



# Tipping Point Community of Practice Training: *The Grants Pass* Decision and Its Implications for Youth Advocacy

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# Youth Law Center



- **Youth Law Center is a Qualified Support Center that provides free legal training, legal technical assistance, and advocacy support. We work on:**
  - Trainings, and Workshops, Workgroups, and Outreach
  - Consultation, Research, Co-Counseling and Technical Assistance
  - Resource Materials, Information Services and Support
- **Areas of expertise include:** child welfare; juvenile justice; public benefits for juvenile court involved youth; education of juvenile court involved youth; health and mental health; housing issues impacting current and former system involved youth and their families; juvenile court records; language access; fees, fines and other juvenile court system imposed costs; immigrant-related issues; civil practice issues on child advocacy

# Disclaimer

- This presentation by the Youth Law Center is provided for educational and/or informational purposes only, and should not be construed as legal advice.

# Agenda

1. Case Walkthrough of *Grants Pass*
2. A Close Look at San Francisco
3. Mythbusting the Effectiveness of Criminalizing Homelessness
4. How Advocates can Help
5. Q&A



# ***Grants Pass Case Walkthrough***

# Background on the City of Grants Pass, Oregon



- Grants Pass Oregon is a city of around 38,000 people with a population of 600 folks experiencing homelessness.
- Grants Pass had 4 identified places where folks experiencing homelessness might be sent:
  - Two Sex-Segregated Facilities operated by Gospel Rescue Mission
  - Sobering Center
  - Hearts with a Mission Youth Shelter
  - Warming Center

# Review of City Ordinances at Issue



- Plaintiffs in *Grants Pass* allege that through a combination of ordinances, customs, and policies unconstitutionally punished them for conducting life sustaining activities of (1) resting; (2) sleeping; and (3) seeking shelter from the elements.
- **City of Grants Pass Municipal Code: 5.61.010 Definitions**
  - A. “To Camp” means to set up or to remain in or at a campsite.
  - B. “Campsite” means any place where bedding, sleeping bag, or other material used for bedding purposes, or any stove or fire is placed, established, or maintained for the purpose of maintaining a temporary place to live, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.



# District Court Decision

- The *Grants Pass* lawsuit was filed six weeks after the 9th Circuit released its initial opinion in *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018).
- This present lawsuit filed a class action complaint challenging that the city's anti-sleeping and anti-camping ordinances violated several portions of the U.S. Constitution including the Eighth Amendment.
- The district court, certified the class, and found that the City's enforcement of its anti-camping and anti-sleeping ordinances violated the Cruel and Unusual Punishment Clause of the Eighth Amendment. The district court entered an injunction blocking Grants Pass from enforcing its laws.

# Map of the Ninth Circuit



# Ninth Circuit Court Decision

- The city of Grants Pass appealed the injunction and class certification to the 9th Circuit.
- The 9th Circuit panel affirmed the lower court's decision and held that the city's anti-camping and anti-sleeping ordinances violated the Cruel and Unusual Punishment clause of the Eighth Amendment.
- The panel largely relied on the 9th Circuit's 2018 decision in *Martin* and the Supreme Court Decisions in *Robinson v. California*, 370 U.S. 660 (1962) and *Powell v. Texas*, 392U.S. 514 (1968).

# SCOTUS Decision

- In a 6-3 decision that fell along ideological lines, the court held that the city's enforcement of its ordinances did not constitute "cruel and unusual punishment" prohibited by the Eighth Amendment of the U.S. Constitution.
- The Majority overturned several decisions by the Ninth Circuit, including *Martin v. Boise*.

# Where are we now?

- The Ninth Circuit in its opinions in *Grants Pass* and *Martin* acknowledged the very low constitutional floor that localities couldn't criminally punish unhoused people for sleeping in public when there were no shelter beds available.
- The Supreme Court in its majority opinion pulled that floor away from us and potentially started a race to the bottom.
- Local communities now have decide what our path forward looks like.

