 Andrew Weber, *Austin Has New Rules on Panhandling, Camping and Resting in Public. Here’s What That Means*, KUT 90.5 (July 1, 2019), <https://www.kut.org/post/austin-has-new-rules-panhandling-camping-and-resting-public-heres-what-means>. Since that time, Austin has revised its policies again. Andrew Weber, *Austin Reinstates Limited Bans On Camping and Resting in Public*, KUT 90.5 (Oct. 17, 2019), <https://www.kut.org/post/austin-reinstates-limited-bans-camping-and-resting-public>.

193 See *id.*; see also AUSTIN, TEX. CODE §9-4-11 – Camping in Public Area Prohibited.

194 Andrew Weber, *Gov. Abbott Threatens State Intervention (Again) Unless Austin Reinstates its Camping Ban*, KUT 90.5 (OCT. 10, 2019), <https://www.kut.org/post/gov-abbott-threatens-state-intervention-again-unless-austin-reinstates-its-camping-ban>.

195 @GregAbbott\_TX, TWITTER (July 1, 2019), [https://twitter.com/GregAbbott\\_TX/status/1145930019451146245](https://twitter.com/GregAbbott_TX/status/1145930019451146245).

196 Austin Sanders, *TxDOT to Begin Clearing Encampments Under Highways*, AUSTIN CHRONICLE (Nov. 1, 2019), <https://www.austinchronicle.com/news/2019-11-01/txdot-to-begin-clearing-encampments-under-highways/>.

## THE U.S. GOVERNMENT: CREATING AND WORSENING THE NATION’S HOMELESS CRISIS

Dramatic cuts to federal funding for subsidized housing led to the modern homeless crisis, and today funding is so inadequate that only 1 in 4 people who are eligible for housing supports actually receives it. In September 2019, the Trump Administration’s Council of Economic Advisors released a white paper claiming that homeless people remain so because they are “too comfortable” living on the streets, and calling for policing as a tool, “to help move people off the street and into shelter or housing...”<sup>197</sup> Most worrisome is that this white paper appears to lay a policy basis for what Trump is reportedly considering - razing encampments and forcibly removing unhoused people off the streets to vacant federal properties.<sup>198</sup> One of the locations that the Trump Administration has reportedly shown interest in forcibly relocating homeless people to is the Hawthorne Federal Building - a vacant federal property that, ironically, homeless service providers previously attempted to acquire through Title V of the McKinney-Vento Homeless Assistance Act to provide voluntary homeless services.<sup>199</sup> That application, like the vast majority of applications under Title V, was denied.<sup>200</sup> The federal government’s disinvestment in subsidized housing, its reported plan to “crack down” on homelessness,<sup>201</sup> and its failure to use the real property assets at its disposal to constructively address the homeless crisis earn the U.S. Government a place on our Hall of Shame.

[com/news/2019-11-01/txdot-to-begin-clearing-encampments-under-highways/](https://www.austinchronicle.com/news/2019-11-01/txdot-to-begin-clearing-encampments-under-highways/).

197 COUNCIL OF ECON. ADVISORS, *THE STATE OF HOMELESSNESS IN AMERICA* (2019), <https://www.whitehouse.gov/wp-content/uploads/2019/09/The-State-of-Homelessness-in-America.pdf>.

198 Kriston Capps, *The Trump Administration Wants to Relocate Skid Row to this Federal Building*, CITYLAB (Sep. 17, 2019), <https://www.citylab.com/equity/2019/09/los-angeles-trump-homeless-crisis-shelter-hawthorne-building/597913/>.

199 Title V of the McKinney-Vento Homeless Assistance Act grants states, cities, and non-profit agencies with the ability to obtain unneeded federal property for free to provide needed homeless housing and services. 200 Between January 2017 and today, a total of 24 applications for vacant federal property were submitted, but only 7 were approved. There is no administrative review procedure for application denials.

201 Jeff Stein, Tracy Jan, Josh Dawsey & Ashley Parker, *Trump Pushing for Major Crackdown on Homeless Camps in California, with Aides Discussing Moving Residents to Government-Backed Facilities*, WASHINGTON POST (Sept. 10, 2019), <https://www.washingtonpost.com/business/2019/09/10/trump-pushing-major-crackdown-homeless-camps-california-with-aides-discussing-moving-residents-government-backed-facilities/>.

# UNFOUNDED AND HARMFUL STEREOTYPES

# CRIMINALIZING HOMELESSNESS PERPETUATES UNFOUNDED AND HARMFUL STEREOTYPES

KABC-TV



Criminalization laws reflect deep-seated prejudice against people experiencing homelessness. Among the erroneous beliefs about homeless people are that they are lazier, more dangerous, and/or more likely to use addictive substances than people in housing. These popular prejudices are unfounded, yet they routinely inform homelessness policy making. This section of the report corrects commonly held, but inaccurate beliefs about people experiencing homelessness.

## HOMELESS PEOPLE LIVE OUTSIDE BECAUSE THEY LACK BETTER OPTIONS

The false narrative that homelessness is a choice, rather than a reflection of a lack of choices, leads to citizen complaints about the mere presence of homeless people in public space, along with extreme political pressure on cities to remove homeless people from view. Inaccurate beliefs contribute to extreme frustration with outdoor camping, which contributes to policies punishing outdoor camping, even when there are insufficient and inadequate alternatives for people without housing. In a poll of Seattle

residents, nearly half of people polled said they approved a zero-tolerance approach to outdoor camping, with 35% “strongly” approving of that approach.<sup>202</sup> A more recent poll of Los Angeles residents found similar results, with some 60% of voters disapproving of allowing people to sleep in public even while the region lacks enough housing and shelters for those in need.<sup>203</sup>

Proponents of criminalization laws point to empty shelter beds as evidence that homeless people choose to be outside, but that is an inaccurate and overly simplistic view of the complex survival choices that homeless people are forced to make each day. Moreover, it ignores the many real barriers to shelter access that face people without housing. In Houston, Texas, for example, people with limited mobility and who need assistance getting in and out of bed

202 Vianna Davila & Vernal Coleman, *In New Poll on Homelessness, Seattle Area Favors Compassion But Distrusts Politicians*, SEATTLE TIMES (Jan. 11, 2019, 6:00 AM), <https://www.seattletimes.com/seattle-news/homeless/homeless-poll-results/>.

203 Benjamin Oreskes et al., *95% of Voters Say Homelessness is L.A.’s Biggest Problem, Times Poll Finds. ‘You Can’t Escape It’*, LA TIMES (Nov. 14, 2019, 6:41 AM), <https://www.latimes.com/california/story/2019-11-14/homeless-housing-poll-opinion>.

and on and off the toilet are turned away from shelter on that basis.

Even if a shelter bed is available and someone can physically access it, shelter beds may still be functionally unavailable. In *Martin v. City of Boise*, the U.S. Court of Appeals for the Ninth Circuit—the largest federal circuit court in the nation—recognized that some people are turned away from shelter even when there are empty beds, like when they have stayed the maximum time allowed under shelter rules for a given period or when they cannot participate in religious programming.

People also point to the refusal of “services” as evidence that people are choosing homelessness and do not want help. But this is premised on the incorrect belief that offered “services” are ones that can meaningfully address a person’s homelessness. Offered “services” are usually only offers of temporary emergency shelter or programming that may not be relevant to the offeree’s housing status. For example, offers of “services” may be offers to evaluate people for entry into drug and alcohol treatment, yet the vast majority of people experiencing homelessness do not abuse drug and alcohol and cannot make use of that service.

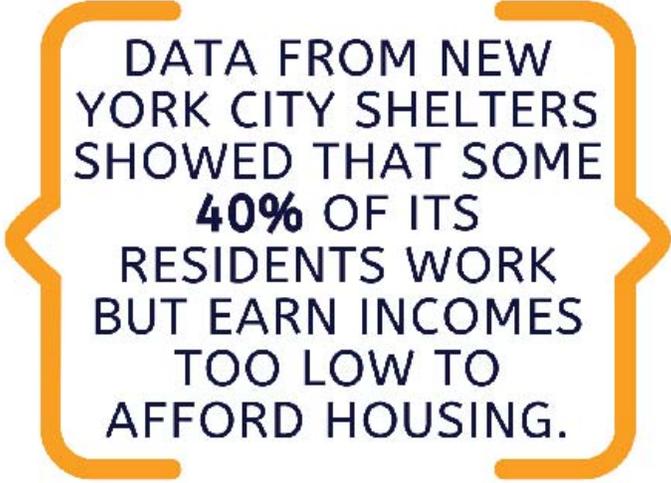
In addition to driving criminalization policies, prejudice against homeless people has limited attempts by cities to pursue constructive alternative approaches to homelessness. Residents in a number of communities have filed lawsuits to prevent cities from expanding service and housing options for unhoused people. In Venice, California, the Venice Stakeholders Association sued the city of Los Angeles and the California Coastal Commission over a plan to establish a shelter. The lawsuit is funded by over \$200,000 raised from individual donors in the area who state they do not want a shelter located in their community.<sup>204</sup>

## HOMELESS PEOPLE WORK, BUT STILL CANNOT AFFORD HOUSING

It is a common misconception, for example, that homeless people are lazy and choose not to work, but many homeless people do work. Data from New York City shelters showed that some 40% of its residents work but earn incomes too

low to afford housing. That a person can work full-time and still be unable to afford housing should come as no surprise: a worker earning the federal minimum wage must work 103 hours per week – the equivalent of 2.5 full time jobs – to afford a one-bedroom apartment at the national average market rent.<sup>205</sup>

Recent media reports have highlighted the problem of homelessness among America’s working poor. John Harris, a San Francisco native, works for the city’s San Francisco Human Services Agency, but he still cannot afford housing. “I thought if I worked for the city and county I would for sure have a place to live,” said Harris. Instead, he sleeps in his truck in a church parking lot, where he volunteers in exchange for access to an overnight parking space. “I’ve been living in this truck for well over two years now,” said Harris. “I get to work at 6:30 in the morning and I get off at 3 p.m.” He has no criminal record, no disabilities, no substance addiction, and he is thus ineligible for many social programs. At 60, he is too young to qualify for senior programs. He is also just over the income threshold for the City’s single room occupancy units. His truck is his only option for shelter, as there are over 1,000 people ahead of him on San Francisco’s shelter waiting list. But the City disallows living in vehicles and has cracked down on working people like John—the City’s own employee.



**DATA FROM NEW YORK CITY SHELTERS SHOWED THAT SOME 40% OF ITS RESIDENTS WORK BUT EARN INCOMES TOO LOW TO AFFORD HOUSING.**

204 Elijah Chiland, *Venice Neighborhood Group Raises \$200K to Fight Homeless Shelter*, CURBED L.A. (Apr. 16, 2019, 12:25 PM), <https://la.curbed.com/2019/4/16/18410698/venice-homeless-shelter-law-suit-fundraising>.

205 OUT OF REACH, *supra* note 35.

The Washington Post featured the story of Monica Diaz, who similarly works full-time at a Washington D.C. restaurant yet has slept in a tent ever since the building she was living in was condemned for non-payment of utility services by the building's owner.<sup>206</sup> Monica has struggled to maintain employment while homeless because keeping up appropriate hygiene is a daily struggle for people unable to regularly access showers, laundry, or even running water. But she has managed to stay working despite the stress of living outside. Monica has been subject to numerous encampment sweeps where she has lost critical property, including identification documents and her tent. Indeed, at the time of her story's publication, she was living in her seventh tent, as all others had been trashed by District employees. She is under constant threat of being swept again—even when temperatures dip into the 30s during the District's cold winters. "I'm at my breaking point," she said in an interview with the Washington Post. "I'm so at my breaking point, I don't know what to do."

## THE VAST MAJORITY OF HOMELESS PEOPLE DO NOT ABUSE ALCOHOL AND/OR DRUGS

Another common misconception is that homeless people are unhoused—and remain that way—because they are addicted to drugs and/or alcohol. In a recent survey of Seattle residents, 72% said they believed half of all people living on the streets are addicted to drugs and alcohol.<sup>207</sup> Yet data from King County, where Seattle is located, shows that the number of unhoused people struggling with addiction is less than half of that.<sup>208</sup> Moreover, lost in the discussion of addiction is the fact that many people using drugs and alcohol on the streets are self-medicating in response to untreated mental or physical illness or as a coping mechanism against trauma.

Stop stereotyping  
homeless people.

206 Terrence McCoy, 'This Is Not Me', WASH. POST (Mar. 22, 2019), [https://www.washingtonpost.com/news/local/wp/2019/03/22/feature/homeless-living-in-a-tent-blocks-from-the-u-s-capitol-and-working-full-time/?noredirect=on&utm\\_term=.aa7dd0e93bd6](https://www.washingtonpost.com/news/local/wp/2019/03/22/feature/homeless-living-in-a-tent-blocks-from-the-u-s-capitol-and-working-full-time/?noredirect=on&utm_term=.aa7dd0e93bd6).

207 Vernal Coleman, *Frustrated King County Residents Want a Plan to Address Homeless Crisis, New Poll Says*, SEATTLE TIMES (Apr. 2, 2019, 6:00 AM), <https://www.seattletimes.com/seattle-news/homeless/frustrated-king-county-residents-want-a-plan-to-address-homeless-crisis-new-poll-says/>. A survey paid for by the Bill & Melinda Gates Foundation, Campion Advocacy Fund, Raikes Foundation, and Ballmer Group asked Seattle residents questions designed to identify popular opinions about homelessness and solutions. *Id.*

208 Lola E. Peters, *Seattle is Addicted to Bad Narratives About Homelessness*, CROSSCUT (Sep. 2, 2019), <https://crosscut.com/2019/09/seattle-addicted-bad-narratives-about-homelessness>.

## HARMFUL & INEFFECTIVE

## CRIMINALIZING HOMELESSNESS IS INEFFECTIVE, HARMFUL, AND EXPENSIVE PUBLIC POLICY



Benjamin Burgess

The rising cost of housing and systemic inequality have led to an increase in unsheltered homelessness for three straight years across the country. Yet, many Americans fail to recognize the systemic causes of homelessness and instead mistakenly believe that unsheltered homelessness is a function of individual choice, rather than a lack of choices. One of the destructive side effects of this false belief is that it enables apathy about the urgent homelessness crisis.<sup>209</sup> It also contributes to complaints about the mere presence of homeless people in public space, and creates political pressure on cities to respond to those complaints by enacting and enforcing policies that outlaw homelessness.

But, arresting and ticketing homeless people for living in public space when they have no better options does not reduce homelessness, nor does such enforcement serve

any constructive purpose. Instead, these punitive measures make it more difficult for people to exit homelessness and directly undermine positive governmental efforts to end homelessness through housing and services. Criminalization policies also stigmatize homeless people, fueling the growing tide of private violence against homeless people.

### CRIMINALIZATION POLICIES FAIL TO ADDRESS THE CAUSES OF HOMELESSNESS, AND INSTEAD WORSEN THE PROBLEM

Laws criminalizing homelessness authorize law enforcement to remove people from public space for acts that are inextricably linked to homeless status, such as sleeping in public. While such laws allow law enforcement to temporarily address complaints about homelessness, they fail to address systemic homelessness because they do nothing to address its underlying causes.

209 Ruth Gourevitch & Mary K. Cunningham, *Dismantling the Harmful, False Narrative that Homelessness Is a Choice*, URBAN INST. (Mar. 27, 2019), <https://www.urban.org/urban-wire/dismantling-harmful-false-narrative-homelessness-choice>.

Instead, these laws accomplish temporary displacement of one or more people experiencing homelessness from one public space. Sometimes, people will return to the same locations where they have been ticketed, cited, or arrested in the past because they have family, friends, stored property, or other draws to the area that are not trumped by the risk of liability, which may exist in all parts of the city under laws punishing unavoidable life-sustaining activities citywide. Indeed, such laws have not been shown to even reduce visible homelessness within a given area.

Even if people subject to enforcement leave a given area, they typically remain in some public space for lack of other options - inevitably leading to more complaints or even an increase in complaints.<sup>210</sup> Indeed, enforcement patterns can even have the result of concentrating unsheltered homelessness in smaller areas, contributing to the rise of homeless encampments.<sup>211</sup> Moreover, laws criminalizing homelessness make homelessness much harder to escape.

Criminal convictions, and their collateral consequences, can bar access to employment and housing. When a homeless person is arrested and jailed for harmless behavior like sleeping in a public park, he or she will often miss work - perhaps for an extended period of time - creating a strong risk that the job will be lost. Even where there is not a prolonged period of incarceration associated with the arrest, homeless defendants who wish to exercise their constitutional right to due process and defend against the charge may be required to attend multiple court hearings, missing additional time at work, before the cases are finally resolved. Finally, court and probation fees associated with resolving a criminal case can amount to hundreds, or even thousands, of dollars. Without the resources to pay, homeless people may be subject to additional jail time, interrupting employment even after a criminal case has been closed. Employment seekers are often required to disclose any arrests or criminal convictions on job application forms. Moreover, potential employers frequently run criminal background checks and choose not to hire anyone with a criminal past, even where the facts of the underlying crime have no bearing on the person's ability to perform the job. In this way, an arrest or conviction can create a lifelong barrier to obtaining employment, preventing homeless

persons from earning the income necessary to afford stable housing.

Criminal convictions, even for minor crimes, can also make someone ineligible for federally subsidized housing. Public Housing Authorities (PHAs), the local administrators of federally subsidized housing programs, are given broad discretion to determine their own policies regarding the eligibility of people with criminal records, and many PHAs use overly exclusive policies that prohibit anyone with a criminal record - even for minor offenses - from receiving assistance.

Lengthy periods of incarceration under laws criminalizing homelessness can also harm a person's ability to access or maintain housing. Incarceration beyond 90 days can cause someone - even a person who has been without access to housing for years - to lose their status as "chronically homeless", and the prioritization for housing supports that often come along with it.<sup>212</sup> Incarceration and/or warrants for some criminal offenses can also cause social security benefits to be suspended.<sup>213</sup> While a disabled individual is incarcerated, federal benefits that they rely upon to pay for housing, such as Supplemental Security Income ("SSI"), are suspended. And, if the period of incarceration extends beyond one year, benefits are terminated and the recipient must submit a new application. A new application does not guarantee that benefits will be re-awarded, and even when they are, the new application may take months or even years to get approved. As a result, many ex-offenders have no ability to pay for housing, leaving them prone to homelessness.

Civil penalties carry similar consequences. Unaffordable tickets lead to ruined credit which can serve as a direct bar to housing access. Unpaid tickets can also lead to driver's license suspensions or loss of vehicles which can cost people their jobs and limit their prospects for work.<sup>214</sup>

210 Laura Waxman, *Homeless Advocates Claim April Sweeps Led to More Encampment Complaints*, SAN FRANCISCO EXAMINER (May 25, 2018, 12:00 AM), <https://www.sfexaminer.com/news/homeless-advocates-claim-april-sweeps-led-to-more-encampment-complaints/>.

211 See e.g., TENT CITY, USA, *supra* note 12.

212 ALLARD K. LOWENSTEIN INT'L HUMAN RIGHTS CLINIC, YALE LAW SCHOOL, "FORCED INTO BREAKING THE LAW:" THE CRIMINALIZATION OF HOMELESSNESS IN CONNECTICUT 7, [https://law.yale.edu/sites/default/files/area/center/schell/criminalization\\_of\\_homelessness\\_report\\_for\\_web\\_full\\_report.pdf](https://law.yale.edu/sites/default/files/area/center/schell/criminalization_of_homelessness_report_for_web_full_report.pdf).

213 See e.g., *Unresolved Court Problems Can Also Cause Problems with Social Security*, IOWA LEGAL AID, <https://www.iowalegalaid.org/resource/unresolved-court-problems-can-also-cause-prob> (last visited Nov. 25, 2019).

214 W. CTR. ON LAW & POVERTY, *supra* note 113, at 19.

## CRIMINALIZATION OF HOMELESSNESS HARMS PUBLIC SAFETY

Criminalization laws are alleged public safety measures, but these policies actually undermine public safety. It does not enhance public safety to cycle homeless people through the criminal justice system when they have committed no real crime, nor does it serve traditional criminal justice goals. A person cannot be rehabilitated from their basic human needs for shelter, rest, and other acts of survival. Instead, these policies distort the role of law enforcement. As stated by the U.S. Department of Justice, “[i]t is neither safe nor appropriate to put law enforcement on the front lines to resolve mental health, substance abuse, and housing crises when what people experiencing homelessness really need is housing and adequate services.”<sup>215</sup> It is also an unfair burden on police to be tasked with trying to solve the social crisis of homelessness.

Criminalization policies divert law enforcement resources from true street crime, clog our criminal justice system with unnecessary arrests, and fill already overcrowded jails. As explained by Colorado Assistant District Attorney Jake Lilly, “Every time police are called upon to arrest someone who poses little threat to public safety, it takes police officers, prosecutors and judges away from the cases where the public needs us. It fills our jails with people who do not need to be there, wasting taxpayer dollars. If we stopped clogging the system with unnecessary arrests, we would have more time to gather evidence, allowing us to solve more serious crimes and focus on high-risk repeat offenders who truly threaten our way of life.”<sup>216</sup>

### Criminalization Increases Recidivism

Because criminalization measures prolong and worsen the problem of homelessness, they also increase the risk of recidivism.<sup>217</sup> People leaving jails and prisons are 10 times more likely than the general population to experience

homelessness.<sup>218</sup> Conversely, supportive housing services have been shown to lower rates of recidivism and homelessness.<sup>219</sup> For example, the Returning Home Ohio Pilot Project, which provided program participants with supportive housing services, reduced recidivism by 40%.<sup>220</sup> Milwaukee County, Wisconsin similarly found that implementation of Housing First programming decreased municipal violations by 82%.<sup>221</sup>

### Criminalization Policies Breed Distrust Between Homeless Individuals and Law Enforcement

Enforcement of criminalization laws erodes trust between police and homeless people, which compromises public safety in key ways. Homeless people are often witnesses to street crime—62% of homeless adults surveyed in five U.S. cities said they witnessed a violent attack.<sup>222</sup> Distrust between police and homeless people can slow criminal investigations.<sup>223</sup> When homeless people become criminals themselves simply for existing in public space, they are less likely to make voluntary contact with police to report crime or to cooperate as witnesses.

Distrust between homeless communities and police also increases tension in street encounters, which in turn elevates the risk of violent confrontation. In Albuquerque, a police officer fatally shot a man he was attempting to detain for camping in an unauthorized area.<sup>224</sup> In Coweta County, Georgia, officers approached a sleeping man and shot him, causing critical injury.<sup>225</sup>

215 U.S. DEP’T OF JUST., COMMUNITY POLICING DISPATCH 2 (Dec. 2015); see also Normore et al., *supra* note 56, at 137.

216 Jake Lilly, Op-Ed, *As a Prosecutor, I Believe Denver Should Stop Criminalizing Homelessness*, WESTWORD (May 5, 2019, 6:55 AM), <https://www.westword.com/news/prosecutor-jake-lilly-argues-in-favor-of-denvers-initiative-300-11332945>. Lilly is the Sex Assault Prosecutor for Colorado’s Fifth Judicial District, responsible for prosecuting sexual abuse and violence cases.

217 Stephen Metraux & Dennis P. Culhane, *Homeless Shelter Use & Reincarceration Following Prison Release*, 3 CRIMINOLOGY & PUB. POL’Y 143 (2004).

218 Kimberly Burrowes, *Can Housing Interventions Reduce Incarceration and Recidivism*, HOUSING MATTERS (Feb. 27, 2019), <https://housingmatters.urban.org/articles/can-housing-interventions-reduce-incarceration-and-recidivism>.

219 See e.g. Faith E. Lutze et al., *Homelessness and Reentry: A Multisite Outcome Evaluation of Washington State’s Reentry Housing Program for High Risk Offenders*, 41 CRIM. JUST. & BEHAV. 471 (2014).

220 Kimberly Burrowes, *Can Housing Interventions Reduce Incarceration and Recidivism*, HOUSING MATTERS (Feb. 27, 2019), <https://housingmatters.urban.org/articles/can-housing-interventions-reduce-incarceration-and-recidivism>.

221 *Id.*

222 Molly Meinbresse et al., *Exploring the Experiences of Violence Among Individuals Who Are Homeless Using a Consumer-Led Approach*, 29 VIOLENCE & VICTIMS 122, 125 (2014), [https://www.nhchc.org/wp-content/uploads/2014/08/vv-29-1\\_ptr\\_a8\\_122-136.pdf](https://www.nhchc.org/wp-content/uploads/2014/08/vv-29-1_ptr_a8_122-136.pdf).

223 Lilly, *supra* note 220.

224 Rebecca R. Ruiz, *New Mexico Officers Won’t Face Federal Charges in Killing of Mentally Ill Man*, N.Y. TIMES (July 18, 2017), <https://www.nytimes.com/2017/07/18/us/james-boyd-shooting-new-mexico-officers-not-charged.html>.

