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## Police Intersection with Those Without Homes

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**Police Intersection with Those Without Homes**

by

David O'Connor

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Submitted to Concordia University, St. Paul, Minnesota

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Requirements for the Degree of

**MASTER OF ARTS CRIMINAL JUSTICE LEADERSHIP**

## Abstract

This paper aims to explain how law enforcement locally and nationally are policing those experiencing homelessness. This paper will be taking a look at historical and current data as it relates to those experiencing homelessness, look at some of the predictors that may lead to homelessness, and evaluate how law enforcement agencies are making decisions as it relates to policing this ever-growing community. As it relates to their interactions with those experiencing homelessness, case law, process, and executive orders are all elements that law enforcement must stay apprised of. A few cases that are starting to provide guidance will be discussed in this paper. There are no doubt ethical dilemmas faced by law enforcement and other stakeholders as it relates to seeking solutions for the challenges presented by those experiencing homelessness. A few of those will be discussed and analyzed. Lastly, as cities and law enforcement agencies start navigating how to best approach working with those experiencing homelessness or struggling with addiction, a potential model policy will be presented.

Keywords: homeless, encampments, those experiencing homelessness, 9<sup>th</sup> Circuit,

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## Chapter 1: Introduction

The purpose of this paper is to take a more in-depth look at how law enforcement has intersected with those experiencing homelessness. First, the author will explain why this topic intrigued him and why he ultimately chose to write about it. Second, the paper will look broadly at how homelessness in general and perhaps some of the reasons people may end up homeless. Third, this paper will dive into some of the past and present ways law enforcement encounters the homeless in their day-to-day work. Fourth, this paper will take a broad look at some of the proposed solutions to dealing with some of the challenges presented with the increase of encampments. Lastly, the challenges involving those experiencing homelessness are nuanced, layered, and short on immediate solutions. It is one of the reasons law enforcement often becomes involved. Are law enforcement personnel the right people to be navigating these challenges? At a couple of different points, this paper touches on the many stakeholders and provides a foundation for why law enforcement systemically will likely continue playing a role.

The author worked as a part of the Minneapolis Police Department's *Homeless and Vulnerable Populations Initiative*. In this document, the author will be briefly reflecting on how Minneapolis addresses encampments of those experiencing homelessness and how this process has been impacted by Executive Orders issued by Governor Tim Walz in response to the COVID-19 pandemic. A portion of this research paper will be committed to reviewing the 9<sup>th</sup> Circuit Court of Appeals decision from 2019 that impacted those experiencing homelessness. How police intersect those without homes is and will continue to be impacted by case law and executive order. It is essential that law enforcement familiarize themselves with local and national cases that impact how they might be applied here in Minnesota. The paper will also

discuss anecdotally the public perceptions that the author received from community members and homeless outreach workers in his work with the homeless community.

The paper that follows will examine the ethical challenges law enforcement faces in their intersection with those experiencing homelessness. How they meet those without homes is complex, nuanced, and engrained with circumstances that undoubtedly make everyone check their ethics and moral compass. This topic is essential for law enforcement to be apprised of because it is becoming more prevalent for even small agencies to interact and intersect with those living outside. Sound ethics are a cornerstone of law enforcement. As a result, this paper will have ethical considerations and dilemmas woven throughout it. The author's decision to research this topic is motivated by his deep care for all people and a recognition that everyone should continuously "check" themselves on the fact that regardless of people's situation, condition, or presentation, they are still people and worthy of dignity and respect.

Through research and on-the-job experience, the author believes that law enforcement and other outreach organizations engage with the homeless community have changed for the better historically, but there is still room for improvement. On a positive note, most law enforcement organizations recognize that their intersection with the homeless community is delicate, and most approach with care. A negative to current approaches is an apparent lack of viable solutions for housing and treatment options to account for the rampant increased use of opioids and meth among those without homes. Through observation in the field, the author believes that there are options available; they do not come without barriers, but they should be considered. This research paper presents some of those options and many of the inherent barriers that come with considering the options. Law enforcement and their partners must consider the ethics of how they or their organization are engaging with these communities.

This paper will look at the intentional efforts a law enforcement leader could undertake in implementing a new unit/team. As proposed and to an extent tried and tested with other organizations, the plan would use drug forfeiture funds to provide start-up funding for a two-person team that would have a sole focus of taking on the challenges presented by those experiencing homelessness and those struggling with opioid addiction. First, a broad overview will be included of what that team's goals and objectives would be. Secondly, a thorough perspective will be provided on the stakeholders from a chief's lens that they believe will be impacted the most significantly by this team's addition to our police department. Third, this paper will examine a model in Duluth, Minnesota, that would be a model to mirror and expand upon as the project is undertaken. Last, this paper will broadly cover how this department might implement the new roles and how successes and results can be measured.

## **Background**

While the entire nation may be facing a homelessness issue, here in MN, they have seen the number of people experiencing homelessness increase steadily over the years. The Wilder Research group put out a report in March 2019 that indicated in October 2018, 4,072 people were experiencing homelessness, and that number 791 were unsheltered homeless (Hennepin County: Characteristics and Trends Of Those Experiencing Homelessness in Minnesota, 2019). Looking more broadly at Minnesota, observations are that in October 2018, there were 10,233 in Minnesota experiencing homelessness. While some seek shelter within formal and established shelters, many end up staying outside in encampments. Presently in MN, there are not any designated locations for people experiencing homelessness to camp. As a result, they find locations that often present challenges to a host of stakeholders. These encampments pop-up all over the state, but larger urban areas tend to absorb a significant number of encampments.

Those experiencing homelessness generally speaking face many challenges, and perhaps challenges that present as barriers to finding proper and suitable housing. A study called *Hennepin County: Characteristics and Trends Of Those Experiencing Homelessness In Minnesota*, published by the Wilder Foundation, articulates this very fact. In this study published by the Wilder Foundation, just over 2,000 adults (18+) were interviewed, and 55% acknowledged having a serious mental health issue, 54% admitted having a chronic physical health condition, 18% acknowledged a substance abuse disorder, and 30% acknowledged having evidence of a traumatic brain injury. Of those interviewed, 81% admitted experiencing at least one of the above challenges (Hennepin County Characteristics and Trends Of Those Experiencing Homelessness In Minnesota, 2016).

The call to action is “What do we do?” This research intends to provide law enforcement with a foundation and understanding of how and why people may become homeless. In doing this research, there are secondary benefits to many stakeholders, including those experiencing homelessness, the community, and businesses. Presently law enforcement agencies vary in how they face and address this challenge. Case law to the legalities associated with camping in public varies from state to state. There is undoubtedly more space for collaboration in identifying solutions and approaches.

### **Problem Statement**

As previously articulated, communities across Minnesota, and the nation for that matter, are seeing an increasing number of homeless living outside. Where they choose to live varies from locations to include underpasses, encampments, riverbanks, and parks. In these encampments, many, not all, struggle with addiction, mental health, or other chronic health

issues. These encampments present challenges that include discarded uncapped needles, human waste, violent behavior, open sexual behavior, and other harmful circumstances that significantly strain the community. Moreover, these encampments' circumstances leave an already vulnerable population, those experiencing homelessness, open for more trauma and violence.

It is a sizable problem to take on, and presently law enforcement is being asked to play a large and sometimes leading role in addressing the challenges that these encampments face. Presently, like many things in society, there is a divide in how law enforcement and others address this problem. On the one hand, advocates, some from the community, and organizations like the ACLU will essentially contend that those experiencing homelessness have the same rights and privileges as those *with homes* and should have a voice in how they want to live. The other side of the coin is that another segment of the population, to likely include elected officials, law enforcement, businesses, and other groups from the community, believes that encampments as they currently present are a tough option to allow. So how do we try and meet in the middle and find solutions that work for most?

## **Conclusion**

As a society, we have seen an increase in the number of homeless and the number of encampments in recent years. The challenges that these encampments present to the community are one that is going to require an intentional approach. This approach will likely require collaboration among stakeholders and seek a balance that is presently not there.

## Chapter 2: Literature Review

### Why the Interest?

Besides seeing homelessness as presented in movies and the news, the author only first remembers learning about homelessness in a sociology course that he was taking to pursue his degree in law enforcement at Normandale Community College in 2001. He recalls vividly reading about the challenges those experiencing homelessness faced and those who provided that community service. The text featured Mary Jo Copeland with Sharing and Caring Hands and spoke of all the good-will she had done in providing care for the homeless community. He was a community service officer with the Minneapolis Police Department, drove by her shelter daily, and remembers being fascinated with her willingness to work with such a challenging community. Fast forward in his law enforcement career (now a police officer), circa 2007, and he was working with a much senior officer. He remembers waiting at a semaphore on the highway's exit ramp when a panhandler caught his attention. Being young, naïve, and less mature with 4-5 years on, he commented to his partner, "Why doesn't that guy just get a job!" The partner responded to the effect, "Don't you think he'd have a job if he could get one, and if you lost your job, how long would it be before you were in his shoes?" The author confidently replied, "It would take a long time." They went back and forth, and ultimately the point he made was that few people are more than a couple of months away from being in that gentleman's shoes if they lose their job. That combined with other factors like fractured family relationships, mental health issues, and other issues. He came to understand the point the senior officer was making. From there on, he looked at those in poverty and experiencing homelessness a lot different from what he had previously.

