

# No Safe Place

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The Criminalization of Homelessness in U.S. Cities

**NATIONAL LAW CENTER  
ON HOMELESSNESS & POVERTY**

# Panelists

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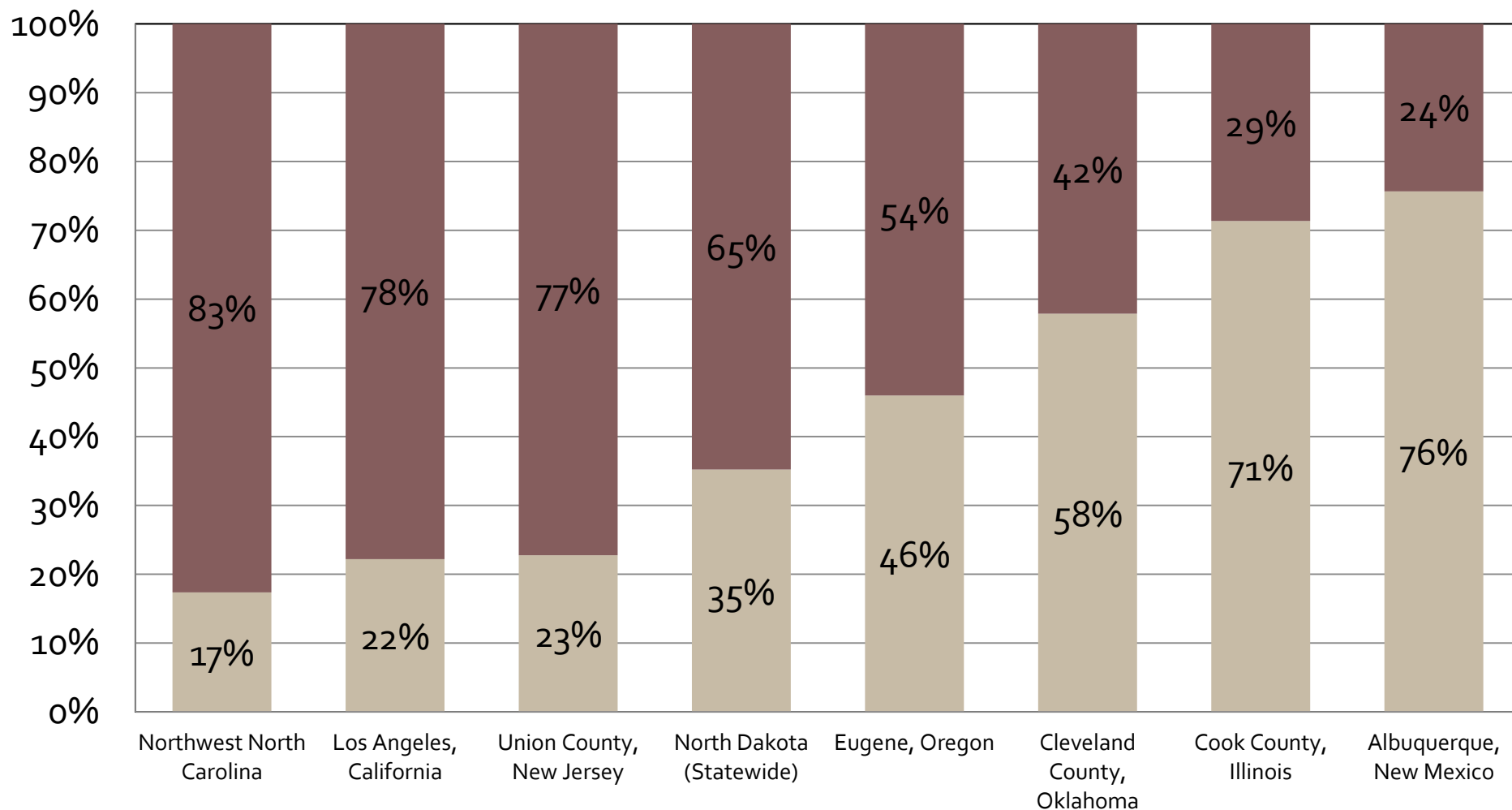
# A Lack of Affordable Housing Causes Homelessness

