

ARTICLES

Criminalization of the Unhoused: A Case Study Of Alternatives to a Punitive System

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ABSTRACT

Millions of people today experience housing insecurity and homelessness, a large percentage of whom live without access to a sanctioned shelter site. The predominant response to this housing and homelessness crisis by local governments throughout the country is the enforcement of punitive measures that are ineffective and inhumane. A punitive approach to addressing unsheltered homelessness creates insurmountable barriers to housing and employment, keeping people in a cycle of homelessness that becomes increasingly difficult to overcome. Using law enforcement as the primary tool to address homelessness is not just counterproductive—it is expensive. Multiple studies have demonstrated the significant cost savings by redirecting enforcement dollars toward housing and support services.

The web of laws that criminalize homelessness is one of the systemic barriers that prevents unhoused people from transitioning to a more stable situation. This criminalization is part of a long history of exclusionary laws that furthers the oppression of marginalized groups and contributes to higher rates of homelessness.

This Article provides a roadmap for practitioners, academics and community activists to compel reform at the local level through a community centered advocacy strategy that redirects local governments away from punitive approaches toward more humane, community-based solutions. The proposed reforms are supported by empirical analysis, lawsuits that have successfully challenged local

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laws that disproportionately impact the unhoused, as well as ordinances and policies enacted in certain jurisdictions in an effort to decriminalize homelessness. The Article focuses on Eugene, Oregon, a city with one of the highest per capita rates of homelessness in the United States, as its case study. The example of Eugene has broad applicability to jurisdictions throughout the country, demonstrating both the impact on unhoused individuals and the high costs incurred by the city to maintain its current punitive system.

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I. INTRODUCTION

“[A]s long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”

Martin v. City of Boise, 9th Circuit¹

1. *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019).

For one of the first times since the number of people who are unhoused has been counted and recorded, the majority of individuals who are unhoused live without any shelter at all.² Anti-homelessness laws,³ by their nature, disproportionately impact the unhoused, particularly people who are unsheltered⁴ and chronically homeless.⁵ People receive citations because they are unhoused and have no place to which they can safely go.⁶ These laws criminalize people for unavoidable, life-sustaining activities, such as prohibited camping, which forbids people from resting or sleeping in public places;⁷ park violations for resting on any

2. Counting families, 40% of all people who are unhoused live without shelter. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, ALL IN: THE FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS 15 (Dec. 2022) [hereinafter THE FEDERAL STRATEGIC PLAN], https://www.usich.gov/sites/default/files/document/All_In.pdf; See also U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, THE 2020 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 18 (2021), <https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:6106e6fe-4c40-3b97-a4ca-7c32f37a1959>; About seven percent of the total unsheltered nationally are homeless veterans, thirty percent are chronically homeless and three percent of families are unsheltered. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, USING HOMELESSNESS AND HOUSING NEEDS DATA: TAILORING AND DRIVING LOCAL SOLUTIONS 3 (2020) [hereinafter USICH 2020], <https://www.usich.gov/sites/default/files/document/Navigating-Homelessness-Housing-Needs-Data-2020-update.pdf>. Unsheltered homelessness among women and BIPOC individuals is increasing. See SAMANTHA BATKO ET AL., UNSHELTERED HOMELESSNESS 27 (2020), <https://www.urban.org/sites/default/files/publication/103301/unsheltered-homelessness.pdf>.

3. Anti-homelessness laws apply almost exclusively to people who are unhoused due to their unhoused status. See, e.g., COAL. ON HOMELESSNESS, PUNISHING THE POOREST: HOW THE CRIMINALIZATION OF HOMELESSNESS PERPETUATES POVERTY IN SAN FRANCISCO 33–34 (2017) [hereinafter PUNISHING THE POOREST], <https://www.cohsf.org/Punishing.pdf>; JOSHUA HOWARD & DAVID TRAN, SEATTLE UNIV. SCH. OF L. HOMELESS RTS. ADVOC. PROJECT, AT WHAT COST: THE MINIMUM COST OF CRIMINALIZING HOMELESSNESS IN SEATTLE AND SPOKANE 2 (Sara K. Rankin ed., 2015), <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1000&context=hrap#:~:>.

4. Unsheltered homelessness is defined as those individuals “who do not use shelters and are typically found on the streets, in abandoned buildings, or in other places not meant for human habitation.” JENNIFER TURNHAM ET AL., ABT ASSOCS INC., A GUIDE TO COUNTING UNSHELTERED HOMELESS PEOPLE 1 (U.S. Dept. Hous. & Urb. Dev. Off. Cmty. Plan. & Dev. 2004), <https://www.hudexchange.info/sites/onecpd/assets/File/Guide-for-Counting-Unsheltered-Homeless-Persons.pdf>; See also USICH 2020, *supra* note 2, at 1–3.

5. Homelessness generally is defined as living in a place unfit for human habitation and is most commonly for short periods of time, including people residing in temporary congregate and non-congregate shelters, doubling up with family and friends, or living in transitional housing. 42 U.S.C. § 11302(a)(4) (2018).

6. See, e.g., *Why People Experiencing Homelessness Don't Accept Shelter*, PALLET SHELTER (May 20, 2020), <https://palletshelter.com/blog/why-the-homeless-dont-accept-shelter/>; *Myths and Facts*, COAL. HOMELESS, <https://www.coalitionforthehomeless.org/myths-and-facts/> (last visited Feb. 17, 2024); LAURIE HAUBER & TALITHA RANDALL, LANE CNTY. LEGAL AID/OR. L. CTR., PERSECUTION OF THE UNHOUSED: FINES AND JAIL TIME FOR HAVING NOWHERE ELSE TO GO IN EUGENE, OREGON 13 (2019), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/28117>.

7. EUGENE OR. CODE § 4.815 (2022), <https://eugene.municipal.codes/EC/4.815>. Prohibited camping ordinances, which have exploded around the country in recent years, are applied exclusively against the unhoused by design. The typical language in this ordinance defines the presence of something as basic as a blanket or other bedding materials as sufficient indicia of setting up a temporary residence, which constitutes “camping” 13C AM. JUR. 2D LEGAL FORMS § 180:71 (2022). Sit/Lie laws, which severely restrict and, in some instances, outright prohibit individuals from sitting or otherwise resting in public places, similarly target the unhoused almost exclusively. NAT'L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS: ENDING THE CRIMINALIZATION ON HOMELESSNESS IN U.S. CITIES 42–43 (2019) [hereinafter HNH 2019], <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

land designated as park land,⁸ and criminal trespass, which prohibits resting on any private property.⁹ Cities also punish the unhoused by prohibiting public behaviors that are legal on private property, such as drinking alcohol from an open container, marijuana use, or leaving a dog off leash.¹⁰ Even without legal penalties, disbanding encampments and constantly forcing people to move to new locations poses a significant health and safety risk.¹¹ In addition, using the enforcement of anti-homelessness laws as the primary tool to address homelessness is far more costly than it is to provide housing.¹²

Punitive laws against people who are unhoused have expanded in both number and scope in recent years, and some version of these and a myriad of other statutorily defined offenses can be found in most cities around the country.¹³ Multiple studies have shown that citations for violations of anti-homelessness laws and other quality of life violations are disproportionately issued to the unhoused¹⁴ and that the majority of the unhoused receive citations and move

8. Eugene, Or., Admin. Order No. 58-17-07-F (2017), <http://coeapps.eugene-or.gov/cmowebblink/0/doc/1901401/Page1.aspx>.

9. EUGENE OR. CODE § 4.807 (2022), <https://eugene.municipal.codes/EC/4.807>.

10. This broader subset of laws, which are generally referred to as Quality of Life Laws, prohibit activity that is legal if done on private property or in a home and, as such, “discriminatorily target, are selectively enforced against, or disproportionately affect people experiencing homelessness.” HOWARD & TRAN, *supra* note 3, at 2.

11. See, e.g., Chris Herring et al., *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness*, 67 SOC. PROBS. 131, 141, 145 (2019) [hereinafter *Pervasive Penalty*], <https://doi.org/10.1093/socpro/spz004>; Sara K. Rankin, *Punishing Homelessness*, 22 NEW CRIM. L. REV. 99, 114 (2019) [hereinafter *Punishing Homelessness*]; HNH 2019, *supra* note 7, at 15; Diane Qi, et al., *Health Impact of Street Sweeps from the Perspective of Healthcare Providers*, 37 J. GEN. INTERN. MED. 3707 (2022).

12. See, e.g., HOWARD & TRAN, *supra* note 3, at iii; RACHEL ADOCK ET AL., TOO HIGH A PRICE: WHAT CRIMINALIZING HOMELESSNESS COSTS COLORADO 25–30 (Rebecca Butler-Dines et al. eds., 2016); MIGUEL A. SANTANA, HOMELESSNESS AND THE CITY OF LOS ANGELES (2015), <https://www.documentcloud.org/documents/1906452-losangeleshomelessnessreport.html>; LATOYA McDONALD ET AL., BUDGET & LEGISLATIVE ANALYST’S OFF., HOMELESSNESS AND THE COST OF QUALITY OF LIFE LAWS (2016), <https://sfbos.org/sites/default/files/FileCenter/Documents/56045-Budget%20and%20Legislative%20Analyst%20Report.Homelessness%20and%20Cost%20of%20Quality%20of%20Life%20Laws.Final.pdf>; TJ Johnston, *The Cost of Criminalizing Homelessness*, STREET SHEET (Jul. 1, 2016), <https://www.streetsheet.org/the-cost-of-criminalizing-homelessness/>; Gale Holland, *L.A. Spends \$100 Million a Year on Homelessness, City Report Finds*, L.A. TIMES (Apr. 16, 2015), <https://www.latimes.com/local/lanow/la-me-ln-homeless-ca-report-20150416-story.html>; *Punishing Homelessness*, *supra* note 11, at 115; HAUBER & RANDALL, *supra* note 6, at 29–31; Adam Brinklow, *San Francisco Spends \$20 Million on Anti-Homeless Laws: Millions of Dollars Resulted in 125 Arrests in 2015*, CURBED (Jun. 3, 2016), <https://sf.curbed.com/2016/6/3/11852832/homeless-san-francisco>; Gale Holland & Christine Zhang, *Huge Increase in Arrests of Homeless in L.A. – But Mostly for Minor Offenses*, L.A. TIMES (Feb. 4, 2018), <https://www.latimes.com/local/politics/la-me-homeless-arrests-20180204-story.html> (discussing the thousands of people experiencing homelessness who were arrested for everyday activities in one year alone).

13. The explosive growth in anti-homelessness laws targeting the homeless in recent years is well recognized. Between 2006 and 2016, bans on sitting and lying increased by 52 percent, city-wide camping bans by 69 percent, prohibitions on loitering and loafing citywide by 88 percent, and bans on living in vehicles rose 143 percent. HNH 2019, *supra* note 7, at 13–14.

14. The unhoused population represents 2% of the population in Portland, but about 50% of all arrests. Melissa Lewis, *Police Know Arrests Won’t Fix Homelessness. They Keep Making Them Anyway.*, REVEAL NEWS (June 23, 2022), <https://revealnews.org/article/homeless-unhoused-police-arrests-west-coast-cities/>; see also PUNISHING THE POOREST, *supra* note 3, at 64 (of those without shelter, 85% were cited and 42% received

along orders.¹⁵ In fact, being unsheltered is the primary factor in determining whether a person is cited for an anti-homelessness or other quality of life violation.¹⁶ Moreover, people of color and people from other marginalized groups who lack shelter are even more likely to be targets of laws that criminalize homelessness.¹⁷

These violations result in fines that cannot be paid and often arrests and possible jail time, all of which are severe consequences for simply being unhoused. Unpaid fines are highly detrimental to a person's credit score, often preventing people from securing housing.¹⁸ Serving time in jail, a criminal record, or even an arrest with no conviction, are significant obstacles in gaining employment and securing housing.¹⁹ Even without a legal sanction, forcing people to move from a group setting, whether through move-along orders or enforced sweeps, takes a toll on an individual's well-being.²⁰ Camp disbandments create more instability in people's lives, increase the risk of assault or other forms of violence,²¹ and can contribute to a mistrust of institutions, including ones that provide critical services to the unsheltered.²² Forcibly dispersing encampments can make it more difficult for people to transition to housing and access services.²³ These move-along orders may seem inconsequential in isolation. However, these interactions with law enforcement often cause psychological harm and build mistrust that can then extend to outreach workers and other service providers.²⁴

Maintaining a punitive system is costly for the community as well. The financial costs to a city to impose citations, arrest and jail people, and process people through the court system are tremendous.²⁵ Policing the homeless for their mere status of being unhoused overcrowds our court system and our jails, and diverts

5 or more citations); W. REG'L ADVOC. PROJECT, NATIONAL CIVIL RIGHTS OUTREACH FACT SHEET 1 (2014), <https://wraphome.org/wp-content/uploads/2018/12/NationalCivilRightsFactSheetDecember2018.pdf>.

15. *Pervasive Penalty*, *supra* note 11, at 145.

16. PUNISHING THE POOREST, *supra* note 3, at 35–36 (extensive survey of the unhoused in San Francisco found 70% of all quality of life violations were specific to homelessness, sitting, sleeping and lying violations being the most common).

17. HNH 2019, *supra* note 7, at 15.

18. *Id.*

19. While HUD has guidelines that limit the circumstances under which criminal history can be a basis for denial of a housing application, in reality the practice continues. See U.S. DEP'T OF HOUS. & URB. DEV., OFFICE OF GENERAL COUNSEL GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL-ESTATE RELATED TRANSACTIONS (2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.

20. *Punishing Homelessness*, *supra* note 11, at 114.

21. *Id.*

22. *Pervasive Penalty*, *supra* note 11, at 144–45 (fears expressed by housed individuals who complain about homelessness were the exact same as unsheltered individuals who are forced to move – fear of personal harm and theft or destruction of personal property); HNH 2019, *supra* note 7, at 11.

23. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, ENDING HOMELESSNESS FOR PEOPLE LIVING IN ENCAMPMENTS 2 (2015), <https://www.usich.gov/guidance-reports-data/federal-guidance-resources/ending-homelessness-people-living-encampments>.

24. *Pervasive Penalty*, *supra* note 11, at 146.

