



## Supplemental Resource Considerations

Chief's Message Video Brief:  
Post Covid-19 Homeless, Trespass, and Eviction  
Considerations

The materials provided in this correspondence are for general informational and educational purposes only and are not intended to be and should not be considered legal advice or opinions. Prior to making any policy or rule changes seek the advice of your municipal attorney.

J.A. Montgomery  
CONSULTING

<b>Table of Contents</b>	
<b>Subject/Item</b>	<b>Page #</b>
Volunteers of America Delaware Valley Available Services and Resources: IMPACT Project, Navigator, Mobile IMPACT Units, Safe Return, and Community Services Linkage	3
PERF Critical Issues in Policing Series-The Police Response to Homelessness	5
New Jersey Attorney General Directive, 2021-2 – Directive Prohibiting Tenants from Illegal Eviction	97
Lowman v. Riviera Beach	105
Reed v. Town of Gilbert, Arizona	131
Philadelphia Police Memorandum 18-2, Defiant Trespass on Private Business Property Open to the Public	162

## ABOUT OUR NAVIGATOR PROGRAM

*Offering outreach, rapid response and navigation to critical services for vulnerable individuals.*

Volunteers of America Delaware Valley's Navigator Program, funded by the New Jersey Department of Human Services, provides individuals in need with linkage to critical social services in order to assist with both short-term and long-term individual and family stabilization. Through collaborative partnerships with providers, hospital systems, law enforcement and the courts, the Navigator Program provides outreach, rapid response and navigation to a number of critical social services, including but not limited to treatment and addiction services, housing, employment services, education, legal services and more.

Unlike Volunteer of America Delaware Valley's Safe Return, the services offered through the Navigator Program are not solely designated for those who have been incarcerated – the program provides enhanced navigation and coordination of housing and homelessness services to all vulnerable populations, while also addressing factors that contribute to housing instability and homelessness.

Through the Navigator Program, VOADV professionals link individuals to a spectrum of services which are personalized to meet each individual's specific needs. The program offers the following key services.

Through additional support by the New Jersey Department of Human Services, VOADV has expanded the footprint of the Navigator Program to include:

- Atlantic and Cape May Counties
- Tri-County – Cumberland, Gloucester, Salem
- Camden County
- Mercer and Burlington Counties

For more information  
on VOADV's Navigator Program, visit:  
[www.voadv.org/navigational-center](http://www.voadv.org/navigational-center).

## Community Services Linkage

The Navigator Program provides comprehensive, community-based care management to individuals in need through numerous initiatives:

### **Navigational Resource Centers**

VOADV currently operates four (4) Navigational Resource Centers to further enhance the Navigator Program and better address the social services needs of vulnerable individuals throughout our footprint. The Navigational Resource Centers are strategically co-located with Safe Return program offices to ensure an immediate, holistic approach to service delivery and one-stop linkage to those requesting assistance.

### **IMPACT Initiative**

#### **(Immediate Mobilization of Police Assisted Crisis Teams)**

With an immediate, direct approach to service delivery, the IMPACT Initiative meets individuals where they are – in the community, in their homes, on the street, at service events, etc. – to ensure prompt service delivery in a comfortable setting. As a key part of the initiative, IMPACT Specialists work side-by-side with law enforcement partners in satellite offices embedded within police departments – delivering critical social services to those most in need, and at times, diverting from criminal justice system involvement. VOADV currently operates eight (8) law enforcement embedded satellite offices in Atlantic (Egg Harbor Township), Burlington (Burlington City, Maple Shade), Camden (Gloucester City, Pennsauken, Pine Hill, and Voorhees) and Mercer (Lawrence Township) counties, with affiliation agreements with additional departments (Collingswood, Lindenwold, Princeton, Waterford, and Winslow) and plans for further expansion.

### **Mobile IMPACT Units**

Units vehicles can be dispatched, as needed, to communities throughout VOADV's footprint in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer and Salem counties to deliver direct, immediate social services to individuals in need in coordination with local law enforcement partners. Currently, VOADV operates three Mobile IMPACT Units for regionalized coverage: Atlantic/Cape/Tri-County (covering Atlantic, Cape May, Gloucester, Salem and Cumberland), Camden County and Burlington/Mercer Counties.

### **Safe Return**

Volunteers of America Delaware Valley's Safe Return Program, funded by the New Jersey Department of Community Affairs, provides reentry assistance and a broad range of essential services for individuals returning to society within three years of being incarcerated and who are no longer under criminal justice supervision. Safe Return ensures that individuals returning to society from incarceration are given the tools and care they need in order to establish and lead self-fulfilling, independent lives after reintegrating back into society.

Through the Safe Return program, VOADV professionals assist individuals in obtaining the necessary structure, support and additional opportunities that are fundamental for successful reintegration into their communities.

# Community Services Linkage

**856-833-0249**



**Volunteers  
of America®**

**DELAWARE VALLEY**

## Safe Return & Navigator Program Services

Employment  
Reentry  
Housing Assistance  
Transportation

Mental and Substance Abuse Treatment  
Identification Assistance  
Veterans Assistance

## Available In:

Atlantic  
Burlington  
Camden  
Cape May

Cumberland  
Gloucester  
Mercer  
Salem

## IMPACT

(Immediate Mobilization of Police Assisted Crisis Teams)  
Initiative

With an immediate, direct approach to service delivery, the IMPACT Initiative meets individuals where they are – in the community, in their homes, on the street, at service events, etc. – to ensure prompt service delivery in a comfortable setting. As a key part of the initiative, IMPACT Specialists work side-by-side with law enforcement partners in satellite offices embedded within police departments – delivering critical social services to those most in need, and at times, diverting from criminal justice system involvement. VOADV currently operates eight (8) law enforcement embedded satellite offices in Atlantic (Egg Harbor Township), Burlington (Burlington City, Maple Shade), Camden (Gloucester City, Pennsauken, Pine Hill, and Voorhees) and Mercer (Lawrence Township) counties, with affiliation agreements with additional departments (Collingswood, Lindenwold, Princeton, Waterford, and Winslow) and plans for further expansion.



# The Police Response to Homelessness





CRITICAL ISSUES IN POLICING SERIES

# The Police Response to Homelessness

June 2018



POLICE EXECUTIVE  
RESEARCH FORUM

This publication was supported by the Motorola Solutions Foundation. The points of view expressed herein are the authors' and do not necessarily represent the opinions of the Motorola Solutions Foundation or all Police Executive Research Forum members.

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- NYPD Officer Lawrence DePrimo offers a new pair of boots he purchased for a homeless man. Photo by Jennifer Foster.
- Hillsborough County, FL Sheriff's Deputy Linda Ruggerio shares her lunch with a young homeless man. Photo by Hillsborough County Sheriff's Office.
- Miami Beach, FL police officers deliver mosquito repellent to community members. Photo by Valerie Navarrete.
- Santa Cruz, CA police officers conducting a survey of homeless persons in order to gather information and direct individuals to services. Photo by Santa Cruz Police Dept.
- Pinellas County Sheriff's Office deputies and employees of Safe Harbor, a homeless shelter and jail diversion created by the Sheriff's Office. See pp. 12-13 of this report. Photo by PCSO.



# Contents

Acknowledgments.....	1
----------------------	---

## **The Police Response to Homelessness: Problem-Solving, Innovation, and Partnerships..... 3**

*By Chuck Wexler*

<i>Sidebar: Pinellas County Sheriff's Office Opens a \$2.3 Million Facility to Help Homeless Persons.....</i>	<i>12</i>
---	-----------

## **What We Know About Homelessness..... 14**

National Data on Homelessness.....	14
------------------------------------	----

States Experiencing High Levels of Homelessness.....	15
--	----

Causes of Homelessness .....	18
------------------------------	----

• Mental Health and Substance Abuse .....	19
---	----

• A Particular Focus of Police: Chronic Homelessness .....	19
--	----

<i>Sidebar: Legalized Marijuana and Homelessness.....</i>	<i>20</i>
---	-----------

• Lack of Affordable Housing .....	21
------------------------------------	----

<i>Sidebar: Supreme Court Ruling on Free Speech Brings Reversals of Laws on Panhandling.....</i>	<i>22</i>
--	-----------

• Does the Availability of Services Attract Homeless Individuals to Particular Communities? .....	23
--	----

<i>Sidebar: Two PERF Surveys on Homelessness in 1993 and 2018: Many of the Themes Are Similar.....</i>	<i>24</i>
--	-----------

## **What Is the Role of the Police?..... 25**

## **Police Officers' Perspectives ..... 30**

## **Crime and the Homeless Community ..... 33**

<i>Sidebar: Portland's Service Coordination Team Helps Homeless Persons Involved in Low-Level Crime.....</i>	<i>36</i>
--	-----------

<i>Sidebar: Homelessness in California: The Unintended Consequences of Criminal Justice Reform.....</i>	<i>38</i>
---	-----------

<i>Sidebar: A Meta-Analysis of Intervention Programs Reveals Some Evidence of Effectiveness .....</i>	<i>40</i>
---	-----------

## **Key Challenges and Promising Practices..... 41**

Homeless Outreach Teams.....	41
------------------------------	----

<i>Sidebar: "Seattle Navigation Team" Combines Officers and Homelessness Caseworkers .....</i>	<i>43</i>
--	-----------

<i>Sidebar: Wet Shelters, Dry Shelters, "Housing First," and Harm Reduction.....</i>	<i>44</i>
--	-----------

Homeless Encampments Raise Difficult Questions.....	45
<i>Sidebar: San Diego County's Response to Hepatitis A</i> .....	46
Court Rulings in California Result in Strict Rules	
Limiting Seizure of Homeless Persons' Property .....	48
<i>Sidebar: How Indio (CA) Is Reducing Homelessness</i> <i>and Evaluating Its Progress</i> .....	50
Homeless Courts Now Operating in More than 30 Jurisdictions.....	52
<i>Sidebar: Cambridge, MA Is Tracking Homelessness</i> <i>With a Focus on Services and Relentless Follow-Up</i> .....	54
Training Programs for Police Officers Who Work with Homeless Persons ....	55
<i>Sidebar: Long Beach, CA Is Using a Multi-Disciplinary,</i> <i>Data-Driven Approach to Combat Homelessness</i> .....	58
Innovative Uses of Technology and Data-Sharing .....	61
<i>Sidebar: Vacaville's Enhanced Survey Measures</i> <i>The Size and Nature of the Homeless Community</i> .....	64
<i>Sidebar: Louisville's "Living Room" Gives Officers</i> <i>An Alternative to Arrest for Minor Offenses</i> .....	65
<i>Sidebar: San Francisco Police, Public Health,</i> <i>Public Works, and Others Work Together</i> .....	66
Funding Issues .....	67
Regional Partnerships and Cooperation .....	69

## **CONCLUSION: 11 Steps Law Enforcement Agencies Can Take to Improve the Response to Homelessness..... 72**

About PERF.....77

About Motorola Solutions and the Motorola Solutions Foundation.....79

APPENDIX: Participants at the Critical Issues Meeting –  
The Police Response to Homelessness.....80



# Acknowledgments

WHEN PERF DECIDED TO HOLD A *CRITICAL ISSUES IN POLICING* MEETING on the police response to homelessness, we weren't sure what to expect. It had been 25 years since PERF last delved into this topic. And while our daily "PERF Clips" news service for our members occasionally includes news stories about homelessness, it wasn't obvious to us that this issue was more than a blip on the profession's radar screen.

So it was something of a revelation to us to learn that for many police departments, the response to homelessness is one of the most important issues they face on a daily basis. The fact that 250 people traveled to Long Beach, CA on January 24, 2018, for our conference indicates how much of a challenge homelessness presents to the law enforcement profession. We traveled to Long Beach for our meeting because California is Ground Zero on the homelessness issue. If you ask a California police chief to name his or her most challenging issue, chances are they will tell you it is homelessness.

I salute all of the police chiefs and sheriffs, other command personnel, supervisors, and front-line officers, along with local government and community partners and researchers, who participated in our meeting. You brought a rich and diverse mix of experiences and perspectives to the table. Your willingness to share new ideas and promising practices made this publication possible.

Any time PERF hosts a meeting outside of our home base in Washington, DC, we rely on local agency support. For this meeting, we could not have asked for a better, more helpful partner than the Long Beach Police Department. Chief Robert Luna and his team helped us with planning and logistics, and offered their assistance every step of the way. Particular thanks go to Peggy Berroa-Morales and Fabiola Smith, who helped with the sign-in process as hundreds of attendees arrived at the meeting.

Twenty years ago PERF started the *Critical Issues in Policing* series. This is our 34th *Critical Issues* project, all made possible by the support of the Motorola Solutions Foundation. Because of the foundation's forward-thinking generosity, PERF is able to research cutting-edge issues such as the police response to homelessness, and we are able to provide timely guidance to the profession through meetings and publications such as this one.

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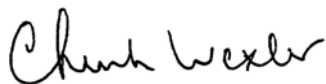
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I am grateful for a talented and hard-working staff, and once again, they planned and carried out another successful project. Our team does a remarkable job conducting background research, getting knowledgeable people to the table, and making sure we ask the right questions and cover the most important topics.

Kevin Morison, PERF's Chief Operations Officer, led the project team and authored several sections of this report. Creation of this report was a true team effort. Research Associates Rachael Arietti, Allison Heider, and Sarah Mostyn, Senior Associate Dan Alioto, and Assistant Communications Director James McGinty all contributed sections of this report, in addition to helping to plan and support the meeting in Long Beach. Research Associate Jason Cheney conducted numerous pre-conference interviews with attendees and assisted with other aspects of project planning. Membership Coordinator Balinda Cockrell assisted with meeting registration and communication with attendees. Communications Director Craig Fischer authored part of the report, edited the entire document, and oversaw production. PERF's graphic designer, Dave Williams, designed and laid out the report. Executive Assistant Soline Simenauer helped to keep the entire project team and me on track. And Andrea Morrozzoff, PERF's Chief Strategy Officer, continues to provide leadership and direction for the *Critical Issues* initiative.

At our meeting, Ken Corney, chief of police in Ventura, CA and past president of the California Police Chiefs Association, summed up the basic challenge that he and his colleagues face in handling issues of homelessness. "Everybody is dealing with the same problems," he said, "and we're all looking for that magic wand approach. But it just doesn't exist, because this is a *community-wide problem* that is often punted to the policing profession to solve."

It is truly amazing to see how many police departments have taken the issue of homelessness to heart. This report provides specific examples of the innovative and humane approaches that departments have taken. I know that police and sheriffs' departments across the country will share this report with their officers so they can learn from these examples. It is gratifying to see the police step up to this challenge.



Chuck Wexler  
Executive Director  
Police Executive Research Forum  
Washington, D.C.

# The Police Response to Homelessness: Problem-Solving, Innovation, and Partnerships

*By Chuck Wexler*

IN MANY WAYS, THE NATURE OF HOMELESSNESS HAS NOT CHANGED much in 25 years. It just seems to have become more severe. What *has* changed is how police and sheriffs' departments see the issue of homelessness, and how they respond to it.

Twenty-five years ago, in 1993, PERF conducted a large, nationally representative survey on policing and homelessness. The survey was sent to chief executives of 650 medium-size or large police agencies, and the response rate was 80 percent. Back then, 69 percent of respondents reported that the homeless individuals in their jurisdiction were viewed “predominantly as a police problem.” Nearly two-thirds said that homeless individuals in their jurisdictions had mental health issues. And the percentages struggling with alcohol abuse (88 percent) and drug abuse (59 percent) were very high.

Those numbers could be even higher today. In January 2018, 72 percent of PERF members who replied to a questionnaire said that homelessness in their communities had increased in recent years; only 13 percent said it had declined. And more than half of the respondents reported increases in mental illness and substance abuse among the homeless population.

## *The New Police Response to Homelessness: Outreach and Services, Not Arrests*

While the nature of homelessness has not changed very much, there has been a sea change in how law enforcement agencies respond to it.

Approximately 250 law enforcement leaders, local government officials, researchers, and other subject matter experts convened in Long Beach, CA on January 24, 2018 for a day-long PERF conference on homelessness. They told us that they have learned that making arrests is not an effective response. Rather, today's police and sheriffs' departments see their role as taking leadership and finding innovative solutions, which often involve multi-faceted activities with social service agencies, other government departments, and other partners.

Today, many law enforcement agencies are implementing direct outreach to homeless individuals, building partnerships with a wide range of service providers, and encouraging their officers and deputies to be resourceful and to show compassion for homeless persons.

So while there may be questions about who “owns” the problem of homelessness, the fact is that police departments across the country are stepping up. (Police and sheriff’s departments tend to be on the leading edge of social problems, because they respond to calls 24 hours every day.) And the focus is on problem-solving and innovation. This report showcases many of the promising practices that were discussed at PERF’s conference in Long Beach.

### *A National Problem, Centered in California*

Each January, the U.S. Department of Housing and Urban Development conducts its national Point in Time (PIT) count of homeless persons. After declining over the last decade, the count rose in 2017, to more than 553,000 homeless people nationwide. Many experts believe the 2018 tally will show another increase.

The PIT numbers paint a detailed, and perhaps surprising, portrait of homelessness in the United States. About 20 percent of the homeless people in the United States are under the age of 18, and another 10 percent are age 18 to 24. Women account for 39 percent of all homeless persons, and nearly 29 percent of the *unsheltered* homeless people are women.

Nowhere is the problem more acute than in California. In 2017, the state had an estimated 134,000 homeless individuals, an increase of almost 14 percent from 2016. Of every 10,000 state residents, 34 were homeless in 2017. *California accounts for one-quarter of all homeless persons in the United States, and nearly half of those who are unsheltered.*

Of course, California is not alone in facing homelessness issues. Four other states—New York, Florida, Texas, and Washington—account for a combined total of 30 percent of the country’s homeless population. There are nuances to the homeless situation depending on location. Some cities in Texas have experienced large numbers of people living in their cars. California has a major problem with encampments in or near dry river beds. Colorado and other states that have legalized marijuana may be seeing an increase in “travelers”—mostly young people who are attracted to locations with legal marijuana but have few if any roots in the community.

### *Challenges of Homelessness, Mental Illness, and Substance Abuse*

Regardless of location, participants at the PERF meeting cited two nearly universal factors that are helping to drive homelessness in their communities: mental illness and substance abuse. Police officials from Eastern cities—Buffalo, NY; Philadelphia; and Louisville, KY, among others—described how the opioid epidemic ravaging their cities is contributing to homelessness. In California and other parts of the West, the persistence of methamphetamine continues to impact homelessness, according to officials there. And police officials



from across the country said that mental illness remains a significant contributor to homelessness in their communities.

Meeting participants discussed other factors that are contributing to homelessness in their communities. These include the prohibitively high cost of housing in many cities, and the expansion of public transportation systems and other services that may attract homeless individuals from nearby communities where services are not as robust.

### *Who Owns This Problem?*

These connections between drug abuse, mental illness, economic factors, and homelessness prompted meeting participants to ask a fundamental question: Who is responsible for responding to the problem of homelessness? The police? Social service agencies? Public housing departments? All of the above?

Being homeless in the United States is not a crime. However, community members frequently complain when they can't use their parks or other public spaces without having to navigate around people who are living there. In these circumstances, residents don't call the health department or social services. They call the police.

As a result, many people think of the police as “owning” the problem of homelessness. This can put police executives and officers in a difficult spot. They feel caught between residents demanding action and homeless individuals who are vulnerable and have few options.

Police Chief James McElvain of Vancouver, WA summed up the dilemma—and the opportunity—facing the police. “Homelessness isn't necessarily a law enforcement problem, but we are the ones who get the calls, and we will respond because that's our responsibility,” he said. “But we don't have the resources to provide more shelter space or services for mental health. We need others to come to the table.”

“Coming to the table”—forming partnerships among police and other agencies and organizations—was a common theme at the *Critical Issues* meeting. Across the country, police chiefs and sheriffs are stepping up and taking the lead in putting together and participating in these collaborative efforts.

### *New Challenges, New Approaches*

PERF's meeting explored many of the underlying principles that have come to guide the police response to homelessness. As police leaders look at specific programs or approaches, it is important to keep in mind these big-picture ideals:

#### **It matters how we think about, and talk about, the problem.**

First, there has been a fundamental shift in how we talk about the issue. In the past, people often referred to “the homeless,” a monolithic term that defined a wide swath of the population by a single characteristic. Today, we refer instead to “persons experiencing homelessness,” recognizing that there are many reasons someone may become homeless, and that *homelessness is often a*

“Homelessness is a *community-wide problem* that is often punted to the policing profession to solve.”

— Ventura Chief Ken Corney



Ken Corney

*temporary condition that, given appropriate intervention by the police and others, can change.* This is not a mere question of semantics. It gets to the fundamental principle of police officers treating everyone, including those who don't have a home, with dignity and respect.

Agencies are putting this principle into action, especially through their training programs. For example, the Broward County, FL Sheriff's Office offers a 40-hour "homelessness school" that is a follow-up to the Crisis Intervention Team (CIT) training that deputies receive. The homelessness training includes classroom instruction, scenario-based exercises, and site visits to shelters and encampments.

Similarly, the Las Vegas Metropolitan Police Department requires its recruit officers to make contact with at least one homeless person per shift during field training. The purpose is to expose the new officers to issues surrounding homelessness, to ensure that they understand that most homeless persons are not committing crimes, and to help them practice their communications and referral skills.

The late John Timoney, who had a stellar career in the New York City Police Department and later became Police Commissioner in Philadelphia and Chief of Police in Miami, once told me that many police officers don't understand that homeless persons often carry knives or similar weapons for self-protection, not to use against officers. It's not surprising that people who sleep in the open, with no locked door to protect them from intruders or attackers, feel the need for self-protection. Many homeless individuals also carry knives as a tool for everyday tasks.

Some police agencies are revamping their training to help officers understand homeless persons better and avoid potentially deadly encounters. A homeless person being awakened by a police officer may instinctively grab his knife, causing the officer to perceive a deadly threat. That's part of the reason the Riverside, CA Police Department began training its officers in PERF's ICAT curriculum (Integrating Communications, Assessment, and Tactics). Riverside Chief Sergio Diaz said the training has helped officers peacefully defuse a number of situations where deadly force might have been deployed in the past.

### **Enforcement action alone won't solve the problem of homelessness.**

Police leaders increasingly recognize that they cannot make the problem of homelessness go away through enforcement actions alone. When homeless individuals commit serious crimes, they need to be held accountable. At the *Critical Issues* meeting, officials from several jurisdictions described crime problems in their homeless encampments, including gang infiltration, domestic violence, prostitution, and human trafficking. Much of the crime is committed by homeless individuals against other homeless individuals, which can make it especially challenging for investigators to locate and work with victims and witnesses.

But for the vast majority of people experiencing homelessness, arrest and incarceration should be a last resort, not a first option for minor offenses. Providing housing, treatment, counseling, and other services is a far more effective

approach for most people who are homeless. That is why Santa Cruz, CA Police Chief Andy Mills stopped enforcing an “anti-camping” ordinance that had officers citing and arresting the same people over and over again, with no impact on homelessness. Instead, the city set up a controlled and secure encampment on city property, and brought in resources for individuals who need help.

Sheriffs’ offices are making this shift as well. In Pinellas County, FL, Sheriff Robert Gualtieri started Safe Harbor, a 400-bed diversion program that is providing transitional housing and a range of services for persons who might otherwise be homeless or in jail because they were involved in minor criminal activity. Safe Harbor provides these services at a fraction of what it would cost to keep a person in jail.

### **Partnerships with other agencies are essential.**

Police leaders have come to recognize that to be effective in addressing homelessness, they must partner with other agencies and service providers and address the problem in a coordinated and comprehensive manner. Sometimes, law enforcement may take the lead in these efforts, as in Indio, CA, where the police department’s Community Outreach Resource Program (CORP) is anchoring that city’s response to homelessness. In other communities, a different agency may lead. That is the case in Long Beach, CA, which has instituted a comprehensive, data-driven approach to homelessness that is being led by the city’s Health and Human Services Department.

The *Critical Issues* meeting revealed other promising partnerships. In San Francisco, for example, the police department recently established a multi-agency command center within its emergency communications facility. When calls involving homelessness come in, officials immediately triage them to determine which agency is best equipped to respond. Sometimes it is the police, but other times it may be another agency. This approach has the potential to improve the response to these calls, while preserving police resources for matters that require their attention.

In Vacaville, CA, Police Chief John Carli created the Homeless Roundtable, a multi-agency entity that brings together the police, social services, the faith-based community, and other nonprofit organizations to share information, develop strategies, and increase coordination in addressing the city’s homeless problem. Other cities, such as Portland, OR, are using a similar model in which the inter-agency group not only discusses broad strategies, but also develops specific plans for individuals who are chronically homeless.

And in San Diego, a public health emergency—a Hepatitis A outbreak among the homeless population—prompted multiple agencies to work together and invest in short- and long-term solutions. With the assistance of the police, the city cleaned up encampments where the disease was spreading and offered vaccinations to homeless individuals, police officers, and other city workers. Then the city erected three “sprung shelters”—large, industrial tents that include storage facilities for people’s property and have service providers on site.

### **Police agencies must think and act regionally.**

Law enforcement leaders are also recognizing that they don't operate in a vacuum in addressing homelessness. One jurisdiction's actions can impact neighboring jurisdictions, so it is important for communities in a region to come together and work cooperatively on strategies and solutions.

Clearwater, FL Police Chief Dan Slaughter described the challenge: "As we squeezed the balloon in Clearwater, it would create problems elsewhere. Then, St. Petersburg, the city due south of us, would squeeze the balloon, and it would create problems for us. So we really needed a countywide approach."

The *Critical Issues* meeting provided examples of regional cooperation. On the east side of Seattle, for example, the communities of Bellevue, Kirkland, and Redmond got together to coordinate their shelter services. Bellevue created a shelter for men, Kirkland built a shelter for women, and Redmond built one for families. In Riverside County, CA, six communities came together to make their local ordinances regarding homelessness more consistent and to collaborate on services and resources.



Clearwater, FL Police Chief  
Dan Slaughter

### **Unintended Consequences: Criminal justice reform in California removed incentives to enter drug treatment.**

Why is homelessness such a severe problem in California? That was one of the issues explored at the *Critical Issues* conference. The answer may provide guidance to other states and localities.

According to law enforcement officials, homelessness in California is caused by more than just the warm climate and the high cost of housing in many parts of the state (although those are certainly factors). California's surge in homelessness may be, in part, an unintended consequence of recent criminal justice reforms that the state enacted.

A.B. 109, the so-called "realignment" bill, was passed by the California State Legislature in 2011 as a way to reduce crowding in the state's prison population. Under the law, individuals convicted of approximately 500 different felony offenses that are considered "non-serious, non-violent and non-sex related" are now sentenced to county jails instead of state prison. As a result, thousands of sentenced offenders who would have served their time in state prisons are now incarcerated in county jails.

California police leaders say this has created a domino effect that is contributing to homelessness in many of their communities. County jails, many of which were already overcrowded, are being forced to release some inmates back to the community in order to make room for the prisoners being sent to them under the realignment bill. Many of those being released lack permanent housing and struggle with mental illness, substance abuse, or both. Some continue to commit crimes, often to feed their addictions, and others become victims of crime.

In addition to A.B. 109, a measure called Proposition 47 is resulting in more low-level drug offenders on the street, and fewer in treatment. Approved by California voters in November 2014, Proposition 47 downgraded a wide range of theft and drug offenses from felonies to misdemeanors. Many suspects

accused of these crimes now receive only a citation and little chance of jail time.

*One consequence of Proposition 47 is that without the threat of incarceration, the justice system lost much of the leverage it once had to get people into drug treatment programs.*

“Low-level drug offenses became misdemeanors. In California, that’s a citation, no matter how many times you’re caught, so there’s no incentive to stop reoffending,” said Los Angeles County Sheriff Jim McDonnell, whose agency operates the largest jail in the nation and is the second largest police agency in the United States. “Before, people facing jail time would eventually accept treatment, but now that leverage is gone. And the number of people in treatment went down after that.”

And as the number of people in drug treatment declines, the number on the streets grows, thus creating additional challenges for law enforcement.

California’s experience with criminal justice reform offers a cautionary tale to other states that are considering similar reform measures. While the underlying goals of these initiatives may be laudable, California has shown that implementation can worsen homelessness.

### **Technology and data sharing are important components of the police response.**

Participants at the *Critical Issues* conference described how technology is helping them to understand and respond to homelessness. In Vacaville, CA, for example, Community Response Unit officers use a survey loaded on their smartphones to voluntarily collect information about homeless individuals they encounter. The data help officers maintain an up-to-date count of the number of homeless persons in their city, and to plan more effective response strategies. In Seattle, a mobile app is helping the city’s “Navigation Teams” (police officers and mental health clinicians) to keep track of the sites they visit, the people they encounter, and the services they offer.

Jurisdictions such as San Diego County and Colorado Springs are using GIS technology to map homeless encampments. This information supports everyday outreach activities and can be life-saving during severe weather or fire events in which evacuations may be necessary.

Other communities are taking on the challenge of sharing data about homeless individuals across agencies, while adhering to privacy laws such as the Health Insurance Portability and Accountability Act (HIPAA). Long Beach drafted an administrative regulation that deems the entire city a single legal entity for purposes of sharing data on individuals who are homeless and high utilizers of city services. The city created a data warehouse where information can be stored and accessed by two dozen departments that are involved in assisting people who are homeless.



## Helping homeless persons can be much less expensive than not helping them.

The types of comprehensive programs that can impact homelessness are expensive in terms of up-front and ongoing operational costs. But making those investments can save money in the long run.

For the past several years, researchers at Portland State University have analyzed Portland's Service Coordination Team, which targets individuals who are homeless and involved in the justice system. *Their most recent study found that every dollar invested in the program resulted in \$13 in savings in crime and justice system costs.*<sup>1</sup>

Participants in Long Beach emphasized that jurisdictions need to be creative in how they fund their homelessness programs. Some cities have used federal, state, and private philanthropic grants to fund their initiatives. In other jurisdictions, voters have approved special sales taxes that fund homelessness initiatives. Measure H, passed in 2017 by voters in Los Angeles County, is expected to raise approximately \$355 million per year over 10 years for homelessness programs and services. And in Lakewood, WA, a charity established to help the families of four officers killed in the line of duty in 2009 is now being used to assist homeless persons in the community.

## The actions of individual police officers make a difference.

Perhaps most importantly, police agencies have come to learn that the actions of dedicated, compassionate police officers are the foundation of an effective response to homelessness. Officers Brandon Haworth and Jose Ibarra doggedly tracked down the mother of a chronically homeless man in Indio, CA, got the man showered, clothed and fed, and then drove him 77 miles to reunite him with his mother.

Sergeant Dave Kellis and members of the Community Response Unit in Vacaville discovered that a homeless woman had a Section 8 housing voucher that was about to expire, and used their community contacts to locate an apartment—and then paid for some of her move-in expenses out of their own pockets.

Across the country, specially trained “Homeless Outreach Teams” are on the front lines every day, practicing their own brand of community policing. Their focus is not on making arrests, but on making contacts, building relationships, and finding ways to improve the lives of homeless individuals in their communities. In many cities, such as Seattle and Houston, these officers team up with mental health clinicians to help individuals who are chronically homeless and have mental health issues.

Selecting and training the right officers to perform these roles are vitally important. Participants at the *Critical Issues* meeting emphasized that homeless outreach officers must possess a unique combination of skills and attributes:



Vacaville, CA Police Sgt.  
David Kellis

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1. Study of the Service Coordination Team and its Impact on Chronic Offenders: 2017 Report. Portland State University, Capstone Class UNST 421, Section 572. 2017



compassion, determination, communication skills, an ability to network and problem-solve, and, perhaps above all else, patience.

The work of these officers can be slow and laborious, and situations are seldom resolved right away. Experts at the meeting said that on average, it can take 15 to 20 contacts with a homeless person before he or she accepts an offer of help. And even then, success can be fleeting.

Our *Critical Issues* meeting produced a number of promising initiatives and helpful case studies that agencies can examine and introduce in their own communities.

The conclusion to this report includes 11 steps that police departments and sheriffs' offices—and their community partners—can consider right away as they look for new and more effective ways to combat homelessness.

### *Lessons from LA's Skid Row – A Half-Century Ago*

More than 50 years ago, the sociologist Egon Bittner published a groundbreaking study of policing on Skid Row in Los Angeles.<sup>2</sup> His findings back then ring true today.

Bittner noted that the general public may turn away from homeless persons, but police officers do not have that option. They must engage with and protect people who are homeless. In doing so, officers come to see homeless persons as individuals with names and stories, and in many cases dreams for a better future. Officers, Bittner noted, “frequently help people to obtain meals, lodging, employment, direct them to welfare and health services, and aid them in various other ways.”

I witnessed this type of compassion first-hand 30 years ago, while walking a beat with Madison, WI Police Chief David Couper. When we passed a homeless man, he looked up. Chief Couper immediately recognized the man, greeted him by name, and asked how he was doing. In that moment, the connection—the gesture of care and compassion—made all the difference.

Acts of kindness and intervention by individual police officers will not solve the problem of homelessness in America. But for many individuals experiencing homelessness, and for communities concerned about the problem, officers' actions can be an important first step. How law enforcement agencies and their partners build on that foundation will go a long way toward determining how successful they will be at reducing homelessness and improving the quality of life in their communities.

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2. Bittner, Egon. “The Police on Skid-Row: A Study of Peace Keeping.” *American Sociological Review*, Vol. 32, No. 5 (Oct., 1967), 699-715. [https://www.jstor.org/stable/2092019?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/2092019?seq=1#page_scan_tab_contents)

## Pinellas County Sheriff's Office Opens A \$2.3 Million Facility to Help Homeless Persons

**Wexler:** Sheriff Gualtieri, you have undertaken a remarkable project in your county. Your Sheriff's Office actually opened a homeless facility, and you run it. Please tell us about it.

**Pinellas County Sheriff Robert Gualtieri:** Pinellas County is the Tampa Bay area—St. Petersburg, Clearwater. We're a county of a million people, with 24 cities and a very diverse population.

The scenario in 2010 was this: We had about 3,600 inmates in the county jail, and were facing projections of it going toward 3,800. We had about 500 inmates sleeping on the floor.

So we looked at the jail population and saw that a lot of the inmates were there on very minor crimes related to homelessness. In effect, the criminal justice system had become a dumping ground for a social problem. And the cops were doing what cops do, which is solve problems by locking people up, because they had no other resources available to them to deal with the homeless population. We had people who had been arrested 75 times in a two-year period for minor crimes—disorderly conduct for urinating, public trespassing, minor retail theft, all those things. Some were spending hundreds of days in the county jail.

Meanwhile, in the 24 cities in the county, elected leaders were meeting. Mayors, judges, prosecutors, everybody was trying to figure this out, but there was a lot of inaction. Nobody was actually doing anything about the problem. And I was faced with 500 inmates on the floor of the jail, which was unworkable. It was an officer safety issue and an operational issue.

So we opened our Pinellas Safe Harbor<sup>3</sup> as a jail diversion program to deal with the chronic homeless. At that point, our peak count was showing about 6,000 homeless people in the county. We opened Pinellas Safe Harbor in January of 2010 with the naïve idea that we would slowly increase the population. Well, right away it went from zero to 400, and our average daily population in Safe Harbor since January 2010 has been 400 a day.

The jail population dramatically went down and now it's about 3,100, which is manageable. The average cost of housing inmates in the county jail is \$126 per person per day. We house them in the Safe Harbor for \$13 a day on average, *and we're getting them services*. Not only shelter and meals, but also medical care, transportation, clothing, laundry facilities, case management services, alcohol treatment, substance abuse treatment, life skills training—all these things to help break the cycle of homelessness.

Since 2010, we have had 86,000 admissions to Safe Harbor. 19,000 unique individuals. And it's solving a problem as it relates to the chronic homeless. We, as the Sheriff's Office, are the largest homeless services provider in the county.

Should we be in the business of running services for homeless persons? I don't know. You can debate that all day long. But we are in that business, and we're making a difference, and it's solving a problem. Ideally, somebody else should be doing it. I've offered it to all of the homeless service providers in the county many times. I ask them, "Do you want to come do it? I'll give it to you." But nobody's taking me up on the offer.



Pinellas County, FL Sheriff  
Robert Gualtieri

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3. <http://www.safeharborpinellas.org/>

So we continue to do it, and we spend \$2.3 million a year to run the facility. But it's a cost avoidance, because the \$2.3 million that we're spending to house those 400 people a day, if they were in the county jail, would be at about \$4.5 million.

So it's a \$2.2-million cost avoidance. *And it's not a revolving door to nowhere.*

One of the benefits of being an elected sheriff is, I don't report to a board, I don't report to the county commission or an administrator or city manager. And so, I decided to do it and I used our money to do it.

**Wexler:** This is fascinating. Why does it cost *less* to put people in Safe Harbor, where they get all these services, than to put them in jail?

**Sheriff Gualtieri:** Because in a county jail, especially when you're an accredited jail like we are, you have to meet all the accreditation standards. Also, Safe Harbor is a safe place, but it's not a secure facility. We have a private contractor we use for security services at Safe Harbor; we don't have sworn deputies. We use a mag for screening; we want to make sure that there's no weapons coming in. We have an "amnesty box," so when people come in, we tell them, "Drop all your dope, drop your guns, drop your knives, whatever weapons you have, drop them in the box. No questions asked." And they come in. We also have what we call "criminal justice specialists," not sworn deputies, to staff positions at Safe Harbor. And we contract different functions out. So we're able to do it at a lower cost than what it requires to run a county jail.

