



Testimony for the Senate Judicial Proceedings Committee

March 30, 2022

SB 861 - Public Safety - Firearm Crimes - Enforcement Center, Offenses, and Procedures

UNFAVORABLE

For the reasons expressed below, the undersigned organizations respectfully urge an unfavorable report on SB 861 - Public Safety - Firearm Crimes - Enforcement Center, Offenses, and Procedures.

Senate Bill 861, as amended, expands the definition of a crime of violence to include the use of a firearm in the commission of possession with the intent to distribute a CDS. Additionally, the bill expands the types of cases in which the State may appeal from a decision of a trial court and alters the classification of certain crimes involving firearms, increasing the classification from a misdemeanor to a felony when a firearm or assault weapon is used during the commission of a felony or crime of violence. This bill also allows judges to deny pre-trial release to individuals charged with certain firearm-related crimes. SB 861 also establishes theft of a handgun as a felony, punishable by up to five years in prison. The bill also formally establishes the Maryland State Police Gun Center as a statewide firearms enforcement center for the tracking, screening, and vetting of all firearm crimes committed in the State.

Expanded Appellate Rights for States Attorneys is improper and likely ineffective

SB 861 adds crimes of violence as defined in § 14–101 of the Criminal Law Article to the list of criminal cases in which the State may appeal from a trial court decision to exclude evidence or require the return of property alleged to have been seized in violation of the U.S. Constitution, the Maryland Constitution, or the Maryland Declaration of Rights.

The Baltimore City Police Department's Gun Trace Task Force has recently come under fire for improperly seizing money, drugs, and other contraband. Expanding the appellate rights of the State – especially in light of these circumstances – is improper. The exclusion of this evidence serves a deterrent effect by discouraging unconstitutional behavior by our law enforcement.

Harsh criminal penalties are disproportionately levied against communities of color

More serious charges such as those proposed in SB 861 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.

Long 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. By increasing the number of persons subject to incarceration, SB 861 threatens to undermine the progress and savings under the JRA, which the state is only just beginning to realize.

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

¹ See Ken Willis, *Maryland's 2016 Criminal Justice Reform (The Pew Charitable Trusts) (2017)*, at 3-4, <http://gocep.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://gocep.maryland.gov/jrcc/documents/jrcc-final-report.pdf>

In fact, no evidence indicates that there is a public safety benefit to increasing sentence lengths.³ Indeed, the evidence shows that more severe sentences do not deter crime more effectively than less severe sentences.⁴ 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.⁵

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.⁶ (*internal citations omitted*)

Thus, this bill is an unfortunate step in the wrong direction, based on failed policies that have undermined public safety and community stability for decades. 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. 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 SB 861 fail to understand that safety is inextricably intertwined with equity and economic opportunity. Investing in and

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

⁵ Id.

⁶ Maryland Justice Reinvestment Coordinating Council—Final Report (December 2015).

expanding opportunities for Maryland's communities is a smarter way to address public safety. Instead of 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.⁷

For the forgoing reasons, the undersigned organizations respectfully urge an unfavorable report on SB 861.

Respectfully,

ACLU of Maryland
Family Support Network
Justice Policy Institute
Leaders of a Beautiful Struggle
Maryland Office of the Public Defender

⁷ 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/jailovertime.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](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](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/>