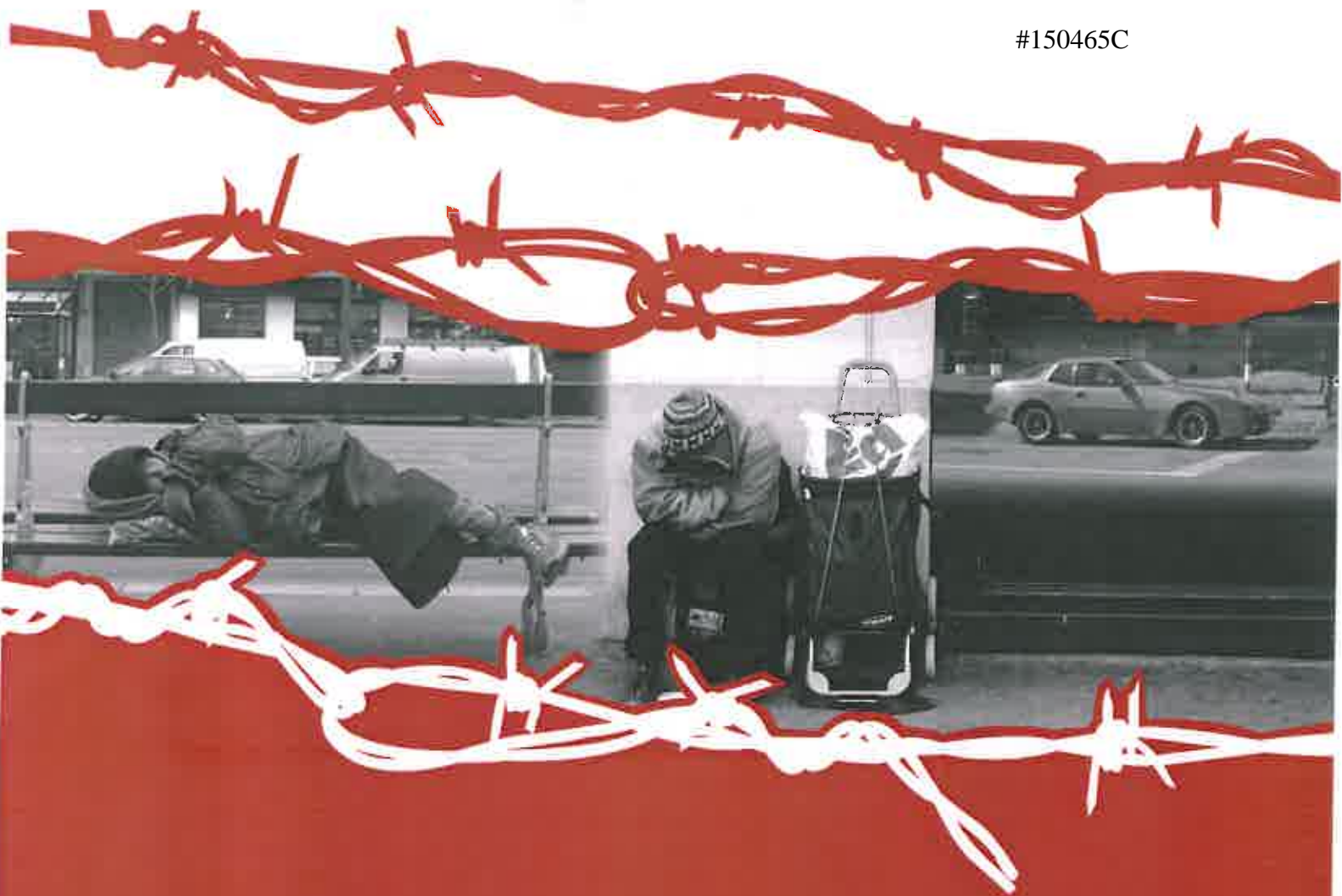


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NO SAFE PLACE

The Criminalization of Homelessness in U.S. Cities

A Report by the National Law Center on Homelessness & Poverty

ABOUT THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

The National Law Center on Homelessness & Poverty is committed to solutions that address the causes of homelessness, not just the symptoms, and works to place and address homelessness in the larger context of poverty.

To this end, we employ three main strategies: impact litigation, policy advocacy, and public education. We are a persistent voice on behalf of homeless Americans, speaking effectively to federal, state, and local policy makers. We also produce investigative reports and provide legal and policy support to local organizations.

For more information about the Law Center and to access publications such as this report, please visit our website at www.nlchp.org.

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ACKNOWLEDGMENTS

The Law Center thanks Tristia Bauman (primary author), Jeremy Rosen, Eric Tars, Maria Foscarinis, Janelle Fernandez, Christian Robin, Eugene Sowa, Michael Maskin, Cheryl Cortemeglia, and Hannah Nicholes for their contributions to this report.

Special thanks to the law firms Manatt Phelps & Phillips LLP and Latham & Watkins LLP for their pro bono support and assistance in creating the Prohibited Conduct Chart.

We are grateful to the funders whose support enables us to carry out our critical work, including Ford Foundation, Bank of America Foundation, Deer Creek Foundation, Oakwood Foundation, The Sunrise Initiative, and W.K. Kellogg Foundation.

We thank the 2014 members of our Lawyers Executive Advisory partners (LEAP) program for their generous support of our organization: Akin Gump Strauss Hauer & Feld LLP; Covington & Burling LLP; Dechert LLP; DLA Piper; Fried, Frank, Harris, Shriver & Jacobson LLP; Hogan Lovells US LLP; Katten Muchin Rosenman LLP; Latham & Watkins LLP; Manatt, Phelps & Phillips, LLP; Microsoft Corporation; Schulte Roth & Zabel LLP; Sidley Austin LLP; Simpson Thacher & Bartlett LLP; Sullivan & Cromwell LLP; and WilmerHale.

The Law Center would also like to thank Megan Godbey for the report design.

The Law Center is solely responsible for the views expressed in this report.

TABLE OF CONTENTS

7	EXECUTIVE SUMMARY
12	INTRODUCTION
12	Homelessness is an Ongoing Crisis
14	A Lack of Affordable Housing Causes Homelessness
14	There Are Fewer Shelter Beds Than Homeless People in Many American Cities
16	THE CRIMINALIZATION OF HOMELESSNESS
16	Criminalization Causes Homeless People to Suffer
16	The Criminalization of Homelessness in Increasing
18	Camping in Public
19	Sleeping in Public
20	Begging in Public
21	Loitering, Loafing, and Vagrancy Laws
22	Sitting or Lying Down in Public
22	Living in Vehicles
24	Food Sharing
26	Storing Personal Belongings in Public
27	Criminalization Laws Violate International Human Rights Law
30	CRIMINALIZATION LAWS HARM THE ENTIRE COMMUNITY
30	Criminalization Laws Are Expensive to Taxpayers
32	Criminalization Laws Do Not Work to End Homelessness
32	Employment
33	Housing
33	Public Benefits
33	Access to Justice
35	THERE ARE CONSTRUCTIVE ALTERNATIVES TO CRIMINALIZATION
35	Governments Should Invest in More Affordable Housing
35	Increase the Stock and Availability of Federally Subsidized Housing
35	National Housing Trust Fund
36	Local Governments Must Dedicate Resources to Ending Homelessness
36	Local Governments Should Adopt Innovative Solutions to Create New Affordable Housing

- 37 Communities Should Adopt a Housing First Model
- 38 Communities Should Coordinate to Improve Efficient and Effective Service Delivery
- 38 Communities Should Improve Police Training and Practices
- 39 Communities Should Use Public Libraries to Help Homeless People
- 39 Communities Should Improve Transition Planning for Homeless People Being Released from Jails and Hospitals
 - 40 Discharge from Jails
 - 40 Discharge from Hospitals
- 40 States Should Enact Homeless Bill of Rights Legislation
- 41 International Examples of Constructive Alternatives
 - 41 South Africa
 - 42 Scotland
- 43 **THERE IS MORE TO BE DONE**
- 43 Federal Responsibility to Combat the Criminalization of Homelessness
- 43 Recommendations to the U.S. Department of Housing and Urban Development (“HUD”)
- 43 Recommendations to the U.S. Department of Justice (“DOJ”)
- 43 Recommendations to the U.S. Interagency Council on Homelessness (“USICH”)
- 43 Recommendations to the Federal Housing Finance Administration (“FHFA”)
- 43 Recommendations to the U.S. Congress
- 43 Recommendations to State Governments
- 44 Recommendations to Local Governments
- 45 **CONCLUSION**
- 46 **APPENDIX**
 - 47 Prohibited Conduct Chart

EXECUTIVE SUMMARY

Imagine a world where it is illegal to sit down. Could you survive if there were no place you were allowed to fall asleep, to store your belongings, or to stand still? For most of us, these scenarios seem unrealistic to the point of being ludicrous. But, for homeless people across America, these circumstances are an ordinary part of daily life.

Homelessness continues to be a national crisis, affecting millions of people each year, including a rising number of families. Homeless people, like all people, must engage in activities such as sleeping or sitting down in order to survive. Yet, in communities across the nation, these harmless, unavoidable behaviors are treated as criminal activity under laws that criminalize homelessness.

This report provides an overview of criminalization measures in effect across the nation and looks at trends in the criminalization of homelessness, based on an analysis of the laws in 187 cities that the Law Center has tracked since 2009. The report further describes why these laws are ineffective in addressing the underlying causes of homelessness, how they are expensive to taxpayers, and how they often violate homeless persons' constitutional and human rights. Finally, we offer constructive alternatives to criminalization, making recommendations to federal, state, and local governments on how to best address the problem of visible homelessness in a sensible, humane, and legal way.

Key Finding: Homeless People are Criminally Punished for Being in Public Even When They Have No Other Alternatives

Homelessness is caused by a severe shortage of affordable housing. Over 12.8% of the nation's supply of low income housing has been permanently lost since 2001, resulting in large part, from a decrease in funding for federally subsidized housing since the 1970s. The shortage of affordable housing is particularly difficult for extremely low-income renters who, in the wake of the foreclosure crisis, are competing for fewer and fewer affordable units.

In many American cities there are fewer emergency shelter beds than homeless people. There are fewer available shelter beds than homeless people in major cities across the nation. In some places, the gap

between available space and human need is significant, leaving hundreds or, in some cases, thousands of people with no choice but to struggle for survival in outdoor, public places.

Despite a lack of affordable housing and shelter space, many cities have chosen to criminally punish people living on the street for doing what any human being must do to survive. The Law Center surveyed 187 cities and assessed the number and type of municipal codes that criminalize the life-sustaining behaviors of homeless people. The results of our research show that the criminalization of necessary human activities is all too common in cities across the country.

Prevalence of laws that criminalize homelessness:

- **Laws prohibiting "camping"¹ in public**
 - 34% of cities impose city-wide bans on camping in public.
 - 57% of cities prohibit camping in particular public places.
- **Laws prohibiting sleeping in public**
 - 18% of cities impose city-wide bans on sleeping in public.
 - 27% of cities prohibit sleeping in particular public places, such as in public parks.

¹ Laws that criminalize camping in public are written broadly to include an array of living arrangements, including simply sleeping outdoors. See, e.g., Orlando, Fla., Code of the City of Orlando, Fla., tit. II, ch. 43, § 43.52(1)(b) (1999), https://library.municode.com/HTML/13349/level2/TITIIICICO_CH43MIOF.html#TITIIICICO_CH43MIOF_S43.52CAPREX ("For the purposes of this section, 'camping' is defined [in part] as . . . [s]leeping out-of-doors.").

- **Laws prohibiting begging in public**
 - 24% of cities impose city-wide bans on begging in public.
 - 76% of cities prohibit begging in particular public places.
- **Laws prohibiting loitering, loafing, and vagrancy**
 - 33% of cities make it illegal to loiter in public throughout an entire city.
 - 65% of cities prohibit the activity in particular public places.
- **Laws prohibiting sitting or lying down in public**
 - 53% of cities prohibit sitting or lying down in particular public places.
- **Laws prohibiting sleeping in vehicles**
 - 43% of cities prohibit sleeping in vehicles.
- **Laws prohibiting food sharing**
 - 9% of cities prohibit sharing food with homeless people.

Examples of cities with bad criminalization policies:

- **Clearwater, Florida.** Although 2013 data from the local Continuum of Care reveals that nearly 42% of homeless people in the area are without access to affordable housing and emergency shelter, the City of Clearwater criminalizes camping in public, sitting or lying down in public, begging in public, and sleeping in vehicles.
- **Santa Cruz, California.** A whopping 83% of homeless people in the Santa Cruz area are without housing or shelter options, yet the city criminalizes camping in public, sitting or lying down on public sidewalks, and sleeping in vehicles.
- **Manchester, New Hampshire.** 12% of homeless people in the City of Manchester are without housing or shelter options, yet the city criminalizes sleeping, lying down, sitting down, and camping in parks and other public places throughout the city.
- **Virginia Beach, Virginia.** Approximately 19% of homeless people in Virginia Beach have no option

but to perform all of their daily functions outside due to a lack of access to housing and shelter, yet the City of Virginia Beach makes it illegal to sit, lie down, beg, or sleep in vehicles anywhere within the city.

- **Colorado Springs, Colorado.** 13% of homeless people in the Colorado Springs area are without housing or shelter options, yet the city criminalizes sleeping in public, camping in public, and begging.
- **El Cajon, California.** Nearly 52% of homeless people in the El Cajon area are without access to shelter, yet El Cajon restricts or bans sleeping in public, camping in public, begging in public, and sleeping in vehicles.
- **Orlando, Florida.** 34% of homeless people in the Orlando area are without shelter beds, yet the city restricts or prohibits camping, sleeping, begging, and food sharing.

Key Finding: The Criminalization of Homelessness is Increasing Across the Country

There has been an increase in laws criminalizing homelessness since our last report in 2011. While the increase is seen for nearly every surveyed category of criminalization law, the most dramatic uptick has been in city-wide bans on fundamental human activities. This increase in city-wide bans shows that the nature of criminalization is changing and that cities are moving toward prohibiting unavoidable, life sustaining activities throughout entire communities rather than in specific areas, effectively criminalizing a homeless person's very existence.

Change in Criminalization Laws since 2011:

- **Camping in Public**
 - City-wide bans on camping in public have increased by 60%.
 - Bans on camping in particular public places have increased by 16%.
- **Sleeping in Public**
 - City-wide bans on sleeping in public have not changed since 2011.
 - Bans on sleeping in particular public places have decreased by 34%.

- **Begging in Public**
 - City-wide bans on begging in public have increased by 25%.
 - Bans on begging in particular public places have increased 20%.
- **Loitering, Loafing, or Vagrancy Laws**
 - City-wide bans on loitering, loafing, and vagrancy have increased by 35%.
 - Bans on sitting or lying down in particular places have decreased by 3%.
- **Sitting or Lying Down in Public**
 - City-wide bans on sitting or lying down in particular public places have increased by 43%.
- **Sleeping in Vehicles**
 - Bans on sleeping in vehicles have increased by 119%.

Key Conclusion: Criminalization Laws Violate the Civil and Human Rights of Homeless People

Criminalization laws raise important constitutional concerns, and courts across the country have found that many such laws violate the rights of homeless people. Courts have invalidated or enjoined enforcement of criminalization laws on the grounds that they violate constitutional protections such as the right to freedom of speech under the First Amendment, freedom from cruel and unusual punishment under the Eighth Amendment, and the right to due process of law guaranteed by the Fourteenth Amendment.

Moreover, the criminalization of homelessness violates international human rights treaties to which the U.S. is a party. In March, the U.N. Human Rights Committee, reviewing U.S. compliance under the International Covenant on Civil and Political Rights, found that the criminalization of homelessness in the U.S. violated the treaty.

Key Conclusion: Criminalization Laws Are Costly to Taxpayers

Criminalization is the most expensive and least effective way of addressing homelessness. 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 housing is the most affordable option. With state and local budgets stretched to their limit, rational, cost-effective policies are needed – not ineffective measures that waste precious taxpayer dollars.

Examples of Cost Savings Studies:

- In its 2013 Comprehensive Report on Homelessness, the Utah Housing and Community Development Division reported that the annual cost of emergency room visits and jail stays for an average homeless person was \$16,670, while providing an apartment and a social worker cost only \$11,000.
- A 2013 analysis by the University of New Mexico Institute for Social Research of the Heading Home Initiative in Albuquerque, New Mexico showed that, by providing housing, the city reduced spending on homelessness-related jail costs by 64%.
- A 2014 economic-impact analysis by Creative Housing Solutions evaluating the cost of homelessness in Central Florida found that providing chronically homeless people with permanent housing and case managers would save taxpayers \$149 million in reduced law enforcement and medical care costs over the next decade.

Key Conclusion: Criminalization Laws Are Ineffective

Criminalization measures do nothing to address the underlying causes of homelessness and, instead, only worsen the problem. Misusing police power to arrest homeless people is only a temporary intervention, as most people are arrested and incarcerated for short periods of time. Ultimately, arrested homeless people return to their communities, still with nowhere to live and now laden with financial obligations, such as court fees, that they cannot pay. Moreover, criminal convictions – even for minor crimes – can create barriers to obtaining critical public benefits, employment, or housing, thus making homelessness more difficult to escape.

Key Recommendation: Criminalization Laws Should Be Replaced with Constructive Solutions to Ending Homelessness

Criminalization is not the answer to meeting the needs of cities that are concerned about homelessness. There are sensible, cost-effective, and humane solutions to homelessness, which a number of cities have pursued.

The following examples represent important steps in the right direction, and these practices should be widely replicated. It is important to note, however, that the best and most enduring solution to ending homelessness is increased investment in affordable housing. Without additional investment in housing at the level needed to end current and prevent future homelessness, even the best models will be unable to solve the problem.

