



**“Forced into Breaking the Law”
The Criminalization of Homelessness
in Connecticut**

Allard K. Lowenstein International Human Rights Clinic

YALE LAW SCHOOL • NOVEMBER 2016

Imagine you have fallen on hard times and have lost your housing.

You have two options: go to a shelter or sleep outside. If you are lucky enough to land a bed in a shelter, you still need a place to go during the day. You decide to go to the public library, where you know you will be able to use the restroom and keep warm. On your way there, you stop to talk to a friend. A police officer sees you standing outside of the library and issues a loitering citation.

You have no money and cannot pay the \$75 fine. Your only option is to contest the fine in court. But since you do not have an address, you are not notified of your court date by mail. When you do not show up at court, the judge issues a warrant for your arrest for “failure to pay or plead.” You have no idea a warrant has been issued.

A few days later, a local business owner calls the police because you are standing in front of his store in a city plaza. A police officer arrives. She checks your name for outstanding warrants and discovers the warrant for failing to pay or plead to your loitering citation. The officer handcuffs you and takes you to the local jail, where you must spend the night until you can see a judge the next morning.

When you finally do see the judge, she dismisses the charges. But the damage has been done. You now have an arrest on your record, which can affect your ability to secure employment, stable housing, and other social services.

You leave jail and try to go back to the shelter. The manager tells you that they gave away your place to someone else because you didn’t show up last night. They also threw away your belongings – some extra clothes, a pair of boots, and your birth certificate – that you were keeping there.

You find yourself back out on the streets. You can sleep outside or trespass to spend the night in an abandoned building. Either way, you risk another run-in with the justice system.

Thus begins the cycle of the criminalization of homelessness.

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About the Allard K. Lowenstein International Human Rights Clinic at Yale Law School

The Allard K. Lowenstein International Human Rights Clinic is a legal clinic at Yale Law School that undertakes projects on behalf of human rights organizations and individual victims of human rights abuses. The goals of the Clinic are to provide students with practical experience that reflects the range of activities in which lawyers engage to promote respect for human rights, to help students build the basic knowledge and skills necessary to be effective human rights lawyers and advocates, and to contribute to efforts to protect human rights through valuable, high-quality assistance to appropriate organizations and individual clients. To that end, the Clinic undertakes a wide variety of projects every year, including fact-finding, drafting reports, amicus briefs, legal manuals, submissions to various international human rights bodies, and other kinds of human rights advocacy.

For more information about the Clinic and to access past projects and publications, please visit its website at <http://www.law.yale.edu/intellecualife/lowensteinclinic.htm>.

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I. Summary: “Forced into Breaking the Law” The Criminalization of Homelessness in Connecticut

Thousands of people across Connecticut are experiencing homelessness right now. Without homes, they must fulfill their basic needs—a place to sleep, a place to bathe, a place to be during the day—in public spaces. But city ordinances across the state prohibit these necessary activities in public, banning loitering, panhandling, occupying and sleeping in public places, and creating shelter, among other activities. Laws in cities throughout Connecticut prohibit a person without a bed from sleeping on a park bench, ban someone without a place to be during the day from standing in a public plaza, and restrict the ability of a person without access to food to ask for money to buy something to eat. Cities across Connecticut continue to enact these laws. For example, since June 2014, East Hartford, Enfield, New Britain, and South Windsor all passed ordinances prohibiting or regulating panhandling.

Laws that restrict behaviors in which people experiencing homelessness must engage to survive, as well as the practices used to enforce these laws, constitute what this report refers to as “making homelessness a crime” or “the criminalization of homelessness.” Under these laws, police officers routinely order people to move. The threat of fines or arrest contributes to a pervasive sense of fear and insecurity. Constantly being told to move from the park, then the plaza, then the coffee shop, Connecticut’s homeless feel they have “nowhere to go.”¹

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A Devastating Cycle: The Impact of Criminalization on People Experiencing Homelessness

A simple citation for violating a city ordinance easily traps people in the criminal justice system. For people living in homelessness, citation fines are typically out of reach. Their only option is to contest citations in court. But without an address or reliable transportation, they often fail to receive notice and do not appear in court.

Failure to appear in court can result in a warrant for arrest. For that individual, the next act of sleeping on a bench or holding up a sign asking for money could lead to jail.

Even if the charges are ultimately dismissed, an arrest carries devastating consequences. Spending even a night or two in jail can mean missing work or losing a spot at a shelter. Criminal records make securing housing, employment, and social services more difficult and, in some cases, impossible. These dynamics further entrench homelessness and poverty, leading people back to the park bench or the city plaza, where they likely will be fined or arrested yet again.

Rights Violations: Ordinances that Criminalize Homelessness Are Unlawful

The criminalization of homelessness violates Connecticut, federal, and international law. People experiencing homelessness often have no choice but to perform basic daily activities in public. Yet many cities choose to ban these very behaviors. Loitering, panhandling, and anti-camping ordinances restrict human rights and may constitute cruel and unusual punishment. These laws are also so vague that people without housing are under constant threat of the laws' enforcement.

The criminalization of homelessness violates Connecticut, federal, and international law.

*Laws criminalizing involuntary, life-sustaining conduct, like sleeping on a park bench or lingering in a public square, constitute **cruel and unusual punishment**.*

Laws in cities across the state make it a crime to perform life-sustaining acts in public spaces. For example, under New Britain's municipal code, "No person shall sleep upon, lie upon or overturn any seat in the park." A person without a place to sleep may be forced to violate the law in New Britain in order to get rest. Since Connecticut does not provide sufficient housing or shelter options, laws and policies that effectively make people criminals because of their homeless status constitute cruel and unusual punishment in violation of U.S. and international law.

*Laws prohibiting panhandling violate **freedom of speech**.*

Panhandling ordinances prohibit people experiencing homelessness or living in poverty from asking people for money or food. Such bans effectively punish speech in violation of protections under both domestic and international law.

The constitutionality of all panhandling laws is now suspect. In 2015 the U.S. Supreme Court held that laws regulating signs are presumptively unconstitutional and may be upheld only if they are narrowly tailored to serve compelling state interests. Applying this standard to panhandling laws, the U.S. Court of Appeals for the Seventh Circuit and federal district courts in Massachusetts and Colorado have held that laws prohibiting panhandling violate the First Amendment.

*Loitering prohibitions violate the **freedom of movement**.*

Many cities severely restrict the movements of people living in homelessness, for example, by prohibiting standing or lying down in public places or by using broad definitions of loitering. These laws run afoul of the protections for freedom of movement found under domestic and international law.

The International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) – treaties ratified by the United States – protect freedom of movement. Likewise, the U.S. Supreme Court has recognized the freedom to travel as a fundamental constitutional right, and federal and state courts have struck down laws criminalizing people's ability to move freely in public spaces. The Connecticut Homeless Person's Bill of Rights provides that people experiencing homelessness have the right to "[m]ove freely in public spaces . . . without harassment or intimidation from law enforcement officers in the same manner as other persons."

*Forced evictions by police of homeless encampments often violate **privacy and property rights**.*

City ordinances often target temporary structures or unlicensed camping. In enforcing laws prohibiting these types of structures, police departments sometimes conduct sweeps or forced evictions in temporary encampments. These sweeps may involve police instructing those living in encampments to clear out their belongings or may escalate to involve slashing tents or using bulldozers to clear an area. These tactics make it almost impossible for people experiencing homelessness to keep and store personal possessions and construct necessary temporary shelters. Police sweeps of encampments can involve the destruction of important personal property and may violate the Fourth Amendment's guarantee of freedom from unreasonable searches and seizures.

*Anti-loitering laws and sweeps of tent cities violate the **freedom of assembly**.*

For people experiencing homelessness, gathering in groups in tent cities or in public spaces may be a form of protest, representing a refusal to remain invisible and publicly expressing a sense of community and belonging. The destruction of tent cities and the enforcement of loitering laws that restrict individuals from gathering in public infringe on the right to assemble, which is protected by the First Amendment of the U.S. Constitution and by the ICCPR.

*Laws criminalizing homelessness, such as prohibitions on loitering, may be **unconstitutionally vague** and invite **arbitrary enforcement**.*

Loitering ordinances are one of the most common tools used to police people living in homelessness. These laws are often too broadly written to give people fair notice of when their behavior is illegal. And because the laws potentially apply to such a wide array of behaviors, police cannot enforce every instance of loitering and may engage in arbitrary enforcement. Both U.S. and international law prohibit vague laws because of their potential for arbitrary enforcement.

As many law enforcement officers themselves recognize, arresting someone for sleeping on a park bench will not solve the problem: People without a place to sleep still need somewhere to go.

*Laws criminalizing homelessness are applied **discriminatorily**.*

Laws that provide sweeping discretion to police, such as anti-loitering ordinances, raise concerns about discriminatory enforcement. Other laws – such as those prohibiting drinking in public or panhandling – may have a disproportionate effect on individuals living in homelessness. The Connecticut Homeless Person's Bill of Rights affirms the right to receive equal treatment by state and local law enforcement agencies. Laws targeting behaviors associated with homelessness also disproportionately affect people of color, transgender people, and people with disabilities, all of whom experience homelessness at higher rates. Such unequal treatment violates U.S. and international law.

Not Just Unlawful: Laws Criminalizing Homelessness Are Counterproductive

Criminalizing homelessness is not only unlawful; it is also ineffective. As many law enforcement officers themselves recognize, arresting someone for sleeping on a park bench will not solve the problem: People without a place to sleep still need somewhere to go.

Laws and policies that make homelessness a crime are counterproductive and costly, in both human and financial terms. Criminalizing homelessness keeps people in a detrimental cycle of citations, imprisonment, and homelessness that makes it even more arduous to secure resources to help them get back on their feet. The federal government recognizes that fining individuals does nothing to get them off the street and has incorporated ending criminalization into national policies that address homelessness. Laws criminalizing homelessness correlate with higher rates of hate crimes and violence perpetrated against those experiencing homelessness. They are also expensive. Many studies have found that it costs far more to jail people than to provide housing solutions. In addition, these laws are unnecessary: If behavior rises to the level of a public safety threat, such behavior would violate other laws, such as robbery.

A Call to Action

Ending the criminalization of homelessness is a matter of pressing public concern. Large numbers of Connecticut residents are currently experiencing homelessness or are at risk of losing their housing. Half of Connecticut renters spend more than 30 percent of their income on rent. Governor Malloy has recognized the importance of addressing homelessness by signing on to the national “Zero: 2016” campaign, through which he has pledged to eradicate veteran and chronic homelessness by the end of 2016. Ending homelessness is rightfully a state priority, but without also addressing the criminalization of homelessness such goals will be almost impossible to meet.

Many people contribute, without even realizing it, to the cycle of criminalizing homelessness. A business owner who calls the police because a man is loitering outside his or her store might not recognize that the call could lead to an unaffordable fine and push that man further into homelessness and poverty. A police officer who tells a woman to move away from a park might not understand how this contributes to her sense of insecurity, fear, and erasure from society. This report sheds light on a system that, through small actions by many actors, puts society’s most vulnerable people in a detrimental cycle of policing, homelessness, and poverty.

This report sheds light on a system that, through small actions by many actors, puts society’s most vulnerable people in a detrimental cycle of policing, homelessness, and poverty.

Instead of using criminal laws to push people living in homelessness even further into the shadows, Connecticut city governments and police departments must immediately stop passing and enforcing laws that criminalize homelessness. Police and local government should instead work together to direct individuals in need to resources and services. Governor Malloy and the Connecticut legislature should ensure sufficient funding for housing and other services in order to keep people out of handcuffs and put them into housing.

Recommendations

To Municipal Governments and Police Departments

- Work together to end the criminalization of homelessness. City governments and police must collaborate closely to develop and implement policies that address homelessness and poverty while avoiding the harms of criminalization.

To Municipal Governments

- Place a moratorium on the enforcement of ordinances that criminalize people because of their homeless status.
- Refrain from passing additional laws and repeal existing laws that criminalize people based on homelessness or poverty, including laws that prohibit loitering, panhandling, occupying and sleeping in public spaces, and erecting shelter.
- Examine laws that may be unconstitutionally vague, including those prohibiting loitering or disorderly conduct, and ensure that they meet the *McKoy* standard of providing “sufficiently definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement.”
- Provide people with a safe alternative place to go if legitimate public safety reasons require an encampment to be moved or disbanded.
- Create policies and allocate resources to ensure that homelessness is rare, brief, and non-recurring.
- Adopt a local version of a Homeless Person’s Bill of Rights.

To City Police Departments

- Respect the right of those experiencing homelessness to use public spaces, including the right to congregate and associate.
- Develop a department-wide policy, in consultation with service providers, individuals experiencing homelessness, and other relevant stakeholders, to guide police interactions with people experiencing homelessness. In keeping with constitutional requirements and the Homeless Person’s Bill of Rights, the policy should make clear that:
 - When interacting with individuals experiencing homelessness, police officers should resort to criminal sanctions or the threat of criminal sanctions only as a last resort and only where there is a genuine threat to public safety. Instead, officers should provide access to necessary services, outside of the criminal justice system.
 - Offenses related to a person’s homeless status, including violations of park curfews and ordinances banning loitering, panhandling, and drinking in public, should not be the basis for citation or arrest.
 - If police officers arrest, cite, or ask a person to move, they should provide clear reasons and cite the ordinances they are enforcing.
 - Police officers must enforce all laws in a non-discriminatory manner.
 - Police officers must not destroy personal property belonging to individuals experiencing homelessness.
- Provide training to police officers regarding how to interact with people experiencing homelessness. Create systems that help police officers guide those experiencing homelessness into social services rather than the criminal justice system.
- Ensure that prior to any enforcement action against homeless encampment residents, authorities provide adequate notice and do not confiscate personal property.
- Collect and publish data about the housing status of individuals who are cited and arrested. Develop protocols to code each city ordinance in order to track how many people are cited under each ordinance and their housing status.

To the Connecticut Governor, General Assembly, and Senate

- Allocate sufficient resources to ensure that homelessness is rare, brief, and non-recurring. This includes providing adequate funding for ancillary, yet critical, services such as mental health treatment.
- Provide financial and other support to cities and towns to develop alternatives to criminalization.

To the Connecticut Department of Emergency Services and Public Protection Police Officer Standards and Training Council

- Include information on how to interact with individuals experiencing homelessness in the annual accreditation standards manual and in police officer basic training requirements. Standards and training should emphasize that criminalization should be a last, not first, resort, and should discourage police officers from enforcing ordinances that criminalize individuals on the basis of their homeless status.

To the Judicial Branch

- Devise procedures to provide notice about court dates and other obligations to people who do not have permanent addresses.
- Educate judges, prosecutors, defense attorneys, and other relevant court officials about the impact of incarceration on homeless individuals, particularly that a person incarcerated or institutionalized for 90 days or more could lose her or his “chronic homelessness” status, which can be essential for securing and maintaining access to certain housing and social services.
- Dismiss failure to pay or plead charges upon the presentation of evidence that the defendant is experiencing homelessness.
- Consider a defendant’s financial situation in setting bail.

To Prosecutors

- Use prosecutorial discretion to decline to prosecute charges related to a person’s homeless status.

To Public Defenders

- Consider using a necessity defense when representing a client whose homeless status contributed to the alleged violation.

II. Methodology

This report relies on interviews, legal research, analysis of municipal city codes, public-records requests, and other desk research conducted by the Allard K. Lowenstein International Human Rights Clinic at Yale Law School in collaboration with the Warburton Resource, Outreach and Collaboration Center at Center Church in Hartford. The report builds on the work of national² and local³ advocacy organizations across the country to highlight the harms and potential unlawfulness of ordinances and policies that criminalize homelessness in Connecticut.

The Clinic reviewed 38 Connecticut cities' ordinances in detail to identify laws that directly criminalize homelessness. The Clinic focused on ordinances because city ordinances, rather than state statutes, tend to regulate activity, such as loitering and sleeping on park benches, in which people experiencing homelessness must engage to survive. The Clinic reviewed the municipal codes of six cities where the Clinic also conducted interviews – Bridgeport, Hartford, Manchester, Middletown, New Britain, and New Haven – as well as every city in Connecticut whose municipal code is available on Municode, an online library of city ordinances.⁴ This survey can be found in the Appendix to this report.

The Clinic also filed Freedom of Information Act requests seeking arrest and citation records for ordinances that appear to criminalize homelessness from the six core cities. Relevant records were received and analyzed from Hartford, Manchester, and New Britain. Bridgeport did not respond to the Clinic's request. New Haven and Middletown responded to the request but did not keep sufficient data to draw significant conclusions. New Haven records all citations for city ordinance violations under the same code number, making it impossible to determine how many citations were issued for a specific ordinance violation, such as loitering. The lack of data among many police departments regarding how often, when, and where citations and arrests occur and who is affected poses significant challenges for researchers seeking to investigate the impact of laws criminalizing homelessness.

In addition, between March and November 2015, five Lowenstein Clinic students and one instructor interviewed fifty-nine individuals who were living in homelessness or had recently experienced a period of homelessness. These interviews were conducted in six cities across Connecticut: Bridgeport, Hartford, Manchester, Middletown, New Britain, and New Haven. These cities were chosen because of their relatively large size and because experts suggested that the criminalization of homelessness was of particular concern in these cities.

The Clinic worked with social service providers to identify people experiencing homelessness with whom to speak for this report. The Clinic conducted interviews with individuals in shelters, soup kitchens, public libraries, parks, and on the street. Most interviews were conducted one-on-one. Interviews focused on the interviewee's experiences with the criminal justice system and with shelters and their homelessness experience generally. All interviewees gave informed consent prior to the interview.

Unless otherwise noted in the report, individuals who are quoted were homeless at the time of the interview or had recently experienced homelessness. The names of all these individuals have been withheld and substituted with pseudonyms to protect their privacy and safety.

Certain particularly vulnerable populations are underrepresented or unrepresented in this report. This is due to the difficulties of gaining access to certain populations. Specifically, the Clinic did not interview children, transgender youth, and physically disabled individuals. Families were also underrepresented. Because the Clinic used service providers to identify individuals willing to be interviewed, researchers were less likely to interview populations that do not frequently use or have access to such resources.

The Clinic also conducted ten interviews in person and over the phone, in the six cities listed above, with homeless service providers, police officers, public defenders, and city officials in order to better understand the impact of criminalization on people experiencing homelessness and the rationales for the use of criminal law in this context.

III. The Criminalization of Homelessness

A. Homelessness in the United States and Connecticut

Cities across the United States are struggling with a homelessness crisis. The number of people experiencing homelessness⁵ has increased substantially since the 2008 recession.⁶ Since various organizations define homelessness differently, the full extent of this crisis is difficult to establish.

This report uses the U.S. Department of Health and Human Services definition of homelessness, which defines a person experiencing homelessness as:

an individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility (e.g., shelters) that provides temporary living accommodations, and an individual who is a resident in transitional housing.⁷

Thus, under this definition, those experiencing homelessness might have a place to sleep, but it is one that is temporary or unstable. Although the scale of homelessness in the United States has not been precisely determined,⁸ the available data is staggering, with estimates in January 2015 ranging from roughly 2.5 million to 3.5 million Americans experiencing homelessness.⁹

The leading causes of homelessness in the United States include poverty and a lack of affordable housing, the after-shock of the foreclosure crisis, domestic violence, mental illness, and substance dependence.¹⁰ More than 12.8% of low-income housing in the United States has been permanently eliminated since 2001, due partly to the cuts in federal subsidies for housing that have taken place since the 1970s.¹¹ Funding for housing and other social services continues to drop due to budget crises around the country: in Connecticut, a 2016 budget shortfall prompted funding cuts to vital housing agencies.¹² Furthermore, research has shown that there is no state in the country in which someone earning the minimum wage can afford fair market rent for a one- or two-bedroom apartment.¹³

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Large swaths of Americans are only a paycheck away from experiencing homelessness.

In January 2016, an estimated 3,911 people in Connecticut were homeless.¹⁴ A total of 673 individuals had no shelter whatsoever, and 11% of surveyed adults were chronically homeless,¹⁵ which the U.S. Department of Housing and Urban Development defines as someone having a long-term status of homelessness and a disability of sufficient severity and duration.¹⁶

In January 2016, an estimated 3,911 people in Connecticut were homeless.

These figures, which come from the annual Point in Time (PIT) count that Connecticut and other states conduct, and which policymakers and service providers rely on when as-

sessing rates of homelessness, likely underestimate the gravity of the homelessness crisis in Connecticut. The count only measures homelessness on one particular night (not across time) and does not include individuals who lack adequate housing but are in hospitals or jails on the night of the count.¹⁷ Over the course of a year, far more people than these counts indicate will experience periods of homelessness. For example, Connecticut’s Homeless Management Information System, which also collects valuable data throughout the year on the homeless population in Connecticut, reported that 13,401 people used emergency or transitional shelter at least once in 2010.¹⁸ In the same year, the PIT count was 3,800.¹⁹

Connecticut’s homeless population includes some of the most vulnerable members of society. In the 2016 PIT count, 613 adults reported a severe mental illness, 309 adults reported a chronic substance abuse disorder, 537 adults reported having experienced domestic violence, and 103 adults reported having HIV or AIDS.²⁰ Moreover, African-Americans are disproportionately represented among the homeless population in Connecticut: For example, 38.2% of homeless youth identified as African-American, while African-Americans constitute only 10.4% of the state’s population.²¹

Although temporary shelter, such as an emergency shelter, is not necessarily where scarce resources should be directed in efforts to make homelessness rare, brief, and non-recurring, the current lack of adequate permanent and temporary shelter makes it impossible for many Connecticut residents to stay off the street. In 2015, only 3,399 year-round shelter beds (emergency shelter and transitional housing) were available across Connecticut, although at least 4,047 people were using such temporary shelters or required shelter the night of the 2015 PIT count.²² In the greater Hartford region on September 30, 2016, 164 people, including 11 families, were on a wait list for shelter spots, with no alternate form of housing.²³ These numbers underscore the extreme difficulty of staying off the street for many Connecticut residents experiencing homelessness.

Connecticut’s lack of affordable housing exacerbates the difficulty of creating policies to ensure adequate housing. Half of Connecticut renters are considered “burdened,” which the U.S. Census Bureau defines as people who spend more than 30 percent of their income on rent.²⁴ That such a large percentage of Connecticut residents live on the brink of a housing crisis should be a matter of broad public concern for the state.

Half of Connecticut renters are considered “burdened,” which the U.S. Census Bureau defines as people who spend more than 30 percent of their income on rent.

Connecticut has taken laudable steps toward reducing or eliminating homelessness. Connecticut is participating in the national Zero:2016 campaign, which aims to end veteran and chronic homelessness in 2016.²⁵ In August 2015, Connecticut Governor Dan Malloy announced that the state had succeeded in ending chronic veteran homelessness, and in February 2016, the state announced it had ended veteran homelessness altogether.²⁶

The gains made under recent state initiatives, while promising, are fragile. Moreover, Connecticut experienced a deficit of more than \$900 million in its Fiscal Year 2017 budget.²⁷ As a result, progress on affordable housing efforts and on increasing homeless-related services has slowed or stalled.²⁸ Without sufficient housing options, more people will end up cycling between the street and jail—an outcome that is destructive to the individual and costly to the public. Decriminalization must be part of any long-term strategy to end homelessness in the state.