225 Matt Johnson, *Dramatic Bodycam Video Shows Shooting that*

## Criminalization Policies Increase the Risk of Violence Against Homeless People

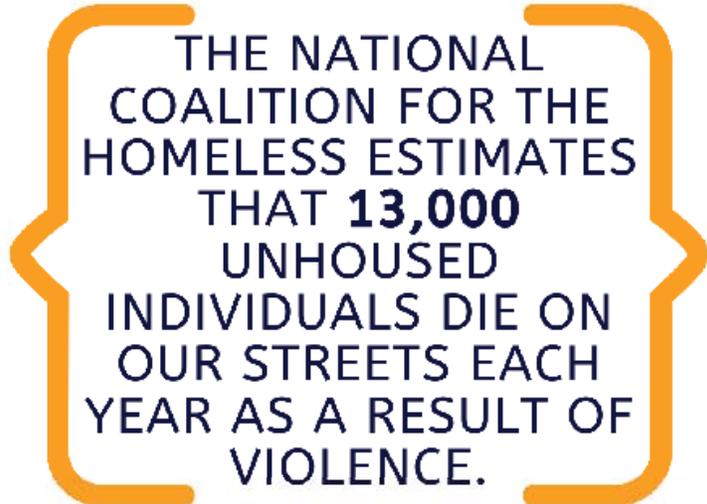
Research shows that enforcement of camping bans and camp evictions heighten the risk of violent crime against homeless people by forcing them into more secluded, less familiar locations where they are more vulnerable.<sup>226</sup> A survey of over 500 homeless people in Denver six months after its camping ban passed showed that 66% of homeless people moved to hidden, more dangerous areas.<sup>227</sup> Many homeless individuals reported being victimized in those secluded locations,<sup>228</sup> and even violently attacked following displacement caused by sweeps.<sup>229</sup>

The National Coalition for the Homeless estimates that 13,000 unhoused individuals die on our streets each year as a result of violence.<sup>230</sup> And it appears that the numbers are going up. Nearly one-third of homicide victims in Seattle were homeless individuals in 2018, according to the county medical examiner—an increase in recent years.<sup>231</sup> In Denver, the number of reported crimes against homeless victims in 2017 was 1008—an increase of 42% from 2013 to 2017.<sup>232</sup> In Los Angeles, between 2017 and 2018, Los Angeles saw a 68% increase in the number of homeless

victims of Part I crimes, which include homicide, rape, robbery, and aggravated assault.<sup>233</sup>

The victimization of homeless individuals prolongs their homelessness and causes physical and psychological trauma.<sup>234</sup> Yet homeless people often do not seek help from law enforcement when they are victimized because they risk punishment under laws criminalizing their presence in public space.

The dehumanization inherent in laws banishing homeless people from public view contributes to growing vigilantism against homeless people. Private individuals become emboldened when homeless people are treated as outlaws, and indeed vigilante groups often describe themselves as enforcing the laws along with local police.<sup>235</sup> Despite their lack of training and authority, civilians feel entitled to harass and remove homeless people and their shelters from public space under authority of laws that treat them as offenders simply for existing.<sup>236</sup>



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The Western Regional Advocacy Project (WRAP), the National Coalition for the Homeless (NCH), and the Law Center have documented complaints of vigilante activity against homeless people on the streets and online. Vigilantes are reported to have entered into people's tents without their permission or even destroy homeless people's shelters and property. Vigilantes may act alone as individuals, but

*Critically Injured Homeless Man*, WSB-TV ATLANTA (July 4, 2019, 10:03 AM), <https://www.wsbtv.com/news/local/coweta-county/dramatic-bodycam-video-shows-shooting-that-critically-injured-homeless-man/963690287>.

226 Samir Junejo et al, *No Rest for the Weary: Why Cities Should Embrace Homeless Encampments*, HOMELESS RTS. ADVOC. PROJECT 6 (2016), <http://digitalcommons.law.seattleu.edu/hrap/4>.

227 Tony Robinson, *THE DENVER CAMPING BAN: A REPORT FROM THE STREET* 8 (2014), available at <https://denverhomelessoutloud.files.wordpress.com/2016/03/camping-ban-report.pdf>.

228 Sig Langegger & Stephen Koester, *Dwelling Without a Home: Denver's Splintered Public Spaces*, in *ORDER AND CONFLICT IN PUBLIC SPACE* 140 (Mattias De Backer et al., eds., 2016).

229 Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, *AMERICAN SOCIOLOGICAL REVIEW* 23 (2019), [https://static1.squarespace.com/static/5b391e9cda02bc79baffeb9/t/5d73e7609b56e748f432e358/1567876975179/complaint-oriented+policing\\_ASR.pdf](https://static1.squarespace.com/static/5b391e9cda02bc79baffeb9/t/5d73e7609b56e748f432e358/1567876975179/complaint-oriented+policing_ASR.pdf).

230 ANNIE LEOMPORRA & MEGAN HUSTINGS, NAT'L COAL. FOR THE HOMELESS, *VULNERABLE TO HATE: A SURVEY OF BIAS-MOTIVATED VIOLENCE AGAINST PEOPLE EXPERIENCING HOMELESSNESS IN 2016-2017*, at 9 (2018), [https://nationalhomeless.org/wp-content/uploads/2018/12/hate-crimes-2016-17-final\\_for-web.pdf](https://nationalhomeless.org/wp-content/uploads/2018/12/hate-crimes-2016-17-final_for-web.pdf).

231 Steve Kiggins, *Officials: Nearly 1/3 of 2018 Seattle Homicide Victims Were Homeless*, Q13Fox (Apr. 2, 2019, 5:28 PM), <https://q13fox.com/2019/04/02/officials-nearly-1-3-of-2018-seattle-homicide-victims-were-homeless/>.

232 Tom McGhee, *Crimes Against Homeless People Up 42 Percent in Denver and Suburban Cops Say That's Pushing Transients into Their Towns*, DENVER POST (Jan. 15, 2018, 7:32 AM), <https://www.denverpost.com/2018/01/14/crimes-against-homeless-people-up-42-percent-in-denver-and-suburban-cops-say-thats-pushing-transients-into-their-towns/>.

233 DOMINIC H. CHOI, L.A. POLICE DEP'T, 2018 4TH QUARTER REPORT ON HOMELESSNESS 3 (2019), [http://www.lapdpolicecom.lacity.org/031219/BPC\\_19-0073.pdf](http://www.lapdpolicecom.lacity.org/031219/BPC_19-0073.pdf).

234 Meinbresse et al., *supra* note 226, at 123.

235 See *id.*

236 Sara Shortt, *We Don't Need Protection from the Homeless. They Need Protection from Us*, L.A. TIMES (Oct. 15, 2018, 4:05 AM), <https://www.latimes.com/opinion/op-ed/la-oe-shortt-homeless-victims-20181015-story.html>.

often they act as members of vigilante groups – sometimes with the participation of local police. In Southern Humboldt County, a local vigilante group known as SoHum Locals on Patrol printed encampment eviction notices—co-branded with the Southern Humboldt County’s Sheriff’s Office—and performed the eviction along with police.

There have also been reports of homeless individuals being threatened at gunpoint, shot at, or even set on fire by civilians who believe police are not sufficiently removing the homeless from public space.<sup>237</sup> In August in Los Angeles, a fire started in a homeless encampment by two housed men, including the son of a local chamber of commerce president, resulted in two freeways being temporarily closed down.<sup>238</sup>

While some acts of violence are intended to cause serious bodily harm, others are aimed at humiliating and excluding homeless people from places where they are unwanted. A viral video of a homeless customer having a pitcher of water poured over his head by a Dunkin Donuts employee is but one example.<sup>239</sup>

Vigilantes have also used online chat forums and social media platforms to mobilize and promote vigilante activity against homeless people.<sup>240</sup> These forums are characterized by deeply dehumanizing language discussing homeless people, and individuals without housing are sometimes identified by name, picture, or license plate, along with personal information about them—whether true or false. It is common for online group members to share pictures or videos of homeless people, taken without their consent, sometimes featuring a confrontation initiated by the photographer. Discussion threads are also characterized by descriptions of homelessness as a nuisance and threat to community safety, leading to the digital humiliation, taunting, shaming, and derision of homeless people.<sup>241</sup>

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237 Allison Needles & Alexis Krell, ‘Into Our Own Hands.’ *People Take Aim at the Homeless, Worrying Police and Advocates*, NEWS TRIBUNE (last updated Mar. 24, 2019, 10:44 AM), <https://www.thenewstribune.com/news/local/article227461664.html>.

238 Carla Green, ‘I Try Not to Sleep’: *Vigilante Attacks on LA’s Homeless Said to Increase*, THE GUARDIAN (Oct. 4, 2019, 1:00 PM), <https://www.theguardian.com/us-news/2019/oct/03/i-try-not-to-sleep-attacks-on-homeless-in-los-angeles-increase-over-past-year>

239 Michael Gold, *Dunkin’ Donuts Worker Dumps Water on Homeless Man in Viral Video. He’s Fired.*, NY TIMES (Oct. 2, 2018), <https://www.nytimes.com/2018/10/02/nyregion/dunkin-donuts-homeless-man-video.html>.

240 Carla Green, ‘I Try Not to Sleep’: *Vigilante Attacks on LA’s Homeless Said to Increase*, THE GUARDIAN (Oct. 4, 2019, 1:00 PM), <https://www.theguardian.com/us-news/2019/oct/03/i-try-not-to-sleep-attacks-on-homeless-in-los-angeles-increase-over-past-year>.

241 See e.g., Thacher Schmid, *In Portland, A Neighborhood Watch*

Members of law enforcement may be active participants in or even administrators of these online groups. Local law enforcement’s participation in these online groups is especially harmful because their participation lends legitimacy and authority to the egregiously anti-homeless rhetoric and actions found on the online forums. Additionally, local law enforcement should be the first line of defense for homeless individuals seeking reprieve from victimization. With local law enforcement’s involvement in spaces that facilitate anti-homeless vigilantism, homeless individuals are unable to recognize local law enforcement as a dependable source of protection.

## CRIMINALIZATION LAWS HARM PUBLIC HEALTH

Jurisdictions often justify punitive approaches to homelessness as necessary to protect public health. Indeed, many cities that limited the enforcement of their camping bans in response to the Ninth Circuit’s ruling in *Martin v. City of Boise* have nevertheless continued to prohibit tents and outdoor encampments for purported public health reasons. While homelessness is certainly a serious public health concern,<sup>242</sup> punitive approaches to homelessness do



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*Group Stirs Debate Over How to Respond to the Homeless*, LOS ANGELES TIMES (Dec. 29, 2018, 12:23 PM), <https://www.latimes.com/nation/la-na-portland-homeless-vigilantes-20181218-hlmlstory.html>.

242 *Homelessness as a Public Health Problem*, AM. PUB. HEALTH ASS’N (Jan. 1, 1992), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/31/07/56/homelessness-as-a-public-health-problem>.

not improve public health. To the contrary, they worsen the health of unhoused populations and compromise general public health.

Homelessness creates new health problems and worsens existing ones.<sup>243</sup> Unhoused people have high rates of chronic mental and physical health conditions, related diseases and co-occurring disorders, and increased rates of morbidity and mortality.<sup>244</sup> At least one study found that the homeless population experiences diabetes and hepatitis C at rates as much as 10 times higher as the general population. Without access to running water, toilets, and trash services, infectious diseases may spread. For example, Hepatitis A outbreaks among homeless populations have been reported from San Diego in 2017 to the Ohio Valley in 2018, where unhoused people did not have access to hand-washing stations or vaccinations.<sup>245</sup>

And the homeless population experiences tuberculosis at rates 40 times higher than the general population.<sup>246</sup> Homeless people also have higher rates of hypertension, asthma, and HIV/AIDS.<sup>247</sup> As homeless individuals tend to have compromised immune systems, they are at even higher risk of contracting infectious diseases.<sup>248</sup>

Homeless people also struggle to comply with prescribed treatment.<sup>249</sup> Limits on shelter stays may interfere with one's

ability to take regular medication or schedule follow up health visits.<sup>250</sup>

Diabetes, for example, is particularly difficult to manage on the streets. Homeless people often lack a place to store and refrigerate insulin—and without trash services, needles may be discarded in public places. Sweeps of homeless encampments can also deprive people of lifesaving medications such as antibiotics or drugs to treat psychiatric disorders or disease.<sup>251</sup>

People without housing are five times more likely to be admitted to the hospital for physical illnesses, mental illness, and substance abuse than other populations.<sup>252</sup> The prevalence of chronic health conditions and limited ability to treat them leaves homeless people vulnerable to repeated hospitalizations and the overuse of emergency services. As much as a third of homeless people are hospitalized during a given year, and they often are served through emergency rooms. People who experience homelessness as individuals are more likely to have avoidable emergency room visits, hospitalizations, and repeated stays in detox and crisis treatment programs, and they are likely to stay longer when they are admitted to a hospital or nursing home, compared to people who have housing.<sup>253</sup> A national study of emergency department use also showed that homeless people are twice as likely as members of the general public to return to emergency departments within only one week of a hospitalization—often in an ambulance, contributing to high treatment costs.<sup>254</sup>

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243 NAT'L HEALTH CARE FOR THE HOMELESS COUNCIL, HOMELESSNESS & HEALTH: WHAT'S THE CONNECTION? 1–2 (2019), <https://www.nhchc.org/wp-content/uploads/2019/02/homelessness-and-health.pdf>.

244 *Id.*

245 Brett Kelman, *Tennessee Hepatitis A Claims First Casualty; More Than 440 Cases Statewide*, TENNESSEAN (last updated Nov. 14, 2018, 9:03 PM), <https://www.tennessean.com/story/money/2018/11/14/tennessee-hepatitis-outbreak-claims-its-first-casualty/1999538002/>; Mary Meehan, *Infection and Inequality: How the Income Gap Fuels Ohio Valley's Hep A Outbreak*, OHIO VALLEY RESOURCE (July 27, 2018), <https://ohiovalley-resource.org/2018/07/27/infection-and-inequality-how-the-income-gap-fuels-ohio-valleys-hep-a-outbreak/>; Erica Wilson, et al., *Notes from the Field: Hepatitis A Outbreak Associated with Drug Use and Homelessness*, CDC (Apr. 12, 2019), <https://www.cdc.gov/mmwr/volumes/68/wr/mm6814a4.htm>.

246 Seena Fazel, MD et al., *The Health of Homeless People in High-Income Countries: Descriptive Epidemiology, Health Consequences, and Clinical and Policy Recommendations*, 384 LANCET 1529 (2014); Lillian Gelberg et al., *Prevalence, Distribution, and Correlates of Hepatitis C Virus Infection Among Homeless Adults in Los Angeles*, 127 PUB. HEALTH REP. 407 (2012), <http://www.natap.org/2012/HCV/issueopen.pdf>.

247 Cheryl Zlotnick & Suzanne Zerger, *Survey Findings on Characteristics and Health Status of Clients Treated by the Federally Funded (US) Health Care for the Homeless Programs*, 17 HEALTH & SOC. CARE IN THE COMM'Y 18 (2008).

248 Brodie Ramin & Tomislav Svoboda, *Health of the Homeless and Climate Change*, 86 J. URB. HEALTH 654, 657–58 (2009).

249 Angela A. Aidala, Michael G. Wilson, Virginia Shubert, et al.,

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*Housing Status, Medical Care, and Health Outcomes Among People Living With HIV/AIDS: A Systematic Review*, 106 AM. J. PUB. HEALTH e1 (2016).

250 Cheryl Zlotnick, Suzanne Zerger & Phyllis B. Wolfe, *Health Care for the Homeless: What We Have Learned in the Past 30 Years and What's Next*, 103 AM. J. PUB. HEALTH S199 (2013).

251 Nuala Sawyer, *Sweeps of Homeless Camps in S.F. Are Creating a Public Health Crisis*, CTR. FOR HEALTH JOURNALISM (Mar. 21, 2019), <https://www.centerforhealthjournalism.org/2019/03/14/sweeps-homeless-camps-sf-are-creating-public-health-crisis>.

252 Rebecca S. Bernstein, et al., *Diabetes and Hypertension Prevalence in Homeless Adults in the United States: A Systematic Review and Meta-Analysis*, 105 AM. J. PUB. HEALTH e46, e47 (2015); Margot B. Kushel, Eric Vittinghoff, Jennifer S. Haas, *Factors Associated With the Health Care Utilization of Homeless Persons*, 285 J. AM. MED. 200 (2001); Sharon A. Salit et al., *Hospitalization Costs Associated with Homelessness in New York City*, 338 NEW ENG. J. MED. 1734 (1998).

253 Lin WC et al., *Frequent Emergency Department Visits and Hospitalizations Among Homeless People with Medicaid: Implications for Medicaid Expansion*, 105 AM. J. PUB. HEALTH S716 (2015).

254 Margot B. Kushel, *Emergency Department Use Among the Homeless and Marginally Housed: Results From a Community-Based Study*, 92 AM. J. PUB. HEALTH 778 (2002), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447161/pdf/0920778.pdf>.

Exposure to the elements and inclement weather contribute to this unhealthy and expensive cycle.<sup>255</sup> Exposure can lead to serious harms, such as frostbite and amputation of extremities, or hypothermia deaths. Frostbite leading to amputations among homeless people in Denver increased 300% after the camping ban went into effect. Hypothermia deaths are not limited to areas with relatively cold weather. Sunny Los Angeles had more hypothermia deaths in 2018 than much colder New York City.<sup>256</sup> Hypothermia can set in when temperatures are as high as 50 degrees. Wet clothing (from exposure to rain, for example) can significantly intensify body heat loss,<sup>257</sup> as can the use of psychiatric medications and/or alcohol.<sup>258</sup>

Under these circumstances, it is unsurprising that the unsheltered homeless have significantly higher mortality rates than housed people. Homeless people's rates of mortality are as much as 11.5 times higher than that of the general population.<sup>259</sup> The National Coalition for the Homeless has found that life expectancy for someone who is homeless can be 20 to 30 years less than a housed person's life expectancy.<sup>260</sup>

Bans on sleeping, sitting, and lying down also severely limit the ability of homeless people to rest, leading to chronic sleep deprivation and a host of related harms. Sleep deprivation has been shown to induce psychosis-like symptoms in even healthy individuals, and is linked with poor mental health.<sup>261</sup> Sleeplessness is also linked to

obesity, diabetes, hypertension, cardiovascular disease and immune suppression. It also impairs cognitive functions, resulting in memory loss, problems concentrating and confusion, and compromised decision making. And chronic sleep deprivation contributes to the much shorter life expectancy among unsheltered people.

Unsheltered homelessness can be fatal, but stays in emergency shelters also carry health risks. Congregate emergency shelters expose people to communicable disease, infestations, and parasites that are more easily spread in crowded conditions.<sup>262</sup> Public health analyses demonstrate that shelters frequently struggle with inadequate ventilation, overcrowding, and insufficient procedures for handling contagious clients.<sup>263</sup> According to the Center for Disease Control, these factors contribute to the spreading of airborne diseases such as tuberculosis and influenza.<sup>264</sup> From 2008 to 2017, there were a total of 110 outbreak-related cases of antibiotic resistant tuberculosis in Atlanta homeless shelters.<sup>265</sup> Hepatitis A, for which homeless populations are a high-risk group, is also highly contagious in indoor "high density living conditions."<sup>266</sup>

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255 Supporting a National Priority to Eliminate Homelessness, AM. PUB. HEALTH ASS'N, (Jan. 1, 1997), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/30/08/44/supporting-a-national-priority-to-eliminate-homelessness>.

256 Kelley Czajka, *More Homeless People Are Dying of Hypothermia in Los Angeles than in New York. Is Climate Change a Factor?*, PAC. STANDARD (Feb. 19, 2019), <https://psmag.com/news/more-homeless-people-are-dying-of-hypothermia-in-los-angeles-than-in-new-york-could-climate-change-be-to-blame>.

257 *Cold Exposure: Ways the Body Loses Heat*, MICH. MED. (Sept. 23, 2018), <https://www.uofmhealth.org/health-library/tw9037>.

258 Cheryl Zonnenberg et al., *Hypothermia Due to Antipsychotic Medication: A Systematic Review*, 8 FRONTIERS IN PSYCHOL. 1 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5594062/pdf/fpsyt-08-00165.pdf>.

259 Merete Nordentoft & Nina Wandall-Holm, *10 Year Follow Up Study of Mortality Among Users of Hostels for Homeless People in Copenhagen*, 327 BMJ 81 (2003), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC164916/pdf/el-gp81.pdf>.

260 NAT'L COAL. FOR THE HOMELESS, HEALTH CARE AND HOMELESSNESS (2012), <https://www.nationalhomeless.org/factsheets/health.html>.

261 See generally Nadine Petrovsky et al., *Sleep Deprivation Disrupts Prepulse Inhibition and Induces Psychosis-Like Symptoms in Healthy Humans*, 34 J. NEUROSCIENCE 9134 (2014); Lorraine Reitzel, *Distress Tolerance Links*

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*Sleep Problems with Stress and Health in Homeless*, 41 AM. J. HEALTH BEHAV. 760 (2017).

262 *Id.*

263 Michelle Moffa et al., *A Systematic Scoping Review of Environmental Health Conditions and Hygiene Behaviors in Homeless Shelters*, INT'L J. HYGIENE & ENVTL. HEALTH, 335, 342 (2018).

264 *TB in the Homeless Population*, CTR. FOR DISEASE CONTROL, <https://www.cdc.gov/tb/topic/populations/homelessness/default.htm> (last visited June 20, 2019); *CDC Guidance for Emergency Shelters for the 2009-2010 Flu Season*, CTR. FOR DISEASE CONTROL, <https://www.cdc.gov/h1n1flu/guidance/emergencysshelters.htm> (last visited June 20, 2019).

265 Ethan Covey, *Resistant TB Outbreak Signals Need for Coordinated Response*, IDSE (Feb. 22, 2019), <https://www.idse.net/Policy--Public-Health/Article/02-19/Resistant-TB-Outbreak-Signals-Need-for-Coordinated-Response/54194>.

266 Greg McCann, *Tuberculosis Remains a Public Health Concern in Oklahoma*, MIAMI NEWS-REC. (July 24, 2017, 8:20 AM), <https://www.miamiok.com/news/20170724/tuberculosis-remains-public-health-concern-in-oklahoma>; *Preventing and Controlling Hepatitis A in Jails and Prisons*, NAT'L INST. CORRECTIONS, <https://nic.gov/preventing-and-controlling-hepatitis-jails-and-prisons-webinar> (last visited June 28, 2019).

Those with mental health conditions may not feel safe in emergency shelters. For example, people with schizophrenia experience paranoia particularly in large groups of people, and paranoia, anxiety, hallucinations, and hypervigilance related to post-traumatic stress disorder may make it difficult for people to cope with the noisy and crowded conditions in shelters. Being surrounded by strangers at nighttime can also induce stress in people with mental health conditions. Substance use compounds these risks. Estimates vary, but approximately one-third of people experiencing homelessness are also dealing with substance use disorders and illness related to substance use disorders.<sup>267</sup> For these people, shelter may be impossible to access due to shelter rules. If a person cannot leave a shelter to mitigate the effects of withdrawal from alcohol or other substances, they are unlikely to be able to safely stay in a shelter. Equally, for people who use opioids, it is safer to do so in a setting such as an encampment where they can be monitored by peers who can administer naloxone if needed.<sup>268</sup> Indeed, San Francisco cited 2018 encampment sweeps as partially responsible for a rise in overdose deaths among the homeless.<sup>269</sup>

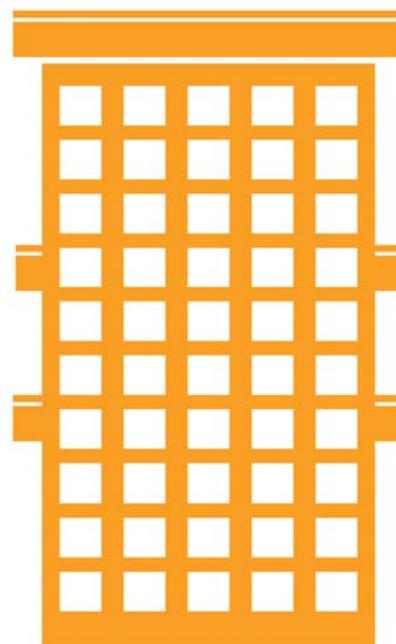
All of the health risks just discussed are reasons that even the American Medical Association has now adopted official policy to:

- Support laws protecting the civil and human rights of individuals experiencing homelessness.
- Oppose laws and policies that criminalize individuals experiencing homelessness for carrying out life-sustaining activities conducted in public spaces that would otherwise be considered noncriminal activity (i.e. eating, sitting or sleeping) when there is no alternative private space available.

- Recognize that stable affordable housing is essential to the health of individuals, families and communities.
- Support policies that preserve and expand affordable housing across all neighborhoods.<sup>270</sup>

This clear statement from the nation's leading medical organization undermines the case made by many communities that criminalization policies are somehow a necessary tool for addressing public health concerns attending homelessness. As the AMA affirms, the best tool to resolve the public health problems associated with unsheltered homelessness is housing.

The best tool to resolve the public health problems associated with unsheltered homelessness is **housing**.



267 Laura Gillis et al., *Recovery and Homeless Services: New Directions for the Field*, 3 OPEN HEALTH SERVS. & POL'Y J. 71 (2010).

268 HOMELESS LINK, NALOXONE IN HOMELESSNESS SERVICES (2014), [https://www.homeless.org.uk/sites/default/files/site-attachments/Naloxone%20in%20homelessness%20services%20April2018\\_0.pdf](https://www.homeless.org.uk/sites/default/files/site-attachments/Naloxone%20in%20homelessness%20services%20April2018_0.pdf).

269 *Id.*

270 Sara Berg, *Homeless People Need More Help, Not Stays in Jails*, AM. MED. ASS'N (June 12, 2019), <https://www.ama-assn.org/delivering-care/patient-support-advocacy/homeless-people-need-more-help-not-stays-jail-ama>.

## CRIMINALIZATION IS EXPENSIVE AND WASTEFUL OF LIMITED PUBLIC RESOURCES

Homelessness is expensive. Chronic homelessness can cost taxpayers some \$83,000 per person per year.<sup>271</sup> A key reason for this is the high cost of arresting and incarcerating homeless people under laws that criminalize homelessness. A comprehensive analysis of criminalization laws throughout the state of Colorado done by the University of Denver Sturm College of Law found that enforcement of criminalization laws in just six Colorado cities cost cities at least five million dollars over a five-year period.<sup>272</sup>

Unhoused people are arrested at disproportionate rates across the country, and they are as much as 11 times more likely than housed people to be jailed.<sup>273</sup> This disproportionality is evident in local data. 2017 data from Portland, Oregon revealed that over half of all people arrested were people experiencing homelessness.<sup>274</sup> One in five people booked into jail in Seattle, Washington are homeless.<sup>275</sup>

Jails are also expensive. According to research by the Vera Institute, the average cost of incarcerating a single individual is \$47,057 each year.<sup>276</sup> For these individuals, even a week in jail could cost the equivalent of a studio apartment for a month or more.

