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**Testimony of David A. Prater, Assistant Attorney General
Before the House Judiciary Committee
HB 104 – Unhoused Individuals – Rights, Civil Actions, and Affirmative Defenses
Position: Favorable
February 3, 2026**

In 2024, the Supreme Court in *Grants Pass v. Johnson*, 603 U.S. 520 (2024) held that State and Municipalities may criminalize persons who are without shelter and engaging in life sustaining activities, such as sleeping, without violating the Eighth Amendment against cruel and unusual punishment. HB 104 restores in Maryland the common-sense rule that it is cruel and ineffective to criminally punish involuntarily homeless persons for sleeping in public if there are no other public areas or appropriate shelters where those individuals can sleep. The Office of Attorney General urges a report of **Favorable**.

The lack of affordable housing in Maryland is acute. The annual household income needed to afford a two-bedroom apartment in Maryland is \$76,345.¹ Based on the 2024 Annual HUD’s last Point in Time count, Maryland had approximately 6,069 households experiencing homelessness, including over 1,000 youth under the age of 18.² Over a thousand households experiencing homelessness reside in Garrett, Allegany, Washington, Frederick, Charles, Calvert, St. Mary’s, Harford, and Cecil County.³

Arrest and imprisonment are not viable solutions to the lack of affordable housing. The monthly cost of incarceration per individual in Maryland in 2022 was estimated to be over

¹ National Low Income Housing Coalition, Housing Needs by State, available at <https://nlihc.org/housing-needs-by-state/maryland> (last accessed on Feb. 3, 2025)

² United States Department of Housing and Urban Development, Office of Policy Development and Research, 2024 Annual Homeless Assessment Report, available at <https://www.huduser.gov/portal/datasets/ahar/2024-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html> (last accessed on Feb. 3, 2025).

³ *Id.*

\$4,970 a month.⁴ Estimates of daily incarceration range from \$90 to \$300 per inmate at local detention centers.⁵ Moreover, unhoused people who enter the criminal justice system struggle to exit, which leads to a vicious cycle of homelessness and incarceration that drains the public fisc.⁶ Criminalization is thus an inefficient, costly, and futile response to homelessness. Indeed, even officers tasked with enforcing such policies are asking for change.⁷

Under HB 104, people experiencing homelessness have the right to exist in public places and engage in life-sustaining activities *and* Maryland counties and municipalities retain the authority to regulate encampments and behavior that negatively affects others. Solutions proven to address homelessness, such as the “Housing First”⁸ approach, which Houston, TX has successfully implemented to reduce homelessness by 63%, remain available to counties and municipalities to implement.⁹

HB 104 prohibits local jurisdictions from passing ordinances and laws that criminalize people without adequate alternative nighttime shelter from merely existing in public places.

HB 104 is not a license for people to engage in other criminal behavior such as harassment, public urination, and/or aggressive soliciting. HB104 does not infringe on the right of private residential property owners to ban people from private property. HB 104 simply acknowledges and protects the dignity and humanity of people experiencing homelessness by not allowing the lack of adequate shelter be grounds for fines and criminal prosecution.

HB 104 specifically recognizes the lack of adequate alternative nighttime shelter as an affirmative defense to certain criminal charges, specifically trespassing on government property and disorderly conduct while engaged in life-sustaining activity.

For these reasons, the Attorney General urges the Committee to issue a favorable report.

⁴ Maryland Department of Legislative Services, Fiscal and Policy Note HB 978 2023), *available at* https://mgaleg.maryland.gov/2023RS/fnotes/bil_0008/hb0978.pdf (last accessed on Feb. 3, 2025)

⁵ *Id.*

⁶ Samantha Batko et al., Urban Institute, Alternatives to Arrests and Police Responses to Homelessness: Evidence-Based Models and Promising Practices (Oct. 2020), <https://tinyurl.com/825s5fsv>

⁷ Doug Irving, RAND, Rethinking How Police Respond to Homelessness (Mar. 4, 2021), <https://tinyurl.com/bdh6zmhd>.

⁸ The Housing First Approach places people in permanent housing with support services, without programmatic requirements such as sobriety or coercive treatments. *See* Michael Wilt, Texas State Affordable Housing Corp., An Overview of the Housing First Model (Mar. 5, 2021), <https://tinyurl.com/2yf49fe7>.

⁹ Michael Kimmelman, How Houston Moved 25,000 People from the Streets into Homes of Their Own, N.Y. Times (June 14, 2022), <https://tinyurl.com/2mpkydad>.