As a police officer with the Minneapolis Police Department, the author had the opportunity to serve in many different roles. He worked 15+ years as a police officer in patrol, as a school resource officer, and in community engagement work. The author was promoted in April of 2018 and was worked in two precincts on the overnight shifts as a patrol supervisor. In the Fall of 2019, due to promotions and transfers, the opportunity to switch assignments was a presented possibility. A sole position in Minneapolis Police Department's Homeless and Vulnerable Population Initiative (HVPI) was one of the possible openings. In September of 2019, he transferred to the position.

The author served in that position for nearly a year and learned something new each day. He enjoyed the work and was very engaged by the unique challenges the position offers. In doing this day-to-day work, the author decided that he wanted to take a broader look at homelessness and evaluate how law enforcement locally and across the US are policing those experiencing homelessness. The research will empower him to know more about the community he is serving and potentially provide foresight on the horizon's challenges. The focus of this paper will be on how law enforcement intersects this community.

### **Brief Historical Background**

It is essential to start by broadly defining what homeless constitutes being, and in fairness, some people and entities define it differently. Housing and Urban Development (HUD) define homelessness as being divided into the four following categories:

1. Individuals or families who lack a fixed, regular, and adequate nighttime residence and includes a subset for an individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or a place not meant for human habitation immediately before entering that institution.

2. Individuals and families who will imminently lose their primary nighttime residence;
3. Unaccompanied youth and families with children and youth who are defined as homeless under other federal statutes who do not otherwise qualify as homeless under this definition; or
4. Individuals and families who are fleeing, or are attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member (Expanding Opportunities to House Individuals and Families Experiencing Homelessness through the Public Housing (PH) and Housing Choice Voucher (HCV) Programs, 2013)

Sometimes identifying homelessness can be challenging. For example, an elderly couple on a fixed income that has to live in an RV within an RV park because they cannot access affordable housing is an example of someone that meets the definition of homeless. They arguably have shelter, but most would surmise that an RV is not a home when they would undoubtedly choose a home or apartment as an alternative. Also, an RV would likely not be defined as a place that was meant for human habitation (at least long-term).

One would believe that those experiencing homelessness, to some degree, have existed since the beginning of time. In the US, all indications are that an increase in those experiencing homelessness started in the 1960s and continued into the early 1980s. Many things are attributed to have caused this increase. In the 1960s, institutions that institutionalized the mentally ill against their will were largely abandoned, leaving a vast population of mentally ill that eventually found themselves on the streets experiencing homelessness. Other factors in the 1970s and 1980s included a deindustrialization period, a reduction in Federal government support for public housing, and gentrification of urban areas (Herbert & Beckett, 2017, pp. 29-30). The

Merriam-Webster dictionary defines gentrification as “ a process in which a poor area (as of a city) experiences an influx of middle-class or wealthy people who renovate and rebuild homes and businesses and which often results in an increase in property values and the displacement of earlier, often poorer residents” (gentrification).

Observing this issue locally, specifically in MN, there has been quite an increase in those experiencing homelessness. A fact sheet put out in 2018 by the Wilder Research group indicates that in 1991 we had 3,079 total people experiencing homelessness, and in 2018 that number had jumped to 10,233 (Characteristics and Trends among Minnesota's Homeless Population: Initial Findings from Face-to-face Interviews Conducted in 2018, 2019 ).

### **Historical Look at Policing the Homeless**

As the US saw an increase in homelessness from the early 1980s to the present, there has been a constant struggle to understand law enforcement's role. Early on, cities started adopting ordinances and laws modeled around addressing the challenges that those experiencing homelessness present. Those consisted of anti-panhandling laws, no sleeping on the sidewalks, no sleeping in parks, etc. They were built around the “broken window” theory, which was a law enforcement strategy of the 1980s and 90s that focused on aggressive enforcement of low-level crime with the premise that if it were left unaddressed, it would lead to more widespread crime. Many of the laws focused on displacing those experiencing homelessness, citing them, and incarcerating them. Outside of specific ordinances and laws that appear to focus on those experiencing homelessness, considerations like trespass play a significant role. As Tony Sparks indicates in his research paper titled *Reproducing Disorder: The Effects of Broken Windows Policing on Homeless People with Mental Illness in San Francisco*, we leave people “spatially marginalized.” In this, he leads that in large urban areas that tend to be where a vast majority of

homeless are, there are constant barriers to socially acceptable space. Sparks primarily addresses recent calls to action in San Francisco in which pressure is being put on law enforcement to play a larger role. He states that a great deal of this has to do with the fact that many experiencing homelessness are also suffering from mental health issues, and when that group is visibly displaying symptoms of their mental health challenges, it creates anxiousness in politicians and residents.

### **Current Data**

The data in this paper will shift between data supplied for Hennepin County and the entire state of Minnesota. While many communities experience homelessness, a large share of them are out of Hennepin County. It is believed large urban areas with resources tend to attract the larger percentages of those experiencing homelessness. The first data point focuses on Hennepin County. The Wilder Research group put out a report in March 2019 that indicated in October 2018, 4,072 people were experiencing homelessness, and that number 791 were unsheltered homeless. Looking more broadly at Minnesota, observations are that in October 2018, there were 10,233 in Minnesota experiencing homelessness. Of that number, 6,763 were from the Twin Cities Metro. In looking at the total state number (10,233), it is essential to break out some demographical data. First, looking at age makeup in which 3,265 were youth 17 and younger with a parent(s), 1,484 were young adults 18-24 younger, 4,382 were 25-54 years old, and 1,054 were older than 55. Secondly, in looking at the racial breakdown, which is 37% black, 34% white, 12% American Indian, 8% Hispanic, 2% Asian, 7% Multi-Racial/Other. Aside from white people, all other racial groups are disproportionately experiencing higher rates of homelessness compared to their representation of the MN population as a whole. For adults 18

and older, 77% report suffering from a chronic health issue, 60% report suffering from mental health issues, and 24% report a substance use disorder.

### **What about that data?**

Not all are convinced that the homeless population in MN (and likely elsewhere) has increased so much over the years. In speaking with James Scott with Street Works Outreach Collaborative, he had a very different perspective on statistical data. He believes that we have gotten better at research and data collection in present times and in the recent past. He believes that the population likely has not risen as much as statistics indicate. He believes we are too reliant on statistics and that in the present day, people are paying attention due to media coverage. It seemed to be his belief the population was likely undercounted in years past and is possibly being overcounted at present (Scott, 2020).

I tend to agree with Mr. Scott on his perspective of how those experiencing homelessness are counted. First, the count in Hennepin County is conducted by St. Stephens Outreach and a team of volunteers. They conduct a count of those that are sheltered and those that are unsheltered. The shelter counts by-in-large appear to be done by utilizing the Homelessness Management Information System (HMIS), a database for those accessing shelter presently and over time. The unsheltered count is done by face-to-face surveys and observation sheets completed by staff/volunteers (Point-In-Time Count Information). This process by which this count is done appears to be vague. A framework of how the count is done in principal was captured through informal conversations with persons who help with the PIT count. The idea is to conduct an overnight count in specific geographical locations that persons experiencing homelessness may be, and then conduct a count in those same spaces the next day. These spaces consist of drop-in centers, transit centers, parks, streets/sidewalks, etc. The surveys and

observation reports don't contain identifiers specific to persons being counted (i.e., name, DOB, SSN) (2021 MN Point-in-Time Count January 27th, 2021), which seems difficult to consider as objective data. In reviewing historical data on unsheltered persons, the author would say that the current count on unsheltered persons seems high. Coming up with a specific figure would be a challenge because people living unsheltered access literally dozens of places that make them a challenge to count. The conundrum you're up against in determining an objective homeless count is you would want identifiers similar to how the U.S. Census would do a population count. Still, two things likely get in the way. First, people likely would not want to provide identifiers considering their circumstances. Secondly, those living unsheltered are challenging to locate, and the volunteer group that does the count is equipped with the knowledge located to find them. The count has to be accepted for what it is.

Also, in looking at how the count is done, it would appear there could be a conflict of interest. St. Stephens Outreach conducts the point-in-time (PIT) count in Hennepin County, and they are a direct outreach partner for Hennepin County, the Minneapolis Police Department, and other organizations. The count they come up with is directly correlated to state/county/federal funding/contracts and philanthropist giving, one would imagine. I recently received a CITI Program certification for a course called *Social and Behavioral Basic/Refresher*. A component of this Criminal Justice Research course reflected on conflicts of interest related to research involving human subjects and organizational conflicts of interest that need to be reviewed by the Independent Review Board (IRB). Although it would be a challenge to find an organization unaffiliated with funding that is trained and talented enough to do a count of the unsheltered population, there are some possible flaws in how the PIT count is conducted, and that the organization doing the count stands to benefit financially from a count that seems to increase

yearly. In reflecting on a *Star Tribune* article titled *Minneapolis Non-Profit Lands \$5Million from Amazon's Jeff Bezos to Help Homeless Families*, the article speaks on how Bezo's foundation donated \$5 million to St. Stephen's but also cites that of a \$12 million operating budget \$8.8 million of that is from government organizations (Smith, 2019).

### **Broad Overview of Why People Experience Homelessness**

People are experiencing homelessness for many reasons, but this paper will focus on three key areas that would seem to be precipitous of why people become homeless and remain homeless. The author can anecdotally speak on this also as he worked with the unsheltered homeless daily. Those areas are access to affordable housing, mental health challenges, and chemical dependency. In some cases, people experiencing homelessness may only align with one category, but they fit all three in many cases.

