

Homelessness and the Law

A Community Comes Together to Defend Homeless Citizens of the Nation's Capital

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In the spring of 2013, District of Columbia mayor Vincent Gray proposed dramatic changes to the local laws governing homeless services. These changes threatened to turn back the clock on the rights of D.C.'s homeless residents and represented a troubling shift to an outmoded philosophy about the causes of and solutions to homelessness.

The Washington Legal Clinic for the Homeless (hereafter "Legal Clinic"), along with numerous allies who included both professional advocates and those who would be directly affected by the changes, succeeded in scaling back the most drastic elements of the mayor's proposal, many of which were based on negative stereotypes and prejudices about people experiencing homelessness.

In this article, we examine the strategies employed, challenges faced, and lessons learned as a community came together quickly to stop a local government from infringing on the rights of its most vulnerable residents.

The Rise of Family Homelessness

From 2000 to 2012, D.C. lost half of its affordable rental stock, or 35,000 of its 70,000 units of affordable housing. The fair-market rent for a two-bedroom apartment in D.C. rose from \$840 per month to \$1,506 per month. The changes were due primarily to a combination of gentrification and federal and local cutbacks in funding for affordable housing.

At the same time that the cost of housing was rising, the Great Recession struck, causing D.C.'s poverty rate to rise to nearly 20 percent by 2010. Among children, the rate was even higher. By 2011, nearly one in three children growing up in D.C. was living at or below the federal poverty line.

As a result of steeply rising housing costs and increasing levels of poverty, family homelessness rose 73 percent in D.C. from 2008 to 2012. But funding for homeless services and housing programs did not keep pace with demand during this period. Tax revenues were down, and the D.C. government's resulting cuts most deeply affected programs that serve low-income residents, its least powerful constituency.

One example was the narrowing of families' year-round access to shelter. District law mandates a right to shelter for all D.C. residents who are homeless when the temperature falls below 32 degrees Fahrenheit. Until the spring of 2011, the District's policy was to shelter families who had no other safe place to stay, regardless of the temperature. Citing budgetary pressures, the District ended this policy, leaving families already in crisis without a safety net for much of the year, including on winter days when temperatures teetered close to freezing but were not below freezing, as required to trigger the legal right to shelter.

Family homelessness continued to grow. From 2009 to 2012 the number of families at D.C. General Emergency Family Shelter,

the largest family shelter in D.C., soared. While just 53 families stayed there in April 2009, by April 2013, 285 families with nearly 600 children were residing at the shelter.

During this time, the Legal Clinic and other community allies increased the pressure on the District to resolve this crisis by highlighting stories of parents and children left outside or in other dangerous situations because they could not access emergency shelter services. In the winter of 2012–13, local media began to focus on the problem of family homelessness as well, highlighting both the magnitude of the need and the administration's failure to respond to it with either shelter or housing resources.

It was in this climate that, in March of 2013, the Gray administration introduced a package of amendments to the Homeless Services Reform Act (HSRA) of 2005, the law governing homeless services in D.C., as part of its proposed FY 2014 Budget Support Act.

A Punitive Approach

The mayor framed these proposals as a way to stabilize families and help them move out of homelessness, but the amendments were almost entirely punitive in nature. They proposed to roll back many of the rights of homeless families and individuals and to increase the number of ways the government could deny access to emergency shelter services.

For example, the amended law would have allowed the District to place families in shelter “provisionally” while the D.C. Department of Human Services (DHS) determined the families’ eligibility for shelter or sent them to places other than shelter. The deputy mayor for Health and Human Services, Beatriz “B.B.” Otero, wrote that these provisional placements were meant to “keep families safe while they complete their assessment and explore alternatives to shelter,” “quickly reconnect or rehouse families using emergency or rapid rehousing funds,” and “allow the District to place families in shelter even during non-hypothermia periods.” Notably, nothing in the existing law prevented the District from sheltering families in non-hypothermic weather, and nothing in the proposed law guaranteed a right to such placements.

