

First Signature: Senator Carden Summers (13th).

Co-Sponsors: Senator Butch Miller (49th), Senator John Albers (56th), Senator Max Burns (23rd), Senator Mike Dugan (30th), Senator Billy Hickman (4th), Senator Lee Anderson (24th), Senator Matt Brass (28th), Senator Frank Ginn (47th), Senator Larry Walker, III (20th), Senator Brandon Beach (21st), Senator Russ Goodman (8th), Senator Clint Dixon (45th), Senator Chuck Payne (54th), Senator Lindsey Tippins (37th), Senator Marty Harbin (16th), Senator Sheila McNeill (3rd), Senator Bruce Thompson (14th), Senator John Kennedy (18th).

Summary: “A BILL to be entitled an Act to amend Title 50 of the Official Code of Georgia Annotated, relating to state government, so as to provide for targeted state funding for projects such as safe parking areas, structured camping facilities, and individual unit shelters; to provide for allocation of state funding under certain conditions; to provide for grant-allocation contracts and state grants; to provide for the designation of structured camping facilities on state property; to provide for a prohibition on use of undesignated state property for camping; to provide for definitions; to provide for applicability; to provide for violations and penalty; to provide for immunity; to provide for related matters; to provide for a short title; to provide for an effective date; to repeal conflicting laws; and for other purposes.”²

Status: Senate read second time on March 11, 2022.³

TEXT OF SENATE BILL 535⁴
(Committee Substitute LC 54 0077S)

SECTION 1.

“Chapter 16 of Title 50 of the Official Code of Georgia Annotated, relating to public property, is amended by adding a new article to read as follows:”

“ARTICLE 8

¹ S.B. 535, 156th Gen. Assemb., 1st Reg. Sess. (Ga. 2021), *available at* <https://www.legis.ga.gov/legislation/62227> (last visited Jan. 29, 2023).

² *2021-2022 Regular Session S.B. 535, Reducing Street Homelessness Act of 2022; enact*, Ga. Gen. Assemb., *available at* <https://www.legis.ga.gov/legislation/62227> (last visited Jan. 29, 2023) [hereinafter S.B. 535 Status Sheet].

³ *Id.*

⁴ S.B. 535, *supra* note 1.

50-16-190.

(a) As used in this article, the term:

(1) 'Camp' means to reside temporarily in a place, with shelter.

(2) 'Department' means the Department of Community Affairs.

(3) 'Local entity' means:

(A) The governing body of a municipality, county, or consolidated government;

(B) An officer or employee of or a division, department, or other body that is part of a municipality or county, including a sheriff, municipal police department, municipal attorney, or county attorney; and

(C) A district attorney or county solicitor.

(4) 'Policy' includes a formal, written rule, ordinance, order, or policy and an informal, unwritten policy.

(5) 'Public camping ban' means a law, rule, ordinance, order, or other regulation that prohibits camping in a public place.

(6) 'Shelter' includes a tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of temporary, semipermanent, or permanent shelter, other than clothing or any handheld device, designed to protect a person from weather conditions that threaten personal health and safety.

50-16-191.

(a) A person commits an offense if the person intentionally or knowingly camps in a public place without the effective consent of the officer or agency having the legal duty or authority to manage the public place.

(b) The actor's intent or knowledge may be established through evidence of activities associated with sustaining a living accommodation that are conducted in a public place, including:

(1) Cooking;

(2) Making a fire;

(3) Storing personal belongings for an extended period;

(4) Digging; or

(5) Sleeping.

(c) Consent given by an officer or agency of a political subdivision is not effective for purposes of subsection (a) of this Code section, unless given to authorize the person to camp for:

(1) Recreational purposes, whether at a campground, recreation area, state park, or a similar public recreation area; or

(2) Purposes of sheltering homeless individuals, if the property on which the camping occurs is subject to a plan approved under Code

Section 50-16-193, and the camping occurs in a manner that complies with the plan.

(d) An offense under this Code section is a misdemeanor.

