

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY



NO
SAFE
PLACE

The Criminalization of Homelessness in U.S. Cities

Panelists

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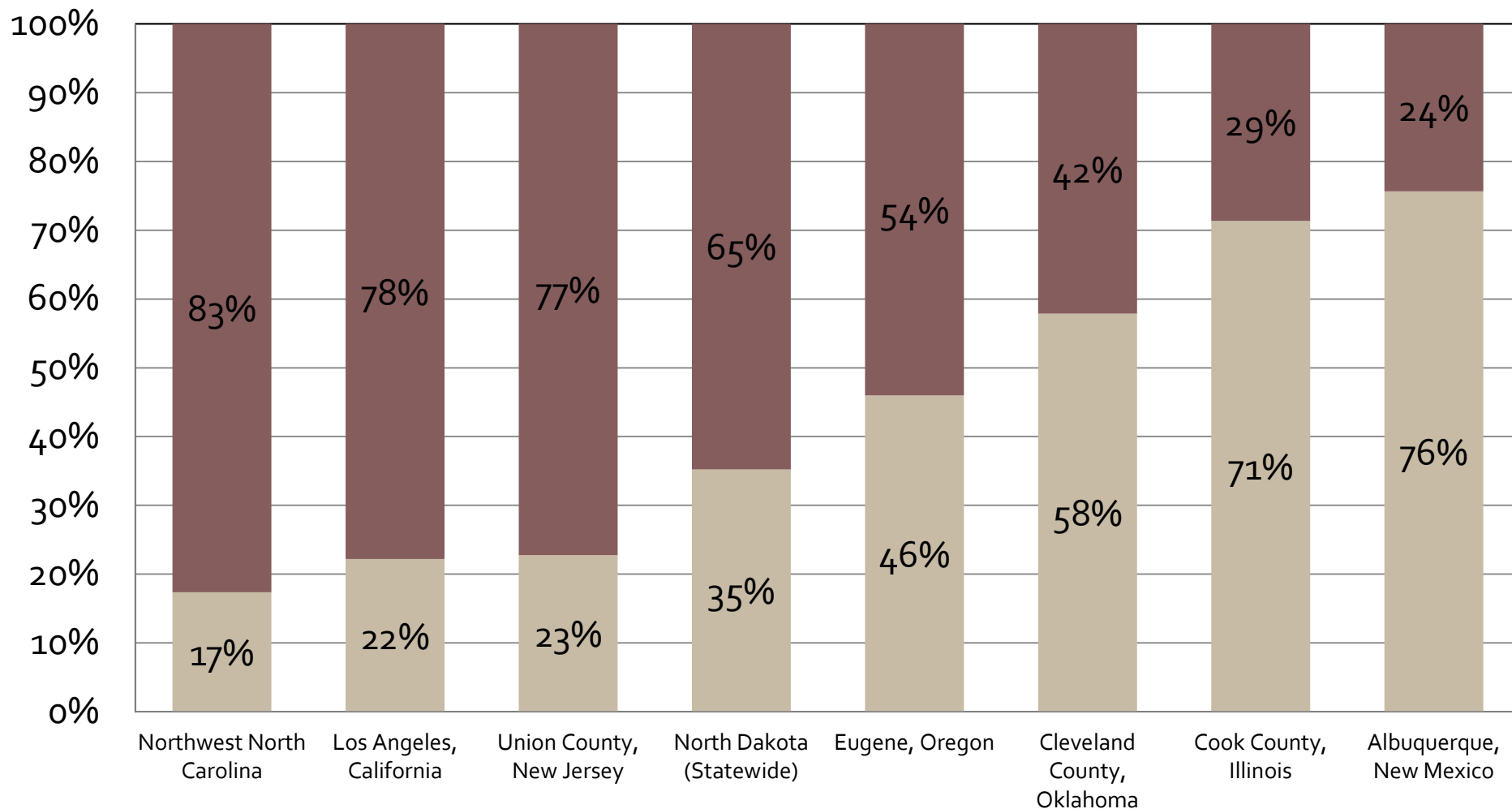
A Lack of Affordable Housing Causes Homelessness

- Affordable housing crisis
- Shrinking federal housing subsidies
- Increased competition for rental housing
- Rising rental costs
- Rise in family homelessness
- Impact on homeless children and youth



Percent of Homeless Population With and Without Available Shelter Beds

- Unmet Need: Homeless People without a Shelter Bed
- Homeless People with a Shelter Bed



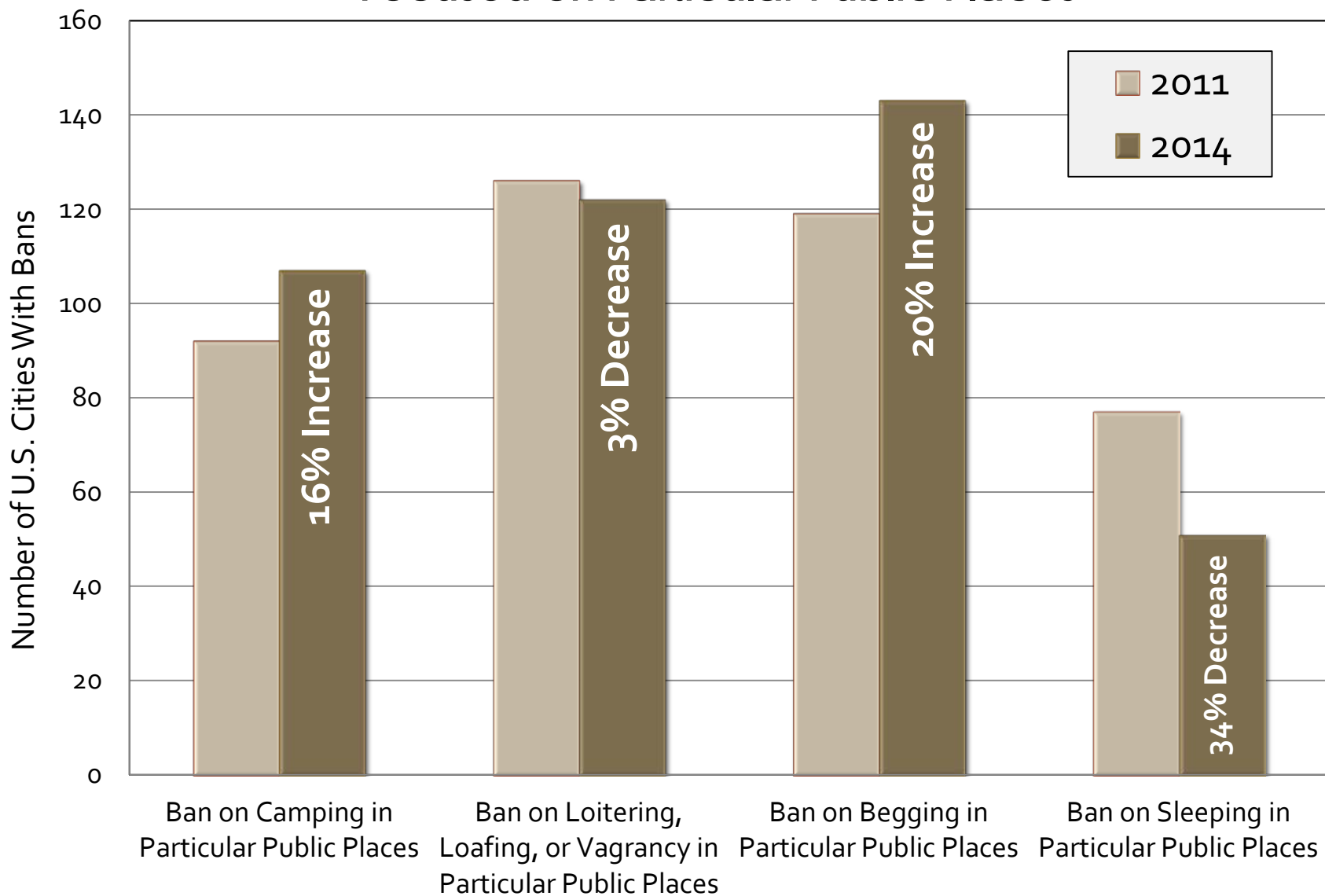
Many Cities Make it Illegal to be Homeless

