

## 2. CHRONIC HOMELESSNESS AND CRIMINALIZATION IN WASHINGTON

“*Legislators should know that homelessness is a lonely place that no one wants to be in. People need a stable environment to help heal from the devastation of the streets.*” –**MARGARET, who experienced chronic homelessness for 20 years**

The criminalization of homelessness occurs when governments use laws to remove visibly homeless or impoverished-looking people from shared public spaces instead of offering services. Criminalization treats the performance of life-sustaining activities, such as sitting, sleeping, eating, and bathing as illegal activities.<sup>1</sup> When community leaders or others talk about ridding the streets of homeless individuals, often they are referring to those who are experiencing chronic homelessness, as they are typically the people who look most visibly poor and who are more often seen living outdoors.

Often times, municipalities or decision makers defend criminalization policies by arguing that visible homelessness prevents non-homeless people from utilizing public spaces, or that it negatively impacts economic activity or

public safety. Ironically, the criminalization of homelessness feeds directly into the cycle of chronic homelessness because individuals are arrested for minor infractions, and then may spend time in jail. This exacerbates mental health issues and results in criminal records, making securing a home and/or a job more difficult. Additionally, criminalizing behaviors like sitting or lying in a public

**The United States Interagency Council on Homelessness explains chronic homelessness as “among people experiencing homelessness, there is a subset of individuals with disabling health and behavioral health conditions who experience homelessness for long periods and/or in repeated episodes over many years.”**

area effectively create zones of exclusion from public areas. Homeless individuals may have nowhere to go during the day when many shelters are closed. **This creates an impossibility of existence, where simply living and being may be criminalized.**

To understand the criminalization of chronic homelessness, we must unpack why people become chronically homeless in the first place. Many links exist between decreased funding for mental health services and the prevalence of chronic homelessness. The closure of mental health institutions across the country in the 1980s led to a significant increase in visible homelessness as new faces appeared on the streets, often lacking access to treatment. According to the 2015 Point in Time Count, 2,749 homeless individuals in Washington are severely mentally ill. People with mental health needs and/or crises may be arrested, especially if they are living on the streets and their mental health needs are seen publically, instead of experienced privately. Prolonged time in jail or on the streets can exacerbate mental health disabilities. Even if a person is able to get help at a hospital or treatment center, if they are released with no home to go

to, their health outcomes can quickly deteriorate as they lack the stability and safety of housing.

Criminalization of homelessness is also connected to lack of access to treatment services for substance use disorders. Due to underfunding, wait periods are often required to enter treatment facilities, making it harder to access help getting sober. Additionally, drug use and addiction is often treated as a crime (instead of a disease in need of treatment), so homeless individuals who lack a private place to use drugs or alcohol may be arrested and charged simply for use. For many, the combination of substance use disorders and mental health challenges are extremely difficult to overcome when living on the streets or in less than stable housing.

**Each year, the U.S. Department of Housing and Urban Development (HUD) requires a county-by-county count of sheltered and unsheltered homeless individuals on a single night in January, called the “Point in Time Count.”**

## CRIMINALIZATION POLICIES IN WASHINGTON STATE

Researchers with Seattle University School of Law's Homeless Rights Advocacy Project (HRAP) looked at the municipal codes of 72 cities across Washington to identify ordinances that criminalize homelessness. The researchers found that many life-sustaining activities were being outlawed, such as sitting or lying on public sidewalks (found in 72% of surveyed municipalities), camping in certain public places (63%), urination/defecation in public (75%), rummaging through trash receptacles (28%), and storing personal property in public places (22%).<sup>2</sup> Additionally, ordinances like aggressive panhandling prohibitions (present in 63% of surveyed cities) specifically target people who are homeless and hold them to a higher standard with potentially harsher punishment than existing assault or harassment laws, which often already prohibit the same conduct.<sup>3</sup> This raises equal protection concerns, because cities can essentially make a choice about which law to charge people with.

