2023-02-22 HB 824 (Support).pdf
Uploaded by: Hannibal Kemerer
Position: FAV

ANTHONY G. BROWN
Attorney General

CANDACE MCLAREN LANHAM
Chief of Staff

CAROLYN A. QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
(410) 576-7036

WRITER'S DIRECT DIAL NO.
(410) 576-6584

February 22, 2023

TO: The Honorable Luke Clippinger
Chair, Judiciary Committee

FROM: Office of the Attorney General

RE: HB 824 – Public Safety – Regulated Firearms – Possession and Permits to Carry, Wear, and Transport a Handgun (Support)

House Bill 824 has four broad components: (1) it adds additional disqualifying conditions to the prohibitions of regulated firearm possession; (2) it adds additional conditions to handgun permitting; (3) it doubles the application fees for handgun permits and requires a more robust program of ongoing review of handgun permits and potential revocation if the licensee misrepresented facts in their application or becomes disqualified after a permit is issued; and (4) it adds some data reporting requirements.

As to the new disqualifying conditions for possession, they are: (1) being currently on supervised probation for DUI, violating a protective order, or any crime punishable by 1 year or more; and (2) having been convicted of storing or leaving a loaded firearm where a child could access it (CL § 4-104), as follows: (a) if it's just a "simple" violation of CL § 4-104, the disqualification lasts only 5 years after the § 4-104 conviction; or (b) if it's a second or subsequent violation of CL § 4-104, or the violations resulted in the child's use of the firearm causing death or serious bodily injury, the disqualification is permanent.

With respect to the new handgun permit requirements, applicants must be at least 21 years old unless a member of the armed forces or national guard (currently an 18-year-old can get a permit, but possession by 18-21 year olds is generally illegal unless they have a permit and are military or National Guard performing official duties or are required to possess a handgun for their job).

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us

House Bill 824 adds several new permit requirements that simply carry over existing prohibitions on possession: (1) not on supervised probation for DUI, violating a protective order, or any crime punishable by 1 year or more; (2) don't have a mental disorder and a history of violent behavior against self or others; (3) have not been involuntarily committed for more than 30 consecutive days; and (4) not a respondent under a current protective order, extreme risk protective order, or any other court order that prohibits them from possessing firearms.

Finally, House Bill 824 would codify new training requirements to get a permit, including: (1) education on Maryland self-defense law, including justifiable use of force and conflict de-escalation; (2) actual live-fire gun range exercises demonstrating safe handling and shooting proficiency; and (3) understanding of federal firearms law as well as state.

The Office of the Attorney General believes the commonsense policy choices in House Bill 824 will serve public safety and, therefore, urges a favorable report on the bill.

cc: Committee Members

2023 HB824.pdf
Uploaded by: Karen Herren
Position: FAV

Testimony in **Support** of

Public Safety - Regulated Firearms - Possession and Permits to Carry, Wear, and Transport a Handgun

HB824

Executive Director Karen Herren
Marylanders to Prevent Gun Violence

February 22, 2023

Dear Chair Clippinger, Vice-Chair Moon, and distinguished members of the Committee,

Marylanders to Prevent Gun Violence (MPGV) is a statewide, grassroots organization dedicated to reducing gun deaths and injuries throughout the state of Maryland. We urge the committee for a **FAVORABLE** report on House Bill 824 which seeks to respond to the recent Supreme Court decision impacting the process of Maryland's firearm wear and carry permitting system.

BACKGROUND

In June of 2022, the U.S. Supreme Court handed down a decision in *New York State Rifle & Pistol Ass. v. Bruen* which directly addressed the constitutionality of what was frequently referred to as "May Carry" permitting processes. Essentially, within "May Carry" jurisdictions, states could choose to grant individuals a permit allowing them to carry a firearm in public. In the *Bruen* decision, the Court decided for the first time that the Second Amendment confers a constitutional right to carry a gun outside of the home. They voided a New York requirement that a concealed carry permit applicant demonstrate "proper cause," or a special need for self-defense.

Maryland's structure for carrying firearms in public has a requirement similar to that in the NY law requiring that an applicant needs to have a "good and substantial" reason for carrying a firearm in public. Maryland's status as a "May-Issue" state goes back at least 50 years. In addition to limiting the number of public carry permits in the state, this framework also allowed Maryland State Police (MSP) to grant permits with restrictions so

that the permit holder was only allowed to public carry in circumstances that met the “good and substantial” need, not all of the time.

As recently as 1990 the vast majority of states were either “May Issue” or the even more restrictive “No Issue” states. Only 11 states were “Shall-Issue” and only 1 state was Permitless. That landscape is markedly different today, with only about 5 states having been able to hold onto their stricter “May-Issue” status prior to the *Bruen* decision being handed down. This movement coincides with increased marketing and lobbying by the gun industry to expand sales and increase political pressure. In *Bruen*, Maryland was specifically called out as having a law affected by the ruling.

