



# Ending Discrimination for Delaware's Homeless

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## *Protecting the Rights of Our Most Vulnerable Citizens*

This report brings attention to the families and individuals in Delaware experiencing homelessness, or at risk of homelessness, who face discrimination due to their housing status, source(s) of income, and/or disability status while on the streets and when seeking access to housing, employment, and temporary shelter.

*Prepared by the Policy Committee on Ending Homelessness in Delaware, a Working Group of the Homeless Planning Council of Delaware*

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## **EXECUTIVE SUMMARY**

This report aims to bring the attention of Delaware legislators to the families and individuals experiencing homelessness, or at risk of homelessness, who face discrimination due to their housing status, source of income, and disability status while on the streets and when seeking access to housing, employment, and temporary shelter.<sup>1</sup> In July 2012, Rhode Island passed the first Homeless Persons' Bill of Rights in the nation, providing protections for all citizens of their State regardless of their housing status.

Discriminatory practices aggravate the problem by unnecessarily prolonging experiences of homelessness and burdening the State's criminal justice, homeless services, and human services systems. As part of a comprehensive strategy to prevent and end homelessness in Delaware we must ensure that persons experiencing and at risk of homelessness receive equal treatment under the law, and have equal access to the goods and services necessary to end their homelessness.

## ***HOMELESSNESS, DISCRIMINATION, AND CRIMINALIZATION***

➤ ***DISCRIMINATION IN ACCESS TO TEMPORARY SHELTER:*** Temporary shelters in Delaware discriminate against persons due to their disability status, whether physical or psychiatric disability. Unlike other citizens in Delaware, disabled persons experiencing or at risk of homelessness are subject to overt housing discrimination by the very system meant to serve them.

### ***POLICY RECOMMENDATIONS:***

- Develop a Homeless Persons' Bill of Rights for the State of Delaware that requires all shelter providers to comply with the American Disabilities Act and Delaware's Fair Housing Act.

➤ ***CRIMINALIZATION ON THE STREET:*** Persons living on the streets are vulnerable to policies that target the homeless for performing necessary life-sustaining activities (e.g. eating, sleeping, sitting, standing) that they have no option but to perform in public places. Laws that make it illegal to do things that persons experiencing homelessness must do as a result of their homeless status criminalize homelessness. Persons experiencing homelessness are frequently treated unequally by authorities with regards to their use of public space in our communities. This criminalization of homelessness

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<sup>1</sup> See APPENDIX A: Definitions

places unnecessary burdens on Delaware's criminal justice system. It also saddles the homeless with fines they cannot afford, and criminal records that inhibit their ability to access housing, employment, and the essential human services they need to end their homelessness.

### ***POLICY RECOMMENDATIONS:***

- Develop a Homeless Persons' Bill of Rights for the State of Delaware that ensures equal treatment under the law, equal access to and use of public space for all Delaware citizens, regardless of their housing status.
- Pursue alternative justice system strategies to criminalization such as police training, human services and police department collaborations, police department homeless liaisons, and homeless diversion or community courts.
- Review municipal and state codes, and their enforcement, to ensure that laws do not unfairly target the homeless due to their housing status.

## ***HOUSING AND EMPLOYMENT DISCRIMINATION***

➤ ***FAIR HOUSING AND EQUAL EMPLOYMENT OPPORTUNITY:*** Persons experiencing or at risk of homelessness are frequently denied access to housing and employment for which they would otherwise be eligible due to practices by landlords and employers that discriminate against applicants based on their housing status and/or source(s) of income. These practices aggravate the problem by denying individuals and families equal opportunities to access the housing and income they need to end their homelessness.

### ***POLICY RECOMMENDATIONS:***

- Develop a Homeless Persons' Bill of Rights for the State of Delaware that protects all individuals and families in Delaware experiencing or at risk of homelessness from discrimination based on their housing status and source of income.
- Add "housing status" and "source(s) of income" to Delaware's Fair Housing Act and Delaware's Equal Opportunity Law.

# I. HOMELESSNESS

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## A. SYSTEM GOALS

The Homeless Planning Council of Delaware (HPC) was informally established in early 1998 and incorporated as a 501 (c) 3 non-profit agency in June 2000. The HPC is an active, cooperative coalition of public, nonprofit and private-sector organizations and individuals working together year-round to address issues related to homelessness in Delaware. The HPC is dedicated to seeking innovative and evidence-based solutions to prevent and end homelessness in the State of Delaware. In 2012, the Policy Committee on Ending Homelessness in Delaware was formed as a working group of HPC to tackle policy issues that directly affect our efforts to end homelessness in the State.

Homelessness is not a simple problem affecting some, but is a complex housing issue that has many causes, solutions and outcomes. The HPC seeks to prevent new entries into homelessness by increasing the availability of homeless prevention, diversion, and rapid re-housing resources in Delaware. These resources help families and individuals experiencing or at risk of homelessness maintain their current housing, or move as quickly as possible out of homelessness and back in to stable housing.

The HPC aims to develop system-wide practices that focus not only on providing temporary shelter for those in need, but moving people out of the homeless services system and into to stable housing as quickly as possible. While temporary shelters help families and individuals in crisis cope with homelessness, they do little to end homelessness quickly and efficiently for those whom they serve.

