

**Photo Identification Barriers Faced by Homeless
Persons: The Impact of September 11**

**A Report by the
National Law Center on Homelessness & Poverty**

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ABOUT THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

The National Law Center on Homelessness & Poverty is committed to solutions that address the causes of homelessness, not just its symptoms, and works to place and address homelessness in the larger context of poverty.

To this end, we employ three main strategies: litigation, legislation, and public education. We are a persistent and effective voice on behalf of homeless Americans, speaking effectively to federal, state, and local policy makers. We also produce investigative reports and provide technical assistance to local organizations.

For more information about our organization and access to publications such as this report, please visit our website at **www.nlchp.org**.

You are also invited to join the network of attorneys, students, advocates, activists and committed individuals who make up NLCHP's membership network. Our network provides a forum for individuals, non-profits and corporations to participate and learn more about using the law to advocate for solutions to homelessness. For membership information please email the Law Center at: **network@nlchp.org**.

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EXECUTIVE SUMMARY

Photo identification is a necessity in modern daily life. Many homeless persons, however, lack photo identification because of the difficulty of maintaining important documents while homeless. After September 11, 2001, homeless persons face additional, significant barriers when they lack a photo ID.

The National Law Center on Homelessness & Poverty (NLCHP) received numerous anecdotal reports about the problems that homeless persons face without photo identification, and conducted a survey to assess the nature and extent of the problem. NLCHP interviewed 56 service providers in sixteen states that serve a total of 25,647 clients per year.

The survey revealed that the lack of photo identification has become a tremendous problem for people who are homeless in a post-September 11 climate. People without photo identification have difficulty accessing the critical services and benefits that help move people out of poverty. Additionally, new restrictive state driver's license laws make it impossible for many homeless people to acquire an ID.

In gathering data, NLCHP heard stories that followed disturbing patterns. Many clients that attempted to obtain an ID were told that they needed a birth certificate. However, when they applied for a birth certificate, they were told they needed a photo ID, thus placing them in a catch-22. Additionally, many clients were turned away from important services, such as an elderly woman in Denver, Colorado who was told by a free dental provider that she could not get her painful tooth removed because she did not have an ID. Policy makers must take action to ensure that these trends do not continue, and that people who are homeless are not prevented from moving out of poverty as a result of these barriers.

Many Americans experience homelessness

- More than 3.5 million men, women, and children will experience homelessness in a given year.
- The lack of affordable housing is a leading cause of homelessness according to experts and to homeless persons themselves.
- Lack of adequate income also significantly contributes to homelessness. In 2002, 2.6 million Americans held full-time jobs that did not pay enough to raise them above the federal poverty threshold.

State laws and administrative policies since September 11 make it difficult and, in some cases, impossible for homeless persons to obtain photo identification

- After September 11, at least 43 states considered some form of law or regulation making it more difficult to procure a driver's license. In 2002 and 2003, at least ten states passed restrictive driver's license statutes and several states enacted proposals by administrative rule.

- At least 26 states currently require applicants for a state-issued ID to prove residency through proof of a physical address. Many homeless people, who by definition lack a stable address, are unable to do this.

There has been a movement since September 11 to federalize and standardize driver's licenses

- Several bills were introduced in Congress after September 11 proposing national standards for photo identification. These bills make it more difficult to obtain photo identification.
- National groups such as the American Association of Motor Vehicle Administrators and the National Conference of State Legislators have developed suggested driver's license procedures that limit access to driver's licenses.

Many homeless people are denied access to benefits and services when they lack photo identification

- NLCHP's survey revealed that large percentages of homeless persons are denied critical benefits and services if they do not have a photo ID.
- According to NLCHP's survey, homeless persons were denied the following benefits in a given month when they lacked photo ID:
 - 51.1% were denied Supplemental Security Income (SSI) benefits
 - 30.6% were denied Temporary Aid to Needy Families (TANF) benefits
 - 53.1% were denied food stamps
 - 54.1% were denied access to shelters or housing services
 - 45.1% were denied access to Medicaid or medical services.
- Applicants for food stamps and SSI have the right to apply for and receive food stamps without a photo ID. The denial of those benefits simply for lack of an ID is unlawful. Some potential SSI applicants are prevented from even entering Social Security Administration buildings to apply because new security measures restrict access to people without photo IDs.

People without identification face increased problems with law enforcement

- According to NLCHP's survey,
 - 33.7% of homeless persons were asked by an officer to produce an ID
 - 59.8% suffered harassment or arrest if they could not produce an ID
 - 8% had their IDs confiscated by police

Many homeless persons cannot afford the cost of a photo ID

- Photo identification can be costly, as much as \$29.
- NLCHP's survey indicated that 36% of clients could not get a photo ID because they could not afford one.

Examples of individuals who faced ID barriers

- One man in Fairfax, Virginia, lost all his personal belongings when his encampment was burned down. He went to the Virginia Department of Motor Vehicles to replace his ID, but was told he needed a birth certificate. He went to the Virginia Department of Vital Statistics to obtain a copy of his birth certificate,

and was told he needed a photo ID. The Virginia Department of Motor Vehicles would accept no documentation substitutes.

- A man in Moorhead, Minnesota was arrested for sleeping in a park. The police confiscated his ID, and when he left the police station, he was told that they did not have it. He has been unable to replace his ID.
- A client in Texas attempted to get his birth certificate in order to procure a photo ID. He was told that he needed at least three letters from relatives who could verify his identity. He does not have three relatives that he is contact with, and could not obtain his birth certificate.
- Numerous clients in Prince George's County, Maryland were wrongfully told by the food stamp office that they needed a photo ID to apply for food stamps. Even though federal law makes clear that a photo ID is not needed to receive food stamps, many clients gave up and never received the food stamps to which they are entitled.

