

HOUSE BILL REPORT

HB 1591

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to the rights of persons experiencing homelessness.

Brief Description: Concerning the rights of persons experiencing homelessness.

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

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/12/19, 2/22/19 [DPS].

Brief Summary of Substitute Bill

- Codifies the rights in public space of people experiencing homelessness, and provides that such a person may not be prosecuted criminally for exercising these rights when the person has no reasonable alternative but to survive in public space and existing local shelters are inadequate in number or capacity or are functionally inaccessible.
- Requires, by October 31, 2019, reports: (a) from the state, counties, and cities concerning laws, regulations, and policies that infringe upon certain rights; and (b) from the Office of Homeless Youth Prevention and Protection Programs regarding certain rights of unaccompanied homeless youth and young adults.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Jinkins, Chair; Thai, Vice Chair; Goodman, Hansen, Kilduff, Kirby, Orwall, Valdez and Walen.

Minority Report: Do not pass. Signed by 6 members: Representatives Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Graham, Klippert, Shea and Ybarra.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Cece Clynch (786-7195).

Background:

Rights of People Experiencing Homelessness.

The United States (U.S.) Ninth Circuit Court of Appeals issued the *Martin v. Boise* 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."

Office of Homeless Youth Prevention and Protection Programs.

The Office of Homeless Youth Prevention and Protection Programs (OHY) was created in 2015 as an office within the Department of Commerce. The OHY provides services for youth and young adults up to 24 years of age, including:

- the Independent Youth Housing Program, which provides rental assistance and case management for eligible youth who have aged out of the state foster care system;
- street youth services;
- HOPE centers; and
- crisis residential centers, which are short-term, semi-secure, and secure facilities for runaway youth and adolescents in conflict with their families.

Summary of Substitute Bill:

Rights of People Experiencing Homelessness.

A new chapter is created, codifying the rights of people experiencing homelessness. Every person experiencing homelessness and who has no reasonable alternative but to survive in public space has the following rights in public space:

- 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 experiencing homelessness may not be prosecuted criminally under any state or local law for exercising these rights when that person has no reasonable alternative but to survive in public space and existing local shelters are inadequate in number or capacity or are functionally inaccessible. The exercise of these rights must not impede or limit the authority and responsibility of the state and local governments to:

- manage public space with respect to identified public health threats or identified public safety concerns;

- provide workplaces free of unreasonable workplace hazards; or
- adequately and appropriately operate, manage, and maintain public facilities.

A number of terms are defined, including the following:

- "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 (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.

Required Reports.

No later than October 31, 2019, the state (the Department of Enterprise Services in cooperation with other state agencies), and counties and cities (acting singly or in cooperation with other counties and cities) must:

- examine and evaluate laws, regulations, and policies to determine whether any infringe upon any of the rights of persons experiencing homelessness that were recognized in *Martin v. Boise* or in this act;
- consider and undertake appropriate revisions that are within their jurisdiction to make;
- make recommendations regarding revisions that require action by the Legislature; and
- report to the appropriate committees of the Legislature.

No later than October 31, 2019, the Office of Homeless Youth Prevention and Protection Programs must make recommendations to the Legislature regarding rights that all

unaccompanied homeless youth and young adults should have regarding appropriate care and treatment in licensed and unlicensed residential runaway and homeless youth programs.

Substitute Bill Compared to Original Bill:

The substitute bill revises the original bill as follows:

- retains the statement of rights in public space that persons experiencing homelessness have, and provides that such a person may not be prosecuted criminally under any state or local law for exercising these rights when the person has no reasonable alternative but to survive in public space and existing local shelters are inadequate in number or capacity or are functionally inaccessible. The substitute bill further provides that the exercise of these rights must not impede or limit the authority and responsibility of state and local governments to: manage public space with respect to identified public health threats or public safety concerns; provide workplaces free of unreasonable workplace hazards; or adequately and appropriately operate, manage, and maintain public facilities;
- retains the definition section as it was in the underlying bill, except that the definitions of "discrimination based on housing status" and "harassment" are stricken;
- strikes provisions that created a civil cause of action and included such causes of action as matters for which money appropriated for civil legal aid could be used;
- requires, no later than October 31, 2019, that the state, counties, and cities:
 - examine and evaluate laws, regulations, and policies to determine whether any infringe upon any of the rights of persons experiencing homelessness that were recognized in *Martin v. Boise* or in this act;
 - consider and undertake appropriate revisions that are within their jurisdiction to make;
 - make recommendations regarding revisions that require action by the Legislature; and
 - report to the appropriate committees of the Legislature;
- requires, no later than October 31, 2019, that the Office of Homeless Youth Prevention and Protection Programs make recommendations to the Legislature regarding rights that all unaccompanied homeless youth and young adults should have regarding appropriate care and treatment in licensed and unlicensed residential runaway and homeless youth programs; and
- strikes the intent section.