- **Laws prohibiting “camping” in public:**
 - 34% of cities impose city-wide bans on camping in public.
 - 57% of cities prohibit camping in particular public places.
- **Laws prohibiting sleeping in public:**
 - 18% of cities impose city-wide bans on sleeping in public.
 - 27% of cities prohibit sleeping in particular public places, such as in public parks.
- **Laws prohibiting begging in public:**
 - 24% of cities impose city-wide bans on begging in public.
 - 76% of cities prohibit begging in particular public places.

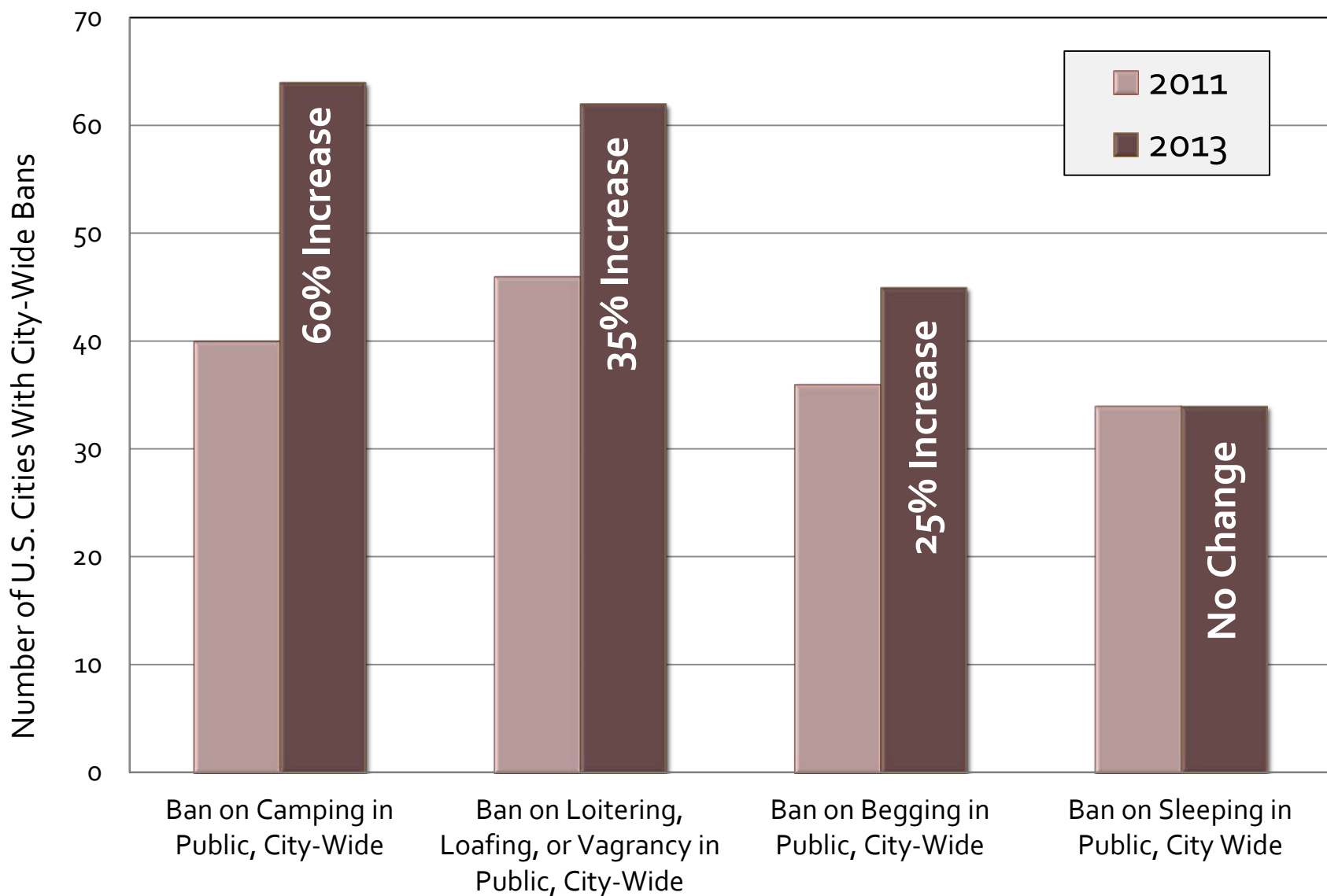
Many Cities Make it Illegal to be Homeless

- **Laws prohibiting loitering, loafing, and vagrancy:**
 - 33% of cities make it illegal to loiter in public throughout an entire city.
 - 65% of cities prohibit the activity in particular public places.
- **Laws prohibiting sitting or lying down in public:**
 - 53% of cities prohibit sitting or lying down in particular public places.
- **Laws prohibiting sleeping in vehicles:**
 - 43% of cities prohibit sleeping in vehicles.
- **Laws prohibiting food sharing:**
 - 9% of cities prohibit sharing food with homeless people.

