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Via email

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Dear Chair Carr and Members of the Tennessee House Property & Planning Subcommittee:

I write on behalf of the National Homelessness Law Center (“Law Center”) to urge you to **oppose HB 1192**, which, if enacted, would misdirect Tennessee’s taxpayer dollars into short-term, unproven, potentially illegal measures that do nothing to end homelessness, and instead would only result in permanent shantytowns in Tennessee’s communities, increased violations of people’s liberties, and deepened racial disparities.

We can all agree that whether we’re Black or white, Asian or Latino, Native or newcomer, everyone wants to see communities in Tennessee free of encampments and the accompanying problems that occur when communities neglect the health, safety, and sanitation needs of their unhoused residents. But not having a roof over your head, an address, or a place to shower -- or having to sacrifice putting food on the table in order to pay rent -- can make landing or keeping a job an impossibility. Providing housing to people who have been pushed into homelessness is a proven approach that ensures people can rebuild their lives. To make Tennessee a place where all of our families can thrive, we must rewrite the rules to ensure everyone has a place to call home. HB 1192 takes us in the wrong direction, enshrining in public policy a plan for permanent shantytowns and loss of liberty for our unhoused neighbors, rather than solving the underlying needs of people currently on the streets.

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 in numerous national reports, including [*Housing Not Handcuffs 2019: Ending the*](#)

[Criminalization of Homelessness in U.S. Cities](#) (2019) and [Housing Not Handcuffs 2021: State Law Supplement](#) (2021). We have also published best practices, model policies, and case studies from across the country on how to constructively address homeless encampments. See [Tent City, USA: The Growth of America's Homeless Encampments, and How Communities are Responding](#) (2018).

We also litigate in federal courts to challenge policies that punish homeless people for living in public space when they lack adequate indoor options. One of our cases, [Martin v. City of Boise](#), resulted in an order from the U.S. Court of Appeals for the Ninth Circuit which held that the Eighth Amendment to the U.S. Constitution prohibits enforcement of laws criminalizing sleeping, sitting, and lying down outside against people with no access to indoor shelter.

Discussion

We urge the Subcommittee to focus on solutions that address the [underlying cause](#) of homelessness: the severe shortage of homes affordable to people with the lowest incomes and the widening gap between incomes and housing costs. In Tennessee, there are [only 4](#) affordable and available rental homes for every 10 extremely low-income renter households. Without affordable options, two in three (67%) extremely low-income Tennesseans have no choice but to pay *more than half* of their limited incomes on rent. Housing costs are out of reach for many low-wage workers, seniors, and people with disabilities. A full-time worker in Tennessee needs to earn [\\$18.30 per hour](#) to afford a modest 2-bedroom home at fair market rent. At Tennessee's minimum wage of \$7.25 per hour, a worker needs to work 85 hours a week – more than 2 full-time jobs – to afford a modest 1-bedroom home. Because these households do not have access to affordable housing, they are left with few resources after paying rent to put groceries on the table, cover medical costs, or meet their other basic needs. One emergency or unexpected expense could, and increasingly does, send these households into homelessness.

The communities that have actually made progress on ending street homelessness have accomplished it through outreach and adequate housing, not by using law enforcement or the threat of forced institutionalization. All Tennesseans deserve the inalienable rights to life, liberty, and pursuit of happiness, which can only happen if they to have a place to live with dignity. Housing ends homelessness; legalized encampments, parking lots, emergency shelters, and asylums, without resources to provide residents with exits into housing, will only result in permanent, under-resourced shantytowns on the peripheries of our communities, or funneling people into jail or asylums at high taxpayer expense and infringement of their personal liberty.

Outside groups like the Cicero Institute, which created the [template legislation](#) that HB 1192—and last year's SB 1610—is based on, want Tennesseans to see things simply—like homelessness is only a personal choice, and that people need to be coerced out of it through harsh law enforcement measures, outdoor living conditions, or threat of involuntary commitment. But most of us know that the rent in Tennessee has been outpacing wages for decades, affordable housing is in short supply, and the economic shocks of the pandemic are forcing many more into homelessness through no fault of their own. No matter what we look like, every person deserves a safe, adequate, affordable place to live, not threats of criminal penalties for simply trying to survive in the absence of one.

