

What the Grants Pass Decision Means for People with Disabilities

August 28, 2024

What I Will Cover

Relationship between homelessness
and disability

Overview of the Grants Pass case

Disability & Homelessness

People with disabilities are at increased risk of homelessness due to:

- Poverty
- Inaccessibility
- Discrimination

Poverty

People with Disabilities are most likely to experience homelessness, be rent burdened, or be unable to afford housing.

- Lower **employment** rate (22.5%) and higher **poverty** rate (25%) due to ableism and other structural barriers to employment and economic security.
- Many disabled people – **over 4 million aged 18-64** - rely on Supplemental Security Income (SSI) benefits to meet their basic needs.
- Federal policies – e.g., income and asset limits for SSI recipients & sub-minimum wages - make it hard for people with disabilities to escape poverty.

Housing is Unaffordable

The primary cause of the record levels of homelessness we see today is the unaffordable housing market, according to [research from the Harvard Joint Center for Housing Studies](#).

Technical Assistance Collaborative [study](#): “there is no United States housing market in which a person living solely on [SSI] can afford a safe, decent apartment without rental assistance.”

Inaccessibility

Less than 5% of housing nationwide is accessible to people with mobility difficulties.

Less than 1% of housing nationwide is accessible to wheelchair users.

Now in a nationwide housing shortage of more than 7 million units, there are even fewer accessible and affordable housing options.

Discrimination

National Fair Housing Alliance [2024 Fair Housing Trends Report](#): nearly 53% of housing discrimination complaints filed were based on disability.

In California, the percentage is [56.2%](#)

- Failure to build units that are accessible;
- Discriminatory rental policies;
- Failure to accommodate;
- Failure to allow reasonable modifications;
- Exclusions and differential treatment due to paternalistic views and/or stigmas;
- Harassment based on disability.


Disabled People are Overrepresented in Unhoused Communities

HUD [2023 Point-in-Time](#) count: 1 in 3

- “Chronic homelessness” – disability and one-year continuous homelessness or four+ episodes of homelessness in the last three years equaling at least 12 months.
- Actual percentage is likely higher.

In California, it has been [reported](#) that 42% of the unhoused population have a disabling condition.

Measures that prohibit life-sustaining activities such as sleeping/camping, eating, sitting, and/or asking for money/resources in public spaces.



Includes criminal penalties like fines and jail time for those activities.

- Restrictions on the public areas in which sitting or sleeping are allowed
- Prohibitions on pitching tents or other structures on public property
- Prohibitions on storing belongings on public property

Laws Criminalizing Unhoused People

Disabled People are More Likely to be Subject to Punishment Under These Laws

Compliance with laws may be difficult or more burdensome due to disability.

Public entities often lack policies or procedures on how to ask for reasonable accommodations.

Public entities often fail to reasonably accommodate people when enforcing local laws despite a duty to do so.

Criminalization Does Not Work

Studies have shown that criminalization perpetuates poverty and continues a cycle of homelessness and incarceration.

- Chris Herring et al., [*Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness*](#), 67 Soc. Problems 131 (2019).

People who are incarcerated are not linked with needed community-based services upon release and are affected by health problems years after they are released, impacting their ability to get and keep housing and employment.

- Michael Massoglia & Brianna Remster, [*Linkages Between Incarceration and Health*](#), 134 Pub. Health Rep. 8S, 10S (2019).



City of Grants Pass, OR v. Johnson

City enacted ordinances prohibiting “camping” outdoors using a blanket, pillow, or cardboard box.

Punished people for seeking shelter from the elements, despite the city having few available shelter beds.

2018: Gloria Johnson sued the city to challenge the ordinances. Asked the court to stop the city from fining and jailing unhoused people for sleeping in public when they have nowhere else to go.

Johnson argued that punishing people with no alternative but to sleep in public violated the 8th Amendment's prohibition on cruel and unusual punishment

District court agreed – relying on an earlier 9th Cir. case, [*Martin v. Boise*](#).

City appealed the decision all the way to the Supreme Court, who heard the case on April 22, 2024.

Grants Pass

Grants Pass, continued

Over 40 amicus briefs were submitted in support of Johnson. [Docket](#).

Disability Rights Education and Defense Fund [Brief](#)

- Discussed the relationship between disability and homelessness
- Stressed how criminalization disproportionately harms unhoused people with disabilities and deepens racial, gender, and health inequalities
- Highlighted the lack of alternatives for disabled people, and the need for different, holistic strategies

Grants Pass – SCOTUS Decision (Slide 1/3)

June 28, 2024: In a 6-3 [ruling](#) Supreme Court held that fining and jailing people experiencing homelessness for sleeping outside does not constitute cruel and unusual punishment even when there is no alternative shelter available.

Justice Neil Gorsuch, a Trump appointee, wrote for the majority.

- 8th Amendment focuses on the “method or kind of punishment” a government may impose after a criminal conviction, not on whether a government may criminalize conduct in the first place.
- “Limited” civil fines, bans from public property, and maximum jail sentences of 30 days are neither cruel nor unusual.

Grants Pass – SCOTUS Decision (2/2)

Arguments rejected by the majority:

- That ordinances banning people from sleeping in public when there is no alternative shelter available criminalize the “status” of being homeless.
- That the ordinances criminalize involuntary behavior—sleeping.

Grants Pass – SCOTUS Decision (3/3)

Justice Sonia Sotomayor wrote the dissent

- For people with no access to shelter, the ordinances punish them for the status of being unhoused.
- Ordinances are so broadly written that unhoused people “necessarily break the law just by existing.”
- “Unconscionable and unconstitutional.”
- Cited DREDF’s disability rights brief.





Aftermath of Grants Pass

Gives government the green light to make criminalization their primary, frontline response to homelessness. E.g., CA Governor Newsom's recent [executive order](#).

Before Grants Pass, government was prohibited from fining and jailing people for sleeping in public when there was no alternative shelter available. Now, they can aggressively conduct sweeps and raids without any restriction.

Will result in many disabled people ending up in jail, psychiatric, nursing, or other institutions.

Thank you!

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