

SB0560_Testimony_Favorable.pdf

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Position: FAV



2A Maryland

2A@2AMaryland.org

Senate Bill 560 Criminal Law – Theft of a Handgun Favorable

The Maryland General Assembly has created an onerous and burdensome path Maryland citizens who wish to legally purchase or transfer a handgun. A citizen must submit fingerprints, pay for expensive training, pass multiple background checks and after negotiating all these legal hurdles then wait 7 days.

Criminals are unfettered by laws and view a handgun as just something there for the taking. Even in the unlikely event of prosecution, current law considers the theft of a firearm as a simple theft of property, a misdemeanor offense. Because the theft of a firearm is currently not considered more serious than shoplifting, most offenders are given probation or not prosecuted at all.

Under current law, the penalty for the theft of a handgun is based upon the value of the property taken:

1. Value between \$100 but less than \$1,500:
 - a. First conviction: Imprisonment not exceeding 6 months or a fine not exceeding \$500 or both
 - b. Second or subsequent conviction: Imprisonment not exceeding 1 year or a fine not exceeding \$500 or both

These penalties would apply to the theft of perhaps as many as a dozen handguns.

Stolen handguns are invariably destined for black market and criminal use.

Senate Bill 560
Favorable

By means of comparison:

1. Straw Purchase - A person convicted of making or participating in a straw purchase of a handgun is subject to imprisonment not exceeding 10 years or a fine not exceeding \$25,000 or both. Each violation is a separate crime. (§5-141)
2. False Statement – A person convicted of giving a false statement on an application to purchase a firearm is subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both. (§5-139)
3. Illegal Transfer – a person convicted of participating in an illegal transfer of a handgun is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both (§5-144)

Much attention is being paid to punishing firearm owners if someone gains access to their firearms. However, the Maryland General Assembly has so far, refused to impose realistic penalties on those who steal firearms. Why are honest citizens being targeted while at the same time the depredations of criminals are essentially ignored? Do stolen firearms not pose a threat to public safety?

Senate Bill 560 will help correct this inequity and treat the theft of a handgun as a very serious matter by:

1. Establishing a separate offense category for the theft of a handgun.
2. Elevating the offense from a simple misdemeanor to a felony
3. Imposing realistic penalties:
 - a. First conviction: Imprisonment for not less than 2 years and not exceeding 5 years and a fine up to \$1,000 or both
 - b. Second or subsequent conviction: Imprisonment for not less than 5 years not exceeding 10 years and a fine up to \$2,500 or both

We urge this Committee to return a favorable report on Senate Bill 560.

Respectfully,

John H. Josselyn
2A Maryland

Art_Novotny_FAV_SB0560.pdf

Uploaded by: Novotny, Art

Position: FAV

Testimony of Art Novotny In Favor of SB0560

I am surprised and, honestly, a little appalled that theft of a handgun is not already a felony. That should be common sense, and I'd bet even the gun lobby would fully support it. Please pass this bill. What excuse could there be not to?

Thank you,
Art Novotny
District 7

Katie_Novotny_FAV_SB560.pdf

Uploaded by: Novotny, Katie

Position: FAV

Written Testimony of Katie Novotny in Support of SB560

February 15, 2021

I am a member of Multiple Gun Rights organizations. Maryland Shall Issue, Associated Gun Clubs, Maryland State Rifle and Pistol Association, and the National Rifle Association. I am a certified Range Safety Officer with the NRA. I compete in multiple shooting events such as Steel Challenge, 3-gun, small bore, and vintage military rifle matches. I am an avid firearms collector. I support SB560.

Under current law, the theft of a handgun or any firearm is treated as simple theft, generally in the \$100-\$1,500 category. The penalty for this is only up to 6 months imprisonment and/or a fine of \$500 for a first offense, and up to 1 year and/or \$500 fine for second or subsequent convictions. Therefore, stealing a firearm does not make a person a prohibited person for future lawful firearms purchases. I think that most would agree that stealing a firearm should prohibit a person from lawfully purchasing a firearm in the future. It takes four CONVICTIONS in this category before the penalty is enough to make a person prohibited. First and second offenses are often not even prosecuted. Misdemeanors with small penalties are often not pursued by prosecutors. Instead, the guns are displayed proudly on the department's social media accounts as a "look what we got off the streets", with virtually no penalties for the thief.

