



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 name "Mark" being the most prominent.

Mark W. Pennak
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