

Water Shutoffs

No one should lose access to water because of an inability to pay a water bill. Utilities often claim that shutoffs are a necessary collection tool to protect utility revenues and to prevent unscrupulous people from “free riding” on paying customers. However, studies ranging from the 1970s to recent decades have demonstrated that the overwhelming majority of households pay their utility bills when they are able.¹ The truth is that when people don’t pay, it is usually because the bills are simply unaffordable.

There is no nationwide reporting on water shutoffs for nonpayment. But multiple studies have documented thousands or tens of thousands of shutoffs in individual cities around the country in a given year.² In one study, among the 73 utilities around the country from which data were obtained in 2016, the authors tallied nearly 570,000 residential shutoffs.³

Disconnecting service to people who can’t afford to pay for water is both cruel and counterproductive. Shutoffs can have severe consequences, including harm to individual and community health, psychological stress, and loss of housing or even of child custody.⁴ Struggling households will often sacrifice other needs to keep the water on, becoming trapped in a cycle of juggling necessities to stay connected to water.⁵ As a result, shutoffs often exacerbate whatever crisis prompted a household to experience payment difficulties in the first place, making it *less* likely that they can get back on track.

This module focuses on policies that place limits and conditions on a utility’s ability to disconnect residential

service due to nonpayment. The programs and policies below may not be available from every water utility but could suggest areas where advocates can seek change, either at the local level or through state legislation.

Critically, protections from shutoffs—whether through limits on disconnection of individual customers or a utility-wide moratorium—should be accompanied by programs that address water debt and unaffordable bills. Simply prohibiting a utility from disconnecting water service does not eliminate a customer’s financial responsibility for water bills. Further, in households where unaffordable water bills are an ongoing problem, there is a high risk of falling behind again, once an immediate shutoff crisis is past.

Therefore, the restrictions on shutoffs covered in this module should be part of a holistic solution that minimizes the chances that households will be confronted with water bills that they cannot afford. The modules on Water Debt, Affordability and Assistance Programs, Equitable Water Rates, and Water Efficiency and Plumbing Repair Assistance address key components of such an approach.

SOLUTIONS AND TOOLS EXPLORED IN THIS MODULE:

- Combining shutoff protections with bill relief for those unable to pay
- Establishing shutoff protections for vulnerable individuals and protections based on extreme temperature, season, time of day, or day of the week
- Prohibiting shutoffs while a billing dispute or application for assistance is pending
- Adopting temporary shutoff moratoriums to address problems facing a large number of customers
- Ensuring adequate notice and opportunity to contest a bill before a shutoff
- Eliminating or limiting punitive fees and other barriers to reconnection
- Preventing shutoffs when water bills are combined with billing for other city services
- Rejecting the use of flow limiters as an alternative to shutoffs

RISKS TO THE HOUSEHOLD FROM WATER SHUTOFFS

Relying on shutoffs as a collection tool creates serious risks for households. Interruptions to water access can significantly disrupt people's home and work life, impacting their ability to care and provide for themselves and their dependents. Individuals need safe drinking water and sewer service to prepare meals and practice basic hygiene. Some also need water for the safe operation of medical devices.⁶

Some utilities impose additional charges when a household is disconnected, such as late fees, interest, disconnection and reconnection fees, or deposit requirements.⁷ Disconnection can also result in other costs, such as the need to buy expensive bottled water. These added fees and costs can increase the household's debt and exacerbate their financial distress, making it even harder to restore and maintain service after a shutoff.

There are more severe risks from being disconnected for an extended period of time. In some cases, a water shutoff can lead to loss of housing. Having running water and sewer service is considered essential for a home to be habitable—safe and fit to live in—as these services are necessary for hygiene and sanitation. Homes without water for long periods of time are at risk for building code violations and possibly condemnation.⁸ For tenants, a shutoff can lead to eviction if the lease terms require the tenant to maintain water service.⁹

Moreover, when a shutoff causes housing instability, it can harm worker productivity and disrupt schooling for students.¹⁰ Prolonged shutoffs can also lead to



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A protester at the Detroit March for Justice in Detroit, Michigan, on October 2, 2015.

structural damage to water pipes or water quality dangers from bacterial buildup in the pipes.¹¹ In some cases, disconnection of water service can also lead to loss of heat where there is no water for boilers and radiators.

Shutoffs can also lead to loss of child custody. Social services may be called in regarding the well-being of young children if a home is considered unsafe due to lack of running water or sewer service.¹² Further, in some places, anyone reconnecting their home to service without authorization can face felony criminal charges.¹³

QUESTIONS TO CONSIDER:

As you develop a water affordability advocacy plan, answering the following questions may help you identify issues to address concerning shutoffs for nonpayment:

- How does your utility notify customers of a pending shutoff for nonpayment, procedures to avoid disconnection, and the process for disputing a bill? Is this notice adequate? Is there enough time to line up emergency assistance or work out a payment arrangement to avoid a shutoff? Is there a fair process for disputing a bill?
- Does your utility have robust affordability or assistance and debt relief programs to prevent shutoffs for households unable to afford their bills?
- Does your utility have special shutoff protections if members of a household are ill, elderly, survivors of domestic violence, or minors? Does it have shutoff protections based on extreme temperature or season (e.g., winter)? Does it prohibit shutoffs on or before weekends or holidays?
- Which communities, households, and neighborhoods are being most impacted by shutoffs? How are they being impacted?
- Does your utility delay enforcing a shutoff when a customer has a good-faith dispute over a bill, or when an application for assistance is pending?
- Does your utility impose punitive fees or deposit requirements that make it hard for households to get reconnected?
- Does your utility use flow limiters in place of shutoffs?
- Are there state laws that provide rules or requirements concerning any of the issues above? If so, do they apply equally to all water utilities, or only to those regulated by a state utility commission?

PROTECTIONS FROM SHUTOFFS

Some utilities have rules or policies to protect against shutoffs under certain circumstances, such as when disconnecting service would cause a significant risk to the household or the public. These rules (if they exist) may have been created by state legislators or regulators, by local officials (for example, through local legislation or mayoral executive order), or by the utility itself. The text box below provides some tips for researching the local rules.

FINDING A WATER UTILITY'S CONSUMER PROTECTION RULES

Water and sewer utilities should have their service rules published somewhere. As discussed in the Accountability and Participation in Decision Making module, how water and sewer systems are governed can differ from city to city within the same state. So figuring out which body of government has authority over a water or sewer utility can take some research.

