

LIMITS OF HOMELESSNESS ENFORCEMENT

Finding the Path to Solutions

November 13, 2019

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Agenda

- Overview of Legal Trends re Homelessness ←
- Anti-Camping and Sit/Lie Ordinances
- Unregulated Camps and Encampments
- Vehicles Used for Habitation
- Panhandling Regulations





Legal Trends in Homelessness

- We have all noticed the dramatic increase in homelessness in recent years. So have the courts.
- Traditional views of how laws may be enforced are undergoing a rapid change.
- That trend shows no signs of slowing down.
- We will focus on recent changes in the law and explore what the future may hold.





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Camping Ordinances--*Martin v. Boise*



- *Martin v. Boise* is a Ninth Circuit decision brought by homeless individuals against the City of Boise.
- The claim: enforcement of public camping ordinances against the homeless violates the Eighth Amendment if no alternative space is available. Doing so criminalizes homelessness.
- The Plaintiffs sought to bar further enforcement of Boise's public camping ordinance.
- Despite the litigation, Boise was actively enforcing its public camping ordinances—over 175 citations in Q1 2015.

Martin--The Opening Lines Tell the Story



“The law, in its majestic equality, forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread.”

— Anatole France, *The Red Lily*

“We consider whether the Eighth Amendment’s prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to. We conclude that it does.”

— Ninth Circuit Court

Martin--Eighth Amendment Analysis



- The “Cruel and Unusual Punishments” clause places substantive limits on what government may criminalize.
- *Robinson v. California*, 370 U.S. 660 (1962) struck down a law that criminalized narcotic addiction.
- *Powell v. Texas*, 392 U.S. 514 (1968) embellished on *Robinson* in a public drunkenness case—criminal penalties may not be inflicted upon a person for being in a position he or she is powerless to change.
- Based on that, “the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one's status or being.”

8th Amendment--*Jones v. Los Angeles*



- *Martin* also reanimated *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006), vacated, 505 F.3d 1006 (2007).
- *Jones* involved a similar type of Eighth Amendment claim brought by homeless individuals in Los Angeles.
- *Jones* reached a result similar to *Martin* on the Eighth Amendment, but was later vacated based on a settlement.
- The settlement required Los Angeles to add an additional 1,250 beds to the shelter system within a certain period of time.
- *Jones* was a reported decision with no precedential value due to being vacated. *Martin* reinstates the *Jones* holding.



Martin—a “Narrow” Holding

“[A]s long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”

Martin provides guidance on what the ruling *does not* cover:

- A city is not required to provide sufficient shelter for the homeless;
- A city need not allow individuals to sit, lie or sleep on the streets at any time or at any place.

Martin—Limitations on the Holding



Martin elaborated further on the limits of its holding in footnote 8:

- It does not cover individuals who *do* have access to shelter, but choose not to use it.
- An ordinance prohibiting sitting, lying or sleeping outside at certain times and in certain locations may be permissible *even when shelter is otherwise unavailable*.
- An ordinance may prohibit right of way obstruction or the erection of certain types of structures for shelter.
- The key is whether a city’s ordinances punishes a person for lacking the means to live out the “universal and unavoidable consequences of being human.”

Martin v. City of Boise--What's Next?



- Boise sought a rehearing before the full Ninth Circuit.
- That request was denied on April 1, 2019, but several judges dissented from the denial of the request, asserting that the case was wrongly decided.
- Next stop, U.S. Supreme Court?
- Boise has sought review, but no word yet on whether the Supreme Court on whether it will accept review.
- In the meantime, the case applies to Ninth Circuit jurisdictions, including those in Washington state.



Lessons Learned—Ordinances

- Boise enforced camping and disorderly conduct ordinances. Both applied to public property on a city-wide basis.
- Do your ordinances allow homeless individuals to sleep in certain locations? Some cities state that they comply with *Martin* if their regulations do not prohibit camping city-wide.
- If your city takes this approach, how explicit do your regulations need to be about where individuals without shelter may sleep or camp?



Lessons Learned—Enforcement

- Boise, at times, aggressively enforced its ordinances against homeless individuals.
- *Martin* did not strike down Boise's ordinances in their entirety, but only as applied to individuals with no other shelter options.
- If in doubt, cities should consider suspending enforcement of such ordinances pending legal review.
- Many camping ordinances predate the rise of the homeless population in our state. Cities may want to consider whether their ordinances are in keeping with current legislative priorities.



Lessons Learned—Shelter Space

- Cities have the option of establishing a system for tracking shelter space availability.
- In theory, such a system would assist a city in determining when it may enforce a city-wide public camping ordinance.
- In practice, such a system will be logistically difficult. It will require coordination with area agencies and non-profits that provide shelter services.
- A tracking system will require ongoing efforts since the number of shelter beds and the homeless population will fluctuate over time.
- Tracking systems may work better when a city operates emergency shelters—the logistics get easier.

Lessons Learned—Shelter Space



Boise’s attempt to track shelter space is a cautionary tale:

- There are three shelters in Boise—two of which are church-run.
- There was evidence that the church shelters required participation in religious activity or instruction in order to receive shelter.
- “A city cannot, via the threat of prosecution, coerce an individual to attend religion-based treatment programs consistently with the Establishment Clause of the First Amendment.”
- All three shelters had duration restrictions for its residents.
- Point in time counts and arrest numbers also demonstrated a lack of available shelter.



