

Preamble [Can also be moved to “Findings” depending on your standard bill format]

Whereas on June 28, 2024, the Supreme Court decided the appeal of City of Grants Pass, OR v. Gloria Johnson, rejecting decades of precedent from federal courts across the country which have found punishing homeless persons with fines or arrests for sleeping or sheltering themselves in public when there are no adequate alternative indoor options is cruel and unusual punishment under the Eighth Amendment;

Whereas more than 40 amicus briefs filed in the case endorsed by more than 1100 organizational and individual signatories documented the harms fining and arresting homeless persons for these involuntary behaviors cause, including inflicting sleep deprivation and exposure to the elements and even death, recognized as torture or cruel, inhuman, and degrading treatment by international human rights monitors;

Whereas the limitation imposed by the Court ignores the systemic lack of affordable housing and even low-barrier emergency shelter in Grants Pass and across the country which is not the fault of the individuals experiencing homelessness who are punished by laws and policies criminalizing the acts of camping, sleeping, etc., meaning such laws have no penological purpose, because they seek to deter behaviors which are innocent and involuntary.

Whereas prior cases upholding homeless persons’ rights to freedom from cruel and unusual punishment, such as *Martin v. Boise*, have helped to spur additional investments in housing and shelter, which do address the root causes of homelessness.

Whereas in addition to implicating Eighth Amendment concerns under the cruel & unusual punishments clause, laws and policies criminalizing homelessness have also been found to implicate the excessive fines clause of the Eighth Amendment, the Due Process clause of the Fourth and Fourteenth Amendment, First Amendment protections on freedom of religion, speech, and assembly, and Article IV’s Privileges & Immunities clause with respect to the right to travel, in addition to the Americans with Disabilities Act.

Whereas the root causes contributing to the crisis of people experiencing homelessness include poverty, economic hardship, a lack of affordable housing options, systemic racism, chronically low wages, underemployment and unemployment, gentrification, housing discrimination, mass incarceration, immigration status, criminalization of poverty, domestic violence, discrimination against lesbian, gay, bisexual, transgender, gender nonconforming, and queer individuals, trauma, disabilities, personal and medical debt, a lack of affordable childcare, natural disasters, institutionalization, barriers to the social safety net system, and unexpected loss of household income.

Whereas the population of people experiencing homelessness in the United States is disproportionately comprised of Black, brown, and Indigenous people, women, children, veterans, undocumented immigrants, people with mental, developmental, and physical disabilities and substance use disorders, and members of the lesbian, gay, bisexual, transgender, gender nonconforming, and queer community.

Whereas emergency shelters, transitional housing programs, permanent supportive housing initiatives, and rapid rehousing programs are inadequately funded and unable to keep up with the constant demand to provide adequate temporary, transitional, or permanent housing for individuals experiencing homelessness.

Whereas more than half of renters in the U.S. spend more than 30% of their income on housing, and more than X% in [your state/jurisdiction – get data from <https://www.jchs.harvard.edu/americas-rental-housing-2024>], putting them at risk of homelessness.

Whereas the criminalization of individuals and communities experiencing homelessness through the creation of State and local ordinances that ban soliciting donations in the form of food or money, loitering, sleeping in tents or vehicles, eating in public, and third parties distributing food to people experiencing homelessness violates the basic human and civil rights of individuals experiencing homelessness to exist in public without fear of law enforcement surveillance, harassment, violence, destruction of property, fines, vehicle impoundment, or arrest.

Whereas sleeping and sheltering oneself from the elements are biological necessities like breathing and eating.

Whereas individuals who are experiencing homelessness often have no choice but to sleep and shelter themselves outside.

Whereas jailing and fining individuals who have nowhere to go does not advance public safety or stop homelessness from occurring.

Whereas decriminalization of rest allows governments to redirect resources from law enforcement activities to activities that address the root causes of homelessness and poverty.

Whereas the vicious cycle of mass incarceration forces people to lose employment, homes, student loans, and financial assistance, and makes access to housing, gainful employment, education, and public assistance extraordinarily difficult for individuals reentering the community from the criminal and juvenile justice systems or with criminal records, thereby contributing to higher recidivism rates and exacerbating the homelessness crisis.

