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MARTIN V. BOISE

HOUSING NOT HANDCUFFS 2021: STATE LAW SUPPLEMENT

November 2021

HOUSING
NOT HANDCUFFS

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ABOUT THE NATIONAL HOMELESSNESS LAW CENTER

The National Homelessness Law Center (formerly the National Law Center on Homelessness & Poverty) (Law Center) is the only national organization dedicated to using the power of the law to end and prevent homelessness. The Law Center works to expand access to affordable housing, meet the immediate and long-term needs of those who are homeless or at risk, and strengthen the social safety-net through policy advocacy, public education, impact litigation, and advocacy training and support.

Our vision is for an end to homelessness in America. A home for every family and individual will be the norm and not the exception; a right and not a privilege. For more information about the Law Center and to access publications such as this report, please visit its website at www.homelesslaw.org.

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ACKNOWLEDGEMENTS

The National Homelessness Law Center is grateful to the following individuals and firms for their tremendous contributions to the research, writing, and layout of the report: Law Center staff, fellows, and interns past and present, especially Rajan Bal for serving as primary author and editor; Xinge He, for outlining and contributing to the first draft; Karianna Barr, Tristia Bauman, Lily Milwit, Brandy Ryan, and Eric Tars for drafting and editing; Burhan Omar for data review; Megan Godbey for design.

Dechert LLP, Kirkland & Ellis LLP, and Sullivan & Cromwell LLP, who committed staff and pro bono hours to researching and updating the Prohibited Conduct Chart.

We also acknowledge with gratitude the generous support of the Oak Foundation, the Oakwood Foundation, and the Herb Block Foundation. The Law Center would also like to thank AmeriCorps VISTA for its support.

The Law Center would like to thank our Lawyers' Executive Advisory Partners (LEAP) member law firms: Alston & Bird LLP; Akin Gump Strauss Hauer & Feld LLP; Baker Donelson PC; Dechert LLP; Goodwin Procter LLP; Kirkland & Ellis LLP; Latham & Watkins LLP; McCarter & English LLP; Microsoft Corporation; Morrison & Foerster; Simpson Thacher & Bartlett LLP; and WilmerHale.

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INTRODUCTION

Unsheltered homelessness is a vast and growing national problem primarily caused by the dearth of available affordable housing, compounded by lack of adequate healthcare and other social safety nets, and exacerbated by criminal law enforcement policies. Due to structural racial discrimination in each of the above systems, Black, Indigenous, and other People of Color disproportionately experience homelessness and its collateral and inter-generational consequences. In recent years, commensurate with the increase in unsheltered homelessness, states and municipalities have increasingly enacted laws criminalizing activities engaged in largely by people experiencing homelessness and housing insecurity.

The economic consequences of the COVID-19 pandemic have already increased unsheltered homelessness, and it could explode even further if efforts to get emergency and long-term rental relief to impacted families do not arrive in time. Despite guidance from the Centers for Disease Control to halt the eviction of encampments during the pandemic unless non-congregate shelter (e.g., individual hotel rooms) can be provided for all encampment residents,¹ and despite the availability of 100% reimbursement for such non-congregate shelter authorized by the Federal Emergency Management Agency,² many communities continue to pass and enforce laws to sweep encampments without providing adequate alternatives.

The Law Center issued its first report on criminalization 30 years ago, and since 2006 has tracked the growth of laws criminalizing homelessness in 187 urban and rural jurisdictions across the country. The Law Center reviewed the municipal codes and ordinances of these cities to identify laws that restricted or prohibited the behavior of people experiencing homelessness, including sleeping, sitting or lying down, and vehicle habitation. The Law Center found increases in the criminalization of homelessness in every measured category of prohibited conduct since it began tracking in 2006.

This brief report supplements our larger municipal research by summarizing the findings of this state-level research. In our most recent report, [Housing Not Handcuffs 2019](#), we discuss the legal and policy flaws associated with ordinances that criminalize homelessness and offer constructive alternative approaches to addressing homelessness. Additionally, we track status offense statutes that criminalize homeless youth for behaviors related to their age—like runaway, curfew, and truancy laws—and detail resources available for homeless youth in our report [Alone Without A Home](#) (produced in conjunction with the National Network for Youth) and the [State Index on Youth Homelessness](#) (produced in conjunction with True Colors United).

While identifying these trends at the local level, the Law Center recognized the lack of equivalent tracking at the state level. With the assistance of the law firm Dechert LLP, the Law Center researched the same categories of criminalizing laws covered in *Housing Not Handcuffs 2019* for each of the 50 U.S. states and the District of Columbia as of 2020. In doing so, we searched state codes for various key words and terms individually and in conjunction, such as “panhandling,” “solicitation,” “begging,” and “camping.” We did not include statutes that authorized municipalities to regulate behaviors but did not restrict the behaviors themselves. Additionally, we did not include statutes that prohibited requiring a minor to panhandle or solicit donations on someone’s behalf. Finally, we recognize that some

1 See CTRS. FOR DISEASE CONTROL & PREVENTION, Interim Guidance on People Experiencing Unsheltered Homelessness (updated Jul. 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>.

2 See NAT'L LOW INCOME HOUSING COALITION, Confirmed: FEMA Change to 100% Reimbursement for Non-Congregate Shelter Applies Retroactively (2021), <https://nlihc.org/resource/confirmed-fema-change-100-reimbursement-non-congregate-shelter-applies-retroactively>.

statutes criminalizing homelessness are buried within other statutes—such as states that consider “begging” or “panhandling” to be a loitering violation. As there is no single way that states criminalize homelessness, this report is likely underinclusive.