The first place to look for a water or sewer utility's written customer protection rules is on the utility's website; it may appear, for example, in the billing or customer service section. For some utilities, particularly those regulated by state utility commissions, these rules may be included as part of their tariff, the legal document that sets out the utility's rates and conditions of service; this should also be available online. In the tariff, look for a section titled "General Rules," "Terms and Conditions," or something similar.

If the water utility is run by the municipality, the customer protection rules may also be in a local ordinance or regulation. You may be able to find the rules by contacting a local elected official's constituent services.

Only a small percentage of water utilities are privately owned, and many of these are regulated by a state utility commission. The commission's website may have links to the rules for commission-regulated water utilities and may also have a summary of those utilities' consumer protection rules. The commission's consumer affairs division should also be able to direct you to the water service rules. A legal services attorney or the state's utility consumer advocate's office (if one exists) may also be able to help you find the water or sewer service consumer protection rules.

Very few states have uniform shutoff protections that apply to all water utilities. California's Water Shutoff Protection Act establishes baseline safeguards applicable to all water systems above a certain size; utility commission-regulated systems in California are subject to additional commission rules. California advocates are currently advancing legislation to strengthen the act. (For details on the California law and proposed amendment, see the text box below, "California's Water Shutoff Protection Act.") In Michigan, advocates are pushing for their own Water Shutoff Protection Act to provide uniform statewide shutoff safeguards.¹⁴

In most states, the state utility commission is a source of uniform statewide rules for utilities under their jurisdiction, which are predominantly privately owned utilities. However, the majority of each state's water utilities are beyond the reach of the utility commission's rules. (There are exceptions, such as in Wisconsin, where the state utility commission regulates virtually all water utilities.)¹⁵

Even where shutoff rules exist, they may not apply to all households. For example, rules that apply only to utility "customers" may not protect renters whose landlord pays the water bill. (Issues related to renters are discussed further in the Protections and Support for Renters module.)

Some common shutoff protections to look for—or advocate for—in utility rules or state or local law are summarized below. Endnotes include specific state or local examples (although the authors have not investigated how effectively the rules are implemented in each instance).¹⁶ California's Water Shutoff Protection Act also includes some of these protections.

- **Shutoff protections combined with bill relief for low-income households and others unable to pay:**

A robust safety net is needed to prevent shutoffs when people *cannot afford* their water bills. This requires not only restrictions on shutoffs based on inability to pay, but also the adoption of programs and policies that provide effective debt relief and ensure that future bills are affordable. (For extensive discussion of options, see the modules on Water Debt, Affordability and Assistance Programs, Equitable Water Rates, and Water Efficiency and Plumbing Repair Assistance.) A shutoff moratorium could provide immediate relief to struggling households while these programs are being established.

There are many ways to structure shutoff protection rules, but these protections alone do not eliminate a customer's debt or reduce future water bills.

- **Special shutoff protections for vulnerable individuals:** If someone in the home is very sick or elderly, is a domestic violence survivor, has a disability, or has young children, there may be special rules prohibiting shutoffs.¹⁷ Even where there are no rules, the utility may be persuaded to hold off on disconnecting water service in order to protect the health and safety of the residents. If there are individuals in the home who have special medical equipment that requires safe water to operate, it's a good idea to let the utility know right away.¹⁸ Rules that provide shutoff protection based on medical need are very common for utilities regulated by state utility commissions; such rules typically require verification from a qualified medical professional that a resident's health and safety will be at risk if the water is disconnected.¹⁹ A recent report by the National Consumer Law Center provides detailed analysis and recommendations concerning serious illness protections for utility customers.²⁰
- **Extreme temperature shutoff protections:** Rules that prohibit shutoffs during extremely hot or cold weather are common for electricity and natural gas service. However, shutoffs of water service can also pose risks in hot weather (e.g., dehydration) or cold weather (e.g., lack of heat when heating systems depend on hot water or steam). The City of Jackson, Mississippi, for example, will not disconnect water service for nonpayment when the National Weather Service for Jackson has issued a freeze warning or excessive heat warning as of 8:00 AM on the day of the scheduled disconnection.²¹
- **Seasonal shutoff moratoriums.** Electric and gas utilities are often prohibited from shutting off service to lower-income customers during the winter. Few states offer comparable protection for water service, even though some homes have heating systems that rely on water. States and cities that offer winter shutoff protections include New Jersey (for all water utilities), Pennsylvania (for utilities regulated by the state utility commission), and Philadelphia and Pittsburgh (for municipal water utilities).²²
- **Limitations on times of day and days of the week when water shutoffs can occur:** Terminating utility service when the utility's billing office isn't open or right before it closes—such as right before closing time or before weekends or holidays—is unfair and potentially dangerous because it does not allow the customer time to make a payment and get reconnected. This can lead to a customer going without water for an extended period despite willingness and ability to pay. It is common for state utility commissions to have rules limiting when a water shutoff can occur, which apply to utilities subject to commission regulation.²³ Municipal utilities, particularly the larger ones, may have similar rules.²⁴
- **Protection from shutoffs if there is a good-faith dispute over a bill:** When a customer has contacted the utility with a good-faith dispute over a bill, the best practice is to delay disconnection while the dispute is being resolved.²⁵ Most rules prohibiting shutoffs in the case of a dispute require that the customer initiate contact with the utility and that the parts of the bill not in dispute be paid. (See the Billing Problems and Dispute Resolution module for additional discussion.)
- **Protections from shutoffs while customers are seeking assistance and following receipt of assistance:** State laws and utility policies should prohibit shutoffs while an application to enroll in an affordability, assistance, or debt relief program is pending; a law passed in New Jersey provides that protection on a temporary basis as the state transitions out of a COVID-19 shutoff moratorium.²⁶ Further, affordability or assistance program rules could provide a customer with shutoff protection for a period of time after the customer initially receives assistance. For example, federal guidelines for the temporary Low Income Household Water Assistance Program (LIHWAP) recommend that participating utilities provide this protection.²⁷
- **Temporary shutoff moratoriums:** Sometimes when there is a widespread problem that poses a risk of disconnection for a large number of customers, a utility or government entity will enact a ban on shutoffs for a period of time. Many people associate moratoriums with the COVID-19 pandemic, when temporary shutoff bans were enacted in many states and cities.²⁸ However, governments and utilities have imposed temporary moratoriums for other reasons as well. For example, DeKalb County, Georgia agreed to suspend shutoffs after a massive community outcry around erroneous and outrageously high water bills affecting thousands of customers.²⁹ Advocating for a moratorium can be an effective way to reduce the immediate harms caused by system-wide problems. However, customers are still responsible for their water bills, and water debt can continue to grow during periods when shutoffs are suspended, posing the risk of widespread shutoffs when the moratorium ends. (For more on dealing with water debt, see the Water Debt module.)

