

# HOW TO BE HOMELESS: AN ASSESSMENT OF THE POLICIES THAT SHAPE AMERICA’S HOMELESSNESS LAW

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\* J.D. candidate, Belmont University College of Law, 2023; B.S., Austin Peay State University, 2020. I want to first thank God for His love and provision in my life, for it is Jesus’ command in John 15:12 to “Love one another as I have loved you” that this Note was inspired. I want to also thank my husband, family, and friends for their encouragement and support during my academic career. Finally, I would like to thank and recognize Professor Maximiliano Gluzman for his guidance with this Note, Professor Kristi Arth for her instruction in developing my legal writing, and the editors of Belmont Law Review for their advice and feedback.

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## INTRODUCTION

Most readers will likely analyze this material from the comfort of their own home, office, or workspace—sheltered spaces. However, there is an ever-increasing segment of the United States’ population that does not have access to a sheltered space, an issue the legal community has sought to address in various ways. This Note engages in an overarching policy assessment of the issues and attitudes surrounding the American homeless community, and provides suggestions for how lawmakers can work toward addressing community concerns in a way that aids the homeless population. After assessing homelessness policymaking, this Note proposes that lawmakers craft a combined approach that establishes uniformity within funding and counting, along with community involvement and government-provided housing to serve this underrepresented population and satisfy societal concerns.

To support that proposal, this Note begins in Section I by first describing essential background information. This section defines the term “homeless” and explores how that group is viewed through the lens of both the federal and various state governments’ agencies. Subsequently, the causes of homelessness are outlined, which include healthcare-related sources and the criminal justice system. This section also highlights a difference in resources for rural communities in addressing the needs of the homeless population. Thereafter, this section notes varying community concerns regarding homeless encampments and the homeless population. These concerns are: (i) crime rates, (ii) illegitimate uses of public community space, and (iii) remaining concerns of business viability and community expenditures. Finally, this section gives an explanation of American homelessness rates.

The discussion then advances to an analysis of current legislative approaches regarding solutions for the homeless community and surrounding societal concerns. Two ideological approaches appear throughout these current solutions. They are: (i) policies based on assisting the homeless and, in turn, addresses community concerns by reducing the homeless population through rehabilitation; and (ii) policies based on addressing solely the concerns of the community rather than the needs of the homeless and, in turn, do not solve the root of the concerns by reducing homelessness. This note substantively examines each of these approaches.

Lastly, Section II proposes legislative solutions in light of the factors discussed throughout this Note. There, this note recommends that the legal community and namely, legislatures, should shift the ideological approach toward solutions that address the needs of the homeless community rather

than toward focusing on short-term solutions that address public concerns but do little to assist the homeless. Recommended solutions outlined in this Section are: (A) Establishing a Uniform Definition of Homelessness, (B) Restructuring Point-In-Time Counts, (C) Seeking Community Engagement, and (D) Implementing Housing First.

## I. BACKGROUND

### A. Defining the Term “Homeless”

Before assessing homelessness in America, it is imperative to first define what situations are categorized under the broad term of being “homeless.” On the surface, “homeless” may appear to be a self-defining term. The prefix “home” is a term that most people typically have a similar view of, whether it mean an apartment, a single-family house, or something related.<sup>1</sup> The suffix “less” connotes being in “destitute of” or “not having.”<sup>2</sup> However, deeper consideration opens the door to a new set of inquiries which make it much more difficult to give the term “homeless” a concrete classification. For instance, how long does one have to be without a home for them to be deemed homeless? Or, what if one does not own a home of their own, but lives with other people? Are they homeless in that circumstance, by definition? Lastly, what factors go into making a structure a home? Must a nurturing environment come into play, involving things such as “home-cooking,” or is shelter simply the only requirement?<sup>3</sup> Is a home based more around the morals found in the ideals of home life, and less in the actual shelter of a house?<sup>4</sup>

Without reaching too far into the realms of family law or philosophy, there are numerous definitions for “homeless” used in the U.S. for legal purposes. Many of these definitions encompass various differing situations, as homelessness reaches a vast array of individuals and is not a “one-size-fits-all” scenario. The U.S. Code first defines a “homeless person” broadly as “an individual or family who lacks a fixed, regular, and adequate nighttime residence.”<sup>5</sup> The definition includes individuals who have a “primary nighttime residence that is a . . . place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park,

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1. *Home*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/home> [<https://perma.cc/5LVC-VL BX>] (last visited Nov. 10, 2022).

2. *Less*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/less> [<https://perma.cc/EZW7-WSUY>] (last visited Nov. 10, 2022).

3. *What do you think of when you think of home?*, FRIENDS OF THE HOMELESS OF THE SOUTH SHORE, <https://friendsofhomeless.org/think-think-home/> [<https://perma.cc/C3D4-FDB9>] (last visited Nov. 10, 2022).

4. PERMANENT SUPPORTIVE HOUSING: EVALUATING THE EVIDENCE FOR IMPROVING HEALTH OUTCOMES AMONG PEOPLE EXPERIENCING CHRONIC HOMELESSNESS 175 (The Nat’l Academies Press, 2018).

5. 42 U.S.C. § 11302(a)(1).

abandoned building, bus . . . .”<sup>6</sup> The federal government’s definition also includes those individuals living in shelters or fleeing from domestic violence.<sup>7</sup>

The U.S. Department of Housing and Urban Development’s (hereinafter “HUD”) definition of homelessness closely follows the language of 42 U.S.C. § 11302.<sup>8</sup> In fact, parts of the definition appear to be taken verbatim from 42 U.S.C. § 11302, including the portion that qualifies someone as homeless when they “lack a fixed, regular, and adequate nighttime residence, meaning: (i) Has a primary nighttime residence that is a public or private place not meant for human habitation . . . .”<sup>9</sup> However, HUD organizes the definition of homelessness into four categories: (1) “Literally Homeless;” (2) “Imminent Risk of Homeless;” (3) “Homeless Under other Federal Statutes;” and (4) “Fleeing/Attempting to Flee [Domestic Violence].”<sup>10</sup> Whereas, 42 U.S.C. § 11302 does not.<sup>11</sup> Similar to 42 U.S.C. § 11302, HUD’s definition also includes individuals living in shelters or fleeing from domestic violence.<sup>12</sup>

In addition to federal definitions, many states codified their own definitions of “homeless.” For example, Minnesota defines the term as “an individual who lacks a fixed, regular, and adequate nighttime residence; and [ ] an individual who has a primary nighttime residence that is [ ] a supervised . . . shelter or dwelling designed to provide temporary living accommodations; [ ] an institution that provides a temporary residence for individuals intended to be institutionalized; or [ ] a public or private place not designed for . . . a regular sleeping accommodation for humans.”<sup>13</sup> Utah’s legal definition of a homeless person is “an individual whose primary nighttime residence is: [ ] a public or private place not designated for or ordinarily used as a regular sleeping accommodation . . . including a car, park, abandoned building, bus station, train station, airport, or camping ground; or [ ] a publicly or privately operated shelter . . . .”<sup>14</sup>

Clearly, these definitions fall closely in line with the federally-defined term of “homeless.” Similar themes of “nighttime residence” and “temporary” living situations in places not made for human beings are found in state statutes as well as the federal definition. In some circumstances even,

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6. *Id.* § 11302(a)(2).

7. *Id.* §§ 11302(a)(3), (b).

8. HOMELESS DEFINITION, U.S. DEP’T OF HOUS. AND URB. DEV., [https://files.hudexchange.info/resources/documents/HomelessDefinition\\_RecordkeepingRequirementsandCriteria.pdf](https://files.hudexchange.info/resources/documents/HomelessDefinition_RecordkeepingRequirementsandCriteria.pdf) [<https://perma.cc/3WTE-U7EM>] (last visited Nov. 10, 2022).

9. *Id.*; *see also* 42 U.S.C. § 11302.

10. HOMELESS DEFINITION, *supra* note 8.

11. 42 U.S.C. § 11302.

12. HOMELESS DEFINITION, *supra* note 8; *see also* 42 U.S.C. § 11302.

13. MINN. STAT. § 116L.361 (2022).

14. UTAH CODE ANN. § 35A-5-302.

states choose to defer directly to the federally-defined term rather than restate it in a similar way.<sup>15</sup>

Additionally, various federal government agencies have either adhered to or varied from the 42 U.S.C. § 11302 definition. For example, in order to provide services to a larger span of homeless students, the Department of Education uses a definition that is wider in scope than the HUD's definition.<sup>16</sup> Similarly, the Social Security Administration defines a homeless individual broadly, as "one who is not in the custody of any public institution and has no currently usable place to live" for the purposes of determining benefits.<sup>17</sup> Yet, the federal Social Security Income/Social Security Disability Insurance Outreach, Access, and Recovery Program defers directly to the HUD's definition of homelessness.<sup>18</sup>

For the purpose of this Note, it is important to standardize the homeless definition. Because this Note discusses homelessness throughout the United States, using specific state statutory definitions would not accurately depict the widespread nature of homelessness across the country. Additionally, the data used to assess homelessness depicted throughout this Note largely relies upon reports from HUD.<sup>19</sup> Therefore, this Note will defer to the federal definitions found in 42 U.S.C. § 11302 and HUD's four categories of definitions.<sup>20</sup> However, as noted, common themes from state statutes defining homelessness are found in the federal definitions and will be referenced throughout this Note.

## B. Causes of Homelessness

Homelessness in America dates back to the 1700s and early 1800s.<sup>21</sup> Though, it was not until shortly after the Civil War that it became a national

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15. FLA. STAT. § 420.621 (Stating, "An individual or family who lacks a fixed, regular, and adequate nighttime residence as defined under "homeless" in 24 C.F.R. s. 578.3."); *see also* S.C. CODE ANN. § 31-22-20(2) (using the HUD definition for purposes of defining homelessness); WIS. STAT. § 46.28 (2022) (stating that "Homeless individual" has the meaning given in 42 U.S.C. 11302 (a)").

16. PERMANENT SUPPORTIVE HOUSING: EVALUATING THE EVIDENCE FOR IMPROVING HEALTH OUTCOMES AMONG PEOPLE EXPERIENCING CHRONIC HOMELESSNESS, *supra* note 4, at 19–20.

17. 20 C.F.R. § 416.201 (2007).

18. SAMHSA SOAR TA Ctr., *Definitions of Homelessness*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., <https://soarworks.samhsa.gov/article/definitions-homelessness> [https://perma.cc/57E6-88M9] (last visited Nov. 10, 2022) (SOAR is a "program designed to increase access to Social Security Administration (SSA) disability benefits for eligible individuals who are experiencing or at risk of homelessness and have a mental illness, medical impairment, and/or a co-occurring substance use disorder.").

19. *See* discussion *infra* Section I, Part E.

20. 42 U.S.C. § 11302; *see also* HOMELESS DEFINITION, *supra* note 8.

