



TO: Chair Bynum, Vice Chairs Noble and Power, and Members of the House Committee on Judiciary
FROM: Disability Rights Oregon
DATE: March 8, 2021
RE: HB 3115, Testimony in Support

Chair, Vice Chairs, and Members of the Committee:

Disability Rights Oregon submits this testimony in support of HB 3115, which would improve the regulation of public property with respect to persons experiencing homelessness.

We thank Representative Kotek for bringing this legislation forward and sponsoring the bill.

Unreasonable restrictions on sitting, lying, sleeping or keeping warm and dry in public spaces target persons with disabilities

Local laws regulating individuals' freedom to sit, lie, sleep or keep warm on public property disproportionately impact unsheltered individuals who have a serious mental illness. Those individual are most likely to sit, lie, or sleep in public spaces. The 2019 Point in Time (PIT) count of people experiencing homelessness conservatively calculates approximately 15,800 homeless Oregonians. PIT data also shows that 31% of the homeless are considered "chronically homeless" and disabled.¹ Statistics from across the state indicate that 29% of the homeless population self-identified as having a serious mental illness.² The State of Oregon does not currently have the capacity to shelter its homeless population. Sleeping space is not available for all of the homeless. Thus, local laws that unreasonably prohibit sitting, lying, sleeping or keeping warm in public spaces, punish unsheltered individuals with serious mental illness for behavior that is an unavoidable consequence of being homeless.

More generally, individuals with physical or mental disabilities are more likely than other individuals to sit, lie, or rest in public spaces. Unreasonable restrictions on those activities have a disparate impact on persons with disabilities.

HB 3115 protects constitutional rights, reduces institutionalization of the mentally ill, and limits barriers to transition out of homelessness

Ordinances that prohibit the unavoidable conduct that accompanies being unsheltered with a serious mental illness lead to unnecessary arrests and institutionalization. With no choice but to violate anti-camping or sit-lie ordinances, unsheltered individuals with mental illness may face criminal prosecution and jail time.

¹ Oregon Housing and Community Services, “2019 Point in Time Dashboard” (2019). Available at <https://public.tableau.com/profile/oregon.housing.and.community.services#!/vizhome/2019Point-in-TimeDashboard/Story1> (last accessed on March 8, 2021).

² Oregon Housing and Community Resources, “Oregon Statewide Shelter Study,” p 16 (2019). Available at <https://www.oregon.gov/ohcs/about-us/Documents/poverty/Oregon-Statewide-Shelter-Study.pdf> (last accessed March 8, 2021).

Despite attempts to prosecute individuals for survival activities, prohibitions on those activities are consistently unconstitutional. The 9th Circuit Court of Appeals held that “so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],’ the jurisdiction cannot prosecute homeless individuals for ‘involuntarily sitting, lying, and sleeping in public.’”³ The court concluded that criminalizing such behavior is a violation of the Eighth Amendment protections against cruel and unusual punishment.

Fines associated with violations of ordinances or issued as a result of prosecution also negatively impact homeless individuals experiencing serious mental illness. Lacking resources to pay those fines, nonpayment would lead to additional fees, debts, and collections imposed upon those who simply cannot afford to pay, and may also lead to contempt of court proceedings and jail time.⁴ The impact on credit and criminal histories of homeless individuals only creates additional barriers. HB 3115 will help protect individual’s constitutional rights and limit unnecessary institutionalization and other barriers to transitioning off the streets.

Unlimited bans on homeless activities threaten the health and safety of unsheltered individuals with mental illness

Broad definitions of what it means to unlawfully sit, lie, or rest in public spaces, may capture even the most basic attempts at protection from the elements. As a result, unsheltered individuals have no way to stay dry and little protection against potentially lethal weather conditions. Denying access to basic shelter places individuals’ health and safety at risk. It also leads to an increase in emergency room visits and other negative impacts on our healthcare system. Trespass orders that often accompany violations of broad prohibitions on homeless activities also deny access to essential mental health and social services. HB 3115 ensures that localities must take into account those health and safety considerations, when placing restrictions on the use of outdoor public spaces.

Disability Rights Oregon supports HB 3115, because it provides a statutory framework to encourage cities to pass ordinances that do not violate the Constitution, disproportionately impact unsheltered individuals with mental illness, criminalize the unavoidable consequences of being homeless, create barriers to transition off the streets, or threaten the health, safety, and survival of those most vulnerable in our communities.

About Disability Rights Oregon

Disability Rights Oregon is a statewide nonprofit that upholds the civil rights of 950,000 people with disabilities in Oregon to live, work, and engage in the community. Disability Rights Oregon serves as a watchdog as we work to transform systems, policies, and practices

³ See *Martin v. City of Boise*, 920 F3d 584, 617 (9th Cir 2019) (quoting *Jones v. City of Los Angeles*, 444 F3d 1118, 1136 (9th Cir 2006)).

⁴ See ORS 161.685 (stating that potential consequences of nonpayment of fines, restitution or costs include debt collection, contempt of court, and issuance of a warrant of arrest).

to give more people the opportunity to reach their full potential. Since 1977, the organization has served as Oregon's federally authorized and mandated Protection & Advocacy System. Disability Rights Oregon is committed to ensuring the civil rights of all people are protected and enforced.

Sincerely,



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