

Vagrancy

A) History

Common law definition of a vagrant is someone who refuses to work or goes about begging. Throughout the 19th and much of the 20th century, VT and most other states criminalized this status.

An 1864 version of the VT statute targeted “A person who has his face painted or concealed in order to prevent having his true character discovered.”

Other versions targeted individuals who were “unable to give a good account of themselves.”

B) Vulnerability

Current statute is vulnerable in two ways:

- 1) The statute is likely unconstitutional
 - a. Supreme Court (*Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972)) *unanimously* struck down a Vagrancy statute in Florida based on:
 1. Statute was constitutionally deficient on vagueness and overbreadth grounds
 2. Statute did not give the average person fair notice of what conduct is forbidden
 3. The Court likened Vagrancy laws in general to a direction from a legislature to police to arrest all suspicious persons
 4. Such statutes encourage arbitrary and erratic arrests
 - b. VT statute is very similar to the FL statute
- 2) Social policy
 - a. The statute criminalizes status rather than conduct
 - b. Only reported VT case law is *State v. Jasmin* (105 VT. 531, (1933)). VT Supreme Court upheld the state’s Vagrancy statute because:
 - i. “As the legislature well knew, when idle or mischievous people are allowed to congregate in public places, danger threatens ... and it is essential that such groups be broken up.”
 - ii. “There is no legitimate reason for anyone to idle away time on city sidewalks.”
 - c. Social mores have changed dramatically since that time

C) Superfluous

All conduct in the statute is most likely covered by other statutes – i.e. Disorderly Conduct, Trespassing, and Assault. Eliminating the Vagrancy statute only removes the overlay of a person’s status (transience) while committing one of these other crimes

Repeal does not remove prohibitions of any actions (conduct)