B. Criminalization as a Response to Homelessness

States and cities across the country “use the criminal justice system to punish people living on the street for doing things that they need to do to survive.”²⁹ The U.S. Interagency Council on Homelessness has defined criminalization of homelessness as “formal and informal law enforcement policies . . . adopted to limit where individuals who experience homelessness can congregate, and punish those who engage in life-sustaining or natural human activities in public spaces.”³⁰

The National Law Center on Homelessness and Poverty and the National Coalition for the Homeless identify the following forms of criminalization of homelessness:

- Laws that make it illegal to sleep, sit, or store personal belongings in public spaces.
- Selective enforcement of ostensibly neutral laws, such as loitering, jaywalking, or open container laws, against homeless persons.
- Sweeps of city areas in which homeless persons are living to drive them out of those areas, frequently resulting in the destruction of individuals’ personal property, such as important documents and medication.
- Laws that punish people for begging or panhandling, in order to move poor or homeless people out of a city or downtown area.
- Laws that prohibit groups sharing food with homeless persons in public spaces.
- So-called “quality of life” ordinances regulating public activities and hygiene (i.e., public urination) when no public facilities are available to people without housing.³¹

The effects of criminalization extend far beyond actual arrests and citations. Throughout this report we use the term “criminalization of homelessness” to refer to laws that are used to prohibit or regulate behaviors associated with homelessness as well as the practices—such as warnings and requests to move along—that are used to enforce such laws. When a police officer tells an individual to “move along,” the request comes with an implicit threat that if the person does not leave the area, he or she will be given a citation or arrested. Although citations are used only for infractions for which punishment does not include the possibility of jail time, a person’s failure to pay or plead to a citation can result in a warrant for arrest. Thus, although being asked to move along may not seem to criminalize behavior, it is part and parcel of a system that threatens eventual arrest for prohibited conduct.

Although being asked to move along may not seem to criminalize behavior, it is part and parcel of a system that threatens eventual arrest for prohibited conduct.

A 2014 survey of 187 cities across the country found that 57% of them prohibit camping in some public places, 27% prohibit sleeping in public in particular places, 76% prohibit begging in particular places, 53% prohibit sitting or lying down in particular public places, 65% prohibit loitering in particular public places, and 33% prohibit loitering throughout the city.³² Although the number of new laws criminalizing homelessness continues to grow,³³ many laws that criminalize behavior associated with homelessness, such as loitering, have been on the books for decades.³⁴ Essentially, communities across the United States have made homeless people’s efforts to survive a crime.

As in many U.S. states, laws criminalizing homelessness are common in Connecticut. Although most of these laws are city ordinances, some state statutes, such as the law of criminal trespass, also have the effect of criminalizing homelessness. The city-level ordinances include prohibitions on loitering, panhandling, erecting shelters in public spaces, drinking in public, and sleeping on benches. A survey of 38 Connecticut cities' ordinances revealed that:

- 35 prohibit public consumption of alcohol;
- 24 prohibit loitering;
- 24 prohibit camping throughout the city or in certain public areas;
- 23 impose a curfew on particular public areas;
- 12 prohibit or regulate panhandling; and
- 4 prohibit sleeping on benches or similar fixtures in public parks.³⁵

Many of these ordinances were passed recently. For example, East Hartford passed an ordinance regulating panhandling in June 2014.³⁶ Enfield passed a similar ordinance in October 2015.³⁷ On April 27, 2016, New Britain passed an ordinance prohibiting aggressive panhandling despite the fact that at two previous public hearings on the ordinance, people across the New Britain community and Connecticut, including concerned families, those currently experiencing homelessness in New Britain, service providers, and religious leaders, attended and spoke out against the law.³⁸

Data gathered from police departments in three cities demonstrate that these laws are enforced regularly. The magnitude of enforcement is apparent even though police departments typically do not track how often these ordinances are enforced against individuals experiencing homelessness. Between January 1, 2010, and April 14, 2015, Hartford police recorded 4,581 loitering summonses or arrests and 6,282 summonses or arrests for public consumption of alcohol. Manchester recorded 98 citations for public consumption of alcohol from January 1, 2010, to April 14, 2015. For the same period, New Britain recorded 1,284 loitering incidents, which could include citations, arrests, or other police interaction, and 1,098 trespassing incidents. Between July 2014 and July 2015, New Britain police recorded 73 incidents of public consumption of alcohol.³⁹

IV. The Homeless Person’s Bill of Rights

As part of efforts to counter the harmful effects of this proliferation of laws criminalizing homelessness, a contrasting trend has recently emerged: state legislatures passing a Homeless Person’s Bill of Rights. Rhode Island ignited the movement in the mainland United States when it passed a Homeless Person’s Bill of Rights in 2012.⁴⁰ A year later, in August 2013, Illinois passed its own version,⁴¹ modeled after the Rhode Island example. In June 2013, Connecticut also enacted such a law.⁴² Currently, California, Delaware, Maryland, Massachusetts, Minnesota, Missouri, Oregon, Tennessee, Vermont, and Wisconsin are considering similar bills.⁴³

The Connecticut Homeless Person’s Bill of Rights reaffirms protections from discrimination based on a person’s housing status in areas of employment, emergency medical care, voting, and interactions with state officials.

The Connecticut Homeless Person’s Bill of Rights reaffirms protections from discrimination based on a person’s housing status in areas of employment, emergency medical care, voting, and interactions with state officials. The law specifically declares that people “without a fixed or regular residence,” including those in shelters, in temporary residences, and living on the street, have the right to “[m]ove freely in public spaces . . . without harassment or intimidation from law enforcement officers”⁴⁴ and “a reasonable expectation of privacy in . . . personal property.”⁴⁵

Although the Connecticut Homeless Person’s Bill of Rights took effect in 2013, interviews with individuals experiencing homelessness in 2015 revealed that the criminalization of homelessness and the harassment, discrimination, and lack of privacy that result from it continue to be a major problem for people experiencing homelessness in this state. Moreover, New Britain’s recent passage of an ordinance restricting panhandling demonstrates that the criminalization of homelessness is an active phenomenon in Connecticut. More needs to be done to strengthen and operationalize this Bill of Rights, including by passing Homeless Person’s Bills of Rights at the municipal level.

Public Act No. 13-251 • An Act Concerning a Homeless Person’s Bill of Rights.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(a) There is created a Homeless Person’s Bill of Rights to guarantee that the rights, privacy and property of homeless persons are adequately safeguarded and protected under the laws of this state. The rights afforded homeless persons to ensure that their person, privacy and property are safeguarded and protected, as set forth in subsection (b) of this section, are available only insofar as they are implemented in accordance with other parts of the general statutes, state rules and regulations, federal law, the state Constitution and the United States Constitution. . . . Each homeless person in this state has the right to:

1. Move freely in public spaces, including on public sidewalks, in public parks, on public transportation and in public buildings without harassment or intimidation from law enforcement officers in the same manner as other persons;
2. Have equal opportunities for employment;
3. Receive emergency medical care;
4. Register to vote and to vote;
5. Have personal information protected;
6. Have a reasonable expectation of privacy in his or her personal property;
7. Receive equal treatment by state and municipal agencies.

V. Criminalization and the Cycle of Homelessness

People across Connecticut who are living in homelessness are trapped in an unyielding cycle. In order to survive, they must break the law – whether by sleeping on a park bench because they lack shelter, in contravention of parks regulations; standing in a city plaza because they have no place else to go, in violation of loitering or trespassing laws; or holding a sign because they need money to eat, in violation of panhandling laws.⁴⁶ Individuals experiencing homelessness often cannot afford to pay the fines imposed for violating these laws. Moreover, if they are arrested – for anything from disorderly conduct to failure to pay a fine or appear in court – they face further barriers to securing social services, employment, and housing. These dynamics lead them back to the park bench or the city plaza, where they will be fined or arrested yet again.

Violating a state statute or city ordinance carries severe consequences for people experiencing homelessness. Sometimes people are arrested and incarcerated for conduct related to their homeless status – for example, being arrested for trespassing for sitting in a supermarket.⁴⁷ More commonly, they are given citations for these actions. Each citation carries its own fine. For example, pushing a shopping cart on a public street in New Haven carries a \$35 fine,⁴⁸ and loitering in New Britain carries up to a \$99 fine.⁴⁹ Although these charges may be trivial for some people, for those without money or housing, coming up with \$35 is typically impossible.

Rolland, a middle-aged man who has lived in a tent near Manchester’s train tracks since losing his job and apartment more than four years ago, does not know how he will pay two recent fines. He received a \$92 fine for drinking in public while walking to the library in September 2015 and has since been subjected to a \$177 fine for disorderly conduct and drinking in public after he was approached by police officers near his tent one night. Rolland told us, “I don’t understand the ticket. I don’t know how to pay the ticket.”⁵⁰ With little money or resources, he fears what will happen if he tells the court he cannot pay.

Although citations alone cannot result in jail time, they often lead people, especially the homeless and other vulnerable populations, into handcuffs. After receiving a citation, which in Connecticut is called a Complaint Ticket, a person must either pay the associated fine or plead not guilty and appear in court to contest the charges.⁵¹ Since most people who are homeless do not have money to pay fines, they typically need to fight the charges in court.

Appearing in court poses distinct challenges for people without housing. As an initial matter, because citations themselves do not carry jail penalties, they do not trigger the right to counsel.⁵² Accordingly, people without means to hire their own attorney must navigate the criminal justice system on their own – often with dangerous consequences. Some people mistakenly believe that if they show up for court without money to pay their fines, they will be arrested. Rolland, a Manchester man facing two outstanding citations, expressed fear that he would be thrown in jail if he went to court without money to pay.⁵³ The U.S. Supreme Court has held that people may not be incarcerated simply because they cannot afford to pay a court fee or fine.⁵⁴ However,

Although citations alone cannot result in jail time, they often lead people, especially the homeless and other vulnerable populations, into handcuffs.

er, people *may* be arrested for failing to appear in court to *tell* the judge they do not have the money to pay. Without attorneys, people are often left without this sort of vital information to help resolve their cases.

When people without resources try to contest their citations, they often struggle to figure out basic information about their case, such as how to respond to the citation and the date of the scheduled court appearance. There are three ways to plead not guilty: A person can check “not guilty” on the ticket and mail the ticket to Connecticut’s Centralized Infractions Bureau (CIB), call the CIB to enter the plea, or plead not guilty through the CIB website.⁵⁵ For someone without housing, pleading not guilty by mail is virtually impossible. Rolland said he does not know how to obtain a stamp in order to respond to the citation.⁵⁶ Even if he could send the letter, Rolland has no return address, because he has no home, to include on the envelope. Accordingly, the court cannot mail him a letter listing his court date and time, as per its procedures.⁵⁷ “I don’t have an address,” Rolland said. “I don’t know where they’re gonna send the date of court.”⁵⁸

For many people experiencing homelessness, the only way to enter a plea or inquire about scheduled court dates is by telephone or the Internet. This requires not only the knowledge that they can enter a plea or find other necessary information through these methods, but also physical access to a phone or computer. For people without resources, this is particularly challenging.

Even when a person experiencing homelessness does receive notification of their court date, it is often difficult to get to the courthouse. The person must remember when his or her court date is – a difficult feat if one does not have a safe space to store documents. Rolland lost his \$92 ticket because he had nowhere to store it.⁵⁹ The person must also find transportation to get to the courthouse. Money for a bus ticket can be difficult to come by for many people living in poverty.⁶⁰ As a result of these barriers, people without homes often fail to appear in court on their appointed date.

Failing to appear in court without paying the required fine for a citation is a crime. It constitutes a misdemeanor offense, known as “failure to pay or plead.” This carries a jail penalty of up to one year in prison, depending on the underlying citation.⁶¹ A judge typically has two options when someone fails to appear for court: She can issue a bench warrant, authorizing law enforcement officers to arrest the person, or send a bail commissioner’s letter to the person’s residence, warning her or him that failure to appear for court in the future can result in a warrant for arrest.⁶²

For people without a permanent residence, a bail commissioner’s letter is not a realistic option. As Trey Bruce, a public defender in New Haven, explained, “If someone doesn’t have an address on file, or if they’re listed as homeless on their arrest report, then the judge is less likely to issue a bail commissioner’s letter because it is just an illusion” as they have no way of receiving the letter.⁶³ As a result, when people without homes miss their court dates, the judge generally issues a warrant for their arrest.⁶⁴ Although law enforcement officers reported that they usually do not actively seek out individuals with warrants for failure to pay or plead to minor infractions, officers routinely conduct background checks – during which they check for warrants – when stopping someone for any reason.⁶⁵ This means that people who do not pay their tickets and are stopped by the police will likely wind up under arrest.

Accordingly, a minor stop for loitering or sleeping on a bench can, if failure to appear in court results in a warrant being issued, lead to an arrest for someone like Rolland. “I can’t pay the ticket. They are going to give me a warrant if I don’t pay the ticket,” Rolland said.⁶⁶ “I don’t know what to do. I can’t pay anyway. What’s the worst that’s going to happen? I don’t have money, you know. People say hire a lawyer or something but nah, I can’t even pay a rent. I can’t pay a ticket. I don’t have no money, no job, no nothing,” he said. “Three months, two months, more, I’m going to go to jail.”⁶⁷

An arrest, even when it does not lead to a conviction, carries devastating consequences. As Trey Bruce said, “Being arrested is a traumatic thing and violent—I don’t mean physical, but even in the most gentle of scenarios, you’re being bound behind your back and you’re being forced to enter [a police car].”⁶⁸

Rick, a New Haven man who had been arrested “countless times” for offenses related to his homeless status, described a typical arrest.⁶⁹ After he was handcuffed and put in a police car, he was taken to jail. In accordance with Connecticut procedures, he was incarcerated overnight before he could appear before a judge the following business day.⁷⁰ On one occasion, Rick was arrested on a Friday; as a result, he was locked up for the entire weekend until court reopened on Monday.⁷¹

After spending a night—or weekend—in jail, Rick would be taken to the local courthouse, where a judge was to review his charges and set bail, determining whether he would be released or incarcerated while his case was pending. In New Haven, people under arrest wait until their case is called in holding cells underground, below the courthouse. Those accused of low-level infractions, like Rick, are held in cramped cells alongside people accused of violent crimes. Rick told us it is “horrible down there,” and can get dirty and overcrowded.⁷² After hours of confinement in the basement of the courthouse, it would be Rick’s turn to see the judge. Like every other person under arrest, no matter how minor the crime, his arms and legs were shackled. On one occasion, Rick had been arrested for holding a sign asking for money. He described his experience appearing before the judge in chains: “[It’s] very uncomfortable, especially if you know you just held up a sign. I’m treated like I’ve killed someone.”⁷³

When individuals charged with crimes stemming from their homeless status finally appear in court—after their arrest, detention, and shackling—the prosecutor sometimes dismisses the charges.⁷⁴ A man from New Haven told us that his charges were ultimately dismissed after his shelter called the court on his behalf: “I was told everything was thrown out because it was bogus.”⁷⁵ According to Trey Bruce, judges and prosecutors in New Haven usually do not believe these offenses are worth prosecuting, because the conduct at issue is so minor.⁷⁶

In many cases, however, the damage is already done. An arrest can affect eligibility for, or trigger eviction from, publicly subsidized housing—even if charges are later dismissed.⁷⁷ In many states, arrests also damage people’s ability to obtain jobs: Employers often discriminate against people with criminal records, regardless of whether they were ultimately convicted.⁷⁸ Although Connecticut recently passed promising legislation erasing records of arrests that did not lead to convictions,⁷⁹ people with arrest records may still face barriers to employment in other states.

Even brief periods of incarceration “erect serious and lasting barriers to social integration and economic wellbeing.”⁸⁰ For instance, incarceration affects eligibility for social services. Under federal law, people who have been institutionalized for more than 90 days – in prison or even in drug treatment facilities, regardless of whether they were convicted of a

crime – lose their “chronic homelessness status,” making them no longer a priority for permanent housing and other support services.⁸¹ If they are not a priority, they must wait longer for permanent housing. Failure to pay for or plead to a citation based on violation of a city ordinance can result in a sentence of 90 days and trigger these consequences.⁸² As Andrea Hakian, a social services provider in Manchester, explained, a person could be homeless for three decades, but “if you’re incarcerated for four months, it’s almost like that thirty years of homelessness just goes away because you lose your chronic [homelessness] status.”⁸³ This has a profound impact, according to Hakian: When people lose their chronic homelessness status, social service providers can only “link them to a less intensive program that might not have the services they need,” the result of which is that these people “have to essentially . . . be homeless for longer.”⁸⁴

The effect of arrests can go beyond the formal legal consequences. Arrests often damage and destabilize people’s lives. Those who are employed miss work while they are in jail, losing precious income and potentially even their jobs.⁸⁵ While incarcerated, they cannot care for their families or continue substance abuse or mental health treatment programs.

People who are arrested, even briefly, may also lose spots in homeless shelters. Individuals typically have to wait in line to sign in to get a spot at a shelter or have to show up at a certain time in order to claim a bed that they have been assigned; if they are arrested, they are often too late, by the time they are released from jail, to obtain a bed for the night.⁸⁶ This might leave them with no other option but to sleep on the streets, in violation of local laws. According to Trey Bruce, their arrest accordingly “perpetuates the same cycle” of homelessness, unaffordable fines, and incarceration.⁸⁷

For already-vulnerable or -marginalized communities, these harms are compounded. People with physical disabilities, mental illness, or drug addictions face harsh challenges after incarceration. Many do not receive adequate treatment in prison and struggle to secure necessary health care and social services once they are released.⁸⁸ Empirical studies show that people suffering from mental illness or drug addictions, already at exceptional risk of homelessness, are less likely than other populations to secure housing after prison.⁸⁹

These harms are even more pronounced for African-Americans, who are disproportionately affected at every stage in the criminal justice system: They are more likely to be arrested, convicted, and incarcerated than whites.⁹⁰ They also face more severe discrimination in housing⁹¹ and employment⁹² upon release from prison.

Laws and policies that criminalize behavior associated with homelessness and then discriminate against those with criminal records further entrench homelessness and poverty.⁹³ Yet despite the demonstrated harms stemming from these measures, the wheel of unavoidable fines, incarceration, and barriers to re-starting a life upon release continues to spin unabated throughout Connecticut.

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VI. Legal Analysis: Laws Criminalizing Homelessness Violate Fundamental Human Rights

In Connecticut, people living in homelessness often find themselves caught in the criminal justice system merely for engaging in necessary behavior. People without homes must perform certain life-sustaining acts in public, yet laws in cities across the state criminalize the performance of these functions in public spaces. Whether these state laws or city-level ordinances are enforced by citations, arrests, or merely warnings from the police to move along, interactions with the criminal justice system can have devastating effects for those experiencing homelessness.

As this legal analysis explains, the criminalization of homelessness occurs in three key ways. First, laws prohibit necessary conduct, such as sleeping and bathing in public, that people experiencing homelessness must perform outdoors because they have nowhere else to go. Second, other laws that do not appear to explicitly target homeless populations or behaviors associated with homelessness prohibit acts in which individuals experiencing homelessness are more likely to engage, such as violating park curfews and drinking in public. Finally, law enforcement officials may disproportionately enforce otherwise neutral laws, such as loitering or disorderly conduct, against individuals experiencing homelessness.

State and local laws and policies that criminalize homelessness may violate state, federal, and international law. Since Connecticut does not provide sufficient housing or shelter options, it is cruel and unusual to treat people as criminals for performing necessary and unavoidable life-sustaining acts in public. Laws criminalizing homelessness also diminish people's exercise of basic rights guaranteed under domestic and international law, like freedom of speech and freedom of movement. In practice, authorities rely on vague laws, such as loitering ordinances, to arrest or cite homeless individuals, which often leads to arbitrary and unequal enforcement.

A. “It’s like you are getting forced into breaking the law”⁹⁴: Laws That Criminalize Unavoidable, Life-Sustaining Behavior Are Cruel and Unusual.

All people have basic needs: a place to go during the day, somewhere to sleep, a place to store belongings, and food to eat. For individuals experiencing homelessness, meeting these simple necessities often involves breaking the law. A person with no bed may need to sleep on a park bench. A person with no shower may have to wash up in public. A hungry person with no access to other resources may have no choice but to beg for money or food. A person with no access to a bathroom may be forced to urinate in public. People without homes must spend much of their time outdoors, in public spaces. These activities are outlawed by cities across Connecticut, which means that homelessness is effectively criminalized.

For example, under New Britain’s municipal code, “No person shall sleep upon, lie upon or overturn any seat in the park.”⁹⁵ Picnicking in public parks and washing in drinking fountains or bodies of water in public parks are also prohibited.⁹⁶ Similarly, Bridgeport bans people from “sleep[ing] upon the grass, benches or any other part of the open ground of the parks.”⁹⁷ In New Haven, it is unlawful to “bathe . . . in any water or waterway in or adjacent to any park” outside of specified times.⁹⁸ Middletown criminalizes changing clothes in public parks.⁹⁹ Connecticut does not have sufficient emergency, transitional, or safe haven housing to meet its homeless population’s needs.¹⁰⁰ Many of the individual cities that have

laws on the books criminalizing homelessness also likely do not have sufficient shelter and transitional housing. For example, Manchester currently has no homeless shelters.¹⁰¹ Accordingly, people experiencing homelessness often have no choice but to spend most of their time outside, in violation of local ordinances.

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Laws criminalizing necessary behavior have a daily impact on people experiencing homelessness. For example, Felix, a man interviewed in Hartford who has experienced homelessness on and off for the last fifteen years, described witnessing Hartford police throwing people who had fallen asleep on park benches out of the parks.¹⁰² Paul, a man interviewed in Middletown, was awakened by a police officer for sleeping on a bench in Harbor Park in Middletown in 2008 and required to leave.¹⁰³ The threat of police encounters resulting from necessary behavior, such as sleeping, can be a constant fixture of life for those experiencing homelessness. As Thomas, who has experienced homelessness in New Britain, remarked: “When they make all your activities illegal, then there’s nowhere for you to go.”¹⁰⁴

“When they make all your activities illegal, then there’s nowhere for you to go.”

