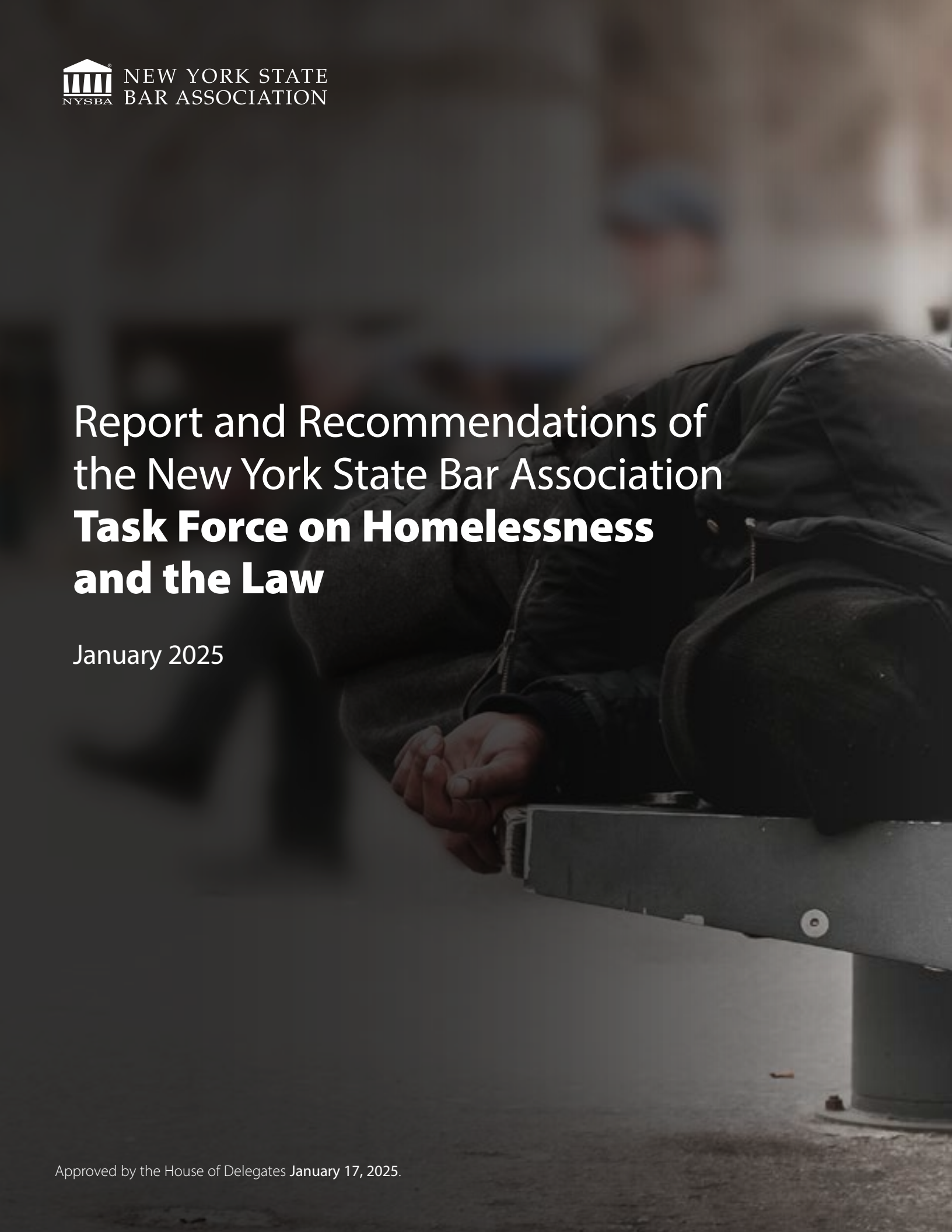
NEW YORK STATE BAR ASSOCIATION



Report and Recommendations of the New York State Bar Association **Task Force on Homelessness and the Law**

January 2025

Approved by the House of Delegates **January 17, 2025**.

Report and Recommendations of the New York State Bar Association Task Force on Homelessness and the Law

January 2025

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INTRODUCTION

In June 2023, then-President Richard C. Lewis of the New York State Bar Association (NYSBA) authorized the creation of the Task Force on Homelessness and the Law (the "Task Force") as among the top priorities of his tenure as President.[1] This has been an issue of great personal importance to former President Lewis and, indeed, to all of us who only need to walk through the streets of any city or drive through any suburban or rural area to witness firsthand evidence of the plight of so many members of our community.

The Task Force accordingly was directed to "look for concrete steps that local, state, and federal governments can take to reduce the number of people living on the streets and improve the lives of the chronically homeless"[2] and adopted the following mission statement:

> The Task Force will examine the causes and effects of the homelessness crisis, including but not limited to the way in which that crisis is affected by the criminal justice and healthcare systems, with focus on the legal and policy considerations in New York State. The Task Force will explore ways in which the federal, state and local governments can take concrete steps to reduce the number of individuals experiencing homelessness and to improve the lives of individuals who continue to experience homelessness.

In order to fulfill this mission, the Task Force recruited representatives from every region of New York State including every large city as well as suburban and rural communities, and included:

- Current and former municipal government employees;
- Academics with relevant research, teaching and practical experience;
- Lawyers with legal services organizations and other non-profits who address the needs of the homeless and housing insecure populations;
- Lawyers in private practice;
- Retired judges; and
- Former members of the law enforcement community.

The Task Force also enlisted the assistance and advice of many non-lawyer advisors with significant experience addressing the needs of the homeless and housing insecure members of our community.

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[1] Rebecca Melnitsky, *New York State Bar Association Task Force Searches for Ways to Reduce Homelessness While Protecting Civil Liberties*, NYSBA, June 21, 2023, https://nysba.org/new-york-state-bar-association-task-force-searches-for-ways-to-reduce-homelessness-while-protecting-civil-liberties/.

[2] *Id*.

The Task Force was divided into several subcommittees to investigate and develop recommendations with respect to the following areas:

- Nature and scope of the crisis
- Existing Resources
- Lack of Sufficient Housing
- Barriers to Entry Into Existing Housing
- Homelessness and the Healthcare System
- Homelessness and the Criminal Justice/Parole System
- Homelessness and the Broader Court System
- Children and Families
- Veterans
- Rural Areas and Populations

As part of their work, and in order to obtain the benefit of the experience and expertise of experts in addition to Task Force members and advisors, the Task Force and its relevant subcommittees met with outside speakers including:

- The former Acting Commissioner of the New York City Division of Homelessness Services;
- The former New York City Commissioner of the Department of Social Services;
- Current law enforcement representatives from outside New York City;
- A major medical insurance provider that administers housing-related programs covered by Medicaid; and
- Leaders of non-profit organizations addressing issues of homelessness and housing insecurity from areas throughout the State.

As a result of these efforts, the Task Force has put together the following report and set of policy recommendations.[3]

[3] David Kagle took no part in the development of the policy recommendations.

I. EXECUTIVE SUMMARY

This report contains a detailed discussion of the following issues and topics, as well as several policy recommendations.

A. Background and Overview of Homelessness in New York State

In this section, we review the history and causes of the homelessness crisis nationally and in the State and provide basic definitions, a brief description of how service delivery models to the homeless have evolved, a description of who experiences homelessness and their pathways to homelessness, and an overview of recent litigation involving homelessness issues.

B. Existing Programs and Resources

This section provides an overview of some of the existing programs and resources currently in place at the federal, state, and local levels. We explore the ways in which certain programs are effective in addressing homelessness and those programs that fall short of achieving their goals. Finally, we provide recommendations to improve the effectiveness of certain programs at the state level including:

- Increasing the amount of funding for existing resources, including those devoted to programs like supportive housing;
- Eliminating regulations tying emergency shelter access to eligibility for public benefits;
- Simplifying the process for approval of supportive housing projects;
- Eliminating the requirement that individuals in the shelter system contribute a portion of any personal income that is better applied toward other individual needs; and
- Encouraging hotel operators to permit emergency housing in their establishments by clarifying that an emergency placement does not constitute legal tenancy.

The entire set of these recommendations appear at pages 25-26 of this report.

C. Lack of Sufficient Housing

This section provides an analysis of the current lack of sufficient affordable housing across the State and provides recommendations with respect to increasing the supply of safe and accessible housing, supporting robust housing subsidy programs, and creating incentives and policies to ensure that households with the lowest incomes can secure permanent affordable housing. The recommendations include:

- Incentivizing the creation and preservation of more housing units, particularly supportive housing units;

- Strengthening enforcement of building codes to prevent the deterioration of housing stock;

- Supporting transit-oriented development that links communities with public transit;

- Promoting accessory dwelling unit creation;

- Safely legalizing basement apartments in New York City; and

- Permitting the development of new housing on state and local government land.

The entire set of these recommendations appear at pages 36-38 of this report.

D. Barriers to Entry into Existing Housing

This section provides an overview of the barriers – in addition to a general lack of affordable housing in New York – that individuals experiencing homelessness face in finding permanent housing. These barriers include source of income discrimination, a lack of accessible housing for people living with disabilities, difficulties in accessing supportive housing, and complications due to immigration status and prior interaction with the criminal justice system. Recommendations to address these issues include:

- Developing a more individualized, case-by-case approach to approving housing for individuals under post-incarceration supervision;

- Increasing enforcement of existing statutes prohibiting source of income discrimination;

- Providing additional resources to administrative agencies that administer housing vouchers to speed up the approval and payment process;

- Increasing the amount of accessible affordable housing;

- Reducing barriers to the lease-up process for individuals living with disabilities; and

- Developing a more realistic method for determining the dollar amount of housing vouchers in a given area.

The entire set of these recommendations appear at pages 49-53 of this report.

E. Homelessness and the Healthcare System

Housing is healthcare and should be viewed as a fundamental element of addressing healthcare issues for unhoused populations. This section discusses the interaction between those experiencing homelessness and the healthcare system, including the unique challenges faced by this population when seeking healthcare. It suggests recommendations including:

- Better coordination of support services, such as through expansion of the Safe Operations Support Teams funded by the State Office of Mental Health;

- Provision of additional training to healthcare and housing placement personnel regarding the unique challenges faced by individuals and families experiencing homelessness; and

- The provision of free transportation to medical appointments and pharmacies to individuals experiencing homelessness.

The entire set of these recommendations appear at pages 56-58 of this report.

F. Homelessness and the Criminal Justice/Parole System

Right now, the criminal justice system is the primary way in which society interacts with individuals experiencing homelessness, but that is not the most effective or efficient model. In this section, the report addresses intervention points for diversion to services and programming, the effects of bail reform, and consequences of a criminal conviction as it relates to homelessness. It describes some programs that have had some success in addressing the needs of the unhoused population without imposing criminal sanctions that only worsen an individual's problems, and it provides recommendations including:

- The expansion of diversion and reentry programs;

- The collection of data regarding those programs to determine which are most effective; and

- The use of more coordinated approaches among law enforcement and service providers in addressing situations involving individuals experiencing homelessness.

The entire set of these recommendations appear at pages 70-72 of this report.

G. Homelessness and the Broader Court System

Here the Task Force reviews the intersection between the broader court system and homelessness, including how individuals experiencing homelessness are treated in the court system and how improvements in the court system could reduce the rates of evictions and homelessness. The Task Force recommends:

- An increase in the availability of counsel for individuals facing foreclosure or eviction;

- The encouragement of mandatory diversion programs in eviction proceedings; and

- Additional steps to ensure that tenants' rights are being protected in eviction proceedings.

These recommendations are described in greater detail at pages 81-82 of this report.

H. Children and Families

The myriad negative consequences of housing insecurity and homelessness on families with children are well-documented and impact every member of the family. In this section, we review the impact of homelessness on children and families and provide recommendations on public policy initiatives that can work to prevent families' homelessness and assist those families experiencing homelessness more effectively. Those recommendations include:

- Targeting more resources toward upstream interventions to keep families in their homes and avoid shelter placements;
- Increasing the availability and amount of vouchers and other rent subsidies;
- Increasing the public shelter allowance to reflect current market rates;
- Creating a statewide voucher program;
- Improving educational access for children in shelters; and
- Increasing the number of shelters that provide services to victims of domestic violence.

The entire set of these recommendations appear at pages 85-94 of this report.

I. Veterans

Veterans have made unique sacrifices to defend the American people and our freedoms, but many of them face challenges in returning to civilian life, including access to housing. This section discusses the unique challenges faced by veterans who are or may become homeless as well as the programs available specifically to veterans. Recommendations include:

- Clarifying who qualifies as a veteran for purposes of receiving housing-related veterans benefits;
- Making housing-related benefits available to veterans who received a less than honorable discharge and to members of the National Guard and Reserves who were activated by the State;
- Educating social service providers on veteran-specific needs and resources;
- Improving data collection with respect to veterans experiencing homelessness; and
- Simplifying application forms for Veterans Administration benefits.

The entire set of these recommendations appear at pages 95-101 of this report.

J. Rural Areas and Populations

While the focus of efforts to address homelessness is frequently on urban and suburban areas, it is a problem in the rural areas of New York State as well. This section analyzes issues unique to rural populations and offers some policy recommendations to address those issues including increased funding for homelessness-related support services in rural areas and increased availability of transportation for individuals experiencing homelessness in rural areas.

II. BACKGROUND AND OVERVIEW OF THE HOMELESSNESS SITUATION IN NEW YORK STATE

In the United States, homelessness is a significant issue that impacts hundreds of thousands of Americans. In 2023, New York State had approximately 15% of the nation's homeless population. The U.S. Department of Housing and Urban Development (HUD), which has been tasked with administering homelessness services on a national level, estimated there were at least 653,104[4] individuals experiencing homelessness nationwide and at least 103,200[5] in New York.

Homelessness impacts people from many walks of life, including but not limited to families, individuals with mental illness, veterans, and individuals fleeing domestic violence. Similarly, the immediate causes of homelessness often include multiple economic, social, or health-related reasons.

The causes of homelessness are generally understood to be broken into two general categories, individual (e.g., mental health, domestic violence, etc.) and structural (e.g., the economy, racism and housing costs).[6] Both of these categories are inextricably intertwined. In 2023's *Homelessness is a Housing Problem*, the authors state:

> Homelessness researcher Brendan O'Flaherty . . . suggests that to generate causal explanations of homelessness, one must consider the interaction between individual characteristics and the context in which that person resides. Either explanation alone is insufficient to explain or predict individual homelessness. By extension, he argues that people who lose their housing are effectively the wrong people in the wrong place. This frame helps to provide a vantage point from which to consider the central question of this book: What explains the substantial variations in per capita homelessness in the United States? To cut to the chase, the answer is on the cover of this book: Homelessness is a Housing Problem. Regional variations in rates of homelessness can be explained by the costs and availability of housing. . . .[7]

This report wholly endorses and supports this statement, while also analyzing other causes of homelessness and making policy recommendations to address the needs identified as stated above.

Here, we will provide a brief history of modern homelessness, describe the structures created to combat homelessness, present an overview of the state of homelessness in New York, and provide definitions for key terms that will be helpful in providing a baseline understanding to better engage with this report and its recommendations.

A. Brief History of Homelessness

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[4] *Annual Homeless Assessment Report*, Office of Policy Dev. & Research, Dec. 2023, https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html.

[5] *Id.*

[6] Gregg Cloburn and Clayton Page Aldern, Homelessness is a Housing Problem: How Structural Factors Explain U.S. Patterns, at 8–9.

[7] *Id.* at 9–10.

Homelessness in the United States in significant numbers can be traced back to the 1930s and the Great Depression. A poor economy and a lack of work led people to be driven from their homes en masse.[8] In contrast, homelessness in in close to its present form began in the late 1970s as a result of a confluence of factors including a reduction in adequate housing options for the poor and changes in the State's mental health policies.[9] Prior to that time, individuals experiencing homelessness were generally single adults who were suffering from mental illness.[10]

> The early 1980s marked the emergence of what now may be considered the modern era of homelessness. Major forces that changed the complexion of homelessness in the modern era include gentrification of the inner city, deinstitutionalization of the mentally ill, high unemployment rate, the emergence of HIV/AIDS, an inadequate supply of affordable housing options, and deep budget cuts to the U.S. Department of Housing and Urban Development (HUD) and social service agencies in response to what was then the country's worst recession since the Great Depression (Jones, 2015).[11]

In the 1980s, family homelessness became more commonplace due to the recession and cuts in federal subsidized housing programs.[12] "We then saw new groups emerge: younger people and families—a much more economically-driven homeless."[13] Since the 1980s, the crisis only grew worse and has disproportionately impacted people of color.[14]

As homelessness became more prevalent, public policy shifted to address the problem. "In 1987, Congress passed and President Reagan signed into law the Stewart B. McKinney Homeless Assistance Act, now known as the McKinney-Vento Homeless Assistance Act to address the growing national crisis of homelessness, the first major federal legislation to do so."[15] In 2009, the McKinney-Vento Homeless Assistance Act was amended by Congress through the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009 (the "HEARTH Act").[16] During these few decades, HUD implemented various programs including the creation of

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[8] Michelle Chen, *The History of Homelessness in America*, The HomeMore Project, Sept. 18, 2022, https://thehomemoreproject.org/the-history-of-homelessness-in-america/.

[9] *Why Are So Many People Homeless?*, Coalition for the Homeless, https://www.coalitionforthehomeless.org/why-are-so-many-people-homeless, (last visited March 19, 2024).

[10] *Id*.

[11] Permanent Supportive Housing: Evaluating the Evidence for Improving Health Outcomes Among People Experiencing Chronic Homelessness, Appendix B: The History of Homelessness in the United States, https://www.ncbi.nlm.nih.gov/books/NBK519584/, (last visited March 28, 2024).

[12] *Why Are So Many People Homeless?*, *supra* note 9.

[13] Diane Jeantet, *A Brief History of Homelessness in New York*, City Limits, Mar. 11, 2013, https://citylimits.org/2013/03/11/a-brief-history-of-homelessness-in-new-york/.

[14] *Homelessness and Racial Disparities*, National Alliance to End Homelessness, Dec. 2023, https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/inequality/.

[15] No Barriers: A Legal Advocate's Guide to Ensuring Compliance with the Education Program of the McKinney-Vento Act, 2d Ed., Nov. 2016, https://homelesslaw.org/wp-content/uploads/2018/10/NoBarriers.pdf.

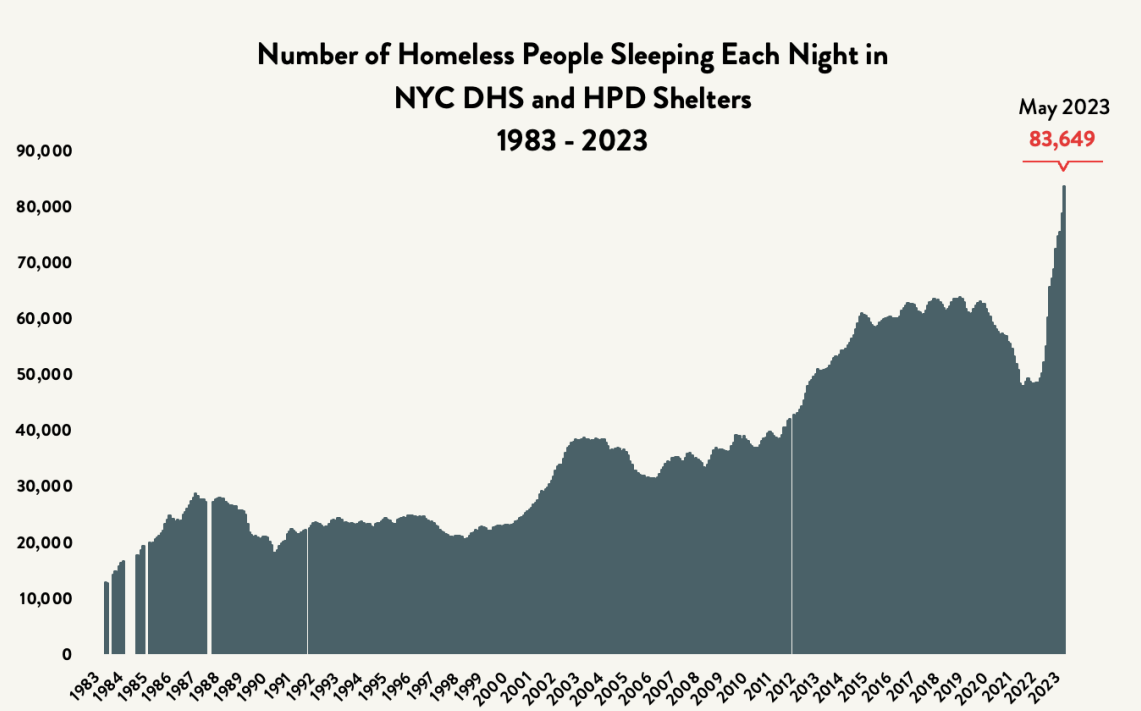
[16] *Homeless Emergency Assistance and Rapid Transition to Housing Act*, HUD Exchange, https://www.hudexchange.info/homelessness-assistance/hearth-act/, accessed April 6, 2024.

the Continuum of Care Program (as defined and discussed in Section III) in the 1990s that was later codified into law by the HEARTH Act.

B. Crisis or Policy Choice?

As we seek to understand the sources of the problem, we should reflect on whether homelessness is a "crisis" as the term is typically defined or should it rather be understood as a policy failure of our own making. A crisis is typically short in duration, whereas modern homelessness has existed for almost 50 years. Moreover, data has shown that when housing for the poor and those at the margins of society is prioritized, homelessness decreases. New York City has tracked data on how many individuals are using its shelter system for the last 40+ years. The following excerpt and the graph below illustrate how prioritizing housing has decreased homelessness in the past:

> . . . at the close of the 1980s a series of ambitious housing initiatives launched by the City and State resulted in significant reductions in New York City's homeless population. The centerpiece of these efforts was the Mayor Koch's "Housing New York" initiative, a ten-year, $5.2 billion capital investment plan announced in 1986. The "Housing New York" plan ultimately created or rehabilitated 150,000 affordable apartments citywide, with fully 10 percent, or 15,000 apartments, targeted to homeless households.[17]



[18]

[17] *Why Are So Many People Homeless?*, *supra* note 9.

[18] *Number of Homeless People in NYC's Main Shelter System*, Coalition for the Homeless, https://www.coalitionforthehomeless.org/facts-about-homelessness/ (last visited April 6, 2024).

This chart shows a sharp decrease in the number of people utilizing the shelter system from a peak of approximately 28,000 people in 1987 to approximately 17,000 in 1990. This illustrates the effect of those New York City policies that prioritized the creation of safe affordable housing for the unhoused.

In another example, "Between 2009 and 2019 . . . Veteran Homelessness in the United States fell by nearly half – a decline of about thirty-six thousand people who were without housing on any given night."[19] The decline was the result of policy choices that prioritized increasing veteran housing and providing the necessary wraparound services (e.g., mental health counseling and case management) that assisted this population in obtaining and remaining in housing.

While many efforts have been initiated throughout the state and federally, homelessness in the United States and New York generally has only worsened. In the last year, the addition of unhoused migrants coming to the State in record numbers has further exacerbated the issue.

C. What is the Definition of Homelessness?

While many people think of homelessness as the visible status of living on the street, homelessness can also take other forms that are not as obvious. HUD divides the definition of homelessness into four categories: (i) literally homeless; (ii) imminent risk of homelessness; (iii) homeless under other federal statutes; and (iv) fleeing or attempting to flee domestic violence.[20]

Literally homeless is defined as people who lack a fixed, regular, and adequate nighttime residence. Imminent risk of homelessness is defined as people who will imminently lose (within 14 days) their primary nighttime residence. The other two categories consist of unaccompanied youth or families with children who have experienced persistent instability in housing and people fleeing domestic violence without another residence.

HUD's definitions provide a rigid framework for a fairly fluid status. People experiencing homelessness have varying experiences that can elude such a strict definition. For example, when an individual "doubles up" by sleeping on a friend's couch, it can slip through all of the HUD definitions.[21] People experiencing homelessness can navigate from sleeping on a friend's couch, to sleeping in a motel using saved wages, to sleeping in a shelter bed, to sleeping on the street in any given month. The fluidity of homelessness makes it difficult to measure and difficult to define as one uniform experience.

Throughout this report, we try to use a consistent definition of homelessness in focusing on individuals and families who lack a fixed, regular, and adequate place to sleep at night. If needed for context, we further identify the type of homelessness being referred to (e.g., street homelessness). We recognize this does not capture everyone's experience with homelessness, but

[19] Cloburn and Aldern, *supra* note 6, at 9.

[20] *Four Categories of the Homeless Definition*, HUD Exchange, https://www.hudexchange.info/homelessness-assistance/coc-esg-virtual-binders/coc-esg-homeless-eligibility/four-categories/.

[21] *Hidden Homelessness in the U.S.: Why Congress Must Change HUD's Definition of Homelessness to Align With Other Federal Agencies*, Schoolhouse Connection, https://schoolhouseconnection.org/aligning-homelessness-definitions/.

this definition (or versions of this definition) is most often used in data collection and analyses because it is the clearest experience to document.[22]

D. Point-in-Time Counts

To try and measure homelessness, HUD requires Continuums of Care[23] to conduct a Point in Time (PIT) count on a single night every January. The count is done in January because

> [c]ounting and interviewing people sleeping in unsheltered locations during the winter months can provide a more precise count of people who are unable or unwilling to access emergency shelter or other crisis response assistance. In many communities, winter is the season when the public is most concerned about the ability of homeless people to survive, and many [Continuums of Care] find it easier to recruit volunteers. A count on one of the coldest nights of the year can be very effective in raising public awareness of the challenges faced by homeless people without shelter. Additionally, conducting the count during the end of the month helps to count people who cycle in and out of homelessness and who may be able to pay for temporary housing (e.g., motel) at the beginning of the month when public benefit payments are available but are unable to do so at the end of the month. Lastly, these counts are important local benchmarks that help measure changes in need at the population and subpopulation level. Counts should help [Continuums of Care] adjust their interventions to be more effective.[24]

It must be noted that this process has been described as flawed by various advocacy groups. These flaws are primarily due to inconsistencies in methodologies in conducting the PIT count between Continuums of Care nationally and the fact that most methods miss many unsheltered homeless and only some kinds of homelessness are counted.[25] While alternative methods have been put forward by advocacy groups, our purpose in describing this process here is to create an understanding of the systems put in place to combat homelessness. For purposes of this report, we do not delve into the different methodologies but rather simply highlight the fact that the methodologies are not perfect and likely undercount homelessness.

E. Who Experiences Homelessness in New York State

In New York State, many types of people experience homelessness. They include single adults, families, veterans, people escaping domestic violence and new arrivals. Each person entered homelessness for reasons that are unique to their own experience, but as stated previously and throughout this report, societal structures exist that continue to disproportionately negatively

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[22] *About Homelessness and Health*, Centers for Disease Control, Oct. 15, 2024, https://www.cdc.gov/homelessness-and-health/about/index.html.

[23] Continuums of Care are described in greater detail below in Section III.

[24] *Point-in-Time Count Methodology Guide*, U.S. Dept. of Hous. And Urb. Dev't, 2014, https://files.hudexchange.info/resources/documents/PIT-Count-Methodology-Guide.pdf.

[25] *Don't Count on It: How the HUD Point-in-Time Count Underestimates the Homelessness Crisis in America*, Nat'l Law Center on Homelessness & Poverty, 2017, https://homelesslaw.org/wp-content/uploads/2018/10/HUD-PIT-report2017.pdf.

impact those on the margins of society. In each of the following subsections we provide a table from the most recent HUD PIT count data where available.

1. Single Adults

In the State, homeless adults make up a large percentage of the state's overall homeless population. Nationally, single adults tend to experience homelessness primarily because of a lack of affordable, available housing.[26]

> Because of the cost of housing and inadequate incomes, even a temporary financial or life crisis – such as losing a job, the end of a relationship, death of a partner, or health emergency – can result in a loss of housing and homelessness. However, the experience of homelessness for this population is most often brief and non-recurring. Despite common stereotypes, most homeless single adults do not suffer from chronic mental illness, substance abuse, or other disabling conditions. Most are homeless for a relatively short time before reconnecting to housing.[27]

[26] *Single Adults*, Nat'l Alliance to End Homelessness, Dec. 2023, https://endhomelessness.org/homelessness-in-america/who-experiences-homelessness/singleadults/.

[27] *Id.*

New York – Individuals	2018	2019	2020	2021	2022	2023
Overall Homeless Individuals	39827	42,113	43,283	40,627	39,373	49,505
Sheltered Total Homeless Individuals	35,562	38,074	38,732	37,793	35,342	44,530
Unsheltered Homeless Individuals	4,265	4,039	4,551	2,834	4,031	4,975

[28]

2. Children and Families

In the State, people in families experiencing homelessness represent a similarly large percentage of the State's overall homeless population. Regarding family homelessness, the National Alliance to End Homelessness states:

> Families experiencing homelessness are similar to other families that are also poor, but who have a home to live in. Both may struggle with incomes that are far less than they need to pay for housing. In fact, it is often some jolt to this precarious situation – a lost job or work hours, conflict with family members they are staying with, an unanticipated bill or violence within the home – that leads families to seek help from homeless service programs. Homeless families are usually headed by a single woman with limited education, are typically young, and have young children.[29]

New York – Families	2018	2019	2020	2021	2022	2023
Overall Homeless People in Families	52,070	49,978	47,988	38,258	34,805	53,695
Sheltered Total Homeless People in Families	52,041	49,970	47,982	38,258	34,798	53,663
Unsheltered Homeless People in Families	29	8	6	0	7	32

[30]

3. Chronically Homeless

The State has a substantial population of chronically homeless individuals who are particularly likely to be undercounted due to the flaws in the PIT count process described above.

> People experiencing chronic homelessness typically have complex and long-term health conditions, such as mental illness, substance use disorders, physical disabilities, or other medical conditions. Once they become homeless — regardless of what immediately caused them to lose their housing — it is difficult for them to get back into housing and they can face long or repeated episodes of homelessness.[31]

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[28] *2007–2023 Point-in-Time Estimates by State*, Office of Policy Dev't & Research, https://www.huduser.gov/portal/sites/default/files/xls/2007-2023-PIT-Counts-by-State.xlsb, (last visited April 22, 2024).

[29] *Children and Families*, Nat'l Alliance to End Homelessness, Dec. 2023, https://endhomelessness.org/homelessness-in-america/who-experiences-homelessness/children-and-families/.

[30] *2007–2023 Point-in-Time Estimates by State*, *supra* note 28.

[31] *Chronically Homeless*, Nat'l Alliance to End Homelessness, Dec. 2023, https://endhomelessness.org/homelessness-in-america/who-experiences-homelessness/chronically-homeless/.

New York – Chronically Homeless	2018	2019	2020	2021	2022	2023
Overall Chronically Homeless	7,195	7,229	7,515	7,386	6,651	6,132
Sheltered Total Chronically Homeless	5,570	5,631	5,920	6,640	5,544	4,938
Unsheltered Chronically Homeless	1,625	1,598	1595	746	1,107	1,194

[32]

4. Veterans

In November 2023, the New York State Comptroller issued a report detailing the reduction in veteran homelessness in the state.[33]

> New York state made substantial progress in reducing homelessness for veterans between 2010 and 2022 with the number of homeless veterans declining 83% (from 5,857 to 990), the largest percentage decline in the nation, according to an analysis by State Comptroller Thomas P. DiNapoli. The share of homeless adults that are veterans was reduced from 9% in 2010 to just 1% in 2022. . . . The most significant reduction in New York occurred between 2011 and 2016 when the number of homeless veterans declined by 78% (from 5,765 to 1,248). The reductions have been driven by policy and funding at the federal level that began in 2010 with release of the first Federal Strategic Plan to Prevent and End Homelessness by the U.S. Interagency Council on Homelessness. Federal funding for programs addressing Veterans' homelessness through the Veterans' Administration in 2009 totaled $376 million and has grown steadily since then. By 2022, federal funding had increased 635% to $2.7 billion.[34]

Although this number increased between 2022 and 2023 and there are still a significant number of veterans experiencing homelessness,[35] the policies described above that focus on veteran homelessness have shown substantial impact and continue to stand out as an example of a successful government response to a legitimate crisis.

New York – Veterans	2018	2019	2020	2021	2022	2023
Overall Homeless Veterans	1,224	1,270	1,251	1,108	990	1,098
Sheltered Total Homeless Veterans	1,184	1,247	1,214	1,097	965	1,065
Unsheltered Homeless Veterans	40	23	37	11	25	33

[32] *2007–2023 Point-in-Time Estimates by State*, *supra* note 28.

[33] *Reductions in Homelessness Among New York's Veterans*, Off. of the N.Y.S. Comptroller, Nov. 2023, https://www.osc.ny.gov/files/reports/osdc/pdf/reductions-in-homelessness-among-new-yorks-veterans.pdf.

[34] *DiNapoli Analysis Finds Sharp Decline in Homeless Veterans in New York*, Off. of the N.Y.S. Comptroller, Nov. 8, 2023, https://www.osc.ny.gov/press/releases/2023/11/dinapoli-analysis-finds-sharp-decline-homeless-veterans-new-york.

[35] *Veterans*, Nat'l Alliance to End Homelessness, Dec. 2023, https://endhomelessness.org/homelessness-in-america/who-experiences-homelessness/veterans/.

