

Housing & Homelessness in Miami-Dade County

Criminalization of Homelessness

“Criminalization creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system & back.”

–USHCH, U.S. Inter-Agency Council on Homelessness¹

- MDC has four ordinances that criminalize life-sustaining behaviors that individuals experiencing homelessness are forced to perform in public:
 - sleeping on public thruways;³
 - living or sleeping in vehicles;⁴
 - “aggressive or obstructive” panhandling;⁵
 - public urination or defecation, despite the lack of public restrooms.⁶
- In 2017, the City of Miami Beach hired a special prosecutor to target “nuisance” crimes, such as jaywalking or consuming alcohol in public.⁷ 2/3 of cases brought involved defendants experiencing homelessness.⁸
- In 2018, the City of Miami instituted a series of “clean-up” sweeps of homeless encampments, displacing individuals and destroying their belongings, including medicines and identity documents.⁹

“I’m terrified of losing everything again. I don’t know if you know that feeling, but it’s terrible.”

–**Rob Rhoads**, a person experiencing homelessness in MDC¹⁰

- In 2019, a federal judge dissolved the consent decree from the *Pottinger v. City of Miami* case,¹¹ protecting people experiencing homelessness from police harassment and arrest, as well as their property during sweeps.¹² The Consent Decree enabled monitoring of city conduct and accountability for violations.

- Criminalization of homelessness violates the human rights to life;¹³

protection from cruel, inhuman or degrading treatment;¹⁴ liberty and security;¹⁵ and freedom of movement.^{16 17}

- Criminalization of homelessness is ineffective and expensive. It merely shuffles people to different parts of the city and results in fines that people can’t pay or felony records that make it next to impossible to secure employment and housing, perpetuating homelessness.¹⁸

The U.N. Committee on the Elimination on Racial Discrimination & U.N. Human Rights Committee called upon the U.S. to: “[a]bolish laws and policies making homelessness a crime”; “intensify efforts to find solutions for the homeless, in accordance with human rights standards”; and “[o]ffer incentives to decriminalize homelessness.”¹⁷

Access to Health Services

“It was hard to transition from being a breadwinner to convincing myself that if I didn’t quit working, I would not be able to walk again”–**Thomas**, a Florida resident who does not have health insurance¹⁹

Health issues increase the risk of homelessness, and homelessness further exacerbates health conditions and can cause new ones.²⁰ Additionally, homelessness often stems from domestic violence,²¹ and Florida has one of the highest rates of violence against individuals experiencing homelessness.²²

- Necessary medications are often lost in sweeps of homelessness encampments.²³

The U.N. Human Rights Council recommended that the U.S. “promot[e] access of vulnerable population[s] to public and social and health services,”²⁴ and “strengthen national health-care programmes so that health care is easily accessible, available and affordable for all members of society.”²⁵

Statistics for Miami-Dade County (“MDC”)

- **3,516 individuals experiencing homelessness; 384 individuals chronically experiencing homelessness:** 71% sheltered; 29% unsheltered
- **Largest homeless population in FL-** 4th largest chronically homeless population²

- While the right to health is protected in various international instruments,²⁶ individuals experiencing homelessness lack access to quality health care, compounded by Florida’s failure to adopt Medicaid expansion.²⁷ Uninsured, they cannot access preventive health services and are forced to seek emergency care when health issues escalate.
- In 2019, Florida took the important step of allowing county commissions to establish needle exchanges throughout the state.²⁸ However, legislation prohibits needle exchange programs from receiving state and federal funding, restricting and underfunding this important life-saving intervention.²⁹

Access to Housing

“Unaffordable housing is the root cause of homelessness. Cities with the highest homeless populations are those with the least amount of affordable housing. Miami ranks as the seventh least affordable housing market in the world and is the second least affordable market in the United States.”

–David Peery, a local advocate who experienced homelessness himself ³⁰

Although various international rights instruments establish the human right to adequate housing,³¹ MDC suffers from significant barriers that limit access to housing:

- Miami has the second-worst income and poverty level in the U.S., and residents spend the nation’s highest share of their income on rent,³² with 48% of residents spending more than 30% of their income on housing.³³
 - Municipalities are barred from addressing the income gap locally because Florida law prohibits municipalities from setting their own minimum wage.³⁵
 - The income gap disproportionately impacts populations of color, who compose 17% of households below the poverty line and 41% of those below survival level.³⁶
 - 17% of femme-led single parent households earn less than a living income.³⁷
- Gentrification has contributed to the hyper-segregation of neighborhoods and has pushed poorer inhabitants further away from the city center and economic opportunities.³⁸
 - Switching from traditional (Euclidian) to form-based zoning eliminated the need for public hearings and community participation for many new developments, resulting in substantial loss of affordable housing.³⁹
 - Special Area Plans allow parcels that are nine acres or larger to forgo normal zoning laws and provide developments free reign to dramatically change the character of neighborhoods and evict existing communities.⁴⁰
 - Climate change, leading to rising sea levels, has caused more affluent populations to move inland to previously low-income neighborhoods, displacing their inhabitants.⁴¹
- Tenants suffer from both underenforcement of the housing code (where buildings fall into disrepair) and overenforcement (where property is frequently examined and fined for minor infractions, pressuring residents to leave).⁴²
- Florida law essentially outlaws rent control.⁴³