Yet, in many cases, the cost of punitive approaches to homelessness are not considered at all. Some cities even claim that proposed criminalization measures will have no fiscal impact, yet the truth is that the public costs of criminalization policies and practices are staggering. City

data from Los Angeles, California, for example, found that the city spends \$100 million annually on homelessness, with \$87 million of that amount devoted to law enforcement, leaving only \$13 million for housing and services in the city with the largest unsheltered homeless population in the country.<sup>277</sup> A 2019 study of Santa Clara County, California – the heart of the nation’s tech industry - estimated that 34% of \$520 million it spent on homelessness each year from 2007 to 2012 were for criminal justice related expenditures, like probation, custody mental health care, and jail/court costs.<sup>278</sup> Nearly half of those public service costs were associated with only 5% of the homeless population.<sup>279</sup> In comparison, social service programs constituted only 13% of the total spent.<sup>280</sup> This problem is not limited to California; it is true in all parts of the country. Salt Lake City, for example, spends 85% of its homeless services budget on policing.<sup>281</sup> Indeed, Utah’s Operation Rio Grande – a large scale homeless arrest campaign – cost a whopping \$67 million, which is nearly 500% more than what Salt Lake City spends on emergency shelters and soup kitchens combined each year.<sup>282</sup>

Even when a person is not arrested, the costs of punitive approaches to homelessness are massive. Sweeps drain millions of dollars from governments across the country each year. Los Angeles, for example, spends over \$30 million per year on sweeps. These policies are not only harmful; they are counterproductive and only increase the costs of homelessness. Because there are too few places for displaced people to go, sweeps achieve only temporary clearing of one public space with an inevitable move to another which will, in turn, need to be cleaned. The cycle repeats in a downward spiral, expending resources for no long-term gain, and, in fact, leaving many homeless persons worse off for having lost their personal property, as well as potentially a better location for privacy, quiet, access to services, or safety, in the course of the sweep.

271 Lavena Staten & Sara Rankin, *Penny Wise But Pound Foolish: How Permanent Supportive Housing Can Prevent a World of Hurt* (2019), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3419187](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3419187).

272 Nantiya Ruan, *Too High a Price: What Criminalizing Homelessness Costs Colorado* (2018), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3169929](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3169929).

273 Sara Rankin, *Punishing Homelessness*, 22 *NEW CRIMINAL LAW REVIEW* 99 (2019), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3410627](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3410627).

274 Rebecca Woolington & Melissa Lewis, *Portland Homeless Accounted for Majority of Police Arrests in 2017, Analysis Finds*, OREGON LIVE (June 27, 2018, last updated Jan. 30, 2019), [https://www.oregonlive.com/portland/2018/06/portland\\_homeless\\_accounted\\_fo.html](https://www.oregonlive.com/portland/2018/06/portland_homeless_accounted_fo.html).

275 David Kroman, *In Seattle, 1 in 5 People Booked Into Jail are Homeless*, CROSSCUT (Feb. 19, 2019), <https://crosscut.com/2019/02/seatle-1-5-people-booked-jail-are-homeless>.

276 Christian Henrichson et al., *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*, VERA <https://www.vera.org/publications/the-price-of-jails-measuring-the-taxpayer-cost-of-local-incarceration>.

277 Gale Holland, *L.A. Spends \$100 Million a Year on Homelessness, City Report Finds*, L.A. TIMES (Apr. 16, 2015), <https://www.latimes.com/local/lanow/la-me-ln-homeless-cao-report-20150416-story.html>.

278 BAY AREA ECON. INST., *supra* note 29, at 17.

279 *Id.*

280 *Id.*

281 Nina Golgowski & Michael Hobbes, *America’s Homeless Crisis is Inspiring New Acts of Cruelty*, HUFFPOST (Oct. 2, 2019, 8:00 AM), [https://www.huffpost.com/entry/cruel-ways-homeless-punished\\_n\\_5d35ee4ee4b004b6adb3cc7d](https://www.huffpost.com/entry/cruel-ways-homeless-punished_n_5d35ee4ee4b004b6adb3cc7d).

282 *Id.*

## The Solution is Cheaper Than the Problem

In comparison, housing unhoused people works to end homelessness and also saves money. Indeed, investments in permanent supportive housing have reduced chronic homelessness by 26% since 2007.<sup>283</sup> Permanent supportive housing keeps people off of the streets over the long term,<sup>284</sup> and reduces formerly homeless people's involvement with costly health care and criminal justice systems.<sup>285</sup>

This not only produces significant and enduring results for homeless people, but it also helps to reduce public costs associated with living without housing. Indeed, a 2019 report from the Homeless Rights Advocacy Project at Seattle University School of Law found that permanent supportive housing always results in gross savings when provided to people experiencing chronic homelessness.<sup>286</sup> And, these savings increase over time.

A growing body of research comparing the cost of homelessness—including the cost of criminalization—with the cost of providing housing to homeless people shows that ending homelessness through housing is the most affordable option over the long run. Indeed, the provision of housing using a Housing First model, which focuses on providing people with quick access to housing and any needed services to maintain housing stability, is cheaper and achieves better outcomes than all other strategies for addressing homelessness. Each person housed is one less who needs to make their home on the streets, reducing the visible impacts of homelessness that housed residents and business owners complain to their elected officials about. Housing is a win for housed and unhoused persons alike.

The following are brief summaries of studies demonstrating the cost ineffectiveness of criminalization approaches as compared with housing solutions to homelessness:

- A study of Housing For Health, a division of the Los Angeles County Department of Health Services that provides supportive housing, evaluated participant

outcomes between 2012 and 2015. They found that its Permanent Supportive Housing program not only saved over \$6.5 million dollars by the second year of its implementation, but it also achieved a number of other benefits, including reducing emergency room visits by 70%. Nearly all of the program's participants (96%) remained stably housed.<sup>287</sup>

- A 2015 report on permanent supportive housing in Massachusetts showed that it is not only more effective at ending homelessness and improving formerly homeless persons' life and health quality, but it also is cost effective. Specifically, the report found that Massachusetts saved an average of \$9,339 per formerly homeless person.<sup>288</sup>
- A study of chronically homeless individuals in Seattle, Washington, found that costs decreased by 60% per individual after one year in housing—even after factoring in the cost of providing housing and supportive services. Researchers found that, "permanent, rather than temporary housing may be necessary to fully realize these cost savings, because benefits continued to accrue the longer these individuals were housed."<sup>289</sup>
- A 2014 analysis by Creative Housing Solutions evaluated the cost of homelessness in Central Florida at \$31,000 per year for law enforcement and medical costs for each chronically homeless person; permanent housing and case managers would cost approximately \$10,000 per year, saving \$21,000 per year per individual housed, and collectively \$149 million over the next decade.<sup>290</sup>
- A cost benefit analysis of the Albuquerque Heading Home Initiative found that housing participants saved an average of about \$14,700 per person. When that average is applied to the total number of eligible participants in the program, the study shows Heading

283 *Permanent Supportive Housing*, NATIONAL ALLIANCE TO END HOMELESSNESS, <https://endhomelessness.org/ending-homelessness/solutions/permanent-supportive-housing/> (last updated Jan. 2019).

284 PSH residents show housing retention rates of up to 96%. See Lavena Staten & Sara Rankin, *Penny Wise But Pound Foolish: How Permanent Supportive Housing Can Prevent a World of Hurt* (2019), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3419187](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3419187).

285 *Id.*

286 *Id.*

287 SARAH B. HUNTER ET AL., RAND EVALUATION OF HOUSING FOR HEALTH PERMANENT SUPPORTIVE HOUSING PROGRAM (2017), [https://www.rand.org/pubs/research\\_reports/RR1694.html](https://www.rand.org/pubs/research_reports/RR1694.html).

288 MASS. HOUSING & SHELTER ALLIANCE, PERM. SUPPORTIVE HOUSING: A SOLUTION DRIVEN MODEL, (Jan. 2015), <http://www.mhsa.net/sites/default/files/January%202015%20HHG%20Report.pdf>.

289 MARY E. LARIMER, PHD; DANIEL K. MALONE, MPH; MICHELLE D. GARNER, MSW, PHD, HEALTH CARE & PUBLIC SERVICE USE & COSTS BEFORE & AFTER PROVISION OF HOUSING FOR CHRONICALLY HOMELESS PERSONS WITH SEVERE ALCOHOL PROBLEMS, THE JAMA NETWORK, (Apr. 1, 2009), <http://jamanetwork.com/journals/jama/fullarticle/183666>.

290 GREGORY A. SHINN, THE COST OF LONG-TERM HOMELESSNESS IN CENTRAL FLORIDA: THE CURRENT CRISIS & THE COST OF PROVIDING SUSTAINABLE HOUSING SOLUTIONS, (2014), <http://shnny.org/uploads/Florida-Homelessness-Report-2014.pdf>.

Home resulted in a two to three-year savings of nearly \$5 million.<sup>291</sup>

- A study by the University of North Carolina of permanent supportive housing in Charlotte, North Carolina found that providing just 85 units to homeless residents saved taxpayers nearly \$2 million dollars in the first year alone. The benefits of housing included a 78% reduction in the number of arrests and nearly 450 fewer emergency room visits.<sup>292</sup>

## COST SAVINGS ASSOCIATED WITH HOUSING ARE GROSSLY UNDERESTIMATED

Most studies focus on only one or a few direct cost drivers associated with chronic homelessness, and thus grossly underestimate the actual cost benefit of housing, not handcuffs.<sup>293</sup> These studies, for example, do not account for public resources wasted on sweeping encampments or in deploying police to order unhoused people to “move along” from public space. Moreover, these studies do not evaluate the significant psychological and physical health impacts of homelessness.

### *Housing Saves Money by Improving Physical and Mental Health*

Living without housing is stressful on minds and bodies, and it can create or exacerbate serious health conditions. Homeless people are five times more likely to visit an emergency room and be admitted to a hospital than housed people,<sup>294</sup> and also to stay hospitalized for longer periods of time.<sup>295</sup>

291 PAUL GUERIN & ANNE MINNSEN, CITY OF ALBUQUERQUE HEADING HOME INITIATIVE COST STUDY REPORT FINAL, UNIVERSITY OF NEW MEXICO INSTITUTE FOR SOCIAL RESEARCH (2016), <http://isr.unm.edu/reports/2016/city-of-albuquerque-heading-home-initiative-cost-study-report-final.pdf>.

292 Scott Keyes, *It Saves Millions to Simply Give Homeless People a Place to Live*, THINK PROGRESS (Mar. 24, 2014, 5:09 PM), <https://thinkprogress.org/it-saves-millions-to-simply-give-homeless-people-a-place-to-live-e18ddbc1146d/>.

293 Lavena Staten & Sara Rankin, *Penny Wise But Pound Foolish: How Permanent Supportive Housing Can Prevent a World of Hurt* (2019), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3419187](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3419187).

294 Rebecca S. Bernstein, et al., *Diabetes and Hypertension Prevalence in Homeless Adults in the United States: A Systematic Review and Meta-Analysis*, 105 AM. J. PUB. HEALTH e46, e47 (2015); Margot B. Kushel, Eric Vittinghoff, Jennifer S. Haas, *Factors Associated With the Health Care Utilization of Homeless Persons*, 285 J. AM. MED. 200 (2001); Sharon A. Salit et al., *Hospitalization Costs Associated with Homelessness in New York City*, 338 NEW ENG. J. MED. 1734 (1998).

295 Lin WC et al., *Frequent Emergency Department Visits and Hospital-*

In contrast, permanent housing with supportive services protects and even improves mental and physical health, reducing a person’s reliance on expensive hospital visits or other medical treatment. Research shows that housing can decrease emergency room visits by up to 81%, and also reduce visits resulting in inpatient admissions by as much as 61%.<sup>296</sup> Housing also shortens the length of time someone stays in a hospital, including psychiatric hospitalizations. A study of 163 formerly chronically homeless people found that permanent supportive housing reduced the cost of psychiatric hospitalizations by 79% in just six months.<sup>297</sup>

For these and other reasons, the American Medical Association (“AMA”) recently passed a resolution stating that it “(1) supports laws protecting the civil and human rights of individuals experiencing homelessness and (2) opposes laws and policies that criminalize individuals experiencing homelessness for carrying out life-sustaining activities conducted in public spaces that would otherwise be considered non-criminal activity.”<sup>298</sup> The AMA further noted that “While there are instances where the government needs to act to protect public health and safety, such as during an infectious disease outbreak, governments should work to mitigate hazards and direct individuals to resources and services outside of the criminal justice system. Criminal sanctions should be a last resort.”<sup>299</sup> Rather, the AMA recognizes that “stable, affordable housing as a first priority, without mandated therapy or services compliance, is effective in improving housing stability and quality of life among individuals who are chronically-homeless.”<sup>300</sup>

Similarly, the American Public Health Association issued a policy statement on Housing and Homelessness as a Public Health Issue in 2017, stating, “criminalization measures in effect across the United States that target activities associated with homelessness are not only ineffective in reducing homelessness and costly to enforce but serve as

*izations Among Homeless People with Medicaid: Implications for Medicaid Expansion*, 105 AM. J. PUB. HEALTH S716 (2015).

296 Lavena Staten & Sara Rankin, *Penny Wise But Pound Foolish: How Permanent Supportive Housing Can Prevent a World of Hurt* (2019), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3419187](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3419187).

297 MELANY MONDELLO ET AL., MAINE HOUSING, COST OF RURAL HOMELESSNESS: RURAL PERMANENT SUPPORTIVE HOUSING 14 (2009), [https://www.mainehousing.org/docs/default-source/housing-reports/cost-of-rural-homelessness-5-2009.pdf?sfvrsn=af65d015\\_7](https://www.mainehousing.org/docs/default-source/housing-reports/cost-of-rural-homelessness-5-2009.pdf?sfvrsn=af65d015_7).

298 *Report of the Board of Trustees: Opposition to Measures that Criminalize Homelessness (Resolution 410-A-18)*, AM. MED. ASS’N (2019), <https://www.ama-assn.org/system/files/2019-04/a19-bot28.pdf>.

299 *Id.*

300 *Id.*

a barrier to income and housing stability.”<sup>301</sup> The statement instead calls for evidence-based strategies to address homelessness, including Housing First strategies to reduce homelessness and increased funding for housing subsidies and income supports to prevent and end it. Nowhere does the statement indicate that criminalization measures are needed to support public health, and indeed, it says:

[I]t is critical for communities in the United States to adopt constructive alternatives to criminalizing basic life-sustaining activities that individuals must perform in public spaces if there is no shelter or housing available. The housing-focused solutions detailed above are critical to reducing the behaviors that these laws are designed to deter. Individuals and families who have a safe, permanent place to live will no longer need to sleep in public or be targeted as loitering. However, while pursuing housing is the ultimate goal, decriminalizing the life-sustaining behaviors of people experiencing homelessness and recognizing their fundamental human rights are essential. Money spent on enforcement of these laws could instead be spent on developing affordable housing options, reinvesting in community services for homeless citizens, or establishing street outreach teams to increase engagement in services.<sup>302</sup>

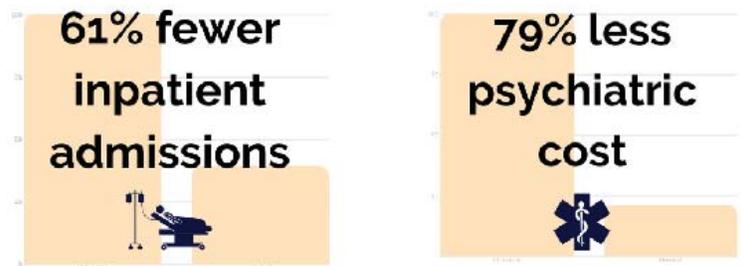
Finally, it “calls upon federal, state, and local agencies to identify and adopt alternative solutions to criminalizing homelessness, including adoption of a homeless bill of rights.”<sup>303</sup> With the support of the two major national public health organizations, it is clear that public health arguments weigh against criminalization, rather than for it.

## Criminalization Policies Threaten Federal Funding for Homeless Services

To encourage communities to invest in proven solutions for ending homelessness, the Department of Housing and Urban Development (HUD) created incentives for communities to stop criminalizing homelessness through its annual Continuum of Care (CoC) Program Competition, which awards more than \$2 billion in federal funds for homeless housing and services each year.<sup>304</sup> This funding is the single largest source of federal funding for local communities to respond to homelessness, and funding levels are determined through a competitive grant process.

In 2015, following years of advocacy by the Law Center and its partners, HUD added Question 1-C6 which asks about the applicant CoC’s efforts to end and prevent the criminalization of homelessness in their geographic area. It is scored on a two-point scale and can significantly affect the amount that grantees are awarded. As a result of this funding incentive, CoCs reporting engagement and education of local policy makers increased by 10.3% and of law enforcement by 4.9%. CoCs reporting implementation of community plans increased by 11.9%. Critically, the number of CoCs reporting no strategies to prevent the criminalization of homelessness reduced significantly, from nine to only one.<sup>305</sup>

With state and local budgets stretched to their limit, rational, cost-effective policies are needed – not ineffective measures that waste precious taxpayer dollars.



301 *Housing and Homelessness as a Public Health Issue*, AM. PUB. HEALTH ASS’N (2017), <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2018/01/18/housing-and-homelessness-as-a-public-health-issue>.

302 *Report of the Board of Trustees: Opposition to Measures that Criminalize Homelessness (Resolution 410-A-18)*, AM. MED. ASS’N (2019), <https://www.ama-assn.org/system/files/2019-04/a19-bot28.pdf>.

303 *Id.*

304 NAT’L L. CTR. ON HOMELESSNESS & POVERTY, SCORING POINTS: HOW ENDING THE CRIMINALIZATION OF HOMELESSNESS CAN INCREASE HUD FUNDING TO YOUR COMMUNITY (2018), <https://nlchp.org/wp-content/uploads/2018/10/NOFAtoolkit2018.pdf>.

305 *Id.*



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Homeless individuals and service providers have brought various legal challenges to municipal ordinances or statutes that criminalize homelessness in federal and state courts. The ultimate goal of litigation against criminalization ordinances is not to protect the right of people to live on the streets. Human beings deserve and have a human right to housing. The aim of litigation is rather to stop communities from using harmful, ineffective, expensive ordinances that violate homeless people’s basic human and constitutional rights so that sensible, humane, and lawful policies can be pursued. Indeed, smart community leaders should not view these constitutional decisions as limitations on what they can do, but rather as an opportunity to help mobilize public opinion to support the best-practice solutions outlined elsewhere in this report that will truly solve the issue of homelessness.

This section includes a brief discussion of some successful legal challenges to common criminalization policies. For a more detailed discussion of claims to challenge criminalization policies and practices, please see our

report, *Housing Not Handcuffs: A Litigation Manual*, which also includes summaries of relevant case law organized by topic and federal circuit.<sup>306</sup>

## CHALLENGING CAMPING AND SLEEPING BANS AND SWEEPS

### *Right to be Free from Cruel & Unusual Punishment*

Lawsuits challenging enforcement of camping bans against homeless people who have no other options for shelter have increased in recent years, and many have been successful. Some courts have found that the criminalization of necessary, life- sustaining activities such as sitting, lying down, or sleeping in public, when done by people involuntarily living outside, constitutes cruel and unusual punishment under the Eighth Amendment.

306 NAT’L L. CTR. ON HOMELESSNESS & POVERTY, *HOUSING NOT HANDCUFFS: A LITIGATION MANUAL* (2018), <https://nlchp.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs-Litigation-Manual.pdf>.

The Eighth Amendment states that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”<sup>307</sup> The Supreme Court has interpreted the Eighth Amendment to, among other limitations, “[impose] substantive limits on what can be made criminal and punished as such.”<sup>308</sup> In *Robinson v. California*, the Supreme Court held that this limitation includes a prohibition against criminalizing a person’s status.<sup>309</sup> Subsequently, in *Powell v. Texas*, five Justices, in two separate writings, agreed that the Eighth Amendment also imposes limits on the State’s ability to criminalize conduct inseparable from an individual’s status.<sup>310</sup> Building upon this precedent, multiple lower courts – including multiple federal circuit courts – have found that the Eighth Amendment is violated when governments impose criminal punishments on people for engaging in involuntary conduct that is inextricably linked to their homeless status.<sup>311</sup>

In September 2018, the U.S. Court of Appeals for the Ninth Circuit ruled in *Martin v. City of Boise* that that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter....As long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”<sup>312</sup> The City of Boise petitioned the Ninth Circuit for en banc review, which was denied in April 2019. In denying Boise’s petition for rehearing en banc, the panel amended its opinion filed in September 2018, emphasizing again its holding that, “municipal ordinances that criminalize sleeping, sitting, or lying in all public spaces, when no alternative sleeping space is available, violate the Eighth Amendment.”<sup>313</sup>

307 U.S. Const. Amend. VIII.

308 *Ingraham v. Wright*, 430 U.S. 651, 667 (1977).

309 *Robinson v. California*, 370 U.S. 660, 667 (1962) (criminalizing the status of being addicted to drugs violates the Eighth Amendment).

310 *Powell v. Texas*, 392 U.S. 514 (1968).

311 See e.g. *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992)(“As long as the homeless plaintiffs do not have a single place where they can lawfully be, the challenged ordinances, as applied to them, effectively punish them for something for which they may not be convicted under the Eighth Amendment—sleeping, eating and other innocent conduct.”); *Johnson v. City of Dallas*, 860 F. Supp. 344, 350 (N.D. Tex. 994), *rev’d on other grounds*, 61 F.3d 442 (5th Cir. 1995) (“Because being does not exist without sleeping, criminalizing the latter necessarily punishes the homeless for their status as homeless, a status forcing them to be in public.”); *Manning v. Caldwell*, 930 F.3d 264, 283 (4th Cir. 2019)(Plaintiffs stated an Eighth Amendment claim by alleging that a statutory scheme criminalizing possession of alcohol by individuals for whom that conduct is “an involuntary manifestation of their illness” and is, and that [wa]s otherwise legal for the general population.”

312 *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018).

313 *Martin v. City of Boise*, 920 F.3d 584, 589 (9th Cir. 2019).

While the *Martin* decision has received significant attention, it is not the only decision recently issued by a federal circuit court affirming that the Eighth Amendment forbids criminalizing acts inseparable from status. The U.S. Court of Appeals for the Fourth Circuit similarly ruled in *Manning v. Caldwell* that a Commonwealth of Virginia “habitual drunkard” law was unconstitutionally applied to homeless alcoholics because it criminalized an “involuntary symptom of a status” in violation of the Eighth Amendment. While Virginia’s law differs significantly from Boise’s camping ban, both punish involuntary conduct by people with no choice but to live outside. Indeed, the Fourth Circuit explicitly noted its agreement with the rationale in *Martin* in footnote 17.<sup>314</sup>

The resolution of two recent cases in California highlight how decisions like *Martin* can help to establish a fairer approach to unsheltered homelessness. In *Vannucci v. County of Sonoma*, plaintiffs sought relief from the closure of a homeless encampment in Santa Rosa, California.<sup>315</sup> The parties stipulated to a preliminary injunction, in effect until June 30, 2020.<sup>316</sup> Included within the injunction is a limitation against enforcing laws restricting camping against people experiencing homelessness without first offering them an opportunity to be placed in adequate shelter or, if shelter is refused, providing them with a reasonable opportunity to relocate. Moreover, the injunction requires the establishment of an operational grievance process allowing people to contest the suitability of their shelter placement and/or the reasonable accommodations that they were provided.<sup>317</sup>

Similarly, a joint settlement agreement in *Orange County Catholic Worker v. the County of Orange*<sup>318</sup> and *Ramirez v. County of Orange*<sup>319</sup> limits anti-camping and loitering enforcement against homeless people until cities within Orange County establish sufficient shelter space to meet their needs. The offered shelter beds must be available within the same zone of the county as where the person subject to enforcement lives, and the offers must be appropriate to the individual’s medical needs. The settlement also sets forth countywide standards for shelters, including a grievance process. “This is an exemplary document that the governor

314 *Manning v. Caldwell*, 930 F.3d 264 (4th Cir. 2019).

315 *Vannucci v. County of Sonoma*, Case No. 18-cv-01955-VC (N.D. Ca. March 2018).

316 *Vannucci v. County of Sonoma*, Case No. 18-cv-01955-VC (N.D. Ca. Jul. 12, 2019).

317 *Id.*

318 *Settlement Agreement* (July 2019), available at <https://scng-dash.digitalfirstmedia.com/wp-content/uploads/2019/07/Catholic-Worker-Ramirez-Settlement-with-Orange-County.pdf>.

319 *Id.*

[of California] should know about,” stated presiding Judge Carter. “It’s a role model for the state. It’s a role model nationally.”<sup>320</sup>

In addition to these positive case law outcomes, a growing number of cities have stopped enforcement of their camping bans against their homeless residents in response to Martin.<sup>321</sup> Unfortunately, that step forward has not meant the end of criminalization of homeless persons’ resting activities. Some cities, while refraining from camping ban enforcement, have increased other enforcement activity against homeless people. After the Martin ruling, for example, Sacramento, California, stopped enforcement of its camping ban on nights when emergency shelter is not available – a nightly occurrence given that there are approximately 3,000 homeless people in the area and approximately shelter 700 beds. Yet, punishment of homelessness has increased under other laws targeting related behavior.<sup>322</sup> Between September 2018 and February 2019, the average number of citations for infractions related to building structures or tying ropes to trees (an activity associated with erecting a temporary structure) have increased over a thousand percent, according to ranger reports.<sup>323</sup> These citations cost between \$50 and \$480 per violation.<sup>324</sup> Adding to its punitive approach to homelessness, the City of Sacramento filed a lawsuit against seven homeless individuals seeking to exclude them from a large section of the city on the argument that their mere presence in public space constitutes a public nuisance.<sup>325</sup>

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320 Nick Gerda, *Homeless Settlement Limits South County Anti-Camping Enforcement*, VOICE OF OC (July 23, 2019), [https://voiceofoc.org/2019/07/homeless-settlement-limits-south-county-anti-camping-enforcement/?utm\\_source=Voice+of+OC+Email+Newsletters&utm\\_campaign=92f04aaa87](https://voiceofoc.org/2019/07/homeless-settlement-limits-south-county-anti-camping-enforcement/?utm_source=Voice+of+OC+Email+Newsletters&utm_campaign=92f04aaa87).

