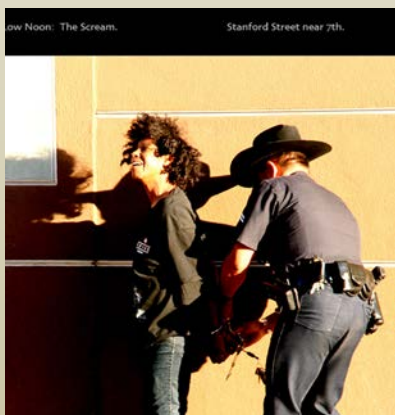


*Homeless Persons'
Access to Injustice*



Homeless person being arrested on Skid Row in Los Angeles.
Courtesy LA Community Action Network.
<http://cangress.org>.

On February 15, 2014, a homeless veteran, Jerome Murdough, died of dehydration in an overheated jail cell on Rikers Island in New York City. Arrested for trespassing in a public housing stairwell where he sought shelter from sub-freezing temperatures, he was still in jail five days after his arrest for the “crime” of simply trying to survive. While death awaiting trial is an extreme example, homeless persons’ lack of permanent address and financial stability has overwhelming and disproportionate consequences at every level of the criminal justice system. From being targeted by ordinances criminalizing basic survival needs in public, to a faulty system of excessively high fines, bail, and fees, to limited access to probation, homeless persons often find themselves incarcerated more often, and for longer, than a just system should allow.

In 2011, out of 234 cities surveyed about local ordinances, 53% prohibited begging, 33% prohibited sitting/lying in certain public places, and 40% prohibited “camping” in particular public places.¹ Other reported prohibitions included loitering and obstructing sidewalks. Indeed, one third of all prosecuted crimes in San Francisco in 2011 were for “quality of life” citations.²

While initial citations do not necessarily directly result in jail time, homeless individuals often cannot afford to pay the fines associated with them. As a result, 57% of survey respondents stated that bench warrants had been issued, leading to their arrest.³

Once arrested, unaffordable bail means that homeless persons are nearly always incarcerated until their trials occur – or until they agree to waive their trial rights in exchange for convictions. 49% of homeless people report having spent five or more days in a city or county jail.⁴ In 87% of cases with a bail of \$1000 or less in New York City in 2008, defendants were not able to post bail and were incarcerated pending trial.⁵ The average length of pretrial detention was 15.7 days.⁶

Pretrial confinement leads to a higher likelihood of conviction. Confinement, or the threat of confinement, prompts defendants to plead guilty and give up their right to a trial.⁷ Eight in ten convicted misdemeanor arrestees receive sentences that do not include jail time – meaning that if they were detained pre-trial, it was unwarranted.

Even when released from jail or prison, the effects of this unequal justice system continue to haunt homeless persons, as they face barriers in accessing employment, are denied the ability to vote, and are denied access to public benefits which could otherwise help them escape homelessness.⁸

As tragic as all these problems are, even worse is their disproportionate impact on racial minority and disability communities. In New York City in 2004, 53% of the overall population was African American and Latino, but 90% of people living in New York City homeless shelters were African American and Latino.⁹ Moreover, studies show for persons with mental disabilities, being homeless without having outpatient mental health treatment significantly increased odds of misdemeanor arrests and longer periods of incarceration.¹⁰

NATIONAL LAW CENTER
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Criminalization of homelessness has been condemned by the federal government and international human rights observers as violating constitutional and human rights.¹¹ Just two weeks ago, the U.N. Human Rights Committee found criminalization of homelessness in the U.S. to be “cruel, inhuman, and degrading treatment,” and called for collaboration among all relevant stakeholders to provide solutions in line with human rights standards,¹² such as:

1. DOJ should issue guidance or provide incentives for state courts to:
 - a. eliminate address requirements for notice of court appearances and update systems to send notifications electronically;
 - b. reduce bail for homeless persons and examine methods of offering pre-trial release on their own recognizance;
 - c. remove obstacles for homeless people to enter into probation (lack of address, lack of transportation to see probation officer, etc.) and ensure accommodations are made so that homeless people will not be forced to remain in jail unnecessarily;
 - d. reduce the use of criminalization ordinances to address homelessness;
2. HUD should:
 - a. ensure that housing programs are accessible to homeless persons who may have arrest records connected to their homelessness;
 - b. provide incentives to communities to eliminate or reduce enforcement of criminalization ordinances;
3. USICH should work with DOJ, HUD, HHS, VA and other agencies as appropriate to ensure that criminalization of homelessness and its consequent effects are reduced.

¹ National Law Center on Homelessness and Poverty, *Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities*, 7-8 (Nov. 2011), available at http://www.nlchp.org/Criminalizing_Crisis.

² Paul Boden, *Criminalizing the Homeless Costs Us All* (Mar. 1, 2012) (citing a 2011 study by WRAP in which more than 663 homeless individuals were interviewed), available at <http://news.streetroots.org/2012/03/01/criminalizing-homeless-costs-us-all>.

³ *Id.*

⁴ Picture the Homeless, *Homelessness and Incarceration: Common Issues in Voting Disenfranchisement, Housing and Employment*, at 2, available at http://www.picturethehomeless.org/Documents/Legal/Homelessness_and_Incarceration_fact_sheet.pdf.

⁵ Human Rights Watch, *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City*, at 2 (Dec. 3, 2010), available at <http://www.hrw.org/node/94574/section/1>.

⁶ *Id.*

⁷ *Id.* at 2, 5.

⁸ Picture the Homeless, *Homelessness and Incarceration: Common Issues in Voting Disenfranchisement, Housing and Employment*, *supra* note 4, at 2.

⁹ *Id.*

¹⁰ National Healthcare for the Homeless Council, *Incarceration & Homelessness: A Revolving Door for Risk*, *In Focus* 1 (Nov. 2013), http://www.nhchc.org/wp-content/uploads/2011/09/infocus_incarceration_nov2013.pdf.

¹¹ See UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, *SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS* 8 (2012), www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf, NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *CRUEL, INHUMAN, AND DEGRADING: HOMELESSNESS IN THE UNITED STATES UNDER THE INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS* (2013).

¹² Human Rights Committee, *Concluding Observations of the Committee on fourth report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (2013).