21. PERMANENT SUPPORTIVE HOUSING: EVALUATING THE EVIDENCE FOR IMPROVING HEALTH OUTCOMES AMONG PEOPLE EXPERIENCING CHRONIC HOMELESSNESS, *supra* note 4, at 175; *see also* Johnathan Hafetz, *Homeless Legal Advocacy: New Challenges and Directions*

issue and the term “homeless” was coined.<sup>22</sup> From the Great Depression into the 1960s, poor living conditions combined with mental illness plagued cities in America.<sup>23</sup>

The beginning of modern-day homelessness occurred in the late twentieth century, rooted primarily in both structural changes within the economy and housing unavailability.<sup>24</sup> As affordable housing decreased and a devaluation of minimum wage occurred, the lack of options for individuals and families became increasingly evident.<sup>25</sup> Today, homelessness is an issue with roots in many different areas of our society.

Perhaps one of the largest sources of homelessness is healthcare-related difficulties. In 2020, nearly 20% of the homeless population in the U.S. experienced chronic homelessness.<sup>26</sup> The roots of chronic homelessness in the healthcare system are vast, being characterized partially by “. . . the presence of a disabling condition (mental or physical) . . .” The HUD’s 2018 Annual Homeless Assessment Report to Congress (hereinafter “AHAR”) stated that over half of the individuals in adult-only shelters reported having a disability.<sup>27</sup>

Additionally, chronic homelessness reaches the realms of mental illness and substance abuse.<sup>28</sup> Researchers estimate that 30% of the chronic homeless population experience a serious mental illness, such as depression or schizophrenia.<sup>29</sup> Lastly, alcohol and drug abuse is a common cause of death in the homeless community, with the Substance Abuse and Mental

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*For the Future*, 30 *FORDHAM URB. L. J.* 1215, 1217 (2003); Alan Bloom, *Toward a History of Homelessness*, 31 *J. OF URB. HIST.* 907, 909 (2005).

22. PERMANENT SUPPORTIVE HOUSING: EVALUATING THE EVIDENCE FOR IMPROVING HEALTH OUTCOMES AMONG PEOPLE EXPERIENCING CHRONIC HOMELESSNESS, *supra* note 4, at 175.

23. Hafetz, *supra* note 21, at 1217.

24. *Id.* at 1224–25.

25. *Id.*

26. HUD Releases 2020 Annual Homeless Assessment Report Part 1, U.S. DEP’T OF HOUS. AND URB. DEV. (March 18, 2021), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/hud\\_no\\_21\\_041](https://www.hud.gov/press/press_releases_media_advisories/hud_no_21_041) [<https://perma.cc/86G9-XCY9>] (last visited Nov. 24, 2022).

27. THE 2018 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS: PART 2, at A-8 (U.S. DEP’T OF HOUS. AND URB. DEV. 2018), [<https://perma.cc/7FRU-WYUJ>] (last visited Nov. 10, 2022).

28. *Chronic Homelessness: Causes and Solutions*, VOLUNTEERS OF AMERICA (Feb 18, 2018), [<https://perma.cc/Q2X6-NHNE>] (last visited Nov. 10, 2022); *see also* ANDRÉE TREMOULET, ET AL., HOMELESS ENCAMPMENTS ON PUBLIC RIGHT-OF-WAY 4 (Portland State Univ. 2012), [<https://perma.cc/5WS8-42S3>] (last visited Nov. 10, 2022); PERMANENT SUPPORTIVE HOUSING: EVALUATING THE EVIDENCE FOR IMPROVING HEALTH OUTCOMES AMONG PEOPLE EXPERIENCING CHRONIC HOMELESSNESS, *supra* note 4, at 25; THE 2018 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS: PART 2, *supra* note 27, at B-3.

29. PERMANENT SUPPORTIVE HOUSING: EVALUATING THE EVIDENCE FOR IMPROVING HEALTH OUTCOMES AMONG PEOPLE EXPERIENCING CHRONIC HOMELESSNESS, *supra* note 4, at 25.

Health Services Administration estimating 38% of homeless people as being dependent on alcohol and 26% abusing other drugs.<sup>30</sup>

The problem of veteran homelessness in America often arises from these causes.<sup>31</sup> A lack of available resources for rehabilitating into civilian society, combined with the previously mentioned conditions of disability, mental health issues, and potential substance abuse as coping mechanisms, drives these individuals into homelessness.<sup>32</sup> Additionally, many mentally ill individuals become homeless when integrating back into society from being institutionalized.<sup>33</sup> This is largely attributed to a lack of resources for dealing with the change between care given at healthcare facilities and the independency of living on their own.<sup>34</sup>

By contrast, short-term homelessness has different triggers within the healthcare system, particularly the burdensome cost of medical emergencies.<sup>35</sup> As many individuals and families are forced to deal with the financial implications of healthcare crises, those unexpected costs can drive them into falling behind on payments and bills.<sup>36</sup> Many studies show the implications of medical debt associated with homelessness.<sup>37</sup> One study in Seattle found strong correlations between individuals experiencing short-term homelessness and simultaneous medical debt.<sup>38</sup> Over half of the sample size experienced such debt, and almost 75% of those individuals were undergoing collections from the debt.<sup>39</sup>

Additional challenges of the healthcare crisis itself add to the struggle of paying for the necessities of life. For example, not being able to work full time, or at all, due to a broken bone or other disability drives the individual even further into short-term homelessness.<sup>40</sup> As expected, this results in home foreclosures and bankruptcies.<sup>41</sup> Often, these individuals are left with little options other than short-term homelessness to deal with the financial struggles for a limited time.<sup>42</sup>

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30. *Id.* at 28; *see also* SUBSTANCE ABUSE AND HOMELESSNESS (Nat'l Coal. for the Homeless, 2017), <https://nationalhomeless.org/wp-content/uploads/2017/06/Substance-Abuse-and-Homelessness.pdf> (last visited Jan. 20, 2022).

31. TREMOULET ET AL., *supra* note 28, at 3.

32. *Id.*

33. Hafetz, *supra* note 21, at 1230.

34. *Id.*

35. TREMOULET ET AL., *supra* note 28, at 3.

36. *Id.*; *see also* Jessica E. Bielenberg et al., *Presence of Any Medical Debt Associated With Two Additional Years of Homelessness in a Seattle Sample*, 57 J. OF HEALTH CARE ORG., PROVISION, AND FIN., 1, 1 (2020).

37. Bielenberg et al., *supra* note 36, at 4–6.

38. *Id.* at 4.

39. *Id.*

40. Melody Finnemore, *The Changing Face of Homelessness*, OREGON STATE BAR (June 2013), <https://www.osbar.org/publications/bulletin/13jun/homelessness.html> [<https://perma.cc/EL8Y-ZJK2>] (last visited Nov. 10, 2022).

41. Bielenberg et al., *supra* note 36, at 6.

42. TREMOULET ET AL., *supra* note 28, at 3.

Another source of homelessness in America is the lack of available resources to support previously incarcerated individuals seeking to rehabilitate into society.<sup>43</sup> The U.S. Interagency Council on Homelessness (hereinafter “USICH”) estimates that 48,000 people enter shelters each year almost directly after leaving prison or the jail system.<sup>44</sup> Additionally, of the 11 million incarcerated individuals in the U.S. each year, 15% report being homeless.<sup>45</sup> Thus, the criminal justice system has been found to be responsible for sending previously incarcerated individuals back into society without services to help them plan for life outside of prison.<sup>46</sup> The lack of resources, in addition to the disadvantage the individual often faces in receiving a job and housing when having a prior conviction on his record, contributes to the increased rates of homelessness among this class of society.<sup>47</sup>

### C. Rural Homelessness: A Resource Issue

Homeless communities in rural areas often face different challenges than those in urban areas.<sup>48</sup> Research shows that rural areas tend to have more isolated cases of homelessness, whereas urban areas enable both larger encampments and more opportunities for shelters under city infrastructure and resources.<sup>49</sup> Often, smaller towns do not have the resources and means to house the homeless in shelters, whereas populated cities have better access to nonprofits and other organizations supporting the homeless community.<sup>50</sup>

An example of this is demonstrated in the rural town of Medford, Oregon, which is required to post notices that give the homeless in encampments both the opportunity to seek shelter somewhere else and the names of available shelters.<sup>51</sup> But, these notices are almost never posted.<sup>52</sup> The homeless community does not have the opportunity and access to the resources they need.<sup>53</sup> Additionally, Medford does not have shelters that allow for individuals under the age of eighteen years old to stay, unaccompanied by an adult.<sup>54</sup> This lack of availability causes a gap in the

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43. *Id.* at 5.

44. *Reduce Criminal Justice Involvement*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (Oct. 16, 2019), <https://www.usich.gov/solutions/criminal-justice/> [<https://perma.cc/M3WQ-J48Q>] (last visited Nov. 10, 2022).

45. *Id.*

46. Hafetz, *supra* note 21, at 1229.

47. *Id.*

48. *People Experiencing Homelessness*, RURAL HEALTH INFORMATION HUB, <https://www.ruralhealthinfo.org/toolkits/services-integration/1/high-needs-populations/homeless> [<https://perma.cc/Y8UT-FJY6>] (last visited Nov. 10, 2022).

49. TREMOULET ET AL., *supra* note 28, at 9.

50. *People Experiencing Homelessness*, *supra* note 48.

51. Finnemore, *supra* note 40.

52. *Id.*

53. *Id.*

54. *Id.*



resources available to the sector of the homeless population comprising minors.<sup>55</sup>

Likewise, there is also a deficiency of money and support for the homeless communities in rural areas.<sup>56</sup> Adding to the gap in resources, one expert asserts that “many elected officials in rural areas are not aware there are homeless people in their communities.”<sup>57</sup> It is not difficult to see a causal link between an absence of resources available and a lack of awareness in policymakers advocating for those resources.

Perhaps as a result, there is a growing number of homeless persons in rural communities.<sup>58</sup> According to data compiled by HUD and the U.S. census bureau in 2017, 27% of U.S. households were described as urban, 52% of U.S. households were described as suburban, and 21% were described as rural.<sup>59</sup> Correspondingly, a large number of the homeless community is not found in the urban parts of America, but rather in the rural and suburban areas. HUD’s 2019 annual report detailed that over 41% of the homeless population were in rural or suburban zones.<sup>60</sup> This percentage remained largely the same for the HUD’s 2020 annual report, with only a 0.01% decrease.<sup>61</sup> Additionally, homelessness among youth and student-aged individuals in rural areas has grown in recent years, with an 11% increase between the 2013–14 and 2016–17 school years.<sup>62</sup>

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55. *Id.*

56. Mary Meehan, *Unsheltered and Uncounted: Rural America’s Hidden Homeless*, NPR (July 4, 2019), <https://www.npr.org/sections/health-shots/2019/07/04/736240349/in-rural-areas-homeless-people-are-harder-to-find-and-to-help> [<https://perma.cc/VUP4-YQ5Q>] (last visited Nov. 10, 2022).

57. *Id.*

58. *Id.*

59. *Urban. Suburban. Rural. How Do Households Describe Where They Live?*, HUD USER (Aug. 3, 2020), <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-080320.html> [<https://perma.cc/V493-QMZ4>] (last visited Nov. 10, 2022).