Changes in Number of Cities with Bans Focused on Particular Public Places

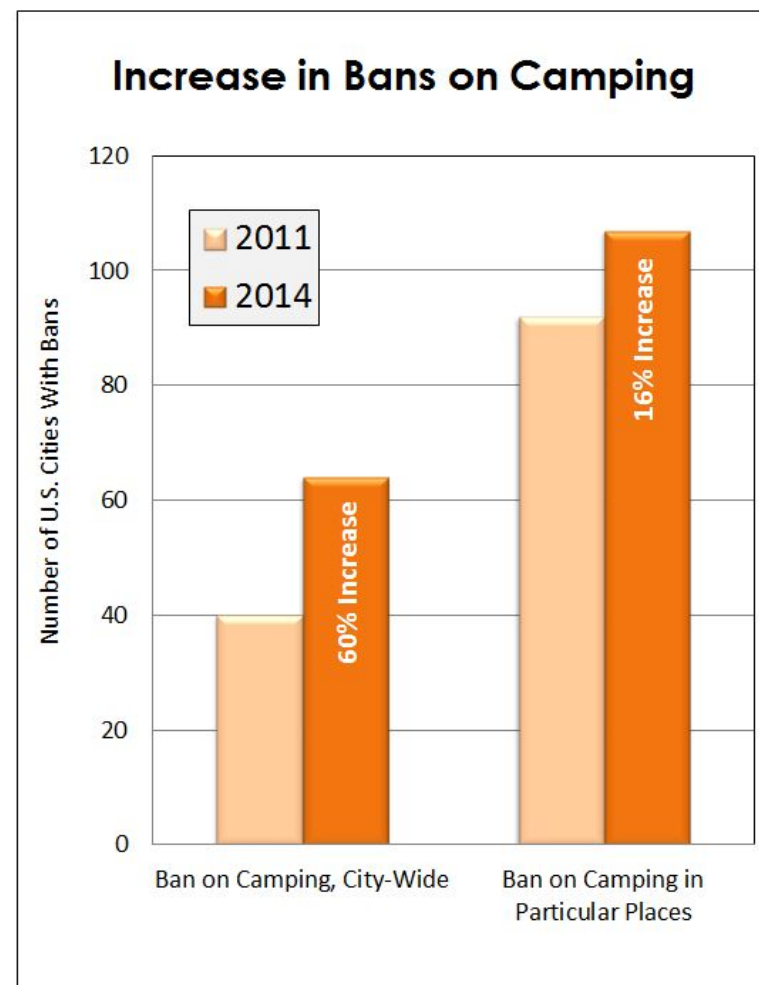


Trends Show Overall Increase in City-Wide Bans

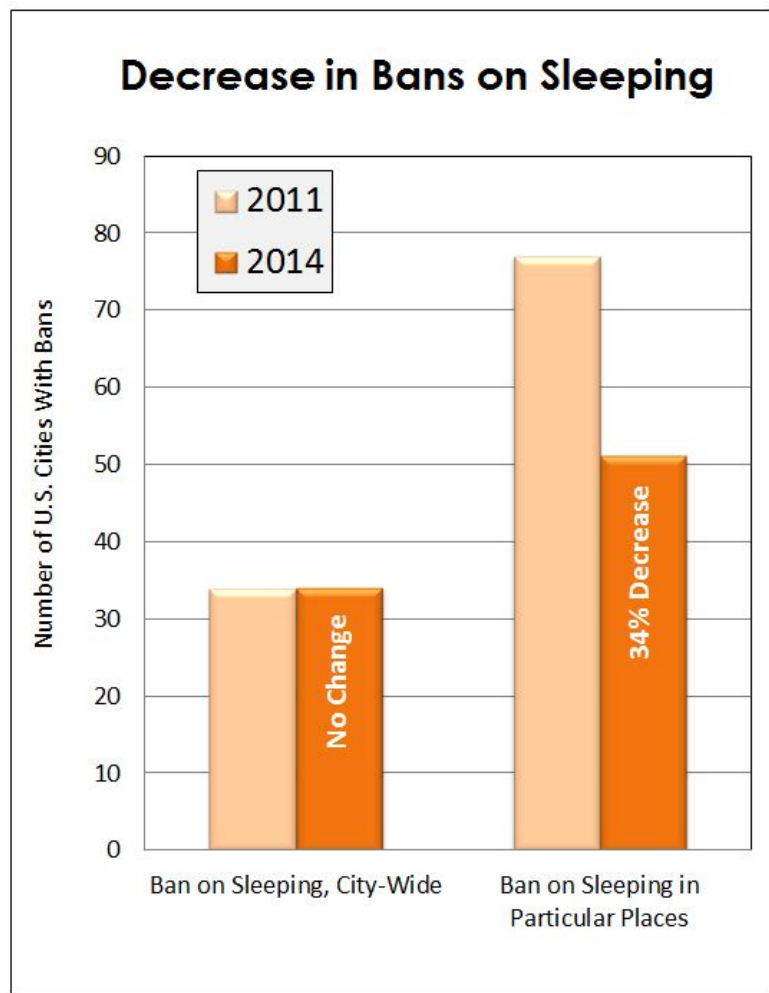


Camping in Public

- 60% increase in city-wide bans on camping in public
- 16% increase in bans on camping in particular places
- “Camping” is broadly defined
- **Examples:**
 - Minneapolis, MN
 - Clearwater, FL
 - Orlando, FL
- Public and private property
- Creates “no homeless” zones



