

EXECUTIVE SUMMARY

DECRIMINALIZING HOMELESSNESS:

WHY RIGHT TO REST LEGISLATION IS
THE HIGH ROAD FOR OREGON

RIGHT TO REST



ACKNOWLEDGEMENTS

The American Civil Liberties Union of Oregon prepared this report with the assistance of our dedicated staff, volunteers, and community partners. We would like to thank the following individuals for their invaluable contributions to this project.

Heather Marek, a law and sociology student at the University of Oregon, researched and drafted the report.

Katie Sawicki wrote the executive summary and introduction and interviewed people for the spotlights.

Zoe La Du, Corrine Fletcher, Elena Stross, and Franz Bruggemeier helped compile data on municipal and county ordinances.

Special thanks to:
Ibrahim, Mel, Cara, and Dakota for sharing their stories.

Paul Boden, Coral Feigin, and the other staff and volunteers with the Western Regional Advocacy Project which includes Right 2 Survive, Sisters Of The Road and Street Roots in Oregon.

Alision McIntosh of Neighborhood Partnerships.

DECriminalIZING HOMELESSNESS:

Why Right to Rest legislation is the High Road for Oregon

Copyright© 2017 by the American Civil Liberties Union of Oregon
All rights reserved.

ACLU of Oregon
P.O. Box 40585
Portland, OR 97240
503.227.3186
info@aclu-or.org
www.aclu-or.org

EXECUTIVE SUMMARY

NOTE:

All of the information in this summary can be found in the full report with comprehensive citations.

SUMMARY

When enough hardships collide—you lose your job, healthcare, food stamps, housing, leave a domestic violence situation—you end up with no place to go. Before you can get back on your feet, you need to survive— to sleep, eat, bathe, and seek shelter. Many of Oregon’s city and state laws punish you for this. Instead of sleeping and resting, you are harassed, constantly moved, criminalized, and pushed to new levels of exhaustion and poor health.

Our research reveals an entire legal infrastructure in Oregon that makes meeting basic survival needs illegal in public spaces. We analyzed local laws in 69 cities statewide that impact unhoused communities—people experiencing homelessness. We found 224 laws that create clear barriers to performing life sustaining activities and legalize the unfair and harmful treatment of unhoused communities.

Laws that criminalize poverty and homelessness punish individuals and families for systemic inequities. This punitive approach is counterproductive, costly, and devastating to a person’s health. It stalls progress by failing to address root causes and fueling stereotypes and prejudices that divide housed and unhoused communities.

Oregon has an opportunity to course correct. The Right to Rest Act decriminalizes rest and prohibits discrimination based on housing status. It also acknowledges the role that

economic hardship, housing instability, lack of access to services, and unemployment all play in homelessness. Right to Rest sets us on a path that replaces outdated, inhumane, and ineffective laws with solutions that protect and respect the health and well-being of people facing incredible difficulties.

AN URGENCY TO ACT

In recent years, homelessness in rural and urban Oregon is on the rise. Whether we are one rent increase away from eviction, have a family member living unsheltered, or are unhoused ourselves, homelessness can affect us all. It disproportionately impacts children, military vets, families, people of color, grandparents, trans women of color, women escaping domestic violence situations, LGBTQ youth, and people with disabilities.

Oregon has recently experienced the largest growth of any state in its chronically homeless population. Low incomes, high rents and lack of affordable housing units are the leading cause. Oregon is an increasingly expensive state to live in with the lowest vacancy rate in the country. Growth in median household income continues to lag. Current law upholds no cause evictions and prohibits rent stabilization. Portland alone experienced the largest increase in median rent of any US city in 2015. The compounding effect of these factors has fueled housing instability and launched us into the crisis we see today.

IBRAHIM, PORTLAND

“They wake you up in the dead of sleep and you have to walk around in the cold and rain trying to find a new place. When you finally get settled, an hour later, they move you again.”

When Ibrahim came to Portland and became a part of the houseless community, he found a series of obstacles that kept him from sleeping, resting, forming camps and the community he needed to survive. Most nights were the same. He would finally find a place away from the cold and rain and then the police would wake him up and make him move. Another time, he was so tired, he sat down on a curb to rest for a minute. The police immediately began questioning him about drugs.

“When you have no sleep like that, you don’t really know what is going on around you. Your whole body is telling you it can’t go any more. It’s screaming. Your legs won’t move. Your eyes won’t open. You start developing mental issues. I was so exhausted.”

At the same time, homelessness is exacerbated by inequities that persist in education, employment, healthcare, and domestic violence. Without proper services, this reality continues to push individuals out of their homes. Oregon has already seen the third highest increase in the country in the unhoused population. Without adequate policy change, our current reality guarantees this number will only grow.

