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# A Homeless Bill of Rights: Step by Step from State to State

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# FEATURE ARTICLE A HOMELESS BILL OF RIGHTS: STEP BY STEP FROM STATE TO STATE

by Jonathan Sheffield

hen the New York Times profiled Barbara, she did not share her full name because she feared her employer would fire her if it knew the truth — she has no home.<sup>1</sup> Barbara's fear is common for men and women who are homeless — that their lack of housing will cause their employer or others to discriminate against them.<sup>2</sup> In some cases, these fears are well-founded, as several cities have responded to pervasive homelessness by pushing out people who have no home.<sup>3</sup> In contrast, between 2012 and 2013, three jurisdictions enacted homeless persons' bills of rights to prevent discrimina-

tion.<sup>4</sup> Beyond the rights protected in these state homeless bills of rights, the United Nations recognizes that every person has a right to adequate housing.<sup>5</sup>

At one point in time in January 2012, 633,782 people experienced homelessness in the United States.<sup>6</sup> While this national estimate decreased by 0.4 percent from 2011, 28 states and the District of Columbia saw increases in the number of people living homeless.<sup>7</sup> Additionally, 71 percent of cities surveyed by the U.S. Conference of Mayors reported that more families were experiencing homelessness, and the Department of Housing and Urban Development estimated there was a 2 percent increase in homelessness among children nationally.<sup>8</sup> These changes in the size and diversity of the homeless population are the result of a complex interplay of causes, including: affordable housing shortages, growing rent and income disparities, and eroding housing subsidy programs.<sup>9</sup>

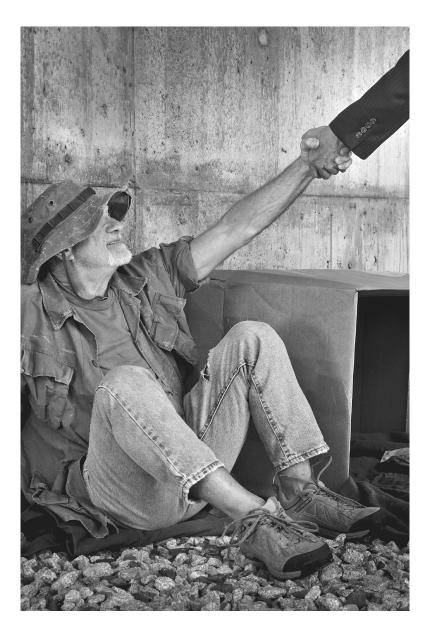
### U.S. Responses to Rise in Homelessness

Some municipalities have tried to prevent people from sleeping, eating, and living in public spaces by using the criminal justice system. Housing advocates refer to some of these practices as criminalizing homelessness. Criminalization measures penalize people for performing necessary, life-sustaining activities in public spaces when they have no alternative because of homelessness. Targeted life-sustaining activities include: sitting, sleeping, loitering, panhandling, camping, storing belongings, and urinating. Municipalities also criminalize homelessness through disparate enforcement of laws, such as jaywalking or littering, against persons appearing to be homeless.

At one point in 2013, anti-homelessness reached a peak when Columbia, S.C. almost started moving individuals without homes to the outskirts of town and criminalizing their presence within city-limits.<sup>15</sup> Under a rescinded city ordinance, police officers were to patrol the city-center in order to steer people who are homeless to a 24-hour privately operated emergency shelter outside the city.<sup>16</sup> Officers were also instructed to strictly enforce the city's quality-of-life ordinances, which ban loitering and public urination, among other activities.<sup>17</sup> Michael Stoops, Director of Community Organizing at the National Coalition for the Homeless, said this was the "most comprehensive anti-homeless measure" that he had ever seen in the last 30 years.<sup>18</sup> "Using one massive shelter on the outskirts to house all a city's homeless is something that has never worked

anywhere in the country."<sup>19</sup> Columbia is representative of several cities that have opted to take such measures, while other cities have taken different paths to achieve the same purpose.<sup>20</sup>

In contrast, Rhode Island, Illinois, and Connecticut have enacted laws that protect the civil rights of people experiencing homelessness.<sup>21</sup>



PROTECTING PEOPLE EXPERIENCING HOMELESSNESS IN THE U.S.

