AMENDMENTS TO SENATE BILL 205

By the Judiciary Committee

Amendment Number 1

In line 14 of Section 36B(c) on page 4 of the third reading file bill, immediately after the semicolon, insert the following: "or (vi) holders of Special Police Commissions issued under Sections 60 to 70 of Article 41 of the Annotated Code of Maryland, while exercising the powers and discharging the duties specified in Section 64 of Article 41 of the Annotated Code of Maryland, or while traveling to or from such duty;".

Amendment Number 2

In line 40 of Section 36E (c) on page 11 of the third reading file bill, immediately after the word "permit.", insert the following: "A permit shall be valid for the carrying of any handgun, and shall not specify any particular handgun."

Amendment Number 3

In lines 84 through 87 of Section 36E(h)(1) on page 12 of the third reading file bill, strike out all of the italicized language.

Amendment Number 4

In line 88 of Section 36E(h)(2) on page 12 of the third reading file bill, strike out "(2)" and insert "(1)" in lieu thereof; in line 92, strike out "(3)" and insert "(2)" in lieu thereof; and in line 96, strike out "(4)" and insert "(3)" in lieu thereof.

AMENDMENTS TO SENATE BILL 205

By the Judiciary Committee

Amendment No. 1

In line 4 of the title on page 1 of the third reading file bill, strike out the words "Concealed Weapons" and insert in lieu thereof the following: "Carrying or Wearing Weapon".

Amendment No. 2

In line 25 of Section 36B(c)(3) on page 5 of the third reading file bill, strike out the following: "hunt, or trap,", and insert in lieu thereof the words "hunting, trapping,".

Amendment No. 3

In lines 30 through 32 of Section 36B(c)(4) on page 5 of the third reading file bill, strike out all of the italicized language and insert in lieu thereof the following:

"(4) Nothing in this section shall prevent a person from wearing, carrying, or transporting a handgun within the confines of real estate owned or leased by him or upon which he resides or within the confines of a business establishment owned or leased by him. Nothing in this section shall prevent a supervisory employee from wearing, carrying, or transporting a handgun within the confines of a business establishment in which he is employed during such time as he is acting in the course of his employment and has been authorized to wear, carry, or transport the handgun by the owner or manager of the business establishment."

Amendment No. 4

In line 144 of Section 36C(c) on page 8 of the third reading file bill, strike out "(7)" and insert "(6)" in lieu thereof.

Amendment No. 5

In line 155 of Section 36C(c) on page 8 of the third reading file bill, strike out "(8)" and insert "(7)" in lieu thereof.

Amendment No. 6

In line 160 of Section 36C(c) on page 8 of the third reading file bill, strike out "(9)" and insert "(8)" in lieu thereof.

Amendment No. 7

In line 165 of Section 36C(c) on page 8 of the third reading file bill, strike out the word "vehicle" and insert in lieu thereof the word "property".

Amendment No. 8

In line 169 of Section 36C(c) on page 8 of the third reading file bill, strike out "(10)" and insert "(9)" in lieu thereof.

Amendment No. 9

In lines 24c and 24d of Section 36E(a) on page 11 of the third reading file bill, strike out beginning with the word "the" on line 24c down to and including the word "section" on line 24d, and insert in lieu thereof the following: "a finding".

Amendment No. 10

In line 6 of Section 36F(a) on page 13 of the third reading file bill, insert a hyphen immediately after the word "short".

Amendment No. 11

In line 15 of Section 36F(a)(1)(B) on page 13 of the third reading file bill, strike out the following: ", or" and insert in lieu thereof the word "of".

AMENDMENTS TO SENATE BILL 205

By the Judiciary Committee

Amendment Number 1

In line 27 of the title of the third reading file bill, strike out the words "in an intoxicated condition" and insert in lieu thereof the words "under the influence of alcohol or drugs".

Amendment Number 2

In lines 65 through 77 of Section 36B(b) on page 4 of the third reading file bill, strike out all of the italicized language.

Amendment Number 3

Immediately after line 41 of Section 36B(d) on page 5 of the third reading file bill, insert the following: "(e) Notwithstanding any other provision of law to the contrary, including the provisions of Section 643 of this article, (a) no court shall enter a judgment for less than the minimum mandatory sentence provided for in this subheading in those cases for which a minimum mandatory sentence is specified in this subheading; (b) no court shall suspend a minimum mandatory sentence provided for in this subheading; (c) no court shall enter a judgment of probation before verdict or probation without verdict with respect to any case arising under this subheading; and (d) no court shall enter a judgment of probation after verdict with respect to any case arising under this subheading which would have the effect of reducing the actual period of imprisonment or the actual amount of the fine prescribed in this subheading as a mandatory minimum sentence."

Amendment Number 4

In line 18 of Section 36E(a)(4) on page 10 of the third reading file bill immediately after the word "substance" insert the following: "not under legitimate medical direction".

Amendment Number 5

In lines 115 and 116 of Section 36E(k) on page 13 of the third reading file bill, strike out the words "in an intoxicated condition" and insert in lieu thereof the words "under the influence of alcohol or drugs".

Amendment Number 6

In lines 10 through 12 of Section 36F(b) on page 14 of the third reading file bill, strike out beginning with the word "except" on line 10 down to and including the word "employment." on line 12: in line 10, strike the comma following the word "vessels" and insert a period in lieu thereof.

AMENDMENTS TO S.B. 205

by Senator Steers

Amendment No. 1. In line 32 of Section 36B(c) on page 5 of the printed bill, immediately following the word "him" strike out the period, and insert in lieu therefor a comma, and immediately following said comma, add the following words: "or with the permission of the owner, lessor, or custodian thereof."

Amendment No. 2. In line 23 of Section 36E on page 7 of the printed bill, strike out the words "in the judgment of the Superintendent" and insert in lieu thereof a comma, and immediately following said comma, insert the words "based on the results of investigation,".

AMENDMENT TO HOUSE BILL NO. 277 AND SENATE BILL NO. 205, GUN CONTROL BILLS, PROPOSED BY JAMES L. DUNBAR IN BEHALF OF FEDERAL ARMORED EXPRESS, INC., DUNBAR ARMORED EXPRESS AND LOUGHLIN SECURITY AGENCY

The following is a proposed amendment to Section 36E(b) of Section 2 of House Bill No. 277 and Senate Bill No. 205. The proposed amendment is to be inserted as an addition after the first sentence of sub-section b of Section 26E and would read as follows:

However, fees for permits issued to employees who serve as uniformed security guards or watchmen in the employ of a company which is engaged in furnishing uniformed security guards or watchmen and to employees serving as guards in the employ of a bank, savings and loan association, building and loan association, or an express or armored car agency, and which are to be effective only while the employee is engaged in the course of his employment or while traveling to or from the place of his employment, may be paid for by the employee's employer according to the following schedule. The Superintendent may charge a non-refundable fee, not to exceed $25.00 per permit, for the first ten applications for new or renewal permits, submitted by such an employer in a calendar year. The Superintendent may charge a non-refundable fee not to exceed $10.00 for each additional application for a new permit or a renewal permit submitted by the same employer in the same year.

By Senator Steers

2nd effort

AMENDMENT TO SENATE BILL 205

In lines 30 through 32 of Section 36B on page 5 of the printed bill, being also lines 49 through 51 on page 5 of the Committee Reprint, strike out the language in its entirety and insert in lieu thereof the following:

"(4) Nothing in this section shall be deemed to prohibit the placing, wearing, carrying, or transporting of a handgun anywhere within the confines of any building [by a person who is the owner, tenant or custodian thereof, or who obtains the permission of that owner, tenant or custodian.]"

Above failed (Legislative support of President + Committee chairman Joe Curran))

Amendment perhaps should read (Bracketed portion)

"By a person who is the owner [or any person who normally resides in the building] or by a tenant within that portion of the building of which he is the tenant or by a person left in charge of part or all of a building by the owner or tenant, in that portion of the building of which he is left in charge."

EMERGENCY BILL

Senate Bill No. 205—By the President (Administration Bill).

CHAPTER.....

A BILL ENTITLED

AN ACT to repeal and re-enact, with amendments, Section 36 of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," subheading "Concealed Weapons;" to repeal and re-enact, with amendments, Section 36A(c) of said Article and title of the said Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), subtitle "I. Crimes and Punishments," subheading "Carrying Deadly Weapons on Public School Property;" to add new Sections 36B, 36C, 36D, 36E, and 36F to Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," to follow immediately after Section 36A of said article, title and subtitle, under the new subheading "Handguns;" to repeal and re-enact, with amendments, Section 594B(e) of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "II. Venue, Procedure and Sentence," subheading "Arrests;" to repeal Section 90A of Article 56 of the Annotated Code of Maryland (1968 Replacement Volume and 1971 Supplement), title "Licenses," subtitle "Private Detectives;" to exclude handguns from the provisions of Section 36 of Article 27; to amend the penalties for carrying a handgun on public school property; to make unlawful, generally regulate, and provide penalties for the wearing, carrying, or transporting of handguns; TO MAKE UNLAWFUL THE WEARING, CARRYING, OR TRANSPORTING OF HANDGUNS BY A PERSON WITH A PERMIT WHILE HE IS IN AN INTOXICATED CONDITION AND TO PROVIDE PENALTIES THEREFOR; to make the use of a handgun in the commission of a felony or crime of violence a misdemeanor and to provide penalties therefor; to allow law enforcement officers to conduct searches for handguns under certain circumstances; to allow law enforcement officers to arrest persons for violating Section 36B of said article pursuant to the provisions of Section 594B(e) of Article 27; to repeal provisions for the issuance of permits to private detectives to carry concealed

EXPLANATION: *Italics indicate new matter added to existing law.*
[Brackets] indicate matter stricken from existing law.
CAPITALS indicate amendments to bill.
~~Strike out~~ indicates matter stricken out of bill.

SENATE BILL NO. 205

weapons; TO CORRECT CERTAIN OBSOLETE LANGUAGE AND REFERENCES; and relating generally to the regulation of handguns.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 36 of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," subheading "Concealed Weapons," be and it is hereby repealed and re-enacted, with amendments, to read as follows:

36.

(a) Every person who shall wear or carry any [pistol,] dirk knife, bowie knife, switchblade knife, sandclub, metal knuckles, razor, or any other dangerous or deadly weapon of any kind, whatsoever (penknives without switchblade *and handguns,* excepted) concealed upon or about his person, and every person who shall wear or carry any such weapon openly with the intent or purpose of injuring any person in any unlawful manner, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one thousand ($1,000.00) dollars or be imprisoned in jail, or sentenced to the Maryland Department of Correction for not more than three years; and in case of conviction, if it shall appear from the evidence that such weapon was carried, concealed as aforesaid or openly, with the deliberate purpose of injuring the person or destroying the life of another, the court [, or justice of the peace, presiding in the case,] shall impose the highest sentence of imprisonment hereinbefore prescribed. In Cecil, Anne Arundel, Talbot, Harford, Caroline, Prince George's, Montgomery, Washington, Worcester and Kent counties it shall also be unlawful and a misdemeanor, punishable as above set forth, for any minor to carry any dangerous or deadly weapon, *other than a handgun,* between one hour after sunset and one hour before sunrise, whether concealed or not, except while on a bona fide hunting trip, or except while engaged in or on the way to or returning from a bona fide trap shoot, sport shooting event, or any organized civic or military activity.

SEC. 2. *Be it enacted by the General Assembly of Maryland,* That Section 36A (c) of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," subheading "Carrying Deadly Weapon on Public School Property," be and it is hereby repealed and re-enacted, with amendments, to read as follows:

36A.

(c) Any person who violates this section shall, upon conviction, be guilty of a misdemeanor and shall be sentenced to pay a fine of no more than one thousand dollars ($1,000.00), or shall be sentenced to the Maryland Department of Correction for a period of not more than three (3) years. *Any such person who shall be found to carry a handgun in violation of this Section 36A, shall be sentenced as provided in Section 36B of this article.*

SEC. 3. *Be it enacted by the General Assembly of Maryland,* That new Sections 36B, 36C, 36D, 36E, and 36F be and they are hereby

added to Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," to follow immediately after Section 36A thereof and to be under the new subheading "Handguns" and to read as follows:

36B. Wearing, carrying or transporting handguns.

(a) Declaration of Policy. The General Assembly of Maryland hereby finds and declares that:

(i) there has, in recent years, been an alarming increase in the number of violent crimes perpetrated in Maryland, and a high percentage of those crimes involve the use of handguns;

(ii) the result has been a substantial increase in the number of persons killed or injured which is traceable, in large part, to the carrying of handguns on the streets and public ways by persons inclined to use them in criminal activity;

(iii) the laws currently in force have not been effective in curbing the more frequent use of handguns in perpetrating crime; and

(iv) further regulations on the wearing, carrying, and transporting of handguns are necessary to preserve the peace and tranquility of the State and to protect the rights and liberties of its citizens.

(b) Unlawful wearing, carrying, or transporting of handguns. Any person who shall wear, carry, or transport any handgun, whether concealed or open, upon or about his person, and any person who shall wear, carry or KNOWINGLY *transport any handgun, whether concealed or open, in any vehicle traveling upon the public roads, highways, waterways, or airways or upon roads or parking lots generally used by the public in this State shall be guilty of a misdemeanor,* ~~*and on conviction thereof,*~~ ; AND IT SHALL BE A REBUTTABLE PRESUMPTION THAT THE PERSON IS KNOWINGLY TRANSPORTING THE HANDGUN; AND ON CONVICTION OF THE MISDEMEANOR *shall be fined or imprisoned as follows:*

(i) if the person has not previously been convicted of unlawfully wearing, carrying or transporting a handgun in violation of this Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A of this article, he shall be fined not less than two hundred and fifty ($250.00) dollars, nor more than twenty five hundred ($2,500.00) dollars, or be imprisoned in jail or sentenced to the Maryland Division of Correction for a term of not less than 30 days nor more than three years, or both; provided, however, that if it shall appear from the evidence that the handgun was worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than 90 days.

(ii) if the person has previously been once convicted of unlawfully wearing, carrying, or transporting a handgun in violation of Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A of this article,

he shall be sentenced to the Maryland Division of Correction for a term of not less than 1 year nor more than 10 years, and it is mandatory upon the Court to impose no less than the minimum sentence of 1 year; provided, however, that if it shall appear from the evidence that the handgun was worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than three years.

(iii) if the person has previously been convicted more than once of unlawfully wearing, carrying, or transporting a handgun in violation of Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A of this article, or any combination thereof, he shall be sentenced to the Maryland Division of Correction for a term of not less than three years nor more than 10 years, and it is mandatory upon the Court to impose no less than the minimum sentence of three years; provided, however, that if it shall appear from the evidence that the handgun was worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than 5 years.

(iv) If it shall appear from the evidence that any handgun referred to in subsection (a) hereof was carried, worn, or transported with the deliberate purpose of injuring or killing another person, the Court shall impose a sentence of imprisonment of not less than five years.

(v) Notwithstanding any other provision of law to the contrary, including the provisions of Section 643 of this article, (a) no court shall enter a judgment for less than the minimum mandatory sentence provided for in this subheading in those cases for which a minimum mandatory sentence is specified in this subheading; (b) no court shall suspend a minimum mandatory sentence provided for in this subheading; (c) no court shall enter a judgment of probation before verdict or probation without verdict with respect to any case arising under this subheading; and (d) no court shall enter a judgment of probation after verdict with respect to any case arising under this subheading which would have the effect of reducing the actual period of imprisonment or the actual amount of the fine prescribed in this subheading as a mandatory minimum sentence.

(c) Exceptions.

(1) Nothing in this section shall prevent the wearing, carrying, or transporting of a handgun by (i) law enforcement personnel of the United States, or of this State, or of any county or city of this State, (ii) members of the armed forces of the United States or of the National Guard while on duty or traveling to or from duty; or (iii) law enforcement personnel of some other state or subdivision thereof temporarily in this State on official business; (iv) any jailer, prison guard, warden, or guard or keeper at any penal, correctional or detention institution in this State; OR (V) SHERIFFS AND TEMPORARY OR FULL-TIME SHERIFFS' DEPUTIES, AS TO ALL OF WHOM THIS EXCEPTION SHALL APPLY ONLY WHEN THEY ARE ON ACTIVE ASSIGNMENT ENGAGED IN LAW ENFORCEMENT; *provided, that any such person mentioned in this paragraph is duly authorized at the time and under the circumstances he is wearing, carrying, or transporting the weapon*

to wear, carry, or transport such weapon as part of his official equipment;

(2) Nothing in this section shall prevent the wearing, carrying, or transporting of a handgun by any person to whom a permit to wear, carry, or transport any such weapon has been issued under Section 36E of this article.

(3) Nothing in this section shall prevent any person from carrying a handgun on his person or in any vehicle while transporting the same to or from the place of legal purchase or sale, or to or from any bona fide repair shop. Nothing in this section shall prevent any person from wearing, carrying, or transporting a handgun ~~normally~~ used in connection with a target shoot, FORMAL OR INFORMAL *target practice, sport shooting event, hunt,* OR TRAP, DOG OBEDIENCE TRAINING CLASS OR SHOW *or any organized ~~civic or~~ military activity while engaged in, on the way to, or returning from any such activity. However, while travelling to or from any such place or event referred to in this paragraph, the handgun shall be unloaded and carried in an enclosed case or enclosed holster.*

(4) Nothing in this section shall prevent a person from having in his presence any handgun within the confines of any dwelling, business establishment, or real estate owned or leased by him.

(d) Unlawful use of handgun in commission of crime. Any person who shall use a handgun in the commission of any felony or any crime of violence as defined in Section 441 of this Article, shall be guilty of a separate misdemeanor and on conviction thereof shall, in addition to any other sentence imposed by virtue of commission of said felony or misdemeanor, be sentenced to the Maryland Division of Correction for a term of not less than five nor more than fifteen years, and it is mandatory upon the court to impose no less than the minimum sentence of five years.

36C. Seizure and Forfeiture.

(a) Property subject to seizure and forfeiture. The following items of property shall be subject to seizure and forfeiture, and, upon forfeiture, no property right shall exist in them:

(i) any handgun being worn, carried, or transported in violation of Section 36B of this article.

(ii) all ammunition or other parts of or appurtenances to any such handgun worn, carried, or transported by such person or found in the immediate vicinity of such handgun;

~~*(iii) any vehicle within which a handgun is transported in violation of Section 36B of this article; provided, however, that (A) no vehicle legitimately used as a common carrier shall be seized or forfeited under this section unless it shall appear that the owner or other person in charge of the vehicle was a consenting party or privy to a violation of Section 36B, and (B) no vehicle shall be seized or forfeited by reason of any act or omission established by the owner to have been committed or omitted by any person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or any State.*~~

(b) Procedure relating to seizure.

(i) any property subject to seizure under subsection (a) hereof may be seized by any duly authorized law enforcement officer, as an incident to an arrest or search and seizure.

(ii) any such officer seizing such property under this section shall either place the property under seal or remove the same to a location designated either by the Maryland State Police or by the law enforcement agency having jurisdiction in the locality.

~~*(iii) property seized under this section shall not be subject to replevin, but shall be deemed to be in custodia legis; provided, however, that upon petition* REQUEST *of any person other than a person who has been charged with a violation of Section 36B of this article and whose case is currently pending trial, the police authorities having custody of the seized property may return the seized property if convinced that (A) the petitioner is the owner of the property; (B) said petitioner did not know and should not have known that the property was being or would be worn, carried, transported, or used in violation of Section 36B of this article; and (C) the property is not needed as evidence in a pending criminal case. No handgun or ammunition shall be returned by the police authorities pursuant to this subsection without the written consent of the State's Attorney having jurisdiction over the case.~~

~~*(c) Procedure relating to forfeiture.*~~

~~*(i) Upon conviction of any person for a violation of Section 36B of this article, any property subject to seizure, actually seized, and not returned pursuant to the provisions of this section shall be forfeited to the State. Any judgment of conviction entered by a court having jurisdiction shall also be deemed to be an order of forfeiture of such articles. If the judgment of conviction is by a jury, the court shall thereupon sua sponte immediately enter an order of forfeiture.*~~

~~*(ii) Notwithstanding the provisions of paragraph (c). (i) hereof, upon petition of any person other than the person convicted of violating Section 36B of this article filed prior to the judgment of conviction or within ten days thereafter, the Court may decline to order forfeiture or may strike any order of forfeiture and order the return of seized property if the petitioner shall prove, by a fair preponderance of the evidence that (A) the petitioner is the owner of the property; (B) said petitioner did not know and should not have known that the property was being or would be worn, carried, transported, or used in violation of Section 36B of this article; and (C) the property is not needed as evidence in any other pending criminal case.~~*

(C) PROCEDURE RELATING TO FORFEITURE.

(1) UPON THE SEIZURE OF PROPERTY PURSUANT TO THIS SECTION, THE STATE'S ATTORNEY SHALL NOTIFY ANY OFFICIAL AGENCY WHICH REGISTERS SUCH PROPERTY OF THE SEIZURE AND SHALL REQUEST THE NAME AND ADDRESS OF THE OWNER THEREOF. IF, AS A RESULT OF SUCH INQUIRY, OR ANY OTHER INQUIRY WHICH HE MAY CONDUCT, THE STATE'S ATTORNEY DETERMINES THE NAME AND ADDRESS OF THE OWNER OF THE PROPERTY, HE SHALL NOTIFY THE OWNER BY CERTIFIED

MAIL OF THE SEIZURE AND OF THE STATE'S ATTORNEY'S DETERMINATION OF WHETHER THE OWNER KNEW OR SHOULD HAVE KNOWN THAT THE PROPERTY WAS WORN, CARRIED, TRANSPORTED OR USED IN VIOLATION OF SECTION 36B.

(2) IF THE STATE'S ATTORNEY DETERMINES THAT THE OWNER NEITHER KNEW NOR SHOULD HAVE KNOWN OF THE USE OR INTENDED USE OF THE PROPERTY IN VIOLATION OF SECTION 36B, HE SHALL SURRENDER THE PROPERTY UPON REQUEST TO THE OWNER UNLESS HE DETERMINES THAT THE PROPERTY IS NEEDED AS EVIDENCE IN A PENDING CRIMINAL CASE, IN WHICH EVENT HE SHALL RETURN THE PROPERTY UPON THE FINAL CONCLUSION OF THE CASE OR CASES IN WHICH THE PROPERTY IS NEEDED AS EVIDENCE.

(3) IF THE STATE'S ATTORNEY DETERMINES THAT THE PROPERTY SHOULD BE FORFEITED TO THE STATE, HE SHALL PETITION THE CIRCUIT COURT OF THE APPROPRIATE SUBDIVISION IN THE NAME OF THE STATE OF MARYLAND AGAINST THE PROPERTY AS DESIGNATED BY MAKE, MODEL, YEAR, AND ~~MOTOR OR~~ SERIAL NUMBER OR OTHER IDENTIFYING CHARACTERISTIC. THE PETITION SHALL ALLEGE THE SEIZURE AND SET FORTH IN GENERAL TERMS THE CAUSES OR GROUNDS OF FORFEITURE. IT SHALL ALSO PRAY THAT THE PROPERTY BE CONDEMNED AS FORFEITED TO THE STATE AND DISPOSED OF ACCORDING TO LAW.

(4) IF THE OWNER OR OWNERS OF THE PROPERTY ARE UNKNOWN OR CANNOT BE FOUND, NOTICE OF THE SEIZURE AND INTENDED FORFEITURE PROCEEDINGS SHALL BE MADE BY PUBLICATION IN ONE OR MORE NEWSPAPERS PUBLISHED IN THE COUNTY IN WHICH THE ACTION IS BROUGHT IF THERE BE ONE SO PUBLISHED, AND IF NOT, IN A NEWSPAPER HAVING A SUBSTANTIAL CIRCULATION IN SAID COUNTY. IN BALTIMORE CITY THE NOTICE SHALL BE PUBLISHED IN ONE OR MORE OF THE DAILY NEWSPAPERS PUBLISHED IN THE CITY. THE NOTICE SHALL STATE THE SUBSTANCE AND OBJECT OF THE ORIGINAL PETITION AND GIVE NOTICE OF THE INTENDED FORFEITURE PROCEEDINGS.

(5) WITHIN 30 DAYS AFTER SERVICE OF THE NOTICE OF SEIZURE AND INTENDED FORFEITURE PROCEEDINGS OR WITHIN 30 DAYS AFTER THE DATE OF PUBLICATION, THE OWNER OF THE PROPERTY SEIZED MAY FILE AN ANSWER UNDER OATH TO THE PETITION.

~~(6) IF THE PROPERTY IS A VEHICLE AND THE OWNER THEREOF DESIRES TO OBTAIN POSSESSION THEREOF BEFORE THE HEARING ON THE PETITION FILED AGAINST THE VEHICLE, THE CLERK OF THE COURT WHERE THE PETITION IS FILED SHALL HAVE AN APPRAISAL MADE BY THE SHERIFF OF THE COUNTY OR CITY IN WHICH THE COURT IS LOCATED. THE SHERIFF SHALL PROMPTLY INSPECT AND RENDER AN APPRAISAL OF THE VALUE~~

~~OF THE VEHICLE AND RETURN THE APPRAISAL, IN WRITING, UNDER OATH, TO THE CLERK OF THE COURT IN WHICH THE PROCEEDINGS ARE PENDING. UPON THE FILING OF THE APPRAISAL, THE OWNER MAY GIVE BOND PAYABLE TO THE STATE OF MARYLAND, IN AN AMOUNT EQUAL TO THE APPRAISED VALUE OF THE VEHICLE PLUS COURT COSTS WHICH MAY ACCRUE, WITH SECURITY TO BE APPROVED BY THE CLERK, AND CONDITIONED FOR PERFORMANCE ON THE FINAL JUDGMENT OF THE COURT AFTER THE HEARING ON THE PETITION, THE COURT DIRECTS THAT THE VEHICLE BE FORFEITED, JUDGMENT MAY THEREUPON BE ENTERED AGAINST THE OBLIGORS ON THE BOND FOR THE PENALTY THEREOF, WITHOUT FURTHER OR OTHER PROCEEDING, TO BE DISCHARGED BY THE PAYMENT OF THE APPRAISED VALUE OF THE VEHICLE SO SEIZED AND FORFEITED AND COSTS, UPON WHICH JUDGMENT EXECUTION MAY ISSUE.~~

(7) ~~SUBJECT TO THE PROVISIONS PERMITTING POSTING OF A BOND,~~ THE COURT SHALL RETAIN CUSTODY OF THE SEIZED PROPERTY PENDING PROSECUTION OF THE PERSON ACCUSED OF VIOLATING SECTION 36B AND IN CASE SUCH PERSON BE FOUND GUILTY, THE PROPERTY SHALL REMAIN IN THE CUSTODY OF THE COURT UNTIL THE HEARING ON THE FORFEITURE IS HELD. THE HEARING SHALL BE SCHEDULED NO MORE THAN 30 DAYS AFTER CONVICTION OF THE DEFENDANT, AND REASONABLE NOTICE SHALL BE GIVEN TO THOSE PARTIES FILING AN ANSWER TO THE PETITION.

(8) IF NO TIMELY ANSWER IS FILED, THE COURT SHALL HEAR EVIDENCE UPON THE USE OF THE PROPERTY IN VIOLATION OF SECTION 36B AND SHALL UPON SATISFACTORY PROOF THEREOF, ORDER THE ~~VEHICLE~~ PROPERTY FORFEITED TO THE STATE.

(9) AT THE SCHEDULED HEARING, ANY OWNER WHO FILED A TIMELY ANSWER MAY SHOW BY COMPETENT EVIDENCE THAT THE PROPERTY WAS NOT IN FACT USED IN VIOLATION OF SECTION 36B OR THAT HE NEITHER KNEW NOR SHOULD HAVE KNOWN THAT THE VEHICLE WAS BEING, OR WAS TO BE SO USED. UPON THE DETERMINATION THAT THE PROPERTY WAS NOT SO USED, THE COURT SHALL ORDER THAT THE PROPERTY BE RELEASED TO THE OWNER.

(10) IF AFTER A FULL HEARING THE COURT DECIDES THAT THE PROPERTY WAS USED IN VIOLATION OF SECTION 36B OR THAT THE OWNER KNEW OR SHOULD HAVE KNOWN THAT THE PROPERTY WAS BEING, OR WAS TO BE SO USED, THE COURT SHALL ORDER THAT THE PROPERTY BE FORFEITED TO THE STATE.

~~(11) IN THE EVENT A BOND HAS BEEN FILED PURSUANT TO THIS SUBSECTION AND THE VEHICLE IS ORDERED FORFEITED, THE PROCEEDS OF THE BOND SHALL BE PAID TO THE STATE IN LIEU OF FORFEITURE OF THE VEHICLE.~~

(d) Whenever property is forfeited under this section, it shall be turned over to the State Secretary of General Services who may (i) order the property retained for official use of State agencies, or (ii) make such other disposition of the property as he may deem appropriate. ~~PROVIDED HOWEVER, THAT, IF THE FORFEITED PROPERTY IS A MOTOR VEHICLE THE STATE SECRETARY OF GENERAL SERVICES SHALL ORDER THAT THE MOTOR VEHICLE BE SOLD OR USED BY LAW ENFORCEMENT PERSONNEL FOR INVESTIGATIVE PURPOSES ONLY.~~

36D. Limited Search.

(a) Any law enforcement officer who, in the light of his observations, information, and experience, ~~*may have*~~ HAS *a reasonable belief that (i) a person may be wearing, carrying, or transporting a handgun in violation of Section 36B of this article, (ii) by virtue of his possession of a handgun, such person is or may be presently dangerous to the officer or to others, (iii) it is impracticable, under the circumstances, to obtain a search warrant; and (iv) it is necessary for the officer's protection or the protection of others to take swift measures to discover whether such person is, in fact, wearing, carrying, or transporting a handgun, such officer may*

(1) approach the person and identify himself as a law enforcement officer;

(2) request the person's name and address, and, if the person is in a vehicle, his license to operate the vehicle, and the vehicle's registration; and

(3) ask such questions and request such explanations as may be reasonably calculated to determine whether the person is, in fact, unlawfully wearing, carrying, or transporting a handgun in violation of Section 36B; and, if the person does not give an explanation which dispels, ~~*in the officers' mind,*~~ *the reasonable* ~~*suspicion*~~ BELIEF *which he had, he may*

(4) conduct a search of the person, limited to a patting or frisking of the person's clothing in search of a handgun; . THE LAW ENFORCEMENT OFFICER IN ACTING UNDER THIS SECTION SHALL DO SO WITH DUE REGARD TO ALL CIRCUMSTANCES OF THE OCCASION, INCLUDING BUT NOT LIMITED TO THE AGE, APPEARANCE, PHYSICAL CONDITION, MANNER, AND SEX OF THE PERSON APPROACHED.

(b) In the event that the officer discovers the person to be wearing, carrying, or transporting a handgun, he may demand that the person produce evidence that he is entitled to so wear, carry, or transport the handgun pursuant to Section 36B (c) of this article. If the person is unable to produce such evidence, the officer may then seize the handgun and arrest the person.

(c) Nothing in this section shall be construed to limit the right of any law enforcement officer to make any other type of search, seizure, and arrest which may be permitted by law, and the provisions hereof shall be in addition to and not in substitution of or limited by the provisions of Section 594B of this article.

~~*(d) No law enforcement officer conducting a search pursuant to the provisions of this Section 36D shall be liable for damages to*~~

~~the person searched unless said person shall prove by a fair preponderance of the evidence, that the officer acted without reasonable grounds for suspicion and with malice.~~

(D) ANY LAW ENFORCEMENT OFFICER SUED IN A CIVIL ACTION FOR CONDUCTING A SEARCH OR SEIZURE PURSUANT TO THIS SECTION WHICH IS ALLEGED TO BE UNREASONABLE AND UNLAWFUL SHALL, UPON HIS REQUEST, BE DEFENDED IN SAID ACTION AND ANY APPEALS THEREFROM, BY THE ATTORNEY GENERAL.

(E) EVERY LAW ENFORCEMENT OFFICER WHO CONDUCTS A SEARCH OR SEIZURE PURSUANT TO THIS SECTION SHALL, WITHIN TWENTY-FOUR HOURS AFTER SUCH SEARCH OR SEIZURE, FILE A WRITTEN REPORT WITH THE LAW ENFORCEMENT AGENCY BY WHICH HE IS EMPLOYED DESCRIBING THE SEARCH OR SEIZURE AND THE CIRCUMSTANCES THEREOF ON A FORM PRESCRIBED BY THE SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES. SUCH REPORT SHALL INCLUDE THE NAME OF THE PERSON SEARCHED. A COPY OF ALL SUCH REPORTS SHALL BE SENT TO THE SUPERINTENDENT OF THE MARYLAND STATE POLICE.

36E. Permits.

(a) A permit to carry a handgun ~~may~~ SHALL *be issued* WITHIN A REASONABLE TIME *by the Superintendent of the Maryland State Police, upon application under oath therefor, to any person whom he finds:*

(1) is twenty-one years of age or older; and

(2) has not been convicted of a felony or of a misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted of such a crime, has been pardoned OR HAS BEEN GRANTED RELIEF PURSUANT TO TITLE 18, SECTION 925 (C) OF THE UNITED STATES CODE*; and*

(3) has not been committed to any detention, training, or correctional institution for juveniles for longer than one year after an adjudication of delinquency by a Juvenile Court; provided, however, that a person shall not be disqualified by virtue of this paragraph (3) if, at the time of the application, more than ten years has elapsed since his release from such institution; and

(4) has not been convicted of any offense involving the possession, use, or distribution of controlled dangerous substances; and is not presently an addict, an habitual user of any controlled dangerous substance or an alcoholic; and

(5) has in the judgment of the Superintendent not exhibited a propensity for violence or instability which may reasonably render his possession of a handgun a danger to himself or other law abiding persons; and

(6) has ~~in the judgment of the Superintendent~~ , BASED ON THE RESULTS OF INVESTIGATION, *good and substantial reason to wear, carry, or transport a handgun.* , PROVIDED HOWEVER, THAT THE PHRASE "GOOD AND SUBSTANTIAL REASON"

AS USED HEREIN SHALL BE DEEMED TO INCLUDE ~~THE~~ STATEMENT BY ANY APPLICANT ~~UNDER THIS SECTION~~ THAT SUCH PERMIT IS NECESSARY AS A REASONABLE PRECAUTION AGAINST APPREHENDED DANGER.

(b) The Superintendent may charge a non-refundable fee not to exceed ~~$25.00,~~ $15.00, *payable at the time an application for a permit or renewal of a permit is filed. All such fees collected by the Superintendent shall be credited to a special fund for the account of the Maryland State Police. The expenses of administering the provisions of this Section 36E, except for the per diem compensation and expenses of the Handgun Permit Review Board, shall be paid from the said special fund, but nothing shall preclude the Governor from including general fund appropriations in his Executive Budget for such purposes if the special fund is inadequate therefor.*

(c) A permit issued under this section shall expire on the last day of the holder's birth month following two years after its issuance. The permit may be renewed, upon application and payment of the renewal fee, for successive periods of two years each, if the applicant, at the time of application, possesses the qualifications set forth in this section for the issuance of a permit.

(d) The Superintendent may, in any permit issued under this section, limit the geographic area, circumstances, or times during the day, week, month, or year in or during which the permit is effective. THE SUPERINTENDENT MAY REDUCE THE COST OF THE PERMIT ACCORDINGLY, IF THE PERMIT IS GRANTED FOR ONE DAY ONLY AND AT ONE PLACE ONLY.

(e) Any person to whom a permit shall be issued or renewed shall carry such permit in his possession every time he carries, wears, or transports a handgun.

(f) The Superintendent may revoke any permit issued or renewed at any time upon a finding that (i) the holder no longer satisfies the qualifications set forth in subsection (a), or (ii) the holder of the permit has violated subsection (e) hereof. A person holding a permit which is revoked by the Superintendent shall return the permit to the Superintendent within ten days after receipt of notice of the revocation. Any person who fails to return a revoked permit in violation of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than $100 or more than $1,000, or be imprisoned for not more than one year, or both.

(g) (i) There is created a Handgun Permit Review Board as a separate agency within the Department of Public Safety and Correctional Services. The Board shall consist ~~of three members appointed from the general public by the Governor~~ WITH ~~THE CONSENT OF THE SENATE and serving at the pleasure of the Governor.~~ OF FIVE MEMBERS APPOINTED FROM THE GENERAL PUBLIC BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE OF MARYLAND AND SHALL HOLD OFFICE FOR TERMS OF THREE YEARS. THE MEMBERS SHALL HOLD OFFICE FOR A TERM OF ONE, TWO, AND THREE YEARS, RESPECTIVELY, TO BE DESIGNATED BY THE GOVERNOR. AFTER THE FIRST APPOINTMENT, THE GOVERNOR SHALL ANNUALLY APPOINT A MEMBER OF THE BOARD IN THE PLACE OF THE MEMBER WHOSE TERM SHALL EXPIRE. MEMBERS OF THE BOARD SHALL

BE ELIGIBLE FOR REAPPOINTMENT. IN CASE OF ANY VACANCY IN THE BOARD, THE GOVERNOR SHALL FILL THE VACANCY BY THE APPOINTMENT OF A MEMBER TO SERVE UNTIL THE EXPIRATION OF THE TERM FOR WHICH THE PERSON HAD BEEN APPOINTED. *Each member of the Board shall receive per diem compensation as provided in the budget for each day actually engaged in the discharge of his official duties as well as reimbursement for all necessary and proper expenses. (ii) Any person whose application for a permit or renewal of a permit has been rejected or whose permit has been revoked or limited may request the Board to review the decision of the Superintendent by filing a written request for review with the Board within ten days after receipt of written notice of the Superintendent's action. The Board shall either sustain, reverse, or modify the decision of the Superintendent upon a review of the record, or conduct a hearing within thirty days after receipt of the request. (iii) Any hearing and any subsequent proceedings of judicial review shall be conducted in accordance with the provisions of the Administrative Procedure Act; provided, however, that no court of this State shall order the issuance or renewal of a permit or alter any limitations on a permit pending final determination of the proceeding.*

(h) Notwithstanding any other provision of this subheading, the following persons may, to the extent authorized prior to the effective date of this subtitle and subject to the conditions specified in this paragraph and paragraph (i) hereof continue to wear, carry, or transport a handgun without a permit:

(1) holders of Special Police Commissions issued under Sections 60 to 70 of Article 41 of the Annotated Code of Maryland, while actually on duty on the property for which the Commission was issued or while travelling to or from such duty;

(2) uniformed security guards ~~or~~, SPECIAL RAILWAY POLICE, AND *watchmen who have been cleared for such employment by the Maryland State Police, while in the course of their employment or while travelling to or from the place of employment;*

(3) guards in the employ of a bank, savings and loan association, building and loan association, or express or armored car agency, while in the course of their employment or while travelling to or from the place of employment;

(4) private detectives and employees of private detectives previously licensed under former Section 90A of Article 56 of the Annotated Code of Maryland, while in the course of their employment, or while travelling to or from the place of employment.

(i) Each person referred to in paragraph (h) hereof shall, within one year after the effective date of this subtitle, make application for a permit as provided in this section. The right to wear, carry, or transport a handgun provided for in paragraph (h) hereof shall terminate at the expiration of one year after the effective date of this subtitle if no such application is made, or immediately upon notice to the applicant that his application for a permit has not been approved.

(J) AS USED IN THIS SECTION, SUPERINTENDENT MEANS THE SUPERINTENDENT OF THE MARYLAND STATE

POLICE, ACTING DIRECTLY OR THROUGH HIS DULY AUTHORIZED OFFICERS AND AGENTS.

(K) IT IS UNLAWFUL FOR A PERSON TO WHOM A PERMIT HAS BEEN ISSUED OR RENEWED TO CARRY, WEAR, OR TRANSPORT A HANDGUN WHILE HE IS IN AN INTOXICATED CONDITION. A PERSON VIOLATING THIS SUBSECTION IS GUILTY OF A MISDEMEANOR, AND UPON CONVICTION HE SHALL BE FINED $1,000 OR BE IMPRISONED FOR NOT MORE THAN ONE YEAR OR BOTH.

36F. Definitions.

~~*(a) The term "handgun" as used in this subheading shall include any pistol, revolver, or other firearm capable of being concealed on a person, except* IT SHALL NOT INCLUDE A RIFLE OR *antique firearms possessed as curiosities, ornaments, or for their historical significance or value and which (i) are incapable of being fired or discharged, or (ii) do not fire cartridge ammunition, or (iii) fire ammunition which is not commercially available.* WERE MANUFACTURED IN OR BEFORE 1898 AND ANY REPLICA OF ANY SUCH ANTIQUE FIREARM IF SUCH REPLICA (1) IS NOT DESIGNED OR REDESIGNED FOR USING RIM-FIRE OR CONVENTIONAL CENTER-FIRE FIXED AMMUNITION, OR (2) USES RIM-FIRE OR CONVENTIONAL CENTER-FIRE FIXED AMMUNITION WHICH IS NO LONGER MANUFACTURED IN THE UNITED STATES AND WHICH IS NOT READILY AVAILABLE IN THE ORDINARY CHANNELS OF COMMERCIAL TRADE.~~

(A) THE TERM "HANDGUN" AS USED IN THIS SUBHEADING SHALL INCLUDE ANY PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED ON THE PERSON, INCLUDING A SHORT-BARRELED SHOTGUN AND A SHORT BARRELED RIFLE AS THESE TERMS ARE DEFINED BELOW, EXCEPT IT SHALL NOT INCLUDE A SHOTGUN, RIFLE OR ANTIQUE FIREARM AS THOSE TERMS ARE DEFINED BELOW.

(1) THE TERM "ANTIQUE FIREARM" MEANS—

(A) ANY FIREARM (INCLUDING ANY FIREARM WITH A MATCHLOCK, FLINTLOCK, PERCUSSION CAP, OR SIMILAR TYPE OF IGNITION SYSTEM) MANUFACTURED IN OR BEFORE 1898; AND

(B) ANY REPLICA, OR ANY FIREARM DESCRIBED IN SUBPARAGRAPH (A) IF SUCH REPLICA—

(I) IS NOT DESIGNED OR REDESIGNED FOR USING RIMFIRE OR CONVENTIONAL CENTERFIRE FIXED AMMUNITION, OR

(II) USES RIMFIRE OR CONVENTIONAL CENTERFIRE FIXED AMMUNITION WHICH IS NO LONGER MANUFACTURED IN THE UNITED STATES AND WHICH IS NOT READILY AVAILABLE IN THE ORDINARY CHANNELS OF COMMERCIAL TRADE.

(2) THE TERM "RIFLE" MEANS A WEAPON DESIGNED OR REDESIGNED, MADE OR REMADE, AND INTENDED TO

BE FIRED FROM THE SHOULDER AND DESIGNED OR RE-DESIGNED AND MADE OR REMADE TO USE THE ENERGY OF THE EXPLOSIVE IN A FIXED METALLIC CARTRIDGE TO FIRE ONLY A SINGLE PROJECTILE THROUGH A RIFLED BORE FOR EACH SINGLE PULL OF THE TRIGGER.

(3) THE TERM "SHORT-BARRELED SHOTGUN" MEANS A SHOTGUN HAVING ONE OR MORE BARRELS LESS THAN EIGHTEEN INCHES IN LENGTH AND ANY WEAPON MADE FROM A SHOTGUN (WHETHER BY ALTERATION, MODIFICATION, OR OTHERWISE) IF SUCH WEAPON AS MODIFIED HAS AN OVERALL LENGTH OF LESS THAN TWENTY-SIX INCHES.

(4) THE TERM "SHORT-BARRELED RIFLE" MEANS A RIFLE HAVING ONE OR MORE BARRELS LESS THAN SIXTEEN INCHES IN LENGTH AND ANY WEAPON MADE FROM A RIFLE (WHETHER BY ALTERATION, MODIFICATION, OR OTHERWISE) IF SUCH WEAPON, AS MODIFIED, HAS AN OVERALL LENGTH OF LESS THAN TWENTY-SIX INCHES.

(5) THE TERM "SHOTGUN" MEANS A WEAPON DESIGNED OR REDESIGNED, MADE OR REMADE, AND INTENDED TO BE FIRED FROM THE SHOULDER AND DESIGNED OR RE-DESIGNED AND MADE OR REMADE TO USE THE ENERGY OF THE EXPLOSIVE IN A FIXED SHOTGUN SHELL TO FIRE THROUGH A SMOOTH BORE EITHER A NUMBER OF BALL SHOT OR A SINGLE PROJECTILE FOR EACH SINGLE PULL OF THE TRIGGER.

(b) The term "vehicle" as used in this Act shall include any motor vehicle, as defined in Article 66½, Section 1-149 of the Annotated Code of Maryland, trains, aircraft, and vessels, except a vehicle owned by the United States government and operated by an agent or employee thereof in the course of his employment.

(c) The term "law enforcement personnel" shall mean any full-time member of a police force or other agency of the United States, a State, a county, a municipality or other political subdivision who is responsible for the prevention and detection of crime and the enforcement of the laws of the United States, a State, or of a county or municipality or other political subdivision of a State. THE TERM SHALL ALSO INCLUDE ANY PART TIME MEMBER OF A POLICE FORCE OF A COUNTY OR MUNICIPALITY WHO IS CERTIFIED BY THE COUNTY OR MUNICIPALITY AS BEING TRAINED AND QUALIFIED IN THE USE OF HANDGUNS.

SEC. 4. *Be it further enacted,* That Section 594B (e) of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "II. Venue, Procedure and Sentence," subheading "Arrests" be and it is hereby repealed and re-enacted, with amendments, to read as follows:

594B.

(e) The offenses referred to in subsection (d) of this section are:

(1) Those offenses specified in the following sections of Article 27, as they may be amended from time to time:

(i) Section 8 (relating to burning barracks, cribs, hay, corn, lumber, etc.; railway cars, watercraft, vehicles, etc.);

(ii) Section 11 (relating to setting fire while perpetrating crime);

(iii) Section 36 (relating to carrying or wearing weapon);

(iv) Section 111 (relating to destroying, injuring, etc., property of another);

(v) Section 297 (relating to possession of hypodermic syringes, etc., restricted);

(vi) Section 341 (relating to stealing goods worth less than $100.00);

(vii) Section 342 (relating to breaking into building with intent to steal);

(viii) The common-law crime of assault when committed with intent to do great bodily harm;

(ix) Sections 276 through 313D (relating to drugs and other dangerous substances) as they shall be amended from time to time; *and*

"(x) Section 36B (relating to handguns)".

SEC. 5. *Be it further enacted,* That Section 90A of Article 56 of the Annotated Code of Maryland (1968 Replacement Volume and 1971 Supplement), title "Licenses," subtitle "Private Detectives," subheading "Special permit to carry concealed weapon," be and it is hereby repealed.

[90A.

A special permit to carry a concealed weapon, as defined in Article 27, Section 36, may be issued by the Superintendent of the Maryland State Police to any person to whom a license has been issued in accordance with provisions of this subtitle, or any employee of any such licensee if such employee has been properly registered in accordance with the provisions of Section 81 of this subtitle, provided that the Superintendent, or his delegate, first finds that such licensee or employee:

(1) Is of good character; and

(2) Has not been convicted of a felony; and

(3) Possesses such mental and physical qualities as the Superintendent may determine necessary.

Any special permit issued pursuant to this section may be revoked by the Superintendent of the Maryland State Police at any time.]

SEC. 6. *Be it further enacted,* That all restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing, carrying, or transporting of handguns are superseded by this Act, and the State of Maryland hereby preempts the right of the political subdivisions to regulate said matters.

SEC. 7. *Be it further enacted,* That if any provision of this Act or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision or application.

SEC. 8. *Be it further enacted,* That all laws or parts of laws, public general or public local, inconsistent with the provisions of this Act are repealed to the extent of the inconsistency.

SEC. 9. *And be it further enacted,* That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of the public health and safety, and having been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two houses of the General Assembly, the same shall take effect from the date of its passage.

Approved:

.....

Governor.

.....

President of the Senate.

.....

Speaker of the House of Delegates.

Sealed with the Great Seal and presented to the Governor, for his approval this..... day of.....

at.....o'clock, ...M.

.....

Secretary.

EMERGENCY BILL

Senate Bill No. 205.

Introduced by the President (Administration Bill).

Read and Examined by Proof Reader:

.....
Proof Reader.

.....
Proof Reader.

Sealed with the Great Seal and presented to the Governor, for his approval this ..... day of .....

at ..... o'clock, ... M.

.....
Secretary.

APPROVED
BY THE GOVERNOR

CHAPTER 13

MAR 27 '72

AN ACT to repeal and re-enact, with amendments, Section 36 of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," subheading ~~"Concealed Weapons";~~ "CARRYING OR WEARING WEAPON"; to repeal and re-enact, with amendments, Section 36A (c) of said Article and title of the said Annotated Code of Maryland (1971 Replacement Volume and 1971

EXPLANATION: *Italics indicate new matter added to existing law.*
[Brackets**]** indicate matter stricken from existing law.
CAPITALS indicate amendments to bill.
~~Strike out~~ indicates matter stricken out of bill.

