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Education as a Right, Homelessness as a Crisis: The Displaced Futures of American Homeless Youth

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Education as a Right, Homelessness as a Crisis: The Displaced Futures of American Homeless Youth

Tina Pham*

Abstract

*Homelessness in the United States has been a humanitarian crisis affecting youth as one of its most vulnerable populations. Education is one of the few opportunities to break through this cycle of poverty. Recognizing the gap in education for homeless students and other students, Congress enacted the McKinney-Vento Act, which guarantees homeless youth educational rights to access public education. Following the Supreme Court's decision in *Grants Pass v. Johnson*, however, the rise of criminalizing policies, such as encampment sweeps and anticamping ordinances, threatens the success of the Act. These policies not only destabilize families, but they also leave homeless youth disadvantaged because they obstruct educational access, displacing their futures.*

*This Note argues that criminalization measures directed at homelessness, such as encampment sweeps, undermine the educational rights of homeless youth under the McKinney-Vento Act. It examines current federal and state legislative frameworks governing homelessness against the rise of criminalizing policies post-*Grants Pass*. Then, it concludes that these policies create challenges for homeless students in violation of the Act. Finally,*

* J.D. Candidate 2026, Washington and Lee University School of Law. Thank you to Professor Alexi Pfeffer Gillett for supervising this work and for his thoughtful insight and guidance. Thank you to the *Washington and Lee Law Review* Editorial Board for their patience and hard work editing this Note. And finally, thank you to my friends and family, who generously endured conversation about this topic more than they ever could have expected.

this Note proposes legal claims plaintiffs could bring under the Eighth Amendment’s Excessive Fines Clause and the McKinney-Vento Act in addition to a broader policy reform that would ensure state and local compliance with the Act. By shedding light on the barriers homeless youth face in accessing education and reframing education as an essential right, this Note emphasizes the urgent need for legal and fundamental interventions to preserve the futures of homeless youth.

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INTRODUCTION

Homelessness has been an American humanitarian crisis since the 1980s.¹ Since the recent Supreme Court holding in *City of Grants Pass v. Johnson*,² many states have shifted toward criminalizing homeless³ communities.⁴ Those who live in encampments like tents or makeshift shelters in public spaces are especially vulnerable. Some cities address homeless communities through blanket measures such as “sweeps”—forced clearings of encampments which displace the individuals living inside.⁵ In addition to being costly and ineffective, they cause an undue mental burden by creating stress and anxiety to those who are affected.⁶ Furthermore, sweeps affect the safety of participants by leaving them open to environmental dangers

1. NAT'L ACADS. OF SCI., ENG'G & MED, PERMANENT SUPPORTIVE HOUSING: EVALUATING THE EVIDENCE FOR IMPROVING HEALTH OUTCOMES AMONG PEOPLE EXPERIENCING CHRONIC HOMELESSNESS (2018), at 176 (2018), <https://perma.cc/L7YH-DLCQ> (“The early 1980s marked the emergence of what now may be considered the modern era of homelessness.”).

2. 603 U.S. 520 (2024).

3. I use the term “homeless” throughout this Note to maintain consistency with the Supreme Court’s terminology. *E.g.*, *id.* But I acknowledge that using the term “unhoused” recognizes that all people deserve housing.

4. *See id.* at 552 (holding that city ordinances banning sleeping outside did not constitute “cruel and unusual punishment” when applied to homeless individuals); Andrew Dorn, *Homeless Camping Bans: Which Cities, States Have Tried to Enforce Them?*, NEWSNATION, <https://perma.cc/MV75-Y7N8> (last updated Apr. 22, 2024); Jennifer Wadsworth & George Kelley, *Newsom Urges Cities to Clear Homeless Camps. Here’s What That Means for SF Bay Area*, S.F. STANDARD (July 25, 2024), <https://perma.cc/VU2Y-WDBB> (reporting on California Governor Gavin Newsom’s directing officials to clear homeless encampments).

5. *Protecting the Health and Well-Being of People Living Unsheltered by Stopping Forcible Displacement of Encampments*, AM. PUB. HEALTH ASS’N (Nov. 13, 2023) [hereinafter *Protecting the Health and Well-Being*], <https://perma.cc/MMG2-J89W>.

6. *Id.* (“Forcible removal of encampments does not end homelessness. . . . In addition to not solving the problem, displacements cause further psychological stress and anxiety, both of which may exacerbate existing physical or mental health problems that often co-occur in individuals who are unhoused.”).

when indoor shelters are unavailable.⁷ Particularly, homeless children and youth⁸ are the most vulnerable to encampment sweeps because it harms their growth and liberties.⁹ Encampment sweeps also create barriers to resources provided by the McKinney-Vento Act (the Act),¹⁰ a law that is designed to support homeless children seeking education.¹¹ As a result, criminalizing homelessness creates a humanitarian crisis not only for adults, but especially for youth because it perpetuates a cycle of homelessness by stripping away basic human rights, creating structural barriers to resources designed to support the transition out of homelessness, and inhibiting social, cognitive, and emotional development.¹²

This Note analyzes the effect of criminalizing policies and sweeps on homeless children. It argues that this conduct violates their right to education under the Act and proposes

7. See J.L. Goldshear et al., “Notice of Major Cleaning”: A Qualitative Study of the Negative Impact of Encampment Sweeps on the Ontological Security of Unhoused People Who Use Drugs, *SOC. SCI. & MED.*, 2023, at 1, 1, <https://perma.cc/ZA2G-H9MF> (PDF) (“[E]ncampment sweeps were noted to be physically, psychologically, and socially destructive. Sweeps left participants feeling anger, loss, and hopelessness while further driving the societal marginalization of unhoused people who use drugs.”).

8. I use the term “youth” to refer to school-aged individuals under eighteen years old.

9. See Naomi Schaefer Riley, *Portland’s Encampment Kids*, *CITY J.* (Jan. 21, 2024), <https://perma.cc/NA3U-HJUK> (reporting that children from grade school to high school ages live in homeless encampments); Ethan Varian, *At Just 7 Years Old, He Lives in a Tent in a San Jose Homeless Encampment and Wishes He Had a Microwave and a Shower*, *SILICON VALLEY* (Aug. 25, 2024), <https://perma.cc/XYE3-M2K2> (last updated Jan. 13, 2025) (“Statewide, unsheltered children, both unaccompanied and with families, make up 2% of the total homeless population of more than 181,000 people. . . . [C]hildren without stable housing or shelter are more likely to develop physical and behavioral health issues . . .”).

10. 42 U.S.C. § 11431.

11. *Id.* § 11434a.

12. See Maria Foscarinis, Kelly Cunningham-Bowers & Kristen E. Brown, *Out of Sight—Out of Mind?: The Continuing Trend Toward the Criminalization of Homelessness*, 6 *GEO. J. ON POVERTY L. & POL’Y* 145, 146–47 (1999) (addressing how the continuing criminalization of homelessness does not solve its root causes); Chris Herring, Dilara Yarbrough & Lisa Marie Alatorre, *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness*, 67 *SOC. PROBS.* 131, 132 (2020) (examining how antihomeless laws facilitate police interactions which negatively impact the urban poor).

legal claims they could pursue under the Constitution, federal and state education laws, and state policies.

Part I of this Note provides an overview of the homelessness crisis in the United States, focusing on its impact on families and youth. This Part specifically examines the effects of homelessness on youth and how it intersects with education. Part II discusses federal and state legislative responses to homelessness, concentrating on the McKinney-Vento Act and the contrast between its lofty goals and the practical issues homeless youth face in accessing education. Part III then analyzes how *Grants Pass* influenced modern criminalization policies against homelessness and how these policies undermine the Act by creating barriers for homeless youth in accessing education. Finally, Part IV sets forth possible claims under the Eighth Amendment's Excessive Fines Clause¹³ and the Act, along with policy considerations states should enact to help homeless youth break the barriers preventing them from pursuing education.

I. THE LANDSCAPE OF AMERICAN HOMELESSNESS

The modern era of homelessness began in the 1980s primarily because of societal shifts toward unemployment, lack of affordable housing, and city gentrification.¹⁴ Despite early responses to this issue extending back decades,¹⁵ the homelessness crisis has only proliferated.¹⁶ According to a study conducted by the U.S. Department of Housing and Urban Development (HUD) in 2023, roughly 653,100 people—about 20 out of every 10,000 people—in the U.S. experienced homelessness.¹⁷ This number accounted for homeless individuals with temporary shelter as well as those without

13. U.S. CONST. amend. VIII.

14. NAT'L ACADS. OF SCI., ENG'G & MED., *supra* note 1.

15. *See id.* (detailing federal action to address homelessness).

16. *See* TANYA DE SOUSA ET AL., U.S. DEP'T OF HOUS. & URB. DEV., THE 2023 ANNUAL HOMELESSNESS ASSESSMENT REPORT (AHAR) TO CONGRESS 2 (2023), <https://perma.cc/4DLY-BSTM> (PDF) ("The 2023 Point-in-Time (PIT) count is the highest number of people reported as experiencing homelessness on a single night since reporting began in 2007.").

17. *Id.*

shelter on a single night.¹⁸ The total number of unsheltered homeless individuals, however, reached the highest count observed since 2007.¹⁹ Although this study provides an estimate of the number of people experiencing homelessness in any given area, there could be thousands more homeless individuals and families unaccounted for.²⁰

States with a dense urban population and high costs of living such as California and New York experience the largest homeless populations in the country.²¹ Despite these states' efforts to address the crisis by establishing more shelter beds, funding social services programs aimed at improving homelessness, and creating more housing infrastructure to address the affordable housing problem, the crisis has not improved.²² If anything, these efforts will take a long time before yielding actual results.²³

18. *Id.* at 6 (noting that the assessment reports offered a “snapshot of experiences of homelessness—both sheltered and unsheltered—on a single night”).

19. *Id.* at 11 (finding a continuing upward trend over the past seven years of people experiencing unsheltered homelessness).

20. *See id.* at 10–11 (suggesting that only a small proportion of the homeless population as a whole are reported).

