Anne Arundel County_FAV_SB 1050 Uploaded by: Baron, Peter

Position: FAV



March 12, 2020

Senate Bill 1050

Public Safety – Lost or Stolen Regulated Firearm – Reporting Senate Judicial Proceedings Committee

Position: FAVORABLE

Anne Arundel County **SUPPORTS** Senate Bill 1050 - Public Safety – Lost or Stolen Regulated Firearm – Reporting. This Bill increases the penalties for failure to report the loss or theft of a regulated firearm.

In response to the alarming trend of violent acts committed by individuals using guns as the preferred weapon of choice, County Executive Steuart Pittman appointed the Anne Arundel County Gun Violence Prevention Task Force (GVPTF) in April 2019. The task force subsequently explored the latest research, compiled relevant facts and data, identified best practices from other jurisdictions, and issued its preliminary recommendations in December 2019. Those recommendations include a broad range of fact-based proposals and intervention strategies that can be implemented at the local level to prevent gun violence before it occurs. One of the task force recommendations was to support gun safety legislation at every level of government, including stricter controls on reporting of lost and stolen firearms.

In addition to stronger preventative actions, the GVPTF report calls for expanded public outreach and education, shared data collection and enhanced gun safety measures. The recommendations were developed through the lens of public health and reflect the growing consensus within the public health community that firearm-related deaths and injuries have reached epidemic levels. Public health organizations, academic researchers, and medical groups such as the American Public Health Association, the National Medical Association, the American Medical Association, the American College of Physicians and the American Academy of Pediatrics each have determined that gun violence is a major threat to public health which will require a public health response. This Bill is an additional method to ensure firearms do not fall into the hands of those who should not have access to them.

Accordingly, Anne Arundel County respectfully requests a **FAVORABLE** report on Senate Bill 1050

Phone: 443.685.5198

Email: exbaro99@aacounty.org

GBC_FAV_SB1050Uploaded by: Fry, Donald

Position: FAV

TESTIMONY PRESENTED TO THE SENATE JUDICIAL PROCEEDINGS COMMITTEE

SENATE BILL 1050 -- PUBLIC SAFETY - LOST OR STOLEN REGULATED FIREARM - REPORTING

March 12, 2020

DONALD C. FRY PRESIDENT & CEO GREATER BALTIMORE COMMITTEE

Position: Support

Senate Bill 1050 establishes the penalties for a first conviction of failing to report a lost or stolen gun to imprisonment not to exceed six months or a fine not exceeding \$1,000. For each subsequent conviction, the bill stipulates imprisonment shall not exceed one year or a fine not exceeding \$2,000, or both.

Gun thefts and loss of guns are a significant problem in the United States. According to the National Crime Information Center, which is part of the Federal Bureau of Investigation, 249,501 firearms were reported lost or stolen in 2016, an increase of more than 62 percent over 2007. In the most recent 10-year period where data is available, at least 1.9 million guns were lost or stolen.

Current penalties are often insufficient to deter people from failing to report a lost or stolen firearm. Senate Bill 1050 acknowledges this issue by altering fines and imprisonment guidelines for failing to report a lost or stolen guns. It is imperative that Maryland have adequate penalties for failing to report lost or stolen firearms to law enforcement because there is no federal statute regarding this issue.

In the Greater Baltimore Committee's 2020 Legislative Priorities, improving public safety in Baltimore City is identified as a priority, stating that, "violent crime and public safety concerns threaten the health, well-being, and economic prosperity of our communities. Persistent violent crime rates in Baltimore City require strategic action by state and city officials." The increased penalties in this bill for failing to report lost or stolen firearms are an important step to reduce violent crime.

For these reasons, the Greater Baltimore Committee urges a favorable report on Senate Bill 1050.

The Greater Baltimore Committee (GBC) is a non-partisan, independent, regional business advocacy organization comprised of hundreds of businesses -- large, medium and small -- educational institutions, nonprofit organizations and foundations located in Anne Arundel, Baltimore, Carroll, Harford, and Howard counties as well as Baltimore City. The GBC is a 65-year-old, private-sector membership organization with a rich legacy of working with government to find solutions to problems that negatively affect our competitiveness and viability.

2A_Maryland_Unf_SB1050Uploaded by: JOSSELYN, JOHN

Position: UNF

2A@2AMaryland.org www.2AMaryland.org

SB 1050 Public Safety – Lost or Stolen Regulated Firearms - Reporting UNFAVORABLE

Citizens who legally own firearms will report the theft or loss of a firearm, not because to aids in an investigation, but rather to increase the chances the firearm will be returned to them and more importantly, to protect themselves from being implicated in any subsequent crime involving the use of their stolen firearm.

