



February 23, 2022

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN SUPPORT OF HB 590

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is a Section 501(c)(4), non-profit, 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 HB 590.

The Bill and the Existing Legal Framework: This bill provides that the Department of Natural Resources may not prohibit an individual to whom a handgun permit has been issued by the State Police under MD Code, Public Safety, § 5-306, from wearing, carrying, or transporting a handgun in a State park or forest, subject to any limitations attached to such a permit by the State Police under MD Code, Public Safety, § 5-307. Under current regulations, the Department has broadly banned possession of firearms in these locations, without regard to whether a person has been issued a permit by the State Police. See COMAR § 08.01.07.14 (relating to Chesapeake Forest Lands); COMAR § 08.07.01.04 (relating to State forests); COMAR § 08.07.06.04 (relating to State parks). This bill would allow persons with carry permits (and **only** such persons) to possess and carry a firearm in these locations, just as such persons are entrusted by the State Police to possess and carry a loaded firearm in other public areas throughout the State.

As amended by the Firearms Safety Act of 2013, MD Code, Public Safety, § 5-306(b)(6), allows the State Police to issue a carry permit upon a showing that the applicant for the permit has demonstrated a “good and substantial reason” to carry a firearm in public. Such a good cause requirement is sometimes known as a “may issue” requirement, as a particularized showing of need is required. Section 5-306 also imposes rigorous training requirements of 16 hours of instruction that includes a live fire component that “demonstrates the applicant’s proficiency and use of the firearm.” Section 5-306(b)(6) requires that the State Police conduct a background investigation using the applicant’s fingerprints, and that the State Police find that the applicant “has not exhibited a propensity for violence or instability that may reasonably render the person’s possession of a handgun a danger to the person or to another.” Another Maryland statute, MD Code, Public Safety, § 5-307, allows the State Police to attach time, place and manner restrictions on any carry permit issued under Section 5-306.

These Maryland requirements are among the most rigorous in the United States. Given these “may issue” restrictions, only about 27,000 people have Maryland carry permits. By way of contrast, forty-two states and the District of Columbia are “shall issue” jurisdictions. In these states, unlike Maryland, no showing of special need is necessary. Our adjoining neighbor, Pennsylvania, has issued more than 1,400,000 carry permits and our neighbor Virginia has issued more than 638,000 permits. <https://www.gunstocarry.com/concealed-carry-statistics/#numbers>. Both Pennsylvania and Virginia have violent crime rates well below Maryland’s rate. Indeed, currently 20 other states have Constitutional Carry -- Alaska, Arizona, Arkansas, Idaho, Iowa, Kansas, Kentucky, Maine, Montana, Mississippi, Missouri, New Hampshire, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia and Wyoming – and thus do not require carry permits at all. See <https://handgunlaw.us/>. By comparison, the number of Maryland permit holders is truly tiny.

The Bill Makes Sense: As should be readily apparent, the bill makes obvious sense. Persons to whom the State Police has issued carry permits may possess and carry a loaded firearm in all areas of the State, other than those areas in which such carry is specifically banned. See, e.g., <http://bitly.ws/oEai> (State Police list of areas where carry is not authorized, even with a permit, including State parks and forests and Chesapeake forests). Persons with permits are thus exempted from the State’s very strict ban on possession and carry of a handgun, otherwise imposed by MD Code, Criminal Law, § 4-203(a). See MD Code, Criminal Law, § 4-203(b)(2) (providing that the Section does not prohibit “the wearing, carrying, or transporting of a handgun, in compliance with any limitations imposed under § 5-307 of the Public Safety Article, by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article”). There is no apparent reason that a permit holder should be allowed to carry a loaded handgun in public on a city street, and yet be banned from carrying the same handgun in the uninhabited woods of State forests and parks.

Indeed, there are unique and important reasons for such carry in the woods. The State forests and parks encompass vast tracts of wilderness, including areas which may be far from any police protection. For example, Rocky Gap State Park encompasses roughly 3,000 acres of land in western Maryland. <http://bitly.ws/oEbd>. New Germany State Park is similarly large and has no cell coverage. <http://bitly.ws/oEbV>. Maryland’s State Forests are also immense. The Department of Natural Resources manages over “214,000 acres of designated State Forest.” <http://bitly.ws/oEiu>. Chesapeake Forest lands comprise some 75,376 acres in Caroline, Dorchester, Somerset, Talbot, Wicomico, and Worcester Counties. <http://bitly.ws/oEiq>. Carry by a permit holder is banned from all this land. Yet, hikers and campers in these State forests and parks may regularly encounter dangerous animals, including rabid animals, and thus may face immediate risk of serious injury. According to the CDC, “[i]n the United States, more than 90% of reported cases of rabies in animals occur in wildlife.” <https://www.cdc.gov/rabies/animals/index.html>. In short, the self-defense needs of a permit holder are no less present in State forests and parks.

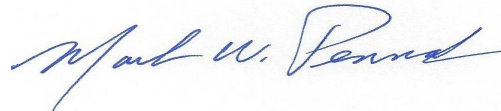
Allowing permit holders to carry is also appropriate simply as matter of practicality and fairness. For example, State forest lands are interwoven with private land all along the 41 miles of the Maryland portion of the Appalachian Trail (“AT”) on South Mountain. There have been 10 documented murders in eight incidents on the AT since 1974, according to the Appalachian Trail Conservancy. The Beltway snipers were apprehended at a State rest stop

on South Mountain, only a short distance from the AT. Yet, these State forest lands along the AT are not marked or signed so a hiker with a carry permit could easily walk from private land, where carry is permitted, on to State forest lands, where carry is banned, without any knowledge that they were on State forest land. It would be equally easy to stray onto State forest and park lands from surrounding private land across the State.

The moment the carry permit holder inadvertently and unknowingly walks onto State forest or park lands, he or she would be committing a serious crime under Section 4-203, which, as the Court of Appeals has recently held, is a strict liability statute and thus imposes severe criminal sanctions (up to three years imprisonment) without regard to a person's intent or knowledge. *Lawrence v. State*, 475 Md. 384, 257 A.3d 588 (2021). Indeed, such a strict liability statute creates such profound constitutional issues that the Court of Appeals in *Lawrence* thought it appropriate "to signal to the General Assembly that, in light of these policy concerns, ... legislation ought to be considered to address the scope CR § 4-203(a)(1)(i) given its classification as a strict liability offense." (475 Md. at 422) (citation and internal quotes omitted). Extending permit carry to State forests and parks is a good first step in addressing the "scope" of Section 4-203, as *Lawrence* requested of the General Assembly. As *Lawrence* suggested, preserving the constitutionality of Section 4-203 requires no less.

We urge a favorable report.

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
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