Moreover, “provisionally placed” families would stand to lose many legal rights that had protected families in shelter for years. According to the amendments, these families could be terminated from shelter or housing for rule violations with only 24 hours’ notice and without due process of law. They could lose other protections as well, among them the right to 15 days’

notice of termination or transfer, the continuation of shelter services during the appeal process, and all rights granted to those in temporary shelters—including the right to receive case-management services.

Another key feature of the amendments was that families could be terminated from shelter for turning down two offers of “rapid rehousing,” or housing with a short-term rental subsidy, regardless of whether the program or the particular unit was appropriate for the family. In other words, a family would not have been able to turn down two units—even on the grounds that they were unaffordable, were not wheelchair accessible, had egregious housing-code violations, were not the right size for the family, or were unsuitable for any other reason—without facing possible termination from shelter.

The proposed laws reflected a shift backward to a view that the causes of poverty and homelessness are poor behavioral choices rather than structural forces beyond an individual family’s immediate control.

The amendments also proposed eliminating several important rights of tenants in supportive housing. Providers could create arbitrary time limits and terminate participants once they reached those limits, no matter the reason. The amended law also would have permitted D.C. to terminate supportive-housing tenants from the program for being hospitalized or otherwise institutionalized for 60 days or more.

Finally, the amendments proposed giving the mayor authority to mandate that shelter residents contribute to escrow accounts as a condition of receipt of shelter. That measure had been rejected in favor of a voluntary system when the Homeless Services Reform Act passed because of the high administrative costs, negative impact on staff/resident relationships, and inability of many shelter residents to contribute to escrow and still meet their basic needs. Under the proposed amendments, programs could terminate residents from shelter if they failed to place money in escrow each month.

Creating Meaningful Process Where There Isn’t Any

One thing was for sure: we needed to act quickly. The normal legislative process would have allowed plenty of opportunity to respond to the proposed changes. Normally, we would have

had a chance to educate the community—including our advocate peers, providers, and, most importantly, our clients, who would be directly impacted—about the harm these amendments would do if enacted into law. By putting the amendments in the budget, however, the administration was assured a truncated review process, and there was a real danger that the amendments would be passed into law without a full public vetting: there would be no separate hearing on the proposed legislation, just one hearing on the entire Budget Support Act. The attention of those focusing on the budget would already be spread too thin for them to take in the amendments.

Faced with such a short time frame (a few months instead of up to two years), we saw that the proposed measures had to be taken out of the budget and put through the regular legislative process before we could address their substance.

In late April, the Legal Clinic and several key partners, including the D.C. Fiscal Policy Institute (DCFPI) and the D.C. Coalition Against Domestic Violence (DCCADV), drafted a sign-on letter to the mayor and D.C. Council citing our objections to the inclusion of such far-reaching proposals in the Budget Support Act without public vetting. We requested that the mayor withdraw the amendments from the FY 2014 Budget Support Act and allow the public a chance to have input. Councilmember Jim Graham, chair of the D.C. Council’s Committee on Human Services, agreed to hold a separate hearing on the proposed legislation if the mayor would remove it from the budget. The District’s own chief financial officer had certified that the proposed amendments would have no fiscal ramifications, and we argued that they were therefore not germane to the budget.

Nearly 200 organizations, including service providers, legal aid offices, and other advocacy organizations, signed on. The letter sent a clear message to the D.C. Council that there was broad community support for taking a careful look at these amendments.

Fighting the “Culture of Dependency” Myth

The administration’s official response to the sign-on letter was less than conciliatory. Otero issued a statement on behalf of the administration, arguing that the amendments were necessary to motivate families to leave shelter. She wrote, “Because families in shelter today pay no rent, no utilities, receive most of their meals for free, keep the full amount of their income, including TANF and food stamps, and receive many other supportive services, such as transportation and child care, there is a significant incentive for families to stay in shelter.”

Perhaps what was most disconcerting about the mayor’s proposals and the deputy mayor’s response was that they reflected a shift backward to a view that the causes of poverty and homelessness are poor behavioral choices rather than structural forces beyond an individual family’s immediate control, such as the steep rise in housing costs or the recession. During this period, the term “culture of dependency” became commonplace in policy discussions with the Gray administration. Officials claimed that the “cycle of poverty and dependence” was at the root of D.C.’s growing family-homelessness problem. The idea was that homeless parents were to blame for their own situations, and that if they were not making progress, they were probably not trying hard enough and they shouldn’t be rewarded with continued assistance.

