

HOUSE BILL REPORT

HB 1380

As Reported by House Committee On:
Housing

Title: An act relating to allowing objectively reasonable regulation of the utilization of public property.

Brief Description: Allowing objectively reasonable regulation of the utilization of public property.

Sponsors: Representatives Gregerson, Peterson, Parshley, Simmons, Alvarado, Pollet, Macri, Hill and Ormsby.

Brief History:

Committee Activity:

Housing: 1/21/25, 1/30/25 [DP].

Brief Summary of Bill

- Requires that any city or town, code city, or county laws that regulate the acts of sitting, lying, sleeping, or keeping warm and dry outdoors on public property that is open to the public be objectively reasonable as to time, place, and manner.
- Creates a private cause of action for injunctive or declaratory relief to challenge the objective reasonableness of such a law.

HOUSE COMMITTEE ON HOUSING

Majority Report: Do pass. Signed by 9 members: Representatives Peterson, Chair; Hill, Vice Chair; Entenman, Gregerson, Lekanoff, Reed, Thomas, Timmons and Zahn.

Minority Report: Do not pass. Signed by 7 members: Representatives Low, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Manjarrez, Assistant Ranking Minority Member; Barkis, Connors, Dufault and Engell.

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

Minority Report: Without recommendation. Signed by 1 member: Representative Richards, Vice Chair.

Staff: Audrey Vasek (786-7383).

Background:

Recent United States (US) Supreme Court and Ninth Circuit Court of Appeals (Ninth Circuit) decisions have considered the constitutionality of local government regulations related to sitting, sleeping, or lying outside on public property.

Martin v. City of Boise.

In 2018 the Ninth Circuit issued the *Martin v. City of Boise (Martin)* opinion holding that the Eighth Amendment of the US Constitution (Eighth Amendment) prohibited the imposition of criminal penalties against homeless individuals for sitting, sleeping, or lying outside 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."

In 2019 the US Supreme Court denied a petition by the City of Boise to review *Martin*, leaving in place the Ninth Circuit ruling. Under *Martin*, some local governments faced injunctions prohibiting them from enforcing their anti-sitting, sleeping, lying, or camping ordinances against homeless individuals when the number of homeless individuals in the jurisdiction exceeded the number of practically available shelter beds.

City of Grants Pass v. Johnson.

In 2024 the US Supreme Court issued the *City of Grants Pass v. Johnson* opinion, overruling *Martin*. The municipal code of the City of Grants Pass in Oregon contained several provisions that prohibited sleeping on the streets or camping in parks. After homeless individuals living in Grants Pass sued the city, a district court entered a *Martin* injunction prohibiting Grants Pass from enforcing its laws against homeless individuals in the city.

The district court concluded that the city's enforcement of its anti-camping and anti-sleeping ordinances violated the Eighth Amendment to the extent that these laws prohibited homeless individuals from taking necessary minimal measures to keep themselves warm and dry while sleeping when there were no alternative forms of shelter available. The Ninth Circuit affirmed the district court's decision, but the US Supreme Court reversed, holding that the enforcement of generally applicable laws regulating camping on public property does not constitute cruel and unusual punishment as prohibited by the Eighth Amendment.

Summary of Bill:

Any city or town, code city, or county law that regulates the acts of sitting, lying, sleeping, or keeping warm and dry outdoors, on public property that is open to the public, must be objectively reasonable as to time, place, and manner. "Keeping warm and dry" is defined as using measures necessary for an individual to survive outdoors, given the environmental conditions, but does not include using any measure that involves fire or flame.

It is an affirmative defense to a charge of violating such a law that the law is not objectively reasonable. Objective reasonableness must be determined based on the totality of the circumstances. In determining objective reasonableness, special consideration must be given to the impact of the law on persons experiencing homelessness.

A person may bring a lawsuit for injunctive or declaratory relief to challenge the objective reasonableness of a law that regulates the acts of sitting, lying, sleeping, or keeping warm and dry outdoors on public property that is open to the public. The lawsuit must be brought in the superior court of the county where the local government that enacted the law is located.