5. New Arrivals

Starting in the spring of 2022, New York City has experienced an increase in the number of individuals arriving from the southern border of the United States and requesting shelter. These new arrivals endured arduous journeys from around the globe to arrive in the United States in search of a better life.[36] Many were provided free buses to New York City, sometimes at the direction of border state governors eager to make a political point.[37] Unlike prior waves of migration to the State, many of the new arrivals do not have contacts in the State who can house them, which has resulted in New York City's shelter system population more than doubling in size.[38] As of September 2024, there were nearly 62,000 new arrivals (including families with children, adult families, single adults, and unaccompanied youth) living in homeless shelters in New York City.[39] Most new arrivals who come to New York end up staying in New York City, though some have been placed in upstate hotels amid significant backlash from upstate communities.[40] The needs of the new arrivals are often different than the needs of longtime New Yorkers experiencing homelessness, as they face struggles gaining access to work authorization and immigration representation in connection with their asylum claims.[41] Without the ability to work legally until six months after submitting their asylum application, new arrivals are often forced to work off the books to try to support themselves, which exposes them to significant risks of exploitation and leaves them without sufficient income to rent permanent housing.[42] While the number of new arrivals coming to New York has dropped significantly in recent months, any future advocacy to address homelessness in New York State will need to take into account the unique needs of the tens of thousands of new arrivals who are still living in New York homeless shelters.

F. Recent litigation

Litigation regarding the rights of individuals experiencing homelessness has been at the forefront recently, as evidenced by the two cases discussed below, *Callahan v. Carey* and *Johnson v. City of Grants Pass.* The outcome of both cases will have lasting effects on the treatment of individuals experiencing homelessness throughout New York State.

1. *Callahan v. Carey*

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[36] *See* Julie Turkewitz, *A Girl Loses Her Mother in the Jungle and a Migrant Dream Dies*, N.Y. Times, Nov. 9, 2022, https://www.nytimes.com/2022/11/09/world/americas/migrants-darien-gap.html.

[37] *See* Miriam Jordan and Edgar Sandoval, *Is Texas' Busing Responsible for the Migrant Crisis Across Cities?*, N.Y. Times, Sept. 7, 2023, https://www.nytimes.com/2023/09/07/us/migrant-buses-texas-nyc-los-angeles.html.

[38] *See* Patrick Spauster, Adrian Nesta & Emma Whitford, *Tracking NYC's Record-High Homeless Shelter Population*, City Limits, Dec. 7, 2023, https://citylimits.org/2023/12/07/tracking-nycs-record-high-homeless-shelter-population/.

[39] *See Accounting for Asylum Seeker Services*, Off. of the NYC Comptroller, Nov. 21, 20224, https://comptroller.nyc.gov/services/for-the-public/accounting-for-asylum-seeker-services/overview/.

[40] *See* Michael Hill, *New York City Sticking With Migrant Hotel Plan Despite Pushback From Suburbs*, AP News, May 10, 2023, https://apnews.com/article/immigration-asylum-new-york-ec6ec0219e59b21d157a2baf6dccf560.

[41] *See* Lauren Glassberg, *7% of NYC Asylum Seekers Have Found Lawyers To Represent Them, Survey Says*, ABC News, June 6, 2023, https://abc7ny.com/nyc-asylum-seekers-lawyers-migrant-crisis/13351692/.

[42] *See* Andrew Silverstein, *Illegal Mopeds and Fake Names: Migrants Scrape By in Underground Economy*, N.Y. Times, Sept. 15, 2023, https://www.nytimes.com/2023/09/15/nyregion/migrant-delivery-unlicensed-moped.html.

New York City provides a right to shelter for anyone in need, which was established through a series of court cases going back over four decades. The City of New York directly challenged this fundamental right last year but eventually relented.

The first case to establish the right to shelter was *Callahan v. Carey*, which was brought in 1979 against New York State and New York City on behalf of single homeless men.[43] The plaintiffs argued that Article XVII of the New York State Constitution, which states that the State is responsible for the "aid, care and support of the needy," guarantees every homeless man a right to a shelter bed.[44] In resolving a motion for a temporary injunction, the New York Supreme Court agreed that Article XVII requires the defendants to provide shelter to the plaintiffs.[45] The case was ultimately settled, and the resulting consent decree requires New York City to shelter every homeless man who requests a bed, and New York State must pay a portion of the costs of that shelter.[46] Whether Article XVII requires the rest of New York State to provide shelter to individuals experiencing homelessness remained an open question.

Two years after *Callahan* was settled, *Eldredge v. Koch* established that single women have a constitutional right to shelter.[47] From 1986 until 2008, The Legal Aid Society (class counsel for *Callahan* and *Eldredge*) also litigated the right to shelter for families with minor children. The resulting settlement, under the caption *Boston v. City of New York*, guaranteed a right to shelter for families with minor children who have no other safe housing option.[48]

With the recent influx of new arrivals from the southern border, New York City has tried to find new ways to meet its obligation under *Callahan*, though these new methods have resulted in people having to sleep or wait outside for long periods of time on multiple occasions.[49] New York State has failed to provide New York City with significant resettlement assistance, and the assistance it has provided has been limited.[50] The federal government has failed to offer

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[43] For a history of *Callahan v. Carey*, *see The Callahan Legacy: Callahan v. Carey and the Legal Right to Shelter*, Coalition for the Homeless, https://www.coalitionforthehomeless.org/our-programs/advocacy/legal-victories/the-callahan-legacy-callahan-v-carey-and-the-legal-right-to-shelter/.

[44] *See generally Callahan v. Carey*, Amended Complaint, April 30, 1980, https://www.coalitionforthehomeless.org/wp-content/uploads/2014/08/CallahanAmendedComplaint-1.pdf.

[45] *See Callahan v. Carey* Order, Dec. 5, 1979, https://www.coalitionforthehomeless.org/wp-content/uploads/2014/08/CallahanAmendedComplaint-1.pdf.

[46] *See Callahan v. Carey*, Final Judgment by Consent (Sup. Ct., N.Y. Co. Dec. 5, 1979).

[47] *See Eldredge v. Koch*, 118 Misc. 2d 163 (Sup. Ct., N.Y. Co. 1983), *rev'd in part on other grounds*, 98 A.D.2d 675, 469 N.Y.S.2d 744, 675–76 (1983).

[48] *See Boston v. City of New York*, Index No. 402295/08 (Sup. Ct., N.Y. Co. Dec. 12, 2008), final judgment, https://www.coalitionforthehomeless.org/wp-content/uploads/2014/08/BostonvNewYorkFinal.pdf.

[49] Emma G. Fitzsimmons and Jay Root, *Migrants Will Sleep Outdoors Because 'There Is No More Room,' Adams Says*, N.Y. Times, July 31, 2023, https://www.nytimes.com/2023/07/31/nyregion/migrants-sleeping-roosevelt-hotel.html; Gwynne Hogan, *Only a Handful of Migrants at 'Reticketing Site' Accept City's Free Trips Out*, The City, Nov. 28, 2023, https://www.thecity.nyc/2023/11/28/few-migrants-accept-nyc-free-trips-out/; Jay Bulger and Paula Aceves, *In Line at St. Brigid*, Curbed, Feb. 26, 2024, https://www.curbed.com/article/nyc-migrants-shelter-stories-st-brigid-church-reticketing.html.

[50] *See* Dana Rubenstein, Andy Newman & Wesley Parnell, *Why a $25 Million Plan to Relocate N.Y.C. Migrant Families Is Struggling*, N.Y. Times, Feb. 25, 2024, https://www.nytimes.com/2024/02/25/nyregion/migrants-

comprehensive immigration reform or any other meaningful aid to New York City to address the influx of recent arrivals.

In May 2023, as a result of the large numbers of new arrivals entering the shelter system, New York City requested leave from the Court to make a motion to modify the *Callahan* consent decree.[51] New York City revised its request to modify twice. The most recent request was submitted in October 2023. The final version of the City's request sought permission for New York City to treat shelter as a public benefit (which is how shelter is treated in the rest of New York State). As a public benefit, the working poor, people with federal disability benefits, or individuals without immigration status would be ineligible for shelter in New York City. If the City had succeeded in modifying its shelter obligation in this manner, the City may have experienced mass street homelessness as is common in west coast cities.[52] In response to the City's request for leave to make a motion, the parties engaged in a court-ordered mediation process for five months. On March 15, 2024, the parties reached a settlement.[53]

The settlement keeps the original *Callahan* consent decree intact and permits the City to operate a temporary separate shelter system to serve the specific needs of new arrivals. For longer-term New Yorkers, access to shelter in New York City remains unchanged. The settlement creates a temporary "Crisis Plan." Single Adult new arrivals are now subject to an initial eligibility screening and will have to show "extenuating circumstances" to receive extensions of their initial 30- or 60-day shelter stay. The settlement provides minimum standards for shelters serving new arrivals and ensures every individual is entitled to an individualized determination regarding their shelter stay. The Crisis Plan will terminate at the end of the Mayoral Emergency Executive Order 224 (related to the influx of recent arrivals) or upon action by the Court or motion by the parties.

2. *Johnson v. City of Grants Pass*

New York is not the only state in which high-stakes litigation involving homelessness is on the docket this year. The Supreme Court's decision in *City of Grants Pass, Oregon v. Johnson* marks a significant moment in the ongoing national discourse on homelessness and the rights of the unhoused. The case stems from challenges to municipal codes in the city of Grants Pass, Oregon that penalize the unhoused for sleeping in public spaces when no shelter options are available.[54] It revisits the principles set forth in *Martin v. Boise*, where the Ninth Circuit held that

relocation-ny.html (describing the failure of the State's only significant investment in the resettlement of new arrivals in New York).

[51] In 1984, the Supreme Court ordered that parties in *Callahan* must obtain permission from the Court to make a motion. *See* Post-Judgment Order, issued October 15, 1984.

[52] *See* Nicole Hong, *What Happens When New York's Shelters Run Out of Room?,* N.Y. Times, Aug. 3, 2023, https://www.nytimes.com/2023/08/03/nyregion/nyc-migrant-homeless-crisis.html.

[53] *See Callahan v. Carey*, Stipulation, Mar. 15, 2024, https://www.coalitionforthehomeless.org/wp-content/uploads/2024/03/42582_1979_ROBERT_CALLAHAN_et_al_v_HUGH_L_CAREY_et_al_STIPULATION___SO_OR_35.pdf.

[54] *Johnson v. City of Grants Pass*, 72 F.4th 868, 874–75 (9th Cir. 2023).

it is unconstitutional under the Eighth Amendment to criminalize the act of sleeping outside on public property when no alternatives exist.[55]

Grants Pass has enacted several ordinances that effectively criminalize homelessness by imposing civil penalties on sleeping and camping in public spaces.[56] This practice, despite only initially incurring civil penalties, has the potential to escalate into criminal repercussions.[57] The lower courts, reflecting on the dire lack of shelter space relative to the number of unhoused individuals in Grants Pass, ruled these practices unconstitutional, but the City of Grants Pass appealed, and the United States Supreme Court granted certiorari.[58]

In a 6-3 decision on June 28, 2024, the Supreme Court overruled the lower court's decision and upheld the constitutionality of the Grants Pass ordinance criminalizing the practice of sleeping outdoors in public spaces. The decision in *City of Grants Pass v. Johnson* has far-reaching implications with respect to the way in which cities across the nation approach the issue of homelessness.[59] The Supreme Court's decision is likely to embolden jurisdictions, including those in New York State, to enact and enforce similar punitive measures, potentially exacerbating the homelessness crisis and complicating efforts to provide shelter and support to those in need.

[55] *See Martin v. City of Boise*, 920 F.3d 584, 616 (9th Cir. 2019).

[56] *Johnson*, 72 F.4th at 876.

[57] *Id*. at 875.

[58] *City of Grants Pass, Oregon v. Johnson*, 144 S. Ct. 679, 217 L. Ed. 2d 341 (2024).

[59] Steve Berg, *Supreme Court and Homelessness: What the Grants Pass v. Johnson Case Could Do*, Nat'l Alliance to End Homelessness, Jan. 26, 2024, https://endhomelessness.org/blog/supreme-court-and-homelessness-what-the-grants-pass-v-johnson-case-could-do/.

III. EXISTING PROGRAMS AND RESOURCES

The following is an overview of the resources currently available to address homelessness-related issues in New York State and how some of those existing programs and resources are administered at the federal, state, and local levels. The description is meant to be illustrative, rather than exhaustive and does not capture every available resource, particularly at the local level. In general, New York State has a number of programs and resources to significantly reduce or prevent homelessness in the State, but weaving all the pieces together into a comprehensive and effective system is challenging for all involved. For instance, each existing resource has a different eligibility requirement, location of service, non-profit or county managing the program and even different definitions as to what homelessness means. Navigating the different eligibility requirements and funding limits is difficult for the service providers, but even more confusing for those individuals and families experiencing homelessness.

A. Federal Programs

1. Continuum of Care Program:

The Continuum of Care Program (the "CoC Program," and each such Continuum of Care a "CoC") is a HUD-sponsored program designed to promote a community-wide commitment to reducing homelessness.[60] The CoC Program was established in response to the growing issue of homelessness in the United States. Its roots trace back to the early 1980s when homelessness began to emerge as a prominent social issue, particularly in urban areas. At that time, there was a lack of coordinated efforts and resources to address the complex needs of individuals and families experiencing homelessness. The CoC Program provides funding for states, counties, municipalities, and non-profits to implement programs focused on reducing homelessness by coordinating the delivery of services from different public agencies and non-profits where coordination is critical to successful outcomes across different service providers. This is achieved by the submission of housing and support service projects to HUD during the annual CoC funding application process. Both governmental and private partners are encouraged to participate in the CoC.

In New York, there are 24 CoC networks. New York City has one CoC that covers all five boroughs, which may be too large to be effective, although the City's Department of Homeless Services programs are run on a citywide basis. In other parts of New York State, a CoC network exists on a countywide basis, and in still other areas, the network crosses multiple county lines. The CoC for Western New York serves Buffalo (Erie County) as well as Niagara, Genesee, Orleans, and Wyoming Counties. In addition to serving Syracuse (Onondaga County), the Homeless & Housing Coalition of Central New York coordinates services in the City of Auburn and Cayuga County, as well as Oswego County. In Rochester (Monroe County), Partners Ending Homelessness serves as the CoC. In Albany, the CoC is the Albany County Coalition on Homelessness. In Westchester County, including the City of Yonkers, Westchester County Continuum of Care Partnership to End Homelessness is the CoC. Each network has a designated

[60] 24 C.F.R. pt. 578.

coordinator who is supposed to look to system-wide needs within each CoC network and determine which non-profit or public agency can best meet or support those various needs.

While the idea of the CoC Program makes sense, the coordination across agencies that the program assumes will happen is often less than perfect. In addition, the HUD funding doesn't typically fund anything more than tenant-based rental assistance and case management staff. Substantial additional funding is needed from the State, the county, or even municipalities within the county. The funding sources, available services and capacity of the non-profits to apply for those services can vary considerably from county to county. Communicating to potential service recipients those services that are available can also be problematic. HUD CoC funding cannot be used for emergency shelter or households that do not meet the HUD definition of homelessness. In addition, applying for the HUD funding that is administered through the CoCs is highly competitive, and the ability to receive it depends on many factors, including the capacity and experience of the entity or person managing the CoC group. The application itself is immensely burdensome and, like so many programs, the grant award is not sufficient to meet the needs of recipients.

2. Emergency Solutions Grants Program:

The Emergency Solutions Grants (ESG) Program is a formula grant program providing funding to various metropolitan cities, urban counties, territories, and states. The ESG program is designed to assist people with quickly regaining stability in permanent housing after experiencing a housing crisis and/or homelessness. This is achieved by providing funding to, among other things, engage homeless individuals and families living on the street, improve the number and quality of emergency shelters for individuals and families experiencing homelessness, operate these shelters, and rapidly re-house individuals and families experiencing homelessness. HUD gives an ESG allocation to New York State Office of Temporary and Disability Assistance (OTDA), and the OTDA passes it through to programs around the State as the Solutions to End Homelessness Program (STEHP).

3. Homelessness Among Veterans:

As noted in Section II, in recent years, the U.S. Department of Veteran Affairs (the VA) has made progress in housing the nation’s homeless veterans through federal funding of numerous programs and initiatives including, among others, HUD-Veterans Affairs Supportive Housing program (HUD-VASH), Supportive Services for Veteran Families (SSVF), and the Grant and Per Diem (GPD) program. The impact has been particularly profound in the State of New York. The HUD-VASH program is a collaborative program between HUD and the VA to provide both housing vouchers and VA supportive services (health care, mental health treatment, and substance abuse counseling) to help homeless veterans and their families find and maintain permanent housing. The VA also assists very low-income veterans who are facing an imminent loss of their home through the SSVF program. This program provides supportive services grants to private non-profit organizations and consumer cooperatives that assist very low-income veteran families residing in or transitioning to permanent housing. Those receiving grants provide a range of supportive services to eligible veteran families that are designed to promote housing stability. Finally, the GPD program is offered annually (as funding permits) by the VA to fund community agencies providing services to veterans experiencing homelessness. This program awards grants

to community-based organizations to provide transitional housing with wraparound supportive services to assist vulnerable veterans move into permanent housing. The grants are designed to meet veterans at various stages as they move to stable housing.

The significant decrease in the number of veterans experiencing homelessness during the tenure of these programs is persuasive evidence of the positive effect that well-funded, targeted programs can have.

4. New York State Programs

The OTDA administers an array of programs to address homelessness in the State. These programs provide a continuum of services for homeless, at risk, and low-income households. OTDA programs are designed to prevent homelessness, provide shelter for individuals experiencing homelessness, construct supportive housing for the homeless, and offer essential services to stabilize housing situations and increase levels of self-sufficiency. Programs listed below, with the exception of the Rental Supplement Program and Homeless Housing and Assistance Program, are competitively procured grants that generally operate on a five-year funding cycle. Grants may only be awarded to non-profits or counties.

- Homeless Housing and Assistance Program (HHAP) is a capital development grant for emergency shelter and permanent supportive housing for households who are homeless or at risk of homelessness.

- Empire State Supportive Housing Initiative (ESSHI) provides services and operating funding for project-based permanent supportive housing for households who are experiencing homelessness or are at risk of homelessness and are part of an identified population such as survivors of domestic violence or individuals suffering from severe mental illness. ESSHI services can only be used for new supportive housing units and are typically paired with a capital development project sometimes funded by HHAP.

- Housing Opportunities for Persons living with HIV/AIDS (HOPWA) generally provides rental assistance and case management for persons with HIV/AIDS who may be homeless or at risk of homelessness.

- New York State Supportive Housing Program (NYSSHP) is formula funding for permanent supportive housing (PSH) and is tied to the number of units a PSH building or project may have. It is a very old program, and operators are struggling to maintain services with existing funding levels. It is, however, the only program that will fund site-based PSH for the "general" homeless population.

- Operational Support for AIDS Housing (OSAH) programming funds operations for site-based supportive housing dedicated to households living with AIDS. OSAH-funded sites must also be an HHAP project.

- Solutions to End Homelessness Program (STEHP) represents the New York State allocation of ESG funds paired with additional state resources. STEHP is highly

competitive, and the State typically receives requests for at least double the total amount available for the program.

- Rental Supplement Program (RSP) is a $100 million rental assistance program that is allocated to local departments of social services that opt in to the program. The target population is households who are experiencing, or at risk of experiencing, homelessness.

- In addition, a "Code Blue" Weather Emergency is a regulation that requires local departments of social services to provide emergency housing for individuals and families when the temperature drops below 32 degrees. Code Blue pays for emergency housing such as hotel placements or warming centers for individuals and families who may otherwise be ineligible for temporary housing assistance. Code Blue was initially an executive order but has now been codified as a regulation and currently costs $20 million per year. Individual districts face challenges meeting this requirement including a lack of adequate resources to meet the needs and safety issues posed by people who may have complex service needs.

B. Local Programs

1. Departments of Social Services

In New York State, local Departments of Social Services (DSS), designated by county (except for NYC, where one social services district covers all five boroughs), are responsible for the oversight and financial support of emergency shelter placements. Local DDSs are the first stop for households experiencing homelessness, and they are the only entity required to assist eligible families or, in certain instances, make emergency housing placements. Social services laws are an overlay to the entire homeless services infrastructure in New York State. If a household is eligible for public assistance and needs emergency shelter, a placement can be made to a shelter or hotel, the cost of which is covered by the local DSS. If a household loses their public benefits for any reason, which may include failure to attend drug or mental health treatment or failure to provide evidence of a job search, the emergency shelter stay cannot be reimbursed, in which case shelters may keep an individual or family at the cost of their own agency but may also discharge them. This rule only applies outside of NYC due to the *Callahan* ruling described above.

If members of a household have any income, they must contribute a portion of their income to their emergency shelter stay.[61] This can serve as a barrier to some homeless households, as some would rather live precariously instead of giving up their very limited income, such as social security benefits, to an emergency setting. If a household accepts a placement, a significant portion of their resources must go to their emergency stay. This contribution, in turn, may prevent a household from leaving a shelter as the household may not be able to save enough money to move out.

Issues regarding legal tenancy status for homeless households have become a source of legal confusion. Hotel operators are becoming increasingly hesitant to accept emergency housing

[61] 18 N.Y.C.R.R. § 352.35, https://govt.westlaw.com/nycrr/Document/I50c3e46fcd1711dda432a117e6e0f345.

placements over concern that a stay past 30 days establishes tenancy as a matter of law that would require the hotel operator to go through a formal eviction process when the individuals would otherwise no longer be entitled to emergency housing at the hotel.

2. Housing Choice Vouchers (Section 8)

An important source of support for the homeless, or those at risk of homelessness, is the Section 8 housing voucher program, now called the Housing Choice Voucher Program (the "Voucher Program"). The Voucher Program is part of the Housing Act of 1937, 42 U.S.C. Section 1437f, as amended many times over the years, most recently as part of the Housing and Community Development Act of 1978 (the "Housing Act of 1978"). In general, the Housing Act of 1978 caps low income rent at 30% of a recipient's income. Applicants for a housing choice voucher must have less than 50% of the relevant geographical area's median income, and 75% of the program's benefits are reserved for persons having less than 30% of the median income. The Voucher Program pays directly to the landlord the qualifying tenant's gross rent less the 30% gross income portion that the qualifying tenant is supposed to pay for themselves. The Voucher Program is funded by HUD but is administered by various public housing agencies, or PHAs. In New York City, the PHA is the New York City Housing Authority. The rest of New York State is largely covered by the NYS Department of Housing and Community Renewal (HCR), which is the statewide Voucher Program administrator and passes vouchers through regionally.

The Voucher Program is critical to preventing low-income people from becoming homeless in the first place. The Voucher Program is also important in helping persons who have experienced homelessness obtain affordable housing. For example, a family that has been evicted or has otherwise lost its housing and become homeless can qualify for subsidies to help gain new housing. Persons who have been suffering homelessness on account of drug or alcohol addiction or mental illness can also use vouchers to pay rent as they receive treatment and gain employment, including at supportive housing programs that may offer addiction recovery and mental health services.

A chronic problem with the Voucher Program is rooted in the shortage of landlords willing to accept vouchers, low payment standards for the vouchers, and years-long waiting lists to receive a voucher. Many waiting lists in the state are closed and prospective voucher recipients are not even able to apply for an eligibility determination. However, there is a homeless preference in place for the Housing Choice Voucher program, meaning that 10% of all new vouchers should go to an applicant who identifies as homeless.

C. New York City

As noted in Section II, there is a legal right to shelter in New York City. As a result, New York City now has a well-established shelter system for the homeless on which DHS spends more than $2 billion per year, without taking into account other costs such as health care provided to individuals experiencing homelessness by the New York City Health & Hospitals Corp. and the time spent by police in dealing with homeless persons arrested or otherwise detained or simply assisted by beat officers called upon to help. The system consists of a mixture of City-run shelters and shelters run by non-profits principally funded under contracts with the City's DHS and supplemented with medical programs for things like mental health and drug and alcohol abuse and

addiction which are funded from sources such as the Department of Social Services and Medicaid. The following is an overview of programs and services provided for the homeless and those at risk of being homeless in the City of New York.

- **Homebase**: Homebase provides New Yorkers experiencing housing instability in the community with various homeless prevention services and aftercare services to families and individuals exiting NYC DHS shelter to permanent housing.

- **Rental Assistance**: Rental assistance programs help New Yorkers experiencing homelessness move out of shelter and into stable housing by providing monthly rent supplements.

- **HOME-STAT**: 24/7/365 street outreach across all five boroughs.

- **Drop-in Centers** provide baseline services with the goal of meeting immediate needs for unsheltered New Yorkers, such as showers and meals. Drop-in centers also have on-site case management services and staff, providing an immediate option for individuals who want to transition off the streets.

- **Safe Havens** are transitional housing options designed to help unsheltered New Yorkers get back on their feet by providing specialized overnight beds and physical and program characteristics specifically meant to address these individuals' unique needs.

D. Recommendations

The Task Force offers the following recommendations regarding the existing system of homelessness-related resources in New York State:

1. Funding for existing state resources should be increased to ensure accessibility for all counties, not just those where a non-profit is able to competitively apply.

2. Emergency shelter capacity is incredibly varied across the State, and most counties do not have a shelter system at all. Payment to non-profit shelter operators hinges on the ability of the person experiencing homelessness to maintain social services benefits. A further analysis of Social Services law should be conducted in order to optimize emergency shelter funding and access to those in need by, for example, eliminating regulations that tie shelter access to eligibility for public benefits.

3. Significant State resources exist to fund the construction and operations of supportive housing dedicated to those who are experiencing or are at risk of homelessness. These projects are often stalled locally, with funded projects never coming into existence due to the resistance of local planning boards and community concerns. It is recommended that the State simplify the process for

developing supportive housing projects in New York State by enacting statutes that override local zoning restrictions.[62]

4. The State should establish a comprehensive affordable housing plan including supportive and multifamily housing to expedite construction. An assembly bill has been introduced that establishes a public benefit corporation for permanently affordable housing.[63] This is a step in the right direction, but the State would still benefit from a comprehensive plan.

5. The personal income contribution requirement for shelter stays should be eliminated in order to alleviate financial burdens on individuals experiencing homelessness.

6. Landlord-tenant laws outside of New York City should be reviewed and, if necessary, amended to make clear that emergency housing placement is not considered tenancy in order to eliminate the disincentive for hotel operators to provide housing.

7. An interagency council on homelessness should be reestablished to coordinate funding, programming, and best practices in New York State. The council should include, among others, representatives from each of the CoCs, community leaders across the State, as well as representatives from state agencies including, but not limited to, the Office of Temporary and Disability Assistance, Office of Mental Health, Office of Children and Family Services, and the Department of Corrections and Community Supervision.

[62] Mark Weitner, *New York's Affordable Housing Plan Bypasses Local Zoning*, Governing, Feb. 2, 2023, https://www.governing.com/community/new-yorks-affordable-housing-plan-bypasses-local-zoning.

[63] A.9088, https://www.nysenate.gov/legislation/bills/2023/A9088.

IV. LACK OF SUFFICIENT HOUSING

New York's homelessness crisis is arguably an affordable housing crisis.[64] Although this argument oversimplifies the current homelessness crisis in New York State, the lack of affordable, supportive housing is undeniably a contributing factor.

A. Existing Housing

1. Private ownership

The homeownership rate in New York State is among the lowest in the United States. In the second quarter of 2022, for example, only 53.6% of New York residents owned a home in the state, compared to 65.8% nationally.[65] Racial and ethnic homeownership gaps in New York are higher than those in the rest of the nation.[66] This racial and ethnic gap is consistent with homelessness statistics overall given that the overwhelming percentage of New York's homeless population are racial and/or ethnic minorities.[67]

The low rate of home ownership is directly related to the high price of real estate, particularly in New York City. In 2022, the median sales prices for homes in New York City reached a record high of $782,000.[68] The median sales price for homes in New York City decreased by approximately 2% in 2023. However, this year (2024), median sales prices in New York City are trending toward an all-time high in New York City, currently up to $785,000.[69]

The inventory of homes available for purchase in New York City has declined steadily over the past three years and is approaching a seven-year low.[70] In addition to the restraint on supply caused by a chronic shortfall of new housing development, the rapid rise in mortgage rates over the past two years has created a condition called "housing lock" because many homeowners who might otherwise be inclined to sell are reluctant to give up the exceptionally low mortgage rate that they locked in while rates were low or to sell at prices they perceive may be lower given prospective buyers' higher rates.[71]

The high price of real estate and low inventory result in a remarkably low rate of home ownership in New York City, which pulls the statewide home ownership percentage downward. For example, the homeownership rates in the Bronx and Manhattan are below 25%, but counties

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[64] *See* State of the Homeless 2023, Compounding Crises, Failed Responses, Coalition for the Homeless, June 2023.

[65] See *Homeownership Rates in New York*, Office of Budget Policy and Analysis, Oct. 2022, https://www.osc.ny.gov/reports/homeownership-rates-new-york.

[66] *Id.*

[67] *See New York City Homelessness: The Basic Facts*, Coalition for the Homeless, Feb. 2024, https://www.coalitionforthehomeless.org/wp-content/uploads/2024/02/NYC-Homelessness-Fact-Sheet-12-2023_citations.pdf.

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

outside New York City enjoy homeownership rates that exceed the statewide average and – in some places – the national average.[72]

2. Rental property

The rental market in New York is no better. In fact, New York State has the 14th highest rent among all 50 states.

In New York's largest metropolitan area, New York City, the average rent prices are among the highest in the nation. The average rent in Manhattan is $3,741 per month, which is more than one and a half times the national average. This makes New York City one of the most expensive cities in which to rent an apartment in the United States.

The need for supportive housing is discussed in greater detail herein, but the financial barriers to the existing housing market cannot be ignored. Although some areas in upstate New York offer more affordable options, the overall New York State rental market is still expensive. The average fair market rent for a residential rental property in New York State is approximately $1,620, compared to the national average rent of roughly $1,275.

There are more than one million people in New York who have rental arrears. Absent intervention through rent subsidies, evictions of New York residents threaten to exacerbate the homelessness crisis we are currently facing. This year, the share of New York renters who pay more than 30% of their income toward rent is the highest on record.[73]

3. Public Housing

There are various government agencies within New York that seek to provide public and supportive housing. The New York City Housing Authority (NYCHA) is the largest public housing authority in North America. NYCHA provides affordable housing to more than half a million residents through public housing, Permanent Affordability Commitment Together (PACT) programs, and the Section 8 housing program discussed above.

On the state level, the NYS Division of Housing and Community Renewal (DHCR) seeks to provide access to safe, decent, and affordable housing. The NYS Office of Mental Health (OMH) works with individuals with mental illness to ensure that they have access to effective treatment and supports essential for living, working, learning, and participating fully in the community. The NYS Office for People with Developmental Disabilities (OPWDD) provides similar supports for people with developmental disabilities.

B. Shelters

[72] *Id*. New York statewide residential median sale price – excluding New York City – was approximately $305,000 in 2021. The lower cost of real estate outside of New York City makes home ownership more attainable, but only slightly.

[73] *See Housing Our Neighbors: A Blueprint for Housing and Homelessness*, Office of the NYC Mayor, 2022, https://www.nyc.gov/assets/home/downloads/pdf/office-of-the-mayor/2022/Housing-Blueprint.pdf.

The majority of homeless shelters are in New York City. New York City claims that there are 140,000 shelter beds available in 2024. The annual cost of housing a family in a New York City shelter is about $100,000.

Based on the City's daily census of its shelter population earlier this year, there were 89,000 people in New York City shelters.[74] Approximately 60% of the shelter population are families, the overwhelming majority of which are single-parent families of color and/or headed by women.

C. Housing Characteristics

1. Aging Properties Statistics

New York has the oldest stock of owner-occupied homes in the country with a median age of 62 years, compared to the median age of owner-occupied homes in the United States, at 39 years.[75] Buffalo, in particular, has old housing stock: roughly 60% of Buffalo's occupied housing units were built before 1939, and 90% were built before 1980.[76] With that aging housing supply come increased problems that ultimately contribute to occupants living in substandard conditions. Attempting to retrofit these properties proves to be extremely expensive, which makes it more difficult for owners to address the issues, further contributing to the increasing number of substandard units in the state.

2. Overcrowding Data

Overcrowded housing in New York is a problem, especially downstate, where households experience overcrowding at a rate of 8%, which is four times the rate of overcrowding upstate. Households in higher income groups experience overcrowding at a lower rate than those in lower income groups. Statewide, just over 9% of households at less than 30% of area median income (AMI) experience overcrowding (including severe overcrowding), whereas 5½% of households at 100% of AMI or more experience overcrowding.[77]

Overcrowding is also significantly more prevalent in renter-occupied housing than owner-occupied. Five percent of all renter households statewide are overcrowded, and 3% are severely overcrowded – more than three times greater than the overcrowding rate in owner-occupied households.[78]

3. Substandard Housing

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[74] *See* Carl Campanile and Craig McCarthy, *NYC Homeless Shelter Population Surges 53% During Migrant Crisis: Mayor's Report*, N.Y. Post, Jan. 30, 2024, https://nypost.com/2024/01/30/metro/nyc-homeless-shelter-population-surges-53-amid-migrant-crisis-mayors-report/.

