



Testimony of
Coalition for the Homeless
and
The Legal Aid Society

on
Oversight: NYPD Subway Diversion Program

presented before

The New York City Council's Committee on General Welfare and Committee on Public Safety

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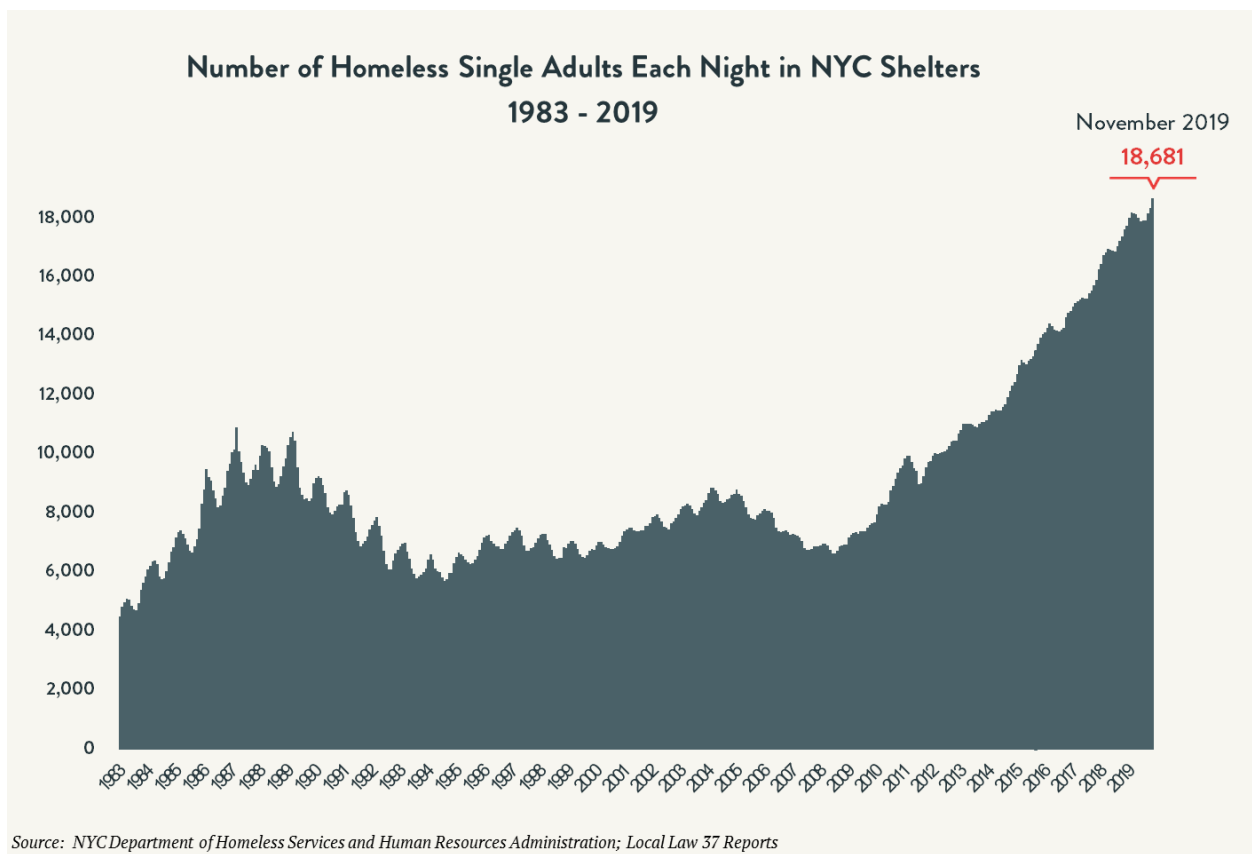
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The Coalition for the Homeless and The Legal Aid Society welcome this opportunity to testify before the New York City Council’s Committee on General Welfare and Committee on Public Safety regarding the subway diversion program.

Record Homelessness in New York City

New York City remains in the midst of the worst homelessness crisis since the Great Depression, with more than 62,000 adults and children sleeping in shelters each night. The number of single adults in NYC shelters reached an all-time record high in November 2019 at 18,681 residents. Thousands more bed down on the streets every single night. Those who end up on the streets often do so after having attempted to access the shelter system but finding that it did not meet their needs, was unsafe for them, or that the bureaucratic intake process was too intrusive or complex for them to manage, among many other reasons.



Mayor de Blasio’s Subway Diversion Program – the Wrong Approach to Addressing Street Homelessness

Mayor de Blasio’s subway diversion program was launched in June 2019, framed as a way to offer services to homeless people in the transit system *in lieu of* contact with the criminal justice system. Unfortunately, this has not turned out to be the case. Based on the first-hand reports of homeless individuals, it appears that the program has served only to increase unwelcome contact with NYPD officers while adding a counterproductive element of coercion to outreach by using summonses to force those individuals to accept transport to a shelter, regardless of whether or not they intend to stay there.

We have witnessed several examples of police explicitly targeting homeless individuals for infractions that are commonly made by riders who are not homeless – including taking up more than one seat or placing their bags on an adjacent seat – removing those individuals from the subway, and in some cases handcuffing them. This is a direct violation of Local Law 71 of 2013, which prohibits bias-based profiling due to a person’s housing status or other protected characteristic.¹

The Coalition for the Homeless, The Legal Aid Society, and other advocates have consistently raised concerns with the subway diversion program since it was first announced last summer. Our fears were confirmed on November 12, 2019, when we received an email from an anonymous group of NYPD Transit Bureau officers who wanted to decry “the blatant discrimination against the homeless in the NYC subway” as a result of the program. In partnership with Human.nyc, we have created a website called **diversioniscoercion.nyc** to disseminate the NYPD officers’ letter along with other documentation we have compiled of the subway diversion program in action. As our documentation shows and the NYPD whistleblowers wrote, “The Diversion Program that is being advertised by the Mayor as helping the homeless can be nothing further from the truth.”

