RECOMMENDATION*

BE IT RESOLVED, That the American Bar Association supports enactment of federal, state and local legislation that would: (1) Prohibit discrimination on the basis of transient or homeless status in government assistance programs at the federal, state and local levels and prohibit interference with the exercise of civil rights solely on the basis of transient or homeless status; (2) Address the pressing need for emergency relief to individuals and families now without permanent shelter and other basic necessities; (3) Encourage public and private initiatives to increase the supply of habitable low-cost housing in the United States; and (4) Adopt public policies and programs that will contribute to the ability of homeless people to become productive citizens.

BE IT FURTHER RESOLVED: That the American Bar Association, in cooperation with state and local bar associations, encourage lawyers to assist the homeless and to help implement this recommendation.

REPORT

Homelessness in America has recently reached a scale and scope not seen since the Great Depression. As the toll in human suffering continues to rise, it is plain that the magnitude of the problem has increased beyond a purely local response. Homelessness is now a nationwide crisis. It demands federal, state and local attention, yet cur-

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*The recommendation was approved. See page 38.

rent governmental measures are dangerously deficient. Focusing almost exclusively on time-limited, emergency operations, they have failed either to meet emergency needs or to stem the tide of homelessness by addressing its causes. Federal, state and local law should be amended and expanded to provide a rational, comprehensive response to this national problem. While emergency assistance is essential to provide immediate relief to individuals and families now without shelter, preventive and long-term measures are also required to address both the precipitating and underlying causes of homelessness.

The Magnitude and Nature of the Crisis

The present crisis reflects both a dramatic growth in the number of homeless people and the spread of the problem to all sections of the country. As the National Governors’ Association Task Force on the Homeless has reported, “few would dispute that, in the course of the last few years, homelessness in the United States has quietly taken on crisis proportions.”

In 1983, advocates estimated the number of homeless men, women and children at two to three million. A 1984 report by the Department of Housing and Urban Development (HUD) put the number at 250,000 to 350,000. And, as the U.S. Conference of Mayors reported in 1984: “Nearly three out of every four cities responding reported that the demand for food assistance and shelter has increased this year.” Similarly, according to a 1984 study by the New York State Department of Social Services, that state’s shelter providers estimated a 126% increase in their caseloads over the preceding three years.

By all accounts, homelessness remains on the rise despite the recent economic upturn. Estimates of the annual rate of increase vary from 10% to 38%. Yet there is no dispute that the gap between the need for shelter and the capacity to provide it at even the most basic emergency level is enormous—and rapidly increasing.

American Bar Association resolutions, encourage lawyers at this recommendation.

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commodate fewer than half of the lowest number estimated by HUD to be homeless on any given night.\(^{10}\) In some parts of the country, the disparity is particularly acute: in New York City there are approximately 38,000 homeless geles, the homeless population is estimated at between 35,000 to 50,000, yet there are fewer than 2,000 shelter beds.\(^{12}\)

The following estimates offer a sampling of the deficit in other cities across the country:\(^{13}\)

<table>
<thead>
<tr>
<th>City</th>
<th>Homeless Persons</th>
<th>Shelter Beds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston</td>
<td>5,000</td>
<td>1,282</td>
</tr>
<tr>
<td>Chicago</td>
<td>12,000–25,000</td>
<td>2,700</td>
</tr>
<tr>
<td>Cleveland</td>
<td>5,000</td>
<td>350</td>
</tr>
<tr>
<td>Denver</td>
<td>2,200–2,600</td>
<td>1,014</td>
</tr>
<tr>
<td>Detroit</td>
<td>12,000–13,000</td>
<td>800</td>
</tr>
<tr>
<td>Kansas City</td>
<td>10,800</td>
<td>600</td>
</tr>
<tr>
<td>Louisville</td>
<td>3,500</td>
<td>600</td>
</tr>
<tr>
<td>Nashville</td>
<td>1,500–2,000</td>
<td>668</td>
</tr>
<tr>
<td>New Orleans</td>
<td>2,000</td>
<td>550</td>
</tr>
<tr>
<td>Phoenix</td>
<td>4,000</td>
<td>374</td>
</tr>
<tr>
<td>Portland</td>
<td>6,000</td>
<td>319</td>
</tr>
<tr>
<td>St. Paul</td>
<td>1,100</td>
<td>477</td>
</tr>
<tr>
<td>San Francisco</td>
<td>4,500–5,500</td>
<td>3,321</td>
</tr>
<tr>
<td>Seattle</td>
<td>3,500–4,000</td>
<td>1,500</td>
</tr>
<tr>
<td>Trenton</td>
<td>2,000–3,000</td>
<td>200</td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>6,429</td>
<td>3,291</td>
</tr>
</tbody>
</table>