Without housing, performing life-sustaining functions becomes a criminal act that can carry dangerous consequences. Zoe, a New Haven woman who had been experiencing homelessness for a year at the time she was interviewed, was arrested for going to the bathroom. Police arrested her for disorderly conduct after she urinated next to a church on the New Haven Green, where she had no access to a public restroom.¹⁰⁵ “I had to use the bathroom, and I peed on the side of the church and the pastor came out and called the police on me for desecrating the side of the church.”¹⁰⁶ Because Zoe had an outstanding warrant, she subsequently spent more than a month in jail.¹⁰⁷

Laws and policies that effectively criminalize actions people must perform because of their homeless status constitute cruel and unusual punishment in violation of federal, state, and international law. The U.S. and Connecticut constitutions forbid the infliction of cruel and unusual punishment.¹⁰⁸ U.S. courts have recognized that criminalizing necessary, life-sustaining activities when no alternatives exist may amount to cruel and unusual punishment in violation of the U.S. Constitution’s Eighth Amendment. In 2006, the U.S. Court of Appeals for the Ninth Circuit, a federal appellate court based in California, found that the enforcement of a city ordinance that criminalized sitting, lying, or sleeping on public streets and sidewalks, with no limitations on time or place, violated the Eighth Amendment’s prohibition on cruel and unusual treatment.¹⁰⁹ The court held that the city’s failure to provide an adequate number of beds for its homeless population made the conduct at issue involuntary. In those circumstances, the city was impermissibly criminalizing involuntary behavior.¹¹⁰

A federal judge ruled that “the city’s practice of arresting homeless individuals for harmless life sustaining activities that they are forced to perform in public” violated the Eighth Amendment’s prohibition on cruel and unusual punishment.

Other courts across the country have made similar findings. In Miami, a federal judge ruled that “the city’s practice of arresting homeless individuals for harmless life sustaining activities that they are forced to perform in public” violated the Eighth Amendment’s prohibition on cruel and unusual punishment.¹¹¹ A federal judge in Oregon allowed a class of

homeless individuals to challenge a city’s enforcement of an ordinance prohibiting camping and temporary structures on the grounds that the ordinance violates the Eighth Amendment because it “criminalizes them for being homeless and engaging in the involuntary and innocent conduct of sleeping on public property.”¹¹²

In August 2015, the U.S. Department of Justice filed a statement of interest in an Idaho lawsuit, arguing that it is impossible for people experiencing homelessness in Boise, Idaho to comply with ordinances that prohibit sleeping outside. The government’s statement asserted that when “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,” enforcing “anti-camping ordinances and criminalizing sleeping in public violates the Eighth Amendment, because it is no different from criminalizing homelessness itself.”¹¹³

Foundational human rights treaties that the United States has ratified and bound itself to follow, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), prohibit cruel, inhuman, or degrading treatment or punishment.¹¹⁴ The CAT Committee, the body charged by the CAT with monitoring States’ compliance, has stated that this prohibition is non-derogable, which means that States must enforce it at all times, regardless of exceptional circumstances, even during a state of emergency.¹¹⁵

International human rights experts have stated that laws that effectively criminalize homelessness rise to the level of cruel, inhuman, or degrading punishment. In its 2014 review of U.S. compliance with the ICCPR, the Human Rights Committee – the body of U.N. experts established by the treaty to monitor States’ compliance – observed that laws criminalizing “people living on the street for everyday activities such as eating, sleeping, sitting in particular areas, etc. . . . raised concerns of . . . cruel, inhuman, or degrading treatment.”¹¹⁶ Similarly, the U.N. Special Rapporteur on Extreme Poverty and Human Rights stated that “penalizing certain behaviours and actions, which are associated with living on the street such as sleeping, sitting, lying, littering, lodging, camping or storing belongings in public spaces; public drunkenness; public urination; or jaywalking . . . have serious adverse physical and psychological effects on persons living in poverty, undermining their right to an adequate standard of physical and mental health and even amounting to cruel, inhuman or degrading treatment.”¹¹⁷

The U.N. Independent Expert on the Right to Water and Sanitation, appointed by the U.N. Human Rights Council, likewise found that prohibitions on public urination and defecation and their enforcement against those experiencing homelessness “may amount to cruel, inhuman or degrading treatment” because people experiencing homelessness have no alternative but to perform these functions outside, often in unsanitary conditions.¹¹⁸

The U.S. government has affirmed these legal findings. In a 2012 report, the U.S. Interagency Council on Homelessness said that, in addition to violating domestic law, measures “imposing criminal penalties for engaging in necessary life activities when there are no other public options that exist . . . may also violate international human rights law, specifically the Convention Against Torture and the International Cov-

enant on Civil and Political Rights.”¹¹⁹ During the U.N. Human Rights Council’s Universal Periodic Review process, through which the human rights records of all U.N. Member States are periodically examined, the U.S. government, in response to a recommendation to amend laws criminalizing homelessness, also expressed a commitment to pursue alternatives to criminalization of homelessness.¹²⁰

B. Laws Criminalizing People Based on Their Housing Status Restrict Fundamental Freedoms.

Laws, policies, and practices across Connecticut restrict the fundamental rights of people experiencing homelessness, from the right to move freely throughout public spaces, to the protection against unreasonable seizures of property, to the right to speak freely. These laws, and the policies through which they are enforced, can effectively criminalize people based on their homeless status.

1. The Right to Freedom of Movement

Laws prohibiting loitering criminalize the act of occupying certain public spaces. For people without permanent housing, who often have no place to go, anti-loitering laws penalize necessary behavior and violate the right to free movement. Loitering is generally defined as “to delay an activity with idle stops and pauses; to remain in an area for no obvious reason.”¹²¹ In the United States, loitering laws have traditionally been justified under “the theory that society must have a means of removing the idle and undesirable from its midst before their potential for criminal activity is realized.”¹²² This justification is not only inaccurate, but also discriminatory and harmful.

Of the Connecticut city codes studied for this report, 24 out of 38 contain laws that restrict loitering.¹²³ The broadly worded language of these ordinances could easily encompass a wide range of unavoidable behavior. For example, New Haven’s loitering ordinance provides: “No persons shall assemble idly and remain in crowds upon any footway, sidewalk, or crosswalks in any streets or in any of the public squares of said city, or before any church or public building, or before or within any cemetery in said city.”¹²⁴

Connecticut does not require cities to have enough beds in homeless shelters to accommodate the number of requests each city receives.¹²⁵ Even people who have places in homeless shelters typically must vacate the shelter during the day. Therefore, homeless individuals in Connecticut often have nowhere to go where they can stand, gather, eat, or sleep during the day. As a result, their very existence is criminalized. Interviews conducted for this report suggest that it is not uncommon for police officers to issue loitering citations to individuals experiencing homelessness.¹²⁶ For example, Thomas, a man who had recently experienced years of homelessness in New Britain, explained his citation, stating, “They said it was for loitering I think,

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“They said it was for loitering I think, but how can you loiter in a public place, just walking through the parking lot? They exploited us because we were obviously homeless. And what recourse do you have? There is no recourse.”

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This survey-based evidence of loitering ordinances being enforced by police¹²⁸ is confirmed by police report data. Laws that restrict the freedom of movement are enforced routinely throughout the state. For example, between January 1, 2015, and April 14, 2015, Hartford police recorded 4,581 summonses or arrests for loitering.¹²⁹ Over the same time period, New Britain police recorded 1,284 incidents involving arrest, citation, or police interactions stemming from a loitering violation.¹³⁰

Laws prohibiting where people can stand, lie down, or move through a city, such as the loitering ordinances in Connecticut cities, can violate the fundamental right to freedom of movement. The ICCPR and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) – treaties ratified by the United States – protect the freedom of movement.¹³¹ Likewise, the U.S. Supreme Court has recognized the freedom to travel as a fundamental constitutional right.¹³² The U.S. Court of Appeals for the Second Circuit, which encompasses Connecticut, has found that this right extends beyond inter-state travel to include intra-state travel.¹³³ The Connecticut Homeless Person’s Bill of Rights provides that homeless people have the right to “[m]ove freely in public spaces, including on sidewalks, in public parks, on public transportation and in public buildings without harassment or intimidation from law enforcement officers in the same manner as other persons.”¹³⁴

The U.S. Supreme Court has held that loitering laws might, in some circumstances, violate the freedom of movement: “[T]he freedom to loiter for innocent purposes is part of the ‘liberty’ protected by the Due Process Clause of the Fourteenth Amendment. We have expressly identified this ‘right to remove from one place to another according to inclination’ as ‘an attribute of personal liberty’ protected by the Constitution.”¹³⁵

Federal and state courts have struck down laws criminalizing people’s ability to move freely in public spaces. A U.S. district court in Florida found that “preventing homeless individuals from performing activities that are ‘necessities of life,’ such as sleeping, in any public place when they have nowhere else to go effectively penalizes migration.”¹³⁶ Similarly, another federal district court in New York found that Amtrak’s enforcement of its Rules of Conduct, which resulted in discriminatory expulsion of homeless individuals from Penn Station, infringed on constitutional rights “because enforcement of these Rules of Conduct implicates Plaintiffs’ fundamental freedom of movement.”¹³⁷

A division of the Washington State Court of Appeals held that ordinances “prohibiting eating, sleeping, sitting, or lying down in public may . . . be so broad that they violate the right to travel if they make it impossible for homeless persons to live within the city.”¹³⁸ In January 2016, a municipal court in Washington State struck down an ordinance prohibiting camping in public spaces when “the homeless facilities in [the city] are grossly inadequate and leave no reasonable alternative for a large segment of the homeless population.”¹³⁹ The court held that the law violated the right to travel by making it “impossible for homeless persons to live within the city.”¹⁴⁰

“[T]he freedom to loiter for innocent purposes is part of the ‘liberty’ protected by the Due Process Clause of the Fourteenth Amendment. We have expressly identified this ‘right to remove from one place to another according to inclination’ as ‘an attribute of personal liberty’ protected by the Constitution.”

2. Privacy and Property Rights

Implementation of laws and policies in many Connecticut cities deprives people experiencing homelessness of their rights to property and privacy. For example, New Britain targets shopping carts, often used by homeless individuals to store belongings, as a “public nuisance.”¹⁴¹ Other cities, such as New Haven and Bridgeport, prohibit structures meant for temporary use.¹⁴² New Haven’s city code restricts anyone from “constructing or erect[ing] any building or structure for temporary use.”¹⁴³ Bridgeport’s code, in its Park Use Regulations, similarly prohibits anyone from erecting a building, tent, cabin, or other structure.¹⁴⁴ Of the cities surveyed, 24 out of 38 had ordinances prohibiting unlicensed camping.¹⁴⁵

In enforcing laws prohibiting these types of structures, police departments sometimes conduct sweeps or forced evictions in temporary encampments. These sweeps may involve police instructing those living in encampments to clear out their belongings¹⁴⁶ or may escalate to involve slashing of tents¹⁴⁷ or using bulldozers to clear an area.¹⁴⁸ These tactics make it almost impossible for people experiencing homelessness to keep and store personal possessions and construct necessary temporary shelters. In a 2011 nationwide survey of service providers, advocates, and people experiencing homelessness, 62% of respondents reported a city-sponsored sweep of areas where people experiencing homelessness lived.¹⁴⁹ These sweeps can occur without notice and without protection of people’s property.¹⁵⁰

In Middletown, Robert, who had experienced homelessness for three years at the time of his interview, described a sweep on a temporary encampment. He stated that the “idea was to run us out of town or destroy our property.”¹⁵¹ Robert and a few friends had set up camp in the woods behind the State’s Veteran’s Cemetery in Middletown. “They slashed up the tents and left a sign that said we had 24 hours to get off the property.”¹⁵² As Robert explained, the police did not issue citations in this instance, but, instead, destroyed and confiscated property, including carpenter tools that Robert used for part-time work.

After a New Haven overflow shelter closed in 2014, a group of unsheltered individuals created an encampment on a piece of vacant public land. Mark Colville, a local service provider, explained: “We weren’t asking the city for anything except for the right of people to take refuge on unused public land. Well, it took about a day and a half before the city came and tore it up. They destroyed our tents and evicted everybody. And a couple of us who refused to leave were arrested and charged with trespassing.”¹⁵³ The homeless individuals relocated to another plot of vacant public land, and “the same thing happened.”¹⁵⁴ People experiencing homelessness, service providers, local advocates, and police officers interviewed in Manchester and New Haven described experiences with sweeps.¹⁵⁵

Sweeps deprive people experiencing homelessness of shelter, destroy their possessions, and prevent them from being able to improve their situations. They also contribute to the sense of insecurity that those living in homelessness often feel. Logan, a Manchester man experiencing homelessness, described police sweeps of encampments: “One day they came by and said ‘you are alright for now.’ One day later they came by and said ‘you have 24 hours to move.’”¹⁵⁶

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Federal and state courts have found police seizure and destruction of homeless people’s belongings to violate Fourth Amendment privacy and property rights. The Ninth Circuit Court of Appeals found that Los Angeles’s practice of seizing and immediately destroying temporarily unattended possessions belonging to homeless people living on “Skid Row” violated the Fourth and Fourteenth Amendments.¹⁵⁷ Upholding an injunction preventing this practice, the court held that even if the plaintiffs violated city ordinances by momentarily leaving their belongings on public sidewalks, “the seizure and destruction of [their] property remains subject to the Fourth Amendment’s reasonableness requirement.”¹⁵⁸

Similarly, a federal judge in Fresno, California, concluded that the city’s practice of conducting sweeps of homeless encampments and immediately destroying any property found violated the Fourth Amendment.¹⁵⁹ The court was particularly troubled by the fact that “the City [was] seizing from homeless people the very necessities of life: shelter, medicine, clothing, identification documents, and personal effects of unique and sentimental value.”¹⁶⁰ These items included a woman’s “grandmother’s wedding band,” seized as she left her belongings unattended while she went to run errands, including showering and eating breakfast;¹⁶¹ a fully-functioning bicycle;¹⁶² and one man’s “antique stamp collection, letters from his father, birthday cards to which he looked for an inspiration, and [an] urn containing the ashes of [his fiancée’s] granddaughter.”¹⁶³ The court concluded, “The City’s seizure of homeless people’s personal property without probable cause and the immediate and permanent destruction of such property without a method to reclaim [it] . . . violates the Fourth Amendment.”¹⁶⁴

“The City [was] seizing from homeless people the very necessities of life: shelter, medicine, clothing, identification documents, and personal effects of unique and sentimental value.”

Connecticut’s highest court has likewise held that property belonging to people experiencing homelessness is protected from unreasonable searches and seizures. The court held that since a homeless defendant treated a bridge abutment where he stored his belongings as his home, police officers’ warrantless search and seizure of his property violated his Fourth Amendment rights.¹⁶⁵ The Fourth Amendment thus ensures that a person’s homeless status does not deprive him or her of the rights to property and privacy. Moreover, the Connecticut Homeless Person’s Bill of Rights states, “Each homeless person in this state has the right to have a reasonable expectation of privacy in his or her personal property.”¹⁶⁶

3. The Right to Freedom of Assembly

Sweeps of tent cities also restrict the right to freedom of assembly. For people experiencing homelessness, tent cities are not only “a matter of necessity” for obtaining physical protection from the elements; they are also “a form of protest—a refusal to remain invisible. In tent cities, homeless individuals are able to form communities in which they can find companionship, respect, safety, autonomy, and a sense of dignity.”¹⁶⁷ Laws and policies that target these communities for destruction violate homeless individuals’ rights to assemble freely.

Laws prohibiting people from loitering in public spaces can similarly infringe on homeless people’s abilities to assemble. For example, as noted previously, New Haven’s loitering ordinance provides that “[n]o persons shall assemble idly and remain in crowds upon any footway, sidewalk, or crosswalks in any streets or in any of the public squares of said city, or before any church or public building, or before or within any cemetery in said city.”¹⁶⁸ Such loitering laws may infringe on the freedom of assembly

by permitting police to break up gatherings that can be an expression of community and protest. In addition to restricting homeless people’s freedom of physical movement, the “erasure of homelessness from places of visibility also interferes with the expressive power associated with the freedom of assembly.”¹⁶⁹ People experiencing homelessness typically do not have access to resources to communicate their needs to the public. Preventing them from gathering in these spaces “den[ies] homeless people one of the few public forums where their concerns might be conveyed, discussed, and addressed.”¹⁷⁰

The “erasure of homelessness from places of visibility also interferes with the expressive power associated with the freedom of assembly.”

These practices and prohibitions violate the right to freedom of assembly enshrined in the First Amendment of the U.S. Constitution and Article 21 of the ICCPR.¹⁷¹ International legal authorities have affirmed a presumption in favor of allowing people to assemble temporarily for a specific purpose.¹⁷²

By preventing people from gathering in public spaces, restrictions on loitering and sweeps of encampments can violate this fundamental right.

4. The Right to Free Speech

Individuals experiencing homelessness may be forced to resort to soliciting money or food from the public in order to survive. Jake, a Hartford man experiencing homelessness, has had nearly thirty encounters with police for panhandling. He stated that police “tell me I cannot panhandle, I cannot stand in the corner for too long or I will be ticketed or go to jail. I have to keep moving to different locations and different areas, but they always follow you and catch up with you.”¹⁷³ As Carol, a New Haven woman, explained: “What are you going to do when you’re hungry? There are soup kitchens, but it uses all my energy and food to get there. So I just hold a sign that says I need help.”¹⁷⁴

“What are you going to do when you’re hungry? There are soup kitchens, but it uses all my energy and food to get there. So I just hold a sign that says I need help.”

Of the 38 Connecticut city codes studied for this report, 12 restrict panhandling.¹⁷⁵ Cities continue to pass panhandling ordinances. Four of these cities – East Hartford, Enfield, New Britain, and South Windsor – passed ordinances prohibiting or regulating panhandling in the last two years.¹⁷⁶ Panhandling ordinances in Bridgeport, Middletown, New Britain, and Hartford all specify the content of the speech that is outlawed: asking a passerby for money or other things of value in a public space. Bridgeport and Hartford both define asking, begging, or soliciting alms as “spoken, written or printed word or such other act conducted for the purpose of obtaining an immediate donation of money or thing of value.”¹⁷⁷ Middletown and New Britain make it illegal to “ask, beg, or solicit alms, including money and other things of value, in an aggressive manner in any place open to the general public.”¹⁷⁸ New Britain’s panhandling ordinance also prohibits a broad swath of “aggressive behaviors,” including “[r]ecklessly approaching, speaking to, or following a person in a manner which would cause a reasonable person to fear bodily harm.”¹⁷⁹ Other cities that do not have ordinances explicitly prohibiting panhandling use different laws to fine individuals asking for money on the street. For example, New London has begun posting no-panhandling signs and issuing \$250 tickets based on a city law that prohibits vending or soliciting funds without a permit.¹⁸⁰ Such restrictions infringe on the right to freedom of speech of the person soliciting donations.

Panhandling ordinances prohibit people without financial means from using spoken or written words to ask for money. This effectively criminalizes the speech of people experiencing homelessness, in violation of free speech protections under the U.S. Constitution, Connecticut Constitution, and the ICCPR.¹⁸¹

In 2015, the U.S. Supreme Court held that laws regulating signs are presumptively unconstitutional and may be upheld only if they are narrowly tailored to serve compelling state interests.¹⁸² The U.S. Supreme Court then ordered a Massachusetts federal district court to review a challenge to a panhandling ordinance in light of this decision.¹⁸³ On review, the district court held that the panhandling law was not narrowly tailored and therefore violated the First Amendment.¹⁸⁴ The Seventh Circuit Court of Appeals, a federal court in Colorado, and another Massachusetts federal court have similarly held that laws prohibiting panhandling violate First Amendment rights.¹⁸⁵ These courts have determined that the government’s stated interest in promoting public safety is not sufficiently compelling to justify these laws and that the laws were not the least restrictive means of achieving this objective.

In a Massachusetts case, a federal district court struck down the city of Lowell’s aggressive panhandling ordinance, finding that “Aggressive Panhandling provisions regulate expressive conduct that is protected by the First Amendment.”¹⁸⁶ The court went on to explain that “[a]n aggressive, perhaps disconcerting and indeed frightening, panhandler still conveys messages related to need and deprivation or, in the City’s characterization, about the alternative lifestyle of panhandling.”¹⁸⁷ The court noted that much of the conduct the aggressive panhandling law prohibited – such as assaulting another person – is already unlawful. These provisions only “subject those who assault while engaged in particular expressive acts [panhandling] to increased liability.”¹⁸⁸ Moreover, the court determined that other provisions in the challenged law that prohibited “non-criminal, allegedly coercive behaviors” such as “panhandling after a person has given a negative response” were impermissible because such provisions are not narrowly tailored.¹⁸⁹

The court noted that much of the conduct the aggressive panhandling law prohibited—such as assaulting another person—is already unlawful.

In the wake of this recent jurisprudence, the panhandling ordinances passed by New Britain and other Connecticut cities invite constitutional challenges. New Britain’s aggressive panhandling ordinance is similar in its language to the ordinance struck down by the Massachusetts federal district court; for example, both ordinances prohibit a person from continuing to ask for money after a person has given a negative response.¹⁹⁰ During the April 26, 2016 New Britain City Council subcommittee meeting, where the proposed ordinance was debated, an attorney for the city of New Britain cautioned that the ordinance could be challenged as unconstitutional and the city could incur legal costs as a result.¹⁹¹

An attorney for the city of New Britain cautioned that the ordinance could be challenged as unconstitutional and the city could incur legal costs as a result.

C. Laws Criminalizing Homelessness Are Broadly Worded, Which Leads to Arbitrary Enforcement.

Laws criminalizing homelessness in Connecticut are vague, covering a wide range of behaviors and failing to precisely define those behaviors. Because police cannot enforce every violation of these broad and vague ordinances, they must exercise their discretion in deciding how and where to enforce these laws.

This results in arbitrary enforcement. The combination of ambiguous laws and arbitrary enforcement creates a constant threat of criminal consequences, which is both harmful and unlawful.¹⁹²

1. Vague Ordinances in Connecticut Cities Give People Inadequate Notice of When Their Conduct Violates the Law.

Ordinances enforced against people experiencing homelessness are often broadly worded, leaving people unsure of when their conduct violates the law. Loitering ordinances are the most prevalent example of vague laws that are frequently enforced against individuals experiencing homelessness. However, other laws, such as those prohibiting nuisances on public ways¹⁹³ or disorderly conduct¹⁹⁴ are often also too broadly written to give people fair notice of when their behavior is illegal. This lack of clarity about what the law prohibits can lead to constant uncertainty and fear of criminal consequences for people experiencing homelessness.

Cities across Connecticut, as in most other states, have ordinances that prohibit loitering.¹⁹⁵ These ordinances are often defined in overly broad or vague terms, fail to give notice that a person's conduct is unlawful, and allow for arbitrary enforcement. For example, Hartford's municipal code defines loitering as "standing around, moving slowly about, spending time idly, sauntering, delaying, lingering or lagging behind,"¹⁹⁶ and New Britain defines loitering as "remaining idle in essentially one location and shall include the concepts of spending time idly, loafing, or walking about aimlessly, and shall also include the colloquial expression 'hanging around.'"¹⁹⁷ As these examples illustrate, vague laws potentially proscribe a wide range of conduct in which any resident might partake without realizing that the behavior is prohibited. In contrast, an example of a law that is not vague is one that requires a person to have a valid driver's license – it would be obvious to drivers whether or not they are complying with this law.

"Sometimes I will be sitting in the park and [a] police officer on bike may ride up to me and say 'what are you doing here' and say 'you gotta go.' Why? It's a public park. [But] since I don't want to be put through the system. . . I will always move."