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



## 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

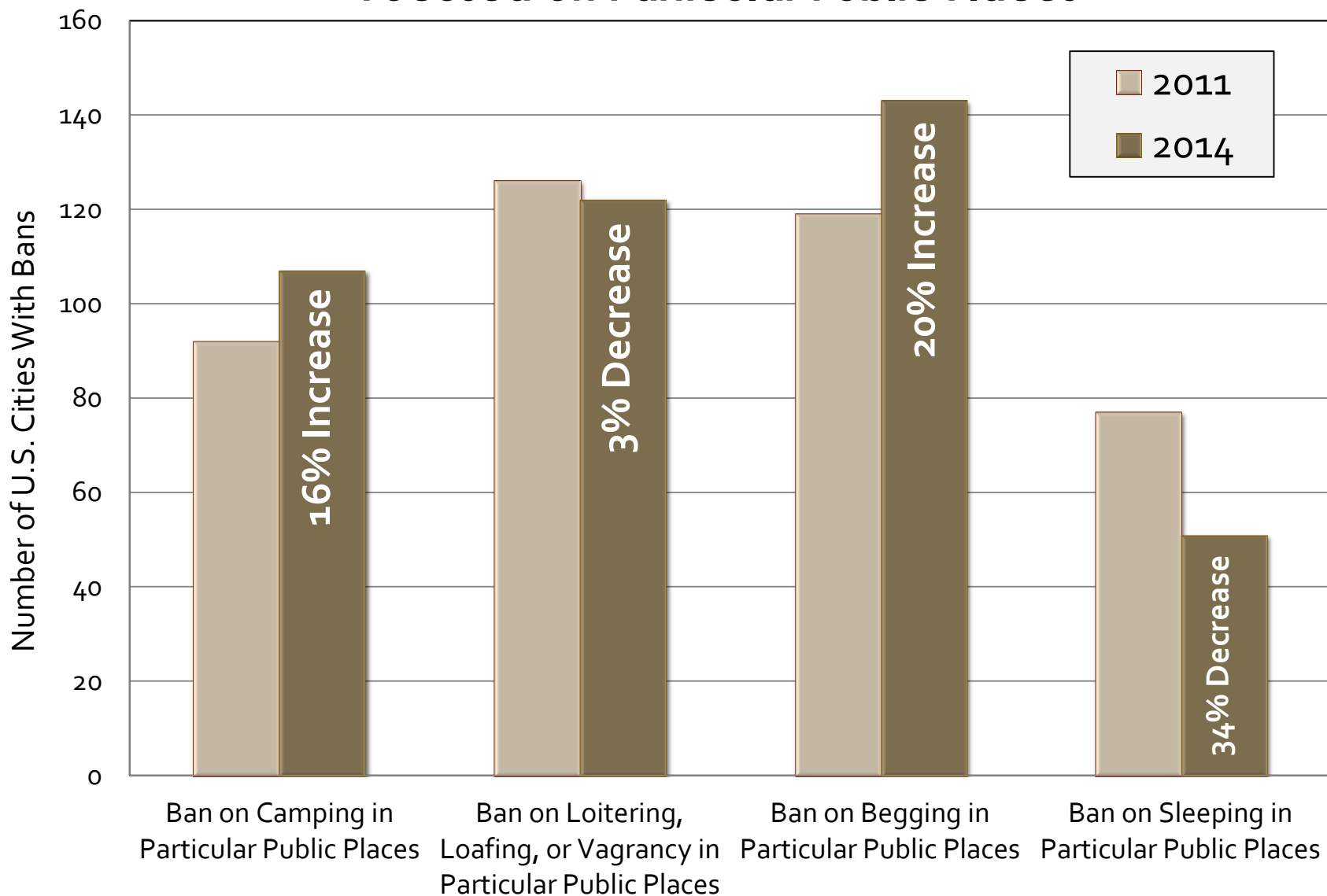
- **Laws prohibiting “camping” in public:**
  - 34% of cities impose city-wide bans on camping in public.
  - 57% of cities prohibit camping in particular public places.
- **Laws prohibiting sleeping in public:**
  - 18% of cities impose city-wide bans on sleeping in public.
  - 27% of cities prohibit 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.



