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## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB 0001** Criminal Law - Wearing, Carrying, or Transporting Firearms - Restrictions

(Gun Safety Act of 2023)

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: 02/06/2023**

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 001.

Senate Bill SB001 makes it illegal for a person to knowingly wear, carry or transport a firearm onto the real property of another unless the other has given express permission, either to the person or to the public generally to wear, carry or transport a firearm on the real property. Violation of this bill carries a penalty of one year in prison.

There are a number of problems with this bill. First, increased criminal penalties and the creation of additional crimes in response to any problem does not work. Increase penalties does not deter unlawful behavior especially when the commission of such acts are rooted in issues of poverty, mental illness and substance use disorder.

As is often the case with laws that increase penalties, especially where the enforcement of gun regulations and drugs are concerned, SB 0001 will disproportionately impact black and Latinx populations. In Montgomery County alone, attorneys are seeing a huge increase in the racial disparity in the charging of “non- use” gun crimes. In the words of one attorney in our office, “Pretty much every person being charged with a non- use gun crime is black. And if they are not black, they are Latino.”

While we know that this law will disproportionately impact black and Latinx communities in terms of who will be charged and prosecuted for these crimes, we also understand that Senate Bill 0001 will only create an increase in the number of people who will be exposed to having criminal charges brought against them. In places like the Western MD (Allegany and Garrett) region because a large portion of people there hunt, they drive to state game lands, to other peoples' property to hunt, they may stop at a restaurant, at a person's house, or at a store like Lowes or Walmart on their way to or on their way back from hunting. This bill would allow such citizens who are lawfully carrying and transporting firearms to be charged

under this new law in those circumstances. As stated by another attorney who practices in Western Maryland, “Basically they could charge half the people in Denny's with rifles in their trucks during hunting season.” This would also be true for places like the Rockville Town Center and Downtown Silver Spring. While these spaces are not commonly known for instances of gun violence, licensed gun carriers who lawfully carry concealed weapons, no doubt visit these establishments and would thereby be at risk of being arrested and convicted to one year in prison for violating the law under Senate Bill 0001. Even further, this bill would also expose various delivery persons (i.e. DoorDash, Uber/ Lyft, Amazon, etc.) who may carry guns for protection while doing their jobs to criminal charges under this law.

This bill appears to be a response to the Supreme Court’s decision in *New York State Rifle and Pistol Association v. Bruen*, and the resulting increase in applications for gun permits. If this is the case, the appropriate response to issues of increased gun permitting and exercise of the Second Amendment is to attach gun regulations for lawful wearing, carrying and transporting to the gun license itself thereby creating civil penalties instead of criminal ones. This means, for any new regulations, the penalties should impact the violator’s ability to maintain his permit or license and not result in a criminal conviction.

The creation of new crimes and increased penalties is not effective in addressing issues surrounding guns. Legislative proposals of this magnitude should be supported by research and data to demonstrate and support passage of laws and policy in a direction that will positively impact crime and reduce recidivism. Simply putting forth statistics outlining the problem does not suffice for providing evidence of data proven solutions.

While this bill is purported by its proponents to be a “common sense” measure to combat crime, not a single bill proponent has put forth any empirical data or evidence to show that enhancing criminal penalties and increasing lengths of incarceration significantly deters or reduces crime. **Rather, research and data show the opposite, that harsh criminal penalties do not deter crime or prevent recidivism.** Tough on crime policies do not make our communities safer because they are proven to increase rates of recidivism and the commission of violent crimes.

Crime policies like SB 0001 fail to understand that safety is inextricably intertwined with equity and economic opportunity. Investing in and expanding opportunities for Maryland’s communities is a smarter way to address public safety. Instead of attempting to resolve a complex problem with a simple yet costly solution of expanding prison populations, a more thoughtful and comprehensive effort should entail the following: adequate and equitable funding for schools; fair and affordable housing opportunities; employment opportunities for Marylanders returning from incarceration; and investment in community-based crime-intervention programs, which really work.

While the list is not exhaustive on research and data demonstrating the deleterious effects of mass incarceration and “tough on crime” policies on increased recidivism, a limited list of additional resources supporting real efforts to reduce recidivism is provided below.

***Final Report of the Maryland Justice Reinvestment Coordinating Council***, December 2015  
<https://goccp.maryland.gov/jrcc/documents/jrcc-final-report.pdf>

***Winnable criminal justice reforms in 2022*** by Naila Awan, A Prison Initiative Report, December 2021 <https://www.prisonpolicy.org/reports/winnable2022.html>

***States of Incarceration: The Global Context 2021***, A Prison Initiative Report by Emily Widra and Tiana Herring, September 2021 <https://www.prisonpolicy.org/global/2021.html>

***Arrest, Release, Repeat: How police and jails are misused to respond to social problems***, A Prison Initiative Report, by Alexi Jones and Wendy Sawyer, August 2019  
<https://www.prisonpolicy.org/reports/repeatarrests.html>

***Era of Mass Expansion: Why State Officials Should Fight Jail Growth***, A Prison Initiative Report, by Joshua Aiken, May 31, 2017 <https://www.prisonpolicy.org/reports/jailsovertime.html>

***Sentencing Laws and How They Contribute to Mass Incarceration***, To fight for fairer sentencing, we first need to understand how the system works by James Cullen, October 5, 2018  
<https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration>

***Long-Term Sentences: Time to Reconsider the Scale of Punishment***, The Sentencing Project by Marc Mauer, November 5, 2018 <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>

***Criminal Justice Solutions: Model State Legislation***, The Brennan Center, December 20, 2018  
<https://www.brennancenter.org/our-work/policy-solutions/criminal-justice-solutions-model-state-legislation>

***Smart, Safe, and Fair II: Creating Effective Systems to Work with Youth Involved in Violent Behavior***, Justice Policy Institute, November 18, 2021 [https://justicepolicy.org/wp-content/uploads/2021/09/child\\_not\\_the\\_charge\\_report5.26.pdf](https://justicepolicy.org/wp-content/uploads/2021/09/child_not_the_charge_report5.26.pdf)

***Rethinking Approaches to Over Incarceration of Black Young Adults in Maryland***, Justice Policy Institute, November 6, 2019 [https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/Rethinking\\_Approaches\\_to\\_Over\\_Incarceration\\_MD.pdf](https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD.pdf)

***The Ungers, 5 Years and Counting: A Case Study in Safely Reducing Long Prison Terms and Saving Taxpayer Dollars***, Justice Policy Institute, November 15, 2018

[https://justicepolicy.org/wp-content/uploads/2021/06/The Ungers 5 Years and Counting.pdf](https://justicepolicy.org/wp-content/uploads/2021/06/The_Ungers_5_Years_and_Counting.pdf)

*Maryland Justice Reinvestment Act: One Year Later*, Justice Policy Institute, October 31, 2018

<https://justicepolicy.org/research/policy-briefs-2018-maryland-justice-reinvestment-act-one-year-later/>

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 0001.**

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**Submitted by: Maryland Office of the Public Defender, Government Relations Division.**

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