MARYLAND SHALL ISSUE®
SELF DEFENSE IS A CIVIL RIGHT

February 11, 2021

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO SB 479 AND HB 200

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 HB 200 and SB 479

The Bills:

These bills would amend Md Code Criminal Law § 4-104. Specifically, current law provides that "[a] person may not store or leave a loaded firearm in a location where the person knew or should have known that an unsupervised child would gain access to the firearm." A child is defined for these purposes as a person "under the age of 16 years." This bill would change the definition of a child to a person under the age of 18 years and modifies the prohibition to provide that a "person may not store or leave a loaded OR UNLOADED firearm in a location where the person knew or should have known that an unsupervised child COULD gain access to the firearm, UNLESS THE FIREARM IS LOCKED." The bills will likewise repeal the exception in existing law that allows a child to have access to firearms if the child has a certificate of firearm and hunter safety issued under § 16 10–301.1 of the Natural Resources Article. Instead, for minors under the age of 18 and who have the hunter safety certificate, the bills allow access to a rifle or a shotgun if the minor has been given express permission by a parent. That access is permitted, however, only if the person who stores or leaves the firearm stores the firearm unloaded and stores the ammunition "in a secure location where a minor **could not reasonably** gain access to the ammunition." Finally, the bills provide an exception if "THE FIREARM IS LEFT OR STORED UNLOADED AND HAS BEEN RENDERED INOPERABLE TO ANYONE OTHER THAN AN ADULT." The bills do not define "access" or "could" or "inoperable."

The bills also change the punishment for a violation of Section 4-104. Current law punishes a violation as "a misdemeanor and on conviction is subject to a fine not exceeding $1,000." No prison time is imposed under current law. These bills would create three new layers of offense with increasing punishments, including prison time for each layer. Merely leaving a

LOADED or UNLOADED firearm in a "location where the person knew or should have known that an unsupervised MINOR COULD gain access to the firearm," is punishable with 90 days imprisonment and a $1,000 fine. At the next level, leaving a LOADED or UNLOADED firearm in a "location where the person knew or should have known that an unsupervised MINOR COULD gain access to the firearm," and the minor actually gains access is punishable with 2 years of imprisonment and a fine of $2,500. And, at the final level, leaving a LOADED or UNLOADED firearm in a "location where the person knew or should have known that an unsupervised MINOR COULD gain access to the firearm," and "THE FIREARM CAUSES HARM TO THE MINOR OR TO ANOTHER PERSON" is punishable with 5 years of imprisonment and a fine of $5,000.

THE BILLS ARE DRACONIAN, IMPOSSIBLE TO COMPLY WITH AND ARE PATENTLY UNCONSTITUTIONAL

Youth Hunting:

As noted, these bills repeal the exception found in current law for a child with a State-issued hunter safety certificate and substitutes an extremely awkward language that provides that such individuals with a hunter safety certificate. Specifically, the bills impose an **ammunition** access restriction on the person (including the minor) who leaves the or stores the rifle or shotgun, requiring that such person store the ammunition in such a way that "MINOR COULD NOT REASONABLY GAIN ACCESS TO THE AMMUNITION." Under this provision, the storage statute would not even apply to a minor who has a hunter safety certificate and has permission from a parent. Such minor is allowed access to a rifle or shotgun for legitimate purposes (such as hunting) with parental consent. The bills thus allow that minor (as a "person") to store the **firearm**, as long as the firearm is unloaded. **Yet, the minor is criminally liable if he or she fails to store the ammunition in the "secure location" where he or she "could not" gain access**. That result is little short of bizarre. The bills expressly exempts from its coverage a minor's access to a rifle and shotgun if he or she has a hunter safety certificate and has permission. Yet, that same minor must then store ammunition in a way to make it inaccessible to himself or herself! Plainly, if a particular minor with a hunter safety certificate is permitted access to the firearm for legitimate purposes, then that minor should likewise be allowed to access the ammunition for the very firearms he or she is allowed to access. After all, a rifle or shotgun is useless for legitimate purposes (e.g., hunting or varmint control) without ammunition. Yet, that access to ammunition is not allowed by these bills. The bills thus impose nonsense restrictions on ammunition.