25. See, e.g., HNH 2019, *supra* note 7; sources cited *supra* note 12.

much needed resources away from addressing crime that is a real threat to public safety.²⁶ As a community, it is costly and ineffective to rely on police officers to be the first responders in dealing with homelessness.²⁷ The core responsibility of law enforcement agents is public safety,²⁸ which is what they are trained to do.²⁹ Enforcing anti-homelessness laws against people who have nowhere else to go fosters mistrust of the police, making it less likely that people will seek protection from police when needed.³⁰

Finally, to the extent laws are intended to deter “illegal behavior,” anti-homelessness laws enforced against people for trying to survive do not serve as motivation to avoid or modify behavior. People have no other choice but to commit these violations given the lack of accessible options. Even the medical field has taken a position against the criminalization of homelessness, recognizing the harm to the individual and high costs to the system. In 2019 the American Medical Association passed a resolution, which in part stated that it, “opposes laws and policies that criminalize individuals experiencing homelessness for carrying out life-sustaining activities conducted in public spaces that would otherwise be considered non-criminal activity.”³¹ In 2017 the American Public Health Association issued a statement similar to the AMA resolution, stating that laws that target activities associated with homelessness are both ineffective and costly to enforce, and “serve as a barrier to income and housing stability.”³²

This Article is based on an extensive report the author wrote in early 2020 as a tool to pressure local decisionmakers in Eugene, Oregon to make changes to laws and practices that criminalize the unhoused.³³ Eugene, Oregon has one of the highest per capita rates of homelessness in the United States.³⁴ While Eugene has multiple sheltering options and innovative programs to support the unhoused,³⁵ including its nationally recognized CAHOOTS program,³⁶ only a

26. *Id.*

27. *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019); HNH 2019, *supra* note 7, at 65.

28. HNH 2019, *supra* note 7, at 65.

29. *Id.* at 67.

30. *Id.*

31. *Id.* at 73 (citing AM. MED. ASS'N., *Report of the Board of Trustees: Opposition to Measures that Criminalize Homelessness* (Resolution 410-A-18) (2019)).

32. *Id.* (citing AM. PUB. HEALTH ASS'N, *Housing and Homelessness as a Public Health Issue* (2017)).

33. HAUBER & RANDALL, *supra* note 6.

34. *City of Eugene Community Court Process and Outcome Evaluation*, NAT'L CTR. FOR STATE COURTS 12 (2020), <https://www.eugene-or.gov/DocumentCenter/View/61132/Final-Eugene-Community-Court-Evaluation>.

35. *See, e.g., Homeless Shelters in Lane County*, LANE CNTY., <https://www.lanecounty.org/cms/one.aspx?pageId=17381734> (last visited Feb. 17, 2024); *Shelter*, CITY OF EUGENE, <https://www.eugene-or.gov/4903/Shelter> (last visited Feb. 17, 2024).

36. CAHOOTS (Crisis Assistance Helping Out On The Streets) is a mobile crisis intervention program designed to divert social service calls from the Eugene Police Department to White Bird Clinic personnel, ensuring that those trained in crisis counseling are the first contact for psychological crises and mental health emergencies. *Cahoots*, WHITE BIRD CLINIC, <https://whitebirdclinic.org/cahoots/> (last visited Feb. 17, 2024).

small fraction of its more than 3,000 unhoused residents have access to any kind of shelter.³⁷ As a case study, Eugene's situation is relevant for so many cities around the country that maintain a punitive system as its predominant approach to addressing unsheltered homelessness.

This Article provides a roadmap for affordable housing and community economic development (CED) practitioners, law school clinicians and other law faculty, as well as other community based legal advocates to compel changes to laws and practices that criminalize a person's status for being unhoused. Lawyers can and should play a critical role in helping to empower community stakeholders to move local governments away from punitive approaches and reorient toward more humane, community-based solutions. As one of the most pressing issues facing cities around the country, the homelessness crisis has become inextricably linked to the work that lawyers and law school clinical faculty do around housing and community development. As such, there is an important role for housing and CED lawyers and academics to help galvanize and advance the goals of a grass roots effort.

Part II situates this case study on Eugene in a broader national context and provides an historic overview of the web of oppressive laws that have contributed to this current national crisis. Part III discusses the local context in Eugene and offers guidance on the development of a community-focused advocacy strategy. Part IV discusses components of a data driven approach to empower community activists to compel change at the local level. Part V highlights the community centered strategies and solutions that have widespread applicability and can be tailored to local jurisdictions.

While the focus of this Article is on unsheltered homelessness and the importance of allowing people to shelter without being subjected to legal sanctions or move along orders, the real solution is housing. Shelter is merely an interim solution until cities, counties and states create more housing that is accessible for the unhoused.³⁸ Effective solutions exist—Housing First and permanent supportive housing are proven cost-effective solutions for the chronically homeless.³⁹ The city of Houston, for instance, had one of the highest per capita rate of homelessness in

37. There were 4,003 people counted as unhoused as of January 2022, compared to 3,360 in January of 2021. EUGENE CITY COUNCIL, UNHOUSED CRISIS RESPONSE, at 11 (2022) [hereinafter EUGENE CITY COUNCIL], https://omnetwork.s3-us-west-2.amazonaws.com/sites/134/documents/unhoused_response_work_session_2022-02-23_final.pdf. With 1,023 shelter beds reported by the city, counting both congregate and noncongregate shelter options, more than 3,000 individuals remain unsheltered and there are long waitlists for noncongregate sites. *Id.*

38. See, e.g., THE FEDERAL STRATEGIC PLAN, *supra* note 2, at 4; U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, 7 PRINCIPLES FOR ADDRESSING ENCAMPMENTS 2 (2022) [hereinafter ADDRESSING ENCAMPMENTS], <https://www.usich.gov/guidance-reports-data/federal-guidance-resources/7-principles-addressing-encampments>.

39. Sara Rankin, *Hiding Homelessness: The Transcarceration of Homelessness*, 109 CAL. L. REV. 559, 568–69 (2021) [hereinafter *Hiding Homelessness*], <https://digitalcommons.law.seattleu.edu/faculty/835>; HNH 2019, *supra* note 7, at 85–87. See also NAT'L LOW INCOME HOUS. COAL. & NAT'L ALL. TO END HOMELESSNESS, THE CASE FOR HOUSING FIRST (2023), <https://nlihc.org/sites/default/files/Housing-First-Research.pdf>; LAURA RILEY, HOMELESS ADVOCACY 49-50 (2023). In 2021 the Biden-Harris administration launched the Federal House America initiative with the goal of housing 100,000

the country as of 2011.⁴⁰ Since that time it reoriented its approach to housing first,⁴¹ reducing its numbers of unhoused by more than one-half by providing housing to over 25,000 unhoused individuals.⁴² As a result, Houston has one of the lowest rates of unhoused among large cities in the country.⁴³ At the Federal level, the Biden-Harris administration launched a comprehensive strategic plan in 2022 with the goal of reducing homelessness by 25 percent by 2025.⁴⁴ With funding through the American Rescue Plan and other sources and with the participation of 105 cities in 31 states around the U.S., at the end of 2022 100,000 households experiencing homelessness were housed and 40,000 new units of affordable supportive housing had been created.⁴⁵ This plan is centered around advancing equity and addressing systemic racism, recognizing that homelessness disproportionately impacts people of color.⁴⁶

II. NATIONAL AND HISTORICAL CONTEXT

Homelessness is a growing problem throughout the nation. Even before the pandemic, an estimated 553,000 people in America experienced homelessness in 2018⁴⁷ and in 2023 approximately 580,000 were homeless on any given night.⁴⁸ This count, referred to as the “Point In Time,” is widely recognized as a significant undercount as it is based on data collected by volunteers on one day in January across the country.⁴⁹ The more accurate approach is considered to be the “Homeless by Names List” based on data generated by HUD’s Homeless

households experiencing homelessness and creating at least 20,000 units of affordable supportive housing. THE FEDERAL STRATEGIC PLAN, *supra* note 2, at 42.

40. Michael Kimmelman et al., *How Houston Moved 25,000 People From the Streets Into Homes of Their Own*, N.Y. TIMES (June 14, 2022), <https://www.nytimes.com/2022/06/14/headway/houston-homeless-people.html>.

41. COAL. FOR THE HOMELESS OF HOUSTON/HARRIS CNTY., HOMELESS ENCAMPMENT RESPONSE STRATEGY (2021), https://irp.cdn-website.com/2d521d2c/files/uploaded/Encampment%20Response%20Strategy%20FINAL_R2nqapuQECxGbqSx72ZQ.pdf.

42. Kimmelman et al., *supra* note 40.

43. *Id.*; see also *Community COVID Housing Program*, COAL. FOR HOMELESS, <https://www.homelesshouston.org/cchp#CCHPProgramInterventionsandExpectedOutcomes> (last visited Feb. 17, 2024); Press Release, City of Houston Mayor’s Office of Communications, City of Houston and Harris County Announce Unprecedented Investment to House the Homeless (Jan. 27, 2022), <https://www.houstontx.gov/mayor/press/2022/house-the-homeless-investment.html> (details the success of Houston’s Phase I housing strategy and outlines the goals for Phase II).

44. THE FEDERAL STRATEGIC PLAN, *supra* note 2, at 4.

45. *Biden Administration Helps End Homelessness for More Than 140,000 People Using Housing First Approach*, NAT’L LOW INCOME HOUS. COAL. (Jan. 30 2023), <https://nlihc.org/resource/biden-administration-helps-end-homelessness-more-140000-people-using-housing-first>.

46. THE FEDERAL STRATEGIC PLAN, *supra* note 2, at 10, 23.

47. U.S. DEP’T HOUS. & URB. DEV., THE 2018 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 10 (2018), <https://www.huduser.gov/portal/sites/default/files/pdf/2018-AHAR-Part-1.pdf>.

48. *The Problem*, NAT’L LOW INCOME HOUS. COAL., <https://nlihc.org/explore-issues/why-we-care/problem> (last visited February 1, 2024).

49. See, e.g., HNH 2019, *supra* note 7, at 28; NAT’L L. CTR. ON HOMELESSNESS & POVERTY, DON’T COUNT ON IT: HOW THE HUD POINT-IN-TIME COUNT UNDERESTIMATES THE HOMELESSNESS CRISIS IN AMERICA 15 (2017), <https://homelesslaw.org/wp-content/uploads/2018/10/HUD-PIT-report2017.pdf>; USICH 2020, *supra* note 2, at 3–4.

Management Information System (HMIS), which creates an unduplicated list of all people experiencing homelessness based on the number of people who access emergency shelters and transitional housing during a 12-month period.⁵⁰ This HMIS data suggests that the actual number of homeless individuals is 2.5–10.2 times higher than that reported in the PIT count.⁵¹ Lack of housing inventory at all price points and rising rents exacerbates an already tenuous situation for millions of low-income renters.⁵² Recent studies show that the number one indicator of the rate of homelessness in a given jurisdiction is access to affordable housing.⁵³ Higher rates of homelessness are in cities with higher rents and less supply.⁵⁴

Prior to the 1980s, homelessness was relatively uncommon in most U.S. cities.⁵⁵ That began to change in the early 1980s with devastating cuts in funding for affordable housing at the federal level, along with severe reductions in poverty assistance programs.⁵⁶ In addition, tax reform measures that started under Reagan incentivized the construction of high end, single family homes over affordable multi-family rentals.⁵⁷ In 1985, for instance, 515,000 multi-family homes were

50. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, NAVIGATING HOMELESSNESS AND HOUSING NEEDS DATA: TAILORING AND DRIVING LOCAL SOLUTIONS 5 (2020) <https://www.usich.gov/sites/default/files/document/Navigating-Homelessness-Housing-Needs-Data-2020-update.pdf>.

51. Stephen Metraux et al., *Assessing Homeless Population Size Through the Use of Emergency and Transitional Shelter Services in 1998: Results from the Analysis of Administrative Data from Nine US Jurisdictions*, 116 PUB. HEALTH REP. 344, 350 (2001).

52. Nationwide, there are only thirty-five units of housing that are affordable and available per every 100 very low-income households. HNH 2019, *supra* note 7, at 11. Advocates estimate that 7 million new affordable units were needed nationwide as of 2022 to meet the need among extremely low-income renters, defined as households at or below the Federal poverty guideline or 30% of area median income. NAT'L LOW INCOME HOUS. COAL., THE GAP: A SHORTAGE OF AFFORDABLE HOMES 5 (2022), <https://nlihc.org/gap>. See also URB. INST., HOUSING SUPPLY CHARTBOOK 5 (2021), <https://www.urban.org/research/publication/housing-supply-chartbook-december-2021>; THE FEDERAL STRATEGIC PLAN, *supra* note 2, at 9.

53. See, e.g., Joy Moses, *New Research Quantifies the Link Between Housing Affordability and Homelessness*, NAT'L ALL. TO END HOMELESSNESS (Dec. 13, 2018), <https://endhomelessness.org/blog/new-research-quantifies-link-housing-affordability-homelessness/>. A \$100 increase in area rent results in a 9% increase in area homelessness. Andrew Hall, *Rising Rents and Inflation Are Likely Increasing Low-Income Families' Risk of Homelessness*, NAT'L ALL. TO END HOMELESSNESS (June 17, 2022), <https://endhomelessness.org/blog/rising-rents-and-inflation-are-likely-increasing-low-income-families-risk-of-homelessness/>; GREGG COLBURN & CLAYTON PAGE ALDERN, HOMELESSNESS S A HOUSING PROBLEM 123 (2022).

54. Hall, *supra* note 53; Moses, *supra* note 53 (discussing link between housing affordability and homelessness); Jerusalem Demsas, *The Obvious Answer to Homelessness*, THE ATLANTIC (Dec. 23, 2022), <https://www.theatlantic.com/magazine/archive/2023/01/homelessness-affordable-housing-crisis-democrats-causes/672224/> (indicating that the most relevant factors in the homelessness crisis are rent prices and vacancy rates); COLBURN & ALDERN, *supra* note 53, at 78.

55. See, e.g., Casey Garth Jarvis, *Homelessness: Critical Solutions to a Dire Problem; Escaping Punitive Approaches by Using a Human Rights Foundation in the Construction and Enactment of Comprehensive Legislation*, 35 W. ST. U. L. REV. 407, 412 (2008); Jennifer E. Watson, *When No Place Is Home: Why the Homeless Deserve Suspect Classification*, 88 IOWA L. REV. 501, 502 (2003); *Pervasive Penalty*, *supra* note 11, at 131; THE FEDERAL STRATEGIC PLAN, *supra* note 2, at 15.

