

5-10-2016

# Shut Out: How Barriers Often Prevent Meaningful Access to Emergency Shelter

Suzanne Skinner

Sara Rankin

*Seattle University School of Law*

Follow this and additional works at: <http://digitalcommons.law.seattleu.edu/hrap>

---

## Recommended Citation

Skinner, Suzanne and Rankin, Sara, "Shut Out: How Barriers Often Prevent Meaningful Access to Emergency Shelter" (2016).  
*Homeless Rights Advocacy Project*. 6.  
<http://digitalcommons.law.seattleu.edu/hrap/6>

This Article is brought to you for free and open access by the Law School Archives at Seattle University School of Law Digital Commons. It has been accepted for inclusion in Homeless Rights Advocacy Project by an authorized administrator of Seattle University School of Law Digital Commons.

# SHUT OUT:

How Barriers Often Prevent Meaningful  
Access to Emergency Shelter



**SEATTLEU**  
SCHOOL OF LAW

HOMELESS RIGHTS  
ADVOCACY PROJECT

***SHUT OUT:***

**How Barriers Often Prevent Meaningful Access to  
Emergency Shelter**

AUTHOR

Suzanne Skinner

EDITOR

Sara K. Rankin

## ACKNOWLEDGEMENTS

The Homeless Rights Advocacy Practicum is a section of the Homeless Rights Advocacy Project (HRAP) at Seattle University School of Law's Korematsu Center. The author is deeply grateful to Professor Sara Rankin of Seattle University School of Law for her inspiration, wisdom, and assistance in preparing this brief. The author also could not have prepared this brief without the invaluable contributions of the following individuals:

- Dana Peterson, Recent Graduate of Seattle University Law School (Seattle, Washington)
- Tristia Bauman, Senior Attorney (National Center on Homelessness and Poverty, Washington, D.C.)
- Professor Emily Benfer (Loyola University Chicago School of Law, Chicago, Illinois)
- Curry Cook, Senior Staff Attorney (Lambda Legal, Seattle, Washington)
- Judi O'Kelley, Deputy Director of Development and Director of Law School Development (Lambda Legal, Seattle, Washington)
- David Gunderson, Board of Directors (Neighbors in Need, Seattle, Washington)
- Melinda Giovengo, Executive Director (Youth Care, Seattle, Washington)
- Sally Wolf, Former Member, Board of Directors (Building Changes, Seattle, Washington)
- HRAP students Ruby Aliment, Ryan Mansell, Jessica So, Samir Junejo, Jodilyn Gilleland, Alexander Glyman, and Vanessa Toor (Seattle, Washington)
- All Home Staff (Access to Homeless Programs Among Transgender Individuals Workshop, Seattle, Washington)
- Tami Cook, Director of Homeless Services (Chicago, Illinois)
- Liz Trautman (Youth Care, Seattle, Washington)
- Karen Jones, Attorney and Board Member (Youth Care, Seattle Washington)
- Joyce Crum, Director (Housing and Homeless Services Division, City and County of San Francisco)
- Mary Frances Schafer (Coalition for the Homeless, Louisville, Kentucky)
- Sola Plumacher, Division Director (Department of Human Services, Seattle, Washington)
- Lisa Waldvogel, Attorney (Northwest Justice Project, Longview, Washington)
- Nancy Talner, Senior Attorney (ACLU, Seattle, Washington)

## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>INTRODUCTION.....</b>	<b>4</b>
<b>I. LEGAL RIGHTS PUT IN JEOPARDY BY CRIMINALIZATION ORDINANCES..</b>	
A. Human Rights .....	8
B. Fourteenth Amendment .....	8
C. Eighth Amendment .....	10
<b>II. BARRIERS TO HOMELESS SHELTERS THAT KEEP PEOPLE     EXPERIENCING HOMELESSNESS OUTSIDE .....</b>	<b>11</b>
A. The Appalling Lack of Available Beds .....	12
B. Crowding, Overcrowding, and Health Risks that Deter Shelter Use.....	15
C. Unsanitary and Unsafe Conditions .....	17
D. Sobriety Rules that Shut Out People with Substance Abuse Disorders.....	19
E. Residential Residency Restrictions and Shelter Bans that Give Sex Offenders Nowhere to Go.....	23
F. Gender Identification Rules that Keep LGBTQ Youth on the Streets.....	26
G. The Dearth of Family Shelters that Forces Families Apart .....	30
<b>III. RECOMMENDATIONS &amp; CONCLUSION .....</b>	<b>34</b>
A. Repeal Criminalization Ordinances that Punish the Homeless for Their Poverty .....	35
B. Increase Investment in Affordable Housing and Reduce Reliance on Shelters.....	35
C. Conduct a Comprehensive Study of the Shelter System .....	35
D. Increase Emergency Housing Options for People Experiencing Homelessness .....	35
E. Improve Information About and Access to Emergency Shelters.....	36
F. Improve Oversight and Cleanliness of Shelters.....	36
G. Reduce Rules that Needlessly Keep Homeless People Out of Shelters.....	36
H. Specific Recommendations for Families .....	36
I. Specific Recommendations for LGBTQ Youth.....	37
J. Specific Recommendations for Registered Sex Offenders .....	37
K. Specific Recommendations for Those Suffering from Substance Abuse Disorders ...	38

## EXECUTIVE SUMMARY

“I like living outside,” a person experiencing homelessness<sup>1</sup> told a reporter.<sup>2</sup> His words and the reporter’s story feed the myth that homeless people choose to live outside. That misperception allows us to ignore the desperately poor people camping in tents or in cars without water, heat, or sanitation, alongside highways, in parks and median strips, throughout the United States—the wealthiest country in the world. Instead of funding affordable housing and services for lower income people, cities across the country have embraced the fiction that homelessness is simply a bad choice, and focused scarce resources on misguided efforts to prosecute people experiencing homelessness and drive them out of their communities.

Cities routinely cite, fine, and even jail homeless people for camping, sleeping or storing belongings in public, among other “crimes,” that they perform in public because they have no other alternative; they have no home.<sup>3</sup> These local laws that govern the use of public space, called “criminalization ordinances,” penalize homeless people for conducting in public the daily life functions that the fortunate undertake in the privacy of their homes. Both legally and morally, criminalization laws are predicated on the assumption that homeless people have a reasonable alternative to life on the streets—namely, emergency shelters—and instead choose to live outside and willfully commit these “crimes.”

This brief will show that this assumption is not only erroneous, it leads to bad social policy with significant legal ramifications. Throughout the country, there are fewer shelter beds than people who lack shelter, and fewer beds still that are truly available to them.

Not that emergency shelters are a reasonable solution to homelessness. At best, shelters are a stopgap measure to put a temporary roof over the heads of people who need permanent, stable housing. Yet, over the past thirty years, shelters have become a fundamental component of the nation’s response to homelessness. Surprisingly, given the nation’s reliance on them, there is a paucity of data on shelters and their accessibility to those in need.<sup>4</sup> The number of shelters nationally is unknown.<sup>5</sup> Even less is known about the number of people served by the nation’s

---

<sup>1</sup> Advocates prefer term “person experiencing homeless” over “homeless person” to emphasize that homelessness is a transitory experience and not an identifier. This brief nonetheless occasionally uses the terms “homeless person” and its plural for brevity with the belief that readers will understand that homelessness is an experience that all too many members of our communities’ experience but that it does not identify them.

<sup>2</sup> Annie Knox & Christopher Smart, *Homeless in Salt Lake City*, THE SALT LAKE TRIBUNE (Oct. 20, 2014), <http://archive.sltrib.com/story.php?ref=/sltrib/news/58526393-78/schwarz-utah-homeless-sltrib.html.csp>.

<sup>3</sup> See generally NAT’L LAW CTR. ON HOMELESSNESS & POVERTY (NLCHP), NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 7 (2014), available at [http://www.nlchp.org/documents/No\\_Safe\\_Place](http://www.nlchp.org/documents/No_Safe_Place); Justin Olson & Scott MacDonald, Seattle University Homeless Rights Advocacy Project, WASHINGTON’S WAR ON THE VISIBLY POOR: A SURVEY OF CRIMINALIZING ORDINANCES & THEIR ENFORCEMENT (Sara K. Rankin ed., May, 2015), available at <http://ssrn.com/abstract=2602318>.

<sup>4</sup> The United States Department of Housing and Urban Development (HUD) has not comprehensively assessed the patchwork of shelters serving people experiencing homelessness across the county. Nor, to the author’s knowledge, has any other federal agency or organization. Given the tremendous investment in the shelter system, and the critical role it plays, a comprehensive, national study is needed of shelters, their conditions and rules, and their effectiveness and deficiencies to best serve homeless people.

<sup>5</sup> HOMELESS SHELTER DIRECTORY, <http://www.homelessshelterdirectory.org/> (last visited Feb. 6, 2016). This brief focuses exclusively on emergency shelters.

shelters or how well they are served. What is known is that lack of capacity and barriers to entry keep vulnerable individuals and families from accessing shelters.<sup>6</sup>

The shortage of emergency shelters leads to overcrowding, which creates unhealthy, unsanitary, and even dangerous conditions in some shelters. Overcrowding facilitates the transmission of communicable diseases and pests. Overcrowding in New York City shelters recently led to housing homeless families in substandard buildings rife with code violations, vermin, and violent crime.<sup>7</sup> Conditions like these can force homeless people out of the shelter system or discourage them from seeking shelter in the first place.



Photo: Suzanne Skinner

Equally significant barriers to entry are the rules and restrictions common to shelters that can make their services inaccessible to those in need. Restrictions governing who can enter bar many people from shelter, while benefitting others. A prime example is that most shelters are restricted to either single males or single females. Families, youth, transgendered individuals, and heterosexual couples consequently are automatically excluded from the vast majority of shelters.

Another example is that many shelters refuse admittance to substance abusers and the mentally ill. Yet, a significant proportion of homeless people suffer from these dual scourges. Being shut out of shelters can deny these individuals access to treatment.

Cataloguing the full scope and impact of the barriers homeless people can encounter when they seek emergency shelter is beyond the scope of this brief. Instead, this brief identifies a handful of common conditions and restrictions of homeless shelters, and, in particular, examines the barriers to emergency shelter faced by four particularly vulnerable groups: families; lesbian, gay, transgendered, and queer (LGBTQ) youth; substance abusers; and registered sex offenders. This examination shows that conditions and rules common to emergency shelters operate to keep these four groups out on the street where they are vulnerable to prosecution for violating criminalization laws.

This brief aims to provide emergency shelter providers, policymakers, and advocates with information about shelter conditions and rules that force homeless people outside, as well as some potential solutions. Key recommendations in the brief include:

- Immediately cease enforcement and repeal laws that criminalize life-sustaining actions of people experiencing homelessness—such as camping and storing property in public. In the alternative, criminalization laws should be amended to require local governments to affirmatively prove that homeless individuals who violate criminalization ordinances had at the time of their citation or arrest reasonable, accessible, and satisfactory alternatives to living outside.

---

<sup>6</sup> See *infra* p. 11-14.

<sup>7</sup> See *infra* pp. 17-18.

- Increase shelter capacity as a stopgap measure to address the tremendous shortfall in transitional and permanent housing. Permanent housing is the only real solution to homelessness.
- Increase the number and capacity of specialized shelters that serve underserved populations of homeless people, such as families and unaccompanied youth.
- Increase the number of “low barrier” shelters and “harm reduction” services for those suffering from substance abuse, to house this underserved segment of the homeless population and potentially lead them to treatment.
- Increase investment in substance abuse treatment for opioid and methamphetamine use. Substance abuse is both a cause and consequence of homelessness.
- Abolish overbroad residency laws for registered sex offenders. These laws, coupled with shelters’ bans on admitting registered sex offenders, effectively force homeless offenders to live outside. Community safety is not served by these laws and practices.
- Conduct a comprehensive, nationwide study of emergency shelters, their rules and conditions, and their effectiveness and deficiencies to better serve people experiencing homelessness until adequate permanent housing is provided.



## INTRODUCTION

Laws that prohibit sleeping in parks or sitting on city streets criminalize the performance of basic life functions in public. These criminalization ordinances are predicated on the premise that those charged have someplace else to go. When homeless people are charged with criminalization ordinances that regulate conducting basic life functions in public, the assumption is that they have an alternative: emergency shelters.

This assumption is often unfounded. Communities throughout the country simply have far too few emergency shelter beds to meet the need. This shortage forces shelter providers to overfill shelters leading to unsafe and unsanitary conditions. The shortfall of beds is exacerbated by shelter restrictions that limit entry to only those who qualify or shelter conditions that pose health and safety risks that scare people away.

Emergency shelter is defined as “any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless, and which does not require occupants to sign leases or occupancy agreements.”<sup>8</sup> It is unclear how many emergency homeless shelters operate at any given time across the United States.<sup>9</sup> The best estimate is that nationally<sup>10</sup> 264,440 emergency shelter beds were available year-round, with another 20,791 beds available during extreme weather conditions.<sup>11</sup>

But as is all-too-evident in cities throughout the United States, the number of unsheltered homeless people far exceeds the available emergency shelter beds.<sup>12</sup> The January 2015 annual “Point-in-Time” count (PIT) identified 564,708 unsheltered people nationwide experiencing homelessness.<sup>13</sup> The PIT is a snapshot of the homeless population:<sup>14</sup> limited to those living in emergency shelters, transitional housing, or on the street, who volunteers manage to locate following protocols that can vary from community to community, rendering the counts vulnerable to underestimation and other flaws.<sup>15</sup> Not included are people who are, on the day of

---

<sup>8</sup> 24 C.F.R. § 91.5 (2015).

<sup>9</sup> NAT’L ALLIANCE TO END HOMELESSNESS, <http://www.endhomelessness.org/pages/faqs#shelters> (last visited Nov. 27, 2015).

<sup>10</sup> National data collected by the Department of Housing and Urban Development (HUD) includes all states, Guam, Puerto Rico, and the District of Columbia.

<sup>11</sup> HUD 2015 CONTINUUM OF CARE HOMELESS ASSISTANCE PROGRAMS, HOUSING INVENTORY COUNT REPORT (Nov. 30, 2015).

<sup>12</sup> See NO SAFE PLACE, *supra* note 3.

<sup>13</sup> HUD narrowly defines “unsheltered” as people living in shelters, in transitional housing and in public places. Housing Inventory Count Report, *supra* note 11.

<sup>14</sup> The PIT has many critics. See generally Joanna S. Kao, et al., *Who Counts as Homeless Depends on How You Ask*, AL JAZEERA AMERICA (Jan. 31, 2015), <http://america.aljazeera.com/multimedia/2015/1/who-countsas-homeless-depends-on-how-you-ask.html#homeless-data> (noting last January, HUD counted 578,424 people on the streets and in shelters in the U.S., down 11 % from 2007—while the Department of Education, or DOE, which uses a different, more expansive methodology, reported that child and family homelessness doubled over the last decade).

<sup>15</sup> Maria Foscarinis, *Homeless Problem Bigger Than Our Leaders Think*, USA TODAY (Jan. 16, 2014), <http://www.usatoday.com/story/opinion/2014/01/16/homeless-problem-obama-america-recession-column/4539917/> (noting that “The problem isn’t just the count’s narrow scope; its methods are flawed... HUD sets the guidelines, but communities have discretion in how they count. A few use sophisticated statistical methods. Most simply organize

the count, in substance abuse or mental health centers, hospitals, and prisons, but who will have nowhere to go upon release.<sup>16</sup> HUD's numbers also depend upon how much funding is available for emergency shelters or transitional housing, among other variables.<sup>17</sup> Moreover, unlike estimates prepared by the Department of Education, the PIT notably excludes individuals who "double-up" or couch surf with friends or families to avoid shelters or the streets.<sup>18</sup>

**In 2014, at least 2.5 to 3.5 million Americans slept in shelters, transitional housing, and public places not meant for human habitation, and an additional 7.4 million stayed with family or friends.**

Other sources peg estimates of the number of people experiencing homelessness much higher. A leading advocacy organization calculates that in 2014 at least 2.5 to 3.5 million Americans slept in shelters, transitional housing, and public places not meant for human habitation, and an additional 7.4 million stayed with family or friends.<sup>19</sup> Moreover, the 2015 report of the United States Conference of Mayors shows that on average the total number of persons experiencing homelessness increased 1.6% based upon a survey of 22 cities.<sup>20</sup> The Conference Report obliquely underscores how national averages can mask problems in particular cities or areas of the country: the number persons experiencing homelessness increased in 58 % and decreased in 42 % of the reporting cities.<sup>21</sup> Among the cities surveyed, considerable differences emerged as to whether individual homelessness, as opposed to family homelessness, increased or decreased.<sup>22</sup>

**Because of insufficient shelter beds, on average at least 300,260 people slept in the rough in 2015, exposed to the elements and potential violence.**

The numbers demonstrate that the United States continues to contend with a homelessness crisis. Just using HUD's conservative figures from the PIT count, the United States experienced, at a minimum, a shortfall of 300,260 emergency shelter beds in January of 2015.<sup>23</sup> That means in

2015 *on average* at least 300,260 people slept in the rough—exposed to the elements and potential violence. During periods of high demand for emergency shelter, as when temperatures fall below freezing, the shortfall in emergency beds was much higher.<sup>24</sup>

---

volunteers to fan out and make judgments about who is homeless, avoiding locations where they feel unsafe. How even the best prepared volunteers can cover large expanses in a few hours is anyone's guess.”)