There are a few takeaways to look at in looking at affordable housing and shelter options for the unsheltered homeless. First, at present in Minneapolis/MN, the community lacks enough shelter space on many nights, particularly in Winter, to shelter all unsheltered homeless persons. Secondly, in looking at housing, there are some key takeaways from the Wilder Research group's March 2019 report in which they indicate that across MN, 32% of adults interviewed had been turned away from a shelter due to a lack of space in the past three months, 50% of adults interviewed were on a subsidized housing waiting list, and for those waiting the average time on that waiting list was 12 months. These all indicate that access to affordable housing is one of the significant challenges that face those experiencing homelessness.

Each county assists those experiencing homeless with housing placement a little differently. In Hennepin County, adults and families seek housing through a process called "Coordinated Entry." Hennepin County's site defines it as "Because housing resources are

limited, this process is designed to ensure that individuals and families with the highest vulnerability, service needs, and length of homelessness receive top priority in housing placement” (Coordinated Entry Homeless Assistance). The focus on Coordinated Entry is to serve those that are “literally homeless” which is a Category 1 definition of Homelessness per Housing and Urban Development (HUD) (HUD's Definition of Homelessness: Resources and Guidance, 2019).

In looking at mental health challenges as a predictor to why some are experiencing homelessness, a reader can see that the Wilder Research group also indicates that in their March 2019 report, in October 2018 that 60% of adults reported suffering from mental health challenges. In my work with the homeless, the author can say this is undoubtedly true but likely underreported. The author feels that of the hundreds of homeless he has met; many are not in mental health crisis during their encounter. In speaking with them, developing a trusted relationship with them, and understanding from them “why they are where they are,” he can say that mental health is a component. The author estimates that 95% of persons he comes into contact with will only consider using a shelter as a last resort. For many, it would seem that mental health factors that they can usually keep in check are more likely to surface if confined to close quarters with other individuals that arguably are in the same boat. As the author finds himself often explaining to stakeholders (residents, politicians, and others), shelters are not ideal for many and for many different reasons.

In looking at chemical dependency, the Wilder Research group’s March 2019 report indicates that 24% of adults acknowledged a substance use disorder. A takeaway from this is figure is one would imagine that only a small percentage of people will acknowledge their chemical dependency challenges. In his day-to-day interactions with those experiencing

unsheltered homelessness, the author would also say that for many, their chemical dependency either is the reason they became homeless or may be a barrier to them finding housing/shelter. To be clear, not all he comes into contact with are chemically dependent, but many are. In the unsheltered homeless community, the author worked with, he saw heavy dependency on opiates/heroin, methamphetamines, and alcohol. The author would come by this knowledge primarily through having informal conversations with them. In starting in his role of homeless outreach with Minneapolis PD, the author was aware that chemical dependency was a challenge those experiencing homelessness faced. However, he had never seen addiction and its impact on those dependent, family, community, and service providers like he saw in his work. The author's feelings on the matter are mainly of sadness and grief for their current condition and statistical data that indicates many addicted to opiates and meth rarely win their addiction battle.

### **Case Law and Legal Considerations**

Research would indicate that most parts of our country are at different points related to case law regarding legal considerations when dealing with the homeless. For example, in Miami, a lawsuit, Michael Pottinger v. City of Miami filed in 1988 and settled in 1998 left that area of Florida with some case law that afforded more rights to those experiencing homelessness and imposed more process on the side of law enforcement. The settlement/finding was called the "Pottinger Agreement." There were a couple of takeaways from the final finding. First, if there is no shelter space available, LE cannot enforce any life-sustaining misdemeanors only because a person's homeless nature leaves them with few options. This could be interpreted to include things like a trespass citation/arrest for sleeping on private property, etc. If shelter space is available and refuses to accept it, they can be cited/arrested for misdemeanor offenses. Secondly,

if a person experiencing homelessness is arrested, the LE agency must secure their property (Stiff, 2018). It would seem that this finding, a result of a Federal Consent decree, on the City of Miami. In February of 2019, this agreement was terminated by a Federal Judge who represents Southern Florida. It was seen as a massive setback for those experiencing homelessness and their advocates (Daynes, 2019).

In Oakland, California, the police department does not enforce any laws related to specific to camping within their city, but their officers can enforce criminal acts occurring within an encampment. As a result, there are sanctioned encampment areas with the City of Oakland per their police chief Anne Kirkpatrick as documented in a Police Executive Research Forum (PERF) report issued in June of 2018 titled *The Police Response to Homeless* (Police Response to Homelessness, 2018).

In recent years, the most significant case that offers significant judicial opinion on homelessness legalities comes from *Martin v. City of Boise*. This case came out of Boise, ID, and was decided on in December 2019 by the U.S. Court of Appeals (*Martin v. City of Boise - 920 F.3d 584 (9th Cir. 2019)*). The case was brought forward initially by several persons experiencing homelessness in Boise, Idaho, that were cited for violating one or both ordinances that the author would characterize as being ordinances that, if enforced, criminalize the very nature of being homeless. In this case, the plaintiffs argued that enforcing these ordinances through citation was cruel and unusual punishment covered by the 8<sup>th</sup> Amendment. The U.S. Court of Appeals ruled that it was as well and stated that persons without shelter and who also do not have access to alternative shelter options could not be cited. This case has impacted the Western States within the 9<sup>th</sup> Circuit (*Law School Brief Martin v. City of Boise -920 F.3d 584 (9th Cir. 2019)*). There were efforts to have this case heard by the United States Supreme Court,

but they deferred they allowed the U.S. Court of Appeals Opinion stands for the time being. While this 9<sup>th</sup> Circuit decision does not impact Minnesota at this point, this is a nuanced finding by the U.S. Court of Appeals because there are some terms like “alternative shelter options” and other legal terms that make seeking solutions for homelessness a challenge to address.

Another case just a few years old out of Houston, Texas, *Kohr v. City of Houston*, was heard by U.S. District Court in Texas in 2017. This case was brought forward by multiple plaintiffs seeking an injunction to prevent Houston PD from enforcing recently implemented ordinances. In this case, the court ruled that recently imposed Houston city ordinances could remain in effect, and an injunction was denied. The core of the ordinances in place prevent persons from setting up tents and structures in public spaces. The court ruled that this, in and of itself, was not criminalizing homelessness and not a violation of the 8<sup>th</sup> Amendment of the U.S. Constitution that prohibits cruel and unusual punishment. In coming to a decision, the court applied several tests as to whether there was ground for the injunction. The court concluded the ordinance was simply a request and requirement that tents or structures could not be put up in violation of the ordinance. The court also cited the fact that Houston PD’s Homeless Outreach Team (HOT) or their partners followed a process that allowed for compliance from individuals before the route of issuing a citation. They also sided on behalf of the defendant (City of Houston) that since a temporary injunction was imposed in August of 2017, it had resulted in some within or near the encampment being injured or killed. Also noted in their decision was the health implications created due to a lack of plumbing, garbage service, and trash accumulation that are detrimental to those within the encampment and the community as a whole.

The courts in the *Martin v. City of Boise* and *Kohr v. City of Houston* couldn’t have come up with such different rulings. They came up with opposite findings in the end that they each

defended with equally opposing logic and reason. The findings speak to the complexities that law enforcement and society as a whole face in making decisions around how to serve those living unsheltered best. In choosing a path of taking on a challenge such as an encampment, it would appear that law enforcement is best served to seek input from stakeholders to include legal counsel, public health, and community members when developing a plan. Rarely is a decision or action needed today, and intentional, collaborative planning with other partners is likely to produce a more desired result.

### **Governor Walz's Executive Order Impact**

On March 25<sup>th</sup>, 2020, the City of Minneapolis a “new normal” with an Executive Order 20-20 being issued by Governor Tim Walz that contained parameters, provisions, and directly related to the “stay at home” order. Under “ 5. Exceptions,” we find sub-section “g” that in summary provides that those experiencing homelessness are free to move freely from encampments, emergency shelters, drop-in centers, etc. and most importantly, that encampments cannot be cleared by municipalities, police departments, etc. (Executive Order 20-20, 2020). As the pandemic moved along, the author in his Homeless and Vulnerable Populations Initiative role had to effectively communicate with leadership within my agency and our city attorney’s office. The language in this initial order did not offer much in the way of detail. Further orders 20-33, 20-47, and 20-55 offered more specific guidance when encampments could be cleared under exigent circumstances, private property (trespass), or life-threatening situations.

The logic behind the order, as interpreted by the Homeless and Vulnerable Populations Initiative, was to allow those without homes space to shelter in place, a place to quarantine if ill, and the ability for them to stay in one place for an extended period so service, evaluation, and care can be provided.

## Legal Basis and Process

As previously mentioned, the Minneapolis Police Department started the Homeless and Vulnerable Population Initiative unit in April of 2018. In the past several years, the city has seen an increase in the number of unsheltered homeless. Due to this increase, they have a dedicated officer/sergeant to work in that role. The City of Minneapolis does have an ordinance that addresses encampments explicitly in Minneapolis, 244.60 Temporary Housing Prohibited; exception which would be summarized as a regulatory services code that stipulates that living in tents, living in cars, temporary structures, etc., are prohibited within the city (244.60 Temporary Housing Prohibited; exception, 2013). It is a code/ordinance that falls under Regulatory Service (Housing/Inspections), but they deputize specific person(s) within MPD to work with this code. Under the leadership of Chief Medaria Arradondo MPD's Homeless and Vulnerable Populations Initiative's goal is to be intentional in not criminalizing homelessness and building trusted relationships with those experiencing homelessness.

