

Early Diversion: Addressing the Critical Need for Housing and Strategies to Overcome Barriers to Improve Housing Access

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Framing the Problem

On any given night in the United States, more than 550,000 people are experiencing homelessness.¹ Among them, approximately 96,000 people are chronically homeless, facing long and repeated episodes of homelessness that make it increasingly difficult to return to housing.² This crisis of homelessness is perpetuated by a legal system that criminalizes survival behaviors associated with homelessness and fails to account for the impossible barriers people who are homeless face within the legal process. Further, criminal legal system involvement compounds existing challenges for people experiencing homelessness, making it even more difficult to find stability and safety.³ Especially for people living with mental illness, which is an established risk factor for homelessness, contact with the criminal legal system can have devastating consequences.⁴

How Homelessness Leads to Criminal Legal System Involvement

In response to the growth of homelessness in the 1980s, cities across the United States began enacting laws and policies intended to discourage people experiencing homelessness from settling in public spaces. For instance, many cities routinely disrupt and disperse homeless communities through forced evictions, or

“sweeps.”⁵ Further, some cities authorize police-issued “move-along orders,” in which people experiencing homelessness are ordered to disperse or vacate a given area under implicit threat of citation or arrest.⁶ Most cities in the United States also still have municipal codes that punish unavoidable aspects of homelessness, such as bans on loitering, vagrancy, and sitting or sleeping in public places, with city officials relying on criminalizing laws to promote a “zero-tolerance” approach to homelessness.⁷ As a result of these policies and enforcement patterns, people experiencing homelessness are steadily drawn into the criminal legal system and exposed to higher rates of arrest and incarceration than people with stable housing.*

How People Experiencing Homelessness Are Disadvantaged within Local Criminal Legal Systems

After the criminal legal process is initiated, people experiencing homelessness face new obstacles at every legal system decision point. Local criminal legal processes are not designed to accommodate people without housing, and as a result, they disadvantage people experiencing homelessness at every stage.

→ *Barriers to appearing for court dates.* Without a physical address or reliable access to the internet, it can be challenging to find basic case information,

* See Jennifer R. Gonzalez, Katelyn K. Jetelina, Madeline Roberts, et. al, “Criminal Justice System Involvement Among Homeless Adults,” *American Journal of Criminal Justice* 43 (2018). A survey of 581 homeless adults in Oklahoma City shelters reported that 76% of the sample had been arrested and 57% of the sample had been to jail more than three times in their lifetime.

such as how to pay a citation or the date of a scheduled court appearance.⁸

- *Risk of low-level citations turning into warrants and arrests.* Although most civil citations do not carry the possibility of jail time, failing to pay the citation or appear in court to challenge it can quickly result in a cascade of other penalties, including arrest.⁹
- *Likelihood of pretrial incarceration.* Judges have broad discretion regarding whom to detain or release from jail pretrial, and under what conditions, and may assume that people without a residential address, stable employment, or traditional family support will not return to court when ordered. Even when bail is set at a very low amount, most people experiencing homelessness are unlikely to be able to pay even a small sum to secure their release.¹⁰
- *Vulnerability to conviction and longer sentences.* Research has established that people who are incarcerated pretrial for longer periods face worse case outcomes, including a higher likelihood of conviction than people who are released within a few days of their bail hearing.¹¹
- *Burdensome conditions of probation and parole.* People who are living outside cannot feasibly obey curfew restrictions, may face challenges when charging electronic monitoring devices, and may find it difficult to secure reliable transportation in order to comply with reporting requirements.¹²

How Criminal Legal System Involvement Leads Back to Homelessness

Numerous studies have demonstrated high rates of homelessness among people returning to the community from jails and prisons.¹³ Indeed, a 2018 report analyzing Bureau of Justice Statistics survey data revealed that formerly incarcerated people were nearly 10 times more likely to experience homelessness than the general public.¹⁴