(e) This Code section shall not preempt an ordinance, order, rule, or other regulation adopted by a state agency or political subdivision relating to prohibiting camping in a public place or affect the authority of a state agency or political subdivision to adopt or enforce an ordinance, order, rule, or other regulation relating to prohibiting camping in a public place if the ordinance, order, rule, or other regulation:

(1) Is compatible with and equal to or more stringent than the offense prescribed by this Code section; or

(2) Relates to an issue not specifically addressed by this Code section.

(f) Except as provided by subsection (g) of this Code section, before or at the time a law enforcement officer issues a citation to a person for an offense under this Code section, the law enforcement officer must make a reasonable effort to:

(1) Advise the person of an alternative place at which the person may lawfully camp; and (2) Contact, if reasonable and appropriate, an appropriate official of the political subdivision in which the public place is located, or an appropriate nonprofit organization operating within that political subdivision, and request the official or organization to provide the person with:

(A) Information regarding the prevention of human trafficking; or

(B) Any other services that would reduce the likelihood of the person suspected of committing the offense continuing to camp in the public place.

(g) Subsection (f) of this Code section shall not apply if the law enforcement officer determines there is an imminent threat to the health or safety of any person to the extent that compliance with that subsection is impracticable.

(h) If the person is arrested or detained solely for an offense under this Code section, a law enforcement officer enforcing this Code section shall ensure that all of the person's personal property not designated as contraband under other law is preserved by:

(1) Permitting the person to remove all the property from the public place at the time of the person's departure; or

(2) Taking custody of the property and allowing the person to retrieve the property after the person is released from custody.

50-16-192.

(a) A political subdivision shall not designate a property to be used by homeless individuals to camp unless the department approves a plan described by Code Section 50-16-193.

(b) Not later than the thirtieth day after the date the department receives a plan submitted by a political subdivision under this article, the department shall make a final determination regarding approval of the plan.

(c) The department shall not approve a plan described by Code Section 50-16-193 if the department determines that a property proposed under the plan is a public park.

50-16-193.

(a) As used in this Code section, the term 'proposed new campers' means homeless individuals the applicant intends to allow to camp at the property.

(b) A plan submitted for approval under this article shall describe each of the following with respect to a proposed property:

(1) The availability of local health care for proposed new campers, including access to Medicaid services and mental health services;

(2) The availability of indigent services for proposed new campers;

(3) The availability of reasonably affordable public transportation for proposed new campers;

(4) Local law enforcement resources in the area; and

(5) The steps the applicant has taken to coordinate with local mental health care providers to provide for any proposed new campers.

(c) An applicant shall respond to reasonable requests for additional information made by the department regarding the proposed property or plan.

50-16-194.

(a) A local entity shall not adopt or enforce a policy under which the entity prohibits or discourages the enforcement of any public camping ban.

(b) In compliance with subsection (a) of this Code section, a local entity shall not prohibit or discourage a law enforcement officer or prosecuting attorney who is employed by or otherwise under the direction or control of the entity from enforcing a public camping ban.

(c) This Code section shall not prohibit a policy that encourages diversion or a provision of services in lieu of citation or arrest.

50-16-195.

(a) The Attorney General may bring an action in a district court in Fulton County or in a county in which the principal office of the entity is located to enjoin a violation of Code Section 50-16-194.

(b) The Attorney General may recover reasonable expenses incurred in obtaining relief under this Code section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

50-16-196.

(a) A local entity shall not receive state grant funds, and state grant funds for the local entity shall be denied, for the state fiscal year following the year in which a final judicial determination in an action brought under Code Section 50-16-193 is made that the entity has intentionally violated Code Section 50-16-194.

(b) The comptroller general shall adopt rules to implement this Code section uniformly among the state agencies from which state grant funds are distributed to a municipality or county.

(c) A local entity that has not violated Code Section 50-16-194 shall not be denied state grant funds, regardless of whether the entity is a part of another entity that is in violation of that Code section.

50-16-197.

(a) A political subdivision that designated a property to be used by homeless individuals to camp before the effective date of this article may apply on or after that date for approval of a plan under Code Section 50-16-193.

(b) Subsection (c) of Code Section 50-16-192 applies to a public park regardless of the date that the public park was first designated by a political subdivision to be used by homeless individuals to camp."

SECTION 2.

"This Act shall become effective on January 1, 2023."