21. *See* Gene Petrino, *Homelessness in America: Statistics, Analysis, and Trends*, SECURITY.ORG, <https://perma.cc/ST3Y-9ZG7> (last updated Oct. 29, 2025) (finding that between 2022–2023, California and New York had the greatest homeless population—181,399 and 103,200 respectively—because of their large concentration of urban cities and high housing costs).

22. *See* CAL. LEGIS. ANALYST OFF., *THE 2023-24 BUDGET: UPDATES ON RECENT HOUSING AND HOMELESSNESS AUGMENTATIONS AND OVERVIEW OF PROPOSED BUDGET CHANGES 3* (2023), <https://perma.cc/8QJG-63E9> (PDF) (reporting that California spent over \$20 billion since 2018 to address its homelessness crisis by funding housing and homeless programs, shelters, and departments such as the Department of Social Services that also offer housing assistance and aim to address homelessness experienced by program participants); JULIA K. HARAMIS, *REPORT TO THE COMMITTEE ON FINANCE AND THE COMMITTEE ON GENERAL WELFARE ON THE FISCAL 2024 EXECUTIVE PLAN AND THE FISCAL 2024 EXECUTIVE CAPITAL COMMITMENT PLAN FOR THE DEPARTMENT OF HOMELESS SERVICES 1* (2023), <https://perma.cc/D9D2-MH2U> (PDF) (proposing a budget of \$106.7 billion to fund initiatives such as nonasylum seeker shelter services, subway safety plans that would provide health services and outreach, drop-in centers, safe haven beds, COVID-19 isolation hotels, and a housing blueprint to build more equitable housing for the homeless population).

23. *See* CAL. LEGIS. ANALYST OFF., *supra* note 22 (referring to California's efforts to build new housing initiatives).

This Part builds on the historical roots of American homelessness by tracing its pervasive spread within families and its profound impact on youth. It highlights youth as the most vulnerable group, examining the consequences of homelessness on their lives with an emphasis on their education. This Part concludes by drawing attention to the challenges homeless youth face in securing education. It examines how homelessness undermines access to schooling and disrupts students' futures. In addition, it investigates how truancy laws exacerbate these challenges, further cementing students' struggles.

A. Families Lost in the Margins

Family homelessness is on the rise, with the most vulnerable and typical composition consisting of a single parent, often a mother, with children.²⁴ This surge in family homelessness is rooted in the expanding income inequality gap between men and women, and the increasing scarcity of affordable housing.²⁵ In a society where economic structures make it increasingly difficult for women to thrive independently, the absence of a male counterpart in heterosexual relationships to share the burden of housing costs makes it challenging to secure housing especially when “affordable housing [is] less available.”²⁶ As a result, women are disproportionately vulnerable to homelessness because of societal inequities.²⁷ And within this broader context, single mothers raising children face compounded hardships: They are not only confronted with challenges that single women face in securing housing, but also

24. See Roy Grant et al., *Twenty-Five Years of Child and Family Homelessness: Where Are We Now?*, 103 AM. J. PUB. HEALTH e1, e1–e2 (2013) (finding income inequality as the reason for family homelessness since the 1980s).

25. *Id.* at e1 (“The increase in family homelessness in the United States beginning in the 1980s was accompanied by increasing rates of income inequality, child poverty, and shortages of affordable housing.”).

26. *Id.* at e2.

27. See *id.* (positing that income inequality is one factor that gave rise to family homelessness).

with the need to balance childcare with employment.²⁸ When one cannot afford housing, often times they also cannot afford childcare, and without childcare, employment becomes an unattainable goal.²⁹ The vicious cycle of this struggle traps families in a paradox where securing even the most basic needs becomes impossible, therefore sparking the rise of homelessness among women and their children.³⁰

The effect of homelessness on young children is especially disturbing. Homelessness impacts young children physically and mentally, causing both short- and long-term implications on physical, emotional, and mental development during the crucial formative years of their lives.³¹ Housing instability and limited income leave homeless children experiencing severe hunger because families cannot afford to feed their children when they face financial instability.³² This contributes to “higher rates of nutritional problems,” exacerbating conditions such as obesity and asthma that have long-term complications.³³ Aside from the physical toll youth experience, homelessness is also an extremely powerful stressor that causes severe psychiatric disorders.³⁴ These disorders include sleep disturbance, eating problems, aggression, and emotional illnesses such as depression, anxiety, and self-harm.³⁵ These difficulties often prevent children from attending school, which can hinder their social, behavioral, and academic growth during crucial early childhood years, delay development, and lead to learning

28. *See id.* (discussing domestic abuse as a major force for homelessness in single mothers and explaining the challenges homeless single mothers face in securing housing, childcare, and employment).

29. *Id.* (“For single women raising young children, affordable child care might be necessary but unavailable to facilitate employment.”).

30. *See id.* at e3 (explaining how the homeless single mother with children dynamic has become prevalent over time).

31. *Id.*

32. *See id.* at e4 (“[S]evere hunger was more prevalent among homeless children.”).

33. *Id.*

34. *See id.* (illustrating that half of homeless school-age children in the Boston area met the criteria for a diagnosed psychiatric disorder).

35. *See* Panos Vostanis, Eleanor Grattan & Stuart Cumella, *Mental Health Problems of Homeless Children and Families: Longitudinal Study*, 316 *BMJ* 899, 901 (1998) (discussing prevalent health issues in homeless families and children because of psychosocial factors such as instable housing).

difficulties.³⁶ But these problems are often overlooked because homeless families have limited access to “primary and secondary medical care, as well as to [immunizations] and other preventive health procedures,” creating additional barriers to resolving these issues.³⁷

B. *Disrupted Futures: Youth Homelessness and Education*

In theory, homeless youth have access to education through public schools, but in reality, practical complications prevent them from pursuing these educational opportunities.

At the outset, homeless youth face initial barriers to enroll in educational institutes because of documentation requirements.³⁸ These requirements, such as residency requirements, guardianship requirements, school records, and immunization documents, prevent homeless children from enrolling in school because many families who lack stable housing are unable to maintain a record of these documents.³⁹

Even if they overcome these initial burdens, homeless youth face further challenges in accessing education. This subpart explores these barriers including real-world limitations that preclude youth from pursuing education and state truancy laws that punish them as a result of these limitations.

1. Structural Barriers to Educational Stability

Some practical considerations and disruptions in education for homeless youth include—but are not limited to—a lack of reliable transportation,⁴⁰ inadequate training for teachers,⁴¹

36. *Id.* at 900.

37. *Id.* at 899.

38. NAT'L COAL. FOR THE HOMELESS, EDUCATION OF HOMELESS CHILDREN AND YOUTH (2009), <https://perma.cc/KZ9N-WGUC> (PDF) (“Residency requirements, guardianship requirements, delays in transfer of school records, lack of transportation, and lack of immunization records often prevent homeless children from enrolling in school.”).

39. *Id.*

40. See *Educational Challenges for Children Facing Homelessness*, ATLANTA MISSION, <https://perma.cc/B4RE-CU3N> (last visited Oct. 25, 2024) (explaining how a lack of resources such as “transportation, study space, and clothing needs” can cause homeless students to fall behind in their education).

41. See Desiree Vargas, *Moving from the Streets to the Classroom: Understanding the Teacher’s Role for Creating a Robust Education for*

and physiological complications arising from limited access to nutrition and clean water.⁴²

First, the challenge of getting to school without reliable transportation contributes to the rise of absenteeism in homeless youth, which can indicate that students are not receiving consistent education.⁴³ When homeless families are constantly moving, it makes reliable transportation difficult to obtain.⁴⁴ Children without reliable transportation are absent from school, missing lessons and falling behind, which compounds their struggle because they are expected to catch up on material they never had the opportunity to learn in the first place.⁴⁵ Additionally, constant movement and the lack of transportation force homeless students to switch enrollment to school districts where they are temporarily housed.⁴⁶ This sudden change in schools detrimentally impacts these students' education because of the inconsistency in learning materials and lesson plans.⁴⁷

Second, even when homeless children are able to attend school, teachers are often ill-equipped to support them adequately.⁴⁸ Homeless children often experience trauma associated with their personal circumstances, which can

Homeless Youth in the Classroom (2018) (Capstone Project, California State University, Monterey Bay), <https://perma.cc/Z5LW-BXLN> (PDF) (“Teachers are unaware on how to deal with issues such as homelessness in the classroom, and that the students’ situations outside of the school grounds could be very traumatic.”).

42. Natalie A. Masento et al., *Effects of Hydration Status on Cognitive Performance and Mood*, 111 BRITISH J. NUTRITION 1841, 1842 (2014).

43. See Mary Niederberger, *For Homeless Students Transportation Issues Mean New Schools and Unfamiliar Classrooms*, PITTSBURGH INST. FOR NONPROFIT JOURNALISM (Mar. 29, 2022), <https://perma.cc/256R-5UWQ> (reporting on how significantly the lack of reliable transportation affects homeless children because it takes at least four to six months for students to recover academically after switching schools).

44. E.g., Barbara Wand James & Patrick D. Lopez, *Transporting Homeless Students to Increase Stability: A Case Study of Two Texas Districts*, 72 J. NEGRO EDUC. 126, 128 (2003).

45. Niederberger, *supra* note 43.

46. *Id.*

47. *Id.*

48. See Vargas, *supra* note 41 (arguing that teachers are unaware of problems that homeless youth face in the classroom).

manifest as behavioral issues and a detachment from school.⁴⁹ This detachment leads to a lack of motivation, making it harder for them to engage with lessons, ultimately frustrating their education.⁵⁰ Unfortunately, teachers are rarely trained on how to effectively address these behavioral challenges, preventing them from providing necessary support to students facing adverse situations.⁵¹ Without proper support in the classroom, the learning challenges homeless students face are exacerbated.⁵²

Finally, homeless youth faced with financial insecurity find themselves unable to secure nutrition and clean water,⁵³ which impairs their cognitive functions and exacerbates their learning challenges.⁵⁴ Children experiencing malnutrition and dehydration suffer from cognitive deficits such as “short-term memory and visual and perceptual abilities as well as mood disturbance[s].”⁵⁵ Homeless children suffering from these deficiencies perform poorly in class because when their bodies are starved of proper nourishment, they lack energy to concentrate, think, and learn.⁵⁶ But even if they are able to

49. *Id.*

50. *See id.* (explaining how a student’s detachment manifests within the classroom).

