

# Criminalization of Homelessness

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Every day in America, people experiencing homelessness are threatened by law enforcement, ticketed, and even arrested for living in public spaces when they have no other alternative. Millions of individuals, families, and youth experience homelessness each year and millions more lack access to decent, stable housing they can afford. Rather than providing adequate housing options, too many communities criminalize homelessness by making it illegal for people to stand, sit, sleep, shelter oneself with anything from a blanket to a vehicle, or even ask for help. These laws and policies violate constitutional, civil, and human rights, traumatize homeless individuals and negatively impact their physical and mental health (including creating police encounters that can lead to unnecessary use of force or death), create arrest records, fines, and fees that stand in the way of homeless people securing jobs or housing, and perpetuate racial inequity.

2022 was a particularly trying year for unhoused and unsheltered individuals and communities and the advocates fighting for their liberation. With significant increases in homelessness and encampment communities, spurred by the COVID-19 pandemic and widespread economic hardship, criminalization was also on the rise. A Texas-based think tank, the Cicero Institute, published and promulgated a “[Reducing Street Homelessness Model Bill](#)” that diverted “American Rescue Plan Act” funding away from long-term permanent housing solutions and toward short-term shelter facilities and encampment communities, while also endorsing the criminalization of “unauthorized sleeping [or] camping...” and making it easier to place psychiatric holds and administer involuntary medical treatment to unhoused people experiencing mental health conditions. The model bill has already gained traction in state

legislatures around the country, with versions introduced in Georgia, Arizona, and Wisconsin and passed in Texas, Missouri, and Tennessee.

Even with these troubling legislative developments, there remains widespread commitment to the fight to end criminalization and to sharing the reality that advocates have known for decades: Criminalization harms entire communities and does nothing to address the root causes of homelessness and housing insecurity. Hard-fought victories in the courts and strong allies in the current Administration suggest good reason for optimism in 2023 as we continue to unite in the fight for Housing, Not Handcuffs.

## HISTORY

From vagrancy laws and the workhouses of pre-industrial England to [legal segregation](#), [sundown towns](#), and [anti-Okie laws](#) in the U.S., ordinances regulating the use of public space have long been used to exclude marginalized persons based on race, gender identity, national origin, disability, age, and economic class. With the advent of modern homelessness in the 1980s, rather than addressing the underlying lack of affordable housing, communities faced with increasingly visible homelessness began pushing homeless persons out of public view with laws criminalizing life-sustaining acts such as self-sheltering (“camping”), sleeping, resting, eating, or asking for donations. Other communities have used disparate enforcement of other ordinances, such as jaywalking or littering, to harass and push homeless persons out of certain spaces. These practices gained even more traction with the trend toward “broken windows” policing in the 1990s. For homeless youth, paternalistic status offense laws like runaway statutes and curfews ignore youths’ own assessments of where they are safest and can turn them into criminals or “delinquents” the second they step out the door without the intent to return.

Since 2006, the National Homelessness Law

Center tracked these laws in 187 cities and across all 50 states and the District of Columbia. The Law Center found that between 2006 and 2019, city-wide bans on camping increased by 92%, on sitting or lying by 78%, on loitering by 103%, on panhandling by 103%, and on living in vehicles by 213%. The Law Center also recently found state statutes criminalizing homelessness in 48 states and the District of Columbia. Meanwhile, a 1,300% growth of homeless encampments has been reported in all 50 states. Too often, homeless residents experience forced evictions or “sweeps” of the encampments, usually with little notice and no provision of alternative housing, frequently resulting in the destruction of important documents, medicines, and what little shelter the residents have.

However, recent court victories have provided advocates with new opportunities to change the conversation. These include the 2018 victory in *Martin v. Boise* in the 9th Circuit, successfully defended from Supreme Court review in 2019, which held that in the absence of adequate alternatives, it is cruel and unusual punishment under the 8th Amendment to punish someone for life-sustaining activities like sleeping, resting, or sheltering oneself. This year, the 9th Circuit affirmed and expanded *Martin* in its *Johnson v. City of Grants Pass* decision, handed down on September 28. The Court reiterated that it is violative of the 8th Amendment’s prohibition on cruel and unusual punishment to criminalize unavoidable acts of survival undertaken by unsheltered individuals in the absence of adequate shelter and applied *Martin*’s holding to civil citations that subject homeless people to future criminal punishment for sleeping outside or taking measures to stay warm and dry while living outside.

Similarly, since the 2015 *Norton v. Springfield* decision in the 7th Circuit, no panhandling ordinance challenged in court has withstood constitutional scrutiny under the 1st Amendment, and dozens of cities have since repealed their ordinances, some instituting more effective day shelter and day labor programs. In fact, the Law Center’s 2022 Litigation Manual

Supplement found that 100% of lawsuits challenging panhandling bans since 2015 have led to favorable outcomes, which include findings of unconstitutionality in the courts, settlement agreements that appropriately redress the harms to unhoused plaintiffs, and repeals of the challenged anti-panhandling laws.

