MARYLAND SHALL ISSUE®
SELF DEFENSE IS A CIVIL RIGHT

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WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO HB 786 AND SB 737

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 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. I appear today as President of MSI in opposition to HB 786 and SB 737.

These bills essentially copy virtually all of Maryland's existing laws that severely restrict the purchase and transfer of handguns over to long guns, ordinary hunting rifles and shotguns, so as to impose most of the same restrictions on the possession and receipt of these long guns. The bills then add a wholly new set of restrictions on temporary and permanent long gun "transfers" which would be defined in an extremely broad manner. The bills would severely criminalize any non-compliance with its many and highly complex new restrictions. The bills would effectively eviscerate loans of guns between law-abiding individuals, including fellow hunters and effectively destroy the market value of countless gun collections, as their sales would be all but banned. The bills mandate the use background checks by Federal Firearms Licensees ("FFLs") for private transfers of long guns in a manner that would actually violate federal law. With few enumerated, highly restrictive exceptions, any "receipt" of a long gun, no matter how temporary, even from a dealer, would be prohibited unless the person possessed a "Long Gun Qualification License" issued by the State Police. With few exceptions, no person would obtain such an LGQL without submitting fingerprints and undergoing four hours of training and submitting an application to the State Police. The bills impose a 7 day waiting period and no person may purchase more than one long gun in 30 days. These requirements would effectively ban formal and informal firearms instruction, in the home or elsewhere. The bills are grossly unconstitutional under the Second Amendment and would create nightmarish uncertainty in violation of the Due Process Clause of the Fourteenth Amendment. Finally, the bills ignore the well-documented reality that these sorts are long guns are almost never used in crime. Indeed, FBI statistics demonstrate that a person is 6.25 times more likely to be killed by a knife than a long gun and 30% more likely to be killed with hands or feet than a long gun. There is simply no public safety purpose that would be served by these bills. **Rather, these bills represent all out legal warfare on long gun owners in Maryland.**

A. THE BAN ON PRIVATE TRANSFERS OF HUNTING RIFLES AND SHOTGUNS

The bills impose new restrictions on the private "transfers" of all regular (non-regulated) rifles and shotguns, such as conventional hunting guns of the type that have been in use for decades in Maryland. The term "transfer" is very broadly defined to include "A SALE, A RENTAL, A FURNISHING, A GIFT, A LOAN, OR ANY OTHER DELIVERY, WITH OR WITHOUT CONSIDERATION." The bills first impose a broad ban on any such transfers, providing that "A PERSON WHO IS NOT A LICENSEE MAY NOT COMPLETE THE TRANSFER OF A RIFLE OR SHOTGUN OTHER THAN A REGULATED FIREARM, AS A TRANSFEREE OR TRANSFEROR, UNLESS THE PERSON IS IN COMPLIANCE WITH THIS SECTION." The bills then provide that such transfers may take place only through a licensed firearms dealer (a "licensee"), stating that "BEFORE A TRANSFER IS CONDUCTED, THE TRANSFEROR AND TRANSFEREE SHALL MEET JOINTLY WITH A LICENSEE AND REQUEST THAT THE LICENSEE FACILITATE THE TRANSFER." The dealer is free to decline to do so and is free to charge any "REASONABLE" fee if the dealer elects to do. The bills then state that "A LICENSEE WHO AGREES TO FACILITATE A TRANSFER UNDER THIS SECTION SHALL PROCESS THE TRANSFER **AS THOUGH** TRANSFERRING THE RIFLE OR SHOTGUN FROM THE LICENSEE'S OWN INVENTORY TO THE TRANSFEREE." The "licensee" is then directed to "COMPLY WITH ALL FEDERAL AND STATE LAW **THAT WOULD APPLY** TO THE TRANSFER, INCLUDING ALL BACKGROUND CHECK AND RECORD–KEEPING REQUIREMENTS." A violation of these requirements is severely punished with "IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH."

1. Existing Federal and State Law

Under current law, dealers are required by federal law to conduct a background check through The National Instant Criminal Background Check System ("NICS"). The NICS system is run by the FBI, as required by the Brady Handgun Violence Prevention Act of 1993, codified at 18 U.S.C. § 922(t). https://www.fbi.gov/services/cjis/nics. Current federal law bans the sale of firearms that have moved in interstate commerce by persons other than a Federal Firearms Licensee ("dealer" or "FFL"). 18 U.S.C. § 922(a). Federal law provides that a dealer must do a NICS check for all sales of long guns. See 18 U.S.C. § 922(t). See also Preamble to ATF Regulations at 63 FR 58272-01, 1998 WL 750214 (October 29, 1998), currently codified at 27 C.F.R. Part 478 ("the law clearly states that the permanent provisions apply to all firearms, including rifles and shotguns "). A "dealer" is defined as "any person engaged in the business of selling firearms at wholesale or retail." 18 U.S.C. § 921(11)(A). As clarified in 1986, "[e]ngaged in the business" means "a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms." 18 U.S.C. § 921(21)(C). Sales by persons who are not "engaged in the business" of firearm sales are not regulated by federal law. NICS checks are not performed by the FBI for secondary sales between private citizens who are not "engaged in the business" of selling firearms,

Background checks for sales of rifles and shotguns in Maryland are governed exclusively by federal law. Specifically, Maryland is a Point of Contact state for NICS checks purposes only for dealer sales of **handguns**. Thus, for handgun sales by a dealer, the Maryland State Police serves as the Point of Contact for purposes of contacting the FBI for a NICS check on a dealer sale of a handgun. However, the Maryland State Police is not a Point of Contact for long gun sales and thus does not conduct a background check for sales of unregulated long guns. Only the dealer does the NICS checks on sales of long guns, using Federal form 4473. Similarly, Maryland regulates private sales of **handguns** by requiring an application, using State form 77R, to be submitted to the State Police for such sales. See MD Code, Public Safety, § 5-124. Because such private sales of handguns (and long guns) is not regulated by federal law, the State Police likewise may not conduct a NICS check on such handgun sales. It may conduct only a background check using state databases. The State Police does not perform either a NICS check or a state database check on for private sales of long guns.

