



February 09, 2023

House Judiciary Committee,
Chairman, Luke Clippinger

Support of HB0481 – Criminal Law- - Wearing, Carrying or Transporting a Handgun – Penalty

Attention Chairman Clippinger, Vice-Chair Moon and members of the committee:

Today I would like to speak to you about the single piece of legislation my office is putting forward this legislative session, one that we are laser-focused on tackling, and that is to codify state law around those first-time offenders who are caught illegally possessing and/or transporting a firearm in our state.

Currently, **Maryland state law PS § 5-133 (d)** subjects an individual between the ages of 18 and 20 caught carrying, transporting, or possessing a firearm to a 5-year maximum sentence and/or a \$10,000 fine for their first offense.

Whereas **CL §4-203** allows for an individual one year older, 21 years of age or older, to only face a 3-year maximum sentence and/or a \$2,500 fine with only a 30-day minimum sentence.

I am looking to make the sentencing behind wear, carry and transport of a firearm a 5-year maximum across the board, aligning the penalties for PS § 5-133 (d) with that of CL §4-203 so that it is uniformed for those 18 years of age and older and offering a stiffer penalty for those considering possessing weapons across our state.

The reasons for behind this legislative push are simple:

First I think we all realize and can agree that we have witnessed an unacceptable increase in violent crime across our state over the past decade, especially crimes committed with a firearm.

In the city that I represent, Baltimore, we have witnessed over 2,667 homicides from 2015 through the end of 2022, and my office has noticed that based on reports, **90% of those victims** of crime were due to someone possessing and using a firearm to cause these deaths.

Second, I believe it's a little unfair to tell a twenty-year old caught with the possession of a firearm that his maximum sentence under PS § 5-133 (d) is five years behind bars, while his 21-year old co-defendant will never face the same five-year sentence under CL §4-203.



Following the passage of the **Justice Reinvestment Act in 2016**, as many of you know, those charged and convicted of misdemeanor offenses are only required to do **25% of their time**. And given that this crime is in fact as misdemeanor, that means those convicted of wear, carry and transport of an illegal firearm are only doing roughly 8-months behind bars before being released, which is basically time-served given that most are waiting that long before they are brought to trial for this charge.

That means, in most cases, they are serving local time, which according to my former clients as a long-time criminal defense attorney, this was something that they were willing to do. Why? Because they no respect for the consequences they would have to face based on the current law.

And because in local facilities like city jail, they have direct access to those within the circles they ran with in their community who don't live far and can come see them regularly, they are housed with many of the same individuals they ran with in the neighborhood, there are no real substance programs or structure in these local facilities, and they can hang on the phone all day with their significant other given the fact that it is a local call.

However, when we look at the sentence of 5-years, while they would still be serving only 25% of their time, which would equate to about 15-months, but now it allows for them to be sentenced the Division of Corrections, which for whatever reason these offenders do not want to risk being sent. Now they are subject to be sent to correctional facilities across the state, whether it be Cumberland, Jessup, Hagerstown or "across the bridge" over to ECI (Eastern Correctional Institute) that force them to have jobs within the facilities and have a more structured daily routine. Now they are not close enough for daily visits, the dorms they are housed are no longer filled with their friends from the neighborhood, and they can't stay on the phone all day because the phone calls are a lot more expensive.

Five years is enough time that we can get their attention and hold them accountable for their actions. Now they are rethinking whether or not they want to chance carrying that illegal weapon, possibly getting caught and being sent to DOC. This isn't some smoke-screen attempt at acting like we are enforcing the law, but rather a real solution to the violent crime and gun crisis we are facing in our communities.

This bill is not going to stop violent crime overnight, nor is it the fix-all to how we address gun violence in our state. But what it does is send these offenders a message that we are not playing, and we are serious about holding them accountable for their actions. We aren't talking about years, but rather the difference between 6-8 months. But it's enough time to make these first-time offenders reconsider a life of crime.