56. See, e.g., RILEY, *supra* note 39, at 5.

57. See, e.g., Beth A. Rubin et al., *Unhousing the Urban Poor: The Reagan Legacy*, 19 J. SOCIO. & SOC. WELFARE 111, 135–36 (1992).

built and by 1991 the number of new multi-family units dropped to 140,000.⁵⁸ In the ensuing decades funds have never been restored to prior levels despite increases in production costs and population growth.⁵⁹ As a result of this permanent reduction in federal funding and a change in tax incentives, the country has not been able to create the housing needed to avert what is otherwise an avoidable crisis.⁶⁰

In addition, the significant loss of Single Room Occupancy units and other related forms of low-income housing options further exacerbated a growing crisis by removing the only affordable option for so many people who were teetering on the edge of homelessness.⁶¹ The recent foreclosure crisis also contributed to our current homelessness crisis, and it was particularly devastating for low-income families with children.⁶² Forty percent of families facing eviction during the foreclosure crisis were renters of properties that were foreclosed and as tenants were forced to leave.⁶³

In addition to federal policies over the past fifty years, the web of laws that target people without shelter has created insurmountable barriers to transitioning to a more stable situation.⁶⁴ These anti-homeless laws, which are designed to exclude certain types of people from public spaces, are part of a long history of exclusionary laws directed toward marginalized populations.⁶⁵ Jim Crow laws, Sundown towns, Anti-Okie laws, the Ugly Laws, and vagrancy ordinances are examples of laws that have discriminatorily targeted people based on their racial, economic, social, immigration, or disability status.⁶⁶ The recent rise in anti-

58. See Kimmelman et al., *supra* note 40.

59. See, e.g., *Volume of Multifamily Housing Units Completed in the U.S. 1997-2022*, STATISTA (July 12, 2023), <https://www.statista.com/statistics/1011965/multifamily-housing-completions-usa/>; Litic Murali, *2020 Multifamily Completion Data: Property Size*, NAT'L ASS'N HOME BUILDERS (Aug. 16, 2021), <https://eyeonhousing.org/2021/08/2020-multifamily-completion-data-property-size/>.

60. See *Volume of Multifamily Housing Units Completed in the U.S. 1997-2022*, *supra* note 59.

61. See, e.g., Cushing N. Dolbeare & Sheila Crowley, *Changing Priorities: The Federal Budget and Housing Assistance 1976-2007*, NAT'L LOW INCOME HOUS. COAL. 9 (2002), https://nlihc.org/sites/default/files/Changing-Priorities-Report_August-2002.pdf (20% of SRO units were lost between 1976-1980: 376,000 to 307,000 units); Karrie Jacobs, *It's Time for New York City to Bring Back SROs*, CURBED (June 24, 2021), <https://www.curbed.com/2021/06/sro-hotels-nyc-bring-back.html> (the rate of homelessness in New York increased exponentially following the closure of SROs).

62. See, e.g., *Eviction (Without) Notice: Renters and the Foreclosure Crisis*, NAT'L L. CTR. ON HOMELESSNESS & POVERTY 6 (2012), https://homelesslaw.org/wp-content/uploads/2018/10/Eviction_Without_Notice.pdf; MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (1st ed. 2016).

63. See NAT'L L. CTR. ON HOMELESSNESS & POVERTY, *supra* note 62, at 6.

64. This recent rise in laws used to target the unhoused is part of a larger trend toward overcriminalization of ordinary conduct in many aspects of society. Jeremiah Mosteller, *The Criminalization of Everything*, STAND TOGETHER TRUST (Aug. 14, 2019), <https://standtogethertrust.org/stories/the-criminalization-of-everything/>. According to the Council of State Governments Justice Center, a criminal record can lead to 44,000 legal barriers to a successful life. *Id.*

65. See, e.g., PUNISHING THE POOREST, *supra* note 3, at 6; JAVIER ORTIZ ET AL., SEATTLE UNIV. SCH. OF L. HOMELESS RTS. ADVOC. PROJECT, *THE WRONG SIDE OF HISTORY: A COMPARISON OF MODERN AND HISTORICAL CRIMINALIZATION LAWS* 11 (2015), <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1003&context=hrap>.

66. See, e.g., PUNISHING THE POOREST, *supra* note 3, at 6; ORTIZ ET AL., *supra* note 65, at 11.

homelessness laws and other laws that target the unhoused continue this long history of discriminatory treatment of marginalized groups. People of color have much higher rates of homelessness compared to whites, for instance.⁶⁷ People with disabilities and transgender people experience higher rates of homelessness as well.⁶⁸ This also extends to more encounters with law enforcement and the legal system. In a study on the criminalization of the unhoused in San Francisco, Black and Latino people who were unhoused experienced police encounters, citations, arrests and incarceration at far higher rates than all other homeless respondents in the study.⁶⁹ Studies also have shown that people of color are searched and have property taken at higher rates than unhoused white people.⁷⁰

The mass incarceration of people of color in this country further exacerbates the disproportionate rate of homelessness among marginalized groups.⁷¹ Incarceration and homelessness are a vicious cycle – incarceration increases the risk of homelessness and there are high rates of incarceration among the unhoused.⁷² Research has shown how incarceration itself leads to homelessness, in part through the barriers it creates to housing and employment, as well as access to services.⁷³ For instance, in this same study, 11% of respondents reported that they became homeless after leaving jail or prison despite being housed when incarcerated.⁷⁴ Without the protection of housing, the risk of police apprehension that often leads to incarceration is much greater, both due to the unavoidability of violating these anti-homelessness laws and because the unhoused tend to locate in high poverty areas with the greatest police presence.⁷⁵

67. See, e.g., *Punishing Homelessness*, *supra* note 11, at 100–01; PUNISHING THE POOREST, *supra* note 3, at 55–56. African Americans represent 13% of the general population but account for 40% of people experiencing homelessness; U.S. DEP'T HOUS. & URB. DEV., THE 2018 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 1 (2018), <https://www.huduser.gov/portal/sites/default/files/pdf/2018-AHAR-Part-1.pdf>; see KAYA LURIE ET AL., SEATTLE UNIV. SCH. OF L. HOMELESS RTS. ADVOC. PROJECT, DISCRIMINATION AT THE MARGINS: THE INTERSECTIONALITY OF HOMELESSNESS & OTHER MARGINALIZED GROUPS 3 (2015) [hereinafter DISCRIMINATION AT THE MARGINS], <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1002&context=hrap>; RILEY, *supra* note 39, at 3; see also THE FEDERAL STRATEGIC PLAN, *supra* note 2, at 15 (summarizing discriminatory policies and practices against people of color that have led to higher rates of homelessness).

68. See, e.g., *Pervasive Penalty*, *supra* note 11, at 8; HNH 2019, *supra* note 7, at 33.

69. PUNISHING THE POOREST, *supra* note 3, at 55–56.

70. *Pervasive Penalty*, *supra* note 11, at 138; HNH 2019, *supra* note 7, at 51.

71. PUNISHING THE POOREST, *supra* note 3, at 8; *Punishing Homelessness*, *supra* note 11, at 100–01. People of color comprise 68% of the homeless population in the United States yet only around one third of the total US population. *Id.*

72. Homelessness is approximately 10 times more prevalent among people in jail compared to the general population and between 25–50% of people experiencing homelessness have a history of incarceration. See DISCRIMINATION AT THE MARGINS, *supra* note 67, at 33–34; *Pervasive Penalty*, *supra* note 11, at 2–3; *Punishing Homelessness*, *supra* note 11, at 101–02.

73. *Pervasive Penalty*, *supra* note 11, at 2–3. The rate of incarceration is even higher among people with serious mental illness. PUNISHING THE POOREST, *supra* note 3, at 8. Almost one million adults with serious mental illness are jailed each year, a high percentage of whom have experienced homelessness. *Id.*

74. PUNISHING THE POOREST, *supra* note 3, at 2.

75. *Id.* at 8.

III. LOCAL CONTEXT AND OVERALL APPROACH

While Oregon's population is only 1.3% of the entire nation, Oregon has 2.6% of the nation's homeless population⁷⁶ and is one of 4 states in the country where the majority of the total unhoused population are unsheltered.⁷⁷ In Eugene, almost 80% of the unhoused are without any shelter.⁷⁸ Oregon's homelessness crisis is worsened by its drug addiction rates – it is ranked highest in the nation in addiction rates and as of 2020 ranked last for access to treatment for drug addiction.⁷⁹ Consistent with the higher rates of homelessness among people of color in the rest of the country, people of color are underrepresented in Oregon's population, and overrepresented in Oregon's unhoused population. Based on data from 2020, Black individuals represented 2% of the total population in Oregon and 6% of the population experiencing homelessness.⁸⁰ Individuals who are American Indian or Alaskan Native represented 1% of the total population and 5% of the unhoused population.⁸¹

Eugene has one of the highest per capita numbers of people who are unhoused and who are unsheltered of any city in the country.⁸² Its high rate of homelessness correlates with its lack of available housing.⁸³ Eugene in particular faces one of the worst housing crisis by many metrics. Its rental vacancy rate is 1.6%,⁸⁴ which is one of the lowest among cities on the West Coast.⁸⁵ Moreover, 45% of metro Eugene residents struggle to meet basic needs.⁸⁶ Median housing

76. JOHN TAPOGNA & MADELINE BARON, HOMELESSNESS IN OREGON: A REVIEW OF TRENDS, CAUSES, AND POLICY OPTIONS 8 (2019), <https://oregoncf.org/assets/PDFs-and-Docs/PDFs/OregonHomelessness.pdf>.

77. The unsheltered population in Oregon is 4.6% of the national total of unsheltered individuals. *Id.* In comparison, Oregon's population is only 1.3% of the total US population. *Growth in the U.S. Population Shows Early Indication of Recovery Amid COVID-19 Pandemic*, U.S. CENSUS BUREAU (Dec. 22, 2022), <https://www.census.gov/newsroom/press-releases/2022/2022-population-estimates.html#:~:text=Changes%20are%20in%20bold,components%20of%20change%20released%20today>.

78. EUGENE CITY COUNCIL, *supra* note 37, at 5 (showing 3,126 unsheltered individuals out of 4,003 unhoused surveyed).

79. Lynne Terry, *Addiction to Drugs, Alcohol Deepens in Oregon, Report Shows*, OR. CAP. CHRON. (Feb. 7, 2022), <https://oregoncapitalchronicle.com/2022/02/07/oregon-has-worst-drug-addiction-problem-in-the-nation-report-shows/>. See also *Oregon Data Extracted from the National Survey on Drug Use and Health, Released December 2021*, MENTAL HEALTH & ADDICTION CERTIFICATION BD., https://mhacbo.org/media/2021_epidemiology.pdf (last visited Feb. 17, 2024) (as of 2021, Oregon was first in the nation at 9% illicit drug disorder and second in mental illness).

80. TASK FORCE ON HOMELESSNESS AND RACIAL DISPARITIES IN OR., FINDINGS AND RECOMMENDATIONS OF THE TASK FORCE ON HOMELESSNESS AND RACIAL DISPARITIES IN OREGON, 15–16 (2022), <https://www.oregon.gov/ohcs/get-involved/Documents/01-21-2022-Findings-and-Recommendation.pdf>.

81. *Id.*

82. EUGENE CITY COUNCIL, *supra* note 37, at 12; see also THE 2020 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS *supra*, note 2 at 16–17.

83. *The Forgotten Answer to the Affordable Housing Crisis*, EUGENE WEEKLY (Feb. 3, 2022), <https://eugeneweekly.com/2022/02/03/the-forgotten-answer-to-the-affordable-housing-crisis/>; see also COLBURN & ALDERN, *supra* note 53, at 132.

84. *Renter Protection Recommendation*, EUGENE HOUS. POL'Y BD., at 7 (Nov. 22, 2021), https://ompnetwork.s3-us-west-2.amazonaws.com/sites/134/documents/211122_renter_protections_pp.pdf.

85. *Id.*; *Rental Vacancy Rate*, IPROPERTY MGMT. (Nov. 13, 2022), <https://ipropertymanagement.com/research/rental-vacancy-rate#oregon>.

86. *Oregon 2018 County Profiles*, UNITED FOR ALICE, <https://www.unitedforalice.org/county-reports/oregon> (last visited Feb. 17, 2024).

prices are far higher than what median incomes can afford.⁸⁷ And there are only 15 units of available housing that are affordable for every 100 very low-income households.⁸⁸

Eugene began creating alternative sheltering options more than a decade ago, codifying their continued existence through local ordinances.⁸⁹ Despite these efforts, fewer than 25% of people who were counted as unsheltered were located in one of Eugene's shelter options.⁹⁰ And while more than 200 non-congregate beds were added since the pandemic began, all of which remain in operation, the total beds available continue to only be a small fraction of what is needed.⁹¹

Despite the lack of shelter for so many, unhoused advocates reported use of citations, arrests and frequent disbandment of encampments by the police. Given this context, when the landmark *Martin v. City of Boise* decision was issued in the spring of 2018, advocates began pushing for a lawsuit based on this decision. People felt empowered by the decision and interpreted the ruling to mean that the government could no longer force people to move from public property. There was also a great deal of confusion as to how and even whether it applied in individual cities, Eugene was no exception. Eugene and many other jurisdictions in the Ninth Circuit interpreted the ruling narrowly to apply to criminal violations only.⁹² Unlike in *Boise*, where prohibited camping was a criminal offense, in Eugene and several other cities on the West Coast, prohibited camping is a civil infraction with a fine typically ranging from \$200-1,000.⁹³ Some cities in the 9th

87. In Lane County, the estimated hourly mean renter wage is \$16.45, and the wage needed to afford a two bedroom is \$24.12. *Out of Reach: Oregon #11*, NAT'L LOW INCOME HOUS. COAL. (2022), https://nlihc.org/sites/default/files/oor/Oregon_2022_OOR.pdf.

88. LANE CNTY. HOUS. DATA AND DEMOGRAPHICS, OR. HOUS. & CMTY. SERVS. 3 (2017), <https://www.oregon.gov/ohcs/Documents/county-profiles/Lane-County-Housing-Profile.pdf>.

89. Eugene, Or., City Code § 4.816 (2019); *see, e.g., Homeless Shelters in Lane County*, LANE CNTY., <https://www.lanecounty.org/cms/one.aspx?pageId=17381734> (last visited Feb. 17, 2024); *Shelter*, CITY OF EUGENE, <https://www.eugene-or.gov/4903/Shelter> (last visited Feb. 17, 2024). One of the first alternative sheltering options created was OpportUNITY Village, a community of around 30 micro sleeping sites and small bungalow structures. *OpportUNITY Village Frequently Asked Questions*, SQUAREONE VILLAGES, <https://www.squareonevillages.org/opportunity-faq> (last visited Feb. 17, 2024); *Our Projects*, LANDSCAPE 4 HUMANITY, <https://www.landscape4humanity.org/opportunity-village> (last visited Feb. 17, 2024). These non-congregate shelter sites are managed by local nonprofit organizations and most commonly provide additional services to help people stabilize their lives. These locations have a much greater positive exit rate compared to outcomes involving emergency congregate shelter. *See also* COMMUNITY SUPPORTED SHELTERS, <https://communitysupportedshelters.org> (last visited Feb. 17, 2024).