321 Cities that have either repealed or amended ordinances, modified policies or practices, and/or increased constructive approaches in response to *Martin*, as gathered from public news sources includes: Aberdeen, WA, Austin, TX, Berkeley, CA, Buena Park, CA, Costa Mesa, CA, Crescent City/Del Norte County, CA, Englewood, CO, Eureka, CA, Grand Junction, CO, Harrisonburg, VA, Honolulu, HI, Lacey, WA, Los Angeles, CA, Marysville/Yuba County, CA, Minneapolis, MN, Modesto, CA, Moses Lake, WA, Nevada County, NV, Oakland, CA, Orange County, CA, Olympia, WA, Portland, OR, Redding, CA, Roseburg, OR, Sacramento, CA, San Clemente, CA, San Francisco, CA, Santa Ana, CA, Santa Cruz, CA, Sutter County, CA, Tacoma, WA, Thousand Oaks, CA, Turlock, CA, Ukiah, CA, and Visalia, CA. The appearance of a city on this list does not indicate our opinion that the modification is *Martin*-compliant.

322 Alexandra Yoon-Hendricks, *Citations Soar for Homeless on American River Parkway After Ruling Halts Bans on Camping*, THE SACRAMENTO BEE (Apr. 7, 2019, 2:30 AM), <https://www.sacbee.com/news/local/homeless/article228738554.html>.

323 *Id.*

324 *Id.*

325 *Sacramento v. Conner et al.*, No. 34-2019-00262525 (Cal.

Cities’ mixed response to precedent like *Martin* demonstrates the power of litigation to address criminalization measures, but it also highlights the pervasive nature of criminalization policies and the broad power of government to pursue such strategies even when litigation against it is successful.

## Property Rights and Due Process

Cities and other governments perform evictions of homeless encampments, often called “sweeps” or “clean-ups”, in areas where homeless individuals sleep, rest, and store belongings. It is common for these evictions to result in the loss of homeless persons’ valuable property – often upon little to no notice. During sweeps, police or city workers may confiscate and destroy belongings, including unabandoned belongings that property owners rely upon for survival, such as camping gear, warm clothing, or even medication and medical equipment. Moreover, sweeps can result in the loss of critical legal documents, such as birth certificates and social security cards, that are necessary to prove identity and to secure employment, public benefits, and even the very housing that a person needs to escape life on the streets.

The lack of policies to guide encampment evictions, and the resulting loss of homeless persons camping gear and other personal property, raise serious legal concerns under the Fourth and Fourteenth Amendments to the U.S. Constitution. The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, from unreasonable searches and seizures.”<sup>326</sup> Courts have recognized that homeless people have a protected possessory interest in their property, and unreasonable interference with this protected property interest, such as through seizure and destruction of property during encampment sweeps, may violate the Fourth Amendment. In *Lavan v. City of Los Angeles*, for example, the Ninth Circuit upheld a district court order restraining the city from summarily destroying personal possession temporarily left on Skid Row sidewalks.<sup>327</sup> Important to the decision, plaintiffs were able to establish with specificity the importance of items lost, such as identification documents, medical supplies, and irreplaceable mementos.

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2019).

326 U.S. Const. Amend. IV.

327 *Lavan v. City of L.A.*, 693 F.3d 1022 (9th Cir. 2012).

With respect to searches of property, some courts have found that homeless people enjoy a right under the Fourth Amendment or analogous state constitutional provisions to privacy in their tents and/or temporary shelters,<sup>328</sup> and in their belongings.<sup>329</sup> In determining whether a search of homeless persons' property is unreasonable, courts have considered a number of factors, including whether the property is located in an area where a person is legally permitted to camp.<sup>330</sup>

Sweeps are often done with little to no advance notice, nor any opportunity for people living outside to contest the destruction or trashing of their personal property.<sup>331</sup> The Fourteenth Amendment to the U.S. Constitution prohibits a state from depriving "any person of ... property, without due process of law."<sup>332</sup> Due process requires, at minimum, notice and an opportunity to be heard before final deprivation of a property interest. Notice is important as it provides people with the opportunity to plan and make alternative arrangements for where they will live and store property. It also helps people to maintain connections to employment, education, health care, child care, and case management services.

The lack of due process has been successfully challenged in litigation, and has even resulted in positive changes in statutory law. In January 2016, for example, the City of Charleston, West Virginia, ordered the dismantling of an encampment known as "Tent City" without prior notice to the homeless residents living there.<sup>333</sup> Six months later, the residents, with assistance from Mountain State Justice, Inc., filed a lawsuit against the Mayor of Charleston, the City of Charleston, and the Charleston Police Department, alleging search and seizure violations as well as violations of procedural and substantive due process.<sup>334</sup> Less than six months after the lawsuit was filed, as a result of settlement discussions among the parties, the City Council enacted the

"City of Charleston Homeless Encampment and Transient Outdoor Living Policy" (the "Charleston Encampment Ordinance"), and committed to opening a storage facility for homeless individuals.<sup>335</sup> The Charleston Encampment Ordinance sets forth required procedures for closing homeless encampments, including at least 14 days written notice to residents of camps located on public property, and additionally to local service providers and Mountain State Justice, Inc. within 48 hours after being posted. The Ordinance also requires (i) providing outreach workers on-site to assist residents with temporary shelter and emergency service needs, (ii) providing transportation to such shelters and emergency services, (iii) providing residents of the camp with at least 60 minutes to collect their belongings, and (iv) providing specific procedures for documenting and cataloguing unclaimed personal items at the encampment and providing for the storage of those items at an established location for at least 14 days after the eviction. If shelter is not available for an encampment resident that has requested it, the resident is allowed to remain on-site at the encampment until shelter is made available or another reasonable solution is determined.



328 See, e.g., *State v. Pippin*, 200 Wn. App. 826, 841, 403 P.3d 907, 915 (2017) (holding warrantless search of homeless person's tent unconstitutional); *State v. Wyatt*, 187 Wn. App. 1004 (2015) (unpublished opinion) (same).

329 *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992).

330 See e.g., *U.S. v. Sandoval*, 200 F.3d 659, 661 (9th Cir. 2000).

331 TENT CITY, USA, *supra* note 12.

332 U.S. Const. Amend. XIV.

333 Erin Beck and Elaina Slauber, *Charleston Mayor Orders "Tent City" Dismantled*, CHARLESTON GAZETTE-MAIL, (Jan. 19, 2016), [https://www.wvgazette.com/news/charleston-mayor-orders-tent-city-dismantled/article\\_b764d542-5e1d-52aa-a795-350850c890a2.html](https://www.wvgazette.com/news/charleston-mayor-orders-tent-city-dismantled/article_b764d542-5e1d-52aa-a795-350850c890a2.html).

334 Complaint, *Curtright v. Jones*, Case No. 2:16-cv-06346, ¶6-7 (July 2016).

335 TENT CITY, USA, *supra* note 12.

## Right to Free Exercise of Religion

When governments act against homeless individuals encamped on the property of religious institutions with the permission of those institutions, they may infringe on the institutions' First Amendment right to free exercise of religion. In *Fifth Avenue Presbyterian Church*, the Second Circuit upheld a district court grant of a preliminary injunction against the city preventing them from dispersing homeless individuals sleeping on church property. The Second Circuit found that the church was likely to prevail on the merits on its free exercise claim because preventing the church from using its own property to provide shelter for the homeless burdened its protected religious activity, and the city failed to show a compelling interest sufficient to outweigh this protected interest.

State constitutional arguments may also provide protection to faith organization's right to host an outdoor encampment as part of its free religious exercise. In 2009, the Washington State Supreme Court found that the city's refusal to process land use applications and allow a church to host an encampment on its property placed a substantial burden on the church's right to free exercise of religion under the Washington State Constitution.<sup>336</sup> Some of these protections were later codified by the state legislature into statute. You can find more information about this in our report, *Tent City USA*.<sup>337</sup>

## CHALLENGING RESTRICTIONS ON LIVING IN VEHICLES

### Right to Due Process

Sleeping in one's own vehicle is often a last resort for people who would otherwise be forced to sleep on the streets. A dramatically growing number of cities across the nation, however, have chosen to impose criminal or civil punishments on people who live in their private vehicles, despite their lack of housing options.

Laws prohibiting living in vehicles have been successfully challenged as being unconstitutionally vague under the Fourteenth Amendment to the U.S. Constitution.<sup>338</sup> The void

for vagueness doctrine may invalidate a law because the law: 1) fails to provide notice that will enable ordinary people to understand what conduct it prohibits and/or 2) authorizes or encourages arbitrary and discriminatory enforcement.<sup>339</sup>

In *Desertrain v. City of Los Angeles*, the Ninth Circuit struck down a Los Angeles law prohibiting car camping, protecting residents in Venice and other areas whose only safe place to live was in their car. The court found the statute to be overly vague, as it allowed police to use the presence in a vehicle of items such as a cooler as evidence that someone was living in the car, when in fact having a cooler in their car could have just been a sign that someone was going to the beach. In *Bloom v. City of San Diego*, a lawsuit filed by the Law Center, Disability Rights California, Disability Rights Advocates, and pro bono counsel,<sup>340</sup> the U.S. District Court for the Southern District of California relied upon *Desertrain* to preliminarily enjoin the City of San Diego from enforcing its vehicle habitation ordinance because plaintiffs showed a likelihood of success on the merits of their claim that the ordinance is unconstitutionally vague, "because it fails to alert the public what behavior is lawful and what behavior is prohibited" and invites selective enforcement.<sup>341</sup>

## Other Theories to Challenge Vehicle Tows and Impoundment

Towing and impoundment of homeless people's vehicles has also been successfully challenged on Fourteenth Amendment grounds, Eighth Amendment grounds, and also under state law. In *Smith v. Reiskin*, a case filed on behalf of a man who was staying at a homeless shelter when his vehicle was towed for unpaid tickets, the Superior Court of California found that a "serious question" justifying preliminary relief was present because "[i]t is not clear... that Defendants can justify the seizure and retention of a vehicle if its owner cannot afford the parking tickets levied upon the vehicle solely on the basis offered here, that the seizure is reasonable in an effort to secure repayment of the debt owed."<sup>342</sup>

2018).

339 *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999).

340 *Bloom v. City of San Diego* is being litigated by the Law Center, Disability Rights California, Disability Rights Advocates, Fish & Richardson P.C., Dreher Law Firm, and Bonnett Fairbourn Friedman & Balint PC.

341 *Bloom v. City of San Diego*, 2018 WL 9539239 (S.D. Cal. Aug. 21, 2018). Unfortunately, the City enacted a replacement ordinance in May 2019, which the plaintiffs in *Bloom* seek to challenge in an amended complaint.

342 *Smith v. Reiskin*, No. C-18-01239 JSW (N.D. Cal. Oct. 10, 2018).

336 *City of Woodinville v. Northshore United Church*, 211 P.3d 406 (2009).

337 *TENT CITY, USA*, *supra* note 12, at 70.

338 See e.g. *Desertrain v. City of Los Angeles*, 754 F. 3d 1147 (9th Cir. 2014); *Bloom v. City of San Diego*, 2018 WL 9539239 (S.D. Cal. Aug. 21,

In *Long v. City of Seattle*, the King County Superior Court in Washington found that fees associated with the impoundment of a homeless man’s vehicle that had been parked in a single location in excess of 72 hours violated the Excessive Fines Clause of the Eighth Amendment. The court also found that the attachment of the vehicle, which was used as his home, violated Washington State’s Homestead Act.

## CHALLENGING BEGGING BANS

### Right to Free Speech

In the absence of employment opportunities or other sources of income, begging may be a homeless person’s best option for obtaining the money that they need to purchase food, public transportation fare, medication, or other necessities. Laws prohibiting begging are often unconstitutional under the First Amendment right to free speech. Charitable solicitation is recognized by courts as protected speech under the First Amendment.<sup>347</sup> Supreme Court precedent in *Reed v. Town of Gilbert*, found that a restriction on speech is content-based triggering strict judicial scrutiny when a law is content based on its face and/or when the purpose and justification for the law are content based.<sup>348</sup> To determine whether a speech restriction is content based, courts must consider whether the face of the ordinance draws regulatory distinctions based on the message a speaker conveys. If a speech restriction, such as a restriction on begging, is found to be content-based, then it must be narrowly tailored to achieve a compelling governmental interest to survive strict judicial scrutiny.<sup>349</sup>

Applying the test in *Reed*, a large number of courts across the country have held that begging bans are unconstitutional under the First Amendment. The first case to do so was *Norton v. City of Springfield*, a case brought by local counsel, Latham & Watkins, and the Law Center, which struck down a ban on vocal solicitations of cash donations. Since that time, every challenge to an ordinance explicitly targeting panhandling since *Norton*, including so-called “aggressive panhandling” bans, has resulted in either the ordinance being struck down or repealed. Building on this momentum, the Law Center organized the national #IAskForHelpBecause campaign, working with state-level partners in a coordinated effort to strike down or stop enforcement of more than 70 additional panhandling ordinances.

Even where a restriction is content neutral, a panhandling ordinance may still be unlawful if it restricts more speech than is necessary to achieve a legitimate government interest or it fails to leave open ample alternative channels for begging speech.

## CHALLENGING LOITERING, LOAFING, AND VAGRANCY LAWS

Laws prohibiting loitering, loafing, or vagrancy, are common throughout the country. Similar to historical Jim Crow, Anti-Okie, and Ugly laws, these modern-day ordinances grant police a broad tool for excluding visibly poor and homeless people from public places. Municipalities have used broadly-worded loitering ordinances to target homeless individuals in public spaces, and these may violate homeless persons constitutional rights under the void for vagueness doctrine described above.<sup>343</sup> In *City of Chicago v. Morales*, for example, the Supreme Court held that an Illinois loitering ordinance aimed at keeping gang members from loitering in public places was unconstitutionally vague because the ordinance failed to provide adequate notice of prohibited conduct and failed to establish minimal guidelines for enforcement.<sup>344</sup> Moreover, the court concluded that “the freedom to loiter for innocent purposes is part of the ‘liberty’ protected by the Due Process Clause of the Fourteenth Amendment.”<sup>345</sup>

Vagrancy ordinances have also been successfully challenged on vagueness grounds.<sup>346</sup>



343 See, e.g., *Kolender v. Lawson*, 461 U.S. 352, 358 (1983).

344 *City of Chicago v. Morales*, 527 U.S. 41, 60 (1999).

345 *Id.* at 53.

346 *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972).

347 See e.g., *Speet v. Schuette*, 726 F.3d 867 (6th Cir. 2013).

348 *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2228 (2015).

349 *Id.*

## CHALLENGING FOOD SHARING RESTRICTIONS

### Right to Free Religious Exercise

Many homeless persons living outdoors have no access to safe food. Seeing this need, community volunteers – often but not always from religious organizations – bring meals to people living on the street. A number of cities have banned public food sharing, arguing (despite a lack of evidence) that this poses a public health hazard for homeless persons. More than limiting food availability to homeless people, food sharing laws also expose individuals or organizations, often faith-based organizations, to fines or criminal liability for feeding poor and hungry persons.

These laws may violate the right to religious expression under the First Amendment, and federal courts have struck down city ordinances restricting food sharing with homeless persons under state religious freedom statutes. In *Big Hart Ministries vs. City of Dallas*, the U.S. District Court for the Northern District of Texas denied the City of Dallas’ motion for summary judgment because the religious ministry challenging the food sharing restriction had adequately alleged that the law imposed a substantial burden on the plaintiffs’ religious expression protected under Texas’ Religious Freedom Restoration Act, and were not justified as the least restrictive means required to meet the claimed state interest in ensuring food safety. This is a higher standard than courts would apply in a First Amendment challenge, where the state would merely have to demonstrate that restrictions on food sharing were reasonable time, place, and manner regulations.

### Right to Expressive Conduct

Food sharing has also been found to be protected expressive conduct under the First Amendment. To determine whether conduct is sufficiently expressive to warrant First Amendment protection, courts must determine: 1) whether there is an “intent to convey a particularized message”; and (2) whether “the likelihood was great the message would be understood by those who viewed it.”<sup>350</sup>

In *Ft. Lauderdale Food Not Bombs v. City of Ft. Lauderdale*, the Eleventh Circuit Court of Appeals reversed the lower

court’s grant of summary judgment because it found that Ft. Lauderdale Food Not Bombs (“FLFNB”), an organization that conducts weekly food sharing events at a large park in the city, was engaged in protected expressive conduct. The court found that FLFNB does not serve food as a charity, but rather shares food in a highly visible location to communicate that message that, “all persons are equal, regardless of socio-economic status, and that everyone should have access to food as a human right.”<sup>351</sup> The court ultimately concluded that the nature of the activity and the factual circumstances surrounding the food sharing established that FLFNB engaged in protected expression.

## CHALLENGING THE HUMAN RIGHTS VIOLATIONS OF CRIMINALIZATION

In 2012, the U.S. Interagency Council on Homelessness (USICH) issued a report, *Searching Out Solutions*, confirming from a federal perspective what the Law Center had long been arguing: “In addition to violating domestic law, criminalization measures may also violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights.”<sup>352</sup> This was the first time a federal agency report has addressed a domestic practice as a potential treaty violation.<sup>353</sup> Since then, thanks to further advocacy by the Law Center, both HUD and DOJ have incorporated references to the criminalization of homelessness as a human rights violation in official materials, indicating a culture shift within the federal government itself and its comfort with addressing criminalization in human rights terms.<sup>354</sup> Even more importantly, both HUD and DOJ have actually taken concrete actions to end criminalization—providing funding incentives to communities to stop the practice,<sup>355</sup>

351 *Id.*

352 UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, *SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS*, 8 (2012), <https://www.usich.gov/tools-for-action/searching-out-solutions>.

353 NAT’L L. CTR. ON HOMELESSNESS & POVERTY, *HUMAN RIGHTS TO HUMAN REALITY: A TEN-STEP GUIDE TO STRATEGIC HUMAN RIGHTS ADVOCACY* (2014), [https://nlchp.org/wp-content/uploads/2018/10/Human\\_Rights\\_to\\_Human\\_Reality-1.pdf](https://nlchp.org/wp-content/uploads/2018/10/Human_Rights_to_Human_Reality-1.pdf).

354 See *Alternatives to Criminalizing Homelessness*, U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT (last visited Nov. 26, 2019), <https://www.hudexchange.info/homelessness-assistance/alternatives-to-criminalizing-homelessness/>; U.S. DEPT. OF JUSTICE COMMUNITY ORIENTED POLICING SERVICES, *Community Policing Dispatch*, Vol. 8, Issue 12 (Dec. 2015), <https://cops.usdoj.gov/html/dispatch/12-2015/index.asp>.

355 U.S. Dept. of Housing & Urban Development, *NOTICE OF FUNDING AVAILABILITY FOR THE 2016 CONTINUUM OF CARE PROGRAM COMPETITION*, 35 (2016), <https://www.hudexchange.info/resources/documents/FY-2016-CoC-Program-NOFA.pdf>; (hereinafter “HUD NOFA”); NAT’L L. CTR. ON HOMELESSNESS

350 *Texas v. Johnson*, 491 U.S. 397, 404 (1989).

filing a statement of interest brief in a case against criminalization,<sup>356</sup> and supporting a bill to constructively address encampments<sup>357</sup>—that directly implemented recommendations from human rights treaty bodies. Additionally, visits from UN human rights officials to the U.S. have put an international spotlight on the criminalization of homelessness, and advocates have utilized these opportunities to push federal and local policy.<sup>358</sup> These explicit acknowledgements by federal agencies that governments have duties under human rights treaties that may be violated by criminalization practices, as well as the further commentary by other human rights officials, provides significant persuasive weight for advocates who want to incorporate international standards into their advocacy inside and outside the courtroom.

Beyond just stopping criminalization, domestic human rights advocacy is leading to the day when housing is recognized as a basic human right in America. In 2019, human rights framing around housing and homelessness broke through to the political mainstream, with five leading candidates for president explicitly calling housing a human right.<sup>359</sup> Other elected officials are also addressing housing as a human right, and even introducing legislation to ratify the

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& POVERTY, *The Cost of Criminalizing Homelessness Just Went Up By \$1.9 Billion* (2015), [http://www.nlhpc.org/press\\_releases/2015.09.18\\_HUD\\_NOFA\\_criminalization](http://www.nlhpc.org/press_releases/2015.09.18_HUD_NOFA_criminalization).

356 *Bell v. Boise, et. al.*, 1:09-cv-540-REB, Statement of Interest of the United States (Aug. 6, 2015); DEPT. OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, *Justice Department Files Brief to Address the Criminalization of Homelessness* (Aug. 6, 2015), <http://www.justice.gov/opa/pr/justice-department-files-brief-address-criminalization-homelessness>.

357 *Letter from Lisa Foster, Director, to Seattle City Councilors*, OFF. FOR ACCESS TO JUSTICE, U.S. DEP'T OF JUST. (Oct 13., 2016), <https://assets.documentcloud.org/documents/3141894/DOJ-ATJ-Letter-to-Seattle-City-Council-10-13-2016.pdf>.

358 See, e.g., Gale Holland, *U.N. Monitor on Extreme Poverty Tours Skid Row in L.A.*, LOS ANGELES TIMES (Dec. 11, 2017), <https://www.latimes.com/local/lanow/la-me-ln-un-skid-row-20171211-story.html>; Editorial Board, *Trump's Vague Plans on Homelessness*, N.Y. TIMES (Sept. 12, 2019), <https://www.nytimes.com/2019/09/12/opinion/trump-homeless-california.html>.

359 See Veronica Rocha and Brian Ries, *Elizabeth Warren CNN Town Hall*, CNN (Mar. 18, 2019), [https://www.cnn.com/politics/live-news/elizabeth-warren-town-hall-mississippi/h\\_f01c5bc2f286a7ed-c3815ed7c28947d3](https://www.cnn.com/politics/live-news/elizabeth-warren-town-hall-mississippi/h_f01c5bc2f286a7ed-c3815ed7c28947d3); Mark Paul, *Sanders Calls for a National Right to Housing*, FORBES (Sept. 18, 2019), <https://www.forbes.com/sites/washingtonbytes/2019/09/18/sanders-calls-for-a-national-right-to-housing/#153166474e76>; Chris Mills Rodrigo, *Julian Castro Rolls Out First Part of Housing Reform Platform*, THE HILL (June 17, 2019), <https://thehill.com/homenews/campaign/448908-julian-castro-rolls-out-housing-reform-platform>; Kate Sullivan and Rebecca Buck, *Cory Booker Unveils Plan to Combat Housing Affordability Crisis*, CNN (June 7, 2019), <https://us.cnn.com/2019/06/05/politics/cory-booker-affordable-housing-plan/index.html>; NATIONAL LOW INCOME HOUSING COALITION, *Senator Harris Calls Housing a "Fundamental Human Right" at Forum* (Apr. 8, 2019), <https://nlhpc.org/resource/senator-harris-calls-housing-fundamental-human-right-forum>.

International Covenant on Economic, Social, and Cultural Rights.<sup>360</sup>

Human rights theories provide useful tools when challenging ordinances criminalizing homelessness. While human rights treaties may not be enforceable on their own in domestic courts, judges in both state and federal settings have looked to human rights law and jurisprudence in a number of cases.<sup>361</sup> Supreme Court cases, as well as rulings by lower federal and state courts, have particularly relied on international standards and rulings as persuasive authority, as sources of the “opinions of mankind” in evaluating “evolving standards of decency” in interpreting the Eighth Amendment.<sup>362</sup> Legal arguments supported by human rights treaties ratified by the U.S. can be used to ensure domestic law complies with human rights treaties, which have the same binding force as federal law.<sup>363</sup> Further, under international law, once the U.S. merely signs a treaty, it is obligated not to pass laws that would “defeat the object and purpose of [the] treaty.”<sup>364</sup>

The United States, for example, ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992, and the ICCPR is one of the foundational human rights treaties of modern international human rights law. The ICCPR does not enumerate a right to housing, but it includes other rights that are implicated in situations faced by persons living in tent cities or homeless encampments. This includes the right to be free from cruel, inhuman, and degrading treatment or punishment, closely parallel to our out Eighth Amendment standard of freedom from cruel and unusual punishment. In its March 2014 review of U.S. compliance with the ICCPR, the Human Rights Committee, which oversees the implementation of the treaty, stated:

“...the Committee is concerned about reports of criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular

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360 Patrick Sisson, *Alexandria Ocasio-Cortez's Latest Legislation? Housing Justice For All*, CURBED (Sept. 25, 2019), <https://www.curbed.com/2019/9/25/20882120/aoc-alexandria-ocasio-cortez-just-society-legislation-housing>; Jeff Andrews, *Housing Proposal Backed by AOC and the Squad Takes Aim at Affordability Crisis*, CURBED (Sept. 10, 2019), <https://www.curbed.com/2019/9/10/20859661/squad-aoc-ocasio-cortez-garcia-pressley-laib-affordable-housing-crisis>.

361 See Opportunity Agenda, *Human Rights in State Courts* (2014), [http://opportunityagenda.org/human\\_rights\\_state\\_courts\\_2014](http://opportunityagenda.org/human_rights_state_courts_2014).

362 See, e.g. *Roper v. Simmons*, 125 S. Ct. 1183, 1198 (2005).

363 U.S. Const. art. VI, § 2; Id. art. II, § 2, cl. 2.

364 The Vienna Convention on the Law of Treaties, May 23, 1969, art. 18(a), 1155 U.N.T.S. 331.

areas etc. The Committee notes that such criminalization raises concerns of discrimination and cruel, inhuman, or degrading treatment...the State party should...abolish the criminalization of homelessness laws and policies at the state and local levels..."<sup>365</sup>

The Law Center has strategically built up this commentary from the Human Rights Committee and numerous other U.N. human rights monitors addressing criminalization of homelessness as cruel, inhuman, and degrading treatment - to provide evidence of an international norm that can guide judges to make similar findings domestically.<sup>366</sup> The Committee on the Elimination of Racial Discrimination (CERD), also specifically condemned the criminalization of homelessness in the U.S. and called on the U.S. to "[a]bolish laws and policies making homelessness a crime." The Committee Against Torture, considered such recommendations at its review of U.S. compliance in November 2014, and asked the U.S. to address the issue at its next review scheduled for 2018 (but the U.S. is overdue in filing its report, so its review has been delayed).<sup>367</sup> The U.S.