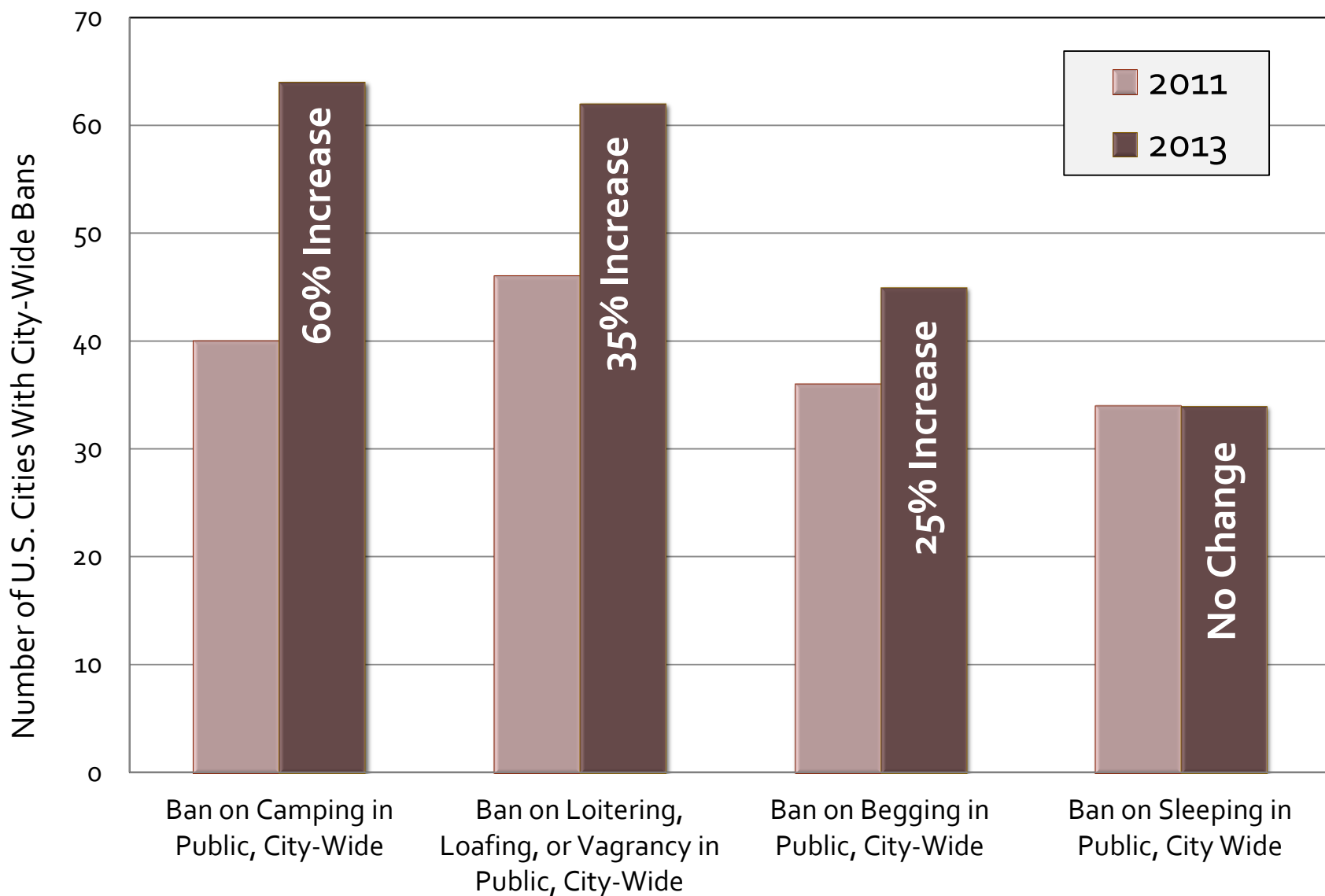
# Many Cities Make it Illegal to be Homeless

