

# Brick or Mortar: The Students Who Pursue a Degree Instead of a Roof

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## Code Sections Affected

Education Code §§ 76012, 76012.5 (new).  
AB 302 (Berman); ordered to inactive file.

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I. INTRODUCTION

There can be a lot of hope in a parking lot.<sup>1</sup> Jasmine, a senior studying kinesiology at Humboldt State University, attends school full-time and ends her day with a short walk to her home on campus—a car.<sup>2</sup> Money is tight.<sup>3</sup> Jasmine earned a scholarship for her academic achievements, but it only covers tuition.<sup>4</sup> She has no savings and receives no financial support from her family.<sup>5</sup> Jasmine’s solution is not ideal, but it has been better than not knowing where she would sleep.<sup>6</sup> Humbled, but not hopeless, she has capitalized on her school’s parking lot.<sup>7</sup>

Jasmine is not alone; at least half a million people in the U.S. lack permanent shelter on any given night.<sup>8</sup> While there has been an encouraging decrease in nationwide homelessness over the past two decades, this success story ends at the California border.<sup>9</sup> The Golden State alone accounts for 24% of the nation’s homeless population.<sup>10</sup> Most homeless Californians live without any shelter, vulnerable to the elements.<sup>11</sup>

For the first time in two decades, homelessness among the general population is becoming more common in the U.S.<sup>12</sup> Students are also experiencing homelessness more than ever.<sup>13</sup> The number of U.S. college students without

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1. *Infra* Part I (explaining high rates of homelessness among students in the U.S. and how overnight parking at schools can help provide shelter and hope for a change).

2. NowThis News, *How Homeless College Students Get By*, YOUTUBE (Jan. 4, 2019), <https://www.youtube.com/watch?v=ck-89pHXsM> (on file with *The University of the Pacific Law Review*).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. MEGHAN HENRY ET AL., U.S. DEP’T HOUSING & UR. DEV., THE 2018 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 10 (2018).

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. SCH. HOUSE CONNECTION, YOUTH HOMELESSNESS AND HIGHER EDUCATION 2 (May 2018), available at <https://www.schoolhouseconnection.org/wp-content/uploads/2018/05/An-Analysis-of-FAFSA-Data.pdf> (on file with *The University of the Pacific Law Review*).

permanent housing has increased by 10% over the past four years.<sup>14</sup> These dedicated students have exposed a glaring lack of support for students without homes.<sup>15</sup> Patchwork services provide help to some students, but paperwork delays and overcrowding often undermine efforts to meet immediate needs.<sup>16</sup> Nearly half of all college students struggle with housing during college.<sup>17</sup> In the U.S., 12% of community college students have been homeless within the past year.<sup>18</sup>

With a permanent solution to student homelessness still beyond the horizon, California Assembly Member Marc Berman authored AB 302 to address the immediate need for safe sleeping places.<sup>19</sup> The law requires California community colleges to designate on-campus parking lots for overnight access and allow students without homes to sleep in their cars overnight.<sup>20</sup> The law does not end homelessness, but for students like Jasmine—who live in their cars—sometimes driving change starts with a place to park.<sup>21</sup>

## II. LEGAL BACKGROUND

Far-reaching legislation in the United States has long attempted to regulate public conduct.<sup>22</sup> These laws have ranged from early vagrancy restrictions, which prohibited vague notions of undesirable behaviors, to prohibitions on public intoxication.<sup>23</sup> Courts have found select conduct laws unconstitutional, leading many legislatures to reformulate regulations to avoid invalidity.<sup>24</sup> Still, more restrictions survive as narrowly-tailored city ordinances or municipal codes designed to circumnavigate judicially-imposed limitations.<sup>25</sup>

Section A tracks the evolution of vagrancy laws and the question of validity

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14. *Id.*

15. *Id.*

16. See Katy McWhirter, *Homeless Youth and Higher Education*, AFFORDABLE C. ONLINE, <https://www.affordablecollegesonline.org/homeless-students-guide/> (last visited Oct. 19, 2019) (on file with *The University of the Pacific Law Review*) (listing a plethora of services and programs that each independently offer help for students without stable housing; they operate without coordination with one another).

17. SARA GOLDRICK-RAB ET AL., STILL HUNGRY AND HOMELESS IN COLLEGE 13 (U. Wis. Hope Lab ed., 2018) (discussing “housing insecurity” which represents difficulty paying recurring housing expenses).

18. *Id.*

19. AB 302, 2019 Leg., 2019–2020 Sess. (Cal. 2019) (as amended Aug. 30, 2019, but not enacted).

20. CAL. EDUC. CODE § 76012(a) (enacted by AB 302).

21. AB 302.

22. See Arthur H. Sherry, *Vagrants, Rogues and Vagabonds—Old Concepts in Need of Revision*, 48 CALIF. L. REV. 557, 560 (1960) (explaining vagrancy laws in the United States evolved from feudal English laws that regulated certain classes of people).

23. *Id.* at 559–561; See *Powell v. Tex.*, 392 U.S. 514, 548–49 (1968) (plurality opinion) (concerning a law against public intoxication and status offenses).

24. *E.g.*, *Papachristou v. City of Jacksonville*, 405 U.S. 156, 171 (1972) (voiding vagrancy laws as unconstitutional); *Robinson v. California*, 370 U.S. 660, 666 (1962); *Horn v. City of Montgomery*, 619 So. 2d 949, 951 (Ala. Crim. App. 1993).

25. MERINA FISHER ET AL., BERKLEY LAW, CALIFORNIA’S NEW VAGRANCY LAWS: THE GROWING ENACTMENT AND ENFORCEMENT OF ANTI-HOMELESS LAWS IN THE GOLDEN STATE 6, 7 (2015).

for modern offenses.<sup>26</sup> Section B explores California’s laws that affect people experiencing homelessness.<sup>27</sup> Section C examines the key features of the McKinney–Vento Act.<sup>28</sup>

A. *Criminalization of Status*

Laws to curb certain public conduct began as general behavior restraints and evolved into status offenses.<sup>29</sup> Early laws penalized “vagrancy,” but vague wording and selective enforcement meant their application was far from uniform.<sup>30</sup> Subsection 1 gives an overview of vagrancy laws and their conflict with the Eighth Amendment.<sup>31</sup> Subsection 2 examines Supreme Court precedent on public conduct laws.<sup>32</sup> Subsection 3 explores the Ninth Circuit Court of Appeals’ inconsistent rulings and the need for a unified approach.<sup>33</sup> Subsection 4 analyzes laws that pertain to sleeping and living in vehicles.<sup>34</sup>

1. *Vagrancy Laws*

Prowling by automobiles, being a vagabond, and loitering were discrete forms of vagrancy laws that permeated the legal system in the 1960s.<sup>35</sup> Courts in Jacksonville, Florida used such vagrancy laws to fine and imprison individuals who did not conform to legislators’ ideal public presence.<sup>36</sup> States codified similar laws throughout the country and sought public conformity through punishment.<sup>37</sup> Legislatures worded these laws vaguely, and police enforced them selectively to conform only certain people’s behaviors.<sup>38</sup>

In 1972, the Supreme Court’s ruling in *Papachristou v. City of Jacksonville* voided the city’s vagrancy laws for vagueness and denied the criminalization of what the Court described as innocent behavior.<sup>39</sup> The Court held that vagrancy laws like Jacksonville’s violated the Eighth and Fourteenth Amendments because

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26. *Infra* Section II.A.1–4.

