

City Council Bill 17-0111
July 17, 2017
Page 2

(2) A county, municipal corporation, or special taxing district may not prohibit the teaching of or training in firearms safety, or other educational or sporting use of the items listed in subsection (a) of this section. This bill exercises the authority granted in this section but only with respect to handguns. Accordingly, the bill is not preempted by State law.

Mandatory Sentences

The bill imposes a mandatory sentence of one year and a \$1,000 fine. Art. II of the City Charter contains the powers granted to the City by the Maryland General Assembly. §48 gives the Mayor and City Council the authority to provide, by ordinance, for "civil and criminal fines and penalties for the violation of any ordinance, rule or regulations established by the City under or in the execution of any power granted by this Article II; provided that no fine or penalty shall exceed \$1000.00 and no imprisonment shall be for a longer period than 12 months." The penalty provided for in the bill is within the scope of the Charter authority but removes any discretion to impose less prison time or a lower fine.

In general, "[a]lthough sentencing is an exclusively judicial function, the legislature may choose to constrict the independent exercise of judicial discretion in sentencing. The legislature has the power to define criminal punishments without giving the courts any sentencing discretion and mandatory sentences do not violate the principle of separation of powers." 16A Am. Jur.2d Constitutional Law §298. This authority has been recognized with respect to local governments as well. See *Brown v. City of Chicago*, 250 N.E.2d 129 (1969) and *City of Detroit v. Recorder's Court Traffic and Ordinance Judge*, 104 Mich. App. 214(1981). Given these general principles, the Law Department concludes that the City Council is acting within its Charter powers when providing for a mandatory sentence in this bill.

Based on the foregoing, the Law Department approves the bill for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro
Chief Solicitor, Division Chief



**Hilary Ruley,
Chief Solicitor**



**Victor Tervala
Chief Solicitor**

**cc: David Ralph, Acting City Solicitor
Karen Stokes, Director of Government Relations
Kyron Banks, Legislative Liaison
Hilary Ruley, Chief Solicitor
Victor Tervala, Chief Solicitor
Jennifer Landis, Special Assistant Solicitor**



**Catherine Pugh
Mayor**

BALTIMORE POLICE DEPARTMENT



**Kevin Davis
Police Commissioner**

July 21, 2017

Honorable President and Members of the Baltimore City Council
Room 400, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Attention: Natawna Austin, Executive Secretary

**Re: City Council Bill No. 17-0111
Weapons - Prohibiting Handguns Near Places of Public Assembly**

Dear Council President Young and Members of the City Council:

The Baltimore Police Department (the Department) has reviewed Council Bill 17-0111. This bill is for the purpose of prohibiting the wearing, carrying, or knowingly transporting of handguns near certain places of public assembly; creating certain exceptions; defining a certain term; establishing a certain mandatory penalty; setting a special effective date; and generally relating to handguns.

The Department supports this bill.

At the time of this writing, there have been 190 murders and 356 non-fatal shootings in Baltimore City so far this year. Of the murders, 86% were committed using a handgun. 46% of the victims and 41.5% of those suspected in these murders had been previously arrested for a gun crime. The handguns used in these crimes are illegally possessed. This data shows that people do not treat the illegal possession of a handgun in Baltimore City as a serious crime.

Further, since the beginning of 2016, there have been over 605 convictions for criminal cases involving a handgun in Baltimore City. 60% of those found guilty in these cases had a majority of their sentence suspended. Again, this data shows that the illegal possession of a handgun in Baltimore City is not treated as a serious crime.

The Department supports this bill because the illegal possession of a handgun in Baltimore City is a serious crime, and there needs to be serious consequences. Additionally, enactment of this ordinance will provide another tool in the toolbox for police and prosecutors to use in order to ensure that the most violent and serious offenders are not in our neighborhoods.

Thank you for the opportunity to comment. The Department looks forward to working with the City Council on this matter.

Sincerely,



James A. Gillis

Director of Government Affairs

JUDICIARY AND LEGISLATIVE INVESTIGATIONS COMMITTEE

Council Bill 17-0111

Hearing Date: July 25, 2017

Testimony (PRO):

- **Anirban Basu**
- **Donald Fry, Greater Baltimore
Committee**
- **Joyce Green, Central District Police
Community Relations Council**
- **Kurt Schmoke, University of Baltimore**
- **Waung Sherren**

Getting the Guns off the Streets – an Economic Perspective, by Anirban Basu

The Issue

As of this writing, Baltimore has already experienced more than 193 murders this year, nearly 25 percent above last year's pace. The city is on pace to surpass 300 homicides this year. Based on hotel occupancy, restaurant, and retail performance, the violence has impacted visitation, which impacts job creation, commercial real estate performance, and tax base. There is even evidence indicating that Baltimore's massive levels of violence are impacting economic outcomes in the Baltimore suburbs. Over the past year, none of the nation's 24 largest metropolitan areas has added jobs as slowly as the Baltimore metropolitan area.

Employment Growth, 24 Largest Metros (NSA): June 2016 v. June 2017 Percent Change

| Rank | MSA | % |
|------|--|------------|
| 1 | Orlando-Kissimmee-Sanford, FL MSA | 4.0 |
| 2 | Tampa-St. Petersburg-Clearwater, FL MSA | 3.6 |
| 3 | Atlanta-Sandy Springs-Roswell, GA MSA | 3.5 |
| 4 | Riverside-San Bernardino-Ontario, CA MSA | 3.4 |
| 5 | Dallas-Fort Worth-Arlington, TX MSA | 3.3 |
| 5 | Minneapolis-St. Paul-Bloomington, MN-WI MSA | 3.3 |
| 7 | Miami-Fort Lauderdale-West Palm Beach, FL MSA | 3.2 |
| 8 | Phoenix-Mesa-Scottsdale, AZ MSA | 3.0 |
| 9 | Charlotte-Concord-Gastonia, NC-SC MSA | 2.9 |
| 10 | Denver-Aurora-Lakewood, CO MSA | 2.6 |
| 11 | Portland-Vancouver-Hillsboro, OR-WA MSA | 2.5 |
| 11 | Seattle-Tacoma-Bellevue, WA MSA | 2.5 |
| 13 | Boston-Cambridge-Nashua, MA-NH Metro NECTA | 2.4 |
| 13 | San Francisco-Oakland-Hayward, CA MSA | 2.4 |
| 15 | Detroit-Warren-Dearborn, MI MSA | 2.2 |
| 16 | Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA | 2.1 |
| 17 | San Diego-Carlsbad, CA MSA | 2.0 |
| 18 | Houston-The Woodlands-Sugar Land, TX MSA | 1.9 |
| 19 | Washington-Arlington-Alexandria, DC-VA-MD-WV MSA | 1.8 |
| 19 | New York-Newark-Jersey City, NY-NJ-PA MSA | 1.8 |
| 21 | Los Angeles-Long Beach-Anaheim, CA MSA | 1.7 |
| 22 | Chicago-Naperville-Elgin, IL-IN-WI MSA | 1.3 |
| 23 | St. Louis, MO-IL MSA | 1.2 |
| 24 | Baltimore-Columbia-Towson, MD MSA | 1.1 |

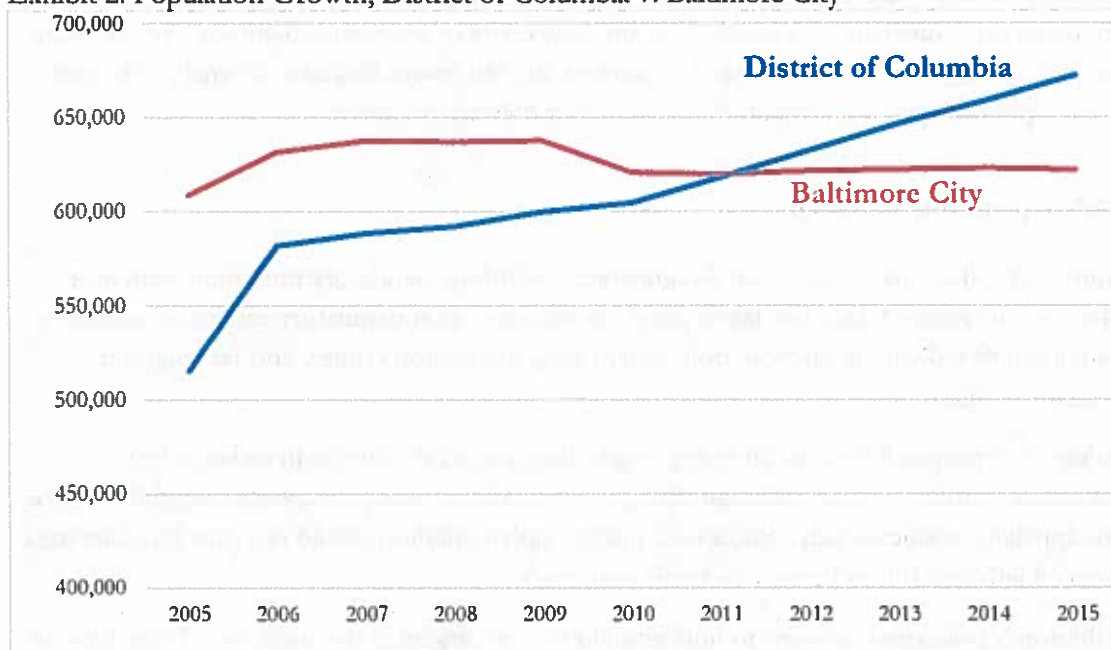
Source: U.S. Bureau of Labor Statistics

In response to the need to radically reduce street-level violence, the Mayor and City Council President Jack Young drafted legislation that will strengthen the penalty for the possession of an illegal handgun within 300 feet of a church, school, park, public building or other place of public assembly. It will change the mandatory sentence for first-time illegal handgun possession from a suspendable 30 day to 3-year sentence to a non-suspendable 1-year sentence. The policy would retain the misdemeanor classification.

Why Economic Development in Baltimore Requires Such a Response

Here is what we know. Baltimore's population (2016 estimate from U.S. Census Bureau is 614,644) is not expanding nearly as rapidly as that of other cities. In 2000, Baltimore's population was 648,654. If Baltimore's population had expanded as rapidly as Washington, D.C.'s since 2000, Baltimore would have boasted a population of 772,352 in the year 2016. If the city had added population as rapidly as Atlanta, GA, our population would have been 727,465 in 2016. In fact, according to the Census, Baltimore was one of only a handful of large U.S. cities to lose population over a recent 12-month period.

Exhibit 2: Population Growth, District of Columbia v. Baltimore City



Source: U.S. Census Bureau, American Community Survey (ACS) 1-Year Estimates.

The same can be said about our lack of tax base expansion. In 2007, Baltimore's property tax revenue was \$599 million.¹ By 2016, that figure has increased to \$857 million.² During that same 10-year span, Washington DC's property tax revenue increased from \$1.345 billion to \$2.357 billion.³ If Baltimore's tax base had expanded at same rate as Washington, D.C.'s, annual property tax collections would have been \$1.050 billion here, a difference approaching \$200 million per annum.

¹ City of Baltimore, Maryland. "Comprehensive Annual Financial Report Year Ended June 30, 2007". <http://finance.baltimorecity.gov/sites/default/files/FY2007.pdf>

² City of Baltimore, Maryland. "Fiscal 2016 Summary of the Adopted Budget". <http://bbmr.baltimorecity.gov/sites/default/files/FY2016%20SOTA%20Final.pdf>

³ Government of the District of Columbia Office of the Chief Financial Officer Office of Revenue Analysis. "D.C. Tax Facts 2016". <https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/2016%20Revised%20Tax%20Facts.pdf>

Here's another thing we know – Baltimore is a place associated with remarkable lethality. Chicago has attracted much of the attention for its high number of homicides. But Chicagoans could point to Baltimore as being a far more deadly city. In 2016, Chicago was associated with 762 homicides. In that same year, Baltimore registered 318 homicides. This means that while Chicago's homicide rate per 100,000 residents was 27.9 – Baltimore's was 51.2. Only St. Louis (59.3) reported a higher rate.⁴

The result is a city that has sustained massive reputational damage. A recent Baltimore Business Journal editorial points out how difficult it has become to recruit talent to Baltimore. One fears that we have ended up weakening our institutions. How many bright students are choosing Carnegie Mellon over Johns Hopkins, how many researchers are choosing the University of Virginia over the University of Maryland, Baltimore, or choosing to work for Nike instead of Under Armour? As the Baltimore Business Journal points out, these types of losses are difficult to measure, but they are no less real.

Let's Upend the Status Quo

Admittedly, there has been much disagreement regarding mandatory minimum sentences. Much of the research that has taken place has focused upon mandatory minimum sentences pertaining to federal jurisdiction, non-violent drug possession crimes, and far lengthier mandatory minimums.

Baltimore's proposal focuses on trying to get the guns off the streets in order to help deescalate conflict, reduce collateral damage to bystanders, and perhaps meaningfully reduce our appalling homicide tally. Successful policy implementation would not only translate into reduced lethality, but to better economic outcomes.

Baltimore's policymakers need to understand just how urgent is the situation. There have in recent years been some real advances in the city, including in the form of the arrival of Amazon, a new casino with 1,250 Baltimore resident employees⁵, an apartment building boom, and the ongoing development of emerging neighborhoods such as Remington, Port Covington, and Harbor Point.

But behind that positive activity are underlying demographic forces that have the potential to completely undermine the city's already fragile fiscal circumstances and the real estate momentum presently observed. In particular, much of the city's progress has been motivated by Millennials, now largely in their 20s and 30s. Over the next ten years, this life

⁴ Mirabile, Francesca. 2017. "Chicago Still Isn't the Murder Capital of America". The Trace. January 18, 2017. <https://www.thetrace.org/2017/01/chicago-not-most-dangerous-city-america/>.

⁵ Meehan, Sarah. 2014. "Half of Horseshoe Casino's employees are Baltimore City residents". The Baltimore Business Journal. August 26, 2014. <https://www.bizjournals.com/baltimore/news/2014/08/26/half-of-horseshoe-casinos-employees-are-baltimore.html>.

force will enter their 30s and 40s in large numbers, triggering significant outmigration in the process absent a significant improvement in the city's value proposition.⁶

While young people may feel invincible in their 20s, once one has children, one tends to feel far more vulnerable. If the city continues on its present path, it is my contention that a building and large-scale pent-up demand to leave the city will be unleashed, translating into large population declines going forward, cuts to the City's bond rating, diminished investment in neighborhoods, and less rapid business formation and expansion.

Baltimore simply cannot afford to allow that scenario to transpire. We must begin to upend the status quo now, and it begins by getting guns off the streets. It is therefore an economic imperative for Baltimore to pass the proposed mandatory minimum of one year in the case of handgun violations. There is already too much blood to wash away and there are too few job openings to fill.

⁶ Sherman, Natalie. 2017. "Baltimore population falls, nearing a 100-year low, U.S. Census says". The Baltimore Sun. March 23, 2017. <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-bz-baltimore-population-loss-jumps-20170322-story.html>.



POSITION STATEMENT

**TESTIMONY PRESENTED TO THE BALTIMORE CITY COUNCIL
JUDICIAL AND LEGISLATIVE INVESTIGATIONS COMMITTEE**

**COUNCIL BILL 17-0111 – WEAPONS – PROHIBITING HANDGUNS NEAR PLACES
OF PUBLIC ASSEMBLY**

**DONALD C. FRY
PRESIDENT & CEO
GREATER BALTIMORE COMMITTEE**

POSITION: SUPPORT

It is no secret that Baltimore City is facing unprecedented levels of violence. Violent crime has seen a double digit increase compared to this time last year. The city is on pace to surpass last year's homicide numbers, one of the most deadly years on record for the city. So far this year, more than 190 men and women have been murdered. Eighty-six percent of those murders were committed using a handgun.