Recommendations

- Federal, state, and local governments should ensure that in safeguarding security, they are not creating unreasonable barriers that prevent homeless persons from obtaining IDs and accessing critical services.
- Federal agencies should help ensure that their state and local offices are not unlawfully denying benefits to persons who lack photo identification. USDA and SSA should monitor their state and local offices for compliance with laws that protect people without IDs in the Food Stamp and SSI Programs, and provide training to local offices on the right to apply for benefits without an ID.
- The Interagency Council on Homelessness should work to remove photo ID barriers for people who are homeless by educating federal agencies and states on the barriers people face when they lack identification. The ICH should encourage states to address the importance of an ID in accessing mainstream programs as part of their Ten Year Plans to End Homelessness and include a component in its "Policy Academies" on photo ID barriers.
- States should provide alternatives to residency requirements for people who are homeless, such as allowing homeless persons to use a descriptive address.
- States should allow for reasonable alternatives to identity documentation requirements when someone has no photo ID or birth certificate, such as school records, photo copies of old IDs, voter registration cards, and IDs from government social service programs.
- States should waive the fee for an ID for people who are homeless, and who often cannot obtain an ID because they cannot afford one.

I. INTRODUCTION

Photo identification has become a necessity in daily American life. Even before the events of September 11, 2001, people needed identification to drive, obtain legal employment, open a bank account, board an airplane, enter certain government buildings, and access many social services. After September 11, 2001, the fear of terrorism has added a new sense of urgency to the government's effort to identify those who operate within its borders. This fear is reflected in the opinion of the Supreme Court of Nevada in *Hiibel v. The Sixth Judicial District of the State of Nevada*¹, a case now before the U.S. Supreme Court, in which the court upheld the arrest of a person who refused to identify himself. The court wrote "we are at war against enemies who operate with concealed identities and the dangers we face as a nation are unparalleled." Since September 11, it has thus become increasingly difficult to function in daily life without state-issued identification.

While it has become more difficult to function without a photo ID, it has also gotten harder to obtain an ID. Many states responded to the September 11 terrorist attacks by proposing laws that make it tougher to acquire a state-issued driver's license or identification card. In 2003, approximately 117 state bills were considered that were intended to restrict access to driver's licenses.²

Photo identification problems are particularly acute for persons facing homelessness. Homeless people are often in desperate need of shelter, food, clothing, and other services. However, many social service providers deny assistance to people without photo IDs, leaving homeless persons without critical aid.³ Additionally, people who live on the streets are occasionally harassed or even arrested by police officers when they lack photo identification.

Homeless persons who attempt to acquire a photo ID frequently experience tremendous obstacles. Many cannot obtain an ID because they cannot prove "residency" in their state due to lack of a physical address. Others simply cannot afford the cost of an ID.

Without a photo ID, homeless persons often find that they cannot successfully move out of homelessness and toward self-sufficiency. They cannot get lawful employment or receive basic social services. They are denied access to clothing closets, shelters, food pantries, and certain public benefits, all of which help move people out of poverty. Restrictive state laws prevent them from getting an ID, but the very lack of ID exacerbates and perpetuates their homelessness. It is therefore critical that homeless and other low-income people are able to obtain identification.

¹ *Hiibel v. The Sixth Judicial District of the State Nevada*, No. 03-5554 (U.S., argued March 22, 2004).

² See National Immigration Law Center, Drivers' License Proposals, available at <http://www.nilc.org/immspbs>.

³ NLCHP's survey revealed that many service sites require photo identification before offering services including shelters, food pantries, and clothing providers.

To assess the current nature and extent of this problem, the National Law Center on Homelessness & Poverty (NLCHP) surveyed homeless service providers around the country. We asked service providers in sixteen states about the problems that lack of photo identification posed for their clients. This report contains a discussion of state and federal measures enacted after September 11 to restrict access to photo IDs, the results of NLCHP's survey, and conclusions and recommendations for policymakers and local service providers.

II. OBTAINING AN ID: STATE LAWS AND POLICIES AND THE IMPACT OF 9/11

A. State laws and policies make it extremely difficult for many people to obtain an ID

Obtaining photo identification is extremely difficult for many Americans. It can be a daunting task simply to understand what documentation is required. In New York, for example, customers must navigate through a complicated grid and point system to determine what to bring to the Department of Motor Vehicles (“DMV”) office. Certain types of documents are assigned a point value, and for each DMV transaction (getting a driver's license, etc.), a different total point value is needed.⁴

The next challenge is actually acquiring the requisite documentation. Many people who are homeless may not have certain important documents. Maintaining possessions can be very difficult while homeless due to the transient and unstable nature of homelessness. Many shelters require residents to leave during the day and do not allow residents to store their belongings at the shelter.⁵ Thus, many homeless people, even if able to secure shelter at night, are left with nowhere to go during the day except public places, and are forced to carry all their personal possessions with them. Lacking any place to store possessions, homeless people also often face loss or destruction of their belongings, including their identification.⁶

Without any identity documentation, such as a birth certificate, it is impossible to procure a state-issued ID. However, in attempting to obtain identity documentation, many people find themselves in a catch-22 of needing an ID to get an ID. Some states require customers seeking an ID to present a birth certificate, but require customers seeking a

⁴ See < <http://www.nydmv.state.ny.us/idlicense.htm>>.

⁵ Office of Policy Dev. & Research, U.S. Dep't of Hous. & Urban Dev., *A Report to the Secretary on the Homeless and Emergency Shelters* 38 (1988).

⁶ The loss or destruction of personal property, including identification, occasionally happens at the hands of law enforcement. See *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1555-56 (S.D. Fla. 1992) (documenting incidents of malicious destruction of the property of homeless persons including “two burning incidents in Lummus Park in which City police officers awakened and handcuffed class members, dumped their personal possessions – including personal identification, medicine, clothing and a Bible – into a pile, and set the pile ablaze.”).

birth certificate to present an ID.⁷ An additional burden exists in many states that only accept original or certified copies of documents. Many low-income people are unable to afford the cost of a certified copy. Once all the necessary documentation is gathered, there remains the problem of the fee.⁸ The fee for a photo ID prohibits many people from obtaining one.

