



**HB 104: Unhoused Individuals -Rights and Affirmative Defense  
Hearing Before the Assembly Judiciary Committee  
Position: FAVORABLE**

We write on behalf of the National Homelessness Law Center (“Law Center”) to urge you to **SUPPORT HB 104**, which, if enacted, would help protect the constitutional and human rights of unhoused Maryland residents by ensuring they are not threatened with tickets or arrest for simply surviving in the absence of adequate alternatives.

**Who We Are**

The Law Center is the national legal advocacy organization dedicated solely to ending and preventing homelessness. We have over 30 years of experience in policy advocacy, public education, and impact litigation. Since 2006, the Law Center has tracked laws criminalizing homelessness in 187 cities across the country, and we have documented the failures and costs of those policies, as well as more constructive alternatives, in numerous national reports, including [\*Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities\*](#) (2019), [\*Housing Not Handcuffs 2021: State Law Supplement\*](#) (2021), and [\*Tent City, USA: The Growth of America’s Homeless Encampments, and How Communities are Responding\*](#) (2018). Following the awful Supreme Court decision in [\*Johnson v. Grants Pass\*](#) in 2024, we helped draft the model legislation upon which HB104 is based, in order to help states restore the protections undermined in that decision and protect their residents from new threats from the federal government.

**Background**

Everybody needs a safe place to live. In Maryland, a worker earning minimum wage needs to work [89 hours a week to afford a modest one bedroom at fair market rent](#). And for every \$100 increase in rent, homelessness goes up by 9%. This will not be solved by throwing people in jail or issuing fines. The only solution to homelessness is ensuring that everybody, regardless of race, class, or income, has a safe affordable place to live. But in 2024, over [6,000 Marylanders experienced homelessness on any given night](#). These are your constituents, families and friends, nurses and teachers, and children. In a state as compassionate and thoughtful as Maryland, we can and must do more to get folks the housing and support they need.

Unfortunately, in Maryland and across the country, we are seeing a dangerous shift in how homelessness is being addressed- away from housing and healthcare and towards laws that make it a crime to be homeless. In the 18 months since the Supreme Court’s Grants Pass decision, over [300 cities and counties across the country](#) have passed new laws that make it illegal to be homeless, including two in Maryland, in addition to pre-existing laws anti-homeless laws in the state.

Moreover, when we testified to this Committee last year, we warned that this bill was crucial to protecting Maryland’s unhoused residents from President [Trump’s threats](#) of a national camping ban and putting homeless people into government-run detention camps under threat of arrest. A

year later, these threats have turned into reality, as President Trump ordered federal law enforcement to [demolish encampments](#) and threaten unhoused people with arrest in DC, and used [Executive Orders](#) and [funding restrictions](#) to try to force these approaches on communities nationwide. The legislation before you today is vitally important to restore the protections lost in the Grants Pass case and help ensure Maryland residents who can't afford the rent don't end up in one of Trump's homeless detention camps.

It's common sense, but bears repeating- [laws that make it a crime to be homeless make homelessness worse](#). Saddling people with fines, jail time, tickets, and warrants pushes them further into the vicious cycle of homelessness and poverty. Maryland knows better. Let us be clear: nobody should have to sleep outside in parks or tents or on benches. The best and only way to actually get folks off the street is to fund housing and support. We must not get distracted by the lure of anti-homeless laws.

That's why we are proud to support House Bill 104, the Unhoused Individuals Rights and Affirmative Defense Act. This law restores the basic protections that were overturned by the Supreme Court 18 months ago and makes sure we focus on the real solutions to homelessness- housing and support, not on things like handcuffs and tickets. Similar legislation has been introduced in [nearly a dozen states](#), and polling shows [three-quarters of Americans support](#) the simple principle set forth in this legislation that communities should not be able to arrest Maryland residents who can't afford the rent just for the act of trying to sleep or shelter themselves from the col, rain, or heat, without at least first having to make sure they do have a place to do those life-sustaining activities. It's a sad state of affairs that this law is necessary. We must be clear that this law is not even the floor; it is the basement. From here, we must do more to ensure that every Marylander has the housing and support they need. We know that we can solve homelessness in Maryland, and when we do, our communities will be healthier, safer, and more just.

