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POSITION ON PROPOSED LEGISLATION

BILL: HB 481 – Criminal Law – Wearing, Carrying, or Transporting a Handgun – Penalty

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 02/13/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 481.

House Bill 481 would enhance penalties for illegal gun possession, increasing the maximum prison term for wearing, carrying, or knowingly transporting a handgun from 3 to 5 years. Proponents assert that this bill will effectuate equity – by aligning the penalty for persons 21 and older with laws on the books for 18-21 year olds – and deter crime by its increase in penalties. To the contrary, this bill will negatively impact communities in need of support and resources and in doing so, undermine public safety,

Research and practice consistently show that increased sentencing has little impact on deterring crime and an incredibly detrimental effect on long-term wellbeing for the individual, their community and society as a whole. In fact, studies consistently find that increased incarceration rates yield little benefit for public safety.¹ Thus, increasing penalties and incarceration for gun possession charges does not work to improve public safety.²

¹ DON STEMEN, VERA INST., THE PRISON PARADOX: MORE INCARCERATION WILL NOT MAKE US SAFER 1 (2017) (“Increases in incarceration rates have a small impact on crime rates and each additional increase in incarceration rates has a smaller impact on crime rates than previous increases Any crime reduction benefits of incarceration are limited to property crime Research consistently shows that higher incarceration rates are not associated with lower violent crime rates Since 2000, however, the increased use of incarceration accounted for nearly zero percent of the overall reduction in crime.”).

² Robert Weiss, Rethinking Prison for Non-Violent Gun Possession, 112 J. CRIM. L. & CRIMINOLOGY 665 (2022)

House Bill 481, and similar measures, cast a net of criminal liability “far and wide to catch enormous numbers of offenders, fully aware that only a small percentage of those who are punished would ever have caused the harm to be prevented.”³ Despite the far reaching impact, the increased penalty does nothing to cure the underlying safety concern that lead Marylanders to carry and use those guns to commit violence in the first place. Rather, the result is a “worst of all possible worlds [in which] guns—and gun violence—saturate our inner cities, while the people who go to prison for possessing guns are overwhelmingly Black and brown.”⁴

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on House Bill 481.

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

³ Douglas N. Husak, *Guns and Drugs: Case Studies on the Principled Limits of the Criminal Sanction*, 23 L. & PHIL. 437, 476 (2004). An excellent analogy is also found in laws that prohibit felons from having guns. See Zack Thompson, *Is it Fair to Criminalize Possession of Firearms by Ex-Felons?*, 9 WASH. UNIV. JURIS. REV. 150, 173 (2016) (“Felonin-possession laws do not proscribe or punish harm itself, but instead attempt to avert the possibility of harm. This means that actual harm will materialize in only a fraction of the instances in which an ex-felon would be subject to punishment for unlawfully possessing a firearm.”).

⁴ EMILY BAZELON, *CHARGED: THE NEW MOVEMENT TO TRANSFORM AMERICAN PROSECUTION AND END MASS INCARCERATION* (2020); JAMES FORMAN JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* (1st ed. 2017)