B. Legislative developments since September 11

Since September 11, there has been a nation-wide movement to restrict access to driver's licenses and state-issued photo identification. The National Conference of State Legislatures reports that "states have moved rapidly to address a variety of issues that were highlighted by the terrorist attacks of September 11, 2001 related to driver's license issuance. . ."⁹ Many of these state responses are in the form of laws or regulations that make it more difficult to obtain driver's licenses. After September 11, at least 43 states considered some form of legislation or rule change to restrict access to driver's licenses.¹⁰ In 2002 and 2003, at least ten states passed restrictive driver's license statutes and several states enacted proposals by administrative rule.¹¹ Many laws require an applicant to prove "lawful presence" in the United States.¹² The majority of these measures are targeted at immigrants, but not only immigrants are affected.

One of the most significant barriers presented by these laws is a residency requirement. Obviously, residency requirements are problematic for people who are homeless and, by definition, lack a stable place of residence. At least twenty-six states require DMV applicants to prove state residency, generally in the form of a lease, mortgage document, or utility bill.¹³ Virginia's law, for example, passed in response to September 11, limits IDs to "Virginia residents."¹⁴ Residence is proved by providing a bill, voter registration card, or other specified documents that show the "street address" of the applicant. A "post office box is not acceptable."¹⁵

⁷ See, e.g., Virginia, Va. Code Ann. § 46.2-345 (requiring a birth certificate to get an ID), <http://www.vdh.state.va.us/vitalrec/index.asp> (requiring a copy of an ID to get a birth certificate) and Florida, <<http://www.hsmv.state.fl.us/ddl/faqkeys.html>> (requiring a birth certificate to obtain an ID), <http://www.doh.state.fl.us/planning/_eval/vital_statistics/birth_death.htm> (requiring a copy of an ID to obtain a birth certificate)

⁸ The fee for a photo ID or driver's license varies widely from state to state. For example, Oregon charges \$29. <<http://www.odot.state.or.us/dmv/DriverLicensing/drfees.htm>>. California charges \$6 <http://www.dmv.ca.gov/dl/dl_info.htm#idrenew>.

⁹ National Conference of State Legislatures, *Drivers License Integrity* <<http://www.ncsl.org/statefed/DLRCSG.htm>>.

¹⁰ *Id.*

¹¹ Colorado, Florida, Georgia, Iowa, Kentucky, Louisiana, Minnesota, New Jersey, Ohio, and Virginia. See National Immigration Law Center, 2001-2001 Driver's License Proposals, available at <<http://www.nilc.org/immspbs>>.

¹² See *id.*

¹³ The following states indicate on their official DMV websites that proof of residency is required: Arkansas, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

¹⁴ 2002 VA HB 638.

¹⁵ <<http://www.dmv.state.va.us/webdoc/pdf/dmv141.pdf>>.

Residency requirements are strongly recommended by the American Association of Motor Vehicle Administrators (AAMVA), a nonprofit organization that represents the state officials who administer and enforce motor vehicle laws.¹⁶ AAMVA has released several status reports on “enhancing driver’s license administration and identification security.”¹⁷ The status reports include a section on “address verification best practices” in which they explain that “an address is an essential data element and one that is frequently used in the perpetration of identity theft and fraud” and that “some method of electronic address verification is highly recommended.”¹⁸

Several of the restrictive state measures have met legal and political opposition. Minnesota’s new rules, for example, failed in the legislature and were subsequently enacted by the Department of Public Safety Commissioner under an emergency rulemaking authority. The rules excluded out-of-state driver’s licenses from being used as stand-alone identification, tied the expiration date of immigrant driver’s licenses to their visa expiration, included the words “status check” on the license on certain immigrant driver’s licenses, and required applicants to take a full-face picture without the head and face obscured. The rules were challenged, and the Minnesota Court of Appeals held the new regulations invalid for failure to follow the proper rule-making procedures.¹⁹

The American Civil Liberties Union (ACLU) in Indiana brought a class action lawsuit challenging Indiana’s new driver’s license law that requires proof of citizenship or immigration status in order to receive a driver’s license.²⁰ The ACLU alleged that Indiana had failed to follow the proper rule-making procedure in making the change to the driver’s license regulations and had violated the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution. The lawsuit is still pending.

While states have enacted measures to limit access to IDs, there has been a movement on the federal level to “federalize” driver’s licenses and other forms of identification.²¹ The Driver’s License Integrity Act, introduced by Representative Cantor of Virginia, mandates minimum standards for issuance and administration of state-issued driver’s licenses, promotes interstate sharing of information for verification, and contains provisions for the prevention of abuse.²² Representative Flake from Arizona introduced legislation that would bar federal agencies from accepting a state-issued driver’s license for identification-related purposes if the state does not require licenses issued to certain

¹⁶ See <<http://www.aamva.org>>.

¹⁷ Reports can be found at <<http://www.aamva.org>>.

¹⁸ AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS, ENHANCING DRIVERS LICENSE ADMINISTRATION, STATUS REPORT TO AAMVA MEMBERSHIP (2003).

¹⁹ *Jewish Community Action v. Commissioner of Public Safety*, 657 N.W.2d 604 (Minn. App. 2003).

²⁰ *Villegas v. Coleman*, No. 49D03-0208-PL-1448, (Indiana Super. Ct. June 2003).

²¹ See generally Richard Sobel, *The Demeaning of Identity and Personhood in the National Identification System* 15 HARV. J. LAW & TEC. 319 (Spring 2002).

²² H.R. 5322, 108th Cong. (2003). This bill has been referred to the Subcommittee on Immigration, Border and Security Claims.

immigrants to expire when the immigrant's visa expires.²³ Many commentators and advocates are concerned that the movement toward national identification standards will undermine basic liberties.²⁴

III. NLCHP'S ID SURVEY

A. Background

After September 11, numerous service providers around the country contacted NLCHP about the problems their clients were facing if they lacked photo identification. Many service providers said that their clients could not access fundamental support services such as shelter or food pantries without photo identification. Additionally, many clients had some of their important rights violated, such as the right to public benefits, when they lacked photo identification.

There were disturbing patterns in the service providers' stories. A typical scenario went as follows: A woman breaks up with a boyfriend and he forces her to leave their apartment. She is suddenly homeless. She falls asleep in the local park that evening and is awakened by a police officer who arrests her for violating an ordinance that prevents sleeping in public parks. She is taken to the police station where her ID is confiscated. When she leaves the police station, she asks to have her ID returned. She is told that they do not have it. She attempts to stay in a shelter that night, but all the local shelters require photo identification. When she visits the DMV to apply for another ID, she is told that she needs to prove her residency to obtain a new ID.