These bizarre requirements create a compliance nightmare and directly burden hunting. It is a traditional for hunters in this state and elsewhere to instruct their sons and daughters in hunting, often starting at a very young age. When such minors are ready (in the judgment of their parents), they are typically allowed to hunt on their own. Such hunting often occurs on the farms or other property of the parents or on property owned by family friends. These bills would criminalize such hunting **by criminalizing access to ammunition by the minor**. Mere possession of ammunition by a minor with a hunter safety certificate would be evidence of the very access banned by these bills. No sane parent will take the risk of criminal prosecution of their child or of themselves by allowing their child to possess ammunition. That reality will effectively ban youth hunting in Maryland. The number of hunters is already dropping in Maryland. Yet, Maryland, like other states, is heavily

dependent on the fees and taxes paid by hunters to manage wildlife and promote conservation. Thus, Maryland, like other states, is actively seeking to encourage more hunting. See https://www.washingtonpost.com/local/maryland-hopes-to-recruit-new-hunters--and-promote-conservation/2018/11/29/69cccf3e-ecf3-11e8-96d4-0d23f2aaad09_story.html ("The Maryland Department of Natural Resources received $11 million last year, including $7.8 million from hunting expenditures").

This public policy fully applies to youth hunting. Indeed, Maryland law accords "a 1-year gratis hunting license to a Maryland resident under the age of 16 years who has successfully completed a hunter safety course," MD Code Nat. Resources §10-301.l(f)(l), and creates special youth hunting days for hunters under the age of 16. See https://dnr.maryland.gov/huntersguide/Pages/JrHunters.aspx. Over time, these bills, if enacted, will radically reduce youth hunting and hunting in general in Maryland. Again, no sane parent who is aware of this law would allow a child access to ammunition for hunting or for any other legitimate lawful purpose. After all, access to ammunition, under these bills, cannot be afforded to minors with the hunter safety certificate. Either that, or the law will be widely ignored, thereby creating large numbers of new criminals among minors and their parents, especially in rural areas. Law enforcement officers will be free to pick and choose who to arrest and prosecutors will likewise have free reign in picking who to prosecute. **The potential for arbitrary and discriminatory enforcement is self-evident.**

We know of no state that bans access to ammunition or firearms to minors who are hunters. See, e.g, N.Y. Penal Code 265.45 ("It shall not be a violation of this section to allow a person less than sixteen years of age access to: (i) a firearm, rifle or shotgun for lawful use as authorized under paragraph seven or seven-e of subdivision a of section 265.20 of this article, or (ii) a rifle or shotgun for lawful use as authorized by article eleven of the environmental conservation law when such person less than sixteen years of age is the holder of a hunting license or permit and such rifle or shotgun is used in accordance with such law."). Similarly, California allows full access to a firearm if access is with parental permission. Cal. Penal Code §25100(2). Neither New York nor California impose this sort of novel restriction on the storage of ammunition.

These bills are a breach of trust. In 2013, when Governor O'Malley pushed hard for enactment of the Firearms Safety Act of 2013 (SB 281), he wrote an email to hunters in Maryland stating that "Let me be clear: **We are committed to protecting hunters and their traditions.** That's why we specifically carved out shotguns and rifles from the licensing requirements of our bill." https://www.washingtontimes.com/blog/guns/2013/feb/12/miller-omalley-emails-licensed-hunters-push-gun-co/. (Emphasis added). As a licensed hunter in Maryland, the undersigned received that email. There is no more fundamental aspect to "hunters and their traditions" than youth hunting. Now, a mere six years later, "hunters and their traditions" are under direct assault by these bills. That promise has been broken. The lesson is clear: the General Assembly cannot be trusted.