Supplement), subtitle "I. Crimes and Punishments," subheading "Carrying Deadly Weapons on Public School Property"; to add new Sections 36B, 36C, 36D, 36E, and 36F to Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," to follow immediately after Section 36A of said article, title and subtitle, under the new subheading "Handguns"; to repeal and re-enact, with amendments, Section 594B (e) of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "II. Venue, Procedure and Sentence," subheading "Arrests;" to repeal Section 90A of Article 56 of the Annotated Code of Maryland (1968 Replacement Volume and 1971 Supplement), title "Licenses," subtitle "Private Detectives;" to exclude handguns from the provisions of Section 36 of Article 27; to amend the penalties for carrying a handgun on public school property; to make unlawful, generally regulate, and provide penalties for the wearing, carrying, or transporting of handguns; TO MAKE UNLAWFUL THE WEARING, CARRYING, OR TRANSPORTING OF HANDGUNS BY A PERSON WITH A PERMIT WHILE HE IS ~~IN AN INTOXICATED CONDITION~~ UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND TO PROVIDE PENALTIES THEREFOR; to make the use of a handgun in the commission of a felony or crime of violence a misdemeanor and to provide penalties therefor; to allow law enforcement officers to conduct searches for handguns under certain circumstances; to allow law enforcement officers to arrest persons for violating Section 36B of said article pursuant to the provisions of Section 594B(e) of Article 27; to repeal provisions for the issuance of permits to private detectives to carry concealed weapons; TO CORRECT CERTAIN OBSOLETE LANGUAGE AND REFERENCES; TO PROVIDE FOR SEIZURES, FORFEITURES AND PROCEDURES RELATING THERETO; and relating generally to the regulation of handguns.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 36 of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," subheading "Concealed Weapons," be and it is hereby repealed and re-enacted, with amendments, to read as follows:

36.

(a) Every person who shall wear or carry any [pistol,] dirk knife, bowie knife, switchblade knife, sandclub, metal knuckles, razor, or any other dangerous or deadly weapon of any kind, whatsoever (penknives without switchblade *and handguns,* excepted) concealed upon or about his person, and every person who shall wear or carry any such weapon openly with the intent or purpose of injuring any person in any unlawful manner, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one thousand ($1,000.00) dollars or be imprisoned in jail, or sentenced to the Maryland Department of Correction for not more than three years; and in case of conviction, if it shall appear from the evidence that such weapon was carried, concealed as aforesaid or openly, with the deliberate purpose of injuring the person or destroying the life of an-

other, the court [, or justice of the peace, presiding in the case,] shall impose the highest sentence of imprisonment hereinbefore prescribed. In Cecil, Anne Arundel, Talbot, Harford, Caroline, Prince George's, Montgomery, Washington, Worcester and Kent counties it shall also be unlawful and a misdemeanor, punishable as above set forth, for any minor to carry any dangerous or deadly weapon, *other than a handgun*, between one hour after sunset and one hour before sunrise, whether concealed or not, except while on a bona fide hunting trip, or except while engaged in or on the way to or returning from a bona fide trap shoot, sport shooting event, or any organized civic or military activity.

SEC. 2. *Be it enacted by the General Assembly of Maryland*, That Section 36A (c) of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," subheading "Carrying Deadly Weapon on Public School Property," be and it is hereby repealed and re-enacted, with amendments, to read as follows:

36A.

(c) Any person who violates this section shall, upon conviction, be guilty of a misdemeanor and shall be sentenced to pay a fine of no more than one thousand dollars ($1,000.00), or shall be sentenced to the Maryland Department of Correction for a period of not more than three (3) years. *Any such person who shall be found to carry a handgun in violation of this Section 36A, shall be sentenced as provided in Section 36B of this article.*

SEC. 3. *Be it enacted by the General Assembly of Maryland*, That new Sections 36B, 36C, 36D, 36E, and 36F be and they are hereby added to Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," to follow immediately after Section 36A thereof and to be under the new subheading "Handguns" and to read as follows:

36B. Wearing, carrying or transporting handguns.

(a) Declaration of Policy. The General Assembly of Maryland hereby finds and declares that:

(i) there has, in recent years, been an alarming increase in the number of violent crimes perpetrated in Maryland, and a high percentage of those crimes involve the use of handguns;

(ii) the result has been a substantial increase in the number of persons killed or injured which is traceable, in large part, to the carrying of handguns on the streets and public ways by persons inclined to use them in criminal activity;

(iii) the laws currently in force have not been effective in curbing the more frequent use of handguns in perpetrating crime; and

(iv) further regulations on the wearing, carrying, and transporting of handguns are necessary to preserve the peace and tranquility of the State and to protect the rights and liberties of its citizens.

(b) Unlawful wearing, carrying, or transporting of handguns. Any person who shall wear, carry, or transport any handgun, whether concealed or open, upon or about his person, and any person who shall wear, carry or KNOWINGLY *transport any handgun, whether concealed or open, in any vehicle traveling upon the public roads, highways, waterways, or airways or upon roads or parking lots generally used by the public in this State shall be guilty of a misdemeanor,* ~~*and on conviction thereof,*~~ ; AND IT SHALL BE A REBUTTABLE PRESUMPTION THAT THE PERSON IS KNOWINGLY TRANSPORTING THE HANDGUN; AND ON CONVICTION OF THE MISDEMEANOR *shall be fined or imprisoned as follows:*

(i) if the person has not previously been convicted of unlawfully wearing, carrying or transporting a handgun in violation of this Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A of this article, he shall be fined not less than two hundred and fifty ($250.00) dollars, nor more than twenty five hundred ($2,500.00) dollars, or be imprisoned in jail or sentenced to the Maryland Division of Correction for a term of not less than 30 days nor more than three years, or both; provided, however, that if it shall appear from the evidence that the handgun was worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than 90 days.

(ii) if the person has previously been once convicted of unlawfully wearing, carrying, or transporting a handgun in violation of Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A of this article, he shall be sentenced to the Maryland Division of Correction for a term of not less than 1 year nor more than 10 years, and it is mandatory upon the Court to impose no less than the minimum sentence of 1 year; provided, however, that if it shall appear from the evidence that the handgun was worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than three years.

(iii) if the person has previously been convicted more than once of unlawfully wearing, carrying, or transporting a handgun in violation of Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A of this article, or any combination thereof, he shall be sentenced to the Maryland Division of Correction for a term of not less than three years nor more than 10 years, and it is mandatory upon the Court to impose no less than the minimum sentence of three years; provided, however, that if it shall appear from the evidence that the handgun was worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than 5 years.

(iv) If it shall appear from the evidence that any handgun referred to in subsection (a) hereof was carried, worn, or transported with the deliberate purpose of injuring or killing another person, the Court shall impose a sentence of imprisonment of not less than five years.

~~(v) Notwithstanding any other provision of law to the contrary, including the provisions of Section 643 of this article, (a) no court shall enter a judgment for less than the minimum mandatory sentence provided for in this subheading in those cases for which a minimum mandatory sentence is specified in this subheading; (b) no court shall suspend a minimum mandatory sentence provided for in this subheading; (c) no court shall enter a judgment of probation before verdict or probation without verdict with respect to any case arising under this subheading; and (d) no court shall enter a judgment of probation after verdict with respect to any case arising under this subheading which would have the effect of reducing the actual period of imprisonment or the actual amount of the fine prescribed in this subheading as a mandatory minimum sentence.~~

(c) Exceptions.

(1) Nothing in this section shall prevent the wearing, carrying, or transporting of a handgun by (i) law enforcement personnel of the United States, or of this State, or of any county or city of this State, (ii) members of the armed forces of the United States or of the National Guard while on duty or traveling to or from duty; or (iii) law enforcement personnel of some other state or subdivision thereof temporarily in this State on official business; (iv) any jailer, prison guard, warden, or guard or keeper at any penal, correctional or detention institution in this State; OR (V) SHERIFFS AND TEMPORARY OR FULL-TIME SHERIFFS' DEPUTIES, AS TO ALL OF WHOM THIS EXCEPTION SHALL APPLY ONLY WHEN THEY ARE ON ACTIVE ASSIGNMENT ENGAGED IN LAW ENFORCEMENT; *provided, that any such person mentioned in this paragraph is duly authorized at the time and under the circumstances he is wearing, carrying, or transporting the weapon to wear, carry, or transport such weapon as part of his official equipment;*

(2) Nothing in this section shall prevent the wearing, carrying, or transporting of a handgun by any person to whom a permit to wear, carry, or transport any such weapon has been issued under Section 36E of this article.

(3) Nothing in this section shall prevent any person from carrying a handgun on his person or in any vehicle while transporting the same to or from the place of legal purchase or sale, OR BETWEEN BONA FIDE RESIDENCES OF THE INDIVIDUAL, ~~OR BETWEEN HIS BONA FIDE RESIDENCE AND HIS PLACE OF BUSINESS,~~ OR BETWEEN HIS BONA FIDE RESIDENCE AND HIS PLACE OF BUSINESS, IF THE BUSINESS IS OPERATED AND SUBSTANTIALLY OWNED BY THE INDIVIDUAL, *or to or from any bona fide repair shop. Nothing in this section shall prevent any person from wearing, carrying, or transporting a handgun ~~normally~~ used in connection with a target shoot,* FORMAL OR INFORMAL *target practice, sport shooting event, ~~hunt,~~* ~~OR TRAP,~~ HUNTING, TRAPPING, DOG OBEDIENCE TRAINING CLASS OR SHOW *or any organized ~~civic or~~ military activity while engaged in, on the way to, or returning from any such activity. However, while travelling to or from any such place or event referred to in this paragraph, the handgun shall be unloaded and carried in an enclosed case or enclosed holster.*

~~*(4) Nothing in this section shall prevent a person from having in his presence any handgun within the confines of any dwelling, business establishment, or real estate owned or leased by him.*~~

(4) NOTHING IN THIS SECTION SHALL PREVENT A PERSON FROM WEARING, CARRYING, OR TRANSPORTING A HANDGUN WITHIN THE CONFINES OF REAL ESTATE OWNED OR LEASED BY HIM OR UPON WHICH HE RESIDES OR WITHIN THE CONFINES OF A BUSINESS ESTABLISHMENT OWNED OR LEASED BY HIM. NOTHING IN THIS SECTION SHALL PREVENT A SUPERVISORY EMPLOYEE FROM WEARING, CARRYING, OR TRANSPORTING A HANDGUN WITHIN THE CONFINES OF A BUSINESS ESTABLISHMENT IN WHICH HE IS EMPLOYED DURING SUCH TIME AS HE IS ACTING IN THE COURSE OF HIS EMPLOYMENT AND HAS BEEN AUTHORIZED TO WEAR, CARRY, OR TRANSPORT THE HANDGUN BY THE OWNER OR MANAGER OF THE BUSINESS ESTABLISHMENT.

(d) Unlawful use of handgun in commission of crime. Any person who shall use a handgun in the commission of any felony or any crime of violence as defined in Section 441 of this Article, shall be guilty of a separate misdemeanor and on conviction thereof shall, in addition to any other sentence imposed by virtue of commission of said felony or misdemeanor, be sentenced to the Maryland Division of Correction for a term of not less than five nor more than fifteen years, and it is mandatory upon the court to impose no less than the minimum sentence of five years.

~~(E) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, INCLUDING THE PROVISIONS OF SECTION 643 OF THIS ARTICLE, EXCEPT WITH RESPECT TO A SENTENCE PRESCRIBED UNDER SUBSECTION (B) (I) HEREOF FOR WEARING, CARRYING, OR TRANSPORTING A HANDGUN, IN VIOLATION OF SECTION 36B. (A) NO COURT SHALL ENTER A JUDGMENT FOR LESS THAN THE MINIMUM MANDATORY SENTENCE PROVIDED FOR IN THIS SUBHEADING IN THOSE CASES FOR WHICH A MINIMUM MANDATORY SENTENCE IS SPECIFIED IN THIS SUBHEADING; (B) NO COURT SHALL SUSPEND A MINIMUM MANDATORY SENTENCE PROVIDED FOR IN THIS SUBHEADING; (C) NO COURT SHALL ENTER A JUDGMENT OF PROBATION BEFORE VERDICT OR PROBATION WITHOUT VERDICT WITH RESPECT TO ANY CASE ARISING UNDER THIS SUBHEADING; AND (D) NO COURT SHALL ENTER A JUDGMENT OF PROBATION AFTER VERDICT WITH RESPECT TO ANY CASE ARISING UNDER THIS SUBHEADING WHICH WOULD HAVE THE EFFECT OF REDUCING THE ACTUAL PERIOD OF IMPRISONMENT OR THE ACTUAL AMOUNT OF THE FINE PRESCRIBED IN THIS SUBHEADING AS A MANDATORY MINIMUM SENTENCE.~~

(E) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, INCLUDING THE PROVISIONS OF SECTION 643 OF THIS ARTICLE, (1) EXCEPT WITH RESPECT TO A SENTENCE PRESCRIBED IN SUBSECTION (B) (I) HEREOF, NO COURT SHALL ENTER A JUDGMENT FOR LESS THAN THE MANDATORY MINIMUM SENTENCE

PRESCRIBED IN THIS SUBHEADING IN THOSE CASES FOR WHICH A MANDATORY MINIMUM SENTENCE IS SPECIFIED IN THIS SUBHEADING; (2) EXCEPT WITH RESPECT TO A SENTENCE PRESCRIBED IN SUBSECTION (B) (I) HEREOF, NO COURT SHALL SUSPEND A MANDATORY MINIMUM SENTENCE PRESCRIBED IN THIS SUBHEADING; (3) EXCEPT WITH RESPECT TO A SENTENCE PRESCRIBED IN SUBSECTION (B) (I) HEREOF FOR WEARING, CARRYING, OR TRANSPORTING A HANDGUN IN VIOLATION OF SECTION 36B OTHER THAN ON PUBLIC SCHOOL PROPERTY, NO COURT SHALL ENTER A JUDGMENT OF PROBATION BEFORE OR WITHOUT VERDICT WITH RESPECT TO ANY CASE ARISING UNDER THIS SUBHEADING; AND (4) EXCEPT WITH RESPECT TO A SENTENCE PRESCRIBED IN SUBSECTION (B) (I) HEREOF NO COURT SHALL ENTER A JUDGMENT OF PROBATION AFTER VERDICT WITH RESPECT TO ANY CASE ARISING UNDER THIS SUBHEADING WHICH WOULD HAVE THE EFFECT OF REDUCING THE ACTUAL PERIOD OF IMPRISONMENT PRESCRIBED IN THIS SUBHEADING AS A MANDATORY MINIMUM SENTENCE.

36C. Seizure and Forfeiture.

(a) Property subject to seizure and forfeiture. The following items of property shall be subject to seizure and forfeiture, and, upon forfeiture, no property right shall exist in them:

(i) any handgun being worn, carried, or transported in violation of Section 36B of this article.

(ii) all ammunition or other parts of or appurtenances to any such handgun worn, carried, or transported by such person or found in the immediate vicinity of such handgun;

~~*(iii) any vehicle within which a handgun is transported in violation of Section 36B of this article; provided, however, that (A) no vehicle legitimately used as a common carrier shall be seized or forfeited under this section unless it shall appear that the owner or other person in charge of the vehicle was a consenting party or privy to a violation of Section 36B, and (B) no vehicle shall be seized or forfeited by reason of any act or omission established by the owner to have been committed or omitted by any person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or any State.*~~

(b) Procedure relating to seizure.

(i) any property subject to seizure under subsection (a) hereof may be seized by any duly authorized law enforcement officer, as an incident to an arrest or search and seizure.

(ii) any such officer seizing such property under this section shall either place the property under seal or remove the same to a location designated either by the Maryland State Police or by the law enforcement agency having jurisdiction in the locality.

~~*(iii) property seized under this section shall not be subject to replevin, but shall be deemed to be in custodia legis; provided, however,*~~

~~that upon petition~~ REQUEST ~~of any person other than a person who has been charged with a violation of Section 36B of this article and whose case is currently pending trial, the police authorities having custody of the seized property may return the seized property if convinced that (A) the petitioner is the owner of the property; (B) said petitioner did not know and should not have known that the property was being or would be worn, carried, transported, or used in violation of Section 36B of this article; and (C) the property is not needed as evidence in a pending criminal case. No handgun or ammunition shall be returned by the police authorities pursuant to this subsection without the written consent of the State's Attorney having jurisdiction over the case.~~

~~(c) Procedure relating to forfeiture.~~

~~(i) Upon conviction of any person for a violation of Section 36B of this article, any property subject to seizure, actually seized, and not returned pursuant to the provisions of this section shall be forfeited to the State. Any judgment of conviction entered by a court having jurisdiction shall also be deemed to be an order of forfeiture of such articles. If the judgment of conviction is by a jury, the court shall thereupon sua sponte immediately enter an order of forfeiture.~~

~~(ii) Notwithstanding the provisions of paragraph (c) (i) hereof, upon petition of any person other than the person convicted of violating Section 36B of this article filed prior to the judgment of conviction or within ten days thereafter, the Court may decline to order forfeiture or may strike any order of forfeiture and order the return of seized property if the petitioner shall prove, by a fair preponderance of the evidence that (A) the petitioner is the owner of the property; (B) said petitioner did not know and should not have known that the property was being or would be worn, carried, transported, or used in violation of Section 36B of this article; and (C) the property is not needed as evidence in any other pending criminal case.~~

(C) PROCEDURE RELATING TO FORFEITURE.

(1) UPON THE SEIZURE OF PROPERTY PURSUANT TO THIS SECTION, THE STATE'S ATTORNEY SHALL NOTIFY ANY OFFICIAL AGENCY WHICH REGISTERS SUCH PROPERTY OF THE SEIZURE AND SHALL REQUEST THE NAME AND ADDRESS OF THE OWNER THEREOF. IF, AS A RESULT OF SUCH INQUIRY, OR ANY OTHER INQUIRY WHICH HE MAY CONDUCT, THE STATE'S ATTORNEY DETERMINES THE NAME AND ADDRESS OF THE OWNER OF THE PROPERTY, HE SHALL NOTIFY THE OWNER BY CERTIFIED MAIL OF THE SEIZURE AND OF THE STATE'S ATTORNEY'S DETERMINATION OF WHETHER THE OWNER KNEW OR SHOULD HAVE KNOWN THAT THE PROPERTY WAS WORN, CARRIED, TRANSPORTED OR USED IN VIOLATION OF SECTION 36B.

(2) IF THE STATE'S ATTORNEY DETERMINES THAT THE OWNER NEITHER KNEW NOR SHOULD HAVE KNOWN OF THE USE OR INTENDED USE OF THE PROPERTY IN VIOLATION OF SECTION 36B, HE SHALL SURRENDER THE PROPERTY UPON REQUEST TO THE OWNER UNLESS HE DETER-

MINES THAT THE PROPERTY IS NEEDED AS EVIDENCE IN A PENDING CRIMINAL CASE, IN WHICH EVENT HE SHALL RETURN THE PROPERTY UPON THE FINAL CONCLUSION OF THE CASE OR CASES IN WHICH THE PROPERTY IS NEEDED AS EVIDENCE.

(3) IF THE STATE'S ATTORNEY DETERMINES THAT THE PROPERTY SHOULD BE FORFEITED TO THE STATE, HE SHALL PETITION THE CIRCUIT COURT OF THE APPROPRIATE SUBDIVISION IN THE NAME OF THE STATE OF MARYLAND AGAINST THE PROPERTY AS DESIGNATED BY MAKE, MODEL, YEAR, AND ~~MOTOR OR~~ SERIAL NUMBER OR OTHER IDENTIFYING CHARACTERISTIC. THE PETITION SHALL ALLEGE THE SEIZURE AND SET FORTH IN GENERAL TERMS THE CAUSES OR GROUNDS OF FORFEITURE. IT SHALL ALSO PRAY THAT THE PROPERTY BE CONDEMNED AS FORFEITED TO THE STATE AND DISPOSED OF ACCORDING TO LAW.

(4) IF THE OWNER OR OWNERS OF THE PROPERTY ARE UNKNOWN OR CANNOT BE FOUND, NOTICE OF THE SEIZURE AND INTENDED FORFEITURE PROCEEDINGS SHALL BE MADE BY PUBLICATION IN ONE OR MORE NEWSPAPERS PUBLISHED IN THE COUNTY IN WHICH THE ACTION IS BROUGHT IF THERE BE ONE SO PUBLISHED, AND IF NOT, IN A NEWSPAPER HAVING A SUBSTANTIAL CIRCULATION IN SAID COUNTY. IN BALTIMORE CITY THE NOTICE SHALL BE PUBLISHED IN ONE OR MORE OF THE DAILY NEWSPAPERS PUBLISHED IN THE CITY. THE NOTICE SHALL STATE THE SUBSTANCE AND OBJECT OF THE ORIGINAL PETITION AND GIVE NOTICE OF THE INTENDED FORFEITURE PROCEEDINGS.

(5) WITHIN 30 DAYS AFTER SERVICE OF THE NOTICE OF SEIZURE AND INTENDED FORFEITURE PROCEEDINGS OR WITHIN 30 DAYS AFTER THE DATE OF PUBLICATION, THE OWNER OF THE PROPERTY SEIZED MAY FILE AN ANSWER UNDER OATH TO THE PETITION.

~~(6) IF THE PROPERTY IS A VEHICLE AND THE OWNER THEREOF DESIRES TO OBTAIN POSSESSION THEREOF BEFORE THE HEARING ON THE PETITION FILED AGAINST THE VEHICLE, THE CLERK OF THE COURT WHERE THE PETITION IS FILED SHALL HAVE AN APPRAISAL MADE BY THE SHERIFF OF THE COUNTY OR CITY IN WHICH THE COURT IS LOCATED. THE SHERIFF SHALL PROMPTLY INSPECT AND RENDER AN APPRAISAL OF THE VALUE OF THE VEHICLE AND RETURN THE APPRAISAL, IN WRITING, UNDER OATH, TO THE CLERK OF THE COURT IN WHICH THE PROCEEDINGS ARE PENDING. UPON THE FILING OF THE APPRAISAL, THE OWNER MAY GIVE BOND PAYABLE TO THE STATE OF MARYLAND, IN AN AMOUNT EQUAL TO THE APPRAISED VALUE OF THE VEHICLE PLUS COURT COSTS WHICH MAY ACCRUE, WITH SECURITY TO BE APPROVED BY THE CLERK, AND CONDITIONED FOR PERFORMANCE ON THE FINAL JUDGMENT OF THE COURT AFTER THE HEARING ON THE PETITION, THE COURT DIRECTS THAT THE VEHICLE BE FORFEITED, JUDGMENT MAY THEREUPON BE ENTERED AGAINST THE~~

~~OBLIGORS ON THE BOND FOR THE PENALTY THEREOF, WITHOUT FURTHER OR OTHER PROCEEDING, TO BE DISCHARGED BY THE PAYMENT OF THE APPRAISED VALUE OF THE VEHICLE SO SEIZED AND FORFEITED AND COSTS, UPON WHICH JUDGMENT EXECUTION MAY ISSUE.~~

~~(7)~~ (6) ~~SUBJECT TO THE PROVISIONS PERMITTING POSTING OF A BOND,~~ THE COURT SHALL RETAIN CUSTODY OF THE SEIZED PROPERTY PENDING PROSECUTION OF THE PERSON ACCUSED OF VIOLATING SECTION 36B AND IN CASE SUCH PERSON BE FOUND GUILTY, THE PROPERTY SHALL REMAIN IN THE CUSTODY OF THE COURT UNTIL THE HEARING ON THE FORFEITURE IS HELD. THE HEARING SHALL BE SCHEDULED NO MORE THAN 30 DAYS AFTER CONVICTION OF THE DEFENDANT, AND REASONABLE NOTICE SHALL BE GIVEN TO THOSE PARTIES FILING AN ANSWER TO THE PETITION.

~~(8)~~ (7) IF NO TIMELY ANSWER IS FILED, THE COURT SHALL HEAR EVIDENCE UPON THE USE OF THE PROPERTY IN VIOLATION OF SECTION 36B AND SHALL UPON SATISFACTORY PROOF THEREOF, ORDER THE ~~VEHICLE~~ PROPERTY FORFEITED TO THE STATE.

~~(9)~~ (8) AT THE SCHEDULED HEARING, ANY OWNER WHO FILED A TIMELY ANSWER MAY SHOW BY COMPETENT EVIDENCE THAT THE PROPERTY WAS NOT IN FACT USED IN VIOLATION OF SECTION 36B OR THAT HE NEITHER KNEW NOR SHOULD HAVE KNOWN THAT THE ~~VEHICLE~~ PROPERTY WAS BEING, OR WAS TO BE SO USED. UPON THE DETERMINATION THAT THE PROPERTY WAS NOT SO USED, THE COURT SHALL ORDER THAT THE PROPERTY BE RELEASED TO THE OWNER.

~~(10)~~ (9) IF AFTER A FULL HEARING THE COURT DECIDES THAT THE PROPERTY WAS USED IN VIOLATION OF SECTION 36B OR THAT THE OWNER KNEW OR SHOULD HAVE KNOWN THAT THE PROPERTY WAS BEING, OR WAS TO BE SO USED, THE COURT SHALL ORDER THAT THE PROPERTY BE FORFEITED TO THE STATE.

~~(11) IN THE EVENT A BOND HAS BEEN FILED PURSUANT TO THIS SUBSECTION AND THE VEHICLE IS ORDERED FORFEITED, THE PROCEEDS OF THE BOND SHALL BE PAID TO THE STATE IN LIEU OF FORFEITURE OF THE VEHICLE.~~

(d) Whenever property is forfeited under this section, it shall be turned over to the State Secretary of General Services who may (i) order the property retained for official use of State agencies, or (ii) make such other disposition of the property as he may deem appropriate. ~~PROVIDED HOWEVER, THAT, IF THE FORFEITED PROPERTY IS A MOTOR VEHICLE THE STATE SECRETARY OF GENERAL SERVICES SHALL ORDER THAT THE MOTOR VEHICLE BE SOLD OR USED BY LAW ENFORCEMENT PERSONNEL FOR INVESTIGATIVE PURPOSES ONLY.~~

36D. Limited Search.

(a) Any law enforcement officer who, in the light of his observa-

tions, information, and experience, ~~may have~~ HAS *a reasonable belief that (i) a person may be wearing, carrying, or transporting a handgun in violation of Section 36B of this article, (ii) by virtue of his possession of a handgun, such person is or may be presently dangerous to the officer or to others, (iii) it is impracticable, under the circumstances, to obtain a search warrant; and (iv) it is necessary for the officer's protection or the protection of others to take swift measures to discover whether such person is, in fact, wearing, carrying, or transporting a handgun, such officer may*

(1) approach the person and identify himself as a law enforcement officer;

(2) request the person's name and address, and, if the person is in a vehicle, his license to operate the vehicle, and the vehicle's registration; and

(3) ask such questions and request such explanations as may be reasonably calculated to determine whether the person is, in fact, unlawfully wearing, carrying, or transporting a handgun in violation of Section 36B; and, if the person does not give an explanation which dispels~~, in the officers' mind,~~ the reasonable ~~suspicion~~ BELIEF *which he had, he may*

(4) conduct a search of the person, limited to a patting or frisking of the person's clothing in search of a handgun~~;~~ . THE LAW ENFORCEMENT OFFICER IN ACTING UNDER THIS SECTION SHALL DO SO WITH DUE REGARD TO ALL CIRCUMSTANCES OF THE OCCASION, INCLUDING BUT NOT LIMITED TO THE AGE, APPEARANCE, PHYSICAL CONDITION, MANNER, AND SEX OF THE PERSON APPROACHED.

(b) In the event that the officer discovers the person to be wearing, carrying, or transporting a handgun, he may demand that the person produce evidence that he is entitled to so wear, carry, or transport the handgun pursuant to Section 36B (c) of this article. If the person is unable to produce such evidence, the officer may then seize the handgun and arrest the person.

(c) Nothing in this section shall be construed to limit the right of any law enforcement officer to make any other type of search, seizure, and arrest which may be permitted by law, and the provisions hereof shall be in addition to and not in substitution of or limited by the provisions of Section 594B of this article.

~~*(d) No law enforcement officer conducting a search pursuant to the provisions of this Section 36D shall be liable for damages to the person searched unless said person shall prove by a fair preponderance of the evidence, that the officer acted without reasonable grounds for suspicion and with malice.*~~

(D) ANY LAW ENFORCEMENT OFFICER SUED IN A CIVIL ACTION FOR CONDUCTING A SEARCH OR SEIZURE PURSUANT TO THIS SECTION WHICH IS ALLEGED TO BE UNREASONABLE AND UNLAWFUL SHALL, UPON HIS REQUEST, BE DEFENDED IN SAID ACTION AND ANY APPEALS THEREFROM, BY THE ATTORNEY GENERAL.

(E) EVERY LAW ENFORCEMENT OFFICER WHO CONDUCTS A SEARCH OR SEIZURE PURSUANT TO THIS SEC-

TION SHALL, WITHIN TWENTY-FOUR HOURS AFTER SUCH SEARCH OR SEIZURE, FILE A WRITTEN REPORT WITH THE LAW ENFORCEMENT AGENCY BY WHICH HE IS EMPLOYED DESCRIBING ~~THE SEARCH OR SEIZURE AND THE CIRCUMSTANCES THEREOF~~ THE CIRCUMSTANCES SURROUNDING THE SEARCH OR SEIZURE AND THE REASONS THEREFOR ON A FORM PRESCRIBED BY THE SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES. SUCH REPORT SHALL INCLUDE THE NAME OF THE PERSON SEARCHED. A COPY OF ALL SUCH REPORTS SHALL BE SENT TO THE SUPERINTENDENT OF THE MARYLAND STATE POLICE.

36E. Permits.

(a) A permit to carry a handgun ~~*may*~~ SHALL *be issued* WITHIN A REASONABLE TIME *by the Superintendent of the Maryland State Police, upon application under oath therefor, to any person whom he finds:*

(1) is twenty-one years of age or older; and

(2) has not been convicted of a felony or of a misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted of such a crime, has been pardoned OR HAS BEEN GRANTED RELIEF PURSUANT TO TITLE 18, SECTION 925 (C) OF THE UNITED STATES CODE*; and*

(3) has not been committed to any detention, training, or correctional institution for juveniles for longer than one year after an adjudication of delinquency by a Juvenile Court; provided, however, that a person shall not be disqualified by virtue of this paragraph (3) if, at the time of the application, more than ten years has elapsed since his release from such institution; and

(4) has not been convicted of any offense involving the possession, use, or distribution of controlled dangerous substances; and is not presently an addict, an habitual user of any controlled dangerous substance NOT UNDER LEGITIMATE MEDICAL DIRECTION *or an alcoholic; and*

(5) has ~~*in the judgment of the Superintendent*~~ , BASED ON THE RESULTS OF INVESTIGATION, *not exhibited a propensity for violence or instability which may reasonably render his possession of a handgun a danger to himself or other law abiding persons; and*

(6) has ~~*in the judgment of the Superintendent*~~ , BASED ON THE RESULTS OF INVESTIGATION, *good and substantial reason to wear, carry, or transport a handgun.* , PROVIDED HOWEVER, THAT THE PHRASE "GOOD AND SUBSTANTIAL REASON" AS USED HEREIN SHALL BE DEEMED TO INCLUDE ~~THE STATEMENT BY ANY APPLICANT UNDER THIS SECTION~~ A FINDING THAT SUCH PERMIT IS NECESSARY AS A REASONABLE PRECAUTION AGAINST APPREHENDED DANGER.

(b) The Superintendent may charge a non-refundable fee not to exceed ~~*$25.00,*~~ $15.00, *payable at the time an application for a permit or renewal of a permit is filed. All such fees collected by the Superintendent shall be credited to a special fund for the account of the*

Maryland State Police. The expenses of administering the provisions of this Section 36E, except for the per diem compensation and expenses of the Handgun Permit Review Board, shall be paid from the said special fund, but nothing shall preclude the Governor from including general fund appropriations in his Executive Budget for such purposes if the special fund is inadequate therefor.

(c) A permit issued under this section shall expire on the last day of the holder's birth month following two years after its issuance. The permit may be renewed, upon application and payment of the renewal fee, for successive periods of two years each, if the applicant, at the time of application, possesses the qualifications set forth in this section for the issuance of a permit.

(d) The Superintendent may, in any permit issued under this section, limit the geographic area, circumstances, or times during the day, week, month, or year in or during which the permit is effective. THE SUPERINTENDENT MAY REDUCE THE COST OF THE PERMIT ACCORDINGLY, IF THE PERMIT IS GRANTED FOR ONE DAY ONLY AND AT ONE PLACE ONLY.

(e) Any person to whom a permit shall be issued or renewed shall carry such permit in his possession every time he carries, wears, or transports a handgun. A PERMIT ISSUED PURSUANT TO THIS SECTION SHALL BE VALID FOR ANY HANDGUN LEGALLY IN THE POSSESSION OF THE PERSON TO WHOM THE PERMIT WAS ISSUED.

(f) The Superintendent may revoke any permit issued or renewed at any time upon a finding that (i) the holder no longer satisfies the qualifications set forth in subsection (a), or (ii) the holder of the permit has violated subsection (e) hereof. A person holding a permit which is revoked by the Superintendent shall return the permit to the Superintendent within ten days after receipt of notice of the revocation. Any person who fails to return a revoked permit in violation of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than $100 or more than $1,000, or be imprisoned for not more than one year, or both.

(g) (i) There is created a Handgun Permit Review Board as a separate agency within the Department of Public Safety and Correctional Services. The Board shall consist ~~of three members appointed from the general public by the Governor~~ WITH ~~THE CONSENT OF THE SENATE~~ *and ~~serving at the pleasure of the Governor.~~* OF FIVE MEMBERS APPOINTED FROM THE GENERAL PUBLIC BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE OF MARYLAND AND SHALL HOLD OFFICE FOR TERMS OF THREE YEARS. THE MEMBERS SHALL HOLD OFFICE FOR A TERM OF ONE, TWO, AND THREE YEARS, RESPECTIVELY, TO BE DESIGNATED BY THE GOVERNOR. AFTER THE FIRST APPOINTMENT, THE GOVERNOR SHALL ANNUALLY APPOINT A MEMBER OF THE BOARD IN THE PLACE OF THE MEMBER WHOSE TERM SHALL EXPIRE. MEMBERS OF THE BOARD SHALL BE ELIGIBLE FOR REAPPOINTMENT. IN CASE OF ANY VACANCY IN THE BOARD, THE GOVERNOR SHALL FILL THE VACANCY BY THE APPOINTMENT OF A MEMBER TO SERVE UNTIL THE EXPIRATION OF THE TERM FOR WHICH THE PERSON HAD BEEN APPOINTED. *Each mem-*

ber of the Board shall receive per diem compensation as provided in the budget for each day actually engaged in the discharge of his official duties as well as reimbursement for all necessary and proper expenses. (ii) Any person whose application for a permit or renewal of a permit has been rejected or whose permit has been revoked or limited may request the Board to review the decision of the Superintendent by filing a written request for review with the Board within ten days after receipt of written notice of the Superintendent's action. The Board shall either sustain, reverse, or modify the decision of the Superintendent upon a review of the record, or conduct a hearing within thirty days after receipt of the request. (iii) Any hearing and any subsequent proceedings of judicial review shall be conducted in accordance with the provisions of the Administrative Procedure Act; provided, however, that no court of this State shall order the issuance or renewal of a permit or alter any limitations on a permit pending final determination of the proceeding. (IV) ANY PERSON WHOSE APPLICATION FOR A PERMIT OR RENEWAL OF A PERMIT HAS NOT BEEN ACTED UPON BY THE SUPERINTENDENT WITHIN 60 DAYS AFTER THE APPLICATION WAS SUBMITTED, MAY REQUEST THE BOARD FOR A HEARING BY FILING A WRITTEN REQUEST FOR SUCH A HEARING WITH THE BOARD.

(h) Notwithstanding any other provision of this subheading, the following persons may, to the extent authorized prior to the effective date of this subtitle and subject to the conditions specified in this paragraph and paragraph (i) hereof continue to wear, carry, or transport a handgun without a permit:

(1) holders of Special Police Commissions issued under Sections 60 to 70 of Article 41 of the Annotated Code of Maryland, while actually on duty on the property for which the Commission was issued or while travelling to or from such duty;

(2) uniformed security guards ~~*or*~~*,* SPECIAL RAILWAY POLICE, AND *watchmen who have been cleared for such employment by the Maryland State Police, while in the course of their employment or while travelling to or from the place of employment;*

(3) guards in the employ of a bank, savings and loan association, building and loan association, or express or armored car agency, while in the course of their employment or while travelling to or from the place of employment;

(4) private detectives and employees of private detectives previously licensed under former Section 90A of Article 56 of the Annotated Code of Maryland, while in the course of their employment, or while travelling to or from the place of employment.

(i) Each person referred to in paragraph (h) hereof shall, within one year after the effective date of this subtitle, make application for a permit as provided in this section. SUCH APPLICATION SHALL INCLUDE EVIDENCE SATISFACTORY TO THE SUPERINTENDENT OF THE MARYLAND STATE POLICE THAT THE APPLICANT IS TRAINED AND QUALIFIED IN THE USE OF HANDGUNS. *The right to wear, carry, or transport a handgun provided for in paragraph (h) hereof shall terminate at the expiration of one year after the effective date of this subtitle if no such*

FIXED AMMUNITION WHICH IS NO LONGER MANUFACTURED IN THE UNITED STATES AND WHICH IS NOT READILY AVAILABLE IN THE ORDINARY CHANNELS OF COMMERCIAL TRADE.

(2) THE TERM "RIFLE" MEANS A WEAPON DESIGNED OR REDESIGNED, MADE OR REMADE, AND INTENDED TO BE FIRED FROM THE SHOULDER AND DESIGNED OR REDESIGNED AND MADE OR REMADE TO USE THE ENERGY OF THE EXPLOSIVE IN A FIXED METALLIC CARTRIDGE TO FIRE ONLY A SINGLE PROJECTILE THROUGH A RIFLED BORE FOR EACH SINGLE PULL OF THE TRIGGER.

(3) THE TERM "SHORT-BARRELED SHOTGUN" MEANS A SHOTGUN HAVING ONE OR MORE BARRELS LESS THAN EIGHTEEN INCHES IN LENGTH AND ANY WEAPON MADE FROM A SHOTGUN (WHETHER BY ALTERATION, MODIFICATION, OR OTHERWISE) IF SUCH WEAPON AS MODIFIED HAS AN OVERALL LENGTH OF LESS THAN TWENTY-SIX INCHES.

(4) THE TERM "SHORT-BARRELED RIFLE" MEANS A RIFLE HAVING ONE OR MORE BARRELS LESS THAN SIXTEEN INCHES IN LENGTH AND ANY WEAPON MADE FROM A RIFLE (WHETHER BY ALTERATION, MODIFICATION, OR OTHERWISE) IF SUCH WEAPON, AS MODIFIED, HAS AN OVERALL LENGTH OF LESS THAN TWENTY-SIX INCHES.

(5) THE TERM "SHOTGUN" MEANS A WEAPON DESIGNED OR REDESIGNED, MADE OR REMADE, AND INTENDED TO BE FIRED FROM THE SHOULDER AND DESIGNED OR REDESIGNED AND MADE OR REMADE TO USE THE ENERGY OF THE EXPLOSIVE IN A FIXED SHOTGUN SHELL TO FIRE THROUGH A SMOOTH BORE EITHER A NUMBER OF BALL SHOT OR A SINGLE PROJECTILE FOR EACH SINGLE PULL OF THE TRIGGER.

(b) The term "vehicle" as used in this Act shall include any motor vehicle, as defined in Article 66½, Section 1-149 of the Annotated Code of Maryland, trains, aircraft, and vessels. ~~, except a vehicle owned by the United States government and operated by an agent or employee thereof in the course of his employment.~~

(c) The term "law enforcement personnel" shall mean any full-time member of a police force or other agency of the United States, a State, a county, a municipality or other political subdivision who is responsible for the prevention and detection of crime and the enforcement of the laws of the United States, a State, or of a county or municipality or other political subdivision of a State. THE TERM SHALL ALSO INCLUDE ANY PART TIME MEMBER OF A POLICE FORCE OF A COUNTY OR MUNICIPALITY WHO IS CERTIFIED BY THE COUNTY OR MUNICIPALITY AS BEING TRAINED AND QUALIFIED IN THE USE OF HANDGUNS.

SEC. 4. *Be it further enacted,* That Section 594B (e) of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "II. Venue, Procedure and Sentence," subheading "Arrests" be and it is hereby repealed and re-enacted, with amendments, to read as follows:

594B.

(e) The offenses referred to in subsection (d) of this section are:

(1) Those offenses specified in the following sections of Article 27, as they may be amended from time to time:

(i) Section 8 (relating to burning barracks, cribs, hay, corn, lumber, etc.; railway cars, watercraft, vehicles, etc.);

(ii) Section 11 (relating to setting fire while perpetrating crime);

(iii) Section 36 (relating to carrying or wearing weapon);

(iv) Section 111 (relating to destroying, injuring, etc., property of another);

(v) Section 297 (relating to possession of hypodermic syringes, etc., restricted);

(vi) Section 341 (relating to stealing goods worth less than $100.00);

(vii) Section 342 (relating to breaking into building with intent to steal);

(viii) The common-law crime of assault when committed with intent to do great bodily harm;

(ix) Sections 276 through 313D (relating to drugs and other dangerous substances) as they shall be amended from time to time; *and*

"(x) Section 36B (relating to handguns)".

SEC. 5. *Be it further enacted*, That Section 90A of Article 56 of the Annotated Code of Maryland (1968 Replacement Volume and 1971 Supplement), title "Licenses," subtitle "Private Detectives," subheading "Special permit to carry concealed weapon," be and it is hereby repealed.

[90A.

A special permit to carry a concealed weapon, as defined in Article 27, Section 36, may be issued by the Superintendent of the Maryland State Police to any person to whom a license has been issued in accordance with provisions of this subtitle, or any employee of any such licensee if such employee has been properly registered in accordance with the provisions of Section 81 of this subtitle, provided that the Superintendent, or his delegate, first finds that such licensee or employee:

(1) Is of good character; and

(2) Has not been convicted of a felony; and

(3) Possesses such mental and physical qualities as the Superintendent may determine necessary.

Any special permit issued pursuant to this section may be revoked by the Superintendent of the Maryland State Police at any time.]

SEC. 6. *Be it further enacted,* That all restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing, carrying, or transporting of handguns are superseded by this Act, and the State of Maryland hereby preempts the right of the political subdivisions to regulate said matters.

SEC. 7. *Be it further enacted,* That if any provision of this Act or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision or application.

SEC. 8. *Be it further enacted,* That all laws or parts of laws, public general or public local, inconsistent with the provisions of this Act are repealed to the extent of the inconsistency.

SEC. 9. *And be it further enacted,* That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of the public health and safety, and having been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two houses of the General Assembly, the same shall take effect from the date of its passage.

Approved:

.....

Governor.

.....

President of the Senate.

.....

Speaker of the House of Delegates.

GEORGETOWN UNIVERSITY LAW CENTER
INSTITUTE OF CRIMINAL LAW AND PROCEDURE
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SAMUEL DASH
DIRECTOR
HERBERT S. MILLER
DEPUTY DIRECTOR

1/26/72

January 21, 1972

John J. Sexton, Esq.
Arent, Fox, Kintner, Plotkin & Kahn
Federal Bar Building
1815 H Street, N. W.
Washington, D.C. 20006

Dear Jack:

Our Task Force on the Administration of Justice has reviewed Governor Mandel's proposed handgun bill following your request of January 7, 1972. The bill we reviewed was the draft you sent to me. I understand there are now some amendments which we have not seen.

The Task Force approves the general provisions of the bill in principle. We feel that it is clearly a first step to deal with the gun problem which underlies so many acts of violence in both our urban and rural communities. Though some of us have strong reservations as to stop and frisk powers in the hands of police, the Task Force found that the provisions in this bill are consistent with the Supreme Court's decision in Terry v. Ohio.

However we do express concern with some of the concepts and provisions of the bill. In the first place we were in agreement that the sentencing structure emphasizes mandatory minimums in both fines and imprisonment, which is inconsistent with the recent recommendations of the American Bar Association Standards on Sentencing Alternatives. We understand that Maryland judges have the power to suspend a sentence imposed and we believe that in a number of cases where the judge would be willing to impose significant punishment within his discretion, he might instead choose to suspend a mandatory minimum sentence if he believed it was too harsh and he had no other alternative.

We also believe that 36B(b)(iv) is both a vague and unnecessary additional provision for imposing a mandatory minimum sentence of 5 years. This provision does not punish any specific act additional to the possession of a handgun, but instead attempts to impose a punishment on the basis of a determination of a mental state accompanying the possession of the handgun. The prosecution would only have to prove that the defendant possessed or transported the handgun "with the deliberate purpose of injurying or killing another person." It is the view of the Task Force that additional criminal penalties should be confined to actual attempts rather than a state of mind that is not sufficient evidence even to

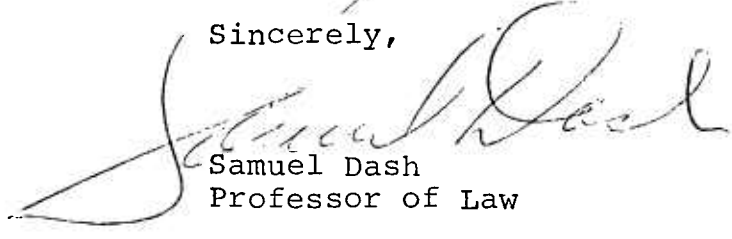
substantiate a prosecution for attempt. As worded, we believe this provision is probably unconstitutional, and also provides the danger of discriminatory enforcement.

Also, 36D(a)(4)(d) should be amended to strike the last three words "and with malice". Stop and frisk procedures are sufficiently dangerous intrusions on individual liberty to require fairly strict standards on police practices. It should be sufficient for a citizen's complaint or suit based on unlawful police action that the police officer acted without reasonable grounds for suspicion. If it is necessary for the citizen to prove in addition that the police officer acted with malice, then it is clear that a citizen who is the victim of an unlawful police stop and frisk will have an empty remedy.

Finally, we believe that 36E needs careful reconsideration. It would prevent the issuing of a permit to carry a handgun to some people who may need it for livelihood who may have a criminal record unrelated to crimes of violence. Criminal records alone should not be a bar; they should have some relationship to the risk of danger in permitting a person with a criminal record to carry a handgun. This comment applies equally to the reference in 36E(a)(3) posing a bar with regard to individuals having been committed to training centers for juveniles for longer than one year after an adjudication of delinquency by juvenile court. This appears to be too broad a restriction without being tied in to the purposes of the bill. Also, 36E(a)(5)(6) appear to us to be provisions that provide no real criteria to the Superintendent of the Maryland State Police. They are sufficiently vague to permit him to withhold or grant permits in a discriminatory manner without any specific standards to review his discretion. It is not clear how the Superintendent can determine that a person has exhibited a "propensity for violence or instability". Also he should be given some more specific guidelines concerning who should be permitted to carry a handgun than is provided by the broad language of "has good and substantial reason to wear, carry or transport a handgun." We do not at this time recommend any specific alternative language for these provisions, but think it is important to bring these matters to your attention for consideration by the Central Committee and by the delegates who will be reviewing the legislation.

With best wishes.

Sincerely,



Samuel Dash
Professor of Law

SD:map

MEMORANDUM

Explanation of "Stop and Frisk" Section
of Proposed Handgun Control Bill

Section 3 of the proposed Handgun Control Bill would enact a new Section 36D to Article 27 of the Code, allowing police officers to make a limited search for handguns under certain specified conditions.

The function of Section 36D is to clarify a potential legal problem resulting from the effect of Section 594B, Article 27 and to codify in simple and concise terms what the Supreme Court and the Maryland Court of Special Appeals has said is constitutionally permissible.

In order to understand the proposed statute, and see how it carries out these two functions, it is necessary to understand the present state of the law.

The underlying base of the law of search and seizure is the Fourth Amendment to the United States Constitution, prohibiting "unreasonable" searches and seizures, which prohibition is made applicable to the States through the "due process" clause of the Fourteenth Amendment. Traditionally, it was assumed that, by

virtue of the Constitutional prohibition, a person or his property could be searched only in two circumstances: pursuant to a valid arrest (with or without an arrest warrant), or pursuant to a search warrant. In order to obtain a search warrant, the police are required to present an affidavit to a judge showing that there is "probable cause" to believe that the person to be searched has committed a crime or that the place to be searched contains property subject to seizure.

The term "probable cause" is incapable of exact definition, but has been held to mean something less than certainty or demonstration, but more than suspicion or possibility. Henson v. State, 236 Md. 518. If the facts alleged are such as to warrant a prudent and cautious man in believing that an offense has been committed, then there is probable cause. Smith v. State, 191 Md. 329.