Despite our State's best efforts, rates of homelessness in Delaware have remained steady for more than 30 years. During that time, new programs have been created – mostly emergency and temporary shelters - and yet there has been no decrease in the rate of homelessness. If we are dedicated to ending homelessness we must dedicate ourselves to seeking new solutions and making changes to how we address the problem at a systems level.

Our goal is for every Delawarean to have a stable and permanent home in which to live. In order to achieve this goal it is essential to ensure that persons experiencing or at risk of homelessness receive equal treatment, and have fair and equal access to the basic goods and services - such as housing, employment, and shelter - that are necessary to end their homelessness. The HPC is currently working in partnership with others, including the Delaware Interagency Council on Homelessness, to develop Delaware's upcoming Plan to Prevent and End Homelessness. We will align our plan with *Opening Doors*, the Federal Strategic Plan to Prevent and End Homelessness, and the HEARTH Act of 2009.

### **B. THE CURRENT STATE OF HOMELESSNESS**

Too many Americans are unable to afford and access adequate housing. As a result, they are finding themselves with no other option but to live in emergency and temporary shelters. Due to lack of shelter space and/or inappropriate shelter options, others are forced to live in unsanitary and often-times life threatening conditions in places not meant for human habitation (under bridges, in parks, in vehicles, etc). In 2012, approximately 1/3 (38%) of the homeless captured in the National Point in Time Homeless Count were unsheltered.

In the United States it is estimated that 643,067 people experience homelessness on any given night. Approximately 13% of Americans experiencing homelessness in 2012 were Veterans of our armed forces. 38% of homeless persons in the United States in 2012 were members of families, making up a total of 77,157 American families. Chronically homeless individuals accounted for 15.8% of the homeless population in 2012.<sup>2</sup>

In the State of Delaware it is estimated that 6,572 people, including adults and children, experienced homelessness in 2012. According to Delaware's 2012 Point in Time Survey, 43% of homeless individuals were female, 40% were members of families with at least one child, and 24% were children under the age of 18. Approximately 7.5% of persons experiencing homelessness reported being victims of domestic violence. Delaware's Department of Education reports 3,063 homeless children and youth in

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<sup>2</sup> U.S. Department of Housing and Urban Development. (2011). Point In Time.

Delaware schools during the 2011-2012 school year.<sup>3</sup> In 2011, approximately 10% of persons experiencing homelessness reported having been in the foster care system at some point in their lives<sup>4</sup>.

Veterans accounted for 14% of all homeless individuals in Delaware in 2012, while African Americans continue to be overrepresented in Delaware's homeless population. African Americans make up 21% of the state's population, but represent approximately 60% of Delaware's homeless population.<sup>5</sup>

### C. RHODE ISLAND'S HOMELESS PERSONS' BILL OF RIGHTS

In July 2012, Rhode Island passed the first Homeless Persons' Bill of Rights in the nation, providing protections for citizens of their State on the basis of their housing status. There are at least five other states where advocates are organizing a Homeless Bill of Rights, including Texas, Oregon, California, Nebraska, and Michigan<sup>6</sup>.

The Rhode Island Homeless Persons' Bill of Rights grants persons experiencing homelessness the "same rights and privileges as any other citizen of the state" with regards to: use of public space, equal treatment by police, access to employment, access to housing, access to quality emergency physical and mental health care, voting, legal counsel, confidentiality of records, and access to public benefits.

The Bill states that:

It is hereby declared to be the policy of the state [of Rhode Island] to assure to all individuals regardless of race, color, religion, sex, sexual orientation, gender identity or expression, marital status, country of ancestral origin, or disability, age, familial status, [or] **housing status**...equal opportunity to live in decent, safe, sanitary, and healthful accommodations anywhere within the state in order that the peace, health, safety, and general welfare of all the inhabitants of the state may be protected and insured<sup>7</sup>

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<sup>3</sup> The DOE definition of homeless children and youth means individuals that lack a fixed or regular residence, including those living doubled up with family or friends, in motels/hotels, and other such temporary locations.

<sup>4</sup> Homeless Planning Council of Delaware (2011). Point In Time Data.

<sup>5</sup> Delaware HMIS FY2011 Data Report. (2012). Homeless Planning Council of Delaware.

<sup>6</sup> International Freedom Coalition. Nationwide Legislation Watch. <http://strongfamiliesnow.org/bor/homeless-bill-of-rights/bill-status/>. Accessed 11/27/2012

<sup>7</sup> Rhode Island Homeless Persons' Bill of Rights, 34-37.1, 20-28



In this Bill they define the term "housing status" as "the status of having or not having a fixed or regular residence, including the status of living on the streets or in a homeless shelter or similar temporary residence."<sup>8</sup>

### **D. EQUAL ACCESS TO TEMPORARY SHELTER**

The Fair Housing Amendments Act of 1988 (FHAA) prohibits discrimination in the sale or rental of housing on the basis of disability. As a result of the Olmstead settlement with the Department of Justice in July 2011, Delaware has made significant progress towards ensuring that individuals with a diagnosed psychiatric disability have access to permanent community-based housing. However, it is also necessary to ensure that psychiatrically and physically disabled persons experiencing or at risk of homelessness are protected from discrimination with regards to equal access to temporary shelter in situations of crisis. In this report, "temporary shelter" means any emergency, transitional, or temporary shelter provided to individuals and/or families experiencing homelessness by any federal, state, faith-based, non-profit, or private agency.

