

## REPORT OF THE BOARD OF TRUSTEES

B of T Report 28-A-19

Subject: Opposition to Measures that Criminalize Homelessness  
(Resolution 410-A-18)

Presented by: Jack Resneck, Jr., MD, Chair

Referred to: Reference Committee D  
(Diana Ramos, MD, MPH, Chair)

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### 1 INTRODUCTION

2  
3 Resolution 410-A-18, “Opposition to Measures that Criminalize Homelessness,” introduced by the  
4 Medical Student Section and referred by the House of Delegates asks that:

5  
6 Our American Medical Association oppose measures that criminalize necessary means of  
7 living among homeless persons, including but not limited to, sitting or sleeping in public  
8 spaces; and advocate for legislation that requires non-discrimination against homeless persons,  
9 such as homeless bills of rights.

10  
11 CURRENT AMA POLICY

12  
13 Existing AMA policy supports improving health outcomes and decreasing the health care costs of  
14 treating people who are chronically homeless through clinically proven, high quality, and cost-  
15 effective approaches, which recognize the positive impact of stable and affordable housing coupled  
16 with social services. The AMA recognizes that stable, affordable housing as a first priority, without  
17 mandated therapy or services compliance, is effective in improving housing stability and quality of  
18 life among individuals who are chronically-homeless. Furthermore, the AMA recognizes that lack  
19 of identification is a barrier to accessing medical care and fundamental services that support health;  
20 and supports policy changes that streamline, simplify, and reduce or eliminate the cost of obtaining  
21 identification cards for the homeless population. Current policy does not specifically address  
22 criminalizing homelessness.

23  
24 BACKGROUND

25  
26 Insufficient income and lack of affordable housing are leading causes of homelessness in the  
27 United States. The Great Recession contributed to a shortage of affordable housing. It is estimated  
28 that we currently have a shortage of 7.2 million rental homes affordable and available to extremely  
29 low-income renters (those whose income is at or below the poverty guideline or 30 percent of their  
30 area median income).<sup>1</sup> Extremely low-income households face a shortage of affordable housing in  
31 every state and major metropolitan area. In addition to the shortage of affordable housing, in many  
32 U.S. cities, there are fewer shelter beds than are needed, leaving people experiencing homelessness  
33 with no choice, but to live in public places.<sup>2</sup>

34  
35 In January 2018, almost 553,000 people were homeless on a single night in the United States, with  
36 nearly two-thirds found in emergency shelters or transitional housing programs.<sup>3</sup> While the number

1 of people experiencing homelessness increased by less than one percent between 2017 and 2018,  
2 overall homelessness has declined by more than 84,000 people (13 percent) since 2010.<sup>4</sup> In the  
3 United States, sixty percent of people experiencing homelessness in 2018 were men or boys, and  
4 39 percent were women or girls.<sup>5</sup> Less than one percent were transgender or gender  
5 nonconforming.<sup>6</sup> Nearly half (49 percent) of all people experiencing homelessness self-identified  
6 as white and almost 40 percent identified as black or African American.<sup>7</sup> People identifying as  
7 white were underrepresented compared to their share of the U.S. population (72 percent), while  
8 African Americans were considerably overrepresented compared to their share of the U.S.  
9 population (13 percent).<sup>8</sup> One in five people experiencing homelessness was Hispanic or Latino (22  
10 percent), which is slightly higher than their share of the U.S. population (18 percent).<sup>9</sup>

11  
12 Substance use disorders and mental health problems are more prevalent among people who are  
13 homeless than in the general population. According to the Office of National Drug Control Policy,  
14 approximately 30 percent of people experiencing chronic homelessness have a serious mental  
15 illness, and around two-thirds have a primary substance use disorder or other chronic health  
16 condition.<sup>10</sup> Lack of stable housing leaves them vulnerable to substance use and/or relapse,  
17 exacerbation of mental health problems, and a return to homelessness.<sup>11</sup>