The scope of homelessness is also expanding. Until recently, homeless people were primarily white, middle-aged, urban and male, often suffering from alcoholism—the stereotypical “Bowery bum.” But the contemporary face of homelessness has changed; it is now a cross-section of this nation. The ranks of the homeless today include families, children, the elderly and the disabled.\(^{14}\) Racial and ethnic minorities are among the homeless in growing numbers, as are the newly unemployed. According to conservative estimates, 21% of homeless people are members of families, 44% are members of minority groups and the average age is now 34.\(^{15}\)

Furthermore, today’s homelessness is not restricted to large urban

\(^{10}\)HUD Report at 34.


\(^{15}\)HUD Report at 28.
areas. According to the NGA Report, small cities—many for the first time in their histories—are now being forced to open or fund emergency shelters. Homelessness is also affecting suburban communities. For example, a recent study revealed thousands of homeless persons in Nassau County, one of New York City’s most affluent suburbs. Finally, while economic hardship and foreclosures continue to plague the nation’s farmbelt, the rural homeless, though less visible, steadily increase.

Causes of the Crisis

The immediate, individual causes of the massive displacement are varied. Some homeless people have exhausted the temporary respite available from friends or relatives while they try, unsuccessfully, to secure replacement housing. Others, such as elderly and disabled people, persist on fixed incomes. In the face of an unexpected crisis or need—or even steady inflation—they have been forced to choose between necessities such as food and shelter. Still others are adolescents who have been compelled to leave their families who are struggling to survive on inadequate incomes.


24Children’s Defense Fund, A Children’s Defense Budget: An Analysis of the President’s Fiscal Year 1987 Budget and Children, 201 (1986). According to this analysis, public and subsidized housing programs have been cut 60% since 1981, from $31 billion in FY 1981 to $10 billion in FY 1985.

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11In Los Angeles County, the homeless population is now between 35,000 to 125,000, yet there are fewer than 125,000 shelter beds.

12The report notes that 10% of homeless persons are elderly, 5% are disabled, and 4% are minors.

13According to conservative estimates, the number of homeless people could be as high as 34,000.


20GAO Report at 37.

sis which may well be unexamined in this century."\textsuperscript{25} Discussing the resulting displacement, the NGA concludes: "When one realizes that the major victims of mass displacement are the poor, those with fewest resources to absorb new hardship or to recover in its wake, it is no mystery that the ranks of the homeless continue to swell."\textsuperscript{26}

**Civil rights issues:** Many homeless people across the country have been denied their civil rights and their right to entitlements based on their homeless or transient status. For example, in several jurisdictions, homeless people have been denied the fundamental right to vote. The denial of the right to vote can be the most severe denial which the government imposes on homeless people. Not only is this right the first public right of citizenship, its refusal leaves a homeless person, whose survival often depends on political decisions, with no political recourse. Homeless people have been denied their right to vote by the imposition of residency requirements. However, cases challenging these requirements have been successful. For example, a federal court in New York recently upheld the right of homeless people to vote, relying on the equal protection clause of the Fourteenth Amendment as well as the state constitution and state statutes.\textsuperscript{26a} Similar results have been reached by courts in California, Pennsylvania and Washington, D.C.\textsuperscript{26b}

Not only have homeless people been denied their right to vote, but they have been denied their right to benefits as well. Many jurisdictions have determined that homeless people are ineligible for food stamps, SSI, AFDC, Medicaid and veteran’s pensions programs because they lack a fixed or permanent address.\textsuperscript{26c} Such denials have occurred despite regulations and court decisions upholding the rights of persons satisfying other eligibility requirements to obtain services without a permanent address.\textsuperscript{26d}

