

Homeless in University Cities

Why is Homelessness a Problem in [Some] University Cities?

- High cost of living
- Housing shortages
- Availability of Services
- Perception of Tolerance

Martin v. Boise

- Boise Ordinances prohibited:
  - Using streets, sidewalks, parks, or public places at any time as camping places [i.e. the "use of public property as temporary or permanent dwelling"], and
  - Occupying, lodging, or sleeping in any building, structure (public or private), or public place, without permission of the owner.

Martin v. Boise

- Background – Homeless PIT Count
  - 867 Homeless Individuals
  - 125 Unsheltered

Martin v. Boise

- Plaintiffs – six homeless individuals
- Suit sought damages and declaratory/injunctive relief
- District Court grants summary judgment
- 9th Circuit reverses, holding that enforcement of two ordinances that prohibited sleeping outside on public property against homeless individuals lacking access to alternative shelter was unconstitutional

Martin v. Boise

- Homeless Shelters
  - "Sanctuary" – men, women & children – 96 beds + beds for families
    - Generally no barrier
  - Boise Rescue Mission (BRM) Shelters
    - "City Light Home" – women and children only
    - "River of Life Rescue Mission" – men only

Martin v. Boise

- BRM Programs
  - Emergency Services Program (ESP) –
    - Up to 30 days at CLM and 17 days at RLRM – then prohibited from returning for 30 days
  - New Life Discipleship Program (NLDP) -
    - "an intensive, Christ-based residential recovery program" of which "religious study was the very essence."

Martin v. Boise

- Total available shelter:
  - 354 beds
  - 92 overflow mats.”

Martin v. Boise

- After Complaint filed, Boise PD promulgates new "special order"
  - Prohibiting enforcement when shelters had no overnight spaces
- While special order pending
  - Sanctuary reported full approx. 40% of nights
  - BRM shelters never reported as full

Martin v. Boise

- 9th Circuit Focuses on barriers to shelter, notwithstanding the availability of shelter:
  - Occupancy limits
  - Mandatory religious component result in "improper coercion" under Establishment Clause

Martin v. Boise – Eighth Amendment

- Three Limitions
  - Types of punishment
  - Punishments that are "grossly disproportionate" to severity of crime
  - Substantive limitations on what may be punished as criminal conduct

Martin v. Boise – Supreme Court Precedent

- *Robinson v. California* (1962) 370 U.S. 660, a California statute which criminalized the "status" of narcotic addiction was found invalid under the Cruel and Unusual Punishments Clause.
- *Martin* decision found noteworthy – that narcotics addition could be an illness or disease, "which may be contracted innocently or involuntarily."

Martin v. Boise – Supreme Court Precedent

- *Powell v. Texas* (1968) 392 U.S. 514,
- Supreme Court distinguishes Robinson - statute criminalized not alcoholism, arguably a disease or affliction, but the conduct of appearing in public while intoxicated.
- Justice White concurrence: with result only acknowledged that, for certain homeless individuals, public drunkenness might be unavoidable.
- "For all practical purposes the public streets may be home for these unfortunates, not because their disease compels them to be there, but because, drunk or sober, they have no place else to go and no place else to be when they are drinking... ll As applied to them this statute is in effect a law which bans a single act for which they may not be convicted under the Eighth Amendment – the act of getting drunk." (*Powell, supra,* at 551.)
- Powell, supra, at 567.

Martin v. Boise – 9th Circuit Precedent

- *Jones v. City of Los Angeles* (2006) 444 F.3d 1118
  - 9th Circuit panel holds that enforcement of the City of Los Angeles' ordinance banning sitting, lying, or sleeping in streets, sidewalks, and public ways – against homeless individuals who cannot obtain shelter – violated the Cruel and Unusual Punishments Clause.
  - Decision vacated by settlement

Martin v. Boise

- "[T]he the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one's status or being." *Robinson v. California* (1962) 370 U.S. 660 (invalidating California statute classifying narcotic addition as criminal offense.
- "This principle compels the conclusion that the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter." *Martin v. Boise*, 902 F.3d at 1048.