[75] *Median Age of Housing Stock by State Varies by More Than 35 Years*, Nat'l Ass'n of Home Builders, April 5, 2021, https://www.nahb.org/blog/2021/04/median-age-of-housing-stock-by-state-varies-by-more-than-35-years/.

[76] *Physical Housing Characteristics for Occupied Housing Units*, S2504, 2017–2021 (Buffalo, N.Y.), U.S. Census Bureau, Oct. 19, 2023, https://data.census.gov/table/ACSST5Y2021.S2504?q=housing&g=160XX00US3611000.

[77] Comprehensive Housing Affordability Strategy (CHAS) data, released by U.S. HUD and based off the 2013–2017 ACS five-year average.

[78] *Id.*

New York State is plagued with one of the highest rates of substandard housing in the country. The poor conditions that individuals live in contribute to the homeless crisis in the state, as many are forced to vacate their homes because of the extreme health risks they face. Over 22% of occupied units suffer from severe housing problems, including at least one of the following: lack of complete kitchen facilities, lack of plumbing facilities, overcrowding, or severely cost-burdened occupants.[79] Housing problems are more prevalent among rental households, with approximately 55% of rental households statewide experiencing at least one housing problem compared to 30% of homeowners.[80] Households of color disproportionately experience higher rates of housing problems. While 38% of households in the state are households of color, 50% experience at least one housing problem.[81]

Housing problems are more prevalent downstate than upstate. Almost half of downstate households experience at least one housing problem compared to less than one-third of upstate households.[82] The rate of New York City housing code violations has remained relatively constant over the years. The rate of housing code violations in New York City for new housing code violations remained similar between 2021 and 2022, going from 351 violations per 1,000 privately owned rental units in 2021 to 351.8 violations per 1,000 privately owned rental units in 2022. Serious housing code violations, defined as violations that are immediately hazardous or serious, increased between 2021 to 2022 (from 88 per 1,000 privately owned rental units to 100.1 per 1,000 respectively).[83] Further, in 2021, 24% of New York City buildings had rodent infestations, more than one in six apartments had leaks, and 17% had cracks in ceilings or floors. Sixteen percent needed more heat in the winter and 10% saw heat shut off in the winter. Roughly 16% of buildings with elevators had breakdowns.[84]

While the issues are more acute downstate, other parts of the state face concerns with substandard housing as well. The Buffalo City Housing Court is flooded with property code violation cases. In addition, there is a very high number of tenants asserting warranty of habitability defenses in response to evictions. In the City of Buffalo, hundreds to thousands of new housing code violations are issued each month. From January 2019 to December 2023, there have been on average approximately 1700 new housing code violations issued each month.[85] The highest numbers of active code violations are concentrated in the areas of greatest poverty.

Lead is a major issue for housing in New York, with nearly 32% of housing stock having a potential for elevated lead risk due to age. This makes New York the state with the highest

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[79] U.S. Dept. of Hous. and Urban Dev't, Comprehensive Housing Affordability Strategy, 2016–2020.

[80] Comprehensive Housing Affordability Strategy (CHAS) data, *supra* note 78.

[81] *Id*.

[82] *Id*.

[83] *State of Renters and Their Homes*, NYU Furman Center, 2022, https://furmancenter.org/stateofthecity/view/state-of-renters-and-their-homes.

[84] *2021 New York City Housing and Vacancy Survey*, New York City Dep't of Hous. Preserv. and Dev't, May 16, 2022, https://www.nyc.gov/assets/hpd/downloads/pdfs/services/2021-nychvs-selected-initial-findings.pdf.

[85] *Code* Violations, CitiStat Buffalo, https://data.buffalony.gov/stories/s/CitiStat-Buffalo-Code-Violations/h6gi-zqw4/.

percentage of housing stock with elevated lead risk.[86] Lead paint is especially concerning in Buffalo homes. A 2017 investigation reported that Buffalo was one of the most dangerous lead hotspots in America, with high blood levels in children at a rate eight times higher than Flint, Michigan.[87] Lead paint was not banned until 1978, so nearly all homes in Buffalo contain some amount of lead paint. Exposure to lead paint affects brain development, and children exposed to lead can experience learning and behavioral problems resulting from damage to the brain and nervous system.

Tenants living in poor housing conditions do not have many options. Tenants who file complaints with local law enforcement face the risk of retaliatory eviction from landlords. Retaliatory evictions happen most commonly by landlords changing the locks to the property, shutting off utilities, or threatening physical violence to the point that a tenant is forced to vacate. Tenants who do contact code enforcement agencies for an inspection may be required to vacate immediately because of the extreme health risks with which they are faced. Advocates see a lack of owner accountability, while tenants have nowhere to turn.

4. Disability and Behavioral/Mental Health Supports

A quarter of households report at least one member with a limiting condition as defined by the U.S. Census Bureau. Ambulatory disabilities are most common, with 14% of households reporting a member having this disability, followed by 10% of households reporting having a vision or hearing disability, and 9% of households reporting a member having a cognitive disability.[88]

Households with members suffering from disabilities experience housing problems at a greater rate than those without a disabled member. Whereas 42 to 52% of households with a member with a disability experience one or more housing problems, just 38% of households without a disabled member experience one or more housing problems.[89]

The number of adult New Yorkers suffering from serious mental illness was more than 663,000 in 2019 – more than the populations of Rochester, Syracuse, and Yonkers combined.[90]

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[86] America's Health Rankings, U.S. Census Bureau, United Health Foundation, AmericasHealthRankings.org, (last visited 2024).

[87] M.P. Bell, Joshua Schneyer & Andy Sullican, *Lead's Hidden Toll: Hundreds More Lead Hotspots Are Identified As Trump Prepares To Gut Programs*, Reuters, April 21, 2017, https://www.reuters.com/investigates/section/usa-lead-2017.

[88] Fair Housing Matter NY: An Assessment of Fair Housing in New York State Report, April 2023, https://hcr.ny.gov/system/files/documents/2023/05/2023-fair-housing-matters-ny-public-cmt-draft-june-16-deadline.pdf.

[89] Comprehensive Housing Affordability Strategy (CHAS) data, *supra* note 78.

[90] *Mayor's Management Report*, NYC Mayor's Office of Operations, Sept. 2021, https://www.nyc.gov/assets/operations/downloads/pdf/mmr2021/2021_mmr.pdf

Further, more than 15,000 individuals across the State experiencing homelessness self-report a serious mental illness.[91]

Households containing members with adisability are disproportionately low-income and census track with poor access to jobs and economic mobility. Households containing people with ambulatory and cognitive disabilities are all concentrated in racially or ethnically concentrated areas of poverty (R/ECAPs) and census track with low scores for health and environmental quality.[92]

D. Housing Affordability

Homelessness in New York State is, to some significant extent, a product of the inability of many New Yorkers to afford safe and stable housing at currently available housing prices. High housing cost burdens mean households are often a paycheck away from potential default on their tenancy obligations or deciding each month whether to prioritize paying rent versus paying for medical care, food, schooling, transportation, or other basics.

1. Household Housing Cost Burdens

When analyzing or quantifying housing affordability, housing agencies frequently focus on housing cost burdens. HUD generally considers a household housing cost-burdened when housing payments exceed 30% of a household's income, and severely housing cost-burdened when housing payments exceed 50% of a household's income.[93]

As the Office of the New York State Comptroller has reported, the housing cost burden on New Yorkers is the main cause of housing insecurity in the State. New York ranks third in the country for its share of cost-burdened housing units, only behind California and Hawaii.[94] There are 38.9% of households in New York that are housing cost-burdened, and 20.6% of New York

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[91] *HUD 2019 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations,* U.S. Dep't of Housing & Urban Development, https://files.hudexchange.info/reports/published/CoC_PopSub_State_NY_2019.pdf.

[92] Fair Housing Matter NY, *supra* note 89.

[93] We acknowledge the healthy debate around whether HUD's 30% rule, or any other share of income measure, is an accurate test of affordability, since every household has different costs they must bear, and for a family earning a high income, 40% might be easily affordable, whereas 25% might be unaffordable to a household at very low income with other unmet basic needs like food, transportation and medical care. See, e.g., *Rental Burdens: Rethinking Affordability Measures*, HUD Office of Policy Development and Research, Sept. 22, 2014, https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_092214.html. Additionally, HUD's 30% metric has come under criticism for not addressing the dramatic increases in the cost of non-housing necessities that also need to be funded by household income. Some commentators have suggested using a "residual income" approach that first reduces household income by the costs of those other necessities to see what's left, and then measures housing cost against that residual to determine whether housing costs are eating into other necessities. *See, e.g.,* Chris Herbert and Daniel McCue, *Is There a Better Way to Measure Housing Affordability?*, Joint Center for Housing Studies of Harvard University, Sept. 26, 2018, https://www.jchs.harvard.edu/blog/is-there-a-better-way-to-measure-housing-affordability.

[94] *New Yorkers in Need: The Housing Insecurity Crisis*, N.Y.S. Comptroller, Off. of Budget Policy and Analysis, Feb. 2024, https://www.ny.gov/reports/new-yorkers-need-housing-insecurity-crisis, at 6 (the "OSC 2024 Report").

households are severely cost-burdened.[95] These two figures are aggregated for both renters and homeowners.

The numbers get worse if we look at renters alone: 52.4% of New York's renters are cost-burdened.[96] At the lower end of the income spectrum, the results for New York decline even further. The greatest increases in housing cost burden between 2012-2022 were for the income cohorts between $35,000-$49,999 and $50,000-$74,999. New Yorkers at the bottom of the income ladder, those with 0-30% of the AMI (extremely low income), are predictably at the greatest risk, with 87% cost burdened, and 73% severely cost burdened.[97] But rates of cost burden for renter households have increased across all income brackets between 2012 and 2022.[98]

New Yorkers are not alone. Nationwide, the proportion of cost-burdened renter households and severely cost-burdened renter households has more than doubled since the 1960s, such that in 2022 "nearly 45 percent of renters are rent-burdened and nearly 24 percent of renters are severely rent-burdened."[99] President Biden's Economic Report for 2024 blames years of insufficient new construction of housing for our current housing shortage (the President cites estimated shortage nationwide between 1.5 million to 3.8 million units).[100] President Biden notes in particular declining construction of "starter homes" and low-cost rental units, as well as the rapidly declining portion of rental housing that is "low-cost," meaning affordable to households in the lowest quintile of income (from 26.7% in 2011 to 17.1% in 2021 after adjusting for inflation).[101]

New York's homeowners are better off than renters as a group, but there are still vulnerabilities. For New York homeowners with a mortgage, over 32% were paying more than 30% of their household income toward housing costs. And for New York homeowners without a mortgage, over 19% were still housing cost-burdened.

Mortgage delinquencies in New York track national trends pretty closely. Per the Consumer Financial Protection Bureau's research, mortgages in New York 30-89 days delinquent (early-stage delinquency) as of June 2023 were around 1.1%, compared to 1.2% nationwide, and mortgages 90 or more days delinquent (serious delinquency) in June 2023 were 0.7% for New York and 0.5% nationwide. For New York State, the 30-89 day data are up from 0.6% in April 2021, but down significantly from the height of the post-2008 mortgage crisis, when New Yorkers hit 3.8% in January 2009 (versus 4.2% for the nation as a whole).[102]

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[95] OSC 2024 Report.

[96] OSC 2024 Report, at 6.

[97] Based on 2021 ACS Datasets. Nat'l Low Income Hous. Coalition, https://nlihc.org/gap/state/ny.

[98] OSC 2024 Report, at 11–22.

[99] *Economic Report of the President*, The White House, Mar. 2024, https://www.whitehouse.gov/wp-content/uploads/2024/03/ERP-2024.pdf, at 146 ("Biden Report").

[100] *Id*. at 148–49.

[101] *Id*. at 194.

[102] *Mortgages 30-89 Days Delinquent*, Consumer Finance Protection Bureau, https://www.consumerfinance.gov/data-research/mortgage-performance-trends/mortgages-30-89-days-delinquent/; *Mortgages 90 or More Days Delinquent*, Consumer Finance Protection Bureau, https://www.consumerfinance.gov/data-research/mortgage-performance-trends/mortgages-90-or-more-days-delinquent/.

2. Household Income vs. Housing Cost

The causes of these housing cost burdens are various, but of course are driven by two key metrics:

Housing prices. Housing prices in New York have been steadily increasing. For renters, housing costs increased 39% between 2012 and 2022.[103]

Household incomes. Household incomes are increasing but not keeping pace with the increase in housing prices. Median household income for New York renters was $52,928 in 2022.[104] For a rental apartment to be affordable (30% of income) to that household, the rent and utilities would need to be below $1,325 per month. The median gross rent reported in the 2022 Five-Year American Community Survey (ACS) data was $1,507.[105]

As reported by President Biden in his 2024 Economic Report, these issues are national and not limited to New York State in particular. "[H]ousing price increases have outpaced wage growth in the last 20 years. Between 2000 and the early 2020s, housing prices tripled while household income doubled; in other words the price of housing rose by 50 percent more than household income in the last 20 years."[106]

3. Other Contributing and Mitigating Factors

Other important factors are key contributors to New York's housing cost burden challenge:

Housing creation at various price points, including affordable and supportive housing. Between 2012 and 2022, New York added a total of 462,000 housing units (a 5.7% increase). That ranked New York only 32nd among states in the nation for housing creation. Interestingly, the state's increase of 5.7% in housing units was greater than the population growth in New York, but less than the job growth of 8.3% during the same period. This highlights a perilous predicament: New York's workforce can't afford to live in New York.

In the Governor's 2023-24 executive budget, Governor Hochul estimated that New York needs to produce 800,000 new housing units.[107] Significantly increasing housing unit supply is expected to help moderate housing prices but will not solve for housing affordability at all income levels. New York also needs more affordable housing at various price points.

These tensions are also apparent in vacancy rates for rentals, which show demand for rental housing far outpacing supply. The recent New York City Housing and Vacancy Survey, conducted

[103] OSC 2024 Report.

[104] OSC 2024 Report.

[105] *Quick Facts: New York*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/NY/INC110222.

[106] Biden Report at 145.

[107] *Achieving the New York Dream, State of the State 2023*, N.Y.S. Governor, https://www.governor.ny.gov/sites/default/files/2023-01/2023SOTSBook.pdf.

in the first half of 2023, shows that despite net increase in housing units since 2021, vacancy rates in New York City stood at 1.4%, the lowest rate since the 1968 survey.[108]

Housing options also need to include supportive housing. As the Urban Institute has reported, individuals experiencing homelessness want safe, affordable housing but need help to achieve that goal in this housing market. That help may include more affordable housing supply at various income levels and/or rental assistance, but also includes support systems, including permanent supportive housing options for those who need it. The Housing First approach championed by the Urban Institute and others promotes permanent supportive housing to address households with multiple barriers to obtaining and retaining housing, including chronic homelessness, disabilities, or substance use disorders. Not surprisingly, housing outcomes for participants who receive permanent supportive housing vastly exceed those who do not have these supports.[109]

Housing Subsidies. In 2022, HUD subsidies provided rental assistance to more than 985,000 New Yorkers in over 594,000 housing units. Those figures include public housing, housing choice vouchers, and various supportive housing programs.[110] Despite the breadth of these programs, demand for them from qualified households vastly exceeds the available funding.

Eviction Prevention Programming. Evictions are one major cause of housing insecurity and homelessness in New York. Eviction data is not collected as reliably as census information, but from the Eviction Lab at Princeton University, we know that New Yorkers are evicted at a higher rate than the national average. In 2018, prior to the COVID-19 pandemic, New York's eviction rate was approximately 9 evictions filed per 100 [rental] households.[111] Evictions declined dramatically during the pandemic due to eviction moratoria and extraordinary rental arrears programs, in particular the Emergency Rental Assistance Program (ERAP). These extraordinary measures, of course, were temporary and their effects have largely dissipated. Evictions filed in 2022 in New York were at 186,013, up from 66,421 in 2021, but still down from 252,557 in 2019.[112]

4. Disproportionate Impacts to Certain Populations

Housing insecurity is not shared equally across demographics in New York State. Race and ethnicity in particular play a significant role.

Race/Ethnicity. People experiencing homelessness were disproportionately Black (64%) and/or Hispanic/Latino (48%).[113] Across the State, households with at least one housing insecurity

[108] *See 2023 New York City Housing and Vacancy Survey, Selected Initial Findings*, NYC Dept. of Hous. Preserv. and Dev't, https://www.nyc.gov/assets/hpd/downloads/pdfs/about/2023-nychvs-selected-initial-findings.pdf.

[109] *Housing First is Still the Best Approach to Ending Homelessness*, Urban Institute Initiative, Feb. 14, 2024, https://housingmatters.urban.org/feature/housing-first-still-best-approach-ending-homelessness.

[110] OSC 2024 Report at 23.

[111] Eviction Lab, as cited in OSC 2024 Report at 17.

[112] OSC 2024 Report at 18.

[113] OSC 2024 Report at 15, 20.

issue were 55% of Hispanic/Latino headed households, 50% of Black/African-American, 48% of Asian, and 31% of White headed households.

Black and Brown New Yorkers are more likely to be renters and less likely to be homeowners than White New Yorkers. Per ACS 2021 Five-Year Estimates, 31% of Black families and 22% Hispanic/Latino families were renters in multifamily housing as opposed to 14% of White families.

Age. 43% of New York households with a person 75 and older and 37% of those with at least one person aged 62– to 74 faced housing insecurity, compared to 34% and 29%, respectively, nationally.[114]

Region and Rural vs. Urban. Downstate New York is generally in a worse crisis than upstate regions. But across the state, housing cost burdens, particularly for renters, are most pronounced around urban areas. That is particularly the case in New York City (43% of all households), but also in the suburbs surrounding NYC (37% in Mid-Hudson and in 36% in Long Island, including 51.4% of Long Island renters).[115]

E. Recommendations

New York's individuals and households experiencing homelessness want to be safely and stably housed. But in many cases, they are not able to afford the suitable housing that is available in their communities. A lack of sufficient housing, in particular affordable housing, is a barrier to solving homelessness and housing instability. A significant part of the solution is increasing the supply of safe and accessible housing, along with the support of robust housing subsidy programs, development incentives, and policies cumulatively designed to ensure that households with the lowest incomes can secure permanent affordable housing. Our fundamental recommendations are broad in scope, but where possible we have tried to identify some current or recent legislative efforts that seem consistent with our recommendations.

1. Incentivize the Creation and Preservation of More Housing Units, in Particular Affordable Housing Units.

- Fund a Multi-Year Affordable Housing Development Plan: For example, the State's five-year $25 billion Housing Plan to create and preserve 100,000 affordable homes statewide that was announced in 2022.[116]

- Establish and Continue Funding Programs to Maintain and Preserve Existing Affordable Housing:

[114] OSC 2024 Report at 16.

[115] 2016–2020 data, as reported in OSC 2024 Report.

[116] *Governor Hochul Unveils Landmark Agreement to Address the Housing Crisis and Unlock New York's Housing Potential as Part of FY 2025 Enacted Budget*, N.Y.S. Div. of the Budget, April 22, 2024, https://www.budget.ny.gov/pubs/press/2024/fy25-enacted-budget-address-housing-crisis.html.

- Provide state funding to existing affordable housing developments that are otherwise outside of allowable refinancing terms, to rehabilitate troubled buildings, and to preserve affordable units that would otherwise disappear.

- Fund the repair and rehabilitation of existing public housing to address compliance and habitability issues.

2. Use Tax Incentives to Create and Preserve Housing Units, in Particular Affordable Housing Units

- Maintain a tax credit incentive to support new affordable rental and homeownership development, like the now-expired 421-a program or the replacement tax credit 485x adopted in the 2024 NYS budget.

- Support Affordable Housing in Commercial-to-Residential Conversions. Promote conversion of underutilized commercial buildings to residential use, including affordable units. Consider tax incentives or other incentives to include affordable units in those conversions.

3. Adopt Policies that Eliminate Barriers to the Creation and Preservation of Housing, in Particular Affordable Housing

- Address NIMBYism and Exclusionary Zoning with a Statewide "Fair Share" Housing Supply Plan: Anti-development sentiments like NIMBYism, combined with local "home rule," have promoted restrictive local zoning policies and practices that prevent residential growth and increased density, severely limiting housing options for renters, low-income households, and people of color, and driving up housing costs. To ensure every community in the State is doing its fair share to alleviate the housing crisis, New York State should play a role in requiring appropriate production targets for growth and provide funding to support local infrastructure and planning assistance needed to boost housing growth. The Governor's Pro-Housing Community Program is a more moderate carrot versus stick approach to the issue. There are several more meaningful approaches to this issue that have been proposed but so far unsuccessfully, including the Governor's 2023 New York Housing Compact, and Senator Rachel May's proposed legislation to establish a state zoning board of appeals to provide a "builder's remedy" to local zoning boards in localities with insufficient affordable housing stock.

- Enforce Building Codes: The lack of adequate, professional code enforcement directly impairs access to adequate housing in New York State. While state law establishes standards for residential property, the failure to uniformly and consistently administer and enforce the code means that housing stock often deteriorates without meaningful or effective government intervention.[117]

[117] In a recent decision, the Appellate Division, Third Department agreed that the current code enforcement process does not seem to work for tenants, stating that petitioner and the amici gave examples which "paint a compelling picture of the legislation's failure to meet one of its primary goals: the protection of tenants from unscrupulous

- Support Increasing Housing Density Through Transit-Oriented Development (TOD): New York State should require localities with rail stations run by the MTA to allow higher-density development in close proximity to rail stations, with decreased parking requirements and more emphasis on walkable downtown communities.

- Support ADUs and Legalizing Basement Apartments

    - Promote Accessory Dwelling Unit (ADU) Creation. ADUs are smaller, independent residential dwelling units that occupy the same lot as a primary residence. They increase density without negatively impacting neighborhood character and create "naturally occurring" affordability. The State should continue to promote the creation of ADUs throughout all residential zones, including through the state's 2024 ADU property tax abatement opt-in, and further supporting programs that offer grants and technical assistance to homeowners, like the ADU Plus One program.

    - Safely Legalize Basement Apartments in New York City: Authorize New York City to convert occupied illegal basement apartments to legal dwelling units that meet health and safety standards and provide amnesty to property owners who convert these units.

- Eliminate Inefficiencies in Environmental Review, Land Use Approval, and Permitting: The State Environmental Quality Review (SEQR) process, in particular, is often used to block or delay housing development. Reforms can provide important protections for environmental review while limiting abuse of the process.

4. Access All Available Land for Affordable Housing Construction

- Faith-Based Affordable Housing: Promote the development by faith-based organizations of affordable housing on their land by streamlining the land use and approval processes, such as has been proposed in the Faith-Based Affordable Housing Act (S7791/A8386).

- Access Development Sites on State and Local Government Property: Governor Hochul has already directed state agencies to review state-owned land for opportunities to develop or support new housing. The state should continue that process, and local towns and other municipalities should do similarly, including by reviewing properties delinquent on its tax rolls.

landlords who avoid the obligation to property maintain their properties in accordance with the Uniform Code." *Clements v. N.Y. Secretary of State*, 227 A.D.3d 84 (3d Dep't 2024). Despite acknowledging the apparent failure of code enforcement, the Court declined to order the Secretary of State to promulgate meaningful enforcement standards, ruling 3-2 that "the ineffectiveness of the statutory scheme ultimately demands a legislative fix . . ."

V. BARRIERS TO ENTRY INTO EXISTING HOUSING

A. Introduction

There are certain misconceptions about people experiencing homelessness in general, and those experiencing homelessness in New York State in particular, that we need to dispel. It is not incorrect or uncommon for an outside observer to conclude that New York State does not have enough property to provide shelter to approximately 100,000 people that are currently experiencing homeless in the State of New York, with the overwhelming majority of those persons experiencing homelessness within the five boroughs of New York City. There is without question a lack of sufficient housing in New York City and New York State, as discussed above.

However, there are a multitude of barriers to entry into the existing housing market in New York State for people experiencing homelessness and those that are on the verge of experiencing homelessness. Some of those barriers are readily apparent, while others are more subtle and nuanced.

B. Criminal Barriers to Entry in Existing Housing

When a defendant is convicted of a crime in New York State, either by plea or by verdict, that defendant is required to serve some type of sentence. Maximum sentences for misdemeanor and felony convictions include terms of incarceration.[118] Alternatively, terms of probation[119] or conditional discharges[120] may be imposed for each of those convictions. Defendants also may be required to abide by orders of protection requiring them to stay away from the home, school, or employment of certain individuals, as well as from communicating with them. In addition to the stigma of a criminal record, which may disqualify an individual from receiving housing benefits or from living in certain areas, individuals convicted of a crime also may have additional probation, parole, or post-release conditions imposed on them that limit their ability to find permanent stable housing.

1. Probation

Probation is a sentence served under community supervision rather than under institutional confinement.[121] Under the supervision of a probation officer, an individual will be required to follow a number of conditions to remain at liberty rather than return to an institutional facility to serve their sentence under confinement. Conditions vary among probation departments and can be tailored to a probationer's particular needs; however, several standard conditions exist.[122]

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[118] PL § 70.02, *et seq.* explains that a judge may impose a maximum 364-day definite term of incarceration in a local jail for a misdemeanor conviction. Furthermore, a judge may impose at least a one-year determinate or indeterminate term of incarceration in a state correctional facility for a felony conviction.

[119] PL § 65.00 lists a maximum three-year term of probation for misdemeanors, as well as a maximum five- year term of probation for most felonies.

[120] PL § 65.05.

[121] PL § 65.00(1).

[122] PL § 65.10(2-5-a).

Several such conditions can serve as barriers to finding stable, secure housing though. For example, a probationer often is required to permit a probation officer to visit the probationer at home at any time.[123] The probationer must live in a probation-approved residence and may not change the residence without prior approval by the probation officer.[124] A probationer must avoid persons and places as directed by the probation officer, including refraining from associating with anyone known to be under parole or probation supervision. Generally, a probationer must refrain from frequenting unlawful or disreputable places or from consorting with disreputable persons.[125]

Indigent incarcerated individuals who serve probationary sentences may rely on public assistance or transitional housing, especially housing associated with specific reentry programs or counseling services. Already scarce because of their overwhelming demand in rural and urban centers, these housing resources become even more scarce with the addition of probationary conditions. The likelihood of entering available housing increases when other probationers or releasees[126] already reside there, but that would violate a general probation condition. The probation officer may hold the opinion that certain other residents or residences are disreputable, which would violate another general probation condition. Ultimately, any residence must be approved and remain approved by a probation officer, removing an individual's autonomy over his independent living choices. Probationary conditions thus can serve as a barrier to the availability of housing to those with criminal records.

2. Parole and Post-Release Supervision

Similar to probation, parole and post-release supervision are sentences of community supervision where incarcerated individuals are released to complete the remainder of their sentence under the supervision of a parole officer from the Department of Corrections and Community Supervision (DOCCS).[127] An individual on parole or subject to post-release supervision is required to follow a number of conditions in order to remain at liberty and avoid a return to an institutional facility to serve his sentence under confinement.

In addition to residency approval and fraternizing conditions described above, parole special conditions of release also prohibit releasees from owning, purchasing, possessing, or renting a motor vehicle without permission. This curtails their ability to search for housing in areas with greater availability. Furthermore, stricter conditions prevent releasees from being within 300 yards of places where children congregate (even stricter distance requirements than the Sexual Assault Reform Act (SARA), discussed below).

3. Sex Offenders

[123] PL § 65.10(3)(a).

[124] *See* PL § 65.10(3)(c).

[125] PL § 65.10(2)(b).

[126] A "releasee" means a person released from imprisonment and under parole supervision. This person often incorrectly is referred to as a parolee.

[127] 9 N.Y.C.R.R. § 8004, *et seq*.; Exec Law § 259-i(3). Parole applies only to indeterminate sentences whereas post-release supervision applies only to determinate sentences.

Sex offenders may be under probationary or parole supervision. In addition to the regular terms, as descried above, sex offenders have the additional requirement of refraining from contact with anyone under the age of 17. They also may be prevented from unsupervised contact with their minor children, as well as from being in places that are frequented by children.[128] Under SARA guidelines, sex offenders may be required to refrain from coming within 1,000 feet of any school's property boundary.[129]

The imposition of those additional terms limit housing options for many convicted sex offenders, especially within urban areas. Cities with high, concentrated populations have dozens of schools; however, their homeless shelters or public housing are often within 1,000 feet of a school's property boundaries. Likewise in rural areas with a paucity of shelters or public housing, sex offenders may not have any housing available to them, especially if their only option is with their minor children.

4. Clean Slate Act

The Clean Slate Act,[130] signed by Governor Kathy Hochul in November 2023, may alleviate some of the stigma associated with criminal convictions, thereby lifting an obstacle to entry to existing housing. Under this act, individuals with misdemeanor convictions may have those convictions automatically sealed after a period of three years after sentence or release from incarceration, whichever is later. Likewise, individuals with felony convictions may have those convictions automatically sealed after a period of eight years after sentence or release from incarceration, whichever is later. Any new convictions acquired during the waiting period restart the clock. Individuals must have completed any sentences of probation or parole before becoming eligible for sealing.

While well-intentioned and able to reduce the stigma associated with many criminal convictions, the Clean Slate Act falls short for many individuals. Clean slate simply *seals* criminal convictions; it does not expunge those convictions. Furthermore, convictions involving sex offenses and class A felonies remain ineligible for sealing, much less expungement. As a result, many individuals who still serve probation, parole, or are registered sex offenders will continue to face barriers to housing for a significant period of time after their criminal convictions.

C. Source of Income Discrimination as a Barrier to Housing for Individuals Experiencing Homelessness

Housing vouchers are one of the most effective tools for preventing homelessness.[131] Despite the success of these programs, source of income discrimination remains a persistent barrier

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[128] PL § 65.10(4-a).

[129] Sexual Assault Reform Act; *see* Exec. Law § 259-c(14).

[130] CPL § 160.57.

[131] The enduring success of the Housing Choice Voucher Program has been documented through rigorous research. *See* Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, Center on Budget and Policy Priorities, Sept. 30, 2024, https://www.cbpp.org/research/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-long-term-gains.

to housing for individuals and families experiencing homelessness.[132] Source of income discrimination occurs when a landlord or broker refuses to rent to an individual or family because they are using a housing voucher to pay the rent. New York is unique in that it offers a variety of housing voucher programs for individuals and families who are experiencing homelessness, including the Section 8, FHEPS, and HUD-VASH programs described above, as well as vouchers available specifically for New York City residents (including City FHEPS, SOTA, and HASA subsidies).[133] New York State has robust source of income discrimination legislation designed to protect individuals with housing vouchers from discrimination based on their status as voucher-holders.[134] These protections are even stronger for those living in New York City.[135]

Despite the illegality of discriminating against potential tenants based on how they will pay their rent, source of income discrimination remains a significant barrier to housing for individuals and families experiencing homelessness because of a lack of enforcement by the relevant State and City agencies.[136] The New York State Department of Human Rights is the agency charged with enforcing State source of income laws. The New York City Commission on Human Rights is the agency responsible for enforcing the City law. There was no dedicated unit for enforcement on the New York City level until 2018, and there is still no dedicated unit for enforcement at the State level.[137] Complicating enforcement is the difficulty in proving discrimination; landlords and brokers may be savvy enough to avoid explicitly saying they do not accept vouchers, and they may simply stop responding to a prospective tenant when they find out the tenant plans to use a voucher. It may be difficult for prospective tenants to understand that this pattern of "ghosting" is a form of discrimination based on their status as a voucher-holder.

While the source of income laws and subsequent case law are clear that denying a tenant an apartment solely on the basis of the tenant's use of a voucher to pay the rent is illegal,[138] there is insufficient clarity as to whether denying a lease to tenants on the basis of lack of credit history, poor credit, lack of landlord references, lack of residential history, or lack of tax returns is source of income discrimination. However, if a client has a guaranteed method of paying the rent, there is a strong argument that landlords should not be requiring any of this additional information. The New York City Commission on Human Rights accordingly takes the position that it is

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[132] For a report documenting "serial discriminators" in New York City, *see Serial Discriminators,* Unlock NYC, 2023, https://weunlock.nyc/reports/serial-discriminators/.

[133] For a general description of many of these programs, s*ee Open Doors: Resources for New Yorkers Facing Housing Instability*, NYC Dep't of Social Services, 2019, https://www.nyc.gov/assets/hra/downloads/pdf/BK-9-SOI-NewGuideForRenters.pdf.

[134] N.Y. Exec. Law § 296.

[135] Title 8 of the New York City Administrative Code, https://www.nyc.gov/site/cchr/law/chapter-1.page/.

[136] *See* Baaba Halm and Amy Blumsack, *Opinion: NYC Needs Better Enforcement Against Housing Discrimination*, City Limits, Oct. 27, 2022, https://citylimits.org/2022/10/27/opinion-nyc-needs-better-enforcement-against-housing-discrimination/.

[137] For a discussion of the funding issue that have plagued New York City's enforcement of source of income laws, *see* David Brand, *NYC's Long-Understaffed Voucher Discrimination Unit Now Has Zero Employees*, City Limits, April 13, 2022, https://citylimits.org/2022/04/13/nycs-long-understaffed-voucher-discrimination-unit-now-has-zero-employees/.