Rhode Island became the first state to prohibit discrimination based on housing status when it enacted the "Homeless Bill of Rights" on June 20, 2012.<sup>22</sup> Over a year later, on August 22, 2013, Illinois enacted the "Bill of Rights for the Homeless Act" which became effective immediately.<sup>23</sup> Most recently, Connecticut's "Homeless Person's Bill of Rights" became effective on October 1, 2013.<sup>24</sup>

The Rhode Island and Illinois laws use similar language and specify that a person who is homeless has the same rights and privileges as any other state resident, which includes the right to: (1) use and move freely in public spaces, including public sidewalks, parks, transportation, and buildings, among other spaces; (2) equal treatment by government agencies; (3) be free of discrimination while seeking or maintaining employment;<sup>25</sup> (4) emergency medical care; (5) vote, register to vote, and receive documentation necessary for voting; (6) have personal records and confidential information not disclosed; and (7) a reasonable expectation of privacy over personal property to the same extent as one would have in a permanent residence.<sup>26</sup>

Generally, the Connecticut law provides the same or similar protections.<sup>27</sup> Although, unlike the others, it does explicitly prohibit "harassment or intimidation from law enforcement officers."<sup>28</sup>

Another key distinction in the Connecticut law is that it defines "homeless person" more broadly than the Rhode Island and Illinois laws.<sup>29</sup> The Rhode Island law prevents discrimination based on "housing status," which is defined as "having or not having a fixed or regular residence, including . . . living on the streets, in a homeless shelter, or similar temporary residence."<sup>30</sup> The Illinois law closely tracks this language.<sup>31</sup> The Connecticut law, on the other hand, uses the general definition of "homeless individual" under 42 U.S.C § 11302, which includes an individual or family who lacks a fixed, regular, and adequate nighttime residence or resides in temporary living arrangements — such as cars, parks, abandoned buildings, public-transit, camp grounds, and shelters — and also people at imminent risk of homelessness or who are living in unstable conditions.<sup>32</sup> By not including individuals at imminent risk of homelessness, the Rhode Island and Illinois laws protect a smaller class of people than the Connecticut law, possibly excluding those who live doubled-up

with family or friends indefinitely — a common practice to avoid living on the street.<sup>33</sup> Such thin protection from the street undoubtedly warrants homeless status.

However, not all parts of the Connecticut law are superior; it fails to provide recoverable money damages.<sup>34</sup> The Rhode Island and Illinois laws provide such damages, stating in relevant part that a "court may award appropriate injunctive and declaratory relief, actual damages, and reasonable attorney's fees and costs to a prevailing plaintiff."<sup>35</sup> This is important for three reasons. First, the prospect of recovering money encourages individuals who have been discriminated against to go through the effort of filing a claim and thereby enforce their rights. Second, representation by an attorney is more likely when attorney's fees are available. Finally, the threat of recoverable damages gives pause to any would-be discriminator.

In fact, the Rhode Island and Illinois enforcement provisions are so strong that the Connecticut law was proposed with the same provision, but it was compromised out of the final version of the bill.<sup>36</sup> Some lawmakers were concerned that the prospect of available damages would invite frivolous suits against employers and others.<sup>37</sup>

THE U.N. RECOGNIZES A HUMAN RIGHT TO ADEQUATE HOUSING

The U.N. recognizes a human right to adequate housing that provides greater protections, freedoms, and entitlements than any American state's homeless bill of rights.<sup>38</sup> The right to adequate housing was first recognized as part of the right to an adequate standard of living in the 1948 Universal Declaration on Human Rights.<sup>39</sup> As defined by the first Special Rapporteur, "the human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity."<sup>40</sup>

The U.N. has determined that governments and the private sector have affirmative obligations to fulfill the right to adequate housing.<sup>41</sup> While the right to adequate housing does not oblige governments to construct housing for all citizens, it does require measures necessary to prevent homelessness, prohibit forced evictions, address discrimination, focus on vulnerable and marginalized

groups, ensure security of tenure, and guarantee that everyone's housing is adequate. 42

