

Feds: Don't criminalize homeless for camping

The Department of Justice's statement could affect the future of Portland's camping ban

BY EMILY GREEN
STAFF WRITER

People experiencing homelessness and their advocates got a powerful new ally in their corner when it comes to decriminalizing sleeping outdoors – the U.S. Department of Justice.

On Aug. 6, the justice department declared that when shelters are full, it's unconstitutional to prosecute homeless people for sleeping outside.

The declaration came in the form of a DOJ-issued statement of interest in an ongoing lawsuit brought by homeless residents against the city of Boise in 2009.

Several homeless plaintiffs in *Janet F. Bell v. City of Boise* argue Boise's ordinances that make sleeping in public places a misdemeanor criminalizes homelessness because shelters in the city are often full, forcing those without homes to sleep outside. This, they claim, violates their Eight Amendment rights – and the DOJ agrees.

Ed Johnson, director of litigation at Oregon Law Center, says the DOJ's statement will “absolutely” help any litigation that may come against Portland's camping ban in the future.

“I've been doing housing law for 20 years,” says Johnson. “I've represented a lot of homeless people in Portland and around Oregon and many of them tell me the last place in the world they want to be sleeping was on the street.”

As in Boise, Portland's shelters are often full. According to Tony Bernal, spokesperson for Transition Projects, the primary operator of shelters in Portland, the wait time for its women's shelter is 7.5 months, and the men's shelters generally have wait times of about 5 to 6 months to get in.

“Portland has fewer shelter beds per capita than most major cities,” he says, adding that Portland also has a higher rate of unsheltered homeless as well.

A similar case filed in 2008, *Anderson v. City of Portland*, also argued that anti-camping ordinances are unconstitutional.

Four years later, plaintiffs dismissed the lawsuit when the city agreed to pay each of them \$3,200 and put \$37,000 toward the city's Rent Assistance Program.

In December, 2013, another group of people experiencing homelessness sued the Oregon Department of Transportation about its clearance of camps. A settlement in that case, reached in the fall of 2014, changed little in terms of actual camping policies, but did require ODOT to follow state guidelines in posting notices and in the handling of people's belongings.

In addition to requiring campers to move, Portland police have also applied the misdemeanor charge of interfering with a police officer on campers that do not leave.

Often cited in camping ban cases is a 2006 decision made by the 9th U.S. Circuit Court of Appeals in *Jones v. City of Los Angeles*. The judges ruled Los Angeles could not legally punish homeless individuals for sleeping outside when shelters are full.

But because the decision was retracted as part of a settlement, it has no persuasive authority, says Johnson.

The statement of interest recently issued by the DOJ sought to clarify the decision in the *Jones* case, and stated the Idaho District Court should adhere to the analysis of that decision when evaluating Boise's anti-camping ordinances.

The statement crafted by DOJ attorneys reads, “If the Court finds that it is impossible for homeless individuals to secure shelter space on some nights because no beds are available, no shelter meets their disability needs, or they have exceeded the maximum stay limitations, then the Court should also find enforcement of the ordinances under those circumstances criminalize the status of being homeless and violates the Eight

Amendment to the Constitution.”

This statement will serve as stronger evidence in future litigation than the commonly referenced *Jones* case decision.

“Anyone who brings these cases in the future,” says Johnson, “will have the voice of the United States Department of Justice on their side. It's a big deal. It's a powerful voice, and could be the decisive voice in those cases.”

But in Boise, the outcome is ultimately up to the presiding judge, who is expected to render a decision later this month.

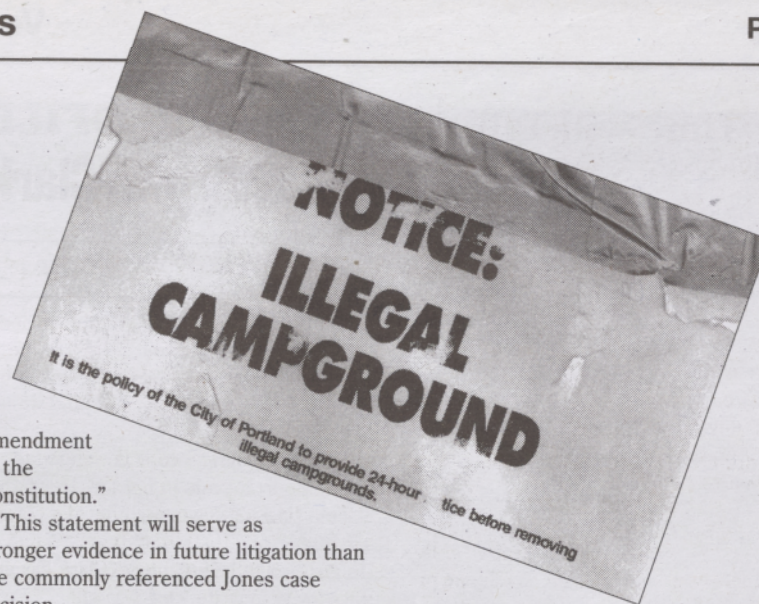
The Idaho Statesman reported that since the lawsuit was filed, Boise “has amended its ordinance to prohibit police from enforcing the camping and sleeping ordinances when there is no available overnight shelter.” It also quoted a city spokesperson as saying this makes the DOJ's filing “incorrect.”