Other court cases have found sweeps of homeless encampments to violate due process and property protections under the 4th Amendment, and other laws criminalizing homelessness to violate the 14th Amendment’s equal protection and due process clauses, along with other state constitutional or common law protections. While litigation must always be done in coordination with legislative advocacy and movement-building, the Law Center found that litigation remains a useful tool in the fight to end the criminalization of homelessness. Based on summaries and analyses of more than 180 lawsuits, the Law Center found that 60% of cases challenging camping bans and/or sweeps of encampments have led to favorable outcomes, 77% of cases challenging loitering or vagrancy bans have led to favorable outcomes, and 66% of cases challenging food sharing bans have led to favorable outcomes.

## ISSUE SUMMARY

The growing affordable housing gap and shrinking social safety net have left millions of people homeless or at-risk, and most American cities have fewer emergency shelter beds than people who need shelter. Despite this lack of affordable housing and shelter space, many cities have chosen to criminally or civilly punish people living on the street for doing what any human being must do to survive, like sleeping, resting, and eating – activities we all do every day and take for granted.

It is important to note that BIPOC communities experience criminalization in disparate and discriminatory ways. This is not only because Black people and people of color experience homelessness across the country at disproportionately high rates, but also because Black and Latinx people are 9.7 times and 5.8

times, respectively, more likely to be cited under laws that criminalize homelessness when compared to white individuals. In 2022, thanks to advocacy from directly impacted communities, the UN Committee on the Elimination of Racial Discrimination specifically condemned the disparate racial impact of criminalization of homelessness and made recommendations to the U.S. to take remedial steps to eliminate it.

Other marginalized groups that disproportionately experience homelessness, including people with disabilities and LGBTQ+ individuals, are also at risk of being discriminatorily targeted and affected by criminalization. While these communities' experiences with homelessness and criminalization have come to the forefront more in recent years, there is significant work to be done when it comes to amplifying and centering the voices and experiences of individuals who experience homelessness while also holding other marginalized identities and statuses.

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

Criminalization is the most expensive and least effective way of addressing homelessness and

wastes scarce public resources on policies that do not work. A growing body of research comparing the cost of homelessness, including the cost of criminalization, with the cost of providing housing to homeless people shows that ending homelessness through housing is the most affordable option in the long run. Indeed, the provision of housing using a Housing First model, which focuses on providing people with quick, low-barrier access to housing followed by any needed services to maintain housing stability, is cheaper and more effective than all other strategies for addressing homelessness. For example, a study in Charlotte, NC, found that the city saved \$2.4 million over the course of a year after creating a Housing First facility, as tenants spent 1,050 fewer nights in jail and 292 fewer days in the hospital and had 648 fewer visits to emergency rooms. With state and local budgets stretched to their limit and the threat of additional federal cuts on the horizon, rational, cost-effective policies are needed, not ineffective measures that waste precious taxpayer dollars.

## PROGRAM SUMMARIES

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

### **U.S. Interagency Council on Homelessness**

For years, USICH has been generally opposed to criminalization, but there was significant backsliding under the Trump Administration. Over the last year, the agency has published several resources and guidance materials aiming to reaffirm its anti-criminalization stance. Perhaps most notably, USICH published "7 Principles for Addressing Encampments" in June 2022. The principles aim to serve as guidance to local decision-makers, and include suggestions such as "establish a cross-agency, multi-sector response," "engage encampment residents to develop solutions," "address basic needs and provide storage," and "develop pathways to permanent housing and supports," among others. This guidance states definitively that

“strategies that use aggressive law enforcement approaches that criminalize homelessness, [and] clos[ing] encampments without offering shelter or housing options ... will not succeed.” Still, the resource is not without shortcomings, primarily because it ultimately endorses law enforcement as a frontline response system to homelessness, despite what advocates know and have made clear about the ways in which police are ill-equipped to work nonviolently with unhoused residents and the ways in which their presence legitimizes the criminal legal system’s role in addressing homelessness. The guidance also prioritizes what local governments should do with cleared encampment spaces after encampment closures, with less attention paid to what happens to the communities and individuals that may have been displaced.

When USICH solicited comments and feedback related to it’s the next iteration of its Federal Strategic Plan to Prevent and End Homelessness, many stakeholders raised criminalization as a key concern area. The agency received more than 1,500 comments and conducted close to 100 listening sessions in communities across the country, and published a list of key themes in advance of its release of the Strategic Plan. The first of the key themes was “end the criminalization of homelessness and implement solutions that trat housing as a right,” signaling that ending the criminalization of homelessness will be an integral piece of the forthcoming Strategic Plan.