We emphasize that the existence or non-existence of a state level statute may not reflect the lived experience of homeless individuals in enforcement. Notably, cities continue to enact local ordinances that criminalize homelessness even in states that already have state-wide statutes restricting the same behavior, but especially in the absence of state-wide statutes. Moreover, enforcement varies widely within states, and sometimes even varies within neighborhoods in the same jurisdiction. **The lack of a state-level statute should not be taken as an indication that homeless persons do not experience criminalization in that state.**

The Law Center intends to continue tracking the criminalization of homelessness at the state level. The Law Center encourages states to repeal statutes prohibiting or restricting conduct of people experiencing homelessness, as the criminalization of homelessness is cruel, ineffective, and fails to meet the needs of unhoused people.



DATA AT A GLANCE

- ➔ Almost every state, **48** in total, has at least one law restricting behaviors that prohibit or restrict conduct of people experiencing homelessness
- ➔ **4 states** have laws restricting camping in public state-wide (California, Florida, New Hampshire, Texas)
- ➔ **15 states** have laws restricting camping in particular public places (Alaska, Arizona, California, Colorado, Georgia, Illinois, Iowa, Nebraska, New Mexico, South Carolina, South Dakota, Tennessee, Texas, West Virginia, and Wisconsin)
- ➔ **1 state** has a law restricting sleeping in public state-wide (New Hampshire)
- ➔ **3 states** have laws restricting sleeping in particular public places (Mississippi and South Carolina)
- ➔ **6 states** have laws restricting sitting and lying down in particular public places (California, Connecticut, Delaware, Hawaii, Maine, and North Carolina)
- ➔ **4 states** have laws restricting lodging, living, or sleeping in vehicles (Hawaii, Oklahoma, South Carolina, South Dakota)
- ➔ **16 states** have laws restricting loitering, loafing, and vagrancy state-wide (Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Iowa, Kentucky, Maryland, Massachusetts, Michigan, New Hampshire, New York, Ohio, Utah, and Wisconsin)
- ➔ **24 states** have laws restricting loitering, loafing, and vagrancy in particular public places (Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Nebraska, Nevada, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia)
- ➔ **6 states** have laws restricting panhandling in public state-wide (Alabama, Arkansas, California, Delaware, Hawaii, and Massachusetts)
- ➔ **24 states** have laws restricting panhandling in particular public places (Alabama, Arizona, Arkansas, District of Columbia, Georgia, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Minnesota, Mississippi, Montana, New Hampshire, New Jersey, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Texas, and Vermont)
- ➔ **7 states** have laws restricting panhandling in particular ways (Alabama, Arizona, District of Columbia, Indiana, New Jersey, North Carolina, and Tennessee)
- ➔ **36 states** have laws restricting pedestrians from standing in roadways (Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin)



STATE LAWS CRIMINALIZING HOMELESSNESS

Laws Restricting Camping

Unfortunately, many states maintain statutes restricting a person's ability to shelter themselves or "camp" in public, despite a lack of sufficient affordable housing and an over-reliance on restrictive congregate shelter facilities to meet the needs of people experiencing homelessness in the state. Camping bans take various forms, but frequently restrict a broad range of activities, including erecting any sort of tent, possessing "camping paraphernalia," such as sleeping bags or even a blanket, or simply sleeping in particular places.

Camping bans are frequently enforced as an excuse to conduct sweeps of homeless encampments. These sweeps can result in arrests and the destruction of a person's personal property, including IDs and personal documents, medicine and medical devices, and other crucial items.³ Enforcement of a camping ban does not suddenly result in a person experiencing homelessness having a place to live. Instead, it unnecessarily displaces a person experiencing homelessness to another public place, where they might find themselves at risk of subsequent enforcement.



17 states criminalize camping in public places

Laws Restricting Camping in Public State-Wide

Currently, four states possess a blanket state-wide camping ban.⁴ In Florida, an ambiguous camping ban is couched within a state nuisance statute. Anyone who "erects, establishes, continues, maintains, owns, or leases" a "building, booth, **tent**, or place that tends to **annoy** [emphasis added] the community or injure the health of the community" is "deemed to be maintaining a nuisance."⁵ The tent itself is also considered a nuisance.⁶ This statute authorizes the inconsistent and disproportionate declaration that tents owned by people experiencing homelessness are a nuisance based on the subjective criteria.

In New Hampshire, it is prohibited to "pitch a tent or place or erect any other camping device or sleep on the ground within the public right-of-way or on public property unless permission is received from the governing board of the governmental authority having jurisdiction over such public right-of-way or property."⁷ This statute essentially prohibits any acts of sleeping or camping on public property across the entire state of New Hampshire.

In California, anyone "who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it" is guilty of disorderly conduct. California relies on this statute to enforce state-wide camping restrictions.⁸

Additionally, Texas proposed and passed a state-wide camping bill during the 2021 legislative session, which became effective on September 1, 2021.⁹ This bill criminalizes a person for camping in a public place state-wide. This law further states that "a local entity

3 See NAT'L HOMELESSNESS L. CTR., HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 38 (2019), <http://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

4 California, Florida, New Hampshire, Texas. See Appendix.

5 Fla. Stat. § 823.05, (2020), http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0800-0899/0823/Sections/0823.05.html.

