



June 28, 2018

**SENT VIA E-MAIL AND U.S. MAIL**

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RE: Portland Police Bureau Harassment of Unhoused Unconstitutional

Dear Mayor Wheeler and Chief Outlaw,

The ACLU of Oregon has been contacted by houseless service providers in the downtown area concerned that the Portland Police Bureau (“PPB”) has been profiling and harassing unhoused individuals in violation of their rights. These practices include stopping, questioning, running warrant checks, and searching personal belongings – including tents – without reasonable suspicion or probable cause. By some accounts, the only reason for these actions is the individual’s apparent homelessness status. Of particular concern are reports that PPB targets locations near social service providers. Such practices are inhumane and counterproductive, and run afoul of federal and state constitutions and statutes, notably the Fourth Amendment of the U.S. Constitution, Article I, sections 9 and 20, of the Oregon Constitution, and Or. Rev. Stat. §§ 131.915, 131.920, and 131.615. Accordingly, we request the Mayor and Chief of Police investigate these reports and ensure these practices end immediately.

**I. The Fourth Amendment of the United States Constitution, Article I, section 9, of the Oregon Constitution, and Or. Rev. Stat. § 131.615.**

PPB’s stops and searches of unhoused individuals lack reasonable suspicion and probable cause respectively, and are therefore unreasonable and unconstitutional. The Fourth Amendment of the U.S. Constitution, as well as Article I, section 9, of the Oregon Constitution prohibit police from stopping and investigating individuals simply because of their real or perceived homelessness. Both provisions guarantee the right of people “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . .”<sup>1</sup> Whenever an

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<sup>1</sup> U.S. Const. amend. IV; OR Const. Art. I, § 9.

officer stops a person and "restrains his freedom to walk away, he has 'seized' that person."<sup>2</sup> The officer must have reasonable suspicion to justify doing so, i.e., "specific and articulable facts" that reasonably support the inference "criminal activity may be afoot."<sup>3</sup> This requires more than an "inchoate and unparticularized suspicion or hunch."<sup>4</sup> Or. Rev. Stat. similarly limits stops.<sup>5</sup> Neither poverty nor homelessness is sufficient cause for an officer to reasonably suspect an individual is engaged in criminal activity. Indeed, the courts, as well as the Oregon Legislature, have repeatedly said these statuses cannot constitute a crime.<sup>6</sup> Rather, the officer must point to some other suspicious conduct, separate from poverty or homelessness, to necessitate the intrusion. Likewise, PPB may violate the constitutional rights of unhoused individuals by conducting warrantless searches of their tents and other personal belongings.<sup>7</sup> In sum, there is no 'homelessness exception' to our constitutional rights.

## II. Article I, section 20, of the Oregon Constitution

Article I, section 20, of the Oregon Constitution prohibits discrimination.<sup>8</sup> Further, it likely extends extra protections to the unhoused as a suspect class, being a group that has endured oppression historically and today, and whose status (being homeless) is immutable and beyond individual control.<sup>9</sup> As such, the unhoused can only be targeted based on "specific

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<sup>2</sup> *Terry v. Ohio*, 392 U.S. 1, 16–17 (1968); *see also State v. Ashbaugh*, 349 Or. 297, 308-09 (2010) (a "stop is a type of seizure that involves a temporary restraint on a person's liberty").

<sup>3</sup> *Terry*, 392 U.S. at 21, 30 (citations omitted); *see also Ashbaugh*, 349 Or. at 309 (an officer "must have reasonable suspicion of criminal activity for a stop").

<sup>4</sup> *United States v. Sokolow*, 490 U.S. 1, 7(1989) (citations and internal quotation marks omitted); *see also State v. Maciel-Figueroa*, 361 Or. 163, 181 (2017) (the officer must have suspicion regarding a specific crime or type of crime, not merely general "criminal activity").

<sup>5</sup> Or. Rev. Stat. § 131.615 (2017) ("A peace officer who reasonably suspects that a person has committed or is about to commit a crime may stop the person").

<sup>6</sup> *See* Or. Rev. Stat. §§ 131.915 and 131.920 (2017) (prohibiting profiling based on homelessness); *Edwards v. California*, 314 U.S. 160 (1941) (striking down a law that prohibited bringing an indigent into the state, noting poverty does not indicate immorality); *Williams v. Illinois*, 399 U.S. 235 (1970) (defendants cannot be imprisoned simply because of their inability to pay fines); *Jones v. City of Los Angeles*, 444 F.3d 1118, 1132 (9th Cir. 2006), *vacated due to settlement*, 505 F.3d 1006 (9th Cir. 2007) (a city cannot "expressly criminalize the status of homelessness by making it a crime to be homeless without violating the Eighth Amendment, nor can it criminalize acts that are an integral aspect of that status"). Vagrancy and loitering laws have also been repeatedly rejected. *See, e.g., Papachristou v. Jacksonville*, 405 U.S. 156 (1972); *City of Chicago v. Morales*, 527 U.S. 41 (1999); *City of Portland v. James*, 251 Or. 8 (1968); *State v. Debnam*, 23 Or. App. 433 (1975); Or. Rev. Stat § 430.402 (2017).