One other important aspect of this is NIMBY—not in my back yard. Nobody wants a facility like this in their back yard. So you need to address the community concerns. We have a community police unit that's assigned to Safe Harbor, not only to deal with what's going on at Safe Harbor, but also everything else that's happening in the neighborhood. At the first community meeting I had when we opened Safe Harbor in 2010, we had about 200 people show up. But within two years, we stopped doing the community meetings because nobody was showing up. Their concerns had been addressed.

**Wexler:** Last question. You are sheriff. You have to run for office. Is this going to help you or hurt you getting re-elected?

**Sheriff Gualtieri:** I think overall it helps. It's not going to hurt. The bottom line is that I don't care about the politics, because it was the right thing to do.



Lieutenant Zach Haisch, manager of Pinellas Safe Harbor, describes the services offered to homeless individuals.  
<https://www.youtube.com/watch?v=wyH1Yc4aPxA>.



# What We Know About Homelessness

## National Data on Homelessness

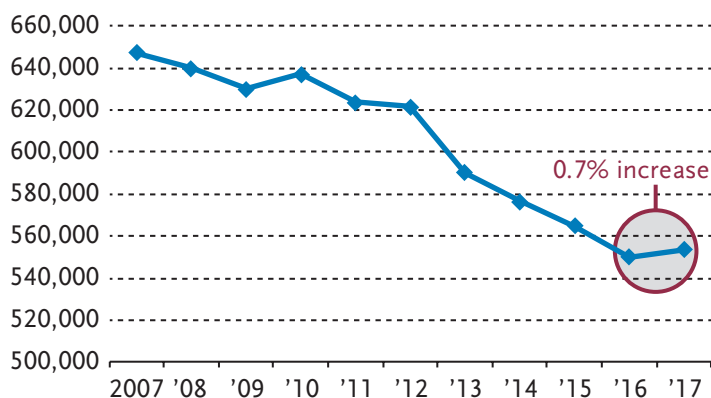
The U.S. Department of Housing and Urban Development (HUD) requires that communities receiving federal funds to reduce homelessness<sup>4</sup> conduct an annual count of all sheltered homeless individuals, and a count every other year of unsheltered homeless individuals. These counts are called “Point-in-Time” (PIT) counts because they focus on the numbers of homeless persons on a single night in January. The PIT counts are important in helping communities to determine the extent of homelessness, and they provide data for comparison across years.<sup>5</sup>

The PIT count of unsheltered homeless persons has limitations, because counting unsheltered homeless persons is more difficult than counting populations of homeless shelters. The methodology for PIT counts of unsheltered homeless persons varies between different communities and across years.<sup>6</sup>

However, PIT counts are the only national measure that captures both sheltered and unsheltered homeless individuals, and therefore they provide the most reliable estimate available of people experiencing homelessness in the United States.<sup>7</sup>

According to the 2017 PIT estimate, there were 553,742 people experiencing homelessness on a single night in January—360,867 (65 percent) sheltered and 192,875 (35 percent) unsheltered. Approximately 67 percent of homeless people were lone individuals, and 33 percent were members of homeless families with children. Approximately 20 percent of the

### PIT Estimates of People Experiencing Homelessness, 2007–2017



Source: U.S. Department of Housing and Urban Development. *The 2017 Annual Homeless Assessment Report (AHAR) to Congress: Part 1: Point-in-Time Estimates of Homelessness*. By M. Henry, R. Watt, L. Rosenthal, and A. Shivji, Abt Associates. December 2017. <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>

4. HUD's "Continuum of Care" program provides funding to provide housing to homeless persons and families and promote self-sufficiency. <https://www.hudexchange.info/programs/coc/>

5. U.S. Department of Housing and Urban Development. 2018. *HDX Reporting*. <https://www.hudexchange.info/programs/hdx/hdx-reporting/>

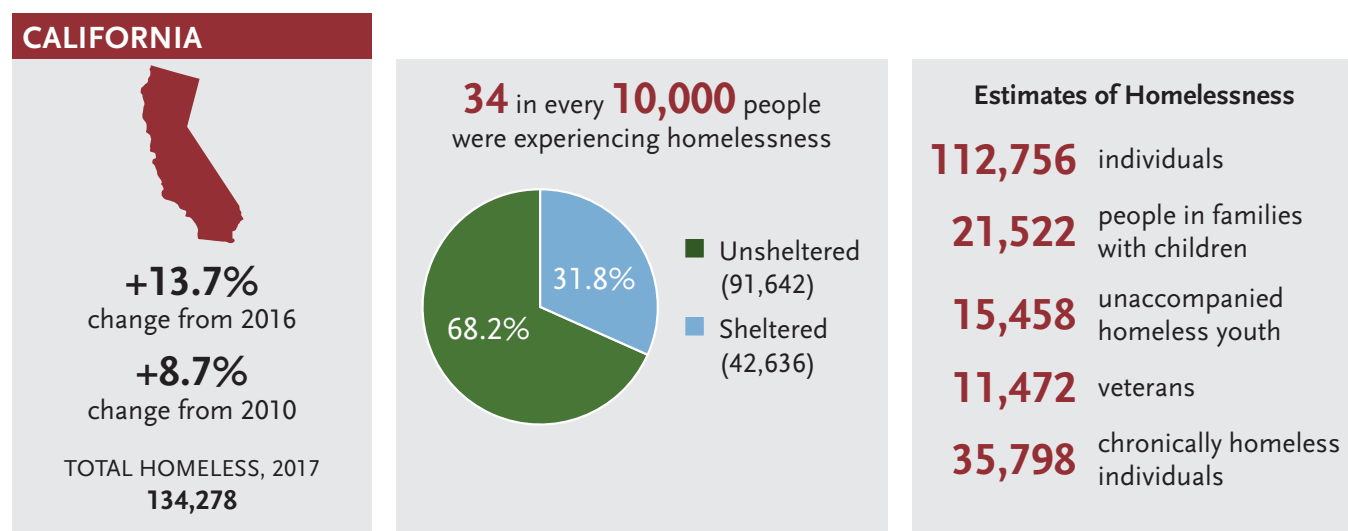
6. U.S. Department of Housing and Urban Development. 2018. *CoC Homeless Populations and Subpopulations Reports*. <https://www.hudexchange.info/programs/coc/coc-homeless-populations-and-subpopulations-reports/>

7. National Alliance to End Homelessness. *What is a Point-In-Time Count?* September 7, 2012. <https://endhomelessness.org/resource/what-is-a-point-in-time-count/>

people experiencing homelessness were children under the age of 18; 70 percent were over the age of 24, and 10 percent were between the ages of 18 and 24. Homelessness has generally declined over the last decade, but increased slightly in 2017 (by a little less than 1 percent) for the first time in seven years. This increase was driven mostly by increases in the number of unsheltered homeless individuals in the 50 largest cities.<sup>8</sup>

## States Experiencing High Levels of Homelessness

Approximately 55 percent of all people experiencing homelessness in 2017 were concentrated in five states: California (25 percent), New York (16 percent), Florida (6 percent), Texas (4 percent), and Washington (4 percent). Representatives from each of these states participated in PERF's conference in Long Beach on January 24, 2018, and provided perspectives on homelessness in their jurisdictions:



### Santa Cruz Police Chief Andy Mills:

#### *Santa Cruz Has Declared a Homeless Shelter Crisis*

We have a significant issue with homelessness in Santa Cruz and in California. The population of our city is about 65,000, and our Point-in-Time count indicates that we have about 2,200 homeless people living in our county and 1,200 in the city of Santa Cruz. Last night, our city council declared a homeless emergency shelter crisis, as many cities have done in California. And when we're looking at the data, we have more homeless in our city than many states do.

Our problem is that seriously mentally ill people, drug-addicted persons, and people with co-occurring disorders [substance abuse and mental health disorders] are the predominant number of people we're



8. U.S. Department of Housing and Urban Development. *The 2017 Annual Homeless Assessment Report (AHAR) to Congress: Part 1: Point-in-Time Estimates of Homelessness*. By M. Henry, R. Watt, L. Rosenthal, and A. Shivji, Abt Associates. December 2017. <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>



seeing, and the resources to help them just are not there. Until we fix that, we're going to continue to either move them from place to place or incarcerate them, which does not seem to be a good solution in anybody's book.

### Los Angeles Deputy Chief Bob Arcos:

*AB109 and Proposition 47 Have Contributed To Homelessness in California*

In California, prison realignment and Proposition 47, the "Reduced Penalties for Some Crimes Initiative," have contributed to the increase in homeless individuals. The street population is probably the worst I have seen in almost 30 years with the Los Angeles Police Department. The City is amid an unprecedented homelessness crisis, struggling to serve people shattered by mental illness, poverty, poor health and addiction. Today, persons experiencing homelessness are in every part of the City, not just Skid Row.



### NEW YORK

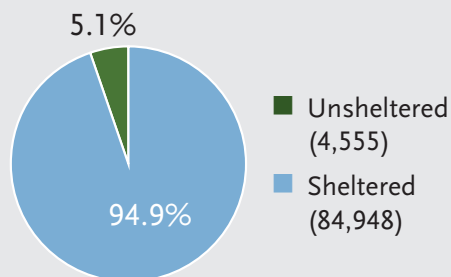


**+3.6%**  
change from 2016

**+36.4%**  
change from 2010

TOTAL HOMELESS, 2017  
**89,503**

**45** in every **10,000** people  
were experiencing homelessness



### Estimates of Homelessness

**37,390** individuals  
**52,113** people in families with children  
**2,829** unaccompanied homeless youth  
**1,244** veterans  
**5,087** chronically homeless individuals

### NYPD Deputy Chief Ed Thompson:

*Sheltered and Unsheltered Homeless Persons Are Two Distinct Populations*

In New York City, there is a dichotomy between the sheltered and unsheltered homeless population. Most of our street homeless population are experiencing mental health issues; this may be the driving factor causing street homelessness, as well as opioid addiction.

Due to a number of socioeconomic issues, people voluntarily seek shelter. For example, the recent loss of a job, shortages of affordable housing, or a sudden traumatic life experience can cause one to voluntarily seek shelter.

Conversely, many street homeless have mental illnesses, and we must try to convince them to seek shelter for their safety. Unfortunately, at times, the street homeless have a negative perception of the shelter system, although many have never been exposed to shelters.





## FLORIDA

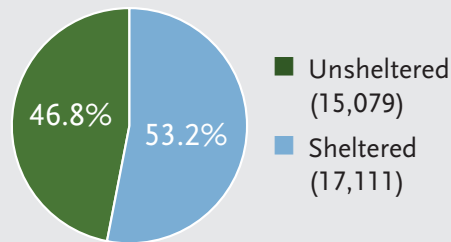


**-4.1%**  
change from 2016

**-44.1%**  
change from 2010

TOTAL HOMELESS, 2017  
**32,190**

**16** in every **10,000** people  
were experiencing homelessness



### Estimates of Homelessness

**22,768** individuals  
**9,422** people in families with children  
**2,019** unaccompanied homeless youth  
**2,817** veterans  
**4,951** chronically homeless individuals

### Miami Beach, FL Major Wayne Jones:

*Our County Has 3,000 Homeless Residents*

In the county of Miami-Dade, which my city is a part of, we think we have roughly 3,000 homeless people. On any given day, about 1,700 of those folks are in shelter, and the rest are on the street. Miami Beach accounts for a small percentage of that; on a given day we have somewhere between 150 and 200 homeless people on our streets.



## TEXAS

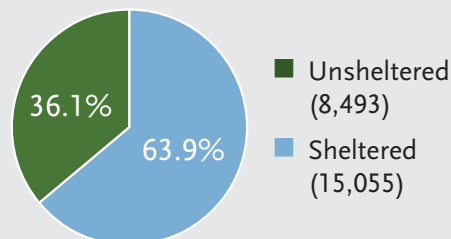


**+1.8%**  
change from 2016

**-33.0%**  
change from 2010

TOTAL HOMELESS, 2017  
**23,548**

**9** in every **10,000** people  
were experiencing homelessness



### Estimates of Homelessness

**16,708** individuals  
**6,840** people in families with children  
**1,318** unaccompanied homeless youth  
**2,200** veterans  
**3,497** chronically homeless individuals

### Arlington, TX Police Chief Will Johnson:

*Many Homeless Juveniles Are Embarrassed, So They Cover It and Do Not Get Services*

Over the last five years, our Point in Time counts have gone up 63 percent. Compared to some of my colleagues, our numbers aren't as high, but the percentage change is really impactful to the community.

We're seeing an increase in the number of homeless juveniles—school-aged kids, high-schoolers. Often, the high school students are embarrassed about being homeless, so they try to cover it and hide it. A lot of times, the services that could be available for these kids aren't rendered as promptly as possible, because they're embarrassed about their family status and the challenges that they're going through.



## WASHINGTON STATE

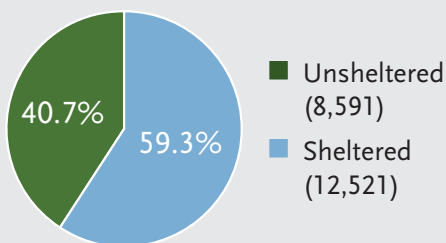


**+1.4%**  
change from 2016

**-7.7%**  
change from 2010

TOTAL HOMELESS, 2017  
**21,112**

**29** in every **10,000** people  
were experiencing homelessness



### Estimates of Homelessness

14,781	individuals
6,331	people in families with children
2,135	unaccompanied homeless youth
2,093	veterans
4,357	chronically homeless individuals

### Seattle, WA Acting Chief Carmen Best:

#### *Homelessness Contrasts with Great Wealth in Seattle*

Homelessness is a huge issue for us. In Seattle we have major corporate offices like Amazon, Boeing, Microsoft, and Starbucks. There's a lot of wealth in Seattle. About one-fifth of the homes have more than a million dollars in value. We have just under 4,000 people homeless in the city of Seattle, and another 1,000 or so who are living in RVs and campers and cars within the city.

We have devoted significant resources as a department to assisting in this crisis, but at this scale, it requires more than even specialized police units can provide.



## Causes of Homelessness

The U.S. Conference of Mayors' Task Force on Hunger and Homelessness conducts a yearly survey of 25 cities to provide information on the magnitude and causes of hunger and homelessness, as well as local responses to these problems. In 2014, mayors of the 25 cities were asked about the top causes of homelessness in their communities.

Respondents reported that the top causes were a lack of affordable housing; unemployment; poverty; mental illness and the lack of needed services; and substance abuse and the lack of treatment services. Many of the cities reported that their shelters had to turn away homeless individuals due to a lack of available beds.<sup>9</sup> Across the 25 cities over the previous year, officials estimated that 22 percent of the demand for emergency shelter had gone unmet.

9. U.S. States Conference of Mayors. *Hunger and Homelessness Survey: A Status Report on Hunger and Homeless in America's Cities – A 25-City Survey*. December 2014. <https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf>

## Mental Illness and Substance Abuse

People with mental illness and/or substance use disorders can be particularly vulnerable to becoming homeless. According to 2017 PIT estimates, 22 percent of homeless individuals were severely mentally ill, and 16 percent experienced chronic substance abuse.<sup>10</sup> Additionally, an estimated 26 percent of homeless adults living in shelters experience serious mental illness, and an estimated 46 percent live with severe mental illness and/or substance abuse disorders.<sup>11</sup> Co-occurring substance abuse and mental health disorders are common among people experiencing homelessness. Mental illness and substance use disorders can create barriers to accessing and maintaining stable and affordable housing.<sup>12</sup>

In addition to being a *consequence* of mental illness and substance abuse, homelessness can also lead to and perpetuate emotional problems and substance abuse.



Denver Deputy Police Chief  
Matthew Murray

## A Particular Focus of Police: Chronic Homelessness

Persons are said to be *chronically homeless* if they have a disability and have been continuously homeless for one year or more, or have experienced at least four episodes of homelessness in the last three years where the combined

>> continued on page 21

## Categories of Homeless Persons

Denver Police Department's Homeless Outreach Unit (HOU) identifies four different groups of homeless individuals.

- **Chronically homeless persons.**
- **Situational homelessness:** People who become homeless because of the sudden loss of a job, divorce, or other unexpected event. These people are generally sane and rational, and usually manage to escape homelessness quickly.
- **Economic homelessness:** Similar to "situationally" homeless individuals, these people become homeless because of a sudden turn in their finances. They share many of the same characteristics as situational homeless individuals.
- **"Travelers":** These are typically young people, mostly in their late teens or 20s, who travel from community to community, with few or no ties to those communities. Many don't consider themselves homeless. They are resistant to accepting services, although many receive food assistance.

10. U.S. Department of Housing and Urban Development. *Continuum of Care Homeless Assistance Programs, Homeless Populations and Subpopulations Report*. November, 2017. [https://www.hudexchange.info/resource/reportmanagement/published/CoC\\_PopSub\\_NatTerrDC\\_2017.pdf](https://www.hudexchange.info/resource/reportmanagement/published/CoC_PopSub_NatTerrDC_2017.pdf)

11. U.S. Department of Housing and Urban Development, Office of Community Planning and Development. (2011). *The 2010 Annual Homeless Assessment Report to Congress*. <https://www.hudexchange.info/resources/documents/2010HomelessAssessmentReport.pdf>

12. United States Interagency Council on Homelessness. *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness*. Washington, D.C., June 2015. [https://www.usich.gov/resources/uploads/asset\\_library/USICH\\_OpeningDoors\\_Amendment2015\\_FINAL.pdf](https://www.usich.gov/resources/uploads/asset_library/USICH_OpeningDoors_Amendment2015_FINAL.pdf)

## Legalized Marijuana and Homelessness

As more states legalize the recreational use of marijuana, officials are looking into what impact legalization may have on homelessness and crime. Police leaders from Colorado, Washington state, and California discussed this matter at the *Critical Issues* conference.

While researchers have found no clear correlation between legalized marijuana and homelessness, police officials report that states with legal marijuana may be attracting a different type of person who may technically be homeless, but does not share the same characteristics as many chronic homeless individuals. For example, the new type of homeless persons who use legal marijuana tend not to have mental illness, and then tend not to abuse alcohol, heroin, methamphetamine, or other serious drugs.

Since retail marijuana was legalized in Colorado in 2012, the state's population has grown by more than 400,000 residents (about 8 percent), or roughly 7,000 residents per month, making Colorado one of the fastest-growing states in the country. What percentage, if any, of that increase can be attributed to legalized marijuana is unknown. As in most states, homelessness in Colorado has generally declined over the last decade, although it did increase 3.7 percent between 2016 and 2017, when it reached nearly 11,000 individuals.

According to police officials from Colorado, many of the people attracted to legal marijuana appear to be “travelers” or “couch surfers” who do not have a permanent residence, but instead drift from place to place. In Colorado, especially, some of these “travelers” end up living in the national parks, sometimes for extended periods of time. In general, these individuals are young and not in need of social services. According to officials, they appear to be responsible for some low-level property crimes such as thefts from cars, but have not contributed to an overall uptick in crime.

One subset of this particular group of homeless individuals is known as “trimigrants.” These are individuals who travel to areas where marijuana is grown to secure work trimming the plants at harvest time. Because most of the trimigrants do not have any connection to the communities they travel to, they can contribute, at least temporarily, to the homeless situation in those localities.

In Seattle, Chief Carmen Best said that “marijuana really hasn't had much of an impact on homelessness or on crime generally. But we certainly have an opioid crisis, and there is definitely a nexus there with homelessness. The City has devoted significant sanitation resources to picking up discarded needles, including around outdoor living locations, and our officers are routinely administering naloxone to persons in distress on the streets.”

“In Denver, we get a lot of travelers, mostly young people who are homeless. Think of the ‘flower children’ of the 1960s. They want to travel the country and smoke marijuana. They don't want services, and they don't want anything to do with the police. They're typically not mentally ill, but they are responsible for a lot of low-level crime that feeds their marijuana habit.”

—Deputy Chief Matthew Murray, Denver Police Department

“My concern with marijuana legalization is that we're going to see greater access and acceptance of marijuana use by young people. I think that's tangentially related to homelessness.

“We do have young people—adolescents, some minors, some young adults—who are not necessarily living in the river beds or the shelters, but they're crashing in a different buddy's garage every night. Some of them do encounter homelessness.”

—Chief Sergio Diaz, Riverside (CA) Police Department

“We had a large group of people coming from all over the world to trim marijuana in Humboldt County [when I was police chief in Eureka], and it did cause a problem with homelessness. On a statewide basis maybe there wasn't much of an impact, but in those impacted counties, it was substantial.”

—Chief Andy Mills, Santa Cruz (CA) Police Department

length of time being homeless in those occasions was at least 12 months.<sup>13</sup> In 2017, almost a quarter (24 percent) of people experiencing homelessness had chronic patterns of homelessness.<sup>14</sup> According to the Office of National Drug Control Policy, 30 percent of people experiencing chronic homelessness have a serious mental illness, and around 66 percent have a primary substance use disorder or other chronic health condition.<sup>15</sup>

Participants at PERF's meeting reported that mental illness and substance abuse were major issues affecting homeless individuals in their jurisdictions. Many agencies have established relationships with local service providers, so they can refer homeless individuals with mental illness and substance abuse to appropriate services. However, police officials also said that chronically homeless individuals they interact with can often be service-resistant, especially those who experience both mental illness and substance abuse. These individuals pose unique challenges to law enforcement, and often require multiple contacts before they agree to accept assistance.

### *Lack of Affordable Housing*

One of the primary drivers of homelessness in America is the lack of affordable housing. As of 2017, 11.4 million renter households living in the U.S. are classified as "Extremely Low Income" (ELI) by HUD. However, there are only 4 million rental homes that are affordable and available to those 11.4 million ELI renters. This adds up to a shortage of 7.4 million affordable and available rental homes.<sup>16</sup> Many participants at PERF's conference said this shortage of affordable housing contributes to homelessness in their communities. This is especially acute in expensive urban areas such as Honolulu, the Boston metro area, and urban centers in California.



Riverside, CA Police Chief  
Sergio Diaz

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#### **Santa Cruz City Manager Martin Bernal:**

*Santa Cruz Is the 4th Least Affordable City in the World*

Santa Cruz is the fourth "least affordable" city in the world. That means that the difference between the price of housing and income levels is one of the greatest in the world, even though we're not the most expensive



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13. U.S. Department of Housing and Urban Development. *The 2017 Annual Homeless Assessment Report (AHAR) to Congress: Part 1: Point-in-Time Estimates of Homelessness*. By M. Henry, R. Watt, L. Rosenthal, and A. Shivji, Abt Associates. December 2017. <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>

14. U.S. Department of Housing and Urban Development. *The 2017 Annual Homeless Assessment Report (AHAR) to Congress: Part 1: Point-in-Time Estimates of Homelessness*. By M. Henry, R. Watt, L. Rosenthal, and A. Shivji, Abt Associates. December 2017. <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>

15. Substance Abuse and Mental Health Services Administration. Homelessness and Housing. Accessed February 13, 2018. <https://www.samhsa.gov/homelessness-housing>

16. Andrew Aurant, Dan Emmanuel, Diane Yentel, and Ellen Errico, *The Gap: A Shortage of Affordable Homes*. National Low Income Housing Coalition, March 2017. [http://nlihc.org/sites/default/files/Gap-Report\\_2017\\_interactive.pdf](http://nlihc.org/sites/default/files/Gap-Report_2017_interactive.pdf)



place. The median price of a house in Santa Cruz is about \$900,000 for a small 1,200-square-foot, 60-year old house. We're a built-out city, so we don't have a lot of raw land. That means that it's very difficult for people to be able to find housing. It's difficult for families and individuals to be able to just stay in the community.

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### Honolulu Police Chief Susan Ballard:

*Even "Affordable Housing" in Honolulu Is Not Affordable for Most People*

In Honolulu, our price of housing is skyrocketing, and it does affect the homeless. We get a lot of immigrants from the Micronesian islands. They're not really aware of the cost of housing or the cost of living in Honolulu, so that's a large population that has become homeless on Oahu. We're seeing an increase in our homeless population because of the lack of affordable housing.

Every time there is housing being built, Honolulu requires a certain amount of more "affordable" housing. But it's sort of an oxymoron, because the so-called affordable housing in Honolulu starts at about a half-million dollars.



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## Supreme Court Ruling on Free Speech Brings Reversals of Laws on Panhandling

In 2015, the U.S. Supreme Court handed down a ruling in the case of *Reed v. Town of Gilbert, AZ*, a case about the free speech rights of churches to post signs about their religious services. The court held that governmental regulations curtailing speech must be narrowly tailored to serve compelling state interests, and ruled against the Town of Gilbert's restrictions on a church's signage.<sup>17</sup>

Unexpectedly, the ruling has had implications for local governments' efforts to restrict the free speech rights of panhandlers, particularly those who hold signs or make verbal requests for donations. Based on the legal precedent set by *Reed v. Gilbert*, ordinances against panhandling have been struck down or repealed in Springfield, IL; Grand Junction, CO; Tampa, FL; Portland, ME; Worcester, MA; Lowell, MA; Akron, OH; Cleveland, OH; and Toledo, OH.<sup>18</sup>

Officials at the PERF conference said that the *Gilbert* ruling is affecting their approach to homelessness and panhandling. In Walnut Creek, CA, the police department is considering how the decision will impact its ability to move people who panhandle in the median strips of highways. Lacey, WA reported that its ordinance on panhandling was recently overturned, and that its homeless population has now grown substantially.

In Arlington, TX, Chief of Police Will Johnson cited the lack of enforcement options for panhandling as a primary factor in the growth of homeless populations in the city. Chief Johnson also noted that the visibility of panhandling often prompts concerns among community members who might otherwise be unaware of the extent of the city's homelessness issues.

Officials agreed that as panhandling ordinances continue to be overturned, police departments will need to find new methods of address the public's concerns related to panhandling and homelessness.

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17. *Reed et al. v. Town of Gilbert, Arizona et al.* 576 U.S. (2015). [https://www.supremecourt.gov/opinions/14pdf/13-502\\_9olb.pdf](https://www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf)

18. Wogan, J.B. "The Unexpected Reason Panhandling Bans are Being Struck Down Across the Country," *Governing*, July 25, 2017. <http://www.governing.com/topics/health-human-services/gov-panhandling-homeless-supreme-court-reed-gilbert.html>



## *Does the Availability of Services Attract Homeless Individuals to Particular Communities?*

Some participants at PERF's conference said that the availability of services or assistance in their communities has attracted more homeless individuals to their jurisdictions, which increases the pressure on police departments and partner agencies. Participants at the PERF conference agreed that offering services is crucial to addressing the problem of homelessness. But many pointed out that having robust services can result in increased demand for the services, so it can be difficult to stay "ahead of the curve" on the homelessness issue.

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### **Colorado Springs, CO Lieutenant Michael Lux:**

*Housing Vouchers Don't Mean Anything  
If No Housing Is Available*

Recently our homelessness numbers have increased greatly, from under 1,000 to about 1,400, according to our PIT. Our problem is that we only have housing for about 500 homeless people in Colorado Springs. Therefore, we have about 900 people living on the streets.

People can talk about voucher programs for housing, but our problem is we just don't have the housing available. We have about 800 people with vouchers walking around saying, "I'd love to live in a place if you can give it to me." But we just don't have it available.



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### **Gainesville, FL Lieutenant Whitney Stout:**

*A Homeless Services Center in Gainesville  
Attracts Individuals from Neighboring Counties*

We're a big city in North Central Florida; we're about 90 miles away from other big cities like Jacksonville, Orlando, and Tampa. We opened a kind of "one-stop homeless center" several years ago, with the intention of providing a place for our local population to get wraparound services. The facility was more "high barrier" than "low barrier," which meant that there were folks who wanted some of the services, but didn't want to have the structure of the rules that came with the homeless center. So the unintended result was that an encampment developed outside of the center. That's a pretty large population for us, with not a lot of rules and not a lot of structure. We're kind of reacting to that now.

We have found that vulnerable populations are being brought to our shelter, and to the resulting homeless camp outside, when their services are terminated in some neighboring county. For example, a hospital may give them a voucher to get a cab when they're released, and they're brought to our homeless center. Most of the Florida prisons are also in close proximity to us, so inmates are released from the Department of Corrections to our location. Even some community mental health care service providers bring homeless people there. So we now have a larger population than we were planning to help or are equipped to help.



Gainesville officers working to provide food and shelter to a community member.

## Two PERF Surveys on Homelessness in 1993 and 2018: Many of the Themes Are Similar

In 1993, PERF conducted a nationally representative survey on the police response to homelessness. PERF surveyed 650 police agencies serving populations of 50,000 or more, or with 100 or more sworn officers, and received an 80-percent response rate. Every state except North Dakota was represented in the sample.

Key findings of the 1993 survey included:

- 69 percent of respondents reported that the homeless individuals in their jurisdiction were viewed “predominantly as a police problem.”
- 77 percent reported that their community did not understand the police role in responding to homeless individuals.
- 88 percent reported that homeless individuals in their jurisdiction appeared to experience alcohol abuse.
- 60 percent reported that homeless individuals in their jurisdiction appeared to be involved with drug abuse.
- Almost 65 percent of respondents reported that homeless individuals in their jurisdiction appeared to have a mental illness.

When asked about the three most common reasons police make contact with the homeless, 92 percent reported calls from citizens, 82 percent reported officer observations, and 74 percent reported calls from the business community.

Regarding policies and training, 35 percent of respondents said their agency did not have a policy specifically related to incidents involving homeless persons. About 50 percent of agencies reported that at least some of their officers receive training regarding homelessness; only 17 percent of agencies reported that they had an individual or unit assigned to deal with the specific needs of the homeless.

With regard to partnerships with service providers, 97 percent of respondents indicated that police departments needed some type of referral arrangement with other agencies to effectively respond to homeless individuals. About 65 percent reported that it was difficult to get assistance for homeless people outside of normal business hours, and 55 percent reported that it was difficult for police to get mental health care for homeless individuals in their jurisdiction.<sup>19</sup>

### 2018 PERF Questionnaire

In preparation for the meeting on the Police Response to Homelessness, PERF prepared a brief questionnaire that was distributed to its members via email. (Unlike the 1993 survey, this was not a nationally representative survey, but rather was designed mainly to identify discussion topics for the conference.)

72 percent of the respondents to the 2018 questionnaire said the homeless population in their jurisdiction has increased within the past five years. 53 percent said there has been an increase in the number of homeless individuals in their jurisdiction experiencing mental illness, and 54 percent said there has been an increase in the number of homeless individuals experiencing substance abuse.

With regard to crime, 39 percent of respondents said they have seen an increase in the number of crime victims within the homeless community, and 51 percent said they have seen an increase in the number of homeless offenders.

Forty percent of responding agencies reported that they have a policy specific to interacting with homeless individuals. Sixty-six percent said their agencies provide training on responding to homeless individuals, and 52 percent reported that their agencies have officers or deputies designated to respond to individuals experiencing homelessness.

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19. Martha R. Plotkin and Ortwin A. “Tony” Narr, *The Police Response to the Homeless: A Status Report*. November, 1993. Police Executive Research Forum.

# What Is the Role of the Police?

ONE OF THE FIRST QUESTIONS ADDRESSED BY PARTICIPANTS AT THE PERF meeting was how to define the role of police and sheriffs' departments in responding to the homelessness problem. Agencies increasingly are viewing the issue as a problem to be solved, rather than an enforcement issue that can be addressed by arresting homeless persons. So the police role is evolving. Because most police and sheriffs' departments are not given funding and resources to take on responsibilities for helping homeless persons, they must develop partnerships with a wide range of social service agencies and other government departments in order to have an impact.

As police agencies take leadership roles in addressing homelessness, the key words that are used most often to describe what's happening are "partnerships" and "innovation." (See "Pinellas County Sheriff's Department Opens A \$2.3 Million Facility to Help Homeless Persons," page 12, for an example of a very innovative program undertaken by a sheriff's department.)

To meet this expanded role, agencies are also developing expertise within their ranks in the form of specially selected and trained officers and units.

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## **Vancouver, WA Chief of Police James McElvain:**

*Police Have a Role in Responding to Calls,  
But Others Have the Resources for Long-Term Solutions*

Homelessness isn't necessarily a law enforcement problem. We have a role to play, and that's always been our stance in Vancouver: We are members at the table with everybody else. Otherwise, we may find ourselves alone and blamed for not solving the problem.

Going back to 2015, we had a service in the city called the Sharehouse that provides shelter, meals, and social services. And an encampment was developing around this facility. Upwards of about 100 people were camping in this residential neighborhood, and we started having drug use and prostitution and crimes of violence occurring there.

People began to express their concerns about all this to the city, and the question was presented to the police, "What are *you* going to do



about it?” And that’s when I took the stance that “We will be a partner in this, but this isn’t our problem. The Police Department doesn’t have the resources to provide more shelter space; we don’t have funding to increase mental health treatment. We simply don’t have all that. We need other services to come to the table.”

So with Community Economic Development, along with Code Enforcement, Public Works, and Social Services, we asked, “What are *we* going to do about this?” And we were able to address the encampment and clean it up with zero negative headlines. We started trying to connect the homeless people to services, while letting them know what our city ordinance said about camping and not camping, and we said, “By this date, this is what’s going to occur.” A lot of people moved off the encampment. Others stayed there, and we ended up having to do some enforcement. But we have developed relationships within our community with social service partners and others in the city.

I think it continues to fall on the shoulders of police because we are the ones who get the calls 24 hours a day, seven days a week, and we will continue to respond to the calls because that is a role and a responsibility for us. But others have more tools to address the issues long-term, and I think we have to bring them to the table.

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### **Former San Diego Chief of Police Bill Lansdowne:**

*Police Must Take a Big Role,  
Because No One Else Responds at 3 a.m.*

Working with the homeless population isn’t for all the officers. Some just don’t have the patience or the skill set to do that. Some officers like to handle traffic. Some officers like to work homicide. And some officers enjoy working with the homeless. They get a lot of satisfaction out of it, and they’re very good at it.

The advantage of having a homeless outreach team or any team specifically assigned to homelessness issues is that they start to build trust within that community. And that means that the community will tell the officers if there’s a violent predator in a homeless encampment, or if there’s a person who is close to dying because they’re not moving, and where they’re hidden.

And that’s what the police do. We provide this service because the ambulance companies won’t go down there into an encampment. The Fire Department won’t go down there for you. No one will go down there until you render it safe. And police are the only ones who can do that. We also are the only ones who can do these things at three o’clock in the morning or on Christmas Eve, because we’re out there all the time.

One thing I recommend is that the police chief or other top people should take some time and go down to the encampments with one of the officers who does the outreach and see what it looks like. Not with a band of 50 officers, but with just one or two of your officers, get a feel for what’s going on, and listen to what these officers tell you. At least in my experience, once the officers believe that you’re concerned about it, they will offer the information you’re looking for about what works best.



These officers have the contacts with the rescue mission and social services. They have the ability to get emergency housing for the kids and families they find out in the riverbeds. And your specialist officers also know whether a homeless person needs to go to jail, or whether they'll do well if you take them to the rescue mission, or whether they're ready for change and they need to get into an AA program. The officers are good at triaging, because they've learned how to work with homeless people.

I don't think this kind of work can be done by all the officers. I think we need to look at specially trained, skilled officers, and we have examples of those kinds of officers here in the room.

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### **Cambridge, MA Police Commissioner Branville Bard, Jr.:**

*We See Our Role as Including Social Work,  
So We Strongly Believe in Dedicated Outreach*

More than a decade ago, the Cambridge Police Department went through a pronounced shift away from being a traditional enforcement agency to being a social service agency. So a great amount of our resources are geared towards that. Out of that came outreach for all of our vulnerable populations, including youths, the homeless, those who suffer from mental health and substance abuse issues, and our elderly.

When we were making a choice for this dedicated outreach, our department selected officers who were already highly engaged with the homeless population and had already shown that they were compassionate with them. That's what it's about.

Of our 500 or so homeless people, about 200 have chronic mental illness. And we know our homeless people. When a call comes out, you hear an officer picking up the radio and saying, "That sounds like Fred." Our homelessness officers know each individual.

**Wexler:** That's very interesting. So the homelessness officers know their customers, and understand what may be happening if a homeless person acts out in a certain way, or has some particular behavior. As opposed to regular patrol officers who roll up and don't necessarily know who they're dealing with...

**Commissioner Bard:** Yes. For example, an officer may be responding to a call for an ambulance because someone is having an episode. And I happen to be nearby, so I'll pull up. And the very first thing the outreach officer shouts at me is, "Commissioner, no sudden movements." The guy's out there behaving strangely, and the officer knows that he had been diagnosed with schizophrenia. And he knows that if I jump out of my car, it may trigger the guy. So the officer tells the guy, "These are my friends. They're here to help me to help you." And the guy says, "Okay, okay."

And so we were able to get him into the ambulance and get him to services without touching him, without having to physically engage him. This is what you can only achieve through that trust-building and that constant contact through dedicated outreach.

We also see our role as being conveners. We are in so many





collaborations with different agencies, that we are able to marshal the resources of the whole city.

Initially, there might have been some uncertainty about this among our line officers, but more than a decade into it, everybody has bought into it because they can see it works.

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### **Hermosa Beach, CA Chief of Police Sharon Papa:**

*Our Role Includes Getting to Know Homeless Persons,  
And We Work with Neighboring Towns to Share Resources*

**Wexler:** Sharon, you were homeless outreach coordinator in the Los Angeles Police Department, and now you're chief in Hermosa Beach. What is that like?