[138] *See Alston v. Starrett City, Inc.*, No. 452674/2015, 2016 WL 3632477 (Sup. Ct., N.Y. Co. June 30, 2016) (reversed on other grounds).

discrimination to require a voucher holder to provide credit history when the voucher will cover the entire rent amount.[139]

D. Disability Status as a Barrier to Housing for Individuals Experiencing Homelessness

Despite robust legislation to protect the rights of individuals living with disabilities at all levels of government (including the federal Americans with Disabilities Act (ADA), Section 504 of the federal Rehabilitation Act, the New York State Human Rights Law, and the New York City Human Rights Law), individuals living with disabilities are vastly overrepresented in the homeless population.[140] In New York City, in 2019, the Department of Homeless Services estimated that 77% of adult families, 68% of single adults, and 53% of families with children sleeping in its shelters had at least one disability.[141] These disabilities include any condition that substantially impacts a major life activity, including both physical and mental health conditions.

Housing in New York is often unaffordable for low-income individuals living with disabilities. If you are disabled and receive federal disability benefits, the amount of the monthly benefit is unlikely to cover the cost of permanent housing in New York City. The maximum monthly allotment for an individual receiving Supplemental Security Income (SSI) is $943 a month, far below the average market rates for studio or one-bedroom apartments in the five boroughs.[142] If you receive SSI, you cannot have more than $2000 in resources or you will become ineligible.[143] Individuals receiving SSI are also ineligible for cash assistance from the State because the amount of benefits they receive from SSI exceeds the meager cash assistance benefit rate. While some individuals on SSI can work in limited circumstances, the rules about doing so are complicated,[144] and many SSI recipients are too disabled to perform any kind of work. As a result, low-income disabled individuals who need SSI benefits to survive are unlikely to afford housing on their own without access to a housing voucher or additional income, leading many disabled individuals to experience homelessness.

In addition to the housing affordability concerns for individuals experiencing homelessness and living with disabilities, there is simply a lack of accessible affordable housing. For those with mental health-related disabilities, supportive housing can be a great resource for affordable housing, but the application requirements are byzantine, and there are far fewer supportive housing

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[139] *See Source of Income Discrimination: A Tenant Advocate's FAQ,* NYC Commission on Human Rights, Mar. 2023, https://www.nyc.gov/assets/cchr/downloads/pdf/materials/FairHouse_FAQs-Tenant-English.pdf.

[140] *See* Brian Glassman, *New Survey Data Provides Demographic Profile of Population Experiencing Homelessness Who Lived in Emergency and Transitional Shelter*, Fig. 1, U.S. Census Bureau, Feb. 27, 2024, https://www.census.gov/library/stories/2024/02/living-in-shelters.html.

[141] *See Basic Facts About Homelessness: New York City*, Coalition for the Homeless, Dec. 2024, https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/.

[142] For a listing of SSI award amounts, *see How Much You Could Get From SSI*, Social Security Admin., https://www.ssa.gov/ssi/amount.

[143] *See* Kathleen Romig, Luis Nunez & Arloc Sherman, *The Case for Updating SSI Asset Limits*, Center on Budget and Policy Priorities, Sept. 20, 2023, https://www.cbpp.org/research/social-security/the-case-for-updating-ssi-asset-limits.

[144] *See Working While Disabled: How We Can Help*, Social Security Admin., https://www.ssa.gov/pubs/EN-05-10095.pdf.

units than the number of people who qualify for them.[145] Individuals who need barrier-free placements as a result of a disability will also experience difficulty in finding accessible affordable housing options. Apartments with elevators are usually more expensive than walk-up apartments. Buildings that have barrier-free entrances in compliance with the ADA design standards and local building codes are likely to be newer construction, which means they are more likely to be expensive (with the exception of the limited affordable housing construction, such as housing available through the housing lotteries[146]). However, even with new construction, the relevant codes do not require large numbers of units to be fully accessible. For example, New York City buildings with between 25 and 50 units are only required to have two fully accessible units.[147] Even for individuals experiencing homelessness who have access to a housing voucher, it can be difficult to afford a barrier-free apartment because the rent levels for such apartments are often higher than the maximum rent the voucher program allows.

While building codes may require an entire building or a specified number of units to be accessible, landlords also have other statutory duties to make alterations to their buildings to accommodate tenants with disabilities. The Fair Housing Act requires landlords to pay for the cost of reasonable physical alterations to buildings built after March 13, 1991.[148] The New York City Human Rights Law is even more expansive, as all housing providers are responsible for the cost of reasonable physical accommodations to their buildings.[149] For example, if there are steps to enter a building, the landlord must explore whether the building entrance can be made accessible with a ramp. Or, if a tenant needs a grab bar in the shower, the landlord must install one. Such changes to the building are often relatively minor but can greatly increase the available housing options for an individual with limited mobility. However, landlords are often unaware of their obligations, and tenants (or potential tenants) are unaware of their entitlement to these kinds of accommodations. This adds yet another additional barrier for individuals experiencing homelessness and living with disabilities trying to access permanent affordable housing.

E. Additional Barriers Specific to Subsidized Housing

The Office of the State Comptroller reports that HUD provided rental assistance for more than 985,000 New Yorkers in over 594,000 units in 2022.[150] "Subsidized" housing comes in myriad forms in New York State, so definitions and generalizations are difficult. Nonetheless, in most cases subsidized housing as we consider it is characterized by financial support for housing costs (typically from mostly governmental funds) provided to low- or moderate-income households. Various forms of subsidized housing and housing subsidies are described above. New Yorkers,

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[145] *See* Giselle Routhier, *A Growing Crisis for Single Adults: Supportive Housing Placements Decline as Homelessness Among Single Adults Remains High*, Coalition for the Homeless, https://www.coalitionforthehomeless.org/growing-crisis-single-adults/.

[146] *See generally* NYC Housing Connect, https://housingconnect.nyc.gov/PublicWeb/.

[147] Section 1107.6.1.1 of the New York City Building Code.

[148] 42 U.S.C. § Ch. 45.

[149] *See NYC Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Disability*, p. 98, https://www.nyc.gov/assets/cchr/downloads/pdf/NYCCHR_LegalGuide-DisabilityFinal.2.pdf.

[150] OSC Report at 24.

particularly the most vulnerable of us, face significant barriers to accessing these existing forms of subsidized housing.

1. Access for Individuals Experiencing Homelessness

Many individuals experiencing homelessness who would otherwise be interested may have difficulty navigating the regulated systems that allocate access to subsidized housing. Difficulty accessing available information about opportunities, as well as technology or language barriers in evaluating and applying for these opportunities, contribute to that difficulty. Failure to maintain consistent contact information, like a phone number, email, and mailing address, complicate access as most subsidized housing involves long waiting times between applying and accessing tenant selection procedures, at which point a failure by an applicant to respond in a timely manner to the income qualification and tenant selection requirements can result in a denial. Effective supports like case managers who provide contact information can help moderate these effects.

2. High Demand

Demand for subsidized housing significantly exceeds supply. The Office of the State Comptroller reports average waiting times of 27 months for public housing and 30 months for Housing Choice vouchers. *See* OSC Report, page 24.

3. Underutilization of Vouchers

Despite high demand for these subsidies, the available subsidies remain under-utilized; the OSC reports that between 2017 and 2021, "the average number of vouchers not used monthly was approximately 4,255." *See* OSC Report, page 24. There are undoubtedly several reasons for this underutilization, including some or all of the barriers to usage outlined in this section.

4. Credit Checks

State and City agencies charged with administering affordable housing and housing vouchers have recognized the barriers to access (and potential housing discrimination) created by credit score screening by affordable housing providers. NYS Homes and Community Renewal's (HCR) Fair and Equitable Housing Office (FEHO) has noted that blanket policies denying affordable housing applicants based on credit score thresholds are "especially pernicious because [they harm] some of the most vulnerable New Yorkers, including people of color, domestic violence survivors, and people with disabilities."[151] HCR also notes that in addition to disparate impact on these protected classes, "credit score is a faulty indicator of whether or not a tenant will pay his or her rent on time."[152] For these policy reasons, HCR's FEHO, in prescribing rules for state-funded housing, requires housing providers who screen for credit to follow its guidelines, which include, inter alia, (i) no credit score requirement for holders of rental vouchers covering 100% of the rent, or applicants who can demonstrate that they have paid their rent in full and on time over a period of time, and (ii) in other cases, individualized assessments that include

[151] *Guide to Applying New York State Credit Policy for Applicants to State-Funded Housing*, NYS Homes and Comm. Renewal, Nov. 6, 2024, https://hcr.ny.gov/system/files/documents/2024/11/doc-n-guide-to-applying-hcr-credit-policy-20240611-final.pdf.

[152] *Id*.

excluding certain types of debts, like medical and student loan debt, and requiring a lower credit score threshold (500 FICO vs. 580) for homeless applicants. Mitigating factors are considered as well, such as the impact of Violence Against Women Act-covered crimes like domestic violence (which frequently involve financial abuse).[153]

New York City has also taken recent action to reduce the barriers to affordable housing imposed by credit checks. Mayor Adams announced in October 2023 that housing voucher holders applying for affordable housing in the City would no longer be subject to credit checks.[154]

5. Criminal Background Checks

As this report addresses in more detail above, a history of involvement in the criminal justice system is a significant barrier to access to all forms of housing, including subsidized housing, and certainly impacts many homeless or housing-insecure individuals. In recognition of the disproportionate impact of convictions and sentencing on the Black and Hispanic community as well as other protected classes, the federal government and New York State HCR have promoted housing policies that take a nuanced approach to housing applicants' prior criminal convictions in order to guard against discriminatory impacts and encourage successful community reentry for formerly convicted individuals. From HUD, that includes recommending that housing providers adopt and follow written criminal background policies that address, on an individualized case-by-case basis, the nature and severity of any prior convictions, as well as the length of time since the conviction and any mitigating circumstances like rehabilitation.[155] The New York State Human Rights Law additionally precludes a housing provider from considering prior arrests that did not lead to a conviction.[156] NYS HCR's policy goes further in not permitting state-funded housing providers to consider a *pending* arrest.[157]

As noted above, the New York State legislature and governor adopted the Clean Slate Act in late 2023 which, when effective in November of 2024, will set new minimum protections for the use of conviction history in New York, generally sealing records of convictions after the individual has been released from incarceration for three years for misdemeanors and eight years for (non-Class A) felonies. The law has many caveats and exceptions but is an important baseline standard for all of the state.[158]

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[153] *Id*.

[154] *Mayor Adams, HPD Commissioner Carrión Take Action To Connect New Yorkers To Affordable Housing More Quickly, Eliminate Unnecessary Credit Checks For Voucher Holders*, New York City Mayor, Oct. 5, 2023, https://www.nyc.gov/office-of-the-mayor/news/738-23/mayor-adams-hpd-commissioner-carri-n-take-action-connect-new-yorkers-affordable-housing-more.

[155] See HUD Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, April 4, 2016; NYS HCR Fair and Equitable Housing Office, Guide for Assessing an Applicant's History of Criminal Legal System Involvement for State-Funded Housing, March 19, 2024 ("HCR Criminal Background Guide").

[156] N.Y. Exec. Law, Ch. 18, Article 15, Sec. 296(16).

[157] HCR Criminal Background Guide, at 1, 4.

[158] Clean Slate Act (CPL § 160.57).

The Clean Slate Act is an important baseline, but it is just a baseline and doesn't replace the need for housing providers to adopt nuanced criminal history policies like the guidelines required by HCR of state-funded housing providers. The HCR guidance, for example, limits the types of convictions that can be considered to those that impact housing (such as offenses involving violence to person or property), doesn't consider crimes committed before an individual turned 18, and applies look-backs of one year since conviction for misdemeanors and five years for felonies (in each case, as long as the individual has been released from supervision, e.g. probation, parole, incarceration, more than one year prior).

F. Insufficient Resources and Supports for the Individuals with Mental Illness

A substantial portion (roughly 11%) of New York State's individuals experiencing homelessness struggle with one or more forms of mental illness. *See* OSC Report, page 20. Individuals suffering from mental illness may in many cases have difficulty maintaining safe and stable housing without supports and interventions and correspondingly struggle to effectively treat their conditions without that safe and stable housing.

Reports of incidents of the State's failure to provide adequate supports and resources for persons with a mental illness experiencing homelessness are beyond anecdotal or corner-case incidents, but rather indicate a systemic failure to serve these most in need New Yorkers. (*See, e.g.*, Amy Julia Harris et al., *Behind 94 Acts of Shocking Violence, Years of Glaring Mistakes*, N.Y. Times, Nov. 20, 2023, https://www.nytimes.com/video/homepage/100000009186948/behind-94-acts-of-shocking-violence-years-of-glaring-mistakes.html.) The *Times* reports on acts of horrific violence by untreated or poorly managed homeless individuals with mental illness, but notes that "[v]iolent acts by homeless, mentally ill people are relatively rare. In fact, mentally ill people are more likely to be the victim of a violent crime than to commit one." Too often, these incidents of violence are preceded by city and/or state actors failing to adequately treat or manage mental illness of which they are aware.

The safety net that is intended to serve the persons with a mental illness experiencing homelessness includes homeless shelters, hospitals, and social services agencies. The *Times* found the most frequent breakdowns in the safety net were in New York City's homeless shelters. But hospitals bear fault as well, where individuals with mental illness can overwhelm public hospital resources, resulting in them regularly discharging people without necessarily addressing or stabilizing their mental illness.

Too often, the lack of sufficient appropriate housing and service solutions has left hospitals, homeless shelters, jails, and prisons as de facto treatment centers for many individuals with a mental illness. As reported by The Supportive Housing Network of NY (SHNNY) in their report *The State of Supportive Housing 2024*,[159] increasing units of supportive housing – typically permanent subsidized housing solutions coupled with voluntary onsite case management services – and funding for existing supportive housing programs are a critical piece of the puzzle for dealing

[159] *The State of Supportive Housing 2024*, Supportive Hous. Network of N.Y., https://shnny.org/what-we-do/advocacy-policy/state/state-of-supportive-housing-sosh/ ("SHNNY Report").

with homelessness and mental illness in the state.[160] With over 62,000 existing units of supportive housing in the state (up from a handful of units in the early 1980s), New York would appear to be in the vanguard and deserves commendation. Nonetheless, the SHNNY report identifies significant inadequacies and inequities in the myriad supportive housing programs that currently exist. The report identifies barriers that exist by virtue of the many different programs and providers involved in the patchwork of supportive housing, in terms of confusion in the market, as well as underinvestment in an aging housing stock and insufficient (and widely fluctuating) funding for these programs.[161]

G. Lack of Information as a Barrier to Entry in Existing Housing

It is important that we advocate increasing the flow of information to the homeless population. Shelter beds, rent vouchers, supportive housing, public housing, and other programs are only as valuable as the individuals that they reach. Those who are experiencing homelessness, or on the verge of becoming homeless, must be able to readily locate information about their rights and options. This can be challenging in the technological age, where the most efficient way to access information is through the internet. Once an individual experiences homelessness, their access to technology is drastically reduced, if not eliminated altogether. Efforts must be made to provide our homeless with improved access to technology.

H. Immigration Status as a Barrier to Entry in Existing Housing

Immigration status was a barrier to existing housing long before the influx of migrants that we have witnessed in the last 18 months. Immigrants have long sought to settle in New York, whether due to family ties, the presence of well-established immigrant communities, or the linguistic and cultural diversity that is offered in New York State, particularly within the major metropolitan areas. However, the above-average cost of housing presents a barrier that is common to all who seek to enter the existing housing market, regardless of immigration status. Still, the sheer price of entry precludes the average immigrant from entering the housing market through the avenues of home ownership and rental.

Additionally, there are many undocumented immigrants in New York State. Those immigrants are not eligible for affordable housing and housing assistance as a result of due to their undocumented status. Moreover, there are refugees and/or asylum-seekers among the immigrant population in New York State. These individuals may be recovering from the traumatic and stressful circumstances that led them to come to the United States. These same individuals are simultaneously navigating the challenges of assimilating into American culture.

Those who are eligible for affordable housing, public supports, and housing assistance often have trouble navigating the government programs that they so desperately need because of language and/or cultural barriers. Such challenges are barriers for entry into the existing housing

[160] Supportive housing supports a variety of different populations in New York State – not just the homeless, but also individuals who have survived domestic violence or involvement in the criminal justice system. The "basic principle of supportive housing is that it serves people who could not maintain housing stability without services and who could not access adequate services without stable housing." SHNNY Report at 4.

[161] *Id*.

market that may prevent an otherwise qualified applicant from accessing available support. These issues have only multiplied with the recent influx of migrants and asylum seekers who have entered New York State at an unprecedented rate.

It has been said that the extent to which the migrants are driving the homeless numbers is skewed. After all, homelessness numbers have been going up for decades, long before the migrant crisis.[162] Regardless, there is no disputing that the number of people in New York City's shelter system increased 53% over the past year, and this increase corresponded directly with the increase in the migrant population in New York State. Indeed, asylum seekers have made up over half of all entrants into the shelter system in the last quarter.

I. Recommendations

1. Develop a More In-Depth Case-By-Case Approach to Approving and Locating Housing for Individuals on Probation, Parole and Post-Release Supervision

The restrictions on sex offenders, violent felons, and persistent felony offenders are rationally based and should remain in place. Although the current restrictions are undoubtedly inconvenient to that specific group of offenders, the overarching concern must be for law-abiding citizens, and those populations that may be vulnerable to the most dangerous individuals in society. In all other cases, however, we must adopt a more practical approach.

Although there is a rational basis for many of the restrictions that are placed on individuals with a criminal history, it is important to consider the impact these restrictions have on an individual's ability to obtain housing, particularly in the case of non-violent victimless crimes. Probation officers must adopt a comprehensive approach to housing approval. Nonfraternization policies must be closely examined in those situations where a probationer may have no other alternative than to reside in a residence where one or more occupants are currently on probation. A similar expanded and practical analysis must be utilized in cases involving individuals on parole or any other form of post-release supervision.

In addition, as recognized in the 2019 Report of the New York State Bar Association Task Force on Incarceration Release Planning and Programs[163], there are a number of programs and services available to individuals after they have been experiencing homelessness for specified periods of time, but a period of incarceration does not count as "homelessness" so individuals released from a period of incarceration do not immediately qualify for those programs and services and have to spend time in a shelter or on the street before they qualify. This is obviously counterproductive to efforts to reintegrate them into the community. Accordingly, the Task Force on Incarceration Release Planning and Programs recommended that the definition of homeless for

[162] There was a distinct drop in homelessness during the Covid-19 pandemic. The number of homeless prior to the pandemic was around 63,000 but dropped to 50,000 during Covid. This is attributable in part to the right to counsel procedures that were implemented in the City during that time. However, it is opined that the biggest contributor was the eviction moratorium. Although we cannot have a permanent eviction moratorium, as noted elsewhere in this report, we recommend that the State establish a robust eviction diversion/reduction program.

[163] NYSBA Report of the Task Force on Incarceration Release Planning and Programs

purposes of those programs and services be expanded to include periods of incarceration. We adopt and restate that recommendation.

2. New York State Should Increase Enforcement of Existing Source of Income Statutes

Thousands of individuals experiencing homelessness are eligible for vouchers in New York, but source of income discrimination remains a major impediment to the success of those programs, leaving families and individuals stuck in shelters or sleeping on the streets. Landlords and brokers will continue to discriminate on the basis of source of income if there is not adequate enforcement. The New York State Commission on Human Rights should dedicate a unit to enforcing this form of discrimination, and the New York City Commission on Human Rights should increase funding for additional staff in its designated unit. Without constant and aggressive enforcement, thousands of individuals experiencing homelessness will languish in shelters or on the streets when they could otherwise be permanently housed.

3. Increase Access to Housing Navigators and Agency Staff Who Can Perform Testing Alongside People With Vouchers

Because source of income discrimination is so pervasive but also difficult to prove when landlords simply stop responding to individuals with vouchers, increased testing is necessary to document the discrimination so that enforcement can be effective. Housing navigators and Human Rights Commission staff (both at the State and City level), trained in source of income discrimination and the different voucher programs, can call landlords and brokers alongside people with vouchers to document the response when the client mentions using a voucher. The tester can then call the same landlords and brokers to ask about apartments for a person without a voucher in order to gather evidence of differential treatment toward the voucher holder. It can be confusing and intimidating for people experiencing homelessness to document the discrimination when it is subtle, so increased access to housing navigators and agency staff who are trained to perform such testing is necessary to both document and enforce source of income discrimination. Housing navigators should have direct access to points of contact at the State Commission on Human Rights (and the New York City Commission on Human Rights) to allow for speedy enforcement when discrimination occurs.

4. Increase the Supply of Accessible Affordable Housing

The lack of affordable housing in New York is one of the State's most vexing political issues, with the problem being especially acute in New York City.[164] For individuals experiencing homelessness and living with disabilities, there are even fewer affordable housing options to choose from due to the dearth of accessible affordable units. The simple answer is that the State needs to invest more in accessible affordable housing. Even if more accessible units are not required by statute for new construction, the State should prioritize building more accessible units in buildings that otherwise meet the relevant accessibility standards. As individuals living with disabilities are overrepresented in the homeless population, it will increase the chances that they

[164] *See* Eliza Shapiro, *Half of NYC Households Can't Afford To Live Here, Report Finds,* N.Y. Times, April 25, 2023, https://www.nytimes.com/2023/04/25/nyregion/affordable-housing-nyc.html.

can escape homelessness and secure permanent affordable housing. Ideally, legislation could be developed that would increase the requirements for accessible units in new construction.

5. Reduce Barriers to the Lease-up Process for Individuals Living With Disabilities

For those individuals experiencing homelessness and living with disabilities who are lucky enough to secure an accessible apartment, the lease-up process is often inaccessible. Especially for individuals with housing vouchers, the lease-up process involves multiple rounds of approvals and inspections, unclear timelines, and a lack of transparency about reasonable accommodations (including modifications, device installation, etc.). The forms individuals must complete are not written in plain language, which can cause unnecessary confusion and delays for individuals living with disabilities who are trying to navigate the process on their own (or with limited help from shelter staff). The State and City agencies overseeing voucher programs should revise their processes to make them more transparent and accessible, including updating forms to be written in plain language.

6. Increase Training and Awareness for Landlords, Brokers, and Building Managers About Their Duty to Provide Reasonable Accommodations to Tenants Living With Disabilities

Landlords, brokers, and building managers are often unaware or not well-educated about their legal obligations to provide reasonable accommodations to tenants living with disabilities, including how to coordinate necessary alterations to meet the needs of tenants or potential tenants. The State should promote awareness of these obligations in a variety of ways, such as trainings, public awareness campaigns, and easily accessible online materials explaining the obligations and how to get technical assistance from the relevant agencies. Ideally, this training and awareness would coincide with increased enforcement by the Commission on Human Rights when tenants are denied these accommodations.

7. Provide Additional Resources and Staffing to Administrative Agencies to Expedite Tenant Approval and Landlord Payment Under Voucher Programs

Both holders of Housing Choice vouchers and landlords and managing agents processing their applications report frustration with administrative requirements of the Section 8 program in order to approve a tenancy. These requirements include additional paperwork, site inspections, and potential health and safety improvements to a unit beyond what local code might require. In addition to the substance of any additional burden these requirements impose on landlords, the most obvious impact is usually *time*. Scheduling inspections, and perhaps reinspections, and finalizing paperwork with the agent can result in a significant delay from a landlord's perspective in getting paid rent for the unit and from the applicant's perspective in terms of having a home. Ensuring the safety and suitability of housing for Section 8 tenants is noble and good policy for these programs, but it does disincentivize many landlords from embracing voucher-holding tenants, despite the security of receiving a portion or all of the rent paid by the government. Additional staffing and resources for these administrative agencies could increase their timeliness in approving tenancies.

8. Develop a Forward-Looking Approach to Determine the Appropriate and Necessary Amounts Needed for Adequate Housing Vouchers

One of the major impediments to use of a housing voucher like a Housing Choice voucher is finding suitable housing at the rental price point supported by the voucher. Voucher holders report long and time-consuming search times for housing they can afford which, coupled with housing discrimination against voucher holders and the other impediments referenced in this section, is highly discouraging to holders and results in underutilization of the State's available voucher resources. HUD generally calculates voucher amounts (the "Fair Market Rent" or "FMR") at 40th percentile of market rents for a given geography (typically by county for non-metro areas). Those backward-looking rents may not be keeping up with the forward-looking movements in market rents and, in any event, typically drive voucher holders to the lower-rent, lower-resourced communities in a given geography, which limits potential upward mobility for those households. *See* OSC Report, page 24-25. Small area FMRs (which calculate voucher amounts based on smaller housing markets) may be a key tool in combatting this and getting households with vouchers into higher opportunity neighborhoods.

9. Provide More Detailed Information on "Affordable Housing" Requirements

The affordability of "affordable housing" is in the eye of the beholder. Even at AMIs in the 40% to 80% range, many applicants for affordable rental housing in New York State cannot afford the rents at those levels. Part of this disconnect may be the difficulty some households have in understanding the rules and requirements around affordable housing, in particular minimum income requirements to be able to afford the rents and utilities. Better education on the requirements for affordable rentals may help, but ultimately the desperation many households feel in their housing insecurity may lead them to apply for anything labeled "affordable housing" without understanding whether it is affordable to *them*.

10. Efforts Must be Made to Implement the Proposals Contained in Governor Hochul's 2024 State of the State

Governor Hochul's 2024 State of the State Book acknowledges the State's crisis in its treatment of mental illness and particularly the need to invest in effective housing solutions for individuals struggling with serious mental illness.[165] The very first section of the Governor's State of the State Book addresses the topic and proposes significant investment to improve resources. The Governor's proposals are various and include addressing hospital policies around discharging patients exhibiting serious mental illness. She calls for increased access to transitional housing for individuals leaving custody, including case management services for mental health and substance use treatment.[166] These proposals come on top of Governor Hochul's 2023 initiative to create 3,500 new supportive housing units for individuals with mental illness.[167]

[165] *State of the State 2024*, N.Y.S. Governor's Office, https://www.governor.ny.gov/sites/default/files/2024-01/2024-SOTS-Book-Online.pdf ("SOTS 2024 Book").

[166] SOTS 2024 Book at 18-19.

[167] SOTS 2024 Book at 15.

11. Improve Record-Keeping and Database(s) to Allow for Continuity of Services and Information for Those in Need of Housing

For individuals who have entered the shelter system, the staff within the shelter are often unaware of how to help temporary residents navigate the public benefits rules that relate to the subsidies that are available. There are certain hurdles that the homeless and shelter residents must overcome in order to receive rental subsidies and other supports from DHS, HRA and other government agencies. This lack of awareness is likely to result in lengthy and avoidable delays in receiving housing, subsidies, and other supports. To prevent these delays, DHS should improve its record-keeping database to provide a record of its staff's most recent efforts to assist a shelter resident in obtaining permanent housing. In that way, each resident will not be delayed in the event they are removed or transferred to another shelter, or if the staff with whom they are working leaves the agency.

12. Implement Multi-Lingual Policies and Programs With an Outreach Component Aimed Specifically at the Immigrant Population in New York State

We must advocate for policies that are designed to specifically assist immigrants, migrants and asylum seekers. These programs must be multilingual and should focus on assisting this population with obtaining the documentation necessary to allow them to avail themselves of the programs that provide assistance for housing and other support services they may need. New York State's language access policy provides that all State agencies that interact with the public must provide interpretation services in any language with respect to the provision of agency services or benefits, but all programs assisting this population should offer multilingual services.

VI. HOMELESSNESS AND THE HEALTHCARE SYSTEM

In addition to the other issues discussed in this report, homelessness has significant health implications. Individuals experiencing homelessness suffer greater social exclusion and health inequities than many other vulnerable groups.[168] They are at increased risk of experiencing a wide range of health challenges due to the lack of stable housing. They also face numerous competing priorities, including their need for food and shelter, which often take precedence over their health.[169] Mistrust of the healthcare system is also prevalent among the homeless population and may cause them to avoid care which, along with poor living conditions, only exacerbates their health conditions.[170]

A. Barriers to Healthcare Services

Individuals experiencing homelessness face many individual and structural barriers to accessing healthcare.[171] These include health challenges like mental illness and substance abuse disorders as well as systemic and institutional barriers such as a lack of or insufficient insurance coverage, stigma and bias among the medical community, limited availability of accessible healthcare facilities, and transportation difficulties.

1. Individual Barriers

Homelessness is associated with a higher prevalence of mental and substance use disorders when compared to stably housed individuals.[172] Rates of mental health challenges, including depression, schizophrenia, bipolar disorder, personality disorder, self-harm, and attempted suicide are disproportionately high among people experiencing homelessness.[173] 21% of individuals experiencing homelessness reported having a serious mental illness, and 16% reported having a substance use disorder.[174]

Mental illness can make it more difficult to access and maintain stable housing. Unsheltered people with mental illness are more likely to experience chronic homelessness [175] People with mental illness require ongoing treatment and rehabilitation services to address their

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[168] Pernilla Omerov, Asa G. Craftman, Elisabet Mattsson, et al., *Homeless persons' experiences of health- and social care: A systematic integrative review*, 28(1) Health Soc Care Community 1, 1–11 (2020), https://pubmed.ncbi.nlm.nih.gov/31524327/.

[169] Michael Liu, Stephen W. Hwang, *Health care for homeless people*, 7 Nature Reviews Disease Primers 5 (2021), https://doi.org/10.1038/s41572-020-00241-2.

[170] Patricia A. Post, *Hard to Reach: Rural Homelessness and Health Care*, Nat'l Health Care for the Homeless Council, Jan. 2002, https://nhchc.org/wp-content/uploads/2019/08/Rural-Homelessness.pdf.

[171] Liu, , Hwang, *supra* note 169.

[172] *Addressing Social Determinants of Health Among Individuals Experiencing Homelessness*, Substance Abuse and Mental Health Services Administration. (2023) https://www.samhsa.gov/blog/addressing-social-determinants-health-among-individuals-experiencing-homelessness.

[173] Jennifer Perry, J., & Tom K.J. Craig,. *Homelessness and mental health*, 6(2) Trends in Urology & Men's Health 19, 19–21 (2015), https://doi.org/10.1002/tre.445.

[174] *Id.*

[175] *Id*.

condition that can be difficult, if not impossible, for individuals experiencing homelessness to access.[176]

Studies consistently show that substance abuse disorders, including alcohol and drug addiction, are more prevalent in the homeless population than the general population.[177] Substance abuse and homelessness often coexist, with substance abuse sometimes being both the cause and result of homelessness.[178] Substance abuse and addiction increase the risk of health problems and can further complicate efforts to find stable housing.[179]

2. Structural Barriers

A person's ability to access healthcare is affected by the individual's financial status. Poverty and unemployment increase the likelihood of experiencing homelessness and may result in a lack of insurance coverage and limited access to health care. Inadequate health insurance coverage is one of the largest barriers to health care access.[180] The limited availability of health care resources, for example a shortage of physicians and medical staff, may also reduce access to health services and increase the risk of poor health outcomes.[181] Even when they have access to health insurance, many individuals experiencing homelessness are denied health care because they do not possess proof of coverage or proper identification.[182] Individuals experiencing homelessness may forego or alter prescribed medications to avoid out-of-pocket costs or spend resources on other priorities.[183]

Research has shown that individuals experiencing homelessness experience significant disparities in care and poorer health outcomes compared to housed individuals.[184] Discrimination

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[176] *Id*.

[177] *Id.*

[178] Kathryn Hryb, MSW, Rob Kirkhart, Ph.D., PA-C, & Rebecca Talbert, PharmD., *A Call for Standardized Definition of Dual Diagnosis*, 4 Psychiatry (Edgemont) 15, 15–16 (2007), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2880934/.

[179] Douglas L. Polcin, *Co-occurring substance abuse and mental health problems among homeless persons: suggestions for research and practice*, 25(1) Journal of social distress and the homeless, 1,1-10, https://pmc.ncbi.nlm.nih.gov/articles/PMC4833089/ (2015).

[180] Kathleen T. Call, Donna D. McAlpine, Carolyn M. Garcia et al., *Barriers to Care in an Ethnically Diverse Publicly Insured Population*, 52(8) Medical Care 720, 720–727, https://pubmed.ncbi.nlm.nih.gov/25023917/ (2014).

[181] *Access to Health Services*, Off. of Disease Prevention and Health Promotion, https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/access-health-services#cit20, n. 20.

[182] Stephen W. Hwang, *Homelessness and health*, 164(2) Canadian Medical Association J. 229 (Jan. 2001), https://www.cmaj.ca/content/164/2/229.short.

[183] Michael R. Law, Lucy Cheng, Irfan A. Dhalla, et al., *The effect of cost on adherence to prescription medications in Canada*, 184(3) Canadian Medical Association J., 297, 297–302 (Feb. 21, 2012), https://www.cmaj.ca/content/184/3/297.short.