Due Process:

These bills change Section 4-104 from a safe storage measure into a truly draconian and vague law that would severely punish otherwise innocent conduct. It now will severely punish any storage that "could" result in access to the firearm, not "would." **That change is highly significant**. The Maryland courts commonly refer to standard dictionaries in

interpreting legislative language. *Marriott Employees Federal Credit Union v. Motor Vehicle Admin*. 346 Md. 437, 449, 697 A.2d 455 (1997). Under virtually all dictionary definitions in this context, "could" is defined in terms of what is "possible." See, e.g., https://www.englishpage.com/modals/could.html ("'Could' is a modal verb used to express possibility"); The American Heritage Dictionary 232, 330 (2d college ed.1985) (noting that "could' is the past tense of "can," which is defined as "[u]sed to indicate possibility or probability."). See also *Keene v. Ault*, 2005 WL 1177905 at *7 (D. Iowa 2005) (applying "could" in this manner).

Changing "would" to "could" is a radical change because it would literally require prescience for owner to know what a child, **any** child, under the age of 18 "could" do. As a rule, "[t]he law does not require prescience." *Raffucci Alvarado v. Sonia Zayas*, 816 F.2d 818, 820 (1st Cir. 1987). See also *Goldsborough v. De Witt*, 171 Md. 225, 242 (1937) ("The law does not require infallibility of decision in its fiduciaries nor prescience"); *Ditto v. Stoneberger*, 145 Md.App. 469, 499 (2002) ("'The law requires proof of probable, not merely possible, facts, including causal relations'"), quoting *Charlton Bros. Transportation Co. v. Garrettson*, 188 Md. 85, 94 (1947). Under this "could" standard, the mere possibility of access would be sufficient. The bills are not limited to minors in the household and thus include the entire universe of minors (other than intruders). The bills thus include minors, anywhere, who have the tools and knowledge sufficient to crack a safe or break into locked storage. Such knowledge is obtainable from the Internet and the requisite tools are easily found at any hardware store. For some safes, all it would take is a diamond edge blade on a circular saw or even a crowbar. Trigger locks, which are often supplied by dealers and universally accepted as a means of securing firearms, can be defeated with tools and a little time. All of this is "possible" for a minor.

Indeed, this bill would effectively repeal MD Code, Public Safety, §5-132(c)(1), which requires that a dealer may not sell a handgun without "unless the handgun is sold, offered for sale, rented, or transferred with an external safety lock." Federal law, 18 U.S.C. §922(a)(1), imposes a similar requirement, providing that "it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun." Section 921(a)(34), 18 U.S.C. §921(a)(34), in turn defines the term "secure gun storage or safety device" to mean "(A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device; (B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or (C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means."

Pursuant to this legislation, the Maryland Handgun Roster Board has published a list of approved safety devices that the dealer may offer at the time of sale. (Attached). These devices likewise satisfy the requirements of federal law. **Every one** of these devices "could" be defeated by a minor, given time and tools. See, e.g., https://www.youtube.com/watch?v=U05ixDwsnNs (video demonstrating using a Bic pen to remove the Roster Board-approved Omega Gunlock very commonly sold with handguns in Maryland). **None** of these devices actually would deny access **to the firearm** itself. These

bills ban all possible access, even to guns locked with Roster Board-approved locks or locks of the type specified in Section 921(a)(34) of federal law. The bills effectively nullify these requirements imposed by existing law. The bills could even ban, for example, access to a quick-release safe containing a firearm because the safe itself could be pried from its moorings, picked up and stolen. "Access" is simply not defined. So what's next, a requirement that the dealers sell guns only with impenetrable safes that must be bolted to a concrete floor?

There is no appropriate *mens rea* requirement in these bills. The bills impose liability upon gun owners if the owners knew or should have known that **any** minor "could" break into any storage and obtain access, *viz.,* knew or should have known whether such access was "possible." That is not a defensible *mens rea*. The bills require requires knowledge of all possible facts, and thus cannot be said to indicate any sort of guilty state of mind. As the Supreme Court has stated, "the basic principle [is] that 'wrongdoing must be conscious to be criminal.'" *Elonis v. United States*, 575 U.S. 723, 135 S.Ct. 2001, 2009 (2015) (citation omitted). That means that "a defendant generally must 'know the facts that make his conduct fit the definition of the offense.'" Id., quoting *Staples v. United States*, 511 U.S. 600, 608, n.3 (1994). See also *Rehaif v. United States*, 139 S.Ct. 2191, 2196 (2019) ("the understanding that an injury is criminal only if inflicted knowingly 'is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil'") (citation omitted). These bills fail these principles, as a person cannot be reasonably charged with knowledge of the infinite variety of facts that are "possible." It is quite impossible for the average gun owner "to choose between good and evil under these bills." (Id.).