<sup>16</sup> *See id.*

<sup>17</sup> NLCHP, [http://www.nlchp.org/documents/Homeless\\_Stats\\_Fact\\_Sheet](http://www.nlchp.org/documents/Homeless_Stats_Fact_Sheet).

<sup>18</sup> U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (USICH), OPENING DOORS: FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS, 13 (2013) (hereinafter “Opening Doors”), [https://www.usich.gov/resources/uploads/asset\\_library/USICH\\_Annual\\_Update\\_2013.pdf](https://www.usich.gov/resources/uploads/asset_library/USICH_Annual_Update_2013.pdf).

<sup>19</sup> NLCHP, *supra* note 17.

<sup>20</sup> U.S. CONFERENCE OF MAYORS, HUNGER AND HOMELESSNESS SURVEY, STATUS REPORT, 2, 17 (Dec. 2015), (hereinafter “Mayors”) <http://www.usmayors.org/pressreleases/uploads/2015/1221-report-hhreport.pdf>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at Appx. A.

<sup>23</sup> 2015 HOUSING INVENTORY COUNT REPORT, *supra* note 11, at 15.

<sup>24</sup> NAT'L COALITION FOR THE HOMELESS, WINTER HOMELESS SERVICES: BRINGING OUR NEIGHBORS IN FROM THE COLD 3 (Jan. 2010), [http://www.nationalhomeless.org/publications/winter\\_weather/Winter\\_weather\\_report.pdf](http://www.nationalhomeless.org/publications/winter_weather/Winter_weather_report.pdf). (hereinafter “Winter Homeless”).

In 2015, cities of all sizes throughout the country turned away homeless individuals and families from emergency shelter beds.<sup>25</sup> For example, shelters in Los Angeles and Louisville, Kentucky turned away 39% of those seeking shelter due to lack of beds in 2015; some cities experienced even higher shortages.<sup>26</sup> The shortfall of emergency beds disguises deeper impediments to providing emergency shelter to those in need: conditions and requirements common to many homeless shelters that act as barriers, keeping individuals and families experiencing homelessness on the streets.

These barriers take two forms: “conditions” of homeless shelters such as overcrowding, pest infestations, or theft and violence; and “requirements or rules” of shelters that determine who can enter. These barriers can operate to keep other unsheltered people on the street.

This examination of negative impacts of conditions and requirements of shelters on homeless individuals is not intended as an attack on the thousands of dedicated staff and volunteers, many from faith-based communities, who selflessly devote their time and money to shelter and feed those who our society ignores or neglects. Shelter providers save lives everyday—often with nominal resources— and they get far too little credit for their efforts.

Instead, this brief examines why some, indeed many, homeless people remain unsheltered in spite of the grave risks of being unsheltered. Those risks are obvious.

Remaining on the streets exposes homeless people to the elements: 700 homeless individuals died from exposure in 2009.<sup>27</sup> Remaining on the streets also puts homeless people at risk of violence, including murder, assault, rape, and theft. Homeless people are often the victims of hate crimes.<sup>28</sup> Close to 1,500 documented attacks against homeless individuals occurred over the past 15 years, with 375 ending in death.<sup>29</sup> And, as discussed herein,<sup>30</sup> remaining on the streets exposes homeless people to potential prosecution for violating “criminalization laws”: statutes and ordinances that regulate the use of public spaces, such as prohibiting sleeping and camping in public, and panhandling.

***The “Choice” to Remain on the Street is a Dangerous One.***

- **700 people died in the U.S. from exposure in 2009.**
- **1,500 attacks occurred nationwide on homeless people in the past 15 years.**
- **212 homeless people died in NYC in 2015.**

Part I of this analysis briefly discusses the legal rights of homeless individuals and the local, state, federal and international laws that are implicated by the enforcement of criminalization against people experiencing homelessness. Of particular importance to this

<sup>25</sup> MAYORS, *supra* note 20, at 15, Appx. B.

<sup>26</sup> *Id.* Shelters in McKinney, Texas had to turn away 86% of those seeking emergency shelter in 2015.

<sup>27</sup> WINTER HOMELESS, *supra* note 24, at 3. Accurate numbers of deaths from exposure are difficult due to multiple causations. Nonetheless, 212 homeless people died in New York City in 2015—the majority during the coldest months, January through March. Laura Nahamas & Brendan Cheney, *At Least 212 Homeless People Died in 2015*, POLITICO NEW YORK (Mar. 23, 2016), <http://www.capitalnewyork.com/article/city-hall/2016/03/8594571/least-212-homeless-people-died-fy-2015-report-shows>.

<sup>28</sup> NAT’L COALITION FOR THE HOMELESS, VULNERABLE TO HATE: SURVEY OF HATE CRIMES AND VIOLENCE AGAINST HOMELESS PEOPLE IN 2013 (2014).

<sup>29</sup> *Id.* at 4.

<sup>30</sup> *Infra* p. 10-11.

analysis is the Eighth Amendment of the United States Constitution.<sup>31</sup> Enforcing ordinances prohibiting sleeping and camping in public against homeless individuals violates their rights to be free of cruel and unusual punishment when they have no other reasonable alternative but to sleep in public because emergency shelters are full or inappropriate.

Part II discusses common conditions and restrictions of shelters that make them inaccessible to many people experiencing homelessness, and argues that such barriers prevent local governments from enforcing criminalization ordinances against those who are impacted.

Part III contains recommendations for changes in the law and improvements to make shelters more accessible to those in need as an emergency response to homelessness.

Through this three-part analysis, this brief hopes to correct the myth that shelters are available and accessible to all homeless people; identify improvements and best practices to enable people wanting emergency shelter to access it as a stepping stone to permanent housing; and provide a legal framework for potential challenges to the criminalization of homelessness.

## **I. LEGAL RIGHTS PUT IN JEOPARDY BY CRIMINALIZATION ORDINANCES**

Beginning in the 1980s, the United States began to witness an upsurge in homelessness that is attributed to multiple factors: a rapid increase in income inequality; the loss of affordable housing; an increase in foreclosures; wages and public assistance falling short of rising housing costs and the cost of living; wide-scale job loss in the Great Recession and persistent underemployment since then; and the closing of state psychiatric institutions without sufficient alternatives.<sup>32</sup> Visible poverty consequently increased.<sup>33</sup> Meanwhile, cities and counties throughout the country have adopted laws that criminalize homelessness: making it illegal to conduct basic life functions in public places.<sup>34</sup> Cities turn to criminalization laws to protect the economic vitality of business districts and public safety and to deter homeless persons from “choosing” to live on the street.<sup>35</sup> But as discussed in Part II, this “choice” is frequently a myth because of the lack of permanent housing, the shortfall in shelter beds, and common conditions and restrictions at emergency shelters that keep people outside.

Many studies have pointed out the futility of prosecuting homeless individuals for violating criminalization ordinances, and the consequent waste of taxpayer dollars—making a detailed recitation of the impacts and costs unnecessary here.<sup>36</sup> Moreover, prosecuting people experiencing homelessness for violating anti-camping ordinances when no shelter space is available, or when shelter rules or conditions preclude access, potentially violates their rights as protected by international law and the Fourteenth and Eighth Amendments of the United States Constitution.

---

<sup>31</sup> “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. CONST. amend. VIII.

<sup>32</sup> OPENING DOORS, *supra* note 18, at 13.

<sup>33</sup> *Id.*

<sup>34</sup> NO SAFE PLACE, *supra* note 3, at 16-19.

<sup>35</sup> *Id.* at 16.

<sup>36</sup> The criminalization of homelessness is well-documented nationally and in many states. *See generally* NO SAFE PLACE, *supra* note 3; Olson and MacDonald, *supra* note 3.

## A. Human Rights

In a 2012 report, the United States Department of Justice (DOJ) and the United States Interagency Council on Homelessness (USICH) recognized criminalization of homelessness as a potential violation of the International Covenant on Civil and Political Rights (ICCPR)—the first time any United States government agency recognized any domestic practice as a possible treaty violation.<sup>37</sup> Article 7, the pertinent provision of the ICCPR, provides: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>38</sup> The Article 7 rights of homeless Americans are violated when people experiencing homelessness lack homes or legal places to engage in basic life functions, and are cited or arrested for sleeping, eating, and defecating in public.<sup>39</sup>

The United Nations Human Rights Committee also condemned the criminalization of homelessness by American cities as violating Article 7 of the ICCPR and called upon the U.S. government to abolish criminalization and take corrective action.<sup>40</sup> Subsequent to these developments, in August of 2015, the DOJ took a stand domestically against criminalization by filing a brief in support of homeless plaintiffs who had raised constitutional challenges in federal district court to municipal anti-sleeping and camping ordinances<sup>41</sup>—a welcome development.<sup>42</sup>

## B. Fourteenth Amendment

The Fourteenth Amendment of the United States Constitution guarantees due process and equal protection under the law to all Americans.<sup>43</sup> The Fourteenth Amendment prohibits cities and states from discriminating among different groups in how laws are enforced, and requires fair notice and due process to those cited with violating the law.<sup>44</sup> If laws are vague or overbroad in prohibiting conduct, such as sleeping in public places, the due process clause of the Fourteenth Amendment comes into play.<sup>45</sup> Due process, accordingly, protected homeless individuals from arrest for remaining in public areas of Pennsylvania Station “too long,” without any evidence of

---

<sup>37</sup> USICH, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS 7 (2012), available at [www.usich.gov/resources/uploads/asset\\_library/RPT\\_SoS\\_March2012.pdf](http://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf); see generally NLCHP et al., CRIMINALIZATION OF HOMELESSNESS IN THE UNITED STATES OF AMERICA: A REPORT TO UNITED NATIONS COMMITTEE AGAINST TORTURE (Sept. 22, 2014), [http://www.nlchp.org/documents/CAT\\_Criminalization\\_Shadow\\_Report\\_2014](http://www.nlchp.org/documents/CAT_Criminalization_Shadow_Report_2014).

<sup>38</sup> UNITED NATIONS HUMAN RIGHTS, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last visited Jan. 23, 2016).

<sup>39</sup> NLCHP, CRUEL INHUMAN AND DEGRADING: HOMELESSNESS IN THE UNITED STATES UNDER THE INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS 6 (2013).

<sup>40</sup> U.N. HUMAN RIGHTS COMMITTEE, CONCLUDING OBSERVATIONS ON THE FOURTH REPORT OF THE UNITED STATES OF AMERICA, CCPR/C/USA/CO/4 (Apr. 23, 2014), available at <http://www.refworld.org/docid/5374afcd4.html>.

<sup>41</sup> *Infra* p. 10.

<sup>42</sup> More work remains to be done, however, as local governments can still use federal funds to support criminalization measures. U.S. HUMAN RIGHTS NETWORK, NLCHP SUBMISSION ON CRIMINALIZATION OF HOMELESSNESS IN THE UNITED STATES OF AMERICA 3 (Jan. 17, 2012) [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/18\\_national\\_law\\_center\\_on\\_homelessness\\_and\\_poverty\\_and\\_coalition.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/18_national_law_center_on_homelessness_and_poverty_and_coalition.pdf).

<sup>43</sup> U.S. CONST. amend. XIV § 1.

<sup>44</sup> *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) (invalidating criminal law that failed to provide notice to ordinary people of prohibited conduct).

<sup>45</sup> *Giacco v. Pennsylvania*, 382 U.S. 399, 402 (1966) (Due Process Clause violated if law too vague to inform of prohibited conduct); *Lanzetta v. New Jersey*, 306 U.S. 451, 458 (1939).

criminal activity or entry into areas reserved for ticketed passengers.<sup>46</sup> Amtrak could point to no rule of conduct that the homeless individuals had violated—other than “hanging around” too long.<sup>47</sup> The court enjoined Amtrak from arresting and ejecting homeless individuals after determining that Amtrak’s broad invitation for the public to use the station had concurrently imposed a duty to respect the due process rights of *all* persons, not just travelers, who entered the station.<sup>48</sup>

Due process also safeguards homeless individuals’ rights to access parks and public spaces subject to reasonable restrictions, no differently than wealthier individuals.<sup>49</sup> The Eleventh Circuit Court of Appeals accordingly allowed homeless plaintiffs to challenge a Saint Petersburg trespass ordinance that allowed city police and civil employees to exclude people from certain public places for one to two years.<sup>50</sup> Because the ordinance failed to provide those given a trespass *warning* with an opportunity for a hearing, outside of being charged with trespass, the court found that plaintiffs had a cognizable due process claim under the Fourteenth Amendment.<sup>51</sup>

Similarly, duplicative ordinances—different ordinances that criminalize the same activity but provide for different penalties—may allow for arbitrary or discriminatory enforcement in violation of due process.<sup>52</sup> A Washington State study of criminalization ordinances found many cities have duplicative ordinances.<sup>53</sup> For example, Spokane, Washington has two ordinances that punish camping in public. Violate one and risk jail.<sup>54</sup> Violate the other and the punishment is a civil infraction and fine.<sup>55</sup> Based upon these duplicative anti-camping ordinances, Spokane police issued criminal citations 25% of the time and civil infractions 75% of the time, creating a serious risk of arbitrary or discriminatory enforcement.<sup>56</sup>

In sum, the Fourteenth Amendment, and in particular, the Due Process Clause, imposes significant limitations on criminalization ordinances, and provides broad protections to homeless individuals cited or charged with violations of anti-camping or anti-sleeping in public ordinances.

---

<sup>46</sup> *Streetwatch v. National Railroad Passenger*, 875 F. Supp. 1055 (S.D.N.Y. 1995). Notably, plaintiffs also adduced evidence of Amtrak’s alleged violation of the Equal Protection clause by disparately ejecting black homeless people from the station. *Id.* at 1058. Ironically, Amtrak defended the Equal Protection claim by pointing out that racial minorities constitute a disproportionately large segment of the homeless population. *Id.*

<sup>47</sup> *Id.* at 1058.

<sup>48</sup> *Id.* at 1061-62.

<sup>49</sup> *Catron v. City of St. Petersburg*, 658 F.3d 1260, 1266 (11th Cir. 2011) (finding plaintiffs’ challenge to the trespass ordinance stated a federal due process claim and state constitutional right to travel claim but rejecting plaintiffs’ facial challenge to the city’s storage ordinance).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 1268.

<sup>52</sup> *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *Desertrain v. Los Angeles*, 754 F.3d 1147, 1155-56 (9th Cir. 2013) (laws that provide no standards for exercising discretion become ““a convenient tool for harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure.””) (citing *Papachristou v. City of Jacksonville*, 405 U.S. 156, 170 (1972)).

<sup>53</sup> Olson and MacDonald, *supra* note 3, at pp. 22-23.

<sup>54</sup> Seattle Municipal Code 10.08B.040 (2007).

<sup>55</sup> Seattle Municipal Code 10.10.040 (2007).

<sup>56</sup> Olson and MacDonald, *supra* note 3, at pp. 22-23.

### C. Eighth Amendment

The “Cruel and Unusual Punishments” Clause of the Eighth Amendment “imposes substantive limits on what can be made criminal and punished as such.”<sup>57</sup> In a seminal application of the Clause to the criminalization of homelessness, in 2015, the DOJ filed a statement of interest in a court challenge by homeless individuals to the City of Boise’s ordinances prohibiting camping and sleeping in public places.<sup>58</sup> Because Boise lacked sufficient shelter space for its residents experiencing homelessness, the DOJ contended that the city’s

**[W]here there is insufficient shelter space to accommodate the homeless population: the conduct of sleeping in a public place is indistinguishable from the status of homelessness...**<sup>60</sup>

ordinances that criminalized sleeping or camping in public punished homeless defendants for the status of being homeless in violation of the Eighth Amendment.<sup>59</sup> According to the DOJ, “where there is insufficient shelter space to accommodate the homeless population: the conduct of sleeping in a public place is indistinguishable from the status of homelessness.”<sup>60</sup> In short, an ordinance criminalizing sleeping in public is unconstitutional when it is enforced against homeless individuals who have no place else to go.

But what does it mean to “have no place to go?” Is a mat in an overcrowded shelter in violation of fire codes someplace to go? One shelter in Boise never turned away those who sought shelter irrespective of fire and safety codes, and without the approval of the fire inspector.<sup>61</sup> Boise used that shelter’s policy to argue that enough shelter existed to meet the need.<sup>62</sup>

Similarly, if your only sleeping space is the chapel where you must attend religious services contrary to your beliefs, is that someplace to go? During the pendency of the *Bell* case, Boise Rescue Mission, the largest of Boise’s two shelter providers, procured an exemption from the Fair Housing Act’s<sup>63</sup> prohibitions on religious discrimination which allowed the shelter to discriminate in providing services against homeless individuals who did not share the shelter’s religious affiliation.<sup>64</sup> The *Bell* plaintiffs contended that the Mission effectively forced homeless

<sup>57</sup> *Ingraham v. Wright*, 430 U.S. 651, 667-68 (1977).

<sup>58</sup> *Bell v. City of Boise*, 993 F. Supp. 2d 1237 (D. Idaho 2014) (dismissed on standing). See generally Statement of Interest of the United States Department of Justice, *Bell v. City of Boise*, 993 F. Supp. 2d 1237 (2014) (No. 1:09-cv-540-REB) (hereinafter “Statement of Interest”), available at <https://www.documentcloud.org/documents/2261447-bell-v-boise-statement-of-interest.html> (last visited Jan. 16, 2016).