27. *Infra* Section II.B.1–4.

28. *Infra* Section II.C.

29. FISHER ET AL., *supra* note 25.

30. See *Papachristou v. City of Jacksonville*, 405 U.S. 156, 168–70 (1972) (“Where, as here, there are no standards governing the exercise of discretion granted by the ordinance, the scheme permits and encourages an arbitrary and discriminatory enforcement of the law.”).

31. *Infra* Section II.A.1.

32. *Infra* Section II.A.2.

33. *Infra* Section II.A.3.

34. *Infra* Section II.A.4.

35. See *Papachristou*, 405 U.S. at 158. (listing specific offenses to vagrancy laws).

36. *E.g.*, *id.* at 167 (ruling on enforceability of vagrancy laws).

37. Sherry, *supra* note 22, at 561.

38. *Id.* at 560.

39. *Papachristou*, 405 U.S. at 163–67.

the laws failed to give reasonable notice, and police enforced them arbitrarily.<sup>40</sup> This decision called attention to similar laws across the country that States were using to drive public conformity.<sup>41</sup>

## 2. Natural Consequences and the Eighth Amendment

It is not illegal to be homeless; however, sleeping in public is a punishable offense throughout the United States.<sup>42</sup> A common characterization of laws against sleeping in public is they are “conduct laws” aimed at restricting certain behaviors.<sup>43</sup> This classification is critical and can be the decisive factor in determining a law’s validity.<sup>44</sup> For instance, a California court circumvented precedent prohibiting the criminalization of status by characterizing the actions in the case as “conduct derivative of one’s status.”<sup>45</sup>

Status offenses, which criminalize individuals for *being* rather than for *doing* a particular action, are contrary to the Eighth Amendment.<sup>46</sup> The Supreme Court invalidated status offenses in *Robinson v. California* by voiding a California law that criminalized narcotic use and addiction.<sup>47</sup> The Court held the latter provision of the law criminalized drug addiction as an ongoing status.<sup>48</sup> The ruling established that punishing status—or conduct that is an integral part of status—violates the Eighth Amendment.<sup>49</sup>

The Court in *Robinson* noted that, under California law, an individual could be guilty of being addicted to narcotics without ever touching a drug in the state.<sup>50</sup> Justice Douglas’s concurring opinion emphasized anomalous violations such as infants born with addictions due to their mothers’ prenatal drug use.<sup>51</sup> The Court held the severity of the sentence is irrelevant—any punishment for “being” violates the bounds of constitutional punishment.<sup>52</sup>

The Supreme Court’s plurality opinion in *Powell v. Texas* crafted a different

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40. *Id.* at 167–68.

41. *See id.* at 165–66 (comparing cases in N.Y. and N.J.).

42. *See* TRISTIA BAUMAN ET AL., NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 24 (2016), available at [https://nlchp.org/wp-content/uploads/2019/02/No\\_Safe\\_Place.pdf](https://nlchp.org/wp-content/uploads/2019/02/No_Safe_Place.pdf) (on file with *The University of the Pacific Law Review*) (providing percentages of states that make sleeping in public illegal conduct).

43. Sherry, *supra* note 22, at 564.

44. *E.g.*, *Lehr v. City of Sacramento*, 624 F. Supp. 2d. 1218, 1234 (E.D. Cal. 2009) (rejecting classification of offenses as status).

45. *Id.* at 1232.

46. *Robinson v. California*, 370 U.S. 660, 666–67 (1962).

47. *Id.* at 667.

48. *Id.* at 666.

49. *Id.* at 667.

50. *Id.* at 666.

51. *Id.* at 670 (Douglas, J., concurring).

52. *Id.* at 667.

approach to status offenses.<sup>53</sup> At issue in *Powell* was a public intoxication law.<sup>54</sup> The holding turned on the voluntariness of the prohibited conduct, emphasizing Powell's volition in his offense.<sup>55</sup> Justice White concurred in the result but expressed concern over the law's application to people without a private residence.<sup>56</sup> To White, the law in *Powell* would penalize a homeless alcoholic for behaviors that are legal (drinking) and involuntary (being in public while homeless).<sup>57</sup>

### 3. The Ninth Circuit's Mixed Rulings

The inherent vagueness of vagrancy laws, necessary to catch broad types of conduct, makes these laws difficult to classify.<sup>58</sup> Therefore, *Papachristou* is not a basis for effectively challenging public conduct laws in all cases.<sup>59</sup> In particular, the outcomes of Ninth Circuit Court of Appeals cases have considerably varied when dealing with public conduct laws.<sup>60</sup> The Court has upheld Washington and Arizona laws prohibiting activities such as sitting or lying on sidewalks during specified hours.<sup>61</sup> These affirmations limit the *Papachristou* holding when the laws reasonably restrict the location and time.<sup>62</sup> The Supreme Court invalidated vagrancy laws, but doubt remains as to the extent of *Papachristou*'s application.<sup>63</sup>

In other cases, the Ninth Circuit followed the reasoning in *Powell* by considering circumstances and opportunities to avoid a crime.<sup>64</sup> In *Jones v. City of Los Angeles*, the Ninth Circuit evaluated a challenge to a conviction for sleeping in public.<sup>65</sup> Homeless shelters in the area had reached capacity at the time of the defendant's arrest.<sup>66</sup> Therefore, Jones had "no choice other than to be on the

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53. See *Powell v. Texas*, 392 U.S. 514, 551–52 (1968) (plurality opinion) (reaching a narrow result including a concurrence looking at whether the violation was voluntary).

54. *Id.* at 554.

55. *Id.* at 540.

56. *Id.* at 551.

57. *Id.*

58. See generally FISHER ET AL., *supra* note 25 (analyzing regulations on public conduct in California and their impact on people experiencing homelessness).

59. *Infra* Section II.A.3 (discussing varied outcomes of cases in the 9th circuit).

