



January 31, 2024

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN SUPPORT OF HB 304 and SB 39

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is a Section 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, 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 304 and the cross-file, SB 39.

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 like the provisions passed in 2020 by the Senate in SB 35 by a vote of 43-4. <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0035/?ys=2020rs>. The Senate Judicial Proceedings Committee favorably reported on SB 35 by a vote of 10-1. *Id.* SB35 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, easily 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), MD Code, 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 15 years of imprisonment under federal law. See 18 U.S.C. § 924(a)(9). 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). Possession of a regulated firearm by a felon previously convicted of a crime of violence 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 investigate and/or 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, with non-prosecution and non-punishment the rule, the victim has little or no incentive to report a theft. 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. We note that Senate Bill 404 (sponsored by Senator Smith) would amend MD Code, Public Safety, § 5-138, to make the mere knowing possession, sale, transfer, or other disposition of a stolen regulated firearm **a felony** punishable with imprisonment for 5 years or a \$10,000 fine or both. This Bill would dovetail with that increased penalty for stolen handguns. Both Bills recognize appropriately 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>.

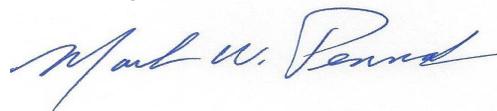
Indeed, the non-punishment accorded to the firearm thief is particularly striking considering the **severe penalties** that Maryland metes out to otherwise law-abiding citizens of Maryland who inadvertently happen to run afoul of one of the many criminal provisions of Maryland's firearms law. For example, 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, including by a non-resident who is merely traveling through the State, 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 even knew of the prohibition. No *mens rea* showing is required. Under MD Code Criminal Law § 4-203(c)(2), a person is "subject to imprisonment **for not less than 30 days and not exceeding 5 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. Such a stop is arguably an improper "transport" in a vehicle under Section 4-203(a)(1)(ii) under the exception set forth in Section 4-203(b)(4). The "knowingly" *mens rea* requirement for this "transport" offense is presumed under Section 4-203(a)(2).

And severe punishment is not restricted to firearms. Absentmindedly taking a penknife (e.g., a Swiss Army knife) anywhere onto school "property" (including while in a vehicle) 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 mace** in one's pocket can be punished by **3 years** of imprisonment and/or a \$1,000 fine. Again, no *mens rea* required. Because all these crimes are punishable by more than 2 years of imprisonment, a conviction of any one of these crimes will result in a life-time firearms disqualification under both federal and State law.

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" (if they are prosecuted at all). After all, thieves know that stealing is criminal. Nothing good can come from stealing a firearm. We urge a unanimous favorable report on this stand-alone Bill.

Sincerely,



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