<sup>59</sup> Statement of Interest, *supra* note 58, at 6-12.

<sup>60</sup> *Id.* at 11. (citing *Jones v. City of Los Angeles*, 444 F.3d 1118, 1136-37 (9th Cir. 2006), *vacated per settlement*, 505 F.3d 1006 (9th Cir. 2007)).

<sup>61</sup> Statement of Undisputed Material Fact in Support of Plaintiffs’ Motion for Summary Judgment at 3, *Bell v. Boise*, 993 F. Supp. 2d 1237 (2014) (No. 1:09-cv-00540-REB).

<sup>62</sup> Statement of Interest, *supra* note 58, at 3, n. 8.

<sup>63</sup> 42 U.S.C. §§ 3601-3631 (1968).

<sup>64</sup> *Intermountain Fair House Council v. Boise Rescue Mission Ministries*, 657 F.3d 988, 996-97 (9th Cir. 2011) (finding that Boise Rescue Mission qualified as a religious organization which exempted its preferential practices for emergency beds from the Fair Housing Act). Plaintiffs in that case alleged that Boise Rescue Mission encouraged homeless clients to attend religious services by feeding them first during meal times, which could leave inferior food for those who were fed last.

individuals to attend religious services when it assigned them to sleeping mats in the chapel.<sup>65</sup> The Mission's policies meant, according to the *Bell* plaintiffs, that the City of Boise could not count Boise Rescue Mission's emergency shelter beds when determining whether homeless individuals in Boise had a meaningful choice about whether or not to sleep in public.<sup>66</sup> Otherwise, homeless individuals would be forced to forgo their First Amendment rights by seeking shelter at Boise Rescue Mission to avoid being cited for sleeping in public.<sup>67</sup>

The court never reached the questions raised by the *Bell* plaintiffs. However, in its Statement of Interest, the DOJ made clear that shelter conditions and restrictions could make shelters effectively inaccessible in certain situations and to certain groups, thereby rendering enforcement of criminalization ordinances unconstitutional.

“If sufficient shelter space is unavailable because a) there are inadequate beds for the entire population, or b) *there are restrictions on those beds that disqualify certain groups of homeless individuals (e.g., because of disability access or exceeding maximum stay requirements)*, then it would be impossible for some homeless individuals to comply with these ordinances.”<sup>68</sup>

Part II explores in greater detail the conditions and restrictions common to emergency homeless shelters that can implicate the Fourth Amendment, Eighth Amendment and human rights of people experiencing homelessness generally, as well as defined groups within that population.

## **II. Barriers to Homeless Shelters that Keep People Experiencing Homelessness Outside**

*“I ran a small shelter in Grand Junction, Colorado. And you know, I used to have staff meetings and we'd make long lists of every barrier there was to those things, and there are so many. They are crowded. On a winter night you can hardly sleep because the hacking is so heavy. The smell...they're really tough to stay in. They really are, and they're really crowded.”*<sup>69</sup>

These words spoken by a former shelter director puncture the common myth that homeless people choose to live outside. The barriers to emergency shelters are many indeed: too few beds, inability to accommodate couples, poor transportation to shelters, unsanitary conditions, safety concerns, curfews that make holding a nighttime or irregular shift job impossible, restrictions on storing belongings, and sobriety requirements, just to name a handful.<sup>70</sup> Barriers like these fail to meet the needs of individuals and families, especially if they must wait months or even years for transitional or permanent housing.

---

<sup>65</sup> Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Summary Judgment, *Bell v. Boise* at 14-16, 993 F. Supp. 2d 1237 (2014) (No. 1:09-cv-00540-REB).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Statement of Interest, *supra* note 58, at 4 (emphasis added).

<sup>69</sup> Ari Shapiro, *Why Some Homeless Choose the Streets Over Shelters*, NAT'L. PUBLIC RADIO (Dec. 16, 2012), <http://www.npr.org/2012/12/06/166666265/why-some-homeless-choose-the-streets-over-shelters>.

<sup>70</sup> *Id.*



Barriers take many forms and are as varied as the shelters themselves. Shelters differ widely: in their capacity—from hundreds of beds to several; their population served—from all comers to LGBTQ adults only; allowed duration of stay—from overnight to several months; and funding sources—public, religious, and foundations. Different funding sources can result in vastly different shelter rules. Publicly funded or operated shelters cannot legally discriminate on religious, sexual, racial, or gender identity grounds.<sup>71</sup> Privately funded, faith-based community shelters, by contrast, can adopt rules that require participation in religious services or membership in a church to procure drug treatment.<sup>72</sup> These differences and permitted preferences can become barriers to entry for many people experiencing homelessness: a Christian shelter, for example, may deny a Jewish homeless woman entry to a bed and services. These differences, conditions, and restrictions can determine whether homeless individuals actually have a choice in whether or not to enter a shelter.<sup>73</sup>



Photo Suzanne Skinner

What follows is an examination of some of barriers to accessing shelter that keep people outside.

#### **A. The Appalling Lack of Available Shelter Beds**

The biggest barrier to shelter is the critical shortage of beds. In 2015, between 564,708 to 3.5 million people experienced homelessness—with only 264,440 emergency shelter beds available nationally.<sup>74</sup> Consequently, hundreds of thousands to millions of people experiencing homelessness have no chance of finding a shelter bed on a given night. Cities of all sizes throughout the United States simply have too few beds to meet the demand—both for homeless individuals and for homeless families.<sup>75</sup>

---

<sup>71</sup>Department of Housing and Urban Development, Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs, 80 Fed. Reg. 72,642-72,649(proposed Nov. 20, 2015) (to be codified at 24 C.F.R. pt. 5), [http://www.regulations.gov/#!documentDetail;D=HUD\\_FRDOC\\_0001-4281](http://www.regulations.gov/#!documentDetail;D=HUD_FRDOC_0001-4281) (hereinafter "HUD proposed regulations"); FAIR HOUSING PARTNERS OF WA STATE, A GUIDE TO FAIR HOUSING FOR NONPROFIT HOUSING AND SHELTER PROVIDERS 20-22 (2013), available at <http://www.kingcounty.gov/~media/exec/civilrights/documents/NPHO-Shelter.ashx?la=en>.

<sup>72</sup> FAIR HOUSING PARTNERS OF WA STATE, *supra* at 71, pp. 20-22. See *supra* pp. 10-11.

<sup>73</sup> Although beyond the scope of this brief, a comprehensive study of the impact on homeless individuals of faith-based restrictions at shelters is warranted. Of course, not all faith-based shelters adopt religiously-linked requirements, and many faith-based shelters are the only provider of shelter in many communities. The Coalition for the Homeless in Puyallup, Washington, for example, provides the only winter, nighttime shelter in East Pierce County through the cooperation of ten local churches—without which homeless individuals would face possible hypothermia or worse. See DIRECTORY *supra* at 5.

<sup>74</sup> See *supra* pp. 5-6.

<sup>75</sup> MAYORS, *supra* note 20, at 15, Appx. B.

The numerical shortage of beds is only the first hurdle. The next is transportation to the shelter: people experiencing homelessness have to get themselves and their belongings to the shelter with an opening. A Connecticut study revealed that while the state government provided support to 44 shelters, the funds provided barely covered operating expenses, leaving little money, if any, available to transport those in need to shelters.<sup>76</sup> Transportation support is spotty. Some shelters operate van services to transport clients,<sup>77</sup> and some cities provide bus tokens—but often token use is restricted to transportation to jobs or medical appointments.<sup>78</sup> In short, people experiencing homelessness frequently need, but do not receive, transportation to available shelters.

**A man experiencing homelessness whose belongings filled a shopping cart wondered how he could navigate buses to the shelter on the opposite side of the city: “What bus driver is going to pick up me and my shopping cart?”**

And meaningful access may require more than a bus token. After being given a bus voucher and the name of a shelter four miles away, a homeless man who needed assistance walking and whose belongings filled a shopping cart asked an advocate: “What bus driver is going to pick up me and my shopping cart?”<sup>79</sup> Fortunately, alternative transportation was arranged for him.<sup>80</sup>

Yet another impediment exists: upon reaching a shelter, a homeless person may find that no bed is available. Many cities lack centralized portals to assist homeless individuals in finding which shelters have capacity and may accept them.<sup>81</sup> Most communities have 2-1-1 resource networks that list the locations and numbers of emergency shelters, but they do not answer the question of whether a bed is available that night. Quite commonly, shelters listed on community resource websites require would-be attendees to go to intakes or pre-register in person.<sup>82</sup> For example, the Bread of Life Mission, centrally located in downtown Seattle near other services for the homeless, requires in-person preregistration for each night’s stay; its website warns that registration is usually full by lunchtime.<sup>83</sup>

**Lack of access to shelters can make enforcement of anti-camping ordinances unconstitutional. A Federal Court found a homeless man had no “choice” but to sleep outside in violation of an anti-camping ordinance because to reach the closest shelter required walking several miles through a “rough part” of Los Angeles.**<sup>60</sup>

<sup>76</sup> ROBIN COHEN, LR RESEARCH, TRANSPORTATION FOR HOMELESS SHELTER CLIENTS (1999), <https://www.cga.ct.gov/PS99/rpt%5Colr%5Chtm/99-R-1140.htm>.

<sup>77</sup> See, e.g., NEED HELP PAYING BILLS,

[http://www.needhelppayingbills.com/html/saint\\_vincent\\_de\\_paul\\_financia.html](http://www.needhelppayingbills.com/html/saint_vincent_de_paul_financia.html) (last visited Mar. 30, 2016).

<sup>78</sup> 211 SAN DIEGO, <https://211sandiego.communityos.org/zf/profile/search/dosearch/1?keyword=bus>.

<sup>79</sup> Interview with Ann LoGerfo, Directing Attorney, Columbia Legal Services, Seattle, Washington (Jan. 21, 2016).

<sup>80</sup> *Id.*

<sup>81</sup> Interview with Sola Plumacher, Division Director, Department of Health and Human Services, Seattle, Washington, (Jan. 20, 2016).

<sup>82</sup> See WASHINGTON STATE 2-1-1,

[http://www.resourcehouse.org/win211/King/topics/Basic\\_Needs/Housing\\_Shelter/Emergency\\_Shelter/Homeless\\_Shelter/Community\\_Shelters/programs.aspx](http://www.resourcehouse.org/win211/King/topics/Basic_Needs/Housing_Shelter/Emergency_Shelter/Homeless_Shelter/Community_Shelters/programs.aspx).

<sup>83</sup> *Id.*

## SNAPSHOT OF HOMELESSNESS AND SHELTER USE IN SEVERAL CITIES, 2015

City	Individuals Turned Away from Emergency Shelter	Families Turned Away from Emergency Shelter	People Forced to Sleep on Floors, etc. Due to Overflow	Estimated Percentage of Unmet Need Overall
Washington DC	Yes	Yes	Yes	10%
Seattle, WA	Yes	Yes	Yes	No estimate offered
Santa Barbara, CA	Yes	Yes	Yes	15%
San Antonio, TX	Yes	Yes	Yes	20%
San Francisco, CA	No	No	No	No unmet need
Salt Lake, UT	No	No	Yes	No unmet need
St Paul, MN	Yes	Yes	Yes	No estimate
Philadelphia, PA	Yes	Yes	No	No estimate
Norfolk, VA	Yes	Yes	Yes	7%
Providence, RI	No	Yes	Variant response—double up in motels	10%
Nashville, TN	Yes	Yes	Yes	15%
McKinney, TX	---	Yes	Yes	86%
Louisville, KY	Yes	Yes	Yes	39%
Los Angeles, CA	Yes	Yes	Yes	39%
Dallas, TX	No	No	Yes	No estimate
Cleveland, OH	No	No	Yes	No estimate
Chicago, IL	No	No	Yes	No estimate
Charleston, SC	Yes	Yes	---	60%
Baltimore, MD	Yes	Yes	Yes	No estimate

- Compiled from: US Conference of Mayors, *Hunger and Homelessness Survey*, Dec. 2015 (Appx. B).
- “No estimate” means that the city did not provide an estimate.
- Note that each city provided the data for the Report—the accuracy of which could be questioned. For example, while San Francisco reported “no unmet need” above, the 2015 PIT Count for San Francisco recorded 3,505 unsheltered individuals. San Francisco: Homelessness Point in Time Count & Survey, Comprehensive Report at 19 (2015), [https://sfgov.org/lhcb/sites/sfgov.org.lhcb/files/2015%20San%20Francisco%2010Homeless%20Count%20%20Report\\_0.pdf](https://sfgov.org/lhcb/sites/sfgov.org.lhcb/files/2015%20San%20Francisco%2010Homeless%20Count%20%20Report_0.pdf).

Most 2-1-1 systems do not make reservations or have admissions authority for potential clients of homeless shelters.<sup>84</sup> Seattle’s system, for example, only makes reservations for homeless families but not for adults or youth.<sup>85</sup> By contrast, Louisville, Kentucky offers shelter reservations for all who request help.<sup>86</sup> Widespread adoption of a reservation or intake system that provides “real-time” information on shelter capacity, if implemented efficiently, could assist homeless people, who often lack phones, cars or even bus fare, to track down a shelter with an available bed that night.

Nor can it be overlooked that many, and in some places most, shelters are not open to all comers: some may only accept men, some only women, and some only youth.<sup>87</sup> In Louisville, for example, most shelters serve either men or women, not both.<sup>88</sup> What happens to a couple looking for shelter together? In Louisville, the only shelter available for a homeless couple or family is almost five miles away—a distance that could be prohibitive without a car or financial resources.<sup>89</sup>

In sum, for many homeless people, access to shelter is a function of information—knowing which shelters may have space; suitability—knowing that the shelter will accept the individual; and transportation resources—having the means<sup>90</sup> to reach the shelter. All three factors need to align for a homeless youth, family, or adult to find emergency shelter. If they do not align, the default is for homeless youth, families, and adults to sleep outside.

## **B. Crowding, Overcrowding, and Health Risks that Deter Shelter Use**

With only 264,440 emergency shelter beds nationally to serve the 564,708 to 3.5 million people experiencing homelessness in 2015, many shelter providers attempt to accommodate demand by lining up hundreds of sleeping mats or cots in former warehouses, gymnasiums and other large spaces.<sup>91</sup> Public health authorities attempt to protect the health and safety of emergency shelter residents by directing shelter operators to leave space between sleeping mats

---

<sup>84</sup> While encouraging centralized intake, HUD has not required that receiving agencies, like shelters, surrender admissions authority due to community and provider concerns. *See* HOMELESSNESS PREVENTION AND RAPID RE-HOUSING PROGRAM, CENTRALIZED INTAKE FOR HELPING PEOPLE EXPERIENCING HOMELESSNESS, [https://www.hudexchange.info/resources/documents/HPRP\\_CentralizedIntake.pdf](https://www.hudexchange.info/resources/documents/HPRP_CentralizedIntake.pdf).

<sup>85</sup> Plumacher, *supra* note 81. Critics contend that the reservation system for families is a bottleneck that prolongs families’ homelessness. *See also Homeless Families Wait Longer for Shelter Under Seattle’s System*, KUOW (Apr. 8, 2015) (hereinafter “KUOW”), <http://kuow.org/post/homeless-families-wait-longer-shelter-under-seattles-system>.

<sup>86</sup> Telephone Interview with Mary Frances Schafer, Director of Community Coordination, Coalition for the Homeless, Louisville, Kentucky (Jan. 19, 2016).

<sup>87</sup> For an in depth examination of restrictions on shelters that exclude people with dogs: Ruby Aliment, Seattle University Homeless Rights Advocacy Project, NO PETS ALLOWED: DISCRIMINATION, HOMELESSNESS, & PET OWNERSHIP (Kaya Lurie & Sara K. Rankin eds., May 2016).

<sup>88</sup> Schafer, *supra* note 86. *See also* DIRECTORY, *supra* note 5.

<sup>89</sup> *Id.*

<sup>90</sup> Panhandling is one way for people experiencing homelessness to raise money for bus fare and for shelter fees.

<sup>91</sup> For example, St. Martin de Porres shelter in Seattle has 212 mats at full capacity. CATHOLIC COMMUNITY SERVICES OF WESTERN WA, [http://www.ccsww.org/site/PageServer?pagename=homeless\\_stmartin&printer\\_friendly=](http://www.ccsww.org/site/PageServer?pagename=homeless_stmartin&printer_friendly=). The Providence Foundation Shelter in San Francisco also employs sleeping mats. Telephone Interview with Joyce Crum, Director, Housing and Homelessness Division, Human Services Agency, San Francisco, California (Feb. 1, 2016). *See also* David Kroman, *Shelters Maxed Out as City Sweeps Homeless from Streets*, CROSSCUT (Jan. 19, 2016), <http://crosscut.com/2016/01/homeless-encampment-sweeps-encounter-already-maxed-out-shelters/>.

or cots in large dormitories.<sup>92</sup> Unfortunately, the chronic problems faced by homeless people— inadequate clothing, malnutrition, and underlying infection—intensifies the risk of contracting diseases in close quarters.<sup>93</sup> And to save lives during periods of extreme weather, shelters become severely overcrowded with providers squeezing mats closer together, and overflow spilling into halls and any available space.<sup>94</sup>

**“One reason it’s hard to fall asleep in a homeless shelter is the almost endless coughing. There’s always at least one person with a cough. Many of those with chronic coughs have chronic illnesses, transmissible diseases.”**<sup>103</sup>

On occasion, crowded shelters can harbor tuberculosis and other infectious diseases.<sup>95</sup> Three people died, for example, from an outbreak in a shelter in Atlanta, Georgia.<sup>96</sup> A short-term shelter in Kane County, Illinois, reported 28 tuberculosis outbreaks among homeless shelter guests over a four-year period.<sup>97</sup> The shelter houses 180 men per night.<sup>98</sup> The Centers for Disease Control and Prevention (CDC) investigated the outbreak and

drew associations between the length of stay at the shelter of those infected, as well alcohol abuse.<sup>99</sup> In other words, longer or more frequent stays increased the risk of infection.