UNHOUSED COMMUNITIES

Unhoused communities include adults and children living without a stable home, sometimes unsheltered, in transitional housing,

temporarily living in jails or hospitals, or couch surfing. Due to varying definitions and data sources, we do not have a comprehensive count. Oregon’s Department of Education, for example, reported over 21,000 students who experienced homelessness between 2015 - 16.

HUD’s 2015 Annual Point-In-Time survey counted just over 13,100 adults and children combined experiencing homelessness in Oregon. The HUD statistics are believed to widely underreport the problem of homelessness, and only provide a snapshot of the number of unhoused individuals on one night in January.

Decriminalizing Homelessness:

Why Right to Rest legislation is the High Road for Oregon

6

Nevertheless, it reported that almost all communities of color, especially African Americans and Native Americans, are overrepresented in the unhoused population; a fifth are victims of domestic violence; nearly a third are families; and one in seven have a serious mental illness, and one in ten is a veteran. Three-quarters of Oregon's chronically homeless communities are unsheltered.

HISTORY OF CRIMINALIZATION

The US and Oregon have a long a history of punishing the poor and unhoused. It began with vagrancy laws aimed at criminalizing loitering, roaming, idleness, unemployment, begging and sleeping outdoors. While some laws have been

repealed, the fundamental approach has not changed.

Cities have since taken on additional strategies, such as targeting street-level misdemeanors, that implicitly and explicitly call for the harassment and removal of houseless people. Local governments have used outdated state statutes to supplement their own anti-homeless laws or to target specific conduct. This legacy of abusive policy provides the foundation for the laws we see today.

CARA

“In my 14 and ½ years on the streets, so many things happened to me. I was held captive. I lost my children. I never had a moment to rest. It was beyond exhausting.”

When she didn't make it to a shelter on time or a rest stop with other people, she was on her own. She'd start out at the safe spots she knew in downtown Eugene. Over the course of a night, she'd wake up to her dog barking and a stranger standing over her telling her to move. She'd pack up quickly, often in the rain, and move onto the next spot. Many nights, she was forced out of town towards the wetlands.

“You are out here by yourself. When you finally get away from downtown and the police harassing you, you then have to worry about other people. And if you got pushed far enough out, you'd have to worry about cougars.”

OUR FINDINGS

We researched and analyzed local laws influencing and affecting people experiencing homelessness in Oregon's 75 most populous cities. Our analysis also included findings from interviews conducted by Western Regional Advocacy Project of 565 unhoused Oregonians.

Our research revealed 224 laws that restrict, criminalize, and punish people for performing life sustaining activities in a public space. This includes meeting basic health and sanitation needs and giving or receiving help from our neighbors. We focused on laws that fall into four main categories, aiming to limit or prohibit,

1. standing, sitting, and resting in public places;
2. sleeping, camping, and lodging in public places, including in vehicles;
3. begging, panhandling, and soliciting; and
4. loitering.

WHEN SLEEPING IS A CRIME

Sleep is one of our most basic needs—but all across Oregon it is becoming a crime to sleep in public spaces. A majority of cities and counties surveyed have laws that prohibit sleeping or camping. There are approximately 125 laws that outlaw some form of sleeping or camping in public spaces. These restrictions range from permit requirements and curfews, to general prohibitions on temporary structures/shelters, including tents. Twenty-seven cities outlaw sleeping or camping anywhere in public.

Restrictions extend beyond simply sleeping and camping. For those individuals that have access to the security of a car, bus, trailer, or RV, sleeping may still be a crime. Thirty-one cities in Oregon restrict sleeping in one's vehicle even if it is in a normal parking place and posing no safety hazard.

Curfew laws target unhoused youth. Forty-four cities and seven counties have curfews that penalize minors who are on the streets unaccompanied by an adult during nighttime hours. Eight in 10 unaccompanied, unhoused youth have no shelter and have to sleep in public without an adult. They often sleep in highly visible places for safety, and curfew laws push them to remote areas where they are vulnerable to victimization.

People experiencing homelessness overwhelmingly report being harassed for sleeping. According to street outreach conducted by Western Regional Advocacy Project (WRAP), 94 percent of people surveyed reported being harassed for sleeping in public and 51 percent were cited for sleeping. Eighty-four percent were harassed for sleeping in a vehicle and 41 percent were cited for this.

WHEN RESTING IS A CRIME

Mental and physical health rely on an ability to rest without constant disruption, harassment, or fear of retaliation for sitting or standing in public. Yet our findings revealed 48 cities and two counties have laws specifically outlawing sitting, standing, and resting in a public space.

