



**Testimony for the House Judiciary Committee  
February 16, 2022**

**SB 396 Crimes - Firearms - Penalties and Procedures  
(Violent Firearms Offender Act of 2022)**

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**OPPOSE**

The ACLU of Maryland opposes SB 396, which seeks to exclude the use or possession of a firearm from the definition of a technical violation, enhance harsher mandatory minimum sentencing for firearm-related offenses, and bar the pretrial release of criminal defendants who have previously been convicted of firearm-related offenses.

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**Pretrial release should be determined on a case-by-case basis**

Existing statutes already provide judges with the authority and discretion to consider case-specific concerns that may provide legitimate reasons for denying pretrial release. For example, judges can already account for factors that may indicate flight risk and public safety concerns in determining whether to release a defendant. Pretrial release is appropriately determined on a case-by-case basis, without blanket denials on release, such as the one proposed in SB 396.

**SB 396 unfairly penalizes defendants who have not been found guilty of the current charge**

At the pretrial phase, a defendant has not been found guilty of the offense at issue. SB 396 unfairly penalizes individuals who are being charged with an offense simply because they have been previously convicted of a violent offense, even if the person has already completed his or her sentence for the violent offense.

**Pretrial incarceration has poor socioeconomic and criminogenic effects**

Pretrial incarceration is also tied to loss of employment and the likelihood that the individual will reoffend in both the short and long-term. One study demonstrated that low-risk defendants who are held 2-3 days were 40% more likely to commit new crimes before their trial than those held no more than 24 hours.<sup>1</sup> Therefore, the social and criminogenic effects of pretrial incarceration weigh against the wholesale pretrial detention of individuals.

**Harsh criminal penalties are disproportionately levied against communities of color**

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<sup>1</sup> The Laura and John Arnold Foundation, *Pretrial Criminal Justice Research* (Nov. 2013) [http://arnoldfoundation.org/sites/default/files/pdf/LJAF-Pretrial-CJ-Research-brief\\_FNL.pdf](http://arnoldfoundation.org/sites/default/files/pdf/LJAF-Pretrial-CJ-Research-brief_FNL.pdf)

Lengthy sentences, such as the one being proposed in SB 396 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**  
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 396 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 and that the chance of being caught is a more effective deterrent than even harsh or severe punishment.<sup>2</sup>

In 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.<sup>3</sup> (*internal citations omitted*)

For the foregoing reasons, the ACLU of Maryland urges an unfavorable report on SB 396.

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<sup>2</sup> "NATIONAL INSTITUTE OF JUSTICE FIVE THINGS ABOUT DETERRENCE". *Ojp.Gov*, May 2016, <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.

<sup>3</sup> Maryland Justice Reinvestment Coordinating Council—Final Report (December 2015).



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