

OREGON LAW CENTER

921 SW Washington, Suite 516
Portland, Or. 97205
(503) 295-2760

TESTIMONY ON HOUSE BILL 2963
Senate Committee on the Judiciary
May 8, 2013

Chair Prozanski and Members of the Committee:

My name is Monica Goracke and I am an attorney in the Portland office of the Oregon Law Center. As you may know, the Oregon Law Center's mission is to achieve access to justice for vulnerable, low-income Oregonians and their communities. I have worked on legal issues that affect homeless people for almost eight years.

I am concerned that HB 2963 is unnecessary and will only result in further conflict around sidewalk use in Oregon cities. The bill removes the intent requirement from Oregon's disorderly conduct statute as it relates to sidewalks, by enabling local governments to pass ordinances criminalizing "obstruction of traffic" on their sidewalks as a strict liability crime. Currently, to violate the disorderly conduct statute, a person must be obstructing traffic with the intent to cause public inconvenience, annoyance, or alarm.

Dispensing with the intent requirement is not a small or narrow change. The element of intent in this statute is crucial to the protection of free expression activities in public spaces, including sidewalks. Without it, people handing out leaflets with their political views, selling newspapers, performing, or even simply stopping to rest could be cited for obstructing the sidewalk. The advocates of this bill suggest that First Amendment protections are not at risk because as judges apply the law, they will distinguish between people engaged in First Amendment activity and people merely obstructing the sidewalk for some other reason. This claim does not reflect the reality that many people charged with these types of violations are unable to afford a lawyer, will not receive a public defender for a violation-level offense, and may not be able to present their First Amendment argument coherently to a judge on their own.

The advocates of this bill also claim that without the bill they cannot have a community discussion about the range of options available to cities to regulate public use of sidewalks. In fact, there is nothing preventing such a discussion in any community in Oregon right now. Nor is there anything preventing any community in Oregon from regulating their sidewalks through local ordinances as long as those ordinances comply with state law and the federal and state Constitutions. Several cities, including Portland, do have sidewalk ordinances which are regularly enforced.

The agenda behind this bill is to enable cities to pass expanded sidewalk ordinances that may both infringe on constitutional rights and be selectively enforced against certain groups, such as homeless people and people with mental illness. I am concerned about these potential ordinances because my experience has shown me that they do not work to solve the problems that the advocates of this bill are complaining about.

From 2006 through 2009, I was part of a group convened by the City of Portland that negotiated a compromise that included a stricter sidewalk ordinance than had been in effect previously. After the new ordinance was passed, we regularly monitored its enforcement and analyzed the warnings and citations that were given out. Nearly all of the warnings and citations were given to homeless individuals. The City did not equally apply its laws against business owners who illegally obstructed sidewalks with signboards or café tables. Only *people* blocking the sidewalk were arrested and given fines, and most of those people were homeless.

In addition, the business community remained unhappy even with the expanded ordinance. The behavior they were most concerned about was not people simply sitting on the sidewalk. The behavior they disliked was people asking for money, people being aggressive and noisy, people hanging out in large groups with backpacks and dogs, people experiencing mental health crises, and people shoplifting or otherwise causing problems inside businesses.

None of the behaviors that the advocates of this bill are complaining about can be addressed with an ordinance that regulates sitting, lying, or placing belongings on the sidewalk. Some of these behaviors can be addressed by existing laws against harassment and intimidation. The current sidewalk ordinance in Portland, for example, already does make it illegal for groups of people to block the sidewalk. Some of the problematic behaviors cannot be addressed by laws at all. You cannot make it illegal for people to experience a mental health crisis, or for certain groups of people to hang out together in public, and you cannot make it illegal for people to act rudely or be annoying.

Using police to move people from the sidewalk is not an effective way to solve homelessness or to alleviate social problems associated with homelessness. It results in increased criminal penalties and fines that make it harder for people to get jobs and housing. It also increases the likelihood of conflict between police and people experiencing mental health crises. Subjecting people who are homeless or people with mental illness to citations and fines for unintentional behavior is cruel and counter-productive to the health and safety of our most vulnerable citizens and our communities. A far more effective solution would be to increase public resources for housing and mental health treatment.

For these reasons, I request that you not pass this bill. Thank you for your time and consideration of my testimony.