Because these ordinances are so broadly worded, people experiencing homelessness have no way of knowing whether their conduct – from standing outside of a shelter to sitting on a park bench – will ultimately lead to a citation or even arrest. This creates an environment in which simply living in public spaces makes people perpetually fear interacting with law enforcement. Twenty-six of the individuals experiencing homelessness interviewed for this report had, at some time, been asked by police to move from public spaces.¹⁹⁸ Kevin, a Hartford man who has been intermittently homeless for almost three years and tries to avoid the police because they constantly ask him to move, explained, "They say, either you get your ass [up], you move your ass, or you're going to jail."¹⁹⁹ Robyn, who has been homeless in New Britain for nearly two decades since she ran away from home at age eighteen, discussed the ever-present fear of law enforcement interaction: "If they see you sitting down, you'll get loitering. We're all risking loitering charges."²⁰⁰

"If they see you sitting down, you'll get loitering. We're all risking loitering charges."

Police sometimes give people no explanation of why – or under what law – individuals are required to move.²⁰¹ This compounds their insecurity. Harold, who has been homeless on and off for the past decade, floating between parks and

shelters in Hartford, explained: “Sometimes I will be sitting in the park and [a] police officer on bike may ride up to me and say ‘what are you doing here’ and say ‘you gotta go.’ Why? It’s a public park. [But] since I don’t want to be put through the system, . . . I will always move.”²⁰²

2. Loitering Laws Are Enforced Arbitrarily.

Since these ordinances are so broadly worded, police officers cannot, and do not, enforce every instance of loitering.²⁰³ Instead, they have discretion regarding what type of enforcement action – if any – to take.²⁰⁴ This inconsistent application of laws contributes to uncertainty and pervasive fear of criminal consequences among people experiencing homelessness.

Carol, a recovering heroin addict who had been homeless for two years in New Haven, described how the police reacted in three different ways to her holding a sign asking for help. The first time a police officer came across her with this sign, she was arrested for disorderly conduct; the second time, she received a traffic violation citation; and the third time, the police officer let her go after hearing that the judge had dropped the disorderly conduct charge.²⁰⁵ This inconsistency can make enforcement of ordinances feel arbitrary.

Daniel, who has cycled in and out of homelessness since 2008, described receiving a ticket for loitering in a bus station in Hartford, where he had gone to charge his phone: “The funny thing is they came for someone else and they just happened to look at me and came over to me.”²⁰⁶

Ordinances prohibiting activities such as loitering are also sometimes enforced capriciously. Thomas described an instance in which police officers issued a loitering charge in retaliation for his work organizing a rally for the Homeless Person’s Bill of Rights in New Britain on July 4, 2012. The police unsuccessfully attempted to shut down the rally, and later that day they sought out the organizers of the rally under a bridge and issued them all loitering tickets.²⁰⁷

Gordon recounted an incident in which he believed a Hartford police officer unfairly issued a loitering charge as a pretext to force him to leave a public space: I was waiting for the shelter to open and I was literally in front of the shelter on the sidewalk. An officer came flying by in his car and accused me of urinating, which I obviously wasn’t. I wasn’t under the influence of alcohol or drugs or anything. And he insisted on handcuffing me. I explained that I live right here. This particular officer is notorious. He eventually gave me a ticket for loitering.²⁰⁸

This arbitrary enforcement undermines faith in the rule of law and causes many people experiencing homelessness to fear or resent the police. Isaac suffers from mental health issues, which are exacerbated by interactions with law enforcement officers, who often ask him to move from public places in Hartford. “I have depression and I’m bipolar, and I can’t stand being harassed by [the police] so many times,” he said.²⁰⁹ Tyler has cycled through periods of homelessness in New Haven since 1998 and has been arrested or cited many times for “using a place as shelter to sleep, sleeping outside, and walking in the wrong area.”²¹⁰ He said that, as a result, “I try to stay away from the police completely. I think they are terrible.”²¹¹ Susan, who has been homeless since July 2015 and received a citation for sleeping near a church on the

New Haven Green in the summer of 2015, reported, “There’s places I can’t even walk without fear of getting arrested. But where else do we go? There are a few bad apples [among people experiencing homelessness], but most of us are just trying to stay out of trouble until we get housing, just dipping and dodging, dipping and dodging.”²¹²

“Most of us are just trying to stay out of trouble until we get housing, just dipping and dodging, dipping and dodging.”

Zoe, who had been homeless for about a year, described how police, in addition to threatening loitering citations, arbitrarily accuse homeless women of being prostitutes for simply standing outside in certain areas. She told us about being wrongfully arrested for prostitution in New Haven, just for having no place to go: “I was standing talking to someone, having a conversation where a lot of prostitution happens. . . . I didn’t have any condoms on me, but the police in New Haven are ridiculous.”²¹³ Police records from New Britain describe similar instances in which police issued loitering citations to women living on the street on suspicion of prostitution.²¹⁴

3. Vague Laws and Arbitrary Enforcement Violate State, Federal, and International Law.

The enforcement of these broadly worded ordinances can, in some circumstances, violate U.S. and international law, both of which prohibit vague laws because of their potential for arbitrary enforcement.

Under the U.S. Constitution, a law “fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits.”²¹⁵ Where loitering laws fail to define the term “loitering” or the circumstances under which the law will apply or to set out a standard by which a reasonable person (and an enforcing police officer) could determine what conduct constitutes unlawful loitering, courts may declare that such laws are invalid for being unconstitutionally vague.

In *Chicago v. Morales*, the Supreme Court found a Chicago ordinance criminalizing loitering by gang members to be unconstitutionally vague because it failed to provide fair notice of prohibited conduct and failed to establish minimal guidelines for enforcement.²¹⁶ Observing that “the term ‘loiter’ [was] defined as remaining in one place ‘with no apparent purpose,’” the Court held that “the vagueness that dooms this ordinance is not the product of uncertainty about the normal meaning of ‘loitering,’ but rather about what loitering is covered by the ordinance and what is not.”²¹⁷ Federal courts have struck down similarly vague ordinances, based on this standard.²¹⁸

Vague laws are impermissible because they are likely to be arbitrarily enforced. In *Papachristou v. City of Jacksonville*, the Supreme Court held that a vagrancy ordinance was unconstitutionally vague because it failed to provide fair notice of what behavior was illegal, made normally innocent behavior criminal, and placed almost unfettered discretion in the hands of the police – leading to erratic and arbitrary arrests and convictions.²¹⁹ “Where, as here, there are no standards governing the exercise of the discretion granted by the ordinance,” the Court held, “the scheme permits and encourages an arbitrary and discriminatory enforcement of the law. It furnishes a convenient tool for ‘harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure.’”²²⁰

Vague loitering laws also violate Connecticut state law.²²¹ In *State v. McKoy*, the Superior Court of Connecticut at Hartford held that “a loitering statute must provide sufficiently definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement.”²²² The court explained that in order for Hartford’s loitering law to be considered valid, and not impermissibly vague, it had to be interpreted to require some evidence of “intentional impeding or interfering with others’ use of the sidewalk.”²²³

“A loitering statute must provide sufficiently definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement.”

Similarly, international human rights law requires that laws be written in a specific enough manner to prevent arbitrary application. Article 9(1) of the ICCPR provides, “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”²²⁴ The U.N. Human Rights Committee has cautioned that “[a]ny substantive grounds for arrest or detention . . . should be defined with sufficient precision to *avoid overly broad or arbitrary interpretation* or application.”²²⁵ The U.N. Special Rapporteur on Extreme Poverty and Human Rights expressed concern that laws criminalizing homelessness are often “vaguely worded, allowing law enforcement agencies extensive discretion and enforcement authority, which threatens to violate legal and constitutional safeguards.”²²⁶

The U.N. Special Rapporteur on Extreme Poverty and Human Rights expressed concern that laws criminalizing homelessness are often “vaguely worded, allowing law enforcement agencies extensive discretion and enforcement authority, which threatens to violate legal and constitutional safeguards.”

Broad loitering ordinances in Connecticut cities tend to violate state, federal, and international law because they do not give adequate notice of what conduct is prohibited and do not provide the police and the public with clear enforcement standards. Even laws that provide a definition of loitering or that prohibit loitering in specific situations are potentially unlawful. For example, Hartford defines loitering as “standing around, moving slowly about, spending time idly, sauntering, delaying, lingering or lagging behind.”²²⁷ This definition is so broad that it would apply to almost everyone’s routine behavior and cannot reasonably be deemed to satisfy U.S. and international requirements that laws give notice of the conduct prohibited.

Moreover, police officers in New Britain, New Haven, and Manchester suggested in interviews that discretion over enforcement of certain local ordinances, such as those prohibiting loitering, is left to individual officers, rather than guided by department-wide rules.²²⁸ A lack of specific enforcement standards heightens concerns about arbitrary enforcement of vague laws.

D. Laws Criminalizing Homelessness Are Discriminatorily Enforced and Have a Disparate Impact.

Vague laws that provide enormous discretion to police officers raise concerns about equal protection under the law. Laws that do not ostensibly target homeless populations can nonetheless be deployed disproportionately – and discriminatorily – against those experiencing homelessness. Ordinances that proscribe behavior in which people experiencing homelessness are more likely to engage can lead to disproportionate enforcement of these laws against those without housing. These laws include restrictions on drinking

in public; sleeping on benches, grass, or sidewalks; changing clothes in public; picnicking or camping; bathing or using public water faucets in parks for washing; and panhandling. Moreover, these laws disproportionately affect people of color, transgender people, and people with disabilities, all of whom experience homelessness at higher rates.

Discretion is an important aspect of law enforcement, allowing police officers to assess diverse situations and determine whether and what type of enforcement action they call for.²²⁹ But discretion can also lead to arbitrary and discriminatory law enforcement.²³⁰ Cities in Connecticut do not always require police to track housing status in their arrest data, which makes it difficult to document arrest characteristics and identify patterns of enforcement.²³¹ However, many people interviewed for this report expressed that they feel targeted by police just for being homeless.²³²

Nelson, a young man experiencing homelessness, explained that when he first arrived in Manchester, he felt like the police were profiling him or keeping tabs on his whereabouts: “They wanted to run your information when they see you around in places where there’s higher crime or drug problems.”²³³ Robert, who had recently experienced homelessness in Middletown, explained, “After a couple of contacts, they started realizing that I was homeless and I was marked as homeless.”²³⁴

For some people, being “marked” as homeless has led to disparate enforcement of certain laws. Tyler took shelter in a Dunkin Donuts on a rainy day in New Haven and bought a cup of coffee. After two hours, the police kicked him out. The situation was “crazy because there were other people who were there longer than me,” he said, including a man who did not even buy anything.²³⁵

Susan, who has been homeless since July, stores her belongings in the woods because “the more stuff you walk with, the more likely you are to be stopped by the cops.”²³⁶ To avoid this stigma, Carol tries to “look” like she has a home: “Once I shower and get dressed I look normal. I purposely don’t wear a backpack” to avoid being approached by the police.

Laws that prohibit drinking in public—a prohibition that is widespread²³⁸ and actively enforced²³⁹ in Connecticut—can disproportionately impact those experiencing homelessness. Public consumption of alcohol laws are not impermissibly vague like other laws that affect people experiencing homelessness. However, they prohibit conduct—drinking in public—in which those without places to privately drink are more likely to engage.

Many individuals interviewed believe that laws prohibiting drinking in public are discriminatorily enforced against people who appear to be homeless.²⁴⁰ Daniel, who has been intermittently homeless in Hartford since 2008, expressed his perception of police hypocrisy when he described seeing groups of “white people sitting on the street drinking” at 11 a.m. right in front of the police during the Hartford Saint Patrick’s Day parade, after he had been arrested for drinking in a bus stop.²⁴¹

Thomas, a formerly homeless man and an advocate for homeless people’s rights in New Britain, echoed this sentiment: “One time I was drinking beer at 10 a.m., and they threw three of us in jail. It was the same day as Mainstreet USA, so there were a million people drinking outside, but they chose us.”²⁴² “Now you can’t treat people differently in the park because they’re homeless,” he continued. “You can’t come up

to me and not the others because I'm homeless. That is my house. What if I said come by my house and have a couple of beers because I haven't seen you in a couple years? I can't do that because I don't have a house. So it's against the law."²⁴³

Connecticut, federal, and international law guarantee all persons the right to be treated equally under the law. The Connecticut Homeless Person's Bill of Rights confers specifically on people experiencing homelessness the right to receive equal treatment by state and local law enforcement agencies.²⁴⁴ In addition, the Fourteenth Amendment of the U.S. Constitution requires equal protection under the law.²⁴⁵ The U.N. Human Rights Committee has interpreted the ICCPR's prohibition against discrimination to include discrimination on the basis of economic and social status.²⁴⁶

The U.N. Special Rapporteur on Extreme Poverty and Human Rights emphasized that even facially neutral ordinances disproportionately affect people experiencing homelessness:

Owing to their lack of or limited access to housing, persons living in poverty rely more heavily on public spaces for their daily activities. Thus, individuals who have no choice but to live on the street find that daily life-sustaining activities can put them in danger of criminal sanctions. . . . This disproportionate application clearly violates the obligation to ensure equality and non-discrimination in the implementation of all laws and policies.²⁴⁷

Disparate Impact on Already-Vulnerable Populations

Within the homeless community, already-vulnerable populations such as people of color, transgender people, and people with disabilities are disproportionately affected by laws criminalizing homelessness.

African-Americans in Connecticut are more likely to be arrested generally than whites. In New Haven, in 2011 and 2012, African-Americans were arrested at a rate more than twice as high as non-African-Americans.²⁴⁸ In Middletown, in 2011 and 2012, 182.3 out of every 1,000 African-Americans were arrested, compared with just 48.8 out of every 1,000 non-African-Americans.²⁴⁹ Although Connecticut does not have reliable data on homelessness status and race in arrest records, interviewees described this disparate impact. Nathan, a white man who finally secured housing in Manchester after a decade of homelessness, told us: "Yeah, I've been discriminated against [by the police], but pretty much I haven't [been]. If I were black or of Puerto Rican descent, I would probably have been more discriminated against."²⁵⁰

In New Haven, in 2011 and 2012, African-Americans were arrested at a rate more than twice as high as non-African-Americans.

Racial discrimination in the enforcement of criminal law violates U.S. and international law. Under federal law, racial discrimination can be challenged under the Fourteenth Amendment's Equal Protection Clause.²⁵¹ The Connecticut Constitution similarly prohibits discrimination based on race.²⁵² Both the ICCPR and CERD, foundational human rights treaties that the United States has ratified, likewise proscribe racial discrimination.²⁵³

In 2014, in its most recent assessment of U.S. compliance with its obligations under the ICCPR, the U.N. Human Rights Committee expressed concern about “reports of criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas, etc.” and noted that “such criminalization raises concerns of discrimination.”²⁵⁴ This echoed misgivings raised during the Committee’s previous review of the United States in 2006, highlighting “reports that some 50% of homeless people are African American although they constitute only 12% of the United States population.”²⁵⁵ Similarly, in its 2014 periodic review of U.S. compliance with the CERD, the CERD Committee expressed concern with “the high number of homeless persons, who are disproportionately from racial and ethnic minorities, particularly African Americans, Hispanic/Latino Americans and Native Americans, and at the criminalization of homelessness through laws that prohibit activities such as loitering, camping, begging, and lying down in public spaces.”²⁵⁶

Similarly, transgender individuals – in particular, transgender youth and transgender women of color – are more likely than the general population to be homeless.²⁵⁷ Moreover, according to a 2011 study, nearly one in three transgender people who had tried to access a homeless shelter reported being denied access due to their gender identity.²⁵⁸ They are also at heightened risk for arrest for behavior such as sleeping in public spaces.²⁵⁹ Connecticut law prohibits discrimination against people on the basis of their gender identity in areas including employment, housing, education, public library access, and state services and licensing.²⁶⁰

The criminalization of homelessness also disproportionately affects people with disabilities,²⁶¹ in violation of U.S. and international law. The Americans with Disabilities Act prohibits discrimination on the basis of disability, including mental health disabilities.²⁶² So does the U.N. Convention on the Rights of Persons with Disabilities, which the United States has signed but not yet ratified.²⁶³ In Connecticut, chronically homeless people often have physical disabilities or mental health issues that make it difficult to stay housed.²⁶⁴ Enforcement of laws that criminalize homelessness may therefore especially impact people with physical, mental, and mental-health disabilities.

Connecticut city ordinances that criminalize behavior such as loitering, drinking in public, or sleeping on benches are harmful and unlawful because they may be discriminatorily enforced against those experiencing homelessness. Furthermore, many laws that criminalize homelessness also have a disproportionate impact on other vulnerable categories of people, contributing to already entrenched discrimination on the basis of race, gender identity, or ability.

VII. Policy Analysis: The Criminalization of Homelessness Is Unnecessary, Costly, and Counterproductive

States across the country and the federal government are recognizing that cities cannot rely upon the criminal justice system to address homelessness. The enforcement of laws criminalizing homelessness, and the justifications for enforcing those laws, can be seen as a vestige of the “broken windows” approach to law enforcement.²⁶⁵ In the 1990s, many police departments invested in prosecuting low-level violations, such as vandalism or toll-jumping, under the theory that this contributed to an overall lawful atmosphere and prevented more serious crimes from being committed.²⁶⁶ But in practice, this approach, particularly as it applies to crimes related to homelessness, has proven expensive and counterproductive.²⁶⁷

Proponents of laws that criminalize homelessness have generally argued that these laws are necessary to preserve public safety and to foster economic development.²⁶⁸ These rationales reflect a common perception, as one legal scholar has summarized, that the “mere presence of . . . homeless in the public sphere has the effect of unraveling the social order, leading to an increase in crime and thereby driving middle- and upper-class consumers out of downtown areas.”²⁶⁹ Such concerns motivated the New Britain City Council to pass an aggressive panhandling ordinance in April 2016, as part of an effort to revitalize its downtown area.²⁷⁰ In other words, it is the fear of homeless people – not any actual danger posed – that matters. From this perspective, policies criminalizing homelessness spring from lawmakers’ need to avoid the mere perception of a safety or economic threat.

In other words, it is the fear of homeless people – not any actual danger posed – that matters.

Some police officers and policymakers in Connecticut similarly justified laws that criminalize homelessness as promoting public safety.²⁷¹ A number of police officers also noted a need to ensure public spaces are sanitary and to protect businesses from the risk that the visibility of homelessness may deter other customers.²⁷² As a New Britain police officer said, “You need some sort of bite in order to be able to move someone along.”²⁷³

As an initial matter, it is unnecessary to pass and enforce laws that criminalize homelessness in order to maintain public safety. If no city in Connecticut had loitering, panhandling, or drinking-in-public ordinances, police could still arrest a person if their behavior became unsafe or violent under Connecticut laws prohibiting specific violent behavior, such as robbery.²⁷⁴ In fact, laws criminalizing homelessness have actually been associated with increases in violent acts against those perceived as homeless.²⁷⁵ Several people living in homelessness who were interviewed for this report described avoiding police at all costs because of their experiences with police officers enforcing laws that criminalize homelessness; these laws and their enforcement, then, can erode trust in police, making the homeless community less likely to report crimes or other public safety threats.²⁷⁶

“[H]anding out a \$99 ticket to someone who has no money just does not make sense.”

Criminalizing behavior associated with homelessness is also ineffective. In a hearing leading up to the passage of New Britain’s aggressive panhandling ordinance, a community member noted that “handing out a \$99 ticket to someone who has no money just does not make sense.”²⁷⁷ Interviews with people living in homelessness in New Britain revealed that individuals there are often told to move from the same areas and are cited or arrested multiple times – even dozens of times – for the same behavior.²⁷⁸ Robyn, a New Britain woman experiencing homelessness, explained that she had spent 90 days in jail as a result of 33 citations

for drinking in public. “I gotta do one night for each of them,” she said. “They pick me up and I do a night in jail and I had 33 tickets built up and spent 90 days in jail.”²⁷⁹

Police officers themselves recognize the futility of citing and arresting people for offenses related to their homeless status. “An arrest quite frankly doesn’t fix the problem,” a New Britain police officer told us. “It’s the definition of insanity: beating your head over and over and thinking you’re going to get a different outcome. We’re not going to fix the problem and get a different result by arresting these people.”²⁸⁰ New Britain Police Chief James Wardwell expressed the same sentiment when asked during a public hearing on April 26, 2016 whether he believed New Britain’s proposed aggressive panhandling ordinance would help the police department to address aggressive panhandling behavior in New Britain. He responded, “The ordinance itself probably won’t help. . . . We are never going to arrest our way out of this issue. . . . We need community support.”²⁸¹

Some police officers reported feeling pressure from other community members to enforce these laws, despite acknowledging that criminalization is not a solution to homelessness. A police official in New Britain reflected that pressure comes primarily from local businesses: “If I see someone asking customers for money, I usually tell them to move along. But if I don’t issue a ticket, storeowners complain to the supervisor or mayor and then I get in trouble.”²⁸² A police officer in New Haven described having a similar experience.²⁸³ Although these officials recognized that handing out citations for loitering or drinking in public would not end homelessness, they expressed a feeling that they had no other choice, because of pressure from local businesses and the lack of other tools to help the homeless population.²⁸⁴

Criminalizing homelessness is not only futile; it is extremely harmful. Laws criminalizing homelessness are often enforced against vulnerable populations.²⁸⁵ The devastating impact of this enforcement on their lives and well-being is disproportionate to the laws’ purported goals. The U.N. Special Rapporteur on Extreme Poverty and Human Rights described the disproportionate effects of even temporary detention on people experiencing homelessness: “Detention and incarceration, even for minor nonviolent offenses, will often result in the temporary or permanent withdrawal of social benefits or the denial of access to social housing, for both the detainee and his or her family. . . . [The individual] will be subject to added social stigmatization and exclusion, diminishing even further [his or her] prospects of escaping poverty.”²⁸⁶

Entanglement with the Criminal Justice System Can Impair Access to Housing:

A brief period in custody cost Tyler, a New Haven man who had previously been homeless for four years, his home. Tyler explained that, after an arduous process, he had finally found housing in a facility where if residents did not return within 36 hours, they would lose their spot. After he was held in custody for more than 36 hours for an incident that was the result of his mental health condition, Tyler lost his place in the residence. He said, “The cops, the parole officer, and the psych hospital did not care. I lost a place that took me months to find. I lost housing.”²⁸⁷

“An arrest quite frankly doesn’t fix the problem,” a New Britain police officer told us. “It’s the definition of insanity: beating your head over and over and thinking you’re going to get a different outcome. We’re not going to fix the problem and get a different result by arresting these people.”