The problem is not so much what abstract definitions are used, but how the rules relate to everyday observations of suspicious conduct. If an officer sees a person acting in a suspicious manner, if he has a reasonable suspicion that the person may be about to commit a crime, or is, by carrying a weapon, then and there actually committing a crime, what is he to do? His suspicion may not, under the circumstances, be enough to constitute the "probable cause" he needs to arrest the person without a warrant, or to obtain a warrant assuming

that he had time to apply for one. Moreover, if the officer believes the person is armed and may present a danger to himself or to others, the problem is even greater. Under traditional rules, he could make no arrest or search, and either had to wait until some overt act was committed or simply ignore the situation. In either case, innocent persons may well suffer as a result.

Some idea of how serious this problem has become is indicated from the fact that 62% of all homicides committed in Baltimore City in 1971 involved the use of handguns, a 74% increase over 1970. During the period 1970 and the first eleven months of 1971, 6052 handguns were confiscated from persons carrying them illegally and destroyed by the Baltimore City Police Department. During the single month of November, 1971, there were 197 concealed weapons cases on the dockets of the Baltimore City District Court.

The Supreme Court first addressed itself to this problem--the helplessness of the police officer in these situations--in two companion cases of Terry v. Ohio, 392 U.S. 1, and Sibron v. New York, 392 U.S. 40; and in 82 pages, the Court attempted to define the circumstances under which policemen could act on the spot--without making an arrest or obtaining a search warrant.

In Terry, a police officer observed three men pacing back and forth in front of a store window. Other than that, there was nothing suspicious about their behavior; but, from his experience, the officer suspected that they might be "casing" the store preparatory to a robbery. He did not know who the men were, but he feared one or more of them might have a gun. With this knowledge, he approached the men, identified himself as a police officer, and asked their names. After they mumbled a response, the officer grabbed one of them and patted him down, feeling a pistol in his breast pocket. He then ordered all three inside the store, removed the pistol, patted down the other two, and found a pistol on one of them. The two on whom weapons were found were then arrested and charged with carrying concealed weapons.

The Court considered the question not as the abstract propriety of the officer's conduct, but as the admissibility of the weapons found. And in that context, the Court narrowed its opinion to the facts before it, without attempting to encompass "protean variety of the street encounter."

Approaching the problem from the point of view of balancing the individual's interest against that of the officer's, the Court first held that a "stop and frisk" is a search and seizure to which the Fourth and Fourteenth Amendments apply, the question then being whether it was, under the circumstances, reasonable. In this connection, the Court concluded:

1. Although whenever possible the police must obtain prior judicial approval of searches and seizures through the warrant procedure, "we deal here with an entire rubric of police conduct -- necessarily swift action predicated upon the on-the-spot observations of the officer on the beat -- which historically has not been, and as a practical matter could not be subjected to the warrant procedure." Thus, the test is general reasonableness.

2. The test of such reasonableness, in the light of the balancing of interests, is "would the facts available to the officer at the moment of the seizure or the search warrant a man of reasonable caution in the belief that the action taken was appropriate."

3. As to that standard, the interests of the officer are to be considered as

(a) the general interest of effective crime prevention and detection, which would authorize an officer to approach a person for purposes of "investigating possible criminal behavior even though there is no probable cause to make an arrest"; and

(b) the more immediate interest in "taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him."

4. In the light of this second interest, "when an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonble to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm."

(NOTE: In a footnote the Court specifically referred to the easy availability of firearms to potential killers and stated "this fact is relevant to an assessment of a need for some form of self protective search power.")

5. Construing the standard of reasonableness, as above stated, the Court held "due weight must be given, not to his (the officer's) inchoate and unparticularized suspicion or 'hunch', but to the specific reasonable inference which he is entitled to draw from the facts in the light of his experience."

Upon the foregoing principles and facts, as stated, the Court held that at the time of the search and seizure, the officer had "reasonable" . . . grounds to believe that petitioner was armed and dangerous and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized.

The specific holding of the Court was stated as follows:

> "We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him."

The next case, Sibron, involved a search conducted pursuant to a New York "stop and frisk" statute.

Sibron actually involved two separate cases consolidated for argument. With respect to Sibron, a police officer observed him continually in the vicinity of a particular address, having conversations with persons known to the officer to be narcotics addicts. Nothing was seen to pass between Sibron and the others. Sibron then walked into a restaurant and spoke with three other addicts. The officer went in and ordered Sibron out of the restaurant. Once outside, Sibron mumbled something and reached into his pocket, but the officer stuck his hand in a pulled out glassine envelopes, later shown to contain heroine.

In the companion case, a police officer, while at home, in his sixth floor apartment, heard a noise, and, upon looking through the peephole in his door, saw two men tiptoeing out of the alcove toward the stairway. He did not recognize either man as a tenant. He took his revolver and gave chase. Grabbing one between the fourth and fifth floors, he patted him down for weapons and discovered a hard object in his pocket. He did not think it was a gun, but thought it might have been a knife. Removing the object, he found it to be an opaque envelope containing burglar's tools.

In each case, the question was the admissibility of the evidence seized; and in that light the Court was asked to declare the "stop and frisk" statute unconstitutional on its face. The statute authorized police officers to stop people, demand explanations of them, and search them for dangerous weapons in certain circumstances upon "reasonable suspicion" that they are engaged in criminal activity and represent a danger to the policeman.

The Court specifically declined to pronounce upon the facial constitutionality of the statute, holding that the relevant question is not the validity of the statute on its face, but the reasonableness of the particular searches and seizures that took place. ~~In so doing, the Court in effect and in light of the Terry decision, made such a statute unnecessary.~~ Sibron's conviction was reversed on the grounds that the officer had no reasonable grounds to conduct the search, there being no immediate apprehension that Sibron was armed. In the companion case, the conviction was sustained, not on the basis of the "stop and frisk" statute, but because the officer had probable cause to make an arrest.

Soon after these decisions were announced, federal and State courts were flooded with cases in which police officers had conducted on-the-spot searches of the Terry type. At least three such cases have reached our own Court of Special Appeals.

In Williams v. State, 7 Md. App. 204, an officer noticed a car, the description of which had been given to him at roll call. He followed it, stopped it, and approached the car asking the driver for his license and registration. The response was at least two bullets fired at him from the car. The officer returned the fire. Another officer, called to assist, saw the car with two bullet holes in the windshield. He circled the block whereupon a bystander told him "the man you want just ran down the street." Circling the block again, the officer observed a man walking down the street who, as the officer approached, turned around and started walking the other way. Another officer then pulled up, whereupon the man sort of "turned to his left, and he had a bulge in his right pocket, pants pocket, and he started to put his hand in there." The officer grabbed his left arm and pulled it out of the pocket; and in doing so, removed a pistol as well. All of this took place about four blocks from the place of the shooting. Upon this evidence, the Court held that the search was reasonable "at least as a protective search authorized by Terry." The search, said the Court, was justified in its inception and was reasonably related in scope to the circumstances which justified the interference in the first place.

In Ramsey v. State, 5 Md. App. 563, an officer went to a bar in connection with a reported shooting there. From a general description he had received, the officer approached the defendant and asked him to accompany the officer to headquarters. As they walked out of the bar, the officer "noticed that there was a bulge"

at the defendant's waistline, and he reached in and removed a gun from the defendant.

The Court held that while the officer had no probable cause to arrest the defendant for the shooting, he did have probable cause to believe that the defendant was carrying a concealed weapon; and his arrest for that crime was proper. The search was held valid as an incident to a proper arrest, and the Court did not deem it necessary to apply the standards of Terry.

In Cleveland v. State, 8 Md. App. 204, an officer had received a general description of a person committing a liquor store hold up. As he was proceeding to the scene, he noticed a man who fit the general description walking briskly toward the rear of a laundromat in a furtive manner. The officer stopped the man, arrested him, and searched him by patting his pockets. Though the Court held that this was not a protective search as authorized in Terry, it concluded that "in the circumstances such a protective search before arrest would have been proper."

As noted, there have been hundreds of cases reaching the courts involving the application of Terry, each involving a slightly different factual situation. The opinions as to when and under what circumstances an officer can make a Terry-type search must run into the thousands of pages. Policemen on the beat cannot be expected to understand all of the nuances and fine distinctions set forth in all of these

cases; but they are the ones who must make the quick decisions, and who are accountable if, through confusion or misunderstanding, make an improper search.

Section 36D is intended to clarify in simple terms when such a Terry-type search can be made -- clarify the situation for the officer and the public. It states the conditions under which such a search is permissible.

The potential legal problem which may be peculiar to Maryland arising from the effect of Section 594B is that that statute authorizes officers to arrest a person for the commission of certain misdemeanors, including, by virture of Section 4 of Senate Bill 205, the unlawful carring, wearing, transporting of handguns upon probable cause. The statute was enacted in 1969 because previously, an officer could make no arrest in a misdemeanor case unless the crime was committed in his presence.

An unforeseen problem, which has yet to be raised in any court in the State, was created by that statute as it applies to handguns, considered in the light of Terry.

In Terry it was argued that a distinction should be drawn between "stop" and and "arrest". The court found a "danger in the logic" which proceeds upon distinctions between "stop" and "arrest".

A "stop" was clearly held to be a seizure for the purposes of the Fourth Amendment and the opinion raises some doubt as to when, in any given stituation, a "stop" may constitutionally amount to an arrest.

To the extent that an officer's actions may, under the Terry language amount to an arrest, and it is conceivable that although constitutionally permissable upon reasonable suspicion under the provisions of Section 594B, they would be statutorially unpermissible without probable cause. In other words the need for probable cause under our statute could be held to be more restrictive than the United States Constitution.

Justice Harlan in a concurring opinion in Terry clearly indicated a need for stop and frisk statutes. In particular he pointed out that

> "If the State (of Ohio) were to provide that police officers could, on articuable suspicion less than probable cause forceably frisk and disarm persons thought to be carrying concealed weapons, I wo uld have little doubt that action taken pursuant to such authority could be constitutionally reasonable."

It is to be especially noted that the statute does not permit or condone harrassment or unreasonable searches. In order to initiate a search, the office must have reasonable grounds to believe that a person is carrying a handgun and may be dangerous. There must be no occasion for him to obtain a search warrant. If these initial conditions are met, he must then attempt to allay his suspicions by asking questions of the suspect; and only if his suspicions are not removed by this limited investigation may he conduct a search. It is to be noted also that the search itself is a limited one -- limited to a patting of the clothing.

Police officials surveyed are nearly unanimous in believing that a concise clarification of the rules would be most helpful in achieving the dual objective of preventing abuse but, at the same time, allowing for a better utilization of constitutionally permissible activity.

HANDGUN CONTROL LAW OF 1972

Background Information

In December of 1971, Governor Marvin Mandel announced that he would submit to the 1972 Session of the General Assembly of Maryland a bill to control the widespread use of handguns in criminal activities in the State of Maryland. His concern was based upon the upsurge of crime in the State and particularly within Baltimore City where 62% of all homicides in 1971 were committed with handguns. The bill, introduced in the Senate of Maryland on January 17, 1972 contains a Declaration of Policy which clearly states the purpose and urgent need for legislation in this area.

The Senate Judicial Proceedings Committee held a public hearing on the bill during which testimony was received from law enforcement officials, legislators, representatives of various rifle and pistol associations, and many interested citizens. Following this hearing, the Committee adopted numerous amendments to meet some of the specific objections of opponents and to clarify certain sections of the bill. The bill was the subject of a two-week debate in the Senate and finally passed and was sent to the House of Delegates where it received further refinement and ultimate adoption. Senate Bill 205 became Chapter 13 of the Laws of 1972 on March 27, 1972 when it received the signature of Governor Marvin Mandel, and became effective immediately.

The Bill

Under the provisions of the enactment, the wearing, carrying, or knowingly transporting of a handgun is now a criminal offense for which specific penalties have been established. These penalties are graded so that the first offender can be treated differently in the discretion of the court; however, the penalties for subsequent offenses are mandatory. Also, the law provides for separate mandatory penalties for a violation on school property, for a violation with an intent to injure, and for use in the commission of a felony.

Certain exceptions have been established to meet the legitimate concerns of those who need a handgun. Those excluded from the law's provisions include law enforcement personnel on official duty, permit holders, participants in certain sporting activities, and the person who possesses a handgun at home or at his place of business.

To effectively attack the use of a handgun in street crime, the law codifies the "stop and frisk" practices of police agencies. The provisions are based upon the decision in Terry v. Ohio, 392 U.S. 1; however, the enactment does not seek to broaden the authority of the police under that decision of the Supreme Court. The new law provides guidelines for the protection of the public and the effective implementation of the limited search procedures.

A handgun may be worn, carried, or transported by a permit holder and the new law establishes permit granting authority in the Superintendent of the Maryland State Police and also establishes criteria for the granting of the permits. An appeal board has been created to hear appeals from individuals whose permit request has been denied.

So that anyone reading the new law can quickly determine what type of firearm is being considered, the enactment utilizes the definitions provided in the federal firearms legislation and explicitly defines what is and what is not considered a handgun for the purposes of this new law.

Timothy E. Clarke
Counsel, Senate Judicial
Proceedings Committee

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Timothy E. Clarke
Counsel, Senate Judicial
Proceedings Committee

Amendments to Senate Bill No. 205 by Delegate Heintz

Amendment #1

On line 30, page 5, of the printed bill, after "holster.", add the following:

The travelling referred to in this paragraph may be by a direct route or a ~~reasonable~~ indirect route to or from any such place or event.

Amendment #2

On line 51, page 10, of the printed bill, after "searched.", add the following:

The report shall also include the questions asked and explanations requested by the law enforcement officer,and the answers and explanations given by the person persuant to paragraph (a)(3) of of this section.

Office of the Governor
Annapolis, Maryland

From the Desk of W. SHEPHERDSON ABELL

Don,

These are the key pages from the Terry decision — we think our bill falls well within their guidelines, but you will want to make your own judgment on that.

The U.S. cite is 392 U.S. 1 and the companion decision (Sibron) is also relevant.

Shep

adequate information to justify taking a person into custody for [27] the purpose of prosecuting him for a crime. Petitioner's reliance on cases which have worked out standards of reasonableness with regard to "seizures" constituting arrests and searches incident thereto is thus misplaced. It assumes that the interests sought to be vindicated and the invasions of personal security may be equated in the two cases, and thereby ignores a vital aspect of the analysis of the reasonableness of particular types of conduct under the Fourth Amendment. See Camara v. Municipal Court, supra.

[26] Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has [illegible] that he is dealing with [illegible] armed and dangerous individual, re[illegible]dless of whether he has probable ca[illegible] to arrest the individual for a crime. [illegible] need [illegible] absolute[illegible] individual [illegible] whether [illegible] the cir[illegible] [illegible] Cf. Bec[illegible] State of Ohio, 3[illegible] 91, 85 S.Ct. [illegible]23, 226, 13 [illegible] (1964); Brinegar v. United S[illegible] 338 U.S. 160, 174–176, 69 S.Ct. 1302, [illegible], 93 L.Ed. 1879 ([illegible]49); S[illegible]acey v. Emery, 97 U.S. 642, 64[illegible], 2[illegible] [illegible] 1035 (1878).[23] [illegible] officer [illegible] his in[illegible] [illegible] Cf. Brineg[illegible] [illegible] States, supra.

[illegible]

[2[illegible]] [illegible] must now examine the conduct [illegible] McFadden in this case to dete[illegible] whether his search and seizure [illegible] were reasonable, both at their inception [28] and as conducted. He had observed Terry, together with Chilton and another man, acting in a manner he took to be preface to a "stick-up." We think on the facts and circumstances Officer McFadden detailed before the trial judge a reasonably prudent man would have been warranted in believing petitioner was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior. The actions of Terry and Chilton were consistent with McFadden's hypothesis that these men were contemplating a daylight robbery—which, it is reasonable to assume, would be likely to involve the use of weapons—and nothing in their conduct from the time he first noticed them until the time he confronted them and identified himself as a police officer gave him sufficient reason to negate that hypothesis. Although the trio had departed the original scene, there was nothing to indicate abandonment of an intent to commit a robbery at some point. Thus, when Officer McFadden approached the three men gathered before the display window at Zucker's store he had observed enough to make it quite reasonable to fear that they were armed; and nothing in their response to his hailing them, identifying himself as a police officer, and asking their names served to dispel that reasonable belief. We cannot say his decision at that point to seize Terry and p[illegible]s clothing for weapons was the product of a volatile or inventive imagination, or was undertaken simply as an act of harassment; the record evidences the tempered act of a policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and [illegible] limited steps to do so.

[28-[illegible]] The manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry as whether they were warranted at all. The Fourth Amendment proceeds as much by limitations upon the [29] scope of govern-

23. See also cases cited in n. 1[illegible], [illegible]a.

mental action as by imposing preconditions upon its initiation. Compare Katz v. United States, 389 U.S. 347, 354–356, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967). The entire deterrent purpose of the rule excluding evidence seized in violation of the Fourth Amendment rests on the assumption that "limitations upon the fruit to be gathered tend to limit the quest itself." United States v. Poller, 43 F.2d 911, 914, 74 A.L.R. 1382 (C.A.2d Cir. 1930); see, e. g., Linkletter v. Walker, 381 U.S. 618, 629–635, 85 S.Ct. 1731, 1741, 14 L.Ed.2d 601 (1965); Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed. 2d 1081 (1961); Elkins v. United States, 364 U.S. 206, 216–221, 80 S.Ct. 1437, 1446, 4 L.Ed.2d 1669 (1960). Thus, evidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation. Warden v. Hayden, 387 U.S. 294, 310, 87 S.Ct. 1642, 1652, 18 L.Ed.2d 782 (1967) (Mr. Justice Fortas, concurring).

[31] We need not develop at length in this case, however, the limitations which the Fourth Amendment places upon a protective seizure and search for weapons. These limitations will have to be developed in the concrete factual circumstances of individual cases. See Sibron v. New York, 392 U.S. 40, 88 S.Ct. 1889, 1912, 20 L.Ed.2d 917 decided today. Suffice it to note that such a search, unlike a search without a warrant incident to a lawful arrest, is not justified by any need to prevent the disappearance or destruction of evidence of crime. See Preston v. United States, 376 U.S. 364, 367, 84 S.Ct. 1042, 1652, 18 L.Ed.2d 782 (1964). The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.

[32] The scope of the search in this case presents no serious problem in light of these standards. Officer McFadden patted down the outer clothing of petitioner and his two companions. He did not place his hands in their pockets or under the outer surface of their garments until he had

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felt weapons, and then he merely reached for and removed the guns. He never did invade Katz' person beyond the outer surfaces of his clothes, since he discovered nothing in his pat-down which might have been a weapon. Officer McFadden confined his search strictly to what was minimally necessary to learn whether the men were armed and to disarm them once he discovered the weapons. He did not conduct a general exploratory search for whatever evidence of criminal activity he might find.

V.

[33, 34] We conclude that the revolver seized from Terry was properly admitted in evidence against him. At the time he seized petitioner and searched him for weapons, Officer McFadden had reasonable grounds to believe that petitioner was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized. The policeman carefully restricted his search to what was appropriate to the discovery of the particular items which he sought. Each case of this sort will, of course, have to be decided on its own facts. We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and

actions in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.

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Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken.

Affirmed.

Mr. Justice BLACK concurs in the judgment and the opinion except where the opinion quotes from and relies upon this Court's opinion in Katz v. United States and the concurring opinion in Warden v. Hayden.

Mr. Justice HARLAN, concurring.

While I unreservedly agree with the Court's ultimate holding in this case, I am constrained to fill in a few gaps, as I see them, in its opinion. I do this because what is said by this Court today will serve as initial guidelines for law enforcement authorities and courts throughout the land as this important new field of law develops.

A police officer's right to make an on-the-street "stop" and an accompanying "frisk" for weapons is of course bounded by the protections afforded by the Fourth and Fourteenth Amendments. The Court holds, and I agree, that while the right does not depend upon possession by the officer of a valid warrant, nor upon the existence of probable cause, such activities must be reasonable under the circumstances as the officer credibly relates them in court. Since the question in this and most cases is whether evidence produced by a frisk is admissible, the problem is to determine what makes a frisk reasonable.

If the State of Ohio were to provide that police officers could, on articulable suspicion less than probable cause, forcibly frisk and disarm persons thought to be carrying concealed weapons, I would have little doubt that action taken pursuant to such authority could be constitutionally reasonable. Concealed weapons create an immediate

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and severe danger to the public, and though that danger might not warrant routine general weapons checks, it could well warrant action on less than a "probability." I mention this line of analysis because I think it vital to point out that it cannot be applied in this case. On the record before us Ohio has not clothed its policemen with routine authority to frisk and disarm on suspicion; in the absence of state authority, policemen have no more right to "pat down" the outer clothing of passers-by, or of persons to whom they address casual questions, than does any other citizen. Consequently, the Ohio courts did not rest the constitutionality of this frisk upon any general authority in Officer McFadden to take reasonable steps to protect the citizenry, including himself, from dangerous weapons.

The state courts held, instead, that when an officer is lawfully confronting a possibly hostile person in the line of duty he has a right, springing only from the necessity of the situation and not from any broader right to disarm, to frisk for his own protection. This holding, with which I agree and with which I think the Court agrees, offers the only satisfactory basis I can think of for affirming this conviction. The holding has, however, two logical corollaries that I do not think the Court has fully expressed.

In the first place, if the frisk is justified in order to protect the officer during an encounter with a citizen, the officer must first have constitutional grounds to insist on an encounter, to make a *forcible* stop. Any person, including a policeman, is at liberty to avoid a person he considers dangerous. If and when a policeman has a right instead to disarm such a person for his own protection, he must first have a right not to avoid him but to be in his presence. That right must be more than the liberty (again, possessed by every citizen) to address questions to other persons, for ordinarily the person

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addressed has an

The Washington Post

AN NEWSPAPER • THURSDAY, JANUARY 20, 1972 PAGE A18

Frisking for Firearms

Although he is a latecomer to the fold, Governor Marvin Mandel deserves commendation for his gun-control bill. He is entitled to a special round of applause for making it "emergency legislation." This requires that it must win approval by three-fifths of each house of the General Assembly instead of the usual simple majority. But it also means that, if it does so, it will take effect as soon as it is passed. What's the governor's hurry? The answer to that purely rhetorical question is writ large as death in the pages of the daily newspapers where armed robberies, holdups, shootings are the standard stuff of headlines. "We have to do something and do it fast," the governor said the other day. Would that it had been done long since.

What Governor Mandel proposes to do is really minimal. He wants to enable officers of the law to protect themselves against breakers of the law —usually called criminals—by letting the former frisk the latter, briefly and politely, on the basis of a "reasonable suspicion" that a concealed lethal weapon may be found. The legislation would also make it unlawful for anyone to carry a handgun, concealed or unconcealed, on the streets or in a car. Unfortunately, it would not affect the sale and possession of pistols kept in homes for junior to show off to his baby sister or to settle family altercations.

Understandably, civil libertarians have had misgivings about the proposed law. Authorizing the police to stop and frisk a person on mere suspicion entails a serious risk that the police will behave arbitrarily or capriciously. And this applies with particular force, of course to black citizens who are so often the special target of police harassment. One must respect their anxiety. But the remedy lies, we think, in maintaining a vigilantly watchful eye on police behavior rather than in denying the police a power they genuinely need for their own safety as well as for the public safety.

The General Assembly could usefully add some safeguards to the bill. It would be wise, we think, to require police officers to file a written report on every frisk they make, whether or not it produces a forbidden weapon. The report should embody a simple statement of the officer's "reason" for suspecting that the frisked person was armed. This should operate to curtail routine or random frisking on the basis of mere generalized suspicion. It will also afford a basis for reviewing the impact of the law.

The dangers to the community arising out of the current widespread possession of pistols makes it seem reasonable to allow limited arrests and limited searches for these particular weapons on a basis less than probable cause. In an opinion by Mr. Chief Justice Warren in 1968, the Supreme Court said: "We cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm."

In a footnote, the chief justice noted that fifty-seven law-enforcement officers were killed in the line of duty in this country in 1966 and that 55 of the 57 died from gunshot wounds, 41 of them inflicted by handguns. Had he been able to foresee the future, he might have added that the number of policemen killed came to 110 in the fiscal year ending June 30, 1971, 101 of whom were shot, 72 by handguns. The rule laid down by the court seems to us to comport with the Fourth Amendment—and with the dictates of common sense.

HB 277

January 29, 1972

Mr. W. Shepherdson Abell
Office of the Lt. Governor
State House
Annapolis, Maryland 21404

Dear Shep:

Thanks for sending me copies of the Post editorial on January 20th on stop-and-frisk and of a portion of the Supreme Court opinion in Terry. I appreciate your bringing these to my attention.

Sincerely yours,

Donald B. Robertson

Office of the Governor
Annapolis, Maryland

From the Desk of W. SHEPHERDSON ABELL

January 21, 1972

Don:

In case you didn't see this, it might be of interest.

Shep

HOUSE OF DELEGATES

No. 363

BY DELEGATES W. ALLEN AND RUBEN—Judiciary

By the HOUSE OF DELEGATES, January 24, 1972.

Introduced, read first time and referred to the Committee on Judiciary.

By order, JACQUELINE M. SPELL, Assistant Chief Clerk.

A BILL ENTITLED

AN ACT to repeal Sections 441 through 448, inclusive, of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title and subtitle "Crimes and Punishments," subheading "Pistols," and to add new Sections 268A through 268H, inclusive, to Article 27, same Code, title and subtitle, to follow immediately after Section 268 thereof, and to be under the new subheading "Handguns," to prohibit the possession, ownership, manufacture, sale, transfer, receipt or transport of a handgun or handgun ammunition in Maryland; to authorize the Secretary of Public Safety and Correctional Services to exempt pistol clubs and manufacturers and dealers of handguns from the provisions of this Act provided they apply for a certain license and conform to other regulations the Secretary may prescribe; to provide for the forfeiture and disposal of handguns to any State or local law enforcement agency designated by the Secretary of Public Safety and Correctional Services; to provide for reimbursement in a certain amount to persons who forfeit their handguns; to provide for certain exemptions to this Act; to provide for certain definitions; and to provide for penalties for violation of this Act; and relating generally to handguns.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Sections 441 through 448, inclusive, of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title and subtitle "Crimes and Punishments," subheading "Pistols," be and they are hereby repealed; and that new Sections 268A through 268H, inclusive, be and they are hereby added to the same Article, Code, title and subtitle, to follow immediately after Section 268 thereof, and to be under the new subheading "Handguns"; and all to read as follows:

EXPLANATION: *Italics indicate new matter added to existing law.*
[Brackets] indicate matter stricken from existing law.

PISTOLS

441. Definitions.

(a) As used in this subtitle—

(b) The term "*person*" includes an individual, partnership, association or corporation.

(c) The term "*pistol or revolver*" means any firearm with barrel less than twelve inches in length, including signal, starter, and blank pistols.

(d) The term "*dealer*" means any person engaged in the business of selling firearms at wholesale or retail, or any person engaged in the business of repairing such firearms.

(e) The term "*crime of violence*" means abduction; arson; burglary, including common-law and all statutory and storehouse forms of burglary offenses; escape; housebreaking; kidnapping; manslaughter, excepting involuntary manslaughter; mayhem; murder; rape; robbery; and sodomy; or an attempt to commit any of the aforesaid offenses; or assault with intent to commit any other offense punishable by imprisonment for more than one year.

(f) The term "*fugitive from justice*" means any person who has fled from a sheriff or other peace officer within this State, or who has fled from any state, territory or the District of Columbia, or possession of the United States, to avoid prosecution for a crime of violence or to avoid giving testimony in any criminal proceeding.

442. Sale or transfer of pistols and revolvers.

(a) *Right to regulate sales preempted by State.*—All restrictions imposed by the laws, ordinances or regulations of all subordinate jurisdictions within the State of Maryland on sales of pistols or revolvers are superseded by this section, and the State of Maryland hereby preempts the rights of such jurisdictions to regulate the sale of pistols and revolvers.

(b) *Application to purchase or transfer.*—No dealer shall sell or transfer any pistol or revolver until after seven days shall have elapsed from the time an application to purchase or transfer shall have been executed by the prospective purchaser or transferee, in triplicate, and forwarded by the prospective seller or transferor to the Superintendent of the Maryland State Police.

(c) *Same—Disposition of copies.*—The dealer shall promptly after receiving an application to purchase or transfer, completed in accordance with subsection (e) below, forward one copy of the same, by certified mail, to the Superintendent of the Maryland State Police. The copy forwarded to the said Superintendent shall contain the name, address, and signature of the prospective seller or transferor. The prospective seller or transferor shall retain one copy of the application for a period of not less than three years. The prospective purchaser or transferee shall be entitled to the remaining copy of the application.

(d) *Same—Statement of penalties for supplying false information required.*—The application to purchase or transfer shall bear the following legend: "Any false information supplied or statement made in this application is a crime which may be punished by im-

prisonment for a period of not more than two years, or a fine of not more than $1,000, or both."

(c) *Same—Information required.*—The application to purchase or transfer shall contain the following information:

(1) Applicant's name, address, occupation, place and date of birth, height, weight, race, eye and hair color and signature. In the event the applicant is a corporation, the application shall be completed and executed by a corporate officer who is a resident of the jurisdiction in which the application is made.

(2) A statement by the applicant that he or she:

(i) Has never been convicted of a crime of violence, in this State or elsewhere, or of any of the provisions of this subtitle.

(ii) Is not a fugitive from justice.

(iii) Is not an habitual drunkard.

(iv) Is not an addict or an habitual user of narcotics, barbiturates or amphetamines.

(v) Has never spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless there is attached to the application a physician's certificate, issued within thirty days prior to the date of application, certifying that the applicant is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others.

(vi) Is at least twenty-one years of age.

(vii) Has or has not submitted a prior application and, if so, when and where.

(3) The date and hour the application was delivered in completed form to the prospectivve seller or transferor by the prospective purchaser or transferee.

(f) *Investigation of application; procedure when false information is discovered or application is incomplete.*—The Superintendent of the Maryland State Police may request the assistance of the police commissioner of Baltimore City, the chief of police in any county maintaining a police force, or the sheriff in a county not maintaining a police force and shall promptly upon receipt of an application to purchase or transfer conduct an investigation in order to determine the truth or falsity of the information supplied and statements made in said application. If it be thereupon determined that any false information or statement has been supplied or made by the applicant, or that the application has not been properly completed, the said Superintendent or any specific member of the State Police authorized by the Superintendent to act as his agent in matters relating to pistol or revolver sales shall notify the prospective seller or transferor, in writing, within seven days from the date the executed application to purchase or transfer was forwarded by certified mail, of his disapproval of said application. Written notification of such disapproval shall be thereafter forwarded by the said Superintendent and/or his duly authorized agent or agents to the prospective purchaser or transferee. The date upon which the executed application to purchase or transfer was forwarded by certified mail by the prospective seller

or transferor shall be considered as the first day of the seven-day period allowed for notice of disapproval to the said prospective seller or transferor. If the seventh day of the seven-day period allowed for the said notice of disapproval shall fall on a Sunday or legal holiday, the computation period shall be extended to the first day next following, which is neither a Sunday nor a legal holiday.

(g) *Sale prohibited to disapproved applicant; exceptions.*—No dealer shall sell or transfer a pistol or revolver to an applicant whose application has been timely disapproved, unless such disapproval has been subsequently withdrawn by the Superintendent of the Maryland State Police and/or his duly authorized agent or agents or overruled by the action of the courts pursuant to subsection (h) below.

(h) *Hearing; judicial review.*—Any prospective purchaser or transferee aggrieved by the action of the State Police may request a hearing within 30 days from the date when written notice was forwarded to such aggrieved person by writing to the Superintendent of State Police, who shall grant the hearing within fifteen days of said request. Said hearing and subsequent proceedings of judicial review, if any, thereupon following shall be conducted in accordance with the provisions of the Administrative Procedure Act.

(i) *Notification of completed transaction; permanent record of sales and transfers.*—Any dealer who sells or transfers a pistol or revolver in compliance with this subtitle shall forward a copy of the written notification of such completed transaction, within seven days from the date of delivery of the said pistol or revolver, to the Superintendent of the Maryland State Police, whose duty is shall be to maintain a permanent record of all such completed sales and transfers of pistols and revolvers in the State. The notifications shall contain an identifying description of the pistol or revolver sold or transferred including its caliber, make, model, manufacturer's serial number, if any, and any other special or peculiar characteristics or marking by which the said pistol or revolver may be identified.

(j) *Construction of section.*—Nothing in this section shall be construed to affect sales and/or transfers for bona fide resale in the ordinary course of business of a person duly licensed under Section 443 of this subtitle, or sales, transfer, and/or the use of pistols or revolvers by any person authorized or required to sell, transfer, and/or use such pistols or revolvers as part of his or her duties as a member of any official police force or other law enforcement agency, the armed forces of the United States, including all official reserve organizations, or the Maryland National Guard.

(k) *Penalties.*—Any person who knowingly gives any false information or makes any material misstatement in an application required by this section, or who fails to promptly forward such application to the Superintendent of the Maryland State Police or his duly authorized agent or agents, or who sells or transfers a pistol or revolver to a person other than the one by whom application was made, or who otherwise sells, transfers, purchases, or receives transfer of a pistol or revolver in violation of this section, shall upon conviction thereof be subject to the penalties hereinafter provided in Section 448 of this subtitle.

443. Pistol and revolver dealer's license.

(a) *Required.*—No person shall engage in the business of selling pistols or revolvers unless he lawfully possesses and conspicuously displays at his place of business, in addition to any other license required by law, a pistol and revolver dealer's license issued by the Superintendent of the Maryland State Police or his duly authorized agent or agents. Such license shall identify the licensee and the location of his place of business. One such license shall be required for each place of business where pistols or revolvers are sold.

(b) *Expiration date; fee; change of place of business.*—Licenses required by subsection (a) above shall expire on the 30th day of June, 1967, and of each year thereafter. The initial fee for such license shall be twenty-five dollars ($25.00), and the annual renewal shall be five dollars ($5.00), payable to the Comptroller of the State of Maryland. Such licenses shall not be transferable nor shall any refund or proration of the annual fee therefor be allowed. Provided, however, that before any licensee changes his place of business he shall so inform the Superintendent of the Maryland State Police or his duly authorized agent or agents and surrender his license, whereupon the said Superintendent or his duly authorized agent or agents shall, if no cause exists for the revocation of such license, issue a new license, without fee, covering the new place of business for the duration of the unexpired term of the surrendered license.

(c) *Application for license—Statement of penalties for giving false information required.*—Every annual application for a pistol and revolver dealer's license shall bear the following legend: "Any false information supplied or statement made in this application is a crime which may be punished by imprisonment for a period of not more than two years, or a fine of not more than $1,000, or both."

(d) *Same—Information required.*—The application for a pistol and revolver dealer's license shall contain the following information:

(1) Applicant's name, address, place and date of birth, height, weight, race, eye and hair color and signature. In the event the applicant is a corporation, the application shall be completed and executed by a corporate officer who is a resident of the jurisdiction in which the application is made.

(2) A clear and recognizable photograph of the applicant, except where such photograph has been submitted with a prior year's application.

(3) A set of the applicant's fingerprints, except where such fingerprints have been submitted with a prior year's application.

(4) A statement by the applicant that he or she:

(i) Is a citizen of the United States.

(ii) Is at least twenty-one years of age.

(iii) Has never been convicted of a crime of violence, in this State or elsewhere, or of any of the provisions of this subtitle.

(iv) Is not a fugitive from justice.

(v) Is not an habitual drunkard.

(vi) Is not an addict or an habitual user of narcotics, barbiturates or amphetamines.

(vii) Has never spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless there is attached to the application a physician's certificate, issued within thirty days prior to the date of application, certifying that the applicant is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others.

(e) *Same—Investigation; procedure when false information discovered or application incomplete.*—The Superintendent of the Maryland State Police and/or his duly authorized agent or agents shall conduct an investigation in order to determine the truth or falsity of the information supplied and statements made in an application for a pistol and revolver dealer's license. If it be thereupon determined that any false information or statement has been supplied or made by the applicant, or that the application has not been properly completed, the said Superintendent and/or his duly authorized agent or agents shall forward written notification to the prospective licensee of his or their disapproval of said application.

(f) *Sales by disapproved applicants prohibited; exceptions.*—No person shall engage in the business of selling pistols or revolvers whose application for a pistol and revolver dealer's license has been disapproved, unless such disapproval has been subsequently withdrawn by the Superintendent of the Maryland State Police and/or his duly authorized agent or agents or overruled by the action of the courts pursuant to subsection (g) below.

(g) *Appeal from disapproval of application.*—Any person aggrieved by the action of the Superintendent of the Maryland State Police and/or his duly authorized agent or agents may appeal the disapproval of his or her application for a pistol and revolver dealer's license to the circuit court of the county where the applicant's intended place of business is to be conducted or to the Baltimore City Court, if the applicant's intended place of business is to be conducted within the limits of Baltimore City. Such appeal must be filed not later than thirty days from the date written notification of disapproval to the prospective licensee was mailed by the said Superintendent and/or his duly authorized agent or agents. The court wherein an appeal is properly and timely filed shall affirm or reverse the determination of disapproval rendered by the said Superintendent and/or his duly authorized agent or agents, depending upon whether it finds that any false information or statement was supplied or made by the applicant, or that the application was not properly completed. A further appeal to the Court of Appeals may be prosecuted by either the Superintendent of the Maryland State Police or the applicant from the decision reached by the circuit court or Baltimore City Court in accordance with this subsection.

(h) *Revocation of license.*—The Superintendent of the Maryland State Police and/or his duly authorized agent or agents shall revoke an issued pistol and revolver dealer's license, by written notification forwarded to the licensee, under any of the following circumstances:

(1) When it is discovered false information or statements have been supplied or made in an application required by this section.

(2) If the licensee is convicted of a crime of violence, in this State or elsewhere, or of any of the provisions of this subtitle, or is a fugitive from justice, or is an habitual drunkard, or is addicted to or an habitual user of narcotics, barbiturates or amphetamines, or has spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless the licensee produces a physician's certificate, issued subsequent to the last period of institutionalization, certifying that the licensee is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others.

(i) *Sales by person whose license has been revoked prohibited; exceptions.*—No person shall engage in the business of selling pistols or revolvers whose pistol and revolver dealer's license has been revoked, unless such revocation has been subsequently withdrawn by the Superintendent of the Maryland State Police and/or his duly authorized agent or agents or overruled by the action of the courts pursuant to subsection (j) below.

(j) *Hearing on revocation of license; judicial review.*—Any prospective dealer aggrieved by the action of the State Police may request a hearing within thirty (30) days from the date when written notice was forwarded to such aggrieved person by writing to the Superintendent of State Police, who shall grant the hearing within fifteen days of said request. Said hearing and subsequent proceedings of judicial review, if any, thereupon following shall be conducted in accordance with the provisions of the Administrative Procedure Act. A suspension or revocation shall not take effect while an appeal is pending.

(k) *Penalties.*—Any person who engaged in the business of selling pistols or revolvers in violation of this section or who knowingly gives any false information or makes any material misstatement in an application required by this section shall upon conviction thereof be subject to the penalties hereinafter provided in Section 448 of this subtitle. Each day on which pistols or revolvers are unlawfully sold or offered for sale shall be considered a separate offense.

444. Obliterating, etc., identification mark or number.

It shall be unlawful for anyone to obliterate, remove, change or alter the manufacturer's identification mark or number on any firearms. Whenever on trial for a violation of this section the defendant is shown to have or have had possession of any such firearms, such fact shall be presumptive evidence that the defendant obliterated, removed, changed or altered the manufacturer's identification mark or number.

445. Restrictions on sale, transfer and possession of pistols and revolvers.

(a) *Right to regulate transfer and possession of pistols and revolvers preempted by State.*—All restrictions imposed by the laws, ordinances or regulations of all subordinate jurisdictions within the State of Maryland on possession or transfers by private parties of pistols and revolvers are superseded by this section and the State of Maryland hereby preempts the right of such jurisdictions to regulate the possession and transfer of pistols and revolvers.

(b) *Sale or transfer to criminal, fugitive, etc.*—It shall be unlawful for any dealer or person to sell or transfer a pistol or revolver to a person whom he knows or has reasonable cause to believe has been convicted of a crime of violence, or of any of the provisions of this subtitle, or is a fugitive from justice, or is an habitual drunkard, or is addicted to or an habitual user of narcotics, barbiturates or amphetamines, or is of unsound mind, or to any person visibly under the influence of alcohol or drugs, or to any person under twenty-one years of age.

(c) *Possession by criminal, fugitive, etc.*—It shall be unlawful for any person who has been convicted of a crime of violence, or of any of the provisions of this subtitle or who is a fugitive from justice or a habitual drunkard, or addicted to or an habitual user of narcotics, barbiturates or amphetamines, to possess a pistol or revolver. (An. Code, 1951, Section 541; 1941, ch. 622, Section 531D; 1966, ch. 502, Section 1.)

446. Sale, transfer, etc., of stolen pistol.

It shall be unlawful for any person to possess, sell, transfer or otherwise dispose of any stolen pistol or revolver, knowing or having reasonable cause to believe same to have been stolen. (An. Code, 1951, Section 542; 1941, ch. 622, Section 531E.)

447. Antique or unserviceable firearms excepted.

The provisions of this subtitle shall not be construed to include any antique or unserviceable firearms sold or transferred and/or held as curios or museum pieces. (An. Code, 1951, Section 543; 1941, ch. 622, Section 531 F.)

448. Penalties.

Any person violating any of the provisions of this subtitle unless otherwise stated herein shall upon conviction be fined not more than one thousand dollars ($1,000) or imprisoned for not more than three years, or both. Any prospective purchaser making a false material statement on an application to purchase or transfer required by Section 442 or any dealer making a false material statement on an application for a pistol and revolver dealer's license required by Section 443 shall upon conviction thereof be fined not more than one thousand dollars ($1,000) or imprisoned for not more than two (2) years, or both.]

Handguns

268A.

[The General Assembly of Maryland hereby finds and declares that:

A *(a) According to the Uniform Crime Report of 1970 issued by J. Edgar Hoover, Director of the Federal Bureau of Investigation:*

(1) two out of every three murders in the United States were committed with guns, and more than one-half of all murders were committed with handguns;

(2) guns, most often handguns, were used in seven out of every ten of the 24,512 violent crimes committed in Maryland;

(3) nearly two out of every three robberies in Maryland were committed with guns;

(4) three of four murders in most cities were committed with handguns;

(5) eight out of every ten murders in Maryland involved family killings, romantic triangles or lover quarrels, and family arguments, rather than confrontations between strangers, and most were committed in rage with handguns;

(6) three of every four murders in the Southern region of the United States, which includes Maryland, were committed with guns, primarily handguns.

(b) More than 100 police officers were murdered in 1970, and more than 1,000 injured, mostly with handguns, according to the International Association of Chiefs of Police.

(c) In the first six months of 1971, there were 54 homicides in London, a city which has outlawed the private ownership of handguns; during the same time there were 652—or 12 times as many homicides—in New York City.

(d) There were 213 murders in Tokyo, the world's largest city and one which bans handguns, during 1970, and only three were committed with handguns; during the same year there were 538 handgun murders in New York City.

(e) Handguns in the home are of less value than is commonly thought in defending against intruders, and are more likely to increase the danger of a fatality to the inhabitants than to enhance their personal safety; and according to Quinn Tamm, Executive Director of the International Association of Chiefs of Police, citizens would be safer by protecting themselves with a brick than a handgun.

(f) With few exceptions, handguns are not used for sport and recreational purposes and such purposes do not require keeping handguns in private homes.

(g) Violent crimes committed with handguns threaten the internal security and domestic tranquility of the State, and fear of guns discourages our citizens from conducting business throughout the State, especially in our cities.

(h) While Federal legislation barring handguns is the only effective solution to this critical problem, the State can and should act to increase the security and well being of its citizens, and hopefully, such legislation will encourage and serve as a model for needed Federal legislation on handguns.

(i) Bold legislation banning the private ownership and possession of handguns is necessary to preserve the peace and tranquillity of the State and protect the rights and privileges of its citizens.]

268B.

As used in this subtitle:

(1) The term "person" includes an individual, partnership, company, association, club, society, joint-stock company or corporation.

(2) The term "handgun" means any firearm with a barrel less than twelve inches in length, including signal, starter, and blank pistols.

(3) The term "dealer" means any person engaged in the business of selling handguns at wholesale or retail, or any person engaged in the business of repairing handguns.

(4) The term "fair market value" means the prevailing price on the open market for handguns, immediately prior to the enactment of this subheading or at the time of a voluntary transfer under section of this subheading, whichever is higher.

(5) The term "Secretary" means the Secretary of Public Safety and Correctional Services.

(6) The term "handgun ammunition" means ammunition or cartridge cases, or bullets designed for use primarily in handguns, but does not include 22 caliber firearm ammunition.

(7) The term "pistol club" means a club organized for target shooting with handguns or to use handguns for sporting or other recreational purposes.

(8) The term "licensed pistol club" means a pistol club which is licensed under this subheading.

268C.

(a) Except as provided in Section 268E, it is unlawful for any person to manufacture, sell, buy, transfer, receive or transport a handgun or handgun ammunition.

(b) Except as provided in Section 268E, after January 1, 1973, it is unlawful for any person to own or possess a handgun or handgun ammunition.

(c) The Security of Public Safety and Correctional Services may exempt from the operation of the above provisions the manufacture, sale, purchase, transfer, receipt, possession, ownership, or transportation of handguns or handgun ammunition by manufacturers, dealers and pistol clubs licensed under this subheading.

268D.

(a) A person [may] deliver to any State or local law enforcement agency designated by the Secretary of Public Safety and Correctional Services a handgun owned or possessed by such a person. The Secretary shall arrange with these designated agencies for the transfer of all handguns to the Department of General Services for the destruction or other disposition of all handguns delivered as provided in this subheading.

(b) Upon proof of ownership by a person delivering a handgun under this subheading, the Secretary of Public Safety and Correctional Services shall provide for reimbursement at fair market value [up to a maximum of $25.00] within 180 days for any handgun delivered as provided in this section.

(c) Reimbursements authorized in this subheading shall be paid out of the fees collected as provided in Section 268D to the extent that these fees are sufficient, and the remainder shall be paid out of general revenues.

26SE.

(a) A pistol club desiring to be licensed under this subheading shall apply to the Secretary of Public Safety and Correctional Services. The application shall be in a form and contain information as the Secretary shall by regulation prescribe.

(b) Any manufacturer or dealer desiring to be licensed to sell handguns under this subheading shall apply to the Secretary of Public Safety and Correctional Services, providing information as the Secretary by regulation shall prescribe.

(c) Any application submitted in accordance with the provisions of subsection (a) of this section shall be approved if:

A *(1) No member of the pistol club is a person whose membership is in violation of any applicable law.*

A *(2) No member of the pistol club has willfully violated any provisions of this subheading or any regulations issued thereunder.*

(3) The club has been funded and operated for bona fide target or sport shooting or other legitimate recreational purposes, and

(4) The pistol club has premises from which it operates and maintains possession and control of the handguns used by its members, and has procedures and facilities for keeping the handguns in a secure place at all times when they are not being used for target shooting or other sporting or recreational purposes, or has made arrangements for storage of handguns in a local police or law enforcement agency facility.

(d) The Secretary of Public Safety and Correctional Services shall act on any application within 60 days of receiving such application. If the application is approved, the license shall be issued upon payment of a fee as the Secretary prescribes by regulation.

(e) The Secretary of Public Safety and Correctional Services may, after notice and opportunity for hearing, revoke any license issued under this subheading if the holder of this license has violated any provision of this subheading or any rule or regulations prescribed by the Secretary.

(f) Any person whose application for a license is denied and any holder of a license which is revoked shall receive a written notice from the Secretary of Public Safety and Correctional Services stating specifically the grounds upon which the application was denied or upon which the license was revoked. Any notice of revocation of a license shall be given to the holder of the license before the effective date of the revocation.

(g) If the Secretary of Public Safety and Correctional Services denies an application for, or revokes, a license, he shall promptly hold a hearing to review his denial or revocation upon request by the aggrieved party. In the case of a revocation of a license, the Secretary shall stay the effective date of the revocation upon request of the holder of the license. If, after the hearing is held, the Secretary decides not to reverse his decision, the Secretary shall give notice of his decision to the aggrieved party; and the aggrieved party may at any time within 60 days after the date of notice was given under

this section, file a petition with a court having jurisdiction for judicial review of the denial or revocation. If the court decides that the Secretary was not authorized to deny the application or to revoke the license, the court shall order the Secretary to take action as may be necessary to comply with the judgment of the court.

(h) Each licensed pistol club shall maintain records as prescribed by regulations by the Secretary of Public Safety and Correctional Services. These records shall be made available for inspection at all reasonable times, and pistol clubs shall submit to the Secretary the reports and information with respect to these records as the Secretary shall prescribe by regulation.

(i) Each manufacturer and dealer licensed under this subheading shall keep records of sales and transfers of handguns as prescribed by regulation by the Secretary of Public Safety and Correctional Services. The Secretary shall be allowed to inspect the records at reasonable times.

