



Regulating the Unhoused

October 10, 2024



Presented by:
Nastasha Anderson, City of Arlington

DIVE BRIEF

Homelessness in Dallas area is down after response transformation

As service providers try a new approach, homelessness has dropped 24% in Texas

Published July 2, 2024

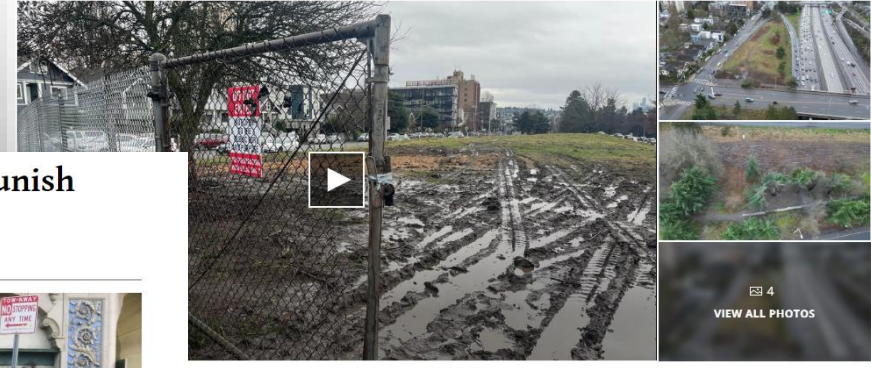
Supreme Court Allows Cities to Punish Homelessness

Brian R. Frazelle



200K pounds of debris removed from encampments along I-5 in Seattle's U-District

by Jeremy Harris, KOMO News Reporter | Wed, February 21st 2024 at 6:01 PM
Updated Thu, February 22nd 2024 at 12:36 PM



California governor vows to take away funding from cities and counties for not clearing encampments

US & WORLD // CALIFORNIA

This California city is taking one of most aggressive responses to Supreme Court ruling on homelessness

By Kevin Fagan, Reporter
Sep 23, 2024

PUBLIC SLEEPING BAN
Central Florida police agencies plan to help homeless first, not arrest them



Agenda

- ❖ History and Legal Background
- ❖ Constitutional and Legal Challenges
- ❖ Options for Cities



Homelessness: Current State of Affairs

HUD's Definition:

Four broad categories of homelessness:

- Individuals and families lacking fixed, regular, and adequate nighttime residences
- Those who will immediately lose their primary nighttime residence
- Children defined as homeless under other federal statutes
- Individuals fleeing domestic violence, sexual assault, stalking, etc., that relate to violence against the individual or a family member

According to HUD, in 2023, there were more than 650,000 people who fell into one of the above categories.

More than half of the people experiencing homelessness were in four states: California, New York, Florida, and Washington.

- California accounted for 49% of all unsheltered people in the country



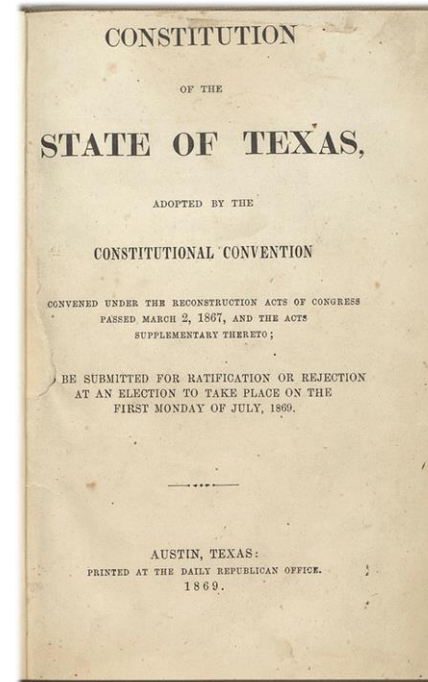
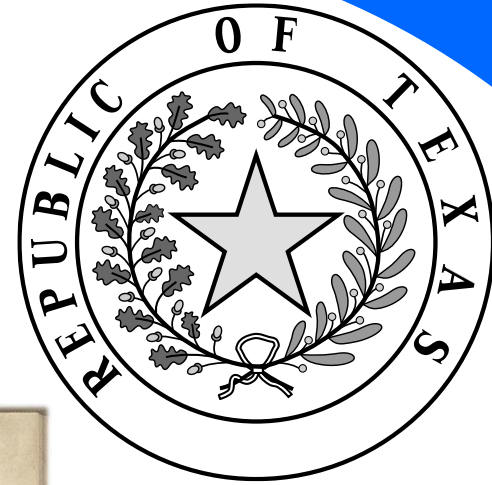
Vagrancy Laws - Historically

