

Daniel J. Carlin-Weber
SB 1
Unfavorable
3/29/2023

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 and a Concealed Firearm Permit Instructor for the State of Utah. 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 1.

As passed by the Senate, SB 1 seeks to make many new places in Maryland where it is unlawful by default to possess a handgun, even for those issued a Wear and Carry permit by the Maryland State Police. It does this without necessarily requiring that the permit holder knows such a place is off limits, nor does it require that all these places post signage that firearms cannot be possessed. The bill also increases the number of ways a person could be denied a permit and what instructors must teach, among other things. All of this is in response to the US Supreme Court's decision in *New York State Rifle and Pistol Association v. Bruen* which struck as unconstitutional New York's "good cause" licensing requirements, identical to Maryland's "good and substantial reason" requirement. Now that the general law-abiding public is legally able to exercise their right to carry a handgun for personal protection in public, the legislature seeks to punish them with the threat of needless interactions with police and incarceration that could permanently disqualify them from possessing firearms. This body should summarily reject these impulses, recognize the demands to embolden the war on guns is as flawed and malicious as that on the war on drugs, and respect that—even though it's unpopular within the Maryland General Assembly—that the 2nd Amendment is no less valuable or valid than any of the other fundamental rights observed within the United States or the State of Maryland.

To begin, SB 1 deems these places off-limits, *in addition* to the other places where firearms cannot be legally carried under current State and local laws:

I. Private Property:

-private dwellings except with permission, excluding common areas in a condominium, as defined in § 11-101 of the Real Property Article, property of a cooperative housing corporation other than a unit as defined in § 5-6B-01 of the Corporations and Associations Article, or common areas of a multifamily dwelling as defined in § 12-203 of the Public Safety Article

-any private property location which is posted conspicuously or after

being notified by the owner or owner's agent that the wearing, carrying, or transporting a firearm is prohibited on the property.

2. Areas for Children and Vulnerable Adults:

- preschool or prekindergarten facilities
- private primary or secondary schools
- youth camps, as defined in § 14-401 of the Health General Article
- health care facilities, as defined in § 15-10B-01 of the Insurance Article
- locations that are being used as a shelter for runaway youth

3. Government or Public Infrastructure Areas

- buildings owned or leased by a unit of the State or Local government
- buildings of public or private institutions of higher education as defined in § 10-101 of the Education Article
- locations that are currently being used as polling places in accordance with Title 10 of the Election Law Article or for canvassing ballots in accordance with Title 11 of the Election Law Article
- electric plants or electric storage facilities as defined in § 1-101 of the Public Utilities Article

4. Special Purpose Areas (private or public ownership included)

- a location licensed to sell or dispense alcohol or cannabis for on-site consumption (most restaurants).
- a stadium
- a museum
- a location being used for an "organized sporting or athletic activity" where three or more individuals are competing in a sport or athletic activity together as part of the same league. Exception is made for sporting activities which customarily involve firearms
- a location being used for a live theater performances
- a location being used for musical concerts or performances for which members of the audience are required to pay or possess a ticket to be admitted
- a location being used for a fair or carnival
- racetracks
- video lottery facilities, including casinos and a facility with terminals for any game of chance, as defined in § 9-1A-01 of the State Government Article
- within 100 yards of a place where a public gathering, demonstration, or an event that requires a permit from the local governing body is being held, if signs posted by a law enforcement agency conspicuously and reasonably inform members of the public that the wearing, carrying, and transporting of firearms is prohibited

Except for the requirements that private business owners must conspicuously post signs or for demonstrations with permits, none of these other places off limits have to post any signage or warning that firearms cannot be carried. On the back of every permit issued in Maryland is a limitation placed by the State Police that the permit is not valid where firearms are prohibited by law. Therefore, anyone who is carrying in a place where it has been banned, regardless of whether they knew or intended to violate that law, is vulnerable to being charged and convicted under MD Code, Criminal Law, § 4-203. A first-time offender convicted under 4-203 is hit with a lifetime disqualifier from firearms possession, as any state misdemeanor punishable by more than two years is considered prohibitive under federal law. See 18 USC § 921(a)(20)(B). <https://bit.ly/3ZiSQsb>.

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.

