

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 20-0951.01 Shelby Ross x4510

HOUSE BILL 20-1233

HOUSE SPONSORSHIP

Melton and Benavidez, Duran, Gonzales-Gutierrez

SENATE SPONSORSHIP

(None),

House Committees

Transportation & Local Government

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CONSTITUTIONAL PROTECTIONS FOR CONDUCTING BASIC**
102 **LIFE FUNCTIONS IN PUBLIC SPACES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill prohibits the state and any city, county, city and county, municipality, or other political subdivision (government entity) from restricting any person from:

- ! Conducting basic life functions in a public space unless the government entity can offer alternative adequate shelter to the person and the person denies the alternative adequate

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

shelter; and
! Occupying a motor vehicle, provided that the motor vehicle is legally parked on public property or parked on private property with the permission of the property owner.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 4.5 to title
3 24 as follows:

4 **ARTICLE 4.5**

5 **Basic Life Functions in Public Spaces**

6 **24-4.5-101. Legislative declaration.** (1) THE GENERAL
7 ASSEMBLY FINDS AND DECLARES THAT:

8 (a) MANY PEOPLE EXPERIENCE HOMELESSNESS BECAUSE OF A
9 VARIETY OF FACTORS, INCLUDING BUT NOT LIMITED TO MENTAL HEALTH
10 AND SUBSTANCE USE DISORDERS, ECONOMIC HARDSHIP, A SEVERE
11 SHORTAGE OF SAFE AND AFFORDABLE HOUSING, AND THE INABILITY TO
12 SECURE GAINFUL EMPLOYMENT;

13 (b) ALTHOUGH A CITY, COUNTY, CITY AND COUNTY, OR
14 MUNICIPALITY HAS THE AUTHORITY TO ENACT LOCAL ORDINANCES THAT
15 PROTECT THE HEALTH AND SAFETY OF ITS CITIZENS, THEY DO NOT HAVE
16 THE AUTHORITY TO DEPRIVE PEOPLE WHO ARE HOMELESS OR PERCEIVED
17 AS HOMELESS OF A PUBLIC, SAFE, AND LEGAL PLACE TO CONDUCT BASIC
18 LIFE FUNCTIONS THAT ARE NECESSARY TO SURVIVE WHEN ADEQUATE
19 SHELTER IS NOT AVAILABLE;

20 (c) THE COLORADO COURT OF APPEALS HAS LONG HELD THAT
21 "[T]HE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION
22 PROHIBITS CRUEL AND UNUSUAL PUNISHMENT AND GUARANTEES
23 INDIVIDUALS THE RIGHT NOT TO BE SUBJECTED TO EXCESSIVE SANCTIONS".

1 *PEOPLE V. VALLES*, 2013 COA 84. THE EIGHTH AMENDMENT ALSO
2 "[P]ROSCRIBES PUNISHMENT GROSSLY DISPROPORTIONATE TO THE
3 SEVERITY OF THE CRIME". *INGRAHAM V. WRIGHT*, 430 U.S. 651 (1977).

4 (d) IN 2018, THE UNITED STATES COURT OF APPEALS FOR THE
5 NINTH CIRCUIT HELD THAT "AS LONG AS THERE IS NO OPTION OF SLEEPING
6 INDOORS, THE GOVERNMENT CANNOT CRIMINALIZE INDIGENT, HOMELESS
7 PEOPLE FOR SLEEPING OUTDOORS, ON PUBLIC PROPERTY, ON THE FALSE
8 PREMISE THEY HAD A CHOICE IN THE MATTER". *MARTIN V. CITY OF BOISE*,
9 902 F.3D 1031, 1048 (9TH CIR. 2018); AND

10 (e) DURING THE HEARING ON THE COURT'S ORDER CONCERNING
11 MOTION TO DISMISS, *CITY OF DENVER V. BURTON*, CASE NO. 19GS004399
12 (DENVER CTY. CT. DEC. 27, 2019), THE DENVER COUNTY COURT HEARD
13 TESTIMONY THAT "...MEN WITH CHILDREN, INDIVIDUALS WITH SERIOUS
14 MENTAL ILLNESS, PERSONS BANNED FROM SHELTERS, UNACCOMPANIED
15 HOMELESS YOUTH, INDIVIDUALS WITH PETS, LGBT INDIVIDUALS, AND
16 SAME SEX PARTNERS HAVE LIMITED ACCESS TO ADEQUATE SHELTER".
17 ADDITIONALLY, "...UNLESS ACCOMPANIED BY A DENVER POLICE OFFICER
18 PERSONS WITH SWING SHIFT JOBS AND OTHER PERSONS WHO SEEK SHELTER
19 AFTER CURFEW ARE ALSO TURNED AWAY BECAUSE OF SHELTER CURFEWS".

