

California Right to Rest Act 2018



January 5, 2018

SECTION 1. This act shall be known and may be cited as the California Right To Rest Act of 2018

SEC. 2. The Legislature finds and declares all of the following:

- (a) The State of California is experiencing a homelessness crisis, with more people experiencing homelessness than ever before.
- (b) While the Legislature and Governor have prioritized the development of affordable housing in recent years, the solutions to our homelessness crisis will not offer relief for several years, leaving hundreds of thousands of Californians without housing and living on the streets only because they are too poor to afford rent or there are not landlords willing accept their subsidized housing voucher.
- (c) California's homelessness crisis not only leaves people without a home, but also leaves them vulnerable to illness, disease, discrimination and criminalization of their poverty.
- (d) A recent visit to the United States by United Nations Special Rapporteur on Poverty and Human Rights stated that "homelessness on this scale is far from inevitable and again reflects political choices to see law enforcement rather than low cost housing, medical treatment, psychological counseling, and job training as solutions" and that "the use of the legal system, [is] not to promote justice, but to raise revenue".
- (e) Our state and our nation have a proud legacy of remedying laws that had discriminated against people based on their race, disability, and socioeconomic status and excluded them from public space, which include:
 - a. Anti-Okie laws that criminalized "bringing or assisting in bringing" extremely poor people into the State of California were struck down as unconstitutional in 1941;
 - b. Jim Crow laws that segregated and disadvantaged African-Americans, Chinese immigrants, and others based on the color of their skin or national origin were eliminated in 1964;
 - c. Vagrancy laws that criminalized people based on their poverty were found unconstitutional in 1972;
 - d. "Ugly laws" that made it illegal for people with "unsightly or disgusting" disabilities to appear in public were eliminated in 1990;
- (f) Local laws that criminally and civilly punish people who are homeless for resting in public space are modern reincarnations of the discriminatory laws that history has condemned. These laws result in harassment, ticketing, and arrest of people engaged in innocent acts of survival, such as sleeping or sitting down in public space, even where they cannot afford or otherwise access private places to rest.
- (g) These discriminatory laws serve no legitimate governmental purpose. Instead, they misuse the criminal justice system to address the social crisis of homelessness. Moreover, they deny people who are homeless basic civil and human rights and harm our communities. The State of California has a compelling interest in preventing and ending discrimination against people who are homeless, and this law is intended to guarantee the fundamental right to rest in public space.
- (h) Many Californians experience homelessness because of economic hardship, a severe shortage of safe and affordable housing, discriminatory housing policies, the inability to secure gainful employment, and a diminished social safety net.

- (i) Responding to the crisis of homelessness with criminal or civil penalties and the intent or effect of pushing people who are homeless out of public spaces and into courts and jails, or to impose on them unaffordable fines and fees, is inhumane and violates basic constitutional, civil, and human rights of people who are homeless. It is also costly and ineffective at achieving its purported goal of reducing homelessness.
- (j) Cities throughout California are enacting and enforcing laws that criminally or civilly punish basic acts of survival. Such laws result in people being criminally or civilly punished for doing what any person must do to survive.
- (k) Local ordinances of this kind do not reduce homelessness or crime. Instead, they increase incarceration rates and the financial indebtedness of people who are homeless. Moreover, the collateral consequences of these ordinances prolong homelessness by making it more difficult for people to secure needed housing, employment, benefits, and medical care.
- (l) While these local ordinances apply to all residents of a city or municipality, they disproportionately impact people who are homeless who have no private or lawful place to rest, shelter themselves, store their belongings, or seek nourishment. These laws are often enforced with discriminatory intent against people who are homeless based upon their appearance or other indicators of their housing status and/or they have a discriminatory impact on people based on their housing status.
- (m) In practice, these ordinances deprive people who are homeless and those who may be perceived as homeless of a safe and legal place to rest, shelter themselves, store belongings and seek nourishment which threatens their health and wellbeing.
- (n) Lacking the resources necessary to obtain adequate legal representation, people who are homeless are often denied access to justice to redress constitutional, civil, and/or human rights violations.
- (o) Both the federal government – through its Interagency Council on Homelessness – and the United Nations have recognized that criminalizing homelessness violates the constitutional and internationally recognized human rights of people who are homeless, including the right to be free from cruel and unusual punishment. The federal government and the United Nations have called upon governments to cease enactment and enforcement of such laws.
- (p) Guaranteeing the right to rest in public space allows municipal governments to redirect resources from local enforcement activities to activities that address the root causes of homelessness and poverty.
- (q) It is the intent of the legislature to prevent the criminalization of poverty, protect the right of people who are homeless to rest and to prohibit discrimination based on housing status.