(j) The loss or theft of any handgun shall be reported to the Secretary of Public Safety and Correctional Services by the person from whose possession it was lost or stolen within ten days after the loss or theft is discovered. The report shall include information that the Secretary by regulation shall prescribe.

268F.

(a) The provisions of this subheading do not apply to the following:

(1) Professional guard services and private detectives licensed by the State under Article 56 of this Code. The guard services and private detectives, shall maintain records as the Secretary of Public Safety and Correctional Services may prescribe and shall permit the Secretary to inspect these records at reasonable times.

(2) Any Federal, State and local departments and agencies.

(3) Handguns manufactured before 1890, or any other handgun which the Secretary determines is unserviceable, not restorable to firing condition, or intended for use as a curio, museum piece, or collector's item.

268G.

It is unlawful for anyone to obliterate, remove, change or alter the manufacturer's identification mark or number on any handguns. [Whenever on trial for a violation of this section the defendant is shown to have or have had possession of any handguns, this fact shall be presumptive evidence that the defendant obliterated, removed, changed or altered the manufacturer's identification mark or number.]

268H.

(a) Whoever violates any provision of this subheading, or whoever knowingly makes any false statement or representation with respect to the information and records required by the provisions of

this subheading, shall be fined not more than $5,000 or imprisoned not more than 5 years or both, and shall become eligible for parole as the Board of Parole shall determine.

(b) Any handgun or handgun ammunition involved or used in any violation of the provisions of this subheading or any rule or regulation promulgated thereunder shall be subject to seizure and forfeiture.

(c) Except as provided in subsection (a) above, no information or evidence obtained from an application submitted to comply with any provision of this subheading or regulations issued by the Secretary under this subheading shall be used as evidence against that person in a criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application containing the information or evidence.

SEC. 2. *And be it further enacted,* That this Act shall take effect July 1, 1972.

EMERGENCY BILL

HOUSE OF DELEGATES

No. 277

BY THE SPEAKER (Administration Bill)—Judiciary

By the HOUSE OF DELEGATES, January 17, 1972.

Introduced, read first time and referred to the Committee on Judiciary.

By order, JACQUELINE M. SPELL, Assistant Chief Clerk.

A BILL ENTITLED

AN ACT to repeal and re-enact, with amendments, Section 36 of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," subheading "Concealed Weapons"; to repeal and re-enact, with amendments, Section 36A(c) of said Article and title of the said Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), subtitle "I. Crimes and Punishments," subheading "Carrying Deadly Weapons on Public School Property"; to add new Sections 36B, 36C, 36D, 36E, and 36F to Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," to follow immediately after Section 36A of said article, title and subtitle, under the new subheading "Handguns"; to repeal and re-enact, with amendments, Section 594B(e) of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "II. Venue, Procedure and Sentence," subheading "Arrests"; to repeal Section 90A of Article 56 of the Annotated Code of Maryland (1968 Replacement Volume and 1971 Supplement), title "Licenses," subtitle "Private Detectives"; to exclude handguns from the provisions of Section 36 of Article 27; to amend the penalties for carrying a handgun on public school property; to make unlawful, generally regulate, and provide penalties for the wearing, carrying, or transporting of handguns; to make the use of a handgun in the commission of a felony or crime of violence a misdemeanor and to provide penalties therefor; to allow law enforcement officers to conduct searches for handguns under certain circumstances; to allow law enforcement officers to arrest persons for violating Section 36B of said article pursuant to the provisions of Section 594B(e) of Article 27; to repeal provisions for the issuance of permits to private detectives to carry concealed weapons; and relating generally to the regulation of handguns.

EXPLANATION: *Italics indicate new matter added to existing law.*
[Brackets] indicate matter stricken from existing law.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 36 of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," subheading "Concealed Weapons," be and it is hereby repealed and re-enacted, with amendments, to read as follows:

36.

(a) Every person who shall wear or carry any [pistol,] dirk knife, bowie knife, switchblade knife, sandclub, metal knuckles, razor, or any other dangerous or deadly weapon of any kind, whatsoever (penknives without switchblade *and handguns,* excepted) concealed upon or about his person, and every person who shall wear or carry any such weapon openly with the intent or purpose of injuring any person in any unlawful manner, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one thousand ($1,000.00) dollars or be imprisoned in jail, or sentenced to the Maryland Department of Correction for not more than three years; and in case of conviction, if it shall appear from the evidence that such weapon was carried, concealed as aforesaid or openly, with the deliberate purpose of injuring the person or destroying the life of another, the court [, or justice of the peace, presiding in the case,] shall impose the highest sentence of imprisonment hereinbefore prescribed. In Cecil, Anne Arundel, Talbot, Harford, Caroline, Prince George's, Montgomery, Washington, Worcester and Kent counties it shall also be unlawful and a misdemeanor, punishable as above set forth, for any minor to carry any dangerous or deadly weapon, *other than a handgun,* between one hour after sunset and one hour before sunrise, whether concealed or not, except while on a bona fide hunting trip, or except while engaged in or on the way to or returning from a bona fide trap shoot, sport shooting event, or any organized civic or military activity.

SEC. 2. *Be it enacted by the General Assembly of Maryland,* That Section 36A (c) of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," subheading "Carrying Deadly Weapon on Public School Property," be and it is hereby repealed and re-enacted, with amendments, to read as follows:

36A.

(c) Any person who violates this section shall, upon conviction, be guilty of a misdemeanor and shall be sentenced to pay a fine of no more than one thousand dollars ($1,000.00), or shall be sentenced to the Maryland Department of Correction for a period of not more than three (3) years. *Any such person who shall be found to carry a handgun in violation of this Section 36A, shall be sentenced as provided in Section 36B of this article.*

SEC. 3. *Be it enacted by the General Assembly of Maryland,* That new sections 36B, 36C, 36D, 36E, and 36F be and they are hereby added to Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," to follow immediately after Section 36A thereof and to be under the new subheading "Handguns" and to read as follows:

tion of Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A of this article, or any combination thereof, he shall be sentenced to the Maryland Division of Correction for a term of not less than three years nor more than 10 years, and it is mandatory upon the Court to impose no less than the minimum sentence of three years; provided, however, that if it shall appear from the evidence that the handgun was worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than 5 years.

(iv) If it shall appear from the evidence that any handgun referred to in subsection (a) hereof was carried, worn, or transported with the deliberate purpose of injuring or killing another person, the Court shall impose a sentence of imprisonment of not less than five years.

(v) Notwithstanding any other provision of law to the contrary, including the provisions of Section 643 of this Article, (a) no court shall enter a judgment for less than the minimum mandatory sentence provided for in this subheading in those cases for which a minimum mandatory sentence is specified in this subheading; (b) no court shall suspend a minimum mandatory sentence provided for in this subheading; (c) no court shall enter a judgment of probation before verdict or probation without verdict with respect to any case arising under this subheading; and (d) no court shall enter a judgment of probation after verdict with respect to any case arising under this subheading which would have the effect of reducing the actual period of imprisonment or the actual amount of the fine prescribed in this subheading as a mandatory minimum sentence.

(b) Exceptions.

(1) Nothing in this section shall prevent the wearing, carrying, or transporting of a handgun by (i) law enforcement personnel of the United States, or of this State, or of any county or city of this State, (ii) members of the armed forces of the United States or of the National Guard while on duty or traveling to or from duty; or (iii) law enforcement personnel of some other state or subdivision thereof temporarily in this State on official business; (iv) any jailer, prison guard, warden, or guard or keeper at any penal, correctional or detention institution in this State; provided that any such person mentioned in this paragraph is duly authorized at the time and under the circumstances he is wearing, carrying, or transporting the weapon to wear, carry, or transport such weapon as part of his official equipment;

(2) Nothing in this section shall prevent the wearing, carrying, or transporting of a handgun by any person to whom a permit to wear, carry, or transport any such weapon has been issued under Section 36E of this article.

(3) Nothing in this section shall prevent any person from carrying a handgun on his person or in any vehicle while transporting the same to or from the place of legal purchase or sale, or to or from any bona fide repair shop. Nothing in this section shall prevent any

person from wearing, carrying, or transporting a handgun normally used in connection with a target shoot, target practice, sport shooting event, hunt, or any organized civic or military activity while engaged in, on the way to, or returning from any such activity. However, while travelling to or from any such place or event referred to in this paragraph, the handgun shall be unloaded and carried in an enclosed case or enclosed holster.

(4) Nothing in this section shall prevent a person from having in his presence any handgun within the confines of any dwelling, business establishment, or real estate owned or leased by him.

(c)(d) Unlawful use of handgun in commission of crime. Any person who shall use a handgun in the commission of any felony or any crime of violence as defined in Section 441 of this Article, shall be guilty of a separate misdemeanor and on conviction thereof shall, in addition to any other sentence imposed by virtue of commission of said felony or misdemeanor, be sentenced to the Maryland Division of Correction for a term of not less than five nor more than fifteen years, and it is mandatory upon the court to impose no less than the minimum sentence of five years.

36C. Seizure and Forfeiture.

(a) Property subject to seizure and forfeiture. The following items of property shall be subject to seizure and forfeiture, and, upon forfeiture, no property right shall exist in them:

(i) any handgun being worn, carried, or transported in violation of Section 36B of this article.

(ii) all ammunition or other parts of or appurtenances to any such handgun worn, carried, or transported by such person or found in the immediate vicinity of such handgun;

(iii) any vehicle within which a handgun is transported in violation of Section 36B of this article; provided, however, that (A) no vehicle legitimately used as a common carrier shall be seized or forfeited under this section unless it shall appear that the owner or other person in charge of the vehicle was a consenting party or privy to a violation of Section 36B, and (B) no vehicle shall be seized or forfeited by reason of any act or omission established by the owner to have been committed or omitted by any person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or any State.

(b) Procedure relating to seizure.

(i) any property subject to seizure under subsection (a) hereof may be seized by any duly authorized law enforcement officer, as an incident to an arrest or search and seizure.

(ii) any such officer seizing such property under this section shall either place the property under seal or remove the same to a location designated either by the Maryland State Police or by the law enforcement agency having jurisdiction in the locality.

(iii) property seized under this section shall not be subject to replevin, but shall be deemed to be in custodia legis; provided, however, that upon petition of any person other than a person who has

36B. Wearing, carrying or transporting handguns.

(a) Declaration of Policy. The General Assembly of Maryland hereby finds and declares that:

(i) there has, in recent years, been an alarming increase in the number of violent crimes perpetrated in Maryland, and a high percentage of those crimes involve the use of handguns;

(ii) the result has been a substantial increase in the number of persons killed or injured which is traceable, in large part, to the carrying of handguns on the streets and public ways by persons inclined to use them in criminal activity;

(iii) the laws currently in force have not been effective in curbing the more frequent use of handguns in perpetrating crime; and

(v) further regulations on the wearing, carrying, and transporting of handguns are necessary to preserve the peace and tranquility of the State and to protect the rights and liberties of its citizens.

(b) Unlawful wearing, carrying, or transporting of handguns. Any person who shall wear, carry, or transport any handgun, whether concealed or open, upon or about his person, and any person who shall wear, carry or transport any handgun, whether concealed or open, in any vehicle traveling upon the public roads, highways, waterways, or airways or upon roads or parking lots generally used by the public in this State shall be guilty of a misdemeanor, and on conviction thereof, shall be fined or imprisoned as follows:

(i) if the person has not previously been convicted of unlawfully wearing, carrying or transporting a handgun in violation of this Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A of this article, he shall be fined not less than two hundred and fifty ($250.00) dollars, nor more than twenty five hundred ($2,500.00) dollars, or be imprisoned in jail or sentenced to the Maryland Division of Correction for a term of not less than 30 days nor more than three years, or both; provided, however, that if it shall appear from the evidence that the handgun was worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than 90 days.

(ii) if the person has previously been once convicted of unlawfully wearing, carrying, or transporting a handgun in violation of Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A of this article, he shall be sentenced to the Maryland Division of Correction for a term of not less than 1 year nor more than 10 years, and it is mandatory upon the Court to impose no less than the minimum sentence of 1 year; provided, however, that if it shall appear from the evidence that the handgun was worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than three years.

(iii) if the person has previously been convicted more than once of unlawfully wearing, carrying, or transporting a handgun in viola-

(3) ask such questions and request such explanations as may be reasonably calculated to determine whether the person is, in fact, unlawfully wearing, carrying, or transporting a handgun in violation of Section 36B; and, if the person does not give an explanation which dispels, in the officer's mind, the reasonable suspicion which he had, he may

(4) conduct a search of the person, limited to a patting or frisking of the person's clothing in search of a handgun;

(b) In the event that the officer discovers the person to be wearing, carrying, or transporting a handgun, he may demand that the person produce evidence that he is entitled to so wear, carry, or transport the handgun pursuant to Section 36B(e) of this article. If the person is unable to produce such evidence, the officer may then seize the handgun and arrest the person.

(c) Nothing in this section shall be construed to limit the right of any law enforcement officer to make any other type of search, seizure, and arrest which may be permitted by law, and the provisions hereof shall be in addition to and not in substitution of or limited by the provisions of Section 594B of this article.

(d) No law enforcement officer conducting a search pursuant to the provisions of this Section 36D shall be liable for damages to the person searched unless said person shall prove by a fair preponderance of the evidence, that the officer acted without reasonable grounds for suspicion and with malice.

36E. Permits.

(a) A permit to carry a handgun may be issued by the Superintendent of the Maryland State Police, upon application under oath therefor, to any person whom he finds:

(1) is twenty-one years of age or older; and

(2) has not been convicted of a felony or of a misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted of such a crime, has been pardoned; and

(3) has not been committed to any detention, training, or correctional institution for juveniles for longer than one year after an adjudication of delinquency by a Juvenile Court; provided, however, that a person shall not be disqualified by virtue of this paragraph (3) if, at the time of the application, more than ten years has elapsed since his release from such institution; and

(4) has not been convicted of any offense involving the possession, use, or distribution of controlled dangerous substances; and is not presently an addict, an habitual user of any controlled dangerous substance or an alcoholic; and

(5) has in the judgment of the Superintendent not exhibited a propensity for violence or instability which may reasonably render his possession of a handgun a danger to himself or other law abiding persons; and

(6) has in the judgment of the Superintendent good and substantial reason to wear, carry, or transport a handgun.

been charged with a violation of Section 36B of this article and whose case is currently pending trial, the police authorities having custody of the seized property may return the seized property if convinced that (A) the petitioner is the owner of the property; (B) said petitioner did not know and should not have known that the property was being or would be worn, carried, transported, or used in violation of Section 36B of this article; and (C) the property is not needed as evidence in a pending criminal case. No handgun or ammunition shall be returned by the police authorities pursuant to this subsection without the written consent of the State's Attorney having jurisdiction over the case.

(c) Procedure relating to forfeiture.

(i) Upon conviction of any person for a violation of Section 36B of this article, any property subject to seizure, actually seized, and not returned pursuant to the provisions of this section shall be forfeited to the State. Any judgment of conviction entered by a court having jurisdiction shall also be deemed to be an order of forfeiture of such articles. If the judgment of conviction is by a jury, the court shall thereupon sua sponte immediately enter an order of forfeiture.

Amended Proposal

(ii) Notwithstanding the provisions of paragraph (c)(i) hereof, upon petition of any person other than the person convicted of violating Section 36B of this article filed prior to the judgment of conviction or within ten days thereafter, the Court may decline to order forfeiture or may strike any order of forfeiture and order the return of seized property if the petitioner shall prove, by a fair preponderance of the evidence that (A) the petitioner is the owner of the property; (B) said petitioner did not know and should not have known that the property was being or would be worn, carried, transported, or used in violation of Section 36B of this article; and (C) the property is not needed as evidence in any other pending criminal case.

(d) Whenever property is forfeited under this Section, it shall be turned over to the State Secretary of General Services who may (i) order the property retained for official use of State agencies, or (ii) make such other disposition of the property as he may deem appropriate.

36D. Limited Search.

(a) Any law enforcement officer who, in the light of his observations, information, and experience, may have a reasonable belief that (i) a person may be wearing, carrying, or transporting a handgun in violation of Section 36B of this article, (ii) by virtue of his possession of a handgun, such person is or may be presently dangerous to the officer or to others, (iii) it is impracticable, under the circumstances, to obtain a search warrant; and (iv) it is necessary for the officer's protection or the protection of others to take swift measures to discover whether such person is, in fact, wearing, carrying, or transporting a handgun, such officer may

(1) approach the person and identify himself as a law enforcement officer;

(2) request the person's name and address, and, if the person is in a vehicle, his license to operate the vehicle, and the vehicle's registration; and

(b) ~~The~~ Superintendent may charge a non-refundable fee not to exceed $25.00, payable at the time an application for a permit or renewal ~~of~~ a permit is filed. All such fees collected by the Superintendent shall be credited to a special fund for the account of the Maryland State Police. The expenses of administering the provisions of this Section 36E, except for the per diem compensation and expenses of the Handgun Permit Review Board, shall be paid from the said special fund, but nothing shall preclude the Governor from including general fund appropriations in his Executive Budget for such purposes if the special fund is inadequate therefor.

(c) A permit issued under this section shall expire on the last day of the holder's birth month following two years after its issuance. The permit may be renewed, upon application and payment of the renewal fee, for successive periods of two years each, if the applicant, at the time of application, possesses the qualifications set forth in this section for the issuance of a permit.

(d) The Superintendent may, in any permit issued under this section, limit the geographic area, circumstances, or times during the day, week, month, or year in or during which the permit is effective.

(e) Any person to whom a permit shall be issued or renewed shall carry such permit in his possession every time he carries, wears, or transports a handgun.

(f) The Superintendent may revoke any permit issued or renewed at any time upon a finding that (i) the holder no longer satisfies the qualifications set forth in subsection (a), or (ii) the holder of the permit has violated subsection (e) hereof. A person holding a permit which is revoked by the Superintendent shall return the permit to the Superintendent within ten days after receipt of notice of the revocation. Any person who fails to return a revoked permit in violation of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than $100 or more than $1,000, or be imprisoned for not more than one year, or both.

(g) (i) There is created a Handgun Permit Review Board as a separate agency within the Department of Public Safety and Correctional Services. The Board shall consist of three members appointed from the general public by the Governor and serving at the pleasure of the Governor. Each member of the Board shall receive per diem compensation as provided in the budget for each day actually engaged in the discharge of his official duties as well as reimbursement for all necessary and proper expenses. (ii) Any person whose application for a permit or renewal of a permit has been rejected or whose permit has been revoked or limited may request the Board to review the decision of the Superintendent by filing a written request for review with the Board within ten days after receipt of written notice of the Superintendent's action. The Board shall either sustain, reverse, or modify the decision of the Superintendent upon a review of the record, or conduct a hearing within thirty days after receipt of the request. (iii) Any hearing and any subsequent proceedings of judicial review shall be conducted in accordance with the provisions of the Administrative Procedure Act; provided, however, that no court of this State shall order the issuance or renewal of a permit or alter any limitations on a permit pending final determination of the proceeding.

(h) Notwithstanding any other provision of this subheading, the following persons may, to the extent authorized prior to the effective date of this subtitle and subject to the conditions specified in this paragraph and paragraph (i) hereof continue to wear, carry, or transport a handgun without a permit:

(1) holders of Special Police Commissions issued under Sections 60 to 70 of Article 41 of the Annotated Code of Maryland, while actually on duty on the property for which the Commission was issued or while travelling to or from such duty;

(2) uniformed security guards, or watchmen who have been cleared for such employment by the Maryland State Police, while in the course of their employment or while travelling to or from the place of employment;

(3) Guards in the employ of a bank, savings and loan association, building and loan association, or express or armored car agency, while in the course of their employment or while travelling to or from the place of employment;

(4) private detectives and employees of private detectives previously licensed under former Section 90A of Article 56 of the Annotated Code of Maryland, while in the course of their employment, or while travelling to or from the place of employment.

(i) Each person referred to in paragraph (h) hereof shall, within one year after the effective date of this subtitle, make application for a permit as provided in this section. The right to wear, carry, or transport a handgun provided for in paragraph (h) hereof shall terminate at the expiration of one year after the effective date of this subtitle if no such application is made, or immediately upon notice to the applicant that his application for a permit has not been approved.

36F. Definitions.

(a) The term "handgun" as used in this subheading shall include any pistol, revolver, or other firearm capable of being concealed on a person, except antique firearms possessed as curiosities, ornaments, or for their historical significance or value and which (i) are incapable of being fired or discharged, or (ii) do not fire cartridge ammunition or (iii) fire ammunition which is not commercially available.

(b) The term "vehicle" as used in this Act shall include any motor vehicle, as defined in Article 66½, Section 1-149 of the Annotated Code of Maryland, trains, aircraft, and vessels, except a vehicle owned by the United States government and operated by an agent or employee thereof in the course of his employment.

(c) The term "law enforcement personnel" shall mean any full-time member of a police force or other agency of the United States, a State, a county, a municipality or other political subdivision who is responsible for the prevention and detection of crime and the enforcement of the laws of the United States, a State, or of a county or municipality or other political subdivision of a State.

SEC. 4. *Be it further enacted,* That Section 594B(e) of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "II. Venue, Procedure and

Sentence," subheading "Arrests" be and it is hereby repealed and re-enacted, with amendments, to read as follows:

594B.

(e) The offenses referred to in subsection (d) of this section are:

(1) Those offenses specified in the following sections of Article 27, as they may be amended from time to time;

(i) Section 8 (relating to burning barracks, cribs, hay, corn, lumber, etc.; railway cars, watercraft, vehicles, etc.);

(ii) Section 11 (relating to setting fire while perpetrating crime);

(iii) Section 36 (relating to carrying or wearing weapon);

(iv) Section 111 (relating to destroying, injuring, etc., property of another);

(v) Section 297 (relating to possession of hypodermic syringes, etc., restricted);

(vi) Section 341 (relating to stealing goods worth less than $100.00);

(vii) Section 342 (relating to breaking into building with intent to steal);

(viii) The common-law crime of assault when committed with intent to do great bodily harm;

(ix) Sections 276 through 313D (relating to drugs and other dangerous substances) as they shall be amended from time to time; *and*

"(x) Section 36B (relating to handguns)".

SEC. 5. *Be it further enacted,* That Section 90A of Article 56 of the Annotated Code of Maryland (1968 Replacement Volume and 1971 Supplement), title "Licenses," subtitle "Private Detectives," subheading "Special permit to carry concealed weapon," be and it is hereby repealed.

[90A.

A special permit to carry a concealed weapon, as defined in Article 27, Section 36, may be issued by the Superintendent of the Maryland State Police to any person to whom a license has been issued in accordance with provisions of this subtitle, or any employee of any such licensee if such employee has been properly registered in accordance with the provisions of Section 81 of this subtitle, provided that the Superintendent, or his delegate, first finds that such licensee or employee:

(1) Is of good character; and

(2) Has not been convicted of a felony; and

(3) Possesses such mental and physical qualities as the Superintendent may determine necessary.

Any special permit issued pursuant to this section may be revoked by the Superintendent of the Maryland State Police at any time.]

SEC. 6. *Be it further enacted,* That all restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing, carrying, or transporting of handguns are superseded by this Act, and the State of Maryland hereby preempts the right of the political subdivisions to regulate said matters.

SEC. 7. *Be it further enacted,* That if any provisions of this Act or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision or application.

SEC. 8. *Be it further enacted,* That all laws or parts of laws, public general or public local, inconsistent with the provisions of this Act are repealed to the extent of the inconsistency.

SEC. 9. *And be it further enacted,* That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of the public health and safety, and having been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two houses of the General Assembly, the same shall take effect from the date of its passage.

EMERGENCY BILL

SENATE OF MARYLAND

No. 205

BY THE PRESIDENT—(Administration Bill)—Judicial Proceedings.

By the SENATE, January 17, 1972.

Introduced, read first time and referred to the Committee on Judicial Proceedings.

By order, ODEN BOWIE, Secretary.

A BILL ENTITLED

AN ACT to repeal and re-enact, with amendments, Section 36 of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," subheading "Concealed Weapons;" to repeal and re-enact, with amendments, Section 36A(c) of said Article and title of the said Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), subtitle "I. Crimes and Punishments," subheading "Carrying Deadly Weapons on Public School Property;" to add new Sections 36B, 36C, 36D, 36E, and 36F to Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," to follow immediately after Section 36A of said article, title and subtitle, under the new subheading "Handguns;" to repeal and re-enact, with amendments, Section 594B(e) of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "II. Venue, Procedure and Sentence," subheading "Arrests;" to repeal Section 90A of Article 56 of the Annotated Code of Maryland (1968 Replacement Volume and 1971 Supplement), title "Licenses," subtitle "Private Detectives;" to exclude handguns from the provisions of Section 36 of Article 27; to amend the penalties for carrying a handgun on public school property; to make unlawful, generally regulate, and provide penalties for the wearing, carrying, or transporting of handguns; to make the use of a handgun in the commission of a felony or crime of violence a misdemeanor and to provide penalties therefor; to allow law enforcement officers to conduct searches for handguns under certain circumstances; to allow law enforcement officers to arrest persons for violating Section 36B of said article pursuant to the provisions of Section 594B(e) of Article 27; to repeal provisions for the issuance of permits to private detectives to carry concealed weapons; and relating generally to the regulation of handguns.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 36 of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments,"

EXPLANATION: *Italics indicate new matter added to existing law.*
[Brackets**]** indicate matter stricken from existing law.

subtitle "I. Crimes and Punishments," subheading "Concealed Weapons," be and it is hereby repealed and re-enacted, with amendments, to read as follows:

36.

(a) Every person who shall wear or carry any [pistol,] dirk knife, bowie knife, switchblade knife, sandclub, metal knuckles, razor, or any other dangerous or deadly weapon of any kind, whatsoever (penknives without switchblade *and handguns*, excepted) concealed upon or about his person, and every person who shall wear or carry any such weapon openly with the intent or purpose of injuring any person in any unlawful manner, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one thousand ($1,000.00) dollars or be imprisoned in jail, or sentenced to the Maryland Department of Correction for not more than three years; and in case of conviction, if it shall appear from the evidence that such weapon was carried, concealed as aforesaid or openly, with the deliberate purpose of injuring the person or destroying the life of another, the court [, or justice of the peace, presiding in the case,] shall impose the highest sentence of imprisonment hereinbefore prescribed. In Cecil, Anne Arundel, Talbot, Harford, Caroline, Prince George's, Montgomery, Washington, Worcester and Kent counties it shall also be unlawful and a misdemeanor, punishable as above set forth, for any minor to carry any dangerous or deadly weapon, *other than a handgun*, between one hour after sunset and one hour before sunrise, whether concealed or not, except while on a bona fide hunting trip, or except while engaged in or on the way to or returning from a bona fide trap shoot, sport shooting event, or any organized civic or military activity.

SEC. 2. *Be it enacted by the General Assembly of Maryland*, That Section 36A (c) of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement). title "Crimes and Punishments," subtitle "I. Crimes and Punishments," subheading "Carrying Deadly Weapon on Public School Property," be and it is hereby repealed and re-enacted, with amendments, to read as follows:

36A.

(c) Any person who violates this section shall, upon conviction, be guilty of a misdemeanor and shall be sentenced to pay a fine of no more than one thousand dollars ($1,000.00), or shall be sentenced to the Maryland Department of Correction for a period of not more than three (3) years. *Any such person who shall be found to carry a handgun in violation of this Section 36A, shall be sentenced as provided in Section 36B of this article.*

SEC. 3. *Be it enacted by the General Assembly of Maryland*, That new Sections 36B, 36C, 36D, 36E, and 36F be and they are hereby added to Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," to follow immediately after Section 36A thereof and to be under the new subheading "Handguns" and to read as follows:

36B. Wearing, carrying or transporting handguns.

(a) Declaration of Policy. The General Assembly of Maryland hereby finds and declares that:

(i) there has, in recent years, been an alarming increase in the number of violent crimes perpetrated in Maryland, and a high percentage of those crimes involve the use of handguns;

(ii) the result has been a substantial increase in the number of persons killed or injured which is traceable, in large part, to the carrying of handguns on the streets and public ways by persons inclined to use them in criminal activity;

(iii) the laws currently in force have not been effective in curbing the more frequent use of handguns in perpetrating crime; and

(iv) further regulations on the wearing, carrying, and transporting of handguns are necessary to preserve the peace and tranquility of the State and to protect the rights and liberties of its citizens.

(b) Unlawful wearing, carrying, or transporting of handguns. Any person who shall wear, carry, or transport any handgun, whether concealed or open, upon or about his person, and any person who shall wear, carry or transport any handgun, whether concealed or open, in any vehicle traveling upon the public roads, highways, waterways, or airways or upon roads or parking lots generally used by the public in this State shall be guilty of a misdemeanor, and on conviction thereof, shall be fined or imprisoned as follows:

(i) if the person has not previously been convicted of unlawfully wearing, carrying or transporting a handgun in violation of this Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A of this article, he shall be fined not less than two hundred and fifty ($250.00) dollars, nor more than twenty five hundred ($2,500.00) dollars, or be imprisoned in jail or sentenced to the Maryland Division of Correction for a term of not less than 30 days nor more than three years, or both; provided, however, that if it shall appear from the evidence that the handgun was worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than 90 days.

(ii) if the person has previously been once convicted of unlawfully wearing, carrying, or transporting a handgun in violation of Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A of this article, he shall be sentenced to the Maryland Division of Correction for a term of not less than 1 year nor more than 10 years, and it is mandatory upon the Court to impose no less than the minimum sentence of 1 year; provided, however, that if it shall appear from the evidence that the handgun was worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than three years.

(iii) if the person has previously been convicted more than once of unlawfully wearing, carrying, or transporting a handgun in violation of Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A

of this article, or any combination thereof, he shall be sentenced to the Maryland Division of Correction for a term of not less than three years nor more than 10 years, and it is mandatory upon the Court to impose no less than the minimum sentence of three years; provided, however, that if it shall appear from the evidence that the handgun was worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than 5 years.

(iv) If it shall appear from the evidence that any handgun referred to in subsection (a) hereof was carried, worn, or transported with the deliberate purpose of injuring or killing another person, the Court shall impose a sentence of imprisonment of not less than five years.

(v) Notwithstanding any other provision of law to the contrary, including the provisions of Section 643 of this article, (a) no court shall enter a judgment for less than the minimum mandatory sentence provided for in this subheading in those cases for which a minimum mandatory sentence is specified in this subheading; (b) no court shall suspend a minimum mandatory sentence provided for in this subheading; (c) no court shall enter a judgment of probation before verdict or probation without verdict with respect to any case arising under this subheading; and (d) no court shall enter a judgment of probation after verdict with respect to any case arising under this subheading which would have the effect of reducing the actual period of imprisonment or the actual amount of the fine prescribed in this subheading as a mandatory minimum sentence.

(c) Exceptions.

(1) Nothing in this section shall prevent the wearing, carrying, or transporting of a handgun by (i) law enforcement personnel of the United States, or of this State, or of any county or city of this State, (ii) members of the armed forces of the United States or of the National Guard while on duty or traveling to or from duty; or (iii) law enforcement personnel of some other state or subdivision thereof temporarily in this State on official business; (iv) any jailer, prison guard, warden, or guard or keeper at any penal, correctional or detention institution in this State; provided, that any such person mentioned in this paragraph is duly authorized at the time and under the circumstances he is wearing, carrying, or transporting the weapon to wear, carry, or transport such weapon as part of his official equipment;

(2) Nothing in this section shall prevent the wearing, carrying, or transporting of a handgun by any person to whom a permit to wear, carry, or transport any such weapon has been issued under Section 36E of this article.

(3) Nothing in this section shall prevent any person from carrying a handgun on his person or in any vehicle while transporting the same to or from the place of legal purchase or sale, or to or from any bona fide repair shop. Nothing in this section shall prevent any person from wearing, carrying, or transporting a handgun normally used in connection with a target shoot, target practice, sport shooting event, hunt, or any organized civic or military activity while engaged in, on the way to, or returning from any such activity. However, while travelling to or from any such place or event referred to in this para-

graph, the handgun shall be unloaded and carried in an enclosed case or enclosed holster.

(4) Nothing in this section shall prevent a person from having in his presence any handgun within the confines of any dwelling, business establishment, or real estate owned or leased by him.

(d) Unlawful use of handgun in commission of crime. Any person who shall use a handgun in the commission of any felony or any crime of violence as defined in Section 441 of this Article, shall be guilty of a separate misdemeanor and on conviction thereof shall, in addition to any other sentence imposed by virtue of commission of said felony or misdemeanor, be sentenced to the Maryland Division of Correction for a term of not less than five nor more than fifteen years, and it is mandatory upon the court to impose no less than the minimum sentence of five years.

36C. Seizure and Forfeiture.

(a) Property subject to seizure and forfeiture. The following items of property shall be subject to seizure and forfeiture, and, upon forfeiture, no property right shall exist in them:

(i) any handgun being worn, carried, or transported in violation of Section 36B of this article.

(ii) all ammunition or other parts of or appurtenances to any such handgun worn, carried, or transported by such person or found in the immediate vicinity of such handgun;

(iii) any vehicle within which a handgun is transported in violation of Section 36B of this article; provided, however, that (A) no vehicle legitimately used as a common carrier shall be seized or forfeited under this section unless it shall appear that the owner or other person in charge of the vehicle was a consenting party or privy to a violation of Section 36B, and (B) no vehicle shall be seized or forfeited by reason of any act or omission established by the owner to have been committed or omitted by any person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or any State.

(b) Procedure relating to seizure.

(i) any property subject to seizure under subsection (a) hereof may be seized by any duly authorized law enforcement officer, as an incident to an arrest or search and seizure.

(ii) any such officer seizing such property under this section shall either place the property under seal or remove the same to a location designated either by the Maryland State Police or by the law enforcement agency having jurisdiction in the locality.

(iii) property seized under this section shall not be subject to replevin, but shall be deemed to be in custodia legis; provided, however, that upon petition of any person other than a person who has been charged with a violation of Section 36B of this article and whose case is currently pending trial, the police authorities having custody of the seized property may return the seized property if convinced that (A) the petitioner is the owner of the property; (B) said petitioner did not know and should not have known that the property was being or

would be worn, carried, transported, or used in violation of Section 36B of this article; and (C) the property is not needed as evidence in a pending criminal case. No handgun or ammunition shall be returned by the police authorities pursuant to this subsection without the written consent of the State's Attorney having jurisdiction over the case.

(c) Procedure relating to forfeiture.

(i) Upon conviction of any person for a violation of Section 36B of this article, any property subject to seizure, actually seized, and not returned pursuant to the provisions of this section shall be forfeited to the State. Any judgment of conviction entered by a court having jurisdiction shall also be deemed to be an order of forfeiture of such articles. If the judgment of conviction is by a jury, the court shall thereupon sua sponte immediately enter an order of forfeiture.

(ii) Notwithstanding the provisions of paragraph (c) (i) hereof, upon petition of any person other than the person convicted of violating Section 36B of this article filed prior to the judgment of conviction or within ten days thereafter, the Court may decline to order forfeiture or may strike any order of forfeiture and order the return of seized property if the petitioner shall prove, by a fair preponderance of the evidence that (A) the petitioner is the owner of the property; (B) said petitioner did not know and should not have known that the property was being or would be worn, carried, transported, or used in violation of Section 36B of this article; and (C) the property is not needed as evidence in any other pending criminal case.

(d) Whenever property is forfeited under this section, it shall be turned over to the State Secretary of General Services who may (i) order the property retained for official use of State agencies, or (ii) make such other disposition of the property as he may deem appropriate.

36D. Limited Search.

(a) Any law enforcement officer who, in the light of his observations, information, and experience, may have a reasonable belief that (i) a person may be wearing, carrying, or transporting a handgun in violation of Section 36B of this article, (ii) by virtue of his possession of a handgun, such person is or may be presently dangerous to the officer or to others, (iii) it is impracticable, under the circumstances, to obtain a search warrant; and (iv) it is necessary for the officer's protection or the protection of others to take swift measures to discover whether such person is, in fact, wearing, carrying, or transporting a handgun, such officer may

(1) approach the person and identify himself as a law enforcement officer;

(2) request the person's name and address, and, if the person is in a vehicle, his license to operate the vehicle, and the vehicle's registration; and

(3) ask such questions and request such explanations as may be reasonably calculated to determine whether the person is, in fact, unlawfully wearing, carrying, or transporting a handgun in violation of Section 36B; and, if the person does not give an explanation

which dispels, in the officers' mind, the reasonable suspicion which he had, he may

(4) conduct a search of the person, limited to a patting or frisking of the person's clothing in search of a handgun;

(b) In the event that the officer discovers the person to be wearing, carrying, or transporting a handgun, he may demand that the person produce evidence that he is entitled to so wear, carry, or transport the handgun pursuant to Section 36B (c) of this article. If the person is unable to produce such evidence, the officer may then seize the handgun and arrest the person.

(c) Nothing in this section shall be construed to limit the right of any law enforcement officer to make any other type of search, seizure, and arrest which may be permitted by law, and the provisions hereof shall be in addition to and not in substitution of or limited by the provisions of Section 594B of this article.

(d) No law enforcement officer conducting a search pursuant to the provisions of this Section 36D shall be liable for damages to the person searched unless said person shall prove by a fair preponderance of the evidence, that the officer acted without reasonable grounds for suspicion and with malice.

36E. Permits.

(a) A permit to carry a handgun may be issued by the Superintendent of the Maryland State Police, upon application under oath therefor, to any person whom he finds:

(1) is twenty-one years of age or older; and

(2) has not been convicted of a felony or of a misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted of such a crime, has been pardoned; and

(3) has not been committed to any detention, training, or correctional institution for juveniles for longer than one year after an adjudication of delinquency by a Juvenile Court; provided, however, that a person shall not be disqualified by virtue of this paragraph (3) if, at the time of the application, more than ten years has elapsed since his release from such institution; and

(4) has not been convicted of any offense involving the possession, use, or distribution of controlled dangerous substances; and is not presently an addict, an habitual user of any controlled dangerous substance or an alcoholic; and

(5) has in the judgment of the Superintendent not exhibited a propensity for violence or instability which may reasonably render his possession of a handgun a danger to himself or other law abiding persons; and

(6) has in the judgment of the Superintendent good and substantial reason to wear, carry, or transport a handgun.

(b) The Superintendent may charge a non-refundable fee not to exceed $25.00, payable at the time an application for a permit or renewal of a permit is filed. All such fees collected by the Superintendent shall be credited to a special fund for the account of the Maryland State Police. The expenses of administering the provisions

of this Section 36E, except for the per diem compensation and expenses of the Handgun Permit Review Board, shall be paid from the said special fund, but nothing shall preclude the Governor from including general fund appropriations in his Executive Budget for such purposes if the special fund is inadequate therefor.

(c) A permit issued under this section shall expire on the last day of the holder's birth month following two years after its issuance. The permit may be renewed, upon application and payment of the renewal fee, for successive periods of two years each, if the applicant, at the time of application, possesses the qualifications set forth in this section for the issuance of a permit.

(d) The Superintendent may, in any permit issued under this section, limit the geographic area, circumstances, or times during the day, week, month, or year in or during which the permit is effective.

(e) Any person to whom a permit shall be issued or renewed shall carry such permit in his possession every time he carries, wears, or transports a handgun.

(f) The Superintendent may revoke any permit issued or renewed at any time upon a finding that (i) the holder no longer satisfies the qualifications set forth in subsection (a), or (ii) the holder of the permit has violated subsection (e) hereof. A person holding a permit which is revoked by the Superintendent shall return the permit to the Superintendent within ten days after receipt of notice of the revocation. Any person who fails to return a revoked permit in violation of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than $100 or more than $1,000, or be imprisoned for not more than one year, or both.

(g) (i) There is created a Handgun Permit Review Board as a separate agency within the Department of Public Safety and Correctional Services. The Board shall consist of three members appointed from the general public by the Governor and serving at the pleasure of the Governor. Each member of the Board shall receive per diem compensation as provided in the budget for each day actually engaged in the discharge of his official duties as well as reimbursement for all necessary and proper expenses. (ii) Any person whose application for a permit or renewal of a permit has been rejected or whose permit has been revoked or limited may request the Board to review the decision of the Superintendent by filing a written request for review with the Board within ten days after receipt of written notice of the Superintendent's action. The Board shall either sustain, reverse, or modify the decision of the Superintendent upon a review of the record, or conduct a hearing within thirty days after receipt of the request. (iii) Any hearing and any subsequent proceedings of judicial review shall be conducted in accordance with the provisions of the Administrative Procedure Act; provided, however, that no court of this State shall order the issuance or renewal of a permit or alter any limitations on a permit pending final determination of the proceeding.

(h) Notwithstanding any other provision of this subheading, the following persons may, to the extent authorized prior to the effective date of this subtitle and subject to the conditions specified in this paragraph and paragraph (i) hereof continue to wear, carry, or transport a handgun without a permit:

(1) holders of Special Police Commissions issued under Sections 60 to 70 of Article 41 of the Annotated Code of Maryland, while actually on duty on the property for which the Commission was issued or while travelling to or from such duty;

(2) uniformed security guards or watchmen who have been cleared for such employment by the Maryland State Police, while in the course of their employment or while travelling to or from the place of employment;

(3) guards in the employ of a bank, savings and loan association, building and loan association, or express or armored car agency, while in the course of their employment or while travelling to or from the place of employment;

(4) private detectives and employees of private detectives previously licensed under former Section 90A of Article 56 of the Annotated Code of Maryland, while in the course of their employment, or while travelling to or from the place of employment.

(i) Each person referred to in paragraph (h) hereof shall, within one year after the effective date of this subtitle, make application for a permit as provided in this section. The right to wear, carry, or transport a handgun provided for in paragraph (h) hereof shall terminate at the expiration of one year after the effective date of this subtitle if no such application is made, or immediately upon notice to the applicant that his application for a permit has not been approved.

36F. Definitions.

(a) The term "handgun" as used in this subheading shall include any pistol, revolver, or other firearm capable of being concealed on a person, except antique firearms possessed as curiosities, ornaments, or for their historical significance or value and which (i) are incapable of being fired or discharged, or (ii) do not fire cartridge ammunition, or (iii) fire ammunition which is not commercially available.

(b) The term "vehicle" as used in this Act shall include any motor vehicle, as defined in Article 66½, Section 1-149 of the Annotated Code of Maryland, trains, aircraft, and vessels, except a vehicle owned by the United States government and operated by an agent or employee thereof in the course of his employment.

(c) The term "law enforcement personnel" shall mean any full-time member of a police force or other agency of the United States, a State, a county, a municipality or other political subdivision who is responsible for the prevention and detection of crime and the enforcement of the laws of the United States, a State, or of a county or municipality or other political subdivision of a State.

SEC. 4. *Be it further enacted,* That Section 594B (e) of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "II. Venue, Procedure and Sentence," subheading "Arrests" be and it is hereby repealed and re-enacted, with amendments, to read as follows:

594B.

(e) The offenses referred to in subsection (d) of this section are:

(1) Those offenses specified in the following sections of Article 27, as they may be amended from time to time:

(i) Section 8 (relating to burning barracks, cribs, hay, corn, lumber, etc.; railway cars, watercraft, vehicles, etc.);

(ii) Section 11 (relating to setting fire while perpetrating crime);

(iii) Section 36 (relating to carrying or wearing weapon);

(iv) Section 111 (relating to destroying, injuring, etc., property of another);

(v) Section 297 (relating to possession of hypodermic syringes, etc., restricted);

(vi) Section 341 (relating to stealing goods worth less than $100.00);

(vii) Section 342 (relating to breaking into building with intent to steal);

(viii) The common-law crime of assault when committed with intent to do great bodily harm;

(ix) Sections 276 through 313D (relating to drugs and other dangerous substances) as they shall be amended from time to time; *and*

"(x) Section 36B (relating to handguns)".

SEC. 5. *Be it further enacted,* That Section 90A of Article 56 of the Annotated Code of Maryland (1968 Replacement Volume and 1971 Supplement), title "Licenses," subtitle "Private Detectives," subheading "Special permit to carry concealed weapon," be and it is hereby repealed.

[90A.

A special permit to carry a concealed weapon, as defined in Article 27, Section 36, may be issued by the Superintendent of the Maryland State Police to any person to whom a license has been issued in accordance with provisions of this subtitle, or any employee of any such licensee if such employee has been properly registered in accordance with the provisions of Section 81 of this subtitle, provided that the Superintendent, or his delegate, first finds that such licensee or employee:

(1) Is of good character; and

(2) Has not been convicted of a felony; and

(3) Possesses such mental and physical qualities as the Superintendent may determine necessary.

Any special permit issued pursuant to this section may be revoked by the Superintendent of the Maryland State Police at any time.]

SEC. 6. *Be it further enacted,* That all restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing, carrying, or transporting of handguns are superseded

by this Act, and the State of Maryland hereby preempts the right of the political subdivisions to regulate said matters.

SEC. 7. *Be it further enacted,* That if any provision of this Act or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision or application.

SEC. 8. *Be it further enacted,* That all laws or parts of laws, public general or public local, inconsistent with the provisions of this Act are repealed to the extent of the inconsistency.

SEC. 9. *And be it further enacted,* That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of the public health and safety, and having been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two houses of the General Assembly, the same shall take effect from the date of its passage.

AMENDMENTS TO HOUSE BILL 277

Amendment No. 1

On page 6 of the printed bill, delete subsection 36C(c), beginning on line 43 and ending on line 60, and insert in lieu thereof, the following:

(c) Procedure relating to forfeiture

(1) Upon the seizure of property pursuant to this section, the State's Attorney shall notify any official agency which registers such property of the seizure and shall request the name and address of the owner thereof. If, as a result of such inquiry, or any other inquiry which he may conduct, the State's Attorney determines the name and address of the owner of the property, he shall notify the owner by certified mail of the seizure and of the State's Attorney's determination of whether the owner knew or should have known that the property was worn, carried, transported or used in violation of Section 36B.

(2) If the State's Attorney determines that the owner neither knew nor should have known of the use or intended use of the property in violation of Section 36B, he shall surrender the property upon request to the owner unless he determines that the property is needed as evidence in a pending criminal case, in which event he shall return the property upon the final conclusion of the case or cases in which the property is needed as evidence.

(3) If the State's Attorney determines that the property should be forfeited to the State, he shall petition the Circuit Court of the appropriate subdivision in the name of the State of Maryland against the property as designated by make, model, year, and motor or serial number or other identifying characteristic. The petition shall allege the seizure and set forth in general terms the causes or grounds of forfeiture. It shall also pray that the property be condemned as forfeited to the State and disposed of according to law.

(4) If the owner or owners of the property are unknown or cannot be found, notice of the seizure and intended forfeiture proceedings shall be made by publication in one or more newspapers published in the county in which the action is brought if there be one so published, and if not, in a newspaper having a substantial circulation in said county. In Baltimore City the notice shall be published in one or more of the daily newspapers published in the City. The notice shall state the substance and object of the original petition and give notice of the intended forfeiture proceedings.

(5) Within 30 days after service of the notice of seizure and intended forfeiture proceedings or within 30 days after the date of publication, the owner of the property seized may file an answer under oath to the petition.

(6) If the property is a vehicle and the owner thereof desires to obtain possession thereof before the hearing on the petition filed against the vehicle, the clerk of the court where the petition is filed shall have an appraisal made by the sheriff of the county or city in which the court is located. The sheriff shall promptly inspect and render an appraisal of the value of the vehicle and return the appraisal, in writing, under oath, to the clerk of the court in which the proceedings are pending. Upon the filing of the appraisal, the owner may give bond payable to the State of Maryland, in an amount equal to the appriased value of the vehicle plus court costs which may accrue, with security to be approved by the clerk, and conditioned for performance on the final judgment of the court after the hearing on the petition, the court directs that the vehicle be forfeited, judgment may thereupon be entered against the obligors on the bond for the penalty thereof, without further or other proceeding, to be discharged by the payment of the appraised value of the vehicle so seized and forfeited and costs, upon which judgment execution may issue.

(7) Subject to the provisions permitting posting of a bond, the court shall retain custody of the seized property pending prosecution of the person accused of violating Section 36B and in case such person be found guilty, the property shall remain in the custody of the court until the hearing on the forfeiture is held. The hearing shall be scheduled no more than 30 days after conviction of the defendant, and reasonable notice shall be given to those parties filing an answer to the petition.

(8) If no timely answer is filed, the court shall hear evidence upon the use of the property in violation of Section 36B and shall upon satisfactory proof thereof, order the vehicle forfeited to the State.

(9) At the scheduled hearing, any owner who filed a timely answer may show by competent evidence that the property was not in fact used in violation of Section 36B or that he neither knew nor should have known that the vehicle was being, or was to be so used. Upon the determination that the property was not so used, the court shall order that the property be released to the owner.

(10) If after a full hearing the court decides that the property was used in violation of Section 36B or that the owner knew or should have known that the property was being, or was to be so used, the court shall order that the property be forfeited to the State.

(11) In the event a bond has been filed pursuant to this subsection and the vehicle is ordered forfeited, the proceeds of the bond shall be paid to the State in lieu of forfeiture of the vehicle.

Amendment No. 2

On page 7 of the printed bill, in Section 36D(a)(3), on line 21, immediately after the words "which dispels", delete as follows: " , in the officers' mind,".