Even worse, these bills make the gun owner into a guarantor against the merely possible misconduct of every minor, any minor. That's absurd burden to place on any law-abiding person. See *Elonis*, 135 S.Ct. at 2007 (The "reasonable person" standard "is inconsistent with the conventional requirement for criminal conduct—awareness of some wrongdoing"). See also *United States v. White*, 810 F.3d 212, 220 (4th Cir. 2016). Such absolute guarantor liability is not even imposed under tort law, much less criminal law. See Restatement (Second) of Torts § 448. Upon the effective date of these bills, every gun owner in Maryland would be immediately guilty of this crime because no gun owner would ever be able to say that it was impossible for a minor to gain access. Arbitrary or discriminatory enforcement is thus virtually guaranteed. See *McDonnell v. United States*, 136 S. Ct. 2355, 2373–74 (2016) (noting that "we cannot construe a criminal statute on the assumption that the Government will 'use it responsibly'") (quoting *United States v. Stevens*, 559 U.S. 460, 480 (2010)). As Lavrentiy Beria, who was Stalin's ruthless secret police chief during the reign of terror, liked to brag: "Show me the man and I'll show you the crime" https://www.oxfordeagle.com/2018/05/09/show-me-the-man-and-ill-show-you-the-crime/. That is exactly what these bills do every gun owner in Maryland. The arbitrary enforcement sanctioned by these bills will undoubtedly be suffered most heavily by the poorer, least educated population of Maryland. These citizens are the least able to defend themselves from such enforcement. See, e.g., https://www.hrw.org/legacy/campaigns/race/criminal_justice.htm.

These bills violate substantive due process. The State may not constitutionally condition the legality of possession of constitutionally protected property, such as a firearm, on compliance with prerequisites that are literally impossible to achieve, *viz.,* the knowledge

of all means of access that are possible. See, e.g., *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976) (noting a due process violation is established where "the legislature has acted in an arbitrary and irrational way"); *MHC Financing Ltd. Partnership v. City of San Rafael*, 714 F.3d 1118 (9th Cir. 2013), *cert. denied*, 571 U.S. 1125 (2014) ("We will strike down a statute on substantive due process grounds if it is arbitrary and irrational."). See also *Broderick v. Rosner*, 294 U.S. 629, 639 (1935) (Brandeis, J.) (invalidating a statute, in part, because it "imposes a condition which, as here applied, is legally impossible of fulfillment"). These bills fail these basic principles.

Likewise hopelessly vague is the exemption for firearms left or stored unloaded **and** "RENDERED INOPERABLE TO ANYONE OTHER THAN AN ADULT." It is virtually impossible to know what this means, as a practical matter. We know of no manner of storage in which the firearm **is** operable by an 18 year-old, but **is not** operable by a 17 year-old. The bills offer no definition for such storage and the ordinary gun owners would simply have to guess at the meaning of this requirement. Such a statute is facially unconstitutional. A penal statute must "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). See also *United States v. Davis*, 139 S. Ct. 2319, 2325 (2019) ("Vague statutes threaten to hand responsibility for defining crimes to relatively unaccountable police, prosecutors, and judges, eroding the people's ability to oversee the creation of the laws they are expected to abide."). **Thus, as the Maryland Court of Appeals has stressed, the General Assembly has an "obligation to establish adequate guidelines for enforcement of the law."** *Ashton v. Brown*, 339 Md. 70, 88, 660 A.2d 447, 456 (1995). These bills utterly fail that "obligation."