On any given day, the author would start his day at St. Vincente DePaul's food bank near the intersection of Cedar AV S and Franklin Avenue E.. This is where the Polaris Ranger is also parked. The Polaris Ranger is stocked with essential needs like gloves, hats, hand warmers, and pre-packaged foods given to those in need. The day for a police officer serving in this role is to head to spots where people experiencing homelessness in an unsheltered capacity can be located. These persons can be found under bridges, underpasses, the Midtown Greenway, parks, riverbanks, and other spaces. Each space they find them is handled a little bit differently than the next.

In MN, there presently is not any presiding case law on circumstances involving those experiencing homelessness, but it is paramount that law enforcement remains cognoscente of

best practices. A good example would be as it relates to searching and entering tents. Some may not consider a tent to be a structure/residence, but MPD's Homeless and Vulnerable Populations Initiative considers a person's tent their residence. In this consideration, they are afforded the same 4<sup>th</sup> amendment rights they would be afforded if they were in a house or apartment.

## **Encampments**

Especially as warmer months come on, law enforcement and the community will see encampments pop up in public spaces such as parks, right of ways, MnDOT land, other public utility spaces, and private property. The encampments often start with a single tent but often grow over several days to become an unmanageable community of tents/structures. They become unsightly with all the trash, different colored tarps, debris/scrap accumulations, and only their sheer size. As they grow in size, it is essential to reflect on some of the leading factors that lead to people ending up homeless: addiction, mental health, and countless other reasons. A large encampment of vulnerable people struggling with many different challenges can and does become lawless quite quickly.

In the Summer of 2020, the City of Minneapolis saw this happen on many occasions. The one that stands out the most was at Powderhorn Park in South Minneapolis. The author benefited from seeing it start in its infancy with half a dozen tents or so. Minneapolis Park Board property and multiple continuances of the MN *Stay at Home* order due to COVID-19 put in place by Gov. Tim Walz offered some protections for encampments to remain in place (Executive Order 20-55, 2020). Over a couple of weeks, as he remembers it, it grew to an encampment of over 600 tents and 300 people (Silva, 2020). Those in the encampment were victimized often in the form of thefts, assaults, sexual assaults, and other heinous crimes by others within the encampment. The

encampment was very lawless in nature, and law enforcement entering to render aid was near impossible. The residential community that surrounded Powderhorn Park faced challenges and a steep increase in property crimes, witnessing open drug use and sales, and public/open sex work. The fear that they experienced and expressed through having to live directly across from such a challenging encampment was evident.

This encampment was one of the dozens of encampments scattered across Minneapolis. The Powderhorn Park encampment, like many others, reached a point where those that possess authority over the land are put into a position to take action. A plan to clear an encampment does not come together quickly and involves a good deal of planning.

### **Encampment Visits and Demobilizations**

The sworn personnel in the HVPI role play a role in this by continually having positive engagements with individual encampments, connecting them to resources that can help them pursue housing/shelter space, providing them essential hard goods like gloves hats, and developing a trusted relationship. A site visit usually consists of me doing a quick assessment of the person, i. e. do they appear healthy, are they impaired, do they have medical needs, and other critical considerations. The camp, i.e., is their needles, evidence of fires, human solid waste, unsafe practices, and things that are potential harm to them or the community. The camp visit also serves as general check-in on how that person is doing as a person. In nearly a year, the author had the opportunity to meet hundreds of people and found many are people experiencing chronic homelessness, so that relationship is critical. The author found it crucial to remember their name, remember some details of who they are, and ensuring that the connection was received as genuine. As a vulnerable community that routinely are victimized, those experiencing homelessness are slow to trust, and disingenuous relationships will not get you far.

When encampments become large, unruly, lawless, and dangerous, those who have worked with this population fully recognized that we still need to treat those experiencing homelessness as fellow human beings and extend them the same privileges and rights that others in the community receive.

A comprehensive plan comes together by establishing who other stakeholders are and the role they can potentially play in ensuring that an encampment is demobilized safely, offers enough services to those being displaced, and those that can potentially house/shelter those being displaced. This process will typically include outreach teams that work with the homeless, health department personnel, and other strategic personnel that work with those experiencing homelessness.

In many cases, the space in which someone chooses to camp is managed/owned by a different entity. For example, the Midtown Greenway falls under different jurisdictions. The City of Minneapolis owns the paved space, but the green spaces/embankments to each side are owned by the Hennepin Railway Authority (HRA). The HRA space is maintained by an organization called Tree Trust. The greenway is a common place for people to camp but technically is viewed as trespassing. The process followed in this case, and by many similar organizations, is that once an encampment is identified, they will “post-it” for clean-up on a specific date/time in the future. The clean-up date is usually set out 5-7 days. On, before, or at the time of the clean-up, the person camping at that spot is required to pack up their belongings and move to a different location. Once they have moved the property, debris, and garbage left behind is cleaned by a contractor.

For city property, the person in the sworn HVPI role is generally the one who will notice that a space needs to be vacated. Usually, that conversation goes on for 2-3 days unless

circumstances exist that require a more rapid approach. Eventually, in that period, an encampment will be given a 24-hour notice that the area needs to be vacated the following day at a specific time. At that time, the sworn HVPI individual arrives early to give another notice to vacate, and then Public Works Dept will respond to assist. Those living in the encampment are provided time to collect their belongings, and that which they do not take (debris, garbage, . . .) will be taken as trash.

If an encampment is asked to clear a location, MPD's *Homeless and Vulnerable Populations Initiative* will even help them move if the occupants request it. While it is not a perfect system, the author would say that organizationally the goal would be to try to seek a semblance of harmony between those experiencing homelessness, citizens, businesses, and visitors to our citizens. At all times, the initiative's goal was to treat those within the encampment with dignity and respect.

The final part of demobilizing or clearing encampments does not come without its short fallings. As stated in some cases, law enforcement can play a role in helping people move, and in many cases, particularly during COVID-19, our Hennepin County partners could put the more vulnerable persons into hotels for a while. However, the challenge is that rarely do people have a credible plan that leaves them in a better place than where we found them. They will often pack half of their personal belongings, leave the rest behind, and move to a different site. If there was anything the author learned early on, and it never changed, was a quote from John Tribbett from St. Stephen's Outreach in which Tribbett told me "there are no easy solutions" when it comes to working with those experiencing homelessness (Tribbett, Personal Communication, Fall 2019).

## **Stakeholders**

The stakeholders in those experiencing homelessness are broad. It includes those experiencing homelessness, their families, businesses, city departments, residents, service providers, elected officials, etc. Each person has a stake in what has become a dynamic challenge to address. Most stakeholders hold a different opinion on homelessness (and its predictors) and even more so on how we address it. The person in the sworn HVPI role essentially has a goal of providing professional and fair service to as many stakeholders as they can. Each situation LE has to deal with when it relates to people experiencing homelessness is unique and comes with its own set of circumstances. It is essential to humanize the situation, whatever it might be, to ensure that people recognize that what we are talking about, homelessness, involves human beings. On one call, it may explain to a camp that they need to expedite leaving an area because the needles they are leaving around are bad for the community and particularly bad for a family of small kids that lives next to the camp. Although the conditions they are living in leave them in a bad spot, they can even recognize at that moment that what they are doing is harmful to the community, and we can have an understanding of that. In another example, the individual in the HVPI may need to explain to a community member that shelter space is at capacity, that housing is not presently an option, and that a person is best suited to remain housed under an underpass. It isn't always easy to explain but humanizing that it is a person sleeping under the underpass with few possessions and practically at rock bottom makes that community member find empathy in the person's situation. It is always a balance trying to keep stakeholders satisfied. Some stakeholders, such as service providers to those experiencing homelessness, feel that we should be doing more for this vulnerable community as a police department and a community

## **Where do we go from here?**

### **Housing**

First, let us look at housing and shelter space. Many agree that we will not build ourselves out of homelessness but more affordable housing, and statewide we desperately need more shelter beds. It would seem as a city, state, or nation, and there is an inherent obligation to ensure that at a minimum, a person has a safe and warm place to sleep each night regardless of how they ended up in their situation. Many housing/shelter options have to provide what we call in the industry “wrap-around services.” As discussed, people experiencing homelessness are often more likely to have mental health issues and chemical dependency issues that need to be addressed along with their housing needs for their housing/shelter options to remain sustainable.

Another housing consideration discussed at different levels and certainly taking place in West Coast cities like Seattle, Los Angeles, and other large cities are designated areas in which camping is allowed. Later on, this paper, as an examination of the ethical implications is discussed, a proposed resolution would offer just that: a sanctioned space for an encampment

### **Addiction**

Our nation and even local government need to invest more money, time, research, and be prepared to make hard decisions on dealing with the opiate/heroin crisis. Obviously, illicit drugs are nothing new, but the precedence at which opiates/heroin is being used, the number of deaths and overdoses we are experiencing nationwide as a result of opiate/heroin abuse, and the damage that these drugs are causing to families/communities have to be addressed. Later in the paper, a dual-purpose model consisting of two persons (sworn and civilian) will be discussed. This team would be dual purposed because the team would focus on both homelessness and addiction support.

