



Making the Link

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American Families, Punished for Poverty: The Criminalization of Homelessness in the United States

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INTRODUCTION

The United States is in the midst of a housing and homelessness crisis, which has worsened in recent years because of the recession and unprecedented numbers of foreclosures and evictions. Families, children and youth, who can no longer afford shelter or who cannot stay with their families, are experiencing homelessness in record numbers. Despite this crisis and the overwhelming lack of affordable housing and shelter space across the country, cities are increasingly penalizing people who are forced to live on our streets and in public spaces. This criminalization includes local ordinances prohibiting sleeping, sitting or lying down, or eating in public, as well as ordinances that punish or prohibit churches, charitable organizations and individuals from sharing food with homeless and other poor persons in public places. Many of these measures violate homeless persons' civil and human rights, and appear designed to move homeless persons out of sight, or even out of a given city. Rather than addressing the root causes of homelessness—namely the lack of affordable housing, unemployment and poverty—these measures frequently perpetuate the problem. The National Law Center on Homelessness & Poverty's recently released report, *Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities*,¹ documents the startling increase of local laws targeting homeless persons, reviews the costs and human impacts of criminalizing homelessness, and includes policy recommendations for ending criminalization and addressing the root causes of homelessness.

Criminalization takes a toll, not only on adults, but also on the growing numbers of families, children and unaccompanied youth experiencing homelessness. This *Making the Link* issue reviews the increase in families, children and youth experiencing homelessness, describes the criminalization measures

increasingly being enacted and enforced against homeless persons and the severe consequences of these measures, and provides policy recommendations.

DEMOGRAPHICS AND TRENDS

What we're finding more and more is that the traditional image many people may have about homelessness—of a single person suffering with long-term substance abuse or even mental illness—is really not the model we're seeing emerging over the last few years in the economic crisis. More and more it's families.

—Department of Housing and Urban Development Secretary
Shaun Donovan²

The economic and foreclosure crises have fueled a dramatic increase in families, children and youth experiencing homelessness. Between 2007 and 2010, the number of people in families that were homeless increased by 20 percent.³ Similarly, in the 29 largest American cities surveyed for the 2011 U.S. Conference of Mayors Annual Report on Hunger and Homelessness, family homelessness increased by 16 percent during the period between September 1, 2010, and August 31, 2011, and officials in the majority of these cities predicted that family homelessness would increase even more in 2012.⁴ Given that children make up 60 percent of the individuals in homeless families, family homelessness is the most salient contributor to the trend of increasing child homelessness.⁵ The National Center on Family Homelessness estimates that homelessness among children increased by 38 percent from 2007 to 2010.⁶

The main causes of homelessness among families with children are unemployment, lack of affordable housing, poverty, low-paying jobs and domestic violence.⁷ In particular, high housing costs relative to income present a large financial barrier to low-income families in the U.S. Findings from the National Low Income Housing Coalition show that there is no state in the U.S. where an individual working full-time at minimum wage can afford an average two-bedroom apartment at Fair Market Rent, the Department of Housing and Urban Development's estimate of what a family moving today can expect to pay in rent and utilities for a modest rental unit in the current market.⁸ The foreclosure crisis has only exacerbated the effect on families at risk of becoming homeless. On average, one in every 639 housing units received a foreclosure filing in May 2012.⁹ Already, 2.3 million children have lost their homes to foreclosure and another 6 million children live in homes that are at risk of foreclosure.¹⁰

Although families experiencing homelessness often find assistance from extended family networks or in emergency shelters, these resources are unavailable or short-lived for many. Emergency shelters in two thirds of the cities surveyed for the 2011 U.S. Conference of Mayors report indicated that they had turned away homeless families with children because they had no beds available for those families.¹¹ Likewise, across the surveyed cities, approximately 24 percent of people in need of emergency food assistance did not receive it.¹² Shelters often impose limits on length of stay, and the pressures of overcrowding (including potential legal risks for the host family) typically make doubling-up with friends and family an untenable long-term option.