As an instructor, I do my best to make sure my students understand the multitude of laws of this state (despite that I and most firearms instructors are not attorneys), and that they're given the best information possible so they're best able to protect themselves and avoid any unnecessary contact with law enforcement. SB 1 makes that practically impossible, as many of the mentioned places are not places a

reasonable person would think as sensitive. The bill prohibits firearms possession in *any* place licensed to serve alcohol for onsite consumption; not the consumption of it or even sitting at the bar, but literally just the act of being there armed while carrying an item the US Supreme Court interprets the Constitution to mean that they have a right to. This affects countless restaurants, venues, theaters, and even hotels. This prohibition alone is shortsighted, but even more so without any requirement that these places post signage or make it known that being there puts a permit holder at risk of incarceration. Does the legislature expect permit holders to look for liquor licenses in these places? Does the legislature somehow think the dining room at Cheesecake Factory is more worthy of special protection by law than inside a Taco Bell? After someone settles in for the night at a hotel in Ocean City for their weekend, are they to pack up and find another place after finding that they can order wine from room service? This is patently absurd, but it's what SB 1 demands.

The Bill also commands that instructors like myself provide students instruction on state and local firearms laws, self-defense, defense of property, the safe storage of firearms, information about banned items in the state, items controlled by federal law, conflict resolution, anger management, and other information. Some of this is already regularly taught in permit classes, but the State is mandating *a lot* from instructors whose background is largely through an NRA or USCCA course on instructing on pistols and self-defense—courses simply not designed specifically with Maryland in mind. The State *should* and really must create a curriculum if they're going to compel instructors for its licensing scheme to train the hundreds of thousands of permit holders this state will likely have over the next few years. Utah does just that, providing its certified instructors (of which I am one) a minimum curriculum containing everything the state mandates to be taught. That curriculum is retrievable here: <https://bit.ly/3ILDLBW>. Currently, the State of Maryland provides no outline of the laws or case law. Instead, there exists a disconnected web of information from the General Assembly's website, the State's Westlaw database, information from advocacy organizations, and different sites on the internet. This is all really complicated. If the legislature wants its permit holders "well-regulated," it has a duty to make this information digestible and accessible to those it demands to carry its water.

The requirements that instructors teach "anger management" is also suspect, as it's usually something taught to individuals who've had an episode or string of instances where they could not control themselves. It usually takes someone with specialized training to provide such information and it is again, not something that's taught in courses that create handgun instructors. It is taught by any instructor that resorting to force and deadly force is a last resort when dealing with a threat and that conflict avoidance is preferred every time as reasonable, but these instructors are not therapists or counselors. The State bears a responsibility here to train instructors on how to provide this sort of specialized guidance if it is going to demand it.

Furthermore, the 16-hour time requirement for initial permit instruction is nothing more than an artificially created burden to make it more expensive and difficult for Marylanders to be able to exercise their right to carry. Before 2013, this requirement did not exist and it was placed (much like this bill to *Bruen*) as a reaction to *Woollard v. Sheridan*, an earlier case where Maryland's "good and substantial reason" requirement was struck as unconstitutional for a time (the US Court of Appeals for the Fourth Circuit later overturned the district court and upheld the requirement). Currently, these courses typically go anywhere from \$250 to \$500 and up. When added together with the cost of the license itself (\$75 currently, supposing that fee isn't doubled by HB 824), and the cost of LiveScan fingerprinting, a permit applicant could very well and already likely does spend more than \$600 before they're able to exercise their right to carry a handgun in public. The increased requirements for what instructors must teach could easily make this cost go higher. The hostility the General Assembly has had on lawful firearms ownership leads me to believe this is by design and not merely incidental.

Maryland's approach to criminalizing gun ownership has not changed much in the last 50 years. In 1972, the General Assembly likewise found itself responding to public outcry on the pervasiveness of violent crime and access to guns (See that bill file here: <https://bit.ly/3JZ8Ag8>). Governor Mandel sought to limit who could legally carry firearms in public to a very select few classes of people. He also demanded that "stop-and-frisk" be put into Maryland law, so police officers could be less restrained in their approach to enforcing the newly enacted gun laws. The demand for more police action was so great, that the Washington Post was flippant about the potential harms to other liberties and even towards the prospect that Black citizens could have the laws disproportionately enforced against them:

What Governor Mandel proposes to do is really minimal. He wants to enable officers of the law to protect themselves against breakers of the law—usually called criminals—by letting the former frisk the latter, briefly and politely, on the basis of a "reasonable suspicion" that a concealed lethal weapon may be found. The legislation would also make it unlawful for anyone to carry a handgun concealed or unconcealed, on the streets or in a car. Unfortunately, it would not affect the sale and possession of pistols kept in homes for junior to show off to his baby sister or to settle family altercations.

