

In recent years, especially due to the economic and foreclosure crises, the homelessness crisis has continued to worsen in the United States. In 2012, the United States Interagency Council on Homelessness (USICH) estimated 649,917 individuals experience homelessness on any given night and nearly half of those individuals experience chronic homelessness.¹ Many of these individuals regularly face harassment and degrading treatment through criminalization practices. Despite national and local shortages of adequate shelter or affordable housing to accommodate the growing homeless population,² many communities have enacted laws and ordinances prohibiting necessary, life-sustaining activities – for example, sitting or sleeping in public, loitering, begging, camping, storing belongings, or urinating in public.³ Other ways that cities have criminalized homelessness include: anti-panhandling laws, sweeps of areas in which homeless individuals sleep, laws that restrict their freedom of movement, search and seizure of their personal property, and selective enforcement of general provisions.⁴ Such laws penalize individuals for activities they have no choice but to engage in due to their homelessness.⁵

The Administration should be commended for its recognition in the 2012 *Searching Out Solutions* report that criminalization of homelessness is poor public policy and may “violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights.”⁶ However, an NLCHP-conducted survey of criminalization practices across U.S. cities found that an increasing number of communities continue to criminalize public performance of at least some basic human functions, leaving homeless individuals vulnerable to criminal penalties as well as difficulty sustaining housing and employment.⁷

While these ordinances are local in nature, the federal government has an important role to play. For example, in 2010, the New York Times reported Key West police –using funding from a Department of Justice (DOJ) grant - specifically targeted homeless individuals with the “sole mission” to conduct “quality-of-life policing.”⁸ In just three months, the police department issued 90 arrests and issued more than twice as many warnings for trespassing as they did in the entire preceding year.⁹ One homeless individual described the enforcement double standard saying, “The tourists come here and drink all day long . . . When we sit here and have one drink, we get arrested.”¹⁰ Thus, one source of federal funding was being used in a manner directly contrary to the express policy against criminalization.

Many cities like Key West continue to implement criminalizing laws despite the negative impact these practices have on the elimination of homelessness in America. Indeed, criminalization of homelessness exacerbates the homelessness crisis in the United States, as such policies misdirect state resources away from effective (and cost-effective) measures like permanent supportive housing,¹¹ which are more likely to represent an exit from homelessness and reduce the number of people living on the streets, and away from permanent solutions, such as affordable housing programs.¹² Thus, policies in many parts of the United States increase homelessness and exposure to cruel, inhuman, and degrading conditions rather than working to reduce them.

We believe adequate housing should be recognized and implemented as a human right, and we welcome the Administration’s commitment to promote adequate housing for all, but until the policies are in place to fully guarantee that right, we must take interim measures to ensure that those facing homelessness are not subject to further violations of their civil and human rights. Federal agencies should promulgate guidance for communities emphasizing the negative consequences of criminalization, provide incentives for decriminalization and constructive alternative approaches, discontinue their funding of local law enforcement practices that criminalize homelessness, and investigate and prosecute criminalization policies or enforcement wherever they occur.

Recommendations to the U.S. Government

1. The Administration should support housing as a human right.
2. USICH should publicly oppose specific local criminalization measures, as well as inform local governments of their obligations to respect the rights of homeless individuals.
3. DOJ should investigate and challenge particular instances of local and state criminalization measures.
4. DOJ should encourage state and local governments to remove burdensome fines imposed through criminalization measures and eliminate the imprisonment of homeless individuals when they are unable to afford such penalties.
5. DOJ and HUD should work with local authorities to cease sweeps of outdoor encampments and instead ensure homeless residents are provided with adequate alternative housing and appropriate protections for their due process and property rights.
6. DOJ and HUD should better structure their funding by including specific questions in requests for funding proposals and giving points to applicants who create constructive alternatives to homelessness, while subtracting points from applicants who continue to criminalize homelessness.
7. HUD should take additional steps to ensure Public Housing Authorities use their discretion to accept people with criminal histories unless federal law requires their exclusion.
8. HHS should work with Congress to change the laws governing federal financing of the child welfare system to allow states to keep families together and safe and assist families in meeting their children's basic needs, rather than removing children from their homes and penalizing the homelessness of the parents.

¹ UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, SEARCH OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS 7 (2012), available at www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf (citing U.S. Dep't of Hous. and Urb. Dev., 2010 Annual Homeless Assessment Report (AHAR), (July 2011)) [hereinafter USICH, SEARCHING OUT SOLUTIONS].

² See, e.g., NATIONAL LOW INCOME HOUSING COALITION, OUT OF REACH (2013), available at <http://nlihc.org/oor/2013>.

³ NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, CRIMINALIZING CRISIS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 7-8 (2011) [hereinafter NLCHP, CRIMINALIZING CRISIS].

⁴ See *Jones v. city of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006). See also, *Johnson v. Freeman*, 351 F. Supp. 2d 929 (E.D. Mo. 2004);

⁵ NLCHP, CRIMINALIZING CRISIS, *supra* note 3, at 15.

⁶ USICH, SEARCHING OUT SOLUTIONS, *supra* note 1, at 7 (citing NLCHP, HOMES NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2009) [hereinafter NLCHP, HOMES NOT HANDCUFFS]),

⁷ NLCHP, CRIMINALIZING CRISIS, *supra* note 3, at 6, 31. A survey of 154 stakeholders reported in 26 different states reported arrests or citations, or both, for public urination/defecation (73%); public camping/sleeping (55%); loitering (55%); public storage of belongings (20%); sidewalk-sitting (19%). More than 80% of respondents who reported such restrictions also reported that their city lacked sufficient facilities for people experiencing homelessness to sleep, perform bodily functions, or store belongings.

⁸ Damien Cave, At Key West Beach, Wondering Who's a Vagrant, N.Y. Times, Mar. 30, 2010, http://www.nytimes.com/2010/03/31/us/31keywest.html?_r=0.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See, e.g., THE LEWIN GROUP, COSTS OF SERVING HOMELESS INDIVIDUALS IN NINE CITIES: CHARTBOOK (2004), available at <http://www.rwjf.org/files/newsroom/cshLewinPdf.pdf>; UTAH DEPT. OF COMMUNITY & ECON. DEV., UTAH'S TEN-YEAR BUSINESS PLAN TO END HOMELESSNESS 6-7 (2004), available at <http://www.usich.gov/slocal/plans/utah.pdf> (noting permanent supportive housing costs approx. \$6,100 per resident per year, compared to \$35,000/yr in Utah state prisons or \$146,730/yr for incarceration in the state mental hospital).

¹² See, e.g., USICH, SEARCHING OUT SOLUTIONS, *supra* note 1.