Homelessness also has a disproportionate impact on unaccompanied youth and youth aging out of foster care. Each year, approximately 30,000 youth age out of foster care.¹³ Youth aging out of foster care face high rates of homelessness—54 percent of those who have recently aged out are homeless or unstably housed.¹⁴ In the majority of states, financial support for foster placements ends at age 18, after which time youth must find their own housing.¹⁵ Some states have laws that prohibit discharging youth into homelessness, but these laws are not always enforced.¹⁶ Unaccompanied youth are most likely to leave home and become homeless because of parental abuse and/or neglect, including physical or sexual abuse, parental substance abuse or youth substance dependency, parental mental health issues, or severe family conflict.¹⁷

Approximately one in 45 American children experience homelessness,¹⁸ with an estimated 1.6 million unaccompanied youth between the ages of 12 and 17 experiencing homelessness in a given year before the recession.¹⁹ Some studies have found that the demographics of homeless youth generally reflect the demographics of their local area, but other studies have shown

that minority groups are overrepresented among homeless youth.²⁰ Statistics from the Department of Justice reveal that approximately 57 percent of homeless youth are Caucasian, 17 percent are Black or African American, and 15 percent are Hispanic or Latino.²¹ A significant proportion of homeless youth—between 20 and 40 percent—identify as lesbian, gay, bisexual or transgendered.²²

THE CRIMINALIZATION OF HOMELESSNESS

Despite the worsening housing and homelessness crisis, cities across the country are increasingly adopting local ordinances or policies that criminalize homelessness. Such measures take a number of forms, but frequently involve restrictions on the use of public space, such as prohibitions on sleeping, sitting, lying down or keeping belongings in public spaces. Many such measures may seem innocuous at first glance—for instance, bans on “camping,” urinating in public or loitering—but, in practice, can be nearly impossible for those living without shelter to avoid violating, or are used by law enforcement to target homeless people in public spaces. In addition, many cities conduct sweeps of areas in which homeless persons are living to drive them out of those areas, frequently resulting in the destruction of individuals’ personal property including important personal documents and medication. Given the dire lack of adequate affordable housing and shelter space in cities across the country, laws that penalize homeless people for engaging in activities needed for survival while in public places essentially criminalize the status of being homeless.

In 2011, the Law Center surveyed municipal law in 234 American cities and found that the vast majority (approximately 96 percent) had multiple laws criminalizing homelessness.²² Furthermore, between 2009 and 2011, the number of criminalization measures increased. For example, during this time period there was a 7 percent increase in prohibitions on “camping” in particular public places and a 10 percent increase in prohibitions on loitering in particular public places.²⁴

Another disturbing trend is the enactment of local ordinances prohibiting or restricting charitable and religious organizations from sharing food with homeless and other poor persons in public places. For instance, in 2006, Las Vegas enacted an ordinance prohibiting sharing food with “indigent” persons in public parks. The law defined “indigent” as a person whom a reasonable ordinary person would believe to be entitled to apply for or receive public assistance.²⁵ Dallas places burdensome restrictions on churches and other charitable organizations that wish to share food with homeless individuals in public and severely limits where these organizations can provide food.²⁶ Recently, Philadelphia enacted a ban on sharing food in all city parks.²⁷



Such criminalization measures violate homeless persons' civil and human rights, as well as the civil rights of the providers and charitable organizations. When there is not adequate shelter space, citations and arrests for sleeping or resting outside can violate homeless people's Eighth Amendment right to be free from cruel and unusual punishment.²⁸ These ordinances may also penalize homeless persons' fundamental right to travel by denying them a necessity of life—a place to sleep—which prevents them from staying within or traveling to the city.²⁹ Courts have overturned anti-loitering and vagrancy laws that were vague and encouraged arbitrary enforcement by police officers.³⁰ They have also found that sweeps, in which officers confiscate or destroy homeless persons' belongings, violate the Fourth Amendment protections against unreasonable searches and seizures and due process rights.³¹ The Law Center and partner organizations recently achieved a victory in their challenge to St. Petersburg, FL's practice of banning—without any avenue for appeal—homeless persons from public parks, sidewalks, bus stops and other public spaces, pursuant to the city's trespass ordinance. The Eleventh Circuit Court of Appeals held that homeless plaintiffs who had been banned from public areas of the city had legal claims for violations of their right to intrastate travel and due process rights.³²

Similarly, restrictions on food sharing or provision of other services to homeless persons can violate the Equal Protection clause of the Fourteenth Amendment and service providers' free exercise of religion, and can be unconstitutionally vague. The Las Vegas food-sharing ordinance was repealed after a successful legal challenge.³³ The Dallas and Philadelphia food-sharing restrictions are currently being challenged in federal court, with the Law Center and pro bono counsel litigating the challenge to the Dallas law.³⁴