Examples of constructive alternatives to criminalization:

- **Miami-Dade County, Florida.** Miami-Dade County has dedicated funding for homeless services through its Homeless and Domestic Violence Tax. The 1% tax is collected 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 was created in 1993 by the Board of County Commissioners to implement the local continuum of care plan and to monitor agencies contracted with by the County to provide housing and services for homeless people.
- **Salt Lake City, Utah.** The State of Utah has reduced chronic homelessness by an impressive 74% since Utah's State Homeless Coordinating Committee adopted its 10 Year Plan to End Chronic Homelessness in 2005. The plan utilizes a highly successful Housing First model that, among other things, sets aside hundreds of permanent supportive housing units, primarily in the Salt Lake City area. The model also creates a streamlined process for assessing a homeless person's need and eligibility for existing housing opportunities in a timely manner, reducing the amount of time one must wait for the services he or she needs.
- **Houston, Texas.** In January of 2011, the Houston Police Department launched its Homeless Outreach Team with the mission of helping chronically homeless people obtain housing. The team, comprised of police officers and a mental health professional, collaborates with area service providers to help homeless people access available resources in the community rather than simply cycling them through the criminal justice system.

Policy Recommendations

- **The federal government should invest in affordable housing at the scale necessary to end and prevent homelessness.**
 - The federal government should fund the National Housing Trust Fund ("NHTF"). To achieve this, the Federal Housing Finance Administration ("FHFA") should immediately release profits from Fannie Mae and Freddie Mac to the NHTF that have instead been given to the US Treasury. In addition, Congress should pass housing finance reform legislation that would provide at least \$3.5 billion per year for the NHTF.
 - Congress should provide renewal funding for all Section 8 vouchers currently in use and provide additional vouchers to assist homeless individuals and families, domestic violence survivors, and people with disabilities.
- **The federal government should play a leadership role in combatting the criminalization of homelessness by local governments and promote constructive alternatives.**
 - HUD should ensure that fewer McKinney-Vento homeless assistance grant dollars go to communities that criminalize homelessness. HUD should better structure its funding by including specific questions about criminalization in the annual Notice of Funding Availability, and by giving points to applicants who create constructive alternatives to homelessness while subtracting points from applicants who continue to criminalize homelessness.
 - The Department of Justice ("DOJ") should ensure that its community policing grants are not funding criminalization practices. In addition, DOJ should write its guidance documents to actively discourage criminalization, and it should take a more active role in investigating police departments that violate the civil rights of homeless people.

- USICH should publicly oppose specific local criminalization measures, as well as inform local governments of their obligations to respect the civil and human rights of homeless persons.

- **State governments should enact and enforce Homeless Bill of Rights legislation that explicitly prohibits the criminalization of homelessness.** These laws should be written to ensure that homeless people are granted the right to engage in basic, life-sustaining activities without being subject to harassment, discrimination, or criminal punishment.

- **Local governments should stop criminalizing homelessness.**

- Local governments should stop passing laws that criminalize homelessness. In addition, local governments should immediately cease enforcing existing criminalization laws and take steps to repeal them.
- Local governments should dedicate sources of funding to increase the availability of affordable housing, but continue to fund needed homeless services, such as emergency shelter, while there is not enough housing for all those who need it.
- Local governments should pursue sensible and cost-effective constructive alternatives to criminalization such as improving coordination of existing services and improving police training and practices related to homelessness.

INTRODUCTION

There are some activities so fundamental to human existence that it defies common sense that they might be treated as crimes. Falling asleep, standing still, and sitting down, are all necessary actions for any human being's survival. While these activities are unquestionably legal when performed indoors, more and more communities across the country are treating these life-sustaining behaviors as criminal acts when performed in public places by people with nowhere else to go.

Nationwide, homeless people are targeted, arrested, and jailed under laws that criminalize homelessness by making illegal those basic acts that are necessary for life. These laws, designed to move visibly homeless people out of commercial and tourist districts or, increasingly, out of entire cities, are often justified as necessary public health and public safety measures. The evidence shows, however, that these laws are ineffective, expensive, and often violate homeless persons' civil and human rights.

This report, the Law Center's eleventh such publication on the criminalization of homelessness,² discusses trends in laws criminalizing homelessness since our last report in 2011 and describes why these laws harm both individuals and communities. This report also sets forth constructive alternatives to criminalization and makes policy recommendations that will guide federal,

state, and local governments to solutions for ending homelessness.

Homelessness is an Ongoing National Crisis

Homelessness remains a national crisis. While the U.S. Department of Housing & Urban Development ("HUD") 2013 Point-in-Time count reported that 610,042 people were homeless on a given night in 2013,³ this count does not adequately capture the full picture of homelessness. The Point-in-Time count looks at people who are in shelters, transitional housing, or in observable public places on a single night. Not included, however, are people who are doubled up⁴ or couch surfing because they cannot afford their own places to live. Also excluded from the count are people in hospitals, mental health or substance abuse centers, jails or prisons with nowhere to go upon release.⁵ This, along with problems related to the execution of the count,⁶ result in an underreporting of the problem of homelessness.

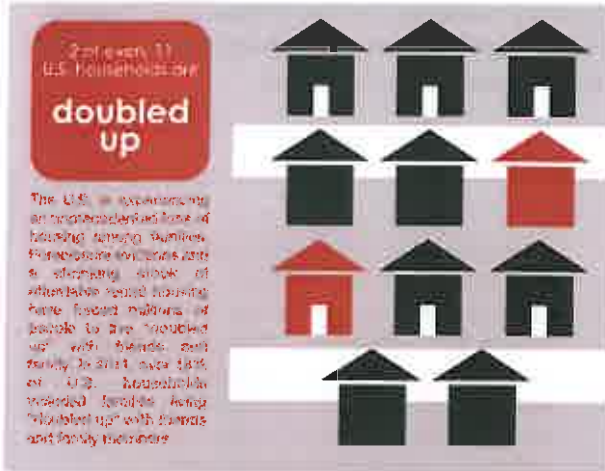
2 NLCHP, *Go Directly to Jail: A report analyzing local anti-homeless ordinances (1991) (nine cities); The Right to Remain Nowhere: A report on anti-homeless laws and litigation in 16 U.S. cities (1993); No Homeless People Allowed: A report on anti-homeless laws, litigation and alternatives in 49 U.S. cities (1994); Mean Sweeps: A report on anti-homeless laws, litigation and alternatives in 50 U.S. cities (1996); Out of Sight, Out of Mind: A report on anti-homeless laws, litigation and alternatives in 50 U.S. Cities; National Coalition for the Homeless (NCH) and National Law Center on Homelessness & Poverty (NLCHP), *Illegal to Be Homeless: The criminalization of homelessness in the U.S. (2002); Punishing Poverty: The Criminalization of Homelessness, Litigation, and Recommendations for Solutions (2003); NCH and NLCHP, A Dream Denied: The Criminalization of Homelessness in U.S. Cities (2006); National Coalition for the Homeless (NCH) and National Law Center on Homelessness & Poverty (NLCHP), *Illegal to Be Homeless: The Criminalization of Homelessness in the United States (2002); NCH and NLCHP, A Dream Denied: The Criminalization of Homelessness in U.S. Cities (2006); NLCHP and NCH, Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities (2009); NLCHP, Criminalizing Crisis: The Criminalization of Homelessness In U.S. Cities (2011).***

3 Office of Cmty. Planning & Dev., U.S. Dep't of Hous. & Urban Dev., *The 2013 Annual Homeless Assessment Report to Congress Part I: Point-in-Time Estimates of Homelessness 1 (2013)*, available at <https://www.onecpd.info/resources/documents/AHAR-2013-Part1.pdf>

4 Homeless Research Inst., Nat'l Alliance to End Homelessness, *The State of Homelessness in America 2013*, at 26 (2013) [herein after *State of Homelessness in America*], available at http://b3cdn.net/naeh/bb34a7e4cd84ee985c_3vm6r7cjh.pdf.

5 Maria Foscarinis, *Homeless Problem Bigger Than Our Leaders Think*, USA Today (Jan. 16, 2014), <http://www.usatoday.com/story/opinion/2014/01/16/homeless-problem-obama-america-recession-column/4539917/>

6 *See id.* ("The problem isn't just the count's narrow scope; its methods are flawed... HUD sets the guidelines, but communities have discretion in how they count. A few use sophisticated statistical methods. Most simply organize volunteers to fan out and make judgments about who is homeless, avoiding locations where they feel unsafe. How even the best prepared volunteers can cover large expanses in a few hours is anyone's guess.")



People in families comprised 56% of the sheltered homeless population nationwide in 2012, an increase of 4% from 2011.



U.S. Department of Housing and Urban Development, The 2012 Annual Homeless Assessment Report to Congress Volume II: Estimates of Homelessness in the United States, at 3-7, available at <https://www.onecpd.info/resources/documents/2012-AHAR-Volume-2.pdf>

Data on homelessness from other sources suggests that the problem is much larger – particularly among children and families. Family homelessness has been on the rise since the inception of the foreclosure crisis in 2007.⁷ The U.S. States Conference of Mayors found that family homelessness increased an average of 4% between 2012 and 2013 in its survey of 25 major American cities.⁸ In some areas of the country, the numbers are even higher.⁹

The impact of homelessness is felt particularly sharply among young children. Over 1.6 million children, or one in every 45, were found to be homeless every year – an increase of 38% from 2007 to 2010.¹⁰ More recent data shows that the problem continues to grow. From 2011 to 2012, the number of unaccompanied children in shelter increased by 28%.¹¹ And the U.S. Department of Education reported that America’s public schools served over 1.1 million homeless children and youth during the 2011-2012 academic year. This number represents an increase of 10% over the previous year and the highest number on record.¹²

7 See Nat'l Law Ctr. on Homelessness & Poverty, *Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities* 25 (2011) [hereinafter *Criminalizing Crisis*], available at http://nlchp.org/documents/Criminalizing_Crisis ("However, the percentage of family homelessness has been on the rise, family homelessness increased from 131,000 families in 2007 to 170,000 families in 2009, a 20 percent increase.").

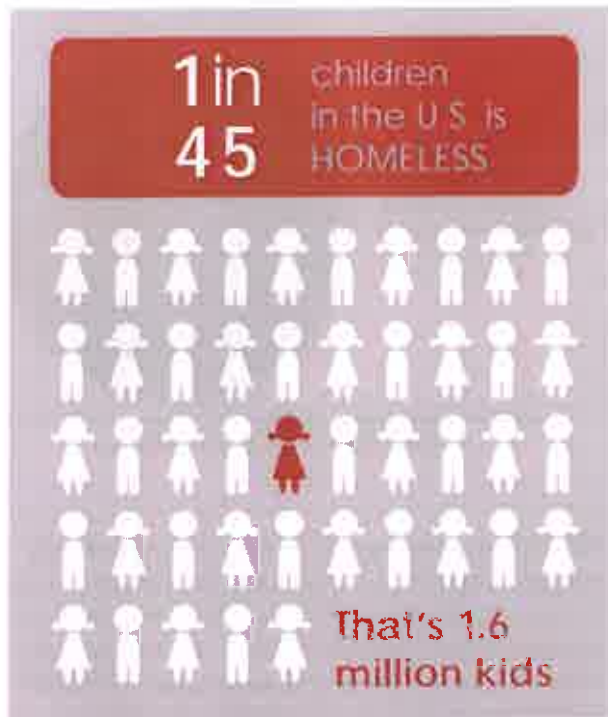
8 U.S. Conference of Mayors, *Hunger and Homelessness Survey: A Status on Hunger and Homelessness in America's Cities* at 30 (2013), <http://www.usmayors.org/pressreleases/uploads/2013/1210-report-HH.pdf>.

9 The District of Columbia witnessed an unprecedented rise in family homelessness during the unusually long and cold winter of 2013-14. This increase cost over \$20 million more than the city had anticipated due to lengthy shelter and temporary hotel stays. This cost could result in some seasonal closures of shelters that are normally available all year. Brigid Schulte, *Homelessness Among DC Families called 'catastrophic'*, *Wash. Post* (Feb. 3, 2014), http://www.washingtonpost.com/local/winter-homelessness-among-dc-families-called-catastrophic/2014/02/03/de58a346-8d21-11e3-833c-33098f9e5267_story.html.

10 The Nat'l Ctr. on Family Homelessness, *State Report Card on Homelessness: America's Youngest Outcasts 2010*, at 6 (2011), available at http://www.homelesschildrenamerica.org/media/NCFH_AmericaOutcast2010_web.pdf

11 Office of Cmty. Planning & Dev., U.S. Dep't of Hous. & Urban Dev., *The 2012 Annual Homeless Assessment Report to Congress Volume II: Estimates of Homelessness in the United States*, at 3-7 (2013), available at <https://www.onecpd.info/resources/documents/2012-AHAR-Volume-2.pdf>.

12 Of those students identified as homeless, 75% were living "doubled-up" with family/friends; 15% were living in shelters; 6% were living in hotels/motels; and 4% were living in some type of unsheltered location. Nat'l Ctr. for Homeless Educ., U.S. Dep't. of Educ., *Education for Homeless Children and Youths Program: Data Collection Summary 15* (2013), available at <http://www2.ed.gov/programs/homeless/data-comp-0910-1112.pdf>.



A Lack of Affordable Housing Causes Homelessness

A lack of affordable housing in America lies at the heart of our ongoing homeless crisis. Research from the National Low Income Housing Coalition shows that there is no state in the country where someone earning the minimum wage can afford a one or two-bedroom apartment at the fair market rent.¹³ This problem is worsening as the rental market, in the wake of the foreclosure crisis, has seen increased competition and, therefore, higher rental prices.¹⁴

Without major new expenditures, this situation will not improve. Over 12.8% of the nation's supply of low income housing has been permanently lost since 2001,¹⁵ and investment in the development of new affordable housing has been insufficient to meet the need. The United States has lost 10,000 units of federally subsidized housing each year since the 1970's.¹⁶ For those subsidies that do remain, waiting lists are long. In some cities, the waiting lists for subsidized

13 Nat'l Low Income Hous. Coal., *Out of Reach 2014: Twenty-five years later, the Affordable Housing Crisis Continues at 4* (2014) [hereinafter *Out of Reach '14*], available at <http://nlihc.org/sites/default/files/oor/2014OOR.pdf>.

14 See *id.* ("With the demand for rental housing growing, the U.S. vacancy rate, which hit 8% in the aftermath of the financial crisis, fell to 4.1% in the fourth quarter of 2013. Landlords continued to raise rents in reaction to this trend, with an average price increase of 3.2% over 2013. Rent increases surpass the average inflation rate and translate to higher cost burdens and housing instability for millions of Americans.")

15 *Id.*

16 *Id.*

housing numbers in the tens of thousands,¹⁷ leaving most people with no realistic chance of obtaining the housing support that they need.

6659

What led up to my becoming homeless was that I was laid off from a job which I had had for several years and... my house burned down... What I realized was that my skills had become less relevant and I wasn't all that employable... I had 20th century work skills... I was a purchasing agent... The world's changed. Anyone with an apartment number and an internet connection can basically find what they need. It's just not relevant anymore... I didn't have a relevant, marketable skill.

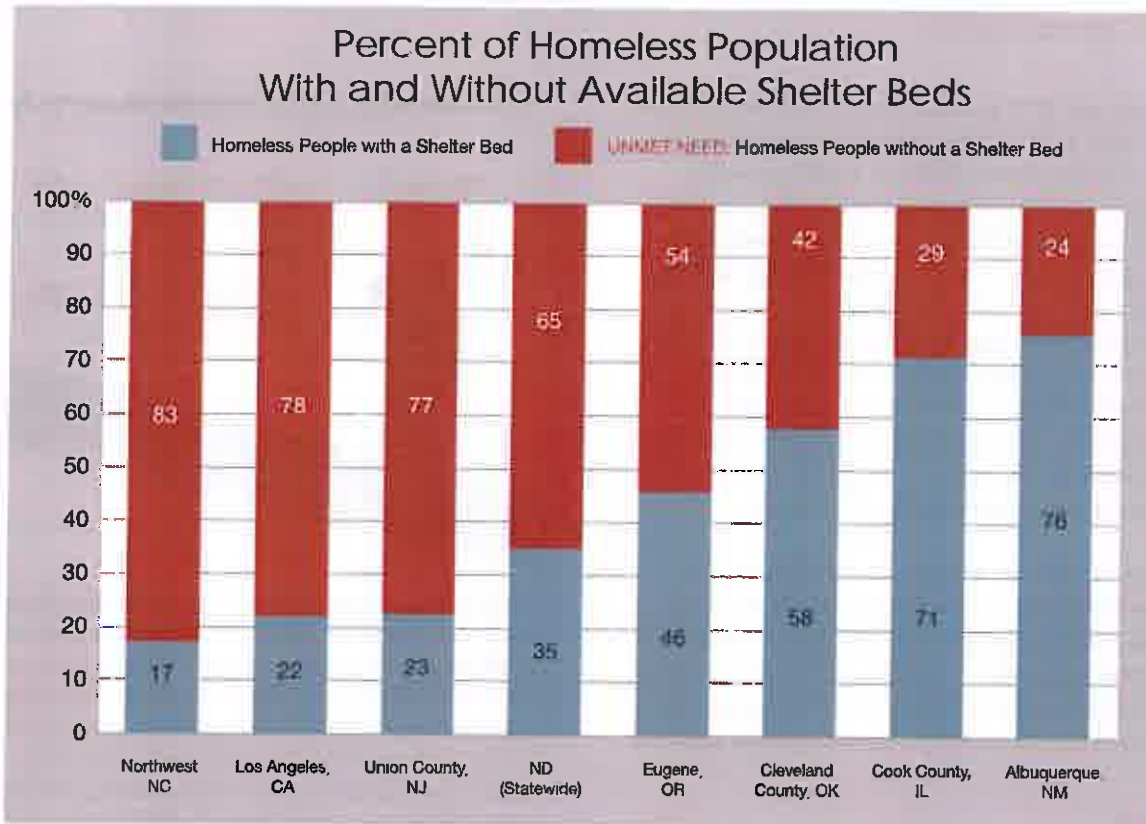
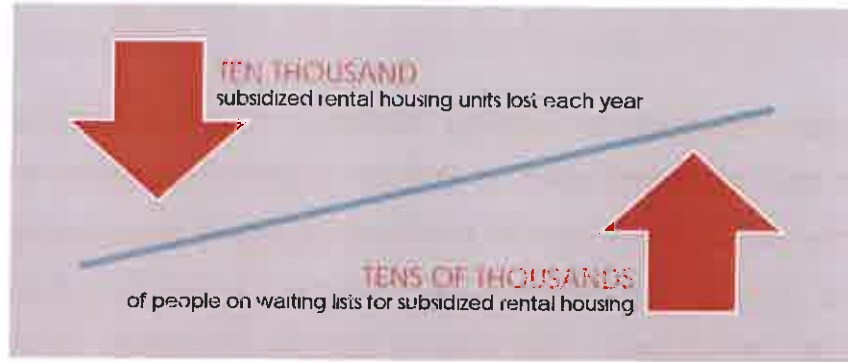
– John Harrison, Formerly Homeless Person

There Are Fewer Shelter Beds Than Homeless People in Many American Cities

Homelessness carries risks of death and bodily injury from the natural elements, violence, and increased health risks caused or worsened by lack of shelter. Despite this, there are far fewer available shelter beds than homeless people in many American cities. In some places, the gap between available space and human need is significant, leaving thousands of people with no choice but to live outdoors in public places.