Martin v Boise (9th Cir. 2018) 902 F.3d 1031 – Narrowing Construction

- "Our holding is a narrow one … [W]e in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place."
  - Takeaway: City is not obligated to furnish shelter to homeless individuals, and may enforce camping restrictions to some undefined extent.

Martin v. Boise

- “We hold only that 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 … That is, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter."
  - **Question: What about transitional encampments?**

Martin v Boise (9th Cir. 2018) 902 F.3d 1031 – Narrowing Construction

- [O]ur 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.
  - Takeaway: City may be able to enforce an ordinance prohibiting camping on public property against a homeless person who is offered suitable alternative shelter but chooses not to avail themselves of it.

Martin v Boise (9th Cir. 2018) 902 F.3d 1031 – Narrowing Construction

- Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible.
  - Takeaway: City *may* be able to enforce an ordinance prohibiting camping on public property in some particular locations against a homeless person so long as it is not enforced generally.

Martin v Boise (9th Cir. 2018) 902 F.3d 1031 – Narrowing Construction

"So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the "universal and unavoidable consequences of being human" in the way the ordinance prescribes." Id. at 1136.

- Takeaway: What about barriers to entry?
  - Dogs
  - Heroin/meth

Post-*Martin v. Boise* cases

- ***Manning v. Caldwell*, 930 F.3d 264 (4th Cir. 2019)**
- Virginia statute making it a criminal offense for "habitual drunkards" from possessing, consuming or purchasing alcohol violates 8th Amendment
- "The only other circuit to squarely confront the issue has arrived at the same conclusion we reach here. See Martin v. City of Boise [citation omitted]."

Post-*Martin v. Boise* cases

- ***Carter v. Dallas Police Dept.* 2020 U.S. Dist. LEXIS 50856 (USDC Northern Dist. of Texas, Dallas Division (5th Circuit), 2020)**
- In this District Court decision, Plaintiff's action seeking declaratory relief alleged that Dallas PD violated his First, Eighth, and Fourteenth Amendment rights by threatening to arrest him for trespassing when he was sleeping on a bench at Dallas Love Field Airport. Citing *Martin v. Boise,* he also claimed Defendants' actions violated his Eighth Amendment right to be free from cruel and unusual punishment and his Fourteenth Amendment rights.
- Citing contradictory Fifth Circuit precedent in *Johnson v. City of Dallas* 61 F.3d 442 (5th Cir. 1995), the District Court rejected Carter's challenge based on lack of standing.
- Holding of *Johnson*: *plaintiff who has not been arrested or prosecuted under an ordinance lacks standing to raise an Eighth Amendment challenge to the ordinance. Johnson, 61 F.3d at 444*.

Post-*Martin v. Boise* cases

- ***Phillips v. City of Cincinnati*, 2019 U.S. Dist. LEXIS 89421 (6th Cir. 2019)**
- Citing *Martin,* District Court opinion states:
- "As this Court has recognized, "the County Court's August 7, 2018 TRO effectively made being homeless in most of Cincinnati illegal. If Plaintiff [or others similarly situated] can show that there is not a bed available for [them] in Cincinnati shelters, then [they] can likely succeed on [the] Eighth Amendment claim."

Post-*Martin v. Boise* cases

- ***Frank v. City of St. Louis*, 2020 U.S. Dist. LEXIS 77525 (8th Circuit)**
- City clears several city block area of homeless encampments
- Court finds City's action was ""expressly limited to only those encampments located near Market Street and Chestnut Street in downtown St. Louis. …
- Court finds that St. Louis was "therefore not criminalizing the state of being homeless or its unavoidable consequences, such as sleeping in public. At most, the City is criminalizing sleeping in public in a particular location."

Post-*Martin v. Boise* cases

- ***Shipp v. Schaaf*, 370 F.Supp. 3d 1033 (USDC Northern Dist. of California) (9th Cir. 2019)**
- *Martin* not applicable to City action to temporarily clear homeless encampments for cleanup of rights of way, parks and city-owned property

Post-*Martin v. Boise* cases

- ***LA All. for Human Rights v. City of Los Angeles*, 2020 U.S. Dist. LEXIS 85999 (USDC Central Dist. of California)**
- Defendants City of Los Angeles and County of Los Angeles ordered to "provide shelter—or alternative housing options, such as safe parking sites, or hotel and motel rooms contracted under Project Roomkey—to individuals experiencing homelessness."