While sometimes heralded as a less-severe option than criminal penalties, civil infractions can also result in serious problems. There is no right to an attorney for civil infractions in Washington state,

and nonpayment of a fine can result in driver's license suspensions or even the issuance of a bench warrant for a person's arrest. (This can vary between municipalities.) Before assuming that civil consequences are less harsh for people who are homeless than criminal consequences, these variances should be examined.

**What all these laws have in common is they criminally punish people who are homeless for just existing in public, even when they have no alternatives.** Criminal charges can have lifelong impacts on individuals, particularly in terms of applying for housing and employment, long after time has been served and restitution has been made.

For more about the consequences of civil infractions, see the HRAP report *Washington's War on the Visibly Poor*.<sup>4</sup> The Western Regional Advocacy Project (WRAP) is another organization that has researched and taken action against criminalization of homelessness. Their research provides stark insights on the impact of criminalization ordinances that will be useful when meeting with and educating decision-makers. More information about both HRAP and WRAP and their research of criminalization ordinances is available in the Appendix.

## CRIMINALIZATION PERPETUATES RACIAL DISPARITIES AND DISPARATE IMPACTS ON OTHER MARGINALIZED GROUPS

Criminalization policies also perpetuate existing racial disparities in homelessness and incarceration, as well as disparate impacts on other marginalized groups.<sup>5</sup> The Seattle University report *Discrimination at the Margins: The Intersectionality of Homelessness & Other Marginalized Groups* finds that “...marginalized groups are disproportionately represented in the homeless population, and are therefore, disproportionately targeted by the ordinances that criminalize homelessness.” People of color, LGBTQ people (particularly LGBTQ youth and young adults), people with mental illness, people with disabilities, and veterans are some of the people discriminatorily impacted by the criminalization of homelessness.

- In King County, 67% of the homeless population are people of color (compared to 35% of the general population). In Pierce County, 35% of the homeless population are African American (compared to 6.8% of the general population).<sup>6</sup>
- In Washington state, approximately 20-40% of homeless youth identify as lesbian, gay, bisexual, transgender, queer and/or questioning, compared to only 5-10% of the overall youth population.<sup>7</sup>
- In Washington state, at least 13% of the homeless population has a mental illness. In some counties, over 50% of the homeless population has a mental illness.<sup>8</sup>
- Nationally, 40% of homeless men are veterans. In Washington State the majority of homeless veterans are people of color and disabled, and veterans are more likely to be chronically homeless than non-veterans.<sup>9</sup>

### Homelessness Disproportionately Impacts People of Color

Native Hawaiian/Pacific Islanders

**3** TIMES MORE LIKELY THAN THEIR WHITE COUNTERPARTS



African Americans

**5** TIMES MORE LIKELY THAN THEIR WHITE COUNTERPARTS



Native Americans/Alaskan Natives

**7** TIMES MORE LIKELY THAN THEIR WHITE COUNTERPARTS



Organizations like WRAP and HRAP have also drawn connections between exclusionary laws that have occurred in U.S. history and the current climate of criminalization of the homeless. Examples of previous exclusionary laws include “Anti-Okie” laws from the 1930s (laws attempting to exclude agricultural worker migrants from Oklahoma and other states affected by the dust bowl and the Great Depression) and Sundown Town laws that existed before the Civil Rights Act of 1968. (These towns excluded people considered “minorities” after sunset—they could work in these towns but not live there.) This comparison may help those challenging criminalization in their communities by asking enactors to articulate the purpose of such ordinances. Asking what the goal of a particular ordinance is can reveal problematic policy overlap, direct the conversation toward more effective alternatives to criminalization, and create opportunities to address underlying assumptions.

For example, if the goal is to save money, spending money to incarcerate people will not likely result in savings. Similarly, a belief that homeless individuals aren’t from a given community can be a justification used to enact citywide banishments. This reasoning effectively says that a community does not have to support people who are not originally “from” there and that they have the right to determine who belongs. More on responding to this and other common

myths about homelessness can be found in the [Myths and Facts About Homelessness in Washington](#) factsheet in the Appendix.

