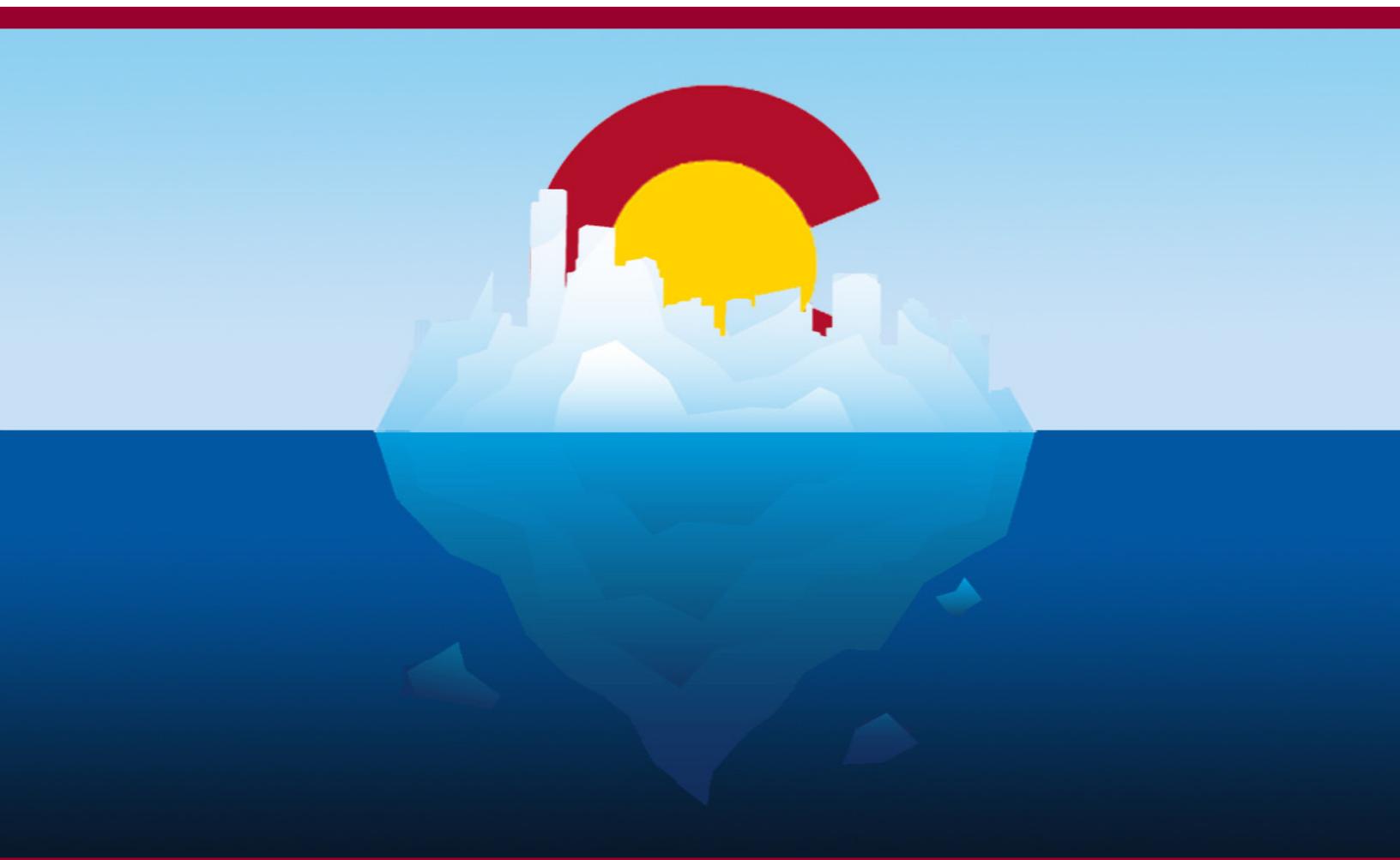


TOO HIGH A PRICE

WHAT CRIMINALIZING HOMELESSNESS
COSTS COLORADO



UNIVERSITY of
DENVER

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EXECUTIVE SUMMARY



LIKE MOST OF AMERICA, COLORADO FACES A HOMELESS EPIDEMIC.¹ Amidst a stark rise in housing costs and equally sharp drop in available affordable housing, Colorado's cities struggle to address the overwhelming needs of its homeless residents. While professing a dedication to eliminating homelessness through homeless and poverty services, state actors continue to write, pass, and enforce local ordinances that criminalize life-sustaining behaviors. Laws that criminalize panhandling, begging, camping, sitting or lying in public, and vagrancy target and disproportionately impact residents that are homeless for activities they must perform in the course of daily living.

This Report examines how laws criminalizing homeless people for being homeless have become widespread in Colorado. Through a comprehensive analysis of the enforcement of anti-homeless laws, this Report also examines the cost—economic and social—anti-homeless laws impose upon all Colorado citizens.

In the process of examining trends across branches of government and across the state, we found similarities between the constitutional challenges to anti-homeless laws and other discriminatory legal frameworks that criminalized people for their identities or statuses. Ordinances punishing people without homes for behaviors necessary to their daily lived existence will soon become another chapter in a shameful history of invalidated laws, such as Anti-Okie Laws, Jim Crow Laws, “Ugly Laws,” and Sundown Laws. Federal courts have begun to recognize the dubious constitutionality of anti-homeless laws, and, in turn, municipalities like Denver and Boulder have begun re-examining how they enforce anti-homeless ordinances. But the data still reveal a trend: a startling high number of ordinances enforced at an alarming rate which comes with a high price tag for Colorado.

To analyze statewide trends, we identified 76 cities in Colorado based on population and geographic diversity, which represent roughly 70% of the state's population. We surveyed these 76 municipal codes and identified numerous anti-homeless ordinances that target those without homes, such as: sitting, sleeping, lying, or storing belongings in public prohibitions; restrictions on begging or panhandling; camping bans; loitering and vagrancy prohibitions; and trespass, park closure, and sanitation laws. Based on this research, we have come to following conclusions:

- Colorado's 76 largest cities have 351 anti-homeless ordinances;
- Cities criminalize homelessness in a variety of ways;

- Adopted ordinances inspire similar ordinances in other municipalities; and
- Ordinances lack clarity and obstruct government transparency and accountability.

From the 76 surveyed cities, we selected 23 cities for more in-depth research using Open Records Requests to examine how anti-homeless ordinances are enforced. We found:

- **Cities issue citations to homeless residents at a staggering rate.** For example, 30% of all citations that Grand Junction issued are pursuant to an anti-homeless ordinance. Fort Collins issues citations to homeless individuals at the rate of two citations per homeless resident per year. Colorado Springs has doubled the rate at which they enforce anti-homeless ordinances between 2010 and 2014.
- **Many cities aggressively target homeless residents for panhandling and for trespassing.** Fewer than half of the cities surveyed have restrictions on begging or panhandling, yet Denver arrested nearly 300 homeless individuals in 2014 for panhandling. Between 2013 and 2014, Denver issued over 2,000 trespass citations to homeless individuals. This represents more than half of all trespass citations in the city even though homeless residents are only 0.05% of the population.
- **Some cities use camping bans to target homeless residents.** Boulder stands out in issuing camping ban citations by issuing 1,767 between 2010 and 2014—as compared with Denver, which issued fifteen in the same time frame, or Durango, which issued zero. Boulder issued camping ban citations at a rate of two citations per homeless resident. Eighty-seven percent of Boulder’s camping citations were issued to homeless residents.
- **Several cities fail to track how anti-homeless citations are enforced** against individuals who are homeless—this includes Durango, Pueblo, Colorado Springs, and Aurora. Because most cities also do not track “move on” orders, the data provided by the cities do not address how these widely used policing tactics impact homeless residents’ lives.
- **Cities do not provide sufficient services for their homeless populations.** For example, Fort Collins provides 118 shelter beds for over 400 homeless residents. On its best night, Boulder provides 280 beds for 440 homeless residents. Some cities, like Grand Junction, have limited services and publicize their attempts to deter people who are homeless from coming to their city.

A major contribution of *Too High A Price* is that it comprehensively analyzes the cost of anti-homeless ordinances by calculating the cost of policing, adjudication, and incarceration. By studying the enforcement of five anti-homeless ordinances in Denver, we found that in 2014 alone, **Denver spent nearly three-quarters of a million dollars (\$750,000.00) enforcing these ordinances. We estimate that just six Colorado cities spent a minimum of five million dollars (\$5,000,000.00) enforcing fourteen anti-homeless ordinances over a five-year period.** For reasons discussed in the report, this number is significantly under-inclusive. Reducing or eliminating anti-homeless ordinances would achieve governmental goals of reducing ineffective spending; expanding efficient homelessness services and prevention; and reducing collateral consequences and implicit social costs associated with criminalizing homelessness.

Too High A Price also includes seven separate City Spotlight Reports that takes a deeper dive into the criminalization of homelessness in the cities of Denver, Boulder, Colorado Springs, Durango, Fort Collins, Grand Junction, and Pueblo. With these case studies, this Report also shows that judicial action alone is not enough to stop the unconstitutional criminalization of homeless people. Despite recent court decisions invalidating panhandling ordinances as unconstitutional, Colorado cities enforce other more facially-neutral ordinances in a way that disproportionately impacts homeless people. Because so many cities have such ordinances, the Colorado state legislature must step in and enact legislation that establishes affirmative rights for homeless individuals at the state level. **The Right to Rest Act**, Colorado House Bill HB-16-1191, introduced by Representatives Salazar and Melton in February 2016, will help combat the disparate impact of these ordinances in Colorado’s communities.

I. HOMELESSNESS IN COLORADO

COLORADO'S CITES STRUGGLE TO ADDRESS THE OVERWHELMING NEEDS OF ITS HOMELESS POPULATION. In response to the crisis, Colorado's city governments capitulate to the pressure of citizens and business interests concerned about community aesthetics to criminalize "visible poverty" in order to both remove evidence of homeless citizens and deter them from returning. To put our research on the enactment and enforcement of municipal codes that criminalize homelessness in Colorado in context, this section provides demographic data on Colorado's homeless residents and the challenges they face.

A. Being Homeless in Colorado

Many factors make Colorado an attractive and unique place to live, including the temperate climate, the nearby mountains, the legalization of marijuana, and the active lifestyle, among others. This lifestyle draws many to Colorado, those with and without housing alike.

In 2015, roughly 9,953 individuals were homeless in Colorado.² Just over 60% of Colorado's homeless population, or 6,130 individuals, live in the seven metro Denver counties.³ Of the 6,130 homeless men, women, and children counted in the January 2015 Denver point-in-time survey, 13% were unsheltered.⁴ This means that in the dead of Colorado's winter, there were over 800 people sleeping outside in the Denver regional area. Nearly one-quarter or 24.5% of all the homeless individuals counted were experiencing homelessness for the first time and had been homeless for less than one year.⁵ Almost half of the individuals counted were households with children.⁶

Further, over one-quarter of respondents indicated that someone in their household "had received money from working in the past month."⁷ This shows that a strong percentage of Colorado's homeless are working or very recently unemployed, yet still cannot afford a place to live.

History of Homelessness in Colorado

Throughout Colorado history, residents have faced the challenges of poverty and homelessness. Perhaps one of the most famous stories of homelessness in Colorado is that of the Tabor family. The Tabor family's story famously illustrates the devastation many Coloradans experienced following the Gold and Silver Rush of the mid-19th century. Elizabeth and Horace Tabor were very wealthy Coloradans who enjoyed a luxurious life that allowed them to travel, attend parties, and donate money to build an opera house.⁸ They exemplified the American entrepreneurial dream by working hard and earning their place on the social ladder.⁹

But that luck ran out with the silver. The Tabors became emblematic of how the Colorado economy has functioned throughout the state's history: "Boom and bust."¹⁰ The Tabors quickly went from being the wealthiest couple in Colorado, living in a Denver mansion, to living in a small cottage near the present-day mountain town of Leadville after the value of silver fell. When Horace died, Elizabeth moved from Denver to Leadville to oversee the mines in hopes of regaining her wealth.¹¹ Unfortunately, Elizabeth never regained her wealth and she ended up dying homeless, squatting in a one-room supply cabin at the Matchless Mine.¹² Elizabeth Tabor, a woman



that was once a millionaire and known as “the Silver Queen” of Colorado, died in poverty.¹³ This revealed a reality to Coloradans that remains true today: “homelessness can happen to anyone.”¹⁴

The typical person living in poverty in Colorado will never have the Tabors’ “rags to riches” experience. This rags-to-riches mythos is mostly just that: myth.¹⁵ In fact, the jobs born of a “boom and bust” economy perpetuate the existence of a population comprised of “working poor.”¹⁶ Throughout Denver’s history, few have benefited from the economic growth while many have struggled against poverty, unemployment, and housing shortages.¹⁷

Since the nineteenth century, living in Colorado without a home has become increasingly difficult. With the rise of Denver’s “City Beautiful Movement” in the early twentieth century,¹⁸ city officials instituted several urban beautification projects.¹⁹ The wealthy residents of Denver quickly moved to the neighborhoods near Capitol Hill to seclude themselves from “the masses of Denver proper.”²⁰ In these years, wealth “impos[ed] order upon the city’s social geography.”²¹ But poor residents had to reside somewhere; tent communities remained on the peripheries of the city.²² While Colorado’s economy has shifted from the industries that fueled early booms to more stable ones, such as technology and tourism, the inclination to emphasize the aesthetic beauty of our state continues to come at the expense of those who live in poverty.²³

From 1978 to 1983, significant cuts in low-income housing at the federal level resulted in mass homelessness.²⁴ More recently, following the Great Recession of 2008, where the real estate boom quickly collapsed into a housing bust, Colorado’s real estate market was one of the fastest to recover, resulting in extremely high occupancy rates and a low supply of affordable housing.²⁵

Some speculate that the newest chapter of Colorado’s “boom and bust” economy has begun with the emergence of the growing recreational marijuana industry. Commentators speculate that legal marijuana has attracted more people who are homeless to the state.²⁶ However, currently, no reliable studies exist to explore the relationship between marijuana legalization and the increasing homeless population.

B. Colorado’s Lack of Affordable Housing

Colorado’s housing market is one of the fastest growing in the country.²⁷ In 2015, the average price of a home sold in Denver metro area was \$420,000, “a 34.5 percent increase from just four years ago.”²⁸ It is estimated that Denver homeowners can expect to spend “about 21 percent of their incomes on mortgage payments, more than their peers in Washington, D.C., Philadelphia, and Miami.”²⁹

Rent costs also continue to steadily increase in many of Colorado’s metropolitan areas, including Boulder, Fort Collins, and Greeley.³⁰ The average cost of rent for Coloradans is growing at three times the pace of the national average.³¹ According to one source, renters in Denver “spend more of their monthly incomes on rent payments than residents of every other city except for places such as New York City and northern New Jersey, Miami/Fort Lauderdale, San Diego, San Francisco, and Los Angeles.”³² As rent continues to increase, rental vacancy rates have dropped: Colorado’s vacancy rates are roughly 60% lower than the U.S. average.³³

This affordability problem is compounded by the current gentrification of lower-income areas.³⁴ Newly built apartment buildings target the higher end of the market and low vacancy rates have caught the attention of investors who buy the complexes, fix them up, and then drastically raise the rent—consequently decreasing lower income housing.³⁵

Wages, meanwhile, are not keeping pace with the rising cost of housing. In order to afford a median-priced rental in Colorado, a resident needs to make thirty-five dollars an hour.³⁶ Thirty-five dollars an hour is more than four times Colorado’s minimum wage.³⁷

The high cost of housing and the lack of affordable housing options puts strain on Colorado families and contributes to the problem of homelessness.

C. Scarcity of Available Resources for People who are Homeless in Colorado

A recent influx of new residents to Colorado³⁸ combined with a steady decline of available low-income and affordable housing has contributed to a 600% increase in the homeless population from the late 1990's to 2010.³⁹ Overnight homeless shelters, however, have not increased their capacity at a similar rate, creating a large discrepancy in available beds for homeless individuals to spend the night.⁴⁰ In fact, shelters in the Denver region can only house about 10% of the area's homeless population.⁴¹

The number of available shelter beds is not representative of the resources actually available to individual homeless citizens because many shelters require that individuals meet certain pre-requisites before participating in their programs, such as marital or job status.⁴² Additionally, many homeless individuals do not qualify for a shelter because of a disability, criminal record, or pets.⁴³ 73% of homeless individuals surveyed by Denver Homeless Out Loud in 2013, said a shelter turned them away for a lack of available beds.⁴⁴ Recently, Denver Homeless Out Loud reports that, of the overnight shelters it surveyed, all were consistently at 90% capacity or higher.⁴⁵

Subsidized housing programs are also inundated with applicants. Currently the Colorado Division of Housing has a waiting list of 6,500 families for housing assistance.⁴⁶ 50% of homeless individuals responding to a Denver Homeless Out Loud survey had been on a housing assistance waitlist for more than a year, and 30% had been waiting for six months to a year.⁴⁷

While policy makers do discuss the lack of available shelter, rarely do they address the problem people without homes face when they are in need of a restroom. Prohibitions on public urination coupled with inadequate public restroom facilities make it impossible for people who live outside to lawfully meet their own most basic needs. For example, neither Denver nor Fort Collins has a public bathroom open 24 hours a day.⁴⁸

With many unable to find either permanent housing or emergency shelter, people are left to the streets. But laws like camping bans and restrictions on sitting or laying in public leave people who are homeless with nowhere to go, and practical realities like cold weather and lack of access to a toilet make life outside difficult.

II. CONSTITUTIONALITY OF ANTI-HOMELESS LAWS

Criminalizing behaviors associated with homelessness is an ineffective way to serve policy goals: it fails to address the causes of homelessness; it comes at a significant cost to taxpayers; and it promotes conditions that keep people homeless. In addition to the social cost of these laws, policymakers should look closely at the burden they place on civil liberties. Decades of court decisions show that constitutional rights are jeopardized by these laws that criminalize people based on their status.

A. Shifts Towards Overturning Anti-Homeless Laws in Colorado

The ordinances that prohibit behaviors inextricably linked to homeless status are often found unconstitutional by today's courts. Specifically, begging and panhandling bans, camping bans, sit/lie prohibitions, and vagrancy laws are each tied to homeless status and for different reasons, unconstitutional, and should be stricken from the municipal codes.