For the same reasons, the use of "could" makes these bills hopelessly vague and thus a violation of the Due Process Clause. The language of these bills leaves gun owners literally at sea concerning what is required and what is not and is an open invitation to arbitrary and discriminatory enforcement. Such a law is unconstitutionally vague. See *Williams v. State*, 329 M.1, 9, 616 A.2d 1275, 1279 (1992) ("a statute must eschew arbitrary enforcement **in addition** to being intelligible to the reasonable person"). These vagueness principles are especially vigorously enforced by the courts where the vague statute could impact the exercise of constitutional rights. For example, in the *City of Chicago v. Morales*, 527 U.S. 41, 54 (1999), the Court struck down a Chicago ordinance that banned loitering as void for vagueness, noting that "the freedom to loiter for innocent purposes is part of the 'liberty' protected by the Due Process Clause." *Morales*, 527 U.S. at 53. The Court found highly significant that the ordinance was a "criminal law that contains no *mens rea* requirement" and concluded "[w]hen vagueness permeates the text of such a law, it is subject to facial attack." Id. at 55. As explained below, law abiding citizens have a constitutional right to possess firearms in their homes. Vagueness in the scope of these bills is thus particularly intolerable. There is nothing "imaginary" about the chilling effects these bills would have on a law-abiding adult's constitutional right to possess an operable firearm in the home. *Babbitt v. United Farm Workers Nat. Union*, 442 U.S 289, 302 (1979). These bills fail these elementary notions of due process.

Second Amendment:

Such criminalization of home possession of a firearm is also unconstitutional under *District of Columbia v. Heller*, 554 U.S. 570 (2008). Under *Heller*, responsible, law-abiding adults

have a constitutional right to keep firearms in the home in order to exercise their right of armed self-defense. The Second Amendment **"elevates above all other interests** the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Heller*, 554 U.S. at 635. Thus, in *Heller*, the Supreme Court struck down as unconstitutional DC's safe storage law that required a firearm to be "disassembled or bound by a trigger lock at all times." (Id. at 628). The Court held this requirement unconstitutionally burdened the right to self-defense in the home because the requirement prevented residents from rendering their firearms "operable for the purpose of ***immediate*** self-defense." Id. at 635 (emphasis added).

The storage requirements imposed by these bills do not permit a homeowner to store a firearm that is "operable for the purpose of immediate self-defense." These bills are even worse than the DC law struck down in *Heller*. Here, the gun owner is criminally liable if a minor "could" gain access, even though the LOADED OR UNLOADED firearm was locked up or even disassembled. That requirement applies unless "THE FIREARM IS LEFT OR STORED UNLOADED AND HAS BEEN RENDERED INOPERABLE TO ANYONE OTHER THAN AN ADULT" (whatever that means). Such storage makes it impossible to make use of the firearm for "immediate self-defense." *Heller*, 554 U.S. at 635. That sort of law is unprecedented. For example, in *Jackson v. San Francisco*, 746 F.3d 953 (9th Cir. 2014), *cert. denied*. 576 U.S. 1013 (2015), the Ninth Circuit sustained a San Francisco safe storage law that required that **a handgun** be locked up in a container or secured with a trigger lock, but exempted from that requirement a "handgun is carried on the person of an individual over the age of 18." The Supreme Court denied review of the Ninth Circuit's decision over the vigorous dissent of Justice Thomas and Justice Scalia, who opined that that law was contrary to *Heller*. Id. 135 S.Ct. at 2800-02. These bills apply to **all** firearms, not merely handguns and the storage requirement is more severe in that the firearms under these bills must be rendered **inoperable** to everyone other than an adult. Merely locking up the firearms or attaching a trigger lock is insufficient under these bills.

We believe that it is highly likely that the Supreme Court will, in an appropriate case, make clear that the "text, history and tradition" test is controlling in determining the constitutionality of gun control legislation – not tiers of scrutiny. Four members of the Supreme Court recently employed this text, history and tradition approach in *NY State Rifle & Pistol Ass'n, Inc. v. City of New York*, 140 S.Ct. 1525 (2020), where a majority of the Court held that the case was mooted by the repeal of the offending City of New York ordinance. See id. at 1526 (Kavanaugh, J.) (concurring in judgment of mootness, but agreeing with Justice Alito's discussion of Heller and McDonald on the merits); Id. at 1540-41 (Alito, Thomas, Gorsuch, JJ., dissenting from the judgment of mootness but noting further on the merits that the City's ordinance violated the Second Amendment under *Heller* and *McDonald*). Justice Thomas made the same point very recently in another case. *Rogers, et al. v. Grewal*, 140 S.Ct.1865, 1868 (2020) (Thomas, J., dissenting from denial of certiorari). See also *Heller v. District of Columbia* (i.e. "*Heller II*"), 670 F.3d 1244, 1269 (D.C. Cir. 2016) (Kavanaugh, J., dissenting) ("In my view, *Heller* and *McDonald* leave little doubt that courts are to assess gun bans and regulations based on text, history, and tradition, not by a balancing test such as strict or intermediate scrutiny."). With Justice Barrett now joining the Court, we believe that a solid majority of the Court will adhere to these principles when the issue is presented in an appropriate case. See *Kanter v. Barr,* 919 F.3d 437, 452-53 (7th Cir. 2019) (Barrett, J., dissenting). Indeed, in *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017), the D.C. Circuit applied this text, history and tradition test in

