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POSITION ON PROPOSED LEGISLATION

BILL: SB 28 and SB 179 (Violent Firearms Offender Act of 2024)

POSITION: Unfavorable

DATE: January 24, 2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bills 28 and 179.

Senate Bill 28 is an emergency bill that establishes that a violation of probation, parole, or any mandatory supervision that involves use/possession of a firearm is not a technical violation. It also requires incarcerated individuals with reentry kits and assistance obtaining medical benefits. Additionally, the bill alters the elements of prohibitions in using a firearm in the commission of a PWID of a CDS offense being a crime of violence for certain purposes. Senate Bill 28 also prohibits a dealer or others from selling, renting, loaning, or transferring a regulated firearm to a purchaser, lessee, borrower, or transferee who intends to use the firearm for a certain purpose.

Senate Bill 179 establishes that a violation of probation, parole, or any mandatory supervision that involves use/possession of a firearm is not a technical violation. It requires incarcerated individuals with a reentry kit and assistance obtaining medical benefits. It alters the prohibition against using a certain firearm in the commission of the offense of PWID of a CDS to be a crime of violence for certain purposes. It lastly alters the penalties for unlawful possession of a regulated firearm.

The national and local dialogue on reducing violent crime instinctively focuses on harsher penalties and longer incarceration as the only appropriate response to criminality. This focus persists despite overwhelming research and people's conventional wisdom that such an approach is merely after-the-fact and cannot prevent violent crime or recidivism. These "tough on crime" initiatives have been proposed and implemented for decades, resulting in increased distrust in government and the police, and the mass incarceration of people of color, which

itself results in a cycle of economic and social harms. Although the Maryland Office of the Public Defender appreciates the inclusion of reentry options in Senate Bill 28, they are better implemented on their own without increased carceral responses to the public health concern of violence and particularly gun violence.

Violent Crime Needs to be Addressed at Its Roots

Based on our experience, the Maryland Office of the Public Defender believes that the prevalence of violent crime is not due to the absence of harsh penalties available or imposed by judges, but in two overarching deficiencies: social and economic injustice, and a lack of quality policing and police-community relations.

We believe limited opportunities for citizens to get adequate education, livable-wage jobs, and quality housing leads to poverty, and in many cases, violence is an outgrowth of poverty and each ends up in a tragic cycle. A common sense approach to combatting crime would entail learning from failed policies and laws that have exacerbated problems of crime within our communities and broken systems of justice and rehabilitation. Proponents of tough on crime policies like Senate Bills 28 and 179 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 fund our schools; fair and affordable housing opportunities; employment opportunities for Marylanders returning from incarceration; and investment in community-based crime-intervention programs, which work.

For example, the violence experienced in Baltimore City is almost exclusively located in low income, African American neighborhoods. Data indicates that approximately 25% of Baltimoreans live below the poverty line. Life expectancy between neighborhoods differs by up to 20 years: Roland Park: 83, Upton/Druid Heights 63 (State of Health White Paper, March 2017). Thirty percent (30%) of children in Baltimore city have an Adverse Childhood Experience (ACE) score of 2 or more (more than two incidences of domestic violence, living with someone with a substance abuse problem, death of a parent or being a victim/witness to violence (State of Health White Paper, March 2017). Until we reset our priorities to focus on

the root causes of violence, any initiatives that seek to increase punishment for violent crimes after the crime has been committed are expensive and misplaced. Moreover, distrust of the criminal justice system and failed policies and scandals - like mass-arrest policies, indictments of multiple members of the City Gun Task Force, and unsafe, inhumane treatment in carceral facilities, impede the proper functioning of justice-serving efforts of the criminal legal system. Ensuring that we hold the criminal legal system, from law enforcement to probation agents and all those in-between, accountable while focusing efforts on protective, proactive community services will make our communities safer than even the harshest penalty.

Research and data show that harsh criminal penalties do not deter crime or prevent recidivism. The increased carceral responses to gun use and possession included in this bill will exacerbate existing sentencing disparities, undermine public safety, and do nothing to increase the “certainty” of punishment. 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.¹ This negatively impacts public safety. Studies demonstrate that unnecessary incarceration, especially 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.”²

Compared to long sentences, some other DOC programs benefit our clients better, fulfill the laws’ intent more faithfully, and carry a cheaper cost. These programs accomplish these things by reducing recidivism. For example, the Alternatives to Violence Project (“AVP”) reduces recidivism. Over the course of either two or three days, it allows inmates to solve conflicts without violence by giving them social skills like empathy, communication, interpersonal trust, self-respect, learning from example, and participating in social activities. The psychologist Marsha Miller and the therapist John Shuford measured AVP’s effect on recidivism. They found, “At the end of three years following release, only 11.5

¹ 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. One study limited to the Federal System, titled, “Length of Incarceration and Recidivism” did challenge the claim that longer sentences did not reduce recidivism. However, that study specifically found that increasing a sentence from 3 to 5 years as proposed by SB 751 would not improve public safety by decreasing recidivism. See USSC, Length of Incarceration and Recidivism (Apr. 29, 2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/researchpublications/2020/20200429_Recidivism-SentLength.pdf (“USSC Report”).

² 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.

percent of the AVP participants had new felony convictions and only half of these were for violent offenses.”³ By contrast, 68% of prisoners nationwide recidivate during the three years after release, according to Mariel Alper and Joshua Markman, the statisticians at the Bureau of Justice Statistics.⁴

Compared to lengthy sentences, AVP boasts a better-document record of reducing recidivism. Our clients become more likely to follow the law not after staying in prison for the longest possible time, but after leaving prison equipped with therapeutic, educational, and vocational tools. By reducing recidivism, these programs serve as better alternatives to long sentences, better fulfill the laws’ intent, and, perhaps most convincingly, carry a lower cost than increased periods of incarceration.

There are many other strategies that would produce a far greater return on investment in addressing the problems these bills seeks to address. To name a few: addressing unmet needs in reentry, collaborating with community-based organizations and academic institutions to develop, implementing and evaluating programs to reduce the risk of an individual previously charged with illegal gun possession from committing gun related crimes, and expanding anti-violence programs such as ROCA and its evidence-based cognitive behavioral therapy model. Our communities deserve to be safe, and to ensure their safety the Maryland General Assembly must implement smart, evidence-based policies that will prevent crime.

For all of the above reasons, OPD respectfully urges an unfavorable report.

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

³ Miller and Shuford obtained these statistics from randomly selecting 300 AVP participants at the Delaware Correctional Center. Marsha L Miller & John A Shuford, *The Alternatives to Violence Project in Delaware: A ThreeYear Cumulative Recidivism Study* (Drane Family Fund of the New Hampshire Charitable Foundation), ii-4 (2005), at ii, 1, 4.

⁴ Alper and Markman used the same methodology as the sentencing commission’s study, mentioned above. Mariel Alper & Joshua Markman, *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)* (Bureau of Justice Statistics), 15 (2018), <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>.