[184] Rishi K. Wadhera et al., *Disparities in Care and Mortality Among Homeless Adults Hospitalized for Cardiovascular Conditions*. 180(3) JAMA Internal Med 357, 357–366 (2020).

and medical mistrust also have a significant effect on the health care decisions of individuals experiencing homelessness and may result in them avoiding necessary care.[185]

The homeless population, regardless of health insurance status, have higher rates of emergency room visits and hospitalizations than the general population.[186] High rates of emergency room visits can be seen as a marker of systemic problems, including poor access to nonemergency health care and preventative care.[187] Research has shown that emergency care does not adequately address the long-term medical needs of the homeless population. Primary care providers are necessary in order to improve the health needs of this population because of these providers' longitudinal and relationship-based patient care.[188] These providers are well-positioned to identify social contributors to poor health (for example, income and food insecurity) and connect patients to community-based services.[189] Unfortunately, primary care providers are frequently unavailable to individuals experiencing homelessness for the reasons discussed in this section.

Transportation barriers to health care have a disproportionate impact on individuals who are poor and who have chronic conditions.[190] These barriers lead to rescheduled or missed appointments, delayed care, and missed or delayed medication use,[191] but can be addressed by offering free or subsidized transportation services to help individuals experiencing homelessness travel to medical appointments and pharmacies.

B. Recommendations.

Housing has been recognized as a critical health intervention in New York State for reducing healthcare spending among individuals who are unhoused or experiencing housing instability.[192]Reports prepared by the Center for Human Services Research (CHSR) demonstrate that investments in housing can significantly impact health care costs and utilization, including

[185] Michael Liu, Stephen W. Hwang, *Health care for homeless people*, 7 Nature Review Disease Primers 5 (2021), https://doi.org/10.1038/s41572-020-00241-2.

[186] *Id*.

[187] Margot B. Kushel et al., *Emergency Department Use Among the Homeless and Marginally Housed: Results from a Community-Based Study*, 92(5) American Journal of Public Health 778, 778–784 (2002), https://doi.org/10.2105/AJPH.92.5.778.

[188] Kevin Pottie, et al., *Clinical guideline for homeless and vulnerably housed people, and people with lived homelessness experience*, 192 Canadian Med. Ass'n J. E240, E240–E254 (2020), https://www.cmaj.ca/content/192/10/E240.short.

[189] *Id.*

[190] Mary K. Wolfe, et al., *Transportation Barriers to Health Care in the United States: Findings from the National Health Interview Survey, 1997–2017*, 110(6) Am. J. of Pub. Health 815, 815–822 (June 1, 2020), https://doi.org/10.2105/AJPH.2020.305579.

[191] Samina T. Syed, Ben S. Gerber & Lisa K. Sharp, *Traveling Towards Disease: Transportation Barriers to Health Care Access*, 38 J. of Community Health 976, 976–993 (2013), https://doi.org/10.1007/s10900-013-9681-1.

[192] *MRT Supportive Housing Evaluation: Reductions in Medicaid Spending and Service Utilization After Enrollment in Supportive Housing*, Univ. at Albany Center for Human Servs. Research, https://www.health.ny.gov/health_care/medicaid/redesign/supportive_housing/docs/research_brief_1.pdf.

40% reduction in inpatient days, 26% reduction in emergency department visits, and 15% reduction in Medicaid health expenditures.[193]

"Housing is healthcare" because access to stable and safe housing is a crucial determinant of health outcomes. Frequent moves and dislocations result in inconsistent care and inadequate treatment.[194] Families with unstable housing often have difficulty accessing existing programs and services. Furthermore, current supportive housing programs offered through the Medicaid system are geared toward a relatively narrow band of people with disabilities who have mental health issues or who are transitioning from psychiatric or skilled nursing facilities. While these are important populations to service, they constitute a small subset of those experiencing homelessness. For example, current programs do not, for the most part, provide assistance to non-disabled children. The Task Force recommends the following steps be taken to expand and improve access to existing health care services.

1. Coordinate access to support services at the local level.

The primary challenges for individuals experiencing homelessness and practitioners addressing their needs involve maintaining continuity of care and appropriate care due to frequent residential relocation, especially in rural areas.[195] Improving the health outcomes for the homeless population will require significant improvement to the health care delivery systems and the linking of health care providers with non-health services. Many individuals experiencing homelessness are unable to access health care services and other support such as Supplemental Nutrition Assistance Program (SNAP) benefits and social security benefits without a stable address. Providers serving vulnerable populations should be able to coordinate access to support services, including transportation, housing assistance, social services, nutritional support, and legal services for those in need. This can be further facilitated by requiring counties to implement a program that would allow homeless persons without a permanent mailing address to reliably receive government-related mail and other communications, including sensitive health care information at a designated location.

An example of effective local coordination that should be expanded and replicated is the Safe Options Support (SOS) Teams described above that are funded by the New York State Office of Mental Health (OMH). There are ten SOS Teams operating in New York City and the OMH recently provided funding for seven more outside the New York City region. SOS Teams provide intensive outreach, engagement and care coordination services to unsheltered individuals living with mental illness. They are comprised of licensed clinicians, care managers, and peer specialists who partner with local government, community providers, hospitals, law enforcement, and others to identify and work with high-risk individuals.[196]

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[193] *Id.*

[194] Patricia A. Post, *Hard to reach: Rural homelessness & health care*, Nat'l Health Care for the Homeless Council.

[195] *Id*.

[196] *NYS Office Of Mental Health Announces $33 Million Investment To Combat Street Homelessness Through Safe Options Support Teams*, Oswego County Today, Apr. 29, 2023, https://oswegocountytoday.com/news/nys-office-of-mental-health-announces-33-million-investment-to-combat-street-homelessness-through-safe-options-support-teams/.

2. Provide additional training to health care and housing placement personnel who work with families experiencing homelessness.

Health care providers and housing placement personnel who work with families experiencing homelessness should be trained to understand and address the unique challenges faced by homeless populations, including trauma, mental health, substance abuse, and the tendency of some individuals to be skeptical of the health care system. This additional training should focus on empathy and compassion to help them better assist, understand and reduce the stigma associated with homelessness.

3. Create a more coordinated system of referrals and options for housing resources to better connect families experiencing homelessness to available resources.

Existing referral pathways to access housing services are narrow and dependent on how an individual or family is being serviced. For example, Medicaid recipients enrolled in the Health Home program (a voluntary program operated by the New York State Department of Health to help members manage all their health care and social service needs) receive different options for services and referral pathways than a Medicaid member who is not enrolled in the Health Home program.

Under Section 1115 of the Social Security Act, the Secretary of Health and Human Services has the authority to approve requests by states to waive provisions of the Medicaid Act to test "experimental, pilot, or demonstration project[s]" that differ from what is required by the Act but are likely to assist in promoting the objectives of the Medicaid program. New York State has submitted a Section 1115 Medicaid waiver request that seeks to use Medicaid funds for health-related social needs such as housing resources for Medicaid-eligible individuals. New York's waiver request emphasizes that local and statewide coordination of community-based organizations ("CBOs") and existing housing resources are an important component of identifying and addressing gaps in services for vulnerable populations. Coordinating all options for housing support would better ensure that the right support reaches the right families, maximizing the use of existing resources and streamlining access for families to needs-based support.

4. Offer Free Transportation to Medical Appointments and Pharmacies

As noted above, transportation difficulties can present a significant barrier for individuals experiencing homelessness who are trying to access necessary healthcare. This is particularly true in rural areas that lack a mass transit system but is equally an issue for individuals in cities and suburban areas who suffer from mobility issues. This can be greatly alleviated at the local level by offering free transportation to medical appointments and pharmacies for individuals experiencing homelessness.

VII. HOMELESSNESS AND THE CRIMINAL JUSTICE / PAROLE SYSTEM

A. General Framing

The criminal justice system is the primary way in which society interacts with people experiencing homelessness, whether by citations, arrests, or calling the police to have an encampment moved or to respond to a mental health incident.

Individuals experiencing homelessness are more likely to be arrested for crimes and violations associated with homelessness: petit larcenies, burglaries, violation of local ordinances, etc.[197] Individuals experiencing homelessness are targets for violating those crimes simply because of their lifestyle: they seek basic needs of food, clothing, and shelter. They may seek emergency housing in the interim; however, many communities, especially upstate rural towns and villages, are overwhelmed by the lack of either affordable housing or emergency housing, leaving many individuals – including many recently incarcerated individuals – homeless.

In this report, we recognize the inclination to view homelessness through a criminal justice lens, but the matter is one with a social justice bent. In this section, we explore how homelessness intersects with the criminal justice system through interactions with police, issues of diversion, effects of bail reform, and consequences of conviction.

B. Interactions with Police

People living without shelter are more vulnerable to police encounters as a result of numerous factors, including the selective policing of offenses related to homelessness, the use of police to forcibly remove individuals experiencing homeless from certain areas, and the use of police to respond to mental health needs.

1. Police Department Interactions

Across the country, the majority of municipalities rely on police departments to address homelessness through punitive measures including arrests and citations.[198] This practice is largely related to the modern drive to address "quality of life" issues through policing and the criminal

[197] Id. at 14.

[198] Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 84(5) Am. Sociological Review 769, 769–800 (Sept. 5, 2019), https://doi.org/10.1177/0003122419872671; Tristia Bauman, , Janet Hostetler, Janelle Fernandez, Eric Tars, Michael Santos, et al., *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities*, Nat'l Law Center on Homelessness and Poverty.; Tony Robinson Tony , *No Right to Rest: Police Enforcement Patterns and Quality of Life Consequences of the Criminalization of Homelessness*, 55(1) Urban Affairs Review 41, 41–73 (Feb. 5, 2017), https://doi.org/10.1177/1078087417690833.

legal system.[199] Low-level offenses such as loitering,[200] aggressive begging,[201] public urination,[202] or sleeping in parks, subway stations, or on sidewalks[203] are all commonly used offenses that either specifically target or fall disproportionately on people living without shelter.[204] Though these offenses on their own may not always lead to criminal charges, they provide grounds for police to approach and search individuals, potentially leading to more serious charges such as drug or weapon possession. Furthermore, even when not otherwise patrolling for or responding to such quality of life complaints, police officers are often tasked with "outreach" to people who are unsheltered. While the purpose of outreach may be to connect these individuals with social services, this increased exposure can also lead to police issuing citations or make arrests for behavior they encounter in the process.[205]

Another common – and particularly aggressive – form of active police intervention is the physical removal of homeless people and their property from a given location in the form of "sweeps." In these sweeps, individuals are forcibly removed by law enforcement from wherever they are staying. This often results in property they have accumulated being taken and destroyed. These policies are especially problematic because they displace and uproot unhoused individuals at great cost to the unhoused but do not do much more. In New York City, Mayor Eric Adams has taken an aggressive approach to street homelessness. From March to October of 2022, the Adams administration cleared 3,198 homeless encampments from public spaces. However, City data found that only 5% (115 of the 2,098 people encountered by City staff) of the individuals targeted by these sweeps entered the shelter system.[206] We can expect that sweeps like this will increase in light of the United States Supreme Court's ruling in *City of Grant's Pass v. Johnson* discussed above. Clearing homeless encampments does not equate to the provision of shelter and housing to these individuals.

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[199] *Id*. For an example of this in practice, see *Homeless on East Harlem Street Feel Unwanted Pressure After Drug Raids*, N.Y. Times, Sept. 24, 2015, https://www.nytimes.com/2015/09/24/nyregion/homeless-on-east-harlem-street-feel-unwanted-pressure-after-raids.html.

[200] N.Y. Penal Law § 240.35

[201] *See, i.e.*, NYC Admin Code 10-136; City of Buffalo Code 317, City of Rochester Code 44-4; Albany Code 255-59.

[202] *See, i.e.*, NYC Admin Code 16-118; Town of Babylon Code 165-4

[203] *See* Andy Newman, *Is It Legal to Sleep Outside in New York? Yes and No*, N.Y. Times, May 26, 2023, https://www.nytimes.com/2023/05/26/nyregion/nyc-homeless-camp-bill-of-rights.html. New York City's 311 website specifically encourages members of the public to report any type of structure – even just a mattress – in public spaces that would serve as an encampment for a homeless person. Although the police supposedly report findings to the Department of Homeless Services, for the reasons described above, even a police encounter for a non-criminal offense risks escalation. https://portal.311.nyc.gov/article/?kanumber=KA-02253#:~:text=Report%20an%20encampment.&text=Officers%20from%20your%20local%20police,of%20Homeless%20Services%20(DHS).

[204] Madeline Bailey, Erica Crew & Madz Reeve, *No Access to Justice: Breaking the Cycle of Homelessness and Jail*, 4, Vera Inst. of Justice, August 2020, https://www.vera.org/downloads/publications/no-access-to-justice.pdf (p 4)

[205] Alissa Dewald, Katherine L. Einstein & Charley E. Willison. *Policing and the Punitive Politics of Local Homelessness Policy*, Boston Univ. Initiative on Cities (2023), https://community.solutions/wp-content/uploads/2023/05/Policing-and-Punitive-Politics-of-Local-Homelessness-Policy-Brief.pdf.

[206] Chau Lam, *Mayor Adams homeless encampment sweeps result in just 115 people entering NYC Shelters*, Gothamist, Nov. 30, 2022, https://gothamist.com/news/mayor-adams-homeless-encampment-sweeps-result-in-just-115-people-entering-nyc-shelters.

Not every effort to remove encampments, however, needs to have these negative repercussions. One example occurred earlier this year in Westchester County. Concerned about the safety of a small encampment under a Thruway overpass in Port Chester, NYS Thruway Authority staff reached out to Westchester County – specifically Task Force member and Deputy Commissioner of the Department of Community Mental Health, Joseph A. Glazer, Esq.

Sweeps tend to result in individuals trying to return to the site, and potentially reducing a person's connection to the system of care. Anticipating the pitfalls of surprise sweeps and clearing of encampments, the Thruway Authority, with support from the New York State Police, wanted to take a different approach. They offered a substantial window of time in which to relocate the occupants and their possessions. A key stakeholder meeting was immediately set up, including the County's Department of Community Mental Health and Social Services, the Thruway Authority, State and local police and Search for Change, a nonprofit provider in the Hudson Valley now hosting an SOS Team (described above) that utilizes an evidence-based approach to provide intensive outreach, engagement, and care coordination services to individuals experiencing street homelessness and those in temporary shelter settings.

From February through May 2024, agency staff and the SOS team planned and worked with the encampment residents to connect them to housing and services. To ensure progress, stakeholder meetings were held every two or three weeks to update and plan.

Working with other local nonprofits, plans were made to store personal possessions with a provider housing a soup kitchen, that serves many of the non-sheltered individuals in the area. That soup kitchen became an information dissemination site for those from the camp or otherwise seeking aid.

After nearly four months of these groups working together, encampment removal went forward. The remaining occupants were given a date certain for the closure, and information on where their remaining possessions would be taken and how to retrieve them. The SOS team was present, and worked with the occupants to track and retrieve whatever possessions remained that they wanted to store and keep. The fences and the site were posted – not just with "No Trespassing" signs, but also signs that told people how to contact the SOS team for assistance if they were homeless and looking to return or seeking help. This is an example of a successful approach to a homeless encampment that can and should be replicated elsewhere.

Beyond the enforcement of laws and codes, police are often tasked with responding to mental health needs. For example, NYPD responds to approximately 200,000 calls each year related to people experiencing mental health crises.[207] However, the presence of police in a

[207] *Transforming Mental Health Crisis Response*, N.Y. Lawyers for the Public Interest, https://www.nylpi.org/campaign/transforming-mental-health-crisis-response/#:~:text=Each%20year%2C%20the%20New%20York,violence%E2%80%94sometimes%20deadly%E2%80%94result.

moment of mental crisis can often escalate the issue, and result in arrest and punitive response rather than assistance.[208]

In all 50 states, police have the authority to initiate an emergency psychiatric hold for individuals who are a danger to themselves or others.[209] These laws can result in police officers with little training on mental illness evaluating symptoms and detaining individuals without their consent. Laws vary considerably state-by-state regarding the circumstances under which an individual can be hospitalized, and the duration of time they can be held.

In a related development, two New York State legislators recently announced that they were introducing the Harness Expertise of Licensed Professionals Act (the "HELP Act") that would expand the pool of mental health professionals permitted to perform clinical evaluations and temporarily hospitalize individuals who may pose a threat to themselves or others beyond physicians to include psychiatric nurse practitioners, psychologists and clinical social workers.[210] The bill would not change the standards required for involuntary commitment and it would require that hospital administrators notify community mental health provides who have previously treated a patient when that patient is admitted to a hospital. The providers, as well as mental health government officials, will also be notified when the individual is discharged. The stated goal is to "help ensure better continuity of care and coordination between the different layers of the healthcare system."[211]

2. Mobile Crisis Teams

As an alternative to police, Mobile Crisis Teams are groups of mental health professionals that can respond to referrals for people experiencing mental health crises.[212] The NYS Mental Hygiene Law defines "Mobile Crisis Teams" as "a team licensed, certified, or authorized by the office of mental health and the office of addiction services and supports to provide community-based mental health or substance use disorder interventions for individuals who are experiencing a mental health or substance use disorder crisis." [213] The mobile crisis team may include behavioral health professionals, certified peer specialists, certified recovery peer advocates, credentialed family peer advocates, and credentialed youth peer advocates.[214] The NYS Office of Mental Health

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[208] Jackson Beck, Melissa Reuland, Leah Pope, *Behavioral Health Crisis Alternatives: Shifting from Police to Community Responses*, Vera Inst. of Justice, November 2020, https://www.vera.org/behavioral-health-crisis-alternatives.

[209] Kristin A. Neylon, *Strategies for the Delivery of Behavioral Health Crisis Services in Rural and Frontier Areas of the U.S.*, Nat'l Ass'n of State Mental Health Program Directors, Aug. 2020, https://nri-inc.org/media/1679/2020paper10.pdf.

[210] N.YS. State Sen. Brad Hoylman-Sigal, *Senator Hoylman-Sigal & Assemblymember-Elect Lasher Propose "H.E.L.P. Act" To Address Staggering Mental Health Crisis on NYC Streets*, Nov. 20, 2024, https://www.nysenate.gov/newsroom/press-releases/2024/brad-hoylman-sigal/senator-hoylman-sigal-assemblymember-elect-lasher.

[211] *Id.*

[212] *Crisis Services/Mental Health: Mobile Crisis Teams*, NYC Dept. of Health and Mental Hygiene, https://www.nyc.gov/site/doh/health/health-topics/crisis-emergency-services-mobile-crisis-teams.page.

[213] N.Y. Mental Hygiene Law §36.03(a)(11).

[214] N.Y. Mental Hygiene Law §36.03(a)(11).

has created billing codes allowing for Medicaid Managed Care reimbursement of many such community crisis response services.[215]

These MCTs respond to urgent – but not emergency – calls that might otherwise lead to police intervention. As of 2022, there were 19 adult mobile crisis teams serving the 5 boroughs of New York City – a decrease from 2019.216

However, the effectiveness of these teams in New York City has been questioned. In particular, there is no diversion of 911 calls to these teams and, instead, the resources can only be accessed by calling "NYC Well." Additionally, the MCTs have limited resources and days-long response times, limiting their utility in a moment of actual crisis.217

Mobile Crisis Teams also face unique challenges in rural areas due to limited resources and long travel times. In the face of geographical distance, MCTs in rural communities have to relax their response times. Lack of reliable broadband serves as another barrier to the effectiveness of MCTs in rural areas. MCT workers may be unable to travel to certain locations during severe weather conditions because of concerns about not being able to call for help if they need it.218Rural communities are also more likely to face staffing and coverage issues due to a lack of mental health care professionals. To address this limitation, some jurisdictions are utilizing Telehealth and other platforms that connect individuals to healthcare professionals via video or telephone to bridge the gap. For example, the Niagara County Sheriff's Office now has iPads that allow officers to connect persons in crisis directly with a mental healthcare professional.219

When MCTs are able to respond to an individual experiencing a crisis, there may still be further barriers to connecting the individuals to therapeutic services. Rural communities have fewer mental healthcare facilities and shelters than urban areas. If MCTs do need assistance transporting an individual to a hospital, it may be harder to get support from law enforcement due to the size of the local department.220

C. Issues of Diversion

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[215] *Crisis Intervention - Mobile/Telephonic Crisis Calculated Rates*, N.Y.S. Off. of Mental Health, https://omh.ny.gov/omhweb/medicaid_reimbursement/excel/mobile_telephonic_crisis.xlsx.

[216] *Improving New York City's Responses To Individuals In Mental Health Crisis: 2022 Update*, NYC Off. of the Public Advocate, Nov. 16, 2022, https://advocate.nyc.gov/reports/improving-new-york-citys-responses-mental-health-crisis-2022.

[217] *Improving New York City's Responses to Individuals In Mental Health Crisis: 2019 Update*, NYC Off. of the Public Advocate, Sept. 25, 2019, https://nylpi.org/wp-content/uploads/2019/09/Reports_-Office-of-the-New-York-City-Public-Advocate.pdf; *id.*

[218] Neylon, *supra* note 209.

[219] *Niagara Co. Sheriff deputies to use iPads for mental health calls*, WIVB, Sept. 9, 2021, https://www.wivb.com/news/local-news/niagara-county/niagara-co-sheriff-deputies-to-use-ipads-for-mental-health-calls/.

[220] Allee Mead, *Bringing Mental Health Services to Rural Residents*, Rural Health Information Hub, May 4, 2022, https://www.ruralhealthinfo.org/rural-monitor/mental-health-access.

Recognizing that there is a seven-to-ten-fold correlation between incarceration and the lack of shelter,[221] it is important to recognize criminal justice diversion models and tools as an effective way of seeking to combat homelessness. The Sequential Intercept Model (SIM) was developed in the early 2000s by Policy Research Associates.[222] It is a demonstrative model of potential intervention points for diversion to services and programming for justice system involved individuals with behavioral health (mental health and/or substance disorder) needs.

The model was developed by three researchers (Mark Munetz, MD, Patricia A. Griffin, PhD, and Henry J. Steadman, PhD) who mapped out a six-step progression of criminal justice system involvement.[223] From pre-arrest to reentry into the community following incarceration, they recognized each step as an opportunity to connect individuals with behavioral health needs to the appropriate services with the goal to intercept and divert individuals away from incarceration and towards treatment. Each of the six steps is outlined below with a focus on experience in New York State.

1. Intercept Zero – Community Services

Intercept Zero is before a person is arrested. Theoretically, any program that prevents arrest or occurs prior to arrest would qualify as Intercept Zero, such as MCTs, co-location of mental health professionals with law enforcement, and hospital emergency department diversions.[224] Successful programs in Intercept Zero attempt to keep individuals out of the criminal justice system, which can prevent individuals from losing their housing in the first place. In New York State, both the Executive Branch and the State Legislature have recently focused on pre-arrest diversion models.

2. Intercept 1 – Law Enforcement

Intercept 1 involves law enforcement encounters prior to arrest. The first step here is "911 Diversion," where trained police call takers and dispatchers identify a mental health crisis unfolding and divert the calls to a crisis line or crisis response model rather than to law enforcement. At other times, law enforcement may be called to the scene, only to learn upon arrival the existence of behavioral health needs for the call's subject. Other times, community policing itself creates an intersection between a person in need and a law enforcement officer. In those circumstances, properly trained officers who are knowledgeable about alternative options should endeavor to avoid arresting the subject. Crisis Intervention Team (CIT) training prepares law enforcement for such encounters and guides officers in understanding the manifestations they

[221] Sarah Knopf-Amelung, *Incarceration & Homelessness: A Revolving Door of Risk*, 2(2) In Focus: A Quarterly Research Review of the National HCH Council 1, 1–5 (Nov. 2013), https://nhchc.org/wp-content/uploads/2019/08/infocus_incarceration_nov2013.pdf.

[222] *The Sequential Intercept Model: Advancing Community-based Solutions for Justice-involved People With Mental and Substance Use Disorders*, Substance Abuse and Mental Health Services Administration's GAINS Center for Behavior Health and Justice Transformation, https://store.samhsa.gov/sites/default/files/pep19-sim-brochure.pdf.

[223] *Id*.

[224] *Id*.

witness and the available options for diversion to the appropriate service point in the community's system of care.

Additionally with New York's Bail Reform Law, many low-level arrests are resulting in pre-arraignment "Desk Appearance Tickets," where individuals remain in the community and receive a mandatory court date to appear. This reform has allowed a new array of diversion models to take hold, like Westchester County's "Fresh Start"[225] and "OPT-In,"[226] which are collaborative models between the criminal justice system, the District Attorney's office, and community-based providers to allow individuals to enter treatment and avoid the court system entirely, and thus avoid conviction and subsequent incarceration. Such diversions keep individuals from losing their employment and/or losing their housing.

3. Intercept 2 – First Appearance and Arraignment

SIM originally described Intercept 2 as initial detention, but bail reform has resulted in only those charged with the most serious crimes facing pre-trial detention. In New York State, the counties, courts, and district attorneys are creating early mental health and substance use assessment and pre-trial release services. The NYS Division of Criminal Justice Services (DCJS) funds specific pre-trial release programs around the State.[227] Most pre-trial release programs are founded in some form of supervision - ranging from pre-trial supervision by the Probation Department to case management provided by a non-profit agency or the local government service provider. Individuals successfully participating in these services and programs (especially those with known or identified behavioral health needs) have an increased likelihood of a favorable disposition and reduced likelihood of losing employment and housing.[228]

4. Intercept 3 – Jails and Courts

Intercept 3 involves both diversion courts and programs, as well as programs within correctional facilities for individuals who are incarcerated. From the original Brooklyn Felony Mental Health Court,[229] and various efforts at misdemeanor diversion models,[230] the number of diversion programs and courts has steadily increased. New York has felony and misdemeanor mental health courts, drug courts, youth courts, Mental Health Alternative to Incarceration Courts

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[225] *Fresh Start Initiative Kicks off in Westchester*, Westchester County Office of the County Executive, Nov. 19, 2021, https://www.westchestergov.com/home/all-press-releases/9132-fresh-start-initiative-kicks-off-in-westchester.

[226] Todd Bender, *DA initiative to provide services instead of prosecution*, Mid Hudson News, September 1, 2023, https://midhudsonnews.com/2023/09/01/da-initiative-to-provide-services-instead-of-prosecution/.

[227] N.Y. CPL § 510.45 - Pretrial services agencies.

[228] Frank Sirotich, *The Criminal Justice Outcomes of Jail Diversion Programs for Persons With Mental Illness: A Review of the Evidence*, 37(4) The J. of the American Acad. Of Psychiatry and the Law 461, 461–72 (Jan. 2009), HYPERLINK "https://www.researchgate.net/publication/40696359_The_Criminal_Justice_Outcomes_of_Jail_Diversion_Programs_for_Persons_With_Mental_Illness_A_Review_of_the_Evidence.

[229] Kelly O'Keefe, *The Brooklyn Mental Health Court Evaluation Planning, Implementation, Courtroom Dynamics, and Participant Outcomes*, Center for Court Innovation, Sept. 2006, https://www.innovatingjustice.org/sites/default/files/BMHCevaluation.pdf.

[230] *Jail Diversion for People with Mental Illness: Developing Supportive Community Coalitions*, TAPA Center for Jail Diversion, Oct. 2003, http://www.antoniocasella.eu/archipsy/NMHA_diversion_oct2003.pdf.

(MHATI), a Misdemeanor Wellness Court (serving mental health and co-occurring disorders), and Veterans' Courts. There are also court-directed diversion programs, like the Treatment Alternatives for Safe Communities (TASC) program, originated in New York State through DCJS in the mid-1980s.[231] Each of these diversion courts and programs works essentially the same. An individual voluntarily consents to enter the program with an understanding that fulfilling treatment requirements will contribute to a better disposition. For most adult diversion courts, an individual must plead guilty to a charge to be admitted, and upon program and service completion the matter is reopened, and the lesser agreed upon plea and sentence is imposed. The diversion courts can decrease the number of individuals incarcerated and/or the length of time incarcerated, which can have a positive effect on the ability of those individuals to remain employed and housed. Some, like TASC and the former MHANYS misdemeanor court do not require participants to enter a mandatory guilty plea.

Intercept 3 also looks to provide behavioral health services in local correctional facilities for individuals with identified needs while they wait for trial or negotiated disposition and a final outcome. Many of those with serious charges will be sentenced to state prison time, where an array of behavioral health services may be available for those who will be incarcerated for a year or longer. It is becoming broadly understood that unaddressed co-occurring disorders contribute to recidivism, which frequently extends into homelessness.[232]

5. Intercept 4 – Reentry

While COVID-19, reform of draconian drug laws, and bail reform have contributed greatly to the census reduction in our prisons and jails,[233] incarcerations in New York State continue to average more than 50,000 people each day.[234] A quick review of the statistics indicates that the vast majority of those incarcerated return to the community in less than 10 years.[235] Reentry is a tool aimed at helping returning citizens connect to housing, services, treatment, employment, and other tools targeted to combat recidivism. The work on reentry begins before release. Mental health and addiction services provided during incarceration are certainly a form of reentry preparation. Most jails and prisons in New York State also have social workers and discharge planners who aid in obtaining or restoring public benefits, including Medicaid, housing and other programs and services, prior to a person's release. In New York State, DCJS funds and supports 20 "Reentry

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[231] *Alternative to Incarceration (ATI) Programs*, N.Y.S. Div. of Criminal Justice Servs., https://www.criminaljustice.ny.gov/opca/ati_description.htm.

[232] Kimberly Houser, Christine A. Saum, Matthew L. Hiller, *Mental Health, Substance Abuse, Co-occurring Disorders, and 3-Year Recidivism of Felony Parolees*, 46(9) Criminal Justice and Behavior (June 2019), https://www.researchgate.net/profile/Kimberly-Houser-3/publication/333899570_Mental_Health_Substance_Abuse_Co-occurring_Disorders_and_3-Year_Recidivism_of_Felony_Parolees/links/5f06044a458515505094e969/Mental-Health-Substance-Abuse-Co-occurring-Disorders-and-3-Year-Recidivism-of-Felony-Parolees.pdf.

[233] "The imprisonment rate at year end 2022 (355 sentenced prisoners per 100,000 U.S. residents of all ages) was down 26% from yearend 2012 (480 per 100,000) but up 1% from yearend 2021 (350 per 100,000)"; *see* E. Ann Carson, Rachel Kluckow, *Prisoners in 2022, Statistical Tables*, Bureau of Justice Statistics, Nov. 2023, https://bjs.ojp.gov/document/p22st.pdf.

[234] *New York Policy Profile*, Prison Policy Initiative, https://www.prisonpolicy.org/profiles/NY.html.

[235] Danielle Kaeble, *Time Served in Prison, 2016*, Bureau of Justice Statistics, Nov. 2018, https://bjs.ojp.gov/content/pub/pdf/tssp16.pdf.

Task Forces,"[236] which organize and coordinate community-based services for returning individuals. In 2023, the funding for these Task Forces more than doubled in the State budget, but more resources are still needed statewide. Successful programs in reentry can reduce recidivism and increase the likelihood for individuals to find steady employment and housing, so an "upfront" investment in reentry resources can more than pay for itself in the long run.

6. Intercept 5 - Community Correction

On January 1, 2022, New York State had a total of 110,000 people serving on probation or parole. Probation is a criminal disposition that is an alternative to incarceration. It is most frequently meted out for misdemeanors and low-level felony offenses. Parole is a decision to allow a person serving felony time in a state prison to finish their sentence in the community. As noted above, each comes with "terms and conditions" collectively aimed at keeping a person from re-entering the criminal justice system. A growing trend for probation and parole is to include conditions that drive successful involvement with treatment programs.[237] Probation and parole officers are often trained in fundamentals of behavioral health, community-based treatment, and even motivational interviewing.[238] These efforts may also include cross-system collaboration, with community corrections officials working with providers and case and care managers to collectively work toward successful compliance.

D. Bail and Parole Reform

Pre-Covid Arrests. Before January 1, 2020, when a defendant was arrested by police officers for any crime, it was regular practice for officers to bring that defendant before a judge for arraignment.[239] At arraignment, in addition to reading the pending charges, the judge had the authority to set bail on the defendant. The purpose of bail was to ensure the defendant's return to court, and the judge considered several factors in determining whether the defendant was a flight risk before deciding to set bail or to release the defendant on his own recognizance. Any bail amount set was to be reasonably related to the particular defendant and his circumstances.

Judges were required to set only two types of bail.[240] Although nine types of bail existed,[241] judges frequently set only cash and bond. Judges could and did set bail on violations and misdemeanors, as well as on felonies. They weighed a defendant's criminal history and county of residence more than other factors.[242] Under these old practices, it was common for indigent defendants to spend several days incarcerated on minor or non-violent offenses before being released. Some remained incarcerated throughout the pendency of their criminal proceedings. Defendants often sought a bail review before a county court judge to modify the type or amount

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[236] *County Re-Entry Task Force Initiative*, N.Y.S. Div. of Criminal Justice Servs., https://www.criminaljustice.ny.gov/crimnet/ojsa/initiatives/offender_reentry.htm.

[237] *Substance Abuse Treatment: For Adults in the Criminal Justice System*, Substance Abuse and Mental Health Services Admin., 2005, https://www.ncbi.nlm.nih.gov/books/NBK572948/.

[238] *Training*, N.Y.S. Div. of Criminal Justice Servs., https://www.criminaljustice.ny.gov/opca/training.htm.

[239] CPL §§ 110.10(2), 140.20.

[240] CPL § 520.10(2)(b), effective until January 1, 2020.

[241] CPL § 520.10(1).