CALIFORNIA'S WATER SHUTOFF PROTECTION ACT

California's Water Shutoff Protection Act was passed in 2018 and took effect in February 2020. It requires all water utilities with at least 200 service connections to provide certain minimum consumer protections.³⁰ In the 2021–2022 legislative session, advocates are advancing legislation to strengthen the protections and extend the requirements to smaller systems.³¹ Below are highlights of the existing law and (in italics) the pending bill to strengthen it. (The summary of proposed amendments is based on the bill as introduced. The state legislature's website includes changes made as the bill advances through various committee hearings.)³²

Baseline requirements for local shutoff policies and debt

repayment: Utilities must have a written policy on disconnection of service for nonpayment, translated into certain languages, and posted online and/or available upon request. The local policy must include:

- A plan for deferred or reduced payments.
- Alternative payment schedules.
- A formal mechanism for a customer to contest or appeal a bill.
- A telephone number to contact to discuss options to avoid a shutoff.
- *Proposed amendment: Require utilities to develop arrearage management plans to forgive all debt over a 12-month period if the customer stays current on new bills.*

Minimum number of days overdue before shutoff:

- Shutoff is prohibited unless customer's bill is at least 60 days overdue.
- *Proposed amendment: Prohibit shutoff unless customer's bill is at least 120 days overdue and arrears are at least \$400.*

Disconnection protection where there is combined billing for water services and non-water services or fees:

- *Proposed amendment: Prohibit utilities from disconnecting water service if the customer has paid an amount equal to or greater than the monthly charge for water service.*

Minimum notice requirements:

- At least 7 days before disconnection, the utility must call or provide written notice of the pending disconnection and must explain the opportunities to prevent the shutoff, the process to have a water bill reviewed, and how to appeal a bill. If the company cannot contact the customer by phone or mail, the utility must visit the customer or leave a written notice in a place where it is likely to be seen by the customer.
- If a water customer is disconnected, the utility must explain how the customer can be reconnected.

Protection while billing dispute is pending: If a customer appeals a water bill, the utility is forbidden from shutting off the water while the appeal is going on.

Serious illness protection: A disconnection is prohibited if it causes a serious threat to a resident's health.

Limitations on fees:

- Low-income customers' reconnection fees are capped at \$50 during business hours and \$150 if reconnection is outside of normal business hours, but fees cannot exceed the actual cost to the utility.
- Low-income customers can have interest charges waived once every 12 months.
- *Proposed amendment: Require utilities to waive disconnection and reconnection fees for low-income customers.*

Protections for tenants and other non-account-holders receiving service:

- For rental housing units receiving individually metered service, where the landlord is the named account holder, utilities must provide at least 10 days' advance written notice to tenants before shutoff and a process for tenants to take over the water service account.
- *Proposed amendment: Add protections for households that reside in a master-metered multifamily building or mobile home park when the owner is in arrears on the water and sewer bill.*

Annual reporting:

- Utilities must report the annual number of disconnections for nonpayment.
- *Proposed amendment: Require reporting of annual number of disconnections for nonpayment for each zip code served, and add the following data points to the annual report: data on the number of accounts for which water service was restored within 36 hours, 36 hours–7 days, and more than 7 days after disconnection; the number of accounts in arrears and the median amount of the debt; and the number of customers enrolled in a water affordability program.*

State enforcement:

- The California State Water Resources Control Board (State Water Board) has enforcement authority and can impose fines up to \$1,000 per day for violations.³³
- *Proposed amendment: Require the State Water Board to assist small water systems with compliance.*
- *Proposed amendment: Require state utility commission to establish a streamlined process for investor-owned electric and gas utilities to share data with water utilities to help identify customers enrolled in low-income utility assistance programs.*

WHEN A LARGE NUMBER OF CUSTOMERS ARE FACING SHUTOFFS

Communities experiencing a large number of shutoffs for nonpayment may want to consider organizing to stop these shutoffs while seeking system-wide changes to fix the underlying root cause of the shutoffs. Shutoff data can be used to demonstrate a pattern of different shutoff rates based on income and race.³⁴ (See also the module on Data Collection and Transparency.)

CUSTOMERS MUST RECEIVE ADEQUATE NOTICE AND HAVE AN OPPORTUNITY TO CONTEST A BILL BEFORE A SHUTOFF

Having clear, fair, and accessible processes for disputing a water bill is a critical consumer protection.³⁵ Furthermore, under the Due Process Clause of the U.S. Constitution, users of publicly owned water utilities (e.g., municipal utilities) are entitled to advance notice of a shutoff and an opportunity to dispute the charges.³⁶ (See the module on Billing Problems and Dispute Resolution for further discussion about this essential consumer protection.)

THE EMERGENCY LOW-INCOME HOUSEHOLD WATER ASSISTANCE PROGRAM (LIHWAP)

The emergency federal LIHWAP program can help households at risk of shutoff or who need to be reconnected to water. This program is temporary and has limited funding, but for those able to receive assistance, it can pay off water debt and help households get reconnected to water.³⁷ See the module on Affordability and Assistance Programs for more information.