It is clear that Baltimore City has a gun problem.

The gun problem is exacerbated by the failure of the court system to address the situation after one has been convicted of possessing an illegal handgun. Between January 1, 2016 and June 7, 2017, according to Baltimore Police Department records, 605 defendants were found guilty of gun violations. Of those defendants found guilty, at the time of sentencing, 60 percent received more than half of their sentence suspended. That is an alarming and troubling statistic for a city with an illegal gun problem.

The legislation pending before you is not a magic elixir for the issues that are at the root of Baltimore's crime problem, nor is it meant to be. Those issues – including widespread poverty, a lack of employment opportunities, the need for workforce training, and increased investment in a world-class K-12 educational system – are critically important to the future success of Baltimore and must be addressed.

The GBC is firmly committed to working with the Mayor and City Council to develop and implement effective solutions to address the underlying issues that contribute to violence in the city. Those solutions will require adequate funding, universal support, and a sustained effort by all interested stakeholders to be successful. It is important that all parties work in collaboration to develop those solutions. That effort should begin now.

However, we also need to address the immediate problem at hand - the tragic loss of life taking place on a daily basis on the streets of Baltimore. That problem cannot wait for the long-term solutions referenced above.

This bill is intended to serve as a tool for police and prosecutors to get illegal guns off the streets. If passed, this bill would ensure that men and women convicted of carrying an illegal handgun in the vicinity of a church, park, school, public building or other place of public assembly will not be allowed to wreak havoc on the streets of Baltimore. Instead, they will be guaranteed a year in jail which will protect innocent citizens from violence.

Opponents have expressed concern that passage of this legislation may result in a conviction and harsh punishment being imposed on an individual that has previously had no connection with the legal system and has an otherwise exemplary record. Our criminal justice system places extraordinary discretion in the State's Attorney's office to determine whether a criminal charge is brought to trial before a judicial officer or if justice would be better served by sending the defendant through some form of diversion program.

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We are confident that the State's Attorney's office is capable of properly exercising this authority and strongly urge that such a diversion alternative be utilized when appropriate.

Passage of this bill would send a clear and strong message that illegal gun possession will not be tolerated in Baltimore City.

This legislation is not a step back to the failed policies of the past nor is it a return to mass incarcerations.

It represents an effort to protect and ensure the future of Baltimore City, a future that cannot and will not be realized if we continue on this path of violence. Residents, employers, employees, and visitors are increasingly frustrated and annoyed, and should be, by the constant drumbeat of gun violence. They have a right to demand that violators of the law receive punishment that fits their crime. This legislation is not a cure-all for all shootings and homicides, but it is part of the solution.

The most important responsibility of a government is to provide for the safety of its citizens.

Under the current circumstances and the rash of violence that plagues Baltimore City, Council Bill 17-0111 is a good step toward that commitment.

For these reasons, I urge you to vote favorably on this legislation. Thank you.

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From: Joyce Green [<mailto:jegreen21201@yahoo.com>]

Sent: Monday, July 24, 2017 10:41 PM

To: Costello, Eric; Scott, Brandon; Henry, Bill (email); Clarke, Mary Pat; Middleton, Sharon; Bernard Young

Cc: Charlene Bourne; Ulysses Miller; Joyce Adamski; Jack Baker; Patricia Rideout; William Miller; Marty Howe; irobb918@gmail.com

Subject: Council Bill 17-0111

Due to circumstances beyond my control I am unable to attend the hearing so I am submitting this letter. Since the Illegal Handgun Bill was introduced publicly, I am hearing pros and cons by citizens. I am more focused on the pro's, those who want to see the violence in this city stopped.

Every day, the Police post photos of handguns and drugs being taken off of our streets.

Every day, there is a judge who is releasing repeat offenders to go back out on the streets to continue their criminal activities. Our court system has a revolving door for criminals. Committing a crime with a handgun means no jail time. The judges are sending a message that it is okay to commit a crime in Baltimore. All we are going to do is wish you well as you leave the courtroom.

Every day there is some kind of crime committed with a handgun in our city.

Nearly every day, I am hearing people saying they do not feel safe in our city. I hear Senior Citizens say they do not like being out after dark.

While I totally support Council Bill 17-0111 I feel it is simply the tip of the Iceberg. The one problem I have with this Bill is that these people facing the Mandatory Sentencing will be able to be released early for good behavior. This means that each person arrested will serve less than a one year sentence. In a sense this defeats the purpose. The mandatory sentence will get many of the repeat offenders off our streets for a year. However in the interim period, the Police Department needs to be supported and not criticized for its efforts in making our streets safer. There comes a time when our City is no longer under siege by criminals who roam the streets robbing and shooting people

We need to continue to go beyond the tip of the Iceberg. Measures must be taken to make our City safer. With the lack of response from our General Assembly and the Judicial System that uses discretion by sentencing a person convicted of a murder to five years then reducing the sentence to one day, tells us just how broken the system is.

This wave of violence did not start over night and it is not going to end over night. It is going to end when as a city, those who care begin to work together.

It is going to end when our elected officials come out and listen to the people who are willing to help solve the problems and not berate them for what isn't happening. It will end when critics who oppose everything positive lose listeners. Critics don't help they are more comfortable putting everything in a negative light.

Therefore, I am urging you to pass Council Bill 17-0111. We have a serious problem and we need serious people working to solve these problems. This is a start but it is just a start. We all have to keep going and build a safer healthier city for all who live, work, visit and worship here.

Respectfully submitted,

Joyce Green
President
Central District Police Community Relations Council

"Courage is the most important of all the virtues, because without courage you can't practice any other virtue consistently. You can practice any virtue erratically, but nothing consistently without courage."

~Maya Angelou~

July 24, 2017

Judiciary and Legislative Investigations Committee
Baltimore City Council

Dear Chairman Costello, Vice Chair Clarke and Members of the Judiciary and Legislative Investigations Committee:

As you consider pending legislation to combat gun violence, the University of Baltimore applauds the city's elected officials for aggressively seeking ways to reduce the city's level of violence. The University acknowledges your intent and commitment to prevent violence in the most effective way. We recognize that these actions may include steps to reduce the incidence of gun violence and realize that the best solution will be the result of much work and deliberation.

The University of Baltimore is home to many of the city's most impactful academic programs, ranging from law to business, from the arts and sciences to public affairs. Our scholars are versed in criminal justice and law, frequently debating the merits of various solutions to crime and violence. We offer our expertise to you as you consider gun violence legislation and contemplate the best approach.

We also are finding success in hosting city youth who are considering college – a sensible way to keep young people engaged and moving in the right direction. Through our College Readiness Academy and Summer Achievement Institute, local high school students are setting off on a path of learning, career-building and life-long success. Since 2009, UB has hosted up to 100 high school students each summer. Education alone cannot rid our city of crime, but it can be a key part of the solution.

UB is an anchor institution in the city concerned about the city's violence, so we join together with you, private citizens, nonprofits and others that live and work in the city to help develop ways to fight the scourge of crime and violence. It's our hope that coordination will post real and measurable gains, as good results will arise from working in collaboration.

Like you, we strive to establish a healthy and peaceful Baltimore that provides an inspirational environment for its residents, businesses and visitors. The University of Baltimore shares your vision of a less violent Baltimore.

Sincerely,



Kurt L. Schmoke
President

Nibber, Dpaul

From: Waung Sherren <danwaung@yahoo.com>
Sent: Monday, July 24, 2017 9:11 PM
To: Costello, Eric; Clarke, Mary Pat; Bullock, John; Pinkett, Leon; Reisinger, Edward; Scott, Brandon; Stokes, Robert
Cc: Nibber, Dpaul
Subject: Weapons -Prohibiting Handguns Bill

Dear Council Committee,
I am for the proposed bill.

CIV indicated far more youths at risk will be affected by this bill than other citizens. If that is true, the bill should reduce the number of guns on the street and the number of youths carrying illegal guns.

The bill is probably not anywhere close to a final solution, but it demonstrates the city is trying to stem the wave of gun related killings.

Respectfully,
Sherren(Dan)Waung, Phd

JUDICIARY AND LEGISLATIVE INVESTIGATIONS COMMITTEE

Council Bill 17-0111

Hearing Date: July 25, 2017

Testimony (AGAINST):

- **Gene Anderson**
- **Nikai Campbell**
- **Jenny Egan**
- **JC Faulk, Circles of Voices**
- **Hassan Giordano, NAACP**
- **Keesha Ha**
- **Dakari Hamlin**
- **Karis Haslam**
- **Rachel Kassman**
- **Vitaly Lorman**
- **Nicole D. Porter, The Sentencing Project**
- **Joshua Prince, Civil Rights Defense Firm**
- **Kevin Ring, Families Against Mandatory Minimums**
- **Paul Sill**
- **David Slaughter**



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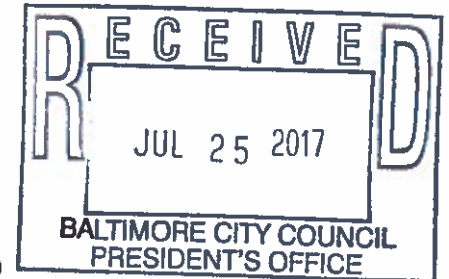
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NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
4805 MT. HOPE DRIVE • BALTIMORE, MARYLAND 21215-3297 • (410) 580-5777

July 25, 2017

Hon. Bernard C. "Jack" Young, President, Baltimore City Council
Eric Costello, Chair, Judiciary and Legislative Investigations Committee
Mary Pat Clarke, Vice Chair, Judiciary and Legislative Investigations Committee
Members, Judiciary and Legislative Investigations Committee
Members, Baltimore City Council



RE: Mandatory Minimum for Gun Possession (City Council Bill 17-0111)

Dear President Young and Members of the City Council:

I am writing to urge the Baltimore City Council not to enact a mandatory minimum sentence for gun possession that will have harmful effects without reducing violent crime. The NAACP has been fighting for over a decade to end mandatory minimums at the local, state, and federal level. Our opposition to mandatory minimums is rooted in the evidence that mandatory minimums lead to racial disparities, add to the power of prosecutors and police, and do not keep communities safe.

Mandatory minimum sentences transfer discretion from judges to prosecutors and police officers. Police can selectively determine who to target for enforcement. Given the United States Department of Justice's findings on Baltimore's pattern and practice of discriminatory law enforcement, this bill is likely to lead to racial disparities that will most heavily impact the African American community. Prosecutors will decide who to charge and will determine which people will spend a year in jail. These prosecutorial decisions will not be made in open court with the transparency inherent in judicial proceedings.

Mandatory sentencing for unlawful gun possession is not a new idea; it was enacted by several cities in the 1970s. These laws ushered in a wave of "tough on crime" tactics that fueled the mass incarceration crisis that persists to this day. Baltimore can learn from other cities' experiments with mandatory sentencing for carrying unlicensed firearms. There is no conclusive evidence that these laws reduced crime, and there is extensive evidence that they resulted in selected enforcement by police and prosecutors.¹

Our country is at a dangerous crossroads. After decades of increasing correctional populations, we have seen increasing awareness of the toll that mass incarceration has taken on our communities. Momentum for change was building, and efforts to enhance public safety while decreasing prison populations have been taken at the federal, state, and local level. However, we now have a federal attorney general who has decided to return to the discredited War on Drugs policies of the past. Laws such as the one under consideration today were the building blocks of our slide into mass incarceration. I hope that Baltimore will not become a leader in backsliding into disproven crime fighting tactics.

Sincerely,
Ngozi Ndulue
Senior Director of Criminal Justice Programs

www.naacp.org

¹ See, e.g., Tonry, Michael. "The mostly unintended effects of mandatory penalties: Two centuries of consistent findings." *Crime and Justice* 38.1 (2009): 65-114.

From: [Gene Anderson](#)
To: [Nibber Draul](#)
Subject: MEETING RESOLUTION
Date: Monday, July 24, 2017 11:21:51 PM

Honest, intelligent citizens will need to be armed near the areas where you desire them to become the victim as it is those locations where the criminal will feel very safe as you are setting forth a safe space for criminals.

Do you need to destroy the family concept by placing EVERYONE in jail?

What is proposed is KNOWN to not work... clearly established as not working in other cities.

From: Kai. Music [<mailto:bmoreskai@gmail.com>]
Sent: Friday, July 21, 2017 6:07 PM
To: Clarke, Mary Pat
Subject: Vote NO on Bill # 17-0111 Weapons

Hello Councilwoman Mary Pat Clarke,

My name is Nikai Campbell, a teenager and soon to be voter who lives in Baltimore City. I would like to thank you for voting "No" on Bill # 71-0111 "Weapons - Prohibiting Handguns Near Places of Public Assembly". Mass Incarceration has affected the nation and especially Baltimore City since the 70s. Our communities are struggling with a lack of jobs for incarcerated individuals; therefore, these individuals look for other source of income. Often these are illegal job such as drug-dealing, robbery, hustling, etc. Guns are used as a way of protection for these people. I do not believe that the current weapons legislation (30 days of jail for first offense of an illegal handgun and 1 year for the second offense) is much different from Mayor Pugh's mandatory minimum of one year prison sentence. We are punishing people for guns, but do not spend enough time finding out where the guns are coming from. The one year prison sentence is not enough of a deterrent for those who are living the "street life". There needs to be more Job opportunities for ex-offenders in this city, something to put money on the table for them and their families. Selling drugs, stealing, and other illegal sources of income welcome anyone, hint: incarcerated people! They can depend on that to make a living. I want to let you know that we support you for your decision on this bill. We hope that you do not waiver in your decision because myself and many other constituents support you. This bill will highly impact my community and I will be there to testify with you on July 25, 2017. Please encourage your co-workers to vote against the bill and explain how it negatively impacts the community.

Thank You,
Nikai Campbell

From: [jenny egan](#)
To: [Costello, Eric](#); [Clarke, Mary Pat](#); [Bullock, John](#); [Pinkett, Leon](#); [Reisinger, Edward](#); [Scott, Brandon](#); [Stokes, Robert](#); [Nibber, Dpaul](#)
Subject: Fwd: Opposition to the New Proposed Gun Law
Date: Monday, July 24, 2017 3:14:21 PM

To Whom It May Concern:

I am writing to you as a constituent to express my extreme disapproval of the proposed gun bill.

If you want to address crime and violence - the way to do it is not criminalization. The strategy of increasing penalties as a way to solve problems has been proven time and again to be ineffective and a tool of oppression.

This bill will not take any more guns off the street, but it will put men and women and children behind bars and do nothing to solve the violence problem in our city.

The Baltimore Police Department has been proven to participate in a pattern and practice of illegal and discriminatory policing. This measure will only embolden them to increase the use of stop and frisk and other discriminatory means of stopping, harassing, and terrorizing communities of color. I would be happy to show you a plethora of police reports that cite only the barest of pretext as constituting the "characteristics of an armed person." They range from touching one's pants, to itching, to walking with your legs "too wide." All things that could also be explained by being human.

This bill is a signal to law enforcement to continue their illegal, racist, and unproductive policing tactics.

This measure will also cost us - not just in the beds that will fill up but in the vacant holes left in families and our communities.

I work every day with young men and women who make bad choices. Given the violence, many citizens feel the only way to protect themselves is to carry an illegal weapon. It's not okay, it's not good - but given the rate of violence you can see why a person might make this choice. When a person merely possesses an illegal weapon, this proposed bill is too harsh and will cost Baltimore too much.

If you want to address violence, you could use the money that will go to imprisoning people to make sure a social worker is assigned to every shooting victim in the city. That someone is tasked with ending the cycle of retaliation that is driving our current murder rate. You could offer trauma informed care to the thousands of children who are walking around our city shell shocked from the things they have seen, the pain they have endured.