At present, there are *harm reduction* service providers that try to mitigate the potential health hazards that come with being an IV drug user. These services consist of needle exchanges, Narcan distribution, and treatment programs to assist in coming down from these drugs (Suboxone). I believe this is best defined by *Streetworks Outreach Collaboratives* training manual *The StreetWorks Tool Kit: A Best Practice Certification for Working with People At-risk of or Experiencing Homelessness and/or Sexual Exploitation*, in which they state, “The Harm-Reduction approach was initially created to reduce the negative consequences associated with drug use, to be used with people for whom abstinence was not feasible. More recently, the same techniques have been successfully used with an array of different populations of people who are in harmful situations and circumstances. Harm reduction improves the quality of life, not necessarily the cessation of all dangerous or harmful behavior” (Fox, 2019, pg. 110). Often, looking at addiction options to include things that have a direct nexus to include sex work, sexual exploitation, etc., and finding solutions requires time and trust. The harm-reduction approach allows people to make incremental steps in the right direction as they develop trust with the persons they are working with. A focus of harm-reduction is to make it client-based. Later in this paper, some suggested resolutions will be suggested as a more in-depth ethical view is taken to evaluate societies' obligation to help those struggling with addiction.

### **Law Enforcement**

Looking at how law enforcement can be better prepared to deal with the challenges that those that are experiencing homelessness present, one would think modeling something similar to Houston PD's *Homeless Outreach Team (HOT)* is an excellent place to start. In short, they have a team of (7) officers, a sergeant to supervise, and (3) mental health caseworkers. In a publication, Sgt Wicktates that the collaboration has “resulted in a more focused and effective

approach to dealing with the issues that have people living on the streets and have seen an overall reduction in their numbers with a corresponding reduction of civility complaints” (Wick). In reading his report, it appears they have a useful model that effectively allows them to deal with the challenges they face. Still, the collaboration provides them a great deal of credibility when dealing with the complex situations they have to handle. Views are mixed on whether people believe law enforcement should be the lead in dealing with this complex challenge, but law enforcement should be a part of a more comprehensive team approach. Looking at history has never played out well for law enforcement when we’ve taken the lead on what frankly is a community issue. Although law enforcement has an empathetic and compassionate side, they are the hammer on the tool belt. At any given time, society/elected officials can demand that the hammer be swung. Later on, in this paper, a smaller model that law enforcement agencies of any size could consider implementing will be discussed.

In an interview with James Scott with *Streetworks*, “As a citizen and an occupational professional, how would you like to see police intersect the homeless?” It seemed he believes law enforcement’s role at present is what it is, and without a doubt, he believed that fundamental changes across the board needed to change. The way we deliver services and systemic changes in the community would be where we would see improvements. He believes that police officers and outreach workers getting together and finding ways to work together was a direction things needed to go. He also believed training on the police department related to those experiencing homelessness would be of benefit (Scott, 2020). In speaking with John Tribbett, who heads up St. Stephens's street outreach, we specifically discussed law enforcement’s role with those experiencing homelessness (Tribbett, 2020). Tribbett is of the stance that the challenges that those experiencing homelessness present should not be matters that law enforcement deals with.

He believes that it should be taken off their “plate” because law enforcement was not intended to do that work. Tribbett suggested using an approach in which a team is dispatched to problematic matters involving those experiencing homelessness. He did not articulate what he meant by a team. Still, in the author's experience working with Tribbett, he would imagine the team would be multi-disciplined to include outreach, healthcare, and perhaps a chemical dependency counselor. Tribbett believed that if law enforcement were to be used to assist on matters with this team, they would have to be specific officers prepared and experienced in dealing with those experiencing homelessness.

### **Collaboration**

Some successes can be had by collaborating with those outside of law enforcement. In many circumstances, police officers may not bring the best or necessary skills to deal with specific persons or situations. There are many partners to consider including street outreach workers, healthcare providers, mental health providers, community organizers, faith personnel, etc.

Those in MPD's HVPI have found that persons experiencing homelessness experience barriers to accessing services for many different reasons, including mental health, addiction, transportation limitations, limited access to a phone, limited access to a computer, etc. Incremental successes can be had by directly partnering with persons that can provide/facilitate these services where people are. Meeting people “where they are at” is also a practical approach in making the services provided client based. MPD's HVPI has had some successes in a couple of capacities by collaborating with other outreach services. First, they identified certain persons experiencing homelessness in their daily work, whereas untreated mental health appeared to be a dominating reason for a person to be still unsheltered or housed. MPD's HVPI was able to a

mental health practitioner with *Healthcare for the Homeless*, and on any given week, they would partner up for 4-6 hours and do some targeted outreach. Past successes have not been observed, but bringing this service to where they appear to be appreciated by those receiving it and expected successes will come eventually. Secondly, a real challenge with getting people housed is having actual access to available housing resources. Minneapolis PD's formal outreach partner *St. Stephen's Outreach* is a great partner, but they do not have immediate access to housing. They assist persons by helping them through the Coordinated Entry process by which person (s) will eventually (maybe) getting housing based on their vulnerability assessment. There are two community-based organizations Avivo Street Outreach and American Indian Community Development Corporation (AICDC), who not only have access to housing but as providers ensure the clients receive the "wrap-around" services that significantly improve the chances that housing will be successful for them. In many cases, these partners can place someone in their housing program either day or within a week. Both partners have a client-based approach, and the typical client that the author has observed is usually chemically dependent.

### **Relevant Ethical Values and Concepts**

When it comes to demobilizing an encampment, it is critical to have the right people and organizations involved. The population of people that law enforcement, social services, outreach teams, and other organizations are working with is very vulnerable. They are vulnerable from the perspective that most face challenges with mental health, addiction, physical health, and in some cases, all three. In addition to facing these challenges, they lack any of the foundational basics many of us take for granted, such as housing, clean clothing, and food. The author found that you need to bring patience, compassion, honesty, and firmness to this work. These qualities would seem to be contradictory at times. Still, he found you must approach the profession prepared to

be compassionate and patient with the population you are working with. Seeking solutions and making sense of an individual's situation can be stressful and challenging to absorb. At the same time, you, or others in the field, need to bring honesty and firmness to the decisions and communication you have with this population. They are exploited regularly by others in their community as well as those that prey on the helpless.

While those who choose to work daily with those experiencing homelessness come from different religious backgrounds, as a Christian, the author can firmly say that other Christian individuals do the work we do because of their religious ethics. The text, *Ethical Dilemmas and Decisions in Criminal Justice*, defines religious ethics as "the ethical system that is based on religious beliefs of good and evil; what is good is that which is God's will" (Pollock, 2019, p. 30). As a Christian and in his daily work, the author looks to the Bible to guide his ethical principles, and a couple of verses from the English Standard Version (ESV) of the Bible define how the author attempts to serve others in his work. First, Matthew 7:12 states, "So whatever you wish that others would do to you, do also to them, for this is the Law and Prophets" (English Standard Version, 2020, Matthew 7:12). While the author does not plan to suffer in addiction, experience chronic mental or physical health issues, or find himself without a home, he knows with certainty that he would appreciate any help given to me. The author also looks to the ESV version of Matthew 25:35-40, which states, "For I was hungry and you gave me food, I was thirsty and you gave me drink, I was a stranger and you welcomed me, I was naked and you clothed me, I was sick and you visited me, I was in prison and you came to me. Then the righteous will answer him, saying, 'Lord, when did we see you hungry and feed you, or thirsty and give you drink? And when did we see you a stranger and welcome you, or naked and clothe you? And when did we see you sick or in prison and visit you?'" And the King will answer

them, “Truly, I say to you, as you did to the least of these my brothers, you did it to me” (English Standard Version, 2020, Matthew 25:35-40). The author sees the service and helps he gives others as being a request made of Christians as written by one of Jesus’ Apostles (Matthew) at the request of God, our creator. While he knows he falls short of the demand, it is a guiding light for how he treats people and how he serves others.

### **Moral Dilemmas for Stakeholders**

Let us first look at the law enforcement profession and consider the moral dilemma they take on typically taking the lead on demobilizing encampments. First, I think we have to assess whether we (law enforcement) should be the organization taking the lead on demobilizing encampments. Is it plausible that government organizations with more of a social worker approach might achieve better results? We have to consider that solutions are hard to come by, and we cannot truly make everyone happy. We essentially take a utilitarianism approach in which we chart a course for a solution that provides the most happiness for the greatest number of people (Pollock, 2019, p. 36). Unfortunately, some people are less than satisfied, and who that group is likely varies depending on where the process is. The community is upset with encampments and achieves satisfaction when the encampments are cleared from their area. The population of people in the encampment may experience little satisfaction at any point in this process, but certainly not when they are being directed to move.

There are still more moral dilemmas that law enforcement takes on. First, when clearing an encampment, what obligation do they have to account for partially abandoned property or property left behind? Should there be a process for sorting through it and storing it? Second, should laws and ordinances that essentially criminalize homelessness be acted on by law enforcement or other organizations?

Looking at outreach organizations that provide street-level outreach to those living on the streets, is there more they could do? From the author's lens, they are the greatest advocates for those without homes, but could they do more in lobbying for housing, chemical dependency support, and other street-level services? Do they have a more outstanding obligation to secure housing/shelter space?