**Cuts in federal assistance programs:** The Urban Institute recently estimated that federal spending on social programs in fiscal year 1985 would show a 9% decrease from spending in 1981.\textsuperscript{27}

\[\text{Sept. 14, 1984; In the Matter of the Applications for Voter Registration of Willie Jenkins, et al., before the D.C. Board of Elections and Ethics (June 7, 1984).}\]

\[\text{\textsuperscript{26a}See e.g., House Committee on Government Operations, The Federal Response to the Homeless Crisis, Third Report (April 1985) at 6.}\]


\[\text{\textsuperscript{26c}Collier v. Mencel, 221 Cal. Rep. 110 (2d Dist. Cal. 1985); Committee for Dignity and Fairness for the Homeless v. Tortaglione, No. 84-3447 (E.D.Pa.) (order and decree).}\]

\[\text{\textsuperscript{26d}Palmer & J. Sawhill, The Reagan Record: An Assessment of America’s Changing Domestic Priorities 13 (1984).}\]
only have homeless people denied their right to vote, but we have been denied their right fits as well. Many jurisdictional determinations that homeless are ineligible for food SSI, AFDC, Medicaid and its pensions programs benefit lack a fixed or permanent.28 Such denials have led despite regulations and decisions upholding the rights of persons satisfying other eligibility requirements to obtain services a permanent address.29

in federal assistance programs. The Urban Institute reported that federal spending on programs in fiscal year 1981 could show a 9% decrease ending in 1981.30 According

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1984), In the Matter of the Appli-

to the Congressional Budget Office, cuts in federal programs such as Aid to Families with Dependent Children and Food Stamps contributed to the 15% increase in poverty rate for 1982, making it the highest rate in 15 years.31 In addition to the outright cuts, the U.S. Census Bureau found “the tightening of eligibility standards for certain government aid programs” a major factor causing eight million Americans to fall below the poverty line between 1979 and 1982.29

At least one study has documented the link between higher levels of poverty and homelessness. A survey in Denver, New York City and Columbus attributed a portion of the increase in the cities’ homeless populations to termination of disability benefits, caused by the Social Security Administration’s tightening review procedures.30 Indeed, the Social Security Administration has itself acknowledged that, because of the failure of its outreach programs, many homeless people who may be eligible for federal assistance are not receiving benefits to which they are entitled.31

Deinstitutionalization of mentally ill people: Approximately 30% of the current homeless population is mentally disabled.32 To a large extent, this significant minority among the homeless are victims of incomplete execution of the national policy of deinstitutionalization during the past 20 years.

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29Id.
30Id.
32See NGA Report at 43.

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33Id. at 41.
34GAO Report at 20.
35Id.: NGA Report at 45.
37NGA Report at 32–35.
38GAO Report at 19.
the U.S. Conference of Mayors, most of the cities surveyed cited unemployment as a major cause of homelessness. And a survey of homelessness in the Southwest found six of seven cities ranking unemployment as the most important cause of homelessness.

Effects of the Crisis

The crisis of homelessness presents a plethora of problems, both for its victims and for those working to help them. Though the needs are complex, there is some consensus that they fall into three general categories.

First, immediate emergency relief is necessary for people who are currently homeless. Emergency shelter is, of course, an obvious need, but other emergencies accompany homelessness. For example:

- Homeless people are hungry. They need emergency food.
- Homeless people often suffer from illness either caused or exacerbated by their living conditions. They require immediate health care.
- Homeless school-age children usually have been displaced from their original school district. They need continued access to education.
- All homeless people need to be informed of and be able to apply for benefits to which they are entitled—whether or not they have a permanent address.

Second, individuals and families who live on the margin of destitution often require assistance to aver impending homelessness. For example:

- A family facing eviction for nonpayment due to a temporary lack of funds could be saved from homelessness by emergency rent assistance.
- People being released from residential institutions (mental hospitals or prisons) may avoid homelessness by receiving benefits to which they are entitled immediately upon release.
- Residents of low-rent units such as single room occupancy hotels need protection against homelessness as a result of the demolition or the conversion of their dwellings.

Third, individuals and families who are homeless or in danger of becoming homeless need access to suitable, affordable housing.