60. THE 2019 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS: PART 1, at 16 (U.S. DEP’T OF HOUS. AND URB. DEV. 2019), [<https://perma.cc/GX4D-VDQN>] (last visited Nov. 10, 2022) (describing rural as areas more than 10 miles from an urban center, or classified as rural by the U.S. Census and describing suburban as within 10 miles of a principal city or urban cluster).

61. THE 2020 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS: PART 1, at 14 (U.S. DEP’T OF HOUS. AND URB. DEV. 2020), [<https://perma.cc/DH2Z-XNSW>] (last visited Nov. 10, 2022); *see also* THE 2021 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS: PART 1, at ii, 12 (U.S. DEP’T OF HOUS. AND URB. DEV. 2021), [<https://perma.cc/GH4J-3XKE>] (last visited Nov. 10, 2022) (Showing that 40.8% of the sheltered homeless population were in rural or suburban areas. The 2021 AHAR does not describe geographic statistics encompassing both sheltered and unsheltered individuals, as the 2019 and 2020 reports do, noting that “Because of pandemic-related disruptions to counts of unsheltered homeless people in January 2021, these findings focus on people experiencing sheltered homelessness.”).

62. Meehan, *supra* note 56.

## D. Community Concerns Surrounding the Homeless Population

### 1. Crime Rates

Homeless population growth heightens community concerns surrounding this people group. Research indicates that there is a correlation between rising crime rates in homeless encampments and surrounding communities.<sup>63</sup> For example, the Los Angeles Police Department indicates strong parallels between the homeless community in Los Angeles and rising crime.<sup>64</sup> This data found that between 2017 and 2018, there was an increase of roughly 1,600 homeless individuals as suspects of Part I crimes (categorized as violent crimes and property crimes).<sup>65</sup> Additionally, there was an increase of around 1,200 homeless individuals involved as a victim in Part I crimes in 2018 from 2017.<sup>66</sup>

However, it is important to realize that the correlation between crime and homeless encampments is dependent on two factors that vary significantly across the United States. These factors are: (1) variances in the acts that are considered crimes in the community, and (2) variances in how data is gathered.

#### a. Variances in the Acts that are Considered Crimes

First, each jurisdiction has different standards as to what constitutes a crime. For instance, in some cities and states, camping prohibitions have become prevalent as a means to reduce homelessness.<sup>67</sup> Therefore, camping on public property is a punishable felony or misdemeanor offense, depending on the jurisdiction.<sup>68</sup> However, such property violations are arguably not serious offenses, but rather a means for policymakers to infiltrate preconceived stigmas about the homeless population into the criminal justice system, keeping the presence of the homeless away from society.<sup>69</sup> As one source suggests, “. . . homeless people are not arrested because they present

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63. SHARON CHAMARD, HOMELESS ENCAMPMENTS, at 8–9 (CTR. FOR PROBLEM-ORIENTED POLICING, INC. 2010), [https://perma.cc/F9JH-78CB] (last visited Nov. 10, 2022).

64. DOMINIC H. CHOI, THE LOS ANGELES POLICE DEPARTMENT’S 2018 4TH QUARTER REPORT ON HOMELESSNESS, at 2 (L.A. POLICE DEP’T 2019), [https://perma.cc/Y8E9-U8F7] (last visited Nov. 10, 2022).

65. *Id.*

66. *Id.*

67. See discussion *infra* Section I, Part F.

68. See discussion *infra* Section I, Part F; see also TENN. CODE ANN. § 39-14-414(d) (2021) (making it a Class E felony to camp on state-owned property); Juan Pablo Garnham, *As Austin voters weigh camping ban proposition, Texas lawmakers consider bills to prohibit homeless encampments statewide*, THE TEX. TRIBUNE (April 27, 2021), https://www.texastribune.org/2021/04/27/texas-homeless-camping-ban/ [https://perma.cc/ZH9E-TUPD] (last visited Nov. 10, 2022) (proposed bill would make camping a Class C misdemeanor).

69. Kevin M. Fitzpatrick & Brad Myrstol, *The Jailing of America’s Homeless: Evaluating the Rabble Management Thesis* 57(2) CRIME & DELINQ. 271, 272–73 (2011).

a risk to public safety, but rather because the social stigma around homelessness makes them ‘offensive.’”<sup>70</sup> Notably, most of the crimes being committed by the homeless are lower level, non-violent threats.<sup>71</sup> To this point, it is important to consider whether the rising crime rates associated with the homeless community accurately depict a true offense, or rather if they depict a rising level of criminalization of the homeless community. Nonetheless, a community that has more statutes criminalizing activities that impact the homeless community, such as camping bans, will likely have higher crime rates involving homeless individuals.

Yet, the news and media continually flood society with headlines amplifying the issue of the homeless and crime. One local news article covering the aforementioned Los Angeles Police Department report is headlined “Crime Rate Among Homeless Skyrockets in Los Angeles”.<sup>72</sup> This article goes on to detail the change in Part I crime involving the homeless from 2017 to 2018, finding a 52% increase in cases involving at least one homeless person.<sup>73</sup> However, that article fails to mention that the data includes crimes to which homeless individuals were *victims*, rather than perpetrators.<sup>74</sup> Homeless communities remain the subject of serious, violent crimes themselves—not just acts being committed by the homeless.<sup>75</sup>

#### b. Variances in How Data is Gathered

Secondly, there are significant variations in data calculations surrounding the homeless community’s involvement in crime. While it is undisputed that there is a correlation between crime and the homeless, great variances in data make it difficult to classify just how prevalent crime really is in the homeless community. As will be discussed in more detail in subsequent sections, the disparity of data in calculating the number of homeless in the U.S. makes it difficult to pinpoint a precise percentage of the homeless that are involved in the criminal justice system.<sup>76</sup> While the prevailing data source from HUD’s point-in-time (hereinafter PIT) counts estimate there to be 580,466 homeless individuals in the United States, data from the National Center for Homeless Education found there to be over 1.5

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70. CHRISTOPHER MAYER & JESSICA REICHERT, *THE INTERSECTION OF HOMELESSNESS AND THE CRIMINAL JUSTICE SYSTEM*, at 7 (ILL. CRIM. JUST. INFO. AUTH. CTR. FOR JUST. RSCH. AND EVALUATION 2018), [<https://perma.cc/HMU2-PRG3>] (last visited Nov. 10, 2022).

71. CHAMARD, *supra* note 63, at 8; *see also* Fitzpatrick & Myrstol, *supra* note 69, at 273.

72. Kate Cagle, *Crime Rates Among Homeless Skyrockets in Los Angeles*, SPECTRUM NEWS 1 (May 7, 2019), [<https://spectrumnews1.com/ca/la-west/news/2019/05/07/crime-among-the-homeless-explodes-in-los-angeles>] [<https://perma.cc/S7CM-XGRD>] (last visited Nov. 10, 2022).

73. *Id.*

74. *Id.*; *see also* CHOI, *supra* note 64, at 2 (defining a “homeless involved” as a crime where a homeless suspect, a homeless victim, or both are involved”).

75. CHAMARD, *supra* note 63, at 7.

76. *See* discussion *infra* Section II, Part B.

million homeless *students* alone during the 2017-2018 school year.<sup>77</sup> Other sources have estimated the total number of the homeless population to be as many as 3 million individuals in the U.S.<sup>78</sup> Clearly, variations in data calculations are vast.

This is no small issue when looking at incarceration rates. Due to these variations of the overall number of the homeless population, rates of arrest and incarceration range from 20% to nearly 70% among this homeless population, depending on what data source is being used.<sup>79</sup> Certainly this is to be expected, as individuals identified as homeless upon arrest will be calculated to be a higher percentage of the overall homeless population if HUD's calculations are used. Whereas, if a larger sample size of an estimated 3 million total homeless in the United States is used, then the resulting percentage of homeless involved in the criminal justice system will be much lower.

Having uncertain data and sample size variation creates issues with public opinion regarding the level of homelessness and crime. Additionally, the HUD reports, which are largely used as the governing data surrounding homelessness, do not include data tailored to the homeless community's association with the criminal justice system. Therefore, there is not a universal data set to use in making inferences about this correlation.

## 2. *Illegitimate Uses of Public Community Space*

Another community concern is the illegitimate use of public space.<sup>80</sup> Such uses stem from statutorily-created legitimate uses. For example, the Tennessee Department of Environment and Conservation designates camping in Tennessee State Parks for only certain areas.<sup>81</sup> Similarly, North Carolina Administrative Code prohibits camping in state parks except in designated areas and with a permit.<sup>82</sup> Therefore, it can be inferred that violations of codes such as these constitute illegitimate public uses.

However, illegitimate uses flow largely from societal perceptions of how public spaces should be used.<sup>83</sup> Patterns in society indicate certain ways in which public spaces, like parks, are to be used and what activities are

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77. THE 2020 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS: PART I, *supra* note 61, at 6; *see* Educ. For Homeless Child. And Youth, FEDERAL DATA SUMMARY SCHOOL YEARS 2015-16 THROUGH 2017-18 8 (NAT'L CTR. FOR HOMELESS EDUC. 2020), [<https://perma.cc/L3Z5-QFVH>] (last visited Nov. 10, 2022).

78. Fitzpatrick & Myrstol, *supra* note 69, at 282.

79. *Id.* at 276.

80. CHAMARD, *supra* note 63, at 10.

81. TENN. COMP. R. & REGS. 0400-02-02-.05 (2021).

82. 7 N.C. ADMIN. CODE 13B.0602 (2021).

83. *See* Julien P. Doucette-Préville, *The Challenge of Homelessness to Spatial Practices*, 8 OIDA INT'L J. SUSTAINABLE DEV. 111, 111 (2015).

acceptable for those areas.<sup>84</sup> For instance, it would be unacceptable and an illegitimate use to bathe at a public theatre or to eat in a public restroom, although one might be hard pressed to find specific statutes addressing such activity.<sup>85</sup>

For many individuals, the homeless community is seen as illegitimate users of public areas like parks, sidewalks, benches, and picnic areas.<sup>86</sup> The homeless often congregate around those areas for the purposes of sleeping and shelter, or for the use of restrooms available at public parks.<sup>87</sup> However, community concerns have increasingly developed with this use, finding that legitimate users of these parks, restrooms, benches, and other public areas are deterred from doing so because of the presence of the homeless community.<sup>88</sup> This societal problem has prompted some suggestions that the general public is penalized when the homeless community makes use of public spaces. In a more extreme viewpoint, some feel as though the only legitimate users are those “paying citizens,” i.e. taxpayers.<sup>89</sup> Some communities have given those views merit by removing shelters at parks, benches, and other attractions to homeless people.<sup>90</sup> Other communities have, once again, resorted to the criminal justice system to prevent the homeless from occupying these areas.<sup>91</sup>

### 3. *Remaining Concerns of Business Viability and Community Expenditures*

In addition to concerns of criminal activity and illegitimate use, homeless encampments pose other important community concerns. The proximity of tent cities to businesses can have a negative impact upon those establishments.<sup>92</sup> Surrounding areas in direct proximity to homeless encampments are indicated to be more susceptible to serious crimes.<sup>93</sup> These concerns arise from the homeless population’s presence being used to “scare away” customers due to their panhandling, and in some more extreme instances, public intoxication, excretion, and urination.<sup>94</sup>

Lastly, public concerns surround the cost of the homeless population to taxpayers.<sup>95</sup> Due to the nature of living unsheltered, without healthcare and basic necessities of life, these individuals require heightened services. These

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84. *Id.*

85. *Id.*

86. CHAMARD, *supra* note 63, at 10.

87. *Id.*; *see also* Finnemore, *supra* note 40.