365 Human Rights Committee, Concluding Observations, CCPR/C/USA/CO/4, ¶ 19, Apr. 23, 2014

366 See U.N. Human Rights Committee, *Concluding Observations on the Fourth Report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (2014); U.N. Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context*, Raquel Rolnik, *Mission to the United States of America*, ¶ 95, U.N. Doc. A/HRC/13/20/Add.4 (Feb. 12, 2012) [hereinafter UNHRC, *Report of Raquel Rolnik*]; U.N. Human Rights Council, *Final Draft of the Guiding Principles on Extreme Poverty and Human Rights*, Submitted by the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, ¶¶ 65, 66(c), U.N. Doc. A/HRC/21/39 (July 18, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, ¶¶ 48-50, 78(c), U.N. Doc. A/67/278 (Aug. 9, 2012); Special Rapporteurs on the Rights to Adequate Housing, Water and Sanitation, and Extreme Poverty and Human Rights, *USA: "Moving Away from the Criminalization of Homelessness, A Step in the Right Direction"* (Apr. 23, 2012), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079&LangID=E>; UNHRC, *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation*, Catarina de Albuquerque, *Addendum, Mission to the United States of America*, A/HRC/18/33/Add.4, Aug. 2, 2011; Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Stigma and the Realization of the Human Rights to Water and Sanitation*, U.N. Doc. A/HRC/21/42 (July 2, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance*, Doudou Diène, *Mission to the United States of America*, U.N. Doc. A/HRC/11/36/Add.3 (Apr. 28, 2009) [hereinafter UNHRC, *Report of Diène*].

367 Committee Against Torture, Summary Record of the 1264th Session, CAT/C/SR.1264, ¶ 37, Nov. 17, 2014, [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/CAT\\_C\\_SR\\_1264\\_22881\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/CAT_C_SR_1264_22881_E.pdf); Committee Against Torture, List of Issues Prior to Submission of the Sixth Periodic Report of the United States of America, CAT/C/USA/QPR/6, ¶ 46, Dec. 19, 2016, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fQPR%2f6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fQPR%2f6&Lang=en).

also received, and accepted, a recommendation from its 2015 Universal Periodic Review by the U.N. Human Rights Council to "amend laws that criminalize homelessness and which are not in conformity with international human rights instruments,"<sup>368</sup> Taken together, the three major human rights treaty bodies, the Universal Periodic Review, plus a wide range of other human rights officials have created a clear and consistent standard establishing that criminalization of homelessness violates human rights norms, which should be given persuasive weight in evaluating the "opinions of mankind."

Rather than simply enjoining such laws only to see communities make minimal changes to the laws but continue criminalizing practices, international law may also provide support for more expansive remedies – such as provision of housing – to address underlying constitutional violations.<sup>369</sup>

Given that the U.S. has ratified the ICCPR, the Convention Against Torture, and the Convention on the Elimination of Racial Discrimination (CERD), and is a signatory to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD), the U.S. has affirmative obligations not to infringe upon certain freedoms of homeless individuals. Under its international legal obligations, many policies in the United States that currently relate to both homelessness in general and to tent cities and encampments in particular violate international law. Forced evictions against tent city residents and tent city closures without the provision of adequate alternative or emergency housing—or even the existence of tent cities instead of adequate housing—may violate international law. Beyond the above-described freedom from cruel, inhuman, and degrading treatment, the ICCPR also recognizes the right to life, which has been interpreted by the Human Rights Committee, to include the right to shelter oneself from the elements.<sup>370</sup>

368 Report of the Working Group on the Universal Periodic Review, United States of America, A/HRC/30/12, ¶ 176.309 (July 20, 2015); Report of the Working Group on the Universal Periodic Review, United States of America, *Addendum, Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State Under Review*, A/HRC/30/12/Add.1, ¶ 12 (Sept. 14, 2015).

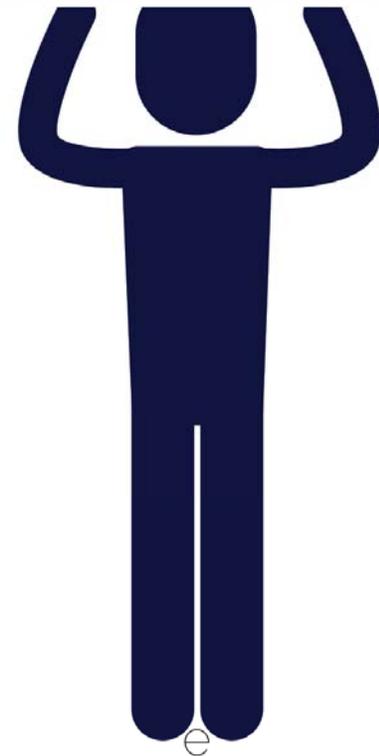
369 Eric Tars, Heather Maria Johnson, Tristia Bauman & Maria Foscarinis, *Can I Get Some Remedy? Criminalization of Homelessness and the Obligation to Provide an Effective Remedy*, 45 Col. HRLR 738 (2014), [http://nlchp.org/documents/HLRL\\_Symposium\\_Edition\\_Spring2014\\_Can\\_I\\_Get\\_Some\\_Remedy](http://nlchp.org/documents/HLRL_Symposium_Edition_Spring2014_Can_I_Get_Some_Remedy).

370 Human Rights Committee, General Comment No. 36: Article 6: Right to Life, CCPR/C/GC/36 (Sept. 3, 2018), ¶ 26, <http://docstore.ohchr>.

Other treaty rights, such as the right to housing, freedom of movement and the right to travel, freedom from arbitrary arrest and interference with one's home, as well as property rights have been violated regularly, often by law enforcement or local government officials. The rights of certain subgroups of the population to non-discrimination under international law, such as children, people with disabilities, and racial minorities, are also implicated by the adverse treatment of homeless people and those living in encampments.

In addition to making the case in the courts, U.N. human rights officials are more frequently visiting and commenting on issues of housing and homelessness in the U.S., and being widely covered by national and local media.<sup>371</sup> Smart advocates are taking advantage of the international spotlight they are able to bring to help amplify their causes and reframe the local and national conversation to one where human rights standards are the new baseline, such as hosting a Congressional briefing following the issuance of the report of the U.N. Special Rapporteur on Extreme Poverty and Human Rights.<sup>372</sup> By making human rights a consistent part of our message, in the courtroom and in the court of public opinion, we can move our country forward to a place where homelessness, let alone its criminalization, is no longer acceptable.

Homelessness  
is a global issue



org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhs-rdBOH115979OVGGb%2bWPAXhNI9eOrX3cJImWwe%2fGBLmVrGm-T01On6KBQgqmxPNljrIC8tda7SSsz61JFriKPz7wCqsecsmPjBWRhCR9U-rpE.

<sup>371</sup> See, e.g. Philip Alston, *Extreme Poverty in America: Read the UN Special Monitor's Report*, THE GUARDIAN (Dec. 15, 2017), <https://www.theguardian.com/world/2017/dec/15/extreme-poverty-america-un-special-monitor-report>; Gary Warth, 'It's As Bad, If Not Worse, Than I Anticipated' — UN Appointee Gets a Look at San Diego Homelessness, SAN DIEGO UNION-TRIBUNE (Aug. 15, 2019), <https://www.sandiegouniontribune.com/news/homelessness/story/2019-08-15/un-rapporteur-visits-san-diego-to-learn-about-areas-homeless>.

<sup>372</sup> USHRN Presents at Congressional Briefing in Washington, D.C., US HUMAN RIGHTS NETWORK (Jan. 28, 2019), <https://ushrnetwork.org/news/32/100/USHRN-presents-at-Congressional-Briefing-in-Washington-D.C.>

## ALL LEVELS OF GOVERNMENT SHOULD INVEST IN HOUSING SOLUTIONS

-  Use a Housing First Model
-  Expand access to affordable housing subsidies
-  Solicit Corporate and Private Donations
-  Utilize surplus property to provide housing and services
-  Embrace innovative housing solutions

Homelessness is a solvable problem, but only if we pursue policies that work to end homelessness. Criminalization policies are ineffective, harmful, expensive, often unconstitutional, and inconsistent with federal recommendations and human rights norms. Yet, these policies persist due, in part, to a lack of awareness of constructive alternative solutions to homelessness. Instead of criminalizing the life-sustaining conduct of homeless people, all levels of government should institute policies that work to end homelessness and save public resources. The following are recommendations for ending homelessness with housing, not handcuffs.

### CITIES SHOULD INVEST IN PERMANENT HOUSING SOLUTIONS USING A HOUSING FIRST MODEL

Housing is a proven solution to homelessness. Indeed, at least 78 communities and three states have effectively ended veteran homelessness by putting in place a system that prevents homelessness or, when it cannot be prevented, ensures that it is rare, brief, and non-recurring.<sup>373</sup> Using the

<sup>373</sup> See *Communities that Have Ended Homelessness*, UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, <https://www.usich.gov/communities->

same criteria, at least four of those communities have also ended chronic homelessness. In contrast, no city has ended homelessness with criminalization policies.

Fundamental to the success of communities that have ended homelessness for veterans and chronically homeless people is the implementation of the Housing First model. Housing First is premised on the idea that pairing homeless people with immediate access to their own apartments—without barriers and without mandated compliance with services—is the best way to sustainably end their homelessness. It is a philosophy that, “values flexibility, individualized supports, client choice, and autonomy.”<sup>374</sup> Under this model, homeless people are quickly placed into permanent housing, supplemented by any supportive services necessary to help them maintain housing stability.

According to the U.S. Interagency on Homelessness (“USICH”), communities must use a system-wide Housing First approach to succeed in ending chronic

[that-have-ended-homelessness/](#) (last visited Nov. 5, 2019).

<sup>374</sup> NAT’L ALL. TO END HOMELESSNESS, *What Housing First Really Means* (Mar. 18, 2019), <https://endhomelessness.org/what-housing-first-really-means/>.

homelessness.<sup>375</sup>The emphasis must be on quick access to permanent housing, and that requires reducing and removing barriers to housing, such criminal records and/or poor credit—two direct consequences of policies criminalizing homelessness.

Marin County provides a good example of the results that Housing First approaches to homelessness can produce in a relatively short time. Since 2017, the Marin County Department of Health and Human Services and its partners have reduced chronic homelessness by an impressive 28% and overall homelessness by 7% using a system-wide Housing First approach.<sup>376</sup>

### Permanent Supportive Housing

One housing model that has shown tremendous potential for ending homelessness is Permanent Supportive Housing (“PSH”). PSH combines affordable housing assistance with voluntary support services as needed to help people live independently.<sup>377</sup>

Residents of PSH nationwide have housing retention rates of up to 96%, meaning that people who become housed stay housed, sustainably reducing the number of people living in public space. Indeed, PSH has helped to decrease the number of chronically homeless individuals counted in HUD’s PIT counts by 26% since 2007.

PSH also carries a host of other benefits.<sup>378</sup> Ample research demonstrates that permanent supportive housing can dramatically improve health. Indeed, permanent housing reduces emergency room visits by up to 81 percent, lowers hospital admissions by up to 61 percent, and even shortens hospital stays by up to 80 percent.<sup>379</sup> Permanent supportive housing has also been shown to increase engagement in substance abuse treatment.

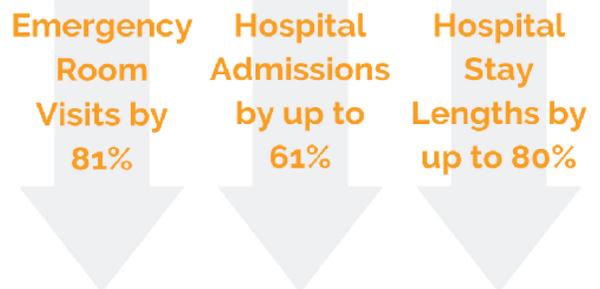
Permanent supportive housing has also been shown to reduce resident’s criminal justice involvement. In Charlotte, North Carolina, for example, permanent supportive housing reduced arrests of residents by 82%.<sup>380</sup>

375 10 STRATEGIES TO END CHRONIC HOMELESSNESS, UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, [HTTPS://WWW.USICH.GOV/RESOURCES/UPLOADS/ASSET\\_LIBRARY/10\\_STRATEGIES\\_TO\\_END\\_CHRONIC\\_HOMELESSNESS.PDF](https://www.usich.gov/resources/uploads/asset_library/10_strategies_to_end_chronic_homelessness.pdf) (APR. 2016).

376 ASHLEY HART MCINTYRE, CHRONIC HOMELESSNESS FALLS 28% IN MARIN: LARGE DROPS RECORDED IN OTHER SUB-POPULATIONS, COUNTY OF MARIN (MAY 08, 2019), [HTTPS://WWW.MARINCOUNTY.ORG/MAIN/COUNTRY-PRESS-RELEASES/PRESS-RELEASES/2019/HHS-PITCOUNT-050819](https://www.marincounty.org/main/country-press-releases/press-releases/2019/hhs-pitcount-050819).

377 PERMANENT SUPPORTIVE HOUSING, NAT’L ALL. TO END HOMELESSNESS, [HTTPS://ENDHOMELESSNESS.ORG/ENDING-HOMELESSNESS/SOLUTIONS/PERMANENT-SUPPORTIVE-HOUSING/](https://endhomelessness.org/ending-homelessness/solutions/permanent-supportive-housing/) (LAST UPDATED JAN. 2019).

## Permanent housing reduces



We can either pay more to react to people’s homelessness, endlessly chasing them through the expensive rotating doors of the criminal justice system and emergency rooms, or we can decide that we all need to step up and invest in finally ending chronic homelessness, once and for all, through the proven intervention of supportive housing.

Flowing from reductions in high cost health care and criminal justice systems, PSH also saves money. In fact, PSH always produces gross savings for chronically homeless populations.<sup>381</sup> In addition to savings associated with

378 LAVENA STATEN & SARA RANKIN, PENNY WISE BUT POUND FOOLISH: HOW PERMANENT SUPPORTIVE HOUSING CAN PREVENT A WORLD OF HURT 252-255 (2019), AVAILABLE AT [HTTPS://PAPERS.SSRN.COM/SOL3/PAPERS.CFM?ABSTRACT\\_ID=3419187](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3419187).

379 *Id.*

380 MARK PRICE, UNC CHARLOTTE REPORT: HOMELESS PROJECT SAVED CITY \$2.4 MILLION, THE CHARLOTTE OBSERVER (MAY 4, 2015, 2:00 AM), [HTTPS://WWW.CHARLOTTEOBSERVER.COM/NEWS/LOCAL/ARTICLE20155044.HTML](https://www.charlotteobserver.com/news/local/article20155044.html).

381 LAVENA STATEN & SARA RANKIN, PENNY WISE BUT POUND FOOLISH: HOW PERMANENT SUPPORTIVE HOUSING CAN PREVENT A WORLD OF HURT (2019), AVAILABLE

individuals, PSH generates as much as \$7,600 in net saving per formerly homeless family each year, as compared with leaving families homeless.<sup>382</sup>

Because PSH is effective and also produces cost-savings, it is rapidly gaining favor with lawmakers and even members of the business community. The Third Door Coalition, based in Seattle, Washington, provides a good example.<sup>383</sup>The Third Door Coalition combines business leaders, service providers, and researchers to work on data-driven approaches to ending chronic homelessness in the greater Seattle area, with a focus on PSH investment.<sup>384</sup> It is estimated that the PSH plan advocated for by the Third Door Coalition would save Seattle and King County at least \$30,000 each year per person.<sup>385</sup>

## GOVERNMENTS SHOULD EXPAND ACCESS TO AFFORDABLE HOUSING SUBSIDIES

As homelessness resulted in large part from federal disinvestment in federally subsidized housing, homelessness in America is unlikely to sustainably end without major reinvestment from the federal government. Rental subsidies, such as Housing Choice Vouchers (“HCVs”) where tenant rent is capped at 30% of household income, can address this problem.

Rent subsidies, like HCVs work to lift people out of poverty and end homelessness.<sup>386</sup> The clearest example of this is the reduction of veteran homelessness following the expansion of federal housing supports to veterans experiencing homelessness. Moreover, vouchers provided at emergency shelters have been shown to reduce the proportion of families with subsequent shelters stays by some 75%.<sup>387</sup>

But there are far too few vouchers to meet the end. Only one in four people eligible for housing subsidies like HCVs actually receives them, and waiting lists in many cities number in the tens of thousands, or are closed. Congress should fund HUD at a level necessary to grant supports to all people who qualify for them. Legislation such as H.R. 1856, the Ending Homelessness Act of 2019<sup>388</sup>, introduced by Congresswoman Maxine Waters (D-CA), Chairwoman of the House Financial Services Committee, is an example



of how this can be accomplished. The bill, which has broad support<sup>389</sup> from homeless and housing organizations, would provide \$13.27 billion in mandatory emergency relief funding over five years for housing and homelessness prevention.

AT [HTTPS://PAPERS.SSRN.COM/SOL3/PAPERS.CFM?ABSTRACT\\_ID=3419187](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3419187).

382 *Id.* at 230.

383 STEPHANIE KLEIN, *THIRD DOOR COALITION PLANS TO END CHRONIC HOMELESSNESS IN KING COUNTY IN 5 YEARS*, MYNORTHWEST (MAY 13, 2019), [HTTPS://MYNORTHWEST.COM/1381535/THIRD-DOOR-COALITION-CHRONIC-HOMELESS-SEATTLE/](https://mynorthwest.com/1381535/third-door-coalition-chronic-homeless-seattle/).

384 SARA RANKIN, *SEATTLE HAS THE SOLUTION TO CHRONIC HOMELESSNESS—WE JUST NEED TO BRING IT TO SCALE*, THE URBANIST (APR. 1, 2019), [HTTPS://WWW.THEURBANIST.ORG/2019/04/01/SEATTLE-HAS-THE-SOLUTION-TO-CHRONIC-HOMELESSNESS-WE-JUST-NEED-TO-BRING-IT-TO-SCALE/](https://www.theurbanist.org/2019/04/01/seattle-has-the-solution-to-chronic-homelessness-we-just-need-to-bring-it-to-scale/).

385 *Id.*

386 NAT'L LOW INCOME HOUS. COALITION, *HOUSING SUBSIDIES LIFT 2.9 MILLION OUT OF POVERTY*, [HTTPS://NLIHC.ORG/RESOURCE/HOUSING-SUBSIDIES-LIFT-29-MILLION-OUT-POVERTY](https://nlihc.org/resource/housing-subsidies-lift-29-million-out-poverty) (SEPT. 17, 2018).

387 THE OREGON COMMUNITY FOUNDATION, *HOMELESSNESS IN THE PORTLAND REGION: A REVIEW OF TRENDS, CAUSES, AND THE OUTLOOK AHEAD 28* (2018), [HTTPS://WWW.OREGONCF.ORG/TEMPLATES/MEDIA/FILES/PUBLICATIONS/HOMELESSNESS\\_IN\\_PORTLAND\\_REPORT.PDF](https://www.oregoncf.org/templates/media/files/publications/homelessness_in_portland_report.pdf).

388 CHAIRWOMAN WATERS INTRODUCES BILL TO END HOMELESSNESS IN AMERICA, U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES, [HTTPS://FINANCIALSERVICES.HOUSE.GOV/NEWS/DOCUMENTSINGLE.ASPX?DOCUMENTID=402520](https://financialservices.house.gov/news/documentsingle.aspx?documentID=402520) (MAR. 26, 2019).

389 THIS BILL IS SUPPORTED BY THE CENTER FOR SUPPORTIVE HOUSING, COMMUNITY SOLUTIONS, COUNCIL OF LARGE PUBLIC HOUSING AUTHORITIES, DRUG POLICY ALLIANCE, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, LEADING AGE, LOCAL INITIATIVES SUPPORT CORPORATION, NATIONAL ALLIANCE ON MENTAL ILLNESS, NATIONAL ALLIANCE TO END HOMELESSNESS, NATIONAL ASSOCIATION OF HOUSING AND REDEVELOPMENT OFFICIALS, NATIONAL COALITION FOR HOMELESS VETERANS, NATIONAL HOUSING CONFERENCE, NATIONAL HOUSING LAW PROJECT, NATIONAL HOUSING TRUST, NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, NATIONAL LOW INCOME HOUSING COALITION, NATIONAL RURAL HOUSING COALITION, PATH (PEOPLE ASSISTING THE HOMELESS), PUBLIC HOUSING AUTHORITY DIRECTORS ASSOCIATION, STEWARDS FOR AFFORDABLE HOUSING FOR THE FUTURE, AND TELACU RESIDENTIAL MANAGEMENT.

The federal government should also fully fund the National Housing Trust Fund ("NHTF"). The NHTF is a HUD administered block grant to states, designed to increase the amount of affordable housing stock to extremely low-income households. It is designed to help build and preserve affordable housing, and it is funded by statute from profits from Freddie Mac and Fannie Mae, and thus is not subject to the annual appropriations process. By law, at least 75% of NHTF funds must be used to support rental housing for households earning 30% of the Area

Median Income or less.<sup>390</sup> While the first \$174 million was allocated to states in 2016, a significantly larger amount is needed.

It is not enough, however, to simply provide new housing subsidies. Housing and income subsidies should be indexed to actual housing costs in a given area. As with inadequate minimum wages to meet local housing costs,

individuals relying on Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) often find housing costs consume their entire supplement check, leaving them no money for even utilities, let alone food or other necessities. Indexing the SSI or SSDI payment itself to local housing costs would prevent the need for additional subsidies and be a cost-effective strategy for states and the federal government to ensure housing affordability for low-income Americans.

In addition, and as discussed in more detail below, governments should prevent source of income discrimination to prevent landlords from unfairly excluding people with vouchers from rental housing.



By law, at least **75%** of NHTF funds must be used to support rental housing for households earning **30%** of the Area Median Income or less.

390 HTF: THE HOUSING TRUST FUND, NATIONAL LOW INCOME COALITION, [HTTPS://NLIHC.ORG/SITES/DEFAULT/FILES/HTF\\_FACTSHEET.PDF](https://nlihc.org/sites/default/files/HTF_FACTSHEET.PDF) (MAR. 10, 2017).

## GOVERNMENTS SHOULD EXPAND ACCESS TO AFFORDABLE HOUSING SUBSIDIES

This can be accomplished in a number of ways, and we highlight only a few examples here.

### Tax on gross receipts of large companies

In November 2018, San Francisco approved Proposition C, which places an average 0.5% gross receipts tax on companies earning in excess of \$50 million each year to fund homeless housing and emergency services. The voter measure passed with a healthy 61% of the vote, and it is estimated to raise as much as \$300 million each year in homeless programming from as many as 400 companies.<sup>391</sup> At least half of the amount raised must be spent on housing for homeless people, with remaining funds going toward mental health services and emergency services.

The successful voter initiative was the result of organizing by the San Francisco Coalition on Homelessness. The measure was also publicly supported by billionaire Salesforce founder and CEO Marc Benioff, who devoted millions to the campaign.<sup>392</sup> A legal challenge delayed implementation of Proposition C, but defenders of the voter-initiated tax were successful in defending against the lawsuit, which ultimately resulted in a court ruling upholding the validity of the measure.<sup>393</sup>

### Sales Tax

Miami-Dade County's Homeless and Domestic Violence Tax is a dedicated revenue stream to fund homeless services that imposes a 1% tax on all food and beverage sales by establishments licensed by the state to serve alcohol on the premises, excluding hotels and motels. 85% of the tax receipts go to the Miami-Dade County Homeless Trust, which coordinates the County's efforts to end homelessness.

391 KEVIN FAGAN, *SF PROP. C HOMELESS TAX – MEASURE TO RAISE \$300 MILLION A YEAR WINS WITH 60%*, SAN FRANCISCO CHRONICLE (NOV. 7, 2018), [HTTPS://WWW.SFCHRONICLE.COM/POLITICS/ARTICLE/SF-PROP-C-HOMELESS-TAX-MEASURE-TO-RAISE-300-13369555.PHP?PSID=IZXFC](https://www.sfchronicle.com/politics/article/SF-PROP-C-HOMELESS-TAX-MEASURE-TO-RAISE-300-13369555.php?PSID=IZXFC).

392 *Id.*

393 ADAM BRINKLOW, *COURT RULES SF CAN TAX BUSINESSES FOR HOMELESS FUNDS*, CURBED SAN FRANCISCO (JULY 8, 2019), [HTTPS://SF.CURBED.COM/2019/7/8/20686450/PROP-C-LAWSUIT-HOMELESS-SAN-FRANCISCO-HOWARD-JARVIS-HERRERA-UPHOLDS](https://sf.curbed.com/2019/7/8/20686450/PROP-C-LAWSUIT-HOMELESS-SAN-FRANCISCO-HOWARD-JARVIS-HERRERA-UPHOLDS).

The food and beverage tax raises some \$20 million a year, helping to fund emergency, supportive and transitional housing, and other homeless services within Miami-Dade County.

Measure H in Los Angeles, a sales tax approved by voters in 2017, provides another good example. Measure H raises sales tax by one-quarter of a cent, and it is expected to raise about \$355 million annually for ten years to fund homeless services, including health care and job training. The measure also calls for the creation of an oversight board to review spending twice per year.

