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POSITION ON PROPOSED LEGISLATION

BILL: SB396 - Crimes – Firearms – Penalties and Procedures (Violent Firearms Offender Act of 2022)

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 02/16/2022

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 396.

SB 396 (1) alters provisions and penalties pertaining to several firearms-related offenses; (2) prohibits a District Court commissioner from authorizing the pretrial release of defendants meeting specified criteria; (3) expands the list of cases in which the State may appeal from a decision of a trial court that excludes evidence offered by the State or requires the return of seized property; and (4) specifies that the violation of a condition of probation, parole, or mandatory supervision involving the use or possession of a firearm is not a technical violation.

This bill is an unfortunate step in the wrong direction, based on failed policies that have undermined public safety and community stability for decades.

Legislative proposals of this magnitude should be supported by research and data to demonstrate and support passage of laws and policy in a direction that will positively impact crime and reduce recidivism. Simply putting forth statistics outlining the problem does not suffice for providing evidence of data proven solutions.

While this bill is purported by its proponents to be a “common sense” measure to combat crime, not a single bill proponent has put forth any empirical data or evidence to show that enhancing criminal penalties and increasing lengths of incarceration significantly deters or reduces crime. Rather, research and data show the opposite, that harsh criminal penalties do not deter crime or prevent recidivism. Tough on crime policies do not make our communities safer because they actually are proven to increase rates of recidivism and the commission of violent crimes.

In Maryland, the length of prison sentences have been on the rise for decades – far exceeding other states across the country.¹ As the Maryland Justice Reinvestment Coordinating Council concluded in 2015, “[t]hese sentencing trends are not in alignment with the research showing that longer sentences do not reduce recidivism.”² After all, long sentences have *never* been shown to reduce recidivism. In fact, longer sentences increase the likelihood of recidivism, and in turn hurts communities.³

Moreover, enhancing criminal penalties to impose long sentences clashes with the intent of the lawmakers who passed the Justice Reinvestment Act (JRA). In a note on fiscal policy, Maryland’s legislature writes, “JRCC, [Justice Reinvestment Coordinating Council], must (1) using a data-driven approach, develop a statewide framework of sentencing and corrections policies to further reduce the State’s incarcerated population, reduce spending on corrections, and reinvest in strategies to increase public safety and reduce recidivism.”⁴ In a 2016 statement about the JRA, Gov. Hogan said, “By investing more in drug treatment and *incarcerating nonviolent inmates less* [emphasis added], this new law will result in safer communities and produce significant cost savings for Maryland’s taxpayers”⁵ Indeed, the JRA reduced the maximum sentences for crimes like felony theft, second-degree murder, and first-degree child abuse.⁶

Yet, even before the JRA, the legislature wanted to shorten sentences in some cases. In 2012, the legislature lowered the maximum sentence for child abuse. The COMAR says, “Acts 2012, c. 249, § 1, and Acts 2012, c. 250, § 1... in subsec. (b)(2)(ii), substituted ‘imprisonment not exceeding 40 years’ for ‘imprisonment not exceeding 30 years’; and in subsec. (c)(2),

¹ See Ken Willis, *Maryland’s 2016 Criminal Justice Reform* (The Pew Charitable Trusts) (2017), at 3-4, <http://goccp.maryland.gov/wp-content/uploads/justice-reinvestment-advisory-20180220-supplemental-materials.pdf>.

² *Final Report of the Maryland Justice Reinvestment Coordinating Council*, December 2015 <https://goccp.maryland.gov/jrcc/documents/jrcc-final-report.pdf>.

³ See Doris Layton MacKenzie & Lynne Goodstein, *Long-Term Incarceration Impacts and Characteristics of Long-Term Offenders: An Empirical Analysis*, 12 CRIMINAL JUSTICE AND BEHAVIOR 406, 409 (1985), <https://journals.sagepub.com/doi/pdf/10.1177/0093854885012004001>. See also Seena Fazel et al., *Depression and violence: a Swedish population study*, 2 Lancet Psychiatry 225-7 (2015), [https://www.thelancet.com/action/showPdf?pii=S2215-0366\(14\)00128-X](https://www.thelancet.com/action/showPdf?pii=S2215-0366(14)00128-X); *The Impact of Parole in New Jersey* 1 (The Pew Charitable Trusts) (2013), https://static.prisonpolicy.org/scans/PSPP_NJParole-Brief.pdf; Kim Steven Hunt & Billy Easley, U.S. Sent’g Comm’n, *The Effects of Aging on Recidivism Among Federal Offenders* (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf.