Persons who are illegally in possession of a firearm will not report the loss or theft of a firearm, much less a firearm they have transferred illegally. Do so would subject them to prosecution and penalties far in excess of those contemplated in this misguided bill. The problem with proving when the person "discovered" the alleged loss or theft is compounded by the 5th Amendment protections regarding self-incrimination. (Haynes v. United States)

It is our view that SB 1050 is simple a facet of this Session's large package of punitive gun control legislation which has nothing to do with public safety or reducing crime and everything to do with making the legal ownership of firearms and daunting and intimidating as possible.

We ask for an unfavorable report.

John H. Josselyn, Director 2A Maryland March 12, 2020

Stoney Creek Fishing and Hunting Club_UNF_SB 1050 Uploaded by: Mathison, Theodore

Position: UNF

Stoney Creek Fishing & Hunting Club 9090 Ft. Smallwood Rd. Pasadena, MD 21122

March 12, 2020

SB 1050: Public Safety – Lost or Stolen Regulated Firearms – Reporting Oppose

The Stoney Creek Fishing and Hunting Club, which has some 300 members and has been in existence for over 70 years, **OPPOSES SB 1050**. We oppose the Bill because it is the wrong approach to the issue of reporting lost or stolen firearms as it would impose extremely harsh penalties where there is no intended harm.

SB 1050 would change the failure to report a lost/stolen firearm from a civil to a criminal violation. It would also increase the penalties for first time and subsequent violations as shown below:

- First time violation:
 - Existing: Fine not exceeding \$500.
 - Proposed: Imprisonment not exceeding 6 months, or fine not exceeding \$1,000, or both.
- Second and subsequent violations:
- Existing: Guilty of misdemeanor, imprisonment not exceeding 90 days, or fine not exceeding \$500, or both.
- Proposed: Imprisonment not exceeding 1 year, or fine not exceeding \$2,000, or both.

These are very severe penalties for "acts of omission" versus "acts of commission" wherein there is no intent to cause harm or injury. By contrast, under Maryland Code Article 7-104(g)(2) the theft of a firearm valued at less than \$1,500 for a first conviction is imprisonment not to exceed 6 months, or a fine of up to \$500, or both. Certainly, the theft of a firearm is more of a public threat than failure to report the theft within a given time frame.

We recognize lost and stolen firearms are a concern in that stolen firearms can be involved with the commission of crimes. During 2019 a total of 186 firearms were lost or stolen in Maryland (*Statista*, "Number of Stolen or Lost Firearms in 2019 by State", December 2019). It appears that perhaps 96 of these firearms were stolen from gun shops in Baltimore, Howard and Montgomery Counties during forced break ins (*Baltimore County News*, "Bill Protects Firearm Retail Establisment(s) and Prevents Gun Burglaries", November 25, 2019, 11:05 AM EST). Thus, one could assume that some 90 or so of the remaining firearms were lost or stolen from private individuals during 2019.

SB 1050: Public Safety – Lost or Stolen Regulated Firearms - Reporting Testimony of Stoney Creek Fishing and Hunting Club Oppose
March 12, 2020
Page 2

We were unable to ascertain how many reports were filed for the 90 firearms. Whether or not these firearms were eventually involved in serious crimes is difficult to ascertain. EurekAlert Science News, "What happens to stolen guns", 25 April 2018, notes that "The tentative results tend to support a conclusion that stolen guns play only a minor role in crime" says Cook who notes that surveys of convicted felons indicate they rarely stole the guns they used...most of the convicted criminals interviewed indicated that they either bought, traded, shared, or were given the weapons they used to commit an offense."

A Rand Corporation study, *The Effects of Lost or Stolen Firearms Reporting Requirements*, March 2, 2018, indicates its analysis of the effectiveness of reporting lost/stolen firearms was inconclusive. The study concluded "...required reporting policies could have the unintended effect of discouraging individuals from reporting lost or stolen weapons in order to avoid legal penalties from failing to report a loss or theft within a certain number of days...".

Accordingly, we question whether the provisions of SB 1050 that would significantly increase the penalties for failing to report the loss/theft of a firearm will have the desired effect, that is, encourage more individuals to report lost/stolen firearms. In fact, the current penalties may actually discourage reporting. Individuals may be hesitant to report a lost/stolen firearm because they are unsure when the loss/theft occurred and fear they have missed the reporting deadline.

We note that when cities like Baltimore and other communities launch gun buy back programs, they usually are "no questions asked" when a firearm is turned in (*Journalist's Resource*, "Gun buybacks: What the research says", January 9, 2020). Further, the individuals are paid for the firearms they turn in! Might these or similar "incentives" be applied to encourage individuals to report lost/stolen firearms, so they would feel more comfortable doing so?