MARYLAND POST BRUEN

In the immediate aftermath of the decision, MSP lifted the restrictions on all current permit holders holding restricted permits (those permits that only allowed public carry for particular reasons). This immediately allowed thousands of permit holders to carry guns in spaces that they had not been allowed to carry the day before. In addition to those, MSP saw 96,892 permit applications filed in 2022 and granted 80,601. As a comparison, the prior year saw only 18,849 applications and 18,667 granted.

Research indicates that more guns in public spaces equals more gun violence. From accidental discharges, like the one that occurred at Arundel Mills Mall in October to road rage incidents like the one in Pikesville in November that claimed the life of a 29-year-old tow truck driver to vigilante deadly force being deployed by a scared shop owner against an unmarked police vehicle in December, guns carried into public spaces lead to more gun violence.

The *Bruen* court specifically endorsed the "shall issue" carry permit licensing systems of the 43 states that didn't require a showing of "proper cause." Justice Kavanaugh, in his concurrence with Justice Roberts says plainly:

"First, the Court’s decision does not prohibit States from imposing licensing requirements for carrying a handgun for self-defense. In particular, the Court’s decision does not affect the existing licensing regimes—known as “shall-issue” regimes—that are employed in 43 States."

Those 43 states' laws include all the same sort of requirements that are included in the permitting process portion of Maryland’s current law and the adjustments of HB824 --minimum age requirements, disqualifying offenses, training mandates, etc.

STRENGTHENING MARYLAND’S CHILD ACCESS PREVENTION LAW

In conjunction with HB307 (Jaelynn's Law) strengthening the storage requirements and raising the age of protection for Maryland's safe storage of firearms law, HB 824 takes the logical next step by determining that those convicted of multiple CAP law infractions or a single serious infraction are inappropriate for firearm ownership. Regardless of the constitutional status of firearm ownership, access to firearms is an enormous responsibility. It is clear that even this Supreme Court agrees that a demonstration of unsuitability for doing so can be used to restrict access. Justice Alito states:

> *"Our holding decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun. Nor does it decide anything about the kinds of weapons that people may possess. Nor have we disturbed anything that we said in Heller or McDonald v. Chicago, 561 U. S. 742 (2010), about restrictions that may be imposed on the possession or carrying of guns."*

STRENGTHENING THE PERMITTING PROCESS

This legislation is designed to address gun violence getting significantly worse in Maryland because of the spike in the number of guns being carried into public spaces. The research is clear that more guns in public spaces leads to more gun violence.[1] We may not be able to completely counter the number of permits that MSP is now issuing, but we can put guardrails in place to try to ensure that the people being granted permits have been thoroughly vetted to ensure that they have not previously demonstrated a propensity for violence, that they are adequately trained for the unique circumstances of carrying a lethal weapon into public spaces, and that they continue to maintain those standards after they are issued a permit.

"The common trope is that places like Baltimore or Detroit or Chicago are the reason we have so many gun deaths in this country," Cass Crifasi, PhD, MPH, the director of research and policy at Johns Hopkins Bloomberg School of Public Health, told the Chicago Tribune. "And yes, those places … have unacceptable rates of gun homicides. But the places with the highest rates of death are not Maryland, Michigan, and Illinois. They are Mississippi, Louisiana, Wyoming, Missouri, and Alabama. The places with weaker gun laws have higher rates of death. …More people died from guns in Texas than Illinois, when suicide and accidental shootings are included."

---

1 https://publichealth.jhu.edu/2022/study-finds-significant-increase-in-firearm-assaults-in-states-that-relaxed-conceal-carry-permit-restrictions

"Most countries don't have a problem with fatal mass shootings," Daniel Webster, ScD, MPH, Johns Hopkins Bloomberg School of Public Health, told Fox News in LA. "Most countries do not have anywhere close to the rates of homicides that we do. It's driven principally … because we have decided to make guns readily available to almost anyone, and our interests seem to be more in protecting those who sell weapons and want to own them as opposed to the broader public."

The goal of **HB824** is to make sure that the people who are authorized to carry firearms into public spaces are adequately trained and determined by the State to be people who do not demonstrate a propensity for violence.

CONCLUSION

MPGV would welcome the addition of enumerated sensitive places within the Maryland Code in which the public carry of firearms would not be allowed. The Supreme Court emphasized that there are still spaces where the public carrying of firearms may be deemed inappropriate. Clearly codifying those sensitive locations with enough specificity to provide clear guidance to permit holders combined with the modifications to the possession and permitting processes enumerated in **HB 824** are common sense steps to help protect the citizens of Maryland.

MPGV urges a **FAVORABLE** report on **HB824**.