**Chief Papa:** It was a huge change to go from LAPD, with a cast of thousands, to a small beach community. Hermosa Beach is about a mile and a half along the coastline with 20,000 people. We have a downtown area that has a Pier Plaza, and has restaurants, bars, and cafes with people sitting outside. If our homeless people are there, they're very visible, and our tourists are paying a lot of money to be there and don't want to see that.

Our officers know all of our homeless people, because it's a lifestyle choice for the majority of them. Hermosa Beach is their home; that's where they hang out. So we have a book with photographs of each of our homeless people and information about them, which is very helpful. For example, if a homeless person dies, we know who the person was and whom to contact. It's a very different dynamic in a small community. Our officers know who's in our town.

When I was the homeless outreach coordinator at LAPD, back in the late '90s, my personal take on what was happening on Skid Row was that it was a problem, but it wasn't the magnitude that it is now. Now I think we've gotten to the point where it's unmanageable, and somebody mentioned that you need to have the political will to deal with it. I'm not sure the will was there then, but it certainly is now. So, I see two very different scenarios in a small city and a large city.

**Wexler:** You can get your hands around it in a small city, right?

**Chief Papa:** Yes.

**Wexler:** But what I'm hearing is that you still need to have people who know the homeless population, no matter what. That seems to be a common theme. If you don't know this population, that's problematic. But if you know them and know their backgrounds, you can engage with them and you are better off to deal with them.

**Chief Papa:** Correct. And you have to look at the issue regionally. We have two beach cities on either side of us, and we went for a grant together to get a clinician to ride with our officers. We're small, so the clinician rides with us one day, she rides with the neighboring city one day, she rides with the other city one day. She's covering our areas and getting to know our people, so hopefully we'll be able to help the



homeless people with mental illness. So if you are too small to deal with it yourself, don't be afraid to reach out to your neighbors.

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**Oakland, CA Chief of Police Anne Kirkpatrick:**

*We Instruct Our Officers to Enforce Criminal Laws,  
But Not Rules Against Camping within the City*

Homelessness is a very big issue for us in Oakland. Our population is about 420,000, and our most current number on homelessness is 2,716. We have 350 shelter beds. And so it is a major crisis for our community. Oakland is a very activist community, with divided wills within the community as to what to do about homelessness. It's easy to say, "We do not want to criminalize homelessness," but many people in the community want us to enforce laws against criminal behavior.

So it can be a mixed message for the officers. They are instructed, "Do not enforce the laws against camping," and some of them have thought that that means "hands-off entirely." But that is not the message. We need to be very clear in telling the officers that if there is criminal behavior within an encampment or by a homeless individual, they are to take action. But they are not to enforce the laws barring camping within the city. The result is that we have sanctioned encampments in our city.



Oakland, CA police distribute meals to community members, thanks to a donation by a local business leader.

# Police Officers' Perspectives

*PERF ASKED SEVERAL LINE OFFICERS WHO ATTENDED THE MEETING IN Long Beach to describe the response to homelessness in their cities, as seen from their perspective of working directly with homeless persons.*

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## **Vancouver, WA Police Officer Tyler Chavers:**

*We've Had an Explosion in Homelessness,  
But There Are Success Stories*

**Wexler:** Officer Chavers, can you give us a success story?

**Officer Chavers:** Yes I can. First, a little background. The homelessness problem has sort of exploded in Vancouver. Back in 2015 when I started, homelessness ate up maybe five minutes a week of my time. By the end of the year, it was probably 50 percent of my time, and it may be more than that now. And I work in the district that has the most visible homelessness problems.

As the homelessness problem grew, I had no choice but to develop relationships with other agencies, because I knew the Police Department couldn't house, feed, and otherwise help these folks who are in need. So we started learning who the social service providers were, and how to get in touch with them. We also started learning homeless people's names, and finding out that homeless people have a lot of different kinds of problems.

So my success story, I'll call him Steve. He lived under a bridge, was on probation, a drug abuser, homeless on and off for years. One morning, I was having a casual conversation with a service provider, who said, "Oh, by the way, if you see Steve today, he needs to be in my office by 2 o'clock this afternoon or he's out."

I knew what that meant. A treatment bed was open, and Steve had to apply for it, or he'd miss his chance. I also knew what it would mean if he didn't get it: he'd end up with another felony warrant for his arrest.

I knew where Steve hung out, and I kept my eyes open. About 1:40 that afternoon, under the bridge, doing some camp checks, I ran across Steve, who saw me and was quickly getting on his bike and trying to get out of



there. I flagged him down, said, “Hey, you’re not in trouble. No warrants today. But you need to call Jamie right now. You’ve got 20 minutes to be in her office, or you’re going to lose your spot.”

I didn’t see him again for about a year. The next time I saw him, he was clean, sober, and had been for some time. He had made it into the treatment bed, and now he was actually a volunteer with our severe weather program, which is about how to house folks when the temperature drops. So I consider that a success story.

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### **El Segundo, CA Police Officer Marco Lemus:**

*Our Training Now Teaches Officers to Help Homeless Persons, Not Arrest Them*

We have a small homeless population, maybe 10 to 15 people. We’ve had encampments that come and go. Our approach has changed because of the training and classes we’ve gone to.

It used to be, “Kick them out, give them a ride somewhere, give them a citation, get them arrested.”

Now the first questions I ask are, “Are you okay? Can we get you some help?” We try to make sure they know that there are services available to them.



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### **Community Lead Officer John Deer, El Segundo, CA Police Dept.:**

*Homeless People in Our City Are Transient, So the Issues Are Constantly Changing*

About 90 percent of our transient issues are sporadic. It’s like a tornado. They’ll come in, create havoc for a day or two, and then they move on.

We have one right now who says he’s got an alcohol problem. I ended up letting him stay where he is, by the railroad tracks. I told him we’ll try to get him help within a couple weeks. Our approach has shifted from being kind of aggressive and kicking people out of town to getting people assistance.

**Wexler:** What you’re ultimately doing is you’re problem-solving, trying to understand what this person’s issues are, is that right?

**Officer Deer:** Yes.

**Wexler:** But you have to build a relationship with them, because they’re kind of afraid of you. Are you in uniform or plainclothes?

**Officer Deer:** We’re moving to plainclothes. Right now it’s uniform.

**Wexler:** Who’s going to help him if you don’t?

**Officer Deer:** Nobody, because we’re the ones who get called. About 60 percent of our calls every day are about transients and problems that they cause.

**Wexler:** How long have you been doing this, and do you like it?

**Officer Deer:** Just a couple of years, and I love it, because it’s different every day. Dealing with different people, different problems.





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**Charlotte-Mecklenburg, NC Police Officer Russ Faulkenberry:**

*We Have Had to Work Hard to Build Trust  
With Homeless People and with Service Providers*

All of our homeless resource providers are downtown, so that's where all of our encampments of homeless persons are. At our last Point in Time count, we had about 1,400 homeless people, with fewer than 300 unsheltered. Fortunately, we don't experience some of the tough problems I've heard about here today. I'm glad we don't have a riverbed in Mecklenburg County.

Brad Hall and I are community police officers, community coordinators for the downtown area. We are the de facto homeless service guys. We don't have a crisis outreach unit or a homelessness unit. In the past, there was a lot of mistrust between the police and our human service providers. So Brad and I have worked hard to build that trust, so the police are not seen as just the people who arrest the homeless people that these service providers work with. We've had to build relationships with the providers to get them to trust us. We invite them to come out into the field with us.

We also work to build rapport with these homeless individuals, so they will trust us enough to bring in these service providers, so we can get them off the street or at least get them connected with providers.



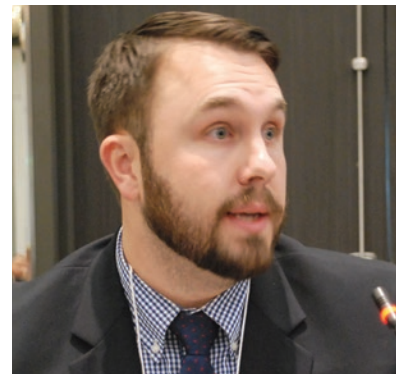
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**Charlotte-Mecklenburg, NC Police Officer Brad Hall:**

*Your Front-Line Officers Are Closest to the Problems,  
So Encourage Them to Offer Ideas for Solutions*

With so many command staff personnel in the room today, I'd like to mention that from a patrol perspective, it's important to allow your officers the freedom to implement some of the ideas they have about how to handle homelessness issues. A lot of our colleagues tell us that they don't feel they have that support from the command staff to maybe try something different or new.

**Wexler:** Excellent point, thank you.





# Crime and the Homeless Community

RESEARCH HAS CONSISTENTLY FOUND THAT HOMELESS PERSONS ARE disproportionately victimized by violent crime:

- A 2014 study of approximately 500 homeless individuals across five U.S. cities found that nearly half the people studied had been victims of violent crime.<sup>20</sup>
- A 2010 study found that 76 percent of homeless youths in Toronto had been victims of violent crime in the previous year.<sup>21</sup>
- For comparison, the Bureau of Justice Statistics' National Crime Victimization Survey found that among the general public, there were just over 2 violent crimes per 100 people in the United States over the age of 12 in 2016.<sup>22</sup>

Homeless individuals also commit crimes at a disproportionate rate. A 2012 study of homeless youths in four U.S. cities found that more than 60 percent of those studied had been arrested and more than 40 percent had been arrested for "severe-status activities," a category that included drug- and violent crime-related arrests.<sup>23</sup> For comparison, fewer than 2 percent of American young adults have been arrested. These findings have echoed earlier studies.<sup>24, 25</sup>

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20. Meinbresse, M. et al. "Exploring the experiences of violence among individuals who are homeless using a consumer-led approach." <https://www.ncbi.nlm.nih.gov/pubmed/24672998>

21. Science Daily. "Homeless youths most often victims of crime." Sept. 28, 2010. <https://www.sciencedaily.com/releases/2010/09/100927105203.htm>

22. U.S. Department of Justice, Bureau of Justice Statistics. "Data Collection: National Crime Victimization Survey (NCVS)." <https://www.bjs.gov/index.cfm?ty=dcdetail&iid=245>

23. Ferguson, Kristin M. et al. "Exploration of Arrest Activity among Homeless Young Adults in Four U.S. Cities." *Social Work Research*, Sept. 2012. <https://academic.oup.com/swr/article/36/3/233/1627542>

24. Schwartz, Marci, et al. "Exploring the Relationship Between Homelessness and Delinquency: A Snapshot of a Group of Homeless Youth in San Jose, California." *Child and Adolescent Social Work Journal*, August 2008. <https://link.springer.com/article/10.1007/s10560-008-0125-1>

25. Kipki, MD et al. "Homeless youth and their exposure to and involvement in violence while living on the streets." *The Journal of Adolescent Health*. May 1997. <https://www.ncbi.nlm.nih.gov/pubmed/9168383>

PERF's 2018 questionnaire indicated that law enforcement agencies have seen a recent increase in violent offenses perpetrated by homeless individuals, as well as an increase in victimization of homeless persons. Thirty-nine percent of respondents said that there had been an increase in victimization among the homeless population over the last five years, and 21 percent said that that number had remained the same. Fifty-one percent of respondents said that there had been an increase in the number of offenders within the homeless population, and 21 percent said that that number had remained the same.

## Mental illness exacerbates problems

Homeless persons with mental illness are at increased risk of becoming perpetrators or victims of crime. Persons with a mental illness are more likely to be homeless than the general population, and people who are both homeless and have a mental illness are arrested more frequently and are victims of crimes at a higher rate than people with a mental illness who have stable housing.<sup>26</sup>

Homelessness also increases the risk that a person will commit crimes later in their lives. Individuals who experience homelessness by age 26 are far more likely to commit property crimes and violent crimes than individuals who do not experience homelessness.<sup>27</sup>

Participants at the PERF summit in Long Beach discussed some of the specific crime problems that occur within the homeless community.

## Homicides

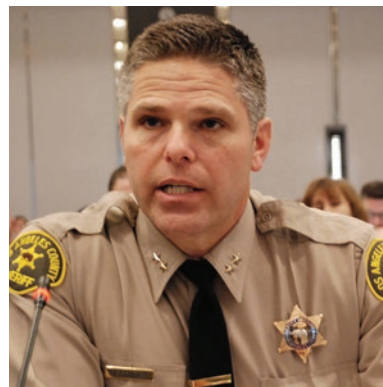
"In one of our patrol areas the majority of the homeless individuals who were issued citations during the month had a criminal history," San Diego Chief Shelley Zimmerman said. "And in 2017 we had substantially more homicides where the victims and/or suspects were homeless than gang-motivated homicides."

Some cities have experienced deliberate and sometimes brutal attacks on individuals experiencing homelessness. And because these types of crimes often have few witnesses or other solid leads, police agencies need to be creative in how they go about investigating these types of crime.

This was the case in Las Vegas in early 2017. Two homeless men were beaten to death near the same downtown Las Vegas intersection within a 30-day period. After the second incident, leaders of the Downtown Area Command implemented a plan dubbed "Operation Charlie McCarthy" (named for the famous ventriloquist dummy used by Edgar Bergen). The plan involved dressing a CPR mannequin as a homeless person, wrapping it in blankets, placing it at the same intersection, and then conducting surveillance.



San Diego Police Chief  
Shelley Zimmerman



Chief James Hellmold,  
Los Angeles County Sheriff's Dept.

26. Roy, Laurence, et al. "Criminal Behavior and Victimization Among Homeless Individuals With Severe Mental Illness: A Systematic Review." *Psychiatric Services*, June 2014. <https://ps.psychiatryonline.org/doi/full/10.1176/appi.ps.201200515?code=ps-site>

27. Cronley, Courtney et al. Effects of Homelessness and Child Maltreatment on the Likelihood of Engaging in Property and Violent Crime During Adulthood." *Journal of Human Behavior in the Social Environment*, Vol. 25, Issue 3, 2015. <http://www.tandfonline.com/doi/full/10.1080/10911359.2014.966219?src=recsys>

Approximately three weeks after the second murder, a person attacked the mannequin in the much the same manner as the first two attacks. The suspect pleaded guilty to attempted murder and was sentenced to eight to 20 years in prison.

## Domestic violence and human trafficking

Several participants said that domestic violence and human trafficking are particularly challenging aspects of the police response to homelessness.

“There has been an increase in domestic violence among our homeless,” James Hellmold, Chief of the Los Angeles County Sheriff’s Department, said. “Sheriff Jim McDonnell has established a unit dedicated to addressing crimes frequently impacting homeless individuals, such as domestic violence and human trafficking.”

“Larger encampments form their own community dynamics,” said Seattle Police Sergeant Eric Zerr. “They bring a sense of anonymity from the outside world, where violence, drug and sex trafficking, and domestic abuse are shielded from view or investigation. In our experience, the larger, more established encampments gravitate towards these activities.”

## Carrying weapons for protection

Many police officials report that homeless persons often carry knives and other weapons to protect themselves and their belongings. This can make working with homeless communities and individuals more difficult for police, because weapons present a risk that officers must consider as they try to communicate with a homeless person.

The limited research on this subject supports police officials’ observations. A 2014 study of homeless youths found that 57 percent of the individuals interviewed across three U.S. cities carried weapons for protection.<sup>28</sup>

“It’s lawless in the riverbeds in California,” Lompoc, California, Chief Patrick Walsh told attendees at the PERF summit. “It’s the Wild West, and everyone is armed. Most are armed with knives, but we’re also seeing more guns in the last couple years.”

## Crime in homeless shelters

Data on crime in homeless shelters is limited, but violence occurs in U.S. shelters on a daily basis and can lead some homeless individuals to avoid shelters in favor of living on the streets. As one example, New York City shelters reported 826 violent critical incidents in 2015, and some homeless individuals in New York City cite safety concerns as a reason they prefer living on the streets to living in shelters.<sup>29</sup>



Seattle Police Sgt. Eric Zerr



Lompoc, CA Police Chief  
Patrick Walsh

28. Bender, Kimberly et al. “Risk Detection and Self-Protection Among Homeless Youth.” *Journal of Research on Adolescence*. 25(2). <https://www.du.edu/tssgroup/media/documents/benderetal2015.pdf>

29. “NYC homeless would rather risk the street than hellish shelter system.” *New York Daily News*, March 14, 2016. <http://www.nydailynews.com/new-york/nyc-homeless-prefer-streets-violent-shelters-article-1.2564370>

## Portland's Service Coordination Team Helps Homeless Persons Involved in Low-Level Crime

One of the biggest challenges facing cities is how to approach individuals who are chronically homeless and also have a history of involvement in the criminal justice system. The Portland Police Bureau (PPB) is addressing this challenge through a comprehensive approach called the Service Coordination Team (SCT).

Although shelters and other services are generally funded at the county level in Oregon (and most other states), Portland took the unusual step of creating and funding within the Police Bureau its own full-service homelessness program that includes a housing component. The goals of the SCT program are to break the cycle of addiction and criminality; reduce police contacts; and provide individuals with housing and treatment that can lead to long-term stability.

**Prior contacts with the police:** The program targets a specific, and challenging, population: *homeless individuals who are involved with low-level crimes and have issues with addiction (and often mental illness)*. Not surprisingly, these individuals are overrepresented among Portland residents having contacts with the police.

The SCT was the brainchild of a police officer working in Portland's Chinatown neighborhood in the late 2000s. He found that he was arresting the same people over and over again, with little or no impact on crime in the community. It became apparent that the common denominators in those arrests were homelessness and addiction, which led the officer to ask: Why don't we treat underlying causes—lack of housing and drug treatment—instead of relying on arrests?

Launched in 2009 as a one-time pilot effort, the SCT has grown into a well-established component of the PPB's approach to homelessness. Program costs for outreach, housing, and services are covered in the annual police budget.

One criterion for getting into the program is that an individual has a criminal history that includes at least three crimes or police contacts inside the City of Portland in the previous six months. Individuals must also have lived in the Portland tri-county area for at least five years. Participation in the program is voluntary.

**"Low-barrier" housing allows drug users to participate:** The SCT program has 60 housing units. They include "low-barrier housing," which means that clients can get housing even if they are still using drugs or alcohol and have legal issues. (See page 44 for a discussion of "wet" vs. "dry" shelters.) A small portion of the housing program was recently opened to people with severe mental health issues. PPB officers are



**Portland is the county seat of  
Multnomah County, Oregon.**

Multnomah County population (2016 est.):  
**799,766**

City of Portland

Population (2016 est.): **639,863**

Area: **133 square miles**

Median household income: **\$58,423**

Percentage of persons in poverty: **16.9 percent**<sup>30</sup>

Most recent Point in Time homelessness  
count: **4,177** (2017, includes Portland and  
Multnomah County)

30. U.S. Census Bureau "QuickFacts." <https://www.census.gov/quickfacts/fact/table/portlandcityoregon,multnomahcountyoregon/PST045216>



empowered to temporarily remove these individuals from the streets and take them to dedicated rooms in a city-sponsored transitional housing facility.

In addition to housing, the SCT program offers a range of wrap-around services, including medical, legal, substance abuse, and mental health programming, as well as 24-hour staff support. Central City Concern, a local nonprofit organization, provides some of the housing, as well as case managers and other staffing.

Individuals can remain in the program for up to 18 months. Clients who show signs of success are moved into drug- and alcohol-free housing, and from there, they can get help in moving into permanent housing. SCT case managers follow up with individual clients for a year after they leave the program to see if they have housing and are sober, employed, and meeting other personal goals. Some SCT “graduates” are hired by the nonprofit organizations that provide services through the program.

In addition to overall program management, the Portland Police Bureau plays a major role in referring individuals to the SCT program. Bicycle officers and other patrol officers refer potential clients to the unit, which also takes referrals from social service agencies, hospitals, probation and parole personnel, and jail employees. Walk-ins are also accepted.

The SCT holds weekly coordination meetings to gather and evaluate new referrals and to discuss next steps on existing cases. The coordination meetings include all of the key stakeholders from the justice system and the service provider community.

**Cost-benefit analysis shows tremendous savings:** Faculty and students at Portland State University have evaluated the SCT program annually since 2009. The evaluation focuses on crime reduction among the targeted population and a cost-benefit analysis. The most recent evaluation, from Spring 2017, examined the 185 persons who entered the SCT program in 2015. Researchers found a 75 percent reduction in post-program arrests among this group. They also calculated that the reduction in crime and criminal justice system costs far exceeded SCT program costs, yielding a cost-benefit ratio of .076. That means that for every \$1 in SCT program costs, there were savings of more than \$13 in reduced crime and justice system costs related to police, courts, and corrections.<sup>31</sup>

“The first portion of our program is ‘low-barrier,’ or ‘wet’ housing. We do not want to be an additional barrier for someone to enter the program. We don’t expect sobriety right away, but abstinence is the ultimate goal. Within 30 to 60 days, there is responsibility and accountability to engage in the program and in treatment services.

“Once an individual is stable in the low-barrier phase, they are eligible for the Alcohol and Drug Free housing portion of the program. This phase focuses on connecting with the recovery community, continuing treatment services, volunteering in the community, and employment/income. Having both low-barrier and alcohol- and drug-free housing options has been key to meeting our participants’ needs.”

**—Emily Rochon, Service Coordination Team Manager  
Portland Police Bureau, Behavioral Health Unit**



Emily Rochon

31. Study of the Service Coordination Team and its Impact on Chronic Offenders: 2017 Report. Portland State University, Capstone Class UNST 421, Section 572. 2017



## Homelessness in California: The Unintended Consequences of Criminal Justice Reform

“In California, all drug possessions are now misdemeanors. The maximum for most misdemeanors is six months in jail, and it is common for someone convicted of misdemeanor possession of cocaine or heroin to be sentenced to six months. In Los Angeles County, the policy is to release any person sentenced to 180 days in jail the same day.

“What this means is that the court system no longer has any leverage to get people into rehab. In the past, the choices were, go to jail or go to rehab. Now, it’s get released or go to rehab. Very few people are choosing rehab.”

—City Prosecutor Doug Haubert, Long Beach, CA



City Prosecutor Doug Haubert

Nowhere is the problem of homelessness more acute than in California. According to the U.S. Department of Housing and Urban Development’s Point in Time count, California had an estimated 134,278 homeless individuals in 2017. That represents a 13.7 percent increase from 2016. California accounts for one-quarter of all homeless persons in the United States, and California has nearly half of the nation’s homeless persons who are unsheltered.

According to California police officials who participated in PERF’s *Critical Issues* meeting, the recent surge in homelessness in California may be an unintended consequence of three criminal justice reforms in the state:

- The California Public Safety Realignment Act (AB 109), passed in 2011, mandated reductions in the state’s prison population. That has been accomplished, in large part, by shifting tens of thousands of offenders from state prisons to county jails to serve their sentences. Many jails, facing overcrowding themselves, have been forced to release inmates back to the community. Many of these individuals are struggling with mental illness and/or substance abuse, and many are homeless.
- Proposition 47, approved by the state’s voters in 2014, downgraded many theft and drug offenses from felonies to misdemeanors. Even if an offender commits multiple offenses covered by the law—for example, theft under \$950 or possession of most illegal drugs—each offense is treated as a misdemeanor. In many counties, especially those facing jail overcrowding, suspects are issued a citation, and there is almost no threat of jail time or other serious consequences upon conviction.
- Proposition 57, approved by voters in 2016, redefined some felony offenses as “nonviolent.” As a result, more prisoners are qualifying for early release back to the community.

“AB 109 shifted people from the state prison to the county jail, which displaced people who were previously in the county jail onto the streets.

“We’ve been dealing with those individuals ever since, as part of our homeless population as well.”

— Sheriff Jim McDonnell, Los Angeles County



Sheriff Jim McDonnell

“We compared the prison population of California, 2006 versus 2016, and found that there are at least 40,000 fewer people in state prisons. It’s down to 115,000 from 155,000.

“Everybody that I have talked to who has worked in state prisons has told me that approximately half of the people there have mental illness.

“So where do we think these people are now, who used to have their lodging, their food and especially their medical care taken care of?”

— **Chief Sergio Diaz, Riverside (CA) Police Department**

“With narcotics offenses now misdemeanors, word travels very rapidly that Los Angeles seems to be a safe haven for people who are experiencing drug abuse, and they make their way into the homeless population.”

— **Deputy Chief Robert Arcos, Los Angeles Police Department**

“Criminal justice reform and reducing incarceration are being discussed not just in California, but across the country.

“For anybody who is considering that as a way forward, you need to look at what’s happening here in California to see what some of these unintended consequences are.”

— **Chief Robert Luna, Long Beach (CA) Police Department**

**The justice system has lost its leverage to get offenders into treatment:** According to California police leaders at the conference, the impact of these three measures on homelessness goes beyond the increase in persons with mental illness and other conditions living in the community who might otherwise be in custody. As importantly, they said, the justice system in California has lost much of its leverage to get lower-level offenders into drug treatment or other services.

In the past, many of these suspects were offered a choice: go to treatment or go to jail. But because many of the underlying offenses are now misdemeanors, with no threat of jail time even upon conviction, fewer people are accepting the treatment option. According to Sheriff Jim McDonnell, the number of offenders in drug treatment in Los Angeles County declined by 60 percent after Proposition 47 was enacted.

While many of California’s police leaders said they support the broad goals of criminal justice reform, the measures in California have had unintended consequences on homelessness and some of its underlying conditions, such as drug addiction and mental illness. They cautioned other states that are considering similar reforms to analyze and understand the impacts in California.



Chief Robert Luna

## A Meta-Analysis of Intervention Programs Reveals Some Evidence of Effectiveness

In 2018, the Campbell Collaboration, a research organization based in Norway, conducted a systematic review to assess the effectiveness of interventions to reduce homelessness and increase residential stability for individuals who are homeless, or at risk of becoming homeless.<sup>32</sup> The authors examined 43 randomized controlled trials (RCTs) of programs targeting homeless individuals that measured the impact on homelessness or housing stability, with follow-up of at least one year.

Of the 43 studies included in the analysis, 37 were from the United States, and all of the studies were conducted prior to January 2016.

The review looked at a range of housing programs and case management interventions, and found that in general, the interventions examined performed better than the “usual services” (i.e., services typically provided outside of the intervention) in reducing homelessness or improving housing stability. However, certainty in the findings varied from very low to moderate.<sup>33</sup>

The interventions that were analyzed in the research studies were categorized as:

- **Case management (high- and low-intensity):** In these programs, clients are assigned to case managers who coordinate their access to services. The services can vary in intensity.
- **Abstinence-contingent housing programs:** In these programs, housing is provided to residents who agree to remain sober.
- **Non-abstinence-contingent housing programs:** Housing is provided regardless of whether residents are sober. Housing First is an example of one such program.
- **Housing vouchers with case management:** In these programs, a housing allowance is provided to certain groups of individuals who qualify.
- **Residential treatment with case management:** Housing is provided to individuals who also need treatment for mental illness or substance abuse.

According to the analysis, these interventions seemed to have similar beneficial effects, so it's unclear which of the programs are the most effective for reducing homelessness and increasing housing stability. Specifically, the researchers found moderate-certainty evidence<sup>34</sup> for high-intensity case management and Housing First programs, as compared to usual services.

Overall, the findings suggest that case management and housing programs appear to be effective in improving housing stability and reducing homelessness. However, the researchers note the uncertainty in their findings, because many of the studies examined have a risk of bias due to various methodological concerns.

In addition, the researchers identified specific gaps in the research with regard to: 1) case management for specific groups, such as disadvantaged youths; 2) abstinence-contingent housing with case management or day treatment; 3) non-abstinence contingent housing comparing group vs. independent living; 4) Housing First compared to interventions other than usual services; and 5) studies outside of the United States.

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32. Heather Menzies Munthe-Kass, Rigmor C. Berg, and Nora Blaasvaer, 2018. *Effectiveness of Interventions to Reduce Homelessness: A Systematic Review and Meta-Analysis*. Campbell Collaboration. <https://www.campbellcollaboration.org/library/effectiveness-of-interventions-to-reduce-homelessness.html>

33. The authors used The Grading of Recommendations Assessment, Development, and Evaluation for effectiveness approach (GRADE) to assess the certainty of the synthesized evidence. GRADE is a method for assessing the certainty of evidence in systematic reviews.

34. “Moderate certainty” indicates that further research is likely to have an impact on the researchers’ confidence in the estimated effect of the program.

# Key Challenges and Promising Practices

*AT THE CRITICAL ISSUES MEETING IN LONG BEACH, POLICE LEADERS discussed the following aspects of their responses to issues of homelessness:*

- *Special units called “Homeless Outreach Teams,”*
- *The challenges in handling homeless encampments,*
- *Court rulings that govern seizures of homeless persons’ property,*
- *“Homeless courts” that are now operating in more than 30 jurisdictions,*
- *The training that police officers receive regarding homelessness,*
- *Innovative uses of technology and data-sharing to improve the police response to homelessness;*
- *Funding of programs that help homeless persons, and*
- *Regional partnerships that agencies have created to share resources.*

In PERF’s recent questionnaire of law enforcement agencies, 52 percent of the respondents said their agency has officers or units dedicated to working with homeless persons.

*This chapter summarizes programs and guidance offered by agencies with experience working with homeless persons.*

## Homeless Outreach Teams

Many law enforcement agencies have created units specifically staffed to respond to individuals experiencing homelessness. Although the names of these units vary, many are called Homeless Outreach Teams (HOT). In PERF’s recent questionnaire of law enforcement agencies, 52 percent of the respondents said their agency has officers or units dedicated to working with homeless persons.

**Police officers working directly with mental health providers:** In creating a Homeless Outreach Team, many departments use a “co-responder” model, in which patrol officers are paired with or co-located with mental health service providers. In Santa Monica, CA, two members of the city’s Department of

Mental Health are co-located with members of the police department's Homeless Liaison Program (HLP). HLP is a unit of eight officers and a sergeant dedicated to addressing homelessness. One of the mental health representatives is assigned to patrol, while the other is assigned to the HLP team. The mental health workers assist officers and connect homeless persons with services.

In Vacaville, CA, the police department has a Community Response Unit (CRU) that acts as a specialized homeless outreach team. The city, through grant funding, embedded a mental health clinician within the unit. The clinician goes out into the field with CRU officers and conducts follow-up and case management.

As the name indicates, a primary responsibility of Homeless Outreach Teams is conducting outreach to homeless individuals. The Houston Police Department's HOT consists of a sergeant, six officers, and three case managers from a local mental health authority who engage individuals on the streets and connect them to services. In 2017, the team found housing for more than 300 individuals, and it connected more than 4,500 people with services. As a result of the large caseloads that HOT members have in the outreach component of their work, HOT members do not always respond to general calls for service, unless those calls involve homelessness.

**Patience is required:** Due to the unique responsibilities of working on a Homeless Outreach Team, many departments carefully select unit members. In Vacaville, CA, candidates for the Community Response Unit were evaluated on their practical experience, emotional intelligence, and patience. Working with homeless communities can be challenging and requires perseverance. In Long Beach, CA, the multi-disciplinary team that responds to homelessness noted that it takes, on average, 17 contacts with a homeless individual before they will agree to enter services. Therefore, officers selected to conduct outreach to the homeless must be prepared to experience resistance from people who may have mental illness and substance abuse issues.

Homeless Outreach Teams provide multiple benefits to their communities and their law enforcement agencies. Dedicating officers to the problem of homelessness gives them time to develop relationships with community partners and service providers. In Long Beach, CA, the police department's Quality of Life officers address homelessness and work closely with service providers. The Las Vegas Metropolitan Police Department (LVMPD) also has improved its relationships with community partners by dedicating officers to the Multi-Agency Outreach Resource Engagement Team (MORE). MORE consists of officers from LVMPD and one provider each from five local nonprofit organizations. Together they conduct outreach and connect homeless individuals with services in the field. By having the designated officers conduct outreach, the officers are able to develop relationships with individuals experiencing homelessness.

**Homeless Outreach officers are a resource for patrol:** In many departments, Homeless Outreach Team officers act as a resource for other patrol officers. In Santa Monica, the HLP team trains others in the department on how to interact with homeless persons. In Vancouver, WA, Neighborhood Police Officers (NPOs) are designated to respond to livability issues and have taken on

>> continued on page 45

"Our officers take the case managers, the mental health experts, into the encampments, because otherwise they would be afraid to go in."

— Houston Assistant Police Chief Wendy Baimbridge



Wendy Baimbridge



## “Seattle Navigation Team” Combines Officers and Homelessness Caseworkers

In 2015, Seattle faced a dramatically increasing number of homeless individuals living within its city limits, prompting Mayor Ed Murray to declare a state of emergency on the issue. Under the state of emergency, the city began concentrated efforts to clean encampments and conduct outreach to homeless individuals. Despite these actions, the city found that the rate of homeless individuals engaging with services remained low.

In order to improve outreach and increase the number of successful referrals of homeless individuals to services, local officials created the Seattle Navigation Team in January 2017. The Seattle Navigation Team is comprised of caseworkers from REACH, an organization that conducts outreach and provides case management services to the homeless population in Seattle; eight officers, a sergeant, and a lieutenant from the Seattle Police Department; and two individuals from the city’s facilities department to assist with possessions left in encampments.



An excellent 6-minute video that shows the Seattle Navigation Team at work is available at <http://www.seattlechannel.org/videos?videoid=x78447>.

**Police and social service workers help each other accomplish goals:** Including outreach workers and police on the same team provides multiple benefits. The presence of outreach workers increased the officers’ credibility and perceived legitimacy in the homeless community. If homeless individuals feel uncomfortable speaking with an officer, they can be directed to the outreach worker. Having officers on the team also assures the community that public safety is a priority and that any criminal activity is being addressed.

On a daily basis, the Navigation Team goes out into the community and makes contact with homeless individuals and attempts to connect them with services. In its first year, the Navigation Team made approximately 8,000 contacts with 1,800 individuals, 35 percent of whom accepted case management and 30 percent of whom accepted shelter referrals. This is an improvement on the 3 to 5-percent referral rates prior to the formation of the Navigation Team.

In addition to increased referrals, positive word of mouth about the Navigation Team in the encampments has resulted in more individuals asking the Navigation Team for assistance.

**Wanted: Engaging, personable officers with problem-solving skills:** To find dedicated officers to work on the Navigation Team, a job position was posted throughout the Police Department, and applicants were interviewed. Before posting the position, police officials carefully considered which qualities they would seek in officers joining the Navigation Team, and decided to look for engaging, personable candidates with problem-solving and team-building skills.

Another important part of the Navigation Team’s success is its relationships with other city departments. In early 2017, Mayor Murray activated a homelessness emergency operation center that brought together the directors of different agencies to meet on a regular basis. The emergency operation center was expected to function for three months but lasted nine months. During that time, various city departments learned to communicate and coordinate their work to clean encampments, create shelters, manage contracts, work with the news media, etc.

**Cell phone app helps keep track of homeless individuals:** The Navigation Team is also able to track its efforts in working with the homeless community through a cell phone app. With this app, the Navigation Team can track where they have worked, which homeless persons they have contacted, what services they offered, and the outcomes of their visits. The data collected from those interactions helps inform the team’s prioritization of what encampments to visit. Outcomes are also tracked to determine how many individuals are moving into housing and which service providers produce stable outcomes.

## Wet Shelters, Dry Shelters, “Housing First,” and Harm Reduction

For homeless persons who are struggling with an addiction to drugs and/or alcohol, finding shelter can be especially difficult if local shelters do not admit individuals who are under the influence of substances. These shelters are known as “dry” shelters, and their counterparts, where individuals are allowed to be intoxicated and, in some cases, consume substances, are referred to as “wet” shelters.

**Dry shelters exclude many homeless persons:** Chief Brian Allen from the Sparks, NV Police Department explained that dry shelters can be a barrier to services for people with an alcohol addiction. “Individuals who want to get into housing don’t want to follow the necessary rules and requirements of a provider that does not allow the individual to be intoxicated when they go into the shelters. So, dry shelters can be a barrier to getting them off the streets and into a shelter.”

Sergeant Russ Norris from the Concord, CA Police Department believes that wet shelters, while more resource-intensive and costly, are more successful and effective in the long run. “Dry shelters sound great on paper, but we have to get somebody sheltered before we can start providing the resources necessary to get them a permanent roof over their head. Making someone come into a shelter only when they are dry restricts us from access to a huge number of people.”

Cities are beginning to embrace the idea of wet shelters, as research has shown that they can be more effective in getting chronically homeless individuals to drink less<sup>35</sup> and to have other positive impacts, including fewer run-ins with police and improved health, social ties, and higher levels of satisfaction with life.<sup>36</sup>

**“Housing First” starts with a stable place to live:** Additionally, a wet shelter is a form of “Housing First,” an approach to combat homelessness in which the immediate focus is to get an individual a stable place to live, followed by providing services and treatment. Housing First has been found effective in reducing homelessness, especially in individuals with co-occurring mental illness and substance use disorders.<sup>37</sup>

Wet shelters are similar to the idea behind needle exchange programs: harm reduction. If individuals are going to drink or abuse drugs, it is better to provide a supervised environment where some of the harm may be mitigated. Contra Costa County, where Concord, CA is located, runs 214 beds in shelters, and all are run as a wet shelter, harm reduction model. Michael Fischer, Program Manager for Contra Costa Health, Housing and Homeless Services, explained how wet shelters promote harm reduction: “We’re reducing the harm to anybody entering our facility. If somebody’s intoxicated and wandering the streets, they could fall, hit their head, and be seriously injured. At our facility, we can take them to their bed and lay them down so they won’t get hurt.”