6 *Id.*

7 N.H. Rev. Stat. § 236:58 (2020), <https://law.justia.com/codes/new-hampshire/2020/title-xx/title-236/section-236-58/>.

8 Cal. Penal Code § 647(e), https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=647.&lawCode=PEN.

9 Tex. H.B. 1925, 87th Leg. (2021), <https://legiscan.com/TX/text/HB1925/2021>.

may not adopt or enforce a policy under which an entity prohibits or discourages enforcement of any public camping ban.”¹⁰ A local entity that seeks to address homelessness in Texas without enforcing a criminal camping ban risks loss of state funding and support.¹¹

Laws Restricting Camping in Particular Public Places

Fifteen states¹² possess statutes that restrict camping in specific public places. These statutes have varying restrictions and punishments. For example, a New Mexico statute prohibits camping within 300 yards of a “manmade water hole, a water well or a watering tank used by wildlife or domestic stock.”¹³ People found in violation of this statute are guilty of a misdemeanor and subject to a fine. However, people found in violation of a Tennessee statute restricting camping are subject to a Class E felony.¹⁴ It is currently a felony in Tennessee to erect or maintain a tent or furniture, store personal belongings, cook, or sleep on state property not designated for camping between 10:00PM and 7:00AM.¹⁵

These camping bans may run afoul of the Ninth Circuit’s decision in *Martin v. Boise*. In *Martin v. Boise*, the Ninth Circuit Court of Appeals found it unconstitutional to punish a person experiencing homelessness for sleeping outside in the absence of adequate alternatives.¹⁶ The Court held that “as 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.”¹⁷ Alaska and Arizona maintain camping restrictions despite being under the Ninth Circuit’s jurisdiction and subject to *Martin*.

Laws Restricting Sleeping, Sitting, and Lying Down

Laws restricting sleeping, sitting, and lying down specifically criminalize a person for exercising their biological need to rest. Someone who is exhausted will eventually fall asleep. Someone weary from standing will eventually sit down. For an unhoused person, despite herculean efforts to resist these biologically unavoidable necessities, this rest often occurs outdoors and on public property. Unfortunately, these behaviors can be targeted and prohibited by statute—locally and at the state level. These statutes further alienate unhoused people and punish them for behaviors they cannot control because their housing status forces these behaviors to occur outdoors.

Laws Restricting Sleeping in Public

New Hampshire has the broadest state-wide sleeping ban in the country as it prohibits sleeping in public in its entirety.¹⁸ In the same statute that restricts camping state-wide, New Hampshire prohibits someone from sleeping on the ground on public property.¹⁹ A person experiencing homelessness in New Hampshire can find themselves liable under the statute for the simple act of sleeping on the ground in a public place.

Three states prohibit sleeping in particular public places. Idaho, Mississippi, and South Carolina prohibit sleeping in or around their respective capitol buildings.²⁰ For example, in Mississippi, a person who occupies any part of the Jackson capitol building as a “lodging or sleeping-room” is guilty of a misdemeanor subject to a fine and up to 30-day imprisonment in the county jail.²¹

10 *Id.*

11 *Id.*

12 Alaska, Arizona, California, Colorado, Georgia, Illinois, Iowa, Nebraska, New Mexico, South Carolina, South Dakota, Tennessee, Texas, West Virginia, and Wisconsin. See Appendix.

13 N.M. Stat. § 72-1-8 (1996), <https://law.justia.com/codes/new-mexico/2011/chapter72/article1/section72-1-8/>.

14 T.C.A. § 39-14-414 (2020), <https://codes.findlaw.com/tn/title-39-criminal-offenses/tn-code-sect-39-14-414.html>.

15 *Id.*

16 Homeless Persons Cannot Be Punished for Sleeping in Absence of Alternatives, 9th Circuit Decision Establishes, NAT’L HOMELESSNESS L. CTR. (2019), <https://homelesslaw.org/homeless-persons-cannot-be-punished-for-sleeping-in-absence-of-alternatives-9th-circuit-decision-establishes/>.

17 *Id.*

18 N.H. Rev. Stat. § 236:58 (2020), <https://law.justia.com/codes/new-hampshire/2020/title-xx/title-236/section-236-58/>.

19 See *Id.*

20 Idaho Code Ann. § 67-1613 (2021), <https://legislature.idaho.gov/statutesrules/idstat/title67/t67ch16/sect67-1613/>; Miss. Code. Ann. § 97-7-7 (2021), <https://casetext.com/statute/mississippi-code-1972/title-97-crimes/chapter-7-crimes-against-sovereignty-or-administration-of-government/section-97-7-7-capitol-building-not-to-be-used-for-sleeping-rooms>. See Appendix.

21 See Miss. Code. Ann. § 97-7-7 (2021), <https://casetext.com/statute/mississippi-code-1972/title-97-crimes/chapter-7-crimes-against-sovereignty-or-administration-of-government/section-97-7-7-capitol-building-not-to-be-used-for-sleeping-rooms>.

Laws Restricting Sitting and Lying Down in Public

Six states have laws restricting sitting and lying down in particular public places.²² For example, in North Carolina, a person cannot “willfully stand, sit or lie upon the highway or street in such a manner as to impede the regular flow of traffic.”²³ In Delaware, a person who “stands, sits idling or loiters upon any pavement, sidewalk or crosswalk, or stands or sits in a group or congregates with others on any pavement, sidewalk, crosswalk, or doorstep, in any street or way open to the public in this State” can be found guilty of loitering.²⁴

Laws Restricting Lodging, Living, or Sleeping in Vehicles

Unhoused people often resort to sleeping or living in their vehicles instead of on the streets. Vehicles can offer necessary privacy and security, a place to keep families together, as well as a place to store one’s belongings. Nevertheless, states restrict utilizing this otherwise life-saving form of shelter. Restrictions on lodging or sleeping in vehicles are often disguised as traffic or parking violations though they are disproportionately enforced against people experiencing homelessness. Enforcement of these statutes can lead to vehicles being towed, arrests, incarceration, and fines.