### **U.S. Department of Justice**

In 2015, DOJ filed a statement of interest brief stating that “Criminally prosecuting those individuals for something as innocent as sleeping, when they have no safe, legal place to go, violates their constitutional rights.” The DOJ has also offered informal guidance, ranging from newsletters to a letter on the impact of excessive fines and fees for poor, to a comment on a proposed encampment ordinance in Seattle. In 2021, the DOJ opened a civil rights investigation into the Phoenix police department, for the first time explicitly listing police violations of homeless communities as a subject of their

investigation. While these are welcome steps, the agency could be doing more, such as requiring law enforcement agencies to disaggregate data by housing status to further understand the extent of the problem, weighing in through statement of interest briefs or other guidance, opening more investigations, and taking a stance against the state-level criminalization bills passed thus far in Texas, Missouri, and Tennessee.

### **U.S. Department of Housing and Urban Development**

In 2015, HUD inserted a new question into its application for the \$2 billion Continuum of Care (CoC) funding stream, giving local governments and providers higher scores and potentially increased funding if they demonstrate that they are preventing the criminalization of homelessness. In 2016, this question was updated with increased points and more specific steps CoCs could take, which have remained in subsequent years.

This year, HUD introduced a funding package aimed at addressing unsheltered homelessness and homeless encampments. The \$365 million package includes grant funds and vouchers meant to enable localities to connect unsheltered individuals to housing, health care, and supportive services. While this funding package does intend to incentivize alternatives to criminalization, HUD could be adding additional incentives in other grant streams and making clearer consequences for localities that continue to criminalize.

### **U.S. Department of Education**

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

## **FORECAST FOR 2023**

With the Supreme Court victory in *Martin v. Boise*, advocates are looking to try to push



the decision as far as it can go to help turn communities from criminalization to housing solutions. However, a backlash is also brewing, with communities looking to find loopholes in constitutional compliance, and deep concern for the long-term impacts of the pandemic on homelessness. Advocates should help legislators look for opportunities to include incentives or requirements for non-criminalization in legislation. In 2021, federal legislators introduced several promising pieces of legislation that included anti-criminalization provisions, including the “Ending Homelessness Act,” “Housing is a Human Right Act,” and the Unhoused Bill of Rights. Additionally, the “George Floyd Justice in Policing Act” includes requirements for data collection on use of force disaggregated by housing status. We hope these bills will be reintroduced in 2023 and that federal legislators continue to incorporate these types of anti-criminalization provisions into future legislative measures aimed at addressing the housing and homelessness crises.

We anticipate that the Cicero Institute-based legislation will continue to gain traction in state legislatures around the country in 2023, and we are working with allies and partners to develop a legislative and litigatory response. Of particular concern is the Cicero Institute’s model bill provision that makes it easier to place psychiatric holds on and involuntarily administer medical treatment to unhoused individuals experiencing mental health conditions. The similar [CARE Court proposal](#) in California, which was signed into law by Governor Newsom this year, provides mechanisms by which Californians living with disabilities, substance use disorders, and mental health conditions can be placed under involuntary court-ordered treatment. Legislative measures like this one, and the one included in the Cicero Institute’s model bill, are meant and likely to target unhoused communities. They also perpetuate a harmful narrative that mental health problems cause homelessness, inviting decision-makers and people in power to continue to gloss over the structural and systemic root causes of homelessness such as racism, classism, and ableism.

## WHAT TO SAY TO LEGISLATORS

The Housing Not Handcuffs Campaign has developed [Model Policies](#) for local, state, and federal governments that emphasize 1) shortening homelessness by stopping its criminalization, 2) preventing homelessness by strengthening housing protections and eliminating unjust evictions, and 3) ending homelessness by increasing access to and availability of affordable housing. The National Coalition for Housing Justice also has a useful statement on criminalization, and the American Bar Association, American Medical Association, American Public Health Association have put out policies opposing criminalization, and even the National League of Cities has offered its critique. The Housing Not Handcuffs Campaign also has [model one-pagers](#) and [Six Ideas for Talking About Housing Not Handcuffs](#) that may be useful in framing conversations with legislators, including a sample script:

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

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

**Solution:** But there is a better way. We’ve seen in city after city that where they change their laws and policies to reduce their reliance on law enforcement and instead invest in affordable, supportive housing, it gets homeless people off the streets far more effectively, and, as it turns

out, far more cheaply than endlessly cycling people through courts, jails, and back onto the streets. It increases public safety when police cars, jails, and courts aren't clogged with people being arrested simply for trying to survive. It increases public health when people are able to get services and are housed, rather than forced to the margins.

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

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

The Housing Narrative Lab has also published helpful tools on how to effectively message in the homelessness advocacy space. The organization's [“Messaging Guidance on Homelessness Messaging”](#) includes tips for how to invoke shared desires among diverse stakeholders and spur legislative solutions. Housing Narrative Lab's research finds that “Housing First” messaging that speaks to the sacrifices people make to provide for their families and demonstrates the impossibility of finding pathways out of homelessness for most families are most likely to generate support among audiences who may have been otherwise opposed.

## **FOR MORE INFORMATION**

National Homelessness Law Center, 202-638- 2535, [info@homelesslaw.org](mailto:info@homelesslaw.org); <https://homelesslaw.org/>.

Housing Not Handcuffs Campaign, <http://www.housingnothandcuffs.org>.