60. Compare *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), *vacated as moot*, 505 F.3d 1006 (9th Cir. 2007) (striking down a law that punished sleeping in public), with *Amster v. City of Tempe*, 248 F.3d 1198, 1199–1200 (9th Cir. 2001) (upholding a law prohibiting sitting on a public sidewalk during certain hours).

61. See *Roulette v. City of Seattle*, 97 F.3d 300, 306 (9th Cir. 1996) (concerning a Washington law); *Amster*, 248 F.3d at 1199–1200 (concerning an Arizona law).

62. *Amster*, 248 F.3d at 1199–1200.

63. See SHARON BRETT, U.S. DEP'T JUST., STATEMENT OF INTEREST ON BEHALF OF THE U.S. 8, 10 (Aug. 6, 2015), available at <https://www.justice.gov/opa/file/643766/download> (on file with *The University of the Pacific Law Review*) (advocating for the court to adopt the reasoning of Jones in light of conflicting rulings).

64. *Jones v. City of Los Angeles*, 444 F.3d 1118, 1132 (9th Cir. 2006), *vacated as moot*, 505 F.3d 1006 (9th Cir. 2007).

65. *Id.* at 1122.

66. *Id.*

street.”<sup>67</sup> The Court asserted that sitting, lying, or sleeping on public sidewalks is a consequence of being human and homeless—punishing this behavior violates the Eighth Amendment.<sup>68</sup> The *Jones* Court vacated the decision on other grounds, but the reasoning of the case remains influential.<sup>69</sup>

In *Martin v. City of Boise*, the United States’ counsel filed a Statement of Interest hoping to persuade the Court to follow the reasoning of *Jones*.<sup>70</sup> *Martin* concerned a law identical to the one in *Jones*, which prohibited sleeping on public property.<sup>71</sup> The Justice Department sought to establish an official position regarding public conduct laws considering the conflicting lower court decisions.<sup>72</sup> The Statement of Interest asserted *Jones*’s analysis was the proper framework for Eighth Amendment questions regarding public conduct laws and voluntariness.<sup>73</sup> The Statement of Interest connected the evolution of status offenses to the lack of shelter space and argued that bans on sleeping in public criminalize homelessness as a status.<sup>74</sup> The Court held that enforcing the law is unconstitutional when there is inadequate shelter space—adopting the Statement’s position and the reasoning of *Jones*.<sup>75</sup>

#### 4. *Sleeping in a Vehicle*

It is unlawful to sleep in a vehicle in 39% of U.S. cities.<sup>76</sup> Penalties for using a vehicle as a home can be severe.<sup>77</sup> Violating these laws can result in cascading punishments: parking tickets lead to vehicle impoundment which causes a loss of transportation, “home,” and belongings.<sup>78</sup> Some cities restrict sleeping in a vehicle to specific zones, while others prohibit the action citywide.<sup>79</sup>

Constitutional challenges to laws restricting sleeping in vehicles—like laws prohibiting sleeping in public—are not always successful.<sup>80</sup> The Eleventh Circuit Court of Appeals held restricting lodging in public—including in cars—is

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67. *Id.* at 1137.

68. *Id.* at 1138.

69. See BRETT, *supra* note 63, at 3 (advocating for the adoption of *Jones*’s reasoning).

69. *Id.* (advocating for the adoption of *Jones*’s reasoning).

70. *Martin v. City of Boise*, 920 F.3d 584, 589 (9th Cir. 2019), *rev’d and remanded*, 920 F.3d 584 (9th Cir. 2019).

71. *Id.*

72. BRETT, *supra* note 63, at 3.

73. *Id.*

74. *Id.*

75. *Martin*, 902 F.3d at 1035.

76. BAUMAN ET AL., *supra* note 42.

77. *Id.*

78. *Id.*

79. See *id.* (describing San Antonio, Texas’s citywide ban on sleeping in vehicles).

80. See *Hershey v. Clearwater*, 834 F.2d 937, 949–51 (11th Cir. 1987) (upholding the law while specifically severing the word “sleeping”); *but see Lehr v. City of Sacramento*, 624 F. Supp. 2d 1218, 1226–27 (E.D. Cal. 2009) (explaining a departure from *Jones*).

generally a legitimate regulation, but an outright ban on sleeping in a vehicle is not.<sup>81</sup> However, another court struck down an Alabama law that prohibited sleeping in a vehicle for the law's arbitrary and discretionary application.<sup>82</sup>

*Horn v. City of Montgomery* concerned a city ordinance prohibiting sleeping in vehicles regardless of whether it was due to incapacity, fatigue, or lack of permanent lodging.<sup>83</sup> Police arrested the defendant for sleeping in his car at 10:00 p.m. despite being legally parked on a residential street.<sup>84</sup> The arresting officer's testimony demonstrated the law's vagueness and the officer's substantial discretion in determining when to cite an offender.<sup>85</sup> According to the Court, sleeping in a car is a potentially innocent behavior, and subjective penalization is inappropriate.<sup>86</sup> The Court reversed the conviction and voided the law for vagueness.<sup>87</sup>

### B. California's Approach to Homelessness

California has responded to unprecedented rates of homelessness with sweeping legislation.<sup>88</sup> Subsection 1 describes California's rapid enactment of legislation concerning homelessness.<sup>89</sup> Subsection 2 explores the laws and policies that affect California college students who sleep in their cars.<sup>90</sup>

#### 1. A Growing Body of Restrictions

California cities have enacted more ordinances restricting the behavior of people experiencing homelessness than any other state.<sup>91</sup> Many of these laws restrict where or when people may sleep, eat, sit, and share food.<sup>92</sup> Since *Robinson*, legislatures have characterized such regulations as concerning "quality of life."<sup>93</sup> The new classification rebrands old restrictions but creates new targets such as improving city sanitation, public cleanliness, and access to public spaces.<sup>94</sup> Quality-of-life laws place limits on certain behaviors in public, either as absolute bans or for select times-of-day.<sup>95</sup>

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81. Hershey, 834 F.2d at 949.

82. *Horn v. City of Montgomery*, 619 So. 2d 949, 951 (Ala. Crim. App. 1993).

83. *Id.*

84. *Id.* at 49.

85. *Id.* at 51.

86. *See id.* (discussing that punishing sleeping in vehicles is legitimate in some situations but not all).

87. *Horn*, 619 So. 2d at 951.

88. FISHER ET AL., *supra* note 25.

89. *Infra* Section II.B.1.

90. *Infra* Section II.B.2.

91. FISHER ET AL., *supra* note 25.

92. *Id.*

93. *Id.*

94. *Id.*

95. *See id.* (studying categories of laws that prohibit standing, sitting, and resting in public places; sleeping).

