H-0549.3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 1591**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Gregerson, Peterson, Macri, Doglio, Appleton, Thai, Robinson, Jinkins, Lekanoff, Slatter, and Davis

AN ACT Relating to the rights of persons experiencing homelessness; amending RCW 2.53.030; adding a new chapter to Title 7 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1)(a) The legislature finds that millions of people in the United States face homelessness each year, and millions more live in tenuous or unstable housing situations. Washington is witnessing significant increases in individuals and families who face insecure housing situations. Many Washington cities are also experiencing spikes in homelessness, particularly in urban areas. Homelessness imposes significant costs on individuals as well as the public generally. Aside from the punishing toll of homelessness on people who experience it, living on the street also generates enormous public costs in the form of high frequency use of emergency services and hospitalization, as well as costs associated with policing, adjudication, probation, and incarceration. Numerous studies show that it costs more to leave chronically homeless people living on the street than it does to provide them a solution to homelessness in the form of permanent supportive housing.

(b) The legislature further finds that, at the same time that the level of homelessness is rising, many communities within Washington are enacting and enforcing laws that disproportionately impact homelessness or make living in public a crime. These laws are potentially unconstitutional, make it harder for people to exit homelessness, do not solve the underlying problem of homelessness, and waste precious public funds.

(c) The legislature further finds that such enforcement does not solve homelessness but extracts great public costs. The legislature intends to reduce the significant cost to the public that is inherent in the enforcement of laws that criminalize public survival by persons who are experiencing homelessness and who have no reasonable alternative. The legislature further intends by this act to mitigate the costly revolving door of homelessness, ensure that the constitutional rights of all people are respected regardless of housing status, and encourage investments in more cost-effective, evidence-based interventions such as housing over the criminalization of homelessness.

(2) The legislature further finds that:

(a) Many people experience homelessness because of economic hardship, a severe shortage of safe and affordable housing, discriminatory housing policies, the inability to secure gainful employment, and a diminished social safety net;

(b) Responding to the growing crisis of homelessness with criminal or civil penalties with the intent or effect of pushing people who are homeless out of public spaces and into courts and jails, or to impose on them unreasonable fines and fees, is inhumane and violates basic constitutional, civil, and human rights of people who are homeless. It is also costly and ineffective at achieving its purported goal of reducing homelessness;

(c) Cities throughout Washington are enacting and enforcing laws that criminally or civilly punish basic acts of survival. Such laws result in people being criminally or civilly punished for doing what any person must do to survive;

(d) Local ordinances of this kind do not reduce homelessness or crime. Instead, they increase incarceration rates and the financial indebtedness of people who are homeless. Moreover, the collateral consequences of these ordinances prolong homelessness by making it more difficult for people to secure needed housing, employment, benefits, and medical care;

(e) While these local ordinances apply to all residents of a city or municipality, they disproportionately impact people who are homeless who have no private or lawful place to rest, shelter themselves, store their belongings, or conduct necessary life-sustaining activities;

(f) In practice, these ordinances deprive people who are homeless, and those who may be perceived as homeless, of a safe and legal place to rest, shelter themselves, store belongings and survive, which threatens their health and well-being;

(g) Lacking the resources necessary to obtain adequate legal representation, people who are homeless are often denied access to justice to redress constitutional, civil, and human rights violations; and

(h) Both the federal government, through its interagency council on homelessness, and the United Nations have recognized that criminalizing homelessness violates the constitutional and human rights of people who are homeless, including the right to be free from cruel and unusual punishment. The federal government and the United Nations have called upon governments to cease enactment and enforcement of such laws.

(3) The legislature intends with this act to recognize that all persons have the right to survive in public as defined in section 2 of this act and to prohibit discrimination based on housing status.

(4) The legislature recognizes that those individuals this act is designed to protect are low-income and indigent, and the legislature finds it appropriate to authorize state moneys to support civil legal assistance to individuals aggrieved under this act.

(5) This act shall be liberally construed to achieve its purposes and preserve its validity.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "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.

(2) "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.

(3) "Homeless" means lacking a fixed, regular, and adequate nighttime residence, and includes persons:

(a) 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; or awaiting foster care placement;

(b) 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, within the meaning of 42 U.S.C. Sec. 11302(a)(2);

(c) Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or

(d) Who meet the definition of "homeless" under 42 U.S.C. Sec. 11434a(2), as it existed on October 1, 2014, as well as persons who would qualify as "homeless" under 42 U.S.C. Sec. 11434a(2), as it existed on October 1, 2014, but for not being a child or youth.

(4) "Motor vehicle" has the meaning defined in RCW 46.04.320.

