Brent Amsbaugh SB0745 Testimony .pdf
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Brent Amsbaugh

SB0745 Written Testimony

I do not understand this body. The nature of this bill seems to be to attack newly minted concealed carry permit holders in an attempt to dissuade us from exercising our **right** to carrying firearms outside the home for self-defense.

This is the time where our representatives should be strengthening our rights, not attacking lawful gun owners and dreaming up ways of sending us to prison. If you must move forward with this, please remove the jail time or amend it to be a fine. If you cannot see fit to do that, limit the jail time to two years of less for those who did not intend to break the law. This is yet another attack on otherwise law-abiding citizens exercising out constitutionally protected **right**. If it is the desire of the states attorney general not to prosecute lawful concealed carry holders, then put it in writing in this bill.

I feel the least safe when driving with my daughters from point A to point B. Carjackings have increased greatly. Do you expect me to disarm myself and not be able to protect them? This does not meet the requirements of history, text, and tradition as set for in the Bruen decision.

The Supreme Court ruled that "the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct.". All this bill seeks to do it through me in prison, strip me of my **right** to keep and bear arms, and catastrophically harm my children and my wife in convicted.

Neighboring states have higher rates of concealed carry holders and much lower murder rates and violent crimes as a result. Having more guns in the hands of law-abiding citizens makes us safer in general, and there is plenty of proof, if you would just open your minds to the possibility that this bill is a step in the wrong direction.

230313-SB745-handgun-penalties.pdf
Uploaded by: Christine Hunt
Position: UNF

Christine Hunt and Jay Crouthers
1014 Dockser Drive
Crownsville, MD 21032

March 13, 2023

Maryland General Assembly
Members of the Judicial Proceedings Committee
Annapolis, MD

RE: SB 745 – Criminal Law – Wearing, Carrying, or Transporting Handgun – Penalties (Gun Violence Accountability Act)

Dear Senators,

We oppose SB745 and respectfully request that you vote against it.

The current penalties in this law are sufficient. Adding more prison time and fines seems unnecessary and will be lacking in any kind of effectiveness in curbing gun violence.

Sincerely,

Christine Hunt and Jay Crouthers

DC-W_SB 745_UNF.pdf

Uploaded by: Daniel Carlin-Weber

Position: UNF

Daniel J. Carlin-Weber
SB 745
Unfavorable
3/14/2023

I am a professional firearms instructor and advocate of responsible firearms handling and ownership. I teach through my Baltimore City-based company, C-W Defense, and hold numerous credentials related to firearms instruction including being recognized as a Qualified Handgun Instructor by the Maryland State Police. Since 2016, I have taught Marylanders from all walks of life how to safely operate firearms and the responsibilities that come with them. I come before you today to urge an unfavorable report for Senate Bill 745.

Among other things SB 745 does, it increases the maximum penalty for the unlawful wear, carry, and transport of a handgun found in MD Code, Criminal Law, § 4-203(c)(2)(i) from three years to five. This testimony focuses on this point; further penalizing a first offense for what is otherwise considered a right and not necessarily an offense committed by someone who is harming or means others any harm. Section 4-203 *already* imperils Marylanders with a penalty that effectively makes legal gun ownership impossible upon conviction, even for simple mistakes. Increasing that potential penalty will do nothing to deter those wishing harm on others, but it will further threaten peaceable Marylanders, including the more than 100,000 (and increasing) holders of a Wear and Carry Permit issued by the State Police.

Section 4-203(a)(1) lacks any requirement that a violator *knew* they were in violation of the law, whereas (a)(2) does provide that it is a defense that someone didn't know, but only if they're in a vehicle. It is *very easy* to run afoul of the current law, as among other considerations, a permit issued by the State Police to carry a handgun is only valid where firearms are allowed by law. If someone were to mistakenly be in a place where it's illegal to possess a firearm, say a rest area (in COMAR 11.04.07.12) or on their way home from work using the bus (MD Code, Transportation, § 7-705(b)(6)), their permit is not valid and they're now carrying as if they had no permit at all – squarely within the sights of Section 4-203. Even forgetting one's permit at home can leave one vulnerable to being outside the bounds of 4-203. See MD Code, Public Safety, § 5-308 (requiring one to be in physical possession of the permit when carrying a handgun). The current law is dangerous enough to innocent people. This body should at least consider including a requirement that violators know they're breaking the law and consider lessening the penalties under current law for those who are otherwise law-abiding and are not prohibited from possessing.

In 2020, the General Assembly's Task Force to Study Crime Classification and Penalties recommended requiring *mens rea* by default in criminal statutes in their interim report from December 2020. https://bit.ly/34qJwvY. The Maryland Court of Appeals has likewise 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). "Guns are bad" cannot and should not be the basis for casting aside due process protections and if someone is to be sent away to prison for a crime involving a gun (or any crime), a showing that they *actually* meant to commit the act should be required.

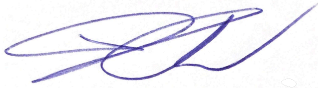
Maryland's approach to criminalizing gun ownership has not changed much in the last 50 years. In 1972, the General Assembly likewise found itself responding to public outcry on the pervasiveness of violent crime and access to guns (See that bill file here: https://bit.ly/3JZ8Ag8). Governor Mandel sought 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.

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 (available here: https://bit.ly/3IhL4K3). It is extremely weary of relying exclusively on a carceral approach to public safety and goes into great detail about how possessory firearms charges are lodged all but exclusively toward communities of color. See pp. 65-67. The emphasis, as the report suggests, should be to focus on holding those committing violence accountable, supporting intervention programs and conflict resolution, and not merely going after illegal possessors by siccing more police on more people. Furthermore, it is worth reading the amicus brief submitted by the Black Attorneys for Legal Aid and Bronx Defenders in support of the petitioners in *New York State Rifle & Pistol Association Inc. v. Bruen* (2022) 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.

Certainly, wanting violent and dangerous criminals held to account and improving public safety are laudable goals and priorities of this committee. However, consideration of this bill and the other bills this committee has seen in response to the US Supreme Court's holdings in *Bruen* absolutely must honestly incorporate these realities of what gun control enforcement entails and what its effects have been and will be. An examination of Maryland's existing gun laws in this context is more appropriate, rather than making already draconian laws more so.



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In Opposition SB 745 CCJR.pdf
Uploaded by: Heather Warnken
Position: UNF

<u>**TESTIMONY IN OPPOSITION: SENATE BILL 745**</u>

Criminal Law - Wearing, Carrying, or Transporting a Handgun

TO: Members of the Senate Judicial Proceedings Committees

FROM: **Center for Criminal Justice Reform, University of Baltimore School of Law**

DATE: March 14, 2023

My name is Heather Warnken and I am the Executive Director of the University of Baltimore School of Law's Center for Criminal Justice Reform. The Center is dedicated to supporting community driven efforts to improve public safety and address the harm and inequity caused by the criminal legal system. In direct alignment with both pillars of this mission, we are strongly opposed to SB 745. On behalf of our center and the undersigned parties, we are grateful for the opportunity to share the reasons why.

SB 745 would eliminate exceptions for the mandatory minimum penalties for unlicensed gun possession, and increase the maximum prison term for wearing, carrying, or knowingly transporting a handgun from 3 to 5 years. This bill will exacerbate existing sentencing disparities, undermine public safety, and, counter to what some advocates have suggested regarding a similar bill, do nothing to increase the "certainty" of punishment.

To be clear: addressing the scourge of gun violence, and the immeasurable pain resulting from the growing number of illegal guns in our communities specifically, must be of utmost priority. Residents throughout the state, especially in low income communities bearing the brunt of this violence, are rightfully very concerned. It is because we care deeply about this crisis and the safety of our communities, not in spite of it, that we are opposed to this bill.