Continuums of Care ("CoCs"), the local bodies that coordinate funding for housing and other services to homeless people, are responsible for tracking local homeless populations and the total number of available shelter beds through Point-in-Time counts, conducted every two years. Information gathered from the 2013 CoC Point-in-Time Count reveals that there are homeless people without any shelter options in most areas across the country, as 62% of CoCs reported more homeless persons than shelter beds.

17 See, e.g., Petula Dvorak, D.C. *Public Housing Waiting List to Close; No New Applicants After April 12*, Wash. Post (Apr. 3, 2013), http://www.washingtonpost.com/local/dc-politics/dc-public-housing-waiting-list-to-close-no-new-applicants-after-april-12/2013/04/03/9cf7abe4-9c96-11e2-a941-a19bce7af755_story.html ("The closure of the list, which stretches to more than 70,000 names, has been contemplated for months as officials acknowledge that demand for public housing units and rental vouchers far outstrips the city's supply.")



The Los Angeles City and County CoC, for example, estimates that there are only 11,933 shelter beds to serve its homeless population of 53,798. This leaves 41,865 people – or 77% of its total homeless population – with nowhere to live but in public places. Las Vegas/ Clark County similarly shows that the number of homeless people far outstrips the number of shelter beds, leaving 4,457 people - 60% of its total homeless population – outside with nowhere to else to live.

The eight CoCs in this chart were chosen because they represent a diverse cross-section of the United States and highlight the point that providing adequate shelter to homeless people is not a challenge isolated to large metropolitan areas or the most populous states.¹⁸

18 The Northwest North Carolina CoC encompasses seven counties located where North Carolina borders Tennessee and Virginia. The Los Angeles CoC encompasses LA County excluding the cities of Glendale, Pasadena and Long Beach. The Union County CoC encompasses all of Union County, which is southwest of Newark, NJ. The Eugene CoC encompasses all of Lane County, the city of Eugene, and the city of Springfield. The Cleveland County CoC encompasses all of Cleveland County and the city of Norman, which is 20 miles southeast of downtown Oklahoma City. The Cook County CoC, encompasses suburban Cook County excluding the city of Chicago. The Albuquerque CoC extends only as far as the city limits of Albuquerque, NM.

THE CRIMINALIZATION OF HOMELESSNESS

With inadequate housing or shelter options, many homeless people are forced to live out of doors and in public places. Despite this fact, many local governments have chosen to remove visibly homeless people from our shared streets, parks, and other public places by treating the performance of basic human behaviors - like sitting down, sleeping, and bathing – as criminal activities.

These laws are often justified under the dubious theory that they are necessary to protect the public interest. Laws prohibiting sitting down on public sidewalks, for example, are allegedly warranted by the public's interest in unobstructed walkways. Sometimes, these laws are premised on the idea that criminalization is a necessary solution to homelessness because it makes it less likely that homeless persons will "choose" to live on the streets. Most often, however, these laws are passed under the erroneous belief that using the criminal justice system to remove homeless persons from a city's commercial and tourist districts is the best method for improving the economic health of those areas.

The evidence reveals, however, that criminalization laws are ineffective, expensive, and violate the civil rights of homeless people. Moreover, both the federal government and international human rights monitors have recognized criminalization of homelessness as a violation of the United States' human rights obligations.

“ ”

The men and women out here, they don't want to be homeless. I don't know a single soul who wants to be homeless...I don't care how broken down you are, not one person out on the street wants to be homeless. And to be penalized for being homeless? That's ludicrous. We're already being penalized. You got to go to the back of the bus, you can't come into certain restaurants, you can't go to the bathroom, you can't do this without buying something – it's already a system that needs a lot of work

– Cynthia Mewborn, Homeless Person

Criminalization Causes Homeless People to Suffer



Beginning in September 2010, the Western Regional Advocacy Project ("WRAP") and their partners have collected nationwide data from homeless people to document their experiences related to criminalization.¹⁹ The results of WRAP's research show that homeless people continue to suffer harassment and arrests. Of over 1,600 homeless people interviewed, only 26% stated that they were aware of a safe and legal place where they could sleep, yet 80% reported being harassed by police for sleeping in public.²⁰

The Criminalization of Homelessness is Increasing

In both 2011 and 2014, data was collected from 187 U.S. cities²¹ assessing the number of municipal ordinances that criminalize the life-sustaining behaviors of homeless people. The results of that research are set forth in the Prohibited Conduct Chart included in the Appendix of this report.

¹⁹ *National Civil Rights Outreach Fact Sheet*, W. Reg'l Advocacy Project (April 5, 2013), <http://wraphome.org/images/stories/pdf/NationalCivilRightsFactSheetMarch2013.pdf>

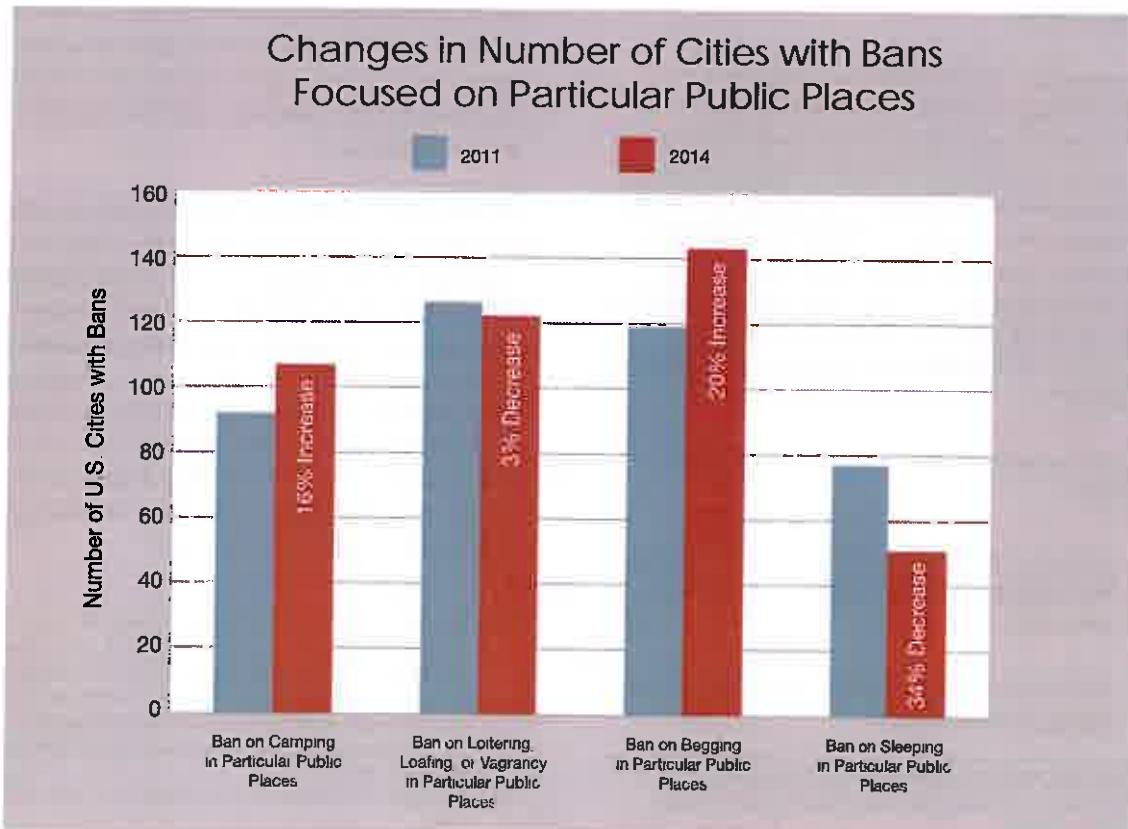
²⁰ *id.*

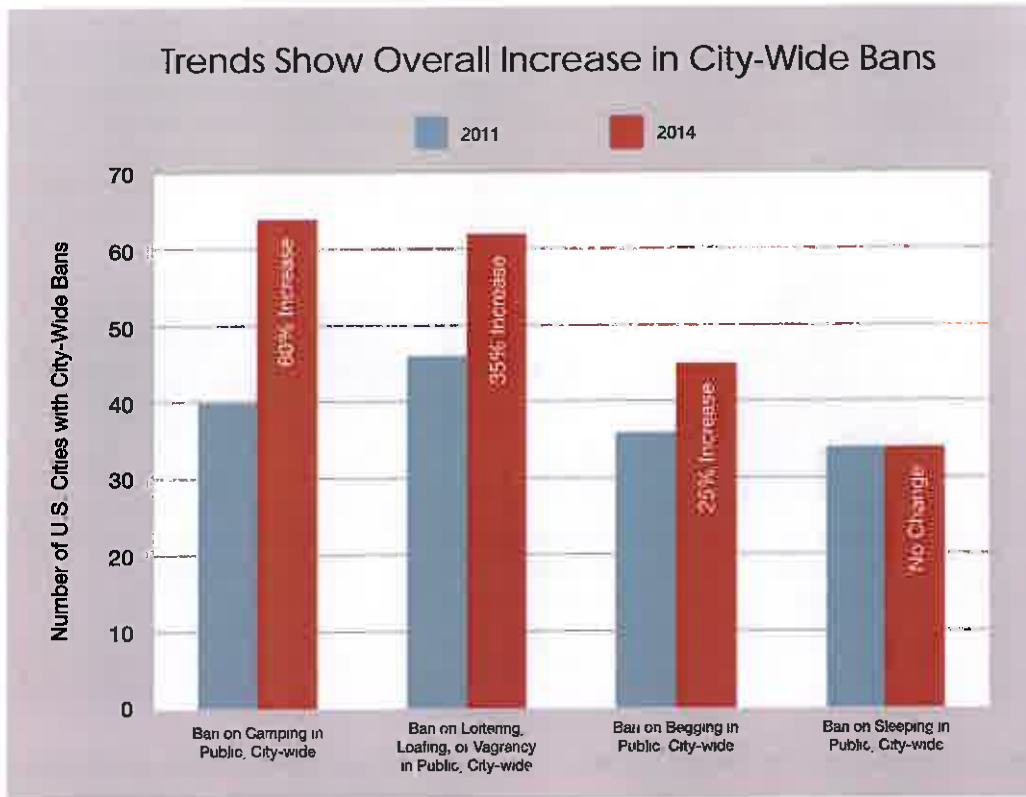
²¹ The Law Center has tracked a core group of 187 cities, selected for their geographic and demographic diversity, since 2009. The data comparison made in this report is between the criminalization laws in those cities, as studied in 2011 and again in 2014.



In our 2011 report, *Criminalizing Crisis*, the Law Center reported that the criminalization of homelessness was on the rise. Unfortunately, this trend persists. Data collected for this report reveals that, since 2011, there has been a marked increase in laws criminalizing homelessness.

The nature of criminalization also appears to be changing for the worse. Our research reveals that there has been a disturbing rise in laws that impose city-wide bans on the basic human actions of homeless people. City-wide bans, by leaving no place for homeless people to do what they must do to survive, criminalize





homeless persons' very existence. Under constant threat of arrest for performing actions necessary for survival, homeless people are forced out of entire communities.

Camping in Public

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, prohibiting homeless people from using any resource that might be their only option for shelter. In Minneapolis, for example, it is illegal for a homeless person to use a "camp car, house trailer, automobile, tent or other temporary structure" as temporary housing anywhere in the city.²² Other laws go even further, defining camping to include the simple act of "sleeping out-of-doors."²³

Of the cities surveyed for this report, our research reveals that:

- 34% of cities have city-wide bans on camping. This represents a 60% increase in such laws since 2011.
- 57% of cities ban camping in particular public places, a 16% increase.

City-wide bans against camping are distinguishable from other forms of criminalization in that these laws are enforced not only against homeless people who "camp" in public places, but also against those who do so on private property, even with the express consent of the property owners. Indeed, these laws may subject consenting private property owners to fines and other legal penalties for allowing homeless people to camp on their property.²⁴

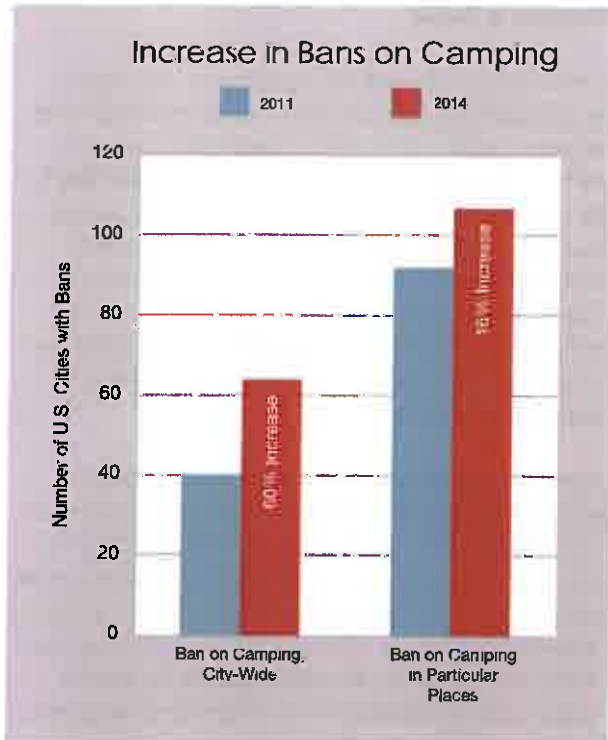
By leaving no single place where homeless people can lawfully camp, these bans transform entire communities into "no homeless zones" where homeless people are left with the choice of facing constant threat of arrest or leaving town. These laws may be illegal, however, where there are insufficient housing or shelter options. When cities impose criminal penalties on homeless people for performing necessary, life-sustaining activities in public places when there are no sheltered alternatives, such actions may violate the cruel and unusual punishment clause of the Eighth Amendment.²⁵

²² Minneapolis, Minn., Code of Ordinances § 244.60(a)(2013).

²³ Orlando, Fla., Code of the City of Orlando, Fla., tit. II, ch. 43. § 43.52(1)(b) (1999).

²⁴ Placerville, Cal., Placerville City Code, tit. 6, ch. 19, § 6-19-3 (2014) available at http://sterlingcodifiers.com/codebook/index.php?book_id=509§ion_id=931131 (subjecting any private property owner that allows someone to camp on their property for more than five consecutive days to the same punishment as someone who violates California's public nuisance statute).

²⁵ *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1571-1572 (S.D. Fla. 1992).



The Story of Lawrence Lee Smith

Mr. Smith became homeless after his degenerative joint disease made him no longer able to work in construction. He lived in a camper van for years until it was towed. He couldn't afford to retrieve it, leaving him with nowhere to reside but in public places in Boise, Idaho, due to frequent overcrowding of area homeless shelters. Mr. Smith was cited for illegal camping and was jailed for a total of 100 days. Due to the arrest, he lost his tent, his stove, and the fishing equipment he relied upon to live.

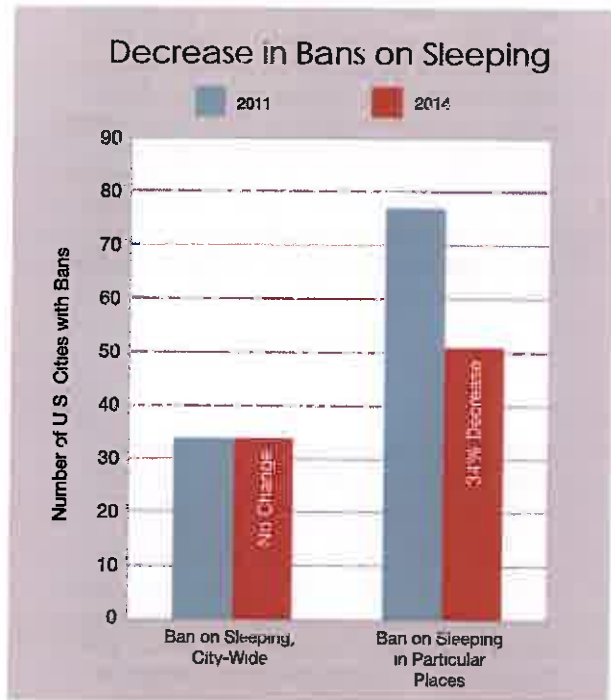
Sleeping in Public

It is impossible for a human being to forego sleep for a lengthy period of time, yet many cities have chosen to outlaw sleeping in public spaces. In Manchester, New Hampshire, for example, it is illegal for a person to, "loung[e] or sleep in or upon any of the commons or squares of the city."²⁶

²⁶ Manchester, N.H., Code of Ordinances of the City of Manchester, tit. XIII, ch. 130, § 130.01(A) (2013), available at http://www.manchesternh.gov/portals/2/departments/city_clerk/Ordinances%20Title%20XIII%20General%20Offenses.pdf.

Of the cities surveyed for this report, our research reveals that:

- 18% of cities have city-wide bans on sleeping in public. This number has remained constant.
- 27% of cities ban sleeping in particular public places, a 34% decline in such laws.



In contrast with other criminalization laws that the Law Center has been tracking over time, there has been a decrease in laws prohibiting sleeping in public. This decline is likely attributable to the dramatic increase in anti-camping laws which, given their broad definitions, capture much of the same conduct. As cities move to anti-camping laws that ban sleeping in both public and private locations, the overall problem of cities making it illegal to sleep outdoors is getting worse.

As with laws prohibiting camping in public, laws that ban sleeping outdoors when there are no sheltered alternatives may violate constitutional protections against cruel and unusual punishment.²⁷

²⁷ *Pottinger*, 810 F. Supp. at 1571-1572.