Sparks, NV Police Chief  
Brian Allen

35. “The Wet House: Homeless People with Alcoholism Drink Less When Booze Is Allowed.” *Time Magazine*, January 20, 2012. <http://healthland.time.com/2012/01/20/the-wet-house-homeless-people-with-alcoholism-drink-less-when-booze-is-allowed/>

36. Reed, M. “Wet Shelters: The Benefits and Risks Associated With Alcohol-Administering Homeless Shelters.” *British Columbia, Cross Government Research, Policy and Practice Branch*, November 13, 2008. [http://www.jedc.org/forms/wet\\_shelters\\_BCstudy.pdf](http://www.jedc.org/forms/wet_shelters_BCstudy.pdf)

37. Tsemberis, S. “Housing First: The Pathways Model to End Homelessness for People with Mental Illness and Substance Use Disorders.” *Hazelden Publishing*: MN (2010). [https://www.researchgate.net/publication/47669330\\_Housing\\_First\\_The\\_Pathways\\_Model\\_to\\_End\\_Homelessness\\_for\\_People\\_with\\_Mental\\_Illness\\_and\\_Addiction\\_Manual](https://www.researchgate.net/publication/47669330_Housing_First_The_Pathways_Model_to_End_Homelessness_for_People_with_Mental_Illness_and_Addiction_Manual)

greater responsibility in addressing homelessness issues. NPOs have become agency experts on the issue of homelessness and are able to educate and assist their fellow patrol officers. In Seattle, WA, patrol officers can refer homeless individuals to officers on the Navigation Team (made up of police officers and mental health clinicians), which frees patrol officers to respond to other calls.

## Homeless Encampments Raise Difficult Questions

Homeless encampments pose a major challenge to law enforcement agencies. Encampments can be unhealthy places for the individuals living in them, and can also be harmful to the environment and the larger surrounding community. Encampments have posed health risks to inhabitants in San Diego and other cities that have experienced outbreaks of Hepatitis A. These sites can also damage the environment, especially when encampments are located along rivers where human waste and hazardous materials are disposed of improperly. Encampments also can foster low-level crime and disorder, which concern community members and business owners who live or work nearby.

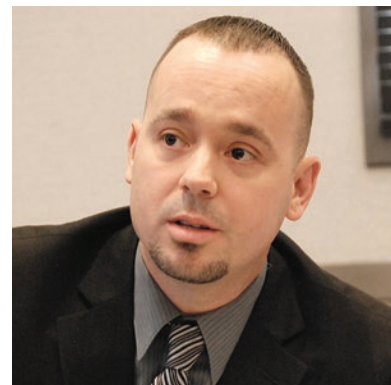
**Philosophical issues about homeless persons' rights:** Advocates for homeless persons argue that for some persons, homelessness is a choice that should be protected by law. Many people object to strategies that they consider “criminalization” of homelessness. In other cases, advocates say, homeless persons have mental illness or substance abuse issues, and they should be given real assistance, rather than being pushed out of one encampment and into another.<sup>38</sup>

While many cities and police departments are moving toward programs to address the underlying causes of homelessness, one of the biggest remaining challenges is how to address the issue of encampments.

**Closing an unsafe encampment in Anaheim:** In Anaheim, CA, a two-mile stretch of the Santa Ana River Trail is home to 500 to 1,000 individuals. Orange County officials and the Orange County Sheriff's Department have been working to clean up the area. Part of this clean-up involves removing the individuals living in the area, as it is not safe for human habitation.<sup>39</sup> Lieutenant Frank Hale of the Anaheim Police Department said, “Although a few people might have viewed this as a temporary quick-fix, pedestrians and cyclists who frequently use the trail felt it was becoming increasingly dangerous.”

The Anaheim Police Department and the Orange County Sheriff's Office, along with outreach workers, posted notices and increased their presence in the area to notify individuals that the encampment would be cleared out. The decision to clear the encampment was difficult because there are few alternative places for individuals to go. According to Lieutenant Hale, Anaheim is

>> continued on page 47



Michael Fischer, Program Manager, Contra Costa, CA Health, Housing, and Homeless Services



Anaheim, CA Police Lieutenant Frank Hale

38. Chamard, S. “Homeless Encampments.” *Center for Problem-Oriented Policing*. (Guide No. 56: 2010). [http://www.popcenter.org/problems/homeless\\_encampments/1](http://www.popcenter.org/problems/homeless_encampments/1)

39. “Homeless Encampment near Angel Stadium in Anaheim Coming Down.” *ABC News 7*, January 22, 2018. <http://abc7.com/society/homeless-encampment-near-angel-stadium-coming-down/2977013/>

## San Diego County's Response to Hepatitis A

In early 2017 in San Diego County, reports of an increase in Hepatitis A cases began to emerge. The county Health and Human Services Agency reported that 42 cases had been reported between November 2016 and April 2017, roughly four times the typical monthly average. San Diego County Undersheriff Mike Barnett said that the first sign the county might have been experiencing an issue with Hepatitis A was discovered by officials at the jail.

After the sheriff's office reported the issue to San Diego's Health and Human Services Agency, the county began to vaccinate police officers, sheriff's deputies, other first responders, and residents on a volunteer basis. Soon it was learned that the outbreak was spreading through the county's homeless population due to unsanitary conditions. Tens of thousands of vaccinations were administered to individuals on the street, by nurses in partnership with city and county law enforcement agencies.

On September 1, 2017, San Diego County declared a state of emergency due to the Hepatitis A outbreak.<sup>40</sup> The county Department of Sanitation was brought in to assist with trash removal, and to begin a program to spray bleach on surfaces that were potentially affected by this outbreak.

"As of January 9, 2018, there were more than 577 confirmed HEP A cases, 20 deaths, and 396 hospitalizations," San Diego Undersheriff Michael Barnett said at the PERF conference. However, the crisis quickly abated at that time. In mid-January, the county passed the first week without a new case reported, and on January 23, the county officially ended the state of emergency.<sup>41</sup>

### Hepatitis Outbreak Prompts El Cajon to Ban Food Distribution in Parks

In October 2017, after San Diego County declared a Hepatitis A emergency, the city of El Cajon banned sharing food in city parks. City officials said that the ban would prevent people from consuming contaminated food that could transmit Hepatitis A. Mayor Bill Wells encouraged churches and other organizations to provide prepared food in their own kitchens and dining facilities, rather than in public parks.

Homeless persons and their advocates argued that the ban was a punitive measure, and formed a group called "Break the Ban." Approximately a dozen people were arrested distributing food in a park. But Mayor Wells said, "This has always been about preventing the spread of hepatitis. Ironically, it's the homeless that are most likely the ones who were most protected by this ban."<sup>42</sup>

When San Diego County declared the public health emergency was over, El Cajon rescinded its ban.

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40. "Local Public Health Emergency for Hepatitis A Outbreak Ratified by Board of Supervisors." *County News Center*, September 6, 2017. <https://www.countynewscenter.com/local-public-health-emergency-for-hepatitis-a-outbreak-ratified-by-board-of-supervisors/>

41. "Hepatitis A Outbreak." San Diego County Health and Human Services Agency. [https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community\\_epidemiology/dc/Hepatitis\\_A/outbreak.html](https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epidemiology/dc/Hepatitis_A/outbreak.html)

42. "El Cajon ends ban on feeding homeless." *San Diego Union Tribune*, Jan. 23, 2018. <http://www.sandiegouniontribune.com/communities/east-county/sd-me-eastcounty-20180123-story.html>



the first city in Orange County to have a year-round multi-service homeless shelter. The 100 beds will hardly be enough to house the individuals who were living adjacent to the Santa Ana riverbed, and police have noted that many people are reluctant to accept shelter.

**Some encampments allowed in Oakland:** Oakland, CA has taken a different approach and sanctioned encampments in certain parts of the city. This means that on certain streets and in parks, the city has designated areas as encampments where people can live. Oakland has approximately 2,700 individuals experiencing homelessness and only 300 shelter beds, so there is a need for additional solutions. Recently, a homeless center opened with 20 “Tuff Sheds”—small structures that can be used for storage or adapted for use as housing. The 20 sheds can provide a temporary housing solution to a total of approximately 40 people.

While Oakland has largely sanctioned encampments, there are instances where an encampment must be closed. These decisions are left to the city council, which gives clear direction to the police department when abatement is needed. “In some of these encampments, we have rat infestation, or we have Hepatitis A beginning to break out,” Police Chief Anne Kirkpatrick said. “We are now vaccinating our officers for Hepatitis A to protect them.”

**Encampments crop up in Honolulu:** In Honolulu, a sanctioned encampment was attempted approximately 20 years ago. Police Chief Susan Ballard explained that “initially, it was working fine, but then it began to deteriorate. It turned into the Wild West, so we had to make the decision to not sanction encampments.” Even though the city no longer sanctions encampments, they still pop up around the island, Chief Ballard said. The police use “compassionate disruption” to enter the encampments and explain to the individuals living there that they need to dismantle the encampment. The individuals then have 24 hours to leave before the police return and clean up the area. However, encampments sometimes are re-established soon after they are taken down. “It’s an ongoing process, because all we’re really doing is moving people around,” Chief Ballard said.

**A Hepatitis outbreak in Santa Cruz:** Santa Cruz, CA Chief Andy Mills stressed the importance of collaboration in addressing these issues, especially when deciding what to do with encampments. Santa Cruz was the second city in California to experience a Hepatitis A outbreak in one of its homeless encampments. That encampment was dismantled and the city has been involved in creating a new encampment. However, homeless persons often move to other locations.<sup>43</sup> The city also has hired a homelessness coordinator.<sup>44</sup> “We have been working on a place that would be lawful for people to go and sleep in a controlled environment,” Chief Mills said. “This would be temporary until the city

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43. “Camp cleanups shuffle Santa Cruz’s homeless population around city.” *Santa Cruz Sentinel*, Feb. 2, 2018. <http://www.santacruzsentinel.com/article/NE/20180202/NEWS/180209910>

44. “Santa Cruz declares homeless shelter crisis, hires homeless manager.” KSBW8, Feb. 9, 2018. <http://www.ksbw.com/article/santa-cruz-declares-homeless-shelter-crisis-hires-homeless-manager/16944143>



and county could purchase a more permanent solution with wraparound services available on site.”

Finding the best solutions for handling encampments can be a challenge. Police departments must balance the need for safety and health of all residents while also treating individuals experiencing homelessness humanely.

## Court Rulings in California Result in Strict Rules Limiting Seizure of Homeless Persons’ Property

Rules for handling a homeless person’s belongings have become a complex issue for law enforcement agencies in California because of a series of court cases holding that homeless persons’ property cannot be seized without limits. Three major cases are involved:

- **Cruel and unusual punishment:** In the 2006 case *Jones et al. v. City of Los Angeles*, the U.S. Court of Appeals for the Ninth Circuit, which has jurisdiction over California and eight other Western states, concluded that criminalizing homelessness was cruel and unusual punishment:

*“[J]ust as the Eighth Amendment prohibits the infliction of criminal punishment on an individual for being a drug addict, or for involuntary public drunkenness that is an unavoidable consequence of being a chronic alcoholic without a home, the Eighth Amendment [ban on cruel and unusual punishments] prohibits the City from punishing involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless without shelter in the City of Los Angeles.”<sup>45</sup>*

As part of the reasoning for its decision, the 9th Circuit added:

*“The loss of [homeless persons’] possessions when they are arrested and held in custody is particularly injurious because they have so few resources and may find that everything they own has disappeared by the time they return to the street.”<sup>46</sup>*

- **Homeless persons have no choice but to leave possessions unattended:** Six years later, in another case involving issues of homelessness, *Tony Lavan et al. v. City of Los Angeles*,<sup>47</sup> the Ninth Circuit upheld strict limitations on the authority of police to confiscate and immediately destroy the possessions of homeless persons. The court noted that homeless persons often have no choice but to leave their possessions unattended on public sidewalks while they “attend to necessary tasks such as eating, showering, and using restrooms.”

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45. *Jones et al. v. City of Los Angeles*, U.S. Court of Appeals for the 9th Circuit, 444 F3d 1118 (2006). <http://caselaw.findlaw.com/us-9th-circuit/1490887.html>

46. Ibid.

47. *Tony Lavan et al. v. City of Los Angeles*, U.S. Court of Appeals for the 9th Circuit, No. 11-56253 (2012). <http://cdn.ca9.uscourts.gov/datastore/opinions/2012/09/05/11-56253.pdf>

As a result, the U.S. District Court for the Central District of California had issued an injunction barring the City of Los Angeles from seizing such property “absent an objectively reasonable belief that it is abandoned, presents an immediate threat to public health or safety, or is evidence of a crime, or contraband.” The District Court injunction held that unless there was “an immediate threat to public health or safety,” any such seized property must be maintained in a secure location for at least 90 days, in order to give homeless persons an opportunity to retrieve their belongings.

The City of Los Angeles appealed the ruling, but the Ninth Circuit denied the appeal, saying:

*“The City has ... asked us to declare that the unattended property of homeless persons is uniquely beyond the reach of the Constitution, so that the government may seize and destroy with impunity the worldly possessions of a vulnerable group in our society. Because even the most basic reading of our Constitution prohibits such a result, the City’s appeal is denied.”*

- **Court provides a detailed list of what Los Angeles cannot do:** In 2016, the Los Angeles City Council approved an ordinance requiring that homeless persons’ tents be taken down between 6 a.m. and 9 p.m., and limiting the amount of property a homeless person can have on the street. A number of homeless persons and advocacy organizations filed suit, alleging that police and other city employees had been cordoning off areas where homeless persons were located and bringing in trash trucks to dispose of tents, blankets, clothing, and other property, and that the city employees were not protecting property such as medications and personal items, making it difficult or impossible for the owners to retrieve their property.

The U.S. District Court for the Central District of California quickly issued an injunction strictly limiting the City of Los Angeles’ ability to confiscate, destroy, or seize and store the property of homeless individuals.<sup>48</sup>

**Police have created protocols for adhering to the court rulings:** Participants at the PERF conference discussed the policies and procedures they have established to comply with the court rulings, with specific rules for temporary seizure of various types of property and for ensuring that homeless persons can retrieve their property. In the past, items such as tents and blankets often were seized and destroyed with little or no documentation. Today, large quantities of property are stored. Exceptions allow police and other city employees to destroy property if it is infested with vermin or otherwise presents a public health risk. The Hepatitis A outbreak in a number of California communities also has affected some decisions about property.

Homeless Outreach Teams take an active role in guiding homeless persons through the process of retrieving property, explaining why certain pieces of

>> continued on page 52

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48. *Mitchell et al. v. City of Los Angeles et al.* U.S. District Court for the Central District of California. Case No. CV 16-01750 SJO (GJSx). Order Granting Plaintiff’s Application for Preliminary Injunction. April 13, 2016. <https://lafla.org/wp-content/uploads/2016/04/Mitchell-Preliminary-Injunction-Text.pdf>

## How Indio (CA) Is Reducing Homelessness and Evaluating Its Progress

Since 2013, Indio, CA has operated the Community Outreach Resource Program (CORP)—a multi-disciplinary, data-driven approach to combating homelessness. When CORP started in 2013, there were 256 unsheltered persons living in Indio. By 2017, that number had dropped to 89, a 65-percent reduction.

The CORP initiative begins with the Indio Police Department and its two Quality of Life officers. They focus on reaching out to and understanding the homeless community in Indio, and identifying individuals who might be good candidates for the treatment and service components of the program. The target population is homeless individuals who have mental illness and/or substance abuse issues, and who have had previous encounters with the police and the justice system.

**Each homeless client is assigned a counselor to guide the person through the program:** Based on their individual needs, clients voluntarily enroll in an extensive long-term recovery program at one of the CORP service providers. There are currently five community-based service providers, including the Coachella Valley Rescue Mission, which shelters more than 200 men, women and children in both transitional and emergency housing. Each CORP client is assigned a designated counselor to help guide the individual through the program and to act as a liaison with the Quality of Life officer, who in turn serves as the liaison with the justice system.

A particular focus of CORP is helping people who successfully complete the recovery program to reintegrate into society. The Coachella Valley Rescue Mission also offers an after-care program for individuals who have graduated from the CORP program. This includes substance recovery meetings, as well as continued mental health, substance abuse, medical, housing and employment services. Program graduates can also work on the community's "food box" distribution program.

In addition, the police department works with the district attorney, public defender and the courts to forgive any outstanding fees or fines that program graduates may have. This increases the chances that program graduates can get driver's licenses and locate jobs and housing. To date, 115 CORP clients have had approximately \$300,000 in fines and fees dismissed.

### Homeless Persons Express High Levels of Satisfaction After Completing the Program

*CORP is undergoing a rigorous process and outcome evaluation led by Dr. Cody Telep of Arizona State University.*

*Initial findings suggest that after participating in the program, clients have better housing, employment status, and quality of life. And exit interviews indicate that they have a better view of the police department and other components of the justice system after participating in the program (see chart, next page):*



#### Indio, CA

Riverside County (125 east of Los Angeles)

Population (est.): **90,000**

Area: **29 square miles**

Median household income: **\$49,500**

Percentage of persons in poverty: **18.9 percent**

Most recent Point in Time (homelessness) count: **89** (2017, unsheltered only)

### Agency Ratings

On a scale of 1 to 10 how would you rate your interactions with the following agencies and groups?

Agency	Entrance Interview Mean (Std. Dev.) n = 48	Exit Interview Mean (Std. Dev.) n = 40
Indio Police Department*	6.32 (3.22)	8.60 (2.36)
Public Defender's Office*	7.51 (2.09)	9.11 (1.53)
Riverside Co. Probation*	7.70 (2.12)	9.27 (1.72)
Service Provider	9.36 (1.22)	9.71 (.70)
CORP Overall	N/A	9.56 (1.09)

\*pre-post t-test  $p < .05$

Source: Dr. Cody Telep, Arizona State University

### CORP Partners

- Indio Police Department
- Riverside County District Attorney's Office
- Riverside County Law Offices of the Public Defender
- Superior Court of California-Larson Justice Center
- Riverside County Indigent Defense Program
- Riverside County Department of Public Social Services
- Riverside University Health System
- Riverside County Probation Department
- Coachella Valley Rescue Mission (CVRM)
- Mama's House
- Martha's Village & Kitchen
- ABC Recovery Center
- Victory Outreach of Indio (faith-based)

"People tend to think of social workers as being compassionate and caring, but that's not the typical role for the police. When the Coachella Valley Rescue Mission first started doing outreach with the two Indio resource officers, people would see the police and start to run. Now, two years later, I don't even have to go out and do the engagement, because the officers engage, they build trust, they get people into rehab or detox, they get them to the mental health services—they just bring the people to us.

"We're collaborating, which is working. We have on-site, 24-7 wraparound services, including medical, mental health, and substance abuse treatment."

— **Tom Cox, Director of Programs,**  
**Coachella Valley Rescue Mission**



Tom Cox

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“I think a key to a program like this is selecting the right officers. They need to have a lot of tenacity—they can’t take ‘no’ for an answer.

“They also need patience. My officers will approach the same person again and again, saying, ‘Let us take you over to the Mission for a meal.’ At some point, that person will finally say, ‘Yes, I want to take advantage of the services you are offering.’

“So persistence really is a key along with strong collaboration across the criminal justice sectors and our community-based organizations like the Coachella Valley Rescue Mission—we just won’t give up on people.”

— **Chief Michael Washburn, Indio Police Department**

“One of the things we focused on in the evaluation is how people who go through the Community Outreach Resource Program view the program and view the criminal justice system.

“So we have them complete a survey at the time they apply to be part of the program, and then another survey at the end.

“We’ve seen improvements in how they view their quality of life, and also improvements in their trust in police and their belief that the police are there to help them.

“Those effects are also for other parts of the justice system.”

— **Dr. Cody Telep, Arizona State University**



Chief Michael Washburn



Dr. Cody Telep

*continued from page 49*

property are destroyed, and in some cases, helping homeless persons replace lost property.

**San Diego rents storage units where homeless persons can store property:** San Diego Police Chief Shelley Zimmerman<sup>49</sup> noted that San Diego was planning an innovative program to help homeless persons manage their property. On March 20, 2018, the City Council voted to approve a storage facility that homeless persons will be able to use to store their property.<sup>50</sup>

## Homeless Courts Now Operating In More than 30 Jurisdictions

Jurisdictions across the country have created a number of different “specialty courts” designed to provide assistance to certain categories of low-level and

49. Chief Zimmerman retired on March 1, 2018.

50. “San Diego City Council approves homeless storage facility.” CBS8.com. March 21, 2018. <http://www.cbs8.com/story/37772452/san-diego-city-council-approves-homeless-storage-facility>



first-time offenders. Drug Courts and Veterans Courts are well-known variations of this model. A number of jurisdictions have applied this concept to homeless offenders, because many of these offenses committed by homeless people are misdemeanor nuisance and quality-of-life violations that can be handled more effectively through alternatives to traditional judicial proceedings.

**The goal is to break the cycle of repeated arrests:** Homeless Courts provide homeless persons with access to treatment services and programs. Ideally, the services help to reduce the chances that a homeless person will repeatedly be arrested and charged with minor offenses. While the rules and requirements for entering Homeless Court differ across jurisdictions, the courts operate under the same basic premises. An individual who meets the qualifications is offered the opportunity to participate in Homeless Court. After a judge hears the case, a plan is outlined that includes programs and services designed to address the underlying issues of the individual's homelessness, such as Alcoholics Anonymous meetings or sessions with a mental health professional. Upon successful completion of the plan, offenders may have their charges expunged from their records.

The first Homeless Court Program was established in San Diego in 1989. Since then, at least 32 other jurisdictions have created similar programs.<sup>51</sup>

Concord, CA recently expanded its Community Court program in order to address the needs of homeless persons. The court was established as a voluntary program designed to divert first-time and nuisance offenders from the criminal justice system and to identify alternative dispositions for long-term problems. The Community Court has operated since 2013 and has diverted 420 criminal cases. Participants in Community Court agree to complete community service or attend diversion classes in order to have their cases set aside.

**Working with persons who lack a permanent address:** Sergeant Russ Norris of the Concord Police Department explained how the city was able to make the Community Court available to homeless persons. "Until recently, the Concord Community Court had not had much success reaching the homeless population, because the program is initiated with an invitation to participate. Because homeless persons do not have fixed addresses, officers had trouble delivering those invitations. However, the recent launch of Contra Costa County's homeless outreach program—Coordinated Outreach, Referral and Engagement Team (CORE)<sup>52</sup>—has allowed us to correct this problem. As of January 2018, the CORE teams can now deliver Community Court invitations to individuals experiencing homelessness."

To allow direct and easy access to this service, the Concord Police Department has set up a special Community Court session held at the homeless shelter. Individuals who agree to participate in court are directed to engage with services that fit their condition in exchange for the criminal case being set aside. There are no fines with this version of Community Court.

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Concord, CA Police Sgt.  
Russ Norris

51. "Homeless Courts." *American Bar Association*. Accessed 2/16/18. [https://www.americanbar.org/groups/public\\_services/homelessness\\_poverty/initiatives/homeless\\_courts.html](https://www.americanbar.org/groups/public_services/homelessness_poverty/initiatives/homeless_courts.html)

52. CORE "works to engage and stabilize homeless individuals living outside through consistent outreach to facilitate and/or deliver health and basic need services and secure permanent housing." For more information, see: <https://cchealth.org/h3/services.php>

## Cambridge, MA Is Tracking Homelessness With a Focus on Services and Relentless Follow-Up

Home to Harvard University and the Massachusetts Institute of Technology, Cambridge, MA is often thought of as a leafy college town. However, the city of about 110,000 (whose daytime population swells to about 200,000) also attracts a sizable and diverse homeless population. The 2017 Point in Time count registered just over 450 individuals in emergency or transitional housing in Cambridge and another 67 who were unsheltered.

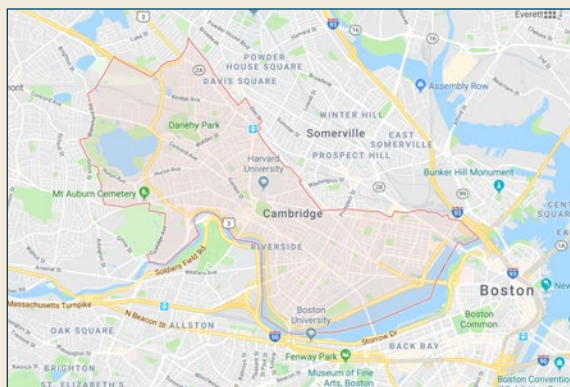
According to city officials, Cambridge's homeless population includes people from the greater Boston area who are attracted to the range of services that Cambridge offers. These include a special "Y2Y shelter"<sup>53</sup> for young people between the ages of 18 and 25, as well as one of only two "wet shelters" in Massachusetts, where individuals who are actively using drugs or alcohol can find temporary housing (see page 44 for a discussion of wet vs. dry shelters).

In the spring and summer, Cambridge also attracts many "travelers"—mostly young people who venture from city to city, living on the streets or sleeping on the couches of people they meet.

**20% of Cambridge officers focus on special populations:** Just over a decade ago, the Cambridge Police Department fundamentally changed its basic approach to individuals experiencing homelessness and other vulnerable populations. Twenty percent of the department's sworn officers now have a specialty assignment that focuses on youth, mental illness, homelessness, or other special populations. The police department established a two-officer Homeless Outreach Team (HOT) in 2005. And while the same two officers have been on the team from the start, their focus has shifted from primarily transporting individuals to hospitals and shelters to a problem-solving, case management approach.

In Cambridge, the Homeless Outreach Team is supported by beat officers, all of whom receive regular in-service and roll-call training on the services and resources available to homeless people and other vulnerable populations. Patrol officers are expected not simply to hand off cases to the HOT team, but to engage with and assist homeless individuals themselves. "Service provision is woven into everything the Cambridge Police Department does," Commissioner Branville Bard said. "Patrol knows what to do when they have a vulnerable person."

**Weekly meetings to review cases of homeless persons:** This service-driven mindset among officers is supported by a citywide multi-disciplinary group that ensures that a range of agencies—not just the police—are focusing on homelessness in a coordinated, strategic manner. Every Wednesday morning, a team consisting of police, public health and mental health officials, and other stakeholders meets to review individual cases that the HOT team, beat officers, and other agencies are working on. The group focuses on the progress of homeless individuals who are high users of services, as well as those who are low utilizers of services but at high risk for negative outcomes.



### Cambridge, MA

Middlesex County (3.5 miles west of Boston)

Population (est.): **110,000**

Area: **7.1 square miles**

Median household income: **\$83,122**

Percentage of persons in poverty: **14.0 percent**

Homeless population: **450 sheltered and 67 unsheltered (2017)**

53. See "Y2Y, Young Adults United to End Homelessness." <https://www.y2yharvardsquare.org/>

After reviewing the cases, the group splits up and heads into the community to make contact with the identified individuals, check on their well-being, and try to get them into appropriate services. Involvement and leadership from the City Manager's Office help to ensure that agencies are coordinating with one another and following through on promises.

"Much the same way that we address crime with relentless follow-up and the CompStat model, we do the same thing with protecting our vulnerable populations, including our homeless community.

"Every Wednesday morning, a multi-disciplinary group is sitting around the table, using a case management approach and focusing on our high utilizers of services and on our high-risk, low-utilizers of services.

"We meet every Wednesday to make sure that each agency did what they said they were going to do on the previous Wednesday."

— **Commissioner Branville Bard, Cambridge Police Department**

"In the past, the approach to homelessness was to arrest and jail individuals, only to have them back on the street in a short period of time. Now, the Police Department has come to realize we can't arrest our way out of this.

"Some homeless people need to go to jail, but most are better served through services we can offer them."

— **Superintendent Christine Elow, Cambridge Police Department**

"I'm sensitive to the issue of, if the police step in and take over, does mean that other people step back?

"I would say we're incredibly fortunate in Cambridge that our experience has been otherwise. The police stepping in and taking a very broad view of their role has resulted in excellent partnerships, both with other city departments and all of our community agencies."

— **Assistant City Manager Ellen Semonoff, City of Cambridge**

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Ventura, CA has involved its homeless community in the city's community intervention courts through its chronic offender program. Individuals who commit five different minor offenses within a year are known as "chronic minor offenders" and are eligible to enter into the community intervention court. One judge hears all of these cases on a dedicated day of the week. The ultimate goal of the community intervention court is to use the justice system to get individuals into treatment.

## **Training Programs for Police Officers Who Work with Homeless Persons**

*This section highlights police training of officers to assist homeless persons in four jurisdictions: Los Angeles County; Broward County, FL; Las Vegas; and Miami.*

## *Los Angeles County Sheriff's Department Gives First Responders Thorough Training on Homelessness*

The Los Angeles County Homeless Initiative includes training for the Sheriff's Department, in a program known as "Homeless Training for First Responders." Deputies are trained to safely interact with the homeless population in a way that is focused on providing resources and assistance, rather than enforcement.

The training includes the following modules:

- Understanding the Homeless Population,
- Stages of Homelessness,
- Approach and Contact,
- Enforcement and Collaboration,
- Leveraging Available Resources, and
- Legal Considerations and Potential Liabilities.

At training sessions, first responders are educated on the various backgrounds of homeless individuals, including veterans, persons with mental illness, "transitional age youth" (teens and young adults, particularly those who are in transition from state custody or foster care to independent living), LGBT persons, and others. Discussions also focus on the challenges faced by homeless individuals, including hunger, sleep deprivation, domestic violence, assaults, substance abuse, and others. Another topic is various patterns regarding how and why individuals slip into homelessness.

**Every encounter with a homeless person can improve the situation—or make it worse:** Emphasis is placed on communication, compassion, and understanding that strategies for building rapport and cooperation offer the best chance for achieving results. Deputies are encouraged to understand the importance of how they handle any particular encounter with a homeless person, because any encounter may either build rapport, or create more problems for the homeless person and undermine the efforts of other deputies who may interact with the homeless individual in the future.

Deputies are also encouraged to work with homeless populations and stakeholders on long-term solutions, and to view joint efforts as *including* law enforcement, but not necessarily being *led by* law enforcement.

## *Award-Winning Training in Broward County, FL Begins with Crisis Intervention*

Most training programs to teach officers how to work with homeless persons begin with Crisis Intervention Team (CIT) training, which is defined as "bringing together law enforcement, mental health providers, hospital emergency departments, and individuals with mental illness and their families to improve responses to people in crisis."<sup>54</sup>

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54. National Alliance on Mental Illness. "What Is CIT?" <https://www.nami.org/Law-Enforcement-and-Mental-Health/What-Is-CIT>



The Broward County Sheriff's Office (BCSO) has taken this approach one step farther by offering a separate 40-hour Homeless Outreach Initiative training that covers the causes of homelessness, prevention, needs assessments, continuity of care, and legal issues. Officers who complete both CIT training and the additional homelessness training are designated as Homeless Outreach Team (HOT) specialists.

The Broward Sheriff's Office is recognized as a leader in homelessness training throughout Florida, and trains other agencies' personnel as well as its own deputies.<sup>55</sup> The CIT training is conducted once per month, and the HOT training is conducted once per quarter.

**Using technology to manage information about homeless individuals and improve services:** The HOT training also integrates with the Homeless Management Information System, which gathers data on clients and on the provision of services to homeless persons, homeless families, and persons at risk of homelessness.<sup>56</sup> Agencies that provide services to homeless persons use HMIS applications to coordinate their work and serve clients more effectively.

"Our training goes into motivational interviewing," Broward Sheriff's Captain Scott Russell said. "Learning how to be good listeners is a big part of the training. We stress that deputies need to stop 'listening to respond.' Instead, they should 'listen to *understand*.'"

### *Las Vegas Uses Field Training to Teach New Recruits to Work with Homeless Persons*

The Las Vegas Metropolitan Police Department takes a somewhat different approach to training officers in how to work with homeless persons. The department instructs officers in the Field Training Program to contact a member of the homeless community once every shift, even if it is just to introduce themselves. The goal of making these contacts is to acquaint new recruits with homeless persons and help them to understand the causes and nature of homelessness. The officers are taught to use their communications skills, to be familiar with the resources that are available for referring homeless persons to services, and to understand that many homeless people experience mental illness and substance addictions.

**Building rapport and sharing resources:** "What we've done is spread it out throughout the whole city," said Las Vegas Assistant Sheriff Charles Hank. "We had challenges getting the academy to cover this, so we looked at another approach where the officers are making consensual contacts and interviewing homeless persons. What we expect from them is to go out, contact these people, share the resources that are available, and at the same time they're developing their communication skills."

As in other cities, many homeless persons in Las Vegas are resistant to

>> *continued on page 60*



Broward County, FL Sheriff's Capt.  
Scott Russell



Las Vegas Assistant Sheriff  
Charles Hank

55. IACP Human Rights and Civil Rights Award 2014 Winners." <http://www.theiacp.org/HCRAwardwinners2014>

56. "Homeless Management Information System." HUD Exchange. U.S. Department of Housing and Urban Development. <https://www.hudexchange.info/programs/hmis/>



## Long Beach, CA Is Using a Multi-Disciplinary, Data-Driven Approach to Combat Homelessness

Like other major cities, Long Beach, CA faces challenges with serious crime. But in community surveys, residents consistently identify homelessness as the top priority they want their local government to address.

### 20-percent reduction in homelessness in 2 years:

The city of Long Beach is addressing homelessness through a multi-disciplinary, data-driven approach that is showing some positive results. City officials report that the number of people experiencing homelessness has declined more than 20 percent over the last two years, at a time when many surrounding jurisdictions and California as a whole have seen their homeless populations increase.<sup>57</sup>

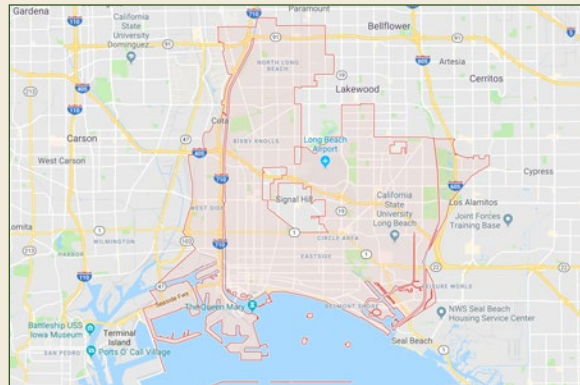
### Unlike most cities, Long Beach has its own health department:

Two key factors in Long Beach's success are (1) the availability of resources and (2) interagency coordination, led by the city's health department. Long Beach is one of only three cities in California to have its own health department; most municipalities work with a county health agency. The Department of Health and Human Services is the lead agency on homelessness in Long Beach, and it is tasked with inter-agency coordination among the various departments (including the police) that are involved in addressing the problem.

The health department manages an annual \$8.5 million continuum-of-care grant from the U.S. Department of Housing and Urban Development, which funds more than a dozen nonprofit agencies that offer permanent and transitional housing and support services to persons experiencing homelessness. Among the service providers is the Century Villages at Cabrillo, which developed former U.S. Navy housing into units for approximately 1,000 individuals. These residents have access to a multi-agency service center, along with case managers and outreach personnel.

Specialist officers as well as patrol officers work on homelessness: In recent years, Long Beach has focused on identifying individuals most in need of assistance and trying to get them into services. Several agencies, including the police department, play a role here. The department has quality-of-life officers, one of whom was homeless himself at one time. The officers work closely with the homeless community and service providers, and they partner with a mental health clinician from Los Angeles County, who assists with outreach and service provision.

Despite the specialization by experts, Long Beach Police Chief Robert Luna emphasizes that “all of our patrol officers work homelessness—there's no way around it. With as many calls for service as we get, how many contacts we make, everybody is trained to address issues related to homelessness.”



### Long Beach, CA

Los Angeles County (20 miles south of Los Angeles)

Population (est.): **475,000**

Area: **51.5 square miles**

Median household income: **\$55,151**

Percentage of persons in poverty: **20.3 percent**

Most recent Point in Time (homelessness) count: **1,863** (2017)

57. “Long Beach cut 21 percent of its homeless population in 2 years. Here’s how.” 89.3 KPCC/Southern California Public Radio, April 27, 2017. <https://www.scpr.org/news/2017/04/27/71212/long-beach-cut-21-percent-of-its-homeless-populati/>

Long Beach also has a Multi-Disciplinary Team (MDT) that meets at least monthly (sometimes more often) to examine the top 10 to 15 cases of homeless individuals who are in need of services but are not connecting with them. A case manager is assigned to oversee outreach and service provision for each of the individuals targeted by the MDT.

**Fewer than half of homeless “high-frequency arrestees” had accessed services:** Long Beach has placed a particular emphasis on individuals who are homeless and are frequently involved in the criminal justice system. The city’s Innovation Team (iTeam), which is funded by a grant from Bloomberg Philanthropies, began analyzing this nexus in 2017.<sup>58</sup> The iTeam looked at five years’ worth of arrest data, and found that 5 percent of the arrestee population had been booked or cited 11 or more times, with the most common charges being quality-of-life offenses such as possessing an open container or drinking alcohol in public, loitering in parks and beaches, and failure to appear on a warrant. The iTeam also made two other interesting discoveries: approximately half of the high-frequency arrestees did not have permanent addresses, and of those, fewer than half had ever accessed homeless services. The iTeam concluded that connecting these high-frequency offenders with the appropriate services could break the cycle of homelessness and crime.

Next, Long Beach focused on ensuring that all of the partner agencies involved in the response to homelessness were sharing data with one another. The city established a unique data-sharing agreement that provides access to critical information but is compliant with HIPAA and other privacy regulations. The city also created a secure data warehouse to facilitate the collection and sharing of data, and it is using technology to provide police officers and other front-line personnel with ready access to the information they need. *(See page 63 for more details on Long Beach’s data sharing and technology innovations.)*

Once candidates for services have been identified, city agencies, including the police department, begin the arduous work of reaching out to homeless individuals to try to get them housed and into services and treatment. Long Beach also operates a multi-service center, a coordinated entry point where homeless individuals can walk in and receive immediate services and develop a plan for longer-term assistance. According to Teresa Chandler, manager of human services in the Long Beach Department of Health and Human Services, it takes up to 17 contacts on average to get a person who has been living outside to say they are ready to start the process of being housed.

