



TO: Chair Bynum, Vice Chairs Noble and Power, and Members of the House Committee on Judiciary  
FROM: Disability Rights Oregon  
DATE: April 13, 2021  
RE: HB 2367, Testimony in Support

Chair, Vice Chairs, and Members of the Committee:

Disability Rights Oregon submits this testimony in support of HB 2367, which would prevent discrimination against unsheltered individuals in public spaces and reinforce the right to rest and move freely through those spaces.

We thank Representatives Campos, Grayber, and Pham for bringing this legislation forward and sponsoring the bill.

**Persons experiencing homelessness should be permitted to use public spaces without discrimination based on their housing status**

Local governments throughout the state have pressed for laws regulating freedom of movement and creating time and place restrictions that target unsheltered individuals who have a serious mental illness. Last year, Disability Rights Oregon opposed a series of laws introduced by the City of Salem that had those aims. In December of 2019, Salem passed an anti-camping ordinance that clearly targeted the city’s unsheltered population. Despite strong opposition from community advocates and organizations like Disability Rights Oregon, Salem’s city leaders then capitalized on the current public health emergency to pass a further prohibition on sitting and lying in public in May of 2020. Governor Brown warned local officials that using her emergency orders as an “enforcement mechanism against Oregon’s unsheltered population” did not follow the intent of those orders. Nonetheless, the City of Salem did just that and used its emergency powers to begin enforcement of a sit-lie prohibition that discriminates against individuals who experience homelessness. Similar laws are known to exist in other cities throughout the state. Those laws that restrict rest or freedom of movement in public spaces openly stigmatize and criminalize the unsheltered.

**Restrictions on rest and freedom of movement have a disproportionate impact on persons with disabilities that leads to institutionalization**

Individuals with physical or mental disabilities are more likely than other individuals to sit, lie, or rest in public spaces. Restrictions on those activities have a disparate impact on persons with disabilities.

Local laws like the ones in Salem that restrict individuals’ freedom to sit, lie, sleep or keep warm on public property disproportionately impact unsheltered individuals who have a serious mental illness. The 2019 Point in Time (PIT) count of people experiencing homelessness conservatively calculates approximately 15,800 homeless Oregonians. PIT data

also shows that 31% of the homeless are considered “chronically homeless” and disabled.<sup>1</sup> Statistics from across the state indicate that 29% of the homeless population self-identified as having a serious mental illness.<sup>2</sup> The State of Oregon does not currently have the capacity to shelter its homeless population. Sleeping space is not available for all of the homeless. Consequently, local laws targeting individuals for engaging in conduct that is an unavoidable consequence of being homeless unfairly punish individuals with serious mental illness.

Ordinances that prohibit the unavoidable conduct that accompanies being unsheltered with a serious mental illness lead to unnecessary arrests and institutionalization. With no choice but to violate anti-camping or sit-lie ordinances, unsheltered individuals with mental illness may face criminal prosecution and jail time.

Despite attempts to prosecute individuals for survival activities, prohibitions on those activities have been held unconstitutional. The 9<sup>th</sup> Circuit Court of Appeals held that “so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],’ the jurisdiction cannot prosecute homeless individuals for ‘involuntarily sitting, lying, and sleeping in public.’”<sup>3</sup> The court concluded that criminalizing such behavior is a violation of the Eighth Amendment protections against cruel and unusual punishment.

Fines associated with violations of ordinances or issued as a result of prosecution also negatively impact homeless individuals experiencing serious mental illness. Lacking resources to pay those fines, nonpayment would lead to additional fees, debts, and collections imposed upon those who simply cannot afford to pay, and may also lead to contempt of court proceedings and jail time.<sup>4</sup> The impact on credit and criminal histories of homeless individuals only creates additional barriers. The rights against discrimination in public spaces that HB 2367 contains reinforce individuals’ constitutional rights and would limit unnecessary institutionalization and other barriers to transitioning off the streets for individuals with disabilities experiencing homelessness.

### **Local laws targeting the use of public spaces by unsheltered individuals threaten the health and safety of those with mental illness**

Efforts across the state to limit rest and free movement in public spaces interfere with unsheltered individuals’ most basic attempts to protect themselves from the elements. As a result, they have no way to stay dry and little protection against potentially lethal weather conditions. Denying access to basic shelter places individuals’ health and safety at risk. It

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<sup>1</sup> Oregon Housing and Community Services, “2019 Point in Time Dashboard” (2019). Available at <https://public.tableau.com/profile/oregon.housing.and.community.services#!/vizhome/2019Point-in-TimeDashboard/Story1> (last accessed on March 8, 2021).

<sup>2</sup> Oregon Housing and Community Resources, “Oregon Statewide Shelter Study,” p 16 (2019). Available at <https://www.oregon.gov/ohcs/about-us/Documents/poverty/Oregon-Statewide-Shelter-Study.pdf> (last accessed March 8, 2021).

<sup>3</sup> See *Martin v. City of Boise*, 920 F3d 584, 617 (9th Cir 2019) (quoting *Jones v. City of Los Angeles*, 444 F3d 1118, 1136 (9th Cir 2006)).

<sup>4</sup> See ORS 161.685 (stating that potential consequences of nonpayment of fines, restitution or costs include debt collection, contempt of court, and issuance of a warrant of arrest).

also leads to an increase in emergency room visits and other negative impacts on our healthcare system. Trespass orders that often accompany violations of broad prohibitions on homeless activities deny access to essential mental health and social services. HB 2367 lessens the likelihood that localities will pursue punitive actions that endanger the health and safety of individuals with mental illness who also experience homelessness.

Disability Rights Oregon supports HB 2367, because it recognizes the discrimination that many chronically homeless individuals with disabilities experience. It will help prevent laws that disproportionately impact unsheltered individuals with mental illness, criminalize the unavoidable consequences of being homeless, create barriers to transition off the streets, and threaten the health, safety, and survival of those most vulnerable in our communities.

### **About Disability Rights Oregon**

Disability Rights Oregon is a statewide nonprofit that upholds the civil rights of 950,000 people with disabilities in Oregon to live, work, and engage in the community. Disability Rights Oregon serves as a watchdog as we work to transform systems, policies, and practices to give more people the opportunity to reach their full potential. Since 1977, the organization has served as Oregon's federally authorized and mandated Protection & Advocacy System. Disability Rights Oregon is committed to ensuring the civil rights of all people are protected and enforced.

Sincerely,



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