



S.A.F.E. Bulletin

INTEGRITY ♦ SERVICE ♦ PROFESSIONALISM ♦ VIGILANCE

The purpose of the S.A.F.E. Bulletin is to promote and support best practices and exceptional law enforcement services free from prejudice or favor, with leadership, integrity, and respect.

OCSD HOMELESS ENFORCEMENT STRATEGY

According to the U.S. Department of Housing and Urban Development (HUD) Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, homelessness is defined as, *“An individual or family with a primary nighttime residence that is a public or private place **not designed for or ordinarily used as a regular sleeping accommodation for human beings**, including; a car, park, abandoned building, bus or train station, airport, or camp ground.”*

CASE LAW REGARDING THE CRIMINALIZATION OF HOMELESSNESS

In **Martin v. City of Boise** (9th Cir. 2018) 902 F.3d 1031, the Ninth Circuit Court of Appeals held that the Cruel and Unusual Punishments Clause of the Eighth Amendment precludes the enforcement of a statute or ordinance prohibiting sleeping outside against homeless individuals with no access to a shelter. The Court ruled, *“So long as there is a greater number of homeless individuals in (a jurisdiction) than the number of available beds (in shelters), the jurisdiction cannot prosecute homeless individuals for involuntarily sitting, lying, and sleeping in public.”*

The ruling was simplified as follows: ***“That is, as long as there is no option of sleeping indoors, the government cannot criminalize the indigent, homeless people for sleeping outdoors, on public property.”***

The court noted an exception in footnote 8: *“Naturally, our holding does not cover individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. . . .*

- *Martin v. City of Boise and the Eighth Amendment bars enforcement of a statute or ordinance prohibiting persons from sitting, sleeping or lying on sidewalks or in other public places whenever a shelter bed is **unavailable**.*

OCSD'S MISSION WITH THE HOMELESS

When working with the homeless, the OCSD's mission is to work collaboratively with all other Agencies and Organizations with a focus on OUTREACH to assist the homeless population and provide them with access to available resources and services.

The OCSD has a primary focus on outreach and **will not enforce any law criminalizing a homeless subject for illegal camping or loitering in public when they have no other option**. This does not forbid the OCSD from enforcing non-status violations and enforcement of laws on private property.

CONSIDERATIONS PRIOR TO ARREST OR CITATION FOR ANTI-CAMPING AND ANTI-LOITERING LAWS IN PUBLIC

Prior to issuing an in-field cite and release or making a custodial arrest for an anti-camping or anti-



loitering law, the deputy shall verify there is a shelter bed available to the intended arrestee and that the intended arrestee refuses the available shelter bed. To locate an available shelter bed, the deputy shall use the Health Care Agency, or appropriate service provider for the area or city where the subject is contacted. The deputy shall appropriately document the availability of the shelter bed and the intended arrestee's refusal to accept the shelter bed in his or her report.

The report shall list where the available bed is and list as a witness the person the deputy contacted to confirm the availability of the bed. In addition to recording your conversation with the intended arrestee, having your cell phone on speaker and documenting the conversation with the witness on your PVS or BWC is advisable.

➤ IMPORTANT CONSIDERATIONS

- Do not allow any ambiguity in *Martin v. City of Boise* to confuse you. **The OCSD will not enforce anti-camping or anti-loitering laws on public property against a homeless person when there is no shelter bed available for the person.**
- Remember these types of crimes are misdemeanors and shall be an in-field cite and release unless the arresting deputy can articulate one or more of the exceptions pursuant to CPC 853.6, subdivision (I), that allow a physical arrest for a misdemeanor.