The cops give us no rest. I mean, we can't even sleep at the park anymore because it's against the [law] to camp. Even if we sleep [on the streets] we get ticketed. There was one night I couldn't even get a full eight hours of sleep because I was getting woken up by cops and told to go from place to place. And I would just go lay down and get woken up an hour later. Go lay down another place, and get woken up. I got five tickets that night." "[Last night] I [slept] in a park right over there, where I'm at risk of getting a ticket every night. I can sleep on the sidewalk and get a ticket. I can sleep [across the street] and get a ticket. No matter where I go I get a ticket."

- Jacob

I sleep on the sidewalk, in a sleeping bag, [because I can't sleep in my car]. And I'm trying to... I don't use drugs. I don't use alcohol. I don't really do anything wrong. . . . I've got a warrant right now for sleeping outside; basically it's a trespassing warrant. I was trying to get away from people who were, um, because of various reasons; drugs or whatever. . . . But I have to get away from them. And some nights you literally have to hide. It's not safe for women, especially older women.

The police gave me a ticket one morning when I woke up. I had to hide from a crowd that was, whatever, I don't know what they were doing. But, you know, I just basically wanted to get in a little bit safer situation so I hid . . . in this church. And they gave me a ticket and now I can't pay for this ticket; it's four-hundred bucks! You know, I can't pay \$80 dollars. I have no income whatsoever.

- Sandy

Begging in Public

Laws restricting or prohibiting begging (also known as panhandling) are common. Some laws prohibit the activity outright, while others place strict limitations on how the action is performed. In Springfield, Illinois, for example, it is unlawful to make "any vocal appeal in which a person requests an immediate donation of money or other gratuity."²⁸ That law, currently the subject of litigation as an unconstitutional violation of First Amendment rights, permits only the silent use of signs or other written communication to request donations of food or money.

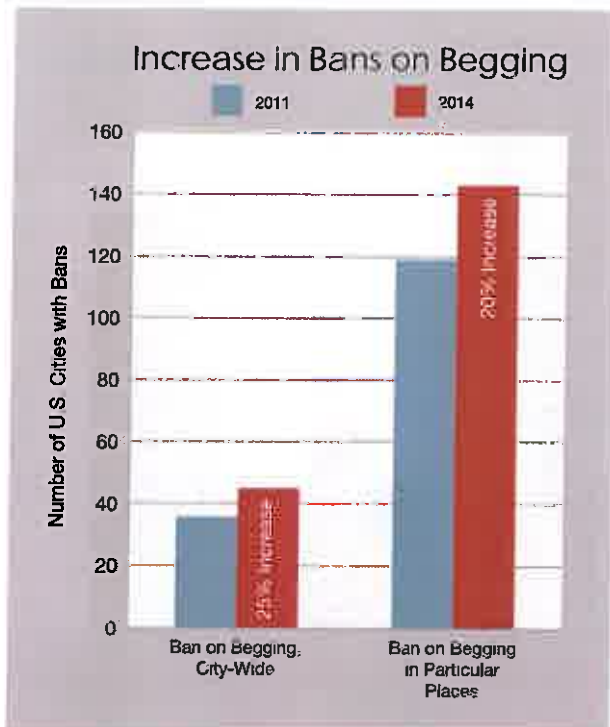
Other laws prohibiting "aggressive panhandling", although purportedly aimed at curbing threatening or intimidating behavior that may accompany begging, are sometimes designed to be enforced against people who are engaged in harmless activities when requesting a donation. In Mobile, Alabama, for example, a person would be in violation of municipal code 55-101 for "aggressive panhandling" if he or she simply requests a donation from a person standing in line to enter a commercial establishment – no matter how mildly the request was made.²⁹

Of the cities surveyed for this report, our research reveals that:

- 24% of cities have city-wide bans on begging in public. This represents a 25% increase in such laws since 2011.
- 76% of cities ban begging in particular public places, a 20% increase in such laws.

28 Springfield, Ill., Springfield Code of Ordinances, tit. XIII, ch. 131, § 131.06(a) (2013), https://library.municode.com/HTML/12414/level2/TITXIIIIGEOF_CH131OFAGPUOR.html#TITXIIIIGEOF_CH131OFAGPUOR_S131.06PA. This law is currently being challenged and is on appeal in the United States Court of Appeals, Seventh Circuit. Don Norton et. al. v. City of Springfield, et. al., No. 13-3581 (7th Cir. filed Nov. 5, 2013).

29 Mobile, Ala., Mobile City Code, ch. 55, § 55-101 (2014), https://library.municode.com/HTML/11265/level3/CICO_CH55SOCA_ARTVPA.html#CICO_CH55SOCA_ARTVPA_S55-101DE.



This data shows that bans on begging, both city-wide and in particular places, have significantly increased since 2011. 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.

In the absence of employment opportunities or when homeless people are unable to access needed public benefits, panhandling may be a person's only option for obtaining money. Many people fail to recognize that, even in an area with a relatively robust homeless services network, homeless people still need access to cash to pay for their stays in certain emergency shelters.³⁰ In addition, homeless people, like anyone else, need cash to purchase food, clothing, and personal hygiene products, and to access transportation. Laws restricting or penalizing begging, which is constitutionally protected speech, may infringe upon

30 In 2011, the L.A. Union Rescue Mission stopped giving homeless individuals the option of staying long term in the shelter, free of charge. While homeless individuals have the option of staying for 5 days without charge, a \$7 per night fee applies after that. *Our History*, Union Rescue Mission, <http://urm.org/about/history> (last accessed July 1, 2014). Similarly, the Salvation Army of Orlando Men's Emergency Shelter allows individuals to stay in the shelter for three nights each year for free, but after that they charge \$9 per night. *Salvation Army of Orlando Men's Emergency Shelter*, Shelter Listings, <http://www.shelterlistings.org/details/36329> (last accessed July 1, 2014).

the right to free speech guaranteed under the First Amendment, when those laws target speech based on content or fail to provide adequate alternate channels of communication.³¹

“”

It's embarrassing for me. It's embarrassing: one, to have to beg; two, it's even more embarrassing that I don't have a criminal background and I'm being harassed by the police. A dollar an hour is really bad, but if you don't have an address, a phone number or something, how are you going to fill out a job application and get a job?

– “Sarah”, a homeless panhandler in Yakima, WA

Loitering, Loafing, and Vagrancy Laws

Laws prohibiting loitering, loafing, or vagrancy, although often alleged to target suspicious behavior, are used to criminalize innocuous activities of homeless people, including sitting, standing still, or lying down. In Newport, Rhode Island, “loitering” is defined to mean “remaining idly in essentially one location, including the concepts of spending time idly, loafing or standing about aimlessly, and also including the colloquial expression ‘hanging around.’”³² Because homeless people do not have the luxury of a private place where they might rest, laws like that in Newport subject a homeless person to criminal penalties anytime they choose to remain in one place for too long.

Of the cities surveyed for this report, our research reveals that:

- 33% of cities have city-wide bans on loitering in public. This represents a 35% increase in such laws since 2011.
- 65% of cities ban loitering in particular public places, a 3% decrease in such laws.

31 See *Loper v. New York City Police Dep't*, 999 F.2d 699 (2nd Cir. 1993); *Blair v. Shanahan*, 775 F. Supp. 1315 (N.D. Cal. 1991), vacated on other grounds, 919 F. Supp. 1361 (N.D. Cal. 1996); *Benefit v. Cambridge*, 679 N.E.2d 184 (Mass. 1997).

32 Newport, R.I., Newport Mun. Code, tit. 9, ch. 9.04, § 9.04.060(A) (2014), https://library.municode.com/HTML/16524/level3/COOR_TIT9PUPEWE_CH9.04OFAGPUPEDE.html#COOR_TIT9PUPEWE_CH9.04OFAGPUPEDE_9.04.060LO.

Enforcement of anti-loitering laws often overlaps with enforcement of municipal or state trespass laws, as a citation or arrest for loitering will often be accompanied by a warning that a return to the same area may result in an arrest for trespass. In Charleston, SC, for example, a person who violates the anti-loitering statute may be punished with a stay away order banning them from a certain location, and if they violate that stay away order they can be arrested for criminal trespass.³³ Although laws prohibiting trespass are separate and distinct from laws prohibiting loitering, the combined effect of such laws may result in lengthy or even indefinite bans from public areas, such as local parks and public libraries, frequented by homeless people.

Sitting or Lying Down in Public

Bans on sitting or lying down in public, often called “sit/lie” laws, are another common form of criminalization law. Although every human being must occasionally rest, sit/lie laws make it a crime for a homeless person to rest in places ordinarily available to the public, such as in parks or on sidewalks.

In Virginia Beach, for example, it is a misdemeanor for a person to, “sit, recline or lie down on any street, sidewalk, alley, curb or entrance to any store or other place of business.”³⁴

Of the cities surveyed for this report, our research reveals that:

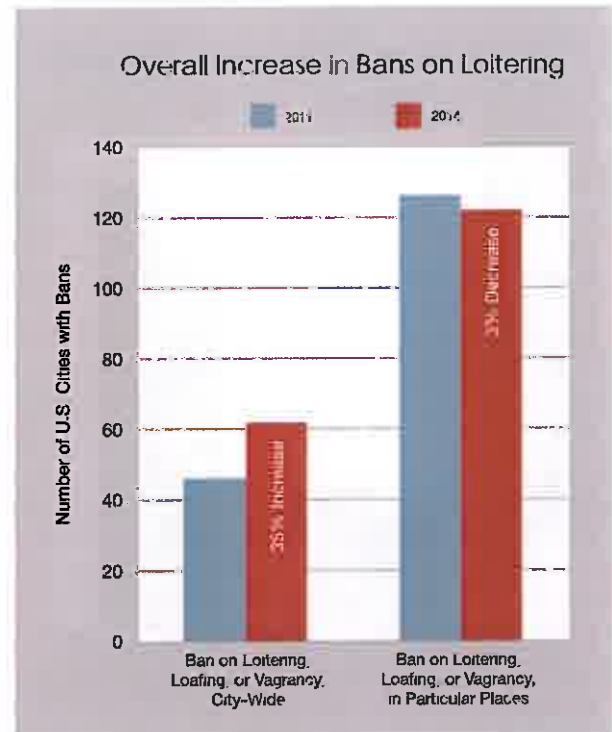
- 53% of cities have laws prohibiting sitting or lying down in public. This represents a 43% increase in such laws since 2011.

Proponents of sit/lie laws argue that such laws are necessary to improve the economic activity in commercial districts where visibly homeless people are present. However, there is no empirical evidence of such an effect.³⁵ To the contrary, these laws impose law

33 Charleston, S.C., Charleston City Code, ch. 21, art. V, § 21-208(k) (2014), https://library.municode.com/HTML/10245/level3/CICO_CH21OF_ARTVOFAGPUPE.html#CICO_CH21OF_ARTVOFAGPUPE_S21-108LO.

34 Virginia Beach, Va., Virginia Beach City Code, ch. 33, art. I, § 33-10 (2014), https://library.municode.com/HTML/10122/level3/CO_CH33STSL_ARTIINGE.html#CO_CH33STSL_ARTIINGE_S33-10SIRELYDOSTSI.

35 See Joseph Cooter, et al., Berkley Law Policy Advocacy Clinic, University of California, Does Sit-Lie Work: Will Berkeley’s “Measures” Increase Economic Activity and Improve Services to Homeless People? 2 (2012), available at <http://www.law.berkeley.edu/files/1023sit-lie2.pdf> (“Our literature review did not reveal any evidence of Sit-Lie’s efficacy in other jurisdictions, and of the fifteen survey responses we received, none directed us to any evidence in support of their views about the positive or negative impacts of Sit-Lie.”).



enforcement and other criminal justice costs on jurisdictions.³⁶

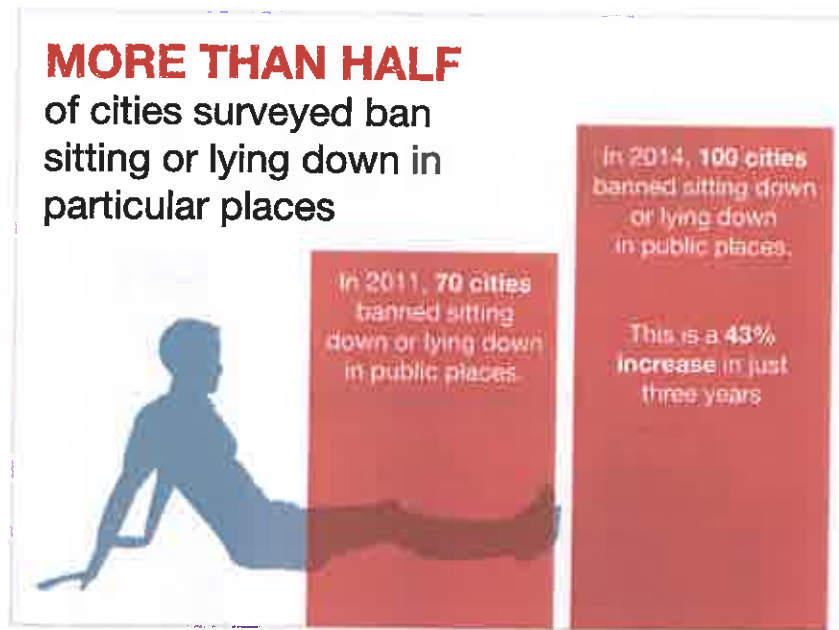
Living in Vehicles

Sleeping in one’s own vehicle is often a last resort for people who would otherwise be forced to sleep on the streets. Cities across the nation, however, have chosen to criminalize the act. The number of laws prohibiting sleeping in vehicles has exploded across the country since 2011, increasing to a greater degree than any other form of criminalization law.

Of the cities surveyed for this report, our research reveals that:

- 43% of cities have laws prohibiting sitting or lying down in public. This represents a 119% increase in such laws since 2011.

36 *Id.* at 3.



These laws make it a crime to seek shelter in a homeless person's private property, even where there is no other option for shelter.³⁷ The effect of these laws is to force homeless people from what may be their only option for safe refuge onto the public streets – where it may similarly be illegal for them to sleep.

One place with such a law is Palo Alto, California. Although Palo Alto has only 15 shelter beds to accommodate roughly 150 homeless persons residing in the area, and the average cost of rent is 2 ½ times the national average, the city has chosen to make sleeping in one's own private vehicle a crime punishable by a \$1,000 fine or up to six months in jail.³⁸

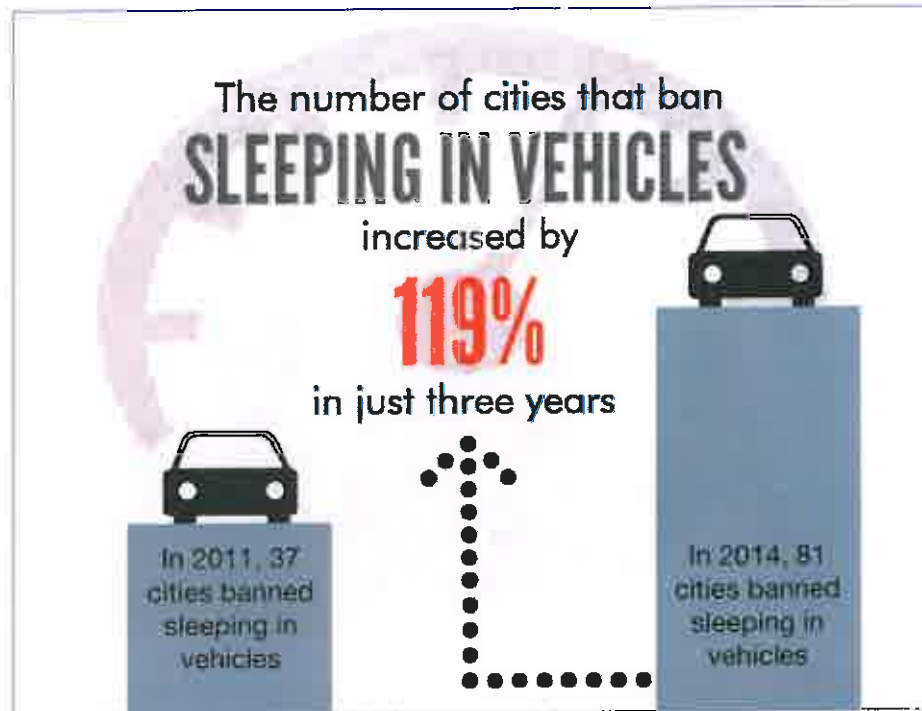
At least one court has found that prohibiting living in vehicles violates the rights of homeless people, when the law is written so broadly as to be unconstitutionally vague.³⁹ In *Desertrain v. City of Los Angeles*, the Ninth Circuit Court of Appeals invalidated a Los Angeles ban on living in vehicles that provided insufficient notice of the conduct it penalizes and promoted arbitrary and discriminatory enforcement. Advocates are hopeful that this decision will help to reverse the growing trend of laws criminalizing sleeping in vehicles.⁴⁰

37 These laws ignore the inherent dangers of living outside where exposure to the elements can be a matter of life and death. Without some form of shelter, homeless people may freeze to death during the winter months. Recently, the decomposed body of a homeless man seeking refuge inside a portable toilet was discovered in an area outside of Detroit. The man, who succumbed to hypothermia, became homeless after losing his home to tax foreclosure in 2010. Gordie Wilczynski, *Homeless Man Found in St. Clair Shores Porta-Potty Identified*, *Macomb Daily* (Apr. 23, 2014), <http://www.macombdaily.com/general-news/20140424/homeless-man-found-in-st-clair-shores-porta-potty-identified>. This year's brutal and prolonged winter weather in Washington, DC also claimed the lives of two men due to hypothermia. Rachel Weiner & Petula Dvorak, *Bodies of Two Men Found Near I-295*, *Wash. Post* (Apr. 16, 2014), http://www.washingtonpost.com/local/crime/bodies-of-two-men-found-under-i-295/2014/04/16/95844454-c57a-11e3-9f37-7ce307c56815_story.html.

38 Jason Green, *Palo Alto Passes Vehicle Dwelling Ban*, *San Jose Mercury News Peninsula* (Aug. 6, 2013), http://www.mercurynews.com/peninsula/ci_23803353/palo-alto-passes-vehicle-dwelling-ban.