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Unregulated Encampments--Seizures



- *Martin* involved criminal penalties for camping or sleeping in public. What about the encampments themselves?
- Clearing encampments must meet certain due process requirements. See [Lavan v. City of Los Angeles](#), 693 F.3d 1022 (9th Cir. 2012). The Court found that:
 - Unattended property does not necessarily mean it's abandoned;
 - A municipality may not summarily remove the property of a homeless person without notice and an opportunity to be heard;
 - A municipality may not summarily destroy seized property—it should be maintained in a secure location for a certain period of time—60 days is common in this area.
 - Failure to hold property so that it may later be claimed by the owner results in hardship—loss of important documents, medicine, keepsakes, etc.

Unregulated Encampments--Searches



A recent Washington Court of Appeals case found that tents and shelters on public property are also protected from unreasonable searches under the State Constitution. See [State v. Pippin](#), 200 Wn. App. 826, 403 P.3d 907 (2017).



Unregulated Encampments--Searches



The Court explained its ruling (in part) as follows:

The law is meant to apply to the real world, and the realities of homelessness dictate that dwelling places are often transient and precarious. The temporary nature of Pippin's tent does not undermine any privacy interest. [citations omitted] Nor does the flimsy and vulnerable nature of an improvised structure leave it less worthy of privacy protections. For the homeless, those may often be the only refuge for the private in the world as it is.



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Living in Vehicles

- [The 2018 Seattle/King County Point-in-Time Count of Persons Experiencing Homelessness](#) found that 3,372 people were living in cars, vans and RVs, which amounts to 46%(!) increase over 2017. That number dropped to 2,147 in [2019](#).
- Traditional view—municipalities may prohibit living in vehicles on private property and in right of way.
- In rights of way, vehicles are often subject to impoundment after 72 hours.
- If a vehicle used as a residence becomes inoperable, it is likely to be impounded if it is parked in the right of way.

Living in Vehicles—Homestead Rights



The use of vehicles for habitation is not a new phenomenon, but has become much more common.

- In [March 2018](#), a King County Superior Court Judge [ruled](#) that an individual residing in his vehicle has homestead rights in the vehicle. A good description and analysis of the case can be found [here](#).
- Homestead rights protect a person's residence and essential possessions from judgments and liens. See [RCW Chapter 6.13](#).
- The trial court ruled from the bench and the case is not precedent. The City of Seattle appealed and we await a court of appeals decision.
- The court did not rule the impoundment was invalid—rather it invalidated the lien for fines and towing fees with respect to a vehicle that is declared to be a residence.

Use of Vehicles for Habitation



Question: Can a city prohibit individuals from using their vehicles for habitation in the right of way?

Answer: It's potentially risky.

- Such an ordinance was struck down as overly vague in *Desertrain v. City of Los Angeles*.
- The City of Tacoma adopted a more specific vehicle habitation ordinance, but it has not been tested in court.
- Parking duration restrictions (such as 72 hours) are valid.



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Panhandling Regulations



Traditionally, courts have ruled that “charitable appeals for funds is protected speech, but that government may impose “time, place and manner” restrictions on such speech. [Village of Schaumburg v. Citizens for a Better Env't](#), 444 U.S. 620, 100 S. Ct. 826 (1980).



Reed v. Town of Gilbert



[Reed v. Town of Gilbert](#) called into question local codes that regulate based on sign content.





City of Lakewood v. Willis

Not long after *Reed*, in 2016, the Washington Supreme Court struck down an ordinance restricting where “begging” could take place in *City of Lakewood v. Willis*.

The ordinance prohibited begging at freeway onramps, offramps and major intersections in the City.



City of Lakewood v. Willis



- Steven Willis was issued a criminal citation for “begging” at a freeway onramp.
- Begging was defined as “asking for money or goods as a charity, whether by words, bodily gestures, signs or other means.”
- He had a sign stating that he was disabled and needed help. He was not cited for blocking the onramp or disrupting traffic.
- The court emphasized that an officer would need to read the sign to know if the ordinance was violated.

City of Lakewood v. Willis



Under the ordinance, soliciting votes or customers would not have been a violation:



City of Lakewood v. Willis–Lessons



- Have you legal counsel review your ordinances regarding panhandling in light of *Willis* if that has not already happened.
- Beware of ordinances that regulate the content of expressive activity instead of legitimate public safety issues.
- Although *Reed* is a sign case, the results in *Willis* are not limited to signs—the reasoning applies to any expressive activity.
- Also beware of ordinances that create broad zones of restriction on soliciting aid or donations within a certain distance of bus stops, parking lots, ATMs, etc. Such ordinances may be vulnerable to challenge, although this issue was not directly addressed in *Willis*.

Conclusions



- Courts will continue to carefully review ordinances that have a significant impact on the homeless in terms of enforcement.
- In addition to reviewing your ordinances, review *enforcement practices* to ensure they are narrowly tailored to serve a proper public purpose.
- Many of the types regulations challenged have been on the books for a long time. Consider whether those regulations are still in keeping with your agency's policy priorities.
- There is a proper role for enforcement, but it needs to be done thoughtfully and it can't be the only strategy for an agency.

Thank you!



Have a question I did not answer today?

Feel free to call me at 206-625-1300, ext. 102

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