SEC. 3. Part 2.2 (commencing with Section 53.8) is added to Division 1 of the Civil Code, to read:

PART 2.2. Ending Discrimination Against People Who Are Homeless

53.8. For purposes of this part, the following definitions shall apply:

- (a) “Discrimination based on housing status” refers to any law, policy, or practice regulating public space that results in disparate treatment or has a disparate impact on people who are homeless or perceived as homeless as defined in section (c).
- (b) “Harassment” means a knowing or willful course of conduct by law enforcement, public or private security personnel or agent directed at a specific person that a reasonable person would consider pestering, troubling, disturbing, or threatening.

- (c) “Homeless” means lacking a fixed, regular, and adequate nighttime residence, and includes:
- (1) sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
 - (2) having a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, within the meaning of sections 42 USC § 11302(a)(2)(C);
 - (3) living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 - (4) have, in the preceding 36 months, moved between jurisdictions in order to obtain temporary or seasonal employment in agriculture or fishing work or have migrated more than 20 miles or more to a temporary residence to engage in a fishing activity. – only for California
- (5) “homeless” includes the definition under the version of 42 USC 11434a(2) in effect in October 2014, as well as persons who would qualify as homeless under this version of 42 USC 11434a(2) but for not being a child or youth.

(d) “Motor vehicle,” means a motor vehicle as defined in California Government Code.

(e) “Public space” means any property that is owned or leased, in whole or in part, by any state or local government entity or any property upon which there is an easement for public use and/or that is held open to the public, including, but not limited to plazas, courtyards, parking lots, sidewalks, public transportation facilities and services, public buildings, shopping centers, and parks.

(f) “Recreational vehicle,” is recreational vehicle as defined in California Government Code.

(g) “Rest” means the state of not moving, holding certain postures in a non-obstructive manner that include, but are not limited to sitting, standing, leaning, kneeling, squatting, sleeping, or lying down. It also includes life-sustaining activities conducted in conjunction with rest, including eating and sheltering oneself in a non-obstructive manner.

(h) “Non-obstructive manner” means in a manner that does not render passageways impassable or hazardous.

53.81.

(a) Discrimination based on housing status is prohibited;

(b) Every person shall have the following rights in public space without being subject to criminal or civil penalties or harassment by law enforcement, public or private security personnel, or any agents of any public-private partnership established under any municipal or county law:

(1) The right to rest in a non-obstructive manner;

(2) The right to shelter oneself from the elements in a non-obstructive manner;

- (3) The right to eat, share, accept, or give food in any public space where food is not prohibited;
- (4) The right to occupy a motor vehicle or recreational vehicle, provided that the vehicle or recreational vehicle is legally parked on public property or parked on private property with the permission of the property owner; and,
- (5) The right to a reasonable expectation privacy in one's personal property.

53.82

A person whose rights have been violated pursuant to this article may seek enforcement of those rights in a civil action. The court may award appropriate injunctive and declaratory relief, restitution for loss of property, and actual and compensatory damages of up to \$1,000 per violation. The court may award reasonable attorney fees and costs to the prevailing party. The remedies available in this section are not exclusive and may be used cumulatively with any other remedies available at law.

53.83

This law shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this law or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this law which can be given effect without the invalid provision or application, and to this end the provisions of this law are declared to be severable and are intended to have independent validity.