Criminalizing homelessness is also costly. Studies have found that it is more expensive for taxpayers to jail those experiencing homelessness than to provide shelter.²⁸⁸ Cities spend, on average, \$87 per day to jail a person, compared with \$28 per day to provide them with shelter.²⁸⁹

The U.S. government has recognized that criminalization measures come at a great cost to both the homeless population and the general public. The U.S. Interagency Council on Homelessness has stated that measures criminalizing behavior associated with homelessness “punish people who currently live on the street and do nothing to reduce the factors contributing to homelessness.”²⁹⁰ Congress also recognized that laws that criminalize homelessness are undesirable when it passed the Helping Families Save Their Homes Act of 2009, “which requires the federal Interagency Council on Homelessness (ICH) to devise constructive alternatives to criminalization measures that can be used by cities across the country.”²⁹¹ In September 2015, the Department of Housing and Urban Development began requiring local Continuum of Care programs to describe steps they are taking to reduce the criminalization of homelessness in their applications for federal funding.²⁹² Some members of the business community have also recognized that ending homelessness, rather than merely displacing those without housing through laws that criminalize homelessness, is good for the economy.²⁹³

VIII. Alternatives to Criminalization

Municipalities across the country have implemented alternatives to criminalization. These alternatives typically consist of (1) increasing access to housing; (2) initiating programs to connect people with social services; and (3) developing alternative sentences for homeless people charged with crimes. These programs represent positive steps but should be paired with decriminalization. Otherwise, the vicious cycle of poverty, homelessness, and criminal consequences will continue.

First, recognizing that people will not have to sleep in public spaces if they have housing, cities have worked to expand housing options.²⁹⁴ For example, Salt Lake City, Utah reduced chronic homelessness by 91% using a “Housing First” model designed to efficiently move people experiencing homelessness into permanent supportive housing units.²⁹⁵ Instead of arresting people for offenses related to their homeless status, or making people enroll in drug or mental health treatment before they are eligible for government housing, Utah’s program provides apartments to chronically homeless individuals as quickly as possible, and then addresses the underlying causes that led to their homeless status.²⁹⁶ “Housing First” and other programs can be effective at making homelessness rare, brief, and non-recurring, and therefore reducing contact with the criminal justice system that results from people living on the street.

In addition to housing-first solutions, in response to large numbers of people living in tent encampments, some cities have created city-sponsored camping sites. For instance, in 2007 Ontario, California created the Temporary Homeless Services Area, an organized encampment where the city provided water, portable toilets, tents, and other basic necessities.²⁹⁷ Similarly, Seattle, Washington has sanctioned a series of portable tent encampments as part of the state’s 10-year plan to end homelessness.²⁹⁸ The rotating nature of the camps can reduce complaints from homeowners who do not want to live near a permanent encampment, but may create unnecessary instability in the lives of those living in these encampments. These programs protect those without housing from arrest for sleeping in tents, but do not lead toward a reduction in the homeless population.

Second, local governments have instituted programs to encourage residents to donate to social service agencies instead of to panhandlers. For instance, in May 2016 Milford, Connecticut instituted its “Have a Heart, Give Smart” program in lieu of outlawing panhandling.²⁹⁹ Billboards and other public education materials state that “[i]t’s ok to say ‘no’ to panhandling” and encourage people to donate to the United Way instead.³⁰⁰ Meanwhile, city officials worked to connect panhandlers to local services.³⁰¹ While these programs are preferable to criminalizing panhandling and may connect more people with services, they erect barriers between the homeless and those who wish to give. This can further stigmatize and render invisible those living in homelessness and poverty.

Other cities have developed more productive alternatives to criminalizing panhandling that connect people asking for money with jobs and social services. For example, Albuquerque, New Mexico tried a new approach to panhandling after the American Civil Liberties Union (ACLU) of New Mexico challenged the city’s strict anti-panhandling ordinance in 2004.³⁰² Recognizing that “you cannot legislate people off the corner,” Albuquerque Mayor Berry Russ initiated “There’s a Better Way,” a program through which people panhandling on the streets can work with the city’s public works department for \$9 an hour—higher than the city’s minimum wage of \$7.50.³⁰³ At the end of the day, workers are dropped off at a nonprofit organization that can connect them with housing, full-time employment, and mental health

services.³⁰⁴ This program has the potential to help people obtain necessary services and stable employment, so that they do not need to return to the streets to ask for money.

But programs like “There’s a Better Way” can only be successful if cities also decriminalize panhandling. Programs connecting people with social services will be ineffective if cities still cite and arrest people for crimes related to their homeless status. As part of a settlement agreement in response to the ACLU’s lawsuit, in 2005 Albuquerque revised its strict anti-panhandling ordinance to instead target specific forms of begging.³⁰⁵ In April 2016, the ACLU challenged the revised law on behalf of Jeffrey Seymour.³⁰⁶ Mr. Seymour had been cited or arrested sixteen times for panhandling and other offenses related to his homeless status, creating a criminal record that hurt his ability to hold down a job as a long-haul trucker.³⁰⁷ Mr. Seymour’s attorney said that the city’s policy toward the homeless appears to be to “harass them until they disappear.”³⁰⁸ The outcome of the lawsuit is still pending.

Finally, beginning in the late 1980s a number of municipalities across the country developed “homeless courts.”³⁰⁹ Similar to other diversionary courts for veterans or people with drug addictions, the courts allow eligible participants – typically people experiencing homelessness who are charged with certain low-level offenses – the option of completing community service or enrolling in life-skills classes in lieu of paying a fine for their offense.³¹⁰ Some programs, such as Hartford’s Community Court, require the defendant to plead guilty to the offense and complete required programs or community service to resolve the charges.³¹¹ Others, like Los Angeles’ Homeless Alternative to Living on the Street (HALO) program, allow eligible people to enroll in treatment *before* pleading.³¹² If the person completes treatment successfully, the prosecutor dismisses the charges.³¹³ If the person cannot complete the programs, they can contest the charges or negotiate a plea.³¹⁴

Further, other initiatives, like Seattle, Washington’s Law Enforcement-Assisted Diversion (LEAD) program for low-level drug and prostitution offenses, divert eligible participants to treatment programs and social services *before they are even arrested*, allowing them to stay completely out of the criminal justice system if they are able to complete treatment.³¹⁵ Portland, Oregon is currently looking into ways to apply the LEAD model to help its homeless population.³¹⁶ These “pre-plea” and “pre-booking” diversion programs are preferable because the defendant is not bound by a guilty plea if he or she is unable to complete the required programs.

Some Connecticut cities have implemented diversionary programs. In 1998, Hartford created a community court to handle certain low-level offenses, including loitering, drinking in public, and disorderly conduct.³¹⁷ Rather than issuing a citation carrying a fine, a police officer will either issue a summons to appear in community court or arrest the person.³¹⁸ If a person is arrested and cannot afford bail, they may be held in jail before their court appearance.³¹⁹ When the defendant appears in community court, they typically enter a conditional plea of guilty.³²⁰ Under these plea agreements, the judge generally will dismiss the charges if the individual successfully completes community service and other court-mandated programming.³²¹

The Hartford court has rightfully been lauded for its success in keeping low-level offenders out of prison, and maintaining low recidivism rates.³²² However, since it is a “post-plea” program, defendants still must suffer the harms of police interaction, summons or arrest, and potentially detention before they are given alternative sentences or directed to services.³²³ Moreover, if defendants do not complete the required programming, or fail to appear for court, they can still face jail time.³²⁴ If a person fails to appear in com-

munity court within 48 hours of being given a summons, a warrant will be issued for their arrest.³²⁵ If an individual has failed to appear three or more times, they may be given a “no mercy” designation, which can entail a jail sentence before being directed to social services.³²⁶

In 2016 New Haven launched a similar initiative, called “Project Green Thumb,” which aims to divert people charged with low-level quality-of-life offenses into community service programs and social services.³²⁷ The program has promising potential, but it is too early to assess its overall impact.

Diversions programs have prompted debates. Proponents note that homeless courts address the underlying causes of peoples’ unlawful activities, connect them with vital services, and – through alternative sentences to community service or treatment programs – reduce unnecessary, costly, and harmful contact with the prison system.³²⁸

Critics, however, point to the potential for increasing the number of people drawn into the criminal justice system. Police officers may issue citations to people they otherwise would not have approached in order to get them access to services or because they know the consequences will be less harsh.³²⁹ Net-widening is problematic because diversionary programs can still lead to jail time. If a person fails to attend court-mandated programs or perform the required number of community service hours – whether because they lack access to transportation; do not have a calendar, phone, or other materials to stay organized because they lack housing; or suffer from debilitating mental illness – they face jail sanctions.³³⁰ Additionally, unless these programs connect individuals with services that can help ensure homelessness is rare, non-recurring, and brief, people will still end up cycling through the criminal justice system time and again.

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IX. Conclusion

“This all seems to be part of a campaign trying to clear the streets of undesirables, or what we would call ‘criminalization of the homeless,’” a New Britain community member said on April 26, 2016, in opposition to a proposed bill outlawing aggressive panhandling in New Britain.³³¹ The following day, the New Britain City Council voted the ordinance into law.³³²

New Britain’s move towards increased criminalization of the poor and homeless is out of sync with state and national trends that recognize the need to de-criminalize and de-incarcerate. In 2015, Governor Malloy implemented the “Second Chance Society,” an initiative aimed at reducing incarceration for low-level offenses and lowering barriers to obtaining employment and housing upon release from prison.³³³ The Governor proclaimed, “We need to break the cycle of crime and poverty that risks being handed down from generation to generation.”³³⁴ Also that year, the Governor announced that Connecticut is on track to end chronic homelessness in 2016, noting that Connecticut is “taking the lead nationally on this issue not only because it’s good for our economy and makes our communities stronger, but because it’s morally right.”³³⁵

If Connecticut is committed to criminal justice reform and eradicating chronic homelessness, it must end the criminalization of homelessness. Despite the Governor’s expressed commitment to reducing over-enforcement of criminal penalties, cities like New Britain continue to pass and enforce laws that make peoples’ very existence illegal. Moreover, the Connecticut legislature recently cut funding for affordable housing and shelter programs,³³⁶ leaving more people on the streets and vulnerable to enforcement of laws that criminalize unavoidable behavior. This makes it all the more important to cease criminalizing homelessness.

The criminalization of homelessness violates U.S. and international law. Many laws that criminalize behavior that people experiencing homelessness must engage in to survive violate prohibitions on cruel and unusual punishment, restrict civil liberties, including the right to free speech and the right to privacy, and are enforced arbitrarily and discriminatorily against people experiencing homelessness, people of color, transgender people, and people with disabilities.

These ordinances are not just unlawful; they are also harmful. Throughout the state, people experiencing homelessness live in fear that a police officer will approach them for asking for money to buy breakfast or for lying down on a bench to rest. If asked to move, they have nowhere else to go. And if cited or arrested, they will likely become entangled in an unyielding cycle of unaffordable court fines, arrest, incarceration, and barriers to employment and social services. This cycle of incarceration and homelessness comes at a steep cost to people experiencing homelessness, as well as to taxpayers, all while failing to address the root cause of homelessness: a lack of housing solutions.

If Connecticut is committed to criminal justice reform and eradicating chronic homelessness, it must end the criminalization of homelessness.

This cycle of incarceration and homelessness comes at a steep cost to people experiencing homelessness, as well as to taxpayers, all while failing to address the root cause of homelessness: a lack of housing solutions.

Everyone who plays a part, wittingly or not, in the criminalization of homelessness can also work to end it. City councils should rescind laws proscribing behavior that is unavoidable for those experiencing homelessness. This includes laws prohibiting loitering, sleeping on benches, and panhandling. In the interim, Connecticut cities should place a moratorium on enforcement of these laws. Police departments should direct their officers to stop citing or arresting people for behavior related solely to their homeless status and should intervene only if they pose a genuine public safety threat. Meanwhile, city governments should devise policies to ensure that homelessness is rare, brief, and non-recurring.

Connecticut must keep people experiencing homelessness out of handcuffs and help them get into housing.

X. Recommendations

To Municipal Governments and Police Departments

- Work together to end the criminalization of homelessness. City governments and police must collaborate closely to develop and implement policies that address homelessness and poverty while avoiding the harms of criminalization.

To Municipal Governments

- Place a moratorium on the enforcement of ordinances that criminalize people because of their homeless status.
- Refrain from passing additional laws and repeal existing laws that criminalize people based on homelessness or poverty, including laws that prohibit loitering, panhandling, occupying and sleeping in public spaces, and erecting shelter.
- Examine laws that may be unconstitutionally vague, including those prohibiting loitering or disorderly conduct, and ensure that they meet the *McKoy* standard of providing “sufficiently definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement.”
- Provide people with a safe alternative place to go if legitimate public safety reasons require an encampment to be moved or disbanded.
- Create policies and allocate resources to ensure that homelessness is rare, brief, and non-recurring.
- Adopt a local version of a Homeless Person’s Bill of Rights.

To City Police Departments

- Respect the right of those experiencing homelessness to use public spaces, including the right to congregate and associate.
- Develop a department-wide policy, in consultation with service providers, individuals experiencing homelessness, and other relevant stakeholders, to guide police interactions with people experiencing homelessness. In keeping with constitutional requirements and the Homeless Person’s Bill of Rights, the policy should make clear that:
 - When interacting with individuals experiencing homelessness, police officers should resort to criminal sanctions or the threat of criminal sanctions only as a last resort and only where there is a genuine threat to public safety. Instead, officers should provide access to necessary services, outside of the criminal justice system.
 - Offenses related to a person’s homeless status, including violations of park curfews and ordinances banning loitering, panhandling, and drinking in public, should not be the basis for citation or arrest.
 - If police officers arrest, cite, or ask a person to move, they should provide clear reasons and cite the ordinances they are enforcing.
 - Police officers must enforce all laws in a non-discriminatory manner.
 - Police officers must not destroy personal property belonging to individuals experiencing homelessness.
- Provide training to police officers regarding how to interact with people experiencing homelessness.
- Create systems that help police officers guide those experiencing homelessness into social services rather than the criminal justice system.
- Ensure that prior to any enforcement action against homeless encampment residents, authorities provide adequate notice and do not confiscate personal property.

- Collect and publish data about the housing status of individuals who are cited and arrested. Develop protocols to code each city ordinance in order to track how many people are cited under each ordinance and their housing status.

To the Connecticut Governor, General Assembly, and Senate

- Allocate sufficient resources to ensure that homelessness is rare, brief, and non-recurring. This includes providing adequate funding for ancillary, yet critical, services such as mental health treatment.
- Provide financial and other support to cities and towns to develop alternatives to criminalization.

To the Connecticut Department of Emergency Services and Public Protection Police Officer Standards and Training Council

- Include information on how to interact with individuals experiencing homelessness in the annual accreditation standards manual and in police officer basic training requirements. Standards and training should emphasize that criminalization should be a last, not first, resort, and should discourage police officers from enforcing ordinances that criminalize individuals on the basis of their homeless status.

To the Judicial Branch

- Devise procedures to provide notice about court dates and other obligations to people who do not have permanent addresses.
- Educate judges, prosecutors, defense attorneys, and other relevant court officials about the impact of incarceration on homeless individuals, particularly that a person incarcerated or institutionalized for 90 days or more could lose her or his “chronic homelessness” status, which can be essential for securing and maintaining access to certain housing and social services.
- Dismiss failure to pay or plead charges upon the presentation of evidence that the defendant is experiencing homelessness.
- Consider a defendant’s financial situation in setting bail.

To Prosecutors

- Use prosecutorial discretion to decline to prosecute charges related to a person’s homeless status.

To Public Defenders

- Consider using a necessity defense when representing a client whose homeless status contributed to the alleged violation.

Appendix: Table of Connecticut City Ordinances That Criminalize Homelessness

| City | Loitering | Panhandling | Park Curfews | Sleeping on benches | Camping | Public Consumption of Alcohol |
|--------------------------------|-----------|-------------|--------------|---------------------|---------|-------------------------------|
| Ansonia ¹ | * | | * | | | * |
| Avon ² | | | * | | * | * |
| Bloomfield ³ | | * | | | * | * |
| Bridgeport ⁴ | * | * | | * | * | * |
| Bristol ⁵ | * | * | * | | | * |
| Cheshire ⁶ | | | * | | * | * |
| Coventry ⁷ | | | * | | * | * |
| Danbury ⁸ | * | * | * | | * | * |
| Darien | | | | | | |
| East Haven ⁹ | | | * | | | * |
| Enfield ¹⁰ | * | * | * | | | * |
| Glastonbury ¹¹ | * | | * | | * | * |
| Greenwich ¹² | | | | | * | |
| Groton ¹³ | | | | | | * |
| Hartford ¹⁴ | * | * | | | | * |
| Manchester ¹⁵ | * | * | * | | | * |
| Middletown ¹⁶ | * | * | * | | * | * |
| Naugatuck ¹⁷ | | | | | | * |
| New Britain ¹⁸ | * | * | * | * | * | * |
| New Fairfield ¹⁹ | * | | | | * | |
| New Haven ²⁰ | * | | * | | * | * |
| New London ²¹ | * | | * | | * | * |
| North Stonington ²² | | * | * | | * | * |
| Norwich ²³ | * | | * | | * | * |
| Portland ²⁴ | * | | * | | | * |
| Seymour ²⁵ | * | | | | * | * |
| Shelton ²⁶ | * | | * | | * | * |
| South Windsor ²⁷ | * | * | | * | * | * |
| Southbury ²⁸ | | | * | | * | * |
| Stamford ²⁹ | * | | | | | * |
| Torrington ³⁰ | * | | * | * | * | * |
| Trumbull ³¹ | * | * | * | | * | * |
| Vernon ³² | * | | * | | | * |
| Waterford ³³ | * | | * | | * | * |
| Watertown ³⁴ | | | | | * | * |
| Westbrook ³⁵ | * | | | | | * |
| Westport ³⁶ | | | | | * | * |
| Windham ³⁷ | | | | | | * |
| Total (38) | 24 | 12 | 23 | 4 | 24 | 35 |

- 1 Ansonia Municipal Code: sec. 17-1 (loitering in groups); sec. 17A-1 (park curfews and public consumption of alcohol in parks); sec. 3-2 (public consumption of alcohol).
- 2 Avon Municipal Code: sec. 41-24(a)(20) (park curfew); sec. 41-24(a)(4) & (23) (camping); sec. 41-24(b) (public consumption of alcohol).
- 3 Bloomfield Municipal Code: sec. 13-48 (panhandling in park); sec. 13-44 (camping); sec. 13-47 (public consumption of alcohol in park); sec. 13-55 (public consumption of alcohol generally).
- 4 Bridgeport Municipal Code: sec. 9.04.010 (loitering); sec. 12.16.040 (loitering); sec. 9.04.035 (panhandling); sec. 12.28.170 (sleeping on benches); sec.12.28.080 (camping); sec. 5.08.030 (public consumption of alcohol); sec. 12.28.070 (public consumption of alcohol in park).
- 5 Bristol Municipal Code: sec. 15-2 (loitering); sec. 21-2 (panhandling); sec. 16-2(d)(2) (panhandling in parks); sec. 16-2(o) (park curfew); sec. 15-47 (public consumption of alcohol); sec. 16-2(a) (public consumption of alcohol in parks).
- 6 Cheshire Municipal Code: sec. 11-4 (park curfews); sec. 11-20(7) (camping); sec. 11-22 (public consumption of alcohol in parks).
- 7 Coventry Municipal Code: sec. 70-69(a) (park curfews); sec. 70-69(d) (camping); sec. 70-71 (public consumption of alcohol in parks).
- 8 Danbury Municipal Code: sec. 12-13 (loitering); sec. 12-12 (panhandling); sec. 13A-31 (park curfews); sec. 13A-36 (camping); sec. 12-1.1 (public consumption of alcohol).
- 9 East Haven Municipal Code: sec. 13-3 (park curfews); sec. 13-2 (public consumption of alcohol).
- 10 Enfield Municipal Code: sec. 50-1 (loitering); secs. 58-35–58-60 (panhandling); sec. 54-3 (park curfews); sec. 54-4(a)(14) (public consumption of alcohol in parks, including town green).
- 11 Glastonbury Municipal Code: sec. 2-249 (loitering); sec. 2-248 (curfew for all developed property); sec. 14-44 (park curfews); sec. 14-34 (camping); sec. 2-247 (public consumption of alcohol); sec. 14-38 (public consumption of alcohol in park).
- 12 Greenwich Municipal Code: sec. 7-26 (camping).
- 13 Groton Municipal Code: sec. 4-3 (public consumption of alcohol).
- 14 Hartford Municipal Code: sec. 25-8 (loitering); sec. 25-15 (panhandling); sec. 4-3 (public consumption of alcohol); sec. 27-43 (2) (public consumption of alcohol).
- 15 Manchester Municipal Code: sec. 236-3 (loitering); sec. 236-6 (panhandling); sec. 292-1 (park curfews); sec. 106-4 (public consumption of alcohol).
- 16 Middletown Municipal Code: sec. 192-2 (loitering); sec. 192-4 (panhandling); sec. 214-6 (park curfews); sec. 214-27 (camping); sec. 101-3 (public consumption of alcohol).
- 17 Naugatuck Municipal Code: sec. 4-1(b) (public consumption of alcohol).
- 18 New Britain Municipal Code: sec. 16-61 (loitering); sec. 16-146-16-151 (panhandling); sec. 17-53 (park curfew); sec. 17-42 (sleeping on benches); sec. 17-43 (camping); sec. 4-2 (public consumption of alcohol).
- 19 New Fairfield Municipal Code: sec. 10-4 (loitering); ch. XXII (camping).
- 20 New Haven Municipal Code: sec. 17-35 (loitering); sec. 19-5 (16) (park curfew); sec. 19-5 (5) (camping); sec. 18-39 (public consumption of alcohol).
- 21 New London Municipal Code: sec. 14-9 (loitering); sec. 14-9.2 (loitering); sec. 18-1 (loitering); sec. 16-43 (park curfew); sec. 16-59 (camping); sec. 3-2 (public consumption of alcohol).
- 22 North Stonington Municipal Code: sec. 14-23 (panhandling in park); sec. 14-22(a) (park curfew); sec. 14-23(a)(15) (camping); sec. 3-1 (public consumption of alcohol).
- 23 Norwich Municipal Code: sec. 13-9 (loitering); sec. 14-9 (park curfew); sec. 14-11(camping); sec. 13-14.2 (public consumption of alcohol).
- 24 Portland Municipal Code: sec. 12-1 (loitering); sec. 13-3 (park curfew); sec. 12-3 (public consumption of alcohol).
- 25 Seymour Municipal Code: sec. 11-14 (loitering); sec. 12-1(i) (camping); sec. 11-20 (public consumption of alcohol).
- 26 Shelton Municipal Code: sec. 10-1 (loitering); sec. 10-2 (loitering); sec. 11-2 (loitering); sec. 11-2 (park curfew); sec. 11-51(7) & (8) (camping); sec. 11-51(18) (public consumption of alcohol).
- 27 South Windsor Municipal Code: article II, div. 2 (loitering); ordinance no. 208 (panhandling); sec. 78-35 (subdivision open space curfew); sec. 74-67 (15) (sleeping on benches in park); sec. 74-67(3) (camping); sec. 78-34(a)(7) (public consumption of alcohol); sec. 74-67 (9) (public consumption of alcohol in park); 78-34(a)(7) (public consumption of alcohol in subdivision open space).
- 28 Southbury Municipal Code: sec. 14-42 (park curfew); sec. 14-49(c) (camping); sec. 14-48(g) (camping); sec. 14-48(a) (public consumption of alcohol in parks).
- 29 Stamford Municipal Code: sec. 158-2 (loitering); sec. 158-8 (loitering in parks and near schools during night); sec. 158-9 (park curfew); sec. 72-2 (public consumption of alcohol).