SECTION 3.

"All laws and parts of laws in conflict with this Act are repealed."

SPONSORS' RATIONALE

Senator Carden Summers sponsored Senate Bill 535, Reducing Street Homelessness Act of 2022, to address Georgia's "homelessness problem".⁵ Senator Marty Harbin of Tyrone, co-sponsors this Bill to address

the aforementioned homelessness problem by focusing on the safety of the people who are homeless.⁶ Sponsors believe that implementing Senate Bill 535 would touch and thereby help other cities, counties, and municipalities with “homeless issues.”⁷ Senate Bill 535 creates a state-level misdemeanor charge for anyone who sets up camp on public property.⁸ It creates a new state law criminalizing street sleeping/camping, resulting in a misdemeanor, “requiring local enforcement or losing state funding, and relocating homeless to...parking lots with a fence, potable water and...” porta potties.⁹

Senate Bill 535 would provide funds to create safe places in the State of Georgia for people who do not have permanent housing.¹⁰ Senator Harbin explained Senate Bill 535 encourages cities and counties to develop government-sanctioned encampments, where those living under bridges or in parks could stay instead.¹¹ The encampments would include “structured camping facilities and individual unit shelters to assist the people living in brutal street conditions.”¹² The government-sanctioned encampments, like parking lots, are aimed to offer a safer, more sanitary place to stay.¹³

OPPOSITION’S RATIONALE

The organizations that oppose Senate Bill 535 have experience successfully reducing the population of people without permanent homes

⁵ Senator Carden Summers, *Carden Summers: Senate Bills Address Public Safety*, Albany Herald, https://www.albanyherald.com/opinion/carden-summers-senate-bills-address-public-safety-protection-of-minors/article_7b6a58d4-94b5-11ec-9a1d-cba3aabf86f0.html (last updated Aug. 30, 2022).

⁶ Stephanie Stokes, *State Bill Criminalizes Homelessness Encampments Advances in Georgia Senate*, WABE (Mar. 9, 2022), <https://www.wabe.org/state-bill-criminalizing-homeless-encampments-advances-in-georgia-senate/>.

⁷ *Id.*

⁸ Ga. Ch. of the Am. Planning Ass’n, *Please Act Today-Oppose HB 1406 and HB713/SB535* (Mar. 15, 2022), <https://georgiaplanning.org/news/please-act-today-oppose-hb-1406-and-hb-713-sb-535/>.

⁹ S.B. 535, *supra* note 1; *see also* Partners for HOME, Atlanta Continuum of Care Meeting Minutes (Sept. 13, 2022), Presentation by Elizabeth J. Appley, Esq., *Homelessness is a Housing Problem, Meeting the Challenge in the Georgia Legislature* (p. 43), https://partnersforhome.org/wp-content/uploads/2022/09/CoC-Meeting-Packet-and-Presentations-09_13_22.pdf (last visited January 22, 2023).

¹⁰ *Id.* (contains commentary on how the version approved in the committee was a pared-down substitute of the original; “[t]he original language would have also discouraged cities from using federal homeless funds for permanent supportive housing”)

¹¹ *Id.*

¹² Senator Summers, *supra* note 5.

¹³ Stanley Dunlap, *Efforts to Criminalize Homelessness Persist After State Effort Dies at The End of 2022 Legislature*, Ga. Recorder, <https://georgiarecorder.com/2022/04/19/efforts-to-criminalize-homelessness-persist-after-state-effort-dies-at-end-of-2022-legislature/> (last updated Apr. 19, 2022).

and oppose Senate Bill 535 due to its criminalization of homelessness, and diversion of funds from successful strategies.¹⁴ The organizations and individuals who make-up the opposition testified that homelessness is a housing problem that must be resolved without criminalization, they also called for changes that would direct more funds to strategies that worked.¹⁵