The Special Rapporteur on adequate housing has called homelessness "perhaps the most visible and most severe symptom of the lack of respect for the right to adequate housing." <sup>43</sup> Moreover, the criminalization of homelessness in the U.S. has been condemned by the Special Rapporteur as discriminatory, cruel, inhuman, and degrading treatment. <sup>44</sup>

Indeed, Scotland has shown the world that it is feasible to implement a human right to housing.<sup>45</sup> Today, under Scotland's Homelessness, Etc. Act of 2003, all people experiencing involuntary homelessness in Scotland have a right to be housed immediately and to live in permanent housing with supportive services.<sup>46</sup> Local authorities have an obligation to ensure this right is met and must also undertake comprehensive affordable housing and homelessness prevention planning.<sup>47</sup> While the Scotland law does require four threshold inquiries before a household may access the right, these inquires have been modified over time to reduce the barriers they present.<sup>48</sup>

The Future for Homelessness in the U.S.

Despite recent, scant decreases in the overall size of the homeless population, in order to end and prevent future homelessness, a concerted U.S. policy response is imperative.<sup>49</sup> Homeless bills of rights are constructive, but the right to adequate housing contains greater protections, freedoms, and entitlements than any enacted homeless bill of rights.<sup>50</sup> Therefore, the U.S., on a state-by-state basis, if not on a federal level, should adopt the right to adequate housing recognized by the U.N.

At least two cities and seven states are considering homeless bills of rights, including Baltimore, Md., California, Delaware, Madison, Wis., Minnesota, Missouri, Oregon, Tennessee, and Vermont. <sup>51</sup> Notably, the California homeless persons' bill of rights provides greater protections than the Rhode Island, Illinois, or Connecticut laws, and debate on the California legislation resumed in 2014 after being set on hold for more than half a year. <sup>52</sup>

At the very least, future homeless rights laws should broadly define what it means to be homeless<sup>53</sup> in addition to clearly defining examples of proscribed

discriminatory practices.<sup>54</sup> However, it is important that future homeless rights laws broadly guarantee people who are homeless the same rights and privileges as any other state resident.<sup>55</sup> The Rhode Island, Illinois, and Connecticut laws are an excellent model for broadly proscribing discrimination while enumerating instances of unlawful discriminatory practices.<sup>56</sup> Additionally, future laws should provide a private right of action similar to the Rhode Island and Illinois laws, with recoverable damages available to aggrieved persons, ensuring widespread enforcement.<sup>57</sup>

Advocacy efforts at the local, state, and national level will be instrumental in moving U.S. policy toward a right to adequate housing.<sup>58</sup> Homeless persons' bills of rights, a major legal development in the past year, are arguably an important stepping stone for municipalities, states, and the U.S. to recognize a right to adequate housing similar to that in Scotland. Persistent advocacy efforts may be able to bring this to fruition, but only time will tell.

### Notes

- 1 Mireya Navarro, *In New York, Having a Job, or 2, Doesn't Mean Having a Home*, N.Y. TIMES (Sept. 17, 2013), http://www.nytimes.com/2013/09/18/nyregion/in-new-york-having-a-job-or-2-doesnt-mean-having-a-home.html?nl=nyregion&emc=edit\_ur\_20130918&\_r=1&.
- 2 *Id*; Scott Keyes, *Connecticut Passes Landmark 'Homeless Person's Bill Of Rights' Law*, Think Progress (June 12, 2013), http://thinkprogress.org/justice/2013/06/12/2139181/connecticut-homeless/.
- 3 See Nat'l Law Ctr. on Homelessness & Poverty, Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities 15 (2011), available at http://www.nlchp.org/view\_report.cfm?id=366 (stating that despite a rise in homelessness cities continue to penalize people forced to live on the street) [Hereinafter Criminalizing Crisis].
- 4 *Id*; *Equal Voice: Homeless 'Bill of Rights' becomes law in Illinois*, Chic. Coalition for the Homeless (Aug. 26, 2013), http://www.chicagohomeless.org/equal-voice-homeless-bill-of-rights-becomes-law-in-illinois/#sthash.WEqf6D1S.dpuf; David Klepper, *Rhode Island Homeless Bill Of Rights Praised As U.S. Model*, Huffington Post (June 27, 2012), http://www.huffingtonpost.com/2012/06/27/rhode-island-homeless-bill-of-rights\_n\_1632411.html.
- 5 Office of the U.N. High Commissioner for Human Rights, *The Right to Adequate Housing Fact Sheet*, Fact Sheet No. 21/Rev. 1, 1 (2008), *available at* http://www.ohchr.org/Documents/Publications/FS21\_rev\_1\_Housing\_en.pdf [Hereinafter U.N. Right to Adequate Housing Fact Sheet].
- 6 NAT'L ALLIANCE TO END HOMELESSNESS & HOMELESSNESS RESEARCH INST., THE STATE OF HOMELESSNESS IN AMERICA 2013, 3 (2013), *available at* http://b.3cdn.net/naeh/bb34a7e4 cd84ee985c\_3vm6r7cjh.pdf [Hereinafter State of Homelessness in America 2013].
- 7 *Id.*

