

**Testimony in Opposition to House Bill 2959  
Before the House Judiciary Committee**

**March 11<sup>th</sup>, 2019**

Chair Williamson, Vice-Chairs Gorsek and Sprenger, and members of the Committee,

On behalf of the Oregon Law Center (OLC), thank you for the opportunity to submit testimony in opposition to HB 2959, which would amend the crime of offensive littering to include the discharging of human waste. Passage of the bill would result in the criminalization of behavior that people who are homeless cannot avoid. We share local governments' concern about the number of Oregonians who are without access to homes, shelters, or restrooms, but the bill's proposed criminalization of necessary bodily functions would be both counter-productive and a gross violation of civil rights.

OLC's mission is to achieve justice for low-income communities of Oregon by providing a full range of the highest quality civil legal services. Helping families maintain safe, stable housing is a critical part of our work. Without stable housing, it is difficult or impossible to hold down a job, keep children in school, access neighborhood amenities, and stay healthy. As vacancy rates have plummeted and housing has become less and less affordable across the state, our clients have increasingly struggled to maintain stability for themselves and their children.

National as well as local studies point to high rents and the housing crisis as a significant cause of high rates of homelessness.<sup>1</sup> As a result of the current housing crisis, an increasing number of our clients are houseless. Oregon currently has the second highest rate of unsheltered homeless people in the nation, according to the most recent federal Department of Housing and Urban Development report to Congress.<sup>2</sup> Statewide, 62% of people who are houseless are living without shelter.<sup>3</sup> This population is without access to bathroom facilities most of the time, and cannot physically avoid the behavior that HB 2959 seeks to criminalize.

**Criminalization of conduct that is biologically compelled, and that cannot be avoided, is a civil rights violation.** People who are homeless, and who do not have access to shelter or bathroom facilities, cannot avoid discharging human waste in public. The 9<sup>th</sup> Circuit Court of Appeals recently considered similar facts in determining whether to uphold a city ban on camping. The Court found that since sleeping outside was an unavoidable condition of being homeless, and there was not sufficient shelter space, punishment of sleeping outside was a violation of the 8<sup>th</sup> amendment of the U.S. Constitution's prohibition against cruel and unusual punishment.<sup>4</sup> We know that the communities most vulnerable to homelessness - communities of color, people who are disabled, people with mental illness, victims of domestic and sexual violence, and a growing number of older Oregonians, would suffer the most were this law to pass.

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<sup>1</sup> [https://m.oregoncf.org/Templates/media/files/publications/homelessness\\_in\\_portland\\_report.pdf](https://m.oregoncf.org/Templates/media/files/publications/homelessness_in_portland_report.pdf);

<https://www.nlchp.org/ProtectTenants2018>

<sup>2</sup> <https://www.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf>

<sup>3</sup> <https://pamplinmedia.com/pt/9-news/415850-318114-oregon-ranks-2nd-in-us-for-unsheltered-homeless-feds-say>

<sup>4</sup> <https://cdn.ca9.uscourts.gov/datastore/opinions/2018/09/04/15-35845.pdf>

**Criminalization of behavior that is an unavoidable consequence of homelessness is cost-intensive.**

Many studies have found that the cost of homelessness—including the cost of criminalization—is greater than the cost of providing assistance to people who are homeless.<sup>5</sup> It is clearly in the public interest to reduce homelessness, and to reduce public waste, but there are more effective and productive ways to approach this problem than thru criminalization. A recent Los Angeles program providing public restrooms is just one example – the city found the pilot so successful in reducing public waste that the pilot was extended.<sup>6</sup>

**In addition to being expensive, criminalization laws are counter-productive and ineffective.**

Our neighbors who are houseless lack access to bathroom facilities. Criminalization would not disincentivize necessary and unavoidable behavior, but would saddle already vulnerable people with the possibility of arrest, fines, and jail time. Passage of this bill would add to the fear and isolation already felt experienced by those living on the streets. Arrest and conviction records would make it harder for people to get into housing and harder to obtain employment, creating additional barriers and burdens to escaping homelessness.

**Amendment:** We understand the proponents have amendments pending that would create an affirmative defense to the application of the bill for people who are homeless. This amendment concept does not address our concerns, because individuals could still be charged with a misdemeanor crime, and would have to appear in court, meet with their lawyers, and prepare a defense in order to avoid fines or jail time, all because of biologically compelled human behavior they cannot avoid and must engage in multiple times a day, day after day.

**For the above reasons, we strongly urge a “No” vote on HB 2959, and hope instead to focus on positive and constructive solutions to the prevention and reduction of homelessness in Oregon.**

We thank the legislature for their consideration of a vast array of solutions to address this problem, including increasing housing supply, increasing access to shelter and emergency assistance, and other proposals. We urge prevention and reduction over criminalization.

Thank you for the opportunity to testify.

Sincerely,  
Sybil Hebb

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<sup>5</sup> [https://nlihc.org/sites/default/files/AG-2018/Ch06-S07\\_Criminalization-Homelessness\\_2018.pdf](https://nlihc.org/sites/default/files/AG-2018/Ch06-S07_Criminalization-Homelessness_2018.pdf)

<sup>6</sup> <https://la.curbed.com/2018/7/23/17595360/homeless-public-bathrooms-mobile-pit-stop-program>