[242] CPL § 510.30(2), effective until January 1, 2020.

of bail set,[243] especially in cases where the arraigning court did not have authority to set bail[244] or where excessive bail was set. Although this relief was available under the Criminal Procedure Law, it did not happen *immediately;* rather, counsel for the defendant needed to prepare a written application and gather information in support of that application before filing it with the court, as well as to rely on the court's availability to schedule it. Based on court calendars or unwritten policies, many bail reviews would take place a few days to a week after a defendant initially was detained.

That restraint on liberty resulted in defendants' lives drastically changing. Pretrial detention increased the likelihood of defendants pleading guilty[245] (because defendants were either convinced that they would be sentenced to time served or would have only a little time left to serve if they plead guilty, which decreased the desire to challenge the charges, versus contesting the charges and risk becoming convicted)[246] due to lack of representation, ineffective assistance of counsel, or a myriad of other reasons. Studies have shown that pretrial detention also increased the likelihood of being rearrested in the future,[247] as if a criminal history placed a target on your back for law enforcement.

Post-Covid Arrests. January 2020's Bail Reform overhauled decades of post-arrest arraignment practices. The reforms required defendants to be released on recognizance for all misdemeanors and E felonies (with some exceptions).[248] It listed "qualifying offenses" for which bail could be set,[249] and it required the setting of at least three forms of bail,[250] mandating that one of those forms be an unsecured or partially secured surety bond. Furthermore, it required the setting of the least restrictive non-monetary conditions of release for non-qualifying felony offenses.

Since 2020, more crimes have been added to the list of qualifying offenses, and the "least restrictive non-monetary" requirements have been removed. Arraigning judges have the ability to remand defendants on whatever forms of bail will reasonably assure a defendant's appearance in court. Release on recognizance remains an option for most misdemeanors and E felonies, allowing those defendants to be at liberty while their charges are pending.

Parole Reform. Since the inception of parole in 1977, when a releasee[251] was charged with violating the conditions of his parole, he was remanded upon the filing and execution of a

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[243] CPL § 530.30.

[244] CPL § 530.20 (2) prohibits justice courts from setting bail or from releasing the defendant if the defendant stands charged with a felony and has two or more felony convictions on his criminal record.

[245] Tiffany Bergin, Rene Ropac, Imani Randolph, Hannah Joseph, *The Initial Collateral Consequences of Pretrial Detention: Employment, Residential Stability, and Family Relationships*, NYC Criminal Justice Agency, Oct. 6, 2022, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4216882, at 2.

[246] *Id*. at 2.

[247] *Id*. at 2.

[248] CPL § 150.20(1).

[249] CPL §§ 510(4)(t), 530.40 (4) (t).

[250] CPL § 520.10 (2) (b).

[251] A "releasee" means a person who has been released from an institution under DOCCS's jurisdiction into the community on temporary release, presumptive release, parole, conditional release, post-release supervision or medical parole (Exec. Law § 259-i(5)).

declaration of delinquency and parole warrant (detainer) by his parole officer. The releasee remained remanded unless released after a preliminary revocation hearing[252] or after the conclusion of a final revocation hearing.[253] At a preliminary hearing, parole had the burden of proof to present probable cause that the releasee had violated the conditions of his parole in an important respect.[254]

The sole ability for a releasee to be at liberty pending his parole revocation proceedings hinged on parole's inability to meet that burden – there was no such thing as bail for parole proceedings. Parole was required to meet that burden on just one violation charge; therefore, if several charges were listed, parole could prove the easiest, technical violation to meet its burden and to remand the releasee until the conclusion of the final revocation hearing. At best, the releasee would be detained for 15 days, and at worst, the would be detained for 90 or more, depending on how long it took to conclude the revocation hearing. While incarcerated, releasees experienced the same hardships that detained defendants faced on criminal matters. In March 2022, parole practices were reformed under the Less is More Act. Among the many reforms to parole, this act created recognizance hearings[255] for releasees charged with parole violations, and those hearings were required to take place within 24 hours of parole warrant execution (or the next business day, if execution fell on a weekend or holiday).[256] At those hearings, parole had a different burden of proof: whether the releasee presented *a substantial risk of willfully failing to appear* at preliminary or final revocation hearing AND no non-monetary condition or combination of conditions in the community would reasonably assure an appearance.[257] This shifted focus away from the violation charges and onto flight risk, allowing many individuals to remain released and working while their charges were pending. It also decreased the time that releasees could be held before advocating for their release.

Since Less is More went into effect, the number of releasees remanded pending their preliminary and final parole revocation hearings has dropped 90%. In addition, as a result of these and other reforms provided for in the Less is More Act, more than 20,000 releasees have been discharged early from parole, reducing the statewide parole population by more than 40%. Based on the information above, it makes sense that bail and parole reforms decrease homelessness. These reforms should continue to remove those factors leading to homelessness.

E. Consequences of Conviction

While it may seem obvious, if a person is convicted of a crime, the impact of such a conviction usually extends further than the criminal record, affecting that person's employment status, housing stability, and access to government benefits. When a person is already experiencing or on the verge of homelessness, these effects can be exacerbated.

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[252] DOCCS formerly was required to hold preliminary hearings no later than 15 days after execution of a parole warrant (former 9 N.Y.C.R.R. § 8005.3, *et. seq.*).

[253] DOCCS formerly was required to hold final parole revocation hearings no later than 90 days after execution of a parole warrant (former 9 N.Y.C.R.R. § 8005.15, *et. seq.*).

[254] Former Exec. Law § 259-i (3).

[255] A "recognizance hearing" is a hearing to determine whether a releasee is to be detained pending a preliminary or final revocation hearing (Exec. Law § 259-i [3] [a] [iv-viii]). It's like a bail hearing for parole.

[256] *Id*.

[257] *Id*.

Employment. Employers treat incarceration as an unexcused absence, and usually do not hold jobs open while an employee remains incarcerated. In a 2022 study, 1,529 individuals arrested in New York City were interviewed to determine the collateral impacts of pretrial detention. In the short term, of those defendants who were interviewed, 20% reported losing employment, and 74% were more likely to become unemployed because of being detained rather than released at the time of arrest. The longer that they had been employed pre-arrest, though, increased the chances of them maintaining that employment post-arrest. Even upon release after any period of detention, approximately 27% of employed defendants were fired or laid off while approximately 16% were suspended. Although non-detained defendants also experienced difficulties in their working environments post-arrest, they experienced them at about 17% less than detained defendants. Furthermore, non-detained defendants had a 15% more chance of remaining employed than detained defendants.[258]

Housing. The law does not impose a stay on financial obligations for incarcerated individuals. If a defendant loses employment, then that person also loses the financial ability to pay for housing. While incarcerated, an individual has no income to pay his rent, mortgage, utilities, etc., and a landlord or mortgage holder has an easier time evicting an incarcerated tenant due to inability to fulfill the contractual terms of leases. The provision of government benefits ceases upon incarceration; in fact, detained defendants have a 271% increased likelihood of losing benefits over non-detained defendants. Detained defendants also have a 420% increased chance of becoming homeless over non-detained defendants. As a result, some incarcerated individuals lose the ability to maintain their housing throughout their incarceration. If they had difficulties affording housing costs pre-arrest, then arrest exacerbates those difficulties more quickly. [259] It takes several days, if not weeks, to reestablish those benefits after release from incarceration to be able to find suitable housing, again.

F. Policies and Recommendations

Because society tends to view homelessness through a criminal justice lens, there are often broad reaching policies that get enacted in an effort to curb homelessness. Whether the policy targets getting people off the streets or answering 911 calls with mental health professionals, these policies should be regularly evaluated for effectiveness. A policy succeeding in New York City may not make sense if enforced in the rural parts of the State. State-wide policies also raise cost concerns. For example, Mobile Crisis Teams can respond to calls quickly in urban areas, but the same cannot be said for rural counties where people are spread out geographically across a region. As the diversion models gain ground across the State, focus should be on whether efforts for intervention and diversion are realized in a lower rate of homelessness.

Apart from statewide policies, cities often work through the criminal justice system to effectuate a shift in the rate of homelessness. In New York City, Mayor Eric Adams issued a controversial directive to police officers to task them with involuntarily transporting individuals with mental illness who also lacked housing to hospitals if the person presented a serious risk of

[258] *Id*.

[259] *Id*. at 10.

harm to themselves or others.[260] The standard for what constituted "harm" was interpreted to include a person who "displays an inability to meet basic living needs, even when no recent dangerous act has been observed."[261] The policy does not offer flexibility, requiring an officer to ensure that the person is transported to the hospital even if the officer disagreed with the need for involuntary transport.[262] Proposed legislative changes would allow involuntary hospitalizations to expand to those who cannot care for themselves, rather than having a requirement of some kind of "harm."[263]

Reports indicate that New York City has placed dozens of people into stable housing or medical centers under this policy.[264] But there is still no tracking in place to see if the same people end up back on the street. Some critiques have also raised concern about the lack of capacity in the hospitals to care for the increased number of prospective patients.[265] Without additional funding, the policies cannot be effective. Further studies are needed to understand the effectiveness of the policy and how the inflexibility prevents police officers from using their discretion in any given situation.

Mayor Adams also announced a hotline run by New York City's public hospital system that would advise law enforcement officers seeking guidance as to whether an individual should be hospitalized against their will.[266] There were zero calls made in the first 6 months following the hotline's launch.[267] This hotline should be more widely publicized and police officers should be encouraged to make use of it.

Based on the above, there appears to be some successful programs that have helped people experiencing homelessness get off the streets. We recommend that these programs establish clear data collection efforts over the next few years to allow a deeper analysis into the success of each program, and in particular, whether there are ways to reduce or eliminate the use of law enforcement as the primary for of outreach to unsheltered individuals. The State should prioritize

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[260] *Transcript: Mayor Eric Adams Delivers Address on Mental Health Crisis in New York City and Holds Q-and-A*, NYC Office of the Mayor, Nov. 29, 2022, https://www.nyc.gov/office-of-the-mayor/news/871-22/transcript-mayor-eric-adams-delivers-address-mental-health-crisis-new-york-city-holds.

[261] *Mental Health Involuntary Removals*, Nov. 28, 2022, https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2022/Mental-Health-Involuntary-Removals.pdf.

[262] *Id*.

[263] Gabriel Poblete, *Adams Renews Push for Forced Psych Hospitalizations as Albany Gets Back to Work*, The City, Jan. 8, 2024, https://www.thecity.nyc/2024/01/08/city-hall-push-forced-hospitalization-albany-session/.

[264] Morgan McKay, *NYC Mayor Adams: Controversial homeless mental health initiative shows positive results*, Nov. 30, 2023, https://www.fox5ny.com/news/nyc-mayor-adams-homeless-mental-health-initiative; *54 mentally ill New Yorkers experiencing homelessness taken off city streets in past year, Mayor Eric Adams says*, CBS New York, Nov. 29, 2023, https://www.cbsnews.com/newyork/news/mayor-eric-adams-mentally-ill-homeless-hospitalized-plan-1-year/.

[265] *Fresh Start Initiative Kicks Off in Westchester*, Westchester County Office of the County Executive, Nov. 19, 2021, HYPERLINK "https://www.westchestergov.com/home/all-press-releases/9132-fresh-start-initiative-kicks-off-in-westchester.

[266] Wilfred Chan, *New York set up a hotline for police handling mental health cases. Not one officer has called*, The Guardian, Jul. 13, 2023, https://www.theguardian.com/us-news/2023/jul/13/new-york-police-nypd-mental-illness-hotline.

[267] *Id*.

evaluating the data to understand whether there are successful city initiatives that can be replicated in rural communities.

In the meantime, specific policies that have proven effective, such as the diversion and reentry programs and Westchester County's successful relocation of encampment residents described above, should be supported, replicated and expanded.

VIII. HOMELESSNESS AND THE BROADER COURT SYSTEM

A. The Intersection of the Court System and Homelessness

Individuals and families face eviction for myriad reasons, including financial challenges, unaffordable housing, health problems, defective housing, and lack of access to legal representation. When a tenant first appears in court for an eviction proceeding, they are almost inevitably beset by a number of intersecting challenges which combine to place them and their family at risk of homelessness. For example, an underlying mental health challenge can contribute both to difficulty taking care of an apartment and problems maintaining a job to pay the rent. Increases in rent may force a tenant to choose between paying the rent and paying for heat, or other basic requirements. A family member's illness or a broken car may have resulted in a job loss and resulting rent arrears. A landlord may have deprived a tenant of basic services such as heat, then sued the tenant for rent, leaving the tenant first without suitable shelter, then fighting to maintain the defective housing while securing repairs.

B. Foreclosures have represented an increasing threat to housing and homeownership since 2008.

While many New Yorkers lose their housing through the eviction process in Town, Village and City Courts, many others lose their homes in foreclosure. Foreclosures are a result of a homeowner failing to remain current on their note and mortgage obligation.[268] Residential foreclosure default rates mirror those we saw during the financial crises in 2008 and foreclosure filings have skyrocketed even further since the expiration of the New York State COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2019. New York State needs safeguards in place now to prevent further foreclosures and the deepening of the homelessness crisis.

New York is continuing to see incredibly high delinquency rates, especially in communities of color and, as noted above, the COVID pandemic has only exacerbated the problem. U.S. Census Household Pulse Survey data showed, as of fall 2023, an average of 8% of New York homeowners were delinquent on their mortgage loans, with an average of 306,587 New York families at risk of losing their homes.[269]

Many property owners face foreclosure because they have experienced some type of temporary financial setback – whether it a be reduction in working wages, the loss of a family member's income or increased expenses to name a few. Increased costs are likely to further contribute to increasing foreclosure rates, as nearly 30%of homeowners were cost burdened in 2022.[270] As noted above, HUD and other federal agencies define cost-burdened households as those for which housing costs exceed 30%of gross income and severely cost-burdened households are those that pay more than 50%of income towards housing.

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[268] *See* OSC Report generally.

[269] *New York's Home Owner Protection Program*, Legal Services NYC, Feb. 9, 2024, https://www.nysenate.gov/sites/default/files/admin/structure/media/manage/filefile/a/2024-02/legal-services-nyc-_24.pdf

[270]OSC Report at 6.

The average weekly mortgage delinquency rate in New York State between August and October 2023 was 8%(over 300,000 homeowners on average) according to US Census Household Pulse Survey data. This rate is over twice the last historical high for mortgages 30 to 89 days delinquent of 3.8%in January 2009. Additionally, New York State had one of the highest rates of foreclosure starts in the first half of 2023.[271] New York State Unified Court System data shows there have been 2,354 foreclosure filings from January 1, 2024 through February 25, 2024, with another 21,080 cases pending.[272]

New York State has a network of advocates who represent property owners in residential foreclosure cases. Attorneys and housing counselors help homeowners navigate an otherwise difficult foreclosure process. The likelihood of maintaining homeownership is low for owners without representation, as almost all lenders are represented by counsel throughout this process. Foreclosure defense advocates report that homeownership can often be preserved through securing loan modifications, by a conservative estimate, in 25–30%of cases. In instances where homeownership cannot be preserved, advocates provide resources to homeowners to help them land on their feet and avoid homelessness.

C. Rent is increasingly unaffordable.

As of February 2024, the median rent in New York State is $2,854, up 12.7% from February 2023 and up by 6.13% since January 2024.[273] New York's annual increase in median rents is the second greatest in the United States.[274] The average rent by year in New York State increases faster than the national average rent inflation rate. After adjusting for inflation, the median rent in New York State increased by 18.04% from 2000 to 2021.[275]

According to a recent report from the New York City Comptroller's office, the median "asking rent" on publicly listed apartments available for leasing in the City rose to a record high in 2023 and, as of January 2024, was at $3,500 per month citywide -- $42,000 per year[276]. In order to meet this rent obligation and not be rent-burdened (defined as paying 30% or more of income on rent), a household would need annual earnings of $140,000 or more.[277] This is more than double the City's median household income level in 2022.[278]

D. Evictions are devastating for families.

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[271] *Midyear 2023 U.S. Foreclosure Report*, ATTOM. https://www.attomdata.com/hnr/midyear-2023-u-s-foreclosure-report

[272] *Statewide Landlord-Tenant Eviction Dashboard (Dataset)*, N.Y.S. Unified Court Sys.m, https://ww2.nycourts.gov/lt-evictions-33576 (*Eviction Dashboard*).

[273] Jamie Forbes, *November 2024 Rent Report: Rents Fall as Affordability Improves*, Rent. Research, Mar. 26, 2024, https://www.rent.com/research/average-rent-price-report/.

[274] *Id.*, fig. 3.

[275] *Average Rent by Year (1940–2024)*, iPropertyManagement, https://ipropertymanagement.com/research/average-rent-by-year, last updated Sept. 2, 2024.

[276] OSC Report at para. 2.

[277] OSC Report at para. 2

[278] OSC Report at para. 5

Evictions result in severe and long-term negative outcomes, contributing to poverty and dramatically increased risk of death and educational harms. The long-term effects of evictions are felt by every member of a family, no matter how young. According to "A Comprehensive Demographic Profile of the United States Evicted Population," by researchers at Princeton, Rutgers and the U.S. Census Bureau, between 2007 and 2016, children under the age of five made up 12% of those affected by an eviction filing each year, the largest affected age group in the country, despite making up only 9% of all rental households. The data becomes increasingly disproportionate when factoring in race; nearly a quarter of black children under the age of five in rental homes face eviction each year.

The New York Times recently highlighted the effect of these evictions on young children, stating, "[h]ousing instability before age 5 can lead to delays in kindergarten readiness, and is associated with attention and behavior challenges and delayed cognitive skills throughout school. In adolescence, these children are more likely to have depression and anxiety and challenges with information processing" and citing to several recent reports supporting their assertions.[279]

Adults facing eviction don't fare much better, according to a report published in the American Journal of Preventive Medicine in February 2022 which analyzed New York City eviction records from 2017, comparing them to New York State Medicaid claims and medical spending. Researchers found that, "eviction was associated with 63% higher odds of losing Medicaid coverage [and] fewer pharmaceutical prescription fills. . . ." The report concludes that "preventing evictions may improve access to care and lower Medicaid costs."[280]

Furthermore, eviction and housing instability are tied to increased rates of mental health diagnoses according to a 2022 report published in the National Library of Medicine which states, "[t]he forced moves and housing instability are associated with developing anxiety and depressive symptoms,"[281] which can persist several years after the eviction,[282] and under extreme scenarios,

[279] *See* Emily Badger, Claire Cain Miller, & Alicia Parlapiano, *The Americans Most Threatened by Eviction: Young Children*, N.Y. Times, https://www.nytimes.com/2023/10/02/upshot/evictions-children-american-renters.html?smid=url-share, at para. 16.

[280] Gabriel L. Schwartz, et al.,. *Eviction, healthcare utilization, and disenrollment among New York City Medicaid patients*, 62(2) American J. of Preventive Medicine157, 157–164, https://doi.org/10.1016/j.amepre.2021.07.018

[281] Shakira F. Suglia, Cristiane S. Duarte & Megan T. Sandel, *Housing Quality, Housing Instability, and Maternal Mental Health*, 88 J. of. Urban Health 1105, 1105–1116 (2011), https://pubmed.ncbi.nlm.nih.gov/21647798/; Patrick J. Fowler, David B. Henry, Katherine E. Marcal, *Family and housing instability: Longitudinal impact on adolescent emotional and behavioral well-being*. 53 Social Sci. Research 364, 364–374 (2015), https://www.sciencedirect.com/science/article/abs/pii/S0049089X15001246; Dawn E. Alley et al., *Mortgage delinquency and changes in access to health resources and depressive symptoms in a nationally representative cohort of Americans older than 50 years*, 101 Am. J. of Pub. Health 2293, 2293–2298 (2011), https://www.sciencedirect.com/science/article/abs/pii/S0049089X15001246.

[282] Matthew Desmond & Rachel T. Kimbro, *Eviction's Fallout: Housing, Hardship and Health*, 94(1) Social Forces 1, 1–30 (Feb. 2015), https://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf.

could lead to suicide.[283] Based on these findings it is clear that, "[h]ousing policies and programs protecting tenants from eviction risk are important in improving the mental health of US adults."[284]

Most concerning was the Eviction Lab's finding, in a 2023 report titled, "Rising Rents and Evictions Linked to Premature Death," that being threatened with eviction, even when that threat did not ultimately lead to an eviction judgment, was associated with a 19% increase in mortality. Receiving an eviction judgment increased the risk of death by a staggering 40%. To reverse these troubling numbers, the Eviction Lab suggests, "[e]mergency rental assistance, eviction diversion, and legal aid programs that can help people avoid evictions."[285] It is clear that evictions have negative mental and physical health consequences for every member of the affected family. These health consequences have a rippling effect across the national economy, preventing students from excelling in school, parents from attending work, and exacerbating pre-existing medical conditions.

E. The Court system often fails to offer tenants a meaningful opportunity to defend their housing.

Eviction cases in New York State are almost exclusively conducted by summary proceedings, which move fast, have dire consequences, and afford tenant-respondents more limited rights than defendants in ordinary civil litigation. Tenants are noticed to appear in court between 10 and 17 days after they are served with the pleadings.[286] Even though there are often serious disputes about rent payment history, discovery is not ordinarily permitted.[287] Further, landlord-tenant law has become far more complex since 2019, and now includes, for example, notice requirements which depend on how long a tenant has lived at a dwelling. Tenants in subsidized housing have complex rights established by federal and state laws and regulations, but it is extremely difficult for a tenant, especially one without counsel, to present and preserve these rights in a summary proceeding in local court.

The procedural and substantive statutes which provide critical defenses for tenants at risk of losing their housing are only as effective as their implementation. Fortunately, among the other 2019 improvements to the Real Property Actions & Proceedings Law, Section 745 now assures tenants of the right to a 14-day adjournment, upon request, from the date of joinder of issue. This adjournment may afford a tenant time to secure representation and to assess and prepare available defenses.

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[283] Inmaculada Mateo-Rodríguez et al., *Risk of suicide in households threatened with eviction: the role of banks and social support*, 19(1) BMC Public Health 1250 (Sept. 11, 2019), https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-019-7548-9.

[284] Binod Acharya, Dependra Bhatta & Chandra Dhakal, *The risk of eviction and the mental health outcomes among the US adults*, 29 Preventive Medicine Reports 101981 (Oct. 2022). https://doi.org/10.1016/j.pmedr.2022.101981, sec. Conclusion.

[285] Juan Pablo Garnham, *Eviction diversion: preventing eviction before going to court*, The Eviction Lab, https://evictionlab.org/eviction-diversion/

[286] Real Property Actions and Proceedings Law (R.P.A.P.L.) 733.

[287] Civil Practice Law and Rules (C.P.L.R.) 408.

However, courts do not routinely advise tenants of their right to an adjournment. Some do not grant the required adjournment even when it is requested. One reason for this is the ambiguous requirement of "joinder of issue" as a threshold for the granting of an adjournment. Some courts have interpreted this as a requirement that tenants raise a "triable issue of fact" at their first appearance to be entitled to an adjournment. However, until a tenant is represented, they may be unable to identify and present procedural and substantive defenses to keep their housing. Courts generally do not *sua sponte* explore the defenses that may be available to tenants or assist a tenant in securing legal aid. As a result, many tenants face a warrant of eviction at their first court appearance without any meaningful opportunity to defend their housing. Tenants may also not be aware of the resources available in the community to assist with back rent or otherwise address the challenges they are facing.

Many judges in Town and Village Courts are not attorneys and many are unaware of the complexity of the legal issues implicated by summary proceedings. In many courts, even the requirements for serving basic court papers to put tenants on notice of the proceeding are misunderstood. This means that, with basic shelter at stake, many evictions are granted without a hearing, without exploration of available defenses, and sometimes without the tenants even having been served with a petition or notice to appear in court.

This reality is inconsistent with the actual law governing summary proceedings. Summary proceedings are civil litigation, the rules of evidence apply, and the burden is on the landlord to prove their case. Nonetheless, it has been observed that even when a landlord offers no evidence into the record, the court may question the tenant or simply rule in favor of the landlord. Defenses that should fully insulate a tenant from eviction are often denied without explanation from the court. To ensure due process of law, it is critical that a summary proceeding create a full record and result in a written decision based only on evidence which was property admitted.

When tenants do have attorneys, these lawyers face an extremely challenging structural landscape. Many courts are open once a week or less, making access to court files, which are supposed to be public records, difficult at best. Litigants are at a severe disadvantage when they cannot review the court filings prior to an appearance in court. Also, although the statute expressly authorizes post- judgment relief, such as when rent has been paid to satisfy a judgment,[288] such remedies are illusory if the court is closed.

Like all courts, those hearing summary proceedings prefer settlements to judicial determinations. However, many courts presume that a settlement will include a warrant of eviction on an extended timetable. Even when tenants raise defenses, like serious condition problems, the court or the landlord will often inquire as to how long the tenant needs to move or why they want to continue to live in a home if the conditions are deficient. These routine inquiries establish a de facto presumption in favor of the landlord and place tenants at a severe disadvantage when they seek to defend their housing and avoid homelessness. They also disregard the important observation of the Appellate Division, Second Department in *Ocean Rock Associates v. Cruz*, 66 A.D. 2d 878 (2d Dep't 1978), that since codification of the warranty of habitability at Real Property

[288] R.P.A.P.L. 749.

Law § 235-b, a tenant who has been denied vital services "is no longer confined to the dubious remedy of vacating his apartment."

To stabilize housing and abate the pressure to settle eviction cases with possession transferred to the landlord, it is important for courts to observe R.P.A.P.L. § 746 which, among other elements, ensures that unrepresented parties' defenses are considered and that they understand the terms of the agreement.

Even where there are substantial trial court missteps, it is exceedingly difficult and complex to perfect an appeal to County Court and the Appellate Terms, and even more onerous for a tenant to try to secure a stay from the Appellate Division when the County Court will not intervene. In the 3rd and 4th Departments, if the County Court does not grant a stay pending appeal, the Appellate Division currently lacks statutory jurisdiction until the appeal is decided by the County Court on the merits. By that point, the tenant would likely have been evicted without any substantive appellate review.

F. Right to Counsel programs improve the outlook for tenants, but are limited by a lack of financial resources and attorney capacity.

According to New York State Unified Court System data, following the expiration of pandemic-era eviction moratoria, the number of eviction filings is climbing back toward pre-pandemic levels. In 2023, the number of eviction filings in the State was 215,968, compared to 193,747 in 2022 and 261,935 in 2019. The top five counties with the highest eviction rates per households are Bronx (10.44%), Kings (4%), New York (3.46%), Albany (3.4%) and Erie (3.15%). In several counties, the number of warrants of eviction also increased substantially from 2022 to 2023[289]. For example: Bronx (from 3975 to 15,835); Kings (from 6720 to 12,524); New York (from 2999 to 8,763); Queens (from 1758 to 7,571) Westchester (from 2,941 to 4,800); Suffolk (2,720 to 4,749); Albany (from 1,698 to 2,319); Broome (from 581 to 628); Chautauqua (from 254 to 344); Erie (from 4,601 to 4,816); Fulton (from 195 to 301); Monroe (from 1,964 to 2,895); Onondaga (from 1,587 to 2,136).

The Furman Center published a research paper examining the number of non-answers and default judgments in New York State eviction proceedings from 2016 through 2022. According to this research, many tenants who receive an eviction filing either fail to formally answer the filing or fail to appear in court after answering. Tenants who do not appear risk default judgments, lose the opportunity to access services available through the court system (such as pro bono legal assistance) and, of course, forfeit the right to assert claims and defenses. Court system data reflects that from 2016 through 2022, the majority (54%), of non-payment eviction filings went unanswered. Approximately 20% (or 11% of all non-payment filings), resulted in default judgments against the tenant. The Furman Center study estimates that during the period examined, 40% of issued eviction warrants across the State were the result of a default judgment.

[289] *Eviction Dashboard,* sec. City and District Court Warrants of Eviction Issued.

Research indicates that increased access to legal services is associated with lower default rates.[290] In New York City, the rate at which tenants answered eviction filings began to rise as the City increased funding for legal services, even before the implementation of the Uniform Access to Counsel (UAC) program providing for a right to counsel in eviction proceedings.[291] The New York City Office of Civil Justice has issued a report on the UAC program for every fiscal year since its implementation. In its year 6 report for FY 2023, the Office of Civil Justice noted that eviction filings increased by 83% from FY 2022, but it also noted that in those Housing Court eviction and NYCHA termination cases with reported resolutions in FY 2023, 84% of households represented in court by lawyers were able to remain in their homes. Similar success rates were reported by the OCJ in their reports for FY 2021 (84%) and 2022 (78%). The OCJ's FY 2023 report also observed that "[s]ince the inception of the Universal Access to Counsel in 2017, New York City "has seen a substantial reduction in residential evictions by city marshals."[292] Compare 16,996 in 2019 to 4,109 in 2022.

Members of the Task Force's Subcommittee on the Court System met with Andrew Scherer, Professor of Law and Policy and Policy Director of the WILF Impact Center on Public Interest Law at New York Law School (and former LSNYC Executive Director), and with Katy Lasell of the Statewide Right to Counsel Coalition to review the status of right to counsel implementation.

The New York City Council enacted legislation/regulations in 2017 establishing the right to counsel for tenants in either Housing Court or NYCHA eviction proceedings. The regulations provided for a five-year implementation plan and $200,000,000 per year to fund lawyers and legal services. Although there are currently sixteen different service providers, there continues to be a woeful paucity of attorneys able and available to provide the services. Today, approximately 40% of tenants facing eviction in New York City receive legal services, as compared with the single digit percentage who received services before the regulations were enacted. Both Mr. Scherer and the online Housing Courts website state that 84% of the represented tenants end up staying in their homes.

Mr. Scherer reported that the number of eviction filings in New York City is down dramatically from a high of 300,000 per year to a current level closer to 100,000, and the courts have cooperated with New York's Office of Civil Justice of HRA that now provides tenants facing eviction with legal services. Oftentimes, however, tenants are first connected with advocates when they appear in court, with the initial contacts occurring in courthouse hallways. At that point, counsel request adjournments and courts grant the requests. Provider organizations may accept cases outside courthouses, but intake procedures are not initiated until after the court appearance.

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[290] Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35(2) Law & Society Review 419, 419–34 (2001), https://doi.org/10.2307/3185408.

[291] Ingrid G. Ellen et al., *Do Lawyers Matter? Early Evidence on Eviction Patterns After the Rollout of Universal Access to Counsel in New York City*, 31(3–5) Housing Policy Debate, 540, 540–61 (2020), https://doi.org/10.1080/10511482.2020.1825009.

[292] *Universal Access To Legal Services: A Report on Year Six of Implementation in New York City*, NYC Dept. of Soc. Servs. Off. of Civil Justice, 2023, https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2023.pdf.

The enormous volume of cases on city dockets and the short statutory adjournments often mean that legal aid programs lack the capacity to cover the number of cases being heard.

While HRA is supposed to provide rental assistance to tenants facing eviction because of non-payment of rent, tenants continue to face obstacles to securing back rent. Greater cooperation among administrative agencies like HRA and counsel and the courts would facilitate a greater reduction in eviction and housing emergencies that would, in turn, reduce homelessness in New York City.

Statewide, there are fewer services for tenants facing eviction. Currently, there is no right to counsel in eviction proceedings outside the City of New York. Tenants who are in eviction proceedings based on rent arrearages usually appear without counsel and face obstacles in obtaining monetary and related assistance from administrative agencies. While many legal services organizations across the State strive to meet the need for full-scope representation of tenants facing eviction, they face significant challenges. These include insufficient funds to pay the necessary number of attorneys a sufficiently competitive wage to allow sufficient recruitment and retention. Further, the breadth of courts spread across the State, without meaningful coordination or sufficient access to records, means that it is exceedingly difficult to deploy the limited number of available attorneys to every court where and when they are needed.

The Right to Counsel (RTC) Coalition is a tenant led advocacy group funded by foundations including the Fund for the City of New York, that is working to pass legislation establishing the right to counsel statewide. Seventeen cities outside New York State and four states have passed legislation designed to guarantee counsel to tenants facing eviction. There are or have been right to counsel bills pending in both houses of the State legislature that would mitigate homelessness in other parts of the State, S. 2721 (2021) and A. 1493 (2023), but neither bill has been passed.

The RTC coalition is aware of the paucity of lawyers in the State to provide legal services to tenants and is looking to ways to make more lawyers available and provide financial support to address this problem. There are programs underway to try to develop a pipeline which will assist in recruiting and preparing law students for housing practice. One example is a new initiative between Legal Assistance of Western New York, Inc and Cornell Law School, in which Cornell students will travel to Rochester City Court to represent tenants under direct supervision of Cornell Law School staff. Legal Assistance of Western New York is assisting in connecting this Cornell program with the court, financial resources under a subcontract, and the consortium of providers who handle cases in Rochester.

G. Diversion programs provide an opportunity to reduce eviction rates and stabilize housing.

In light of the extreme challenges facing tenants in eviction proceedings, and the severe harms of eviction, it is important to explore potential alternatives to the loss of housing. As noted above, many courts presume a case will end with an eviction, even when settled. However, there are resources available which can establish alternatives to eviction and stabilize tenant housing. These include emergency assistance from the Department of Social Services, non-profit agencies, and mental health providers. Tenant need for these services is usually at its most critical when

court proceedings are pending or imminent. However, the resources to prevent eviction are usually only tangentially connected, at most, to the court system.