Tuberculosis is not the only infectious disease that is easily transmitted in homeless shelters. The CDC also issued precautionary circulars to shelter providers on the H1N1 virus and the flu.<sup>100</sup> In addition to common precautions like vaccines and vigilant sanitation, the CDC recommends increasing the distance between sleeping mats or cots to six feet to reduce the likelihood of disease transmission.<sup>101</sup> The CDC also urges shelters to employ optimum heat, air conditioning, and ventilation systems due to the large numbers of individuals commonly housed in a single room.<sup>102</sup> However, given that shelters are often in older buildings and are underfunded, the CDC’s recommendations are not realistic options for many shelters.

The risk of contracting an infectious disease in shelters, as well as skin diseases and parasites, leads some homeless people to avoid shelters.<sup>103</sup> People experiencing homelessness

<sup>92</sup> Plumacher, *supra* note 81.

<sup>93</sup> WINTER HOMELESS, *supra* note 24, at 8.

<sup>94</sup> *Id.* See also Schafer, *supra* note 86.

<sup>95</sup> *TB in the Homeless Population*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/tb/topic/populations/homelessness/default.htm> (“TB in the homeless population is a public health concern. While the reported number of TB cases in the United States decreased slightly in 2011, a disproportionate number of TB cases still occur among high-risk populations, including people experiencing homelessness.”).

<sup>96</sup> Clyde Hughes, *Tuberculosis in Atlanta: 3 Dead in Outbreak in Homeless Shelter*, NEWS MAX (Aug. 11, 2014), <http://www.newsmax.com/TheWire/tuberculosis-atlanta-3-dead-homeless/2014/08/11/id/588052/>.

<sup>97</sup> *Tuberculosis Attack Associated with a Homeless Shelter*, CENTERS FOR DISEASE CONTROL AND PREVENTION (March 23, 2014), <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6111a3.htm>.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Interim Guidance for Homeless and Emergency Shelters on the H1N1 Virus*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Dec. 21, 2009), <http://www.cdc.gov/h1n1flu/guidance/homeless.htm>.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Shapiro, *supra* note 69; Klyssa Shay, *Why Don’t Homeless People Sleep in Shelters*, HUBPAGES (Feb. 10, 2016), [http://hubpages.com/politics/why\\_homeless\\_people\\_avoid\\_shelters](http://hubpages.com/politics/why_homeless_people_avoid_shelters). See also John Mixon, *What are the Disadvantages of Living in a Homeless Shelter Compared to Living in Your Car?*, QUORA,

face very difficult choices in protecting their health—whether they live outside or attempt to use emergency shelters. But it cannot be said that those who avoid homeless shelters where diseases and parasites can proliferate are unreasonable to stay on the streets or that such shelters offer a real choice to staying outside.

### C. Unsanitary and Unsafe Conditions that Keep People Out of Shelters

When asked why some homeless people avoid shelters, one homeless man turned advocate stated, “shelters are dangerous places, ...they’re full of drugs and drug dealers, that people will steal your shoes... .”<sup>104</sup>

New York City recently came under fire for housing homeless families with children, in filthy, dangerous emergency shelters.<sup>105</sup> By law, New York City must provide shelter to anyone who asks for it who qualifies for public assistance or needs temporary shelter due to physical, mental or social dysfunction.<sup>106</sup> As of July, 2015, the city’s Department of Homeless Services (DHS) estimated that more than 58,000 people were homeless—a number well beyond what city-owned and operated shelters could house.

In a scramble to provide shelter, the city contracted with private property owners to take in a number of homeless families on a temporary basis.<sup>107</sup> Homeless families found themselves in apartments and hotels, run by landlords who could amass more than \$3,000 per unit in city funds, an amount intended (but often not used) to pay for unit maintenance and security.<sup>108</sup>

One resident of a contracted shelter said, “[B]uildings are often characterized by violence, drug-use, mice, broken elevators, periods without heat and hot water, and violations of fire safety laws.”<sup>109</sup> Complaints prompted multiple investigations. A leading report found that the City’s amalgam of contracted shelters, which housed 2,000 families, exposed residents to “serious health and safety violations such as extensive vermin infestations, blocked or obstructed means of egress, non-working smoke and carbon monoxide detectors, and improper and/or missing Certificates of Occupancy.”<sup>110</sup>

The City Auditor’s investigation also found gross disregard for basic public health and safety measures, and mismanagement.<sup>111</sup> As a consequence of these well-publicized conditions,

---

<https://www.quora.com/What-are-the-disadvantages-of-living-in-a-homeless-shelter-compared-to-living-in-your-car>.

<sup>104</sup> *Id.*

<sup>105</sup> Nikita Stewart & Vivian Yee, *As Cuomo Acts on Homeless Problem, City and State Are Often at Odds*, N.Y. TIMES (Jan. 12, 2016), <http://www.nytimes.com/2016/01/13/nyregion/as-cuomo-acts-on-homelessness-problem-city-and-state-are-often-at-odds.html>.

<sup>106</sup> Callahan v. Carey, Final Judgment by Consent, Index No. 42582/79, N.Y. Sup. Ct, N.Y. County (Aug. 26, 1981).

<sup>107</sup> Jake Flanagan, *Private Homeless Shelters Are Exactly as Awful as You Would Think*, QUARTZ (July 16, 2015), <http://qz.com/454682/private-homeless-shelters-are-exactly-as-awful-as-they-sound/>.

<sup>108</sup> Joseph Berger, *For Some Landlords Real Money in the Homeless*, NEW YORK TIMES (Feb. 8, 2013), [http://www.nytimes.com/2013/02/09/nyregion/for-some-landlords-real-money-in-the-homeless.html?\\_r=0](http://www.nytimes.com/2013/02/09/nyregion/for-some-landlords-real-money-in-the-homeless.html?_r=0).

<sup>109</sup> *Id.*

<sup>110</sup> CITY OF NEW YORK, DEP’T. OF INVESTIGATION, DOI INVESTIGATION OF 25 CITY-RUN HOMELESS SHELTERS FOR FAMILIES FINDS SERIOUS DEFICIENCIES (Mar. 12, 2015), *available at* [http://www.nyc.gov/html/doi/downloads/pdf/2015/mar15/pr08dhs\\_31215.pdf](http://www.nyc.gov/html/doi/downloads/pdf/2015/mar15/pr08dhs_31215.pdf).

<sup>111</sup> MARJORIE LANDA, AUDIT REPORT ON THE CONTROL OF THE DEP’T. OF HOMELESS SERVICES ON THE SHELTER PLACEMENT AND PROVISION OF SERVICES TO HOMELESS FAMILIES WITH CHILDREN (Dec. 18, 2015), *available at* [http://comptroller.nyc.gov/wp-content/uploads/documents/MG14\\_088A.pdf](http://comptroller.nyc.gov/wp-content/uploads/documents/MG14_088A.pdf).

one homeless advocate observed, “People are reluctant to go into the shelter system because it’s chaotic and often dangerous on the front end and it doesn’t lead to permanent housing on the back end.”<sup>112</sup>

While New York City’s shelter system has particularly egregious problems, homeless individuals generally avoid shelters with reputations for being crowded and dangerous.<sup>113</sup> Fear of harm from mentally unstable shelter residents can keep other people experiencing homelessness outside.<sup>114</sup> On occasion, untreated mentally ill shelter residents have injured and even murdered other residents.<sup>115</sup> The notoriety of such events predictably frightens other people experiencing homelessness away from shelters.<sup>116</sup>

**Homeless women face even greater risks of violence—not only from assault inside shelters but in leaving shelters—from criminals who recognize and prey on their vulnerability.**

Homeless women face particularly acute risks. What little evidence there is suggests that, at least for homeless women, shelters are safer than life on the streets.<sup>117</sup> Yet, one formerly homeless woman noted that she avoided homeless shelters out of fear of assault not just inside, but more particularly, leaving the shelter—due to predation by criminals who recognize that women’s homelessness makes them more vulnerable to crime and less likely to report crime to police.<sup>118</sup>

Fear of losing what few belongings they have also keeps people out of shelters.<sup>119</sup> One man tied his belongings to him as he slept; others stuffed their money in socks.<sup>120</sup> Even the shelter provider may become a victim: an Alaskan shelter lost over \$8,500 from its vault—money that some shelter residents had to save from their jobs to pay for their shelter.<sup>121</sup>

In sum, concerns for personal safety and property keep some homeless people out of the shelter system. After all, if you were the head of a homeless family with a car and a few

---

<sup>112</sup> Catherine Rafter, *Why Aren’t More Homeless New Yorkers Staying in Shelters?*, OBSERVER (Aug. 5, 2015), <http://observer.com/2015/08/why-arent-more-homeless-new-yorkers-staying-in-shelters/>.

<sup>113</sup> Betty Reid Mandell, *Homeless Shelters: A Feeble Response to Homelessness*, NEWPOLITICS, <http://newpol.org/print/content/homeless-shelters-feeble-response-homelessnessle>.

<sup>114</sup> Shapiro, *supra* note 69.

<sup>115</sup> Kim Barker et al., *Two Lives Collide at Night in a Harlem Shelter*, NEW YORK TIMES (Jan. 30, 2016), <http://www.nytimes.com/2016/01/30/nyregion/two-lives-intersected-at-homeless-shelter-with-tragic-results.html>.

<sup>116</sup> Mandell, *supra* note 113.

<sup>117</sup> Adeline Nyamathi, et al., *Sheltered versus Unsheltered Women: Differences in Health, Behavior, Victimization and Utilization of Care*, 15 J. GEN. INTERNAL MED. 562-72 (2000) (finding unsheltered women had over 3 times greater odds of fair or poor physical health, over 12 times greater odds of poor mental health than sheltered homeless women, and were more likely than sheltered women to have a history of physical assault). *See also*, Lisa A. Goodman et al., *No Safe Place: Sexual Assault in the Lives of Homeless Women*, NATIONAL ONLINE RESOURCE CENTER ON VIOLENCE AGAINST WOMEN (2011), [http://www.vawnet.org/applied-research-papers/print-document.php?doc\\_id=558](http://www.vawnet.org/applied-research-papers/print-document.php?doc_id=558).

<sup>118</sup> Shay, *supra* note 103.

<sup>119</sup> *Id.*

<sup>120</sup> Eric Zorn, *Homeless Shelters No Place of Refuge*, CHICAGO TRIBUNE (Jan. 20, 1994), [http://articles.chicagotribune.com/1994-01-20/news/9401200199\\_1\\_shelter-residents-gang-activity-gang-member](http://articles.chicagotribune.com/1994-01-20/news/9401200199_1_shelter-residents-gang-activity-gang-member).

<sup>121</sup> *Money Stolen from Homeless Shelter’s Locked Safe*, CBS SEATTLE (Jan. 1, 2013), <http://seattle.cbslocal.com/2013/01/01/money-stolen-from-homeless-shelters-locked-safes/>.

belongings, would you put your few possessions and family at risk for one night in an emergency shelter and to avoid a citation for illegally sleeping in your car?

#### **D. Sobriety Rules that Shut Out People with Substance Abuse Disorders**

Roughly 35% of individuals experiencing homelessness suffer from addiction to drugs and alcohol<sup>122</sup>—a figure approximately 10% higher than reported abuse of alcohol and illicit drugs by the general population.<sup>123</sup> Substance abuse is both a result and a cause of homelessness.<sup>124</sup> Homelessness, which is usually accompanied by loss of income, isolation, and loss of self-worth, drives people to substance abuse.<sup>125</sup> Recreational use of alcohol and drugs can become an overwhelming addiction that leads people with homes, jobs, and families into homelessness.<sup>126</sup>

Moreover, among the homeless substance abuse frequently results from untreated mental illness—people self-medicate.<sup>127</sup> The Substance Abuse and Mental Health Services Administration estimates that 20 to 25% of homeless Americans suffer from some form of severe mental illness. In comparison, only 6% of Americans are severely mentally ill. The U.S. Conference of Mayors asked 22 cities to identify the three largest causes of homelessness in their communities. Ten cities cited mental illness—almost half.<sup>128</sup> Substance abuse was blamed by 38% of cities as being a principal cause of homelessness among single individuals.<sup>129</sup> The two causes can be inextricably intertwined.

Against this already dismal backdrop, the United States is the midst of a substance abuse epidemic. Deaths from prescription drugs and heroin in the general public reached a new peak in 2014.<sup>130</sup> Overdose deaths of heroin quadrupled and from prescription painkillers doubled.<sup>131</sup>

---

<sup>122</sup> SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, CURRENT STATISTICS ON THE PREVALENCE OF SUBSTANCE ABUSE AMONG THE HOMELESS (2011), [http://homeless.samhsa.gov/ResourceFiles/hrc\\_factsheet.pdf](http://homeless.samhsa.gov/ResourceFiles/hrc_factsheet.pdf); NAT'L COALITION FOR THE HOMELESS, SUBSTANCE ABUSE AND HOMELESSNESS (2009), <http://www.nationalhomeless.org/factsheets/addiction.pdf>.

<sup>123</sup> In 2013, 24.6 million Americans or 9.4% of the population admitted to using illegal drugs; 22.9% of the population reported binge drinking alcohol (five or more drinks in one sitting) in the past month. SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, RESULTS FROM THE 2013 NATIONAL SURVEY ON DRUG USE AND HEALTH, SUMMARY OF NATIONAL FINDINGS (Sept. 2014), <http://www.samhsa.gov/data/sites/default/files/NSDUHresultsPDFWHTML2013/Web/NSDUHresults2013.pdf>.

<sup>124</sup> Lisa Stand, *Substance Abuse, a Factor and a Consequence of Homelessness*, NAT'L ALLIANCE TO END HOMELESSNESS, [www.endhomelessness.org/blog/entry/substance-abuse-a-factor-and-a-consequence-of-homelessness#.Vq1xw\\_krJX8](http://www.endhomelessness.org/blog/entry/substance-abuse-a-factor-and-a-consequence-of-homelessness#.Vq1xw_krJX8) (Last visited Jan. 31, 2016).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> NAT'L COAL. FOR THE HOMELESS, MENTAL ILLNESS AND HOMELESSNESS (2009), *available at* [http://www.nationalhomeless.org/factsheets/Mental\\_Illness.pdf](http://www.nationalhomeless.org/factsheets/Mental_Illness.pdf).

<sup>128</sup> MAYORS, *supra* note 20, at 14, Appx. B.

<sup>129</sup> *Id.* at 14.

<sup>130</sup> Haeyoun Park, *et al. Epidemic of Drug Overdose Deaths Ripples Across America*, N.Y. TIMES (Jan. 20, 2016), [http://www.nytimes.com/interactive/2016/01/07/us/drug-overdose-deaths-in-the-us.html?\\_r=0](http://www.nytimes.com/interactive/2016/01/07/us/drug-overdose-deaths-in-the-us.html?_r=0) (noting number of deaths peaked in 2014 at 47,055 people, or the equivalent of 125 Americans per day).

<sup>131</sup> Olga Khazan, *Why Eighty Percent of Addicts Can't Get Treatment*, ATLANTIC MAGAZINE (Oct. 13, 2015), <http://www.theatlantic.com/health/archive/2015/10/why-80-percent-of-addicts-cant-get-treatment/410269/>.



But the United States is woeful short of treatment programs to address this opioid-addiction epidemic. Eighty percent of people who are dependent on heroin or painkillers are not getting treatment.<sup>132</sup> During the four-year period of the study, only 22% of addicts received any kind of treatment at all—and the most common treatment was self-help groups and outpatient methadone clinics.<sup>133</sup> Further

**“I think people forget that with substance abuse, you don't have much control. You need help, you really need help, and you can't necessarily come in [to a shelter] without having alcohol on your breath.”<sup>69</sup>**

impeding treatment, 22 states preclude Medicaid from paying for the drugs that ease withdrawal.<sup>134</sup> Twenty-eight states fail to grant immunity from prosecution to 9-1-1 callers who report drug over dosages from prosecution: a serious deterrent to seeking help and saving lives.<sup>135</sup> However, the biggest problem is the lack of qualified treatment staff, which leaves nearly a million opioid addicts unable to access treatment.<sup>136</sup>

The number of psychiatrists, psychologists, counselors and social workers trained to treat substance abuse ranges from a high of 70 in Vermont to a low of 11 in Nevada for every 1,000 addicts, with a national average of 32 per 1,000 addicts.<sup>137</sup> Experts agree that the current workforce is grossly inadequate.<sup>138</sup>

The dearth of treatment providers means that well-to-do addicts can wait 18 months for treatment.<sup>139</sup> And addicts often pay out of pocket; many insurance companies do not cover treatment.<sup>140</sup> Of course, getting treatment is even more difficult for homeless people who often have neither regular health care providers nor insurance.<sup>141</sup> Sean, who camps outside under a Seattle freeway and is addicted to heroin, has been waiting six months to get into treatment, and is not sure when he will be admitted.<sup>142</sup>

What is clear that if Sean gets into treatment, he will need housing first for treatment to succeed. Drug treatment professionals universally recognize that stable housing is a prerequisite

---

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> Christine Vestel, *How Severe is the Shortage of Substance Abuse Specialists*, PEW CHARITABLE TRUSTS RESEARCH AND ANALYSIS (Apr. 1, 2015), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/4/01/how-severe-is-the-shortage-of-substance-abuse-specialists>.

