

# 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 sit, sleep, or even eat in public places, despite the absence of adequate alternatives. These laws and policies violate constitutional, civil, and human rights and create arrest records, fines, and fees that stand in the way of homeless people securing jobs or housing. Yet these expensive policies are ineffective at addressing homelessness or reducing the number of people who must sleep on the streets. In fact, more effective policies such as providing affordable housing and services have been proven to cost less than criminalizing homelessness.

2020 holds both great promise and great peril for the issue of criminalization. In 2019, the Supreme Court declined to hear a 9<sup>th</sup> Circuit case establishing that homeless people have freedom from the cruel and unusual punishment of being criminalized for basic life-sustaining activities in the absence of adequate alternatives. Advocates are already hopeful that this will spur communities to reexamine their failed criminalization approaches and take more constructive steps. However, contrary to the positive role the prior administration took in taking increasingly strong actions to discourage and stop the criminalization of homelessness, the current administration is rumored to be considering razing encampments and mass incarceration of people experiencing homelessness in relocation camps. Now, more than ever, we need a united voice 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, national origin, 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.

Over the course of the past 13 years, the National Law Center on Homelessness & Poverty has tracked these laws in 187 cities and found that city-wide bans on camping have increased by 92%, on sitting or lying by 78%, on loitering by 103%, on panhandling by 103%, and on living in vehicles by 213%. Meanwhile, a 1,300% growth of homeless encampments have been reported in all 50 states. Too often homeless residents experience forced evictions or “sweeps” of the encampments, usually with little notice and no provision of alternative housing, frequently resulting in the destruction of important documents, medicines, and what little shelter the residents have.

However, recent court victories have provided advocates with new opportunities to change the conversation. These include the 2018 victory in *Martin v. Boise* in the 9<sup>th</sup> 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 has already resulted in a number of communities ceasing the enforcement of anti-camping laws and setting up legal camping zones or shelters. Similarly, since the 2015 *Norton v. Springfield* decision in the 7th Circuit, no panhandling ordinance challenged in court has withstood constitutional scrutiny under the 1st Amendment, and dozens of cities have repealed their ordinances.

2019 was a breakthrough year in terms of national attention to the issue of criminalization. On the positive side, several Democratic presidential contenders for the first time addressed criminalization either in their [policy platforms](#) or in [opposing Las Vegas' new camping ban](#). On the negative side, President Trump has used increasingly dehumanizing language to describe homeless people is reportedly [developing policies](#) to encourage criminalization and incarceration of homeless persons.

## ISSUE SUMMARY

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

Criminalization policies are ineffective and, in fact, make homelessness harder to exit. Because people experiencing homelessness are not on the street by choice but because they lack choices, criminal and civil punishment serves no constructive purpose. Instead,

arrests, unaffordable tickets, and the collateral consequences of criminal convictions make it more difficult for people to exit homelessness and get back on their feet. Criminalization of homelessness might mean that individuals experiencing homelessness are taken to jail, where they may remain for weeks if they cannot pay their bail or fines, perhaps losing custody of their children, property and/or employment in the process. Once released, they could have criminal records that make it more difficult to get or keep a job, housing, or public benefits. Moreover, fines and court fees associated with resolving a criminalization case can amount to hundreds, or even thousands, of dollars. Without the resources to pay, homeless people may be subject to additional jail time.

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

## PROGRAM SUMMARIES

In response to the growing cost data and advocacy at the international and domestic levels, many federal agencies have taken an

increasingly strong stance against criminalization of homelessness, but these programs are under threat.