88. CHAMARD, *supra* note 63, at 10.

89. Doucette-Préville, *supra* note 83, at 116.

90. CHAMARD, *supra* note 63, at 10; *see also* Doucette-Préville, *supra* note 83, at 114.

91. *See* discussion *infra* Section I, Part F(ii).

92. CHAMARD, *supra* note 63, at 9.

93. *Id.*

94. *Id.*

95. *Id.* at 10.

required services, such as police and medical efforts, impose significant costs upon taxpayers.<sup>96</sup> In San Diego, California, these costs were estimated to be \$3 million spent on public services for fifteen chronically homeless people during an eighteen month span.<sup>97</sup> In a less extreme case, a famous 2006 study titled “Million Dollar Murray” followed the life of a homeless man, Murray, in Nevada.<sup>98</sup> He experienced many healthcare hurdles due to his status as chronically homeless.<sup>99</sup> The study found that it cost taxpayers \$100,000 a year to support his status as homeless, predominantly from medical bills alone.<sup>100</sup> In other cases, studies found that homeless individuals with a severe mental illness incur an average of \$40,500 per year in healthcare costs, correctional services, and shelters.<sup>101</sup>

Yet, it is widely recognized that shelter and housing are mitigating factors for such medical costs and have significantly lower costs to society.<sup>102</sup> In fact, one study in Los Angeles found that the average monthly cost to keep a person in supportive housing is \$605, whereas the average cost in city services for a homeless person on the streets is \$2,897.<sup>103</sup> By living indoors, away from the impairment of weather and other outside harms, statistics show that the overall health of the homeless population improves.<sup>104</sup>

Still, taxpayers remain apprehensive regarding public money being spent on individuals who will, most likely, live and die on the streets.<sup>105</sup> However, these concerns largely ignore the fact that being on the street is the reason that heightened medical and police attention are necessary. Perhaps, if public dialogue concerning the homeless community could shift toward an attitude of stopping the problem at the source—living on the streets—taxpayers would be open to spending more money to provide housing for this vulnerable group of people. By framing the money as being spent toward the greater goal of addressing the long-term health of the homeless population, rather than viewing the money as being spent on individuals who will live and die on the streets, lawmakers could provide a larger benefit for the homeless population themselves and alleviate public concerns.<sup>106</sup> Therefore,

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96. *Id.*

97. *Id.*

98. Dennis P. Culhane, *The Cost of Homelessness: A Perspective from the United States*, 2 EUR. J. HOMELESSNESS 97, 105 (2008).

99. *See id.*

100. *Id.*

101. *Id.* at 102.

102. *Id.* at 102–04 (estimating over \$15,000 expenditure savings per year, per homeless person as a result of housing).

103. Alex S. Vitale, *The Safer Cities Initiative and the removal of the homeless*, 9 CRIMINOLOGY & PUB. POL’Y 867, 871 (2010).

104. Culhane, *supra* note 98, at 102–04.

105. *Cf. id.* at 105.

106. *See* Amilia Cervantes, *Homelessness: A Dilemma of Public Space and Public Policy*, 2 LANDMARKS THE UNDERGRADUATE GEOGRAPHY J. 24, 27 (2016).

as will be examined later in this Note, societal concerns of taxpayer spending can largely be addressed by providing housing for the homeless.<sup>107</sup>

### E. Homelessness Rates

It is also important to provide context to the number of individuals that are included in the definition of “homeless.” HUD found in 2020 that on a single night in January, 580,466 experienced homelessness in the United States.<sup>108</sup> This number demonstrates an increase of 2.2%—12,751 people—from January of 2019.<sup>109</sup> But, an important caveat lies within this data since it only includes counts from *sheltered* individuals across America in the last week of January, annually.<sup>110</sup> These numbers come from the HUD’s AHAR, which requires that communities receiving federal funds from the McKinney-Vento Homeless Assistance Grants program conduct annual PIT counts in January.<sup>111</sup> Therefore, not only do HUD’s reports demonstrate only a count of *sheltered* individuals each year, but only sheltered individuals in communities that receive federal funds. Biannually, unsheltered counts of the homeless population in areas receiving these funds are mandated.<sup>112</sup> However, these unsheltered counts come with little guidelines and result in many data disparities, as discussed in subsequent Sections.<sup>113</sup> Still, this form

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107. See discussion *infra* Section II, Part D.

108. THE 2020 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS: PART 1, *supra* note 61, at 6. This Note often refers to recent AHAR reports. Due to the COVID-19 pandemic, data from the 2021 AHAR has been released with caution. For this reason, this Note primarily focuses on reports from 2020 and before, in order to avoid skewed information from COVID-19. See THE 2021 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS: PART 1, at ii, 5–6 (U.S. Dep’t Hous. and Urb. Dev. 2021), <https://www.huduser.gov/portal/sites/default/files/pdf/2021-AHAR-Part-1.pdf> [perma.cc/K6C5-FT92] (last visited Nov. 7, 2022) (noting that “[e]stimates of the number of people experiencing sheltered homelessness at a point in time in 2021 should be viewed with caution, as the number could be artificially depressed compared with non-pandemic times, reflecting reduced capacity in some communities or safety concerns regarding staying in shelters.”).

109. U.S. DEP’T OF HOUS. AND URB. DEV., *supra* note 26.

110. *What is a Point-in-Time Count?*, NAT’L ALL. TO END HOMELESSNESS (Sept. 7, 2012), <https://endhomelessness.org/resource/what-is-a-point-in-time-count/> [https://perma.cc/38Y6-PKQW] (last visited Nov. 14, 2022).

111. *Id.*; see also *The McKinney-Vento Act Quick Reference*, SCHOOLHOUSE CONNECTION 1, 1, <https://schoolhouseconnection.org/wp-content/uploads/2020/09/The-McKinney-Vento-Act-Quick-Reference.pdf> [https://perma.cc/Z3X8-Z3XE] (last visited Nov. 14, 2022) (noting, “[t]he McKinney-Vento Act provides rights and services to children and youth experiencing homelessness, which includes those who are: sharing the housing of others due to loss of housing, economic hardship, or a similar reason; staying in motels, trailer parks, or camp grounds due to the lack of an adequate alternative; staying in shelters or transitional housing; or sleeping in cars, parks, abandoned buildings, substandard housing, or similar settings.”).

112. *What is a Point-in-Time Count?*, *supra* note 110.

113. *Id.*; see also discussion *infra* Section II, Part B.

of counting is the prevailing system, with HUD being the primary source of data for both state and federal funding.<sup>114</sup>

#### F. Legislative Approaches to Address Community Concerns

It is undisputed that the homeless population raises valid concerns in communities across America.<sup>115</sup> The issues and causes surrounding the growing homeless population flow into three major systems of society: healthcare, criminal justice, and education. Healthcare and mental health are connected as leading causes of homelessness.<sup>116</sup> The criminal justice system is also deemed a cause of homelessness, with concerns surrounding the crimes committed by the homeless community.<sup>117</sup> Not only this, but the criminal justice system is brought into this societal issue through legislation that has the effect of criminalizing homelessness, as further explained in this Section.<sup>118</sup> Lastly, data shows that 40% of the homeless population is made up of families with school-aged children.<sup>119</sup> Therefore, the assistance given to the homeless community is important to aid children and future generations of society.

Nonetheless, this population remains a growing, vulnerable people group in the United States, and these individuals are in urgent need for equal representation within the political process.<sup>120</sup> Historically, the homeless typically do not vote.<sup>121</sup> Therefore, ensuring proper protections and policies for the homeless community is a necessary check on elected officials to serve the entire community, including unrepresented homeless members.<sup>122</sup> Another expert contributes this lack of representation to the loss of shock and urgency in society toward the homeless community.<sup>123</sup> In analyzing this, he states, “[w]hat was once seen as a temporary crisis[, homelessness] has become a fixed part of the social and political landscape.”<sup>124</sup>

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114. Meehan, *supra* note 56.

115. *See* discussion *supra* Section I, Part D.

116. *See* discussion *supra* Section I, Part B.

117. *See* discussion *supra* Section I, Part B.

118. *See* discussion *supra* Section I, Part D.

119. John H. Wong et al., *McKinney-Vento Homeless Assistance Act*, 16 GEO. J. ON POVERTY L. & POL'Y 53, 56 (2009) (noting that around 40% of the homeless population in urban areas are made up of families. Further explains that 1.35 million children in the U.S. are homeless. However, this data reflects calculations based on the definition of homeless from the McKinney-Vento Homeless Assistance Act. This is inconsistent with the number of homeless individuals in the U.S. per HUD numbers, due to the difference in definitions classifying an individual as homeless. For more on this, *see* discussion *infra* Section I, Part E.).

120. Hafetz, *supra* note 21, at 1215–16.

121. *See* Ann M. Burkhart, *The Constitutional Underpinnings of Homelessness*, 40 HOUS. L. REV. 211, 216 (2003).

122. *Id.*

123. Hafetz, *supra* note 21, at 1215.

124. *Id.*



Perhaps this very sense of an unconcerned attitude toward the homeless community is what has led this issue to be unresolved for so long. However, the approaches to addressing those concerns have become tainted with ideological interests.<sup>125</sup> These beliefs take form in two ways. They are: (i) policies based on assisting the homeless and, in turn, addresses community concerns by reducing the homeless population through rehabilitation; and (ii) policies based on addressing solely the concerns of the community rather than the needs of the homeless and, in turn, do not solve the root of the concerns by reducing homelessness.

1. *Policies Based on Assisting the Homeless and, in turn, Addresses Community Concerns by Reducing the Homeless Population Through Rehabilitation*

One notable policy choice is to adopt a Homeless Bill of Rights. This is viewed as important in assisting the homeless community by protecting from systemic discrimination and criminalization.<sup>126</sup> Currently, only Rhode Island, Illinois, and Connecticut have approved constitutional amendments to adopt a Homeless Bill of Rights.<sup>127</sup> While each bill varies slightly, they generally ensure: the right to use public spaces in the same manner as other people, the right to equal treatment by the state and local governments, the right to not face discrimination in employment, the right to emergency medical care, the right to register to vote and to vote, the right to have personal information protected, and the right to have a reasonable expectation of privacy in his or her personal property.<sup>128</sup>

Although some argue that these Homeless Bills of Rights do little to address the issues homeless individuals face, these policies have been regarded as an important legislative tool by many scholars.<sup>129</sup> The National Law Center on Homelessness & Poverty contends that these policies are

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125. Cervantes, *supra* note 106.