Mandatory minimums defeat the purposes of sentencing and exacerbate racial disparities in the criminal justice system

By eliminating an exception to Md. Code, Crim. Law § 14-102, SB 745 essentially creates a mandatory minimum for first time offenders who carry an unlicensed handgun. As Judge Stephanos Bibas has explained, mandatory minimums force judges to sentence with "sledgehammers rather than scalpels."[1] By eliminating discretion, mandatory minimums prevent judges from sentencing the individual in front of them on the basis of the specific circumstances of their crime. It is a foundational principle of American justice that the punishment should fit the crime. MD 4-203 involves a misdemeanor for carrying a handgun in public without a license. One can imagine a wide range of scenarios that would satisfy the elements of the crime from the dangerous individual preparing to commit a crime of violence to the

[1] Stephanos Bibas, Plea Bargaining Outside the Shadow of Trial, 117 Harv. L. Rev. 2463, 2487 (2004).

domestic violence victim who arms herself for fear of attack or the unthinking defendant who simply holds a friend's gun for a moment. While the facts of some cases might warrant a carceral sentence, it is critically important that judges maintain their ability to tailor the sentence to the circumstances of the defendant who stands in front of them.

Moreover, despite claims that mandatory sentences would reduce racial disparities in the criminal justice system, they have, in fact, exacerbated the problem of unequal treatment. Mandatory minimums shift power away from judges to prosecutors. Prosecutors can sidestep a mandatory minimum by targeting charges or by choosing whether to meet critical notice requirements that might trigger a mandatory sentence. In fact, one study suggested that prosecutors bring mandatory minimum charges "65% more often" against Black individuals than against other defendants, all else remaining equal.[2]

SB 745 forces judges to saddle every defendant with a criminal conviction

SB 745 eliminates language that would allow a judge to sentence a first time gun offender to probation before judgment. As with mandatory minimums, this proposal will undermine the ability of judges to fit the consequences to the facts of the crime and the defendant. Forcing a judge to impose a criminal conviction that will burden every first time gun offender with a criminal record for life is not sound public safety policy.

Increasing prison sentences is based on a false premise and is not going to make the public safer

The evidence is simply not there to support SB 745. And in fact, there is a great deal of evidence to suggest this bill will be harmful to public safety. Here's why.

Much like the United States has established itself as an outlier with gun violence, with 5% of the world's population and more than 20% of the world's prison population, the U.S. stands out by incarcerating more of its residents than any nation on earth.[3] Within this context of punitive excess nationwide, Maryland holds the shameful distinction of ranking first in the nation in racial disparities through its over-incarceration of Black men and youth.[4]

In addition to establishing mandatory minimums for first time gun offenders, SB 745 increases the maximum penalty for the misdemeanor for Wearing, Carrying, or Transporting a Handgun to five years. Supporters of such an increase have downplayed its potential impact on mass incarceration. However, longer sentencing ranges that rely on prosecutorial and judicial discretion to identify who deserves greater punishment have been demonstrated to lead to harsher sentences for Black, brown and poor defendants

[2] See M. Marit Rehavi & Sonja B. Starr, Racial Disparity in Federal Criminal Sentences, 122 J. Pol. Econ. 1320, 1350 (2014).
[3] https://www.aclu.org/issues/smart-justice/mass-incarceration.
[4] The Sentencing Project, The Color of Justice: Racial and Ethnic Disparities in State Prisons at 20 (2021).

than their white and wealthier counterparts.[5] The explicit goal of this bill to increase sentences represents a return to the failed policies that led to our current mass incarceration problem.

This can be true for first time defendants, but also fueled by seemingly "objective" criteria utilized to drive decision-making; for example, an individual's prior arrest and conviction record. Factors used when applying that discretion are often more heavily influenced by whether or not that person's poor, Black neighborhood is hyper-surveilled than it is illegal behavior. And can be influenced by defendant characteristics such as race, gender identity, socioeconomics, and disability status, leading directly to the disparities documented across the continuum of arrests, prosecutions, convictions, and sentencing.[6] Also relevant to predictable outcomes in sentencing if SB 745 were to raise the ceiling is the concept of "anchoring," which research has found judges to be as susceptible to as the general population.[7]

Mandatory Minimums and Unnecessarily Longer Sentences Exact a Heavy Toll on Defendants and Their Communities

The impact of incarceration on individuals, families and communities is staggering, including the extensive list of collateral consequences that can follow a justice-involved individual for years, well after a case or period of incarceration concludes.[8] Time incarcerated, away from one's family, peers, employment, or school can have cascading negative consequences, spanning numerous areas central to a person's ability to survive and thrive. These include job loss, impeding access to stable housing, education and healthcare disruption, voting, occupational licensing, loss of public benefits, parent-child separation and more.

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[5] U.S. SENTENCING COMMISSION REPORT ON THE CONTINUING IMPACT OF UNITED STATES V. BOOKER ON FEDERAL SENTENCING 108 (2012) (finding that prison sentences of black men were nearly 20% longer than those of white men for similar crimes between 2007 and 2011); Blackness as Disability?, Kimani Paul-Emile, in Georgetown Law Review 2018; Chris Guthrie et al., Blinking on the Bench: How Judges Decide Cases, 93 CORNELL L. REV. 1 (2007): In this study, the researchers found the judges rely heavily on intuition in sentencing, which can lead to discriminatory results. Id. at 131. MIRKO BAGARIC ,GABRIELLE WOLF, DANIEL MCCORD, Nothing Seemingly Works in Sentencing, Not Mandatory Penalties; Not Discretionary Penalties - But Science Has the Answer, at 524-26.

[6] Blackness as Disability?, Kimani Paul-Emile, in Georgetown Law Review from 2018,https://www.law.georgetown.edu/georgetown-law-journal/in-print/volume-106/volume-106-issue-2-january-2018/blackness-as-disability/; Cauley, Erin. The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender, Am J Public Health. 2017 December; 107(12): 1977–1981, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5678390/.

[7] Chris Guthrie et al., Inside the Judicial Mind, 86 CORNELL L. REV. 777, 816 (2001); Forensic Science and the Judicial Conformity Problem, 51 Seton Hall L. Rev. 589 (2021), 610-611. As explained by University of Baltimore Law Professor Katie Kronick, "with the cognitive bias "anchoring," if a person is asked to guess how much a pencil costs and is told that the pencil costs less than $10,000, the person is likely to guess a higher number than a person not told about the $10,000 limit, even though it is preposterous that a pencil would cost even close to $10,000. People use that "anchor" of $10,000 as a shortcut to try to determine the cost of the pencil, and some might, perhaps unconsciously, assume that if $10,000 is mentioned, the pencil must be worth more than they otherwise would have thought.

[8] https://goc.maryland.gov/incarceration/.

Claims that people need to experience prison time as opposed to local jail, where they would be incarcerated farther away from their community, in institutions such as Cumberland, Hagerstown and Jessup, are misguided. Sending a person to a state-run facility farther from home exacerbates these impacts and collateral consequences, especially the disconnection from family members, a direct contributor to risk of recidivism upon release.

Given that this is a plan to try to send people farther from home, it is also worth drawing special attention to the profound impact that will have on family members, especially children.[9] For families with lower means, time off of work and transportation to these facilities can be especially burdensome if not impossible; stress borne by mothers, grandparents, and numerous other loved ones. A large percentage of the incarcerated population overall, and undoubtedly individuals who will be impacted by this bill, are parents. A large body of literature on children with incarcerated parents demonstrates the trauma and severe disruption parental incarceration can cause to a child's life.[10] In addition to the health and wellbeing of all involved, visitation with children is also key to preserving parental rights. This bill will increase the number of children whose relationships with their parents will be legally severed forever.[11]

Scores of reputable studies demonstrate that 1) remaining in close touch with loved ones reduces recidivism,[12] and 2) prisons too often do the opposite of rehabilitate; they cause trauma.[13]

The alarming recent revelations surrounding the conditions of confinement in Maryland facilities, including the violence, overdoses, and other unexplained deaths in Baltimore's jails should also call these statements into question. As reported by the Baltimore Banner (not the State of Maryland), at least four deaths have occurred in Central Booking in the past four months.[14] Relatedly, in August 2022, the ACLU National Prison Project published a letter following a visit to the Baltimore Central Booking and Intake Center, stating, "people in [Baltimore Central Booking and Intake Center] IMHU are held in the harshest

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[9] Eric Martin, Hidden Consequences: The Impact of Incarceration on Dependent Children, National Institute of Justice (2017).