51. *See id.* (explaining that when teachers are not informed about homelessness and trauma, they can perceive behavioral problems in homeless students as bad behavior).

52. *Id.* (explaining that when homeless students are not provided support, they may feel rejected from their peers and teachers which exacerbates the problem).

53. Lela Nargi, *Unhoused Children Suffer the Worst Health Consequences of Poor Water Access*, PRISM (July 18, 2024), <https://perma.cc/Z355-G5R3> (reporting on health conditions homeless children face as a result of poor water access). *See generally* COAL. ON HOMELESSNESS, S.F., WATER FOR ALL (2021), <https://perma.cc/W4C8-Y3ZG> (PDF) (summarizing the seriousness of how unhoused residents in one major city have inadequate access to water).

54. Masento et al., *supra* note 42, at 1850 (“Severe dehydration has been shown to cause cognitive deficits such as short-term memory and visual perceptual abilities as well as mood disturbance, whereas water consumption can improve cognitive performance, particularly visual attention and mood.”).

55. *Id.*

56. Marina Roberts et al., *The Effects of Nutritional Interventions on the Cognitive Development of Preschool-Age Children: A Systematic Review*, 14 NUTRIENTS 532, 532 (2022) (“Undernourished children also exhibit impaired development and decreased functional capacity.”); Aregash Ababayehu Zerga et al., *Impact of Malnutrition on the Academic Performance of School Children*

attend class, these students are more likely to forget what they learned because of their short-term memory.⁵⁷ For homeless students, the classroom becomes a place of struggle not only with schoolwork, but with the basic ability to keep up.⁵⁸ This challenge is further intensified by truancy laws, which compound the burdens placed on the most vulnerable rather than confronting the underlying source of homelessness.

2. Truancy Laws: The Costs of Youth Homelessness

Truancy laws, legal measures aimed at ensuring attendance in school,⁵⁹ add another layer to the weight of homeless youth's academic struggle. The primary goal of these laws is to address absenteeism and promote consistent educational engagement.⁶⁰ Enforcing student attendance typically involves collaboration between parents and various authorities to implement interventions aimed at getting children back in school.⁶¹ For example, in California, interventions are generally structured in tiers which escalate in severity.⁶² In extreme cases of truancy, schools and school districts may impose penalties on both the truant student and their parents.⁶³ For students, penalties often begin with “an

in Ethiopia: A Systematic Review and Meta-Analysis, 10 SAGE OPEN MED. 1, 1 (2022) (finding that students in Ethiopia facing malnutrition and dehydration suffer from poor academic performance in school because of cognitive impairments).

57. See Zerga et al., *supra* note 56 (highlighting the deficiencies students face when they are malnourished and dehydrated).

58. See *id.* (explaining how malnourished and dehydrated students suffer from poor academic performance).

59. For an example of one state's truancy laws, see CAL. EDUC. CODE §§ 48260–48269 (West 2026).

60. Deborah Gleich-Bope, *Truancy Laws: How Are They Affecting Our Legal Systems, Our Schools, and the Students Involved?*, 87 THE CLEARING HOUSE 110, 111 (2014) (noting the intent behind truancy laws as a way to engage students to attend class).

61. *Id.* at 113 (“The interventions to reduce truancy can involve more than just the school; they can include the families, the student, law enforcement, local businesses, judicial and social service agencies, and community youth organizations.” (citation omitted)).

62. EDUC. § 48264.5 (discussing the different levels of truancy); CAL. PENAL CODE § 272 (West 2026) (providing penalties for violations of truancy laws).

63. EDUC. § 48264.5(d).

attendance review board or a truancy mediation program.”⁶⁴ If truancy persists, the student may be declared a “ward of the court,” which can result in fines up to fifty dollars, mandatory attendance in a court-approved truancy program, and community service.⁶⁵ For parents, penalties can include fines of up to \$500 (the amount is determined by the number of offenses committed).⁶⁶ Not only do these laws punish absence, but they also deepen the education crisis by making it harder for children already facing insurmountable odds to keep their place in an education system that feels increasingly out of reach.⁶⁷

Homeless families are particularly vulnerable to truancy penalties because their children often struggle with school attendance due to housing and transportation instability, which could leave them with fines they cannot afford to pay.⁶⁸ Although states typically use truancy penalties as a last resort, imposing fines on homeless families sets a troubling standard because these fines exacerbate financial burdens and ignore the realities that homeless youth face in their inability to attend school.⁶⁹ As a result, truancy penalties are excessive when they are imposed on families who cannot afford to pay, which could violate the Eighth Amendment’s prohibition against excessive fines,⁷⁰ an issue that will be further explored in Part IV. Yet, even as truancy fines weigh heavily on homeless families and

64. *Id.* § 48264.5(c).

65. *Id.* § 48264.5(d).

66. *Id.* § 48293(a)(3).

67. See SHAHERA HYATT & JESSICA REED, *ADDING INSULT TO INJURY: THE CRIMINALIZATION OF HOMELESSNESS AND ITS EFFECT ON YOUTH 5* (2015), <https://perma.cc/J5H8-XUFN> (PDF)

Youth who are truant from school may be detained by law enforcement during school hours and returned to school or home. If a youth is found to be a “habitual truant,” the school may take administrative actions and the youth may be declared a ward of the court. These actions could negatively impact the educational career of homeless students that already face significant barriers to successful school completion.

68. See Niederberger, *supra* note 43 (explaining how absenteeism is common among homeless students).

69. See Betty Márquez Rosales, *California Districts Try Many Options Before Charging Parents for Student Truancy*, EDSOURCE (Aug. 7, 2024), <https://perma.cc/KH4S-EHE7> (reporting different methods California schools try before imposing civil fines on parents for their child’s truancy).

70. U.S. CONST. amend. VIII.

youth, federal and state legislation has emerged as an attempt to address the escalating crisis of homelessness.

II. LEGISLATIVE RESPONSES TO HOMELESSNESS

Legislators responded to this growing humanitarian crisis that began to take root in the 1980s by enacting initiatives to support homeless individuals and families.⁷¹ These initiatives reflected an evolving recognition that homelessness was not only a personal plight, but also a systemic issue demanding collective action.

This Part examines federal and state efforts to address homelessness. Subpart A discusses federal efforts to address homelessness, focusing on the role of HUD as the primary federal agency responsible for resolving homelessness and how these priorities have shifted throughout different presidential administrations. Subpart B then explores the historical approach of education as a right and delves into one of the most foundational federal legislative acts supporting homeless youth education, the McKinney-Vento Act, by examining its intent and impact. Then, subpart C explores the unique measures some states have employed to ensure that the needs of vulnerable homeless populations are met in addition to their implementation of the Act. Finally, this Part concludes by arguing that despite the Act's lofty goals, its effectiveness is undermined by real-world challenges and systemic barriers.

A. Federal Efforts to Address Homelessness

The federal government plays a critical role in efforts to address homelessness on multiple fronts, with HUD serving as the primary federal agency leading these efforts.⁷² HUD aims at mitigating homelessness nationwide by providing funding for emergency shelters, permanent housing, and transitional housing.⁷³ It also collaborates with other federal agencies, such

71. NAT'L ACADS. OF SCI., ENG'G & MED., *supra* note 1.

72. See *Homelessness*, U.S. GOV'T ACCOUNTABILITY OFF., <https://perma.cc/49UN-26L7> (last visited Dec. 12, 2024) (listing the responsibilities of the HUD to address homelessness on a federal scale).

73. *Id.*

as the Federal Emergency Management Agency (FEMA), to support state and local governments during natural disasters.⁷⁴

HUD provides funding for state government initiatives that address homelessness.⁷⁵ These initiatives, often directed at vulnerable populations such as survivors of domestic violence, dating violence, sexual assault, and stalking, reflect HUD's commitment to recovery.⁷⁶ It prioritizes and encourages initiatives that connect individuals with supportive services, rather than less compassionate approaches that impose mandatory conditions on homeless individuals—such as compelling them to complete treatment—before they can receive aid.⁷⁷ These programs reflect HUD's belief that recovery begins with security, not prerequisites.⁷⁸ For example, HUD advanced the Continuum of Care Program, which is designed to assist families experiencing homelessness by funding nonprofit and state organizations that support family rehousing, provide access to homeless-support programs, and promote self-sufficiency.⁷⁹

The Biden-Harris administration further strengthened this mission by committing \$3.16 billion to homeless assistance programs nationwide, providing substantial funding to HUD in its fight against homelessness.⁸⁰ This funding allowed HUD to continue its collaborations with state governments, where it actively awarded grants to support state-level initiatives.⁸¹ These grants empower states to develop and implement their own strategies and policies to address homelessness more effectively at a local level, while also ensuring that they have

74. *Id.*

75. *Id.*

76. See Press Release, U.S. Dep't of Hous. & Urb. Dev., Biden-Harris Administration Awards \$3.16 Billion in Homelessness Assistance Funding to Communities Nationwide (Jan. 29, 2024), <https://perma.cc/8Z7M-296W> (awarding grants to over 7,000 projects which represents “the largest amount of annual federal funding provided through HUD's Continuum of Care program in history”).

77. *Id.*

78. *Id.*

79. *Continuum of Care (CoC) Program Eligibility Requirements*, HUD EXCHANGE <https://perma.cc/R3B3-LKRV> (last visited Oct. 21, 2024) (providing details for how states may qualify for funding).