126. FROM WRONGS TO RIGHTS: THE CASE FOR HOMELESS BILL OF RIGHTS LEGISLATION, 6–7 (Nat'l L. Ctr. on Homelessness & Poverty 2013), [https://homelesslaw.org/wp-content/uploads/2018/10/Wrongs\\_to\\_Rights\\_HBOR.pdf](https://homelesslaw.org/wp-content/uploads/2018/10/Wrongs_to_Rights_HBOR.pdf) [<https://perma.cc/92ZL-NAHT>] (last visited Nov. 14, 2022).

127. *Id.* at 6.

128. *Id.* at 6–7.

129. Compare Hailey Rehberg, *Homeless Bill of Rights: How Legislators Get to Feel Pro-Homeless Without Effort or Money*, 6 N. ILL. UNIV. L. REV. ONLINE J. 91, 104–07 (2015) (arguing that homeless bill of rights do not do enough to help the homeless); Jonathan Sheffield, *A Homeless Bill of Rights: Step by Step from State to State*, 19 PUB. INT. L. REP. 8, 13 (2013) (arguing that the homeless bill of rights do not go far enough, should adopt right to housing too) *with* FROM WRONGS TO RIGHTS: THE CASE FOR HOMELESS BILL OF RIGHTS LEGISLATION, *supra* note 126, at 6; *Homeless Bill of Rights*, NAT'L COAL. HOMELESS, <https://nationalhomeless.org/campaigns/bill-of-right/> [<https://perma.cc/4B66-MJKT>] (last visited Nov. 14, 2022); Adam Ploszka, *A Homeless Bill of Rights as a New Instrument to Protect the Rights of Homeless Persons*, 16 EUR. CONST. L. REV. 601, 610–11, 624 (2020).

integral to combatting discrimination and criminalization of homelessness by ensuring that this people group has the same rights as those individuals with a physical address.<sup>130</sup> Still, this type of policy has struggled to gain traction. Although many states have proposed the Homeless Bill of Rights, only Rhode Island, Illinois, and Connecticut have successfully enacted such legislation.<sup>131</sup> However, as of recent, this type of legislation has approached the national sphere, with Congresswoman Cori Bush introducing a federal resolution for Congress to adopt an “Unhoused Bill of Rights.”<sup>132</sup> If adopted, this would become the first federal affirmation of the civil and human rights of unhoused individuals.<sup>133</sup>

Further, the Ninth Circuit recently combatted anti-homeless legislation by addressing an Eighth Amendment claim to a city ordinance imposing criminal penalties for camping on public property. In *Martin v. City of Boise*, the Ninth Circuit held that such penalties are unconstitutional as cruel and unusual punishment when the homeless individuals did not have a valid opportunity to obtain shelter.<sup>134</sup> That is, when the city does not have enough beds in homeless shelters to account for the number of homeless individuals, they cannot constitutionally impose criminal penalties for camping on public property.<sup>135</sup> However, the crux of this holding is the idea that localities are using reliable data to calculate the number of beds to be made available based on the number of homeless individuals in the community – something that, in practice, does not always reflect accuracy.<sup>136</sup>

## 2. *Policies Based on Addressing Solely the Concerns of the Community Rather Than the Needs of the Homeless*

The second ideological viewpoint has become the apparent epicenter for multiple pieces of recent legislation across the country. Due to rising societal concerns surrounding the homeless, many state and local

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130. FROM WRONGS TO RIGHTS: THE CASE FOR HOMELESS BILL OF RIGHTS LEGISLATION, *supra* note 126, at 6.

131. *Id.*; see also *Rhode Island First State to Pass Homeless Bill of Rights*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., <https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/rhode-island-homeless-bill-rights> [<https://perma.cc/GG9B-PZYE>] (last visited Nov. 15, 2022).

132. H.R. 568, 117th Cong. (2021); see also *Congresswoman Cori Bush Introduces “Unhoused Bill of Rights,”* NAT’L LOW INCOME HOUS. COAL. (Aug. 2, 2021), <https://nlihc.org/resource/congresswoman-cori-bush-introduces-unhoused-bill-rights> [<https://perma.cc/F2KE-TC4T>] (last visited Nov. 15, 2022) [hereinafter “Unhoused Bill of Rights”].

133. “*Unhoused Bill of Rights*,” *supra* note 132; see also H.R. Res. 568, 117th Cong. (2021) (noting that this proposed resolution has not received any action since being referred to the Subcommittee on Nutrition, Oversight, and Department Operations in August 2021).

134. *Martin v. City of Boise*, 920 F.3d 584, 617–18 (2019).

135. *Id.*; but see *infra* Section I, Part F(ii) (citing *Tobe v. City of Santa Ana*, 892 P. 2d 1145, 1157 (Cal. 1995)).

136. *Infra* Section II, Part B.

governments have used legal solutions to address such alarms.<sup>137</sup> However, many of these supposed solutions center around appeasing concerns of constituents rather than forming concrete solutions for the homeless population. Yet, the homeless community is still very much present in the community and continues to need resources and rehabilitation.<sup>138</sup> The ideological approach of addressing community concerns without looking at the source of those concerns—homelessness itself—is criticized as being ineffective and counterintuitive.<sup>139</sup> Rather than seeking long-term solutions that can address both societal concerns and aid this vulnerable population, these solutions are found to ignore a people group that is part of our society and deserving of consideration in the policymaking process.<sup>140</sup>

Additionally, some argue that taking this approach is due to the lack of compassion for the homeless in general. Rather than viewing the homeless as a people group in need, they are seen as a “stain” on society due to their unsanitary and uncomplimentary presence.<sup>141</sup> In order to maintain the illusion of moral standards and public order, the homeless are criminalized and pushed off the streets, with discriminatory ordinances being disguised as addressing community concerns.<sup>142</sup> In discussing this idea, one scholar notes that “it is not the dangerousness of the rabble that results in their apprehension; instead, it is their offensiveness to conventional society.”<sup>143</sup> Instead of addressing community concerns surrounding effects of the homeless population, many of these solutions address concerns about who the homeless population *is*, by nature.<sup>144</sup> As asserted, these resolutions have become about who they are, not what they have done.<sup>145</sup>

As part of these solutions, there have been widespread prohibitions on sleeping outdoors in public places.<sup>146</sup> These prohibitions take several different forms, ranging from outright prohibitions on encampments, to preventing only the existence of makeshift homes in certain areas.<sup>147</sup> Yet, some follow a more extremist route, with policies aimed at tearing down tent cities.<sup>148</sup>

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137. Elizabeth Schultz, *The Fourth Amendment Rights of the Homeless*, 60 *FORDHAM L. REV.* 1003, 1004–05 (1992).

138. See Doucette-Préville, *supra* note 83, at 112–13.

139. *Id.* at 113; see also Cervantes, *supra* note 106.

140. See Cervantes, *supra* note 106.

141. *Id.*

142. *Id.*; see also Fitzpatrick & Myrstol, *supra* note 69.

143. Fitzpatrick & Myrstol, *supra* note 69, at 272–73 (defining “rabble” as “people in the community viewed by those in the mainstream as bothersome and unseemly sorts because of their unconventional behavior, appearance, and customs.”).

144. *Id.* at 275.

145. *Id.*

146. Schultz, *supra* note 137, at 1004–05.

147. *Id.* at 1004.

148. *Id.* at 1005.

For example, Tennessee lawmakers have codified a statute banning individuals from camping on state-owned property.<sup>149</sup> Under this statute, “camping” is defined as partaking in any number of activities during 10:00 p.m. and 7:00 a.m., including, “. . . leaving . . . or using a piece of furniture, tent, raised tarp, or other temporary shelter, structure, or furniture; [ ] [p]lacing or storing personal belongings for future use, including storing food for consumption; or [ ] [c]arrying on cooking activities . . . ; [ ] [s]leeping or making preparations to sleep, including laying down a sleeping bag, blanket, or other material used for bedding; [ ] [m]aking a fire or preparing to make a fire; or [ ] [d]oing any digging or earth breaking.”<sup>150</sup> Penalties for violating this statute include a Class E felony, as well as confiscation of property and storage-related fees for the property.<sup>151</sup>

Further, Tennessee lawmakers recently expanded this statute by passing House Bill 0978, which allows local municipalities the same ability to ban camping on locally-owned property as Tennessee Code Annotated § 39-14-414 provides for state-owned property.<sup>152</sup> Under this legislation, individuals are charged a \$50 fine, or twenty to forty hours of community service, for camping on public property.<sup>153</sup> This bill’s sponsor expressly cited reasons for the bill as a community desire to have a means of encouragement for the homeless community to move elsewhere and find other places to live, as well as concerns of littering.<sup>154</sup> In expressing his support of the bill, one legislator strongly conveyed his opposition to the actions of the homeless community stating, there is a “growing need to get a handle on people who trash our beautiful state.”<sup>155</sup> Still, while the sponsoring legislator recognized that this bill creates legal ramifications for the homeless community, he viewed it as necessary to create an actionable offense for camping on public property in order to open the door for the homeless individuals to receive information about resources from law enforcement.<sup>156</sup>

Yet, this piece of legislation is counterintuitive. Although Tennessee’s House Bill 0978 was presented by the bill’s sponsor as not criminalizing homelessness, the bill amended the Tennessee Code titled “Criminal Offenses.”<sup>157</sup> Therefore, the statutory scheme of this newly-codified bill speaks differently as to the criminalization aspect. Additionally,

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149. TENN. CODE ANN. § 39-14-414(d) (2021).

150. *Id.* § 39-14-414(b).

151. *Id.* §§ 39-14-414(e)–(f).

152. H.B. 0978, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021); *see also* 2022 Tenn. Pub. Acts 986.

153. H.B. 0978, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021); *see also* 2022 Tenn. Pub. Acts 986.

154. *Hearing on H.B. 0978 Before the Crim. Just. Subcomm.*, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021) (statement of Ryan Williams, State Rep.).

155. *Id.* (statement of Dan Howell, State Rep.).

156. *Id.* (statement of Ryan Williams, State Rep.).