90. *2019 Point in Time Count Report*, LANECOUNTY.ORG, 5 (2019), https://cdns5-hosted.civiclive.com/UserFiles/Servers/Server_3585797/File/HSD/FINAL%202019%20PIT%20COUNT%20report%20ver%201.0.pdf.

91. EUGENE CITY COUNCIL, *supra* note 37. As of January 2022, the city reported that more than 3,000 individuals were unhoused in Eugene. *Id.*

92. Megan Banta, *How Eugene and Springfield May Change their Camping Ordinances to Comply with Oregon Law*, THE REG. GUARD (Mar. 10, 2023), <https://www.registerguard.com/story/news/homelessness/2023/03/10/eugene-springfield-oregon-homeless-camping-tents-laws-affordable-housing-crisis/69978357007/>.

93. *Id.*

Circuit reduced their fines under prohibited camping ordinances to avoid falling under what cities perceived as the “excessive fines ruling” in *Boise*.⁹⁴ While the *Boise* decision does not mention an amount that constituted an excessive fine, cities appeared to compare fine amounts to that of neighboring or comparable cities to determine whether their fines would be reasonable under *Boise*.⁹⁵

Within a few months of the ruling, leaders among the unhoused in Eugene organized dozens of people to camp on city sidewalks around the courthouse in the center of downtown. The city and county, while stating publicly that *Boise* did not apply, were fearful of legal action if they issued citations to people for sitting or sleeping outdoors in public places.⁹⁶ In response, and in negotiation with the unhoused leaders, city and county government officials hastily formed a camp on the outskirts of town where approximately 100 people were relocated, including those who were camping downtown.⁹⁷ I met with several people at the camp and heard repeatedly about the fines and outstanding warrants people had for prohibited camping, park violations and other homelessness-related violations. They also spoke of the fear they lived with because of the constant threat of punishment for violating these laws and for being told to move somewhere else. In light of these stories and the push among housed and unhoused advocates to file a lawsuit against the city based on the *Boise* decision, I decided that the best way I could use my legal skills to help address this dire situation was to help the unhoused and housed activists determine the best course of action in Eugene and whether a lawsuit was a feasible option. As part of this assessment, it was important for advocates to be aware of the downsides to a class action lawsuit, which can be disempowering for the constituents it is designed to help.⁹⁸ A lawsuit also would

94. *Id.* A subsequent case decided by the district court in the District of Oregon, Medford Division, and affirmed in part by the 9th Circuit found that “[a]ny fine is excessive if it is imposed on the basis of status and not conduct.” *Blake v. City of Grants Pass*, 1:18-CV-01823-CL, 2020 WL 4209227 (D. Or. July 22, 2020), *aff’d in part, vacated in part, remanded sub nom. Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022), *cert. granted sub nom. Grants Pass, OR v. Johnson*, No. 23-175, 2024 WL 133820 (U.S. Jan. 12, 2024).

95. LANECOUNTY.ORG, *supra*, note 90.

96. Tatiana Parafiniuk-Talesnick, *Are Downtown Protest Camps Legal? It Depends on Who’s Talking*, THE REG.-GUARD (Feb. 9, 2020), [\(https://www.registerguard.com/story/news/2020/02/09/are-downtown-protest-camps-legal/1730155007/\(statement of Eugene spokesperson, Laura Hammond\)\)](https://www.registerguard.com/story/news/2020/02/09/are-downtown-protest-camps-legal/1730155007/(statement%20of%20Eugene%20spokesperson,%20Laura%20Hammond)) (“We’re not arresting people for illegal camping, we’re citing them. . . . We weren’t actually in violation of the Ninth Circuit to begin with. So we’re still enforcing those citations.”); Alex Hasenstab, *Peaceful Protests Organized in Eugene to Fight Homeless Camping Ban*, KATU (Oct. 13, 2018), <https://katu.com/peaceful-protests-organized-in-eugene-to-fight-homeless-camping-ban> (Eugene City Council stated that they don’t believe the *Boise* decision will affect Eugene’s camping ban).

97. Meerah Powell, *City Hall Lot to Become Temporary Homeless Shelter*, EUGENE WKLY. (Oct. 23, 2018), <https://eugeneweekly.com/2018/10/23/city-hall-lot-to-become-temporary-homeless-shelter/>.

98. See, e.g., Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947 (1992); Angelo N. Ancheta, *Community Lawyering*, 81 CAL. L. REV. 1363 (1993); Howard M. Erichson, *Aggregation as Disempowerment: Red Flags in Class Action Settlements*, 92 NOTRE DAME L. REV. 859 (2016); Jim Freeman, *Supporting Social Movements: A Brief Guide for Lawyers and Law Students*, 12 HASTINGS RACE & POVERTY L.J. 191 (2015).

be divisive and likely would close the door to getting legislative and policy reforms passed quickly.

As a first step, it was critical to gather data to understand the scope of the problem in Eugene. To help inform a community-driven strategy, a report of my findings was needed for community stakeholders to use in their advocacy efforts.⁹⁹ This report and the story it told was intended to empower those whose voices have been marginalized to take the lead in deciding on the best course of action and most effective strategies to bring about change with existing laws and practices.¹⁰⁰ This report also was intended to serve as a vehicle to bring together a diverse range of stakeholders to identify overlapping interests in order to develop a coordinated advocacy strategy. Decision makers would be forced to listen to a broad coalition of stakeholders that included housed and unhoused advocates, neighborhood leaders and local business interests. Given the confusion around *Boise*, the momentum among the advocacy community, and the recognition among business owners and neighborhood leaders that significant changes were needed, there was real opportunity to capitalize on this moment to accomplish meaningful reform.

IV. DATA-DRIVEN APPROACH TO LEGAL REFORM

Fact finding and data analysis are critical in persuading lawmakers to adopt an alternative approach to punishing homelessness. Key data elements needed as part of a community advocacy strategy include empirical data and stories from impacted individuals, an analysis of lawsuits that have successfully challenged local laws that target the unhoused, successful policies and practices enacted in other jurisdictions, along with proposed concrete changes to local laws that criminalize homelessness. This data-driven approach arms advocates with the information needed and provides a framework to compel local policy makers to change laws and enforcement practices that punish the unhoused for having nowhere else to go.

A. Scope of the Problem on Unhoused Populations

Quantitative and qualitative data is critical to show the scope of the problem—the number of individuals impacted by the current system, costs to both individuals and the city, as well as non-financial costs. For a total homeless number, most cities use the Point In Time count as their official count,¹⁰¹ although many cities across

99. I worked closely with the Homelessness and Poverty Work Group of the Eugene Human Rights Commission (HP Workgroup) throughout the process of creating this report. *Human Rights Commission*, CITY OF EUGENE, <https://www.eugene-or.gov/526/Human-Rights-Commission> (last visited Feb. 17, 2024). This workgroup is comprised of local advocates, unhoused individuals and people who are housing insecure, and representatives from the Eugene Human Rights Commission. *Id.*

100. While a discussion of community lawyering is beyond the scope of this article and is certainly a concept that is covered extensively in legal scholarship, my approach was intended to follow a community lawyering model. *See, e.g.*, Tremblay, *supra* note 98, at 952–53; *see also* Ancheta, *supra* note 98.

101. *Point-in-Time Count*, U.S. DEP'T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/comm_planning/coc/pit-count (last updated Nov. 17, 2023).

the country, including Eugene, have adopted the more accurate “Homeless Management Information Systems.”¹⁰²

As part of this data analysis, the laws most commonly used against the unhoused in a particular jurisdiction must be identified. It can be helpful to examine national reports to see the anti-homelessness laws that are most common around the country and how they typically are defined.¹⁰³ To make this determination in Eugene, we reviewed Municipal Court¹⁰⁴ data between Jan. 1, 2018 and May 31, 2019 to identify which violations appeared most often based on the number of hearings on the docket per citation category. For each violation category we determined the number and percentage of people who were unhoused.¹⁰⁵ We used this data as a basis to assess the number of citations issued to unhoused individuals in each category, the number of unhoused people impacted, and the amount in unpaid fines owed by unhoused individuals.¹⁰⁶ We also used this data to attempt to get a rough idea of the costs incurred by the city to maintain the current system.

Based on this analysis, the ordinance violations that most commonly are the basis for criminal and civil penalties imposed on the unhoused in Eugene include prohibited camping, criminal trespass II, violation of park rules and open container.¹⁰⁷ Prohibited camping applies to both resting in public places and living in a vehicle while parked on public property.¹⁰⁸ While open container is not an

102. *The Homeless By-Name List*, LANE CNTY. (July 29, 2020), <https://www.eugene-or.gov/DocumentCenter/View/55791/Homelessness-By-Name-List-FAQ>. In 2019, the first full year for the Homeless By-Name List in Lane County, 9,679 unduplicated individuals accessed homelessness services in Lane County during at least one point in the year compared to 2,165 unhoused people identified in the PIT Count. *See also Don't Count on It: How the HUD Point-in-Time Count Underestimates the Homelessness Crisis in America*, NAT'L L. CTR. ON HOMELESSNESS & POVERTY (now: NAT'L HOMELESSNESS L. CTR.) (2017), <https://homelesslaw.org/wp-content/uploads/2018/10/HUD-PIT-report2017.pdf>.

103. *See, e.g., HNH 2019, supra note 7; Reports & Publications by Category*, NAT'L HOMELESSNESS L. CTR. <https://homelesslaw.org/publications/> (last visited Feb. 17, 2024) (collection of reports by the Law Center related to fighting homelessness in the United States).

104. Justice courts, town courts, summary courts, mayor courts, and police courts are other names for the local court system in a jurisdiction. Alexandra Natapoff, *Criminal Municipal Courts*, 134 HARV. L. REV. 964, 966 (2021).

105. The methodology to determine who was unhoused was to view each person's record of prior violations. In instances where housing status was unclear, we counted the individual as housed to avoid any risk of over-counting the number of unhoused. Thus, the total number of unhoused is likely low. Another way to determine housing status would be to submit an open records request to obtain the record of each defendant and their known address during a specified time period. Any individual whose record had no address or had a record that stated, “no known address,” could be counted as unhoused.

106. *See Eugene Municipal Court*, MUN. RECS. SEARCH, <https://www.municipalrecordsearch.com/eugeneor> (Eugene Municipal Court's online database offers an example of the relevant data that can be accessed online in most jurisdictions).

107. EUGENE, OR., CODE § 4.815 (2022); EUGENE, OR., CODE § 4.807 (2022); Eugene, Or., Admin. Order No. 58-17-07-F (2017); EUGENE, OR., CODE § 4.190 (2022).

108. Impoundment of vehicles falls under prohibited camping or under “Storage on the Streets” as a parking violation. EUGENE, OR., CODE § 4.990(8) (2022).

unavoidable life-sustaining activity the way sitting, sleeping and resting are, it is a direct result of not having a home in which alcohol can be consumed.¹⁰⁹

We also obtained the records from public works for every camp closure during the same 18-month period, as well as the limited police data that we were able to obtain, which included notices banning people from parks, most vehicle impoundments, and a list of all police responses to prohibited camping complaints.

Based on our analysis of the Municipal Court, parks and police data, our key findings are listed below. While the actual data is specific to Eugene, the categories of findings, which attempt to quantify the impact on the unhoused, are applicable in most jurisdictions.

- Unhoused people are 14 times more likely to receive citations than housed people.
- Over one quarter of Municipal Court’s docket is devoted to these four anti-homelessness offenses.
- On average, 83% of all quality-of-life citations and arrests went to unhoused people:
 - 100% of all prohibited camping citations
 - 88% of all violation of park rules
 - 80% of all criminal trespass II
 - 80% of all open container.
- An average of 3.4 Criminal Trespass II violations were issued to unhoused people each day (1,759 total).
- Over 60% (133) of the unhoused who appeared on the June 2019 Municipal Court docket owed more than \$1,000; 48 owed more than \$5,000.¹¹⁰

Park rules should be reviewed to understand the legal consequences people suffer for locating in park land and to determine whether these administrative rules raise due process concerns. In many jurisdictions a violation of a park rule for resting or sleeping in any land designated as park land can be severe.¹¹¹ In addition to a citation or arrest, a violation also restricts a person’s use and/or bans

109. Open container was the third-most-common citation against the unhoused based on our analysis—419 unhoused people were cited for open container during the time period of our analysis, which was 80% of all people cited for open container during this time period. HAUBER & RANDALL, *supra* note 6, at 13.

110. *Id.* at 12–13.

111. *See, e.g.*, Eugene, Or., Admin. Order No. 58-17-07-F, *supra* note 8, at §§ 1.005 & 1.010; Blake v. City of Grants Pass, No. 18-cv-01823-CL, 2020 WL 4209227, at *2 (D. Or. July 22, 2020); Peyton Headlee, *New Law Makes it Illegal for Homeless People to Sleep on State Owned Land in Missouri*, KMBC NEWS (Jan. 2, 2023), <https://www.kmbc.com/article/new-law-makes-it-illegal-for-homeless-people-to-sleep-on-state-owned-land-in-missouri-kansas-city/42380842> (discussing a new law in Missouri that punishes sleeping in public parks by implementing fines up to \$750 or 15 days in prison).

people from park land after one or more infractions.¹¹² How long a person can be excluded from park land and whether the person is excluded from all park land or just park land where the violation occurred should be noted. For instance, in Eugene, after one violation a person can be banished from all park lands and the duration of time increases with each subsequent infraction.¹¹³ After the third violation, a person is banished from all park land for an entire year.¹¹⁴ The park rules in Eugene also lack sufficient notice,¹¹⁵ the hearing is post-deprivation¹¹⁶ and the steps a person must take to even request a hearing are onerous and not easily accessible.¹¹⁷

Because the understanding of and level of empathy toward the unhoused varies dramatically among different constituents and decision makers, the causes of homelessness and the commonly held misperceptions should be mentioned as part of a data-driven approach. The number one cause of homelessness is lack of available housing, closely followed by lack of a living wage.¹¹⁸ Other primary causes include domestic violence, medical expenses, bankruptcy, and untreated mental illness.¹¹⁹ None of these causes are about a person's choice,

112. See, e.g., SEATTLE, WASH., MUN. CODE § 18.12.278 (2023), https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT18PARE_CH18.12PACO_SUBCHAPTER_VIIUSRE_18.12.278PAEX; Eugene, Or., Admin. Order No. 58-17-07-F, *supra* note 8, at 15–16; TACOMA, WASH., MUN. CODE § 8.27.255 (2019), <https://www.metroparkstacoma.org/places/conduct-in-our-parks/>.

