

Ordinances Criminalizing Homelessness: Constitutional Issues

Austin Ordinances

Criminalizing Homelessness

- **No Solicitation** (Austin Municipal Code §9.4.13)
 - Though the language of this ordinance limits its scope to “aggressive” solicitation, in practice many homeless people are cited for normal panhandling, such as holding a sign up by a road asking for money.
- **No Camping** (Austin Municipal Code §9.4.11)
 - This ordinance bans “use of a public area for living accommodation purposes.” People commonly receive citations under this ordinance for storing personal belongings in a public area, sleeping in a vehicle, or otherwise appearing to be living in a public area.
- **No Sit/No Lie** (Austin Municipal Code §9.4.14)
 - This ordinance forbids sitting or lying down in certain public areas of downtown Austin.

Eighth Amendment

- The Supreme Court has held that laws that criminalize an individual's status, rather than specific conduct, violate the Eighth Amendment's prohibition against **cruel and unusual punishment**. *Robinson v. California*, 370 U.S. 660 (1962).
- Many courts have found that laws punishing the life-sustaining activities of homeless people amounts to criminalization of homeless status in violation of the Eighth Amendment.
- Courts have looked at whether the number of homeless people **exceeds the number of available shelter beds** to determine whether the activities being criminalized are voluntary conduct or conduct inextricably linked with homeless persons' status.

First Amendment

- Courts have found solicitation to be protected speech and laws that target speech based on content must satisfy strict scrutiny to be constitutional. This means that content-based restrictions on speech must be narrowly tailored to achieve a compelling governmental interest.
- Austin's solicitation ordinance bans "aggressive" solicitation, including panhandling that:
 - Uses "obscene language;"
 - Continues after a person has refused to give money; or
 - Could intimidate a person into responding affirmatively to the request
- This statute could be challenged as unconstitutionally vague and in violation of the First Amendment's protection of free speech.

Questions? Comments?

Emily Gerrick

egerrick@fairdefense.org

512-879-1189

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