A study of the 58 most populous cities in California counted 592 laws restricting a total of 781 biologically essential behaviors, such as sleeping or eating.<sup>96</sup> These types of laws continue to pile on the books as the rate of enactment continues to increase.<sup>97</sup>

Laws imposing citywide bans on public conduct are uncommon in California; instead, cities favor location-specific restrictions.<sup>98</sup> These laws target particular neighborhoods or zoning districts.<sup>99</sup> California also has the most quality-of-life laws concerning food sharing and vehicle lodging.<sup>100</sup> For instance, California has 124% more laws that prohibit sleeping in vehicles than the national average.<sup>101</sup>

## *2. Homelessness at Community Colleges*

There is no uniform rule for sleeping in vehicles at California community colleges.<sup>102</sup> Forty-three California community colleges have no policy regarding overnight parking.<sup>103</sup> Of the colleges that do have policies in place, twenty-six colleges prohibit overnight parking, while thirty-five allow parking but only in special circumstances.<sup>104</sup>

California's education code already mandates that schools grant shower and bathroom access to students experiencing homelessness.<sup>105</sup> The existing law requires each school set regular hours of operation for these facilities and establish a definition of "homeless students" per the McKinney-Vento Act.<sup>106</sup>

## *C. Foundational Law: The McKinney-Vento Act*

The Stewart B. McKinney Homeless Assistance Act of 1987 was the first major federal legislation addressing the unique challenges of homeless youth.<sup>107</sup> Now known as the McKinney-Vento Act, it established broad funding for services to help people experiencing homelessness transition from emergency shelters to permanent housing.<sup>108</sup> Title VII of the Act created education-oriented programs

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camping, or lodging in public and vehicles; begging and panhandling; food sharing).

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 302, 2019-2020 REG. SESS., at 21 (Cal. 2019).

103. *Id.*

104. *Id.*

105. CAL. EDUC. CODE § 76011(a) (West 2017).

106. *Id.* § 76011(b)(1), (4).

107. John Wong et al., *The McKinney-Vento Homeless Assistance Act—Education for Homeless Children and Youths Program*, 11 GEO. J. ON POVERTY L. & POL'Y 283, 292 (2004).

108. McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11301 (2004); McKinney-Vento Homeless

and required each state to adopt policies to support and increase homeless youth school enrollment.<sup>109</sup> Education department overhauls have expanded and reauthorized the Act; it remains the foundational law regarding homeless youth education and funding.<sup>110</sup>

The Education for Homeless Children and Youth (“EHCY”) is the provision of the Act dealing with education.<sup>111</sup> EHCY’s goal is to ensure that every child without stable housing has equal access to the same public education as other children.<sup>112</sup> The EHCY passed after reports indicated 50% of children experiencing homelessness did not regularly attend school.<sup>113</sup> The EHCY specifies certain educational rights to promote the goal of increasing access to education for youth without permanent shelter.<sup>114</sup> These educational rights include expedited school enrollment (even with a lack of documentation), the ability to remain in the school of origin, and free transportation to and from that school.<sup>115</sup>

The McKinney–Vento Act also created new, mandatory positions at the state level: including state coordinators and local liaisons for homeless youth.<sup>116</sup> States must utilize these positions to develop a homeless education plan, provide training to educators, and integrate the education of students experiencing homelessness with other school activities.<sup>117</sup> The Act additionally authorizes the use of funding for “tutoring, supplemental instruction, and enriched educational services” to help meet state academic standards.<sup>118</sup>

The McKinney–Vento Act also established the standardized definition of “homeless children and youths” for legislation.<sup>119</sup> Homeless children lack a “fixed, regular, and adequate nighttime residence.”<sup>120</sup> The definition specifically includes children who regularly sleep in places—whether public or private—not ordinarily designed for sleeping accommodations.<sup>121</sup> These places include cars, parks, and

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Assistance Act, Pub. L. No. 106–400, § 1, 11 Stat. 1675 (2000) (changing the name from “The Stewart B. McKinney Homeless Assistance Act of 1987” to “The McKinney–Vento Homeless Assistance Act”); *Id.*

109. Wong et al., *supra* note 107.

110. See U.S. Dep’t Educ., *A Brief History of the McKinney–Vento Act*, NAT’L. CTR. FOR HOMELESS EDUC., available at [https://nche.ed.gov/wp-content/uploads/2018/12/ehcy\\_profile.pdf](https://nche.ed.gov/wp-content/uploads/2018/12/ehcy_profile.pdf) (last visited June 20, 2019) (on file with *The University of the Pacific Law Review*) (describing the act’s amendment in 1990; reauthorization in 1994; reauthorization in 2004 by the No Child Left Behind Act; and reauthorization by the Every Student Succeeds Act).

111. McKinney–Vento Homeless Assistance Act, 42 U.S.C. § 11431 (2016).

112. *Id.*

113. Wong et al., *supra* note 107.

114. U.S. Dep’t Educ., *supra* note 10.

115. *Id.*

116. *Supporting the Success of Homeless Children and Youths*, U.S. DEP’T OF EDUC., available at <https://www2.ed.gov/policy/elsec/leg/essa/160315ehcyfactsheet072716.pdf> (last visited June 21, 2019) (on file with *The University of Pacific Law Review*).

117. Wong et al., *supra* note 107, at 297–98.

118. 42 U.S.C. § 11433 (West 2015).

119. *Id.* § 11434(a)(2).

120. *Id.*

121. *Id.*

abandoned buildings.<sup>122</sup> The definition also includes situations such as cohabitating due to loss of housing or economic hardship and living in hotels or campgrounds.<sup>123</sup>

Title V of the McKinney–Vento Act created a process for transforming unused or excess federal property into rehousing facilities for people experiencing homelessness.<sup>124</sup> Organizations that advocate for people experiencing homelessness can apply for vacant federal property.<sup>125</sup> Title V expedites the process by requiring the government to approve completed applications without extensive verifications and bidding.<sup>126</sup> Meeting this criteria simply requires an entity to formulate a plan for taking over the facility—bolstering the McKinney–Vento Act’s ability to create opportunities for those experiencing homelessness.<sup>127</sup>

#### IV. AB 302

AB 302 requires community colleges to allow students without stable housing to sleep in their cars in designated on-campus parking lots.<sup>128</sup> Additionally, the law requires each community college district to establish and implement a specific plan for carrying out the law.<sup>129</sup> The law’s requirements are not comprehensive but do give school districts boundaries for operation.<sup>130</sup> These boundaries include keeping parking areas drug- and alcohol-free, scheduling hours of operation, and connecting students utilizing the program to housing resources.<sup>131</sup>

Each community college must designate specific parking lots on campus for overnight use and provide monitoring during sleeping hours.<sup>132</sup> These hours limit access to the facilities for sleeping to maintain daily activity of the parking lot.<sup>133</sup> All students seeking overnight use of the parking facility must first complete a parking form and a liability waiver.<sup>134</sup>

AB 302 establishes a uniform procedure for overnight parking but also provides exceptions for schools with satisfactory assistance programs.<sup>135</sup> To qualify for the exception, a school must demonstrate existing housing support such as hotel vouchers, emergency grants, or a rapid rehousing referral service.<sup>136</sup> The

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122. *Id.*

123. *Id.*

124. *Id.* § 11411(a).