“The key for us was that the community didn’t look to the police department specifically to handle the problem of homelessness. They wanted the entire city government to handle it.

“In Long Beach, for the last decade or so—Los Angeles County Sheriff Jim McDonnell being my predecessor here as chief—we have really pushed the idea that homelessness is a public health issue and a challenge that we have to take on collectively with our many partners.”

— **Chief Robert Luna, Long Beach (CA) Police Department**

“Ten years ago, people were pointing fingers. Now, there is a citywide team in place that feels like they’re in this together and are working together.”

— **Tracy Colunga, Long Beach Innovation Team Director**



Tracy Colunga

>> continued on page 60

58. i-team Update to City Council. Long Beach Innovation Team, October 10, 2017. <http://innovatelb.com/assets/city-council-presentation---public-safety.pdf>

*continued from page 59*

“The Health and Human Services Department has been able to work very closely with our police department, fire department, parks and recreation, public works, City Attorney’s Office, and the libraries to form a true inter-departmental coordination, which really focuses on getting people connected to housing and addressing the issues of homelessness.”

— **Teresa Chandler, Manager of Human Services,  
Long Beach (CA)**



Teresa Chandler

*continued from page 57*

accepting services, but by building rapport with homeless persons, officers eventually succeed in some cases and help homeless persons get help.

### *Miami Training Is Based on a Landmark Court Case*

Training of police officers in Miami on homelessness issues is based largely on the findings of a federal court in a landmark 1992 case, *Pottinger et al. v. City of Miami*. In that case, the U.S. District Court for the Southern District of Florida found that it was unconstitutional for the City of Miami to “criminalize homelessness” by arresting persons for behaviors associated with homelessness, such as sleeping outdoors, because the arrested persons had no alternatives for those behaviors.<sup>59</sup>

There was additional litigation over the Pottinger ruling, and a detailed agreement was reached in 1998 specifying the essential activities of life that may be conducted in public areas of the city. Changes to the agreement were made in 2013, and additional proposed changes provoked controversy in 2015.<sup>60</sup>

Major Wayne Jones of the Miami Beach Police Department said that the agreement has been refined over the years. “For example, in the original agreement, homeless residents were allowed to start small fires and cook outdoors, because cooking is a life-sustaining activity,” Major Jones said. “But under the amendments made to the agreement in 2013, cooking outdoors in a public place is no longer allowed.” The Miami Beach Police Department has voluntarily adopted the guidelines for the City of Miami resulting from the Pottinger case, and ensures that its personnel understand the guidelines.

59. *Pottinger et al. v. City of Miami*. 810 F. Supp. 1551 (1992). U.S. District Court for the Southern District of Florida. <http://osaka.law.miami.edu/~schnably/pottinger/pottinger.html>

60. “Miami commission defers vote on controversial homeless camping law.” *Miami Herald*, March 12, 2015. <http://www.miamiherald.com/news/local/community/miami-dade/article13805360.html>

## Innovative Uses of Technology and Data Sharing

As jurisdictions look to implement comprehensive, cross-disciplinary approaches to combating homelessness, they are recognizing the importance of collecting and sharing data. At the *Critical Issues* conference, participants described innovative uses of technology that are helping them to understand and respond to homelessness.

Several jurisdictions, for example, are using mobile applications and mapping systems to collect data on the homeless individuals in their communities, the locations where they are living, and the services they are accessing.

**21-question survey in Vacaville:** In Vacaville, CA, Community Response Unit officers collect information about homeless individuals they encounter using a 21-question survey loaded on their smartphones. The voluntary questionnaire covers a range of information, including how long the person has been homeless, what factors led the person to become homeless, what brought the person to Vacaville, and past experiences with law enforcement and service providers. This Enhanced Homeless Community Survey provides officials with a more accurate, real-time count of the homeless population, and it helps them plan more effective responses to individual cases. *(See pages 64-65 for more information on Vacaville's approach to homelessness.)*

**"Clarity Cards" to access services in Las Vegas:** In Las Vegas, officials issue "Clarity Cards" to individuals experiencing homelessness. To access services such as meals, housing, clothing, and haircuts from local nonprofit organizations and other providers, individuals must show their card. Clarity Cards are connected with the Homeless Management Information System used in Nevada and other Western states. The system helps officials track the specific services that individuals access, as well as larger service use patterns.

**An app for tracking homelessness data in Seattle:** The Seattle Police Department worked with the city's Information Technology department to build an app that is used by the city's "Navigation Teams," which consist of police officers and mental health clinicians who focus on offering services in homeless encampments. The app tracks locations that the team visited, individuals they contacted, services offered, and outcomes of the visit. By pulling in data on calls for police service, community complaints and other information, the app also helps the Navigation Teams prioritize which locations they will prioritize for intervention.

**GIS mapping apps to monitor far-flung locations of homeless encampments:** Police in other jurisdictions—including Colorado Springs, CO and San Diego County, CA—are using GIS mapping applications to capture the locations of homeless encampments. Members of the Colorado Springs Police Department's Homeless Outreach Team (HOT) use their smartphones to collect information about locations and size of encampments.

Because Colorado Springs spans 200 square miles, with numerous hiking trails and open spaces ideal for setting up camps, the maps provide all team members with a visual representation of camps. This information is used to support everyday outreach by the HOT team, and in the event of major weather



In October 2016, Vacaville police worked to reunify a homeless man with his family in Hawaii, who were able to find him housing and a job. With a grant from a foundation, police arranged an airline flight, and Sergeant David Kellis drove the man to the airport.



events such as blizzards, flash flooding or wildfires, the maps can be shared with others to guide the deployment of emergency resources.

“Covering the large geographic area that we’re responsible for, it’s virtually impossible for our Homeless Outreach Team to be able to get out to all of the encampments in the event of a weather emergency.

“A lot of our patrol officers don’t know the depths of where these camps are, so we send the GIS map out to the different area commands, and they can safely deploy their patrol resources out to the hazardous areas when there is an emergency.”

— **Sgt. Curtis Hasling, Colorado Springs Police Department**

**Sharing the burden of calls for service more effectively:** In other jurisdictions, police agencies are looking more closely at calls-for-service data in order to determine the most appropriate response to individual calls. They are finding that, in many cases, it may be more appropriate for a health or social service agency to respond to a call for service, and not the police department.

In mid-January, the San Francisco Police Department launched its Healthy Streets Command Center, which it modeled after a similar approach being used in Seattle. At the Healthy Streets Command Center, officials from a variety of city departments—including police, public health, and homelessness—triage calls for service as they come in, and collectively determine which agency, or combination of agencies, is best suited to respond. (*See page 66 for more information on the Healthy Streets Command Center initiative.*)

**HIPAA often limits information-sharing:** While information-sharing among different agencies is critical to an effective response to homelessness, participants at the *Critical Issues* meeting noted that laws such as HIPAA (the Health Insurance Portability and Accountability Act) can severely restrict the amount and types of information that can be shared across different agencies. In general, police department data on contacts with individuals who are homeless can be readily shared with partner agencies. However, information collected by others, including health, mental health, and drug treatment entities, cannot always be shared with the police.

This situation can be frustrating for police officers who work closely with homeless persons, because they lack a complete picture of the barriers the individuals are facing and the full range of services they are receiving. Police officials are quick to point out that they are not looking for personal information on specific diagnoses, medications, or treatments. Rather, they are seeking information on contacts with different service providers. That way, if an officer encounters a homeless person in need or in crisis, the officer can coordinate with the appropriate providers to determine the best course of action.

**Long Beach addresses HIPAA concerns by “combining” departments:** One jurisdiction that is addressing the issue of data-sharing is Long Beach, CA. The city’s multi-agency approach to homelessness is led by the Department of Health and Human Services and is supported by a special “Innovation Team”



Sgt. Curtis Hasling



funded by a grant from Bloomberg Philanthropies. (See pages 58-60 for details on Long Beach's comprehensive, data-driven approach to homelessness.)

As the city began looking at individuals who were high utilizers of city services, they discovered that staff members in some city agencies were hesitant to share basic information with other departments because of concerns over violating HIPAA and other protections. So the program partners brought in the city attorney and drafted an administrative regulation that deems the city of Long Beach a single legal entity for purposes of data-sharing. This arrangement allows 24 city departments to share data on high utilizers of city services—including names, dates of birth, contacts with city agencies, and services rendered. The next step is to create a data warehouse where information from multiple agencies can be stored in a single location and accessed by personnel from various departments when they encounter homeless persons. With access to information about past services, police and other service providers can make more informed decisions about future assistance.

“Long Beach is building a data warehouse. Our different city departments that have distinct data systems will start to load their information into the data warehouse. On the back end, when someone types in ‘John Doe,’ they can see how many contacts John Doe had with fire, police, homeless outreach teams, and the like.

“Now we can triage around these individuals, and provide a more comprehensive system of accountability and wrap-around services.”

— Tracy Colunga, City of Long Beach Innovation Team Director

**Making it possible for officers to know about past contacts a homeless person has had with police and service agencies:** Long Beach is benefiting from another unique data sharing system called GUIDES (Government User Integrated Diversion Enhancement System). Developed by the Long Beach City Prosecutor's Office, GUIDES is designed to equip police officers with information they need to make informed decisions when interacting with homeless persons.

(The idea for GUIDES grew out of an earlier system developed by the prosecutor's office directed at gang members. That system took information on stay-away orders and other restrictions that courts placed on gang members, and made it available to officers in the field. In three years, Long Beach police increased their arrests for gang court order violations by 760 percent, because officers had ready access to information about what certain gang members were not permitted to do.)

Similarly, GUIDES focuses on court diversion actions, allowing officers to know how many times a homeless person has been diverted from the justice system or connected to services, either through court diversion, pre-filing diversion, or pre-booking diversion. This information helps police officers and other first responders to quickly determine if a homeless individual is already receiving services and what services may be most appropriate moving forward.

>> continued on page 67

## Vacaville's Enhanced Survey Measures The Size and Nature of the Homeless Community

In May 2016, using a grant from the Office of Community Oriented Policing Services, the Vacaville, CA Police Department created a three-person Community Response Unit (CRU) to address a variety of quality-of-life issues, including homelessness.

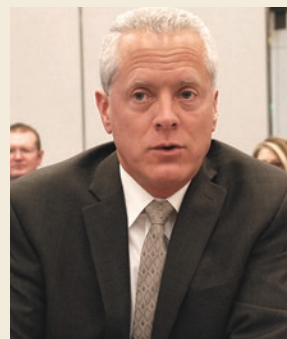
One of the early priorities of the CRU was to assess the nature and extent of the homelessness problem. In the past, different data collection systems—primarily, the annual Point in Time count by the Department of Housing and Urban Development and the Department of Education's count of homeless school children—had produced vastly different estimates of homelessness in Vacaville.

Rather than rely on an annual, single-day count of the homeless population, the CRU decided it needed an ongoing tool to track the unit's interactions with homeless individuals over time.

The idea was not merely to count how many homeless individuals are in Vacaville. Rather, it was to collect more detailed information about these individuals, so that CRU officers and other partners could match people with appropriate social service programs or make contact with family members.

As a result, the CRU team developed the Enhanced Homeless Community Survey. The instrument is hosted on an off-the-shelf survey tool, and it runs on officers' smartphones or other mobile devices.

When CRU officers encounter a homeless individual for the first time, they ask the person if he or she would be willing to take the survey. The instrument is completely voluntary. Chief John Carli said that while some individuals may be "a little standoffish on the first contact," CRU members work hard to build rapport, and most individuals end up providing information.



Chief John Carli

"There's an established relationship over time between the officers and the community. You have to know them by name.

"What you end up getting is honesty. People will tell you if they've been arrested before, or if they're addicted to drugs, or if there is prior mental illness.

"From that, we can then offer resources and have that connectivity."

— Chief John Carli, Vacaville, CA Police Department

**21 survey questions provide profiles of each homeless person:** The survey consists of 21 questions designed to provide a window into the person's life: their family situation, veteran status, possible drug or alcohol dependency, other issues that contributed to their current homeless situation, resources used in the past, and other data. In other words, the tool allows officers to put names and circumstances to the individuals they encounter. Chief Carli said that 21 questions seem to be a good number: the survey provides enough information to help CRU officers and others understand the individual, but it isn't too intimidating or time-consuming.

The information is not static. When CRU members encounter homeless individuals who have previously completed the survey, they will ask if there have been any changes in the person's situation and update the survey. Because the survey is electronic, every member of the CRU team has access to the information in the field.

As Vacaville has expanded its homeless outreach and intervention efforts, the information in the survey has become even more important. For example, a social services professional is now embedded with the CRU for two or three days per month. Information collected through the survey helps her to quickly identify what services particular homeless individuals may benefit from. The survey also helps to inform the work of the Homeless Roundtable, a regional forum in which faith-based entities, other

nonprofit organizations, the police, and other government agencies meet monthly to identify service needs and increase coordination among stakeholders.

**20-percent reduction in homelessness:** Chief Carli reported that Vacaville has achieved a 20 percent reduction in homelessness in recent years. He attributed the decline to the proactive, service-model approach that the city has adopted—an approach that the Enhanced Homeless Community Survey supports.

### Questions in the Enhanced Homeless Community Survey

- |   |   |
|---|---|
| Q1 What is your name?                                 | Q12 What resources have you been offered in the past?           |
| Q2 How long have you been homeless?                   | Q13 What resources do you wish were offered?                    |
| Q3 What is your relationship status?                  | Q14 What type of benefits are you eligible for or using?        |
| Q4 Do you have minor children?                        | Q15 Have you ever been diagnosed with a mental health disorder? |
| Q5 Do you have a drug or alcohol dependency?          | Q16 If yes, can you tell us what disorders?                     |
| Q6 What led to you being homeless?                    | Q17 Are you a veteran?  |
| Q7 How long have you been in Vacaville?               | Q18 When was the last time you had a steady job?                |
| Q8 What made you come to Vacaville?                   | Q19 Where is your closest living relative?                      |
| Q9 Where did you live before Vacaville?               | Q20 Are you satisfied with your current lifestyle?              |
| Q10 How many times have you been arrested?            | Q21 Is your lifestyle a matter of choice?                       |
| Q11 What type of resources have you used in the past? |   |

## Louisville’s “Living Room” Gives Officers An Alternative to Arrest for Minor Offenses

Recognizing the large role that substance abuse plays in homelessness, the Louisville, KY Metro Police Department has implemented initiatives to connect homeless persons with substance abuse services. One recent initiative known as “the Living Room” is being piloted.<sup>61</sup>

The Living Room—located in the basement of a mental health organization named Cornerstone—is a safe place for individuals experiencing mental health or substance abuse crises that do not reach the level of requiring involuntary hospitalization or criminal prosecution. At the Living Room, individuals in crisis can receive peer support and immediate referrals to other services. Additionally, individuals do not have to be detoxed to gain access to the Living Room or its services. If individuals are not violent, the Living Room will accept them. The service acts as an alternative to jail for low-level offenders who, without this service, might otherwise be jailed for offenses such as public intoxication or disturbing the peace.

The Living Room program also benefits patrol officers. Officers can take individuals to the Living Room, where they will receive assistance. In the past, officers often had little choice but to make arrests in many situations, and the officers would be off the street for hours handling the intake process and documentation requirements associated with arresting an individual. By taking someone to the Living Room, an officer can be back on patrol promptly. Living Room caseworkers take responsibility for the persons they accept for services.

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61. “Instead of jail, new Louisville program offers ‘living room’ for people with mental illness.” *Louisville Courier Journal*, Dec. 19, 2017. <https://www.courier-journal.com/story/news/local/2017/12/19/louisville-living-room-program-mentally-ill-drug-users/793010001/>

## San Francisco Police, Public Health, Public Works, and Others Work Together

In January 2018, the San Francisco Police Department, in partnership with other city agencies, began an innovative way to work together to address homelessness. Partners include the San Francisco Department of Public Health, Department of Public Works, Department of Homelessness and Supportive Housing, the Department of Emergency Management, 311, and other agencies.

Instead of operating separately and relying on the police to respond to calls about homeless persons, the San Francisco partners created a plan to bring together all agencies affected by homelessness to discuss and think through each type of call. The coordination allows the agencies to consolidate resources and coordinate their responses.

This initiative, called the San Francisco Healthy Streets Operations Center (HSOC), is centered within the Department of Emergency Management (DEM) in San Francisco.

Utilizing an Incident Command System structure,<sup>62</sup> stakeholders are staffed five days a week to triage and respond to the calls for service that come into the DEM involving individuals experiencing homelessness. As calls come in, the individuals in the Healthy Streets Operations Center determine what the immediate need is, if any. If there is no immediate threat to public safety, the team discusses the main issue of the call in order to dispatch the most appropriate resources. For example, if they receive a call about hypodermic needles surrounding an encampment, the team may send a representative from the Department of Public Health to respond, instead of sending police.

By operating in this manner, the team is able to send the correct and most effective resources to each incident. This keeps the police department focused on police matters while utilizing the other valuable resources that exist in the city.

“Every day, we’re learning something new about where the gaps are,” said San Francisco Police Commander David Lazar. “These conversations and coordinating resources won’t happen if we’re working in silos. It has to happen when everybody is in the room, in real-time.”



San Francisco Police Commander David Lazar

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62. ICS is a management approach to coordinate an emergency response. It involves a hierarchy in which responders from multiple agencies (multiple law enforcement agencies, fire, EMS, etc.) can be organized and utilized effectively and efficiently. For more information, see <https://www.fema.gov/incident-command-system-resources>

“One of the things I’ve heard over and over is that police officers too often spin their wheels.

“On Monday, one officer deals with a person who is chronically homeless and maybe spends an hour or two with that person trying to connect them to services. Then on Friday, another officer encounters that same person, but doesn’t know what the first officer did.

“Maybe that person has already been connected to services, and now it’s just a matter of reconnecting that person. In Long Beach we are developing software to help us connect and reconnect chronic offenders to services.”

— Doug Haubert, City Prosecutor, City of Long Beach

## Funding Issues

Providing targeted and sustained outreach to individuals experiencing homelessness is almost always an arduous undertaking. Experts at the *Critical Issues* meeting noted that it usually takes multiple contacts—often 15 to 20 or more—to get an individual to agree to accept services.

The provision of those services—including temporary housing, substance abuse treatment, mental health treatment, job readiness training, and others, depending on the needs of the individual—can also be a lengthy process. Many people who enter a treatment program don’t succeed on the first try, and some never succeed.

**Costs and Benefits:** As a result, addressing homelessness is an expensive proposition, both for police agencies conducting outreach and enforcement operations, and for the support services that are crucial to making a long-term impact on the problem. Combating homelessness requires up-front investments in everything from police homeless outreach teams to housing options and services. It also demands maintenance funding to keep these initiatives operating.

**However, experience suggests that making these investments can improve outcomes and reduce criminal justice system costs over the long run.** For example, researchers at Portland State University have been evaluating the impact of the Portland, OR Police Bureau’s Service Coordination Team (SCT), in terms of reducing crime among program participants and lowering criminal justice costs. The SCT is a comprehensive homeless reduction initiative that targets the most difficult cases, involving chronically homeless individuals who have also had frequent contacts with the police. The 2017 evaluation found a 75-percent reduction in post-program arrests. Researchers calculated that every dollar spent on the SCT program resulted in a \$13.10 savings in costs related to crime and criminal justice system activities.<sup>63</sup> (*More information on Portland’s SCT program can be found on pages 36-37.*)

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63. Study of the Service Coordination Team and its Impact on Chronic Offenders: 2017 Report. Portland State University, Capstone Class UNST 421, Section 572. 2017



Similarly, in Pinellas County, Florida, the sheriff's office opened the Safe Harbor facility as an alternative to jail for approximately 400 individuals involved in low-level crimes often related to homelessness (*see page 12 for more information about Safe Harbor*). The facility, which offers both temporary housing and wrap-around support services, costs about \$2.3 million per year to operate. That is about half of what it would cost to house those same 400 individuals in the county jail, where they wouldn't have the access to services they receive in Safe Harbor.

**Federal, state and private grants:** To cover their start-up costs, some jurisdictions have turned to grant funding from federal and state governments and private foundations. For example:

Indio, CA started its Community Outreach Resource Program (CORP) with local funds, but turned to the state of California for funding as the initiative grew. In 2017, Indio received a \$1.9 million state grant to expand CORP and keep it operating for three years.

In Vacaville, CA, the police department received a \$250,000, three-year grant from the U.S. Department of Justice, Office of Community Oriented Policing Services to launch its Community Resource Unit.

Long Beach, CA created an Innovation Team that has used sophisticated data analysis to address issues related economic development, public safety, and homelessness. Substantial funding for the iTeam came from a \$3 million grant from Bloomberg Philanthropies.

**City vs. county funding:** As cities look to develop comprehensive programs to address homelessness, one of the funding challenges they face is coordination with their county governments. In general, municipalities are responsible for policing, code enforcement, and related services, while counties are generally responsible for housing, mental health, substance abuse, and other social services. Participants at the *Critical Issues* meeting said tensions can arise when larger cities, which often have the highest concentration of homeless individuals in need of services, must compete for funding with smaller communities and unincorporated areas.

Some cities, such as Long Beach, CA, have established their own health and human services departments, which gives them control over many social services and more direct access to federal and state grants funds. Other cities, such as Portland, have simply invested in support services themselves.

“Most health and human services are funded by the state and implemented through the county. However, because homeless challenges tend to be more significant in the urban areas, they are not always attuned to the needs of the city, where the homeless problem and service needs are greatest. As a result, services in Santa Cruz—shelters, substance abuse, and mental health services—have not been as robust as they need to be. We always feel like we're playing catch-up.”

— **City Manager Martin Bernal, Santa Cruz, CA**

**Special Sales Taxes:** Some jurisdictions have turned to special sales taxes as another source of funding for programs and services directed at individuals experiencing homelessness.

In Los Angeles County, voters in March 2017 approved Measure H, a quarter-cent sales tax for homeless services. The tax took effect in October 2017, and is expected to raise approximately \$355 million per year over 10 years. While the bulk of the funding is being directed toward housing for homeless persons, several million dollars each year are expected to be devoted to outreach services.

In November 2017, voters in the City of Los Angeles approved Proposition HHH, a special parcel tax that is expected to raise \$1.2 billion in bonds for the construction of 10,000 units of housing.

In Washington state, the legislature in 2005 approved the Mental Health and Substance Abuse Tax, which allows individual counties to pass a one-tenth of 1 percent sales tax for mental health, substance abuse treatment, and court treatment programs—services that are frequently needed by homeless individuals. To date, 22 of Washington's 39 counties, covering about 80 percent of the state's population, have enacted the tax.

**Community Support:** In the community of Lakewood, WA, residents and the police department turned a tragedy into an opportunity to help individuals experiencing homelessness. On November 29, 2009, four Lakewood Police officers were ambushed and killed as they sat in a coffee shop. The Lakewood Officers' Charity Fund was created to support family members of the slain officers.

With strong support from the community and the police department, the charity raised several million dollars. After the families' needs were met, the charity's board decided that any remaining funds would be devoted to helping the community. The charity continues to raise money through regular fund-raisers and voluntary payroll deductions by officers.

According to Lakewood Sergeant Jeff Carroll, money from the charity fund is regularly used to help homeless individuals in the community. In some cases, it provides train or bus fares to reunite a person who is homeless with responsible family members. The fund can also pay for up to three nights of motel rooms for homeless individuals or families who are particularly vulnerable.



Lakewood, CO Police Sergeant  
Jeff Carroll

## Regional Partnerships and Cooperation

Another theme that emerged from the Critical Issues conference was the importance of regional cooperation in combating homelessness. Here are a few examples of how communities are forming partnerships and working together more closely.

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### **Hermosa Beach, CA Police Chief Sharon Papa:**

*Hermosa, Redondo, and Manhattan Beaches  
Share a Mental Health Clinician*

We have a mental health clinician that we share with two neighboring cities—Redondo Beach and Manhattan Beach. The clinician rides with our officers one day a week, and with the other agencies on other days. We share that resource, but she’s in our community and is getting to know our people. She helps us with evaluations and trying to determine whether people meet the criteria for “5150” involuntary psychiatric holds.<sup>64</sup> She has had limited success in trying to establishing long-term relationships, but she does work with repeat individuals to offer resources. This is a relatively new program we have adopted in the last six months, so hopefully with more time there will be measurable positive impacts.

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### *Bay Area Rapid Transit Police Department Engages Homeless Persons in Train Stations*

The Bay Area Rapid Transit Police Department (BART PD) serves four counties in the San Francisco Bay Area. BART PD frequently experiences issues with homeless individuals using trains and stations for shelter. In order to engage homeless persons and attempt to connect them to services, BART PD began a partnership with the city of San Francisco to pay for Homeless Outreach Teams (HOT) to work in their stations. These HOT teams provide practical support, information and referrals, and in-depth assessment and case management for the most vulnerable and at-risk individuals.

In addition, BART PD participates in the Alameda County Multi-Disciplinary Forensic Team—a coalition of Alameda County law enforcement agencies, Alameda County Behavioral Health Care, and allied service providers. The team assists individuals who have mental illness, substance abuse issues, and co-occurring disorders who are at high risk for homelessness, involuntary hospitalization, and arrest. The team’s goal is to provide these individuals with treatment and ongoing services, leading toward recovery and reducing recidivism.

### *Cities in Riverside County, CA Adopt A Program of “Responsible Compassion”*

Murrieta, CA, a city of 115,000 southeast of Los Angeles in Riverside County, recently formed a collaboration with nearby Temecula and four other municipalities to address homelessness in a comprehensive way.

“For years, each city handled homelessness in silos, and the neighboring cities created conflicting ordinances and practices. Some focused on enforcement, others accommodated homeless persons

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64. California Legislative Information, Welfare and Institutions Code. The Lanterman-Petris-Short Act. [http://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=5150&lawCode=WIC](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5150&lawCode=WIC)

or provided assistance. But we have very little resources and limited experience in the homelessness arena. Our nonprofits aren't able to handle such an increasing problem. So we decided that it's important to take a collaborative approach, with teamwork by city and county agencies and nonprofit organizations, to *solve* homelessness, as opposed to just *managing* it. Our police department is starting to understand that an enforcement-only approach simply squeezes one end of a balloon, moving homeless individuals across an arbitrary city border. But the root causes of homelessness are never addressed and nothing truly gets done."

— **Brian Ambrose, Assistant to the City Manager in Murrieta**

In November 2017, the city of Temecula hosted a panel on homelessness that included law enforcement officers, city officials, and religious leaders.<sup>65</sup> Personnel from the Murrieta Police Department and the Riverside County Sheriff's Office (which patrols Temecula) discussed the partnerships they have in place and how the cities are working together. Both cities have homeless outreach teams.

Robin Gilliland, Homeless Outreach Liaison for Temecula, said that the city has adopted a program of "Responsible Compassion," a policy for working with homeless persons that is designed to help these individuals become self-sufficient. Through the partnership, Temecula, Murrieta, and the four other cities have adopted this philosophy collectively to help ensure that consistent outreach is occurring throughout south Riverside County.<sup>66</sup>

### *Three Cities in Washington State Join Forces to Create Shelters*

Bellevue, WA is a suburb of Seattle with a population of 141,400. Along with its neighboring cities, Redmond and Kirkland, the area is known as East Side Cities, a region that has seen an increase in the number of homeless individuals in the past four to five years.

Rather than addressing the homelessness issue individually, the East Side Cities have taken a regional approach, specifically in the creation of shelters. Bellevue, WA created a shelter for men, Redmond created a shelter for families, and Kirkland created a shelter for women. Taking this approach enables the region to focus specifically on the needs of each population, while offering services in close proximity for all homeless individuals in the region. If an officer in Bellevue encounters a family experiencing homelessness, the officer can take the family to the shelter in Redmond and arrange for services in a timely manner.

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65. "Community Forum Looks at Comprehensive Approach to Homelessness." *Valley News*, November 23, 2017. <http://www.myvalleynews.com/story/2017/11/23/news/community-forum-looks-at-comprehensive-approach-to-homelessness/56110.html>

66. See for example, [http://www.murrietaca.gov/getconnected/homeless\\_resources.asp](http://www.murrietaca.gov/getconnected/homeless_resources.asp) and <https://temeculaca.gov/1078/Homeless-Outreach>

## CONCLUSION

# 11 Steps Law Enforcement Agencies Can Take To Improve the Response to Homelessness

AS PERF BEGAN RESEARCHING THE POLICE RESPONSE TO HOMELESSNESS, we were somewhat taken aback at how immense and complex the problem is.

More than half a million people in America today are homeless. Many of them are grappling with mental illness, substance abuse, or both. In many cities, the high price of housing allows few affordable options for many people, including some who have jobs.

Many communities remain divided in what the response to homelessness should be. Many homeless persons are suspicious of government and social service agencies, and are reluctant to accept assistance, even when the assistance might improve their living situation. So it often takes a long time before police and social service workers can convince a homeless person to accept help. In the meantime, the problem continues. And some community members believe that homeless individuals should be left alone, if that is what they wish.

Other community members want the police to clear parks, sidewalks, and other public spaces of homeless individuals—to make the problem “go away,” or at least go somewhere else.

This divergence of opinion puts the police in a challenging position. It is more difficult to deal with a problem when there is no consensus in the community about what the goals are.

When 250 law enforcement personnel and other experts gathered in Long Beach, CA in January 2018 for PERF’s *Critical Issues in Policing* conference on the Police Response to Homelessness, their focus was, in many ways, on how to bridge these gaps and find solutions that most people can agree on. The meeting was a wide-ranging exploration of what police departments and sheriffs’ offices can do to alleviate the problem of homelessness in caring, compassionate, and effective ways that the community can support.

This report documents the range of strategies and programs that agencies in different parts of the country are implementing. Because the problem is different in every community, it is impossible to identify one single or preferred approach. However, the *Critical Issues* meeting and the research that went



into it revealed the following actions or initiatives that every law enforcement agency and its community partners should consider:

1. **Take a problem-solving approach to homelessness.** The police and sheriffs' departments that are most advanced in addressing homelessness issues have adopted problem-solving approaches, in which they analyze their local challenges, and then work with a wide range of other government and private-sector organizations to address the challenges. Arresting homeless persons for minor offenses (that typically result from their homelessness) is no longer considered a viable approach. Rather, police and sheriffs' agencies are adopting a variety of initiatives to directly address the problem, such as specialized training for dedicated officers, homeless courts, regional partnerships that pool resources and spread the work around, and technologies that help to keep track of homeless individuals and the services they are receiving.
2. **Create a dedicated Homeless Outreach Team.** In agencies of all sizes, these units (which go by a variety of names) provide the focus and the expertise to understand the issues surrounding homelessness and the strategies for addressing it. Homeless Outreach Team members are able to get to know members of the homeless community and the service providers who can help them, and they are critical for connecting the two. However, Homeless Outreach Teams, especially in large cities, cannot address the problem on their own. They are most effective when they coordinate closely with uniformed patrol officers, other police personnel, and external agencies that are involved in the response.
3. **Select the right personnel to staff the Homeless Outreach Team.** Serving on a dedicated Homeless Outreach Team takes a distinctive set of skills and a special mindset. In many respects, team members must adopt a social worker-like perspective. They must have compassion, excellent communications skills, and tremendous patience, among other attributes. It is imperative that agencies with Homeless Outreach Teams establish a process for reviewing and selecting officers who have the needed skill set, and not make assignments based on seniority or other factors that don't take skills and mindset into account.
4. **Provide staff with training to work effectively with persons experiencing homelessness.** In addition to Homeless Outreach Team members, all patrol officers need basic instruction on how to safely and humanely interact with homeless persons. Crisis Intervention Team (CIT) training and ICAT (Integrating Communications, Assessment, and Tactics) are two examples of training that all officers could benefit from in their interactions with homeless individuals. Officers must also be provided with information on the services available in the community to persons experiencing homelessness and how to refer individuals to those services. Homeless Outreach Team members should receive more specialized and comprehensive training, covering topics such as psychology, the homeless culture, and detailed instruction on connecting individuals with services.

5. **Take a multi-disciplinary approach to the problem.** Police departments and sheriffs' offices cannot "own" the problem of homelessness, and they certainly cannot solve it on their own. The jurisdictions that have had the most success in addressing homelessness are those that have taken an expansive, multi-disciplinary approach to the problem. Law enforcement agencies must be an integral part of these multi-disciplinary, multi-agency efforts, and in some cases they may take the leading role. But it is essential that the approach involve the full range of service providers—health, human services, housing, employment, fire and emergency medical services, and nonprofit and faith-based communities.
6. **Collect, analyze, and share data to better understand the community of homeless individuals and their service needs, and to track progress.** Homeless management information systems, mobile apps, and geographic information systems are among the applications that agencies are using to support homeless outreach and service provision. Agencies involved in the response to homelessness—including the police, public health, fire and EMS, and others—should seek creative ways to share information to support their response, without violating privacy laws and regulations.
7. **Form regional partnerships to address the problem in a coordinated fashion.** Homelessness knows no geographic or governmental boundaries. Actions taken in one community can have a ripple effect on homelessness in adjacent areas. To avoid simply displacing the problem from one community to another, jurisdictions should form partnerships to coordinate resources, programs, and strategies. This coordination can be especially important in areas with a number of small to mid-sized jurisdictions, which often lack the resources to fully manage the problem on their own.
8. **Pursue a variety of funding sources.** Providing an effective and compassionate response to homelessness is expensive. Jurisdictions need to pursue a range of funding sources to meet the needs related to outreach, housing, services, and follow-up. Law enforcement agencies have benefitted from federal, state, and foundation grants, special sales taxes, and charitable organizations that support their efforts in responding to homelessness.
9. **Create or expand homeless courts.** Like drug courts and other specialized courts, homeless courts offer alternatives for homeless persons facing minor criminal charges who are in need of services. These courts provide leverage for getting homeless individuals into housing and services for substance abuse, mental health treatment, job readiness, and other assistance—and keeping them out of jails and prisons. This approach has the potential to be less costly and more effective in addressing the underlying long-term issues facing persons experiencing homelessness.
10. **Work to identify and eliminate unnecessary, counterproductive barriers that prevent homeless persons from improving their lives.** One of the reasons it can take 15 to 20 contacts or more to convince a homeless person to accept services is that there are often barriers in the way. For

example, even after homeless persons complete a program to help them re-enter society, some face fines and fees assessed by the criminal justice system for past offenses. Jurisdictions should look to eliminate these barriers.

11. **Evaluate what you are doing.** As the *Critical Issues* meeting demonstrated, communities across the country have adopted a number of innovative and creative approaches to homelessness, many of which appear to be producing positive results. However, there are not many formal evaluations of the initiatives taking place. If the law enforcement profession and its partners are to know what really works when it comes to addressing homelessness, they must invest in research.

### *The Human Factor in the Police Response to Homelessness*

Egon Bittner wrote a sociological study of the police response to homelessness in 1967—long before any of the programs cited in this report were created. And yet, some of Bittner’s findings from more than 50 years ago describe the “human factor” that is at the heart of today’s approaches. Police and sheriffs’ departments are getting to know homeless persons as individuals, and are taking leadership roles in marshaling the resources of many different agencies to offer real assistance to community members who need help.

In many ways, the police response to homelessness is similar to the police response to the opioids epidemic that has gripped many parts of the nation in recent years. In both cases, police departments are not the type of social service or public health agency that one would expect to see leading the way to problem-solving and innovative approaches to these issues. But because police respond to calls for service 24 hours of every day, they tend to be among the first to detect social problems like homelessness and an epidemic of drug overdoses.

Furthermore, homelessness and the opioid epidemic are both types of problems that require close collaboration by many different governmental and non-governmental organizations for an effective response, and often these collaborations and partnerships do not naturally occur. Too often, agencies remain in their own “silos,” unaware of other organizations that have similar missions and goals. In these cases, many police and sheriffs’ departments have been stepping into the breach and organizing the multi-agency cooperation that is needed.

### *What Does Success on Homelessness Look Like?*

One of the interesting questions posed at the *Critical Issues* conference was, “When it comes to combating homelessness, what exactly does success look like?”

For the short term, success may be defined as getting more people into temporary or transitional housing and accessing services for mental health issues, substance abuse, and other factors that lead to homelessness. In some jurisdictions that offer a wide and robust range of services, success may actually

cause a temporary *increase* in the number of homeless persons in their communities, because individuals from one jurisdiction sometimes are attracted to a neighboring community that offers more help.

For law enforcement agencies, success may mean placing homeless people with social service agencies so they can obtain the care they need, a reduction in crime involving homeless persons (as victims or perpetrators), and fewer citizen complaints about encampments or other locations where homeless individuals gather.

For the long term, success entails getting more people off the streets and into permanent supportive housing and jobs.

It is unrealistic to expect that these changes will happen overnight, and even the most effective programs will not make the problem of homelessness disappear altogether. However, with concerted and coordinated efforts of police and sheriffs' departments and their partner agencies, communities can experience real success, reducing suffering and distress among individuals who are vulnerable, and increasing community safety and overall quality of life.

# About the Police Executive Research Forum

THE POLICE EXECUTIVE RESEARCH FORUM (PERF) IS AN INDEPENDENT research organization that focuses on critical issues in policing. Since its founding in 1976, PERF has identified best practices on fundamental issues such as reducing police use of force; developing community policing and problem-oriented policing; using technologies to deliver police services to the community; and developing and assessing crime reduction strategies.

