

GRANTS PASS V. JOHNSON: REINFORCING THE CYCLE BETWEEN INCARCERATION AND HOMELESSNESS

The recent Supreme Court decision [Grants Pass v. Johnson](#) held that the U.S. Constitution's 8th Amendment's prohibition on cruel and unusual punishment does not bar local governments from arresting, ticketing, or fining people experiencing homelessness for engaging in life-sustaining activities, like sleeping, in public, even when they have no other safe option. Conviction and arrest records have a profound impact on housing access by creating additional barriers to safe housing for people already experiencing homelessness. This factsheet explains the connection between conviction histories, housing access, and homelessness, and how arresting unhoused people reinforces this vicious cycle and more deeply entrenches racial and social inequities.

WHAT IS GRANTS PASS V. JOHNSON?

The case *Grants Pass v. Johnson* started in the city of Grants Pass, Oregon, where Gloria Johnson and several of her fellow Grants Pass residents experiencing homelessness sued the city for issuing tickets to people for sleeping outside on public property, despite a lack of safe alternatives. Johnson and her colleagues argued that laws punishing people for sleeping outside when there are no other alternatives are a violation of the Eight Amendment of the U.S. Constitution, which prohibits cruel and unusual punishment. Johnson and the other plaintiffs argued that it is cruel and unusual to punish people for involuntary conduct - like sleeping outside when there is no option to sleep inside. Multiple courts ruled in-favor of Johnson, but the case was appealed by the city to the Supreme Court. Despite the lower courts' rulings, on June 28, 2024, the [Supreme Court](#) sided with the city of Grants Pass, giving local governments clearance to enact laws to arrest, ticket, and fine unhoused people.

WHAT IS THE IMPACT OF GRANTS PASS V. JOHNSON?

While communities do not have to - and should not - adopt laws which arrest, ticket, or fine unhoused people, the Supreme Court's decision may embolden misguided elected officials to enact these harmful and backwards policies and to ramp up enforcement of existing laws.

[Criminalizing homelessness is cruel and ineffective](#). Studies and the experiences of unhoused people show that arrests, tickets, and fines do nothing to address the cause of homelessness - namely, a lack of safe, decent, affordable, and accessible housing - and ultimately lead to more people experiencing homelessness. That is because, in addition to the [supply](#) and [affordability](#) challenges of finding housing, arrest and conviction records and fines create significant additional barriers to housing access.

HOW DO ARREST AND CONVICTION HISTORIES CREATE BARRIERS TO HOUSING?

In addition to having to navigate the challenges of the rental housing market, a conviction or arrest record poses a significant barrier to accessing both private market and assisted housing. Landlords and housing providers have [broad discretion](#) to screen out applicants with conviction or arrest histories, and frequently rely on [third-party background screening companies](#) to evaluate potential tenants. These companies pull information from various records databases into a report summarizing an applicant's legal, credit, and eviction histories; reports are sometimes accompanied by an up-or-down recommendation as to whether to lease to the applicant.

Despite their widespread use, background screenings are prone to error, including mixing up the records of two people with the same name, misreporting arrests as convictions and vice-versa, and providing sealed or expunged records that should not be available. Moreover, tenants rarely – if ever – have the opportunity to review these reports, let alone correct or refute any inaccurate, outdated, or incorrect information. Landlords and housing providers, including Public Housing Authorities (PHAs), which administer HUD housing assistance programs, also use unreasonable lookback periods to evaluate applicants' arrest and conviction records. These lookback periods can span decades for some convictions and effectively act as a ban from a housing development, such that people with arrest and conviction histories need not apply.

Similarly, [fining unhoused people makes it harder for them to find stable housing](#). Fines hurt housing applicants' credit and may divert what little money they have from basic necessities like housing. [Studies show](#) that unhoused people with legal debt face, on average, an additional two years of homelessness.

WHAT IS THE CONNECTION BETWEEN CRIMINAL HISTORIES AND HOMELESSNESS?