Eight hundred and forty-six (37%) of the adults served by Delaware's homeless services system in FY 2011 reported having a disability of long duration<sup>9</sup>. Approximately 10% of Delaware's homeless in 2011 were physically disabled.<sup>10</sup> During Delaware's Registry Week in June 2012 for the 100,000 Homes Campaign, volunteers located and interviewed a total of 186 homeless individuals living on the streets in Delaware over the course of 3 mornings. Of those persons, 78% reported one or more behavioral health issue, while 40% reported a dual diagnosis of mental illness and substance abuse disorder.<sup>11</sup> In Delaware's 2012 Point in Time survey, 27% of individuals reported having a diagnosed mental illness, and 24% reported having a substance abuse problem.

Homeless individuals diagnosed with physical and psychiatric disabilities, including co-occurring disorders (recurring mental illness *and* recurring substance abuse disorder), are at greater risk of being denied access to shelter than the general homeless population in Delaware due to their disability

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<sup>8</sup> Rhode Island Homeless Persons' Bill of Rights, 34-37-3, 27-29

<sup>9</sup> Homeless Planning Council of Delaware. (2012). Delaware HMIS FY2011 Data Report.

<sup>10</sup> Homeless Planning Council of Delaware (2011). Point In Time Data.

<sup>11</sup> Homeless Planning Council of Delaware. (2012). Delaware Registry Week Community Brief Back Fact Sheet.

status. Individuals who are physically disabled are frequently turned away from temporary shelters because the facility is not accessible to them. Many individuals with psychiatric disabilities are turned away at the door, or discharged to the street and back into homelessness by providers. Consequently, those who are most vulnerable and in greatest need are often the least served in our homeless services system.

### **E. THE CRIMINALIZATION OF HOMELESSNESS**

In 2009, the United States Congress passed the HEARTH Act. The HEARTH Act required the U.S. Interagency Council on Homelessness to promote alternatives to codes and statutes that criminalize homelessness. As a result, The U.S. Interagency Council on Homelessness (USICH) and Department of Justice (DOJ) issued the report “Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness.” This report officially recognizes, for the first time, that in addition to possible violations under the U.S. Constitution, the criminalization of homelessness may implicate our human rights treaty obligations under the International Covenant on Civil and Political Rights, which the United States ratified in 1992.<sup>12</sup>

However, cities, towns, and municipalities across the nation continue to pass ordinances (such as anti-loitering and anti-lurking) and perform sweeps of homeless areas that target persons experiencing homelessness for performing life-sustaining activities such as sitting, sleeping, and eating in public places. These are necessary activities which persons experiencing homelessness have no choice but to perform on public property. Across 27 large cities surveyed in 2010, an average of 27% of persons experienced homelessness in these cities were turned away from shelters due to lack of shelter beds<sup>13</sup>. Criminalization of homelessness is ineffective in addressing the real problem – a lack of affordable housing and shelter beds.

In the City of Wilmington an individual cited for “Loitering for the Purpose of Begging” can be fined up to \$750.00. In Smyrna Delaware Code, Section 42-108, it is stated that “It shall be unlawful for any

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<sup>12</sup> National Law Center on Poverty and Homelessness. (2012). Human Right to Housing Report Card.

<sup>13</sup> National Law Center on Poverty and Homelessness. (2011). Criminalizing Crisis Report: the Criminalization of Homelessness in U.S. Cities.

person to prowl at night in the alleys...and such person shall be guilty of night prowling." Anyone cited for this violation is subject to fines.

Many times persons experiencing street homelessness are unable to pay court fees and/or fines. When individuals fail to pay fines, they may be served with an active arrest warrant and/or forced to serve time in prison.

"I have been locked up just for asking someone to help me. A police officer heard me ask and arrested me for Loitering for the Purpose of Begging. I have been arrested many times for this, given a fine I cannot pay, and then locked up again for non-payment of fines. The last time I did 90 days in Gander Hill. This is serious stuff we deal with daily."

- Person experiencing Homelessness in Delaware, 2012

Individuals with active arrest warrants may be turned away from shelters, forcing them to live out on the streets where they are subject to acquiring more violations and fines. Serving time in prison for nuisance violations further aggravates the problem. It places unnecessary financial burdens on the criminal justice system as it is costly to the state not only to process each case but to shelter someone overnight in prison. In Delaware it cost an average of \$99/day to imprison one inmate.<sup>14</sup> In Delaware's emergency shelters, it costs an average of \$30/night to shelter an individual. In permanent supportive housing, it costs an average of \$40/night to permanently house an individual in the community.<sup>15</sup>

In Delaware's 2012 Point in Time Survey, 32% of respondents reported having been incarcerated at some point in time. When homeless persons are incarcerated for nuisance violations it becomes increasingly difficult for them to reintegrate into mainstream society, and contributes to their recidivism back into the criminal justice system. Firstly, it saddles them with criminal records, making it more difficult for them to access housing and employment. Secondly, incarceration disrupts their access to essential services. That person may miss work, lose their public benefits (depending on length of incarceration), lose important vital documents (state ID, social security card, etc.), or miss important appointments for housing, benefits or other vital services. All of these consequences prolong a person's experience of homelessness.