Amendment No. 3

On page 7 of the printed bill, delete subsection (d) of Section 36D, beginning on line 36 and ending on line 40, and insert in lieu thereof, the following:

(d) Any law enforcement officer sued in a civil action for conducting a search or seizure pursuant to this section which is alleged to be unreasonable and unlawful shall, upon his request, be defended in said action and any appeals therefrom, by the Attorney General.

Amendment No. 4

On page 7 of the printed bill, in Section 36D, insert the following subsection (e) immediately after subsection (d) inserted by Amendment No. 3:

(e) Every law enforcement officer who conducts a search or seizure pursuant to this section shall, within twenty-four hours after such search or seizure, file a written report with the law enforcement agency by which he is employed describing the search or seizure and the circumstances thereof on a form prescribed by the Secretary of Public Safety and Correctional Services. Such report shall include the name of the person searched. A copy of all such reports shall be sent to the Superintendent of the Maryland State Police.

Amendment No. 5

On page 8 of the printed bill, in subsection (b) of Section 36E, on line 26, immediately after the word "exceed", delete the amount "$25.00", and insert in lieu thereof the amount "$15.00".

Amendment No. 6

On page 9 of the printed bill, in subsection (h)(2) of Section 36E, on line 31, immediately after the words "uniformed security guards", delete the word "or" and insert the following: ", special railway police, and".

Another significant development was the fact that in recent years we began to learn more about this particular aspect of police work and its impact. Empirical studies on the subject were published, * * *. Stop and frisk was also investigated by the President's Commission on Law Enforcement and Administration of Justice, which recommended that state legislatures enact statutory provisions prescribing the authority of law enforcement officers to stop persons for brief questioning. The National Advisory Commission on Civil Disorders agreed that guidelines for "field interrogation" and its incidents were needed, and that it was imperative for police and others to distinguish legitimate investigative procedures from somewhat similar actions of dubious legality and efficacy (often called "aggressive preventive patrol").

It was against this backdrop that the United States Supreme Court, on June 10, 1968, decided the *Terry, Sibron,* and *Peters* cases * * *.

TERRY v. OHIO

392 U.S. 1, 88 S.Ct. 1868,
20 L.Ed.2d 889 (1968).

Mr. Chief Justice WARREN delivered the opinion of the Court.

[Officer McFadden, a Cleveland plainclothes detective, became suspicious of two men standing on a street corner in the downtown area at about 2:30 in the afternoon. One of the suspects walked up the street, peered into a store, walked on, started back, looked into the same store, and then joined and conferred with his companion. The other suspect repeated this ritual, and between them the two men went through this performance about a dozen times. They also talked with a third man, and then followed him up the street about ten minutes after his departure. The officer, thinking that the suspects were "casing" a stickup and might be armed, followed and confronted the three men as they were again conversing. He identified himself and asked the suspects for their names. The men only mumbled something, and the officer spun Terry around and patted his breast pocket. He felt a pistol, which he removed. A frisk of Terry's companion also uncovered a pistol; a frisk of the third man did not disclose that he was armed, and he was not searched further. Terry was charged with carrying a concealed weapon, and he moved to suppress the weapon as evidence. The motion was denied by the trial judge, who upheld the officer's actions on a stop-and-frisk theory. The Ohio court of appeals affirmed, and the state supreme court dismissed Terry's appeal.]

* * * Unquestionably petitioner was entitled to the protection of the Fourth Amendment as he walked down the street in Cleveland. * * * The question is whether in all the circumstances of this on-the-street encounter, his right to personal security was violated by an unreasonable search and seizure.

We would be less than candid if we did not acknowledge that this question thrusts to the fore difficult and troublesome issues regarding a sensitive area of police activity—issues which have never before been squarely presented to this Court. Reflective of the tensions involved are the practical and constitutional arguments pressed with great vigor on both sides of the public debate over the power of the police to "stop and frisk"—as it is sometimes euphemistically termed—suspicious persons.

On the one hand, it is frequently argued that in dealing with the rapidly unfolding and often dangerous situations on city streets the police are in need of an escalating set of flexible responses, graduated in relation to the amount of informa-

selves. However, some members were afraid that the police would abuse this power and conduct a general search for narcotics and other contraband. E. g., 43 *ALI Proceedings* 114–17 (1966).

tion they possess. For this purpose it is urged that distinctions should be made between a "stop" and an "arrest" (or a "seizure" of a person), and between a "frisk" and a "search." Thus, it is argued, the police should be allowed to "stop" a person and detain him briefly for questioning upon suspicion that he may be connected with criminal activity. Upon suspicion that the person may be armed, the police should have the power to "frisk" him for weapons. If the "stop" and the "frisk" give rise to probable cause to believe that the suspect has committed a crime, then the police should be empowered to make a formal "arrest," and a full incident "search" of the person. This scheme is justified in part upon the notion that a "stop" and a "frisk" amount to a mere "minor inconvenience and petty indignity," which can properly be imposed upon the citizen in the interest of effective law enforcement on the basis of a police officer's suspicion.

On the other side the argument is made that the authority of the police must be strictly circumscribed by the law of arrest and search as it has developed to date in the traditional jurisprudence of the Fourth Amendment. It is contended with some force that there is not—and cannot be—a variety of police activity which does not depend solely upon the voluntary cooperation of the citizen and yet which stops short of an arrest based upon probable cause to make such an arrest. The heart of the Fourth Amendment, the argument runs, is a severe requirement of specific justification for any intrusion upon protected personal security, coupled with a highly developed system of judicial controls to enforce upon the agents of the State the commands of the Constitution. Acquiescence by the courts in the compulsion inherent in the field interrogation practices at issue here, it is urged, would constitute an abdication of judicial control over, and indeed an encouragement of, substantial interference with liberty and personal security by police officers whose judgment is necessarily colored by their primary involvement in "the often competitive enterprise of ferreting out crime." * * * This, it is argued, can only serve to exacerbate police-community tensions in the crowded centers of our Nation's cities.

In this context we approach the issues in this case mindful of the limitations of the judicial function in controlling the myriad daily situations in which policemen and citizens confront each other on the street. The State has characterized the issue here as "the right of a police officer * * * to make an on-the-street stop, interrogate and pat down for weapons (known in the street vernacular as 'stop and frisk')." But this is only partly accurate. For the issue is not the abstract propriety of the police conduct, but the admissibility against petitioner of the evidence uncovered by the search and seizure. * * * [I]n our system evidentiary rulings provide the context in which the judicial process of inclusion and exclusion approves some conduct as comporting with constitutional guarantees and disapproves other actions by state agents. A ruling admitting evidence in a criminal trial, we recognize, has the necessary effect of legitimizing the conduct which produced the evidence, while an application of the exclusionary rule withholds the constitutional imprimatur.

The exclusionary rule has its limitations, however, as a tool of judicial control. It cannot properly be invoked to exclude the products of legitimate police investigative techniques on the ground that much conduct which is closely similar involves unwarranted intrusions upon constitutional protections. Moreover, in some contexts the rule is ineffective as a deterrent. Street encounters between citizens and police officers are incredibly rich in diversity. They range from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, or injuries, or loss of life. Moreover, hostile confrontations are not all of a piece. Some of them begin in a friendly

enough manner, only to take a different turn upon the injection of some unexpected element into the conversation. Encounters are initiated by the police for a wide variety of purposes, some of which are wholly unrelated to a desire to prosecute for crime. Doubtless some police "field interrogation" conduct violates the Fourth Amendment. But a stern refusal by this Court to condone such activity does not necessarily render it responsive to the exclusionary rule. Regardless of how effective the rule may be where obtaining convictions is an important objective of the police, it is powerless to deter invasions of constitutionally guaranteed rights where the police either have no interest in prosecuting or are willing to forego successful prosecution in the interest of serving some other goal.

Proper adjudication of cases in which the exclusionary rule is invoked demands a constant awareness of these limitations. The wholesale harassment by certain elements of the police community, of which minority groups, particularly Negroes, frequently complain, will not be stopped by the exclusion of any evidence from any criminal trial. Yet a rigid and unthinking application of the exclusionary rule, in futile protest against practices which it can never be used effectively to control, may exact a high toll in human injury and frustration of efforts to prevent crime. No judicial opinion can comprehend the protean variety of the street encounter, and we can only judge the facts of the case before us. * * *

[W]e turn our attention to the quite narrow question posed by the facts before us: whether it is always unreasonable for a policeman to seize a person and subject him to a limited search for weapons unless there is probable cause for an arrest. * * *

* * * It is quite plain that the Fourth Amendment governs "seizures" of the person which do not eventuate in a trip to the station house and prosecution for crime—"arrests" in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person. And it is nothing less than sheer torture of the English language to suggest that a careful exploration of the outer surfaces of a person's clothing all over his or her body in an attempt to find weapons is not a "search." Moreover, it is simply fantastic to urge that such a procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a "petty indignity." [13] It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.

The danger in the logic which proceeds upon distinctions between a "stop" and an "arrest," or "seizure" of the person, and between a "frisk" and a "search" is twofold. It seeks to isolate from constitutional scrutiny the initial stages of the contact between the policeman and the citizen. And by suggesting a rigid all-or-nothing model of justification and regulation under the Amendment, it obscures the utility of limitations upon the scope, as well as the initiation, of police action as a means of constitutional regulation. * * *

The distinctions of classical "stop-and-frisk" theory thus serve to divert attention from the central inquiry under the Fourth Amendment—the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security. "Search" and "seizure" are not talismans. We therefore reject the notions that the Fourth Amendment does

[13] Consider the following apt description: "[T]he officer must feel with sensitive fingers every portion of the prisoner's body. A thorough search must be made of the prisoner's arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet." Priar & Martin, Searching and Disarming Criminals, 45 J. Crim. L. C. & P. S. 481 (1954).

come into play at all as a limitation on police conduct if the officers stop short of something called a "technical arrest" or a "full-blown search."

In this case there can be no question, then, that Officer McFadden "seized" petitioner and subjected him to a "search" when he took hold of him and patted down the outer surfaces of his clothing. We must decide whether at that point it was reasonable for Officer McFadden to have interfered with petitioner's personal security as he did.[16] And in determining whether the seizure and search were "unreasonable" our inquiry is a dual one—whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.

If this case involved police conduct subject to the Warrant Clause of the Fourth Amendment, we would have to ascertain whether "probable cause" existed to justify the search and seizure which took place. However, that is not the case. We do not retreat from our holdings that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, see, e. g., Katz v. United States [p. 168 of this Chapter] * * * or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances. * *

But we deal here with an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officer on the beat—which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures.

Nonetheless, the notions which underlie both the warrant procedure and the requirement of probable cause remain fully relevant in this context. In order to assess the reasonableness of Officer McFadden's conduct as a general proposition, it is necessary "first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen," for there is "no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails." Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967). And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate? * * * Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial

[16] We thus decide nothing today concerning the constitutional propriety of an investigative "seizure" upon less than probable cause for purposes of "detention" and/or interrogation. Obviously, not all personal intercourse between policemen and citizens involves "seizures" of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a "seizure" has occurred. We cannot tell with any certainty upon this record whether any such "seizure" took place here prior to Officer McFadden's initiation of physical contact for purposes of searching Terry for weapons, and we thus may assume that up to that point no intrusion upon constitutionally protected rights had occurred.

than inarticulate hunches, a result this Court has consistently refused to sanction.
* * *

Applying these principles to this case, we consider first the nature and extent of the governmental interests involved. One general interest is of course that of effective crime prevention and detection; it is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest. It was this legitimate investigative function Officer McFadden was discharging when he decided to approach petitioner and his companions. He had observed Terry, Chilton, and Katz go through a series of acts, each of them perhaps innocent in itself, but which taken together warranted further investigation. There is nothing unusual in two men standing together on a street corner, perhaps waiting for someone. Nor is there anything suspicious about people in such circumstances strolling up and down the street, singly or in pairs. Store windows, moreover, are made to be looked in. But the story is quite different where, as here, two men hover about a street corner for an extended period of time, at the end of which it becomes apparent that they are not waiting for anyone or anything; where these men pace alternately along an identical route, pausing to stare in the same store window roughly 24 times; where each completion of this route is followed immediately by a conference between the two men on the corner; where they are joined in one of these conferences by a third man who leaves swiftly; and where the two men finally follow the third and rejoin him a couple of blocks away. It would have been poor police work indeed for an officer of 30 years' experience in the detection of thievery from stores in this same neighborhood to have failed to investigate this behavior further.

The crux of this case, however, is not the propriety of Officer McFadden's taking steps to investigate petitioner's suspicious behavior, but rather, whether there was justification for McFadden's invasion of Terry's personal security by searching him for weapons in the course of that investigation. We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded. Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives.

In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.

We must still consider, however, the nature and quality of the intrusion on individual rights which must be accepted if police officers are to be conceded the right to search for weapons in situations where probable cause to arrest for crime is lacking. Even a limited search of the outer clothing for weapons constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an

annoying, frightening, and perhaps humiliating experience. Petitioner contends that such an intrusion is permissible only incident to a lawful arrest, either for a crime involving the possession of weapons or for a crime the commission of which led the officer to investigate in the first place. However, this argument must be closely examined.

Petitioner does not argue that a police officer should refrain from making any investigation of suspicious circumstances until such time as he has probable cause to make an arrest; nor does he deny that police officers in properly discharging their investigative function may find themselves confronting persons who might well be armed and dangerous. Moreover, he does not say that an officer is always unjustified in searching a suspect to discover weapons. Rather, he says it is unreasonable for the policeman to take that step until such time as the situation evolves to a point where there is probable cause to make an arrest. When that point has been reached, petitioner would concede the officer's right to conduct a search of the suspect for weapons, fruits or instrumentalities of the crime, or "mere" evidence, incident to the arrest.

There are two weaknesses in this line of reasoning however. First, it fails to take account of traditional limitations upon the scope of searches, and thus recognizes no distinction in purpose, character, and extent between a search incident to an arrest and a limited search for weapons. The former, although justified in part by the acknowledged necessity to protect the arresting officer from assault with a concealed weapon, Preston v. United States [p. 227 of this Chapter] is also justified on other grounds, ibid., and can therefore involve a relatively extensive exploration of the person. A search for weapons in the absence of probable cause to arrest, however, must, like any other search, be strictly circumscribed by the exigencies which justify its initiation. Warden v. Hayden (Mr. Justice Fortas, concurring). Thus it must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby, and may realistically be characterized as something less than a "full" search, even though it remains a serious intrusion.

A second, and related, objection to petitioner's argument is that it assumes that the law of arrest has already worked out the balance between the particular interests involved here—the neutralization of danger to the policeman in the investigative circumstance and the sanctity of the individual. But this is not so. An arrest is a wholly different kind of intrusion upon individual freedom from a limited search for weapons, and the interests each is designed to serve are likewise quite different. An arrest is the initial stage of a criminal prosecution. It is intended to vindicate society's interest in having its laws obeyed, and it is inevitably accompanied by future interference with the individual's freedom of movement, whether or not trial or conviction ultimately follows. The protective search for weapons, on the other hand, constitutes a brief, though far from inconsiderable intrusion upon the sanctity of the person. It does not follow that because an officer may lawfully arrest a person only when he is apprised of facts sufficient to warrant a belief that the person has committed or is committing a crime, the officer is equally unjustified, absent that kind of evidence, in making any intrusions short of an arrest. Moreover, a perfectly reasonable apprehension of danger may arise long before the officer is possessed of adequate information to justify taking a person into custody for the purpose of prosecuting him for a crime. Petitioner's reliance on cases which have worked out standards of reasonableness with regard to "seizures" constituting arrests and searches incident thereto is thus misplaced. It assumes that the interests sought to be vindicated and the invasions of personal security may be equated in the two cases, and thereby ignores a vital aspect of the analysis of the reasonableness of particular types of con-

duct under the Fourth Amendment. See Camara v. Municipal Court.

Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. * * * And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or "hunch", but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.

We must now examine the conduct of Officer McFadden in this case to determine whether his search and seizure of petitioner were reasonable, both at their inception and as conducted. He had observed Terry, together with Chilton and another man, acting in a manner he took to be preface to a "stick-up." We think on the facts and circumstances Officer McFadden detailed before the trial judge a reasonably prudent man would have been warranted in believing petitioner was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior. The actions of Terry and Chilton were consistent with McFadden's hypothesis that these men were contemplating a daylight robbery—which, it is reasonable to assume, would be likely to involve the use of weapons—and nothing in their conduct from the time he first noticed them until the time he confronted them and identified himself as a police officer gave him sufficient reason to negate that hypothesis. Although the trio had departed the original scene, there was nothing to indicate abandonment of an intent to commit a robbery at some point. Thus, when Officer McFadden approached the three men gathered before the display window at Zucker's store he had observed enough to make it quite reasonable to fear that they were armed; and nothing in their response to his hailing them, identifying himself as a police officer, and asking their names served to dispel that reasonable belief. We cannot say his decision at that point to seize Terry and pat his clothing for weapons was the product of a volatile or inventive imagination, or was undertaken simply as an act of harassment; the record evidences the tempered act of a policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and took limited steps to do so.

The manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry as whether they were warranted at all. The Fourth Amendment proceeds as much by limitations upon the scope of governmental action as by imposing preconditions upon its initiation. Compare Katz v. United States. The entire deterrent purpose of the rule excluding evidence seized in violation of the Fourth Amendment rests on the assumption that "limitations upon the fruit to be gathered tend to limit the quest itself." * * * Thus, evidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation. Warden v. Hayden (Mr. Justice Fortas, concurring).

We need not develop at length in this case, however, the limitations which the Fourth Amendment places upon a protective seizure and search for weapons. These limitations will have to be developed in the concrete factual circumstances of individual cases. * * * Suffice it to note that such a search, unlike a search

without a warrant incident to a lawful arrest, is not justified by any need to prevent the disappearance or destruction of evidence of crime. See Preston v. United States. The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.

The scope of the search in this case presents no serious problem in light of these standards. Officer McFadden patted down the outer clothing of petitioner and his two companions. He did not place his hands in their pockets or under the outer surface of their garments until he had felt weapons, and then he merely reached for and removed the guns. He never did invade Katz's person beyond the outer surfaces of his clothes, since he discovered nothing in his pat down which might have been a weapon. Officer McFadden confined his search strictly to what was minimally necessary to learn whether the men were armed and to disarm them once he discovered the weapons. He did not conduct a general exploratory search for whatever evidence of criminal activity he might find.

We conclude that the revolver seized from Terry was properly admitted in evidence against him. At the time he seized petitioner and searched him for weapons, Officer McFadden had reasonable grounds to believe that petitioner was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized. The policeman carefully restricted his search to what was appropriate to the discovery of the particular items which he sought. Each case of this sort will, of course, have to be decided on its own facts. We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous; where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries; and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken.

Affirmed.

Mr. Justice HARLAN, concurring.

While I unreservedly agree with the Court's ultimate holding in this case, I am constrained to fill in a few gaps, as I see them, in its opinion. I do this because what is said by this Court today will serve as initial guidelines for law enforcement authorities and courts throughout the land as this important new field of law develops. * * *

If the State of Ohio were to provide that police officers could, on articulable suspicion less than probable cause, forcibly frisk and disarm persons thought to be carrying concealed weapons, I would have little doubt that action taken pursuant to such authority could be constitutionally reasonable. Concealed weapons create an immediate and severe danger to the public, and though that danger might not warrant routine general weapons checks, it could well warrant action on less than a "probability." I mention this line of analysis because I think it vital to point out that it cannot be applied in this case. * * * [T]he Ohio courts did not rest the constitutionality of this frisk upon any general authority in Officer McFadden to take reasonable steps to protect the citizen-

ry, including himself, from dangerous weapons.

The state courts held, instead, that when an officer is lawfully confronting a possibly hostile person in the line of duty he has a right, springing only from the necessity of the situation and not from any broader right to disarm, to frisk for his own protection. This holding, with which I agree and with which I think the Court agrees, offers the only satisfactory basis I can think of for affirming this conviction. The holding has, however, two logical corollaries that I do not think the Court has fully expressed.

In the first place, if the frisk is justified in order to protect the officer during an encounter with a citizen, the officer must first have constitutional grounds to insist on an encounter, to make a *forcible* stop. Any person, including a policeman, is at liberty to avoid a person he considers dangerous. If and when a policeman has a right instead to disarm such a person for his own protection, he must first have a right not to avoid him but to be in his presence. That right must be more than the liberty (again, possessed by every citizen) to address questions to other persons, for ordinarily the person addressed has an equal right to ignore his interrogator and walk away; he certainly need not submit to a frisk for the questioner's protection. I would make it perfectly clear that the right to frisk in this case depends upon the reasonableness of a forcible stop to investigate a suspected crime.

Where such a stop is reasonable, however, the right to frisk must be immediate and automatic if the reason for the stop is, as here, an articulable suspicion of a crime of violence. Just as a full search incident to a lawful arrest requires no additional justification, a limited frisk incident to a lawful stop must often be rapid and routine. There is no reason why an officer, rightfully but forcibly confronting a person suspected of a serious crime, should have to ask one question and take the risk that the answer might be a bullet. * *

I would affirm this conviction for what I believe to be the same reasons the Court relies on. I would, however, make explicit what I think is implicit in affirmance on the present facts. Officer McFadden's right to interrupt Terry's freedom of movement and invade his privacy arose only because circumstances warranted forcing an encounter with Terry in an effort to prevent or investigate a crime. Once that forced encounter was justified, however, the officer's right to take suitable measures for his own safety followed automatically.

Upon the foregoing premises, I join the opinion of the Court.

Mr. Justice WHITE, concurring.

I join the opinion of the Court, reserving judgment, however, on some of the Court's general remarks about the scope and purpose of the exclusionary rule which the Court has fashioned in the process of enforcing the Fourth Amendment.

Also, although the Court puts the matter aside in the context of this case, I think an additional word is in order concerning the matter of interrogation during an investigative stop. There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets. Absent special circumstances, the person approached may not be detained or frisked but may refuse to cooperate and go on his way. However, given the proper circumstances, such as those in this case, it seems to me the person may be briefly detained against his will while pertinent questions are directed to him. Of course, the person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest, although it may alert the officer to the need for continued observation. In my view, it is temporary detention, warranted by the circumstances, which chiefly justifies the protective frisk for weapons. Perhaps the frisk itself, where proper, will have beneficial results

whether questions are asked or not. If weapons are found, an arrest will follow. If none are found, the frisk may nevertheless serve preventive ends because of its unmistakable message that suspicion has been aroused. But if the investigative stop is sustainable at all, constitutional rights are not necessarily violated if pertinent questions are asked and the person is restrained briefly in the process.

Mr. Justice DOUGLAS, dissenting.

I agree that petitioner was "seized" within the meaning of the Fourth Amendment. I also agree that frisking petitioner and his companions for guns was a "search." But it is a mystery how that "search" and that "seizure" can be constitutional by Fourth Amendment standards, unless there was "probable cause" to believe that (1) a crime had been committed or (2) a crime was in the process of being committed or (3) a crime was about to be committed.

The opinion of the Court disclaims the existence of "probable cause." If loitering were an issue and that was the offense charged, there would be "probable cause" shown. But the crime here is carrying concealed weapons; and there is no basis for concluding that the officer had "probable cause" for believing that crime was being committed. Had a warrant been sought, a magistrate would, therefore, have been unauthorized to issue one, for he can act only if there is a showing of "probable cause." We hold today that the police have greater authority to make a "seizure" and conduct a "search" than a judge has to authorize such action. We have said precisely the opposite over and over again.

In other words, police officers, up to today have been permitted to effect arrests or searches without warrants only when the facts within their personal knowledge would satisfy the constitutional standard of *probable cause*. At the time of their "seizure" without a warrant they must possess facts concerning the person arrested that would have satisfied a magistrate that "probable cause" was indeed present. The term "probable cause" rings a bell of certainty that is not sounded by phrases such as "reasonable suspicion." Moreover, the meaning of "probable cause" is deeply imbedded in our constitutional history. * * *

The infringement on personal liberty of any "seizure" of a person can only be "reasonable" under the Fourth Amendment if we require the police to possess "probable cause" before they seize him. Only that line draws a meaningful distinction between an officer's mere inkling and the presence of facts within the officer's personal knowledge which would convince a reasonable man that the person seized has committed, is committing, or is about to commit a particular crime. * *

To give the police greater power than a magistrate is to take a long step down the totalitarian path. Perhaps such a step is desirable to cope with modern forms of lawlessness. But if it is taken, it should be the deliberate choice of the people through a constitutional amendment. Until the Fourth Amendment, which is closely allied with the Fifth, is rewritten, the person and the effects of the individual are beyond the reach of all government agencies until there are reasonable grounds to believe (probable cause) that a criminal venture has been launched or is about to be launched. * * *

The Court shed some light on the meaning and scope of *Terry v. Ohio* in two companion cases: SIBRON v. NEW YORK and PETERS v. NEW YORK, 392 U.S. 41, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968). Although the parties on both sides of these cases pressed the Court to decide the constitutionality of New York's new "stop and frisk" law [set forth at p. 242 n. 18 of this Chapter] "on its face," the Court declined "to be drawn into what we view as the abstract and unproductive exercise of laying

the extraordinarily elastic categories of [the statute] next to the categories of the Fourth Amendment in an effort to determine whether the two are in some sense compatible," and turned instead to the concrete factual context of each case.

The Court, per Chief Justice WARREN, summarized the *Sibron* facts as follows:

"[Appellant] was convicted of the unlawful possession of heroin. He moved [unsuccessfully] before trial to suppress the heroin seized from his person by the arresting officer, Brooklyn Patrolman Anthony Martin. * * * At the hearing on the motion to suppress, Officer Martin testified that while he was patrolling his beat in uniform on March 9, 1965, he observed Sibron 'continually from the hours of 4:00 P.M. to 12:00, midnight * * * in the vicinity of 742 Broadway.' He stated that during this period of time he saw Sibron in conversation with six or eight persons whom he (Patrolman Martin) knew from past experience to be narcotics addicts. The officer testified that he did not overhear any of these conversations, and that he did not see anything pass between Sibron and any of the others. Late in the evening Sibron entered a restaurant. Patrolman Martin saw Sibron speak with three more known addicts inside the restaurant. Once again, nothing was overheard and nothing was seen to pass between Sibron and the addicts. Sibron sat down and ordered pie and coffee, and as he was eating, Patrolman Martin approached him and told him to come outside. Once outside, the officer said to Sibron, 'You know what I am after.' According to the officer, Sibron 'mumbled something and reached into his pocket.' Simultaneously, Patrolman Martin thrust his hand into the same pocket, discovering several glassine envelopes, which, it turned out, contained heroin."

On these facts, the Court deemed it clear that the heroin was inadmissible:

"It must be emphasized that Patrolman Martin was completely ignorant regarding the content of these conversations, and that he saw nothing pass between Sibron and the addicts. So far as he knew, they might indeed 'have been talking about the World Series.' The inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support an intrusion by the police upon an individual's personal security. Nothing resembling probable cause existed until after the search had turned up the envelopes of heroin. It is axiomatic that an incident search may not precede an arrest and serve as part of its justification. * * *

"[T]he Court of Appeals of New York * * * seems to have viewed the search here as a self-protective search for weapons and to have affirmed on the basis of [the state "stop and frisk" law], which authorizes such a search when the officer 'reasonably suspects that he is in danger of life or limb.' * * * But the application of this reasoning to the facts of thise case proves too much. The police officer is not entitled to seize and search every person whom he sees on the street or of whom he makes inquiries. Before he places a hand on the person of a citizen in search of anything, he must have constitutionally adequate reasonable grounds for doing so. In the case of the self-protective search for weapons, he must be able to point to particular facts from which he reasonably inferred that the individual was armed and dangerous. Terry v. Ohio. Patrolman Martin's testimony reveals no such facts. The suspect's mere act of talking with a number of known narcotics addicts over an eight-hour period no more gives rise to reasonable fear of life or limb on the part of the police officer than it justifies an arrest for committing a crime. Nor did Patrolman Martin urge that when Sibron put his hand in his pocket, he feared that he was going for a weapon and acted in self-defense. His opening statement to Sibron

—'You know what I am after'—made it abundantly clear that he sought narcotics, and his testimony at the hearing left no doubt that he thought there were narcotics in Sibron's pocket.

"Even assuming *arguendo* that there were adequate grounds to search Sibron for weapons, the nature and scope of the search conducted by Patrolman Martin were so clearly unrelated to that justification as to render the heroin inadmissible. The search for weapons approved in *Terry* consisted solely of a limited patting of the outer clothing of the suspect for concealed objects which might be used as instruments of assault. Only when he discovered such objects did the officer in *Terry* place his hands in the pockets of the men he searched. In this case, with no attempt at an initial limited exploration for arms, Patrolman Martin thrust his hand into Sibron's pocket and took from him envelopes of heroin. His testimony shows that he was looking for narcotics, and he found them. The search was not reasonably limited in scope to the accomplishment of the only goal which might conceivably have justified its inception—the protection of the officer by disarming a potentially dangerous man."

In a brief concurring opinion, Justice DOUGLAS observed:

"Consorting with criminals may in a particular factual setting be a basis for believing that a criminal project is underway. Yet talking with addicts without more rises no higher than suspicion. That is all we have here; and if it is sufficient for a 'seizure' and a 'search,' then there is no such thing as privacy for this vast group of 'sick' people."

Concurring in the result in *Sibron*, Justice HARLAN agreed that Officer Martin possessed neither probable cause to arrest appellant nor "reasonable grounds for a *Terry*-type 'stop' short of an arrest":

"In the first place, although association with known criminals may, I think, properly be a factor contributing to the suspiciousness of circumstances, it does not, entirely by itself, create suspicion adequate to support a stop. There must be something at least in the activities of the person being observed or in his surroundings that affirmatively suggests particular criminal activity, completed, current or intended. That was the case in *Terry*, but it palpably was not the case here. For eight continuous hours, up to the point when he interrupted Sibron eating a piece of pie, Officer Martin apparently observed not a single suspicious action and heard not a single suspicious word on the part of Sibron himself or any person with whom he associated. If anything, that period of surveillance pointed away from suspicion.

"Furthermore, in *Terry*, the police officer judged that his suspect was about to commit a violent crime and that he had to assert himself in order to prevent it. Here there was no reason for Officer Martin to think that an incipient crime, or flight, or the destruction of evidence would occur if he stayed his hand; indeed, there was no more reason for him to intrude upon Sibron at the moment when he did than there had been four hours earlier, and no reason to think the situation would have changed four hours hence. While no hard-and-fast rule can be drawn, I would suggest that one important factor, missing here, that should be taken into account in determining whether there are reasonable grounds for a forcible intrusion is whether there is any need for immediate action.

"For these reasons I would hold that Officer Martin lacked reasonable grounds to intrude forcibly upon Sibron. In consequence, the essential premise for the right to conduct a self-protective frisk was lacking. See my concurring opinion in *Terry*. I therefore find it unnecessary to reach two further troublesome questions. First, although I think that, as in *Terry*, the right to frisk is automatic when an officer lawfully stops a person suspected of a crime whose nature creates a substantial likelihood that he is armed, it is not clear that suspected possession of narcotics falls

into this category. If the nature of the suspected offense creates no reasonable apprehension for the officer's safety, I would not permit him to frisk unless other circumstances did so. Second, I agree with the Court that even where a self-protective frisk is proper, its scope should be limited to what is adequate for its purposes. I see no need here to resolve the question whether this frisk exceeded those bounds."

Dissenting from the reversal in *Sibron*, Justice BLACK maintained that when appellant, "who had been approaching and talking to addicts for eight hours, reached his hand quickly to his left coat pocket" the officer "had * * * probable cause to believe that [he] * * * had a dangerous weapon which he might use if it were not taken away from him."

The Court, per WARREN, C. J., summarized the *Peters* facts as follows:

"Officer Samuel Lasky of the New York City Police Department * * * was at home in his apartment in Mount Vernon, New York, at about 1 p. m. on July 10, 1964. He had just finished taking a shower and was drying himself when he heard a noise at his door. His attempt to investigate was interrupted by a telephone call, but when he returned and looked through the peephole into the hall, [he] saw 'two men tiptoeing out of the alcove toward the stairway.' He immediately called the police, put on some civilian clothes and armed himself with his service revolver. Returning to the peephole, he saw 'a tall man tiptoeing away from the alcove and followed by this shorter man, Mr. Peters, toward the stairway.' Officer Lasky testified that he had lived in the 120-unit building for 12 years and that he did not recognize either of the men as tenants. Believing that he had happened upon the two men in the course of an attempted burglary, Officer Lasky opened his door, entered the hallway and slammed the door loudly behind him. This precipitated a flight down the stairs on the part of the two men, and Officer Lasky gave chase. His apartment was located on the sixth floor, and he apprehended Peters between the fourth and fifth floors. Grabbing Peters by the collar, he continued down another flight in unsuccessful pursuit of the other man. Peters explained his presence in the building to Officer Lasky by saying that he was visiting a girl friend. However, he declined to reveal the girl friend's name, on the ground that she was a married woman. Officer Lasky patted Peters down for weapons, and discovered a hard object in his pocket. He stated at the hearing that the object did not feel like a gun, but that it might have been a knife. He removed the object from Peters' pocket. It was an opaque plastic envelope, containing burglar's tools."

On these facts, the Court thought it "clear that the search * * * was wholly reasonable under the Constitution":

"By the time Officer Lasky caught up with Peters on the stairway between the fourth and fifth floors of the apartment building, he had probable cause to arrest him for attempted burglary. The officer heard strange noises at his door which apparently led him to believe that someone sought to force entry. When he investigated these noises he saw two men, whom he had never seen before in his 12 years in the building, tiptoeing furtively about the hallway. They were still engaged in these maneuvers after he called the police and dressed hurriedly. And when Officer Lasky entered the hallway, the men fled down the stairs. It is difficult to conceive of stronger grounds for an arrest, short of actual eyewitness observation of criminal activity. As the trial court explicitly recognized, deliberately furtive actions and flight at the approach of strangers or law officers are strong indicia of *mens rea*, and when coupled with specific knowledge on the part of the officer relating the suspect to the evidence of crime, they are proper factors to be considered in the decision to make an arrest. * * *

"[A] search incident to a lawful arrest, may not precede the arrest and serve as

part of its justification. * * * [I]t is clear that the arrest had for purposes of constitutional justification already taken place before the search commenced. When the policeman grabbed Peters by the collar, he abruptly 'seized' him and curtailed his freedom of movement on the basis of probable cause to believe that he was engaged in criminal activity. * * * At that point he had the authority to search Peters, and the incident search was obviously justified 'by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime.' Preston v. United States [p. 227 of this Chapter]. Moreover, it was reasonably limited in scope by these purposes. Officer Lasky did not engage in an unrestrained and thoroughgoing examination of Peters and his personal effects. He seized him to cut short his flight, and he searched him primarily for weapons. While patting down his outer clothing, Officer Lasky discovered an object in his pocket which might have been used as a weapon. He seized it and discovered it to be a potential instrument of the crime of burglary."

Concurring Justice DOUGLAS "would hold that at the time [Officer] Lasky seized petitioner, he had probable cause to believe that petitioner was on some kind of burglary or housebreaking mission."

Concurring Justice HARLAN agreed that Peters' conviction should be upheld, but differed "strongly and fundamentally with the Court's approach":

"I do not think that Officer Lasky had anything close to probable cause to arrest Peters before he recovered the burglar's tools. Indeed, if probable cause existed here, I find it difficult to see why a different rationale was necessary to support the stop and frisk in *Terry* and why States such as New York have had to devote so much thought to the constitutional problems of field interrogation. * * *

"Officer Lasky testified that at 1 o'clock in the afternoon he heard a noise at the door to his apartment. He did not testify, nor did any state court conclude that this 'led him to believe that someone sought to force entry.' He looked out into the public hallway and saw two men whom he did not recognize, surely not a strange occurrence in a large apartment building. One of them appeared to be tip-toeing, Lasky did not testify that the other man was tip-toeing or that either of them was behaving 'furtively.' *Ibid.* Lasky left his apartment and ran to them, gun in hand. He did not testify that there was any 'flight,' though flight at the approach of gun-carrying strangers (Lasky was apparently not in uniform) is hardly indicative of *mens rea.*

"Probable cause to arrest means evidence that would warrant a prudent and reasonable man (such as a magistrate, actual or hypothetical) in believing that a particular person has committed or is committing a crime. Officer Lasky had no extrinsic reason to think that a crime had been or was being committed, so whether it would have been proper to issue a warrant depends entirely on his statements of his observations of the men. Apart from his conclusory statement that he thought the men were burglars, he offered very little specific evidence. I find it hard to believe that if Peters had made good his escape and there were no report of a burglary in the neighborhood, this Court would hold it proper for a prudent neutral magistrate to issue a warrant for his arrest.

"In the course of upholding Peters' conviction, the Court makes two other points that may lead to future confusion. The first concerns the 'moment of arrest.' If there is an escalating encounter between a policeman and a citizen, beginning perhaps with a friendly conversation but ending in imprisonment, and if evidence is developing during that encounter, it may be important to identify the moment of arrest, i. e., the moment when the police were not permitted to proceed further unless they by then had probable cause. This moment-of-arrest problem is not, on the Court's premises, in any way involved

in this case: the Court holds that Officer Lasky had probable cause to arrest at the moment he caught Peters, and hence probable cause clearly preceded anything that might be thought an arrest. The Court implies, however, that although there is no problem about whether the arrest of Peters occurred *late* enough, i. e., after probable cause developed, there might be a problem about whether it occurred *early* enough, i. e., before Peters was searched. This seems to me a false problem. Of course, the fruits of a search may not be used to justify an arrest to which it is incident, but this means only that probable cause to arrest must precede the search. If the prosecution shows probable cause to arrest prior to a search of a man's person, it has met its total burden. There is *no* case in which a defendant may validly say, 'Although the officer had a right to arrest me at the moment when he seized me and searched my person, the search is invalid because he did not in fact arrest me until afterwards.'

"This fact is important because, as demonstrated by *Terry* not every curtailment of freedom of movement is an 'arrest' requiring antecedent probable cause. At the same time, an officer who does have probable cause may of course seize and search immediately. Hence while certain police actions will undoubtedly turn an encounter into an arrest requiring antecedent probable cause the prosecution must be able to date the arrest as *early* as it chooses following the obtaining of probable cause.

"The second possible source of confusion is the Court's statement that 'Officer Lasky did not engage in an unrestrained and thorough-going examination of Peters and his personal effects.' Since the Court found probable cause to arrest Peters, and since an officer arresting on probable cause is entitled to make a very full incident search, I assume that this is merely a factual observation. As a factual matter, I agree with it.

"Although the articulable circumstances are somewhat less suspicious here than they were in *Terry*, I would affirm on the *Terry* ground that Officer Lasky had reasonable cause to make a forced stop. Unlike probable cause to arrest, reasonable grounds to stop do not depend on any degree of likelihood that a crime *has* been committed. An officer may forcibly intrude upon an incipient crime even where he could not make an arrest for the simple reason that there is nothing to arrest anyone for. Hence although Officer Lasky had small reason to believe that a crime had been committed, his right to stop Peters can be justified if he had a reasonable suspicion that he was about to attempt burglary.

"It was clear that the officer had to act quickly if he was going to act at all, and, as stated above, it seems to me that where immediate action is obviously required, a police officer is justified in acting on rather less objectively articulable evidence than when there is more time for consideration of alternative courses of action. Perhaps more important, the Court's opinion in *Terry* emphasized the special qualifications of an experienced police officer. While 'probable cause' to arrest or search has always depended on the existence of hard evidence that would persuade a 'reasonable man,' in judging on-the-street encounters it seems to me proper to take into account a police officer's trained instinctive judgment operating on a multitude of small gestures and actions impossible to reconstruct. Thus the statement by an officer that 'he looked like a burglar to me' adds little to an affidavit filed with a magistrate in an effort to obtain a warrant. When the question is whether it was reasonable to take limited but forcible steps in a situation requiring immediate action, however, such a statement looms larger. A court is of course entitled to disbelieve the officer (who is subject to cross-examination), but when it believes him and when there are some articulable supporting facts, it is entitled to find action taken under fire to be reasonable.

"Given Officer Lasky's statement of the circumstances, and crediting his experienced judgment as he watched the two men, the state courts were entitled to conclude, as they did, that Lasky forcibly stopped Peters on 'reasonable suspicion.' The frisk made incident to that stop was a limited one, which turned up burglar's tools. Although the frisk is constitutionally permitted only in order to protect the officer, if it is lawful the State is of course entitled to the use of any other contraband that appears."

Concurring Justice WHITE joined the affirmance of Peters' conviction, "not because there was probable cause to arrest, a question I do not reach, but because there was probable cause to stop Peters for questioning and thus to frisk him for dangerous weapons."

FURTHER REFLECTIONS ON THE STOP-AND-FRISK CASES

A. Temporary Seizure for Investigation

1. Why did the Court conclude in *Terry* that the "crux of this case * * * is not the propriety of Officer McFadden's taking steps to investigate petitioner's suspicious behavior," and warn that nothing had been decided "concerning the constitutional propriety of an investigative 'seizure' upon less than probable cause"? Is Justice Harlan correct in saying that the officer's right to stop should be resolved before any other questions are reached? Or, was it appropriate to defer that issue until it arises in the context of whether a power to stop is necessary in connection with some permissible investigative technique? In the oral argument of *Sibron*, Mr. Michael Juviler, for the New York County district attorney, as amicus curiae, observed: "It's an accident of jurisprudence that the cases that have come before the Court this week have all involved discovery of tangible objects. * * * The average case that has come to the attention of the lower courts and of this Court on petitions for certiorari are cases where there is merely a stop, *a questioning* and a detention, and this is really the heart of the stop provision." (Emphasis added.)

If Justice White is correct in saying that there "is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets," then is it necessary to confer upon the police a power to stop suspects for purposes of questioning? Does this depend upon whether the suspect has a right to walk away and thus refuse to be questioned, that is, upon whether *Miranda v. Arizona*, p. 416 of this Book, applies in this situation? For consideration of this issue, see p. 457 of this Book.

Or, is the power to stop suspects sometimes necessary so that the officer may display the suspect to the victim or witness of a crime recently committed in the area? Again, there is some question as to the propriety of the investigative technique which might serve as the basis for the stopping. See *United States v. Wade*, p. 466 of this Book, concerning the right to counsel at a lineup; *Stovall v. Denno*, p. 483 of this Book, concerning the one-man showup; and *Russell v. United States*, 408 F.2d 1280 (D.C.Cir.1969), concerning the application of these cases to prompt confrontations with an eyewitness at the scene of the crime.

2. Does the Court give any indication as to how the reasonableness of a stopping for investigation might be determined? Is the question whether "the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate"? Or, whether the officer's observations lead him "reasonably to conclude in light of his experience that criminal activity may be afoot"? Are these tests more or less precise than the New York statute? Is the difficulty with permitting investigative stops on grounds less than required

for arrest that it is impossible to develop precise standards and objective controls? Compare H. Schwartz, *Stop and Frisk (A Case Study in Judicial Control of the Police)*, 58 J.Crim.L.C. & P.S. 433, 444–50 (1967), with LaFave, *"Street Encounters" and the Constitution: Terry, Sibron, Peters, and Beyond*, 67 Mich.L.Rev. 40, 68–72 (1968).[a]

[a] Consider, in this regard, *Model Code of Pre-Arraignment Procedure* § 2.02 (Tent. Draft No. 2, 1969), which reads in part:

(1) *Cases in Which Stop is Authorized.* A law enforcement officer, lawfully present in any place, may, in the following circumstances, order a person to remain in the officer's presence near such place for such period as is reasonably necessary for the accomplishment of the purposes authorized in this subsection, but in no case for more than twenty minutes:

(a) *Persons in suspicious circumstances relating to certain felonies and misdemeanors.*

(i) Such person is observed in circumstances such that the officer reasonably suspects that he has just committed or is about to commit a felony or misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property, and

(ii) such action is reasonably necessary to obtain or verify the identification of such person, to obtain or verify an account of such person's presence or conduct, or to determine whether to arrest such person.

(b) *Witnesses near scene of certain felonies and misdemeanors.*

(i) The officer has reasonable cause to believe that a felony or misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property has just been committed near the place where he finds such person, and

(ii) the officer has reasonable cause to believe that such person has knowledge of material aid in the investigation of such crime, and

(iii) such action is reasonably necessary to obtain or verify the identification of such person, or to obtain an account of such crime.

(c) *Suspects sought for certain previously committed felonies.*

(i) The officer has reasonable cause to believe that a [felony] [felony or misdemeanor] involving danger of injury to persons or of appropriation of or damage to property has been committed, and

(ii) he reasonably suspects such person may have committed it, and

(iii) such action is reasonably necessary to obtain or verify the identification of such person for the purpose of determining whether to arrest him for such crime.

Compare the approach in Tent.Draft No. 1, drafted prior to *Terry*, at p. 243 n. 22 of this Chapter.

3. Consider LaFave, supra, at 73–75:

"Despite claims that the distinction between 'reasonable grounds to believe' and 'reasonable grounds to suspect' is only a 'semantic quibble,' it does seem that separate, distinguishable standards for arrest and for stopping could be developed. Both procedures require probable cause, but a somewhat different kind of probable cause: for arrest the officer must have 'reasonable grounds to believe' that the person has committed a crime, but for stopping (to use the language in *Terry* instead of the much-maligned New York formula) he must 'reasonably * * * conclude [that is, believe] * * * that criminal activity may be afoot.' Since 'in dealing with probable cause * * * we deal with probabilities,' the difference between these two formulae may lie in the degree of probability required.

"As to the probability required for an arrest, it may generally be stated that it must be more probable than not that the person has committed an offense, although this is less certain as to the probability that a particular person is the offender than to the probability that a crime has been committed by someone. In the latter situation, which assumes central importance when there is no doubt who the offender is *if* a crime has been committed, courts ordinarily require that criminal conduct be more probable than non-criminal activity. * * *

"When it is at least more probable than not that a crime has occurred, courts usually hold that a particular person may be arrested for that crime only if it is more probable than not that that person is the offender; the information must be such that 'reasonable men would conclude that in all probability' the suspect is the perpetrator. * * * [T]he general rule—as repeatedly emphasized by the Su-

preme Court—is that where there are several actual or potential suspects, all of them may not be arrested nor may any one be arrested at random.

"By contrast, when a case involves temporary seizure for investigation, and it is 'more relevant to ask whether there is probable cause for restraining a suspect than to ask whether there is probable cause for believing in the suspect's guilt,' the more-probable-than-not test is inapplicable. Rather, as suggested by the reference in *Terry* to reasonable belief 'that criminal activity *may* be afoot,' it should be sufficient that there is a substantial possibility that a crime has been or is about to be committed and that the suspect is the person who committed or is planning the offense."

4. Consider whether, on the following facts, the police have evidence (i) sufficient for an arrest; (ii) sufficient for an investigative stop but not an arrest; or (iii) insufficient evidence for either an arrest or a stop:

(a) An anonymous telephone caller told the police that a youth of a certain description was standing on a certain corner and that he "had a loaded 32 calibre revolver in his left hand jacket pocket." An officer proceeded to the location and saw an individual matching the description standing in the middle of a group of children. See *People v. Taggart,* 20 N.Y.2d 335, 283 N.Y.S.2d 1, 229 N.E.2d 581 (1967).

(b) A supermarket in a metropolitan area was robbed during the evening hours. The robber was described as being a fairly tall man of large build with dark hair who was wearing a red sweater. A man fitting this description was observed driving a car six blocks from the scene of the crime twenty minutes later. See *People v. Mickelson,* 59 Cal.2d 448, 30 Cal.Rptr. 18, 380 P.2d 658 (1963).

(c) Officers on patrol at 4:30 a.m. heard a woman screaming for help. At the same moment they observed a man run out of an alley near the point where the screams originated. See *Bell v. United States,* 108 U.S.App.D.C. 169, 280 F.2d 717 (1960).

(d) At 1:15 a. m. an employee of the Railway Express Agency exited from the REA terminal and saw a man nearby carrying a brown carton which looked like it came from REA. The employee hailed a patrolman and pointed the man out to him. See *United States v. Lewis,* 362 F.2d 759 (2d Cir. 1966).

For a discussion of these and similar situations, see Tiffany, McIntyre, & Rotenberg, *Detection of Crime* 18–43 (Remington ed. 1967); LaFave, supra, at 76–84.

5. Should the nature of the suspected crime have a bearing on whether an investigative stop should be permitted? Consier LaFave, supra, at 65: "In *Terry* the anticipated crime was armed robbery, while in *Peters* it was burglary; both are serious offenses and not infrequently are attended by violence. *Sibron,* on the other hand, involved possession of narcotics. * * * [T]his may have contributed in some measure to the Court's refusal to permit inferences in that case as generous as in the other two—the failure to consider, for example, if it was not unusual for a person to spend eight consecutive hours loitering in an area frequented by narcotics addicts. Justice Harlan's analysis of *Sibron* is also revealing, for he says that the real question is whether there was a need for *immediate* action, and adds that he would apply as a general formula the New York statutory requirement that the officer must reasonably suspect a felony. His failure to quote the balance of the statute, which also permits stop and frisk where the officer reasonably suspects the misdemeanor of narcotics possession, might well have been deliberate."