RECONNECTING SERVICE AFTER A SHUTOFF (FEES AND DEPOSITS)

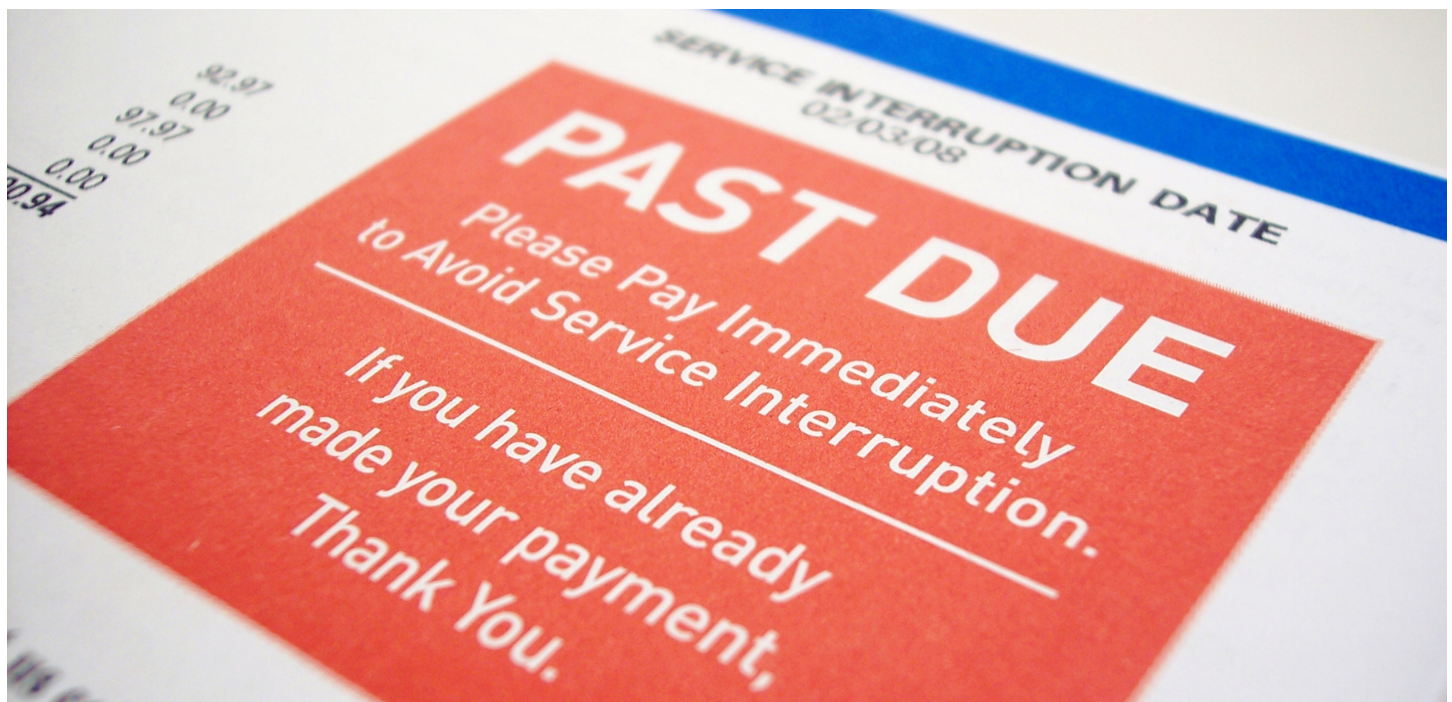
As described above, for struggling households, missing a bill payment can lead to assorted fees, penalties, interest, and deposit requirements that increase debt and make it harder to get reconnected.

The Water Debt module provides examples of state laws and utility rules that eliminate or restrict these charges. For example, California's Water Shutoff Protection Act limits reconnection fees for low-income customers; pending legislation to amend the law would waive shutoff and reconnection fees entirely for low-income customers. San Francisco's municipal water and sewer utility eliminated a \$55 disconnection fee and \$55 reconnection fee because it came to realize those fees were punitive.³⁸

Households can face other costs when trying to reconnect, such as plumbing repairs that may be necessary to safely restore service and water costs for the flushing of lines as necessary to ensure safe water following reconnection.³⁹ Effective affordability and assistance programs could help address these costs.

SPECIAL PROBLEMS WHEN THE WATER BILL ALSO INCLUDES OTHER UTILITIES AND SERVICES

Some municipalities combine water and wastewater service with other equally costly or more expensive municipal services, such as electricity and solid waste disposal, on a single bill. In these cases, failure to pay the full bill, for all services, may lead to loss of water service.⁴⁰ (See the Billing Problems and Dispute Resolution module for more discussion on this topic.)



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CAUTION: FLOW RESTRICTORS THAT PROVIDE SUBSTANDARD SERVICE MAY BE PROPOSED AS AN ALTERNATIVE TO SHUTOFFS

Some water utilities have taken an interest in an emerging, and disturbing, practice of drastically reducing the flow of water to a household that is behind on its water bills. The use of flow restrictors is often framed by the utilities as more compassionate than shutoffs.⁴¹ Many advocates disagree with that characterization and instead see water flow restrictors as rationing a basic necessity and jeopardizing water quality as well as the performance of fixtures and appliances. This is second-class (if not lower) service, and it fixes attention on punitive measures instead of focusing resources on addressing the underlying water affordability problem.

Basic activities such as bathing take much longer with flow limiters. A dramatic reduction in the flow of water affects whether showers will have enough pressure to work, particularly on an upper floor. In fact, flow restrictors appear designed to make struggling households miserable until the water debt is paid off.

Reduced flow rates may also affect the functioning of household plumbing systems in ways that create risks to health and safety. For example, the anti-scald mechanism in a shower may not work as designed when flow rates are reduced.⁴² Additionally, if a utility is proposing use of flow restrictors, advocates should consider pushing the utility to assess whether restrictors could jeopardize the safety of drinking water.⁴³

Phoenix's water department began installing low-flow restrictors in March of 2020 in the roughly 600 homes where water was shut off at the time.⁴⁴ The city stated that with installations of the restrictors, "flows would be restricted to the lowest level at which the meter still registers use," thereby precluding outdoor and discretionary water use.⁴⁵ But the city conceded that indoor use is drastically impaired as well. A water utility representative explained that the restrictor leaves a 1.3 millimeter opening at the meter that limits flow to 0.4 gallons per minute—as opposed to the typical maximum flow rate of 20–30 gallons per minute through a residential meter. As described in a media article, "Showers become splash baths. Filling a glass of water takes 20 to 30 seconds instead of 2 seconds."⁴⁶

According to Circle of Blue, the experiment lasted only a few weeks in 2020. When COVID-19 hit, the water department suspended penalties for late payments and removed the installed flow restrictors, thereby restoring regular water service.⁴⁷ But the program was restarted in 2021, with restrictors removed only when a water debt was resolved or a payment plan was entered into.⁴⁸

KEY RESOURCES:

Food & Water Watch, *America's Secret Water Crisis: National Shutoff Survey Reveals Water Affordability Emergency Affecting Millions*, October 24, 2018, <https://www.foodandwaterwatch.org/insight/americas-secret-water-crisis>.

This report collected and analyzed data on shutoffs from 73 large water utilities in states across the country. It also contains a discussion of the harms of shutoffs and policy recommendations.

