



**Testimony for the Senate Judicial Proceedings Committee
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SB 35 Criminal Law - Crime of Violence - Definition

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UNFAVORABLE

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The ACLU of Maryland urges an unfavorable report on SB 35, which would expand the definition of a crime of violence to include use of a firearm in the commission of possession with the intent to distribute a CDS.

Harsh criminal penalties are disproportionately levied against communities of color

Lengthy sentences, such as the one being proposed in SB 35 have historically been levied disproportionately against persons of color. In Maryland, African Americans make up only 30% of the general population, but over 70% of the incarcerated population. Until the state can identify causes of and begin to undo the racial disparities that permeate every dimension of the criminal legal system, we strongly discourage this body from enacting new or enhancing existing criminal penalties.

Enhanced sentences are expensive and yield little or no public safety returns

By expanding the crimes of violence statute, SB 35 is effectively a sentence enhancement. Enhanced sentences require that the state expend unjustified resources housing persons who may otherwise be appropriate for release. Maryland currently expends on average \$3,800 per month per inmate in state facilities. A few years ago, the General Assembly passed the Justice Reinvestment Act in an effort to curb the bloated prison population while maintaining public safety. SB 35 potentially undermines the progress and savings under the JRA, which the state is only just beginning to realize.

Moreover, no evidence indicates that there is a public safety benefit to increasing sentence lengths. Indeed, the evidence shows that more severe sentences do not deter crime more effectively than less severe sentences.¹ In researching the correlation between severe sentences and crime deterrence, Professors Durlauf & Nagin found that the marginal deterrent effect of increasing already lengthy prison sentences is modest at best and evidence suggests the possibility of a negative criminogenic effect from imprisonment.²

¹ Durlauf & Nagin, *Imprisonment and Crime: Can Both Be Reduced?*, 10 CRIMINOLOGY & PUBL. POL'Y, 13, 37-38 (2011)

² *Id.*

In the its final report to the General Assembly, the Justice Reinvestment Coordinating Council noted:

A growing body of criminological research demonstrates that prison terms are not more likely to reduce recidivism than noncustodial sanctions. For some offenders, *including drug offenders*, technical violators, and first-time offenders, studies have shown that prison can actually increase the likelihood of recidivism. There is also growing evidence that, for many offenders, adding days, months, or years to prison sentences has no impact on recidivism.³ (*internal citations omitted*)

Diminution credits help to maintain safety in facilities

SB 35 would lower the rate at which some defendants can earn diminution credits. The possibility of earning enough credits to be released early incentivizes prisoners to comply with facility rules. In fact, according to the Fiscal and Policy Note accompanying a 2018 bill, the Department of Public Safety and Correctional Services relies heavily on diminution credits in order to maintain safety:

DPSCS advises that it uses an inmate’s ability to earn diminution credits as an incentive to encourage good behavior and participate in rehabilitative programs and/or work programs. By eliminating the applicability of diminution credits [...], DPSCS advises that it loses the ability to modify inmate behavior. In addition, DPSCS advises that the elimination of diminution credits could decrease the number of inmates who are working or participating in programming and increase institutional violence.⁴

For the forgoing reasons, the ACLU of Maryland respectfully urges an unfavorable report on SB 35.

³ Maryland Justice Reinvestment Coordinating Council—Final Report (December 2015).

⁴ SB 210 Correctional Services - Murder - Diminution Credits, Fiscal and Policy Note (2018).