This measure will not reduce violence, it will further criminalize and devastate Baltimore.

Please vote no.

Regards,

Jenny Egan
[410.340.6992](tel:410.340.6992)
jenny.egan@gmail.com
21218

From: JC Faulk [<mailto:jcfaulk@circlesofvoices.com>]
Sent: Thursday, July 20, 2017 6:47 PM
To: Costello, Eric
Cc: JC Faulk
Subject: Deny Pending Weapons - Prohibiting Handguns (17-0111) Ordinance

Councilman Eric Costello,

I am the Founder of *Circles of Voices, LLC*, regularly facilitating diverse groups of Baltimore citizens through discussions that diminish the impact of isms and phobias. Nearly three thousand people have attended sessions over two years. Outside of raising my daughter, it is the most life affirming activity of my life. I am also an OSI Fellow and a member of GBC Leadership '17. However, I write these words in reference to a more pressing matter.

In light of the pending Weapons - Prohibiting Handguns (17-0111) ordinance, I reach out because it is of utmost importance to deny BPD, our Mayor and the States Attorney their intent to enforce mandatory sentences on illegal gun holders in Baltimore. This law would unjustly target first time offenders and contribute deeply to the school to prison pipeline.

For example, imagine for a moment that a young teen lives in one of the most dangerous communities in Baltimore. Choose any of them, for there are many. Then visualize that he/she faces our most dangerous criminals on a daily basis, in an area that is insufficiently policed, where people are afraid to call those who are sworn to protect them.

This fear is warranted, given the murder of Freddie Gray, Tyrone West and the many brutalized unnamed others. Given the excessively abusive track record of BPD, current and past, neither Kevin Davis nor BPD deserves our trust. It must be earned, and it has not been. Point in fact; the BPD is currently under a DOJ consent decree, which is driven by a magnitude of abuses, as spelled out in the recent DOJ Report. It is perplexing that BPD would ask for more power when the department is under federal scrutiny for past and current egregious offenses against Baltimore's impoverished African-American citizenry. It would be unconscious to impose mandatory sentences in a city where police are regularly caught planting evidence. See the recent Baltimore Brew article.

<https://baltimorebrew.com/2017/07/20/as-pugh-calls-for-crackdown-on-guns-video-shows-police-possibly-planting-evidence>

Vulnerable communities understand systemic abuse more than we can possibly know, because they are at the painful edge of over-prosecution and community based criminals. They need us to hear them.

This bill would take discretion from judges and defense attorneys at a time when vulnerable impoverished citizens need a buffer between their bodies and systemic injustice. You can be that buffer. It is clearly documented that Baltimore's African-American citizenry have been excessively criminalized. This measure would deny victims the due process of *just* laws. It would weaken a defense attorney's ability to protect clients, when there has been documented and undeniable racial injustice in Baltimore.

Excerpt from the DOJ Report:

"Recent events highlight the critical importance of mutual trust and cooperation between law enforcement officers and the people they serve. A commitment to constitutional policing builds trust that enhances crime fighting efforts and officer

safety... [T]here are "two Baltimores:" one wealthy and largely white, the second impoverished and predominantly black. Community members living in the City's wealthier and largely white neighborhoods told us that officers tend to be respectful and responsive to their needs, while many individuals living in the City's largely African-American communities informed us that officers tend to be disrespectful and do not respond promptly to their calls for service. Members of these largely African-American communities often felt they were subjected to unjustified stops, searches, and arrests, as well as excessive force."

Think of the young teen, first offender, acquiring a weapon to protect her/his family. If apprehended by BPD, a first time offender would mandatorily face a year in jail, without the possibility of judicial restraint. When the sentence is complete, he or she would return to our city hardened, wounded and irreparably damaged. This is untenable in a just society. A vote in favor of this measure conveys a lack of trust in Judges across the system. Have faith in their ability to see and respond to the worth of individuals standing before them.

I have seen a few of them in action in Baltimore, and have been impressed by their concern for life, justice and liberty. In specific, Shannon Avery (Maryland Circuit Court Judge) gave me reason to believe in the possibility of justice, shortly after the 2015 unrest. As a concerned, active citizen, I ask that you refrain from tying her hands.

No one deserves prison for a first time offense related to carrying a weapon that they did not use to commit a violent crime. Overall, it is inhumane to continue down this path, when national data confirms that mandatory sentencing exacerbates problems. The current bill would further erode public trust, and over-criminalize first time offenders. There is no necessity for this, when there are current laws in place to punish violent offenders.

The school to prison pipeline must be deconstructed. Citizens look to you to buffer us from a system that has been intent, either consciously or unconsciously, on continuing policies that over criminalize Black people. This measure would deepen festering wounds.

Addressing issues of historic and present racism/discrimination/poverty will resolve issues in our city and our nation. This is not a time to lose the trust being built in Baltimore. More school to prison pipeline activities will only destroy more lives, intensify oppression and continue us on a never-ending cycle of poverty and pain. See the recent *Popular Democracy* report using the link below.

(<http://populardemocracy.org/sites/default/files/Freedom%20To%20Thrive%2C%20Higher%20Res%20Version.pdf>)

If you have already decided to vote against this measure, I applaud your commitment to ushering in a brighter future for Baltimore. If you are weighing your decision, for the sake of vulnerable Baltimore citizenry, deeply consider all that I have said. There is only one way to promote justice here, and that is to deny the proliferation of systemic oppression.

J.C. Faulk
Circles of Voices, LLC

From: Hassan Giordano [<mailto:hassangiordano@gmail.com>]

Sent: Monday, July 24, 2017 10:43 AM

To: Cohen, Zeke; Scott, Brandon; Dorsey, Ryan; Henry, Bill (email); Schleifer, Isaac; Middleton, Sharon; Pinkett, Leon; Burnett, Kristerfer; Bullock, John; Reisinger, Edward; Costello, Eric; Stokes, Robert; Sneed, Shannon; Clarke, Mary Pat; City Council President

Subject: Written Testimony in OPPOSITION to CB 17-0111

Dear Council Rep:

Due to the fact that like most productive members of today's society, I will be working during the 10:00 a.m. public hearing scheduled for CB 17-0111, I wanted to personally submit my testimony in opposition of this legislation. And since it is no way of doing such online that I have found, I am writing my opposition to all fourteen council members, as well as the Council President.

Below is my opposition in written form, articulated in a recent article I wrote that spells out the false narrative being pushed by those in support of this reactionary piece of legislation. I would hope you read my full testimony and consider the fact that this bill will offer nothing that the state's attorney doesn't already have at their disposal, but will further exacerbate a problem we've witnessed for years in the black community, how mandatory minimums decimate families and ruin individual lives by handcuffing the very judges we either appoint and/or elect to hand down these sentences. Thank you for listening!

The false narrative of regarding CB 17-0111

In 2007 a Baltimore City resident, known in this article as John Q. Innocent for purposes of not wanting to reveal his true identity, received a frantic call from the mother of his three-year old daughter who had

informed him that their daughter had been struck by a stray bullet. Responding as any parent would, Mr. Innocent got dressed, ran outside and was finally able to flag down a hack (an unlicensed cab driver) in order to get transported to Sinai Hospital.

Since Mr. Innocent had no valid license, like so many in his Park Heights neighborhood, and didn't want to wait all day for the cab he called twenty minutes prior to show up, he decided to take the ride from the hack – a normal means of transportation in Baltimore's black community. Letting the driver know of the circumstances, he asked that they try to push the limit in getting to the hospital as quickly as possible. Failing to yield to a stop sign in the proper fashion, or so says the police report that followed, the two gentlemen were pulled over, yanked out of the car, patted down and sat on the curb in the pouring rain.

Mr. Innocent was clean, having no outstanding warrants since his law breaking days had been put away after the birth of his first child some 6-years ago. However the driver, a 67-year old Baltimore resident with no criminal record, had a licensed handgun inside his glove compartment for his safety while transporting individuals "hacking" – which has become a very dangerous business. Both gentlemen were locked up, Mr. Innocent because he was on parole and thereby violating that order by "associating with someone in possession of a firearm".

At trial, the 67-year old man was given probation before judgment, while charges were eventually dropped against Mr. Innocent, though he was sent back in (to jail) to face a parole revocation board hearing and released, successfully completing the eight-months remaining on his

sentence. And yet, had the bill pending before the Baltimore City Council been in effect, both men could have potentially been given a mandatory year in prison because of this traffic stop, as it just so happens that they were pulled over outside a closed and aging school facility.

The judge in their cases would have had no choice but to abide by a mandatory minimum sentencing guideline, passed by a majority of elected representatives in the face a surging crime wave. And yet, while the council and others want to blame the Judges for given lenient sentences on crimes such as possession of a firearm, research shows that in fact it's not the judges who use these sentencing enhancements or even have a say in what is known as "plea bargains". In fact, that all falls on one person, the prosecutor.

Currently, the city state's attorneys have the discretion to bring forth mandatory sentencing guidelines already on the books if they so choose, and yet this current administration has chosen not to utilize the "tough on crime" laws currently in existence. Maybe that's why her statement in regards to the latest legislation pending before the City Council was that while she's "for strengthening gun control laws" that she would "use her discretion" when utilizing the new law if it's passed. The irony is, she could use discretion when administering the use of the new law, but it would take the discretion of sentencing out of the hands of judges.

The problem with that is, judges no longer have a say in plea deals and agreements. As explained by Circuit Court Judge Wanda Heard recently

at the NAACP Criminal Justice Tow Hall, a case known as [Sharp v State of Maryland](#), the state's high court stated the following:

The defendant may enter into an agreement with the State's Attorney for a plea of guilty or nolo contendere on any proper condition, including one or more of the following: . . . [t]hat the parties will submit a plea agreement proposing a particular sentence, disposition, or other judicial action to a judge for consideration pursuant to section (c) of this Rule.

If a plea agreement has been reached . . . for a plea of guilty or nolo contendere which contemplates a particular sentence, disposition, or other judicial action, the defense counsel and the State's Attorney shall advise the judge of the terms of the agreement when the defendant pleads. The judge may then accept or reject the plea and, if accepted, may approve the agreement or defer decision as to its approval or rejection until after such pre-sentence proceedings and investigation as the judge directs.

Meaning, a Judge only has the power to accept or reject a plea agreement, which is entered into by the defendant's counsel and the state's attorney. So this notion that judges are somehow allowing these individuals found guilty of possessing a firearm to walk free, or giving them lenient sentences, is a false narrative being pushed by those who have absolutely no clue as to how the criminal justice system actually works.

What this new mandatory minimum gun bill does do though, is handcuff a judge in using their discretion when dealing with a case based on its merits, rather than some sweeping mandate passed by bureaucrats who are acting out of fear of the public realizing that they have no real tangible crime plan in place to curb the level of homicides and violent crime that has risen to the level of a 'crisis'. In fact, the law as it stands does not target "illegal guns", as nowhere in the bill are those words ever mentioned. It does in fact target anyone carrying a weapon, whether legally owned or not, outside a public place of assembly, a public building, church or school – which in Baltimore City is just about everywhere, especially in the black communities,

The data also shows that while the cases that would be brought forth because of this bill would still initially be heard in the city's district courts, that majority of those cases are plead out by the State's Attorney's office before ever being heard by a judge. Statistics show that from July 2015 to June 2016, of the over 27,000 cases brought before the city's district courts, that 12,922 of them were Nolle Prosequi "a formal notice of abandonment by a prosecutor or plaintiff", with 23,265 cases never making it before a judge, receiving "non-trial dispositions". And it is this same state's attorney that will have the discretion on whether or not to even bring forth this mandatory minimum gun enhancement if passed.

So the question most advocates have is: Where in this legislation do the members of the City Council see this new law being able to get more guns off the street; when in fact, laws similar to this were passed in

major cities such as New York and Chicago with absolutely no positive impact on communities. This is nothing more than a reactionary policy aimed at making fearful citizens confident that their elected members of the city council are in fact worried about their safety, without ever really making them safe at all.

When someone asks you to support this bill, first ask them to show you an overall crime plan and how this legislation works to be a means to an end. Then ask them how the city reached all-time lows in homicides and every major crime category under the Sheila Dixon/Fred Bealefeld administration without draconian laws like this in place. And anyone with good sense and an honest bone in their body will tell you, they had a deputy commissioner, Anthony Barksdale, who drew up a comprehensive crime plan, and then had a police commissioner, mayor and state's attorney working side-by-side enforcing the plan with resources aimed at targeting effective prosecutions of repeat violent offenders while offering non-violent offenders services that got them off the streets and back to being productive members of society with programs like the successful gun registry.

One bill, written in haste and jammed through the council in the dead of night while nobody is looking will not help improve the conditions we see today. And if this measure actually did something, why hold the public hearing a week after its introduction, at 10:00 am on a Tuesday when most productive citizens are working, and try to rush it through hastily without true public input and several public meetings and hearings.

Hassan Giordano

Chair, NAACP Criminal Justice Committee

Baltimore City Resident/Voter

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As Always,

Hassan Giordano

#MrPolitics

#443.863.8028 (Office)

#443.473.6401 (Cell)

Democratic Candidate for Clerk of the Circuit Court for Baltimore City

www.hassangiordano.com

(Find the campaign on Twitter, InstaGram and Facebook: @Giordano4Clerk)

FoxNewsRadio, Contributor

@FoxNewsRadio

Criminal Justice, Chair

NAACP - Baltimore City Branch

For the record regarding the hearing on bill 17-0111

25 July 2016

Dear Committee Chairman

1. Council has shown itself not to consider the likelihood of Constitutional violations when proposing weapons laws. Case in point, in June 2017 Council voted to pass electronic handguns for citizens to possess and carry only after being forced to reverse itself while facing a monetary penalty from the feds. The banning of "stun guns" was a reactionary measure seeking political favor in turbulent times - much like this proposal. Verify that the city solicitor has determined that the proposed law is not likely to be ruled unconstitutional or the implementation/ enforcement of said law is not likely to leave the city even more vulnerable to similar claims that would further deteriorate the abysmal level of public trust that exists.

2. Council has shown itself to be derelict in its duty to be financially prudent by awarding settlements stemming from complaints of excessive force and false imprisonment stemming from a culture of poorly trained police officers combined with the inability to remove police from the force who have become both a danger and a liability. If this law does indeed pass, additional scrutiny should be placed on police enforcing this law in the Southwestern, Western and Central Districts since these three have demonstrated consistent disregard to professional policing practices that would most certainly leave this council and its citizens holding the bill to pay monetary settlements.

3. Public sentiment has turned away from mandatory sentencing, mass incarceration, blind trust of the police, and the "successful" implementation of this proposed law is predicated in all three - thus in violation of the will of the people. The sentiment is not by whim or folly. Empirical evidence garnered after 30+ years of the war on drugs, a greater use of technology, and proven methodology has made mandatory minimum sentencing a relic of the dark ages and not the way forward. Passage of this bill is reflective of the old ways, old ideas, and a willful desire to repeat the same behavior in search of a different result.

4. The findings of the investigation of the Baltimore Police Department requested by Council for the Department of Justice were numerous but those that speak to the inadequacies of this bill are: that the BDP has a pattern and practice of making unconstitutional stops, searches and arrests. It goes on, but even this was the only concern (and the painful truth it's only the tip of the iceberg) it's devastating because it's the most IMPORTANT aspect of an officer's job -- to enforce laws while protecting the rights of its citizens. Clearly, the officers are selective in the laws they choose to enforce and routinely violate the rights of their most vulnerable citizens in doing so.

