

SECTION 5

The Criminalization of Homelessness

With high poverty rates and the increase in targeting poor people with fines, fees, and arrests, there has also been a rise in homelessness in some states. On any given night, an estimated 600,000 people in this country are homeless. Arguably the worst economic hardship, homelessness is also increasingly treated as criminal behavior. Homeless people — and even those assisting homeless people — are being targeted by the criminal justice system.⁷²

The Hardships of Being Homeless

What if you could not sit down, eat, sleep, stand, place a few possessions, or perform necessary human functions without fear of being locked up? This is the harsh reality facing a growing number of homeless people in the United States. People without homes are increasingly targeted, criminalized, and arrested for nothing other than being people with unavoidable human behaviors and nowhere to perform them privately.

The National Law Center on Homelessness and Poverty (NLCHP) recently published a comprehensive report on the national homelessness crisis. The report focused on the growing ways in which the mere act of being without a home is considered a criminal act in a number of cities

“I’m 53 years old and I’m half-crippled, so no one wants to give you a job.” Franklin, a homeless veteran, is unsuccessfully looking for work every morning. Franklin lives in the woods off a highway in South Florida. Choking up, tells the reporter: “Sleeping out here with the sand and the bugs, man, it’s real tough.” To survive, he resorts to asking for money. He has received four tickets so far for standing on an exit ramp asking for money. Franklin says he managed to pay the other three citations from money he asked for on the street, but he didn’t think he could get the \$64.50 required by this citation. He pulls in an average of \$10 per day. He said he’s got to pay it. “It’s either that or jail, which, I’m probably going to wind up in jail.”⁷³

nationwide. [No Safe Place](#) examined policies pertaining to the criminalization of homeless in nearly 200 cities across the nation. Researchers at the center found that the criminalization of life-sustaining activities is increasing at alarming rates. Furthermore, these punitive policies are not only ineffective, but costly to taxpayers.

Why are people homeless?

- 76 percent ban begging in defined public spaces⁷⁴
- A majority of cities — 53 percent — prohibit sitting or lying down in defined public spaces⁷⁵
- 43 percent of cities have made it illegal to sleep in vehicles⁷⁶

Just as poverty is caused by a lack of money, homelessness is caused by the lack of affordable housing. Since the 1970s, federal funding for affordable housing has been on the decline. Almost 13 percent of our nation's affordable housing has been permanently lost since 2001, according to NLCHP's report. In the wake of the recession and the foreclosure crisis of 2009, there are more low-income renters without homes as well as a decreasing number of beds in emergency shelters in major cities.

The National Low-Income Housing Coalition (NLICH) has calculated a housing wage, defined as "... The hourly wage a full-time worker must earn to afford a decent two-bedroom rental home at HUD-estimated Fair Market Rent while spending no more than 30 percent of income on housing costs."⁷⁷

The NLICH's recent report *Out of Reach* finds that, "In the United States, the 2014 two-bedroom Housing Wage is \$18.92. This national average is more than two-and-a-half times the federal minimum wage and 52 percent higher than it was in 2000. In no state can a full-time minimum wage worker afford a one-bedroom or a two-bedroom rental unit at Fair Market Rent."⁷⁸

Criminalization of Necessary Human Activities

Despite the lack of affordable housing, many U.S. cities have criminalized life-sustaining activities, such as sleeping, sheltering, sitting, asking for help, sharing food, and even resting. According to NLCHP:

- 34 percent of cities prohibit public camping (i.e., creating some type of shelter from the elements) and 57 percent apply this ban in defined public spaces.
- 18 percent prohibit public sleeping citywide and a third prohibit it in defined public spaces.
- 24 percent ban begging citywide and 76 illegal to share food with a homeless person.