18  
19 *Laws Criminalizing Homelessness*

20  
21 Criminalizing homelessness refers to laws enacted by municipalities to prohibit life-sustaining  
22 activities such as sitting, sleeping, loitering, panhandling, camping, eating, storing belongings, and  
23 urinating in public spaces. Laws criminalizing homelessness trap vulnerable populations in the  
24 criminal justice system.<sup>12</sup> The continuous threat of citations and possibility of arrest contributes to a  
25 pervasive sense of fear and insecurity among the homeless population. For individuals  
26 experiencing homelessness, fines typically cannot be paid, leaving individuals to contest citations  
27 in court.<sup>13</sup> Without a reliable address or transportation, citations can result in not receiving a notice  
28 to appear in court or having no way to get there. Failure to appear in court can result in a warrant  
29 for arrest.<sup>14</sup> Arrests and criminal records make housing, employment, and social services more  
30 difficult to access thereby perpetuating the cycle of homelessness and health inequity.<sup>15</sup>

31  
32 Laws criminalizing homelessness have increased in cities across the United States over the past 10  
33 years.<sup>16</sup> Since 2006, citywide bans on loitering, loafing, and vagrancy increased by 88 percent, bans  
34 on camping increased by 69 percent, bans on sitting and lying down in certain public places  
35 increased by 52 percent, bans on panhandling grew by 43 percent, and bans on sleeping in public  
36 increased by 31 percent.<sup>17</sup> These laws are designed to move visibly homeless people out of  
37 commercial and tourist districts and are often justified based on the government's responsibility to  
38 maintain orderly, aesthetically pleasing public parks and streets as well as the responsibility to  
39 protect public health and safety.

40  
41 DISCUSSION

42  
43 Laws criminalizing homelessness have been found to violate international and, in some instances,  
44 federal law. In 2014, the United Nation's (UN) Committee on the Elimination of Racial  
45 Discrimination, called on the United States to abolish laws and policies making homelessness a  
46 crime and ensure cooperation among stakeholders to find solutions for people experiencing  
47 homelessness in accordance with human rights standards.<sup>18</sup> Furthermore, the UN encouraged the  
48 United States to provide incentives to decriminalize homelessness, including financial support to  
49 local authorities that implement alternatives to criminalization, and withdrawing funding from local  
50 authorities that criminalize homelessness.<sup>19</sup>

1 In 2017, the UN Special Rapporteur on extreme poverty and human rights visited the United States  
2 to report to the Human Rights Council on the extent to which the government's policies and  
3 programs relating to extreme poverty are consistent with its human rights obligations and to offer  
4 recommendations to the government and other stakeholders. The report stated that:

5  
6 In many cities, homeless persons are effectively criminalized for the situation in which they  
7 find themselves. Sleeping rough<sup>1</sup>, sitting in public places, panhandling, public urination and  
8 myriad other offences have been devised to attack the 'blight' of homelessness... Ever more  
9 demanding and intrusive regulations lead<sup>1</sup> to infraction notices for the homeless, which rapidly  
10 turn into misdemeanours, leading to warrants, incarceration, unpayable fines and the stigma of  
11 a criminal conviction that in turn virtually prevents subsequent employment and access to most  
12 housing.<sup>20</sup>

13  
14 Courts in the United States have come to differing conclusions on laws criminalizing  
15 homelessness, particularly anti-camping ordinances, due to differing interpretations of whether the  
16 Eighth Amendment's protection against cruel and unusual punishment prohibits only  
17 criminalization of status or also the criminalization of involuntary conduct.<sup>21</sup> In 2015, the United  
18 States government issued a statement indicating its position on the issue in the case of *Bell et al v.*  
19 *City of Boise*:

20  
21 If the Court finds that it is impossible for homeless individuals to secure shelter space on some  
22 nights because no beds are available, no shelter meets their disability needs, or they have  
23 exceeded the maximum stay limitations, then the Court should also find that enforcement of  
24 the ordinances under those circumstances criminalizes the status of being homeless and  
25 violates the Eighth Amendment to the Constitution.<sup>22</sup>

