



February 5, 2020

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO HB 302

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 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 and in muzzle loader. I appear today as President of MSI in opposition to HB 302.

Statutory Context and the Bill:

A “dangerous weapon” is defined by MD Code, Criminal Law, § 4-101 to include a wide assortments of weapons, but that list **excludes** “a penknife without a switchblade.” A “penknife” is simply a folding knife, like a Swiss Army knife. See *Bacon v. State*, 322 Md. 140 (1991). Persons excluded from 4-101’s ban include law enforcement officers, persons with a Maryland wear and carry permit to carry a handgun and “a person who carries the weapon as a reasonable precaution against apprehended danger.”

However, MD Code Criminal law, 4-102(b), provides that a “person may not carry or possess a firearm, knife, or deadly weapon of any kind on public school property.” Because this provision separately bans knives, not even a folding penknife can be possessed on public school property. Section 4-102 makes an exception for law enforcement officers who are on duty or who are a parent, guardian, or visitor of a child at the school. It also makes an exception for “a person *hired by* a county board of education *specifically* for the purpose of guarding public school property.” Unlike Section 4-101, Section 4-102 makes no exception for persons with a Maryland wear and carry permit. For mere possession of every weapon besides a handgun, a violation of Section 4-102 is punishable by “imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.” Possession of a **handgun** on public school property is punished more severely. Under MD Code Criminal Law, 4-203(c)(2)(i), possession of a handgun on public school property “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.”

This bill would expand Section 4-102 to include not only public school property but also include “NONPUBLIC” school property. It would exclude from its coverage “a person *hired* by A NONPUBLIC SCHOOL *SPECIFICALLY FOR THE PURPOSE OF GUARDING NONPUBLIC SCHOOL PROPERTY*. Because wear and carry permit holders are not exempt under 4-203 for public schools, such permits holders would likewise be banned from private school property under this bill.

The Ban Creates Inviting Targets for Mass Shooters by Mandating “Weapon Free” and “Gun Free” Zones And Kneecaps The Ability of Private Schools to Provide for Their Own Security:

Private schools are frequently associated with churches and synagogue, often housed in the same building or grounds. This bill would make these private facilities massive “weapon free” zones by completely banning all knives. Teachers, administrators, church officials, pastors, rabbis and others visiting the school, church or synagogue could be imprisoned for up to 3 years for possessing a simple penknife (Swiss Army knife or x-acto blade used in class) at the facility. Because these private schools are often on the same “property” as churches or synagogues, any possession of any knife for any other purpose on such property would be criminalized, including knives used in religious ceremonies conducted on the same grounds as the school. Indeed, this bill would arguably ban a knife in a pastor’s manse located on such property. That is simply absurd. Obviously this bill simply has given no thought to the huge variety of private school facilities.

This bill would also make such facilities massive “gun free” zones. Churches and synagogues are targets for mass shootings. <https://www.latimes.com/opinion/story/2019-12-30/opinion-why-do-people-attack-places-of-worship-heres-what-we-know-from-our-mass-shootings-database>. Gun free zones are targets for mass shootings. See <https://spectator.org/mass-shootings-in-gun-free-zones/>. The latest statistics indicate that 94% of mass shootings since 1950 have occurred in gun free zones. <https://crimeresearch.org/2018/06/more-misleading-information-from-bloombergs-everytown-for-gun-safety-on-guns-analysis-of-recent-mass-shootings/>. Between 1998 and 2015, inclusive, that percentage is 96.2%. (Id.).

Mass shooters are drawn to gun free zones as they know that they will be unopposed to extended periods while they commit their horrific rampages. <https://www.nationalreview.com/2014/01/cruelty-gun-free-zones-john-r-lott-jr/>. No sane person would post a “gun free zone” sign in front of their homes. Yet, that is what this bill would do to private schools properties. Under this bill, only an on-duty law enforcement officer (or a law enforcement officer who is a parent, guardian or visitor of a child at the school) could carry a concealed handgun on private school property. The leaders of these facilities would not be allowed to arm themselves or allow a Maryland State Police vetted and fully trained permit holder to be armed, even though it is widely acknowledged that permit holders are literally the most law-abiding individuals in the Nation, with a crime rate substantially lower than commissioned police officers. See *Concealed Carry Permit Holders Across the United States: 2017* (July 18, 2017) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3004915.

The bill would effectively eliminate a vital option that private churches and synagogues have recently employed to protect their facilities from mass shooting. Such private schools are typically not assigned School Resource Officers (Deputy Sheriffs or County officers), as they are private facilities. Thus, these private organizations have often turned to Maryland wear and carry permit holders, who volunteer their time. The Maryland State Police specifically issues permits to persons sponsored by churches and synagogues, for this very purpose of providing protection. Such persons have received all the training mandated by Maryland law, MD Code Public Safety 5-306, and often go far beyond that level of training by seeking out and obtaining additional training, such as advanced NRA courses, which are quite excellent. These advanced courses involve extensive legal instruction and many hundreds of rounds of live fire, including graded proficiency assessments by certified instructors. Yet, under this bill, all these carry permit persons would be banned from all such churches and synagogues if there was a private school on the same “property.”

Substantial number of states allow this sort of authorized carry in schools. <https://www.inverse.com/article/41606-which-states-allow-teachers-to-carry-guns>. Some states require permits, some states require additional training, but only a minority of states are like Maryland and basically ban all carry on school property. (Id.). Moreover, highly specialized training for school employees is available for free. An acclaimed Ohio company, Buckeye Firearms Foundation, a 501(c)(3) public charity, has created the “FASTER” program devoted to training selected school staff members who are willing, competent and capable of carrying in the schools. <https://www.inverse.com/article/41606-which-states-allow-teachers-to-carry-guns>. This issue is debated on a WMUL Washington, D.C. radio broadcast. Every responsible legislator who cares about our children should listen with an open mind. <http://fastersaveslives.org/faster-saves-livess-joe-eaton-on-washington-d-c-public-radio>.

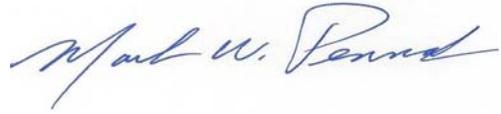
Using volunteers has proved effective. In December 2019, a private permit holder and a parishioner in Texas, commissioned by a church as part of a church security team, stopped a mass shooter and saved many lives. <https://www.cnn.com/2019/12/29/us/church-shooting-texas/index.html>. Yet, under this bill, the use of such individuals would be banned, as the bill exempts only persons “hired” SPECIFICALLY FOR THE PURPOSE OF GUARDING NONPUBLIC SCHOOL PROPERTY. If this bill had been the law in Texas, many more persons would have died at that church. These volunteers are not “hired.” They are parishioners and others who step up to guard these facilities at the request of leaders of these facilities.

These private churches and synagogues would also be barred from requesting a parent to obtain a permit for this task so that they could volunteer to protect the school. It would also bar such a facility from asking an existing employee, who may have a permit, to guard the facility. Such existing employees are typically not “hired” “SPECIFICALLY” for the protection of guarding the school, but, nonetheless, are quite able to provide a level of protection for the property. When every second counts, such protection is far better than nothing at all.

Fundamentally, the Maryland General Assembly should not presume to substitute its judgment for that of the leaders of these private schools, churches and synagogues from making their own decisions on how to best protect their facilities from mass shooters. These

leaders should be allowed to develop policies that meet their own needs without interference of the State.

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
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