PERF strives to advance professionalism in policing and to improve the delivery of police services through the exercise of strong national leadership; public debate of police and criminal justice issues; and research and policy development.

The nature of PERF's work can be seen in the titles of a sample of PERF's reports over the last decade. Most PERF reports are available without charge online at <http://www.policeforum.org/free-online-documents>.

- *New National Commitment Required: The Changing Nature of Crime and Criminal Investigations* (2018)
- *The Revolution in Emergency Communications* (2017)
- *The Unprecedented Opioid Epidemic: As Overdoses Become a Leading Cause of Death, Police, Sheriffs, and Health Agencies Must Step Up Their Response* (2017)
- *The "Crime Gun Intelligence Center" Model: Case Studies of the Denver, Milwaukee, and Chicago Approaches to Investigating Gun Crime* (2017)
- *Hiring for the 21st Century Law Enforcement Officer: Challenges, Opportunities, and Strategies for Success* (2017)
- *ICAT: Integrating Communications, Assessment, and Tactics* (2016)
- *Guiding Principles on Use of Force* (2016)
- *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence* (2016)
- *Advice from Police Chiefs and Community Leaders on Building Trust: "Ask for Help, Work Together, and Show Respect"* (2016)
- *Re-Engineering Training on Police Use of Force* (2015)
- *Gun Violence: Regional Problems, Partnerships, and Solutions* (2015)

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- *Constitutional Policing as a Cornerstone of Community Policing* (2015)
- *Defining Moments for Police Chiefs* (2015)
- *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* (2014)
- *Local Police Perspectives on State Immigration Policies* (2014)
- *New Challenges for Police: A Heroin Epidemic and Changing Attitudes Toward Marijuana* (2014)
- *The Role of Local Law Enforcement Agencies in Preventing and Investigating Cybercrime* (2014)
- *The Police Response to Active Shooter Incidents* (2014)
- *Future Trends in Policing* (2014)
- *Legitimacy and Procedural Justice: A New Element of Police Leadership* (2014)
- *Compstat: Its Origins, Evolution, and Future in Law Enforcement Agencies* (2013)
- *Civil Rights Investigations of Local Police: Lessons Learned* (2013)
- *A National Survey of Eyewitness Identification Procedures in Law Enforcement Agencies* (2013)
- *An Integrated Approach to De-Escalation and Minimizing Use of Force* (2012)
- *Improving the Police Response to Sexual Assault* (2012)
- *2011 Electronic Control Weapon Guidelines* (2011)
- *Managing Major Events: Best Practices from the Field* (2011)
- *It's More Complex than You Think: A Chief's Guide to DNA* (2010)
- *Promoting Effective Homicide Investigations* (2007)
- *"Good to Great" Policing: Application of Business Management Principles in the Public Sector* (2007)
- *Managing a Multi-Jurisdiction Case: Identifying Lessons Learned from the Sniper Investigation* (2004)

In addition to conducting research and publishing reports on our findings, PERF conducts management studies of individual law enforcement agencies; educates hundreds of police officials each year in the Senior Management Institute for Police, a three-week executive development program; and provides executive search services to governments that wish to conduct national searches for their next police chief.

All of PERF's work benefits from PERF's status as a membership organization of police officials, who share information and open their agencies to research and study. PERF members also include academics, federal government leaders, and others with an interest in policing and criminal justice.

All PERF members must have a four-year college degree and must subscribe to a set of founding principles, emphasizing the importance of research and public debate in policing, adherence to the Constitution and the highest standards of ethics and integrity, and accountability to the communities that police agencies serve.

PERF is governed by a member-elected President and Board of Directors and a Board-appointed Executive Director.

# About Motorola Solutions and the Motorola Solutions Foundation



MOTOROLA SOLUTIONS CREATES INNOVATIVE, MISSION-CRITICAL COMMUNICATION solutions and services that help public safety and commercial customers build safer cities and thriving communities.

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## APPENDIX

# Participants at the Critical Issues Meeting: The Police Response to Homelessness

January 24, 2018, Long Beach, CA

*Participants' titles and affiliations are those at the time of the meeting.*

**Sergeant Fareed Ahmad**

TORRANCE (CA) POLICE DEPARTMENT

**Captain Tim Albright**

ELK GROVE (CA) POLICE DEPARTMENT

**Sergeant Chris Alkadis**

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ORANGE COUNTY (CA) HEALTH CARE AGENCY

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LOS ANGELES (CA) POLICE DEPARTMENT

**Assistant Police Chief**

**Rick Armendariz**

MODESTO (CA) POLICE DEPARTMENT

**Lieutenant Michael Austin**

GREENVILLE (SC) POLICE DEPARTMENT

**Officer Alberto Avelar**

FRESNO (CA) POLICE DEPARTMENT

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**Assistant Chief Wendy Baimbridge**

HOUSTON (TX) POLICE DEPARTMENT

**Community Resources Manager  
Riann Balch**

CITY OF CHANDLER (AZ)

**Chief Susan Ballard**

HONOLULU (HI) POLICE DEPARTMENT

**Commissioner Branville Bard, Jr.**

CAMBRIDGE (MA) POLICE DEPARTMENT

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SAN DIEGO COUNTY (CA)  
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**Acting Chief Carmen Best**

SEATTLE (WA) POLICE DEPARTMENT

**Vanessa Botti**

ELGIN (IL) POLICE DEPARTMENT

**Lieutenant Harold Brady**

SURPRISE (AZ) POLICE DEPARTMENT

**Commander Randy Brice**

GILBERT (AZ) POLICE DEPARTMENT

**Officer Rodney Brinser**

MARTINEZ (CA) POLICE DEPARTMENT

**Chief Tammany Brooks**

ANTIOCH (CA) POLICE DEPARTMENT

**Chief Allwyn Brown**

RICHMOND (CA) POLICE DEPARTMENT

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FRESNO (CA) POLICE DEPARTMENT

**Captain Donna Cayson**

SIERRA MADRE (CA) POLICE DEPARTMENT

**Lieutenant Neil Cervenka**  
TURLOCK (CA) POLICE DEPARTMENT

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CITY OF SURPRISE (AZ)

**Superintendent Christine Elow**  
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**Chief Larry Esquivel**  
TRACY (CA) POLICE DEPARTMENT

**Officer Russ Faulkenberry**  
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**Lieutenant Craig Friesen**  
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**Officer Brad Hall**  
CHARLOTTE-MECKLENBURG (NC)  
POLICE DEPARTMENT

**Chief Robert Handy**  
HUNTINGTON BEACH (CA)  
POLICE DEPARTMENT

**Assistant Sheriff Charles Hank**  
LAS VEGAS (NV) METROPOLITAN  
POLICE DEPARTMENT

**Lieutenant Dean Hardin**  
RIALTO (CA) POLICE DEPARTMENT

**Sergeant Curtis Hasling**  
COLORADO SPRINGS (CO) POLICE DEPARTMENT

**City Prosecutor Doug Haubert**  
LONG BEACH (CA) CITY PROSECUTOR

**Deputy Chief Wally Hebeish**  
LONG BEACH (CA) POLICE DEPARTMENT

**Chief James Hellmold**  
LOS ANGELES COUNTY (CA)  
SHERIFF'S DEPARTMENT

**Lieutenant Danny Henderson**  
LA HABRA (CA) POLICE DEPARTMENT

**Commander Erik Herzog**  
LONG BEACH (CA) POLICE DEPARTMENT

**Officer Christopher Hodge**  
FRESNO (CA) POLICE DEPARTMENT

**Captain Jonathan Hoffman**  
BELLEVUE (WA) POLICE DEPARTMENT

**Officer Gary Holden**  
FRESNO (CA) POLICE DEPARTMENT

**Officer Ryan Holz**  
LODI (CA) POLICE DEPARTMENT

**Commander Michael Horn**  
TEMPE (AZ) POLICE DEPARTMENT

**Commander Brett Houser**  
BRAWLEY (CA) POLICE DEPARTMENT

**Lieutenant Bill Huffor**  
EL PASO COUNTY (CO) SHERIFF'S OFFICE

**Deputy Chief James Huggins**  
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**Investigator Kendrick Hunter**  
DURHAM (NC) POLICE DEPARTMENT

**Deputy Christopher Ibrahim**  
TEMECULA (CA) POLICE DEPARTMENT

**Chief John Incontro**  
SAN MARINO (CA) POLICE DEPARTMENT

**Commander James Jackson**  
SURPRISE (AZ) POLICE DEPARTMENT

**Inspector Jutiki Jackson**  
MILWAUKEE (WI) POLICE DEPARTMENT

**Captain Chris Jacobson**  
LODI (CA) POLICE DEPARTMENT

**Chief Nina Jamsen**  
CALIFORNIA STATE UNIVERSITY,  
SAN BERNARDINO

**Deputy Chief Brian Johnson**  
METROPOLITAN NASHVILLE (TN)  
POLICE DEPARTMENT

**Jennifer Johnson**  
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**Deputy Todd Johnson**  
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**Chief Will Johnson**  
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SHERIFF'S DEPARTMENT

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MIAMI BEACH (FL) POLICE DEPARTMENT

**Major Joshua Judah**  
LOUISVILLE METRO (KY) POLICE DEPARTMENT

**Sergeant Ted Kazarian**  
FRESNO (CA) POLICE DEPARTMENT

**Sergeant David Kellis**  
VACAVILLE (CA) POLICE DEPARTMENT

**Corporal Craig Kelly**  
VENTURA (CA) POLICE DEPARTMENT

**Lieutenant Dan Kim**  
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**Officer Stephen Kim**  
TORRANCE (CA) POLICE DEPARTMENT

**Director of Government Marketing  
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**Chief Anne Kirkpatrick**  
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## *State of New Jersey*

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*Governor*

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### **ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2021-2**

**TO:** All Law Enforcement Chief Executives  
All County Prosecutors

**FROM:** Gurbir S. Grewal, Attorney General

**DATE:** March 30, 2021

**SUBJECT: Directive Protecting Tenants from Illegal Evictions**

The COVID-19 pandemic has threatened not only the health of New Jersey's residents, but also their livelihoods. More than 1.8 million New Jerseyans have applied for unemployment since the pandemic began, and many households have found it increasingly difficult to cover their basic needs, including housing.

The state and federal governments have taken various steps to address housing insecurity created or exacerbated by the pandemic. In March 2020, for example, Governor Philip D. Murphy issued Executive Order No. 106 (EO 106), which imposed a moratorium on the enforcement of eviction orders until the end of the public health emergency. In September 2020, the federal Centers for Disease Control and Prevention issued its own nationwide eviction moratorium, which has since been extended to June 30, 2021. Taken together, these actions have allowed untold New Jerseyans to remain in their homes during this health crisis.

But it appears that the eviction moratoria have had at least one unintended effect: some landlords, unable to evict tenants through lawful means, have now taken matters into their own hands. In the most egregious cases, landlords have changed locks or shut off utilities without the tenants' knowledge or approval, leaving residents unable to access their properties and effectively rendering them homeless. These actions—in the middle of a global pandemic—are not simply illegal, they are inhumane.

Law enforcement agencies have an important role to play in preventing these types of illegal evictions. In January 2006, Governor Richard J. Codey signed Public Law 2005, c. 319, which clarified that only an officer of the court can execute an eviction order (formally, an





“execution of warrant for possession”) and made it a crime for landlords and others to evict residents using any other means, including illegal lockouts. Now codified as N.J.S.A. 2C:33-11.1, the law provides an especially powerful tool for preventing illegal evictions during the current pandemic.

Broadly speaking, Section 33-11.1 criminalizes two types of conduct: illegal evictions, and refusals to allow illegally evicted residents to immediately reenter their homes. But unlike many offenses, officers cannot charge a person with violating Section 33-11.1 unless that person has been previously warned by the officer or another public official about the illegality of their conduct. This unusual provision requires officers to take additional measures before they can issue a complaint-summons to any individuals responsible for the illegal eviction.

Section 33.11-1 makes clear what types of illegal evictions trigger the statute: any occasion where a person either “takes possession” or “effectuates a forcible entry or detainer” of a residential property without obtaining the occupant’s consent or complying with lawful eviction procedures. The statute further defines “forcible entry or detainer” as any means of compliance other than lawful eviction procedures, including the use of violence, the changing of locks, or the shutting off of utilities.<sup>1</sup> Any person who engages in such conduct—after being warned of its illegality—can be charged with a disorderly persons offense. Similarly, any person who refuses to “restore immediately” an occupant displaced in such a manner, after receiving a warning, also may be charged with a disorderly persons offense.<sup>2</sup> Section 33.11-1 also includes a recidivist provision, which upgrades the violation to a fourth-degree crime if the offender has been convicted of the same offense any time in the past five years.

Section 33-11.1 includes two other provisions that bear mentioning. First, the law provides that illegally evicted occupants are entitled to reenter their residences “without delay,” and that the occupants who seek reentry shall not be considered trespassers or chargeable with any offense, but only so long as a law enforcement officer is “present at the time of reentry.” Second, the law creates an affirmative duty for officers present during reentry to prevent the landlord or other persons from “obstructing or hindering” such reentry by the occupant.

Taken as a whole, Section 33-11.1 outlines a process for preventing illegal evictions and holding irresponsible landlords accountable, but also imposes several requirements on law enforcement officers not typically found in other criminal statutes. While guidance from prior

<sup>1</sup> As a practical matter, so long as EO 106 remains in effect, virtually all evictions constitute a violation of Section 33.11-1, insofar as EO 106 has halted the lawful execution of warrants for possession. Note, however, that EO 106 does permit enforcement of removal actions in the rare circumstances when a court determines on its own motion or a motion of the parties that enforcement is necessary in the interest of justice.

<sup>2</sup> Section 33:11-1 does not limit who may be charged for violations, provided that the person either illegally evicted occupants or refused to immediately restore them to their residence. Although the law does not define what constitutes a refusal, the term implies that the person has the power to readmit the displaced occupant, and so this Directive instructs officers to only charge those who can authorize reentry, such as landlords, property owners, or property management executives with decision-making power.

Attorneys General has addressed the requirements of this law, I have determined that officers statewide would benefit from additional guidance on Section 33-11.1 and am issuing this Directive to ensure uniform enforcement across New Jersey. And while COVID-19 has highlighted the problem of illegal evictions, this Directive will remain useful and necessary for officers even after the pandemic ends, and will create a framework to ensure that no New Jersey resident is illegally displaced from their home.

This Directive outlines a four-step process that law enforcement officers must follow when responding to a report of an illegal eviction. As a first step, when officers arrive at the scene, they should attempt to determine the basic facts regarding the eviction or threatened eviction. If the officers identify potential violations of Section 33-11.1, they should promptly issue warnings to the responsible parties. Next, if the officers determine that a tenant was evicted illegally, then they should ensure that the tenant is immediately restored to their residence. Finally, if the warned individuals refuse to comply with requirements of Section 33-11.1, then the officers should promptly charge those individuals by complaint-summons. By following these simple steps, law enforcement officers can ensure compliance with the law and protect tenants from illegal evictions.<sup>3</sup>

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the State of New Jersey to implement and comply with the procedures outlined below. This Directive supersedes the Revised Notice to Law Enforcement Concerning Unlawful Eviction Law issued by Attorney General Milgram on July 20, 2009.

## **I. Law Enforcement Response to Reports of Illegal Evictions**

A. ***Step 1: Determine Facts Regarding Eviction or Threatened Eviction.*** As soon as officers learn of a potential violation of Section 33-11.1, they should attempt to determine the basic facts regarding the eviction or threatened eviction. In particular, officers should seek answers to the following questions:

- *What is the residential property in question?* To trigger Section 33-11.1, the property must be rented or owned for residential purposes, including any house, building, mobile home, or tenement. *See* N.J.S.A. 2A:18-61.1; *see also* N.J.A.C. 5:27-3.3(c) (extending eviction law to certain residents of rooming and boarding houses).

<sup>3</sup> To be clear, this Directive addresses how law enforcement officers should respond to the illegal removal of occupants from their premises, pursuant to Section 33-11.1. It does not address the lawful process for removing occupants via eviction or ejectment.

- *Who is the property's occupant?* Typically, the complainant will be an occupant claiming that they were illegally evicted or threatened with illegal eviction. The officers should attempt to determine whether the purported occupant in fact resides at the property. The officers should make this determination based on the totality of the evidence, which can include witness interviews, proof of residency (such as a driver's license or recent utilities bill), and/or an inspection of the premises.
- *Who is evicting the occupant or attempting to do so?* Typically, the evicting party will be the property owner or landlord. In some cases, the eviction or attempted eviction will be performed by an agent of the landlord, such as employees of a property management company.
- *Is the occupant no longer able to access their property?* The officers should determine whether the occupant has in fact been denied access to their residence and is no longer able to reside at the property.
- *Has the evicting party removed the occupant in compliance with the state's lawful eviction procedures?* Generally speaking, landlords can only evict tenants pursuant to a valid "execution of warrant for possession," which must be effectuated by a sheriff's officer or other officer of the court. N.J.S.A. 2A:42-10.16. ***Please note that so long as EO 106 and/or the CDC moratorium remain in effect, officers are prohibited from enforcing executions of warrant, and so as a practical matter almost all evictions during this time violate Section 33-11.1.*** (See Footnote 1.)
- *What steps has the evicting party taken or threatened to take in order to remove the occupant?* Section 33-11.1 prohibits persons from effectuating a "forcible entry or detainer," which the law defines as the entering and holding of a property using any means other than those permitted by the lawful eviction process. The statute includes several examples of improper means, including: (1) violence or threats of violence; (2) statements or actions intended to create fear; (3) moving the occupant's furniture or personal effects outside the premise; (4) entering peaceably and then, by force or threats, turning the occupant out of possession; (5) padlocking or otherwise changing locks to the property; and (6) shutting off vital services, including heat, electricity, or water, in an effort to regain possession.

In seeking answers to these questions, officers should be mindful of their role during Step 1 of this process: to ascertain whether an illegal eviction has occurred, and not to provide legal advice to tenants or others parties. If officers believe that a person requires legal advice about their housing status but cannot afford private counsel, officers should encourage the individual to contact Legal Services of New Jersey at 888-LSNJ-LAW. In addition, the New Jersey Department of Community Affairs has posted a reference guide on the rights and responsibilities of residential landlords and tenants, which is available at [https://www.nj.gov/dca/divisions/codes/offices/landlord\\_tenant\\_information.html](https://www.nj.gov/dca/divisions/codes/offices/landlord_tenant_information.html).

- B. ***Step 2: Issue Warnings to Responsible Persons.*** Based on the information gathered during Step 1, officers should determine whether any person has violated or appears likely to violate Section 33-11.1, either by illegally evicting the occupant (including by forcible entry and detainer) or refusing to allow an illegally evicted occupant to immediately reenter the premises. If a violation has occurred or appears likely to occur, then the officers should instruct the relevant persons to immediately cease their illegal conduct and warn them that failure to do so will result in charges. As soon as practicable, the officers should document in writing who received the warning, when the warning was issued, and what conduct was covered in the warning.<sup>4</sup>

In determining which persons should receive a warning, officers should evaluate who appears to be responsible for the illegal conduct and who has the authority to restore the occupant to the premises. An individual need not be physically present at the premises to be responsible for the violation, provided that the individual directed an agent to perform the illegal eviction or has the authority to allow the occupant to reenter the premises. Depending on the circumstances, if a corporate entity owns or manages the property, then the responsible persons could include corporate executives with the authority to allow or disallow occupants to reenter their homes.

- C. ***Step 3: Ensure Any Illegally Evicted Occupants Are Immediately Restored to Premises.*** If officers conclude that any occupants were illegally evicted in a manner prohibited by Section 33-11.1, then the officers should ensure that the evicting party immediately allow the occupants to reenter and reoccupy the premises.<sup>5</sup> Section 33-11.1 makes clear that reentry should occur “without delay,” and so the officers should ensure that the process take no longer than absolutely necessary to complete. In addition, the law states that officers have an affirmative duty to “prevent the landlord or any other persons from obstructing or hindering” the reentry and reoccupancy of the dwelling. If the evicting party effectuated a “forcible entry or detainer” in connection with the illegal eviction, then the officers should ensure that the evicting party has addressed any obstructions or hindrances arising from such actions, such as a padlock on the entrance or the removal of furniture from the residence.

Section 33-11.1 prohibits officers from charging an illegally evicted occupant with trespass or other offenses if the occupant reenters and reoccupies the dwelling while an officer is present. The law includes no such prohibition on charging occupants who reenter a dwelling when an officer is *not* present. That said, officers are not *required* to

<sup>4</sup> Each law enforcement agency is responsible for ensuring that officers who subsequently respond to the same location are aware of previously issued warnings.

<sup>5</sup> In carrying out their responsibilities under Section 33-11.1, officers should consider whether any of the involved parties are subject to any other valid court orders—such as a domestic violence restraining order or a protective order relating to certain sex crime convictions—that may restrict their ability to enter or be present at a particular premises. Neither Section 33-11.1 nor EO 106 allows tenants to avoid otherwise valid court orders restricting their access to a location.

charge illegally evicted occupants who reenter their homes without an officer present, and officers should exercise their discretion about such charges based on the totality of the circumstances.

- D. ***Step 4: If Warnings Goes Unheeded, Issue Complaint-Summons.*** If officers issue a warning to an individual during Step 2 and the person nonetheless violates Section 33-11.1, then the officers should promptly charge that person by complaint-summons. The officers need not wait a specified amount of time after issuing the warning before charging the person; as soon as the warned individual indicates their refusal to comply with the law, the officer may issue the complaint-summons. The officer need not charge the person if the individual is making good-faith efforts to restore the illegally evicted occupant to their residence.

In most cases, the defendant will be charged with a disorderly persons offense. If, however, the defendant has been previously convicted of a Section 33-11.1 violation during the past five years, then the violation should be charged as a fourth-degree crime.

## II. **Other Provisions**

- A. ***Compliance with N.J.S.A. 52:17B-4.6.*** This Directive supersedes the Revised Notice to Law Enforcement Concerning Unlawful Eviction Law issued by Attorney General Anne Milgram on July 20, 2009. Pursuant to N.J.S.A. 52:17B-4.6, this Directive shall be:
1. Transmitted to the chief or director of every municipal police department, every municipal prosecutor, every county prosecutor, and the Superintendent of the New Jersey State Police;
  2. Disseminated to every law enforcement officer operating under the authority of the laws of the State of New Jersey; and
  3. Reinforced at roll calls and academy service training and continuing education programs so to ensure that all officers and prosecutors are educated of their responsibilities under Section 33-11.1.
- B. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.



- C. **Severability.** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.
- D. **Questions.** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or their designee.
- E. **Effective date.** This Directive shall take effect immediately. The provisions of this Directive shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.



Gurbir S. Grewal  
Attorney General

ATTEST:



Veronica Allende  
Director, Division of Criminal Justice

Dated: March 30, 2021

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

## Syllabus

LOZMAN *v.* CITY OF RIVIERA BEACH, FLORIDACERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE ELEVENTH CIRCUIT

No. 17–21. Argued February 27, 2018—Decided June 18, 2018

After petitioner Lozman towed his floating home into a slip in a marina owned by the city of Riviera Beach, he became an outspoken critic of the City’s plan to use its eminent domain power to seize waterfront homes for private development and often made critical comments about officials during the public-comment period of city council meetings. He also filed a lawsuit alleging that the City Council’s approval of an agreement with developers violated Florida’s open-meetings laws. In June 2006 the Council held a closed-door session, in part to discuss Lozman’s lawsuit. He alleges that the meeting’s transcript shows that councilmembers devised an official plan to intimidate him, and that many of his subsequent disputes with city officials and employees were part of the City’s retaliation plan. Five months after the closed-door meeting, the Council held a public meeting. During the public-comment session, Lozman began to speak about the arrests of officials from other jurisdictions. When he refused a councilmember’s request to stop making his remarks, the councilmember told the police officer in attendance to “carry him out.” The officer handcuffed Lozman and ushered him out of the meeting. The City contends that he was arrested for violating the City Council’s rules of procedure by discussing issues unrelated to the City and then refusing to leave the podium. Lozman claims that his arrest was to retaliate for his lawsuit and his prior public criticisms of city officials. The State’s attorney determined that there was probable cause for his arrest, but decided to dismiss the charges.

Lozman then filed suit under 42 U. S. C. §1983, alleging a number of incidents that, under his theory, showed the City’s purpose was to harass him, including by initiating an admiralty lawsuit against his floating home, see *Lozman v. Riviera Beach*, 568 U. S. 115. The jury

## Syllabus

returned a verdict for the City on all of the claims. The District Court instructed the jury that, for Lozman to prevail on his claim of a retaliatory arrest at the city council meeting, he had to prove that the arresting officer was motivated by impermissible animus against Lozman's protected speech and that the officer lacked probable cause to make the arrest. The Eleventh Circuit affirmed, concluding that any error the District Court made when it instructed the jury to consider the officer's retaliatory animus was harmless because the jury necessarily determined that the arrest was supported by probable cause when it found for the City on Lozman's other claims. The existence of probable cause, the court ruled, defeated a First Amendment claim for retaliatory arrest.

*Held:* The existence of probable cause does not bar Lozman's First Amendment retaliation claim under the circumstances of this case. Pp. 5–13.

(a) The issue here is narrow. Lozman concedes that there was probable cause for his arrest. Nonetheless, he claims, the arrest violated the First Amendment because it was ordered in retaliation for his earlier, protected speech: his open-meetings lawsuit and his prior public criticisms of city officials. Pp. 5–6.

(b) In a §1983 case, a city or other local governmental entity cannot be subject to liability unless the harm was caused in the implementation of "official municipal policy." *Monell v. New York City Dept. of Social Servs.*, 436 U. S. 658, 691. The Court assumes that Lozman's arrest was taken pursuant to an official city policy.

Two major precedents bear on the issue whether the conceded existence of probable cause for the arrest bars recovery regardless of any intent or purpose to retaliate for past speech. Lozman argues that the controlling rule is found in *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U. S. 274, a civil case in which a city board of education decided not to rehire an untenured teacher after a series of incidents, including a telephone call to a local radio station. The phone call was protected speech, but, the Court held, there was no liability unless the alleged constitutional violation was a but-for cause of the employment termination. *Id.*, at 285–287. The City counters that the applicable precedent is *Hartman v. Moore*, 547 U. S. 250, where the Court held that a plaintiff alleging a retaliatory prosecution must show the absence of probable cause for the underlying criminal charge, *id.*, at 265–266. If there was probable cause, the case ends. If the plaintiff proves the absence of probable cause, then the *Mt. Healthy* test governs. Pp. 6–10.

(c) Whether *Hartman* or *Mt. Healthy* governs here is a determination that must await a different case. For Lozman's claim is far afield from the typical retaliatory arrest claim, and the difficulties

## Syllabus

that might arise if *Mt. Healthy* is applied to the mine run of arrests made by police officers are not present here. Lozman alleges that the City itself retaliated against him pursuant to an “official municipal policy” of intimidation. *Monell, supra*, at 691. The fact that he must prove the existence and enforcement of an official policy motivated by retaliation separates his claim from the typical retaliatory arrest claim. An official retaliatory policy can be long term and pervasive, unlike an ad hoc, on-the-spot decision by an individual officer. And it can be difficult to dislodge. A citizen can seek to have an individual officer disciplined or removed from service, but there may be little practical recourse when the government itself orchestrates the retaliation. Lozman’s allegations, if proved, also alleviate the problems that the City says will result from applying *Mt. Healthy* in retaliatory arrest cases, for it is unlikely that the connection between the alleged animus and injury in a case like this will be “weakened . . . by [an official’s] legitimate consideration of speech,” *Reichle v. Howards*, 566 U. S. 658, 668, and there is little risk of a flood of retaliatory arrest suits against high-level policymakers. Because Lozman alleges that the City deprived him of the right to petition, “one of the most precious of the liberties safeguarded by the Bill of Rights,” *BE&K Constr. Co. v. NLRB*, 536 U. S. 516, 524, his speech is high in the hierarchy of First Amendment values. On these facts, *Mt. Healthy* provides the correct standard for assessing a retaliatory arrest claim. On remand, the Eleventh Circuit may consider any arguments in support of the District Court’s judgment that have been preserved by the City, including whether a reasonable juror could find that the City formed a retaliatory policy to intimidate Lozman during its closed-door session, whether a reasonable juror could find that the arrest constituted an official act by the City, and whether, under *Mt. Healthy*, the City has proved that it would have arrested Lozman regardless of any retaliatory animus. Pp. 10–13.

681 Fed. Appx. 746, vacated and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, ALITO, SOTOMAYOR, KAGAN, and GORSUCH, JJ., joined. THOMAS, J., filed a dissenting opinion.

## Opinion of the Court

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**SUPREME COURT OF THE UNITED STATES**

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No. 17–21

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FANE LOZMAN, PETITIONER *v.* CITY OF RIVIERA  
BEACH, FLORIDA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE ELEVENTH CIRCUIT

[June 18, 2018]

JUSTICE KENNEDY delivered the opinion of the Court.

This case requires the Court to address the intersection of principles that define when arrests are lawful and principles that prohibit the government from retaliating against a person for having exercised the right to free speech. An arrest deprives a person of essential liberties, but if there is probable cause to believe the person has committed a criminal offense there is often no recourse for the deprivation. See, *e.g.*, *Devenpeck v. Alford*, 543 U. S. 146, 153 (2004). At the same time, the First Amendment prohibits government officials from retaliating against individuals for engaging in protected speech. *Crawford-El v. Britton*, 523 U. S. 574, 592 (1998).

The petitioner in this case alleges that high-level city policymakers adopted a plan to retaliate against him for protected speech and then ordered his arrest when he attempted to make remarks during the public-comment portion of a city council meeting. The petitioner now concedes there was probable cause for the arrest. The question is whether the presence of probable cause bars petitioner’s retaliatory arrest claim under these



## Opinion of the Court

circumstances.

## I

The city of Riviera Beach is on the Atlantic coast of Florida, about 75 miles north of Miami. The petitioner here is Fane Lozman. In 2006 Lozman towed his floating home into a slip in the City-owned marina, where he became a resident. Thus began his contentious relationship with the City's elected officials.

Soon after his arrival Lozman became an outspoken critic of the City's plan to use its eminent domain power to seize homes along the waterfront for private development. Lozman often spoke during the public-comment period at city council meetings and criticized councilmembers, the mayor, and other public employees. He also filed a lawsuit alleging that the Council's approval of an agreement with developers violated Florida's open-meetings laws.

In June 2006 the Council held a closed-door session, in part to discuss the open-meetings lawsuit that Lozman recently had filed. According to the transcript of the meeting, Councilmember Elizabeth Wade suggested that the City use its resources to "intimidate" Lozman and others who had filed lawsuits against the City. App. 176. Later in the meeting a different councilmember asked whether there was "a consensus of what Ms. Wade is saying," and others responded in the affirmative. *Id.*, at 181–182. Lozman alleges that these remarks formed an official plan to intimidate him. The City, on the other hand, maintains that the only consensus reached during the meeting was to invest the money and resources necessary to prevail in the litigation against it.

In all events, Lozman became embroiled in a number of disputes with city officials and employees over the ensuing years, many of which Lozman says were part of the City's plan of retaliation. The dispute that led to this litigation took place in 2006. In November of that year, five months

## Opinion of the Court

after the closed-door meeting where the “intimidate” comment was made, the City Council held a public meeting. The agenda included a public-comment session in which citizens could address the Council for a few minutes. As he had done on earlier occasions and would do more than 200 times over the coming years, see Tr. in No. 9:08–cv–80134 (SD Fla.), Doc. 785, p. 61, Lozman stepped up to the podium to give remarks. He began to discuss the recent arrest of a former county official. Councilmember Wade interrupted Lozman, directing him to stop making those remarks. Lozman continued speaking, this time about the arrest of a former official from the city of West Palm Beach. Wade then called for the assistance of the police officer in attendance. The officer approached Lozman and asked him to leave the podium. Lozman refused. So Wade told the officer to “carry him out.” The officer handcuffed Lozman and ushered him out of the meeting. The incident was recorded on video. See Record, Def. Exh. 505, Doc. 687, available at [https://www.supremecourt.gov/media/video/mp4files/Lozman\\_v\\_RivieraBeach.mp4](https://www.supremecourt.gov/media/video/mp4files/Lozman_v_RivieraBeach.mp4). According to the City, Lozman was arrested because he violated the City Council’s rules of procedure by discussing issues unrelated to the City and then refused to leave the podium. According to Lozman, the arrest was to retaliate for his open-meetings lawsuit against the City and his prior public criticisms of city officials.

Under arrest, Lozman was escorted to police headquarters. He was charged with disorderly conduct and resisting arrest without violence and then released. Later, the State’s attorney determined there was probable cause to arrest Lozman for those offenses but decided to dismiss the charges.

Lozman filed this lawsuit under Rev. Stat. §1979, 42 U. S. C. §1983. The complaint described a number of alleged incidents that, under Lozman’s theory, showed the City’s purpose to harass him in different ways. These

## Opinion of the Court

ranged from a city employee telling Lozman that his dog needed a muzzle to the City's initiation of an admiralty lawsuit against Lozman's floating home—the latter resulting in an earlier decision by this Court. See *Lozman v. Riviera Beach*, 568 U. S. 115 (2013). The evidence and arguments presented by both parties with respect to all the matters alleged in Lozman's suit consumed 19 days of trial before a jury. The jury returned a verdict for the City on all of the claims.

Before this Court, Lozman seeks a reversal only as to the City's alleged retaliatory arrest at the November 2006 city council meeting. The District Court instructed the jury that, for Lozman to prevail on this claim, he had to prove that the arresting officer was himself motivated by impermissible animus against Lozman's protected speech and that the officer lacked probable cause to make the arrest. The District Court determined that the evidence was insufficient as a matter of law to support probable cause for the offenses charged at the time of the arrest (disorderly conduct and resisting arrest without violence). But the District Court concluded that there may have been probable cause to arrest Lozman for violating a Florida statute that prohibits interruptions or disturbances in schools, churches, or other public assemblies. Fla. Stat. §871.01 (2017). (The City had brought this statute to the District Court's attention during the course of the litigation.) The District Court allowed the jury to decide whether there was probable cause to arrest for the public-disturbance offense.

Judgment having been entered for the City after the jury's verdict, Lozman appealed. The Court of Appeals for the Eleventh Circuit affirmed. 681 Fed. Appx. 746 (2017). As relevant here, the Court of Appeals assumed that the District Court erred when it instructed the jury that the officer, rather than the City, must have harbored the retaliatory animus. But the Court of Appeals held that

## Opinion of the Court

any error was harmless because the jury necessarily determined that the arrest was supported by probable cause when it found for the City on some of Lozman’s other claims—specifically, his claims that the arrest violated the Fourth Amendment and state law. *Id.*, at 751–752. And, under precedents which the Court of Appeals deemed controlling, the existence of probable cause defeated a First Amendment claim for retaliatory arrest. See *id.*, at 752 (citing *Dahl v. Holley*, 312 F.3d 1228, 1236 (CA11 2002)).

This Court granted certiorari, 583 U. S. \_\_\_\_ (2017), on the issue whether the existence of probable cause defeats a First Amendment claim for retaliatory arrest under §1983. The Court considered this issue once before, see *Reichle v. Howards*, 566 U. S. 658, 663 (2012), but resolved the case on different grounds.

## II

The issue before the Court is a narrow one. In this Court Lozman does not challenge the constitutionality of Florida’s statute criminalizing disturbances at public assemblies. He does not argue that the statute is overly broad, *e.g.*, *Terminiello v. Chicago*, 337 U. S. 1 (1949); *Watchtower Bible & Tract Soc. of N. Y., Inc. v. Village of Stratton*, 536 U. S. 150 (2002); or that it impermissibly targets speech based on its content or viewpoint, *e.g.*, *Texas v. Johnson*, 491 U. S. 397 (1989); *Cohen v. California*, 403 U. S. 15 (1971); or that it was enforced in a way that curtailed Lozman’s right to peaceful assembly, *e.g.*, *Brown v. Louisiana*, 383 U. S. 131 (1966). Lozman, furthermore, does not challenge the validity of the City Council’s asserted limitations on the subjects speakers may discuss during the public-comment portion of city council meetings (although he continues to dispute whether those limitations in fact existed).

Instead Lozman challenges only the lawfulness of his

## Opinion of the Court

arrest, and even that challenge is a limited one. There is no contention that the City ordered Lozman's arrest to discriminate against him based on protected classifications, or that the City denied Lozman his equal protection rights by placing him in a "class of one." See *Village of Willowbrook v. Olech*, 528 U. S. 562 (2000) (*per curiam*). Lozman, moreover, now concedes that there was probable cause for the arrest. Although Lozman does not indicate what facts he believes support this concession, it appears that the existence of probable cause must be based on the assumption that Lozman failed to depart the podium after receiving a lawful order to leave.

Lozman's claim is that, notwithstanding the presence of probable cause, his arrest at the city council meeting violated the First Amendment because the arrest was ordered in retaliation for his earlier, protected speech: his open-meetings lawsuit and his prior public criticisms of city officials. The question this Court is asked to consider is whether the existence of probable cause bars that First Amendment retaliation claim.

## III

It is well established that in a §1983 case a city or other local governmental entity cannot be subject to liability at all unless the harm was caused in the implementation of "official municipal policy." *Monell v. New York City Dept. of Social Servs.*, 436 U. S. 658, 691 (1978); see *Los Angeles County v. Humphries*, 562 U. S. 29, 36 (2010). Lozman's §1983 damages claim is against only the City itself, based on the acts of its officers and employees—here, the members of the City Council. Lozman says that the City, through its city councilmembers, formed an official policy to retaliate against him and ordered his arrest. The Court assumes in the discussion to follow that the arrest was taken pursuant to an official city policy, but whether there was such a policy and what its content may have been are

## Opinion of the Court

issues not decided here.

