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**Senate Bill 396 Crimes - Firearms - Penalties and Procedures
(Violent Firearms Offenders Act of 2022)**

Position: Support

Senate Judicial Proceedings Committee

February 16, 2022

**Keiffer Mitchell, Chief Legislative Officer & Senior Counselor, Governor's Office
Erin Chase, Deputy Legislative Officer, Governor's Office**

Chair Smith, Vice Chair Waldstreicher, and Members of the Committee:

Senate Bill 396, the Violent Firearms Offender Act, is emergency legislation that increases penalties for those who use and repeatedly, illegally possess firearms as well as people who knowingly supply guns to criminals.

Of the 336 people killed in Baltimore in 2021, 88% were killed with a firearm. Statewide, firearms were used in 92% of murders in 2020. Often, these murders occurred as a direct result of violent drug trade and involved rival drug gangs disputing turf or retaliating for past acts of violence.

Criminals are using and repeatedly carrying firearms to commit violent crimes. Of the homicide suspects in Baltimore City, 84% had a prior record. Forty-three percent of homicide suspects had previous arrests for gun crimes. If we are going to get a handle on rampant gun violence, we must stem the flow of illegal guns into the hands of criminals. We must send a message that this will not be tolerated and we must provide our criminal justice system with tools to hold violent offenders accountable.

Senate Bill 396 contains approximately ten provisions aimed at those who use and repeatedly, illegally possess firearms, as well as people who supply guns to criminals.

Increases penalties for criminals who use and repeatedly, illegally possess firearms

Increases penalties for those who use guns to commit violent crimes

Senate Bill 396 proposes to increase from five to ten years the minimum sentence for repeat offenders who use a firearm to commit a violent crime. It would also require a sentence for a violation of Criminal Law Article § 4-204 to be served consecutively, rather than concurrently, with any other sentence imposed for the underlying violent crime or felony. The use of a firearm in commission of a violent crime would be reclassified as a felony, and conforming changes would be made to existing provisions of law related to use of an assault weapon or machine gun.

Increases the maximum penalty for those who repeatedly, illegally possess guns

Current law provides for a maximum penalty of five years for prohibited persons who illegally possess regulated firearms; Senate Bill 396 proposes to increase the maximum penalty for repeat offenders to ten years. Prohibited persons are those who meet one of the current statutory disqualifiers under Public Safety Article § 5-133(b), which includes people convicted

of a disqualifying crime and those who suffer from a mental disorder or have a history of violent behavior against themselves or another.

Creates a five year minimum for convicted gang members who illegally possess firearms

Senate Bill 396 adds previous gang-related convictions to the predicate offenses that trigger a five year minimum penalty under Public Safety Article § 5-133(c). People convicted of gang offenses who then possess regulated firearms should not be carrying firearms.

Provides prosecutors with the ability to appeal a court's decision not to include evidence during a trial for certain firearm offenses

Current law allows the State to appeal from a decision of a trial court that excludes evidence offered by the State in violent crime and drug felony cases. Senate Bill 396 proposed to expand the existing statute to include the following firearm offenses: use of a firearm during drug trafficking; possession of a firearm by someone previously convicted of a drug felony; illegal possession of a gun; illegal possession of ammunition; illegal transfer of a firearm to a prohibited person; knowing and willful straw purchase of a firearm; possession of a stolen firearm; transporting a firearm for the purpose of unlawfully selling or trafficking a regulated firearm; and obliterating a serial number. This is a necessary tool that the state needs in order to successfully prosecute gun crimes.

Requires an offender currently on pretrial supervision for a firearms charge to see a judge before they can be released for subsequent firearms charges

Currently, a District Court commissioner cannot authorize pretrial release of a defendant charged with certain firearms crimes if the defendant has a previous conviction for a crime of violence or certain firearm related crimes. Senate Bill 396 would expand that prohibition to defendants currently on pretrial release for crimes of violence or certain firearms offenses. The bill also proposes to expand the list of disqualifying firearms offenses.

Allows a judge or parole commissioner to exceed revocation caps for offenders who use or possess firearms

Under current law, unless an offender is charged with a new crime, the use or possession of a firearm is a technical violation of probation, parole, or mandatory supervision. Technical violations are capped at 15, 30, and 45 day revocation caps for first, second, and third violations respectively. People on community supervision who are found to be using or possessing a firearm inherently pose a risk to public safety, and should not be defined as technical violators of supervision.