157. *Id.* (statement of Ryan Williams, State Rep.); *see also* H.B. 0978, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021); TENN. CODE ANN. § 39-14-414 (2021); 2022 Tenn. Pub. Acts 986.

opponents of the bill strongly argued that failure to pay the fine or serve the community service, as required by the bill, will result in a court appearance implicating the possibility of a Failure to Appear charge—a misdemeanor—if the individual does not show up.<sup>158</sup> Citing concerns of access to transportation and notice of court dates, many legislators expressed their apprehensions for this bill being used to criminalize the homeless population.<sup>159</sup> Further, these opponents argue against the negative impacts a misdemeanor charge can have upon the homeless individual, potentially leading to ineligibility for welfare benefits or affordable housing.<sup>160</sup>

Other state legislatures have recently passed similar bills, such as Texas.<sup>161</sup> Texas House Bill 1925, passed by the House 101-45 and passed by the Senate 27-4, made camping a Class C misdemeanor and punishable by a fine of \$500.<sup>162</sup> Activists against Texas' House Bill 1925 argued that affordable housing must be made available to the homeless population before taking such action, finding this type of approach ineffective and harmful to the homeless community without housing accommodations.<sup>163</sup>

Another example of highly contested legislation is in Oregon, which recently created strict laws surrounding when homeless encampments can be evacuated by city officials.<sup>164</sup> Citing prevention of COVID-19 as a guiding reason, these procedures allow for evacuations to be ordered when “. . . untreated sewage is prevalent; the fire bureau deems the site ‘an extreme fire risk;’ there are reports of violence or criminal activity; ADA access is consistently blocked; the campsites impedes ‘regular operations at schools;’ or the campsite is considered a public health risk due to the presence of biohazardous materials.”<sup>165</sup> Activists against this legislation argue that without having a plan for rehousing or affordable housing in place before implementing this legislation, this type of action is only adding to the worsening issue of homelessness.<sup>166</sup>

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158. *Hearing on H.B. 0978 Before the House Floor*, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021) (statement of Vincent Dixie, State Rep.).

159. *Hearing on H.B. 0978 Before the Crim. Just. Comm.*, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021) (statement of London Lamar, State Rep.).

160. *Id.* (statement of Carson Bill Beck, State Rep.); *see also Hearing on S.B. 1610 Before the Judiciary Comm.* (Tenn. 2021) (statement of Ingrid McIntyre, Reverend).

161. Garnham, *supra* note 68.

162. *Id.*; H.B. 1925, 87th Leg., Reg. Sess. (Tex. 2021); S.B. 1925, 87th Leg., Reg. Sess. (Tex. 2021).

163. Sarah Riley, *Texas House Bill 1925/ Senate Bill 987 Fact Sheet*, NAT'L HOMELESSNESS L. CTR., <https://homelesslaw.org/texas-house-bill-1925-senate-bill-987-fact-sheet/> [<https://perma.cc/94WW-WGKD>] (last visited Nov. 15, 2022).

164. Rebecca Ellis, *Portland announces “a more assertive approach” to dispersing homeless encampments*, OR. PUB. BROAD., (May 19, 2021, 3:57 p.m.), <https://www.opb.org/article/2021/05/19/portland-oregon-homeless-encampments/> [<https://perma.cc/2R5X-UYC7>] (last visited Nov. 15, 2022).

165. *Id.*

166. *Id.*

Not only does legislation demonstrate this ideology, but the public discourse surrounding the homeless population also shows a strong backing of homeless policies that choose to “hide” the homeless. One such example of this is in San Francisco, where former Mayor Frank Jordan and city Economic and Redevelopment Director Kent Sims generated policies of the homeless community surrounding the idea of reducing visibility of the homeless to tourists and minimizing the flow of the undesirable people group.<sup>167</sup> Rather than addressing the issues the homeless population were facing, such as lack of housing and decreased salaries in the San Francisco workforce, these political leaders created discussion on the homeless population’s mental health issues, regarding them as an irrational people group.<sup>168</sup>

In addition to this discourse, the California Supreme Court stood by such dialogue in its holding in *Tobe v. City of Santa Ana*, where the court denied an as-applied challenge to a city ordinance banning sleeping in public places.<sup>169</sup> Because the petitioners, homeless individuals, did not allege that other alternatives to camping in public areas were unavailable, such as that shelter beds were inaccessible, they failed to demonstrate that the statute was facially discriminatory.<sup>170</sup>

The dissent vehemently argued that discrimination of the homeless community was the true purpose of the statute, rather than the asserted purpose of cleanliness and accessibility.<sup>171</sup> To this argument, evidence of the City’s memorandums stating, “[t]he City Council has developed a policy that the vagrants are no longer welcome in the City of Santa Ana . . . In essence, the mission of this program will be to move all vagrants . . . [ ] out of Santa Ana by continually removing them from the places that they are frequenting in the City.”<sup>172</sup> Despite this discourse, the court’s majority turned their heads at the notion that the city used this anti-camping policy as a prejudicial measure against the homeless community, stating, “[w]e cannot assume, as does the dissent, that the sole purpose of the Santa Ana ordinance was to force the homeless out of the city.”<sup>173</sup>

Therefore, while solutions that compose this second ideological approach may be effective at accomplishing community relief by keeping the homeless population out of society, this begs the question of, “is this the type

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167. SEAN PARSON, *COOKING UP A REVOLUTION* 65 (Manchester Univ. Press 2018).

168. *Id.*; *see also* discussion *infra* Section II, Part D (stating that the city of San Francisco has since generated a much different public discourse surrounding the homeless population and has become one of the first large U.S. cities to develop a Housing First program); *see generally* *San Francisco Housing First Program*, NAT’L LOW INCOME HOUS. COAL. (May 3, 2016), <https://reports.nlihc.org/rental-programs/catalog/san-francisco-housing-first-program> [<https://perma.cc/GG42-34LW>] (last visited Nov. 15, 2022).

169. 892 P. 2d 1145, 1157 (Cal. 1995).

170. *Id.* at 1157–58.

171. *Id.* at 1177 (Mosk, J., dissenting).

172. *Id.* at 1177 (Mosk, J., dissenting).

173. *Id.* at 1159.

of ideological approach that our culture wants to take?" I suggest that it should not be. Rather, a more resourceful approach can be used that would both tackle community concerns and rehabilitate of the homeless community as a vulnerable people group in need of community support.

## II. PROPOSED SOLUTIONS

Thus far, this Note has discussed solutions implemented in various areas across the United States. Yet, many of these solutions are deemed as ineffective for addressing the needs of the homeless community. Therefore, this Section discusses comprehensive policies that, if implemented together, will aid the concerns of the community and assist the homeless in getting off the streets. Recommended solutions that will be outlined are: (A) establishing a uniform definition, (B) restructuring Point-In-Time counts, (C) seeking community engagement, and (D) implementing Housing First.

### A. Establishing a Uniform Definition of Homelessness

As already detailed, each definition of homelessness varies in substance.<sup>174</sup> The federal government has codified a definition of homelessness into 42 U.S.C. § 11302. Yet, HUD, the predominant government agency assigned to addressing homelessness, does not defer to 42 U.S.C. § 11302 but instead has their own definition that differs from the statute. Each state has also codified differing definitions of homelessness that, generally, fall closely in line with federally defined homelessness but vary slightly from each jurisdiction. Additionally, other federal government agencies that aid the homeless community, such as the Department of Education, have departed from the 42 U.S.C. § 11302 and HUD definitions to create their own, broader forms of definitions that encompass more individuals to receive aid.

Because narrowing a definition of homelessness that is tailored to encompass each unique situation of a homeless individual is no small task, some federal agencies argue for a different approach.<sup>175</sup> But support for a uniform definition is well-founded in academia and the research community.<sup>176</sup> In 2011, USICH submitted a report to Congress

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174. See discussion *supra* Section I, Part A.

175. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, USICH REPORT TO CONGRESS: COMMUNITY FORUM TO DISCUSS GAO RECOMMENDATION TO DEVELOP A COMMON FEDERAL VOCABULARY ON HOUSING STATUS, 3 (June 2011), [https://www.usich.gov/resources/uploads/asset\\_library/USICH\\_Report\\_-\\_Common\\_Housing\\_Status\\_Vocabulary.pdf](https://www.usich.gov/resources/uploads/asset_library/USICH_Report_-_Common_Housing_Status_Vocabulary.pdf) [<https://perma.cc/U3ZJ-TTYA>] (last visited Jan. 20, 2022).

176. *Id.*; see also *Legislation would help remove legal barriers to federal assistance for homeless children and youth*, AM. BAR ASS'N (June 30, 2018), [https://www.americanbar.org/advocacy/governmental\\_legislative\\_work/publications/washingtonletter/june2018/homellessyouth/](https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/june2018/homellessyouth/) [<https://perma.cc/D5KH-LWS2>] (last visited Jan. 20, 2022); Volker Busch-

recommending standardized terminology to be used amongst federal agencies surrounding homeless data collection.<sup>177</sup> This report based its findings on council data and was backed by the U.S. Government Accountability Office (GAO).<sup>178</sup> The council asserted that because each federal agency uses different definitions to determine eligibility for benefits, there is a lack of consistency in the data provided by these agencies regarding the homeless.<sup>179</sup> Due to this, variations in data are prevalent from agency to agency.<sup>180</sup> This inconsistent data impacts an array of important policies for the homeless, including the actual number of homeless and funding allocated based on that number, the use of homelessness services, and the unmet needs of the homeless.<sup>181</sup>

However, following the publication of USICH's report, Congress did not take any steps toward implementing the recommended uniform vocabulary across federal agencies. Although the federal definition of homelessness under 42 U.S.C. § 11302 remains intact along with various agencies' deviations, Congress has shown some interest in changing the federal definition in recent years.<sup>182</sup> The Homeless Children and Youth Act of 2017 received consideration in Congress, but did not reach a full vote.<sup>183</sup> Under this Act, the McKinney-Vento Homeless Assistance Act would be amended to change the HUD's definition of homelessness to align with other federal agencies' definitions, namely the Department of Education.<sup>184</sup> By expanding this definition, children would be able to receive resources from department-specific programs, as well as HUD assistance on a case-by-case basis.<sup>185</sup>

Since the complications created by varying definitions harm data collection and worsen inequality in services offered to this vulnerable group, it is imperative that the federal government work toward creating a more succinct definition of homelessness. Having a consistent federal definition amongst agencies will ensure that federal data regarding the homeless

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Geertsema, et al. *Developing a Global Framework for Conceptualizing and Measuring Homelessness*, 55 HABITAT INT'L 124, 126 (2016).

177. U.S. Interagency Council on Homelessness, *supra* note 175, at 3.

178. *Id.*

179. *Id.* at 4.

180. PERMANENT SUPPORTIVE HOUSING: EVALUATING THE EVIDENCE FOR IMPROVING HEALTH OUTCOMES AMONG PEOPLE EXPERIENCING CHRONIC HOMELESSNESS, *supra* note 4, at 19–21.

181. *Id.*

182. H.R. 1511, 117th Cong. (2021); *see also* S. 611, 115th Cong. (2017); H.R. 2001, 116th Cong. (2019); S. 1469, 117th Cong. (2021).

183. S. 611, 115th Cong. (2017); *see also* H.R. 1511, 117th Cong. (2021); H.R. 2001, 116th Cong. (2019).

184. *Legislation would help remove legal barriers to federal assistance for homeless children and youth*, *supra* note 176; *see also* H.R. Rep. No. 115-1026, at 1 (2018).

185. *Legislation would help remove legal barriers to federal assistance for homeless children and youth*, *supra* note 176.



community is accurate by eliminating variances and ensure aid goes to all eligible individuals.