80. Press Release, U.S. Dep't of Hous. & Urb. Dev., *supra* note 76.

81. *Id.*

resources to adopt and implement federal statutes such as the Act. The Trump administration, however, froze the disbursement of this funding, leaving its release uncertain as litigation remains pending.⁸² More broadly, the Trump administration signaled a shift away from homeless assistance programs. For example, it proposed an overwhelming 44 percent budget cut to HUD's affordable housing, homelessness, and community development programs.⁸³ This proposed budget cut would eliminate at least 84 percent of staff responsible for "administer[ing] homelessness assistance and grants that help communities build affordable housing and recover from disasters," making it more difficult and time-consuming for states to obtain funding to sustain homelessness assistance measures.⁸⁴

Although the historic collaborative partnership between federal and state governments underscores the shared commitment to addressing homelessness and recognizing the right to education for homeless youth, the current reduction in federal support has increasingly shifted the burden of enforcement and implementation onto the states.

B. The McKinney-Vento Act: Recognizing Education as a Right for Homeless Youth

The right to education has never been clearly established,⁸⁵ and marginalized low-income youth have historically faced significant challenges in receiving an education. In *San Antonio Independent School District v. Rodriguez*,⁸⁶ the Supreme Court

82. Danielle McLean, *\$3.6B in Homelessness, Domestic Violence Funding Still Frozen, Nonprofits Say*, SMART CITIES DIVE (Mar. 11, 2025), <https://perma.cc/Z8FN-UQ8U>.

83. Kim Johnson, *Trump Administration Releases Additional Details of FY26 Budget Request Slashing HUD Rental and Homelessness Assistance Programs—Take Action!*, NAT'L LOW INCOME HOUS. COAL. (Jun. 2, 2025), <https://perma.cc/Q6H9-FHXZ>.

84. Will Fischer, *DOGE-Driven HUD Cuts Will Make It Harder for People to Afford Housing, Exit Homelessness*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 11, 2025), <https://perma.cc/2X98-EQTM>.

85. *But see* Matthew Shaw, *The Public Right to Education*, 89 U. CHI L. REV. 1179, 1179 (2022) (arguing that the right to education must be afforded constitutional protections).

86. 411 U.S. 1 (1973).

did not recognize education as a fundamental right guaranteed by the Constitution.⁸⁷ When a school district provides unequal distribution of school funding, that action does not violate the Equal Protection Clause because it is not considered discrimination against either poor or wealthy students.⁸⁸ But inequitable funding distributed among schools significantly impacts low-income students because schools in less affluent neighborhoods lack the resources necessary to provide an education comparable to wealthier schools.⁸⁹ The Court in *Plyler v. Doe*,⁹⁰ however, acknowledged that “education has a fundamental role in maintaining the fabric of our society.”⁹¹ As a result, when select groups of individuals are denied access to education, there is a risk of significant social costs.⁹² Despite the important role education has, homeless children are still subjected to challenges that limit their access to education, thus undermining the fabric of our society.⁹³

To address these disparities, Congress enacted the McKinney-Vento Act to ensure that homeless youth have equal access to free education.⁹⁴ Understanding the challenges homeless students face in attending school such as constant mobility and lack of transportation, Congress emphasized the crucial role that stability plays in ensuring educational access

87. *Id.* at 35 (“Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.”).

88. *Id.* at 29 (“[T]his Court has never heretofore held that wealth discrimination alone provides an adequate basis for invoking strict scrutiny, appellees have not relied solely on this contention.”).

89. *See id.* (reasoning that education is affected when there are differences in funding, particularly for low-income students).

90. 457 U.S. 202 (1982).

91. *Id.* at 221 (“As . . . pointed out early in our history, . . . some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.” (alteration in original) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972))).

92. *See id.* at 230 (holding that undocumented immigrants benefit from the Equal Protection Clause of the Fourteenth Amendment and are afforded the same access to public education as other students).

93. *See Educational Challenges for Children Facing Homelessness*, *supra* note 40 (listing the different challenges students face in attaining education).

94. *See generally* 42 U.S.C. § 11434a (focusing on “homeless children and youths”).

for these students.⁹⁵ The Act reduces accessibility barriers by requiring state and local educational agencies to provide resources addressing challenges in accessibility that specifically pertain to homelessness.⁹⁶ Key provisions of the Act provide homeless students essential rights and services: students can remain in their original school even if they are temporarily living in another district, with the school providing transportation if needed; students may enroll and attend school immediately even if they lack typical enrollment documents; the school district and county education office must appoint a homeless liaison to ensure the Act's implementation, in addition to every state designating a state coordinator; and the state's department of education, county offices of education, and school districts are required to review and revise policies and practices to remove barriers to enrollment and retention for homeless students.⁹⁷ The legislative intent behind the Act focuses on reducing the educational disadvantages faced by homeless youth.⁹⁸ By promoting access and removing barriers, Congress intended for this Act to safeguard educational opportunities by ensuring stability and equal access for homeless students.

C. State Efforts to Address Homelessness

States have their own diverse approaches to the homelessness crisis.⁹⁹ Some states implement policies addressing the safety of homeless families and access to healthcare, while other states take on bold reforms by ensuring

95. See *id.* § 11431 (providing a policy statement for the Act).

96. Candace Crook, *Educating America's Homeless Youth Through Reinforcement of the McKinney Vento Homeless Assistance Act*, 6 FAULKNER L. REV. 395, 402 (2015) ("The right of a homeless child to be given the opportunity to receive access to a free public education is firmly established in federal law.").

97. Patricia Julianelle, *Using What We Know: Supporting the Education of Unaccompanied Homeless Youth*, 7 SEATTLE J. SOC. JUST. 477, 478–79 (2008) (outlining the key provisions of the McKinney-Vento Act). See generally 42 U.S.C. § 11432 (explaining the activities for which states must utilize the grants).

98. § 11431(1)–(4).

99. Jennifer Horton, *State Approaches to Address Homelessness and Increase Affordable Housing*, COUNCIL OF STATE GOV'TS (Feb. 7, 2023), <https://perma.cc/GE9L-8BLG>.

that every homeless person has access to a shelter bed.¹⁰⁰ A range of solutions have emerged to address the crisis, each shaped by their own resources and communities they serve.¹⁰¹

This subpart begins by examining the varied strategies states have adopted to confront homelessness. It then focuses on the adoption of the McKinney-Vento Act, exploring how states' enforcement of the Act is constrained by practical limitations.

1. How States Shape Laws to Aid Homelessness

States have taken divergent approaches to protecting homeless individuals, either enacting legislation that ensures the specific needs of homeless communities are met or by imposing statewide mandates addressing the need for shelters. For example, California enacted Welfare and Institutions Code § 17000,¹⁰² ensuring homeless individuals and families have access to essential services, including healthcare. Healthcare is crucial for homeless families, especially for children, who face malnutrition, dehydration, and other health risks.¹⁰³ With proper care, these youth can begin recovering from physical, cognitive, and behavioral challenges, removing another barrier to education.¹⁰⁴ In addition to acknowledging the need for essential resources, California has recognized the dangers the unsheltered face by enacting innovative measures such as designating safe locations for homeless individuals and families to sleep securely.¹⁰⁵ In states like California where homelessness is pervasive, legislators familiar with the dangers of life on the streets have shaped their policies with a focus on the perils that homelessness carries.¹⁰⁶ These measures,

100. *E.g.*, CAL. WELF. & INST. CODE § 17000 (West 2026) (providing healthcare services for homeless families); *Save the Right to Shelter*, COAL. FOR THE HOMELESS, <https://perma.cc/2NTX-N3C4> (last visited Dec. 11, 2025) (explaining New York's Right to Shelter laws).

101. Horton, *supra* note 99 (noting that some policies adopted by state legislators to address homelessness are dependent on factors such as the state of local communities and zoning laws).

102. CAL. WELF. & INST. CODE § 17000 (West 2026).

103. For more information on health challenges homeless children face, see *supra* Part I.A.

104. *See supra* Part I.A.

105. CAL. GOV'T CODE § 8698.4 (West 2026).

106. *See id.* (recognizing the dangers faced by those who sleep in the open).

targeted toward safety, help ensure that the essential needs of homeless individuals and families are being met.

Other states meet these needs by prioritizing the need for shelters through effecting legislation statewide. Massachusetts enacted the Right to Shelter law in 1983,¹⁰⁷ becoming the first state in the country to guarantee shelter for families with children and pregnant individuals without children who do not have a place to stay.¹⁰⁸ Similarly, New York's right to shelter exists for individuals and families who do not have a place to sleep.¹⁰⁹ By ensuring that anyone seeking shelter cannot be turned away, these provisions create a unique legal entitlement that helps prevent homeless encampments seen in cities like Los Angeles and San Francisco.¹¹⁰

These varied approaches demonstrate the critical role state legislatures have in addressing homelessness, signifying that states have the ability to enact policies to solve the education crisis homeless youth face.¹¹¹ At the same time, these efforts leave open opportunities for federal intervention to help states implement these policies and to facilitate the integration of federal statutes into their frameworks.

2. States, the McKinney-Vento Act, and Barriers to Its Implementation

Education in the U.S. is primarily the responsibility of the states, a power that is rooted in the Tenth Amendment.¹¹² States maintain and operate public schools; establish and select public

107. MASS. GEN. LAWS ch. 23B, § 30 (2026).

108. Julia Hubbard, *Running out of Room: The Right to Shelter in Massachusetts*, B.U. DOME (Jan. 26, 2024), <https://perma.cc/GWF5-GU3F>

In 1983, Massachusetts closed its mental hospitals, which along with rising drug use, left people homeless and sleeping in the streets across the state. In response, Governor Michael Dukakis filed legislation guaranteeing shelter for every homeless family in the state. Ten months later he signed the 'right to shelter' law.

109. *See Save the Right to Shelter*, *supra* note 100 (explaining the history of the right to shelter in New York and its prominence in safeguarding unhoused New Yorkers).

110. *See id.* (explaining how these laws ensure that every homeless person is afforded indoor shelters).

111. *See infra* Part IV.C.

112. U.S. CONST. amend. X.

school curricula; regulate teaching methods and instructional materials; decide on educational funding and special education programs; and set standards for teacher qualifications.¹¹³ They manage the “day-to-day” operations of education within their borders while the federal government provides “funding, national programs, and policy recommendations.”¹¹⁴

Under the Supremacy Clause, where federal laws are “laws of the land,” laws like the Act set standards for state educational frameworks.¹¹⁵ As a result, many states adopt the Act’s provisions into their statutory framework.¹¹⁶ For example, Virginia “school divisions shall comply with the requirements of [the Act] to ensure that homeless children and youths shall receive the educational services comparable to those offered to other public school students.”¹¹⁷ Despite the Act’s incorporation into their statutes, many states face challenges in implementing and enforcing these requirements.

