

Daniel J. Carlin-Weber
SB 889
Unfavorable
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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.



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