The Inadequacy of Present Efforts

To date, efforts to address these needs have been inadequate. As clearly shown by the gap between the number of homeless people and the number of shelter beds, state and local governments universally lack the resources—and some, the inclination—to adequately address even the most basic need of homeless people, for emergency shelter. For example, in Laramie, Wyoming, there is no federally subsidized housing available at all. Local authorities advise applicants to await the death of present tenant, or else to move to a different state. In Milwaukee, Wisconsin, eligible applicants face a two-and-a-half year

40GAO Report at 19.
41See supra n. 13.
42Telephone interview with Kathleen McDonald, Big Brothers/Big Sisters of Southeastern Wyoming, 11/21/85.
pending homelessness. For example, a family facing eviction for nonpayment due to a temporary lack of funds could be evicted from homelessness by emergency rent assistance. People being released from institutional settings (mental hospitals or prisons) may avoid homelessness by receiving benefits to which they are entitled immediately upon release.

Residents of low-rent units such as single room occupancy hotels need protection against homelessness as a result of the demolition of or the conversion of their dwellings. Individuals and families who are homeless or in danger of becoming homeless need access to affordable housing.

**adequacy of Present Efforts**

Efforts to address these problems have been inadequate. As shown by the gap between the number of homeless people and the number of shelter beds, state and local governments universally lack the resources—and some, the commitment—to adequately address the most basic need of homeless people, for emergency shelter. In Laramie, Wyoming, there are no federally subsidized shelters available at all. Local agencies advise applicants to wait for the present tenant, or else to contact a different state.

In Milwaukee, Wisconsin, eligible applicants face a two-and-a-half year wait for public housing. In Albuquerque, New Mexico, 600 applicants are in line for 1,200 units of public housing and the list was frozen last April.

Federal efforts to address the crisis also have been inadequate. Virtually the sole source of federal emergency shelter assistance is the Federal Emergency Management Agency (FEMA), which is authorized to spend $70 million for shelters in FY 1986. Yet in 1985, New York City alone spent over $217 million on services to homeless people—and it was far from enough.

**Legal Obstacles**

In some communities where general relief, shelter or other benefits and services are available, homeless people are barred from taking advantage of them by the imposition of arbitrary requirements. The most common barrier is a requirement that the applicant provide identification including a local address indicating that he or she resides in the community.

Homeless people denied benefits for lack of a permanent address have challenged this requirement in at least seven states. In each of these cases, the homeless plaintiffs convinced either the court that the address requirement was illegal, or the defendants that the relevant agency should be prohibited from denying benefits solely because the applicant lacks a permanent address.

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42 Telephone interview with Joe Volk, Community Advocates, 11/21/85.
43 Telephone interview with Sally McCabe, Department of Human Services, City of Albuquerque, 11/22/85.
45 See Lake v. Illinois Dept. of Public Aid, No. 79CH3434 (Cook County Cir. Ct., July 10, 1979) (consent order entered prohibiting defendant from denying general assistance to applicants without housing or residing in shelters); Eisenheim v. Board of Supervisors of Los Angeles County, No. C-479453 (Cal. Super. Ct., Dec. 20, 1983) (temporary restraining order granted prohibiting lack of identification and permanent address as a barrier to obtaining relief); Ebers v. Bates, (N.Y. Sup. Ct., Feb. 15, 1984) (consent judgment entered prohibiting Westchester County from denying benefits to eligible persons solely on their inability to furnish a permanent address); Martin v. Milwaukee County, No. 656-770 (Milwaukee City Cir. Ct., Jan. 9, 1985) (county ordered to provide relief to all eligible applicants regardless of their inability to furnish a permanent address); Klimechek v. Pennington County, Cir. No. 85-5017 (D.S.D. filed January 25, 1985) (settlement prohibiting county from requiring "fixed and permanent abode" before providing general assistance); Matteika v. City of Atlantic City, No. L8306-84E (N.J. Super., Jan. 29, 1985) (state and local governments enjoined from denying homeless plaintiffs general assistance solely on their inability to furnish a permanent address); Labelkin v. City Manager of City of Hartford, (Conn. Super., filed Feb. 4, 1984) (settlement entered prohibiting Department of Social Services from denying benefits to these applicants who lacked a permanent Hartford address).
child with room and board only up to fifteen days without ensuring any follow-up care or services. AFDC, the only federal program available to poor mothers, often discourages family unity by cutting off aid when a child reaches 21 years regardless of whether the child is still in school and by counting the income of stepparents, grandparents and even minor siblings in determining eligibility and grant levels regardless of whether these other family members actually contribute to the AFDC recipient's support. Even our education laws exacerbate the plight of homeless families by prohibiting children living in shelters or lacking a fixed address from attending public schools.