Increases penalties for those who illegally supply guns to criminals

Increases the maximum penalty from five to 15 years for those who knowingly and illegally transfer a gun to someone who has a previous violent crime conviction or plans to use the gun to commit a crime Firearms used in crimes often do not belong to the offender. Current law prohibits the transfer of a regulated firearm to a person who the transferor knows or has reasonable cause to believe is a prohibited person or intends to use the firearm to commit a crime or harm someone. The maximum penalty for this offense is currently five years. Senate Bill 396 proposes to increase the maximum penalty to 15 years for a transferor who has actual knowledge that the transferee has a previous violent or gun-related conviction or intends to use the firearm to commit a crime or harm someone.

Classifies theft of a firearm, possession of a stolen firearm, and selling a stolen firearm as felony offenses and increases penalties for those offenses

In 2021, Maryland law enforcement agencies entered 949 guns stolen in the National Criminal Information Center. In addition, 152 firearms were reported stolen from federal firearms licensees in Maryland to the ATF in 2022. Maryland law treats the theft of a firearm like the theft of any other item. Senate Bill 396 proposes to increase minimum penalties to two years for first time offenders and five for repeat offenders. Identical penalties are applied to those who possess, sell, transfer or otherwise dispose of a stolen regulated firearm if the person knows or has reasonable cause to believe the firearm is stolen. Increases penalties for straw purchases to a minor or prohibited person Senate Bill 396 proposes to create a five year minimum sentence and increase the maximum sentence from 10 to 15 years for straw purchases to a minor or person prohibited from possessing a regulated firearm.

Increases the maximum sentence from 5 to 10 years for obliterating a serial number

The current maximum penalty for obliterating or altering a manufacturer's serial number on a firearm is five years. Senate Bill 396 proposes to increase the maximum penalty to ten years.

Senate Bill 396 increases penalties for those who pose a danger to our communities by using and repeatedly, illegally possessing firearms with impunity. The legislation also increases penalties for those who facilitate guns getting into the hands of criminals who should not have them. Senate Bill 396 increases accountability and will help us keep our communities and neighborhoods safe.

For these reasons, the Administration respectfully requests a favorable report on Senate Bill 396.

Testimony in support of SB396.pdf

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Testimony to the Maryland Senate Judicial Proceedings Committee

SB396 The Violent Firearm Offenders Act of 2022

Submitted February 16, 2022

By Jason Johnson

- *President, Law Enforcement Legal Defense Fund*
- *Former Deputy Commissioner, Baltimore Police Department (2016-2018)*
- *Prince George's County Police Department (retired)*

Members of the Senate Judicial Proceedings Committee:

My name is Jason Johnson and I served as the Deputy Commissioner of the Baltimore Police Department from 2016 and 2018 where I oversaw the Strategic Service Bureau and chaired the department's performance review. Previously, I served as a patrol officer and shift commander with the Prince George's County Police Department for over twenty years, rising to the rank of Major and leading the Department's Office of Legal Affairs and the Internal Affairs Division. I am currently the president of the Law Enforcement Legal Defense Fund, a nonprofit organization promoting effective and constitutional policing.

In my over two decades in law enforcement, I saw firsthand the havoc that criminals with guns can wreak on our streets. The toll in lives lost and shattered is shocking and the toll on the families and friends of those lost to gun-toting criminals is heartbreaking.

Sadly, if not for the failings of our criminal justice system, many of those murders would not have happened – many were preventable, if the killers had faced consequences for their previous, often firearms-related, crimes and had been “incapacitated” in jail or prison – unable to terrorize our streets.

Fortunately, the Violent Firearms Offenders Act of 2022 offers the legislature the opportunity to stem the bloodshed on our streets by giving law enforcement and prosecutors the tools to keep

these would-be killers behind bars longer, before they can take a life from another family in Maryland.

Homicides and nonfatal shootings rose dramatically across the country in 2020 and 2021. In Maryland, the rise between 2019 and 2020 was only 5.5% and Baltimore City actually saw 13 fewer homicides than the previous year.

But those figures obscure the City of Baltimore's persistently elevated levels of violence over the past few years – and the dramatic spike across other counties in Maryland.

