

# **SAO Testimony for SB0889.pdf**

Uploaded by: Hassan Giordano

Position: FAV



## **Good afternoon Chairman Smith, Vice-Chair Waldstreicher and members of the Judicial Proceedings Committee.**

My name is Ivan Bates, and I was fortunate enough to be elected by the great citizens of Baltimore City last year to be their State's Attorney. And one of the main principles of my campaign that the citizens of Baltimore emphasized the need for me to tackle on Day One is the need to get these illegal handguns out of the hands of those shooting and killing people on a daily basis.

This is the reasoning behind my sole piece of legislation this session, which is before you today in the form of SB889, and I would like to thank Senator Cory McCray for recognizing the importance of this legislation and introducing it for us in the Senate.

As you can see by the written testimony you should have received online, we are not the only concerned citizens of this state that feel as if the need to pass this legislation is long overdue. Joining us in this fight to tackle the illegal gun problem we have witnessed across our great state is:

### **Congressman Kweisi Mfume**

Baltimore City **Mayor, Brandon Scott**

The County Executive from Gorgeous Prince George's County, **Ms. Angela Alsobrooks**

The County Executive and the State's Attorney for Baltimore County, **Johnny Olszewski Jr and Scott Shellenberger**, respectively.

In fact, all 24 Maryland State's Attorneys have backed this bill. As have dozens of local community association, faith-based and business leaders from across the state.

Simply put, SB889 is an issue of fairness and equity. It fixes a problem that currently exists which is that those 18-20 years of age currently face a 5-year maximum sentence and/or a \$10,000 fine if caught illegally wearing, carrying or transporting a firearm under **[PS § 5-133 (d)]**.

However, those one year older, 21-years old and above only face a 3-year maximum sentence and/or a \$2,500 fine for that same offense under **[CL §4-203]**

I am looking to **align the penalties for PS § 5-133 (d) with that of CL §4-203** so that it is uniformed across the board for those 18 years of age and older and offering a stiffer penalty for those considering illegally possessing weapons in our city and state.

**Why?**



Following the passage of the **Justice Reinvestment Act in 2016**, those charged and convicted of misdemeanor offenses are only required to do **25% of their time**. So those who receive the maximum sentence of 3-years are only serving 8-9 months, which is basically time-served – because they are waiting on trial for about that long.

Whereas someone who receives the maximum sentence on a five-year sentence may only receive roughly 16-18 months, only a few months more, but they are also likely to be given DOC time, which now serves as a deterrent that the local time does not. Those serving local time are surrounded by those from their neighborhood, they can see their girlfriend and friends on visits on a regular basis, and hang on the phone all day with local call charges not disturbing their way of life.

However, when you are being sent to Hagerstown, or Cumberland or across the bridge over to ECI, or any one of the various Department of Corrections facilities, that becomes an entirely different story. Phone calls are more expensive, which prevents the regular phone calls home, they don't see their family and friends on a regular basis, and they are given a more structured routine, having to work or do something productive as opposed to local jail where that is not required.

You'll hear testimony about how we are ripping these offenders away from their loved ones and that has an adverse effect on them, but if we really want to save these offenders lives, we need to ensure that they understand the significance of their actions. **I would much rather sentence someone to 18-months behind bars for carrying an illegal firearm than to have to sentence them to 18-years to life for using that handgun on someone.**

The **United States Sentencing Commission** put forth a study of recidivism following the *1984 Sentencing Reform Act (SRA)*, understanding that this was central to their work. That report showed how in their first study entitled Rhodes, that longer prison terms modestly reduced recidivism, reducing more than 1% point per every 7 1/2 months per sentence, while **the second report found offenders receiving sentences of more than 60 months (or 5-years) incarceration had lower odds of recidivism when compared to similar offenders receiving shorter sentences.**

This is significant because the opposition will have you believe that longer sentences do not deter crime, when in fact they do, as outlined by the federal government and the most extensive report done on the comparison of length of sentencing v recidivism.

