



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>.

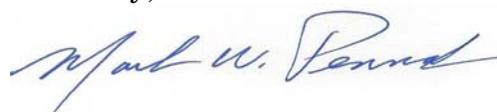
Indeed, the mild, non-punishment accorded to the theft of firearms is particularly striking in light of the **severe penalties** that Maryland law metes out to otherwise law-abiding citizens of Maryland who happen to run afoul of one of the many criminal provisions of Maryland’s firearms law. For example, 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,



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