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<sup>14</sup> Delaware Department of Correction. (2012). Annual Report 2011-2012.

<sup>15</sup> Homeless Planning Council of Delaware. (2012). System Evaluator Tool.

"I was trying to help this guy find a place to stay. I called shelters all over Wilmington. I finally had an appointment set up for him at [the shelter] and he got locked up for sleeping on his friend's porch. His friend told him that he could sleep there, but wasn't home at the time. He missed his appointment at the shelter and had to start all over. This kind of thing was a daily occurrence for him."

– Delaware Service Provider, 2013

## II. HOUSING

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### A. THE UNITED STATES AND THE HUMAN RIGHT TO HOUSING

In 1948 the United States led the world in developing the Universal Declaration of Human Rights, which states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, **housing** and medical care and necessary social services..."<sup>16</sup> In 2009 the United States published the U.S. Human Rights Commitments and Pledges. In this document it is stated that:

"The deep commitment of the United States to championing the human rights enshrined in the Universal Declaration of Human Rights is driven by the founding values of our nation and the conviction that international peace, security, and prosperity are strengthened when human rights and fundamental freedoms are respected and protected."

The United States is also signatory to the International Covenant on Economic, Social and Cultural Rights<sup>17</sup>. Article 11 of the Covenant recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and **housing**, and to the continuous improvement of living conditions." In 2010, President Obama stated that it is "simply unacceptable for individuals, families, children, and our nation's veterans to be faced with homelessness in this country."<sup>18</sup> More recently, on November 29, 2012, the City Council of Madison, Wisconsin joined New

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<sup>16</sup> Universal Declaration of Human Rights. (1948). Art. 25(1).

<sup>17</sup> United Nations Treaty Collection. [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en) Accessed 12/5/12.

<sup>18</sup> National Law Center on Poverty and Homelessness. (2011). Simply Unacceptable: Homelessness and the Human Right to Housing In the United States.

York City in recognizing housing as a human right by passing a city resolution and pledging to take concrete steps to realize that right for all citizens of their city.<sup>19</sup>

### **B. DELAWARE'S AFFORDABLE HOUSING CRISIS**

It is not surprising that there has been increased attention to the issue of homelessness on a federal and state level since the housing market crisis in 2008. Currently, nearly 12 million renters and homeowner households in the United States pay over 50 percent of their annual income for housing.<sup>20</sup> In 2011 alone 5,112 mortgage foreclosure complaints were filed in Delaware.<sup>21</sup> The State of Delaware has done tremendous work in the areas of foreclosure prevention, including Delaware's Mandatory Mediation Program and the Attorney General's more recent National Mortgage Servicing Settlement. However, housing in Delaware, whether renter or owner-occupied, continues to be unaffordable for many Delawareans. The capability to secure and maintain affordable housing is a socio-economic issue. Households with one person working full-time at minimum wage cannot afford the local fair-market rent for a two-bedroom apartment anywhere in the United States.<sup>22</sup>

In 2012, the fair market rent for a 2 bedroom apartment in Delaware was \$970.00. In order to afford that level of housing cost at 30% of household income, a household must earn \$38,784.00 annually. For a single adult working 40 hrs/week, 52 weeks/year, the hourly housing wage for a 2 bedroom apartment in Delaware is \$18.65/hour. In Delaware, a minimum wage worker earns \$7.25/hour. The estimated mean renter earns \$7.47/hour.<sup>23</sup> This means that there is an approximately \$10.00/hour wage gap between the mean renter wage in Delaware and the market-based rent for a 2-bedroom apartment.

For many working professional Delawareans, wages are not keeping pace with housing costs. Professionals unable to afford a 2 bedroom apartment in Delaware include pre-school teacher

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<sup>19</sup> National Law Center on Poverty and Homelessness. (2012). Human Right to Housing Report Card.

<sup>20</sup> U.S. Department of Housing and Urban Development. (2012). *Affordable Housing*. <http://portal.hud.gov/>, Accessed December 2012

<sup>21</sup> Delaware State Housing Authority. (2012). 2011 Delaware Foreclosure Filing Data

<sup>22</sup> U.S. Department of Housing and Urban Development. (2012). *Affordable Housing*. <http://portal.hud.gov/>, Accessed December 2012

<sup>23</sup> National Low Income Housing Coalition. (2012). Out of Reach: Delaware Housing Wage Report.

(\$11.05/hr), Pharmacy Technician (\$12.09/hr), Bank Teller (\$11.76/hr), and Nursing Aide (\$13.11/hr).<sup>24</sup> Furthermore, approximately 21,552 (24.2%) renter households in Delaware are severely cost-burdened, with housing costs exceeding 50% of their income. These households are one missed pay check or one medical emergency away from homelessness.