In addition to sales regulated by federal law, Maryland may also access NICS "in connection with the issuance of a firearm-related or explosives-related permit or license…." 28 C.F.R. 25.6(j). Access to NICS for other reasons, including background checks for private sales, is strictly prohibited. "State or local agencies, FFLs, or individuals" who misuse their NICS access privileges are "subject to a fine not to exceed $10,000 and subject to cancellation of NICS inquiry privileges." 28 C.F.R. 25.11(a). These bills do not disturb this basic allocation of responsibility. The State Police would remain the Point of Contact for contacting the FBI for a NICS check for dealer handgun sales and the dealer would continue to be responsible for obtaining the NICS background check for all dealer long gun sales. With respect to private long gun sales, the only change is that these bills would now ban private long gun sales unless the transfer is "facilitated" by a dealer who would conduct a NICS background check "as though" the sale was from the dealer's inventory. But, as discussed below, the dealer simply may not legally conduct such NICS checks in this manner for private long gun sales.

2. The NICS Check Required By These Bills Is Contrary To Federal Law

The foregoing federal regulatory system is fatal to these bills, as Nevada discovered recently when it tried to implement an almost identical requirement in that state. Stated simply, a dealer is allowed under federal law to request a NICS check only when the dealer is actually making the sale from his/her own inventory. NICS checks are not permitted for private sales because NICS is a federal database and bona fide private sales are not regulated by federal law. See *United States v. Hosford,* 843 F.3d 161 (4th Cir. 2016). That means that no dealer may legally comply with the requirements for private sales that would be imposed by these bills because the dealer **is not** actually making the sale and thus may not access NICS to institute a background check. Federal regulations are quite explicit on that point. 28 C.F.R. 25.6(a) provides that "FFLs may initiate a NICS background check **only** in connection with a proposed firearm transfer as **required by the Brady Act**. FFLs are **strictly prohibited** from initiating a NICS background check for any other purpose." (Emphasis added). Similarly, the Federal Firearms Licensee Manual issued by the FBI states that "[a]n FFL is never authorized

to utilize the NICS for employment or other type of **non-Brady Act-mandated background checks**." (Emphasis added).

In Nevada, an initiative was adopted on November 8, 2016, that expressly required dealers to perform NICS checks for all secondary transactions (private sales), just as these bills would require dealers to perform NICS checks for such transactions. Indeed, the Nevada statute used much of the same language in these bills, instructing the dealers to treat the transfer "as though" it took place from the dealer's own inventory. As shown by the attached letter, the FBI refused to perform such NICS checks because federal law does not regulate private transactions and thus did not permit the FFLs to access the NICS system for purposes of the checks newly required by the Nevada statute. As the FBI informed Nevada, state "legislation regarding background checks for private sales cannot dictate how federal resources are applied." FBI Letter, Dec. 14, 2016 at 2 (attached). Because of this reality, the Nevada Attorney General refused to enforce the Nevada statue and a Nevada state court recently sustained that refusal, holding that the entire Nevada statute was unenforceable and thus invalid. See *Zusi v. Sandoval*, No. A-17-762975-W (Nev. Dist. Ct. August 20, 2018). See http://www.lccentral.com/2018/09/05/judge-confirms-gun-background-check-law-unenforceable/

The same problem is presented by these bills. As noted, these bills require that "A LICENSEE WHO AGREES TO FACILITATE A TRANSFER UNDER THIS SECTION SHALL PROCESS THE TRANSFER **AS THOUGH** TRANSFERRING THE RIFLE OR SHOTGUN FROM THE LICENSEE'S OWN INVENTORY TO THE TRANSFEREE." Treating the transfer "as though" it were from the dealer's "own inventory" necessarily recognizes that these sales are **not in fact** from the dealers' own inventory. In reality, the person making the sale is the private "transferor" who is defined in these bills as simply "A PERSON WHO DELIVERS OR INTENDS TO DELIVER A FIREARM IN A TRANSFER." Requiring the dealer to treat a private sale "as though" it was from his "own inventory," as required by these bills, is obviously intended to direct the dealer to perform a NICS check in the same manner as a dealer would for the dealer's own sales. Yet, as explained above and as the Nevada example illustrates, the dealer is not authorized by federal law to request such a NICS check for such private transfers because they are not, in fact and law, regulated by federal law. For the same reason, the FBI will refuse to conduct such a NICS check for such private sales, just as the FBI refused to do so in Nevada. In short, the NICS check required by these bills requires the dealer to commit a violation of federal law and inappropriately seeks to enlist the dealer in an effort to commandeer the FBI into providing a NICS check system in a manner contrary to federal law.

That result cannot be evaded by adopting a legal fiction requiring a dealer to treat the private secondary sale "as though" it came out the dealer's "own inventory." Treating a private sale "as though" it came out of inventory simply is not the same as a sale actually coming from the dealer's inventory. Any dealer who attempted to make that false certification to the FBI in requesting a NICS check would be subject to prosecution and imprisonment for making a false "representation." See 27 C.F.R. 478.128(c) ("Any * * * licensed dealer * * * who knowingly makes any false statement or representation with

respect to any information required by the provisions of the Act * * * under the Act or this part shall be fined not more than $1,000 or imprisoned not more than 1 year, or both."). Similarly, a State or a FFL that requests a NICS check not authorized by federal law is subject to a $10,000 fine and a termination of access to the NICS system. 28 C.F.R. § 25.11(a). As in Nevada, the FBI and federal law will not permit FBI resources to be commandeered in the manner required by these bills. **These bills thus require the legally impossible, *viz.,* a NICS background check that a dealer is federally prohibited from requesting and that the FBI will not perform**.

The legal impossibility of conducting a NICS check required by these bills means that the requirement is contrary to the Due Process Clause of the Fourteenth Amendment and thus unenforceable. 1 W. Lafave & A. Scott, Jr., *Substantive Criminal Law* § 3.3(c) at 291 (1986) ("[O]ne cannot be criminally liable for failing to do an act which he is physically incapable of performing."). See also *Broderick v. Rosner*, 294 U.S. 629, 639 (1935) (Brandeis, J.) (invalidating a statute, in part, because it "imposes a condition which, as here applied, is legally impossible of fulfillment"); *Ezell v. City of Chicago*, 651 F.3d 684, 710-11 (7th Cir. 2011) (invalidating a requirement that that Chicago had made legally impossible to satisfy within the city); *Hughey v. JMS Dev. Corp.*, 78 F.3d 1523, 1530 (11th Cir. 1996) ('The law does not compel the doing of impossibilities."). The Nevada Attorney General reached the same conclusion soon after the Nevada law was adopted. The Nevada courts have held that the law is unenforceable. These bills will be unenforceable as well. These bills should be withdrawn for this reason alone.