**Specifically, the odds of recidivism were approximately 30 percent lower for offenders incarcerated for more than 120 months and approximately 17 percent lower for offenders incarcerated for more than 60 months up to 120 months.** The Commission did not find any statistically significant relationship between length of incarceration and recidivism for offenders incarcerated for less than 60 months.



The realities of today's society is that people are carrying illegal firearms at an alarming rate, and if you really want to know how the law-abiding citizens of this state feel, I would encourage you to ask them yourself. Do a poll of those in your neighborhoods and communities to see if they rather you strengthen the laws on the books for those wearing, carrying and transporting illegal firearms or if they'd rather you do nothing at all; and I will bet my entire paycheck that the majority would say they'd rather strengthen the laws.

Why am I so sure? Because after knocking on 15,000 doors during last year's election, that is what the overwhelming majority of the citizens of Baltimore told me; and I am someone who tends to believe what I have seen and heard rather than some hypothetical or theoretical beliefs from those who aren't in these neighborhoods having to endure the daily gun violence happening in our streets.

**Conclusion:**

These are the realities my prosecutors are facing, and we need every tool available to be able to prosecute violent crime, especially those that involve the wearing, carrying and/or transporting of illegal firearms.

Thank you, Mr. Chairman and members of the Judicial Proceedings Committee for your time and consideration regarding SBO889, it is deeply appreciated. Hopefully, based on the conversation we have had today, you would be so inclined to either consider supporting this legislation, or choosing another vehicle for the language to be included.

Yours in Service,

A handwritten signature in black ink, appearing to read "Ivan J. Bates", with a long horizontal flourish extending to the right.

Ivan J. Bates, Esq.  
Baltimore City State's Attorney

# **Jason Rodriguez Testimony SB 0889.pdf**

Uploaded by: Jason Rodriguez

Position: FAV

Jason Rodriguez  
618 Markham Road  
Baltimore, MD 21229  
(443) 682-5586

Maryland General Assembly  
c/o Judicial Proceedings Committee  
2 East  
Miller Senate Office Building  
Annapolis, Maryland 21401

**Favorable Testimony – SB 0889 Wearing, Carrying, or Transporting a Handgun – Penalty**

Chair Smith, Jr., Vice Chair Waldstreicher, Committee Members,

Thank you for the opportunity to testify in favor of Senate Bill SB 0889. My name is Jason Rodriguez, and I am the Deputy Director for People Empowered By The Struggle (PEBTS), a One Stop Shop for all struggles. I'm not here today representing my organization, but as a citizen of Baltimore City who has experienced and witnessed gun violence way too often. As a grassroots organizer whose boots are on the frontlines of Baltimore City's most troubled neighborhoods, I do not feel that this piece of legislation will lead to the mass incarceration of mostly young men and women of color. But I must add that this Bill will do very little to change the culture and tone of gun violence especially in communities like Baltimore City.

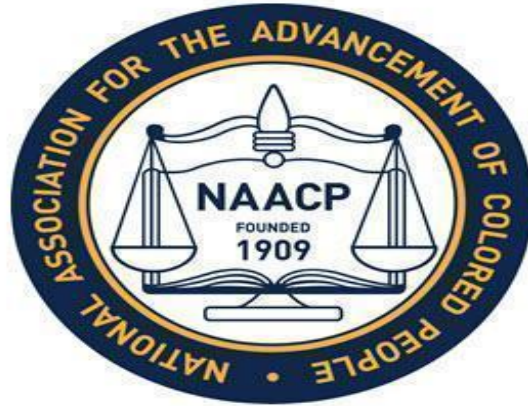
The problem of gun violence in America will not be resolved through tougher laws and longer prison sentences. Those who are carrying guns illegally are often not in the mindset to follow and/or carryout laws. Many I argue cannot even read the language of this Bill nor truly comprehend its implications on their lives. You cannot police, legislate, nor incarcerate your way out of this pandemic of gun violence. For as long as we keep having issues like failing schooling in Baltimore City without any accountability nor oversight, we will continue to see the onset of young men and women of color who will continue the cycles of gun violence.