GVPedia
GUN VIOLENCE RESEARCH

A Lott of Lies: Debunking John Lott, the NRA's Favorite Academic

Fact Sheet
March 6, 2019

OVERVIEW

Economist John R. Lott Jr., author of the 1998 book More Guns, Less Crime , has been touted as an expert by the corporate gun lobby, including the National Rifle Association. Lott's most prominent claims have been decisively refuted, yet he is still cited and published by media outlets including The New York Times, Washington Post, Wall Street Journal, LA Times, CNN, and Fox. In recent years, he has testified as an expert witness in Michigan, Tennessee, Wyoming, Nevada, and even the US Senate. Lott is currently the president of The Crime Prevention Research Center, where he promotes his book The War On Guns which has received rave reviews from prominent conservative politicians.
But beneath the accolades, Lott has committed a host of ethical violations. In addition, his research is riddled with numerous flaws and inaccuracies , all of which completely undermines his credibility.

SIGNIFICANT ETHICAL VIOLATIONS

John Lott has been caught:

- Fraudulently claiming to have published a study in the peer-reviewed Econ Journal Watch even though the journal had rejected his paper. [1]
- Falsely claiming that the mass shooting rate in Europe is equivalent to that in the United States while his own research actually showed that the US had double Europe's rate. [2]
- Falsely claiming that more than 99% of Brady background check denials are errors. An Inspector General's report revealed that these background check denials are accurate in 99.8% of cases. [3]
- Fabricating an entire survey on defensive gun use. When asked to provide hard evidence of the survey, he claimed all the data had been lost in a computer crash. [4]
- Repeatedly supporting studies that have significant errors that either nullify or reverse their results. [5,6]
- Frequently hiding his work behind fake identities. In 2003, Lott was uncovered as having invented the identity Mary Rosh -- who claimed to be a former student of Lott's -- to defend his own work. [7] And in 2015, Lott was uncovered as the real author of a first person account by stalking victim Taylor Woolrich. [8]

www.GVPedia.org

LOTT'S FLAWED RESEARCH

John Lott's status as a credible expert rests on two deeply flawed foundations: his original research on Right-to-Carry (RTC) laws and newer research on whether gun-free zones attract mass shooters.

Lott's research claims that passing RTC laws dramatically reduces rates of violent crime. However:

- In 2004, the National Research Council voted 15-1 that the current evidence could not support Lott's claim that Right-to-Carry laws reduce crime. [9]
- A majority of national research since 2005 finds that right to carry laws increase violent crime. [10] (GVPedia Concealed Carry Literature Review)

Lott's research on the intersection of gun-free zones and mass shootings makes three claims: that RTC laws greatly reduce such shootings; that only 4 mass shootings (where 4 or more people are killed) since 1950 have occurred in areas that did not ban firearms; and that citizens with concealed carry permits frequently stop would-be mass shootings. Yet:

- A peer-reviewed 2002 study found no evidence that RTC laws reduce mass public shootings. [11]
- Lott's own research indicates that at least six additional mass shootings didn't occur in areas that banned guns. [12]
- His research misclassifies a significant number of mass shootings that actually occurred in areas allowing guns, ranging from Hialeah, Florida to Umpqua Community College in Oregon. [13]
- An FBI report of 160 active shooting events found that only 1 was stopped by a concealed carry permit holder, compared with 4 by armed guards, 2 by off-duty police, and 21 by unarmed civilians. [14]

For more information, contact Devin Hughes, CFA at Devin@GVPedia.org.

1. https://thinkprogress.org/debunking-john-lott-5456e83cf326#.ydjq5yv7x
2. Ibid
3. https://oig.justice.gov/reports/2016/a1632.pdf
4. http://www.armedwithreason.com/shooting-down-the-gun-lobbys-favorite-academic-a-lott-of-lies/
5. https://thinkprogress.org/debunking-john-lott-5456e83cf326#.ydjq5yv7x
6. http://digitalcommons.law.yale.edu/fss_papers/1242/
7. https://www.washingtonpost.com/archive/lifestyle/2003/02/01/scholar-invents-fan-to-answer-his-critics/f3ae3f46-68d6-4eee-a65e-1775d45e2133/
8. https://www.buzzfeed.com/madisonpauly/why-taylor-woolrich-wanted-a-gun?utm_term=.jjR02z9P8#.bjLX5ZpyR
9. https://www.nap.edu/read/10881/chapter/8
10. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443681
11. https://www.utdallas.edu/senate/documents/MassPublicShootings_000.pdf
12. https://thinkprogress.org/debunking-john-lott-5456e83cf326#.ydjq5yv7x
13. http://www.vox.com/2016/8/30/12700222/nra-social-scientist-claims-debunked
14. https://www.thetrace.org/2015/06/gun-rights-advocates-say-that-places-that-ban-guns-attract-mass-shooters-the-data-says-theyre-wrong/

HB 824_MNADV_FAV.pdf
Uploaded by: Melanie Shapiro
Position: FAV

BILL NO: House Bill 824
TITLE: Public Safety - Regulated Firearms - Possession and Permits to Carry, Wear, and Transport a Handgun
COMMITTEE: Judiciary
HEARING DATE: February 22, 2023
POSITION: **SUPPORT**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Judiciary Committee to issue a favorable report on HB 824.**

House Bill 824 includes numerous important measures to ensure that firearms are only accessed by those that are properly trained and prevents those that are prohibited from possessing firearms including wear, carry, transport permits. Notably, many of the provisions in HB 824 extend to those under an order of probation for a violation of a protective order. This is significant since there may have been a violation on a temporary or interim order of protection and a firearm surrender was not yet ordered or a term of probation exceeds the duration of a final protective order. HB 824 also explicitly states that a wear, carry, transport permit cannot be issued to someone who is a Respondent against whom there is a non ex-parte order of protection and requires a regular review to verify that those that possess permits still meet the statutory requirements for eligibility.