3. Long Guns Are Very Seldom Used In Crime

Apart from the illegality of the requirements imposed by these bills, the bills inappropriately criminalize private sales of long guns even though such long guns are very seldom used in crime. This is confirmed by the Maryland 2015 UNIFORM CRIME REPORT issued annually by the State Police. For example, in 2014, a rifle (of any type) was used in one (1) murder in Maryland and a shotgun was used in seven (7). In 2015, a rifle was used in five (5) murders and a shotgun used in six (6). By way of comparison and perspective, a knife was used in **79** murders in 2014 and 65 murders in 2015. A "blunt object" was used in **12** murders in 2014 and **17** murders in 2015. "Personal weapons" (hands and feet) were used in **13** murders in 2014 and **19** murders in 2015. FBI statistics show similar results nationwide. https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/expanded-homicide-data/expanded_homicide_data_table_8_murder_victims_by_weapon_2010-2014.xls. According to the latest data from the FBI (attached), in Maryland, there were **475** murders in 2017. Of those **475** murders, **5** (1%) were committed with rifles and **3** (0.6%) were committed with shotguns. In contrast, knives were used in **44** murders and hands and feet were used in **11** murders. **Fifty** (50) murders were committed in Maryland in 2017 using "other weapons." In short, murders using long guns are not only exceedingly rare, they are the **least** used weapon for such crimes. Yet, nothing in these bills would address murders using knives or murders by using hands and feet or by "other weapons."

As is apparent from these numbers, there is simply no serious public safety justification for the restrictions imposed by these bills. As discussed below, the State may not

constitutionally ban firearms or their acquisition. Nor may the General Assembly enact legislation just because a majority of legislators hate guns or want to discourage the ownership of all firearms. As explained below, those purposes are constitutionally illegitimate and any legislation based on those reasons is likewise illegitimate. There are somewhere between 300 million upwards to 600 million firearms in the United States, maybe more. There are literally "more guns than people." https://www.washingtonpost.com/news/wonk/wp/2018/06/19/there-are-more-guns-than-people-in-the-united-states-according-to-a-new-study-of-global-firearm-ownership/?utm_term=.38aed4ccac25. The State may not confiscate firearms under the Second Amendment, as construed the Supreme Court. So firearms are here to stay.

And so are knives. But would the General Assembly seriously consider requiring background checks for knives? After all, in 2014, a knife was used in a murder 79 times while a rifle was used only once. Surely if a rifle transfer warrants a background check then a knife transfer should be also subjected to a background check. Is it "common sense" to impose background checks for private sales of rifles, but not for knives? Similarly, in 2017 "other weapons" were used as murder weapons in Maryland, 6.25 times more often than long guns (8 for long guns, 50 for other weapons). Will the State enact a regulatory regime for paper weights, baseball bats, hammers and all other blunt objects because they can be misused? In 2014, personal weapons, such as feet and hands, killed **more than twice** as many people as long guns. Will the State now require all persons with hands and feet to submit to background checks?

4. The Bills Criminalize Innocent Conduct

There are other practical problems. A widow who wishes to sell off her deceased husband's long gun firearms collection will now be forced to do so through a dealer who is free to charge a fee, the amount of which need only be "reasonable" (whatever that means). That fee effectively decreases the amount of money she will receive for each such sale. Will the State supervise the "reasonableness" of the fees charged? Highly doubtful. There is no mechanism for doing so in these bills. Participation by a dealer in these private sales is entirely voluntary. If she cannot find a willing dealer, she is effectively foreclosed from liquidating a firearms collection, thereby depriving her of what may be a desperately needed source of funds. And if the widow fails to understand that these sales, which have been taking place in Maryland for centuries, are now criminalized, **each** such sale would be punishable by placing her (as well as each transferee) in prison for 5 years. Even if a dealer can be found, the dealer is free to charge a substantial fee for any such services. Because a dealer **cannot** access the NICS system without **actually** taking the firearm into his inventory, the dealer will have substantial record keeping and federal and state compliance costs associated with every such transfer. Dealers are tightly regulated by Maryland law. See, e.g., Md Public Safety § 11-106. Any dealer transfer fees will thus likely be substantial for every single firearm. Most dealers will simply not want to be bothered. In short, the likely effect of these bills will be to ban private long gun sales and thereby effectively destroying the value of long gun collections.

These bills also directly impact hunters. As noted, the bills comprehensively define a "transfer" to include "SALE, A RENTAL, **A FURNISHING**, A GIFT, **A LOAN, OR ANY OTHER DELIVERY**, WITH OR WITHOUT CONSIDERATION." For hunters, the bill carves out a narrow exception for transfers taking place "WHILE THE TRANSFEREE IS HUNTING OR TRAPPING." Presumably, that limited exception would mean that a "transfer" taking place between neighbors or friends the night before a hunt would be subject to the requirements imposed by this bill. Any hiatus in the hunting (a break for lunch?) would likely re-impose the ban on possession. In every case, the hunter and his friend would be required to find a dealer for that loan for the next day's hunt **and then** find the dealer again to transfer the gun back to the original owner after the hunt is over and pay the dealer's transfer fees associated with each such transfer. The same would be true if the loan was for a longer period, such as a week-long trip to Wyoming to hunt elk. The transferor would become a criminal if the transferee hunter took "delivery" of the long gun before he left to hunt in Wyoming and would become a criminal again the moment the transferee stopped "hunting" and returned to Maryland with the long gun still in his possession. The transferee would become a criminal at the same time for the same reasons.

