COVID-19 & Constitutional Rights

State-Created Danger
Cruel and Unusual Punishment
Today’s Panelists

Tristia Bauman, Senior Attorney, NLCHP

Dr. Elizabeth Frye, M.D., M.P.H., Board member of the Street Medicine Institute

Lili Graham, Litigation Counsel, Disability Rights California
Webinar Housekeeping

Your Participation

• Please submit your text questions and comments using the Questions panel.

• Please raise your hand to be unmuted for verbal questions.

Note: Today’s presentation is being recorded and may be posted as a resource.

@nlchphomeless
It is illegal to rest in most U.S. cities.

- **“Camping” bans**
  - Sleeping or resting outside
  - Using tents, blankets, etc.
- **72% of surveyed cities restrict camping in public**
  - 37% of cities ban camping citywide
  - 9% = public and private land
- **“Sleeping” bans**
  - Universal and unavoidable conduct
- **51% of surveyed cities restrict sleeping in public**
  - 21% of cities ban sleeping in public citywide
- **“Sitting and Lying” bans**
  - Temporarily resting in place
- **55% of cities restrict sitting and/or lying down in public**
  - 7% of surveyed cities prohibit sitting or lying down anywhere in public space
- **Bans on Living in Vehicles**
  - Using vehicles as shelter and/or housing
- **50% of cities restrict living in vehicles**
  - 213% increase since 2006
Enforcement

- Arrest and incarceration
- Fines and fees
  - Debtors prisons
- Warrants
- Move-along orders
- Stay away orders
- Trespass bans
- Property destruction
- Privatization of public space
- Hostile architecture

People without housing are 11 times more likely than housed people to go to jail.

#housingnothandcuffs
Harmful Impact of Criminalization Policies

• Worsens homelessness crisis
  • Convictions
  • Ineligible for subsidized housing
  • Poor credit
• Contributes to creation of large encampments
• Loss of employment
• Loss of property
• Worsened health
• Increased risk of violence
• Death
• Exacerbates racial inequality
• Encourages vigilantism
• Expensive and wasteful of public resources
• Harms public health
• Harms public safety
Emergency Shelters

Common barriers to shelter access:
- Gender
- Age
- Identification requirements
- Family composition
- Pet ownership
- Lack of property storage
- Physical disability
- Physical health
- Mental health
- Lack of stability
- Addiction
- LGBTQ+ identity
- Lack of privacy
- Religion
- Immigration status
- Sanitation concerns
- Safety concerns

Not a solution to homelessness

Congregate shelters

<table>
<thead>
<tr>
<th>Characteristics</th>
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<tr>
<td>Crowded</td>
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<td>Full and turn people away</td>
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<tr>
<td>Temporary (e.g. only available overnight)</td>
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<tr>
<td>Stay limitations</td>
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<tr>
<td>Inaccessible to people with certain disabilities</td>
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Congregate shelters & COVID-19

<table>
<thead>
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<th>Characteristics</th>
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<tr>
<td>Physical distancing is difficult or impossible</td>
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<tr>
<td>Shared surfaces (bathrooms, etc.)</td>
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<td>Safety concerns</td>
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Shelters should not close or exclude people who are having symptoms or test positive for COVID-19 without a plan for where these clients can safely access services and stay.

Depending on resources and staff availability, non-group housing options (such as hotels/motels) that have individual rooms should be considered for the overflow, quarantine, and protective housing sites.

In addition, plan for how to connect clients to housing opportunities after they have completed their stay in these temporary sites.

• Unless individual housing units are available, do not clear encampments during community spread of COVID-19.
• Encourage spacing of tents.
• Ensure nearby restroom facilities have functional water taps, are stocked with hand hygiene materials (soap, drying materials) and bath tissue, and remain open to people experiencing homelessness 24 hours per day.
• If toilets or handwashing facilities are not available nearby, provide access to portable latrines with handwashing facilities for encampments of more than 10 people.

Panelist

- Dr. Elizabeth Frye
  - M.D.
  - Master of Public Health
  - Board Member of the Street Medicine Institute
    (www.streetmedicine.org)
Challenging Criminalization Policies

- **1st Amendment**
  - Begging
  - Food sharing

- **4th Amendment**
  - Property seizures during sweeps
  - Tows of vehicle shelters

- **8th Amendment**
  - Sleeping, sitting, lying down

- **14th Amendment**
  - Encampment evictions
  - Selective enforcement of punitive laws

- **Americans with Disabilities Act**

- **State laws**
  - State Constitutions
  - Religious Freedom Restoration Act
  - Homestead Act

- **International human rights law**
Substantive Due Process:
State-Created Danger

- 5th & 14th Amendments
- Right to bodily integrity
- Special relationship
  - Duty of care (e.g. person is in custody)
- State-created danger:
  - Affirmative action by a state actor
  - Created or exposed person to known or obvious danger
  - Deliberate indifference to risk of serious harm
Race and Homelessness in San Diego County

Sources: https://www.census.gov/quickfacts/fact/table/US/IPE120218

Presenter

• Lili Graham
  • Litigation Counsel at Disability Rights California
  • Co-counsel in
    Bloom v.
    City of San Diego
Cruel & Unusual Punishment

**8th Amendment**: “Excessive bail shall not be required, nor excessive fines imposed, *nor cruel and unusual punishments inflicted*.”