Such measures also implicate human rights principles, and specific commitments made by the U.S. in international covenants, such as the International Covenant on Civil and Political Rights³⁵ and the International Convention on the Elimination of Racial Discrimination.³⁶ These commitments bind the U.S. at all levels—federal, state and local—and prohibit laws and policies that have a discriminatory or disproportionate impact on those who are poor or lack property, as well as on racial or ethnic minorities. Advocates are increasingly including human rights arguments in challenging criminalization measures, with growing success. For example, advocates in Salt Lake City, supported by the Law Center, mounted a human rights campaign to challenge the city's anti-camping ordinance. As a result of the campaign, the Salt Lake City police stopped enforcing the ordinance against homeless persons and instead try to engage people living on the street and provide available resources. In addition, advocates are engaging international monitoring entities to support their campaigns. Most recently,

for example, the Law Center has been working with the U.N.'s top independent expert on extreme poverty, who issued a report condemning the criminalization of homelessness in the U.S. and other countries as violative of human rights norms.³⁷ Following the report's release in 2011, the Law Center facilitated a meeting between the expert and federal agencies, including U.S. Housing and Urban Development (HUD), the U.S. Department of Justice (DOJ), and the U.S. Interagency Council on Homelessness (USICH), to discuss these agencies' obligations to protect homeless people from criminalization. Due in part to the Law Center's advocacy efforts, the USICH and DOJ recently released a report critical of criminalization, which encourages the adoption of constructive alternatives.³⁸ Currently, the Law Center is working with the U.N. expert and the U.S. State Department on a U.S.-sponsored U.N. resolution condemning the criminalization of homelessness and poverty.

The Effects of Criminalizing Homelessness

Beyond limiting homeless persons' legal use of public space, their access to food and their ability to live without fear of citation or arrest, criminalization measures can have a long-lasting negative impact. Criminalization creates barriers to employment, housing and services. Beyond that, it affects the ability of homeless persons to remain in their communities over time, to maintain stable and intact families, and to be politically engaged for themselves and for their families. Homeless youth face additional barriers often due to their status as minors and increased scrutiny from law enforcement.

Barriers to Employment, Housing and Services

When someone is cited or arrested for violating a criminalization measure, the criminal justice consequences substantially hinder his or her ability to seek and maintain employment, housing and benefits needed to support a family. Not only will the individual have a citation or arrest on his or her record, but he or she will also be required to travel to and attend court appearances (or face additional criminal sanctions), and may be sentenced to jail time or fines that he or she cannot afford to pay (which can lead to more sanctions). Homeless individuals who are employed may be forced to miss work, which jeopardizes their employment. Having a criminal record also makes it more difficult to find new employment. More than 90 percent of large employers conduct criminal background checks on some or all job applicants,³⁹ and some employers have blanket policies excluding from employment not only those convicted of serious crimes or offenses but also those with misdemeanor convictions, and, in some cases, arrests that did not lead to conviction.⁴⁰

The criminalization of necessary, life-sustaining acts can also make the already difficult process of securing housing even more difficult. Having a criminal record not only makes private rentals harder to obtain, but also can limit access to public housing.

Toward the end of 2010, a family of two parents and three children that had been experiencing homelessness for a year and a half applied for a two-bedroom apartment. The day before a scheduled meeting with the apartment manager during the final stages of acquiring the lease, the father of the family was arrested for public urination. The arrest occurred at an hour when no public restrooms were available for use. Because of the arrest, the father was unable to make the appointment with the apartment manager and the property was rented out to another person. Several months later, the family was still homeless and searching for housing. Instead of taking a step forward and establishing a stable housing situation, the family's homelessness continued.⁴¹ Guidelines from HUD, including its "One Strike and You're Out" policy, recommend that Public Housing Authorities (PHAs) use overly exclusive policies when determining whether an applicant with a criminal record is eligible for public housing.⁴² Although HUD issued new guidance in 2011 emphasizing that PHAs have discretion in making this determination, and encouraging PHAs to allow those with criminal convictions to reunite with their families in HUD-subsidized housing,⁴³ few PHAs have changed their policies. Many PHAs have policies allowing ineligibility based solely on arrest records even if the charges were later dropped.⁴⁴ Few provide a meaningful evaluation of the applicant's conduct or the seriousness of the offense before issuing a rejection.⁴⁵

Criminalization makes it substantially more difficult for homeless people to access needed benefits and services and can disrupt existing relationships with service providers. Many states exclude people with misdemeanor convictions from receiving public housing assistance,⁴⁶ and other benefits, such as Supplemental Security Income (SSI), Social Security Disability Insurance, Medicaid, Medicare and Department of Veterans Affairs (VA) pension benefits, suspended after a period of incarceration, may not be restored until after a lengthy eligibility review.⁴⁷ For instance, SSI and other benefits are suspended while a person is incarcerated and reinstatement requires an in-person visit to a Social Security Administration office immediately following release, resulting in a delay of benefits.⁴⁸ Some states also prohibit those with outstanding fines, court costs or restitution from collecting state-administered benefits such as medical and cash assistance.⁴⁹

Family Integrity, Community Participation and Educational Stability

The criminalization of homelessness can lead to additional, ancillary negative effects on families, exacerbating the already debilitating impacts of homelessness. These impacts can trigger a downward spiral that further marginalizes families and adversely affects their children and their future.