The risk of homicide for women increases by 500% with the presence of a gun in the home.[1] The 2021 domestic violence homicide numbers were the highest they have been in over ten years.[2] There were 58 Marylanders that lost their lives as the result of domestic violence in 2021. At least 47 children were left behind as a result of these deaths. A firearm was used in 76% of the deaths.

The most dangerous time for a victim of domestic violence is when they leave, increasing the risk of homicide as well as increased violence.[3] Pursuant to a final order of protection a court, "shall order the respondent to surrender to law enforcement authorities any firearm in the

[1] The National Domestic Violence Hotline, Retrieved 1/29/21, https://www.thehotline.org/resources/safety-planning-around-guns-and-firearms/
[2] https://www.mnadv.org/wp-content/uploads/2022/02/2022-Memorial-Program-Trifold_Final-Version.pdf
[3] https://ncadv.org/why-do-victims-stay

For further information contact Melanie Shapiro ■ Public Policy Director ■ 301-852-3930 ■ mshapiro@mnadv.org

respondent's possession, and to refrain from possession of any firearm, for the duration of the protective order."[4] It is within the court's discretion whether to order the surrender of firearms for temporary orders of protection. In January 2023 firearms were ordered to be surrendered by 882 individuals pursuant to final orders of protection and 274 orders to vacate a home were rendered.[5]

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on HB 824.**

[4] MD FAMILY § 4-506

[5] https://mdcourts.gov/data/dv/DVCR_Statewide_2023_1.pdf

For further information contact Melanie Shapiro ■ Public Policy Director ■ 301-852-3930 ■ mshapiro@mnadv.org

1997 Annapolis Exchange Parkway, Suite 300 ■ Annapolis, MD 21401
Tel: 301-429-3601 ■ E-mail: info@mnadv.org ■ Website: www.mnadv.org

HB824 Opposition Letter.pdf
Uploaded by: D.J. Spiker
Position: UNF

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VIRGINIA 22030

NRA

February 20, 2023

House of Delegates
Judiciary Committee
Chairman Luke Clippinger
6 Bladen St
Annapolis, MD 21401

Dear Chairman Clippinger:

On behalf of our tens of thousands of members in Maryland, we ask you today to give an unfavorable report to House Bill 824 for the following reasons:

Doubling application and renewal fees
HB824 would double the initial cost of application fees, as well as doubling the cots for renewals, subsequent applications, and even required a duplicate or modified permit. These fees for some will be cost-prohibitive, and seem designed to target lower socio-economic classes to discourage appropriate wear and carry permitting.

Increasing burden of training
HB824 would dramatically increase the training course required for applicants, adding additional curriculum items, some of which do not exist as of February 2023. Requiring teaching of state self-defense law, including justifiable force or deadly force and proportional use of force in self-defense are laws that as of present, do not exist in the Maryland code. Requiring theses items to be taught in courses would be impossible prior to their passage. Additionally, directions for requiring live-fire are unclear on what threshold may qualify as 'shooting proficiency', leaving discretion to the Secretary for determination.

Remnants of 'good and substantial' remain in the existing code section
The Supreme Court decision in New York Rifle and Pistol Association v Breun effectively ended the 'may issue', changing all states, including Maryland, to 'shall issue' states for wear and carry permitting. However, on page 10 of HB824, line 24 continues to describe 'may issue', giving unconstitutional discretion to the Secretary. This is magnified in contrast on page 11, line 17, which expressly changes 'may' to 'shall' when it comes to permit revocation.

Reducing period of time for renewal permits to be valid
HB824 would reduce the amount of time a renewed permit shall be valid from three years to two. This reduction increases the burden on law-abiding gun owners who wish to protect themselves and their family by exercising their constitutional rights.

The National Rifle Association respectfully requests that you *give an unfavorable report to* House Bill 824.

Sincerely,

D.J. Spiker
State Director
NRA-ILA

CC:

Del. David Moon
Del. Lauren Arikan
Del. Sandy J. Bartlett
Del. Christopher Eric Bouchat
Del. Jon S. Cardin
Del. Frank M. Conaway Jr.
Del. Charlotte Crutchfield
Del. Elizabeth Embry
Del. Robin L. Grammer Jr.
Del. Aaron M. Kaufman
Del. Rachel Munoz
Del. Cheryl E. Pasteur
Del. N. Scott Phillips
Del. Stuart Michael Schmidt Jr.
Del. Gary Simmons
Del. Karen Simpson
Del. Kym Taylor
Del. Chris Tomlinson
Del. Karen Toles
Del. William Valentine
Del. Nicole A. Williams
Del. Caylin Young

HB0824.pdf
Uploaded by: Frederick Abt
Position: UNF

Dear Senators of the State of Maryland,

.