- 30 Torrington Municipal Code: sec. 143-1 (loitering); sec. 155-4 (park curfews); sec. 155-9 (sleeping on benches in park); sec. 155-10 (camping); sec. 75-2 (public consumption of alcohol).
- 31 Trumbull Municipal Code: sec. 14-2 (loitering); sec. 2-211(f) (panhandling on golf course); sec. 15-6 (panhandling in parks); sec. 15-14 (park curfews); sec. 15-8 (camping); sec. 15-17 (public consumption of alcohol in parks).
- 32 Vernon Municipal Code: sec. 8-5 (loitering); sec. 9-2 (park curfews); sec. 11-4(c) (public consumption of alcohol); sec. 9-1(c) (public consumption of alcohol in parks).
- 33 Waterford Municipal Code: 9.04.020 (loitering); 12.08.010 (park curfews); 12.08.060(c) (camping); 12.08.040 (public consumption of alcohol in parks).
- 34 Watertown Municipal Code: sec. 18-77(e) (camping); sec. 18-77(a) & (b) (public consumption of alcohol in parks).
- 35 Westbrook Municipal Code: sec. 13-1 (loitering); sec. 13-1(b) (public consumption of alcohol).
- 36 Westport Municipal Code: sec. 30-271 (no camping on island); sec. 30-271 (no public consumption of alcohol on island).
- 37 Windham Municipal Code: sec. 9-1 (public consumption of alcohol).

Endnotes

- 1 Interview with Shane, in New Britain, CT (Apr. 18, 2015).
- 2 National Law Center on Homelessness & Poverty, *No Safe Place* (2014), https://www.nlchp.org/documents/No_Safe_Place [No Safe Place].
- 3 Marina Fisher et. al., *California's New Vagrancy Laws: The Growing Enactment and Enforcement of Anti-Homeless Laws in the Golden State* (2015), http://www.homelesslivesmatterberkeley.org/pdf/CA_New_Vagrancy_Laws.pdf; Tony Robinson & Allison Sickels, *No Right to Rest: Criminalizing Homelessness in Colorado* (2015), <https://denverhomelessoutloud.files.wordpress.com/2016/03/no-right-2-rest.pdf>; Coalition on Homelessness, *Punishing the Poorest: How the Criminalization of Homelessness Perpetuates Poverty in San Francisco* (2015), <http://www.cohsf.org/Punishing.pdf>; ACLU, *Picking up the Pieces: A Minneapolis Case Study* (2015), <https://www.aclu.org/feature/picking-pieces#homeless>.
- 4 See Municode Library, <https://www.municode.com/library/>.
- 5 Throughout this report, we use the term “individual experiencing homelessness.” This phrase underscores the fact that homelessness is a temporary condition that is experienced, rather than an identity or permanent status.
- 6 National Law Center on Homelessness & Poverty, *Homelessness in America: Overview of Data and Causes*, p. 1 (2015), http://www.nlchp.org/documents/Homeless_Stats_Fact_Sheet [Data and Causes].
- 7 Public Health Service Act, 42 U.S.C. sec. 245(b).
- 8 Finding accurate data documenting the exact number of people experiencing homelessness is difficult, partly because reporting sources employ different definitions of “homeless.” Data and Causes, *see above* note 6, at p. 1. Compare the narrow definition provided by the U.S. Department of Housing and Urban Development (HUD), limited to people in shelters, transitional housing, and public spaces, to the broader definition used by the U.S. Department of Education (DoE), which also encompasses families who have moved into other families’ residences due to economic hardship. *Ibid.* In addition, communities across the nation use varied – and occasionally flawed – methodologies to measure homeless populations. *Ibid.* (citing 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> [Homeless Problem]).
- 9 Data and Causes, *see above* note 6, at p. 1.
- 10 *Ibid.*, p. 3 (citing National Low Income Housing Coalition, *Housing Spotlight: The Affordable Rental Housing Gap Persists*, p. 2 (2014), http://nlihc.org/sites/default/files/HS_4-1.pdf; National Law Center on Homelessness & Poverty, *Staying Home: The Rights of Renters Living in Foreclosed Properties*, p. 2 (2010), <http://nlchp.org/documents/StayingHome>; Victoria Tischler, et al., “Mothers Experiencing Homelessness: Mental Health, Support, and Social Care Needs,” *Health Social Care Community* v. 15, pp. 246-53 (2007); Ellen Shelton, et al., Wilder Research Center, *Homeless Study Fact Sheet: Long Term Homelessness* (2013); U.S. States Conference of Mayors, *Hunger and Homelessness Survey: A Status on Hunger and Homeless in America's Cities*, p. 2 (2014), <http://usmayors.org/pressreleases/uploads/2014/1211-report-hh.pdf>).
- 11 No Safe Place, *see above* note 2, at p. 7.
- 12 Connecticut recently experienced a \$900 million deficit in the state’s Fiscal Year 2017 budget. Several housing-related agencies and programs have been cut, including an \$8.2 million reduction in the Connecticut Department of Housing’s Housing and Homeless services, a reduction of \$4 million for the Homeless Prevention Response Fund, and a reduction from \$135 million to \$120 million for the Affordable Housing Program. “As Bond Bill Passes, CT FY17 Budget Finalized with Significant Reductions in State Spending,” *Partnership for Strong Communities* (June 7, 2016), <http://www.pschoosing.org/news/bond-bill-passes-ct-fy17-budget-finalized-significant-reductions-state-spending> [As Bond Bill Passes].
- 13 No Safe Place, *see above* note 2, at p. 14.
- 14 Connecticut Coalition to End Homelessness, *Connecticut Counts: 2016 Report on Homelessness in Connecticut*, p. 3 (2016), <http://cceh.org/wp-content/uploads/2016/05/CT-Counts-2016.pdf> [Connecticut Counts]. HUD requires each state to conduct a ‘Point-in-Time’ (PIT) count to determine the number of sheltered and unsheltered homeless individuals and families across the United States. “What is the Point-in-Time (PIT) Count?,” *Connecticut Coalition to End Homelessness*, <http://www.cceh.org/pit/overview/>.
- 15 Connecticut Counts, *see above* note 14, at pp. 3, 9.
- 16 *Ibid.*, p. 4. The Department of Housing and Urban Development (HUD) recently changed the definition of “chronically homeless,” which resulted in a decrease in the number of people reported as chronically homeless. HUD’s Homeless Management Information System data standards now require those counted as “chronically homeless” to have a disability of a certain severity and duration. As a result of this change, the number of documented chronically homeless people dropped sharply: Only 42 percent of those who counted as chronically homeless under the 2010 data standards would be considered chronically homeless under the new 2015 standards. *Ibid.*, p. 6. In Connecticut, two counts conducted under the previous definition revealed 872 chronically homeless individuals or families in 2013 and 1,026 chronically homeless individuals or families in 2014.

Ibid., pp. 6, 19. In contrast, when the PIT was conducted under the revised definition in 2015, only 538 individuals or families were counted as chronically homeless. *Ibid.*

According to the revised rule:

[A] “chronically homeless” individual is defined to mean a homeless individual with a disability who lives either in a place not meant for human habitation, a safe haven, or in an emergency shelter, or in an institutional care facility if the individual has been living in the facility for fewer than 90 days and had been living in a place not meant for human habitation, a safe haven, or in an emergency shelter immediately before entering the institutional care facility. In order to meet the “chronically homeless” definition, the individual also must have been living as described above continuously for at least 12 months, or on at least four separate occasions in the last 3 years, where the combined occasions total a length of time of at least 12 months. Each period separating the occasions must include at least 7 nights of living in a situation other than a place not meant for human habitation, in an emergency shelter, or in a safe haven.

Department of Housing and Urban Development; Homelessness Emergency Assistance and Rapid Transition to Housing: Defining “Chronically Homeless,” 80 C.F.R. sec. 233(2015); *see also* Jayme Day, “Here’s What You Need to Know about HUD’s New Chronic Homelessness Definition,” *National Alliance to End Homelessness* (Dec. 16, 2015), <http://www.endhomelessness.org/blog/entry/heres-what-you-need-to-know-about-huds-new-chronic-homelessness-definition#.VtOHQ5MrLRo>.

- 17 Homeless Problem, *see above* note 8.
- 18 Opening Doors Connecticut, *Framework for Preventing and Ending Homelessness*, p. 6 (2011) http://www.pschousing.org/files/RH_OpeningDoorsCT_Framework_8-13-12.pdf [Opening Doors].
- 19 *Ibid.*, p. 10.
- 20 Connecticut Counts, *see above* note 14, at p. 14.
- 21 Opening Doors, *see above* note 18, at p. 10. *See also* Committee on the Elimination of Racial Discrimination, *Concluding Observations*, U.N. Doc. CERD/C/USA/CO/7-9 (2014), para. 12 (expressing concern “at the high number of homeless persons, who are disproportionately from racial and ethnic minorities, particularly African Americans, Hispanic/Latino Americans and Native Americans, and at the criminalization of homelessness”); Connecticut Counts, *see above* note 14, at p. 28.
- 22 U.S. Department of Housing and Urban Development, *HUD 2015 Continuum of Care Homeless Assistance Programs Housing Inventory Count Report* (Dec. 7, 2015), https://www.hudexchange.info/resource/reportmanagement/published/CoC_HIC_State_CT_2015.pdf [HUD Continuum of Care]; Connecticut Counts, *see above* note 14, at p. 4. As discussed above, the PIT count likely severely underestimated the homeless population.
- 23 Greater Hartford Coordinated Access Network Shelter Waitlist, on file with the Warburton Resource and Outreach Center at Center Church (Sept. 30, 2016).
- 24 Partnership for Strong Communities, *Housing in CT 2015: The Latest Measures of Affordability* (2015), http://www.pschousing.org/files/PSC_HsgInCT2015_FullReport.pdf.
- 25 Connecticut is one of only four states participating in this campaign, among a total of 71 communities. Connecticut Coalition to End Homelessness, *Zero: 2016 Connecticut* (2015), <http://cceh.org/wp-content/uploads/2015/06/Zero-2016-overview.pdf>.
- 26 Office of Governor Dannel P. Malloy, “Gov. Malloy Announces that Connecticut is First State in America to End Chronic Veteran Homelessness” (Aug. 27, 2015), http://portal.ct.gov/Departments_and_Agencies/Office_of_the_Governor/Press_Room/Press_Releases/2015/08-2015/Gov_Malloy_Announces_that_Connecticut_is_First_State_in_America_to_End_Chronic_Veteran_Homelessness/; Sarah Grossman, “Connecticut Becomes Second State to Officially End Veteran Homelessness,” *The Huffington Post* (Feb. 22, 2016), http://www.huffingtonpost.com/entry/connecticut-becomes-second-state-to-officially-end-veteran-homelessness_us_56cb4bebe4b0928f5a6c9693.
- 27 As Bond Bill Passes, *see above* note 12.
- 28 *Ibid.*
- 29 National Law Center on Homelessness & Poverty and National Coalition for the Homeless, *Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities*, p. 9 (2009), http://nationalhomeless.org/wp-content/uploads/2013/11/CrimzReport_2009.pdf [Homes Not Handcuffs].
- 30 United States Interagency Council on Homelessness, *Searching out Solutions: Constructive Alternatives to the Criminalization of Homelessness*, p. 7 (2012), www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf.
- 31 Homes Not Handcuffs, *see above* note 29, at pp. 9-10.
- 32 No Safe Place, *see above* note 2, at pp. 7-8.
- 33 Homes Not Handcuffs, *see above* note 29, at pp. 10-11.
- 34 For example, Bristol, Connecticut outlawed panhandling in the 1960s. Bristol, CT Municipal Code sec. 21-3 (stating that “No person shall solicit alms upon any sidewalk, street or highway of the city”).
- 35 *See* Appendix.
- 36 Hilda Muñoz, “Town Council Approves Anti-Panhandling Ordinance,” *Hartford Courant* (June 3, 2014), [49](http://arti-</div><div data-bbox=)

- cles.courant.com/2014-06-03/community/hc-east-hartford-panhandle-0604-20140603_1_your-town-news-new-ordinance-veterans-affairs-com
- mission. East Hartford was not one of the cities surveyed because its code is not available on Municode. Therefore, its panhandling ordinance is not reflected in the appendix.
- 37 Mikaela Porter, “Enfield Bans ‘Aggressive Panhandling,’ Requires Permit for Roadside Soliciting,” *Hartford Courant* (Oct. 13, 2015), <http://www.courant.com/community/enfield/hc-enfield-panhandlers-connecticut-laws-20151013-story.html>.
 - 38 Paul Zagorsky, “\$99 Solution: City Oks ‘aggressive panhandling’ ordinance,” *New Britain Herald* (Apr. 27, 2016), http://www.centralctcommunications.com/newbritainherald/article_7514dc26-0ce3-11e6-bbaa-9b92ea8ac70c.html.
 - 39 Hartford police incident report, 2010-2015, on file with author; Manchester police incident report, 2010-2015, on file with author; New Britain police incident report, 2010-2015, on file with author.
 - 40 R.I. Gen. Laws sec. 34-37.1-3. Puerto Rico set this movement in motion by passing the first of these bills in 1998. Sara K. Rankin, “A Homeless Bill of Rights (Revolution)” *Seton Hall Law Review* v. 45, p. 399 (2015).
 - 41 775 Ill. Comp. Stat. sec. 45/10.
 - 42 Conn. Gen. Stat. sec. 1-500.
 - 43 National Coalition for the Homeless, *Local Homeless Bill of Rights Measures* (2014), <http://nationalhomeless.org/campaigns/bill-of-right/>.
 - 44 The Connecticut Homeless Person’s Bill of Rights uses the federal law definition of homeless. See 42 U.S. Code sec. 11302; Conn. Gen. Stat. sec. 1-500(b)(1).
 - 45 Conn. Gen. Stat. sec. 1-500(b)(6).
 - 46 See, e.g., New Britain, CT Municipal Code sec. 17-42 (prohibiting sleeping on park benches); Hartford, CT Municipal Code sec. 25-8 (prohibiting loitering).
 - 47 Connecticut law defines criminal trespass as remaining in a building when the person knows that they are not licensed or privileged to do so. Conn. Gen. Stat. sec. 53a-108. See, e.g., Interview with Theodore, in New Britain, CT (Apr. 18, 2015). In Hartford people can also be arrested or issued a summons to appear in court, rather than given a citation, for city ordinance violations, including loitering and panhandling. Hartford, CT Municipal Code sec. 25-1.
 - 48 New Haven, CT Municipal Code sec. 29-10 (“No person shall . . . wheel . . . any . . . cart . . . upon any sidewalk or footpath in the streets or public squares of said city.”); Interview with Sergeant Roy Davis, in New Haven, CT (Nov. 12, 2015).
 - 49 New Britain, CT Municipal Code sec. 16-62.
 - 50 Interview with Rolland, in Manchester, CT (Nov. 20, 2015).
 - 51 “CIB Processes,” *Centralized Infractions Bureau* (2012), <http://www.jud.ct.gov/Publications/ES182.pdf> [CIB Processes].
 - 52 See *Argesinger v. Hamlin*, 407 U.S. 25 (1972); John D. King, “Beyond ‘Life and Liberty’: The Evolving Right to Counsel,” *Harvard Civil Rights-Civil Liberties Law Review*, vol. 48, p. 4 (2013), http://harvardcrcl.org/wp-content/uploads/2013/04/King_1-49.pdf (“Many jurisdictions provide, either formally or informally, for some kind of deferred adjudication or diversionary program for those accused of minor offenses. Where such programs carry no possibility of incarceration, the accused is not entitled by federal constitutional doctrine to the appointment of counsel.”).
 - 53 Interview with Rolland, in Manchester, CT (Nov. 20, 2015).
 - 54 *Bearden v. Georgia*, 461 U.S. 660 (1983).
 - 55 “Traffic Violation / Complaint Ticket Frequently Asked Questions,” *State of Connecticut Judicial Branch* (2016), <http://www.jud.ct.gov/faq/traffic.html#7>.
 - 56 Interview with Rolland, in Manchester, CT (Nov. 20, 2015).
 - 57 CIB Processes see above note 51. p. 2 (“When CIB receives a Not Guilty plea, the case is transferred to the Superior Court that handles infractions or violations for the geographical area where the ticket was issued. You may have to go to court. The court will send you a notice that will include the date you have to go to court and the court address.”).
 - 58 Interview with Rolland, in Manchester, CT (Nov. 20, 2015).
 - 59 *Ibid.*
 - 60 “I don’t have bus fare. I can’t walk that far.” Interview with Robyn, in New Britain, CT (Apr. 18, 2015) (discussing her inability to go to Alcoholics Anonymous after the meetings were moved to another location).
 - 61 State of Connecticut Superior Court, *Chart A*, p. 2 (2014), <https://www.jud.ct.gov/Publications/Infractions/infractions.pdf> [Chart A].
 - 62 Interview with Trey Bruce, in New Haven, CT (Oct. 22, 2015).
 - 63 *Ibid.*
 - 64 *Ibid.*

- 65 See Interview with Police Captain Anthony Duff, in New Haven, CT (Nov. 24, 2015); Interview with Police Officer Stephan Torquati, in New Haven, CT (Nov. 24, 2015); Interview with Lieutenant Sean Grant, in Manchester, CT (Nov. 20, 2015); Interview with Sergeant David Mocarsky, Lieutenant John Rodriguez, and Officer Wojtek Sztachelski, New Britain Police Dept. in New Britain, CT (Nov. 12, 2015).
- 66 Interview with Rolland, in Manchester, CT (Nov. 20, 2015).
- 67 *Ibid.*
- 68 Interview with Trey Bruce, in New Haven, CT (Oct. 22, 2015).
- 69 Interview with Rick, in New Haven, CT (Nov. 4, 2015).
- 70 See Christopher Reinhart, Connecticut Office of Legislative Research, *Chain of Custody Arrests*, (2012), <https://www.cga.ct.gov/2012/rpt/2012-R-0505.htm> (“Police departments generally transport arrestees from their lockups to court for arraignment on the court’s next business day.”).
- 71 Interview with Rick, in New Haven, CT (Nov. 4, 2015).
- 72 *Ibid.*
- 73 *Ibid.*
- 74 Interview with Trey Bruce, in New Haven, CT (Oct. 22, 2015).
- 75 Interview with Grover, in Hartford, CT (Apr. 1, 2015).
- 76 Interview with Trey Bruce, in New Haven, CT (Oct. 22, 2015).
- 77 See, e.g., 24 C.F.R. sec. 966.4(I)5(iii)(A) (stating that in conventional public housing, a public housing authority may terminate assistance “regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction”); 24 C.F.R. sec. 982.553(c) (analogous provision for Section 8 voucher); National Law Center on Homelessness & Poverty, *Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities*, p. 34 (2011), https://www.nlchp.org/Criminalizing_Crisis (explaining that public housing authorities often “use overly exclusive policies when determining whether an applicant with a criminal record is eligible for public housing” and sometimes reject applicants even if the charges against them are dropped) [Criminalizing Crisis]; Marah Curtis, et. al, “Alcohol, Drug, and Criminal History Restrictions in Public Housing,” *Cityscape* v. 15, p. 44 (2013); J. McGregor Smyth, Jr., American Bar Association, *From Arrest to Reintegration: A Model for Mitigating Collateral Consequences of Criminal Proceedings* (2009), http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_cjmag_24_3_smyth.authcheckdam.pdf.
- 78 See, e.g., Susan Adams, Forbes, “Background Checks on Job Candidates: Be Very Careful,” *Forbes* (June 21, 2013), <http://www.forbes.com/sites/susanadams/2013/06/21/background-checks-on-job-candidates-be-very-careful/> (noting that, according to a 2012 survey, more than two thirds of all businesses perform background checks on job applicants); *Criminalizing Crisis*, see above note 77, at p. 32 (noting that 38 states allow employers to consider arrests, even if they never resulted in conviction, when making hiring decisions).
- 79 Conn. Gen. Stat. sec. 54-142a.
- 80 See National Law Center on Homelessness & Poverty, *Cruel, Inhuman, and Degrading: Homelessness in the United States under the International Covenant on Civil and Political Rights*, p. 8 (2013), http://www.nlchp.org/Cruel_Inhuman_and_Degrading [Cruel, Inhuman, and Degrading].
- 81 42 U.S.C. sec. 11360; U.S. Department of Housing and Urban Development Office of Community Planning and Development, *Notice on Prioritizing Persons Experiencing Chronic Homelessness and Other Vulnerable Homeless Persons in Permanent Supportive Housing* (2016), <https://www.hudexchange.info/resources/documents/notice-cpd-16-11-prioritizing-persons-experiencing-chronic-homelessness-and-other-vulnerable-homeless-persons-in-psh.pdf>.
- 82 Chart A, see above note 61, at p. 2 (for failure to pay or plead, a “defendant can be arrested and required to appear in court, where that person will face a maximum penalty of imprisonment for up to three months and a fine of up to five hundred dollars in addition to the penalties imposed pursuant to the original infractions matter.”).
- 83 Interview with Andrea Hakian, in Manchester, CT (Oct. 17, 2015).
- 84 *Ibid.*
- 85 See, e.g., Human Rights Watch, *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City*, p. 31 (2010), https://www.hrw.org/sites/default/files/reports/us1210webwcover_o.pdf (“The unfortunate reality is that many clients in poor communities of color . . . are too poor to post even modest bail Forced to remain behind bars, their lives destabilize: They lose their jobs; their physical and mental health deteriorates; and their families’ social and economic networks fall apart.”) [Price of Freedom]; The PEW Charitable Trusts, *Collateral Costs: Incarceration’s Effect on Economic Mobility*, p. 27 (2010), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1pdf.pdf (“Drawn disproportionately from the poorly educated and the marginally employed, the millions of people in American jails and prisons faced poor mobility prospects before they entered the prison walls. But by the time they leave, this research finds, they face even smaller chances of finding and keeping jobs and moving up the income ladder.”).

