

WRITTEN TESTIMONY OF MICHAEL F BURKE, IN SUPPORT OF **HB 750**

02/28/2023

In introduction, please be informed that I am:

- \* Veteran of the Armed Forces, with 21 years of Service with the US Army, as a Military Police Office, MP Investigator, and Counterintelligence Agent.
- \* 25 years Law Enforcement Officer and Special Agent, at the County, State, and Federal levels.
- \* Expert in Maryland Firearms Law, federal firearms law and the law of self-defense.
- \* Maryland State Police Qualified Handgun Instructor QHIC-2016-0123 for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License
- \* NRA Pistol Instructor, Chief Range Safety Officer
- \* Subject Matter Expert in Physical Security – Certified Protection Professional (**CPP**), ASIS International
- \* Firefighter, Emergency Medical Technician (EMT) with over 30 yrs. experience
- \* An experienced Chief Election Judge with service over the terms of several past Governors in Maryland (speaking as a Citizen, not for the Elections Board);
- \* Board Member of Maryland Shall Issue (“MSI”)

**I appear today in SUPORT OF HB 750.**

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 passed in 2020 by the Senate in SB 35, which likewise made theft of a firearm a felony and punished such theft with imprisonment for

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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.

In 2021, more than 100 guns were stolen across 13 robberies in Maryland. As of today, we don't know exactly how many similar crimes occurred in 2022.

This bill would support the State's intent to reduce violent crime by making the theft of a Firearm a FELONY. This would make it clear to the public that crimes involving firearms are a serious threat to the public at large and to 6.16 Million citizens individually.

At present, thieves and criminals face little fear of committing burglary of Firearms dealers or individual homes to steal rifles, shotguns, handguns, and other firearms. Passing this bill would make it clear to ALL that such conduct is morally and legally UNACCEPTABLE and carries serious consequences.

The Office of the State's Attorney for Baltimore City, Ivan Bates, has repeatedly appeared before House and Senate committees seeking enhanced penalties and tougher legislation to allow him to prosecute individuals engaged in violent crime. Let's give him and the other jurisdictions this powerful tool, a Felony charge, to deter "smash and grab" thefts and burglaries across the State.

In the recent past, Baltimore County Executive John Olszewski Jr. (D) said in testimony before the House Judiciary Committee that 51 guns were stolen from a licensed dealer during one incident.

Tim Hafer of Hafer's Gunsmithing in Hagerstown has testified about what crime has cost him.

Hafer already has stringent security measures in place. He said the barriers outside of his shop cost about \$60,000 and his video surveillance system was around \$50,000. However, criminals can attack his (or other shops) in attempts to steal firearms, and only face misdemeanor charges if they are successful.

On 12/29/2021 Almost two dozen firearms were stolen in a burglary one Wednesday morning in Harford County, Maryland State Police reported.

Another Example: <https://www.wbaltv.com/article/23-guns-stolen-burglary-harford-county-pawn-shop/38635583>

State police said troopers were called shortly after 5:15 a.m. to a pawn shop in the 2100 block of Pulaski Highway, where multiple suspects drove a stolen vehicle through the front doors of the store, broke the glass storage area to the gun cases and stole 23 weapons. Police said the burglars fled in two vehicles.

"We're obviously concerned about the brazenness of the crime. It's early on in the investigation. Our investigators are canvassing the scene, looking for witnesses, asking the public for assistance in this case," Maryland State Police spokesman Ron Snyder said.

The Bureau of Alcohol, Tobacco, Firearms and Explosives' Baltimore Field Division sent a statement to 11 News, saying it is aware of the incident: "ATF Special Agents have responded and begun investigating. We are working with Maryland State Police on this investigation."

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Under current law, this represents 23 misdemeanor THEFTS, no different than stealing 23 packs of cigarettes or 23 candy bars.

The US Constitution affirms (not grants) the right of the PEOPLE (not just citizens, not just adults) to keep and bear arms. This proposed legislation flies in the face of the Constitution and is in direct contravention of the orders of the Supreme Court.

Theft of firearms is a serious concern to all. Such thefts deprive citizens of all ages, genders, and social backgrounds of their right to self-defense, and threatens ALL once that stolen firearm enters the black market in the hands of unauthorized individuals.

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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. See <http://www.msccsp.org/Files/Guidelines/MSGM/guidelinesmanual.pdf>. 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)(1), MD Code, Public Safety, § 5-101(g)(2). Given the severe public safety consequences associated with stolen firearms, that result is fully appropriate.

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 prosecute this theft crime under current law and thus actual prosecution to conviction is very 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 the 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.

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 traveling through the State, 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 an arguable 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

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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 know that stealing is criminal. Nothing good can come from stealing a firearm. In 2020, The Senate Judicial Proceedings Committee favorably reported on the comprehensive provisions of SB 35 by a vote of 10-1 with only Senator Carter casting a nay vote.

**I urge the Committee to issue a FAVORABLE report on this bill.**

Michael F Burke, CPP