113. Eugene, Or., Admin. Order No. 58-17-07-F, *supra* note 8, at 15–16. After receiving one written violation, a person can be excluded from all parks land for one month. *Id.*

114. *Id.*

115. *Id.* at § 1.005. Among the vast majority of Notice of Violation citations that were prosecuted, whenever a person failed to appear for their scheduled hearing, the person would be guilty of a misdemeanor by default and there could be a warrant for the person's arrest. HAUBER & RANDALL, *supra* note 6, at 23. This is particularly problematic since the initial violation notice simply states that a complaint may be filed in Municipal Court, whether the person receives the actual citation with the exact date and time of his/her court hearing is unpredictable. *Id.* at 23–24.

116. Eugene, Or., Admin. Order No. 58-17-07-F, *supra* note 8, at § 1.005. The exclusion takes effect immediately and is not stayed pending a person's appeal. HAUBER & RANDALL, *supra* note 6, at 24. Therefore, even if a person's exclusion is found to be invalid, they have been deprived of their right to use any park space throughout Eugene while the appeal was pending. *Id.*

117. Eugene, Or., Admin. Order No. 58-17-07-F, *supra* note 8, at § 1.005. In order to have a hearing to challenge a Restriction of Use, the person must make a request in writing within forty-eight hours of receiving the Notice of Restriction of Use at a location specified on the notice. HAUBER & RANDALL, *supra* note 6, at 24. Even if an individual is successful in requesting a hearing, the Director can exclude anyone from the hearing unless the person is presenting testimony, thus preventing friends and advocates from appearing with the excluded individual. *Id.*

118. *Homelessness in America: Overview of Data and Causes*, Nat'l L. Ctr. on Homelessness & Poverty (now: NAT'L HOMELESSNESS L. CTR.) (2015), https://homelesslaw.org/wp-content/uploads/2018/10/Homeless_Stats_Fact_Sheet.pdf; COLBURN & ALDERN, *supra* note 53, at 132.

119. NAT'L L. CTR. ON HOMELESSNESS & POVERTY, *supra* note 118. Low-income survivors of abuse are particularly vulnerable to homelessness and abuse is a leading cause of homelessness among women. CARMELA DE CANDIA ET AL., NAT'L CTR. ON FAMILY HOMELESSNESS, CLOSING THE GAP: INTEGRATING SERVICES FOR SURVIVORS OF DOMESTIC VIOLENCE 3–4 (2013), https://www.air.org/sites/default/files/downloads/report/Closing%20the%20Gap_Homelessness%20and%20Domestic%20Violence%20toolkit.pdf. One in four homeless women were driven into homelessness due to abuse, either to flee the abuse or as a result of an eviction caused by their abusers. *Id.* at 2. See also RILEY, *supra* note 39, at 79–86 (discusses nexus between gender and homelessness, particularly with respect to domestic violence).

which is one of the most widely held misconceptions about people who are unhoused.¹²⁰ Many justify this belief by referencing stories about people turning down shelter options, particularly congregate shelter.¹²¹ There are a myriad of reasons why a congregate, emergency shelter is not a viable option for so much of the unhoused population.¹²² Related to the narrative that homelessness is a choice is the commonly held belief that drug and alcohol addiction leads to homelessness.¹²³ While this factor can increase the risk of homelessness, it is more likely that homelessness leads to drug addiction.¹²⁴ Similarly, while physical and sexual abuse are risk factors for homelessness, a high number of people experience such abuse once unhoused.¹²⁵

B. Individual and Community Costs of a Punitive Approach

Showing the costs of a punitive approach is critical in persuading policy makers to enact legislative and policy changes that reorient toward housing and away from criminalization. It is important to provide cost figures that can be gathered, which can be difficult to track down since data from each department requires separate records requests. Examples of the categories of costs that should be evaluated include the following:

- police enforcement costs, which include dispatch time, as well as the time spent responding to complaints, apprehending individuals with whom police initiate contact without a complaint, and arrests for outstanding warrants;
- department of public works costs to clear and clean up camps;
- costs for the district attorney's office to review each infraction and the more significant costs of prosecuting violations;¹²⁶
- costs to operate municipal court;
- costs to operate the county jail based on the percentage of unhoused who occupy beds,¹²⁷ including medical costs while incarcerated; and

120. See, e.g., DISCRIMINATION AT THE MARGINS, *supra* note 67, at 2; *Five Myths About Homelessness in the Portland Area*, MULTNOMAH CNTY., <https://www.multco.us/johs/news/five-myths-about-homelessness-portland-area> (last visited Feb. 17, 2024); HNH 2019, *supra* note 7, at 60–63.

121. See, e.g., *Hiding Homelessness*, *supra* note 39, at 584–85; MULTNOMAH CNTY., *supra* note 120, HNH 2019, *supra* note 7, at 60–63; DISCRIMINATION AT THE MARGINS, *supra* note 67, at 2.

122. See sources cited *supra* note 121.

123. *Hiding Homelessness*, *supra* note 39, at 104–05.

124. *Id.*

125. *Id.*

126. For instance, between January 1, 2018 and May 31, 2019, there were 310 citations issued for Prohibited Camping in Eugene, 96% of which were prosecuted. HAUBER & RANDALL, *supra* note 6, at 21. During that same time period, there were 2,518 citations issued for Criminal Trespass in the Second Degree and 86% were prosecuted. *Id.* at 22.

127. *Punishing Homelessness*, *supra* note 11, at 46. See also Jennifer Perlman & John Parvensky, *Denver Housing First Collaborative Cost Benefit Analysis and Program Outcomes Report*, CO. COAL. FOR HOMELESS 8 (2006), https://shnny.org/uploads/Supportive_Housing_in_Denver.pdf (indicating costs of incarceration for sample group decreased following entry into housing).

- administrative costs simply to process citations through the various systems, including the police, public works, the court system and the local district attorney's office.

In Eugene, we were able to make a rough estimate of the portion of Municipal Court costs that goes toward processing and adjudicating anti-homelessness violations against the unhoused. We calculated the percentage of anti-homelessness violations on the docket, which was approximately 25% of the court's docket,¹²⁸ and applied that percentage to the annual Municipal Court budget. We also were able to estimate the amount of money Public Works spends clearing camps. We obtained the work orders for a 17-month time period to see the total number of work hours on camp disbandments and then estimated the cost based on the average Public Works employee salary by using the salary data available for public employees.

Police department costs are significant due to the multiple aspects of a punitive system that involve the police and what tends to be higher salaries compared to other departments. For instance, in Eugene, Police Patrol was the third largest budget item on the city's overall approved budget for 2019.¹²⁹ The only police data we were able to obtain was the total number of complaints to which the police responded that involved prohibited camping.¹³⁰ Because our police data was so incomplete we were not able to come up with a reasonable estimate of the police costs in enforcement against the unhoused.

Using cost data from studies conducted in other cities also can help determine the percentage of unhoused in a given part of the system and the related cost. For instance, we were not able to obtain the number of unhoused people who are in the county jail on a given night. We used a San Francisco study that found that anywhere from 10-24% of the county jail population are unhoused.¹³¹ We applied this range to estimate the percentage of incarceration costs attributable to the unhoused.

Cost data from other cities also can be useful to help demonstrate the staggering amounts cities are spending and the costs cities save by redirecting enforcement dollars toward housing and support services.¹³² Numerous studies demonstrate the cost savings of housing compared to the health care and policing costs cities incur when people live without any form of shelter.¹³³ A subset of

128. HAUBER & RANDALL, *supra* note 6, at 46–48.

129. *Id.* at 30.

130. In the time period we evaluated, Eugene police responded to 474 complaints involving prohibited camping. Fewer than one-third of those responses led to citations. Regardless, each of those 474 calls to service is money spent policing the homeless. *Id.* at 30.

131. *Punishing Homelessness*, *supra* note 11, at 46.

132. *See, e.g.*, HOWARD & TRAN, *supra* note 3, at iii; ADOCK ET AL., *supra* note 12, at 25–30; McDONALD ET AL., *supra* note 12; Johnston, *supra* note 12; *Punishing Homelessness*, *supra* note 11, at 115; HAUBER & RANDALL, *supra* note 6, at 29–31; Brinklow, *supra* note 12; Holland & Zhang, *supra* note 12.

133. SARAH B. HUNTER ET AL., RAND, EVALUATION OF HOUSING FOR HEALTH PERMANENT SUPPORTIVE HOUSING PROGRAM at viii (2017), https://www.rand.org/pubs/research_reports/RR1694.html

these studies break out the specific costs to cities of enforcing quality of life laws, from policing to adjudicating to incarcerating.¹³⁴ Camp sweeps alone are very costly for cities.¹³⁵ Sweeps simply displace people temporarily and, in most instances, force people to move to another location that then will need to be cleared, incurring more costs and often putting people in a more vulnerable situation.¹³⁶

Consequences to individuals should be raised as a concern since the impacts on individuals indirectly increase costs to a city. As discussed in the introduction section, outstanding fines, arrest warrants and criminal charges create barriers to employment and housing.¹³⁷ In addition, living in fear of arrest or citation, and being subject to sweeps and frequent move-along orders also contributes to negative mental and physical health issues, increasing medical costs and making it more difficult to transition from homelessness.¹³⁸ Forcing people to move from a group setting, whether through move-along orders or enforced sweeps, creates a loss of a community and sense of security, which has emotional consequences as well as real safety risks.¹³⁹

It also is important to raise the futility of imposing fines on people without an income and the additional challenges outstanding fines create for the

(examining costs in Los Angeles County); GREGORY A. SHINN, THE COST OF LONG-TERM HOMELESSNESS IN CENTRAL FLORIDA: THE CURRENT CRISIS AND THE ECONOMIC IMPACT OF PROVIDING SUSTAINABLE HOUSING SOLUTIONS (2014), <https://shnny.org/uploads/Florida-Homelessness-Report-2014.pdf> (examining costs in Central Florida); *Hiding Homelessness*, *supra* note 39, at 129–32; *Study Data Show that Housing Chronically Homeless People Saves Money, Lives*, NAT'L ALL. TO END HOMELESSNESS (June 30, 2015), <https://endhomelessness.org/blog/study-data-show-that-housing-chronically-homeless-people-saves-money-lives/>. A study in Denver found that Housing First saved Denver \$17,858 per person over 2 years. *Webinar 1: Emerging Threats Facing People Experiencing Homelessness*, NAT'L LOW INCOME HOUS. COAL., NAT'L ALL. TO END HOMELESSNESS, & CTR. ON BUDGET & POLICY PRIORITIES 27 (2022), https://nlihc.org/sites/default/files/Housing-First_Webinar_081522.pdf. A study in Los Angeles documented that the costs on the city are 5 times greater for people who are unsheltered on “Skid Row” in Los Angeles compared to the costs of people who have been housed in supportive housing. *Id.*

134. SHINN, *supra* note 133; *Punishing Homelessness*, *supra* note 11, at 49–50. See also HAUBER & RANDALL, *supra* note 6, at 31.

135. *Punishing Homelessness*, *supra* note 11, at 67 (relaying DPW costs approximately \$3 million).

136. *Id.*

137. In *Blake v. Grants Pass*, the District Court explicitly stated outstanding fines make finding housing more difficult. WL 4209227, at 23.

138. Unsheltered individuals suffer higher rates of poor physical health, mental health issues and substance abuse compared to the sheltered homeless population. DISCRIMINATION AT THE MARGINS, *supra* note 67, at 25–33.

139. *Pervasive Penalty*, *supra* note 11, at 140–42. Camp evictions heightened the risk of assault particularly for women, trans people, and those with mental illness or disability. Sig Langeegger & Stephen Koester, *Moving on, Finding Shelter: The Spatiotemporal Camp*, 32 INT'L SOCIOLOGY 454 (2017), https://www.researchgate.net/publication/315986404_Moving_on_finding_shelter_The_spatiotemporal_camp.

individual.¹⁴⁰ Fines in most jurisdictions range from \$200 to as high as \$1,000.¹⁴¹ Without the means to pay the fine, people continue to accumulate debt, which traps them in a cycle of homelessness that becomes increasingly difficult to overcome.¹⁴² In Eugene, for instance, when unpaid fines are turned over to a collections agency the municipal court adds an additional 25% to the total outstanding amount.¹⁴³ The collections agency also adds interest that accrues daily.¹⁴⁴ In certain states unpaid fines can lead to license suspension, which can make it impossible to maintain a job.¹⁴⁵ Unpaid debt can lead to a bench warrant for someone's arrest, exacerbating their situation even further.¹⁴⁶ Even in cities where there is a pathway to seek dismissal or reduction of outstanding fines, it tends to be a complex process and most people are not even aware of this possibility.¹⁴⁷ Impoundment of vehicles is particularly devastating since it most often results in the loss of a person's only accessible shelter.¹⁴⁸ The accumulation of tow yard fees, which in Eugene is around \$100 per day, makes recovery of the vehicle impossible for many people after a few days.¹⁴⁹ It can take people that long to track down the correct tow yard, either because the person is away from their vehicles when it is towed or the citation is mailed to the registered owner.¹⁵⁰ While the unhoused person is the owner of the vehicle, this person often is not the registered owner as the seller retains the title because the cost of transferring title is unaffordable for the unhoused individual.¹⁵¹ Many tow yards bar a person from accessing the vehicle unless they can show proof of title.¹⁵²

140. See *Pervasive Penalty*, *supra* note 11, at 142–43; *Punishing Homelessness*, *supra* note 11, at 105–07; PUNISHING THE POOREST, *supra* note 3, at 33.

141. See, e.g., *Anti-Homeless Laws Across the U.S. Criminalize Survival*, GO HUMANITY, <https://gohumanity.world/anti-homeless-laws/> (last visited Feb. 17, 2024) (discussing monetary penalties for violating anti-homeless laws in a variety of U.S. cities).