For those Delawareans unable to work due to disability, they often must rely solely on Supplemental Security Income (SSI) of \$698.00/month in order to meet their most basic needs – including shelter. However, nowhere in the State of Delaware can someone receiving SSI afford a one-bedroom apartment at fair market value. A national study of housing affordability needs for SSI recipients determined that average rents for efficiency apartments required 66% of the SSI check, one-bedroom required 80%, and in 9% of counties fair-market rent for a one-bedroom apartment exceeded the total amount of SSI benefits.<sup>25</sup>

### **C. FAIR HOUSING: HOUSING STATUS AND SOURCE OF INCOME**

When persons experiencing homelessness seek access to housing they are unable to present potential landlords with a current or permanent address. Those staying in temporary shelters or institutions often must use the address of the shelter or institution on their rental applications.

Others must report income from state or federal sources, such as Social Security Income, General Assistance, Temporary Assistance for Needy Families, or housing subsidies such as Section 8 Housing Choice Vouchers. Persons experiencing and at risk of homelessness are often discriminated against by potential landlords due to their housing status and/or source(s) of income when applying for a rental unit.

“Housing Status” means the type and location of housing in which an individual resides or has resided, and the status of having or not having a fixed or regular residence; including, but not limited to: 1) The status of living or having lived on the street, in a homeless shelter or other temporary residence, 2) The

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<sup>24</sup> Delaware State Housing Authority. (2012). Delaware Housing Fact Sheet.

<sup>25</sup> Doak, M. J. (2006). *Homeless in America: How could it happen here?* Farmington Hills, MI: Thomson Gale.

status of living or having lived in an institution (e.g. mental or physical health facility) or; 3) The status of living or having lived in public housing, at a particular address, or in a particular neighborhood.

“Source of Income” means any lawful source of money paid directly or indirectly to a renter or buyer of housing, including but not limited to: 1) Income derived from any lawful profession or occupation 2) Income derived from any government or private assistance, grant, or loan program, including Welfare, Social Security, and Section 8 and other housing voucher programs; or 3) Income derived from annuity, alimony or child support.

In Delaware 11.2% of the population lives below the poverty level.<sup>26</sup> In 2012, 4,553 HUD vouchers were under lease in Delaware, with a waiting list that can last for several years.<sup>27</sup> In 2011, 16,240 individuals in Delaware were recipients of Supplemental Security Income.<sup>28</sup> Many of these households are living on extremely low incomes, and are one medical emergency or missed pay check away from homelessness.

From 2000 – 2010 42% of fair housing complaints in Delaware were disability-related. Source of Income discrimination (SSI, SSDI, housing assistance like Housing Opportunities for People with AIDS) is a common fair housing issue for people with disabilities, as they often rely on subsidy and entitlement income.<sup>29</sup> Eight hundred and forty-six (37%) of the adults served by Delaware's homeless services system in FY 2011 reported having a disability of long duration.<sup>30</sup>

Under current Delaware law there are no protections in place for individuals and families based on source of income or housing status. Delaware Code, Chapter 46, states that:

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<sup>26</sup> U.S. Census Bureau. (2011). <http://quickfacts.census.gov/qfd/states/10000.html>, Accessed 1/10/13.

<sup>27</sup> Voucher Management System. (2012) HUD Delaware Field Office.

<sup>28</sup> Social Security Administration. (2011). SSI Recipients by State.

[http://www.socialsecurity.gov/policy/docs/statcomps/ssi\\_sc/2011/de.html](http://www.socialsecurity.gov/policy/docs/statcomps/ssi_sc/2011/de.html). Accessed 1/9/12.

<sup>29</sup> Delaware Housing Coalition, the Housing Sub-Committee of the Governor's Commission on Community Based Alternatives for People with Disabilities, and State Council on Persons with Disabilities. (2012). Community and Choice: Housing Needs for People with Disabilities in Delaware.

<sup>30</sup> Homeless Planning Council of Delaware. (2012). Delaware HMIS FY2011 Data Report,

This chapter is intended to eliminate, as to housing offered to the public for sale, rent or exchange, discrimination based upon race, color, national origin, religion, creed, sex, marital status, familial status, age, sexual orientation or disability...

Currently landlords in Delaware are permitted to discriminate against those citizens most in need of housing, even when they are able to afford the rental unit and meet all other rental requirements. This discrimination in access to housing aggravates the problem of homelessness. It keeps people living in shelters and on the streets for longer periods of time than necessary, and places low income and disabled individuals at higher risk of homelessness due to unequal access to housing. It also places an unnecessary cost burden on Delaware's shelter and human services system by contributing to, rather than helping to solve, the problem.

Rhode Island is currently the only state that prohibits discrimination based on housing status. Twelve states and the District of Columbia prohibit source of income discrimination. They are California, Connecticut, Maine, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont and Wisconsin.<sup>31</sup> The City of Wilmington, along with the City of Chicago and others, also provides protections in its fair housing code for source of income. In Chapter 35, Article III of City of Wilmington Code, it is stated that:

The provisions of this article are intended to eliminate, as to housing offered to the public for sale or rent, discrimination based upon race, age, marital status, creed, color, sex, sexual orientation, handicap, national origin or ***economic status as a welfare recipient, person dependent on fixed income*** or as a parent with a minor child or minor children.

#### D. EQUAL EMPLOYMENT OPPORTUNITY

Persons and families experiencing homelessness are often discriminated against due to their housing status by potential employers when seeking access to employment in the State of Delaware.

