

Criminalization of Homelessness

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Every day in America, people experiencing homelessness are threatened by law enforcement, ticketed, or even arrested for living in public spaces, even when they have no other alternatives. Millions of individuals, families, and youth on their own experience homelessness each year, and millions more lack access to decent, stable housing they can afford. Rather than providing adequate housing options, too many communities criminalize homelessness by making it illegal for people to sit, sleep, or even eat in public places, despite the absence of adequate alternatives. These laws and policies violate constitutional, civil, and human rights and create arrest records and fines and fees that stand in the way of homeless people getting jobs or housing. Yet these expensive policies are ineffective at addressing homelessness or reducing the number of people who must sleep on the streets. In fact, more effective policies, such as providing affordable housing and services can, in fact, cost less than criminalizing homelessness.

As a result of all of these issues, the federal government has taken increasingly strong actions to discourage and stop the criminalization of homelessness throughout the past few years, but more must be done to end criminalization at the local level and promote constructive alternatives.

HISTORY

From vagrancy laws and the workhouses of pre-industrial England to legal segregation, sundown towns, and anti-Okie laws in the U.S., ordinances regulating the use of public space have long been used to exclude marginalized persons based on race, national origin, or economic class. With the advent of modern homelessness in the 1980s, rather than addressing the underlying lack of affordable housing, communities faced with increasingly visible homelessness began attempting to push homeless persons out of

public view with laws criminalizing life-sustaining acts such as self-sheltering (“camping”), sleeping, resting, eating, or asking for donations. Other communities have used disparate enforcement of other ordinances, such as jaywalking or littering, to harass and push homeless persons out of certain spaces. These practices gained even more traction with the trend toward “broken windows” policing in the 1990s.

Over the course of the past 10 years, the National Law Center on Homelessness & Poverty has tracked these laws in 187 cities and found that bans on camping have increased by 69%, on sitting or lying by 51%, on loitering by 88%, on panhandling by 43%, and on living in vehicles by 143%. Meanwhile, a 1,300% growth of homeless encampments have been reported in all 50 states. Too often homeless residents experience forced evictions or “sweeps” of the encampments, usually with little notice and no provision of alternative housing, frequently resulting in the destruction of important documents, medicines, and what little shelter the residents have.

However, recent court victories have provided advocates with new opportunities to change the conversation. These include the 2018 victory in *Martin v. Boise* in the 9th Circuit, which held that in the absence of adequate alternatives, it is cruel and unusual punishment under the 8th Amendment to punish someone for life-sustaining activities like sleeping, resting, or sheltering oneself. This has already resulted a number of communities ceasing enforcement of anti-camping laws and setting up legal camping zones or shelters. Similarly, since the 2015 *Norton v. Springfield* decision in the 7th Circuit, no panhandling ordinance challenged in court has withstood constitutional scrutiny under the 1st Amendment, and dozens of cities have repealed their ordinances.

ISSUE SUMMARY

The growing affordable housing gap and shrinking social safety net have left millions of

people homeless or at-risk, and most American cities have fewer emergency shelter beds than people who need shelter. Despite this lack of affordable housing and shelter space, many cities have chosen to criminally or civilly punish people living on the street for doing what any human being must do to survive, like sleeping, resting, and eating—activities we all do every day and take for granted. Communities of color; mentally and physically disabled persons; and lesbian, gay, bisexual, transgender, and queer/questioning youth and adults, who are already disproportionately affected by homelessness, are most likely to be further marginalized by criminalization.

Criminalization policies are ineffective and, in fact, make homelessness harder to exit. Because people experiencing homelessness are not on the street by choice but because they lack choices, criminal and civil punishment serves no constructive purpose. Instead, arrests, unaffordable tickets, and the collateral consequences of criminal convictions make it more difficult for people to exit homelessness and get back on their feet. Criminalization of homelessness might mean that individuals experiencing homelessness are taken to jail, where they may remain for weeks if they cannot pay their bail or fines, perhaps losing custody of their children, property and/or employment in the process. Once released, they could have criminal records that make it more difficult to get or keep a job, housing, or public benefits. Moreover, fines and court fees associated with resolving a criminalization case can amount to hundreds, or even thousands, of dollars. Without the resources to pay, homeless people may be subject to additional jail time.

Criminalization is the most expensive and least effective way of addressing homelessness and wastes scarce public resources on policies that do not work. [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 in the long run. Indeed,

the provision of housing using a Housing First model, which focuses on providing people with quick, low-barrier access to housing followed by any needed services to maintain housing stability, is cheaper and more effective than all other strategies for addressing homelessness. For example, a [study](#) in Charlotte, NC, found that the city saved \$2.4 million over the course of a year after creating a Housing First facility, as tenants spent 1,050 fewer nights in jail and 292 fewer days in the hospital, and had 648 fewer visits to emergency rooms. With state and local budgets stretched to their limit and the threat of additional federal cuts on the horizon, rational, cost-effective policies are needed, not ineffective measures that waste precious taxpayer dollars.

PROGRAM SUMMARIES

In response to the growing cost data and advocacy at the [international](#) and domestic levels, many federal agencies have taken an increasingly strong stance against criminalization of homelessness.