Legislative Approaches to Homelessness

- Communities Often Demand Legislative Action to Address the Negative Externalities Associated with Homelessness
- Legislative Bodies Respond
- Panhandling Restrictions
- Camping Prohibitions
- Sit/Lie
- Remaining on Medians
- Right to Rest Legislation

Panhandling Restrictions

- First Amendment Restrictions
- Panhandling is Speech
- *Gresham v. Peterson*, 225 F.3d 899 (7th Cir. 2000)
- Clatterbuck v. City of Charlottesville, 708 F.3d 549, 551 (4th Cir. 2013)
- *Speet v. Schuette*, 726 F.3d 867, 876 (6th Cir. 2013)
- Aggressive panhandling ordinance probably okay.
- Area limitations
- Place limitations

Sit/Lit Ordinances

- *Roulette v. City of Seattle*, 97 F.3d 300 (9th Cir. 1996)
- Portland, OR (Portland State)
  - *Anderson v. City of Portland*, 2009 U.S. Dist. LEXIS 67519 (D. Or. July 30, 2009)
- Seattle, WA (University of Washington)
- San Francisco, CA (University of San Francisco)
- Honolulu, HI (University of Hawaii)
- Durango, CO (Fort Lewis College)
- Salem, OR (Willamette University)
- Santa Barbara, CA (UC Santa Barbara)
- Austin, TX (University of Texas)

Camping Restrictions

- Limited Viability after *Martin*
  - *Sufficient Shelter*
  - *No application if a person is not interested in shelter*
  - *No other circuit has followed*
- Boulder's Ordinance has been upheld four times.
- Many combined with sit/lie

Cleanups/Sweeps – Some Cases

- *Cash v. Hamilton Cty. Dep't of Adult Prob.*, 388 F.3d 539 (6th Cir. 2004)
- *Pottinger v. Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992)
- *Smith v. City of Corvallis*, No. 6:14-cv-01382-MC, 2016 U.S. Dist. LEXIS 73205 (D. Or. June 6, 2016)(dismissing 8th Amendment Claim – allowing other claims to stand)
- *Lyall v. City of Denver*, Civil Action No. 16-cv-2155-WJM-CBS, 2018 U.S. Dist. LEXIS 48846 (D. Colo. Mar. 26, 2018)(denying cross motions for summary judgment)
- *Kincaid v. City of Fresno*, No. 1:06-cv-1445 OWW SMS, 2006 U.S. Dist. LEXIS 93464 (E.D. Cal. Dec. 8, 2006)(granting preliminary injuction)
- *See v. City of Fort Wayne*, No. 1:16-cv-00105-JVB-SLC, 2016 U.S. Dist. LEXIS 185598 (N.D. Ind. June 16, 2016)(granting, in part, preliminary injunction)







Cleanup/Sweeps - Issues

- Notice
- Opportunity for Shelter
- Services
- Storage/Destruction of Property
- Hazardous waste/Public health risk

Remaining on Medians

- *Cutting v. City of Portland*, 802 F.3d 79 (1st Cir. 2015)(prohibition on standing on medians without regard to size violated the first amendment)
- *Evans v. Sandy City*, 944 F.3d 847 (10th Cir. 2019)(upholding a limitation on standing on medians of less than 36 inches)
- February 2020 – Boulder Ordinance 8382 – changed exemption from 30 feet to 36 inches