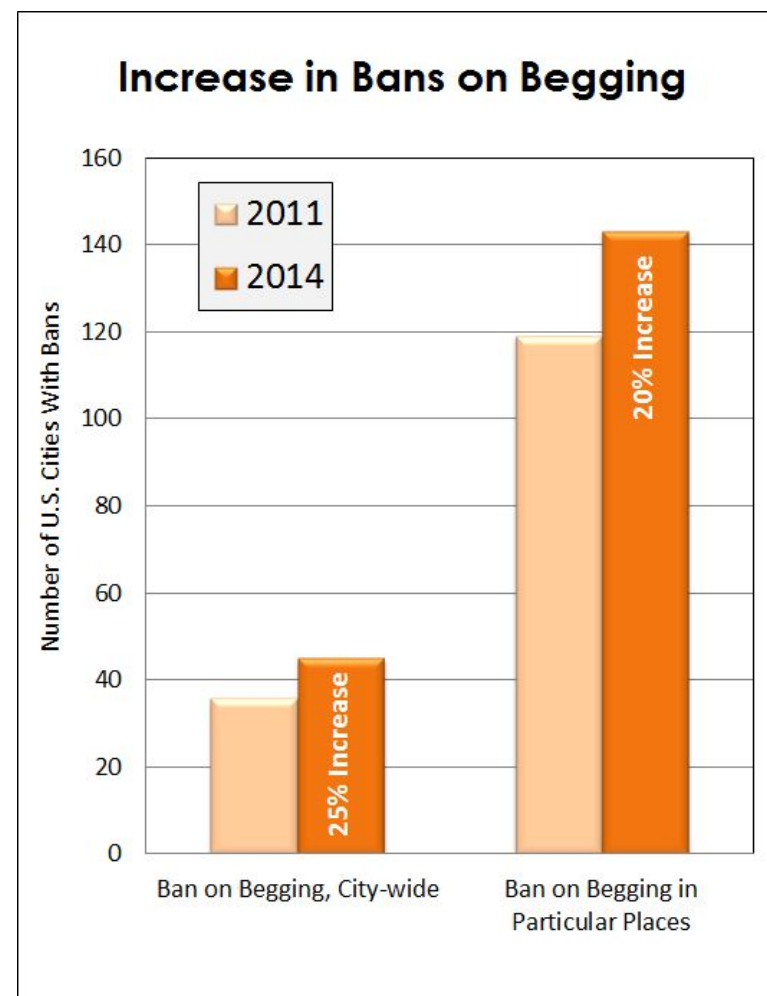
Sleeping in Public



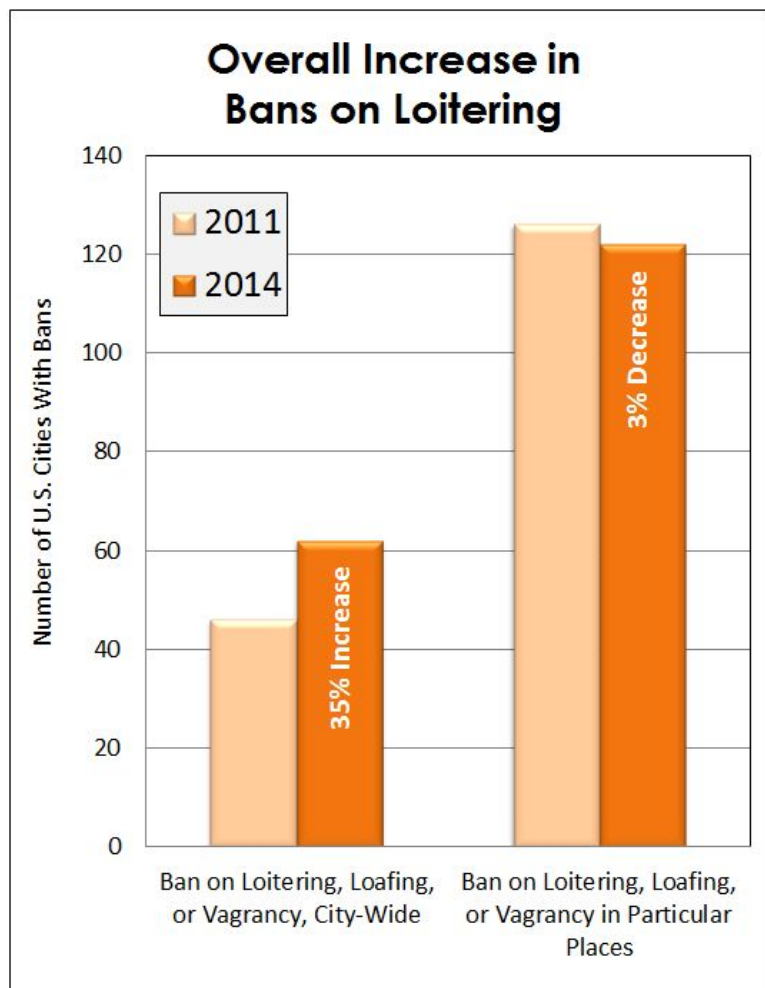
- No change in city-wide bans on sleeping in public
- 34% decrease in bans on sleeping in particular places
- **Examples:**
 - Manchester, NH
 - Virginia Beach, VA
- Sleeping vs. Camping
- Impact on health and safety

Begging in Public

- 25% increase in city-wide bans on begging in public
- 20% increase in bans on begging in particular places
- **Examples:**
 - Lexington, KY
 - Springfield, IL
 - Mobile, AL
- Need for access to cash
- City-wide bans vs. bans in particular places



Loitering, Loafing, and Vagrancy




- 35% increase in city-wide bans on loitering
- 3% decrease in bans on loitering in particular places
- “Loitering” is broadly defined
- **Examples:**
 - Newport, RI
 - Wichita, KS
- Overlap with trespass laws

Sitting and Lying Down

- 43% increase in laws prohibiting sitting and lying down in public
- Sit/Lie Laws
- **Examples:**
 - Virginia Beach, VA
 - Denver, CO
- No evidence that sit/lie laws improve economic activity in a community
- **Example:**
 - Berkeley, CA

MORE THAN HALF

of cities surveyed ban sitting or lying down in particular public places



In 2011,
70 cities banned
sitting or lying down
in public places.

In 2014,
100 cities banned
sitting or lying down
in public places.

This is a
43% increase
in just three years.

Living in Vehicles



- 119% increase in laws prohibiting living in vehicles
- Examples:
 - El Cajon, CA
 - Las Vegas, NV
- *Desertrain v. City of Los Angeles*, No. 11-56957, 2014 WL 2766541 (9th Cir. June 19, 2014)
- Loss of belongings

Food Sharing

- 9% of cities prohibit sharing food with homeless people
- Need for food services
- Expands liability to homeless service providers and volunteers
- **Example:**
 - Dallas, TX
- *Big Hart Ministries v. City of Dallas*, 2011 WL 5346109 (N.D. Tex. Nov. 4, 2011)

NO SHARING ALLOWED



17 of the cities surveyed have ordinances that **restrict individuals & private organizations** from sharing food with homeless people

Criminalization Laws are Expensive

- Temporarily cycles people through costly criminal justice system
- Providing housing is far more cost effective
- **Examples:**
 - Utah
 - Albuquerque, NM
- Exposes cities to expensive litigation

Reducing Costs with Housing First		
	One Year <u>Before</u> Housing First Program Cost	One Year <u>After</u> Housing First Program Cost
Hospital Inpatient	\$946,874.22	\$153,003.48
Emergency Room	\$208,439.74	\$181,272.62
Medical Outpatient	\$524,568.17	\$319,711.58
Mental Health Inpatient	\$21,732.62	\$54,089.00
Mental Health Outpatient	\$47,391.66	\$31,790.87
Shelter	\$117,948.92	\$0.00
Social Services Costs	\$27,272.36	\$155,264.74
Jail	\$51,540.30	\$18,448.89
Jail-Based Treatment	\$3,844.79	\$4,133.67
Housing First Program Housing Costs	\$0.00	\$309,706.37
Housing First Program Services Costs	\$0.00	\$106,473.07
Total	\$1,949,814.78	\$1,333,894.29
Annual Savings with Housing First Program		\$615,920.49