Begging and Panhandling Bans: Fifty-five of Colorado's seventy-six largest cities have at least one law restricting begging or panhandling.⁴⁹ These laws are ripe for legal battles against ordinances discriminately affecting individuals living in poverty. While other bans may be unconstitutionally vague, advocates have challenged begging and panhandling bans as violations of First Amendment protections of free speech.⁵⁰

Undoubtedly, begging and panhandling bans specifically target people in poverty, and the federal district court in Colorado has become a leader in revealing the unconstitutionality of these discriminatory ordinances. In *Browne v. City of Grand Junction*, the United States District Court for the District of Colorado found Grand Junction's prohibitions against panhandling were unconstitutional violations of protected free speech.⁵¹ Grand Junction's now unconstitutional ordinance prohibited soliciting money under specific circumstances and in specific locations—amounting to a near universal ban on begging and panhandling.⁵² The plaintiff argued that these bans violated freedom of speech, were unconstitutionally vague, and discriminately affected a protected class.⁵³ The defendant argued that the bans were narrowly tailored to a legitimate government interest, that poverty and wealth do not define a protected class, that the prohibitions were rationally related to a legitimate government interest, and that the prohibitions were detailed enough to not be unconstitutionally vague.⁵⁴

Because government cannot “restrict expression because of its message, its ideas, its subject matter, or its content,”⁵⁵ the court first determined that the panhandling ordinance was a “content based” prohibition (as opposed to a “content neutral” prohibition) that, “on its face” draws distinctions based on the message [the] speaker conveys.”⁵⁶ Based on a recent Supreme Court case vacating a finding that a panhandling ordinance was neutral on its face, Judge Christine Arguello of the District of Colorado found a panhandling ban is a content-based restriction.⁵⁷ Therefore, the court analyzed the bans under a strict scrutiny test: the panhandling ordinance needed to “serve a compelling state interest” and be the “least restrictive means” to achieving that end.⁵⁸ The court found Grand Junction's panhandling bans were “over-inclusive because they prohibit protected speech that poses no threat to public safety.”⁵⁹ In light of this holding, the court also recognized, in dicta, that certain forms of panhandling can be overly aggressive or threatening and, therefore, could be banned; however, the plaintiff had not challenged those sections of the ordinances.⁶⁰

People living in poverty may rely on panhandling for day-to-day support. For an individual without stable housing, consistent employment is generally elusive; panhandling can easily become a necessary activity to face the daily struggle of buying food—or any other activity that requires money.⁶¹ A panhandling ban attempts to push individuals living in poverty or without houses out of communities by making subsistence impossible. This District Court's holding

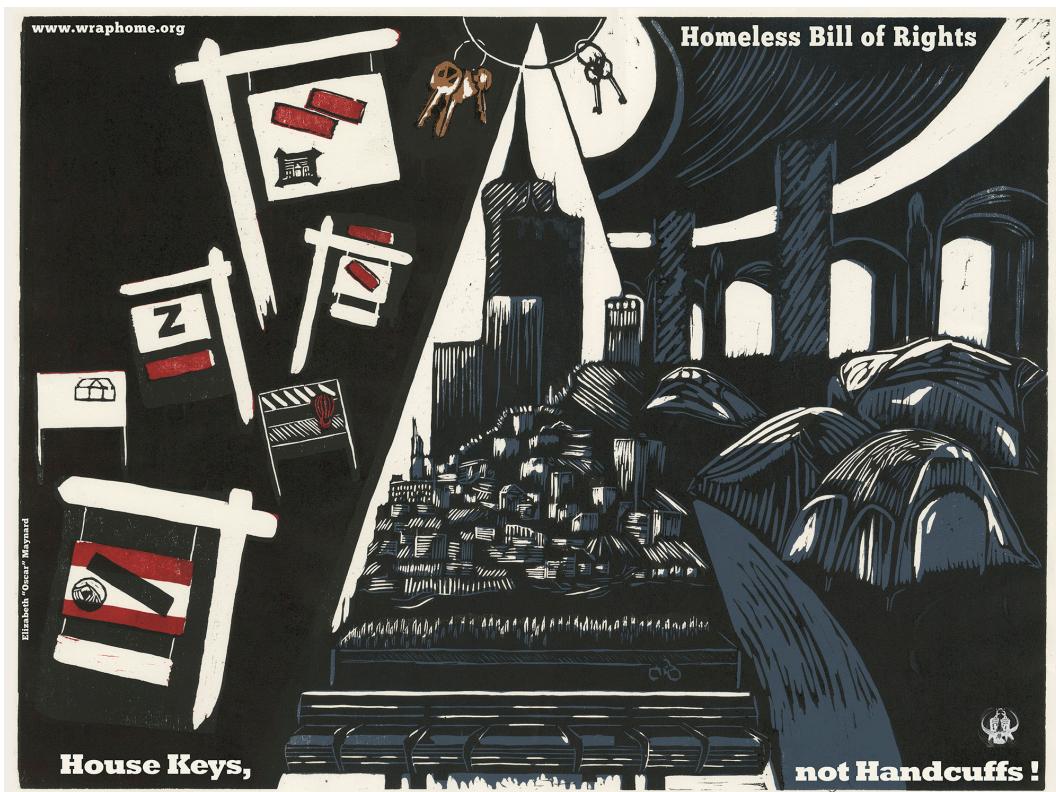
makes such exclusionary regulations unconstitutional in Colorado.

Camping Bans: Twenty-five of Colorado's seventy-six largest cities have city-wide camping bans and an additional seventeen cities ban camping in certain places, primarily parks.⁶² While bans on un-housed people sleeping in public have not yet been found unconstitutional, "camping bans" are unconstitutional because they punish those living in poverty for being un-housed and for being impoverished. The U.S. Department of Justice agrees.

In 1984, the U.S. Supreme Court held prohibitions on camping or sleeping in public are constitutional when they do not implicate protected speech (e.g. protestors sleeping somewhere as part of a political action).⁶³ The effect is that any municipality with a camping ban can punish un-housed people for sleeping outdoors even though they have nowhere else to sleep. While the intent of these laws is to force un-housed people to leave certain communities, these neighborhoods are where critical services are offered for people in poverty and therefore, unlikely to accomplish the intended goal.

Recently, the Department of Justice filed a Statement of Interest to argue that a camping ban in Boise, Idaho violates Eighth Amendment protections against cruel and unusual punishments.⁶⁴ Because the city of Boise does not have enough beds for all of the homeless people who, by nature of being human, must sleep at some point and who, by nature of being homeless, lack anywhere private to sleep, Boise's camping ban unconstitutionally punishes homeless individuals for being homeless.⁶⁵ The court has yet to rule on the merits of this argument, however the DOJ's reasoning persuasively communicates a federal policy that camping bans should not be prosecuted because of their civil liberty implications.

Further suggesting that outdoor dwellings are subject to Constitutional protection, former Colorado Supreme Court Justice Gregory Hobbs authored an opinion acknowledging individual's Fourth Amendment rights to privacy in tents and temporary shelters.⁶⁶ Justice Hobbs emphasizes those structures' special place in the history of "Colorado and the West."⁶⁷



Sit/Lie Prohibitions: Seven of Colorado's seventy-six largest cities explicitly restrict sitting or lying in public in at least part of the city.⁶⁸ An additional fifty-four cities do not restrict sitting or lying explicitly but have laws preventing sidewalk obstruction, which can be enforced against individuals who are sitting or lying on the sidewalk.⁶⁹ Although no Supreme Court or Tenth Circuit case law directly addresses these prohibitions, ordinances restricting where and how people can sit or lie in public places (e.g. parks) are likely unconstitutional for vagueness—thus violating individuals' due process protections.⁷⁰ Additionally, the Department of Justice's reasoning in their statement of interest in Boise likely applies: ordinances prohibiting individuals from sitting or lying in public are cruel and unusual because people who are homeless must, at some point rest, and do not have any alternative resting places where they would not risk trespassing on private property. In fact, the Ninth Circuit found that "sit/lie" ordinances violate Eighth Amendment rights for this very reason.⁷¹ The plaintiffs, all homeless individuals, argued that enforcement of Los Angeles's sit/lie prohibition violated the plaintiffs' Eighth Amendment rights because plaintiffs did not have access to private places to sit or lie at night.⁷² The court agreed.⁷³

Vagrancy: Of Colorado's seventy-six largest cities, seven ban loitering or vagrancy city wide and an additional four cities limit loitering or vagrancy in certain parts of the city. Any ordinances prohibiting vagrancy are unconstitutional under Supreme Court case law.⁷⁴ The Court found vagrancy ordinances to be unconstitutional because they "fail[ed] to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute . . . and because it encourages arbitrary and erratic arrests and convictions."⁷⁵ The court noted that such ordinances criminalize "activities which by modern standards are normally innocent"—like walking at night or "wandering or strolling."⁷⁶ Just three years prior to this Supreme Court holding, the District of Colorado found a Colorado vagrancy law unconstitutional for the same reasons.⁷⁷

B. Current Trends in Overturning Ordinances Against People Who Are Homeless

A number of cities still have ordinances that are likely unconstitutional.⁷⁸ The survey of Colorado ordinances shows that bigger cities that are more likely to have a well-resourced city attorney's office and an active city council are also more likely to have narrower prohibitions. For example, while nineteen small cities broadly prohibit begging, no city with a population larger than 33,000 contains such a prohibition.⁷⁹ These prohibitions are unconstitutional under cases like *Thayer*.

While courts have held broad laws that criminalize behaviors associated with homelessness unconstitutional, cities in Colorado still criminalize living outdoors. In an effort to comply with recent changes in jurisprudence, cities have started to shift from criminalizing broad behaviors like loitering, vagrancy, and panhandling. Enactment dates show a trend toward prohibitions of specific behaviors like camping bans or narrower panhandling restrictions. Of the seventy-six cities, there are twenty municipalities with camping bans that make it illegal to camp anywhere in public and citywide. Fourteen of those cities have enactment dates available: only five in 1975 to 2000, and nine since 2000.

In the wake of the District of Colorado's holding about the Grand Junction panhandling ban, other municipalities around Colorado have taken note. Notably, the Denver and Boulder Police Departments stopped enforcing municipal ordinances banning "aggressive panhandling."⁸⁰ This federal case is a significant step forward for overturning and repealing ordinances discriminatorily punishing people for their homeless status and, consequently, disappearing the un-housed without supporting or serving them. Similarly, the Department of Justice's Statement of Interest indicates federal support against local ordinances that criminalize poverty as opposed to conduct.

As the arguments advanced in this Report come to light, including those advocated by homeless advocates in Washington and California, the tides are turning. As Boulder City Human Rights Commission became aware of this Report and the unusually high rate at which Boulder was enforcing its camping ban, it brought its concerns to the Boulder City Council, which agreed to do further research on the issue in response to advocates pushing for a moratorium on enforcing the camping ban.⁸¹ And, as previously mentioned, Fort Collins has eliminated the majority of its panhandling ordinances as part of a settlement agreement.⁸²

C. History of Exclusion Laws in the U.S.

Cities moving away from criminalizing homelessness are on the right side of our long struggle to eliminate discriminatory laws. Throughout U.S. history, laws have unconstitutionally criminalized people because of their identity or status. These laws pushed targeted people of specific demographics out of communities. For example, Jim Crow laws marginalized and isolated people simply because of their racial identity.⁸³ Municipal ordinances criminalizing homelessness and the behaviors associated with poverty are the next chapter in this shameful history of exiling already marginalized individuals.

During the Colonial period of the United States, colonies imposed vagrancy laws that limited the movement of poor people from town to town.⁸⁴ These laws gave local authorities the power to tell people who had recently moved to the town to leave.⁸⁵ The justification for these laws was the physical and economic protection of town citizens—the latter by precluding the town from shouldering the cost of supporting poor people.⁸⁶ In practice, however, these laws forced people in need of services out of the only communities that could provide those services. The majority of these laws were repealed or invalidated for being unconstitutionally vague and, thus, in violation of the Fourteenth Amendment's Due Process protections.⁸⁷

After the Great Depression and with large-scale “dust bowl” migrations, Anti-Okie laws punished people who were transient as well as those who helped them.⁸⁸ Again, these laws sought to protect local communities from the economic burdens of supporting poor strangers.⁸⁹ In 1941, the Supreme Court found statewide “Anti-Okie Laws” unconstitutional for violating the Commerce Clause.⁹⁰

Once pervasive, “Ugly Laws” restricted individuals who were “unappealing” to the rest of society.⁹¹ Generally, people were considered “unappealing” if they were “unsightly” in some way—more often than not, this was coded language to describe individuals with disabilities.⁹² These laws typically targeted individuals with disabilities and aimed to “preserve the quality of life” for cities.⁹³ However, in practice, these laws were yet another attempt at making people of a certain status disappear without providing the necessary rights, support, or services these individuals needed. The Americans with Disabilities Act invalidated the majority of these laws.⁹⁴

Finally, Sundown Laws explicitly prevented particular ethnic and racial minorities from residing within a certain distance of a city center.⁹⁵ Sundown Laws were clear attempts at exclusion and making certain populations disappear from communities. Colorado enforced just such laws through policies and accompanying signs that read “No Mexicans After Night.”⁹⁶ Because individuals of certain ethnicities were precluded from being within city limits after dark, Sundown Laws like this Colorado ban ensured that certain people could not own property within city limits. The Supreme Court found these prohibitions on property ownership to violate the Thirteenth Amendment’s prohibition against the badges and incidents of slavery.⁹⁷

Whether through the decisions of courts, state legislatures, or city councils, ordinances punishing people who are homeless simply because they are homeless will soon become another chapter in a shameful history of laws invalidated for punishing people based on their statuses. The legacy of vagrancy laws continues to unconstitutionally marginalize un-housed people. And like Jim Crow laws, Ugly laws, and Sundown laws, panhandling, camping, and sit/lie bans punish status and act as marginalizing forces. The former laws pushed individuals out of communities by precluding access simply because of the individuals’ racial, ethnic, or physical traits; the laws targeting people in poverty preclude access simply because of individuals’ financial instability or lack of housing. Municipalities passing and enforcing such ordinances punish and push-out un-housed people simply because they are un-housed.

III. COLORADO ENACTMENT OF ANTI-HOMELESS LAWS

In order to understand how Colorado cities are criminalizing homelessness, we have identified and evaluated anti-homeless ordinances across Colorado. For this survey, we selected seventy-six Colorado cities, based on geographic diversity⁹⁸ and population⁹⁹ to analyze as a representation of the entire state. The cities surveyed were not randomly chosen, but are instead representative of every region in the state and include 3,478,593 Coloradans, or roughly 69% of the state's total residents.¹⁰⁰ In each of the seventy-six cities, we surveyed the local municipal code and identified any anti-homeless ordinances currently in effect. As the first statewide analysis of its kind, the results of this survey shed light on the breadth of the problem in Colorado and contribute to the discourse on trends and government transparency.

In sum, the survey exposes barriers faced by Colorado's homeless residents, and reveals: (1) that there is a large number of anti-homeless ordinances in the state; (2) that cities criminalize homelessness in a variety of ways; (3) that ordinances adopted in one city can inspire trends in other cities; and, (4) that some anti-homeless ordinances create barriers to government transparency and accountability because they are not clearly drafted.

A. Colorado cities enacted a large number of anti-homeless ordinances.

In designing this survey, we identified search terms to identify ordinances most directly affecting Colorado's homeless community. To qualify as "anti-homeless," an ordinance must likely impact homeless individuals disproportionately, and (1) either reflect an intent to target homeless individuals or (2) restrict a necessary life activity.¹⁰¹ Using this definition, the seventy-six cities we selected enacted a total of 351 anti-homeless ordinances.¹⁰² This is an average of approximately six anti-homeless laws per city.¹⁰³ A list of all 351 ordinances, hyperlinked to the on-line municipal code and categorized by type of targeted behaviors, is available at the University of Denver's website at <http://www.law.du.edu/index.php/homeless-advocacy-policy-project>.

"The 76 cities we selected enacted a total of 351 anti-homeless ordinances."

Many cities' ordinances clearly intend to limit the rights of homeless individuals. These ordinances typically include camping bans, prohibitions on sleeping, sitting, or lying in public, and limitations on begging or panhandling. It is difficult to imagine these laws being enforced against anyone who is not homeless.

Other ordinances limit conduct in a way that likely reaches beyond homeless residents, but disproportionately affects homeless people as it directly impacts their ability to engage in necessary life-sustaining activities. These ordinances include prohibitions on public urination (especially where a city does not provide 24-hour public restrooms) and restrictions on bathing in public waters. Other types of anti-homeless ordinances includes those with broadly written language, which simply make them easy tools to use against people who are homeless, such as loitering prohibitions, trespass ordinances, and the few remaining vagrancy laws.¹⁰⁴

The most common anti-homeless ordinances in Colorado are those criminalizing public urination and defecation – fifty-nine cities have such ordinances. The second more common is restrictions on begging – fifty-five cities have at least one ordinance restricting begging. These ordinances range from total prohibitions on begging anywhere in the city to more limited prohibitions on begging in particular places, limitations on soliciting occupants of vehicles, or

limitations on aggressive begging.¹⁰⁵

Every municipality we surveyed has at least two anti-homeless ordinances. Bigger cities tend to have more. For example, Denver, Colorado Springs, and Fort Collins—three of the four largest Colorado cities—have the most qualifying ordinances, with ten or more each.¹⁰⁶

Bigger cities also prohibit a wider range of behaviors and are more likely to prohibit behaviors like food sharing and camping.¹⁰⁷ With ten ordinances that restrict fourteen types of behavior, Colorado Springs restricts the most types of behaviors. Denver follows close behind with eleven ordinances restricting eleven different types of behavior. Both cities stand out from the other cities in Colorado, where, on average, city codes have five different ordinances restricting about six types of behavior.¹⁰⁸

The cumulative effect of anti-homeless ordinances is clear: living without a home in Colorado nearly guarantees that a person will break some law. People who are homeless feel this burden most profoundly in larger cities, even though these cities typically have the most accessible public transportation and services for homeless residents. Conversely, smaller cities, that have fewer laws criminalizing the homeless, are less hospitable in other ways: they tend to be more rural and have lower concentrations of social service agencies

Limitations

While our search returned an array of ordinances commonly used to criminalize homelessness, the survey is under inclusive in a number of ways. First, choosing to include ordinances that meet the criteria described above means that we omitted a number of ordinances city officials may be enforcing primarily against homeless people. Notably, laws criminalizing trespass on private property, open container, and outdoor smoking ordinances are generally applicable but have a disproportionate impact on those who spend most of their time outside.¹⁰⁹

Second, through search terms alone, there are certain types of ordinances that are difficult to identify as having a discriminatory impact on the homeless, such as ordinances prohibiting food sharing. For instance, Denver Ordinance 39-71 makes no mention of food sharing specifically in its language, but it requires a permit for certain park activities. In addition, Denver Ordinance 39-1(a)(2) empowers the park manager to restrict activities and uses of the park. Combined, the Denver Parks and Recreation Department has decided that food sharing is not an appropriate activity for parks, and it will not issue permits for this use.¹¹⁰ While we are unaware of any other cities restricting food sharing, our code search alone would not have revealed similar schemes in other cities.

Lastly, this survey does not include ordinances related to a failure to appear in court or failure to pay fines related to a violation of one of these ordinances. The American Civil Liberties Union (“ACLU”) of Colorado has demonstrated that such penalties have enormous impact on the lives of homeless Coloradans, but such an analysis is outside the scope of this report.¹¹¹

B. Colorado’s cities are getting more creative about the ways they criminalize homelessness.

In the past, city officials wanting to keep homeless people out of their city would simply ban them or enforce broad loitering bans that left homeless residents with nowhere to go.¹¹² A number of courts have concluded that these prohibitions violate Constitutional protections, including free speech and prohibitions on vague laws.¹¹³ Rather than moving away from criminalization efforts in response to these rulings, Colorado local officials have come up with more creative ways to criminalize homelessness—notably through camping bans, food-sharing prohibitions, and stricter regulations in the most popular city areas.

When enactment dates are available, we can see that loitering and vagrancy prohibitions were generally enacted in the early 20th century, and over the past several decades, local lawmakers have trended toward a patchwork of narrower ordinances including camping bans, limited panhandling prohibitions, and restrictions limited to Business

Improvement Districts. For example, the most-enforced camping bans in the state are in Boulder and Fort Collins.¹¹⁴ Boulder's ordinance was passed in the 1980s and was updated in 2001.¹¹⁵ Fort Collins initially passed its camping ban in 1972 and updated it in 2006. Denver passed its highly publicized ban in 2012.¹¹⁶

The cumulative effect of anti-homeless ordinances is clear: living without a home in Colorado nearly guarantees that a person will break some law.

Denver, the city with the largest homeless population in the state, enacted a prohibition on sharing food in public parks in 2006.¹¹⁷ While Denver is the only city in Colorado we have identified as currently prohibiting food sharing, 21 such bans were enacted across the United States in 2013 alone.¹¹⁸

City officials in Denver, Aurora, and Colorado Springs have enacted ordinances specific to their commercial centers. In Denver, sitting and lying down on the sidewalk are prohibited in the Downtown Denver Business Improvement District (BID).¹¹⁹ Denver's BID includes the Sixteenth Street Mall and surrounding area.¹²⁰ The laws in Aurora impose nearly identical restrictions on the Colfax Corridor.¹²¹ Colorado Springs City Council passed a similar ban on February 9, 2016. This recent amendment by Colorado Springs highlights municipal creativity in criminalizing homelessness, as it occurred in the same meeting when the City Council repealed portions of the solicitation ordinance due to concerns of legal challenges.¹²² Prohibiting homeless people from spending time in the busiest blocks in their respective cities,

officials in Denver, Aurora, and Colorado Springs attempt to push individuals without homes to isolated streets that are likely to be darker and more dangerous for them.

Although courts have rejected past iterations of anti-homeless laws,¹²³ Colorado's city officials have ignored this precedent and continued to draft laws that target homelessness, which fail to address the root causes of homelessness. Colorado's city officials continue to legislate in a way that makes life extraordinarily difficult for those living without homes.

C. Anti-homeless ordinances reflect legislative trends across the state.

Cities often repeat or draw on language from other jurisdictions' anti-homeless ordinances. Colorado news coverage of the municipal camping bans show how such a process unfolded in Denver. The Denver Post coverage of discussions surrounding the passage of Denver's camping ban point to Denver City Council using Boulder's camping ban as a model for Denver's 2012 ordinance.¹²⁴

Beyond camping bans, cities have repeatedly adopted



the same model language as other jurisdictions in the state. As another example, all 23 cities that have a citywide ban on begging phrase their ordinance as a prohibition on “loitering for the purpose of begging.” The spread of these types of ordinances across jurisdictions underscore the need to take statewide action.

D. A number of criminalization ordinances are poorly drafted, creating barriers to government transparency and accountability.

In many ways, Colorado works hard to be a state with transparent and accountable government.¹²⁵ Many of the ordinances we identified as criminalizing homelessness are at odds with transparency ideals. Our survey identifies a number of inconsistent or unclear ordinances, including overlapping ordinances and compound ordinances. This makes it difficult to categorize or track the enforcement of such laws.