These cities most commonly do so by prohibiting the obstruction of pedestrian or vehicular traffic on any sidewalk, street, or common area. Some cities also prohibit overnight obstructions and others prevent obstruction with personal property or other objects. These laws are designed to keep unhoused individuals “moving along”, despite the lack of evidence that they are creating a safety hazard.

Compounding citations can result in hefty legal and financial penalties, but the cost to a person’s stress level is high. WRAP’s street outreach revealed that every single person interviewed reported being harassed for loitering or hanging out and nearly half were cited for loitering.

WHEN BASIC SANITATION IS A CRIME

Other laws have also made staying clean and healthy a crime. Over half of the cities surveyed outlaw fulfilling basic health needs in public. While this can include urinating or defecating in public places, these cities do so without providing sufficient facilities to accommodate public need. Other cities go as far as to prohibit using bathrooms or other sources of water to clean oneself.

MEL, EUGENE

“I was teaching kids, working in the school district. Having to wake up in the morning, find a shower somewhere and get to work on time was an obstacle every day. Having to be productive was even harder. I was so sleep deprived.”

Mel was houseless on and off in her life, but one six-month spell in Eugene was especially hard. The lack of sleep made work nearly impossible. To alleviate some of stress she had for her safety, she tried to camp with other people whenever she could.

“There were too many predators providing shelter to women, offering a place to shower and wash their clothes, and then sexually assaulting them.”

But they had to stay in small numbers in order to keep the camps from being broken up. The larger the group the more likely you were to be run off.

“You would finally start to create a safe space with people you trust. The police would break us up.”

WHEN SURVIVING IS A CRIME

When no other options are available, unhoused individuals may need to ask for help. Twenty cities in our sample have laws restricting panhandling and begging. In eleven cities, they have total bans on begging or soliciting in public places. Cities have also attempted to work around constitutional challenges by specifically outlawing “abusive” or “aggressive” panhandling or solicitation. Some cities have gone as far as to prohibit panhandling for the purpose of trying to ensure public spaces for visitors that protect the “economic vitality” that tourism brings to the city.

Finally, civil exclusion laws make it legal to ban individuals from a particular geographic region, such as a government building, parks, neighborhoods, downtown districts, or any public property. These laws exist across the state and in a variety of forms that typically use minor infractions, like sleeping or camping in a public space, to constitute legal grounds for exclusion. Exclusion orders allow cities to banish “undesirables” from the public eye. This often happens in urban development regions, pushing the visible effects of poverty and homelessness to more remote neighborhoods. Doing so exacerbates issues of isolation and danger facing many unhoused people.

WHEN HELPING IS A CRIME

Some cities go as far as to limit those who want to help. Property owners, including churches, businesses, or private citizens, face a variety of legal hurdles in trying to provide space or reprieve. Nine cities impose restrictions on when and if a person can camp or sleep on private property. Six of these cities restrict situations under which a property owner can host a camper, for example, by limiting the number of consecutive hours or the total days in a given timeframe.

Oregon state law restricts religious institutions from accommodating more than three vehicles with people living in them at one time. They also require sanitation facilities be provided. Laws that limit the ability to help unhoused community members, further divides housed and unhoused communities and limits innovative, community-based solutions.

“Transfer laws” outlaw giving and receiving. Seven cities have implemented unlawful transfer laws. While functioning under the guise of traffic safety, these laws prohibit drivers and passengers of vehicles from giving money or other tangible personal property to a pedestrian while on a highway, road, or street. These laws also prohibit pedestrians from accepting such items.



IMPLICATIONS

Homelessness makes it nearly impossible for children to go to school, parents to work, and families and individuals to be healthy and feel connected. But criminalizing homelessness guarantees an even harder road; and one that comes with grave social and economic costs.

HEALTH AND WELL-BEING

The cumulative toll that lack of sleep, rest, food, and safety takes on a person's physical and mental health is immense. Being roused and ousted through the night, moving place to place, the stress of not being free to rest, stand, eat, in public spaces can cause severe fatigue. At the same time, the challenges of severe poverty, economic insecurity, exposure to the elements, physical disabilities, abuse from housed people, and mental health issues, also greatly impact health.

JUSTICE SYSTEM INVOLVEMENT

As we have laid out in this report, Oregon law has made almost all aspects of basic survival and daily living a crime for unhoused people. This means that for many, citations, arrest, court fees, police encounters, criminal records, all go hand in hand with living unhoused, especially for those who are unsheltered. Criminal justice involvement has severe implications on life success.

Criminal justice backgrounds significantly reduce access to jobs, renting a home, receiving social services and other related services. Court fees can create debt and result in additional fines, incarceration, and other punitive sanctions. Compounding debt for unhoused individuals can make saving what is needed to move into stable housing insurmountable.