I am writing you to voice my opposition to HB0824.

.

As a Maryland resident for 55 years, a resident of Perry Hall for 20 years and a Maryland wear and carry permit holder, The increase in fees proposed in this bill will affect me directly for no good reason. This is also very discriminatory, as it makes it difficult for those with modest means to protect their lives.

.

I long for the day when the people of Maryland are able to elect a government willing to pass laws to do the hard things like going after criminals, rather than ones like this one and SB1 that abuse the law abiding.

.

Thank you for your service and consideration,

.

Frederick W. Abt IV

10 Glasshouse Garth

Nottingham, MD 21236

410-804-5164

MSI Testimony on Hb 824.pdf
Uploaded by: Mark Pennak
Position: UNF

MARYLAND SHALL ISSUE®
SELF DEFENSE IS A CIVIL RIGHT

February 22, 2023`

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO HB 824

I am the President of Maryland Shall Issue ("MSI"). Maryland Shall Issue is a 501(c)(4), 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 and personal protection in the home and outside the home and in muzzle loader. I appear today as President of MSI in opposition to HB 824.

The Bill:

This bill would add sections to MD Code, Public Safety, § 5-133(b), to prohibit the possession of a regulated firearm (a handgun) if a person is on supervised probation from any crime punishable by more than 1 year of imprisonment, has been convicted of driving under the influence of alcohol or drugs, has violated a protective order entered under the Family Law article of the Maryland code, or has been convicted a second time of a violation of the storage provisions of MD Code, Criminal Law, 4-104 or has been convicted of violating Section 4-104 if the violation resulted in the use of a loaded firearm by a child causing death or serious bodily injury. It would further provide that a person who has been convicted of any violation of Section 4-104, even a first-time conviction, would be barred from possessing a regulated firearm for 5 years. It would likewise amend Section 5-133 to ban possession of a regulated firearm by any person who suffers from a "mental disorder" as defined by MD Code, Health General 10-101(I)(2) and by any person who is the respondent to a civil protective order under Section 4-506 of the Family Law article.

The bill would amend MD Code, Public Safety, § 5-304 to double the fees that may be charged by the State Police. The fee for an initial application for wear and carry permit is doubled to $150 for an initial application. The fee for a renewal is doubled to $100 for a renewal, and the fee for a duplicate or modified permit is doubled to $20. The bill would then amend MD Code, Public Safety 5-306 to limit wear and carry permits to persons who are at least 21 years of age (or is a member of the armed forces or National Guard). The bill prohibits the issuance of a permit to persons who are on supervised probation for any crime punishable by more than 1 year, for any violation of Section 21-902 of the Transportation article (relating to driving under the influence), or for violating a domestic protective order, for any violation of a second violation of Section 4-104 or if the violation of Section 4-104 led

to use of a loaded firearm by a child causing death or serious bodily injury, and bars the issuance of a permit to any person for 5 years for *any* violation of Section 4-104.

The bill also amends Section 5-306 to specify that the instruction for wear and carry permit include live-fire shooting, safe-handling of a handgun and "shooting proficiency with a handgun." It would further require instruction on State self-defense law, including on the justifiable use of force, the proportional use of force, and conflict de-escalation and resolution. Bill repeals the "good and substantial" reason requirement of Section 5-306(a)(6)(ii). The bill then amends MD Code, Public Safety, 5-309 to change the time period permit renewals from 3 years to 2 years.

The bill amends MD Code, Public Safety, § 5-310 to require that the State Police to revoke a permit if the permit holder would no longer be qualified to receive a permit and requires the State Police to REGULARLY REVIEW INFORMATION REGARDING ACTIVE PERMIT HOLDERS USING THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES TO DETERMINE WHETHER ALL PERMIT HOLDERS CONTINUE TO MEET THE QUALIFICATIONS DESCRIBED IN § 5–306 OF THIS SUBTITLE. It provides further that the State Police may revoke a permit if the permit holder violates Section 5-308 (requiring the permit holder to possess the permit while carrying). The bill amends MD Code, Public Safety, § 5-311 to make changes to the appeal procedures relating to any denial of a permit, including providing written notice and a statement of reasons. It then adds reporting requirements imposed on the State Police concerning permits. The bill amends MD Code, Public Safety, § 5-312 to impose additional reporting requirements on the Office of Administrative Appeals regarding permits.

The Bill Is Unnecessary: The training requirements newly imposed by this bill for the issuance of a wear and carry permit reflect current practice. Most, if not all, instructors, including the undersigned, already provide detailed instruction on all these topics under current law. The State Police already expressly require live-fire and impose a live-fire qualification course and other requirements that every instructor must certify that a student has passed. See generally COMAR § 29.03.02.05. These requirements are enforced vigorously by the State Police. This bill adds nothing to those existing requirements.