Overlapping ordinances occur when two different ordinances prohibit the same type of behavior. These types of ordinances are problematic because an individual ordinance's effect on behavior when it is duplicative of another law creates uncertainty for law enforcement as well as individuals subject to these laws. For instance, when a city has both a prohibition on camping or begging broadly drafted to cover all public places, as well as a prohibition on engaging in that conduct only in certain locations, law enforcement can choose to cite the individual under either ordinance. We identified overlapping anti-homeless ordinances in six cities.¹²⁶ Most often, these overlapping ordinances were two ordinances that both prohibited obstructing sidewalks. Below is an example of such language in two ordinances under Salida's municipal code.

Salida 10-3-30: Obstructing or Interfering with Use of Public Ways.

(a) It is unlawful for any person, alone or with others, to obstruct, interfere with or prevent the free, unobstructed and reasonable use of any public highway, street, alley or sidewalk in the City by a vehicle, animal or pedestrian along any public street, highway, alley or sidewalk within the City or to fail or refuse to move on, disperse or cease such obstruction or interference immediately upon being so ordered by any police officer of the City or other authorized peace officer...

Salida 10-3-40: Interfering with Use of Streets or Sidewalks.

It is unlawful for any person to obstruct, interfere with or prevent the free, unobstructed and reasonable use of a public highway, street, alley or sidewalk by any other person, to fail or refuse to yield to the reasonable use or passage of any other person on that public highway, street, alley or sidewalk or to fail or refuse to move on, disperse or cease such obstruction or interference immediately upon being so ordered by any peace officer.

Beyond the ordinances we identified as overlapping with other ordinances in the survey, there is reason to believe that a number of the ordinances criminalizing homelessness overlap with other, broader ordinances. For example, activity prohibited under aggressive panhandling bans may also be prohibited by an assault ordinance.

A compound ordinance includes a list of multiple prohibited behaviors under one section of a city's municipal code. The problem with compound ordinances is that citation records often do not track which provision was the source of the violation. This makes it difficult to determine how many individuals are being cited for anti-homeless subsections of the ordinance as opposed to other provisions that do not have a discriminatory affect on homeless people. For example, in the language below, Fort Collins Ordinance 23-193(d) prohibits camping in public parks, but it also includes prohibitions on twenty other behaviors, all of which are unrelated to one another.

Fort Collins 23-193: Prohibited Acts; Permits.

(d) Except as authorized by a permit obtained for such use from the Service Area, it shall be unlawful to:

(l) Enter a natural area during the hours of 11:00 p.m. to 5:00 a.m. except:

a. As otherwise permitted by a sign posted by the Service Unit opening or closing the particular area or a portion of the area for public use for a specified time or during specified hours; or

b. As necessary to participate as a registered or otherwise officially recognized participant in a City-sponsored or permitted event in a natural area.

(2) Operate a motorized boat, other than one with a wakeless, electric trolling motor in a natural area....

(19) Camp in a natural area.

(20) Possess in a natural area any gun, pistol, crossbow, bow and arrow, slingshot or other firearm or weapon whatsoever, including BB guns or pellet or paintball guns, except as permitted by a City-issued or other lawfully issued permit. Discharge of any such firearm or weapon shall be prohibited, except in a natural area as expressly permitted by a City-issued hunting permit.

Because a ticket for a camping violation would look identical to a ticket issued for possessing a crossbow in a park, it is impossible to determine how Fort Collins has enforced its ban against camping in parks. A number of ordinances in other cities are constructed similarly, including many loitering and begging prohibitions.

The Colorado Open Records and Criminal Justice Records Acts aim to enable Colorado citizens to hold their government accountable. It is impossible to track the enforcement of compound ordinances, which brings us no closer to the accountability goals in mind when CORA and CCJRA were enacted.



IV. COLORADO ENFORCEMENT OF ANTI-HOMELESS LAWS

Looking at the enactment of anti-homeless ordinances alone does not give a complete picture of the criminalization of homelessness in Colorado. An analysis of how these laws are enforced better explains the perpetuation of poverty than their enactment alone. Each citation means the possibility of fines, time spent in court, a criminal record, and possibly arrest and incarceration.

In order to capture an in-depth picture of Colorado's enforcement of anti-homeless laws, we requested Open Records data on the number of citations issued to homeless people from twenty-three Colorado cities. From this data collection, we analyzed statewide trends and provide an in-depth analysis in separate City Spotlight Reports of anti-homeless ordinance enforcement in seven representative Colorado cities (Denver, Boulder, Colorado Springs, Durango, Fort Collins, Grand Junction, and Pueblo).¹²⁷

The data we collected show that the ordinances we identified are disproportionately enforced against homeless individuals. Although homeless individuals represent less than one hundredth of one percent of Colorado's population, they make up five percent of all citations issued under local municipal codes. Under the codes we identified as criminalizing homelessness, cities issued over 50% to individuals identified as homeless. As noted elsewhere, these numbers are likely an under representation because they only include individuals who self-identify as homeless.

Homeless people represent .01% of Colorado's population. Yet, they represent 5% of all those cited under Colorado's Municipal Codes.

For a closer look at Denver, Boulder, Colorado Springs, Durango, Fort Collins, Grand Junction, and Pueblo, please see the City Spotlight Reports, available at <http://www.law.du.edu/index.php/homeless-advocacy-policy-project>. Each City Spotlight Report provides insights that the numbers could not, including the extensive use of "move on" orders, a lack of homeless services, an avoidance in attracting those in need, and city government response to address the root causes of homelessness.

A. Overview of Colorado's Criminalization of Homeless Residents

Across Colorado, homeless people are prosecuted for crimes closely related to their economic status. They are fined and even jailed for engaging in life-sustaining activities, such as sleeping, sitting, and lying down.

As shown in the following example, Colorado's enforcement measures are not always friendly. "Bob," a pseudonym to protect this man's identity, shared his experience:

Law-enforcement treats me pretty rough. I've had things happen to me that I've never reported. I've been kicked in my sleep, kicked in the face. I fell asleep not too far away from Coors Field, in a dumpster area. I thought I was off the beaten path, but then a security guard and a police man found me. I knew it was them because there was a big flashlight in my face. I stood up and saw them. They gave me a few choice

of words," get out of here, you f-ing bum, if I catch you here again, you're going to get it worse." This was at 2:30 in the morning, now I have to find somewhere else to deal with the rest of my day. I will never forget that one, it was a thunderstorm that night and that's the only cover I had. But hey, they didn't kill me. I walked away from that.¹²⁸

Colorado city governments criminalize homelessness by enacting legislation that penalize homeless individuals for life-sustaining activities. Police officers in Colorado may issue citations in lieu of arrest for low-level ordinance violations.¹²⁹ A citation is a written order issued by a police officer that requires the violator to appear at a designated court at a specified date and time.¹³⁰ A citation without arrest is commonly associated with traffic infractions, but it is also common for other municipal code infractions.¹³¹ The recipient of a citation will be free to go after receiving the citation, but must pay a fine and attend the prescribed court date where the individual may be sentenced to jail.¹³² If the cited individual does not pay the assessed fine or appear for court (both of which are challenging requirements to meet for people living without shelter), the person may later be arrested on a warrant issued for failure to pay or failure to appear.¹³³

Officers have a choice to issue a citation to homeless people rather than arrest them at the time of the offense. The main concerns police officers consider when determining whether or not to issue a citation in lieu of arrest are: (1) whether the public will be endangered by the continued freedom of the suspected misdemeanant; (2) whether the law enforcement officer has reasonable proof of the identity of the suspected misdemeanor; and (3) whether there is a reason to believe the suspected misdemeanant will not appear as required by law.¹³⁴

Arrests are costly in both jail space and police patrol time.¹³⁵ The latest jail census in Colorado provided that there are 64 counties in Colorado and 60 of them have county jail facilities.¹³⁶ In 2013, it was estimated that Colorado jail facilities house over 11,000 inmates a year.¹³⁷ The cost of housing one individual for one day in a county jail in Colorado ranges from a little more than \$50 dollars to over \$300 dollars.¹³⁸ These costs are avoided when officers choose to issue a citation rather than arresting the individual.

However, when those who are cited do not show up for their required court date, often referred to as a failure to appear (FTA), a warrant is issued for their arrest. Similarly, if the individual does appear at the court date but does not pay the ordered fine, a failure to pay (FTP) can result in an arrest warrant. In either event, the individual is arrested and forced into the criminal justice system as a direct result of being issued the offending citation. This is how the anti-homeless ordinances directly criminalize homeless citizens for being poor and unsheltered.

B. State-wide trends in enforcement of anti-homeless ordinances

For analysis of statewide trends, we selected twenty-three of the seventy-six cities to research the enforcement of anti-homeless ordinances by requesting citation records through the Colorado Open Records Act and Criminal Justice Records Act. We selected these twenty-three cities based on size, geographic diversity, and range of anti-homelessness ordinances. These cities represent every region of the state, approximately 48% of Colorado's population, and ordinances prohibiting nearly every behavior we identified.

Below is a list of all 76 cities we surveyed; the 23 cities we requested enforcement data from are highlighted in red.

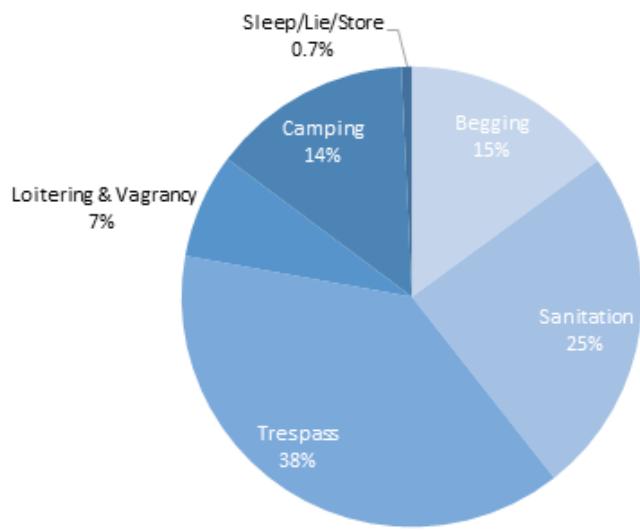
List of Survey Cities (Records Request Cities)

1. Alamosa	17. Colorado Springs	33. Fort Lupton	49. Lamar	65. Sheridan
2. Arvada	18. Commerce City	34. Fort Morgan	50. Littleton	66. Steamboat
3. Aspen	19. Cortez	35. Fountain	51. Lochbuie	67. Sterling
4. Aurora	20. Craig	36. Frederick	52. Lone Tree	68. Superior
5. Avon	21. Delta	37. Fruita	53. Longmont	69. Thornton
6. Berthoud	22. Denver	38. Glenwood Springs	54. Louisville	70. Trinidad
7. Boulder	23. Durango	39. Golden	55. Loveland	71. Vail
8. Brighton	24. Eagle	40. Grand Junction	56. Manitou Springs	72. Wellington
9. Broomfield	25. Edgewater	41. Greeley	57. Miliken	73. Westminster
10. Brush	26. Englewood	42. Greenwood Village	58. Montrose	74. Wheat Ridge
11. Cañon City	27. Erie	43. Gunnison	59. Monument	75. Windsor
12. Carbondale	28. Estes Park	44. Gypsum	60. Northglenn	76. Woodland Park
13. Castle Pines	29. Evans	45. Johnstown	61. Parker	
14. Castle Rock	30. Federal Heights	46. La Junta	62. Pueblo	
15. Centennial	31. Firestone	47. Lafayette	63. Rifle	
16. Cherry Hills Village	32. Fort Collins	48. Lakewood	64. Salida	

i. Categories and Trends of Prohibited Behaviors

Police departments, park rangers, and other public servants enforce ordinances that prohibit a wide variety of life-sustaining activities under their city's municipal code. The activities homeless persons are being penalized for engaging in can be categorized into at least six different categories: camping, begging and panhandling, sleeping, lying or storing of belongings, loitering or vagrancy, trespass, and sanitation. Below is a chart showing the distribution of enforcement anti-homeless laws, by issuance of a citation, across Colorado. As this chart shows, Colorado cities have enacted a range of different types of laws in choosing to criminalize life-sustaining behaviors, and, while some are used more frequently than others, all are used to some degree.

Distribution of Citations Issued By Behavior Category, for all Responding Cities



N= 20,263 Begging (3026); Sanitation (4958); Trespass (7791); Loitering & Vagrancy (1492); Camping (2847); Sleeping/Lying/Storing (149)

a. Camping

Recently in Colorado, ordinances against camping have received significant attention in cities like Denver, Boulder, and Fort Collins.¹³⁹ Although camping bans are not the most widely enforced ordinances against homeless individuals, they merit special attention because they are one of the most visible issues surrounding the criminalization of homelessness in the state.

Municipal camping bans in Colorado exist in a number of forms, but they generally prohibit sleeping, or simply being, on some piece of public property with some form of shelter, which can include simply using a blanket or piece of cardboard over one's legs. A prominent example is Boulder's camping ban ordinance, which states:

Boulder 5-6-10 Camping or Lodging on Property Without Consent.

- (a) No person shall camp within any park, parkway, recreation area, open space, or other city property.
- ...
- (d) **For purposes of this section, camp means to reside or dwell temporarily in a place, with shelter, and conduct activities of daily living, such as eating or sleeping, in such place.** But the term does not include napping during the day or picnicking. **The term shelter includes, without limitation, any cover or protection from the elements other than clothing.** . . .

Nearly 60% of the Colorado municipalities we surveyed have ordinances that ban camping on public property. Twenty-five cities ban camping on any public property at any time. Twenty-seven cities ban camping under certain circumstances, such as at night or in public parks. Cities as large as Denver, with a population of over 600,000, and as small as Manitou Springs, with a population under 5,000, have camping bans in place.

Camping ban enforcement varies significantly from city to city. While Denver police issued fifteen camping ban citations in 2014 (after enacting its camping ban the previous year), Boulder police have issued an average of 300 citations or warnings per year between 2010 and 2014. The following table illustrates how many citations were issued between 2010 and 2014 by police in the fifteen Colorado cities we surveyed with camping bans.

Cities with Camping Bans	Total Camping Ban Citations Issued 2010-2014
Boulder	1767
Fort Collins	861
Colorado Springs	92
Edgewater	31
Lakewood	27
Wheat Ridge	22
Denver	15
Broomfield	9
Littleton	6
Salida	4
Grand Junction	3
Commerce City	0
Craig	0
Durango	0
Fort Lupton	0

In comparison to other Colorado cities with a similar ordinance, Boulder is a significant outlier in its camping ban enforcement. Boulder's high citation count is not due solely to its homeless population and demographics. As shown in the table below, the city has a significantly smaller homeless population than Denver or Colorado Springs yet writes many more camping ban citations than either of those cities. The table on the right shows the number of camping ban citations in relation to the number of homeless residents four of the state's biggest cities. In 2014, Boulder issued an average of two citations for every one homeless person, while Denver issued only one citation for every 200 homeless persons.

City	Homeless Population	City	Number of homeless individuals per citation
Denver	3,245	Fort Collins	0.3
Colorado Springs	1,219	Boulder	0.5
Boulder	850	Colorado Springs	13.3
Fort Collins	289	Denver	216.3

We cannot conclude that this means that other cities are allowing camping in public, despite ordinances that prohibit it. For instance, it is common practice for Denver police officers to request an individual to "move on" because they are in violation of the city's camping ban, but not issue a citation to that individual.¹⁴⁰ Therefore, Denver police are enforcing their ban, but they are doing it "off the record": Denver does not keep track of their "move on" orders and therefore no data are available to ascertain the pervasiveness of this practice. Anecdotal evidence suggests that such move-on orders are widely used to enforce Denver's camping ban.¹⁴¹

b. Begging and Panhandling

City ordinances that prohibit begging and panhandling have recently received intense scrutiny from the press and courts in Colorado.¹⁴² Like camping bans, panhandling and begging ordinances are highly visible issues in the criminalization of homelessness.

Colorado towns have enacted a variety of panhandling ordinances. They can broadly be grouped into three categories: prohibitions on aggressive panhandling, prohibitions on panhandling within certain places and times, and complete prohibitions on loitering. For illustrations of the first two categories, below we included Denver's panhandling ordinance, which has language typical of an aggressive panhandling ordinance, and Durango's panhandling ordinance, which has language typical of a time and place panhandling ordinance.

Just under half of the cities we surveyed have restrictions on begging in public.¹⁴³ A quarter of the cities and towns had one or more of the following: a ban on begging citywide, a ban begging in specific places, or a ban on aggressive panhandling.¹⁴⁴ In 2014 alone, Denver had 294 arrests of self-identified homeless or "transient" individuals for panhandling. Fort Collins, a much smaller city, issued 57 citations for panhandling in 2014.

On September 30, 2015, a federal court ruled that portions of Grand Junction's anti-begging ordinance violated a person's First Amendment right to free speech.¹⁴⁵ Given the uncertain future of these ordinances, some cities, such as Boulder, have amended their city ordinance,¹⁴⁶ and others, such as Denver, have issued orders to cease enforcement under the ordinance.¹⁴⁷

Denver 38-132: Panhandling.

(a) Definitions. For the purpose of this section:

(1) Aggressive panhandling shall mean:

- a. Intentionally touching or causing physical contact with another person without that person's consent in the course of soliciting;
- b. Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact;
- c. Using violent or threatening gestures toward a person solicited;
- d. Using profane or abusive language which is likely to provoke an immediate violent reaction from the person being solicited;
- e. Approaching or following a person for solicitation as part of a group of two (2) or more persons, in a manner and with conduct, words, or gestures intended or likely to cause a reasonable person to fear imminent bodily harm or damage to or loss of property or otherwise to be intimidated into giving money or other thing of value.

...

(b) Prohibited acts.

- (1) No person shall engage in aggressive panhandling in any public place.
- (2) No person shall panhandle on private or residential property after having been asked to leave or refrain from panhandling by the owner or other person lawfully in possession of such property.
- (3) No person shall solicit from any operator or occupant of a motor vehicle on a public street in exchange for blocking, occupying, or reserving a public parking space, or directing the operator or occupant to a public parking space.

Durango Sec. 17-43. - Aggressive begging.

No person shall beg aggressively for a gift of money or any thing of value on any public street, sidewalk, way, mall, park, building or other public property while in close proximity to the individual addressed. Aggressive begging means begging accompanied by or followed immediately by one (1) or more of the following:

- (1) Repeated requests after a refusal by the individual addressed;
- (2) Blocking the passage of the individual addressed;
- (3) Addressing fighting words to the individual addressed; or
- (4) Touching the individual addressed.

c. *Sleeping, Lying, Sitting, and Storing Belongings in Public*

Cities and towns in Colorado are not widely enforcing ordinances that make it illegal to sit, lie down, or sleep in public. Citations for this category of behavior make up only around one percent of the citations under ordinances we identified as criminalizing homelessness. Nevertheless, such ordinances are problematic because they directly criminalize the status of homelessness by making it illegal to perform necessary life-sustaining activities in public spaces. A prime example is Aurora's ordinance, which prohibits a person from lying down in public spaces during the day:

The only two city police departments that significantly enforce ordinances that explicitly restricts sleeping, lying, sitting, and storing belongings in public are Colorado Springs and Aurora. Over five years, Colorado Springs issued 32 citations for storing property in a public place.

Aurora 94-117: Loitering in the Colfax Corridor, laying down or sleeping in business district.

Within the Colfax Corridor it shall be unlawful for any person to lie down upon any street, sidewalk, parking lane, bus lane, median, plaza, or in any bus shelter between the hours of 7:00 a.m. and 9:00 p.m., whether on the ground or upon benches, stools, chairs, or other seats, nor upon any other surface unless compelled to do so by medical necessity.

Aurora, however, was the true outlier in this category. In a five-year period, Aurora issued 117 citations under an ordinance that explicitly prohibits lying down within the Colfax Corridor.¹⁴⁸ As discussed below, Aurora also issued 383 citations to homeless individuals for solicitation.¹⁴⁹ Based on the cities we surveyed, Aurora stands alone in Colorado by enforcing an ordinance that makes it a crime to lie down in public during the day. Of course, this might change, as additional cities enact these types of ordinances: as recently as February 9, 2016, Colorado Springs broadened the scope of its sit/lie ordinance to prohibit sitting or lying in any of its downtown areas.¹⁵⁰

Additionally, cities may not be enforcing ordinances that prohibit sitting or lying in public because they are instead citing under ordinances that prohibit obstructing sidewalks. While for data analysis purposes, we have included these ordinances in the loitering and vagrancy categories, their broad drafting allows them to be enforced against anyone sitting on a sidewalk. Each of the cities we surveyed with a sit or lie prohibition also has an ordinance prohibiting sidewalk obstruction.

d. Loitering and Vagrancy

While cities enforce loitering ordinances less frequently, they merit particular concern because of their breadth. These ordinances prohibit more behaviors than sit and lie laws, and include restrictions on remaining “idle” in public places, as well as obstructing passageways, such as sidewalks. Pueblo’s loitering ordinance illustrates how broad such ordinances can be:

Pueblo 11-202: Loitering.