5. The need for transparency and accountability as part of a comprehensive plan to address the spike in violent crime in the city. Passing this bill in isolation without consideration of other factors: housing, access to health care, public education, mental/behavior health, homelessness, diet/food deserts,

post-conviction assistance, re-entry programs, family reunification, correctional safety among other areas is the complete opposite of leadership. Instead, the council will be complicit in further entrenching people into a cycle of poverty and despair.

Keesha Ha

12th District Resident

Baltimore City, Maryland

From: Dakari Hamlin [<mailto:dakari.hamlin@gmail.com>]

Sent: Monday, July 24, 2017 2:46 PM

To: Pinkett, Leon; Costello, Eric; Stokes, Robert

Subject: Oppose bill #17-0111

Dear Councilpeople,

I am a teenager currently living in Baltimore and I am messaging you regarding your approval of bill #17-111. Our city is suffering from a crime epidemic and this bill will worsen this city's conditions. Understanding a dilemma like this is all about perspective and that is what you're lacking, since you voted yes on forwarding the bill. I just got a summer job and I want my tax money going toward solutions to problems, not to things that perpetuate them. This damned country has the highest incarcerated persons population in the world and your idea to combat this is to contribute to this fact. Everyday our people of color are being forced to conform to these systematic setbacks. We need more qualifiable jobs for our formally incarcerated felons. We need to provide opportunities to rehabilitate and gain employment opportunities to put money on their tables legally. Only you (and your colleagues) can stop fueling this cycle of violence and systematic oppression, make it happen.

From: Karis Haslam [<mailto:karishaslam@comcast.net>]

Sent: Monday, July 24, 2017 3:50 PM

To: City Council President

Subject: Ordinance 17-0111

Hello Council President Young.

I have never written you before but I feel quite strongly about the proposed bill for mandatory minimum sentencing for illegal gun possession (Ordinance 17-0111).

While I am generally supportive of gun control measures, I feel this bill is not about that. The proposed minimum sentence for handgun possession is a knee-jerk "quick fix" solution born of fear and frustration which will not have the intended affect. It will not lessen violence in the city; it will push first time young, mostly poor black offenders into a hell hole that is not rehabilitative - and will more likely increase their chances of following a life of crime.

Just this year we have turned our backs on the harder-to-implement longer term solutions of jobs, living wages & good education by slashing the already underfunded city school budget and denying the passage of a \$15 minimum wage bill which Mayor Pugh first campaigned on, then vetoed.

One other point: we saw graphically last week how Baltimore Police can plant evidence. There are way too many dirty cops in this city and there is no question that some of them will plant guns to put away who they want with this law. It will be abused.

Please don't pass this bill. Though it is tempting to try to do "something" about the horrible homicide rate in this city right now, we have to resist "quick fixes" (because there aren't any) that can do more harm than good and dedicate ourselves to the long term efforts that can really make the difference: jobs, living wages, education, access to holistic health services, stable housing and *police reform and accountability*.

Thank you for taking the time to read this.

Sincerely,

Karis Haslam
2703 Halcyon Ave.
Baltimore, MD 21214

From: [Rachel Kassman](#)
To: [Costello, Eric](#); [Clarke, Mary Pat](#); [Bullock, John](#); [Pinkett, Leon](#); [Reisinger, Edward](#); [Scott, Brandon](#); [Stokes, Robert](#); [Nibber, Dpaul](#); [Schleifer, Isaac](#)
Subject: This is BAD legislation
Date: Friday, July 21, 2017 11:42:20 AM

Dear Councilmembers:

I am writing to urge you NOT to support Bill 17-0111, creating mandatory minimum sentences for "conviction of carrying an illegal handgun in Baltimore City within 100 yards of a park, school, church, public building or other place of public assembly."

Mandatory sentencing like this has been proven to be detrimental to communities, creates a culture of criminality, and makes it nearly impossible for young offenders to get a chance at a happy, successful life.

Please do not support this bill. I wish I could attend the hearing on the 25th, but since I cannot this email will have to serve.

Sincerely,
Rachel Kassman
Ken Oak Road
Baltimore District 5

From: Vitaly Lorman [<mailto:lorman@gmail.com>]
Sent: Monday, July 24, 2017 1:56 PM
To: City Council President
Subject: Please vote NO on Bill 17-0111

Dear Council President Young,

I am writing to strongly encourage you to vote against Bill 17-0111 on mandatory minimum sentencing for illegal gun possession.

I have been a Baltimore resident for 7 years, and it is extremely disappointing to see how little we've learned from the mistakes of zero-tolerance policing, as explicitly detailed in the DOJ report. Given everything that has happened, I can't believe that the response to the increase in crime is more incarceration prior to any meaningful attempts at community investment. We will not incarcerate our way out of this problem. I am also very troubled by the several recent instances of police corruption, and I worry that this bill would make it easier for police to target vulnerable communities.

Leaders from grassroots organizations doing work with the communities most impacted by the crime (No Boundaries Coalition and Leaders of Beautiful Struggle, among many others) have spoken out against this bill, and I hope you will listen to their judgement.

I hope to see you vote NO on this bill tomorrow. Furthermore, I hope you will instead push for an expansion of Safe Streets and other community investments--affordable housing, lead paint removal, and a living wage--as more effective and humane solutions to the crime problem.

Thank you,
Vitaliy Lorman



July 25, 2017

The Sentencing Project Opposes Baltimore City's Mandatory Minimum Sentence Proposal

WASHINGTON –Today, The Sentencing Project, a national research and advocacy organization, joins other criminal justice, civil and human rights, and faith leaders in opposing Baltimore City's proposed handgun safety law, which will be considered by the City Council and contains a mandatory minimum sentence of one year in jail for gun possession.

"The city of Baltimore faces challenges in gun crimes, but 'tough on crime' responses to crime concerns are too often excessively punitive and do not enhance public safety,' said Nicole D. Porter, director of advocacy at The Sentencing Project." City leaders should target initiatives for at-risk youth that have been demonstrated to have an impact on reducing crime and improving public safety."

The challenge of gun violence, including homicide, in Baltimore¹ certainly necessitates a response by city leaders and law enforcement. But large-scale incarceration is already a reality. As a consequence of more punitive laws and harsher sentencing policies more than 20,408 are incarcerated in Maryland's prisons and jails – many from Baltimore City -- a growth of nearly 164 percent since 1980.

Mandatory minimum penalties are premised on a "one size fits all" strategy that prohibits judges from making distinctions between high-level offenders and those with significant mitigating factors. A comprehensive review of these policies conducted by the National Research Council concluded that "Mandatory minimum ... laws have little or no effect on crime rates [and] shift sentencing power from judges to prosecutors."²

City leaders should respond to crime by implementing practical solutions that reduce gun violence. Research demonstrates that social interventions are more cost-effective in producing better public safety outcomes than expanding incarceration.³

Evidence-based crime prevention policy demonstrated to improve public safety includes: initiatives targeted at social disadvantage, strengthening good job opportunities for city residents at risk of violence, and supporting family services in high crime neighborhoods.⁴

More information on effective responses to crime can be found in [*Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment*](#) by The Sentencing Project.

The Sentencing Project works for a fair and effective U.S. justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration.

¹ Rosenfeld, Richard. 2016. Documenting and Explaining the 2015 Homicide Rise: Research Directions? National Institute of Justice. Washington, DC: National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. <https://www.ncjrs.gov/pdffiles1/nij/249895.pdf>

² National Research Council. 2014. *The Growth of Incarceration in the United States: Exploring Causes and Consequences of High Rates of Incarceration*. J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. pg. 83

³ Porter, Nicole. 2013. Ending Mass Incarceration: Social Interventions That Work. Washington, DC: The Sentencing Project. <http://www.sentencingproject.org/wp-content/uploads/2015/12/Ending-Mass-Incarceration-Social-Interventions-That-Work.pdf>

⁴ Currie, Elliott. 2016. *The Roots of Danger: Violent Crime in Global Perspective*. New York: Oxford University Press.

CIVIL RIGHTS DEFENSE FIRM, P.C.

Defending YOUR Inalienable Rights

*Joshua Prince
Adam Kraut
Jorge Pereira*

*Phone: 888-202-9297
Fax: 610-400-8439*

July 21, 2017

Baltimore City Council
Office of the President
Suite 400
City Hall
100 North Holliday Street
Baltimore, MD 21202

RE: Proposed Ordinance: Weapons - Prohibiting Handguns Near Places of Public Assembly

Dear President Young and Council Members,

I represent numerous individuals and organizations that are concerned for numerous reasons with the recent proposed ordinance: Weapons - Prohibiting Handguns Near Places of Public Assembly. For the reasons set-forth *infra*, my client and I are respectfully requesting that the proposal not be enacted.

The proposed ordinance would criminalize the carry or transport of a handgun, either openly or concealed, within 100 yards of a public building, park, church, school or other place of public assembly, with a mandatory penalty of one-year imprisonment and a \$1,000 fine; however, it fails to consider the U.S. Supreme Court's holding in District of Columbia v. Heller, where the Court defined "bear arms" as to "wear, bear, or carry ... upon the person *or in the clothing or in a pocket*, for the purpose of . . . being armed and ready for offensive or defensive action in a case of conflict with another person." 554 U.S. 570, 584-585 (2008) (*quoting, Muscarello v. United States*, 524 U.S. 125, 143 (1998)(emphasis added)). More recently, the Court held that the possession of electronic incapacitation devices – commonly referred to as Tasers or stun guns – come under the protection of the Second Amendment, including in public. Caetano v. Massachusetts, 136 S. Ct. 1027 (2016).

The proposal also fails to take into consideration that the enactment of this ordinance would result in a patchwork of laws that serve no purpose but to ensnare those, who have no intention of violating the law but whom unwarily find themselves in a jurisdiction, which imposes restrictions on their rights that state law otherwise allows. By including parks, churches, schools, public buildings and other places of public assembly – for which the proposal provides no definitions – it makes it almost impossible for any individual to know, whether or not, he/she is violating the law. The verbiage is also discriminatory in that only Christian-oriented religious buildings are included to the exclusion of other religious-oriented buildings, which do not constitute a "church."

More disconcerting is that the proposal only requires it to be a “knowing” violation in relation to transporting a handgun, but not in relation to wearing or carrying – neither of which are defined and clearly result in substantial overlap – and then provides for a presumption that the individual is presumed to know that he/she is transporting the handgun; yet, as mentioned previously, fails to define the actual locations that are covered by the proposal.

Of even greater concern is that the proposed ordinance provides for a mandatory minimum sentence of a year; thereby, stripping the judiciary of its ability to determine appropriate penalties based upon the facts and circumstances of individual cases, after both the prosecutor and defendant have opportunity to argue for what they perceive to be an appropriate sentence. These concerns were recently echoed by Baltimore City Public Defender Todd Oppenheim. See, <http://www.baltimoresun.com/news/opinion/oped/bs-ed-op-0720-mandatory-minimum-guns-20170718-story.html>. More concerning is that this ordinance would permit unequal application of the law and sentencing across Maryland; therefore, drawing into question its constitutionality under the United States and Maryland Constitutions. The proposal also seeks to divest prosecutors of prosecutorial discretion, by stripping their ability to offer probation before judgment in cases that warrant such a disposition. While these provisions are offered under the guise that the judiciary is not providing for harsh enough sentences, as evidenced by the recent refusal of a Baltimore City District Court judge to lower bail in a situation involving a young man’s unlawful possession of a handgun, this contention is erroneous, at best, if not disingenuous. See, <http://www.wbaltv.com/article/baltimore-judge-throws-book-at-young-man-in-gun-arrest/10330794>. Moreover, as correctly declared by Adam Jackson of the community group Leaders of a Beautiful Struggle in his Statement, “[m]andatory minimums are a vestige of the failed war on drugs and perpetuate failed, feel-good ‘law and order’ policies instead of focusing political capital on proven crime prevention strategies such as investment in anti-violence programs, drug treatment, reentry and workforce development initiatives.” See, <http://lbsbaltimore.com/op-ed-mandatory-minimums-for-illegal-handguns-will-not-stop-murders-in-baltimore>.

In fact, Mr. Jackson’s profound Statement goes much further when reviewed through the lens of firearm regulation, which has its roots in slavery in the antebellum South. While racist laws precluding the possession of arms by African Americans predate the establishment of the United States, in 1751, the French Black Code required Louisiana colonists to detain any African Americans, and if necessary, beat “any black carrying any potential weapon, such as a cane.” In the event the African American refused to stop on demand while on horseback, the colonist was authorized to “shoot to kill.” See, Thomas N. Ingersoll, “Free Blacks in a Slave Society: New Orleans, 1718-1812”, *William and Marry Quarterly*, 48:2 [April, 1991], pgs. 178-79. Even after the Founding, while no restrictions existed on the peaceable carrying of arms either openly or concealed for Caucasians (*Heller*, 554 U.S. at 614), the states remained in absolute fear of armed African Americans, resulting in slave states to pass laws designed *only* to disarm all African Americans, both slave and free, while explicitly preserving the right of Caucasians to bear arms. In fact, in Maryland, these prohibitions went so far as to prohibit free African Americans from owning dogs without a license, and authorizing any Caucasian to kill an unlicensed dog owned by a free African American, for fear that African Americans would use dogs as weapons. Theodore Brantner Wilson, *The Black Codes of the South* (University of Alabama Press: 1965), pgs. 26-30.

In one of the most abhorrent decisions in U.S. Supreme Court history, the Court, in denying the privileges and immunities of citizens to African Americans, declared that if it were to hold otherwise, “[i]t would give to persons of the negro race, who were recognized as citizens in any

one State of the Union, the right ... to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State." Scott v. Sandford, 60 U.S. 393, 417 (1857). It is interesting to note that the proposed ordinance is also cloaked in the argument that it is necessary so as to protect the peace or safety of the public.

While the reduction of crime is a laudable goal, it must be recognized that individuals, intent on violating the law, will commit criminal acts. If the felonies and far more egregious misdemeanors (*i.e.* murder, manslaughter, unlawful homicide, assault with a firearm, assault) that are currently provided for in the law are not dissuading criminals from committing these violent acts, how is it possible for the proposed ordinance to dissuade them? Rather, the proposed ordinance will only ensnare those, who have no intention of violating the law but whom unwarily find themselves in a Baltimore City, which, unbeknownst to them, imposes restrictions on their rights that state law otherwise allows.

For these reasons, my clients and I respectfully request that this Honorable Council vote against enactment of this proposed ordinance.

Yours truly,
Civil Rights Defense Firm, P.C.



Joshua Prince
joshua@civilrightsdefensefirm.com

jp/web
Matter no. 10003

Written Statement of Kevin Ring
President, Families Against Mandatory Minimums
Submitted to the Baltimore City Council Judiciary and Legislative Investigations
Committee
July 25, 2017

I want to thank Chair Costello, Vice-Chair Clark, and the members of this committee for the opportunity to submit written testimony on behalf of Families Against Mandatory Minimums (FAMM) in opposition to proposed ordinance 17-0111.

FAMM is a nonpartisan, nonprofit sentencing reform advocacy group founded in Washington, D.C. in 1991. FAMM's mission is to protect public safety and promote efficiency in the criminal justice system by advocating for individualized, proportional criminal sentencing laws. We support punishment, and we recognize the value jails and prisons offer to public safety. Our overarching belief is simply that sentences should fit the crime and the offender, and that judges are in the best position to decide the proper punishment in each and every case. More importantly, we believe decentralized sentencing maximizes efficiency in the effort to protect public safety, and allows for the kind of ongoing flexibility necessary to respond meaningfully to rapidly changing crime dynamics.