## **CRIMINALIZATION TACTICS DO NOT END HOMELESSNESS**

The graphic on the following page (also available as a [full-size handout](#) in the Appendix) shows the cycle of the criminalization of homelessness, which entangles people in a web of incarceration/institutionalization, life on the streets or in other unsafe and unstable places, and the continual struggle to meet basic needs due to lack of access to affordable housing and support services. This includes lack of access to health care and employment.

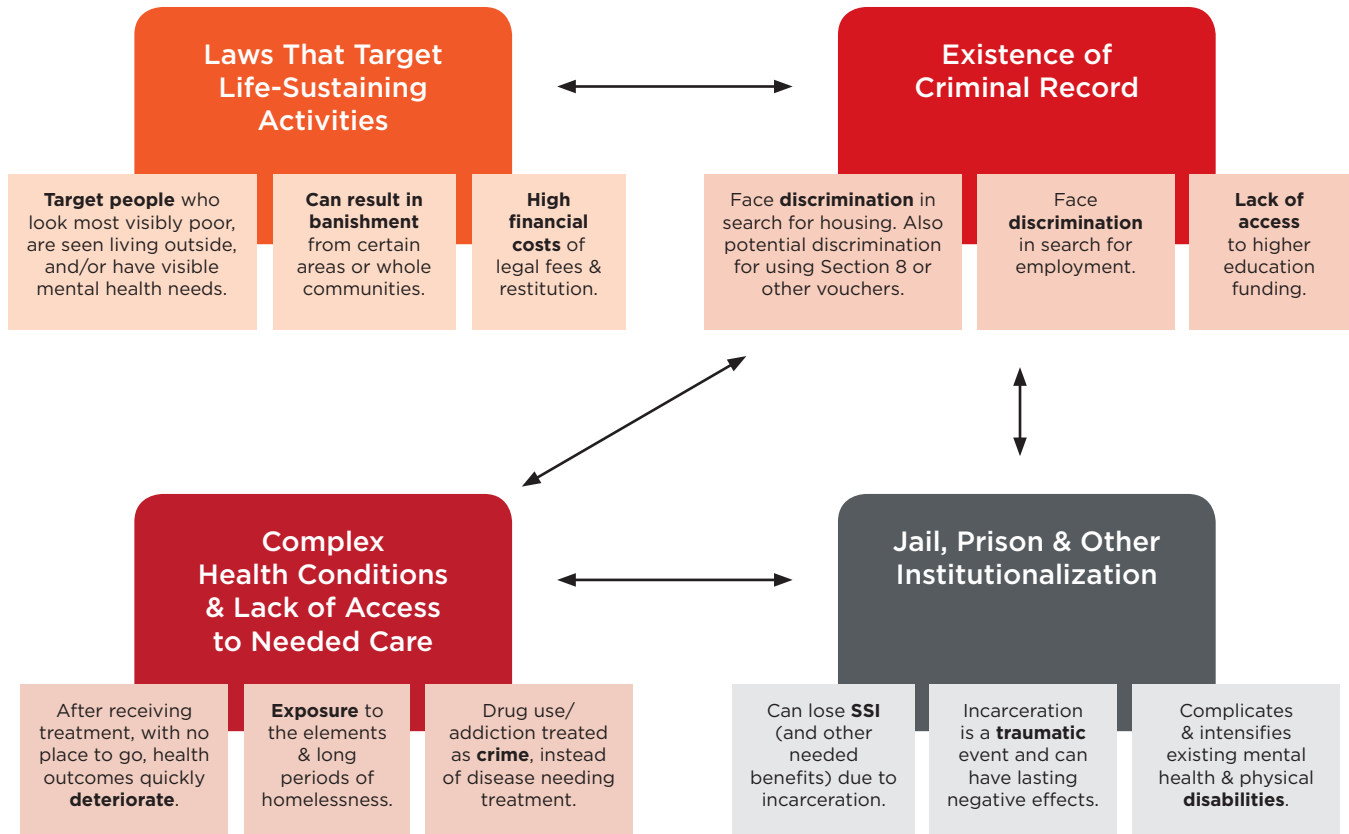
Communities and organizations nationwide have worked to articulate the harm these policies cause and to expose that many ordinances do not accomplish what cities and municipalities hope they will. Criminalization tactics are expensive for cities and small communities. Incarceration, additional law enforcement officer pay, emergency resource use by those without affordable housing, and other governmental expenses are all more costly than providing housing. None of these strategies help to interrupt the cycle of homelessness and often only exacerbate them, as well as further perpetuate racial disparities in homelessness and incarceration.