Significantly, people reentering the community after incarceration face new obstacles to securing safe and stable housing. With lengthy waiting lists and limited bed space in halfway houses with supportive programming, people who are newly released from jail or prison must often rely on short-term halfway houses or homeless shelters or live outside.¹⁵ Federally subsidized public housing is not widely available due to scarcity of housing stock, and local public housing administrators have wide discretion to screen out applicants with prior criminal legal system involvement.^{16,17} Moreover, private property owners also regularly conduct criminal background checks and formally or informally bar applicants with histories of criminal legal system involvement from living in private rental housing.¹⁸

Breaking the Cycle of Homelessness and Jail

Without significant change, the cycle of homelessness and jail will continue to harm people experiencing poverty, as well as threaten the health and safety of entire communities. It will also deepen existing racial disparities within the criminal legal system, including in incarceration rates, as studies have shown that Black and Latinx people are more vulnerable to experiencing homelessness due to years of discrimination and economic inopportunity.^{19,20}

Ultimately, the most humane way to stop the cycle of homelessness and jail is to provide safe and stable housing for all.²¹ From within the criminal legal system, stopping the cycle could involve providing meaningful reentry support before release that includes making realistic connections to housing and employment; championing partnerships with shelters, nonprofits, and other support services to ensure a coordinated transition for people leaving incarceration; and advocating to stop the practice of restricting people with criminal records from public housing.

Similarly, localities should convene system actors and social service providers to offer more aligned support for people experiencing homelessness. Many jurisdictions operate Frequent User System Engagement (FUSE) programs, which are designed to offer streamlined, wraparound services that help to break the cycle of homelessness and incarceration.²² FUSE services

offer placement in supportive housing, in addition to intensive case management and coordination of services, with the goal of resolving issues that would otherwise lead to jail incarceration. Other counties have established more collaborative models between law enforcement and service providers.²³

Spotlight Initiative: Housing, Health and Human Services Center in Bergen County, New Jersey

The Bergen County Housing, Health and Human Services Center began with the intent of ending homelessness in Bergen County by providing a full continuum of housing services, including temporary shelter, permanent placement, and homelessness prevention. The Center is a one-stop location for people experiencing homelessness to receive a wide spectrum of care, services, information, and financial assistance. Most notably, the Center:

- Centers “Housing First” principles through beginning active efforts to place clients in permanent rental housing immediately following initial assessment, including through providing housing search assistance and facilitating financial assistance for clients to cover costs of housing placement. Once placed in housing, the Center provides additional supports and services to help participants maintain independent housing
- Identifies and prioritizes admission for people who are most in need of immediate shelter in order to avoid adverse outcomes, with the goal of never turning vulnerable people away due to space concerns.
- Actively develops relationships with landlords in the community in order to facilitate permanent housing placement and supports landlords throughout the rental process, including through providing education on the importance of housing for community safety and through providing “risk mitigation funds” to pay for any missed payments or property damage.

- Does not restrict admission based on history of criminal legal system involvement, mental or substance use disorders, or any other basis and actively conducts regular “inreach” at the local jail in order to identify people who will need housing support when they are released.
- Builds political will across broad cross-sections of the community in order to provide a strong continuum of care, foster expansive community involvement, and maintain positive and mutually beneficial relationships with law enforcement and diversion programs.

As a result of widespread community collaboration championed by the Center, Bergen County, New Jersey, has reached levels of “functional zero” for chronic homelessness and homelessness of veterans – a standard that means the number of unhoused people in one of these categories is less than the number of people a community has proven it can house in a month.

Spotlight Initiative: Office of Supportive Housing within the Georgia Department of Behavioral Health and Developmental Disabilities (DBHDD)

The Office of Supportive Housing within the Georgia DBHDD offers a number of statewide programs aimed at connecting individuals who have serious and persistent mental illness and are experiencing chronic homelessness with safe and stable housing. They do this by:

- *Providing recurring housing vouchers.* The Georgia Housing Voucher Program provides recurring financial support for people who are deemed to qualify for the program by their mental health providers. Voucher amounts are determined by the person’s county of residence and household size and can be used to pay for housing in private apartments, trailers, single-family homes, and more. There is no limit on the amount of time over which someone can continue to receive these

vouchers. This program also actively works to facilitate long-term relationships with landlords who are willing to house voucher recipients again and again.