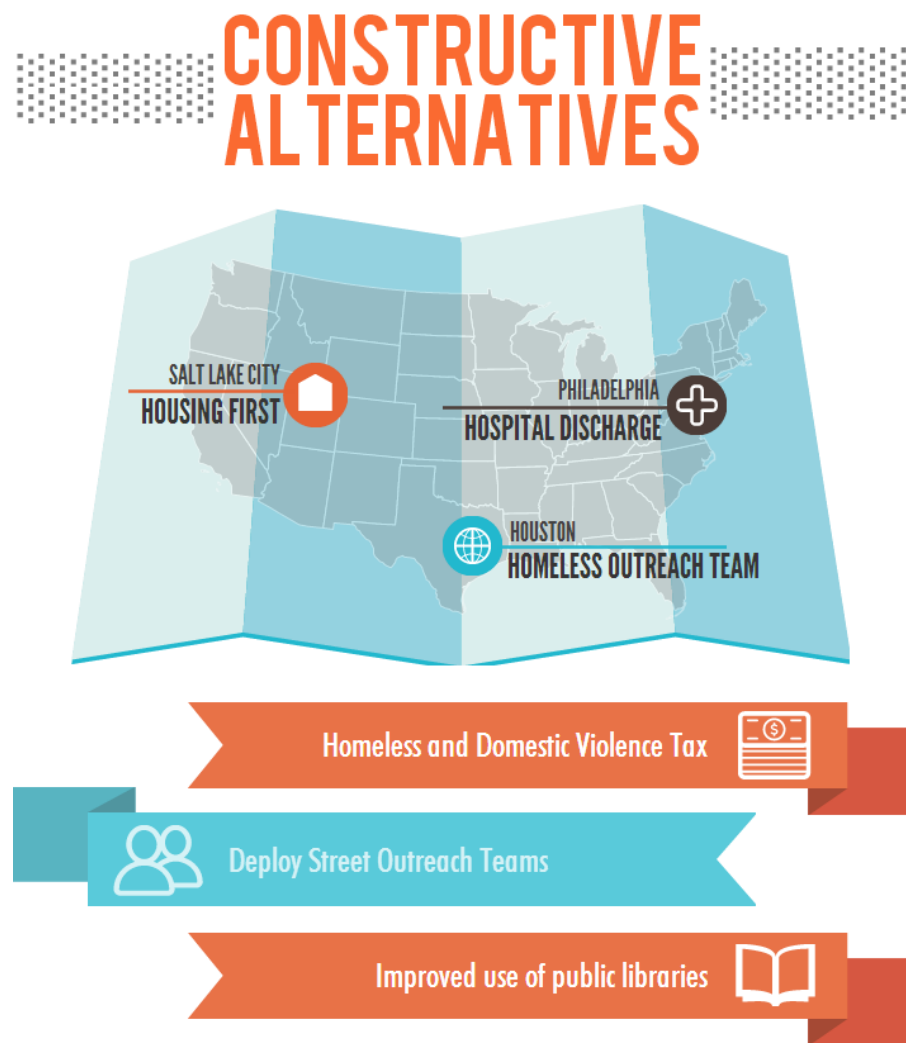
Criminalization Laws Do Not Work



- Collateral consequences of criminalization
 - Criminal records
 - Loss of photo identification and other needed belongings
 - Employment
 - Housing
 - Public Benefits
 - Voting Rights
- Access to justice

Constructive Alternatives to Criminalization

- Devote more resources to affordable housing and needed services
 - National Housing Trust Fund
 - Miami-Dade County's Homeless and Domestic Violence Tax
- Improve efficient and effective service delivery
 - Housing First in Utah
 - 25 Cities Initiative
- Improve Police Training and Practices
 - Homeless Outreach Team in Houston, TX
- Improve Transition Planning from Jails and Hospitals
 - Respite care in Philadelphia, PA



There is More to be Done

- Federal responsibility to combat the criminalization of homelessness
 - *Recommendations to U.S. Dept. of Housing & Urban Development:*
 - Ensure fewer McKinney-Vento dollars go to communities that criminalize homelessness
 - Take additional steps to ensure that criminal convictions do not prevent access to housing benefits
 - *Recommendations to U.S. Department of Justice:*
 - Ensure community policing grants are not funding criminalization practices
 - Investigate police departments for civil rights violations of homeless people
 - *Recommendations to Federal Housing Finance Administration:*
 - Immediately fund the National Housing Trust Fund

Recommendations to State and Local Governments

- State governments should enact and enforce Homeless Bill of Rights legislation that prohibits the criminalization of homelessness
 - Example:
 - California
- Local governments should:
 - Immediately cease enforcement of existing criminalization laws
 - Repeal existing criminalization laws
 - Stop enacting criminalization laws
- Local governments should pursue constructive alternatives to criminalization

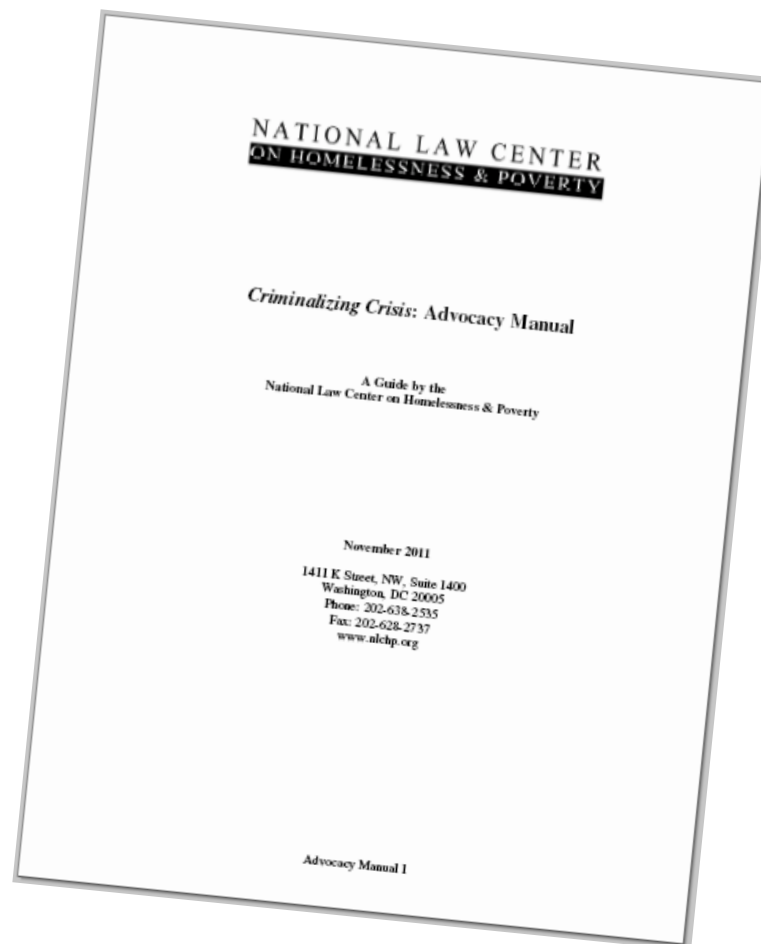
Eric Tars

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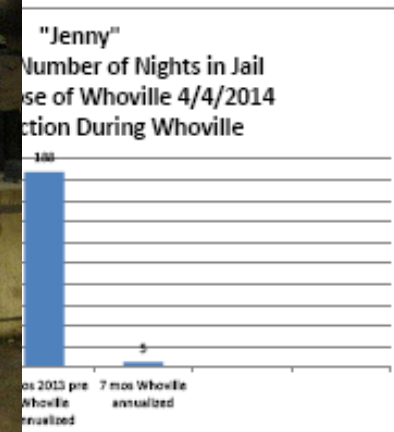
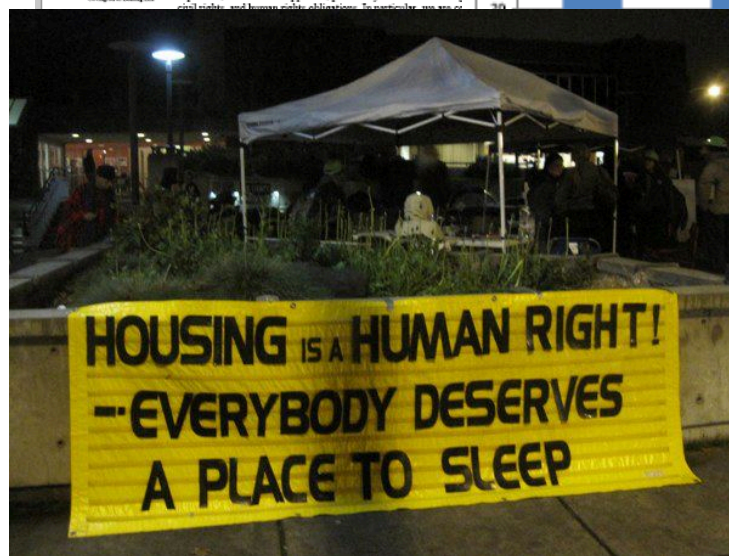
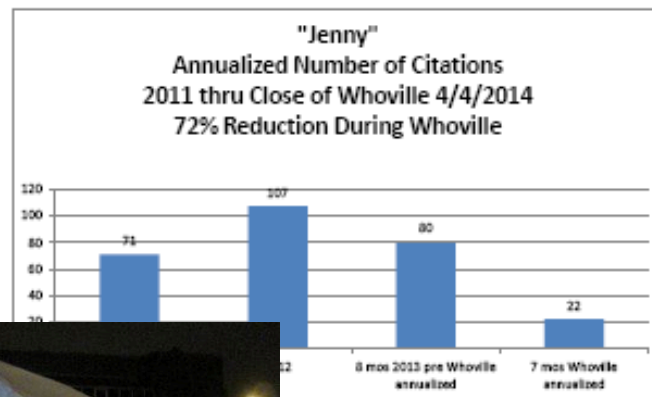
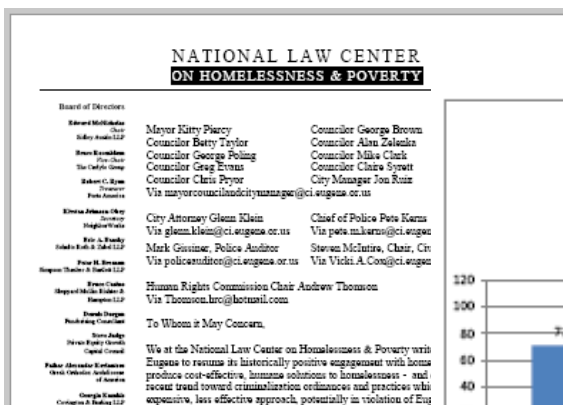
Countering Criminalization