<sup>138</sup> *Id.*

<sup>139</sup> Marc Fisher, *Long Waiting Lists for Drug Treatment Add to Addicts Desperation*, WASH. POST (July 26, 2015), [https://www.washingtonpost.com/politics/long-waiting-lists-for-drug-treatment-add-to-addicts-desperation/2015/07/26/d8e8e2b2-13ae-11e5-9518-f9e0a8959f32\\_story.html](https://www.washingtonpost.com/politics/long-waiting-lists-for-drug-treatment-add-to-addicts-desperation/2015/07/26/d8e8e2b2-13ae-11e5-9518-f9e0a8959f32_story.html).

<sup>140</sup> Meghan Barr, *Here's Why It's So Difficult for Addicts to Get Treatment*, BUSINESS INSIDER (Apr. 7, 2015), <http://www.businessinsider.com/why-its-difficult-for-heroin-addicts-to-get-treatment-2014-4>.

<sup>141</sup> NAT'L ALLIANCE TO END HOMELESSNESS, [http://www.endhomelessness.org/pages/mental\\_physical\\_health](http://www.endhomelessness.org/pages/mental_physical_health) (last visited Jan. 30, 2016).

<sup>142</sup> Interview with Sean, Peter's Place, Seattle (Jan. 27, 2016) (last name omitted to protect privacy).

to treating addiction.<sup>143</sup> Indeed, professionals commonly assert that “housing is treatment!”<sup>144</sup> This is the essence of Housing First model: give a homeless person a secure residence, and *then* provide supportive mental and physical health services, substance abuse treatment, education, and employment.<sup>145</sup>

The irony is that homeless individuals with substance abuse problems are frequently barred from emergency shelters, as many require sobriety to access their services.<sup>146</sup> Rules requiring sobriety to enter or remain inside exclude those who suffer from addiction. Of course, the impact of exclusionary rules is to keep homeless addicts on the street and estranged from any chance for treatment.

No tolerance policies in shelters are common—although data is anecdotal.<sup>147</sup> A survey of homeless shelters revealed that 38 (76.0%) of those that responded admitted inebriated people during cold weather while 12 (24.0%) did not.<sup>148</sup> Thus, roughly one-quarter held to hard-fast sobriety rules during extreme weather.<sup>149</sup> Presumably, a higher percentage required sobriety during better weather when the risk of hypothermia and frostbite decreased.

In small communities or communities with few shelter options, no tolerance policies effectively keep those struggling with substance abuse outside. A case in point: the only shelters for homeless men and women in Jacksonville, North Carolina, completely ban drugs and alcohol.<sup>150</sup> People who struggle with sobriety have no option but to remain outside. Another example is the Community Action Partnership of San Luis Obispo, California (CAPSLO)—the main provider of homeless services in that county—which requires complete sobriety and mandates drug and Breathalyzer testing if a potential client appears intoxicated.<sup>151</sup> CAPSLO’s rationale echoes that of other shelters mandating sobriety: the belief that substance abusers choose their lifestyle of addiction and can give it up.<sup>152</sup>

This rationale runs afoul of current science which deems drug and alcohol dependence a brain disease, called “substance abuse disorder,” and not a choice.<sup>153</sup> People may begin using

---

<sup>143</sup> Ken Kraybill, et al. *Providing Treatment for Homeless People with Substance Abuse*, NAT’L HEALTHCARE FOR THE HOMELESS COUNCIL i, (2003), <http://www.nhchc.org/wp-content/uploads/2011/09/CA05RCasestudies-FINAL5.pdf>.

<sup>144</sup> *Id.*

<sup>145</sup> “Housing First” was created by Dr. Sam Tsemberis and Pathways to Housing in 1992 to address homelessness among people with psychiatric disabilities and addiction disorders. *See* PATHWAYS NATIONAL, <https://pathwaystohousing.org/housing-first-model>.

<sup>146</sup> *See generally* DIRECTORY, *supra* note 5.

<sup>146</sup> *Common Eligibility Criteria for Emergency Shelters 3. See also* 100,000 HOMES, available at [https://100khomes.org/sites/default/files/Common%20Eligibility%20Criteria%20for%20Emergency%20Shelters%20FINAL\\_0.pdf](https://100khomes.org/sites/default/files/Common%20Eligibility%20Criteria%20for%20Emergency%20Shelters%20FINAL_0.pdf).

<sup>147</sup> DIRECTORY, *supra* note 5.

<sup>148</sup> WINTER HOMELESS, *supra* note 24.

<sup>149</sup> *Id.*

<sup>150</sup> ONSLOW COMMUNITY OUTREACH, <https://www.onslowco.org/shelter-rules> (last visited Nov. 28, 2015).

<sup>151</sup> AnnMarie Cornejo, *CAPSLO to Stop Helping Homeless Who Abuse Drugs and Alcohol*, THE TRIBUNE (May 9, 2014), <http://www.sanluisobispo.com/news/local/article39475932.html>.

<sup>152</sup> *Id.* CAPSLO directors explained, “Those who *choose* to maintain a lifestyle of drugs and alcohol—we will no longer be able to serve them.” *Id.* (emphasis added).

<sup>153</sup> The American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (commonly referred to as the DSM-5) defines addiction as a chronic, relapsing brain disease that is characterized by compulsive

drugs and alcohol by choice, but addiction and addictive behavior is not a choice.<sup>154</sup> The impacts of substance abuse on the brain and the body require medical and psychological treatment for recovery.<sup>155</sup> Substance abuse disorders are characterized by a compulsion for the drug or alcohol: a symptom commonly stigmatized as a failure of willpower or discipline.<sup>156</sup>

Shelter providers requiring strict sobriety ask the near impossible of homeless addicts: to suppress the mental disorder that creates the compulsion to abuse and to withstand agonizing and dangerous withdrawal.<sup>157</sup> Established best practices are *not* to bar people who are addicted to alcohol or drugs from shelter.<sup>158</sup> Rather, best practices for substance abuse are “low-barrier” entry into shelters and permanent housing—which do not make sobriety a prerequisite to admittance.<sup>159</sup> Communities nationwide have successfully established safe, “low barrier” emergency shelters without requiring sobriety.<sup>160</sup> Most of Seattle’s shelters, for example, are low barrier.<sup>161</sup> Residents are not supposed to drink or take drugs on site but neither testing nor searching of bags is done upon entry.<sup>162</sup> But if residents are belligerent or aggressive, they are expelled.<sup>163</sup> Those who fail to meet standards of conduct often end up in Seattle’s 60-bed sobering center, as an alternative to the streets.<sup>164</sup>

Vancouver, B.C. has taken the “low barrier” model a step further. Emergency shelters, like the Seymour Street Shelter, accept all comers, regardless of whether they are using drugs, and provide harm reduction stations in each shelter containing needle exchanges and clean supplies.<sup>165</sup> And even more innovative is Vancouver’s Insite program: a “safe injection site” where addicts inject the illegal drugs they purchase on the street under medical supervision.<sup>166</sup>

---

drug seeking and use, despite harmful consequences. NAT’L INSTITUTE ON DRUG ABUSE, <https://www.drugabuse.gov/publications/media-guide/science-drug-abuse-addiction-basics> (last visited Nov. 28, 2015).

<sup>154</sup> *Id.*

<sup>155</sup> *Drugs, Brains, and Behavior: The Science of Addiction*, NAT’L INSTITUTE ON DRUG ABUSE, <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/treatment-recovery> (last visited Apr. 4, 2016).

<sup>156</sup> Lenny Bernstein, *Recovering Substance Abusers Brave Stigma by Giving up Secrecy*, THE WASHINGTON POST (Oct. 1, 2015), [https://www.washingtonpost.com/national/health-science/some-with-alcohol-and-drug-disorders-no-longer-want-to-be-anonymous/2015/09/30/8914fe90-6086-11e5-9757-e49273f05f65\\_story.html](https://www.washingtonpost.com/national/health-science/some-with-alcohol-and-drug-disorders-no-longer-want-to-be-anonymous/2015/09/30/8914fe90-6086-11e5-9757-e49273f05f65_story.html).

<sup>157</sup> NAT’L INSTITUTE ON DRUG ABUSE, *supra* note 154.

<sup>158</sup> Common Eligibility, *supra* at 146.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> Plumacher, *supra* note 81.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> KING COUNTY,

<http://www.kingcounty.gov/healthservices/SubstanceAbuse/Services/Intervention/DutchShisler.aspx> (last visited Jan. 31, 2016).

<sup>165</sup> Bob Kronbauer, *A Look Inside the Seymour Street Temporary Homeless Shelter*, VANCOUVER IS AWESOME (Dec. 12, 2014), <http://www.vancouverisawesome.com/2012/12/14/a-look-inside-the-seymour-street-temporary-homeless-shelter-in-yaletown/>. A center in New York City also provides harm reduction services to some shelters. HARM REDUCTION COALITION, <http://harmreduction.org/connect-locally/new-york/williamf-ryan-chc/> (last visited Jan. 31, 2016).

<sup>166</sup> SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, HOMELESS RESOURCE CENTER <http://homeless.samhsa.gov/channel/harm-reduction-273.aspx> (last visited Apr. 6, 2016). *See also*, CAN. PRESS, *Safe*

Approximately 20% of its clients are homeless.<sup>167</sup> In its 14-year history, Insite has never lost a client to overdose on its premises and offers on-site recovery programs.<sup>168</sup>

The underlying premise of low barrier shelters and harm reduction centers is to keep homeless individuals who are suffering from addiction off the streets, out of the criminal justice system, and one step closer to rehabilitation. But the premise remains highly controversial. Indeed, one community adopted a moratorium on low-barrier shelters, even though no shelter existed or was planned.<sup>169</sup>

Addiction is widespread in the United States affecting both the housed and unhoused. Homeless individuals who suffer from addiction, however, do so in public. Shelter rules mandating sobriety keep homeless addicts on the streets where they run afoul of the criminal justice system. Far wiser public policy is to provide low barrier shelters to homeless addicts with access to harm reduction centers. Getting homeless addicts inside may open the door to eventual recovery.

### **E. Residential Residency Restrictions and Shelter Bans that Give Sex Offenders No Where to Go**

Widespread fear that sex offenders will reoffend have led to a web of laws nationwide that ostracize them from housing and jobs in communities—even from homeless shelters. The roughly 820,000 registered sex offenders across the United States are more carefully tracked and controlled than other former criminals due to the nature of their crimes.<sup>170</sup> Federal and state sex offender registry and notification laws (SORNS) are intended to protect children by requiring convicted sex offenders to notify government authorities of their residence and activities.<sup>171</sup> Notably, SORNS kick in once offenders have completed their sentences, putting restrictions on the activities of sex offenders on parole or probation that do not apply parolees who have committed non-sex crimes.<sup>172</sup>

Since the 1990s, building upon SORNS, cities and states have adopted laws limiting where registered sex offenders can live.<sup>173</sup> Common residency restrictions prohibit sex offenders

---

*Injection in Vancouver*, HUFFINGTON POST BRITISH COLUMBIA (Jan. 1, 2015), [http://www.huffingtonpost.ca/2016/01/15/safe-injection-vancouver\\_n\\_8993218.html](http://www.huffingtonpost.ca/2016/01/15/safe-injection-vancouver_n_8993218.html).

<sup>167</sup> *Id.*

<sup>168</sup> Video: Seattle City Council, Heath Services and Public Health Committee Meeting (Mar. 21, 2016), *available at* <https://www.seattlechannel.org/mayor-and-council/city-council/city-council-all-videos-index?videoid=x62485>.

<sup>169</sup> Tony Lystra, *Kelso Bans Low Barrier Shelters*, THE DAILY NEWS (Jan. 21, 2014), [http://tdn.com/news/local/kelso-bans-low-barrier-homeless-shelters/article\\_440e73ec-8335-11e3-a3da-001a4bcf887a.html](http://tdn.com/news/local/kelso-bans-low-barrier-homeless-shelters/article_440e73ec-8335-11e3-a3da-001a4bcf887a.html).

<sup>170</sup> SHAWN M. ROLFE, ANOTHER COLLATERAL CONSEQUENCE? EXAMINING HOMELESS SHELTERS' POLICIES ON SEX OFFENDERS ACROSS FOUR STATES 3, 68-70 (2015), <http://ir.library.louisville.edu/cgi/viewcontent.cgi?article=3153&context=etd>.

<sup>171</sup> Jill Levenson, *Faulty Data Must Not Influence Sex Crime Policy*, JURIST (July 3, 2013), <http://jurist.org/hotline/2013/07/jill-levenson-sex-offenders.php>. In *U.S. v. Kebodeaux*, the Supreme Court upheld the retroactive application of the recently passed Sex Offender Registry and Notification Act, 42 U.S.C. § 16913(a) (2012), a federal statute intended to impose uniform requirements on variable registry and notification requirements. *See* 133 S. Ct. 2496, 2505 (2013).

<sup>172</sup> HUMAN RIGHTS WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE UNITED STATES, VOL. 19, NO. 4(G) 38-44 (2007), <https://www.hrw.org/sites/default/files/reports/us0907webwcover.pdf>.

<sup>173</sup> *Id.* at 100-05.

from living near schools, playgrounds, day care centers, and other places where children congregate.<sup>174</sup> The limits set can be very stringent—prohibiting a convicted sex offender from living within 2,500 of a protected space.<sup>175</sup>

Although the precise number is unknown, about 20 states and hundreds of cities and towns nationwide now have such laws.<sup>176</sup> New residency requirements continue to appear on the books in cities around the country.<sup>177</sup> Cities also continue to expand the size of “no go” zones—enlarging the areas where offenders cannot live.<sup>178</sup>

Not all sex offenders, however, pose a risk to others. There are, however, many types of sex offenders, depending upon state law, ranging from those who urinate in public to sexual predators and pedophiles.<sup>179</sup> Sexual offenders are graded on their perceived likelihood to reoffend: from Level 1, low risk of a repeat offense, to Level 3, high risk.<sup>180</sup> But residency requirements commonly apply to all registered sex offenders irrespective of risk level,<sup>181</sup> and even apply to child perpetrators.<sup>182</sup> For example, a 30-year old man in Dallas lives in fear of having to move due to an inappropriate touching incident when he was 12 years old.<sup>183</sup>

Hence, registry requirements are increasingly seen as overbroad;<sup>184</sup> only four states limit their residency restriction laws to persons convicted of sex offenses involving child victims.<sup>185</sup> They also miss the mark: the vast majority of sex offenses involving children are not committed by strangers but by individuals who have an established connection to the victims such as family members, teachers and coaches.<sup>186</sup> The most likely offenders therefore do not fall under the

---

<sup>174</sup> *Id.*

<sup>175</sup> Barbara Goldberg, *Tide Turns against U.S. Residency Requirements*, REUTERS (Nov. 11, 2015), <http://news.yahoo.com/tide-turns-against-u-residency-restrictions-sex-offenders-135708205.html>; HUMAN RIGHTS WATCH, *supra* note 172, at 100.

<sup>176</sup> HUMAN RIGHTS WATCH, *supra* note 172, at 100.

<sup>177</sup> Goldberg, *supra* note 175.

<sup>178</sup> HUMAN RIGHTS WATCH, *supra* note 172, at 100-02.

<sup>179</sup> Public urination can be prosecuted as lewdness or indecent exposure, potentially leading to enrollment on a registry: for example, in Arizona for offenses involving minors and repeat crimes (ARIZ. REV. STAT. § 13-3821 (2015)); in California (CAL. PENAL CODE §§ 314(1)-(2) (1982), 290 (2012)); and in Georgia when the offense is committed in view of a minor (GA. CODE §§ 42-1-12 (2015), 16-6-8 (2015)). *See also* Janet Portman, *Public Urination Laws and Penalties*, CRIMINAL DEF. LAWYER, <http://www.criminaldefenselawyer.com/resources/criminal-defense/sex-crimes/public-urination-law-penalty.htm> (last visited Feb. 1, 2016).

<sup>180</sup> *E.g.*, *Civil Commitment Process*, WASH. STATE DEP'T OF SOC. & HEALTH SERVS. <https://www.dshs.wa.gov/ra/civil-commitment-process> (last visited Feb. 1, 2016); *Levels of Sex Offenders*, MASS.GOV, <http://www.mass.gov/eopss/crime-prev-personal-sfty/sex-offenders/levels-of-sex-offenders.html> (last visited Feb. 1, 2016). The most dangerous Level 3 offenders may be civilly committed after serving their criminal sentences.

<sup>181</sup> HUMAN RIGHTS WATCH, *supra* note 172, at 100-02.

<sup>182</sup> Emily Deprang, “*Life on the List*” TEXAS OBSERVER (May 31, 2012), <https://www.texasobserver.org/life-on-the-list/>. The subject of the story was 12 when he inappropriately touched his younger sister. His mother’s call to a Christian Counseling Center compelled the Center to report the incident.