FAMM understands the impetus for this proposed ordinance. By any metric, Baltimore's crime rate is unacceptable. In 2015, Baltimore's violent crime rate was more than four times the national average. Its property crime rate was more than twice the national average that year. Even more troubling is Baltimore's murder rate, which was more than 11 times the national average in 2015. Perhaps most troubling: in 2015, 93 percent of Baltimore's murder victims were African-American.¹ There can be no doubt that Baltimore is currently experiencing an intolerable crime wave, the burden of which falls most heavily on the city's most vulnerable citizens. Crime is a clear and present danger to the citizens of Baltimore, and this City Council is tasked with finding a solution.

A problem, however, can never by itself justify any given solution. No matter how serious the problem, a proposed solution must nevertheless find justification by evidence, data, and experience, not merely repetition of descriptions of the problem itself. Baltimore's violent crime problem is no different. Everyone understands the problem, and the proposed ordinance under consideration has been offered as a solution to it. The question is whether that proposed ordinance should be approved as a solution to Baltimore's violence problem. That question turns entirely on whether the proposed policy is likely to reduce crime more efficiently than competing alternative strategies.

The available evidence suggests there is very little reason to believe the proposed ordinance will have any meaningful impact on violent crime in Baltimore. At the same time, there are good reasons to believe the proposed ordinance will reduce the certainty of punishment for gun offenders, create significant negative unintended consequences, and create burdens on already overburdened public employees. The combined result will be an expensive experiment that will

¹ Jess Bidgood, "The Numbers Behind Baltimore's Record Year in Homicides." *New York Times*. January 15, 2016. Available: https://www.nytimes.com/interactive/2016/01/14/us/Baltimore-homicides-record.html?_r=0.

crowd out more efficient alternatives and ultimately fail to accomplish its objectives. In the meantime, criminals will continue to prey on the innocent. The committee has the opportunity to actually impact crime in Baltimore. But it should start by rejecting useless, tough-sounding symbolism and committing completely to the task of finding and implementing crime control strategies that can actually produce real benefits for Baltimore.

Mandatory Minimum Gun Laws are Ineffective

The first reason to reject the proposed ordinance is perhaps the only one that should be required: There is simply no good reason to believe it will work. Similar proposals, with similar goals, have been tried at the city and state level across the country going back more than four decades. There is no shortage of research on the effectiveness of those laws, and the balance of that research suggests they simply do not deliver on their promises.

Massachusetts

One of the earliest attempts to use mandatory gun sentences to reduce violent crime was Massachusetts' "Bartley-Fox" gun law, which took effect in April 1975. Bartley-Fox "explicitly prohibited the courts from interposing informal dispositions that might short-circuit the imposition of the new penalty by requiring that the minimum sentence of one year in prison be imposed and served without suspension, parole, or furlough."² The publicity campaign attached to the new law warned potential criminals that punishment would be swift and certain, and that once you were caught, "Nobody can get you out."³

Research into the effectiveness of Bartley-Fox on gun crime and crime generally is mixed. Some early research found the law did have a moderate impact on some gun-related crimes in Massachusetts.⁴ However, some of that same research indicated that the bulk of whatever crime deterrence occurred was due to *publicity* about harsher penalties generally, and not the actual administration of the law. In fact, researchers noted specifically that their findings could not be tied to the enforcement of mandatory minimums.⁵

However, subsequent research cast doubt on whether Bartley-Fox provided any public safety benefit at all. One study noted that declines in crime were "consistent with several conflicting interpretations," including that such declines were regressions to the mean that happened to coincide with the new law. The study concluded that data "do not permit a definitive attribution of the change in crime rate to deterrence caused by [Bartley-Fox]."⁶

Another study found, "[T]here is no indication . . . that the law had more than a very temporary impact on the number of firearms in general circulation in Massachusetts," and that "an analysis

² James A. Beha, II. "'And Nobody Can Get You Out': The Impact of a Mandatory Prison Sentence for the Illegal Carrying of a Firearm on the Use of Firearms and on the Administration of Criminal Justice in Boston--Part I." 57 B.U. L. Rev. 96 (1977).

³ Id.

⁴ Glenn L. Pierce and William J. Bowers, "The Bartley-Fox Gun Law's Short-Term Impact on Crime in Boston." *Annals of the American Academy of Political and Social Science*. (May 1981).

⁵ Id.

⁶ Kenneth Carlson & Carol Dorsey, "Mandatory Sentencing: The Experience of Two States." *National Institute of Justice*. May 1982. Available: <https://babel.hathitrust.org/cgi/pt?id=purl.32754077523706;view=1up;seq=2>.

of robbery, assault and homicide trends does not, to date, reveal any clear deterrent to those crimes created by anticipation of additional Bartley-Fox penalties.”⁷

Michigan

Michigan’s statewide “Felony Firearms Law” took effect in January 1977. That law mandated a two-year prison sentence for felonies committed with firearms. Researchers examined the impact of the mandatory sentencing law on crime in Detroit – where, notably, the County Attorney refused to drop or reduce charges in exchange for guilty pleas. They noted that in Detroit, the “tough gun law” was enforced, and “cases were vigorously prosecuted.”⁸ Nevertheless, researchers found that “the gun law did not significantly alter the number or type of violent offenses committed in Detroit.”⁹ They then concluded, “[I]f the policy does not reduce gun violence, and at the same time diverts attention and resources from alternative policies, its costs are clearly greater than its benefits.”¹⁰ The conclusion of another study is clear: “When all of the evidence is considered, it appears the [Felony Firearms Law] did not have a discernible effect on the level or the pattern of violent crime in Detroit.”¹¹

Detroit

In November 1986, the Detroit, Michigan City Council passed an ordinance similar to the ordinance under consideration by this committee. That ordinance “imposed a mandatory jail sentence on anyone convicted of unlawfully concealing a pistol or carrying a firearm in the city.”¹² Two years after it took effect, a survey of crime in Detroit found the ordinance “clearly failed to stop the surge” in homicides, which actually *increased* after the ordinance was implemented.¹³

These examples are just a snapshot of the general trends and available evidence that suggests proposals like the ordinance under consideration by this committee fail to meaningfully reduce violent crime. For a more comprehensive overview of the evidence that mandatory sentences do not deter violent crime, see Stephanie Kollmann and Dominique D. Nong, “Combating Gun Violence in Illinois: Evidence-Based Solutions,” published by the Bluhm Legal Clinic at Northwestern Law School.¹⁴

Evidence shows that mandatory minimum gun sentences have failed to reduce crime and murder elsewhere. Baltimore should not make the mistake of thinking that it will get different results using the same failed tactics.

⁷ “And Nobody Can Get You Out.”

⁸ Colin Loftin & David McDowall. (1981.) “One With a Gun Gets You Two: Mandatory Sentencing and Firearm Violence in Detroit.” *The Annals of the American Academy of Political and Social Science*.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Colin Loftin, Milton Heumann and David McDowall. “Mandatory Sentencing and Firearms Violence: Evaluating an Alternative to Gun Control.” *Law & Society Review*, Vol. 17, No. 2 (1983).

¹² Patrick W. O’Carroll, *et al.* (1991.) “Preventing Homicide: An Evaluation of the Efficacy of a Detroit Gun Ordinance.” *American Journal of Public Health*.

¹³ *Id.*

¹⁴ Available: <https://www.osibaltimore.org/wp-content/uploads/Gun-Violence-Memo-Northwestern-Bluhm-Legal-Clinic.pdf>.

Mandatory Minimums Do Not Increase the Certainty of Punishment for Gun Offenders

Part of the support for this ordinance is frustration with the way courts have punished offenders caught with illegal guns. Perhaps more than any other individual consideration, support for this ordinance derives from the belief that it will increase the certainty that offenders caught with illegal guns will be punished, that it will guarantee punishment for lawbreakers, and by extension guarantee their incapacitation for at least a year. Unfortunately, experience suggests this belief is misplaced. If history is a guide, the proposed ordinance is more likely to make punishment for gun offenders *less* certain.

Massachusetts

After Bartley-Fox took effect in 1975, Massachusetts police officers reported becoming “more selective about whom to frisk” in light of the mandatory minimum law, thus reducing the likelihood of finding potential criminals in the first place.¹⁵ Further, defendants began absconding in significantly higher numbers than before mandatory minimums were adopted.¹⁶ Not guilty verdicts and dismissals increased, as well.¹⁷ And while 41 percent of defendants were sentenced for gun carrying in 1974, only 17 percent of defendants charged with the same crime were actually sentenced two years later.¹⁸

One study found that the effect of the mandatory sentencing law “for most defendants at most stages of the process was to increase the chance of outcomes favorable to the defendant.”¹⁹ All told, “the number of defendants who avoided conviction entirely . . . rose from 53.5 percent in 1974 to 73.5 percent in 1975 and 80 percent in 1976.”²⁰ Thus a policy intended to increase the certainty of punishment for a given offense actually *decreased* such certainty.

Michigan

Despite the intentions of Michigan’s mandatory minimum law, the actual experience of the law as implemented tracks Massachusetts’ experience. In Michigan, “the system managed in large measure (but not completely) to ‘absorb’ the mandatory sentence without substantially upsetting the norms that had guided its practices in the earlier period.”²¹ One study found mandatory minimums did not generally change “the probability of serving time for murder, armed robbery, or assault with intent to commit great bodily harm.”²²

Like Massachusetts, Michigan’s mandatory minimum sentencing law reduced the certainty of punishment for gun offenders, including by reducing “the probability of conviction for felonious assaults and perhaps armed robberies.”²³ All in all, researchers found that “with some exceptions

¹⁵ “Mandatory Sentencing: The Experience of Two States.”

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Milton Heumann, Colin Loftin, & David McDowall. (1982.) “Federal Firearms Policy and Mandatory Sentencing.” *Journal of Criminal Law and Criminology*.

²² “Mandatory Sentencing and Firearms Violence.”

²³ *Id.*

. . . the situation stayed *pretty much the same* after the introduction of the mandatory two-year sentence” in Michigan (emphasis added).²⁴

Detroit

Two years after Detroit passed its mandatory jail sentence ordinance, researchers found that “the law did not result in any . . . change in jail sentences for illegally concealing a pistol or carrying a firearm,”²⁵ and that, according to various actors in the criminal justice process, “extremely few of those who were arrested for carrying concealed weapons ultimately received the mandatory sentences stipulated in the ordinance.”²⁶ The researchers hypothesized that lack of enforcement might be to blame for the failure of the ordinance to reduce gun-related homicides.²⁷

Again, history shows that mandatory minimum gun sentences do not, in fact, increase the certainty of arrest, conviction, or incapacitation of offenders. Baltimore should expect the same results if it passes the proposed ordinance.

Mandatory Minimum Sentences Create Significant Unintended Consequences

In addition to failing to increase the certainty of conviction and punishment, mandatory minimum sentences create other unintended and counterproductive consequences that undermine public safety.

A Subsidy to the Worst of the Worst

According to a *Baltimore Sun* investigation, “in Baltimore, hit men for hire have become fixtures on the streets. Police recently began tracking the so-called 10 Grand Club, an organized gang of hit men willing to kill for that price, and prosecutors say that’s double the typical fee.”²⁸ Additionally, in cities that have cracked down on illegal gun possession, “people serve as ‘human holsters,’ carrying guns for felons.”²⁹

Approving the ordinance under consideration by this committee will increase the cost of carrying a gun illegally in Baltimore. That, in turn, will create more demand for the kinds of perverse criminal markets described in the *Sun* investigation. The result will be a bigger supply of “human holsters” and more opportunities and profits for gangs of hit men. The proposed ordinance will not reduce crime in Baltimore, but it will create a generous subsidy for the 10 Grand Club.

New Burdens on Police, Prosecutors, and Courts

The number of full-time law enforcement officers per 1,000 Baltimore residents fell 14 percent between 2003 and 2015, and fell even further in 2016.³⁰ Meanwhile, according to the Murder Accountability Project, Baltimore’s homicide clearance rate in 2015 was around 30 percent, or

²⁴ Id.

²⁵ “Preventing Homicide: An Evaluation of the Efficacy of a Detroit Gun Ordinance.”

²⁶ Id.

²⁷ Id.

²⁸ Justin George, “Shoot to Kill: Why Baltimore is One of the Most Lethal Cities in the U.S.” *Baltimore Sun*, September 30, 2016. Available: <http://data.baltimoresun.com/news/shoot-to-kill/>.

²⁹ Id.

³⁰ FBI Uniform Crime Report. Data compiled at City-Data.com. Available: www.city-data.com/crime/crime-Baltimore-Maryland.html.

about half the national average.³¹ It rose to around 40 percent in 2016, still well below the national average.³² Baltimore's homicide detectives are described as "drowning in work,"³³ and the police department is described as "struggling with is the volume of cases versus the number of detectives and resources to investigate those cases."³⁴

There is reason to suspect that unsolved homicides contribute to high violent crime rates. For instance, Daniel Webster, director of the Johns Hopkins Center for Gun Policy and Research, said recently that in his view, "[I]f you don't bring shooters, killers, to justice, the street works that out — and it becomes this reciprocal pattern where violence spreads in almost a contagious way."³⁵ Baltimore Police spokesperson T.J. Smith gave credence to that view, noting that "retaliatory violence has been a big driver in the murders" in 2016.³⁶ Incidentally, even those researchers who found that Massachusetts' mandatory minimum gun law had a small deterrent effect on crime also found that such laws are "unlikely to be effective against those who decide to carry a gun for a specific, short-term purpose,"³⁷ like a bank robbery or a revenge killing.

Passing an ordinance designed to radically increase the number of offenders incarcerated *and* the length of that incarceration will be expensive. The resources spent on incarceration will not be available to hire more police for patrols, or to hire more homicide detectives (or pay them overtime), or to hire more prosecutors to help reduce caseloads (which would help build stronger cases, thus creating a stronger likelihood of conviction). Has this committee compared the likely crime reduction from enforcing this ordinance to alternative strategies, like shifting resources to clearing unsolved murders? That would be a better investment than the costs of the proposed ordinance, and likely prevent more crime. More justice begets more safety.

Finally, prior experience with mandatory minimum gun sentencing laws suggests that the smaller percentage of defendants who are actually convicted under these laws are also considerably more likely to appeal that conviction. In Massachusetts, for instance, before mandatory minimums were imposed, 20 percent of illegal gun cases were appealed from the lower courts. A year later that figure had risen to between 40 and 50 percent.³⁸ Such appeals are costly and time-consuming. Every dollar spent defending a conviction on an appeal that exists only because this ordinance took effect is a dollar that can't be spent fighting or solving crime.

Overcrowded Jails and Dangerous Jail Dumps

Jail space is inherently limited. A bed taken up by one offender is a bed that cannot be taken up by another. This ordinance, strictly enforced, would dramatically increase competition among offenders for available jail space. By stripping courts of all discretion for one type of offense,

³¹ Murder Accountability Project, Clearance Rates. Accessed July 24, 2017. Available: <http://www.murderdata.org/p/blog-page.html>.

³² Kevin Rector, "In 2016, Baltimore's second-deadliest year on record, bullets claimed targets and bystanders alike." *Baltimore Sun*, January 2, 2017.

³³ *Id.*

³⁴ *Id.* (Quoting Daniel Webster, Director of the Johns Hopkins Center for Gun Policy and Research.)

³⁵ *Id.*

³⁶ *Id.*

³⁷ "The Bartley-Fox Gun Law's Short-Term Impact on Crime in Boston."

³⁸ Seth Kaplan, "Study Shows Massachusetts Gun Law Has Little Effect on Crime After Year." *The Harvard Crimson*, July 16, 1976.

this ordinance comparatively prioritizes marginal jail space for every offender convicted of that offense relative to all others. The almost inevitable result is that some offenders – including *comparatively more dangerous offenders* – who are not serving mandatory sentences will be released to make room for gun offenders whose continued incarceration might be completely unnecessary for public safety. This pattern has been repeated in almost every jurisdiction where mandatory minimums have been tried.³⁹ Allowing sentencing courts to make individual sentencing decisions based on the totality of the circumstances reduces the risk of this kind of dangerous tradeoff, and thus reduces the risk to law-abiding citizens. Jail beds are scarce and expensive resources that should be reserved for the most dangerous offenders, not indiscriminately occupied a year at a time by many people who may, in fact, pose little threat.