In addition to individual stories, NLCHP heard reports about problematic state and federal policies. In Rhode Island, for example, many courthouses were denying entrance to people without photo identification. This policy had an extremely detrimental impact on people who had a legal obligation to be in court, such as a criminal defendant or witness under subpoena. For example, when an unrepresented criminal defendant does not appear in court, a warrant can be issued for the defendant's arrest. In a civil matter, the non-appearance of a party in court may lead to a judgment by default. Although advocacy efforts were ultimately successful in getting the policy changed in Rhode Island, similar problems remain. Applicants for Supplemental Security Income (SSI) benefits continue to face similar problems when attempting to enter federal buildings to apply for benefits or to attend Social Security Administration (SSA) hearings.

The General Services Administration (GSA) has established a system of security alert levels, designed to guide other federal agencies in the development of their internal

²³ H.R. 4043, 108th Cong. (2003). This bill was referred to the Subcommittee on Immigration, Border and Security Claims.

²⁴ See generally Richard Sobel, *The Degradation of Political Identity Under a National Identification System*, 8 B.U. J. SCI. & TECH. L. 37 (Winter 2002).

security policies.²⁵ The levels range from one (lowest threat level) to four (highest threat level).²⁶ While SSA has adopted the GSA security alert levels, SSA (like other federal agencies) remains free to modify security policies and procedures for its own offices.

Prior to the terrorist attacks of September 11, 2001, SSA field offices operated at the lowest level of security. Under that security alert system, visitors to stand-alone field offices were not required to present proof of identity.²⁷ However, the events of September 11 resulted in the issuance of a level three security alert for all SSA facilities.²⁸ This alert level requires that all visitors to SSA offices “present a state license or other comparable valid identification.”²⁹ Based on the results of NLCHP’s ID survey, it appears that this security policy is being enforced in SSA field offices around the country. As a result, people who are eligible to apply for SSI but do not have ID are being denied their right to enter a SSA field office to file applications.³⁰ Additionally, “Offices of Hearing and Appeals,” where SSI claimants attend hearings, are sometimes subject to GSA’s level three security alert, which requires verification of ID.³¹ Consequently, claimants without ID are typically unable to attend their own hearings.

Panhandlers may also face difficulties. In Cincinnati, Ohio, panhandlers are required to register and get a license. The City of Cincinnati’s application for panhandling asks applicants to provide their driver’s license number.³² This is particularly problematic for people who are unable to obtain employment because they do not have a driver’s license or other form of state-issued identification.

Many of the reports NLCHP received related to problems with state residency requirements for getting IDs. Virginia’s new restrictive residency requirements have had a tremendous impact.³³ In the first three business days of 2004, almost 3,300 people, or one in twenty customers, were turned away by the Virginia DMV due to the restrictive law.³⁴ NLCHP contacted homeless service providers in three different Virginia cities to assess the effect of the residency requirement on homeless Virginians. The providers reported that it is impossible for many homeless persons to get an ID in Virginia. One provider from a shelter in Arlington told us that the DMV office used to accept a letter of residency from his agency, verifying that a client was residing there. That will no longer

²⁵ Memorandum from Andria Childs, Associate Commissioner for Facilities Management, SOC. SEC. ADMIN., to All Assistant Regional Commissioners for Management and Operations Support, SOC. SEC. ADMIN. 1 (Sept. 18, 2001) (on file with author) (hereinafter “Childs Memo”).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Memorandum # AM-02034, from Office of Facilities Management, SOC. SEC. ADMIN., to Regional Commissioners (RC’s), Administrative Law Judges (ALJ’s), and Facilities Managers, SOC. SEC. ADMIN. 1 (February 13, 2002) (on file with author) (hereinafter “SSA Memo”).

²⁹ Childs Memo, *supra* note 25.

³⁰ NLCHP is examining legal and policy strategies to change this security policy, and permit homeless persons to enter SSA field offices to transact business. For additional information, contact our office.

³¹ See generally Childs Memo, *supra* note 25; SSA memo *supra* note 28.

³² See Larry Elder, *Cincinnati Requires a License to Panhandle*, <<http://www.townhall.com/columnists/larryelder/le200330717.shtml>> (July 17, 2003).

³³ See *infra*, p. 3.

³⁴ David Cho, *3,300 Denied Va. Licenses Under New Regulations*, WASH. POST, January 8, 2004, at B1.

satisfy the Virginia residency requirement. A client now also needs two pieces of mail sent to the shelter. Many shelters, however, will not receive mail for their residents. A homeless service provider in Fairfax, Virginia, reported that her clients are simply unable to obtain a photo ID when they lose their belongings. They cannot get a birth certificate or some other proof of identity without a photo ID. Her clients have attempted using copies of school records or copies of IDs from social service programs, but the Virginia DMV will never accept these as substitutes. She had one client, for example, who was living in the woods with his girlfriend. Their encampment was burned down, and he lost all his personal documents. He got copies of some of his documents from shelters that he has stayed at, including a copy of his destroyed driver's license, but the Virginia DMV would not accept these as proof of identity. He has been unable to replace his ID.

B. Survey Results

In response to these and other reports that NLCHP received about photo identification problems in the wake of post-September 11 policy and legislative changes, we issued a survey to homeless service providers around the country. The survey was designed to assess the nature and frequency of the problems. NLCHP targeted the following sixteen states for the survey: Alabama, California, Colorado, Connecticut, D.C., Illinois, Kansas, Kentucky, Maryland, Minnesota, Missouri, New York, North Carolina, Oklahoma, South Carolina, and Texas. We surveyed 56 service providers whose organizations assist a total of 25,647 clients per year. The service providers work at a wide range of organizations including homeless shelters, food pantries, and transitional living facilities. The organizations also vary in size, serving as few as five clients per month or as many as 5000. The respondents were selected at random, and most of the surveys were conducted over the phone.