States often find themselves working with insufficient funding to implement the Act, which poses challenges to enforcing its requirements.¹¹⁸ They receive funding from the federal government, which allocates a budget and grant for each state using formulaic calculations.¹¹⁹ But these calculations are wrong because states often receive insufficient funding to provide homeless students with essential resources, such as bus transportation, to enforce the provisions of the Act.¹²⁰

Another barrier for states to implement the Act is that there is no requirement for families to disclose their homelessness

113. Jade Yeban, *The Roles of Federal and State Governments in Education*, FINDLAW (Dec. 4, 2024), <https://perma.cc/N48X-RA6S> (“The State government establishes academic standards, manages the teachers’ certification process, and determines students’ graduation requirements.”).

114. *Id.*

115. U.S. CONST. art. VI, cl. 2.

116. *E.g.*, Va. Code Ann. § 22.1-3 (2026).

117. *Id.*

118. Jennifer A. Na, *For Better or for Worse?: A Closer Look at the Federal Government’s Proposal to Provide Adequate Educational Opportunities for Homeless Children*, 51 HOW. L.J. 863, 881–85 (2008).

119. *Id.* at 882.

120. *See id.* at 882–83 (explaining how at least 450,000 homeless children do not receive all of the services they need to engage in school).

status.¹²¹ The Act leaves disclosure as a voluntary choice and relies on families to self-identify.¹²² This creates a significant challenge because “if families are unaware of their rights, they probably will not perceive a need to disclose a potentially stigmatizing piece of personal information.”¹²³ Without this knowledge, youth whom the Act is designed to protect are unable to access the services they are entitled to, resulting in many students slipping through the cracks.¹²⁴ According to one study, the self-disclosure requirement is one of the primary obstacles for families seeking services.¹²⁵ Even when families are aware of this legal right, they are deterred from benefiting from its resources because they are reluctant to disclose such stigmatizing information.¹²⁶ As a result, identifying and supporting homeless students becomes a matter of guesswork rather than certainty.

Although outcomes of the Act fall short of its intended goals due to the states’ limited ability to enforce its mechanisms, subsequent litigation has paved an avenue for plaintiffs seeking redress.¹²⁷ These cases demonstrate that despite systemic challenges, the Act can be leveraged to advocate for the rights of homeless students, ensuring that their best interests remain a priority in educational policies and practices.¹²⁸

121. See Martha Ellen Wynne et al., *Educational Opportunity: Parent and Youth Perceptions of Major Provisions of the McKinney-Vento Act*, 23 J. SOC. DISTRESS & HOMELESS 1, 14 (2014) (“[T]he results from our study suggest many children and families are not receiving the services they need and local educational agencies are not upholding the intent of the law. Focus group participants identified issues with self-disclosure as one major barrier to receiving services.”).

122. *Id.*

123. *Id.*

124. See *id.* at 4 (“Additionally, parents who could potentially benefit from the McK-VAct tend not to have the knowledge, skills, or financial capacity to advocate for their children effectively.”).

125. See *id.* at 14 (reporting that parents and children were less likely to self-disclose information about their homelessness status due to lack in knowledge of rights or concern for stigmatization).

126. *Id.* (“[W]hen parents become aware of their rights and realize what services are available, for them the benefits of receiving services outweighed the embarrassment of self-disclosure.”).

127. See *infra* Part IV.B.

128. See *infra* Part IV.B.

III. CRIMINALIZING SURVIVAL: NEW CHALLENGES FOR YOUTH AND FAMILIES

Criminalizing homelessness significantly inhibits homeless children's right to education by introducing impossible obstacles that undermine the foundation of the Act. Although the Act was designed to remove barriers and provide homeless children with access to educational opportunities, punitive laws targeting homelessness counteract this goal.¹²⁹ Punitive laws, such as anticamping ordinances, exacerbate the challenges faced by homeless families by imposing impossible fines and subjecting the families to legal actions for activities such as sleeping in public spaces.¹³⁰ Criminalization perpetuates a cycle of poverty and instability, diverting attention and resources away from education. As a result, the protections and services guaranteed by the Act become less accessible, leaving many homeless children without the support they need to succeed in school.

This Part examines the landscape of homeless criminalization before *Grants Pass* and how the decision encouraged states to intensify punitive measures, such as sweeps, therefore sidelining reformatory actions. It then argues that states and cities that conduct sweeps violate children's rights under the Act and prioritize the criminalization of homelessness over ensuring educational rights for homeless youth.

A. Grants Pass: *The New Era of Criminalization Policies*

Punitive laws strike unsheltered homeless families and individuals the hardest. Before *Grants Pass*, the Ninth Circuit in *Martin v. Boise*¹³¹ held that local ordinances punishing homeless people—when no shelter was available—violated the Eighth Amendment's ban on cruel and unusual punishment.¹³²

129. For more information about the legislative goals behind the Act, see *supra* Part II.A.

130. Siobhan Allen, *The Role of the Excessive Fines Clause in Ending the Criminalization of Homelessness*, 55 COLUM. J.L. & SOC. PROBS. 499, 500 (2022) (arguing that fines imposed on homeless persons creates a cycle of poverty).

131. 902 F.3d 1031 (9th Cir. 2018), *amended and superseded on denial of reh'g*, 920 F.3d 584 (9th Cir. 2019).

132. *Id.* at 1046 (stating that the "Cruel and Unusual Punishments Clause of the Eighth Amendment preclude[s] the enforcement of a statute prohibiting

The Ninth Circuit, drawing from *Robinson v. California*,¹³³ held that it is unconstitutional to prosecute and penalize people for offenses when it results from “an involuntary act or condition if it is the unavoidable consequence of one’s status or being.”¹³⁴ Recognizing that homelessness is not a choice, the court reasoned that “involuntarily sitting, lying, and sleeping in public” are “universal and unavoidable consequences of being human.”¹³⁵ As a result, states could not prosecute conduct that is the consequence of being homeless.¹³⁶ The outcome of *Martin* was important because it exposed a reality: City ordinances that criminalize homelessness do not punish conduct—they punish homelessness itself.¹³⁷

Grants Pass unraveled what *Martin* affirmed—the Supreme Court held that citywide bans on encampments did not infringe on a person’s substantive due rights.¹³⁸ This ruling marked a deleterious shift in policy for homeless communities—it effectively allowed cities to enforce sleeping bans even when no shelter beds are available because these policies do not constitute “cruel and unusual punishment” under the Eighth Amendment.¹³⁹ State and local governments became emboldened to implement punitive measures against homeless individuals, including criminalizing activities essential for survival, such as sleeping in public spaces, loitering, and panhandling—acts that the *Martin* court recognized as inherently human and inseparable from homelessness.¹⁴⁰ State governments attempted to justify these policies as necessary means to maintain public safety and order, arguing that strict

sleeping outside against homeless individuals with no access to alternative shelter”).

133. 370 U.S. 660 (1962).

134. *Martin*, 902 F.3d at 1048 (citations omitted).

135. *Id.*

136. *Id.* (“[T]he government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”).

137. *See id.* (concluding that laws punishing conduct arising from being homeless were unconstitutional).

138. *City of Grants Pass v. Johnson*, 603 U.S. 520, 560–61 (2024).

139. *Id.*

140. *See Dorn*, *supra* note 4 (reporting on state and local governments’ actions following the *Grants Pass* decision).

enforcement discourages encampments and protects community resources.¹⁴¹ But these adverse policies do not resolve homelessness—they perpetuate its existence.¹⁴² Homeless people are unlikely to pay the fines and citations from these policies because they have little to nothing.¹⁴³ As a result, fines imposed by adverse policies force homeless people into a deeper cycle they cannot escape.¹⁴⁴

In the wake of *Grants Pass*, the criminalization of homelessness places families at greater risk. Adverse policies such as anticamping ordinances not only punish individuals, but they dismantle families, leaving them exposed to new dangers.¹⁴⁵ A parent arrested and jailed for sleeping outside may lose custody of their children if they cannot pay the fine or post bail.¹⁴⁶ Homeless youth, the most vulnerable population, are even more at risk because they are caught in a system that treats their existence like a crime.¹⁴⁷ Additionally, in cities like San Francisco, which do not have enough shelters to house homeless people, government officials have already taken steps to conduct encampment sweeps, displacing people with nowhere to go.¹⁴⁸ These sweeps leave homeless people vulnerable to exceedingly high risks and perceived dangers that go beyond

141. See Shawn Hubler, *Newsom Orders California Officials to Remove Homeless*, N.Y. TIMES (July 25, 2024), <https://perma.cc/KD6F-FXNL> (providing an example of one state governor calling on local leaders and state officials to remove homeless encampments because they threaten health and safety).

142. See Allen, *supra* note 130, at 533 (“[F]ines increase recidivism, worsen future opportunities for people experiencing homelessness, and severely damage the mental health of unhoused people, [and] they may fail to even raise revenues for municipalities.” (citations omitted)).

143. *Id.* (reporting that approximately 10% of homeless people actual pay fines incurred from legal debts).

144. *Id.* at 532–33 (explaining how fines limit people experiencing homelessness from attaining a secure future).

145. See Eric S. Tars, *Criminalization of Homelessness*, NAT’L LOW INCOME HOUS. COAL., <https://perma.cc/LS8N-YYTK> (PDF) (last visited Feb. 21, 2025) (“[A]rrests, unaffordable tickets, and the collateral consequences of criminal convictions make it more difficult for people to exit homelessness and get back on their feet.”).