Furthermore, creating a concise definition across federal agencies will also better address the needs of individuals who need aid from multiple agencies. Rather than determining eligibility for aid from department to department, standardizing the definition of homelessness would allow a caseworker to make every needed determination at once.<sup>186</sup> Moreover, homeless individuals will not be denied eligibility for aid by one department for not fitting the definition of homeless when they *are* deemed homeless by another department.<sup>187</sup>

By adopting a succinct and standardized definition, individuals can better access the resources they need to survive. Therefore, comprising a uniform definition is an important first step for the federal government to properly rehabilitate the homeless population. That increased efficiency would better equip homeless individuals to regain their footing in society by obtaining jobs, housing, and rehabilitation through federal assistance and, in turn, address community concerns regarding crime rates, illegitimate use, and business viability.

### B. Restructuring Point-In-Time Counts

Despite the fact that other methods of conducting comprehensive data collection are available, most areas in the United States continue to base their homeless calculations on problematic HUD's PIT counts.<sup>188</sup> The HUD's PIT counts have been widely criticized for their failure to include the unsheltered homeless each year (only requiring a *biannual* unsheltered count), delayed return to shelters, and shallow, single-night sample size.<sup>189</sup> To this point, one study shows that over a one-month span, the counts for homeless individuals were up to three-times higher than the single night counts.<sup>190</sup> For these reasons, some argue that HUD's use of PIT counts is "largely inaccurate."<sup>191</sup>

However, there are other methods of conducting homeless statistical counts that offer more comprehensive results that are truly representative of the entire homeless community. For example, Houston, Texas has a

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186. U.S. Interagency Council on Homelessness, *supra* note 175, at 3–5.

187. *Id.*

188. Meehan, *supra* note 56.

189. Carey L. Biron, *Forget no one: U.S. cities use real-time data to end homelessness*, REUTERS (Feb. 1, 2021, 10:44 AM), <https://www.reuters.com/article/us-usa-cities-homelessness-feature-trfn/forget-no-one-u-s-cities-use-real-time-data-to-end-homelessness-idUSKBN2A130G> [<https://perma.cc/CFJ3-QCY9>] (last visited Jan. 20, 2022); *see also What is a Point-in-Time Count?*, *supra* note 110.

190. JAMES D. WRIGHT, ADDRESS UNKNOWN: THE HOMELESS IN AMERICA, at xiii (Routledge 2009).

191. Meehan, *supra* note 56; *see also* Laurie Ball Cooper & Ana Vohryzek, *Rethinking Rapid Re-housing: Toward Sustainable Housing for Homeless Populations* 19 U. PA. J.L. & SOC. CHANGE 307, 314–15 (2017).

widespread PIT counting system that involves counting multiple areas of the homeless community, rather than only sheltered individuals. By going beyond HUD's basic requirements of counting only sheltered individuals, Houston generates more effective counts.<sup>192</sup> Houston's multi-faceted approach begins with compiling a community support system of volunteers.<sup>193</sup> Volunteers are trained and assigned to teams, where counts then begin with unsheltered homeless living in places not meant for habitation, such as street corners or parks.<sup>194</sup> Specialized outreach teams are used to conduct counts of homeless individuals in those unsheltered areas that are less visible, such as encampments or areas under bridges.<sup>195</sup>

Houston also accounts for homeless youth by specifically targeting areas where youth are known to congregate.<sup>196</sup> This already marks a departure from HUD's requirements, which only requires that individuals be counted in unsheltered areas on a biannual basis.<sup>197</sup> As some experts have noted, homeless youth can be a particularly difficult portion of the homeless community to identify and include in data sets.<sup>198</sup> Because homeless youth tend to congregate in different areas than adults and are often unwilling to take steps to seek refuge in shelters, the assessment of homeless youth gets undercut in PIT counts.<sup>199</sup> Therefore, by taking steps further than HUD's requirements, Houston achieves far more accurate PIT counts.

Next, Houston's PIT counting system assists shelters in generating accurate numbers of homeless individuals there. Rather than simply asking shelters to use HUD's Homeless Management Information System (HMIS) to calculate numbers for a single night in January, Houston partners with these shelters to ensure that they have the proper training to know how to use the HMIS system.<sup>200</sup> Additionally, Houston's program works with these shelters to confirm the numbers inputted into the system accurately match the shelter's own calculations from that night.<sup>201</sup>

Houston also contacts shelters that do not use the HMIS system to account for the homeless individuals that were at those shelters on the single night in January, rather than excluding them as allowed under the HUD system.<sup>202</sup> Houston makes follow-up calls to shelters encouraging them to submit their counts.<sup>203</sup> By doing this, Houston's system better serves their

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192. Monika Schneider et al., *Do We Really Know How Many Are Homeless?: An Analysis of the Point-In-Time Homelessness Count*, 97 FAMILIES IN SOC'Y 321, 326 (2016).

193. *Id.* at 343 (stating that Houston obtained over 600 volunteers); see discussion *infra* Section II, Part C.

194. Schneider et al., *supra* note 192, at 324.

195. *Id.*

196. *Id.*

197. *What is a Point-in-Time Count?*, *supra* note 110.

198. *Id.*

199. *Id.*

200. Schneider et al., *supra* note 192, at 324.

201. *Id.*

202. *Id.*

203. *Id.*

homeless community by generating accurate counts, rather than a narrow, shelter-only count each year.

Other cities have used similar approaches to Houston. Denver, Colorado also uses a volunteer-based approach.<sup>204</sup> The Denver counting initiative uses volunteers to count homeless sleeping in parks, cars, sidewalks, and abandoned buildings, in addition to homeless shelters.<sup>205</sup> Once again, this effort goes a step beyond HUD's requirements by encompassing a broader variety of the homeless community through annual *unsheltered* counts, rather than counting the unsheltered only biannually.<sup>206</sup>

Another differing counting system is by-name list data. This form of counting consists of a comprehensive, regularly updated list of every person in a community experiencing homelessness.<sup>207</sup> The list includes data such as each individual's name, homeless history, health, and housing needs.<sup>208</sup> Communities can choose to use by-name list data for the purposes of focusing on a specific sector of the homeless population, like families or single adults. But, the goal is that the community will work toward having one comprehensive list encompassing the entire homeless population.<sup>209</sup> This form of counting is supported for its ability to prioritize the needs of each homeless individual, having a more in-depth questionnaire than HUD counts.<sup>210</sup> Additional support comes from the program's ability to monitor progress by having real-time data that breaks down which needs are being met.<sup>211</sup> However, data on the program's success is minimal since this form of counting is still developing in the United States.<sup>212</sup>

Despite these alternatives, HUD's PIT counts continue to be used by Congress in determining assistance and federal funding for homeless communities across America.<sup>213</sup> However, in order to better address the

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204. *Id.* at 325.

205. *Id.* at 325–26.

206. *What is a Point-in-Time Count?*, *supra* note 110.

207. *What is a By-Name List?*, CMTY. SOL. (Jan. 28, 2021), <https://community.solutions/what-is-a-by-name-list/> [<https://perma.cc/FF4J-QPTK>] (last visited Jan. 20, 2022).

208. *Id.*

209. *Id.*

210. *Id.*

211. *What is a By-Names Prioritized List (BNPL)?*, CITY OF WINDSOR, <https://www.citywindsor.ca/residents/housing/Housing-with-Supports-and-Homelessness-Prevention/Pages/By-Names-Prioritized-List.aspx> [<https://perma.cc/AU4F-EXE3>] (last visited Jan. 20, 2022).

212. *Functional Zero: A definition for ending homelessness for a population*, CMTY. SOL., <https://community.solutions/built-for-zero/functional-zero/> [<https://perma.cc/DKB3-HWWV>] (last visited Jan. 20, 2022) (indicating that 14 of the 79 communities using by-name counting have ended homelessness); *see also Point in Time (PIT) Homeless Count*, LANE CNTY., <https://www.lanecounty.org/cms/one.aspx?portalId=3585881&pageId=6095987> [<https://perma.cc/BV9L-J762>] (last visited Jan. 20, 2022) (noting that Lane County, Oregon implemented by-name list counting in 2019, but additional resources from federal government in 2020 due to COVID-19 has made data on the success of by-name counts skewed).

213. Meehan, *supra* note 56.

homeless crisis in the United States, a shift in the conducting of HUD's PIT counts is essential. The federal funding allocated as a result of HUD counts includes an emphasis on mental illness rehabilitation, supportive housing, and other levels of funding for homeless children and youth, as part of the McKinney Vento Homeless Assistance Act.<sup>214</sup> Certainly, government funding can have a tremendous positive impact on vulnerable populations. However, to make such life-changing determinations based on data that has been largely criticized is concerning. Additionally, because the lack of information about the homeless community continues to be one of the largest difficulties in addressing their needs, the demand for accurate data collection is ever-important.<sup>215</sup>

A comprehensive, accurate counting system is not only needed to resolve systemic issues blocking the homeless from effective rehabilitation, but also to address both the needs of the homeless population and their surrounding communities. Rather than using single-night PIT counts, comprehensive data should be analyzed to ensure accuracy throughout the year. Aspects of the by-name list counting system's real-time data tracking should be used to check numbers throughout the year and map fluctuations in the homeless population instead of relying on a single night's numbers.

Additionally, aspects from Houston's approach should be used in that comprehensive search including a count of parks, bridges, and other lesser-accessible areas. Rather than the current system in place, where unsheltered individuals are only counted biannually, efforts by the federal government should be made to equip communities for annual counts of unsheltered individuals to ensure that localities are getting the federal resources they need to aid the homeless population, including those unsheltered, on a yearly basis.

### C. Seeking Community Engagement

Additionally, research indicates that utilizing teams of community members to help combat the homeless crisis is instrumental in achieving successful results.<sup>216</sup> First, using community members to network between police and other social service agencies on behalf of homeless individuals is an important need for ensuring that homeless individuals are given the requisite care.<sup>217</sup> While some may argue that gathering a substantial community-based volunteer system in rural areas is unreasonable, a case study from Baldock, Oregon titled "The Baldock Restoration Project,"

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214. Hafetz, *supra* note 21, at 1230; *see also* Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. § 11301 (1987).

