

Daniel J. Carlin-Weber  
HB1206 Public Safety – Handgun Permit Requirement – Repeal  
Favorable with Amendments  
3/9/2022

I am a firearms instructor and advocate of responsible firearms handling and ownership. Currently, I am a Maryland State Police Qualified Handgun Instructor, a Utah Concealed Firearm Permit Instructor, USCCA Concealed Carry and Home Defense Instructor, NRA Range Safety Officer, and Basic Pistol Instructor. Since 2016, I have instructed Marylanders from all walks of life on how to safely operate firearms and the responsibilities that come with them. I come before you today to urge a favorable report of House Bill 1206.

HB1206 would remove the requirement that one be issued a wear and carry permit to carry a handgun in public. I support the bill and any other moves that decriminalize the ability for Marylanders to protect themselves in public with the “quintessential self-defense weapon.” *District of Columbia v Heller*, 554 U.S., 570 (2008). Current penalties for violating Md. Criminal Law § 4-203 are stiff and the 3-year penalty for a first offense means that convicted individuals become prohibited from possessing firearms. The Maryland Court of Appeals recently recommended to the General Assembly in *Lawrence v. State*, 475 Md. 384, 408, 257 A.3d 588, 602 (2021) that *mens rea* be incorporated into Maryland’s restrictions on the wearing, carrying, and transporting of regulated firearms, Md. Criminal Law § 4-203(a)(1)(i), as this requirement is currently a strict liability crime and it doesn’t even matter if one made an honest mistake by being in the wrong place, being beyond any restrictions on their carry permit, or even simply forgetting that their handgun was in their bag. HB1206 would protect these honest Marylanders and should be moved by this committee and would be a move away from the state’s horrific pro-carceral approach to gun regulation.

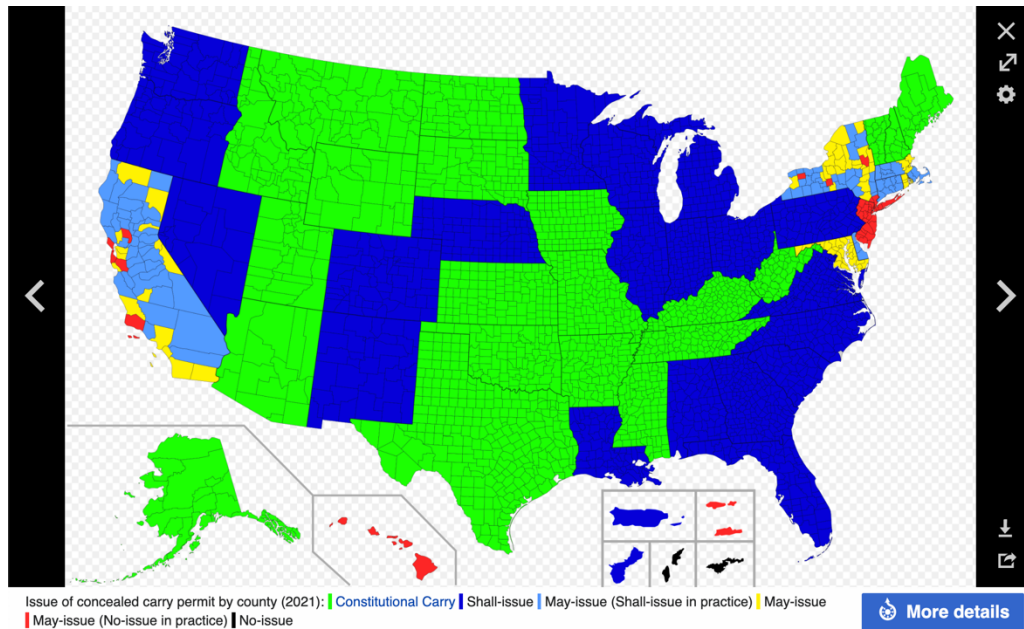


Figure 1 - Map of US by counties' practices of issuing carry permits. Areas in green do not require permits to carry concealed firearms in public at all. Graphic sourced from Wikipedia [https://en.wikipedia.org/wiki/Concealed\\_carry\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/Concealed_carry_in_the_United_States)

Every bordering jurisdiction of Maryland generally have much more permissive laws on firearms carry, but there's no evidence to suggest they are any more dangerous places than Maryland is, and in fact, the reverse is true. West Virginia requires no permit at all for people over the age of 21 to carry firearms openly or concealed within its borders, much like what this bill would do. Those who do must still not be prohibited by law from possessing firearms. West Virginia does still issue carry permits to those who seek them. *Gun Reciprocity / Frequently Asked Questions*, West Virginia State Attorney General's Office, <https://ago.wv.gov/gunreciprocity/Pages/FAQ.aspx>. West Virginia does not even crack the top 25 states for violent crime despite their lack of restrictions. <https://bit.ly/35DxkJ4>. USA Today puts Maryland at number 11.