Olivia B. Wein and Charlie Harak, *Protecting Seriously Ill Consumers from Utility Disconnections: What States Can Do to Save Lives Now*, National Consumer Law Center, February 2021, <https://www.nclc.org/issues/energy-utilities-communications/protecting-seriously-ill-consumers-from-utility-disconnections.html>.

This report surveys state policies concerning disconnection of electric and gas service to individuals experiencing serious illness. Although the report focuses on the energy sector, it may be useful when considering similar protections for water users.

Access to Utility Service: Disconnections, Metering, Payments, Telecommunications, and Assistance Programs (Boston: National Consumer Law Center, 2018), <https://library.nclc.org/aus>.

This manual provides exhaustive discussion and examples of utility (mainly energy) shutoff protections. The online version requires a subscription and the hard copy is available for purchase, but a copy may be available in a local law library or legal services office.

ENDNOTES

- 1 See Darlene R. Wong et al., *Review and Recommendations for Implementing Water and Wastewater Affordability Programs in the United States*, National Consumer Law Center (hereinafter NCLC), March 2014, 10, <https://www.nclc.org/images/pdf/pr-reports/report-water-affordability.pdf> (discussing a 1977 Senate report finding that “97 percent of all consumers pay all bills on time, every month, in a good economy”); John Cromwell et al., *Best Practices in Customer Payment Assistance Programs*, Water Research Foundation, January 2010, 35, https://aquadoc.typepad.com/files/water_affordability_4004.pdf (discussing studies from 2004, 2005, and 2007 finding that “most people want to pay their utility bills on time if it is at all possible for them to do so”).
- 2 Food & Water Watch, *America’s Secret Water Crisis: National Shutoff Survey Reveals Water Affordability Emergency Affecting Millions*, October 24, 2018, <https://www.foodandwaterwatch.org/insight/americas-secret-water-crisis>. Other data from particular states and cities show similarly staggering numbers. In California, in 2018, researchers found that water utilities reported water shutoffs to about 200,000 single-family households. Laura Feinstein, Morgan Shimabuku, and Greg Pierce, “When Utilities Shut Off Water for the Poor, We Are All at Risk,” *Pacific Institute Blog*, April 20, 2020, <https://pacinst.org/when-california-utilities-shut-off-water-for-the-poor-we-are-all-at-risk/>. Detroit garnered international headlines—and the condemnation of United Nations human rights official—when it imposed mass shutoffs during and after the city’s bankruptcy. From 2014 to 2017, the city disconnected about 100,000 homes for nonpayment. Joel Kurth, “Detroit Shut Water to 1 in 10 Homes This Year. Yes, That’s Progress,” Michigan Radio, NPR, December 5, 2017, <https://www.michiganradio.org/families-community/2017-12-05/detroit-shut-water-to-1-in-10-homes-this-year-yes-thats-progress>. In 2019, Detroit shut off water to 23,000 homes. See Nina Lakhani, “Detroit Suspends Water Shutoffs Over Covid-19 Fears,” *The Guardian*, March 12, 2020, <https://www.theguardian.com/us-news/2020/mar/12/detroit-water-shutoffs-unpaid-bills-coronavirus>. In mid-January 2020, shortly before the COVID-19 pandemic spurred a moratorium on shutoffs, it was estimated that 9,500 households in Detroit lacked running water due to shutoffs for nonpayment. Joel Kurth, “Detroit Says No Proof Water Shutoffs Harm Health. Get Real, Experts Say,” *Bridge Michigan*, March 9, 2020, <https://www.bridgemi.com/michigan-health-watch/detroit-says-no-proof-water-shutoffs-harm-health-get-real-experts-say>. In Buffalo, from 2015 to March 2019, there were 17,000 instances of water being shut off for nonpayment. Nina Lakhani, “Millions in U.S. at Risk of Water Shutoffs Amid Layoffs Triggered by Pandemic,” *Consumer Reports*, accessed May 13, 2022, <https://www.consumerreports.org/utilities/millions-in-us-at-risk-of-water-shutoffs-amid-layoffs-triggered-by-pandemic-a2187925013/>.
- 3 Food & Water Watch, *America’s Secret Water Crisis*.
- 4 Patricia A. Jones and Amber Moulton, *The Invisible Crisis: Water Unaffordability in the United States*, Unitarian Universalist Service Committee, May 2016, 11–12, https://www.uusc.org/sites/default/files/the_invisible_crisis_web.pdf; Coty Montag, *Water/Color: A Study of Race and the Water Affordability Crisis in America’s Cities*, Thurgood Marshall Institute at the NAACP Legal Defense Fund, April 2019, 26–29, https://www.naacpldf.org/wp-content/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf; Nina Lakhani, “Water Insecurity Causes Psychological Distress for Americans, Study Finds,” *The Guardian*, September 17, 2020, <https://www.theguardian.com/us-news/2020/sep/17/us-water-bills-psychological-distress-study>.
- 5 Dahlia Rockowitz et al., “Household Water Security in Metropolitan Detroit: Measuring the Affordability Gap,” *University of Michigan Poverty Solutions*, August 2018, <https://poverty.umich.edu/10/files/2018/08/PovertySolutions-PolicyBrief-0818-r2.pdf>.
- 6 For example, dialyzers and infusion pumps require safe water during use, cleaning, and maintenance. See U.S. Food and Drug Administration, “Unique Considerations in the Home,” accessed April 15, 2022, <https://www.fda.gov/medical-devices/home-use-devices/unique-considerations-home>.
- 7 The Water Debt module provides many illustrative examples. One particularly egregious example is provided by Phoenix, which imposes a 3 percent monthly late fee on delinquent balances of bundled city service bills that include water. The late fee compounds each month, as prior late fees are considered to be part of the delinquent amount, resulting in an effective 34 percent penalty on a balance carried for a year. Phoenix City Code ch. 37 art. V § 37-88(A), <https://phoenix.municipal.codes/CC/37-88>. The city requires customers to pay all delinquent amounts before restarting service and may impose a deposit requirement. Phoenix City Code ch. 37 art. V § 37-94(A), <https://phoenix.municipal.codes/CC/37-94>. Extended payment agreements are expressly *not* available if the customer “is in the process of disconnection due to nonpayment.” See City of Phoenix Water Services, “How to Setup an Online Payment Arrangement,” accessed May 20, 2022, <https://www.phoenix.gov/waterservicesite/Documents/Payment%20Arrangement%20FAQ%20Final.pdf>.
- 8 Greensboro Rules & Regs. for the Operation of Water and Wastewater System G.5 (Discontinuance of Service), <https://www.greensboro-nc.gov/departments/water-resources/customer-service-for-residents-and-businesses/water-and-sewer-rules-and-regulations> (stating, “If water service is discontinued, the premises may be condemned.”); ACLU Michigan, “Permanent Moratorium on Water Shutoffs and Condemnation of Homes for Unpaid Water Bills,” letter to the director of neighborhood services and inspections, city manager, and City Council of Saginaw, Michigan, July 8, 2021, https://acb0a5d73b67fccd4bbe-c2d8138f0ea10a18dd4c43ec3aa4240a.ssl.cf5.rackcdn.com/10033/Saginaw+Letter+to+Water+Department_.pdf?v=1626097489000.
- 9 National Housing Law Project, “Disconnection of Utilities,” section 11.2.4.2.6 in *HUD Housing Program: Tenants’ Rights* (San Francisco: National Housing Law Project, 2018), <https://www.nhlp.org/products/green-book/> (noting that maintaining utility service can be a requirement in the lease and loss of service can be grounds for eviction).
- 10 Food & Water Watch, *America’s Secret Water Crisis*, 3–6.
- 11 This issue came to the fore in some cities at the start of the COVID-19 pandemic, when utilities restored service to households that had been disconnected for nonpayment. Garret Ellison, “Damaged Plumbing Delays Detroit Water Restarts During Coronavirus Outbreak, Activists Warn,” Michigan Live, March 20, 2020, <https://www.mlive.com/coronavirus/2020/03/damaged-plumbing-hampers-detroit-water-restarts-during-coronavirus-pandemic-activists-warn.html>; Michigan Department of Environment, Great Lakes, and Energy, “Flushing Your House Plumbing System When Water Services Are Restored,” accessed May 20, 2022, <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/DWEHD/Community-Water-Supply/Flushing-Your-House-Plumbing-System-When-Water-Services-are-Restored-English.pdf?rev=8e55d7f5970046958f52556a3a6a4911>.
- 12 Jones and Moulton, *The Invisible Crisis*, 11. The report notes that lack of running water is considered child neglect in 21 states and cites documented cases of water shutoffs leading to the loss of child custody in Detroit.
- 13 See Jones and Moulton, *The Invisible Crisis*, 12. Advocates in Michigan have introduced legislation to decriminalize unauthorized reconnection, making it instead a civil infraction. *Ibid.* at 37. That legislation has been reintroduced in several consecutive sessions of the Michigan Legislature, most recently in 2021 as SB 346, <http://legislature.mi.gov/doc.aspx?2021-SB-0346>, and SB 347, <http://legislature.mi.gov/doc.aspx?2021-SB-0347>.
- 14 Mich. SB 343 (introduced March 25, 2021), <http://legislature.mi.gov/doc.aspx?2021-SB-0343>. The bill would establish shutoff notice requirements; create shutoff protections for seniors, families with children, and people who are seriously ill or disabled; protect renters from shutoffs when the landlord fails to pay a water bill; prohibit shutoffs during the heating season; and guarantee low-income customers the opportunity to avoid a shutoff by entering a payment plan or affordability program, with monthly payments based on ability to pay.
- 15 Public Service Commission of Wisconsin, “Water Utility Regulation,” accessed May 13, 2022, <https://psc.wi.gov/Pages/ForUtilities/Water/Water.aspx>.