Whereas encampment sweeps, evictions, and cleanups, the removal of outdoor living spaces, or impounding vehicles being used as residences without ensuring individuals displaced have adequate housing exacerbates the complex issues faced by individuals experiencing homelessness and fails to address the lack of affordable and accessible housing options.

Whereas all Americans can agree that no one should have to sleep on the streets, and we should therefore all agree on the best, evidence-based approaches to get us there, which focus on housing and services, not on policing responses;

Sec. 1. This bill shall be known and may be cited as the “Gloria Johnson Anti-Cruelty to [State/Local resident name, e.g. “Alabamans”] Experiencing Homelessness Act”

(A) Purpose. This bill will eliminate costly and counter-productive enforcement of civil and criminal penalties against homeless persons in the absence of adequate alternative housing and shelter in [State].

(B) Definitions.

As used in this Act:

- i. ”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) 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;
 - 4) any person who would meet the definition of homelessness under the version of 42 USC 11434a(2) but for not being a child or youth.
- ii. “Motor vehicle,” means a motor vehicle as defined in [insert state code here or use 18 USC § 31(a)(6)..]
- iii. “Public land” 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 that is held open to the public, or any federal land where local law enforcement has jurisdiction to enforce local laws, including, but not limited to plazas, courtyards, parking lots, sidewalks, public transportation facilities and services, public buildings, shopping centers, underpasses and lands adjacent to roadways, and parks [alternatively, if “public land is defined elsewhere in state law, feel free to reference that].
- iv. “Recreational vehicle,” is recreational vehicle as defined in [insert state code here or use 24 CFR § 3282.15 (b.)
- v. “Life sustaining activities” includes, but is not limited to, moving, resting, sitting, standing, lying down, sleeping, protecting oneself from the elements, eating, drinking, and storing such personal property as needed to safely shelter oneself.
- vi. “Adequate alternative indoor space” means a space that is legally and physically accessible to an individual, and which does not require them to sacrifice any other personal right afforded to them under federal, state, or local law.
 1. This space must be available indefinitely to the individual without requiring daily re-application, at no charge, and must accommodate any disabilities, as well as pets, partners (whether legally married or

not), family members, other support persons, and possessions the individual wishes to bring with them.

2. “Tiny homes” or similar structures may be included as “alternative indoor space” provided they include locking doors, are climate-controlled appropriate to their local climate conditions, and either include their own sanitary and cooking facilities or common facilities sufficient to the population of the tiny home community are accessible to them.
3. Alternative indoor space in a neighboring jurisdiction is presumptively inaccessible, unless adequate transportation is available, at no cost to the individual, to ensure the individual can continue to attend to any personal or professional business in the jurisdiction of origin.

Sec. 2. Legislative Declarations

- (A) Constitutional interpretation: For purposes of interpreting the [State] constitution, Article [# referring to cruel & unusual punishment, excessive fines, or equivalent], it is the position of this state that threatening or imposing civil or criminal punishments on homeless individuals for undertaking life-sustaining activities including sleeping and sheltering oneself in an unobtrusive manner on public land in the absence of adequate alternative indoor places to do so violates the constitutional protection against cruel and unusual punishment and/or excessive fines.
- (B) Necessity Defense: For purposes of [State][section codifying necessity defense, if any], it shall be an affirmative defense to a charge of violating a statute or ordinance criminalizing a life-sustaining behavior that the individual had no access to an adequate alternative indoor space in which to undertake the prohibited conduct.
 - a. It shall be the responsibility of the court to notify the charged individual of the availability of this defense and how to raise it.
 - b. Once the defense is raised, there is a rebuttable presumption that adequate alternative indoor space did not exist, and it the burden of proving availability of adequate alternative indoor space is on the prosecution.

