



# **“Forced into Breaking the Law”**

## **The Criminalization of Homelessness in Connecticut**

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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.”<sup>1</sup>

### 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.

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*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.

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*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.

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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.