The Ninth Circuit specifically considered whether a Los Angeles ordinance that prohibited using a vehicle as “living quarters either overnight, day-by-day, or otherwise” was unconstitutionally vague in violation of the Due Process Clause of the Fourteenth Amendment. In *Desertrain v. City of Los Angeles*, homeless plaintiffs found in violation of the vehicle habitation ordinance sued the City of Los Angeles and argued that the ordinance was unconstitutionally vague and “criminalize[d] otherwise innocent behavior with insufficient notice as to what constitutes a violation of the law.”²⁵ Additionally, the plaintiffs argued that the ordinance was “totally devoid of any standards or

guidelines to limit police discretion in enforcing a vague law,” such as by not listing items that would make it apparent a vehicle was being used as living quarters.²⁶

The Ninth Circuit found that the statute was unconstitutionally vague because it failed to clearly distinguish between innocent and criminal conduct and because it promoted arbitrary enforcement especially against people experiencing homelessness.²⁷ More recently, in *Bloom v. City of San Diego*, the United States District Court for the Southern District of California granted a motion to enjoin enforcement of a the City of San Diego’s Vehicle Habitation Ordinance relying on *Desertrain*.²⁸ The city revised its ordinance and litigation is ongoing.

Four states maintain ordinances restricting lodging, living, or sleeping in vehicles.²⁹ In Hawaii, it is unlawful to use any vehicle that is parked on any public property in the state “for purposes of human habitation” between 6 PM and 6 AM.³⁰ This includes any use of the vehicle as a sleeping place, regardless of the availability of adequate alternatives available and despite Hawaii being subject to the Ninth Circuit’s holding in *Martin v. Boise* and *Desertrain v. City of Los Angeles*.

Oklahoma’s statute, like many others that criminalize people experiencing homelessness, is written vaguely. In Oklahoma, it is “unlawful for any persons to loiter in or upon any automobile or motor vehicle.” This language is similar to the ordinance found unconstitutionally vague in *Desertrain*.

Laws Restricting Loitering, Loafing, or Vagrancy

Many states have ordinances that prohibit loitering and loafing. These laws often originated as part of Jim Crow codes and were intended to be selectively enforced against Black persons to force them to either accept employment at unreasonable terms or be arrested and sentenced to forced labor.³¹ The terms “loitering”

22 California, Connecticut, Delaware, Hawaii, Maine, North Carolina. See Appendix.

23 N.C.G.S. § 20-174.1, https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_20/GS_20-174.1.pdf.

24 See 11 DE Code § 1321 (2019), <https://law.justia.com/codes/delaware/2019/title-11/chapter-5/subchapter-vii/section-1321/>.

25 *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1153 (9th Cir. 2014).

26 See *id.* at 1154.

27 See *id.* at 1157.

28 Order Granting in Part and Denying in Part Plaintiffs’ Motion for Preliminary Injunction, *Bloom v. City of San Diego*, Case No.: 17-cv-2324-AJB-NLS (S.D. Cal. 2018).

29 Hawaii, Oklahoma, South Carolina, and South Dakota. See Appendix.

30 HRS § 291C-112, https://www.capitol.hawaii.gov/hrscurrent/Vol05_Ch0261-0319/HRS0291C/HRS_0291C-0112.htm

31 See, e.g., Javier Ortiz et al., *THE WRONG SIDE OF HISTORY: A COMPARISON OF MODERN AND HISTORICAL CRIMINALIZATION LAWS*, 17 (2015).

and “loafing” are deliberately vague. Behaviors that constitute loitering and loafing in one state (or for one group of persons) might not be considered as such in another. Police are often given significant discretion to determine what behaviors are loitering. Because of this discretion, loitering laws are often disproportionately enforced against people experiencing homelessness and can be used to exclude visibly poor and homeless people from public places.

Our research found that sixteen states have laws restricting loitering, loafing, or vagrancy state-wide,³² and twenty-four states have that restrict these behaviors in particular public places.³³ These statutes criminalize different behaviors and are subject to different penalties. Many of these restrictions overlap with other behaviors related to homelessness. For example, in Alabama, a person who “loiters, remains, or wanders about in a public place for the purpose of begging” has committed “the crime of loitering” in the state.³⁴ This statute essentially designates panhandling as a loitering offense. In Maryland, staying in a public building or on public grounds during regularly closed hours constitutes loitering.³⁵ Though it does not specifically say “camping,” this loitering statute essentially prohibits camping.



32 states criminalize loitering, loafing, or vagrancy

Some loitering statutes are particularly vague. For example, in Florida and Georgia, a person commits the crime of loitering if they are “in a place at a time or in a manner not usual for law abiding individuals that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.”³⁶ A police officer in the state is authorized to evaluate what is considered “not usual for law abiding individuals.” This language can be used to distinguish and further separate people experiencing homelessness from “law abiding individuals” in the states.

Laws Restricting Vagrancy or “Tramp” Status

Astonishingly, some states even criminalize “vagrancy” or being a “tramp.” In Wisconsin, any “person, with the physical ability to work, who is without lawful means of support and does not seek employment” is considered a “vagrant.”³⁷ Anyone found to be a vagrant is guilty of a Class C misdemeanor in a state. Under this statute, *it is illegal to be unemployed and not actively seeking work in Wisconsin*. Though many people experiencing homelessness are employed, it is likely this law will only be enforced against unemployed persons who are also homeless.

In Massachusetts, a person who “roves about from place to place begging, or living without visible means of support, shall be deemed a tramp.”³⁸ The statute specifically considers “an act of begging or soliciting alms, whether of money, food, lodging or clothing, by a person having no residence in the town within which the act is committed” as prima facie evidence that a person is a tramp.³⁹ As people experiencing unsheltered homelessness likely lack a residence in the town which they need to seek charity to survive, they are prime targets to be swept up in this statute.