In fact, Baltimore City has consistently been America's big city homicide capital for the last seven years and ranks among the world's deadliest cities per capita. Since 2015, nearly 2,400 residents¹ have been murdered or 1 out of every 250 inhabitants. While Baltimore is home to less than 10% of Marylanders, it accounts for six out of every ten of the state's murders and carjackings, half of its robberies, and a third of all aggravated assaults.²

While Baltimore's 338 killings in 2021 accounted for half the total murders in Maryland— it is not just Baltimore that is being ravaged by violence.

Violence has skyrocketed Prince George's and Montgomery counties in the past two years. Last year, Prince George's County saw its most homicides since 2007, and Montgomery County its highest figure in two decades. Murders in both counties more than doubled since 2019. Meanwhile, aggravated assaults (which include nonfatal shootings) jumped more than 20 percent in those two suburban counties. Carjackings and robberies are up as well.

The question, then, is why? Based on my decades in both law enforcement leadership and on the frontlines, the answer is that our current laws and procedures abet these dangerous, repeat offenders by releasing them on bail, failing to fully prosecute their crimes, imposing light sentences, and freeing them before their time was up.

Those systemic failures cannot be solved entirely by one piece of legislation, but the 2022 Violent Firearms Offenders Act (VFOA) goes a long way toward remedying the dangerous policies of leniency that allowed these individuals to rob, maim, and kill Marylanders.

Research has consistently shown that carrying firearms illegally is strongly linked to the likelihood of the possessor either committing violence or becoming a victim of it.³

According to a 2018 study by the state of Illinois' Criminal Justice Information Authority, those arrested for firearms-related crimes were twice as likely as those arrested for other crimes to be victims of homicide and usually by gun.⁴

In Baltimore from 2015 to 2021, 45% of homicide victims had prior firearms charges. Another 16% of murder victims – more than two hundred individuals – had been victims of nonfatal shootings before. In 2021, 11 victims were themselves suspected in homicides according to the police department's homicide analysis.⁵

The known perpetrators of violence have long criminal histories as well, each homicide suspect averages more than ten arrests and one gun-related arrest.

Since we only know about the suspects that we can identify – with only about one in three killings in Baltimore being solved each year – we know that 42% or nearly 300 of the murder suspects in the last seven years had a gun arrest. Assuming the same rate for all murderers, over 1,300 of Baltimore’s killers have been previously arrested for firearms offenses before the incident. That is a lot of lives unnecessarily lost if those cases had resulted in both being held without bond, convicted, and sentenced to longer prison terms.

And that is precisely what the VFOA seeks to fix by establishing a class of firearms offenses that preclude the offender from pretrial release and enhancing the type of crimes eligible for stricter sentencing.

Bail releases of violent firearms offenders are a particular problem but all too common and do result in unspeakable tragedy. Last June in Annapolis, Naval Academy mom Michelle Cummings came to town to celebrate her son’s induction into an institution dedicated to training those who defend us. But our system failed to defend Michelle Cummings from a dangerous criminal, Angelo Harrod, who shot at killed her while she sat on a hotel balcony. Harrod, who had a decade-long history of violence and carrying guns, was released on an ankle monitor in February 2021 despite being charged with assault, reckless endangerment, and a slew of gun-related charges which under this bill would have kept him behind bars. But Harrod removed his ankle bracelet in May – something he had done before when facing previous charges in 2017 – but could not be re-apprehended in time to prevent the senseless killing of the Naval Academy mom who had traveled from Houston for her son’s celebration.

Angelo Harrod’s case is all too common and calls out for change.

Additionally, the available penalties for firearm offenses in current laws are inadequate and ineffective in combatting the surge in violence.

The Baltimore Sun found in 2016 and 2017 that 43 percent of those convicted of a gun crime received less than a year in jail, and half had 50 percent or more of their sentence suspended. The average sentence, according to Baltimore City’s State’s Attorney Marilyn Mosby, was 16 months. Police data showed it to be less than six months.⁶

Those penalties do not stop or deter violent criminals, they rarely even delay them from committing violence.

In my experience, 99.9 percent of residents of Maryland’s violence-wracked communities are decent, hard-working people, it is only the tiny fraction of offenders who carry guns, deal drugs and fight over turf who commit the lion’s share of all the violence – so-called “trigger-pullers.” They need to be off our streets to stop the violence.

