

# SENATE BILL REPORT

## SB 5107

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As of February 3, 2021

**Title:** An act relating to compassionate and effective strategies to address the homelessness crisis.

**Brief Description:** Addressing homelessness.

**Sponsors:** Senator Fortunato.

**Brief History:**

**Committee Activity:** Housing & Local Government: 2/03/21.

### Brief Summary of Bill

- Requires counties and cities with a population of more than 50,000 to establish at least one emergency overnight shelter within its jurisdiction.
- Requires such counties and their eligible cities to coordinate to ensure there are a sufficient number of shelter beds available to accommodate at least the number of sheltered and unsheltered homeless according to the most recent point-in-time count.
- Requires each shelter to prohibit possession or use of alcohol and unprescribed drugs on the premises, but make available employment, mental health, and drug counseling services on site.
- Requires each shelter to provide for a police presence during operating hours.

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### SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

**Staff:** Brandon Popovac (786-7465)

**Background:** *Martin v. City of Boise* (2018). In 2017, the 9th Circuit Court of Appeals

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

heard arguments regarding a Boise, Idaho ordinance banning people from sleeping outdoors on public property. In 2019, the court held that any ordinance that imposes criminal sanctions against homeless individuals for sleeping outdoors on public property when no alternative shelter is available, and the enforcement of such ordinance, violates the 8th Amendment of the United States Constitution prohibiting cruel and unusual punishment. The ruling applies to nine Western states, including Washington, and was denied review by the United States Supreme Court in December 2019. Some cities have taken steps in response to the court decision to address sleeping or camping on public property.

Emergency Shelters and Point-In-Time Counts. Emergency shelters are typically operated by public or private, nonprofit entities or religious organizations and only allow occupancy during the day or overnight, but sometimes both. Some are considered high-barrier shelters by having certain requirements for residents, such as mandatory curfews, mandatory sobriety or prohibition of on-site use of illegal substances, or both, and mandatory treatment or program services participation. Some are considered low-barrier with no requirements as to sobriety or use of illegal substances or participation in program services.

Each year the United States Department of Housing and Urban Development (HUD) and Washington State require a statewide count, also known as a point-in-time (PIT) count, of all persons staying in temporary housing programs—sheltered count, and places not meant for human habitation—unsheltered count. The Department of Commerce (Commerce) provides survey forms for counties and agencies to use for their counts. Counties can opt to use their own forms as long as the count complies with state guidelines.

Due to the COVID-19 pandemic, HUD and Washington State are allowing communities to choose not to conduct an unsheltered count in 2021, but the regular sheltered count is still required. The 2021 PIT count took place on Thursday, January 28.

Housing Trust Fund. Established in 1986, the Washington Housing Trust Fund (HTF) program provides grants or loans to help communities develop and preserve affordable housing to meet the needs of low-income and special needs populations. Since 1986, the HTF has awarded over \$1 billion in funding and helped build or preserve over 50,000 units of affordable housing statewide.

The HTF is governed by two statutory programs—the Housing Assistance Program established in 1986 and the Affordable Housing Program established in 1991. Commerce refers to both of these statutes in the administration of the HTF.

One of the statutorily authorized activities eligible for assistance from the HTF and other legislative appropriations includes shelters and related services for the homeless, including emergency shelters and overnight youth shelters.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** Every county and each city with a population over 50,000 must establish and operate at least one emergency overnight shelter site in its respective jurisdiction. Counties and eligible cities within the county's geographic boundary must coordinate to ensure there are enough cumulative shelter beds to accommodate, at a minimum, the sheltered and unsheltered portions of the county's most recent PIT homeless count.

Each shelter must:

- prohibit the possession and use of alcohol and unprescribed drugs on its premises, contingent upon evaluation for and compliance with treatment as recommended;
- provide for a police presence during operating hours; and
- make available employment, mental health, and drug counseling services on site.

Any emergency overnight shelter established is eligible for assistance under the HTF.

**Appropriation:** None.

**Fiscal Note:** Requested on January 28, 2021.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony On Proposed Substitute:** PRO: The purpose of this bill is to provide the unsheltered homeless with a place to go. Persons experiencing homelessness should have the opportunity to find employment and work their way out of homelessness while their possessions can be secure at a shelter. Drug and alcohol treatment is the key to solving the homelessness crisis. The intent of the bill is not to criminalize homelessness but to create safe community spaces and parks. It is not compassionate to let people sleep on the sidewalks in cardboard boxes.

CON: The bill is untenable for many reasons, including a variety of unfunded mandates. Funding from the HTF would not be adequate to cover operational costs of shelters, even if allowed. An increase in overall shelter funding is needed to accommodate the required number of beds. The Housing First model is the best strategy to address treatment needs. The treatment mandate in the bill might prevent or push away those in need from accessing the shelter. Five major cities alone would have to increase capacity at all of their homeless shelters. Most current shelters need additional staff. The bill creates even more barriers for persons to move off the street, especially the police presence portion which could have the unintended consequence of leading people from poverty to jail. BIPOC already have concerns with systemic racism in police enforcement policies. Increased personal incomes do not alleviate homelessness nor aid in prevention. Evidence shows that no- and low-barrier shelters are the best method to get unsheltered into housing. Recent use of hotels as shelters shows that individuals are thriving within a non-congregate care model. More

permanent supportive housing is needed since it includes essential services for individuals with complex medical and mental health needs. The Governor's budget proposal contains shelter capacity grants. FEMA have relaxed reimbursement rules to now to include 100 percent reimbursement for certain shelters. The bill is rooted in debunked theories that homeless individuals are not ready for housing, and the bill would perpetuate inequities in the system. The houseless are more likely to be victims of crime rather than perpetrators. The bill is punitive to those with addiction issues and is counter-therapeutic and contrary to evidence-based practices. Voluntary shelter options is the preferred method. Staffing shelters is still a challenge and more funds are needed to fill current demand.

OTHER: There has been no commitment of sources to local governments, aside from Governor's statewide sheltering initiative to provide more capacity last year. Twenty-five local governments provided more shelter bed capacity after COVID-19 hit. Flexible funding has provided local governments with a variety of strategies to provide shelter. Over \$70 million is proposed by the Governor to address shelter capacity. HTF capital funding is not available for shelter operations and services, and local governments cannot reallocate local funding and resources to meet these new shelter requirements. Requiring treatment to stay at a shelter may be contrary to *Martin* holding.

**Persons Testifying:** PRO: Senator Phil Fortunato, Prime Sponsor.

CON: Juliana Roe, Washington State Association of Counties; Raelene Schifano; Dan Wise, Catholic Community Services; Melanie Smith, Seattle/King County Coalition on Homelessness; Michele Thomas, Washington Low Income Housing Alliance; Yael-Sophia Spinoza, Chop Shop Economics; John Rios, Downtown Emergency Service Center; Breanne Schuster, ACLU of Washington; David Moser, Seattle University.

OTHER: Tedd Kelleher, Department of Commerce.

**Persons Signed In To Testify But Not Testifying:** No one.