The current disconnect between eviction prevention resources and the court system means that tenants and landlords come to court with a limited understanding of the available programs and their requirements. They often leave court without the tools to access those programs. Landlords also often do not understand their obligation to accept rent and cooperate with attempts to pay rent to resolve a nonpayment proceeding, which results in denials of assistance and ongoing eviction proceedings which should have been resolved.

Model programs exist for eviction diversion to resolve conflicts and access resources without loss of housing. For example, Philadelphia has an Eviction Diversion Program. Under that program, landlords are required to apply for and participate in the diversion program before they may commence an eviction proceeding. This program has funds available to prevent an eviction by paying up to $3500.[293] Philadelphia's Eviction Diversion Program has a success rate of approximately 70%.

The National Center for State Courts supports the establishment of programs that help to connect litigants with the community resources needed to prevent eviction.[294] Such approaches provide an opportunity to resolve landlord concerns and stabilize housing.

It is important that any thorough review of the massive and diffuse judicial machinery of eviction consider the tools available to preserve housing through meaningful structured collaboration and coordination of the equally diffuse (though admittedly insufficient) resources available to stabilize housings.

H. Recommendations

The Task Force on Homelessness accordingly makes the following recommendations with respect to the operation of the civil justice system in New York State.

1. Increase the availability of counsel for individuals facing foreclosure or eviction.

The data described above shows the significant disparity in results between tenants and homeowners who are represented by counsel and those who lack counsel. Measures should include increased funding for civil legal services providers who provide advice and representation in eviction and foreclosure proceedings; passage of a statewide law providing for a right to counsel in eviction and foreclosure actions; and implementation of a statewide program to train law students to become tenant advocates.

[293] *Eviction Diversion Program*, Dept. of Planning and Dev't of the City of Philadelphia, https://eviction-diversion.phila.gov/#/.

[294] *Eviction Diversion Initiative Grant Program*, Nat'l Center for State Courts,. https://www.ncsc.org/consulting-and-research/areas-of-expertise/access-to-justice/eviction-resources/eviction-diversion-initiative-grant-program.

2. Encourage the implementation of mandatory diversion programs in eviction proceedings.

Programs like Philadelphia's Eviction Diversion Program providing for alternatives to eviction have shown great success. Local jurisdictions should implement similar programs in which landlords are required or strongly encouraged to participate in similar mediation and eviction alternative programs before commencing an eviction proceeding.

3. Ensure that tenants' rights are being protected in eviction proceedings.

As described above, tenants frequently remain unaware of their right -- such as the right to a fourteen day adjournment under RPAPL §745 – and many courts lack understandings of the tenant protections in eviction proceedings, particularly at the Town and County Court level. The Office of Court Administration should establish a commission to examine eviction proceedings statewide and ensure that judges who handle eviction proceedings are receiving adequate training.

IX. CHILDREN AND FAMILIES

A. Background

Like homelessness in general, family homelessness is caused by a number of factors.[295] "Research shows that the primary cause of homelessness, particularly among families, is lack of affordable housing. Surveys of homeless families have identified the following major immediate, triggering causes of homelessness: eviction; doubled-up or severely overcrowded housing; domestic violence; job loss; and hazardous housing conditions."[296]

The myriad negative consequences of housing insecurity and homelessness on families with children are well-documented, impacting every member of the family. They include but are not limited to: reduced social networks and increased isolation,[297] negative impact to early childhood development,[298] disruptive school transfers or unreasonably long school commutes that cause increased absenteeism and poor academic performance,[299] and poor health care outcomes.[300] These detrimental effects often exacerbate one another and perpetuate the intergenerational cycle of homelessness. Children who grow up experiencing homelessness are more likely to experience homelessness as an adult.[301]

In the point in time ("PIT") count conducted in 2023 to estimate the number of individuals experiencing homelessness, throughout the State there were approximately 53,633 families with

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[295] "[I]t is often some jolt to this precarious situation – a lost job or work hours, conflict with family members they are staying with, an unanticipated bill or violence within the home – that leads families to seek help from homeless service programs." *Who Experiences Homelessness? Children and Families*, Nat'l Alliance to End Homelessness, https://endhomelessness.org/homelessness-in-america/who-experiences-homelessness/children-and-families/ (last updated December 2023).

[296] *Basic Facts About Homelessness: New York City*, Coalition for the Homeless, https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/ (last updated December 2024).

[297] "" Sarah Murran and Eavan Brady, *How does family homelessness impact on children's development? A critical review of the literature*, 28(2) Child & Family Social Work 360, 360–71, (May 2023).

[298] "[Homelessness] can negatively impact brain development and result in poorer educational outcomes. Homelessness during infancy and toddlerhood has been linked to social emotional delays (Armstrong, & Tisdale, 2015), poor academic achievement and engagement (Fantuzzo, J., LeBoeuf, W., Brumley, B., Perlman, 2013), and underdeveloped social skills in elementary school (Brumley, Fantuzzo, Perlman, & Zager, 2015)." Jan Moore, *Practices in Homeless Education Brief Series: Early Care and Education for Young Children Experiencing Homelessness*,___, Nat'l Center for Homeless Education, Summer 2018, https://nche.ed.gov/wp-content/uploads/2019/09/Early-Care-and-Education-for-Young-Children-Experiencing-Homelessness.pdf.

[299] "School-age homeless children face barriers to enrolling and attending school, including transportation problems, residency requirements, inability to obtain previous school records, and lack of clothing and school supplies." *Families with Children Experiencing Homelessness*, Nat'l Coalition for the Homeless, https://nationalhomeless.org/families-youth-education/.

[300] "Homelessness severely impacts the health and well being of all family members. Children without a home are in fair or poor health twice as often as other children, and have higher rates of asthma, ear infections, stomach problems, and speech problems (Better Homes Fund, 1999). Homeless children also experience more mental health problems, such as anxiety, depression, and withdrawal. They are twice as likely to experience hunger, and four times as likely to have delayed development." *Id.*

[301] *Youth Homelessness Overview*, Nat'l Conference of State Legislators, March 29, 2023, https://www.ncsl.org/human-services/youth-homelessness-overview.

children and 29,377 children under the age of 18 living in government-funded shelters on a given night in January. [302] Much of this population is centered in urban areas and densely populated suburban areas such as Long Island where publicly-funded shelters are most prevalent. Data collected from CoCs that serve these communities found the following number of individuals living in families who were experiencing homelessness, 46,923 in New York City, 2,456 on Long Island, 545 in Buffalo, 355 in Rochester, 698 in Yonkers, 344 in Syracuse, and 297 in Albany.[303]

These numbers, of course, only represent families in the shelter system and do not capture all of the families experiencing homelessness as this Task Force has defined it. See Section II(D) supra. Although harder to quantify accurately, in 2019 there were an estimated 3.7 million people nationally living in doubled up housing,[304] and an estimated 135 people out of every 10,000 in New York State in untenable, temporary living situations: doubled up with friends or family, living in public spaces or out of automobiles.[305] These families who are experiencing homelessness outside the shelter system experience the same financial, employment, academic and health issues as those within the shelter system.

By far, the largest proportion of families experiencing homelessness in the State are people of color. See chart below.[306]

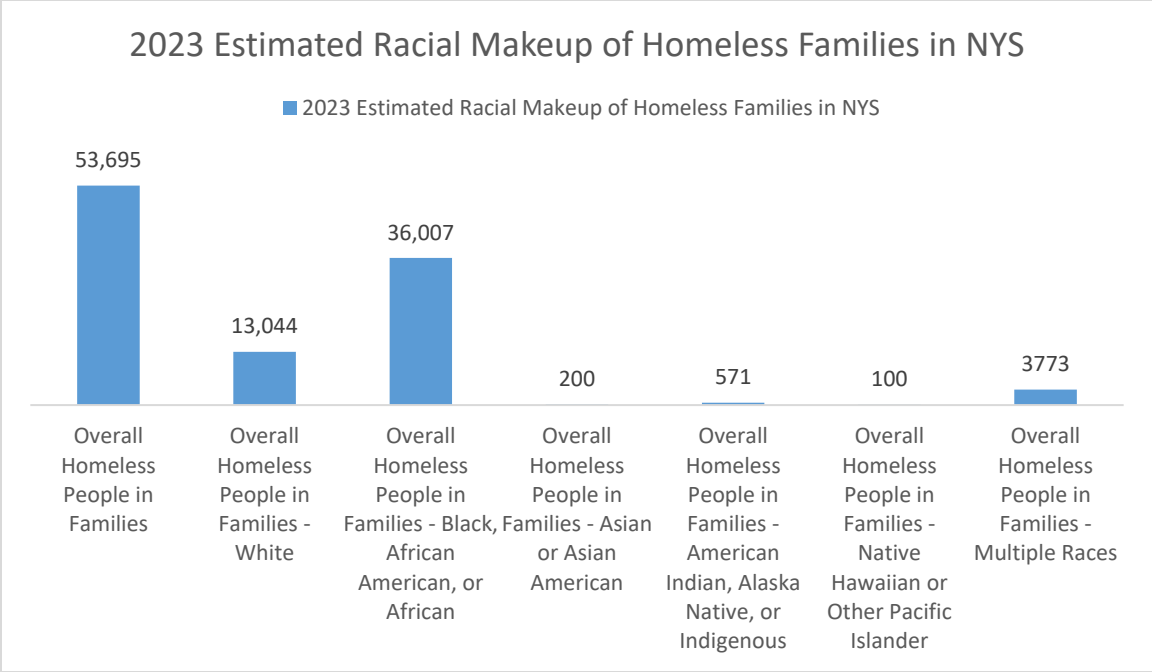
[302] *2023 Annual Homelessness Assessment Report, 2007–2023 Point-in-Time Estimates by State*, U.S. Dept. of Hous. and Urban Dev't Off. of Policy Dev't and Research, https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html.

[303] *2023 Annual Homelessness Assessment Report, 2007–2023 Point-in-Time Estimates by CoC*, U.S. Dept. of Hous. and Urban Dev'tOff. of Policy Dev't and Research, https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html.

[304] Erik Gartland, *Hidden Housing Instability: 3.7 Million People Live in Doubled-Up Households*, Center on Budget and Policy Priorities, Sept. 6, 2022, https://www.cbpp.org/blog/hidden-housing-instability-37-million-people-live-in-doubled-up-households.

[305] Id.

[306] 2007–2023 Point-in-Time Estimates by State, *supra* note 302.



As stated previously, numerous causes can and do lead to homelessness such as job loss or other economic hardship leading to eviction, domestic violence, mental or physical illness, or recent migration. Nonetheless, the most significant contributing factor in New York is the lack of affordable housing. As detailed in Section IV, a substantial increase in the number of affordable housing units must be at the core of the State's homelessness policy. Nonetheless, reducing the number of people in the State who experience homelessness requires a multi-faceted approach. Accordingly, we make the following additional recommendations, with a focus on families with children.

B. Recommendations

1. Reorient current policies and programs to target more resources toward upstream interventions that keep families in their homes.

A large proportion of money and services currently devoted to homelessness issues are focused on people who have already lost their homes and have had to resort to the shelter system. As noted above, families who are forced to enter the shelter system experience disruptions to work, school, health care, childcare and community support. The shelter system is not a momentary stop-gap measure for most families. During the 2023 Fiscal Year, the average stay of a family in the New York City shelter system was 750 days (over two years).[307] In the Cattaraugus County family shelter from January 1, 2022 through March 1, 2024, the average family stay was 109 days.

According to the State Education Department data, 155,147 students were identified as homeless during the 2022–2023 school year.[308] 119,000 New York City students (roughly one in

[307] *Preliminary Mayor's Management Report*, NYC Mayor's Office of Operations, January 2024, at 219.

[308] *Student Information Repository System (SIRS)*, N.Y.S. Dept. of Education, https://www.p12.nysed.gov/irs/sirs/.

9) experienced homelessness during the same period.[309] While the recent influx of migrants has increased these numbers, student homelessness has been a persistent problem for many years. 2022-2023 marked the eighth consecutive school year in which more than 100,000 public school students in New York City were identified as homeless.[310] Of the 119,000 New York City students in temporary housing, 40,840 (34%) spent time living in City shelters, more than 72,500 (61%) were doubled up or temporarily sharing housing of others, and about 5,900 were living in hotels and motels, unsheltered, or otherwise lacking a regular and adequate nighttime residence.[311]

As noted below, problems of absenteeism and school performance persist for many students in the shelter system, either due to long school commutes or the need to change schools. Transferring a child away from teachers, counselors and classmates with whom he or she is familiar and who understand the personality and needs of the child is extremely disruptive. The number of school transfers among children experiencing homelessness far exceeds those of children who are not. In 2022, New York City students in temporary housing were more than four times as likely as students with permanent housing to transfer schools.[312] Families who choose to keep a child enrolled in his or her "School of Origin" often experience excessive school commutes after being forced out of their home. This often results in the child being deprived of access to school meals programs and extracurricular activities and often results in less time to do homework. With all the problems and barriers these children face due to homelessness, it is not surprising that their attendance and academic performance suffer.

Meanwhile, the parents of these children often have to miss work or forfeit employment opportunities due to lack of childcare and/or the need to accompany to school children who are too young to use public transportation by themselves, assuming such public transportation is even available.[313]

Waiting for families to enter shelter before helping them is extremely inefficient from an economic perspective. As an illustration, in New York State, there are an estimated 450,000 households behind on their rent, with approximately 362,000 children in these households.[314] The average amount of arrears for these households is $3,400.[315] The annual cost of maintaining a family in a NYC shelter, by contrast is $84,826.[316] Thus, keeping families in their homes is, by

[309] *Issue Brief: Student Homelessness in New York City, 2022–23,* Advocates for Children of New York, Nov. 1, 2023.

[310] *Id*.

[311] *Id*.

[312] *Id*.

[313] As noted in Section XI, families experiencing homelessness in more rural areas of the state are often sheltered where public transportation is scarce or non-existent.

[314] National Equity Atlas, https://nationalequityatlas.org/.

[315] *Id*.

[316] *2023 Mayor's Management Report*, NYC Mayor's Office of Operations, Sept. 2023, https://www.nyc.gov/assets/operations/downloads/pdf/mmr2023/2023_mmr.pdf . This amount does not include the costs of the intake process.

far, the most effective and efficient way to avoid the myriad negative consequences of homelessness.[317]

2. Increase the availability and amount of vouchers and rent subsidies.

Vouchers are highly effective at reducing homelessness, overcrowding, and housing instability and can enable people with low incomes to rent housing in a wider range of neighborhoods. Furthermore, evidence demonstrates that housing vouchers improve housing stability, reduce exposure to domestic violence, and lower incidences of food insecurity.

HUD's funded Family Options Study, for example, found that for most families, homelessness is a housing affordability problem that can be remedied with long-term housing subsidies. Moreover, the study showed that the provision of permanent housing vouchers to families resulted in significant positive impact beyond housing stability, including significant reductions in family separations, substance use, exposure to intimate partner violence and psychological distress, and increased food security.[318] The children in these families had fewer school transfers, lower absenteeism and fewer behavioral problems.[319]

To maximize the benefits, subsidies must reflect the actual cost of housing in their communities. As noted above, Section 8 vouchers are based on the Fair Market Rent ("FMR") of rents in the various regions of the State. In many areas, however, actual rental costs exceed FMR as determined by Section 8 regulations. Subsidy amounts should be based on "rent reasonableness" – i.e., based on the actual rental costs in a given area.

Counterproductive restrictions and limitations in existing programs should also be reduced or eliminated, where possible. For example, the Special One-Time Assistance ("SOTA") program adopted by New York City will pay one year of rent for a family with children who have been in a DHS shelter for at least 90 days. DHS spends approximately $20,000 per year on each family that receives a SOTA grant.[320] While helping families to exit the shelter system into more permanent housing is of obvious need and importance, earlier intervention that enabled these families to stay in their homes would be far less costly and far more beneficial to the family. Thus, we recommend allowing for earlier intervention before families fall into homelessness by eliminating the "in shelter" requirement for SOTA and other similar rent subsidy or support programs.

Steps have recently been taken to expand the eligibility for and the benefits provided by some existing rental assistance programs. For example, in January 2023, New York City's DSS increased the rent limits under the CityFHEPS program – currently the primary New York City-

[317] In Section VIII *supra*, this Report addresses the importance of legal assistance and pre-eviction diversion programs to reduce the number of otherwise avoidable evictions.

[318] *See Family Options Study: 3-Year Impacts of Housing and Services Interventions for Homeless Families*, U.S. Dept. of Hous. And Urban Dev't Off. of Policy Dev't and Research, https://www.huduser.gov/portal/sites/default/files/pdf/FamilyOptionsStudySummaryReport.pdf.

[319] *Id*.

[320] David Brand, *Far Fewer Homeless Families Using Rent Subsidies to Move Out of NYC*, City Limits, Oct. 13, 2021, https://citylimits.org/2021/10/13/far-fewer-homeless-families-using-rent-subsidies-to-move-out-of-nyc/

funded rental assistance program – to match Section 8 price levels.[321] Following the increase, the rent limit for a 2-bedroom for households with 3-4 members, including utilities, is $2,696. This is still significantly less than the average New York City per month rent of $3,500.[322] The City Council has also taken steps to increase the number of individuals and families eligible for the CityFHEPS program.[323] While this is a positive development, increasing the number of CityFHEPS applications will strain an already overburdened system unless additional employees and eligibility specialists are hired. The number of active employees who work on CityFHEPS has decreased in recent years while caseloads have increased.[324] In the past, the City did not publish data on the length of time required between application for and receipt of CityFHEPS benefits, but according to New York City's Independent Budget Office (the "IBO"), there have been "clear indications that the program is facing significant delays, including multiple reports of eviction filings due to delays with payment or recertification."[325] For example, Cash Assistance applications – a prerequisite to obtaining CityFHEPS benefits – are not being processed in a timely manner. In 2023, just 29% of the Cash Assistance applications were processed on time.[326] Going forward, the City Council has passed legislation requiring the City to publish data on the timeliness of CityFHEPS rental assistance payments. While we support the expansion of benefits and eligibility under programs such as CityFHEPS, it is critical that these improvements be accompanied by commensurate increases in personnel.

3. The Public Assistance Shelter Allowance should be increased to reflect the current fair market rent level.

New York State's Family Assistance grant consists of two parts: a shelter and a non-shelter grant. The shelter grant is further divided into shelter allowances for households with children and for households without children. The amounts of the shelter allowances are established by regulations promulgated by the New York Office of Temporary and Disability Assistance ("OTDA").

The amount of the shelter allowance for households with children varies based on county of residence, household size and composition.[327]

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[321] According to a recent report from the Independent Budget Office, New York City expended $333 million on CityFHEPS in 2022 and $499 million in 2023. *Understanding the City Fighting Homelessness and Eviction Prevention Supplement (CityFHEPS) Program: Budget, Usage, Expansion Projections and Concerns*, NYC Independent Budget Office, , Jan. 2024, https://www.ibo.nyc.ny.us/iboreports/CityFHEPS_Jan2024.pdf.

[322] *Spotlight: New York City's Rental Housing Market*, Off. of the NYC Comptroller, Jan. 17, 2024, https://comptroller.nyc.gov/reports/spotlight-new-york-citys-rental-housing-market/.

[323] *Id*.

[324] *Id*. At HRA, which processes CityFHEPS benefits applications, the number of employees related to Cash Assistance processing fell by approximately 15 percent from 2019 to 2023 while the caseloads increased by roughly 14 percent in the same period.

[325] *Id*.

[326] *Id*.

[327] Households also receive a home energy allowance, depending on whether utilities are included in the rent.

According to an annual analysis of the fair market rent in each New York county performed by HUD, housing costs in New York State are among the highest in the country. [328] This fact is well recognized by the OTDA.[329] As numerous studies and organizations have recognized, the amount of the shelter allowance for families with children, which has not been adjusted since 2003, is far below the actual cost of decent housing.[330] The current shelter allowance for a family of three with children ranges from $259 for Franklin County to $447 for Suffolk County, as compared to HUD's 2023 Fair Market Rent determination for a 2-bedroom apartment of $826 in Franklin County (a $567 shortfall) and $2,297 in Suffolk County (a $1,850 shortfall).[331] Shortfalls of this nature exist in every county of New York, all exceeding $500 per month. The shortfall in 18 counties exceeds $1,000; the shortfall in 7 counties exceeds $2,000. In other words, in each and every county of New York, there are virtually no habitable units available for the amount of rental assistance provided by the current shelter allowance.

4. Create a New York State Housing Access Voucher Program to shorten waitlists and tailor it to the needs of New York families.

Federal housing subsidies, such as those offered through the Housing Choice voucher program, are only made available to roughly 25% of the households who are eligible to receive them.[332] In response to this deficiency, the New York State Legislature has proposed a Housing Access Voucher Program ("HAVP") that would allocate $250 million in the State budget to create a statewide housing voucher for households currently experiencing homelessness and those at risk of eviction. The HAVP would augment both federal and state programs, including Housing Choice and New York City's CityFHEPS program. HAVP funds would be allocated based on the number of severely rent-burdened households in a county or city (defined as those who pay more than 50% of their income on rent). In its current form, the proposed legislation calls for 50% of the funds in each jurisdiction to be spent on households currently experiencing homelessness and 50% to be spent to help households avoid eviction. The Furman Center estimates that the program in this form would serve 13,764 households throughout the State.[333]

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[328] *National Comprehensive Housing Market Analysis*, U.S> Dept. of Hous. And Urban Dev't Off. of Policy Dev't and Research, 2024, https://www.huduser.gov/portal/publications/pdf/National-CHMA-24.pdf.

[329] "Housing costs in New York State are among the highest in the nation, and [are] more than twice the national average." *Meeting 01, Data Orientation*, Child Poverty Reduction Advisory Council October 13, 2022, at minute 1:12, https://otda.ny.gov/news/meetings/attachments/2022-10-13-CPRAC-Presentation.pdf.

[330] Empire Justice Report; Rochester organization report.

[331] *Shelter Allowance for 1 Person, No Children, Compared to HUD's 2023 Fair Market Rent for a Studio Apartment*, Let's End Homelessness, https://letsendhomelessness.org/wp-content/uploads/formidable/31/1188_001.pdf.

[332] Will Fischer, Sonya Acosta & Erik Gartland, *More Housing Vouchers: Most Important Step to Help More People Afford Stables Homes*, Center on Budget and Policy Priorities, May 13, 2021. https://www.cbpp.org/research/housing/more-housing-vouchers-most-important-step-to-help-more-people-afford-stable-homes; Hayley Raetz, Jiaqi Dong, Matthew Murphy & Vicki Been, *A State-Level Rent Voucher Program*, NYU Furman Center, Mar. 10, 2022, https://furmancenter.org/files/publications/2_A_State-Level_Rent_Voucher_Program_Final.pdf.

[333] *Id*.

Several other states, including New Jersey, Connecticut, Massachusetts, and Colorado, have enacted state-funded voucher programs.[334] While none of these programs meets the needs of all eligible households, each expands the availability of vouchers to those who are eligible under the federal programs but do not receive vouchers due to budget shortfalls or otherwise.[335] The monthly cost to New York State per household of HAVP would be, on average, $1,514.[336] This figure does not take into account the savings that federal, State and local governments would realize in the form of reduced spending on emergency shelter and reduced costs of health care and other supportive services. Accordingly, the legislature should be encouraged to enact the proposed legislation.

5. Preserve access to affordable and supportive housing with essential wrap-around services for the whole family.

Permanent supportive housing, which combines quality units with on-site services, has proven to be one of the most effective tools available to combat chronic homelessness for individuals and families with children such as those leaving domestic violence situations. Along with improved housing stability, supportive housing placement is also associated with reduced preventable health care visits among homeless families.[337]

According to the Supportive Housing Network of New York, New York State's Supportive Housing Program (NYSSHP) is the oldest and lowest-funded supportive housing program in the State. That program has 20,000 total supportive housing units, currently provides annual support of $2,736 per individual and $3,672 per family and does not have dedicated rental assistance for most tenants.

Programs funded solely through NYSSHP therefore face limitations in the services they can provide and the salary level they can offer to employees, leading to high staff turnover and unfilled vacancies. Also, not having any rental assistance creates additional and unnecessary burdens for both providers and potential tenants.

At the same time, the Empire State Supportive Housing Initiative (ESSHI) was launched in 2016 and provides an additional 20,000 supportive housing units in the State, with up to $25,000 offered per unit annually for social services and rental assistance.

The Supportive Housing Network of New York estimates that there are approximately 9,000 "at-risk" NYSSHP units, due to underfunding and the lack of dedicated rental assistance. We support a plan to move these units under the ESSHI, where they would receive more funding.

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[334] *Id*.

[335] *Id*.

[336] *Id*.

[337] Sungwoo Lim et al., *Impact of a New York City Supportive Housing Program on Housing Stability and Preventable Health Care among Homeless Families*, 53(5) Health Serv. Research 3437, 3437–54, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6153151/.

The other 11,000 units under NYSSHP should receive additional funding from federal, State and local programs.[338]

6. Increase Access to Much Needed Health Care Services.

As noted elsewhere in this report it is well established that "housing is healthcare." This is particularly true with respect to families, and providing families with children with suitable housing improves health outcomes and substantially reduces Medicaid costs. Children experiencing homelessness suffer from poor nutrition, inadequate sleep, a variety of otherwise avoidable physical health issues and increase behavioral and mental health challenges, including cognitive impairment, depression, anxiety and aggression.[339] Frequent moves and dislocations result in inconsistent health care providers and inadequate treatment and access to medications. These challenges are particularly pronounced in rural areas where fewer service providers are available.

Families with unstable housing often have difficulty accessing existing programs and services. Furthermore, current supportive housing programs offered through the Medicaid system are geared toward a relatively narrow band of people with disabilities, who have mental health issues or who are transitioning from psychiatric or skilled nursing facilities. While these are important populations to service, they constitute a small subset of those experiencing homelessness. For example, current programs do not, for the most part, provide assistance to non-disabled children. As set forth in Section VI, the Task Force recommends expanding and improving access to existing health care services.

7. Improve Educational Access for Children in Shelters.

Children who enter the shelter system suffer significant negative impacts on their education. School transfers, especially in the midst of the school year, are extremely disruptive. When a shelter is far from a student's existing school, a long school commute may result in increased tardiness and absenteeism and cause the student to miss out on school breakfast and extracurricular programs. Approximately 72% of students who enter the New York City shelter system were marked "chronically truant" for missing at least 18 days of school in the 2022-2023 school year.[340] Extensive research establishes that the academic performance of students in shelter

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[338] *The State of Supportive Housing*, Supportive Housing Network of New York, April 4, 2024, https://shnny.org/images/uploads/State_of_Supportive_Housing_4.4.24_final_.pdf.

[339] "Children experiencing homelessness may be affected by a variety of health challenges because of difficulty accessing regular health care or not having a medical home, inadequate nutrition and access to food, education interruptions, trauma, and disruption in family dynamics. Children experiencing homelessness are sick at twice the rate of children who have homes. They also go hungry twice as often as children who have homes. Children experiencing homelessness have twice the rate of learning disabilities and three times the rate of emotional and behavioral problems of children who have homes." *Caring for the Health and Wellness of Children Experiencing Homelessness*, Nat'l Center on Early Childhood Health and Wellness, June 3, 2024, https://eclkc.ohs.acf.hhs.gov/publication/caring-health-wellness-children-experiencing-homelessness.

[340] *See* Michael Elsen-Rooney, *Influx of Asylum Seekers Pushes NYC's Homeless Student Population to Record High*, Chalkbeat, Nov. 1, 2023, https://www.chalkbeat.org/newyork/2023/11/1/23941021/nyc-schools-homeless-students-record-high-number/#:~:text=An%20astounding%2072%25%20of%20students,compiled%20by%20Advocates%20for%20Children.

is far worse than their peers.[341] In 2021–2022 (the most recent year for which data are available), students living in shelter dropped out of high school at more than three times the rate of their permanently housed peers and only 22% of those in grades 3–8 reached proficiency on the State English Language Arts exam.[342]

The McKinney-Vento Act guarantees the right of families experiencing homelessness to keep their children enrolled in their schools of origin and imposes legal obligations on the State to protect that right through proximate shelter placements and adequate transportation. Nonetheless, adequate school transportation is often unavailable to students in shelters or temporary housing. For example, while Metro Cards are provided in New York City for parents and children when busing is not available, the need to escort young children back and forth to school interferes with the parents' ability to work, to tend to the needs of the family's other children or to otherwise pursue means to stabilize the family's living situation. Moreover, in many areas of the State, public transportation is simply not available. As a result, families who do not have a car or cab fare have no reliable means to get their children to school unless and until school buses are rerouted to provide transportation.

Placing families who enter the shelter system in the same borough in which the youngest child's "school of origin" is located (a "School of Origin Placement") should be made more of a priority. Although federal, State and City law require that homeless students and their families be given the opportunity to remain enrolled in the student's school of origin, families in New York City often do not receive a School of Origin Placement.[343] If a School of Origin Placement is not available when a family initially enters the shelter system, DHS should proactively monitor shelter vacancies and offer transfers to the family when a borough of origin placement becomes available.

8. Make access to the shelter system more available and less burdensome.

In New York City, there is one intake center (in the South Bronx) for every family seeking to enter the shelter system. This makes the placement process more arduous than it needs to be and places additional burdens on families who are already in crisis. DHS should establish at least one family intake center in each borough.

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[341] *See, e.g.*, Troy Closson, *More Than 104,000 New York City Students Were Homeless Last Year*, N.Y. Times, Oct. 26, 2022, https://www.nytimes.com/2022/10/26/nyregion/nyc-homeless-students.html ("Only 60 percent of homeless high school students living in shelters graduate in four years. Their high school drop out rate is three times higher than that of students in stable housing.").

[342] *Issue Brief: Student Homelessness in New York City, 2022-23*, Advocates for Children of New York, Nov. 1, 2023, https://advocatesforchildren.org/policy-resource/student-homelessness-data-2023/.

[343] According to the Fiscal 2024 Preliminary Mayor's Management Report, in 2023, 58% of homeless families were initially placed in the borough of their youngest school-aged child's school address. For the same period, 77.3% of families were living in the borough of their youngest school-aged child's school address, the difference presumably due to a combination of school transfers and shelter transfers. *See* https://www.nyc.gov/assets/operations/downloads/pdf/mmr2024/2024_mmr.pdf.

Moreover, the application process for families seeking shelter should be simplified. As of 2022, 40% of family applications at DHS shelters in NYC were initially denied.[344] Shelter intake applications should be simplified and streamlined to improve the pathway into shelter for families.

There is a shortage of family shelters outside of New York City. This is particularly true in upstate New York, where a large geographic scope and diversity of urban and rural communities create many logistical issues. If funded, the larger upstate cities and counties could model initiatives after New York City programs. Although rural youth experience homelessness at approximately the same rate as urban youth, programs that are effective in an urban setting may not produce the same results in rural settings. Funding should be provided to support the development and assessment of customized housing service delivery models to support homeless children and families in rural communities. Like in New York City, the eligibility process for shelters or assistance from the upstate county social services agency should be simplified and streamlined.

In areas of the State where there are few shelters for families with children, such as rural areas, additional diversion resources should be used to assist families in finding alternative, more permanent, forms of shelter. While many shelters counsel families on other viable housing options, more resources can be dedicated to these efforts. Some shelter systems in other states have seen success when providing money for rent, mediation, or other forms of connecting individuals facing homelessness with an alternative to the shelter system.[345] Directing additional resources to diversion efforts in areas with low access to family shelters would likely prove more cost effective than the construction and maintenance of new shelters.

9. Increase the number of shelters that provide services to victims of domestic violence.

While earlier upstream prevention measures is the recommended approach for many families experiencing homelessness, domestic violence situations present different challenges and require different solutions. For domestic violence victims, remaining in their current home is not a safe or viable option. A large number of domestic violence victims who confront this dilemma are women with children. For example, in New York City in 2022, 10,640 domestic violence survivors sought refuge in the Human Resources Administration ("HRA") domestic violence shelter system, 96% of whom were families with children. 97% of heads of households in HRA domestic violence shelters identified as female, 60% were Black and 33% were Hispanic. In January 2024, there were 1,361 families with children in HRA-administered domestic violence shelters. Separately, there were 776 families with children in HRA domestic violence emergency shelters and 585 families with children in HRA domestic violence Tier II/transitional shelters.

In 2022, the State Division of Criminal Justice Services ("DCJS") reported 39,224 domestic violence victims in New York City (an increase of 4,297 or 12% from 2021) and 49,598

[344] *See* Belinda Juran & Paige Warren, *The Moral and Economic Answer to NYC's Homelessness Isn't Shelter, It's Housing*, Harv. Advance Leadership Initiative: Soc. Impact Rev., Dec. 18, 2023, https://www.sir.advancedleadership.harvard.edu/articles/moral-economic-answer-nyc-homelessness-isnt-shelter-its-housing.

[345] *See* Aidan Gardiner, *The Shelters Keeping People Out of Shelters*, N.Y. Times, Mar. 7, 2024, https://www.nytimes.com/2024/03/07/headway/homeless-shelters-family-double-up.html.

in the rest of the State (an increase of 766 or 2% from 2021). Of course, these statistics do not include many victims of domestic violence who do not enter the criminal justice system.