SB 0889 sends a clear message that our representatives and other elected officials are serious about wanting to address gun violence, but there is a lot more work that must be done to truly get at the root of this issue. My organization PEBTS and I are here to help and to provide some strong holistic solutions. **I urge a favorable report and thank you for your consideration on the Bill.**

# **PRESSReleaseGun Possession.pdf**

Uploaded by: Ryan Coleman

Position: FAV



# Randallstown

P.O. Box 731 Randallstown, MD 21133

## Gun Possession Legislation

Feb 2, 2023  
Immediate Release

Contact: Ryan Coleman, President  
[randallstownnaacp@gmail.com](mailto:randallstownnaacp@gmail.com)

In 2020, the analysis found there were 269 gun related deaths in Baltimore City, which equates to 45.9 for every 100,000 residents. That number was nearly three-and-a-half times higher than the 2020 national average.

Of all the Baltimore homicides that year, 87.7 percent involved a gun. That's more than 10 percent above the national average.

The rise in gun related deaths is not just a problem plaguing Baltimore City, but rather the entire U.S.

FBI data recently showed a 5.6 percent increase in violent crime nationwide from 2019 to 2020, while the murder rate rose by around 30 percent, one of the largest year-over-year increases on record.

It makes sense from an equity standpoint that everyone over 18 faces a maximum penalty of five years for gun possession. The SA for Baltimore City is requesting this to fight crime as well.



The Randallstown NAACP supports the effort and/or bill to increase the penalty for gun possession to five years for individuals over 21. Further, we would like a study done on the feasibility and impact of making gun possession a felony.

# **Brent Amsbaugh SB0889 Testimony.pdf**

Uploaded by: Brent Amsbaugh

Position: UNF

Brent Amsbaugh

SB0889 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 you should be strengthening our **rights**, not attacking us. If you must move forward with this, please remove the jail time and amend it to be a fine. If you cannot see fit to do that, limit the jail time to two years or 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**.

When driving with my daughters from point A to point B is where I feel the least safe. 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 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.”. 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 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.

**DC-W\_SB 889\_UNF.pdf**

Uploaded by: Daniel Carlin-Weber

Position: UNF

Daniel J. Carlin-Weber  
SB 889  
Unfavorable  
3/21/2023

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 889.

Among other things SB 889 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/3lhL4K3>). 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.

I strongly urge an unfavorable report.



Daniel J. Carlin-Weber  
225 N Calvert St., 819  
Baltimore, MD 21202  
dcw@cwdef.com

**sb889.pdf**

Uploaded by: Derek West

Position: UNF



SB889 is unnecessary, simply impose the current penalties.

# **SB 889 HB 481 Written Opposition Testimony.pdf**

Uploaded by: Heather Warnken

Position: UNF



**TESTIMONY IN OPPOSITION: SENATE BILL 889 / HOUSE BILL 481**

**Criminal Law - Wearing, Carrying, or Transporting a Handgun**

TO: Members of House Judiciary and Senate Judicial Proceedings Committees

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

DATE: March 20, 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 strongly oppose SB 889 / HB 481. On behalf of our center and the undersigned parties, a coalition of public safety advocates, attorneys, civil liberties organizations, law professors, and others, we are grateful for the opportunity to share the reasons why.

This bill would enhance penalties for illegal gun possession, increasing the maximum prison term for wearing, carrying, or knowingly transporting a handgun from 3 to 5 years. Supporters of this bill have been arguing throughout public safety forums in Baltimore and Annapolis that this change is necessary to ensure consistency and fairness across age groups, aligning the penalty for persons 21 and older with laws on the books for 18-21 year olds; as well as arguing that this increase in penalties is needed to deter crime. To the contrary, this bill will exacerbate existing sentencing disparities, undermine public safety, and, counter to what the bill's advocates have suggested, 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 so deeply about this crisis and the safety of our communities, not in spite of it, that we are opposed to this misguided bill.