And it is important to note that locking up violent offenders or those disposed to violence is not and will not be a major driver in the prison population, leading to “mass incarceration.”

According to the Department of Justice, only 4% of the 1.2 million state prisoners were sentenced for weapons offenses compared to 58% for violent crimes and 14% for drug offenses.⁷

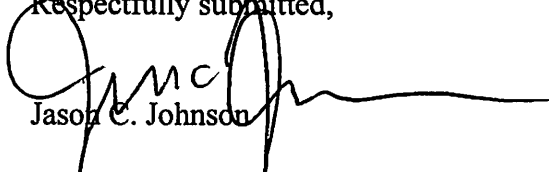
According to a 2021 Pew Research poll, the communities that supposedly worry about “mass incarceration” are most likely be concerned about gun violence with 93% of Black respondents and 71% of Hispanic respondents saying it is a “very big” or “moderately big” problem compared to only 64% of white respondents.⁸

Another poll last June by the Washington Post found that African Americans respondents believed that new stronger gun laws (76%) and stricter enforcement of current laws (75%) would reduce violent crime in America – twice the rate of white Americans.⁹

And Johns Hopkins researchers endorsed similar policies, concluding that an emphasis on the prosecution of high-risk firearm offenders is critical to reducing gun violence in Baltimore.¹⁰ We also have case evidence from other states and the federal government whose use of “focused deterrence” strategies targeting gun offenders with stiffer penalties and prosecutions successfully reduced gun violence.¹¹

It’s not just commonsense that taking the bad guys off the street will curb violence, it’s a fact. I urge you to support public safety by voting this legislation out of committee with a favorable report.

Respectfully submitted,



Jason C. Johnson

Notes:

¹ Baltimore Sun, “Baltimore Homicides” 2015-2022; <https://homicides.news.baltimoresun.com/>. (Jan 1, 2015-Feb 15, 2022) = 2380 homicides

² Maryland State Police, “Crime in Maryland 2020 Uniform Crime Report,” 2021 <https://mdsp.maryland.gov/Document%20Downloads/Crime%20In%20Maryland%202020%20Uniform%20Crime%20Report.pdf>; 2015-2020 data average

³ Oliphant SN, Mouch CA, Rowhani-Rahbar A, Hargarten S, Jay J, Hemenway D, Zimmerman M, Carter PM; FACTS Consortium. A scoping review of patterns, motives, and risk and protective factors for adolescent firearm carriage. *J Behav Med.* 2019 Aug;42(4):763-810. <https://pubmed.ncbi.nlm.nih.gov/31367939/>; Beidi Dong, Douglas J. Wiebe, Violence and beyond: Life-course features of handgun carrying in the urban United States and the

associated long-term life consequences, *Journal of Criminal Justice*, Volume 54, 2018, Pages 1-11.
<https://doi.org/10.1016/j.jcrimjus.2017.11.002>.

⁴ Devitt Westley, C., Kang, B., Sheridan, E., & Specker, J. (2018). Examining the recidivism of firearm offenders using state criminal history and mortality data. Chicago, IL: Illinois Criminal Justice Information Authority.
<https://icjia.illinois.gov/researchhub/articles/examining-the-recidivism-of-firearm-offenders-using-state-criminal-history-and-mortality-data>

⁵ Baltimore Police Department “Homicide Analysis,” data from report years 2015-2021

⁶ Luke Broadwater and Ian Duncan, “Baltimore Gun Offenders Vary, Sun Review Shows,” *The Baltimore Sun*, July 24, 2017, <https://www.baltimoresun.com/news/investigations/bs-md-ci-gun-bill-20170720-story.html>; Justin Fenton, “Arrests in Baltimore for Illegal Guns Often Lead to Dropped Charges or Little Jail Time,” *The Baltimore Sun*, October 22, 2016, <https://www.baltimoresun.com/news/crime/bs-md-ci-gun-arrest-prosecutions-20161022-story.html>

⁷ Department of Justice –Bureau of Justice Statistics, “Prisoners in 2020,” December 2021,
<https://bjs.ojp.gov/content/pub/pdf/p20st.pdf>.