# **A Close Look at San Francisco**

# 2024 Point-in-Time Count

- Over 4,300 people in San Francisco are experiencing unsheltered homelessness.
- Over 800 are Homeless youth are unaccompanied minors under 18 years old and young adults age 18-24.
- The number of individuals experiencing homelessness residing in tents or on the streets is at a decade low.
- The number of individuals experiencing homelessness spending nights in shelters increased 39% since 2019.
- 48% of individuals experiencing homelessness in San Francisco are sheltered.

# Criminal and Civil Laws Addressing Homelessness



- **SF Police Code Section 168 (warning, infraction, or misdemeanor)**
  - Prohibition on sitting/lying on sidewalks during 7:00 am to 11:00 pm.
- **SF Police Code Section 22-44 (infraction/misdemeanor)**
  - Prohibits obstructing free passage on sidewalks or streets (requires 48 inch path)
- **Cal Penal Code Section 647(e) (misdemeanor)**
  - Unlawful lodging, including intention to remain for indefinite period (not just sleeping)



# Criminal and Civil Laws

## Addressing Homelessness Cont.-



- **Cal Penal Code Section 370-372 (misdemeanor)**
  - Public Nuisance (interference with enjoyment of life/property or obstructing passage of streets/parks)
- **Cal Penal Code 148(a) (misdemeanor)**
  - Resisting, delaying, or obstructing a public officer or peace officer
- **Cal Penal Code 647(c) (misdemeanor)**
  - Prohibits obstructing free movement in any public place

# Bag and Tag Policy

- All items picked up by the Department of Public Works must be bagged and tagged including bulky items like mattresses, except for abandoned property (separate from attended property), “trash,” perishables, and items causing a safety risk.
- For routine cleanings, staff must provide owners with reasonable time to move their belongings (“approximately 30 minutes”), taking into account special needs and the number of items.
- Bag and tag forms must be given to the owner or left at the place where the items were taken, including date, time, a description of the items, and staff name.
- Must also provide notice of scheduled encampment sweeps.

# *Coalition on Homelessness v. City of San Francisco*



- **Arguments**

- **SF is violating its own policy regarding its treatment of unhoused residents.**
  - Criminal enforcement during sweeps
  - Violating bag and tag policy
  - Destroying property

- **History**

- **Filed in September 2022**
- **Injunction granted in December 2022**

- **Claims**

- **Criminal enforcement violates the 8th Amendment of U.S. Constitution**
- **Property Destruction violates the 4th amendment**
- **Disability law claims**
- **14th Amendment Procedural Due Process**

# Preliminary Injunction Issued in December 2022



- Criminal Enforcement - Prevent SF from arresting people for simply sitting/sleeping in public when they have no reasonable access to shelter or housing (based on the 8th Amendment). (Vacated in 2024 following *Grants Pass*)
- The injunction requires SF to follow its own written bag and tag policies that prohibit the city from destroying the property of unhoused people. (Still in effect)
- Didn't prohibit SF from addressing encampments or enforcing most laws related to public safety, including clearing sidewalks for public health or accessibility purposes.

# Timeline of Policy Changes Post Grants Pass



- **July 18, 2024**
  - **Mayor London Breed vows “aggressive response” to homeless encampments beginning in August.**
- **July 25, 2024**
  - **Gov. Gavin Newsom issues executive order directing state officials to dismantle homeless encampments.**
- **July 30, 2024**
  - **Mayor London Breed issues “Update on San Francisco’s Street Response Under Grants Pass”**
    - States that there will be “coordinated efforts to prevent re-encampments and new areas from being encamped.”
    - Says: “Staff will not be required to re-offer shelter in an area where they’ve recently been working to clear an encampment if individuals return to the same area.”
    - Further states: “Enforcement against camping on San Francisco’s streets will consist of progressive penalties. Warnings will be followed by citations. In some cases, citations could be followed by escalating penalties, including arrest. The goal is not punishment, it is compliance.”