**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 889 / HB 481. 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.<sup>1</sup> Within this context of punitive excess nationwide, Maryland

---

<sup>1</sup> <https://www.aclu.org/issues/smart-justice/mass-incarceration>.

holds the shameful distinction of ranking first in the nation in racial disparities through its over-incarceration of Black men and youth.<sup>2</sup>

SB 889 / HB 481 supporters have emphasized, “this bill is not a mandatory minimum” in an attempt to downplay its potential impact on mass incarceration. However, while not a “mandatory” sentence, 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 than their white and wealthier counterparts.<sup>3</sup> Thus, though not creating a mandatory minimum, 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.<sup>4</sup> Also relevant to predictable outcomes in sentencing if this bill were to raise the ceiling is the concept of “anchoring,” which research has found judges to be as susceptible to as the general population.<sup>5</sup>

### **Downplaying the impact of incarceration and a criminal record**

Perhaps the most alarming aspect of the talking points espoused by supporters of this bill has been the downplaying of the enormous impact of incarceration on individuals and their families. Supporters of SB

---

<sup>2</sup> The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparities in State Prisons* at 20 (2021).

<sup>3</sup> 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.

<sup>4</sup> 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/>.

<sup>5</sup> 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.

889 / HB 481 have made statements that “short” stints of time in local jail, “where family members can easily visit them and ‘everything’s still a joke’ is insufficient compared to sending that person farther away from home to a state-run facility.<sup>6</sup> And that because current penalties (averaging over seven months of incarceration) are *no big deal* and something that individuals can do standing “on their head,” the current laws on the books do not serve as a sufficient deterrent.<sup>7</sup>

This is out of touch with both the literature on deterrence and the well-documented toll that even a “short” period of incarceration takes on a person and their community.

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.<sup>8</sup> Spending even one night locked up, 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.

Claims that people need “to get a taste of prison,” where they would be incarcerated farther away from their community, in institutions such as Cumberland, Hagerstown and Jessup, are grossly misguided.<sup>9</sup> 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 literally 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.<sup>10</sup> 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.<sup>11</sup> In addition to the health and

---

<sup>6</sup>[www.thebaltimorebanner.com/community/criminal-justice/ivan-bates-handgun-bill-OJA4HPUIA5HADOEUZ7VYCC6OPM/](http://www.thebaltimorebanner.com/community/criminal-justice/ivan-bates-handgun-bill-OJA4HPUIA5HADOEUZ7VYCC6OPM/)

<sup>7</sup>[www.thebaltimorebanner.com/community/criminal-justice/ivan-bates-handgun-bill-OJA4HPUIA5HADOEUZ7VYCC6OPM/](http://www.thebaltimorebanner.com/community/criminal-justice/ivan-bates-handgun-bill-OJA4HPUIA5HADOEUZ7VYCC6OPM/)

<sup>8</sup> <https://qoc.maryland.gov/incarceration/>.

<sup>9</sup> <https://www.facebook.com/citydelegation/videos/1632204523905062/>

<sup>10</sup> Eric Martin, Hidden Consequences: The Impact of Incarceration on Dependent Children, National Institute of Justice (2017).

<sup>11</sup> 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.

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.<sup>12</sup>

Scores of reputable studies demonstrate that 1) remaining in close touch with loved ones reduces recidivism,<sup>13</sup> and 2) prisons too often do the opposite of rehabilitate; they cause trauma.<sup>14</sup>

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.<sup>15</sup> 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 and most depraved conditions we have ever encountered in any prison or jail in the United States, including in death row and ‘supermax’ units.”<sup>16</sup>

The claim that jail time is a “joke” discounts the trauma of incarceration experienced by poor people of color, and would never be stated if our jails were filled with wealthy white residents. This framing of the need for this bill relies in particular on a racist trope and deeply problematic narrative in American society, discounting and erasing the oppression of Black men and youth. It is emblematic of the systemic racism our state must work to eradicate, not further, and a direct contributor to how Maryland gained the status of first in the nation in racial disparities in incarceration in the first place.

### **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.<sup>17</sup> This is often bad for public safety, with studies demonstrating that unnecessary incarceration, especially

<sup>12</sup> <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>.

<sup>13</sup> 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).

<sup>14</sup> Benjamin Hattem, *Carceral Trauma and Disability Law*, Stanford Law Review (2020) (summarizing studies on experiences of trauma during incarceration).