“Just this month I was overlooked for employment because of my address at the [shelter]. I was told that the director of the company said not to hire anyone who lives

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<sup>31</sup>National Multi Housing Council. Fair Housing Act Protected Classes/Sources of Income Discrimination. <http://www.nmhc.org/Content/ContentList.cfm?NavID=599>. Accessed December 2012.



at the [shelter]. How are we supposed to better our situation if this kind of thing continues?" –Person Experiencing Homelessness in Delaware, 2012

In Delaware, there are no protections against this kind of discrimination. In Chapter 7 of Current Delaware Code, Title 19, it is stated that:

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of race, marital status, genetic information, color, age, religion, sex, sexual orientation, or national origin...

Recognizing the need to combat the effects of bias and bigotry throughout Cook County Illinois, the Cook County Board of Commissioners adopted the Cook County Human Rights Ordinance on March 16, 1993. The Ordinance is designed to protect all people who live and work in the County from discrimination in employment and housing, among other things. The Ordinance prohibits discrimination when based upon a person's race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, **source of income**, gender identity, or **housing status**.

## III. POLICY RECOMMENDATIONS

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Not one adult or child should experience the trauma and dehumanization of homelessness. The fact is that a lack of stable, safe, and affordable housing has forced thousands of Americans out of their homes. As individuals and families struggle to lift themselves out of homelessness they often face practices by potential landlords, employers, service providers, or the police that are discriminatory. These practices not only fail to address the root problem – a lack of affordable housing – but aggravate the problem by preventing access to essential services and opportunities for those most in need.

In order to prevent and end homelessness in Delaware we must ensure that persons experiencing or at risk of homelessness receive equal treatment, and have equal access to employment, housing, and shelter. We suggest that Delaware take the following actions:

### A. Develop a Homeless Persons' Bill of Rights in Delaware

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We suggest that Delaware follow Rhode Island's example and develop legislation that guarantees persons experiencing homelessness the same rights and privileges as any other citizen of the state, particularly with regards to equal access to temporary shelter, equal use of public space and treatment by police, and equal access to housing and employment.

#### *Equal Access to Temporary Shelter*

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A Homeless Persons' Bill of Rights in Delaware must require that all temporary housing providers in Delaware comply with the American Disabilities Act and the Delaware Fair Housing Act. This will ensure that persons with disabilities experiencing homelessness in Delaware have equal and fair access to temporary shelter. Without equal access, those most in need of services, care, and housing will continue to be under served.

### *Equal Use of Public Space and Equal Treatment by Police*

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A Homeless Persons' Bill of Rights in Delaware must ensure that persons experiencing homelessness in the state enjoy the same rights as other citizens. The intentional targeting of homeless individuals by police officers for being present in public spaces, performing legal and life sustaining activities in public spaces, or violating nuisance laws is discriminatory. It further marginalizes our most vulnerable community members, burdens the criminal justice system, and creates significant barriers for persons experiencing homelessness as they seek access to shelter, employment, essential human services, and housing. If we intend to end homelessness in Delaware we must ensure that people have equal opportunity to access the goods and services they need to do so.

### *Equal Access to Housing and Employment*

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A Homeless Persons' Bill of Rights in Delaware should require housing providers and employers to treat all applicants equally, regardless of their housing status or sources of income. In our efforts to prevent and end homelessness, fair housing and equal employment opportunity are essential for helping to move people out of homelessness and into permanent housing.

## **B. Pursue alternative justice system strategies to criminalization.**

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The criminalization of homelessness is costly, ineffective, and aggravates the problem. As part of a comprehensive strategy to end homelessness in Delaware, we must pursue creative alternatives to criminalization in our communities.

### *Homeless Persons' Diversion Court*

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Delaware Superior Court has developed multiple programs to provide more efficient and cost-effective services through specialized courts such as Drug Court, Mental Health Court, Reentry Court, and Veterans' Court. Each of these courts targets a particular population with the goal of

achieving better outcomes for that population. We recommend the development of a diversion court program designed to divert homeless individuals charged with nuisance violations from Delaware's criminal justice system and to the services that they need to end their homelessness. Examples of innovative programs include San Diego's Homeless Court Program and Houston's Homeless Court.<sup>32</sup>

### *Community Court Programs*

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We also recognize that community court programs can play a large role in diverting persons experiencing homelessness from the system. Community courts employ a non-traditional restorative approach to addressing minor, non-violent crime at a community level. Community courts are "neighborhood-focused courts that attempt to harness the power of the justice system to address local problems. They can take many forms, but all focus on creative partnerships and problem solving."<sup>33</sup> Communities across the country in California, Connecticut, Colorado, Indiana, Minnesota, New York, New Jersey, and many others, are developing community courts in their jurisdictions.

### *Police Training*

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We also suggest that trainings be conducted with police departments throughout the state that focus specifically on the rights of persons experiencing homelessness. Police officers should be trained on legal issues related to the enforcement of nuisance laws against homeless persons, and alternatives to criminal intervention.

### *Homeless Liaison Officers*

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Each police department, law enforcement agency, and public safety agency in Delaware, including the Delaware State Police, should establish one or more officers as designated

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<sup>32</sup> United States Interagency Council on Homelessness. (2012). Searching Out Solutions: Constructive Alternatives to Criminalization. pp31-32.