- 16 Water affordability advocates may also find it useful to point to a resolution of the National Association of State Utility Consumer Advocates, which called on state utility commissions and state legislatures to adopt more comprehensive programs and policies to reduce the incidence of water shutoffs. Nat'l Ass'n of State Util. Cons. Advocates, Resolution 2019-06, "Encouraging State Legislatures and State Public Utility Commissions to Institute Programs to Reduce the Incidence of Disconnection of Residential Water Service Based on Nonpayment and to Collect Uniform Data on Such Disconnections," 2019, <https://www.nasuca.org/2019-06-nasuca-water-affordability-resolution/>. See also NCLC, "Protections From Disconnection," section 6.3 in *Access to Utility Service: Disconnections, Metering, Payments, Telecommunications, and Assistance Programs* (Boston: National Consumer Law Center, 2018), <https://library.nclc.org/aus>.
- 17 For example, the City of Jackson, Mississippi adopted by mayoral executive order a "Water and Sewer Customer Bill of Rights," which provides, among other things, that the municipal water utility "will not disconnect your service for nonpayment for a period of sixty days when you provide a written notice from a medical doctor...certifying that disconnection of service would create a life-threatening situation for you or other permanent resident of your household." City of Jackson, Mississippi, "Water and Sewer Customer Bill of Rights," November 14, 2019, <https://www.jacksonms.gov/documents/water-and-sewer-customer-bill-of-rights/>. The Boston Water and Sewer Commission offers shutoff protections to seniors or customers with medical needs if they show financial hardship. Boston Water and Sewer Commission, "Residential Billing Info & Assistance," accessed April 15, 2022, <https://www.bwsc.org/residential-customers/billing-info-and-assistance>. Massachusetts law provides shutoff protections to certain vulnerable customers of investor-owned utilities, including households with a financial hardship where there is an infant under 12 months or households with adults over 65 and a minor. 220 Mass. Code Regs. §§ 25.03, 25.05, <https://www.mass.gov/info-details/220-cmr-department-of-public-utilities#220-cmr-17.00--30.00>. In Pennsylvania, victim of domestic violence with a Protection from Abuse or other court order may not be disconnected for nonpayment for utility service in another person's name. Pennsylvania Code, Title 52, Ch.56, Subch. L, 56.252; Community Legal Services of Philadelphia, "Affordable Utilities for Survivors of Domestic Violence," February 23, 2021, <https://clsphila.org/utilities/affordable-utilities-for-survivors-of-domestic-violence/>.
- 18 For example, dialyzers or infusion pumps require safe water during use, cleaning, and maintenance. US Food & Drug Administration, "Unique Considerations in the Home," accessed April 15, 2022, <https://www.fda.gov/medical-devices/home-use-devices/unique-considerations-home>. U.S. Food & Drug Administration, "Unique Considerations in the Home."
- 19 Illinois offers a typical example. Ill. Admin. Code tit. 83, § 280.130 (m), <https://www.law.cornell.edu/regulations/illinois/Ill-Admin-Code-tit-83-SS-280.130> ("Medical Certification: A utility shall not disconnect service to a residence for 60 days upon receipt of a valid medical certificate for a resident of the household, so long as the account is eligible for medical certification under Section 280.160.").
- 20 Olivia B. Wein and Charlie Harak, *Protecting Seriously Ill Consumers from Utility Disconnections: What States Can Do to Save Lives Now*, National Consumer Law Center, February 2021, <https://www.nclc.org/issues/energy-utilities-a-communications/protecting-seriously-ill-consumers-from-utility-disconnections.html>.
- 21 City of Jackson, Mississippi, "Water and Sewer Customer Bill of Rights," November 14, 2019, <https://www.jacksonms.gov/documents/water-and-sewer-customer-bill-of-rights/>.
- 22 A New Jersey regulation establishes a "Winter Termination Program," which originally applied only to electric and gas utilities. It prohibits shutoffs from November 15 to March 15 for residential customers participating in certain income-based state and federal assistance programs or who are "unable to pay their utility bills because of circumstances beyond their control." N.J. Admin. Code § 14:3-3A.5, <https://www.law.cornell.edu/regulations/new-jersey/N-J-Admin-Code-SS-14-3-3A-5>. In 2021, the state legislature extended these protections to customers of all water utilities. N.J. Stat. Ann. §§ 40A:5A-28 to 40A:5A-30 (applicable to publicly owned water utilities), <https://law.justia.com/codes/new-jersey/2021/title-40a/>. N.J. Stat. Ann. §§ 48:2-29.54 to 48:2-29.56 (applicable to privately owned, utility commission-regulated water utilities), <https://law.justia.com/codes/new-jersey/2021/title-48/>. Pennsylvania prohibits water utilities regulated by the state utility commission from terminating "heat-related service" from December 1 to March 31, except with permission from the commission. It also prohibits terminating water service to "landlord ratepayers" during the same period. 