In 2013, when Governor O'Malley pushed hard for enactment of the Firearms Safety Act of 2013 (SB 281), he wrote an email to hunters in Maryland stating that "Let me be clear: We are committed to protecting hunters and their traditions. ***That's why we specifically carved out shotguns and rifles from the licensing requirements of our bill.***" https://www.washingtontimes.com/blog/guns/2013/feb/12/miller-omalley-emails-licensed-hunters-push-gun-co/ (Emphasis added). Now, a mere six years later, "hunters and their traditions" are under direct assault by these bills. That promise has been broken. That breach applies to all aspects of these bills, including the long gun background checks, the ban on loans and the egregious Long Gun Qualification License requirements addressed below.

Stated simply, the bills these bills would, as a practical matter, ban all loans of long guns among hunters and criminalize everyone who failed to comply. That will likely be most of the hunters in this State because non-compliance will be exceedingly common. Stated simply, hunters have been buying and selling long guns in Maryland since long before Maryland became a State and these sorts of transfers historically have been and are part of rural life in America. Because a violation of these provisions is punishable with three years of imprisonment, person convicted (regardless of sentence) would be subject to a permanent, lifetime firearms disability under federal law. See 18 U.S.C. § 922(g), and 18 U.S.C. § 921(a)(20). Subsequent possession (or constructive possession) of any modern firearm or ammunition (no matter how temporary or fleeting) by a person subject to this firearms disability is a violation of federal law, 18 U.S.C. § 922(g), which is punishable by up to 10 years imprisonment. See 18 U.S.C. §924(a)(2). A similar disability and similar punishments are imposed under Maryland law. See MD Code, Public Safety, § 5-101(g)(3), § 5-133(b)(1), § 5-205(b)(1), § 5-144. Does Maryland really want to wage legal war on its otherwise law-abiding hunters and other citizens? Because that is what these bills do.

These bills make an exception for a transfer "THAT IS TEMPORARY AND NECESSARY TO PREVENT IMMINENT DEATH OR SERIOUS BODILY HARM," but only "IF THE TRANSFER LASTS **ONLY AS LONG AS NECESSARY** TO PREVENT IMMINENT DEATH OR SERIOUS BODILY HARM." That would mean that a person becomes a criminal if they hang onto the long gun for too long (a minute?) after the use that was "necessary" to save a person's life or the life of another person. The provisions would create extremely difficult questions of fact for individuals, law enforcement, judges and juries. Respectfully, that result is utter nonsense and yet it is compelled by the plain language of these bills.

By its terms, this bill would also impose strict criminal liability on the defendant without regard to the *mens rea* of the defendant. The defendant need not know that the transfer was illegal to be subject to the law. Yet, imposing severe criminal liability for innocent conduct would be unjust by any measure. To avoid precisely these kinds of injustices, strict liability statutes are heavily disfavored in the law. See *Staples v. United States*, 511 U.S. 600, 605 (1994) (noting that "the requirement of some *mens rea* for a crime is firmly embedded" in common law). Thus, when construing federal statutes, the federal courts will require specific *mens rea* to the extent "necessary to separate wrongful conduct from 'otherwise innocent conduct.'" *Carter v. United States*, 530 U.S. 255, 269 (2000) (citation omitted). The guiding principle is that "wrongdoing must be conscious to be criminal." *Morissette v. United States*, 342 U.S. 246, 252 (1952). Implementation of that requirement varies with the context, but it is undeniable that in some instances "requiring only that the defendant act knowingly 'would fail to protect the innocent actor.'" *Elonis v. United States*, 135 S.Ct. 2001, 2010 (2015) (citation omitted) (emphasis added). State law also strongly favors an appropriate *mens rea* requirement. 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."); *Lowery v. State,* 430 Md. 477, 498, 61 A.3d 794, 807 (2013) (same). These bills ignore these principles.

B. THE LONG GUN QUALIFICATION LICENSE

1. Introduction

Maryland's existing Handgun Qualification License statutory and regulatory scheme are currently being challenged as unconstitutional in federal district court by MSI and others. See *MSI v. Hogan*, No. 16-3311 (D. Maryland). In September of 2017, that federal court denied the State's motion to dismiss that lawsuit. *MSI v. Hogan*, 2017 WL 3891705 (D. MD. 2017). The federal court held that "that the Plaintiffs allege adequate facts to present a plausible claim that the HQL Provision and regulations have deprived them (or their members or customers) of the Second Amendment right to possess a handgun in the home for self-defense." Since then, the parties have conducted extensive discovery and have recently submitted cross motions for summary judgments to the district court. Those motions are now pending before the court. Oral argument will probably be conducted soon and a decision will come down thereafter. MSI and the other plaintiffs fully expect to prevail in that litigation, in whole or in part, as it has become apparent that the State has been utterly unable to justify under the Second Amendment

all the burdens and costs that the HQL provisions impose for the purchase of handguns in Maryland. The same fate awaits these bills should they become law.

These LGQL provisions in these bills are unconstitutional under Second Amendment principles recognized by the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008), and made applicable to and binding on all 50 States in *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010). Maryland is one of the very few states that does not have a Second Amendment counterpart in its state constitution. Prior to *McDonald*, gun possession and use in Maryland was thus treated as privilege rather than right. Maryland has been able to ignore Second Amendment principles for most of its history. With the Supreme Court's 2010 ruling in *McDonald*, the State Government of Maryland must now get used to the idea that its citizens have constitutional rights that the State must now respect. As *Heller* stated, "the enshrinement of constitutional rights necessarily takes certain policy choices off the table." (554 U.S. at 636). Any failure by the State to recognize and implement these new legal constraints will result in heavy litigation costs and create an unnecessary adversarial relationship between Maryland's gun owners and State Government.

In this regard, we are compelled to note that constitutionality of restrictions on firearms is now, once again, before the Supreme Court. Specifically, the standard of review under the Second Amendment for judging the constitutionality of firearms restrictions will be addressed in *NYSRPA v. NYC*, 883 F.3d 45 (2d Cir. 2018), *cert. granted*, 2019 WL 271961 (S.Ct. Jan 22, 2019), a New York City case involving transport outside the home. That New York City law banned a licensed owner of a handgun from transporting the handgun outside the city limits, a restriction that is simply unjustified by any other public safety rationale other than the notion that the law made it easier for the police to enforce *other* gun laws. The Supreme Court has already agreed to hear that case and it is widely expected that the Court will strike down New York City's law. A decision will likely be in late 2019 or 2020, during the Court's next Term. Several other petitions for certiorari involving other aspects of gun control law are also pending before the Supreme Court. Those may also be granted or held pending a decision in *NYSRPA*. Given the pendency of *NYSRPA*, novel and burdensome gun control measures, such as imposed by these bills, can only be enacted at great legal peril for the State.

