



**Testimony for the Senate Judicial Proceedings Committee
February 21, 2024**

SB 404 Criminal Law – Controlled Dangerous Substances and Firearms

OPPOSE UNLESS AMENDED

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The ACLU of Maryland opposes SB 404. Although we support the initial intent and spirit of the bill, we strongly oppose the amendments to reclassify certain firearm offenses from misdemeanors to felonies.

In particular, we support the provisions in the bill to limit the maximum criminal penalties for manufacturing, distributing, dispensing, or possessing large amounts of marijuana and allowing individuals to petition to modify or reduce their sentences for a violation of §5-612 or §5-613 involving marijuana or less than 448 grams of cocaine base. Punitive sentencing policies in Maryland have already resulted in a deeply racially disproportionate criminal justice system.¹ Research shows Black people are vulnerable to serving longer sentences and that increasing criminal penalties does little to deter crime. Limiting the maximum criminal penalties for some crimes will work against the already-present racial disparities in sentencing in the state.

However, SB 404 also seeks to implement harsher penalties despite overwhelming research showing that “tough on crime” initiatives have been ineffective in reducing violent crime or recidivism and have only resulted in increased distrust in the police and the mass incarceration of people of color.

We specifically oppose the increase of firearm crime penalties from misdemeanors to felonies.

SB 404 seeks to reclassify the penalty for possessing, selling, transferring, or otherwise disposing of a stolen regulated firearm, manufacturing a non-registered firearm or a firearm that has manufacturer identification marks removed, or selling or offering to sell a handgun without proper manufacturer identification markings or is unregistered to a felony.

¹ Rethinking Approaches to Over Incarceration of Black Young Adults in Maryland (Nov. 6, 2019), Justice Policy Institute, <https://justicepolicy.org/research/policy-briefs-2019-rethinking-approaches-to-over-incarceration-of-black-young-adults-in-maryland/>.

In passing the Justice Reinvestment Act of 2016, legislators expressed concern for Maryland's bloated prison population and racial disparities in sentencing while addressing public safety. Instead of reducing Maryland's prison population, SB 404 would further existing racial disparities in sentencing. The war on guns will have the same impact as the war on drugs with little benefit to public safety, as seen recently in Chicago. A Marshall Project analysis found that from 2010 to 2022, Chicago police made more than 38,000 arrests for illegal gun possession.² These arrests almost always resulted in felonies and bore misleading names that implied violence. Chicago police justified their focus on confiscating guns as a way of curtailing violence, but these tactics have not substantially reduced shootings. Studies showed those convicted of felony gun possession did not go on to commit a violent crime, and the majority of those sentenced to prison for gun possession did not have past convictions for violence. This rings true in Maryland as well. In 2019, 52% of the people charged with a firearm offense in 2019 were solely carrying a firearm and were not convicted of any other crime. As amended, SB 404, would directly counter to the initial goals of reducing the bloated prison population if every one of these offenders was saddled with the burden of additional jail time and a felony conviction.

Enhanced sentences yield little to no public safety benefits. Evidence shows that longer sentences do not deter crime more effectively than shorter sentences.

There is no evidence that there is a public safety benefit to increasing sentencing lengths. Research consistently shows that higher incarceration rates are not associated with lower violent crime rates. The weak association between higher incarceration rates and lower crime rates applies almost entirely to property crime.³ There is also growing evidence that, for many offenders, adding days, months, or years to prison sentences has no impact on recidivism.

Furthermore, according to the National Institute of Justice, it is the certainty of being caught that deters a person from committing a crime, not the fear of being punished or the severity of the punishment.⁴ Focusing on minor or low-level offenses like illegal gun possession instead of the actual violent crime or gun traffickers has repeatedly proven ineffective in reducing violent crime. For example, comparing Baltimore City numbers from 2019, the year with the most homicides over the past 30 years, with 2011, the year with the least murders during the same time period, proves this. In 2019 in Baltimore City, there were

² Lakeidra Chavis & Geoff Hing, The War on Gun Violence Has Failed. And Black Men Are Paying the Price, Mar. 23, 2023, https://www.themarshallproject.org/2023/03/23/gun-violence-possession-police-chicago?utm_campaign=share-tools&utm_content=post-top&utm_medium=email&utm_source=email.

³ Don Stemen. The Prison Paradox: More Incarceration Will Not Make Us Safer. New York: Vera Institute of Justice, 2017, https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf.

⁴ National Institute of Justice, "Five Things About Deterrence," June 5, 2016, [nij.ojp.gov: https://nij.ojp.gov/topics/articles/five-things-about-deterrence](https://nij.ojp.gov/topics/articles/five-things-about-deterrence)

348 murders, 2,203 gun seizures, and 1,161 weapons possession arrests. In 2011, there were 196 murders, 2,178 gun seizures, and 1,224 weapons possession arrests.⁵

Enhanced sentences are an expensive way to achieve little public safety.

Increasing criminal penalties is not necessary to make communities safer and is not an effective use of resources. Growing evidence that responses from outside the criminal legal system, like funding for community and hospital-based violence intervention programs, will make communities safer. Additionally, costs of high incarceration are not just felt by the government. Incarceration reduces economic mobility and has a lasting impact on families and communities.

For the foregoing reasons, the ACLU of Maryland urges an unfavorable report on SB 404 unless amended.

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⁵ Soderberg, B. (2022, February 18). 30 years of gun seizures in Baltimore haven't kept the city safe. The Real News Network. Retrieved March 28, 2023, from <https://therealnews.com/30-years-of-gun-seizures-baltimore-havent-kept-the-city-safe>.

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