The court may award reasonable attorneys' fees to a prevailing plaintiff if the plaintiff:

- was not seeking to vindicate an interest unique to the plaintiff; and
- at least 90 days before the lawsuit was filed, provided written notice to the local government of the plaintiff's intent to bring the lawsuit, including actual notice of the basis upon which the plaintiff intends to challenge the law.

Nothing in the bill creates a private right of action for monetary damages for any person.

The bill applies retroactively to all causes of action brought on or after the effective date of the bill, and to all city or town, code city, or county laws existing on or after the effective date of the bill, regardless of when the cause of action arose or when the laws were enacted. In all other respects, the bill applies prospectively.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This bill is critical for protecting the rights of persons experiencing homelessness in the state. Every person should have a place to sleep and store personal belongings. Everyone is connected to the systemic factors that have led to homelessness, and everyone has a responsibility to do better.

This bill is a middle ground proposal that will preserve each jurisdiction's ability to take care of the unique needs of their communities. It will encourage local governments to enact reasonable regulations while recognizing that policy responses to homelessness need to be flexible and varied.

This bill aligns with the Supreme Court decision in *Grants Pass*. This bill was based on an Oregon law that was cited in the *Grants Pass* case as an example of potentially viable local legislation. There has not been an explosion of litigation in Oregon due to that law.

People should not be punished for being homeless, and they should be protected from sweeps that result in the loss of their belongings. Losing belongings only makes it harder for people to get out of homelessness. Local governments should spend their scarce resources on addressing root causes of homelessness by providing systems of support instead of punishing people for being homeless.

Some persons who have experienced homelessness, frequent incarceration, and addiction have been able to break free of the cycle thanks to the system of supports in place in their communities. Most people who are experiencing homelessness are trying to stay in their communities. They should be treated with decency and respect.

(Opposed) Many cities share the bill's goal of ending homelessness but have significant concerns with this bill. As written, this bill will result in unnecessary litigation. If objective reasonableness is not defined more precisely, it will have to be determined through litigation, which will take away from resources that could otherwise go towards reducing homelessness. Cities will have to decide between cutting funding to programs or using their scarce resources to defend their ordinances.

This is not a hypothetical. This bill is based on a law from Oregon. On day one of the effective date of Oregon's law, the City of Portland was sued, resulting in a \$175,000 settlement.

This bill will not reduce homelessness. It will worsen it by encouraging cities to continue bad strategies, like encampments. Several studies have shown that the most frequent trigger for loss of housing is social not economic. The vast majority of the unsheltered are single men without children who have endured many years of income below the poverty line prior to losing housing. They have a very high prevalence of untreated addiction and mental illness, as well as physical and cognitive disabilities. They need well-funded residential rehabilitation and vocational programs.

Cities do not simply move people along. Local jurisdictions have invested millions of dollars in services, such as in-patient substance use treatment, repurposing property to provide housing, and hiring community navigators to provide resources to those experiencing homelessness.

Cities should not be forced to turn their public spaces into encampments or hospices. This bill raises significant public safety concerns for urban cities, particularly those with high volume traffic. Local jurisdictions should have the ability to enforce their ordinances. The purpose of these ordinances has never been to criminalize homelessness.

Persons Testifying: (In support) Representative Mia Gregerson, prime sponsor; Po Leapai, Washington Low Income Housing Alliance; Charles Schaefer, Burien Community Support Coalition; Jazmyn Clark, ACLU of Washington; Sharyl Brown, Jewels Helping Hands; Colleen Hinton; Scott Crain, Northwest Justice Project; Sarah Nagy, Columbia Legal Services; and Chloe Gale, REACH.

(Opposed) Eric Zimmerman, Mayor, City of Normandy Park; Nancy Backus, City of Auburn Mayor; Jeff Wagner, City of Covington; Curtis Steinhauer, Washington State Association of Counties; Armondo Pavone, Mayor, City of Renton; Carl Schroeder, Association of Washington Cities; Dana Ralph, City of Kent; Lisa Beaton, City of Kennewick Deputy City Manager; and Salim Nice, City of Mercer Island.

Persons Signed In To Testify But Not Testifying: James Lovell.