142. See *Pervasive Penalty*, *supra* note 11, at 142–43; PUNISHING THE POOREST, *supra* note 3, at 33. One study found that only 10 percent of respondents had paid the fine from their most recent citation. Of the 90% who did not pay, many mentioned accumulating additional fines for failing to pay the initial citation and being forced to navigate a complex bureaucratic process. *Id.*

143. See Or. Rev. Stat. § 1.202 (2023); *Collections*, OR. JUD. BRANCH, <https://www.courts.oregon.gov/courts/multnomah/payments/pages/collections.aspx> (last visited Feb. 17, 2024).

144. HAUBER & RANDALL, *supra* note 6, at 13.

145. See *Pervasive Penalty*, *supra* note 11, at 143; *Free to Drive: National Campaign to End Debt-Based License Restrictions*, FINES & FEES JUST. CTR., <https://finesandfeesjusticecenter.org/campaigns/national-drivers-license-suspension-campaign-free-to-drive/> (last visited Feb. 17, 2024) (analyzes debt-based license restrictions in each state and identifies jurisdictions where reform efforts are underway).

146. See *Pervasive Penalty*, *supra* note 11, at 143. One San Francisco-based study found that most survey respondents had at least \$1,000 in court debt, a suspended driver's license, and a bench warrant. *Id.* Arrest warrants make accessing housing even more difficult as this can disqualify individuals from receiving public housing assistance. PUNISHING THE POOREST, *supra* note 3, at 42.

147. *Pervasive Penalty*, *supra* note 11, at 143.

148. HAUBER & RANDALL, *supra* note 6, at 26–27.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

C. Constitutional Challenges to Punitive Measures

In recent years there have been several successful lawsuits, particularly based on Fourth and Eighth Amendment arguments, with a noticeable increase since *Boise*.¹⁵³ Increasingly, courts are acknowledging the unconstitutionality of punishing innocent, involuntary conduct such as sleeping and are upholding rights against the illegal seizure of property.¹⁵⁴ Given the resource and time intensive nature of a federal lawsuit, leveraging successful lawsuits in other jurisdictions to show local decisionmakers the risks of a punitive system can be a very effective advocacy strategy. The threat of facing a costly multi-year lawsuit can create pressure on decision-makers. A discussion of successful lawsuits can make a connection between the facts in a decision favorable to the unhoused and the circumstances in a specific city.

Several courts have found local laws that prohibit people from sleeping or camping outside a violation of the Eighth Amendment prohibition against cruel and unusual punishment.¹⁵⁵ *Boise*'s influence extends beyond the Ninth Circuit, there have been legal challenges to prohibited camping in other parts of the country.¹⁵⁶ In addition, successful cases since *Boise* have expanded the scope of its ruling. In *Blake v. Grants Pass*, the District Court determined that the Eighth Amendment's prohibition against cruel and unusual punishment applies to civil infractions, not just criminal, particularly where the punishment is for a person's status not behavior.¹⁵⁷ The court also found that the fine is punitive, and, therefore, excessive under the Eighth Amendment, if it is imposed on the basis of status not conduct.¹⁵⁸ In this case the court found that the unhoused plaintiffs were being punished for unavoidable life sustaining acts of sleeping and resting.¹⁵⁹ Beyond its influence in legal challenges, *Boise* operates in the background in local government decision-making. The *Boise* decision has prompted statewide legislation in Oregon that prohibits cities from completely banning sleeping, sitting, or lying outdoors on public property.¹⁶⁰

153. Hauber & Randall, *supra* note 6, at 37–40; *see also* *Litigation Manual Supplement: Criminalization of Homelessness Case Summaries 2022*, Nat'l Ctr. on Homelessness & Poverty, 6–8 (2022) https://homelesslaw.org/wp-content/uploads/2022/03/HNH_Supplement_to_Litigation_Manual.pdf; Rachel M. Cohen, *The Little-Noticed Court Decision that Changed Homelessness in America*, *Vox* (June 12, 2023), <https://www.vox.com/23748522/tent-encampments-martin-boise-homelessness-housing>.

154. Cohen, *supra* note 153, at 5.

155. *Litigation Manual Supplement*, *supra* note 153, at 8.

156. HAUBER & RANDALL, *supra* note 6, at 37–40; *Litigation Manual Supplement*, *supra* note 153, at 8.

157. *Blake v. City of Grants Pass*, 1:18-CV-01823-CL, 2020 WL 4209227, at *17–19 (D. Or. July 22, 2020).

158. *Id.* at 19.

159. *Id.* at 19.

160. H.R. 3115, 81st Leg. Assemb., Reg. Sess. (Or. 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3115/Enrolled>. The relevant text requires that “. . . any city or county law that regulates the act of sitting, sleeping, lying or keeping warm and dry outdoors on public property that is open to the public must be objectively reasonable as to time, place and manner . . .” *Id.* This legislation, which went into effect July 1, 2023, creates an affirmative defense. *Id.*

In another successful challenge to the city of Chico's camping ban, the District Court required the City to allow people to camp in place until adequate shelter is available.¹⁶¹ The Eighth Amendment also has been used to challenge public drunkenness laws in situations where a person is unhoused and suffers from alcoholism.¹⁶²

Fourth Amendment cases are based on the illegal seizure of property in connection with encampment closures by local officials.¹⁶³ Government conduct found to be illegal typically involves failure to provide adequate notice of a camp closure, seizure and disposal of people's belongings, lack of a clear process for the storage of and ability to reclaim personal property, and failure to provide an opportunity to challenge property seizure.¹⁶⁴ A procedural due process argument often is made as well on the basis of inadequate notice and failure to institute or follow existing procedures for managing people's personal property.¹⁶⁵ These lawsuits have resulted in a range of consequences, including injunctive relief, restitution payments, revision of laws and policies to establish clear camp clean up and storage protocols, longer notice before removal of belongings, improved access to the storage facility, clear protocols for preserving and storing belongings, as well as increased services for unhoused residents of encampments in the event of a closure.¹⁶⁶ In 2021, the Oregon legislature codified protections relating to camp closures and storage of personal property based on a successful lawsuit in Portland.¹⁶⁷ The amended statute increased the written notice requirement to 72 hours and required that the notice state where unclaimed property will be stored; expanded who may be given unclaimed personal property to include local social service agencies that serve homeless individuals; established more protections for proper storage of personal property; and allowed for donations of unclaimed personal property to charitable organizations.¹⁶⁸

In addition to Fourth and Eighth Amendment arguments, legal challenges based on the First Amendment have had some success, particularly ones brought by religious institutions on freedom of religion grounds.¹⁶⁹ These organizations

161. *Warren v. City of Chico*, No. 2:21-CV-00640-MCE-DMC, 2021 WL 2894648, at *6 (E.D. Cal. July 8, 2021).

162. *Manning v. Caldwell for City of Roanoke*, 930 F.3d 264, 284 (4th Cir. 2019).

163. *Housing Not Handcuffs: A Litigation Manual*, NAT'L L. CTR. ON HOMELESSNESS & POVERTY 1, 7 (2017), <https://homelesslaw.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs-Litigation-Manual.pdf>; RILEY, *supra* note 39, at 121, 148–61.

164. *Housing Not Handcuffs*, *supra* note 163, at 11; HAUBER & RANDALL, *supra* note 6, at 37–40.

165. *Litigation Manual Supplement*, *supra* note 153, at 8.

166. HAUBER & RANDALL, *supra* note 6, at 37–40.

167. H.R. 3124, 81st Leg. Assemb., Reg. Sess. (Or. 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3124/Enrolled>; *Anderson v. City of Portland*, WL 2386056 (D. Or. 2009).

168. H.R. 3124, *supra* note 167.

169. *5th Ave Presbyterian Church v. City of NY*, 177 Fed.Appx. 198 (2nd Cir. 2006); NAT'L CTR. ON HOMELESSNESS & POVERTY, *supra* note 153, at 6-7; RILEY, *supra* note 39, at 140–141 (discussing successful rulings based on the exercise of religious freedom). In an ongoing lawsuit in Southern Oregon, the legal argument is based predominately on an alleged violation of the Religious Land Use

have successfully made the connection between providing shelter and/or food on their property and a sincerely held religious belief.¹⁷⁰

The treatment of the unhoused as an international human rights violation should be considered as well. The National Homelessness Law Center, a national leader in the effort to prevent and end homelessness, is leading a national campaign to establish housing as a human right based on international standards and precedent.¹⁷¹ Various international human rights instruments prohibit the criminalization of homeless people.¹⁷² The United Nations Human Rights Council has condemned the treatment of the unhoused in the United States and recommended that state and local governments eliminate such laws.¹⁷³ Even the US Department of Justice and Interagency Council on Homelessness have acknowledged in their published reports that the enforcement of quality of life laws against the unhoused may violate international human rights conventions.¹⁷⁴ In some jurisdictions, showing how these anti-homelessness laws violate human rights could resonate with local leaders.¹⁷⁵

V. EFFECTIVE REFORM: SOLUTIONS AND STRATEGIES

This Part discusses the solutions that are most broadly applicable to jurisdictions across the country, which include some combination of proposed ordinance and policy changes as well as modifications to current practices. Part V also highlights the components of a community focused advocacy strategy to accomplish the desired outcomes.

and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. 2000cc for an ordinance that requires churches to obtain a permit that limits churches to providing meals no more than twice a week. *Statement of Interest of the United States, St. Timothy’s Episcopal Church v. City of Brookings*, No. 1:22-cv-00156-CL (D. Or. Nov. 21, 2023).

170. *Litigation Manual Supplement*, *supra* note 153, at 6–7; RILEY, *supra* note 39, at 140–141.

171. NAT’L HOMELESSNESS L. CTR., HUMAN RIGHT TO HOUSING REPORT CARD 2023: GRADING THE UNITED STATES RESPONSE TO HOUSING AND HOMELESSNESS (2023), <https://homelesslaw.org/wp-content/uploads/2023/09/ReportCard2023.pdf>.

172. *Id.* at 8–9.

173. *Id.* at 21; PHILIP ALSTON, HUM. RTS. COUNCIL, REPORT OF THE SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS ON HIS MISSION TO THE UNITED STATES OF AMERICA, U.N. Doc. A/HRC/38/33/Add.1 (2018), 18–19, <https://digitallibrary.un.org/record/1629536>.

174. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS 7 (2012), <https://www.usich.gov/guidance-reports-data/federal-guidance-resources/searching-out-solutions-constructive-alternatives>. The Interagency Council on Homelessness indicated in its report that “criminalization measures may also violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights.” *Id.*

175. For instance, criminalizing people for unavoidable, life-sustaining human behaviors contradicts Eugene’s Human Rights Code, which states, in part: “It is the intent of the city that all people have an equal opportunity to participate fully in the life of the city and that discriminatory barriers to equal participation in employment, housing and public accommodations be removed.” Eugene, Or., Mun. Code § 4.613 (2022), <https://eugene.municipal.codes/EC/4.613>.

A. Proposed Solutions

1. Ordinance and Policy Changes

While only a small number of jurisdictions have decriminalized anti-homelessness laws, there has been some progress in recent years.¹⁷⁶ Since *Boise* was decided in the Spring of 2019, several cities on the West Coast have taken proactive steps to make changes to their laws and have changed their police policies, particularly ones that involve the enforcement of their sleeping bans.¹⁷⁷ Legislative and administrative changes have not been limited to jurisdictions in the Ninth Circuit; cities such as Austin, Denver, Indianapolis, and Dallas have made changes, none of which were precipitated by a lawsuit.¹⁷⁸ Examples of ordinance changes cities have enacted include reducing penalties to civil violations and eliminating jail sentences, opening up areas to allow overnight sleeping, allowing car camping in certain locations, lengthening warning notices before sweeps are conducted and reforming protocols for storing people's belongings that are taken as part of a sweep.¹⁷⁹ Some cities have reduced fines to nominal amounts or allowed community service in lieu of fines for quality of life violations.¹⁸⁰ A few cities have instituted a requirement that first responders must assist individuals find appropriate shelter before a citation can be issued.¹⁸¹

While it would be impossible to provide proposed specific ordinance changes since there are significantly different ordinances in cities across the country, proposed changes can be organized by the department responsible for making and/or executing the changes. In most cities this would include the city council, city manager or mayor's office, police department, municipal court and parks department or public works. With each suggested ordinance change, the number of cities that have made a similar change and the names of individual cities could be noted, if helpful to a jurisdiction's advocacy efforts.¹⁸² Being able to reference other cities that have implemented similar changes can give policy makers the support needed to take similar action.

An example of an ordinance change that applies to multiple departments would be to expand the forms of allowable notice in addition to mail to include

176. See, e.g., HAUBER & RANDALL, *supra* note 6, at 32–36 (providing a list of jurisdictions that have made changes in recent years, based on research through November 19, 2019); HNH 2019, *supra* note 7, at 85–105.

177. HAUBER & RANDALL, *supra* note 6, at 32–36.

178. *Id.*; HNH 2019, *supra* note 7, at 85–105.

179. See HAUBER & RANDALL, *supra* note 6, at 32–36; HNH 2019, *supra* note 7, at 85–105; INTERAGENCY COUNCIL ON HOMELESSNESS, ENDING HOMELESSNESS FOR PEOPLE LIVING IN ENCAMPMENTS (2015), https://www.usich.gov/sites/default/files/document/Ending_Homelessness_for_People_Living_in_Encampments_Aug2015.pdf (setting forth a list of strategies for cities to follow to establish temporary encampments with effective outreach and engagement with service providers and suggests only closing camps if alternative housing and shelter is available).