striking down the carry statute enacted by the District of Columbia. Nothing in the text, history or tradition of the Second Amendment would remotely support the restrictions imposed by these bills.

In any event, these storage requirements will fail under a tiers of scrutiny. From the time that it adopted the two-part analysis in *United States v. Chester*, 628 F.3d 673 (4th Cir. 2010), the Fourth Circuit has stated repeatedly that if a challenged law implicates the core right of a law-abiding, responsible citizen to possess a firearm in his or her home, the law is subject to a strict scrutiny analysis. To satisfy strict scrutiny, the State must establish that the challenged laws are narrowly tailored to promote a compelling government interest. *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 189 (4th Cir. 2013). To be narrowly tailored under strict scrutiny, the law must employ **the least restrictive** means to achieve the interest. There is nothing "least restrictive" about these bills. Even under intermediate scrutiny, "[t]he burden of justification is demanding and it rests entirely on the State." *United States v. Virginia*, 518 U.S. 515, 533 (1996). The State will have a difficult time carrying its burden to justify these storage requirements, even under intermediate scrutiny. The Supreme Court has made clear that "to survive intermediate scrutiny, a law must be 'narrowly tailored to serve a significant governmental interest.'" *Packingham v. N.C.*, 137 S. Ct. 1730, 1732 (2017) (quoting *McCullen v. Coakley*, 573 U.S. 464, 486 (2014)). These bills would fail that test as the bills are hardly "narrowly tailored." See *Johnson v. Lyon*, 406 F.Supp.3d 651, 669 (W.D. Mich. 2018) (denying the State's motion to dismiss a suit challenging firearm safe storage requirements for foster parents under intermediate scrutiny).

The Requirements Are Extreme:

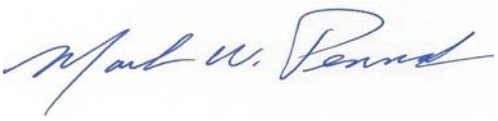
The strict storage requirements imposed by these bills stand alone. Only eleven states even have laws concerning storage. https://giffords.org/lawcenter/gun-laws/policy-areas/child-consumer-safety/safe-storage/. No other state has ever enacted any requirements that come even close to those imposed by these bills. For example, only Massachusetts even requires that firearms be stored in a locked container and even that statute does not regulate minor access, much less access that "could" be had by a minor. Mass. General Laws c.140 § 131L(a). That statute does not apply to firearms "carried by or under the control of the **owner or other lawfully authorized user**," including minors. (Id.). California addresses access by minors, providing, in Cal. Penal Code § 25100, that a person may not "**negligently** store[] or leave[] a firearm in a location where the person **knows, or reasonably should know**, that a child **is likely** to gain access to the firearm **without the permission** of the child's parent or legal guardian, **unless reasonable action is taken by the person to secure the firearm against access by the child**") (emphasis supplied). California also **creates safe harbors** under Calif. Penal Code 25105, providing that the safe storage requirements of Section 25100 do not apply where "[t]he firearm is kept **in a locked container or in a location that a reasonable person would believe to be secure**," or where the "[t]he person who keeps a firearm on premises that are under the person's custody or control **has no reasonable expectation**, based on objective facts and circumstances, that a child is **likely to be** present on the premises." Similarly, New York very recently (2019) enacted a storage bill which requires that a firearm be locked up if the owner "KNOWS, OR HAS REASON TO KNOW, THAT A PERSON LESS THAN SIXTEEN YEARS OF AGE **IS LIKELY** TO GAIN ACCESS." Senate Bill S.2450 (2019), amending N.Y. Penal Code 265.50. That bill completely exempted from its coverage a person under the age of 16 "WHO IS THE HOLDER OF A HUNTING

LICENSE." It further provides that the penalty for a failure to safety store fires "IS A VIOLATION PUNISHABLE ONLY BY A FINE OF NOT MORE THAN TWO HUNDRED FIFTY DOLLARS." Id.