- **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

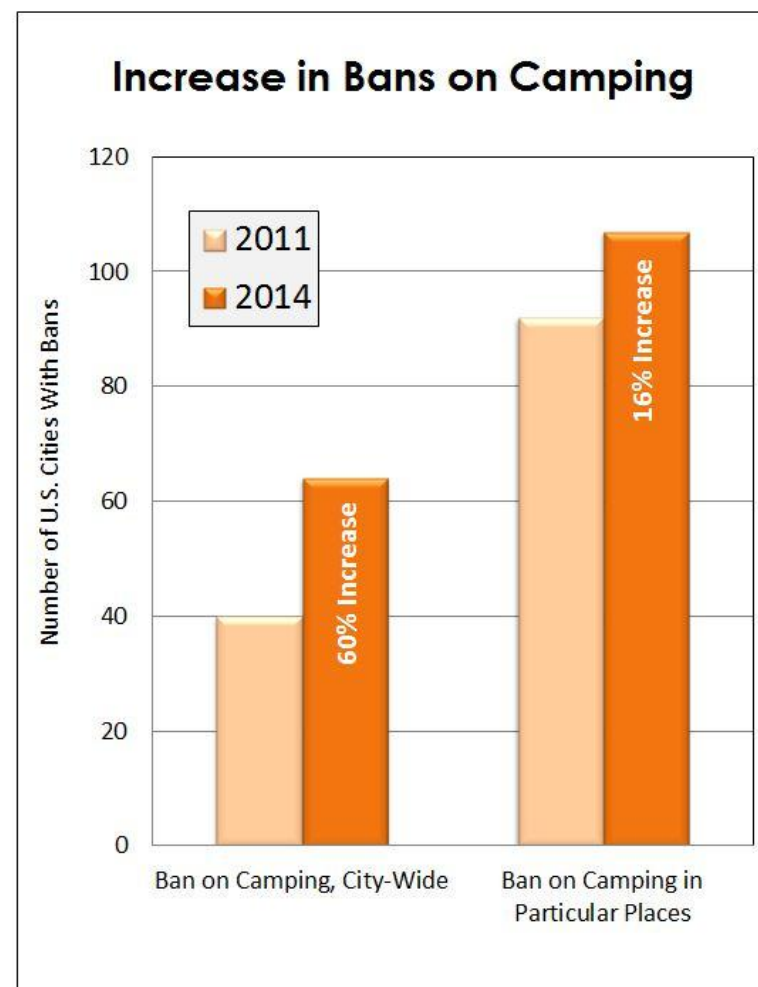


## Trends Show Overall Increase in City-Wide Bans

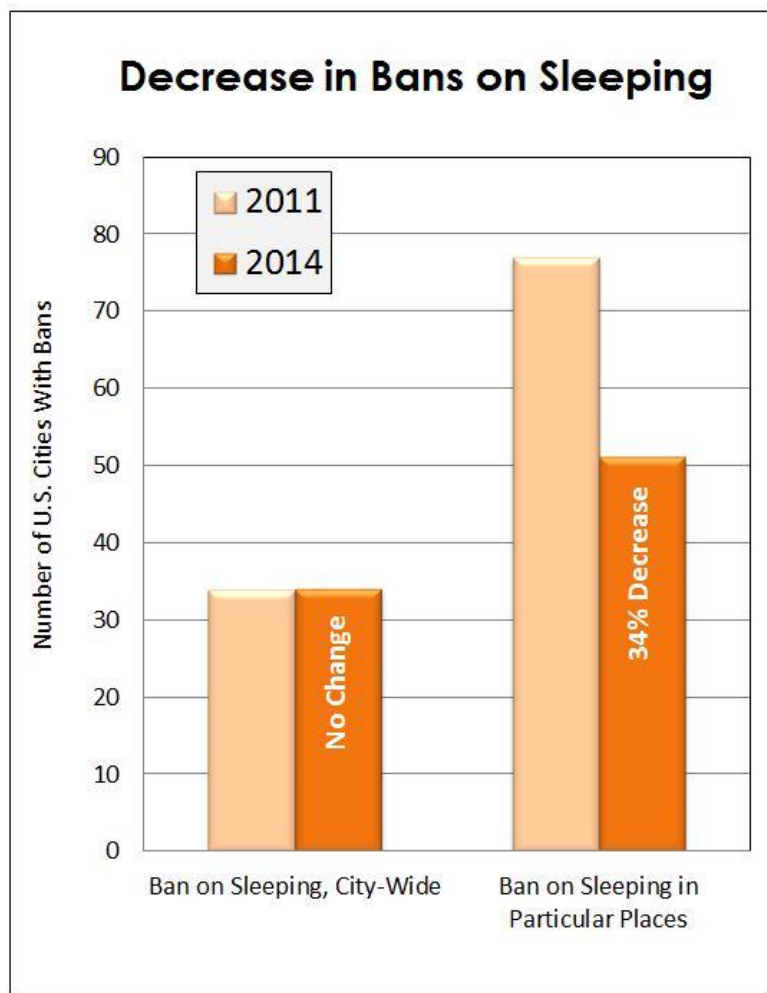


# Camping in Public

- 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



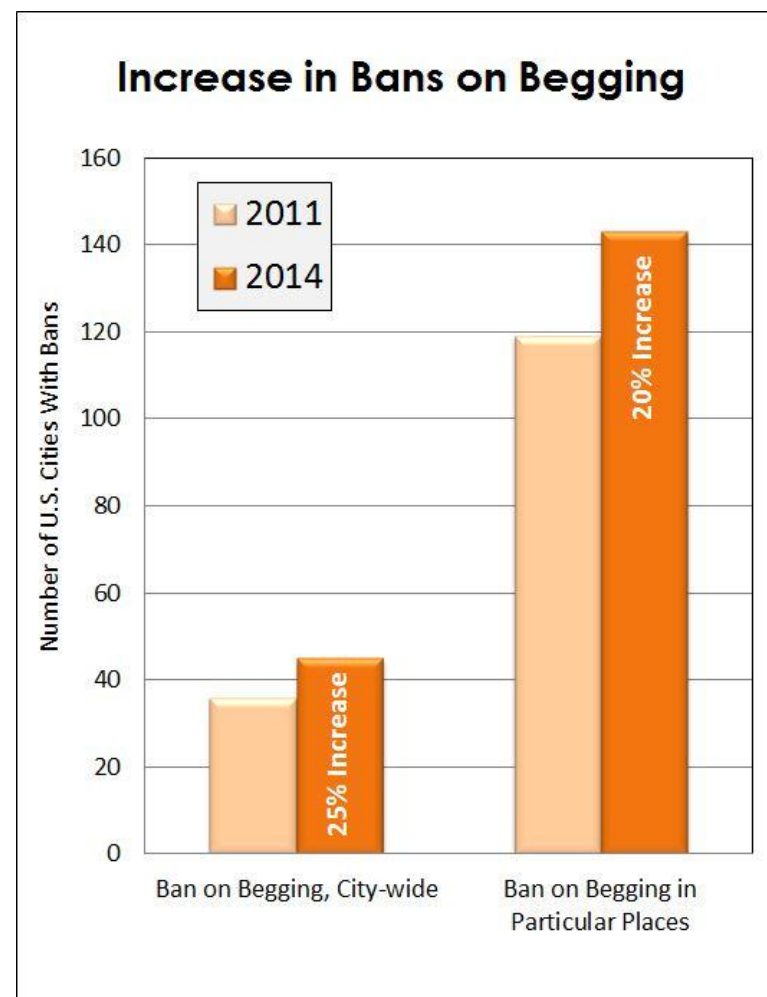
# Sleeping in Public



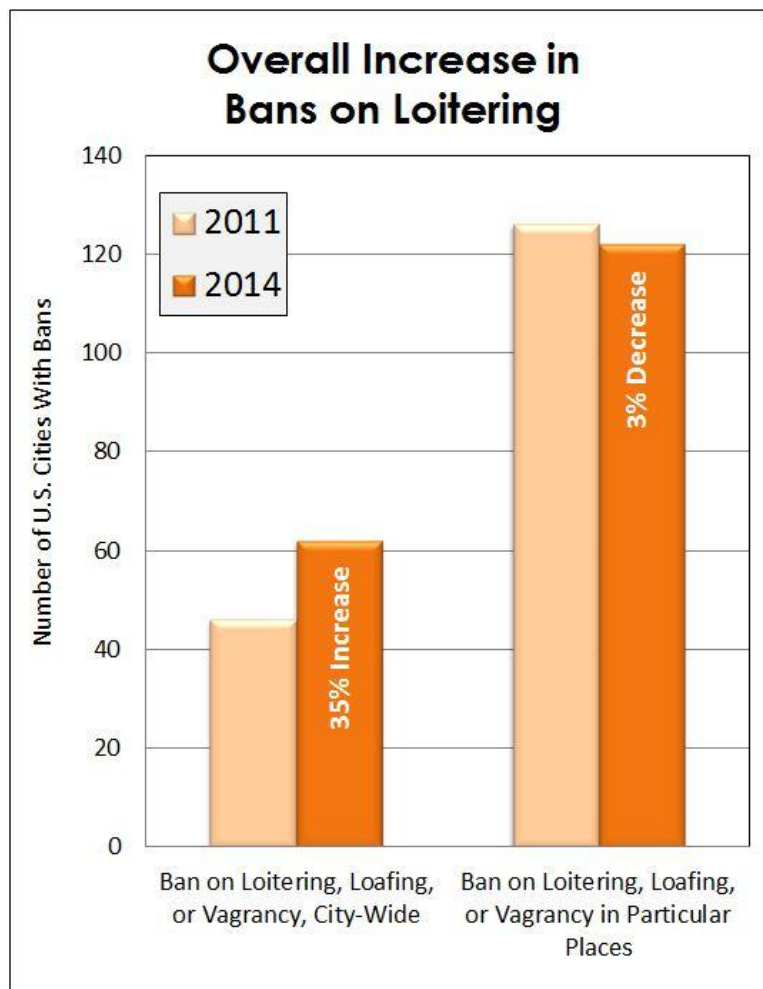
- No change in city-wide bans on sleeping in public
- 34% decrease in bans on sleeping in particular places
- **Examples:**
  - Manchester, NH
  - Virginia Beach, VA
- Sleeping vs. Camping
- Impact on health and safety

# 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.

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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 (9<sup>th</sup> 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

# Kirsten Clanton

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Attorney & Director of Homeless Advocacy Project  
Southern Legal Counsel

# Florida: A Case Study in Criminalization



# Sleeping is Innocent, Life-Sustaining Conduct

- 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):
  - Individuals rarely choose to be homeless
  - Because of unavailability of housing or shelter space, no choice but to conduct **involuntary, life-sustaining** conduct in public
  - **harmless** conduct for which they are arrested is inseparable from their involuntary condition of being homeless.
- St. Petersburg ordinance criminalizing **sleeping** in public places unconstitutional because "it drew no distinction between conduct that was calculated to harm and that which was **essentially innocent.**" *State v. Penley*, 276 So.2d 180 (Fla. 2d DCA 1973).