A GOOD PRACTICE: ADDRESSING YOUTH HOMELESSNESS

- The HOMY (Helping Our Miami-Dade Youth) Collective is a collaboration of about 100 organizations and youth leaders working to prevent and end youth homelessness.
- Four working groups within HOMY focus on education and employment, stable housing, permanent connections, and well-being.
- The collective works closely with the MDC Homeless Trust, which provided seed funding through a 1% Food & Beverage Tax dedicated to homelessness.
- HOMY focuses on mental health and family support for LGBT youth, working to prevent homelessness by keeping individuals in the family home.³⁴

Recommendations

Criminalization of Homelessness:	Access to Health Services:	Access to Housing:
<ul style="list-style-type: none"> Florida should codify the Pottinger Consent Decree protections in a Homeless Bill of Rights. Statutes prohibiting life-sustaining activities should not be enforced when there is no alternative. Any sweeps should respect the dignity, safety, and property of individuals experiencing homelessness. Municipalities should monitor compliance by officers with the Pottinger Consent Decree protections and establish consequences for infractions, such as re-training or suspension. 	<ul style="list-style-type: none"> Florida should adopt Medicaid expansion to cover low-income uninsured adults. MDC should provide access to free mental health clinics and support for survivors of domestic violence. Florida should establish free needle exchange programs throughout the state and amend legislation to permit state and local funding. 	<ul style="list-style-type: none"> Municipalities should consult with communities to adopt policies best-suited to their needs including social housing, community land trusts, rent control, subsidized housing, and removing land and housing from the speculative market. Municipalities should simplify the building code to expedite creation of affordable housing. Municipalities should provide incentives to encourage the equitable development of neighborhoods and require public hearings for new developments. Developers should prepare both environmental and community impact assessments and mitigation plans for displacing vulnerable populations. <ul style="list-style-type: none"> Florida should remove laws that preempt municipalities' ability to enact rent control and set a local minimum wage. MDC should provide legal representation or court navigators to assist those facing eviction.⁴⁴ The U.S. Department of Housing and Urban Development should expand funding to replicate the HOMY Collective in other states. MDC should replicate the HOMY Collective's multi-dimensional and cross-sectoral approach in addressing homelessness more broadly.