32 Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Iowa, Kentucky, Maryland, Massachusetts, Michigan, New Hampshire, New York, Ohio, Utah, and Wisconsin. See Appendix.
33 Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Nebraska, Nevada, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia. See Appendix.
34 Ala. Code § 13A-11-9 (2021), <https://casetext.com/statute/code-of-alabama/title-13a-criminal-code/chapter-11-offenses-against-public-order-and-safety/article-1-offenses-against-public-order-and-decency/section-13a-11-9-loitering>.
35 Md. Crim Law Code. § 6-409 (2019), <https://law.justia.com/codes/maryland/2019/criminal-law/title-6/subtitle-4/sect-6-409/>.
36 Fla. Stat. § 856.021 (2018), <https://www.flsenate.gov/Laws/Statutes/2018/856.021>; Ga. Code Ann. § 16-11-36 (2019), <https://law.justia.com/codes/georgia/2019/title-16/chapter-11/article-2/section-16-11-36/>.
37 Wis. Stat. § 947.02 (2019), <https://law.justia.com/codes/wisconsin/2019/chapter-947/section-947-02/>.
38 Mass. Gen. Laws. ch. 272 § 63, <https://malegislature.gov/Laws/GeneralLaws/PartIV/Title/Chapter272/Section63>.
39 *Id.*

Every panhandling ordinance challenged in court since 2015 has been struck down or repealed.

Laws Restricting Panhandling

People experiencing homelessness might need to ask for charity to purchase food, medication, or other necessities. Significant economic uncertainty because of the COVID-19 pandemic may have increased this need further. Panhandling restrictions can prohibit specific forms of solicitation, or could be construed as a restriction on when, where, and how a person can seek charity.

These laws raise significant First Amendment consequences as they actively restrict a type of protected speech. Just as the First Amendment prohibits infringing one's right to speak about religion, education, sports, or politics, so too does it prohibit infringing one's right to request charity. Courts use the most stringent standard – strict scrutiny – to review such restrictions.⁴⁰ Since the landmark Supreme Court ruling in *Reed v. Gilbert*⁴¹ in 2015, **every panhandling ordinance challenged in court has been struck down.**⁴²

Laws That Restrict Panhandling State-Wide

Six states have laws that restrict panhandling across the state.⁴³ For example, the Arkansas statute prohibits panhandling by considering a person who “lingers or remains in a public place or on the premises of another

for the purpose of begging” to be guilty of loitering state-wide.⁴⁴ Similarly, the Alabama loitering statute criminalizes a person who “loiters, remains, or wanders about in a public place for the purpose of begging.”⁴⁵ These statutes prohibit a wide variety of behaviors, but all notably infringe on a person's ability to ask for help.

Laws That Restrict Panhandling in Particular Public Places

Twenty-four states restrict panhandling in particular public places.⁴⁶ Instead of considering panhandling to be an offense in and of itself, these statutes restrict where a person can seek charity. For example, Idaho prohibits a person from standing on any highway “for the purpose of soliciting employment, business or contributions from the occupant of any vehicle.”⁴⁷ New Jersey on the other hand restricts panhandling on or in “air, bus or marine terminals operated by [the Port of New York Authority] within the territorial limits of the State of New Jersey.”⁴⁸

Laws That Restrict Panhandling in Particular Ways

Seven states regulate the way people can panhandle.⁴⁹ These are often called “malicious” or “aggressive” panhandling bans. In Tennessee, a person commits “aggressive panhandling” in various ways, including “intentionally touching the person being solicited without the person's consent” or “by making any statement, gesture, or other communication that would cause a reasonable person to feel fear of personal harm for

40 See, e.g., *Reed*, 576 U.S. at 163 (holding that content-based laws only survive strict scrutiny if “the government proves that they are narrowly tailored to serve a compelling state interest”).

41 See *id.*

42 See, e.g., *Cutting v. City of Portland*, 802 F.3d 79 (1st Cir. 2015); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177 (D. Mass. 2015); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218 (D. Mass. 2015); *McCraw v. City of Oklahoma City*, No. 19-6008, 2020 U.S. App. LEXIS 27710 (10th Cir. Aug. 31, 2020); *Rodgers v. Bryant*, 942 F.3d 451 (8th Cir. 2019); *Brown v. Government of District of Columbia*, 390 F. Supp. 3d 114 (D.D.C. 2019); *Blitch v. City of Slidell*, 260 F. Supp. 3d 656 (E.D. LA 2017); *Champion v. Commonwealth*, 520 S.W.3d 331 (Ky. 2017); *Petrello v. City of Manchester, No. 16-cv-008-LM*, 2017 U.S. Dist. LEXIS 144793 (D.N.H. Sept. 7, 2017); *City of Lakewood v. Willis*, 186 Wash. 2d 210 (Wash. 2016); *Browne v. City of Grand Junction Colo.*, 136 F. Supp. 3d 1276 (D. Colo. 2015); see also Little, et al., *Nowhere to Go: In many cities, it's illegal to beg for food or money*, CSN Homelessness (July 29, 2020), <https://homeless.csnmaryland.org/2020/06/29/illegal-to-beg-for-food/> (“[Courts] have found more than two dozen anti-panhandling ordinances in violation of the First Amendment since 2015, when the Supreme Court imposed strict limits on local government's power to restrict speech based on its purpose or content.”).

43 Alabama, Arkansas, California, Delaware, Hawaii, and Massachusetts. See Appendix.

44 Ark. Code. § 5-71-213 (2019), <https://law.justia.com/codes/arkansas/2019/title-5/subtitle-6/chapter-71/subchapter-2/section-5-71-213/>.