Sec. 3 Permitted Use of Public Lands

- (A) General Rule: All persons experiencing homelessness have the statutory rights under this Act to use public spaces without discrimination based on housing status including:
 - a. the right to conduct life sustaining activities on public land, provided that such activities do not obstruct the normal movement of pedestrian or vehicular traffic in such a manner that creates a hazard to others, or on private property with the permission of the property owner, unless sufficient adequate alternative indoor space is available to the homeless individual in a given jurisdiction, and has been offered to the individual, including transportation for the individual and their belongings;

- b. the right to use and move freely in places of public accommodation without discrimination based on actual or perceived housing status;
- c. the right to be free from civil or criminal sanctions for soliciting, sharing, accepting, or offering food, water, money or other donations in public places;
- d. the right to privacy in one's personal property stored in public places to the same degree of privacy as property in a private dwelling, which shall not be subject to unreasonable search and seizure.
- e. the right to pray, meditate, worship or practice religion in public spaces without discrimination based on housing status;
- f. the right to occupy a motor vehicle or a recreational vehicle provided that the vehicle is parked on public property provided that the vehicle is not parked in a position so as to obstruct the normal movement of traffic or create a hazard to other traffic upon the highway or on private property with the permission of the private property owner; and
- g. the right to relocate a motor vehicle or recreational vehicle being used for life sustaining activities before a parking ticket may issue or the vehicle is towed, to retrieve items from a towed vehicle, and to retrieve the vehicle from storage at a free or reduced rate upon consideration of ability to pay.

Sec. 4. Application and Preemption

(a) IN GENERAL.—

(1) Except as stated under subsection (b), this Act supersedes and applies to the law of the State Government and each local government, and the implementation of such law, whether statutory, common law, or otherwise, and whether adopted before or after the date of enactment of this Act, and neither the State Government nor any local government shall administer, implement, or enforce any law, rule, regulation, standard, or other provision having the force and effect of law that conflicts with any provision of this Act, notwithstanding any other provision of state law.

(2) State statutory law adopted after the date of the enactment of this Act is subject to this Act unless such law explicitly excludes such application by reference to this Act.

(b) This Act shall take effect immediately upon the date of enactment of this Act.

Sec. 5. Rules of Construction

(a) IN GENERAL.—In interpreting the provisions of this Act, a court shall liberally construe such provisions to effectuate the purposes of the Act.

(b) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to authorize any government to interfere with a person's right to be free from facing punishment for status conditions, or to diminish or in any way negatively affect a person's constitutional right to be free from cruel and unusual punishment, or to displace any other remedy for violations of the constitutional right to be free from cruel and unusual punishment.

Sec. 6. Enforcement

(a) ATTORNEY GENERAL.—The [State] Attorney General may commence a civil action on behalf of the [State] against any State or local government that violates, or against any government official that implements or enforces a limitation or requirement that violates, section 3. The court shall hold unlawful and set aside the limitation or requirement if it is in violation of this Act.

(b) PRIVATE RIGHT OF ACTION.—

(1) IN GENERAL.—Any individual adversely affected by an alleged violation of this Act, may commence a civil action against any State that violates, or against any government official that implements or enforces a limitation or requirement that violates, section 3. The court shall hold unlawful and set aside the limitation or requirement if it is in violation of this Act.

(c) EQUITABLE RELIEF.—In any action under this section, the court may award appropriate equitable relief, including temporary, preliminary, or permanent injunctive relief.

(d) COSTS.—In any action under this section, the court shall award costs of litigation, as well as reasonable attorney's fees, to any prevailing plaintiff. A plaintiff shall not be liable to a defendant for costs or attorney's fees in any non-frivolous action under this section.

(e) JURISDICTION.—The district courts of [State] shall have jurisdiction over proceedings under this Act and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided for by law.

(f) ABROGATION OF STATE IMMUNITY.—Neither a local government that enforces or maintains, nor a government official who is permitted to implement or enforce any limitation or requirement that violates section 3 shall be immune under the Tenth Amendment to the Constitution of the United States, the Eleventh Amendment to the Constitution of the United States, or any other source of law, from an action in a Federal or State court of competent jurisdiction challenging that limitation or requirement.

Sec. 9. Severability

If any provision of this Act, or the application of such provision to any person, entity, government, or circumstance, is held to be unconstitutional, the remainder of this Act, or the application of such provision to all other persons, entities, governments, or circumstances, shall not be affected thereby.