U.S. Interagency Council on Homelessness

In 2009, Congress passed the “Homeless Emergency Assistance and Rapid Transition to Housing Act,” directing the U.S. Interagency Council on Homelessness (USICH) to prepare a report on criminalization and constructive alternatives. In 2012, the USICH issued this report, *Searching out Solutions: Constructive Alternatives to the Criminalization of Homelessness*. *Searching Out Solutions* was groundbreaking in stating that in addition to raising constitutional issues, criminalization of homelessness may violate international human rights law, the first time a domestic agency has labelled domestic practice as such. In 2015, the USICH issued guidance on *Ending Homelessness for Persons Living in Encampments*, providing a checklist of steps for communities to constructively address homeless encampments without criminalization, and added several [case studies](#) of positive practices in 2017. USICH is currently coordinating an inter-agency working group around law enforcement interactions with people experiencing homelessness.

U.S. Department of Justice

In 2015, DOJ filed a [statement of interest brief](#) stating that “Criminally prosecuting those individuals for something as innocent as sleeping, when they have no safe, legal place to go, violates their constitutional rights.” DOJ’s Office of Community Oriented Policing Services dedicated its December 2015 newsletter to reducing criminalization, [stating](#), “Arresting people for performing basic life-sustaining activities like sleeping in public takes law enforcement professionals away from what they are trained to do: fight crime.” DOJ also issued a [letter](#) on the impact of excessive fines and fees for poor persons that also is useful in addressing criminalization practices. DOJ’s Office for Access to Justice [commented](#) on a proposed ordinance in Seattle that would create constructive procedures for dealing with homeless encampments.

U.S. Department of Housing & Urban Development

In 2015, HUD [inserted](#) a new question into its application for the \$2 billion Continuum of Care (CoC) funding stream, giving local governments and providers’ higher scores, and potentially increased funding, if they demonstrate that they are preventing the criminalization of homelessness. In 2016, this question was [updated with increased points](#) and more specific steps CoCs could take, which have remained in subsequent years. Additionally, HUD officials have repeatedly stated to communities, including those engaged in the [Mayor’s Challenge to End Veteran Homelessness](#), that achieving the goals of the challenge will be difficult or impossible if they continue to engage in criminalization practices.

U.S. Department of Education

In 2016, ED issued [guidance on homeless students](#), reminding school personnel that they have to work outside the school building to remove barriers to homeless students’ success in school, including working with state legislatures and local governments to address the criminalization of homelessness.

White House

In 2016, the White House created the [Data-Driven Justice Initiative](#). The initiative is now working with more than 160 counties, states, and cities to use data to divert persons with mental illness and/or substance abuse issues—who frequently encounter the criminal justice or emergency healthcare systems (often those facing chronic homelessness)—into housing and services. This initiative has been transitioned to the [National Association of Counties](#) with the new Administration.

FORECAST FOR 2019

Thanks to the new federal tools, court victories, and continually emerging cost data, there is hope that in 2019 advocates will be able to continue the momentum against the criminalization of homelessness by changing policies and practices at the local, county, and state levels. At the federal level, the priority will be to maintain past gains and to look for strategic ways to move forward. Issues to watch for include proposals in Congress to cut non-defense spending (which could increase homelessness and undermine other efforts for constructive alternatives) or any proposals to limit or de-fund offices that promote and protect the civil rights of people experiencing homelessness. Additionally, advocates should look for opportunities to include requirements for non-criminalization. For example, an infrastructure funding bill could require applicants to certify that any homeless persons living under bridges displaced by the project would receive alternative housing (and perhaps even make that an included authorized expense for the funds). In order to build on existing gains and address the urgent need, hundreds of national and local organizations, including the Law Center and NLIHC, launched the [Housing Not Handcuffs](#) Campaign in late 2016 to fight against criminalization and for adequate housing for all. It will not be an easy struggle, but it is more important than ever and within our sights if we work together.

WHAT TO SAY TO LEGISLATORS

The Housing Not Handcuffs Campaign has developed Model Policies for local, state, and federal governments that emphasize 1) shortening homelessness by stopping its criminalization, 2) preventing homelessness by strengthening housing protections and eliminating unjust evictions, and 3) ending homelessness by increasing access to and availability of affordable housing. The Campaign also has model one-pagers and *Six Ideas for Talking About Housing Not Handcuffs* that may be useful in framing conversations with legislators, including a sample script:

Value: Together, we have the opportunity—and responsibility—to do better for the worst off amongst us. Everyone can agree that it does not make any sense to arrest people for being homeless. And we can also all agree that we don't want to see people sleeping on the sidewalks.

Problem: But instead of solving homelessness, we have expensive policies that make it worse. Unfortunately, too many places in this country are ignoring data/common sense and are using handcuffs rather than housing to address homelessness. But when anyone experiencing homelessness faces criminal punishment for simply trying to survive on the streets, these criminal records only make it more difficult to hold a job and regain housing. Not only do these policies make homelessness harder to solve, they also cost MORE taxpayer dollars than the policies that actually work.

Solution: But there is a better way. We've seen in city after city that where they change their laws and policies to reduce their reliance on law enforcement and instead invest in affordable, supportive housing, it gets homeless people off the streets far more effectively, and, as it turns out, far more cheaply than endlessly cycling people through courts, jails, and back onto the streets. Because housing provides the stability needed for people to take advantage of other programs and to get back on their feet.

Action: If you want to see an end to homelessness in your community, join our

campaign for Housing Not Handcuffs, learn more about the best practices that are working around the country, and call for an end to criminalization and more support for housing so we can all enjoy a community where no one has to sleep on the streets or beg for their daily needs.

Recent court victories also provide an opportunity for local elected officials to shift some political pressure from themselves to the courts. When constituents come to them complaining of visible homelessness, they can now say “look, the courts have told us we can't just criminalize people living on the streets, but if you work with me, we can find creative solutions that will be a win-win for everyone.”

FOR MORE INFORMATION

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Housing Not Handcuffs Campaign,
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