But many municipalities with anti-camping ordinances that don't take shelter vacancy into account, such as Portland, may be affected.

According to his spokesperson, Dana Haynes, Mayor Charlie Hales is aware of the DOJ statement, but because it's a policy statement and not a ruling, the city is not yet sure what the impact will be and is waiting for the City Attorney's Office to finish its analysis.

Ellen Osoinach with the Portland City Attorney Office says the city “is aware of and has read the DOJ's brief with interest,” but she cannot tell Street Roots what impact the brief will have on Portland's anti-camping ordinance as doing so would require her office to give readers legal advice, and “unfortunately, I cannot do that.”

Paul Boden, Director of the Western Regional Advocacy Project (WRAP), says



the statement may help efforts to pass “Right to Rest” litigation in Oregon, California and Colorado. The predominant force behind such litigation, WRAP is made up of community organizations across the country, including Street Roots and Right 2 Survive in Portland.

“This does give a lot of credence to why the state of Oregon needs to take very seriously the Right to Rest Act,” he says.

During the 2015 legislative session, a bill to establish Oregon's Right to Rest Act died in committee. It would have granted homeless people the right to rest, eat and pray in public spaces and to camp inside their vehicles in public spaces.

Shannon Singleton, director of the housing assistance program JOIN, says camping bans and other laws that criminalize homelessness, “further the negative stigma of homelessness and fail to see the humanity of our neighbors stuck sleeping outside while also failing to meet the objective of not having people sleep in public spaces.”

According to Johnson, the DOJ's position “puts some burden on the municipality that has this ordinance to show that the person they're ticketing, the person they're prosecuting, has some options besides sleeping on the street.”

The best way to make sure people have options to sleeping outdoors, he says, is to invest in affordable housing.

“If you have enough affordable housing and the shelter system is available, then the people who want to access the shelter system, who don't want to sleep on the streets, will be able to do so,” he says.

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“You're the government,” he says, “you should figure out a way.”

Mat dos Santos, legal director of ACLU Oregon says, “I would think the burden on the criminal justice system (to show the warrant) is very small, but the right that is infringed is very big.

“We really want to make sure that when we're dealing with taking away someone's fundamental liberty – which is what an arrest does, it is the most basic way of depriving somebody of liberty – that every T is crossed and every I is dotted, because that's sort of the heart of due process.”

Additionally, he says, the statute not only provides guidelines for arresting officers,

but also exists to make the public aware of what their rights are during an arrest.

O'Connor's complaint recommends Portland police officers “familiarize themselves with the statutes related to their arrest powers,” and that they “put in place a simple system to print copies of relevant warrants” so they can be served “prior to or at the time of booking into jail.”

In Hillsboro, “Most people that get picked up don't ask to see it,” says Hillsboro police spokesperson Lt. Mike Rouches, “and I don't know that it's their responsibility to ask, right? To me it seems pretty reasonable that we would show it to them – like we do with a search warrant.”

Rouches says he was unaware of the state law requiring officers to serve arrest

warrants prior to Street Roots' inquiry. But now, he says, “I'd better look at the law, and (Hillsboro Police Department) should probably show them every time because if that's what the law says, that's what we should do.”

O'Connor says his clients are often confused about the nature of their arrest, and that having access to their warrant would help them understand exactly what they are in jail for.

Severe agrees that given the vulnerability of many people interacting with the justice system, at least one part of the confusion for them could be cleared up if law enforcement complied with this law, however, he says, “I don't think it's the silver bullet that would clear up everything.”

Street Roots asked the Oregon Attorney General's Office if police departments are allowed to pick and choose which laws they follow, and we asked why no one is checking to make sure that law enforcement agency policies across the state are aligned with state laws.

A spokesperson for the attorney general's office told Street Roots that DPSST “has jurisdiction over this area.”

According to Gabliks at DPSST, his agency is responsible for training and certification only, and each department is ultimately responsible for developing and implementing its own procedures and policies, although in some cases they may work with the district attorney's office or their own legal counsel.