
HOUSE BILL 1591

State of Washington

66th Legislature

2019 Regular Session

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

Read first time 01/24/19. Referred to Committee on Civil Rights & Judiciary.

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

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

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

20 (b) The legislature further finds that, at the same time that the
21 level of homelessness is rising, many communities within Washington

1 are enacting and enforcing laws that disproportionately impact
2 homelessness or make living in public a crime. These laws are
3 potentially unconstitutional, make it harder for people to exit
4 homelessness, do not solve the underlying problem of homelessness,
5 and waste precious public funds.

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

17 (2) The legislature further finds that:

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

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

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

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

39 (e) While these local ordinances apply to all residents of a city
40 or municipality, they disproportionately impact people who are

1 homeless who have no private or lawful place to rest, shelter
2 themselves, store their belongings, or conduct necessary life-
3 sustaining activities;

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

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

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

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

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

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

28 NEW SECTION. **Sec. 2.** The definitions in this section apply
29 throughout this chapter unless the context clearly requires
30 otherwise.

31 (1) "Discrimination based on housing status" refers to any law,
32 policy, or practice regulating public space that results in disparate
33 treatment or has a disparate impact on people who are homeless or
34 perceived as homeless as defined in this section.

35 (2) "Harassment" means a knowing or willful course of conduct by
36 law enforcement or public or private security personnel or agents
37 directed at a specific person that a reasonable person would consider
38 pestering, troubling, disturbing, or threatening.

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

3 (a) Sharing the housing of other persons due to loss of housing,
4 economic hardship, or a similar reason; living in motels, hotels,
5 trailer parks, or camping grounds due to the lack of alternative
6 adequate accommodations; living in emergency or transitional
7 shelters; abandoned in hospitals; or awaiting foster care placement;

8 (b) Having a primary nighttime residence that is a public or
9 private place not designed for or ordinarily used as a regular
10 sleeping accommodation for human beings, within the meaning of 42
11 U.S.C. Sec. 11302(a)(2);

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

14 (d) Who meet the definition of "homeless" under 42 U.S.C. Sec.
15 11434a(2), as it existed on October 1, 2014, as well as persons who
16 would qualify as "homeless" under 42 U.S.C. Sec. 11434a(2), as it
17 existed on October 1, 2014, but for not being a child or youth.

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

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

21 (6) "Public space" means any property that is owned or leased, in
22 whole or in part, by any state or local government entity or any
23 property upon which there is an easement for public use and that is
24 held open to the public, including, but not limited to:

25 (a) Plazas;

26 (b) Courtyards;

27 (c) Parking lots;

28 (d) Sidewalks;

29 (e) Public transportation facilities and services;

30 (f) Rooms or areas within public buildings, but only to the
31 extent that the rooms or areas are generally held open to the public,
32 and only during normal hours of operation;

33 (g) Shopping centers, but only those which serve as the
34 functional equivalent of downtown areas under the Washington
35 Constitution, and only during normal hours of operation;

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

38 (i) Natural and wildlife areas, but only those areas which are
39 open to the public without fee or charge and subject to reasonable

1 rules and regulations necessary to protect fish and wildlife
2 resources and their habitat.

3 (7) "Recreational vehicle" has the meaning defined in RCW
4 43.22.335.

5 (8) "Survive" means the conduct of necessary, life-sustaining
6 activities in a nonobstructive manner that includes, but is not
7 limited to, sitting, standing, leaning, kneeling, squatting,
8 sleeping, lying down, eating, and sheltering oneself.

9 NEW SECTION. **Sec. 3.** People experiencing homelessness enjoy
10 constitutional and civil rights, including the right to survive,
11 regardless of their housing status. Accordingly:

12 (1) Discrimination based on housing status is prohibited;

13 (2) Every person experiencing homelessness and who has no
14 reasonable alternative but to survive in public space has the
15 following rights in public space without being subject to criminal or
16 civil penalties or harassment by law enforcement, public or private
17 security personnel, or any agents of any public-private partnership
18 established under any state or local law:

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

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

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

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

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

30 (3) A person experiencing homelessness may not be subject to
31 criminal or civil penalties or harassment by law enforcement, public
32 or private security personnel, or any agents of any public-private
33 partnership established under any state or local law, for surviving
34 in public space when that person has no reasonable alternative but to
35 survive in public space and existing local shelters are inadequate in
36 number or are functionally inaccessible.

1 NEW SECTION. **Sec. 4.** (1) A person whose rights under this
2 chapter have been violated may seek enforcement of those rights in a
3 civil action.

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

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

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

18 **Sec. 5.** RCW 2.53.030 and 2018 c 21 s 2 are each amended to read
19 as follows:

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

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

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

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

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

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

29 (a) Lobbying.

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

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

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

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

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

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

24 (c) Class action lawsuits.

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

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

38 A fee-generating case may be accepted when: (i) The case has been
39 rejected by the local lawyer referral services or by two private
40 attorneys; (ii) neither the referral service nor two private

1 attorneys will consider the case without payment of a consultation
2 fee; (iii) after consultation with the appropriate representatives of
3 the private bar, the program has determined that the type of case is
4 one that private attorneys do not ordinarily accept, or do not accept
5 without prepayment of a fee; or (iv) the director of the program or
6 the director's designee has determined that referral of the case to
7 the private bar is not possible because documented attempts to refer
8 similar cases in the past have been futile, or because emergency
9 circumstances compel immediate action before referral can be made,
10 but the client is advised that, if appropriate and consistent with
11 professional responsibility, referral will be attempted at a later
12 time.

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

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

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

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

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

39 (6) The office of civil legal aid may establish requirements for
40 client participation in the provision of civil legal aid under this

1 section, including but not limited to copayments and sliding fee
2 scales.

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

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

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

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

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

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

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

29 NEW SECTION. **Sec. 6.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

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

--- END ---