Jack Hardin, Chair of the Regional Commission on Homelessness and Gateway, and a corporate lawyer in Georgia for fifty years, denouncing Senate Bill 535 explains that “the Bill is a cruel and unusual punishment for those who did not choose to be homeless, many of them having no control over their diagnoses, such as schizophrenia or depression, and no control if they were born into a poor household.”¹⁶ Partners for HOME, a non-profit organization, has implemented many initiatives in Atlanta that have helped people find a permanent home.¹⁷ Organizations like Partners for HOME adamantly believe that Senate Bill 535’s strategy is counterintuitive to its goal of reducing homelessness by: displacing people who do not have permanent homes into different areas of the state; criminalizing people experiencing homelessness by using the threat of arrest to force people into encampments; and not offering funding or resources to address the challenges of homelessness.¹⁸

¹⁴ E-mail from Franco Bejarano, LCSW, Clinical Specialist in Homeless Services and Team Leader for Homeless Outreach Programs at Intown Collaborative Ministries (Sept. 6, 2022, 18:47 EST) (on file with author) (forwarding Partners for HOME’s and Jack Hardin’s separate comments in newsletter).

¹⁵ Partners for HOME, Presentation by Appley, *supra* note 9, p. 49.

¹⁶ E-mail from Franco Bejarano, *supra* note 14; *see* Smith Gambrell Russell, <https://www.sgrlaw.com/attorneys/hardin-edward-j-jack/> (last visited Jan. 29, 2023) (includes a full listing Mr. Hardin’s involvement with organizations whose main focus is to ensure stable homes for people do not have permanent housing).

¹⁷ Partners for HOME, Presentation by Appley, *supra* note 9; *see* Partners for HOME, *Atlanta Continuum of Care*, <https://partnersforhome.org/coc/> (last visited Jan. 29, 2023) (Atlanta’s continuum of care is funded by the United States Department of Housing and Urban Development, as a “group of direct service providers...who promote community-wide commitment to the goal of ending homelessness in the City of Atlanta. The Atlanta CoC provides funding for efforts by nonprofit providers and state and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness. The Atlanta CoC promotes access to and effects utilization of mainstream programs by homeless individuals and families. Finally, the Atlanta CoC optimizes self-sufficiency among individuals and families experiencing homelessness.”).

¹⁸ E-mail from Franco Bejarano, *supra* note 14; *see also* E-mail from Franco Bejarano, *supra* note 14 (Organizations like Gateway, LLC, found unique results because of the funding provided as a result of COVID); *see* Partners for HOME, *Lift 2.0 Updates*, <https://partnersforhome.org/lift-2-0-updates/> (last updated September 1, 2022) (Partners for HOME set-up the Lift strategy, which is a homeless response plan that will prioritize people experiencing unsheltered and chronic homelessness utilizing a phased approach that reduces encampments, moves people into housing, and ensures they have

Furthermore, Senate Bill 535 requires Georgia's Department of Community Affairs (hereinafter, DCA) to "redirect funding to cities for addressing homelessness via short-term housing or sheltering, requiring such funds to be used for safe parking lots, basic utilities, bathrooms, structured camping and individual unit shelters to be limited to six months of stay."¹⁹ DCA would also be responsible for designating state property for the aforementioned purpose.²⁰ The DCA Commissioner, Christopher Nunn, testified to lawmakers of the state's financial risk in adopting Senate Bill 535.²¹ Moreover, under Senate Bill 535, cities will be denied state grants if they refuse to abide by the ban set forth in Senate Bill 535.²² State grants would also be taken away if a city has a per-capita homelessness rate higher than the state.²³ Lastly, Senate Bill 535 redirects federal homeless funds, which are critically needed by organizations that have evidence-based programs that have reduced the number of homeless people in their respective cities, away from those organizations and into Senate Bill 535's temporary housing efforts.²⁴ Consequently, Senate Bill 535 cuts off federal and state funds for organizations that are furthering affordable housing efforts.²⁵

Non-profit organizations urge that funding should not be stripped to go towards encampments because temporary housing has not proven to be effective in permanently reducing homelessness.²⁶ They argue that funding should go to increasing the availability of affordable housing, and decreasing home and rent prices.²⁷ These organizations are also pushing for

access to wraparound support services to achieve lasting self-sufficiency).