# Begging is Protected Speech

- Complete bans on speech not constitutional
- Begging laws must pass First & Fourteenth Amendment scrutiny
- Licensing schemes presumptively unconstitutional
- Cities may not discriminate based on content of speech
- Laws must give adequate notice of prohibited conduct
- Arbitrary & discriminatory enforcement unconstitutional



# The “Beggar’s Badge”

- *Booher v. Marion County* (M.D. Fla.), Case No. 5:07-CV-00282
  - Preliminary Injunction (2007). Ordinance repealed (2008).
- **Section 10-403, Marion County Code. Restrictions.**
  - It shall be unlawful for any person to beg, panhandle, solicit, or obtain alms, food, money or gifts, **directly or indirectly** for the personal use of the solicitor or beggar without a panhandler's license.
- **Section 10-405, Marion County Code. Issuance of License.**
  - Applicant must pay **\$100 fee**, no fee waiver available.
  - The applicant must not have violated the ordinance in the past year or committed crimes of moral turpitude.
  - Must be issued a **badge**, identifying the applicant as a beggar or panhandler.

# Loitering, Loafing and Vagrancy are Not Punishable Crimes

- City of Jacksonville vagrancy ordinance criminalized “rogues and vagabonds...persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers” and other offenses.
- U.S. Supreme Court declared it unconstitutional:
  - “Where, as here, there are **no standards** governing the exercise of the discretion granted by the ordinance, the scheme permits and encourages an **arbitrary** and **discriminatory** enforcement of the law.
  - “A presumption that people who might walk or loaf or loiter or stroll... or who look suspicious to the police are to become future criminals is **too precarious for a rule of law.**”
  - *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972).



# Feeding as Expressive Conduct

- Orlando Food Not Bombs members arrested for serving food in a city park in violation of City's large group feeding ordinance.
- *First Vagabonds Church v. City of Orlando*, 638 F.3d 756 (11th Cir. 2011) (en banc)
  - 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.
  - After decision, 24 additional members of Food Not Bombs were arrested for sharing vegan food with hungry people. All charges were eventually dropped.

# Trespass: The New “Banishment”



# Due Process & Trespass

- *Catron v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir. 2011)
  - One plaintiff permanently banned from all city parks; other plaintiff banned for one year from city park based on alleged violation of city ordinance where he was never prosecuted.
  - “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.”
  - The issuance of trespass warnings for city parks deprives Plaintiffs of a constitutionally protected liberty interest.
  - Due process is required in connection with trespass warnings for public property (under times and conditions when it is open to public).

# Illegal to Access Water/Sanitation



# Pinellas County & Criminalization

- Pinellas Safe Harbor
  - Low-barrier emergency shelter located in jail annex on jail property & run by Sheriff's Office
  - Outdoor courtyards, "carrot and stick" approach
  - Involuntary placement by police through "choice" of arrest or transportation to Safe Harbor
  - Connection to criminalization, continued isolation/marginalization
- Homeless Diversion Program
  - Targets chronically homeless individuals
  - Due process concerns

# Costs of Criminalization in Central Florida

- The Cost of Long-Term Homelessness in Central Florida (2014), a report by Rethink Homelessness found:
  - **Osceola County** spent **\$6,417,905** over 10 years to arrest and jail 37 individuals (1,250 arrests).
  - **Orange County** spent **\$3,509,088** over 10 years to arrest and jail 37 individuals (1,320 arrests).
  - **Seminole County** spent **\$1,712,246** over 10 years to arrest and jail 37 individuals (520 arrests).
  - Average annual cost to be homeless (including jail and hospitalizations) was \$31,065 per person per year.
  - Providing permanent supportive housing for individuals cost an average of \$10,051 per person per year, an annual cost savings of \$21,014 per person, or a reduction of 68% per person, per year.