125. *Id.* § 11411.

126. *Id.* § 11434(b)(2).

127. *Id.* § 11434(e)(2)(B)(i)–(ii).

128. CAL. EDUC. CODE § 76012 (enacted by AB 302).

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.* § 76012.5.

136. *Id.*

law does not affect schools without on-campus parking lots.<sup>137</sup>

Students must pay mandatory enrollment fees, enroll in coursework, and be in good standing with the community college district to be eligible for overnight parking.<sup>138</sup> AB 302 requires that school districts define “homeless students” based on the McKinney–Vento Homeless Assistance Act.<sup>139</sup> While the McKinney–Vento Act is the framework for defining “homeless students,” the community college board must also take its district’s homeless student population into account.<sup>140</sup> This directive requires adherence to federal law but creates a semi-flexible standard because it allows schools to account for local circumstances.<sup>141</sup>

## V. ANALYSIS

Addressing homelessness in the U.S. requires considering what it means to live without shelter and taking a pragmatic approach to reducing homelessness.<sup>142</sup> The growing number of people sleeping in public reflects the unsuccessful efforts to criminalize the behavior.<sup>143</sup> AB 302 approaches homelessness as an unfortunate circumstance—rather than a blameworthy choice—marking a critical pivot toward solutions instead of sanctions.<sup>144</sup>

Section A discusses people-centered approaches to reducing homelessness on the national and global scale.<sup>145</sup> Section B explores the severe shortage of shelter space for people experiencing homelessness.<sup>146</sup> Section C analyzes AB 302’s adaptations to existing parking lot models in California.<sup>147</sup> Section D summarizes the interplay between AB 302 and the McKinney–Vento Act.<sup>148</sup>

### A. *The Homeless Experience*

Reducing homelessness begins with the way people and governments address it.<sup>149</sup> Subsection 1 analyzes how linguistic choices and people-centered policies

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137. *Id.* § 76012(b).

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. See U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, HOME TOGETHER: THE FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS 14 (2018) [hereinafter Interagency Council] (encouraging the use of programs not strictly tied to homelessness to improve welfare).

143. BAUMAN ET AL., *supra* note 42 (explaining the negative effect of criminalizing behaviors of people experiencing homelessness).

144. CAL. EDUC. CODE § 76012 (enacted by AB 302).

145. *Infra* Section IV.A.

146. *Infra* Section IV.B.

147. *Infra* Section IV.C.

148. *Infra* Section IV.D.

149. INTERAGENCY COUNCIL, *supra* note 142, at 20.

can improve responses to homelessness.<sup>150</sup> Subsection 2 analyzes new federal policies and the shift away from criminalization.<sup>151</sup> Subsection 3 discusses international comments on the troubled history of homelessness in the U.S.<sup>152</sup>

### *1. Framing the Issue*

Terminology is important.<sup>153</sup> Simply using the phrase “homeless people” has subtle but significant impacts on perception and policy.<sup>154</sup> In the case of homelessness, Mentalism rouses subconscious blame on people for not having a home.<sup>155</sup> This thinking reinforces the belief that people are homeless by choice or due to laziness, in turn discouraging policies focused on the welfare of people without homes.<sup>156</sup>

To combat this negative stigma, federal agencies have adopted “people-first” language that emphasizes personhood before difficulty.<sup>157</sup> The phrase “people experiencing homelessness” better frames the issue and promotes people-centered responses.<sup>158</sup> The American Psychological Association and the CDC have adopted people-centered language for discussing the circumstances of individuals and each advocate for usage in all fields.<sup>159</sup>

Linguistic choices are not the limit of the people-centered approach; they also inform how legislatures address issues and craft bills.<sup>160</sup> Legislation that punishes individuals for sleeping in public labels people without homes as criminals.<sup>161</sup> Rather than addressing the root causes of homelessness, these laws reaffirm negative perceptions of people experiencing homelessness and can prolong the experience.<sup>162</sup> The criminal record a person accrues by sleeping in public creates

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150. *Infra* Section IV.A.1.

151. *Infra* Section IV.A.2.

152. *Infra* Section IV.A.3.

153. MICHAEL BARAN ET AL., *A HOUSE, A TENT, A BOX 16* (FrameWorks ed., 2016) (describing how the word “housing” colloquially means “the projects”).

154. *Id.* at 25.

155. *See id.* at 32 (describing the Mentalism model which characterizes others by status and places responsibility and blame for conditions on the individual).

156. *Id.*

157. Jennifer L. Rich, *People Experience Homelessness, They Aren't Defined by It*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (June 28, 2017), <https://www.usich.gov/news/people-experience-homelessness-they-arent-defined-by-it/> (on file with *The University of the Pacific Law Review*).

158. *Id.*

159. CDC, *Communicating With and About People with Disabilities*, available at [https://www.cdc.gov/ncbddd/disabilityandhealth/pdf/disabilityposter\\_photos.pdf](https://www.cdc.gov/ncbddd/disabilityandhealth/pdf/disabilityposter_photos.pdf), (last visited July 8, 2019) (on file with *The University of the Pacific Law Review*); AMERICAN PSYCHOLOGY ASSOCIATION, *Choosing Words for Talking About Disability*, <https://www.apa.org/pi/disability/resources/choosing-words> (last visited July 8, 2019) (on file with *The University of the Pacific Law Review*).

160. *See* BARAN ET AL., *supra* note 153 at 25 (illustrating how the language society uses informs the thoughts and perceptions of the American public).