The licensing provisions in these bills are egregious. These bills would require the prior registration of all long gun buyers who must obtain a "long gun qualification license" in order to purchase or rent or even to "receive" a long gun. To obtain such a license, a person must pay a $50 application fee, "the fee authorized under § 10–221(B)(7)," and the "mandatory processing fee" for NICS checks. The applicant must also submit "two complete sets of the applicant's legible fingerprints," and "proof of satisfactory completion of a firearms safety training course approved by the Secretary" that must consist of "a minimum of 4 hours of instruction by a qualified firearms instructor" on specified subjects. The applicant bears the cost of all of these requirements. These costs are substantial. The Secretary of the State Police will demand LiveScan computer fingerprinting, which costs a minimum of $75.00. The specified training course of 4 hours is roughly equivalent to the NRA's Basic Rifle course, which costs approximately

between $100 and $150. The Bill does not set any limit on the cost that the Secretary may impose for this training and there is no statutory assurance that the NRA course will be deemed sufficient. The license itself, is good only for ten years, at which time the licensee must renew the license. The total cost of these requirements is roughly $300.00. That does not count the cost of taking time off of work to obtain fingerprinting services, attending the training and go through the complex permit process. It is noteworthy that in the HQL litigation the State Police were forced to admit that 30,877 Marylanders started an HQL application, but stopped before completing it, probably in frustration over the complexity of the requirements and the process. That number will be far higher for the LGQL.

There can be little dispute that these requirements would substantially burden a law-abiding citizen's constitutional right to acquire arms under the Second Amendment, as construed by the Supreme Court in *Heller*, 554 U.S. 570, 635 (2008) (the Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home"). This right is so fundamental that it has been incorporated into the Due Process Clause of the 14th Amendment and thus made applicable to the States. See *McDonald*, 130 S.Ct. at 3036 ("citizens must be permitted to use handguns for the core lawful purpose of self-defense" because "this right is 'deeply rooted in this Nation's history and tradition'"). As discussed below, the burden is on the State to justify any burden on this core constitutional right and that justification must survive "strict scrutiny." These bills articulate no such justification and none can be found. In short, the State is going to lose in court if it enacts these bills.

2. Background Checks For Long Gun Sales Are Already Mandated by Federal Law.

All purchasers of long guns, in Maryland and elsewhere, must comply with Federal law. The ATF requires that each such purchaser from a FFL fill out Form 4473. That federal form affirmatively requires the purchaser to represent under penalty of perjury that he or she is the real purchaser. Lying on the federal form is a violation of 18 U.S.C. 922(a)(6) and is a felony punishable under 18 U.S.C. 924(a)(2) by up to 10 years in prison. The dealer is required by the federal law, the Brady Act, 18 U.S.C. 922(t), to conduct a NICS check with the FBI for every such purchase. There is no evidence whatsoever that requiring a purchaser to obtain a LGQL will result in fewer sales to disqualified persons. In the HQL litigation, currently in the federal court, the State Police have been unable to identify a **single** sale subject to the HQL restrictions that would not have been also prevented by pre-existing state or federal law. Not a single straw purchase, for example, was prevented. The LGQL is utterly unnecessary to prevent illegal sales by dealers.

3. The Licensing Provisions Would Not Survive Either Strict Scrutiny or Intermediate Scrutiny.

This lack of real evidence is of constitutional dimension. *Heller* and *McDonald* expressly hold that law-abiding citizens have a right to possess firearms (including handguns) for the "core right" of self-defense in the home. Because these licensing requirements are a pre-condition to the purchase of any long gun, they indisputably burden the right of

citizens to be armed with a long gun in the home. In the HQL litigation, the State of Maryland has fully conceded that there is a constitutional right to purchase or acquire a firearm for self-defense in the home. That is not open to dispute. These licensing provisions thus indisputably burden "the core right identified in *Heller* – the right of a law-abiding, responsible citizen to possess and carry a weapon for self-defense." *United States v. Chester*, 628 F.3d 673, 683 (4th Cir. 2010) (emphasis omitted).

Burdening the core right of self-defense in the home is assessed at the highest level of scrutiny in the federal courts. For example, the Fourth Circuit distinguished between regulations affecting the right outside the home and those that affect the right inside the home and stated that "**we assume that any law that would burden the 'fundamental,' core right of self-defense in the home by a law-abiding citizen would be subject to strict scrutiny.**" *United States v. Masciandaro*, 638 F.3d 458, 470 (4th Cir. 2011) (emphasis added). See also *Chester*, 628 F.3d at 683 (suggesting that any abridgement of the "core right" would be subject to strict scrutiny); *United States v. Carter*, 669 F.3d 411, 416 (4th Cir. 2012) ("[W]e have noted that the application of strict scrutiny is important to protect the core right of self-defense identified in *Heller*[.]").

Accordingly, since the licensing provisions of these bills burden the right to purchase a long gun for self-defense in the home, these provisions would be subject to strict scrutiny under controlling Fourth Circuit precedent. Under that test, the State would be required to show both a "compelling" state interest and that the measure was "narrowly tailored" to that interest and was the least restrictive measure that addressed the compelling interest. See, e.g., *Abrams v. Johnson*, 521 U.S. 74, 91 (1997); *Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor and City Council of Baltimore,* 683 F.3d 539, 558 (4th Cir. 2012). Strict scrutiny almost always results in invalidation of a regulatory provision. See Laurence H. Tribe, *American Constitutional Law* § 16–30, at 1089 (1st ed.1978) (noting strict scrutiny is a "virtual death-blow"). Here, the licensing provisions would not survive strict scrutiny. The state has no compelling state interest, much less one that is "narrowly tailored" and is the "least restrictive" to any identifiable legitimate state interest.