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

In 2009, Congress passed the “Homeless Emergency Assistance and Rapid Transition to Housing Act,” directing the U.S. Interagency Council on Homelessness (USICH) to prepare a report on criminalization and constructive alternatives. In 2012, the USICH issued this report, *Searching out Solutions: Constructive Alternatives to the Criminalization of Homelessness*. *Searching Out Solutions* was groundbreaking in stating that in addition to raising constitutional issues, criminalization of homelessness may violate international human rights law, the first time a domestic agency has labelled domestic practice as such. In 2015, the USICH issued guidance on *Ending Homelessness for Persons Living in Encampments*, providing a checklist of steps for communities to constructively address homeless encampments without criminalization and added several case studies of positive practices in 2017. The USICH coordinated *Home, Together*, the 2018 Federal Strategic Plan to End Homelessness, listing reducing criminalization among the top strategic priorities in ending homelessness. However, in December 2019, the Trump administration named Robert Marbut as the new executive director of the agency, a man with a history of promoting heavy enforcement of laws criminalizing homelessness in order to drive people experiencing homelessness into jail-like shelter facilities (more below).

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

In 2015, DOJ filed a statement of interest brief stating that “Criminally prosecuting those individuals for something as innocent as sleeping, when they have no safe, legal place to go, violates their constitutional rights.” DOJ’s Office of Community Oriented Policing Services dedicated its December 2015 newsletter to reducing criminalization, stating, “Arresting people for performing basic life-sustaining activities like sleeping in public takes law

enforcement professionals away from what they are trained to do: fight crime.” DOJ also issued a letter on the impact of excessive fines and fees for poor persons that also is useful in addressing criminalization practices. DOJ’s Office for Access to Justice commented on a proposed ordinance in Seattle that would create constructive procedures for dealing with homeless encampments.

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

In 2015, HUD inserted a new question into its application for the \$2 billion Continuum of Care (CoC) funding stream, giving local governments and providers higher scores and potentially increased funding if they demonstrate that they are preventing the criminalization of homelessness. In 2016, this question was updated with increased points and more specific steps CoCs could take, which have remained in subsequent years. Although the Trump administration sought freedom to remove these incentives, the 2019 HUD funding authorization statutorily required the agency to retain the funding criteria of the 2018 application.

### **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 2020**

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. Moreover, there is deep concern for what the president’s policies and the new executive director of the USICH may bring. In particular, the administration is reportedly considering steps that may utilize

multiple federal funding and enforcement levers to either directly implement criminalizing policies or incentivize their development at the local level. However, advocates can also use the attention to help legislators look for opportunities to include incentives or requirements for non-criminalization in other legislation. For example, an infrastructure funding bill could require applicants to certify that any homeless persons living under bridges displaced by the project would receive alternative housing (and perhaps even make that an included authorized expense for the funds). In order to build on existing gains and address the urgent need, hundreds of national and local organizations, including the Law Center and NLIHC, launched the Housing Not Handcuffs Campaign in late 2016 to fight against criminalization and for adequate housing for all. It is being used as an umbrella to unify efforts to oppose the current threat from President Trump. It will not be an easy struggle, but it is more important than ever and within our sights if we work together.

## WHAT TO SAY TO LEGISLATORS

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

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

**Problem:** But instead of solving homelessness, we have expensive policies that make it worse. Unfortunately, too many places in this country

are ignoring data/common sense and are using handcuffs rather than housing to address homelessness. But when anyone experiencing homelessness faces criminal punishment for simply trying to survive on the streets, these criminal records only make it more difficult to hold a job and regain housing. Not only do these policies make homelessness harder to solve, they also cost MORE taxpayer dollars than the policies that actually work.

**Solution:** But there is a better way. We've seen in city after city that where they change their laws and policies to reduce their reliance on law enforcement and instead invest in affordable, supportive housing, it gets homeless people off the streets far more effectively, and, as it turns out, far more cheaply than endlessly cycling people through courts, jails, and back onto the streets. 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 also provide an opportunity for local elected officials to shift some political pressure from themselves to the courts. When constituents come to them complaining of visible homelessness, they can now say “look, the courts have told us we can't just criminalize people living on the streets, but if you work with me, we can find creative solutions that will be a win-win for everyone.”

## FOR MORE INFORMATION

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