161. BAUMAN ET AL., *supra* note 42.

162. *Id.*

an additional barrier that further frustrates his or her ability to find and maintain permanent housing.<sup>163</sup>

Designing legislation and public policy to reduce rather than punish homelessness produces a more humane and effective approach.<sup>164</sup> AB 302 promotes positive solutions by creating designated sleeping zones for students experiencing homelessness.<sup>165</sup> This approach addresses the public's interest in reducing the visibility of homelessness through practical assistance for students.<sup>166</sup>

## 2. The Federal Approach

The U.S. Interagency Council on Homelessness (“USICH”) combines 19 federal agencies—including the Departments of Education, Housing and Urban Development (“HUD”), Justice, and Labor.<sup>167</sup> USICH utilizes resources and leaders of its member agencies to generate reports and action plans for the entire U.S.<sup>168</sup> USICH’s most recent publication is *Home, Together: The Federal Strategic Plan to Prevent and End Homelessness*.<sup>169</sup> *Home, Together* seeks to ensure homelessness is a “rare, brief, and one-time experience.”<sup>170</sup>

The plan does not set rigid timeframes but rather serves as a general guide to systematic changes for preventing and ending homelessness.<sup>171</sup> *Home, Together* does not end at the federal level however; it encourages involvement and adoption by state, local, and private-sector partners to collaboratively develop support systems.<sup>172</sup> Federal agencies have adopted *Home, Together* policies and encouraged widespread usage through incentive programs.<sup>173</sup> The HUD began to encourage decriminalization of homelessness through its grant process.<sup>174</sup> It administers a grant fund of two billion dollars for communities that demonstrate efforts to repeal laws that criminalize homelessness.<sup>175</sup>

The Department of Justice also took a firm stance in 2015 with its Statement

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163. *Id.* at 36.

164. *Id.* at 24.

165. CAL. EDUC. CODE § 76012 (enacted by AB 302).

166. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SEEKING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS 2, 11 (2012), available at [https://www.usich.gov/resources/uploads/asset\\_library/RPT\\_SoS\\_March2012.pdf](https://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf) (on file with *The University of the Pacific Law Review*).

167. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (Mar. 2019), available at [https://www.usich.gov/resources/uploads/asset\\_library/USICH\\_Fact\\_Sheet\\_March\\_2019.pdf](https://www.usich.gov/resources/uploads/asset_library/USICH_Fact_Sheet_March_2019.pdf) (on file with *The University of the Pacific Law Review*).

168. *Id.*

169. INTERAGENCY COUNCIL, *supra* note 142, at 1.

170. *Id.* at 10.

171. *Id.* at 6.

172. *Id.* at 9.

173. BAUMAN ET AL., *supra* note 42.

174. *Id.*

175. *Id.*

of Interest in *Bell v. Boise*.<sup>176</sup> By advocating for a finding of Eighth Amendment violations, the Justice Department encouraged judiciary action to influence policy changes.<sup>177</sup> The nonbinding Statement of Interest urged a shift toward decriminalization and succinctly criticized contrary policies.<sup>178</sup>

### *3. International Perspective*

The U.S. is beginning to adopt a federal policy against criminalizing homelessness.<sup>179</sup> This policy followed a rebuke by a panel for the International Convention on the Elimination of All Forms of Racial Discrimination, to which the U.S. is a member.<sup>180</sup> The Committee on the Elimination of Racial Discrimination (“CERD”) delivered an advisory report in 2014 on violations by the U.S.<sup>181</sup> Among the identified concerns was the U.S.’s negative treatment of people experiencing homelessness.<sup>182</sup> The report highlighted the “high number of homeless persons . . . [and] the criminalization of homelessness through laws that prohibit loitering, camping, begging, and lying in public spaces.”<sup>183</sup>

The CERD’s report cited to Article 5 of the Convention on Human Rights, which provides that “[e]veryone has the right to liberty and security of person.”<sup>184</sup> These criticisms concluded with a call upon the U.S. to abolish laws and policies that criminalize homelessness.<sup>185</sup> The committee also condemned laws and policies that may not be discriminatory by design but are discriminatory in effect.<sup>186</sup>

### *B. Nowhere Else to Go*

A penal approach to reducing homelessness exacerbates the problem.<sup>187</sup> Laws criminalizing sleeping in public attempt to discourage people from using public spaces for normal life functions.<sup>188</sup> This approach creates “no homeless zones”

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176. BRETT, *supra* note 63, at 3.

177. *Id.*

178. *Id.*

179. INTERAGENCY COUNCIL, *supra* note 142, at 11; see *Homeless Assistance Programs, Decriminalizing Homelessness*, U.S. DEP’T OF HOUS. & URBAN DEV. (2019), <https://www.hudexchange.info/homelessness-assistance/alternatives-to-criminalizing-homelessness/> (on file with *The University of the Pacific Law Review*) (explaining the department’s advocacy for non-criminal measures).

180. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, CONCLUDING OBSERVATIONS ON THE COMBINED SEVENTH TO NINTH REPORTS OF UNITED STATES OF AMERICA 5 (2014), available at [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD\\_C\\_USA\\_CO\\_7-9\\_18102\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_7-9_18102_E.pdf) (on file with *The University of the Pacific Law Review*) [hereinafter CERD].

181. *Id.*

182. *Id.*

183. *Id.*

184. European Convention on Human Rights, art. 5, C.E.T.S. no. 194 (entered into force Sept. 3, 1953).

185. CERD, *supra* note 180.

186. *Id.*

187. BAUMAN ET AL., *supra* note 42.

188. *Id.*

where people experiencing homelessness must either risk continuous violations or leave town.<sup>189</sup>

Seventy-four percent of people experiencing homelessness “do not know a place where it is safe [and] legal for them to sleep.”<sup>190</sup> The lack of places to sleep is at the core of Eighth Amendment challenges to anti-camping and sleeping laws.<sup>191</sup> In particular, punishing people for a natural behavior—sleeping—violates the Eighth Amendment when there are insufficient beds available.<sup>192</sup> In 2014, there were 11,933 shelter beds for the 53,798 people experiencing homelessness in Los Angeles—enough for only 23% of the homeless population.<sup>193</sup> The severe deficit of shelter beds makes it extremely difficult for people experiencing homelessness to avoid violating laws against sleeping or camping in public.<sup>194</sup>

A lack of shelter space is not unique to Los Angeles.<sup>195</sup> Sixty-four percent of cities in the United States have reported turning people away from shelters due to overcrowding.<sup>196</sup> *Martin v. City of Boise* illustrated that the ratio of beds to people is critical even when the number of people experiencing homelessness is relatively low.<sup>197</sup> Despite only 2,012 people experiencing homelessness in the entire state of Idaho, Boise’s enforcement of public sleeping restrictions was held unconstitutional.<sup>198</sup>

### C. The Parking Lot Model

Structured overnight parking lot programs provide safe places to sleep for people living in their cars.<sup>199</sup> Subsection 1 analyzes the form and function of existing California overnight parking programs.<sup>200</sup> Subsection 2 considers the impact and liabilities AB 302 poses for California schools.<sup>201</sup>

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189. *Id.*

190. *Id.*

191. *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), *vacated as moot*, 505 F.3d 1006 (9th Cir. 2007).