<sup>7</sup> *United States v. Sandoval*, 200 F.3d 659, 661 (2000) ("we do not believe the reasonableness of Sandoval's expectation of privacy turns on whether he had permission to camp on public land. Such a distinction would mean that a camper who overstayed his permit in a public campground would lose his Fourth Amendment rights, while his neighbor, whose permit had not expired, would retain those rights"); *Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012), *cert. denied*, 570 U.S. 918 (2013) (by seizing and destroying homeless individuals' unabandoned legal papers, shelters, and personal effects, city interfered with their possessory interests in that property under the Fourth Amendment, even if property was left on sidewalks in violation of municipal ordinance); *United States v. Gooch*, 6 F.3d 673, 677 (9th Cir. 1993)("a tent is more analogous to a (large) movable container than to a vehicle; the Fourth Amendment protects expectations of privacy in movable, closed containers")(citations omitted). For a discussion of the limitations of these privacy interests, *see State v. Tegland*, 269 Or. App. 1 (2015).

<sup>8</sup> *State v. Clark*, 291 Or. 231, 237 (1981).

<sup>9</sup> *Tanner v. Or. Health Scis. Univ.*, 157 Or.App. 502, 521-22 (2006).

biological differences.”<sup>10</sup> Obviously, unhoused people – diverse in sex, race, age, disability, and circumstances – share no unifying characteristic that could justify disparate treatment. Accordingly, the practice of stopping, questioning, searching, and running warrant checks on unhoused people because they are homeless constitutes unlawful discrimination under Article I, section 20, of the Oregon Constitution.

### **III. Or. Rev. Stat. §§ 131.915 and 131.920**

Profiling people because of their homelessness violates state law and PPB’s own policies. Oregon statute requires law enforcement agencies to adopt and implement policies prohibiting profiling, including targeting people based solely on their real or perceived homelessness.<sup>11</sup> Accordingly, PPB’s directive regarding bias-based policing and profiling explicitly forbids profiling or disparate treatment based on housing or economic status.<sup>12</sup> Such status characteristics may only be considered “in combination with other relevant and specific identifying traits or factors (e.g., description of clothing, height, etc.) when searching for a specific individual or group” and “should not be the sole factor cited/identified.”<sup>13</sup> Homelessness and poverty are not crimes, and, without more, are impermissible grounds for police action. Thus, PPB violates the law when it stops and searches people simply because they are unhoused.

### **IV. Policing Poverty is Inhumane and Counterproductive**

Preying on people because of their extreme destitution is deplorable as a matter of principle as well as public policy. Treating unhoused people like criminals punishes and dehumanizes those who are already vulnerable and struggling. It also fails to address the empirical causes of homelessness, like Portland’s affordable housing crisis.<sup>14</sup> Instead, this approach undermines public health and safety. It erodes trust in police, breeding fear and insecurity. Moreover, by targeting areas surrounding social service providers, PPB interferes with access to services necessary to the physical and mental wellbeing of unhoused community members.

This pattern of cracking down on unhoused people near social service providers is particularly troubling in light of PPB’s history of unnecessary and excessive force towards people with mental illness.<sup>15</sup> One-in-seven unhoused Oregonians has a serious mental disorder,

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<sup>10</sup> *Hewitt v. State Accident Ins. Fund Corp.*, 294 Or. 33, 46 (1982).

<sup>11</sup> Or. Rev. Stat. §§ 131.915, 131.920 (2017).

<sup>12</sup> Portland Police Bureau Directive 0344.05, Policy (3) (2018).

<sup>13</sup> Portland Police Bureau Directive 0344.05, Procedure (2.2) (2018).

<sup>14</sup> Oregon had one of the lowest rates of available rental housing in late 2017 (3.6%). U.S. Census Bureau, Rental Vacancy Rates by State: 2005-Present (2018), *available at* <https://www.census.gov/housing/hvs/data/rates.html>. The average cost to rent a one-bedroom apartment has out-paced the median income twenty-fold since 2015. Multnomah Cnty, 2017 Point in Time Count (2018), *available at* <https://multco.us/multnomah-county/news/2017-point-time-count-more-neighbors-counted-homeless-2015-more-sleeping>.

<sup>15</sup> See Settlement Agreement Pursuant to Fed. R. Civ. P. 41(a)(2), *United States v. City of Portland*, Case No. 3:12-cv-02265-SI (D. Or. 2012), ECF No. 4-1.

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and these individuals are most likely to be unsheltered.<sup>16</sup> Many more are in the midst of a temporary crisis. PPB should exercise greater care in choosing when to engage, and possibly escalate, people on the street. PPB should also be more cognizant of the potential consequences of obstructing access to social services. PPB's targeting of unhoused community members is inhumane, and it is detrimental to the public safety and welfare of all Portlanders.

**V. Conclusion**

The ACLU of Oregon strongly encourages the City of Portland to investigate PPB conduct towards our community members who are unhoused. We also ask that you halt practices that violate state and federal law and that compromise community health and safety. Should the City want to discuss the contents of this letter further, please do not hesitate to reach out. [Contact information removed]

Sincerely,



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Mat dos Santos  
Legal Director  
American Civil Liberties Union of Oregon



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<sup>16</sup> Or. Hous. and Cmty. Servs., 2017 Point-In-Time Estimates of Homelessness in Oregon (2018), *available at* <http://www.oregon.gov/ohcs/ISD/RA/2017-Point-in-Time-Estimates-Homelessness-Oregon.pdf>.