

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.

2024 was devastating for unhoused and unsheltered individuals and communities and the advocates fighting with them for their liberation. The Supreme Court struck down a 9th Circuit decision that at least required communities to offer alternative shelter before punishing people for sleeping in *Johnson v. Grants Pass*: <https://johnsonvgrantspass.com/>. This has already resulted in more than [150 communities: https://bit.ly/3GDtzoX](https://bit.ly/3GDtzoX) passing new camping bans in just 6 months since the decision. A Texas-based think tank, the *Cicero Institute*: <https://bit.ly/4IMGWmZ>, published and promulgated a “Reducing Street Homelessness Model Bill”: <https://bit.ly/3S562zL> that diverts funding away from long-term permanent housing solutions and toward forcing homeless persons into detention camps under threat of arrest, and making it easier to place psychiatric holds and

administer involuntary medical treatment to unhoused people experiencing mental health conditions. Versions of the bill have been introduced in Arizona, Indiana, Kansas, and Wisconsin, and [passed: https://bit.ly/3S6Xw3e](https://bit.ly/3S6Xw3e) in Florida, Georgia, Missouri, Oklahoma, Tennessee, Texas, and Utah. President Trump entered office on a [platform: https://bit.ly/44D0oMQ](https://bit.ly/44D0oMQ) of a national camping ban and detention camps for people who simply cannot afford rent, with a nominee for *HUD Secretary*: <https://homelesslaw.org/scottturner/> pledged to that agenda, honoring the *murderer of Jordan Neely*: <https://bit.ly/3RzJ0AX>.

2025 will be a critical year in the fight against criminalization. The Trump Administration must be stopped from implementing a national camping ban and forcing unhoused people into government detention camps and housing advocates must fight against state and local efforts to do the same. Even with these troubling developments, the wide coalition of who [rallied: https://johnsonvgrantspass.com/rally](https://johnsonvgrantspass.com/rally) around the *Grants Pass* case enter 2025 with a renewed commitment to end criminalization and to share the truth that we have known for decades: Criminalization harms entire communities and does nothing to address the root causes of homelessness and housing insecurity. [Housing, Not Handcuffs: https://housingnohandcuffs.org/](https://housingnohandcuffs.org/) is how we end homelessness.

History

From [vagrancy laws: https://bit.ly/3RzJ1ov](https://bit.ly/3RzJ1ov) and the workhouses of pre-industrial England to [legal segregation, sundown towns, and anti-Okie laws: https://bit.ly/42ZX39j](https://bit.ly/42ZX39j) 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” or “quality of life” 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: https://bit.ly/4iAujbQ](https://bit.ly/4iAujbQ) 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: https://bit.ly/4iu3ypu](https://bit.ly/4iu3ypu). 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.

Over the past few decades, the courts have provided some limited protection against criminalization, covered in the Law Center’s [2022 Litigation Manual Supplement: https://bit.ly/4iqhu3H](https://bit.ly/4iqhu3H). For example, since the 2015 [*Norton v. Springfield*: https://bit.ly/4iyFVfE](https://bit.ly/4iyFVfE) decision

in the 7th Circuit, no panhandling ordinance challenged in court has withstood constitutional scrutiny under the First Amendment, and dozens of cities have since repealed their ordinances, some instituting more effective day shelter and day labor programs. In 2018, the [*Martin v. Boise*: https://bit.ly/3S6wlpq](https://bit.ly/3S6wlpq) decision in the 9th Circuit 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 led to many successful cases following a similar theory, and communities invested significant new resources into shelters and other alternatives. However, in June 2024, the Supreme Court overruled this principle in the [Johnson v. City of Grants Pass: https://johnsonvgrantspass.com/](https://johnsonvgrantspass.com/) case. The Court did affirm that other protections may still exist for unhoused persons, and since that time there have been cases finding 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 have also 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: https://wraphome.org/ldc/](https://wraphome.org/ldc/), 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: https://bit.ly/4iqhu3H](https://bit.ly/4iqhu3H) 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, 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](https://bit.ly/42qxNca): <https://bit.ly/42qxNca>, but also because Black and Latinx people are 9.7 times and 5.8 times, respectively, [more likely to be cited](https://bit.ly/3S2EbjM): <https://bit.ly/3S2EbjM> 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](https://bit.ly/3S3cSpo): <https://bit.ly/3S3cSpo>. Over the past few years, thanks to [advocacy](https://bit.ly/3S53UYQ): <https://bit.ly/3S53UYQ> 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](https://bit.ly/4iQ2Q6l): <https://bit.ly/4iQ2Q6l> 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 [peo-](https://bit.ly/4iQ93Ss)