192. *Martin v. City of Boise*, 902 F.3d 1031, 1035 (9th Cir. 2018), *rev’d and remanded*, 920 F.3d 584 (9th Cir. 2019).

193. BAUMAN ET AL., *supra* note 42.

194. *Id.* at 7.

195. U.S. Conference of Mayors, *2010 Hunger and Homelessness Survey* at 2 (2010).

196. *Id.*

197. *See Martin*, 902 F.3d at 1035 (discussing the shortage of shelter beds to people experiencing homelessness).

198. *Id.*; *See HENRY ET AL.*, *supra* note 8 (reporting 2,012 people experiencing homelessness in Idaho).

199. *Safe Parking Program*, DREAMS FOR CHANGE, <https://www.dreamsforchange.org/the-safe-parking-program/> (last visited July 9, 2019) (on file with *The University of the Pacific Law Review*).

200. *Infra* Section IV.B.1.

201. *Infra* Section IV.B.2.

### 1. Parking Programs in California

Living in one's car can be a critical last resort after losing permanent housing.<sup>202</sup> While owning a car is common in the U.S., places to legally sleep in one are not.<sup>203</sup> The number of cities that prohibit sleeping in vehicles more than doubled between 2011 and 2014—from 37 to 81.<sup>204</sup> Despite the restrictions, 30% of students report turning to sleeping in a vehicle after losing their housing.<sup>205</sup> The option to legally and safely sleep in a vehicle is critical for people experiencing homelessness.<sup>206</sup>

Secure, monitored parking lot programs for people living in their vehicles are successful in California.<sup>207</sup> The Safe Parking Program in Santa Barbara is one of the nation's longest-running parking programs for people living in their cars.<sup>208</sup> Established in 2004, the program allows people to park in various lots overnight and then vacate during the day.<sup>209</sup> Through the Safe Parking Program, people transition from sleeping in their car to stable housing.<sup>210</sup>

Another parking lot system is Dreams for Change.<sup>211</sup> The nonprofit offers overnight parking at private lots for people living in their cars in San Diego.<sup>212</sup> The organization operates as a support system and provides services such as case workers, assistance with applications or paperwork, and food donations.<sup>213</sup> Dreams for Change has served 2,650 people since 2010.<sup>214</sup>

Dreams for Change does not treat living in cars as a long-term solution.<sup>215</sup> The program offers temporary services and requires that participants seek long-term housing.<sup>216</sup> These efforts to assist people out of homelessness have been fruitful—

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202. BAUMAN ET AL., *supra* note 42, at 22.

203. *U.S. Vehicle Registration Statistics*, HEDGES & COMPANY, <https://hedgescompany.com/automotive-market-research-statistics/auto-mailing-lists-and-marketing/> (last visited July 9, 2019) (on file with *The University of the Pacific Law Review*); see BAUMAN ET AL., *supra* note 42 (detailing the declining number of cities that allow sleeping in a vehicle).

204. BAUMAN ET AL., *supra* note 42.

205. GOLDRICK-RAB ET AL., *supra* note 17.

206. *Id.*

207. DREAMS FOR CHANGE, *supra* note 199; Vianna Davila, *San Diego Did What Seattle Didn't: Give People a Safe Place to Sleep in Cars*, SEATTLE TIMES (May 3, 2018), <https://www.seattletimes.com/seattle-news/homeless/how-california-cities-did-what-seattle-has-not-give-people-living-in-cars-a-safe-place-to-spend-the-night/> (on file with *The University of the Pacific Law Review*).

208. Davila, *supra* note 207.

209. *Id.*

210. *Safe Parking Program*, NEW BEGINNINGS COUNSELING CTR. (2019), <https://sbnbcc.org/safe-parking/> (on file with *The University of the Pacific Law Review*).

211. DREAMS FOR CHANGE, *supra* note 199.

212. *Id.*

213. *Id.*

214. *Id.*

215. See *id.* (detailing a model of limited services and the requirement that participants actively seek other permanent options).

216. Client Eligibility Criteria for Safe Parking Program, DREAMS FOR CHANGE, *available at* <https://www.dreamsforchange.org/wp-content/uploads/2016/01/Client-Eligibility-Criteria-update.pdf> (last visited

65% of participants in the parking program obtain housing or move into long-term transitional programs.<sup>217</sup>

Both Dreams for Change and the Safe Parking Program are comprehensive systems that provide immediate safe sleeping areas and help participants find permanent solutions.<sup>218</sup> Participation in the Safe Parking Program includes access to case workers, shelters, housing assistance, and food services.<sup>219</sup> Dreams for Change retains caseworkers on-site every night.<sup>220</sup> These comprehensive services foster rapid transitions to housing by providing immediate help and working toward making a lasting changes.<sup>221</sup>

## 2. The Cost: More Than Plugging the Meter

Santa Barbara and San Diego's parking lot models primarily rely on donations and minimal government funding.<sup>222</sup> Operating Dreams for Change costs about \$436,000 annually and supports 150 vehicles at a time.<sup>223</sup> The California college parking program under AB 302 is state funded and incorporates aspects of these existing models, relying on what has worked before.<sup>224</sup>

The parking lot models of Santa Barbara and San Diego largely rely on temporary services to avoid becoming permanent campgrounds.<sup>225</sup> AB 302 follows a similar framework by limiting the hours of operation to only overnight.<sup>226</sup> Overall, the cost of implementing AB 302 would be significantly lower than non-profit parking lots because AB 302 does not provide additional services beyond parking.<sup>227</sup> The final cost for each community college will vary and depend on existing infrastructure and availability of campus security.<sup>228</sup>

AB 302 also creates new liabilities for colleges.<sup>229</sup> An analysis of civil liability revealed schools may be vulnerable to civil suits for negligence.<sup>230</sup> AB 302 mandates liability waivers but does not provide a standard form.<sup>231</sup> The waiver

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July 9, 2019) (on file with *The University of the Pacific Law Review*).

217. DREAMS FOR CHANGE, *supra* note 199.

218. *Id.*; NEW BEGINNINGS COUNSELING CTR., *supra* note 199.

219. NEW BEGINNINGS COUNSELING CTR., *supra* note 199.

220. *Id.*

221. *Id.*

222. Davila, *supra* note 207.

223. *Id.*

224. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 302, 2019–2020 REG. SESS., at 1 (Cal. 2019).