39 *Desertrain v. City of Los Angeles*, No. 11-56957, 2014 WL 2766541 (9th Cir. June 19, 2014).

40 Sue Dremann, *Los Angeles Ruling Could Jeopardize Palo Alto Vehicle-Dwelling Law*, *Palo Alto Weekly* (June 20, 2014), <http://www.paloaltoonline.com/news/2014/06/20/los-angeles-ruling-could-jeopardize-palo-alto-vehicle-dwelling-law>.



Me and my son live in a car and we're not bad people. I'm so afraid what will happen if we lose that.

– Diane Jones, homeless mother, regarding the ban on sleeping in vehicles in Palo Alto, California.

When you criminalize people who have no place to go, they end up getting pushed out of your community... These are Palo Altans. These are people who have jobs in the community; people who would love to stay here if possible but can't; people who are staying in their cars because they live in Tracy, they have jobs out here and they can't afford a daily commute back to Tracy. These are people who are contributing to your community who deserve something more humane.

– James Han, homeless advocate, regarding the Palo Alto ban on sleeping in cars

Food Sharing

Eating is essential to life. We cannot survive without food. Yet, many cities have chosen to restrict homeless persons' access to food under the flawed premise that providing homeless persons with free food encourages them to remain homeless. Moreover, there is unfounded concern that access to free food services attracts homeless people to the service area, increasing crime and negatively affecting the aesthetic of a neighborhood.⁴¹

Of the cities surveyed for this report, our research reveals that:

- 9% of cities have laws that criminalize sharing food with homeless people.

These laws are sometimes premised on the erroneous belief that homeless people have existing access to food resources. However, this is not always the case. In 2012, it was estimated that more than half of people who are homeless do not receive SNAP benefits.⁴² Even where free food services are present

41 U.S. Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* (2012) [hereinafter *Searching Out Solutions*], available at http://usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf.

42 Campaign to End Child Homelessness, *The Nat'l Cntr. on Family Homelessness, Improving Access to Mainstream Programs for Families Experiencing Homelessness*, (2012), available at <http://www.familyhomelessness.org/media/364.pdf>.

NO SHARING ALLOWED



17 of the cities surveyed have ordinances that **restrict individuals & private organizations** from sharing food with homeless people

in a community, increased demand for these services since the onset of the foreclosure crisis has left many food service providers with inadequate supply to meet the growing need.⁴³ Also, some food banks are limited in their ability to help homeless people; a food pantry that provides canned or packaged goods may be of no practical use to a homeless person who has no place to cook or store the food.⁴⁴

The theories surrounding food sharing restrictions are not supported by evidence of the feared harms. Indeed, they are not supported by common sense. Restricting access to safe, healthy food sources by individuals and faith-based organizations will not provide an incentive for a person to stop “choosing” a life on the streets. Instead, it will force hungry people to search for food in unsanitary places, such as garbage cans.⁴⁵

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. In so doing, these laws may represent an unconstitutional restraint on religious expression. In *Big Hart Ministries v. City of Dallas*, the Law Center, along with law firm Akin Gump Strauss Hauer & Feld LLP, brought litigation on behalf of two religious organizations in Dallas, Texas, challenging the city’s anti-food sharing law. The court found that food sharing activities were religious expression protected under the Texas Religious Freedom Restoration Act, and that the city had failed to articulate a compelling interest justifying them.⁴⁶



We believe we should be able to continue feeding people in the park because we’re not hurting anybody,” Debbie Jimenez said. “That’s our calling in life.”

Pastor Rick Wood of Birmingham, Alabama was ordered by police to stop providing hotdogs and bottled water to homeless people in a city park. “This makes me so mad,” Wood told a local news station. “These people are hungry, they’re starving. They need help from people. They can’t afford to buy something from a food truck.”⁴⁷

43 See *The Impact of Food Stamp Benefits on Family Homelessness in New York City*, Inst. for Children, Poverty & Homelessness, <http://www.icphusa.org/index.asp?page=16&report=93&pg=52> (last visited Jun. 24, 2014) (“Nearly one-third (30%) of New York City families with children received SNAP benefits in 2010, an increase of 50% since the recession began in 2007.”).

44 See Bob Erlenbusch et al., *Sacramento Hunger Coal., Cmty. Serv. Planning Council, Hunger and Homelessness in Sacramento 2010 Hunger & Food Insecurity Report 2 (2010)*, available at <http://www.sachousingalliance.org/wp-content/uploads/2013/03/2010-Homeless-Hunger-Report-FINAL.pdf> (“Nearly 60% [of the homeless] have no access to food storage facilities while between 56%-84% have no access to any kind of cooking facilities.”).

45 See Jerry Nelson, *Homeless in Washington: What Happened to the American Dream? (Video)*, Guardian Liberty Voice (Mar. 5, 2014), <http://guardianlv.com/2014/03/homeless-in-washington-what-happened-to-the-american-dream-video/> (“Speaking at the opening of the meeting were several individuals who have left the streets thanks to the help from advocates. Alan Banks, 53, talked about his days of eating out of trash cans because he was hungry.”).

46 *Big Hart Ministries Ass’n Inc. v. City of Dallas*, 2011 WL 5346109 (N.D. Tex. Nov. 4, 2011).

47 *Cities Prohibit Feeding Homeless*, My Fox NY (Apr. 22, 2014), <http://www.myfoxny.com/story/25309897/city-prohibits-feeding-homeless>.

Storing Personal Belongings in Public

The possessions of homeless people often include items necessary for survival, like clothing or medication. Yet, many cities have chosen to make it a crime for homeless people to store their belongings in public places, even if they have no other place to put them. In Charlotte, for example, a person violates §15-26 of the municipal code for “camping” if they store their personal belongings in a public place.⁴⁸

It is impractical for homeless people to remain with their personal property at all moments of every day. Homeless people, just like those with access to permanent housing, must conduct a series of daily activities – using the bathroom, bathing, or working – that make it impossible to remain in actual possession of their belongings at all times. Still, homeless people reasonably expect to retain ownership of their personal belongings when they are stored for safekeeping. Despite this reality, many cities treat the belongings of homeless people as abandoned when unattended. This is reflected in the practice of “homeless sweeps” engaged in by cities across the country.⁴⁹

A homeless “sweep” is a practice designed to remove homeless people and their belongings from a given area, often based on the stated rationale that doing so is necessary to protect public health. Sweeps often involve law enforcement officials and other government employees, like sanitation workers, who clear out an area by throwing away or destroying all personal possessions in the area regardless of the condition or value of the property or the apparent care with which someone used to store the items. In many cases, homeless people are given no notice that the sweep will occur, and they are given no opportunity to protect their belongings or retrieve them once the sweep has been completed.⁵⁰

The destruction of highly valuable or very difficult to replace items, such as birth certificates, social security cards, or photo identification, causes considerable harm to homeless people. Worse yet, the loss of medicine or medical equipment can become a matter of life and death.

In the case of *Kincaid v. City of Fresno*, for example, a City of Fresno police officer destroyed the asthma medication and nebulizer machine which a homeless plaintiff, Jeannine Nelson, needed to breathe.⁵¹ The destruction of this property landed Ms. Nelson in the emergency room, a costly medical intervention, and required her to eventually replace her medications and breathing machine – all at taxpayer expense.

When a city moves, confiscates, or destroys the property of homeless people during “homeless sweeps,” the action may violate the Fourth Amendment right to be free from unreasonable searches and seizures. While cities are permitted to clean public areas, courts have found that the practice may violate the Fourth Amendment rights of homeless people when the city fails to follow constitutionally adequate procedures, such as providing reasonable notice before the clean-up takes place.⁵²



The officer told us we were too late. They took my wife's wheelchair, her medicines, and our wedding pictures.

- [Alphonso Williams](#)

I lost my ID, my grandmother's diamond wedding ring, Social Security paperwork, clothes, and blankets. I had no place to sleep, no blankets, and I caught pneumonia.

- [Sandra Thomas](#)

48 Charlotte, N.C., Charlotte Code, pt. 2, ch. 15, art. I, § 15-26 (2014), available at https://library.municode.com/HTML/19970/level3/PTIICOOR_CH15OFMIPR_ARTIINGE.html#PTIICOOR_CH15OFMIPR_ARTIINGE_S15-26CAOTACPRPUPR.

49 See, e.g., Cam Tran, *City Plans on Homeless Sweeps 3 Times a Week: Cleanups Cost the City \$330,000*, KITV 4 Hawaii (Jan. 10, 2014), <http://www.kitv.com/news/hawaii/city-plans-on-homeless-sweeps-3-times-a-week/23876950#lbakPln>.

50 See, e.g., *Kincaid v. Fresno*, 2006 WL 3542732 at *6 (E.D. Cal. Dec. 8, 2006) (“[T]he City’s policy is that any property that is not physically attended to by its owner is considered abandoned and is defined by the City as “trash.” All such property will be destroyed with no chance for the owner to reclaim it.”).

51 *Kincaid v. Fresno*, 244 F.R.D. 597 (E.D. Cal. 2007).

52 See *Lehr v. Sacramento*, 624 F. Supp. 2d 1218 (E.D. Ca. 2009); *Pottinger*, 810 F. Supp. at 1571-1572; *Kincaid v. Fresno*, 2006 WL 3542732 (E.D. Cal. Dec. 8, 2006) (order granting preliminary injunction); *Justin v. City of Los Angeles*, 2000 WL 1808426 (C.D. Cal. Dec. 5, 2000) (order granting preliminary injunction).



A number of us [homeless] would leave our possessions in these hedges that were in a median along New York Avenue so that we didn't have to carry everything we had with us. There was a metropolitan police officer who took it upon himself to take what amounted to, basically, our worldly possessions. He one time came with his police car with a garbage truck following him, rooting through the bushes, to get our stuff and throw it away... Our belongings were so obviously those of someone just barely scraping by. And it went further. The city also re-landscaped that whole stretch of New York Avenue to entirely eliminate the hedges in which we could conceal our things. And now if you walk by there, the plants are about 8 inches tall.

– John Harrison, Formerly Homeless Person

Criminalization Laws Violate International Human Rights Law

Criminalizing homelessness violates basic human rights as well as treaties that our country has signed and ratified.⁵³ In 2012, the U.S. Interagency Council on Homelessness (USICH) and the U.S. Department of Justice (DOJ) agreed, in a major joint report, *Searching out Solutions: Constructive Alternatives to the Criminalization of Homelessness*. The agencies noted that, in addition to raising constitutional issues, criminalization of homelessness may “violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights.”⁵⁴ Since then, the USICH has repeatedly addressed criminalization as not only a domestic civil rights violation, but as a human rights violation.⁵⁵ USICH sets forth these three key reasons why it is important to address criminalization from a human rights perspective:

1. **Housing is a human right**, and remembering that keeps stakeholders focused on helping

53 See Nat'l Law Ctr. on Homelessness & Poverty, *Simply Unacceptable: Homelessness & the Human Right to Housing in the U.S.* (2011), available at http://nlchp.org/Simply_Unacceptable.

54 *Searching Out Solutions*, *supra* note 41, at 8.

55 *Human Rights and Alternatives to Criminalization*, U.S. Interagency Council on Homelessness, <http://usich.gov/issue/human-rights> (last visited Jun. 13, 2014); see also Amy Sawyer, *Criminalizing Homelessness is Costly, Ineffective, and Infringes on Human Rights*, U.S. Interagency Council on Homelessness Blog (Apr. 15, 2014), <http://usich.gov/blog/criminalizing-homelessness>.

people who experience homelessness achieve permanent housing, rather than on services that—may be well-intentioned, but—do not ultimately help people exit homelessness into housing stability. Permanent housing is the primary solution to preventing and ending homelessness and the overarching strategy of *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness*.

2. **Human rights put people first.** Good strategies start from understanding the unique needs of individuals, families, youth, and Veterans. A human rights approach keeps people and their needs at the forefront of our work.
3. **Homelessness has a human cost.** Yes, ending homelessness is cost-effective for the taxpayer (doing nothing can actually cost taxpayers more money). But dollars are not the only cost of homelessness; humans experience homelessness at a horrific expense to the health and well-being of themselves and their communities. When we make the case that safe and stable housing is a human right, our cause is strengthened. We can tap into the passions, relationships, and experiences that cut across sectors—and budget sheets—to create new partnerships and solutions.⁵⁶

The use of human rights standards in court have been most effective as persuasive authority, particularly as sources of “evolving standards of decency”⁵⁷ in interpreting the Eighth Amendment, where there is a clear and consistent affirmation of principle, across numerous human rights sources.⁵⁸ For this reason, advocates have been working to develop this clear and consistent record.⁵⁹

56 Liz Osborn, *3 Reasons to Address Homelessness as a Human Rights Issue*, U.S. Interagency Council on Homelessness (Apr. 14, 2014), <http://usich.gov/blog/3-reasons-to-address-homelessness-as-a-human-rights-issue> (last visited Jun. 13, 2014).

57 *Roper v. Simmons*, 543 U.S. 551, 587 (2005) (Stevens, J., concurring).

58 See *id.* at 578 (“The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.”); see also *Lawrence v. Texas*, 539 U.S. 558 (2003) (“The right the petitioners seek in this case has been accepted as an integral part of human freedom in many other countries. There has been no showing that in this country the governmental interest in circumscribing personal choice is somehow more legitimate or urgent.”).

59 See Eric Tars & Kirsten Blume, *Changing the Paradigm: Addressing the Criminalization of Homelessness in the United States through the UN Human Rights Committee Review*, Hous. Rights Watch Newsletter, Issue 6 (Oct. 2013), <http://housingrightswatch.org/sites/default/files/2013-10-16%20HRW%20newsletter%20EN%20Issue%206.pdf>.

The most recent, and perhaps most significant, affirmation of principle came in March 2014 by the U.N. Human Rights Committee, which stated in its Concluding Observations on the review of the U.S. government's record of implementation of the International Covenant on Civil & Political Rights:

While appreciating the steps taken by federal and some state and local authorities to address homelessness, the Committee is concerned about reports of criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas etc. The Committee notes that such criminalization raises concerns of discrimination and cruel, inhuman, or degrading treatment (arts. 2, 7, 9, 17, and 26 [of the treaty]).

The State party should engage with state and local authorities to: (a) abolish criminalization of homelessness laws and policies at state and local levels; (b) ensure close cooperation between all relevant stakeholders including social, health, law enforcement and justice professionals at all levels to intensify efforts to find solutions for the homeless in accordance with human rights standards; and (c) offer incentives for decriminalization and implementation of such solutions, including by providing continued financial support to local authorities implementing alternatives to criminalization and withdrawing funding for local authorities criminalizing the homeless.

The significance of this statement rests on multiple grounds. First, its source, in the Concluding Observations of the Human Rights Committee, is the official interpretation of a treaty the U.S. has ratified and is "supreme Law of the Land; and the Judges in every State shall be bound thereby" under Art. VI of the Constitution.⁶⁰ Second, it specifically addresses criminalization as "cruel, inhuman and degrading" – language parallel to, and potentially useful in interpreting, our own Eighth Amendment, as well as being powerful moral language. And finally, it calls on the federal government to take specific steps to "abolish" criminalization – language that recalls previous abolition movements, and ties that language to concrete policy changes for which U.S. domestic advocates can hold the government accountable.

60 U.S. Const. art. VI, § 2; see also Nat'l Law Ctr. on Homelessness & Poverty, *Housing Rights for All: Promoting and Defending Housing Rights in the United States*, Fifth Edition, 113 (2011), http://nlchp.org/Human_Right_to_Housing_Manual (providing more information on how international human rights treaties can be used to interpret domestic law).



I'm just simply baffled by the idea that people can be without shelter in a country, and then be treated as criminals for being without shelter. The idea of criminalizing people who don't have shelter is something that I think many of my colleagues might find as difficult as I do to even begin to comprehend.

- Sir Nigel Rodley, Chair of the Human Rights Committee, in closing comments on the 2014 U.S. review.⁶¹

The Committee's Concluding Observations build on statements from numerous other human rights monitors, including the Special Rapporteurs on the Rights to Water and Sanitation,⁶² Adequate Housing,⁶³ Extreme Poverty,⁶⁴ and Racism.⁶⁵ Each of these have been powerful statements in their own right, and have been used by advocates in opposing criminalization measures at the local level.⁶⁶

61 See Press Release, Nat'l Law Ctr. on Homelessness & Poverty, U.N. Human Rights Committee Calls U.S. Criminalization of Homelessness "Cruel, Inhuman, and Degrading" (Mar. 27, 2014), http://nlchp.org/U.N._Human_Rights_Committee_Calls_U.S._Criminalization_of_Homelessness_Cruel,_Inhuman,_and_Degrading.pdf.

62 Catarina de Albuquerque, *UN Independent Expert on the right to water and sanitation: Mission to the United States of America from 22 February to 4 March 2011*, (Mar. 4, 2011), available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10807&LangID=E>, (last visited Dec. 4, 2012).

63 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*, U.N. Doc. A/HRC/13/20/Add.4 (Feb. 12, 2010).

64 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, U.N. Doc. A/HRC/21/39 (July 18, 2012); see also U.N. Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights*, ¶¶ 48-50, 75, U.N. Doc. A/67/278 (August 9, 2012).

65 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).

66 See *Sacramento's Homeless People Being Heard Loud and Clear*, Homelessness Law Blog (Feb. 8, 2012), <http://homelessnesslaw.org/2012/02/sacramentos-homeless-people-being-heard-loud-and-clear/>; see also *More than a Roof: A Grassroots Documentary*, Nat'l Econ. & Soc. Rights Initiative (2010), <http://www.nesri.org/programs/more-than-a-roof-a-grassroots-documentary>.