52 Pa. Code § 56.100, <http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/052/chapter56/s56.100.html>. Philadelphia suspends shutoffs of residential occupied properties from December 1st to March 31st each winter. Phila. Water Dep't Regs. § 100.4(d), <https://water.phila.gov/regulations>. Pittsburgh's "Winter Shutoff Moratorium" protects single-family residential customers earning an annual income that is at or below 300% of the federal poverty level from disconnection between December 1 and March 31 each winter. Pittsburgh Water and Sewer Authority, "PWSA Expands Customer Assistance Programs," press release, February 15, 2022, <https://www.pgh2o.com/news-events/news/press-release/2022-02-15-pwsa-expands-customer-assistance-programs>.
- 23 Illinois and New Jersey offer typical examples, which include restrictions on times of day and days of the week when shutoffs can occur. Ill. Admin. Code tit. 83, § 280.130 (l), "Time of Day and Day of the Week Prohibitions and Limits," <https://www.law.cornell.edu/regulations/illinois/Ill-Admin-Code-tit-83-SS-280.130>; N.J. Admin. Code § 14:3-3A.1(c), <https://www.law.cornell.edu/regulations/new-jersey/N-J-Admin-Code-SS-14-3-3A-1>.
- 24 For example, the City of Jackson, MS, will not disconnect service for nonpayment on any Saturday, Sunday, or any holiday observed by the city, unless the city is open to accept payment and restore service on those days. City of Jackson, Mississippi, "Water and Sewer Customer Bill of Rights," November 14, 2019, <https://www.jacksonms.gov/documents/water-and-sewer-customer-bill-of-rights/>. The City of Phoenix will not disconnect service for nonpayment on a Friday, Saturday, Sunday, city-observed holiday, or the day before a city-observed holiday. Phoenix City Code ch. 37 art. V § 37-88(C), <https://phoenix.municipal.codes/CC/37-87>.
- 25 A typical example is found in Maryland's rules for customers of investor-owned utilities, which prohibit shutoff for nonpayment of a disputed amount while the dispute is pending. Md. Code Regs. 20.32.01.04(N). Seattle requires customers to pay the undisputed portion of the combined water and electric utility bill during the dispute resolution process and provides that shutoffs and other collection activities will be put on hold while the dispute is pending. Seattle Public Utilities, Policy & Procedure Number SPU-CS-104, "Customer Billing and Service Disputes Within the Customer Service Branch (eff. 11/1/05)," https://www.seattle.gov/util/cs/groups/public/@spuweb/@policy/documents/webcontent/02_008541.pdf. The Louisville Water Co. appoints a company employee as the "account consultation officer" to handle customer billing disputes. If this officer determines there is an amount owed to the water company, the customer has 7 days from the decision to pay that amount owed before the water company may disconnect the service. Louisville Water Co. Serv. Rules & Regs. § 1.14.6 - 1.14.8, https://www.louisvillewater.com/sites/louisvillewater.com/files/user_uploads/2020%20Service%20Rules%20final%20w%20page%2023.pdf.
- 26 N.J. S2356 (2022-2023 Session) (approved as Pub. L. 2022, ch. 4, on March 25, 2022), <https://www.njleg.state.nj.us/bill-search/2022/S2356>. A state agency notice to municipalities explains the law's provisions. N.J. Dept. of Community Affairs, Division of Local Government Services, "Treatment of Residential Water, Sewer & Electric Arrearages; Residential Ratepayer Assistance," Local Finance Notice 2022-11, April 29, 2022, <https://www.nj.gov/dca/divisions/dlgs/lfns/22/2022-11.pdf>.
- 27 LIHWAP was created on an emergency basis to address arrears accrued during the COVID-19 pandemic. The U.S. Department of Health and Human Services, which oversees LIHWAP, suggests that states require participating utilities to maintain service for at least 90 days after the LIHWAP benefit is disbursed. U.S. Department of Health and Human Services, Office of Community Services, "LIHWAP IM-2021-03 Use of Funds Q and A FY2021," July 23, 2021, <https://www.acf.hhs.gov/ocs/policy-guidance/lihwap-im-2021-03-use-funds-q-and-fy2021>. See attachment 2: "Sample Low Income Household Water Assistance Vendor Agreement," § 6.k, https://www.acf.hhs.gov/sites/default/files/documents/ocs/COMM_LIHWAP_Sample%20Vendor%20Agreement_FY2021.pdf.
- 28 Nineteen states, plus Washington, D.C., and Puerto Rico, adopted statewide water shutoff moratoriums for some period of time during the pandemic. See Larry Levine, "Congress & States Must Protect Water Access During COVID-19," NRDC *Expert* blog, August 7, 2020, <https://www.nrdc.org/experts/larry-levine/congress-states-must-protect-water-access-during-covid-19>. Many individual cities did so as well. See Food & Water Watch, "External-Local-State Water Shutoff Moratoria Amidst Coronavirus," spreadsheet, accessed May 3, 2022, <https://docs.google.com/spreadsheets/d/153Ze6RRZ-ZZ9oVkaSErhVHGMv3Z4laQDs0GR07UmYnQ>.