¹⁹ Ga. Ch. of the Am. Planning Ass'n, *supra* note 8; *see also* Partners for HOME, Presentation by Appley, *supra* note 9, p. 43 (explains the interplay between House Bill 713 (2021) and SB 535; HB 713 was proposed to divert all state and federal funds for homelessness away from permanent supportive housing and into parking lots for homeless people with cars, sanctioned camps for people without cars, and short-term cabins for up to six months conditioned on work. Locales that failed to reduce homelessness below state averages would lose funding).

²⁰ Ga. Ch. of the Am. Planning Ass'n, *supra* note 8.

²¹ *Id.* (testifying that Senate Bill 535 "puts a lot on the line for cities who are trying to do the right thing even if their actions have not yet turned the tide").

²² S.B. 535, *supra* note 1 (O.C.G.A. § 50-16-194(c): "[t]his Code section shall not prohibit a policy that encourages diversion or a provision of services in lieu of citation or arrest").

²³ Ga. Ch. of the Am. Planning Ass'n, *supra* note 8.

²⁴ *Id.*

²⁵ E-mail from Franco Bejarano, *supra* note 14.

²⁶ Partners for HOME, Presentation by Appley, *supra* note 9.

²⁷ *Id.*; *see* Rebecca Grapevine, *Homelessness a Problem in Rural Georgia*, Georgia Public Broadcasting (Aug. 29, 2022), <https://www.gpb.org/news/2022/08/29/homelessness-problem-in-rural-georgia> ("Georgia is short by around 207,000 affordable and accessible rental units").

the strengthening of the State Housing Voucher Program under the United States Department of Justice/Georgia Department of Behavioral Health and Developmental Disabilities Settlement Agreement with: more vouchers, more landlord incentives, more case management, strengthen support for voucher holders to access apartments, bridge funding, and more.²⁸

IMPLICATIONS IN GEORGIA

Senate Bill 535 could face a constitutional challenge under the Eighth Amendment.²⁹ The Cruel and Unusual Punishments Clause restricts the criminal process in three ways.³⁰ “First, it limits the type of punishment the government may impose; second, it proscribes punishment ‘grossly disproportionate’ to the severity of the crime; and third, it places substantive limits on what the government may criminalize.”³¹ The Court has explained that the substantive limits create a distinction that exists “between applying criminal laws to punish conduct, which is constitutionally permissible, and applying them to punish status, which is not.”³² Constitutional challenges of Senate Bill 535 may be founded under the aforementioned third limitation

²⁸ See Ga. Dep’t of Behavioral Health and Dev. Disabilities, *ADA Settlement Agreement*, <https://dbhdd.georgia.gov/organization/be-informed/reports-performance/ada-settlement-agreement> (last visited Jan. 29, 2023), for the full agreement between the U.S. Dep’t of Justice and the GA Dep’t of Behavioral Health and Developmental Disabilities; Partners for HOME, Presentation by Appley, *supra* note 9, p. 52 (showing that the record state surplus for fiscal year 2022 had a \$6 Billion surplus, and that there are “enormous federal funds available for housing and homelessness”); see E-mail from Franco Bejarano, *supra* note 14 and Partners for HOME, Atlanta Continuum of Care Meeting Minutes (Sept. 13, 2022), Presentation, *Lift 2.0, Partners for Home’s Plan to Stably House 1,500 Households* (pp. 4 - 27), https://partnersforhome.org/wp-content/uploads/2022/09/CoC-Meeting-Packet-and-Presentations-09_13_22.pdf (last visited January 22, 2023) (Partners for HOME, and other similar organizations, relying on City funds, State funds, and private funds to implement programs like the Lift program, housed over 700 households of chronically homeless and vulnerable persons from November 2021 to May 2021. There are also additional statistics showing the positive impact they made to assist people without permanent shelter find and maintain permanent shelter, using public and private funds); see E-mail from Franco Bejarano, *supra* note 14 (Opponents of Senate Bill 535 believe strategies like Lift 2.0 need to be “continued and scale[d] up”); see Partners for HOME, Presentation by Appley, *supra* note 9 (Georgia had a record state surplus in fiscal year 2022, it was \$6 Billion, and there are “[e]normous federal funds available for housing and homelessness.”);

²⁹ U.S. Const., amend. VIII (...excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted).