45 Ala. Code. § 13A-11-9 (2021), <https://casetext.com/statute/code-of-alabama/title-13a-criminal-code/chapter-11-offenses-against-public-order-and-safety/article-1-offenses-against-public-order-and-decency/section-13a-11-9-loitering>.

46 Alabama, Arizona, Arkansas, District of Columbia, Georgia, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Minnesota, Mississippi, Montana, New Hampshire, New Jersey, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Texas, and Vermont. See Appendix.

47 Idaho Code Ann. § 49-709, <https://legislature.idaho.gov/statutesrules/idstat/title49/t49ch7/sect49-709/>.

48 N.J. Rev. Stat. § 32:1-146.6 (2020), <https://law.justia.com/codes/new-jersey/2020/title-32/section-32-1-146-6/>.

49 Alabama, Arizona, District of Columbia, Indiana, New Jersey, North Carolina, and Tennessee. See Appendix.

refusing a solicitation of a donation.”⁵⁰ Many of these restrictions would be encompassed by other criminal statutes, like assault, but can be invoked in response to a person seeking charity.

Laws That Restrict Standing in Roadways for the Purpose of Solicitation

In addition to various ways that states restrict panhandling, thirty-six states prohibit a person for standing in a roadway or highway for the purpose of solicitation.⁵¹ While states generally have restrictions for the purposes of traffic and vehicular safety, these states distinguish acceptable behavior based on solicitation, not vehicular safety. Often, the prohibited behavior is soliciting a ride (hitchhiking) or employment. For example, in South Carolina, it is prohibited to stand in a roadway for the purpose of “soliciting a ride” and “soliciting employment, business, or contributions from the occupant of any vehicle.”⁵²

However, ordinances like the one in South Carolina distinguish the validity of the behavior based on the content of the request. Here, standing on the roadway is not prohibited unless it is accompanied with a solicitation. Statutes like these should be considered as potential violations of one’s First Amendment rights, like traditional panhandling statutes.

Laws Criminalizing Youth (Status Offenses)

Status offenses are behaviors or actions that are legal for adults but punishable by law when performed by minors, including truancy, delinquency, age-based curfews, and running away from home. Girls, youth of color, and LGBTQ youth are disproportionately subjected to harsher punishments for status offenses.⁵³ Status offenses are purportedly designed to protect young people from victimization, but instead can criminalize acts of self-preservation by young people living in otherwise unsafe environments. Criminalizing these acts also serves only to put these youth into other environments that are inhospitable to adolescent development, like the juvenile justice system.

Unfortunately, many states possess statutes that criminalize status offenses that do not serve youth. Rather than relying on status offenses to police young people, states should focus efforts on providing the supports and services young people and their families need. To learn more about how states criminalize youth, please refer to our report [Alone Without A Home](#) (produced in conjunction with the National Network for Youth).

Status Offenses at the State-Level⁵⁴

- ➔ **50 jurisdictions** explicitly allow police to take youth who run away into custody
- ➔ **9 jurisdictions** classify running away from home as a status offense
- ➔ **2 jurisdictions** classify youth who run away from home as delinquent
- ➔ **5 jurisdictions** explicitly allow youth who ran away from home to be detained in secure facilities
- ➔ **6 jurisdictions** classify truancy as a status offense
- ➔ **5 jurisdictions** classify truants as delinquent under certain circumstances
- ➔ **39 jurisdictions** authorize curfews, either explicitly at the state level or make allowances for authorization by local governments
- ➔ **18 jurisdictions** specifically authorize curfews for youth with ages ranging from under 12 to under 18 years old

50 Tenn. Code. Ann. § 39-17-313 (2020), <https://law.justia.com/codes/tennessee/2019/title-39/chapter-17/part-3/section-39-17-313/>.

51 Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin. See Appendix.

52 SC Code § 56-5-3180 (2020), <https://law.justia.com/codes/south-carolina/2020/title-56/chapter-5/section-56-5-3180/>.

53 See NAT’L HOMELESSNESS L. CTR. & NAT’L NETWORK FOR YOUTH, ALONE WITHOUT A HOME: A NATIONAL REVIEW OF STATE LAWS AFFECTING UNACCOMPANIED YOUTH 25 (2019), <https://homelesslaw.org/wp-content/uploads/2019/04/AWAH-report.pdf>.

54 *Id.* at 27.

RECENT TRENDS

Even though state statutes criminalizing homelessness are seen less frequently than municipal ordinances, several recent trends are worth noting.

Legal Successes

Fortunately, like municipal panhandling ordinances, state laws criminalizing panhandling are clearly vulnerable to constitutional challenge. Since 2010, both federal and state courts have ruled state level panhandling statutes unconstitutional in Arkansas, the District of Columbia, Florida, Massachusetts, and Michigan, and none have been upheld. Thanks to local advocacy, other states, like Delaware, are currently considering repealing their panhandling statutes to comply with this constitutional mandate. The constitutionality of two Alabama panhandling statutes⁵⁵ have also been challenged in a case in *Singleton v. Montgomery*.⁵⁶

State-Level Anti-Camping Statutes

Unfortunately, other state level statutes, particularly anti-camping statutes, appear to be on the rise, with bills being introduced in Texas, Arizona, and Tennessee in the 2021 legislative session.