26  
27 In the case in question, the 9<sup>th</sup> Circuit Court of Appeals held that the Cruel and Unusual  
28 Punishments Clause of the Eighth Amendment precluded enforcement of a statute prohibiting  
29 sleeping outside against homeless individuals with no access to alternative shelter. The court held  
30 that as long as there is no option of sleeping indoors, the government cannot criminalize indigent,  
31 homeless people for sleeping outdoors, on public property, on the false premise that they had no  
32 choice in the matter.<sup>23</sup> The court further explained that "[e]ven where shelter is unavailable, an  
33 ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations  
34 might well be constitutionally permissible. So, too, might an ordinance barring the obstruction of  
35 public rights of way or the erection of certain structures."<sup>24</sup>

36  
37 *Homeless Bill of Rights*

38  
39 Rhode Island, Illinois, and Connecticut, and Puerto Rico have enacted laws that protect the civil  
40 rights of people experiencing homelessness, these laws are referred to as a Homeless Bill of Rights.  
41 While the laws vary by jurisdiction, they specify that a person who is homeless has the same rights  
42 and privileges as any other state resident. The laws each outline the rights of persons experiencing  
43 homelessness (i.e. move freely in public spaces, receive equal treatment by state and municipal  
44 authorities, not face discrimination while seeking or maintaining employment, access to emergency  
45 medical services, etc.).<sup>25</sup> The impact these laws have had is unclear.

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<sup>1</sup> "Sleeping rough" – refers to sleeping outside without shelter

1     *Public Health Nuisance Laws*

2  
3     Actions by government officials aimed at individuals experiencing homelessness are often justified  
4     based on public health and safety concerns. While laws criminalizing homelessness are of concern,  
5     it should be clear that there are legitimate instances in addressing homeless populations where the  
6     government needs to act to protect the health of the public. For example, the environmental  
7     conditions associated with homelessness, which can include overcrowding in encampments and  
8     shelters, exposure to the elements, and poor hygiene, facilitate the transmission of infectious  
9     diseases.

10  
11    The United States is currently experiencing the worst multi-state outbreak of hepatitis A virus  
12    (HAV) in over 20 years, due in part to the lack of access to proper sanitation and hygiene among  
13    persons experiencing homelessness.<sup>26</sup> In response to this multi-state HAV outbreak, the CDC's  
14    Advisory Committee on Immunization Practices, voted in 2018 to add a new policy recommending  
15    that everyone ages 1 and older who is experiencing homelessness routinely be immunized against  
16    hepatitis.<sup>27</sup> In some jurisdictions, there have been campaigns to vaccinate and educate people at  
17    risk and to provide portable hygiene facilities in areas where people who are homeless congregate.  
18    To address public health risks, some jurisdictions have created sanctioned tent encampments where  
19    they provide essential public services to help ensure that residents are in a safe environment. It has  
20    been cautioned that while these measures may prevent immediate harm, they are not long-term  
21    solutions to the problem of homelessness in the United States.<sup>28</sup>

22  
23    CONCLUSION

24  
25    Insufficient income and lack of affordable housing are leading causes of homelessness in the  
26    United States. Laws criminalizing homelessness, or laws prohibiting life-sustaining activities in  
27    public spaces when there are no sheltered alternatives, have increased in U.S. cities over the past 10  
28    years. These laws trap vulnerable populations in the criminal justice system and raise both human  
29    rights and constitutional concerns. Actions by government officials aimed at individuals  
30    experiencing homelessness are often justified based on public health and safety concerns. While  
31    there are instances where the government needs to act to protect public health and safety, such as  
32    during an infectious disease outbreak, governments should work to mitigate hazards and direct  
33    individuals to resources and services outside of the criminal justice system. Criminal sanctions  
34    should be a last resort.