(a) Definitions. When used in this Section:

(1) Loitering or loiter shall mean remaining idle in essentially one (1) location, to be dilatory or to tarry and shall include but not be limited to standing around, sitting, kneeling, sauntering or prowling.

(b) It shall be unlawful for any person to loiter:

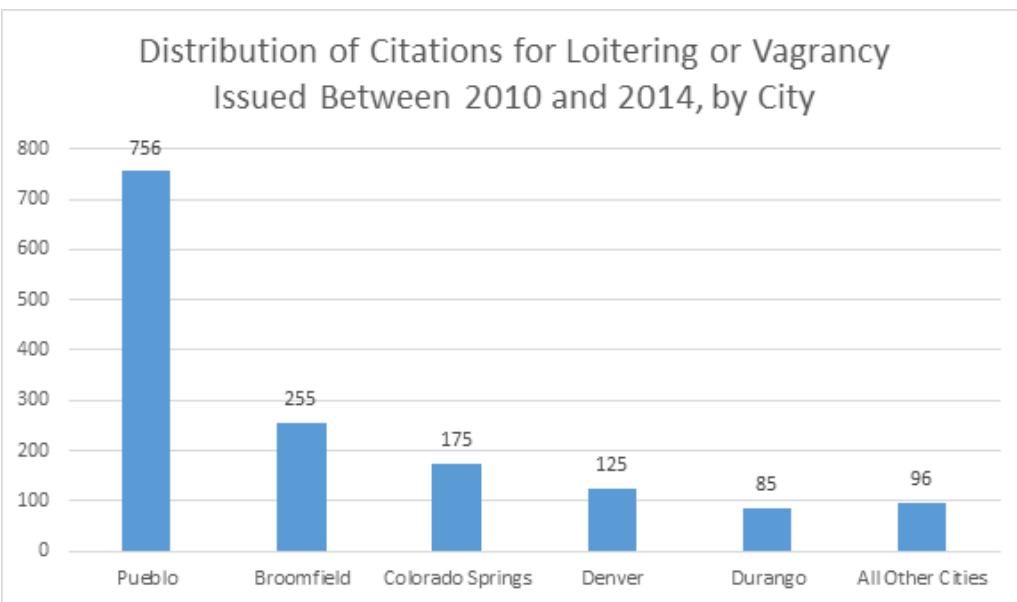
(1) In a manner which obstructs any public street, highway or sidewalk or entrance to a public facility by hindering, impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians;

(2) In or upon any public street, public highway, public sidewalk or any other public place and engage in any act which obstructs or interferes with the free and uninterrupted use of the property or with any business lawfully conducted in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress herein, thereon and thereto; or . . .

Although these types of ordinances are almost certainly unconstitutional, seven cities have broad loitering prohibitions.¹⁵¹ An additional four cities limit loitering in certain places, such as parks (Firestone) and parking lots (Durango), and fifty-four cities have ordinances prohibiting obstruction of sidewalks or passageways. These ordinances are broadly written and could be used against homeless persons sitting, lying, or storing belongings. In fact, in the twenty-three cities we surveyed, we saw these laws frequently being enforced against homeless citizens.

In this category, the city of Pueblo stands out for its high frequency of enforcement. Pueblo issued 756 citations under its loitering ordinance between 2010 and 2014. The data we received also reflect a disproportionate impact on homeless individuals from these ordinances. In Denver, 37% of citations for obstructing streets were issued to homeless individuals, while in Boulder that number was 46%.

Assuming other cities issue citations to homeless individuals for loitering or obstruction at similar rate of 40%, the twenty-three cities we surveyed would have issued 596 such citations to homeless individuals over five years.¹⁵² Below is a chart illustrating the statewide percentage of citations, issued by each city under its loitering or vagrancy ordinance.



e. Closure and Trespass

Closures of public places and prohibitions on trespassing disproportionately impact homeless individuals. Closures of public places and prohibitions on trespassing disproportionately impact homeless individuals. These ordinances criminalize being in public places, which are the only places many individuals without houses are able to be. Examples of closures and trespass ordinances can be found in Denver and Grand Junction's municipal codes:

Denver 39-3: Curfews and closures.

- (a) It shall be unlawful for any person, other than authorized personnel, to go upon or remain in any park, or other recreational facility within the boundaries of the city between the hours of 11:00 p.m. and 5:00 a.m., or any mountain park or other recreational facility outside the boundaries of the city between one (1) hour after sunset and one (1) hour before sunrise.
- (b) It shall be unlawful for any person, other than authorized personnel, to go upon or remain in a parkway median as defined in adopted rules ("parkway median") between the hours of 11:00 p.m. and 5:00 a.m.
- (c) It shall be unlawful for any person, other than authorized personnel, to go upon or remain in any park, parkway median, mountain park or other recreational facility, or any area or part of the same, at any time when the same is declared to be closed to the public by the manager.

Grand Junction 04.080: Trespass.

It shall be unlawful to commit trespass in the City. "Private property" within this section shall include private property where the public is a business invitee. A person commits trespass if he:

- (a) Enters upon or refuses to leave any private property of another, where such property has been posted with no trespass signs which are visible to persons entering upon the private property or which have been posted at reasonable intervals along the property boundary.
- (b) Enters upon or refuses to leave any private property of another having been given notice by the owner or person responsible for the property that such entry or continued presence is prohibited.
- (c) Enters upon or refuses to leave any public or private parking lot during the hours it is closed to business invitees when such property has been posted with no parking or no trespassing signs and the hours such property is closed which are visible to persons entering upon the property or have been posted at reasonable intervals along the property boundary.
- (d) Enters upon or refuses to leave any public place after being ordered to do so by any police officer or fire fighter acting in the course of his employment and duties.
- (e) Refuses to leave the property of any parochial school, private school or public school, including a college, where such property is used for the education of persons, when asked to do so by the principal, teacher, staff member, or by any person entrusted with the authority to maintain and supervise the property.
- (f) Enters upon or remains in any of the public cemeteries of the City between the hours of 10:00 p.m. and 6:00 a.m., unless the person is an employee of the City acting in the course of his employment.

Because of their breadth, our count of anti-homeless ordinances does not include general trespass laws, which are on the books in nearly every jurisdiction. We did, however, survey ordinances that enforce trespass provisions in public places, as they are often used to remove people without homes from parks and public buildings.¹⁵³ Twenty-two cities have such ordinances.

In our records request research, we gathered data both about these public trespass provisions as well as general trespass ordinances, and asked jurisdictions to tell us how many of these ordinances were issued to people identified as homeless. Trespass was one of the most highly enforced ordinances in every city. Because many cities did not provide information identifying if cited individuals were homeless, we cannot make a definitive conclusion about the enforcement of trespass ordinances as a tool against homeless residents. However, all the anecdotal and quantitative data indicates a disproportionate impact on the homeless population.¹⁵⁴

For instance, in 2013 and 2014, Denver issued over 1,000 trespass citations each year to homeless individuals. In both years, this represented more than half of all trespass citations in the city. Half of the the citations Grand Junction issued under its trespassing ordinance were also written to homeless people.

Many cities, including both Denver and Grand Junction, have broad trespass ordinances that cover both public and private property. In addition to a general trespass ordinance, some cities also have a trespass ordinance that applies specifically to public property. According to our data, 80% of citations issued for trespassing on public property in Boulder were written to homeless people. In Grand Junction, 100% of these citations went to homeless individuals.

Ordinances dictating closures of public spaces also seem to be disproportionately enforced against the homeless. In 2013 and 2014, Denver issued between 600 and 730 citations for violations of park closures to homeless individuals. In both years, this represented over 60% of all citations under these ordinances. Grand Junction showed a similar trend, with just under 60% of all citations for violating park hours being issued to homeless individuals.

If we were to assume other cities issue citations for trespassing to homeless individuals at a similar rate of about 50%, the twenty-three cities we surveyed would have issued 3,895 trespass citations to homeless individuals over five years.

f. Sanitation

Ordinances regulating sanitation were the second most highly enforced category after trespass and closures. This category is dominated by ordinances prohibiting public urination or defecation. Similar to trespass and closure ordinances, we cannot make a definitive conclusion about the enforcement of sanitation statutes because many cities did not provide information identifying if cited individuals were homeless.

The data we collected does suggest, however, that these laws disproportionately impact homeless individuals, although, not to the extent of trespass laws. For instance, Denver issued 33% of its public urination citations to homeless individuals, while Boulder issued 18% of these citations to homeless individuals.

If we were to assume other cities issue citations for public urination to homeless individuals at the rate of 20%, the twenty-three cities we surveyed would have issued 990 citations to homeless individuals over the course of five years.

V. IMPACT OF ANTI-HOMELESS LAWS AND ENFORCEMENT

A. Cost of Enforcement

Colorado cities want to eradicate homelessness and to help do so they have chosen to invest resources in pushing homeless people out of city centers by criminalizing activities associated with living outside.¹⁵⁵ This Report offers an estimate of how much these laws cost to enforce through an analysis of the cost of policing, adjudication, and incarceration of five Denver ordinances criminalizing homelessness. We estimate that just six Colorado cities spent more than five million dollars (\$5.000.000.00) enforcing fourteen anti-homeless ordinances.¹⁵⁶

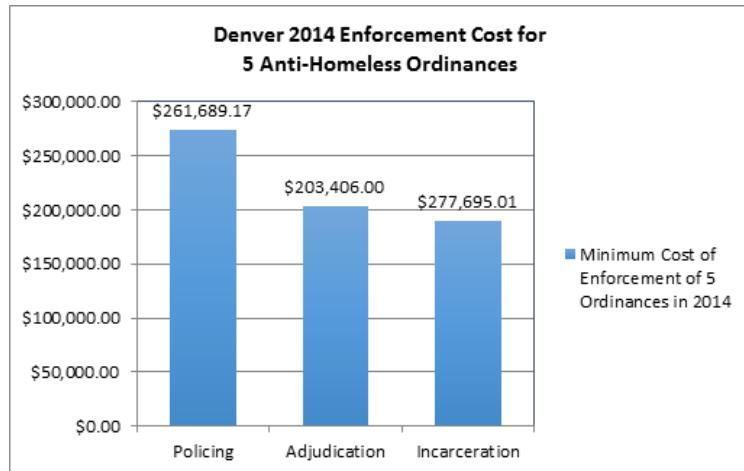
Since the 2008 financial crisis, state and local governments have been forced to evaluate budget line items with scrutiny. In Colorado, the Taxpayer's Bill of Rights (TABOR) contributes to a challenging fiscal environment. This constitutional measure "limits the annual growth in state (and sometimes local) revenues or spending to the sum of the inflation rate and the percentage change in the state's population."¹⁵⁷ TABOR limits many communities' abilities to financially bolster social programs.¹⁵⁸ Facing limited revenues, many local policy makers are continually looking for ways to cut costs, specifically of programs or policies that are deemed ineffective and expensive. As lawmakers consider where to reduce spending, they should closely consider the costs of criminalizing homelessness.

Case Study: Citations issued in 2014 in Denver

While enforcement of each of the 371 anti-homeless ordinances our survey identified carries a cost, we used Denver's data to approximate the cost of enforcement. We chose to research Denver data for several reasons: (1) in response to our open records requests, Denver provided a list of citations written pursuant to each ordinance we identified; (2) Denver police and municipal courts have robust data-tracking systems facilitating our analysis; (3) although Denver did not disclose which citations were given to homeless individuals, Denver did provide us with a list of citation numbers, which we could research online and determine the length of incarceration and whether the individual was homeless; and (4) Denver has ordinances criminalizing a variety of behaviors.

We have estimated the cost of policing, adjudication, and incarceration resulting from enforcing five Denver ordinances:¹⁵⁹ Unlawful Camping (Sec. 28.86.2), Park Curfews and Closures (Sec. 39-3), Panhandling (Sec. 38.132), Solicitation on or Near a Street (Sec. 54-548), and Urinating in Public (Sec. 38-99). In order to calculate the cost of enforcement, we sampled citations issued under each of these sections of Denver's code. Using the city's municipal court website, we could determine whether the defendant failed to appear in court and if the defendant served any jail time. Then, using rates of arrest and length of incarceration collected based on Denver's 2014 citations, we were able to approximate the cost of enforcing these Denver laws for years 2010-2013 and the cost of enforcing similar ordinances in other Colorado cities.

Enforcement costs are separated into policing, adjudication, and incarceration costs. The total cost of enforcing these five anti-homeless ordinances in Denver in 2014 alone amounted to \$742,790.18.



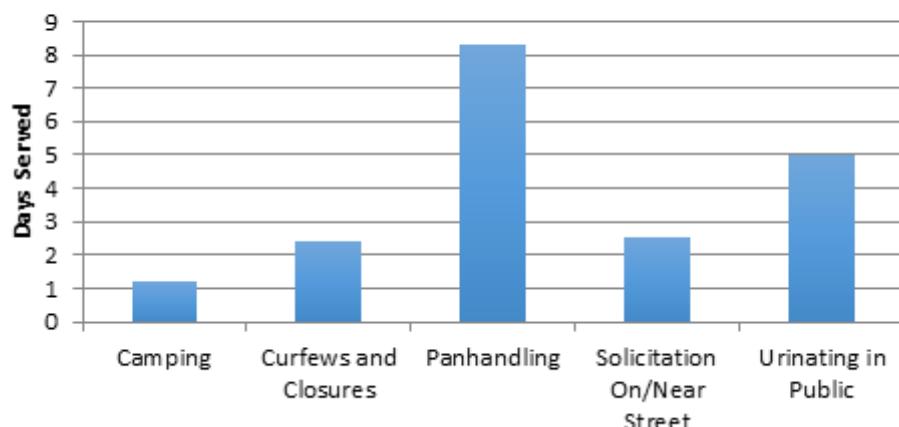
Policing

When an individual violates a municipal ordinance, the police are the person's first point of contact during enforcement. The cost of policing includes the costs of issuing a citation and the cost of arresting an individual due to a failure to appear warrant resulting from the original anti-homeless ordinance violation.¹⁶⁰ In 2014, the total cost of policing for these five ordinances was over \$260,000 dollars.¹⁶¹ This means that, on average, Denver spent about \$225.00 on policing costs for each citation.

Adjudication

After a police officer issues a citation, the case is adjudicated in municipal court.¹⁶² Each municipal case costs an average of \$174 to adjudicate.¹⁶³ This means that the city of Denver spent \$203,406.00 in adjudication costs on the 1,169 citations under anti-homeless ordinances in 2014. This includes costs associated with the municipal court, as well as the district attorney (but not a public defender). It is important to note that this cost estimate includes only adjudication of the initial citation. There is not sufficient data to estimate the additional costs incurred in cases resulting in a failure to pay, failure to appear, or costs associated with citations that went to trial and incurred the additional cost of court-appointed counsel.¹⁶⁴

Denver 2014 Average Incarceration Days by Offense Under Five Anti-homeless Ordinances



Total Amount of Jail Time Served (all sample citations)= Camping (18); Curfews and Closures (685); Panhandling (1543); Solicitation Near Street (135); Urinating in Public (1160).

Incarceration

About 50% of citations resulted in the recipient serving jail time.¹⁶⁵ A citation recipient for the five ordinances we researched can expect to spend, on average, 4.61 days in jail.¹⁶⁶ Incarcerating someone for one day in the Denver jail costs the public \$53.64.¹⁶⁷ Incarcerating individuals for violating these five ordinances in 2014 alone costs the city \$277,695.01—for an average per-citation incarceration cost of \$247.32.

Between 2010 and 2014, the city of Denver spent over \$3.23 million dollars enforcing five of these anti-homeless ordinances.¹⁶⁸ If we assume other cities arrested and incarcerated recipients of citations at a similar rate, Boulder, Colorado Springs, Durango, Fort Collins, and Grand Junction, spent over \$5 million dollars combined enforcing their own prohibitions on panhandling, camping, and sleeping or laying in public over the course of five years.¹⁶⁹

Ordinance	Cost of Enforcement 2010-2014
Denver	
Camping Ban	\$7,623.09
Curfews and Closures	\$1,402,094.30
Panhandling	\$1,117,681.34
Solicitation Near Street	\$32,650.02
Public Urination	\$676,334.52
Boulder	
Panhandling	\$20,486.85
Camping	\$946,457.20
Colorado Springs	
Sleep/Lay Ban	\$23,324.84
Solicitation Near Street	\$78,035.48
Camping	\$51,142.58
Durango	
Panhandling	\$31,662.57
Fort Collins	
Panhandling	\$239,282.34
Camping	\$515,686.60
Grand Junction	
Camping	1,680.69
TOTAL	
	\$5,144,142.43

If taxpayer dollars were redirected to address root causes of homelessness, local governments would save hundreds of thousands of dollars on enforcement and could begin to end the “revolving door” of homeless individuals circulating through the criminal justice system.

Indirect Costs of Criminalizing Homelessness

These calculations only account for the financial costs directly associated with enforcing anti-homeless ordinances. It

does not account for the social cost of criminalization, or the opportunity cost of allocating resources to the criminal justice system instead of solutions that address the root causes of homelessness.

According to a study conducted by the City of Denver's Crime Prevention and Control Commission, Denver spends an average of \$35,000 dollars a year on one chronically homeless individual.¹⁷⁰ As lawmakers consider where to reduce spending, they should closely evaluate the costs of criminalizing homelessness.

Choosing to address homelessness through criminal enforcement is an ineffective and expensive policy. Rather, communities should address the root causes behind why an individual is sleeping on a bench, standing by the side of the road requesting money, or sitting in a park after hours with no other place to go. By focusing resources at combating the causes of homelessness, the "costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back"¹⁷¹ can begin to close.

B. Criminalization and the Perpetuation of Poverty

Beyond the costs local government incurs in enforcing anti-homeless ordinances, enforcement carries a heavier social cost by perpetuating cycles of poverty. The enforcement of even minor infractions against a homeless person can have dramatic collateral consequences. Fines, jail time, and warrants resulting from Failure to Pay or Failure to Appear can have long-term impact on a homeless individual's ability to secure housing, obtain employment, or pursue education. Obtaining permanent housing and employment are already challenging without a safe place to sleep. Targeted criminalization of people who are homeless can create insurmountable barriers to escaping poverty and homelessness.

a. Housing

Whether from a private landlord or through a public program, renting a home or an apartment becomes exceedingly difficult if an individual has a criminal record. Federally subsidized housing programs are administered by local Public Housing Authorities that can establish their own policies as to what types of criminal histories bar applicants from participation.¹⁷² PHAs have denied access to public housing on the basis of records of minor criminal offenses, including riding public transit without paying, public urination, trespassing, and disturbing the peace.¹⁷³ Additionally, private landlords commonly exclude prospective tenants on the basis of criminal records.¹⁷⁴

b. Employment

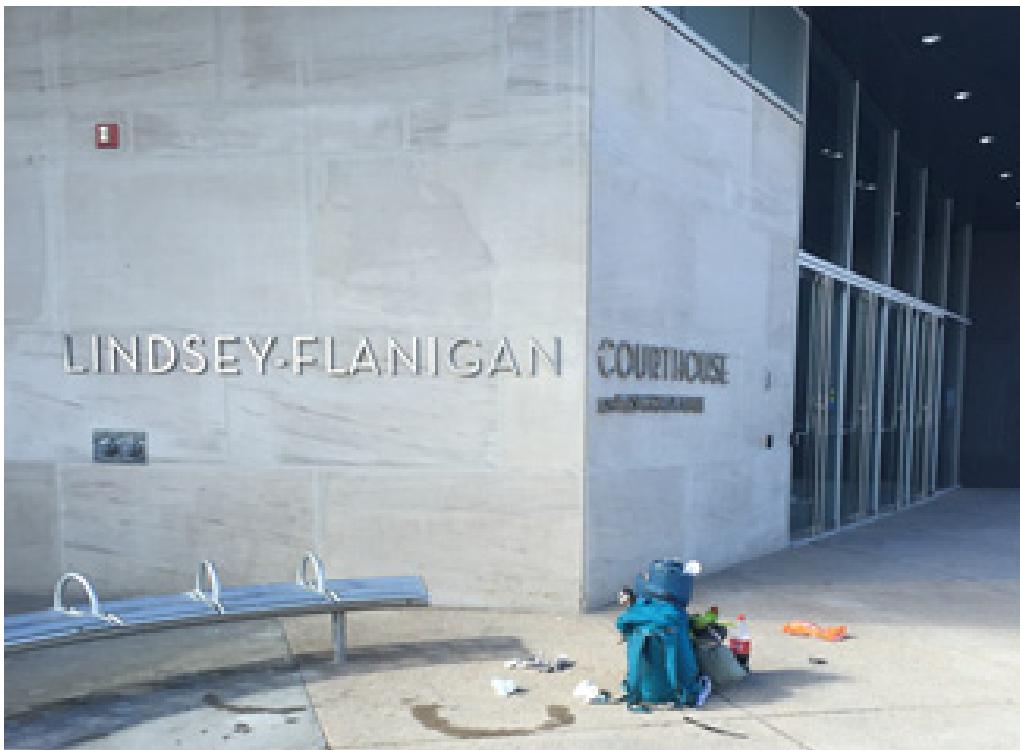
Criminalizing homelessness can create two significant problems for homeless individuals as they seek jobs and maintain employment: being forced away from work or a job search for criminal proceedings and creating a criminal record.