Conclusion

The proposed ordinance is no doubt well-intentioned. No reasonable person can observe Baltimore's current crime wave and fail to be moved to do something about it.

But you were not elected to "just do something." You were not elected to pass reflexive, symbolic policies that might make for good campaign fodder, but will not help those suffering from crippling crime rates throughout your city – and might actually make crime worse. Rather, you were elected to give serious consideration to policy proposals, to compare them to alternative strategies, to think through marginal costs and benefits, to discern potential unintended consequences, and, ultimately, to decide whether a particular policy proposal is justified.

As this testimony has outlined, there are very good reasons to believe the ordinance will not achieve its proposed crime reduction goals, and similarly good reasons to believe it could be counterproductive to those goals. This ordinance will limit this Council's ability to respond quickly to changing needs of the city, it will create additional burdens on a police force already stretched thin, and it will create unnecessary burdens on prosecutors and the court system. Most perversely, this ordinance will do nothing to actually protect your constituents, but will create even more demand for murder-for-hire gangs and "human holsters" roaming the streets.

As the committee considers this ordinance, we urge the members to ask: What evidence suggests a one-year mandatory minimum sentence yields more crime control per dollar spent than, say, a mandatory minimum of six months? Or ten months? (Or three, etc.?) What evidence suggests incarcerating one offender for 12 months yields more public safety benefits than incarcerating 12 offenders for one month? (Or six for two months, etc.) What evidence suggests spending scarce tax dollars on incarcerating offenders convicted of illegal gun possession yields more public safety benefits than spending the same amount of money on hiring more police officers and prosecutors, or shifting those resources into homicide investigations? What evidence suggests using jail space to house *every* offender convicted under this ordinance for a year yields more public safety benefits than using the same space to house an offender convicted of a different, potentially more dangerous offense? Which offenders is the committee comfortable with releasing early to make room for offenders covered under this proposal? What evidence suggests

³⁹ See, e.g., "Mandatory Sentences Keep Petty Crooks In, Let Violent Ones Out," *Orlando Sentinel* Editorial, January 20, 1993, p. A10.

spending *all* of the additional resources needed to enforce this ordinance yields more public safety benefits than spending some of that amount on alternative strategies?

If the committee has considered these questions, where is that cost-benefit analysis? What evidence was used to reach its conclusions? Which experts were consulted? Which experiences in other cities or other states were considered instructive? And how does the city plan to pay for its choices without cutting funding for other public safety priorities?

Baltimore deserves to be safe. Therefore, FAMM urges the members of this committee to pause, consider the actual implications of this ordinance, consult the available evidence, and commit to passing policy consistent with it. We are confident that such a commitment would compel this committee to reject this proposal and find solutions that will actually work.

From: Paul Sill [<mailto:paul@sillengineering.com>]

Sent: Saturday, July 22, 2017 3:49 PM

To: City Council President

Subject: OPPOSE: Proposed Ordinance: Weapons - Prohibiting handguns near places of public assembly

Dear Council President Young,

I'm asking that you **OPPOSE** this legislation. I currently hold a Maryland Wear and Carry Permit, with business restrictions, and am terrified by this legislation. If I come across a police officer that does not believe I am within my restrictions, I would be going to jail for a year. Please, do not do that to the law-abiding citizens that visit your city.

Thank you for your time,

Paul M. Sill, PE, LEED AP
Sill Engineering Group, LLC
11130 Dovedale Court, Suite 200
Marriottsville, MD 21104
Office: 443-325-5076 ext. 102
Fax: 410-696-2022
Cell: 443-878-4314
Website: www.sillengineering.com

 Please consider the environment before printing this email.

From: David Slaughter <David.Slaughter@mluisconstruction.com>

Date: 7/24/17 10:22 (GMT-05:00)

To: City Council President <City.CouncilPresident@baltimorecity.gov>, "Cohen, Zeke" <Zeke.Cohen@baltimorecity.gov>, "Scott, Brandon" <Brandon.Scott@baltimorecity.gov>, "Dorsey, Ryan" <Ryan.Dorsey@baltimorecity.gov>, "Henry, Bill (email)" <Bill.Henry@baltimorecity.gov>, "Schleifer, Isaac" <Isaac.Schleifer@baltimorecity.gov>, "Middleton, Sharon" <Sharon.Middleton@baltimorecity.gov>, "Pinkett, Leon" <Leon.Pinkett@baltimorecity.gov>, "Burnett, Kristerfer" <Kristerfer.Burnett@baltimorecity.gov>, "Bullock, John" <John.Bullock@baltimorecity.gov>, "Reisinger, Edward" <Edward.Reisinger@baltimorecity.gov>, "Costello, Eric" <Eric.Costello@baltimorecity.gov>, "Stokes, Robert" <Robert.Stokes@baltimorecity.gov>, "Sneed, Shannon" <Shannon.Sneed@baltimorecity.gov>, "Clarke, Mary Pat" <MaryPat.Clarke@baltimorecity.gov>

Subject: Mandatory sentence for illegal possession of a handgun

To the Baltimore City Council,

I am writing to voice my concern regarding the proposed mandatory one-year sentence in prison for anyone prosecuted for the illegal possession of a handgun within 100 yards of a public place of assembly. As a point of reference, I am a white male in my mid-fifties who grew up in Baltimore and have been a lifelong resident of Maryland. I am the President of a construction company that employs about 100 people in and around Baltimore and a staunch supporter of Mayor Pugh and the Baltimore Police Department. I am also a member of the 2017 class of the Greater Baltimore Committee Leadership program. Throughout this year I have toured the Baltimore Jail, experienced a Friday night ride along with a City Police officer in West Baltimore and listened to presentations from Dr. Wen from the Health Department, Commissioner Davis and State's Attorney Marilyn Mosby about the many challenges facing our City.

Like most people, I am disheartened and ashamed by the violence that is so prevalent in Baltimore. I am ashamed because we can't seem to move toward a solution to curb the violence and I sit paralyzed not knowing what I can do to impact the environment. We all want to do something, but a mandatory one-year sentence for a misdemeanor handgun violation is not the answer. I realize there is tremendous political pressure to do something different to curb the escalating murder rate. I am reminded of the failure of the three strikes and you're out policies of the Clinton Administration which incarcerated mostly black Americans and overwhelmed the US prison system. I encourage you to watch the documentary 13th if you have not seen it. It certainly changed my perception of mandatory sentencing policies and highlighted their predictable negative aftermath. I believe the mandatory sentencing will put a disproportionate number of young black Marylanders in a prison forever impacting their opportunities to lead productive lives. I believe the expense to house this group of offenders in prison would be better spent expanding effective programs like *Safe Streets* and other violence mediation programs as well as second chance employment training. Dr. Wen counseled our group to consider the cost of not taking action when overwhelmed by the cost of implementing preventive programs. In this case, the cost of grass roots programs focused on violence mediation appear to be a wise investment.

I want to reiterate my support of Mayor Pugh, the Baltimore City Police department, the Commissioner and the officers. I do not do want to impede their efforts keeping Baltimore safe. However, I think putting more young men in prison will not curb the violence or deter crime. I urge you not to enact

mandatory sentencing for the illegal possession of a handgun within 100 yards of a public place of assembly.

Thank you for your consideration,

David Slaughter

David Slaughter
President

M. LUIS IS A MDOT, WBENC CERTIFIED MBE/WBE ASPHALT MANUFACTURER



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CITY OF BALTIMORE

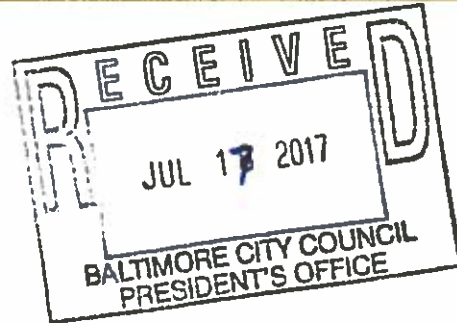
CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

101 City Hall
Baltimore, Maryland 21202

July 17, 2017



The Honorable President and Members
of the Baltimore City Council
Attn: Natawna Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 17-0111 – Weapons – Prohibiting Handguns Near Places of Public Assembly.

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0111 for form and legal sufficiency. This bill provides that a person may not wear, carry or knowingly transport a handgun, concealed or open, on or about the person within 100 yards of or in a park, church, school, public building or other place of public assembly. The bill also provides that a person may not wear, carry or knowingly transport a handgun, concealed or open, in a vehicle within those same areas. The bill provides for the same exceptions to the prohibition that are found in the State gun law Md. Criminal Law Art. §4-203(b). Within these exceptions is a provision which exempts persons from the prohibition who have a valid permit to carry a handgun. See §4-203(b)(2).

Upon review, there are several legal issues that arise that will be discussed below. The Law Department believes that these issues can be resolved in a way that allows for approval for form and legal sufficiency.

Preemption

Md. Crim. Law Art., §4-209 expressly preempts law regulation of handguns. It states (a) Except as otherwise provided in this section, the State preempts the right of a county, municipal corporation, or special taxing district to regulate the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of: (1) a handgun, rifle, or shotgun”

§4-209(b) provides for exceptions to the general preemption of local regulation. It states: (b)(1) A county, municipal corporation, or special taxing district may regulate the purchase, sale, transfer, ownership, possession, and transportation of the items listed in subsection (a) of this section: (iii) except as provided in paragraph (2) of this subsection, within 100 yards of or in a park, church, school, public building, and other place of public assembly.

Fav w/ comment

City Council Bill 17-0111
July 17, 2017
Page 2

(2) A county, municipal corporation, or special taxing district may not prohibit the teaching of or training in firearms safety, or other educational or sporting use of the items listed in subsection (a) of this section. This bill exercises the authority granted in this section but only with respect to handguns. Accordingly, the bill is not preempted by State law.

Mandatory Sentences

The bill imposes a mandatory sentence of one year and a \$1,000 fine. Art. II of the City Charter contains the powers granted to the City by the Maryland General Assembly. §48 gives the Mayor and City Council the authority to provide, by ordinance, for “civil and criminal fines and penalties for the violation of any ordinance, rule or regulations established by the City under or in the execution of any power granted by this Article II; provided that no fine or penalty shall exceed \$1000.00 and no imprisonment shall be for a longer period than 12 months.” The penalty provided for in the bill is within the scope of the Charter authority but removes any discretion to impose less prison time or a lower fine.

In general, “[a]lthough sentencing is an exclusively judicial function, the legislature may choose to constrict the independent exercise of judicial discretion in sentencing. The legislature has the power to define criminal punishments without giving the courts any sentencing discretion and mandatory sentences do not violate the principle of separation of powers.” 16A Am. Jur.2d Constitutional Law §298. This authority has been recognized with respect to local governments as well. See *Brown v. City of Chicago*, 250 N.E.2d 129 (1969) and *City of Detroit v. Recorder’s Court Traffic and Ordinance Judge*, 104 Mich. App. 214(1981). Given these general principles, the Law Department concludes that the City Council is acting within its Charter powers when providing for a mandatory sentence in this bill.

Based on the foregoing, the Law Department approves the bill for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro
Chief Solicitor, Division Chief



Hilary Ruley,
Chief Solicitor



Victor Terval,
Chief Solicitor

cc: David Ralph, Acting City Solicitor
Karen Stokes, Director of Government Relations
Kyron Banks, Legislative Liaison
Hilary Ruley, Chief Solicitor
Victor Terval, Chief Solicitor
Jennifer Landis, Special Assistant Solicitor



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**CITY OF BALTIMORE
COUNCIL BILL 17-0111
(First Reader)**

Introduced by: The Council President, President Young, Councilmembers Costello, Middleton,
Reisinger, Stokes

At the request of: The Administration (Police Department)

Introduced and read first time: July 17, 2017

Assigned to: Judiciary and Legislative Investigations Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Police Department, Baltimore City
State's Attorney

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Weapons – Prohibiting Handguns Near Places of Public Assembly**

3 FOR the purpose of prohibiting the wearing, carrying, or knowingly transporting of handguns
4 near certain places of public assembly; creating certain exceptions; defining a certain term;
5 establishing a certain mandatory penalty; setting a special effective date; and generally
6 relating to handguns.

7 BY adding

8 Article 19 - Police Ordinances

9 Section(s) 59-5

10 Baltimore City Code

11 (Edition 2000)

12 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the**
13 **Laws of Baltimore City read as follows:**

14 **Baltimore City Code**

15 **Article 19. Police Ordinances**

16 **Subtitle 59. Weapons**

17 **§ 59-5. HANDGUNS.**

18 (A) *"HANDGUN" DEFINED.*

19 IN THIS SECTION "HANDGUN" MEANS A FIREARM, AS DEFINED IN STATE PUBLIC SAFETY
20 ARTICLE § 5-101(H), THE BARREL OF WHICH IS 14 INCHES OR UNDER IN LENGTH.

21 (B) *CARRYING PROHIBITED.*

22 A PERSON MAY NOT:

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

Council Bill 17-0111

1 (1) WEAR, CARRY, OR KNOWINGLY TRANSPORT A HANDGUN, WHETHER CONCEALED OR
2 OPEN, ON OR ABOUT THE PERSON WITHIN 100 YARDS OF, OR IN, A:

3 (I) PARK;

4 (II) CHURCH;

5 (III) SCHOOL;

6 (IV) PUBLIC BUILDING; OR

7 (V) OTHER PLACE OF PUBLIC ASSEMBLY.

8 (2) WEAR, CARRY, OR KNOWINGLY TRANSPORT A HANDGUN, WHETHER CONCEALED OR
9 OPEN, IN A VEHICLE TRAVELING ON A ROAD WITHIN 100 YARDS OF A:

10 (I) PARK;

11 (II) CHURCH;

12 (III) SCHOOL;

13 (IV) PUBLIC BUILDING; OR

14 (V) OTHER PLACE OF PUBLIC ASSEMBLY.

15 (C) *PERMISSIBLE INFERENCE.*

16 THE FINDER OF FACT MAY INFER THAT A PERSON WHO TRANSPORTS A HANDGUN IN
17 VIOLATION OF THIS SECTION TRANSPORTS THE HANDGUN KNOWINGLY.

18 (D) *EXCEPTIONS.*

19 THIS SECTION DOES NOT PROHIBIT THE WEARING, CARRYING, OR TRANSPORTING OF A
20 HANDGUN BY A PERSON COVERED BY AN EXCEPTION IN STATE CRIMINAL LAW ARTICLE
21 § 4-203(B).

22 (E) *PENALTIES.*

23 (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON
24 CONVICTION IS SUBJECT TO THE FOLLOWING MANDATORY PENALTIES FOR EACH
25 OFFENSE:

26 (I) IMPRISONMENT FOR 1 YEAR; AND

27 (II) A FINE OF \$1,000.

28 (2) THE COURT MAY NOT IMPOSE LESS THAN, OR SUSPEND ANY PART OF, THE MANDATORY
29 SENTENCE PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION.

Council Bill 17-0111

1 (3) A PERSON WHO VIOLATES THIS SECTION IS NOT ELIGIBLE FOR A PROBATION BEFORE
2 JUDGMENT.

3 (4) A PERSON WHO VIOLATES THIS SECTION IS NOT ELIGIBLE FOR PAROLE.

4 (5) EACH VIOLATION OF THIS SECTION IS A SEPARATE OFFENSE.