The Need for a Comprehensive Response

That homelessness is a nationwide problem is uncontested. A coordinate governmental response on the federal, state and local levels is both appropriate and urgently needed. As demonstrated above, homelessness now afflicts a demographic and geographic cross-section of the country. The causes leading to this massive displacement and the needs resulting from it are multifaceted. The inadequacy of state and local governments' response has been documented. Each of these facts underscores the need for uniform, comprehensive, and coordinated governmental programs to address the effects and causes of the crisis.

Indeed, federal programs that could be amended or expanded to respond to the problem are in large part already in existence. It is not necessary to create a host of new programs. What is essential is the tailoring of available assistance to meet the new needs created by homelessness, along with funding to begin to redress the devastation wrought by cuts in existing programs.

Federal action is urgently required to:

- Alleviate the immediate distress of homelessness by providing emergency relief to those now without shelter;
- Stem the growth of homelessness by providing assistance needed by individuals and families to avert impending homelessness; and
- Address the underlying causes of homelessness by increasing the availability of low-cost housing.

While the crisis looms ever larger, ever more men, women and children continue to suffer. Only when the crisis and its causes are addressed comprehensively, on a nationwide scale, will the disgrace of homelessness be removed from our nation.

Private Bar Involvement

In addition to governmental action, state and local bar associations may play an important role in providing assistance to homeless people. For example, in February 1985, the District of Columbia Bar Association created an ad hoc committee on the homeless to address the legal problems facing homeless people. The initial focus of this committee was to establish a program to provide individual legal services to persons in shelters. An all day seminar was organized through the offices of the D.C. Bar. A kit was prepared for distribution at the seminar including a list of available resources in the community for emergency shelter, medical
ness, along with funding to redress the devastation it by cuts in existing programs. General action is urgently re-
to:

Lleviate the immediate distress of homelessness by providing emergency relief to those now without shelter; stem the growth of homelessness by providing assistance needed by individuals and families to avert impending homelessness; and address the underlying causes of homelessness by increasing the availability of low-cost housing.

The crisis looms ever larger as more men, women and children continue to suffer. Only the crisis and its causes are comprehensively, on a wide scale, will the disgracefulness be removed from society.

Bar Involvement

In addition to governmental action and local bar associations, the legal profession can play an important role in addressing homelessness. For example, in February the District of Columbia Bar Association established an Ad Hoc Committee on Homelessness to address problems facing the homeless. The initial focus of this committee was to establish a protocol to provide individual legal assistance to persons in shelters. An educational seminar was organized at the offices of the D.C. Bar association, including a list of resources in the community emergency shelter. Medical care, mental health care, food stamps, public housing, family counseling and entitlement programs. In December, a one-day seminar was held at the offices of the D.C. Bar. Approximately 100 lawyers attended, and local activist, Mitch Snyder, was the keynote speaker. His address was followed by a series of panels consisting of psychiatrists, shelter operators, and lawyers with extensive experience in entitlement programs, mental health problems and housing issues.

As a result of the December program, over fifty lawyers, paralegals, and law students are currently volunteering time in shelters. A working relationship has been developed with a local law school enabling students, under the supervision of a professor, to handle SSI benefit cases. A similar program has been developed with a veteran's organization in order to provide representation to veterans who are homeless. The ad hoc committee is now turning its attention to legislation and is working with the Individual Rights and Responsibilities Section to set up similar committees in bar associations throughout the United States.

Respectfully submitted,

Abner J. Mikva, Chairperson
ABA Section of Individual Rights and Responsibilities

David B. Wexler, Chairperson
ABA Commission on the Mentally Disabled

John H. Pickering, Chairperson
ABA Commission on Legal Problems of the Elderly

August, 1986