
Civil Rights & Judiciary Committee

HB 1591

Brief Description: Concerning the rights of persons experiencing homelessness.

Sponsors: Representatives Gregerson, Peterson, Macri, Doglio, Appleton, Thai, Robinson, Jinkins, Lekanoff, Slatter and Davis.

Brief Summary of Bill

- Codifies the rights of people experiencing homelessness and creates a civil cause of action.
- Permits state monies appropriated for civil legal aid services to be used in matters relating to enforcing these rights.

Hearing Date: 2/12/19

Staff: Cece Clynych (786-7195).

Background:

Martin v. City of Boise.

The United States (U.S.) Ninth Circuit Court of Appeals issued an opinion in September 2018 holding that sitting, lying, and sleeping are unavoidable consequences of being human, and that a city is prohibited under the Eighth Amendment to the U.S. Constitution from imposing criminal sanctions against homeless individuals for sleeping outdoors on public property when no alternative shelter was available to them. The Eighth Amendment provides that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Civil Legal Aid Services.

The Office of Civil Legal Aid (OCLA) is an independent agency of the judicial branch. Moneys appropriated by the Legislature for civil representation are administered by the OCLA and must be used solely for the purpose of contracting with qualified legal aid programs for legal representation of indigent persons in matters relating to:

- domestic relations and family law matters;

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- governmental assistance and services;
- health care;
- housing and utilities;
- mortgage foreclosures;
- consumer, financial service, credit, and bankruptcy;
- employment;
- rights of residents of long-term care facilities;
- wills, estates, and living wills;
- elder abuse;
- guardianship,
- disability rights;
- education, including special education;
- administrative agency decisions; and
- discrimination prohibited by local, state, or federal law.

Summary of Bill:

A new chapter is created, codifying the rights of people experiencing homelessness and creating a civil cause of action. Discrimination based on housing status is prohibited. Every person experiencing homelessness and who has no reasonable alternative but to survive in public space has the following rights in public space without being subject to criminal or civil penalties or harassment by law enforcement, public or private security personnel, or any agents of any public-private partnership established under any state or local law:

- the right to survive in a nonobstructive manner;
- the right to shelter oneself from the elements in a nonobstructive manner;
- the right to eat, share, accept, or give food in any public space where food is not prohibited;
- the right to occupy a motor vehicle or recreational vehicle, provided that it is legally parked on public property or parked on private property with the permission of the property owner; and
- the right to a reasonable expectation of privacy in one's personal property.

A person whose rights have been violated may bring a civil lawsuit to enforce those rights. The plaintiff must establish his or her homelessness. The burden then shifts to the defendant to show that sufficient reasonable alternatives other than to survive in public space were available to the plaintiff. Courts may award appropriate injunctive and declaratory relief, restitution for loss of property, and actual and compensatory damages up to \$1,000 per violation. The court may also award reasonable attorneys' fees and costs to the prevailing party. These remedies are not exclusive.

A number of terms are defined, including the following:

- "Discrimination based on housing status" refers to any law, policy, or practice regulating public space that results in disparate treatment or has a disparate impact on people who are homeless or perceived as homeless as defined in this section.
- "Harassment" means a knowing or willful course of conduct by law enforcement or public or private security personnel or agents directed at a specific person that a reasonable person would consider pestering, troubling, disturbing, or threatening.

- "Homeless" means lacking a fixed, regular, and adequate nighttime residence, and includes persons sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; living in emergency or transitional shelters; abandoned in hospitals; awaiting foster care placement; having a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or who meet the definition of "homeless" under the McKinney-Vento Homelessness Assistance Act, as well as persons who would qualify as "homeless" under that Act but for not being a child or youth.
- "Nonobstructive manner" means in a manner that does not render passageways impassable or hazardous.
- "Public space" means any property that is owned or leased, in whole or in part, by any state or local government entity or any property upon which there is an easement for public use and that is held open to the public, including, but not limited to: plazas; courtyards; parking lots; sidewalks; public transportation facilities and services; rooms or areas within public buildings, but only to the extent that the rooms or areas are generally held open to the public, and only during normal hours of operation; shopping centers, but only those which serve as the functional equivalent of downtown areas under the Washington Constitution, and only during normal hours of operation; parks, but only those parks and areas within parks which are open to the public without fee or charge; and, natural and wildlife areas, but only those areas which are open to the public without fee or charge and subject to reasonable rules and regulations necessary to protect fish and wildlife resources and their habitat.
- "Survive" means the conduct of necessary, life-sustaining activities in a nonobstructive manner that includes, but is not limited to, sitting, standing, leaning, kneeling, squatting, sleeping, lying down, eating, and sheltering oneself.

Moneys appropriated by the Legislature for civil representation and administered by the Office of Civil Legal Aid may be used for the purpose of contracting with qualified legal aid programs for legal representation of indigent persons in matters relating to discrimination prohibited by this new chapter.

A severability clause is included.

Appropriation: None.

Fiscal Note: Requested on February 5, 2019.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.