³⁰ *Martin v. City of Boise*, 920 F.3d 584, 616 (9th Cir. 2019) (citing *Ingraham v. Wright*, 430 U.S. 651, 667 (1977)).

³¹ *Ingraham*, 430 U.S. at 667.

³² *Joel v. City of Orlando*, 232 F.3d 1353, 1361 (11th Cir. 2000) (citing *Robinson v. California*, 370 U.S. 660 (1962)).

stemming from the Eighth Amendment.

In 1962, the Court held that state statutes cannot criminally punish people for involuntary conduct brought about due to a chronic condition.³³ Applying this limitation to State statutes similar to Senate Bill 535, courts in the appellate circuit have held legislation which punishes people for sleeping outside because they have nowhere else to go, neither their own place, nor a homeless shelter, violates the Eighth Amendment.³⁴ The most recent case that involved a statute similar to Senate Bill 535 was heard in 2022 by the Ninth Circuit Court of Appeals.³⁵

In *Johnson*, the Ninth Circuit addresses two issues regarding the State's anti-camping ordinance under the Eighth Amendment: (1) whether civil citations, followed by a civil park exclusion order, and eventually, prosecutions for criminal trespass, were "cruel and unusual punishment," and (2) whether prohibiting people from sleeping on bedding outdoors within city limits, was constitutionally permissible.³⁶ As to the first issue, the court held that "the anti-camping ordinances prohibit[ed] Plaintiffs from engaging in activity they cannot avoid."³⁷ The court reasoned that "imposing a few extra steps before criminalizing the very acts *Martin* explicitly says cannot be criminalized does not cure the anti-camping ordinances' Eighth Amendment infirmity."³⁸ Thus, the eventual criminal trespass within the ordinance was sufficient to trigger the protection of the Eighth Amendment.³⁹ Regarding the second issue, the court held that the anti-camping ordinance was unconstitutional to the extent that it prohibited people who are homeless from sleeping on bedding on the streets or parks that are within the city limits.⁴⁰ However, the court declined to opine on the constitutionality of the ordinance's ban on fire, stove, and structure prohibitions because the record did not establish whether those prohibitions

³³ See *Robinson*, 370 U.S. at 666 (state statute providing criminal punishment for addiction to narcotics violates the Eighth Amendment because it punishes the status of being addicted to narcotics rather than the commission of any act).

³⁴ *Joel*, 232 F.3d at 1353 (holding that a person can be arrested for sleeping outside, despite not having a place of their own to go to, so long as the officer knows that homeless shelters are all at full capacity, without violating the Eighth Amendment); accord *Martin*, 920 F.3d at 617 (holding that statute allowing criminal prosecution of people for sleeping outside on public property when those people have no home or other shelter to go to violates the Eighth Amendment, so 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).

³⁵ See *Johnson v. City of Grants Pass*, 40 F.4th 787 (9th Cir. 2022).

³⁶ *Id.* at 808.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 812.

deprive homeless persons of sleep or “the most rudimentary precautions” against the elements.⁴¹

Like the statutes at issue in *Martin* and *Johnson*, Senate Bill 535 creates a misdemeanor charge for people who are sleeping outdoors on public property.⁴² Usually, people who sleep outside do not have a permanent place to lay their head, thus it is likely that Senate Bill 535 will be applied against people who are chronically homeless. However, like *Johnson*, Senate Bill 535 prohibits cooking, making a fire, and digging⁴³; this language has not been determined to deprive people who are homeless of sleep or the most rudimentary precautions against the elements. Thus, it is unclear whether that language can be challenged under the third limitation of the Cruel and Unusual Punishment Clause.