- “Rogues and vagabonds, or dissolute persons who go about begging, common gamblers, **persons who use juggling or unlawful games or plays**, common drunkards, common night walkers, thieves, pilferers or pickpockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object....” – *Jacksonville FL vagrancy law*
 - 8 defendants who had been convicted sued
 - Supreme Court held the law unconstitutional
 - *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972)



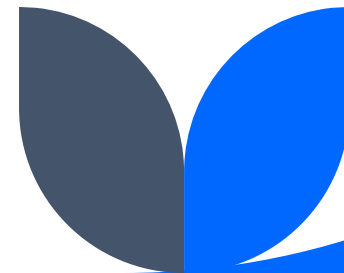
Vagrancy Laws - Texas

- Constitution of the Republic of Texas - 1839
Texas Joint Resolution:
 - “duty of all justices of the peace and other civil officers to arrest all vagrants and idle persons living within their respective jurisdictions, and to examine into their mode and manner of living....they shall be adjudged to work for the public, thirty days for the first offense, sixty days for the second, and one year for the third offense, **or receive thirty-nine lashes on his bare back.**”
- Texas Constitution, Article III, Section 48 :
 - required that the Legislature “at its first session after the adoption of this constitution, enact effective vagrant laws.” – Repealed 1969
 - Article 607 of the Penal Code - prohibited an able-bodied person to “habitually loaf, loiter, and idle about, the larger portion of his time,” without “any regular employment, and without any visible means of support.”



Current Texas Law

- 87th Legislature
 - General prohibition on camping in public without effective consent of the officer or agency having the legal duty or authority to manage the public place.
 - Texas Penal Code §48.05(b)
 - Subchapter PP, Chapter 2306 of the Government Code
 - designating property by political subdivisions for camping by homeless individuals.
 - Municipalities prohibited from refusing to enforce the statute or discouraging a peace officer or prosecuting attorney from enforcing a public camping ban.
 - See Tex. Loc. Gov't Code § 364.002



Before *Grants Pass*

- 9th Circuit Precedent
 - Constitutional protections under the 8th amendment for individuals who slept in public without other criminal activity, if the person had no means to access shelter.
 - *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), vacated, 505 F.3d 1006 (9th Cir. 2007); *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019)
- Rationale
 - *Robinson v. State of California*, 370 U.S. 660 (1962)- Supreme Court held a statute criminalizing the “status” of narcotics addiction unconstitutional under the Eighth Amendment.
 - In *Powell v. State of Texas*, 392 U.S. 514 (1968) the Supreme Court distinguished and upheld a statute criminalizing public drunkenness, interpreting *Robinson* not to preclude statutes that criminalize “involuntary conduct.”
 - Confirmed the holding in the holding in *Robinson* applies only to criminalization of pure status crimes, not to criminalizing specified conduct, even if the conduct is related to the status.



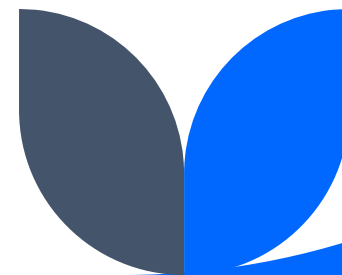
Grants Pass Decision

- Case Background:
 - Roughly 600 of its 38,000 residents homeless
 - City passed ordinance prohibiting sleeping or camping on public property
 - Progressive consequences in the form of civil fines, exclusion orders, and criminal trespass
- Supreme Court Holding:
 - Ordinance or statute criminalizing camping or sleeping in public does not offend the 8th Amendment
 - Ordinance criminalized particular conduct, not the status of homelessness itself.



City of Phoenix – DOJ Report

- June 13, 2024, US Department of justice released a report *“Investigation of the City of Phoenix and the Phoenix Police Department”*
 - *DOJ findings broken into six categories*
- 2nd Category - *“Alleges Phoenix PD and the City violated the rights of people experiencing homelessness, systematically and regularly...”*
 - Illegally detaining homeless people and seizng and destroying property
 - Homeless population= 1%; Arrests = 37% from Jan 2016-March 2022
- Report discussed issues thar arose because police where designated as primary point of contact for offering services
 - Individuals arrested for “appearing to be homeless”
 - Detained people for obstructing rights of way which were still passable
 - Mass clean up process that sometimes scooped property into garbage truck



Options for Cities

“Homelessness is complex. Its causes are many. So may be the public policy responses required to address it.” – *Grants Pass, 2226*



- **FIRST: Establish a Plan**
- **Create A Housing Authority**
- **State and Federal Government Options**
- **City Examples**



Questions?



Thank you!