<sup>183</sup> Goldberg, *supra* note 175.

<sup>184</sup> HUMAN RIGHTS WATCH, *supra* note 172, at 3-13.

<sup>185</sup> *Id.* at 101.

<sup>186</sup> Matt Clarke, *Easing Residency Restrictions Helps Curb Homelessness Among Registered Sex Offenders*, PRISON LEGAL NEWS (May 6, 2015), <https://www.prisonlegalnews.org/news/2015/may/6/easing-residency-restrictions-helps-curb-homelessness-among-registered-sex-offenders/>.

purview of residency laws. Finally, residency policies have “little effect” on sex offender recidivism.<sup>187</sup> The largest study to date, commissioned by the DOJ, found a recidivism rate of 5.3%, lower than many other categories of crime.<sup>188</sup>

While the effectiveness of SORNS and residency laws may be debatable, their impact on the lives of convicted sex offenders and, in particular, their access to emergency shelters and housing is not.

**Fear that sexual offenders will reoffend appears overblown: offenders’ recidivism rate is only 5.3%, lower than for many other crimes.**

Convicted sex offenders are triply hamstrung in finding housing upon release. Residency restrictions often keep offenders from moving back in with family and friends whose homes happen to fall within restricted zones.<sup>189</sup> Residency restrictions can also ban individuals from living in the areas closest to jobs and public transit where schools, daycare centers, and parks are likely to be located.<sup>190</sup> In addition, federal law precludes offenders from qualifying for the most widespread housing programs.<sup>191</sup>

The more compact or dense the community, the more difficult finding a place to live becomes for an offender. Offenders living in the nation’s largest cities and most heavily-populated states face more “no-go” areas because of density, which means fewer housing options, including homeless shelters.<sup>192</sup> Emergency shelters are the “last chance” roof for people experiencing homelessness. But if located in a “no go” zone, registered sex offenders excluded—sometimes with unintended consequences.<sup>193</sup>

A four-state survey found that 71.45% of shelters denied entry to registered sex offenders, and 44.1 % of those shelters instituted bans to comply with residential residency laws.<sup>194</sup> A significant percentage of shelters admitted that they barred offenders from entry to placate community concerns for safety.<sup>195</sup> For these dual reasons, residential residency laws and appeasing community concerns, shelters adopt rules banning offenders. A typical example is the Onslow Community Outreach shelter, whose website states: “We do not accept registered sex

---

<sup>187</sup> HUMAN RIGHTS WATCH, *supra* note 172, at 25-27.

<sup>188</sup> DOJ, Office of Justice, Bureau of Justice Statistics, <http://www.bjs.gov/content/pub/press/rsorp94pr.cfm> (last visited Apr. 12, 2016).

<sup>189</sup> Joseph Goldstein, *Housing Restrictions Keep Sex Offenders in Prison Beyond Release Dates*, JUSTICE CTR. (Aug. 21, 2014), <http://csgjusticecenter.org/reentry/media-clips/housing-restrictions-keep-sex-offenders-in-prison-beyond-release-dates/>.

<sup>190</sup> HUMAN RIGHTS WATCH, *supra* note 172, at 102.

<sup>191</sup> 42 U.S.C. § 13663 (2012). In 1998, Section 8 housing became banned for all registered sex offenders that are required to register for life. NAT’L HOUSING LAW PROJECT “SEX OFFENDER ISSUES” <http://nhlp.org/resourcecenter?tid=128> (last visited Apr. 18, 2106).

<sup>192</sup> HUMAN RIGHTS WATCH, *supra* note 172, at 102-104.

<sup>193</sup> ROLFE, *supra* note 170, at 2, 58-61.

<sup>194</sup> *Id.* at 58-61.

<sup>195</sup> *Id.*

offenders.”<sup>196</sup> The Durham Rescue Mission goes further—barring services to individuals who have been charged (but not necessarily convicted) of sex offenses.<sup>197</sup>

The unintended consequence, however, of residential residency restrictions and shelter rules banning registered sex offenders is that they have no choice but to try to survive in parks, green belts, right-of-ways, and under bridges.<sup>198</sup> A case in point: California enacted a statewide ban on sex offenders living within 2,000 feet of schools and parks, which increased homelessness among registered sex offenders 101% in one year.<sup>199</sup> As a result, one-third of all registered sex offenders in California listed themselves as transient.<sup>200</sup>

And these unintended consequences waste taxpayer dollars. Miami-Dade County adopted strict residency restrictions that led to an encampment under a highway of more than 100 homeless sex offenders.<sup>201</sup> County staff tried to shut down the encampment, but the evicted offenders had nowhere else where they could legally reside. Eventually, Miami-Dade officials had to reduce the size of the county’s 2,500-foot buffer zones.<sup>202</sup>

What is clear is that rules prohibiting homeless sexual offenders from entering shelters may be counterproductive: keeping offenders outside, unemployed, and isolated, while concurrently, interfering with effective monitoring, and close probationary supervision.<sup>203</sup> With few exceptions, registered sexual offenders have remained in emergency shelters without incident.<sup>204</sup> Sex offenders with positive, informed support systems—including stable housing and social networks—have significantly lower criminal and technical violations than sex offenders who had negative or no support.<sup>205</sup> While shelters are far from perfect and are not the stable homes needed, easier access to shelters is a necessary first step for offenders to reengage in society productively.

**One year after California adopted strict 2,000-foot residency restrictions, homelessness increased 101% among registered sex offenders because they had no place to legally live.**

## **F. Gender Identification Rules and Prejudices that Keep LGBTQ Youth on the Streets**

Homelessness is rampant among who identify as lesbian, gay, bisexual, transgender, transsexual, queer and questioning (LGBTQ). Official counts of the number of homeless youth are notoriously unreliable because so few shelters accept unaccompanied youths, and youth

<sup>196</sup> *Shelter Rules*, ONSLOW CMTY. OUTREACH, <https://www.onslowco.org/shelter-rules> (last visited Nov. 28, 2015).

<sup>197</sup> *Programs & Services for the Homeless in Durham, Raleigh & Chapel Hill*, DURHAM RESCUE MISSION, <https://www.durhamrescuemission.org/programs-services/> (last visited Nov. 29, 2015).

<sup>198</sup> CALIFORNIA SEX OFFENDER MANAGEMENT BOARD, HOMELESSNESS AMONG CALIFORNIA’S REGISTERED SEX OFFENDERS: AN UPDATE, 3-6 (Sept. 2011), [http://www.casomb.org/docs/Residence\\_Paper\\_Final.pdf](http://www.casomb.org/docs/Residence_Paper_Final.pdf).

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> COUNCIL OF STATE GOVERNMENTS, SEX OFFENDER MANAGEMENT IN THE STATES, STRENGTHENING POLICY AND PRACTICE, FINAL REPORT 8 (Winter 2010), <http://www.csom.org/pubs/csg%20final%20report.pdf>.

<sup>202</sup> *Id.*

<sup>203</sup> HUMAN RIGHTS WATCH, *supra* note 172, at 103-04.

<sup>204</sup> Clarke, *supra* note 186. Shelters banned sex offenders after a 2007 incident in which a registered sex offender living at Central Arizona Shelter Services in downtown Phoenix sexually assaulted a girl in a nearby park. *Id.*

<sup>205</sup> HUMAN RIGHTS WATCH, *supra* note 172, at 9-10; JILL LEVENSON, SEX OFFENDER RESIDENCE RESTRICTIONS 5-6 (2005), available at <https://ccoso.org/sites/default/files/residencerestrictionsFL.pdf>.

couch surf more than adults.<sup>206</sup> Nevertheless, nationally, an estimated 1.3 to 1.7 million youth experience one night of homelessness annually, with 550,000 youth being homeless for a week or longer.<sup>207</sup> LGBTQ youth comprise a shocking 25-50 % of all homeless youth, although they comprise only 3-5% of youth generally.<sup>208</sup>

Why are so many LGBTQ youth homeless? Youth generally blame their homelessness on being discharged from the foster system and severe family conflict.<sup>209</sup> Twelve to 36% of emancipated foster care youth report being homeless at least once after discharge.<sup>210</sup> These are the same reasons LGBTQ youth become homeless but in far greater numbers.

Family conflict over a youth's sexual orientation or gender identity is an additional, compounding factor that leads LGBTQ youth into homelessness.<sup>211</sup> One study found 50% of parents reacted negatively when their gay teens came out, so negatively that 26% of parents kicked their children out of the house.<sup>212</sup> More than one-third of those LGBTQ youth who were kicked out were physically assaulted when they came out.<sup>213</sup> And because of a general easing of social appropriation against LGBTQ people, younger children are coming out earlier,<sup>214</sup> although that does not necessarily translate to acceptance at home.

Nor do LGBTQ youth necessarily find safe harbor in the foster care system. A Los Angeles County study showed that LGBTQ youth have more foster care placements than their heterosexual counterparts.<sup>215</sup> Because they could not find accepting foster homes, LGBTQ youth ended up living in group homes more frequently and needed hospitalization to treat emotional problems three times more often than straight youth.<sup>216</sup>

Los Angeles County is not unique. The foster care system, generally, is ill-equipped to meet the needs of LGBTQ youth.<sup>217</sup> Foster parents and child welfare workers are often not educated about how to properly care for these youth, and some are simply hostile toward

---

<sup>206</sup> NAT'L ALLIANCE TO END HOMELESSNESS, LGBTQ HOMELESS YOUTH FACT SHEET, <http://www.safeschoolscoalition.org/LGBTQhomelessFactSheetbyNAEH.pdf>. Only in 2013 did HUD call for separately identifying homeless youth as part of the annual one-night count of homelessness nationally. NAT'L NETWORK FOR YOUTH, *How Many Homeless Youth Are in America*, <https://www.nn4youth.org/learn/how-many-homeless/> (last visited Apr. 6, 2016) [hereinafter NAT'L NETWORK FOR YOUTH].

<sup>207</sup> NAT'L NETWORK FOR YOUTH, *supra* note 206.

<sup>208</sup> KAYA LURIE & BREANNE SCHUSTER, Seattle University Homeless Rights Advocacy Project, *DISCRIMINATION AT THE MARGINS: THE INTERSECTIONALITY OF HOMELESSNESS & OTHER MARGINALIZED GROUPS* 18 (Sara Rankin ed., 2015), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2602532](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2602532); NICHOLAS RAY, NAT'L GAY & LESBIAN TASKFORCE, *LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH: AN EPIDEMIC OF HOMELESSNESS* at 1 (2006), [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/HomelessYouth\\_ExecutiveSummary.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/HomelessYouth_ExecutiveSummary.pdf).

<sup>209</sup> NAT'L NETWORK FOR YOUTH, *supra* note 206. Like adults, youth remain homeless due to lack of affordable housing, education, job opportunities, and substance abuse. *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> RAY, *supra* note 208, at 2.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> DAVID WAGNER, CTR. FOR AM. PROGRESS, *NOWHERE TO GO* 3-6 (2010), [https://cdn.americanprogress.org/wp-content/uploads/issues/2010/08/pdf/nowhere\\_to\\_go.pdf](https://cdn.americanprogress.org/wp-content/uploads/issues/2010/08/pdf/nowhere_to_go.pdf).

<sup>215</sup> Hailey Branson-Potts, *Gay Youths More Likely to Report Trouble in Foster Care, Study Finds*, L.A. TIMES (Aug. 27, 2015), <http://www.latimes.com/local/countygovernment/la-me-lgbt-foster-youth-20140827-story.html>.

<sup>216</sup> *Id.*

<sup>217</sup> WAGNER, *supra* note 214.



them.<sup>218</sup> National estimates show that 78% of gay and transgender youth in foster care either run away or are removed from their foster families because of conflict over the child’s sexual orientation or gender identity.<sup>219</sup> Seventy percent of gay and transgender children are victims of violence within the foster care system.<sup>220</sup> More than half of those youth surveyed said they felt safer on the streets than in their foster or group homes.<sup>221</sup> It is not surprising then that LGBTQ youth end up on the streets.

**More than half of LGBTQ youth questioned stated that they felt safer from violence living on the street than in their foster or group homes.<sup>221</sup> No wonder then that LGBTQ youth end up homeless.**

But living on the street is dangerous and devastating. Sexual assault is endemic among homeless youth—especially among LGBTQ homeless youth. Thirty-three percent of straight homeless youth are victims of sexual assault, but even worse, 58% of LGBTQ youth are victims.<sup>222</sup> And LGBTQ youth on the street are often younger than their straight counterparts. In New York City,

for example, the *average* age for becoming homeless for lesbians and gays is 14.4 years old, and 13.5 years for transgender youth.<sup>223</sup> Not surprisingly, homeless gay and transgender youth suffer more depression, substance abuse, and are more likely to commit suicide than heterosexual homeless youth.<sup>224</sup>

Yet, emergency homeless shelters—the “last resort” roof for the homeless—are often unwelcoming to LGBTQ youth and, in particular, to transgender youth. Denials of access are common. One study reported that that 29% of transgender individuals said they were denied entry to homeless shelters.<sup>225</sup> Shelter doors were closed most frequently to transgender women.<sup>226</sup> Moreover, once inside, shelters sometimes housed transgendered individuals with their birth gender rather than their expressed gender or evicted once their gender identity became apparent.<sup>227</sup> Forty-seven percent of all transgender respondents left emergency shelters because of ill-treatment—choosing the street over the abuse and indignity they experienced in the shelters.<sup>228</sup>

Moreover, 55% of transgendered individuals experienced harassment and violence in shelters from other residents and staff.<sup>229</sup> Twenty-five percent of transgender individuals were physically assaulted in shelters,<sup>230</sup> and 22% reported being sexually assaulted.<sup>231</sup> The violence

---

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> JAIME M. GRANT ET AL., NAT’L CTR. FOR TRANSGENDER EQUALITY, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 116-18 (2011), [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf).

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.* at 117-18 n.5.

<sup>229</sup> GRANT ET AL., *supra* note 225.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

transgendered people face prompted one advocate to ask, “How in the world are we going to help transgender youth and adults get back into society and be productive if they have to worry about safety in shelters?”<sup>232</sup>

**“How in the world are we going to help transgender youth and adults get back into society and be productive if they have to worry about safety in shelters?”<sup>232</sup>**

The emergency shelter system is failing LGBTQ youth and especially transgender individuals. The emergency shelter system, which developed in the 1980’s in response to what was at the time almost exclusively single adult homelessness,<sup>233</sup> is overwhelmingly segregated by sex, serving only men or women.<sup>234</sup> And many shelters for women serve a particularly vulnerable population: victims of domestic violence and their children.<sup>235</sup>

Many homeless shelters are “congregate” shelters, large rooms in old gymnasiums or warehouses, where privacy is non-existent.<sup>236</sup> Bathrooms are shared.<sup>237</sup> Resources are few. In large, female-only shelters with no privacy, the competing sensitivities of transgendered youth and domestic violence victims living in close quarters has created problems that quite likely deter transgendered individuals from returning.<sup>238</sup>

Moreover, social service and shelter providers can fail to provide culturally appropriate service to transgender homeless individuals. Even publicly operated and funded shelters may have staff that discourage gay and transgender individuals from entering, single them out, or stand by idly when they are harassed or attacked by other residents.<sup>239</sup> In particular, forcing transgender youth to sleep in all-male shelters based upon their birth-sex, rather than their expression or identity, can place them in danger of harassment or sexual assault.<sup>240</sup>

Nor can training necessarily overcome discriminatory social beliefs. In response to a training about working with gay youth, one social worker reported that some of her colleagues sat “with arms crossed and saying things like, ‘I’m only here because I have to be here, but it’s against my religion.’”<sup>241</sup> Such attitudes are found in both faith-based shelters, which are sometimes the only shelter in a community, as well as publicly-operated shelters.<sup>242</sup>

Efforts are being made slowly to make shelters more welcoming to LGBTQ individuals. In 2012, HUD finally banned discrimination in federally funded housing programs based on

---

<sup>232</sup> Interview with Curry Cook, Senior Staff Attorney, Lambda Legal, in Seattle, Washington (Oct. 15, 2015).

<sup>233</sup> OPENING DOORS, *supra* note 18, at 13.

<sup>234</sup> Directory, *supra* note 5.

<sup>235</sup> Telephone Interview with Tami Cole, Director of Homeless Services, City of Chicago (Feb. 2, 2016).

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.* For example, issues arose during the stay at a congregate women’s shelter of a transgender individual, who presented as a birth male. To allay the concerns of some other residents, staff had to clear out all other users from the bathroom for the transgender individual to enter. It is easy to see how uncomfortable that situation might have been for the transgendered individual.

<sup>239</sup> WAGNER, *supra* note 214.

<sup>240</sup> *Id.*

<sup>241</sup> Branson-Potts, *supra* note 215.

<sup>242</sup> WAGNER, *supra* note 214.

sexual orientation and gender.<sup>243</sup> Not until 2015, after further study, did HUD extend the rule’s protection to transgendered individuals giving them full access to facilities and services, including shelters with shared sleeping quarters or bathing facilities.<sup>244</sup> HUD concurrently issued a directive (not a rule) encouraging shelter providers to defer to a client’s expressed gender identity in same-sex shelter assignments and instructions on privacy matters.<sup>245</sup> Buried in the stiff guidance language is HUD’s recognition that many emergency shelters are physically ill-equipped, and often simply reluctant, to provide transgender homeless individuals basic services in a respectful manner.

