



RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND • GENERAL • ASSEMBLY

2026 Session
HB0104

Unhoused Individuals - Rights and Affirmative Defense

Bill Summary

This bill establishes that unhoused individuals have certain rights relating to engaging in “life-sustaining activities.” The bill prohibits certain governmental entities, officials, or agents from imposing specified penalties for exercising a right established under the bill or for offering aid to unhoused individuals on or about public places. The bill also authorizes the Attorney General or an individual harmed by a violation of the bill’s provisions to bring a civil action against governmental entities, officials, or agents. Furthermore, the bill establishes an affirmative defense of necessity for certain criminal prosecutions relating to trespass or disturbing the peace. Finally, the bill repeals the authority of a municipality to prohibit vagrancy. The provisions of the bill must supersede any local law or ordinance comparable in subject matter except to the extent that the local law or ordinance provides broader applicability or more protections for unhoused individuals than the bill.

Racial Equity Impact Statement

The bill aims to prevent the criminalization of homelessness and ensure that unhoused individuals are treated equitably under the law by affirming certain rights relating to “life-sustaining activities,” establishing a “necessity defense,” and repealing specified vagrancy laws. While all unhoused individuals in the State will likely benefit from the bill’s changes, Black individuals will likely be positively impacted to the largest extent as they are significantly overrepresented in Maryland’s unhoused population. The Department of Housing and Community Development (DHCD) reports that Black individuals accounted for 57% of the State’s unhoused population in 2024. It is important to note that data related to housing cost burdens and other data related to homelessness are not regularly updated due to measurement constraints. The overall impacts of the bill would depend greatly on how its provisions would be implemented.

Analysis

Established Rights of Unhoused Individuals

The bill establishes that all unhoused individuals have the right to:

- be on or about “public places” within the State without being discriminated against on the basis of actual or perceived housing status;
- engage in life-sustaining activities on or about public places, provided that such activities do not obstruct the normal movement of pedestrian or vehicular traffic in such a manner that creates a hazard to others, unless an “adequate alternative indoor space” is available and has been offered to the individual, including transportation for the individual and the individual’s belongings;
- use and move freely in public places without being discriminated against on the basis of actual or perceived housing status;
- privacy in personal property stored on or about public places to the same extent as personal property stored in a private dwelling;
- pray, meditate, worship, or practice religion on or about public places without being discriminated against on the basis of actual or perceived housing status;
- occupy a motor vehicle or recreational vehicle parked on or about a public place that is not obstructing the normal movement of traffic;
- relocate a motor vehicle or recreational vehicle being used for life-sustaining activities prior to receiving a parking ticket or the vehicle being towed;
- retrieve items from a towed motor vehicle or recreational vehicle;
- reclaim a towed motor vehicle or recreational vehicle from storage free of charge or at a reduced rate upon consideration of the individual’s ability to pay any costs; and
- receive any additional interventions offered to unhoused individuals by local human services, social services, public health, and law enforcement agencies when adequate alternative indoor space is not available.

Civil and Criminal Penalties

The State, an agency of the State, a political subdivision of the State, or an official or agent of the State, an agency of the State, or a political subdivision of the State acting under color of law may not (1) impose a civil or criminal penalty against an unhoused individual for exercising a right described above or (2) impose a civil or criminal penalty against any individual for soliciting, sharing, accepting, or offering food, water, money, or other donations to unhoused individuals on or about public places. However, these entities and individuals acting under color of law may arrest or impose civil or criminal penalties on an unhoused individual who has engaged in criminal activity that is not a protected activity described above.

Defenses of Necessity

The bill establishes an unhoused individual’s right to a “defense of necessity” upon facing charges like trespassing or disturbing the peace, which may be asserted if (1) the defendant committed the alleged criminal act while engaging in a life-sustaining activity and (2) the defendant, at the time

of committing the criminal act, was not offered access to an adequate alternative indoor space and a reasonable storage option for personal property. A defense of necessity creates a rebuttable presumption that an adequate alternative indoor space was not available to the defendant.

Finally, the bill repeals a municipality's authority to prohibit vagrancy, which includes acts like sleeping in public, loitering, and begging/panhandling. This provision aims to mitigate the criminalization of homelessness that would further exacerbate one's ability to access stable and adequate housing due to a criminal record and/or unpayable legal fees.