- Policy Challenges
- Legal Challenges



Countering Criminalization - Policy

- Start early
- Dispel myths
- Show costs
- Provide a better way
- Organize!



Countering Criminalization - Legal

- Anti-sleeping/camping
- Anti-panhandling
- Anti-loitering/loafing/vagrancy
- Anti-food sharing
- Sweeps
- Trespass



Countering Criminalization - Legal

- Anti-sleeping/camping
 - 8th Amendment: City of Miami's practice of "arresting the homeless for harmless, involuntary, life-sustaining acts such as **sleeping, sitting** or **eating** in public is cruel and unusual." *Pottinger v. City of Miami*, 810 F.Supp. 1551 (S.D. Fla. 1992)
 - International: "The Committee is concerned about reports of criminalization of people living on the street for everyday activities ...[and] notes that such criminalization raises concerns of discrimination and cruel, inhuman, or degrading treatment." U.N. Human Rights Committee, *Concluding observations on the fourth report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (2014).
 - 14th Amendment: "The City of Los Angeles has many options at its disposal to alleviate the plight and suffering of its homeless citizens. Selectively preventing the homeless and the poor from using their vehicles for activities many other citizens also conduct in their cars should not be one of those options." *Desertrain v. City of Los Angeles*, No. 11-56957, 2014 WL 2766541 (9th Cir. June 19, 2014).

Countering Criminalization - Legal

- Anti-panhandling
 - 1st Amendment – begging constitutes expressive conduct, there is no compelling government interest served by prohibiting those who beg peacefully from communicating, statute banning all begging was not narrowly tailored, not content-neutral, and left open no alternative channels of communication “by which beggars can convey their messages of indigency.” - *Loper v. New York City Police Department*, 999 F.2d 699 (2nd Cir. 1993)
 - 14th Amendment - fails to sufficiently define prohibited conduct and provides the county administrator with excess discretion. Licensing schemes are presumptively unconstitutional. - *Booher v. Marion County* (M.D. Fla.), Case No. 5:07-CV-00282 - Preliminary Injunction (2007). Ordinance repealed (2008).
 - However, “aggressive panhandling”, if clearly defined, often survives challenges.

Countering Criminalization - Legal

- Anti-loitering
 - 14th Amendment – The ordinance “fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute” and “encourages arbitrary and erratic arrests and convictions.” *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972).

Countering Criminalization - Legal

- Anti-food sharing
 - 1st Amendment/Religious freedom statutes- food sharing activities are religious expression protected under the Texas Religious Freedom Restoration Act, and the city had failed to articulate a compelling interest justifying them. *Big Hart Ministries Ass'n Inc. v. City of Dallas*, 2011 WL 5346109 N.D. Tex. Nov. 4, 2011).
 - But in *First Vagabonds Church v. City of Orlando*, 638 F.3d 756 (11th Cir. 2011) (en banc), the Court assumed, without deciding, that feeding of homeless persons is expressive conduct, but decided that Orlando ordinance restricting large group feeding within downtown district to two permits per park per year was reasonable restriction on speech.

Countering Criminalization - Legal

- Sweeps
 - 4th Amendment - “seizure of homeless people’s personal property without probable cause and the immediate and permanent destruction of such property without a method to reclaim or to assert the owner’s right, title, and interest to recover such personal property violates the Fourth Amendment.” *Kincaid v. City of Fresno*, 2006 WL 3542732, 8 (Dec. 8, 2006).
 - The court also found that, because the City was seizing “the very necessities of life: shelter, medicine, clothing, identification documents, and personal effects of unique and sentimental value,” the inconsistent and confusing notice of up to a few days was inadequate.
 - Sweeps may constitute “forced evictions,” forbidden under international law.

Countering Criminalization - Legal

- Trespass
 - 14th Amendment - "Plaintiffs have a constitutionally protected liberty interest to be in parks or on other city lands of their choosing that are open to the public generally." *Catron v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir. 2011)

Countering Criminalization - Legal

- Anti-sleeping/camping
- Anti-panhandling
- Anti-loitering/loafing/vagrancy
- Anti-food sharing
- Sweeps
- Trespass



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A Homeless Bill of Rights (Revolution)

Sara K. Rankin, Seattle University School of Law

- Article cited in National Law Center's Report
- Link available at <http://ssrn.com/abstract=2376488>.

Surveys current efforts in 9 states and Puerto Rico

- Different substantive and strategic approaches
- Potential challenges and benefits

Substantive Considerations

Positive rights

- Housing, healthcare, food, workforce training

Negative rights (freedom from...)

- Discrimination
- Violations of general constitutional rights to privacy and property, etc.

Anti-criminalization

Strategic Considerations

End goal

- Enactment
- Public dialogue, awareness

Timeline

- View of incrementalism

Starting point

- Go big? How big?

Range of Models

Puerto Rico (enacted)

Rhode Island (enacted)

California

- Status
- Substantive provisions
- Strategic hallmarks

Puerto Rico

Status

- Series of laws enacted since 1998

Substantive provisions

- Ex. Shelter, nourishment, healthcare, workforce training, and anti-criminalization

Strategic hallmarks

- Implementation; administrative entity

Rhode Island

Status

- Enacted; inspired CT, IL, HI, VT, MO, MA

Substantive provisions- negative rights

- Ex. Use and move freely in public spaces, equal treatment, privacy, property, discrimination

Strategic hallmarks

- Enactment priority
- Monitoring; incremental development

California

Status

- Proposed last session; regrouping

Substantive provisions

- Ex. housing, legal counsel, anti-criminalization

Strategic hallmarks

- Getting substantive priorities, especially anti-criminalization provisions, enacted

Moving Ahead

Discuss your substantive and strategic goals?