I believe it is common sense that the theft of a firearm should be a separate crime than theft of property or services. Any theft is bad, but theft of a handgun, or any firearm is especially egregious. The only reason anyone would steal a firearm would be for nefarious purposes. The punishment must match the seriousness of the crime. With the current state of affairs with murders by handguns in this state, an increased penalty is in order.

I am not opposed to making the penalty a misdemeanor with the same sentence for a first offense rather than a felony. The bottom line is that laws for stealing firearms must have teeth, and they must be prosecuted. People who steal firearms MUST be held responsible and MUST be punished more harshly than an otherwise law abiding citizen who innocently runs afoul of one of the myriad of gun laws in this state, particularly ones that have or will change very recently.

Because of these reasons above, I request a favorable report.

Katherine Novotny

District 7

443-617-7568

Katie.Novotny@hotmail.com

MSI Testimony on SG 560 theft of a firearm.pdf

Uploaded by: Pennak, Mark

Position: FAV



February 17, 2021

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN SUPPORT OF SB 560

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 560

The Bill

The purpose of this bill 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. The bill would change these penalties for theft of a firearm to a felony and would impose, on the first offense, a term of imprisonment not exceeding 5 years and/or a fine of \$1,000. Subsequent offenses are punishable by imprisonment for a term not exceeding 10 years and/or a fine not exceeding \$2,500. These punishments are similar to the provisions enacted last year (2020) by the Senate in SB 35 which likewise made theft of a firearm a felony and punished such theft with imprisonment for up to 5 years and a fine of \$10,000. SB 35 further required the thief to restore the firearm to the owner or pay the owner the value of the firearm.

The Bill Is 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, falls 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 don’t see any jail time at all, as the Maryland Sentencing Guidelines classify this property crime as the least serious offense listed in the Guidelines and one that is actually punished by mere probation for the first and second offense. See

<http://www.msccsp.org/Guidelines/Matrices.aspx#property>. Since this offense is currently a misdemeanor and is not punishable by imprisonment by more than two years, a conviction for this crime is not even sufficient to render the person a disqualified person under federal and state law. See 18 U.S.C. 921(a)(20)(B), Public Safety, § 5-101(g)(3). In contrast, by changing the offense to a felony, this bill would render a person convicted of this crime a disqualified person under federal and state law and thus may not possess modern firearms or modern ammunition for life. See 18 U.S.C. § 922(g), MD Code, Public Safety, § 5-101(g)(2).

Subsequent possession of any modern firearm or ammunition by a person subject to this firearms disability is punishable by up to 10 years of imprisonment under federal law. See 18 U.S.C. § 924(a)(2). Maryland law likewise bans possession of a regulated firearm (handgun or assault weapon) by a disqualified person. MD Code, Public Safety, § 5-133(b)(1). Possession of a regulated firearm by such a disqualified person is punishable with up to 5 years of imprisonment and/or a fine of \$10,000 under MD Code, Public Safety, § 5-144(b). By contrast, under Maryland law, possession of a regulated firearm by a felon previously convicted of a **crime of violence** is punished more severely; such possession is “subject to imprisonment for **not less than 5 years and not exceeding 15 years.**” MD Code, Public Safety, § 5-133(c)(2). Similarly, simple possession of a rifle or a shotgun by any disqualified person is punishable by imprisonment of 3 years and/or a fine of \$1,000. See MD Code, Public Safety, § 5-205(d).

There is simply no incentive to actually prosecute this theft crime under current law and thus actual prosecution to conviction is rare. Compare this non-punishment for the thief to the \$500 fine imposed on **the victim** of gun theft for a mere failure **to report** a theft of a firearm within 72 hours. See MD Code, Public Safety, § 5-146. A second offense of a failure to report is punished even more severely, with 90 days of imprisonment and/or a \$500 fine. It should be obvious that thief is more culpable than the victim. Yet, what is the point of reporting the theft if nothing happens to the thief? Indeed, because this theft crime is punished so lightly under current law, the convicted thief **remains free to legally buy and legally possess a firearm, including a handgun or assault weapon.**