Compounding the impediments to providing safe, welcoming shelter space for LGBTQ youth is a general shortage of shelter beds for *all* youth.<sup>246</sup> For example, the Seattle area has only 100 youth shelter beds reserved for youth,<sup>247</sup> although the area has 700-1,000 homeless youth at any given time.<sup>248</sup> Plainly, many homeless youth, and in particular LGBTQ youth, have no reasonable alternative but to live on the streets—making enforcing criminalization ordinances against them both unconstitutional and unconscionable.

### **G. The Dearth of Family Shelters that Forces Families Apart**

The President has made keeping families together a national priority;<sup>249</sup> it is a priority that few would question. Paradoxically, the current shelter system forces many families to choose between splitting up to get a bed or staying together on the street. There are simply too few shelters open to entire families; the emergency shelter system remains overwhelmed by the scale of family homelessness nationwide.

In 2015, the conservative estimate is that 67,613 families were homeless, representing 37% of all homeless people.<sup>250</sup> Family homelessness peaked during the Great Recession but remains stubbornly high.<sup>251</sup> The national average is 18.3 out of every 10,000 family members are homeless.<sup>252</sup> National averages, of course, level out local “trouble spots.” Eleven states,

---

<sup>243</sup> HUD proposed regulations, *supra* at 71.

<sup>244</sup> *Id.*

<sup>245</sup> Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities, Notice CPD-15-02 (Feb. 2, 2015), <https://www.hudexchange.info/resources/documents/Notice-CPD-15-02-Appropriate-Placement-for-Transgender-Persons-in-Single-Sex-Emergency-Shelters-and-Other-Facilities.pdf>.

<sup>246</sup> NAT’L ALL. TO END HOMELESSNESS, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (CSEC) AND YOUTH HOMELESSNESS, [http://www.endhomelessness.org/page/-/files/4299\\_file\\_Commercial\\_Sexual\\_Exploitation\\_Brief.pdf](http://www.endhomelessness.org/page/-/files/4299_file_Commercial_Sexual_Exploitation_Brief.pdf).

<sup>247</sup> Telephone Interview with Liz Trautman, Youth Care, Seattle, Washington (Feb. 4, 2016).

<sup>248</sup> *How Many Homeless Youth Live in King County?*, YOUTHCARE (Apr. 30, 2012), <http://www.youthcare.org/about-youthcare/news/how-many-homeless-youth-live-king-county#.VrOAKfkrJX8>.

<sup>249</sup> U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, PRESIDENT’S 2016 BUDGET: FACT SHEET ON HOMELESSNESS ASSISTANCE, [https://www.usich.gov/resources/uploads/asset\\_library/2016\\_Budget\\_Fact\\_Sheet\\_on\\_Homelessness\\_Assistance.pdf](https://www.usich.gov/resources/uploads/asset_library/2016_Budget_Fact_Sheet_on_Homelessness_Assistance.pdf). Advocates question the federal government’s commitment and response. Greg Kaufmann, *This Week in Poverty: Ignoring Homeless Families*, NATION (Apr. 19, 2013), <http://www.thenation.com/article/week-poverty-ignoring-homeless-families/>.

<sup>250</sup> MEGHAN HENRY et al., U.S. DEPT. OF HOUS. & URBAN DEV., THE 2014 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 22 (2014), <https://www.hudexchange.info/resources/documents/2014-AHAR-Part1.pdf>. See, criticism of the undercounting of the point in time count, *supra* notes 7-8.

<sup>251</sup> NAT’L ALL. TO END HOMELESSNESS, THE STATE OF HOMELESSNESS IN AMERICA 9 (2015), [http://www.endhomelessness.org/page/-/files/State\\_of\\_Homelessness\\_2015\\_FINAL\\_online.pdf](http://www.endhomelessness.org/page/-/files/State_of_Homelessness_2015_FINAL_online.pdf).

<sup>252</sup> *Id.*

predominantly in the West and Southwest, as well as the District of Columbia report recent increases in family homelessness.<sup>253</sup>

Family homelessness has also spiked in many cities. The U.S. Conference of Mayors reports that in 42% of cities surveyed family homelessness increased in 2015, and half of those cities expect family homelessness to increase in 2016.<sup>254</sup> One example, New York City, reported 12,724 homeless families in shelters in 2014, a number that unfortunately increased to 14,700 in both 2015 and 2016.<sup>255</sup>

There is a national shortage of shelters that will accept families,<sup>256</sup> leaving 11% of homeless families unsheltered.<sup>257</sup> In 2015, 76% of cities surveyed reported that families with children were turned away from emergency shelters—even in cities that reported a decrease in family homelessness.<sup>258</sup> For example, Washington, D.C. received 2,000 applications for only 330 emergency shelter spaces in 2011.<sup>259</sup> Family shelters in Los Angeles County regularly turn away 85% of families due to lack of space.<sup>260</sup> As one homelessness expert in Louisville, Kentucky said, “Shelter for families is really tight, turnover is low, and the need is great. The waiting list for family shelters is long with thirty families on the list. If they don’t call every other day, they are removed from the list, so they always call.”<sup>261</sup>

**Nationally, the rental market is tightening which pushes out low income renters. In the United States in 2013, only 31 affordable rental units were available for every 100 low-income households. Increasingly, middle income people occupy units that were once affordable to low income renters.**<sup>262</sup>

Why are so many families in need of emergency shelter? Low wages and high rents are two causes. In 2015, the full-time hourly wage required to rent a decent two-bedroom apartment was more than 2.5 times the federal minimum wage and four dollars more than the average wage earned by renters nationally.<sup>262</sup> A compounding factor is that most families who end up homeless are headed by a single parent: most commonly a mother with two children.<sup>263</sup> Half of homeless

---

<sup>253</sup> *Id.* at 13.

<sup>254</sup> MAYORS, *supra* note 20, at 13.

<sup>255</sup> COAL. FOR THE HOMELESS, STATE OF THE HOMELESS: 2014, at 4 (2014), <http://www.coalitionforthehomeless.org/wp-content/uploads/2014/03/StateoftheHomeless20141.pdf>; COAL. FOR THE HOMELESS, STATE OF THE HOMELESS: 2016, at 11 (2016), <http://www.coalitionforthehomeless.org/wp-content/uploads/2016/04/SOTH-2016.pdf>

<sup>256</sup> MAYORS, *supra* note 20, at 15.

<sup>257</sup> STATE OF HOMELESSNESS, *supra* note 251, at 9.

<sup>258</sup> MAYORS, *supra* note 20, at 2.

<sup>259</sup> HOMELESS CHILDREN’S PLAYTIME PROJECT, FAMILY HOMELESSNESS IN DC (2012), <http://www.playtimeproject.org/wp-content/uploads/2012/12/DC-Family-Homelessness-Fact-Sheet.pdf>.

<sup>260</sup> SHELTER PARTNERSHIP, INC., OPERATING AT CAPACITY: FAMILY SHELTERS IN LOS ANGELES COUNTY 16-17 (2006), [http://www.shelterpartnership.org/Common/Documents/studies/FinalFamilyReport\\_000.pdf](http://www.shelterpartnership.org/Common/Documents/studies/FinalFamilyReport_000.pdf).

<sup>261</sup> Schafer, *supra* note 86.

<sup>262</sup> MEGAN BOLTON et al., OUT OF REACH, 2015, NAT’L. LOW INCOME HOUSING COAL. 1-5 (2015), available at [http://nlihc.org/sites/default/files/oor/OOR\\_2015\\_FULLL.pdf](http://nlihc.org/sites/default/files/oor/OOR_2015_FULLL.pdf).

<sup>263</sup> DEBBIE CANAVAN THIELE & SHARON McDONALD, CORP. FOR SUPPORTIVE HOUSING & THE NAT’L COAL. TO END HOMELESSNESS, ENDING FAMILY HOMELESSNESS: NATIONAL TRENDS AND LOCAL SYSTEMS RESPONSES 3 (2012), [http://www.endhomelessness.org/page/-/files/2012\\_Ending\\_Family\\_Homelessness.pdf](http://www.endhomelessness.org/page/-/files/2012_Ending_Family_Homelessness.pdf).

parents are younger than thirty and have two children ages five or under.<sup>264</sup> The annual income of a mother with two children is under \$10,000.<sup>265</sup> Single mothers with young children struggle to find jobs that pay enough to afford rent and childcare. Only 41% of homeless families are eligible, moreover, to receive income and employment support from the Temporary Assistance for Needy Families block grant program, exacerbating their poverty.<sup>266</sup>

An underlying reason that women, and women with children, become homeless is domestic violence. An estimated 63% of homeless women are victims of domestic violence.<sup>267</sup> However, women's domestic violence shelters often are not equipped for older children.<sup>268</sup> Conversely, some family shelters must close their doors to women and children fleeing domestic violence due to security concerns.<sup>269</sup> Therefore, women fleeing domestic violence with older children can struggle to find shelter.

**A mother with several children can face a terrible dilemma: Does she stay on the street with her entire family? Or enter a shelter with her younger children and hope that a men's shelter will accept her older son?**

Since there is a shortage of few family shelters, many family shelters exclusively serve mothers with children.<sup>270</sup> The reason is that 65% of homeless women live with at least one of their children,<sup>271</sup> while only 7% of homeless men do so.<sup>272</sup>

However, family shelters open to female-headed households often have age limits on the children that can enter—particularly for boys.<sup>273</sup> In Los Angeles County, 37.5% of family shelter set age limits for male children,<sup>274</sup> which can be as low as eleven.<sup>275</sup> Seven percent of homeless parents in Minnesota said age limits for children forced them to send their older children elsewhere to get beds for their younger children.<sup>276</sup> A mother with several children can face a terrible dilemma: does she take her entire family outside, or enter the shelter with her younger children and send her son to a men's shelter on the hope that he will not be rejected for being too

---

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Family Homelessness Facts*, GREEN DOORS, <http://www.greendoors.org/facts/family-homelessness.php> (last visited Apr. 12, 2016); ASSOC. PRESS, *Domestic Violence Big Factor in Homelessness of Women and Children*, KGOU (Oct. 17, 2013), <http://kgou.org/post/domestic-violence-big-factor-homelessness-women-and-children#stream/0>; *Homeless Families with Children – NCH Fact Sheet #12*, NAT'L COAL. FOR HOMELESS (Aug. 2007), <http://www.nationalhomeless.org/publications/facts/families.html>.

<sup>268</sup> Schafer, *supra* note 86.

<sup>269</sup> SHELTER P'SHIP, INC., *supra* note 260.

<sup>270</sup> *Id.*

<sup>271</sup> GREEN DOORS, *supra* note 267.

<sup>272</sup> *Id.*

<sup>273</sup> *Homeless Families with Children*, NAT'L COALITION FOR THE HOMELESS (July 2009), <http://www.nationalhomeless.org/factsheets/families.html>; Cole, *supra* at 235.

<sup>274</sup> SHELTER P'SHIP, INC., *supra* note 260.

<sup>275</sup> *Id.*

<sup>276</sup> WILDER RESEARCH, 2012 MINNESOTA HOMELESS STUDY: HOMELESS CHILDREN AND THEIR FAMILIES 3 (2014), <https://www.wilder.org/Wilder-research/Publications/Studies/Homelessness%20in%20Minnesota%202012%20Study/Homeless%20Children%20and%20Their%20Families.pdf>.

young?<sup>277</sup> Faced with that decision, not surprisingly, families couch surf with extended family or friends or live in their cars (if they own one).<sup>278</sup>

Couples face comparable difficulties, although more data is needed. One study showed that 41% of family shelters in Los Angeles County bar heterosexual couples.<sup>279</sup> Meanwhile, providers report that more couples are seeking shelter.<sup>280</sup> Because there are so few shelters for couples in Seattle, one provider opens up the shelter's day room for couples at night where they can sleep on chairs.<sup>281</sup> More frequently, couples resort to camping outside where at least they can be together.<sup>282</sup>

Finally, even fewer shelters are open to single families headed by males. Homeless single fathers end up on the street because few shelters will accept a father with children.<sup>283</sup> "Not many family shelters exist and if they do, it's for women with children only. Dad gets sent to a men's shelter if he can get into one."<sup>284</sup> Moreover, children cannot stay in the vast majority of men's homeless shelters, effectively pushing single fathers and their children outside.<sup>285</sup> Despite the deficit of shelter space for fathers and their children, providers report an increase of male-headed households seeking shelter over the past several years.<sup>286</sup> One example of a response to this growing need: a small family shelter in Pasadena, California is now open to fathers who are single parents.<sup>287</sup>

Pets are also an issue.<sup>288</sup> An estimated 10 to 25% of the homeless population has dogs or cats.<sup>289</sup> Eighty-percent of homeless individuals with pets are refused shelter.<sup>290</sup> Rather than abandoning her pet for shelter, one homeless individual explained, "I would say most days, [my pet's] the reason why I keep going, because I made a commitment to take care of her when I adopted her. So she needs me, and I need her. She is the only source of daily, steady affection and companionship that I have."<sup>291</sup>

---

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*; SHELTER P'SHIP, INC., *supra* note 260; *see generally* Jessica So, Scott MacDonald, Justin Olson & Ryan Mansell, Seattle University Homeless Rights Advocacy Project, *LIVING AT THE INTERSECTION: LAWS AND VEHICLE RESIDENCY* (Sara K. Rankin ed., May 2016).

(discussing the increase in the number of people experiencing homelessness living in their vehicles and laws barring vehicle residency).

<sup>279</sup> SHELTER P'SHIP, INC., *supra* note 260.

<sup>280</sup> WILDER RESEARCH, *supra* note 276.

<sup>281</sup> Plumacher, *supra* note 81.

<sup>282</sup> Samir Junejo, Seattle University Homeless Rights Advocacy Project, *NO REST FOR THE WEARY: WHY CITIES MUST EMBRACE HOMELESS ENCAMPMENTS* (Sara K. Rankin & Suzanne Skinner eds., May 2016).

<sup>283</sup> Steve Scauzillo, *Growing Number of Homeless Single Fathers Showing Up in Local Shelters*, WHITTIER DAILY NEWS (June 6, 2012), <http://www.whittierdailynews.com/article/ZZ/20120616/NEWS/120618571>.

<sup>284</sup> Cary Fuller, *Homeless Shelter Systems and What They Don't Tell You*, HUFFINGTON POST (Oct. 27, 2011), [http://www.huffingtonpost.com/carey-fuller/homeless-shelter-parents\\_b\\_1035952.html](http://www.huffingtonpost.com/carey-fuller/homeless-shelter-parents_b_1035952.html).

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> Aliment, *supra* note 86, i.

<sup>289</sup> Hilary Hanson, *When Homeless Shelters Create Room for Pets, Everybody Wins*, HUFFINGTON POST, (Nov. 4, 2015) [http://www.huffingtonpost.com.entry/homeless-shelters-pets-petsmart-family-promise\\_563a5f3de4b0307f2cabb415](http://www.huffingtonpost.com.entry/homeless-shelters-pets-petsmart-family-promise_563a5f3de4b0307f2cabb415).

<sup>290</sup> Aliment, *supra* note 86, i.

<sup>291</sup> *Id.*

More family shelters are desperately needed as an emergency measure until families can find transitional or permanent housing. Parents should not be forced to choose between putting a roof over the heads of some family members while leaving others outside. Nor should couples have to split up for a shelter bed. Every effort should be made to keep families and pets together when seeking emergency shelter. Moreover, better quality family shelters are needed, as the exposé of dangerous and filthy conditions in shelters and apartments used for homeless families in New York demonstrated.<sup>292</sup>

A Seattle Police Officer noted, “I interact with a lot of people who do choose to be on the streets instead of in the shelters and frankly I would too...they aren’t nice places.”<sup>293</sup> That officer’s acknowledgment underscores the absurdity of prosecuting couples and families for sleeping outside, whether they are in tents or in cars, to stay together when any other shelter alternative would force them to give up the most important asset they have: family.

### III. Conclusion and Recommendations

Emergency shelters are not a substitute for affordable, supportive housing—the only permanent solution to homelessness.<sup>294</sup> Decades of federal underinvestment in housing have contributed to today’s homelessness crisis: a prolonged “crisis” that has only worsened since it began in the early 1980s.<sup>295</sup> In 1983, the federal government responded to the upsurge in homelessness in 1983 by funding “emergency” shelters and feeding programs rather than increasing funding for affordable housing.<sup>296</sup> Over the last thirty-odd years, during which the shortage of affordable housing has only intensified and now impacts the middle class, “emergency” shelters have become permanent fixtures.<sup>297</sup> These “emergency” shelters, initially structured on responses to natural disasters,<sup>298</sup> are consequently deeply flawed—yet, we assume the vast diversity of people who experience homelessness in the United States will fit in the overburdened, underfunded, and regimented shelter system. As the examples of barriers to accessing shelters discussed in this brief establish, this assumption is erroneous.

What follows are general recommendations to improve how we respond to people experiencing homelessness, and specific recommendations to address some of the barriers to accessing shelters identified in this brief.

---

<sup>292</sup> Junejo, *supra* note 282.

<sup>293</sup> Interview with Officer David Sullivan, Seattle Police Dep’t, Crisis Response Team, in Seattle, Washington (Nov. 5, 2015).

