



## **Housing is the Answer to the Housing Crisis**

### *A Brief Report on HB 1925 and how the City of Austin can Support Rather Than Criminalize its Unhoused Community*

#### Introduction

On any given night, over 2,500 people are sleeping unsheltered in the City of Austin.<sup>1</sup> These individuals include some of Austin’s most vulnerable residents. Those experiencing homelessness in Austin include people who have physical and mental disabilities; families with children; individuals whose personal situations, such as having a criminal record or a previous eviction, make finding affordable housing more difficult; and essential workers who have been priced out of Austin’s booming housing market.

The cost of living in Austin is at an all-time high, as the average home price rose 29% in the past year.<sup>2</sup> The lack of available affordable housing, the extensive economic hardships from the pandemic, and the passage of inhumane legislation criminalizing homelessness locally and statewide, demonstrate the desperate need for real solutions to housing insecurity, namely permanent supportive housing. It is vital that Austin seizes the opportunity to alleviate some of the harmful impact of the statewide camping ban through a provision that allows for “diversion or a provision of services in lieu of citation or arrest” as laid out in HB 1925.<sup>3</sup> The Downtown Austin Community Court, sanctioned encampments, and emergency shelters have all been proposed as possible solutions to the issue of homelessness in Austin; however, they each pose significant challenges to Austinites. **The only real solution the City should consider and support is investing in housing and services for Austin’s unhoused residents and avoiding costly criminal legal involvement.**

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<sup>1</sup> Austin/Travis County PIT Count (2020). Ending Community Homelessness Coalition (ECHO). <https://1zdndu3n3nla353ymc1h6x58-wpengine.netdna-ssl.com/wp-content/uploads/2020/07/PIT-2020-Source-Document.-Revised-7.9.2020.pdf>.

<sup>2</sup> Gates, Billy. “Austin’s Median Home Price JUMPS NEARLY 29%, Highest Increase in Nation.” KXAN Austin, April 16, 2021.

<https://www.kxan.com/news/local/austin/austins-median-home-prices-jump-nearly-29-highest-increase-in-nation/>.

<sup>3</sup> H.B. 1925, 87th TX Lege. § 3 (2021).

## HB 1925: Legislation Overview

HB 1925 criminalizes homelessness statewide by creating a class C offense of camping for non-recreational purposes, where “camping” is defined as residing on public property while using a tent, tarp, or even a blanket to shield oneself from the elements.<sup>4</sup> Uniquely, the bill contains a provision threatening state grant funds if any employee of a jurisdiction discourages enforcement of the offense. The legislation was created in reaction to the City of Austin’s move to lift its camping ban in 2019. Because Black Austinites represent more than one-third of the homeless population, but fewer than 10% of the Austin/Travis County population, criminal enforcement of HB 1925 will once again place the City in the position of disproportionately policing and prosecuting Black Austinites.<sup>5</sup>

However, an amendment to the legislation allows jurisdictions to enact policies to encourage “diversion or a provision of services *in lieu of* citation or arrest” (emphasis added). The general language of this provision allows jurisdictions to think outside of the box when it comes to what diversion methods and services they can provide to avoid punishing vulnerable residents with criminal charges. If jurisdictions choose not to take advantage of the diversion provision and cite people for this new offense, there are significant financial costs for the City and individuals who receive citations. These costs include:

- The cost of storing belongings: the jurisdiction must take care of a person’s belongings at no cost to the person being arrested;<sup>6</sup>
- The costs of prosecuting a case against a person who is unable to pay court fines and costs; and
- The approximately \$217 per night cost of jailing a person per night.<sup>7</sup>

The only way to avoid these costs without risking state grant funding is to take advantage of the diversion amendment and provide diversion and services *in lieu of citation*. It is important that any such diversion program not involve citations as part of the diversion process, since those can easily turn into warrants that end up costing the jurisdiction storage and jailing fees and subjecting the person to increased fines and driver’s license suspension, creating insurmountable hurdles to exiting homelessness.

## Solutions or Pitfalls?

### **I. Downtown Austin Community Court**

The Downtown Austin Community Court (DACC) was established in 1999 and handles public order offenses within the heart of the City.<sup>8</sup> More specifically, DACC operates as a

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<sup>4</sup> H.B. 1925, 87th TX Lege. § 1 (2021).

<sup>5</sup> Austin/Travis County PIT Count *supra* note 1.

<sup>6</sup> H.B. 1925, 87th TX Lege. § 1 (2021).

<sup>7</sup> Interlocal Agreement Between Travis County and City of Austin for Booking and Related Service (2017-2022). <https://www.austintexas.gov/edims/document.cfm?id=292459>; Downtown Austin Community Court Data (2019-2021) obtained via the Texas Public Information Act.