Criminal laws like last year's SB 1610, which made it a felony to camp on public property statewide, are not necessary in order to get unhoused people into housing and access to services that will help support them to maintain it. Social workers are more effective at achieving these outcomes and cost communities half to a third as much as criminalization. Milwaukee County's housing first initiative costs \$2 million a year, but reduces Medicare costs by \$2.1 million a year, mental health costs to the county by \$715,000 a year, and costs to the legal system by \$600,000 a year—a net savings to Milwaukee County of \$1.4 million.¹ Through this approach, Milwaukee has reduced its homeless population by 70 percent, down to only 17 unsheltered persons at the last count.²

Moreover, by taking away funding (whether federal or state) from permanent housing to put into legalized encampments, HB 1192 would hinder communities' ability to provide exits for people experiencing homelessness into permanent housing, thereby making the encampments permanent features of our cityscapes. 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.³ In short, *the only way to permanently end encampments is to end the need for encampments—but because this bill takes away funding from the permanent housing that people need, it only lays the path to permanent encampments.*

Troublingly, this bill would hijack the federal Point-In-Time (PIT) count of persons experiencing homelessness to prioritize certain communities for these short-term measures that only serve to mask the visibility of homelessness. While the PIT Count approach is [flawed](#) and represents an under-estimate of homelessness to begin with, this approach will encourage communities to attempt to further game the system, resulting in an even more unreliable assessment of the community's actual needs.

It is also important to note that while this bill will affect all Tennesseans, it will have a discriminatory impact on the state's most marginalized populations. 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](#)

¹ Matthew Braunginn, *Housing on the brink; Milwaukee County's 'housing first' success and the crisis of affordability*, Daily Kos, July 27, 2022, <https://www.dailykos.com/stories/2022/7/27/2112026/-Housing-on-the-brink-Milwaukee-County-s-housing-first-success-and-the-crisis-of-affordability>.

² *Housing First: Milwaukee County recognized with lowest unsheltered homeless population in America*, Milwaukee Independent, Apr. 12, 2022, <https://www.milwaukeeindependent.com/articles/housing-first-milwaukee-county-recognized-lowest-unsheltered-homeless-population-america/>.

³ See, Jon DeCarmine and Joseph S. Jackson, 'A TALE OF TWO TENT CITIES: THE CRITICAL ROLE OF HOUSING ENGAGEMENT IN ADDRESSING HOMELESS ENCAMPMENTS', *forthcoming*, Georgetown Journal of Poverty Law and Policy, Fall 2022; Jon Decarmine, *What's going on with Dignity Village?*, <https://www.gracemarketplace.org/dignityvillageclosure>.

[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](#).

As legislators may be aware, other bills based on the template from the Cicero Institute are already subject to [multiple lawsuits](#). The Department of Housing & Urban Development has noted potential conflicts of a similar bill passed in Missouri with the federal Fair Housing Act.⁴ Laws like HB 1192 will likely result in segregation and other discriminatory impacts in violation of civil rights protections for marginalized populations.

Also troubling, when combined with last year's SB 1610, the bill leaves little to no recourse for homeless individuals forcibly removed from encampments and placed in to potentially dangerous "sanctioned camping sites," prohibiting legal actions against camp operators unless the claim involves "gross negligence." This mean unhoused Tennesseans can be forced under threat of arrest into these sanctioned camping sites, can be subjected to inhumane conditions that they can't leave without being threatened with arrest again, and will have no legal recourse. Simply put, this provides state and local actors cover to act with total disregard for the rights of Tennessee's most vulnerable citizens, with zero accountability, while undermining the very programs that have demonstrated real and proven success in reducing homelessness.