Factors Contributing to Homelessness in Maryland

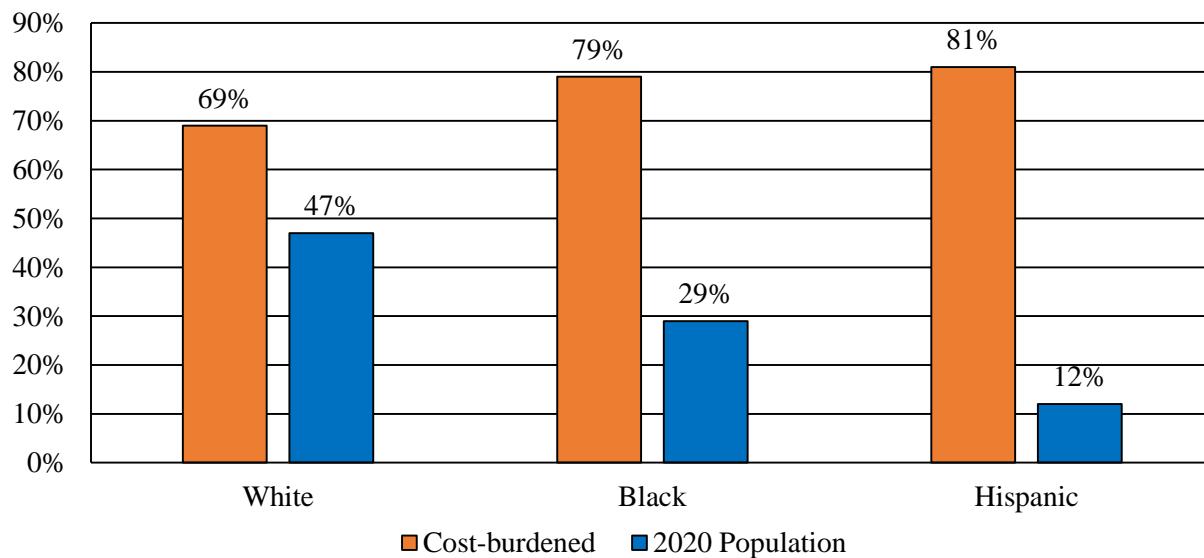
DHCD and the Interagency Council on Homelessness report that the primary contributing factors of homelessness are a combination of low wages and a lack of available, affordable, or adequate housing. Low income relative to the cost of living, disabling conditions, domestic violence, and sudden income loss are all common issues that result in the loss of housing.

Income and renter data from the U.S. Census Bureau and DHCD suggest that the link between high housing costs and homelessness is real and persistent. The U.S. Census Bureau's 2023 American Community Survey reported that nearly half of all renters in the country were cost-burdened, meaning they spent more than 30% of their income on housing costs. This cost burden was higher among Black renters at 56%.

Exhibit 1 shows the racial and ethnic breakdown of the cost burden data for renters in Maryland compared to their portion of the State's population in 2020. While a significant number of all Maryland renters are cost-burdened to some degree, Hispanic and Black renters experience this at disproportionate levels when compared to their shares of the State's population. The data also shows that Black and Hispanic renters have slightly higher levels of households that are "severely cost burdened," meaning that they spend more than 50% of their income on housing. The severely cost burdened rate is 23% for white renters and 27% for both Black and Hispanic renters.

According to DHCD's 2025 Maryland Housing Needs Assessment Update, Black renters also have higher levels of households that are considered "extremely low income," meaning that their household income falls below 30% of the area median income. This likely requires them to allocate a larger percentage of their income to housing costs. The report notes that Black renters in the State comprised 52% of the "extremely low income" renter households in 2022.

Exhibit 1
Maryland Cost-burdened Renters
2020



Note: Cost-burdened means spending more than 30% of income on housing costs.