⁴ DEPARTMENT OF LEGISLATIVE SERVICES ET AL., FISCAL AND POLICY NOTE FOR SENATE BILL 602 1 (Maryland General Assembly) (2015), http://mgaleg.maryland.gov/2015RS/fnotes/bil_0002/sb0602.pdf.

⁵ Governor of Maryland, *Maryland Governor’s Message*, May 3, 2016 (2016), [https://1.next.westlaw.com/Document/I78A0BA90425D11E6AF088AB341E81C36/View/FullText.html?listSource=Foldering&originationContext=clientid&transitionType=MyResearchHistoryItem&contextData=\(oc.Default\)&VR=3.0&RS=cblt1.0](https://1.next.westlaw.com/Document/I78A0BA90425D11E6AF088AB341E81C36/View/FullText.html?listSource=Foldering&originationContext=clientid&transitionType=MyResearchHistoryItem&contextData=(oc.Default)&VR=3.0&RS=cblt1.0).

⁶ S. 1005, (Md. 2016), http://mgaleg.maryland.gov/2016RS/Chapters_noln/CH_515_sb1005e.pdf.

substituted ‘imprisonment not exceeding 40 years’ for ‘imprisonment not exceeding 30 years.’”⁷ All the way back in 2012, the legislature lowered the penalties for both repeat offenders and for a parent whose abuse results in the death of a child over the age of 13. The JRA served not as a turning point, but an example of an older trend toward shorter sentences. In other words, the legislators intended to shorten some sentences even before the JRA.

Not only do longer sentences diverge from the intent of some lawmakers, but they also waste money both by draining the prisons’ budget and by increasing the likelihood of recidivism.⁸ In 2015, Maryland was spending \$1,071,682,231 in total on incarceration. Adjusted for inflation, that amount becomes \$1,160,096,456.⁹ Since Maryland was keeping 24,028 people in prison that year, the state spending \$44,601.39 per inmate. Adjusted for inflation, that amount becomes \$48,281.02. Granted, that number reflects the average cost, not the residual cost, but Maryland would still save money by shortening prison sentences rather than increasing them. Compared to enhancing penalties and increasing sentences, rehabilitative programming provides better long-term benefits, fulfill the laws’ intent more faithfully, and carry a cheaper cost.¹⁰

Common sense legislation would not ignore factual data disproving its purported intent. A common sense approach to combatting crime would entail looking at past mistakes and learning from failed policies and laws that have only exacerbated problems of crime within our communities and broken systems of justice and rehabilitation.

Proponents of “tough on crime” policies like SB396 fail to understand that safety is inextricably intertwined with equity and economic opportunity. Investing in and expanding opportunities for Maryland’s communities is a smarter way to address public safety. Instead of

⁷ MD. CODE ANN., Crim. Law § 3-601 (West 2012).

⁸ See e.g., Elizabeth Drake et al., *Increased Earned Release From Prison: Impacts of a 2003 Law on Recidivism and Crime Costs, Revised*, Publications, 1, 8-9 (2009), http://www.wsipp.wa.gov/ReportFile/1039/Wsipp_Increased-Earned-Release-From-Prison-Impacts-of-a-2003-Law-on-Recidivism-and-Crime-Costs-Revised_Full-Report.pdf.

⁹ Maryland’s Department of Corrections reported this information on a survey. Chris Mai & Ram Subramanian, (Vera Institute of Justice), 6-8 (2017), <https://www.justnet.org/pdf/The-Price-of-Prisons-Examining-State-Spending-Trends-2017.pdf>.