Could investigative stops be limited to certain serious offenses as a matter of Fourth Amendment interpretation? Consider the difficulties which have been encountered in determining to what of-

fenses *Gideon v. Wainwright*, p. 71 of this Book, and *Duncan v. Louisiana*, p. 33 of this Book, are applicable.

6. In defining the powers of the police to make investigative stops, should a distinction be drawn between detection of crime and prevention of crime? "*Terry* expressly deals only with the latter, for the officer feared that a crime was about to be committed; thus, there is nothing in that case which forecloses the contention that the only new police authority for which a genuine need can be shown is the power to take preventive action in such circumstances. It is in this situation that the police have heretofore lacked any clear authority to act, even with the most compelling evidence; and it is here that all members of the Court agree that some new authority, in the interest of crime prevention, is imperative." LaFave, supra, at 66.

7. Assuming that the police may make a temporary seizure on the street for purposes of investigation on evidence which would be insufficient for arrest, then what limits must be observed by the police to prevent the seizure from becoming an arrest? How long may the suspect be detained? May he be moved from the location where he was stopped? See *United States v. Mitchell*, 179 F.Supp. 636 (D.D.C. 1959), holding that the suspect had been arrested when the officer took him to a call box about a block away, but basing this conclusion on the pre-*Terry* notion that "the term arrest may be applied to any case where a person is taken into custody or restrained of his full liberty, or where the detention of a person in custody is continued even for a short period of time." As to detention at the police station, see p. 263 of this Chapter.

B. PROTECTIVE SEARCH

1. After *Terry*, what is the test for determining whether an officer may conduct a "frisk"? Is it whether the officer "is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous," or whether he reasonably believes that "the persons with whom he is dealing may be armed and presently dangerous"? Is there always a right to frisk when the police are investigating certain kinds of crimes? If not, or if such a crime is not involved, what other circumstances must be present?

2. Assuming that there are grounds for a protective search, how extensive a "patting down" of the suspect is permissible? Consider the description quoted in note 13 of the *Terry* decision, and see LaFave, supra, at 90–91.

3. Is the right to make a protective search limited to the person of the suspect? What if the suspect is carrying an attache case, a shopping bag, a purse, or similar object? What if the suspect is seated in a vehicle?

4. Should the Court have ruled that a weapon found in a frisk is never admissible? At oral argument, counsel for Sibron contended: "[T]he [New York stop-and-frisk] statute * * * has a two-fold purpose: protection and evidence-gathering. And once you go on beyond merely giving the officer the right to protect himself and give him the right to gather evidence, then this is a search for the purpose of gathering evidence, and you can't give it on anything less than probable cause. * * * If you wanted to let a police officer protect himself in those situations where he is in heartfelt need of self-protection, you could let him make the search or the frisk, or whatever, and say he won't be prosecuted civilly, he won't be reprimanded administratively, but you don't have to—but you can't then say, just because he made it for self-protection, you have to let the evidence come in."

5. Should anything other than a weapon found in a lawful frisk be admissible in evidence? It is suggested in LaFave, supra, at 93, that the "otherwise questionable disposition of the *Peters*

case" may be attributable to a desire by the Court to leave that issue open, although it was raised several times during oral argument. For example:

"Mr. Justice Fortas: Suppose [the officer] finds narcotics in an envelope. Do you take the position that that may be used in evidence even though the circumstances did not amount to probable cause, but merely amounted to reasonable suspicion?

"Mr. Duggan [for the State of New York]: Yes sir, we would take the position that that was admissible.

"Mr. Justice Fortas: Why?

"Mr. Duggan: For the reason, your Honor, that as a basic proposition, as a search may not be justified by what it turns up, it may not be condemned by what it turned up."

Compare the views of Judge Van-Voorhis, dissenting in *People v. Sibron*, 18 N.Y.2d 603, 272 N.Y.S.2d 374, 219 N.E.2d 196 (1966): "If we go beyond [admitting only weapons], then frisking a suspect, which can be done in practice (though not in theory) at the officer's whim, will become a pretext for the general search of the person, without probable cause, which the Fourth Amendment was designed to prevent. The power to frisk is an exception to the probable cause rule in search and seizure, and is not a search at all except for the discovery of a dangerous weapon concealed upon the person. There it should end, for all purposes. The protection thereby afforded to a policeman, and to bystanders if a shooting duel ensues, is so manifestly called for as a matter of common sense that the benefits to be derived should not be foregone by bending this wholesome device to a different and unintended purpose and by so doing subtly to subvert an important part of the Fourth Amendment."

C. Detention at the Police Station

1. In PEOPLE v. MORALES, 22 N.Y.2d 55, 238 N.E.2d 307 (1968), cert. granted 394 U.S. 972, 89 S.Ct. 1472, 22 L.Ed.2d 752 (1969), decided less than one month before the Supreme Court handed down the *Terry, Sibron,* and *Peters* decisions, it was acknowledged that Morales "was not free to leave at the time he was apprehended," and thus the court, per Judge JASEN, moved directly to the question of "whether the police *unreasonably* seized defendant within the meaning of the Fourth Amendment by taking him to the 42nd Precinct Station for questioning." The police were investigating a brutal murder of a woman in the elevator of her apartment building, and their questioning of a large number of persons established that no one witnessed the murder or saw the killer leave the scene of the crime. The investigation did disclose that the defendant had been present in the building at the time of the crime, that he was a known narcotics addict, and that he had not been seen since the killing. The police later located the defendant and took him to the station for questioning; he was not informed that he was under arrest. He was apprehended at 8 p. m., arrived at the station about 8:30 (at which time he "was informed of the subject matter of the investigation, his right to remain silent, his right to have a lawyer at any time, and advised that any answers he gave could be used against him"), and signed a confession at 9:05. In affirming the conviction, the court relied upon the balancing of interests approach in *Camara v. Municipal Court,* 387 U.S. 523, 87 S. Ct. 1727, 18 L.Ed.2d 930 (1967) (rejecting the contention that warrants should issue only when a health inspector has probable cause to believe that a *particular* dwelling contains a code violation and permitting their issuance on probable

cause based on *area* inspection standards), and concluded that the need to solve a serious crime justified the brief interference with the defendant's movements:

"This prerogative of police officers to detain persons for questioning is not only essential to effective criminal investigation, but also protects those who are able to exculpate themselves from being arrested and having formal charges made against them before their explanations are considered. The fact that detention is not recorded as an arrest and may not be considered by the individual as an arrest is also important.

"The evil to be guarded against is the danger posed to constitutional rights by incommunicado questioning, without advice as to a suspect's rights. This evil can be controlled by fully advising a person of his rights and providing counsel upon request. Where, as here, the defendant is advised of his rights, he is confronted with a clear choice. If he declines to talk, the police must release him unless they have probable cause to arrest on a charge of crime. The fact that defendant was questioned in a police station should not be controlling, although, of course, it is considered with all the other circumstances in determining the reasonableness of police conduct. Police station interrogation facilitates questioning because trained investigators and stenographic facilities are present. Its privacy eliminates the distractions caused by crowds which may form during questioning conducted on the street.

"In conclusion, the police were justified in questioning defendant in the manner in which they did because of the exceptional circumstances of this case. There was a high degree of public interest involved resulting from the confluence of a brutal crime and a lack of practical alternative investigative techniques. The checkerboard square of the police investigation, although resting upon circumstantial evidence, pointed only to defendant. The public interest in questioning defendant was, therefore, great. In fact, defendant was the only person the police could have reasonably detained for questioning based upon the instant record. Finally, custodial interrogation, the investigative technique, was reasonably applied to the needs of the situation. The explanation of defendant's constitutional rights clearly exceeded the requirements of the law as it was understood at the time of his interrogation. The period of proposed detention was brief, approximately one hour. Defendant, experienced in police procedures, could not have regarded his temporary detention as tantamount to an arrest. Of course, when defendant confessed approximately 15 minutes after questioning began, detectives then had probable cause to arrest him on a charge of crime. * * *

"It is recognized that detention for questioning has its manifest evils and dangers. This decision, is, therefore, limited to the exceptional circumstances presented on this appeal involving a serious crime affecting the public safety. We hold merely that a suspect may be detained upon reasonable suspicion for a reasonable and brief period of time for questioning under carefully controlled conditions protecting his Fifth and Sixth Amendment rights. Mass detentions for questioning are never permissible. The scope of the authority to question is limited to those persons reasonably suspected of possessing knowledge of the crime under investigation in circumstances involving crimes presenting a high degree of public concern affecting the public safety."

Chief Judge FULD concurred "solely on the ground that the record established that defendant waived his constitutional rights and acquiesced in his being interrogated by the police at the police station."

2. In DAVIS v. MISSISSIPPI, 394 U.S. 721, 89 S.Ct. 1394, 22 L.Ed.2d 676 (1969), petitioner and 24 other Negro youths were detained for questioning and fingerprinting in connection with a rape for which the only leads were a general description given by the victim

and a set of fingerprints around the window through which the assailant entered. Petitioner's prints were found to match those at the scene of the crime, and this evidence was admitted at his trial. The Court, per BRENNAN, J., held that the prints should have been excluded as the fruits of a seizure of petitioner in violation of the Fourth Amendment [see p. 547 of this Book], but intimated that a detention for such a purpose might sometimes be permissible on evidence insufficient for arrest:

"Detentions for the sole purpose of obtaining fingerprints are no less subject to the constraints of the Fourth Amendment. It is arguable, however, that because of the unique nature of the fingerprinting process, such detentions might, under narrowly defined circumstances, be found to comply with the Fourth Amendment even though there is no probable cause in the traditional sense. See Camara v. Municipal Court. Detention for fingerprinting may constitute a much less serious intrusion upon personal security than other types of police searches and detentions. Fingerprinting involves none of the probing into an individual's private life and thoughts which marks an interrogation or search. Nor can fingerprint detention be employed repeatedly to harass any individual, since the police need only one set of each person's prints. Furthermore, fingerprinting is an inherently more reliable and effective crime-solving tool than eyewitness identifications or confessions and is not subject to such abuses as the improper line-up and the 'third degree.' Finally, because there is no danger of destruction of fingerprints, the limited detention need not come unexpectedly or at an inconvenient time. For this same reason, the general requirement that the authorization of a judicial officer be obtained in advance of detention would seem not to admit of any exception in the fingerprinting context.

"We have no occasion in this case, however, to determine whether the requirements of the Fourth Amendment could be met by narrowly circumscribed procedures for obtaining, during the course of a criminal investigation, the fingerprints of individuals for whom there is no probable cause to arrest. For it is clear that no attempt was made here to employ procedures which might comply with the requirements of the Fourth Amendment: the detention at police headquarters of petitioner and the other young Negroes was not authorized by a judicial officer; petitioner was unnecessarily required to undergo two fingerprinting sessions; and petitioner was not merely fingerprinted during the December 3 detention but also subjected to interrogation."

Justice HARLAN, concurring, noted: "There may be circumstances, falling short of the 'dragnet' procedures employed in this case, where compelled submission to fingerprinting would not amount to a violation of the Fourth Amendment even in the absence of a warrant, and I would leave that question open." Justices BLACK and STEWART dissented.

LESZEK OCHOTA, M. D., D.Sc.
3810 RANDOLPH ROAD
WHEATON, MARYLAND 20902
February 3, 1972

DIPLOMATE, AMERICAN BOARD OF
CLINICAL IMMUNOLOGY AND ALLERGY

PHONE 946-5381

TESTIMONY BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY
February 3, 1972

After attending the S-205 hearing on January 25, 1972 I am asking permission to share few remarks with you:

1. ad H.B. 277:

   a. Similarly to several other reputable citizens (mostly practising physicians like myself) who were mentioned at the S-205 hearing as having been denied the permit to carry a handgun, I * too, a certified pistol marksmanship instructor, was denied such a permit in Montgomery county in spite of rather valid reasons to the contrary (I would be glad to elaborate on this point orally, if you wish).

   b. With my experience from behind the Iron Courtain, first with the Germans, then with the Soviets, I call your attention to the historical perspective: both, the brown and the red fascists started with similar gun control laws; what followed the stop-and-frisk, was - sooner or later - a shot in the neck - or belly, if you were a Jew so that you may die more slowly. And the current experience in Vietnam (My Lai,etc.) teaches us that we are no longer an innocent society.

   c. To counter the argument of Senator Schweinhaut voiced on January 25, viz., "I have constitutional right to life", my reply is: surely she has, but so have hundreds of thousands law-abiding handgun owners in Maryland; their "constitutional right to life" would be much more protected by permitting them to carry handguns, particularly now, during the steadily increasing invasion of the suburbs by the inner city criminals (how many on bond?! how many under drug influence?!).
   Please, Lady Nimmerrichter and Gentlemen of this Committee, consider this problem in more detail since it did not receive satisfactory evaluation at the January 25 Senate hearing.

   d. The concomitant seizure and fortfeiture of the automobile certainly deserves repudiation - for many reasons.

   e. A review board to be appointed solely by the governor!?! This smacks even more like the above mentioned totalitarian controls than the democratic evolutionary processes our Republic trived during the last two centuries. Several other solutions have been offered at the Senate hearing.

   f. Except in Baltimore City where the violent crime prevails, the police officer should always have a search warrant, barring situations where the suspect is caught in flagranti.

2. ad H.B. 59:

all for it but this bill sounds rather naive to me.

3. ad H.B. 258:

definitely yes.

4. ad H.B. 365:

apparently drafted by power-hungry psychopaths in a typical fascist and nazi dictatorial fashion - does not deserve any discussion --should be rejected in toto and its proponents banished from public life (I promise my share in the next elections).

5. ad H.B. 375:

I do not have enough facts to decide whether it is really needed or not.

Respectfully submitted
by faithfully yours

Lucek Oclote, M.D.

Polish-American Veteran WW II

* I do not belong to any gun lobby, etc., however, I am listed in:

Who's Who in the East
Personalities of the South
Dictionary of International Biography (London).

STONEY CREEK FISHING AND HUNTING ASSOCIATION
Fort Smallwood Road Box 53, Route 11
Pasadena, Maryland

Since this club is near Annapolis and has members resident in that enter of action" we are taking the liberty of informing our companion ganizations of the "score", as we see it, on the Governor's proposed Gun Bill.

The provisions with regard to search are reasonable, and the penalties for use of a handgun in connection with crime are advisable, and if anything, too light.

What we object to is: (1) Needless restrictions placed upon use of handguns by law abiding citizens, and: (2) Difficulty in obtaining permits for those who are willing to obtain same as a safety measure against ambiguous or ill-advised restrictions.

The backers of the Bill want it passed, and if they are faced with the probability of it being defeated they no doubt would accept amendments that would make the bill more acceptable to sportsmen and other patriotic citizens who resent infringement on their right to bear arms. Should the bill be passed as an emergency measure, without suitable amendment, the hunting and shooting clubs of this state, with friends among non-member hunters and various patriotic organizations, could easily muster enough signatures to require a referendum in November.

Accordingly, we submit three suggestions requiring amendments to the Bill. We leave the choice of one or more of these suggestions to the discretion of our legislators and the wording to their expertise; but, if one or more of these suggestions is not adopted we should and can defeat the Bill as a whole, by referendum if necessary, though that measure should not be necessary if our representatives heed our voices now.

SUGGESTION I

(Relative to restrictions on law-abiding citizens). (Three amendments necessary)

Amendment Paragraph 36 B (c) (3) (p.4, line 26 Senate Bill 205; p.5, line 45, House Bill 277)
After "activity" delete period and add ", or a reasonable digression or stop-over while performing such travel."

Amendment Paragraph 36 B (c) (4) (Both Senate and House Bill, p. 5, line 51)
After "leased by him." delete period and add ", or while performing normal travel between such places provided the handgun shall be unloaded and carried in a closed case or holster."

and

Amendment (Both Senate and House Bills p. 5 after paragraph 36 (B) (c) (4)

Add a new sub-paragraph 36 B (c) (5). Nothing in this section shall prevent any person from carrying an unconcealed handgun from property on which he is authorized to have such handgun, for the clear purpose of rendering assistance to a neighbor believed to be threatened by a lawless person.

SUGGESTION II PERMITS

(Two Amendments)

Amendment Change last line of sub-paragraph 36 E (a) (5) (page 7 of Senate and House Bills) by omitting word "and" and change semi-colon to period.
Delete present wording of sub-paragraph 36 E (a) (6) and substitute the following: "The Superintendent may specify on the permit, whether or not the gun must be unconcealed."

NOTE: If the qualifications of the five sub-paragraphs preceding 36 E (a) (6) are met to the satisfaction of the Superintendent, the mere desire for a permit on the part of the qualified citizen, for purpose of travel and protection should be sufficient for issue of a permit to carry an unconcealed hand gun. Most crimes are committed by "repeaters", disqualified by sub-paragraphs (1) to (5).

Amendment Omit paragraph 36 E (d) (p.8 of Senate and House Bills)
NOTE: Limitations as to time, place or circumstances (for instance as applied to public school property in this Bill) should be the prerogative of the Legislature, or in times of emergency of the Governor himself, rather than the responsibility of an appointed official. If a citizen is qualified to carry a handgun under ordinary circumstances he should be qualified under most circumstances.

SUGGESTION III

Amendment to limit the life of the proposed bill

No bill, however restrictive, will prevent criminals from obtaining guns, and we believe the present nationwide increase in crime is due to "softness" on the part of courts in upholding present laws, and over-indulgence in parole and suspension of sentence, and failure to exercise the death sentence.

However, to give the courts a chance to prove themselves and the State time to provide more prisons, we could stand the proposed Gun Bill for a period of two years, provided it become null and void at the end of that period, except for such sentences and penalties as may be assigned for offences committed during that period, and such permits as might have been granted. At the end of two years, present laws would automatically go into effect except for such new laws as may be enacted to take effect on termination of the life of the proposed Bill.

* *

If you agree with us, request your delegates to defeat the Bill in its entirety unless one or more of these suggestions is adopted.

If you want to know how your delegates vote on roll-call amendments and the Bill as a whole, send a self-addressed stamped envelope to the undersigned. We expect to have an observer present at all sessions concerning this bill.

If one of your club members comes to Annapolis to see your delegates it might be advisable to contact the undersigned for local information.

H. Leland de Rivera

Chairman, Legislative Committee
(21 Wardour Drive, Annapolis, Md. 21401)
(Phone 263-3367)

SUMMARY

AMEND PROPOSED BILL OR ITS FORM PASSED BY SENATE SO THAT:

I. Transportation of handguns for legitimate purposes will be less restricted, or

II. It will be less difficult for law abiding citizens to obtain permits to transport or carry unconcealed handguns, or

III. The bill will be a temporary (two year) measure.

Maryland & District of Columbia Rifle and Pistol Association Inc.

LEGISLATIVE MATTERS

8415 Bellona Lane, #706, Towson, Md. 21204

ATTACHMENT A - To letter, 2-2-72, from Md.-D.C. R & P Assoc.

The contents of this attachment are also endorsed by the Maryland Wildlife Federation, by the Associated Sportsmen's Clubs of Central Maryland and by the Associated Gun Clubs of Baltimore

We most respectfully suggest the following changes to HB 277:

Change A - Remove the Emergency Bill designation and let the bill, if enacted and signed, take effect July 1, 1972.

We reiterate, allow the General Assembly some time and some relative peace and quiet to study proposed changes to the introductory bill. Further, the State Police can only set up the machinery for considering permit applications by diverting personnel from other work where they quite possibly are urgently needed.

Change B - Have the permits be issued by the Clerk of the Circuit Court (or his counterpart in Baltimore City) of the applicant's principal place of residence after an investigation, limited to matters of fact, by the State Police. Apportion the permit fee between the Clerk's office and the State Police.

Suggested Change B would put the decision-making responsibility in the hands of an elected, rather than appointed, official. If he decides unwisely too often (in either direction, too lenient or too restrictive) the people can make a change within four years. Further, it would avoid putting the police "on the spot"--they investigate and report facts only--and, hopefully avoid further deterioration of police-community relations.

Frankly, we suggest Change B with a certain trepidation that chaotic non-uniformity between the counties would result. If the quasi-judicial responsibility given the Superintendant in 36E (a) (5) and (6) on page 7 at lines 19 and 23, respectively, and the even quasi-legislative responsibility implied in 36 (a) (6) at line 23 could be removed or substantially reduced by suitable language changes in these conditions for issue of the permit, we would be delighted to recede from our suggestion.

Change C - Provide that no permit shall be valid when the permittee is under the influence of, or has his ability impaired by, alcohol or drugs and, as an expressed condition of issue, the permittee consents to chemical tests, as presently in Article 66½ for motor vehicle operator licenses.

The merit of Change C is obvious--alcohol does not mix with gunpowder any more than it does with gasoline--nor any less, either. Shooting situations sometimes develop out of drinking situations.

Change D - Provide that the issuing authority must act expeditiously in issuing, denying or limiting a permit by adding words to that effect in 36E (a) on page 7 lines 2-24 of the printed bill and provide that the Handgun Permit Review Board, Section 36E (g) on page 8 at lines 1-21 of the printed bill may review and reverse unreasonable delays by adding words to that effect in 36E (g) (ii) at line 8 on page 8.

In the bill as filed, no appeal may be taken until the permit is refused, limited, or revoked. The suggested change would discourage simple "stalling" tactics.

Change E - Delete the words "in the judgement of the Superintendant" on page 7 at line 19 and again at line 23 and substitute in lieu thereof, in each case, the words ",based on the results of investigation,"

Change F - Use "shall issue" rather than "may issue" on page 7 in line 2 of the printed bill, relative to the issuing authority's action after all six conditions, 36E (a) (1-6) at lines 5-24, have been met.

Changes E and F are intended to protect the rights of an applicant to a proper review. As the bill was drafted, a court would probably rule that any refusal had been justified as long as the refusing authority used the words "in my judgement" as a reason, and possibly even if he did not.

Change G - Provide for a refund of the permit fee when a final refusal is based on someone's interpretation of the facts or judgement of the situation, i.e. on items (5) or on (6) of 36E (a) on page 7 at lines 19 and 23. But let the fee remain non-refundable when refusal is based on a matter of fact, as in items (1), (2), (3) or (4) at lines 5, 6, 9 or 15 on page 7 of the printed bill.

The applicant cannot be expected to know that his own judgement of himself and his situation may not be shared by the refusing authority. He should, however, know if he is disqualified on a factual basis.

Change H - Reexamine the permit fee structure. It is our understanding that the Administration has suggested that the fee be reduced to $15.00. We had earlier proposed that the biennial renewal fee be reduced to $10.00

It is believed that the Administration suggestion would grant important relief to those business enterprises which provide large numbers of uniformed security guards for assignment to the premises of client businesses. Our organization does not represent any such enterprise, although individual entrepreneurs may be among our membership. In any event, the major cost would be in the initial investigation which would not have to be repeated, only updated biennially.

Change I - Add to 36B (c) (4) on page 5 at lines 49-51 the words ",or with the permission of the owner, lessor, or custodian thereof."

Change I is intended to allow a person's spouse, guest, or employee to have a handgun upon or about his person while on-premises.

Change J - Remove "transport" or "transporting" from the offenses except in the special case when in a vehicle, loaded, and readily accessible for immediate use.

Change K - Remove open carrying from offenses except where the open carrying is on school property, or with intent to commit a crime of violence, or to intimidate others or to promote or encourage civil unrest.

Changes J and K alleviate most of the situations in which law abiding, responsible citizens wish to move about with a handgun. Both changes represent a substantial tightening of existing law. It would no longer be necessary for the prosecution to prove concealment in the vehicle cases and we have broadened the list where open carrying is proscribed. Specifically, under present law it is necessary for the prosecution to show an intent to "injure any person"; we would make it "to commit any crime of violence", whether or not personal injury is involved, as well as covering the obviously socially undesirable situations where the gun is carried openly as some sort of a threat.

The bill as written bans all carrying or transporting with certain exceptions and it would be necessary for the citizen to prove that his actions fell within an allowed exception. Changes J and K restore the classical presumption of innocence, making the State prove that the citizen was doing something undesirable, rather than he having to prove that he was not.

Changes J and K may materially reduce the tendency for rural counties to attempt to exempt themselves, hence aid in keeping the bill truly statewide.

Change L - Remove from the jurisdiction of the Juvenile Courts all weapons offenses, Sections 36, 36A, and proposed 36B, where the alleged offender is 14 years of age or older. House Bill 254, by Delegates Arnick and Hopkins proposes the same effect.

Although juvenile authorities waive jurisdiction where a very serious offense is charged, they ordinarily do not waive in simple carrying-weapons cases. Change L is a strengthening of the bill--after all, the juvenile who holds a knife at your throat or a gun in your ribs is doing an extremely dangerous thing--perhaps even more dangerous than similar action by an adult who may have learned a little bit of self-restraint.

In December, 1971, the Baltimore City State's Attorney's office announced that they had just dropped formal charges against 224 juveniles and recommended that more than 700 complaints which had not yet reached the formal charge stage be dropped because of Juvenile Court overload. It is not known how many of these cases involved weapons, but an article under the Governor's by line (Baltimore News-American, 1-31-72) stated that "more than 125 handguns have been confiscated in city schools during the past year--". The General Assembly might well inquire into the disposition of the cases of the alleged offenders before taking hasty and precipitous action.

Change M - Make the mandatory prison sentences, Section 36B (b) (v) on page 4 at lines 6-19 of the printed bill, apply only to "Unlawful use of handgun in commission of crime" on page 5 at lines 52-60, modifying the language of 36B (b) (i) on page 3 at line 25 (ii) at line 38, and (iii) at line 50 to allow judicial clemency in simple unaggravated cases of carrying. And in the revised language for mandatory sentences for use of a handgun in a violent crime, eliminate the possibility of concurrent sentences.

It is extremely important to preserve the distinction between the substantive and the technical offense. Carrying a concealed handgun is socially undesirable, in most cases, and society, quite properly, has proscribed it. It is a crime because it is forbidden. Most of the people who choose to violate present law by carrying a concealed weapon are not going to do a further and more serious wrong. But the person who commits a robbery or an assault is doing something that is wrong even if there were not a word of statute on the subject. If he uses a gun, protect society from him for at least five years.

> Change N - Make the unlawful use of a handgun in commission of a violent crime be a felony, rather than a misdemeanor. Page 5 at line 55 of the printed bill.

If we are going to bring the person to trial on the violent crime, the State is going to have to go into Circuit Court anyway.

> Change O - Add to 36C (b) (i) on page 5 at line 22 of the printed bill the requirement that tbe officer investigate to determine if the property seized has been reported stolen and if so, that the rightful owner be notified prior to the initiation of any legal action which could result in forfeiture of the property. Restore the right of replevin taken away at line 30, when the State holds the property wrongfully.

Change O is to protect the rightful owner from losing his property because of sloppy police work, and giving him a legal recourse.

> Change P - Reverse the "presumption of guilt" imposed on the rightful owner, non-accused, of the seized property in 36C (b) (iii) B on page 6 at line 36 and in 36C (c) (ii) B on page 6 at line 57. Reword B. in each case, to read "unless the prosecution shall show that the petitioner knew or should have known that the property, etc."

Change P would relieve the rightful owner of the legal necessity of proving a negative, "that he did not know, etc.".

> Change Q - Delete the necessity for the written consent of the State's Attorney to the return of the property, all three other conditions precedent to its return having been met, lines 39-42 on page 6 of the printed bill.

Change Q would protect the rightful, non-accused, owner from arbitrary refusals by a recalcitant State's Attorney in the cases where it is his property, he did not know that it was going to be wrongfully used, and the State does not need it as evidence.

> Change R - Delete the vehicle seizure of 36C (a) (iii) on page 5 at line 10 of the printed bill.

The penalty seems out of scale. A vehicle may cost $5000 or more and the only monetary fine called out cannot exceed $2500. Is carrying in a vehicle that much more important than carrying while walking or while drunk in a bar?

The vehicle forfeiture provision of the introductory bill seems to come to us out of laws on illegal alcohol, drugs and gambling. The theory in that particular class of offense is, apparently, that the vehicle itself is a necessary item in conducting an illegal commercial activity and that by forfeiting the vehicle the commercial activity is inhibited. Weapons cases are almost invariably not an organized, commercialized enterprise but the ilegal activity of an individual. He does not need a car for the primary purpose of carrying a gun, but needs it, or thinks he needs it, just to get about in pursuit of his other activities. In those limited number of cases where handguns are alleged to be bootlegged out of the trunk or back seat of a car, the proper place to take care of the activity is as an offense against Section 443 of Article 27, charging the alleged offender with being an unlicensed dealer in firearms. As separate legislation (in order to stay within the constitutional limitation of one bill--one subject) the General Assembly might consider adding seizure and forfeiture when a vehicle is used in committing the offense against 443.

> Change S - Bring other dangerous or deadly weapons (of present Sections 36 and 36A) under the provisions of the bill with the above proposed amendments. This is most simply done by adding subsections beginning with 36 (d) to existing law, said subsections to provide for increased penalties, certain exceptions, seizure and forfeiture, limited search, permits, definitions, and State preemption. Another section would amend Article 26 to remove weapons cases from Juvenile Courts. It would not be necessary to amend Section 594B of Article 27 since the Section already includes violations of Section 36.

The benefits to the people of Maryland given by suggested Change S are obvious. In only about half of the armed robbery cases, and robbery is the most prevalent violent crime, is the weapon a gun. Two or three teenagers with switch blade knives are enough to terrify any of us. Let us work on crime, not on guns <u>per se</u>.

We are taking no position, at this time, on the highly controversial "stop and frisk" provisions of the bill. Similarly, I am asking local gun clubs to take no position on that extremely touchy issue.

Should the above respectfully suggested changes meet with your favor we would be more than pleased to work with your committee, with your colleagues in the Senate and with Legislative Reference in developing detailed amendatory language to implement the changes in technically correct form.

J. Robert Esher

J. Robert Esher
Legislative Chairman

Maryland & District of Columbia Rifle and Pistol Association Inc.

~~BOX 526, BOWIE, MARYLAND 20715~~

Md. Y 3. Ha 23 :2/H /972

[Legislative Reference Bill File for Handgun Control

LTTERS

Towson, Md. 21204

February 2, 1972

The Honorable Martin A. Kircher
Chairman, House Judiciary Committee and
All Members, House Judiciary Committee

Dear Delegates:

The Board of Directors and the President of our Association have authorized me to present to you our views on certain bills to be heard by your Committee on February 3, 1972.

H.B. 277 by The Speaker (Administration)

The bill, as written, is most strenuously opposed. It would, in our opinion, not aid materially in reducing crime and could seriously jeopardise the completely harmless activities of any number of respectable, socially responsible and generally law abiding citizens. However, the bill could be amended to turn what we presently, regretfully, feel is a bad bill into a very good one. If the changes which we most respectfully suggest by Attachment A hereto are incorporated and undesirable changes are avoided, we shall urge all of our members, our affiliated clubs and the other sportsmen's organizations to get solidly behind the amended bill and help to get it passed.

The changes suggested in Attachment A are identified by letters A, B, C, etc., each followed by a short explanation stating why we favor the change. The list is similar to, but slightly different from, the changes we suggested to your colleagues in the Senate last week. Where the difference is other than a matter of the simple difference in line numbering between HB 277 and SB 205, it occurred because of testimony at the Senate hearings or as the result of several subsequent meetings we have attended.

One change, a procedural one only, should be emphasized by being mentioned here. Change A would remove the Emergency Bill designation and let the law become effective July 1, 1972. The most important effect of Change A would be to provide time for orderly consideration of the bill by the General Assembly, as well as the more orderly organization of the permit investigation machinery. The value of a little time, free from editorial pressure by our great newspapers and TV commentators, cannot be overstated. No one thinks clearly with someone shouting and beating a drum in his ear. And the drum beating and shouting will take place as long as that Emergency label stays on the bill.

Testimony by the State Police at the Senate Judicial Proceedings Committee hearing was that, according to their colleagues in New Jersey, the 1966 New Jersey Act had not yet had time to show any beneficial effect on crime rates.

(The New Jersey murder rate has increased by 78% and the robbery rate by 210% in 1970 over the 1965 rates. 1965 was the last full year under New Jersey's old law and 1970 is the last for which we have FBI statistics under the new one.) If, now, the New Jersey law has not had statistical impact in six years, what difference could a few months make in Maryland? Buy yourselves some time and maybe a little peace and quiet, gentlemen.

We are asking that our people refrain from taking a position on "stop and frisk". Bluntly, most sportsmen's organizations do not know the subtleties of that complex and controversial field.

H.B. 254, by Delegates Arnick and Hopkins is a good bill. We have suggested that its provisions, removing juvenile weapons offenses when the alleged offender is 14 years of age or older from the jurisdiction of the juvenile courts, be incorporated into the Administration bill. We also urge its separate enactment. The Governor could veto it if its provisions were in the Administration bill, hence redundant, and both passed.

H.B. 258 by Delegates Athey and Hagner to proscribe certain weapons would also seem to be a good bill. The sawed off shotgun or short rifle is, effectively, banned by Chapter 53 of the U.S. Internal Revenue Code, Sections 5801-5861. If our State and local authorities feel that they need a State statute because they are not getting adequate support from the Federal authorities the matter should be investigated, but there would seem to be little harm in giving them another tool.

H.B. 365 by Delegates Woodrow Allen and Leonard Ruben is a bad bill and it is hardly conceivable that it could be amended into anything good. In attempting to outlaw, effectively, all private ownership of handguns, it simply ignores the fact that the overwhelming majority of such handguns (at least 98%) are owned by honest citizens who will never do any harm. Those least likely to be affected by its provisions are the criminal and the otherwise irresponsible.

H.B. 375 by Delegate Rynd and others is an attempt to bring private sales of handguns under the waiting period, police investigation, procedures now applicable to sales by dealers. It is a bad bill. It ignores the fact that private sales, and indeed all private possession, of pistols are presently covered by Subsections 445 (b) and 445 (c) of Article 27. It would be an expensive and unenforceable law if enacted and signed.

H.B. 404 by Delegates Miller and others was received too late to be included in our detailed analysis. On the face of it, however, the attempt to cover criminal use, rather than honest possession or transfer as would H.B. 365 and H.B. 375 is refreshing.

Very truly yours,

J. Robert Esher

J. Robert Esher
Legislative Chairman

Encl: Attachment A

Maryland & District of Columbia Rifle and Pistol Association Inc.

~~BOX 526, BOWIE, MARYLAND 20715~~

LEGISLATIVE MATTERS

8415 Bellona Lane, #706, Towson, Md. 21204

Alternate to Suggested Change B:

Delete the present wording of 36E (a) (6) on page 7 at lines 23 and 24 of the printed ~~x~~ House bill and substitute in lieu thereof the words "has, based on the results of an investigation, good reason to fear an injury to his person, property or property in his care"

The change would provide the Superintendent with legislative guidance and the applicant with some grounds for court appeal should all administrative appeals fail.

J. Robert Esler

Office of the County Council

MONTGOMERY COUNTY, MARYLAND

COUNTY OFFICE BUILDING, ROCKVILLE, MARYLAND 20850 · 301 279-1231

Honorable Marvin Mandel
Governor of Maryland
The State House
Annapolis, Maryland

December 7, 1971

Dear Governor Mandel,

I congratulate you most sincerely on your moves to achieve tighter controls on the sale of handguns. I will support you in any way I can and in any way you ask here in Montgomery.

It would be useful to me to have copies of some of the materials that your staff is collecting on this issue, so that I can talk at all times from hard facts.

Best wishes,

Sincerely,

William H. Willcox
Montgomery County Council

cc : Members of the County Council
County Executive James P. Gleason
Members of Montgomery County Legislative Delegation

Mandel seeks tighter gun law

By BARRY C. RASCOVAR
Annapolis Bureau of The Sun

Annapolis—Citing the recent outbreak of shooting incidents in Baltimore schools, Governor Mandel has summoned top law enforcement and criminal justice officials to a meeting today to discuss ways of stemming the free flow of hand guns in Maryland.

The present situation, Mr. Mandel said yesterday "cannot be tolerated, particularly in the Baltimore city schools." There have been four shooting incidents—one of them fatal—near city schools in recent weeks, and city police have confiscated more than 125 handguns from school students during the same period.

The purpose of today's meeting, which will take place in the State Office Building in Baltimore, will be to discuss what type of legislation should be drafted to curb the flow of guns into the hands of criminals and students.

Those attending

Scheduled to attend the meeting with the Governor are Donald D. Pomereau, the city police commissioner; Robert J. Lally, the state's Public Safety chief; Thomas H. Smith, State Police superintendent; Robert W. Sweeney, chief judge of the state's District Courts; Dulaney Foster, chief judge of the city Supreme Bench; Francis B. Burch, the state attorney general; Arthur B. Marshall, Prince Georges county state's attorney and chairman of the Maryland State's Attorneys' Association, and Milton B. Allen, the city's state's attorney.

Mr. Mandel has in recent weeks reversed his stand on the need for stronger state laws regulating the ownership of hand guns. He has indicated that he now favors new legislation that would place greater restrictions on the sale of handguns than is now on the books.

Existing law restricts the sale of handguns by dealers. It does not, however, affect the sale of handguns by private individuals.

A BILL

ENTITLED

AN ACT to repeal and re-enact, with amendments, Section 36 of Article 27 of the Annotated Code of Maryland, (1971 Replacement Volume), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," subheading "Concealed Weapons"; to repeal and re-enact, with amendments, Section 36A(c) of said Article, title and subtitle of the Code (1971 Replacement Volume and 1971 Supplement), subheading "Carrying Deadly Weapons on Public School Property"; to add new Sections 36B, 36C, 36D and 36E to said Article of the Code (1971 Replacement Volume and 1971 Supplement) and under said title and subtitle, to follow immediately after Section 36A thereof and to be under the new subheading "Handguns"; to repeal and re-enact, with amendments, Section 594B(e) of said Article and title of the Code (1971 Replacement Volume), subtitle "II. Venue, Procedure and Sentence," subheading "Arrests"; to repeal Section 90A of Article 56 of the Annotated Code of Maryland (1968 Replacement Volume and 1971 Supplement), title "Licenses," subtitle "Private Detectives"; to exclude handguns from the provisions of section 36 of Article 27; to amend the penalties for carrying a handgun on public school property; to make unlawful, generally regulate, and provide penalties for the wearing, carrying, or transporting of handguns; to allow officers to conduct searches for handguns under certain circumstances; to allow officers to arrest persons for violating section 36B of said article upon probable cause; to repeal provisions for the issuance of permits to private detectives to carry concealed weapons and relating generally to the regulation of handguns.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 36 of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," subheading "Concealed Weapons," be and it is hereby repealed and re-enacted, with amendments, to read as follows:

36.

(a) Every person who shall wear or carry any [pistol,] dirk knife, bowie knife, switchblade knife, sandclub, metal knuckles, razor, or any other dangerous or deadly weapon of any kind, whatsoever (penknives without switchblade and handguns, excepted) concealed upon or about his person, and every person who shall wear or carry any such weapon openly with the intent or purpose of injuring any person in any unlawful manner, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one thousand ($1,000.00) dollars or be imprisoned in jail, or sentenced to the Maryland Department of Correction for not more than three years; and in case of conviction, if it shall appear from the evidence that such weapon was carried, concealed as aforesaid or openly, with the deliberate purpose of injuring the person or destroying the life of another, the court, or justice of the peace, presiding in the case, shall impose the highest sentence of imprisonment hereinbefore prescribed. In Cecil, Anne Arundel, Talbot, Harford, Caroline, Prince George's, Montgomery, Washington, Worcester and Kent counties it shall also be unlawful and a misdemeanor, punishable as above set forth, for any minor to carry any dangerous or deadly weapon, other than a handgun, between one hour after sunset and one hour before sunrise, whether concealed or not, except while on a bona fide hunting trip, or except while engaged in or on the way to or returning from a bona fide trap shoot, sport shooting event, or any organized civic or military activity.

SECTION 2. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 36A (c) of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title "Crimes and Punishments," subtitle "I. Crimes and Punishments," subheading "Carrying Deadly Weapon on Public School Property," be and it is hereby repealed and re-enacted, with amendments, to read as follows:

36A.

(c) Any person who violates this section shall, upon conviction, be guilty of a misdemeanor and shall be sentenced to pay a fine of no more than one thousand dollars ($1,000.00), or shall be sentenced to the Maryland Department of Correction for a period of not more than three (3) years. Any such person who shall be found to carry a handgun in violation of this Section 36A, shall be sentenced as provided in Section 36B of this article.

SECTION 3. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new sections 36B, 36C, 36D, and 36E be and they are hereby added to Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement), title "Crimes and Punishments, subtitle "I. Crimes and Punishments," to follow immediately after Section 36A thereof and to be under the new subheading "Handguns" and to read as follows:

36B. Wearing, carrying or transporting handguns.

(a) Declaration of Policy. The General Assembly of Maryland hereby finds and declares that:

(i) there has, in recent years, been an alarming increase in the number of violent crimes perpetrated in Maryland involving the use of handguns;

(ii) the result has been a substantial increase in the number of persons killed or injured which is traceable, in large part, to the relatively easy accessability of handguns by persons inclined to carry them on the streets and public ways and use them in criminal activity;

(iii) aside from certain special circumstances, there is no justification for persons to wear, carry, or transport handguns around the streets and public ways of this State;

(iv) the laws currently in force have been ineffective in curbing the easy accessability of handguns by juveniles and other persons who ought not to have them, or in curbing the more frequent use of handguns in perpetrating crime; and

(v) further regulations on the acquisition, wearing, carrying, and transporting of handguns are necessary to preserve the peace and tranquility of the State and to protect the rights and liberties of its citizens.

(b) Unlawful wearing, carrying, or transporting of handguns. Any person who shall wear, carry, or transport any handgun, whether concealed or open, upon or about his person, and any person who shall wear, carry or transport any handgun, whether concealed or open, in any vehicle traveling upon the public roads, ~~public~~ highways, waterways, or airways in this State shall be guilty of a misdemeanor, and on conviction thereof, shall be fined or imprisoned as follows:

(i) if the person has not previously been convicted of unlawfully wearing, carrying or transporting a handgun in violation of this Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A of this article, he shall be fined not less than two hundred and fifty ($250.00) dollars, nor more than twenty five hundred ($2,500.00) dollars, or be imprisoned in jail or sentenced to the Maryland Division of Correction for a term of not less than 30 days nor more than three years, or both; provided, however, that if it shall appear from the evidence that the handgun was

worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than 90 days.

(ii) if the person has previously been once convicted of unlawfully wearing, carrying, or transporting a handgun in violation of Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A of this article, he shall be imprisoned in jail or sentenced to the Maryland Division of Correction for a term of not less than 1 year nor more than 10 years; provided, however, that if it shall appear from the evidence that the handgun was worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than three years.

(iii) if the person has previously been convicted more than once of unlawfully wearing, carrying, or transporting a handgun in violation of Section 36B, or of unlawfully carrying a concealed weapon in violation of Section 36 of this article, or of unlawfully carrying a deadly weapon on public school property in violation of Section 36A of this article, or any combination thereof, he shall be imprisoned in jail or sentenced to the Maryland Division of Correction for a term of not less three years nor more than 10 years; provided; ~~provided,~~ however, that if it shall appear from the

evidence that the handgun was worn, carried, or transported on any public school property in this State, the Court shall impose a sentence of imprisonment of not less than 5 years.

(iv) If it shall appear from the evidence that any handgun referred to in subsection (a) hereof was carried, worn, or transported with the deliberate purpose of injuring or killing another person, the Court shall impose a sentence of imprisonment of not less than five years.

(c) Exceptions. (1) Nothing in this section shall be construed to prevent the carrying of a handgun by (i) law enforcement or military personnel of the United States, or of this State, or of any county or city of this State, (ii) by law enforcement or military personnel of some other state or subdivision thereof temporarily in this State on official business, or (iii) by any special agent of a railway; provided, that such person mentioned in subsections (i) through (iii) is duly authorized at the time and under the circumstances he is carrying the weapon to carry such weapon as part of his official equipment, or (iv) by any person to whom a permit to carry any such weapon has been issued under Section 36E of this article.

(2) Nothing in this section shall prevent any person from carrying on his person or in any vehicle a handgun while transporting the same to or from the place of purchase, or to or from any bona fide repair shop, or any handgun normally used in connection with a bona fide trap, skeet, or target shoot, sport shooting event, hunt, or any bona fide organized civic or military activity while engaged in, on the way to, or returning from any such activity; provided, however, that while traveling to or from any such place or event, the handgun shall be carried in an enclosed case or enclosed holster clearly indentifiable and marked as a gun case or holster.

(3) Nothing in this section shall prevent a person from having in his presence any handgun within the confines of any dwelling, business establishment, or real estate owned or leased by him.

(d) Unlawful use of handgun in commission of crime. Any person who shall use a handgun in the commission of any felony or any crime of violence as defined in Section 441 of this Article, shall be guilty of a separate misdemeanor and on conviction thereof shall, in addition to any other sentence imposed by virtue of commission of said felony or misdemeanor, be sentenced to the Maryland Division of Correction for a term of not less than five / nor more than fifteen years.

(e) The term "handgun" as used in this Act shall include any pistol, revolver or other firearm capable of being concealed on a person. The term "vehicle" shall include any motor vehicle, as defined in Article 66-½, Section 1-149 of the Code, trains, aircraft and vessels.

36C. Seizure and Forfeiture.

(a) Property subject to seizure and forfeiture. The following items of property shall be subject to seizure and forfeiture, and, upon forfeiture, no property right shall exist in them:

(i) any handgun being worn, carried, or transported in violation of Section 36B of this article.

(ii) all ammunition or other parts of or appurtenances to any such handgun worn, carried, or transported by such person or found in the immediate vicinity of such handgun;

(iii) any vehicle within which a handgun is transported in violation of Section 36B of this article.

(b) Procedure relating to seizure.

(i) any property subject to seizure under subsection (a) hereof may be seized by any duly authorized law enforcement officer, as an incident to an arrest or search and seizure.

(ii) any such officer seizing such property under this section shall either place the property under seal or remove the same to a location designated either by the Maryland State Police or by the law enforcement agency having jurisdiction in the locality.

(iii) property seized under this section shall not be subject to replevin, but shall be deemed to be in custodia legis; provided, however,

that upon petition of any person other than a person who has been charged with a violation of Section 36B of this article and whose case is currently pending trial, the police authorities having custody of the seized property may, with the written consent of the State's Attorney, return seized property if convinced that (A) the petitioner is the owner of the property; (B) said petitioner did not know and should not have known that the property was being or would be worn, carried, transported, or used in violation of Section 36B of this article; and (C) the property is not needed as evidence in a pending criminal case.

(c) Procedure relating to forfeiture.

(i) Upon conviction of any person for a violation of Section 36B of this article, any property subject to seizure, actually seized, and not returned pursuant to the provisions of this section shall be forfeited to the State. Any judgment of conviction entered by a court having jurisdiction shall also be deemed to be an order of forfeiture of such articles. If the judgment of conviction is by a jury, the court shall thereupon sua sponte immediately enter an order of forfeiture.

(ii) Notwithstanding the provisions of subparagraph (c)(i) hereof, upon petition of any person other than the person convicted of violating section 36B of this article filed prior to the judgment of conviction or within ten days thereafter, the Court may decline to order forfeiture or may strike any order of forfeiture and order the return of seized property if the petitioner shall prove, by a fair preponderance of the evidence that (A) the petitioner is the owner of the property; (B) said petitioner did not know and should not have known that the property was being or would be worn, carried, transported, or used in violation of section 36B of this

article; and (C) the property is not needed as evidence in any other pending criminal case.

(d) Whenever property is forfeited under this Section, it shall be turned over to the State Secretary of General Services who may (i) order the property retained for official use of State agencies, or (ii) make such other disposition of the property as he may deem appropriate.

36D.

(a) Any law enforcement officer who, in the light of his observations, information, and experience, may have reasonable grounds to believe that (i) a person may be wearing, carrying, or transporting a handgun in violation of Section 36B of this article, (ii) by virtue of his possession of a handgun, such person is or may be presently dangerous to the officer or to others, (iii) it is impracticable, under the circumstances, to obtain a search warrant; and (iv) it is necessary for the officer's protection or the protection of others to take swift measures to discover whether such person is, in fact, wearing, carrying, or transporting a handgun, such officer may

(1) approach the person and identify himself as a law enforcement officer;

(2) request the person's name and address, and, if the person is in a vehicle, his license to operate the vehicle, and the vehicle's registration; and

(3) ask such questions and request such explanations as may be reasonably calculated to determine whether the person is, in fact, unlawfully wearing, carrying, or transporting a handgun in violation of Section 36B; and, if the person does not give an explanation which dispels, in the officers' mind, the reasonable suspicion which he had, he may

(4) conduct a search of the person, limited to a patting or frisking of the person's clothing in search of a handgun;

(b) In the event that the officer discovers the person to be wearing, carrying, or transporting a handgun, he may demand that the person produce evidence that he is entitled to so wear, carry, or transport the handgun pursuant to Section 36B(d) of this article. If the person is unable to produce such evidence, the officer may then seize the handgun and arrest the person.