To enforce these draconian rules, police conduct sweeps of areas where homeless people live, confiscating shelter, clothing, and even medication.⁷⁹

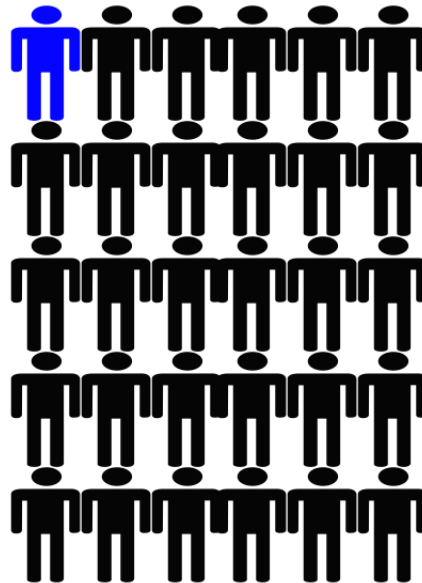
Homeless Children and Unaccompanied Youth

Among our nation's homeless population are an increasing number of children. From 2012 to 2013, the United States experienced an eight percent increase nationwide in the number of homeless children, according to a National Center on Family Homelessness report *America's Youngest Outcasts*. The report found that homelessness among children in the United States is at a historic high. Two and a half

million children are now homeless each year: one in every 30 children in the US.⁸⁰

Figure 6.

1 in 30 children in the United States are Homeless



Source: Created by Joshua Serrano from "America's Youngest Outcasts: A Report Card on Child Homelessness," by American Institutes for research. Accessed at: <http://www.homelesschildrenamerica.org/mediadocs/282.pdf>.

Unaccompanied youth ages 12 to 17 who are living alone on the streets are criminalized even further than homeless adults and accompanied children. Approaches used to address the needs of unaccompanied youth without homes tend to be punitive rather than service-based. In addition, some cities have curfew laws that particularly impact unaccompanied homeless youth.⁸¹

Policy Recommendations (drawn from the National Law Center on Homelessness and Poverty and the National Center on Family Homelessness at American Institutes for Research):⁸²

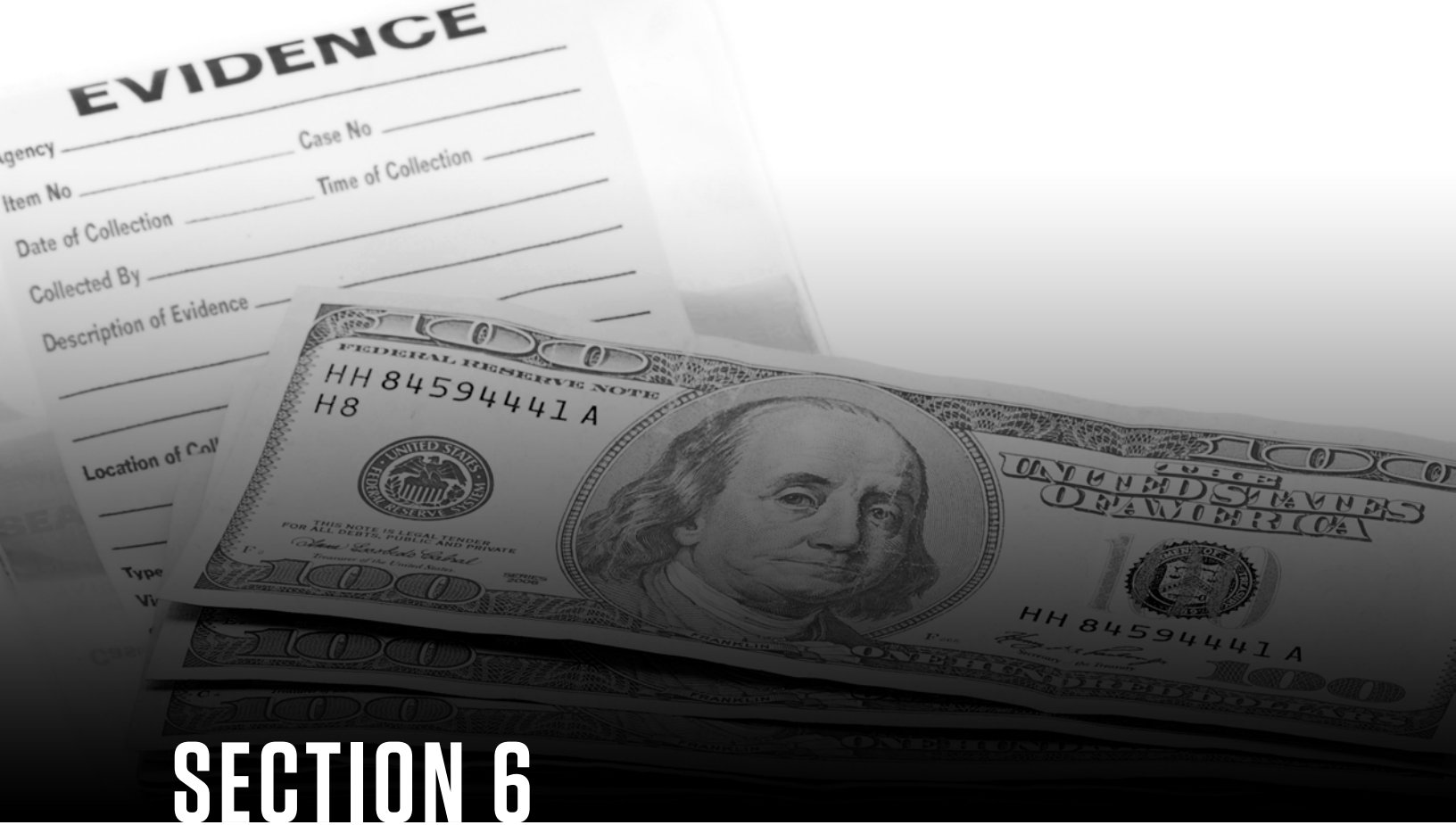
- The federal government should invest in affordable housing at the scale necessary to end and prevent homelessness.
- State governments should enact and enforce the Homeless Bill of Rights legislation that explicitly prohibits the criminalization of homelessness.
- Local governments should stop criminalizing homelessness and focus on creating education and employment opportunities.
- All homeless families should receive a comprehensive needs assessments and access to family-oriented services that incorporate trauma-informed care, mental health care, and parenting support.