### Social Impact Bonds

Social Impact Bonds are tools that allow governments to partner with private investors to address social needs.<sup>394</sup> For example, Denver, Colorado, partnered with eight private investors in 2016 to develop a supportive housing program.<sup>395</sup> Relying on support from these private investors as well as other partner organizations, Denver sought to create a housing support program to “stabilize people caught in a homelessness-jail cycle through housing and intensive services, leading to increased housing stability and decreased jail stays.”<sup>396</sup> Through this social impact bond, Denver is able to provide 170 apartment homes to 250 homeless residents, while also providing referrals to other services, including psychiatric, legal, and substance use.<sup>397</sup>

394 *SOCIAL IMPACT BONDS*, GOLDMAN SACHS, [HTTPS://WWW.GOLDMANSACHS.COM/INSIGHTS/PAGES/SOCIAL-IMPACT-BONDS.HTML](https://www.goldmansachs.com/insights/pages/social-impact-bonds.html) (OCT. 2, 2014).

395 SARAH GILLESPIE ET AL., URBAN INSTITUTE, DENVER SUPPORTIVE HOUSING SOCIAL IMPACT BOND INITIATIVE: HOUSING STABILITY OUTCOMES 1, [HTTPS://WWW.URBAN.ORG/SITES/DEFAULT/FILES/PUBLICATION/94141/DENVER-SIB-OUTCOME-REPORT\\_0.PDF](https://www.urban.org/sites/default/files/publication/94141/denver-sib-outcome-report_0.pdf).

396 *Id.*

397 *PROGRAM OVERVIEW*, COLORADO COALITION FOR THE HOMELESS, [HTTPS://WWW.COLORADOCOALITION.ORG/SOCIAL-IMPACT-BOND-INITIATIVE](https://www.coloradocoalition.org/social-impact-bond-initiative) (LAST VISITED NOV. 19, 2019).

## SOLICIT CORPORATE AND PRIVATE DONATIONS

In recent years, a number of the nation's largest corporations have pledged large sums of money for affordable housing and homelessness measures. While these donations alone do not offset the effect that these companies have on the cost of housing in the markets where they operate and gentrification, they are still helpful sources of revenue for needed housing and homeless services. Some examples include:

- In 2018, Kaiser Permanente, one of the nation's largest not-for-profit health plans, launched a \$200 million Thriving Communities Fund to address housing instability and homelessness.<sup>398</sup> Through the fund, Kaiser Permanent established a \$100 million loan fund to create and preserve housing for low-income renters.<sup>399</sup> It is also spending millions of dollars to fight gentrification and end chronic homelessness for 500 individuals in Oakland, California, where Kaiser Permanente is headquartered.<sup>400</sup>
- In November 2019, Apple announced a \$2.5 billion plan to address housing affordability in California, particularly in the Bay Area where Apple is based.<sup>401</sup> \$1 billion will go to an affordable housing fund for the development of new low to moderate-income housing.<sup>402</sup> Another \$1 billion will provide first-time homebuyer mortgage assistance, with an emphasis on increasing homeownership access to school employees, veterans, and essential service personnel. The remaining millions will be aimed at additional affordable housing development and homelessness prevention, including a \$50 million donation to Destination:Home, a public-private partnership organization that works to end homelessness in Santa Clara County, California.
- Microsoft has pledged \$500 million for affordable housing and homeless services in Seattle, Washington and the greater Puget Sound area.<sup>403</sup> \$250 million will

be dedicated to supporting low-income housing in King County, where Microsoft is based.<sup>404</sup> Another \$225 million will support development and preservation of middle-income housing in the county, and the remaining \$25 million will fund homeless programming, including a United Way program providing legal representation to people at risk of homelessness.<sup>405</sup>

**“This unparalleled financial commitment to affordable housing, and the innovative strategies at the heart of this initiative, are proof that Apple is serious about solving this issue. I hope other companies follow their lead,” said Gavin Newsom, governor of California.**

- Google has pledged \$1 billion in funding for housing in the Bay Area of California, where the company is headquartered.<sup>406</sup> The goal of the funding is to create 20,000 homes, including by establishing a \$250 million investment fund to incentivize developers to build at least 5,000 affordable housing units in the area.<sup>407</sup> Also, \$50 million will be granted to nonprofits working on homelessness and housing displacement.<sup>408</sup>

398 \$200M FOR OUR FIGHT AGAINST HOMELESSNESS, KAISER PERMANENTE, [HTTPS://ABOUT.KAISERPERMANENTE.ORG/WHO-WE-ARE/FAST-FACTS/AT-A-GLANCE/200-MILLION-FIGHT-HOMELESSNESS](https://about.kaiserpermanente.org/who-we-are/fast-facts/at-a-glance/200-million-fight-homelessness) (LAST VISITED NOV. 19, 2019).

399 *Id.*

400 *Id.*

401 APPLE COMMITS \$2.5 BILLION TO COMBAT HOUSING CRISIS IN CALIFORNIA, APPLE (NOV. 4, 2019), [HTTPS://WWW.APPLE.COM/NEWSROOM/2019/11/APPLE-COMMITS-TWO-POINT-FIVE-BILLION-TO-COMBAT-HOUSING-CRISIS-IN-CALIFORNIA/](https://www.apple.com/newsroom/2019/11/apple-commits-two-point-five-billion-to-combat-housing-crisis-in-california/).

402 *Id.*

403 MICROSOFT PLEDGES \$500 MILLION TO ADDRESS HOMELESSNESS, AFFORDABLE HOUSING IN THE SEATTLE AREA, THE WASHINGTON POST (JAN. 16, 2019), [HTTPS://WWW.WASHINGTONPOST.COM/BUSINESS/2019/01/17/MICROSOFT-PLEDGES-MILLION-ADDRESS-HOMELESSNESS-AFFORDABLE-HOUSING-SEATTLE-AREA/](https://www.washingtonpost.com/business/2019/01/17/microsoft-pledges-million-address-homelessness-affordable-housing-seattle-area/).

404 *Id.*

405 *Id.*

406 GOOGLE'S \$1 BILLION ATTEMPT TO FIX BAY AREA HOUSING CRISIS, FORBES (JULY 1, 2019), [HTTPS://WWW.FORBES.COM/SITES/KORIHALE/2019/07/01/GOOGLES-1-BILLION-ATTEMPT-TO-FIX-BAY-AREA-HOUSING-CRISIS/#A19D22095849](https://www.forbes.com/sites/korihale/2019/07/01/googles-1-billion-attempt-to-fix-bay-area-housing-crisis/#A19D22095849).

407 *Id.*

408 *Id.*

## GOVERNMENTS SHOULD UTILIZE SURPLUS PROPERTY TO PROVIDE HOUSING AND SERVICES

All levels of government own real property that is vacant and/or that they do not need to execute their governmental duties. These unused assets can be turned to productive use if they are made available to provide needed housing, shelter, and services to people experiencing homelessness.

One model for using surplus government property in this way is the federal Title V program, authorized under the McKinney-Vento Homeless Assistance Act. Under the Title V program, eligible homeless service providers – including state and local governments and private non-profit organizations – are granted a right of first refusal to receive unneeded federal buildings and land before such property can be otherwise transferred or sold. Critically, title to these properties is provided for free to successful applicants, which has enabled resource limited homeless service providers to create or expand services in over 30 states across the country. While the program has not been adequately implemented by the federal government, over 2 million homeless and formerly homeless people are housed, sheltered, or otherwise served by programs operating in Title V properties each year. All levels of government should assess their real property holdings, determine which unneeded properties are suitable for homeless use, and develop a legal framework for transforming these properties into homeless housing, shelter, and/or services as needed.

In 2016, Congress enacted the Federal Assets Sale Transfer Act (“FASTA”) which made some important improvements to the Title V program, including making permanent housing for homeless people an eligible use of vacant federal properties. The FASTA also established a Public Buildings Reform Board (“PBRB”) that is tasked with reviewing and recommending certain federal government’s real property holdings for disposal. If there is a federal property in your community that you think could be useful for housing and/or serving homeless people, you can contact the PBRB [here](#) to recommend the property for disposal under Title V.<sup>409</sup>

Local governments can also put their vacant properties to good use. Philadelphia, Pennsylvania, for example,

provided a vacant police headquarters in its subway system to a local service organization, Project HOME, to open a day center for people experiencing homelessness called the Hub of Hope.<sup>410</sup> The Hub provides a place to sit, charging stations, free coffee, medical and legal clinics, washers and dryers, and showers for people experiencing homelessness, and has greatly reduced the number of homeless persons otherwise occupying the corridors of the subway station.<sup>411</sup>

In Portland, Oregon, several business owners came together to offer vacant spaces in their properties for use as temporary shelters.<sup>412</sup> Now the joint city-county homeless services office has stepped in to help facilitate other businesses with properties that will not be used for several months.<sup>413</sup> The office will inspect the property, and if it is safe and otherwise adequate for the shelter needs of at least 100 people, the city or a nonprofit operator will provide upgrades to get the property into usable condition, and the city’s liability insurance will cover the facility.<sup>414</sup> This is an excellent model for engaging businesses that often complain about the existence of homelessness in downtown areas in becoming part of the solution, and getting people off the street immediately as longer term solutions are implemented.

Organizations can also offer their unused property as safe places for people without housing to shelter, rest, or park. In San Diego, a local church calls its effort to build some 16 affordable housing units in its private parking lot is being called “Yes In God’s Backyard” or YIGBY.<sup>415</sup> Pastor Jonathan Doolittle explained that “There’s lots of places with unused land and it’s a way to take advantage of the resources congregations have in order to make better use for the whole community.”<sup>416</sup>

409 U.S. GEN. SERV. ADMIN., *FEDERAL ASSETS SALE TRANSFER ACT*, [HTTPS://WWW.GSA.GOV/POLICY-REGULATIONS/POLICY/REAL-PROPERTY-POLICY/ASSET-MANAGEMENT/FEDERAL-ASSETS-SALE-TRANSFER-ACT-FASTA](https://www.gsa.gov/policy-regulations/policy/real-property-policy/asset-management/federal-assets-sale-transfer-act-fasta) (LAST VISITED NOV. 26, 2019).

410 NINA FELDMAN, *EXPANDED HUB OF HOPE HOMELESS SHELTER OPENING UNDER SUBURBAN STATION, WHY?* (JAN. 30, 2018), [HTTPS://WWW.WHY.ORG/ARTICLES/EXPANDED-HUB-HOPE-HOMELESS-CENTER-OPENING-SUBURBAN-STATION/](https://www.whyy.org/articles/expanded-hub-hope-homeless-center-opening-suburban-station/).

411 *THE HUB OF HOPE*, [HTTPS://WWW.PROJECTHOME.ORG/HUBOFHOPE](https://www.projecthome.org/hubofhope) (LAST VISITED NOV. 11, 2019).

412 MOLLY HARBARGER, *PORTLAND DEVELOPERS TRY TO EASE HOMELESS CRISIS THEY HELPED CREATE*, *THE OREGONIAN* (JULY 23, 2017), [HTTPS://WWW.OREGONLIVE.COM/PORTLAND/2017/07/BUSINESS\\_COMMUNITY\\_TAKES\\_BIGGE.HTML](https://www.oregonlive.com/portland/2017/07/business_community_takes_bigge.html).

413 *SEE ID.*

414 *SEE ID.*

415 MELISSA ADAN, *‘YES IN GOD’S BACKYARD:’ LOCAL CHURCH PROPOSES AFFORDABLE HOUSING PLAN*, *NBC SAN DIEGO* (JUN. 6, 2019, LAST UPDATED JUN. 7, 2019), [HTTPS://WWW.NBCSANDIEGO.COM/NEWS/LOCAL/A-LOCAL-CHURCH-IS-PROPOSING-AN-AFFORDABLE-HOUSING-PLAN-CALLED-YES-IN-GODS-BACKYARD-510943761.HTML](https://www.nbcsandiego.com/news/local/a-local-church-is-proposing-an-affordable-housing-plan-called-yes-in-gods-backyard-510943761.html).

416 *ID.*

## GOVERNMENTS SHOULD EMBRACE INNOVATIVE HOUSING SOLUTIONS

There are a number of innovative housing models that communities can use to temporarily, or even permanently, address shortages in their affordable housing markets. While some of the models described below fall short of truly adequate housing, they all have the advantage of giving people access to private shelter and a stable environment while more traditional housing is developed. As such, each of the following models can be an important part of any communities housing continuum, and we recommend that they be pursued simultaneously with permanent housing development.

### Accessory Dwelling Units

Declines in average household size and interest in environmentally sustainable housing have created a market for smaller housing, and accessory dwelling units (“ADUs”) can meet this contemporary housing need while also expanding a community’s affordable housing stock.<sup>417</sup> ADUs are independent living units sited on the property of a single-family home.<sup>418</sup> In addition to providing an affordable housing option, ADUs can also increase access to high-quality neighborhoods near to educational and employment opportunities and public transportation.

The BLOCK Project in Seattle is a good example of an ADU model that takes a community-building approach to homeless housing by placing a pre-fabricated tiny home on single-family residential lots.<sup>419</sup> The tiny homes are 125 square feet and designed to be self-sufficient, including a kitchen, bathroom, sleeping area, solar-panels, greywater system, and composting toilet. Because the homes are no larger than a storage shed and need no connection to the grid, they are legal in residentially zoned areas. The BLOCK project relies on volunteer homeowners, and uses a questionnaire to match hosts and residents and provides ongoing support through a social worker. Residents have an indefinite rental contract, allowing them to take as much time as they need to transition to other housing, or to stay if

they need to. Residents will pay 30 percent of their income on rent, divided between the host family, a maintenance program, and reinvestment into building new homes. The BLOCK project placed its first housing resident in housing in 2017.

Multnomah County, Oregon has a similar program.<sup>420</sup> Multnomah County offers to build a full tiny home in homeowners’ back yards. The homeowner will receive the tiny home for free after five years of allowing a homeless family to live there. Each unit is 200 square feet, will be connected to both electrical and plumbing grids. The county aim to fit them within Portland’s accessory-dwelling unit allowance of the zoning code or some other pre-existing legal setting, which will also help avoid the pushback often experienced in attempting to site homeless facilities or affordable housing into neighborhoods. Residents may be expected to pay 30 percent of their income into a savings account to be used for moving into permanent housing at the end of their stay. More than 800 potential hosts have indicated interest.

Many cities restrict ADU development, but communities should consider whether ADUs can provide a simple and relatively inexpensive way to expand affordable housing stock and, if so, adjust any policy or regulatory barriers to their development.

“By bringing together an entire block to unite around a vision of lifting someone out of homelessness, not only will that individual benefit, but the entire neighborhood will be stronger.” - Mike O’Brien, Seattle City Councilmember

417 TRAN DINH ET AL., YES, IN MY BACKYARD: BUILDING ADUS TO ADDRESS HOMELESSNESS, HOMELESS RIGHTS ADVOCACY PROJECT (2018), [HTTPS://DIGITALCOMMONS.LAW.SEATTLEU.EDU/CGI/VIEWCONTENT.CGI?ARTICLE=1014&CONTEXT=HRAP](https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1014&context=hrap).

418 *Id.*

419 TENT CITY, USA, *SUPRA* NOTE 12.

420 *Id.*

## Tiny Home Communities

As discussed in the context of ADUs, so-called tiny homes can be relatively quick and inexpensive to build. In addition to siting tiny homes on residential properties, tiny homes can be built as communities. While many tiny homes often lack the amenities of higher quality housing, such as working toilets and cooking facilities, they also provide many of the attributes cherished in housing: privacy, dignity, and autonomy.

For example, the City of Seattle maintains nine villages of tiny homes as part of a multifaceted partnership with faith-based organizations, building trade organizations, and the Low Income Housing Institute.<sup>421</sup> These villages allow the City of Seattle to house 283 homeless residents and boast exit rates to permanent housing comparable to other shelter programs.<sup>422</sup> Furthermore, tiny villages offer residents spaces that are often more comfortable and private than traditional shelters, are more flexible to construct, significantly less expensive, and require less land.<sup>423</sup>

In October 2019, following years of advocacy by local homeless organizers Denver Homeless Out Loud, the Denver City Council unanimously voted to allow 70 square foot tiny home communities in most of Denver.<sup>424</sup> With a willing property owner, a tiny home “village” is permissible as a matter of right in industrial, commercial, and mixed-use areas. Church parking lots and residential areas can also host a village, and permits can be renewed yearly at the same location for up to four years, after which they village must move to a new location.

## Community Land Trusts

Community land trusts are deliberate investments by community-oriented organizations to safeguard residents against rising land costs or increased rent.<sup>425</sup> In Washington, DC, the Douglass Community Land trust “is a key recommendation” of a neighborhood development plan that was designed to promote community development and ensure that residents are able to remain part of their neighborhood.<sup>426</sup> This process includes creating and maintaining affordable housing. The Douglass Community Land Trust purchased a 65-unit apartment complex as part of its commitment to community control, intending to “provide ways for folks to be in charge in directing the way their development occurs around them.”<sup>427</sup> Community land trusts act as ways for local organizations to “manage gentrification” by promoting affordable housing options.<sup>428</sup>

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421 See *TINY HOUSES*, LOW INCOME HOUSING INSTITUTE, [HTTPS://LIHI.ORG/TINY-HOUSES/](https://lihi.org/tiny-houses/) (LAST VISITED NOV. 19, 2019); *CITY-PERMITTED VILLAGES*, SEATTLE.GOV, [HTTPS://WWW.SEATTLE.GOV/HOMELESSNESS/CITY-PERMITTED-VILLAGES](https://www.seattle.gov/homelessness/city-permitted-villages) (LAST VISITED NOV. 19, 2019).

422 *Id.*

423 SHARON LEE, *TINY HOUSE VILLAGES IN SEATTLE: AN EFFICIENT RESPONSE TO OUR HOMELESSNESS CRISIS*, SHELTERFORCE, [HTTPS://SHELTERFORCE.ORG/2019/03/15/TINY-HOUSE-VILLAGES-IN-SEATTLE-AN-EFFICIENT-RESPONSE-TO-OUR-HOMELESSNESS-CRISIS/](https://shelterforce.org/2019/03/15/tiny-house-villages-in-seattle-an-efficient-response-to-our-homelessness-crisis/) (MAR. 15, 2019).

424 ANDREW KENNEY, *DENVER OPENS THE DOOR FOR TINY HOMES. WILL MOBILE HOMES BE NEXT?*, DENVER POST (OCT. 7, 2019, 8:08 PM), [HTTPS://WWW.DENVERPOST.COM/2019/10/07/DENVER-TINY-HOMES-VILLAGE-MOBILE-HOMES/](https://www.denverpost.com/2019/10/07/denver-tiny-homes-village-mobile-homes/).

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425 See PETER JAMISON, *COULD A COMMUNITY LAND TRUST HELP SOLVE D.C.'S GENTRIFICATION CRISIS?*, THE WASHINGTON POST (OCT. 2, 2019), [HTTPS://WWW.WASHINGTONPOST.COM/LOCAL/DC-POLITICS/COULD-A-COMMUNITY-LAND-TRUST-HELP-SOLVE-DCS-GENTRIFICATION-CRISIS/2019/10/01/BBA990FC-DE11-11E9-8DC8-498EABC129A0\\_STORY.HTML](https://www.washingtonpost.com/local/dc-politics/could-a-community-land-trust-help-solve-dcs-gentrification-crisis/2019/10/01/bba990fc-de11-11e9-8dc8-498eabc129a0_story.html).

426 DOUGLASS COMMUNITY LAND TRUST, [HTTP://DOUGLASSCLT.ORG/#ORIGINS](http://douglassclt.org/#origins) (LAST VISITED NOV. 19, 2019)

427 MEENA MORAR, *THE DOUGLASS COMMUNITY LAND TRUST IS MAKING ITS FIRST INVESTMENT TO SUPPORT COMMUNITY CONTROL AMONG NEW HOUSING DEVELOPMENT IN WARD 8*, STREET SENSE MEDIA (JUN. 26, 2019), [HTTPS://WWW.STREETSEMEDIA.ORG/ARTICLE/PERMANENT-AFFORDABILITY-HOUSING/#.XBHSGlVKiUk](https://www.streetsememedia.org/article/permanent-affordability-housing/#.XBHSGlVKiUk).

428 *Id.*

## Vehicle and RV Parking Options

After housing is lost, people may seek shelter in their vehicles, and the number of people doing so has increased.<sup>429</sup> Vehicles can provide shelter from the elements, secure storage for personal belongings, as well as transportation to employment or other services. Certain vehicles, such as RVs, also have amenities offered in traditional housing, such as toilets, running water, and lighting. To accommodate the growing number of people residing in vehicles, some communities have taken initial steps to provide safe, legal lots for people living in vehicles to park them.<sup>430</sup>

Since at least 1997, Eugene Oregon has allowed public and private entities, including non-profits, businesses, or religious organizations, to host vehicles for overnight parking.<sup>431</sup> The current version of the car camping ordinance grants permission for up to six vehicles to park at each site overnight, which must ensure availability of sanitary facilities, garbage disposal services, and a storage area for campers to store any personal items so that they are not visible from any public street.<sup>432</sup> St. Vincent de Paul Church provides siting and camper screening, and also takes care of portable restrooms and garbage disposal for sites that choose to participate in their program, although some hosts provide their own sanitation services.<sup>433</sup> St. Vincent de Paul currently operates more than 70 spots at 43 addresses, and other churches, non-profits, and business host additional spots.<sup>434</sup> Additionally, Eugene allows single-family homeowners in residential districts to host one vehicle in their driveway or one tent in their backyard.<sup>435</sup>

While most parking programs do not accept RVs, some do. The City of Oakland, California established the first

Safe Lot for RVs in the Bay Area in June 2019.<sup>436</sup> The new city-sponsored lot will host as many as 50 RVs for up to six months, and it provides hookups for electricity and water. It also has on-site toilets and security.<sup>437</sup> More locations are being developed.

Cities and counties should stop punishing people for living in their vehicles when they lack housing options and, until housing options are sufficiently available, governments should establish adequate parking options. California bill AB 891 required cities and counties with a population greater than 330,000 to establish a safe parking program for individuals and families living in their vehicles. While the bill passed through the state legislature, California Governor Newsome vetoed the bill in October 2019.

In addition to establishing sufficient and adequate places where unhoused people can lawfully park, governments should stop towing and impounding vehicles used as shelter for unpaid parking or traffic tickets, in the absence of any urgent purpose. AB 516 in California would have ended these so-called “poverty tows”<sup>438</sup> and required advance notice before tows can occur. Unfortunately, the bill did not pass.



429 SEE, E.G., ELIZABETH CHOU & SUSAN ABRAM, *WHERE DO THE HOMELESS SLEEP? LA COUNTY NOW KNOWS*, DAILY NEWS (AUG. 28, 2017), [HTTP://WWW.DAILYNEWS.COM/2017/07/28/WHERE-DO-THE-HOMELESS-SLEEP-LA-COUNTY-NOW-KNOWS/](http://www.dailynews.com/2017/07/28/where-do-the-homeless-sleep-la-county-now-knows/).

430 TENT CITY, USA, SUPRA NOTE 12.

431 SEE EUGENE, OR ORDINANCE No. 20097 (1997), [HTTP://COEAPPS.EUGENEOR.GOV/CMOWEB/DOCVIEW.ASPX?ID=363273&SEARCHID=FABD64D5-E09E-4BE3-A78E-BCCFDA48E319&DBID=0](http://coeapps.eugeneor.gov/cmoweb/DocView.aspx?id=363273&searchid=fabd64d5-e09e-4be3-a78e-bccfda48e319&dbid=0).

432 EUGENE, OR ORDINANCE No. 20517, [HTTP://COEAPPS.EUGENE-OR.GOV/CMOWEB/DOCVIEW.ASPX?ID=981598&SEARCHID=FABD64D5-E09E4BE3-A78E-BCCFDA48E319&DBID=0](http://coeapps.eugene-or.gov/cmoweb/DocView.aspx?id=981598&searchid=fabd64d5-e09e4be3-a78e-bccfda48e319&dbid=0).

433 CAR CAMPING PROGRAM, EUGENE, OR, [HTTPS://WWW.EUGENE-OR.GOV/3703/CAR-CAMPING-PROGRAM](https://www.eugene-or.gov/3703/CAR-CAMPING-PROGRAM) (LAST VISITED NOV. 19, 2019).

434 THE CAR CAMPING PROGRAM, [HTTPS://WWW.EUGENE-OR.GOV/DOCUMENTCENTER/VIEW/36022/CAR-CAMPING-FLYER?BIDID=](https://www.eugene-or.gov/documentcenter/view/36022/car-camping-flyer?bidid=) (LAST VISITED NOV. 19, 2019).

435 EUGENE, OR ORDINANCE No. 20517, [HTTP://COEAPPS.EUGENE-OR.GOV/CMOWEB/DOCVIEW.ASPX?ID=981598&SEARCHID=FABD64D5-E09E4BE3-A78E-BCCFDA48E319&DBID=0](http://coeapps.eugene-or.gov/cmoweb/DocView.aspx?id=981598&searchid=fabd64d5-e09e4be3-a78e-bccfda48e319&dbid=0).

436 LAURA ANTHONY, *NEW CITY-SANCTIONED ‘SAFE RV LOT’ OPENS IN OAKLAND*, ABC 7 NEWS (JUNE 21, 2019), [HTTPS://ABC7NEWS.COM/SOCIETY/NEW-CITY-SANCTIONED-SAFE-RV-LOT-OPENS-IN-OAKLAND/5357751/](https://abc7news.com/society/new-city-sanctioned-safe-rv-lot-opens-in-oakland/5357751/).

437 *Id.*

438 WESTERN CTR. ON L. & POVERTY, *TOWED INTO DEBT: HOW TOWING PRACTICES IN CALIFORNIA PUNISH POOR PEOPLE* (2019), [HTTPS://WCLP.ORG/WP-CONTENT/UPLOADS/2019/03/TOWEDINTODEBT.REPORT.PDF](https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf).

## GOVERNMENTS SHOULD STOP USING PUNITIVE APPROACHES TO HOMELESSNESS

As we discuss in detail above, punitive approaches to homelessness do not work to end homelessness, and they make it harder for individuals saddled with unaffordable fines, criminal records, and/or warrants to exit. They cause extreme harm, and waste limited public resources. Moreover, laws criminalizing homelessness directly undermine government's investments in housing and services, threatening to doom those constructive efforts.