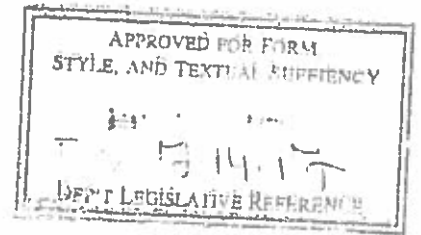
5 (F) *SEVERABILITY.*

6 ALL PROVISIONS OF THIS SECTION ARE SEVERABLE. IF A COURT DETERMINES THAT A
7 WORD, PHRASE, CLAUSE, SENTENCE, PARAGRAPH, SUBSECTION, OR OTHER PROVISION IS
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9 CIRCUMSTANCES IS INVALID, THE REMAINING PROVISIONS AND THE APPLICATION OF THOSE
10 PROVISIONS TO OTHER PERSONS OR CIRCUMSTANCES ARE NOT AFFECTED BY THAT
11 DECISION.

12 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
13 are not law and may not be considered to have been enacted as a part of this or any prior
14 Ordinance.

15 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it is
16 enacted.

INTRODUCTORY*
CITY OF BALTIMORE
COUNCIL BILL _____



Introduced by: The Council President and President Young
At the request of: The Administration (Police Department)

A BILL ENTITLED

AN ORDINANCE concerning

Weapons – Prohibiting Handguns Near Places of Public Assembly

FOR the purpose of prohibiting the wearing, carrying, or knowingly transporting of handguns near certain places of public assembly; creating certain exceptions; defining a certain term; establishing a certain mandatory penalty; setting a special effective date; and generally relating to handguns.

BY adding

Article 19 - Police Ordinances
Section(s) 59-5
Baltimore City Code
(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 19. Police Ordinances

Subtitle 59. Weapons

§ 59-5. HANDGUNS.

(A) *"HANDGUN" DEFINED.*

IN THIS SECTION "HANDGUN" MEANS A FIREARM, AS DEFINED IN STATE PUBLIC SAFETY ARTICLE § 5-101(H), THE BARREL OF WHICH IS 14 INCHES OR UNDER IN LENGTH.

(B) *CARRYING PROHIBITED.*

A PERSON MAY NOT:

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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THE OFFICIAL COPY CONSIDERED BY THE CITY COUNCIL IS THE FIRST READER COPY.

(1) WEAR, CARRY, OR KNOWINGLY TRANSPORT A HANDGUN, WHETHER CONCEALED OR OPEN, ON OR ABOUT THE PERSON WITHIN 100 YARDS OF, OR IN, A:

- (I) PARK;
- (II) CHURCH;
- (III) SCHOOL;
- (IV) PUBLIC BUILDING; OR
- (V) OTHER PLACE OF PUBLIC ASSEMBLY.

(2) WEAR, CARRY, OR KNOWINGLY TRANSPORT A HANDGUN, WHETHER CONCEALED OR OPEN, IN A VEHICLE TRAVELING ON A ROAD WITHIN 100 YARDS OF A:

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- (II) CHURCH;
- (III) SCHOOL;
- (IV) PUBLIC BUILDING; OR
- (V) OTHER PLACE OF PUBLIC ASSEMBLY.

(C) *PERMISSIBLE INFERENCE.*

THE FINDER OF FACT MAY INFER THAT A PERSON WHO TRANSPORTS A HANDGUN IN VIOLATION OF THIS SECTION TRANSPORTS THE HANDGUN KNOWINGLY.

(D) *EXCEPTIONS.*

THIS SECTION DOES NOT PROHIBIT THE WEARING, CARRYING, OR TRANSPORTING OF A HANDGUN BY A PERSON COVERED BY AN EXCEPTION IN STATE CRIMINAL LAW ARTICLE § 4-203(B).

(E) *PENALTIES.*

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO THE FOLLOWING MANDATORY PENALTIES FOR EACH OFFENSE:

- (I) IMPRISONMENT FOR 1 YEAR; AND
- (II) A FINE OF \$1,000.

(2) THE COURT MAY NOT IMPOSE LESS THAN, OR SUSPEND ANY PART OF, THE MANDATORY SENTENCE PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION.

(3) A PERSON WHO VIOLATES THIS SECTION IS NOT ELIGIBLE FOR A PROBATION BEFORE JUDGMENT.

(4) A PERSON WHO VIOLATES THIS SECTION IS NOT ELIGIBLE FOR PAROLE.

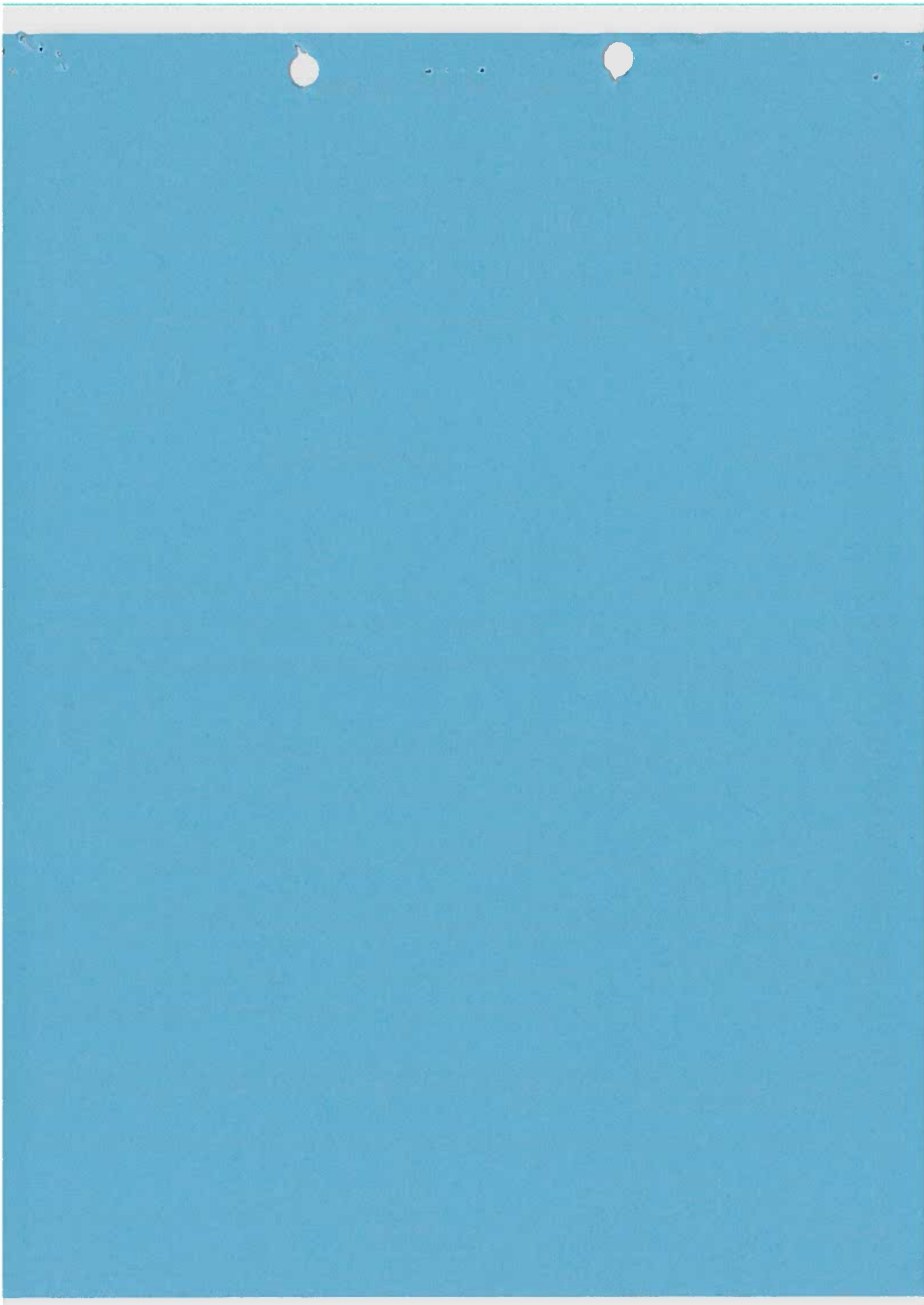
(5) EACH VIOLATION OF THIS SECTION IS A SEPARATE OFFENSE.

(F) *SEVERABILITY*.

ALL PROVISIONS OF THIS SECTION ARE SEVERABLE. IF A COURT DETERMINES THAT A WORD, PHRASE, CLAUSE, SENTENCE, PARAGRAPH, SUBSECTION, OR OTHER PROVISION IS INVALID OR THAT THE APPLICATION OF ANY PART OF THE PROVISION TO ANY PERSON OR CIRCUMSTANCES IS INVALID, THE REMAINING PROVISIONS AND THE APPLICATION OF THOSE PROVISIONS TO OTHER PERSONS OR CIRCUMSTANCES ARE NOT AFFECTED BY THAT DECISION.

SECTION 2. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the date it is enacted.



ACTION BY THE CITY COUNCIL

JUL 17 2017
20

FIRST READING (INTRODUCTION) _____

PUBLIC HEARING HELD ON JULY 25 20 17

COMMITTEE REPORT AS OF AUGUST 14 20 17

_____ FAVORABLE _____ UNFAVORABLE FAVORABLE AS AMENDED _____ WITHOUT RECOMMENDATION



Chair

COMMITTEE MEMBERS:

COMMITTEE MEMBERS:

SECOND READING: The Council's action being favorable (unfavorable), this City Council bill was (was not) ordered printed for Third Reading on:

AUG 14 2017
20

Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING _____ 20 _____

_____ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

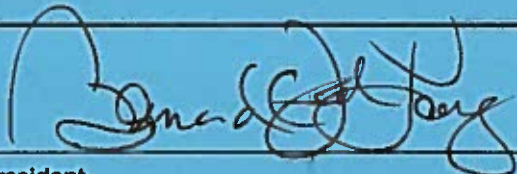
THIRD READING (ENROLLED) _____ 20 _____

_____ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (RE-ENROLLED) _____ 20 _____

WITHDRAWAL _____ 20 _____

There being no objections to the request for withdrawal, it was so ordered that this City Council Ordinance be withdrawn from the files of the City Council.



President



Chief Clerk

CITY OF BALTIMORE

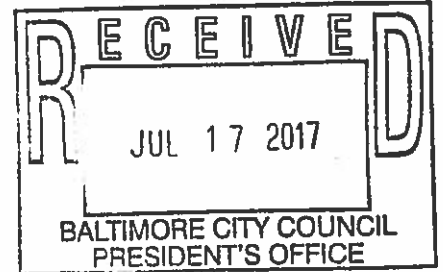
CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

101 City Hall
Baltimore, Maryland 21202

July 17, 2017



The Honorable President and Members
of the Baltimore City Council
Attn: Natawna Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 17-0111 -- Weapons -- Prohibiting Handguns Near Places of Public Assembly.

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0111 for form and legal sufficiency. This bill provides that a person may not wear, carry or knowingly transport a handgun, concealed or open, on or about the person within 100 yards of or in a park, church, school, public building or other place of public assembly. The bill also provides that a person may not wear, carry or knowingly transport a handgun, concealed or open, in a vehicle within those same areas. The bill provides for the same exceptions to the prohibition that are found in the State gun law Md. Criminal Law Art. §4-203(b). Within these exceptions is a provision which exempts persons from the prohibition who have a valid permit to carry a handgun. See §4-203(b)(2).

Upon review, there are several legal issues that arise that will be discussed below. The Law Department believes that these issues can be resolved in a way that allows for approval for form and legal sufficiency.

Preemption

Md. Crim. Law Art., §4-209 expressly preempts law regulation of handguns. It states (a) Except as otherwise provided in this section, the State preempts the right of a county, municipal corporation, or special taxing district to regulate the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of: (1) a handgun, rifle, or shotgun"

§4-209(b) provides for exceptions to the general preemption of local regulation. It states: (b)(1) A county, municipal corporation, or special taxing district may regulate the purchase, sale, transfer, ownership, possession, and transportation of the items listed in subsection (a) of this section: (iii) except as provided in paragraph (2) of this subsection, within 100 yards of or in a park, church, school, public building, and other place of public assembly.

For w/ Comments

City Council Bill 17-0111
July 17, 2017
Page 2

(2) A county, municipal corporation, or special taxing district may not prohibit the teaching of or training in firearms safety, or other educational or sporting use of the items listed in subsection (a) of this section. This bill exercises the authority granted in this section but only with respect to handguns. Accordingly, the bill is not preempted by State law.

Mandatory Sentences

The bill imposes a mandatory sentence of one year and a \$1,000 fine. Art. II of the City Charter contains the powers granted to the City by the Maryland General Assembly. §48 gives the Mayor and City Council the authority to provide, by ordinance, for "civil and criminal fines and penalties for the violation of any ordinance, rule or regulations established by the City under or in the execution of any power granted by this Article II; provided that no fine or penalty shall exceed \$1000.00 and no imprisonment shall be for a longer period than 12 months." The penalty provided for in the bill is within the scope of the Charter authority but removes any discretion to impose less prison time or a lower fine.

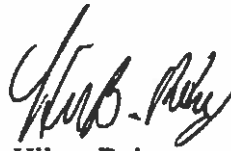
In general, "[a]lthough sentencing is an exclusively judicial function, the legislature may choose to constrict the independent exercise of judicial discretion in sentencing. The legislature has the power to define criminal punishments without giving the courts any sentencing discretion and mandatory sentences do not violate the principle of separation of powers." 16A Am. Jur.2d Constitutional Law §298. This authority has been recognized with respect to local governments as well. See *Brown v. City of Chicago*, 250 N.E.2d 129 (1969) and *City of Detroit v. Recorder's Court Traffic and Ordinance Judge*, 104 Mich. App. 214(1981). Given these general principles, the Law Department concludes that the City Council is acting within its Charter powers when providing for a mandatory sentence in this bill.

Based on the foregoing, the Law Department approves the bill for form and legal sufficiency.

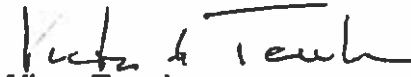
Sincerely yours,



Elena R. DiPietro
Chief Solicitor, Division Chief



Hilary Ruley,
Chief Solicitor



Victor Tervala
Chief Solicitor

cc: David Ralph, Acting City Solicitor
Karen Stokes, Director of Government Relations
Kyron Banks, Legislative Liaison
Hilary Ruley, Chief Solicitor
Victor Tervala, Chief Solicitor
Jennifer Landis, Special Assistant Solicitor

**CITY OF BALTIMORE
COUNCIL BILL 17-0111
(First Reader)**

Introduced by: The Council President, President Young, Councilmembers Costello, Middleton,
Reisinger, Stokes

At the request of: The Administration (Police Department)

Introduced and read first time: July 17, 2017

Assigned to: Judiciary and Legislative Investigations Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Police Department, Baltimore City
State's Attorney

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Weapons – Prohibiting Handguns Near Places of Public Assembly**

3 FOR the purpose of prohibiting the wearing, carrying, or knowingly transporting of handguns
4 near certain places of public assembly; creating certain exceptions; defining a certain term;
5 establishing a certain mandatory penalty; setting a special effective date; and generally
6 relating to handguns.

7 BY adding

8 Article 19 - Police Ordinances

9 Section(s) 59-5

10 Baltimore City Code

11 (Edition 2000)

12 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
13 Laws of Baltimore City read as follows:

14 **Baltimore City Code**

15 **Article 19. Police Ordinances**

16 **Subtitle 59. Weapons**

17 **§ 59-5. HANDGUNS.**

18 (A) *"HANDGUN" DEFINED.*

19 IN THIS SECTION "HANDGUN" MEANS A FIREARM, AS DEFINED IN STATE PUBLIC SAFETY
20 ARTICLE § 5-101(H), THE BARREL OF WHICH IS 14 INCHES OR UNDER IN LENGTH.