35  
36    Current AMA policy recognizes that stable, affordable housing as a first priority, without mandated  
37    therapy or services compliance, is effective in improving housing stability and quality of life  
38    among individuals who are chronically-homeless. In addition, to reaffirming this policy, the AMA  
39    should recognize the lack of affordable housing as a leading cause of homelessness and support  
40    measures to address this problem through policies that preserve and expand affordable housing  
41    across all neighborhoods.

42  
43    RECOMMENDATIONS

44  
45    The Board of Trustees recommends that the following statements be adopted in lieu of Resolution  
46    410-A-18 and the remainder of the report be filed.

47  
48    1. That our American Medical Association: (1) supports laws protecting the civil and human  
49    rights of individuals experiencing homelessness and (2) opposes laws and policies that  
50    criminalize individuals experiencing homelessness for carrying out life-sustaining activities  
51    conducted in public spaces that would otherwise be considered non-criminal activity (i.e.,

1       eating, sitting, or sleeping) when there is no alternative private space available. (New HOD  
2       Policy)  
3  
4       2. That our AMA recognizes that stable, affordable housing is essential to the health of  
5       individuals, families, and communities, and supports policies that preserve and expand  
6       affordable housing across all neighborhoods. (New HOD Policy)  
7  
8       3. That our AMA reaffirm Policy H-160.903, "Eradicating Homelessness"  
9       Our American Medical Association: (1) supports improving the health outcomes and  
10      decreasing the health care costs of treating the chronically homeless through clinically proven,  
11      high quality, and cost effective approaches which recognize the positive impact of stable and  
12      affordable housing coupled with social services; (2) recognizes that stable, affordable housing  
13      as a first priority, without mandated therapy or services compliance, is effective in improving  
14      housing stability and quality of life among individuals who are chronically-homeless;  
15      (3) recognizes adaptive strategies based on regional variations, community characteristics and  
16      state and local resources are necessary to address this societal problem on a long-term basis;  
17      (4) recognizes the need for an effective, evidence-based national plan to eradicate  
18      homelessness; and (5) encourages the National Health Care for the Homeless Council to study  
19      the funding, implementation, and standardized evaluation of Medical Respite Care for  
20      homeless persons. (Reaffirm Current HOD Policy)

Fiscal Note: less than \$500

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<sup>2</sup> National Law Center on Homelessness and Poverty. No Safe Place: The Criminalization of Homelessness in U.S. Cities. July 16, 2014. Available at [https://nlchp.org/wp-content/uploads/2019/02/No\\_Safe\\_Place.pdf](https://nlchp.org/wp-content/uploads/2019/02/No_Safe_Place.pdf). Accessed March 1, 2019.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> National Low Income Housing Coalition. Criminalization of Homelessness Increases in U.S. Cities. Nov 21, 2016. Available at <https://nlihc.org/resource/criminalization-homelessness-increases-us-cities>. Accessed February 20, 2019.

<sup>17</sup> *Id.*

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<sup>19</sup> *Id.*

<sup>20</sup> United Nations, General Assembly. Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America. 4 May 2018. Available at <https://undocs.org/A/HRC/38/33/ADD.1>. Accessed February 20, 2019.

<sup>21</sup> Statement of Interest of the United States. *Bell et al. v. City of Boise*, U.S. District Court for the District of Idaho. Civil Action No. 1:09-cv-540-reb-Hon. Available at <https://www.justice.gov/crt/file/761211/download>. Accessed March 1, 2019.

<sup>22</sup> *Id.*

<sup>23</sup> *Martin et al v City of Boise*, 9th U.S. Circuit Court of Appeals, No. 15-35845.

<sup>24</sup> *Id.*

<sup>25</sup> The National Law Center and Homelessness and Poverty. From Wrongs to Rights: The Case For Homeless Bill Of Rights Legislation. Available at [https://nlchp.org/wp-content/uploads/2018/10/Wrongs\\_to\\_Rights\\_HBOR.pdf](https://nlchp.org/wp-content/uploads/2018/10/Wrongs_to_Rights_HBOR.pdf). Accessed February 20, 2019.

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