



March 3, 2020

## WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN SUPPORT OF SB 672, SB 674 AND HB 914

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 SUPPORT of SB 672, SB 674 and HB 914

### These Bills

The purpose of these bills is to provide for greatly enhanced penalties for the theft of a firearm. Under current law, theft of a firearm is treated just like the theft of any other piece of personal property. For example, under MD Code Criminal Law § 7-104(g)(2), “a person convicted of theft of property or services with a value of at least \$100 but less than \$1,500, is guilty of a misdemeanor and: (i) is subject to: 1. for a first conviction, imprisonment not exceeding 6 months or a fine not exceeding \$500 or both; and 2. for a second or subsequent conviction, imprisonment not exceeding 1 year or a fine not exceeding \$500 or both.

All of these bills would change these penalties to a felony. SB 672 would apply only to theft of **a handgun** and punish a first offense as a felony, imposing a sentence of at least 2 years and not exceeding 5 years and/or a fine of \$5,000. SB 674 and its cross-filed bill, HB 914, would apply to the theft of **any firearm** and would impose, on the first offense, imprisonment of at least 2 years and not exceeding 5 years and and/or a fine of \$1,000. All the bills would impose minimum sentences of at 2 years on the first offense.

### These Bills Are Necessary For the Public Safety:

Simply put, it is unbelievable that theft of a firearm is punishable so lightly under current law. The value of most firearms, including most handguns, fall into the range of between \$100 and \$1,500 and thus theft of such firearms is currently punished **at most** by 6 months in prison and/or a small fine. In reality, persons convicted of such a crime are very unlikely to see any jail time at all, as the Maryland Sentencing Guidelines classify this property crime as a Category VII offense (even on a second offense), which is the least serious offense listed in the Guidelines and one that can be punished by mere probation.

See <http://www.msccsp.org/Guidelines/Matrices.aspx#property>. Yet, it should be obvious that stealing a firearm is a serious threat to the community and, as such, well deserving of actual punishment. See David J. Cherrington, *Crime and Punishment: Does Punishment Work?* at 4 (2007) (“Studies of punishment have shown that individuals who have observed others being punished change their behavior almost as much as those who were actually punished.”), available at <https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1953&context=facpub>.

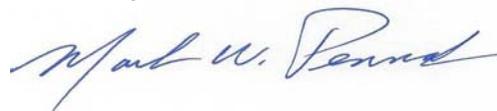
Indeed, the mild, non-punishment accorded to the theft of firearms is particularly striking in light of the **severe penalties** that Maryland law metes out to otherwise law-abiding citizens of Maryland who happen to run afoul of one of the many criminal provisions of Maryland’s firearms law. For example, a new resident of Maryland who knowingly neglected to register his or her regulated firearm within 90 days of becoming a Maryland resident, as required by MD Code Public Safety § 5-143, is subject to imprisonment for **5 years** and/or a \$10,000 fine under MD Code Public Safety § 5-144(b). A law-abiding person who knowingly “receives” a handgun in Maryland without possessing a Handgun Qualification License issued under by MD Code Public Safety § 5-117.1, can likewise be punished by **5 years** imprisonment and/or fined under Section 5-144.

Other provisions of Maryland firearms law do not even require a *mens rea*. An otherwise innocent “transport” in Maryland of a so-called “assault weapon” banned by MD Code Criminal Law §4-303, is punishable by up to **3 years** imprisonment and/or a fine of \$5,000 under MD Code Criminal Law §4-306, regardless of whether the person even knew of the prohibition. Under MD Code Criminal Law § 4-203, a person is “subject to imprisonment **for not less than 30 days and not exceeding 3 years** or a fine of not less than \$250 and not exceeding \$2,500 or both” for as little as leaving an unloaded handgun in the car’s trunk while doing grocery shopping on the way home from the range. No *mens rea* required.

And severe punishment is not restricted to firearms. Absentmindedly taking a penknife (e.g., a Swiss Army knife) anywhere onto school “property” is a violation of MD Code Criminal Law §4-102, and that crime is punishable by imprisonment not exceeding **3 years** or a fine not exceeding \$1,000 or both, regardless of scienter. Under MD Code Criminal Law, § 4-101, merely carrying **pepper spray** in one’s pocket can be punished by **3 years** of imprisonment and/or a \$1,000 fine.

Maryland should not be punishing mistakes by otherwise innocent persons so severely while letting actual **thieves of firearms** off the hook with the proverbial “slap on the wrist.” After all, thieves actually know that stealing is criminal. Nothing good can come from stealing a firearm. We urge a favorable report for either one of these bills.

Sincerely,



Mark W. Pennak  
President, Maryland Shall Issue, Inc.  
mpennak@marylandshallissue.org