[ple with disabilities](https://bit.ly/4iQ93Ss): <https://bit.ly/4iQ93Ss> and [LGBTQ+ individuals](https://bit.ly/4iCoTgD): <https://bit.ly/4iCoTgD>, 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](https://bit.ly/3Gofjk2): <https://bit.ly/3Gofjk2> 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 penological purpose](https://bit.ly/4iu37vv): <https://bit.ly/4iu37vv>. Instead, arrests, unaffordable tickets, and the collateral consequences of criminal convictions make it [more difficult for people to exit homelessness](https://bit.ly/4IMRgvk): <https://bit.ly/4IMRgvk> 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](https://bit.ly/4IQB1xm): <https://bit.ly/4IQB1xm> associated with resolving a criminalization case can amount to hundreds, or even thousands, of dollars. Without the resources to pay, homeless people often have warrants taken out against them and 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](https://bit.ly/3S3hewL): <https://bit.ly/3S3hewL> 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 previous Trump Administration which we expect to return. Under the Biden Administration, the agency published [several resources: https://bit.ly/3GEhZKc](https://bit.ly/3GEhZKc) 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: https://bit.ly/4IMFdOr](https://bit.ly/4IMFdOr) 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: https://bit.ly/4IQ96O8](https://bit.ly/4IQ96O8) and [religious institutions’ right to share food: https://bit.ly/4iCyofH](https://bit.ly/4iCyofH). However, the Administration filed a [brief: https://bit.ly/3SbqChT](https://bit.ly/3SbqChT) “in favor of neither party” in the *Grants Pass* case, stating many policy reasons not to criminalize, but wanting to retain the ability of the federal government to do it. The DOJ has also offered informal guidance, ranging from [newsletters: https://bit.ly/3S4KTpr](https://bit.ly/3S4KTpr) to a letter on the impact of [excessive fines and fees: https://bit.ly/3Ry2khX](https://bit.ly/3Ry2khX), to a comment on a [proposed encampment ordinance: https://bit.ly/42YrbSp](https://bit.ly/42YrbSp) in Seattle. In 2021, the DOJ opened a civil rights investigation into the [Phoenix: https://bit.ly/4iyBMbk](https://bit.ly/4iyBMbk) police department, for the first time explicitly listing police violations of homeless communities as a subject of their investigation. How the agency will be used to proactively criminalize homelessness in the Trump Administration is unknown at the time of this writing.

U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

Since 2015, HUD has included an [incentive: https://bit.ly/4itrb1h](https://bit.ly/4itrb1h) 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: https://bit.ly/4iyPa4c](https://bit.ly/4iyPa4c) 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. We are concerned these incentives will be eliminated, or worse yet, reversed, under the second Trump Administration.

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: https://wapo.st/4iBC5SW](https://wapo.st/4iBC5SW) in D.C., and the US Forest Service and Bureau of Land Management, who shot and paralyzed a homeless man in [Idaho: https://bit.ly/4itPgFi](https://bit.ly/4itPgFi). The [National Coalition for Housing Justice: https://bit.ly/4itPgVO](https://bit.ly/4itPgVO) 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. Unfortunately, we expect these agencies instead to increase enforcement under the second Trump Administration.