- ¹ UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS (USICH), *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* (2012), https://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf.
- ² *Annual Report*, FLA. COUNCIL ON HOMELESSNESS, 1, 46 (2018), myflfamilies.com/service-programs/homelessness/docs/Council%20on%20Homelessness%20Annual%20Report%202018.pdf.
- ³ City of Miami Code 1967, § 38–49; City of Miami Code 1980, § 37–69.
- ⁴ City of Miami Code 1967, § 38–54.1; City of Miami Code 1980, § 37–69.
- ⁵ Ord. No. 12006, § 2, 12-14-00; *see also* Ord. No. 12997, § 2, 5-22-08; Ord. No. 13232, § 2, 11-18-10.
- ⁶ Ord. No. 13495, § 2, 2-12-15.
- ⁷ Joey Flechas, *Tired of nuisance crimes going unpunished? Miami Beach is about to crack down*, MIAMI HERALD (Jan. 3, 2018), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article192826269.html>.
- ⁸ Kyra Gurney, *Tourists are rarely jailed for breaking Miami Beach laws. Not so for the homeless*, MIAMI HERALD (Jan. 15, 2019), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article224019710.html>.
- ⁹ Joey Flechas & Daniel Cheng, *Many people moved into shelter or treatment as Miami cleans out Overtown homeless area*, MIAMI HERALD (Jan. 3, 2018), www.miamiherald.com/news/local/community/miami-dade/article220231260.html; *Pottinger v. City of Miami*, 359 F. Supp. 3d 1177, 1192 (S.D. Fla. 2019).
- ¹⁰ Flechas, *supra* note 7.
- ¹¹ *Pottinger v. City of Miami*, 359 F. Supp. 3d 1177, 1195 (S.D. Fla. 2019).
- ¹² *Pottinger v. City of Miami*, 810 F. Supp. at 1569–73; Settlement Agreement at 7–13, *Pottinger v. City of Miami*, No. 88-2406-CIV-ATKINS (S.D. Fla. Oct. 1, 1998).
- ¹³ Universal Declaration of Human Rights (“UDHR”) art. 3, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948); International Covenant on Civil and Political Rights (“ICCPR”) art. 6(1), *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (ratified by the U.S. on June 8, 1992).
- ¹⁴ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) art. 16, 1465 U.N.T.S. 85, *adopted* Dec. 10, 1984 (ratified by the U.S. on April 18, 1988); UDHR, *supra* note 14, art. 5; ICCPR, *supra* note 14, art. 7.
- ¹⁵ ICCPR, *supra* note 13, art. 9; UDHR, *supra* note 13, art. 3; International Convention on Elimination of All Forms of Racial Discrimination (“ICERD”) art. 5(b), Dec. 21, 1965, 660 U.N.T.S. 195 (ratified by the U.S. on June 8, 1992).
- ¹⁶ UDHR, *supra* note 13, art. 13; ICCPR, *supra* note 13, art. 12(1); ICERD, *supra* note 15, art 5(d)(i).
- ¹⁷ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, CERD/C/USA/CO/7–9, ¶ 12 (2014); *see also* Human Rights Committee, *Concluding observations on the fourth periodic report of the United States of America*, CCPR/C/USA/CO/4, ¶ 19 (2014) (calling upon the U.S. to “[a]bolish the laws and policies criminalizing homelessness at state and local levels”).
- ¹⁸ Nicole Weissman & Marina Duane, *Five Problems with Criminal Background checks*, URBAN INSTITUTE (March 13, 2007), <https://www.urban.org/urban-wire/five-problems-criminal-background-checks>; *Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America*, ¶ 45, U.N. Doc. A/HRC/38/33/Add.1, (criticizing the U.S. for creating “[e]ver more demanding and intrusive regulations . . . which rapidly turn into misdemeanours, leading to warrants, incarceration, unpayable fines and the stigma of a criminal conviction that in turn virtually prevents subsequent employment and access to most housing.”).
- ¹⁹ FLA. HEALTH JUSTICE PROJECT, *Thomas, Stories*, <https://www.floridahealthstories.org/thomas>.
- ²⁰ NAT’L HEALTH CARE FOR THE HOMELESS COUNCIL, *What is the relationship between health, housing, and homelessness?*, <https://www.nhchc.org/faq/relationship-health-housing-homelessness/>; Florida Council on Homelessness, *supra* note 2, at 17 (“Homelessness exacerbates pre-existing health problems, reduces the speed and likelihood of recovery, and exposes people to more health threats. Children who experience homelessness develop more slowly, have more health issues, and are less likely to achieve in school.”); Center for American Progress, *Lack of Housing and Mental Health Disabilities Exacerbate One Another*, <https://www.americanprogress.org/issues/poverty/news/2018/11/20/461294/lack-housing-mental-health-disabilities-exacerbate-one-another/>.
- ²¹ *Annual Report*, FLA. COUNCIL ON HOMELESSNESS (2019), Appendix III, Table 3: Homeless Population Characteristics, 2018–2019, *accessible at*: myflfamilies.com/service-programs/homelessness/docs/2019CouncilReport.pdf.

