



## Testimony for the House Judiciary Committee

March 27, 2018

### SB 122 Criminal Law – Comprehensive Crime Bill of 2018

#### UNFAVORABLE

The ACLU of Maryland opposes SB 122, which would increase several criminal penalties; expand the government's authority to wiretap Marylanders; expand the admissibility of evidence that was acquired in violation of the constitution; create certain funding sources for violence intervention programs; and establish a task force to study gang statutes.

#### **Enhanced sentences are expensive and yield little or no public safety returns**

SB 122 drastically increases the maximum sentences for certain gun offenses. Enhanced sentences require that the state expend unjustified resources housing persons who may otherwise be appropriate for release. This is not only a waste of existing correctional resources; it is also a waste of current and future taxpayer dollars. Maryland currently spends on average \$3,800 per month per inmate in state facilities. Only two years ago, the General Assembly passed the Justice Reinvestment Act in an effort to curb the bloated prison population while maintaining public safety. SB 122 potentially undermines the progress and savings under the JRA, which the state is only just beginning to realize.

Moreover, no evidence indicates that there is a public safety benefit to increasing sentence lengths. Indeed, the evidence shows that more severe sentences do not deter crime more effectively than less severe sentences.<sup>1</sup> In researching the correlation between severe sentences and crime deterrence, Professors Durlauf & Nagin found that the marginal deterrent effect of increasing already lengthy prison sentences is modest at best and evidence suggests the possibility of a negative criminogenic effect from imprisonment.<sup>2</sup>

In its final report to the General Assembly, the Justice Reinvestment Coordinating Council noted:

A growing body of criminological research demonstrates that prison terms are not more likely to reduce recidivism than noncustodial sanctions. For some offenders, including drug offenders, technical violators, and first-time offenders, studies have shown that prison can

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<sup>1</sup> Durlauf & Nagin, *Imprisonment and Crime: Can Both Be Reduced?*, 10 CRIMINOLOGY & PUBL. POL'Y, 13, 37-38 (2011)

<sup>2</sup> *Id.*

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actually increase the likelihood of recidivism. There is also growing evidence that, for many offenders, adding days, months, or years to prison sentences has no impact on recidivism.<sup>3</sup> (*internal citations omitted*)

Therefore, the expanded maximum sentences under SB 122 will cost precious taxpayer dollars with little or no anticipated public safety gains.

### **Mandatory minimum sentences disproportionately penalize Black defendants**

SB 122 increases the sentences for existing mandatory minimums for certain gun offenses. During the meetings of the 2015 statewide Justice Reinvestment Coordinating Council, data uncovered that in FY13 and FY14, 81% of defendants sentenced to mandatory minimum sentences for drug crimes in Maryland were Black.<sup>4</sup> We have no reason to believe the disparities are different for more serious offenses.

Several JRCC council members expressed concern regarding the magnitude of discretion that mandatory minimum sentences place with the prosecution and the resultant racial disparities in sentencing. It is for this reason that the General Assembly removed mandatory minimum sentences for certain drug-related offenses in the final Justice Reinvestment Act of 2016.

### **Expanding Privacy Intrusion is improper in light of the Illegal Activities of the Baltimore City Police Department's Gun Trace Task Force**

SB 122 expands the list of offenses for which evidence may be gathered during a criminal investigation through the interception of oral, wire, or electronic communications. The bill adds the following offenses to the list: § 5-134 (restrictions on sale, rental, or transfer of regulated firearms); § 5-136 (straw purchases); § 5-138 (sale, transfer, or disposal of stolen regulated firearms); § 5-140 (transporting regulated firearm for unlawful sale or trafficking); § 5-141 (knowing participation in straw purchase); and § 5-144 (knowing participation in a violation of Title 5, Subtitle 1 of the Public Safety Article).

Although this is a statewide bill, the impetus for the bill stems from crime rates in Baltimore City. While there is good reason to take a closer look at the crime rates, that analysis cannot be divorced from the reality that the Baltimore Police Department has demonstrated, time and again, that it cannot be trusted to respect the civil rights and civil liberties of Baltimoreans. Just this year, members of the Baltimore City Police Department's Gun Trace Task Force were indicted (and some convicted, while the others pled guilty) on corruption charges. In light of this, now is simply not the time to entrust law enforcement with expanded authority to invade privacy rights.

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<sup>3</sup> Maryland Justice Reinvestment Coordinating Council—Final Report (December 2015).

<sup>4</sup> Final Report, Justice Reinvestment Coordinating Council (2015), <http://goccp.maryland.gov/wp-content/uploads/jrcc-final-report.pdf>.

**Expanded Appellate Rights for States Attorneys is improper and likely ineffective**

SB 122 adds the following offenses to the list of criminal cases in which the State may appeal from a trial court decision to exclude evidence or require the return of property alleged to have been seized in violation of the U.S. Constitution, the Maryland Constitution, or the Maryland Declaration of Rights: (1) unlawful possession of a regulated firearm under § 5-133 of the Public Safety Article; (2) unlawful possession of a rifle or shotgun by a person (general) under § 5-205 of the Public Safety Article; and (3) unlawful possession of a rifle or shotgun by a person with specified prior convictions under § 5-206 of the Public Safety Article.

As noted above—the Baltimore City Police Department’s Gun Trace Task Force has recently come under fire for improperly seizing money, drugs, and other contraband. Why would we allow greater latitude for the introduction of evidence that was obtained in violation of our Constitution? The exclusion of this evidence serves a deterrent effect by discouraging unconstitutional behavior by our law enforcement.

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**SB 122 improperly couples crucial funding Initiatives with regressive criminal justice penalties**

SB 122 includes funding for programs like the “Safe Streets Initiative,” which refers to violence prevention or intervention programs operated by community-based organizations in neighborhoods disproportionately affected by violent crime. This funding source is the only evidence-based public safety measure in the bill—it should not be jeopardized by the balance of the bill, which contains regressive criminal penalties.

For these reasons, we urge an unfavorable report on SB 122.