[10] Nat'l Research Council, The Growth of Incarceration in the United States: Exploring Causes and Consequences 270-73 (Jeremy Travis et al. eds., 2014), 270-273.

[11] https://www.themarshallproject.org/2018/12/03/how-incarcerated-parents-are-losing-their-children-forever; https://law.yale.edu/yls-today/news/clinic-releases-report-preserving-parental-rights-incarcerated-parents.

[12] Karen De Claire and Louise Dixon, The Effects of Prison Visits From Family Members on Prisoners' Well-Being, Prison Rule Breaking, and Recidivism: A Review of Research Since 1991, Trauma, Violence and Abuse (2017).

[13] Benjamin Hattem, Carceral Trauma and Disability Law, Stanford Law Review (2020) (summarizing studies on experiences of trauma during incarceration).

[14] www.thebaltimorebanner.com/community/criminal-justice/deandre-whitehead-jail-death-W2UHGCYAJJGEJO4SMUJ7QR4SIU/; https://www.thebaltimorebanner.com/community/criminal-justice/death-baltimore-central-booking-3GSA2X7OWREJJJA6TZVNZMWAF4/; https://www.thebaltimorebanner.com/community/criminal-justice/he-didnt-have-a-fighting-chance-questions-surround-killing-of-deaf-man-in-baltimore-jail-WHUNVECKTNEBNMYNKWY7H3L6OA/.

and most depraved conditions we have ever encountered in any prison or jail in the United States, including in death row and 'supermax' units."[15]

The truth about deterrence

The evidence suggests that deterrent effects from longer prison sentences are minimal to nonexistent, and any minimal effect is severely costly - financially to the state, and to the stability of that person's life.[16] This is often bad for public safety, with studies demonstrating that unnecessary incarceration, especially when compared to more cost effective non-custodial responses such as programming or probation, "does not prevent reoffending and has a criminogenic effect on those who are imprisoned."[17]

B 745 also relies on a conflation of the difference between "certainty" versus "severity" of consequences. The research is clear that certainty of apprehension and response for committing gun offenses is more important and cost-effective in reducing crime than increasing the length of sentences.[18] Furthermore, incarceration for unlicensed gun carrying is described in the research as both unjust and counter to public safety, due to the ways unnecessary incarceration infringe on residents' liberty and make individuals more - not less - likely to commit crimes.

Although our center posits that by far the greatest return on investment in reducing gun violence will come in the form of a long list of currently under-invested health and healing oriented strategies in disinvested communities, currently the criminal legal consequences for illegal gun possession are not certain at all, due to many systemic deficiencies surrounding how illegal gun possession is policed and prosecuted.[19] A 2020 report from the Johns Hopkins University Center for Gun Violence Policy and Research cites a long list of factors impacting case outcomes that are in the purview of the State's Attorney's Office, including the need for better data sharing and transparency with government partners, improved quality and maintenance of evidence, improving relationships needed to work with community in the course of prosecution, and working to curb illegal police stops and searches that create evidentiary issues in court.[20]

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[15] www.aclu.org/cases/duvall-v-hogan?document=duvall-v-hogan-report-plaintiffs-counsel-august-2-3-2022-jail-visit.
[16] Webster et al, *Reducing Violence and Building Trust*, Johns Hopkins Center for Gun Policy and Research. Nagin, *Deterrence in the Twenty-First Century*, Crime and Justice Vol. 42 No. 1, August 2013. One study limited to the Federal System, titled, ""Length of Incarceration and Recidivism" did challenge the claim that longer sentences did not reduce recidivism. However, that study specifically found that increasing a sentence from 3 to 5 years as proposed by SB 751 would <u>not</u> improve public safety by decreasing recidivism. See USSC, Length of Incarceration and Recidivism (Apr. 29, 2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/researchpublications/2020/20200429_Recidivism-SentLength.pdf ("USSC Report").
[17] Webster et al, *Reducing Violence and Building Trust*, Johns Hopkins Center for Gun Policy and Research, pp. 24. Nagin, *Deterrence in the Twenty-First Century*, Crime and Justice Vol. 42 No. 1, August 2013.
[18] Id.
[19] Id. pg. 4
[20] Id. pg. 21-22.

UNIVERSITY OF BALTIMORE
Center for Criminal Justice Reform

This bill is not an effective answer to the underlying problem of illegal gun possession

The prevalence of illegal guns in our communities is indeed a serious problem, and directly contributes to the high rates of homicide and nonfatal shootings in Baltimore City and too many other parts of the state. However, this bill does not address the real problems we are trying to solve, including the factors that lead too many residents to carry and use those guns to commit violence in the first place. As discussed above, the destabilizing impacts of incarceration, collateral consequences and disenfranchisement that follow a conviction, combined with lack of sufficient rehabilitative and reentry programming,[21] lead the overwhelming percentage of incarcerated people to return home to their communities more vulnerable than they were before.

In other words, SB 745 will make these problems worse. For individuals with a history of experiencing violence in their community or in prison, fear of being victimized is a powerful motivator for carrying a firearm.[22] For far too many people who have not accessed meaningful support services, this runs deep.[23]

A poignant illustration comes from research in a Baltimore neighborhood where 9 in 10 residents are Black, and half the families live below the federal poverty line, which found that among 40 young men age 18–24 in a homicide support program, they had collectively experienced the deaths of 267 peers, family members, and other important adults in their lives. Nearly half were homicides. Only three of the youth had not suffered the loss of a biological family member or close peer to homicide.[24]

The reality is that most people are not aware of nor weighing criminal penalties when making the decision about whether to possess a gun, especially when motivated by their own survival. This is especially true for those carrying the physiological and emotional weight of untreated trauma.

An ever-growing body of research on trauma is critical for informing more effective policy solutions to the gun violence epidemic we are trying to address. It promotes opportunities to ask better questions about what people actually need to heal and feel safe, guided by a more evidence-based incorporation of the historical, systemic, and individual trauma the highest risk population using and disproportionately dying by these firearms face. Trauma reactions vary across individuals, cultures and experiences, but there is often an underlying element of fear which motivates behavior, especially when untreated.[25] A survivor's nightmares after victimization represent a trauma reaction, just as another survivor deciding to carry a weapon also may represent a trauma reaction. Fight, flight, freeze, and fawn responses are occurring in

[21] Maryland Reentry Resource Center, 2022 Reentry Impact Report, https://mdrrc.org/.
[22] Webster et al., *Reducing Violence and Building Trust*, Johns Hopkins Center for Gun Policy and Research, 2022.
[23] Warnken et al, *Victim Services Capacity Assessment Report*, USDOJ National Public Safety Partnership, July 2021.
[24] Smith, J. R. "Unequal Burdens of Loss: Examining the Frequency and Timing of Homicide Deaths Experienced by Young Black Men Across the Life Course." American Journal of Public Health, 105(S3), (2015): 483–490.
[25] Warnken et al, *Victim Services Capacity Assessment Report*, USDOJ National Public Safety Partnership, July 2021

the body. Those internal body responses to threats not only impact decision making, but can have long-term health outcomes for survivors (e.g., sleep disturbance, hypertension, early death).[26] In fact, there are striking differences in average life expectancy across certain Baltimore zip codes with the highest rates of gun violence, concentrated poverty, and other stressors compared to more affluent communities well-documented in the data, i.e., 84 years in Homeland compared to within the 60s in Clifton-Berea, Greenmount East, Upton/Druid Heights and more, despite their close geographic proximity within the same city.[27]

Many in Maryland and across the country are unifying around the need to understand violence as a public health epidemic. Yet contrary to this approach, the trauma reactions in plain sight are still often evaluated solely through a lens of sufficiency of punitive response. Rather than apply the data to create community safety through healing, we continue to exile many of those who need that healing most from eligibility for support, and, through unnecessary incarceration, from their community. When the underlying trauma reactions are not recognized and/or overcriminalized, we undermine numerous opportunities for prevention of future victimization or perpetration of harm.