To improve the lives and opportunities of unaccompanied youth, officials should:

- Eliminate curfew laws.
- Exempt runaway youth from “Child in Need of Services” statutes that do not provide appropriate services.
- Limit the circumstances under which runaway youth can be taken into custody, set very brief time limits for such custody, and prohibit housing of runaway youth with delinquent youth or adults.

Provide opportunities for young people to avoid court involvement, through diversion programs, counseling, treatment, family mediation, housing assistance, and other services, as well as adequate time to meet treatment goals.

- De-classify running away and truancy as status offenses. Assign responsibility for the care and support of runaway youth to the social service system rather than the juvenile justice system and prohibit housing runaway youth in secure detention facilities.



SECTION 6

Confiscating Poor People's Property through Civil Asset Forfeiture

Even if people who lack sufficient resources for a decent standard of living are able to find employment, pay parking tickets, keep a roof over their heads, and find a safe school for their kids, a little-known but widespread practice called Civil Asset Forfeiture can wreak havoc on their lives. Law enforcement officials use this legal tool to confiscate property that they assert has been involved in certain criminal activity — even if the owner of the property is innocent.

According to a study by the Institute for Justice, under current “civil asset forfeiture” laws, police officers and prosecutors can seize someone’s private property, like a car or a home, without a warrant, conviction, or charges of committing a crime. In most states, law enforcement relies solely on reasonable suspicion that the property was used during the commission of a crime. Federal, state, and local police departments liquidate the assets they have seized and can use the proceeds to fund their departmental budgets and operations.

- Under current Civil Asset Forfeiture laws, your property is guilty until you prove it innocent; the owner’s innocence does not prove the property’s innocence.
- The burden to prove the property’s innocence, including legal fees and time, falls on the owner,

Nelly Moreira from Washington, DC used her 2005 Honda Accord to get to her three jobs. In March 2012, Moreira’s son was pulled over for a minor traffic stop while driving her car. The stop turned into a pat down, which resulted in authorities finding a handgun on him. He was arrested, and the police seized the car. After she borrowed enough money to pay the \$1,020 bond fee, Moreira was still denied access to her car. The bond fee was only the cost of starting the process of recovering her property from the state government. Moreira spent a year in a legal battle to free her impounded vehicle, while struggling to make car payments.⁸³

- regardless of if they are innocent or guilty.
- A piece of property does not share the constitutional rights of a person. There is no right to due process and, in most states, no presumption of guilty until proven innocent.