<sup>8</sup> Community Court (2021). City of Austin. <https://www.austintexas.gov/departments/community-court>

“problem solving and rehabilitative court” and provides referrals to supportive services largely to individuals experiencing homelessness.<sup>9</sup> Although attractive on its face, DACC relies heavily on citations and warrants to get individuals through its door. In 2019 alone, DACC issued warrants to over 1298 people (1900 warrants total).<sup>10</sup> In that same year, DACC assisted 45 people to exit homelessness. This means that in receiving a citation and interfacing with DACC, individuals are 29 times more likely to receive a warrant that could lead to their arrest than receive case management services that could help them exit homelessness.<sup>11</sup> DACC’s Intensive Case Management services is an effort to help people exit homelessness, however only people with multiple citations are typically eligible and the average wait time to be assigned to a Clinical Case Manager is currently 334 days.<sup>12</sup> Creating or adding to a person’s criminal record in order for them to qualify for services aimed towards helping them meet their basic needs is antithetical to the City of Austin’s goal in creating “complete communities.”<sup>13</sup>

In a 2017 Audit Report by the City of Austin, in about 90% of cases, people who received citations under the City’s camping, sit/lie, or panhandling ordinances failed to appear in court, often due to confusion, lack of transportation, disability, or fear of arrest.<sup>14</sup> An arrest warrant was issued in 72% of these cases.<sup>15</sup> These results are likely to continue due to factors such as poor relations between unhoused Austinites and the police department cemented by APD’s practice of threatening, ticketing, and evicting people from their communities. This lack of community trust disincentivizes unhoused Austinites from engaging with the legal process facilitated by DACC. Attempts to force unhoused folks into services through DACC ignores both the deep-rooted causes of homelessness and the racialized history of the criminal legal system while also wasting valuable resources on punitive and unhelpful practices like the issuance of warrants.

Additionally, Texas statute provides for a waiver of any fines and fees owed by a person with undue hardship in paying these costs.<sup>16</sup> Experiencing homelessness is a factor in a determination of undue hardship, therefore strict enforcement of HB 1925 through citations creates a costly cycle of prosecution of cases that ultimately qualify for waiver. However, many cases don’t get to the point of waiver since people accused of class C misdemeanors are not entitled to court appointed attorneys, but generally need an attorney to raise the issue of eligibility for waiver. Therefore, a diversion model that does not involve citations for entry is not

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<sup>9</sup> Id.

<sup>10</sup> Downtown Austin Community Court Data (2019-2021) obtained via the Texas Public Information Act.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Imagine ATX Blog, “What is a complete community?”, February 25, 2013.

<http://www.austintexas.gov/blog/what-complete-community>

<sup>14</sup> City of Austin Office of the City Auditor (2017). Homelessness Assistance Audit Series: City Policies Related to Homelessness.

<sup>15</sup> Id.

<sup>16</sup> Tex. Code. Crim. Proc. Art. 45.0491: Waiver of Payment of Fines and Fees and Costs for Certain Defendants and For Children

only necessary and humane, but also will save the City money in the long term, especially given DACC's approximately \$10 million annual budget.<sup>17</sup>

## **II. Sanctioned Campsites**

Under HB 1925, designated or "sanctioned" encampments are an available avenue for legal camping; however, these must be pre-approved by the State's Department of Housing and Community Affairs (DHCA) through an onerous process, and the use of parks as designated campsites is prohibited. In addition, national experts on homelessness caution against sanctioned campsites, as there is no evidence that they help to reduce homelessness and they take away resources from real solutions like permanent supportive housing. The United States Interagency Council on Homelessness (USICH) warns local jurisdictions thinking of forming sanctioned encampments that creating these environments is costly, difficult to manage and maintain, and may outwardly look like they are taking action to end homelessness without actually doing so.<sup>18</sup>

## **III. Shelter Beds/ Diversion Center**

Emergency shelter beds can be a critical life support for people experiencing a housing crisis, however they are temporary and inadequate at treating the root causes of homelessness. Shelters often pose many barriers to unhoused community members by enforcing strict sobriety rules, criminal background checks, family or single-sex restrictions, unsanitary and unsafe conditions, rules forbidding pets, and are typically overcrowded.<sup>19</sup> These barriers pose risks and challenges for people who need services, but are discouraged from seeking support due to a disability, mental illness, substance use disorder, or simply wanting to keep their independence. There is a dire need for alternatives that fully meet the needs of diverse residents.