*Ingraham v. Wright*, 430 U.S. 651 (1977)
- Type of punishment
- Grossly disproportionate punishment
- What can be punished as criminal


Punishing status

**Powell v. Texas**, 392 U.S. 514 (1968)

Conduct that is inseparable from status and “impossible” to avoid
• Prohibits criminalizing sleeping, sitting, and lying down when housing and shelter are not “realistically available”
• Universal and unavoidable conduct
  • “Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the ‘universal and unavoidable consequences of being human’ in the way the ordinance prescribes.”
• Conduct performed involuntarily in public space
  • “[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.”
• Open beds v. “realistically available” beds
  • Stay limitations
  • Religious environment
  • Disability access
• Does not require governments to create housing or shelter
NLCHP Recommendations

- Stop the sweeps
- Do not force people into congregate shelter
- House people in hotels, motels, trailers and/or RVs
- Increase access to hygiene and sanitation services
- Place a moratorium on vehicle ticketing, towing, and impoundment
- Immediately and safely decrease the number of people incarcerated for laws criminalizing homelessness
- Use surplus governmental property for safe camping, parking and access to supplies and services
- Prevent new homelessness by immediately halting ALL eviction and foreclosure proceedings
- Halt termination of utility services
- Ensure that outreach workers have resources and protective gear
Take action!

[Delete before sending:

Rules for use:
1) You are free to use only with edits in highlighted boxes – any alterations to base text must be confirmed with NLCHP first, contact Rajan Bal at rbal@nlchp.org.
2) CC: Trista Bauman at tbauman@nlchp.org and Rajan Bal at rbal@nlchp.org on any emails or make sure both get a copy of any hard copy letter sent so we can track.
3) Let Rajan know if any response is received, if policy is changed, or, after a week or so, if no policy is changed. We will be developing an online self-reporting tracking sheet, at which point this process will change.

Date
City/County/State Official
Address (email or physical)

Dear [CITY/COUNTY/STATE OFFICIAL],

I write on behalf of [ORGANIZATION (“Abbreviation”) and the National Law Center on Homelessness & Poverty (“Law Center”) to inform you that recent guidelines released by the Centers for Disease Control and Prevention (“CDC”) state that homeless encampments should not be evicted during the COVID-19 pandemic unless the city can offer individual housing units to people experiencing homelessness, and to urge you to immediately stop [arresting unhoused people for resting and sheltering in public space/conducting sweeps of homeless encampments/impounding vehicle shelters/other local practice] to comply with these guidelines. See https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html. This step is necessary to curb the spread of the virus and to protect against avoidable hospitalization and death among both housed and unhoused people.

[Local org description]

The Law Center is the only national legal advocacy organization dedicated solely to ending and preventing homelessness. We have published numerous reports, including Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness https://nlchp.org/housing-not-handcuffs-2019/, which includes a section about the negative impact of criminalization policies on public health, and Tent City, USA: The Growth of America’s Homeless Encampments, and How Communities are Responding collecting best practices, model policies, and case studies from across the country on how to constructively address homeless encampments. See https://nlchp.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf

According to the CDC, COVID-19 primarily spreads from person-to-person, between people within six feet of each other and droplets that are expelled when a person infected with COVID-19 coughs or sneezes. Recent reports indicate that homeless individuals infected by COVID-19 would be twice as likely to be hospitalized, two to four times as likely to require critical care, and two to three times as likely to die than the general population. See
Poll

Will you use what you learned today in your advocacy on behalf of people experiencing homelessness during COVID-19 and beyond?
Housing Not Handcuffs Campaign

- Endorse
- www.housingnothandcuffs.org
  - Resources
    - Talking points
    - Sample legislation
  - Research
- Connect with allies
  - Housing Not Handcuffs listserv
  - @nlchphomeless
  - #HousingNotHandcuffs
Support the Work

Housing is Public Health. Housing is a Right.

This crisis presents tremendous challenges, but is bringing necessary attention to housing as healthcare.

Your support, no matter how large or small, protects and aids our most vulnerable neighbors.

nlchp.org/donate
Contact Information

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