The barriers to employment, housing and services that can result from criminalization perpetuate homelessness and can make it

extremely difficult for homeless people to maintain stable families. The arrest or incarceration of a parent clearly has implications for the entire family; indeed, it may result in family separation and placement of the children in foster care if there is not another parent or family member to care for the children. In addition, and apart from the problem of criminalization, homeless families are already at risk for separation, simply based on their status. Although homelessness should not by itself be grounds for separating families, there is evidence that as a matter of practice some child welfare agencies do remove children from their families on the basis of homelessness.⁵⁰

Homelessness often requires relocation, as families double up with others, move into a shelter or seek refuge in public spaces. Criminalization may further contribute to the need for relocation, for instance, when a criminal record prevents homeless families or individuals from securing or remaining in shelter in their communities, or requires them to abandon public places. This can strain families' ties with their home community; it can also have a detrimental effect on children's education. Title VII of the federal McKinney-Vento Act allows homeless children to stay in the same school when it is in the child's best interest, and school districts are required to provide transportation for children back to their school of origin.⁵¹ However, despite these strong legal protections, the provisions of the McKinney-Vento education program are often violated. As a result, homeless children are forced to change schools or are kept out of school altogether. Furthermore, although the McKinney-Vento education provisions state that guardianship requirements may not be used as a reason to keep children out of school, as a matter of practice children are sometimes denied enrollment in school if not accompanied by a parent or an official guardian. The arrest or incarceration of a parent because of the criminalization of homelessness may prevent access to school for their children. Without school stability or even the ability to continue their education, homeless children are severely injured and their future prospects diminished.

Policies criminalizing homelessness can also make it more difficult for homeless persons to exercise their right to vote and influence policies affecting themselves and their families. Homeless persons already face numerous obstacles when registering and casting their ballots. For instance, state regulations for proving residence, providing a mailing address and showing identification at the polls can raise difficulties for homeless voters who meet their state's eligibility requirements. Policies criminalizing homelessness—particularly "sweeps" and confiscation of homeless persons' belongings and laws that force homeless persons to move frequently—often result in the loss of identification and other important documents such as birth certificates.⁵² Given the proliferation of voter ID laws, combined with stringent requirements for getting or replacing IDs, the loss



or confiscation of an ID card results in an inability to exercise one's fundamental right to vote.

Impacts on Homeless Youth

The barriers erected by criminalization measures can be especially difficult for homeless youth and youth aging out of foster care. There is some evidence that homeless youth are targeted by law enforcement and receive a disproportionate share of citations and arrests for violations of criminalization ordinances. Un-emancipated minors may not legally be able to apply for employment and housing, thus further limiting their options.

Moreover, the majority of U.S. states explicitly authorize juvenile curfews,⁵⁴ which prohibit young persons from being on the street and in other public spaces at stated times of the day. Youth who are on their own often have no choice but to be on the street after curfew because of the limited availability of shelter space, and their inability to afford or legally rent a residence. In addition, many U.S. states and jurisdictions criminalize running away, truancy and harboring a minor, creating further barriers for homeless children and youth.⁵⁵ Indeed, many states have "children in need of services" or "CHINS" statutes providing that young people "need supervision" in a variety of circumstances including running away from home.⁵⁶ This status authorizes police and other government officials to take young people into custody.⁵⁷ In addition, many homeless youth have limited access to health care services because most states do not authorize or require provision of health care services to unaccompanied youth without court involvement.⁵⁸

The criminalization of truancy is of particular concern for homeless children and youth. Under the McKinney-Vento Act, homeless students have a right to continued, stable education⁵⁹; however, if a school violates this right, the student may be kept out of school—and thus made "truant" through no fault of her own.⁶⁰ Denial of access to school, in violation of the law, is a particularly unfair form of "school discipline." Criminalizing the resulting "truancy" further compounds the injury, challenging the chances for a positive outcome. Given the rapid growth of homelessness among students, this is an issue that deserves increased attention.