In this respect, any desire to discourage the exercise of the Second Amendment constitutional right by making the purchase of a long gun more difficult, time consuming or expensive is facially illegitimate and cannot be used to justify these bills. For instance, in *Heller v. District of Columbia*, 801 F.3d 264 (D.C. Cir. 2015) ("*Heller III*"), the United States Court of Appeals for the District of Columbia Circuit struck down the District's ban on registering more than one gun per month. Id. at 280. The District defended that ban as designed to "promote public safety by limiting the number of guns in circulation," based on its theory "that more guns lead to more gun theft, more gun accidents, more gun suicides, and more gun crimes." Id. But the court rejected that argument because "taken to its logical conclusion, that reasoning would justify a total ban on firearms kept in the home." Id.; see also *Grace v. Dist. of Columbia*, 187 F. Supp. 3d 124, 148 (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)). The LGQL provisions would fail strict scrutiny.

In any event, even under the more relaxed standard of intermediate scrutiny, "the government bears the burden of demonstrating (1) that it has an important governmental 'end' or 'interest' and (2) that the end or interest is 'substantially served by enforcement of the regulation.'" *United States v. Carter*, 669 F.2d 411, 417 (4th Cir. 2012) (citations omitted). "Significantly, intermediate scrutiny places the burden of establishing the required fit squarely upon the government." *Chester*, 628 F.3d at 682. Here, the State has articulated no interest served by the LGQL, much less one that meets the demands of intermediate scrutiny.

First, any such showing will require real evidence, not mere conjecture or supposition. See *United States v. Carter*, 669 F.3d 411, 418 (4th Cir. 2012) (noting that the State may not "'rely upon mere 'anecdote and supposition'" in attempting to meet its burden), quoting *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 822 (2000); *Chester*, 628 F.3d at 682 (requiring a "strong showing"). Indeed, this requirement for real evidence has been repeatedly stressed in the Second Amendment case law. See *Heller v. District of Columbia*, 670 F.3d 1244, 1248 (D.C. Cir. 2011) (*Heller II*) (vacating a district court decision sustaining the D.C. requirements and remanding for a factual determination on whether the District's attempts at "licensing the owner of the firearm" were supported by actual evidence under intermediate scrutiny); *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012) (holding that Illinois ban on public possession of handguns outside the home was not supported by sufficient legislative facts); *United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010) (en banc), *cert. denied* 131 S.Ct. 1674 (2011) (requiring a "form of strong showing"— a/k/a "intermediate scrutiny"—in a Second Amendment challenge to a prosecution under 18 U.S.C. § 922(g)(9), which prohibits the possession of firearms by persons convicted of a domestic-violence misdemeanor); *Ezell*, 651 F.3d at 708 (striking down City of Chicago ban on gun ranges and holding that "'logic and data" must demonstrate "a substantial relation between [the regulation] and [an important governmental] objective") (quoting *Skoien*, 614 F.3d. at 642); *Chester*, 628 F.3d at 682 (remanding because the government "has not attempted to offer sufficient evidence to establish a substantial relationship between § 922(g)(9) and an important governmental goal."). The State cannot meet these requirements.

4. The Burdens on Long Gun Sales Are Substantial and Without Precedent In Any Other State

Very few States impose **any** requirement to obtain a license to purchase a long gun. As far as we know, no other State imposes the severe constraints required by these bills on the purchase of an ordinary long gun. Very few states require any permit or license to purchase a long gun. The District of Columbia, for example, merely requires that long guns be registered at the time of sale. Private sales of long guns are not barred, but rather the potential transferee need only register the long gun prior to the transfer. Persons moving into the District of Columbia are similarly required to register the long gun. As part of this registration requirement, DC requires that the buyer watch a 30-minute video on-line which is free of cost. No other training is required. https://mpdc.dc.gov/node/178032. The application can be submitted on-line. Once the registration certificate is received, the purchaser is free to pick up his or her long gun.

There are no costs associated with this process, as it is almost completely automated. https://dcfst.mpdconline.com/. While DC attempted to limit registration to one gun for every 30 days, that requirement was struck down as unconstitutional under the Second Amendment by the D.C. Circuit in *Heller v. District of Columbia*, 801 F.3d 264 (D.C. Cir. 2015). The same fate would await the 30-day requirement imposed by these bills.

Similarly, in Illinois, a person who possesses a firearm must have a FOID card, but that card is available for a cost of $10. The process is entirely on-line and there is no training requirement. https://www.ispfsb.com/Public/FAQ.aspx Persons without a computer may even submit an application over the telephone for the same $10. (Id.). New Jersey, a notoriously anti-gun state, also requires a FOID card, but it does not impose **any** training requirement whatsoever for long gun sales, much less a requirement that the purchaser personally attend a 4-hour class given by a certified instructor, as required by these bills. The application fee in New Jersey is $5.00. N.J.A.C. 13:54-1.4. There is no restriction placed on the number of long guns that may be purchased once the New Jersey FOID card is obtained. N.J.A.C. 13:54-1.9. New York State, the home of ex-Mayor Bloomberg, **does not require any permit at all** to purchase a long gun. We know of no special or unique reason for imposing all these requirements on Marylanders when **no other state** has done so. In short, these bills are extreme by any measure.

The burdens are substantial. The fees and costs fees imposed by the LGQL provisions are prohibitive for ordinary people. There would be the cost of the training by private instructors, the cost of fingerprinting, the cost of submitting the application, the costs of payment for the new background checks required in order to obtain an LGQL. And that is just for the applicant. The costs imposed on the Maryland State Police for duplicating its HQL permit system for all long gun transfers would be immense. Sales of long guns dwarf those of handguns. The record keeping along required by these bills would bury the State Police.

Under these bills, the Secretary has 30 days to approve a license and there is no provision for expedited treatment of licenses. Given the staffing levels at the State Police, these bills would effectively impose a minimum 30-day waiting period just to obtain a license. In discovery conducted in the HQL litigation, the State Police stated, in sworn testimony, that the average time for a HQL permit to be issued is 26-27 days and has often taken much longer. The number of long gun purchasers are orders of magnitude greater than the number of individuals buying handguns. The State Police would be inundated. The bills would then impose an additional 7-day waiting period on top of that 30-day period to actually purchase a long gun. The 4 hour training course imposed by these bills would create a huge backlog of applications for training. Providing training for thousands people who purchase long guns could take years. There are simply not enough instructors certified by the Secretary or gun ranges available to service anywhere near that many applicants in any reasonable amount of time.