<sup>33</sup> Center for Court Innovation. Community Court: Overview. <http://www.courtinnovation.org/topic/community-court>. Accessed 2/6/13.

homeless liaisons. These persons will serve as the points of contact for the department on issues of homelessness, meet with homeless service providers in the community, intentionally build relationships with local providers and homeless persons, and help connect homeless persons to services.<sup>34</sup>

### *State-wide Review of Public Nuisance Codes*

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Public nuisance laws are important means by which jurisdictions keep their communities pleasant, safe, and clean for everyone. However, criminalizing persons in a community who are experiencing homelessness for violating minor nuisance codes is a costly and ineffective solution. Municipalities across the state, in collaboration with police departments, should review their public nuisance laws and enforcement practices and make changes where needed in order to ensure that the basic rights of each individual in their community are protected, regardless of their housing status.

## C. Revise Delaware Fair Housing and Equal Employment Law

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Discriminatory housing and employment practices aggravate the problem of homelessness in Delaware. They further marginalize our most vulnerable citizens and deny individuals and families equal access to the income and housing they need to end their episode of homelessness.

### *Add "source of income" and "housing status" to Delaware's Fair Housing and Equal Employment Law*

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Adding source of income and housing status to our Fair Housing and Equal Opportunity laws would protect persons experiencing or at risk of homelessness from discriminatory landlords and employers. These additions to Delaware's laws would not require landlords or employers to accept everyone. They would be free to use the same legitimate criteria that they currently use to screen all potential employees and tenants, such as rental history, ability to pay,

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<sup>34</sup> National Law Center on Homelessness and Poverty. (2011). *Criminalizing Crisis: the Criminalization of Homelessness in U.S. Cities*; Advocacy Manual.

references, employment history, etc. However, under these new protections, it would be unlawful for them to categorically refuse to rent to or employ a person due to that persons' housing status or source of income.

## **APPENDIX A: DEFINITIONS**

“Housing Status” means the type and location of housing in which an individual resides or has resided, and the status of having or not having a fixed or regular residence; including, but not limited to:

- 1) The status of living or having lived on the street, in a homeless shelter or other temporary residence,
- 2) The status of living or having lived in an institution (e.g. a mental health facility, physical health facility, or other institution) or;
- 3) The status of living or having lived in public housing, at a particular address, or in a particular neighborhood.

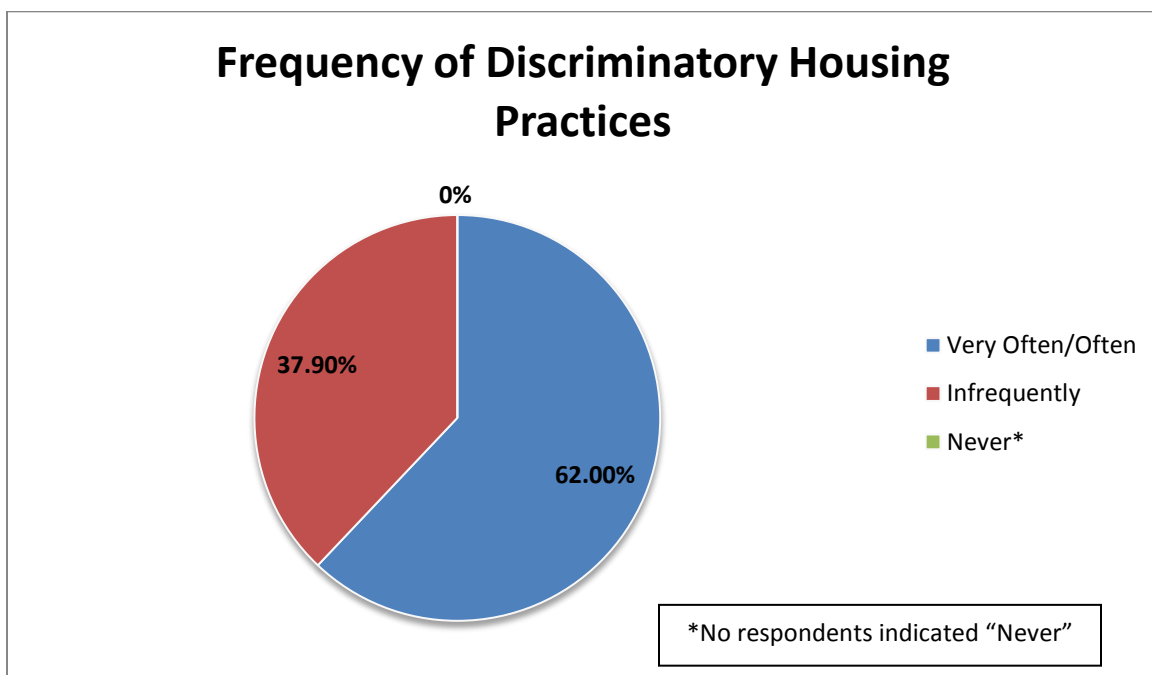
“Source of Income” means any lawful source of money paid directly or indirectly to a renter or buyer of housing, including but not limited to:

- 1) Income derived from any lawful profession or occupation
- 2) Income derived from any government or private assistance, grant, or loan program, including Welfare, Social Security, Section 8 and other housing voucher programs; or
- 3) Income derived from annuity, alimony or child support.