In Texas, a statewide camping ban was proposed that would impose fines and penalties for camping in a public space.⁵⁷ Proposed on largely partisan grounds, this bill would also prohibit a community from choosing not to enforce the camping ban or risk losing state funding.⁵⁸ This bill was unfortunately passed and went into effect September 1, 2021.⁵⁹

In Arizona, a state-wide camping ban was proposed that would have made it illegal to camp on state property except in “structured camping facilities”.⁶⁰ It would also have introduced monetary caps on housing initiatives and prohibit some Housing First initiatives in the state. Fortunately, this bill was defeated in committee.⁶¹

A similar bill was proposed and defeated in Tennessee. This state-wide bill would have created a Class C misdemeanor offense “punishable by a \$50 fine and community service work, for solicitation or camping along a controlled-access highway or entrance or exit ramp.”⁶² Significantly, the bill would have also expanded previous state-wide camping restrictions to make “unauthorized camping” on public property a **felony offense** in Tennessee.⁶³ This bill failed in the Tennessee Senate Judiciary Committee on April 13, 2021.⁶⁴

Positive Trends

We also celebrate state-level activity that protects the rights of people experiencing homelessness. Many states, including Connecticut, Illinois, and Rhode Island, as well as Puerto Rico, have passed Homeless Bills of Rights, which provide limited non-discrimination protections for people experiencing homelessness. Rep. Cori Bush introduced a federal Unhoused Bill of Rights in July, 2021.⁶⁵

Thanks to the efforts of the Western Regional Advocacy Project and its members, bills known as “Right to Rest” laws have been introduced in California, Colorado, Oregon, and Washington, though none have made it

55 Alabama Code § 13A-11-9(a)(1) (prohibiting loitering “in a public place for the purpose of begging”) and Alabama Code § 32-5A-216(b) (prohibiting individuals from “stand[ing] on a highway for the purpose of soliciting . . . contributions”).

56 See *Singleton v. Montgomery*, Stipulated Settlement Agreement, Case No. 2:20-cv-99-WKW (2020).

57 Tex. H.B. 1925, 87th Leg. (2021), <https://legiscan.com/TX/text/HB1925/2021>.

58 *Id.*

59 *Id.*

60 AZ H.B. 2668, 55th Leg. (2021), azleg.gov/legtext/55leg/1R/adopted/S.2668APPROP.pdf.

61 *Id.*

62 TN S.B. 1610 (2021), <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB1610>.

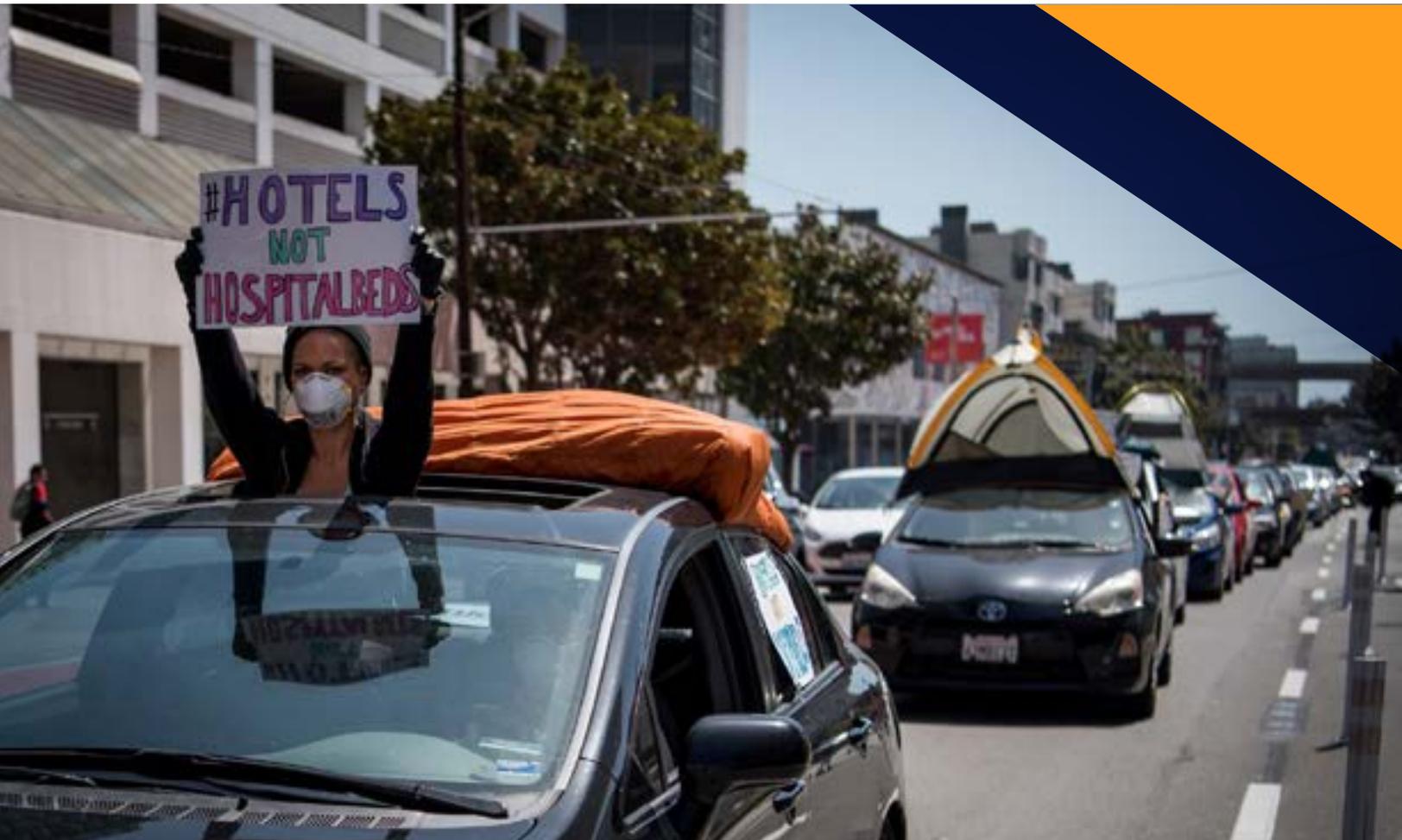
63 *Id.*

64 *Id.*

65 Unhoused Bill of Rights Introduced by Representative Cori Bush (MO-01), NAT'L HOMELESSNESS L. CTR. (Jul. 2021), <https://homelesslaw.org/unhoused-bill-of-rights-introduced-by-representative-cori-bush-mo-01/>.