These bills allow the State Police to issue regulations. If the State Police were to require "live fire," as they have for the HQL, the expense and difficulty would dramatically increase as almost all the firing ranges in Maryland are private ranges to which access is strictly limited. There are, for example, no ranges available to the public in the City

of Baltimore. Indeed, there are no **private** ranges in Baltimore, only the police range which is not open to the public or to private instructors. While the bills allow the Secretary to waive training if the applicant "has completed a certified firearms training course approved by the Secretary," the legislation does not specify or give the Secretary any guidance on what certifications that the Secretary may accept. A similar provision applies to the HQL process; yet, to date, the HQL litigation has established that the State Police have not certified a **single** such training course. We can expect the same under these bills.

5. The Bills Severely Criminalize Innocent Conduct

Moreover, these bills ban the "receipt" of a long gun by any person who does not have a LGQL, providing that "A PERSON MAY PURCHASE, RENT, OR **RECEIVE** A RIFLE OR SHOTGUN ONLY IF THE PERSON: POSSESSES A VALID LONG GUN QUALIFICATION LICENSE ISSUED TO THE PERSON BY THE SECRETARY." The bills then create **new crime** under new Section 5-208 of the Public Safety Article, proving EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, A DEALER OR **OTHER PERSON** MAY NOT KNOWINGLY PARTICIPATE IN THE ILLEGAL SALE, RENTAL, TRANSFER, PURCHASE, **POSSESSION**, OR RECEIPT OF A RIFLE OR SHOTGUN OTHER THAN A REGULATED FIREARM IN VIOLATION OF THIS SUBTITLE." The bills go on to state that A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH." Indeed, under the bills, "EACH VIOLATION OF THIS SECTION IS A SEPARATE CRIME." Thus, **each** "receipt" or "possession" would be punishable with 5 years in jail.

"Receive" is not defined but the common dictionary definitions of "receive" include the simple taking of possession no matter for how long or temporarily. Maryland courts typically rely on these sorts of dictionary definitions in construing statutes. That is also the definition accorded "receive" under federal gun control law, 18 U.S.C. §922(h). See, e.g., *United States v. Turnmire,* 574 F.2d 1156, 1157 (4th Cir. 1978). That "receipt" means "possession" is confirmed by the criminalization provisions under new Section 5-208. While Section 5-208 purports to cover all "possessions" covered by "this subtitle," every other "possession" crime in the subtitle has a **separate set** of penalties for a violation and new Section 5-208 exempts from its coverage any provision "OTHERWISE PROVIDED IN THIS SUBTITLE." Thus, by necessary implication, the only offenses covered by new Section 5-208 are those added by these bills, thereby further reinforcing the point that "receipt" includes mere possession, no matter how temporary or transitory. Otherwise the ban on "possession" in Section 5-208 would have no meaning at all. The bills would thus criminalize the temporary "receipt" or "possession" of a long gun by any member of the family or by any other person if that person did not possess a LGQL. There are no exceptions for "temporary receipt." There are no exceptions for "receipt" or possession while at the range. There are no exceptions for "receipt" during firearms instruction or among family members. In banning "receipt" and "possession," the bills would effectively supersede the limited exceptions for private transfers to family members and other persons contained in the long gun transfer provisions set

forth **in these same bills**. Family members may participate in a long gun private long gun transfer but still may not do so **unless** they possessed an LGQL.

All of this would mean that even the most temporary of possessions by a person who lacked a LGQL would be punishable by 5 years in prison. Even persons with an HQL would still have to obtain an LGQL before they would be allowed to "receive" a long gun, as the HQL provisions are not even cross-referenced. Indeed, the bills would ban receipts or possessions that are required by to obtain the very training that the bills separately require. Similarly, persons who lacked the LGQL would be not be allowed to handle a long gun during the hunter safety course under Md Code Natural Resources Article §10-301.1. Ironically, the bills would exempt a person holding such a hunter safety certificate from the training requirements while at the same time making it impossible for the actual training to take place by banning any "receipt" or possession associated with that training. Maryland's hunter safety course requires such possession, including live fire. The bills would criminalize both the instructor and the student for any "participation" in such a receipt or possession. A parent literally would be unable to teach gun safety at home if it involved even a temporary possession of the long gun by the child. All formal and informal instruction on the use of long guns would be forced to cease if it involved the "receipt" of a long gun.

These bans on receipt and possession are senseless, especially since long guns are seldom used in crimes. At a minimum, these bills would create massive uncertainty concerning the scope of this ban on mere possession. That is a classic violation of the Due Process Clause of the Fourteenth Amendment. See *Sessions v. Dimaya*, 138 S.Ct. 1204, 1212 (2018) ("'the prohibition of vagueness in criminal statutes…is 'essential' of due process required by both 'ordinary notions of fair play and the settled rules of law.'") quoting *Johnson v. United States*, 135 S.Ct. 2551, 2557 (2015). Precisely this issue is presently being litigated in the HQL litigation under the HQL statute which uses the same language to likewise arguably ban such temporary "receipt." Plainly, little thought has gone into drafting these bills. The risk of arbitrary and discriminatory enforcement is self-apparent.

6. The Fingerprinting Requirements Are Unnecessary

In light of the recent requirements imposed by Federal law, there is no earthly reason for the fingerprinting requirement. Maryland's compliance with the Federal REAL ID Act, see Dept. Homeland Sec., REAL ID Enforcement: Maryland, https://www.dhs.gov/realid/maryland ensures that the Maryland "driver's or photographic identification" is authentic, see 6 C.F.R. 37.15(a)(b), because the REAL ID Act requires Maryland to "include document security features on REAL ID driver's licenses and identification cards designed to deter forgery and counterfeiting." Federal law already requires FFLs to use drivers' license or other State official identification to check the identity of every purchaser. 18 U.S.C. §§ 922(a)(3), (a)(5), (b)(3). Fingerprinting is thus utterly unnecessary to ascertain the identity of the purchaser.

