

April 22, 2022

Via U.S. Mail and Email to [bill.lee@tn.gov](mailto:bill.lee@tn.gov)

The Honorable Bill Lee  
Governor of the State of Tennessee  
Tennessee State Capitol, 1<sup>st</sup> Floor  
600 Dr. Martin Luther King Jr. Blvd.  
Nashville, TN 37243

**Re: SB 1610/HB 978**

Dear Governor Lee,

On behalf of the ACLU of Tennessee and its tens of thousands of members throughout the state, I write to ask you to **veto SB 1610/HB 978**. This cruel piece of legislation would make sleeping on any public property a *felony*. SB 1610/HB 978 takes a heartless approach to the problem of homelessness, which cannot be punished away. It also raises serious constitutional concerns under the Eighth Amendment, which prohibits cruel and unusual punishment. Unhoused people are already struggling to meet basic needs. They need affordable housing, not criminal charges. We urge you to reject SB 1610/HB 978, which criminalizes unhoused people for simply existing. Instead, we ask you to focus on solutions that will end homelessness in our communities, such as affordable housing for people who are unhoused or at risk of homelessness or housing instability.

SB 1610/HB 978 would expand Tennessee's current ban on "camping" from state-owned property to all public property, including land owned by local governments. Already, laws governing "camping" on state-owned property are too harsh and make a Class E felony of "sleeping" on any state-owned land not specifically designated for camping between 10 p.m. and 7 a.m. (Tenn. Code Ann. § 39-14-414).

Consider the implications of expanding this law to all public property. If shelters are full, unhoused people have nowhere to go. They may not sleep on private property, lest they trespass. They may not sleep on state property, lest they violate current law. If SB 1610/HB 978 passes, they are barred from sleeping on property owned by local governments as well. Where can they sleep? Tennesseans experiencing homelessness will face up to six years in prison and a fine of up to \$3,000 – not to mention a host of collateral consequences, such as loss



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of voting rights, difficulty getting jobs, and, ironically, barriers to finding housing.

Felony classification is reserved for the most serious offenses. Class E felonies now on the books in Tennessee include statutory rape (T.C.A. §39-13-506), reckless endangerment with a deadly weapon (§39-13-103), and sexual battery (§39-13-505). Making sleeping on public property a felony is grossly disproportionate. Sleeping, a biologically necessary human function, does not belong on this list. Moreover, this legislation classifies sleeping as an offense *worse* than assaulting a first responder or a nurse (§39-13-116), stalking (§39-17-315), and inciting to riot (§39-17-304), all of which are class A misdemeanors.



Such a law may be unconstitutional and raises concerns under the Eighth Amendment, which prohibits cruel and unusual punishment. In *Martin v. City of Boise*, the Ninth Circuit Court of Appeals ruled that a city may not “prosecut[e] people criminally for sleeping outside on public property when those people have no home or other shelter to go to.” *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir.), cert. denied sub nom. *City of Boise, Idaho v. Martin*, 140 S. Ct. 674, 205 L. Ed. 2d 438 (2019). The court cites another 9th Circuit case that explains that “sitting, lying, and sleeping are... universal and unavoidable consequences of being human.” *Jones v. City of Los Angeles*, 444 F.3d 1136. Prohibiting sleeping on all public property is not permissible, particularly when an unhoused person does not have any alternatives.

The bill also creates a criminal charge in a separate portion of the code, Title 55, for camping “on the shoulder, berm, or right-of-way of a state or interstate highway... or under a bridge or overpass, or within an underpass, of a state or interstate highway.” The penalty for a violation of this provision is a Class C misdemeanor, punishable by a \$50 fine or 20 to 40 hours of community service. Again, this punitive approach is harmful and unproductive. Not only does it levy fines against people who desperately need the money but also forces them to work *without pay* for 20 to 40 hours, depriving them of the opportunity to search for work and make a wage during that time.<sup>1</sup>

Further, these provisions are confusing and may actually incentivize people to sleep in more dangerous locations. Banning camping on public property encourages unhoused people to sleep in increasingly remote and unsafe places in order to avoid detection. But moreover, as the law is written, an unhoused person may conclude that sleeping

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<sup>1</sup> This does not include the time it takes for a person to be arrested, processed, jailed, arraigned, tried, etc.

next to an interstate highway would result in a *lesser* charge – a misdemeanor – than sleeping elsewhere on public property, like in a park. This potentially creates a perverse incentive: an unhoused person may be encouraged to put their lives, and motorists’ lives, at risk in order to avoid being convicted of a felony. Surely this is not an outcome members of the Tennessee General Assembly intended.

Advocates for the bill have suggested that this bill is “permissive” rather than punitive and argued that local prosecutors have discretion over whether to enforce it. This position makes little sense and invites unconstitutional selective enforcement and opportunities for racial discrimination. The legislature does not and should not establish criminal charges with the intent they be enforced in some jurisdictions and not others — or at some times, against some people, and not others. District attorneys have – and must have – prosecutorial discretion. But this argument by the bill’s sponsors promotes a drastically uneven system of justice. In one county, sleeping will be sleeping. In another, it will be a felony. In reality, calling the bill “permissive” is an admission by advocates for the legislation that standardized enforcement of this bill across the entire state would be a catastrophe.

Every human being must rest. Expecting someone not to sleep is delusional, and punishing someone for sleeping is delusionally cruel. We cannot close our eyes and wish away the problem of homelessness, nor can we criminalize it out of existence. People experiencing homelessness are not apart *from* our communities. They are a part *of* our communities. They are fathers and mothers, brothers and sisters, sons and daughters, friends and neighbors. We can show them empathy and compassion, or we can pass this legislation. We cannot do both.

**Please veto SB 1610/HB 978.**

Sincerely,



Hedy Weinberg  
Executive Director



Jack Seigenthaler  
Policy Strategist