Uplifting this data is in no way intended to absolve harmful behavior, or discount the need for real accountability. Rather, the knowledge that the source of harmful behavior is often trauma-reactive rather than bad or irredeemable character flaws is critical to effective public safety measures. While it is often stated that "today's victims are often tomorrow's perpetrators" and vice versa, this well-documented reality has often not translated effectively into policy and practice in the criminal legal system - even when that system purports to not be exclusively about punishment.

This bill ignores the lack of trust between police and communities hardest hit by gun violence

More effectively addressing the reasons residents carry illegal guns also requires acknowledging another elephant in the room: the lack of trust between those living in neighborhoods hardest hit by gun violence and the police. This bill seeks to threaten and punish individuals into putting down illegal firearms, while at the same time ignoring that many of those same individuals have little to no faith in the party the government claims will protect them from other people's guns.

Beyond questioning the responsiveness of law enforcement in the aftermath of victimization, many downright fear or resent the police. Police violence and mistreatment is exponentially more prevalent for Black, brown, and low income residents,[28] and when combined with other forms of low confidence in government systems, leads too many residents to view gun carrying as a necessary means of self

[26] Id.
[27] "Neighborhood Health Profile Reports.", *Baltimore City Health Department*, 9 Jun. 2017, health.Baltimorecity.gov/neighborhood-health-profile-reports.
[28] https://mappingpoliceviolence.us/.

defense.[29] The recent horrific killing of Tyre Nichols and recurring incidents throughout the country create a steady pace of tragic reminders that we have not fully reckoned with prevalent abuse of power and violence at the hands of police. Until we improve trust and legitimacy of the legal system in the eyes of those making decisions about how to keep themselves safe, we can continue to expect high rates of illegal gun possession.

Even the nightmare of Baltimore's Gun Trace Task Force (whose purported focus at one point was arresting individuals illegally possessing guns) is not past but present, still playing out in Maryland's courts. Hundreds of cases involving those officers have since been dropped or vacated, and if the latest settlement payment to those victimized by the unit is approved, it will bring the total payouts by the city connected to GTTF to $22 million.[30] Given the tremendous amount of work still needed to improve trust and legitimacy of police and other actors in the system, there are many policy solutions that would better convince those most fearful of calling the police that they should put down their guns.

Since the death of Freddie Gray in 2015, homicides in Baltimore have exceeded 300 per year. Many residents of color living in the hardest hit communities across the city have experienced a sense of both over and under-policing, i.e., high rates of arrest for minor offenses their white, wealthy counterparts engage in routinely with impunity (e.g., drug use), and abysmally low arrest and clearance rates for serious violent crime,[31] which has further exacerbated their sense of vulnerability and lack of trust in police and city government. The increase in gun carrying is reflective of the culture of fear throughout this country that has resulted in record surge of gun purchasing since the onset of the Covid-19 pandemic.

Research ties this unfinished work of repair and trust-building as vital to gains in public safety in numerous ways.[32] Eroded police legitimacy can actually decrease compliance with the law, and significantly impacts the willingness of community members to share information with law enforcement officials trying to solve or prosecute cases.[33] We are not talking enough about the crisis of clearance rates throughout the state, which in Baltimore dropped again last year for homicides to 36% (lower for nonfatal

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[29] Webster et al., *Reducing Violence and Building Trust,* Johns Hopkins Center for Gun Policy and Research, pg. 28-29, 2022.

[30] www.baltimoresun.com/politics/bs-md-ci-baltimore-settlement-gttf-burley-johnson-20230208-bv4rxxn6rrfrfpfwz5tv7wo7k4-story.html.

[31] Professor David Kennedy of John Jay College of Criminal Justice, Director of the National Network of Safe Communities described this phenomenon in the LA Times as, "what families in stressed black neighborhoods have experienced, very high rates of arrest for minor offenses white folks routinely get away with, and shockingly low arrest rates for serious violent crime. The cause of the latter is not as simple as deliberate police withdrawal - it's a toxic mix of a terrible history of exactly that, and a nearly as toxic present of mistrust, broken relationships and bad behavior on both sides - but the result is the same. Being overpoliced for the small stuff, and under-policed for the important stuff, alienates the community, undercuts cooperation and fuels private violence: which itself often then drives even more intrusive policing, more alienation, lower clearance rates, and still more violence." https://www.latimes.com/opinion/bookclub/la-reading-los-angeles-kennedy-ghettoside-20150404-story.html.

[32] Warnken et al., *Victim Services Capacity Assessment Report*, USDOJ National Public Safety Partnership, July 2021; Webster, Crifasi, Williams, Booty, Buggs, *Reducing Violence and Building Trust,* Johns Hopkins Center for Gun Policy and Research, pg. 9, 2022.

[33] Id.

shootings), which *includes* cases where any arrest was made or the case was “cleared by other means,” such as the suspect is subsequently murdered. To say we have work to do is an understatement. None of this is fixed, and is likely made worse, by this bill.

A more promising policy agenda for reducing gun violence

Though there is little research evidence to support this bill, the good news is there are many highly promising strategies for reducing gun violence that we have yet to fully embrace.

A recent report I co-authored on the response to victims of violence in Baltimore in my previous role, as part of the U.S. Department of Justice Public Safety Partnership Program (PSP), focused on those who are so often most harmed yet least helped by our systems of support - Black and brown victims of gun violence. The report details the prevalence of mistreatment by the criminal legal system, numerous barriers and gaps in services, and the implications of this.

The reality that repeatedly emerged in our assessment is that Black residents impacted by violence, especially those who are low income or who have ever touched the system previously, are more likely to be criminalized than seen as human beings deserving of dignity and support. Even surviving loved ones of homicide victims, witnesses at crime scenes, and people fighting for their lives in hospital beds are experiencing additional trauma at the hands of the system, including rights violations and coercion, in the course of investigations, prosecutions, and beyond. Throughout the over 50 hours of recorded confidential interviews our team conducted, service providers in multiple settings repeatedly expressed how they often feel they are expending their limited resources trying to protect victims from the system rather than proactively helping them heal.

These dynamics don’t just fail residents in their most difficult moments. They profoundly worsen the relationship between the community and police, and the system as a whole. They undermine police and prosecutor’s own investigative goals. They alienate victims and witnesses who face genuine threats to their physical safety, who subsequently get characterized as emblematic of “stop snitching” culture. They miss opportunities to interrupt cycles of harm and violence stated as top of every elected leader's agenda.

The report identifies numerous opportunities for public safety and prevention in the community, public health, and criminal legal system realm, especially for those living at highest risk, such as addressing the current deficiencies in victim/witness relocation and Criminal Injuries Compensation Board benefits eligibility. Most importantly, the report proactively offers 21 recommendations for changing policy, practice and culture urgently needed to more effectively help residents heal and reduce violence, including the homicides and retaliatory shootings committed with illegal guns.

The work starts with respect for human dignity. It depends on collaboration across community and government toward a more holistic set of public safety goals. The work requires repair and investment in

our long-divested communities - the same communities bearing the brunt of gun violence, which research now directly ties to their history of being redlined.[34] We have not reckoned with this intergenerational exclusion. We have continued it through a fiscally and morally unsustainable overreliance on incarceration, rather than scaling an evidence-based infrastructure of opportunity and care.

There are many other highly promising strategies that would produce a far greater return on investment in addressing the problems this bill seeks to address, and this testimony will do nothing close to providing a comprehensive list. However, we will cite a few important examples, including addressing unmet needs in reentry, and numerous ideas listed in the Johns Hopkins report; for example, the need for a government funded collaboration with community-based organizations and academic institutions to develop, implement and evaluate a program to reduce the risk of an individual previously charged with illegal gun possession from commiting gun related crimes. And, relatedly, growing the availability and follow-up capacity for anti-violence programs such as ROCA and its evidence-based cognitive behavioral therapy model for youth up to 25, to reach a greater percentage of all ages of the highest risk population currently carrying guns.