The survey focused on three primary areas: barriers to accessing benefits, problems with law enforcement, and lack of adequate funds to pay for identification. The results indicated that lacking photo identification is a significant problem among people who are homeless. Persons without a photo ID are often denied critical services and benefits such as shelter, medical care, food stamps, and social security benefits. Additionally, homeless persons are occasionally harassed by police officers or even arrested if they lack photo identification.

The survey asked providers to identify, of the clients they serve, the number that lack photo identification each month. A total of 10.7% of clients lacked photo identification. Many of the providers indicated that they require an ID to access their services, including emergency shelters and food pantries. We did not include their responses in this data.

Barriers to accessing benefits and services

The first section of our survey asked providers to identify how many clients are denied certain benefits and services due to lack of photo identification each month. These included Supplemental Security Income (SSI), Temporary Aid to Needy Families (TANF), food stamps, housing or shelter services, and medical services (including

Medicaid and hospital services). Survey respondents reported that large percentages of clients are denied services because they lack photo identification.

<u>Service/Benefit</u>	<u>Percentage of Clients Denied Service Due to lack of Photo Identification Monthly</u>
SSI	51.1%
TANF	30.6%
Food Stamps	53.1%
Housing or Shelter Services	54.1%
Medical Services	45.1%

These benefits and services are often critical to families living in poverty. The Food Stamp Program alone serves millions of families as a basic nutritional safety net when they become so poor that they cannot afford adequate nutrition. Children are the primary recipients of food stamps, receiving approximately 79% of all food stamp benefits.³⁵

Housing and shelter services are also crucial to people who have lost their housing. Our survey indicated that far too many people are told that they cannot stay the night in a warm place simply because they lack photo identification. Indeed, many shelters require clients to produce an ID before offering services.

NLCHP’s survey indicated that clients without an ID are often denied benefits unlawfully. Some programs are governed by statutes that explicitly protect people without IDs, including the Food Stamp Program, the SSI Program, and the Medicaid Program. Offices that deny food stamps, SSI benefits, and Medicaid benefits simply because someone lacks an ID violate state and federal laws.

Food Stamps: A food stamp applicant does not need a photo ID to apply for, or receive, food stamps. It is unlawful for the food stamp office to deny someone food stamps solely because he/she lacks photo identification. Food stamp eligibility workers are required to verify the identity of food stamp applicants. However, under the federal regulations, there are a variety of ways that identity can be verified.³⁶ The regulations state that “identity may be verified through readily available documentary evidence, or if this is unavailable, through a collateral contact,” and that “any documents which reasonably establish the applicant’s identity must be accepted, and no requirement for a specific document, such as a birth certificate, may be imposed.”³⁷

There are two primary ways that identity can be verified according to the federal food stamp regulations. One is through the use of documentary evidence. A food stamp applicant can offer some type of documentation that reasonably establishes identity.

³⁵ < http://www.frac.org/html/federal_food_programs/programs/fsp.html>.

³⁶ 7 C.F.R. § 273.1(f)(1)(vii) (2003).

³⁷ *Id.*

Some examples of acceptable documentary evidence include a voter registration card, wage stubs, a birth certificate, and an ID for health benefits.³⁸ The other method of verifying identity is through a collateral contact, which is “an oral confirmation of a household’s circumstances by a person outside the household.”³⁹ A collateral contact may confirm information in person or over the phone.⁴⁰ It may be someone from a social service agency, an employer, a landlord, or a neighbor. The collateral contact simply vouches for the identity of the food stamp applicant.

SSI: Photo ID is not required to apply for SSI. Filing an application for SSI requires that identity be verified.⁴¹ However, SSA’s operations manual makes clear that a photo ID is not required for this purpose.⁴² If a person who is applying for benefits can provide her name and/or Social Security number, a SSA claims representative can use that information to pull up her record in SSA’s computer system.⁴³ Once the computer record has been located, the claims representative is simply required to verify identity to his satisfaction. If the applicant does not have an ID document, she can be asked open-ended questions such as “what is your mother’s maiden name” or “where were you born?” If the applicant’s answers match the data in SSA’s records, the claims representative will consider that to be sufficient verification of identity.⁴⁴

TANF: There is no federal mandate that TANF applicants provide a photo ID to receive benefits. However, many of the rules relating to TANF administration are left up to the states, and some states have chosen to require a photo ID to receive TANF benefits.⁴⁵

Medicaid: Photo identification is not required to apply for Medicaid benefits. The basic form of identification required under the Medicaid statute is the applicant’s social security number.⁴⁶ If a client lacks a social security number, the state Medicaid agency is required to help the individual “complete an application for a SSN,” and “obtain evidence required under SSA regulations to establish the age, the citizenship or alien status, and the true identity of the applicant.”⁴⁷ Additionally, the state may not deny Medicaid benefits while “issuance or verification of the individual’s SSN” is taking place.⁴⁸

³⁸ *Id.*

³⁹ 7 C.F.R. § 273.2(f)(4)(ii) (2003).

⁴⁰ *Id.*

⁴¹ SOC. SEC. ADMIN, Program Operations Manual System (POMS), Supplemental Security Income (SSI) 00601.062 (2003).

⁴² *Id.*

⁴³ Any person who has a Social Security Number should have a record in SSA’s computer system.

⁴⁴ *Id.* For a further discussion of how to document identity in SSI cases, see Jeremy Rosen, Rebecca Hoey, and Theresa Steed, *Food Stamp and SSI Benefits: Removing Access Barriers for Homeless People*, 34 CLEARINGHOUSE REV. 679-696 (March-April 2001).

⁴⁵ See e.g. Idaho, Rhode Island, and New Jersey (require a photo ID to receive TANF benefits).

⁴⁶ 42 U.S.C. § 1396(a)(46)

⁴⁷ 42 C.F.R. § 435.910(e)

⁴⁸ 42 C.F.R. § 435.910(f)

Problems with law enforcement

The next section of our survey focused on the relationship between lack of an ID and encounters with law enforcement. Survey respondents indicated that people who live in public spaces have been asked by law enforcement officials to produce identification and may suffer harassment or even arrest for failing to produce identification. Additionally, police officers occasionally confiscate the IDs of homeless persons.

