

# Policy and Legal Considerations in Serving the Unsheltered

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## *Martin v. City of Boise*

### **The holding**

“[T]he Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.”

### **The limitations**

- Criminal penalties
- Public property
- The infamous Footnote 8

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## *Martin v. City of Boise*

### **The unanswered questions**

When is shelter “practically available?”

What is the relevant “jurisdiction?”

How is the number of persons experiencing homelessness determined?

The list goes on...

### **The broader implications: Footnote 8 cuts both ways**

“Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the ‘universal and unavoidable consequences of being human.’”

Cooking and warming fires?

Public urination and defecation?

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## *Boise’s Progeny*

*Shipp v. Schaff*

Northern District of California

*Aitken v. City of Aberdeen*

Western District of Washington

*Gomes v. County of Kauai*

District of Hawaii

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## City of Sacramento's Response

In general terms, camping and storing personal property are prohibited:

- On or near critical infrastructure, real property or facilities "so vital and integral to the operation or functioning of the city that its damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety or welfare."
- On public rights-of-way that, by law, must remain clear to first responders
- Within hollow sidewalks
- In wildfire risk areas

Interfering with abatement of violations is actionable.

Sacramento City Code Chapter 8.140

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# City of SACRAMENTO

## Department of Community Response

Bridgette Dean, LCSW, PPSC

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## Timeline

- July 1, 2020, the City Council directed the City Manager to create the Department of Community Response (DCR)
  - To provide an alternative response model in public safety that effectively transfers calls that do not require a law enforcement or fire response to alternative first responders from DCR
  - Focus on those in need of mental health services, substance use disorders, youth in crisis and residents experiencing homelessness
  - Two (2) year timeline to be fully operational
- September 2020, Homeless Services Division and Office of Violence Prevention added to Department of Community Response
- July 1, 2021, the Department of Community Response is funded.

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## Department of Community Response

- Systemic shift in our public safety model.
- Provide alternative resources and response to those in crisis or in need of assistance that may not require police or fire personnel to respond.
- Key partner in city's first response model.
  - Work collaboratively with police, fire and emergency response models to connect individuals to community-based services and providers.
  - Primary response and/or provide follow up and support response as needed.
- Establish collaborative teams that reflect the communities they serve, use trauma informed interventions, work from a culturally competent framework, engage in first languages and respect lived experience.
- Support community-based organizations and create space for community led interventions.

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## GOALS:

The primary goal of the Department of Community Response is to link each person to appropriate services (i.e. mental health, substance use, housing, medical, food) to ensure quality of life for that individual and reduce calls for service to law enforcement or fire.

Additional goals of the Department of Community Response related to calls for service:

- 1) Improve positive response experience for the individual in crisis.
- 2) Reduce repetitive or rate of contact with LE and Fire department personnel.
- 3) Create new collaborative partnerships to expand services to individual's city wide.
- 4) Increase access to service providers in the community and support long term success of individual.
- 5) Reduce the impact on overcrowded emergency departments.
- 6) Reduce calls for service to 911 and provide access to community resources.

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## DCR Structure



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## Additional programs and projects:

### Office of Homeless Services

- Oversees and facilitates 55 projects and provider contracts including safe-ground, shelters, food services, whole person care, motel voucher program, citywide coordination of services and providers.
- Collaboration with county providers, hospitals and area wide homeless programs.

### Office of Violence Prevention

- Oversees and facilitates 10 contracts related to violence prevention. Collaborates with city departments, community agencies and organizations. Supports outreach and programming citywide with community stakeholders.

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## Homeless Response Model

- 311:
  - Unsheltered individuals/welfare checks
  - Encampment concerns (non-criminal)
  - Trash only (Forensiclean)
- DCR Response:
  - Connect with individuals in encampment or location
  - Build rapport – meet individual where they are (needs assessment)
  - Provide resources and support
  - Access safe-ground, motel vouchers, county programs etc. as available
  - Follow up with reporting party when possible
  - Resolve issues collaboratively with city departments, CBO's, county, Caltrans and community members when viable.

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## Department of Community Response can also....

- Respond to school campus issues
- Respond to family and youth crisis
- Respond to mental health calls for service
- Respond to unsheltered related calls for service
- Stabilize mental health symptoms
- ID support systems for individual to use during the crisis
- Connect individuals to resources and link them to past/current providers
- Redirect and educate clients to community resources instead of 911
- Write 5150 holds
- Provide voluntary transfer when applicable or support first responders once they arrive at ED
- Follow the ambulance to the ED and complete the Mental Health Crisis Assessment
- Support the person and the family during crisis
- Provide ongoing case management and follow up after initial contact to ensure service adherence

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## Contact or questions:

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## Welfare and Institutions Code section 17200

### ***LA Alliance for Human Rights v. City of Los Angeles***

“[T]he most reasonable interpretation of § 17000 . . . is that it applies not only to counties alone, but to cities and counties when they undertake a joint venture directed to the goals of § 17000, such as a coordinated effort to alleviate homelessness in their jurisdictions.”

Judge David O. Carter  
Central District of California

The League joins as amicus curiae.  
Decision on appeal pending before the Ninth Circuit Court of Appeals.

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## The COVID-19 Pandemic

### **Legal Challenges**

#### City of Sacramento

- Petition for writ of mandate in Sacramento County Superior Court

Plaintiffs alleged that City violated mandatory duty to provide medical care by failing to provide housing. Homelessness causes and exacerbates health problems; ‘basic shelter’ is medical necessity.

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# The COVID-19 Pandemic

## City of San Diego

- **Petition for writ of mandate in San Diego County Superior Court**

Plaintiffs alleged that shelter program at San Diego Convention Center posed health and safety risks to persons experiencing homelessness; City violated ministerial duty to provide hotel and motel rooms.

- **Civil complaint in San Diego County Superior Court**

Plaintiff alleged that City created a nuisance by utilizing the San Diego Convention Center as a shelter and failing to prevent criminal activity of persons experiencing homelessness, who allegedly disturbed Plaintiff's property.

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