146. *Id.*

147. See *id.* (highlighting how criminalization policies target people who do not choose to be homeless by choice).

148. See Hubler, *supra* note 141 (providing an example of one city’s justification for conducting encampment sweeps).

survival such as “sexual assault, exploitation, and forms of human trafficking.”¹⁴⁹ For homeless youth, the threat is compounded because they are further restricted by laws that affect only youth and not adults.¹⁵⁰

As a result, *Grants Pass* has done more damage to clear the path for state and local governments to criminalize homelessness. It has displaced the futures of homeless youth by exposing them to a landscape that offers little protection, safety, or stability. Without concurrent investments in housing and social services that yield immediate results, punitive measures address the symptoms of homelessness rather than the root causes.¹⁵¹ The trend of criminalization highlights the incongruity between the federal goals of encouraging supportive measures and state-level enforcement practices that punish homelessness.¹⁵²

B. *Eroding the McKinney-Vento Act*

Homeless encampment sweeps and forced displacements severely jeopardize the safety, stability, and educational opportunities of children experiencing homelessness.¹⁵³ Repeated enforcement of sweeps and antihomelessness laws further harm youth by subjecting them to fines, warrants, and incarceration for acting out of necessity.¹⁵⁴ These actions disrupt

149. HYATT & REED, *supra* note 67 (“As a result of the ban, homeless people are being forced to move further away from well-lit downtown areas where services are located, and forcing them to stay in unsafe locations that put them at risk for sexual assault, exploitation, and forms of human trafficking.”).

150. *See id.* (“In addition to being criminalized for their housing status, unemancipated minors (in California, persons under the age of 18), are subject to ‘status offenses,’ a term that generally applies to behaviors and actions considered illegal when committed by minors.”).

151. *See supra* Part II.A.

152. *See supra* Parts II.A–B.

153. *Protecting the Health and Well-Being, supra* note 5 (“Forced removals or displacements of encampments, sometimes called ‘sweeps,’ endanger the health and well-being of people experiencing unsheltered homelessness and impair access to safe, stable housing or shelter.”).

154. HYATT & REED, *supra* note 67, at 3 (“Repeated enforcement has a cumulative negative effect on homeless individuals. As they continue to incur fines, face warrants, and serve time in jail for committing acts of necessity, attempts to acquire housing become increasingly more difficult for members of this community.”).

a child's environment, resulting in absenteeism and disengagement from educational opportunities—opportunities that are guaranteed rights under the Act.¹⁵⁵

One key provision of the Act requires states and local educational agencies to track homeless students.¹⁵⁶ But when families and children are forcibly displaced, it becomes impossible to keep track of students whose living situation is constantly disrupted, creating a challenge for schools to maintain contact and provide the support these students need.¹⁵⁷ Encampment sweeps result in a lack of continuity in education because they disrupt homeless families' temporary housing situation, which leads to increased absenteeism and disengagement from school altogether.¹⁵⁸

Another way criminalizing homelessness threatens the Act is by creating legal implications for parents or older youths by way of fines and arrests.¹⁵⁹ For homeless students, having family members entangled in the criminal justice system triggers emotional and logistical challenges that discourages them from pursuing educational opportunities.¹⁶⁰ The Act ensures that homeless youth have access to education without the need for parental involvement or guardianship, but arrest records and displacement due to sweeps can jeopardize their ability to exercise these rights.¹⁶¹ This issue is especially critical for youth because arrests create nonconfidential records.¹⁶²

155. See *supra* Part II.C.

156. 42 U.S.C. § 11432.

157. See *Protecting the Health and Well-Being*, *supra* note 5 (explaining why displacement can exacerbate challenges for homeless youth in receiving support from the Act).

158. See Niederberger, *supra* note 43 (explaining how deficient resources can lead to absenteeism among homeless students).

159. HYATT & REED, *supra* note 67 (explaining how criminalizing homelessness often leads to fines and arrests for unhoused individuals).

160. Grant et al., *supra* note 24 (explaining how criminalizing homelessness implicates legal penalties, stigma, and instability that intensify existing challenges homeless families and youth face).

161. HYATT & REED, *supra* note 67.

162. See RIYA SAHA SHAH & JEAN STROUT, JUVENILE L. CTR., FUTURE INTERRUPTED: THE COLLATERAL DAMAGE CAUSED BY PROLIFERATION OF JUVENILE RECORDS 2 (2016), <https://perma.cc/EY5T-FTCV> (PDF)

Nearly 1.5 million youth are arrested each year. For each of those youth, records are created the moment the child comes in contact with the justice system. Many of these records are easily accessible

These records can follow young individuals, potentially affecting their middle and high school experiences.¹⁶³ Many states also require schools to be notified of a student's arrest, which further stigmatizes these youths.¹⁶⁴ Some schools, in violation of the Act's protections, may use arrest records or perceived behavioral issues as a reason to ostracize or exclude these students, which exacerbates collateral challenges they already face.¹⁶⁵ For homeless students, the impact is particularly severe. Arrest records create additional barriers to higher education, limiting their opportunities and perpetuating a cycle of marginalization and disadvantage.

Ultimately, criminalizing homelessness complicates core protections of the Act because it not only disrupts homeless students from receiving care and resources, but it also poses challenges for school administrators in enforcing the Act's key provisions.¹⁶⁶ In addition to undermining the Act's intent to provide stability and equal access to education for homeless youth, criminalizing homelessness perpetuates systemic barriers that harm vulnerable students. To confront the underlying cause of homelessness and end the cycle of poverty, it is essential to equip homeless families and youth with the means to contest these damaging policies in the courtroom—a space where they can demand recognition.

IV. THE PATH FORWARD: PROTECTING EQUITABLE EDUCATION

Education for homeless youth is not just a moral imperative; it is a legal one. The McKinney-Vento Act requires states to eliminate barriers that prevent homeless children from

to individuals both inside and outside the system. . . . These records interfere with children's opportunities to move ahead in life and demonstrate their ability to make better choices.

163. *Id.*

164. *Id.* at 3 (“[E]ven though adolescents are generally less culpable and more capable of change than adults, their records have become barely less stigmatizing than adult criminal records. A finding of delinquency today differs little from a conviction of guilt, considering the barriers it erects.” (citation omitted)).

165. *See id.* (illustrating how students with arrest records may lose their driving privileges or render youths ineligible to enlist in the military).

166. For more information about key provisions of the Act, see 42 U.S.C. § 11432.

accessing public education. But the Act's protections have been inconsistently implemented and undermined by local ordinances criminalizing homelessness, reducing education to a privilege rather than a right. The current system deepens the marginalization of homeless families and children by criminalizing homelessness through encampment sweeps and imposing truancy penalties, which further undermine the Act's enforcement and exacerbate academic inequity.

This Part explores the avenues in which plaintiffs—homeless parents, youth, and children affected by sweeps and denied access to education—may have a plausible cause of action. It begins by analyzing whether plaintiffs may challenge fines incurred from truancy laws and adverse policies, such as camping ordinances, under the Eighth Amendment's Excessive Fines Clause. Then, it contends that plaintiffs have an enforceable right under the clear language of the McKinney-Vento Act. This Part concludes by recommending potential policy solutions that states could adopt to help homeless youth overcome barriers that prevent them from receiving education.

A. Addressing the Impact of Excessive Fines

In *Grants Pass*, the Supreme Court did not address whether imposing compounded fines under city camping ban laws violated the Eighth Amendment's Excessive Fines Clause.¹⁶⁷ This leaves the door open for plaintiffs—homeless families and individuals subjected to excessive fines—to challenge them under the Eighth Amendment's Excessive Fines Clause incorporated through the Fourteenth Amendment's Due Process Clause.¹⁶⁸ Their claims would likely succeed because the increasing likelihood that homeless people could be jailed for their inability to pay these fines contravenes the rationale behind *Timbs v. Indiana*,¹⁶⁹ *United States v. Bajakajian*,¹⁷⁰ and

167. *City of Grants Pass v. Johnson*, 603 U.S. 520, 588 (2024) (Sotomayor, J., dissenting).

168. U.S. CONST. amend. XIV.

169. 586 U.S. 146 (2019).

170. 524 U.S. 321 (1998).

*Bearden v. Georgia*¹⁷¹—three key cases that inform the Court’s interpretation on the Excessive Fines Clause.

The Eighth Amendment’s Excessive Fines Clause limits the government’s power to impose fines that are grossly disproportionate to the offense committed.¹⁷² It protects against both excessive civil and criminal penalty fines.¹⁷³ As the Supreme Court elaborated in *Bajakajian*, “[t]he touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.”¹⁷⁴ A fine violates the Excessive Fines Clause if it is “grossly disproportional” to the severity of the crime.¹⁷⁵

The Excessive Fines Clause was then found to be applicable to states through the Fourteenth Amendment’s Due Process Clause in *Timbs*.¹⁷⁶ Tracing the roots of the Excessive Fines Clause to historical tradition like the Magna Carta, the Court stressed that economic penalties must be proportional to the offense, emphasizing that fines should not strip individuals of their livelihood.¹⁷⁷ Read together, *Timbs* and *Bajakajian* suggest that determining whether a fine is excessive requires considering the individual’s financial circumstances. The principle that punishment should not be a tool of economic oppression was also reinforced in *Bearden*, where the Court determined that states cannot impose financial penalties and then incarcerate individuals who lack the resources to pay.¹⁷⁸

171. 461 U.S. 660 (1983).

172. U.S. CONST. amend. VIII.

173. *Hudson v. United States*, 522 U.S. 93, 103 (1997).

174. *Bajakajian*, 524 U.S. at 334 (citation omitted).

175. *Id.*

176. *Timbs*, 586 U.S. at 154–56.

177. *Id.* at 151 (“As relevant here, Magna Carta required that economic sanctions ‘be proportioned to the wrong’ and ‘not be so large as to deprive an offender of his livelihood.’”).