Understandably, civil libertarians have had misgivings about the proposed law. Authorizing the police to stop and frisk a person on mere suspicion entails a serious risk that the police will behave arbitrarily or capriciously. And this applies with particular force, of course to black citizens who are so often the special target of police harassment. One must respect their anxiety. But the remedy lies, we think, in maintaining a vigilantly watchful eye on police behavior rather than in denying the police a power they genuinely need for their own safety as well as for the

public safety.
 - Frisking for Firearms. (1972, January 20). *The Washington Post*, p. A18.

The City of Philadelphia recently conducted a year-and-a-half-long study on why it suffers from so much gun violence and what approaches could be taken to lessen it (available here: <https://bit.ly/3IhL4K3>). It is extremely weary of relying exclusively on a carceral approach to public safety and goes into great detail about how possessory firearms charges are lodged all but exclusively toward communities of color. See pp. 65-67. The emphasis, as the report suggests, should be to focus on holding those committing violence accountable, supporting intervention programs and conflict resolution, and not merely going after illegal possessors by siccing more police on more people. Furthermore, it is worth reading the amicus brief submitted by the Black Attorneys for Legal Aid and Bronx Defenders in support of the petitioners in *New York State Rifle & Pistol Association Inc. v. Bruen* (2022) for a host of examples of what the enforcement of gun control laws really looks like. <https://bit.ly/3LdnJZn>. From their summary:

The consequences for our clients are brutal. New York police have stopped, questioned, and frisked our clients on the streets. They have invaded our clients' homes with guns drawn, terrifying them, their families, and their children. They have forcibly removed our clients from their homes and communities and abandoned them in dirty and violent jails and prisons for days, weeks, months, and years. They have deprived our clients of their jobs, children, livelihoods, and ability to live in this country. And they have branded our clients as "criminals" and "violent felons" for life. They have done all of this only because our clients exercised a constitutional right.

This isn't limited to New Yorkers or Philadelphians. The Marshall Project has just recently explored this issue as well in a report about how gun laws are enforced in Illinois. An excerpt:

The Marshall Project found that widespread stops and gun possession arrests — and the inability of Chicago officials to show they are working — have parallels to other discredited strategies like "broken windows" policing, stop-and-frisk and the war on drugs.

"People are for 'gun control' but against 'mass incarceration,'" said James Forman Jr., a professor at Yale Law School and author of "Locking Up Our Own: Crime and Punishment in Black America." "They haven't thought about how this particular form of gun control ends up helping to produce and sustain mass incarceration."

In a country where guns are deeply intertwined with race, class and safety, discussions about them are often guided by politics and sensationalism. But as officials try to address street-level gun violence and prevent yet another mass shooting, it's important to understand how firearm laws play out in reality, upending deeply ingrained assumptions about guns, who should have them, and how laws are enforced.

-The War on Gun Violence Has Failed. And Black Men Are Paying the Price. *The Marshall Project*. <https://bit.ly/3LZ7ORc>.

It would be beyond naïve and dishonest to portray enforcement in Maryland any differently. Indeed, the Racial Equity Impact note for SB 1 (retrievable here: <https://bit.ly/3zccDiy>) references the disparate treatment of Black and Latino Marylanders by law enforcement, cautioning that:

There are other potential impacts that cannot be measured at this time, but they are similarly intertwined with the prospective effects of the Bruen ruling. One such impact involves whether enforcement practices under the bill will impact individuals disproportionately. National and State data confirm that Black or African American and Hispanic or Latino individuals are more susceptible to aggressive law enforcement actions and excessive punishments than their white counterparts in Maryland. If the strategies used to enforce this bill resemble the past trends and patterns for racial and ethnic disparities, it is possible that Black or African American individuals, Hispanic or Latino individuals, and potentially others who carry a firearm outside of the home may be subject to more aggressive enforcement and harsher punishments relative to their white counterparts.

This legislative body has rightfully recognized that Maryland's war on drugs is destructive in more ways than one and has spent the last many sessions working to curtail it through decriminalization, legalization, and putting some restraints on how law enforcement can interact with Marylanders over it. That work is all laudable and necessary, but it cannot be overlooked that this body seems to willfully ignore that all the same logic applies to how gun laws are enforced. SB 1 and the other attempts this session to further limit lawful access to constitutionally protected items smacks against this body's work to support Marylanders' other individual rights, whether it be in support of bodily autonomy or to be free from harassment by the people whose job it is to serve and protect them. An examination of Maryland's existing gun laws in this context is more appropriate, rather than making already draconian laws more so and creating more ways for more peaceable Marylanders to wind up in cages and otherwise have their lives ruined.

I strongly urge an unfavorable report.



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