Join a current campaign?

Participate in data collection?

- Statewide charts of prohibited conduct
- Street level surveys
- Enforcement (public record requests)

Developing a national repository for advocates?

- Reported cases, supporting briefs, policy papers, data

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Member

Eugene Human Rights Commission

Kirsten Clanton

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Costs of Criminalization

A case for constructive alternatives

Federal Plan to End Homelessness

“Criminalizing acts of survival is not a solution to homelessness and results in unnecessary public costs for police, courts, and jails.”

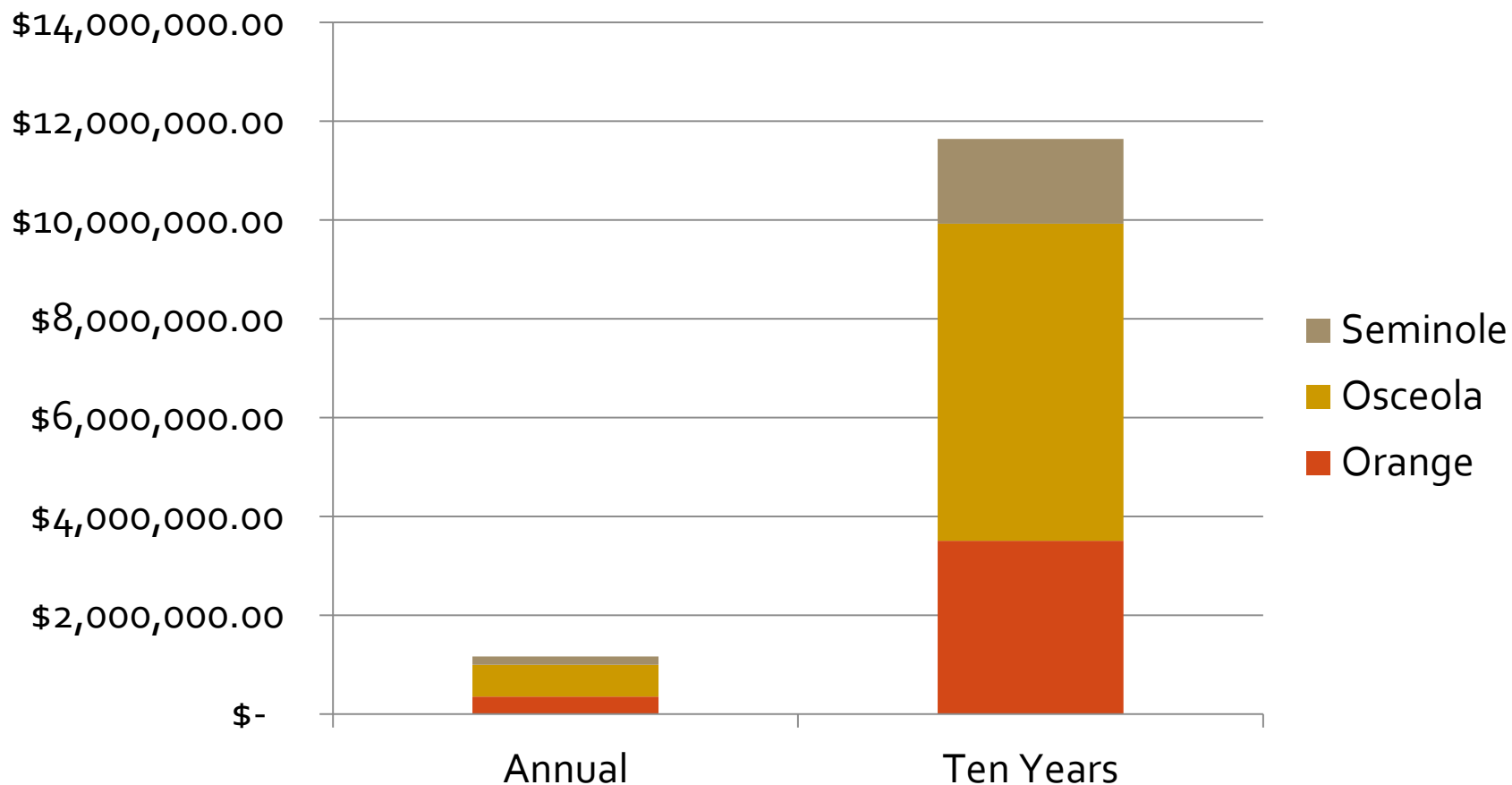
“The Cost of Long-Term Homelessness in Central Florida”

- Creative Housing Solutions retained by Central Florida Commission on Homelessness to study economic impact of homelessness in Orange, Seminole & Osceola Counties
- 2014 Report Analyzes actual and projected costs incurred by long-term chronically homeless including repeated incarcerations and hospital usage

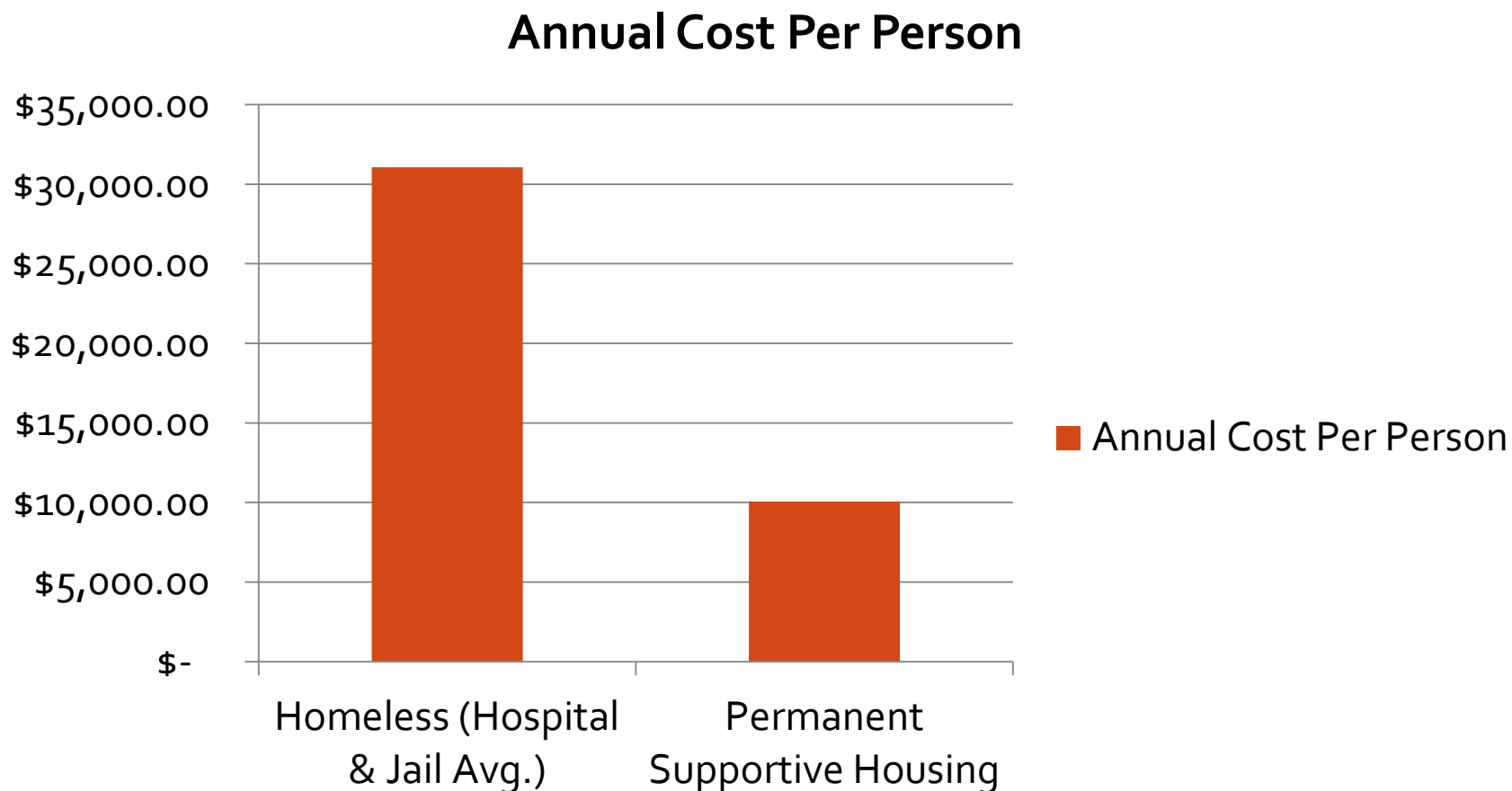
The Cost of Doing Nothing is Not Nothing