First, the time associated with court proceedings and possible jail time arising out of behavior associated with the necessities of daily living creates a significant obstacle to obtaining or holding a job. Repeated interruptions at work due to court appearances or incarceration can lead to a reduction in shift hours or a total loss of employment. When arrested and incarcerated, people who are homeless also often lose their belongings, as they have no place to store them. This includes identification, the loss of which creates additional barriers to finding or holding work.¹⁷⁵

Second, employers often refuse to hire individuals on the basis of criminal history.¹⁷⁶ Even convictions for minor misdemeanor offenses affect job prospects.¹⁷⁷ A nationwide trend to "ban the box" has helped people with criminal records, but Colorado law restricts only public employers' ability to consider criminal records.¹⁷⁸ This leaves private employers free to disqualify candidates on the basis of misdemeanor convictions.¹⁷⁹

c. Education

Living without a permanent address alone makes pursuing education extremely challenging.¹⁸⁰ When a homeless person is thrust into the criminal justice system by receiving a citation for engaged in life-sustaining behaviors, the time and costs associated with those criminal proceedings makes educational success while homeless a near impossibility.



Attending a class, completing a GED program, or enrolling in courses all become increasingly difficult for a homeless individual who is also trying to navigate the criminal justice system.¹⁸¹ Both because of logistical barriers to enrollment and challenges associated with living without housing, school-aged children affected by homelessness are significantly less likely than their peers to attend school regularly.¹⁸² Having to relocate frequently, which can be a necessity when your presence in a city has been criminalized based on your housing status, also detrimentally affects school performance.¹⁸³ While American culture views education as the “great equalizer,” living without consistent access to housing makes educational attainment difficult.¹⁸⁴ These challenges in school while homeless will mean a higher likelihood of unemployment and reduced earning potential as an adult.¹⁸⁵

d. Public Benefits

Accessing and maintaining public benefits such as food and housing assistance or Social Security requires attending appointments and meeting application deadlines. Homeless individuals burdened with court dates and jail time face additional challenges in scheduling or attending required appointments with caseworkers or for filing required paperwork.¹⁸⁶ As Patty, a homeless woman who has lived in both Denver and Boulder, explains: “You can’t do anything when you’re arrested all the time... I couldn’t get to see my attorney for my Social Security. I couldn’t fax paperwork. I couldn’t go get the resources that I need. You can’t call to the people you need to.”¹⁸⁷

While difficult to measure, collateral consequences of criminalizing homelessness create social costs beyond tax dollars expended on police enforcement, adjudication, and jail time. By criminalizing the daily necessities of living while un-housed, cities contribute to a cycle of poverty: the cities preclude impoverished individuals’ access to consistent housing, employment, education, and other public benefits—all crucial pillars to escaping poverty. Criminalizing homelessness anchors un-housed individuals in perpetual poverty.

VI. ALTERNATIVES TO CRIMINALIZING HOMELESSNESS

Diverting money away from current criminalization efforts towards solutions that prevent and reduce homelessness could both save tax money and significantly improve the lives of un-housed Coloradans. We explore three alternatives to criminalizing behavior associated with homelessness that are notable for their cost effectiveness and positive outcomes: Housing First programs, Rapid-Rehousing, and problem solving or recovery courts. Each of these programs holds significant promise for reducing tax-payer spending and improving the lives of homeless people, including the newly homeless and chronically homeless.

A. Housing First Programs

One of the most successful alternatives to criminalization is the Housing First movement. Flipping the old model of dealing with homelessness on its head, Housing First programs recognize that it is much harder to help people resolve the issues causing them to be homeless such as substance abuse, poor mental health, or lack of employment, without stable, permanent housing.¹⁸⁸ Therefore, by providing people with “permanent supportive housing first, and then givi[ng] them help,” not only does it “work better,”¹⁸⁹ but it also creates “a positive domino-effect”¹⁹⁰ where the problems that homelessness creates for individuals and communities begins to resolve.¹⁹¹

One of the states with the most effective Housing First program is Utah. Over the “past nine years, Utah has decreased the number of homeless by 72%—largely by finding and building apartments where they can live, permanently, with no strings attached.”¹⁹² In addition to this program being extremely effective in keeping people housed, it is demonstrated to reduce public spending. It is estimated that Utah’s Housing First program “cost[s] between \$10,000 and \$12,000 per person,” about half the cost of caring for a homeless person on the street.¹⁹³

The Colorado Coalition for the Homeless (CCH) is our state’s largest supporter of the Housing First ideology. CCH manages over sixteen housing developments that are sustainably built and located near public transit.¹⁹⁴ These developments support the Coalition’s integrated approach to housing by “combining high-quality housing for homeless families with affordable homes for individuals and families with lower incomes.”¹⁹⁵

In 2006, CCH created Colorado’s first Housing First collaborative. As a result of the collaborative, Denver saw success in reducing chronic homelessness to those participating in its program by providing permanent housing first.¹⁹⁶ These successful housing programs seem poised to continue to grow throughout the Denver-metro area. In order to address the outstanding need, Housing First programs can be expanded both in the metro area and in the rest of the state.¹⁹⁷

B. Rapid Re-housing

Cities might be unable to provide stable, permanent, and affordable housing for all homeless people through Housing First alone. Housing First programs often focus on the chronically homeless populations, which typically represent a smaller percentage of the overall homeless population within a city.¹⁹⁸ Other programs are needed to address people who are not chronically homeless, including those who may have recently lost their home.

One of the most effective approaches to helping newly homeless individuals is Rapid Re-housing. Focusing on the same principle as Housing First of getting homeless individuals housing as the first priority, Rapid Re-housing “helps homeless families exit shelters and get back into permanent housing quickly” by “provid[ing] short-term help with housing expenses and case management.”¹⁹⁹

Advocates support Rapid Re-housing initiatives because they often have “lower barriers” to entry than other transitional housing strategies available for homeless individuals.²⁰⁰ For example, a HUD study found that, “only 10 percent of families screened for rapid re-housing lost access because of eligibility criteria, while 17 percent of families screened for project-based transitional housing lost access because of eligibility criteria.”²⁰¹

Unfortunately, implementation of Rapid Re-housing programs remains limited. According to the National Alliance to End Homelessness, of the 11,945 shelter, transitional, permanent, and Rapid Re-housing beds available in Colorado in 2014, Rapid Re-housing beds only accounted for 3.2% of them.²⁰²

C. Problem-Solving and Recovery Courts

Even if Colorado enacts critical legislation that establishes affirmative rights for homeless individuals by passing The Right to Rest Act, and repeals anti-homeless ordinances, in the short term, people who are chronically homeless will likely continue to have some interactions with the criminal justice system. Living in public means more interactions with law enforcement officers than those who have a private place of their own, which means more opportunity for any violation of law, no matter how small, to lead to an arrest.²⁰³

Problem-solving courts address the underlying issues that precipitate why an individual has become involved with the criminal justice system.²⁰⁴ They aim to reduce recidivism and are cost effective.²⁰⁵ Problem-solving courts often include a “collaborative approach to decision-making; individualized justice for each litigant; a focus on defendant accountability; community engagement; enhanced information through staff trainings and better data collection on each case; and an interest in producing better substantive outcomes, such as lower recidivism, improved safety for victims, or stronger communities.”²⁰⁶

As of 2014, Colorado has established 78 problem-solving courts within 20 judicial districts.²⁰⁷ These courts include drug courts, DUI courts, mental health courts, dependency/neglect courts, and veteran’s treatment courts.²⁰⁸ One problem-solving court that directly addresses the cycle of homeless individuals interacting with the criminal justice system is the Denver County and Municipal Recovery Court established at the Denver County and Municipal Court in April 2014. The program has four stages and provides housing, substance abuse treatment, employment and financial training.²⁰⁹ 95% of those that participated in 2013 were homeless.²¹⁰

Since the Recovery Court began in 2014, there has been a 76% reduction in the number of days the participants have spent in jail, a 71% reduction in the amount of time the participants have been arrested; and an almost 60% reduction in detox and emergency room visits among Recovery Court participants.²¹¹ Denver’s Recovery Court program has drastically improved the lives of many individuals by providing housing, substance abuse treatment, and employment.

CONCLUSION

Modern homelessness is a solvable problem. Unfortunately, too many Colorado cities are attempting to “solve” the visible problem of homelessness by making them “invisible” through criminalization. Across the state, Colorado cities have enacted a total of 351 anti-homeless ordinances that criminalize a wide variety of behaviors, including panhandling, begging, camping, and sitting or lying in public. Local police departments choose to enforce these ordinances in a variety of ways, but the typical result is that they target or disproportionately affect homeless individuals – individuals who have no other choice but to break the law. Examining the cost of policing, adjudication, and incarceration to enforce five anti-homeless ordinances in Denver makes it clear: criminalization is a short-term solution, it is costly for Colorado taxpayers, and it keeps people in the cycle of poverty.

This Report also shows that judicial action alone will not be enough to stop the unconstitutional criminalization of homeless people. Although one Grand Junction panhandling ordinance has been found unconstitutional, the city, and others like it, continue to enforce other facially-neutral ordinances in a disproportionate way. Because so many cities have enacted these ordinances, the Colorado state legislature must support legislation that establishes affirmative rights for homeless individuals at the state level. The Right to Rest Act, Colorado House Bill HB-16-1191, introduced by Representatives Salazar and Melton in February 2016, will help combat the disparate impact of these ordinances in Colorado’s communities.

In addition, although it is outside the scope of this Report to propose a broad solution to the problem of homelessness, we propose that state and local governments divert the money currently being spent on criminalization into other cost-effective and humane solutions. Colorado’s existing Housing First, Rapid Re-housing, and Recovery Court programs are examples of such constructive alternatives and these programs should be expanded to meet the need of Colorado’s residents. While we cannot solve complex homeless issues overnight, we can ensure that our people are not punished for surviving on the streets.

“ Ironically, ending homelessness is actually cheaper than continuing to treat the problem. This would not only benefit the people who are homeless; it would be healing for the rest of us to live in a more compassionate and just nation. It’s not a matter of whether we know how to fix the problem. Homelessness is not a disease like cancer or Alzheimer’s where we don’t yet have a cure. We have the cure for homelessness—it’s housing. What we lack is political will. ”

– *Sam Tsemberis, founder and executive director of Pathways to Housing,*

APPENDIX A:

METHODOLOGY FOR SURVEY OF ANTI-HOMELESS ORDINANCES

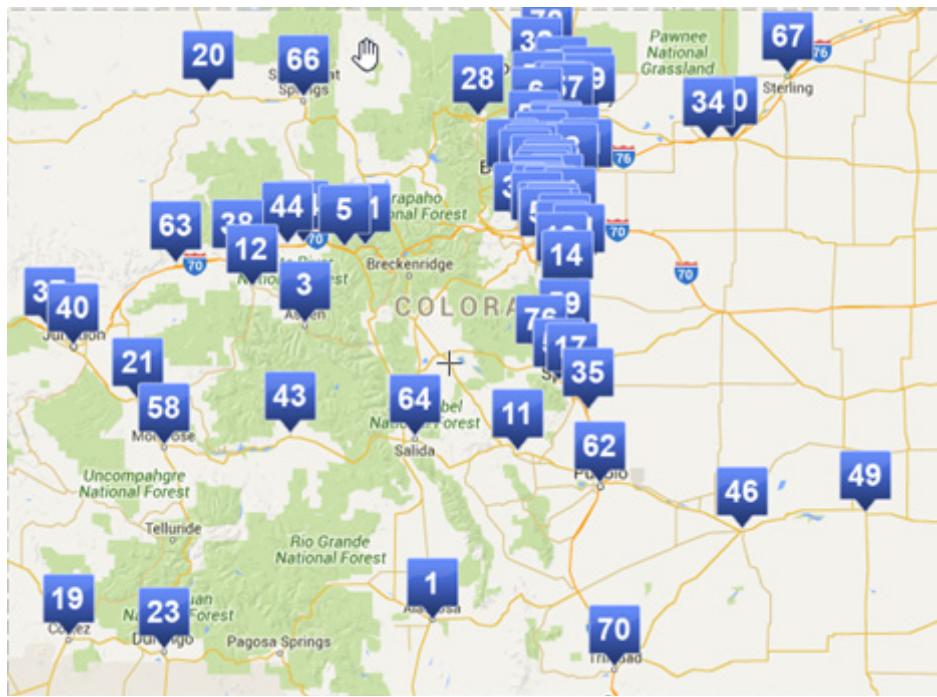
Selection of Cities

We surveyed ordinances in Colorado's seventy-six most populous cities in order to provide an overview of anti-homeless ordinances across the state.²¹² We elected these cities because they are the most populous and represent a cross-section of Colorado's geography.²¹³ According to 2010 Census data, these cities are home to 3,478,593 Coloradans, or about 69% of the state's residents.²¹⁴

List of Survey Cities

1. Alamosa	17. Colorado Springs	33. Fort Lupton	49. Lamar	65. Sheridan
2. Arvada	18. Commerce City	34. Fort Morgan	50. Littleton	66. Steamboat
3. Aspen	19. Cortez	35. Fountain	51. Lochbuie	67. Sterling
4. Aurora	20. Craig	36. Frederick	52. Lone Tree	68. Superior
5. Avon	21. Delta	37. Fruita	53. Longmont	69. Thornton
6. Berthoud	22. Denver	38. Glenwood Springs	54. Louisville	70. Trinidad
7. Boulder	23. Durango	39. Golden	55. Loveland	71. Vail
8. Brighton	24. Eagle	40. Grand Junction	56. Manitou Springs	72. Wellington
9. Broomfield	25. Edgewater	41. Greeley	57. Miliken	73. Westminster
10. Brush	26. Englewood	42. Greenwood Village	58. Montrose	74. Wheat Ridge
11. Cañon City	27. Erie	43. Gunnison	59. Monument	75. Windsor
12. Carbondale	28. Estes Park	44. Gypsum	60. Northglenn	76. Woodland Park
13. Castle Pines	29. Evans	45. Johnstown	61. Parker	
14. Castle Rock	30. Federal Heights	46. La Junta	62. Pueblo	
15. Centennial	31. Firestone	47. Lafayette	63. Rifle	
16. Cherry Hills Village	32. Fort Collins	48. Lakewood	64. Salida	

Map of 76 Ordinance Survey Cities



Inset - Denver Metro and Surrounding, 76 Survey Cities



Selection of Search Terms

In order to identify ordinances that both disproportionately affect homeless individuals and either reflect an intent to target homeless individuals or restrict a necessary life activity, we compiled a list of search terms. We assembled our terms after reviewing Western Regional Advocacy Program reports that included discussion of common ordinances criminalizing homelessness and through collaboration with Denver Homeless Out Loud.²¹⁵ Our final list of search terms included the words: aggressive, bathing, begging, camp, camping, curfews, closures, defecate, defecation, food,

hours, loafing, lodge, loiter, loitering, lying, obstruction, pan handling, pan-handling, panhandling, scavenging, sitting, sleep, sleeping, solicitation, median, storage, trespass, urinate, urination, vehicle, vagrancy, and washing.

Searching

We searched each of the 76 cities municipal codes for all of the 33 search terms. The precise methodology of each search varied from city to city as cities publish their municipal codes on a number of different platforms. Some city codes are available on LexisNexis, which provides for the most powerful search options with robust boolean search capabilities. Other cities publish codes using MuniCode or using Sterling Codifiers, which have more limited search capabilities than LexisNexis but still enable flexible searching of the entire municipal code. Finally, some cities publish their city codes using PDF or html links on their own website, leaving “Ctrl+F” searching as the only option. These types of codes were the most difficult to search. Searching these city codes required more browsing titles and reading ordinances to look for relevant results than the online databases with search functions.

Categorizing Ordinances

Once we had identified the ordinances responsive to our search, we worked to categorize them based on the types of behavior they prohibit. Broadly, the categories of behavior prohibited included: Sleeping, Lying, Sitting, and Storing Belongings in Public; Motor Vehicle Restrictions; Camping; Loitering and Vagrancy; Trespass and Closure; Sanitation; Begging; and Other. We grouped ordinances into these broad categories in effort to compare the scope of criminalization across jurisdictions. When a single ordinance criminalizes multiple types of behaviors, it appears in each category of behavior it prohibits.

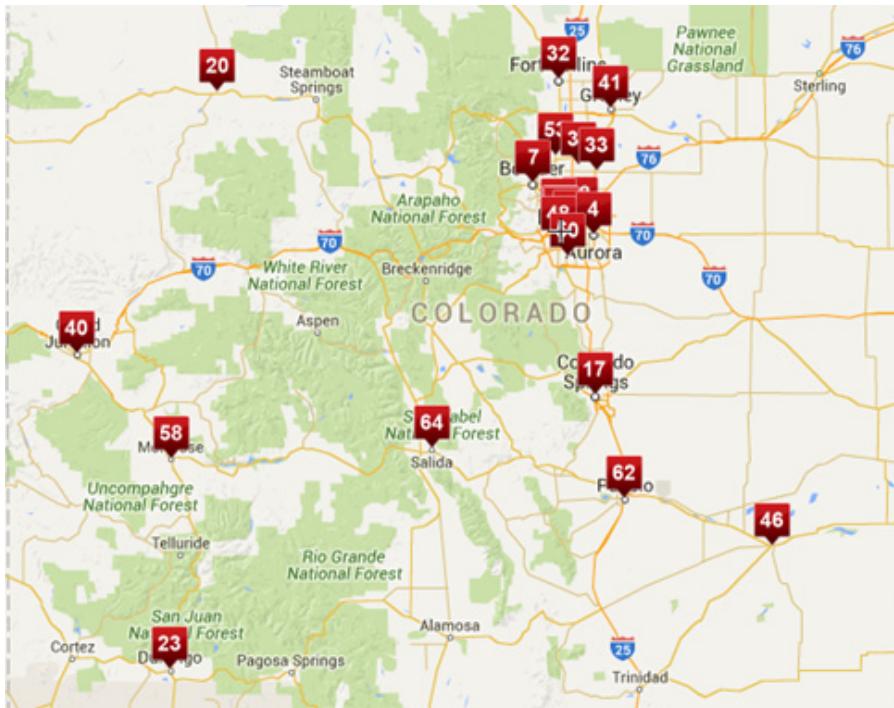
APPENDIX B: METHODOLOGY FOR SURVEY OF ENFORCEMENT ANTI-HOMELESS ORDINANCES

Selection of Cities

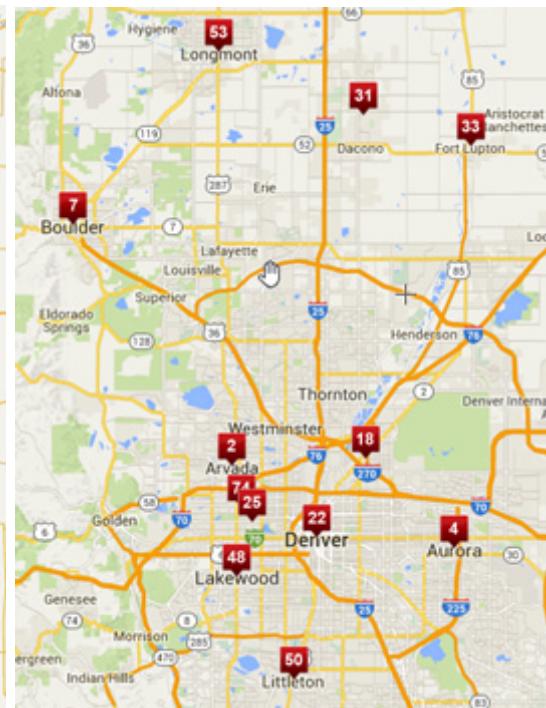
After completing the ordinance survey described in Appendix A, we selected twenty-three of the seventy-six cities for additional research into the enforcement of anti-homeless ordinances. We selected these cities based on diversity of geography and population size.