20 (2) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT IT IS
21 NECESSARY TO ALLOW PERSONS TO USE PUBLIC SPACES TO CONDUCT BASIC
22 LIFE FUNCTIONS WHEN ADEQUATE SHELTER IS NOT AVAILABLE AND THAT
23 SUCH MATTERS ARE MATTERS OF STATEWIDE CONCERN.

24 **24-4.5-102. Definitions.** AS USED IN THIS ARTICLE 4.5, UNLESS
25 THE CONTEXT OTHERWISE REQUIRES:

26 (1) "ADEQUATE SHELTER" MEANS AN INDOOR PLACE WHERE A
27 PERSON CAN CONDUCT BASIC LIFE FUNCTIONS THAT DOES NOT RESTRICT

1 A PERSON FROM UTILIZING THE SHELTER BECAUSE OF CERTAIN
2 LIMITATIONS, INCLUDING BUT NOT LIMITED TO RESTRICTED HOURS OF
3 OPERATION, LACK OF STORAGE FOR PERSONAL BELONGINGS, RELIGIOUS
4 REQUIREMENTS, OR PERSONAL CHARACTERISTICS THAT A PERSON MAY
5 POSSESS.

6 (2) "BASIC LIFE FUNCTIONS" INCLUDES SITTING, STANDING,
7 LEANING, KNEELING, SLEEPING, LYING DOWN, EATING, AND SHELTERING
8 ONESELF IN A NONOBSTRUCTIVE MANNER.

9 (3) "MOTOR VEHICLE" HAS THE SAME MEANING AS SET FORTH IN
10 SECTION 42-1-102 (58) AND INCLUDES:

11 (a) CAMPER TRAILERS, AS DEFINED IN SECTION 42-1-102 (14);

12 (b) COMMERCIAL VEHICLES, AS DEFINED IN SECTION 42-1-102
13 (17.5); AND

14 (c) MOTOR HOMES, AS DEFINED IN SECTION 42-1-102 (57).

15 (4) "NONOBSTRUCTIVE MANNER" MEANS IN A MANNER THAT DOES
16 NOT RENDER PASSAGEWAYS IMPASSABLE OR HAZARDOUS.

17 (5) "PUBLIC SPACE" MEANS ANY OUTDOOR PROPERTY THAT IS
18 OWNED OR LEASED BY A STATE OR LOCAL GOVERNMENTAL ENTITY OR ANY
19 PROPERTY UPON WHICH THERE IS AN EASEMENT FOR PUBLIC USE.

20 **24-4.5-103. Basic life functions in public spaces - prohibition**

21 **on restricting.** (1) THE STATE AND ANY CITY, COUNTY, CITY AND
22 COUNTY, MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION IS PROHIBITED
23 FROM:

24 (a) RESTRICTING ANY PERSON FROM CONDUCTING BASIC LIFE
25 FUNCTIONS IN A PUBLIC SPACE UNLESS THE STATE, CITY, CITY AND
26 COUNTY, MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION CAN OFFER
27 ALTERNATIVE ADEQUATE SHELTER TO THE PERSON AND THE PERSON

1 DENIES THE ALTERNATIVE ADEQUATE SHELTER; AND

2 (b) RESTRICTING ANY PERSON FROM OCCUPYING A MOTOR
3 VEHICLE, PROVIDED THAT THE MOTOR VEHICLE IS LEGALLY PARKED ON
4 PUBLIC PROPERTY OR PARKED ON PRIVATE PROPERTY WITH THE
5 PERMISSION OF THE PROPERTY OWNER.

6 **24-4.5-104. Enforcement.** A PERSON MAY PURSUE A CIVIL ACTION
7 AGAINST THE STATE OR ANY CITY, COUNTY, CITY AND COUNTY,
8 MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION THAT ENACTS A LAW,
9 REGULATION, OR ORDINANCE IN VIOLATION OF THIS SECTION. THE COURT
10 MAY AWARD APPROPRIATE INJUNCTIVE AND DECLARATORY RELIEF,
11 RESTITUTION FOR LOSS OF PROPERTY, AND ACTUAL AND COMPENSATORY
12 DAMAGES. THE COURT MAY AWARD REASONABLE ATTORNEY FEES AND
13 COSTS TO THE PREVAILING PARTY.

14 **24-4.5-105. Severability.** THIS ARTICLE 4.5 MUST BE LIBERALLY
15 CONSTRUED TO ACHIEVE ITS PURPOSES AND PRESERVE ITS VALIDITY. IF
16 ANY PROVISION OR CLAUSE OF THIS ARTICLE 4.5 OR APPLICATION THEREOF
17 TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID, SUCH INVALIDITY
18 DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS ARTICLE
19 4.5 THAT CAN BE GIVEN FULL EFFECT WITHOUT THE INVALID PROVISION OR
20 APPLICATION. TO THIS END, THE PROVISIONS OF THIS ARTICLE 4.5 ARE
21 DECLARED SEVERABLE AND ARE INTENDED TO HAVE INDEPENDENT
22 VALIDITY.

23 **SECTION 2. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, or safety.