Key domestic organizations have adopted policies opposing criminalization. The American Bar Association and International Association of Official Human Rights Agencies (the association of state and local human rights commissions), and the U.S. Conference of Mayors have all passed resolutions opposing criminalization and/or endorsing local implementation of human rights policies.⁶⁷

These resolutions in combination with the international standards have served as persuasive authority to help overturn local criminalization laws. For example, Columbia, South Carolina's city council introduced a disturbing plan to ban homeless persons from the downtown area of Columbia and force their relocation

to a remote shelter, with police preventing their return to downtown without a reason that the police deemed legitimate. Lawyers at the South Carolina Appleseed Legal Justice Center, working with the Law Center, used Columbia Mayor Steve Benjamin's sponsorship of the resolution at the U.S. Conference of Mayors, together with the threat of international condemnation by the UN Human Rights Committee, to successfully pressure the mayor to withdraw support from the proposal, killing the plan.⁶⁸ Similarly, advocates in Eugene, Oregon have worked with their local Human Rights Commission to change the dialogue around local homeless encampments, creating several "safe camping" sites as they work toward more permanent solutions.⁶⁹

⁶⁷ See House of Delegates Resolution, American Bar Association Annual Meeting 2013, Resolution 117 (Aug. 12-13, 2013), <http://bit.ly/lhheEL>; Resolution, Int'l Assoc. of Off. Hum. Rts. Ag. Res. 1 (2013); Resolution, U.S. Conference of Mayors 81st Annual Meeting, Resolution No. 57: Promoting and Encouraging International Human Rights (June 21-24, 2013), http://www.usmayors.org/resolutions/81st_conference/resolutions-adopted.pdf.

⁶⁸ See Tars & Blume, *supra* note 59, at 6.

⁶⁹ See Edward Russo, *More Opportunity: Advocates plan to develop a new village for the homeless in Eugene*, Register-Guard (May 30, 2014), <http://registerguard.com/rg/news/local/31650634-75/village-eugene-opportunity-homeless-residents.html.csp>; Catherine Siskron, *Sleep Deprivation: Eugene violates basic human rights*, Eugene Weekly (Jan. 31, 2013), <http://www.eugeneweekly.com/article/sleep-deprivation>. However, recent incidents of criminalization approaches show this progress remains tenuous. See, Josephine Woolington, *Unauthorized camp for homeless shut down*, Register-Guard (Apr. 5, 2014), <http://registerguard.com/rg/news/local/31389667-75/whoville-residents-homeless-site-police.html.csp#.U0B6kVrIGB8.email>.

CRIMINALIZATION LAWS HARM THE ENTIRE COMMUNITY

Criminalization Laws Are Expensive to Taxpayers

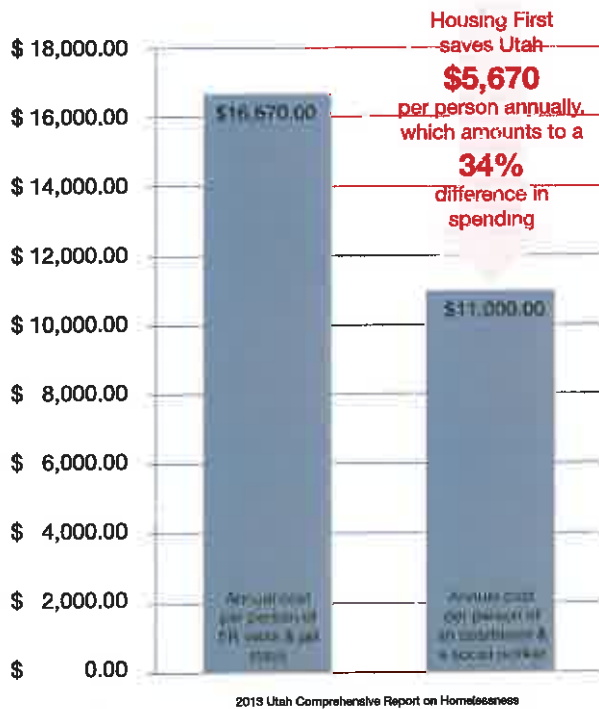
Criminalization measures waste limited state and local resources.⁷⁰ Rather than addressing the causes of homelessness and helping people escape life on the streets, criminalization “creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.”⁷¹ A growing body of research comparing the cost of homelessness to the cost of providing housing to homeless people consistently shows that housing, rather than jailing, homeless people is the much more successful and cost-effective option.

The Utah Housing and Community Development Division found that the annual cost of emergency room visits and jail stays for an average homeless person was

\$16,670, while providing an apartment and a social worker cost only \$11,000.⁷² By providing housing to its homeless population, Utah has been able to reduce its rate of chronic homelessness by 74% since the adoption of its 10 year plan to end homelessness in 2005.⁷³

A 2013 analysis of a comparable housing program in Albuquerque, New Mexico, similarly demonstrated the economic benefit of providing housing over employing criminalization strategies.⁷⁴ After only one year of operating a housing program, the City of Albuquerque realized a savings of \$615,920.49 – a 31.6% reduction in spending from the previous year.⁷⁵ These savings resulted, in large part, from a dramatic reduction in expensive emergency health care costs⁷⁶ and criminal justice expenses - the city saw a 64% reduction in jail costs.⁷⁷

Housing First in Utah



Earlier this year, an independent economic-impact analysis by Creative Housing Solutions evaluated the cost of homelessness in Central Florida and found that providing chronically homeless people with permanent housing and case managers would cost approximately \$10,000 per year; \$21,000 less than the region currently spends on law enforcement and medical costs for each chronically homeless person.⁷⁸ The savings from providing housing would save taxpayers \$149 million over the next decade.⁷⁹

70 Cities spend, on average, \$87 per day to jail a person, compared with \$28 per day to provide them with shelter. U.S. Interagency Council on Homelessness, *Opening doors: Federal Strategic Plan to Prevent and End Homelessness 18* (2010), available at http://usch.gov/PDF/OpeningDoors_2010_FSPPPreventEndHomeless.pdf.

71 *Searching Out Solutions*, *supra* note 41.

72 See Kerry Drake, *Wyoming Can Give Homeless a Place to Live, And Save Money*, WyoFile.com (Dec. 3, 2013), <http://wyofile.com/kerrydrake/wyoming-homelessness-place-live-save-money/> (“In 2005, Utah did a study that found the average annual cost for emergency services and jail time for each chronically homeless person was \$16,670. The cost to house them and provide case management services was only \$11,000 per person.”).

73 *Id.*

74 Paul Guerin et al., *City of Albuquerque Heading Home Initiative Cost Study Report Phase 1* (2013), available at <http://isr.unm.edu/reports/2013/city-of-abq-heading-home-initiative-cost-study-phase-1.pdf>.

75 *Id.*

76 Emergency room visits, for example, decreased by 36% and inpatient hospitalization costs decreased by 84%. *See id.*

77 *Id.*

78 Gregory A. Shinn, *The Cost of Long-Term Homelessness in Central Florida: The Current Crisis and the Economic Impact of Providing Sustainable Housing Solutions 13* (2014), <http://www.impacthomelessness.org/resources/docs/eis/Eco-Impact-Report-LOW-RES.pdf>; see also Kate Santich, *Cost of Homelessness in Central Florida? \$31k Per Person*, Orlando Sentinel (May 21, 2014), http://articles.orlandosentinel.com/2014-05-21/news/os-cost-of-homelessness-orlando-20140521_1_homeless-individuals-central-florida-commission-tulsa.

79 Shinn, *supra* note 78 at 30.

Reducing Costs with Housing First		
	One Year <u>Before</u> Housing First Program Cost	One Year <u>After</u> Housing First Program Cost
Hospital Inpatient	\$946,874.22	\$153,003.48
Emergency Room	\$208,439.74	\$181,272.62
Medical Outpatient	\$524,568.17	\$319,711.58
Mental Health Inpatient	\$21,732.62	\$54,089.00
Mental Health Outpatient	\$47,391.66	\$31,790.87
Shelter	\$117,948.92	\$0.00
Social Services Costs	\$27,272.36	\$155,264.74
Jail	\$51,540.30	\$18,448.89
Jail-Based Treatment	\$3,844.79	\$4,133.67
Housing First Program Housing Costs	\$0.00	\$309,706.37
Housing First Program Services Costs	\$0.00	\$106,473.07
Total	\$1,949,814.78	\$1,333,894.29
Annual Savings with Housing First Program \$615,920.49		

City of Albuquerque Heading Home Initiative Cost Study Report Phase I

Housing First in Central Florida



Implementing constructive alternatives to criminalization also saves cities money in other ways. Criminalization laws expose local governments to protracted and expensive litigation for violating homeless persons' civil and human rights. Positive solutions to homelessness avoid this expense while also reducing the numbers of homeless people living outdoors.

At a time when government budgets are shrinking, expensive and ineffective strategies should be avoided. The human and financial toll of cycling people through jails, crisis centers, emergency rooms, and emergency shelters back to the streets is substantial – and the cycle is extremely difficult for homeless people to break. Investing in strategies that work to prevent and end homelessness is a smart use of taxpayer money and should be the strategy of choice for any city seeking to resolve the problem of visible homelessness to the benefit of the entire community.



This is only money that we could document for the individuals we studied — and it's money that is simply being wasted. The law-enforcement costs alone are ridiculous. They're out of control."

"The numbers are stunning," said the homeless commission's CEO, Andrae Bailey. "Our community will spend nearly half a billion dollars [on the chronically homeless], and at the end of the decade, these people will still be homeless. It doesn't make moral sense, and now we know it doesn't make financial sense."

Criminalization Laws Do Not Work to End Homelessness

Criminalization strategies not only cost cities millions in wasted resources, they also fail to address the root causes of homelessness. Arrests, incarceration, fines, and convictions prolong homelessness by creating new, sometimes nearly insurmountable barriers to obtaining employment and stable housing.

Employment

A common misconception is that homeless people do not work. However, the National Coalition for the Homeless estimates that 44% of all homeless people are employed on a temporary or full-time basis.⁸⁰ In New York City's emergency shelters, 28% of homeless families include a working adult,⁸¹ and 16% percent of adults are employed.⁸²

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.⁸³ Even where there is not a prolonged period

⁸⁰ *Employment and Homelessness*, Nat'l Coal. for the Homeless, <http://www.nationalhomeless.org/factsheets/employment.html> (last visited Jun. 18, 2014) (citing Martha R. Burt Et Al., *Urban Inst., Homelessness: Programs and the People They Serve* (1999), available at <http://www.urban.org/UploadedPDF/homelessness.pdf>).

⁸¹ Mireya Navarro, *In New York, Having a Job, or 2, Doesn't Mean Having a Home*, *N.Y. Times* (Sept. 17, 2013), http://www.nytimes.com/2013/09/18/nyregion/in-new-york-having-a-job-or-2-doesnt-mean-having-a-home.html?pagewanted=1&_r=2&hp&id.

⁸² *Id.*

⁸³ *Homeless Man Jailed, Loses Job, After Charging Cell Phone*, *My Fox Tampa Bay* (Jan. 8, 2013), <http://www.myfoxtampabay.com/story/20079522/2012/11/13/homeless-man-jailed-after-charging-cell-phone>.

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.⁸⁴ Without the resources to pay, homeless people may be subject to additional jail time, interrupting employment even after a criminal case has been closed.⁸⁵

Employment seekers are often required to disclose any arrests or criminal convictions on job application forms.⁸⁶ 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.

Housing

Given the lack of housing affordable to the lowest income Americans, subsidized housing programs, such as the Section 8 voucher program and public housing, are a critical means of preventing and ending homelessness. Homeless people may find, however, that having a criminal record has made them ineligible for federal housing subsidies.

Applicants for federally subsidized housing are required to disclose any criminal convictions on their records, even those for minor and non-violent crimes. Under federal law, only two types of people must be permanently barred: 1) people found to have manufactured or produced methamphetamine on the

⁸⁴ *Fee Schedule*, Miami-Dade Clerk, http://www.miami-dadeclerk.com/service_fee_schedule.asp (last visited Jun. 25, 2014).

⁸⁵ Joseph Shapiro, *As Court Fees Rise, The Poor Are Paying the Price*, *npr.org* (May 19, 2014), <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor> ("Stephen Papa was sentenced to 22 days in jail, not because of his original offense — destruction of property and resisting arrest after he got drunk with friends one day — but because he couldn't pay the fines and court fees. At his hearing, the judge asked for a \$50 first installment on his \$2,600 in court debt, but Papa, who was homeless and on the verge of starting a new job, had only \$25.").

⁸⁶ *Nebraska Joins the States That No Longer Allow Employers to Ask Job Applicants About Criminal Record*, *Daily Kos* (Apr. 18, 2014), <http://www.dailykos.com/story/2014/04/18/1292950/-Nebraska-joins-the-states-that-no-longer-allow-employers-to-ask-job-applicants-about-criminal-record> ("Gov. Dave Heineman signed a bill Wednesday making Nebraska the 11th state that bars employers from asking prospective employees if they have a criminal record.").



One time I was one check away from getting off the streets in Las Vegas and somebody stole all my money. I was staying in a winter shelter at night and they stole my purse with all my money in it. I raised 'Cain' about it so [the shelter] threw me out. And when the cops came . . . they . . . handcuff[ed] me and told me I was trespassing. So I went to jail for 45 days. I lost that job.

- Kathryn

premises of federally assisted housing,⁸⁷ and 2) sex offenders subject to a lifetime registration requirement.⁸⁸

Otherwise, 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. Many PHAs utilize overly exclusive policies when determining applicant eligibility. For example, some PHAs prohibit anyone with a criminal record – even for minor offenses – from receiving assistance.⁸⁹

In June 2011, HUD Secretary Shaun Donovan issued a memorandum to PHAs encouraging them to consider the seriousness and age of offenses when determining eligibility for assistance. HUD further urged PHAs to consider evidence of rehabilitation.⁹⁰ While this was a positive step, it was not mandatory – and many PHAs across the country still deny housing assistance to those who need it the most, based solely on their criminal records.

87 24 C.F.R. § 960.204(a)(3) (2014).

88 24 C.F.R. § 960.553(a)(2)(i) (2014).

89 The New York City Housing Authority has an “ineligibility timetable” describing the amount of time one is ineligible to apply for housing after serving a sentence (parole must also be completed). A two year minimum wait period is assigned for violations or DUIs, while Class B Misdemeanors can result in 3 to 4 years. Class A, B, or C felonies all result in 6 years of ineligibility after sentencing is complete. Each public housing authority [in the state of New York], and each agency that manages Section 8 vouchers, has its own “ineligibility timetable. *Know your Rights: Housing and Arrests or Criminal Convictions*, The Bronx Defenders (Oct. 2, 2010), <http://www.bronxdefenders.org/housing-and-arrests-or-criminal-convictions/#sthash.oFDZDa26.dpuf>.

90 Letter from Shaun Donovan, Sec’y, U.S. Dep’t of Hous. & Urban Dev., to Pub. Hous. Auth. Exec. Dir. (June 17, 2011), *available at* <http://nhlp.org/files/Rentry%20letter%20from%20Donovan%20to%20PHAs%206-17-11.pdf>.



Well I've been homeless since I been out of prison two years now . . . and now my past is catching up with me. I can't get into an apartment. I'm on social security, but everywhere I go my criminal record comes up and I'm denied housing.

- Donald

Public Benefits

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.⁹¹ A new application does not guarantee that benefits will be re-awarded,⁹² 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.⁹³

Access to Justice

Navigating the criminal justice system can be difficult for anyone. These problems can be particularly difficult, however, for people without a permanent address, regular access to transportation, a safe place to store personal records, and few to no financial resources.

The lack of a permanent address and financial resources create access to justice barriers for homeless defendants at every level of the criminal justice system. From being targeted by ordinances criminalizing basic survival needs, to a faulty system of excessively high fines, bail, and fees, to limited access to probation, homeless persons often find themselves incarcerated more often, and for longer, than a just system should allow.

91 *What Prisoners Need to Know*, Soc. Sec. Admin. 3 (March 2010), *available at* <http://www.ssa.gov/pubs/EN-05-10133.pdf>.

92 *See id* (outlining that those who reapply for SSI benefits will only be approved if they meet the requirements of the program).

93 *See* Dazara Ware & Deborah Dennis, Substance Abuse and Mental Health Services Admin., *Best Practices for Increasing Access to SSI/SSDI Upon Exiting Criminal Justice Settings* (2013), *available at* http://www.prainc.com/soar/cms-assets/documents/Best_Practices_Exiting_CJ_Systems030413.pdf (“Unfortunately, people who are newly released often wait months before their benefits are reinstated or initiated. . . . Consequently, the approximately 125,000 people with mental illness who are released each year are at increased risk for experiencing symptoms of mental illness, substance abuse, homelessness, and recidivism.”).

Once arrested, unaffordable bail means that homeless persons will be incarcerated until their trials. In 87% of cases with a bail of \$1,000 or less in New York City in 2008, defendants were not able to post bail and were incarcerated pending trial. The average length of pretrial detention was 15.7 days.

Pretrial confinement leads to a higher likelihood of conviction. Confinement, or the threat of confinement, prompts defendants to plead guilty and give up their right to a trial. This creates additional problems, as the consequences for convictions can be severe - creating barriers to obtaining employment, housing, and other public assistance necessary for escaping homelessness.

Even when released from jail or prison, the effects of the unequal justice system continue to haunt homeless persons. Court costs resulting from criminalization measures provide a good example. Fees are present at multiple stages of the criminal justice process, including pretrial detention, applying for a court-appointed attorney, resolving a case, and performing any court-ordered probation. These fees are often well beyond a homeless person's ability to pay. Moreover, these fees, often set by statute, may not be subject to a reduction even upon a judicial finding that the defendant cannot afford them. Many people fail to pay these fees, which can result in various consequences including additional periods of incarceration.⁹⁴ Other consequences include driver's license suspensions, making finding or maintaining employment considerably more difficult, and poor credit.

On February 15, 2014, a homeless veteran, Jerome Murdough, died of dehydration in an overheated jail cell on Rikers Island in New York City. Arrested for trespassing in a public housing stairwell where he sought shelter from sub-freezing temperatures, he was still in jail five days after his arrest for the "crime" of simply trying to survive.



⁹⁴ According to a year-long investigation and state-by-state survey by National Public Radio, an increasing number of people are sentenced to jail time not for the underlying crimes, but for failing to pay the exorbitant fees associated with resolving their cases. Joseph Shapiro, *As Court Fees Rise, the Poor are Paying the Price*, NPR.org (May 19, 2014), <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>.

THERE ARE CONSTRUCTIVE ALTERNATIVES TO CRIMINALIZATION

Criminalization is not successful at reducing homelessness. As discussed above, criminalization measures are expensive, ineffective, and may be unconstitutional. Instead of criminalizing the life-sustaining conduct of people who are involuntarily homeless, cities should institute constructive alternatives to criminalization that reduce homelessness while also meeting the goals of the local business community, service providers, government, and taxpayers.