## **Discussion**

***Grants Pass Explicitly Permits States and Municipalities to Add Protections Like HB104.*** As you know, the proposed bill affirms the protections for unhoused Maryland residents who must shelter themselves in public areas despite the lack of adequate alternatives that were lost in the *Johnson v. Grants Pass* case. In that case, the Supreme Court ruled that although the Eighth Amendment to the federal constitution did not prohibit Grants Pass from enforcing an anti-camping ordinance against unhoused residents, even though there was no other place where those residents could sleep or shelter themselves, “a variety of other legal doctrines and constitutional provisions work to protect” unhoused people from conviction. *Grants Pass v. Johnson*, 603 US \_\_\_ (2024), *slip op. at* 24. Importantly, the Court stated explicitly “nothing in today’s decision prevents States, cities, and counties from...declining to criminalize public camping”, and in fact that “States and cities are free as well to add additional substantive protections.” *Ibid.* [More than a dozen bills](#) have been introduced across the country proposing just such protections, Maryland would be squarely within the ruling in passing in HB104.

**HB104 Could Help Prevent President Trump from Forcing Unhoused Marylanders into Detention Camps Under Threat of Arrest.** President Trump arrived in office on an explicit [platform](#) calling for criminalization of unhoused persons to force them into government-run

detention camps, and has since used [executive orders](#), including one ordering [National Guard and federal law enforcement](#) into the District of Columbia to demolish homeless encampments, to begin executing on that plan. His Administration is “encouraged” by Utah’s steps to create [a homeless detention camp](#). By explicitly requiring an offer of adequate indoor shelter before Maryland’s unhoused residents can be threatened with arrest, and providing procedural protections if they are arrested, HB104 would help ensure if Trump turns his attention to Maryland’s cities, there will at least be some state level protections in place. This is not only important for those experiencing homelessness today, but as [Trump cuts other safety net programs](#), those who may become homeless in the future.

**HB 104 Will Help Reduce Overrepresentation of Black, Indigenous, and other people of color, LGBTQ+, and disabled persons in the criminal justice system.** Similar to other aspects of the criminal system, inequitable enforcement of laws criminalizing homelessness against Black, Indigenous, and other persons of color experiencing homelessness dominates its use, just as homelessness disproportionately affects persons of color. A leading report illustrates [that unhoused Black and Latinx people are 9.7 and 5.7 times more likely](#) to be cited under laws criminalizing homelessness than white people. [Black Americans](#) represent 40% of people experiencing homelessness nationally, despite constituting only 13% of the overall population. There is also overrepresentation of [Indigenous people and other people of color](#), and overrepresentation based on [gender identity, sexual orientation](#), and [disability status](#) amongst unhoused persons. People with multiple marginalized identities, such as LGBTQ+ people of color, are even more vulnerable to homelessness, to criminalization, and to the [ensuing collateral consequences](#). Laws like HB 104 will likely also result in reduced segregation and other discriminatory impacts that violate the civil rights protections for marginalized populations.

**Municipalities With Laws Like HB104 Have Successfully Reduced Homelessness and Encampments.** The first of court cases that found that the Eighth Amendment did require the offer of alternative shelter before threatening punishment, *Pottinger v. Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992), imposed these same rules on the city of Miami proposed in HB104, and when they abided by it, unsheltered [homelessness plummeted by 90 percent](#). When the court’s injunction was lifted, and the city returned to criminalization (including passage of a new statewide camping ban in Florida), [it went up again](#). While operating under the similar *Martin v. Boise* standard, Los Angeles had its first two-year stretch of reducing homelessness, including a [17% reduction of street homelessness](#). Far from opponents’ fears that laws like HB104 make it harder to address homelessness, the evidence shows they help.