Source: Department of Housing and Community Development

Impacts of the Bill

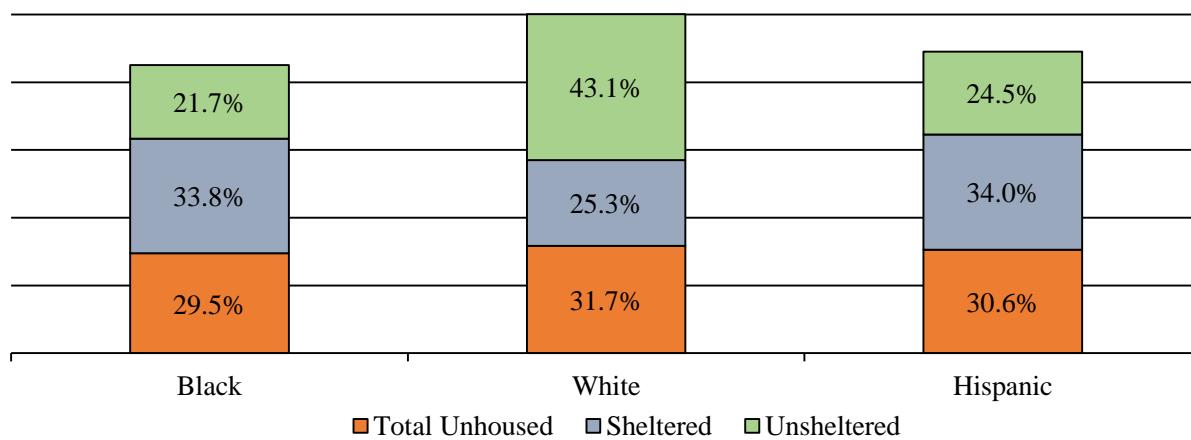
Exhibits 2 and 3 show the latest available count of unhoused individuals from 2024 for the United States and for Maryland. This data is reported to the U.S. Department of Housing and Urban Development (HUD) after local jurisdictions around the nation conduct the annual Point-in-Time (PIT) estimates. It should be noted that, according to DHCD, these surveys only offer a *snapshot* of homelessness for both the sheltered and unsheltered on a single night, and that the number of unhoused individuals counted in the PIT count is often approximately one-fifth of the total number of unhoused clients served in a given year. In addition to the PIT count, DHCD collects data on the annual number of clients served by providers in each year. These numbers include anyone that was homeless or at risk of homelessness who received services such as prevention, outreach, emergency shelters, rapid re-housing, and placement into permanent housing. In 2021, the total number of clients served was 23,243.

To be included in the PIT count, a person must meet the definition of experiencing homelessness used by HUD, which may differ from the definition used by other agencies. HUD defines experiences of homelessness as lacking a fixed, regular, and adequate nighttime residence. It includes people staying in emergency shelters, safe havens, and transitional housing programs. It also includes people who were experiencing unsheltered homelessness in places not meant for human habitation such as on the streets, in abandoned buildings, bus stations, or in their cars.

National Data

As shown in Exhibit 2, in the United States, Black, white, and Hispanic individuals are the bulk of the homeless or unhoused population nationwide. In 2024, the national PIT count surveyed a total of 771,480 individuals experiencing homelessness. Both exhibits below show the total portion of unhoused individuals counted and the portion of individuals in that total who were observed in sheltered conditions – such as temporary housing – versus those that were unsheltered or living outside. The national data shows disparities by race and ethnicity as Black and Hispanic individuals experienced homelessness at a much greater rate. While both of these groups combined comprise over 60% of the total homeless individuals, they make up only one-third of the total national population. This is compared to white individuals who comprise 58% of the U.S. population but make up just under 32% of the total homeless population. Asian, American Indian or Alaska Native, Native Hawaiian or Pacific Islander, and Middle Eastern or North African individuals made up less than 5% of the total.

Exhibit 2
U.S. Homeless Population Demographics
2024



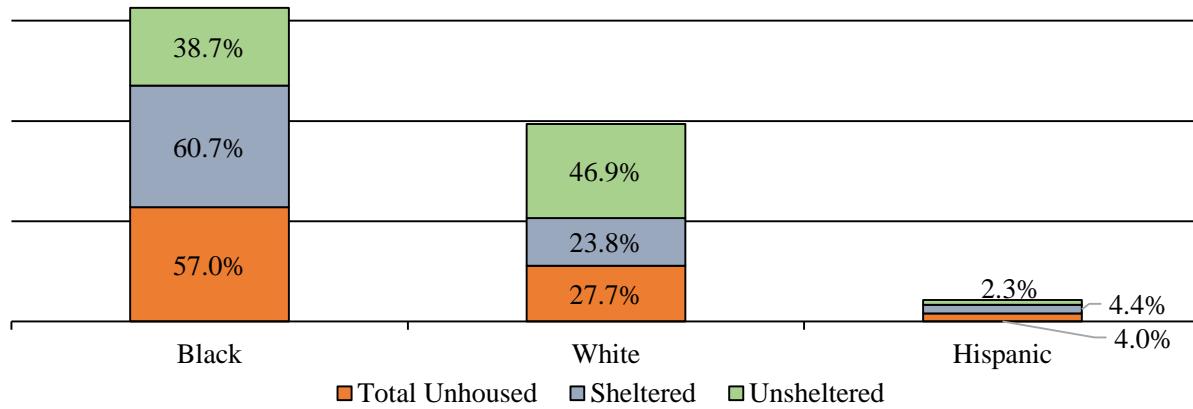
Source: U.S. Department of Housing and Urban Development

Maryland Data

In Maryland, as shown in Exhibit 3, the PIT data confirms some of the persistent disparities found in the national data for Black individuals. The State level PIT survey counted a total of 6,069 individuals experiencing homelessness around the State in 2024. Black unhoused individuals comprised 57% of that total compared to their 30% share of the State's population and 28% of unhoused individuals were white compared to their 46% share of the State's population. Hispanic individuals were 4% of the total unhoused population compared to their 13% portion of the State's population. Asian, American Indian or Alaska Native, Native Hawaiian or Pacific Islander, and

Middle Eastern or North African individuals made up less than 3% of the total and individuals of multiple races comprised 9% of the total.