- 8 United States Conference of Mayors, Hunger and Homelessness Survey 25-26 (2012), *available at* http://usmayors.org/pressreleases/uploads/2012/1219-report-HH. pdf; State of Homelessness in America 2013 *supra* note 6, at 12.
- 9 See State of Homelessness in America 2013 supra note 6, at 4, 16–25 (discussing economic and housing factors related to homelessness).
- 10 Criminalizing Crisis supra note 3, at 15.
- 11 Id.
- 12 *Id.* at 6–7.
- 13 Id.
- 14 Id. at 7.
- 15 Scott Keyes, South Carolina City Approves Plan To Exile Its Homeless, THINK PROGRESS (Aug. 20, 2013), http://thinkprogress.org/justice/2013/08/20/2496741/columbia-criminalize-homeless/.
- 16 Id.
- 17 Id.
- 18 Id.
- 19 Id.
- Two cities in Florida (Miami and Tampa) have similar ordinances that criminalize lifesustaining activities in public spaces and attempt to move people experiencing homelessness outside of the city without a way back. See Scott Keyes, Miami Considers Jailing Homeless People For Eating, Sleeping In Public, THINK PROGRESS (July 16, 2013), http://thinkprogress.org/ justice/2013/07/16/2307891/miami-criminalize-homelessness/; (discussing the Miami, FL ordinance criminalizing life-sustaining activities in public spaces without providing more funding to city shelters and a city commissioner's attempt to renege on the city's 1998 response to homelessness that included offering people a place to sleep); see Amanda Mole, Tampa passes new ordinances on homeless despite protests, Examiner.com (July 19, 2013), http://www.examiner. com/article/tampa-passes-new-ordinances-on-homeless-despite-protests (reporting that when shelters in Tampa are overcrowded the city plans to take people to shelters outside the city limits but the city has not stated how it plans to ensure such people can get back into the city); see also Scott Keyes, Tampa Passes New Law To Toss Homeless People In Jail For Sleeping In Public, THINK PROGRESS (July 22, 2013), http://thinkprogress.org/justice/2013/07/22/2335261/ tampa-criminalize-homelessness/ (reporting that protesters included elementary school children handing out flyers and asking passersby, "Where are they supposed to go?"). Additionally, a Palo Alto, CA ordinance prohibits people from sleeping in their vehicle, a common practice for the working poor who have jobs in the city. See Scott Keyes, Palo Alto Passes New Ordinance To Criminalize Homelessness, Think Progress (Aug. 6, 2013) http://thinkprogress.org/justice/ 2013/08/06/2423041/palo-alto-homeless/ (reporting that in 2013, in addition to existing laws to effectively prevent people who are homeless from being in the city center, Palo Alto added a law to prohibit sleeping in cars which is punishable by six months in jail and a \$1,000 fine).
- 21 Homeless Bill of Rights, R.I. GEN. LAWS ANN. § 34-37.1-3 (2012); Bill of Rights for the Homeless Act, 2013 Ill. Laws 098-0516; An Act Concerning a Homeless Person's Bill of Rights, 2013 Conn. Pub. Acts 13-251.
- 22 Homeless Bill of Rights, R.I. GEN. LAWS ANN. § 34-37.1-3 (2012).
- 23 Bill of Rights for the Homeless Act, 2013 Ill. Laws 098-0516.
- 24 An Act Concerning a Homeless Person's Bill of Rights, 2013 Conn. Pub. Acts 13-251.
- 25 It is worth noting that Illinois's version of the law omits 'seeking' employment, which permits an employer to discriminate during the hiring process against people who are homeless but not against employees who become homeless. This was a compromise made in the Illinois