<u>Problem</u>	<u>Percentage of Clients Affected</u> <u>Monthly</u>
Asked to produce ID	33.7%
Suffered harassment or arrest for lacking ID	59.8%
ID confiscated by police	8.0%

Homeless persons, particularly those living on the streets, can be the target of police harassment. Without permanent places of residence, homeless people must regularly perform acts in public that would otherwise be done in private, including walking the streets at all hours of the day and night, occupying public spaces for extended periods of time, carrying large amounts of personal property, sleeping in public, and erecting and living in makeshift shelters.⁴⁹ Homeless people have become a particular target with the onset of efforts by localities to “criminalize” homelessness by making it illegal to engage in activities such as sleeping, sitting, standing, leaning, cooking, or storing personal belongings in public places – behaviors that are not criminal activities in and of themselves and may be lawful if conducted in a private home. Examples of these types of anti-homelessness ordinances prevent sleeping in public places,⁵⁰ camping⁵¹ or lodging

⁴⁹ See NLCHP & National Coalition for the Homeless, *Illegal to be Homeless: The Criminalization of Homelessness in the United States* (August 2003); NLCHP, *Punishing Poverty: The Criminalization of Homelessness, Litigation, and Recommendations for Solutions* (May 2003).

⁵⁰ DALLAS, TEX. CITY CODE S 31-13 (A)(1) (1992) (it is a crime to “sleep or doze in a street, alley, park, or other public place”); BEVERLY HILLS, CAL., CITY ORDINANCE 93-0-2165 (1993), amending Beverly Hills, CAL. CITY CODE ART. 13 S 5.6.1303 (1993) (prohibits sitting, lying, or sleeping in any public places, with exceptions for physical disability, legally conducted parades, and those who are “seated on a bench lawfully installed for such purpose”); PHOENIX, ARIZ., CITY CODE S 23-48.01 (1981) (“(i)t shall be unlawful for any person to use a public street, ... sidewalk (or) other right-of-way, for lying, sleeping or otherwise remaining in a sitting position thereon, except in the case of a physical emergency or the administration of medical assistance”); MIAMI, FLA., CODE S 37-63 (1990) (“(i)t shall be unlawful for any person to sleep on any of the streets, sidewalks, public places or upon the private property of another without the consent of the owner thereof”); CAL. PENAL CODE S 647 (I) (West 1988) (prohibiting “lodg(ing) in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to (its) possession or control”).

⁵¹ SANTA ANA, CAL., ORDINANCE NS-2160 (Apr. 3, 1992), amending SANTA ANA, CAL. CITY CODE S 10-402 (1992) makes it “unlawful for any person to camp, occupy camp facilities, or use camp paraphernalia in ... (a) any street; (b) any public parking lot or public area, improved or unimproved.” The statute defines “camp facilities” and “camp paraphernalia” to include “temporary shelters,” “tarpaulins, cots, beds, sleeping bags, hammocks or non-city designated cooking facilities and similar equipment.” *Id.* at s 10-401 (b), (c). The statute also makes it unlawful to “store personal property” in any public area. *Id.* at s 10-403. Under Section 43.52 of the City Code for the City of Orlando, Florida, “camping,” defined to include “sleeping out-of-doors,” is prohibited.

in any public area,⁵² or public bathing.⁵³ Similarly, some cities have targeted homeless people either by eliminating public spaces used by homeless people⁵⁴ or by attempting to prevent homeless people from using facilities that are generally available to the public.⁵⁵

After approaching a homeless person, police sometimes will use state statutes or local ordinances that prohibit the obstruction of a police officer's duties to arrest a person for refusing or failing to present identification.⁵⁶ They also may conduct such arrests based on statutes that prohibit concealing one's identity if lawfully detained by an officer.⁵⁷

Despite these statutes, police may or may not be able to lawfully arrest people for failing to identify themselves depending on the circumstances. During a consensual encounter with police, a person may not be arrested merely for not having identification. The Fourth Amendment protects a person's right to disregard police questioning when approached during such an encounter.⁵⁸ Therefore, if a police officer approaches a person for investigation without reasonable suspicion, a subsequent refusal or failure by the person to produce identification cannot serve as a basis for arrest.⁵⁹ Such an arrest would violate the Fourth Amendment.⁶⁰

However, constitutional rights shift when an officer has reasonable suspicion to approach

⁵² CAL. PENAL CODE § 647 (West 1988) prohibits "lodging" or "us[ing] any public space or public street for living accommodations." See *Betancourt v. Giuliani*, 2000 U.S. Dist. LEXIS 18516 (S.D.N.Y. 2000) (challenge to arrest under New York Administrative Code Section 16-122(b) under which it is "unlawful for any person[s] . . . to leave or permit to be left, any box, barrel, bale of merchandise or other movable property whether or not owned by such person[s], upon any . . . public place, or to erect or cause to be erected thereon any shed, building or other obstruction.").

⁵³ See NLCHP, *The Right to Remain Nowhere*, at 79 (1993).

⁵⁴ Cities have installed short, slanted, or sectioned off benches in downtown areas or at bus stops to prevent homeless people from lying down. See National Coalition for the Homeless, *Illegal to be Homeless*, *supra* note 49.

⁵⁵ In Montgomery County, Texas, for example, a commissioner's court approved a measure to put combination locks on the county building restrooms to prevent homeless people from using the facilities. Carla Rivera, "California Is 'Meanest' State for Homeless," *Los Angeles Times*, Aug 6, 2003, B.8; National Coalition for the Homeless, *Illegal to be Homeless: The Criminalization of Homelessness in the United States* at 49 (August 2003). According to a county judge, the combination would be given to anyone unless "they walk in with a suitcase." *Id.*

⁵⁶ See EAST LANSING, MICH., CODE, tit. IX, ch. 108, § 9.102(19) (2000); NEV. REV. STAT. § 197.190 (2003); MINN. STAT. § 609.50 (2002); IOWA CODE § 719.1 (2002); OHIO REV. CODE ANN. § 2921.31 (2003).

⁵⁷ See N.M. STAT. ANN. § 30.22.3 (2003); NEV. REV. STAT. § 171.123 (2003).