<sup>294</sup> *E.g.*, *Housing First*, 100,000 HOMES, <http://100khomes.org/read-the-manifesto/housing-first> (last visited Apr. 5, 2016).

<sup>295</sup> For a comprehensive but succinct analysis of the relationship between federal disinvestment in housing and homelessness *see*, W. REG’L ADVOCACY PROJECT, WITHOUT HOUSING: DECADES OF FEDERAL HOUSING CUTBACKS, MASSIVE HOMELESSNESS, AND POLICY FAILURES 36 (2010).

[http://www.reimaginerpe.org/files/WRAP\\_without\\_housing\\_PRINT\\_0.pdf](http://www.reimaginerpe.org/files/WRAP_without_housing_PRINT_0.pdf) (pointing out that while the federal budget has doubled since the emergence of contemporary mass homelessness in early 1980s, federal outlays to HUD were flat-lined.).

<sup>296</sup> U.S. GEN. ACCOUNTING OFFICE, HRD-85-40, HOMELESSNESS: A COMPLEX PROBLEM AND FEDERAL RESPONSES, at iii (1985) (noting creation of Federal Interagency Task Force for the Homeless in 1983 to provide emergency funding to create shelters and feeding programs for the upsurge in homelessness), <http://www.gao.gov/assets/150/142674.pdf>.

<sup>297</sup> WRAP, *supra* note 295, at 36.

<sup>298</sup> GAO, *supra* note 296.

### **A. Repeal Criminalization Ordinances that Punish the Homeless for Their Poverty**

The data demonstrates that throughout the United States, the number of shelter beds falls woefully short of the need. Compounding this numeric shortfall, but no less devastating, is the fact that the conditions and rules of many shelters bar many homeless people, including families, from entry.

Governments should repeal criminalization laws that punish the poor for their homelessness. Alternatively, criminalization laws should be amended to require local governments to affirmatively prove that homeless individuals who violate criminalization ordinances have reasonable, accessible, and satisfactory alternatives to living outside.

### **B. Increase Investment in Affordable Housing and Reduce Reliance on Shelters**

Federal, state and local governments must provide sufficient affordable housing and preserve existing public and subsidized housing.<sup>299</sup> Emergency shelters should only be used on a short-term basis, not to address long-term homelessness and poverty.

### **C. Conduct a Comprehensive Study of the Shelter System to Better Serve People Experiencing Homelessness Until Permanent Housing Becomes Available**

Despite the investment of untold federal, state, local, and charitable dollars into the patchwork of emergency shelters across the country, we do not know how many emergency shelters operate in the United States, let alone who they are serving or how well. The nation does not even have a centralized database of emergency shelters. The only one—the Homeless Services Directory—is maintained by volunteers.<sup>300</sup> HUD, in concert with other federal agencies with relevant expertise, should amass the basic data necessary to determine how best serve low-income and moderate-income people who need emergency housing, and how to place them as quickly as possible into affordable, permanent housing.

### **D. Increase Emergency Housing Options for People Experiencing Homelessness**

There are too few shelters to meet demand in many areas of the country. More shelters that lead to permanent or transitional housing are needed. But due to the magnitude of the homelessness crisis in some parts of the country, and the diverse needs of the homeless population who can be shut of shelters, governments should implement other, proven emergency housing options, including tent encampments and tiny houses.<sup>301</sup>

### **E. Improve Information About and Access to Emergency Shelters**

Information about available shelter options and transportation to shelters vary<sup>302</sup>—which puts the onus on each city or county to closely study how shelters are accessed and to make the required improvements.

Based upon this analysis, the following measures should also be considered:

- Implementing shelter reservation systems.

---

<sup>299</sup> WRAP, *supra* note 295, at 43.

<sup>300</sup> *Directory*, *supra* note 5.

<sup>301</sup> Junejo, *supra* note 281.

<sup>302</sup> Plumacher, *supra* note 81; Crum, *supra* note 91.



- Developing a “real-time” centralized tracking system for available shelter beds so that shelter system coordinators and outreach workers know which, if any, shelters will have space on a given night. Such a system would also assist providers whose shelters are full in directing those in need to other shelters with open beds.
- Providing vans to drive homeless individuals and their belongings to available shelters.

#### **F. Improve Oversight and Cleanliness of Shelters**

Fear of pests and diseases understandably keeps homeless people out of shelters.<sup>303</sup> In bringing new shelters and other housing options on line, providers should work with health departments to design spaces with superior ventilation and hygiene systems, and plan for regular fumigation and disease control maintenance.

Cities scrambling to establish emergency housing options, including shelters, must implement stringent oversight systems to protect the homeless families and individuals under their care. The recent fiasco in New York City, where hundreds of families were found to be living in dangerous and dirty apartments while landlords pocketed huge sums, underscores the importance of rigorous monitoring and auditing systems.<sup>304</sup>

#### **G. Reduce Rules that Needlessly Keep Homeless People Out of Shelters**

Shelters have many, many rules. Shelters commonly have rules that govern: when people can enter, when they can leave, when they may eat dinner, where they must sleep, and when they may shower, among other details of day-to-day existence.<sup>305</sup> Homeless adults, many who have lost homes, jobs, families, and self-esteem, can understandably chafe under a web of rules that reduces their autonomy.<sup>306</sup> Moreover, the hard-fast curfews of most shelters simply will not work for homeless individuals with night jobs or irregular shifts.<sup>307</sup>

Shelter providers should take a hard look at the rules in place to see which might be relaxed or removed to open doors to working homeless people and to give more autonomy to all. The many faith-based shelters, moreover, can impose rules requiring prayer, chapel attendance, bible study, or participation in programming.<sup>308</sup> Such requirements, while legal, keep many needy people outside and should be reconsidered.

#### **H. Specific Recommendations for Families**

More emergency shelters are needed to keep families together and off the streets as a stopgap measure until they receive permanent housing. Shelters should drop rules that exclude older children and other family members.

No less important: systematic, coordinated intervention is needed to keep families at risk from becoming homeless, including financial assistance, legal representation, mediation, and

---

<sup>303</sup> *Supra* p. 15-17.

<sup>304</sup> *Supra* pp. 27-18.

<sup>305</sup> *Supra* p. 11-12.

<sup>306</sup> Carey Fuller, *Homeless Shelter Systems and What They Don't Tell You*, HUFFINGTON POST (Dec. 27, 2011), [http://www.huffingtonpost.com/carey-fuller/homeless-shelter-parents\\_b\\_1035952.html](http://www.huffingtonpost.com/carey-fuller/homeless-shelter-parents_b_1035952.html).

<sup>307</sup> KUOW, *supra* note 85.

<sup>308</sup> Fuller, *supra* note 305.

case management.<sup>309</sup> Once they lose homes, families should be rehoused as quickly as possible, following as closely as possible the well-publicized success of Salt Lake City, Utah.<sup>310</sup>

### **I. Specific Recommendations for LGBTQ Youth**

All shelters, not just those receiving federal funds, should fully implement the HUD guidance for LGBTQ individuals and youth.<sup>311</sup> Shelter staff also need cultural competency awareness training about the needs of LGBTQ individuals.<sup>312</sup> Shelters are not the solution, however.

LGBTQ youth who are disenfranchised from their families need permanent housing as well as education and services to help them become self-sufficient.<sup>313</sup>

Better still would be to prevent LGBTQ youth homelessness. The Family Acceptance Program researches best practices and provides counseling services to LGBTQ youth, their families and caregivers, and their schools to support youth as they define their sexual and gender identity.<sup>314</sup> Widespread adoption of measures like those used by the Family Acceptance Program could keep families together and promote well-being for LGBTQ youth.

### **J. Specific Recommendations for Registered Sex Offenders**

Registered sexual offenders are rated levels one through three based upon their perceived likelihood to reoffend.<sup>315</sup> Currently, in most states, all registered sexual offenders, irrespective of their assigned risk level, are subject to residential residency requirements—effectively zoning these individuals away from their families, potential jobs, and supportive communities.<sup>316</sup>

California recognized this approach was overbroad and needlessly punitive. California now analyzes the application of residential residency laws to convicted sex offenders case by case.<sup>317</sup> High-risk sex offenders and those whose crimes involved children under age 14 remain subject to stringent restrictions. However, Level 1 and 2 offenders now potentially can live in

---

<sup>309</sup> *Washington State Homelessness and Family Stability*, BILL & MELINDA GATES FOUND., <http://www.gatesfoundation.org/What-We-Do/US-Program/Washington-State/Homelessness-and-Family-Stability> (last visited Apr., 12, 2016).

<sup>310</sup> Terrence McCoy, *The Surprisingly Simple Way Utah Solved Chronic Homelessness and Saved Millions*, WASH. POST (Apr. 17, 2015), <https://www.washingtonpost.com/news/inspired-life/wp/2015/04/17/the-surprisingly-simple-way-utah-solved-chronic-homelessness-and-saved-millions/>. Before it started its program in 2004, Utah was spending on average \$20,000 a year per chronically homeless individual. *Id.* Now the state saves roughly \$8,000 a year per homeless individual. *Id.* With savings now totaling in the millions of dollars, Utah has nearly defeated homelessness in the state. *Id.*

<sup>311</sup> *Supra* p. 29-30.

<sup>312</sup> NAT'L ALL. TO END HOMELESSNESS, LGBTQ YOUTH NAT'L. POLICY STATEMENT (Apr. 19, 2012), <http://www.endhomelessness.org/library/entry/lgbtq-youth-national-policy-statement>

<sup>313</sup> LARKIN STREET YOUTH SERVS., <http://larkinstreetyouth.org/> (last visited Apr. 5, 2016) (LGBTQ Homeless Youth in San Francisco).

<sup>314</sup> *Overview*, FAMILY ACCEPTANCE PROJECT, <http://familyproject.sfsu.edu/overview> (last visited Apr. 5, 2016).

<sup>315</sup> *Supra* pp. 24.

<sup>316</sup> *Supra* pp. 25-26.

<sup>317</sup> Kate Mather & Victoria Kim, *California Eases Jessica's Law Restrictions for Some Sex Offenders*, L.A. TIMES (Mar. 26, 2015), <http://www.latimes.com/local/crime/la-me-jessica-law-20150327-story.html>.

areas that were once off-limits.<sup>318</sup> Other communities should adopt this common sense approach, which will reduce homelessness among registered sexual offenders.

A further recommendation is that that shelters nationwide respond in kind and open their doors to homeless Level 1 and 2 offenders until permanent housing becomes available for them. Nor is community safety served by relegating homeless Level 3 offenders to the streets; they too need housing with treatment and monitoring.

### **K. Specific Recommendations for Those Suffering from Substance Abuse Disorders**

Most shelters prohibit alcohol or drug use when inside, and some go so far as to test potential clients for drugs or alcohol.<sup>319</sup> While providers certainly have to protect the safety of residents and staff from potential violence exacerbated by substance abuse, or associated with drug deals,<sup>320</sup> more shelters and more permanent housing are required that can harbor homeless people with substance abuse disorders.

Providers in North American cities have successfully employed the following harm reduction models to give shelter to homeless people with substance abuse disorders, to save lives, and to connect addicts to treatment.<sup>321</sup> These harm reduction models should be widely adopted.

Low Barrier Shelters for Alcohol and Drugs. “Low barrier” shelters for alcohol admit individuals who are under the influence of alcohol; while they are not supposed to drink on-site, they also are not searched.<sup>322</sup> Some shelters in Seattle and San Francisco admit drug users when under the influence and do not search them for drugs upon entry.<sup>323</sup> However, both for alcohol and drug users, belligerent, disrespectful or violent behavior results in ejection.<sup>324</sup>

Wet Shelters. “Wet shelters” apply the Housing First model to give homeless alcoholics stable housing where they can live and drink.<sup>325</sup> Seattle built the country’s first wet shelter; almost all its residents significantly reduced their drinking over time.<sup>326</sup> While tenants are not required to participate in substance abuse treatment or other services as a condition of occupancy,<sup>327</sup> the program provides mental health services, chemical dependency counseling, and help with independent living skills.<sup>328</sup>

Wet shelters save money. Seattle’s shelter saved more than \$4 million in its first operating year by eliminating nearly \$2,500 per month per person in health and crisis system

---

<sup>318</sup> *Id.*

<sup>319</sup> *E.g.*, GOOD SAMARITAN SHELTER, <http://www.goodsamshelter.net/> (last visited Apr. 12, 2016).

<sup>320</sup> Shay, *supra* note 103.

<sup>321</sup> Plumacher, *supra* note 81; Crum, *supra* note 91.

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> DOWNTOWN EMERGENCY SERVS. CTR., JAMA RESEARCH SHOWS HOUSING FOR HOMELESS SAVES TAXPAYERS MILLIONS (2009), [http://www.desc.org/documents/DESC\\_1811\\_JAMA\\_info.pdf](http://www.desc.org/documents/DESC_1811_JAMA_info.pdf).

<sup>326</sup> *Id.*

<sup>327</sup> Susan Chamard, *Chronic Inebriate Housing in Seattle*, ALASKA JUSTICE FORUM, 27(1); 2-3 (Spring, 2010), [http://justice.uaa.alaska.edu/forum/27/1spring2010/b\\_housingfirst.html](http://justice.uaa.alaska.edu/forum/27/1spring2010/b_housingfirst.html).

<sup>328</sup> *Id.*

costs.<sup>329</sup> Visits to the hospital alone decreased by 32%.<sup>330</sup> Wet shelters also operate in Minnesota, Boston, and Canada.<sup>331</sup>

Needle Exchange Programs. Needle exchange programs provide users with clean needles as well safer sex and biohazard supplies to reduce the spread of blood-borne diseases.<sup>332</sup> They are a practical, proven measure to save lives that should be more widely adopted.

Safe Injection or Consumption Sites. Vancouver, British Columbia's Insite Program is a "safe injection site" with a 13-year record of effectiveness; approximately 20% of its clients are homeless.<sup>333</sup> Addicts purchase their drugs on the black market, then bring them to Insite where they inject the drugs under nurse supervision.<sup>334</sup> This program, studied by world-class medical journals, shows a decrease in overdose deaths and transmission of blood-borne diseases with no increase in crime.<sup>335</sup> Insite is also credited with causing a 30% increase in entry to detoxification programs.<sup>336</sup> A second program will open in the near future.<sup>337</sup> Seattle is considering following Vancouver's lead and creating a safe consumption site for heroin and cocaine users.<sup>338</sup>

Emergency shelters provide essential, if imperfect, assistance to homeless individuals and families during times of crisis. But they are not, and never should be, a substitute for affordable, permanent housing. A three-pronged approach is required to deal with homelessness, which has reached such unprecedented levels in some areas of the country as to trigger local declarations of emergency.

First and foremost, the federal, state, and local governments must truly commit to ending homelessness by fully funding affordable housing.

Second, and only as an interim measure until permanent housing is built, federal, state, and local governments must provide more shelters and temporary housing options to address the tremendous shortage of beds for homeless families and individuals. Shelter providers, moreover, need to remove common barriers to accessing shelter to welcome and serve all people experiencing the crisis of homelessness.

---

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> Lori Jobe, *Wet Shelter and Central Square*, CENT. SQUARE (Aug. 1, 2013), <http://centralsquare.com/wet-shelter-and-central-square/>; Chris Welch & Tricia Escobedo, *A Safe Place to Drink, or Just Giving Up?*, CNN (May 11, 2011), <http://www.cnn.com/2011/HEALTH/05/11/minneapolis.wethouse.alcoholics/>; "Wet" Shelter for Homeless Alcoholics Proposed for Edmonton, CBC NEWS (Sept. 3, 2014, 8:53 PM), <http://www.cbc.ca/news/canada/edmonton/wet-shelter-for-homeless-alcoholics-proposed-for-edmonton-1.2754911>.

<sup>332</sup> Stephen Gaetz, *Substance Use & Addiction: Harm Reduction*, HOMELESS RES. CTR. (2012), <http://homeless.samhsa.gov/channel/harm-reduction-273.aspx>.

<sup>333</sup> *Id.*; CAN. PRESS, *Vancouver Safe-Injection Site Approved by Feds After 14 Years*, HUFFINGTON POST (Jan. 15, 2016), [http://www.huffingtonpost.ca/2016/01/15/safe-injection-vancouver\\_n\\_8993218.html](http://www.huffingtonpost.ca/2016/01/15/safe-injection-vancouver_n_8993218.html).

<sup>334</sup> Thomas Kerr, *Are Supervised Drug-Injection Sites a Wild Idea*, SEATTLE TIMES (Apr. 3, 2016, 4:01 PM), <http://www.seattletimes.com/opinion/are-supervised-drug-injection-sites-a-wild-idea/>.

<sup>335</sup> *Id.*

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> Daniel Beekman, *Heroin, Cocaine Users in Seattle May Get Country's First Safe-Use Site*, SEATTLE TIMES (Apr. 4, 2016), <http://www.seattletimes.com/seattle-news/politics/heroin-other-drug-users-may-get-a-safe-use-site-in-seattle/>.

Finally, it is unconstitutional and a violation of human rights to cite or arrest homeless people for living outside when shelter options are so few and, many times, so inappropriate to their needs. The rules and conditions prevalent in many shelters can make the cost of accessing shelter too high, forcing people experiencing homelessness to split up their families or hide their gender identity to get a roof over their heads. Implementing the recommendations in this brief may help homeless families and individuals avoid these unconscionable choices and move cities a step toward solving the homelessness crisis.