Governments Should Invest in More Affordable Housing

The most important way to address homelessness is to increase the availability of affordable housing. While there are an increasing number of good models to maximize the use of existing housing resources, without a substantial new investment in housing, even the best models will be unsuccessful.

Over 12.8% of the nation's supply of low income housing has been permanently lost since 2001,⁹⁵ and investment in the development of new affordable housing has been insufficient to meet the need.⁹⁶ The lack of affordable housing is felt most acutely by low-income renters. Research from the National Low Income Housing Coalition shows that there is no state in the country where someone earning the minimum wage can afford a one or two-bedroom apartment at the fair market rent.⁹⁷ With increased housing costs, low-income households are forced to cut back spending on other necessities, like food.⁹⁸

Increase the stock and availability of federally subsidized housing

Federal rental subsidies can make a big difference for low-income renters; however, the number of assisted housing units has not kept pace with the need. Since the 1970s, the HUD budget has been cut by more than 56%, leading to reductions of approximately 10,000

units per year in the stock of publicly assisted housing.⁹⁹

Due largely to this reduction, over 75% of low-income households that are income-eligible for federal housing assistance are unable to obtain it. This leaves 11.5 million extremely low-income renters to compete in the private market for a mere 3.2 million units.¹⁰⁰

National Housing Trust Fund

The National Housing Trust Fund ("NHTF"), enacted as part of the Housing and Economic Recovery Act of 2008,¹⁰¹ is intended to increase the supply of housing available to the lowest income Americans.¹⁰²

The NHTF is a block grant to states, administered by HUD. Distribution at the state level is based on priority housing needs. The NHTF requires that 90% of the funds

⁹⁹ The 1978 HUD budget authority was \$95,700,000 in constant 2013 dollars (\$33,818,000 in 1978 dollars), the 2014 HUD budget authority estimate is \$41,518,000. White House, Office of Management & Budget, Historical Tables, Table 5.2 – Budget Authority by Agency: 1976-2019 (2014), <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/hist05z2.xls>; See also, Western Regional Advocacy Project, Without Housing: Decades of Federal Housing Cutbacks, Massive Homelessness, and Policy Failures 20 (2010); Out of Reach '14 *supra* note 13. Constant dollar calculations based on Samuel H. Williamson, *Seven Ways to Compute the Relative Value of a U.S. Dollar Amount, 1774 to present*, Measuring Worth, 2014, www.measuringworth.com/uscompare/.

¹⁰⁰ Joint Ctr. for Hous. Studies, Harvard Univ., *The State of the Nation's Housing 5* (2014), available at <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14-color-full.pdf>

¹⁰¹ Housing and Economic Recovery Act of 2008 (HERA), P.L. 110 289 (July 30, 2008).

¹⁰² See *National Housing Trust Fund*, Nat'l Alliance to End Homelessness, http://www.endhomelessness.org/pages/national_housing_trust_fund (last visited July 3, 2014) ("HUD estimates that \$1 billion would create 16,000 affordable units for extremely low and very low income households").

⁹⁵ Out of Reach '14, *supra* note 13, at 4.

⁹⁶ See *id.* ("Only 34% of new units in 2011 were affordable to the median income renter.").

⁹⁷ *Id.*

⁹⁸ *Id.*

be used to preserve, rehabilitate, or operate rental housing for very low-income¹⁰³ and extremely low-income households¹⁰⁴, with the remaining 10% available to assist first time homebuyers.¹⁰⁵

To date, the NHTF has received no funding. Federal law requires Fannie Mae and Freddie Mac to contribute a percentage of its revenue to finance the NHTF. Before any initial contributions were made, however, Fannie and Freddie indefinitely suspended their required contributions after they began losing money in 2008.¹⁰⁶

Fannie Mae and Freddie Mac are again profitable.¹⁰⁷ Rather than all of those profits going into the Federal Treasury, Fannie and Freddie should make their required contributions to the NHTF. Indeed, failure to do so violates the law creating the NHTF, according to a suit filed in July 2013 by the National Low Income Housing Coalition against the Federal Housing Finance Agency, the regulator of Fannie and Freddie, when Edward DeMarco was Acting Director.¹⁰⁸ The lawsuit is now pending against current Director Mel Watt. Recognizing that the new Director may be more sympathetic than his predecessor to providing resources for the Trust Fund, advocates are also trying to persuade Director Watt to reverse DeMarco's decision on his own initiative.

In March 2014, Senate Banking Committee Chair Tim Johnson (D-SD) and Ranking Member Mike Crapo (R-ID) released a bipartisan housing finance reform proposal that could provide over \$3.5 billion dollars per year for the NHTF. "Once funded to scale, the National Housing Trust Fund is the solution to ending homelessness in the United States and assuring housing stability for low wage earners and poor people who are elderly or who have a disability," said Sheila Crowley, Executive Director of the National Low Income Housing Coalition. "The Johnson-Crapo bill offers real hope to some of our nation's most vulnerable and underserved citizens."

103 See *National Housing Trust Fund: Frequently Asked Questions*, Nat'l Low Income Hous. Coal. (Apr. 12, 2013) [hereinafter *NHTF FAQ*], http://nlihc.org/sites/default/files/NHTF_FAQ_4-12-13.pdf. ("[H]ouseholds[] with incomes of 30% of area median or less.")

104 *Id.* ("[H]ouseholds[] with incomes of 50% of area median or less.")

105 *Housing Trust Fund*, U.S. Dep't of Hous. and Urban Dev., http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/programs/home/htf (last visited July 7, 2014).

106 *NHTF FAQ*, *supra* note 104.

107 Clea Benson, *U.S. Projects \$179 Billion Profit from Fannie Mae, Freddie Mac*, Bloomberg News (Mar. 10, 2014), <http://www.bloomberg.com/news/2014-03-10/u-s-projects-179-billion-profit-from-fannie-mae-freddie-mac.html>.

108 Press Release, Nat'l Low Income Hous. Coal., Press Call: NLIHC Files Suit Against Federal Housing Finance Agency for Failing to Fund Affordable Housing (July 9, 2013), available at <http://nlihc.org/press/releases/2706>.

Local governments must dedicate resources to ending homelessness

Local governments must also commit financial resources to help prevent and end homelessness. One example of such an investment is Miami-Dade County's Homeless and Domestic Violence Tax. The tax, designed as a dedicated revenue stream to fund homeless services, 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.¹⁰⁹ 85% of the tax receipts go to the Miami-Dade County Homeless Trust, which coordinates the County's efforts to end homelessness. The food and beverage tax raises almost \$20 million a year, helping to fund emergency, supportive and transitional housing, and other homeless services within Miami-Dade County.¹¹⁰

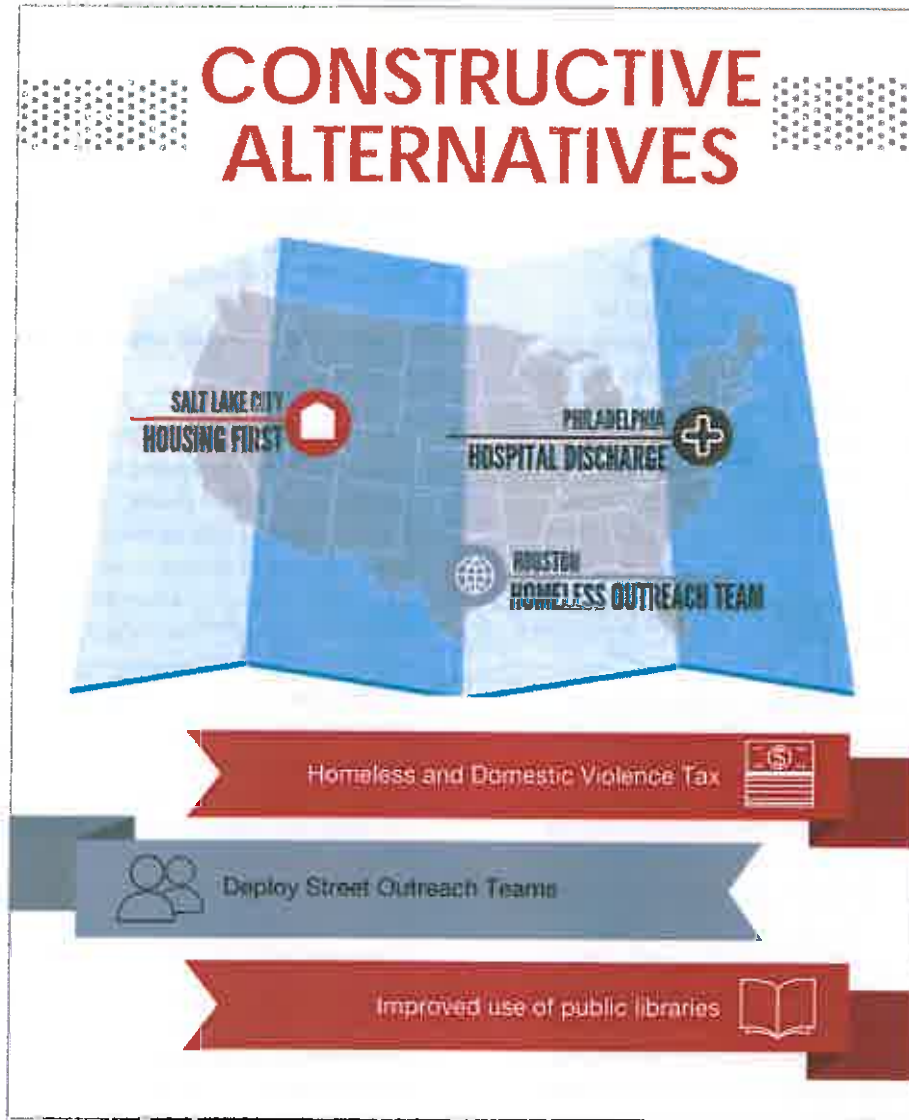
Local Governments Should Adopt Innovative Solutions to Create New Affordable Housing

Local governments should make use of new and innovative housing sources to increase the supply of affordable housing. One example is the development of a "micro-housing" community in Olympia, Washington.

In Olympia, a "micro-housing" community on 2.1 acres is composed of small, single homes of 144 square feet with covered porches that cost \$19,000 each, including labor. Each insulated house has a bedroom and half bath. At the center of this community of micro-houses is a community center that has showers, laundry facilities, and a shared kitchen, dining area, living room, and office and meeting space. Including the cost of site preparation and the community center, the total cost for each micro-house is \$88,000, less than one-half of the cost of a studio apartment in western Washington. Funding for the development came from the state's housing trust fund, the Federal Community Development Block Grant program, state document recording fees, and community and individual donors.

109 The tax is a 1% tax on all food and beverage sales, by places licensed to sell alcoholic beverages for consumption on the premises, except for hotels and motels, and establishments making less than \$400,000 in gross receipts annually. It is collected throughout Miami-Dade County, except for the cities of Miami Beach, Surfside and Bal Harbour. *Tourist and Convention Development Taxes*, Miami-Dade County Tax Collector, available at <http://www.miamidade.gov/taxcollector/tourist-taxes.asp>.

110 Interview with Barbara A. Ibarra, Exec. Dir., Miami Coal. for the Homeless (July 2, 2014).



The county has provided a 41-year lease for the community at \$1 per year. Residents are expected to pay 30 percent of their income toward rent. Twenty-nine homeless individuals moved into these homes in December, 2013.

The \$3.05 million real estate development presents a model that other communities can follow. The community has hosted representatives from Santa Cruz, California, Portland, Oregon, and Seattle, Washington and fielded inquiries from homeless advocates in Ann Arbor, Michigan, Salt Lake City, Utah, and Prince George's County, Maryland. When communities plan micro-housing developments, they should consider locating them in areas close to employment and services.

Communities Should Adopt a Housing First Model

Increased resource investment in affordable housing is the most critical step toward ending homelessness, and the most effective constructive alternative to criminalization. As additional funding is being sought, however, there are important steps that communities can take today to maximize use of existing resources.

One proven method for reducing long-term street homelessness is the Housing First model. The Housing First approach is premised on the idea that pairing homeless people with immediate access to their own apartments is the best way to end their homelessness. Under this model, homeless people are quickly placed into permanent housing supplemented by any supportive services necessary to help them maintain housing stability. Housing First, "can be provided through three primary strategies: 1) pairing

a rental subsidy with committed services; 2) building new or rehabilitate units at a single site and providing a rental subsidy and on-site services; or 3) setting aside units within an affordable housing community and providing a rental subsidy with on-site supportive services.”¹¹¹

The Housing First model has proven to be highly effective in reducing homelessness. Moreover, the model results in tremendous cost savings to communities. Salt Lake City, Utah developed a highly successful Housing First model, utilizing three primary elements for ending chronic homelessness, including creating a centralized tenant selection process that can pair people in need with available housing resources in a timely manner.¹¹² As a result, Utah has reduced chronic homelessness by 74% since 2005.¹¹³

Communities Should Coordinate to Improve Efficient and Effective Service Delivery

Through improved coordination, communities can increase the efficiency of service delivery to homeless people. One example of this model is the now complete 100,000 Homes Campaign, described in the Law Center’s last report on the criminalization of homelessness.¹¹⁴ An initiative of Community Solutions, the 100,000 Homes Campaign was a national campaign involving more than 235 communities, working together to house 100,000 individuals and families characterized as “vulnerable and chronically homeless” - before July 2014.¹¹⁵ Starting in 2010, the campaign worked with communities to: (1) identify all of their homeless neighbors by name; (2) track and measure the local housing placement progress; and (3) adopt methods of housing homeless people more quickly, using process improvements and evidence-based best practices.¹¹⁶ The 100,000 Homes Campaign successfully completed its goal a month early: by June 10, 2014 the organization had housed 101,628 people and families, including 31,171 homeless veterans.¹¹⁷

A similar model is the new 25 Cities Initiative, launched as a partnership between Community Solutions, HUD, the VA, and USICH. The program, designed to end

veteran and chronic homelessness, builds or enhances existing coordinated entry systems that allow homeless people to be quickly matched with the existing resources they need. The Initiative will help eliminate the need for homeless people to jump through multiple bureaucratic hoops before receiving services. This pilot will be extended to 75 cities, as part of an effort to eliminate chronic and veteran homelessness in participating communities by 2016.

Communities Should Improve Police Training and Practices

Criminalization measures breed distrust and animosity between law enforcement and homeless people. This is a misuse of police power, not only because it diverts limited police resources away from true threats to public safety, but also because it turns police officers into part of the problem, rather than a critical part of the solution. Police officers are uniquely situated to have contact with homeless people on the streets, in parks, and in other public areas that are patrolled. Officers who are properly trained to address the needs of people experiencing homelessness, rather than merely cycling them repeatedly through the criminal justice system, can be a key connector between homeless people and the services that they need.¹¹⁸

One successful model for constructively using law enforcement resources is the deployment of street homeless outreach teams. Police officers can play a key role in the outreach team model, either as core members or by working in close collaboration with teams comprised of local homeless service providers and health care professionals. These teams, by engaging homeless people on their terms, build trust between the parties and help to eliminate barriers to homeless services.¹¹⁹ Building relationships with local housing providers increases the ability of outreach workers to refer homeless people directly to available housing.¹²⁰ This is a particularly important intervention for homeless individuals whose physical and mental health conditions make it difficult for them to access shelter and services through regular channels.

111 Searching Out Solutions, *supra* note 41.

112 2013 Utah Annual Report, *supra* note 72.

113 *id.*

114 Criminalizing Crisis, *supra* note 7, at 11.

115 *Projects. The 100,000 Homes Campaign*, Cmty. Solutions, <http://cmtysolutions.org/projects/100000-homes-campaign> (last accessed July 1, 2014).

116 *id.*

117 Jake Maguire, *Campaign Reaches Goal as 100,000th Homeless American Housed*, 100,000 Homes Blog (June 10, 2014), <http://100khomes.org/blog/campaign-reaches-goal-as-100000th-homeless-american-housed>.

118 Ashley Luthern, *Specially Trained Milwaukee Officer's Work to Help Homeless*, Milwaukee Journal Sentinel (Dec. 23, 2013), <http://www.jsonline.com/news/milwaukee/specially-trained-milwaukee-officers-work-to-help-homeless-b99167574z1-237110131.html>.

119 See Ctr. for Problem-Oriented Policing, *Homeless Outreach Team (HOT) Colorado Springs Police Department* (2010), [http://www.popcenter.org/library/awards/goldstein/2010/10-37\(W\).pdf](http://www.popcenter.org/library/awards/goldstein/2010/10-37(W).pdf) (“This trust was formed after repeated contacts with the same individuals who were able to see that the HOT was not there to harass them, but to help them.”).

120 Rebecca Bowe, *Inside the Homeless Outreach Team*, S.F. Bay Guardian Online (Mar. 27, 2014), <http://www.sfbg.com/politics/2014/03/27/inside-homeless-outreach-team>.

One successful example of the outreach model is in Houston, Texas. The Houston Police Department launched their Homeless Outreach Team (“HOT”) in January 2011 with the goal of helping chronically homeless people obtain housing. The team, led by Sergeant Stephen Wick, is additionally comprised of two police officers and one mental health professional. HOT collaborates with area service providers to help homeless people access needed resources from housing to bus fare.¹²¹

The Police-Homelessness Outreach Program (“P-HOP”) in Ramsey County, Minnesota provides another good example of a coordinated effort between police and outreach workers. The P-HOP program has a social worker (from a nonprofit with expertise in serving homeless clients with mental health and chemical dependency issues) placed in the local police station. That person has a relationship with law enforcement while also serving as a liaison to the homeless community.¹²²

The success of the outreach team model depends on good law enforcement training. Police officers often have no formal training on how to meet the needs of the homeless people they are sworn to protect and serve. Police officers can benefit from specialized and regular trainings to help familiarize them with homelessness, its causes, and its solutions. Officers can be trained, for example, on how to identify and respond to homeless people suffering from mental health crises. This training can help police officers know when to divert homeless people from jail when the situation more appropriately calls for mental health treatment. Cross-training of police officers and homeless service providers can be especially helpful as it enhances information sharing, collaboration, and trust.¹²³

Communities Should Use Public Libraries to Help Homeless People

Public libraries often serve as a central gathering place for homeless people because libraries offer free access to computers and to the internet, allowing people to set up an email account, look for social services, search for jobs, and connect with the outside world. Libraries, therefore, are prime locations for making contact with homeless people and helping them to connect with the services that they need.