# Contact Information

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# 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
<b>Total</b>	<b>\$1,949,814.78</b>	<b>\$1,333,894.29</b>
<b>Annual Savings with Housing First Program</b>		<b>\$615,920.49</b>



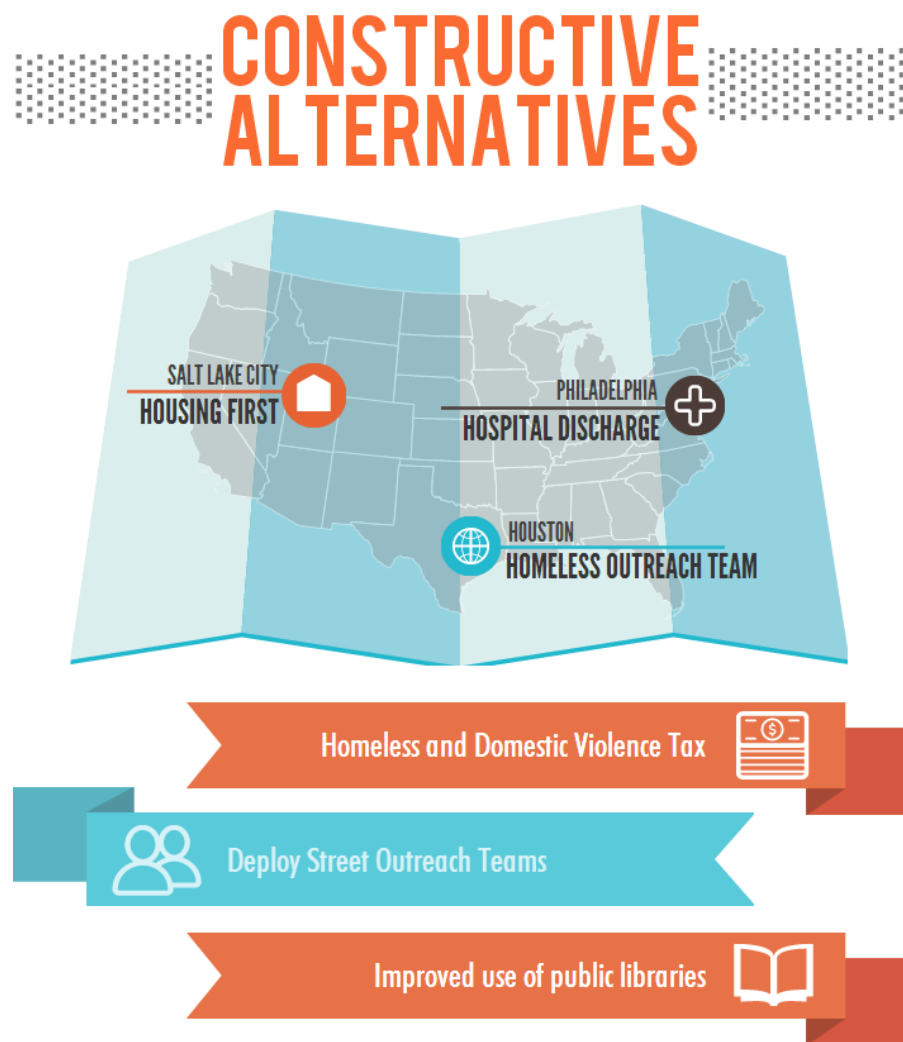
# Criminalization Laws Do Not Work



- Collateral consequences of criminalization
  - Criminal records
  - Loss of photo identification and other needed belongings
  - Employment
  - Housing
  - Public Benefits
- 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

# Contact Information

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# Questions?

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***No Safe Place:***

*The Criminalization of Homelessness in U.S. Cities*

available at [nlchp.org/reports](https://nlchp.org/reports)