For a Marylander to be able to legally carry a handgun in public, they need a permit to do so. To be issued one, an applicant needs to take a 16-hour training course and demonstrate

proficiency, pay \$75 in fees, submit to background checks, have digital LiveScan fingerprints taken at their cost, and submit to a lengthy interview process before the State. An applicant must also have a “good and substantial reason to wear, carry, or transport a handgun.” What constitutes “good and substantial reason” has been the center of debate for many, many years, but it is without dispute that the requirement denies the typical Marylander the ability to lawfully carry a handgun beyond their front door. Maryland’s current law demands that only special or favored classes of citizens can Business owners (or employees in certain circumstances), top-secret security clearance holders, and other government employees including law enforcement are the only people generally deemed worthy of having this ability. Those who have been subjected to targeted crimes *might* be able to get a permit with enough documentation, but even then, this supposes that the person survives whatever threat they were faced with.

Maryland’s approach of criminalizing more gun ownership and carriage has not changed much in the last 50 years. In 1972, the General Assembly was likewise in a time of responding to public outcry on the pervasiveness of violent crime and access to guns. Governor Mandel sought to limit who could legally carry firearms in public to a very select few classes of people. He also demanded that “stop-and-frisk” be put into Maryland law, so police officers could be less restrained in their approach to enforcing the newly enacted gun laws. The demand for more police action was so great, that the Washington Post was flippant about the potential harms to other liberties and even towards the prospect that Black citizens could have the laws disproportionately enforced against them:

What Governor Mandel proposes to do is really minimal. He wants to enable officers of the law to protect themselves against breakers of the law—usually called criminals—by letting the former frisk the latter, briefly and politely, on the basis of a “reasonable suspicion” that a concealed lethal weapon may be found. The legislation would also make it unlawful for anyone to carry a handgun concealed or

unconcealed, on the streets or in a car. Unfortunately, it would not affect the sale and possession of pistols kept in homes for junior to show off to his baby sister or to settle family altercations.

Understandably, civil libertarians have had misgivings about the proposed law. Authorizing the police to stop and frisk a person on mere suspicion entails a serious risk that the police will behave arbitrarily or capriciously. And this applies with particular force, of course to black citizens who are so often the special target of police harassment. One must respect their anxiety. But the remedy lies, we think, in maintaining a vigilantly watchful eye on police behavior rather than in denying the police a power they genuinely need for their own safety as well as for the public safety.

- Frisking for Firearms. (1972, January 20). *The Washington Post*, p. A18.

Last year, the Maryland General Assembly and indeed this body, spent a great deal of time and resources in reconciling with the lack of accountability among law enforcement agencies in the state and the side-effects of the tough-on-crime approach commonplace in many parts of our state. Since 2017, the Baltimore City Police Department is currently under a federal consent decree in large part for its decades of unconstitutional and abusive approach to law enforcement and undoubtedly, Maryland's gun laws have been a vessel for those officers to abuse and even when they're not abusive, the letter of many of these laws incur lengthy or otherwise life changing penalties upon those convicted under them. I fully understand the desire to make Maryland a safer place for residents – I want that too – and that legislators have a duty to represent their constituents' best interests. However, Maryland's current approach to guns does not contribute in the slightest to public safety. The vast majority of Marylanders and indeed Maryland gun owners are well-meaning and harmless to others, yet current prohibitions and steep restrictions on gun carriage put lawful self-defense out of reach to many who do not have access to the same resources as others may have. This logic is regularly adopted in other realms of criminal law in Maryland, particularly with driving laws or even drug use, but rejected when discussing guns. "Guns bad" is a terrible way to legislate given the prevalence of such devices in a country where there is an explicit individual

right to keep and bear them. None of this should be seen as a plea to just “enforce the laws we already have” against those who are willfully harming others and endangering our communities but to reflect on what actual good may come from such a pro-carceral approach. The legislature is indeed working to invest in communities and even alternatives to relying solely on criminal law enforcement to mitigate and intervene in disputes. I encourage it to continue those approaches and not yield to the desires by some of just throwing more muscle at communities already weary of the effects of over-policing.

The City of Philadelphia recently conducted a year-and-a-half-long study on why it suffers from so much gun violence and what approaches could be taken to lessen it. See 100 Shooting Review Committee Report. <https://bit.ly/3utv0ya>. The report is fully aware of the trouble of trying to regulate access to guns a country where there exist enough millions of guns to arm every adult resident at least twice. See NSSF Releases Firearms Production Figures. (2019, December 4) NSSF. <https://bit.ly/331muey>. There aren't enough police officers nor enough prison cells to lock up every possessor or carrier of illegal guns. Instead of suspected armed individuals at random, the emphasis, as the report suggests, should be to focus on holding those committing violence accountable and not merely going after illegal possessors. Philadelphia District Attorney Larry Krasner writes in the 100 Shooting Review Committee Report on page 43:

“Focusing so many resources on removing guns from the street while a constant supply of new guns is available is unlikely to stop gun violence, but it does erode trust and the perceived legitimacy of the system. This in turn decreases the likelihood that people will cooperate and participate in the criminal legal system and associated processes, reducing clearance, conviction, and witness appearance rates.”