Looking at those experiencing homelessness, the author believes that they undoubtedly face ethical dilemmas, but identifying them could be challenging. A combination of factors to often include being homeless, hungry, unwell mentally and physically, chemically dependent, and lacking other basic needs leaves them in an unimaginable place. What shapes their decisions? The author tends to think they are in a fight or flight mode, and moral dilemmas are challenging, if not impossible, to identify in those moments. The author is not minimizing their worth but trying to frame how they are likely in a place no one can fathom how they make decisions or articulate their ethical mindset.

### **Most pressing moral or ethical issues**

In having worked day-in and day-out with those experiencing homelessness for nearly a year, the author can say that stakeholders from across the spectrum must collaborate to address some of the root causes of homelessness. They are undoubtedly trying, but they must do better. The author can say anecdotally, and the data broadly supports it, that chemical dependency (opioids and meth) and untreated mental health are the two leading causes of why people become homeless and remain homeless. Being someone that has absorbed knowledge in his time working with this population, the author can say that there is often a substantial nexus between addiction and mental health. In many cases, substance use is a way to self-medicate and attempts to

cover/balance the individual's untreated mental health, which has likely been untreated/unaddressed for years.

Another pressing moral issue is what obligation does society (government and community) have to provide those without homes, some sort of space, housing, or shelter? Is housing, access to services, and food a basic human need that all, including those experiencing homelessness, should receive? The author thinks this is a pressing moral issue that cannot be ignored.

A final pressing moral and ethical issue is assessing what could be done better related to the demobilization of encampments. Are we providing enough services at the time of demobilization? Could we do more as it relates to sorting/storing abandoned property related to encampments? Should large (or small) law enforcement organizations have standard operating procedures (SOP) for encampment demobilizations? What would it look like? As stated, this is a pressing ethical issue as we see the number of people living outside increase, and the number of encampments too—the author will attempt to offer a framework that addresses this and the other pressing moral and ethical issues that have been mentioned.

### **Proposed resolutions to pressing ethical issues**

There is no doubt that society is in the midst of a crisis regarding opioid and methamphetamine addiction. Before working with those experiencing homelessness, the author had heard of the opioid epidemic but thought little of it. It had not impacted anyone he knew, so it was merely something in the news. He still remembers going to his first encampment and seeing the needles strewn across the ground. There were dozens of needles on the ground and in the tents. It made him cringe because he hates needles! He says it took me a month before he became comfortable navigating encampments and overlooking the needles. The author's point is

that nearly every camp he went to had intravenous (IV) drug use occurring, and rarely did he hear of someone entering treatment. It was more common to hear about another overdose that led to someone's death. Presently, there are broadly two paths for treating addiction to IV drug use (opioids and meth). First, persons are guided toward the traditional chemical dependency programming that is either done inpatient or outpatient. A second alternative is called "harm reduction," in which a more passive approach is taken to addressing the addiction. While not necessarily addressing the addiction, this approach employs methods that reduce the potential harm that addicts are inflicting on themselves. This approach comes to include Suboxone/Methadone programs, needle exchanges, and other methods that are structured around reducing use over time. The author sees issues with this latter approach; he has come to understand that addictions to opioids and methamphetamines are challenging (if not nearly impossible) to address. He has seen harm reduction efforts reduce the potential harm they could cause to themselves (i.e., clean needles), but to date, he has not seen someone "recover" from their addiction employing this method. have to think outside of the box.

### **"Outside the Box" Addiction Approach**

The author's suggestion, which is grounded in the teleological ethical system's utilitarianism principles, would form policy and mandates some treatment level for those struggling with addiction, and specifically focused on those struggling with addiction to opioids and methamphetamines. The teleological ethical system is defined as "an ethical system that is concerned with the consequences or ends of an action to determine goodness" (Pollock, 2019, p.36). The goal would be to reduce addiction, help those in recovery obtain housing, and provide continuing support as they find stability during their recovery process. As it relates to untreated mental health, he feels like it is closely tied to the addiction aspect and would be addressed in

conjunction with the addiction. This proposal does not come without its challenges, though. The author's proposal would have to be a policy supported broadly in society, i.e., written into statute, for it to have any support. He thinks as it stands that mandating any treatment for non-criminal behavior and absent situations where people are a present threat to themselves or others pushes past the boundaries of protections offered by the U.S. Constitution's Fourth Amendment. As we all know, this amendment is the amendment that protects against unlawful stops, seizures, and searches. The author thinks that so many people are impacted by addiction to opioids, meth, and other prescriptions that, at some point, there may be societal support for an idea such as this. Again, this approach focuses on helping those struggling with chronic homelessness due to addiction and untreated mental health and getting them the support and wrap-around services they need to find stable housing, attain employment, and start them on a path of better health. This would seem to be a Stewardship Principle of providing the needed support that benefits many stakeholders (user, family, etc.) and with no apparent benefit to those providing the support. While there are apparent underlying benefits for all, this proposal is not designed to line anyone's pockets but is an attempt to fix a large societal issue.

### **Sanctioned Camping Locations**

The next resolution is an approach that would only work if efforts to address addiction and untreated mental health were a priority as well. It is the concept of ensuring that there are places where those without homes can camp, and perhaps it is a site(s) that are government-sanctioned and managed. In having worked with this community, it seems that for every proposed solution, there is at least one reason the proposal will not work. This one many would find an issue with as well. Still, if done right, and in collaboration with many teams to include law enforcement, health department, regulatory services, and all government levels, it is

possible. The rough proposal would be to allocate space, be it park space, right of way, wooded spaces, or another suitable area, and erect temporary poly buildings that are slightly off the ground and are essentially a cross between a shed and a small house. The material allows it to be sanitized regularly and reused by others. Being off the ground keeps it dry, and the small size contains (by rule) the amount of stuff a person can have. They would be spaced out, there would be portable toilets on-site, portable handwash stations, and meals would be provided. The goal would be to have people in specific, designated camps where outreach and housing specialists can locate them. A challenge often faced is that people move or are asked to move often and cannot be located for services/appointments they have set. While this idea does not come without its challenges, I feel that proactively doing it, say in the Spring when we see an increase in people outside, would allow us (law enforcement and other organizations) to proactively guide a process instead of being reactive as we usually are.

### **Demobilization Process**

The author's next proposal revolves strictly around how law enforcement does its demobilizations. He would suggest that larger agencies that encounter encampments at greater ratios draft a standard operating procedure (SOP) for how encampments are demobilized. The population of people who inhabit these camps are vulnerable and do not have a lot of stability in their lives. It is essential organizationally that law enforcement is consistent, fair, and ethical in how we do demobilizations. The following is a brief framework of what I see that SOP looking like:

- One-week notice
  - o Notice is given once a day verbally, and placard the encampment with written notices

- Done in collaboration with health and humans services, outreach partners, and other relevant stakeholders
- On the day of demobilization, property not claimed that is not obviously garbage will be retained and stored in storage lockers (picture motorcycle lockers) at the city impound lot. Property not claimed within two weeks will be destroyed.
- As these are done in collaboration with outreach, the goal would be to keep these low-key, offer transportation, and ensure they have access to supportive services that can potentially get them housed or get them into a shelter.

The goal with this SOP is to seek consistency, ensure that people's property is retained/stored as needed, and be treated with the respect and dignity they deserve. The author's experience would tell him that the property likely would not be claimed, and he would say the sorting of what has value will be a real challenge, but still, the effort to preserve their belongings is essential.

### **Plug-n-Play Model**

Those in law enforcement leadership have learned that as decisions are made on how to "best" serve and protect those you police, you have to offer a considerable amount of prioritization to how you protect and serve your most vulnerable and marginalized communities. As a community both locally and within MN, statistically, there has been an increase in those experiencing homelessness. This has also been anecdotally evidenced in a steady increase of "encampments that are scattered across many communities. In MN, the Wilder Research group put out a fact sheet in 2018 indicated that in MN, data would indicate that the homeless population increase from 3,079 in 1991 to 10,233 in 2018. While it is likely that our general population grew at a similar growth rate, it is undeniable that law enforcement is still presented with the challenge of fulfilling a role in serving and protecting this challenging and growing

community. In March 2019, the Wilder Research group indicated that in October 2018, there were 791 unsheltered homeless in Hennepin County alone out of 4,072 total homeless within the county. Whether housed or unhoused, those experiencing homelessness present unique and nuanced challenges that for your average patrol officer nearly impossible to solve. In looking for short-term or long-term solutions, the author has found that they have to be attained collaboratively through partnerships with external/internal organizations. It is a big ask of patrol officers to day-in and day-out try to attain seemingly impossible solutions for very complex challenges that this community presents. For these reasons, this plan would route all, or a portion of forfeiture funds, from a respective department's narcotics and drug task force to a new unit called the Homeless and Vulnerable Populations Team (HVPT). The funding would be guided toward funding one full-time sworn officer or sergeant and one full-time chemical dependency counselor. This team's sole focus would be to attain sustainable and meaningful solutions for our homeless and most vulnerable community members.