This brings the discussion to the issue the parties deem central to the case: whether the conceded existence of probable cause for the arrest bars recovery regardless of any intent or purpose to retaliate for past speech. Two major precedents could bear on this point, and the parties disagree on which should be applicable here. The first is this Court's decision in *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U. S. 274 (1977). See also *Board of Comm'rs, Wabunsee Cty. v. Umbehr*, 518 U. S. 668 (1996). Lozman urges that the rule of *Mt. Healthy* should control and that under it he is entitled to recover. The second is this Court's decision in *Hartman v. Moore*, 547 U. S. 250 (2006), which the City cites for the proposition that once there is probable cause there can be no further claim that the arrest was retaliation for protected speech.

*Mt. Healthy* arose in a civil, not criminal, context. A city board of education decided not to rehire an untenured school teacher after a series of incidents indicating unprofessional demeanor. 429 U. S., at 281–283. One of the incidents was a telephone call the teacher made to a local radio station to report on a new school policy. *Id.*, at 282. Because the board of education did not suggest that the teacher violated any established policy in making the call, this Court accepted a finding by the District Court that the call was protected speech. *Id.*, at 284. The Court went on to hold, however, that since the other incidents, standing alone, would have justified the dismissal, relief could not be granted if the board could show that the discharge would have been ordered even without reference to the protected speech. *Id.*, at 285–287. In terms of precepts in the law of torts, the Court held that even if retaliation might have been a substantial motive for the board's action, still there was no liability unless the alleged constitutional violation was a but-for cause of the employment termination. *Ibid.*; see also *Umbehr*, *supra*, at 675.



## Opinion of the Court

The City resists the applicability of the *Mt. Healthy* test as the sole determinant here. It contends that, where there was probable cause for the arrest, the applicable precedent is *Hartman*—a case that was in the criminal sphere and that turned on the existence of probable cause.

The background in *Hartman* was that a company and its chief executive, William Moore, had engaged in an extensive lobbying and governmental relations campaign opposing a particular postal service policy. 547 U.S., at 252–253. Moore and the company were later prosecuted for violating federal statutes in the course of that lobbying. *Id.*, at 253–254. After being acquitted, Moore filed suit against five postal inspectors, alleging that they had violated his First Amendment rights when they instigated his prosecution in retaliation for his criticisms of the Postal Service. *Id.*, at 254. This Court held that a plaintiff alleging a retaliatory prosecution must show the absence of probable cause for the underlying criminal charge. *Id.*, at 265–266. If there was probable cause, the case ends. If the plaintiff proves the absence of probable cause, then the *Mt. Healthy* test governs: The plaintiff must show that the retaliation was a substantial or motivating factor behind the prosecution, and, if that showing is made, the defendant can prevail only by showing that the prosecution would have been initiated without respect to retaliation. See 547 U.S., at 265–266.

The Court in *Hartman* deemed it necessary to inquire as to the existence of probable cause because proving the link between the defendant’s retaliatory animus and the plaintiff’s injury in retaliatory prosecution cases “is usually more complex than it is in other retaliation cases.” *Id.*, at 261. An action for retaliatory prosecution “will not be brought against the prosecutor, who is absolutely immune from liability for the decision to prosecute.” *Id.*, at 261–262. Instead, the plaintiff must sue some other government official and prove that the official “induced the

## Opinion of the Court

prosecutor to bring charges that would not have been initiated without his urging.” *Id.*, at 262. Noting that inquiries with respect to probable cause are commonplace in criminal cases, the Court determined that requiring plaintiffs in retaliatory prosecution cases to prove the lack of probable cause would help “bridge the gap between the nonprosecuting government agent’s motive and the prosecutor’s action.” *Id.*, at 263.

The City’s argument here is that, just as probable cause is a bar in retaliatory prosecution cases, so too should it be a bar in this case, involving a retaliatory arrest. There is undoubted force in the City’s position. *Reichle*, 566 U. S., at 667–668. There are on average about 29,000 arrests per day in this country. Dept. of Justice–FBI, Uniform Crime Report, Crime in the United States, 2016 (Fall 2017). In deciding whether to arrest, police officers often make split-second judgments. The content of the suspect’s speech might be a consideration in circumstances where the officer must decide whether the suspect is ready to cooperate, or, on the other hand, whether he may present a continuing threat to interests that the law must protect. See, e.g., *District of Columbia v. Wesby*, 583 U. S. \_\_\_, \_\_\_ (2018) (slip op., at 10) (“suspect’s untruthful and evasive answers to police questioning could support probable cause” (internal quotation marks omitted)).

For these reasons retaliatory arrest claims, much like retaliatory prosecution claims, can “present a tenuous causal connection between the defendant’s alleged animus and the plaintiff’s injury.” *Reichle*, 566 U. S., at 668. That means it can be difficult to discern whether an arrest was caused by the officer’s legitimate or illegitimate consideration of speech. *Ibid.* And the complexity of proving (or disproving) causation in these cases creates a risk that the courts will be flooded with dubious retaliatory arrest suits. See Brief for District of Columbia et al. as *Amici Curiae* 5–11.

## Opinion of the Court

At the same time, there are substantial arguments that *Hartman*'s framework is inapt in retaliatory arrest cases, and that *Mt. Healthy* should apply without a threshold inquiry into probable cause. For one thing, the causation problem in retaliatory arrest cases is not the same as the problem identified in *Hartman*. *Hartman* relied in part on the fact that, in retaliatory prosecution cases, the causal connection between the defendant's animus and the prosecutor's decision to prosecute is weakened by the "presumption of regularity accorded to prosecutorial decisionmaking." 547 U. S., at 263. That presumption does not apply in this context. See *Reichle*, *supra*, at 669. In addition, there is a risk that some police officers may exploit the arrest power as a means of suppressing speech. See Brief for Institute for Free Speech as *Amicus Curiae*.

## IV

The parties' arguments raise difficult questions about the scope of First Amendment protections when speech is made in connection with, or contemporaneously to, criminal activity. But whether in a retaliatory arrest case the *Hartman* approach should apply, thus barring a suit where probable cause exists, or, on the other hand, the inquiry should be governed only by *Mt. Healthy* is a determination that must await a different case. For Lozman's claim is far afield from the typical retaliatory arrest claim, and the difficulties that might arise if *Mt. Healthy* is applied to the mine run of arrests made by police officers are not present here.

Here Lozman does not sue the officer who made the arrest. Indeed, Lozman likely could not have maintained a retaliation claim against the arresting officer in these circumstances, because the officer appears to have acted in good faith, and there is no showing that the officer had any knowledge of Lozman's prior speech or any motive to arrest him for his earlier expressive activities.

## Opinion of the Court

Instead Lozman alleges more governmental action than simply an arrest. His claim is that the City itself retaliated against him pursuant to an “official municipal policy” of intimidation. *Monell*, 436 U. S., at 691. In particular, he alleges that the City, through its legislators, formed a premeditated plan to intimidate him in retaliation for his criticisms of city officials and his open-meetings lawsuit. And he asserts that the City itself, through the same high officers, executed that plan by ordering his arrest at the November 2006 city council meeting.

The fact that Lozman must prove the existence and enforcement of an official policy motivated by retaliation separates Lozman’s claim from the typical retaliatory arrest claim. An official retaliatory policy is a particularly troubling and potent form of retaliation, for a policy can be long term and pervasive, unlike an ad hoc, on-the-spot decision by an individual officer. An official policy also can be difficult to dislodge. A citizen who suffers retaliation by an individual officer can seek to have the officer disciplined or removed from service, but there may be little practical recourse when the government itself orchestrates the retaliation. For these reasons, when retaliation against protected speech is elevated to the level of official policy, there is a compelling need for adequate avenues of redress.

In addition, Lozman’s allegations, if proved, alleviate the problems that the City says will result from applying *Mt. Healthy* in retaliatory arrest cases. The causation problem in arrest cases is not of the same difficulty where, as is alleged here, the official policy is retaliation for prior, protected speech bearing little relation to the criminal offense for which the arrest is made. In determining whether there was probable cause to arrest Lozman for disrupting a public assembly, it is difficult to see why a city official could have legitimately considered that Lozman had, months earlier, criticized city officials or filed a

## Opinion of the Court

lawsuit against the City. So in a case like this one it is unlikely that the connection between the alleged animus and injury will be “weakened . . . by [an official’s] legitimate consideration of speech.” *Reichle*, 566 U. S., at 668. This unique class of retaliatory arrest claims, moreover, will require objective evidence of a policy motivated by retaliation to survive summary judgment. Lozman, for instance, cites a transcript of a closed-door city council meeting and a video recording of his arrest. There is thus little risk of a flood of retaliatory arrest suits against high-level policymakers.

As a final matter, it must be underscored that this Court has recognized the “right to petition as one of the most precious of the liberties safeguarded by the Bill of Rights.” *BE&K Constr. Co. v. NLRB*, 536 U. S. 516, 524 (2002) (internal quotation marks omitted). Lozman alleges the City deprived him of this liberty by retaliating against him for his lawsuit against the City and his criticisms of public officials. Thus, Lozman’s speech is high in the hierarchy of First Amendment values. See *Connick v. Myers*, 461 U. S. 138, 145 (1983).

For these reasons, Lozman need not prove the absence of probable cause to maintain a claim of retaliatory arrest against the City. On facts like these, *Mt. Healthy* provides the correct standard for assessing a retaliatory arrest claim. The Court need not, and does not, address the elements required to prove a retaliatory arrest claim in other contexts.

This is not to say, of course, that Lozman is ultimately entitled to relief or even a new trial. On remand, the Court of Appeals, applying *Mt. Healthy* and other relevant precedents, may consider any arguments in support of the District Court’s judgment that have been preserved by the City. Among other matters, the Court of Appeals may wish to consider (1) whether any reasonable juror could find that the City actually formed a retaliatory policy to

## Opinion of the Court

intimidate Lozman during its June 2006 closed-door session; (2) whether any reasonable juror could find that the November 2006 arrest constituted an official act by the City; and (3) whether, under *Mt. Healthy*, the City has proved that it would have arrested Lozman regardless of any retaliatory animus—for example, if Lozman’s conduct during prior city council meetings had also violated valid rules as to proper subjects of discussion, thus explaining his arrest here.

For these reasons, the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*



THOMAS, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

No. 17–21

FANE LOZMAN, PETITIONER *v.* CITY OF RIVIERA  
BEACH, FLORIDA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE ELEVENTH CIRCUIT

[June 18, 2018]

JUSTICE THOMAS, dissenting.

We granted certiorari to decide “whether the existence of probable cause defeats a First Amendment claim for retaliatory arrest under [42 U. S. C.] §1983.” *Ante*, at 5. Instead of resolving that question, the Court decides that probable cause should not defeat a “unique class of retaliatory arrest claims.” *Ante*, at 12. To fall within this unique class, a claim must involve objective evidence, of an official municipal policy of retaliation, formed well before the arrest, in response to highly protected speech, that has little relation to the offense of arrest. See *ante*, at 11–12. No one briefed, argued, or even hinted at the rule that the Court announces today. Instead of dreaming up our own rule, I would have answered the question presented and held that plaintiffs must plead and prove a lack of probable cause as an element of a First Amendment retaliatory-arrest claim. I respectfully dissent.

I

The petition for certiorari asked us to resolve whether “the existence of probable cause defeat[s] a First Amendment retaliatory-arrest claim as a matter of law.” Pet. for Cert. i. That question has divided the federal courts for decades. See *id.*, at 10–13. We granted certiorari to consider it six years ago in *Reichle v. Howards*, 566 U. S. 658,

THOMAS, J., dissenting

663 (2012). But we did not resolve it then because the petitioner’s second question presented—whether qualified immunity applied—fully resolved the case. *Ibid.* Since *Reichle*, the split in the federal courts has widened. See Pet. for Cert. 12–13. In this case, we again granted certiorari, 538 U. S. \_\_\_\_ (2017), this time only on the question of probable cause, see Pet. for Cert. i.

Yet the Court chooses not to resolve that question, leaving in place the decades-long disagreement among the federal courts. The parties concentrated all their arguments on this question in their briefs and at oral argument. Neither party suggested that there was something special about Fane Lozman’s claim that would justify a narrower rule. See, e.g., Tr. of Oral Arg. 15–16 (refusing to take the “fallback position” that this “is some special kind of case”). Yet the Court does that work for them by defining a “unique class of retaliatory arrest claims” that do not require plaintiffs to plead and prove a lack of probable cause. *Ante*, at 12.

By my count, the Court has identified five conditions that are necessary to trigger its new rule. First, there must be “an ‘official municipal policy’ of intimidation.” *Ante*, at 11 (quoting *Monell v. New York City Dept. of Social Servs.*, 436 U. S. 658, 691 (1978)). Second, the policy must be “premeditated” and formed well before the arrest—here, for example, the policy was formed “months earlier.” *Ante*, at 11.<sup>1</sup> Third, there must be “objective evidence” of such a policy. *Ante*, at 12. Fourth, there must be “little relation” between the “protected speech” that prompted the retaliatory policy and “the criminal offense

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<sup>1</sup>This requirement suggests that the Court’s rule does not apply when the “policy” that the plaintiff challenges is an on-the-spot decision by a single official with final policymaking authority, like the “policy” that this Court recognized in *Pembaur v. Cincinnati*, 475 U. S. 469 (1986). See *id.*, at 484–485 (holding that a county prosecutor’s order to forcibly enter the plaintiff’s clinic was a “municipal policy”).

THOMAS, J., dissenting

for which the arrest is made.” *Ante*, at 11. Finally, the protected speech that provoked the retaliatory policy must be “high in the hierarchy of First Amendment values.” *Ante*, at 12. Where all these features are present, the Court explains, there is not the same “causation problem” that exists for other retaliatory-arrest claims. *Ante*, at 11.

I find it hard to believe that there will be many cases where this rule will even arguably apply, and even harder to believe that the plaintiffs in those cases will actually prove all five requirements. Not even Lozman’s case is a good fit, as the Court admits when it discusses the relevant considerations for remand. See *ante*, at 12–13. In my view, we should not have gone out of our way to fashion a complicated rule with no apparent applicability to this case or any other.

## II

Turning to the question presented, I would hold that plaintiffs bringing a First Amendment retaliatory-arrest claim must plead and prove an absence of probable cause.<sup>2</sup> This Court has “repeatedly noted that 42 U. S. C. §1983 creates “‘a species of tort liability.’”” *Memphis Community School Dist. v. Stachura*, 477 U. S. 299, 305 (1986) (footnote omitted). Accordingly, we “defin[e] the contours and prerequisites of a §1983 claim” by “look[ing] first to the common law of torts.” *Manuel v. Joliet*, 580 U. S. \_\_\_, \_\_\_ (2017) (slip op., at 12); see, e.g., *Heck v. Humphrey*, 512 U. S. 477, 484 (1994) (analogizing to the “common-law cause of action for malicious prosecution”); *id.*, at 491 (THOMAS, J., concurring) (emphasizing that the decision

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<sup>2</sup>I am skeptical that 42 U. S. C. §1983 recognizes a claim for retaliatory arrests under the First Amendment. I adhere to the view that “no ‘intent-based’ constitutional tort would have been actionable under the §1983 that Congress enacted.” *Crawford-El v. Britton*, 523 U. S. 574, 612 (1998) (Scalia, J., dissenting). But because no party presses this argument, I assume that such claims are actionable under §1983.

THOMAS, J., dissenting

was “consistent . . . with the state of the common law at the time §1983 was enacted”).

When §1983 was enacted, there was no common-law tort for retaliatory arrest in violation of the freedom of speech. See *Hartman v. Moore*, 547 U. S. 250, 259 (2006). I would therefore look to the common-law torts that “provid[e] the closest analogy” to this claim. *Heck, supra*, at 484. The closest analogs here are the three arrest-based torts under the common law: false imprisonment, malicious prosecution, and malicious arrest. In defining the elements of these three torts, 19th-century courts emphasized the importance of probable cause.

Consider first the tort of false imprisonment. Common-law courts stressed the need to shape this tort with an “indulgence” for peace officers, who are “specially charged with a duty in the enforcement of the laws.” T. Cooley, *Law of Torts* 175 (1880) (Cooley); see, e.g., *Hogg v. Ward*, 3 H. & N. 417, 423, 157 Eng. Rep. 533, 536 (Ex. 1858) (opinion of Watson, B.) (stressing “the utmost importance that the police throughout the country should be supported in the execution of their duty”). Accordingly, private citizens were always liable for false imprisonment if the arrestee had not actually committed a felony, but constables were “excused” if they had “made [the arrest] on reasonable grounds of belief”—*i.e.*, probable cause. Cooley 175; accord, 2 C. Addison, *Law of Torts* §803, p. 18 (1876); 1 F. Hilliard, *The Law of Torts or Private Wrongs* §18, pp. 207–208, and n. (a) (1866). As Lord Mansfield explained, it was “of great consequence to the police” that probable cause shield officers from false-imprisonment claims, as “it would be a terrible thing” if the threat of liability dissuaded them from performing their official duties. *Ledwith v. Catchpole*, 2 Cald. 291, 295 (K. B. 1783). This concern outweighed “the mischief and inconvenience to the public” from the reality that “[m]any an innocent man has and may be taken up upon suspicion.” *Ibid.* Many State Su-

THOMAS, J., dissenting

preme Courts agreed with Lord Mansfield's reasoning. See, e.g., *Burns v. Erben*, 40 N. Y. 463, 469 (1869) (opinion of Woodruff, J.) (quoting *Ledwith*); *Brockway v. Crawford*, 48 N. C. 433, 437 (1856) ("[The] exempt[ion] for responsibility" for arrests based on probable cause "encourages . . . a sharp look-out for the apprehension of felons"). As one court put it, "How, in the great cities of this land, could police power be exercised, if every peace officer is liable to civil action for false imprisonment" whenever "persons arrested upon probable cause shall afterwards be found innocent?" *Hawley v. Butler*, 54 Barb. 490, 496 (N. Y. Sup. 1868).

Courts also stressed the importance of probable cause when defining the torts of malicious prosecution and malicious arrest. See, e.g., *Ahern v. Collins*, 39 Mo. 145, 150 (1866) (holding that "malice and want of probable cause are necessary ingredients of both"). For the tort of malicious prosecution, courts emphasized the "necessity" of both the "allegation" and "proof" of probable cause, in light of the public interest "that criminals should be brought to justice." *Hogg v. Pinckney*, 16 S. C. 387, 393 (1882); see also *Chrisman v. Carney*, 33 Ark. 316, 326 (1878) ("The existence of probable cause is of itself alone a complete defense . . . . The interest which society has in the enforcement of the criminal laws requires this rule"). Similarly, if the element of probable cause were not "strictly guarded," "ill consequences would ensue to the public, for no one would willingly undertake to vindicate a breach of the public law and discharge his duty to society, with the prospect of an annoying suit staring him in the face." *Ventress v. Rosser*, 73 Ga. 534, 541 (1884); accord, *Cardinal v. Smith*, 109 Mass. 158 (1872). The element of probable cause also played an evidentiary role for both torts. Lack of probable cause provided "evidence of malice, though inconclusive," *Herman v. Brookerhoff*, 8 Watts 240, 241 (Pa. 1839), because "[m]alice may be inferred from a

THOMAS, J., dissenting

total want of probable cause,” *Ventress, supra*, at 541; accord, *Ahern, supra*, at 150.

In sum, when §1983 was enacted, the common law recognized probable cause as an important element for ensuring that arrest-based torts did not unduly interfere with the objectives of law enforcement. Common-law courts were wary of “throw[ing] down the bars which protect public officers from suits for acts done within the scope of their duty and authority, by recognizing the right of every one who chooses to imagine or assert that he is aggrieved by their doings, to make use of an allegation that they were malicious in motive to harass them with suits on that ground.” *Chelsey v. King*, 74 Me. 164, 175–176 (1882).

Applying that principle here, it follows that plaintiffs bringing a First Amendment retaliatory-arrest claim under §1983 should have to plead and prove a lack of probable cause. I see no justification for deviating from the historical practice simply because an arrest claim is framed in terms of the First Amendment. Even under a First Amendment theory, “the significance of probable cause or the lack of it looms large.” *Hartman*, 547 U. S., at 265. The presence of probable cause will tend to disprove that the arrest was done out of retaliation for the plaintiff’s speech, and the absence of probable cause will tend to prove the opposite. See *id.*, at 261. Because “[p]robable cause or its absence will be at least an evidentiary issue in practically all such cases” and “[b]ecause showing [its] absence . . . will have high probative force, and can be made mandatory with little or no added cost,” the absence of probable cause should be an “element” of the plaintiff’s case. *Id.*, at 265–266; see also *id.*, at 264, n. 10 (refusing to carve out an exception for unusual cases).

Moreover, as with the traditional arrest-based torts, police officers need the safe harbor of probable cause in the First Amendment context to be able to do their jobs



THOMAS, J., dissenting

effectively. Police officers almost always exchange words with suspects before arresting them. And often a suspect’s “speech provides evidence of a crime or suggests a potential threat.” *Reichle*, 566 U. S., at 668. If probable cause were not required, the threat of liability might deter an officer from arresting a suspected criminal who, for example, has a political bumper sticker on his car, cf. *Kilpatrick v. United States*, 432 Fed. Appx. 937 (CA11 2011); is participating in a politically tinged protest, *Morse v. San Francisco Bay Area Rapid Transit Dist.*, 2014 WL 572352 (ND Cal., Feb. 11, 2014); or confronts and criticizes the officer during the arrest of a third party, *Holland v. San Francisco*, 2013 WL 968295 (ND Cal., Mar. 12, 2013). Allowing plaintiffs to bring a retaliatory-arrest claim in such circumstances, without pleading and proving a lack of probable cause, would permit plaintiffs to harass officers with the kind of suits that common-law courts deemed intolerable.

\* \* \*

Because we should have answered the question presented and held that probable cause necessarily defeats First Amendment retaliatory-arrest claims, I respectfully dissent.

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

## Syllabus

REED ET AL. *v.* TOWN OF GILBERT, ARIZONA, ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT

No. 13–502. Argued January 12, 2015—Decided June 18, 2015

Gilbert, Arizona (Town), has a comprehensive code (Sign Code or Code) that prohibits the display of outdoor signs without a permit, but exempts 23 categories of signs, including three relevant here. “Ideological Signs,” defined as signs “communicating a message or ideas” that do not fit in any other Sign Code category, may be up to 20 square feet and have no placement or time restrictions. “Political Signs,” defined as signs “designed to influence the outcome of an election,” may be up to 32 square feet and may only be displayed during an election season. “Temporary Directional Signs,” defined as signs directing the public to a church or other “qualifying event,” have even greater restrictions: No more than four of the signs, limited to six square feet, may be on a single property at any time, and signs may be displayed no more than 12 hours before the “qualifying event” and 1 hour after.

Petitioners, Good News Community Church (Church) and its pastor, Clyde Reed, whose Sunday church services are held at various temporary locations in and near the Town, posted signs early each Saturday bearing the Church name and the time and location of the next service and did not remove the signs until around midday Sunday. The Church was cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs. Unable to reach an accommodation with the Town, petitioners filed suit, claiming that the Code abridged their freedom of speech. The District Court denied their motion for a preliminary injunction, and the Ninth Circuit affirmed, ultimately concluding that the Code’s sign categories were content neutral, and that the Code satisfied the intermediate scrutiny accorded to content-neutral regulations of speech.

*Held:* The Sign Code’s provisions are content-based regulations of

## Syllabus

speech that do not survive strict scrutiny. Pp. 6–17.

(a) Because content-based laws target speech based on its communicative content, they are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *E.g.*, *R. A. V. v. St. Paul*, 505 U. S. 377, 395. Speech regulation is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g.*, *Sorrell v. IMS Health, Inc.*, 564 U. S. \_\_\_, \_\_\_–\_\_\_. And courts are required to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys. *Id.*, at \_\_\_. Whether laws define regulated speech by particular subject matter or by its function or purpose, they are subject to strict scrutiny. The same is true for laws that, though facially content neutral, cannot be “‘justified without reference to the content of the regulated speech,’” or were adopted by the government “because of disagreement with the message” conveyed. *Ward v. Rock Against Racism*, 491 U. S. 781, 791. Pp. 6–7.

(b) The Sign Code is content based on its face. It defines the categories of temporary, political, and ideological signs on the basis of their messages and then subjects each category to different restrictions. The restrictions applied thus depend entirely on the sign’s communicative content. Because the Code, on its face, is a content-based regulation of speech, there is no need to consider the government’s justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny. Pp. 7.

(c) None of the Ninth Circuit’s theories for its contrary holding is persuasive. Its conclusion that the Town’s regulation was not based on a disagreement with the message conveyed skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of “animus toward the ideas contained” in the regulated speech. *Cincinnati v. Discovery Network, Inc.*, 507 U. S. 410, 429. Thus, an innocuous justification cannot transform a facially content-based law into one that is content neutral. A court must evaluate each question—whether a law is content based on its face and whether the purpose and justification for the law are content based—before concluding that a law is content neutral. *Ward* does not require otherwise, for its framework applies only to a content-neutral statute.

The Ninth Circuit’s conclusion that the Sign Code does not single out any idea or viewpoint for discrimination conflates two distinct but related limitations that the First Amendment places on government regulation of speech. Government discrimination among viewpoints

## Syllabus

is a “more blatant” and “egregious form of content discrimination,” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829, but “[t]he First Amendment’s hostility to content-based regulation [also] extends . . . to prohibition of public discussion of an entire topic,” *Consolidated Edison Co. of N. Y. v. Public Serv. Comm’n of N. Y.*, 447 U. S. 530, 537. The Sign Code, a paradigmatic example of content-based discrimination, singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter.

The Ninth Circuit also erred in concluding that the Sign Code was not content based because it made only speaker-based and event-based distinctions. The Code’s categories are not speaker-based—the restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. And even if the sign categories were speaker based, that would not automatically render the law content neutral. Rather, “laws favoring some speakers over others demand strict scrutiny when the legislature’s speaker preference reflects a content preference.” *Turner Broadcasting System, Inc. v. FCC*, 512 U. S. 622, 658. This same analysis applies to event-based distinctions. Pp. 8–14.

(d) The Sign Code’s content-based restrictions do not survive strict scrutiny because the Town has not demonstrated that the Code’s differentiation between temporary directional signs and other types of signs furthers a compelling governmental interest and is narrowly tailored to that end. See *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 564 U. S. \_\_\_, \_\_\_. Assuming that the Town has a compelling interest in preserving its aesthetic appeal and traffic safety, the Code’s distinctions are highly underinclusive. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town when other types of signs create the same problem. See *Discovery Network, supra*, at 425. Nor has it shown that temporary directional signs pose a greater threat to public safety than ideological or political signs. Pp. 14–15.

(e) This decision will not prevent governments from enacting effective sign laws. The Town has ample content-neutral options available to resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability. And the Town may be able to forbid postings on public property, so long as it does so in an evenhanded, content-neutral manner. See *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U. S. 789, 817. An ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—e.g., warning signs marking hazards on private property or signs directing traffic—might also survive strict scrutiny. Pp. 16–17.

## Syllabus

707 F. 3d 1057, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, ALITO, and SOTOMAYOR, JJ., joined. ALITO, J., filed a concurring opinion, in which KENNEDY and SOTOMAYOR, JJ., joined. BREYER, J., filed an opinion concurring in the judgment. KAGAN, J., filed an opinion concurring in the judgment, in which GINSBURG and BREYER, JJ., joined

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

**SUPREME COURT OF THE UNITED STATES**

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No. 13–502

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CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF  
GILBERT, ARIZONA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE THOMAS delivered the opinion of the Court.

The town of Gilbert, Arizona (or Town), has adopted a comprehensive code governing the manner in which people may display outdoor signs. Gilbert, Ariz., Land Development Code (Sign Code or Code), ch. 1, §4.402 (2005).<sup>1</sup> The Sign Code identifies various categories of signs based on the type of information they convey, then subjects each category to different restrictions. One of the categories is “Temporary Directional Signs Relating to a Qualifying Event,” loosely defined as signs directing the public to a meeting of a nonprofit group. §4.402(P). The Code imposes more stringent restrictions on these signs than it does on signs conveying other messages. We hold that these provisions are content-based regulations of speech that cannot survive strict scrutiny.

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<sup>1</sup>The Town’s Sign Code is available online at <http://www.gilbertaz.gov/departments/development-service/planning-development/land-development-code> (as visited June 16, 2015, and available in Clerk of Court’s case file).



## Opinion of the Court

## I

## A

The Sign Code prohibits the display of outdoor signs anywhere within the Town without a permit, but it then exempts 23 categories of signs from that requirement. These exemptions include everything from bazaar signs to flying banners. Three categories of exempt signs are particularly relevant here.

The first is “Ideological Sign[s].” This category includes any “sign communicating a message or ideas for noncommercial purposes that is not a Construction Sign, Directional Sign, Temporary Directional Sign Relating to a Qualifying Event, Political Sign, Garage Sale Sign, or a sign owned or required by a governmental agency.” Sign Code, Glossary of General Terms (Glossary), p. 23 (emphasis deleted). Of the three categories discussed here, the Code treats ideological signs most favorably, allowing them to be up to 20 square feet in area and to be placed in all “zoning districts” without time limits. §4.402(J).

The second category is “Political Sign[s].” This includes any “temporary sign designed to influence the outcome of an election called by a public body.” Glossary 23.<sup>2</sup> The Code treats these signs less favorably than ideological signs. The Code allows the placement of political signs up to 16 square feet on residential property and up to 32 square feet on nonresidential property, undeveloped municipal property, and “rights-of-way.” §4.402(I).<sup>3</sup> These signs may be displayed up to 60 days before a primary election and up to 15 days following a general election. *Ibid.*

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<sup>2</sup>A “Temporary Sign” is a “sign not permanently attached to the ground, a wall or a building, and not designed or intended for permanent display.” Glossary 25.

<sup>3</sup>The Code defines “Right-of-Way” as a “strip of publicly owned land occupied by or planned for a street, utilities, landscaping, sidewalks, trails, and similar facilities.” *Id.*, at 18.

## Opinion of the Court

The third category is “Temporary Directional Signs Relating to a Qualifying Event.” This includes any “Temporary Sign intended to direct pedestrians, motorists, and other passersby to a ‘qualifying event.’” Glossary 25 (emphasis deleted). A “qualifying event” is defined as any “assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization.” *Ibid.* The Code treats temporary directional signs even less favorably than political signs.<sup>4</sup> Temporary directional signs may be no larger than six square feet. §4.402(P). They may be placed on private property or on a public right-of-way, but no more than four signs may be placed on a single property at any time. *Ibid.* And, they may be displayed no more than 12 hours before the “qualifying event” and no more than 1 hour afterward. *Ibid.*

## B

Petitioners Good News Community Church (Church) and its pastor, Clyde Reed, wish to advertise the time and location of their Sunday church services. The Church is a small, cash-strapped entity that owns no building, so it holds its services at elementary schools or other locations in or near the Town. In order to inform the public about its services, which are held in a variety of different loca-

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<sup>4</sup>The Sign Code has been amended twice during the pendency of this case. When litigation began in 2007, the Code defined the signs at issue as “Religious Assembly Temporary Direction Signs.” App. 75. The Code entirely prohibited placement of those signs in the public right-of-way, and it forbade posting them in any location for more than two hours before the religious assembly or more than one hour afterward. *Id.*, at 75–76. In 2008, the Town redefined the category as “Temporary Directional Signs Related to a Qualifying Event,” and it expanded the time limit to 12 hours before and 1 hour after the “qualifying event.” *Ibid.* In 2011, the Town amended the Code to authorize placement of temporary directional signs in the public right-of-way. *Id.*, at 89.

## Opinion of the Court

tions, the Church began placing 15 to 20 temporary signs around the Town, frequently in the public right-of-way abutting the street. The signs typically displayed the Church's name, along with the time and location of the upcoming service. Church members would post the signs early in the day on Saturday and then remove them around midday on Sunday. The display of these signs requires little money and manpower, and thus has proved to be an economical and effective way for the Church to let the community know where its services are being held each week.

This practice caught the attention of the Town's Sign Code compliance manager, who twice cited the Church for violating the Code. The first citation noted that the Church exceeded the time limits for displaying its temporary directional signs. The second citation referred to the same problem, along with the Church's failure to include the date of the event on the signs. Town officials even confiscated one of the Church's signs, which Reed had to retrieve from the municipal offices.

Reed contacted the Sign Code Compliance Department in an attempt to reach an accommodation. His efforts proved unsuccessful. The Town's Code compliance manager informed the Church that there would be "no leniency under the Code" and promised to punish any future violations.

Shortly thereafter, petitioners filed a complaint in the United States District Court for the District of Arizona, arguing that the Sign Code abridged their freedom of speech in violation of the First and Fourteenth Amendments. The District Court denied the petitioners' motion for a preliminary injunction. The Court of Appeals for the Ninth Circuit affirmed, holding that the Sign Code's provision regulating temporary directional signs did not regulate speech on the basis of content. 587 F.3d 966, 979 (2009). It reasoned that, even though an enforcement

## Opinion of the Court

officer would have to read the sign to determine what provisions of the Sign Code applied to it, the “kind of cursory examination” that would be necessary for an officer to classify it as a temporary directional sign was “not akin to an officer synthesizing the expressive content of the sign.” *Id.*, at 978. It then remanded for the District Court to determine in the first instance whether the Sign Code’s distinctions among temporary directional signs, political signs, and ideological signs nevertheless constituted a content-based regulation of speech.

On remand, the District Court granted summary judgment in favor of the Town. The Court of Appeals again affirmed, holding that the Code’s sign categories were content neutral. The court concluded that “the distinctions between Temporary Directional Signs, Ideological Signs, and Political Signs . . . are based on objective factors relevant to Gilbert’s creation of the specific exemption from the permit requirement and do not otherwise consider the substance of the sign.” 707 F. 3d 1057, 1069 (CA9 2013). Relying on this Court’s decision in *Hill v. Colorado*, 530 U. S. 703 (2000), the Court of Appeals concluded that the Sign Code is content neutral. 707 F. 3d, at 1071–1072. As the court explained, “Gilbert did not adopt its regulation of speech because it disagreed with the message conveyed” and its “interests in regulat[ing] temporary signs are unrelated to the content of the sign.” *Ibid.* Accordingly, the court believed that the Code was “content-neutral as that term [has been] defined by the Supreme Court.” *Id.*, at 1071. In light of that determination, it applied a lower level of scrutiny to the Sign Code and concluded that the law did not violate the First Amendment. *Id.*, at 1073–1076.

We granted certiorari, 573 U. S. \_\_\_\_ (2014), and now reverse.

## Opinion of the Court

## II

## A

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws “abridging the freedom of speech.” U. S. Const., Amdt. 1. Under that Clause, a government, including a municipal government vested with state authority, “has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Dept. of Chicago v. Mosley*, 408 U. S. 92, 95 (1972). Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *R. A. V. v. St. Paul*, 505 U. S. 377, 395 (1992); *Simon & Schuster, Inc. v. Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 115, 118 (1991).

Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g.*, *Sorrell v. IMS Health, Inc.*, 564 U. S. \_\_\_, \_\_\_–\_\_\_ (2011) (slip op., at 8–9); *Carey v. Brown*, 447 U. S. 455, 462 (1980); *Mosley*, *supra*, at 95. This commonsense meaning of the phrase “content based” requires a court to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys. *Sorrell*, *supra*, at \_\_\_ (slip op., at 8). Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Our precedents have also recognized a separate and additional category of laws that, though facially content neutral, will be considered content-based regulations of speech: laws that cannot be “justified without reference to

## Opinion of the Court

the content of the regulated speech,” or that were adopted by the government “because of disagreement with the message [the speech] conveys,” *Ward v. Rock Against Racism*, 491 U. S. 781, 791 (1989). Those laws, like those that are content based on their face, must also satisfy strict scrutiny.

## B

The Town’s Sign Code is content based on its face. It defines “Temporary Directional Signs” on the basis of whether a sign conveys the message of directing the public to church or some other “qualifying event.” Glossary 25. It defines “Political Signs” on the basis of whether a sign’s message is “designed to influence the outcome of an election.” *Id.*, at 24. And it defines “Ideological Signs” on the basis of whether a sign “communicat[es] a message or ideas” that do not fit within the Code’s other categories. *Id.*, at 23. It then subjects each of these categories to different restrictions.

The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign. If a sign informs its reader of the time and place a book club will discuss John Locke’s *Two Treatises of Government*, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke’s followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke’s theory of government. More to the point, the Church’s signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas. On its face, the Sign Code is a content-based regulation of speech. We thus have no need to consider the government’s justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny.



## Opinion of the Court

## C

In reaching the contrary conclusion, the Court of Appeals offered several theories to explain why the Town's Sign Code should be deemed content neutral. None is persuasive.

## 1

The Court of Appeals first determined that the Sign Code was content neutral because the Town “did not adopt its regulation of speech [based on] disagree[ment] with the message conveyed,” and its justifications for regulating temporary directional signs were “unrelated to the content of the sign.” 707 F. 3d, at 1071–1072. In its brief to this Court, the United States similarly contends that a sign regulation is content neutral—even if it expressly draws distinctions based on the sign's communicative content—if those distinctions can be “justified without reference to the content of the regulated speech.” Brief for United States as *Amicus Curiae* 20, 24 (quoting *Ward, supra*, at 791; emphasis deleted).