⁵⁸ *Florida v. Bostick*, 501 U.S. 429, 434 (1991). A consensual encounter occurs when a police officer approaches a person for questioning without having reasonable suspicion. The officer may ask the individual to consent to police questioning. However, the person is not required to consent to the inquiry or to answer any questions.

⁵⁹ *Brown v. Texas*, 443 U.S. 47, 52 (1979). Reasonable suspicion has come to mean "specific and articulable" facts to back up a suspicion that someone is involved in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). For example, in *Brown v. Texas*, the Supreme Court found that the officers' mere observation of the appellant in an alley in a neighborhood frequented by drug users did not provide enough of a basis to suspect the appellant of engaging in criminal activity. *Brown*, 443 U.S. at 51, 52.

⁶⁰ *Id.* at 53.

someone for investigation. Until this year, the U.S. Supreme Court had declined to determine whether an arrest for failure to identify oneself violates a person's Fourth Amendment rights during an investigation based upon reasonable suspicion.⁶¹ As a result, courts in different jurisdictions throughout the country have come to different conclusions about whether there is a right to refuse or fail to identify oneself under such circumstances.⁶²

On March 22, 2004, the Supreme Court heard oral arguments on this issue in a case on appeal from the Nevada State Supreme Court, *Hiibel v. The Sixth Judicial District Court of Nevada*.⁶³ This case presents the question of whether the Fourth and Fifth Amendments to the U.S. Constitution prohibit police from compelling individuals to identify themselves when stopped for investigation based on reasonable suspicion. NLCHP filed an amicus brief in the case arguing that police should not be able to arrest people for failing to identify themselves during such investigations, especially in light of the difficulties homeless people face in obtaining identification.⁶⁴

How clients pay for IDs

NLCHP's survey next sought to identify how low-income people find the resources to pay for an ID. We asked providers how many clients per month obtain funds to pay for an ID with the help of their organization or the assistance of another agency. We also asked how many clients simply do not get an ID because they cannot afford one.

It can be costly to obtain an ID. The fee for a state-issued photo ID is generally around eight dollars, but can be as high as twenty-nine dollars.⁶⁵ The fee for the ID is not the only expense. Applicants must also pay for transportation to the DMV office, and for copies of certain documentation, such as birth certificates.

For many families, these costs create a significant burden. One out of three Americans is officially classified as living in poverty for at least two months out of the year.⁶⁶ In 2002, 2.6 million Americans held full-time jobs that did not pay enough to raise them above the federal poverty threshold.⁶⁷ Consider a single mother with two children who works full-time at a minimum wage job. She will make \$10,712 before taxes, which is \$1000 below

⁶¹*Brown*, 443 U.S. at 53 n.3; *Kolender v. Lawson*, 461 U.S. 352, 362 n.10 (1983). A broad definition of probable cause is "reasonable ground for belief of guilt." *Brinegar v. United States*, 338 U.S. 160, 175 (1949). Probable cause exists when the facts and circumstances within an officer's knowledge, based on trustworthy information, are sufficient to justify a man of reasonable caution to believe that an offense has been or is being committed. *Id.*

⁶² See *Risbridger v. Connolly*, 275 F.3d 565 (6th Cir. 2002); *Oliver v. Woods*, 209 F.3d 1179 (10th Cir. 2000); *Carey v. Nev. Gaming Control Bd.*, 279 F.3d 873 (9th Cir. 2002).

⁶³ *Supra*, note 1.

⁶⁴ NLCHP's amicus brief can be found at www.nlchp.org.

⁶⁵ See e.g., North Dakota (\$8 for a photo ID), <http://www.state.nd.us/dot/dlinfo.html>, North Carolina (\$10 for a photo ID), <http://www.dmv.dot.state.nc.us/driverlicense/faq>, and Oregon (\$29 for a photo ID) <http://www.odot.state.or.us/dmv/DriverLicensing/drfees.htm>.

⁶⁶ U.S. CENSUS BUREAU, DYNAMICS OF ECONOMIC WELL-BEING: POVERTY 1996 – 1999 (July 2003).

⁶⁷ U.S. CENSUS BUREAU, POVERTY IN THE UNITED STATES: 2002, CURRENT POPULATION REPORTS (September 2003).

the federal government’s poverty threshold.⁶⁸ For her, the fee for an ID may be prohibitive because her meager income barely provides the resources necessary to feed and support her family.

<u>Method of Obtaining Funds</u>	<u>Percentage of Organizations That Report Use of Method</u> (Some clients use more than one method)
Organization helps pay for ID	46%
Other nonprofit or agency helps pay for ID	54%
There are no available funds so client does not get ID	36%

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

Photo identification barriers have become a disturbing trend in a post-September 11 climate. As NLCHP’s survey indicates, homeless persons without a photo ID experience myriad difficulties, including being unlawfully denied benefits and being turned away from homeless shelters. Compounding these problems is how enormously difficult it has become to obtain an ID after September 11.

Because photo identification has become a necessary tool in the move out of homelessness and poverty, states that provide homeless persons with IDs play an important role in helping their residents become self-sufficient. But, when states create unreasonable barriers to acquiring identification, they exacerbate and prolong homelessness. This leads to a variety of costs to the government. It is therefore in the state’s best interest to issue valid IDs. It is critical that states develop a process of issuing IDs that prioritizes security and integrity without being so needlessly burdensome or unreasonable that it is impossible to obtain one.

Below are recommendations for the federal and state governments on ways to help remove photo identification barriers and ensure that homeless persons can receive them. Additionally, we include some recommendations for service providers and advocates on how to help clients obtain IDs.

B. Recommendations

1. Federal Recommendations

Federal agencies should ensure that their state and local offices are not requiring IDs unlawfully. Federal agencies can monitor state and local offices to ensure that clients are

⁶⁸ See <www.nccbuscc.org/cchd/povertyusa>.

not being denied services unlawfully for lack of a photo ID, and provide training to state offices on the issue. For example, USDA should remind state and local offices that food stamp applicants have the right to apply even if they do not have a picture ID. This can be accomplished via a policy directive or memo, or through training at meetings of state food stamp administrators. SSA can work to ensure that applicants are not turned away from SSA buildings for failure to produce an ID. Specifically, SSA should develop a policy, in conjunction with the Department of Homeland Security, that permits building access without requiring the presentation of a picture ID. SSA should then issue a policy transmittal to all field offices and hearing offices, requiring them to follow the new policy.