One alternative is pre-arrest diversion. Diversion refers to a variety of programs that seek to avoid funneling a person through the traditional criminal legal system. Under a general pre-arrest diversion program, when an individual makes contact with a police officer and is suspected of committing a crime, instead of being arrested, they may be diverted to treatment or a services provider; meanwhile the prosecutors' office does not file any charges.<sup>20</sup> At a glance, this appears to be the best case scenario as it avoids further involvement in the criminal legal system, however there are still flaws. First, this kind of diversion relies on the police as gatekeepers with discretion to decide who gets treatment or who goes to jail.<sup>21</sup> The City's

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<sup>17</sup> City of Austin Proposed FY 2021-22 Budget

[https://assets.austintexas.gov/budget/21-22/downloads/Proposed/2022\\_Proposed\\_Budget.pdf](https://assets.austintexas.gov/budget/21-22/downloads/Proposed/2022_Proposed_Budget.pdf)

<sup>18</sup> United States Interagency Council on Homelessness (2018). Caution is Needed When Considering "Sanctioned Encampments" or "Safe Zones".

[https://www.usich.gov/resources/uploads/asset\\_library/Caution\\_Sanctioned\\_Encampments\\_Safe\\_Zones\\_052318.pdf](https://www.usich.gov/resources/uploads/asset_library/Caution_Sanctioned_Encampments_Safe_Zones_052318.pdf)

<sup>19</sup> National Alliance to End Homelessness (2018). "Would Adding More Emergency Shelter Help Reduce Unsheltered Homelessness? It's Complicated..."

<https://endhomelessness.org/adding-emergency-shelter-help-reduce-unsheltered-homelessness-complicated/>

<sup>20</sup> Immigrant Legal Resource Center. (2019). Diversion and Immigration Law.

[https://www.ilrc.org/sites/default/files/resources/2019.04\\_ilrc\\_diversion\\_document-final.pdf](https://www.ilrc.org/sites/default/files/resources/2019.04_ilrc_diversion_document-final.pdf)

<sup>21</sup> Sonenstein, Brian. (2018). "The Problem with Diversion Programs- Should cops and courts be gatekeepers for addition and mental health treatment?"

Analysis of APD Racial Profiling Data demonstrates biases against people of color when officers are empowered with this level of discretion during traffic stops, which casts doubt on APD's ability to implement a diversion program that is not similarly racially biased.<sup>22</sup> Police encounters can also be traumatizing and dangerous for unhoused people living with a mental illness. The Texas Harm Reduction Alliance conducted a participatory action research (PAR) project, where 56 unhoused Austinites were interviewed about what makes them feel safe. 80% of the individuals shared that they would not call the cops if they felt unsafe and 50% shared that they have personally been harassed by police in Austin.<sup>23</sup> These results suggest to policy makers that they should avoid utilizing police officers as first responders to public-camping violations and instead deploy mental health workers and service navigators as the initial step to diversion.

Another form of diversion is diversion centers. Diversion centers are growing in popularity as an alternative to jail and prison. Like shelters and sanctioned camping, diversion centers and courts are often inaccessible to those who need it due to the high level barriers to entry. Eligibility requirements are often only open to people with a first-time, low-level and nonviolent offense.<sup>24</sup> In addition, people often have to pay their way through the programs' fees, classes, and treatment. Furthermore, if an individual is unable to complete the requirements of a given diversion program, they still risk the chance of jail time.

Over the past year, Travis County has been deliberating a proposal for a pilot mental-health diversion program through the Austin Travis County Sobering Center. As proposed, this program would offer short-term wrap-around services to people experiencing mental health crises and homelessness rather than booking them into jail.<sup>25</sup> The proposal still requires a referral from law enforcement and it is unclear whether the programming would be one hundred percent voluntary or if successful completion is required to avoid criminal charges. Regardless, all people should have autonomy over making decisions concerning their treatment, and policy makers should seek long term solutions that will move people out of homelessness.

#### **IV. Permanent Supportive Housing**

Evidence shows that an effective solution to homelessness is housing, therefore jurisdictions which hope to adopt a diversion policy should prioritize investing in such. Permanent Supportive Housing (PSH), a housing-first model that combines affordable long-term

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[https://www.conwaydailysun.com/portland\\_phoenix/columns/above\\_the\\_law/the-problem-with-diversion-programs-should-cops-and-the-courts-be-gatekeepers-for-addiction-and/article\\_be906bb4-2b99-11e8-9a0d-a7e9d4046d12.html](https://www.conwaydailysun.com/portland_phoenix/columns/above_the_law/the-problem-with-diversion-programs-should-cops-and-the-courts-be-gatekeepers-for-addiction-and/article_be906bb4-2b99-11e8-9a0d-a7e9d4046d12.html)

<sup>22</sup> City of Austin Office of Police Oversight, Office of Innovation, and Equity Office. (2020). Joint Report: Analysis of APD racial profiling data. <http://www.austintexas.gov/edims/pio/document.cfm?id=334984>

<sup>23</sup> Texas Harm Reduction Alliance. (2021). "In Our Hands: A conversation with Austin's unhoused."