The promising work of Maryland's hospital based violence intervention programs is also far from realized. Some program staff feel as though they are "bailing water out of the ocean with a thimble"; under-capacity for meeting the needs of victims, and facing too many headwinds protecting the rights and dignity of their patients from ongoing criminalization of those patients by law enforcement to have yet been given a real chance to succeed.[35]

It is both a public safety and a racial justice imperative to end this ineffective reliance on criminalizing the same Black, brown, low income communities this country has long excluded and abandoned, especially while leaving so many promising health and healing oriented strategies on the table. We have to have the courage to give these evidence-based and emerging solutions a chance to work, rather than regressing to politically expedient yet utterly failed strategies of the past.

Similar to the "tough on crime" failed strategies of the war on drugs, we cannot and will not incarcerate our way out of the epidemic of gun violence. The well documented history of that "war" demonstrates that knee jerk reactions to crime not grounded in science and evidence will continue to produce negative results in the short and long term. We can't afford that.

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[34] Warnken, *A Vision for Equity in Victim Services: What Do the Data Tell Us About the Work Ahead*, noting recent analysis examining the enduring impact of redlining, the pattern of deliberate disinvestment widely practiced from the 1930s onward. In particular, this study looked at Census Tracts placed within red zones in 1937 and found that they now have more than eight times the amount of gun violence than those places that had been previously placed in the green. In other words, the same places imagined to be "unworthy of economic investment" due to residents' race and ethnicity are the places where gun violence is most common today. https://ovc.ojp.gov/media/video/12971. Currie, *A Peculiar Indifference: The Neglected Tool of Violence in Black America,* Metropolitan Books, 2020.

[35] Warnken et al., *Victim Services Capacity Assessment Report*, USDOJ National Public Safety Partnership, July 2021; Webster et al., *Reducing Violence and Building Trust,* Johns Hopkins Center for Gun Policy and Research, pg. 9, 2022.

When we know better, we're supposed to do better. We implore you to not go backwards.

For these reasons, we urge an unfavorable report on Senate Bill 745.

Heather Warnken
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University of Baltimore School of Law

David Jaros
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American Civil Liberties Union of Maryland

Maryland Office of the Public Defender

Katie_Novotny_UNF_SB745.pdf
Uploaded by: Katie Novotny
Position: UNF

WRITTEN TESTIMONY OF KATIE NOVOTNY IN OPPOSITION TO SB745

March 14, 2023

I am a gun owner, advocate for the right to self-defense, certified range safety officer, and a competitor in firearms competition. I oppose SB745.

Rather than increasing the penalties for non prohibited persons carrying without a permit (absent any other crime), the penalties should be reduced to a civil fine. There are already different penalties for prohibited persons or felons who are caught carrying firearms. The penalty for ordinary people should only be harsh enough to encourage people to instead apply for their Handgun Permit, now that we have a "Shall Issue" permitting scheme post Bruen.

The cost to obtain a Handgun Permit is not inconsequential. You have class fees, fingerprinting fees, cost for photographs, and then the actual permit fee. There are portions of this state where training is not readily accessible, and firearms generally cannot be transported on public transportation, making it even more difficult for some people.

A Johns Hopkins study even shows that many people carry without a permit in dangerous neighborhoods because they do not feel safe due to violent crime, and they do not feel protected by the police due to events such as those surrounding the Gun Trace Task Force. (https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/_docs/reducing-violence-and-building-trust-gun-center-report-june-4-2020.pdf)

The bottom line is that increasing penalties for non prohibited persons from carrying without a permit, absent any crime, is not how you reduce the violence plaguing our state. It simply encourages more of the same stop and frisk practices that have led to distrust of the police in the communities where citizen cooperation is most desperately needed to solve actual crimes of violence.

Because of these reasons above, I request an unfavorable report.

Respectfully,

Katie Novotny

District 35A
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MSI Testimony on SB 745 carry penalty 5 years Fina

Uploaded by: Mark Pennak
Position: UNF

March 14, 2023

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO SB 745

I am the President of Maryland Shall Issue ("MSI"). Maryland Shall Issue is a Section 501(c)(4) all-volunteer, non-partisan, non-profit organization dedicated to the preservation and advancement of gun owners' rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. I am also an attorney and an active member of the Bar of Maryland and of the Bar of the District of Columbia. I recently retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland firearms law, federal firearms law and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License ("HQL") and a certified NRA instructor in rifle, pistol, personal protection in the home, personal protection outside the home and in muzzle loader. I appear today as President of MSI in OPPOSITION to SB 745.

The Bill:

MD Code Criminal Law § 4-203(**a**), sharply limits the right of otherwise law-abiding Marylanders to wear, carry or transport a handgun in the State. Specifically, subsection 4-203(a)(1) provides in pertinent part: "(a)(1) Except as provided in subsection (b) of this section, a person may not: (i) wear, carry, or transport a handgun, whether concealed or open, **on or about the person**; (ii) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State." Subsection 4-203(a)(2) provides that "[t]here is a rebuttable presumption that a person who transports a handgun under paragraph (1)(ii) of this subsection transports the handgun knowingly." This law broadly bans such wear, carry or transport **everywhere** in Maryland.

Subsection 4-203(**b**) then establishes exceptions to the broad ban by subsection 4-203(**a**). One of those exceptions is for "the wearing, carrying, or transporting of a handgun, in compliance with any limitations imposed under § 5-307 of the Public Safety Article, by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article." See subsection 4-203(b)(2). Other exceptions include the wear, carry and possession "on real estate that the person owns or leases or where the person resides or within the confines of a business establishment that the person owns or leases" (subsection 4-203(b)(6)), the wear, carry or transport on the person or in a vehicle while the person is transporting the handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide residences of the person, or between the bona fide residence and place of business of the person, if the business is operated and owned substantially by the person if each handgun is unloaded and carried in

an enclosed case or an enclosed holster." Subsection 4-203(b)(3). Any wear, carry or transport of a handgun that is not encompassed by an exception is a crime punishable under current law with 3 years of imprisonment on first offense and/or a fine of $2,500. **This Bill would increase that term of imprisonment from 3 years to 5 years.**

Bruen: The proper analysis for cases arising under the Second Amendment is set forth in *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111 (2022), where the Court struck down as unconstitutional New York's "proper cause" requirement for issuance of a permit to carry a handgun in public. *Bruen* squarely holds that Second Amendment protects the right to carry in public while also making clear that a State may condition that right on obtaining a wear and carry permit from the State, as long as the permit is issued on an otherwise reasonable and objective "shall issue" basis. *Bruen*, 142 S.Ct. at 2138 & n.9.

Prior to the Supreme Court's decision in *Bruen*, the Maryland State Police enforced the requirement, found in MD Code, Public Safety, § 5-306(b)(6)(ii), that an applicant for a wear and carry permit demonstrate a "good and substantial reason" for wishing to carry a firearm in public. In *Bruen*, the Court specifically cited this statutory requirement as the functional twin of New York's "good cause" requirement and thus, by necessary implication, likewise invalidated Maryland's "good and substantial reason" requirement for a carry permit. See *Bruen*, 142 U.S. at 2124 n.2 (citing the Maryland statute as one of six State statutes that had "analogues to the 'proper cause' standard" of the New York statute invalidated in *Bruen*). As a result, the Maryland Attorney General and the Governor instructed the State Police that the "good and substantial reason" requirement could no longer be enforced. https://bit.ly/3UraHuB. The Maryland Court of Special Appeals agreed. *Matter of Rounds*, 255 Md.App. 205, 213, 279 A.3d 1048 (2022) ("We conclude that this ruling [in *Bruen*] requires we now hold Maryland's 'good and substantial reason' requirement unconstitutional."). Maryland wear and carry permits are thus now issued on a "shall issue" basis to all applicants who otherwise satisfy the stringent training, fingerprinting and investigation requirements otherwise set forth in MD Code, Public Safety, § 5-306(a)(5),(6).

The *Bruen* Court ruled that "the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." 142 S.Ct. at 2127. Under that standard articulated in *Bruen*, "the government may not simply posit that the regulation promotes an important interest." 142 S.Ct. at 2126. Likewise, *Bruen* expressly rejected deference "to the determinations of legislatures." Id. at 2131. *Bruen* thus abrogates the two-step, "means-end," "interest balancing" test that the courts had previously used to sustain gun laws, including the storage law at issue in *Jackson*. 142 S.Ct. at 2126. Those prior decisions are no longer good law.

