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Maine Equal Justice

People Policy Solutions

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**Testimony of Frank D'Alessandro, Maine Equal Justice,
in support of LD 1478
"An Act To Decriminalize Homelessness"
May 14, 2021**

To Senator Deschambault, Representative Warren and members of the Committee on Criminal Justice and Public Safety: My name is Frank D'Alessandro, and I am the Litigation and Policy Director at Maine Equal Justice. We are a civil legal services organization, and we work with and for people with low income seeking solutions to poverty through policy, education, and legal representation. Thank you for the opportunity to offer testimony in support of LD 1478.

Maine Equal Justice Supports LD 1478 because no one should be criminalized for not having a home. We support LD 1478 for the following reasons and many more.

What LD 1478 Will Do

This bill would de-criminalize certain offenses for individuals who are homeless that occur because someone lacks a place to live.

Why Maine Equal Justice Supports LD 1478

I. Homelessness is an Inevitable Result of Inequality and a Housing System that Leaves Many Struggling to Make Rent.

Maine's housing landscape leaves many Mainers behind. Even before the pandemic, thousands of Mainers struggle month in and month out to afford rent and stay housed. In Maine, wages are not high enough for everyone to keep a roof over their heads.¹ On average, Mainers need an annual income of \$42,489 to pay for a two-bedroom home, but a typical low-income renter makes only \$35,098 (and many make far less). As a result, nearly 60% of extremely low-income households pay more than 50% of their monthly income towards rent, a threshold which HUD deems severely rent burdened.¹

With so many households living on a razor's thin edge to make rent, it is no surprise that in the 5 years before the pandemic, Maine Courts handled between 5,300 and 6,200 eviction cases every year. This means that an average of 14 to 17 households faced loss of their homes every day – these included families with children, seniors, veterans, and single adults striving every day to make ends meet.

As a result of the systemic challenges in Maine's housing system, many fall into literal homelessness every year in both urban and rural communities across the state. When they

do, many basic activities that we do in the comfort of our homes – such as resting, sleeping, drinking, and necessary functions to maintain our health and wellbeing – are criminal offences for people experiencing homelessness, under ordinances that prohibit loitering, sleeping outside, consumption of alcohol, and other behaviors. As such, those who are most vulnerable in our society are being constantly criminalized for just trying to survive.

Peggy, who is currently experiencing homelessness, lives this every day as she tries to find a safe place to be in Central Maine. She has been living in her truck for the last year, unable to find a rental she can afford. Each night, she looks for a well-lit public parking lot where she can sleep safely. She has been threatened by the police many times for parking and sleeping in her car in public lots. The police have threatened to have her truck towed, with all her belongings, leaving her with nothing but the shirt on her back. She asked the officer: “are you really going to tow my home?” The officer replied: “it’s not my problem”. Peggy counts herself lucky to at least have a roof over her head. “I can’t believe we made it through the winter in the truck, but the people I know living in tents through winter storms, they’re the ones I worry about.” Peggy has been given tickets she can’t pay; she lives in constant fear that her remaining belongings will be taken away and impounded. Instead of helping to connect Peggy to resources and programs that might help her take steps to being housed, she is treated like a criminal and punished in large and small ways for just existing.

II. Criminalization of Homelessness and Criminal Records Prevent Access to Housing.

A long-term consequence of criminalizing basic activities for those experiencing homelessness is that it creates another barrier to housing that only serves to prolong homelessness. This was the case for Jim, who finally came up on the list for an affordable apartment after over 5 years of homelessness. However, when the landlord pulled his criminal record, he saw a list of the types of crimes contemplated in this bill. Jim could point to each one as a direct result of him living outside, without a public option to use the bathroom or a private place to sleep, eat, or drink. That landlord denied him an apartment, and as a result Jim was homeless for several months more before he found a landlord who knew such crimes have no impact on his ability to pay rent or be a good tenant.

III. Decriminalizing Homelessness of Homelessness is Consistent with Constitutional Law and Criminalization of Homelessness Violates the Cruel and Unusual Punishment Clause of the 8th Amendment.

Opponents to the bill argue that the bill violates the Equal Protection clause of the federal constitution. This is an overstatement of equal protection jurisprudence. Neither wealth nor homelessness is a suspect class under the Equal Protection Clause, *United States v. Myers*, 294 F.3d 203, 209 (1st Cir. 2002), As a result any effort to show discriminatory enforcement will be subject to the deferential standard of rational basis scrutiny, *Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 458, 461-62, 108 S. Ct. 2481, 101 L. Ed. 2d 399 (1988). As a result, an equal protection claim challenge in this case would require a showing that the plaintiff was "intentionally treated differently from others similarly situated and that *there is no rational basis for the difference in treatment.*" *Donovan v. City of Haverhill*, 311 F.3d 74, 77 (1st Cir.

2002). (Emphasis Added). There is obviously a rational basis not to criminalize behavior that people engage in because they lack housing.

In fact, criminalization of sleeping out when there are not available shelter options has been found by federal courts and declared by the Justice Department as a violation of the 8th Amendment prohibition on cruel and unusual punishment. In its 2015 statement of interest in the federal district court case of *Bell v. City of Boise et al.*, the Justice Department Declared, “[i]t should be uncontroversial that punishing conduct that is a universal and unavoidable consequence of being human violates the Eighth Amendment. . .”² In its public statement supplementing the its court filing, Director Lisa Foster of the Office for Access to Justice said that “No one wants people to sleep on sidewalks or in parks, particularly not our veterans, or young people, or people with mental illness ... But the answer is not to criminalize homelessness. Instead, we need to work with our local government partners to provide the services people need, including legal services, to obtain permanent and stable housing.”

IV. Alternatives to Law Enforcement Response, Diversion and Treatment Programs are a Proven Approach to Address Homelessness and Help People Find Housing and Services

Since 2010, the United States Interagency Council on Homelessness has advocated strongly for constructive alternatives to the Criminalization of homelessness. Across the country, communities who take a stand against criminalizing basic activities have found that alternatives have been effective in reducing and preventing homelessness, are inexpensive to implement (when compared to criminal justice involvement), and “result in a lasting positive impact on the quality of life for individuals experiencing homelessness and the larger community.”³

The 2012 update to the USICH report on alternatives to criminalization highlights numerous street outreach and court diversion programs that avoid criminal records and focus on supporting individuals that date as of 2021 have been in place for over 30 years. It is time for Maine to adopt the best practices we know work to addressing homelessness and stop criminalization of basic activities for those without homes.

Conclusion

The activities decriminalized by this bill are activities that people who are housed engage in routinely within the confines of their home and only become “criminal” when someone lacks a place to live.

- A person with a home doesn’t need to seek shelter in a public place. They go home at night to sleep in their own bed.
- A person with a home doesn’t need to urinate in a public place. They use the bathroom down the hall.
- A person with a home can have a beer after work at their kitchen table.

The fact that a person lacks a home shouldn’t make them criminals. Especially for engaging in activities that people who have a place to live take for granted.

For these reasons Maine Equal Justice urges you to vote “ought to pass” on LD 1478.