Likewise unnecessary are many of the disqualifications newly imposed by this bill. For example, the State Police do not issue permits to persons who are subject to a domestic violence protective order as such persons are already disqualified. See 18 U.S.C. § 922(g)(8), (9); MD Code, Public Safety, § 5-134(b)(10). The same is true for persons who suffer from a mental disorder, as defined in Section 10-101(i)(2), or who have been confined to a mental hospital. See MD Code, Public Safety, § 5-134(b)(8), (9). The State Police likewise require the disclosure of any arrest, regardless of conviction, and then consider that information in assessing whether a person should be issued a permit under MD Code, Public Safety, § 5-306(a)(6)(i). That subsection requires the State Police to conduct "an investigation" and precludes the issuance of a permit **unless** the State Police determine that the person "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." The State Police conduct a vigorous investigation, consulting not only the NICS federal database and 17 different State databases.

Every applicant for a permit must sign a comprehensive waiver to allow the State Police to investigate any mental health issues and the applicant's background. Under this waiver, the applicant authorizes "the full and complete disclosure of the records of educational institutions, financial or credit institutions, and the records of commercial or retail mercantile establishments and retail credit agencies; medical and psychiatric consultation and/or treatment, including those hospitals, clinics, private practitioners, the U.S. Veterans' Administration, and all military and psychiatric facilities; public utility companies; employment and pre-employment records including background investigations reports, the results of polygraph examinations, efficiency ratings, complaints or grievances filed by or against me; of complaints of a civil nature made by or against me, for the internal purposes of the Licensing Division, Department of the State Police." The waiver could hardly be any broader.

The shortening of the renewal period from 3 years to 2 years is likewise ill-advised as it will impose substantial costs on the applicant **and on the State Police** for no good reason. Current law provides that the first permit is valid only for two years, with a 3-year period only applicable to subsequent renewals. Three years is already highly atypical. For example, Florida permits are good for 7 years. Permits issued by Virginia, Utah, New Hampshire and Pennsylvania are good for 5 years. Maine permits are valid for 4 years. Even New York allows permit renewal every three years. With modern technology, already in use by the State Police, frequent renewals are not necessary to ensure continued validity of any permit. The high costs associated with 2-year permits are pointless.

Every applicant is fingerprinted using the latest live-scan technology and the Maryland Department of Safety and Correctional Services keeps all the data from those prints. Through their fingerprint data, all permit holders are identifiable by the FBI's RAP BACK system, under which a mere arrest of any permit holder anywhere in United States will be immediately reported to the Maryland State Police. https://bit.ly/3B8l142. Upon receipt of this information, the State Police then act to revoke or review any wear and carry permit. If warranted, the State Police will likewise use that information to revoke any Handgun Qualification License. The State Police will then seize, as appropriate, any firearms that the permit holder may already possess. The requirement imposed by this bill that the State Police "regularly review information regarding active permit holders" does little more than impose costs. The State Police are already vigilant about revoking permits for any person who becomes disqualified. And any disqualified person who continues to possess any firearm (not merely a handgun) commits a serious federal felony under 18 U.S.C. § 922(g)(1), as well as a serious misdemeanor or felony under State law. See MD Code Public Safety, § 5-133(e). The State Police have better things to do with their limited resources. The Committee should trust the State Police to do its job.

Parts of the Bill Violate the Second Amendment: This bill affects the exercise of Second Amendment rights. Under the Supreme Court's recent decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022), law-abiding gun owners with carry permits have a Second Amendment right to carry in public. 142 S.Ct. at 2135. *Bruen* squarely holds that the Second Amendment protects the right to carry in public while also making clear that a State may condition that right on obtaining a wear and carry permit from the State, if the permit is issued on an otherwise reasonable and objective "shall issue" basis. 142 S.Ct. at 2138 & n.9. The Court was, however, careful to cabin a State's discretion. Permits must be issued on a "shall issue" basis and permit statutes may "contain only

narrow, objective, and definite standards guiding licensing officials . . . rather than requiring the "appraisal of facts, the exercise of judgment, and the formation of an opinion." (Internal quotes and citations omitted).

The *Bruen* Court ruled that "the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." 142 S.Ct. at 2127. The relevant time period for that historical analogue is 1791, when the Bill of Rights was adopted. 142 S.Ct. at 2135. That is because "'Constitutional rights are enshrined with the scope they were understood to have when the people adopted them.'" Id., quoting *District of Columbia v. Heller*, 554 U.S. 570, 634–635 (2008). Under that standard articulated in *Bruen*, "the government may not simply posit that the regulation promotes an important interest." 142 S.Ct. at 2126. *Bruen* expressly abrogates the two-step, "means-end," "interest balancing" test that the courts had previously used to sustain gun bans. Id. Those prior decisions applying interest balancing and a "means-end" test are no longer good law.