The constitutionality of Section 4-203(a)'s broad ban on wear, carry and transport obviously turns on strict adherence to *Bruen*. As long as Maryland issues carry permits on an otherwise objective and reasonable basis, then the State may condition the wear, carry and transport of handguns in the State on obtaining such a permit. That said, the Maryland carry permit under existing law is quite difficult and expensive to obtain. Permit holders in Maryland are fingerprinted, thoroughly investigated by the State Police and, unless exempt,

receive at least 16 hours of training by a State-certified, private instructor. MD Code, Public Safety, § 5-306(a)(5),(6). These training requirements include a mandatory, course of live-fire in which the applicant must achieve a specific minimum score. COMAR 29.03.02.05 C.(4). Private instruction for the permit averages around $400-$500 per person. Add to that sum the $75 application fee, and the roughly $70 in fingerprint fees plus any incidental costs, such as ammunition, the cost of obtaining a permit is at least $600.00. Of the 43 "shall issue" States identified in *Bruen*, 142 U.S. at 2123 n.1, only Illinois requires as much training as Maryland. Permit holders, nationwide, are the most law-abiding persons in America, with crime rates a fraction of those of police officers. See https://bit.ly/3IeqtGu.

The Bill Wrongly *Increases* the Punishment For Exercising A Constitutional Right: Section 4-203(a) was enacted in 1972, long before Maryland or the Supreme Court recognized that public carry is a constitutional right. Under *Bruen*, there is a right to carry in public by an otherwise law-abiding citizen of the State. *Bruen* allows the State to demand that citizens obtain a carry permit, but the underlying holding of *Bruen* is that "the Second Amendment guarantees a general right to public carry," 142 S.Ct. at 2135, and that there is a "general right to publicly carry arms for self-defense." *Bruen*, 142 S.Ct. at 2134. In contrast, Section 4-203(a) was premised on the theory that carry was a privilege and that the Second Amendment did not even embody an individual right at all, much less that the right applied to the States. Those assumptions were abrogated by the Supreme Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008) (recognizing an individual right to keep and bear arms), and *McDonald v. City of Chicago*, 561 U.S. 742, 783-84 (2010) (holding that the Second Amendment was a fundamental right and thus incorporated as against the States).

Bruen now makes clear that the right to keep and bear arms extends outside the home. After *Bruen*, all 50 States and the District of Columbia are now "shall issue" jurisdictions. Twenty-four States are "constitutional carry" jurisdictions in which carry is permitted without any permit at all. Those States are Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Mississippi, Missouri, Montana, New Hampshire, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia and Wyoming. See https://bit.ly/3QM6Ms0. Almost all these States enjoy a violent crime rate well below that of Maryland. For example, Maryland's murder rate **substantially** exceeds that of neighboring Pennsylvania and Virginia, where "shall issue" carry permits have long been issued and carry is widely practiced. Maryland has the 4th highest murder rate in the country at a rate of 9 per 100,000. Pennsylvania comes in 19th highest at a rate of 5.8 per 100,000 and Virginia's rate is even lower at 5.3 per 100,000. http://bit.ly/3IdEFzr. Yet, Pennsylvania has over 1.5 million current carry permit holders and Virginia has over 800,000 permit holders (resident and non-resident). See http://bit.ly/3xca7bb (at 18). Open carry is permitted in both States. At the end of 2022, even after the surge of permit applications after *Bruen*, the State Police informed the Senate Judicial Proceedings Committee in January that Maryland had only about 80,000 permits issued by the end of 2022. http://bit.ly/3E0lAOB. Any thinking person in Maryland concerned about murder would gladly trade spots with Virginia or Pennsylvania. Honestly, does any member of this Committee truly feel unsafe in Virginia or Pennsylvania?

As explained, all law-abiding citizens enjoy this right to carry in public, subject only to the condition that a State may require such persons to obtain a "shall-issue" permit in order to exercise the right in public. After the decision in *Bruen*, State's Attorneys across the State

were forced to dismiss charges against persons who were merely carrying without a permit and who were not otherwise disqualified and had not been arrested for any other crime. Thus, the effect of Section 4-203(a) is to severely punish those persons who cannot afford the high costs of getting a permit, or have not yet, for some reason, had an opportunity to obtain a carry permit. This Bill increases the penalty for carry by these otherwise innocent people from 3 years to 5 years of imprisonment. It simply has no other application.

That increase to 5 years is unconscionable. The State should be **reducing** its penalties for unpermitted carry by otherwise law-abiding persons, not increasing such penalties. The current 3-year penalty is disqualifying under both State and federal law. See MD Code, Public Safety, 5-101(g)(3); 18 U.S.C. 922(g)(1); 18 U.S.C. 921(a)(20). Thus, a conviction under Section 4-203 permanently strips a person of his or her Second Amendment rights. A 5-year penalty would likewise be permanently disqualifying. Under *Bruen*, the State's interest in punishing carry outside the home is constitutionally limited to encouraging otherwise law-abiding persons to obtain a carry permit, which the State Police must now issue on a "shall issue" basis. Thus, the penalty for non-permitted carry should be set at the lowest level sufficient to encourage individuals to obtain the carry permit (along with the associated training and background checks). We suggest a penalty of no more than a fine. At a minimum, the penalty should not *exceed* 2 years imprisonment, which is the level at which a conviction becomes permanently disqualifying under State and federal law.

Attaching a disqualifying punishment for carry by the law-abiding is unlikely to survive judicial review post-*Bruen*. Under this standard adopted in *Bruen*, it is highly questionable whether the State may impose a firearms disqualification for a misdemeanor violation not involving a violent crime. For example, the Court of Appeals for the Fifth Circuit just applied *Bruen* to invalidate 18 U.S.C. § 922(g)(8), which imposes a firearms disqualification on a person subject to a domestic violence restraining order. See *United States v. Rahimi*, 59 F.4th 163 (5th Cir. Feb. 2, 2023), *as revised and superseded by* --- F.4th ----2023 WL 2317796 (5th Cir. March 2, 2023). Similarly, the court in *United States v. Quiroz*, --- F.Supp.3d ----, 2022 WL 4352482 (W.D. Tex. 2022), invalidated 18 U.S.C. 922(n) (imposing a disqualification for persons under indictment). And in *United States v. Harrison*, --- F.Supp.3d ---, 2023 WL 1771138 (W.D. Okla. 2023), the court invalidated 18 U.S.C. 922(g)(3), which imposes a disqualification on users of substances made unlawful by the federal Controlled Substances Act, including cannabis. See also *United States v. Price*, --- F.Supp.3d ---, 2022 WL 6968457 (S.D. W.Va. 2022) (invalidating 18 U.S.C. § 922(k), holding that criminalizing the knowing possession of a firearm with an obliterated serial number was unconstitutional under *Bruen*).

The Court of Appeals for the Third Circuit, sitting en *banc*, has just heard oral argument in *Range v. United States*, 53 F.4th 262 (3d Cir. 2022), *rehearing en banc granted*, 56 F.4th 992 (3d Cir. Jan. 2023). The issue in *Range* is whether a firearms disqualification for a non-violent State misdemeanor violation punishable by more than 2 years imprisonment is constitutional under *Bruen*. Federal law imposes that disqualification under 18 U.S.C. § 922(g), as defined in 18 U.S.C. § 921(a)(20). As noted, Maryland imposes the same disqualification under MD Code, Public Safety, § 5-101(g)(3). While a decision in *Range* has yet to issue, from the oral argument it appears that the odds are good that such a disqualification will not survive. While Maryland is in the Fourth Circuit, such a holding in *Range* will likely lead to challenges to a broad range of disqualifications imposed by Maryland law, including the disqualifications imposed by Section 4-203.