180. See HAUBER & RANDALL, *supra* note 6, at 32–36; HNH 2019, *supra* note 7, at 85–105.

181. See *id.*

182. HAUBER & RANDALL, *supra* note 6, at 4–5, 16–20 (listing proposed ordinance changes and cities that have passed similar changes).

text, email and/or phone calls so more people are informed of their infraction and are aware of their court hearings.¹⁸³ In Eugene, as is likely the case in most places around the country, certain anti-homelessness violations are sent by mail and as a result, from a practical standpoint, the unhoused are not given an opportunity to challenge such violations.¹⁸⁴

Examples of broadly applicable policy changes include measures such as an alternative complaint and dispatch system; trained outreach workers as first responders to complaints involving unhoused individuals where there is no threat to public safety; complaint-driven responses to anti-homelessness violations rather than initiated by officer observation; reduced criminal penalties to civil infractions for violations based on status; and creation of a community court as an alternative to municipal court for unhoused people who are cited for quality of life violations and meet the criteria for diversion.¹⁸⁵

In advocating for legislative changes, state wide legislative efforts should be considered as well. As mentioned in Part IV, Oregon passed a law in 2021 requiring local laws pertaining to “. . . the act of sitting, sleeping, lying or keeping warm and dry outdoors on public property that is open to the public,” be objectively reasonable as to time, place and manner.¹⁸⁶ Cities were required to amend their ordinances by July 1st, 2023. While it is too soon to determine whether the amended local ordinances will create a more human-centered response, the recognition among cities that people cannot be punished for sitting, resting or lying on public property is a step in the right direction. This legislation gives advocates another tool to stop cities from passing harsher laws against the unhoused and to pressure cities to enact measures to allow unhoused people places to sleep, sit and rest.¹⁸⁷

2. Reform Current Practices

A final category of solutions involves changes to current practices. Some practical changes seem almost too basic to be helpful but in reality can make a critical difference. For instance, getting a city to provide accessible porta-potties and trash bins in locations where the city is tacitly allowing groups of people to camp are two essential items that help prevent an unhealthy situation that leads to

183. See *Snyder v. Alternate Energy Inc.*, 857 N.Y.S.2d 442, 442 (Civ. Ct. 2008) (recognizing email service in New York) (“Considering the pervasive role the Internet plays in today’s world, it is striking how seldom it is used to notify somebody that he or she is being sued.”).

184. Certain anti-homelessness violations in Eugene are not even handed directly to the person and only are mailed, such as “storage of vehicles on streets,” Eugene Or. Code § 5.135 (2022), <https://eugene.municipal.codes/EC/5.135>.

185. See, e.g., HAUBER & RANDALL, *supra* note 6, at 32–35.

186. H.R. 3115, 81st Leg. Assemb., Reg. Sess. (Or. 2021).

187. Megan Banta, *How Eugene and Springfield May Change their Camping Ordinances to Comply with Oregon Law*, THE REG. GUARD (Mar. 10, 2023), <https://www.registerguard.com/story/news/homelessness/2023/03/10/eugene-springfield-oregon-homeless-camping-tents-laws-affordable-housing-crisis/69978357007/>.

a camp shutdown.¹⁸⁸ These two items also help maintain social order and dignity for the individuals residing in the camp.¹⁸⁹ Beyond encampments, the general lack of accessible restrooms for the unhoused is yet another factor that contributes to the criminalization of the unhoused. With so few public restrooms in so many municipalities, people who do not have a home have no choice but to violate city prohibitions against public urination and defecation.¹⁹⁰ Advocating for more public bathrooms and showing the nexus to a punitive system could be part of a coalition's campaign for change.

Another possible initiative is the creation of an app for police and outreach workers to use to check in real time the location of available shelter beds.¹⁹¹ Shifting from the Point In Time count to the Homeless By Name List would provide a more accurate count of the number of people who are unhoused in any given month.¹⁹² Working with government and social service providers to establish a more accurate count allows a community to better understand the scope of homelessness, which better informs service needs and how best to prioritize resources, and allows jurisdictions to more effectively seek additional funding support. In addition, in some cities it may be possible to secure an informal agreement with the City Prosecutor's office to limit the circumstances under which the City Prosecutor charges homeless people for committing anti-homelessness violations.

3. Create More Shelter Sites

Central to any effort to compel a city to move away from a punitive system is the creation of more shelter sites and more generally, permissible places for people to exist. As discussed in Part III, because of the lack of housing in so many communities throughout the country and the lengthy timeline for building more housing, a short-term solution is needed. While many cities recognized the need for more temporary shelter solutions and were working to increase sites before Covid, the need became very apparent during the pandemic. In Eugene, for instance, more than 200 beds were added in 2021 through the creation of new non-congregate programmatic shelter sites.¹⁹³ For all non-congregate shelter sites, a nonprofit runs the site and provides supportive services to help people transition to more permanent housing.¹⁹⁴ While this is not an article about

188. Don Kahle, *When Out and About in Eugene, Where to Find Relief?*, THE REG. GUARD (Jun. 15, 2022), <https://www.registerguard.com/story/opinion/columns/2022/06/15/restroom-near-me-when-out-and-about-in-eugene-oregon-where-to-find-relief-homeless-bathroom-access/65360926007/>; RILEY, *supra* note 39, at 115.

189. See *Punishing Homelessness*, *supra* note 11, at 32.

190. Ron S. Hochbaum, *Bathrooms as a Homeless Rights Issue*, 98 N.C. L. REV. F. 205, 216 (2020).

191. EUGENE AREA CHAMBER COMMERCE, THE STATE OF OUR HOMELESSNESS CRISIS 18 (2021), <https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:b6a0c53a-8306-3185-aca6-a32a96b25d17>.

192. See sources cited *supra* note 49.

193. EUGENE CITY COUNCIL, *supra* note 37, at 3. The city used Community Cares funding to help fund the creation of new sites. *Id.*

194. *Id.*

temporary shelters, it is worth noting that 40-60% of people in non-congregate shelter have a positive exit compared to only 5-15% from emergency shelters.¹⁹⁵

Covid and the reduction of beds at large congregate shelter sites precipitated a reevaluation of cities' approaches to sheltering the unhoused and a recognition among decisionmakers of the downsides of large congregate shelter.¹⁹⁶ Beyond the health implications, as discussed in Part IV, there are several reasons why this type of sheltering with no personal space does not work for a significant number of people who are unhoused, such as family and pet prohibitions, conflict and abuse in congregate shelters, PTSD and loss of encampment community.¹⁹⁷

In many communities it is impossible to devote sufficient resources to create enough shelter sites for everyone who is unsheltered. Despite a significant investment the city of Eugene made in sheltering options since Covid, total shelter beds continue to only be enough for a small percentage of the unsheltered individuals in Eugene. In many communities, as in Eugene, there will continue to be a segment of the population without access to sanctioned shelter. The solution cannot be to cite and arrest those who are not fortunate enough to access a sanctioned shelter site. Unsheltered people outside these sanctioned sites need to be allowed to exist. In Eugene, a group of advocates and neighborhood leaders successfully pressured the city to allow groups of people to remain in camps in response to the CDC's sheltering in place recommendations that were issued periodically during the pandemic.¹⁹⁸ This group also worked with police leadership to create camp guidelines to reduce the risk of a camp getting shut down for health or safety risks. Homeless service organizations distributed these guidelines at camp sites throughout the city. As a group, we also worked with the police to ensure camps were provided items essential for success – porta-potties, hand sanitization, trash receptacles and safe needle disposal. Because of Covid, the group was somewhat successful in getting the city to provide these essential items at camps.

4. Legal Diversion through Community Court

Community courts are voluntary and are established to provide an alternative pathway for low level nonviolent misdemeanors.¹⁹⁹ The primary goal is to provide

195. See, e.g., CODY ZEGER, ALAMEDA COUNTY OFFICE OF HOMELESS CARE AND COORDINATION, EVALUATING PROJECT ROOMKEY IN ALAMEDA COUNTY 38 (2021), <https://homelessness.acgov.org/homelessness-assets/img/reports/Final%20PRK%20Report.pdf> (demonstrating that Alameda County's low barrier non-congregate shelter (NCS) resulted in 65% housing at exit versus 35% for the County generally); *Impacts of Hotels as Non-Congregate Emergency Shelters*, DOWNTOWN EMERGENCY SERV. CTR. (Nov., 2020), <https://www.desc.org/impact-of-hotels-as-non-congregate-emergency-shelters/> (finding positive results for individuals in non-congregate shelters compared to those in congregate emergency shelters in Seattle).

196. See sources cited *supra* note 195.

197. See sources cited *supra* note 6.

198. See, e.g., NAT'L CTR. FOR IMMUNIZATION & RESPIRATORY DISEASES (U.S.) DIV. VIRAL DISEASES, INTERIM GUIDANCE ON PEOPLE EXPERIENCING UNSHELTERED HOMELESSNESS 6-8 (2021), <https://stacks.cdc.gov/view/cdc/107838>.

199. See, e.g., *About Homeless Courts*, AM. BAR ASS'N, https://www.americanbar.org/groups/public_interest/homelessness_poverty/initiatives/homeless-courts/about-homeless-courts/ (last visited Feb.

individuals an action-orientated solution that reduces future involvement with the criminal justice system and eliminates barriers to housing and employment.²⁰⁰ Eugene has had an operating community court since 2016 where people who have been cited for certain non-violent misdemeanor offenses, including the ones discussed in this Article, have an alternative pathway to seek dismissal and overcome barriers.²⁰¹ The court is located in the city's public library and social service providers are on site to work with the individuals to access the resources needed to eliminate criminal justice barriers and, in many instances, to access shelter or housing.²⁰² The presiding judge meets with each person to develop an individually tailored case plan.²⁰³ While this court has led to successful outcomes for many people who are unhoused, it is very limited in its geographic scope²⁰⁴ and some have questioned its overall effectiveness.²⁰⁵ In cities like Eugene where a community court already exists, data in a report can be used to advocate for an expansion and changes to the process to improve outcomes.²⁰⁶

B. Components of an Effective Advocacy Strategy

An advocacy campaign requires a multi-faceted effort that includes community-based legal strategies as well as additional community-led initiatives. Success is achieved not by legal intervention alone, but with a combined community organizing strategy and public awareness campaign.²⁰⁷ A combination of legal and non-legal strategies are essential to improve outcomes for individuals and

17, 2024) (The ABA Commission on Homelessness and Poverty is the lead entity that works with local communities to set up these courts and there are approximately 70 around the country); Steve Binder & Matt Wechter, *Homeless Courts: Recognizing Progress and Resolving Legal Issues that Often Accompany Homelessness*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (Jul. 9, 2020), <https://www.usich.gov/news/homeless-courts-recognizing-progress-and-resolving-legal-issues-that-often-accompany-homelessness/>.

200. See AM. BAR ASS'N, *supra* note 199; Binder & Wechter, *supra* note 199.

201. *Community Court*, CITY OF EUGENE, <https://www.eugene-or.gov/3337/Community-Court> (last visited Feb. 17, 2024).

202. "The foundation of the Community Court is a team of justice system and social service professionals dedicated to collaborating on cases to reach practical solutions." *Id.*

203. MICHELLE CERN ET AL., NAT'L CTR. FOR STATE CTS., CITY OF EUGENE COMMUNITY COURT PROCESS AND OUTCOME EVALUATION (2020), <https://www.eugene-or.gov/DocumentCenter/View/61132/Final-Eugene-Community-Court-Evaluation>.

204. CITY OF EUGENE, *supra* note 201.

205. According to a study conducted by the Catalyst Journalism Project at the University of Oregon School of Journalism and Communication, the recidivism rate did not change among those who successfully completed the court's program. Taylor Perse & Morgan Theophil, *An Unsuccessful Solution*, EUGENE WKLY. (Jan. 31, 2019), <https://eugeneweekly.com/2019/01/31/an-unsuccessful-solution/>; see generally Gina Scalpone et al., *Community Courts and the Homeless: Do these Programs Make a Difference?*, NOWHERE TO GO (Jun. 29, 2020), <https://homeless.cnsmaryland.org/2020/06/29/community-courts-the-homeless-do-these-programs-make-a-difference/> (examining the mixed results that community courts around the country have had on rates of recidivism within the criminal justice system).

206. See, e.g., AM. BAR ASS'N, *supra* note 199; Binder & Wechter, *supra* note 199.

207. See, e.g., *Rad Lawyers and WRAP – Upending Unjust Laws and Systems Together!*, W. REG'L ADVOC. PROJECT [hereinafter *WRAP Clinics*], https://myemail.constantcontact.com/Rad-Lawyers-and-WRAP—Upending-unjust-laws-and-systems-together-.html?soid=1114978407058&aid=a_T1hHGtlkg (last visited Feb. 17, 2024) (discussing WRAP, a national network of community legal clinics that integrate legal support and community organizing).

achieve longer term success at a broader level. With every strategy lawyers must be vigilant about ensuring that each initiative is community driven and that the strategies developed are centered on input from people who are unhoused.

1. Community Legal Advocacy

A combination of the strategies discussed below can be used to exert pressure on city decision-makers and the primary institutions involved in enforcing a punitive system. Some or all of these legal strategies are best implemented by an organized, collaborative effort among local legal aid organizations and/or similar public interest legal organizations, law school clinics, and even law school pro bono programs, working closely with social service agencies and community organizers.²⁰⁸ These essential community partners are the primary referral sources and help ensure that the legal services provided are part of a holistic, community-driven approach to effectively eliminate barriers to housing and employment and empower people who are unhoused.²⁰⁹ In addition, because these community organizations and individual outreach workers have credibility and trust among the unhoused, they are a critical link in helping legal service providers establish trust with unhoused individuals.

A team of lawyers and trained advocates could represent individuals in municipal court to seek a significant reduction or elimination of fees and fines, dismissal of outstanding citations and warrants, and recovery of impounded vehicles. Based on the demonstrated benefits of having a lawyer or other trained legal advocate in several other civil contexts, such as eviction and foreclosure defense, domestic violence protective orders, and bail hearings, having a lawyer or advocate would increase the likelihood of a dismissal and/or a significant fine reduction.²¹⁰ This is consistent with my own experience successfully representing an individual in municipal court whose RV was impounded for violating Eugene's prohibited camping ordinance.²¹¹ With legal help, the citations were

208. *Id.*

209. *See, e.g.,* Binder & Wechter, *supra* note 199; *WRAP Clinics*, *supra* note 207.

210. *See, e.g.,* *The Benefits of Counsel in Civil Cases*, NAT'L COAL. FOR CIV. RT. TO COUNS., http://civilrighttocounsel.org/about/the_benefits_of_counsel (last visited Feb. 17, 2024) (finding that litigants who are represented by counsel are anywhere between 8 and 200 times more likely to win their civil case than those who are unrepresented); MELANCA CLARK & MAGGIE BARON, *FORECLOSURES: A CRISIS IN LEGAL REPRESENTATION* 20 at 46 n.80 (2009) (discussing improved eviction outcomes— "only 22% of represented tenants had final judgments against them as compared with 51% of tenants without legal representation."); Jane Murphy, *Engaging with the State: the Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U.J. GENDER SOC. POL'Y & L. 499, 511–12 (2003) (explaining that in Baltimore, Maryland, comparisons of represented and unrepresented women in domestic violence protective order proceedings demonstrated that 83% of complainants with attorneys experienced success in obtaining a protective order as compared to only 32% of complainants without an attorney); Douglas L. Colbert et al., *Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail*, 23 CARDOZO L. REV. 1719, 1752–61 (2002) (explaining that a Baltimore study of bail review hearings revealed that defendants with lawyers were four times as likely to have their bail reduced as defendants without lawyers, and were over twice as likely to be released on their own recognizance).