The Interagency Council on Homelessness should work to remove photo ID barriers for homeless persons. The Interagency Council on Homelessness should instruct states and cities to include strategies and outcomes in their “Ten Year Plans to End Homelessness” that ensure that homeless persons can obtain IDs and can access programs and services even when they do not have IDs. Lacking photo identification prohibits access to mainstream programs. The Interagency Council can encourage states to address the importance of an ID in accessing mainstream programs as part of their Ten Year Plans. The Interagency Council can also provide outreach, training, and advocacy to federal agencies on resolving photo ID problems for homeless persons. For example, the Interagency Council could include a component on ID barriers during its “policy academies” or could encourage the American Association of DMV Administrators to issue model policies that consider people facing homelessness.

National driver’s license legislation should include protections for homeless persons. Congress can ensure that any legislation pertaining to national driver’s license standards include provisions that ensure that homeless persons are able to obtain IDs, such as creating exceptions to state “residency requirements” for people who are homeless.

2. State Recommendations

States should allow for alternatives to the residency requirement. States that require an address as proof of residency for an ID can offer alternatives to people who are homeless. One approach, adopted by Oregon, is to allow homeless persons to use a descriptive address. Oregon law requires that every state identification card include the customer’s residence address.⁶⁹ However, Oregon provides an exception for people who lack a permanent residence. The Oregon DMV website states that “if you have no actual residence, such as a homeless person or a person who continuously travels in a motor home, you may use a descriptive address in place of the residence address. Examples include: ‘under the Marion Street Bridge’ or ‘continuous traveler.’”⁷⁰

⁶⁹ OR. REV. STAT. § 807.110 (2001)

⁷⁰ See <<http://www.odot.state.org.us/dmv/DriverLicensing/orres.htm>>. See also *Pitts v. Black*, 608 F. Supp. 692 (S.D.N.Y. 1984) (listing a number of alternative methods of verifying residency, such as allowing homeless residents in the District of Columbia to describe their residence location for voting purposes).

States can also accept verification from a school that a family is homeless. Many students are identified as homeless, and work with someone in their school who serves as a liaison for homeless families.⁷¹ States could accept a letter from the liaison or other school official or immunization records, for example, to verify that the family is homeless, but is indeed residing in the state.

States should accept alternative documentation. Many states mandate that applicants provide original or certified documents that can be difficult or impossible for homeless persons to obtain.⁷² To alleviate this problem, states can broaden the scope of documents that can be used to verify identity and other information within reason. For example, states could allow people to use copies of school or medical records to verify identity instead of a birth certificate. States can also choose to accept photocopies when originals are unavailable. For example, a homeless person could be permitted to use a photocopy of her birth certificate if she cannot afford the cost of a certified copy.

States should waive the fees for people who are homeless. People who are homeless frequently cannot afford the cost of an ID. States can resolve this by waiving the fee for people who are homeless. South Carolina is one state that has chosen to waive the fee for homeless individuals. In order to get a fee waiver, a homeless person provides a letter from a shelter employee or other service provider indicating that he is homeless and requesting a fee waiver.

States should use “logical verification” when appropriate. States can verify identity through a series of questions. When someone lacks any identity documentation, the National Consumer Law Center and others have proposed the idea of “logical verification” as one model for verifying identity in the banking and consumer context. Logical verification is a system that uses information that a bank already has about someone from a credit report or some other database to verify identity. To illustrate, consumers attempting to open a bank account may be asked to name the bank at which they have a car loan or to name the city where they last lived.⁷³ Logical verification protects against identity theft because the bank or other institution asks about personal information that is not readily available, and yet allows the client to use the banking system without requiring excessive documentation.

3. Recommendations for Service Providers

Advocates can ensure that clients are not being denied services unlawfully when they lack photo identification. Local advocates can monitor compliance with the laws governing various social service programs to ensure that clients are not being unlawfully

⁷¹ The McKinney-Vento Homeless Assistance Act requires each school district to have a “liaison” to support and help homeless students in variety of ways, including ensuring that they are enrolled in school immediately and receive the services they need. 42 U.S.C. § 11432(g)(i)(J)(ii) and (g)(6).

⁷² See, e.g., Virginia <<http://www.dmv.state.va.us/webdoc/general/news/newlaws02.asp>> and Oklahoma <<http://www.dps.state.ok.us/dls/>>, which both require original or certified copies.

⁷³ See the National Consumer Law Center’s website for more information on logical verification www.nclc.org. The Social Security Administration currently verifies information in essentially the same way.

turned away for lack of photo identification. If clients are being told that they cannot apply for food stamps without photo identification, for example, advocates can look to remedy that. They can talk with their local human services office about the problem or call a national advocate.⁷⁴

Advocates can talk with state legislators and DMV administrators about photo ID problems. Advocates can arrange a meeting with their state legislator or state DMV administrator to discuss the barriers that homeless people face when they try to obtain a photo ID. They should come to the meeting with documented cases of clients who encountered roadblocks and with suggestions for improving access. It is important to make public officials aware of the problem and the impact that it has on low-income citizens.

Advocates can locate organizations that assist people who lack photo identification. Some areas have local nonprofits that assist clients with gathering the documentation they need to apply for an ID and with paying for the fee. In Houston, for example, a local church runs a program called “Operation ID” where church volunteers help clients obtain Texas IDs. They help clients fill out applications for birth certificates or track down other identifying documents. They accompany clients to the DMV office, if needed. Advocates can investigate whether their area has a similar service or try to create one.

By adopting some of the above recommendations, governments and advocates can find ways to respond to the increased security concerns of September 11, while not making homeless people victims of the tragedy. For further information or assistance on these issues, please contact the National Law Center on Homelessness & Poverty, 1411 K Street, NW, Suite 1400, Washington, DC 20005, (202) 638-2535, ssimon@nlchp.org.

⁷⁴ NLCHP is available to help if advocates encounter systemic problems. You can contact NLCHP by calling (202) 638-2535.

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