- *Providing bridge funding.* The Office of Supportive Housing also provides one-time payments aimed at helping qualifying people cover the upfront costs of securing housing, including the security deposit, first and last month rent payments, purchasing furniture, and clearing up unpaid bills so that utilities can be turned on.
- *Securing wraparound support services that go hand in hand with stable housing.* Funding is available for additional supports as needed by program participants, including residential care services or periodic wellness checks.
- *Using Project for Assistance from Homelessness (PATH) SAMHSA funds to support assertive outreach and case management.* The partnership between the PATH program and Atlanta’s Police Alternatives Diversion Initiative aims to address the underlying issues that can lead to criminal legal system involvement. Staff work to identify individuals with mental illness who are experiencing homelessness to improve their access to housing, with the ultimate goal of promoting community integration and wellness.

Importantly, no one is turned away from any of these programs due to a history of criminal legal system involvement, and the Office of Supportive Housing works to ensure that a participant’s housing remains secured and its rent paid for at least 60 days in the event that they are arrested or detained in jail.

Conclusion

As some jurisdictions are starting to recognize the urgency of housing as a means to stop the cycle of homelessness and jail incarceration, state and local governments, criminal legal system stakeholders, and community advocates have begun implementing promising solutions. The efforts outlined above were

incremental and strategically evolved over time, they were data informed, they utilized “Housing First” strategies, they involved public and private partnerships, and they made use of blended funding strategies. Following these strategies, communities can meaningfully increase housing access and offer people experiencing homelessness a way to avoid the devastating consequences of involvement in the criminal legal system.

About

SAMHSA’s GAINS Center for Behavioral Health and Justice Transformation focuses on expanding access to services for people with mental and/or substance use disorders who come into contact with the justice system.

Contact Us

SAMHSA’S GAINS CENTER

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Additional Resources

Alabama Appleseed Center for Law and Justice, *In Trouble: How the Promise of Diversion Clashes with the Reality of Poverty, Addiction, and Structural Racism in Alabama's Justice System* (Montgomery, AL: Alabama Appleseed Center for Law and Justice, 2020), <https://perma.cc/G4LD-F3UL>.

Bernadette Rabuy and Daniel Kopf, *Detaining the Poor: How Money Bail Perpetuates an Endless Cycle of Poverty and Jail Time* (Northampton, MA: Prison Policy Initiative, 2016). <https://perma.cc/A2VB-QE47>.

Mark Puente and Richard Winton, "L.A. Vows to Void Two Million Court Citations and Warrants. Homeless People Will Benefit Most," *Los Angeles Times*, October 2, 2019, <https://www.latimes.com/california/story/2019-10-02/homeless-housing-erase-citation-fine-fees>.

Sara K. Rankin, "Punishing Homelessness," *New Criminal Law Review* 22, no. 1 (2019), <https://perma.cc/6RTJ-XWSS>.