Severely penalizing carry without a permit is also counterproductive and punishes the otherwise law-abiding who carry out of fear. There is no doubt that ordinary, law-abiding citizens in Baltimore are carrying, notwithstanding Section 4-203. A 2020 Johns Hopkins study found that carry by otherwise law-abiding persons in Baltimore is very common **because** of violent crime and the lack of trust in the ability of the police to protect them. See Johns Hopkins Center for Gun Policy and Research, *Reducing Violence and Building Trust* at 5 (June 2020) ("In Baltimore neighborhoods most impacted by gun violence, residents lack faith in BPD's ability to bring individuals who commit violence to justice. Perceived risk of being shot and perceptions that illegal gun carrying is likely to go unpunished lead some residents to view gun carrying as a necessary means for self-defense.") (available at https://bit.ly/3DYKgXV). The law enforcement abuses of the Gun Trace Task Force in Baltimore are too numerous and too recent to ignore. http://bit.ly/3ZEJwAo. The social justice issues associated with further criminalizing these individuals should be apparent.

As much as some may assert that carrying is not the "answer" to violent crime, that emotionally driven belief is not shared by those who are most at risk of a violent attack. As the Hopkins study confirms, otherwise law-abiding people who fear for their safety will simply ignore State laws banning carry, **regardless** of the penalties. Increasing punishments on carrying will not deter people who perceive that their survival is at stake. As Johns Hopkins Professor Daniel Webster told the Senate in January, the data is clear that longer sentences do not deter crime. http://bit.ly/3E0lAOB (starting at 1:00 hr.). That is confirmed by the Department of Justice's National Institute of Justice, which has stated, "[r]esearch shows clearly that the chance of being caught is a vastly more effective deterrent than even draconian punishment." https://nij.ojp.gov/topics/articles/five-things-about-deterrence. Increasing the penalty for such otherwise innocent persons cannot be justified.

Such a reduction of penalties for the otherwise law-abiding would not hamper enforcement of existing laws that bar **disqualified** persons from possessing (much less carrying) firearms. Illegal carry by disqualified persons, MD Code, Public Safety, § 5-101(g) (defining "disqualifying crime"), is separately and severely punished. Under federal law, the mere possession of any firearm or modern ammunition by a disqualified person is a 10-year federal felony. 18 U.S.C. § 922(g)(1), 18 U.S.C. § 921(a)(20)(B). Under Maryland State law, mere possession of a handgun by any disqualified person who was not previously convicted of a felony is a serious misdemeanor and is punishable by up to 5 years imprisonment and a $10,000 fine. MD Code, Public Safety, § 5-144(b). Mere possession by persons previously convicted of **a felony** is an additional felony and is punishable by not less than 5 years but not more than 15 years in prison. MD Code, Public Safety, § 5-133(c)(1). Possession by a disqualified person of a long gun is a serious misdemeanor and is punishable by up to 3 years in prison. MD Code, Public Safety, § 5-205(d). As is apparent, the Bill is unnecessary to address carry of a handgun by a disqualified person as those persons are already severely punished under existing law.

Yet, bizarrely, this Bill would punish carry by **non**-disqualified persons **more** severely than carry of a long gun by **disqualified** persons and inflict the same penalty for the carry of a handgun by a (non-felon) **disqualified** person. It should be obvious that carry by disqualified persons warrants harsher sanctions than carry by ordinary law-abiding persons who are **NOT** disqualified. After all, disqualified persons have already been convicted of a serious crime punishable by more than 2 years of imprisonment. The NON-disqualified person may

have a completely clean record and may be carrying because she is living in fear of violent attack. The Bill ignores these differences in circumstances. Those circumstances matter.

Amendments to Section 4-203 Are Required By *Lawrence v. State*: and *Bruen*. Instead of increasing penalties under Section 4-203, the General Assembly should be paying heed to the Maryland Court of Appeals' (now renamed as the Maryland Supreme Court) decision in *Lawrence v. State*, 475 Md. 384, 408, 257 A.3d 588, 602 (2021). As noted, Section 4-203(a)(1)(i) criminalizes the wear, carry, and transport of a handgun "on or about the person." In *Lawrence*, Maryland's highest court held that the General Assembly intended to impose "strict liability" for any violation of Section 4-203(a)(1)(i). Strict criminal liability means that the defendant can be held to be criminally liable without regard to the defendant's actual knowledge or state of mind. But, in so holding, the Court stressed the importance of a *mens rea* requirement in the context of Section 4-203(a). While finding it unnecessary to resolve the issue in that case, the *Lawrence* Court suggested that a strict liability law, like Section 4-203(a) could violate the Due Process Clause for lack of notice because it not only bans wear, carry or transport "on or about" a person "leaves some questions about the notice afforded to defendants alleged of wearing, carrying, or transporting a handgun 'about' their person." 475 Md. at 421. The Court in *Lawrence* thus stated it was appropriate "**to signal to the General Assembly**" that, "in light of these policy concerns, ... **legislation ought to be considered**" to address "the scope CR § 4-203(a)(1)(i) given its classification as a strict liability offense." (Id. at 422). As a matter of good government, the General Assembly should respect such a "signal" from the State's highest court and "consider" changes to Section 4-203(a)(1)(i). This Bill should be amended to do so.

The changes "signaled" by *Lawrence* are easy to accomplish. The ban on carry, wear or transport "about" the person basically allows the arrest and prosecution of multiple occupants of a residence for the presence of a firearm in that location, regardless of whether a particular person even knew of the presence of the firearm. See *Jefferson v. State,* 194 Md.App. 190, 213-15, 4 A.3d 17 (2010). That result is both unfair and actively promotes discriminatory or arbitrary enforcement by the police and prosecutors. Such an abuse of gun laws and search and seizure laws is well documented in Baltimore and led to a federal consent decree that remains in force. http://bit.ly/3yyESaU. Such misconduct by law enforcement officers led to the arrest, prosecution and conviction of members of Baltimore's infamous Gun Trace Task Force. https://www.gttfinvestigation.org/. Given this sorry history, the mere prospect of such enforcement generates distrust in the community.

It should be obvious that few law-abiding citizens follow the legislative sausage-making of the Maryland General Assembly or are aware that Section 4-203(a)(1)(i) imposes strict liability. *Lawrence* makes clear that this lack of a *mens rea* requirement plus the use of vague, ill-defined terms ("on or about the person") will mean that Section 4-203 is at risk of being struck down as unconstitutionally vague in an appropriate case. This Bill does nothing to fix the constitutional concerns identified by the *Lawrence* Court. The Committee should exercise leadership and take up and resolve this issue, as the Maryland Supreme Court has requested. In our view, the correct approach under *Bruen* is to minimize the risk of unfair application of Section 4-203 to otherwise innocent persons who are merely exercising a constitutional right, albeit without a permit.

Federal law is instructive. Federal firearms law imposes specific *mens rea* requirements for virtually every firearms crime. For example, a violation of 18 U.S.C. § 922(a)(1)(B) (barring

"any person" except federal licensees from engaging in the "business" of the manufacture of firearms) is not a crime unless the person "willfully" violates that provision. See 18 U.S.C. § 924(a)(1)(D). Such a "willful" violation is a 5-year federal felony. (Id.). The Supreme Court has held that "in order to establish a 'willful' violation of a statute, 'the Government must prove that the defendant acted with knowledge that his conduct was unlawful.'" *Bryan v. United States*, 524 U.S. 814, 191-92 (1998), quoting *Ratzlaf v. United States*, 510 U.S. 135, 137 (1994) (emphasis added). Similarly, a false statement on federal form 4473 used for purchasing a firearm is not a crime unless the false statement was made "knowingly." See 18 U.S.C. 922 (a)(6). See also 18 U.S.C. 924 (a)(2) (requiring that the violation of "subsection (a)(6), (h), (i), (j), or (o) of section 922" be done "knowingly").

No such *mens rea* requirement is found in this Bill or in Section 4-203(a)(1)(i). There is no excuse for this absence. After all, MD Code, Public Safety, § 5-144, expressly precludes a conviction for any violation of any provision of subtitle 1 of Title 5 of the Public Safety article (governing regulated firearms) unless the violation was done "knowingly." See *Chow v. State,* 393 Md. 431, 903 A.2d 388, 413 (2006) ("a person must know that the activity they are engaging in is illegal"). That provision likewise imposes a five-year term of imprisonment. As *Chow* recognizes, Section 5-144 embodies the commonsense realization that before people may be incarcerated for such lengthy times, the State should be required to prove a culpable state of mind. The same point is equally applicable to violations of Section 4-203.