(5) "Nonobstructive manner" means in a manner that does not render passageways impassable or hazardous.

(6) "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:

(a) Plazas;

(b) Courtyards;

(c) Parking lots;

(d) Sidewalks;

(e) Public transportation facilities and services;

(f) 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;

(g) 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;

(h) Parks, but only those parks and areas within parks which are open to the public without fee or charge; and

(i) 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.

(7) "Recreational vehicle" has the meaning defined in RCW 43.22.335.

(8) "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.

NEW SECTION. **Sec.**  People experiencing homelessness enjoy constitutional and civil rights, including the right to survive, regardless of their housing status. Accordingly:

(1) Discrimination based on housing status is prohibited;

(2) 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:

(a) The right to survive in a nonobstructive manner;

(b) The right to shelter oneself from the elements in a nonobstructive manner;

(c) The right to eat, share, accept, or give food in any public space where food is not prohibited;

(d) The right to occupy a motor vehicle or recreational vehicle, provided that the vehicle or recreational vehicle is legally parked on public property or parked on private property with the permission of the property owner; and

(e) The right to a reasonable expectation of privacy in one's personal property.

(3) A person experiencing homelessness may not be 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, for surviving in public space when that person has no reasonable alternative but to survive in public space and existing local shelters are inadequate in number or are functionally inaccessible.

NEW SECTION. **Sec.**  (1) A person whose rights under this chapter have been violated may seek enforcement of those rights in a civil action.

(2) In any action brought under this chapter, once the plaintiff establishes homelessness, the burden shifts to the defendant to show that sufficient reasonable alternatives other than to survive in public space were available to the plaintiff. For example, a city could show that adequate and effective emergency shelter existed, that this shelter fit the plaintiff's particular needs, that the plaintiff was made aware of the emergency shelter, and that there were no barriers to accessing the emergency shelter.

(3) The court may award appropriate injunctive and declaratory relief, restitution for loss of property, and actual and compensatory damages up to one thousand dollars per violation. The court may also award reasonable attorneys' fees and costs to the prevailing party.

(4) The remedies available in this section are not exclusive and may be used cumulatively with any other remedies available at law.

**Sec.**  RCW 2.53.030 and 2018 c 21 s 2 are each amended to read as follows:

(1)(a) The legislature recognizes the ethical obligation of attorneys to represent clients without interference by third parties in the discharge of professional obligations to clients. The legislature further finds that the prevalence of civil legal problems experienced by low-income people in Washington state exceeds the capacity of the state-funded legal aid system to address. To ensure the most beneficial use of state resources, the legislature finds it appropriate to authorize legal assistance with respect to civil legal problems that directly affect important rights and basic needs of individual low-income residents and their families and to define certain limits on the use of state moneys appropriated for civil legal aid. Accordingly, moneys appropriated for civil legal aid pursuant to this section shall not be used for legal representation that is either outside the scope of or prohibited by this section.

(b) Nothing in this section is intended to limit the authority of existing entities, including but not limited to the Washington state bar association, the public disclosure commission, the state auditor, and the federal legal services corporation to resolve issues within their respective jurisdictions.

(2) Any money appropriated by the legislature for civil legal aid to indigent persons pursuant to this section shall be administered by the office of civil legal aid established under RCW 2.53.020, and shall be used solely for the purpose of contracting with qualified legal aid programs for legal representation of indigent persons in matters relating to: (a) Domestic relations and family law matters, (b) governmental assistance and services, (c) health care, (d) housing and utilities, (e) mortgage foreclosures, (f) consumer, financial services, credit, and bankruptcy, (g) employment, (h) rights of residents of long-term care facilities, (i) wills, estates, and living wills, (j) elder abuse, (k) guardianship, (l) disability rights, (m) education including special education, (n) administrative agency decisions, ((~~and~~)) (o) discrimination prohibited by local, state, or federal law, and (p) chapter 7.--- RCW (the new chapter created in section 7 of this act).

(3) For purposes of this section, a "qualified legal aid program" means a not-for-profit corporation incorporated and operating exclusively in Washington which has received basic field funding for the provision of civil legal aid to indigents from the federal legal services corporation or that has received funding for civil legal aid for indigents under this section before July 1, 1997.

(4) When entering into a contract with a qualified legal aid provider under this section, the office of civil legal aid shall require the provider to provide legal aid in a manner that maximizes geographic access throughout the state and meets generally accepted standards for the delivery of civil legal aid.

(5) Funds distributed to qualified legal aid programs under this section may not be used directly or indirectly for:

(a) Lobbying.