21 (B) *CARRYING PROHIBITED.*

22 A PERSON MAY NOT:

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

Council Bill 17-0111

1 (1) WEAR, CARRY, OR KNOWINGLY TRANSPORT A HANDGUN, WHETHER CONCEALED OR
2 OPEN, ON OR ABOUT THE PERSON WITHIN 100 YARDS OF, OR IN, A:

3 (I) PARK;

4 (II) CHURCH;

5 (III) SCHOOL;

6 (IV) PUBLIC BUILDING; OR

7 (V) OTHER PLACE OF PUBLIC ASSEMBLY.

8 (2) WEAR, CARRY, OR KNOWINGLY TRANSPORT A HANDGUN, WHETHER CONCEALED OR
9 OPEN, IN A VEHICLE TRAVELING ON A ROAD WITHIN 100 YARDS OF A:

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11 (II) CHURCH;

12 (III) SCHOOL;

13 (IV) PUBLIC BUILDING; OR

14 (V) OTHER PLACE OF PUBLIC ASSEMBLY.

15 (C) *PERMISSIBLE INFERENCE.*

16 THE FINDER OF FACT MAY INFER THAT A PERSON WHO TRANSPORTS A HANDGUN IN
17 VIOLATION OF THIS SECTION TRANSPORTS THE HANDGUN KNOWINGLY.

18 (D) *EXCEPTIONS.*

19 THIS SECTION DOES NOT PROHIBIT THE WEARING, CARRYING, OR TRANSPORTING OF A
20 HANDGUN BY A PERSON COVERED BY AN EXCEPTION IN STATE CRIMINAL LAW ARTICLE
21 § 4-203(B).

22 (E) *PENALTIES.*

23 (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON
24 CONVICTION IS SUBJECT TO THE FOLLOWING MANDATORY PENALTIES FOR EACH
25 OFFENSE:

26 (I) IMPRISONMENT FOR 1 YEAR; AND

27 (II) A FINE OF \$1,000.

28 (2) THE COURT MAY NOT IMPOSE LESS THAN, OR SUSPEND ANY PART OF, THE MANDATORY
29 SENTENCE PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION.

Council Bill 17-0111

1 (3) A PERSON WHO VIOLATES THIS SECTION IS NOT ELIGIBLE FOR A PROBATION BEFORE
2 JUDGMENT.

3 (4) A PERSON WHO VIOLATES THIS SECTION IS NOT ELIGIBLE FOR PAROLE.

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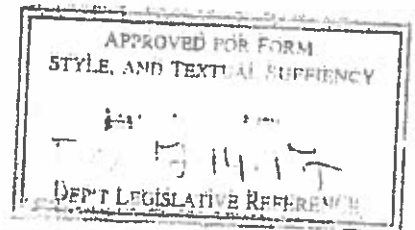
5 (F) *SEVERABILITY.*

6 ALL PROVISIONS OF THIS SECTION ARE SEVERABLE. IF A COURT DETERMINES THAT A
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10 PROVISIONS TO OTHER PERSONS OR CIRCUMSTANCES ARE NOT AFFECTED BY THAT
11 DECISION.

12 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
13 are not law and may not be considered to have been enacted as a part of this or any prior
14 Ordinance.

15 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it is
16 enacted.

INTRODUCTORY*
CITY OF BALTIMORE
COUNCIL BILL 17-011



Introduced by: The Council President and ~~President Young~~ = President Bernard C. 'Jack' Young
At the request of: The Administration (Police Department)

A BILL ENTITLED

AN ORDINANCE concerning

Weapons – Prohibiting Handguns Near Places of Public Assembly

JLI
Law

FOR the purpose of prohibiting the wearing, carrying, or knowingly transporting of handguns near certain places of public assembly; creating certain exceptions; defining a certain term; establishing a certain mandatory penalty; setting a special effective date; and generally relating to handguns.

Police
State
Attorn

BY adding
Article 19 - Police Ordinances
Section(s) 59-5
Baltimore City Code
(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 19. Police Ordinances

Subtitle 59. Weapons

§ 59-5. HANDGUNS.

(A) *"HANDGUN" DEFINED.*

IN THIS SECTION "HANDGUN" MEANS A FIREARM, AS DEFINED IN STATE PUBLIC SAFETY ARTICLE § 5-101(H), THE BARREL OF WHICH IS 14 INCHES OR UNDER IN LENGTH.

(B) *CARRYING PROHIBITED.*

A PERSON MAY NOT:

EXPLANATION: CAPITALS indicate matter added to existing law.
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(1) WEAR, CARRY, OR KNOWINGLY TRANSPORT A HANDGUN, WHETHER CONCEALED OR OPEN, ON OR ABOUT THE PERSON WITHIN 100 YARDS OF, OR IN, A:

- (I) PARK;
- (II) CHURCH;
- (III) SCHOOL;
- (IV) PUBLIC BUILDING; OR
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(2) WEAR, CARRY, OR KNOWINGLY TRANSPORT A HANDGUN, WHETHER CONCEALED OR OPEN, IN A VEHICLE TRAVELING ON A ROAD WITHIN 100 YARDS OF A:

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- (III) SCHOOL;
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- (V) OTHER PLACE OF PUBLIC ASSEMBLY.

(C) *PERMISSIBLE INFERENCE.*

THE FINDER OF FACT MAY INFER THAT A PERSON WHO TRANSPORTS A HANDGUN IN VIOLATION OF THIS SECTION TRANSPORTS THE HANDGUN KNOWINGLY.

(D) *EXCEPTIONS.*

THIS SECTION DOES NOT PROHIBIT THE WEARING, CARRYING, OR TRANSPORTING OF A HANDGUN BY A PERSON COVERED BY AN EXCEPTION IN STATE CRIMINAL LAW ARTICLE § 4-203(B).

(E) *PENALTIES.*

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO THE FOLLOWING MANDATORY PENALTIES FOR EACH OFFENSE:

- (I) IMPRISONMENT FOR 1 YEAR; AND
- (II) A FINE OF \$1,000.

(2) THE COURT MAY NOT IMPOSE LESS THAN, OR SUSPEND ANY PART OF, THE MANDATORY SENTENCE PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION.

(3) A PERSON WHO VIOLATES THIS SECTION IS NOT ELIGIBLE FOR A PROBATION BEFORE JUDGMENT.

(4) A PERSON WHO VIOLATES THIS SECTION IS NOT ELIGIBLE FOR PAROLE.

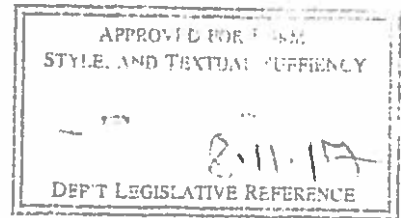
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SECTION 2. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the date it is enacted.



AMENDMENTS TO COUNCIL BILL 17-0111
(1st Reader Copy)

By: The Judiciary and Legislative Investigations Committee
{To be offered on the Council Floor}

Amendment No. 1

On page 1, in line 2, after “Prohibiting” insert “the Illegal Possession of”; and, on that same page, in line 17, after “HANDGUNS” insert “– ILLEGAL POSSESSION PROHIBITED”.

Amendment No. 2

On page 1, in line 5, strike “a certain mandatory penalty” and substitute “certain penalties, including certain mandatory penalties”; and, on page 2, after line 14, insert:

“(3) WEAR, CARRY, OR KNOWINGLY TRANSPORT A HANDGUN IN CONNECTION WITH THE COMMISSION OF A CRIME AGAINST A PERSON OR PROPERTY, WITHIN 100 YARDS OF, OR IN, A:

(I) PARK;

(II) CHURCH;

(III) SCHOOL;

(IV) PUBLIC BUILDING; OR

(V) OTHER PLACE OF PUBLIC ASSEMBLY.”; and,

on that same page, in line 24, strike “MANDATORY”; and, on that same page, strike lines 26 and 27 in their entireties and substitute:

“(I) IF THE HANDGUN WAS WORN, CARRIED, OR TRANSPORTED IN CONNECTION WITH THE COMMISSION OF A CRIME AGAINST A PERSON OR PROPERTY, MANDATORY IMPRISONMENT FOR 1 YEAR AND A MANDATORY FINE OF \$1,000;

(II) IF THE PERSON HAS A PREVIOUS CONVICTION FOR A VIOLATION OF THIS SECTION OR STATE CRIMINAL LAW ARTICLE § 4-203 {“WEARING, CARRYING, OR TRANSPORTING

HANDGUN”}, MANDATORY IMPRISONMENT FOR 1 YEAR AND A MANDATORY FINE OF \$1,000; OR

(III) IF NEITHER ITEM (I) NOR ITEM (II) OF THIS PARAGRAPH APPLY, A FINE OF NOT MORE THAN \$1,000 OR IMPRISONMENT FOR NOT LONGER THAN 12 MONTHS OR BOTH FINE AND IMPRISONMENT, IN THE DISCRETION OF THE COURT.”; and,

on that same page, in line 28, before “MANDATORY” strike “THE” and substitute “ANY”.

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 17-0111

Introduced by: The Council President, President Young, Councilmembers Costello, Middleton,
Reisinger, Stokes
At the request of: The Administration (Police Department)
Introduced and read first time: July 17, 2017
Assigned to: Judiciary and Legislative Investigations Committee

Committee Report: Favorable with amendments
Council action: Adopted
Read second time: August 14, 2017

AN ORDINANCE CONCERNING

1 **Weapons – Prohibiting the Illegal Possession of Handguns Near Places of Public Assembly**

2 FOR the purpose of prohibiting the wearing, carrying, or knowingly transporting of handguns
3 near certain places of public assembly; creating certain exceptions; defining a certain term;
4 establishing ~~a certain mandatory penalty~~ certain penalties, including certain mandatory
5 penalties; setting a special effective date; and generally relating to handguns.

6 BY adding

7 Article 19 - Police Ordinances
8 Section(s) 59-5
9 Baltimore City Code
10 (Edition 2000)

11 SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the
12 Laws of Baltimore City read as follows:

Baltimore City Code

Article 19. Police Ordinances

Subtitle 59. Weapons

16 § 59-5. HANDGUNS – ILLEGAL POSSESSION PROHIBITED.

17 (A) *“HANDGUN” DEFINED.*

18 IN THIS SECTION “HANDGUN” MEANS A FIREARM, AS DEFINED IN STATE PUBLIC SAFETY
19 ARTICLE § 5-101(H), THE BARREL OF WHICH IS 14 INCHES OR UNDER IN LENGTH.

EXPLANATION: CAPITALS indicate matter added to existing law
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike-out~~ indicates matter stricken from the bill by
amendment or deleted from existing law by amendment.

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1 (B) *CARRYING PROHIBITED.*

2 A PERSON MAY NOT:

3 (1) WEAR, CARRY, OR KNOWINGLY TRANSPORT A HANDGUN, WHETHER CONCEALED OR
4 OPEN, ON OR ABOUT THE PERSON WITHIN 100 YARDS OF, OR IN, A:

5 (I) PARK;

6 (II) CHURCH;

7 (III) SCHOOL;

8 (IV) PUBLIC BUILDING; OR

9 (V) OTHER PLACE OF PUBLIC ASSEMBLY.

10 (2) WEAR, CARRY, OR KNOWINGLY TRANSPORT A HANDGUN, WHETHER CONCEALED OR
11 OPEN, IN A VEHICLE TRAVELING ON A ROAD WITHIN 100 YARDS OF A:

12 (I) PARK;

13 (II) CHURCH;

14 (III) SCHOOL;

15 (IV) PUBLIC BUILDING; OR

16 (V) OTHER PLACE OF PUBLIC ASSEMBLY.

17 (3) WEAR, CARRY, OR KNOWINGLY TRANSPORT A HANDGUN IN CONNECTION WITH THE
18 COMMISSION OF A CRIME AGAINST A PERSON OR PROPERTY, WITHIN 100 YARDS OF,
19 OR IN, A:

20 (I) PARK;

21 (II) CHURCH;

22 (III) SCHOOL;

23 (IV) PUBLIC BUILDING; OR

24 (V) OTHER PLACE OF PUBLIC ASSEMBLY.

25 (C) *PERMISSIBLE INFERENCE.*

26 THE FINDER OF FACT MAY INFER THAT A PERSON WHO TRANSPORTS A HANDGUN IN
27 VIOLATION OF THIS SECTION TRANSPORTS THE HANDGUN KNOWINGLY.

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1 (D) *EXCEPTIONS.*

2 THIS SECTION DOES NOT PROHIBIT THE WEARING, CARRYING, OR TRANSPORTING OF A
3 HANDGUN BY A PERSON COVERED BY AN EXCEPTION IN STATE CRIMINAL LAW ARTICLE
4 § 4-203(B).

5 (E) *PENALTIES.*

6 (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON
7 CONVICTION IS SUBJECT TO THE FOLLOWING ~~MANDATORY~~ PENALTIES FOR EACH
8 OFFENSE:

9 ~~(i) IMPRISONMENT FOR 1 YEAR; AND~~

10 ~~(ii) A FINE OF \$1,000.~~

11 (I) IF THE HANDGUN WAS WORN, CARRIED, OR TRANSPORTED IN CONNECTION
12 WITH THE COMMISSION OF A CRIME AGAINST A PERSON OR PROPERTY,
13 MANDATORY IMPRISONMENT FOR 1 YEAR AND A MANDATORY FINE OF \$1,000;

14 (II) IF THE PERSON HAS A PREVIOUS CONVICTION FOR A VIOLATION OF THIS SECTION
15 OR STATE CRIMINAL LAW ARTICLE § 4-203 {"WEARING, CARRYING, OR
16 TRANSPORTING HANDGUN"}, MANDATORY IMPRISONMENT FOR 1 YEAR AND A
17 MANDATORY FINE OF \$1,000; OR

18 (III) IF NEITHER ITEM (I) NOR ITEM (II) OF THIS PARAGRAPH APPLY, A FINE OF NOT
19 MORE THAN \$1,000 OR IMPRISONMENT FOR NOT LONGER THAN 12 MONTHS OR
20 BOTH FINE AND IMPRISONMENT, IN THE DISCRETION OF THE COURT.

21 (2) THE COURT MAY NOT IMPOSE LESS THAN, OR SUSPEND ANY PART OF, ~~THE ANY~~
22 MANDATORY SENTENCE PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION.

23 (3) A PERSON WHO VIOLATES THIS SECTION IS NOT ELIGIBLE FOR A PROBATION BEFORE
24 JUDGMENT.

25 (4) A PERSON WHO VIOLATES THIS SECTION IS NOT ELIGIBLE FOR PAROLE.

26 (5) EACH VIOLATION OF THIS SECTION IS A SEPARATE OFFENSE.

27 (F) *SEVERABILITY.*

28 ALL PROVISIONS OF THIS SECTION ARE SEVERABLE. IF A COURT DETERMINES THAT A
29 WORD, PHRASE, CLAUSE, SENTENCE, PARAGRAPH, SUBSECTION, OR OTHER PROVISION IS
30 INVALID OR THAT THE APPLICATION OF ANY PART OF THE PROVISION TO ANY PERSON OR
31 CIRCUMSTANCES IS INVALID, THE REMAINING PROVISIONS AND THE APPLICATION OF THOSE
32 PROVISIONS TO OTHER PERSONS OR CIRCUMSTANCES ARE NOT AFFECTED BY THAT
33 DECISION.

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1 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
2 are not law and may not be considered to have been enacted as a part of this or any prior
3 Ordinance.

4 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it is
5 enacted.

Certified as duly passed this _____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,
this _____ day of _____, 20__

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City