The National Network to End Domestic Violence ("NNEDV") conducts a one-day, unduplicated count survey of adults and children who sought domestic violence services in a single 24-hour period. The most recent survey revealed in a single day in 2023 that 9,411 adult and child victims of domestic violence received services by domestic violence programs in New York State; 5,173 victims found refuge in emergency housing; and hotline staff received 1,573 calls, averaging nearly 66 calls per hour. On the same day, it was reported that 1,045 requests for help went unmet due to a lack of available resources by local providers of domestic violence programs.

Outside of New York City and other large urban areas, such as Buffalo, there are very few shelters serving victims of domestic violence and their families.[346] Most of the 57 counties outside of New York City have only one domestic violence organization that provides residential services.[347]

10. Expand New York State's Child Tax Credit.

New York offers a credit to taxpayers with qualifying minor children. The current credit is small, with families only receiving the larger of $100 or 33% of the federal child tax credit.348 Other states offering such credits have systems that significantly increase the child tax credit for the lowest income earners.[349] Vermont, for example, provides a $1,000 credit per qualifying child. New Jersey provides $500.[350] While some legislators have argued for a larger child tax credit,[351] more action is needed. Increasing the amount of the New York child tax credit and directing its benefits to the lowest income earners might decrease homelessness and decrease pressure on an already strained family shelter system.

[346] Only 44% of the 122 domestic violence services providers in New York State provide transitional housing services. *See New York Domestic Violence Help, Programs and Statistics,* DomesticShelters.org, https://www.domesticshelters.org/help/ny.

[347] New York State Coalition Against Domestic Violence Program Directory.

[348] If the federal child tax credit increases, there will not be a proportionate increase in the New York child tax credit. The federal tax credit amounts and income thresholds are based on 2017 numbers. *See Empire State child credit,* N.Y.S. Dept. of Tax'n and Fin., Mar. 15, 2024, https://www.tax.ny.gov/pit/credits/empire_state_child_credit.htm.

[349] *See Child Tax Credit Overview*, Nat'l Conf. of State Legislatures, Jan. 26, 2024, https://www.ncsl.org/human-services/child-tax-credit-overview.

[350] *See id.*

[351] *See* Susan Arbetter, *Expanding New York's Child Tax Credit Is On the Negotiating Table*, Spectrum Loc. News, Apr. 7, 2023, https://spectrumlocalnews.com/nys/central-ny/politics/2023/04/07/expanding-new-york-s-child-tax-credit-is-on-the-negotiating-table.

X. VETERANS

A. Background

Veterans have made unique sacrifices to defend the American people and our freedoms.Military service members who have left active duty face many challenges returning to civilian life, including access to housing. Only 5% of Americans are veterans, but 11% of unhoused adults are veterans, and that is likely under-representative of the true magnitude of the problem.[352]Homelessness among veterans is caused by many of the same factors as the population at large, including poverty, addiction, and mental health issues. Some of those factors, however, reflect the unique challenges faced by veterans, such as Post Traumatic Stress Disorder (PTSD), harassment or trauma based on sexual orientation or gender identity, and sexual trauma faced by women service members.[353]

B. Recommendations

Because veterans are uniquely vulnerable to homelessness, the Task Force has the following recommendations:

1. Reassessing who qualifies as a veteran experiencing homelessness

When an individual is discharged from military service, the discharge falls into one of several categories including honorable, general, other than honorable, bad conduct and dishonorable, among others.[354] We should strive to make housing benefits available to more veterans who fall into the many other-than-honorable (OTH) discharge categories which might render a veteran ineligible for benefits. The VA provides benefits to all veterans who were honorably discharged from the military, but many veterans with an OTH discharge record are ineligible for housing benefits. For example, a service member might have been inappropriately pressured to leave the military after being sexually assaulted.[355] Another might have been involuntarily separated from the military due to a non-combat related personality disorder.[356] Still another might have been discharged for his or her sexual orientation during the "don't ask, don't

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[352] *See 2021 Report of the Veterans Task Force*, Legal Services Corporation, , (2021), at 4, https://www.lsc.gov/our-impact/publications/other-publications-and-reports/lsc-veterans-task-force-report.

[353] These unique challenges are best addressed by veteran-specific resources. For example, the Dwyer Project has developed an innovative approach in addressing mental health issues of veterans affected by mental illness across New York State. *See* https://mhaw.org/dwyer/.

[354] *See* Tiffini Theisen & Jim Absher, *Understanding the Types of Military Discharge*, Military.com, June 13, 2023, https://www.military.com/benefits/military-legal/types-of-military-discharge.html.

[355] *See* 38 U.S.C. § 5303(a) (resignations "for the good of the service" render a veteran ineligible for VA housing assistance).

[356]*See*, *What You Should Know About Chapter 5: AR 635-200 Separation for the Convenience of the Government*, Fort Knox Field Office: Trial Defense Service, https://home.army.mil/knox/application/files/3515/6624/4721/Chapter_5.pdf; *see also* 38 U.S.C. § 5303(b) (Although insanity at the time of discharge might permit a veteran to be eligible for benefits, other types of mental illness, short of insanity, would not allow a veteran's discharge to be reassessed).

tell" era.[357] All of these forms of discharge, including discharge because of any felony offense,[358] would disqualify a veteran from receiving VA housing benefits such as HUD Veterans Affairs Supportive Housing benefits.[359] Many unhoused veterans have received these types of OTH discharges and therefore are unable to receive veteran-specific housing benefits.[360] We recommend expanding access to VA housing benefits to veterans with all forms of OTH discharge, short of dishonorable discharge, to better serve New York's unhoused veteran population.

Housing benefits should even be considered for veterans who were dishonorably discharged. Although there is little research specifically on veterans with dishonorable discharges, one study found that a disproportionate number of OTH discharged veterans in general became homeless compared to their honorably discharged counterparts.[361] Indeed, the type of misconduct that causes an OTH discharge "may be a proxy indicator for . . . risk factors associated with homelessness" such as mental health struggles and substance abuse.[362] Similar types of misconduct may cause dishonorable discharges.[363] Dishonorably discharged veterans, therefore, are likely vulnerable to the same risk factors causing increased homelessness rates in the OTH discharged population.[364] Because dishonorably discharged veterans are at a heightened risk of experiencing homelessness, they may need access to critical housing benefits, regardless of the conduct that caused their dismissal.

Housing benefits should also be available to National Guard and Reservists who were activated by the State but have not been federally activated under Title 10 or Title 32 orders. New York State activated some of these service members in the aftermath of the terrorist attacks that

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[357] Service members discharged for sexual orientation during this era, however, may now be eligible for a discharge upgrade by appealing to the federal government. *See* David Vergun, *DOD to Upgrade Discharges From 'Don't Ask, Don't Tell' Policy*, DOD News, Sept. 20, 2023, https://www.defense.gov/News/News-Stories/Article/Article/3532368/dod-to-upgrade-discharges-from-dont-ask-dont-tell-policy/.

[358] *See* 38 C.F.R. § 3.12(d)(3).

[359] *See id. See also* Sidath V. Panangala, *Veterans' Benefits: The Impact of Military Discharges on Basic Eligibility*, Congressional Research Services, Mar. 6, 2015, https://crsreports.congress.gov/product/pdf/R/R43928/6, at 21 (where servicemember received civilian penalties for DUI and possession of marijuana after experiencing trauma on deployment causing him to receive an other-than-honorable discharge and thus be denied VA benefits).

[360] *See*, Rep. Scott Peters, , *Press Release: House Passes Peters' Bill to Reduce Veteran Homelessness*, Jan. 13, 2020, https://scottpeters.house.gov/2020/1/house-passes-peters-bill-to-reduce-veteran-homelessness#:~:text=Veterans%20with%20other%20than%20honorable,of%20the%20homeless%20veteran%20population.

[361] This study was undoubtedly under representative of the real magnitude of the problem, as it only analyzed veterans who had sought out VA assistance. *See VA Research on Homelessness*, U.S. Dep't of Veterans Affs. Off. Of Research and Dev't, https://www.research.va.gov/topics/homelessness.cfm ("The study looked at the 448,290 Iraq and Afghanistan Veterans who had used VA for care since their discharge. It found that 5.6 percent of those Veterans had been discharged for misconduct, usually drug or alcohol abuse—but that those patients accounted for 28.1 percent of those who became homeless within a year of their discharge.").

[362] *See id*.

[363] *See Substance Use and Military Life DrugFacts*, Nat'l Inst. On Drug Abuse, Oct. 2019, https://nida.nih.gov/publications/drugfacts/substance-use-military-life ("Service members can face dishonorable discharge and even criminal prosecution for a positive drug test . . . .").

[364] *See Twenty-One Percent of Veterans in Substance Abuse Treatment Were Homeless*, The TEDS Rep., Jan. 7, 2014, https://www.samhsa.gov/data/sites/default/files/spot121-homeless-veterans-2014.pdf (finding 21 percent of veterans in substance abuse treatment were homeless).

targeted New York City on September 11, 2001. Despite their service as critical first responders, these veterans are ineligible for VA housing benefits without federal activation.[365] We support Governor Hochul's proposed legislation which would grant state veterans' benefits to National Guard members who served in the aftermath of September 11th.[366] We encourage the State legislature to expand this legislation to include Reservists who heeded the State's call as well. Moreover, the federal government should consider retroactively providing federal active duty status to National Guard and Reservist members who served their state in response to the September 11 terrorist attacks.

As noted above, the definition of "homeless" can exclude individuals who currently have shelter, but live in substandard conditions. Nearly 130,000 New York veterans live in homes with major quality, crowding, or cost problems.[367] These individuals would not be considered sufficiently "homeless" to receive state, federal, and city housing benefits, including veterans benefits. Yet they face harrowing circumstances and are in dire need of housing assistance.[368] Accordingly, the definition of "homeless" should likely be expanded for purposes of VA care.

2. Educating social service providers on veteran-specific needs

Social services providers should conduct outreach to inform veterans about restoration-of-honor programs at the federal and state level. LGBTQ veterans, for example, may be eligible for a reinstatement of honorable discharge status at the federal level. In September 2023, the Department of Defense announced plans to allow dishonorably discharged LGBTQ veterans the opportunity to apply for record corrections if they were discharged for their sexual orientation.[369] Should a dishonorably discharged veteran receive a record correction, she would likely be eligible to receive VA benefits from which she is currently excluded, as noted above.

Restorations of honor are also available at the state level. New York State has long offered benefits for veterans, but veterans who were dishonorably discharged, or were discharged for other reasons or encouraged to leave because of issues of sexual harassment or abuse, were previously ineligible for these benefits. These veterans are uniquely vulnerable to homelessness. Veterans

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[365] *See Veteran Status for Reserve, National Guard, and Militia*, N.Y. State Dep't of Veterans' Servs., https://veterans.ny.gov/veteran-status-reserve-national-guard-and-militia ("[State Active Duty status] is not creditable toward eligibility for federal veterans' benefits or services, or for eligibility status of state veterans' benefits requiring federal active service.")

[366] *See On 20th Anniversary of 9/11, Governor Hochul Proposes Legislation to Allow National Guard Members to Qualify as Veterans Under New York State Law*, Governor's Press Office, Sept. 11, 2021, https://www.governor.ny.gov/news/20th-anniversary-911-governor-hochul-proposes-legislation-allow-national-guard-members-qualify.

[367] *See Supporting Veterans in New York*, Hous. Assistance Council, Mar. https://veteransdata.info/states/2360000/NEW_YORK.pdf (last visited Mar. 11, 2024).

[368] For an example of what some unhoused individuals go through every day, *see* Linda Villarosa et al., *Opinion: A Life Without a Home*, N.Y. Times, Feb. 21, 2024, https://www.nytimes.com/interactive/2024/02/21/opinion/homelessness-crisis-america-stories.html?smid=nytcore-ios-share&referringSource=articleShare&sgrp=c-cb.

[369] *See* Def. Sec. Llloyd J. Austin, III, *Press Release: Statement by Secretary of Defense Lloyd J. Austin III on the Twelfth Anniversary of the Repeal of 'Don't Ask, Don't Tell'*, Sept. 20, 2023, https://www.defense.gov/News/Releases/Release/Article/3531561/statement-by-secretary-of-defense-lloyd-j-austin-iii-on-the-twelfth-anniversary/.

who experienced sexual trauma in the military, for example, are twice as likely to be homeless within five years of leaving duty.[370] In 2019, however, New York passed legislation allowing veterans to receive state-level veteran benefits although they were dishonorably discharged because of sexual orientation, their status as a victim of harassment, or other eligible categories under the State law.[371] The State program is more inclusive, and it likely allows more veterans access to resources than the federal restoration of honor program which only applies to dishonorable discharges for sexual orientation. Eligible veterans must apply through New York State to receive a restoration of honor.[372] Although these programs can provide veterans access to crucial resources, few homeless veterans are even aware that honor-restoration programs exist.

The New York County Lawyers Association (NYCLA) offers representation to veterans seeking a restoration of honor through its Veterans Discharge Upgrade Pro Bono Program (the "NYCLA Discharge Upgrade Program").[373] Other pro bono and non-profit organizations do as well. Social workers should be provided with information on these initiatives to share with homeless veterans seeking a discharge upgrade. Moreover, these programs should be expanded. The New York State Interest on Lawyer Account Fund (IOLA) should be encouraged to make funding available to the NYCLA Discharge Upgrade program, and other similar programs, to assist homeless veterans seeking access to veterans' benefits.

Social services providers should also be trained on what veteran status does, or does not, mean for an individual's access to additional housing programs. Despite successful efforts to reduce the number of veterans experiencing homelessness, a significant number of veterans still are homeless in New York State, and nearly 130,000 New York veterans live in homes with major quality, crowding, or cost problems.[374] Many veterans do not know that they qualify as "veterans" for purposes of housing programs because "veteran" is defined differently by different programs and organizations. In New York State alone there are various definitions of "veteran."[375] The federal definition of "veteran" also varies for each benefit type. By training social workers on the

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[370] *See VA Research on Homelessness*, *supra* note 361.

[371] *See*, *Restoration of Honor Fact Sheet*, N.Y. State Dept. of Veterans' Servs., Feb. 1, 2024, https://veterans.ny.gov/system/files/documents/2024/02/20240201-roha-application-package.pdf#:~:text=%E2%80%A2-,The%20New%20York%20State%20Restoration%20of%20Honor%20Act%20authorizes%20the,service%20due%20to%20Post%2DTraumatic (describing New York Restoration of Honor Act).

[372] *Restoration of Honor Act*, N.Y. State Dept. of Veterans Servs., https://veterans.ny.gov/restoration-honor-act, (last visited Mar. 11, 2024).

[373] *See Need Legal Pro Bono Help?*, N.Y. Cnty. L. Assoc., https://www.nycla.org/resource/pro-bono/nycla-pro-bono-programs-for-new-yorkers/ (last visited Mar. 11, 2024).

[374] *See Supporting Veterans in New York*, *supra* note 367.

[375] For example, service in combat is required to qualify for the Veterans Tuition Award. To qualify for the Alternative Veterans Real Property Tax Exemption, service during wartime, but not necessarily in a combat zone, is required. To qualify as a veteran for services from the New York State Department of Veterans' Services, neither combat nor wartime service is required. N.Y. Veterans Service Law § 1(3) (defining veteran as a "person who served on active duty in the uniformed services of the United States, or in the army national guard, air national guard, or service as a commissioned officer in the public health service, commissioned officer of the national oceanic and atmospheric administration or environmental sciences services administration, cadet at a United States armed forces service academy, and who has been released from such service under other than dishonorable conditions.").

specific benefits of "veteran" status, and how to deduce who qualifies for them, unhoused veterans might gain access to resources of which they might not otherwise be aware.[376]

3. Expanding access to housing resources for veterans, especially female veterans

More housing resources, such as housing waivers, should be made available to homeless veterans. We support New York State's effort to amend the Section 1115 Medicaid Waiver. We also support expanding the categories of people eligible for Section 1115 housing services. A major provider of services to the unhoused in New York found that 60% of the homeless veteran population they serve live with at least one serious health condition.[377] The relationship between the lack of access to proper medical care and homelessness is clear. By expanding Section 1115 waivers to include veterans, service providers who already assist individuals experiencing homelessness in registering for Medicaid will have another tool in their toolkit.

More housing for homeless female veterans, in particular, is essential. Female and male veterans are treated differently in terms of available shelters. For example, in Long Island there is a shelter for male veterans, but there is no shelter for female veterans. Women often bring their children with them in their search for shelter yet shelters often restrict the amount, or age, of children that are permitted to access shelter services.[378] Female-only veterans' shelters are virtually non-existent for most New York veterans experiencing homelessness. There is currently only one female-only veterans' facility in New York State, the Guardian House in Ballston Spa, and it is nearly 200 miles from New York City.[379]

4. Improving data collection and tracking of veterans experiencing homelessness

The State should improve data collection on the increase in the number of homeless female veterans. Homelessness in America has grown among veterans generally and especially among women, who are often discharged or leave military service because of abuse and harassment receiving neither an honorable nor dishonorable discharge.[380] In recent years, women have been

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[376] For example, social workers could be trained to inform homeless individuals of specific housing programs and benefits for veterans, such as the NYC Veteran Housing Ladder. *See NYC Veteran Health Insurance Navigator*, NYC Dept. of Veterans Servs., https://www.nyc.gov/assets/veterans/downloads/pdf/VIC-2021.pdf (last visited Mar. 11, 2024). Social workers who respond to, or follow up after, 911 calls could be trained to provide information about veteran benefits or Medicaid eligibility. Social workers could be prepared with QR code pamphlets that lead to the NY State Department of Veteran's Services, which offers to help veterans file benefit claims. *See* N.Y. Dept. of Veterans Servs., https://veterans.ny.gov/ (last visited Mar. 11, 2024).

[377] *See Restoring Stability for New York City's Unhoused Veterans*, Bob Woodruff Foundation, Oct. 30, 2023, https://bobwoodrufffoundation.org/sus-nyc-unhoused-veterans/.

[378] *See The Dynamics of Family Homelessness in New York City*, Institute for Children, Poverty & Homelessness, (June 2019), at 10, https://www.icph.org/wp-content/uploads/2019/07/Shelter-DynamicsFinal07819.pdf (describing the three types of shelters available to women with children in New York City).

[379] *See Transitional Housing Programs*, Veterans & Comm. Hous. Coal., https://vchcny.org/category/programs/transitional-housing-programs-for-veterans/ (last visited Mar. 11, 2024).

[380] *See* Mariah Brennan & Emily Graham, *Issue Brief #64: Serving Those Who Served: Renegotiating Support and Benefits for U.S. Military Veterans with Less than Honorable Discharges*, Syracuse Univ. Lerner Center for Pub. Health Promotion and Pop. Health, Nov. 21, 2023, at 10, https://surface.syr.edu/cgi/viewcontent.cgi?article=1231&context=lerner ("Women suffering from Military Sexual

the fastest growing group of homeless veterans.[381] These women are undercounted by organizations that track individuals experiencing homelessness, such as HUD.[382] Female veterans are undercounted because there are restraints on admitting children to shelters; women are more wary of sleeping outdoors due to dangers of predation; and women are reluctant to stay in shelters predominantly structured for, and accommodated by, men.[383] The State should collect data on women who are sleeping on couches, not using the shelter system, or otherwise fall outside of the traditional definition of homelessness. If the data are not available through one of New York's veteran assistance organizations, then the State should begin collecting essential data on homeless veterans such as their gender, race, and military discharge status.

To improve these data collection efforts, and recommendations for available services, word choice is essential. For example, rather than asking "are you a veteran?" data collectors should ask "have you ever served in the military?" Veterans often do not know that they are considered a "veteran" if they have been other-than-honorably discharged, and they might not even know whether they are considered "homeless." Properly drafted questions are necessary to adequately determine the population in need of assistance.

5. Streamlining and simplifying the VA Department Forms

Both the Federal and State governments should reduce the number and complexity of forms that must be filed to apply for veteran benefits. While there are many veteran benefits available, the forms to secure those benefits are overly detailed and difficult to complete, even for lawyers, which discourages applications for those benefits. A typical veteran must complete more than 30 pages of forms and submit approximately 50 pages of supporting documents to apply for VA Compensation, DIC, Burial, HISA, or VA Pension Benefits from the Department of Veterans Affairs, and this is for veterans who have been honorably discharged.[384] Veterans with a less-than-honorable discharge must first file their petitions for a discharge upgrade before even being eligible to begin the paperwork required to receive benefits. Legal professionals and social services advocates can examine the legal procedures for applying for Veterans Affairs benefits, including for different discharge categories, and propose to reduce the red tape to help veterans obtain benefits.

Trauma (MST) have wrongfully been given 'General' or 'Other than Honorable' discharges at the discretion of their chain of command.").

[381] S*ee* Final Salute, Inc., https://www.finalsaluteinc.org/Home.html.

[382] *See id*.

[383] *See id*.

[384] *See VA Forms*, Senior Veterans Serv. All., https://www.veteransaidbenefit.org/va_forms.htm (last visited Mar. 11, 2024) (listing the most commonly used forms, including, but not limited to: SF 180 – Request Pertaining to Military Records, VA Form 21-0966 – Intent to File a Claim, VA Form 21-526EZ – Veteran's Application for Disability Compensation & Related Benefits, VA Form 10-10EZ – Application for Health Care, VA Form 21p-527EZ – Veteran's Application for Pension, VA Form 21-0969 – Income and Assets Statement, VBA Form 21-2680 – Examination for Household Status or Permanent need for Regular Aid and Attendance (Completed by Claimant's Physician)).

6. Improving collaboration across counties, industries, and stakeholders

Leaders in the healthcare, homelessness, and veteran sectors from across the State should meet quarterly to discuss developments and ways to improve their responses to homelessness. Cross collaborating and sharing models across the State are essential ways to improve the approaches to homelessness taken by counties, the VA, and the State. Collaboration might increase the speed with which effective policies spread, and ineffective policies are eliminated. It is important to incorporate new voices across different constituencies when addressing homelessness. Continued dialogue across communities is essential for tackling the homelessness crisis in a large and diverse state such as New York.

The City convenes a taskforce weekly to address the "top 50" list of individuals experiencing homelessness.[385] New York City should expand the representation on this taskforce to include a representative from either New York City Department of Veterans Services, the New York State Department of Veterans Services, or the VA. The taskforce would benefit from the assistance of a specialist in veterans' issues.

[385] *See* Jan Ransom et al., *New York Claims Progress in Moving Mentally Ill People Off Streets*, N.Y. Times, Dec. 4, 2023, https://www.nytimes.com/2023/11/29/nyregion/nyc-adams-homeless-mentally-ill.html.

XI. RURAL AREAS AND POPULATIONS

A. Background

The issue of homelessness has gained increased attention in recent years, but the focus has been largely on urban areas. Homelessness, however, knows no boundaries and extends beyond city limits and into rural communities. Rural homelessness is in many ways a separate issue from urban homelessness, and can requires different approaches.

Unlike the stark visibility of street homelessness in urban areas, those experiencing homelessness in rural areas are more likely to engage in hidden practices such as couch surfing, inhabiting abandoned buildings, living in vehicles, or residing in substandard housing.[386] Because HUD does not count people who are "doubled up" (couch surfing) or living in substandard housing as "homeless," the number of houseless people in rural areas is likely even more underreported than those in urban areas.[387]

Furthermore, shelters in rural counties are few and far between. Social services departments may be forced to utilize hotels, motels, and other marginal housing situations that do not have supervision of any kind, offer no support, and may not even be located in the county where the individual is located. This leaves rural counties competing with each other for scarce bed space for their homeless populations, and oftentimes creates an atmosphere that can have a negative effect on the individual or family rather than providing supports needed to try and address the needs of the individuals.

As noted above in Section II, HUD conducts its PIT count on a single night in January[388] and it includes both those sheltered and unsheltered. The purpose behind conducting the PIT count in January is that the weather generally lends itself to greater shelter occupancy due to the conditions.

Unfortunately, performing the PIT count in January is even less accurate in rural areas, as unhoused people are more likely to be off the streets in the colder months, and not necessarily in shelters. In rural areas, fewer shelters exist, and this leads to more occurrences of "doubling up" which is not accounted for in the count.

Accurate data collection, including that obtained through the PIT count, is critical in being able to truly measure the need in rural areas in order to generate funding for programs and housing. If more shelters existed in rural areas, it would be easier to conduct the PIT count, as homeless people would likely be residing in a shelter rather than their car or abandoned/substandard

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[386] Chan Kemper, *Community Solutions' Policy Recommendations On Rural Homelessness*, Community Solutions, Aug. 23, 2023, https://community.solutions/research-posts/community-solutions-policy-recommendations-on-rural-homelessness/ (Kemper).

[387] Tanya de Sousa, Alyssa Andrichik, Marissa Cuellar, Jhenelle Marson, Ed Prestera, & Katherine Rush, *The 2022 Annual Homelessness Assessment Report (AHAR) to Congress*, , U.S. Dept. of Hous. and Urban Dev't Off. of Community Planning and Dev't, 2022, at 1–108.

[388] *Point-in-Time Count and Housing Inventory Count*, HUD Exchange (2024), https://www.hudexchange.info/programs/hdx/pit-hic/.

housing[389]. Moreover, it is important to train staff/volunteers performing the PIT count on the differences between rural and urban homelessness, as approaching rural homelessness the same as urban homelessness is not effective.

In addition to the PIT count, community surveys could help identify and address homeless people that may otherwise go unnoticed. Collaboration with local agencies, such as social services, healthcare providers, and police forces could help identify homeless people in the area as well – and not just when the temperature is at or below freezing. While some of this does occur through the CoCs described above, further efforts could be made to identify individuals in need of homelessness-related services

Rural areas do not have access to the same funding as bigger cities, resulting in fewer housing-related resources available[390]. For example, New York's Clinton County has a higher percentage of unhoused people than New York City, yet there are hundreds of shelters, food pantries, and soup kitchens in New York City, and very few in Clinton County.[391]

In addition to financial challenges, the unavailability of quality mental health care and the ongoing opioid epidemic pose significant concerns. This is particularly acute in rural areas where there are fewer healthcare resources available and the distance to the physical and mental health resources that do exists presents significant challenges. Without a car, it is difficult to travel in rural areas. Public transportation services are limited, and rideshare companies are expensive.[392] Many mental health offices are not accepting new patients due to the increased demand for services. This keeps individuals in a vicious cycle of homelessness.[393]

The lack of available transportation in rural areas can also create barriers to obtaining other forms of assistance as well. For example New York's "Emergency Assistance" is available to people at risk or currently experiencing homelessness, but in order to receive emergency assistance, there is first an eligibility process.[394] This proves to be difficult for individuals without access to transportation.

In addition to the other issues discussed above, there is a particular dearth of available affordable housing in rural areas. There is a federal program called 521 Rural Rental Assistance which provides an offset to tenants of properties that were financed by the owner of the property through a federal 515 program. Unfortunately, there has not been significant construction of this housing over the past several years. "USDA estimates that rural communities will lose nearly 1,800 rental homes annually due to maturing mortgages between 2016 and 2027, more than 16,000 rental homes annually between 2028 and 2032, and 22,000 homes annually in the following years. When

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[389] *See* Kemper, *supra* note 386.

[390] *Id.*

[391] *Cash Assistance*, N.Y. City Human Resources Admin., https://www.nyc.gov/site/hra/help/cash-assistance.page.

[392] *Rural Services Integration Toolkit: People Experiencing Homelessness*, Rural Health Info. Hub, July 2014,. https://www.ruralhealthinfo.org/toolkits/services-integration/1/high-needs-populations/homeless.

[393] L. T. Patton, *Homelessness, Health, and Human Needs*, Institute of Medicine (US) Committee on Health Care for Homeless People, 1988, https://doi.org/10.1163/2210-7975_hrd-9978-20190011.

[394] *Temporary Assistance*, N.Y. State Off. of Temporary and Disability Assistance,. https://otda.ny.gov/programs/temporary-assistance/.

these loans reach maturity, property owners are no longer required to meet affordability standards and may convert their properties to market-rate housing or cease operation altogether."[395] Kemper goes on to recommend that the requirement for affordability be standard for federal support, and not connected to whether there is a mortgage or whether it is federally guaranteed. Without such a change in the law, New York's rural areas are primed to lose a significant amount of affordable housing.

B. Recommendations. The Task Force has the following recommendations with respect to homelessness in our rural communities.

1. Increase funding for homelessness-related support services in rural communities.

There is a lack of sufficient funding statewide, but as noted above the lack of resources is particularly acute in rural areas. The funding for all homelessness-related resources in rural communities should be increased.

2. Address the lack of transportation in rural areas.

As explained above, the distance to service providers and lack of available transportation presents unique problems for individuals in our rural communities. Possible solutions include providers offering mobile services, or providing free transportation to their locations. Transportation also could be incorporated in policies that address homelessness, mental and physical health, and income-based services to enhance accessibility for the rural homeless.

3. Increase the amount of available affordable housing in rural areas.

This is a common theme throughout this report, but the issue is particularly acute in rural areas. Steps should be taken to increase affordable housing stock, including expanding the federal 521 Rural Rental Assistance Program.

[395] *See* Kemper, C 2023

XII. RECOMMENDATIONS

The Task Force recommends the following actions be taken by the State, local and Federal governments to better address the issues outlined in this report.

Reform of Existing Programs and Resources

- Increasing the amount of funding for existing resources including those devoted to programs like supportive housing;
- Eliminating regulations tying emergency shelter access to eligibility for public benefits;
- Simplifying the process for approval of supportive housing projects;
- Eliminating the requirement that individuals in the shelter system contribute a portion of any personal income that is better applied toward other individual needs; and
- Encouraging hotel operators to permit emergency housing in their establishments by clarifying that an emergency placement does not constitute legal tenancy.

Increasing the Amount of Sufficient Housing

- Incentivizing the creation and preservation of more housing units -- particularly supportive housing units;
- Strengthening enforcement of building codes to prevent the deteriorization of housing stock;
- Supporting transit oriented development that links communities with public transit;
- Promoting accessory dwelling unit creation;
- Safely legalizing basement apartments in New York City; and
- Permitting the development of new housing on State and local government land.

Eliminating Barriers to Entry into Existing Housing

- Developing a more individualized, case-by-case approach to approving housing for individuals under post-incarceration supervision;
- Increasing enforcement of existing statutes prohibiting source of income discrimination;
- Providing additional resources to administrative agencies that administer housing vouchers to speed up the approval and payment process;
- Increasing the amount of accessible affordable housing;
- Reducing barriers to the lease-up process for individuals living with disabilities; and
- Developing a more realistic method for determining the dollar amount of housing vouchers in a given area.

Addressing Homelessness and the Healthcare System

- Better coordination of support services such as through expansion of the Safe Operations Support Teams funded by the State Office of Mental Health;
- Provision of additional training to healthcare and housing placement personnel regarding the unique challenges faced by individuals and families experiencing homelessness; and

- The provision of free transportation to medical appointments and pharmacies to individuals experiencing homelessness.

Homelessness and the Criminal Justice/Parole System

- The expansion of diversion and reentry programs;
- The collection of data regarding those programs to determine which are most effective; and
- The use of more coordinated approaches among law enforcement and service providers in addressing situations involving individuals experiencing homelessness.

Homelessness and the Broader Court System

- An increase in the availability of counsel for individuals facing foreclosure or eviction;
- The encouragement of mandatory diversion programs in eviction proceedings; and
- Additional steps to ensure that tenants' rights are being protected in eviction proceedings.

Providing Housing for Children and Families

- Targeting more resources toward upstream interventions to keep families in their homes and avoid shelter placements;
- Increasing the availability and amount of vouchers and other rent-subsidies;
- Increasing the public shelter allowance to reflect current market rates;
- Creation of a statewide voucher program;
- Improving educational access for children in shelters; and
- Increasing the number of shelters that provide services to victims of domestic violence.

Meeting the Needs of Veterans

- Clarifying who qualifies as a veteran for purpose of receiving housing-related veterans benefits;
- Making housing-related benefits available to veterans who received a less than honorable discharge and to members of the National Guard and Reserves who were activated by the State;
- Educating social service providers on veteran-specific needs and resources;
- Improving data collection with respect to veterans experiencing homelessness; and
- Simplifying application forms for Veterans Administration benefits.
- Clarifying who qualifies as a veteran for purpose of receiving housing-related veterans benefits;
- Making housing-related benefits available to veterans who received a less than honorable discharge and to members of the National Guard and Reserves who were activated by the State;
- Educating social service providers on veteran-specific needs and resources;
- Improving data collection with respect to veterans experiencing homelessness; and
- Simplifying application forms for Veterans Administration benefits.

The Needs of Rural Areas and Populations

- Increased funding for homelessness-related support services in rural areas, specifically targeting county-based services.
- Increased availability of transportation for individuals experiencing homelessness in rural areas to enable them to more readily access healthcare and other services.

XIII. CONCLUSION

This is a long report, yet it barely scratches the surface with respect to the issue of homelessness. This in and of itself is evidence of the complexity of the issue and of the fact that there are no easy fixes. But the lack of simple solutions does not mean that the recommended practices and policy initiatives described above, if implemented and expanded, will not result in a meaningful improvement with respect to the number of individuals and families experiencing homelessness and with respect to the quality of life of those who remain unhoused or housing insecure.