121 *Homeless Outreach Team*, Houston Police Dep’t: Mental Health Div., <http://www.houstoncit.org/test/> (last accessed July 8, 2014).

122 Searching Out Solutions, *supra* note 41, at 25.

123 *Id* at 4.



So, we have worked with Sergeant Schnell for many, many years. He has this great bond with lots of people that have been on the streets for years and years. He relates to them very well. He’s able to work in a gentle manner and help get them the care they need.

- David Foisom, St. Vincent de Paul Family Health Center

Why do we need police officers doing this? Because a lot of times police officers are the first ones called. There’s an angry property owner downtown, who says, ‘Somebody is sleeping on my front steps. Do something!’ or ‘Someone is urinating on my building. Do something!’ These people don’t belong in jail, they need assistance.

- Houston Mayor Annise Parker

We address not just the homeless issue, but the why they are homeless, whether it’s mental issues or substance abuse. We have providers we can plug them into, and we’ve been pretty successful.’

- Police Officer Jaime Giraldo of Houston’s Homeless Outreach Team.

In recognition of this, the San Francisco Public Library hired a full-time social worker to serve the library’s homeless patrons. The social worker, a trained and licensed therapist, develops relationships with homeless library visitors and helps them to access stable housing. The program served as a model for similar programs in Salt Lake City, Philadelphia, the District of Columbia, and Sacramento.¹²⁴

Communities Should Improve Transition Planning for Homeless People Being Released From Jails and Hospitals

Helping people plan a successful transition from institutions like hospitals and jails is critical to preventing and ending homelessness. Following a period of hospitalization or incarceration, people may not be able to locate or secure safe and stable housing.

124 Scott Schafer, *Urban Libraries Become De Facto Homeless Shelters*, NPR.org (Apr. 23, 2014), <http://www.npr.org/2014/04/23/306102523/san-francisco-library-hires-social-worker-to-help-homeless-patrons>.

Without adequate planning and support, people who are released from these institutions onto the streets are often doomed to prolonged homelessness or, in many cases, a return to the very institutions from which they were released.

Discharge from Jails

The National Alliance to End Homelessness (“NAEH”) estimates that the odds of experiencing homelessness in a year are 1 in 200 for the general population.¹²⁵ For those being released from prison, however, the odds increase dramatically to 1 in 11.¹²⁶

Transition planning from jails and prisons, including connecting people with housing and social services, can help reduce recidivism and maintain healthy communities. To be most effective, the process must begin while people are still incarcerated, allowing them to connect to services tailored to their unique needs (such as case management, health care, employment services, and reentry housing) – rather than having them be released with no place to go.¹²⁷

Discharge from Hospitals

According to recent survey results reported in the *Journal of General Internal Medicine*, 67% of homeless patients spent their first night after discharge in a shelter, and 11% spent it on the streets. Due to lack of food and rest, lack of medication storage, and potential exposure to the elements, or to unsanitary and unsafe conditions, this complicates and undermines medical recovery.¹²⁸ As a result, many people relapse and end up back in the hospital, resulting in increased costs for taxpayers and health care providers.¹²⁹

Under current federal law, hospitals are generally required to treat indigent patients until they are deemed “stabilized.” Moreover, they must have written discharge planning policies in place.¹³⁰ However, these requirements are often violated or poorly implemented. The National Health Care for the Homeless Council reports that its member clinics routinely see clients who have been discharged by hospitals to streets or shelters. Despite its prevalence nationally, hospital dumping has received little sustained national attention and no significant national advocacy for systemic reform to prevent this egregious problem is underway.

Some local communities, however, have initiated programs designed to combat the problem. A pilot program in Philadelphia, for example, provides homeless men with a place to recover from serious illness and injury following their discharge from area hospitals.¹³¹ The program, operated by DePaul House and the Public Health Management Corporation, is designed to provide a safe place where homeless people can regain their health, thereby reducing return visits to the emergency room and, consequently, reducing costs. The program has an innovative funding model - hospitals pay a per diem rate for each patient in the program, recognizing that by reducing returns to emergency rooms, they will save money.

States Should Enact Homeless Bill of Rights Legislation

States should enact and enforce Homeless Bill of Rights legislation that prohibits the criminalization of homelessness. Homeless people experience various forms of discrimination preventing them from realizing rights that many of us take for granted, such as the right to move freely in public places.¹³² Homeless bill of rights laws, enacted in Rhode Island, Illinois, Connecticut, and the U.S. territory of Puerto Rico and proposed in several additional states and cities across the country, can directly combat that discrimination.¹³³

Moreover, these laws have the ability to protect homeless people from common forms of police

125 State of Homelessness In America, *supra* note 4.

126 *Incarceration and Homelessness Rates Linked*, Durham Opening Doors Homeless Prevention & Services, <http://www.durhamopeningdoors.org/?p=1898> (last visited Jun. 18, 2014),.

127 Dep. of Health and Human Services, *Helping Inmates Return to the Community* (2001), available at <http://www.cdc.gov/odu/facts/cj-transition.pdf>

128 See S. Ryan Greyson et al., *Understanding Transitions in Care from Hospital to Homeless Shelter: a Mixed-methods, Community-based Participatory Approach*, 27(11) *J. Gen. Internal Med.* 1484 (2012), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3475815/> (“Sixty-seven percent of (66/98) participants stayed at a shelter on the night of their discharge, 17 % (17/98) stayed with friends, family, or had another arrangement, and 11 % (11/98) stayed on streets the first night after discharge.”).

129 See *id.* (“At the level of the healthcare system, many studies have shown that a small number of high-utilizers of acute care account for a disproportionate share of overall costs for programs such as Medicare and Medicaid. Targeted interventions to improve the coordination of care for these most vulnerable, high-use patients can both improve patient outcomes and reduce overall costs of care.”).

130 See 42 C.F.R. § 482.43 (requiring hospitals to have discharge policies in writing before they can participate in Medicare and Medicaid).

131 Jennifer Lynn, *Northwest Philly Respite Center Gives Homeless Men a Place to Get Better*, News Works (May 28, 2014), http://www.newsworks.org/index.php/homepage-feature/item/67557-northwest-philly-respite-center-gives-homeless-men-a-place-to-get-better?linktype=dse_share.

132 Nat’l Law Ctr. on Homelessness & Poverty, *From Wrongs to Rights: The Case for Homeless Bill of Rights Legislation* (2014), available at http://nlchp.org/documents/Wrongs_to_Rights_HBOR.

133 *Id.*

harassment. The Homeless Bill of Rights introduced in the California legislature last year would have provided several such protections. Homeless Californians would have been granted the right to engage in basic, life-sustaining activities on public property, such as the right to move, eat, rest, and solicit donations, without being subject to police harassment.¹³⁴ The bill would have also guaranteed a right to counsel if a homeless person is arrested for engaging in those protected activities.¹³⁵ Most importantly, the bill would have helped curb harassment of homeless persons by requiring local law enforcement to track “citations, arrests, and other enforcement activities” related to laws that have historically been used to criminalize homelessness.¹³⁶ Armed with hard data, advocates would have been able to more effectively argue that homeless bills of rights are necessary to stop the criminalization of homelessness. The California bill has served as a model for other states’ homeless bill of rights legislation.¹³⁷

International Examples of Constructive Alternatives

South Africa

South Africa’s constitution recognizes a fundamental right to adequate housing, requiring progressive realization of the right and prohibiting arbitrary evictions.¹³⁸ While much work remains, significant progress in implementing this right has been made both in legislation and through the courts.¹³⁹ The 1998 Prevention of Illegal Eviction from and Unlawful Occupation of Land Act dictates that evictions of unlawful occupiers (squatters, equivalent to homeless persons in encampments or sheltering in unoccupied

buildings in the U.S.) must be “just and equitable.”¹⁴⁰ South African courts have come to interpret the Act as protecting the right of occupiers to be treated with “dignity and respect.”¹⁴¹ If the occupiers cannot find alternative accommodation, then the State must take “reasonable measures” to find such accommodation; even private landowners are required to wait until the state has the opportunity to fulfill its obligations to ensure people are not evicted into homelessness.¹⁴² Although municipalities have resisted fulfilling their duties under the Constitution and the Act, these laws have been regularly invoked by South African courts and have allowed the courts to develop and expand the legal protection of the right to adequate housing.¹⁴³

South Africa’s Right to Housing in Action

Early in the morning of Friday March 31, 2006, representatives from three governmental agencies raided and destroyed temporary structures constructed by a group of homeless people on a vacant plot of land. In a case brought by non-profit organization Tswelopele, the Supreme Court of Appeal of South Africa found that the that government had violated not only the housing provisions of the Constitution, but also various other provisions of the Bill of Rights that ensure personal security, dignity, and privacy. The judge crafted a common sense remedy for the homeless people that nonetheless would be shocking to see in U.S. courts. He noted that, “Placing them on the list for emergency [housing] assistance will not attain the simultaneously constitutional and individual objectives that re-construction of their shelters will achieve. The respondents should, jointly and severally, be ordered to reconstruct them. And, since the materials belonging to the occupiers have been destroyed, they should be replaced with materials that afford habitable shelters.”¹⁴⁴ Lower courts have followed this guidance in subsequent cases, ordering police to restore shelters they had destroyed - under threat of contempt. These decisions exemplify the practical importance of the legal recognition of the right to housing.

134 A.B. 5, 2013-2014 Reg. Sess. 553.2(a)(1)-(11)(Ca. 2012).

135 *Id.* at 553.2(a)(12)(A).

136 See *id.* at 553.5(a)(1)-(17) (listing laws that criminalize loitering, trespassing, sitting, lying down, sleeping in public, living in a vehicle, and others).

137 Nat’l Law Ctr. on Homelessness & Poverty, *From Wrongs to Rights: The Case for Homeless Bill of Rights Legislation* (2014), available at http://nlchp.org/documents/Wrongs_to_Rights_HBOR.

138 See S. Afr. Const. 1996 § 26, “(1) Everyone has the right to have access to adequate housing. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve a progressive realization of this right. (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.”

139 See Michael Clark, Socio-Econ. Rights Inst., *Evictions and Alternative Accommodation in South Africa: An Analysis of the Jurisprudence and Implications for Local Government* at 3 (Jackie Dugard ed., 2013) (“The sheer volume of litigation has meant that the law in relation to the right to housing, evictions and alternative accommodation is continuously changing and adapting.”).

140 Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

141 Clark, *supra* note 134, at 14.

142 *Id.* at 19.

143 *Id.* at 3-4.

144 See *Tswelopele Non-Profit Organisation v. City of Tshwane Metropolitan Municipality* 2007 (6) SA 551 (SCA) at 22 para. 28 (S.Afr.).

Scotland

Scotland's comprehensive Homelessness, Etc. (Scotland) Act of 2003 recognizes a judicially-enforceable right to immediate housing for all homeless persons and the right to long-term, supportive housing as long as is needed.¹⁴⁵ The Scottish law's inclusive definition of homelessness protects not only those who are literally without shelter but also those living in intolerable conditions and those at risk of homelessness.¹⁴⁶ It was progressively widened over the period from 2003-2012 so that now it encompasses all persons with inadequate accommodations, broadly defined to include those who cannot safely access their accommodation such as domestic violence victims, those with unreasonable accommodation – including overcrowded housing, and those residing in accommodations that are unsuitable for long-term housing.¹⁴⁷ Homeless individuals have the right to immediate housing while their application for long-term housing is being considered and have the option to sue for enforcement when that right is violated.¹⁴⁸

Preventative policies include requirements for landlords and mortgage lenders to notify local housing authorities of potential homelessness,¹⁴⁹ and for local governments to create comprehensive plans to create affordable housing – along with an individual right to sell one's house to the government to avoid foreclosure, but rent it back to allow one to maintain one's residence through financial difficulty, perhaps ultimately repurchasing the home.¹⁵⁰

Though the Scottish laws are not perfectly implemented, homelessness in Scotland has largely been reduced to a rare and brief occurrence.¹⁵¹ The Scottish model could be used in the U.S. to expand the definition of homelessness to protect more individuals, require adequate planning for the housing needs of people at all income levels, promote preventative policies, and create a legally enforceable duty for the government to meet the housing needs of all residents.¹⁵² Scotland demonstrates how the right to housing for all individuals is not merely aspirational, but can be implemented and enforced in practice.¹⁵³

145 Eric S. Tars & Caitlin Egleson, *Great Scott: The Scottish Plan to End Homelessness and Lessons for the Housing Rights Movement in the United States*, 16 *Geo. J. on Poverty L. & Pol'y* 187, 190-1 (2009).

146 *Id.* at 191-4.

147 Housing (Scotland) Act, 1987, c. 26. Part II, § 24.

148 Tars & Egleson, *supra* note 140, at 192, 215.

149 *Id.*

150 *Id.*

151 See National Statistics, Operation of the Homeless Persons Legislation in Scotland, 2013-14 (June 24, 2014), <http://www.scotland.gov.uk/Resource/0045/00453960.pdf>.

152 Tars & Egleson, *supra* note 140, at 191.

153 *Id.* at 216.

THERE IS MORE TO BE DONE

Federal Responsibility to Combat the Criminalization of Homelessness

The federal government can and should play an active role in combatting the criminalization of homelessness and in promoting constructive alternatives. Several important first steps have been taken since our last report, most notably the release of a report on constructive alternatives by the U.S. Interagency Council on Homelessness (USICH), entitled “Searching Out Solutions.”¹⁵⁴ Still, more must be done.

Recommendations to the U.S. Department of Housing and Urban Development (“HUD”)

- HUD should ensure that fewer McKinney-Vento homeless assistance grant dollars go to communities that criminalize homelessness. HUD should better structure its funding by including specific questions about criminalization in the annual Notice of Funding Availability, and by giving points to applicants who create constructive alternatives to homelessness while subtracting points from applicants who continue to criminalize homelessness.
- HUD should take additional steps to ensure that PHAs use their discretion to accept people with criminal histories unless federal law requires their exclusion.

Recommendations to the U.S. Department of Justice (“DOJ”)

- DOJ should ensure that its community policing grants are not funding criminalization practices. In addition, DOJ should fund positive community policing practices that address homelessness in a more productive way.
- DOJ should investigate police departments for civil rights violations connected with the criminalization of homeless people.
- DOJ should identify opportunities for filing Statement of Interest briefs where evidence of

¹⁵⁴ The report, following from a 2010 summit between USICH, HUD, and DOJ, local government officials, and advocacy groups, including the Law Center, where several successful strategies for reducing criminalization were identified, makes several recommendations to communities.

civil and human rights violations related to the criminalization of homelessness is present.

- DOJ should ensure that its guidance documents discourage criminalization of homelessness and instead recommend the positive police practices noted in this report.

Recommendations to the U.S. Interagency Council on Homelessness (“USICH”)

- USICH should publicly oppose specific local criminalization measures, as well as inform local governments of their obligations to respect the rights of homeless individuals.
- USICH should continue to talk about housing as a human right and to promote constructive alternatives to criminalization.

Recommendations to the Federal Housing Finance Administration (“FHFA”)

- FHFA should immediately fund the National Housing Trust Fund, by releasing profits from Fannie Mae and Freddie Mac that have instead been given to the US Treasury, in violation of the law.

Recommendations to the U.S. Congress

- Congress should pass housing finance reform legislation that would provide \$3.5 billion per year for the National Housing Trust Fund.
- Congress should provide renewal funding for all Section 8 vouchers currently in use and then provide an additional 40,000 vouchers – 30,000 for individuals and families who are homeless, 5,000 so Public Housing Authorities can use the Violence Against Women Act to promptly transfer survivors of domestic violence, and 5,000 for people with disabilities to support deinstitutionalization.

Recommendations to State Governments

- States should enact and enforce Homeless Bill of Rights legislation that prohibits the criminalization of homelessness.

Recommendations to Local Governments

- **Local governments should cease enforcement of existing criminalization laws, and stop passing new ones.**
- **Local governments should dedicate sources of funding to provide needed housing and supportive services.**
- **Local governments should improve coordination of existing services for homeless persons.**
- **Local governments should improve police training and practices related to homelessness.**

CONCLUSION

Homelessness continues to affect Americans across the country, including a rising number of families and children. Despite the need, there is insufficient affordable housing and shelter availability across the country, leaving people with no choice but to struggle for survival on the streets. Although homeless people have no choice but to perform life-sustaining conduct in public places, cities continue to treat these activities as criminal.

In recent years, there has been a dramatic increase in criminalization laws, continuing the unfortunate trend last reported on by the Law Center in our 2011 report, *Criminalizing Crisis*. The increase in criminalization laws has been most prevalent in city-wide bans on activities like camping, resting, and begging. There has also been a dramatic rise in laws prohibiting living in vehicles.

Criminalization measures, rather than solving the underlying causes of homelessness, create additional barriers to accessing employment, housing, and public benefits 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 at great taxpayer expense. Finally, these laws are often illegal, violating homeless persons' constitutional and human rights.

Instead of relying upon ineffective, expensive, and potentially illegal criminalization laws to address homelessness, communities should pursue constructive alternatives. Most importantly, federal, state, and local governments should invest in affordable housing at the level necessary to prevent and end homelessness. In addition, governments should make better use of currently available resources dedicated to homelessness.

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

Prohibited Conduct Chart

The following chart provides data regarding prohibited conduct in cities around the country. With the assistance of Manatt, Phelps, & Phillips LLP and Latham & Watkins LLP, the Law Center gathered the data by reviewing the municipal codes of the cities listed in the chart and identifying laws that either target or are likely to have a particularly negative impact on homeless individuals. The Law Center carefully evaluated the language and

definitions used in various codes to avoid including laws that appeared directly aimed at preventing other illegal acts unrelated to homeless individuals, such as loitering with the intent to solicit prostitution or general trespass laws. Also, the chart does include laws that, while not facially discriminatory, could be or have been enforced in a manner that disproportionately affects homeless individuals.

Although the chart reviews the laws in existence in different cities, enforcement of these laws varies widely.