Appropriation: None.

Fiscal Note: Requested on February 25, 2019.

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

Staff Summary of Public Testimony:

(In support) For people experiencing homelessness who lack resort to a private place, surviving in public is risky. There are risks because of the laws that prohibit behaviors that are necessary just to survive. Chronically homeless people are frequently issued civil infractions and criminal charges related to their homelessness. These laws impose a significant cost not only on the liberties of poor men, women, and children, but on society overall. Research proves that it is far more expensive to criminalize homelessness than it is to pursue nonpunitive alternatives, such as low-barrier shelters, permanent supportive housing, and mental health and substance abuse treatment. Criminalization laws have been successfully challenged as unconstitutional under various provisions of the federal constitution. The Ninth Circuit Court recently addressed the question of whether cities can punish homeless people for surviving in public spaces. The *Martin v. Boise (Martin)* decision has extraordinary implications for our state. The *Martin* decision stands for the proposition that laws criminalizing homelessness are unconstitutional. The *Martin* decision also clarifies that determining whether a city provides reasonable alternatives is not a simple mathematic calculation of shelter beds. A reasonable alternative shelter must be functionally accessible to the person who needs it. As seen in *Martin*, many shelters impose religious requirements as a condition for access. This created an unacceptable barrier, and therefore the *Martin* court ruled those shelters were not reasonable alternatives. The *Martin* decision is also significant because many shelters impose various barriers to entry that render them functionally inaccessible. Many states are enacting similar legislation, including Illinois, Connecticut, Rhode Island, California, and others. Almost 200 homeless people in King County alone have died over the past year. While deaths might not always be preventable, every resident deserves to live with dignity. There are over 6,300 unsheltered King County residents at the moment. This is a full-fledged crisis, but it did not happen overnight. This crisis happened because of thousands of policy and programmatic decisions that have been made for decades, and these effects cannot be erased immediately, or with a single bill.

Everyone wishes there was not a homeless problem, and solutions are being explored. In the meantime, these solutions take time, and there are people living in cars who are continually getting tickets. One study of persons who were homeless when they died found that these persons had been prosecuted in municipal court for things like stealing a sandwich. Poverty should not be criminalized. Some shelters impose barriers. For instance, a mother of a 13-year-old son will have difficulty finding a shelter for the two of them. Targeting people who are homeless has been shown to be a failed policy. The punitive approach does not work and is counterproductive in that it actually increases the time it takes to get out of homelessness. People with disabilities, people of color, veterans, and LGBTQ people, especially youth, are more likely to be homeless. Camp Nickerson in Olympia is a success story. This is a quiet camp on a greenbelt in which 10 persons are living. Olympia has stayed eviction proceedings, and a church partner provides garbage and toilet facilities. One resident has made the transition out of homelessness and will be eligible for the city's tiny home project.

(Opposed) The cities have significant concerns. They are supportive of greater investments to reduce homelessness, such as increasing the document recording fee, providing more funds for the housing trust fund, and embedding social workers with law enforcement agencies. This bill does not allow balance and does not allow government to manage the uses of public space. It goes further than *Martin*. The *Martin* court did not apply across the entire city for the entire day. There are no additional resources for cities provided. There is a question of, given the definition of "harassment," whether a person could even be asked if

they needed assistance or be referred to services. The language is overly broad. Pursuant to this, a person could set up a tent in front of a business, have a campfire, and cook. The fact that it only applies to persons who are homeless also raises equal protection concerns. It will cause more problems than it solves. Counties own lots of public land. It is understood that it is aimed at law enforcement, but the language is so broad that it could implicate county health codes. Vehicles parked on the side of the road, particularly in rural areas, can be a problem for snow plows, garbage trucks, neighbors getting their mail, and government workers clearing ditches. It is unclear how it could be determined whether someone was using the vehicle as a living space.

(Other) This bill severely limits state agencies as they manage public spaces and will have impacts upon public health, safety, facilities management, and worker safety.

Persons Testifying: (In support) Representative Gregerson, prime sponsor; Xochitl Maykovich, Washington Community Action Network; and Renata Rollins, Olympia City Council.

(Opposed) Carl Schroeder, Association of Washington Cities; Mike Ennis, Association of Washington Business; and Mike Hoover, Washington State Association of Counties.

(Other) Jim Baumgart, Office of the Governor.

Persons Signed In To Testify But Not Testifying: None.