HB 1192 also dramatically expands the civil court system's ability to impose significant involuntary treatment obligations on persons with mental health disabilities experiencing homelessness. Current law requires that "the person poses a substantial likelihood of serious harm because of the mental illness or serious emotional disturbance." HB 1192 expands this to include a highly speculative determination that "the person's condition resulting from the mental illness or serious emotional disturbance *is likely* to deteriorate rapidly to the point that the person will pose a substantial likelihood of serious harm." (emphasis added). This standard is vague and subjective, and far lower than any standard which currently exists to authorize such extensive and involuntary control over an individual with a mental disability.

HB 1192 is based on the false assumption that people choose homelessness and treatment aversion over appropriate services that are available on demand also known as the myth of "service resistance." That is not the case. People cannot reject non-existent services, and HB 1192 does nothing to fund much-needed services. This myth, and the rhetoric that accompanies it, are born from harmful stereotypes, false narratives, and incomplete or misconstrued information about the realities in which unhoused individuals live. To the extent that services exist at all, many people with mental disabilities who are living unsheltered have had traumatic encounters with law enforcement, have

⁴ See Letter from Ulysses M. Clayborn, Regional Administrator to Jenni Miller, Missouri Housing Development Corporation, Sept. 7, 2022.

experienced invasions of their privacy in unsanitary congregate shelter settings,⁵ or have been disappointed by unfulfilled promises of overworked case managers in an underfunded social services system. All of this provides legitimate justifications for wariness to engage with ineffective or inaccessible programs labeled as “services.”⁶ The perpetuation of the “service resistance” myth allows systems and institutions to evade critical review, while shifting the blame for homelessness and mental health crises to those most affected.

What works to get unhoused people with mental health disabilities off the streets and into treatment is access to affordable and supportive housing, intensive case management, and a range of voluntary treatment and services. Studies show that when people are offered private, dignified housing options, they accept these placements.⁷ Access to housing and voluntary services is particularly effective in ending and preventing chronic homelessness among those with severe mental health conditions.⁸ By adding intensive case management (such as Assertive Community Treatment or Full Service Partnerships), people who are unhoused with significant mental disabilities have better mental health outcomes, fewer interactions with the criminal legal system, and lower costs to the state.⁹ Instead, HB 1192 requires coercive, court-ordered mental health services without first addressing the lack of housing for targeted individuals.

HB 1192’s reliance on coercive treatment also violates the fundamental rights of people with disabilities. Courts have held that the right to make voluntary decisions about one’s medical treatment, including the right to refuse treatment, are guaranteed by the Constitution and the common law.¹⁰ Disparities also exist throughout the mental health system. Studies have shown that Black and brown

⁵ See e.g., Eve Garrow & Julia Devanthery, *This Place is Slowly Killing Me: Abuse and Neglect in Orange County Emergency Shelters*, ACLU OF SOUTHERN CALIFORNIA (Mar. 2019), at https://www.aclusocal.org/sites/default/files/aclu_socal_oc_shelters_report.pdf (documenting unsanitary conditions, civil rights concerns, and sexual harassment complaints in congregate shelters in Orange County).

⁶ See e.g., Ananya Roy et al., *(Dis)Placement: The Fight for Housing and Community After Echo Park Lake*, UCLA LUSKIN INSTITUTE ON INEQUALITY AND DEMOCRACY (Mar. 23, 2022), at <https://escholarship.org/uc/item/70r0p7q4#page=9> (finding that police displacement of unhoused people from a Los Angeles encampment resulted in virtually no meaningful access to housing—only 17 of the 183 displaced were placed into what could be called “housing” at the time of the displacement; one year later, very few were housed and those were housed mainly through social networks and community support, and at least six passed away).

⁷ Jason M. Ward et al., *Recent Trends Among the Unsheltered in Three Los Angeles Neighborhoods*, Rand Corporation (2022), at https://www.rand.org/pubs/research_reports/RRA1890-1.html (reporting that nearly all unhoused respondents surveyed indicated interest in housing, and around 80 percent said they would accept a private shelter or hotel room, a permanent stay in a motel- or hotel-like setting, or permanent supportive housing).