What people may not understand, in the City of Baltimore for example, prior to the Freddie Gray case – the 2015 case that charged several Baltimore City Police Officers involved in the death of this young man; people on the streets of Baltimore City were carrying packs of drugs, but firearms were typically kept at a remote location, which was easily accessible, but they were not carrying these firearms on their person due to the possibility of law enforcement jumping out on them and having to receive jail time for possessing the weapon.

This led to many incidents not resulting in non-fatal or fatal shootings, because by the time they went to retrieve their weapon they had either calmed down OR the person they had an issue with was no longer present once they returned to the scene of the initial argument.

However, post-Freddie Gray, when those in the streets realized that law enforcement had taken a step back from cracking down on them, they replaced the drugs with weapons, which led to a drastic increase in shootings and homicides, given that they had weapons readily available on their person, so when a “beef” (or incident) occurred, instead of having to go to a nearby location to get the weapon, they had the weapon in-hand and ready for action.

We have to take steps to ensure that those considering arming themselves with illegal firearms, begin to rethink their actions and either leave their weapons at home, or not have them at all.

This bill is about Maya Morton, a young 23-year old mother driving down the middle of Baltimore on Pennsylvania Avenue and Laurens Street with her 3-year old son and infant baby girl in the backseat, when gunfire erupted, she was struck and killed, causing her to run into a pole and her children seriously injured.

This was all because a couple knuckleheads were in a nearby carry-out when they heard gunfire, and decided to pull their weapons out of their waistband and began firing indiscriminately not ever recognizing a threat to their own lives, but simply because they heard a gunshot and they were all armed so they decided to begin shooting.

Now these two young children will never get to spend their Christmas or their birthdays with their mother. They will never get to kiss, hug or tell their mother they love her. Why?

Because we are more concerned about whether or not these offenders serve 8-months for carrying an illegal firearm as opposed to 16-months? What we aren't considering is the fact that I much rather they receive double-digit months in jail for possessing the firearm, which will hopefully sent a message not to carry these deadly weapons, rather than having to sentence them to double-digit years in jail for taking the life of someone with that very handgun.



We have to consider the children of Maya Morton, and so many other innocent men and women who look like Maya, who will never see their loved ones again. We are so busy worrying about the what-ifs of something that has yet to present itself, instead of looking at the realities of the trauma that this gun violence is causing our communities.

I know the arguments against the bill. What if someone who simply forgot to renew their gun registry is caught with a weapon, which technically would be a violation of this law? Then the prosecutor, and the judge, can take those extenuating circumstances into consideration and offer that person probation.

This is NOT a mandatory minimum sentence as some have tried labeling it, as the prosecutor and judge still have the discretion to impose a sentence of **up to** five years. Which means they can consider such circumstances and ask for a sentence comparable to the crime.

And we can offer those who made a mistake the opportunity to make up for that mistake by completing their sentence, whether it be parole or probation, with no new convictions, and bring them back in to offer them a PBJ (Probation Before Judgement) so that they are able to expunge their record.

Why not make it 3-years for everyone as opposed to 5-years, if it's about equity within the law? Because there is no deterrent factor in having someone who knows they only have to sit for a few months awaiting trial and they are back out on the streets.

The fact that we are continuing to go out of our way not to increase penalties for those who have chosen to break the law, and in this case, with such a dangerous tool that we have seen used to take thousands of innocent lives, should be something I hope each of you seriously takes into consideration when deciding on whether or not to vote favorably for this legislation.

Thank you, Mr. Chairman, and members of the House Judiciary Committee.

Your time today, and consideration of this bill, are deeply appreciated and I am open to any questions or concerns you may have on this legislation. Hopefully, based on the conversation we have had today, you would be so inclined to **vote favorably on this legislative proposal**.

And I hope we can continue this constructive dialogue throughout the 90-day legislative session and beyond as we all seek to improve our communities and the lives of our constituents by working hard to ensure that their best interests are always put first.

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Sincerely,

A handwritten signature in black ink, appearing to read "I. Bates". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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