past committee hearings. The Rest to Rest Acts would prohibit governments from punishing people for resting in outdoor spaces open to the public in a non-obstructive and non-hazardous manner. Additionally, the Law Center worked with the Moms 4 Housing and Alliance of Californians for Community Empowerment to introduce a 2020 California bill which would have amended its state constitution to recognize the human right to housing. Finally, in conjunction with Connecticut Coalition to End Homelessness, we introduced a Connecticut bill which recognizes housing as a human right.⁶⁶

66 Connecticut SB 194: An Act Establishing a Right to Housing, <https://www.cga.ct.gov/2021/TOB/S/PDF/2021SB-00194-R00-SB.PDF>. SB 194 passed in the State Senate 25-10 but unfortunately did not make it through the 2021 Connecticut legislative session.



CONCLUSION

Laws that criminalize homelessness do not solve the underlying causes of homelessness. Punishing an unhoused person for sleeping outdoors does not obviate their need to sleep nor does it create a safe place for them to sleep indoors. Instead, criminalization exacerbates a person's homelessness, often by creating additional barriers to housing and employment. Additionally, whether at the state- or local- level, enforcing criminal statutes is expensive and diverts resources that could instead be spent to solve homelessness.⁶⁷

In an era of record poverty exacerbated by the global COVID-19 pandemic, the expiring national eviction moratorium, prolonged unemployment, and a shrinking stock of affordable housing, sensible and cost-effective policies are needed. We encourage states with state-level statutes that criminalize homelessness to repeal

these statutes and instead pursue constructive policies that end homelessness and invest in affordable housing at levels necessary to end homelessness in their respective states.



⁶⁷ This report does not claim that state-level statutes that have been identified are being enforced. The presence or lack of a state-level statute should not be taken as the sole indicator of enforcement against people experiencing homelessness. Countless communities across the country have local statutes that also criminalize people experiencing homelessness.

APPENDIX: Criminalization of Homelessness in State Law Across United States

State	Sleeping, Camping, Lying and Sitting, and Vehicle Restrictions						Loitering and Vagrancy			Panhandling / Begging		
	Sleeping in public state-wide	Sleeping in particular public places	Camping in public state-wide	Camping in particular public places	Sitting/lying in particular public places	Lodging, living, or sleeping in vehicles (or parking a vehicle used as a lodging / living accommodation)	Loitering / Loafing / Vagrancy state-wide	Loitering / Loafing in particular public places	Standing in Roadway	Panhandling in public places state-wide	Panhandling in particular public places	Panhandling in particular ways
Alabama							X	X	X	X	X	X
Alaska				X								
Arizona				X			X	X	X		X	X
Arkansas							X	X	X	X	X	
California			X	X	X			X	X	X		
Colorado				X					X			
Connecticut					X			X	X			
Delaware					X		X	X		X		
District of Columbia											X	X
Florida			X				X		X		X	
Georgia				X			X	X	X		X	
Hawaii					X	X				X		
Idaho		X									X	
Illinois				X					X		X	
Indiana									X		X	X
Iowa				X			X	X	X			
Kansas									X		X	
Kentucky							X	X	X		X	

State	Sleeping, Camping, Lying and Sitting, and Vehicle Restrictions						Loitering and Vagrancy			Panhandling / Begging		
	Sleeping in public state-wide	Sleeping in particular public places	Camping in public state-wide	Camping in particular public places	Sitting/lying in particular public places	Lodging, living, or sleeping in vehicles (or parking a vehicle used as a lodging / living accommodation)	Loitering / Loafing / Vagrancy state-wide	Loitering / Loafing in particular public places	Standing in Roadway	Panhandling in public places state-wide	Panhandling in particular public places	Panhandling in particular ways
Louisiana								X	X			
Maine					X			X	X			
Maryland							X		X			
Massachusetts							X	X		X	X	
Michigan							X					
Minnesota									X		X	
Mississippi		X							X		X	
Missouri												
Montana									X		X	
Nebraska				X				X	X			
Nevada								X				
New Hampshire	X		X				X		X		X	
New Jersey								X	X		X	X
New Mexico				X					X			
New York							X	X				
North Carolina					X			X	X		X	X
North Dakota									X		X	
Ohio							X					
Oklahoma						X			X		X	
Oregon												
Pennsylvania								X	X		X	
Rhode Island								X	X			

State	Sleeping, Camping, Lying and Sitting, and Vehicle Restrictions						Loitering and Vagrancy			Panhandling / Begging		
	Sleeping in public state-wide	Sleeping in particular public places	Camping in public state-wide	Camping in particular public places	Sitting/lying in particular public places	Lodging, living, or sleeping in vehicles (or parking a vehicle used as a lodging / living accommodation)	Loitering / Loafing / Vagrancy state-wide	Loitering / Loafing in particular public places	Standing in Roadway	Panhandling in public places state-wide	Panhandling in particular public places	Panhandling in particular ways
South Carolina		X		X		X		X	X		X	
South Dakota				X		X						
Tennessee				X				X	X			X
Texas			X	X				X	X		X	
Utah							X					
Vermont									X		X	
Virginia								X	X			
Washington									X			
West Virginia				X					X			
Wisconsin				X			X		X			
Wyoming												
Total	1	3	4	15	6	4	16	24	36	6	24	7