Finally, criminalization often leads to the confiscation and destruction of important personal property, including medication, identifications, family memorabilia, and shelters.

A VIOLATION OF RIGHTS AND LIBERTIES

Criminalization violates the rights and liberties of unhoused people. Anti-camping ordinances have been deemed unconstitutional under the Eighth Amendment when people have no alternatives. This ban was therefore considered cruel and unusual. Many laws highlighted in this report also raise similar civil rights and liberties we need to address.

IT LIMITS OREGON

Criminalizing homelessness is also expensive to enforce, using police, court, and jail resources. Utilizing punitive measures that rely on criminal justice system resources is far more costly than investments in support and prevention services. It continues to send many of the same people back into the criminal justice system for offenses they cannot help doing. Uploading laws that continue to tap public dollars without stopping cycles of criminal justice involvement are not as cost effective as addressing root causes head on.

Oregon's cities and counties currently uphold laws and practices that foster poor public perceptions of people experiencing homelessness. They exacerbate the divide between unhoused and housed communities. This has fueled strategies that further criminalize homelessness.

SOLUTIONS

RIGHT TO REST

The Right to Rest Act, landmark legislation from the Homeless Bill of Rights movement, protects the rights of unhoused individuals by (a) prohibiting discrimination in public spaces based on housing status; (b) extending privacy rights to people experiencing homelessness; (c) affirming the rights of houseless individuals to use public spaces, rest (sit, stand, and sleep), eat and share food, pray, and occupy a legally parked vehicle free from harassment, citation or arrest, (d) providing a defense to civil and criminal charges imposed for merely engaging in these rights, and (e) allowing the Bureau of Labor and Industries and private attorneys to enforce these protections through civil actions. Additional legislation recommended by the Homeless Bill of Rights movement includes (a) ensuring unhoused individuals have 24-hour access to hygiene facilities; (2) ensuring that individuals have legal counsel if charged; and (3) requiring judges to allow individuals to use necessity defense in any prosecution dealing with homeless-related legal issues.

The Right to Rest Act is a first step in changing the way we treat our unhoused communities. Western Regional Advocacy Project has led a grassroots movement for Right to Rest legislation that is gaining momentum in multiple states with help from the nation's leading homeless rights advocacy organizations, including the National Law Center on Homelessness and Poverty and the National Coalition for the Homeless. This legislation was developed by people most

impacted by homelessness, in partnership with legal and policy experts, and is evidence-based. It offers a solution that will meaningfully improve the lives of people experiencing homelessness.

In addition to providing basic relief to unhoused people, this approach is a critical step towards long-term change that addresses root causes. The Right to Rest Act acknowledges the role that economic hardship, a shortage of safe and affordable housing, unemployment and a dwindling social safety net play in homelessness. It decriminalizes basic life-sustaining activities and allows local governments to redirect resources from enforcement to activities that address root causes of homelessness and poverty.

Shifting our approach to homelessness from punishment to prevention, begins with establishing a shared understanding of what is humane and deserving of *all* people, regardless of housing status. Right to Rest is a giant step forward in achieving this.

REPEALING STATEWIDE ANTI-HOMELESS LAWS

The Oregon Legislature can also have a positive impact on the rights of the unhoused by repealing laws that get in the way of real solutions. For example, the state law that restricts the ability of municipalities to establish more than two campgrounds for providing transitional housing accommodations; and the state law that prohibits religious institutions

SOLUTIONS

from accommodating more than three overnight camping spaces to unhoused people living in their vehicles.

PUBLIC EDUCATION AND OUTREACH

Public perception of unhoused communities is rooted in a lack of education, fear, and bias towards people experiencing poverty and homelessness. These stereotypes play a major role in fostering public anxiety and unease, which pressure city officials and politicians to perpetuate criminalization. Instead of limiting our ability to lift up communities most impacted by economic inequity, poor health, and no housing, we should work to create pathways to prosperity.

Governments should cultivate understanding among the housed community about homelessness, including public education about poverty, homelessness, and the civil rights and liberties of unhoused individuals. Policymakers can also develop programs that bring diverse groups together and encourage intermingling and cooperation. Finally, policymakers and the broader community could develop a better understanding of unhoused individuals and their experiences and needs by engaging them in the process of planning and making policy decisions.

DECRIMINALIZING HOMELESSNESS:

Why Right to Rest legislation is the High Road for Oregon

Copyright© 2017 by the American Civil Liberties Union of Oregon
All rights reserved.

ACLU of Oregon
P.O. Box 40585
Portland, OR 97240
503.227.3186
info@aclu-or.org
www.aclu-or.org

