

# **Legal Advocacy for Unhoused People with Disabilities:**

## Toolkit to Challenge California Laws Criminalizing Homelessness

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Disability Rights Education & Defense Fund



# Agenda

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1. Overview of DREDF and Toolkit Content
2. Americans with Disabilities Act: Disparate Impact
3. Americans with Disabilities Act: Reasonable Modifications
4. Question and Answers
  - Brigitte Nicoletti, Staff Attorney/Clinical Supervisor, East Bay Community Law Center
  - EmilyRose Johns, Attorney, Siegel, Yee, Brunner & Mehta
  - Jason Sarris, Formerly Unhoused and Community Activist
  - Robbie Powelson, Community Activist
  - Sabyl Landrum, Senior Staff Attorney, East Bay Community Law Center

# Disability Rights Education & Defense Fund

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## **DREDF – Support Center For QLSP**

- Specialized knowledge on disability
- Unhoused rights
- Housing Rights/Tenant Rights
- Special Education
- Health/Medical
- Transportation
- Reproductive Rights

### **Contact Information**

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Disability Rights Education & Defense Fund **DREDF** 

# Toolkit Table of Contents

**Chapter 1:** Background

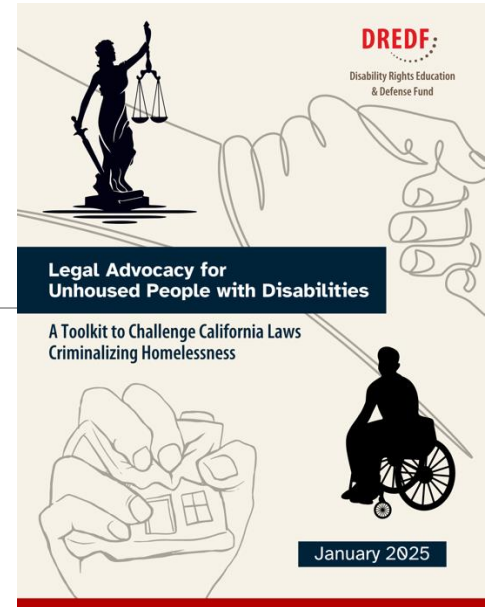
**Chapter 2:** Disability Law

**Chapter 3:** Title II of the Americans with Disabilities Act

**Chapter 4:** Reasonable Modifications under Title II of the Americans with Disabilities Act

**Chapter 5:** Government Responses to Title II of the Americans with Disabilities Act

**Link:** <https://dredf.org/legal-advocacy-for-unhoused-people-with-disabilities-toolkit/>



# Americans with Disabilities Act: Title II

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## Application of Title II

"[S]ervices, programs, or activities" of city and state government, law enforcement, and other government departments and agencies.

Anything public entity does

Encampment sweeps

## Title II Prohibits

Disparate Treatment

Disparate Impact

Failure to make a reasonable modification/accommodation

# ADA Title II: Disparate Impact

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- “[F]acially neutral government policy or practice has the ‘effect of denying meaningful access to public services’ to people with disabilities.” *Payan v. Los Angeles Cnty. Coll. Dist.*, 11 F.4th 729, 737 (9th Cir. 2021)
- Neutral policy with disproportionate burden on a disabled person.
- Person with disability has burden of proof.
- Do not need to show discriminatory intent.

# Anti-Camping Laws & Disparate Impacts

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## Legal Provision

Requirement to move every 24 hours

Limitations on the number of people in an encampment

## Disparate Impact

Some people with mobility disabilities will not be able to move in 24 hours and are thus more likely to lose their items and be arrested.

People with disabilities who rely on others to help with daily activities or provide emotional support cannot camp with others.

# Anti-Camping Laws & Disparate Impacts

continued

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## Legal Provision

Limitations on locations of camping, such as no camping in parks, near schools, near critical infrastructure, etc.

## Disparate Impact

Could prevent a disabled person from being near public transit, doctor's offices, and resources. Forces people with I/DD into unfamiliar places causing distress.

# ***Bloom v. San Diego***

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- RV parking ordinance
- Applied to disabled and non-disabled people equally
- Enforcement burdened disabled "persons in a manner different and greater than it burdens others."
- People with disabilities were uniquely dependent on RVs to live
- Therefore, the City's ordinances "effectively denie[d] these persons...meaningful access to the City's services, programs, and activities, which are easily accessible by others."

# ADA: Reasonable Modifications

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- Changes to a public service, benefit, or program for people with disabilities so they can take part in the service. (28 CFR 35.130(b)(7)(i); *McGary v. City of Portland*, 386 F.3d 1259, 1265–66 (9th Cir. 2004).
- Affirmative Obligation (28 C.F.R. § 35.130(b)(7)(i); *Tennessee v. Lane*, 541 U.S. 509, 512, 124 S. Ct. 1978, 1982, 158 L. Ed. 2d 820 (2004))

## Examples:

- More time to move before an encampment sweep
- Assistance in moving belongings
- Exceptions to location limitations

# Reasonable Modifications

A reasonable modification in one context may be unreasonable in another

- Fact specific
- Individualized

Provide a clear and concrete description of the benefit denied

- Fit the requested modification within the benefit.

*Prado v. City of Berkeley:*

- Reasonable modification request to include mental health professional as part of the housing navigation services.
- Benefit Denied: Outreach services
- Reasonable Modification: Mental health professionals that enable people to use outreach services.
- Without outreach services, the modification would likely be a “fundamental alteration”

# ***Glover v. City of Laguna Beach***

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Local shelter inaccessible to people with disabilities

Benefit Denied: "safe, legal place to sleep"

Modification: Permanent supportive housing

Court denied modification request, ruling it was a fundamental alteration

"Plaintiffs' lengthy list of grievances with the City's homelessness program, however well-founded, reaffirm that Plaintiffs are not likely focusing their ADA claim on any particular service provided by the City, but instead on the amorphous aim of 'the provision of a safe, legal place to sleep.'"


# Government Denial Of Request

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- Fundamental alteration
- Undue financial burden
- Undue administrative burden
- Direct threat to health and safety

# For More On Reasonable Accommodations

**Webinar Recording**



The thumbnail image shows a presentation slide with the title 'How Reasonable Accommodations Under the Americans with Disabilities Act Can Help Unhoused People with Disabilities'. Below the title, it says 'February 20, 2024' and 'Presented by Erin Nguyen Neff, Staff Attorney; Michelle Uzeta, Deputy Legal Director; Disability Rights Education & Defense Fund'. The slide features a photograph of a wheelchair in front of a building and two small video insets of the presenters. The DREDF logo is visible in the bottom right corner of the slide.

under the Americans with Disabilities Act Can Help Unhoused People with Disabilities.

[Download Slides \(.ppt\)](#) [Download Slides \(.pdf\)](#) [Download Transcript \(.txt\)](#)

To learn how to make a reasonable accommodation for unhoused people in encampments and shelters, please check out our previous training:

[How Reasonable Accommodations Under the ADA Can Help Unhoused People with Disabilities](#)

# Question and Answer

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