End Notes

- 1 National Alliance to End Homelessness. "State of Homelessness," accessed June 22, 2020, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-report>.
- 2 Ibid.
- 3 Bailey Gray and Doug Smith. "Return to Nowhere: The Revolving Door Between Incarceration and Homelessness," (Austin, TX: Texas Criminal Justice Coalition, 2019), <https://perma.cc/R3B6-ZHNL>.
- 4 Katherine H. Shelton, et al., "Risk Factors for Homelessness: Evidence from a Population-Based Study," *Psychiatric Services* 60, 4 (2009), <https://ps.psychiatryonline.org/doi/full/10.1176/ps.2009.60.4.465>.
- 5 National Law Center on Homelessness and Poverty (NLCHP), *Housing Not Handcuffs 2019* (Washington, DC: NLCHP, 2019), 50, <https://perma.cc/A7JU-5HDL>.
- 6 Tony Robinson, "No Right to Rest: Police Enforcement Patterns and Quality of Life Consequences of the Criminalization of Homelessness," *Urban Affairs Review* 55, no. 1 (2019), <https://perma.cc/D5YAMLMG>.
- 7 Chris Herring, Dilara Yarbrough, and Lisa Marie Alatorre, "Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness," *Social Problems* 67, no. 1 (2020), <https://perma.cc/YPM6-M6DW>.
- 8 Allard K. Lowenstein Human Rights Clinic, *Forced Into Breaking the Law: the Criminalization of Homelessness*. New Haven, CT: Yale Law School, 2016), 15-16.
- 9 Herring, Yarbrough, and Alatorre, "Pervasive Penalty," 2020, 142-43.
- 10 Human Rights Watch, *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City* (New York: Human Rights Watch, 2010), 3, <https://perma.cc/562C-BZ55>.
- 11 Léon Digard and Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention* (New York: Vera Institute of Justice, 2019), <https://perma.cc/FL9W-B5CD>.
- 12 Chris Herring, Dilara Yarbrough, and Lisa Marie Alatorre, "Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness," *Social Problems* 67, no. 1 (2020), <https://perma.cc/YPM6-M6DW>.
- 13 Margot Kushel, Judith Hahn, Jennifer Evans et al., "Revolving Doors: Imprisonment Among the Homeless and Marginally Housed Population," *American Journal of Public Health* 95, no. 10 (2005), <https://www.semanticscholar.org/paper/Revolving-doors%3A-imprisonment-among-the-homeless-Kushel-Hahn/d1c5691e557f8204c8e4907324cf1c2e2b2c415a?p2df>.

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- 14 Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People* (Northampton, MA: Prison Policy Initiative, 2018), <https://perma.cc/2JST-EEJC>.
 - 15 Caterina Roman and Jeremy Travis, "Where Will I Sleep Tomorrow? Housing, Homelessness, and the Returning Prisoner," *Housing Policy Debate*, 17, no. 2 (2006).
 - 16 Caterina Roman and Jeremy Travis, *Taking Stock: Housing, Homelessness, and Prisoner Reentry* (Washington, DC: The Urban Institute, 2004) http://webarchive.urban.org/UploadedPDF/411096_taking_stock.pdf.
 - 17 Marie Claire Tran-Leung, *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*, (Chicago, IL: Sargent Shriver National Center on Poverty Law, 2015) <https://www.povertylaw.org/wp-content/uploads/2019/09/WDMD-final.pdf>.
 - 18 Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People* (Northampton, MA: Prison Policy Initiative, 2018), <https://perma.cc/2JST-EEJC>.
 - 19 Vincent A. Fusaro, Helen G. Levy, and H. Luke Shaefer, "Racial and Ethnic Disparities in the Lifetime Prevalence of Homelessness in the United States," *Demography*, 55, no. 6 (2018)
 - 20 National Alliance to End Homelessness, "State of Homelessness," accessed June 22, 2020, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-report>.
 - 21 Bailey Gray and Doug Smith, *Return to Nowhere: The Revolving Door Between Incarceration and Homelessness* (Austin, TX: Texas Criminal Justice Coalition, 2019), <https://perma.cc/R3B6-ZHNL>.
 - 22 National Association of Counties, *Phases of FUSE: Planning and Implementing Successful Supportive Housing*, (2014) 3, https://www.naco.org/sites/default/files/documents/PHASES_of_FUSE-FEB2014.pdf.
 - 23 Nicole Hayden, "Fixing This Takes More Than Arrest: Riverside County Forgives Warrants, Fines to Help Homeless," *Palm Springs Desert Sun*, December 27, 2019, <https://www.desertsun.com/story/news/2019/12/27/riverside-county-forgives-warrants-fines-helphomeless/2624646001/>.