**Passing HB104 Will Save Communities Money and Help them End Encampments.** Because enforcing laws criminalizing homelessness imposes hidden costs onto communities, it takes away funding that could be going to permanent housing and services, this bill helps stop communities from inadvertently making the encampments they purport to be concerned about a more permanent features of our cityscapes. The [Economic Roundtable of Los Angeles](#) found that housing reduced average monthly spending on people experiencing homelessness by 41% per person, even after including the cost of providing housing. This savings included a 95% reduction in jail facilities and services costs. Though the fact that elected officials like that they can hide those costs in the law enforcement and jail budget while pretending that only housing homeless individuals costs money, the fact is that criminalizing homelessness incurs significant costs for Maryland

communities and their taxpayers—without solving the problem of homelessness. In contrast, communities such as [Gainesville, FL](#), adopted a planned phase out of an unregulated 222-person encampment which, through a process with deep involvement of the directly-impacted encampment residents, was moved to a temporary site adjacent to the main shelter and service provider, who then worked to house every person living in the encampment, eventually closing the camp altogether. This program was closely monitored and evaluated, and succeeded in closing the encampment without a single arrest, less than a 10% dispersal rate into the community, and 150 successful placements into permanent housing in less than two years.<sup>11</sup> The only way to permanently end encampments is to end the *need* for encampments—because criminalization takes away funding from permanent housing, it will only lay the path for permanent encampments.

**HB104 Will Save Marylanders Lives.** Finally, displacing encampment residents and tearing down their “makeshift housing”<sup>11</sup> threatens the life and health of encampment residents in a very real way. Because people experiencing homelessness have heightened [risks of serious illness, hospitalization, and early morbidity](#) compared with the general population, they are especially vulnerable to serious harms flowing from loss of their shelters and other property. For many unsheltered homeless people, property loss is “the greatest threat” to their survival. Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 84 AM. SOCIOLOGICAL REV. 769, 790 (2019). Makeshift housing, like tents, offer protection, however rudimentary, from outdoor elements and allows the homeless citizens to seek shelter in locations where they feel most safe (relatively speaking). The destruction and removal of their tents and other temporary structures deprives homeless people of this protection, thus exposing already vulnerable individuals to increased risk of serious physical harm. See *Jeremiah v. Sutter Cty.*, Case No. 2:18-cv-00522, 2018 WL 1367541, at \*4; 2018 U.S. Dist. LEXIS 43663, at \*12 (E.D. Cal. Mar. 16, 2018) (“[T]he Court finds that Sutter County would knowingly place the homeless at increased risk of harm if it confiscates and seizes Plaintiffs’ shelters and possessions.”).

### **We all win when we solve homelessness.**

In an era of record poverty, prolonged unemployment, and a shrinking stock of affordable housing, sensible and cost-effective policies are needed. We all wish to end homelessness in our communities—but the best, most cost-effective, and permanent way to achieve that is to ensure that all who are unsheltered can access adequate, alternative housing. Criminalizing unsheltered homelessness without providing individual housing units just displaces people experiencing homelessness, risks the destruction of property, and inevitably leads to subsequent encampments. See Sara K. Rankin, *Punishing Homelessness*, 22 NEW CRIM. L. REV. 99, 114 (2019). Not arresting or ticketing people for sleeping outside when they have nowhere else to go is a vital first step. More must be done. But by **passing HB104**, Maryland can show that housing is the solution to homelessness, not handcuffs.

We are happy to discuss this matter with you. Please feel free to contact us at [etars@homelesslaw.org](mailto:etars@homelesslaw.org) with any questions or concerns.

---

<sup>11</sup> When people lose their housing, “their decisions about where to stay represent pragmatic choices among the best available alternatives, based on individual circumstances at a particular moment in time. Encampments form in response to the absence of other, desirable options for shelter.” REBECCA COHEN, WILL YETVIN & JILL KHADDURI, [Understanding Encampments of People Experiencing Homelessness and Community Responses](#) (2019).