(i) For purposes of this section, "lobbying" means any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device directly or indirectly intended to influence any member of congress or any other federal, state, or local nonjudicial official, whether elected or appointed:

(A) In connection with any act, bill, resolution, or similar legislation by the congress of the United States or by any state or local legislative body, or any administrative rule, rule-making activity, standard, rate, or other enactment by any federal, state, or local administrative agency;

(B) In connection with any referendum, initiative, constitutional amendment, or any similar procedure of the congress, any state legislature, any local council, or any similar governing body acting in a legislative capacity; or

(C) In connection with inclusion of any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient of funds under this section.

(ii) "Lobbying" does not include the response of an employee of a legal aid program to a written request from a governmental agency, an elected or appointed official, or committee on a specific matter. This exception does not authorize communication with anyone other than the requesting party, or agent or employee of such agency, official, or committee.

(b) Grass roots lobbying. For purposes of this section, "grass roots lobbying" means preparation, production, or dissemination of information the purpose of which is to encourage the public at large, or any definable segment thereof, to contact legislators or their staff in support of or in opposition to pending or proposed legislation; or contribute to or participate in a demonstration, march, rally, lobbying campaign, or letter writing or telephone campaign for the purpose of influencing the course of pending or proposed legislation.

(c) Class action lawsuits.

(d) Participating in or identifying the program with prohibited political activities. For purposes of this section, "prohibited political activities" means (i) any activity directed toward the success or failure of a political party, a candidate for partisan or nonpartisan office, a partisan political group, or a ballot measure; (ii) advertising or contributing or soliciting financial support for or against any candidate, political group, or ballot measure; or (iii) voter registration or transportation activities.

(e) Representation in fee-generating cases. For purposes of this section, "fee-generating" means a case that might reasonably be expected to result in a fee for legal aid if undertaken by a private attorney. The charging of a fee pursuant to subsection (6) of this section does not establish the fee-generating nature of a case.

A fee-generating case may be accepted when: (i) The case has been rejected by the local lawyer referral services or by two private attorneys; (ii) neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; (iii) after consultation with the appropriate representatives of the private bar, the program has determined that the type of case is one that private attorneys do not ordinarily accept, or do not accept without prepayment of a fee; or (iv) the director of the program or the director's designee has determined that referral of the case to the private bar is not possible because documented attempts to refer similar cases in the past have been futile, or because emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(f) Organizing any association, union, or federation, or representing a labor union. However, nothing in this subsection (5)(f) prohibits the provision of legal aid to clients as otherwise permitted by this section.

(g) Representation of individuals who are in the United States without legal authority.

(h) Picketing, demonstrations, strikes, or boycotts.

(i) Engaging in inappropriate solicitation. For purposes of this section, "inappropriate solicitation" means promoting the assertion of specific legal claims among persons who know of their rights to make a claim and who decline to do so. Nothing in this subsection precludes a legal aid program or its employees from providing information regarding legal rights and responsibilities or providing information regarding the program's services and intake procedures through community legal education activities, responding to an individual's specific question about whether the individual should consult with an attorney or take legal action, or responding to an individual's specific request for information about the individual's legal rights or request for assistance in connection with a specific legal problem.

(j) Conducting training programs that: (i) Advocate particular public policies; (ii) encourage or facilitate political activities, labor or antilabor activities, boycotts, picketing, strikes, or demonstrations; or (iii) attempt to influence legislation or rule making. Nothing in this subsection (5)(j) precludes representation of clients as otherwise permitted by this section.

(6) The office of civil legal aid may establish requirements for client participation in the provision of civil legal aid under this section, including but not limited to copayments and sliding fee scales.

(7)(a) Contracts entered into by the office of civil legal aid with qualified legal aid programs under this section must specify that the program's expenditures of moneys distributed under this section:

(i) Must be audited annually by an independent outside auditor. These audit results must be provided to the office of civil legal aid; and

(ii) Are subject to audit by the state auditor.

(b)(i) Any entity auditing a legal aid program under this section shall have access to all records of the legal aid program to the full extent necessary to determine compliance with this section, with the exception of confidential information protected by the United States Constitution, the state Constitution, the attorney-client privilege, and applicable rules of attorney conduct.

(ii) The legal aid program shall have a system allowing for production of case-specific information, including client eligibility and case type, to demonstrate compliance with this section, with the exception of confidential information protected by the United States Constitution, the state Constitution, the attorney-client privilege, and applicable rules of attorney conduct. Such information shall be available to any entity that audits the program.

(8) The office of civil legal aid must recover or withhold amounts determined by an audit to have been used in violation of this section.

(9) The office of civil legal aid may adopt rules to implement this section.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  Sections 2 through 4 of this act constitute a new chapter in Title 7 RCW.

**--- END ---**