Right to Rest/Homeless Bill of Rights

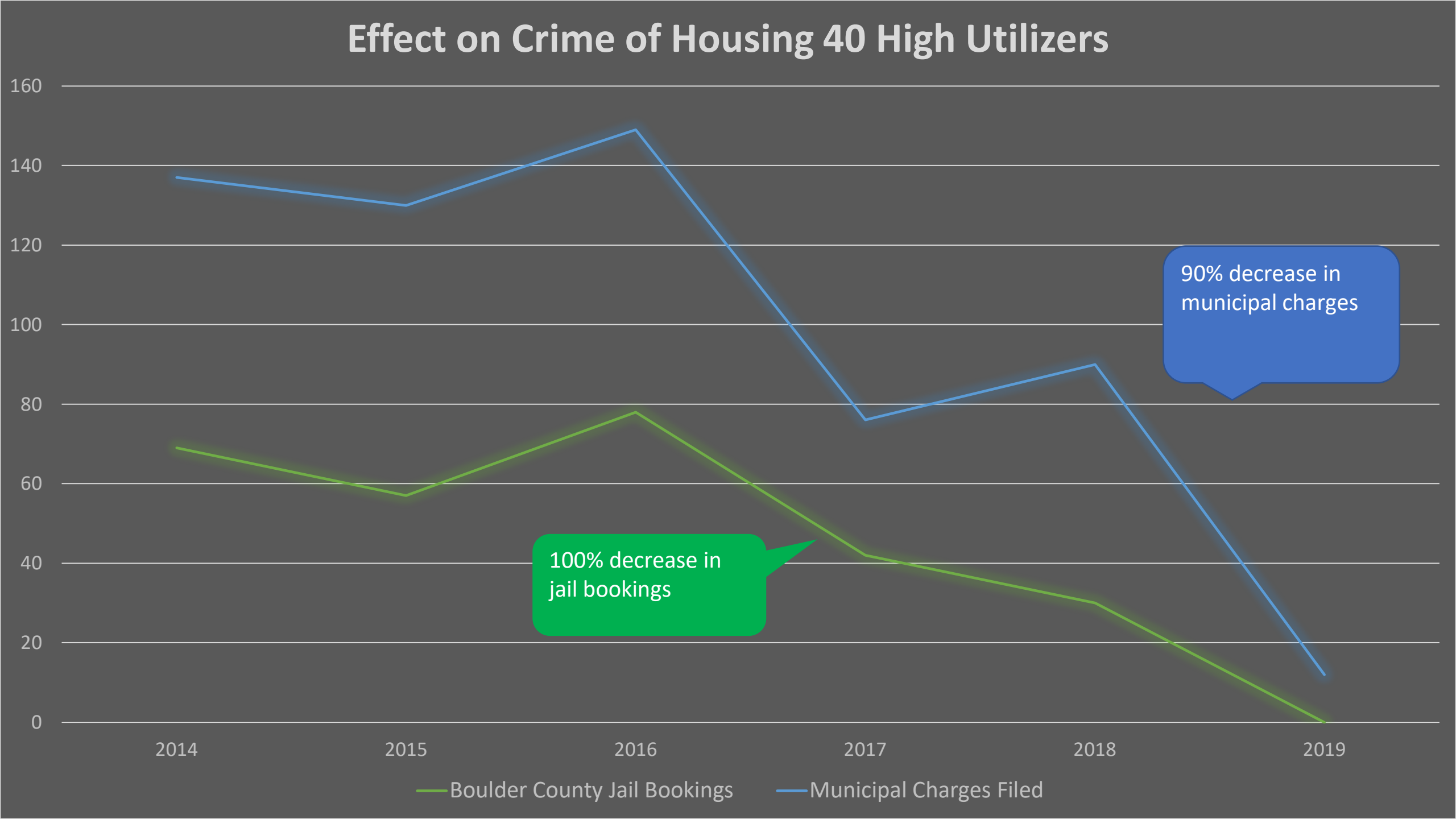
Adopted:

- Rhode Island
- Connecticut
- Illinois

Proposed in California, Delaware, Minnesota, Missouri, Oregon, Tennessee, and Vermont

Taking Homelessness out of the Criminal Justice System

- Housing
- Social Service Model Reponses
- Shelter conditioned on accessing services
- Limiting services to individuals with ties to the community


Effect on Crime of Housing 40 High Utilizers
160
140
120
100
80
60
40
20
0
2014
2015
2016
2017
2018
2019
90% decrease in municipal charges
100% decrease in jail bookings
Boulder County Jail Bookings
Municipal Charges Filed

Questions?

- Tony Condotti, City Attorney
- City of Santa Cruz, CA

- Tom Carr, City Attorney
- City of Boulder, CO