But this analysis skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of “animus toward the ideas contained” in the regulated speech. *Cincinnati v. Discovery Network, Inc.*, 507 U. S. 410, 429 (1993). We have thus made clear that “[i]llicit legislative intent is not the *sine qua non* of a violation of the First Amendment,” and a party opposing the government “need adduce ‘no evidence of an improper censorial motive.’” *Simon & Schuster, supra*, at 117. Although “a content-based purpose may be sufficient in certain circumstances to show that a regulation is content based, it is not necessary.” *Turner Broadcasting System, Inc. v. FCC*, 512 U. S. 622, 642 (1994). In other words, an

## Opinion of the Court

innocuous justification cannot transform a facially content-based law into one that is content neutral.

That is why we have repeatedly considered whether a law is content neutral on its face *before* turning to the law’s justification or purpose. See, e.g., *Sorrell, supra*, at \_\_\_\_–\_\_\_\_ (slip op., at 8–9) (statute was content based “on its face,” and there was also evidence of an impermissible legislative motive); *United States v. Eichman*, 496 U. S. 310, 315 (1990) (“Although the [statute] contains no explicit content-based limitation on the scope of prohibited conduct, it is nevertheless clear that the Government’s asserted *interest* is related to the suppression of free expression” (internal quotation marks omitted)); *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U. S. 789, 804 (1984) (“The text of the ordinance is neutral,” and “there is not even a hint of bias or censorship in the City’s enactment or enforcement of this ordinance”); *Clark v. Community for Creative Non-Violence*, 468 U. S. 288, 293 (1984) (requiring that a facially content-neutral ban on camping must be “justified without reference to the content of the regulated speech”); *United States v. O’Brien*, 391 U. S. 367, 375, 377 (1968) (noting that the statute “on its face deals with conduct having no connection with speech,” but examining whether the “the governmental interest is unrelated to the suppression of free expression”). Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny.

The Court of Appeals and the United States misunderstand our decision in *Ward* as suggesting that a government’s purpose is relevant even when a law is content based on its face. That is incorrect. *Ward* had nothing to say about facially content-based restrictions because it involved a facially content-*neutral* ban on the use, in a

## Opinion of the Court

city-owned music venue, of sound amplification systems not provided by the city. 491 U. S., at 787, and n. 2. In that context, we looked to governmental motive, including whether the government had regulated speech “because of disagreement” with its message, and whether the regulation was “justified without reference to the content of the speech.” *Id.*, at 791. But *Ward’s* framework “applies only if a statute is content neutral.” *Hill*, 530 U. S., at 766 (KENNEDY, J., dissenting). Its rules thus operate “to protect speech,” not “to restrict it.” *Id.*, at 765.

The First Amendment requires no less. Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech. That is why the First Amendment expressly targets the operation of the laws—*i.e.*, the “abridg[ement] of speech”—rather than merely the motives of those who enacted them. U. S. Const., Amdt. 1. “The vice of content-based legislation . . . is not that it is always used for invidious, thought-control purposes, but that it lends itself to use for those purposes.” *Hill, supra*, at 743 (SCALIA, J., dissenting).

For instance, in *NAACP v. Button*, 371 U. S. 415 (1963), the Court encountered a State’s attempt to use a statute prohibiting “improper solicitation” by attorneys to outlaw litigation-related speech of the National Association for the Advancement of Colored People. *Id.*, at 438. Although *Button* predated our more recent formulations of strict scrutiny, the Court rightly rejected the State’s claim that its interest in the “regulation of professional conduct” rendered the statute consistent with the First Amendment, observing that “it is no answer . . . to say . . . that the purpose of these regulations was merely to insure high professional standards and not to curtail free expression.” *Id.*, at 438–439. Likewise, one could easily imagine a Sign Code compliance manager who disliked the Church’s

## Opinion of the Court

substantive teachings deploying the Sign Code to make it more difficult for the Church to inform the public of the location of its services. Accordingly, we have repeatedly “rejected the argument that ‘discriminatory . . . treatment is suspect under the First Amendment only when the legislature intends to suppress certain ideas.’” *Discovery Network*, 507 U. S., at 429. We do so again today.

## 2

The Court of Appeals next reasoned that the Sign Code was content neutral because it “does not mention any idea or viewpoint, let alone single one out for differential treatment.” 587 F. 3d, at 977. It reasoned that, for the purpose of the Code provisions, “[i]t makes no difference which candidate is supported, who sponsors the event, or what ideological perspective is asserted.” 707 F. 3d, at 1069.

The Town seizes on this reasoning, insisting that “content based” is a term of art that “should be applied flexibly” with the goal of protecting “viewpoints and ideas from government censorship or favoritism.” Brief for Respondents 22. In the Town’s view, a sign regulation that “does not censor or favor particular viewpoints or ideas” cannot be content based. *Ibid.* The Sign Code allegedly passes this test because its treatment of temporary directional signs does not raise any concerns that the government is “endorsing or suppressing ‘ideas or viewpoints,’” *id.*, at 27, and the provisions for political signs and ideological signs “are neutral as to particular ideas or viewpoints” within those categories. *Id.*, at 37.

This analysis conflates two distinct but related limitations that the First Amendment places on government regulation of speech. Government discrimination among viewpoints—or the regulation of speech based on “the specific motivating ideology or the opinion or perspective of the speaker”—is a “more blatant” and “egregious form of

## Opinion of the Court

content discrimination.” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). But it is well established that “[t]he First Amendment’s hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.” *Consolidated Edison Co. of N. Y. v. Public Serv. Comm’n of N. Y.*, 447 U.S. 530, 537 (1980).

Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. *Ibid.* For example, a law banning the use of sound trucks for political speech—and only political speech—would be a content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed. See *Discovery Network, supra*, at 428. The Town’s Sign Code likewise singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter. Ideological messages are given more favorable treatment than messages concerning a political candidate, which are themselves given more favorable treatment than messages announcing an assembly of like-minded individuals. That is a paradigmatic example of content-based discrimination.

## 3

Finally, the Court of Appeals characterized the Sign Code’s distinctions as turning on “the content-neutral elements of who is speaking through the sign and whether and when an event is occurring.” 707 F.3d, at 1069. That analysis is mistaken on both factual and legal grounds.

To start, the Sign Code’s distinctions are not speaker based. The restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. If a local business, for example, sought to put up

## Opinion of the Court

signs advertising the Church's meetings, those signs would be subject to the same limitations as such signs placed by the Church. And if Reed had decided to display signs in support of a particular candidate, he could have made those signs far larger—and kept them up for far longer—than signs inviting people to attend his church services. If the Code's distinctions were truly speaker based, both types of signs would receive the same treatment.

In any case, the fact that a distinction is speaker based does not, as the Court of Appeals seemed to believe, automatically render the distinction content neutral. Because “[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content,” *Citizens United v. Federal Election Comm’n*, 558 U. S. 310, 340 (2010), we have insisted that “laws favoring some speakers over others demand strict scrutiny when the legislature’s speaker preference reflects a content preference,” *Turner*, 512 U. S., at 658. Thus, a law limiting the content of newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based. Likewise, a content-based law that restricted the political speech of all corporations would not become content neutral just because it singled out corporations as a class of speakers. See *Citizens United*, *supra*, at 340–341. Characterizing a distinction as speaker based is only the beginning—not the end—of the inquiry.

Nor do the Sign Code's distinctions hinge on “whether and when an event is occurring.” The Code does not permit citizens to post signs on any topic whatsoever within a set period leading up to an election, for example. Instead, come election time, it requires Town officials to determine whether a sign is “designed to influence the outcome of an election” (and thus “political”) or merely “communicating a message or ideas for noncommercial purposes” (and thus “ideological”). Glossary 24. That obvious content-based

## Opinion of the Court

inquiry does not evade strict scrutiny review simply because an event (*i.e.*, an election) is involved.

And, just as with speaker-based laws, the fact that a distinction is event based does not render it content neutral. The Court of Appeals cited no precedent from this Court supporting its novel theory of an exception from the content-neutrality requirement for event-based laws. As we have explained, a speech regulation is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed. *Supra*, at 6. A regulation that targets a sign because it conveys an idea about a specific event is no less content based than a regulation that targets a sign because it conveys some other idea. Here, the Code singles out signs bearing a particular message: the time and location of a specific event. This type of ordinance may seem like a perfectly rational way to regulate signs, but a clear and firm rule governing content neutrality is an essential means of protecting the freedom of speech, even if laws that might seem “entirely reasonable” will sometimes be “struck down because of their content-based nature.” *City of Ladue v. Gilleo*, 512 U. S. 43, 60 (1994) (O’Connor, J., concurring).

## III

Because the Town’s Sign Code imposes content-based restrictions on speech, those provisions can stand only if they survive strict scrutiny, “‘which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest,’” *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 564 U. S. \_\_\_, \_\_\_ (2011) (slip op., at 8) (quoting *Citizens United*, 558 U. S., at 340). Thus, it is the Town’s burden to demonstrate that the Code’s differentiation between temporary directional signs and other types of signs, such as political signs and ideological signs, furthers a compelling governmental interest and is narrowly tai-



## Opinion of the Court

lored to that end. See *ibid.*

The Town cannot do so. It has offered only two governmental interests in support of the distinctions the Sign Code draws: preserving the Town’s aesthetic appeal and traffic safety. Assuming for the sake of argument that those are compelling governmental interests, the Code’s distinctions fail as hopelessly underinclusive.

Starting with the preservation of aesthetics, temporary directional signs are “no greater an eyesore,” *Discovery Network*, 507 U. S., at 425, than ideological or political ones. Yet the Code allows unlimited proliferation of larger ideological signs while strictly limiting the number, size, and duration of smaller directional ones. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town while at the same time allowing unlimited numbers of other types of signs that create the same problem.

The Town similarly has not shown that limiting temporary directional signs is necessary to eliminate threats to traffic safety, but that limiting other types of signs is not. The Town has offered no reason to believe that directional signs pose a greater threat to safety than do ideological or political signs. If anything, a sharply worded ideological sign seems more likely to distract a driver than a sign directing the public to a nearby church meeting.

In light of this underinclusiveness, the Town has not met its burden to prove that its Sign Code is narrowly tailored to further a compelling government interest. Because a “law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited,” *Republican Party of Minn. v. White*, 536 U. S. 765, 780 (2002), the Sign Code fails strict scrutiny.

## Opinion of the Court

## IV

Our decision today will not prevent governments from enacting effective sign laws. The Town asserts that an “absolutist” content-neutrality rule would render “virtually all distinctions in sign laws . . . subject to strict scrutiny,” Brief for Respondents 34–35, but that is not the case. Not “all distinctions” are subject to strict scrutiny, only *content-based* ones are. Laws that are *content neutral* are instead subject to lesser scrutiny. See *Clark*, 468 U. S., at 295.

The Town has ample content-neutral options available to resolve problems with safety and aesthetics. For example, its current Code regulates many aspects of signs that have nothing to do with a sign’s message: size, building materials, lighting, moving parts, and portability. See, e.g., §4.402(R). And on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner. See *Taxpayers for Vincent*, 466 U. S., at 817 (upholding content-neutral ban against posting signs on public property). Indeed, some lower courts have long held that similar content-based sign laws receive strict scrutiny, but there is no evidence that towns in those jurisdictions have suffered catastrophic effects. See, e.g., *Solantic, LLC v. Neptune Beach*, 410 F.3d 1250, 1264–1269 (CA11 2005) (sign categories similar to the town of Gilbert’s were content based and subject to strict scrutiny); *Matthews v. Needham*, 764 F.2d 58, 59–60 (CA1 1985) (law banning political signs but not commercial signs was content based and subject to strict scrutiny).

We acknowledge that a city might reasonably view the general regulation of signs as necessary because signs “take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation.” *City of Ladue*, 512 U. S., at 48. At the same time, the presence of certain

## Opinion of the Court

signs may be essential, both for vehicles and pedestrians, to guide traffic or to identify hazards and ensure safety. A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses—well might survive strict scrutiny. The signs at issue in this case, including political and ideological signs and signs for events, are far removed from those purposes. As discussed above, they are facially content based and are neither justified by traditional safety concerns nor narrowly tailored.

\* \* \*

We reverse the judgment of the Court of Appeals and remand the case for proceedings consistent with this opinion.

*It is so ordered.*

ALITO, J., concurring

**SUPREME COURT OF THE UNITED STATES**

No. 13–502

CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF  
GILBERT, ARIZONA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE ALITO, with whom JUSTICE KENNEDY and  
JUSTICE SOTOMAYOR join, concurring.

I join the opinion of the Court but add a few words of  
further explanation.

As the Court holds, what we have termed “content-  
based” laws must satisfy strict scrutiny. Content-based  
laws merit this protection because they present, albeit  
sometimes in a subtler form, the same dangers as laws  
that regulate speech based on viewpoint. Limiting speech  
based on its “topic” or “subject” favors those who do not  
want to disturb the status quo. Such regulations may  
interfere with democratic self-government and the search  
for truth. See *Consolidated Edison Co. of N. Y. v. Public  
Serv. Comm’n of N. Y.*, 447 U. S. 530, 537 (1980).

As the Court shows, the regulations at issue in this case  
are replete with content-based distinctions, and as a result  
they must satisfy strict scrutiny. This does not mean,  
however, that municipalities are powerless to enact and  
enforce reasonable sign regulations. I will not attempt to  
provide anything like a comprehensive list, but here are  
some rules that would not be content based:

Rules regulating the size of signs. These rules may  
distinguish among signs based on any content-neutral  
criteria, including any relevant criteria listed below.

Rules regulating the locations in which signs may be

ALITO, J., concurring

placed. These rules may distinguish between free-standing signs and those attached to buildings.

Rules distinguishing between lighted and unlighted signs.

Rules distinguishing between signs with fixed messages and electronic signs with messages that change.

Rules that distinguish between the placement of signs on private and public property.

Rules distinguishing between the placement of signs on commercial and residential property.

Rules distinguishing between on-premises and off-premises signs.

Rules restricting the total number of signs allowed per mile of roadway.

Rules imposing time restrictions on signs advertising a one-time event. Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed.\*

In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. See *Pleasant Grove City v. Summum*, 555 U. S. 460, 467–469 (2009). They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.

Properly understood, today’s decision will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate esthetic objectives.

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\*Of course, content-neutral restrictions on speech are not necessarily consistent with the First Amendment. Time, place, and manner restrictions “must be narrowly tailored to serve the government’s legitimate, content-neutral interests.” *Ward v. Rock Against Racism*, 491 U. S. 781, 798 (1989). But they need not meet the high standard imposed on viewpoint- and content-based restrictions.

BREYER, J., concurring in judgment

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APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE BREYER, concurring in the judgment.

I join JUSTICE KAGAN’s separate opinion. Like JUSTICE KAGAN I believe that categories alone cannot satisfactorily resolve the legal problem before us. The First Amendment requires greater judicial sensitivity both to the Amendment’s expressive objectives and to the public’s legitimate need for regulation than a simple recitation of categories, such as “content discrimination” and “strict scrutiny,” would permit. In my view, the category “content discrimination” is better considered in many contexts, including here, as a rule of thumb, rather than as an automatic “strict scrutiny” trigger, leading to almost certain legal condemnation.

To use content discrimination to trigger strict scrutiny sometimes makes perfect sense. There are cases in which the Court has found content discrimination an unconstitutional method for suppressing a viewpoint. *E.g.*, *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 828–829 (1995); see also *Boos v. Barry*, 485 U. S. 312, 318–319 (1988) (plurality opinion) (applying strict scrutiny where the line between subject matter and viewpoint was not obvious). And there are cases where the Court has found content discrimination to reveal that rules governing a traditional public forum are, in fact, not a neutral way of fairly managing the forum in the interest of all

BREYER, J., concurring in judgment

speakers. *Police Dept. of Chicago v. Mosley*, 408 U. S. 92, 96 (1972) (“Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say”). In these types of cases, strict scrutiny is often appropriate, and content discrimination has thus served a useful purpose.

But content discrimination, while helping courts to identify unconstitutional suppression of expression, cannot and should not *always* trigger strict scrutiny. To say that it is not an automatic “strict scrutiny” trigger is not to argue against that concept’s use. I readily concede, for example, that content discrimination, as a conceptual tool, can sometimes reveal weaknesses in the government’s rationale for a rule that limits speech. If, for example, a city looks to litter prevention as the rationale for a prohibition against placing newsracks dispensing free advertisements on public property, why does it exempt other newsracks causing similar litter? Cf. *Cincinnati v. Discovery Network, Inc.*, 507 U. S. 410 (1993). I also concede that, whenever government disfavors one kind of speech, it places that speech at a disadvantage, potentially interfering with the free marketplace of ideas and with an individual’s ability to express thoughts and ideas that can help that individual determine the kind of society in which he wishes to live, help shape that society, and help define his place within it.

Nonetheless, in these latter instances to use the presence of content discrimination automatically to trigger strict scrutiny and thereby call into play a strong presumption against constitutionality goes too far. That is because virtually all government activities involve speech, many of which involve the regulation of speech. Regulatory programs almost always require content discrimination. And to hold that such content discrimination triggers strict scrutiny is to write a recipe for judicial management



BREYER, J., concurring in judgment

of ordinary government regulatory activity.

Consider a few examples of speech regulated by government that inevitably involve content discrimination, but where a strong presumption against constitutionality has no place. Consider governmental regulation of securities, *e.g.*, 15 U. S. C. §78l (requirements for content that must be included in a registration statement); of energy conservation labeling-practices, *e.g.*, 42 U. S. C. §6294 (requirements for content that must be included on labels of certain consumer electronics); of prescription drugs, *e.g.*, 21 U. S. C. §353(b)(4)(A) (requiring a prescription drug label to bear the symbol “Rx only”); of doctor-patient confidentiality, *e.g.*, 38 U. S. C. §7332 (requiring confidentiality of certain medical records, but allowing a physician to disclose that the patient has HIV to the patient’s spouse or sexual partner); of income tax statements, *e.g.*, 26 U. S. C. §6039F (requiring taxpayers to furnish information about foreign gifts received if the aggregate amount exceeds \$10,000); of commercial airplane briefings, *e.g.*, 14 CFR §136.7 (2015) (requiring pilots to ensure that each passenger has been briefed on flight procedures, such as seatbelt fastening); of signs at petting zoos, *e.g.*, N. Y. Gen. Bus. Law Ann. §399–ff(3) (West Cum. Supp. 2015) (requiring petting zoos to post a sign at every exit “‘strongly recommend[ing] that persons wash their hands upon exiting the petting zoo area’”); and so on.

Nor can the majority avoid the application of strict scrutiny to all sorts of justifiable governmental regulations by relying on this Court’s many subcategories and exceptions to the rule. The Court has said, for example, that we should apply less strict standards to “commercial speech.” *Central Hudson Gas & Elec. Corp. v. Public Service Comm’n of N. Y.*, 447 U. S. 557, 562–563 (1980). But I have great concern that many justifiable instances of “content-based” regulation are noncommercial. And, worse than that, the Court has applied the heightened

BREYER, J., concurring in judgment

“strict scrutiny” standard even in cases where the less stringent “commercial speech” standard was appropriate. See *Sorrell v. IMS Health Inc.*, 564 U. S. \_\_\_, \_\_\_ (2011) (BREYER, J., dissenting) (slip op., at \_\_\_). The Court has also said that “government speech” escapes First Amendment strictures. See *Rust v. Sullivan*, 500 U. S. 173, 193–194 (1991). But regulated speech is typically private speech, not government speech. Further, the Court has said that, “[w]hen the basis for the content discrimination consists entirely of the very reason the entire class of speech at issue is proscribable, no significant danger of idea or viewpoint discrimination exists.” *R. A. V. v. St. Paul*, 505 U. S. 377, 388 (1992). But this exception accounts for only a few of the instances in which content discrimination is readily justifiable.

I recognize that the Court could escape the problem by watering down the force of the presumption against constitutionality that “strict scrutiny” normally carries with it. But, in my view, doing so will weaken the First Amendment’s protection in instances where “strict scrutiny” should apply in full force.

The better approach is to generally treat content discrimination as a strong reason weighing against the constitutionality of a rule where a traditional public forum, or where viewpoint discrimination, is threatened, but elsewhere treat it as a rule of thumb, finding it a helpful, but not determinative legal tool, in an appropriate case, to determine the strength of a justification. I would use content discrimination as a supplement to a more basic analysis, which, tracking most of our First Amendment cases, asks whether the regulation at issue works harm to First Amendment interests that is disproportionate in light of the relevant regulatory objectives. Answering this question requires examining the seriousness of the harm to speech, the importance of the countervailing objectives, the extent to which the law will achieve those objectives,

BREYER, J., concurring in judgment

and whether there are other, less restrictive ways of doing so. See, e.g., *United States v. Alvarez*, 567 U. S. \_\_\_, \_\_\_–\_\_\_ (2012) (BREYER, J., concurring in judgment) (slip op., at 1–3); *Nixon v. Shrink Missouri Government PAC*, 528 U. S. 377, 400–403 (2000) (BREYER, J., concurring). Admittedly, this approach does not have the simplicity of a mechanical use of categories. But it does permit the government to regulate speech in numerous instances where the voters have authorized the government to regulate and where courts should hesitate to substitute judicial judgment for that of administrators.

Here, regulation of signage along the roadside, for purposes of safety and beautification is at issue. There is no traditional public forum nor do I find any general effort to censor a particular viewpoint. Consequently, the specific regulation at issue does not warrant “strict scrutiny.” Nonetheless, for the reasons that JUSTICE KAGAN sets forth, I believe that the Town of Gilbert’s regulatory rules violate the First Amendment. I consequently concur in the Court’s judgment only.

KAGAN, J., concurring in judgment

**SUPREME COURT OF THE UNITED STATES**

No. 13–502

CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF  
GILBERT, ARIZONA, ET AL.ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE KAGAN, with whom JUSTICE GINSBURG and JUSTICE BREYER join, concurring in the judgment.

Countless cities and towns across America have adopted ordinances regulating the posting of signs, while exempting certain categories of signs based on their subject matter. For example, some municipalities generally prohibit illuminated signs in residential neighborhoods, but lift that ban for signs that identify the address of a home or the name of its owner or occupant. See, *e.g.*, City of Truth or Consequences, N. M., Code of Ordinances, ch. 16, Art. XIII, §§11–13–2.3, 11–13–2.9(H)(4) (2014). In other municipalities, safety signs such as “Blind Pedestrian Crossing” and “Hidden Driveway” can be posted without a permit, even as other permanent signs require one. See, *e.g.*, Code of Athens-Clarke County, Ga., Pt. III, §7–4–7(1) (1993). Elsewhere, historic site markers—for example, “George Washington Slept Here”—are also exempt from general regulations. See, *e.g.*, Dover, Del., Code of Ordinances, Pt. II, App. B, Art. 5, §4.5(F) (2012). And similarly, the federal Highway Beautification Act limits signs along interstate highways unless, for instance, they direct travelers to “scenic and historical attractions” or advertise free coffee. See 23 U. S. C. §§131(b), (c)(1), (c)(5).

Given the Court’s analysis, many sign ordinances of that kind are now in jeopardy. See *ante*, at 14 (acknowledging

KAGAN, J., concurring in judgment

that “entirely reasonable” sign laws “will sometimes be struck down” under its approach (internal quotation marks omitted)). Says the majority: When laws “single[] out specific subject matter,” they are “facially content based”; and when they are facially content based, they are automatically subject to strict scrutiny. *Ante*, at 12, 16–17. And although the majority holds out hope that some sign laws with subject-matter exemptions “might survive” that stringent review, *ante*, at 17, the likelihood is that most will be struck down. After all, it is the “rare case[] in which a speech restriction withstands strict scrutiny.” *Williams-Yulee v. Florida Bar*, 575 U. S. \_\_\_, \_\_\_ (2015) (slip op., at 9). To clear that high bar, the government must show that a content-based distinction “is necessary to serve a compelling state interest and is narrowly drawn to achieve that end.” *Arkansas Writers’ Project, Inc. v. Ragland*, 481 U. S. 221, 231 (1987). So on the majority’s view, courts would have to determine that a town has a compelling interest in informing passersby where George Washington slept. And likewise, courts would have to find that a town has no other way to prevent hidden-driveway mishaps than by specially treating hidden-driveway signs. (Well-placed speed bumps? Lower speed limits? Or how about just a ban on hidden driveways?) The consequence—unless courts water down strict scrutiny to something unrecognizable—is that our communities will find themselves in an unenviable bind: They will have to either repeal the exemptions that allow for helpful signs on streets and sidewalks, or else lift their sign restrictions altogether and resign themselves to the resulting clutter.\*

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\*Even in trying (commendably) to limit today’s decision, JUSTICE ALITO’s concurrence highlights its far-reaching effects. According to JUSTICE ALITO, the majority does not subject to strict scrutiny regulations of “signs advertising a one-time event.” *Ante*, at 2 (ALITO, J., concurring). But of course it does. On the majority’s view, a law with an exception for such signs “singles out specific subject matter for

KAGAN, J., concurring in judgment

Although the majority insists that applying strict scrutiny to all such ordinances is “essential” to protecting First Amendment freedoms, *ante*, at 14, I find it challenging to understand why that is so. This Court’s decisions articulate two important and related reasons for subjecting content-based speech regulations to the most exacting standard of review. The first is “to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.” *McCullen v. Coakley*, 573 U. S. \_\_\_, \_\_\_–\_\_\_ (2014) (slip op., at 8–9) (internal quotation marks omitted). The second is to ensure that the government has not regulated speech “based on hostility—or favoritism—towards the underlying message expressed.” *R. A. V. v. St. Paul*, 505 U. S. 377, 386 (1992). Yet the subject-matter exemptions included in many sign ordinances do not implicate those concerns. Allowing residents, say, to install a light bulb over “name and address” signs but no others does not distort the marketplace of ideas. Nor does that different treatment give rise to an inference of impermissible government motive.

We apply strict scrutiny to facially content-based regulations of speech, in keeping with the rationales just described, when there is any “realistic possibility that official suppression of ideas is afoot.” *Davenport v. Washington Ed. Assn.*, 551 U. S. 177, 189 (2007) (quoting *R. A. V.*, 505 U. S., at 390). That is always the case when the regulation facially differentiates on the basis of viewpoint. See *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829 (1995). It is also the case (except in non-public or limited public forums) when a law restricts “discussion of an entire topic” in public debate. *Consolidated*

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differential treatment” and “defin[es] regulated speech by particular subject matter.” *Ante*, at 6, 12 (majority opinion). Indeed, the precise reason the majority applies strict scrutiny here is that “the Code singles out signs bearing a particular message: the time and location of a specific event.” *Ante*, at 14.

KAGAN, J., concurring in judgment

*Edison Co. of N. Y. v. Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537, 539–540 (1980) (invalidating a limitation on speech about nuclear power). We have stated that “[i]f the marketplace of ideas is to remain free and open, governments must not be allowed to choose ‘which issues are worth discussing or debating.’” *Id.*, at 537–538 (quoting *Police Dept. of Chicago v. Mosley*, 408 U. S. 92, 96 (1972)). And we have recognized that such subject-matter restrictions, even though viewpoint-neutral on their face, may “suggest[] an attempt to give one side of a debatable public question an advantage in expressing its views to the people.” *First Nat. Bank of Boston v. Bellotti*, 435 U. S. 765, 785 (1978); accord, *ante*, at 1 (ALITO, J., concurring) (limiting all speech on one topic “favors those who do not want to disturb the status quo”). Subject-matter regulation, in other words, may have the intent or effect of favoring some ideas over others. When that is realistically possible—when the restriction “raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace”—we insist that the law pass the most demanding constitutional test. *R. A. V.*, 505 U. S., at 387 (quoting *Simon & Schuster, Inc. v. Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 116 (1991)).

But when that is not realistically possible, we may do well to relax our guard so that “entirely reasonable” laws imperiled by strict scrutiny can survive. *Ante*, at 14. This point is by no means new. Our concern with content-based regulation arises from the fear that the government will skew the public’s debate of ideas—so when “that risk is inconsequential, . . . strict scrutiny is unwarranted.” *Davenport*, 551 U. S., at 188; see *R. A. V.*, 505 U. S., at 388 (approving certain content-based distinctions when there is “no significant danger of idea or viewpoint discrimination”). To do its intended work, of course, the category of content-based regulation triggering strict scrutiny must



KAGAN, J., concurring in judgment

sweep more broadly than the actual harm; that category exists to create a buffer zone guaranteeing that the government cannot favor or disfavor certain viewpoints. But that buffer zone need not extend forever. We can administer our content-regulation doctrine with a dose of common sense, so as to leave standing laws that in no way implicate its intended function.

And indeed we have done just that: Our cases have been far less rigid than the majority admits in applying strict scrutiny to facially content-based laws—including in cases just like this one. See *Davenport*, 551 U. S., at 188 (noting that “we have identified numerous situations in which [the] risk” attached to content-based laws is “attenuated”). In *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U. S. 789 (1984), the Court declined to apply strict scrutiny to a municipal ordinance that exempted address numbers and markers commemorating “historical, cultural, or artistic event[s]” from a generally applicable limit on sidewalk signs. *Id.*, at 792, n. 1 (listing exemptions); see *id.*, at 804–810 (upholding ordinance under intermediate scrutiny). After all, we explained, the law’s enactment and enforcement revealed “not even a hint of bias or censorship.” *Id.*, at 804; see also *Renton v. Playtime Theatres, Inc.*, 475 U. S. 41, 48 (1986) (applying intermediate scrutiny to a zoning law that facially distinguished among movie theaters based on content because it was “designed to prevent crime, protect the city’s retail trade, [and] maintain property values . . . , not to suppress the expression of unpopular views”). And another decision involving a similar law provides an alternative model. In *City of Ladue v. Gilleo*, 512 U. S. 43 (1994), the Court assumed *arguendo* that a sign ordinance’s exceptions for address signs, safety signs, and for-sale signs in residential areas did not trigger strict scrutiny. See *id.*, at 46–47, and n. 6 (listing exemptions); *id.*, at 53 (noting this assumption). We did not need to, and so did not, decide the

KAGAN, J., concurring in judgment

level-of-scrutiny question because the law’s breadth made it unconstitutional under any standard.

The majority could easily have taken *Ladue*’s tack here. The Town of Gilbert’s defense of its sign ordinance—most notably, the law’s distinctions between directional signs and others—does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test. See *ante*, at 14–15 (discussing those distinctions). The Town, for example, provides no reason at all for prohibiting more than four directional signs on a property while placing no limits on the number of other types of signs. See Gilbert, Ariz., Land Development Code, ch. I, §§4.402(J), (P)(2) (2014). Similarly, the Town offers no coherent justification for restricting the size of directional signs to 6 square feet while allowing other signs to reach 20 square feet. See §§4.402(J), (P)(1). The best the Town could come up with at oral argument was that directional signs “need to be smaller because they need to guide travelers along a route.” Tr. of Oral Arg. 40. Why exactly a smaller sign better helps travelers get to where they are going is left a mystery. The absence of any sensible basis for these and other distinctions dooms the Town’s ordinance under even the intermediate scrutiny that the Court typically applies to “time, place, or manner” speech regulations. Accordingly, there is no need to decide in this case whether strict scrutiny applies to every sign ordinance in every town across this country containing a subject-matter exemption.

I suspect this Court and others will regret the majority’s insistence today on answering that question in the affirmative. As the years go by, courts will discover that thousands of towns have such ordinances, many of them “entirely reasonable.” *Ante*, at 14. And as the challenges to them mount, courts will have to invalidate one after the other. (This Court may soon find itself a veritable Supreme Board of Sign Review.) And courts will strike down those democratically enacted local laws even though no

KAGAN, J., concurring in judgment

one—certainly not the majority—has ever explained why the vindication of First Amendment values requires that result. Because I see no reason why such an easy case calls for us to cast a constitutional pall on reasonable regulations quite unlike the law before us, I concur only in the judgment.



## PHILADELPHIA POLICE DEPARTMENT

MEMORANDUM (18-02)

(06-08-18)

### SUBJECT: DEFIANT TRESPASS ON PRIVATE BUSINESS PROPERTY OPEN TO THE PUBLIC

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#### 1. PURPOSE

- A. The crime of Defiant Trespass is driven by the owner or other authorized persons with control of the property. In matters involving private property not open to the general public, the Crimes Code provides sufficient guidance for officers. However, in those cases involving private business properties open to the public, the motives or reasons for requesting police actions may not be so obvious.
  - B. While business owners may exclude persons from their establishments, they cannot misuse the authority of police officers in the process. Such misuse may lead to a technically lawful arrest, but can create the appearance of improprieties on behalf of the officers and the Department.
  - C. Therefore, the purpose of this policy is to: (1) reiterate the specifics of the state law regarding Defiant Trespassers; (2) clearly identify the requirements of the Department to make a misdemeanor level Defiant Trespass arrest on private business property open to the public; and (3) provide officers additional guidance on how to avoid misuse of police authority by business owners or other authorized persons when dealing with complaints occurring in private businesses open to the public.
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#### 2. POLICY

- A. Philadelphia's Fair Practices Ordinance protects individuals against unlawful discrimination: "It shall be an unlawful public accommodations practice to deny or interfere with the public accommodations opportunities of an individual or otherwise discriminate based on his or her race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, disability, marital status, familial status, or domestic or sexual violence victim status."
- B. The core values of the Philadelphia Police Department are Honor, Integrity and Service. As such, a cornerstone of the Department's mission is to "*Enforce the laws while safeguarding the constitutional rights of all people.*" Accordingly, the Philadelphia Police Department remains committed to enforcing all laws in a fair, equitable and unbiased manner. Equally important, the Department will take the necessary precautions to avoid creating the appearance of any improprieties that would undermine this mission when taking any enforcement actions.

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### 3. STATE LAW

A. A “Defiant Trespasser” is defined in the Pennsylvania Crimes Code section 3503(b) as follows:

(b) Defiant trespasser -

- (1) A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:
  - (i) actual communication to the actor;
  - (ii) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders;
  - (iii) fencing or other enclosure manifestly designed to exclude intruders;
  - (iv) notices posted in a manner prescribed by law or reasonably likely to come to the person's attention at each entrance of school grounds that visitors are prohibited without authorization from a designated school, center or program official
  - (v) an actual communication to the actor to leave school grounds as communicated by a school, center or program official, employee or agent or a law enforcement officer.
- (2) Except as provided in paragraph (1)(v), **an offense under this subsection constitutes a misdemeanor of the third degree if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person.** An offense under paragraph (1)(v) constitutes a misdemeanor of the first degree. **Otherwise it is a summary offense.**

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### 4. INITIAL RESPONSES TO AVOID MISUSE OF POLICE AND THE APPEARANCE OF IMPROPRIETY

- A. Officers must remember that any arrests for Defiant Trespass on private business property open to the public is complaint driven by the business owners or other authorized persons. Therefore, to avoid misuse of police authority by business owners and the appearance of any impropriety by the officers, prior to arresting and processing any misdemeanor arrest for defiant trespass on business property open to the public, officers shall:
1. Attempt to deescalate and mediate the disturbance between the owner and the offender;

2. If not Crisis Intervention Team (CIT) trained, request a CIT trained officer; and
  3. Request a supervisor to respond to the location.
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## 5. REQUIREMENTS FOR A WARRANTLESS, MISDEMEANOR ARREST ON BUSINESS PROPERTY OPEN TO THE PUBLIC AND ADDITIONAL PROCEDURES

- A. If these efforts are unsuccessful, to arrest an individual for a misdemeanor of the third degree (M3) Defiant Trespass, five (5) conditions must be present:
  1. The offender must know and understand that he/she is not allowed to enter the property or remain on the property,
  2. Notice must have been provided to the individual [*See section, (1)(i) through (v)*],
  3. The individual must intentionally defy an order to leave personally communicated to him/her **by the owner of the property or other authorized person**,
  4. The refusal to leave, must be committed in the presence of the officer, and
  5. The owner or other authorized person must be a complainant to establish that an actual order to leave the property was communicated and denied. In this context, Police Officers are NOT “other authorized persons.” This term is used to define other persons with authority or control over the property. **The owner/authorized person must sign the 75-48 confirming that they wish to prosecute the individual.**

**NOTE:** All arrests shall be processed at the Divisional Detective Division.

### B. Instruction for Officers:

If the facts do not support that the owner or other authorized person personally communicated an order to leave the property and the order was denied OR the owner or other authorized person refuses to be a complainant on the trespass violation, **the offender will not be arrested for a misdemeanor Defiant Trespass or cited for a summary level Trespass violation.**

**NOTE:** In these situations, officers shall retain full discretion to arrest or cite for any other crimes or offenses committed in their presence as needed to maintain public safety.

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## **6. PATROL SUPERVISOR RESPONSIBILITIES**

- A. Regardless of whether a misdemeanor arrest is appropriate under the Defiant Trespass law and the business owner or other authorized person is willing to prosecute, the responding supervisor shall evaluate all available facts and circumstances and have the authority and discretion to decline the arrest if such facts and circumstances provide a reasonable likelihood that the owner or other authorized person is attempting to misuse the enforcement powers of the police.
  - 1. If the supervisor declines the arrest, the supervisor will promptly notify the owner or other authorized person of this decision and properly advise how to and where to file a private criminal complaint.
  - 2. Despite the decision not to arrest for the Defiant trespass violation, the supervisor and officers on scene shall retain full discretion to arrest or cite for any other crimes or offenses committed in their presence, as needed, to maintain public safety.

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Richard J. Ross  
Police Commissioner