

Grants Pass v. Johnson:

Overview and Action Steps

August 2024

Background

On 6.28.24, the Supreme Court released their decision in *City of Grants Pass v. Johnson*. They ruled that it isn't "cruel and unusual punishment" for governments to pass or enforce laws that criminalize sleeping or camping on public property.

While this decision overturns *Martin v. Boise*, **it doesn't require governments to enforce or create laws making sleeping outside or camping a crime.** This guide offers resources and steps communities can take to protect people experiencing homelessness and continue to work towards better housing outcomes for residents.

Considerations to support local discussions

Criminalization punishes people experiencing homelessness for survival activities when they have nowhere else to go. Below are considerations for communities that are weighing fines and jail time for sleeping and camping on public property.

Most individuals experiencing homelessness were previously housed, and are likely to stay, in the same community.

- A California statewide study found that 75% of participants experiencing homelessness had previously resided in the community they were homeless in for at least one year.
- Many residents of encampments return to locations that have been swept by police. When Los Angeles adopted a law that criminalized resting and storing property in the public right of way, nearly 39% of people returned to their encampment.
- When people do relocate, they move to search for work, be near family, or for other reasons unrelated to the amount or quality of services in the area. The constitutional right to travel permits

	citizens to travel from state to state and establish residency in a new state.
<p>Fines and jail time are unlikely to change behavior – and can have catastrophic consequences.</p>	<ul style="list-style-type: none"> • Criminalization ordinances <u>do not reduce homelessness or address the root causes</u> of homelessness, including <u>unaffordable housing</u>. • When fines are left unpaid, the consequences can snowball. Consequences for non-payment can include <u>additional financial penalties, probation revocation, arrest warrants, losing your driver’s license, jail time, and not being able to seal or expunge your record</u>.
<p>Even a single night in jail can make exiting homelessness more challenging.</p>	<ul style="list-style-type: none"> • Even one day in jail <u>increases the likelihood of re-arrest</u>. This is because spending a night or two in jail can lead to consequences like missing work or losing a shelter spot. • Misdemeanors can show on background checks, which can <u>limit housing options after release</u>.

Next steps for responding to Grants Pass v. Johnson

Communities have many tools at their disposal to prevent criminalization and mitigate its impacts. Below are suggestions for ways homelessness response systems can start acting today.

Internal action steps for homelessness response systems

- Develop clear governance policies and consensus decision-making processes that outline how Continuums of Care (CoCs) can advocate against criminalization with a unified voice.**
 - New law proposals may advance quickly. Having these policies in place before a law is introduced can help you respond in time.
 - You may be uncertain about CoCs’ ability to participate in advocacy about the criminalization of homelessness. The limits of what is allowed will differ by how each CoC member organization files taxes and staffs their advocacy work, as well as state lobbying laws. Each member organization should discuss these with legal counsel when possible.

- Educating elected officials about homelessness – such as by inviting them to visit successful programs and meet with people with lived experience – can be different from lobbying.
- The [Bolder Advocacy](#) project can be useful for understanding the limits of lobbying.

Host a CoC-wide workshop about criminalization of homelessness that includes the Lived Experience Advisory Board (LEAB).

- A workshop can help you understand how the ruling impacts providers and people with lived experience and whether members want to actively engage in advocacy.
- Facilitate discussion and set a goal to emerge with a clear next step from the conversation.
- Work with the LEAB to ensure the voices of people living in encampments and people with criminal records are represented in conversations and decision-making.

Establish non-carceral, voluntary shelter and interim housing options.

- Shelter and interim housing should not be the only alternative to a fine or jail time. Instead, these resources should be person-centered and non-carceral in design and implementation.
- Shelter and interim housing should limit background checks. If they are required by the funding source, programs should develop tailored screening that assess individuals for program fit (rather than use third party screenings) and limit denials as much as possible.

Connect with legal services providers to meet the needs of people facing criminalization.