211. Eugene, Or., Mun. Code § 4.990(8) (2022), <https://eugene.municipal.codes/EC/4.990> (Willful Violation of Prohibited Camping).

dismissed and the client was able to recover the approximately \$600 he paid the tow yard for his vehicle, which was money he and his partner had saved over several months to go toward a security deposit on an apartment. In addition to the money, the legal victory made him feel vindicated from the way he had been treated by the police. As is most often the case, this client would not have felt comfortable challenging the citation and fees on his own. Many people are not even aware that they can challenge the impoundment and associated fees in court.

Appearing in court regularly on behalf of unhoused plaintiffs and telling essentially the same story at each hearing adds another dimension of pressure and helps demonstrate the futility of the existing system. For instance, as discussed in Part IV, there are several problems with parks violations in many cities, including significant procedural due process issues. Representing multiple clients through the appeals process, consistently raising the same legal challenges, and proposing the same changes to park rules makes it easier for a city to amend the administrative rules since the same arguments and proposed language changes have been made in multiple legal proceedings.

In addition to legal representation in connection with fines and warrants, a large percentage of people who are unsheltered have other legal issues that create obstacles to housing and employment.²¹² Fortunately, there are successful community-based models that work with individuals who are homeless to eliminate legal barriers to housing, such as public benefits, disability issues, expungement of criminal records, identification, license reinstatement and/or child custody and payments.²¹³ These services are provided by a range of different types of legal services providers, such as law school clinics, pro bono legal service projects established through the local bar or nonprofit public interest legal organization, and some public defender offices.²¹⁴

212. RILEY, *supra* note 39, at 66; U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, ENGAGING LEGAL SERVICES IN COMMUNITY EFFORTS TO PREVENT AND END HOMELESSNESS 1–3 (2017), https://www.usich.gov/sites/default/files/document/Engaging_Legal_Services.pdf; *Punishing Homelessness*, *supra* note 11, at 31.

213. *See, e.g., Proven Solutions*, COAL. FOR HOMELESS, <https://www.coalitionforthehomeless.org/proven-solutions/> (last visited Feb. 17, 2024).

214. *See, e.g., U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, supra* note 212, at 4–6; *Homeless Rights Advocacy Project*, SEATTLE UNIV. SCH. LAW, <https://law.seattleu.edu/centers-and-institutes/korematsu-center/initiatives-and-projects/homeless-rights-advocacy-project/> (last visited Feb. 17, 2024) (“HRAP engages Seattle University School of Law students in effective legal and policy research, analysis, and advocacy work to advance the rights of homeless adults, youth, and children.”); *Homelessness Service Project*, BERKELEY L., <https://www.law.berkeley.edu/experiential/pro-bono-program/slps/current-slps-projects/homelessness-service-project/> (last visited Feb. 17, 2024) (“HSP provides legal assistance to unhoused and low-income communities in the Easy Bay Area.”); *About*, W. REG’L ADVOC. PROJECT, <https://wraphome.org/mission-goals/about/> (last visited Feb. 17, 2024) (“WRAP was founded...by local social justice organizations across the West Coast to expose and eliminate root causes of homelessness and poverty, empower communities to demand protection of civil and human rights, and advocate for restoring federal funding for affordable housing”).

2. Public Education

A public education campaign can enhance advocacy efforts. Widespread distribution of easy-to-read handouts can be a central part of such a campaign. For instance, know your rights handouts for people who are unhoused and homeless advocates can easily be created and disseminated. Social media posts (e.g., group Facebook pages) can reach an even broader audience, serve as a community organizing space, and help raise awareness of the consequences and futility of punishing people for violations of laws that are unavoidable for anyone without shelter. Legal service providers, including law school clinicians, could play a central role in such an information campaign, educating both the housed and unhoused on alternatives to criminalization as a way to spread the main talking points of a community campaign to a wider segment of the population, empower individuals, and educate the public more generally.²¹⁵

3. Coalition Building

Extensive outreach is imperative in building a coalition of a diverse range of stakeholders. When all representative voices are aligned, they can exert more pressure on government decisionmakers. In most jurisdictions, this will include housed and unhoused advocates, neighborhood leaders (this is especially critical in cities where neighborhood associations hold a great deal of power and have a direct line to local leaders), and leaders in the business community (as they are a constituency with a direct line to government leadership). Alignment among representatives of these key constituencies essentially forces government actors to listen. A united front prevents city officials from playing one group against another and creating divisions. While the interests and goals of these respective groups differ in very real ways, overlapping interests and shared goals can be identified. This needs to be an organized approach with a strategic plan that contains agreed upon goals and objectives, action items, and measurements of success. Such structure helps hold people accountable and keep the coalition intact through inevitable differences in approach and process.²¹⁶ The United States Interagency Council on Homelessness (USICH), in its proposed strategies for cities and counties to address encampments, urges cities and counties to establish such a community-wide collaboration with all relevant stakeholders.²¹⁷

215. See U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *supra* note 212, at 3–4 (highlighting the importance of legal service providers educating communities on alternative programs and policies to the criminalization of homelessness).

216. There are glimpses of this happening in Eugene. The Eugene Chamber of Commerce issued a report in 2021, called *The State of Our Homelessness Crisis*, and has convened a group of business, nonprofit, government, philanthropy, faith leaders, and housed and unhoused advocates to work together to accomplish shared goals. EUGENE AREA CHAMBER COMMERCE, *supra* note 191, at 12. Following the release of the report, the Business Leaders Task Force was created to lead this effort on behalf of the Chamber to push for more shelter sites and streamline data collection in order to engage in more effective advocacy. *Business Leaders Task Force*, EUGENE AREA CHAMBER COMMERCE, <https://www.eugenechamber.com/hi-bltf.html> (last visited Feb. 17, 2024).

217. ADDRESSING ENCAMPMENTS, *supra* note 38, at 2.

In creating a broad-based coalition, there are benefits to establishing a collaborative relationship with law enforcement. The police could be an ally in advocating for movement away from an enforcement paradigm. It is a drain on police resources to enforce anti-homelessness laws against the unhoused and it detracts from responding to actual safety threats. Moreover, as discussed in Part IV of this Article, the police are not trained as social service providers nor are social services the reason people choose to pursue a career in policing.²¹⁸ With the police in support of a shift in practices, they can be an ally in advocating for change, even if they do so informally with city leaders. Public works and parks departments could also be allies given that these two departments are typically involved with camp closures and removal of people's belongings.

4. Report as an Advocacy Tool

As discussed in Part III, in Eugene, the coalition of housed and unhoused advocates determined that a report was essential in persuading city leaders to engage in meaningful reform. This type of report can be a central tool in any jurisdiction for raising awareness and understanding of the issues, and for providing shared talking points to a broad-based coalition of stakeholders. Partnering with a department or course within a university to assist with data collection and analysis can help create a more compelling story for policy makers. Many universities are engaged in research related to homelessness and several have collaborated with community partners to publish reports that have influenced local policies and practices. Faculty and students who are experienced in empirical research in connection with public policy issues can help structure and implement an efficient and effective research plan, from determining how best to obtain the necessary data and formulate the questions, to setting up the most efficient way to tabulate and analyze the data.²¹⁹

In Eugene, because the coalition's initial focus was on meaningful ordinance and policy changes, and given that the report was created with the full support and active engagement of the HP Workgroup,²²⁰ the first public introduction of this report was to the Human Rights Commission on behalf of the HP Workgroup.²²¹ The Eugene Human Rights Commission endorsed the report, and

218. *Punishing Homelessness*, *supra* note 11, at 17–18.

219. *See, e.g.*, HOWARD & TRAN, *supra* note 3 (showcasing a policy brief authored by law students at Seattle University School of Law and members of the founding cohort of Seattle University's Homeless Rights Advocacy Project); *Pervasive Penalty*, *supra* note 11 (featuring work created in collaboration, among others, with the San Francisco Coalition on Homelessness, students at San Francisco State University, UC Berkeley Center for Human Rights, and UC San Diego Center for Global Justice); Scalpone et al., *supra* note 205 (discussing work that was the product of a collaboration among the University of Maryland's Howard Center for Investigative Journalism and the University of Oregon's Catalyst Journalism Project, Stanford University, Arizona State University, the University of Arkansas, Boston University, and the University of Florida).

220. CITY OF EUGENE, *supra* note 99.

221. *Meeting Packet for Tuesday, February 18, 2020, 5:30 – 7:45 PM*, CITY OF EUGENE HUM. RTS. COMM'N 73 (2020), https://www.eugene-or.gov/AgendaCenter/ViewFile/Agenda/_02182020-1005.

made a recommendation to the Eugene City Council to hold a work session on the report.²²² An endorsement from a government agency/ies, as part of a legislative advocacy strategy, can help give a report and the advocacy effort itself legitimacy. It also can serve as another point of pressure for local decision-makers to take the report's recommendations seriously as government leaders typically do not lightly ignore a recommendation from another government agency.

In addition to full endorsement/s, simply speaking during public comment at governmental agency meetings also helps raise awareness and gives people consistent talking points to repeat elsewhere. Repeating the same message in multiple public forums is another way of making the report findings and solutions part of the community discourse. In addition to public comment, providing testimony on local and, to the extent applicable, state legislation that relates to the plight of the unhoused serves a similar purpose. For instance, testifying in support of the state-wide legislation in Oregon that limits the extent to which cities can prohibit sleeping outdoors on public property provided yet another opportunity to reinforce the same messages statewide.²²³

5. Leverage National Movements

With the defund the police movement that began in the Spring of 2021, advocating for alternate dispatch and response systems could be focal points of change in many jurisdictions, particularly ones where there already is a strong movement and significant pressure to reduce funding for the police and reallocate funding toward mental health and social workers.²²⁴

The defund the police movement has brought heightened scrutiny to police and related enforcement costs.²²⁵ The data on the significant costs of a punitive system can paint a very clear picture of how public resources are being squandered by utilizing the highest paid type of responder with the least relevant expertise to handle matters unrelated to public safety. Given the sensitivity around public expenditures for police, proposed decriminalization solutions can be

222. *Id.*

223. H.R. 3115, 81st Leg. Assemb., Reg. Sess. (Or. 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3115/Enrolled> (requiring that "... any city or county law that regulates the act of sitting, sleeping, lying or keeping warm and dry outdoors on public property that is open to the public must be objectively reasonable as to time, place and manner . . ." and creating an affirmative defense for defendants under such laws).

224. Howard Henderson & Ben Yisrael, *7 Myths about "Defunding the Police" Debunked*, BROOKINGS INST. (May 19, 2021), <https://www.brookings.edu/blog/how-we-rise/2021/05/19/7-myths-about-defunding-the-police-debunked/> (noting that as of May 2021, 13 cities had developed plans to defund the police); Ram Subramanian & Leily Arzy, *State Policing Reforms Since George Floyd's Murder*, BRENNAN CTR. FOR JUST. (May 21, 2021), <https://www.brennancenter.org/our-work/research-reports/state-policing-reforms-george-floyds-murder>.

225. See, e.g., Henderson & Yisrael, *supra* note 224; Jessica M. Eaglin, *To "Defund" the Police*, 73 ST. L. REV. 120 (2021), <https://www.stanfordlawreview.org/online/to-defund-the-police/>; Jemima McEvoy, *At Least 13 Cities Are Defunding their Police Departments*, FORBES (Aug. 13, 2020), <https://www.forbes.com/sites/jemimamcevoy/2020/08/13/at-least-13-cities-are-defunding-their-police-departments/>; Subramanian & Arzy, *supra* note 224.

incorporated into a larger defund the police advocacy campaign.²²⁶ For example, Cahoots, a community program in Eugene that provides a health care based response to people experiencing a mental health care crisis,²²⁷ has received widespread national attention as part of the larger national effort to reexamine police department expenditures.²²⁸ While Cahoots is a model worthy of consideration by other cities, having provided thousands of people over the years with a response appropriate to their situation and at cost savings to the city, it is not a solution to the criminalization of the unhoused. Cahoots responds to what callers perceive as an acute mental health crisis, it does not respond to a call simply because someone is unsheltered and resting or sleeping on a sidewalk. As discussed in Part III of this Article, the police in Eugene respond to hundreds of calls each year simply because someone is outside and has nowhere to go.

VI. CONCLUSION

It is important to reiterate that the most important solution, and one that cannot be forgotten, is investment in housing. As already discussed in this Article, studies have demonstrated the sizeable cost savings that cities realize by redirecting money spent on enforcement to the expansion of affordable housing.

Despite the severe shortage of housing available for people who are unhoused, and the lack of shelter options in so most jurisdictions, cities around the country continue to use these punitive measures as their primary means of dealing with the unhoused. Once unsheltered, people face a cascade of other problems such as mental and physical health issues, increased risk of drug and alcohol abuse, and a greater likelihood of being a victim of a crime. These harms are severely exacerbated through the punitive system in place in so many cities throughout the country. As the discussion of Eugene demonstrates, cities that have established innovative sheltering models and other seemingly more humane practices continue to harm people who are unhoused and create a heavier burden on tax payers.

There are glimpses of hope. Successful legal challenges as well as the efforts some local jurisdictions proactively have taken to decriminalize their laws that disproportionately target the unhoused and reorient toward a more humane, community centered approach to addressing homelessness offers models for other cities. These efforts suggest that there is growing recognition of the futility and harm of punishing people for having nowhere to go. The Biden-Harris Administration's commitment to addressing the homeless crisis through levels of

226. Subramanian & Arzy, *supra* note 224.

227. *What is Cahoots?*, WHITE BIRD CLINIC (Oct. 29, 2020), <https://whitebirdclinic.org/what-is-cahoots/> (In operation since 1989, a mental health worker and medic respond as a team to calls involving a mental health crisis, using a trauma informed de-escalation approach. The focus is on connection to appropriate resources and treatment of non-emergent medical needs).

228. *Cahoots in the News*, WHITE BIRD CLINIC, <https://whitebirdclinic.org/services/cahoots/cahoots-in-the-news/> (date last visited Feb. 17, 2024) (List of news sources around the country that have covered Cahoots as a model).

funding to local communities that have not been seen in the past several decades also is encouraging. With sustained Federal resources and focus, achieving the Administration's interim goal of reducing homelessness by 25% by January 2025 is possible and, if successful, could provide a foundation for continued reductions in homelessness and ultimately, the elimination of homelessness. There is a role each of us can play to help community stakeholders achieve broader systemic reforms and compel cities to redirect policing resources to more effective community-based solutions.