(c) Nothing in this section shall be construed to limit the right of any law enforcement officer to make any other type of search, seizure, and arrest which may be permitted by law, and the provisions hereof shall be in addition to and not in substitution of the provisions of Section 594 B of this article.

(d) No law enforcement officer conducting a search to the provisions of this Section 36D shall be liable for damages to the person searched unless said person shall prove that the officer acted without reasonable grounds for suspicion and with malice.

36E.

(a) A permit to carry a handgun may be issued by the Superintendent of the Maryland State Police, upon application therefor, to any person whom he finds:

(1) is twenty-one years of age or older; and

(2) has not been convicted of a felony or of a misdemeanor for which a sentence of imprisonment for more than one year could have been imposed; and

(3) has not been committed to any detention or training center for juveniles for longer than one year after an adjudication of delinquency by a Juvenile Court; and

(4) has not been convicted of any offense involving the possession, use, or distribution of controlled dangerous substances, and is not presently an addict or habitual user of any controlled dangerous substance; and

(5) has not exhibited a propensity for violence or instability which may reasonably render his possession of a handgun a danger to himself or other law abiding persons; and

(6) has good and substantial reason to wear, carry, or transport a handgun.

(b) Any person to whom a permit shall be issued under subsection (a) shall carry such permit in his possession every time he carries, wears, or transports a handgun.

(c) The Superintendent may revoke any permit issued under subsection (a) at any time upon a finding that (i) the holder no longer satisfies the qualifications set forth in subsection (a), or (ii) the holder of the permit has violated subsection (b) hereof.

(d) Any person, whose application for a permit has been rejected or whose permit has been revoked, may request in writing a hearing before the Secretary of Public Safety and Correctional Services within thirty days from the date when written notice of the Superintendent's action was received by such person. The Secretary shall conduct a hearing within thirty days of receipt of said request. The hearing and any subsequent proceedings of judicial review shall be conducted in accordance with the provisions of the Administrative Procedure Act.

SECTION 4. BE IT FURTHER ENACTED, That section 594B(e) of Article 27 of the Annotated Code of Maryland (1971 Replacement Volume), title "Crimes and Punishments," subtitle "II. Venue, Procedure and Sentence," subheading "Arrests" be and it is hereby repealed and re-enacted, with amendments, to read as follows:

594B.

(e) The offenses referred to in subsection (d) of this section are:

(1) Those offenses specified in the following sections of Article 27, as they may be amended from time to time:

(i) Section 8 (relating to burning barracks, cribs, hay, corn, lumber, etc.; railway cars, watercraft, vehicles, etc.);

(ii) Section 11 (relating to setting fire while perpetrating crime);

(iii) Section 36 (relating to carrying or wearing weapon);

(iv) Section 111 (relating to destroying, injuring, etc., property of another);

(v) Section 297 (relating to possession of hypodermic syringes, etc., restricted);

(vi) Section 341 (relating to stealing goods worth less than $100.00);

(vii) Section 342 (relating to breaking into building with intent to steal);

(viii) The common-law crime of assault when committed with intent to do great bodily harm;

(ix) Sections 276 through 313D (relating to drugs and other dangerous substances) as they shall be amended from time to time ;and

"(x) Section 36B (relating to handguns)".

SECTION 5. BE IT FURTHER ENACTED, That Section 90A of Article 56 of the Annotated Code of Maryland (1968 Replacement Volume and 1971 Supplement), title "Licenses," subtitle "Private Detectives," subheading "Special permit to carry concealed weapon," be and it is hereby repealed.

SECTION 6. BE IT FURTHER ENACTED, That no political subdivision of this State shall enact any legislation on the subject of handguns which is less restrictive than the provisions of this Act; provided, however, that any such subdivision may enact legislation which provides additional restrictions on the acquisition, possession or the use of handguns not inconsistent with the provisions of this Act.

SECTION 7. BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision or application.

SECTION 8. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1972.

January 25, 1972

Mrs. Richard Betters
12211 Connecticut Avenue
Silver Spring, Maryland 20902

Dear Mary:

Pursuant to your request last night, I am enclosing a copy of H.B. 277, the Governor's gun control-stop and frisk proposal. I would be interested in your comments on it.

With best regards.

Sincerely yours,

Donald B. Robertson

DBR/msa
Enc.

December 27, 1971

The Honorable Marvin Mandel
Governor, State of Maryland
Executive Department
Annapolis, Maryland 21404

Dear Governor Mandel:

Thank you for your letter of December 21, 1971, enclosing your tentative proposed handgun bill. I shall read it with interest.

With kindest regards and best wishes for the holiday season.

Sincerely yours,

Donald B. Robertson

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

ANNAPOLIS, MARYLAND 21404

MARVIN MANDEL
GOVERNOR

December 21, 1971

12-24-71

Honorable Donald B. Robertson
7003 Delaware Street
Chevy Chase, Maryland 20015

Dear ~~Delegate Robertson~~:

I am enclosing herewith for your information and comments, a tentative draft of a handgun bill which has been prepared by my office.

The tentative bill is a comprehensive one, but it is particularly directed toward curbing the widespread carrying of handguns on the streets and in vehicles by persons who have no legitimate reason to carry them. The bill has been drafted so as not to interfere with the possession and use of handguns by sportsmen and others who have a legitimate reason to carry and use them.

I would very much like to receive your comments on this bill as well as any suggestions for changes which you think may improve the bill. Please send any such comments or suggestions to John C. Eldridge, Chief Legislative Officer, State House, Annapolis, Maryland, 21404.

Sincerely,

Governor

Enclosure

January 29, 1972

Mrs. Samuel Colodny
8107 Eastern Avenue
Silver Spring, Maryland 20910

Dear Mrs. Colodny:

Thank you for your letter of January 1, 1972, enclosing a copy of your letter, on behalf of the 3-B Caucus, to Governor Mandel expressing your support of gun control legislation. In accordance with your request, your letter to the Governor has been distributed to the rest of the delegates and the senators.

With kindest regards.

Sincerely yours,

Donald B. Robertson

Mrs. Samuel Colodny

8107 Eastern Avenue, Silver Spring, Md.
20910

FOR 3-B CAUCUS.

January 1, 1972

Mr. Donald B. Robertson
Chairman, Montgomery County Delegation
7003 Delaware Street
Chevy Chase, Md. 20015

Addded 1-25-72

Dear Don:

Attached find copy of letter to Governor Mandel, which is self-explanatory.

We would appreciate it greatly, if you were to make copies of same for distribution to the Delegates, plus Senators Schweinhaut and Crawford.

With our thanks,

Respectfully,

Ethel Colodny,
CHAIRMAN, 3-B Caucus.

EC

Electrostatic
1/25/72

For 3-B Caucus

December 31, 1971

The Honorable Marvin Mandel
Maryland State House
Annapolis, Maryland.

Att: Ms. Grace Donald

Dear Governor Mandel:

At the last meeting of the 3-B CAUCUS, the membership expressed the desire to advise you of its sentiments concerning the injection of your HIGH OFFICE into the matter of GUN CONTROL Legislation.

The crime situation is so urgent, that we find ourselves adopting a new life style--predicated on FEAR. We therefore greatly applaud your efforts and feel strongly that we may now be closer to getting some progressive and effective action.

We urge your continued interest, and offer our support for whatever value it may have.

May I now take one more moment, for a brief explanation of what the 3-B CAUCUS represents. We are a group of about seventy-five precinct chairmen and vice-chairmen covering the entire area in Montgomery County, known as 3-B. We have for some time now, been meeting regularly, so that we might keep current on all matters pertinent to the needs and wishes of the voters in our respective precincts, and to keep close and constructive contact with all of our elected officials.

With kindest regards, and all good wishes to you and Barbara for a most happy New Year.

Respectfully,

Ethel Colodny, CHAIRMAN 3-B Caucus.

bcc Don Robertson, Chairman Montg. Co. Del.

Gun Control

1-27-72

John J. Hutton, Esquire
Arent, Fox, Kintner, Plotkin & Kahn
1815 H Street, N. W.
Washington, D. C. 20006

Dear Jack:

Thanks for sending Lennie, Marty, Lucy, and me a copy of the Terry opinion and the New York statute. By the way, the hearing on the Governor's proposal, as well as all others relating to gun control, will be held on February 1st. It should be an interesting day!

Sincerely,

Donald B. Robertson

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Gun Control Bill

January 19, 1977

Mr. L. Leonard Kuben
11 Schindler Court
Silver Spring, Maryland 20903

Dear Lenny:

Apparently there was no statute involved in Terry v. Ohio. I must have been thinking of the companion cases, Sibron v. New York and Peters v. New York, which were decided the same day as Terry, but in which the Supreme Court did not reach the question of the validity of the New York statute.

I enclose a copy of the Terry opinion and also a copy of the New York statute.

Sincerely yours,

John J. Sexton

Enclosures

cc: Mr. Martin J. Becker
Ms. Lucille Maurer
Mr. Donald E. Robertson

NY Code Crim Proc §180-a:

"1. A police officer may stop any person abroad in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony or any of the offenses specified in section five hundred fifty-two of this chapter, and may demand of him his name, address and an explanation of his actions.

"2. When a police officer has stopped a person for questioning pursuant to this section and reasonably suspects that he is in danger of life or limb, he may search such person for a dangerous weapon. If the police officer finds such a weapon or any other thing the possession of which may constitute a crime, he may take and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person."

weapons seized may properly be introduced in evidence against the person from whom they were taken, where the officer observed unusual conduct leading him reasonably to conclude in the light of his experience that criminal activity might be afoot and that the persons with whom he was dealing might be armed and presently dangerous; where in the course of investigating this behavior he identified himself as a policeman and made reasonable inquiries; and where nothing in the initial stages of the encounter served to dispel his reasonable fear for his own or others' safety.

APPEARANCES OF COUNSEL

Louis Stokes argued the cause for petitioner.
Reuben M. Payne argued the cause for respondent.
Briefs of Counsel, p 1661, infra.

OPINION OF THE COURT

*[392 US 4]

*Mr. Chief Justice **Warren** delivered the opinion of the Court.

This case presents serious questions concerning the role of the Fourth Amendment in the confrontation on the street between the citizen and the policeman investigating suspicious circumstances.

Petitioner Terry was convicted of carrying a concealed weapon and sentenced to the statutorily prescribed term of one to three years

*[392 US 5]

in the penitentiary.[1] Following *the denial of a pretrial motion to suppress, the prosecution introduced in evidence two revolvers and a number of bullets seized from Terry and a codefendant, Richard Chilton,[2] by Cleveland Police Detective Martin McFadden. At the hearing on the motion to suppress this evidence, Officer McFadden testified that while he was patrolling in plain clothes in downtown Cleveland at approximately 2:30 in the afternoon of October 31, 1963, his attention was attracted by two men, Chilton and Terry, standing on the corner of Huron Road and Euclid Avenue. He had never see the two men before, and he was unable to say precisely what first drew his eye to them. However, he testified that he had been a policeman for 39 years and a detective for 35 and that he had been assigned to patrol this vicinity of downtown Cleveland for shoplifters and pickpockets for 30 years. He explained that he had developed routine habits of observation over the years and that he would "stand and watch people or walk and watch people at many intervals of the day." He added: "Now, in this

1. Ohio Rev. Code § 2923.01 (1953) provides in part that "no person shall carry a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person." An exception is made for properly authorized law enforcement officers.

2. Terry and Chilton were arrested, indicted, tried, and convicted together. They were represented by the same attorney, and they made a joint motion to suppress the guns. After the motion was denied, evidence was taken in the case against Chilton. This evidence consisted of the testimony of the arresting officer and of Chilton. It was then stipulated that this testimony would be applied to the case against Terry, and no further evidence was introduced in that case. The trial judge considered the two cases together, rendered the decisions at the same time and sentenced the two men at the same time. They prosecuted their state court appeals together through the same attorney, and they petitioned this Court for certiorari together. Following the grant of the writ upon this joint petition, Chilton died. Thus, only Terry's conviction is here for review.

case when I looked over they didn't look right to me at the time."

His interest aroused, Officer McFadden took up a post of observation in the entrance to a store 300 to
*[392 US 6]
400 feet *away from the two men. "I get more purpose to watch them when I seen their movements," he testified. He saw one of the men leave the other one and walk southwest on Huron Road, past some stores. The man paused for a moment and looked in a store window, then walked on a short distance, turned around and walked back toward the corner, pausing once again to look in the same store window. He rejoined his companion at the corner, and the two conferred briefly. Then the second man went through the same series of motions, strolling down Huron Road, looking in the same window, walking on a short distance, turning back, peering in the store window again, and returning to confer with the first man at the corner. The two men repeated this ritual alternately between five and six times apiece—in all roughly a dozen trips. At one point, while the two were standing together on the corner, a third man approached them and engaged them briefly in conversation. This man then left the two others and walked west on Euclid Avenue. Chilton and Terry resumed their measured pacing, peering, and conferring. After this had gone on for 10 to 12 minutes, the two men walked off together, heading west on Euclid Avenue, following the path taken earlier by the third man.

By this time Officer McFadden had become thoroughly suspicious. He testified that after observing their elaborately casual and oft-repeated reconnaissance of the store window on Huron Road, he suspected the two men of "casing a job, a stick-up," and that he considered it his duty as a police officer to investigate further. He added that he feared "they may have a gun." Thus, Officer McFadden followed Chilton and Terry and saw them stop in front of Zucker's store to talk to the same man who had conferred with them earlier on the street corner. Deciding that the situation was ripe for direct action, Officer McFadden approached the
*[392 US 7]
three men, identified *himself as a police officer and asked for their names. At this point his knowledge was confined to what he had observed. He was not acquainted with any of the three men by name or by sight, and he had received no information concerning them from any other source. When the men "mumbled something" in response to his inquiries, Officer McFadden grabbed petitioner Terry, spun him around so that they were facing the other two, with Terry between McFadden and the others, and patted down the outside of his clothing. In the left breast pocket of Terry's overcoat Officer McFadden felt a pistol. He reached inside the overcoat pocket, but was unable to remove the gun. At this point, keeping Terry between himself and the others, the officer ordered all three men to enter Zucker's store. As they went in, he removed Terry's overcoat completely, removed a .38-caliber revolver from the pocket and ordered all three men to face the wall with their hands raised. Officer McFadden proceeded to pat down the outer clothing of Chilton and the third man, Katz. He discovered another revolver in the outer pocket of Chilton's overcoat, but no weapons were found on Katz. The officer testified that he only

patted the men down to see whether they had weapons, and that he did not put his hands beneath the outer garments of either Terry or Chilton until he felt their guns. So far as appears from the record, he never placed his hands beneath Katz' outer garments. Officer McFadden seized Chilton's gun, asked the proprietor of the store to call a police wagon, and took all three men to the station, where Chilton and Terry were formally charged with carrying concealed weapons.

On the motion to suppress the guns the prosecution took the position that they had been seized following a search incident to a lawful arrest. The trial court rejected this theory, stating that it "would be stretching the facts beyond reasonable comprehension" to find that

*[392 US 8]

Officer *McFadden had had probable cause to arrest the men before he patted them down for weapons. However, the court denied the defendants' motion on the ground that Officer McFadden, on the basis of his experience, "had reasonable cause to believe . . . that the defendants were conducting themselves suspiciously, and some interrogation should be made of their action." Purely for his own protection, the court held, the officer had the right to pat down the outer clothing of these men, who he had reasonable cause to believe might be armed. The court distinguished between an investigatory "stop" and an arrest, and between a "frisk" of the outer clothing for weapons and a full-blown search for evidence of crime. The frisk, it held, was essential to the proper performance of the officer's investigatory duties, for without it "the answer to the police officer may be a bullet, and a loaded pistol discovered during the frisk is admissible."

After the court denied their motion to suppress, Chilton and Terry waived jury trial and pleaded not guilty. The court adjudged them guilty, and the Court of Appeals for the Eighth Judicial District, Cuyahoga County, affirmed. State v Terry, 5 Ohio App 2d 122, 214 NE 2d 114 (1966). The Supreme Court of Ohio dismissed their appeal on the ground that no "substantial constitutional question" was involved. We granted certiorari, 387 US 929, 18 L Ed 2d 989, 87 S Ct 2050 (1967), to determine whether the admission of the revolvers in evidence violated petitioner's rights under the Fourth Amendment, made applicable to the States by the Fourteenth. Mapp v Ohio, 367 US 643, 6 L Ed 2d 1081, 81 S Ct 1684, 84 ALR2d 933 (1961). We affirm the conviction.

I.

[1-5] The Fourth Amendment provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." This

*[392 US 9]

inestimable right of *personal security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs. For, as this Court has always recognized,

"No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." Union Pac. R.

Co. v Botsford, 141 US 250, 251, 35 L Ed 734, 737, 11 S Ct 1000 (1891).

We have recently held that "the Fourth Amendment protects people, not places," Katz v United States, 389 US 347, 351, 19 L Ed 2d 576, 582, 88 S Ct 507 (1967), and wherever an individual may harbor a reasonable "expectation of privacy," id., at 361, 19 L Ed 2d at 588 (Mr. Justice Harlan, concurring), he is entitled to be free from unreasonable governmental intrusion. Of course, the specific content and incidents of this right must be shaped by the context in which it is asserted. For "what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures." Elkins v United States, 364 US 206, 222, 4 L Ed 2d 1669, 1680, 80 S Ct 1437 (1960). Unquestionably petitioner was entitled to the protection of the Fourth Amendment as he walked down the street in Cleveland. Beck v Ohio, 379 US 89, 13 L Ed 2d 142, 85 S Ct 223 (1964); Rios v United States, 364 US 253, 4 L Ed 2d 1688, 80 S Ct 1431 (1960); Henry v United States, 361 US 98, 4 L Ed 2d 134, 80 S Ct 168 (1959); United States v Di Re, 332 US 581, 92 L Ed 210, 68 S Ct 222 (1948); Carroll v United States, 267 US 132, 69 L Ed 543, 45 S Ct 280, 39 ALR 790 (1925). The question is whether in all the circumstances of this on-the-street encounter, his right to personal security was violated by an unreasonable search and seizure.

We would be less than candid if we did not acknowledge that this question thrusts to the fore difficult and troublesome issues regarding a sensitive area of police activity—issues which have never before been
*[392 US 10]
squarely *presented to this Court. Reflective of the tensions involved are the practical and constitutional arguments pressed with great vigor on both sides of the public debate over the power of the police to "stop and frisk"—as it is sometimes euphemistically termed—suspicious persons.

On the one hand, it is frequently argued that in dealing with the rapidly unfolding and often dangerous situations on city streets the police are in need of an escalating set of flexible responses, graduated in relation to the amount of information they possess. For this purpose it is urged that distinctions should be made between a "stop" and an "arrest" (or a "seizure" of a person), and between a "frisk" and a "search."[3] Thus, it is argued, the police should be allowed to "stop" a person and detain him briefly for questioning upon suspicion that he may be connected with criminal activity. Upon suspicion that the person may be armed, the police should have the power to "frisk" him for weapons. If the "stop" and the "frisk" give rise to probable cause to believe that the suspect has committed a crime, then the police should be empowered to make a formal "arrest," and a full incident "search" of the person. This scheme is justified in part upon the notion that a "stop" and a "frisk"

3. Both the trial court and the Ohio Court of Appeals in this case relied upon such a distinction. State v Terry, 5 Ohio App 2d 122, 125–130, 214 NE2d 114, 117–120 (1966). See also, e.g., People v Rivera, 14 NY2d 441, 201 NE2d 32, 252 NYS2d 458 (1964), cert denied, 379 US 978, 13 L Ed 2d 568, 85 S Ct 679 (1965); Aspen, Arrest and Arrest Alternatives: Recent Trends, 1966 U Ill LF 241, 249–254; Warner, The Uniform Arrest Act, 28 Va L Rev 315 (1942); Note, Stop and Frisk in California, 18 Hastings LJ 623, 629–632 (1967).

amount to a mere "minor inconvenience and petty indignity,"[4] which can properly be imposed upon the

*[392 US 11]

*citizen in the interest of effective law enforcement on the basis of a police officer's suspicion.[5]

On the other side the argument is made that the authority of the police must be strictly circumscribed by the law of arrest and search as it has developed to date in the traditional jurisprudence of the Fourth Amendment.[6] It is contended with some force that there is not—and cannot be—a variety of police activity which does not depend solely upon the voluntary cooperation of the citizen and yet which stops short of an arrest based upon probable cause to make such an arrest. The heart of the Fourth Amendment, the argument runs, is a severe requirement of specific justification for any intrusion upon protected personal security, coupled with a highly developed system of judicial controls to enforce upon the agents of the State the commands of the Constitution. Acquiescence by the courts in the compulsion in-

*[392 US 12]

herent *in the field interrogation practices at issue here, it is urged, would constitute an abdication of judicial control over, and indeed an encouragement of, substantial interference with liberty and personal security by police officers whose judgment is necessarily colored by their primary involvement in "the often competitive enterprise of ferreting out crime." Johnson v United States, 333 US 10, 14, 92 L Ed 436, 440, 68 S Ct 367 (1948). This, it is argued, can only serve to exacerbate police-community tensions in the crowded centers of our Nation's cities.[7]

[6-8] In this context we approach the issues in this case mindful of the limitations of the judicial function in controlling the myriad daily situations in which policemen and citizens confront each other on the street. The State has characterized the issue here as "the right of a police officer . . . to make an on-the-street stop, interrogate and pat down for weapons (known in street vernacular as 'stop and frisk')."[8] But this is only partly accurate. For the issue is not the abstract propriety of the police conduct, but the admissibility against petitioner of the evidence uncovered by the search and seizure. Ever since its inception, the rule excluding evidence seized in violation of the Fourth Amendment has been recognized as a principal mode of discouraging lawless police conduct.

4. People v Rivera, supra, n. 3, at 447, 201 NE2d, at 36, 252 NYS2d, at 464.

5. The theory is well laid out in the Rivera opinion:

"[T]he evidence needed to make the inquiry is not of the same degree of conclusiveness as that required for an arrest. The stopping of the individual to inquire is not an arrest and the ground upon which the police may make the inquiry may be less incriminating than the ground for an arrest for a crime known to have been committed. . . .

. . . . . .

"And as the right to stop and inquire is to be justified for a cause less conclusive than that which would sustain an arrest, so the right to frisk may be justified as an incident to inquiry upon grounds of elemental safety and precaution which might not initially sustain a search. Ultimately the validity of the frisk narrows down to whether there is or is not a right by the police to touch the person questioned. The sense of exterior touch here involved is not very far different from the sense of sight or hearing—senses upon which police customarily act." People v Rivera, 14 NY2d 441, 445, 447, 201 NE2d 32, 34, 35, 252 NYS2d 458, 461, 463 (1964), cert denied, 379 US 978, 13 L Ed 2d 568, 85 S Ct 679 (1965).

6. See, e.g., Foote, The Fourth Amendment: Obstacle or Necessity in the Law of Arrest?, 51 J Crim LC & PS 402 (1960).

7. See n 11, infra.

8. Brief for Respondent 2.

See Weeks v United States, 232 US 383, 391–393, 58 L Ed 652, 655, 656, 34 S Ct 341, LRA 1915B 834 (1914). Thus its major thrust is a deterrent one, see Linkletter v Walker, 381 US 618, 629–635, 14 L Ed 2d 601, 608–612, 85 S Ct 1731 (1965), and experience has taught that it is the only effective deterrent to police misconduct in the criminal context, and that without it the constitutional guarantee against unreasonable searches and seizures would be a mere "form of words." Mapp v Ohio, 367 US 643, 655, 6 L Ed 2d 1081, 1090, 81 S Ct 1684, 84 ALR2d 933 (1961). The rule also serves another vital function—"the imperative of judicial integ-

*[392 US 13]

rity." Elkins *v United States, 364 US 206, 222, 4 L Ed 2d 1669, 1680, 80 S Ct 1437 (1960). Courts which sit under our Constitution cannot and will not be made party to lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasions. Thus in our system evidentiary rulings provide the context in which the judicial process of inclusion and exclusion approves some conduct as comporting with constitutional guarantees and disapproves other actions by state agents. A ruling admitting evidence in a criminal trial, we recognize, has the necessary effect of legitimizing the conduct which produced the evidence, while an application of the exclusionary rule withholds the constitutional imprimatur.

[9] The exclusionary rule has its limitations, however, as a tool of judicial control. It cannot properly be invoked to exclude the products of legitimate police investigative techniques on the ground that much conduct which is closely similar involves unwarranted intrusions upon constitutional protections. Moreover, in some contexts the rule is ineffective as a deterrent. Street encounters between citizens and police officers are incredibly rich in diversity. They range from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, or injuries, or loss of life. Moreover, hostile confrontations are not all of a piece. Some of them begin in a friendly enough manner, only to take a different turn upon the injection of some unexpected element into the conversation. Encounters are initiated by the police for a wide variety of purposes, some of which are wholly unrelated to a desire to prosecute for crime.[9]

*[392 US 14]

Doubtless some *police "field interrogation" conduct violates the Fourth Amendment. But a stern refusal by this Court to condone such activity does not necessarily render it responsive to the exclusionary rule. Regardless of how effective the rule may be where obtaining convictions is an important objective of the police,[10] it is powerless to deter inva-

9. See L. Tiffany, D. McIntyre & D. Rotenberg, Detection of Crime: Stopping and Questioning, Search and Seizure, Encouragement and Entrapment 18–56 (1967). This sort of police conduct may, for example, be designed simply to help an intoxicated person find his way home, with no intention of arresting him unless he becomes obstreperous. Or the police may be seeking to mediate a domestic quarrel which threatens to erupt into violence. They may accost a woman in an area known for prostitution as part of a harassment campaign designed to drive prostitutes away without the considerable difficulty involved in prosecuting them. Or they may be conducting a dragnet search of all teenagers in a particular section of the city for weapons because they have heard rumors of an impending gang fight.

10. See Tiffany, McIntyre & Rotenberg, supra, n 9, at 100–101; Comment, 47 Nw U L Rev 493, 497–499 (1952).

sions of constitutionally guaranteed rights where the police either have no interest in prosecuting or are willing to forgo successful prosecution in the interest of serving some other goal.

[10] Proper adjudication of cases in which the exclusionary rule is invoked demands a constant awareness of these limitations. The wholesale harassment by certain elements of the police community, of which minority groups, particularly Negroes, frequently complain,[11] will

*[392 US 15]

not be *stopped by the exclusion of any evidence from any criminal trial. Yet a rigid and unthinking application of the exclusionary rule, in futile protest against practices which it can never be used effectively to control, may exact a high toll in human injury and frustration of efforts to prevent crime. No judicial opinion can comprehend the protean variety of the street encounter, and we can only judge the facts of the case before us. Nothing we say today is to be taken as indicating approval of police conduct outside the legitimate investigative sphere. Under our decision, courts still retain their traditional responsibility to guard against police conduct which is overbearing or harassing, or which trenches upon personal security without the objective evidentiary justification which the Constitution requires. When such conduct is identified, it must be condemned by the judiciary and its fruits must be excluded from evidence in criminal trials. And, of course, our approval of legitimate and restrained investigative conduct undertaken on the basis of ample factual justification should in no way discourage the employment of other remedies than the exclusionary rule to curtail abuses for which that sanction may prove inappropriate.

Having thus roughly sketched the perimeters of the constitutional debate over the limits on police investigative conduct in general and the background against which this case presents itself, we turn our attention to the quite narrow question posed by the facts before us: whether it is always unreasonable for a policeman to seize a person and subject him to a limited search for weapons unless there is probable

*[392 US 16]

cause for an arrest. *Given the narrowness of this question, we have no occasion to canvass in detail the constitutional limitations upon the scope of a policeman's power when he confronts a citizen without probable cause to arrest him.

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11. The President's Commission on Law Enforcement and Administration of Justice found that "[i]n many communities, field interrogations are a major source of friction between the police and minority groups." President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police 183 (1967). It was reported that the friction caused by "[m]isuse of field interrogations" increases "as more police departments adopt 'aggressive patrol' in which officers are encouraged routinely to stop and question persons on the street who are unknown to them, who are suspicious, or whose purpose for being abroad is not readily evident." Id, at 184. While the frequency with which "frisking" forms a part of field interrogation practice varies tremendously with the locale, the objective of the interrogation, and the particular officer, see Tiffany, McIntyre & Rotenberg, supra, n 9, at 47–48, it cannot help but be a severely exacerbating factor in police-community tensions. This is particularly true in situations where the "stop and frisk" of youths or minority group members is "motivated by the officers' perceived need to maintain the power image of the beat officer, an aim sometimes accomplished by humiliating anyone who attempts to undermine police control of the streets." Ibid.

II.

[11, 12] Our first task is to establish at what point in this encounter the Fourth Amendment becomes relevant. That is, we must decide whether and when Officer McFadden "seized" Terry and whether and when he conducted a "search." There is some suggestion in the use of such terms as "stop" and "frisk" that such police conduct is outside the purview of the Fourth Amendment because neither action rises to the level of a "search or seizure" within the meaning of the Constitution.[12] We emphatically reject this notion. It is quite plain that the Fourth Amendment governs "seizures" of the person which do not eventuate in a trip to the station house and prosecution for crime—"arrests" in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person. And it is nothing less than sheer torture of the English language to suggest that a careful exploration of the outer surfaces of a person's clothing all over his or her body in an attempt to find weapons is not a "search." Moreover, it is simply fantastic to urge that such a procedure *[392 US 17] *performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a "petty indignity."[13] It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.[14]

[13, 14] The danger in the logic which proceeds upon distinctions between a "stop" and an "arrest," or "seizure" of the person, and between a "frisk" and a "search" is twofold. It seeks to isolate from constitutional scrutiny the initial stages of the contact between the policeman and the citizen. And by suggesting a rigid all-or-nothing model of justification and regulation under the Amendment, it obscures the utility of limitations upon the scope, as well as the initiation, of police action as a means of constitutional regulation.[15] This Court has *[392 US 18] held in *the past that a search

12. In this case, for example, the Ohio Court of Appeals stated that "we must be careful to distinguish that the 'frisk' authorized herein includes only a 'frisk' for a dangerous weapon. It by no means authorizes a search for contraband, evidentiary material, or anything else in the absence of reasonable grounds to arrest. Such a search is controlled by the requirements of the Fourth Amendment, and probable cause is essential." State v Terry, 5 Ohio App 2d 122, 130, 214 NE2d 114, 120 (1966). See also, e.g., Ellis v United States, 105 US App DC 86, 88, 264 F2d 372, 374 (1959); Comment, 65 Col L Rev 848, 860 and n 81 (1965).

13. Consider the following apt description:
"[T]he officer must feel with sensitive fingers every portion of the prisoner's body. A thorough search must be made of the prisoner's arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet." Priar & Martin, Searching and Disarming Criminals, 45 J Crim L.C. & P.S. 481 (1954).

14. See n 11, supra, and accompanying text.

[12] We have noted that the abusive practices which play a major, though by no means exclusive, role in creating this friction are not susceptible of control by means of the exclusionary rule, and cannot properly dictate our decision with respect to the powers of the police in genuine investigative and preventive situations. However, the degree of community resentment aroused by particular practices is clearly relevant to an assessment of the quality of the intrusion upon reasonable expectations of personal security caused by those practices.

15. These dangers are illustrated in part by the course of adjudication in the Court of Appeals of New York. Although its first decision in this area, People v Rivera,

which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope. Kremen v United States, 353 US 346, 1 L Ed 2d 876, 77 S Ct 828 (1957); Go-Bart Importing Co.
*[392 US 19]
v *United States, 282 US 344, 356–358, 75 L Ed 374, 381–383, 51 S Ct 153 (1931); see United States v Di Re, 332 US 581, 586–587, 92 L Ed 210, 216, 68 S Ct 222 (1948). The scope of the search must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible. Warden v Hayden, 387 US 294, 310, 18 L Ed 2d 782, 794, 87 S Ct 1642 (1967) (Mr. Justice Fortas, concurring); see, e.g., Preston v United States, 376 US 364, 367–368, 11 L Ed 2d 777, 780, 781, 84 S Ct 881 (1964); Agnello v United States, 269 US 20, 30–31, 70 L Ed 145, 148, 46 S Ct 4, 51 ALR 409 (1925).

[15] The distinctions of classical "stop-and-frisk" theory thus serve to divert attention from the central inquiry under the Fourth Amendment—the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security. "Search" and "seizure" are not talismans. We therefore reject the notions that the Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of something called a "technical arrest" or a "full-blown search."

[16, 17] In this case there can be no question, then, that Officer Mc-

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14 NY2d 441, 201 NE2d 32, 252 NYS2d 458 (1964), cert denied, 379 US 978, 13 L Ed 2d 568, 85 S Ct 679 (1965), rested squarely on the notion that a "frisk" was not a "search," see nn. 3–5, supra, it was compelled to recognize in People v Taggart, 20 NY2d 335, 342, 229 NE2d 581, 586, 283 NYS2d 1, 8 (1967), that what it had actually authorized in Rivera and subsequent decisions, see, e.g., People v Pugach, 15 NY2d 65, 204 NE2d 176, 255 NYS2d 833 (1964), cert denied 380 US 936, 13 L Ed 2d 823, 85 S Ct 946 (1965), was a "search" upon less than probable cause. However, in acknowledging that no valid distinction could be maintained on the basis of its cases, the Court of Appeals continued to distinguish between the two in theory. It still defined "search" as it had in Rivera —as an essentially unlimited examination of the person for any and all seizable items—and merely noted that the cases had upheld police intrusions which went far beyond the original limited conception of a "frisk." Thus, principally because it failed to consider limitations upon the seope of searches in individual cases as a potential mode of regulation, the Court of Appeals in three short years arrived at the position that the Constitution must, in the name of necessity, be held to permit unrestrained rummaging about a person and his effects upon mere suspicion. It did apparently limit its holding to "cases involving serious personal injury or grave irreparable property damage," thus excluding those involving "the enforcement of sumptuary laws, such as gambling, and laws of limited public consequence, such as narcotics violations, prostitution, larcenies of the ordinary kind, and the like." People v Taggart, supra, at 340, 214 NE2d, at 584, 283 NYS2d, at 6.

[13] In our view the sounder course is to recognize that the Fourth Amendment governs all intrusions by agents of the public upon personal security, and to make the scope of the particular intrusion, in light of all the exigencies of the case, a central element in the analysis of reasonableness. Cf. Brinegar v United States, 338 US 160, 183, 93 L Ed 1879, 1894, 69 S Ct 1302 (1949) (Mr. Justice Jackson, dissenting). Compare Camara v Municipal Court, 387 US 523, 537, 18 L Ed 2d 930, 940, 87 S Ct 1727 (1967). This seems preferable to an approach which attributes too much significance to an overly technical definition of "search," and which turns in part upon a judge-made hierarchy of legislative enactments in the criminal sphere. Focusing the inquiry squarely on the dangers and demands of the particular situation also seems more likely to produce rules which are intelligible to the police and the public alike than requiring the officer in the heat of an unfolding encounter on the street to make a judgment as to which laws are "of limited public consequence."

Fadden "seized" petitioner and subjected him to a "search" when he took hold of him and patted down the outer surfaces of his clothing. We must decide whether at that point it was reasonable for Officer McFadden to have interfered with petitioner's personal security as he did.[16] And in determining whether the seizure and search were "unreasonable" our inquiry *is a dual one—whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.

*[392 US 20]

III.

[18] If this case involved police conduct subject to the Warrant Clause of the Fourth Amendment, we would have to ascertain whether "probable cause" existed to justify the search and seizure which took place. However, that is not the case. We do not retreat from our holdings that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, see, e. g., Katz v United States, 389 US 347, 19 L Ed 2d 576, 88 S Ct 507 (1967); Beck v Ohio, 379 US 89, 96, 13 L Ed 2d 142, 147, 85 S Ct 223 (1964); Chapman v United States, 365 US 610, 5 L Ed 2d 828, 81 S Ct 776 (1961), or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances, see, e. g., Warden v Hayden, 387 US 294, 18 L Ed 2d 782, 87 S Ct 1642 (1967) (hot pursuit); cf. Preston v United States, 376 US 364, 367–368, 11 L Ed 2d 777, 780, 781, 84 S Ct 881 (1964). But we deal here with an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officer on the beat—which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures.[17]

[19–23] Nonetheless, the notions which underlie both the warrant procedure and the requirement of probable cause remain fully relevant in this context. In order to assess the reasonableness of Officer McFadden's conduct as a general proposition, it is necessary "first to focus

*[392 US 21]

upon *the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen," for there is "no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails." Camara v Municipal Court, 387 US 523, 534–535, 536–537, 18 L Ed 2d 930, 938–940, 87 S Ct 1727

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[17] 16. We thus decide nothing today concerning the constitutional propriety of an investigative "seizure" upon less than probable cause for purposes of "detention" and/or interrogation. Obviously, not all personal intercourse between policemen and citizens involves "seizures" of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a "seizure" has occurred. We cannot tell with any certainty upon this record whether any such "seizure" took place here prior to Officer McFadden's initiation of physical contact for purposes of searching Terry for weapons, and we thus may assume that up to that point no intrusion upon constitutionally protected rights had occurred.

17. See generally Leagre, The Fourth Amendment & the Law of Arrest, 54 J. Crim. L. C. and P. S. 393, 396–403 (1963).

(1967). And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.[18] The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances.[19] And in making that assessment it is imperative that the facts be judged against an objective

*[392 US 22]

standard: would the facts *available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate? Cf. Carroll v United States, 267 US 132, 69 L Ed 543, 45 S Ct 280, 39 ALR 790 (1925); Beck v Ohio, 379 US 89, 96–97, 13 L Ed 2d 142, 147, 148, 85 S Ct 223 (1964).[20] Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction. See, e. g., Beck v Ohio, supra; Rios v United States, 364 US 253, 4 L Ed 2d 1688, 80 S Ct 1431 (1960); Henry v United States, 361 US 98, 4 L Ed 2d 134, 80 S Ct 168 (1959). And simple "'good faith on the part of the arresting officer is not enough.' . . . If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects,' only in the discretion of the police." Beck v Ohio, supra, at 97, 13 L Ed 2d at 148.

[24, 25] Applying these principles to this case, we consider first the nature and extent of the governmental interests involved. One general interest is of course that of effective crime prevention and detection; it is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating

[21] 18. This demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence. See Beck v Ohio, 379 US 89, 96–97, 13 L Ed 2d 142, 147, 148, 85 S Ct 223 (1964); Ker v California, 374 US 23, 34–37, 10 L Ed 2d 726, 738–740, 83 S Ct 1623 (1963); Wong Sun v United States, 371 US 471, 479–484, 9 L Ed 2d 441, 450–452, 83 S Ct 407 (1963); Rios v United States, 364 US 253, 261–262, 4 L Ed 2d 1688, 1693, 1694, 80 S Ct 1431 (1960); Henry v United States, 361 US 98, 100–102, 4 L Ed 2d 134, 137, 138, 80 S Ct 168 (1959); Draper v United States, 358 US 307, 312–314, 3 L Ed 2d 327, 331, 332, 79 S Ct 329 (1959); Brinegar v United States, 338 US 160, 175–178, 93 L Ed 1879, 1890, 1891, 69 S Ct 1302 (1949); Johnson v United States, 333 US 10, 15–17, 92 L Ed 436, 441, 442, 68 S Ct 367 (1948); United States v Di Re, 332 US 581, 593–595, 92 L Ed 210, 219, 220, 68 S Ct 222 (1948); Husty v United States, 282 US 694, 700–701, 75 L Ed 629, 632, 51 S Ct 240, 74 ALR 1407 (1931); Dumbra v United States, 268 US 435, 441, 69 L Ed 1032, 1036, 45 S Ct 546 (1925); Carroll v United States, 267 US 132, 159–162, 64 L Ed 543, 554, 555, 45 S Ct 280, 39 ALR 790 (1925); Stacey v Emery, 97 US 642, 645, 24 L Ed 1035, 1036 (1878).

19. See, e. g., Katz v United States, 389 US 347, 354–357, 19 L Ed 2d 576, 583, 585, 88 S Ct 507 (1967); Berger v New York, 388 US 41, 54–60, 18 L Ed 2d 1040, 1049, 1053, 87 S Ct 1873 (1967); Johnson v United States, 333 US 10, 13–15, 92 L Ed 436, 440, 441, 68 S Ct 367 (1948); cf. Wong Sun v United States, 371 US 471, 479–480, 9 L Ed 2d 441, 450, 83 S Ct 407 (1963). See also Aguilar v Texas, 378 US 108, 110–115, 12 L Ed 2d 723, 725–729, 84 S Ct 1509 (1964).

20. See also cases cited in n. 18, supra.

possibly criminal behavior even though there is no probable cause to make an arrest. It was this legitimate investigative function Officer McFadden was discharging when he decided to approach petitioner and his companions. He had observed Terry, Chilton, and Katz go through a series of acts, each of them perhaps innocent in itself, but which taken together warranted further investigation. There is nothing unusual in two men standing together on a street corner, perhaps waiting for someone. Nor is there anything

*[392 US 23]

suspicious about people *in such circumstances strolling up and down the street, singly or in pairs. Store windows, moreover, are made to be looked in. But the story is quite different where, as here, two men hover about a street corner for an extended period of time, at the end of which it becomes apparent that they are not waiting for anyone or anything; where these men pace alternately along an identical route, pausing to stare in the same store window roughly 24 times; where each completion of this route is followed immediately by a conference between the two men on the corner; where they are joined in one of these conferences by a third man who leaves swiftly; and where the two men finally follow the third and rejoin him a couple of blocks away. It would have been poor police work indeed for an officer of 30 years' experience in the detection of thievery from stores in this same neighborhood to have failed to investigate this behavior further.

[24, 26, 27] The crux of this case, however, is not the propriety of Officer McFadden's taking steps to investigate petitioner's suspicious behavior, but rather, whether there was justification for McFadden's invasion of Terry's personal security by searching him for weapons in the course of that investigation. We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded.

*[392 US 24]

*Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives.[21]

[28] In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospec-

21. Fifty-seven law enforcement officers were killed in the line of duty in this country in 1966, bringing the total to 335 for the seven-year period beginning with 1960. Also in 1966, there were 23,851 assaults on police officers, 9,113 of which resulted in injuries to the policemen. Fifty-five of the 57 officers killed in 1966 died from gunshot wounds, 41 of them inflicted by handguns easily secreted about the person. The remaining two murders were perpetrated by knives. See Federal Bureau of Investigation, Uniform Crime Reports for the United States —1966, at 45–48, 152 and Table 51.

[27] The easy availability of firearms to potential criminals in this country is well known and has provoked much debate. See e. g., President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 239–243 (1967). Whatever the merits of gun-control proposals, this fact is relevant to an assessment of the need for some form of self-protective search power.

tive victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.

We must still consider, however, the nature and quality of the intrusion on individual rights which must be accepted if police officers are to be conceded the right to search for weapons in situations where probable cause to arrest for crime is lacking. Even a limited search of the outer clothing for weapons con-

*[392 US 25]

stitutes a severe, *though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience. Petitioner contends that such an intrusion is permissible only incident to a lawful arrest, either for a crime involving the possession of weapons or for a crime the commission of which led the officer to investigate in the first place. However, this argument must be closely examined.

Petitioner does not argue that a police officer should refrain from making any investigation of suspicious circumstances until such time as he has probable cause to make an arrest; nor does he deny that police officers in properly discharging their investigative function may find themselves confronting persons who might well be armed and dangerous. Moreover, he does not say that an officer is always unjustified in searching a suspect to discover weapons. Rather, he says it is unreasonable for the policeman to take that step until such time as the situation evolves to a point where there is probable cause to make an arrest. When that point has been reached, petitioner would concede the officer's right to conduct a search of the suspect for weapons, fruits or instrumentalities of the crime, or "mere" evidence, incident to the arrest.

[29] There are two weaknesses in this line of reasoning, however. First, it fails to take account of traditional limitations upon the scope of searches, and thus recognizes no distinction in purpose, character, and extent between a search incident to an arrest and a limited search for weapons. The former, although justified in part by the acknowledged necessity to protect the arresting officer from assault with a concealed weapon, Preston v United States 376 US 364, 367, 11 L Ed 2d 777, 780, 84 S Ct 881 (1964), is also justified on other grounds, ibid., and can therefore involve a relatively extensive exploration of the person. A search for weapons in the absence of probable cause to

*[392 US 26]

*arrest, however, must, like any other search, be strictly circumscribed by the exigencies which justify its initiation. Warden v Hayden, 387 US 294, 310, 18 L Ed 2d 782, 794, 87 S Ct 1642 (1967) (Mr. Justice Fortas, concurring). Thus it must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby, and may realistically be characterized as something less than a "full" search, even though it remains a serious intrusion.

[30] A second, and related, objection to petitioner's argument is that it assumes that the law of arrest has already worked out the balance be-

tween the particular interests involved here—the neutralization of danger to the policeman in the investigative circumstance and the sanctity of the individual. But this is not so. An arrest is a wholly different kind of intrusion upon individual freedom from a limited search for weapons, and the interests each is designed to serve are likewise quite different. An arrest is the initial stage of a criminal prosecution. It is intended to vindicate society's interest in having its laws obeyed, and it is inevitably accompanied by future interference with the individual's freedom of movement, whether or not trial or conviction ultimately follows.[22] The protective search for weapons, on the other hand, constitutes a brief, though far from inconsiderable, intrusion upon the sanctity of the person. It does not follow that because an officer may lawfully arrest a person only when he is apprised of facts sufficient to warrant a belief that the person has committed or is committing a crime, the officer is equally unjustified, absent that kind of evidence, in making any intrusions short of an arrest. Moreover, a perfectly reasonable apprehension of danger may arise long before the officer is possessed of adequate information to justify taking a person

*[392 US 27]

into custody for *the purpose of prosecuting him for a crime. Petitioner's reliance on cases which have worked out standards of reasonableness with regard to "seizures" constituting arrests and searches incident thereto is thus misplaced. It assumes that the interests sought to be vindicated and the invasions of personal security may be equated in the two cases, and thereby ignores a vital aspect of the analysis of the reasonableness of particular types of conduct under the Fourth Amendment. See Camara v Municipal Court, supra.

[31] Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. Cf. Beck v Ohio, 379 US 89, 91, 13 L Ed 2d 142, 145, 85 S Ct 223 (1964); Brinegar v United States, 338 US 160, 174–176, 93 L Ed 1879, 1889–1891, 69 S Ct 1302 (1949); Stacey v Emery, 97 US 642, 645, 24 L Ed 1035, 1036 (1878).[23] And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or "hunch," but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience. Cf. Brinegar v United States supra.

IV.

[32] We must now examine the conduct of Officer McFadden in this case to determine whether his search and seizure of petitioner were reasonable, both at their inception

*[392 US 28]

*and as conducted. He had observed

22. See generally W. LaFave, Arrest—The Decision to Take a Suspect into Custody 1–13 (1965).

23. See also cases cited in n. 18, supra.

Terry, together with Chilton and another man, acting in a manner he took to be preface to a "stick-up." We think on the facts and circumstances Officer McFadden detailed before the trial judge a reasonably prudent man would have been warranted in believing petitioner was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior. The actions of Terry and Chilton were consistent with McFadden's hypothesis that these men were contemplating a daylight robbery—which, it is reasonable to assume, would be likely to involve the use of weapons—and nothing in their conduct from the time he first noticed them until the time he confronted them and identified himself as a police officer gave him sufficient reason to negate that hypothesis. Although the trio had departed the original scene, there was nothing to indicate abandonment of an intent to commit a robbery at some point. Thus, when Officer McFadden approached the three men gathered before the display window at Zucker's store he had observed enough to make it quite reasonable to fear that they were armed; and nothing in their response to his hailing them, identifying himself as a police officer, and asking their names served to dispel that reasonable belief. We cannot say his decision at that point to seize Terry and pat his clothing for weapons was the product of a volatile or inventive imagination, or was undertaken simply as an act of harassment; the record evidences the tempered act of a policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and took limited steps to do so.

[33–35] The manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry as whether they were warranted at all. The Fourth Amendment proceeds as much by

*[392 US 29]

limitations upon the *scope of governmental action as by imposing preconditions upon its initiation. Compare Katz v United States, 389 US 347, 354–356, 19 L Ed 2d 576, 583–585, 88 S Ct 507 (1967). The entire deterrent purpose of the rule excluding evidence seized in violation of the Fourth Amendment rests on the assumption that "limitations upon the fruit to be gathered tend to limit the quest itself." United States v Poller, 43 F2d 911, 914 (CA2d Cir 1930); see, e. g., Linkletter v Walker, 381 US 618, 629–635, 14 L Ed 2d 601, 608–612, 85 S Ct 1731 (1965); Mapp v Ohio, 367 US 643, 6 L Ed 2d 1081, 81 S Ct 1684, 84 ALR2d 933 (1961); Elkins v United States, 364 US 206, 216–221, 4 L Ed 2d 1669, 1676–1679, 80 S Ct 1437 (1960). Thus, evidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation. Warden v Hayden, 387 US 294, 310, 18 L Ed 2d 782, 793, 87 S Ct 1642 (1967) (Mr. Justice Fortas, concurring).

