

Criminalization of Homelessness

By Eric Tars, Legal Director, National Homelessness Law Center

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.

2023 was a particularly trying year for unhoused and unsheltered individuals and communities and the advocates fighting with them for their liberation. With significant increases in homelessness and encampment communities, spurred by the expiration of COVID-19 pandemic aid 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 Arizona, Georgia, Kansas, Oklahoma, and Wisconsin, and passed in Missouri, Tennessee, Texas, and Utah.

2024 will be a critical year in the fight against criminalization. [Former President Trump](#) has been fearmongering around homelessness and made a nationwide camping ban and a push to put unhoused persons into “relocation camps” a part of his platform. Encouraged by politicians across the political spectrum, the [Supreme Court](#) has taken up a case that could limit even the small protections unhoused people have. But even with these troubling 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. Housing, Not Handcuffs is how we end homelessness.

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, or preventing aid providers from sharing food, 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 and a 1,300% growth of homeless encampments. 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. In 2023, the 9th Circuit affirmed and clarified *Martin* in its *Johnson v. City of Grants Pass* decision, applying *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. Advocates overturned anti-food sharing laws on First Amendment religious exercise, assembly, and speech grounds and other religious freedom statutes. 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. Additionally, with court cases prohibiting communities from using criminal ordinances against unhoused persons, jurisdictions across the country and political spectrum have also increasingly pushed to

remove protections against involuntary mental health commitments as an alternative way to forcibly remove unhoused persons with mental health disabilities from the streets.

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, and Black individuals are also at higher risk of being diagnosed with mental illness that could lead to involuntary commitment or conservatorship. Over the past few years, thanks to advocacy from directly impacted communities, the UN Committee on the Elimination of Racial Discrimination, UN Expert Mechanism on Law Enforcement & Racism, and UN Special Rapporteur on Racism have all condemned the disparate racial impact of criminalization of homelessness in the U.S. and made recommendations to abolish 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, though practice does not always

follow the policies on paper.

U.S. INTERAGENCY COUNCIL ON HOMELESSNESS

For years, USICH has been generally opposed to criminalization, but there was significant backsliding under the Trump Administration. Under the current Administration, the agency has published [several resources](#) and guidance materials aiming to reaffirm its anti-criminalization stance. In late 2022, USICH published [All In: Federal Strategic Plan to Prevent and End Homelessness](#) emphasizing “Unless encampment closures are conducted in a coordinated, humane, and solutions-oriented way that makes housing and supports adequately available, these “out of sight, out of mind” policies can lead to lost belongings and identification which can set people back in their pathway to housing; breakdowns in connection with outreach teams, health care facilities, and housing providers; increased interactions with the criminal justice system; and significant traumatization—all of which can set people back in their pathway to housing and disrupt the work of ending homelessness.”

U.S. DEPARTMENT OF JUSTICE

In 2015, DOJ filed a [statement of interest brief](#) stating that “Criminally prosecuting those individuals for something as innocent as sleeping, when they have no safe, legal place to go, violates their constitutional rights.” The Department subsequently filed briefs in cases related to [panhandling](#) and [religious institutions’ right to share food](#). The DOJ has also offered informal guidance, ranging from [newsletters](#) to a letter on the impact of [excessive fines and fees](#), 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. Still, 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, 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 & URBAN DEVELOPMENT

Since 2015, HUD has included an [incentive](#) in 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 2022, 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.

NATIONAL PARKS SERVICE, US FOREST SERVICE, & BUREAU OF LAND MANAGEMENT

In 2023, multiple agencies failed to follow the Federal Plan to End Homelessness’ mandate to connect unhoused people to housing and services, instead employing violent law enforcement behavior. This includes the National Parks Service in its eviction of the [McPherson Square encampment](#) in D.C., and the US Forest Service and Bureau of Land Management, who shot and paralyzed a homeless man in [Idaho](#). The [National Coalition for Housing Justice](#) has called for an executive order to end federal law enforcement responses to homelessness, and for each agency which whose law enforcement personnel may interact with unhoused persons to develop protocols to ensure a housing and services-based response instead.

U.S. DEPARTMENT OF EDUCATION

In 2018, the Department of Education updated [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 2024

As noted above, 2024 is shaping up to be a critical year in the fight against criminalization of homelessness. The issue will be part of the national Presidential election debates, with former President Trump making a nationwide camping ban and a push to put unhoused persons into “relocation camps” a part of his platform. The Supreme Court has taken up the *Johnson v. Grants Pass* case, putting a further spotlight on the issue. Even without the overturning of *Grants Pass*, communities are looking to find loopholes in constitutional compliance and are passing new versions of the same failed ordinances that have never ended homelessness. Meanwhile, the Cicero Institute is actively conducting polls and seeding op-eds in states where they hope to push criminalization at the state level.

Advocates should help legislators look for opportunities to include incentives or requirements for non-criminalization in legislation. In 2023, 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” that are still pending in the House, and we hope more will be introduced and passed.

At the state level, advocates should be on the lookout for bills including the Cicero Institute's template language or similar efforts to criminalize or place unhoused persons into involuntary commitments. These bills perpetuate a harmful narrative that unhoused persons are dangerous, and 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, and the Housing Narrative Lab has also published helpful tools on how to effectively message in the homelessness advocacy space.

FOR MORE INFORMATION

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

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