Under this standard adopted in *Bruen*, it is highly questionable whether the State may impose a firearms disqualification for a misdemeanor violation not involving a violent crime. For example, the Court of Appeals for the Fifth Circuit just applied *Bruen* to invalidate 18 U.S.C. § 922(g)(8), which imposes a firearms disqualification of person subject to a domestic violence restraining order. See *United States v. Rahimi*, --- F.4th ----, 2023 WL 1459240 (5th Cir. Feb. 2, 2023). Similarly, the court in *United States v. Quiroz*, --- F.Supp.3d ----, 2022 WL 4352482 (W.D. Tex. 2022), invalidated 18 U.S.C. 922(n) (imposing a disqualification for persons under indictment). And in *United States v. Harrison*, --- F.Supp.3d ---, 2023 WL 1771138 (W.D. Okla. 2023), the court invalidated 18 U.S.C. 922(g)(3), which imposes a disqualification on users of substances made unlawful by the federal Controlled Substances Act, including cannabis. See also *United States v. Price*, --- F.Supp.3d ---, 2022 WL 6968457 (S.D. W.Va. 2022) (invalidating 18 U.S.C. § 922(k), holding that criminalizing the knowing possession of a firearm with an obliterated serial number was unconstitutional under *Bruen*).

Persons between the ages of 18 and 21 also have Second Amendment rights. In *Firearms Policy Coalition, Inc. v. McCraw*, --- F.Supp.3d ---, 2022 WL 3656996 (Aug. 25, 2022), a federal district court struck down, under *Bruen*, a Texas ban on carry of a handgun by 18–20-year-olds. And Tennessee has just consented to the entry of judgment in federal district court overturning its ban on carry by 18-20-year-olds. That consent was filed in *Beeler v. Long*, No. 3:21-cv-152 (E.D. Tenn. 2023). Indeed, in *Hirschfeld v. BATF*, 5 F.4th 407, 417 (4th Cir.), *vacated as moot*, 14 F.4th 322 (4th Cir. 2021), *cert. denied*, 142 S.Ct. 1447 (2022), the Fourth Circuit (which includes Maryland) applied intermediate scrutiny and held, pre-*Bruen*, that the federal ban on the sale of handguns to persons between the ages of 18-20, 18 U.S.C. § 922(b)(1), was unconstitutional under the Second Amendment and could not be justified, even under intermediate scrutiny. See generally, David B. Kopel & Joseph G.S. Greenlee, *The Second Amendment Rights of Young Adults*, 43 Southern Illinois University Law Journal 495 (2019). Under this body of case law, the ban imposed by this bill on permits for adults under the age of 21 is likely unconstitutional.

The Court of Appeals for the Third Circuit, sitting en *banc*, has just heard oral argument in *Range v. United States*, 53 F.4th 262 (3d Cir. 2022), *rehearing en banc granted*, 56 F.4th 992 (3d Cir. Jan. 2023). The issue in *Range* is whether a firearms disqualification for a non-violent State misdemeanor violation punishable by more than 2 years imprisonment is constitutional under *Bruen*. Federal law imposes that disqualification under 18 U.S.C. § 922(g), as defined in 18 U.S.C. § 921(a)(20). Maryland imposes the same disqualification under MD Code, Public Safety, § 5-101(g)(3). While a decision in *Range* has yet to issue, from the oral argument it appears that the odds are good that such a disqualification will not survive. While Maryland is in the Fourth Circuit, such a holding in *Range* will likely lead to challenges to a broad range of disqualifications imposed by Maryland law, including the disqualifications imposed by this bill for driving under the influence or for violations of the storage provisions of Section 4-104. Such disqualifications are unlikely to survive scrutiny under this emerging body of case law. Allowing the State Police to revoke the permit simply because the permit holder forgot to carry it on his person, as this bill mandates, is particularly and egregiously unconstitutional.

The Doubling of Fees Is Likely Unconstitutional: We question as well whether doubling the fees associated with the permit process, as imposed by this bill, will be sustained after *Bruen*. It is well-established that State's power to impose fees on the exercise of a constitutional right is very limited. See *Cox v. New Hampshire*, 312 U.S. 569 (1941). In *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), the Court invalidated a city ordinance which as construed and applied, required distributors of religious literature to pay a flat license fee as a prerequisite to conducting their activities, holding that a "State may not impose a charge for the enjoyment of a right granted by the Federal Constitution." 319 U.S. at 113. Under these rulings, a fee imposed on the exercise of a constitutional right must not be a general "revenue tax," but such a fee is lawful if it is instead designed "to meet the expense incident to the administration of the act and to the maintenance of public order in the matter licensed." *Cox.*, 312 U.S. at 577. See also *S. Oregon Barter Fair v. Jackson Cty.,* 372 F.3d 1128, 1139 (9th Cir. 2004) (holding that a "state may ... impose a permit fee that is reasonably related to legitimate content-neutral considerations, such as the cost of administering the ordinance" in question, as long as the ordinance or other underlying law is itself constitutional).