<sup>15</sup> [www.thebaltimorebanner.com/community/criminal-justice/deandre-whitehead-jail-death-W2UHGCYAJJGEJO4SMUJ7QR4SIU/](http://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/>.

<sup>16</sup> [www.aclu.org/cases/duvall-v-hogan?document=duvall-v-hogan-report-plaintiffs-counsel-august-2-3-2022-jail-visit](http://www.aclu.org/cases/duvall-v-hogan?document=duvall-v-hogan-report-plaintiffs-counsel-august-2-3-2022-jail-visit).

<sup>17</sup> Turner, *Longer Prison Sentences are Cruel and Ineffective: Here’s the Proof*,

<https://www.bostonglobe.com/2023/02/13/opinion/long-prison-sentences-are-cruel-ineffective-heres-proof/>; 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.

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.”<sup>18</sup>

As part of its unsound reliance on deterrence theory, this bill also relies on a troubling 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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

Contrary to the claims of SB 889 / HB 481 supporters, studies around the use of swift and certain consequences in the criminal legal system do not support increasing jail or prison time. To the contrary, those studies suggest that increasing penalties is not an effective way to increase public safety. It is a complete waste of resources to prioritize making consequences for illegal gun possession more severe than the ones we already have.

### **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,<sup>22</sup> lead the

---

<sup>18</sup> 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.

<sup>19</sup> Id.

<sup>20</sup> Id. pg. 4

<sup>21</sup> Id. pg. 21-22.

<sup>22</sup> Maryland Reentry Resource Center, 2022 Reentry Impact Report, <https://mdrrc.org/>.

overwhelming percentage of incarcerated people to return home to their communities more vulnerable than they were before.

In other words, this bill 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.<sup>23</sup> For far too many people who have not accessed meaningful support services, this runs deep.<sup>24</sup>

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.<sup>25</sup>

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.<sup>26</sup> 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 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).<sup>27</sup> 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.<sup>28</sup>

---

<sup>23</sup> Webster et al., *Reducing Violence and Building Trust*, Johns Hopkins Center for Gun Policy and Research, 2022.

<sup>24</sup> Warnken et al, *Victim Services Capacity Assessment Report*, USDOJ National Public Safety Partnership, July 2021.

<sup>25</sup> 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.

<sup>26</sup> Warnken et al, *Victim Services Capacity Assessment Report*, USDOJ National Public Safety Partnership, July 2021

<sup>27</sup> Id.

<sup>28</sup> "Neighborhood Health Profile Reports.", *Baltimore City Health Department*, 9 Jun. 2017, [health.Baltimorecity.gov/neighborhood-health-profile-reports](http://health.Baltimorecity.gov/neighborhood-health-profile-reports).



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 - for good reason.

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,<sup>29</sup> 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 defense.<sup>30</sup> 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

---

<sup>29</sup> <https://mappingpoliceviolence.us/>.

<sup>30</sup> Webster et al., *Reducing Violence and Building Trust*, Johns Hopkins Center for Gun Policy and Research, pg. 28-29, 2022.

connected to GTTF to \$22 million.<sup>31</sup> 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,<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup> 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 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 no 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

---

<sup>31</sup>[www.baltimoresun.com/politics/bs-md-ci-baltimore-settlement-gttf-burley-johnson-20230208-bv4rxn6rrfrfpwz5tv7w07k4-story.html](http://www.baltimoresun.com/politics/bs-md-ci-baltimore-settlement-gttf-burley-johnson-20230208-bv4rxn6rrfrfpwz5tv7w07k4-story.html).

<sup>32</sup> 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>.

<sup>33</sup>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.

<sup>34</sup>Id.

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 real 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.<sup>35</sup> 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.

---

<sup>35</sup> 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.

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 call out a few that are within the lane and partnerships of the State’s Attorney’s Office, 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 committing 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.<sup>36</sup>

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.

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 889 / House Bill 481.

---

<sup>36</sup>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.