1.	Arvada	13.	Fort Lupton
2.	Aurora	14.	Grand Junction
3.	Boulder	15.	Greeley
4.	Broomfield	16.	La Junta
5.	Colorado Springs	17.	Lakewood
6.	Commerce City	18.	Littleton
7.	Craig	19.	Longmont
8.	Denver	20.	Montrose
9.	Durango	21.	Pueblo
10.	Edgewater	22.	Salida
11.	Firestone	23.	Wheat Ridge
12.	Fort Collins		

Map of 23 Record Request Cities



Inset - Denver Metro and Surrounding, 23 Record Request Cities



Records Requests

After selecting the cities for further research, we drafted a template Colorado Open Records Act (CORA) request.²¹⁶ We then adapted the template to each of the 23 municipalities by including the specific anti-homeless ordinances identified for each city. In the early Fall of 2015, we sent the requests to the appropriate record keepers in each municipality. We followed up with additional clarifications and questions as needed.

In the requests, we asked for records from January 1, 2010 to December 31, 2014, relating to ten separate questions. Our primary focus were the first five questions, covering citations issued to all individuals and homeless individuals under the entirety of the municipal code as well as the specific ordinances our survey identified as anti-homeless. In some instances, we included general trespass ordinances in our records requests though those ordinances were ultimately not included in our final count of anti-homeless ordinances. We included these ordinance in our records request to seek data about how many cited individuals were homeless, which some jurisdictions were able to provide.

We also requested additional records concerning the anti-homeless ordinances, including information on: resolved versus outstanding citations, fines issued for citations, time in custody for citations, warrants issued for citations, and resulting consequences for failures to appear for citations.

Cities provided varying degrees of information in response to our data requests. Financial and time constraints required us to make decisions about how far to pursue data from each municipality. Considerations in pursuing follow-up information included: the size of the municipality, any news reports or anecdotal evidence of anti-homeless ordinance enforcement, the anticipated record retrieval fees reported by the municipality, and the responsiveness of the records keeper.²¹⁷

Compiling of CORA Responses

We saved all substantive responses from record keepers on a cloud-based file storage system accessible to the entire team. We received records in a wide range of formats, including physical letters, CDs, emails, PDFs, and Microsoft Word documents. The responses also varied widely in the substantive information provided and the structure of how that information was presented.

When available, we reported and made use of more specific citation records, such as citations by year and citations to homeless individuals. When this level of detail was unavailable, we provided total citations over the five year period or total citations to all individuals, making explicit the basis for any assumptions about probable yearly citations rates or rates of citations to homeless individuals.

We compiled all the responses into a series of charts for easier comparison and application. These charts form the basis for the graphs and numbers presented throughout Section IV of this Report.²¹⁸

APPENDIX C: METHODOLOGY FOR COST OF ENFORCEMENT CALCULATIONS

In order to analyze the cost of enforcing criminalization ordinances that target homeless people, we calculated and totaled the costs associated with the policing, adjudication, and incarceration resulting from enforcing certain municipal ordinances. Policing costs include issuing a ticket and completing an arrest, when they occur. The adjudication costs include the cost to adjudicate a ticket in municipal court, as well as the court and prosecution costs. The incarceration costs represent a per-citation cost based on the daily cost of housing an individual in the jurisdiction's jail and the average number of days served in jail due to an ordinance violation. We calculated the total of these costs for all violations under five different criminalization ordinances in Denver for the year 2014. We then used the 2014 Denver calculations to project costs for Denver enforcement efforts in 2010-2013 and in other cities through out the state of Colorado.

Calculating Denver's Costs in 2014

Of the cities that responded to our CORA requests, Denver provided the most robust data. Though the Denver Police Department was able to identify the number of citations issued to "transient" individuals under the specific criminalization ordinances we were researching, they were not able to give us specific ticket/case numbers for each ticket.²¹⁹ However, the Municipal Court of Denver was able to provide excel spreadsheets with a list of every citation issued under the specific ordinances for each year. Unfortunately, the records from Denver Municipal Court do not identify which cases involved homeless or transient individuals. Accordingly, we used a sample from all citations issued (not just those issued to homeless individuals) to examine how many people were arrested and how much time the average person spent in jail on each violation. Once we had researched our sample of citations to determine if there was an arrest and if the person was incarcerated, we used the average arrest rate and days of incarceration alongside the total number of citations issued to homeless people to calculate the cost of enforcing these laws against Denver's homeless residents.

Determining Sample Size

S = Sample Size

$$S = \frac{z^2 * p(1 - p)}{\frac{e^2}{1 + (z^2 * p(1 - p))} - \frac{e^2}{e^2 N}}$$

To calculate the sample size, we consulted Dr. Nancy Reichman, a social scientist, to determine the correct size and values. We used the following values:

- The total population - total number of citations issued under ordinance of interest, minus any juvenile charges (records for juvenile charges are sealed, therefore, unavailable for analysis (N)

- A confidence interval of 95 (for a z-score of 1.96) (z)
- A margin of error of 5% (e)

Once we determined the sample size, we selected the appropriate amount of citations under each ordinance for analysis. Rather than randomizing selection, we built our sample by choosing citations evenly throughout the 2014 calendar year. However, when we selected citations for inclusion we did so using only the citation number and date issued; we did not know anything about the disposition of the case at the time of selection.

Researching Citations

After selecting the sample citations, we looked up each citation using the Denver Municipal Court website.²²⁰ If a citation did not have a disposition because it was dismissed or still active, we removed it from the sample.²²¹ For any citation we removed because it was dismissed or still active, we replaced it with another randomly selected citation.

Although many citations had more than one charge, if a citation included multiple charges under two or more of the criminalization ordinances we were researching, we ensured that each citation was only included in a sample once. We did this because we did not want to include the outcome of any individual citation twice in our calculation of average time served.

Estimating Costs

We analyzed criminalization costs by analyzing policing, adjudication, and incarceration. This methodology follows the one developed by Seattle University and UC Berkeley's Western Regional Advocacy Project Reports.

Policing

Policing costs include both the time an officer spends issuing a ticket and the cost of an arrest, when an arrest occurs.

Calculation: Policing Cost Under Selected Ordinance

λ = Total policing cost for all citations written to homeless people under selected ordinance

H_y = number of citations issued to homeless people under selected ordinance in Year N

F = Number of citations issued to homeless people under selected ordinance resulting in a FTA

Cost of issuing a citation = (.1666667 * \$31.10) = \$5.18

$\lambda = (H_{2014})(\$5.18) + (F * \$461)$

Average Per Citation:

$$\phi = \frac{\lambda}{H_{2014}}$$

Based on California's experience, we assumed a citation without an arrest takes an average of 10 minutes (or 1/6 of an hour) for an officer to issue.²²² In order to calculate the cost of this police time, we used the mean officer hourly wage for Colorado as reported by the Bureau of Labor Statistics, \$31.10 an hour.²²³

An arrest takes significantly more resources than issuing a citation. Denver's records do not indicate definitively whether or not a recipient of a citation was arrested upon issuing of a citation. Each arrest costs approximately \$461.²²⁴

In order to calculate expenditures on arrest, we looked at failure to appear (FTA) data. Denver municipal court records indicate whenever a defendant fails to appear at a required court date. When a defendant fails to appear, an arrest warrant is issued. Because we did not count any active warrant cases, all FTAs that were documented were individuals who at one point missed a court date, had a warrant out for their arrest, and then were eventually arrested, and proceeded through the judicial process. By only using the number of FTAs to represent the number of arrests resulting from the enforcement of the criminalization ordinances, our cost calculation is likely under inclusive as officers can arrest not just for a FTA, but also upon issuing a citation if they deem it appropriate.²²⁵ Unfortunately, we were not able to find out which citations resulted in an arrested immediately upon being issued. Because we could not access a record of these arrests, their cost is not included in this analysis.

Adjudication

Adjudication represents the costs incurred by the judicial system (the municipal court and district attorney). We used an average adjudication cost of \$174 based on the study, *The Price of Jails*, by the VERA Institute of Justice.²²⁶

Calculation: Adjudication Cost Under Selected Ordinance

$$A = (H_{2014})(\$174)$$

Incarceration

The municipal court records associated with each citation indicate how much jail time, if any, the recipient of the citation served.

Calculation: Incarceration Costs Under Selected Ordinance

I = Total incarceration costs under selected ordinance

φ = Average Jail Time Per Citation

$j = \Sigma$ (Jail Time Served, All Sample Citations)

$$\varphi = \frac{j}{S}$$

Total:

$$I = \varphi * H_{2014} * \$53.64$$

We tracked this data for citations in the sample, and then averaged the days of jail time served for each citation in order to apply that data to the total population. We then multiplied the estimated number of days served in jail under the ordinance by the average cost of one day in a Denver County jail, \$53.64.²²⁷

Total Enforcement Costs Under Each Ordinance

To calculate total enforcement cost, we added together Policing, Adjudication, and Incarceration costs.

Calculation: Total Enforcement Costs Under Selected Ordinance

Total Enforcement Cost = $\lambda + A + I$

Total Enforcement Cost = $\lambda + A + I$

Average Per Citation Cost

In order to determine an average cost per citation, we took the total cost under each ordinance and divided it by the number of citations issued to homeless people under that ordinance.

CALCULATION: AVERAGE PER CITATION ENFORCEMENT COSTS UNDER SELECTED ORDINANCE

K = AVERAGE PER CITATION ENFORCEMENT COST, DENVER

$K = (\Phi + \$174) + (\Phi * \$53.64)$

Projecting Denver's Costs, Years 2010-2013

After looking to individual citations to determine 2014 enforcement costs in Denver, we averaged the per-citation cost under each ordinance.

Calculation: Total Enforcement Costs, Years Other than 2014

$$\Sigma (k * H_y)$$

We used this average cost to approximate expenditures for years 2010 through 2013. In order to do so, we took the average per-citation enforcement cost for each ordinance, and multiplied by the number of citations issued under that ordinance in each 2010, 2011, 2012, and 2013. This estimate does not take into account inflation or other changes in cost that may occur over time.

Projecting Costs in Other Cities

We next calculated costs for the other cities highlighted in this report. Unfortunately, most jurisdictions were unable to identify which citations were written to homeless individuals. In order to begin to account for the costs of criminalization ordinances in other cities despite this shortcoming, we chose to calculate the cost only for those ordinances that clearly target homeless people. While park closures, for example, are most likely to affect homeless people, this type of ordinance is not directly related to poverty or living outside. We concluded ordinances criminalizing sleeping outside, asking for money, and laying or sitting on the sidewalk all fall into this category.

Calculation: Total Enforcement Costs, Other Cities

Ω = Cost of incarcerating an individual for one day in selected county

$$\Sigma(\lambda + \$174 + \phi * \Omega)$$

Q: Average Cost of Incarcerating One Individual for One Day, by County

Denver	\$53.64 ²²⁸
Boulder	\$110.64 ²²⁹
El Paso (Colorado Springs)	\$62.50 ²³⁰
La Plata (Durango)	\$129.78 ²³¹
Fort Collins (Larimer)	\$88.00 ²³²
Mesa (Grand Junction)	\$65.87 ²³³

To project costs for other cities in the state, we used the average arrest rates and lengths of incarceration calculated using the 2014 Denver sample, as this data was not available for other cities. We then used the appropriate cost of one day in jail for each county. We calculated only the total cost for all citations issued from 2010 to 2014.

APPENDIX D: SAMPLE CORA/CCJRA RECORDS REQUEST LETTER

[Month] [Day], [Year]

[Served Entity]

Attn: [Recipient name] [Title]

[Address 1]

[Address 2]

Via [mail or Email]: [email address if applicable]

RE: Public Records Act Request – Citation Information for [City] Municipal Codes

Dear [Recipient name] or [her/his] representative:

I am requesting that the records described below be made available for inspection, pursuant to the Colorado Open Records Act (CORA) and the Colorado Criminal Justice Records Act (CCJRA). For purposes of this request, the term “records” refers to any recorded information, whether kept in written, electronic, or any other form, as defined by C.R.S. §§ 24-72-202(7).

I am requesting certain information (see specific questions below) pertaining to citations, “move on orders,” or issuance of warnings, issued based on violations of the following [City] Municipal Codes:

[Code section 1]

[Code section 2]

[Repeat as necessary]

Specifically, I am requesting all relevant records related to the following questions for the time period between January 1, 2010, and December 31, 2014:

- 1) How many total citations, “move on orders,” or issuance of warnings, were issued under all city codes?
- 2) How many total citations, “move on orders,” or issuance of warnings were issued under the city codes specified above?
- 3) How many citations, “move on orders,” or issuance of warnings were issued per each separate city code specified above?
- 4) How many of the citations, “move on orders,” or issuance of warnings were issued to people who are self-identified as homeless or transient?
- 5) Of the citations, “move on orders,” or issuance of warnings issued to homeless/transient individuals, how many were issued per each separate city code specific above?

- 6) How many of these citations were resolved, or how many are still outstanding?
- 7) What are the consequent fines that result from the citations issued pursuant to violations of the city codes specified above?
- 8) How many people spent time in custody as a result of these citations and how much time did they spend in custody?
- 9) How many citations led to the issuance of a warrant? How many people were brought to the station and/or sent to jail as a result of a citation issued pursuant to the violations of the city codes specified above?
- 10) What are the consequent fines/additional charges that are a result of a failure to appear for these citations?

Pursuant to C.R.S. §§ 24-72-305.5, I affirm that the requested records will not be used for the direction solicitation of business for pecuniary gain. I am a law student at the University of Denver Sturm College of Law, which is a not for profit, educational institution, and I seek the requested information and records for a non-commercial public purpose, including non-profit and research. If your office so provides, we request a reduced or waived fee pursuant to C.R.S. §§ 24-72-205(4).

If the records are in electronic form or can be scanned and sent by email, we request to receive those records solely by electronic means sent to [your email@law.du.edu]. If the cost associated with collecting and sending the requested records exceeds \$50.00, please contact me first at [your cell]. If the records cannot be transmitted electronically, and any anticipated charges will be less than \$50.00, please mail the copies to the address below with any invoice for copy charges, which shall be promptly paid. If the anticipated charges will be in excess of \$50.00, or if your office requires prepayment for copies, please first contact me at [your cell]. If the estimated charges will be in excess of \$50.00, we may elect to first inspect the records, and then designate only certain records for copying.

If you deny this request for records in whole or in part, I ask that you provide a written statement of the reasons for the denial that cites the law or regulation that you rely on. C.R.S. §§ 24-72-204(4), 24-702-305(6). If any of the requested records are in active use, in storage, or otherwise unavailable at this time, I likewise request that you provide a written statement and that the custodian set a date and hour at which time the records will be available for inspection. C.R.S. §§ 24-72-203(3), 24-702-303(3).

I look forward to your response to this request for documents at your earliest convenience, and no later than three business days, as required by Colorado law. Thank you in advance for your attention to this matter.

Very truly yours,

[Name]
Law Student
c/o Professor Nantiya Ruan
University of Denver Sturm College of Law
2255 E. Evans Avenue
Room 480B
Denver, Colorado 80208

ENDNOTES

1. The number of homeless Americans in 2014 was an estimated 578,424. Colorado saw a 2.8 percent increase in the number of homeless residents from 2013 to 2014. *The State of Homelessness in America 2015*, National Alliance To End Homelessness, available at http://www.endhomelessness.org/page/-/files/State_of_Homelessness_2015_FINAL_online.pdf.
2. *2007-2015 Point-in-Time Estimates by State*, THE U.S. DEP’T OF HOUS. AND URBAN DEV., HUD Exchange, (November 2015), <https://www.hudexchange.info/resources/documents/2007-2015-PIT-Counts-by-State.xlsx>.
3. On January 26, 2015, Metro Denver Homeless Initiative (MDHI) volunteers collected point-in-time data of the people experiencing homelessness within seven counties around the Denver metropolitan area: Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson Counties. *2015 Point-In-Time Report*, METRO DENV. HOMELESS INITIATIVE 8, (2015), <http://mdhi.org/wp-content/uploads/2015/06/FINAL-DRAFT-06.05.15.hf.pdf>. Many feel that point-in-time surveys are extremely under-inclusive, so these numbers are looked at as the minimum number of homeless individuals on the night of January 26, 2015, within the seven-county area. See Paul Boden, *Homeless Head Counts Help No One*, S.F. CHRON. (Feb. 5, 2013), <http://www.sfgate.com/opinion/openforum/article/Homeless-head-counts-help-no-one-4254191.php>.
4. Unsheltered means “living on the street, under a bridge, in an abandoned or public building, in a car, camping, etc.” *2015 Point in Time Report*, *supra* note 3, at vi.
5. *Id.*
6. *Id.*
7. *Id.*
8. Elizabeth ‘Baby Doe’ McCourt Tabor, HISTORYCOLORADO.ORG, http://www.historycolorado.org/sites/default/files/files/Kids_Students/Bios/Baby_Doe_Tabor.pdf (last visited Dec. 10, 2015).
9. *Id.*
10. Susan Klein Marine, Rona Wilensky & Cindi Yantz, *A PROFILE OF POVERTY IN THE DENVER METROPOLITAN AREA*, 8–9 (The Piton Foundation 1987) (noting that Denver, and the Rocky Mountain region as a whole, experience “episodic rapid growth” followed by sweeping poverty as mining, energy, agricultural, and high tech industries expanded and contracted).
11. *Id.*
12. *Id.*
13. *Id.*
14. *Searching for Home*, COLO HISTORY CTR., <http://historycoloradocenter.org/exhibits/searching-for-home/> (last visited Dec. 10, 2015); *see also* Tabor, *supra* note 8.
15. *See* Marine, *supra* note 10, at 59 (“In summary, having a job does not necessarily bring an end to poverty, because the majority of adults in Denver who have incomes below the poverty level do work. In fact, the structure of the job market suggests that employment may not provide a solution to poverty.”)
16. *Id.*; *see also*, CARL ABBOTT, STEPHEN J. LEONARD & DAVID G. McCOMB, *COLORADO, A HISTORY OF THE CENTENNIAL STATE* 57 (3d ed. 1994).
17. *See, e.g.*, R. A. ZUBROW ET AL., *POVERTY AND JOBS IN DENVER 1–5* (U.S. Dep’t of Com. Econ. Dev. Admin. 1969) (noting that despite economic growth exceeding national averages, Denver “housed” a population, 2/5ths of which lived in poverty in the 1960’s). The history of poverty in Colorado necessarily implicates race and nationality—especially in light of Colorado’s policies to deter the “Mexican Menace” through employment and housing restrictions in the early twentieth century. CARISSA BYRNE HESSICK & GABRIEL J. CHIN, *STRANGE NEIGHBORS: THE ROLE OF STATES IN IMMIGRATION POLICY* 63–96 (2014). Just like current anti-homeless laws, many of Colorado’s policies against Mexican immigrants focused on pushing the people living in poverty out of Colorado’s communities. *Id.* at 80–86.
18. WILLIAM WYCKOFF, *CREATING COLORADO: THE MAKING OF A WESTERN LANDSCAPE*, 1860–1940 116 (1999).
19. *Id.*; *see also* DAVID M. P. FREUND, *COLORED PROPERTY: STATE POLICY & WHITE RACIAL POLITICS IN SUBURBAN AMERICA* 49–50 (2010) (discussing how the “City Beautiful” campaigns in the Midwest necessarily intertwined health and economic policies affecting people in poverty).
20. WYCKOFF, *supra* note 18, at 121.
21. *Id.* at 122.
22. *Id.*
23. Annie Gilbert Coleman, *Call of the Mild: Colorado Ski Resorts and the Politics of Rural Tourism*, *THE COUNTRYSIDE IN THE AGE OF THE MODERN STATE: POLITICAL HISTORIES OF RURAL AMERICA* 281–303 (Cornell U. 2001).
24. For an account of federal housing cuts during this time frame and their impact, see Western Regional Advocacy Project, *Without Housing: Decades of Federal Housing Cutbacks, Massive Homelessness, and Policy Failures*, 2007, http://wraphome.org/wraparchives/downloads/without_housing.pdf.

25. See, e.g., Douglas McIntyre, *States with the Strongest Housing Markets*, NBC NEWS, Sept. 10, 2012, <http://www.nbcnews.com/business/states-strongest-housing-markets-989241>; Thomas Frohlich, *Eight Housing Markets at All-Time Highs*,” USA TODAY, June 17, 2014, <http://www.usatoday.com/story/money/markets/2014/06/17/housing-markets-all-time-highs/10661139/>.