U.S. DEPARTMENT OF EDUCATION

In 2018, the Department of Education updated [guidance: https://bit.ly/4JOXsH](https://bit.ly/4JOXsH) 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 2025

As noted above, 2025 will be a critical year in the fight against criminalization of homelessness. [President Trump's: https://bit.ly/4itPhck](https://bit.ly/4itPhck) pledge of a nationwide camping ban and detention camps, enabled by the Supreme Court's *Grants Pass* decision; the [Cicero Institute's: https://bit.ly/4itPhsQ](https://bit.ly/4itPhsQ) lobbying in states across the country to push criminalization at the state level; and local political officials on both sides of the political aisle turning to criminalization strategies make the threat to unhoused persons greater than ever.

At the same time, advocates are working better, together, than ever before. The *Grants Pass* case brought fresh attention to the issue from the [media: https://johnsonvgrantspass.com/press-1](https://johnsonvgrantspass.com/press-1), [federal: https://bit.ly/4IJOTZZ](https://bit.ly/4IJOTZZ), [state: https://bit.ly/4iCoTgD](https://bit.ly/4iCoTgD), and [local: https://bit.ly/4itPiwU](https://bit.ly/4itPiwU) elected officials, and other [allies: https://johnsonvgrantspass.com/amici](https://johnsonvgrantspass.com/amici). As of this writing, state bills seeking to reverse the impacts of *Grants Pass* have already been introduced in [Connecticut: https://bit.ly/4itPiNq](https://bit.ly/4itPiNq), [Illinois: https://bit.ly/3Ewo5Mh](https://bit.ly/3Ewo5Mh), [Maryland: https://bit.ly/4itPj3W](https://bit.ly/4itPj3W), and [Virginia: https://bit.ly/4itPjks](https://bit.ly/4itPjks), local bills in [Hamden, CT: https://bit.ly/3EDobSb](https://bit.ly/3EDobSb) and [Philadelphia, PA: https://bit.ly/3EDobl9](https://bit.ly/3EDobl9) and we expect more states and a federal bill later this session.

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 most critical message for legislators to hear is that punishing homeless people for needing to sleep and survive outside doesn't end homelessness – it makes it worse. If legislators don't want to see people living on their streets, the best, most effective, most cost-effective approach is housing and services, not tickets and arrests. The [Housing Not Handcuffs Campaign](https://housingnothandcuffs.org/): <https://housingnothandcuffs.org/> has developed [Model Policies: https://bit.ly/4itPjAY](https://bit.ly/4itPjAY) 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, as well as the template [Gloria Johnson anti-criminalization act: https://bit.ly/3EEughc](https://bit.ly/3EEughc). The [National Coalition for Housing Justice: https://nchj.org/policing-and-punishment-based-approaches-a-really-expensive-way-to-make-homelessness-worse/](https://nchj.org/policing-and-punishment-based-approaches-a-really-expensive-way-to-make-homelessness-worse/) has a useful statement on criminalization, and the [American Bar Association: https://bit.ly/4itPk80](https://bit.ly/4itPk80), [American Medical Association: https://bit.ly/3Ry6dDx](https://bit.ly/3Ry6dDx), [American Public Health Association: https://bit.ly/3YhNPTb](https://bit.ly/3YhNPTb) have put out policies opposing criminalization, and even the [National League of Cities: https://bit.ly/4iAujsm](https://bit.ly/4iAujsm): <https://johnsonvgrantspass.com/social-media-toolkit> has offered its critique. Lots of [resources](#) were developed for the Grants Pass case, and the Housing Not Handcuffs Campaign also has [model one-pagers: https://bit.ly/3RxtVQk](https://bit.ly/3RxtVQk) and [Six Ideas for Talking About Housing Not Handcuffs: https://bit.ly/3GB7VSe](https://bit.ly/3GB7VSe) that may be useful in framing conversations with legislators, and the Housing Narrative Lab has also published helpful [\[ratiavelab.org/resources/\]\(https://ratiavelab.org/resources/\) on how to effectively message in the homelessness advocacy space.](https://housingnar-</p></div><div data-bbox=)

For More Information

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

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