Exhibit 3
Maryland's Homeless Population Demographics
2024



Source: U.S. Department of Housing and Urban Development

Conclusion

The bill's provisions aim to prevent the criminalization of homelessness and ensure the rights of unhoused individuals under the law. This will benefit any individual experiencing homelessness to the extent that the bill provides an affirmative defense of necessity to protect against legal penalties for performing basic survival tasks, and eliminates municipal vagrancy laws. The bill has the potential to mitigate the persistent and cyclical adversity exacerbated by the criminalization of homelessness, particularly for Black individuals that consistently face homelessness and its contributing factors at disproportionately high rates at both the State and national levels. The magnitude of the bill's impacts on various groups would depend greatly on how the bill is implemented.

Information Sources: U.S. Census Bureau; U.S. Department of Housing and Urban Development; Department of Housing and Community Development; Interagency Council on Homelessness; Department of Legislative Services

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HB 104/ Page 6

Appendix – Maryland Demographics

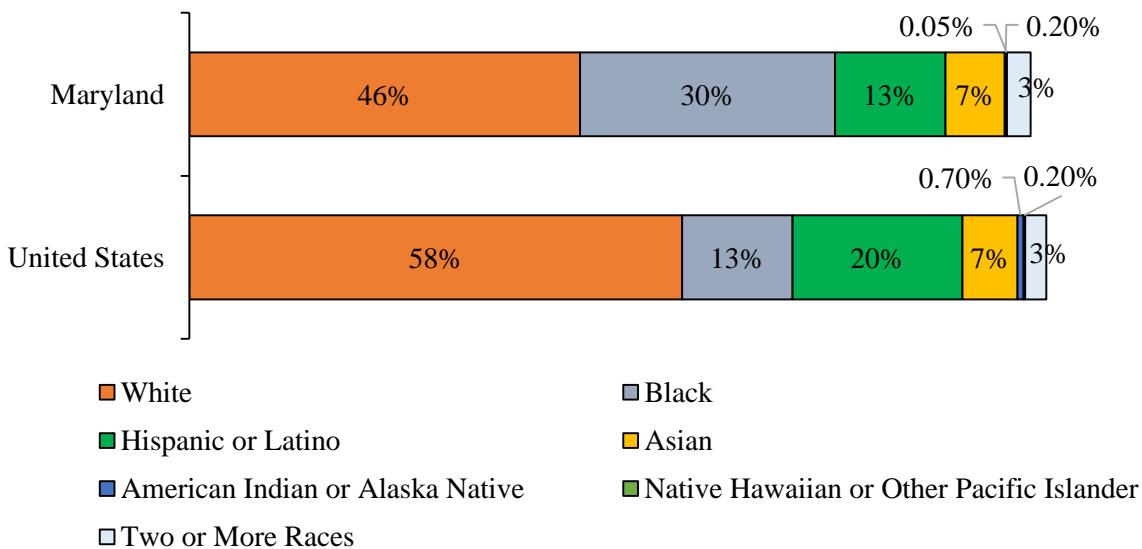
Race and Ethnicity of the Maryland Population

Maryland's 2020 census population is 6,177,244, a 7% increase from the 2010 census count and approximately 2% higher than the 2019 census population estimates. Maryland remains one of the most racially and ethnically diverse states in the nation and is ranked as the fourth most diverse state by the U.S. Census Bureau's [Diversity Index](#). While no single racial or ethnic group constitutes a majority, racial minorities as a group constitute a majority of the State's population. This diversity underpins the analytical framework used in racial equity impact notes (REIN), which seek to identify potential disparities that may be exacerbated or created by proposed criminal justice legislation.

Methodology Update

Beginning in 2025, REIN will use annual population estimates from the U.S. Census Bureau's Population Estimates Program (PEP) as the basis for disparity and disproportionality calculations. This methodological update reflects best practices in demographic analysis, as PEP data incorporate births, deaths, and migration to provide the most current population counts between censuses. Although the estimates are more temporally responsive, they do not materially change the proportionate racial and ethnic breakdown observed in the 2020 census. Instead, they conservatively reflect population changes since 2020 while preserving the overall demographic composition of the State.

U.S. and Maryland Population by Race and Ethnicity 2024 Population Estimates



Note: Percentages do not total 100% due to rounding.

Source: U.S. Census Bureau