Indeed, subsection 4-203(a)(2) creates the *opposite* presumption, providing that "[t]here is a rebuttable presumption that a person who transports a handgun under paragraph (1)(ii) of this subsection transports the handgun knowingly." Subsection 4-203(a)(1)(ii) applies to the "wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle." Such a presumption is of dubious constitutionality where (as is often the case) it is applied to justify the arrest of every person in a vehicle upon discovery of a single firearm in the vehicle. See *Leary v. United States*, 395 U.S. 6, 36-38 (1969) (striking down a statutory presumption and holding "that a criminal statutory presumption must be regarded as 'irrational' or 'arbitrary,' and hence unconstitutional, **unless** it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend"). (Emphasis added). Stated simply, it is "not more likely than not" that every person in a vehicle would know that someone else in the vehicle was illegally transporting a handgun. The presumption thus, once again, acts to criminalize the innocent. It has been enforced in an arbitrary and discriminatory manner in the past and will be in the future unless the General Assembly amends the statute.

Finally, the United States Supreme Court so strongly disfavors strict liability criminal statutes that it will read in a *mens rea* requirement where none is in the text of the statute. See, e.g., *Staples v. United States*, 511 U.S. 600, 619 (1994) (holding that the government was required to prove that the defendant "knew" that his rifle possessed the characteristics of a prohibited machine gun). Similarly, in *Rehaif v. United States*, 139 S. Ct. 2191, 2195 (2019), the Supreme Court held that the government must prove that an alien unlawfully in the United States, who is otherwise barred from possessing a firearm by federal law, knew that his presence in the United States was unlawful. The Court relied on the "longstanding presumption, traceable to the common law, that [the legislature] intends to require a defendant to possess a culpable mental state regarding 'each of the statutory elements that criminalize otherwise innocent conduct.'" Id. (citation omitted).

Lawrence rejected that presumption as to Section 4-203 because of *stare decisis*, but it did so with obvious misgivings about the lack of notice provided by Section 4-203. This Bill makes the situation even worse by increasing the penalty for violating what the *Lawrence* Court has found to be a strict liability law that fails to give adequate notice. Those misgivings noted in *Lawrence* are now even more warranted after *Bruen*, which held that there is a constitutional right to carry outside the home. This Bill ignores all these considerations and **increases** the punishment for people who may be "entirely innocent." *Staples*, 511 U.S. at 614. This Bill will not promote public trust in Maryland's failing criminal justice system.

Even apart from *Lawrence,* the Supreme Court's decision in *Bruen* requires that the State adjust its *mens rea* approach to the carriage of firearms outside the home in recognition that such carriage involves a constitutional right. In that context, ambiguity is intolerable in a strict liability statute. See *City of Chicago v. Morales*, 527 U.S. 41, 55 (1999) ("a criminal law that contains no *mens rea* requirement, * * * and infringes on constitutionally protected rights, * * * is subject to facial attack"). At minimum, such an adjustment should abolish the strict liability imposed by Section 4-203(a)(1). Such vagueness "may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; [and] it may authorize and even encourage arbitrary and discriminatory enforcement." Id. One need only review the actions of the Gun Trace Task Force to see such arbitrary and discriminatory enforcement of Section 4-203. See also *Gonzales v. Carhart*, 550 U.S. 124, 149 (2007) ("The Court has made clear that scienter requirements alleviate vagueness concerns.") (collecting case law).

Suggested Amendments To Section 4-203: We respectfully suggest the following amendments to this Bill to address these concerns identified in *Lawrence* and that arise from the holding in *Bruen*. As noted, *Lawrence* was concerned about the ambiguity associated with the use of "on or about" in Section 4-203(a)(1)(i), which contains no *mens rea* requirement and thus imposes strict liability. That subsection should thus be amended to strike "about" and to insert a "knowingly" *mens rea* provision into Section 4-203(a)(1). The "knowingly" requirement in 4-203(a)(1)(ii), could then be stricken as redundant. Taken together, the provisions would read (strikeout is a delete, bold is added language):

> Except as provided in subsection (b) of this section, a person may not **knowingly**:
> (i) wear, carry, or transport a handgun, whether concealed or open, on ~~or about~~ the person;
> (ii) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State.

This "knowingly" *mens rea* is used in other provisions of Maryland firearms law. See, e.g., MD Code, Public Safety, § 5-138 (knowing possession or sale of stolen firearms), § 5-141 (knowing participation in a straw purchase) and § 5-144 (knowing violation of any provision in the subtitle). It is also, as noted above, the standard imposed in federal statutory law and by the Supreme Court in *Staples*. This *mens rea* requirement protects the innocent and establishes an appropriate threshold of culpability for prosecutions under Section 4-203(a), no less than for prosecutions under these other statutes. See *Liparota v. United States*, 471

U.S. 419, 426 (1985). The "rebuttable presumption" set forth in current law, § 4-203(a)(2), should be stricken as constitutionally problematic for the reasons outlined above.

As explained above, the decision in *Bruen* that law-abiding persons have a constitutional right to carry outside the home also requires an adjustment to the penalty provisions of Section 4-203(c). Specifically, Section 4-203(c) should be amended to reduce the penalty for carrying without a permit where the carry is by an otherwise law-abiding person who **would have been** eligible for a permit. As noted, under *Bruen*, a non-disqualified person has a constitutional right to carry outside the home and, under *Bruen*, Maryland is now a shall-issue State. Thus, for such persons, carrying without a permit is, at most, a failure to jump through all the expenses and other hoops necessary to procure a permit. As noted elsewhere, it costs roughly $600 to obtain a permit in Maryland ($400 for the 12 hours of mandatory training, $75 for the application fee, $70 for the live-scan fingerprint and the cost of ammunition for the live-fire training required by the State Police. The State may well have a legitimate interest in requiring persons to obtain a permit, but the State lacks a sufficient reason to attach a permanent disqualification for the failure to do so. The disparate impact of current law on persons from disadvantaged communities should not be perpetuated. Under *Bruen*, every law-abiding person, the rich and poor alike, have a right to armed self-defense.

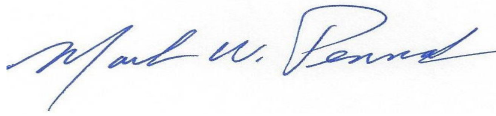
First offenses should be treated differently. Thus, at minimum, the penalty for a first offense by such an otherwise-eligible person should be reduced to less than 2 years, as crimes punishable by more than 2 years are defined as disqualifying under MD Code, Public Safety, § 5-101(g)(3). More fundamentally, we believe that the threat of imprisonment is utterly unnecessary to provide the necessary incentive to obtain a permit. A substantial civil fine will serve that objective without needlessly incarcerating or criminalizing people for what is, in essence, a permit violation. The penalty provisions of Section 4-203(c) should thus be amended to so provide.

Accordingly, we suggest the following amendment to Section 4-203(c) (new language is in bold):

> (2) If the person has not previously been convicted under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title**, and if the person otherwise may possess a handgun under State and Federal law, then the person is subject to a civil fine not exceeding $1,000.00, otherwise:**
> (i) except as provided in items (ii) of this paragraph, the person is subject to imprisonment for not less than 30 days and not exceeding 3 years or a fine of not less than $250 and not exceeding $2,500 or both; or
> (ii) if the person violates subsection (a)(1)(iii) of this section, the person shall be sentenced to imprisonment for not less than 90 days

We urge an unfavorable report of the Bill as written. The Bill's imposition of a 5-year term of imprisonment for a violation of Section 4-203 is redundant of current law with respect to carry of a handgun by disqualified persons and is far too severe with respect to carry by otherwise law-abiding persons who are exercising the right recognized in *Bruen*, but simply have not yet obtained a carry permit.

Sincerely,



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