¹⁰ See e.g., Marsha L Miller & John A Shuford, *The Alternatives to Violence Project in Delaware: A Three-Year Cumulative Recidivism Study* (Drane Family Fund of the New Hampshire Charitable Foundation), ii-4 (2005); Mariel Alper & Joshua Markman, *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)* (Bureau of Justice Statistics), 15 (2018), <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>; Catie Clark et al., *Assessing the Impact of Post-Release Community Supervision on Post-Release Recidivism and Employment Assessing the Impact of Post-Release Community Supervision on Post-Release Recidivism and Employment*, 34-5 (2016), <https://www.ncjrs.gov/pdffiles1/nij/grants/249844.pdf>; John H Esperian, *The Effect of Prison Education Programs on Recidivism*, 61 *Journal of Correctional Education*, 324 (2010), <https://www.jstor.org/stable/pdf/23282764.pdf?refreqid=excelsior:9e011a238865a28556e3b12e1775f121>; Ryang Hui Kim & David Clark, *The effect of prison-based college education programs on recidivism: Propensity Score Matching approach*, 41 *Journal of Criminal Justice* (2013), <https://www.sciencedirect.com/science/article/pii/S004723521300024X>.

attempting to resolve a complex problem with a simple yet costly solution of expanding prison populations, a more thoughtful and comprehensive effort should entail the following: adequate and equitable fund our schools; fair and affordable housing opportunities; employment opportunities for Marylanders returning from incarceration; and investment in community-based crime-intervention programs, which really work.

While the list is exhaustive on research and data demonstrating the deleterious effects of mass incarceration and “tough on crime” policies on increased recidivism, a small collection of additional resources highlighting long-supported data and supporting real efforts to reduce recidivism is provided in the footnote below.¹¹

¹¹ *Final Report of the Maryland Justice Reinvestment Coordinating Council*, December 2015
<https://goccp.maryland.gov/jrcc/documents/jrcc-final-report.pdf>.

Winnable criminal justice reforms in 2022 by Naila Awan, A Prison Initiative Report, December 2021
<https://www.prisonpolicy.org/reports/winnable2022.html>.

States of Incarceration: The Global Context 2021, A Prison Initiative Report by Emily Widra and Tiana Herring, September 2021 <https://www.prisonpolicy.org/global/2021.html>.

Arrest, Release, Repeat: How police and jails are misused to respond to social problems, A Prison Initiative Report, by Alexi Jones and Wendy Sawyer, August 2019
<https://www.prisonpolicy.org/reports/repeatarrests.html>.

Era of Mass Expansion: Why State Officials Should Fight Jail Growth, A Prison Initiative Report, by Joshua Aiken, May 31, 2017 <https://www.prisonpolicy.org/reports/jailsovertime.html>.

Sentencing Laws and How They Contribute to Mass Incarceration, To fight for fairer sentencing, we first need to understand how the system works by James Cullen, October 5, 2018
<https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration>.

Long-Term Sentences: Time to Reconsider the Scale of Punishment, The Sentencing Project by Marc Mauer, November 5, 2018 <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>.

Criminal Justice Solutions: Model State Legislation, The Brennan Center, December 20, 2018
<https://www.brennancenter.org/our-work/policy-solutions/criminal-justice-solutions-model-state-legislation>.

Smart, Safe, and Fair II: Creating Effective Systems to Work with Youth Involved in Violent Behavior, Justice Policy Institute, November 18, 2021 https://justicepolicy.org/wp-content/uploads/2021/09/child_not_the_charge_report5.26.pdf.

Rethinking Approaches to Over Incarceration of Black Young Adults in Maryland, Justice Policy Institute, November 6, 2019 https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD.pdf

The Ungers, 5 Years and Counting: A Case Study in Safely Reducing Long Prison Terms and Saving Taxpayer Dollars, Justice Policy Institute, November 15, 2018
https://justicepolicy.org/wp-content/uploads/2021/06/The_Ungers_5_Years_and_Counting.pdf

Maryland Justice Reinvestment Act: One Year Later, Justice Policy Institute, October 31, 2018
<https://justicepolicy.org/research/policy-briefs-2018-maryland-justice-reinvestment-act-one-year-later/>

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB396.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.