⁸ See Leyla Gulcur et al., *Housing, Hospitalization, and Cost Outcomes for Homeless Individuals with Psychiatric Disabilities Participating in Continuum of Care and Housing First Programmes*, 13 JOURNAL OF COMMUNITY AND APPLIED SOCIAL PSYCHOLOGY 171 (2003); see also Molly Brown et al., *Housing First as an Effective Model for Community Stabilization Among Vulnerable Individuals with Chronic and Nonchronic Homelessness Histories*, 44 JOURNAL OF COMMUNITY PSYCHOLOGY 384 (2016).

⁹ See generally H. Richard Lamb et al., *Treatment Prospects for Persons with Severe Mental Illness in an Urban County Jail*, 58 PSYCHIATRIC SERVICES 782 (2007); United Way, *Homeless in Orange County: The Costs to Our Community* (2017), at <https://www.unitedwayoc.org/wp-content/uploads/2017/08/united-way-cost-study-homelessness-2017-report.pdf>.

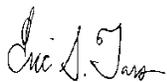
¹⁰ See, e.g. *Conservatorship of Wendland*, 26 Cal. 4th 519, 531, 28 P.3d 151, 159 (2001) (citing California Constitution art. I, § 1).

people are three to five times more likely to be diagnosed with schizophrenia than white people.¹¹ This may be due, in part, to overdiagnosis and misidentification, including when “culturally normative behavior is mistaken for psychopathology.”⁴⁸ HB 1192’s invitation to speculate on future likelihood of substantial harm—with no clear standards for what that means—makes it highly likely that existing biases will ensure that Black and brown people will be disproportionately impacted by the law and subjected to more restrictive forms of involuntary treatment. Data already shows that Black people are “less likely to be offered either evidence-based medication therapy or psychotherapy,”¹² and yet are more likely to be committed into involuntary holds and guardianship proceedings.¹³ The targeting of Black and brown individuals for more restrictive and involuntary treatment, as well as the many overlaps between the mental health and criminal legal systems, demonstrate the racialized systemic failures that the implementation of HB 1192 would further magnify.

In an era of record poverty exacerbated by the global COVID-19 pandemic and a shrinking stock of affordable housing, sensible and cost-effective policies are needed to address homelessness. 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, institutionalizing, or segregating unsheltered homeless persons without providing permanent housing just displaces people experiencing homelessness, risks the destruction of property, deprivation of liberty, and inevitably leads to subsequent encampments. See Sara K. Rankin, *Punishing Homelessness*, 22 NEW CRIM. L. REV. 99, 114 (2019). Permanent supportive housing is the proven best practice to help people exit homelessness; prohibitions on the use of federal or state funds to implement proven solutions is counterproductive and will only exacerbate and prolong homelessness. Expanding involuntary commitments will not result in more successful treatment, and will only deepen racial disparities in Tennessee. Moving forward with HB 1192 will also trigger legitimate legal challenges.

We urge you not to enact HB 1192 and we are happy to discuss this matter with you. Please feel free to contact me at etars@homelesslaw.org or 202-464-0034 with any questions or concerns.

Sincerely,



Eric Tars, Legal Director, National Homelessness Law Center

¹¹ Robert Schwartz & David Blankenship, *Racial Disparities In Psychotic Disorder Diagnosis: A Review Of Empirical Literature*, 4 World J. Psychiatry 133 (Dec. 22, 2014), at

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4274585/> (identifying a “clear and pervasive pattern” exists of Black and Latinx people diagnosed with psychotic disorders three to four times more often than white people).

¹² See Phillip Murray, *Mental Health Disparities: African Americans*, AMERICAN PSYCHIATRIC ASSOCIATION (2017), at <https://www.psychiatry.org/File%20Library/Psychiatrists/Cultural-Competency/Mental-Health-Disparities/Mental-Health-Facts-for-African-Americans.pdf>.

¹³ San Francisco Housing Conservatorship Working Group (Oct. 18, 2021), 12-14, at https://www.sfdph.org/dph/files/housingconserv/Housing_Conservatorship_Meeting_12_revised.pdf; San Francisco Housing Conservatorship Working Group (Nov. 2021), 4, at https://sf.gov/sites/default/files/2021-11/HC_Health%20Commission%20Update.pdf.