<https://www.harmreductiontx.org/in-our-hands?fbclid=IwAR34wbXqC25t1xjKqOW5f8MQMeypG9fRdR294llHaAgJOdpRyjamgUXk>

<sup>24</sup> Rempel, Michael, Labriola, Melissa, Hunt, Priscilla, Davis, Robert C., Reich, Warren A. & Cherney, Samantha (2018). "NIJ's Multisite Evaluation of Prosecutor-Led Diversion Programs." Center for Court Innovation.

<sup>25</sup> Larned, Tori. "Travis County considering diversion program to help people with mental illness avoid jail time." KVUE, July 26, 2021.

<https://www.kvue.com/article/news/local/travis-county-diversion-program/269-d7e91fd2-2539-48ce-a9c9-cc82327928d7>

housing with supportive services to improve housing stability, has shown tremendous promise as a tool for ending homelessness.<sup>26</sup> Crucial services provided include mental health and substance use treatment, healthcare, employment, and social services. Approximately 96% of people experiencing chronic homelessness provided PSH remain housed after one year.<sup>27</sup> In addition, according to the National Alliance to End Homelessness, PSH implementation across the country has decreased the number of chronically homeless individuals by 8% since 2007.<sup>28</sup> These results are encouraging for cities and counties considering best practices and solutions to respond to the compounding economic crisis of the pandemic and housing crisis.

A recent study in Denver found that people who were referred to supportive housing experienced a reduction in both police contacts (34%) and arrests (40%).<sup>29</sup> This makes sense, as people move into housing, they are no longer criminalized for homelessness. Lastly, PSH has a wealth of additional public health benefits including dramatically reducing emergency room visits, hospital admissions and stays, and inpatient psychiatric services.<sup>30</sup> However reviewed, expanding PSH and additional services without requiring a citation should be the City's top priority for ending homelessness in Austin.

### Moving Forward: Takeaways and Recommendations

HB 1925 allows diversion in lieu of ticketing and arrest. Years of data concerning homelessness and potential systemic responses to the housing crisis have shown us that:

- Receiving tickets disincentivizes engagement with DACC: Most people are unable to appear for their court date which can lead to warrants, arrests, and mounting debt.
- People who interface with law enforcement and DACC are 29 times more likely to receive a warrant than services.
- The most successful diversion models do not involve citations, arrests, or jail, and do not place police officers in the position of gate-keepers to supportive programming and services.
- The housing crisis can only be solved through investing in long-term solutions, namely permanent supportive housing and community-based services.

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<sup>26</sup> National Alliance to End Homelessness. (2021). "Permanent Supportive Housing." <https://endhomelessness.org/ENDING-HOMELESSNESS/SOLUTIONS/PERMANENT-SUPPORTIVE-HOUSING/>

<sup>27</sup> National Law Center on Homelessness & Poverty. (2019). "Housing Not Handcuffs"

<sup>28</sup> National Alliance to End Homelessness *supra* note 23.

<sup>29</sup> Cunningham, Mary K. et al., (2021.) "Breaking the Homelessness-Jail Cycle with Housing First: Results from the Denver Supportive Housing Social Impact Bond Initiative." Urban Institute. <https://www.urban.org/research/publication/breaking-homelessness-jail-cycle-housing-first-results-denver-supportive-housing-social-impact-bond-initiative>

<sup>30</sup> Staten, Lavena and Rankin, Sara. "Penny Wise But Pound Foolish: How Permanent Supportive Housing Can Prevent a World of Hurt," (July 12, 2019). Available at SSRN: <https://ssrn.com/abstract=3419187>, or <http://dx.doi.org/10.2139/ssrn.3419187>

Prop B and HB 1925 have posed significant challenges for Austinites experiencing homelessness by criminalizing individuals for not having a place to sleep at night. It is vital that Austin seizes the opportunity to alleviate some of the harmful impact of the statewide camping ban through the “diversion or a provision of services in lieu of citation or arrest” amendment. There are several ways to utilize this amendment, but the most humane and effective option for the City of Austin is to pursue investments in permanent supportive housing and accompanying community-based services as diversion to criminal legal involvement. People with lived homelessness experience are the experts in this field. Reach out to them, talk to them, and ask them what they need. To truly make Austin the most liveable city in America, we have to ensure that it’s liveable for all.