- Public Defender Offices can leverage connections to homeless services as mitigation when contesting misdemeanors. This webinar on [Pre-Conviction Housing Preservation](#) explains how.
- If someone is accused of a violation that doesn't result in a misdemeanor, the Public Defender may not have the capacity or funding to represent them. Connect such people to the [Participatory Defense Movement](#), which has local chapters that focus on empowering people and their families to advocate for themselves in the criminal system.
- The Supreme Court talked about the right of people accused of public camping or sleeping outside to use the “necessity defense” in court. The legal requirements of this defense may vary by state. Talk with the Public Defender or other legal organizations about whether they can provide trainings or resources for people experiencing unsheltered homelessness to better understand how and when to assert this defense.
- Other legal services providers can support individuals experiencing homelessness with clearing criminal records, eliminating driver's license holds, or representing people in impact litigation that

further challenges criminalization laws under other legal routes like “excessive fines” or the Americans with Disabilities Act.

External steps homelessness responses systems can take in their communities

Collaborate with existing advocacy groups on combatting local criminalization efforts.

- Consider your ability to advocate in your different roles in a community – as a member of the public, member of a homeless services organizations, a local government staff member, CoC representative, person with lived experience, etc.
- Look to strong networks of local agencies working to limit mass incarceration, including re-entry coalitions, criminal legal reform groups, and organizations committed to racial equity.
- National groups with tools and/or strategies to leverage include [Housing Not Handcuffs](#), [Fines & Fees Justice Center \(FFJC\)](#), and the [National Low Income Housing Coalition](#).

Advocate for policies that protect the safety and dignity of individuals experiencing unsheltered homelessness.

- Consider using the [Gloria-Johnson Act](#) as a template for legislation.
- Equity Agenda has developed a useful toolkit on [How to Advocate at the Local Level](#). NAEH’s [How to Advocate to Your Lawmaker Toolkit](#) can also be a good place to start.
- Encourage local government to join the next cohort of FFJC’s [Cities and Counties for Fine and Fee Justice](#) to better understand how to reduce the burdens of fines and fees.

Work with Public Housing Authorities (PHAs) to limit barriers to program access for people with criminal records.

- PHAs can use their discretion to provide [Housing Choice Vouchers](#) to a broad set of people with criminal records.
- While the comment period for [HUD’s Notice of Proposed Rulemaking](#) on this topic has closed, the policy proposals, with [some modifications](#), can help PHAs address an increase in applicants with arrest records and police involvement due to sleeping or camping outside.

Coordinate with advocacy groups and other allies on a compelling, coordinated, and locally tailored narrative for change.

- Like the considerations above, there are well documented reasons that criminalization is not an effective strategy for ending homelessness. Getting local allies on the same page about those reasons is an essential component of combatting the criminalization narrative.
- Many national and state-level organizations have resources for developing a narrative for change, including [Housing Narrative Lab](#), [PolicyLink Housing Justice Narrative Toolkit](#), [The California Dream](#), [Housing Justice Project](#), [Opportunity Agenda](#), and [Narrative Initiative](#).

Minimize interactions between law enforcement and individuals experiencing homelessness.

- Establish an alternative response unit to divert mental health crisis calls and low-level 911 calls from police to trained response teams. [CAHOOTS](#) in Eugene OR [diverts about 5-8% of 911 calls](#) from police. The [STAR](#) team in Denver has been shown to be [more cost-effective than police and reduce crime](#).
- Host cross training opportunities between street outreach teams and police on beats where there are encampments. This can include establishing a CoC point of contact for police to contact when they encounter unsheltered people in violation of ordinances.

Work with local encampment residents to assess their needs prior to sweeps.

- If an encampment sweep will move forward, work with encampment residents and leadership to prepare. For example, identify a plan for how residents can be bailed out of jail if they are arrested and who can take care of pets and property in the meantime.
- Work with the government agency to create “bag and tag” policies that ensure encampment residents can be reunited with their items after a sweep. Support residents with retrieving their items after a sweep (e.g., offer transportation to the storage location).

Interested in working with Homebase’s Criminal Legal System Initiative to act following the *Grants Pass* case? Get in touch today.

- Visit our [website](#) for additional resources.
- Contact us for a free consultation at clsi@homebaseccc.org.
- Sign up for our [newsletter](#)!