The ACLU reports that civil asset forfeiture practices are riddled with racial profiling and disproportionately impact low-income black or Latino groups. In general, law enforcement practices fuel racial inequalities in the criminal justice system by systematically targeting people of color.⁸⁴

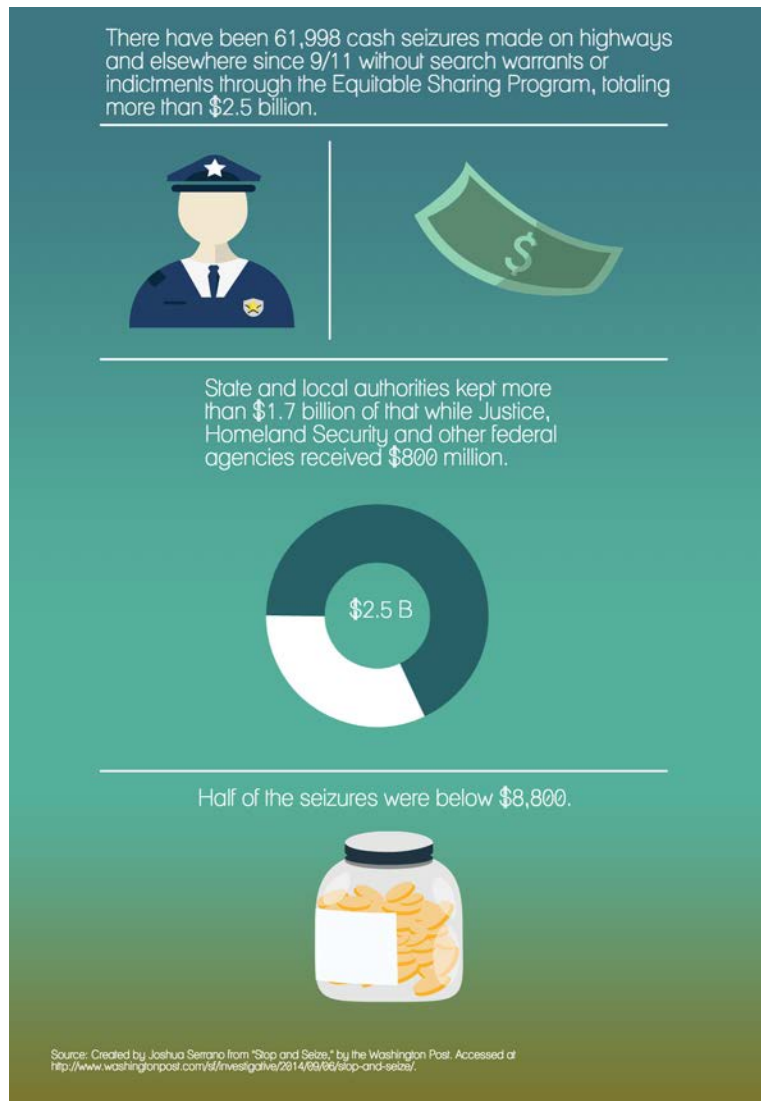
Over the years, the Drug Enforcement Administration has helped train police to profile highway travelers for potential drug couriers. “This profile is based on associating people of color with crime, creating a phenomenon known as “driving while black or brown,” reports the ACLU. Similarly, in urban areas, young minorities are routinely stopped and frisked — which is perfectly legal after a Supreme Court ruling stated that police only need a reasonable cause for suspicion to stop and search individuals. A very clear incentive exists for police departments to engage in racial profiling.

- Police departments are increasingly dependent on revenue from civil asset forfeitures for regular operational costs. “By targeting minority communities whose voices and political power are marginalized, law enforcement agencies can exploit the power of forfeiture without many Americans ever learning of the practice.”⁸⁵
- As reported by Sarah Stillman in the *New Yorker*, civil asset forfeitures are overwhelmingly targeted to low-income people. She reports that most asset and cash seizures are usually small amounts from people who may not be entitled to a public defender and have trouble affording a lawyer. This makes getting their property back almost infeasible given the high financial burden of seeking legal council, which is often more expensive than the value of the property seized.⁸⁶
- The Justice Department explicitly bans racial profiling in civil asset forfeitures, but in 400 federal court cases examined by *The Washington Post* where people who challenged their asset seizures won money back, the majority were either black, Hispanic or another minority.⁸⁷

By allowing law enforcement to use seized property to cushion their department’s budgets, law enforcement has a dangerous incentive to take property. According to the Institute for Justice, “The report finds that by giving law enforcement a direct financial stake in forfeiture efforts, most state and federal laws encourage policing for-profit, not justice.” In addition, the Department of Justice has shared over \$4.5 billion⁸⁸ in forfeited assets with more than 8,000 state and local law enforcement agencies.⁸⁹

U.S. Attorney General Eric H. Holder, Jr. ended the U.S. Department of Justice’s Equitable Sharing program, which provided a loophole to circumvent state law and make civil asset seizures easier for local and state police departments. Equitable Sharing enabled local and state police to make civil asset seizures and then have them “adopted” by Federal agencies, which share in the proceeds of asset seizures.⁹⁰

Figure 11.