John Pfaff of Slate recently provided coverage on the report, noting the differences in approaches offered by Krasner in contrast with New York City Mayor Eric Adams, who has not been shy about taking an aggressive approach to targeting illegal gun possession. See Pfaff, J. *What an analysis of 2,000 shootings tells us about how to end gun violence*. Slate Magazine. (2022, February 14). <https://bit.ly/3v1nTx8>.

Furthermore, it is worth reading the amicus brief submitted by the Black Attorneys for Legal Aid and The Bronx Defenders in support of the plaintiffs in *New York State Rifle & Pistol Association Inc. v. Bruen*, 20-843 for a host of examples of what the enforcement of gun control laws really looks like. <https://bit.ly/3LdnJZn>. From their summary:

“The consequences for our clients are brutal. New York police have stopped, questioned, and frisked our clients on the streets. They have invaded our clients’ homes with guns drawn, terrifying them, their families, and their children. They have forcibly removed our clients from their homes and communities and abandoned them in dirty and violent jails and prisons for days, weeks, months, and years. They have deprived our clients of their jobs, children, livelihoods, and ability to live in this country. And they have branded our clients as “criminals” and “violent felons” for life. They have done all of this only because our clients exercised a constitutional right.”

The amici here isn’t just advocating for the Supreme Court to overturn New York’s ‘proper cause’ requirements for issuance of permits to carry handguns in public, but an elimination of their licensing scheme all together. From their brief:

But what these stories and our experience illustrate is that New York’s licensing requirements— which cause criminal penalties for unlicensed possession— themselves have controversial public safety implications. It is not safe to be approached by police on suspicion that you possess a gun without a license. *See, e.g.,* Michael Cooper, *Officers in the Bronx Fire 41 Shots, And An Unarmed Man Is Killed*, N.Y. Times (Feb. 5, 1999) (reporting the murder of Amadou Diallo). It is not safe to have a search warrant executed on your home. *See, e.g.,* Richard A. Oppel et al., *What to Know About Breonna Taylor’s Death*, N.Y. Times (Apr. 26, 2021). It is not safe to be caged pretrial at Rikers Island. *See, e.g.,* Michael

Schwartz et al., *Rikers Deemed Too Dangerous for Transferred Inmates*, N.Y. Times (May 5, 2017). It is not safe to lose your job. Margaret W. Linn et al., *Effects of Unemployment on Mental and Physical Health*, 75 Am. J. Pub. Health 502 (1985). It is not safe to lose your children. Bruce Golding, *Lawsuit Says NYC Has One of the Worst Foster Care Systems in US*, N.Y. Post (July 8, 2015). It is not safe to be sentenced to prison. Jean Casella et al., *New York's State Prisons Are Brutal and Deadly. That's Something We Can Change*, Gothamist (Feb. 21, 2019). And it is not safe to forever be branded as a “criminal,” or worse, as a “violent felon.” See *Strieff*, 136 S. Ct. at 2069-70 (Sotomayor, J., dissenting) (describing the “civil death” that accompanies criminal convictions). In sum, New York’s licensing requirements are not safe.

And these licensing requirements also violate the Constitution. They allow New York to deny Second Amendment rights to thousands of people, and to instead police and criminalize them for exercising those rights. Such a policy is the type that “the enshrinement of constitutional rights necessarily takes . . . off the table.” *Heller*, 554 U.S. at 636.

The Court must not “stand by idly” while New York denies its people the right to keep and bear arms, “particularly when their very lives may depend on it.” *Peruta v. California*, 137 S. Ct. 1995, 2000 (2017) (Thomas, J., dissenting from the denial of certiorari). It must create a rule that will in fact protect the Second Amendment rights of “all” the people. See *McDonald*, 561 U.S. at 773. Achieving that goal requires that the Court answer the question presented by holding for the 34 Petitioners and reasoning that New York’s licensing regime violates the right to keep and bear arms.

Maryland has followed a similar path to New York’s for decades and is continuing to effectively eliminate the 2<sup>nd</sup> Amendment for whole classes of people who deserve to be able to exercise it like anyone else. It is long past time for this state to change its ways in regards to guns.

HB1206 should be amended so that it does not otherwise prohibit individuals from carrying other types of weapons for personal defense. As currently written, it could conflict with the ability to carry other firearms, certain knives, and even *nunchaku* (for all the Bruce Lees among us).

I urge a favorable report with these amendments in-mind.

A handwritten signature in blue ink, appearing to read 'D. Carlin-Weber', with a small circle at the end of the signature.

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