### **Civilian Chemical Dependency Counselor**

At present, opiate use, opiate overdoses, and opiate-related overdose deaths have been skyrocketing nationwide. Obviously, some in law enforcement, drug task force, and general patrol combat the influx of opiates (and other drugs) hitting the streets, but there are ways to supplement these efforts. Having a chemical dependency counselor on staff with a respective department will be a great asset and represent the other half of the proposed HVPT and other impacted units/divisions by steering those in addiction to treatment programs. The author has done a great deal of work with those addicted to opiates, and one of the first things learned was that until some battling addiction is prepared to admit they're an addict and willing to take their

addiction on, there is little that can be done. There, however, is a massive gap in outreach that focuses on steering persons towards recovery.

Other agencies have found substantial successes in implementing a chemical dependency program to work with those struggling with addiction. In 2018 the Duluth Police Department, in collaboration with a joint drug task force, hired Jessica Nickilla. She connects with overdose victims the day after their overdose and tries to offer them services. In an article featured in the Star Tribune titled *In Duluth-Superior, small town cops face a formidable foe: Mexican cartels* the article states, “Over the past 10 months, Nickilla has steered 50 people to supportive services and 35 to inpatient care, according to data tracked by her office” (Mannix, 2019). In looking at Duluth’s population (85,000 +/-), this number was pretty impressive. A respective agency piloting such a program with their agency would benefit the community, the police department, and those struggling with opiate addiction. The program’s success has allowed for it to see expansion, it would seem. The Duluth Police Department recently received a \$900,000 grant that will allow them to expand upon Jessica’s singular role into their Lake Superior Diversion and Substance Use Response Team. The funding will allow them to hire a second peer recovery specialist/opioid technician and a chemical dependency counselor. They saw a record 19 overdose deaths in 2020 as of mid-December, and this funding will allow this team to reach 20 to 30 additional people that are struggling with addiction(Johnson, 2020).

In interviewing Jessica Nickilla regarding her role with the Duluth Police Department/Lake Superior Drug Task Force, she affirmed that she is now the Lake Superior Substance Use Response Team's program director. This was with the recent expansion of her team. While the work she was initially doing saw her only responding to engage with those that had overdosed on opioids, her team now will respond and work with anyone struggling with any

substance use addiction. She ends up connecting with them after being notified of their overdose, self-referral, referrals from others to include law enforcement, and through a hotline, which is her cell phone. She said that since she started doing the work in December of 2018, she has been able to engage and work with about 200 individuals. Nickila works with a sworn police officer who works in a plain-clothes capacity. She advised that many within the department had more buy-in to the work she was doing when she had a sworn partner she was paired with.

In talking with her, her team's approach is a "direct client care," meaning they find people who are struggling with substance use and offer them resources that vary from inpatient care to connecting them with community partners that can help. The approach appears to vary drastically from the *harm reduction* approach that many outreach groups use. In using harm reduction, outreach may have a goal of providing supportive rehabilitative services at some point. Still, it will often take a more subtle approach to develop trust and rapport with their client. In harm reduction, they also will usually try to reduce the level of harm the client may be exposing themselves to by usually having clean needles or condoms to keep them safer while they navigate their addiction. An outreach group, *Streetworks*, in their training publication, reflects on harm reduction as "harm reduction does not attempt to minimize or ignore the harm and danger in which youth may be involved. It simply recognizes that sometimes the best or only option is to reduce the harmful effects of the risky or dangerous behavior" (Fox, 2019, p.110). In practice, the author does not see "harm reduction" as being as effective in comparison to Nickila's more direct approach. Nickila advised that she estimated that 95% of people she engages with want support and do not want to be addicted. A challenge she faces in her work is serving such a large geographical region. While most of her work is in Duluth proper, she finds

herself in other areas due to being attached to the Lake Superior Drug Task Force. It was pleasing to hear that Cloquet and some other rural communities are within her support area.

In closing the interview with her, the discussion briefly touched on the idea of whether or not she believed addicts in recovery are better suited than non-addict individuals when it comes to working in chemical/substance dependency work. She asserted that there was no question that those in recovery are better in these roles because they often can develop trust and rapport much quicker than the latter when engaging with clients. Nickila advised that she has been in recovery from opioid (heroin) addiction for about ten years (Nickila, 2020).

### **Stakeholders**

Many stakeholders would benefit from the respective police department attaining the necessary funding to start their own department's Homeless and Vulnerable Populations Team (HVPT). The respective police department, the community, and those struggling with homelessness and addiction benefitting from this team being established.

Police officers working with those struggling with homelessness and addiction can be some of the most challenging work out there. People in both situations rarely ended up in their situation by accident. Going through all the layers of an individual's complex situations takes time, empathy, patience, and wisdom to attain workable solutions. A police department benefits from allocating monies specific to these two positions that focus on finding workable solutions for different challenges in their work with people experiencing homelessness and struggling with addiction. Their niche roles will allow them to build trusted relationships with the population they are working with and others that seek to help this community. The benefit to the department also extends deep into liability and credibility. First, specifically in working with the population struggling with homelessness, the case law, standard operating procedures employed by some

agencies, and best practices are continually changing. It is critical from a liability perspective to be abreast of these changes, perhaps allow for this team to forge best practices for this agency, and ensure that we provide professional police service to a community that is already very vulnerable from the onset. For example, what responsibility does an officer or organization have in determining what to do with a homeless individual's property (two carts full) if that person has to be arrested? The courts have not provided a universal answer yet. Still, some agencies are creating a best practice to ensure that the individuals' property is retained and stored briefly (30 days) to be picked up by that person during that time frame. Whether the property is picked up or not, this respective law enforcement organization chooses a way to do their part in treating those *without homes* as those *with homes* would be treated. From the outside looking in, one would have to believe that civil/criminal analysis would conclude that this is a better practice than, say, an alternative to leaving the property where it lies. The respective department would also gain credibility by allocating the funds for these positions because they are acknowledging that these are vulnerable communities and that intentional methods of working with them are being sought. While some law enforcement organizations may not always consider or care about their credibility with organizations external to their police department, this organization gains nearly instant credibility in choosing to commit personnel to work with these communities. Lastly, by committing personnel to work with those struggling with addiction to opioids and meth, law enforcement addresses substance use from a "non-enforcement" perspective. Most in law enforcement would agree that they combat drug-trafficking because they do not want those in our community struggling with addiction. Still, law enforcement rarely pursues an approach that directly impacts those struggling with addiction as typically, law enforcement directs their energy towards the drug dealers and drug suppliers. This approach goes the other direction. It

meets the addict where they are and will do its best to provide them with the support and services they want.

The next stakeholder group that would benefit from a sworn/civilian team that works with the homeless and those struggling with addiction are those living outside and struggling with addiction. This population would have a team of individuals interested in serving them, a team perhaps more knowledgeable and better trained on serving this population, and less likely to incur judgment. Both of these populations often find themselves the victims of exploitation to varying levels, and trust is hard to develop. Having a consistent team that can build trust over time will best serve both populations well, and trusted relationships are more likely to provide more sustainable solutions.

The last stakeholder group that stands to benefit from this sworn/civilian team that works with those living outside and those struggling with addiction is the community, businesses, and parks that these events are occurring in. The author has often found that those living outside and those struggling with addiction can often forget about how some of their actions impact their community they are a part of. An example would be IV drug users who will often discard their hypodermic needles onto the ground without capping them. In the author's work with the homeless struggling with IV substance use disorder, he would often highlight, to those using, the harmful effects their uncapped needles had on the community, be it the unsightliness of them or the apparent risk of a community member stepping on one. An intentional, thoughtful, and patient approach brought to bringing this to their attention effectively brought change. Over the course of approximately a year that he did the work, he saw a sharp decrease in the number of needles he saw lying on the ground when I went through encampments. A dedicated team would

help steer encampments into areas that are less likely to impact the community they are in as well.

### **Personnel Needs & Brick and Mortar Needs**

There will be apparent needs in the way of office space, vehicles, resources, and personnel to implement the HVPT. The most crucial part of establishing the HVPT will be identifying the right personnel to fulfill the team's roles. In identifying an officer or sergeant for the sworn position, it is critical to seek someone out interested in serving this population, prepare to partner with a civilian counterpart, and work effectively and develop partnerships with community/municipal partners. This role will also have a lot of independence and latitude, and putting someone into the role that is self-start and trustworthy is essential. In assessing the civilian role, it would be critical to identify a licensed chemical dependency counselor and is comfortable working in partnership with law enforcement. The benefit of having a CD counselor is that they will be able to administer Rule 25 assessments independent of other organizations. The Rule 25 assessment is conducted by a Rule 25 assessor and is an assessment as to whether an individual needs treatment and specifically which kind will be the most successful. A Rule 25 also needs to be completed before being accepted into any treatment program attached to public funding. Northstar Behavioral health identifies the treatment paths as being primary inpatient, primary outpatient, extended care, and half-way house (Rule 25 Assessments). A challenge in working with the unhoused and those struggling with addiction is that there are countless barriers to successfully getting someone help. In my work with this community getting that Rule 25 completed was critical to them getting support, and I often found that they did not sleep and wake to a traditional schedule. Barriers like access to transportation often saw appointments

missed. A few Rule 25 assessors could do the assessment on-site, meeting their clients where they were, to get the process moving forward.

The office space needs would be equally as essential to address. The goal would be to seek office space in the community and likely away from the police station. While there may be some barriers, my recommendation would be to have the space near the community you're serving, potentially within a church, and be suitable for the sworn/civilian personnel to meet with clients effectively.