In *Martin*, the Court held that the statute criminalizing being homeless violated the Eighth Amendment because there was a genuine issue of material fact as to whether shelters were available to the plaintiff.⁴⁴ Then, in *Johnson*, the Ninth Circuit explained that the anti-camping ordinance at issue is unconstitutional only when applied against those that are involuntarily homeless and only if there is no other place, such as a shelter, where they can lawfully sleep.⁴⁵ Similarly, in *Joel*, the Eleventh Circuit held that a State statute criminalizing homelessness did not violate the Eighth Amendment because the plaintiff could have gone to a homeless shelter since the homeless shelters were not at maximum capacity.⁴⁶ In *McArdle v. City of Ocala, FL*, the district court of the Ocala Division of the Middle District of Florida heard a challenge on a State statute banning sleeping on public property.⁴⁷ The district court held that the statute in question can comply with the holdings in *Martin* and *Joel*, only if the officer inquires whether the homeless shelters have reached maximum capacity before arresting the individual.⁴⁸

The district court in *McArdle*, reasoned that a bill like Senate Bill 535 is constitutional so long as the officer determines whether surrounding homeless shelters are at capacity before issuing a criminal citation. The language in Senate Bill 535 may not be in compliance with *Martin* for two

⁴¹ *Id.*

⁴² S.B. 535, *supra* note 1.

⁴³ *Id.*

⁴⁴ *Martin*, 920 F.3d at 584.

⁴⁵ *Johnson*, 50 F.4th at 812 ; *c.f. McArdle v. City of Ocala, FL*, 519 F. Supp. 3d 1045, 1052 (M.D. Fla. 2021) (reasoning that a statute banning sleeping on public property can comply with the holdings in *Martin* and *Joel*, only if the officer inquires whether the homeless shelters have reached maximum capacity before arresting the individual).

⁴⁶ *Joel*, 232 F.3d at 616.

⁴⁷ 519 F. Supp. 3d 1045 (M.D. Fla. 2021).

⁴⁸ *Id.* at 1052.

reasons. First, it allows officers to issue a citation before or after advising the person of available shelters. Second, it does not require an officer to inquire whether a homeless shelter is at capacity prior to issuing a criminal citation.⁴⁹ Moreover, given the large range of population across the State of Georgia, Senate Bill 535 may not be in compliance with *Martin* in some cities, but be in compliance in others.⁵⁰

LEGISLATIVE GENEALOGY

On February 17, 2022, the Bill was submitted into the Senate hopper.⁵¹ On February 22, 2022, the Senate read and referred the Bill to the Government Oversight Committee.⁵² On March 8, 2022, there was a Senate Committee on Government Oversight in which Senate Bill 535 was discussed and criticized mainly for its criminal penalties.⁵³ On March 9, 2022 the Senate committee favorably reported by substituting.⁵⁴ On March 11, 2022, the Senate read the Bill for the second time.⁵⁵

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⁴⁹ S.B. 535, *supra* note 1.

⁵⁰ Homeless Shelters Directory, <https://www.homelessshelterdirectory.org/county/ga-fulton> (last visited January 29, 2023) (lists over twenty homeless shelters in Fulton County but does not list number of homeless shelters in smaller counties).

⁵¹ S.B. 535, *supra* note 1.

⁵² *Id.*

⁵³ Georgia State Senate, Vimeo, <https://vimeo.com/georgiastatesenate>.

⁵⁴ Ga. Gen. Assembly, *supra* note 43.

⁵⁵ *Id.*; see George Chidi (@neonflag), Twitter (Mar. 13, 2022, 11:07 PM), <https://twitter.com/neonflag/status/1503206042355834882?lang=en>, (On March 13, 2022, Senator Summers ultimately decided to pause the bill and pursue a study committee); see Georgia State Senate, *supra* note 45 (On August 4, 2022, November 9, 2022, and November 23, 2022, Senate Study Committees on unsheltered homelessness were held. All three study committees lasted about twelve hours in total.); see Georgia State Senate, *Senate Study Committee on Unsheltered Homelessness* (Aug. 4, 2022), <https://vimeo.com/733668859> (In the August 4th hearing, only one witness spoke for the legislation, the additional thirty-seven (37) testimonies, oral and written, spoke out against Senate Bill 535. Additional testimonies were heard during the hearings held on November 9, 2022, and November 23, 2022) and (the committee ended by stipulating that Senate Bill 535 would be off the table, but that there would be new legislation proposed in 2023. The proposed legislation is now in the hands of the newly elected representatives. The committee also expressed that the new legislation would not criminalize homelessness); see Partners for HOME, Presentation by Appley, *supra* note 9, p. 51 (However, it was unanswered whether any new legislation would require enforcement of city ordinances on sleeping and camping or risk losing state funding).