

MEMORANDUM

To: Rep. Helen Head & House General, Housing & Military Affairs Committee

DATE: January 19, 2018

FROM: Chloé White, American Civil Liberties Union
Jessica Radbord, Vermont Legal Aid
Erhard Mahnke, Vermont Affordable Housing Coalition

RE: H.412, Homeless Bill of Rights

Please accept the following suggested changes to H.412, as introduced. These suggestions represent consensus recommendations from our three respective organizations. They are informed by our review of relevant statutes passed, and bills introduced, in other states. We would be happy to go over these with committee members during scheduled testimony on Friday, January 19. Thanks in advance for your consideration.

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Throughout the bill: Change all appearances of “a person without housing” to “a person without housing or perceived to be without housing” and all appearances of “housing status” to “actual or perceived housing status.”

Change Section 2(b)(1) as follows:

(b) A person without housing or perceived to be without housing shall have the right:

(1) To use and move freely in public spaces, including public sidewalks, parks, transportation, and buildings without harassment or intimidation from law enforcement officers or other government officials, in the same manner as any other person and without discrimination on the basis of his or her actual or perceived housing status.

Change Section 2(b)(2) to require: “...equal treatment by State and municipal ~~agencies~~ government without discrimination on the basis of actual or perceived housing status...”

[It is unclear whether the existing language would include the Judiciary, which the revised wording is meant to include.]

Change Section 2(b)(6) and (8) as follows:

(b) A person without housing or perceived to be without housing shall have the right:

* * *

(6) To confidentiality of personal records and information in accordance with all limitations on disclosure established by State and federal law, including but not limited to: the Federal Homeless Management Information Systems, the Federal Health Insurance Portability and Accountability Act, and the Federal Violence Against Women Act. In particular, victims of

~~domestic and sexual violence and stalking who are homeless have the right to safety and confidentiality. No identifying information pertaining to such victims shall be released without a written release unless the disclosure of the information is required by State or federal law or a court order.~~

(A) Homeless Management Information System data must be kept confidential while allowing for reasonable and responsible uses and disclosures of data. Baseline standards are based on principles of fair information practices and security standards set forth by the Department for Housing and Urban Development in 69 FR 45888.

(B) In accordance with the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d-2, and its implementing regulations, health information may not be disclosed except as provided by HIPAA's implementing regulations at 45 C.F.R. Subpart A.

(C) In accordance with 42 U.S.C. § 290dd-2 and implementing regulations, records of the identity, diagnosis, prognosis, or treatment of any patient related to substance use or alcohol use is confidential and can be disclosed only with the prior written consent of the patient and only to the extent necessary to carry out the purpose of the disclosure.

(D) In accordance with the Violence Against Women Act, 34 U.S.C. § 12491 and its implementing regulations, any information related to a person's status as a victim of domestic violence, dating violence, sexual assault, or stalking shall be maintained in strict confidence and retained separately from other client information. Such information may not be entered into any shared database. Such information shall not be disclosed to any other entity or individual, except to the extent the disclosure is specifically requested or consented to by the individual in writing for a specific limited time period or is otherwise required by applicable law.

* * *

(8) To immediate and continued enrollment of his or her school-age children based on the best interests of the child as provided for in 16 V.S.A. § 1075(e) and ~~applicable federal law~~ the McKinney Vento Act, 42 U.S.C. §§ 11431-11435.

[These proposed changes clarify the confidentiality protections provided by the bill and directly link them to applicable federal statutes and regulations.]

Add private right of action:

Any person whose rights have been violated pursuant to this act may enforce those rights in a civil action. In a civil action alleging a violation of this act, the court may award appropriate injunctive and declaratory relief, actual damages and reasonable attorney fees and costs to a prevailing plaintiff, including restitution for loss of property or personal effects and belongings.

Additional suggested new provisions:

[Work with Legislative Council on wording]

(1) The laws, policies, and practices that prohibit or limit the use of public space by persons without housing, or perceived to be without housing, for life-sustaining activities are hereby repealed, and shall not be enforced or funded.

(2) No person shall be subject to, or threatened with, civil or criminal sanctions or harassment by law enforcement, other governmental officials, or private security personnel for moving, resting, sitting, standing, lying down, sleeping, protecting oneself from the elements, or conducting other life sustaining activities on public property or in a legally parked car.

(3) The right to use and move freely in places of public accommodation without discrimination based on actual or perceived housing status shall not be abridged.

(4) No person shall be subject to civil or criminal sanctions for soliciting, sharing, accepting, or offering food, water, money or other donations in public places.

(5) Personal property of homeless persons shall not be subject to unreasonable search and seizure.

(6) No law shall target persons without housing or perceived to be without housing, the harmless activities associated with homelessness, or the provision of supports or services to persons without housing or perceived to be without housing in traditional public fora. *[There are different types of public forums under First Amendment law. A traditional public forum is a place with a long tradition of freedom of expression and speech, like a public park or street corner. The government can usually only impose content-neutral time, place, and manner restrictions on speech and behavior here (unless the restriction is necessary to further a compelling government interest). Under this provision, a law couldn't forbid people giving food to those experiencing homelessness who are in a public park, or a statute couldn't be enacted forbidding 'loitering' on a street corner.]*

(7) Require DMV to provide identification under relaxed ID verification requirements to persons without housing, if their housing status is verified by a state-funded homeless service provider, and to waive fees for obtaining identification for such persons. *[The current requirements make it impossible for most persons without housing to get ID. The biggest difficulty for them is accessing identification.]*

(8) Add housing status to 21 V.S.A. § 495, Unlawful Employment Practice *[We've heard from individuals who were homeless that they were fired when employers learned they had no permanent mailing address, or that their mailing address was the General Mail and the post office. We understand lack of housing also prevents them from being hired.]*

Change effective date: to July 1, 2018