To some extent, both the sworn/civilian staff will need vehicle accommodations and potentially some options to that end. While cars allow you to access most spaces, a four-wheeler or side-by-side would allow you to more readily/legally access trails, parks, and riverbanks with greater ease. Accessing these spaces is essential because it is often those tucked away locations that people will choose to say.

Outside of the brick and mortar office, the team will need (2) laptops, a printer, (2) business-specific cell phones, and general office supplies. A component of the role this team will fulfill will be an offering of resources that will vary from water, pre-packaged foods, hand warmers, and other essential hard goods. Much of this can be attained through community partners, and it is not presented as an expected upfront cost. Please see Exhibit A get an expected breakdown of costs. The hope would be to get enough grant funding to sustain this HVPT for two years. Being able to measure results over two years will allow for a better gauge of whether the value being put into the effort is being received in return.

### **Measuring Results**

A significant component of today's world depends on results with time and monies invested. The need for results requires validating, improve efficiencies, and produce data points

as fiduciaries of either public funding or grant dollars. Our world is such that city councils, boards, foundations, and other funding sources want to know that they are getting out of a project that is being invested.

It is critical to implement ways to measure the work that the HVPT would be doing. It would be suggested to measure contacts, monies received in grants, and donated hard goods. It would also be essential to keep a database of contacts, clients' progress, and encampments. While a summary, this will go a long-ways towards accountability of grant-funded and forfeiture dollars. In the end, some things cannot be measured as well. For example, how do you measure the “efforts” that this team would be putting forward? The effort, the relationships, and small differences that this team would have on stakeholders to an extent are immeasurable.

### **Conclusion**

The author served in the Homeless and Vulnerable Populations Initiative for about 11 months and would say about a third of his time was committed to interaction with community members, businesses, elected officials, and outreach workers that are directly impacted in varying ways by the presence of encampments within the communities of Minneapolis. Speaking anecdotally, each of these groups' opinions and responses varies as to their views on homelessness. First, it appears outreach workers that work with those experiencing homelessness varied from worker to worker. In general, the author's perspective is that outreach works believe that people should be able to live where they want, do what they want, and free to make decisions for themselves as to what they do. Also, some outreach workers believe that the 9<sup>th</sup> circuit decision should be held-up here in MN. In an interview with James Scott, who is an outreach worker and trainer with Street Works, a discussion was about where he sees homelessness going and whether it is getting worse. He is concerned that with as much

attention as the large encampment brought to the topic of homelessness, more was not done. He thinks in a year, and we have actually taken a step back. He believes that until we give those experiencing homelessness a reason to be part of the community, he does not see solutions coming (Scott, 2020).

Second, community members and businesses also appear to have differing views on homelessness. Most are tolerant to the extent that encampments are safe and do not impact communities to too great a level. Some communities, those that tend to be wealthier, are less tolerant and understanding of those experiencing homelessness. Lastly, similarly to the author, elected officials are attempting to seek an ideal harmony to meet their constituents' needs.

Due to a series of executive orders issued by Governor Tim Walz related to the COVID-19 pandemic, the number of encampments increased drastically. A priority has been minimizing the impact and has included providing portable toilets, hand washing stations, food, on-site health care (mental, physical, chemical, etc.), and other essential hard goods. This comes with increased partnerships with outreach and collaboration between a broad spectrum of offices within the city and county. While the City of Minneapolis' current situation is not ideal, it would seem that all stakeholders are adjusting to what could eventually be normal from the authors' perspective. It appears that the numbers of homeless increase and that addressing the core needs and the precipitous of why they may be homeless to start with will continue to be a challenge.

### **Chapter 3: Implications, Recommendations, and Conclusions**

As this paper has documented, here in Minnesota, we have seen a steep increase in the number of persons experiencing homelessness. While many homeless have stable shelter through shelters, there are many yet that end up living outdoors in encampments. Why people end up in their situation is going to vary from person to person. The data would suggest that many, not all,

experiencing homelessness struggle with addiction, mental health, and chronic health issues. A study the *Hennepin County: Characteristics and Trends Of Those Experiencing Homelessness In Minnesota*, published by the Wilder Foundation, articulates this very fact. In this study published by the Wilder Foundation, just over 2,000 adults (18+) were interviewed, and 55% acknowledged having a serious mental health issue, 54% admitted having a chronic physical health condition, 18% acknowledged a substance abuse disorder, and 30% acknowledged having evidence of a traumatic brain injury. Of those interviewed, 81% admitted experiencing at least one of the above challenges (Hennepin County Characteristics and Trends Of Those Experiencing Homelessness In Minnesota, 2016).

Those living in encampments can be a particular challenge for a litany of stakeholders to include the community, law enforcement, businesses, and even expose themselves to being more vulnerable. The encampments that pop-up routinely become problematic with uncapped needles, human waste, open drug use, and other socially unacceptable behaviors. Those in law enforcement are often asked to play a vital role in working through the next steps that in many cases see an encampment being asked to move or demobilized. This portion of the job does not come without its ethical challenges, perhaps legal challenges, and challenges related to the process used. This paper has attempted to offer suggested options to include proposals related to the process, a need for additional housing, suggestions on the possibility of sanctioned encampments, and a call for more collaborative work among service providers to this community.

### **Practical Applications**

In conducting the research and documenting the experiences of those that work with the homeless community, the idea is to draw attention to the nuanced challenges that law

enforcement and others are presented with in working with this community. In drawing attention, the hope would be that perhaps others, including advocates, churches, community, and elected officials, will start pursuing sustainable solutions that benefit all. The research and information within this document would also prove to be very helpful to law enforcement organizations just now realizing the challenges presented in working with the homeless community.

### **Recommendations for Further Research**

It would be helpful to know how some other states and municipalities are working through the challenges created by those experiencing homelessness from a “boots on the ground” perspective. The author intended to visit a couple of locations in the U.S. to take in that knowledge, but plans were derailed by the COVID-19 pandemic that hit our world.

### **Conclusion**

This paper has given the reader a broad overview of how law enforcement has historically and presently intersected those experiencing homelessness. In presenting the topic, the author has explained why the topic interests him and why he chose to research this subject. In assessing these two groups' intersection, the paper identifies and provides some background to how and why people may end up homeless. The challenges that the homeless community face and present at the same time are layered and complicated. For that reason, despite perhaps not being a natural fit, law enforcement will continue a role. There are many stakeholders in this topic, and each of them brings a different perspective. This paper has tried to be intentional in identifying those perspectives.

This paper has taken a brief look at what Minneapolis Police Department's approach to homelessness is. Secondly, the research reviews differing perspectives offered in court rulings that have occurred, specifically the 9<sup>th</sup> Circuit's decision in *Boise v. Martin* that asserted to the

extent that criminalizing homelessness was an 8<sup>th</sup> Amendment violation of a person's civil rights. While independent of the Boise decision also reviewed was *Kohr v. City of Houston*, in which the local U.S. District Court offered an opinion opposite of the Boise decision to deny an injunction sought by plaintiffs in that case. Thirdly, this paper also touched on how Governor Walz's office's executive orders have impacted those experiencing homelessness. Lastly, the author has tried to offer anecdotal perspectives on what different stakeholder's perspectives are on the manner.

This paper identifies some of the ethical and moral dilemmas that face law enforcement and other organizations that demobilize encampments inhabited by those experiencing homeless. We have also had a glimpse at some of the ethical systems/principles that guide some that do their work with this population. The paper has identified some of the more pressing dilemmas and has attempted to identify some resolutions for these pressing ethical and moral dilemmas.

This paper has offered some perspective of the processes that a prospective chief or law enforcement agency could utilize to implement a dual role sworn/civilian *Homeless and Vulnerable Populations Team* with the police agency that I lead. Secondly, I have reviewed the overall goals and objectives of the proposed unit. I have taken a look at the stakeholders that I believe benefit from implementing such a unit. Thirdly, I have reviewed a similar program (chemical dependency counselor side) that I believe is a successful model for us to follow. In closing, I have identified some of the financial needs of such an endeavor and some of the ways I will ask that the team measure their efforts.

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**Table:**

**CJU 596: Business Budget Worksheet**

<b>Homeless and Vulnerable Populations Team-2 yr budget</b>			
<b>CATEGORY</b>	<b>BUDGET AMOUNT</b>	<b>ACTUAL AMOUNT</b>	<b>DIFFERENC E</b>
Income—Asset Forfeiture Funds	\$150,000		
Income—Grant	\$229,000		
<b>TOTAL INCOME</b>	<b>\$379,000</b>		
<b>EXPENSES</b>			
Human Resource Services			
Advertising			
Health Insurance, Benefits	\$24,000		
Hiring Costs	\$2,000		
Union Fees			
Brick and Mortar Lease Costs	\$16,000		
Technology (computer, phones, radios)	\$3,000		

Purchase, Installation, and Repair of Equipment	\$500		
Inventory Purchases			
Legal Expenses			
Licenses and Permits			
Office Supplies	\$500		
Payroll	\$320,000		
Printing, Forms, Materials			
Professional Training	\$3,000		
Professional Association Fees			
Subscriptions and Dues			
Vehicle Expenses	\$12,000		
Other-Budget for CD Counselor	\$10,000		
Other			
Other			
<b>TOTAL EXPENSES</b>	379,000		
<b>TOTAL INCOME MINUS TOTAL EXPENSES</b>	\$0		