Increased policing is not the answer to homelessness. People who experience these interactions say they find them to be humiliating and unhelpful, at best. Deploying police officers in this manner only serves to increase the mistrust that trained outreach workers work so hard to overcome. And again, the program fails to offer what homeless individuals truly need to get off the streets: permanent affordable housing, with services for those who need them.

The Need for Permanent Housing

There is no criminal justice or policing solution to homelessness in New York City. Homelessness is not a crime. People avoid services and shelters for a variety of legitimate reasons, the most important being negative past experiences in the shelter system and other systems and bureaucracies that have repeatedly failed them. The vast majority of those bedding down in public spaces report a prior stay in the shelter system and contact with outreach teams since leaving the system. Because outreach workers are often unable to offer anything more than another trip to a shelter, their offers are frequently rejected. Reducing the tragedy of people taking makeshift refuge in transit facilities and on trains requires giving them somewhere better to go. Urgent action is needed to expand the supply of permanent housing necessary to finally reduce homelessness. Instead of wasting public resources on this misguided and counterproductive strategy, Mayor de Blasio must immediately expand access to low-barrier safe havens and low-threshold housing, and accelerate the pipeline of supportive housing.

We thank the Council for the opportunity to testify, and we look forward to opportunities for further advocacy to address the needs of all homeless New Yorkers.

¹ See Local Law 71 of 2013:
https://www1.nyc.gov/assets/cchr/downloads/pdf/amendments/Int_1080_2013_bias_profiling.pdf

About The Legal Aid Society and Coalition for the Homeless

The Legal Aid Society: The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal, and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society has performed this role in City, State and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of more than 2,000 attorneys, social workers, paralegals, and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City, the Society provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

The Society's legal program operates three major practices — Civil, Criminal, and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits more than 1.7 million low-income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact.

The Legal Aid Society is uniquely positioned to speak on issues of law and policy as they relate to homeless New Yorkers. The Legal Aid Society is counsel to the Coalition for the Homeless and for homeless women and men in the *Callahan* and *Eldredge* cases. The Legal Aid Society is also counsel in the *McCain/Boston* litigation in which a final judgment requires the provision of lawful shelter to homeless families. The Society, in collaboration with Patterson Belknap Webb & Tyler, LLC, filed *C.W. v. The City of New York*, a federal class action lawsuit on behalf of runaway and homeless youth in New York City. Our goal in litigation is to ensure that the City creates and maintains enough youth-specific beds to meet the needs of *all* youth seeking shelter. The Society, along with institutional plaintiffs Coalition for the Homeless and Center for Independence of the Disabled – NY, settled *Butler v. City of New York* on behalf of all disabled New Yorkers experiencing homelessness.

Coalition for the Homeless: Coalition for the Homeless, founded in 1981, is a not-for-profit advocacy and direct services organization that assists more than 3,500 homeless New Yorkers each day. The Coalition advocates for proven, cost-effective solutions to the crisis of modern homelessness, which is now in its fourth decade. The Coalition also protects the rights of homeless people through litigation involving the right to emergency shelter, the right to vote, the right to reasonable accommodations for those with disabilities, and life-saving housing and services for homeless people living with mental illness and HIV/AIDS.

The Coalition operates 11 direct-services programs that offer vital services to homeless, at-risk, and low-income New Yorkers. These programs also demonstrate effective, long-term solutions and include: Supportive housing for families and individuals living with AIDS; job-training for homeless and formerly homeless women; and permanent housing for formerly homeless families and individuals. Our summer sleep-away camp and after-school program help hundreds of homeless children each year. The Coalition's mobile soup kitchen distributes over 900 nutritious hot meals each night to homeless and hungry New Yorkers on the streets of Manhattan and the Bronx. Finally, our Crisis Intervention Department assists more than 1,000 homeless and at-risk households each month with eviction prevention, individual advocacy, referrals for shelter and emergency food programs, and assistance with public benefits as well as basic necessities such as diapers, formula, work uniforms, and money for medications and groceries.

The Coalition was founded in concert with landmark right to shelter litigation filed on behalf of homeless men and women (*Callahan v. Carey* and *Eldredge v. Koch*) and remains a plaintiff in these now consolidated cases. In 1981, the City and State entered into a consent decree in *Callahan* through which they agreed: "The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter." The *Eldredge* case extended this legal requirement to homeless single women. The *Callahan* consent decree and the *Eldredge* case also guarantee basic standards for shelters for homeless men and women. Pursuant to the decree, the Coalition serves as court-appointed monitor of municipal shelters for homeless adults, and the City has also authorized the Coalition to monitor other facilities serving homeless families. In 2017, the Coalition, fellow institutional plaintiff Center for Independence of the Disabled – New York, and homeless New Yorkers with disabilities were represented by The Legal Aid Society and pro-bono counsel White & Case in the settlement of *Butler v. City of New York*, which is designed to ensure that the right to shelter includes accessible accommodations for those with disabilities, consistent with Federal, State, and local laws.