

Written Statement of Kevin Ring
President, Families Against Mandatory Minimums
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Committee
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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 crowd out more efficient alternatives and ultimately fail to accomplish its objectives. In the

¹ Jess Bidgood, *The Numbers Behind Baltimore's Record Year in Homicides*, N.Y. TIMES, January 15, 2016.

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, 98 (1977).

³ *Id.*

⁴ Glenn L. Pierce & William J. Bowers, *The Bartley-Fox Gun Law's Short-Term Impact on Crime in Boston*, 455 Am. Acad. Pol. & Soc. Sci. 120, (May 1981).

⁵ *Id.* at 137.

⁶ Kenneth Carlson & Carol Dorsey, *Mandatory Sentencing: The Experience of Two States*, National Institute of Justice (May 1982).

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 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 II*, 57 B.U. L. Rev. 289, 314 (1977).

⁸ Colin Loftin & David McDowall. *One With a Gun Gets You Two: Mandatory Sentencing and Firearm Violence in Detroit*. 455 Am. Acad. Pol. & Soc. Sci. 150, 163 (1981).

⁹ *Id.* at 162.

¹⁰ *Id.* at 163.

¹¹ Colin Loftin, Milton Heumann & David McDowall. *Mandatory Sentencing and Firearms Violence: Evaluating an Alternative to Gun Control*, 17 Law & Soc’y. Rev. 287, 309 (1983).

¹² Patrick W. O’Carroll et al., *Preventing Homicide: An Evaluation of the Efficacy of a Detroit Gun Ordinance*, Am. J. Public Health, May 1991, at 576.

¹³ *Id.* at 578.

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 Carlson & Dorsey, *supra* note 6, at 6.

¹⁶ *Id.* at 7.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 10.

²¹ Milton Heumann, Colin Loftin, David McDowall, *Federal Firearms Policy and Mandatory Sentencing*, 73 J. Crim. L. & Criminology 1051, 1058 (1982).

²² Loftin, Heumann & McDowall, *supra* note 11, at 294.

²³ *Id.* at 295.

. . . 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.* at 298.

²⁵ O’Carroll et. al., *supra* note 12, at 578.

²⁶ *Id.* at 579.

²⁷ *Id.*

²⁸ Justin George, *Shoot to Kill: Why Baltimore is One of the Most Lethal Cities in the U.S.*, BALT. SUN, September 30, 2016.

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*, BALT. 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 Pierce & Bowers, *supra* note 4, at 122.

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., Myriam Marquez, *Mandatory Sentences Keep Petty Crooks In, Let Violent Ones Out*, ORL. SENT., 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.