178. *See Bearden*, 461 U.S. at 674

The focus of the court’s concern, then, was that the petitioner had disobeyed a prior court order to pay the fine, and for that reason must be imprisoned. But this is no more than imprisoning a person solely because he lacks funds to pay the fine, a practice we condemned in *Williams* and *Tate*. By sentencing petitioner to imprisonment simply because he could not pay the fine, without

Though the Supreme Court has not illustrated what constitutes an excessive fine, some courts have held that fines which “effectively . . . deprive the defendant of his or her livelihood” are excessive and in violation of the Constitution.¹⁷⁹

A 2018 report found that homeless individuals earn an average of \$590 per month.¹⁸⁰ In the City of Grants Pass, for example, a single unpaid anticamping fine can reach \$537.60—amounting to 91 percent of a homeless individual’s monthly income.¹⁸¹ As a result, homeless individuals are forced to choose between paying fines and meeting basic needs like food and temporary shelter.¹⁸² Plaintiffs challenging excessive fines under truancy laws or ordinances criminalizing homelessness should bring their claim through an “as-applied” challenge, arguing that these penalties violate their constitutional rights under the Eighth Amendment because they are “grossly disproportionate” and functionally impossible to pay.¹⁸³

Bajakajian violated federal law by trying to leave the U.S. with \$357,144 in cash.¹⁸⁴ The government sought forfeiture of the entire sum under a statute that allowed for full confiscation of unreported cash.¹⁸⁵ The Supreme Court, in striking down the forfeiture as grossly disproportionate, considered that Bajakajian’s underlying violation was not linked to criminal

considering the reasons for the inability to pay or the propriety of reducing the fine or extending the time for payments or making alternative orders, the court automatically turned a fine into a prison sentence.

179. Alec Schierenbeck, *The Constitutionality of Income-Based Fines*, 85 U. CHI. L. REV. 1869, 1909 (2018) (citation omitted) (explaining that the First and Second Circuits have found that the measure for excessive fines is whether the fine deprives the defendant of their livelihood).

180. Vinayak Menon, *Should Homelessness Be a Crime? A Critique of City of Grants Pass v. Johnson*, PRINCETON LEGAL J.F. (2025), <https://perma.cc/M34V-R3QV>.

181. *City of Grants Pass v. Johnson*, 603 U.S. 520, 571 (2024) (Sotomayor, J., dissenting) (noting the number of fines imposed on those who violate the Grants Pass Ordinance).

182. Menon, *supra* note 180.

183. *Bajakajian*, 524 U.S. at 334.

184. *Id.* at 324–25.

185. *Id.* at 325.

activity, and the harm it caused was “minimal.”¹⁸⁶ Therefore, plaintiffs facing similar circumstances should argue that anticamping fines are grossly disproportionate given their financial status and the unavoidable reality that their offenses arise from being unhoused, not because they were involved in egregious criminal activity.¹⁸⁷

Finally, antihomelessness ordinances and truancy laws violate the Court’s holding in *Bearden* because they impose impossible fines on homeless people; states cannot jail individuals solely for failing to pay fines due to an inability to afford them.¹⁸⁸ Homeless plaintiffs face a dilemma where they must either neglect essential needs to pay fines or risk incarceration.¹⁸⁹ By imposing fines on homeless people, city ordinances and truancy laws subject those living in poverty to criminal liability, an outcome the Court has already found unconstitutional in *Bearden*.¹⁹⁰ In addition to finding that these punitive measures against marginalized families and youth violate constitutional safeguards, this argument next shifts to the enforceable rights plaintiffs hold under the clear language of the Act.

B. Enforceable Rights Under the McKinney-Vento Act

The McKinney-Vento Act requires a state’s education agency to review and “undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education.”¹⁹¹ Homeless encampment sweeps are particularly detrimental to a child’s education because they exacerbate barriers the Act seeks to eliminate.¹⁹² Specifically,

186. *Id.* at 337 (“[T]he forfeiture of respondent’s entire \$357,144 would violate the Excessive Fines Clause. Respondent’s crime was solely a reporting offense.”).

187. *See id.* at 338–39 (considering that Bajakajian’s violation was unrelated to criminal activity and that the harm of his violation was minimal).

188. *Bearden v. Georgia*, 461 U.S. 660, 674 (1983) (reaffirming that “imprisoning a person solely because he lacks the funds to pay” is unconstitutional).

189. *Menon*, *supra* note 180.

190. *Bearden*, 461 U.S. at 674.

191. 42 U.S.C. § 11431.

192. For more information about the Act’s provisions, see Part II.B.

the Act prohibits educational barriers for homeless students, such as delayed enrollment and lack of access to school records or transportation.¹⁹³ When children are displaced, their school records and other necessary documents often become inaccessible, leading to delays in enrollment and disruptions in critical services mandated under the Act.¹⁹⁴ For example, the Act guarantees transportation to a child's school of origin to mitigate the negative impacts of mobility, a provision that becomes increasingly difficult to fulfill when children lack stable housing.¹⁹⁵

The Act's implementation mechanisms are weak, however, because it does not define how schools should be held accountable for failing to enforce its provisions. Additionally, parental participation in challenging decisions those districts make is significantly limited because there is no method for schools to file claims.¹⁹⁶ As a result, the sole recourse for parents alleging that their children's rights have been violated is to file a lawsuit in federal district court.¹⁹⁷

Enforceable rights under the Act were firmly established in *Lamkin v. District of Columbia*,¹⁹⁸ where a group of homeless mothers alleged that a D.C. school district violated the Act's transportation provisions.¹⁹⁹ With the children's best interests in consideration, the *Lampkin* court found that the Act "creates an enforceable right *unless* it reflects merely a congressional preference for a certain kind of conduct rather than a binding

193. 42 U.S.C. § 11432 (requiring state and local authorities to provide certain resources for homeless students).

194. *Protecting the Health and Well-Being*, *supra* note 5 (highlighting the challenges students face when their living circumstances are disrupted).

195. 42 U.S.C. § 11431 (requiring schools to provide transportation services for their homeless students).

196. See Alexis Iheke, Patching the Umbrella: Sheltering the Education of Homeless Youth Under the McKinney-Vento Act in the Modern Era 16 (2021) (Seton Hall Univ., law school student scholarship), <https://perma.cc/28H5-B9ED> (PDF) (explaining that parents cannot seek administrative relief under the Act).

197. *Id.* at 15 ("Under the Act, a distressed individual does not have an administrative enforcement mechanism against a federal agency granting funds to a local agency. The lack of recourse signals that Congress contemplated § 1983 when deciding on remedies.").

198. 27 F.3d 605 (D.C. Cir. 1994).

199. *Id.* at 607.

obligation on the governmental unit,” in which case it would not be enforceable.²⁰⁰ By accepting the grants made under the Act, states are put on notice of the obligations they assume.²⁰¹ As a result, any state accepting funding must ensure that the Act’s provisions are enforced; otherwise, plaintiffs suing under the law have an actionable claim.²⁰² Under the Act, plaintiffs can challenge the alleged unlawful conduct by invoking 42 U.S.C. § 1983.²⁰³ Section 1983 provides remedies for plaintiffs who were injured from constitutional violations by persons acting under the color of state law.²⁰⁴ These “persons” encompasses municipalities such as school districts and educational agencies.²⁰⁵ Homeless plaintiffs, therefore, have the right to sue these educational institutes under § 1983 when these municipalities fail to fulfill their statutory duty to ensure that homeless students have their educational rights protected under the Act.²⁰⁶

Under § 1983, municipalities and state actors could be liable for failing to enforce terms of the Act. In *National Center on Homelessness & Poverty, R.I. v. New York*,²⁰⁷ a group of homeless children and their parents sought class certification in their § 1983 claim against the New York State Education Department and the Commissioner of Education of the State of New York, among other parties.²⁰⁸ The plaintiffs argued that their rights under the McKinney-Vento Act and Equal

200. *Id.* at 610 (citation omitted).

201. *Id.* at 611.

202. *Id.* at 612 (holding that the Act creates enforceable rights on its beneficiaries under § 1983).

203. *Id.*; Nat’l L. Ctr. on Homelessness & Poverty, *R.I. v. New York*, 224 F.R.D. 314, 320 (E.D.N.Y. 2004) (“Under the McKinney Act, an aggrieved individual has no recourse against the federal agency that is granting the funds, which strongly leads to the conclusion that Congress intended to provide an individual right enforceable under § 1983.”).

204. 42 U.S.C. § 1983.

205. See *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 692 (1978) (holding that a plaintiff may bring a § 1983 against a municipality when a policy or custom causes a municipal employee to violate constitutional rights).

206. *Id.* (holding that a plaintiff may bring a § 1983 against a municipality when a policy or custom causes a municipal employee to violate constitutional rights).

207. 224 F.R.D. 314 (E.D.N.Y. 2004).

208. *Id.* at 316–17.

Protection Clause of the Fourteenth Amendment were violated because the Education Department and the Commissioner failed to implement certain provisions of the Act.²⁰⁹ As a result of these failures, said the plaintiffs, the state was responsible for a “systematic failure to provide homeless children . . . access to education.”²¹⁰ The court, citing *Lamkin*, affirmed that “Congress intended that the McKinney-Vento Act confer individually enforceable rights.”²¹¹ It then denied New York’s motion to dismiss because the plaintiffs had sufficiently alleged a violation of the Equal Protection Clause as the defendants “appear to be penalizing these homeless children because of the misfortunes or misdeeds of their parents.”²¹² Accordingly, plaintiffs can challenge education departments when their conduct, or lack thereof, violates the Act and denies homeless students the same educational access afforded to other students.²¹³

Outside of § 1983 claims, another way educational institutes can be held liable is when they fail to consider the best interests of the students when meeting their statutory duties. In *Division of Family Services v. N.S.*,²¹⁴ where a homeless child diagnosed with disabilities was repeatedly moved between temporary housing, the court held the local educational agency and social services liable because they failed to act in the child’s best interest.²¹⁵ Even if educational and social services follow the Act’s provisions, plaintiffs would still have a valid claim if these institutions neglect the children’s best interests. Holding

209. *Id.*

Plaintiffs allege that the Defendants . . . fail[ed] to: (1) locate and ensure enrollment of homeless children; (2) provide uninterrupted transportation to enable homeless children to attend school; (3) provide immediate enrollment to homeless children upon becoming homeless; and (4) provide education services that are comparable to the services that non-homeless children receive.

210. *Id.* at 317–18.

211. *Id.* at 319.