# Timeline of Policy Changes Post Grants Pass Cont.-



- July 30, 2024

- Mayor London Breed issues “Update on San Francisco’s Street Response Under Grants Pass”
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# **Mythbusting the Effectiveness of Criminalizing Homelessness**

# What is Criminalization of Homelessness?

- The criminalization of homelessness refers to measures that prohibit life-sustaining activities such as sleeping/camping, eating, sitting, and/or asking for money/resources in public spaces. These ordinances include criminal penalties for violations of these acts. Criminalization looks like:
  - Carrying out sweeps: confiscating personal property including tents, bedding, papers, clothing, medications, etc.
  - Making panhandling illegal.
  - Making it illegal for groups to share food with homeless persons in public spaces.
  - Enforcing a “quality of life” ordinance relating to public activity and hygiene.
  - Making sleeping/camping in public spaces illegal.
  - Arbitrary enforcement of other laws such as jaywalking or disorderly conduct.



# Long History of Excluding Undesired People from Public Spaces



- There is an unfortunate long history in the United States of using the law and/or violence to exclude from public spaces those deemed by society to be unwelcome:
  - The Colonies adopted the anti-vagrancy laws of Britain.
  - Following the Civil War many southern states adopted Black Codes, which included vagrancy laws, to restrict the movement of the hundred of thousands of freed enslaved people.
  - During the Great Depression California passed an “anti-Okie” law which made it a misdemeanor to “bring or assist in bringing” extremely poor people into the state.
  - During the Jim Crow era the system of de jure racial segregation also barred individuals from public spaces based on their race.
  - Sundown towns restricted racial and ethnic minorities from living within their borders.

# Increased Focus on Criminalization

- In the wake of *Grants Pass* there have been many examples of local governments redoubling efforts to enforce anti-sleeping and anti-camping ordinances.
- Even prior to the *Grants Pass* decision there have been targeted efforts to expand the criminalization of homelessness and target housing first practices.
- SCOTUS decision potentially sets the scene for a race to the bottom where localities try to out cruel each other.

# Anti-Sleeping and Anti-Camping Laws Across the United States



- National Homelessness Law Center *Housing Not Handcuffs 2019* Report examined the laws of 187 cities in the United States and found:
  - 72% of the cities had at least one law banning camping in public.
  - 37% of the cities had one or more laws prohibiting camping citywide.
  - 51% of the cities surveyed american cities had at least one law restricting sleeping in public.
  - 21% of the cities had a citywide ban on sleeping in public.
- The same report also found that prevalence of the bans increased between 2006 and 2019.
  - A 92% increase for camping bans
  - A 50% increase for sleeping bans

# Laws Attempting to Ban individuals experiencing Homelessness are Growing more extreme



- The Cicero Institute offers homelessness ban templates to legislators and has spearheaded homelessness bans in 12 states.
- Florida Governor Ron DeSantis recently passed a bill that prohibits counties and municipalities from allowing camping or sleeping on public property. Creates right of action for private citizens, business owners, or the state attorney general to sue if a county or city fails to follow the law.
- The Safer Kentucky Act makes camping on specific private and public properties into a misdemeanor after multiple offenses. It also allows property owners to use deadly force against people who are illegally camping.

# Importance of Mythbusting the Efficacy of Criminalization



- There is an intentional effort to push that criminalization can provide an adequate solution to homelessness.
- It is important that lawyers and advocates are intentional about pushing back on those narratives.
- We cannot arrest our way out of youth homelessness!

# We Cannot Arrest our Way out of Youth Homelessness



- **Criminalization does not address the root cause of youth homelessness.**
  - Many youth cite family conflict and breakdown as the major reason for their homelessness.
  - Many youth experiencing homelessness have prior experience in foster care, juvenile justice, and/or mental health systems become homeless when transitioning out of systems.
  - Contact with the criminal justice system will not address any of these root causes of youth homelessness.

# We Cannot Arrest our Way out of Youth Homelessness



- Criminalization doesn't increase the likelihood individuals accept services.
  - The argument that the threat of jail, stylized as a "tough love approach," will increase the acceptance of supportive sources are proliferating local and national news.
  - However, there have been several research studies that demonstrate the opposite.
    - Tony Robinson, *No Right to Rest: Police Enforcement Patterns and Quality of Life Consequences of the Criminalization of Homelessness* (2017).
    - Samantha Batko et al., *Alternatives to Arrests and Police Responses to Homelessness* (2020).

