



President  
Mark W. Pennak

February 1, 2017

The Honorable Maggie McIntosh  
Chair,  
House of Delegates Appropriations Committee  
Room 121  
House Office Building  
Annapolis, MD 21401

RE: House Bill 159

Dear Chair McIntosh:

The undersigned orally testified and submitted written testimony on House Bill 159 at the hearing conducted on January 31, 2017. A number of questions arose during the question and answer session that require further response.

First, the question posed by this Bill is not whether guns belong on campus. All Maryland institutions already bar the unauthorized possession of firearms on campus. Rather, the question is really whether the State should set aside the role of the college administrators and severely criminalize such possession without so much as imposing *mens rea* requirement as an element of the offense. Respectfully, this Committee's expertise over educational matters does not extend to these fundamentally important questions of criminal law. See, e.g., *Garnett v. State*, 332 Md. 571, 577-78, 632 A.2d 797, 800 (1993) ("The requirement that an accused have acted with a culpable mental state is an axiom of criminal jurisprudence.").

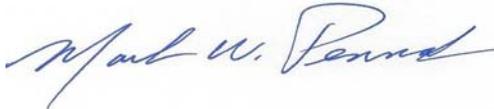
Second, there was much discussion at the hearing about preventing suicides among young students. Yet, suicide is a mental health issue, not a criminal issue. Students with thoughts of suicide need help from college administrators and mental health professionals, not a criminal conviction punishable with three years in prison. In any event, this Bill does far more than ban possession by students. Rather, it bans possession by any "person" anywhere on any college "property" (including farms and commercial property). The Bill thus disarms off-duty federal and state law enforcement officers and fully trained persons who have demonstrated to the Maryland State Police that they possess a good and substantial reason to be armed for purposes of Wear and Carry Permit. Disarming these individuals simply cannot be rationally justified as a means of preventing suicide by students. Indeed, such disarmament effectively will prevent these off-duty law enforcement personnel from helping to protect college students, faculty and employees from violent crime while these officers may be on campus. That result is senseless. Federal and state law enforcement officers carry firearms off-duty for good reasons and those reasons are beyond the purview of this Committee.

Third, in response to questions, the sponsor of the Bill assured the Committee that convictions for otherwise innocent possessions would not be a problem because prosecutors will take that into account in deciding whether to bring charges. Respectfully, that response misapprehends the role of the prosecutor in our system of criminal justice. In deciding whether to bring charges, the prosecutor is ethically required only to make a judgment whether the prosecution will result in a conviction, *i.e.*, the prosecutor must "refrain from prosecuting a charge that the prosecutor knows is not supported by

probable cause.” ABA, Model Rules of Professional Conduct, Rule 3.8(a). A prosecutor’s job is not to second-guess the wisdom or application of criminal laws enacted by the General Assembly.

Fourth, the sponsor was similarly mistaken in suggesting the punishment of innocent possession will not be an issue. The Committee should fully understand that a conviction of this offense is punishable with mandatory minimum prison sentence under MD Code, Criminal Law, 4-203(c). The sponsor’s response also ignores the reality that a mere arrest will create a criminal record that can follow the individual for a lifetime and any conviction, regardless of the actual sentence, will impose a lifetime legal disability under federal law. See, e.g., *Schrader v. Holder*, 704 F.3d 980 (D.C. Cir. 2013). So the question before the Committee is really whether it wishes to promote legislation that imposes these severe legal consequences on otherwise innocent students, faculty members, employees, law enforcement officers and other persons. In our view, that question answers itself.

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  
President, Maryland Shall Issue

cc: Members of the Committee