- 22 *Vulnerable to Hate: A Survey of Bias-Motivated Violence against People Experiencing Homelessness in 2016–2017*, NAT'L COAL. FOR HOMELESS, 1, 14 (Dec. 2018), accessible at: nationalhomeless.org/wp-content/uploads/2019/01/hate-crimes-2016-17-final_for-web2.pdf.
- 23 Flechas & Cheng, *supra* note 9.
- 24 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: United States of America*, ¶ 176.315, A/HRC/30/12 (July 20, 2015).
- 25 *Id.* at ¶ 176.317.
- 26 UDHR, *supra* note 13, art. 25(1); ICERD, *supra* note 15, art. 5; International Covenant on Economic, Social and Cultural Rights (“ICESCR”) art. 12, (signed by the U.S. on Oct. 5, 1977); Convention on the Elimination of all Forms of Discrimination Against Women (“CEDAW”) art. 12 (signed by the U.S. on July 17, 1980). While the U.S. has only signed the ICESCR and CEDAW, it has “an obligation to refrain, in good faith from acts that would defeat the object and the purpose of the treaty.” RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 304 (AM. L. INST. 2018). Even under these bare minimum standards, the U.S. is currently failing to meet its obligations by criminalizing homelessness, and thereby creating barriers to health and housing.
- 27 *Florida Medicaid Expansion Update*, FLA. HEALTH JUSTICE PROJECT (Apr. 2019), <https://www.floridahealthjustice.org/publications--media/medicaid-expansion-update-april-2019>.
- 28 H.R., *Final Bill Analysis*, CS/HB 171, 7 (Fla. 2019).
- 29 Miami-Dade County, Legislative Item 192270, *Sterile Needle and Hypodermic Syringe Exchange Program* (Oct. 3, 2019), accessible at: <http://www.miamidade.gov/govaction/matter.asp?matter=192270&file=true&fileAnalysis=false&yearFolder=Y2019>.
- 30 David Peery (op. ed.), *Public toilets enable homelessness? Not true, and a ridiculous excuse to let Miami streets stay filthy*, MIAMI HERALD (Dec. 19, 2019), <https://www.miamiherald.com/opinion/op-ed/article238544703.html>.
- 31 UDHR, *supra* note 13, art. 25(1); ICESCR, *supra* note 26, art. 11(1); ICERD, *supra* note 15, art. 5(e)(iii); CEDAW, *supra* note 26, art. 14(h).
- 32 Jerry Iannelli, *Five Stories That Show Wages in Miami Are Far Too Low*, MIAMI NEW TIMES (Sept. 24, 2017).
- 33 Richard Florida & Steven Pedigo, *Miami’s Housing Affordability Crisis*, at 4 (2019). https://carta.fiu.edu/mufi/wp-content/uploads/sites/32/2019/03/Miamis_Housing_Affordability_Crisis_FNL.pdf.
- 34 HOMY Collective Comprehensive Plan to Prevent and End Youth Homelessness in Miami-Dade County, <http://www.homelesstrust.org/library/coc/2017-homy-comprehensive-plan.pdf>.
- 35 *City of Miami Beach v. Fla. Retail Fed’n, Inc.*, 233 So. 3d 1236, 1236 (Fla. Dist. Ct. App. 2017); Fla. Stat. § 218.077(2) (2015) (“Except as otherwise provided in subsection (3), a political subdivision may not establish, mandate, or otherwise require an employer to pay a minimum wage, other than a state of federal minimum wage.”).
- 36 Ali R. Bustamante, *State of Working Florida: 2017*, FLA. INT’L UNIV. CTR. FOR LABOR RESEARCH & STUDIES, (Sept. 2017), <https://riseup.fiu.edu/state-of-working-florida/state-or-working-florida-2017.pdf>.
- 37 *Blueprint and Connect Capital Report*, MIAMI’S WORKER’S COUNCIL, available at: <https://drive.google.com/file/d/1Uq5JjXCCsUwMkYqv76V0yVXCtj1uboX5/edit>.
- 38 Interview with Daniela Tagtachian, Clinic Professor, Environmental Justice Clinic, University of Miami School of Law (Jul. 8, 2019); Tony Roshan Samara & Grace Chang, *Gentrifying Downtown Miami*, 15 RACE POVERTY & THE ENV’T 14, 15; Jesse M. Keenan et al., *Climate Gentrification: from theory to empiricism in Miami-Dade County, Florida*, ENVIRO. RES. LETT. 13 (2018); Interview with Stephen Schnably, Professor, University of Miami School of Law (Sept. 25, 2019); *but see* Better Bus Project Miami, <https://www.betterbus.miami/concepts> (describing how MDC has been taking some steps to reassess its bus system to make public transportation more comprehensive and reliable in the county).
- 39 Ajay Garde, Cecilia Kim & Oscar Tsai, *Differences Between Miami’s Form-Based Code and Traditional Zoning Code in Integrating Planning Principles*, J. OF AM. PLANNING ASS’N, 81.1 (2015).
- 40 Daniela A. Tagtachian, Natalie N. Barefoot & Adrienne L. Harreveld, *Building by Right: Social Equity Implications of Transitioning to Form-Based Code*, 28 J. AFFORDABLE HOUS. & COMM. DEV. L. 71, 84–85 (2019).
- 41 S. FLA. HOUS. STUDIES CONSORTIUM, *The Dynamics of Housing Affordability in MDC*, at ii; Interview with Daniela Tagtachian, *supra* note 38.
- 42 Curtis J. Berger, *Beyond Homelessness: An Entitlement to Housing*, 45 U. MIAMI L.R. 315, 322 n.43 (1990).
- 43 Fla. Stat. § 125.0103(1)(a) (2019) (noting that “no county, municipality, or other entity of local government can impose price controls upon a local business activity . . . that is not part of a government agency.” This includes home and apartment prices which essentially outlaws any potential local rent control).
- 44 *E.g.*, Kriston Capps, *New York Guarantees a Lawyer to Every Resident Facing Eviction*, THE CITY LAB, (Aug. 14, 2017), <https://www.citylab.com/equity/2017/08/nyc-ensures-eviction-lawyer-for-every-tenant/536508/>.