# We Cannot Arrest our Way out of Youth Homelessness



- Criminalization pushes individuals further away from services and towards less safe conditions.
  - Efforts to avoid criminalization often result in individuals living in more isolated sleeping locations to avoid police contact. This isolation frequently results in:
    - Greater vulnerability to assault;
    - Increased risk of exposure to weather and climate related hazards; and
    - Decreased access to supportive services
  - See Marisa Westbrook & Tony Robinson, *Unhealthy by design: health & safety consequences of the criminalization of homelessness* (2022).



# We Cannot Arrest our Way out of Youth Homelessness



- Criminalization is expensive and often diverts money away from more effective interventions.
  - Research indicates that it can cost up to three times more to enforce anti-homeless laws than to find housing for people who don't have it.
  - Takes money and attention away from more effective Housing First approaches.

# We Cannot Arrest our Way out of Youth Homelessness



- **Criminalization often makes it harder for youth experiencing homelessness to be housed.**
  - Encampment sweeps can be destabilizing and result in individuals losing: items needed for work; medication, identification, essential paperwork.
  - Criminalization also disrupts connection to supportive services that make it easier for individuals to find housing and stay housed.

# Communities must be Clear about their Goal



- Are we a community that doesn't want to **SEE** people be homeless?
- Are we a community that doesn't want people to **BE** homeless?

# Communities must be Clear about their Goal



1. Are we a community that doesn't want to **SEE** people be homeless?
  - Criminalization can push people out of sight, but it cannot solve why people experience homelessness.
  - As Angela Davis wrote over 30 years ago: "prisons do not disappear problems, they disappear human beings."
2. Are we a community that doesn't want people to **BE** homeless?
  - We must look beyond criminalization to address the reasons why people experience homelessness.

# **How Advocates can Help**

# Oppose Criminalizing Legislation



- Lookout for and oppose state/local laws that criminalizes people who are unhoused.
  - As localities are deciding how to respond following *Grants Pass* be a vocal part of the conversation about what solutions do and don't work.

# Support Model State Legislation



- The National Homeless Law Center drafted the Gloria Johnson Act.
  - The model bill eliminates civil and criminal penalties against homeless persons “in the absence of adequate alternative housing and shelter.”
  - It is an attempt to codify the rule established by the Ninth Circuit in *Martin*.
  - As written, it would supersede any municipal laws that attempt to criminalize homelessness.

# Support Litigation to Protect the Rights of Youth Experiencing Homelessness



- Support litigation to protect the rights of youth experiencing homelessness under state constitutions and the 4th and 14th Amendment of the U.S. Constitution.
  - Justice Sotomayor's dissent in *Grants Pass* concludes with an overview of some of the protections that are still applicable.



# Review Model Policies from the National Coalition for the Homeless



- NCH has shared model policies for local, state, and federal legislation that aims to:
  - Shorten homelessness by stopping its criminalization
  - Prevent homelessness by strengthening housing protection and eliminating unjust evictions
  - End homelessness by increasing access and availability to affordable housing.

# Support Use of HUD funded vouchers to help House Youth



- The Foster Youth to Independence (FYI) initiative is a youth-written distribution mechanism for Family Unification Program (FUP) for youth vouchers.
- Foster Youth to Independence or Family Unification Program (FUP) Housing Choice Vouchers from 18-25 (3 year voucher than can be extended 2 additional years under the Family Self-Sufficiency (FSS) Program):
  - **Eligibility Criteria:**
    - Youth is 18 through 24 years of age (have not reached their 25<sup>th</sup> birthday), and
    - Has left foster care, or will leave foster care within 90 days, and
    - Are homeless or are at risk of becoming homeless when they were age 16 or older. (42 U.S.C.A. 1437f(x)(2))
- FUP vouchers are a type of Housing Choice Voucher (HCV) that are designated for families or youth involved with the child welfare system.

# How Advocates can Help

- Demand that elected officials invest in, or remain committed to, solutions that help:
  - **Prevent Homelessness**
    - Creating systems that work
    - Income Opportunity and Services
    - Eviction Defense
  - **Ensure Homelessness is Rare, Brief, and One-Time**
    - Providing Rapid Re-Housing
    - Permanent Supportive Housing
    - Crisis Response

**Thank you for your time  
today!**

**If you have any questions  
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