These bills go far beyond such requirements. Indeed, the only general exemption from the criminal provisions of these bills is for firearms that are both stored unloaded **and** "RENDERED INOPERABLE TO ANYONE OTHER THAN AN ADULT." Again, that provision is hopelessly vague; it is virtually impossible to think of a manner of storage in which the firearm is operable by an 18 year-old, but rendered inoperable by a 17 year-old. That requirement might be read, at best, as requiring that the firearm be stored completely inoperable, which was, of course, the very requirement that was struck down in *Heller*. These bills create the impossible standard that the guns be operable only by an adult and thus access to an inoperable gun would violate these bills if it was possible for a minor to render it operable. If it possible for an adult to render the gun operable it most certainly will be possible for a 17 year-old to render it operable. The bills are too clever by half in their attempt to evade *Heller*. These requirements will not survive a court challenge.

Finally, the bills would change the focus of existing law on a "loaded" gun into a ban on access to both a loaded and an **unloaded** gun. Reasonable limits on access to a loaded gun may make sense, as an untrained child might accidentally discharge a loaded gun. But to criminalize the possibility that a minor "could" access an **unloaded** gun makes no sense at all. An unloaded gun is no more dangerous than a brick and far less dangerous than a knife or a baseball bat or many other household items. In *Heller*, the Court stated that its ruling invalidating the DC law did not suggest "the invalidity of laws regulating the storage of firearms to prevent **accidents**." (554 U.S. at 632). That *dicta* cannot be read as swallowing the holding in *Heller*. Thus, storage laws may not make it impossible or unreasonably difficult for the owner to use the firearm for "immediate" self-defense. For example, there is no risk of an "accident" with an unloaded gun. Criminalizing storage of an unloaded gun is thus particularly unjustifiable under *Heller*. What's next? Bans on unsupervised access to kitchen knives? We urge an unfavorable report on these extreme bills.

Sincerely,



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Approved Integrated Mechanical Safety Devices

The Maryland Handgun Roster Board has approved the following integrated mechanical safety devices for either factory, distributor, importer aftermarket installation, or by licensed firearms retailers. Installation of any of these listed devices in an approved handgun when sold satisfies Maryland law.

3 Second Lock

Bersa Lock (Firestorm)

Bersa Lock (Thunder)

Bond Arms Derringer Lock (not the "Allen Key" version)

Borelock D-31

Charter 2000

Chiappa Firearm Key Lock

Cimarron-Aldo Uberti System for SAA

Ghost, Inc. (for Glocks only)

Glock's Lock (*device that went into the magazine well and kept the gun from being loaded and fired)*

GSI Internal Gunlock

Gunblocker (for handguns)

Gunblocker (for AR-15) style handguns

Heckler & Koch System

Interbore Gun Lock

Omega Gunlock (for revolvers)

Omega Gunlock (for semiautomatics)

Omega Gunlock (12 Gauge Pump & Auto Shotgun Lock)

Omega Gunlock (12 Gauge Over/Under Shotgun Lock)

Saf-T-Trigger by Saf-T-Hammer

Sig Arms (only on model 229 at this time)

Sig Sauer Lock (for semi-automatic pistols)

Smith & Wesson Lock

Smith & Wesson Integrated Lock (for semi-automatic pistols)

Springfield Armory, Integral Locking System

Steyr Integrated Limited Access Device

Strahan Firing Pin Lock

Sturm Ruger Key Lock

Swiss Safety by Aldo Uberti

Taurus Systems (separate systems for revolvers and semi-automatics)

VisuaLock

Walther 22

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