The barriers described above make it more difficult – and often impossible – to find safe, affordable, accessible housing after an arrest, conviction, or civil fine. The *Grants Pass v. Johnson* decision may embolden misguided elected officials to enact laws to arrest, ticket, and fine unhoused people, which will burden more people with arrest and conviction records and fines that make it more difficult to find housing. This traps people in a “revolving door” between homelessness and incarceration: people who have been incarcerated are almost [10 times more likely](#) to experience homelessness than the general public, and people experiencing homelessness are [more likely](#) to interact with the criminal-legal system.

Historic and ongoing racism in the housing and job markets have led to the [disproportionate representation](#) of people of Black, Latino, and Native people among people experiencing homelessness; likewise, the [discriminatory impact](#) of the criminal legal system on Black communities and other communities of color has disproportionately burdened people of color, and in particular Black people, with criminal records. The increased criminalization of homelessness will further reinforce and more deeply entrench these racial disparities. Similarly, [people with disabilities](#) and members of the [LGBTQ community](#) – already over-represented among both people experiencing homelessness and people with criminal records – will be disproportionately impacted by criminalization policies.

WHAT SHOULD COMMUNITIES DO INSTEAD?

Communities should [adopt policies](#) that connect people experiencing homelessness and those exiting incarceration to safe, stable, affordable, and accessible housing, with voluntary supportive services when needed to ensure long-term housing stability. These policies include:

- **Implementing “Housing First” programs that prioritize connecting people experiencing homelessness with no-barrier housing and voluntary supportive services.** [Housing First](#) is a [proven effective, evidence-based approach](#) to ending homelessness that provides people experiencing homelessness with stable, no-barrier affordable housing and voluntary supportive services when needed to ensure long-term housing stability.
- **Creating systems that connect people leaving incarceration to safe, stable, no-barrier housing before their exit date.** Affordable, accessible housing is the cornerstone to successful reentry, but too often people exit incarceration into homelessness and housing insecurity. While requirements for discharge and release planning vary depending on state and jurisdiction, it should be [mandatory](#) for all reentry planning to include securing affordable, accessible housing before release, along with identifying any supportive services needed to maintain long-term housing stability after release.
- **Reining-in the discretion housing providers have in denying potential tenants with a conviction or arrest record.** Both private and public housing providers [create barriers](#) to housing access that make it difficult - and for some, impossible - for those exiting incarceration to find a quality, affordable place to live, pushing people from imprisonment into homelessness. While there is ample evidence of the harm caused by barriers to housing, there is no meaningful proof that high barriers to housing for formerly incarcerated and convicted people make our communities safer. Rather, [studies show](#) that people with criminal records are just as good of tenants as people without criminal records. Communities should bar landlords from having blanket bans on people with criminal histories, limit the types of convictions that can be considered, and mandate an individualized review of applicants with relevant convictions.
- **Investing in proven solutions to homelessness, like rental assistance and the construction and preservation of deeply affordable, accessible housing.** People often become homeless because housing is too expensive. The nation is facing a shortage of [over 7.3 million](#) affordable, available homes for households with the lowest incomes, [and only one in four people](#) who qualify for rental assistance receive it. While communities can, and should, invest more into rental assistance and affordable housing development and preservation, only the federal government can provide the resources at the scale required to end the affordable housing crisis and make sure everyone has a safe, affordable, accessible place to call home. Communities should call on the federal government to expand investments in programs like [Housing Choice Vouchers](#), which help households afford rent in existing housing stock that would otherwise be out of reach, and the [national Housing Trust Fund](#), which would increase the stock of deeply affordable, accessible housing for people with the most urgent housing needs.

For questions, additional information, or to get involved in the Partnership for Just Housing, please contact Kim Johnson, policy manager at the National Low Income Housing Coalition (kjohnson@nlihc.org), Kimberly Dunne, co-national organizer at the Formerly Incarcerated, Convicted People and Families Movement, at kimberly@ficpfm.org, and Ashley Bishel, staff attorney at the Shriver Center on Poverty Law (ashleybishel@povertylaw.org).