212. *Id.* at 322.

213. *Id.* (finding that plaintiffs alleged a sufficient claim that their rights were violated under the Equal Protection Clause).

214. No. CS11-01668, 2011 WL 5531011 (Del. Fam. Ct. Aug. 16, 2011).

215. *Id.* at *1.

these institutions accountable ensures that homeless students receive appropriate educational opportunities.²¹⁶

Most states have statutes that mirror the language of the McKinney-Vento Act, and plaintiffs litigating under these statutes have also been successful in securing injunctive relief in litigation against states. In *E.G. v. City of New York*,²¹⁷ a class of plaintiffs—homeless families and students—filed an action against the City of New York for failing to provide children with internet access or iPads after schools transitioned to remote learning due to the COVID-19 pandemic.²¹⁸ The plaintiffs sought a preliminary injunction to expedite discovery and for an evidentiary hearing on the matter.²¹⁹ The city’s failure violated New York Education Law § 3209, which “incorporates the requirements of the McKinney-Vento Act,” argued the plaintiffs, because homeless students cannot participate in remote learning when they do not have internet access or computers.²²⁰ The court not only granted the plaintiff’s injunction, but it also found that the city disrupted homeless students’ education when it “failed to remedy the barriers that prevent homeless children from being able to participate in remote learning.”²²¹ Though this was not a § 1983 case, *E.G.* illustrates how plaintiffs can seek injunctive relief as a remedy in challenging adverse state policies, such as those targeting homeless encampments.

Class plaintiffs—homeless youth and their parents affected by a city’s anticamping ordinances and routine encampment sweeps—can challenge these policies under § 1983 by arguing that the policies violate their educational rights under the McKinney-Vento Act. Under a § 1983 claim, plaintiffs need to show that a state or city’s enforcement of anticamping ordinances and encampment sweeps is the “moving force” behind the violations of the McKinney-Vento Act.²²² Following

216. *Id.* at *6.

217. No. 20-CV-9879, 2020 WL 7774346 (S.D.N.Y. Dec. 30, 2020).

218. *Id.* at *3.

219. *Id.*

220. *Id.*

221. *Id.* at *4.

222. See *K.J. v. Henry Cnty. Sch. Dist.*, No. 18-CV-004251, 2019 WL 13268209, at *10 (N.D. Ga. Jan. 9, 2019) (“To prevail on their § 1983 claim related to the McKinney-Vento Act violations, Plaintiffs must also show that Defendants had a custom or policy that constituted deliberate indifference to

the framework established in *National Center* and *E.G.*, plaintiffs should have a viable argument that enforcing these policies undermines the Act because displacing children prevents schools from offering essential services like transportation. By forcibly displacing families, municipalities obstruct children's access to educational resources and deny homeless students the same educational opportunities that nonhomeless students are provided, contravening the Act.²²³ Therefore, anticamping ordinances and encampment sweeps not only violate the Act, but also constitutional rights under the Equal Protection Clause because homeless children are "penalized" for the "misfortunes or misdeeds of their parents," when nonhomeless students remain unaffected by those educational disruptions.²²⁴ Plaintiffs should seek injunctive relief to stop sweeps because municipalities are required to comply with the Act's mandate to review and revise policies that obstruct its implementation.²²⁵ Because these sweeps starkly conflict with the Act's fundamental promise of ensuring equal access to education, cities that still implement them violate the clear language of the Act.²²⁶ Therefore, like in *E.G.*, relief should be granted because these cities "fail[] to remedy the barriers" that prevent homeless children from accessing education.²²⁷ As a result, plaintiffs challenging criminalizing policies and sweeps have not only an actionable claim, but also a viable path toward legal redress.

C. Policy Innovations to Rebuild Educational Equity

States can implement policy changes to bridge the gaps in applying the Act and secure educational stability for homeless

Plaintiffs' rights under the Act, and that this custom or policy was the moving force behind the violations.").

223. For more information about rights provided under the Act, see Part II.B.

224. Nat'l L. Ctr. on Homelessness & Poverty, *R.I. v. New York*, 224 F.R.D. 314, 322 (E.D.N.Y. 2004).

225. 42 U.S.C. § 11431.

226. *See generally id.* ("Each State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education . . .").

227. *E.G. v. New York*, No. 20-CV-9879, 2020 WL 7774346, at *3 (S.D.N.Y. Dec. 30, 2020).

students before issues escalate. By redirecting financial resources away from punitive measures, such as encampment sweeps, and toward reforming policies that strengthen and expand the Act's implementation, states can ensure that education remains a fundamental right for this vulnerable population.²²⁸

Homeless students face immense difficulty in maintaining a consistent education, especially when schools overlook those displaced by encampment sweeps.²²⁹ Students who have been forcibly displaced through sweeps are nearly impossible to track because of absenteeism and disrupted communication between the student and their school.²³⁰ As a result, school officials face challenges in implementing the Act to provide educational rights for the students.²³¹ To address these issues, states must adopt policies that improve the application of the Act.

The Act mandates a liaison between schools and homeless students.²³² Strengthening this provision warrants a collaboration between the school's liaison and city officials to act in the best interests of the students.²³³ The liaison should confidentially report information about homeless students enrolled in the school who live in temporary shelters such as encampments, while the city should notify the liaison in advance of planned sweeps. This channel of communication allows both parties to take timely action to secure housing for any potentially affected student before displacement occurs. Additionally, when a student's living arrangements change, the liaison must have notice to ensure that the student's new housing is integrated with transportation services required by

228. For more information about gaps in the Act's implementation, see *supra* Part II.C.2.

229. For more information, see *supra* Part I.

230. Wynne et al., *supra* note 121 (finding that the self-disclosure requirements prevent many homeless students from reporting their status, thus schools are not always aware of all homeless students under their charge).

231. *Id.* (explaining why school officials face challenges when they do not know all the homeless students in their care).

232. See 42 U.S.C. § 11431 (requiring state agencies to ensure homeless youth have access to education).

233. See *Div. of Fam. Servs. v. N.S.*, No. CS11-01668, 2011 WL 5531011, at *6 (Del. Fam. Ct. Aug. 16, 2011) (finding that school services must consider the child's best interests when following the provisions of the Act).

the Act to guarantee continuing education.²³⁴ Once the liaison is informed of any new information regarding a student's living accommodation, the liaison should alert the school, which will allow it to support the student's educational needs by providing notice for educators.

In addition to this external policy change, supporting homeless students demands reforms within the schools themselves. Schools can meet these demands by requiring that their teachers and faculty be prepared to meet the challenges faced by homeless students.²³⁵ Sensitivity training is important for educators to build foundational skills such as empathy to better understand the challenges faced by these students.²³⁶ States must adopt policies mandating these trainings so that educators can be better equipped to address behavioral changes and support their homeless students.²³⁷ In a space where students feel safe and understood, mutual respect grows between teachers and students.²³⁸ And with enough trust, students may feel confident enough to share crucial information about their struggles, which allows educators to provide more meaningful support. This connection can help homeless students overcome behavioral obstacles like disengagement, ensuring that they remain rooted in their education despite their unstable lives.

These policy changes not only bridge the gap in enforcing the Act, but also shift the focus toward solutions that are humane and practical by moving resources away from punitive practices like encampment sweeps. This shift creates an

234. See § 11432(e)(3)(C)(i)(III) (requiring that schools provide transportation services so students can attend school).

235. For more information about challenges faced by homeless students in pursuing education, see *supra* Part I.B.

236. See *Empathy for Students*, GREATER GOOD IN EDUC., <https://perma.cc/LJL3-5936> (last visited Feb. 24, 2025) (highlighting the importance of empathy and how it plays out in classrooms).

237. See Courtney Pfeifer, *Real World Examples: Educator (Teacher) Sensitivity*, TEACHSTONE (Oct. 16, 2024), <https://perma.cc/4HWN-B65P> (providing real world examples of how important educator sensitivity is in navigating challenges faced by children).

238. See *id.* (“[E]ducators who consistently score high in Educator (Teacher) Sensitivity effectively address children’s social, emotional, and academic needs in a timely manner, helping them feel comfortable taking risks and actively participating throughout the day.”).

opportunity for HUD and other federal agencies to provide additional funding to states, removing financial barriers to the Act's implementation.²³⁹ With this support, states can focus on implementing reforms that strengthen the Act's provisions and ensure a more stable and equitable pathway for homeless students, ensuring that their right to education is not just an abstract promise but a lived reality.

CONCLUSION

Homelessness is a critical issue in the U.S. Many individuals and families are left without shelter and exposed to dangerous and destabilizing circumstances. The most vulnerable populations are homeless youth because the lack of access to essential resources, particularly education, undermines their opportunities for growth and stability.

Education is necessary to break the cycle of homelessness and foster equity within marginalized communities. Recognizing this, Congress enacted the McKinney-Vento Act to ensure that homeless children and youth have the resources necessary to access free public education. The Act stresses that education is a fundamental right that is salient for addressing structural inequities by removing barriers homeless students face such as delayed enrollment, lack of transportation, and instability.

The success of this Act, however, is threatened by the rise of punitive measures targeting homelessness such as encampment bans and ordinances penalizing individuals for survival behaviors and needs. These policies obstruct the Act's implementation by destabilizing families, limiting access to critical resources, and perpetuating the cycle of poverty and displacement. The consequences are particularly severe for homeless families and youth because these punitive measures disrupt educational access and deepen systemic barriers.

Protecting the rights guaranteed by the McKinney-Vento Act to address the broader crisis of homelessness requires a compassionate approach. Individuals whose education has been obstructed by punitive policies can seek relief through litigation

239. See Press Release, U.S. Dep't of Hous. & Urb. Dev., *supra* note 76 (noting how HUD encourages initiatives that are based on supportive measures).

under the Eighth Amendment's Excessive Fines Clause or by demanding that states comply with the Act's mandate to review and revise policies that obstruct its implementation. Additionally, states should implement broader systemic reforms that strengthen the Act's implementation to ensure that state and local laws do not infringe on the Act's provisions. These courses of action help ensure that education remains a fundamental right for everyone.