The National Law Center on Homelessness & Poverty, National Coalition for the Homeless, and more than 100 other organizations launched the Housing Not Handcuffs campaign in 2016 to place emphasis on housing as a solution to homelessness instead of punishing homeless people with arrests, incarcerations, and/or fines and fees. For more information on the Housing Not Handcuffs Campaign, visit [www.housingnothandcuffs.org](http://www.housingnothandcuffs.org).

*Repeal, defund, and stop enforcing laws that criminalize homelessness*

The laws, policies, and practices that prohibit or limit the use of public space by homeless people for life-sustaining activities should be repealed and defunded. Homeless people should not be subject to, or threatened with, civil or criminal sanctions by governmental actors and/or private security personnel for conducting life-sustaining activities in public places. In addition, homeless persons' personal property should not be subject to unreasonable searches and seizures.

Prosecutors should exercise their discretion not to charge homeless people for crimes related to their outdoor survival activities, and they should dismiss existing cases brought under laws penalizing homelessness, including those

with outstanding warrants. Moreover, prosecutors can champion methods for allowing people to receive notice of court hearings by text or email, rather than by regular mail, to reduce the number of warrants issued to people with no regular mailing address.

In 2016, San Francisco threw out 66,000 arrest warrants issued for violations of criminalization policies, like sleeping in public, and judges stopped issuing bench warrants for unpaid tickets issued for those offenses.<sup>439</sup> Los Angeles recently announced a similar plan to erase hundreds of thousands of minor citations and warrants. While the aim of Los Angeles' plan is to relieve pressure on the overburdened court system and to help stop the cycle of debt and arrests of Los Angeles' poorest citizens, the plan has been criticized as not going far enough to make a significant impact.<sup>440</sup> First, Los Angeles plans to continue writing citations under its numerous criminalization of homeless policies, and also to issue warrants and \$300 civil fines for homeless people who fail to appear in court.<sup>441</sup> Moreover, the amnesty program does not include citations and warrants issued in the past five years.<sup>442</sup>

Criminal justice professionals can also support diversion programs that can keep people experiencing homelessness out of the criminal justice system. A nationally recognized example of this is the Law Enforcement Assisted Diversion program ("LEAD"),<sup>443</sup> which started in Seattle, Washington. LEAD is the "result of a unique collaboration between police, district attorneys, civil rights advocates and public defenders, political leaders, mental health and drug treatment providers, housing providers and other service agencies, and business and neighborhood leaders—all working together to find new ways to solve real problems for individuals who did not respond well to a criminal justice system driven approach that relies on arrest, prosecution, and punishment."<sup>444</sup> The goal of the program is to divert people from the traditional criminal justice system to community-based programs for individually tailored

439 BOB EGGLE, *SF JUDGE EXPLAINS WHY 66,000 ARREST WARRANTS WERE DISCARDED*, SF GATE (DEC. 7, 2016, 11:11 AM), [HTTPS://WWW.SFGATE.COM/CRIME/ARTICLE/S-F-JUDGE-EXPLAINS-WHY-66-000-ARREST-WARRANTS-10645460.PHP](https://www.sfgate.com/crime/article/S-F-JUDGE-EXPLAINS-WHY-66-000-ARREST-WARRANTS-10645460.PHP).

440 GALE HOLLAND, *L.A. VOIDED MILLIONS OF OLD TICKETS AND WARRANTS. HERE'S WHY IT WON'T HELP HOMELESS PEOPLE*, LA TIMES (NOV. 4, 2019), [HTTPS://WWW.LATIMES.COM/CALIFORNIA/STORY/2019-11-04/HOMELESS-COURT-WARRANTS-CITATIONS-AMNESTY-CRIMINALIZATION](https://www.latimes.com/california/story/2019-11-04/homeless-court-warrants-citations-amnesty-criminalization).

441 *Id.*

442 *Id.*

443 THE LEAD NATIONAL SUPPORT BUREAU, [HTTPS://WWW.LEADBUREAU.ORG/](https://www.leadbureau.org/) (LAST VISITED NOV. 26, 2019).

444 PUBLIC DEFENDER ASS'N, [HTTP://DEFENDER.ORG/PROJECTS/LEAD](http://defender.org/projects/lead) (LAST VISITED NOV. 26, 2019).

services, ranging from housing to mental health care to drug treatment. A growing number of cities<sup>445</sup> and the states of California and Colorado have already taken steps to follow Seattle's LEAD program, and dozens more jurisdictions are considering it.<sup>446</sup>

### *Prohibit the criminalization of homelessness through legislation*

Cities using the criminal justice system to effectively push homeless people out of their city can lead to a "race to the bottom" where cities compete to make their communities so inhospitable to homeless people that they will relocate elsewhere. State governments should enact legislation to prevent this domino effect. One model of such legislation is the Right to Rest Act, a model bill developed by the Western Regional Advocacy Project and their homeless organizing members. The aim of the proposed legislation, which was developed based on thousands of surveys of people experiencing homelessness in those states, is to prohibit governments from punishing people without housing for certain survival activities in public space, including resting. State-specific versions of the Right to Rest Act have been introduced and debated in the Colorado, California, and Oregon legislatures, but none has yet been enacted.

A similar state bill was introduced in Washington State by Rep. Mia Gregerson, D-Seatac, in 2019.<sup>447</sup> The bill, HB 1591, would have prohibited cities and counties from criminalizing homelessness, prohibited discrimination based on housing status, and provided funding for legal services in housing related cases.<sup>448</sup> Representative Gregerson cited the *Martin v. City of Boise* decision as the backdrop for her bill, which did not make it out of the state house.

Private citizens do not have to depend on lawmakers to enact legislation prohibiting the criminalization of homelessness. They can also make use of the voter initiative process. Denver Homeless Out Loud and other homeless advocates gathered nearly 10,000 signatures to place the Right to Survive Initiative on Denver's May 2019 ballot. The Right to Survive initiative, the first of its kind in the nation, would have made it unlawful to prohibit non-obstructive

camping in spaces open to the public, among other needed protections for people experiencing homelessness in Denver. While early polls indicated voter approval, the initiative was ultimately defeated after the Right to Survive Campaign was outspent 25 to 1, with opponents of the initiative raising over \$2 million in donations from developers and business interests.<sup>449</sup> Still, 33,685 Denver residents voted in favor of the initiative, which garnered notable law enforcement support and endorsements from civil rights groups like the ACLU of Colorado and the Center for Constitutional Rights.

In addition to repealing and defunding criminalization laws, governments should also take steps to amend the broad authority of BIDs to collect and spend mandatory property assessment money on lobbying for and enforcing punitive approaches to homelessness. Also, governments should regulate and provide oversight of BID activities within their jurisdictions to ensure that funds are not being spent on punitive approaches to homelessness.

**"I support the Right to Survive because it will help get people off the streets. As a former law enforcement professional, with a focus on corrections, my experience has taught me that homeless people are in need of housing and services - not jail. By eliminating criminal punishment for simply being homeless, the Right to Survive will help law enforcement play a more productive role in ending homelessness. We can build trust, which helps us to successfully connect homeless people to services and treatment." - Carrie Roberts, Former Officer and Sheriff's Deputy, Colorado Department of Corrections, Parker, CO**

445 EXAMPLES INCLUDE SANTA FE, NM, ALBANY, NY, FAYETTEVILLE, NC, PORTLAND, OR, HUNTINGTON, WV, CHARLESTON, WV AND BALTIMORE, MD.

446 THE LEAD NATIONAL SUPPORT BUREAU, [HTTPS://WWW.LEADBUREAU.ORG/](https://www.leadbureau.org/) (LAST VISITED NOV. 26, 2019).

447 WASHINGTON STATE LEGISLATURE, HB 1591 – 2019-20, [HTTPS://APP.LEG.WA.GOV/BILLSUMMARY?BillNumber=1591&Year=2019](https://app.leg.wa.gov/BillsSummary?BillNumber=1591&Year=2019).

448 *Id.*

449 CHASE WOODRUFF, *AFTER HEAVY DEFEAT, RIGHT TO SURVIVE SUPPORTERS VOW TO FIGHT ON*, WESTWORD (MAY 8, 2019, 6:26 AM), [HTTPS://WWW.WESTWORD.COM/NEWS/AFTER-HEAVY-DEFEAT-RIGHT-TO-SURVIVE-SUPPORTERS-VOW-TO-FIGHT-ON-11336115](https://www.westword.com/news/after-heavy-defeat-right-to-survive-supporters-vow-to-fight-on-11336115).

## Stop sweeping encampments without offering adequate alternatives

Sweeps of encampments are traumatizing, and often result in the permanent loss of homeless people's few possessions. They are ineffective. They are expensive. Moreover, sweeps frequently destroy the relationships that outreach workers have built with residents, and that residents have built with each other, again, putting further barriers between residents and permanent housing.

Ending the harmful process of seizing and destroying homeless people's property helps to retain homeless people's sense of security and stability. It also lessens the chances that people will be displaced into less familiar, more dangerous parts of the city where they have no community or sense of connection.

This is not to say that cities cannot clean public spaces. Indeed, they should, but cities do not need to permanently displace unhoused people to clean the outdoor spaces where they live. Instead, cities can clean at regular times and/or give people advance notice to temporarily move when necessary so that the location can be cleaned, following which they are permitted to return. Moreover, cities can provide homeless people with basic trash and sanitation services so that people can keep the outdoor spaces where they live free of debris and human waste.

Cities should also eliminate police involvement in cleaning of public space. While police should be involved if there is criminal activity or genuine safety risks involved, clean-ups do not ordinarily raise such concerns.

**Outreach workers, including medical and mental health professionals, are preferable first-responders to homelessness**

## Stop relying on police to be first responders to homelessness

Homelessness is a social crisis which cannot be solved with a criminal justice approach. Yet, law enforcement officers are tasked with receiving and responding to complaints about homelessness, even when there is no attendant public safety issue. This is an ineffective and inappropriate use of limited law enforcement resources. It can also be actively harmful to homeless people who may find the mere presence of police to be intimidating or even traumatizing.

Outreach workers, including medical and mental health professionals, are preferable first-responders to homelessness as they have professional expertise and knowledge of a community's homeless housing and resources that police may not. Outreach workers should be dedicated staff who meet homeless people in the places where they are, and their efforts should be aimed at connecting with and building trust with people experiencing homelessness. Moreover, outreach should be housing focused. Deploying outreach workers to offer "services" that may not actually be helpful to ending one's homelessness does not accomplish anything constructive. To the contrary, refusal of unhelpful "services" can exacerbate distrust between homeless people and the governments and/or organizations aiming to help them, and fuel punitive approaches to homelessness.

An example of constructive street outreach is the Crisis Assistance Helping Out On The Streets ("CAHOOTS") model in Eugene, Oregon. CAHOOTS uses teams made up of a medic and a mental health professional to respond to emergency calls about people experiencing homelessness. It was developed with community involvement, and it emphasizes offering services, like temporary shelter and a respite clinic, while maintaining homeless people's dignity.

When police are deployed as first responders to homelessness, it is important for these efforts to be done in combination with homeless service providers. In August 2018, the U.S. Interagency Council on Homelessness ("USICH") and The Council of State Governments Justice Center held a convening to discuss how law enforcement and service providers can effectively partner to address homelessness.<sup>450</sup> One recommendation that emerged from

450 JUSTICE CENTER, THE COUNCIL OF STATE GOVERNMENTS, STRENGTHENING PARTNERSHIPS BETWEEN LAW ENFORCEMENT AND HOMELESSNESS SERVICES SYSTEMS (JUNE 2019), [https://www.usich.gov/resources/uploads/asset\\_library/Law-](https://www.usich.gov/resources/uploads/asset_library/Law-)

that meeting is for law enforcement officers and homeless service providers to, “establish the foundation of a strong partnership by identifying [their] shared goals, metrics for tracking and assessing progress over time, and clear roles for each system’s involvement.”<sup>451</sup> Written memoranda of understanding outlining when and how police can connect people experiencing homelessness to more appropriate outreach workers is useful in this process, and they should be developed.

### *Improve police training and enforcement protocols*

It is important for communities to provide law enforcement officers with adequate training and written protocols and policies that can guide police interactions with people experiencing homelessness. Written protocols should be developed in partnership with experts from local homeless services and behavioral health systems, and they should be paired with basic training for all officers on issues ranging from homelessness to de-escalation techniques.

Miami-Dade County, Florida found that providing mental health de-escalation training to their police officers and 911 dispatchers enabled them to divert more than 10,000 people to services or safely stabilizing situations without arrest.<sup>452</sup> The jail population fell from over 7,000 to just over 4,700, and the county was able to close an entire jail facility, saving nearly \$12 million a year.<sup>453</sup> Stories like this led to the White House launching the Data-Driven Justice Initiative in June 2016, and now more than 130 jurisdictions are participating in the effort to use data-driven strategies to reduce unnecessary incarceration and provide housing and services instead.<sup>454</sup>

The Washington Legal Clinic for the Homeless has also provided effective training for the DC Metropolitan Police Department for the last twenty years.<sup>455</sup> The purpose of

ENFORCEMENT-AND-HOMELESSNESS-SERVICE-PARTNERSHIP-2019.PDF.

451 *Id.*

452 WHITE HOUSE, FACT SHEET: LAUNCHING THE DATA-DRIVEN JUSTICE INITIATIVE: DISRUPTING THE CYCLE OF INCARCERATION (2016), [HTTPS://OBAMAWHITEHOUSE.ARCHIVES.GOV/THE-PRESS-OFFICE/2016/06/30/FACT-SHEET-LAUNCHING-DATA-DRIVEN-JUSTICE-INITIATIVE-DISRUPTING-CYCLE](https://obamawhitehouse.archives.gov/the-press-office/2016/06/30/fact-sheet-launching-data-driven-justice-initiative-disrupting-cycle).

453 *Id.*

454 *Id.*; SEE ALSO, DATA-DRIVEN JUSTICE, NATL. ASS’N OF COUNTIES, [HTTPS://WWW.NACO.ORG/RESOURCES/SIGNATURE-PROJECTS/DATA-DRIVEN-JUSTICE](https://www.naco.org/resources/signature-projects/data-driven-justice) (2019).

455 MARCIA BERNBAUM, WASHINGTON LEGAL CLINIC FOR THE HOMELESS CASE STUDY WITH A FOCUS ON THE ‘COMMUNITY EDUCATION AND ENGAGEMENT’ (MAY 2018), [HTTPS://WWW.LEGALCLINIC.ORG/WP-CONTENT/UPLOADS/2019/04/A-FOCUS-ON-COMMUNITY-EDUCATION-AND-ENGAGEMENT-BY-MARCIA-BERNBAUM-PHD.PDF](https://www.legalclinic.org/wp-content/uploads/2019/04/A-FOCUS-ON-COMMUNITY-EDUCATION-AND-ENGAGEMENT-BY-MARCIA-BERNBAUM-PHD.PDF).

the training was to “ensure that law enforcement officers understood some of the challenges that people experiencing homelessness face; the causes of homelessness; and that simply because some of the people they engage with are experiencing homelessness doesn’t mean they shouldn’t be treated with the same respect that everyone deserves.”<sup>456</sup> As a result of these trainings, in 2011 the Assistant Police Chief Diane Grooms issued an order establishing that MPD policy is “to treat homeless persons in a manner that protects their needs, rights and dignity, while providing appropriate law enforcement services to the entire community.”<sup>457</sup>

### **GOVERNMENTS SHOULD HELP HOMELESS PEOPLE MEET BASIC HUMAN NEEDS UNTIL HOUSING IS AVAILABLE.**

People without housing have the same basic human needs as housed people, but they often lack any safe, stable, and lawful place to meet those needs. Some of this is attributable to the fear that, by helping people to meet their basic needs on the streets, homelessness will be normalized or, worse yet, enabled. But those unfounded fears ignore the stark reality: all people must eat, rest, go to the bathroom, and sleep somewhere. When they cannot do those things indoors due to a lack of adequate housing and accessible shelter, then they will do them outside - there simply is no other choice.

The following recommendations are not housing, and thus none of them is a solution to homelessness. But they will help to people without housing to meet their basic human needs while housing options are pursued, and simultaneously improve quality of life in communities by reducing trash, human waste, and personal property stored in public space.

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456 *Id.*

457 GENERAL ORDER, INTERACTIONS WITH HOMELESS PEOPLE, METROPOLITAN POLICE DISTRICT OF COLUMBIA (OCT. 31, 2011), [HTTPS://GO.MPDCONLINE.COM/GO/GO-OPS-308-14.PDF](https://go.mpdconline.com/go/go-ops-308-14.pdf).

## Establish places where people can store their property

One main driver of complaints about homelessness is the presence of homeless people's personal property in public space. These complaints lead to sweeps and property destruction, and also to laws outlawing storing property in public, even though there is no reasonable way for people without housing to comply. As discussed above, the threat of property loss is significant for homeless people, and it can affect whether they are able to attend appointments, hold a job, or even get needed medical treatment. Rather than essentially outlawing property possession—which is impractical, expensive to enforce, and may be illegal—cities would be far better off establishing places where homeless people can securely store their possessions. This not only meets the needs of homeless people, it also provides a constructive response to complaints.

Some cities offer storage facilities, sometimes established pursuant to settlement agreement. Most recently, in *Lyall v. City of Denver*, a settlement agreement established notice and property storage protocols as a resolution to a class action brought on behalf of unhoused people in Denver subject to the city's ongoing sweeps. Per the agreement, any items of property "that could reasonably be assumed to have value to any person will be collected and stored."<sup>458</sup> The storage facility is required to be open at least three days per week as early as 6am, and at least one day until 6pm. The settlement agreement also requires the city to make an estimated 200 storage lockers available for use, which may be used for up to thirty days.<sup>459</sup>

Merely requiring temporary storage of homeless people's property does not guarantee, however, that their property will be safeguarded or returned. Due care for individual's property, no or low identification requirements, and appropriate siting of the storage facility—which will likely be accessed by foot or public transit—is critical. Moreover, storage facilities should be open daily and not limited only to normal

## Provide access to toilets

All people dispel human waste, and most of us do multiple times a day. People with certain medical conditions, pregnant women, and others may urinate and defecate even more frequently than normal. Yet, homeless people often lack access to toilets where they can safely deposit their human waste, leading inevitably to urine and feces in outdoor places where they do not belong. The accumulation of human waste in public is more than just unsightly and malodorous; it can be threatening to public health.

The best solution to reducing human waste in outdoor locations is to expand access to toilets. In many cities, there are no public bathrooms that are regularly accessible to homeless people. Cities should expand access to regularly serviced toilets in locations where homeless people can readily access them.

## Provide unhoused people with trash services

People who live outside often lack access to trash cans, yet all human beings produce trash waste. With nowhere to deposit that waste, people who live outside quickly become surrounded by trash, which can lead to expensive, harmful, and futile sweeps. Rather than wasting energy and money on punishing homeless people for disposing of trash in public when there are no other options, cities should invest trash services to people living outside. An example of how this can work in practice is the Triangle Works cleaning program in Denver, Colorado, which is a five-person crew responsible for cleaning the streets near a park where many homeless people stay outside.<sup>460</sup> That cleaning crew has not only made a positive impact by providing trash services to certain encampments, it also helps to keep public areas clean, reducing the likelihood of spread of disease and improving aesthetics.

Along with general trash services, cities should consider offering "sharps" containers for safe disposal of needles discarded by diabetics, substance users, and others.

458 SEE FULL AND FINAL RELEASE AND SETTLEMENT AGREEMENT (FEB. 2019), AVAILABLE AT [HTTPS://DENVERHOMELESSOUTLOUD.FILES.WORDPRESS.COM/2019/04/LYALL-ET-AL.-V.-DENVER-COMPLETE-FINAL-SETTLEMENT-AGREEMENT-1.PDF](https://denverhomelessoutloud.files.wordpress.com/2019/04/lyall-et-al.-v.-denver-complete-final-settlement-agreement-1.pdf).

459 *Id.*

460 DENVER HOMELESS OUT LOUD, FIRST 100-DAY PLAN FOR 2019 DENVER MUNICIPAL GOVERNMENT ACTION PLAN FOR RIGHTS, DIGNITY, AND HOUSING (2019), [HTTPS://DENVERHOMELESSOUTLOUD.FILES.WORDPRESS.COM/2019/07/100-DAY-ACTION-PLAN.PDF](https://denverhomelessoutloud.files.wordpress.com/2019/07/100-day-action-plan.pdf).

The reduction of needles strewn in public space carries obvious benefits to all users of public space, and it also directly responds to a common complaint about homeless encampments.

### *Provide people with shower and laundry services*

The inability to stay clean for lack of sanitation facilities is demoralizing to people, and it contributes to anti-homeless stigma. It limits job prospects, and even can be the basis for a person to be excluded from public transit, public libraries, and other locations available to the rest of the public. It is also a dangerous proposition for people who, without the ability to stay clean, are at heightened risk of becoming sick and/or developing infections. To assist people with their hygiene needs, cities should provide access to places where homeless people can shower and do laundry.

“[Shower to the People has] been such a blessing, I can’t even tell you. I wish we had about five more trucks. People in the streets want to be clean, it’s almost as important as the food we eat.” – Regina Coey, user of service

Local governments should take steps to ensure that existing public shower facilities are accessible to people experiencing homelessness. They should also expand access by, for example, offering shower trucks. An example of a highly successful and well-regarded mobile shower truck program is Shower to the People, operating in St. Louis, Missouri. At least four times a week in the evening, the truck is available in various locations around St. Louis to typically serve as many as 50 unhoused people who would otherwise not have access to a way to get clean. The program got started when one local pastor, John Austin, purchased a 1998 GMC box truck, relying on donations secured from social media. An RV center outside of St. Louis agreed to

outfit the truck with plumbing and shower amenities for free in support of the mission. Now, the program is supported by grants and donations and is financially independent.<sup>461</sup> The program has been so successful that it is expanding services to add additional shower stalls, and to include washers, dryers, and a barber station for haircuts and shaves. It also offers needed hygiene products, like soap, toothbrushes and toothpaste, and feminine hygiene products. Key to the success of the program is the program’s approach to their clientele as friends and neighbors, and not just a number to be served. Also key has been the support of the city, which provided free water to the program. The goal is to expand the system to additional cities across the country by the end of 2020.

Local governments should also offer access to laundry services. As with mobile shower programs, laundry trucks can help to meet that need. A good example is the Laundry Truck LA program, which is a mobile laundry services operating multiple days a week in the Los Angeles area.<sup>462</sup> The program is meant to help provide people with a free way to wash their clothes, which is an important accompaniment to shower services, and also to provide people with a sense of community while they do their laundry. Detergent is provided to help reduce the amount of things that homeless people must carry to and from the service.<sup>463</sup>

## HELP PEOPLE MEET THEIR NEED FOR SHELTER FROM THE ELEMENTS

### *Low-Barrier Emergency Shelters*

Emergency shelters are not housing, and thus they are not a solution to homelessness. But, providing access to low-barrier emergency shelters is one way that cities can help people without housing to meet their basic human need for shelter until housing is available.

As described in detail above, many emergency shelters provide only temporary accommodation, sometimes for a single night at a time. Such arrangements, while helpful to

461 RENE DELGADILLO, *AFTER A YEAR OF HELPING ST. LOUIS’ HOMELESS GET SHOWERS, FOUNDER SEEKS EXPANSION*, ST. LOUIS POST-DISPATCH (AUG. 4, 2017), [HTTPS://WWW.STLTODAY.COM/NEWS/LOCAL/METRO/AFTER-A-YEAR-OF-HELPING-ST-LOUIS-HOMELESS-GET-SHOWERS/ARTICLE\\_495D570C-E0FB-502F-BFB3-C8097E7FC3C3.HTML](https://www.stltoday.com/news/local/metro/after-a-year-of-helping-st-louis-homeless-get-showers/article_495d570c-e0fb-502f-bfb3-c8097e7fc3c3.html).

462 *LAUNDRY TRUCK LA HELPS GIVE HOMELESS PEOPLE A FRESH START*, INVISIBLE PEOPLE, [HTTPS://INVISIBLEPEOPLE.TV/LAUNDRY-TRUCK-LA-HELPS-GIVE-HOMELESS-PEOPLE-A-FRESH-START/](https://invisiblepeople.tv/laundry-truck-la-helps-give-homeless-people-a-fresh-start/) (LAST VISITED NOV. 26, 2019).

463 *Id.*

some each night, cannot be relied upon by an individual for regular shelter access, nor can it be accessed at all by people who work in the evenings or at night. Moreover, congregate shelter settings may be medically intolerable to people with certain disabilities. Indeed, shelters without appropriate medical staff may exclude people based on their lack of mobility and/or mental health.

Still, low-barrier emergency shelters can play an important role in a city's homeless services continuum, and local governments, faith organizations, and non-profits offering emergency shelter services should adopt a low-barrier shelter model. A feature of this model is to meet the needs of all household members, and not require self-defined family members to separate from each other. Other key criteria for low-barrier shelters include not making access contingent on minimum income requirements, lack of criminal history, or sobriety, and to allow people to enter with their pets and personal property.

Shelter environments should be safe, clean, and accessible to the fullest extent possible to people with disabilities and/or who have experienced trauma. But, it is important to recognize that even the best congregate shelter environments are not appropriate for all people experiencing homelessness. Shelters also do not offer the privacy and/or autonomy enjoyed by people in private homes, such as the ability to enter and exit at will. Thus, cities should not rely on temporary, congregate shelters as adequate alternatives to housing, or even to people's tents and vehicle homes.

Communities should not attempt to force people into using low-barrier shelters under pain of arrest or financial penalty. Doing so perpetuates harmful, punitive approaches to homelessness, and also fails to produce the positive results flowing from investment in permanent housing using a Housing First model.

### *Authorized Encampments*

As with emergency shelters, authorized encampments are not a permanent solution to homelessness. Housing is the only permanent solution. But safe and lawful homeless encampments can be a critical interim measure for helping to unhoused people while housing options are pursued.

Local governments should develop constructive encampment policies, including designating a sufficient number of adequate areas where homeless people may safely and lawfully camp and store their belongings. To reduce harm to homeless residents and the surrounding communities, encampments should be provided with trash service, water service, and other necessary services, like toilets.