“Temporary Shelter” means any emergency, transitional, or temporary shelter provided to individuals and/or families experiencing homelessness by any federal, state, faith-based, non-profit, or private agency.

## APPENDIX B: HOUSING DISCRIMINATION CHART

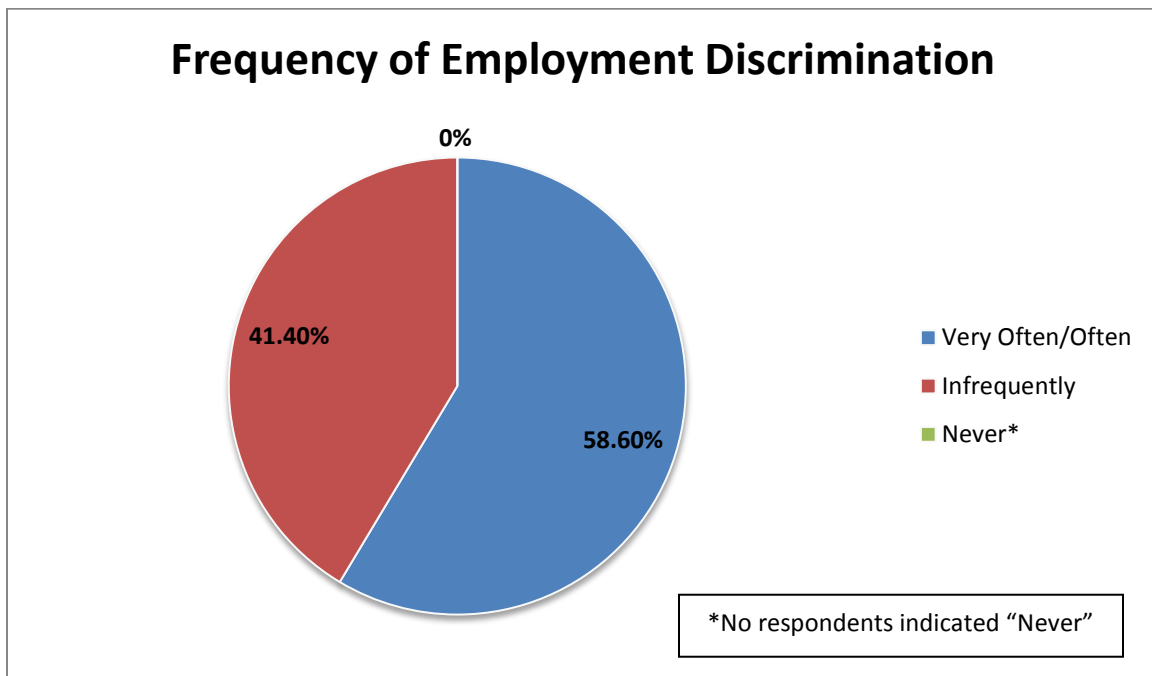
The below charts represent results of an opinion survey distributed to all homeless service provider agencies in the State of Delaware in November 2012. Responses represent the impressions of provider staff (including directors and case Workers) regarding the indicated concern specific to persons experiencing homelessness in the State of Delaware.





### APPENDIX C: EMPLOYMENT DISCRIMINATION CHART

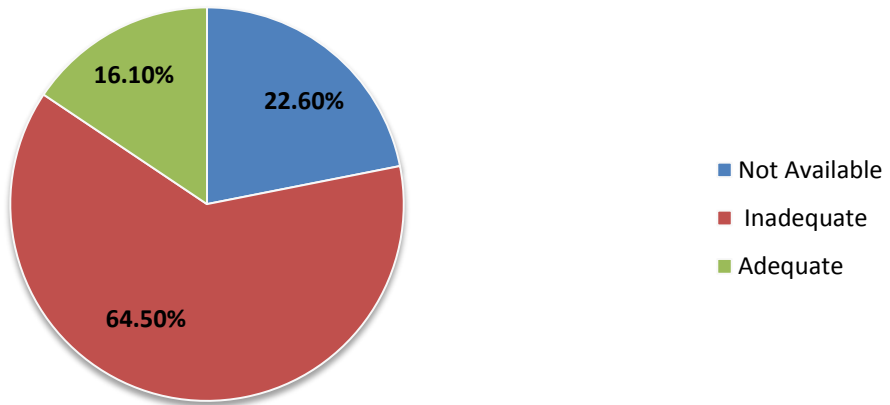
The below charts represent results of an opinion survey distributed to all homeless service provider agencies in the State of Delaware in November 2012. Responses represent the impressions of provider staff (including directors and case workers) regarding the indicated concerns specific to persons experiencing homelessness in the State of Delaware.



**APPENDIX D: CRIMINALIZATION CHARTS**

The below charts represent results of an opinion survey distributed to all homeless service provider agencies in the State of Delaware in November 2012. Responses represent the impressions of provider staff (including directors and case Workers) regarding the indicated concerns specific to persons experiencing homelessness in the State of Delaware.

**Availability of Diversion Opportunities from the Criminal Justice System for the Homeless**



**Frequency of Police Practices that Unfairly Penalize the Homeless**

