A BILL FOR AN ACT

CONCERNING CONSTITUTIONAL PROTECTIONS FOR CONDUCTING BASIC 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
Be it enacted by the General Assembly of the State of Colorado:

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

ARTICLE 4.5
Basic Life Functions in Public Spaces

24-4.5-101. Legislative declaration. (1) The General Assembly finds and declares that:

(a) Many people experience homelessness because of a variety of factors, including but not limited to mental health and substance use disorders, economic hardship, a severe shortage of safe and affordable housing, and the inability to secure gainful employment;

(b) Although a city, county, city and county, or municipality has the authority to enact local ordinances that protect the health and safety of its citizens, they do not have the authority to deprive people who are homeless or perceived as homeless of a public, safe, and legal place to conduct basic life functions that are necessary to survive when adequate shelter is not available;

(c) The Colorado Court of Appeals has long held that "[T]he Eighth Amendment of the United States Constitution prohibits cruel and unusual punishment and guarantees individuals the right not to be subjected to excessive sanctions".

(d) In 2018, the United States Court of Appeals for the Ninth Circuit held that "as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter". MARTIN V. CITY OF BOISE, 902 F.3d 1031, 1048 (9TH CIR. 2018); and

(e) During the hearing on the court's order concerning motion to dismiss, CITY OF DENVER V. BURTON, Case No. 19GS004399 (DENVER CTY. CT. DEC. 27, 2019), the Denver County Court heard testimony that "...men with children, individuals with serious mental illness, persons banned from shelters, unaccompanied homeless youth, individuals with pets, LGBT individuals, and same sex partners have limited access to adequate shelter". Additionally, "...unless accompanied by a Denver Police Officer persons with swing shift jobs and other persons who seek shelter after curfew are also turned away because of shelter curfews".

(2) Therefore, the General Assembly declares that it is necessary to allow persons to use public spaces to conduct basic life functions when adequate shelter is not available and that such matters are matters of statewide concern.

24-4.5-102. Definitions. As used in this article 4.5, unless the context otherwise requires:

(1) "Adequate shelter" means an indoor place where a person can conduct basic life functions that does not restrict
A person from utilizing the shelter because of certain limitations, including but not limited to restricted hours of operation, lack of storage for personal belongings, religious requirements, or personal characteristics that a person may possess.

(2) "Basic life functions" includes sitting, standing, leaning, kneeling, sleeping, lying down, eating, and sheltering oneself in a nonobstructive manner.

(3) "Motor vehicle" has the same meaning as set forth in section 42-1-102 (58) and includes:

(a) Camper trailers, as defined in section 42-1-102 (14);

(b) Commercial vehicles, as defined in section 42-1-102 (17.5); and

(c) Motor homes, as defined in section 42-1-102 (57).

(4) "Nonobstructive manner" means in a manner that does not render passageways impassable or hazardous.

(5) "Public space" means any outdoor property that is owned or leased by a state or local governmental entity or any property upon which there is an easement for public use.

24-4.5-103. Basic life functions in public spaces - prohibition on restricting. (1) The state and any city, county, city and county, municipality, or other political subdivision is prohibited from:

(a) Restricting any person from conducting basic life functions in a public space unless the state, city, city and county, municipality, or other political subdivision can offer alternative adequate shelter to the person and the person
DENIES THE ALTERNATIVE ADEQUATE SHELTER; AND

(b) Restricting any person from 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.

24-4.5-104. Enforcement. A person may pursue a civil action against the state or any city, county, city and county, municipality, or other political subdivision that enacts a law, regulation, or ordinance in violation of this section. The court may award appropriate injunctive and declaratory relief, restitution for loss of property, and actual and compensatory damages. The court may award reasonable attorney fees and costs to the prevailing party.

24-4.5-105. Severability. This article 4.5 must be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this article 4.5 or application thereof to any person or circumstances is held invalid, such invalidity does not affect other provisions or applications of this article 4.5 that can be given full effect without the invalid provision or application. To this end, the provisions of this article 4.5 are declared severable and are intended to have independent validity.

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