- bill. Interview with Jennifer Cushman, Policy Specialist, Chi. Coal. for the Homeless, in Chi., Ill. (Oct. 24, 2013).
- 26 Homeless Bill of Rights, R.I. Gen. Laws Ann. § 34-37.1-3 (2012); Bill of Rights for the Homeless Act, 2013 Ill. Laws 098-0516.
- 27 An Act Concerning a Homeless Person's Bill of Rights, 2013 Conn. Pub. Acts 13-251. However, unlike the Illinois and Rhode Island laws, Connecticut's law does not include a right to receive documentation necessary to prove identity for voting. *Id*; Homeless Bill of Rights, R.I. Gen. Laws Ann. § 34-37.1-3 (2012); Bill of Rights for the Homeless Act, 2013 Ill. Laws 098-0516.
- 28 An Act Concerning a Homeless Person's Bill of Rights, 2013 Conn. Pub. Acts 13-251.
- 29 *Id.* (adopting the definition of homeless individual stated in 42 U.S.C § 11302); Homeless Bill of Rights, R.I. GEN. LAWS ANN. § 34-37.1-3 (2012) (prohibiting discrimination based on housing status and defining that term to mean the status of having or not having a fixed or regular residence, including the status of living on the streets, in a shelter, or in a temporary residence); Bill of Rights for the Homeless Act, 2013 Ill. Laws 098-0516 (same).
- 30 Homeless Bill of Rights, R.I. GEN. LAWS ANN. § 34-37.1-3 (2012)
- 31 Bill of Rights for the Homeless Act, 2013 Ill. Laws 098-0516
- 32 42 U.S.C. § 11302 (2011); An Act Concerning a Homeless Person's Bill of Rights, 2013 Conn. Pub. Acts 13-251.
- 33 Id.
- 34 See An Act Concerning a Homeless Person's Bill of Rights, 2013 Conn. Pub. Acts 13-251 (prohibiting discrimination but not stating the penalty for proscribed discriminatory practices).
- 35 Homeless Bill of Rights, R.I. Gen. Laws Ann. § 34-37.1-3 (2012); Bill of Rights for the Homeless Act, 2013 Ill. Laws 098-0516.
- 36 Interview with Jennifer Cushman, Policy Specialist, Chi. Coal. for the Homeless, in Chi., Ill. (Oct. 24, 2013).
- 37 Id.
- 38 See U.N. Office of the High Commissioner for Human Rights, The right to adequate housing, General Comment 4 (Art.11 (1)) (1991), available at http://www.unhchr.ch/tbs/doc.nsf/ (Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument (stating protections found in human right to adequate housing); see also Jake Grovum, Activists Aim to Bolster Rhode Island's Homeless Bill of Rights, Stateline (Nov. 12, 2012), http://www.pewstates.org/projects/stateline/headlines/activists-aim-to-bolster-rhode-islands-homeless-bill-of-rights-85899429426 (commenting that early versions of Rhode Island's bill focused on a right to housing, but advocates scaled the bill back to get it passed).
- 39 U.N. Right to Adequate Housing Fact Sheet supra note 5, at 1.
- 40 Special Rapporteur on adequate housing, U.N. Office of High Commissioner for Human Rights, http://www.ohchr.org/en/issues/housing/pages/housingindex.aspx (last visited October 24, 2013).
- 41 U.N. Right to Adequate Housing Fact Sheet *supra* note 5, at 29 37.
- 42 *Id.* at 3–6, 22–23.
- 43 Id. at 21.
- 44 U.N. Special Rapporteur, April 2012 Press Release *USA: Moving away from the criminalization of homelessness, a step in the right direction*, (2012), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079&LangID=E.
- 45 Criminalizing Crisis supra note 3, at 53-54.
- 46 Id.