- 86 Interview with Trey Bruce, in New Haven, CT (Oct. 22, 2015); *see also* Price of Freedom, *see above* note 85, at p. 2 (stating that people who are incarcerated “can lose their places in homeless shelters”).
- 87 Interview with Trey Bruce, in New Haven, CT (Oct. 22, 2015); *see also* National Health Care for the Homeless Council, *Incarceration & Homelessness: A Revolving Door of Risk*, p. 3 (2013), http://www.nhchc.org/wp-content/uploads/2011/09/infocus_incarceration_nov2013.pdf.
- 88 *See, e.g.*, The Sentencing Project, *Mentally Ill Offenders in the Criminal Justice System: An Analysis and Prescription*, p. 4 (2002), http://www.sentencingproject.org/doc/publications/sl_mentallyilloffenders.pdf; KiDeuk Kim, et. al, *The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System*, p. v (2015), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000173-The-Processing-and-Treatment-of-Mentally-Ill-Persons-in-the-Criminal-Justice-System.pdf>.
- 89 Kamala Mallik-Kane & Christy A. Visher, *Health and Prisoner Reentry: How Physical, Mental and Substance Abuse Conditions Shape the Process of Reintegration*, p. 37 (2008), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/411617-Health-and-Prisoner-Reentry.PDF>.
- 90 *See, e.g.*, Francisca Fajana, “The Intersection of Race, Poverty, and Crime,” *Journal of Poverty Law and Policy* v. 41 (2007); Bruce Western, “Punishment and Inequality in America,” *Project Muse*, p. 3 (2006), <http://isites.harvard.edu/fs/docs/icb.topic1458086.files/Western.pdf>.
- 91 *See, e.g.*, Maxwell Ciardullo, “Criminal background checks: A pretext for housing discrimination,” *Vera Institute of Justice* (Oct. 16, 2015), <https://www.vera.org/blog/criminal-background-checks-a-pretext-for-housing-discrimination> (noting that “housing providers regularly use criminal background screening policies to keep out people of color.”).
- 92 *See, e.g.*, Devah Pager, et. al, “Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records,” *The Annals of the American Academy* v. 623, p. 199, 210 (2009), http://scholar.harvard.edu/files/pager/files/annals_sequencingdisadvantage.pdf (stating that “a criminal record modifies the effect of racial discrimination, which raises the bar to employment higher for blacks than similarly situated whites”).
- 93 *See, e.g.*, Legal Action Center, *After Prison: Roadblocks to Reentry: A Report on State Legal Barriers Facing People with Criminal Records*, p. 16 (2004), http://lac.org/roadblocks-to-reentry/upload/lacreport/LAC_PrintReport.pdf (stating that “[m]any public housing authorities consider arrest records that did not lead to conviction in determining eligibility for public housing.”).
- 94 Interview with Marlin, in Manchester, CT (Nov. 20, 2015).
- 95 New Britain, CT Municipal Code sec. 17-42 (prohibiting sleeping on park benches). According to the New Britain park use regulations, “park” refers to “any city-owned parkland or open space.” New Britain, CT Municipal Code sec. 17-36.
- 96 New Britain, CT Municipal Code sec. 17-43-45.
- 97 Bridgeport, CT Municipal Code sec. 12.28.170(A).
- 98 New Haven, CT Municipal Code sec. 19-5(b)(10).
- 99 Middletown, CT Municipal Code sec 214-26.
- 100 In 2015, there were 3,399 Emergency, Safe Haven and Transitional Housing beds available year-round in Connecticut. HUD Continuum of Care, *see above* note 22. Yet according to the February 2015 Point in Time Count, there were 4,047 people across the state in need of such housing. Connecticut Counts, *see above* note 14, at p. 4.
- 101 Bill Chappell, “Homeless Shelter Opts to Close Instead of Accepting People on Drugs, Alcohol,” *National Public Radio* (Apr. 16, 2015), <http://www.npr.org/sections/theway/2015/04/16/400125730/homeless-shelter-opts-to-close-instead-of-accepting-people-on-drugs-alcohol>.
- 102 Interview with Felix, in Hartford, CT (Apr. 1, 2015).
- 103 Interview with Paul, in Middletown, CT (Mar. 6, 2015).
- 104 Interview with Thomas, in New Britain, CT (Apr. 18, 2015).
- 105 Interview with Zoe, in New Haven, CT (Apr. 17, 2015).
- 106 *Ibid.*
- 107 *Ibid.*
- 108 U.S. Constitutional Amendment VIII. Although this prohibition is not explicit in Connecticut’s constitution, the Connecticut Supreme Court has interpreted the state constitution’s due process clause to include a proscription against cruel and unusual punishment. *State v. Ross*, 230 Conn. 183, p. 246 (Conn. 1994); *see also State v. Santiago*, 318 Conn. 1, p. 4 (Conn. 2015) (“Although neither provision of the state constitution expressly references cruel or unusual punishments, it is settled constitutional doctrine that both of our due process clauses prohibit governmental infliction of cruel and unusual punishments.”).
- 109 *Jones v. City of L.A.*, 444 F.3d 1118, p. 1132 (9th Cir. 2006), *vacated as moot*, 505 F.3d 1006 (9th Cir. 2007).
- 110 *Ibid.*, p. 1132 (“[T]he involuntariness of the act or condition the City criminalizes is the critical factor delineating a constitutionally cognizable status, and incidental conduct which is integral to and an unavoidable result of that status, from acts or conditions that can be criminalized consistent with the Eighth Amendment.”).

- 111 *Pottinger v. City of Miami*, 40 F.3d 1155, p. 1156 (11th Cir. 1994). The court noted that the district court had also found that the ordinance violated the Fourteenth Amendment for reaching innocent conduct protected by the Due Process Clause and burdening the fundamental right to travel protected by the Equal Protection Clause. Further, the district court found violations of the Fourth Amendment for the city's practice of destroying personal property. Although the Eleventh Circuit's opinion focused on remanding the case to the district court in order to clarify provisions of the issued injunction, the opinion also reiterated the constitutional violations found by the lower court. *Ibid.*
- 112 *Anderson v. City of Portland*, No. 08-1447-AA, 2009 WL 2386056 *1, p. *7 (D. Or. July 31, 2009).
- 113 Statement of Interest of the United States, *Bell v. Boise*, No. 1:09-cv-540-REB at pp. 4, 14 (D. Idaho Aug. 6, 2015).
- 114 International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, entered into force Mar. 23, 1976, 999 U.N.T.S. 171, at art. 7 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.") [ICCPR]; Convention on the Elimination of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, entered into force June 26, 1987, 1465 U.N.T.S. 85, at art. 16 ("Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment") [CAT].
- 115 U.N. Committee Against Torture, General Comment No. 2, Implementation of Article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP (2007).
- 116 U.N. Human Rights Committee, *Concluding Observations on the Fourth Report of the United States of America*, U.N. Doc. CCPR/C/USA/CO/4 (2014), para 19 [ICCPR Concluding Observations 2014].
- 117 U.N. General Assembly, *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, U.N. Doc. A/66/265 (2011), paras 33, 36 [Carmona Rep.].
- 118 Office of the U.N. High Commissioner for Human Rights, *U.N. Independent Expert on the Right to Water and Sanitation: Mission to the United States of America from 22 February to 4 March 2011, Catarina de Albuquerque* (2011), <http://aquadoc.typepad.com/files/un-ic-end-of-mission-statement-mar-4-2011.pdf>. Zoe, a woman interviewed in New Haven, described being arrested for disorderly conduct for urinating in public. Interview with Zoe, in New Haven, CT (Apr. 17, 2015).
- 119 United States Interagency Council on Homelessness, *Searching Out Solutions*, p. 8 (2012), http://usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf [Searching Out Solutions].
- 120 U.N. Human Rights Council, *Addendum of the United States of America to the Report of the Working Group on its Universal Periodic Review*, para. 12 (2015), <https://geneva.usmission.gov/2015/09/01/addendum-of-the-united-states-of-america-to-the-report-of-the-working-group-on-its-universal-periodic-review/>.
- 121 "Loiter," *Merriam-Webster.com* (2016).
- 122 Mark Malone, "Homelessness in a Modern Urban Setting," *Fordham Urban Law Journal* v. 10, pp. 755-56 (1982).
- 123 See Appendix. In addition to this vague restriction, some cities also prohibit people from lying on certain benches or from being in public spaces after set hours. For example, New Haven prohibits anyone from remaining in a park between sunset and 6:00 a.m. New Haven, CT Municipal Code sec. 19-5(16). Manchester also restricts access to parks and outlaws anyone from acting "unduly boisterous" in a public place. Manchester, CT Municipal Code secs. 292-1; 161-1. When someone has nowhere else to go, these restrictions on activity in public space prohibit unavoidable behavior.
- 124 New Haven, CT Municipal Code sec. 18-17.
- 125 See *Moore v. Ganim*, 233 Conn. 557, p. 580 (Conn. 1995) (holding that a state statute providing support for financially destitute residents for only nine out of twelve months is constitutional because an indigent person does not have a common law cause of action to compel the state to provide a minimal level of subsistence, and there is no unenumerated constitutional obligation for the state to do so); *Connecticut Coalition for Justice in Educ. Funding v. Rell*, 295 Conn. 240, p. 278 (Conn. 2010) (In *Moore*, the Court concluded that "the state has no affirmative constitutional obligation to provide minimal subsistence to its poor citizens.").
- 126 Fourteen individuals interviewed described being issued citations for loitering. See Interview with Logan, in Manchester, CT (Nov. 20, 2015); interview with Robyn, in New Britain, CT (Apr. 18, 2015); interview with Scott, in New Britain, CT (Apr. 18, 2015); interview with Theodore, in New Britain, CT (Apr. 18, 2015); interview with Thomas, in New Britain, CT (Apr. 18, 2015); interview with Alex, in New Haven, CT (Apr. 17, 2015); interview with Marvin, in Manchester, CT (Apr. 15, 2015); interview with Isaac, in Hartford, CT (Apr. 8, 2015); interview with Albert, in Bridgeport, CT (Apr. 2, 2015); interview with Daniel, in Hartford, CT (Apr. 1, 2015); interview with Dennis, in Hartford, CT (Apr. 1, 2015); interview with Edward, in Hartford, CT (Apr. 1, 2015); interview with Gordon, in Hartford, CT (Apr. 1, 2015); interview with Howard, in Hartford, CT (Apr. 1, 2015).
- 127 Interview with Thomas, in New Britain, CT (Apr. 18, 2016).

- 128 The National Law Center on Homelessness & Poverty surveyed 154 service providers, advocates, and people experiencing homelessness from 26 different states. Fifty-five percent of respondents reported arrests and citations of homeless persons for loitering in their cities. The results of the survey indicate that the criminalization of homelessness continues to be a pervasive and persistent problem in communities across the country. Criminalizing Crisis, *see above* note 77, at p. 7.
- 129 Hartford police incident report, Jan. 1, 2015–Apr. 14, 2015, on file with authors. Hartford’s Municipal code provides that if an individual is found in violation of a municipal ordinance, instead of receiving a citation, they will be given a summons to appear in Community Court or arrested. Hartford, CT Municipal Code sec. 25-1. Once in court, they can be sentenced to a fine or community service. *Ibid.*
- 130 New Britain police incident report, Jan. 1, 2015–Apr. 14, 2015, on file with authors. The New Britain data revealed 232 loitering (ticket issued) incidents and 1,052 loitering incidents during this time period. An incident could represent a citation, arrest or an officer telling a person that they are in violation of the loitering ordinance. Phone conversation with New Britain Police Department Records department representative, Sept. 27, 2016.
- 131 ICCPR, *see above* note 114, at art. 12(1) (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”); Convention on the Elimination of All Forms of Racial Discrimination, adopted Dec. 21, 1965, entered into force Jan. 4, 1969, 660 U.N.T.S. 195, art. 5(i) (protecting “[t]he right to freedom of movement and residence within the border of the State”).
- 132 *United States v. Guest*, 383 U.S. 745, p. 759 (1966). The source of this fundamental right to travel is unclear: “Not all right to travel opinions have eschewed the burden of locating the right to travel in some appropriate constitutional text. Various Justices at various times have suggested no fewer than seven different sources: The Article IV Privileges and Immunities Clause, the Fourteenth Amendment Privileges and Immunities Clause, a conception of national citizenship said to be implicit in ‘the structural logic of the Constitution itself,’ the Commerce Clause, the Equal Protection Clause, and each of the Due Process Clauses.” *Lutz v. City of York*, 899 F.2d 255, pp. 260–61 (3d Cir. 1990) (internal citations omitted).
- 133 *King v. New Rochelle Municipal Housing Authority*, 442 F.2d 646, p. 648 (2d Cir. 1971).
- 134 An Act Concerning a Homeless Person’s Bill of Rights, Public Act No. 13-251, sec. (1)(b)(1) [Homeless Person’s Bill of Rights].
- 135 *City of Chicago v. Morales*, 527 U.S. 41, p. 53 (1999) (citing *Williams v. Fears*, 179 U.S. 270, p. 274 (1900)) (internal citations omitted).
- 136 *Pottinger v. City of Miami*, 810 F. Supp. 1551, p. 1580 (S.D. Fla. 1992).
- 137 *Streetwatch v. Nat’l R.R. Passenger Corp.*, 875 F. Supp. 1055, p. 1059 (S.D.N.Y. 1995).
- 138 *Seattle v. McConahy*, 86 Wash. App. 557, p. 571 (Wash. Ct. App. 1997). The court upheld the ordinance at issue in *McConahy* because it “did not exact a penalty for moving within the state or prohibit homeless persons from living on the streets of Seattle. Nor [did] it make it more difficult for people to migrate from state to state.” *Ibid.*, p. 572.
- 139 *Everett v. Bluhm*, No. 112997, p. 6 (Wash. Municipal Ct. Jan. 12, 2016). The court also held that the law constituted cruel and unusual punishment. *Ibid.*, p. 6.
- 140 *Ibid.*, p. 4.
- 141 New Britain, CT Municipal Code sec. 21-190.
- 142 New Haven, CT Municipal Code sec. 19-5. Bridgeport, CT Municipal Code sec. 12.28.080.
- 143 New Haven, CT Municipal Code sec. 19-5.
- 144 Bridgeport, CT Municipal Code sec. 12.28.080.
- 145 *See* Appendix.
- 146 Interview with Toby, in Manchester, CT (Nov. 20, 2015).
- 147 Interview with Robert, in Middletown, CT (Mar. 6, 2015).
- 148 Interview with Vincent, in New Haven, CT (Apr. 17, 2015).
- 149 Criminalizing Crisis, *see above* note 77, at p. 19.
- 150 National Law Center on Homelessness & Poverty, *Welcome Home: The Rise of Tent Cities in the United States*, p. 59 (2014), https://www.nlchp.org/documents/Welcome-Home_TentCities [Welcome Home].
- 151 Interview with Robert, in Middletown, CT (Mar. 6, 2015).
- 152 *Ibid.*
- 153 Interview with Mark Colville, Amistad House, in New Haven, CT (Oct. 27, 2015).
- 154 *Ibid.*
- 155 Interview with Rolland, in Manchester, CT (Nov. 20, 2015); interview with Logan, in Manchester, CT (Nov. 20, 2015); interview with Toby, in Manchester, CT (Nov. 20, 2015); interview with Tasha, in Manchester, CT (Nov. 20, 2015) (describing son’s experience); interview with Mark Colville, Amistad House, in New Haven, CT (Oct. 29, 2015); interview with Vincent, in New Haven, CT (Apr. 17, 2015); interview with William, in New Haven, CT (Apr. 17, 2015); interview with Michelle, in Manchester, CT (Apr. 15, 2015); interview with Monica, Naomi, and Oliver, in Manchester, CT (Apr. 15, 2015).

- 156 Interview with Logan, in Manchester, CT (Nov. 20, 2015).
- 157 *Lavan v. City of Los Angeles*, 693 F.3d 1022, p. 1024 (9th Cir. 2012).
- 158 *Ibid.*, p. 1029.
- 159 *Kincaid v. City of Fresno*, No. 1:06-cv-1445, 2006 WL 3542732, p. *36 (E.D. Cal. Dec. 8, 2006).
- 160 *Ibid.*, p. *38.
- 161 *Ibid.*, p. *8.
- 162 *Ibid.*, p. *9.
- 163 *Ibid.*
- 164 *Ibid.*, p. *37.
- 165 *State v. Mooney*, 218 Conn. 85, p. 111 (Conn. 1991). In a fact-specific holding, the court upheld the defendant's right to privacy because it found that: (1) the police searched the *interior* of closed containers (the defendant's closed duffel bag and box), which are traditionally afforded greater privacy protections than open containers; (2) the containers were "located in a place that, as the police knew when they searched them, the defendant regarded as his home, and that he maintained as such, however roughly;" (3) the defendant could not assert his Fourth Amendment rights in these belongings because he was under arrest and in police custody at the time of the search; and (4) the purpose of the search was not to safeguard the luggage or identify its owner, but to gather evidence "of the very crimes for which the defendant was in custody." *Ibid.*
- 166 Homeless Person's Bill of Rights, *see above* note 134, at sec. (b)(6).
- 167 Welcome Home, *see above* note 150, at p. 94.
- 168 New Haven, CT Municipal Code sec. 18-17.
- 169 Cruel, Inhuman, and Degrading, *see above* note 80, at p. 9.
- 170 *Ibid.*
- 171 U.S. Constitutional Amendment I ("Congress shall make no law . . . interfering with the right to peaceably assemble"); ICCPR, *see above* note 114, at art. 21 ("The right of peaceful assembly shall be recognized."); *see also* Manfred Nowak, *UN Covenant on Civil and Political Rights, CCPR Commentary*, p. 373 (1993) ("The term 'assembly' is not defined but rather presumed in the Covenant. Therefore, it must be interpreted in conformity with the customary, generally accepted meaning in national legal systems, taking into account the object and purpose of this traditional right. . . . [O]nly intentional, temporary gatherings of several persons for a specific purpose are afforded the protection of freedom of assembly.").
- 172 The Organization for Security and Cooperation in Europe (OSCE) summarized international law regarding freedom of assembly, stating that there is a presumption in favor of allowing assemblies; states have a duty to protect peaceful assembly; restrictions must be sufficiently precise so as to provide notice of prohibited conduct, and proportional to the harms they aim to avoid; states cannot discriminate between different types of assembly; and the public must have access to and information about the relevant regulatory authority. OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, p. 15 (2007).
- 173 Interview with Jake, in Hartford, CT (Apr. 8, 2015).
- 174 Interview with Carol, in New Haven, CT (Nov. 4, 2015).
- 175 *See* Appendix.
- 176 *Ibid.*; *see also* Hilda Muñoz, "Town Council Approves Anti-Panhandling Ordinance," *Hartford Courant* (June 3, 2014), [http://articles.courant.com/2014-06-03/community/hc-east-hartford-panhandle-0604-20140603_1-your-town-news-new-ordinance-veterans-affairs-commission;Mikaela%20Porter,%20%27Enfield%20Bans%20%27Aggressive%20Panhandling;%20Requires%20Permit%20For%20Roadside%20Soliciting,%27%20Hartford%20Courant%20\(Oct.%2013,%202015\),%20http://www.courant.com/community/enfield/hc-enfield-panhandlers-connecticut-laws-20151013-story.html](http://articles.courant.com/2014-06-03/community/hc-east-hartford-panhandle-0604-20140603_1-your-town-news-new-ordinance-veterans-affairs-commission;Mikaela%20Porter,%20%27Enfield%20Bans%20%27Aggressive%20Panhandling;%20Requires%20Permit%20For%20Roadside%20Soliciting,%27%20Hartford%20Courant%20(Oct.%2013,%202015),%20http://www.courant.com/community/enfield/hc-enfield-panhandlers-connecticut-laws-20151013-story.html); Kathleen McWilliams, "South Windsor Defines Aggressive Panhandling, Passes Ordinance to Restrict to Certain Areas," *Hartford Courant* (Feb. 16, 2016), <http://www.courant.com/community/south-windsor/hc-south-windsor-panhandling-0217-20160216-story.html>; Robert Storage, "\$99 solution: City oks 'aggressive panhandling' ordinance," *New Britain Herald* (Apr. 27, 2016), http://www.centralctcommunications.com/newbritainherald/article_7514dc26-0ce3-11e6-bbaa-9b92ea8ac70c.html.
- 177 Bridgeport, CT Municipal Code sec. 9.04.035; Hartford, CT Municipal Code sec 25-15.
- 178 Middletown, CT Municipal Code sec. 92-4; New Britain, CT Municipal Code sec. 16-148 (on file with authors).
- 179 New Britain, CT Municipal Code sec. 16-148 (on file with authors).
- 180 "A \$250 fine for those who ask for change," *WTNH* (May 9, 2014), <http://wtnh.com/2014/05/09/250-fine-ask-change/>; New London, CT Municipal Code sec. 7-106.
- 181 *See* U.S. Constitutional Amendment I ("Congress shall make no law . . . abridging the freedom of speech"); Connecticut Constitution Art. 1, Sec. 4 ("Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty"); Sec. 5 ("No law shall ever be passed to curtail or restrain the liberty of speech or of the press."); ICCPR, *see above* note 114, at art. 19(2) ("Everyone shall have the right to freedom of expression.").