We also believe a public awareness program might have a positive effect. Currently, the only times an individual is formally made aware of the requirement to report a lost/stolen firearm is when they purchase a firearm from a licensed dealer or undergo some type of formal firearms training. If either of these events occurred a number of years ago, the warning could have been forgotten.

We urge SB 1050 receive an unfavorable report.

Theodore E. Mathison

Ch, Legislative Committee,

410-987-9591;

Email: tem2@verizon.net

Pennak_President_MSI_UNF_SB1050 Uploaded by: Pennak, Mark

Position: UNF



March 12, 2020

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO SB 1050

I am the President of Maryland Shall Issue ("MSI"). Maryland Shall Issue is an all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners' rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. I am also an attorney and an active member of the Bar of Maryland and of the Bar of the District of Columbia. I recently retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland firearms law, federal firearms law and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License ("HQL") and a certified NRA instructor in rifle, pistol, personal protection in the home, personal protection outside the home and in muzzle loader. I appear today as President of MSI in OPPOSITION to SB1050.

This Bill:

This bill proposes an amendment to MD Code Public Safety § 5-146 to criminalize and increase the penalties for a failure to report a lost or stolen regulated firearm. Under current law, the owner of a regulated firearm has 72 hours to report the lost or theft of the firearm to a local law enforcement agency. A knowingly and willful failure to do so is punishable, on the first offense, as a civil offense with a fine not exceeding \$500.00. On the second or subsequent offense, the failure is punishable as a criminal misdemeanor with imprisonment of 90 days and a fine not exceeding \$500.00.

This bill would abolish the civil penalty for the first offense and make a failure to report on the first offense a criminal misdemeanor punishable by up to 6 months in jail and a \$1,000 fine. Second and subsequent violations are also criminal and punishable by imprisonment not exceeding 1 year and a fine of \$2,000.

The Bill Criminalizes the Victim And Is Extreme In The Penalties Imposed

This bill is apparently motivated by a desire to prevent gun diversions and straw purchases by punishing a theft victim for a failure to report a lost or stolen regulated firearm. Those motivations are misguided. A Rand Corporation study published in 2018 found that there is no evidence or study that actually supports any reporting requirement. https://www.rand.org/research/gun-policy/analysis/lost-or-stolen-firearms.html. That Study is attached to this testimony. Specifically, the Study found that "[w]e found no qualifying studies showing that lost or stolen firearm reporting requirements increased any of the eight outcomes we investigated." (Id. at 1). Indeed, the Study further states that "[w]e found no qualifying studies showing inconclusive evidence about lost or stolen firearm reporting

requirements." (Id.). In short, the supposed benefits of such reporting requirements are speculative at best.

In contrast, criminalizing the victim is sure to have unintended consequences. First, because this bill makes the failure to report a criminal violation with jail time, instead of a civil violation, the theft victim may well be **less likely** to report a lost or stolen firearm. Section 5-146 provides that the owner must report the loss "within 72 hours after the owner first discovers the loss or theft." Under this bill, a criminal investigation will likely be conducted into when the owner "first discovered" the loss. In all cases, the question of when the loss was "discovered" creates a question of fact for the trier of fact, thus exposing the owner to the risk of criminal prosecution.

Because a failure to report would become criminal, any rational owner will be loath to expose himself or herself to any such criminal investigation or questioning by the police for fear that his responses to such questioning might be incriminating. Indeed, for the same reasons, any competent legal counsel would advise such an owner to invoke his or her Fifth Amendment right to silence and the Sixth Amendment right to counsel and thus refuse full cooperation with the police. Thus, even if the stolen firearm is discovered at a crime scene and traced to the original owner, such owner would be legally ill-advised to submit to police questioning because of the criminal penalties imposed by this bill. That result would frustrate any investigation into the loss or theft as well as any crime that may have been committed with the stolen firearm. That consequence is, of course, exactly the opposite of the desired result.

Second, criminalizing a failure to report with steep fines and jail time is extreme. Only a small minority of states require an owner even to report lost or stolen firearms. California, for example, simply requires a report within **5 days** and does not impose any civil or criminal consequences for any failure. California Penal Code §25250. Connecticut punishes a failure to report, as a first offense, with a fine of \$90.00. CT Gen Stat § 53-202g. The District of Columbia imposes a civil fine of \$100 for any failure to report and does not impose any jail time, even for subsequent offenses. D.C. Code § 7–2502.08. Similarly, New Jersey law imposes only civil penalties for first or subsequent offices. N.J. Stat. Ann. § 2C:58-19. Our neighbor, Delaware, punishes a first offense as a "civil penalty" with a fine of not less than \$75 and not more than \$100. Del. Code tit. 11, § 1461. Michigan requires a stolen firearm to be reported in **5 days** and punishes any failure as a "civil violation" with a fine of no more than \$500. Mich. Comp. Laws § 28.430.

