

Homelessness, Panhandling, Vagrancy, and Related Issues

SUMMARY

The Supreme Courts of the United States and Washington have made it clear that local governmental jurisdictions cannot penalize someone based upon a status or state of being that is “an unavoidable consequence of being human.” This means that a city’s law enforcement officers cannot arrest people simply because they ask for money, sleep in vehicles, parks, or other public places, or make us uncomfortable. “Criminalizing homelessness” has repeatedly been found to be unconstitutional.

BACKGROUND

Jurisdictions must be cautious when adopting and establishing laws or policies that appear to be based upon individuals’ mental health, substance use, or inability to afford appropriate housing. A city is responsible for ensuring people have adequate shelter available before it seeks to enforce quality of life laws, like parking and camping ordinances.

This responsibility is not new. For decades, law enforcement officers have been prevented from arresting people for looking a certain way or being somewhere “out of place.” Police also cannot arrest someone simply for asking for money or other charitable donations. All of these activities have been found to be covered under fundamental rights and protections granted by the federal and state Constitutions, such as freedom of speech, travel, and assembly; equal protection; and the prohibition against unlawful search and seizure. At their core these protections — which are confirmed by case law — mean that a person cannot be singled out for arrest for merely holding a sign, sleeping in a park, or sitting outside a storefront.

CURRENT STATUS

The City of Sequim, along with nearly every municipality in the country, is working hard to address concerns about the unhoused and the mentally ill. This includes finding ways to provide adequate resources in our community, such as food, shelter, medical/mental health services, and treatment for substance use disorders. Local nonprofits, churches, and other agencies are critical to finding a meaningful solution. *Shelter + services = enforcement.*

Cities and counties need to be able to offer solutions before they can enforce quality of life laws. This is how the Sequim Health and Housing Collaborative (SHHC) came into existence. SHHC consists of The Sequim Food Bank, Healthy Families, The Free Clinic, Olympic Peninsula Community Clinic, Peninsula Behavioral Health, and OlyCAP. SHHC fields “navigators” who help people access various services, like mental/physical health and treatment, substance use treatment, meals, and shelter. For further information, or if you want to help, please contact any of the SHHC agencies.

SCENARIOS/EXAMPLES

Police cannot arrest a person who is holding a sign on the sidewalk, highway ramp, or outside a storefront. Protestors, Girl Scouts, Salvation Army and other charitable organizations, and panhandlers all have constitutional protections.

- Police cannot arrest a person for simply sleeping in a park, on a bench or sidewalk, near a storefront, or at a bus stop. A person must be actually obstructing pedestrian traffic and even then they will simply be asked to move.
- Police cannot arrest a person for mumbling, yelling, or frightening others unless that person poses a real threat of harm to themselves or others. Police do not have the authority to send a mentally ill person to involuntary treatment.
- Police cannot arrest someone, tow their vehicle, or destroy their belongings simply because a person lives in a vehicle.
- Arresting someone requires actual, and in most cases intentional, unlawful conduct.

SOURCES – CASE LAW

[MRSC - Homelessness and the Limits of Enforcement](#)

[Homelessness & Housing Toolkit for Cities \(mrsc.org\)](#)

[MRSC - Regulation of Unauthorized Camping, Loitering, and Solicitation of Aid](#)

Please also refer to the City’s other Fact Sheets related to this topic.

1972—City’s vagrancy laws unconstitutional. Legislative direction to the police “to arrest all suspicious persons would not pass constitutional muster.” *Papachristou v. City of Jacksonville*, U.S. Supreme Court.

1983—California statute requiring people who “loiter and wander streets” to provide “credible” identification and justification for their whereabouts to law enforcement when asked is unconstitutional. *Kolender v. Lawson*, U.S. Supreme Court.

2006— Ordinance prohibiting peaceful “asking, begging, pleading, or soliciting” for money or other things of value is unconstitutional. *ACLU of Nevada v. City of Las Vegas*, 9th Circuit Court of Appeals.

2010—Police use of force diminished by fact that person is mentally ill and thus, use of force differs in degree and in kind than that normally used. The “purpose of detaining a mentally ill individual is not to punish him, but to help him.” *Bryan v. MacPherson*, 630 F.3d 805, 9th Circuit Court of Appeals.

2012—City wrongfully interfered with homeless persons' property, such as legal papers, and shelters, by seizing and destroying that property, violating the 4th and 14th Amendments. *Lavan v. City of Los Angeles*, 9th Circuit Court of Appeals.

2016—City of Lakewood’s ordinance prohibiting begging, panhandling at freeway on-ramps and major intersections is unconstitutional. “The First Amendment protects ‘charitable appeals for funds,’ including appeals in the form of begging or panhandling.” *City of Lakewood v. Willis*, Washington State Supreme Court.

2019—8th Amendment prohibits punishing an involuntary act or condition if it is an unavoidable consequence of one’s status or being, such as sitting, sleeping, or lying on public property. Homeless individuals cannot be compelled to go to shelters where they must participate in religious activities in exchange for that shelter. *Martin v. City of Boise*, 9th Circuit Court of Appeals.

2021—Vehicles used as a residence are protected under the Homestead Act. If a vehicle “serves as the owner’s principal residence, the City may not withhold the vehicle from the owner under threat of forced sale.” Impound fines and fees are subject to “excessive fines” prohibited by the 8th Amendment. *City of Seattle v. Long*, Washington State Supreme Court.