

Policing and Homelessness: A Working Roundtable Discussion

Problem Statement

Homelessness is an emerging crisis nationally. Although attempts to count the nation's homeless individuals are notoriously unreliable, the federal government estimates that 580,466 individuals were homeless during a single point-in-time count in 2020. That number represents the fourth consecutive year of increasing homelessness following a decade of steady declines.

At the same time, more and more individuals are experiencing “chronic” patterns of homelessness, defined as either continuous homelessness for at least one year or at least four periods of homelessness in the preceding three years. Experts attribute the reversal to the increased cost of housing and to a national shortage in affordable housing.

As the number of homeless individuals have increased, so too have the percentage of those individuals who live unsheltered. “Unsheltered” homelessness describes the conditions of those individuals living in encampments, in vehicles, or in other places not designed for human habitation. In 2020, 39% of the federally counted homeless individuals were classified as unsheltered, up nearly 29% from just a few years prior. At current rates, the number of unsheltered homeless individuals will surpass the number of sheltered homeless individuals by 2028.

Across the country, local laws (e.g., city ordinances) prohibit broad swaths of conduct that make existing in public spaces difficult for those who lack housing. As a result, Americans experiencing homelessness may commit countless crimes every day out of necessity, including loitering in parks, resting at bus stops, obstructing sidewalks, pitching tents, asking for money, asking for work, and sleeping just about anywhere.

The National Law Center on Homelessness and Poverty surveyed hundreds of cities nationwide and found dramatic spikes in such laws in recent years. In the span of a decade, city-wide bans on camping in public increased by 69%; bans on begging increased by 43%; bans on sitting or lying down increased by 52%; and bans on standing around increased by a remarkable 88%. Although laws criminalizing the homeless experience appear more popular than ever, the scholarly literature has long recognized that criminalizing behaviors attendant to homelessness merely compounds the problem.

Criminal convictions (and in some instances, even mere arrests) frequently render individuals ineligible for jobs, housing, food stamps, shelters, or other government services or benefit. In turn, criminal fines and fees (including late payment fees) are often beyond the means of homeless individuals, who may not know how they'll pay for their next meal. Criminalization may help trap individuals in cycles of poverty that are likely to prolong their experiences of homelessness and push them toward further criminality for life-sustaining resources. By contrast, the existing literature points towards non-carceral alternatives, such as housing-first solutions, as being both more effective and less expensive.

As a matter of constitutional law, aggressive law enforcement in this area runs the risk of infringing upon civil liberties, as federal courts have recognized various limitations on the ability of police to enforce local criminal ordinances against homeless citizens. Recently, for instance, the Ninth Circuit Court of Appeals held that the Eighth Amendment prohibits arresting or citing

homeless individuals for public camping when alternative shelter is not reasonably available. Several courts have also concluded that criminal prohibitions on public begging and on sharing food with homeless individuals may violate the First Amendment’s right to free speech. Other courts found that the Fourth Amendment protects homeless individuals’ possessions from confiscation and destruction, even when on public property, and struck down ordinances that prohibit residing in vehicles as being unconstitutionally vague.

The overarching dynamic seems to place police departments in a no-win situation. Housed citizens often call on police to be first responders in addressing visible homelessness, even though the enforcement of criminal prohibitions is likely to be ineffective and perhaps even counterproductive. We expect police to respect the rights of homeless individuals who are often violating the law through no choice of their own—and yet departments that have led with service-first models, or that have exercised discretion to withhold citations and arrests for unavoidable conduct, have often experienced pushback from local businesses and property owners.

To be sure, in recent years some cities have succeeded in reducing their homeless populations, driven by, among other things, multi-agency coordination and political leaders committed to evidence-based solutions. Indeed, it is the premise and hope of our roundtable that the issues raised in this Problem Statement and elsewhere have discernible and achievable solutions.