Many proposed changes to the District of Columbia’s policy were based on negative stereotypes and prejudices about people experiencing homelessness.

The deputy mayor’s response also attempted to pit homeless families against homeless individuals without children, a strategy that ultimately failed. She claimed that the administration would save \$5.3 million by passing the amendments, and threatened that if they were not passed, “DHS will be forced to close these [three large singles] shelters outside of hypothermia season, beginning October 1, 2013.”

Both of these statements proved to be major missteps for the administration. First, there was the depiction of D.C. General—the District’s largest family homeless shelter—as a place where families are so comfortable that they have little incentive to leave, which struck us, our clients, and our allies as both laughable and offensive. For years, local media had detailed the poor conditions in which families were living at D.C. General, from overcrowding to heat and elevator outages to mold to inedible meals and more. And many of the “perks” that the letter mentioned, like free transportation and child care, did not exist at the shelter or elsewhere. Otero’s explanation of why there were so many families left at the shelter was based on harmful myths rather than the reality of the affordable-housing crisis and suppressed wages in the District. When families at D.C. General learned of the deputy mayor’s characterization of them, they began to organize and became committed to making sure their side of the story was heard.

Similarly, homeless individuals without children were tired of being threatened and pitted against families. The homeless advocacy group SHARC (Shelter, Housing and Respectful Change) began organizing shelter residents to attend meetings and rallies with the message that they both supported families and opposed shelter closures.

At the large hearing on the Budget Support Act a week after the sign-on letter was sent, a group of parents staying at the D.C. General shelter, several with kids in tow, read a statement of opposition to the proposed legislation on behalf of families at the shelter. They testified that they had not been afforded an opportunity to weigh in meaningfully on proposed changes to the law that would directly affect them, and they challenged the negative stereotypes on which the changes were based. The mothers insisted that families had every incentive to leave the shelter, but that many were encountering obstacles for reasons that were out of their control. They implored the council to remove the proposals from the budget and to invest in affordable-housing programs as a real solution to the families' plight.

Councilmembers seemed sympathetic, and those whom we had already briefed about our concerns asked the mayor's budget director pointed questions about why the amendments had been put in the budget when D.C.'s chief financial officer had certified that they had no budgetary impact.

The following Monday, the D.C. Council voted to remove the mayor's proposal from the Budget Support Act. Councilmember Graham introduced it as stand-alone legislation—Bill 20-0281, the "Homeless Services Reform Amendment Act of 2013." He announced that a hearing on the bill would be held in early June.

Mobilizing the Community

As a community, we had won a more open and transparent legislative process via a public hearing, but we had no time to celebrate, because the bill was still on a fast track under mayoral pressure. Along with some key partners, we continued our outreach to people who were homeless or in supportive-housing programs to inform them of the key provisions of the amendments. We encouraged them to voice their concerns via the upcoming June hearing and visits to the D.C. Council.

At an open informational session a week before the scheduled public hearing, we shared the Legal Clinic's analysis of each proposed amendment, heard additional concerns about the substance of the amendments from the perspective of service

providers and affected community members, and, together, developed a strategy.

At the June 3 hearing, which lasted for ten hours, more than 60 public witnesses testified against the bill and offered alternatives to the proposals.

The affected community in particular came out in force. Representatives of SHARC were very vocal and persuasive. Their message was clear: the proposals did nothing to solve homelessness and, worse, were based on unfounded stereotypes about people who are homeless, such as that people are poor because they don't know how to manage their money. The message was one we had all espoused, but it had added resonance coming from them.