Heather Warnken  
Executive Director, Center for Criminal Justice Reform  
University of Baltimore School of Law

American Civil Liberties Union of Maryland

Baltimore Action Legal Team (BALT)

Campaign Zero  
DeRay Mckesson, Executive Director

Alexandra K.P. Becnel  
Dinolt, Becnel, & Wells Investigative Group

Family Support Network  
Martina Hazelton  
Co-Founder and Program Executive

The Civil Rights Lawyers at Hansel Law, PC

Helping Ourselves to Transform

Life After Release

Justice Policy Institute

Maryland Alliance for Justice Reform

Maryland Coalition for Justice and Police Accountability

Maryland Office of the Public Defender

Maryland Prisoners Rights Coalition

Olinda Moyd, Esq.

Out for Justice

Nate Golden, Baltimore City Schools Teacher

Public Justice Center

Founders of RECTIFY



Ms. Catherine Abrams and Mr. Desmond Haneef-Perry

Rebuild, Overcome, and Rise (ROAR) Center  
University of Maryland Baltimore

Professor Binny Miller  
Professor of Law and Co-Director, Criminal Justice Clinic  
American University, Washington College of Law

Braden Stinar  
Research Fellow, Center for Criminal Justice Reform  
University of Baltimore School of Law

David Jaros  
Faculty Director, Center for Criminal Justice Reform  
University of Baltimore School of Law

Katie Kronick  
Director, Criminal Defense and Advocacy Clinic  
Assistant Professor of Law  
University of Baltimore School of Law

Jonny Kerr  
Clinical Teaching Fellow, Criminal Defense and Advocacy Clinic  
University of Baltimore School of Law

Shanta Trivedi  
Assistant Professor of Law  
Faculty Director, Sayra and Neil Meyerhoff Center for Families, Children, and the Courts

Sayra and Neil Meyerhoff Center for Families, Children, and the Courts  
University of Baltimore School of Law

Joseph B. Richardson, Jr. PhD  
The Joel and Kim Feller Professor of African-American Studies and Anthropology  
MPower Professor, University of Maryland College Park  
Producer of Life After the Gunshot

Lila Meadows  
Director, Justice for Victims of Crime Clinic  
University of Maryland Carey School of Law

Michael Pinard  
Professor of Law



University of Maryland Carey School of Law

Maneka Sinha  
Associate Professor of Law  
University of Maryland Carey School of Law

*\* This list is updated as new signs-ons are requested.*



**SB0889.pdf**

Uploaded by: Karla Mooney

Position: UNF



SB0889/HB481 Criminal Law – Wear, Carry, or Transporting a Handgun - Penalty

Karla Mooney

21175 Marigold St

Leonardtown MD 20650

Resident of St. Mary' County Dist. 29C

I am State Director of The DC Project and the State Leader of the Armed Women of America. I stand in solidarity with the Ladies of both of these groups, numbering many more than just myself.

As I read this bill you are increasing penalty for wearing, carrying transporting a handgun from 3 years to 5 years. This would make some one a lifetime prohibited person, I do not believe this bill is appropriately addressing an issue we have in this state. The penalty for Criminals who have firearms that are stolen is much less, please look at that bill as one to move forward not this bill that will actually hurt the law abiding citizen not the criminals who would not care that they are breaking a law by carrying out side of what is lawful.

We are once again looking at a bill that doesn't address what our criminal penalty for those who choose to not follow written law and would more than likely take a law abiding citizen and turn them in to a criminal.

I request an unfavorable report on this bill.

# **MSI Testimony on SB 889 carry penalty 5 years fina**

Uploaded by: Mark Pennak

Position: UNF



March 21, 2023

## WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO SB 889

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 8895.

### 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 4<sup>th</sup> highest murder rate in the country at a rate of 9 per 100,000. Pennsylvania comes in 19<sup>th</sup> 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/3E0IAOB>. 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 (5<sup>th</sup> Cir. Feb. 2, 2023), *as revised and superseded by* --- F.4th ----2023 WL 2317796 (5<sup>th</sup> 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 Under *Bruen* and *Lawrence*** We respectfully suggest the following amendments to this Bill to address the concerns identified in *Lawrence* and that arise from the holding in *Bruen*. As noted, *Lawrence* was concerned about the vagueness 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. Under *Bruen*, the State may require persons to obtain a permit, but the State lacks a sufficient reason to attach severe penalties and a permanent disqualification for the failure to do so. 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