⁸ Pew Research Center, April 2021, “Amid a Series of Mass Shootings in the U.S., Gun Policy Remains Deeply Divisive,” <https://www.pewresearch.org/politics/2021/04/20/amid-a-series-of-mass-shootings-in-the-u-s-gun-policy-remains-deeply-divisive/#americans-living-in-urban-areas-are-much-more-likely-than-rural-americans-to-say-gun-violence-is-a-very-big-problem-in-the-country>

⁹ Washington Post-ABC News, Conducted June 27-30, 2021; https://www.washingtonpost.com/context/june-27-30-2021-washington-post-abc-news-poll/9f67b281-b289-4e67-a9e1-9515018d7e90/?itid=lk_inline_manual_44

¹⁰ Webster, Daniel et al, “Reducing Violence and Building Trust: Data to Guide Enforcement of Gun Laws in Baltimore,” Johns Hopkins University, June 2020; https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-violence-prevention-and-policy/_docs/reducing-violence-and-building-trust-gun-center-report-june-4-2020.pdf

¹¹ Anthony A. Braga and David L. Weisburd, “Focused Deterrence and the Prevention of Violent Gun Injuries: Practice, Theoretical Principles, and Scientific Evidence,” *Annual Review of Public Health* 2015 36:1, 55-68;
<https://doi.org/10.1146/annurev-publhealth-031914-122444>

StacieMacDonaldSB396.pdf

Uploaded by: Stacie MacDonald

Position: FAV

Stacie MacDonald

31 ENCLAVE COURT, ANNAPOLIS, MD 21403

February 15, 2022

Senate Judicial Proceedings Committee
11 Bladen St.
Annapolis, MD 21401

Dear Mr. Chair, Madam Vice Chair, and Members of the Committee:

I live right here in the heart of Annapolis and I and my neighbors are becoming more afraid of being victims of violent crime every day. Right near this Senate office building an innocent woman was shot to death last June while visiting her son who was attending the Naval Academy. She was murdered while sitting in the patio at the Graduate Hotel, a venue where several legislators stay while the legislature is in session. She was the unintended innocent victim of a "drive-by" shooting.

We have been dealing with unacceptable and increasing levels of violent crime in Maryland for many years. Baltimore City has been hit especially hard with over 35 murders in January alone. I support looking for long term solutions, nonetheless any solution must include getting violent criminals off the streets and into prison where they cannot murder more innocent people.

What plagues our Cities and Counties is recidivism. These career criminals need to be locked up. While I do believe in second chances and rehabilitation, these options should be offered to those that are not repeat violent offenders. It is in the best public interest that repeat violent offenders be taken off the streets and be sentenced to minimum times in prison.

This Bill not only strengthens law enforcement, it forces those - who are in charge - to rid our society of the small criminal class who has wreaked havoc and spread violence for years. Career criminals belong in one place - PRISON. I urge your support for this Bill. While it is not the only answer it is a much-needed start. We must take back our streets from the criminals and begin to restore our communities.

Sincerely,

Stacie MacDonald

OPD Opposition Statement_SB396.pdf

Uploaded by: Krystal Williams

Position: UNF



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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>.

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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.

sb396.pdf

Uploaded by: Sara Elalamy

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 396
Crimes – Firearms – Penalties and Procedures (Violent Firearms
Offender Act of 2022)
DATE: February 2, 2022
(2/16)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 396. This bill establishes and alters various penalties and conditions of sentencing regarding certain firearm-related violations.

This bill contains numerous mandatory sentencing provisions – including mandatory minimum sentences, mandatory consecutive sentences, prohibitions on suspension of sentences, and limitations on parole eligibility. The Judiciary traditionally opposes legislation that includes mandatory provisions. The Judiciary believes it is important for judges to weigh the facts and circumstances for each individual case when imposing a sentence. Provisions that place restrictions on the sentencing judge prevent the judge from considering legislative intent or factors unique to the case. Recognizing that lawmakers are responsible for enacting penalties for crimes, judges are mindful of various mitigating factors in crafting a sentence that most appropriately fits the individual defendant and the crime.

cc. Hon. Bill Ferguson
Judicial Council
Legislative Committee
Kelley O'Connor

SB396_UFAV_Amanuel-ACLU.pdf

Uploaded by: Yanet Amanuel

Position: UNF



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

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

YANET AMANUEL
INTERIM PUBLIC POLICY
DIRECTOR

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.¹ 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

¹ 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

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.²

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.³ (*internal citations omitted*)

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

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

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



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