- 47 Eric S. Tars & Caitlin Egleson, Great Scotl: The Scottish Plan to End Homelessness and Lessons for the Housing Rights Movement in the United States, 16 GEO. J. ON POVERTY L. & POL'Y 187, 195 (2009).
- 48 *Id.* The four inquiries are: (1) Does the household meet Scotland's broad definition of homeless; (2) Is a member of the household in a "priority need" category defined by the law; (3) Did it became homeless intentionally and (4) Does the household have a connection to the LA? *Id.*
- 49 See State of Homelessness in America 2013 supra note 6, at 4 ("Scant decreases in the overall size of the homeless population and the rate of homelessness between 2011 and 2012 remind us that there is still a great deal of work to be done").
- 50 See supra notes 20-29 and accompanying text (detailing protections of both types of rights laws).
- Dean Mosiman, *Madison committee considering homeless bill of rights*, WISCONSIN STATE JOURNAL (Aug. 7, 2013), http://host.madison.com/news/local/govt-and-politics/madison-committee-considering-homeless-bill-of-rights/article\_db613edd-ef97-581d-a9c0-5b4bf8437b83. html (Madison, WI); Amien Essif, *A Bill of Rights for the Homeless*, In These Times (Jul. 29, 2013), http://inthesetimes.com/article/15227/a\_bill\_of\_rights\_for\_the\_homeless/ (Missouri, Oregon, and Vermont); Homeless People Are Real People too (HARP), *H.A.R.P.: Homeless Bill of Rights for Delaware*, MOVEON.ORG http://petitions.moveon.org/sign/harp-homeless-bill-of (last visited Oct. 24, 2013); *Homeless Person's Bill of Rights Legislation*, NAT'L COALITION FOR THE HOMELESS, http://www.nationalhomeless.org/advocacy/Homeless\_Bill\_of\_Rights.html (last updated July 26, 2013) (stating cities and states that have passed or are considering homeless rights legislation and including: California, Delaware, Baltimore, MD, Minnesota, Missouri, Oregon, Tennessee, Vermont, and Madison, WI).
- 52 See T.J. Johnson, State Homeless 'Bill of Rights' Put on Hold Until Next Year, San Francisco Public Press (May 30, 2013), http://sfpublicpress.org/news/2013-05/state-homeless-bill-of-rights-put-on-hold-until-next-year#sthash.UOK3yt3F.dpuf (stating that the bill will go before the Appropriations Committee in January 2014). In a prior version, the bill would have gone beyond other enacted homeless persons' bills of rights by guaranteeing a "right to safe, decent, permanent, affordable housing, as soon as possible." Assembly Bill No. 5, 2013 2014 Reg. Sess. (Ca. 2013). If passed, this would arguably be closer to a human right to adequate housing. See generally U.N. Right to Adequate Housing Fact Sheet supra note 5 (explaining that the human right to adequate housing requires governments to take measures to prevent homelessness).
- 53 See supra notes 25 29 and accompanying text (discussing the drawbacks of the narrow definition of housing status, which is a proxy for definition of homelessness).
- 54 See supra note 28 and accompanying text (Connecticut's law, by specifically stating the freedom to move without police interference, there can be no question that this law applies to cases involving police conduct).
- 55 See supra text accompanying note 34 (by providing that a person experiencing homelessness has the same rights as other state residents, rather than seeking to enumerate all rights protected, this provides protection for a host of important rights that do not bear mentioning).
- 56 See generally supra text accompanying notes 27-37 (discussing the laws' provisions). 57 Id.
- 58 See Homeless Person's Bill of Rights Legislation, NAT'L COALITION FOR THE HOMELESS, http://www.nationalhomeless.org/advocacy/Homeless\_Bill\_of\_Rights.html (last updated July 26, 2013) (describing efforts of National Coalition for the Homeless to educate advocates who are responsible for passing protections for people without housing).