To justify the fees imposed by this bill, the State would be required, at a minimum, to satisfy this test. The burden would be on the State to show that the fees are limited to the "cost of administering" otherwise reasonable and appropriate provisions of the permit process. Id. See also *Ne. Ohio Coal. for the Homeless v. City of Cleveland*, 105 F.3d 1107, 1109–10 (6th Cir. 1997) ("The lesson to be gleaned from *Cox* and *Murdock* is that an ordinance requiring a person to pay a license or permit fee before he can engage in a constitutionally protected activity does not violate the Constitution so long as the purpose of charging the fee is limited to defraying expenses incurred in furtherance of a legitimate state interest."). The doubling of fees has not been justified by any such analysis. Without such proof, the doubling of fees will not survive judicial review.

Indeed, it is an open question whether this *Cox* and *Murdock* analysis, developed in First Amendment litigation, is even applicable to Second Amendment challenges under the text, history and tradition test articulated in *Bruen*. That test applies to **all** statutes that regulate activity protected by the text of the Second Amendment and we know of no historical analogue that would permit the imposition of fees. For example, a "tiers of scrutiny"

approach applies to First Amendment cases, but the Court expressly rejected that approach under the Second Amendment. Thus, there is no deference to legislative judgments under the Second Amendment. See *Bruen*, 142 S.Ct. at 2131 ("But while that judicial deference to legislative interest balancing is understandable—and, elsewhere, appropriate—it is not deference that the Constitution demands here."). The State would be wise to **reduce** the cost of the permitting process, not add to it. The State may well be stuck with the tab for all these costs.

A Final Note: The multiple new requirements imposed by this bill bespeaks of a fundamental hostility to the exercise of the right identified in *Bruen*. Such a motivation is constitutionally illegitimate. Any law enacted for the purpose of discouraging the exercise of a constitutional right is "patently unconstitutional." See *Saenz v. Roe*, 526 U.S. 489, 499 n.11 (1999) ("[i]f a law has 'no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional.'"), quoting *United States v. Jackson*, 390 U.S. 570, 581 (1968) (brackets and ellipsis the Court's).

Similarly, a government may not suppress possible adverse secondary effects flowing from the exercise of a constitutional right by suppressing the right itself. See, e.g., *City of L.A. v. Alameda Books, Inc.*, 535 U.S. 425, 449-50 (2002) (Kennendy, J., concurring) ("It is no trick to reduce secondary effects by reducing speech or its audience; but [the government] may not attack secondary effects indirectly by attacking speech"). See *Imaginary Images, Inc. v. Evans*, 612 F.3d 736, 742 (4th Cir. 2010) (same); *St. Michael's Media, Inc. v. Mayor and City Council of Baltimore*, 566 F.Supp.3d 327, 374 (D. Md. 2021), aff'd., 2021 WL 6502219 (4th Cir. 2021) (same). The same point applies to Second Amendment rights. *Grace v. District of Columbia*, 187 F.Supp.3d, 124, 187 (D.D.C. 2016), *aff'd, sub. nom. Wrenn v. Dist. of Columbia*, 864 F.3d 650 (D.C. Cir. 2017) ("it is not a permissible strategy to reduce the alleged negative effects of a constitutionally protected right by simply reducing the number of people exercising the right") (quotation marks omitted). See *Bruen*, 142 S.Ct. at 2126, 2148 (citing *Wrenn* with approval). "[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table." *Heller*, 554 U.S. at 636.

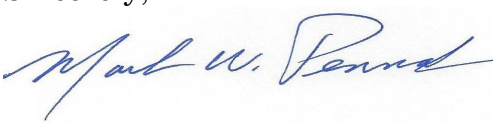
Bruen makes clear that "[t]he constitutional right to bear arms in public for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" 142 S.Ct. at 2156 (citation omitted). Ironically, the more requirements that the State piles on the permitting process, the more likely those requirements will result in a successful challenge to the Maryland permitting process. For example, such a suit might well lead to the invalidation of subsection 5-306(a)(6)(i), which allows the State Police to deny a permit to persons who, in the State Police's sole judgment, show a "propensity for violence." Nothing in this bill provides any "objective criteria" for that assessment. *Bruen* expressly disallows any shall-issue permitting process that allows "the 'appraisal of facts, the exercise of judgment, and the formation of an opinion.'" 142 S.Ct. at 2138 n.9 (citation omitted).

This bill impermissibly adds *more* such discretion to the permitting process, not less. The bill should thus be amended to provide objective criteria to the subsection 5-306(a)(6)(i) inquiry. As the Court stated in *Bruen*, "we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry." 142 S.Ct. at 2138 n.9. This

bill, with its multiple disqualifications for non-violent misdemeanors, unnecessary provisions, and doubling of fees, crosses that line. If this bill is enacted into law, the State will not be able to say that it wasn't warned.

This Bill is unnecessary and likely unconstitutional. We urge an unfavorable report.

Sincerely,



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