Holder's move won't end abuses entirely because civil asset forfeiture is currently legal to varying degrees in all 50 states, but it will prohibit local police agencies from circumventing state laws. Holder's reforms only curb the Federal government's role in civil asset forfeitures.⁹¹

Policy Recommendation:

- Civil asset forfeiture should be ended in all 50 states. According to the American Civil Liberties Union, civil asset forfeiture is a threat to civil liberties and property rights, and state and federal civil asset forfeiture laws should be reformed.⁹²

CONCLUSION

With the explosion in protests ignited by the police killing of an unarmed young black man in Ferguson, Missouri, some aspects of the criminalization of poverty are getting increased attention. More people's eyes were opened to the reality that if you are poor, you are more likely to be arrested, jailed, and even killed.

The Ferguson and St. Louis stories and the 2014/2015 Department of Justice investigation of the Ferguson Police Department and municipal court⁹⁴ also helped expose the increase in court fines and fees targeting the poor. According to an NPR investigation, the city of Ferguson collected \$2.6 million in such fines and fees in 2013, most of them for traffic violations and other low-level offenses. This collection of fines and fees was Ferguson's second-largest source of income.⁹⁵

We need to build on the momentum of the Ferguson protests to tackle the intersections of poverty, race, and gender bias that collude to make life exceptionally difficult for the 15 percent of our population living in poverty, the additional 2.3 million incarcerated, and the tens of millions more living close to the edge of poverty.

The U.S. Department of Justice investigation into the Ferguson Police Department revealed deeply flawed criminal justice system that disproportionately affects people of color and low-income people. Ferguson is but a microcosm of a broken criminal justice system nationwide. At the federal, state, and municipal levels, we must address and find ways to correct the findings of significant injustices found in the investigation.

We are a nation that has turned its welfare system into a criminal system. We criminalize life-sustaining activities of people too poor to afford shelter. We incarcerate more people than any other nation in the world.⁹⁶ And we institute policies that virtually bar them for life from participating in society once they have done their time. We have allowed the resurgence of debtors' prisons. We've created a second-tier public education system for poor children and black and Latino children that disproportionately criminalizes their behavior and sets them early onto the path of incarceration and lack of access to assistance and opportunity.

"Just over a year ago, Tonya DeBerry was driving her 4-year-old grandson in her daughter-in-law's car. A St. Louis County police officer saw that the license plates were expired and pulled her over. He ran a background check and saw an arrest warrant for multiple unpaid traffic tickets in Ferguson. Among those old violations were tickets for driving with a suspended license — lost for earlier unpaid tickets — and driving with no registration, insurance or proof of inspection.

DeBerry was arrested and handcuffed in front of her grandson. After someone came to pick up the boy, she was taken to jail. 'Just traffic tickets. No criminal act. Nothing,' says DeBerry, 52, who doesn't work and depends on a disability check and food stamps. "If you have the money, you would never go through that type of situation. If you don't have the money, it's jail, jail."

-Excerpted from Shapiro, Joseph. 8 February 2015. "Civil Rights Attorneys Sue Ferguson Over 'Debtors Prisons.'" National Public Radio

The events in Ferguson sparked what could be the next civil rights movement in this country. A democratic society that purports “freedom and justice for all” can’t coexist with one that profiles, criminalizes and blames poor, black and Latino communities. We need to take collective responsibility for our hostile nation where the poor get prison.

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⁹³ Shapiro, J. (2015, February 8). Civil Rights Attorneys Sue Ferguson Over 'Debtors Prisons.' *NPR*. Retrieved from <http://www.npr.org/blogs/codeswitch/2015/02/08/384332798/civil-rights-attorneys-sue-ferguson-over-debtors-prisons>

⁹⁴ Investigation of the Ferguson Police Department. *United States Justice Department Civil Rights Division*. Retrieved from http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf

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⁹⁶ Highest to Lowest – Prison Population Total. *International Centre for Prison Studies*. Retrieved from http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All