



NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: House Bill 734 - Municipalities - Vagrancy - Repeal of Authority to Prohibit
FROM: Maryland Office of the Public Defender
POSITION: FAVORABLE
DATE: 2/13/2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 734. House Bill 734 would repeal the authority of a municipality to prohibit vagrancy. A repeal of vagrancy and similar laws (*e.g.*, loitering, loafing, rogue, and vagabond) is long overdue.

Vagrancy statutes have a long and negative history. “Vagrancy” is defined as “[t]he quality, state, or condition of wandering from place to place without a home, job, or means of support other than begging.”¹ Any person who has no home, property, or visible means of support may be considered a “vagrant.”² Vagrancy—a relic of the English common law and feudal system—was “the criminal aspect of the poor laws.”³ It generally prohibited the laboring population from wandering from their homes without a valid purpose.

In the United States and Maryland, the vagrancy concept was adopted as a crime-prevention method.⁴ The laws were adopted with the purpose of preventing would-be criminals from doing future harm.⁵ Based on this purpose, the American version of vagrancy laws criminalized certain groups of people who were deemed likely to engage in certain socially disruptive activities.⁶ Thus, a person who appeared to fit the status of a vagrant could be charged.⁷

During the 1800s and into the Jim Crow era, vagrancy laws made it a crime for Black or African American people to be unemployed.⁸ But, during the 1960s and 1970s, vagrancy laws were being invalidated as constitutionally infirm.⁹ In *Papachristou v. City of Jacksonville*,¹⁰ the petitioners were convicted under a vagrancy ordinance that prohibited several activities, such as “wandering or strolling around from place to place without any lawful purpose,” and defined classes of violators, including thieves, habitual loafers, and disorderly persons. In invalidating the law, the U.S. Supreme Court

reasoned that the broad wording of the statute failed to provide proper notice to potential offenders and provided unfettered discretion to the police officers enforcing the law. Furthermore, the statute covered a variety of innocent activities that were criminalized under the English vagrancy law from which it was derived.

Notwithstanding U.S. Supreme Court scrutiny and the diminishing acceptance of vagrancy laws, many vagrancy laws and offshoots (prohibitions on loitering, prowling, begging, soliciting, etc.) remain effective in Maryland.¹¹ Today, these laws directly criminalize people who are experiencing homelessness.¹² But, the issue of homelessness is a matter of social policy, not criminal law. In fact, some courts have taken the position that criminalizing people for experiencing homelessness constitutes cruel and unusual punishment.¹³

Based on this long and troubled history and the negative impact that vagrancy laws have on people experiencing homelessness, municipalities should no longer have the authority to prohibit vagrancy. This repeal is needed and long overdue. **For these reasons, the Maryland Office of the Public Defender strongly urges this Committee to issue a favorable report on House Bill 734.**

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

**Authored by: Tia L. Holmes, Esq.
Assistant Public Defender
Appellate Division
Tia.Holmes@maryland.gov**

¹ VAGRANCY, Black's Law Dictionary (11th ed. 2019).

² VAGRANT, Black's Law Dictionary (11th ed. 2019).

³ William O. Douglas, *Vagrancy and Arrest on Suspicion*, 70 Yale L.J. 1, 5 (1960).

⁴ *Downes v. State*, 11 Md. App. 443, 446-47 (1971) (explaining that the purpose of Maryland's rogue and vagabond law "is to give enforcement officers a tool to apprehend and suppress more aggravated criminal conduct prior to its actual commission").

⁵ Rollin M. Perkins, *The Vagrancy Concept*, 9 Hastings L.J. 237, 250 (1958) ("The primary purpose of this provision of the statute was to require the man without means to work for a living rather than to gain subsistence by begging, but another possibility may not have been overlooked entirely. If the man without means found it difficult to obtain all he desired by begging he might be tempted to try methods even more antisocial in their nature, hence the enforcement of this statute may well have had a tendency to prevent crime.").

⁶ See Douglas, *supra* note 3, at 2-6; Perkins, *supra*, at 253-61; see also Forrest W. Lacey, *Vagrancy and Other Crimes of Personal Condition*, 66 Harvard L. Rev. 1203 (1953) (“Vagrancy is the principal crime in which the offense consists of being a certain kind of person rather than in having done or failed to do certain acts.”); Arthur H. Sherry, *Vagrants, Rogues and Vagabonds-Old Concepts in Need of Revision*, 48 California L. Rev. 564 (1960) (“... England’s Vagrancy Act of 1824, in contrast to the statutes in this country, placed almost exclusive emphasis on *conduct* and did not purport to attach criminality to *status* alone.”).

⁷ See Sherry, *supra* note 6, at 564.

⁸ See generally Public Broadcasting Service (PBS), “Slavery by Another Name: Black Codes and Pig Laws,” <https://www.pbs.org/tpt/slavery-by-another-name/themes/black-codes-and-pig-laws/> (last visited Feb. 8, 2024); see also Britannica.com, History & Society, “Black Code,” <https://www.britannica.com/topic/black-code> (last visited Feb. 9, 2024) (“There were vagrancy laws that declared a black person to be vagrant if unemployed and without permanent residence; a person so defined could be arrested, fined, and bound out for a term of labour if unable to pay the fine.”).

⁹ Jonathan Weinberg, *Proving Identity*, 44 Pepp. L. Rev. 731, 779-80 (2017).

¹⁰ 405 U.S. 156 (1972).

¹¹ See, e.g., [Wicomico County Code, Ch. 218](#) (defining vagrants and penalties for the crime); [Worcester County Code, CL § 1-202](#) (“It is a misdemeanor to be a vagabond, vagrant, beggar or common gambler in Worcester County.”); [Town of Forest Heights, Chapter C. Charter § 33-20\(40\)\(a\)](#) (establishing the police power “[t]o prohibit, suppress, and punish within the Town all vice, gambling, and games of chance; prostitution and solicitation therefore and the keeping of bawdy houses and houses of ill fame; **all tramps and vagrants**; all disorder, disturbances, annoyances, disorderly conduct, obscenity, public profanity, and drunkenness”) (emphasis added); [Capital Heights, Md. Code of Ordinance §§ 7-105, 7-106](#) (local ordinance prohibiting loitering, begging, and soliciting).

¹² See generally National Homelessness Law Center, *Housing Not Handcuffs 2021: State Law Supplement*, <https://homelesslaw.org/wp-content/uploads/2021/11/2021-HNH-State-Crim-Supplement.pdf>.

¹³ E.g., *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) (holding that, in the absence of adequate alternatives, it is cruel and unusual punishment under the Eighth Amendment to punish someone for life-sustaining activities like sleeping, resting, or sheltering oneself).