Stealing a firearm is a serious threat to the community and, as such, well deserving of actual punishment. The federal BATF has found that stolen firearms are a “threat to community safety as well as law enforcement,” and that “stolen firearms are crime guns; they fuel illicit trafficking and are used by violent criminals to terrorize our communities.” <https://www.foxnews.com/us/where-do-criminals-get-guns>. See also 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 non-punishment accorded to the thief is particularly striking in light of the **severe penalties** that Maryland metes out to otherwise law-abiding citizens of Maryland who inadvertently happen to run afoul of one of the many criminal provisions of Maryland’s firearms law. For example, a new resident of Maryland who 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, risks imprisonment for **5 years** and/or a \$10,000 fine under MD Code, Public Safety, § 5-144(b). A law-abiding person who “receives” a handgun in Maryland

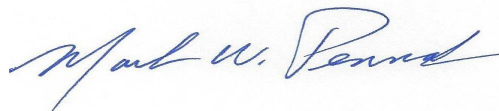
without possessing a Handgun Qualification License issued under by MD Code, Public Safety, § 5-117.1, likewise risks **5 years** imprisonment and/or a fine under Section 5-144.

An otherwise innocent “transport” or possession 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, including a non-resident, 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* showing is required for any of these “crimes.”

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(c)(1),(d), merely carrying **pepper mace** in one’s pocket can be punished by **3 years** of imprisonment and/or a \$1,000 fine. Again, no *mens rea* required.

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. In 2020, this Committee favorably reported on the comprehensive provisions of SB 35 by a vote of 10-1 with only Senator Carter casting a nay vote. We urge a unanimous favorable report on this stand-alone bill.

Sincerely,

A handwritten signature in blue ink that reads "Mark W. Pennak". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

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

SB560 - Support Letter.docx.pdf

Uploaded by: Spiker, D.J.

Position: FAV

NATIONAL RIFLE ASSOCIATION OF AMERICA

INSTITUTE FOR LEGISLATIVE ACTION

11250 WAPLES MILL ROAD

FAIRFAX, VIRGINIA 22030



NRA

February 15, 2021

Chairman William C. Smith Jr.
90 State Cir
Annapolis, Maryland, 21401

Dear Chairman Smith:

On behalf of our members in Maryland, I would like to communicate our support for Senate Bill 560.

Theft of a firearm is considered a felony in many other states, including Washington and California. In 2016, California voters approved Proposition 63 by more than 63%, which among other policies moved theft of a firearm from a misdemeanor to a felony.

We as an organization believe that classifying theft of a firearm as a felony will protect gun owners, while an important crime deterrent. This legislation would directly address the understandable and justified concerns from law enforcement regarding firearm theft and subsequent criminal activities.

For the foregoing reasons NRA supports SB560.

Sincerely,

D.J. Spiker
Maryland State Director
NRA-ILA

CC: Senator Jeff Waldstreicher
Senator Jack Bailey
Senator Jill P. Carter
Senator Robert Cassilly
Senator Shelly Hettleman
Senator Michael J. Hough
Senator Michael A. Jackson
Senator Susan C. Lee
Senator Charles E. Sydnor III
Senator Chris West

MD Judiciary - Testimony SB 560.pdf

Uploaded by: Elalamy, Sara

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 560
Criminal Law – Theft of a Handgun
DATE: February 3, 2021
(2/17)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 560. This legislation provides that a person convicted of theft of a firearm is guilty of a felony and subject to certain penalties. The court is prohibited from imposing less than or suspending any part of the mandatory minimum sentence of two years and for a second or subsequent conviction, five years. The sentence imposed must be separate from and consecutive to a sentence for any other offense.

The Judiciary traditionally opposes legislation that includes mandatory penalties. The Judiciary believes it is important for judges to weigh the facts and circumstances for each individual case when imposing a sentence. Provisions that place restrictions on the judge prevent the judge from considering factors unique to the case. Recognizing that lawmakers are responsible for enacting penalties for crimes, judges are mindful of various mitigating factors in crafting a sentence that most appropriately fits the individual defendant and the crime.

cc. Hon. Justin Ready
Judicial Council
Legislative Committee
Kelley O'Connor