Even the very few States that do impose criminal penalties for a failure to report do not, as a rule, impose the draconian penalties imposed by this bill on the first offense. Ohio, for example, punishes a failure to report within **7 days** as a fourth decree misdemeanor which is punishable with a maximum jail sentence of 30 days and a fine not to exceed \$250. Ohio Rev. Code Ann. § 2923.20(A)(5). Massachusetts does not impose jail time until the third offense and even that penalty is applicable only to sellers and or a person who has been issued a license to carry a pistol or revolver. Mass. Gen. Laws ch. 140, § 129C. In Illinois, a failure to report is a "petty offense" which is punishable by a fine between \$1 and \$1,000. 720 Ill. Comp. Stat. 5/24-4.1. Rhode Island punishes a failure to report with a "fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100)." R.I. Gen. Laws § 11-47-48.1. This bill, with its heavy fine and jail time for the first offense, would plainly make Maryland an outlier jurisdiction.

Third, punishing an owner for failing to report is, itself, perverse. The owner may be unaware of any such reporting requirement, but may, under this bill, nonetheless be exposed to a criminal investigation just for being a victim of a theft. While the mens rea requirement could help the owner avoid a conviction by requiring a knowing and willful failure to report, the owner would still face the possibility of being a suspect in a potential crime when he or she has already been victimized by the theft. Such an investigation would simply add to the trauma that the victim has already experienced. It could well require the victim to hire legal counsel at considerable expense. That is simply no way to treat otherwise innocent crime victims. If the "victim" is truly a bad actor, then remedies are already available under existing law, not changed by this bill. See MD Code Public Safety § 5-146(e) ("The imposition of a civil or criminal penalty under this section does not preclude the pursuit of any other civil remedy or criminal prosecution authorized by law."). There is no reason to pile on potential criminal liability that could work to ensnare the innocent person. That is especially so given that the supposed benefits associated with mandatory reporting requirements are so speculative, as the Rand study points out. In short, this bill is both bad policy and over-criminalization. We see no need or reason to alter Maryland's existing law. We urge an unfavorable report.

Sincerely,

Mark W. Pennak

President, Maryland Shall Issue, Inc. mpennak@marylandshallissue.org





RAND > Research > Gun Policy in America > Research Review >

The Effects of Lost or Stolen Firearm Reporting Requirements

March 2, 2018

Laws requiring gun owners to report lost or stolen firearms are intended to help prevent gun trafficking and straw purchases (in which a lawful buyer makes the purchase on the behalf of a prohibited buyer) and to help ensure that prohibited possessors are disarmed. Data collected from Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) trafficking investigations covering 1999 to 2002 showed that 6.6 percent (7,758 of 117,138) of diverted firearms were stolen from a residence or vehicle (Braga et al., 2012).

How Lost or Stolen Firearms Reporting Requirements Affect Gun Use Outcomes

MAY INCREASE

We found no qualifying studies showing that lost or stolen firearm reporting requirements increased any of the eight outcomes we investigated.

MAY DECREASE

We found no qualifying studies showing that lost or stolen firearm reporting requirements decreased any of the eight outcomes we investigated.

INCONCLUSIVE EVIDENCE

We found no qualifying studies showing inconclusive evidence about lost or stolen firearm reporting requirements.

NO STUDIES MET OUR CRITERIA

Defensive Gun Use

Gun Industry Outcomes

Hunting and Recreation

Officer-Involved Shootings

Mass Shootings

Suicide

Unintentional Injuries and Deaths

Violent Crime

Federal law requires licensed firearm dealers to report lost or stolen guns to local authorities or the U.S. Attorney General within 48 hours (18 U.S.C. 923). There is no federal law requiring individuals to report lost or stolen firearms.