- “Over the past 20 years, a growing body of research has documented the escalating cost of homelessness on communities across the country... it is now well established that allowing homelessness to exist in a community is more expensive than providing the solutions to the problem.”

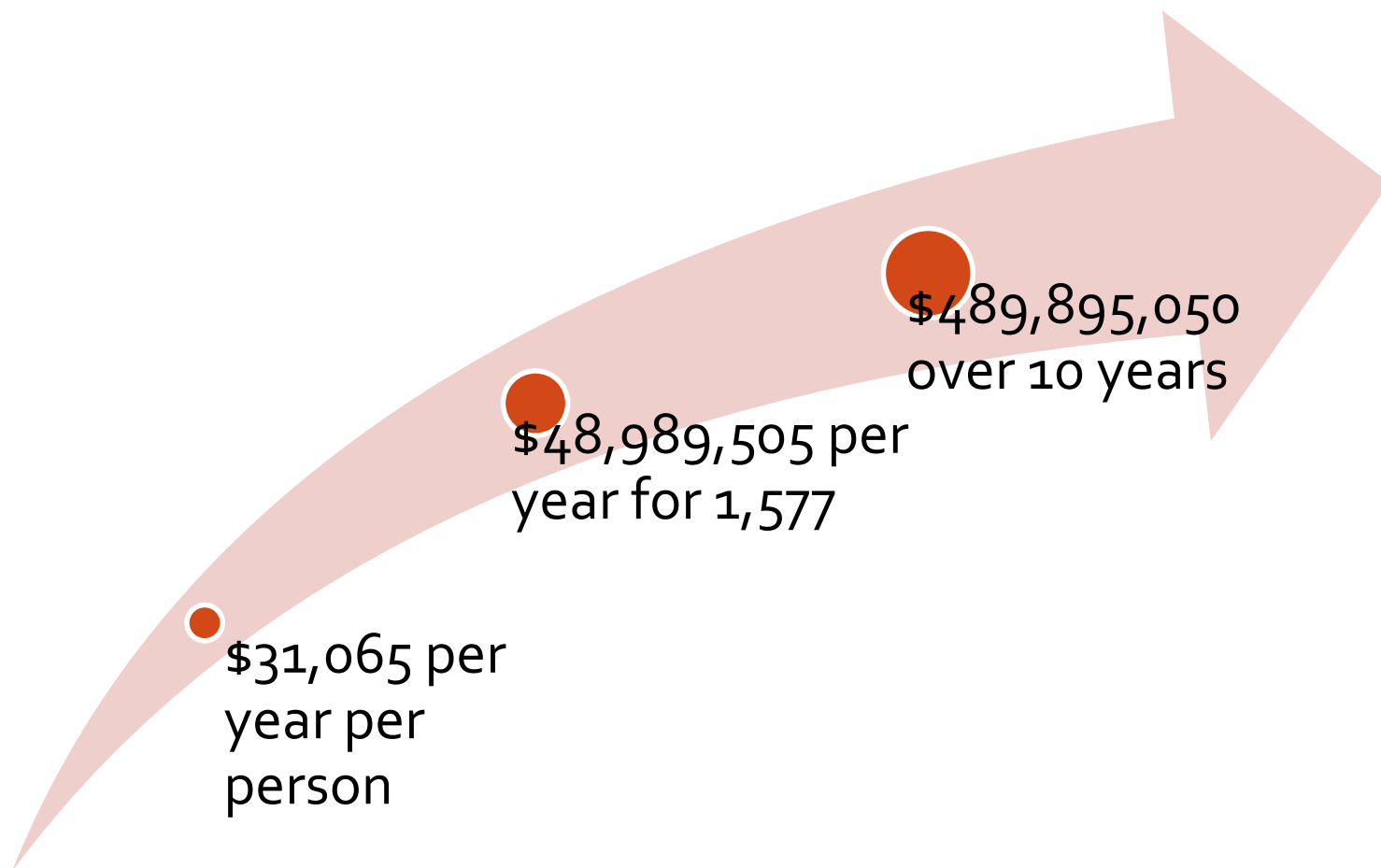
Costs of Incarceration for 107 chronically homeless individuals



Average Costs in Central Florida



Projected Costs For Tri-County over 10 years (1,577 individuals)



Housing the Homeless= Saved Money + Saved Lives

- **25%** reduction in chronic homelessness = 400 x \$21,014 per person = **\$7,565,040** annual savings
- **100%** reduction in chronic homelessness = 1,600 x \$21,014 per person = **\$30,260,160** annual savings
 - Over **10 years**, the savings could exceed **\$302,601,600**
 - Creating 3,978 jobs for property management, maintenance and capital improvements related to affordable housing
 - **Total economic impact = \$466,230,960**

Constructive Alternatives

Become Solution-Oriented

- Anti-sleeping ordinances
 - Lack of affordable housing
 - Lack of adequate emergency shelter
- Public urination ordinances
 - Lack of affordable housing
 - Lack of public bathrooms 24/7
- Anti-begging ordinances
 - Lack of adequate income
 - Lack of affordable housing

Building Coalitions

- Community Impact—Costs of Homelessness
 - Government
 - Judiciary
 - Law Enforcement
 - Business (Tourism)
 - Health Care
 - Education
 - Social/Human Services

Resources

- www.usich.gov
 - “Opening Doors” – Federal Strategic Plan to Prevent & End Homelessness
 - “Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness”
- www.rethinkhomelessness.org
 - “The Cost of Long-Term Homelessness in Central Florida: The Current Crisis and the Economic Impact of Providing Sustainable Housing Solutions.”

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**SOUTHERN
LEGAL COUNSEL**

BALANCING THE SCALES FOR OVER 35 YEARS

Questions?

No Safe Place:

The Criminalization of Homelessness in U.S. Cities

available at nlchp.org/reports