



HOMELESS PERSONS REPRESENTATION PROJECT, INC.

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SUPPORT

HB 304 - Criminal Law – Failure to Obey a Reasonable and Lawful Order House Judiciary Committee, Tuesday, February 1, 2022

The Homeless Persons Representation Project, Inc. (HPRP) is a non-profit civil legal aid organization that provides free legal representation to people who are homeless or at risk of homelessness on legal issues that will lead to an end to homelessness. HPRP regularly represents tenants in criminal record expungement matters in Baltimore City and Montgomery County. HB 304 is necessary to ensure that Maryland's Failure to Obey a Reasonable and Lawful Order statute does not continue result in unnecessary law enforcement contact and criminalization of homelessness, which disproportionately harms people of color and people with disabilities who are unhoused.

Maryland Criminal Code 10-201(c)(3), Failure to Obey a Reasonable and Lawful Order (FOLO), is vague, overly broad, and ripe for biased enforcement. Maryland's FOLO statute is broadly written with vague language regarding what is an "order" or when alleged "failure to obey" rises to an actionable level. FOLO carries a harsh penalty of possible incarceration, yet law enforcement officers have almost unfettered discretion to arrest even when the behavior at issue poses no risk to public health or safety. In addition, the statute does not require law enforcement officers to assess whether a person understands the "order" at issue, has intent to disobey, or even has capacity to obey. Accordingly, this problematic statute often serves as a "catch-all" when there is no other crime on which to base an arrest. This creates a clear danger of biased, inconsistent, and reactive enforcement with no benefit to public health or safety.

Maryland's FOLO law criminalizes homelessness and disproportionately harms people of color and people with disabilities. People who are unhoused often have no option but to live their private lives in public spaces, exposing them to a degree of scrutiny and surveillance that housed people easily avoid. The FOLO statute ostensibly criminalizes a broad range of activities witnessed in public spaces regardless of the legality of the underlying behavior or whether it poses any threat to public health or safety. For instance, a "lawful order" could include ordering a person to stop an act which is completely legal, such as smoking a cigarette or standing in a public area. The lens through which law enforcement officers (or persons who call law enforcement) perceive people experiencing homelessness and their behavior is often tainted by animus, stigma, and negative stereotypes, particularly for people of color and people with disabilities who are unhoused. In Maryland over the last 3 years, Black or African American people account for more than 53 % of the cases where FOLO was the only crime charged and 64% of cases where FOLO has been charged in conjunction with another crime. FOLO law creates unnecessary police interactions and criminalizes homelessness rather than addressing its root causes.

FOLO also perpetuates homelessness by undermining housing and employment stability. HPRP has an extensive criminal record expungement practice, as well as representing clients in housing and public benefits cases. We have observed firsthand how FOLO charges, even when they result in no conviction, undermine housing and employment access for our clients and community. We urge the Committee to support policy initiatives that decriminalize homelessness by reducing unnecessary interactions between unhoused individuals and the criminal justice system.

HPRP strongly urges the Committee to issue a favorable report on HB 304. If you have questions or would like additional information, please contact Ingrid Lofgren (ilofgren@hprplaw.org) or Angel Dawson (adawson@hprplaw.org).