2 of 6 3/11/2020, 7:38 PM

https://www.rand.org/research/gun-policy/analysis/lost-or-stolen-firearms.html

In 2015, federally licensed firearm dealers reported 14,800 firearms as lost or stolen (ATF, 2016a). Quantifying the number of firearms lost or stolen from private citizens is more challenging, but based on data from ATF, 173,675 firearms were reported lost or stolen from non–federal firearm licensee entities and private citizens in 2012 (ATF, 2013). Using an alternative data source, another study estimated that about 233,000 guns were stolen annually during household property crimes between 2005 and 2010, and about four out of five firearms stolen were not recovered (Langton, 2012). Data from police departments in 14 American cities suggest that the number of guns reported lost or stolen in 2014 varies from 17 in San Francisco to 364 in Las Vegas (Everytown for Gun Safety Support Fund, 2016). A recent national survey (Hemenway, Azrael, and Miller, 2017) estimates that 2.4 percent of American gun owners had at least one gun stolen in the past five years and that the average number of guns stolen per person was 1.5. The authors use these data to estimate that 380,000 guns were stolen per year.

There are several plausible mechanisms through which these policies might reduce criminal use or trafficking of firearms. First, reporting requirements might encourage private gun owners to take steps that decrease the ease with which their firearms might be lost or stolen. Second, reporting requirements could deter some straw purchasers who are reluctant to report as stolen the guns they have diverted to prohibited possessors but who also fear that failure to report transferred guns as stolen could leave them accountable for explaining how their guns later turned up at crime scenes. Third, timelier reporting of gun losses or thefts may aid law enforcement gun-tracing efforts and increase criminal prosecutions of illegal users or traffickers of stolen firearms, potentially reducing the stock of firearms among prohibited possessors. However, required reporting policies could have the unintended effect of discouraging individuals from reporting lost or stolen weapons in order to avoid legal penalties from failing to report loss or theft within a certain number of days. Thus, to estimate how requirements for reporting lost or stolen firearms affect such outcomes as violent crime, we might first examine to what extent such policies affect gun owners' reporting and storage behavior.

To assess whether required reporting of lost or stolen guns reduces violent crime by disrupting illegal firearm trafficking, causal inference could be strengthened by examining crime gun trace data,^[1] as

well as changes in homicide or violent crime rates. Specifically, if these laws restrict trafficking operations from in-state sources, one should observe a larger share of crime guns originating from out-of-state sources after law passage, as well as a reduction in guns with a short time-to-crime (Webster and Wintemute, 2015; Braga et al., 2012). However, a series of provisions attached to ATF appropriations (commonly known as the Tiahrt Amendments) has denied most researchers access to firearm trace data since 2003, making it currently infeasible to conduct this type of analysis (Krouse, 2009).

Requiring gun owners to report lost or stolen firearms is unlikely to have measureable effects on such outcomes as suicide, unintentional injuries and death, defensive gun use, or hunting and recreation. If the requirements successfully discouraged straw purchases, it could have a small effect on firearm sales.

State Implementation of Lost or Stolen Firearm Reporting Requirements

AK										ME
								VT	NH	MA
WA	ID	MT	ND	MN	WI	МІ		NY	СТ	RI
OR	UT	WY	SD	IA	IL	IN	ОН	PA	NJ	
CA	NV	СО	NE	МО	KY	WV	MD	DC	DE	
	ΑZ	NM	KS	AR	TN	VA	NC	SC		
			OK	LA	MS	AL	GA			
н			TX				FL			

State implementation data valid as of January 1, 2017.

A minority of states require firearm owners to report to law enforcement when their weapons are lost or stolen. California, Connecticut, Delaware, Illinois, Massachusetts, New Jersey, New York, Ohio, Nhode Island, and the District of Columbia require individuals to report the loss or theft of all firearms. Maryland requires the reporting of loss or theft of handguns and assault weapons, and Michigan requires the reporting of thefts, but not loss, of all firearms.

Notes

- 1. The Bureau of Alcohol, Tobacco, and Firearms (2002, p. A-3) defined *crime gun* as "any firearm that is illegally possessed, used in a crime, or suspected to have been used in a crime. An abandoned firearm may also be categorized as a crime gun if it is suspected it was used in a crime or illegally possessed." *J*
- 2. Per Webster and Wintemute (2015), the metric known as *time-to-crime* is the "unusually short interval—ranging from less than 1 year to less than 3 years—between a gun's retail sale and its subsequent recovery by police from criminal suspects or crime scenes A short [time-to-crime] is considered an indicator of diversion, especially when the criminal possessor is someone different from the purchaser of record." *J*
- 3. Calif. Penal Code §§ 26815, 27540, 27545 (the waiting period applies to dealers, but, in California, all sales must be processed through a dealer); D.C. Code Ann. §§ 22-4508.
- 4. Hawaii Rev. Stat. Ann. § 134-2. A separate permit is required for each handgun purchase, and the permit expires after ten days; long-gun permits are valid for one year.

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ATF—See Bureau of Alcohol, Tobacco, Firearms and Explosives.

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