26. See, e.g., Tom McGhee, *Legal Pot Blamed for Some of Influx of Homeless in Denver This Summer*, THE DENVER POST, July 25, 2014, http://www.denverpost.com/news/ci_26216037/legal-pot-blamed-some-influx-homeless-this-summer.

27. Aldo Svaldi, *Colorado Home Prices Rising at Fastest Rate in Country*, THE DENVER POST, Feb. 2, 2015, http://www.denverpost.com/business/ci_27867166/colorado-home-prices-rising-at-fastest-rate-country.

28. Robert Sanchez, *The Two Sides of Denver’s Real Estate Boom*, 5280 MAGAZINE, Oct. 2015, <http://www.5280.com/news/magazine/2015/09/two-sides-denvers-real-estate-boom>.

29. *Id.*

30. Shay Castle, *Apartment Rent Hikes Catching Boulder County Residents by Surprise*, DAILY CAMERA, July 5, 2015, http://www.dailycamera.com/boulder-business/ci_28436044/apartment-rent-hikes-catching-boulder-county-residents-by; Pat Ferrier, *Fort Collins Apartment Rents, Vacancies Hit New Highs, Lows*, COLORADAN, June 11, 2014, <http://www.coloradoan.com/story/money/2014/06/11/vacancy-rates-hit-new-lows/10326831/>; Sharon Dunn, *Weld County Rent Increases Highest in the State*, GREELEY TRIB., March 11, 2014, <http://www.greeleytribune.com/news/10567132-113/percent-rents-greeley-rates>.

31. Svaldi, *supra* note 27.

32. Sanchez, *supra* note 28.

33. In 2014, Colorado’s rental vacancy rates were 2.6% compared with a national rental vacancy rate of 6.9%. Community Facts, U.S. CENSUS BUREAU, <http://factfinder.census.gov/>.

34. Svaldi, *supra* note 27.

35. See Lauri Lynnxe Murphy, *When Manual High Students Study Gentrification, It’s a Real Class Act*, WESTWORD, July 1, 2015, <http://www.westword.com/news/when-manual-high-students-study-gentrification-its-a-real-class-act-6856237>.

36. Howard Pankratz, *Renters Need to Make \$35 an Hour to Afford Housing in Metro Denver*, THE DENVER POST, Dec. 11, 2014, http://www.denverpost.com/business/ci_27118702/renters-need-make-35-an-hour-afford-housing.

37. *Id.* The 2015 minimum wage in Colorado was \$8.23.

38. Since 2010, Colorado’s population growth has been more than twice the national average. In 2014 alone, Colorado saw a net increase of 87,499 residents. *State & County QuickFacts: Colorado*, U.S. CENSUS BUREAU (Oct. 14, 2015), <http://quickfacts.census.gov/qfd/states/08000.html>.

39. Tony Robinson & Denver Homeless Out Loud, *The Denver Camping Ban: A Report from the Street* 13 (Apr. 3, 2013), <http://issuu.com/denverhomelessoutloud/docs/surveypreport> [hereinafter *Denver Camping Ban*] (citing Denver Homeless Planning Group, *A Blueprint for Addressing Homelessness in Denver* (2003)).

40. *Id.* at 13.

41. *Id.*

42. *Colorado Homeless Shelters And Social Services For The Needy*, HOMELESS SHELTER DIRECTORY, <http://www.homelessshelterdirectory.org/colorado.html> (last visited Dec. 10, 2015).

43. *Id.*

44. *Denver Camping Ban*, *supra* note 39, at 49.

45. *Id.*

46. Libby Smith, *Red Hot Rental Market Squeezing Out Low Income Renters*, CBS DENVER, Aug. 6, 2015, <http://denver.cbslocal.com/2015/08/06/red-hot-rental-market-squeezing-out-low-income-renters/>.

47. *Denver Camping Ban*, *supra* note 39, at 50.

48. Stacey McKenna, *No Toilets for the Homeless*, DEV. SET, Jan. 20, 2016, <https://medium.com/the-development-set/no-toilets-for-the-homeless-55b3b073e919#.llpuw5ywf>; *Downtown Denver Public Toilet Inventory*, Denver Homeless Out Loud, Aug. 17, 2014, <http://denverhomelessoutloud.org/2014/08/17/1022/>. Data about available public restrooms is not available for many Colorado cities, but we are not aware of a single city with restrooms that are accessible to the general public 24 hours a day.

49. For ordinance details, see *Chart of Colorado’s Anti-homeless Ordinances*, available at <http://www.law.du.edu/documents/homeless-advocacy-policy-project/chart/Ordinance-Count.html>.

50. Landow et. al. v. City of Ft. Collins, 2015 WL 1087385, Civil Action No. 15-cv-0281-WJM-KMT (D. Colo. Mar. 9, 2015).

51. Browne v. City of Grand Junction, 27 F. Supp. 3d 1161 (D. Colo. Mar. 21, 2015).

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.* (citing Reed v. Town of Gilbert, 135 S. Ct. 2218, 2226–27 (2015)).

56. *Id.*

57. *Id.* (citing Thayer v. City of Worcester, 135 S. Ct. 2887 (2015); Norton v. City of Springfield, 768 F.3d 713, 717 (7th Cir. 2014) (holding that a panhandling ordinance is a form of content-based discrimination)).

58. *Id.* (citing Ark. Writers’ Project, Inc. v. Ragland, 481 U.S. 221, 231 (1987); Ashcroft v. ACLU, 542 U.S. 656, 666 (2004)).

59. *Id.*

60. *Id.*

61. See *infra* Section V (discussing challenges that homeless individuals face in trying to secure and maintain employment).

62. For ordinance details, see Chart of Colorado's Anti-homeless Ordinances available at <http://www.law.du.edu/documents/homeless-advocacy-policy-project/chart/Ordinance-Count.html>.

63. Clark v. Community for Creative Non-Violence, 468 U.S. 288 (1984) (focusing on protestors sleeping in public as opposed to people who are homeless and have nowhere else to sleep).

64. Bell v. City of Boise, Case 1:09-cv-00540-REB, Statement of Interest of the United States, Doc. 276 (D. Idaho Aug. 6, 2015).

65. *Id.*

66. People v. Schafer, 946 P. 2d 938, 942–43 (Colo. 1997).

67. *Id.*

68. For ordinance details, see Chart of Colorado's Anti-homeless Ordinances available at <http://www.law.du.edu/documents/homeless-advocacy-policy-project/chart/Ordinance-Count.html>.

69. *See id.*

70. *See, generally*, Winters v. New York, 333 U.S. 507 (1948) (explaining the void-for-vagueness doctrine and how it applies to indigent persons).

71. Jones v. City of L.A., 444 F.3d 1118, 1132 (9th Cir. 2006).

72. *Id.* at 1120–21.

73. *Id.* at 1138. (opinion ultimately withdrawn because parties settled); Jones v. City of L.A., 505 F.3d 1006 (9th Cir. 2007).

74. Papachristou v. City of Jacksonville, 405 U.S. 156 (1972) (holding a law prohibiting vagrancy to be unconstitutionally vague).

75. *Id.* at 162 (quoting U.S. v. Harriss, 347 U.S. 612, 617 (1954)) (citing *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Herndon v. Lowry*, 301 U.S. 242 (1937)).

76. *Id.* at 163.

77. Goldman v. Knecht, 295 F. Supp. 897, 903–06 (D. Colo. 1969) (holding that Colorado's vagrancy law also violated equal protection rights because it discriminated between classes of people by associating “idleness and poverty” with criminality).

78. *See, e.g.*, *supra* Part III (discussing Colorado cities with panhandling bans, camping bans, and sit/lie prohibitions).

79. Brighton is the largest city to have a begging prohibition.

80. Training Bulletin from the Denver Police Department, Colorado District Court Strikes Down Grand Junction Aggressive Panhandling Ordinance (Oct. 1, 2015), http://aclu-co.org/wp-content/uploads/2014/03/panhandling_DPD-Bulletin.10-1-15-2.pdf; Sarah Kuta, *Boulder Suspends Panhandling Enforcement as City Council Weighs Revisions*, DAILY CAMERA, Oct. 5, 2015, http://www.dailycamera.com/news/boulder/ci_28922027/boulder-suspends-enforcement-panhandling-ordinances-city-council-weighs.

81. Erica Meltzer, *Boulder City Council Seeks Data on Arrests Under City's Camping Ban*, DAILY CAMERA, Feb. 2, 2016, http://www.dailycamera.com/news/boulder/ci_29467758/boulder-city-council-seeks-data-arrests-under-city.

82. *See Colorado City Spotlights: Fort Collins*, available at <http://www.law.du.edu/index.php/homeless-advocacy-policy-project/colorado-city-spotlights>.

83. Note the Supreme Court overturned the majority of Jim Crow laws with *Brown v. Board of Education*—and the cases and legislation, like the Civil Rights Act of 1964 that surrounded *Brown*—which held segregation inherently violated the Fourteenth Amendment's Equal Protection clause because separate facilities based on skin color were inherently unequal. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241; *Brown v. Board of Education*, 347 U.S. 483, 495 (1954) (overruling *Plessy v. Ferguson*, 163 U.S. 537 (1896) among other legal pillars of segregation).

84. Harry Simon, *Towns Without Pity: A Constitutional and Historical Analysis of Official Efforts to Drive Homeless Persons from American Cities*, 66 TUL. L. REV. 631, 639 (1992); *see also* Javier Ortiz, Matthew Dick & Sara K. Rankin, *THE WRONG SIDE OF HISTORY: A COMPARISON OF MODERN AND HISTORICAL CRIMINALIZATION LAWS* 3, SEATTLE U. SCHOOL OF L. HOMELESS RTS. ADVOC. PROJ., May 4, 2015, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2602533.

85. Simon, *supra* note 84, at 639; *see also* Ortiz, *supra* note 83, at 3.

86. Simon, *supra* note 84, at 639; *see also* Ortiz, *supra* note 83, at 3.

87. Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).

88. *See, Ortiz, supra* note 84, at 4–5.

89. William H. Mullins, *Okie Migrations*, OKLA. HIST. SOC'Y, 2009, <http://www.okhistory.org/publications/enc/entry.php?entry=OK008>; *see also* Ortiz, *supra* note 83, at 4–5.

90. Edwards v. California, 314 U.S. 160, 173 (1941) (holding that a state closing its doors to the poor placed an economic burden on neighboring states that had to shoulder the costs of supporting the poor).

91. Ortiz, *supra* note 84, at 9–10.

92. Samuel R. Bagenstos, *Subordination, Stigma, and “Disability”*, 86 VA. L. REV. 397, 441 (2000).

93. Dan Thompson, *Ugly Laws: The History of Disability Regulation in North America*, PROGRESS, 2011, <http://www.ambest.com/directories/bestconnect/DeeGeeArticle.pdf>; Ortiz, *supra* note 84, at 10.

94. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990).

95. BARBARA YOUNG WELKE, LAW AND THE BORDERS OF BELONGING IN THE LONG NINETEENTH CENTURY UNITED STATES 52–53 (2010) (citing JAMES W. LOEWEN, SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM (2005)); Tom I. Romero, II, *No Brown Towns: Anti-Immigrant Ordinances and Equality of Educational Opportunity for Latina/os*, 12 J. GENDER RACE & JUST. 13, 29 (2008); Ortiz, *supra* note 83, at 11–12.

96. Peter Carlson, *When Signs Said 'Get Out'*, WASH. POST, Feb. 21, 2006, at 3 <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/20/AR2006022001590.html>; *see also*, Hessick & Chin, *supra* note 17, at 80–86.

97. Shelley v. Kraemer, 334 U.S. 1, 3 (1948) (holding Sundown Laws also violated the Fourteenth Amendment).

98. Colorado is comprised of a number of regions that are diverse in demographics, weather, political communities, and in other ways. We worked to include cities from each of these different regions. . Colorado can be divided into the following nine regions: Denver Metro Area, Foothills, Palmer Divide, Urban Corridor, Eastern Plains, Front Range, Mountains, Western Slope, and Continental divide. *See Understanding Colorado's Regions*, 9NEWS.COM, http://archive.9news.com/weather/resources/region_guide/ (last visited Dec. 10, 2015).

99. *QuickFacts*, *supra* note 38.

100. For a list of Colorado cities in order of most to least populous, *see 2010 Population and Percent Change* http://dola.colorado.gov/dlg/demog/2010data/total%20pop%20change%20muni_ranked.xls. Because the survey examines municipal codes, not ordinances regulating unincorporated areas, our survey included cities and towns only, and does not include any census-designated places.

101. *QuickFacts*, *supra* note 37.

102. These criteria are adapted from criteria developed by researchers at Seattle University School of Law. Necessary life activities include activities like urinating and defecating and sleeping or resting. Justin Olson & Scott MacDonald, *Washington's War on the Visibly Poor*, SEATTLE U. SCHOOL OF L. HOMELESS RTS. ADVOCACY PROJ., (May 6, 2015). For a complete discussion of survey methodology, *see infra* Appendix A.

103. *See Chart of Colorado's Anti-homeless Ordinances*, available at <http://www.law.du.edu/documents/homeless-advocacy-policy-project/chart/Ordinance-Count.html>. *See infra* Appendix A for methodology used to select cities.

104. A fully hyperlinked list of all 351 ordinances categorized by type of behavior that is targeted can be found at the University of Denver's website at <http://www.law.du.edu/documents/homeless-advocacy-policy-project/chart/Ordinance-Count.html>.

105. Our final list of search terms included: aggressive, bathing, begging, camp, camping, curfews, closures, defecate, defecation, food, hours, loafing, lodge, loiter, loitering, lying, obstruction, pan handling, pan-handling, panhandling, scavenging, sitting, sleep, sleeping, solicitation, median, storage, trespass, urinate, urination, vehicle, vagrancy, and washing. For a description of the methodology of searching and serch term selection, *see infra* Appendix A.

106. For discussion of the constitutional challenges to begging and panhandling ordinances, *see supra* Section II.A.

107. Firestone also had ten ordinances that criminalized homelessness. A town of only 11,000, Firestone is an outlier in this regard.

108. Denver is the only city with a known prohibition on food sharing. Of the ten largest cities in the state, Pueblo and Aurora have no camping ban, but both cities prohibit lying in certain public places.

109. We find it useful to consider both the number of ordinances and the number of behaviors restricted, as the scope of each ordinance varies widely. For example, in some jurisdictions, a single ordinance may prohibit loitering, aggressive panhandling, and panhandling near a road, while in another jurisdiction, three separate ordinances may cover the same behavior. For a discussion of the impact of these drafting decisions, *see infra* Section III.4.

110. We have included Boulder's smoking ban in our ordinance chart following reports that the ban has become an important tool in moving homeless people away from Boulder's city center. Erica Meltzer, *Smoking Ban Key in Clearing Homeless from Boulder's Municipal Campus*, DAILY CAMERA, Aug. 23, 2014, http://www.dailycamera.com/news/boulder/ci_26393651/smoking-ban-key-clearing-homeless-from-boulders-municipal. While other cities may have outdoor smoking bans, they are not included as the only evidence we have of such bans being used to criminalize homelessness is from the City of Boulder.

111. David Migoya, *Park Meals for Homeless Can Continue for 90 Days*, THE DENV. POST, Nov. 6, 2006, http://www.denverpost.com/headlines/ci_4614199.

112. *See Debtors' Prison*, ACLU OF COLO., <http://aclu-co.org/court-cases/debtors-prisons/>.

113. For a discussion of Constitutional Law evolutions that have stopped cities from enacting such ordinances, *see supra* Section II.

114. *See id.*

115. For a discussion of trends in camping ban enforcement, *see* Section IV.B.i.a.

116. Jeremy Meyer, *Effect of Camping Bans Debated as Denver Considers Ordinance*, THE DENV. POST, Apr. 22, 2012, http://www.denverpost.com/ci_20452293/effect-camping-bans-colorado-debated-denver-ordinance.

117. *Id.*; for more discussion of the circumstances surrounding passage of Denver's camping ban, *see Colorado City Spotlights: Denver*, available at <http://www.law.du.edu/index.php/homeless-advocacy-policy-project/colorado-city-spotlights>.

118. Migoya, *supra* note 111.

119. NTL. COAL. FOR THE HOMELESS, SHARE NO MORE: THE CRIMINALIZATION OF EFFORTS TO FEED PEOPLE IN NEED (Oct. 2014), <http://nationalhomeless.org/wp-content/uploads/2014/10/Food-Sharing2014.pdf>.

120. DENV. MUN. CODE § 38-86.1.

121. About the BID, Downtown Denver Partnership, Inc. <http://www.downtowndenver.com/category/about-the-bid> (last visited Jan. 27, 2016).

122. AURORA MUN. CODE § 94-117; AURORA MUN. CODE § 94-116.

123. Jakob Rodgers, *Colorado Springs City Council Passes Pedestrian Access Act*, THE GAZETTE, Feb. 9, 2016, <http://gazette.com/colorado-springs-city-council-passes-revised-sit-lie-ordinance/article/1569631> (“It prohibits sitting, kneeling, reclining or lying on sidewalks and other rights-of-way during certain hours in parts of downtown and Old Colorado City.”).

124. *See supra* Section II.

125. Meyer, *supra* note 116.

126. See Colo. Rev. Stat. § 24-6-401; *Colorado Open Records Act (CORA)*, COLO. SEC’Y OF ST., http://www.sos.state.co.us/pubs/info_center/files/CORA_Act.pdf (last visited Jan. 28, 2016); COLO. TRANSPARENCY ONLINE PROJ., <https://www.colorado.gov/apps/oit/transparency/index.html> (last visited Jan. 28, 2016).

127. Aspen, Colorado Springs, Greenwood Village, Lafayette, Rifle, and Salida.

128. For an in-depth discussion of criminalization efforts in these cities, *see Colorado City Spotlights*, available at <http://www.law.du.edu/index.php/homeless-advocacy-policy-project/colorado-city-spotlights>.

129. Tony Robinson & Allison Sickels, *No Right To Rest: Criminalizing Homelessness in Colorado*, DENVER HOMELESS OUT LOUD (Apr. 4, 2015), <http://issuu.com/denverhomelessoutloud/docs/report-final/4?e=7722969/12234987> [hereinafter *No Right To Rest*]. In this report, Denver Homeless Out Loud provided interviews and surveys conducted with people who are or were homeless.

130. Colo. Rev. Stat. § 24-6-401.

131. Citation In Lieu of Arrest, NAT’L CONFERENCE OF STATE LEGISLATORS, Mar. 3, 2013, <http://www.ncsl.org/research/civil-and-criminal-justice/citation-in-lieu-of-arrest.aspx>.

132. *Id.*

133. *Id.*

134. COLO. MUN. CT. R. P. 204(f). *See also* Christopher N. Osher, *Colorado Cities Jail Poor Who Can’t Pay Fines for Minor Offenses*, THE DENV. POST, Dec. 12, 2013, http://www.denverpost.com/news/ci_24726701/colorado-cities-jail-poor-who-can-t-pay-fines.

135. Citation In Lieu of Arrest, *supra* note 131; *see also* Colo. Rev. Stat. § 24-6-401.

136. *See infra* Section V.a.

137. Corrections Statistics by State: Colorado, NAT’L INST. OF CORR. <http://nicic.gov/statestats/?st=CO> (last visited Jan. 28 2016).

138. *Id.*

139. The cost of housing one individual for one day in a city/county jail within Colorado had a large range: Denver=\$53.64; Colorado Springs=\$62.50; Mesa County=\$65.87; Durango/La Plata County=\$129.78; Boulder County=\$110.64; Pitkin County=\$361.01. *See infra* Appendix C, Chart: Ω: Average Cost of Incarcerating One Individual for One Day, by County.

140. *See, e.g.*, Chris Walker, *Activists Storm Denver City Council Meeting to Protest Urban Camping Ban*, WESTWORD, Oct. 27, 2015, <http://www.westword.com/news/activists-storm-denver-city-council-meeting-to-protest-urban-camping-ban-7286965>; Meltzer, *supra* note 81; Katie de la Rosa, *Homeless Community Protests Fort Collins Camping Ban*, COLORADOAN, Sept. 1, 2015, <http://www.coloradoan.com/story/news/2015/08/31/homeless-community-protests-fort-collins-camping-ban/71496766/>.

141. Jon Murray, *Activists Disrupt Denver City Council to Call for Camping Ban Repeal*, THE DENV. POST, Oct. 26, 2015, http://www.denverpost.com/news/ci_29027707/activists-disrupt-denver-city-council-call-camping-ban.

142. *No Right to Rest*, *supra* note 129, at 8 (noting that of the homeless individuals interviewed, “60% report that they frequently cannot get a night’s sleep due to constant police efforts to ‘move them along’”).