Additionally, once individuals have criminal records, finding a job or housing is often much more difficult or even impossible. The National Law Center of Homelessness & Poverty gives much more detail about the effects of criminalization on homeless individuals, pointing out the myriad ways people who have been arrested and/or incarcerated are harmed, such as the loss of disability benefits, access to affordable housing and more.<sup>10</sup> The main takeaway of their work is that criminalization tactics, regardless of their breadth or scope, do not end homelessness.

WRAP has also articulated the problems of these types of laws and reframed the problems of criminalization by promoting a Homeless Bill of Rights, which articulates the rights that all people, including people who are homeless, *should* have. These include the right to sleep, pray, and rest in public; the right to share and eat food in public; and the right to occupy a legally parked vehicle (some people who are homeless reside in their cars, often as protection from the elements).<sup>11</sup>

Many cities and towns would like to combat homelessness in effective ways,

### The Cycle of the Criminalization of Homelessness



but often aren't sure where to begin. When speaking with decision makers, it is important to name interventions that we know have worked in addressing chronic homelessness, such as Permanent Supportive Housing<sup>12</sup> and models like Housing-First with services connected to housing. See the Appendix for resources that provide more examples of alternatives to criminalization and proven solutions to ending chronic homelessness.

### ENGAGING COMMUNITY STAKEHOLDERS IN ADDRESSING CRIMINALIZATION

For community alternatives to the criminalization of homelessness to succeed, they require strong relationships between direct service providers, law enforcement, local lawmakers, business leaders, and other stakeholders. Across Washington state, communities have advanced alternatives to criminalization by engaging these stakeholder groups in strategies to prevent criminalization.

“ Relationships with local businesses, City Council, the Mayor's office, City staff, and the police department have all been critical in advancing this effort. Local officials know that if a service provider can reach a person first, there will oftentimes be no need for action from law enforcement. My advice to advocates is simple: have open dialogue with business leaders and local lawmakers. Sit down and talk to people. Those communication channels will become the infrastructure that supports whatever solutions your community creates.”

—GREG WINTER, Executive Director, Opportunity Council, Bellingham, WA

In Whatcom County, advocates knew better communication between local businesses, service providers and law enforcement could help prevent the criminalization of homelessness. In 2015, the Opportunity Council opened an outreach hotline, available to merchants and community members as an alternative to calling the police if they are concerned about someone who appears to be in crisis.

### Per night cost of incarceration vs. housing



Source: Washington State Department of Corrections



Source: Downtown Emergency Service Center

Housing-First is a proven approach to ending chronic homelessness. It prioritizes stable housing as a person's primary need, while also providing services to address behavioral health, addiction, or other issues people may be struggling with. In this model, housing is not a reward for good behavior, it is necessary for accessing treatment and getting better. Permanent Supportive Housing was developed in Washington state by Downtown Emergency Service Center (DESC) and it's so successful that other states and countries have adopted it, including Utah where chronic homelessness has declined 91% as a result.

In addition to creating alternatives to criminalization in our communities, ultimately advocates can challenge criminalization efforts by taking action to end homelessness. We must work to educate decision makers and the public about the root causes of homelessness, and actively address and dispel the myths and stereotypes that criminalization policies are built on. We must oppose and repeal ordinances and any other local attempts to criminalize homelessness. Finally, we must invest in policies that fund solutions. You can see current policy priorities and analysis by visiting the Washington Low Income Housing Alliance online at [wliha.org](http://wliha.org).