Policy Concerns

Laws that criminalize engaging in necessary, life-sustaining activities in public spaces do not address the root causes of homelessness and instead perpetuate homelessness. As described previously, criminalization measures create significant barriers to obtaining employment, housing and social services that can make it substantially more difficult for homeless families and youth to move out of homelessness. This takes a significant toll on those experiencing homelessness, and carries a hefty cost to

the public. In addition, criminalization measures burden the criminal justice system and are actually more expensive than adopting more humane and constructive approaches to homelessness. Costs studies conducted in 13 cities and states revealed that, on average, cities spend \$87 per day to house someone in jail versus approximately \$28 a day for shelter.⁶¹ Utah's largest homeless shelter, The Road Home, studied homelessness costs and found that the annual costs for a person in permanent supportive housing is about \$6,100 and the annual costs for providing emergency shelter is about \$6,600.⁶² In contrast, the annual costs of housing someone in the county jail and the state prison were \$25,500 and \$35,000, respectively.⁶³ The cost difference with respect to homeless youth is even more stark. A study conducted by Urban Peak, a Colorado organization working with homeless and runaway youth, found that the average annual cost of placing a homeless youth in the criminal justice system is approximately \$53,700, whereas the average cost of permanently moving a homeless youth off the streets – including placing the youth in independent permanent, transitional, or supportive housing or reunifying the youth with his or her family – is only about \$5,900.⁶⁴

POLICY RECOMMENDATIONS & CONCLUSION

Although many cities are exacerbating the problem of homelessness by criminalizing it, some cities are adopting initiatives that instead address the root causes of homelessness or aim to limit the devastating effects of criminalization. Some examples include:

- **Minneapolis and Hennepin County, MN.** In January 2007, Hennepin County developed a 10-year plan to address homelessness. As part of the plan, the Street Outreach Program was created to connect homeless individuals with needed services and divert them from involvement with the criminal justice system. The program has succeeded in housing a number of individuals in addition to reducing the amount of public dollars spent on each homeless person.⁶⁵
- **Portland, OR.** In 2006, Portland Commissioner Randy Leonard began the development of The Portland Loo, an innovative public bathroom that stays open 24 hours a day and is powered completely through solar energy. Currently, the City of Portland has a Loo in place in four separate locations. Providing a 24/7 public bathroom reduces the need for homeless people to resort to public urination or defecation and helps prevent the criminalization of this basic human need.⁶⁶
- **Puyallup, WA.** In 2010, Puyallup passed an ordinance that allows religious organizations to host temporary encampments for homeless individuals. The ordinance was the

result of an advocacy campaign, in which the Law Center participated, to address the persistent homeless sweeps and enforcement of anti-camping laws despite a clear lack of affordable housing or shelter space.⁶⁷

- **Orlando, FL.** Once a month in Orlando, government agencies and local service providers come together for an event called IDignity, which helps homeless persons apply for various types of government identification. The most commonly applied for are driver's licenses, Social Security cards and birth certificates. The first IDignity event was held in May 2008 and it has helped more than 6,500 homeless individuals secure employment, housing and public benefits.⁶⁸

Criminalization is not a feasible solution to homelessness. As a policy, it is completely ineffective and only exacerbates the factors that contribute to individuals' homelessness. Cities can undertake policy alternatives that reach their goal—lowering the number of homeless individuals in their community—not only more effectively but also more humanely. Here are a few examples:

- Stopping the enactment of laws that criminalize homeless persons, such as prohibitions on sleeping, camping or engaging in other necessary, life-sustaining activities in public when shelter is not available, and food sharing restrictions; declassifying running away and truancy as crimes for homeless children and youth; removing restrictions on harboring minors; and eliminating curfews and CHINS statutes;
- Preventing the use of federal grant funding to pay for criminalization activities at the state or local level, while authorizing and appropriating state and local funds targeted toward homeless individuals, families and children and youth;
- Establishing a council that includes homeless persons, providers and advocates to provide oversight of ordinances and practices that have a negative impact on homeless persons;
- Enacting laws that focus specifically on the welfare of homeless children and youth, including permitting minors to enter into contracts for necessities (such as real property, employment, educational loans, admission to school, medical and mental health care and treatment, bank accounts, and admission to shelter, housing and supportive service programs) and establishing emancipation procedures in all states and jurisdictions;
- Establishing police and other protocols that ensure homeless persons' civil rights are protected; similarly, conducting police trainings and establishing homeless liaisons within the police department can help foster improved relationships between police and people experiencing homelessness;

- Providing more affordable housing and other resources to not only preempt the occurrence of criminalized behavior, but to also help provide a more cost-effective approach of ensuring stable access to education for homeless children and youth by decreasing frequent residency and school changes, among other things; and
- Making sure local, state and federal governments work to ensure that all homeless families and youth have access to safe and affordable housing.

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