143. *See supra* Section II.a., pp 14-15 (discussing the recent Grand Junction panhandling case).

144. Language varies across municipalities. Cities used the terms begging, panhandling, and solicitation to refer to the same types of behaviors.

145. Denver Police uses the label transient to include people who live on the streets or who move around so much as to have no address, and we consider Denver Police Department’s definition of transient interchangeable with homeless. *See, e.g.*, *Denver Police Dept. Sex Offender Registration Unit Frequently Asked Questions*, DENV. POLICE DEPT., <https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/SexOffenders/DenverFAQaboutSexOffenders.pdf>.

146. *See supra* Section II.a., pp 14-15 (discussing the recent Grand Junction panhandling case).

147. Michael Roberts, *Denver, Boulder Panhandling Rules Changing Due to Sweeping Court Ruling*, WESTWORD, Oct. 7, 2015, <http://www.westword.com/news/denver-boulder-panhandling-rules-changing-due-to-sweeping-court-ruling-7221068>.

148. *Id.*

149. The Colfax Corridor is a prominent business district in Aurora. It is situated around East Colfax Avenue, a major street that crosses much of the Denver Metro Area. Aurora specifically defines this area as all public areas within the space bounded “by the midline of Yosemite Street on the western edge to the midline of Peoria Street on the eastern edge, and from the midline of 14th Avenue on the southern edge to the midline of 16th Avenue on the northern edge.” AURORA MUN. CODE, § 94-114.

150. Aurora's criminalization of homelessness is particularly stark, given that 500 of 654 citations written under the sections of the Aurora municipal code prohibiting "Loitering in the Colfax Corridor" and "Solicitation on or Near a Street or Highway" were for either lying down or asking for money.

151. See Rodgers, *supra* note 123.

152. These laws ban loitering in a broad way. A number of cities ban loitering with specific criminal intent; these loitering laws are not included in our survey. The ordinances incorporated in this report include vague bans on loitering "to warrant alarm" as well as bans on loitering or vagrancy without any restriction.

153. Not all cities retain data on the number of citations given specifically to homeless individuals, so this is a projection based on reported data.

154. For qualitative see immediately following discussion of local ordinances in Colorado, *see infra* pp. 39–40. For anecdotal data *see No Right to Rest*, *supra* note 129, at 30–35.

155. *Id.*

156. For a survey of local laws criminalizing homelessness, *see supra* Section III.

157. For a complete description of cost calculation methodology, *see infra* Appendix C.

158. *Policy Basics, Taxpayer Bill of Rights (TABOR)*, CTR. ON BUDGET & POL'Y PRIORITIES 1, (Aug. 13, 2013), http://www.cbpp.org/sites/default/files/atoms/files/policybasics-tabor_0.pdf. Some local spending continues to be constrained by TABOR, while other voters in other localities have opted out of TABOR provisions as they apply to local spending. *See Colorado's TABOR*, THE BELL POL'Y CTR., <http://www.bellpolicy.org/basic/colorados-tabor>.

159. *See Ten Years of TABOR*, THE BELL POL'Y CTR. 16 (2003), <http://www.bellpolicy.org/sites/default/files/TABOR10.pdf>.

160. Total costs are calculated based on 2014 data and extrapolated to other years. For an in-depth discussion of our methodology, *see infra* Appendix C.

161. Police officers in Denver often issue municipal anti-homeless citations without arresting the recipient. Generally, recipients of municipal citations receive a ticket that has specifies a date and time that he or she must appear in court. If that person does not appear on their required court date than a warrant is issued for their arrest and their court record will reflect a failure to appear (FTA). Police officers most often arrest individuals due to municipal ordinance violations on failures to appear (FTA), or upon issuing the citation if the officer believes the person poses a danger to others.

162. In 2014, we estimate Denver spent \$261,689.17 policing these five ordinances. This calculation is almost certainly under inclusive. The records associated with these citations do not indicate if the recipient was arrested immediately following the citation, so arrest costs are calculated assuming those cases with an FTA had an arrest (an arrest warrant is automatically issued after a FTA, meaning the individual would be arrested upon his or her next contact with police). It is likely that Denver police also arrested a number of recipients upon issuing the citation, but data showing exactly how many citations resulted in arrest is not available. For a complete description of methodology, *see infra* Appendix C.

163. There are a number of possible outcomes after receiving a citation: the recipient may choose to plead guilty and pay a fine and/or receive another penalty (typically a reduced penalty), the recipient may go to trial and defend herself and may be found guilty and punished or may have the case against them dismissed. Each of these outcomes was represented among the citations we analyzed and the cost numbers calculated here represent the average cost among all citations.

164. The Denver Crime Prevention and Control Commission and the Denver Municipal Court calculated this number. Telephone Interview with Cindy E. Laub, Analyst of the Crime Prevention and Control Commission, City of Denver (Nov. 18, 2015) (on file with the author).

165. When a criminal defendant fails to pay a fine issued to them or appear in court they will receive an FTP or FTA, respectively. Cases with an FTA typically result in issuing a warrant for the defendant's arrest and so will mean greater adjudication, policing, and incarceration costs should that person have future interactions with law enforcement which cannot be accounted for here. Further, when an individual chooses to take their case to trial, often a municipal public defender is appointed to the case; and the average adjudication cost calculated by the Crime Prevention and Control Commission does not account for these costs.

166. Of the 778 citations we examined, jail time was served in 381 cases.

167. All references to incarceration days refer to time served, not time sentenced.

168. *See infra* Appendix C.

169. *See infra* Appendix C for a detailed description of methodology.

170. *See infra* Appendix C for detail on cost in these jurisdictions.

171. *See infra* Appendix C (discussing Recovery Court).

172. *Searching Out Solutions, Constructive Alternatives to the Criminalization of Homelessness*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS 7 (2012), https://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf.

173. Mark David Evans, *The Consequences of Conviction Sanctions Beyond the Sentence Under Colorado Law*, COLO. ST. PUB. DEF. 16, http://pdweb.coloradodefenders.us/index.php?option=com_rubberdoc&view=doc&id=16&format=raw&Itemid=121 (last visited Jan. 28, 2016). Colorado has 25 Public Housing Authorities, each with its own set of policies. *Housing Authorities*, U.S. DEP'T OF HOUS. AND URBAN DEV., <http://portal.hud.gov/hudportal/HUD?src=/states/colorado/renting/hawebsites> (last

visited Jan. 28, 2016).

174. John J. Ammann, *Affordable Housing: Criminal Records of the Poor and Their Effects on Eligibility for Affordable Housing*, 9 J. AFFORDABLE HOUS. & CMTY. DEV. L. 222, 223 (2000).

175. David Thacher, *The Rise of Criminal Background Screening in Rental Housing*, 33 L. & SOC. INQUIRY 5, 24 (2008).

176. See, e.g., Audio: Panel Discussion on Boulder Camping Ban (Nov. 18, 2015), <http://news.kgnu.org/2015/11/panel-discussion-on-boulder-camping-ban-affecting-homeless/>

177. Joseph Fried, *When 'Help Wanted' Comes With a Catch*, THE NEW YORK TIMES, Sept. 17, 2006, http://www.nytimes.com/2006/09/17/jobs/17convicts.html?_r=3&scp=6; Devah Pager, *The Mark of a Criminal Record*, 180 AM. J. OF SOC. 937, 942 (2003).

178. Maya Rhodan, *A Misdemeanor Conviction is Not a Big Deal, Right? Think Again*, TIME, Apr. 24, 2014, <http://time.com/76356/a-misdemeanor-conviction-is-not-a-big-deal-right-think-again/>.

179. See, e.g., Colo. Rev. Stat. § 24-5-101 (2015).

180. *Id.*

181. *Education of Homeless Children and Youth*, NTL. COAL. FOR THE HOMELESS, (Sept. 2009), <http://www.nationalhomeless.org/factsheets/education.html>.

182. While there appears to be minimal research available about the effect of arrests on adult educational attainment, studies about the impact of juvenile criminal charges on high school attendance are indicative of the barriers criminal charges pose to educational attainment. See Christopher C. Weiss, E. Christine Baker-Smith & Vanessa G. Ohta, *The Added Cost of Education after Arrest, to Community and Student*, INST. FOR SOC. & ECON. RES. & POL'Y, http://www.aefpweb.org/sites/default/files/webform/Weiss%20Baker-Smith%20Ohta%202011_0.pdf (last visited Jan. 28, 2016).

183. Thirteen percent of homeless children are not enrolled in school and twenty-three percent of homeless children do not attend school regularly. *Education of Homeless Children*, *supra* note 181.

184. *Id.*

185. Horace Mann was among the first to characterize education this way. See Roslin Growe & Paula S. Montgomery, *Educational Equity in America: Is Education the Great Equalizer?*, 25 THE PROF'L EDUCATOR 23 (2003).

186. *Employment Projections*, U.S. DEP'T OF LAB. BUREAU OF LAB. STATS. (Dec. 8, 2015) http://www.bls.gov/emp/ep_chart_001.htm.

187. Little has been written about the intersection of logistical challenges arising from criminal charges and access to public benefits, but scholars have described similar challenges arising from unpredictable work schedules. See Liz Ben-Ishai, *Volatile Job Schedules and Access to Public Benefits*, CLASP POL'Y SOLUTIONS THAT WORK FOR LOW-INCOME PEOPLE 2 (Sept. 2015), <http://www.clasp.org/resources-and-publications/publication-1/2015.09.16-Scheduling-Volatility-and-Benefits-FINAL.pdf>.

188. *No Right to Rest*, *supra* note 129, at 59.

189. James Surowiecki, *Home Free?*, THE NEW YORKER, Sept. 22, 2014, <http://www.newyorker.com/magazine/2014/09/22/home-free> (“The old model assumed that before you could put people into permanent homes you had to deal with their underlying issues—get them to stop drinking, take their medication, and so on. Otherwise, it was thought, they'd end up back on the streets.”).

190. *Id.*

191. Joshua Howard & David Tran, *AT WHAT COST: THE MINIMUM COST OF CRIMINALIZING HOMELESSNESS IN SEATTLE AND SPOKANE* 24-25, SEATTLE U. SCHOOL OF L. HOMELESS RIGHTS ADVOC'Y. PROJ., May 2015, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2602530.

192. *Id.*

193. Scott Carrier, *Room for Improvement*, MOTHER JONES (March/April 2015), <http://www.motherjones.com/politics/2015/02/housing-first-solution-to-homelessness-utah>. This number records what Utah categorized as the chronically homeless, not every homeless individual within the state.

194. *Id.*

195. *What We Do: Housing*, COLO. COAL. FOR THE HOMELESS, http://www.coloradocoalition.org/what_we_do/what_we_do_housing.aspx (last visited Jan. 31, 2016).

196. *Id.*

197. A 2006 study, completed by the Colorado Coalition for the Homeless, collected data spanning a four-year period on nineteen chronically homeless individuals. The data represented the cost of health care, detoxification services, incarceration in county jails, and emergency shelter costs for all nineteen individuals. These costs were tracked for two years prior to receiving housing through Denver's Housing First program and two years after being enrolled in the program. The study found that the program provided an “average cost saving of \$31,545 per person” and when that amount was projected onto the 513 chronically homeless people that year, “a total of \$16.1 million dollars” could be saved through investing in “comprehensive supportive housing,” rather than allowing individuals to languish on the streets for years, racking up enormous unpaid bills for medical and detox treatment, incarceration, and shelter use. Jennifer Perlman & John Parvensky, *Cost Benefit Analysis and Program Outcome Report*, DENV. HOUS. FIRST COLLABORATIVE, COAL. FOR THE HOMELESS, (December 11, 2006), <http://denversroadhome.org>.

[org/files/FinalDHFCCostStudy_1.pdf](#) [hereinafter: DENVER 2006 COST ANALYSIS].

198. At the time this report went to publication, the City Council of Denver was in the process of taking up the innovative funding model of social-impact bonds as a way to fund supportive housing programs and social services for homeless individuals. Maya Rodriguez, *New Proposal to Help Homeless in Denver*, 9NEWS, Jan. 12, 2016, <http://legacy.9news.com/story/news/2016/01/12/new-proposal-help-homeless-denver/78707640/>. The authors of this report are extremely supportive of this idea; but again, there is a concern that all the services and housing for homeless individuals is only located within the metro area of Denver, limiting the ability to help homeless residents living in other parts of the state.

199. *See, e.g.*, James Surowiecki, *supra* note 189.

200. Mary Cunningham, Sarah Gillespie & Jacqueline Anderson, *Rapid Re-Housing: What the Research Says*, URB. INST. 1 (June 2015), <http://www.urban.org/research/publication/rapid-re-housing-what-research-says>.

201. *Id.* at 13.

202. *Id.* (citing *Family Options Study: Interim Report*, ABT ASSOC. INC., US DEP'T OF HOUS. & URB. DEV. (Mar. 21, 2013), https://www.huduser.gov/portal/publications/homeless/hud_503_FOS_interim_report.html). Common reasons people are not accepted into Rapid-Rehousing programs include past criminal records or history of substance abuse. For a look at how criminal background records perpetuates the cycle of poverty for homeless individuals, *see supra* Section V.

203. *The State of Homelessness in America*, NAT'L ALL. TO END HOMELESSNESS 73 (2015), http://www.endhomelessness.org/page/-/files/State_of_Homelessness_2015_FINAL_online.pdf. This is less than national average of five percent for rapid re-housing beds. *Id.*

204. *See* Dorothy Cotton and Terry G. Coleman, *Canadian Police Agencies and Their Interactions with Persons with a Mental Illness: A Systems Approach*, 11 J. POLICE PRAC. & RES. 301, 305 (2010).

205. *See, e.g.*, PROBLEM-SOLVING COURTS: JUSTICE FOR THE TWENTY-FIRST CENTURY? vii–ix (Higgins and Mackinem eds. 2009).

206. *Id.*

207. Rachel Porter, Michael Rempel & Adam Mansky, *What Makes a Court Problem Solving? Universal Performance Indicators for Problem-Solving Justice*, CTR. FOR CT. INNOVATION 1–2 (Feb. 2010), http://www.courtinnovation.org/sites/default/files/What_Makes_A_Court_P_S.pdf.

208. *Problem Solving Courts*, COLO. JUD. BRANCH, <https://www.courts.state.co.us/Administration/Unit.cfm?Unit=prbsolct> (last visited Jan. 31, 2016).

209. *Id.*

210. Jeremy Meyer, *Meyer: Denver's Recovery Court is Working Wonders*, THE DENV. POST, Mar. 21, 2015, http://www.denverpost.com/ci_27752421/order-this-court-working-wonders.

211. *Recovery Court, A Time to Succeed*, The City of Denver Crime Prevention & Control Commission, (June 2015), *see* Appendix C.

212. *Id.*

213. A list of Colorado cities in order of most to least populous is available here: http://dola.colorado.gov/dlg/demog/2010data/total%20pop%20change%20muni_ranked.xls. Because the survey examines municipal codes, and not ordinances regulating unincorporated areas, our survey included cities and towns only, and does not include any census-designated places.

214. Colorado is comprised of a number of regions that are diverse in demographics, weather, political communities, and in other ways. We aimed to include cities from each of these different regions. Colorado can be divided into the following nine regions: Denver Metro Area, Foothills, Palmer Divide, Urban Corridor, Eastern Plains, Front Range, Mountains, Western Slope, and Continental divide. *See Understanding Colorado's Regions*, 9NEWS.COM, http://archive.9news.com/weather/resources/region_guide/ (last visited Dec. 10, 2015).

215. *See, e.g.*, *QuickFacts*, *supra* note 38.

216. *See California's New Vagrancy Laws*, BERKLEY LAW U. CAL. POL'Y ADVOC. CLINIC 44 n.62 (February 2015); Justin Olson & Scott MacDonald, *supra* note 102, at 47; *No Right to Rest*, *supra* note 129.

217. *See infra* Appendix C.

218. Specific information on which municipalities responded to which portion of the CORA request can be found at *Chart of City Responses to CORA Requests*, available at <http://www.law.du.edu/index.php/homeless-advocacy-policy-project/enforcement-of-anti-homeless-ordinances>.

219. For these charts and the data provided by each municipality, *see Id.*; *Chart of Enforcement of Anti-Homeless Ordinances*, available at <http://www.law.du.edu/index.php/homeless-advocacy-policy-project/enforcement-of-anti-homeless-ordinances>.

220. In response to our CORA request asking how many of the cited individuals were homeless, Denver responded with a number of tickets issued to “transient” individuals. Denver Police uses the label transient to include people who live on the streets or who move around so much as to have no address, and we consider Denver Police Department’s definition of transient interchangeable with homeless. *See, e.g.*, *Denver Police Dept. Sex Offender Registration Unit Frequently Asked Questions*, DENV. POLICE DEPT., <https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/SexOffenders/DenverFAQaboutSexOffenders.pdf>.

221. Denver’s Municipal Court records search is available at: <https://www.denvercountycourt.org/search/?searchtype=searchbycase>

no.

222. We did not count dismissed cases or currently active ones because we were specifically looking for number of days spent in jail. A dismissed case did not identify if any jail time was served. An open case was often open due to a previous failure to appear in court, which resulted in an arrest warrant. However, the case was still open because the individual had yet to be arrested. Therefore, no arrest had occurred yet, nor had any jail time yet been served.

223. Ten-minutes is a rough estimation, and likely underrepresents the total time officers spent citing homeless individuals. This number was based in part on interviews with homeless rights advocates in the Berkley, California area completed by Jeffrey Selbin's Policy Advocacy Clinic. *See, e.g., California's New Vagrancy Laws, supra* note 216.

224. 33-3051, Police and Sheriff's Patrol Officers, Protective Service Occupations, May 2014 State Occupational Employment and Wage Statistics Colorado, BUREAU OF LAB. STATS., http://www.bls.gov/oes/current/oes_co.htm#33-0000 (last visited January 23, 2016).

225. The cost of arresting one individual was calculated by the Denver Police Department in conjunction with the Crime Prevention Control Commission of Denver (CPCC). Though the number was specific to the city of Denver, it is thought that this number is a valid estimate for the cost of arresting one person within any municipality in the state of Colorado. Telephone Interview with Cindy E Laub PhD., Analyst, Crime Prevention and Control Commission, Department of Safety, City and County of Denver, (November 18, 2015) (on file with the author).

226. *See* Citation in Lieu of Arrest, *supra* note 131 (describing criteria that guide when an officer will arrest the recipient of a citation).

227. This value comes from the CCPC's work with the City of Denver Municipal Court. This number is not thought to include defense attorney costs because often, if not all of the violations of municipal ordinances, only result in a municipal public defender being appointed if the individual pleads "not guilty." This rarely happens because when the judge inquires an individual's plea, many are in custody, and if they want to get out of custody then they must plead "guilty." Otherwise, an in-custody individual, who pleads "not guilty," will stay in custody for at least another three-five days, till a municipal public defender can be appointed and being work on the case. Therefore, the incentive by individuals is to plead "guilty," hence why defense attorney costs are not included in this number. Telephone Interview with Cindy E Laub PhD., Analyst, Crime Prevention and Control Commission, Department of Safety, City and County of Denver, (Nov. 18, 2015) (on file with the author).

228. *See infra* p. 77.

229. The Denver Sheriff's office is reimbursed \$53.64 per day for inmates housed in the Denver County Jail. Email from Mary Dulacki, Records Coordinator, Department of Safety, City and County of Denver, (November 2, 2015) (on file with the author).

230. Christian Henrichson et al., *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*, VERA INST. OF J. 27, (May 2015), <http://www.vera.org/sites/default/files/resources/downloads/price-of-jails.pdf>.

231. Letter from Mark Silverstein, Legal Director, ACLU of Colorado & Rebecca Wallace, Staff Attorney, ACLU of Colorado to Wynetta Massey, Colorado Springs City Attorney (Oct. 22, 2015) <http://static.aclu-co.org/wp-content/uploads/2015/09/2015-10-22-Massey-Silverstein-Wallace-pay-or-serve.pdf>.

232. In 2014, La Plata County spent a total of \$5.4 million running its jail, which houses 114 inmates a day. Jake Pearson, *Study: Fewer Inmates, better budget*, DURANGO HERALD, May 25, 2015, <http://www.durangoherald.com/article/20150525/NEWS01/150529760/-1/js/Study:-Fewer-inmates-better-budget->. To calculate spending on a per inmate, per day basis we divided the annual budget by 365 days and then by the number of inmates per day (\$5,400,000/365/114).

233. Robert Allen, *Larimer County Invests in Part-Time Prisoners*, THE DENV. POST, Mar. 3, 2012, http://www.denverpost.com/search/ci_20093366.

234. Henrichson et al., *supra* note 230 at 29.



Drawing by Ariel Schreiber



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