Most advocates, providers, and community members testified that the amendments should be withdrawn completely—that the proposed law would hurt, not help, people experiencing homelessness. Some testified that the underlying assumptions and premises of the proposals were flawed. Experts noted that some provisions violated basic constitutional due-process protections and federal antidiscrimination laws. For instance, the section proposing termination of tenants for stays in hospitals or institutions would have violated the civil rights of tenants with disabilities. (This legal testimony prompted Councilmember Graham to request that the District's attorney general, Irv Nathan, look into the constitutionality and legality of some of the proposed bill's provisions.)

A community came together quickly to stop a local government from infringing on the rights of its most vulnerable residents.

The administration had made its own efforts to mobilize providers to support the bill at the hearing but had failed to educate them adequately on details of the provisions. For instance, several providers testified that escrow programs were helpful and therefore important to the residents of their shelters or housing programs. But upon further questioning, they admitted that they were in favor of escrow programs only if they were voluntary, and that they would not expel people from their programs for missing escrow payments, as the proposed amendment stipulated.

The public pressure worked. After the hearing, we were approached by representatives of the administration about setting up a meeting to explore whether there was any room for agreement between the two sides. A series of meetings with the D.C. Department of Human Services ensued, and large parts of the bill were dropped. Yet soon we reached an impasse.

We were able to obtain a meeting with the chairman of the D.C. Council, Phil Mendelson, at which we shared our remaining concerns and our impression that the mayor would not budge any further. Chairman Mendelson listened to our specific proposals and suggested that we try once more to reach agreement, intimating that only after significant additional effort on our part to reach an agreement would he intervene in the matter.

The fight could not have been won without the active engagement of families and individuals who would have been directly affected by the regressive proposed policies.

At the final meeting with the deputy mayor, representatives of the Department of Human Services, Councilmember Graham, and members of our coalition, we presented our positions and suggested possible compromises. A SHARC representative spoke eloquently about the hundreds of homeless people he had talked to about the misguided nature of the bill. He asked why, if the mayor was invested in solutions to homelessness, he was proposing only policies that left people out on the street instead of working to create good-paying jobs and affordable housing. The deputy mayor dismissed those comments, stating that there would be no further negotiation and that the mayor was personally committed to seeing the bill, as it stood, pass. The SHARC representative walked out of the meeting, while the rest of us wondered why we were there if no further work was to be done.

The deputy mayor's complete dismissal of the community's concerns and proposals left us free to realign our course in two significant ways. First, we were able to go back to our original positions on the provisions instead of proposing compromise language. Second, we could now report to Chairman Mendelson that we had done our very best to work out a compromise but had found the administration to be unyielding. Probably

noting our good faith efforts, the broad coalition we had amassed, the substantive concerns we had raised, and the positions of D.C. councilmember Graham and other councilmembers, which were more progressive than those of the mayor, the chairman redlined the bill himself and took out or ameliorated every one of the sections with which we still had concerns.

In another stroke of good of luck, three days before the scheduled vote on the bill, the District's June revenue forecast revealed a surplus of \$92.3 million for FY 2014. This disproved the administration's claim that it would have to close singles shelters if the legislation did not pass.

A Triumph of Community Teamwork

The bill that was passed at the June 27 council hearing was a vast improvement over the original. Many of the most punitive sections of the mayor's proposed law were removed entirely from the final version, including the provisional-placement scheme, time limits for housing, and an expanded list of grounds for termination from supportive housing.

Other sections of the original bill were greatly improved. The law now gives the mayor authority to develop a mandatory savings program, but an individual cannot be kicked out of shelter for failing to save money. Similarly, a shelter resident cannot be threatened with termination for failing to accept a rapid-rehousing unit that does not meet his or her household's specific needs. Finally, the section that would have allowed terminations of participants in supportive housing was altered to protect the rights of people with disabilities and to extend the right to return to housing after absences.

This process was an example of the power of communities to safeguard the rights of their most disenfranchised members. At the start of this journey, the administration had the advantage of power, influence, and, at the beginning, control of the message. We faced setbacks along the way, but it was a testament to the strength of our relationships with our allies that we were able to adapt and shift strategies in a timely way. Finally, this fight could not have been won without the active engagement and participation of those residents, both families and individuals, who would have been directly affected by the regressive policies in the mayor's original proposal. ■