225. Davila, *supra* note 207.

226. CAL. EDUC. CODE § 76012 (enacted by AB 302).

227. Compare Davila, *supra* note 207 (providing cost estimates for full service parking program), with CAL. EDUC. CODE § 76012 (enacted by AB 302) (providing no budget estimate but lacking more extensive services of other programs).

228. COMMITTEE ANALYSIS OF AB 302 at 10.

229. *Id.*

230. *Id.*

231. *Id.* at 5.

must explicitly state that the school cannot ensure the safety of participating students.<sup>232</sup> These provisions reflect concerns that incidents occurring on campus as a result of the program could generate significant costs for the schools.<sup>233</sup>

Another concern is budget increases to account for facility management and maintenance.<sup>234</sup> In particular, the required surveillance for each parking facility may add costs for colleges that do not retain campus security.<sup>235</sup> While not all schools keep full time security, additional facility costs should be negligible.<sup>236</sup> Existing state law already requires student access to shower and bathroom facilities on campus.<sup>237</sup>

#### *D. The Framework of McKinney–Vento*

The McKinney–Vento Act contains key provisions that AB 302 builds upon.<sup>238</sup> Subsection 1 discusses the requirements for defining “homeless students” under the McKinney–Vento Act.<sup>239</sup> Subsection 2 examines Title V of the McKinney–Vento Act and its parallels with AB 302.<sup>240</sup>

##### *1. Defining “Homeless Students”*

AB 302 does not explicitly define “homeless students.”<sup>241</sup> Instead, it requires the community college district’s governing board to create a definition based on the McKinney–Vento Act.<sup>242</sup> This definition must “reflect the age of the homeless student population at the community college campus.”<sup>243</sup> The McKinney–Vento Act both constrains and provides discretion for defining “homeless students” by allowing the district to consider the age of its student body.<sup>244</sup>

The McKinney–Vento Act defines and assists “homeless children and youths.”<sup>245</sup> However, the Act does not specify an age range; instead, it categorizes individuals by living conditions.<sup>246</sup> Therefore, AB 302 does not place the burden of age limitations on colleges when determining eligibility.<sup>247</sup> Considering 39% of

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232. EDUC. § 76012.

233. COMMITTEE ANALYSIS OF AB 302, at 11.

234. *Id.*

235. *Id.* at 12.

236. EDUC. § 76011 (requiring student access to showers and bathroom facilities).

237. *Id.*

238. *Id.* § 76012.

239. *Infra* Section IV.C.1.

240. *Infra* Section IV.C.2.

241. EDUC. § 76012.

242. *Id.*

243. *Id.*

244. *Id.*

245. 42 U.S.C.A. § 11434(a) (West 2016).

246. *Id.*

247. *Id.*; EDUC. § 76012.

students attending community colleges in the U.S. are over twenty-five, any definition that “reflects the student population” should not have an age limitation.<sup>248</sup> The legislature did not give further details as to how a school’s definition must reflect the student body.<sup>249</sup>

## 2. Title V: Use of Existing Land

Title V of the McKinney–Vento Act requires the government to make vacant federal lands available for sheltering people experiencing homelessness.<sup>250</sup> This system of converting land has been severely underutilized.<sup>251</sup> In 2003, the government received applications for only 17 of the 945 eligible properties.<sup>252</sup>

AB 302 makes no direct reference to Title V but shares the aim of using otherwise wasted land frugally in order to provide services to people without homes.<sup>253</sup> AB 302 has a much more limited scope than Title V.<sup>254</sup> Additionally, California has direct governance over the use of parking lots under AB 302 while Title V has oversight of federal land utilized for an approved plan.<sup>255</sup> Despite the differences, AB 302 revitalized the goals of Title V, further demonstrating the need for effective programs that create new places to sleep.<sup>256</sup>

## IV. CONCLUSION

No single law will end homelessness in California overnight.<sup>257</sup> Still, incremental progress towards fewer people sleeping unsheltered on the streets is a worthwhile endeavor.<sup>258</sup> AB 302 creates sleeping spaces by focusing on immediately available options for students experiencing homelessness.<sup>259</sup>

Policies that promote the rights and dignity of people experiencing homelessness are both pragmatic and humane.<sup>260</sup> The trend now permeates the

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248. Characteristics of Postsecondary Students, NAT’L. CTR. FOR HOMELESS EDUC. (2019), available at [https://nces.ed.gov/programs/coe/pdf/coe\\_csb.pdf](https://nces.ed.gov/programs/coe/pdf/coe_csb.pdf) (on file with *The University of the Pacific Law Review*).

249. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 302, 2019–2020 REG. SESS., at 1 (Cal. 2019).

250. 42 U.S.C.A. § 11434.

251. Kriston Capps, The Unsung Government Program That Gives Federal Property to the Homeless, CITYLAB (April 27, 2017), <https://www.citylab.com/equity/2017/04/the-unsung-government-program-that-gives-federal-property-to-the-homeless/524277/> (on file with *The University of the Pacific Law Review*).

252. *Id.*

253. 42 U.S.C.A. § 11434; CAL. EDUC. CODE § 76012 (enacted by AB 302).

254. *See* 42 U.S.C.A. § 11434 (detailing requirement to use federal property for housing with fewer property restrictions); EDUC. § 76012.

255. EDUC. § 76012; 42 U.S.C.A. § 11434.

256. EDUC. § 76012.

257. *See generally* INTERAGENCY COUNCIL, *supra* note 142.

258. *Id.* (noting that solving homelessness will strengthen communities and therefore is a worthwhile endeavor).

259. EDUC. § 76012.

260. *See* BAUMAN ET AL., *supra* note 42 (encouraging solutions involving support and detailing the failures

legal system; from the government to lower courts, the U.S. is pivoting away from criminalizing homelessness.<sup>261</sup> These changes set the U.S. on course with international standards of human rights.<sup>262</sup>

California cities' parking lot programs help people living in vehicles transition out of homelessness.<sup>263</sup> Granting access to unused college parking lots at night is a critical first step towards helping the 12% of college students that find themselves homeless each year.<sup>264</sup> AB 302 and the parking lot models it builds upon can serve as the framework for more creative, low-cost solutions.<sup>265</sup> Living in a car is not part of the American dream, but that dream certainly begins with a safe night's rest.<sup>266</sup>

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of criminalization).

261. INTERAGENCY COUNCIL, *supra* note 142, at 16; BRETT, *supra* note 63, at 3.

262. CERD, *supra* note 180.

263. *Infra* Section IV.B.1.

264. GOLDRICK-RAB ET AL., *supra* note 17.

265. EDUC. § 76012; GOLDRICK-RAB ET AL., *supra* note 17 (reporting high rates of student homelessness).

266. GOLDRICK-RAB ET AL., *supra* note 17.