In addition, local governments should develop constructive policies for addressing existing homeless encampments modeled on federal guidance and our Encampment Principles and Best Practices. At a minimum, state and local governments should develop policies for cleaning public places that do not displace homeless people from public lands, nor result in the destruction of their belongings, when there is no adequate housing alternative. Our Encampment Principles are available in Appendix B of this report.



Emergency shelters should be focused on exits to permanent housing. Policies should also promote dignity and respect for people using the facility, including by offering a grievance and appeal process for people to use when they have a complaint about mistreatment.

## Safe Parking Lots

Beyond establishing encampment communities, cities can also engage homeowners to establish places for people living in tents or RVs to temporarily live. Hawaii's Yard Rental Proposal, HB 968, provides an example of how this can be done. The bill would grant homeowners the ability to rent yard or driveway space to people living in tents or RVs, and provides an exemption to any zoning ordinances unless the lease would violate health or safety regulations or other private agreements. The bill ultimately failed to pass, but it can still be a useful model to other communities.

## Help people access income

People living without housing have difficulty getting and maintaining employment, limiting their access to needed cash. To meet the need for cash that can be used to purchase necessities, such as medication and access to transportation, some people will panhandle. As an alternative to panhandling, some communities have implemented day labor programs to provide income and access to services for people who would otherwise beg. Albuquerque, New Mexico, operates the There's a Better Way campaign to offer panhandlers day labor, which typically includes landscaping work under the supervision of the city's Solid Waste Department.<sup>464</sup> Syracuse, New York operates a similar program. Three days a week the city's Hire Ground van picks up panhandlers to offer them lunch, access to a social worker, and \$50 cash at the end of a day of labor.<sup>465</sup>

While these programs are helpful for getting people access to much needed cash, these programs do not provide incomes sufficient to regain housing.



## GOVERNMENTS SHOULD ENACT POLICIES TAILORED TO HOMELESS YOUTH NEEDS

Most states do not allow minors to sign themselves into a shelter for more than 72 hours without parental consent or the intervention of law enforcement or child welfare.<sup>466</sup> Under a typical state law or licensing requirement, when a youth arrives at a shelter the provider has a certain time period, usually 48 to 72 hours, in which the shelter must notify the youth's parent or guardian or, in some circumstances child protective services and/or law enforcement, of the youth's admission to the shelter. As a result, a youth under 18 may be incentivized to stay on the streets of another unsafe environment rather than access area services. To help address this problem,

Texas enacted a state law allowing unaccompanied youth ages 16 and over to stay in a transitional living program without parental consent.<sup>467</sup>

State laws limit housing options other than shelters, as well. Statutes that prohibit harboring a runaway impose potential liability on any adult who provides a runaway minor with a place to stay, even if that place is safe and far superior to the child's family home and/or the streets.

Also, it is difficult for minors to access permanent housing on their own behalf, as they have no legal right to enter contracts. This makes a lease between a minor and a landlord unenforceable in many states. Oregon took steps to address this problem by enacting a law that allows youth age 16 and over to enter into binding leases and utility services agreements independently and without parental consent.

464 'THERE'S A BETTER WAY', HOPE WORKS, [HTTPS://WWW.HOPEWORKSNM.ORG/PROGRAMS-AND-SERVICES/THERES-A-BETTER-WAY/](https://www.hopeworksnm.org/programs-and-services/theres-a-better-way/)

465 [HTTPS://WWW.SYRACUSE.COM/NEWS/2019/05/PANHANDLERS-WOULD-RATHER-WORK-FOR-THEIR-MONEY-NEW-SYRACUSE-DAY-LABOR-EFFORT-FINDS.HTML](https://www.syracuse.com/news/2019/05/panhandlers-would-rather-work-for-their-money-new-syracuse-day-labor-effort-finds.html) (LAST VISITED Nov. 26, 2019).

466 TRUE COLORS FUND, STATE INDEX ON YOUTH HOMELESSNESS (2018), AVAILABLE AT [HTTPS://DRIVE.GOOGLE.COM/FILE/D/14hCgF6GwxF7At2kanWLuIcIE1NPN-Z5C/VIEW](https://drive.google.com/file/d/14hCgF6GwxF7At2kanWLuIcIE1NPN-Z5C/view).

467 TEXAS FAMILY CODE §32.203.

## GOVERNMENTS SHOULD PREVENT HOMELESSNESS BEFORE IT HAPPENS

Inflows into homelessness exceed the pace at which homeless people become rehoused. To end our homelessness crisis, we must prevent housing loss before it happens.

### *Enact “Just Cause” eviction protections and rent stabilization laws*

In many states, renters in privately owned rental housing may be evicted after their lease has expired, even if they are responsible tenants. No reason or “just cause” is needed before someone can be forced from their housing, usually upon as little as 30 days’ notice, which may not be enough time to find adequate alternative housing. These evictions without cause are particularly problematic in tight, expensive rental markets where landlords may displace existing tenants in favor of new renters who can afford higher rents. Just cause eviction laws, which limit the reasons by which renters may be legally evicted from their housing, are important for protecting renters’ security of tenure.

Just cause eviction protections are most effective when paired with rent stabilization policies which protect renters by limiting annual rent increases to a reasonable amount. In February 2019, the Oregon state legislature enacted Senate Bill 608—the first statewide just cause and rent stabilization law in the country. The bill limits rent increases to 7% each year, and it requires landlords to have good cause for evicting renters. California followed suit in October 2019 by enacting its own statewide rent control policy, Assembly Bill 1482, which limits rent increases to 5%, plus the local rate of inflation.

### *Prohibit discriminatory housing policies*

Housing discrimination creates barriers to housing access that contribute to and perpetuate homelessness. Denial of housing based on an individual’s criminal, eviction, or credit history is common, and is often a proxy for discriminating against poor people of color. It can also unfairly prevent people who were unjustly arrested or evicted from gaining access to housing through no fault of their own. States and local governments should enact laws that prohibit discrimination based upon an individual’s criminal, eviction,

or credit history that is unrelated to the individual’s future ability to abide by reasonable terms of tenancy.

Refusal to rent to people based upon their sources of income is a common and discriminatory housing practice that disproportionately harms elderly, disabled, and other vulnerable groups of people. Policies that reject recipients of social security, child support, federal income supports, or Section 8 housing vouchers, should be outlawed and enforced to ensure that discrimination based on legitimate sources of income do not unfairly deny housing access to poor people.

Denial of housing based on an individual’s criminal, eviction, or credit history is common, and is often a proxy for discriminating against poor people of color.

Criminal records—even for minor and/or non-violent offenses—can also bar someone from accessing rental housing under rental admission policies that exclude people on the basis of their criminal histories. Even when the tenant can demonstrate an ability to pay rent, they may be left without housing by virtue of their backgrounds. Matthew Charles, a man released from prison under the First Step Act as a result of advocacy by famous socialite and reality tv star, Kim Kardashian, encountered this problem when his application for a Tennessee apartment was denied—even though Kardashian offered to pay his first six months’ rent in advance.<sup>468</sup>

468 KAYLA EPSTEIN, *WHY THIS FORMER INMATE IS STRUGGLING TO RENT A HOME, EVEN WITH KIM KARDASHIAN’S HELP*, MERCURY NEWS (MAR. 19, 2019, 5:32 AM), [HTTPS://WWW.MERCURYNEWS.COM/2019/03/19/FORMER-INMATE-STRUGGLES-TO-RENT-HOME-EVEN-WITH-KIM-KARDASHIANS-HELP/](https://www.mercurynews.com/2019/03/19/former-inmate-struggles-to-rent-home-even-with-kim-kardashians-help/).

The City of Seattle has taken a constructive policy step by passing the Fair Chance Housing legislation.<sup>469</sup> The law, which went into effect in February 2018, prevents landlords from automatically or categorically denying applicants with criminal histories, including records of arrest and/or conviction. It is enforced by the Seattle Office for Civil Rights.

### Guarantee a right to counsel in housing cases

Access to counsel in cases involving housing rights is critical to addressing the homelessness crisis. Attorneys can help negotiate additional time to move out, secure the return of deposits and prepaid rents, and/or help renters to avoid default judgments against them. Moreover, counsel helps to even the power imbalance in housing courts where 90% of landlords are represented by counsel, but roughly the same percentage of tenants are not.

Yet, access to counsel is elusive for poor people as legal aid offices are unable to meet the need for services to defend against evictions. Although roughly one in five Americans

qualify for free legal assistance, most are turned away due to a lack of available resources. In addition, many millions more do not qualify for free services, yet they are still too poor to afford legal representation.

Laws that guarantee a right to counsel in eviction cases can address this gap in services, prevent unnecessary eviction, and also save taxpayer dollars. Mandatory legal representation for evictions has proven effective in New York City where 84% of tenants remain in their homes. Moreover, a study done on behalf of the New York City Bar Association's Pro Bono and Legal Services Committee found that providing free legal counsel to low-income tenants at risk of eviction would result in a net savings to the city of \$320 million each year.

To assist with right to counsel advocacy, the National Coalition for a Civil Right to Counsel and Washington Appleseed developed a manual for organizations wishing to create pilot projects that are designed to generate statistical data demonstrating the benefits – including cost savings – of providing a right to counsel.<sup>470</sup>



469 FAIR CHANCE HOUSING, SEATTLE.GOV, [HTTPS://WWW.SEATTLE.GOV/CIVILRIGHTS/CIVIL-RIGHTS/FAIR-HOUSING/FAIR-CHANCE-HOUSING](https://www.seattle.gov/civilrights/civil-rights/fair-housing/fair-chance-housing) (LAST VISITED NOV. 26, 2019).

470 WASHINGTON APPLESEED, DEVELOPING CIVIL RIGHT TO COUNSEL PILOT PROJECTS: A RESOURCE FOR DESIGNING AND IMPLEMENTING EFFECTIVE PROGRAMS (2012), [HTTP://CIVILRIGHTTOCOUNSEL.ORG/UPLOADED\\_FILES/117/DEVELOPING\\_CIVIL\\_RIGHT\\_TO\\_COUNSEL\\_PILOT\\_PROJECTS\\_\\_WA\\_APPLESEED\\_.PDF](http://civilrighttocounsel.org/uploaded_files/117/Developing_Civil_Right_to_Counsel_Pilot_Projects__WA_Appleseed_.pdf).



Over the past thirteen years, there has been a dramatic increase in criminalization laws, yet access to affordable housing grows ever more elusive.

Criminally and civilly punishing homeless people for engaging in life-sustaining activities in public space does not solve the underlying causes of homelessness, but rather exacerbates them by creating barriers to housing, employment, and services needed to escape life on the streets. Moreover, these laws waste precious and limited community resources by temporarily cycling homeless people through the costly criminal justice system to no effect – and at great taxpayer expense.

Instead of relying upon ineffective, expensive, and potentially illegal criminalization laws to address homelessness, communities should pursue constructive policy solutions that work to prevent and end homelessness. Most importantly, federal, state, and local governments should invest in affordable housing at the

level necessary to meet the human need, and eliminate barriers to housing access imposed by discriminatory housing practices.

We can end homelessness in America and, in doing so, improve the quality of life for everyone. This will not happen, however, as long as communities continue to rely upon misguided criminalization policies that punish people for being homeless, without offering real solutions to the problem.

# APPENDIX A

## 2019 Prohibited Conduct Chart

Location		Sleeping, Camping, Lying and Sitting, and Vehicle Restrictions						Loitering and Vagrancy		Begging		Food Sharing
State	City	Sleeping in public city-wide	Sleeping in particular public places	Camping in public city-wide	Camping in particular public places	Sitting/lying in particular public places	Lodging, living, or sleeping in vehicles (or parking a vehicle used as a lodging/living accommodation)	Loitering/Loafing/Vagrancy city-wide	Loitering/Loafing in particular public places	Begging in public places city-wide	Begging in particular public places	Food Sharing city-wide or in particular public places (i.e. bans)
Total number of surveyed cities with this type of ordinance		39	72	69	107	103	93	64	113	69	121	17
Percent of surveyed cities with this type of ordinance		21%	39%	37%	57%	55%	50%	34%	60%	37%	65%	9%
AK	Anchorage			x	x	x		x		x		
AK	Fairbanks			x								
AK	Juneau		x			x	x		x	x		
AL	Mobile						x	x	x		x	
AL	Montgomery		x		x		x	x	x			
AR	Fayetteville				x	x					x	
AR	Little Rock		x	x	x				x	x	x	
AR	North Little Rock									x		
AZ	Glendale	x		x			x		x			
AZ	Mesa		x		x	x	x		x	x	x	
AZ	Phoenix			x		x	x	x	x		x	
AZ	Scottsdale	x		x	x		x			x		

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AZ	Tempe		x	x		x	x			x	x	
AZ	Tucson		x		x	x					x	x
CA	Bakersfield	x		x	x		x		x	x	x	
CA	Berkeley		x		x	x			x			
CA	El Cajon	x	x	x	x	x	x	x			x	x
CA	Fresno			x	x	x			x		x	
CA	Long Beach		x	x	x		x		x		x	
CA	Los Angeles		x		x	x		x	x		x	
CA	Modesto			x	x	x	x		x		x	
CA	Oakland		x			x	x		x	x	x	
CA	Redondo Beach			x	x		x		x	x	x	
CA	Sacramento			x	x	x			x		x	
CA	San Bruno					x	x				x	
CA	San Diego				x	x	x	x				

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CA	San Francisco		X		X		X		X		X	
CA	San Jose				X	X	X		X		X	
CA	San Luis Obispo				X	X	X		X	X	X	
CA	Santa Barbara	X	X	X	X	X	X			X	X	
CA	Santa Cruz	X		X		X	X	X			X	
CA	South Lake Tahoe	X	X	X	X		X				X	
CA	Tracy		X	X	X		X		X		X	
CA	Ukiah				X				X		X	
CA	Union City					X	X	X	X		X	
CO	Boulder	X		X	X	X	X				X	
CO	Colorado Springs	X		X	X	X			X	X		
CO	Denver			X	X	X				X	X	
CO	Lakewood		X		X	X						
CT	Hartford							X			X	

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CT	New Haven		X		X	X		X			X	
CT	Norwalk				X			X			X	
CT	Stamford							X	X			
DC	Washington		X	X		X	X	X		X	X	
DE	Dover				X				X		X	
DE	Wilmington							X		X	X	
FL	Bradenton			X		X						
FL	Clearwater	X		X	X	X	X	X			X	
FL	Daytona Beach	X		X				X			X	
FL	Fort Lauderdale		X		X	X	X	X		X	X	
FL	Fort Myers		X		X		X		X		X	
FL	Gainesville				X	X	X			X	X	X
FL	Hallandale Beach	X	X	X	X		X				X	X
FL	Jacksonville		X		X	X	X				X	X

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FL	Key West	x		x	x	x	x				x	
FL	Lake Worth		x	x	x	x	x	x	x	x	x	
FL	Miami	x		x	x	x	x	x	x		x	
FL	Naples		x				x		x			
FL	Orlando	x	x	x	x	x		x				x
FL	Palm Bay		x		x				x	x	x	x
FL	Sarasota	x	x	x	x	x	x		x		x	
FL	St. Augustine	x		x			x		x	x	x	
FL	Tampa	x	x	x	x		x			x		x
GA	Albany	x		x		x		x		x		
GA	Athens	x	x		x			x		x		
GA	Atlanta	x		x	x	x	x		x	x		
GA	Augusta			x	x			x	x		x	
GA	Brunswick		x	x			x	x		x		

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GA	Columbus			X		X	X	X	X	X		
GA	Savannah						X		X	X		
GA	Statesboro							X	X	X		
GA	Stone Mountain	X				X	X	X	X			
GA	Washington							X				
HI	Honolulu		X		X	X			X		X	
HI	Maui County		X		X	X					X	
IA	Bettendorf				X	X					X	
IA	Cedar Rapids		X	X		X	X	X	X	X		
IA	Davenport		X		X		X	X			X	X
IA	Des Moines		X		X		X	X	X	X		
IA	Waterloo		X	X	X		X	X	X			
ID	Boise		X	X	X	X	X	X	X	X		
ID	Idaho Falls			X		X						

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ID	Pocatello								X		X	
IL	Chicago		X						X	X		
IL	Evanston		X				X		X		X	
IL	Woodstock										X	
IN	Bloomington				X						X	
IN	Indianapolis		X					X		X	X	X
IN	Jeffersonville							X		X		
IN	South Bend			X	X				X	X	X	
KS	Lawrence		X		X				X	X	X	
KS	Topeka		X				X		X			
KS	Wichita	X		X	X		X	X	X	X		
KY	Covington		X		X					X	X	X
KY	Lexington		X		X					X		
KY	Louisville	X		X			X				X	

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LA	Baton Rouge								X		X	
LA	Lafayette					X	X		X	X		
LA	New Orleans		X		X	X			X		X	
LA	Shreveport		X		X	X			X		X	
MA	Boston		X			X			X	X	X	
MA	Fall River		X		X				X			
MA	Worcester										X	
MD	Baltimore					X		X	X	X	X	X
MD	Elkton					X		X	X			
MD	Frederick	X		X	X			X	X	X		
ME	Augusta				X		X	X				
ME	Bangor				X		X	X			X	
ME	Portland					X	X	X	X		X	X
MI	Detroit						X	X	X	X	X	

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MI	Kalamazoo				X				X		X	
MI	Pontiac					X			X	X	X	
MN	Minneapolis			X	X	X	X	X	X		X	
MN	St. Paul				X	X	X	X	X	X	X	
MO	Kansas City			X		X	X	X	X		X	
MO	St. Louis					X		X	X		X	
MS	Biloxi					X	X	X	X			
MT	Billings						X	X			X	
NC	Asheville	X		X		X		X	X		X	
NC	Charlotte	X	X	X		X			X		X	
NC	Raleigh		X		X				X	X	X	
ND	Fargo										X	
ND	Grand Forks				X	X					X	
NE	Lincoln					X			X	X	X	

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NE	Omaha					X			X	X		
NH	Concord			X	X	X	X		X		X	
NH	Manchester	X	X		X	X	X		X		X	
NJ	Atlantic City	X	X			X	X		X		X	
NJ	Newark				X				X	X	X	
NJ	Trenton	X		X		X	X					
NM	Albuquerque				X	X	X		X		X	
NM	Santa Fe	X	X	X	X	X	X				X	
NV	Las Vegas		X		X	X	X				X	X
NV	North Las Vegas		X		X	X			X			
NV	Pahrump	X				X	X	X		X		
NV	Reno				X	X	X		X	X	X	
NY	Buffalo		X	X		X			X	X		
NY	New York				X	X	X		X	X	X	

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NY	Rochester		X		X				X		X	
OH	Cincinnati					X	X	X		X	X	
OH	Cleveland		X			X			X		X	
OH	Columbus				X	X	X		X		X	
OH	Dayton					X	X				X	X
OH	Toledo					X	X	X	X			
OK	Oklahoma City		X		X				X		X	
OK	Tulsa			X	X		X		X		X	
OR	Beaverton			X		X	X		X			
OR	Corvallis	X	X	X	X	X	X				X	
OR	Eugene	X	X	X		X			X			
OR	Portland	X	X	X	X	X			X			
PA	Allentown				X	X		X	X	X	X	
PA	Philadelphia				X	X		X	X	X		

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PA	Pittsburgh				X						X	
RI	Newport	X				X	X	X	X			
RI	Providence		X			X			X		X	
SC	Charleston				X		X	X	X	X	X	
SC	Columbia		X	X		X		X		X	X	
SD	Pierre		X	X		X	X			X		
SD	Rapid City		X		X	X			X			
SD	Sioux Falls					X			X		X	
TN	Memphis								X		X	
TN	Nashville										X	
TX	Amarillo			X	X	X			X		X	
TX	Austin		X	X	X				X		X	
TX	Corpus Christi				X				X		X	
TX	Dallas	X			X						X	X

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TX	El Paso		X		X				X	X		
TX	Fort Worth				X					X	X	
TX	Houston				X	X	X				X	X
TX	San Antonio			X	X	X	X		X	X	X	
UT	Salt Lake City				X	X	X	X	X			
VA	Norfolk		X	X			X	X			X	
VA	Richmond			X		X		X	X	X	X	
VA	Roanoke						X					
VA	Suffolk			X							X	
VA	Virginia Beach	X	X	X		X	X		X		X	
VT	Burlington				X			X	X		X	
VT	Montpelier									X		
WA	Olympia	X			X	X	X			X		
WA	Seattle				X	X	X			X		

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WA	Spokane		X		X	X				X		
WA	Woodinville				X		X		X			
WI	Eau Claire			X	X			X	X			
WI	Madison		X		X				X	X		
WI	Milwaukee								X		X	
WV	Charleston						X		X	X		
WY	Cheyenne						X	X				

Based on input from federal, state, and local representatives, service providers, and people experiencing homelessness, as well as relevant domestic and international laws, our initial findings revealed certain key principles and corresponding practices that appear to be important for successful interventions to end encampments in our communities. These principles and practices are excerpted from TENT CITY, USA: The Growth of America's Homeless Encampments and How Communities are Responding ([https://www.nlchp.org/Tent\\_City\\_USA\\_2017](https://www.nlchp.org/Tent_City_USA_2017)), which also includes numerous case studies of communities implementing these best practices. As a caution, we note that while incorporating interim encampments into a plan to end homelessness may provide homeless individuals with an improvement in their quality of life and reduce calls for criminalization, the community must also have a serious and funded long-term plan that ensures the availability of permanent, adequate, appropriate housing for all, so encampments do not become a permanent feature of our cities and towns.

## Encampment Principles and Practices

**Principle 1:** All people need safe, accessible, legal place to be, both at night and during the day, and a place to securely store belongings— until permanent housing is found.

- Determine the community's full need for housing and services, and then create a binding plan to ensure full access to supportive services and housing affordable for all community members so encampments are not a permanent feature of the community.
- Repeal or stop enforcing counterproductive municipal ordinances and state laws that criminalize sleeping, camping, and storage of belongings.

- Provide safe, accessible, and legal places to sleep and shelter, both day and night. Provide clear guidance on how to access these locations.
- Create storage facilities for persons experiencing homelessness, ensuring they are accessible—close to other services and transportation, do not require ID, and open beyond business hours.

**Principle 2:** Delivery of services must respect the experience, human dignity, and human rights of those receiving them.

- Be guided by frequent and meaningful consultation with the people living in encampments. Homeless people are the experts of their own condition.
- Respect autonomy and self-governance for encampment residents.
- Offer services in a way that is sensitive and appropriate with regard to race, ethnicity, culture, disability, gender identity, sexual orientation, and other characteristics. Use a trauma-informed approach.

**Principle 3:** Any move or removal of an encampment must follow clear procedures that protect residents.

Create clear procedures for ending homelessness for people living in pre-existing encampments, including:

- Make a commitment that encampments will not be removed unless all residents are first consulted and provided access to adequate alternative housing or—in emergency situations—another adequate place to stay.
- If there are pilot periods or required rotations of sanctioned encampments, ensure that residents have a clear legal place to go and assistance with the transition. Pilot periods or requiring rotation of legal encampments/parking areas on a periodic basis (e.g., annually or semi-annually) can help reduce local “not-in-my-back-yard” opposition, but shorter time periods hinder success.

- Provide sufficient notice to residents and healthcare/ social service workers to be able to determine housing needs and meet them (recommended minimum 30 days, but longer if needed).
- Assist with moving and storage to enable residents to retain their possessions as they transfer either to housing, shelter, or alternative encampments.

**Principle 4:** Where new temporary legalized encampments are used as part of a continuum of shelter and housing, ensure it is as close to possible to fully adequate housing.

- Establish clear end dates by which point adequate low-barrier housing or appropriate shelter will be available for all living in the legal encampments.
- Protect public health by providing access to water, personal hygiene (including bathrooms with hand washing capability), sanitation, and cooking services or access to SNAPs hot meals benefits.
- Provide easy access to convenient 24-hour transportation, particularly if services are not co-located.
- Statutes and ordinances facilitating partnerships with local businesses, religious organizations, or non-profits to sponsor, support or host encampments or safe overnight parking lots for persons living in their vehicles can help engage new resources and improve the success of encampments.
- Do not require other unsheltered people experiencing homelessness to reside in the encampments if the facilities do not meet their needs.

**Principle 5:** Adequate alternative housing must be a decent alternative.

- Ensure that emergency shelters are low-barrier, temporary respites for a few nights while homeless individuals are matched with appropriate permanent housing; they are not long-term alternatives to affordable housing and not appropriate in the short term for everyone. Low-barrier shelter includes the “3 P’s”—pets, possessions, and partners, as well as accessible to persons with disabilities or substance abuse problems.

- Adequate housing must be:
  - Safe, stable, and secure: a safe and private place to sleep and store belongings without fear of harassment or unplanned eviction;
  - Habitable: with services (electricity, hygiene, sanitation), protection from the elements and environmental hazards, and not overcrowded;
  - Affordable: housing costs should not force people to choose between paying rent and paying for other basic needs (food, health, etc.);
  - Accessible: physically (appropriate for residents’ physical and mental disabilities, close to/ transport to services and other opportunities) and practically (no discriminatory barriers, no compelling participation in or subjection to religion).

**Principle 6:** Law enforcement should serve and protect all members of the community.

- Law and policies criminalizing homelessness, including those criminalizing public sleeping, camping, sheltering, storing belongings, sitting, lying, vehicle dwelling, and panhandling should be repealed or stop being enforced.
- Law enforcement should serve and protect encampment residents at their request.
- Law enforcement officers—including dispatchers, police, sheriffs, park rangers, and private business improvement district security—should receive crisis intervention training and ideally be paired with fully-trained multi-disciplinary social service teams when interacting with homeless populations.

Beyond these specific recommendations, in order to create the long-term housing solutions communities needed to permanently end encampments, we also encourage individuals and organizations to look at the model policies of the Housing Not Handcuffs Campaign: [housingnothandcuffs.org](http://housingnothandcuffs.org).