- 182 *Reed v. Town of Gilbert*, 135 S. Ct. 2218, p. 2227 (2015). Finding that a city law restricting the use of signs was content based, the U.S. Supreme Court applied strict scrutiny to the restriction. The Court defined content-based laws as those that “appl[y] to particular speech because of the topic discussed or the idea or message expressed.” *Ibid.*
- 183 *Thayer v. City of Worcester*, 135 S. Ct. 2887 (2015).
- 184 *Thayer v. City of Worcester*, 144 F. Supp. 3d 218 (D. Mass. 2015).
- 185 *Norton v. City of Springfield*, 803 F.3d 411 (7th Cir. 2015); *Thayer*, 144 F. Supp. 3d; *Mclaughlin v. City of Lowell*, 140 F. Supp. 3d 177 (D. Mass. 2015); *Brown v. City of Grand Junction*, 136 F. Supp. 3d 1276 (D. Colo. 2015). *See also Smith v. City of Fort Lauderdale*, 177 F.3d 954, p. 956 (11th Cir. 1999) (“Like other charitable solicitation, begging is speech entitled to First Amendment protection.”).
- 186 *Mclaughlin*, 140 F. Supp. 3d at p. 191.
- 187 *Ibid.*
- 188 *Ibid.*, p. 193.
- 189 *Ibid.*
- 190 Compare Lowell, MA Municipal Code sec. 222-15 with New Britain, CT Municipal Code sec. 16-147.
- 191 Statement of corporation counsel, New Britain Consolidated Subcommittee Hearing (Apr. 26, 2016), <http://www.newbritainct.gov/images/stories/audio/20160426%20Consolidated%20Committee.mp3>.
- 192 *See Desertrain v. City of Los Angeles*, 754 F.3d 1147, p. 1157 (9th Cir. 2014) (ordinance prohibiting using a vehicle as living quarters “provides inadequate notice of the unlawful conduct it proscribes, and opens the door to discriminatory enforcement against the homeless and the poor. Accordingly, [the ordinance] violates the Due Process Clause of the Fourteenth Amendment as an unconstitutionally vague statute.”).
- 193 *See, e.g., New Haven, CT Municipal Code sec 27-31* (“No person shall commit any nuisance in any street in the city. This shall include but not be limited to any impediment, obstruction or interference with the free flow of movement within the public right-of-way.”).
- 194 *See, e.g., Manchester, CT Municipal Code sec. 161-1* (“It shall be unlawful for any person in the Town to be found in, near, around or about any place of public accommodation or any public property conducting himself in such a way as to be unduly boisterous, using lewd or profane language, obstructing access to said premises, or otherwise creating a nuisance to the neighborhood.”).
- 195 *See Appendix.*
- 196 Hartford, CT Municipal Code sec. 25-8(a).
- 197 New Britain, CT Municipal Code sec. 16-61. The specificity of Connecticut ordinances prohibiting loitering vary. Some ordinances simply state that loitering in public places is prohibited, with little or no explanation of what behavior constitutes loitering. *See, e.g., Bridgeport, CT Municipal Code sec. 9.04.010* (“Any person who, without permission or legitimate purpose, loiters upon the property of another or upon city-owned property, and who upon command of any police officer or person in charge of city-owned property fails to quit such property, shall be punished.”). In contrast, other ordinances, such as those in Hartford and New Britain, offer more detail about where it is unlawful to loiter or what types of behavior will be considered loitering. Although more specific ordinances can make it easier for people to know what behavior is prohibited, such laws may still contain criteria that are highly subjective. For example, New Britain’s code prohibits loitering in a manner to “[c]reate or cause to be created any disturbance or annoyance to the comfort and repose of any person.” New Britain, CT Municipal Code sec. 16-61(b).
- 198 Interview with Rolland, in Manchester, CT (Nov. 20, 2015); interview with Toby in Manchester, CT (Nov. 20, 2015); interview with Logan, in Manchester, CT (Nov. 20, 2015); interview with Thomas, in New Britain, CT (Apr. 18, 2015); interview with Alex, in New Haven, CT (Apr. 17, 2015); interview with Marvin, in Manchester, CT (Apr. 15, 2015); interview with Nathan, in Manchester, CT (Apr. 15, 2015); interview with Nelson, in Manchester, CT (Apr. 15, 2015); interview with Isaac, in Hartford, CT (Apr. 8, 2015); interview with Jake, in Hartford, CT (Apr. 8, 2015); interview with Malcolm, in Hartford, CT (Apr. 8, 2015); interview with Albert, in Bridgeport, CT (Apr. 2, 2015); interview with Benjamin, in Hartford, CT (Apr. 1, 2015); interview with Brad, in Hartford, CT (Apr. 1, 2015); interview with Dennis, in Hartford, CT (Apr. 1, 2015); interview with Gordon, in Hartford, CT (Apr. 1, 2015); interview with Harold, in Hartford, CT (Apr. 1, 2015); interview with Tyler, in New Haven, CT (Mar. 24, 2015); interview with Vincent, in New Haven, CT (Mar. 24, 2015); interview with Paul, in Middletown, CT (Mar. 6, 2016); interview with Patricia, in Middletown, CT (Mar. 6, 2016); interview with Rachel, in Middletown, CT (Mar. 6, 2016); interview with Richard, in Middletown, CT (Mar. 6, 2016); interview with Robert, in Middletown, CT (Mar. 6, 2016).
- 199 Interview with Kevin, in Hartford, CT (Apr. 8, 2015).
- 200 Interview with Robyn, in New Britain, CT (Apr. 18, 2015).
- 201 *See* interview with Alex, in New Haven, CT (Apr. 17, 2015); interview with Marvin, in Manchester, CT (Apr. 15, 2015); interview with Isaac, in Hartford, CT (Apr. 8, 2015); interview with Tyler, in New Haven, CT (Mar. 24, 2015); interview with Paul, in Middletown, CT (Mar. 6, 2015).

- 202 Interview with Harold, in Hartford, CT (Apr. 1, 2015).
- 203 Fifteen interviewees reported receiving a citation for loitering, while twenty-six interviewees reported being asked to move, showing that police officers have treated homeless people inconsistently in responding to similar behavior.
- 204 See Interview with Lieutenant Sean Grant, Manchester Police Department, in Manchester, CT (Nov. 20, 2015) (“In some cases, we’d make arrests, some cases not. Discretion plays a role.”); interview with Sergeant Roy Davis, New Haven Police Dept. (Nov. 13, 2015) (“Police have discretion [to enforce local ordinances]”); interview with Sergeant David Mocarsky, Lieutenant John Rodriguez, and Officer Wojtek Sztachelski, New Britain Police Department, in New Britain, CT (Nov. 12, 2015) (“Officers have discretion in all cases except felonies.”).
- 205 Interview with Carol, in New Haven, CT (Nov. 4, 2015).
- 206 Interview with Daniel, in Hartford, CT (Apr. 1, 2015).
- 207 Interview with Thomas, in New Britain, CT (Apr. 18, 2015).
- 208 Interview with Gordon, in Hartford, CT (Apr. 1, 2015).
- 209 Interview with Isaac, in Hartford, CT (Apr. 8, 2015).
- 210 Interview with Ben, in New Haven, CT (Mar. 24, 2015).
- 211 *Ibid.*
- 212 Interview with Susan, in New Haven, CT (Nov. 4, 2015).
- 213 Interview with Zoe, in New Haven, CT (Apr. 17, 2015).
- 214 See, e.g., New Britain citation #14-22971: Police gave a woman a loitering citation for “remain[ing] idle at this location for several minutes making no attempts to leave. [Name redacted] was also starting at vehicles as they drove by. know from my police experience that there has been several prostitution arrests on Lafayette Street in the past It should be noted that I issued two infraction tickets to two individuals in the same area who I suspected to be involved in prostitution yesterday. . . .” The record notes that the person cited did not have housing.
- 215 *Giaccio v. Pennsylvania*, 382 U.S. 399, p. 402 (1966).
- 216 *City of Chicago v. Morales*, 527 U.S. 41 (1999). Although this decision struck down the Chicago gang-member loitering ordinance, it does not stand for the proposition that all loitering prohibitions are unconstitutionally vague. The decision is limited to the text of the ordinance at issue.
- 217 *Ibid.*, pp. 53, 57.
- 218 See, e.g., *Derby v. Town of Hartford*, 599 F. Supp. 130 (D. Vt. 1984) (finding that the town’s loitering ordinance was unconstitutionally vague because it contained an uncertain time element that failed to indicate how long a person could remain idle in one location before that conduct becomes a violation and because enforcing officers had unguided discretion to decide whether a person was engaged in criminal conduct under the ordinance); *Streetwatch v. Nat’l R.R. Passenger Corp.*, 875 F. Supp. 1055 (S.D.N.Y. 1995) (issuing a preliminary injunction based on likelihood of a success on a claim that Amtrak Police’s enforcement of Amtrak’s Rules and Policies violated the Fourteenth Amendment’s Due Process Clause because the rules, including a prohibition on loitering, were unconstitutionally vague and resulted in arrests based on no evidence that individuals arrested had committed any crimes).
- 219 *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972).
- 220 *Ibid.*, p. 170 (citing *Thornhill v. Alabama*, 310 U.S. 88, pp. 97-98 (1940)). The law in question was particularly far reaching and defined vagrants to include a long list of types, including “[r]ogues and vagabonds, or dissolute persons who go about begging, common gamblers, persons who use juggling or unlawful games or plays,” and even “persons able to work but habitually living upon the earnings of their wives or minor children.” *Ibid.*, p. 156 n. 1.
- 221 See, e.g., *State v. Anonymous*, 33 Conn. Supp. 55 (Conn. 1976) (finding Connecticut’s “Blue State Laws,” which limited the sale of alcohol, were discriminatory and impermissibly vague under both the state and federal constitutions); *State v. Cavallo*, 200 Conn. 664, p. 670 (Conn. 1986) (stating that “where . . . a challenged statute, if vague, could intrude on fundamental constitutional guarantees such as first amendment rights, we will refuse to enforce the statute if we find that it is unconstitutionally vague on its face.”). Thus, city ordinances in Connecticut that are vague and that restrict fundamental rights may be invalidated by state courts. For example, a vague pan-handling law would be especially suspect because it also intrudes on fundamental constitutional free speech rights.
- 222 *State v. McKoy*, No. CR01553994S, 2003 WL 1908167, p. *6 (Conn. Super. Ct. Apr. 1, 2003).
- 223 *Ibid.* Hartford police recorded more than 4,500 incidences of loitering between 2010 and 2015. Hartford police incident report, Jan. 1, 2010 – Apr. 14, 2015, on file with author. It seems unlikely that every one of these loitering incidents involved intentionally impeding or interfering with others’ use of the sidewalk, suggesting that in ordering someone to move or issuing citations, police rely on a loitering definition vaguer than the specific language the court in *State v. McKoy* determined was necessary to redeem the impermissibly vague ordinance.
- 224 ICCPR, see above note 114, at art. 9(1). The Human Rights Committee has interpreted Article 9 as applying “to all deprivations of liberty,” including arrests or non-criminal citations based on a person’s homeless status. U.N. Human Rights Committee, General Comment No. 8,

- Article 9 (Right to liberty and security of persons) (1982), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2f-GEC%2f6628&Lang=en, para. 1 (emphasis added).
- 225 U.N. Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of person), U.N. Doc. CCPR/C/GC/35 (2014), para. 22.
- 226 Carmona Rep., *see above* note 117, para 33.
- 227 Hartford, CT Municipal Code Sec. 25-8.
- 228 *See* Interview with Lieutenant Sean Grant, Manchester Police Dept., in Manchester, CT (Nov. 20, 2015) (“In some cases, we’d make arrests, some cases not. Discretion plays a role.”); interview with Sergeant Ron Davis, New Haven Police Dept., in New Haven, CT (Nov. 13, 2015) (“Police have discretion [to decide whether to enforce local ordinances.]”); interview with Sergeant David Mocarisky, Lieutenant John Rodriguez, and Officer Wojtek Sztachelski, New Britain Police Dept., in New Britain, CT (Nov. 12, 2015) (“Officers have discretion in all cases except felonies.”).
- 229 *See* Simon Bronitt & Philip Stenning, “Understanding Discretion in Modern Policing,” *Criminal Law Journal* v. 35, pp. 323-24 (2011).
- 230 Kim Forde-Mazrui, “Ruling Out the Rule of Law,” *Vanderbilt Law Review* v. 60, p. 1514 (2007) (noting that police discretion in the context of traffic laws raises concerns “that the police may selectively enforce traffic laws against particular motorists as a pretext for investigating crimes for which they lack justified suspicion or as an excuse to target particular motorists for arbitrary or discriminatory reasons”).
- 231 *See* Hartford police incident report, on file with author; New Britain police incident report, on file with author; Manchester police incident report, on file with author.
- 232 Eleven people interviewed for this report said that they have felt targeted by police for being homeless. Interview with Rolland, in Manchester, CT (Nov. 20, 2015); interview with Marlin, in Manchester, CT (Nov. 20, 2015); interview with Thomas, in New Britain, CT (Apr. 18, 2015); interview with Zoe, in New Haven, CT (Apr. 17, 2015); interview with Benjamin, in Hartford, CT (Apr. 1, 2015); interview with Brad, in Hartford, CT (Apr. 1, 2015); interview with Gordon, in Hartford, CT (Apr. 1, 2015); interview with Tyler, in New Haven, CT (Mar. 24, 2015); interview with Paul, in Middletown, CT (Mar. 6, 2015); interview with Robert, in Middletown, CT (Mar. 6, 2015). For example, Zoe, interviewed in New Haven, reported on police treatment of the homeless: “It was awful. The police tend to harass homeless people because they think they’re drinking. If it’s women and it’s late at night, they want to arrest you for prostitution and all that.” Interview with Zoe, in New Haven, CT (Apr. 17, 2015).
- 233 Interview with Nelson, in Manchester, CT (Apr. 15, 2015).
- 234 Interview with Robert, in Middletown, CT (Mar. 6, 2015).
- 235 Interview with Tyler, in New Haven, CT (Mar. 24, 2015).
- 236 Interview with Susan, in New Haven, CT (Nov. 4, 2015).
- 237 Interview with Carol, in New Haven, CT (Nov. 4, 2015).
- 238 Drinking in public is prohibited in 35 out of 38 city codes surveyed for this report. *See* Appendix. For example, New Britain’s municipal code states that “[n]o person shall consume alcohol or alcoholic beverages of any kind in any public area in the city” and goes on to define “public area” to “include, but not be limited to, streets, roadways, sidewalks, parking areas and parking garages, unless such area is private property and those consuming alcohol therein have permission of the owner thereof to so use his property.” New Britain, CT Municipal Code sec. 4-2.
- 239 Hartford alone made 6,282 public-drinking arrests or summons between January and April of 2015. Hartford police incident report, Jan. 1, 2015 – Apr. 14, 2015, on file with authors.
- 240 Interview with Rolland, in Manchester, CT (Nov. 20, 2015); interview with Thomas, in New Britain, CT (Apr. 18, 2015); interview with Victor, in New Haven, CT (Apr. 17, 2015); interview with Brad, in Hartford, CT (Apr. 1, 2015); interview with Cameron, in Hartford, CT (Apr. 1, 2015); interview with Daniel, in Hartford, CT (Apr. 1, 2015); interview with Robert, in Middletown, CT (Mar. 6, 2015).
- 241 Interview with Daniel, in Hartford, CT, (Apr. 1, 2015).
- 242 Interview with Thomas, in New Britain, CT (Apr. 18, 2015).
- 243 *Ibid.*
- 244 Homeless Person’s Bill of Rights, *see above* note 134, at sec. (1)(b)(1).
- 245 In the United States, the Fourteenth Amendment’s Equal Protection Clause prohibits discrimination. Although this provision is most successfully used to challenge laws or practices that burden a fundamental right or certain characteristics that courts have deemed to be “suspect classifications,” such as race, sex, or national origin, plaintiffs have brought cases under the Equal Protection Clause that challenge discriminatory policing against the homeless. Most of these challenges allege that the way police enforce ordinances targets individuals experiencing homelessness. In *Anderson v. City of Portland*, where a class of homeless individuals challenged the city’s ordinances prohibiting camping and temporary structures, the court refused to dismiss plaintiffs’ Equal Protection claim, which alleged that “the City’s enforcement is strategically deployed to target and harass homeless persons.” *Anderson*

- son v. City of Portland*, No. CIV 08-1447-AA, 2009 WL 2386056, p. *8 (D. Or. July 31, 2009). The court made this holding at the motion-to-dismiss stage of the case and so did not address what level of scrutiny the court would eventually apply to the plaintiffs’ equal-protection claims. Federal courts have been reticent to extend heightened scrutiny—which entails scrutinizing certain kinds of laws more carefully than others—to socio-economic categories of plaintiffs under the Equal Protection Clause. Connecticut law also prohibits unequal treatment. See Connecticut Constitution Art. 1, Sec 1.
- 246 Carmona Rep., *see above* note 117, at para. 18; U.N. Human Rights Committee, CCPR General Comment No. 18, Non-discrimination (1989), <http://www.refworld.org/docid/453883fa8.html>, para. 7; *see also* U.N. Committee on the Elimination of Racial Discrimination, *Reports Submitted by States Parties Under Article 9 of the Convention, United States of America*, U.N. Doc. CERD/C/351/Add1 (2000), para. 298; American Convention on Human Rights, adopted Nov. 22, 1969, 1144 U.N.T.S. 123, at art. 1.
- 247 Carmona Rep., *see above* note 117, at para 34.
- 248 African-Americans were arrested at a rate of 281 arrests for every 1000 people, while non-African-Americans were arrested at a rate of 110.8 arrests for every 1000 people. “Compare Arrest Rates,” *USA Today* (2014), <http://www.gannett-cdn.com/experiments/usatoday/2014/11/arrests-interactive/>.
- 249 *Ibid.*
- 250 Interview with Nathan, in Manchester, CT (Apr. 15, 2015).
- 251 Laws criminalizing homelessness have not been challenged as discriminating on the basis of race.
- 252 Connecticut Constitution Art. 1, Sec. 20 (“No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability.”).
- 253 ICCPR, *see above* note 114, at art. 2(1) (“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”); International Convention on the Elimination of All forms of Racial Discrimination, adopted Dec. 21, 1965, entered into force Jan. 4, 1969 660 U.N.T.S. 195, at art. 2 (1) (“States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; . . .”) [CERD].
- 254 U.N. Human Rights Committee, *Concluding Observations on the Fourth Report of the United States of America*, U.N. Doc. CCPR/C/USA/CO/4 (2014), para. 19.
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- 256 Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/7-9 (2014), para. 12.
- 257 *See* Center for American Progress, *The Unfair Criminalization of Gay and Transgender Youth*, pp. 2-3 (2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile_justice.pdf [Center for American Progress Rep.] (“Gay and transgender youth represent up to 40 percent of the homeless youth population even though they only compose 5 percent to 7 percent of the youth population overall”); Kristine Blume, “The Road to Geneva: Criminalization and Discrimination,” *National Law Center on Homelessness & Poverty* (Oct. 4, 2013), <http://homelessnesslaw.org/2013/10/the-road-to-geneva-criminalization-and-discrimination/>; Catherine Hanssens et al., *A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living With HIV* (May 2014), https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf.
- 258 National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, p. 116 (2011), http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.
- 259 *See* Center for American Progress Rep., *see above* note 257, at p. 3.
- 260 Connecticut Public Act 11-55 (2011). Internationally, a 2012 booklet published by the Office of the UN High Commissioner for Human Rights describes States’ existing legal obligations toward LGBT people and lays out recommendations for enforcing the rights of LGBT people to non-discrimination. U.N. Office of the High Commissioner for Human Rights, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, U.N. Doc. HR/PUB/12/06 (2012). The booklet states: “International law defines discrimination as any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on a prohibited ground of discrimination and that has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing,

- of rights guaranteed under international law. Differences in treatment based on prohibited grounds are considered discriminatory, unless a State can show that there is a justification for the difference in treatment that is reasonable and objective. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social Cultural and Rights all include lists of prohibited grounds of discrimination in their non-discrimination guarantees. These lists do not explicitly include 'sexual orientation' or 'gender identity', but they all conclude with the words 'other status.' The use of the phrase 'other status' shows that the lists were intended to be open-ended and illustrative: in other words, the grounds of discrimination are not closed." *Ibid.*, p. 40. See also Human Rights Council Resolution 17/19, Human Rights, Sexual Orientation and Gender Identity, adopted June 17, 2011, U.N. Doc. A/HRC/RES/17/19 ("Expressing grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity" and requesting a study on this subject).
- 261 See Richard Cho, "Bridging Gaps in Implementing the Olmstead Mandate and Ending Chronic Homelessness," *United States Interagency Council on Homelessness* (Feb. 24, 2016), <https://www.usich.gov/news/bridging-gaps-implementing-the-olmstead-mandate-ending-chronic-homelessness> (explaining that the de-institutionalization of many people with psychiatric disabilities in the 1970s and 1980s caused many people to become homeless or end up in prison).
- 262 Americans with Disabilities Act, 42 U.S.C. sec. 12102.
- 263 Convention on the Rights of Persons with Disabilities, adopted Jan. 24, 2007, entered into force May 3, 2008, signed by the United States of America Jun. 30, 2009, 2515 U.N.T.S. 3, at art. 5. Though signature alone does not bind the United States, it does create an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty. In addition, although the ICCPR does not explicitly mention disabled persons, several provisions are directly relevant to people with disabilities, including Article 7 (the right to freedom from torture and other cruel, inhuman or degrading treatment and punishment), Article 9 (the right to liberty and security of a person), and Article 16 (the right to be recognized as a person before the law). ICCPR, *see above* note 114.
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- 276 Interview with Susan, in New Haven, CT (Nov. 4, 2015); interview with Kevin, in Hartford, CT (Apr. 8, 2015); interview with Tyler, in New Haven, CT (Mar. 24, 2015).
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- 278 Interview with Robyn, in New Britain, CT (Apr. 18, 2016); interview with Thomas, in New Britain, CT (Apr. 18, 2016). See also Interview with Sergeant David Mocarsky, Lieutenant John Rodriguez, and Officer Wojtek Sztachelski, New Britain Police Dept., in New Britain, CT (Nov. 12, 2015) (acknowledging “repeat players” that their department confronts or cites for the same infractions).
- 279 Interview with Robyn, in New Britain, CT (Apr. 18, 2016).
- 280 Lieutenant John Rodriguez, from Interview with Sergeant David Mocarsky, Lieutenant John Rodriguez, and Officer Wojtek Sztachelski, New Britain Police Dept., in New Britain, CT (Nov. 12, 2015); see also interview with Zeena Tawfik, City of New Britain, Community Services, in New Britain, CT (Nov. 12, 2015) (“Because honestly what’s the arrest gonna do? They’re just gonna be back out the next day. They don’t even have the money to pay the \$99 ticket. And now they have a court date. And the case manager will go to the court session. And it’s more wasted money for the city than if we nip it in the bud.”). As discussed above, many officers feel obligated to enforce these ordinances under pressure from business owners.
- 281 Police Chief James Wardwell, New Britain Consolidated Subcommittee Hearing (Apr. 26, 2016), <http://www.newbritainct.gov/images/stories/audio/20160426%20Consolidated%20Committee.mp3>.
- 282 Officer Wojtek Sztachelski from Interview with Sergeant David Mocarsky, Lieutenant John Rodriguez, and Officer Wojtek Sztachelski, New Britain Police Dept., in New Britain, CT (Nov. 12, 2015).
- 283 Interview with Sergeant Roy Davis, New Haven Police Department, in New Haven, CT (Nov. 13, 2015) (“It affects businesses – customers don’t want to see people panhandling.”).
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- 312 “Homeless Alternative to Living on the Street,” *Law Office of the Los Angeles County Public Defender*, http://pd.co.la.ca.us/Rest_Halo.html.
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“Forced into Breaking the Law” The Criminalization of Homelessness in Connecticut



Every day, Connecticut’s homeless residents face the threat of criminal sanctions for simply existing. A person living on the street may receive a citation for loitering while waiting on the corner for a shelter to open. Or, just for asking for a few dollars, a person may receive a \$99 fine under a city’s anti-panhandling ordinance. Initial contact with the criminal justice system often escalates and results in a downward spiral. Poor people who cannot afford fines must contest the ticket in court. For people living in homelessness, the stakes are especially high because failure to show up on their court date – because they lack transportation or never received notice of their court date because they do not have an address – could result in arrest and incarceration. Even when they are not fined or arrested, Connecticut’s homeless are constantly told to move, resulting in the widespread sense that they have “nowhere to go.”

“Forced into Breaking the Law”: *The Criminalization of Homelessness in Connecticut* documents the harmful cycle of citations, arrests, homelessness, and poverty that results from laws that criminalize homelessness. This report shows how laws that target behavior that is either unavoidable for those living on the street or that disproportionately impact people experiencing homelessness violate Connecticut, U.S., and international law.

The report also demonstrates the ways in which local ordinances that criminalize homelessness are unnecessary, counter-productive, costly, and out of line with Connecticut values.

The Lowenstein International Human Rights Clinic at Yale Law School urges Connecticut cities to immediately stop enforcing laws that criminalize homelessness and encourages state and local officials to focus on policies that will put people experiencing homelessness into housing, not handcuffs.