Fingerprinting is also unnecessary to conduct a background check. Under current law, the dealer must ensure that every long gun purchaser have a NICS background check

conducted by the FBI. Indeed, as discussed above, the NICS check is the very system that the private sales provisions of these bills would mandate. These bills would require the State Police to conduct a background check for the LGQL and that same NICS background check would then be performed once again on any sale of a long gun. That's senseless.

In the HQL litigation, Maryland proved to be unable to identify a single person who would have been found to be disqualified because of the fingerprinting requirement for the HQL. The LGQL lasts for 10 years and the LGQL holder may purchase any number of long guns during that time period with a NICS check and without any fingerprints being required for any of those purchases. In sum, fingerprinting is a senseless, expensive burden for all concerned. But the fingerprinting requirement, because of its burden and expense, will effectively discriminate against the less affluent citizens of Maryland. Once again, the direct effect of this law is to create a huge disparate impact on the poor and minorities.

C. CONCLUSION

If enacted into law, these bills will draw a challenge in the courts. If the plaintiffs prevail in whole or in part, as is likely, the State would be liable for substantial attorneys' fees and costs under federal civil rights law, 42 U.S.C. §1988. These fees and costs could be huge. For example, the City of Chicago has already paid in excess of $1.2 million in attorneys' fees to plaintiffs' counsel who have prevailed in Second Amendment litigation against the City. Invalidation of the LGQL statute will likely take years and during that time, the State will have to spend millions of dollars in staffing the State Police to carry out these procedures. The State Police will spend more money to issue regulations. All of that money will have been wasted once these requirements have been struck down. In the meantime, the State will also be prosecuting inevitable violations of these bills by otherwise law-abiding citizens, thereby destroying reputations and inflicting legal and perhaps economic ruin on these individuals. Jobs will be lost, security clearances revoked and families traumatized. This is over-criminalization and waste at its worse. There is nothing sensible about these bills.

Sincerely,

Mark W. Pennak
President, Maryland Shall Issue, Inc.
1332 Cape St. Claire Rd #342
Annapolis, MD 21409
mpennak@marylandshallissue.org

Table 20

Murder
by State, Types of Weapons, 2017

Data Declaration (https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/table-20/table-20.xls/@@template-layout-view?override-view=data-declaration)

Download Excel (https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/table-20/table-20.xls/output.xls)

State	Total murders[1]	Total firearms	Handguns	Rifles	Shotguns	Firearms (type unknown)	Knives or cutting instruments	Other weapons	Hands, fists, feet, etc.[2]
Alabama[3]	2	1	0	0	0	1	0	1	0
Alaska	62	37	7	3	3	24	13	8	4
Arizona	404	249	162	8	9	70	50	93	12
Arkansas	250	168	92	11	4	61	23	52	7
California	1,830	1,274	886	37	34	317	258	195	103
Colorado	218	137	88	7	4	38	37	22	22
Connecticut	102	72	30	0	1	41	11	9	10
Delaware	52	44	20	0	1	23	3	4	1
District of Columbia	116	90	89	0	0	1	15	5	6
Georgia	672	542	490	15	5	32	37	85	8
Hawaii	39	4	1	1	0	2	9	10	16
Idaho	28	13	8	4	1	0	6	3	6
Illinois[3]	814	693	596	24	3	70	53	50	18
Indiana	360	291	147	14	6	124	20	39	10

State	Total murders[1]	Total firearms	Handguns	Rifles	Shotguns	Firearms (type unknown)	Knives or cutting instruments	Other weapons	Hands, fists, feet, etc.[2]
Iowa	100	57	25	1	5	26	18	18	7
Kansas	129	79	44	4	7	24	16	26	8
Kentucky	263	192	128	6	6	52	25	33	13
Louisiana	566	460	216	23	12	209	46	42	18
Maine	23	12	4	0	0	8	3	4	4
Maryland	475	370	339	5	3	23	44	50	11
Massachusetts	170	99	34	0	0	65	36	29	6
Michigan	567	381	185	13	12	171	55	101	30
Minnesota	113	69	58	1	2	8	14	23	7
Mississippi	149	111	90	4	3	14	12	20	6
Missouri	596	514	224	22	8	260	25	48	9
Montana	41	17	10	2	1	4	12	5	7
Nebraska	43	31	27	2	2	0	4	5	3
Nevada	270	201	16	58	0	127	28	30	11
New Hampshire	14	7	4	0	1	2	5	1	1
New Jersey	324	242	175	7	4	56	42	29	11
New Mexico	113	71	20	2	0	49	20	19	3
New York	547	292	233	6	9	44	113	91	51
North Carolina	547	413	279	9	26	99	33	64	37
North Dakota	9	5	2	1	0	2	1	2	1
Ohio	682	485	226	5	11	243	46	128	23
Oklahoma	239	163	131	5	5	22	25	32	19
Oregon	100	58	34	2	2	20	17	22	3
Pennsylvania	735	567	452	11	8	96	63	73	32
Rhode Island	20	8	1	0	0	7	4	5	3
South Carolina	387	312	183	11	8	110	29	36	10
South Dakota	21	8	6	0	0	2	7	2	4
Tennessee	525	407	271	19	11	106	42	64	12
Texas	1,364	1,012	594	40	26	352	156	131	65
Utah	73	46	32	0	3	11	7	12	8
Vermont	14	6	1	0	0	5	6	1	1
Virginia	453	338	156	11	11	160	44	54	17
Washington	228	134	75	1	1	57	36	40	18

State	Total murders[1]	Total firearms	Handguns	Rifles	Shotguns	Firearms (type unknown)	Knives or cutting instruments	Other weapons	Hands, fists, feet, etc.[2]
West Virginia	79	45	25	4	4	12	8	23	3
Wisconsin	186	149	111	4	2	32	11	17	9
Wyoming	14	6	5	0	0	1	3	3	2
Guam	1	0	0	0	0	0	0	1	0

- [1] Total number of murders for which supplemental homicide data were received.
- [2] Pushed is included in hands, fists, feet, etc.
- [3] Limited supplemental homicide data were received.

Data Declaration (https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/table-20/table-20.xls/@@template-layout-view?override-view=data-declaration)

Provides the methodology used in constructing this table and other pertinent information about this table.