215. Schneider et al., *supra* note 192, at 321.

216. TREMOULET ET AL., *supra* note 28, at 17–18.

217. *Id.*

showcases how using community teams in rural and suburban areas can produce impressive results.<sup>218</sup>

This study surrounded an area off Interstate 5, over twenty miles from the urban city of Portland, Oregon, heavily populated by a homeless community.<sup>219</sup> While many in this community were chronically homeless, a large portion were also transitionally homeless, being forced into the community due to loss of a job, medical bills, or other financial debt.<sup>220</sup> This community was located near a rest area, which provided running water and access to toilets, and was also accessible to the interstate for those who were still commuting to jobs and living in their cars.<sup>221</sup>

The Oregon Travel Information Council and Oregon Department of Transportation partnered together to remove the homeless individuals from the encampment to address the community concern of restoring the public rest area back to its intended use.<sup>222</sup> Various other nonprofit, faith-based, and legal organizations joined, providing case-management services to the individuals to find housing and meet other needs.<sup>223</sup> As one source states, “[e]very person who wanted help received it; each household that accepted case management services developed either a short-term relocation strategy or a long-term housing solution.”<sup>224</sup> Through the use of this program, the encampment was dispersed over a five-month period, with 60% of the homeless community obtaining housing.<sup>225</sup>

Additionally, engaging the community in volunteer positions has positive impacts on PIT counts. For example, Houston’s PIT counting program is marketed to the area through the local government and community leaders, with public support from the mayor, judges, and other political officials.<sup>226</sup> The community support generated from these campaigns is vast, with over 600 volunteers during a 2014 case study.<sup>227</sup> The volunteer base includes a wide variety of individuals, involving a number of social workers, everyday community members, and even formerly homeless individuals to assist in canvassing efforts.<sup>228</sup>

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218. *Id.* at 20; *see also* Finnemore, *supra* note 40, at 3.

219. TREMOULET ET AL., *supra* note 28, at 20; *see also* Finnemore, *supra* note 40, at 2–3; THE 2019 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS: PART 1, *supra* note 60, at 16 (describing rural as areas more than 10 miles from an urban center, or classified as rural by the U.S. Census and describing suburban areas as within 10 miles of a principal city or urban cluster).

220. Finnemore, *supra* note 40, at 2.

221. TREMOULET ET AL., *supra* note 28, at 20.

222. *Id.*

223. Finnemore, *supra* note 40, at 2.

224. TREMOULET ET AL., *supra* note 28, at 20.

225. *Id.* at 21; *see* Finnemore, *supra* note 40, at 3.

226. Schneider et al., *supra* note 192, at 324–26; *see also* discussion *supra* Section II, Part B. (discussing Houston’s PIT counting system further).

227. Schneider et al., *supra* note 192, at 324.

228. *Id.*

The involvement of Houston's community in improving its PIT counts led to more support for the homeless community in both government and the private sector.<sup>229</sup> Generating this awareness, paired with accurate data collection, creates the opportunity for the homeless community to be better served in receiving needed resources. Other cities, such as Denver, Colorado, have also implemented community involvement into their approach of managing the homeless community.<sup>230</sup> While not the same large-scale effort as Houston, Denver's counting initiative used eighty-five community volunteers to help conduct PIT counts of homeless individuals.<sup>231</sup>

Through engaging the community in solutions, legislators' achievements will be twofold. First, the public attitude surrounding the homeless population will become a reflection of the encouragement of public officials to volunteer and assist the homeless. Second, by using a community-engagement approach, societal concerns of community expenditures will be reduced as volunteers are used and monetary resources are conserved.

Finally, while community involvement may not directly address societal concerns of crime rates, illegitimate use, or business viability, as the community becomes more involved in the solutions for the homeless community, the public will become more educated about the homeless population and their needs. In turn, this will help address the societal concerns in a manner that also tends to the necessities of this vulnerable people group.

#### **D. Implementing Housing First**

Housing First, also known as Rapid Re-Housing, is defined by the National Alliance to End Homelessness as, "[a] homeless assistance approach that prioritizes providing permanent housing to people experiencing homelessness, thus ending their homelessness and serving as a platform from which they can pursue personal goals and improve their quality of life."<sup>232</sup> Many experts call for using a Housing First strategy to address the growing homeless population rather than monetary fines or other forms of criminalization.<sup>233</sup>

The United Nations Committee on Economic, Social and Cultural Rights has recognized a broad, express right to adequate housing.<sup>234</sup> However, the United States has departed from the international community

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229. *Id.* at 327.

230. *Id.* at 325.

231. *Id.*

232. NAT'L ALL. TO END HOMELESSNESS, FACT SHEET: HOUSING FIRST 1 (2016).

233. Vitale, *supra* note 103, at 867.

234. OFFICE OF THE UNITED NATIONS HIGH COMM'R. FOR HUMAN RIGHTS, THE RIGHT TO ADEQUATE HOUSING: FACT SHEET NO.21/REV. 1, at 3 (2009); *see also* U.N. Committee on Economic, Social, and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing* (Art. 11 (1) of the Covenant), ¶ 6, 7, U.N. Doc. E/1992/23 (Dec. 13, 1991).

by failing to do so.<sup>235</sup> In fact, the U.N. Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, Raquel Rolnik, criticized the United States for failing to address affordable housing and shelter as a right and, instead, resorting to the criminal justice system to punish people living on the streets.<sup>236</sup> For these reasons, scholars have encouraged the United States to adopt better housing rights and affordable access.<sup>237</sup>

While not adopted on a national level, Housing First models have been implemented in various parts of the United States.<sup>238</sup> Use of a Housing First model proved successful in San Francisco, where the number of people living on the streets dropped by forty-one percent after being implemented.<sup>239</sup> Of those placed in housing, ninety-five percent remained housed.<sup>240</sup> Denver, Colorado also found success by employing a Housing First model. Within the first five years of implementation, the number of individuals in need of shelter reduced by forty percent.<sup>241</sup> Additionally, of the individuals receiving housing, there was an eighty-six percent retention rate for remaining in stable housing after one year, and an eighty-one percent retention rate after two years.<sup>242</sup>

Critics of the Housing First model reprimand the program's inability to prepare homeless individuals to afford housing in the actual market once their time in the government housing comes to an end.<sup>243</sup> Yet, this is mitigated through using community volunteers and programs to educate the homeless individuals in preparing to transition out of government-funded housing.<sup>244</sup>

Additionally, a Housing First model addresses the root causes of homelessness, namely healthcare-related sources associated with costs of medical bills and inability to find affordable housing in the midst of

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235. Sheffield, *supra* note 129, at 12–14; *see also USA: "Moving away from the criminalization of homelessness, a step in the right direction,"* U.N. HUM. RTS. OFF. OF THE HIGH COMM'R (April 23, 2012), <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079> [<https://perma.cc/YRB8-GV2C>] (last visited Jan. 20, 2022).

236. *USA: "Moving away from the criminalization of homelessness, a step in the right direction," supra* note 235.

237. Sheffield, *supra* note 129, at 13.

238. STEPHEN EIDE, HOUSING FIRST AND HOMELESSNESS: THE RHETORIC AND THE REALITY IS NOT THE KEY TO END HOMELESSNESS, at 9 (Manhattan Inst. 2020).

239. *Responses to the Problem of Homeless Encampments*, ARIZ. STATE UNIV. CTR. FOR PROBLEM ORIENTED POLICING, <https://popcenter.asu.edu/content/homeless-encampment-s-page-3> [<https://perma.cc/F6M7-4T35>] (last visited Jan. 20, 2022).

240. *Id.*

241. MARY CUNNINGHAM, ET AL., BREAKING THE HOMELESSNESS-JAIL CYCLE THROUGH A HOUSING FIRST APPROACH, at 1 (Urb. Inst. July 2021), [https://www.urban.org/sites/default/files/publication/104497/breaking-the-homelessness-jail-cycle-through-a-housing-first-approach\\_0.pdf](https://www.urban.org/sites/default/files/publication/104497/breaking-the-homelessness-jail-cycle-through-a-housing-first-approach_0.pdf) [<https://perma.cc/G66M-KFFS>] (last visited Jan. 20, 2020).

242. *Id.*; *see also* discussion *supra* Section II, Part C.

243. Cooper & Vohryzek, *supra* note 191, at 308–09.

244. *Id.*

healthcare crises.<sup>245</sup> With the exception of shelters, the homeless on the streets have little options of places to go when rain, wind, snow, and cold weather arise.<sup>246</sup> Exposure to these forces of nature make it more difficult to remain healthy while living on the streets, adding to healthcare implications. Additionally, homeless shelters in rural areas have limited resources and shelters in urban populations can be overrun.<sup>247</sup> It is for these reasons that legislation aimed at addressing societal concerns of illegitimate use by banning encampments is opposed. By addressing the societal concerns of illegitimate use, lawmakers are effectively making it so that “there is nowhere to be homeless.”<sup>248</sup> But where access to a shelter is not feasible, the homeless have just as much right to public areas as the average citizen.<sup>249</sup>

While solutions such as camping bans and removing park shelters do address the societal concern of illegitimate uses of public areas, these solutions do not aid the homeless community in being rehabilitated, getting housing, or finding shelter. While society may be satisfied in having these individuals “out of sight, out of mind,” the homeless community is forced into moving from one unwanted place to another as a result of such policies that fail to address their actual need for permanent housing.

Furthermore, by addressing community concerns in this manner, the public concern of community expenditures is heightened. By keeping the homeless population on the streets, rather than in housing, more resources for police and healthcare are used. One expert asserts, “[i]t costs more to keep people homeless than it costs to actually fix the issue.”<sup>250</sup> However, costs for maintaining healthcare and incarceration are reduced when the homeless community are placed in housing.<sup>251</sup> Therefore, rather than using public resources to keep these individuals in such living conditions on the streets, rehabilitating the homeless through a Housing First plan will both aid these individuals and serve the public by reducing taxpayer expenditures.

## CONCLUSION

This Note serves as an overarching policy assessment of the issues surrounding the homeless community in the United States and proposes steps that could be taken to beneficially address the needs of the homeless

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245. Vitale, *supra* note 103, at 871; *see also* TREMOULET ET AL., *supra* note 28, at 3 (noting that housing assistance has been effective at mitigating the likelihood that veterans with war-related problems will experience homelessness, and has helped homeless families recover quickly from short term medical emergencies).

246. Doucette-Préville, *supra* note 83, at 112.

247. *People Experiencing Homelessness*, *supra* note 48; *see also* *Hearing on H.B. 0978 Before the Crim. Just. Comm.*, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021) (statement of London Lamar, State Rep.).

248. Doucette-Préville, *supra* note 83, at 112.

249. *Hearing on H.B. 0978 Before the Crim. Just. Comm.*, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021) (statement of London Lamar, State Rep.)

250. Cervantes, *supra* note 106, at 27.

251. Vitale, *supra* note 103, at 871.



population. This Note largely organizes around the community concerns of: (i) crime rates, (ii) illegitimate uses of public community space, and (iii) remaining concerns of business viability and community expenditures. After analyzing how to address these concerns, two ideological approaches emerge from the various solutions already adopted to address these concerns. They are: (i) policies based on assisting the homeless and, in turn, addresses community concerns by reducing the homeless population through rehabilitation; and (ii) policies based on addressing solely the concerns of the community rather than the needs of the homeless and, in turn, do not solve the root of the concerns by reducing homelessness.

In light of the evidence discussed, the legal community and namely, legislatures, should shift the ideological approach toward solutions that address the needs of the homeless community rather than focusing on short-term solutions that address public concerns but do little to assist the homeless. By attacking the heart of the problem itself, legislators would ultimately address community concerns. To accomplish this task, legislators should: (A) establish a uniform definition of homelessness, (B) restructure Point-In-Time counts, (C) seek community engagement, and (D) implement Housing First.