**Conflict Between SB1 and Section 4-203.** There is a direct conflict between the penalties imposed by SB1 and the penalties imposed by Section 4-203(c). As noted above, Section 4-203(c) imposes on the first offense, imprisonment for up to 3-years and a substantial fine. Conviction of this offense is disqualifying under MD Code, Public Safety, 5-101(g)(3) (defining a disqualifying crime to include any crime punishable by more than 2 years in prison). As amended in 2013, Section 4-203(b)(2) provides for an exemption for permit holders from the general ban on carry otherwise imposed by Section 4-203(a), but expressly limits that exception to “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.”

Pursuant Section 5-307, the State Police have placed on **every** permit a limitation that provides: “NOT VALID WHERE FIREARMS ARE PROHIBITED BY LAW.” See <https://www.marylandshallissue.org/jmain/counselor-s-corner> (showing an example of this limitation on the back of a permit). Thus, if a permit holder carries in the locations banned by SB1, the permit is NOT VALID. That means that the permit holder can be charged and convicted under Section 4-203 for carrying in the locations in which firearms are banned by SB1 and, upon conviction, will be disqualified for life from possessing firearms and modern ammunition.

These Section 4-203 penalties directly conflict with penalties imposed by SB1 for the carrying of a handgun in the areas newly banned by SB1. Specifically, Section 4-111(g) provides that a person who carries in these newly prohibited places is subject, on first conviction, to a penalty of 90 days of imprisonment and a \$3000 fine and, for a second offense, 15 months of imprisonment and a \$7,500 fine. Similarly, Section 6-411(d), as set forth in SB1, punishes a first offense of carrying on posted private property with imprisonment for 90 days or a fine up to \$500, and, for a second offense, occurring within 2 years of the first offense, imprisonment up to 6 months or a fine of up to \$1,000 or both. Unlike the punishments imposed by Section 4-203, none of the punishments imposed under Section 4-111 or Section 6-411, are permanently disqualifying. The lesser penalties were imposed in SB1 in recognition that permit holders should not be severely punished for simple mistakes or inadvertence. Yet, Section 4-203 imposes strict liability for such mistakes because a limitation on the permit was exceeded. That result is nonsensical, especially after *Bruen*.

Thus, the Bill should be amended to make clear that the penalties imposed by Section 4-203 are subordinate to those imposed by S1 where both govern the same conduct. This issue may be remedied by a simple amendment to the list of exceptions set forth in subsection 4-203(b) by adding a new exception to provide:

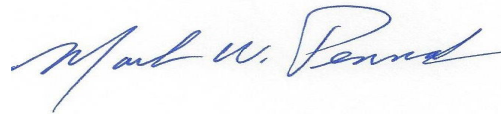
**(10) the wearing, carrying, or transporting of a handgun by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article where such wear, carry or transport is otherwise regulated by Section 4-111 or by Section 6-411 of the Criminal Law Article.**

This amendment would make clear that permit holders who violate Section 4-111 or Section 6-411 are punishable under those sections rather than under Section 4-203.

Alternatively, subsection 4-203(b)(2) could be amended by striking “in compliance with any limitations imposed under § 5-307 of the Public Safety Article” from that subsection. That limitation may have made sense in 2013 when it was first imposed, because, at that time, the Maryland Court of Appeals had held that the Second Amendment did not apply outside the home at all. See *Williams v. State*, 417 Md. 479, 496, 10 A.3d 1167 (2011). That decision was obviously abrogated by *Bruen*. Limitations on the right to carry outside the home are now governed by SB1. There is, accordingly, no reason for this limitation from subsection 4-203(b)(2).

**Conclusion:** 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. The Committee should amend Section 4-203 to make it compatible with SB1 and to bring it into compliance with *Bruen* and *Lawrence*.

Sincerely,

A handwritten signature in blue ink that reads "Mark W. Pennak". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Mark W. Pennak  
President, Maryland Shall Issue, Inc.  
[mpennak@marylandshallissue.org](mailto:mpennak@marylandshallissue.org)