- 29 Tyler Estep, “After 5 Years, DeKalb Set to End Moratorium on Water Disconnections,” *Atlanta Journal-Constitution*, April 20, 2021, <https://www.ajc.com/news/atlanta-news/after-5-years-dekalb-set-to-end-moratorium-on-water-disconnections/MJ2DG4K77JCNFKBAA3UU6SPLXI/>.
- 30 The California State Water Resources Control Board offers a plain language summary of the Act here: California State Water Resources Control Board, “Water Shutoff Protection Act FAQs,” accessed April 13, 2022, https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/SB_998_FAQs_1.10.20.pdf. The law is codified at Cal. Health & Safety Code §§ 116900-116926 (West), https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=HSC&division=104.&title=&part=12.&chapter=6.&article=.
- 31 Cal. SB 223 (2021), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20210220SB223. A fact sheet on the bill can be found here: Office of California Senator Bill Dodd, “SB 223–Dodd: Strengthening Low-Income Residential Water Service Protections,” accessed May 13, 2022, <https://drive.google.com/file/d/1yD8cDcZc5FEt0NyGORmJlbJ7O6K-Er04/view>.
- 32 See Cal. SB 223 (2021), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20210220SB223.
- 33 State Water Resources Control Board, *Water Quality Enforcement Policy*, April 4, 2017 (effective October 5, 2017), https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf.
- 34 Federal civil rights lawsuits have alleged racial disparities in water shutoffs in specific cities, based on statistical analysis of data obtained from local water utilities. See ACLU Michigan, “Civil Rights Coalition Files Class Action Lawsuit Challenging Detroit Water Shutoff Policy,” July 9, 2020, <https://www.aclumich.org/en/press-releases/civil-rights-coalition-files-class-action-lawsuit-challenging-detroit-water-shutoff>; NAACP Legal Defense Fund, “LDF Files Lawsuit Against the City of Cleveland to Address Discriminatory Water Liens and Shutoffs,” press release, December 18, 2019, <https://www.naacpldf.org/press-release/ldf-files-lawsuit-against-the-city-of-cleveland-to-address-discriminatory-water-liens-and-shutoffs/>.
- 35 The 2020 Baltimore Water Accountability and Equity Act creates an Office of Water Customer Advocacy within the utility and has an independent appeals process. A subsequent amendment strengthened the dispute resolution procedures as well as the Office of Water Customer Advocacy and created a data collection requirement regarding the dispute resolution process. Balt. City Code art. 24, §§ 2-17 through 2-23. (The most current version of the Baltimore City Code is available here: <https://legislative.baltimorecity.gov/city-codes>.) In Michigan, advocates are pursuing legislation to establish uniform water customer protections concerning billing and dispute resolution. See Mich. SB 0348 (2021), <http://legislature.mi.gov/doc.aspx?2021-SB-0348>.
- 36 *Memphis Light, Gas, & Water Division v. Craft*, 436 U.S. 1 (1978); *Georgia State Conference of the NAACP v. City of LaGrange*, 940 F.3d 627 (11th Cir 2019) (claim that the city’s practice of disconnecting water service for failure to pay unrelated municipal debt has a discriminatory impact on Black residents in violation of the Fair Housing Act survives a challenge to dismiss); *Pickett v. City of Cleveland*, No.1:19 CV 2911 (D. Ohio Sept. 29, 2020) (claim that city violated plaintiffs’ due process rights by failing to provide adequate notice before disconnecting water service survives a motion to dismiss).
- 37 U.S. Department of Health and Human Services, Office of Community Services, “Low Income Household Water Assistance Program.”
- 38 Brett Walton, “Utilities Ordered to Forgive Customer Water Debt,” Circle of Blue, August 12, 2020, <https://www.circleofblue.org/2020/wef/utilities-ordered-to-forgive-customer-water-debt/>.
- 39 Garret Ellison, “Damaged Plumbing Delays Detroit Water Restarts.”; Michigan Department of Environment, Great Lakes, and Energy, “Flushing Your House Plumbing System.”
- 40 Kyl Center for Water Policy at Morrison Institute, *Ten Tenets of Water Equity: Considerations for Community Water Systems*, Arizona State University, April 2021, 10, https://morrisoninstitute.asu.edu/sites/default/files/water_equity_2021.pdf; City of Phoenix Water Services Department, *Water Equity Initiative*, June 23, 2020, 5, https://www.phoenix.gov/waterservicessite/MediaAssets/WSD%20Home%20Page/EquityPaper_2020-06-23_Final.pdf.
- 41 Brett Walton, “Phoenix Tests Water Shutoff Alternative,” Circle of Blue, July 15, 2020, <https://www.circleofblue.org/2020/world/phoenix-tests-water-shutoff-alternative/>.
- 42 WaterSense, “WaterSense Specification for Showerheads Supporting Statement,” U.S. Environmental Protection Agency, March 4, 2010, 6-7, <https://www.epa.gov/sites/default/files/2017-01/documents/ws-products-support-statement-showerheads.pdf>.
- 43 For example, reduced flows may increase the likelihood of backflow events that allow contamination of water supplied to other nearby customers. Additionally, if a restrictor reduces a household’s total water usage, as seems inevitable, then water will remain longer in the home’s internal piping. In general, the risk of pathogen growth can increase as water remains in pipes for a longer period of time. A utility should have the burden of demonstrating that flow restrictors will not pose these sorts of water quality risks.
- 44 See Walton, “Phoenix Tests Water Shutoff Alternative.”
- 45 City of Phoenix Water Services Department, *Water Equity Initiative*.
- 46 See Walton, “Phoenix Tests Water Shutoff Alternative.”
- 47 *Ibid.*
- 48 See City of Phoenix Water Services Department, “Low Flow,” YouTube video, August 23, 2021, <https://www.youtube.com/watch?v=vI1a79glnsw>.