[36, 37] We need not develop at length in this case, however, the limitations which the Fourth Amendment places upon a protective seizure and search for weapons. These limitations will have to be developed in the concrete factual circumstances of individual cases. See Sibron v New York, 392 US 40, 20 L Ed 2d 917, 88 S Ct 1889. Suffice it to note that such a search, unlike a search without a warrant incident to a lawful arrest, is not justified by any need to prevent the disappearance or

destruction of evidence of crime. See Preston v United States, 376 US 364, 367, 11 L Ed 2d 777, 780, 84 S Ct 881 (1964). The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.

[38] The scope of the search in this case presents no serious problem in light of these standards. Officer McFadden patted down the outer clothing of petitioner and his two companions. He did not place his hands in their pockets or under the outer surface of their garments until

*[392 US 30]

he had *felt weapons, and then he merely reached for and removed the guns. He never did invade Katz' person beyond the outer surfaces of his clothes, since he discovered nothing in his pat-down which might have been a weapon. Officer McFadden confined his search strictly to what was minimally necessary to learn whether the men were armed and to disarm them once he discovered the weapons. He did not conduct a general exploratory search for whatever evidence of criminal activity he might find.

V.

[39, 40] We conclude that the revolver seized from Terry was properly admitted in evidence against him. At the time he seized petitioner and searched him for weapons, Officer McFadden had reasonable grounds to believe that petitioner was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized. The policeman carefully restricted his search to what was appropriate to the discovery of the particular items which he sought. Each case of this sort will, of course, have to be decided on its own facts. We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which

*[392 US 31]

might be used to assault him. *Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken.

Affirmed.

Mr. Justice Black concurs in the judgment and the opinion except where the opinion quotes from and relies upon this Court's opinion in Katz v United States and the concurring opinion in Warden v Hayden.

SEPARATE OPINIONS

Mr. Justice **Harlan,** concurring.

While I unreservedly agree with the Court's ultimate holding in this case, I am constrained to fill in a few gaps, as I see them, in its opinion.

I do this because what is said by this Court today will serve as initial guidelines for law enforcement authorities and courts throughout the land as this important new field of law develops.

A police officer's right to make an on-the-street "stop" and an accompanying "frisk" for weapons is of course bounded by the protections afforded by the Fourth and Fourteenth Amendments. The Court holds, and I agree, that while the right does not depend upon possession by the officer of a valid warrant, nor upon the existence of probable cause, such activities must be reasonable under the circumstances as the officer credibly relates them in court. Since the question in this and most cases is whether evidence produced by a frisk is admissible, the problem is to determine what makes a frisk reasonable.

If the State of Ohio were to provide that police officers could, on articulable suspicion less than probable cause, forcibly frisk and disarm persons thought to be carrying concealed weapons, I would have little doubt that action taken pursuant to such authority could be constitutionally reasonable. Concealed weapons

*[392 US 32]

create an immediate *and severe danger to the public, and though that danger might not warrant routine general weapons checks, it could well warrant action on less than a "probability." I mention this line of analysis because I think it vital to point out that it cannot be applied in this case. On the record before us Ohio has not clothed its policemen with routine authority to frisk and disarm on suspicion; in the absence of state authority, policemen have no more right to "pat down" the outer clothing of passers-by, or of persons to whom they address casual questions, than does any other citizen. Consequently, the Ohio courts did not rest the constitutionality of this frisk upon any general authority in Officer McFadden to take reasonable steps to protect the citizenry, including himself, from dangerous weapons.

The state courts held, instead, that when an officer is lawfully confronting a possibly hostile person in the line of duty he has a right, springing only from the necessity of the situation and not from any broader right to disarm, to frisk for his own protection. This holding, with which I agree and with which I think the Court agrees, offers the only satisfactory basis I can think of for affirming this conviction. The holding has, however, two logical corollaries that I do not think the Court has fully expressed.

In the first place, if the frisk is justified in order to protect the officer during an encounter with a citizen, the officer must first have constitutional grounds to insist on an encounter, to make a *forcible* stop. Any person, including a policeman, is at liberty to avoid a person he considers dangerous. If and when a policeman has a right instead to disarm such a person for his own protection, he must first have a right not to avoid him but to be in his presence. That right must be more than the liberty (again, posessed by every citizen) to address questions to other persons, for ordinarily

*[392 US 33]

the person *addressed has an equal right to ignore his interrogator and walk away; he certainly need not submit to a frisk for the questioner's protection. I would make it perfectly clear that the right to frisk in this case depends upon the reasonableness of a forcible stop to investigate a suspected crime.

Where such a stop is reasonable, however, the right to frisk must be immediate and automatic if the reason for the stop is, as here, an articulable suspicion of a crime of violence. Just as a full search incident to a lawful arrest requires no additional justification, a limited frisk incident to a lawful stop must often be rapid and routine. There is no reason why an officer, rightfully but forcibly confronting a person suspected of a serious crime, should have to ask one question and take the risk that the answer might be a bullet.

The facts of this case are illustrative of a proper stop and an incident frisk. Officer McFadden had no probable cause to arrest Terry for anything, but he had observed circumstances that would reasonably lead an experienced, prudent policeman to suspect that Terry was about to engage in burglary or robbery. His justifiable suspicion afforded a proper constitutional basis for accosting Terry, restraining his liberty of movement briefly, and addressing questions to him, and Officer McFadden did so. When he did, he had no reason whatever to suppose that Terry might be armed, apart from the fact that he suspected him of planning a violent crime. McFadden asked Terry his name, to which Terry "mumbled something." Whereupon McFadden, without asking Terry to speak louder and without giving him any chance to explain his presence or his actions, forcibly frisked him.

I would affirm this conviction for what I believe to be the same reasons the Court relies on. I would, however, make explicit what I think is

*[392 US 34]

implicit in affirmance on *the present facts. Officer McFadden's right to interrupt Terry's freedom of movement and invade his privacy arose only because circumstances warranted forcing an encounter with Terry in an effort to prevent or investigate a crime. Once that forced encounter was justified, however, the officer's right to take suitable measures for his own safety followed automatically.

Upon the foregoing premises, I join the opinion of the Court.

Mr. Justice **White**, concurring.

I join the opinion of the Court, reserving judgment, however, on some of the Court's general remarks about the scope and purpose of the exclusionary rule which the Court has fashioned in the process of enforcing the Fourth Amendment.

Also, although the Court puts the matter aside in the context of this case, I think an additional word is in order concerning the matter of interrogation during an investigative stop. There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets. Absent special circumstances, the person approached may not be detained or frisked but may refuse to cooperate and go on his way. However, given the proper circumstances, such as those in this case, it seems to me the person may be briefly detained against his will while pertinent questions are directed to him. Of course, the person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest, although it may alert the officer to the need for continued observation. In my view, it is temporary detention, warranted by the circumstances, which chiefly justifies the protective

frisk for weapons. Perhaps the frisk itself, where proper, will have beneficial results whether questions are asked or not. If weapons are

*[392 US 35]

found, an arrest will follow. *If none are found, the frisk may nevertheless serve preventive ends because of its unmistakable message that suspicion has been aroused. But if the investigative stop is sustainable at all, constitutional rights are not necessarily violated if pertinent questions are asked and the person is restrained briefly in the process.

Mr. Justice **Douglas**, dissenting.

I agree that petitioner was "seized" within the meaning of the Fourth Amendment. I also agree that frisking petitioner and his companions for guns was a "search." But it is a mystery how that "search" and that "seizure" can be constitutional by Fourth Amendment standards, unless there was "probable cause"[1] to believe that (1) a crime had been committed or (2) a crime was in the process of being committed or (3) a crime was about to be committed.

The opinion of the Court disclaims the existence of "probable cause." If loitering were in issue and that

*[392 US 36]

*was the offense charged, there would be "probable cause" shown. But the crime here is carrying concealed weapons;[2] and there is no basis for concluding that the officer had "probable cause" for believing that that crime was being committed. Had a warrant been sought, a magistrate would, therefore, have been unauthorized to issue one, for he can act only if there is a showing of "probable cause." We hold today that the police have greater authority to make a "seizure" and conduct a "search" than a judge has to authorize such action. We have said precisely the opposite over and over again.[3]

1. The meaning of "probable cause" has been developed in cases where an officer has reasonable grounds to believe that a crime has been or is being committed. See, e. g., The Thompson, 3 Wall 155, 18 L Ed 55; Stacey v Emery, 97 US 642, 24 L Ed 1035; Director General v Kastenbaum, 263 US 25, 68 L Ed 146, 44 S Ct 52; Carroll v United States, 267 US 132, 69 L Ed 543, 45 S Ct 280, 39 ALR 790; United States v Di Re, 332 US 581, 92 L Ed 210, 68 S Ct 222; Brinegar v United States, 338 US 160, 93 L Ed 1879, 69 S Ct 1302; Draper v United States, 358 US 307, 3 L Ed 2d 327, 79 S Ct 329; Henry v United States, 361 US 98, 4 L Ed 2d 134, 80 S Ct 168. In such cases, of course, the officer may make an "arrest" which results in charging the individual with commission of a crime. But while arresting persons who have already committed crimes is an important task of law enforcement, an equally if not more important function is crime prevention and deterrence of would-be criminals. "[T]here is no war between the Constitution and common sense," Mapp v Ohio, 367 US 643, 657, 6 L Ed 2d 1081, 1091, 81 S Ct 1684, 84 ALR2d 933. Police officers need not wait until they see a person actually commit a crime before they are able to "seize" that person. Respect for our constitutional system and personal liberty demands in return, however, that such a "seizure" be made only upon "probable cause."

2. Ohio Rev Code § 2923.01.

3. This Court has always used the language of "probable cause" in determining the constitutionality of an arrest without a warrant. See, e. g., Carroll v United States, 267 US 132, 156, 161–162, 69 L Ed 543, 552, 554, 555, 45 S Ct 280, 39 ALR 790; Johnson v United States, 333 US 10, 13–15, 92 L Ed 436, 439–441, 68 S Ct 367; McDonald v United States, 335 US 451, 455–456, 93 L Ed 153, 158, 69 S Ct 191; Henry v United States, 361 US 98, 4 L Ed 2d 134, 80 S Ct 168; Wong Sun v United States, 371 US 471, 479–484, 9 L Ed 2d 441, 450–452, 83 S Ct 407. To give power to the police to seize a person on some grounds different from or less than "probable cause" would be handing them *more* authority than could be exercised by a magistrate in issuing a

*[392 US 37]

*In other words, police officers up to today have been permitted to effect arrests or searches without warrants only when the facts within their personal knowledge would satisfy the constitutional standard of *probable cause*. At the time of their "seizure" without a warrant they must possess facts concerning the person arrested that would have satisfied a magistrate that "probable cause" was indeed present. The term "probable cause" rings a bell of certainty that is not sounded by phrases such as "reasonable suspicion." Moreover, the meaning of "probable cause" is deeply imbedded in our constitutional history. As we stated in Henry v United States, 361 US 98, 100–102, 4 L Ed 2d 134, 137–138, 80 S Ct 168.

"The requirement of probable cause has roots that are deep in our history. The general warrant, in which the name of the person to be arrested was left blank, and the writs of assistance, against which James Otis inveighed, both perpetuated the oppressive practice of allowing the police to arrest and search on suspicion. Police control took the place of judicial control, since no showing of 'probable cause' before a magistrate was required.

. . . . . .

"That philosophy [rebelling against these practices] later was reflected in the Fourth Amendment. And as the early American decisions both before and immediately after its adoption show, common rumor or report, suspicion, or even 'strong reason to suspect' was not adequate

*[392 US 38]

to support a warrant *for arrest. And that principle has survived to this day. . . .

". . . It is important, we think, that this requirement [of probable cause] be strictly enforced, for the standard set by the Constitution protects both the officer and the citizen. If the officer acts with probable cause, he is protected even though it turns out that the citizen is innocent. . . . And while a search without a warrant is, within limits, permissible if incident to a lawful arrest, if an arrest without a warrant is to support an incidental search, it must be made with probable cause. . . . This immunity of officers cannot fairly be enlarged

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warrant to seize a person. As we stated in Wong Sun v United States, 371 US 471, 9 L Ed 2d 441, 83 S Ct 407, with respect to requirements for arrests without warrants: "Whether or not the requirements of reliability and particularity of the information on which an officer may act are more stringent where an arrest warrant is absent, they surely cannot be less stringent than where an arrest warrant is obtained." Id., at 479, 9 L Ed 2d at 450. And we said in Brinegar v United States, 338 US 160, 176, 93 L Ed 1879, 1890, 69 S Ct 1302:

"These long-prevailing standards [for probable cause] seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice."

And see Johnson v United States, 333 US 10, 14–15, 92 L Ed 436, 440, 441, 68 S Ct 367; Wrightson v United States, 95 US App DC 390, 393–394, 222 F2d 556, 559–560 (1955).

without jeopardizing the privacy or security of the citizen."

The infringement on personal liberty of any "seizure" of a person can only be "reasonable" under the Fourth Amendment if we require the police to possess "probable cause" before they seize him. Only that line draws a meaningful distinction between an officer's mere inkling and the presence of facts within the officer's personal knowledge which would convince a reasonable man that the person seized has committed, is committing, or is about to commit a particular crime. "In dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." Brinegar v United States, 338 US 160, 175, 93 L Ed 1879, 1890, 69 S Ct 1302.

To give the police greater power than a magistrate is to take a long step down the totalitarian path. Perhaps such a step is desirable to cope with modern forms of lawlessness. But if it is taken, it should be the deliberate choice of the people through a constitutional amend-

*[392 US 39]

ment. *Until the Fourth Amendment, which is closely allied with the Fifth,[4] is rewritten, the person and the effects of the individual are beyond the reach of all government agencies until there are reasonable grounds to believe (probable cause) that a criminal venture has been launched or is about to be launched.

There have been powerful hydraulic pressures throughout our history that bear heavily on the Court to water down constitutional guarantees and give the police the upper hand. That hydraulic pressure has probably never been greater than it is today.

Yet if the individual is no longer to be sovereign, if the police can pick him up whenever they do not like the cut of his jib, if they can "seize" and "search" him in their discretion, we enter a new regime. The decision to enter it should be made only after a full debate by the people of this country.

4. See Boyd v United States, 116 US 616, 633, 29 L Ed 746, 752:

"For the 'unreasonable searches and seizures' condemned in the Fourth Amendment are almost always made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the Fifth Amendment; and compelling a man 'in a criminal case to be a witness against himself,' which is condemned in the Fifth Amendment, throws light on the question as to what is an 'unreasonable search and seizure' within the meaning of the Fourth Amendment."

WRC-TV4 Editorial

HB277

"Maryland-Guns"
Volume Five, Number Seventeen
Broadcast: February 1 & 2, 1972

WRC-TV feels the only real way to end the spiraling rise in gunplay is federal legislation - outlawing the sale and possession of handguns - nationwide.

Unfortunately, that is a long way off. There are few politicians willing to defy the gun lobby.

So, the states are left to protect their own citizens. Governor Marvin Mandel believes the situation in Maryland is grave enough to warrant "emergency legislation" of gun control measures. His package is a good one - as far as it goes. It would outlaw the carrying of handguns concealed or unconcealed on the street and in an automobile. The penalties are severe enough to be deterrent. WRC-TV has no quarrel with the controversial "Stop and Frisk" proposal because it only brings the state law in line with recent Supreme Court decisions. Safeguards can be written into the measure to make sure police do not abuse the power. However, to consider only the Governor's bill is a half way step. Mandel's legislation does nothing about the sale of or possession of pistols or revolvers in the home - where the majority of killings and woundings take place. Recognizing that, Delegate Woodrow Allen of Montgomery County has introduced a bill that would outlaw private ownership of any handguns by anyone except law enforcement officers, collectors, and target shooters who agree to lock up their weapons.

WRC-TV urges the legislature to take the best features of both the Governor's and Delegate Allen's bills, and pass a measure that could provide Marylanders with one of the best crime protection laws in the nation.

Naval Ordnance Laboratory
Rifle and Pistol Club
White Oak, Silver Spring, Md. 20910
2 February 1972

The Honorable Martin A. Kircher
Chairman, House Committee on the Judiciary
Maryland House of Delegates
Annapolis, Maryland 21404

Dear Mr. Kircher:

House Bill 277, the Administration Bill to prohibit the carrying or transportation of handguns, would increase handgun crime by making "criminals" of the many sportsmen who would violate its provisions by accident or ignorance. Its effect on real crimes, such as murder or armed robbery, would be negligible. Therefore, the Naval Ordnance Laboratory Pistol and Rifle Club finds it necessary to oppose this bill.

The bill is based on the fallacy that crimes of violence result from the transportation of handguns, rather than their harmful use. No list of exceptions for legal handgun use could possibly cover all harmless transportation of handguns. The exceptions allowed by the bill are insufficient to allow normal sporting use of handguns, and they are sufficiently ambiguous to invite unintentional violations.

Specifically, the bill would forbid our members to place their pistol cases in their cars in the morning, to drive to work, and then to drive to the NOL pistol range for target practice after work. The major shooting activity of this club would thus become illegal. Going directly from work to compete in Metropolitan Pistol League indoor winter matches would likewise become illegal.

The restriction of allowable handguns to those "normally used" in the specified activities is ambiguous and unnecessary. Any type of handgun can be used harmlessly in non-competitive target practice. Some of the non-match-grade pistols which are occasionally used at our range are replicas of antiques and are not suitable for either normal target competition or crimes of violence.

The other major type of non-match-grade handgun brought to the range by club members is the "home defense weapon". Some of these are in the collections of club members, and others belong to non-members who are invited to the range for instruction in the safe and effective handling of such weapons. Since such instruction reduces the likelihood of home handgun accidents, it should be encouraged, not prohibited.

Although our own range is not set up for it, many of our members occasionally plink at tin cans in other safe shooting spots. The change of pace provided by this informal shooting is beneficial in increasing one's accuracy on the target range. Unfortunately, plinking is not listed as one of the allowable handgun activities. A shooter might claim that it is "target practice", but the penalties are quite severe if the courts decide that his interpretation is wrong.

Similarly, some of our members own vacation or retirement properties with informal pistol ranges. There seems to be no legally safe way for such a person to transport a handgun from his residence to such property, and to store it in an unoccupied building is to invite theft.

Much of our crime problem is probably caused by a lack of respect for law. Respect for law is decreased by making "crimes" out of harmless acts. If this unwise bill is passed and not enforced, it will cause great disrespect for law by punishing only those people who inconvenience themselves by obeying it. If this bill is enforced against sportsmen, great injustices will result.

Even the minimum penalties for a first offense are quite severe, and they are more severe for target shooters than for most other people. The $250 minimum fine is just the smallest part of the penalty. A typical target shooter transports about $500 worth of guns and shooting equipment to the range, and these would be forfeited. Since he would be easiest to catch as he drove onto a public street after carrying a gun box from his home to the back of his car, his car would normally be siezed also. A less obvious penalty is that anyone convicted of a violation of a handgun law is thereafter forbidden by state law from possessing any other handgun. Similarly, Federal law prohibits any person convicted of a law such as this from possessing any firearm obtained in interstate commerce. Thus, the minimum penalty for a harmless, unintentional violation of this ambiguous bill would be the immediate loss of the sportsman's car and any handguns he had with him, a $250 fine, and the loss of his right to possess any other firearms. This is analogous to punishing the first occurrence of the most minor of traffic violations with a $250 fine, forfeiture of the "criminal's" car, and revocation of his driving license.

The Naval Ordnance Laboratory Pistol and Rifle Club stands opposed to House Bills 277, 365 and 375.

We are firmly opposed to House Bill No. 365, which would prohibit the private ownership of handguns. Only a very small fraction of the handguns in Maryland are used for criminal purposes. This bill would have little effect on the number of guns kept for the purpose of being used in crimes. Instead, its effect would be limited to the destruction of the handguns that belong to the majority of law-abiding shooters in this state. The activities of this pistol club would be drastically reduced; for the collected handguns of our members would be a very attractive target for thieves, and we shall probably be unable to obtain sufficiently secure handgun storage facilities at our range.

House Bill 375, to regulate the private transfers of handguns, is unenforceable. Its only effect would be to provide another way for the harmless, handgun-owning citizen to become a "criminal". We oppose it for this reason.

The Naval Ordnance Laboratory Rifle and Pistol Club (NOLR&PC) is a group of civilian employees at NOL and we have strong feelings on the various restrictive gun bills before the Maryland State Legislature. It should be made clear, however, that the thoughts expressed in this letter are those of the civilian club members and in no way should be considered as expressing the opinions of the Naval Ordnance Laboratory or the Federal Government.

Letter of Intent for

GEORGE J. SLOAN
President, Naval Ordnance Laboratory
Rifle and Pistol Club

DEFINITIONS AS USED IN THIS STATUTE: Article 27, Sections 441 to 448

1. The term "person" includes an individual, partnership, association or corporation.
2. The term "pistol or revolver" means any firearm with barrel less than twelve inches in length, including signal, starter and blank pistols, excluding antique guns.
3. The term "dealer" means any person engaged in the business of selling firearms at wholesale or retail or any person engaged in the business of repairing such firearms.
4. The term "crime of violence" means abduction; arson; burglary; including common law and all statutory and storehouse forms of burglary offenses; escape; housebreaking; kidnapping; manslaughter, excepting involuntary manslaughter; mayhem; murder; rape; robbery; and sodomy; or an attempt to commit any of the aforesaid offenses, or assault with intent to commit any other offense punishable by imprisonment for more than one year.
5. The term "fugitive from justice" means any person who has fled from a sheriff or other peace officer within this State, or who has fled from any state, territory or the District of Columbia, or possession of the United States, to avoid prosecution for a crime of violence or to avoid giving testimony in any criminal proceeding.

NO PERSON MAY PURCHASE OR POSSESS A PISTOL OR REVOLVER IF HE OR SHE:

1. Has been convicted of a crime of violence in this State or elsewhere, or of any of the provisions of this statute.
2. Is a fugitive from justice. 3. Is under twenty-one years of age. 4. Is an habitual drunkard.
5. Is addicted to or an habitual user of narcotics, barbiturates or amphetamines.
6. Has spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless there is attached to the application a physician's certificate, issued within thirty days prior to the application, certifying that the applicant is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others.

INSTRUCTIONS

Upon application being made to purchase a weapon covered in the Maryland Pistol Law, the gun dealer will promptly forward the original Application to Purchase or Transfer a Pistol or Revolver and one copy thereof to the police agency which has been designated to act as "Agent for the Superintendent", in the locality in which the applicant resides. The dealer shall retain a copy of the said Application and shall furnish the remaining copy to the prospective purchaser.

The police agency upon receiving the Application and a copy thereof on which Sections I and II have been completed, will conduct the required investigation and complete Section III. If purchase is authorized, the agency returns the original application to the dealer and may retain a copy for agency files.

As the Maryland Pistol Law requires disapproval by the "Superintendent or any specific member of the State Police", authority to disapprove applications shall be vested in the Division, Troop, Barrack or Post Commanders or their designated subordinate State Police personnel.

After the investigation has been conducted by a law enforcement agency other than the State Police and disapproval has been recommended, the matter shall then be referred to the Firearms-License Section, or to the nearest barrack of the Maryland State Police for final disapproval. To speed up the transmittal of the information, the contact may be made by telephone. The disapproved original application then would be returned to the dealer with the name of the specific member of the State Police who disapproved the application. After noting disapproval dealer forwards original copy to State Police.

In the event the application has been approved and a gun sale or transfer was thereafter effected, the dealer shall complete Section IV of the original application and return the same to the Superintendent within seven (7) days from the date of delivery of the weapon transferred.

Ladies and Gentlemen:

Here are a few additional points not covered by my fellow citizens who oppose Senate Bill 205 and House Bill 277.

1. Gun control has never worked! In fact, in all states where strict gun control has existed, crime has increased at a greater rate than those states with lenient laws. New Jersey enacted an almost identical law in 1965. The Uniform F.B.I. Crime Reports clearly indicates that the law was worthless and shows a 4% increase over its neighboring states with crimes of violence.

2. Strict gun laws have always created more crimes of violence, robberies, murders, rapes, etc. According to Dr. Carl Rogers of the University of Wisconsin who states in his study of crimes of violence, the criminal element, realizing that the law abiding citizens obey laws, feel much safer knowing that there are no guns on the streets against them and will increase their illegal activities.

3. With each law you, as legislators, will create a new group of criminals. Old criminals will not be tried under the new laws, but people - average citizens - will be made into criminals. These are people who, out of ignorance, stupidity or fear, will have a handgun on their person or in their car and will be caught and convicted. An example is shown: The Federal Gun Control Act of 1968 was created to stop crime in the streets; at the end of the first year, 1,500 people had been convicted of violations of this act. Not one was tried of any criminal act other than violation of the gun law and none had prior criminal records, making new criminals and not stopping crime.

4. Each one of these gun control laws creates a bureaucratic trap and all of the expense that goes with the additional enforcement and record keeping always winds up a burden on the tax payer. This law will be abused the same way as the Federal Gun Control Act of 1968 has been abused. Enforcement people strive for convictions which make them look good and to justify their existance. With the additional convictions, criminal activities continue to increase at a far greater ratio than these convictions.

James Doyle
Citizen, Baltimore City
467-5204

STATEMENT
of
J. ELLIOTT CORBETT
United Methodist Board of Christian Social Concerns
regarding House Bill 365
before the
HOUSE JUDICIARY COMMITTEE
of the
Maryland House of Delegates
February 3, 1972

Mr. Chairman and Members of the Committee:

I am Jack Corbett of Bethesda, Maryland, here today representing the Board of Christian Social Concerns of The United Methodist Church. I serve as Director of Church/Government Relations on the staff of that national agency.

The Board of Social Concerns, one of five national boards of our church, meets at least annually and consists of approximately 90 persons from all regions of the country and all walks of life including lawyers, judges, professors, bishops, clergymen, government officials, housewives, scientists, engineers, businessmen, farmers, etc.

At its last annual meeting held in Washington, D.C., the Board passed a resolution with respect to firearms policy. This resolution states:

> The Church records its support for the licensing of all gun owners and the registration of all firearms. Licensing provisions should require adequate identification of gun owners and provide

basic standards with respect to age, absence of mental illness and lack of a serious criminal record. These and other objective standards should be applied in determining the denial of any license.

Reasonable and effective state licensing and registration provisions should be required be federal law. If states fail to act within two years to provide adequate measures in accordance with federal standards, then federal licensing and registration provisions should apply.

In accordance with the recommendation of the President's Commission on Violence, we endorse the elimination of private ownership and use of hand guns, except in extremely limited instances.

We deplore the killing and injuring of police officers by citizens, however serious or legitimate their grievances may be. We must, however, be cognizant of the fact that fifty times as many citizens are killed by the police in the United States, and in too many instances, these are unnecessary and unwarranted. We, therefore, not only call for the tightening of legal control over citizen ownership of firearms or of guns, but we also call for the formulation of more responsible firearms policies by every agency of law enforcement in the country.

As far as House Bill 365 is concerned, the key aspect of our position would be that we favor "the elimination of private ownership and use of hand guns, except in extremely limited circumstances." Thus, I would like to make some personal observations on this point.

We have not specified what "extremely limited instances" means. However, the President's Commission on

Violence (to which we have referred) spoke in terms of "determination of need." They said: "We recommend that determination of need be limited to police officers and security guards, small businesses in high crime areas, and others with a special need for self-protection." The went on to declare: "At lease in major metropolitan areas, the federal system should not consider normal household self-protection a sufficient showing of need to have a handgun."

Thus, it seems to me that House Bill 365 would be a step in the right direction. That is, it would "prohibit the possession, ownership, manufacture, sale, transfer, receipt or transport of a handgun...in Maryland." The preamble of Section 268A graphically illustrates the need for this legislation. If I understand it correctly then, if this measure were made law in Maryland, handguns (the weapons of crime) would be restricted to possession by the police, security guards, the armed forces, private detectives, and by target shooters while using such guns at authorized pistol clubs. Also, provision would be made for gun collectors retaining non-fireable weapons in their respective collections.

It is my personal opinion that the ordinary householder does not have to protect his house against intruders by keeping on hand the weapon of crime. In all too many instances the use of such weapons, in critical moments, has resulted in the death by accident of the householder's wife or some innocent newsboy delivering his early morning paper. If householders feel they need protection, a family dog with a loud bark is probably the best protection that can be afforded a home. As I understand it, House Bill 365 does not in any way preclude the possibility of a householder retaining a rifle or shotgun for his protection--if he feels the need for it.

As far as the protection of shopkeepers is concerned, it is possible that one can make a case, as the Eisenhower Violence Commission did, that "small businesses in high crime areas" be given the option of retaining a handgun. However, in all too many instances, the shopkeeper himself has become the victim of this practice--often killed while reaching for a handgun at the same time that the armed robber is holding one in his own hand.

Is it a dangerous practice to leave handguns fundamentally in the possession of the police? In an eternally vigilant democracy I don't believe so. I confess, however,

I do have some reservations about the "stop and frisk" provisions of the gun control bill of Governor Mandel. It is extremely important, it seems to me, that the law protect citizens against dragnet procedures and that civil liberties safeguards be provided against unreasonable harrassment on the part of the police. Firearms policies, formulated by law enforcement agencies with respect to police restraint, are essential.

Thus, to sum things up, I would commend Delegates Allen and Ruben for their introduction of House Bill 365 into the Legislature. I believe it would be effective in reducing crime and that in the long run, householders and shopkeepers would be more safe, policemen would be less victimized, and our society generally would be more free--free of violence, crime, and fear.

On the basis of our Board's resolution and my own views, I, therefore, support the enactment of House Bill 365 and appreciate the opportunity of testifying before this committee.

J. Elliott Corbett

LOCAL TELEPHONE: 374-4729
FROM BALTIMORE CITY:
DIAL 1-374-4729

SIDNEY C. MILLER, JR.
ATTORNEY AT LAW
RIDGE ROAD
UPPERCO, MARYLAND 21155

January 27, 1972

Honorable J. Joseph Curran, Jr.
Chairman Judicial Proceedings Committee
Room S-105
Court of Appeals Building
Annapolis, Maryland

RE: Senate Bill No. 205
House Bill No. 277

Dear Senator Curran:

This letter to supplement my note of January 24th, and also to thank you and the members of your Committee for the extended patience and courtesy shown to all at Tuesday's prolonged hearing.

In view of the obvious uncertainty of many speakers as to the need, or the lack of need, for a permit in connection with the "transportation" of a handgun in varying specific situations - it seems evident that the "Exceptions" Subsection, 36B(c), should, be broadened and clarified.

You will recall that a question was raised as to the transportation of a handgun from a permanent residence to a summerhome. Without question, and I'm sure you'd agree, a perfectly proper purpose - but one of the gentlemen speaking for the administration suggested that an officially issued permit would be necessary.

There were also several witnesses who questioned whether the "target shoot - target practice" exception would be broad enough to cover "plinking" - that is, informal practice against tin cans and similar items.

The common practice by hikers and fishermen of carrying a handgun as protection against snakes was also mentioned - and this, clearly, would not seem to be within the parameters of any of the exceptions.

Of more importance is the very real question of the legality of an "indirect route" in the "on the way to, or returning from" provision. [In the last few months I have been shooting weekday evenings at the 5th Regiment Armory pistol range. To save myself a 50 mile drive to and from my home to pick up my weapon, I customarily bring the same to my office in Baltimore City in my

briefcase - holstered and unloaded, of course. I'm sure that a great many others have similar problems.]

One solution, of course, is to try to rework and to expand this subsection so as to deal with as many of these areas as possible. I am not entirely convinced that this can be done. Discounting the practical considerations, there could also be a technical problem.

If I recall my horn book law correctly, criminal statutes must be more explicit than civil ones. The traditional approach, of course, has been to define the prohibited conduct in great detail so that a person of ordinary intelligence has the opportunity to understand exactly what is proscribed. A directly contrary approach seems to have been taken by the draftsman of this particular bill: A few actions, unfortunately rather ill-defined, are declared to be legal - and everything else, by the very fact of omission, is made illegal. I don't profess to have any great expertise in the area of constitutional law and due process - but I do suspect that a strong, Bill-of-Rights objection could be raised against any loosely drawn, criminal statute framed on the aforementioned illegal-by-omission theory.

The better approach, I think, is to avoid the problem entirely by exempting "transportation" and "open carrying" from the whole act - as Bob Esher has suggested.

As I indicated to Senator Mitchell, I am also concerned about the "stop and frisk" provisions contained in Section 36D.

Assume that I am on my way to do some informal target practice on my neighbor's property where I have permission to shoot at my convenience; my pistol is unloaded and in a box on the back seat of my car. I am stopped for some reason by a police officer, and I am interrogated as provided by 36D, Subsection (3). I advise the officer as to my destination and purpose - but for some reason, possibly my rather scruffy, Saturday morning attire, the officer remains unsatisfied. At that point, under Subsection (4)(b) which follows as a continuation - to escape arrest - I am required to produce "evidence" that I am legally entitled to transport my pistol. The officer has my statement - what other "evidence" could I produce?

Some members of your Committee seemed to feel that the "on the way to" provision contained in 36B(c)(3) would give complete protection in a situation of this sort - but I question this most strenuously in view of the explicit provisions of the aforementioned (4)(b) which require me, on-the-spot, to prove my

innocent intention. Again the exemption of "transportation" and "open carrying" from the parameters of the act would remove this objection.

Professionally, I am most concerned about the seizure and forfeiture provisions, as to vehicles, which are contained in Section 36C. In my judgment, this concept can be characterized as nothing less than viscous and over-reaching.

This statute is aimed at the misuse by a very small segment of the population of a specific item of property, the ownership or possession of which is in no way proscribed or detrimental to the public welfare. We are most certainly not attempting to prohibit an organized traffic in contraband, such as the transportation and sale of bootleg whiskey or narcotics. Vehicle confiscation has been justified by some on the rather dubious theory that it removes a necessary tool by which an illegal commerce is carried on - but that theory is totally inapplicable where there is no illegal merchandise to be moved from seller to buyer.

As was noted in the testimony, there are a multitude of third-party situations which could result in the confiscation of an innocent party's automobile. Giving a ride to a friend, for instance, with his pistol properly cased and unloaded, but not in fact "on the way to, or returning from" one of the permitted shooting activities - could result in the forfeiture of your vehicle or mine.

I urge that you and your Committee give serious consideration to the adoption of Bob Esher's recommendation: the total deletion of the unnecessary and dangerous vehicle seizure provisions.

In that connection please note that Section 36C, subsections (b)(iii) and (c)(ii), now employ "may" as the operative word instead of "shall" - which leaves the return of seized vehicles utterly within the arbitrary discretion of both the police and the court - notwithstanding the fact that the petitioner may fully meet the burden imposed by the statute: proof that he did not know, and should not have known, of the illegality of the transportation, etc. At a very minimum, this hazard should be removed.

In addition, please note also that no one other than "owners", as the bill is presently drawn, are entitled to petition for the return of the seized vehicles. This procedure completely ignores the rights of any and all lien holders.

Obviously, the vast majority of private automobiles are financed by lending institutions who retain a security interest in the vehicle. In most cases the institution has a much larger investment in the vehicle, at the outset, than does the individual purchaser, who routinely makes only a minimum down payment.

Imprisonment of an offender, coupled with a forfeiture of the vehicle, leaves the bank or other institution with no hope whatsoever of recovering its investment.

Certainly none of the reputable lending institutions in this State intentionally deal with known criminals, or with those having criminal proclivities. And just as certainly, it occasionally happens that a few of the many-thousand customers of any institution will run afoul of the law. Confiscation of a financed vehicle can impose a heavy, monetary loss on the bank or other lender - but leave the offender himself almost untouched.

Since the police do not (and rightly so) give out information as to an individual's criminal record, the only practical way that a lending institution can cut down its over all risk of forfeiture is to limit its clientele to the somewhat more affluent members of society. This, I think, is not desirable from a sociological point of view.

A ready solution to the problem - if some form of vehicle seizure must be retained in the bill - is to amend Section 36C so that, as to vehicles, both the owner "or any other party otherwise entitled to possession" shall have the right to petition for its return.

In the event that there should be some objection to the foregoing proposal - on the theory that a lending institution could recover a vehicle and then return the same to an offender - the adverse effect on the institution might still be mitigated. A simple amendment requiring the State to sell the vehicle in a commercially reasonable manner and to pay off the lien would be enough. Obviously, any surplus would be retained by the State, and any deficiency would be absorbed by the institution. In effect, this would amount to a confiscation to the offender's equity in the vehicle - as opposed to the whole vehicle itself - which seems to meet the minimal standards of fairness, all things considered.

In closing, may I also suggest that your Committee weigh most carefully the proposed amendment of the present Section 36 - so as to remove every vestige of the right, in exceptional and extreme circumstances, to carry a handgun for purposes of self defense.

I disagree most emphatically with the gentleman who suggested the need for a ready means of self defense on every long-distance auto trip.

On the other hand, I have, in two instances, felt an absolute necessity to carry a firearm for my own protection: On one occasion, while serving process, at night, in a remote area of Anne Arundel county, against a person of extremely uncertain

temper and reputation - and the other, on the first morning of the 1968 riots, before the restoration of order, when compelled to drive to Penn Station to pick up my wife and infant children arriving on an early train.

To be completely honest - in identical circumstances - balancing the risks involved, and without regard to the mandate of the law - I would be very much tempted to make the same decisions.

May I ask you, again, to make this letter a part of the record before your Committee.

With much appreciation, I remain,

Yours very truly,

Sidney C. Miller, Jr.

SCM.Jr/lw

cc: Members of the Senate Committee on Judicial Proceedings
Chairman and Members of the House Committee on Judiciary
Honorable C. A. Porter Hopkins
Honorable Jervis S. Finney
Honorable Julian L. Lapides
Honorable Frederick C. Malkus

STATEMENT

OF

QUINN TAMM
EXECUTIVE DIRECTOR
INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE
ELEVEN FIRSTFIELD ROAD
GAITHERSBURG, MARYLAND 20760

I appreciate this opportunity to submit a statement regarding House Bill 365 and related matters on behalf of the police executives who constitute a major part of our 8,500 members.

The International Association of Chiefs of Police has since its founding in 1893 been vitally concerned with the easy accessibility of firearms to the criminal. Shortly after the turn of the century - in 1908 - IACP membership enacted a resolution calling for uniform laws governing the sale and use of dangerous and deadly weapons.

In 1922, a major resolution was adopted calling for more stringent regulations concerning the distribution of firearms and the licensing of sellers. It was recommended that individual owners be required to obtain permits.

In 1925, it was again observed that the carrying of small firearms by unauthorized persons constituted a menace to law-abiding citizens in their persons and property and the request was made for more restrictive licensing procedures.

In 1937, IACP membership commented on the need for further Federal legislation with respect to pistols and revolvers and observed at that time that most of the murders and other crimes of violence and voluntary homicide were committed with handguns. It called for appropriate legislation to arrest traffic in and transportation of pistols and revolvers.

In 1966, a resolution was adopted urging additional Federal legislation designed to promote more effective gun control. Although most of the provisions

of that resolution were included in the Omnibus Crime Control and Safe Streets Act of 1968, it has relevance to the deliberation of this Committee. For that reason I would like to read major portions of the resolution into the record.

"WHEREAS, there is in the United States a widespread traffic in firearms moving in or otherwise effecting interstate or foreign commerce, and the existing Federal controls over such traffic do not adequately enable the states to control the firearms traffic within their own borders through the exercise of their police power;

"AND RECOGNIZING, that the ease with which any person can acquire firearms (including criminals, juveniles without the knowledge or consent of their parents or guardians, narcotics addicts, mental defectives, armed groups who would supplant the functions of duly constituted public authorities, and others whose possession of firearms is similarly contrary to the public interest) is a significant factor in the prevalence of lawlessness and violent crime in the United States;

"That the possession and use of firearms by those engaged in crime and lawless activities aids in the carrying out of such activities and greatly magnifies the tragic and serious consequences thereof;

"That the acquisition on a mail order basis of firearms by nonlicensed individuals, from a place other than their state of residence, has materially tended to thwart the effectiveness of state laws and regulations, and local ordinances;

"That the sale or other disposition of concealable weapons by importers, manufacturers, and dealers holding Federal licenses, to nonresidents of the state in which the licensee's place of business is located, has tended to make ineffective the laws, regulations, and ordinances in the several states and local jurisdictions regarding such firearms;

"That the United States has become the dumping ground of the castoff surplus military weapons of other nations, and that such weapons, and the large volume of relatively inexpensive pistols and revolvers (largely worthless for sporting purposes), imported into the United States in recent years, have contributed greatly to lawlessness and to the Nation's law enforcement problems;

"That there is a causal relationship between the easy availability of firearms and juvenile and youthful criminal behavior, and that firearms have been widely sold by Federally licensed importers and dealers to emotionally immature, or thrill-bent juveniles and minors prone to criminal behavior. . . "

The provisions of the Omnibus Crime Control and Safe Streets Act of 1968 provided adequate controls over import and distribution and thus

reduced possession of low quality handguns of foreign manufacture. It, however, does not provide adequate controls over the distribution of such handguns of domestic origin.

It is obvious from the resolutions I have cited that the nation's police officers have always had a great concern for the availability to the criminal of firearms.

Originally, this concern was borne of police responsibility for preventing or investigating incidents in which firearms were illegally used.

More recently a new dimension has been added, for the police officer has himself been the frequent object of violence committed by the use of handguns.

On July 1, 1970, it had become obvious that assaults on police officers were becoming more frequent and that adequate data were not being collected on a structured basis regarding such assaults. Under a grant from the Law Enforcement Assistance Administration a Police Weapons Center was established within the IACP (I might parenthetically add that on April 30 of this year the grant from LEAA expired, application for its renewal was rejected and the IACP is now inadequately financing its continuation).

As a part of the activities of the Police Weapons Center, we began to collect and disseminate specific and detailed information concerning assaults on police officers and resultant injuries and fatalities.

It should be of interest to the Maryland House of Delegates that from July 1, 1970, through August 31, 1971, 119 American police officers were

killed and 2,126 were injured by criminal assaults, many of these in the State of Maryland. It is also relevant to your deliberation that 78 of the 119 police officers killed were murdered with a handgun and that the injuries sustained by 301 of the 2,126 officers were inflicted with a handgun.

The conclusion is inevitable. I am convinced that the ready accessibility of handguns constitutes a threat, both to the citizen and more specifically to the police.

# # # #

MILTON S. EISENHOWER

February 1, 1972

Dear Mr. Allen:

Now that I have retired from the Presidency of The Johns Hopkins University and can write you as a private citizen, I may comment on House Bill 365 which deals with the manufacture, sale, transfer and ownership of those handguns, commonly called "Saturday night specials," which have little if any sporting value but are responsible for a high percentage of the violent crimes committed in Maryland and other states.

The provisions of House Bill 365 are essentially in agreement with the recommendations made by the President's Commission on the Causes and Prevention of Violence. I served as Chairman of that Commission and submitted a final report to the President on December 10, 1969. The Commission's recommendations favored a Federal statute which would go into effect in all the states unless within a specified number of years the states enacted relevant legislation that met Federal standards.

Your bill would meet the Federal standards if the Congress enacted the legislation the Commission recommended.

I am tempted to write at length on this subject, but I would only be repeating what is clearly set forth in the enclosed official document. I subscribe to the reasoning and conclusions therein set forth.

Obviously, a good law in this area is commendable, but it will not be fully effective until all states take essential action, for states now with good laws (such as New York) find that their residents purchase handguns in other states which have failed to take action in this vital area.

Sincerely yours,

Milton S. Eisenhower

The Honorable Woodrow M. Allen
House of Delegates
Annapolis, Maryland 21404

NOTE: This statement is for use after the press conference of Dr. Milton S. Eisenhower, Chairman of the Commission, which is scheduled for 3:00 pm, EDT, Monday, July 28, in Room 2008, Federal Office Building No. 7, on 17th between Pennsylvania and H Streets. For further information, phone 395-3390.

COMMISSION STATEMENT ON FIREARMS & VIOLENCE

DR. MILTON S. EISENHOWER

CHAIRMAN

July 28, 1969

NATIONAL COMMISSION ON
THE CAUSES AND PREVENTION OF VIOLENCE

NATIONAL COMMISSION
ON THE CAUSES AND PREVENTION OF VIOLENCE

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SPECIAL ASST. TO THE CHAIRMAN

FIREARMS AND VIOLENCE

Whether guns cause violence, contribute to it, or are merely coincidental to it has long been debated. After extensive study we find that the availability of guns contributes substantially to violence in American society. Firearms, particularly handguns, facilitate the commission and increase the danger of the most violent crimes–assassination, murder, robbery and assault. The widespread availability of guns can also increase the level of violence associated with civil disorder. Firearms accidents, while they account for only a small percentage of all accidents, cause thousands of deaths and injuries each year.

This relationship between firearms and violence tends to obscure two other important facts bearing on the firearms question. First, the vast majority of gun owners do not misuse firearms. Millions of Americans are hunters, target shooters, and collectors, who use their guns safely and responsibly and who, perhaps more than many of their fellow citizens, deplore the criminal use of firearms. Second, in attending to the firearms problem, we must not forget that the root causes of American violence go much deeper than widespread gun ownership. Firearms generally facilitate, rather than cause, violence.

The challenge for this Commission–and for the nation as a whole–is to find ways to cope with illegitimate uses of guns without at the same time placing undue restrictions on legitimate uses. We believe this is possible if both the advocates and the opponents of gun control legislation will put aside their suspicions and preconceptions, accept the fact of a common danger without exaggerating its dimensions, and act for the common good.

1. THE DOMESTIC ARMS BUILDUP

WE FIND THAT THE UNITED STATES IS IN THE MIDST OF A PERIOD OF INCREASING FIREARMS OWNERSHIP.

Our Task Force on Firearms estimates that there are now about ninety million firearms in the United States. Half of the nation's sixty million households possess at least one gun, and the number of guns owned by private citizens is rising rapidly.

During the first half of this century, about ten million firearms on the average were added to the civilian firearms supply in each decade. In the decade since 1958, however, nearly thirty million guns have been added to the civilian stockpile. Moreover, the sharpest increases have occurred in the last five years–a period of urban riots and sharply rising crime rates. Annual rifle and shotgun sales have doubled since 1963. Annual handgun sales have quadrupled.

Some of the increased gun sales in recent years have resulted from an increase in hunting and sport shooting, a fact consistent with the rising amount of money being spent on leisure time activities. But these predictable increases in sales of sporting arms cannot explain the much larger increases in the sales of handguns. With a few scattered exceptions, handguns are not sporting guns.

A substantial part of the rapidly increasing gun sales, particularly handgun sales, must be attributed to the rising fear of violence that the United States has recently experienced. Studies by our Task Force on Firearms, as well as by the Stanford Research Institute and the Senate

Subcommittee on Juvenile Delinquency, show that gun sales in a particular area tend to increase sharply during and after a period of disorder. After the 1967 Detroit riot, for example, gun sales skyrocketed: Detroit issued four times as many handgun permits in 1968 as it did in 1965, and a nearby, predominantly white suburb issued five times as many permits.

Lending impetus to the arms buildup are the exhortations of extremist groups, both black and white. In their speeches and publications, leaders of these groups urge their members to buy firearms and be prepared to use them against "the enemy." Neighborhood protective associations have proliferated and have sometimes come to share the fears of the right-wing paramilitary groups, with the result that firearms are now being stockpiled in homes as well as "in the hills." A new wave of American vigilantism could result from these activities. Further, black extremist organizations urge their members to obtain firearms for neighborhood and home defense, and sometimes for guerrilla warfare and terrorist activities as well. Ironically, extremist groups, regardless of race, are remarkably alike in their attitudes toward firearms and their opposition to firearms control.[1]

Quite apart from civil disorders, the urban arms buildup has increased the role of firearms in accidents and violent crime. Our Task Force has found that in Detroit accidental firearms deaths were three times greater in 1968, the year after the riot, than in 1966, the year before the riot. Between 1965 and 1968, homicides in Detroit committed with firearms increased 400 percent while homicides committed with other weapons increased only 30 percent; firearms robberies increased twice as fast as robberies committed without firearms. (These rates of increase are much higher than for the nation as a whole.)

Other studies confirm our finding that the proportion of gun use in violence rises and falls with gun ownership. The urban arms buildup threatens not only to escalate future civil disorders, but also to bring with it greater misuse of firearms in crimes and accidents.

2. FIREARMS AND VIOLENT CRIME

WE FIND THAT FIREARMS, PARTICULARLY HANDGUNS, PLAY A MAJOR ROLE IN THE COMMISSION OF HOMICIDE, AGGRAVATED ASSAULT, AND ARMED ROBBERY, AND THAT THEY ARE BEING USED IN GREATER PERCENTAGES OF THESE VIOLENT CRIMES.

Many Americans are alarmed by the rise of violent crime in the United States, and not without reason. Personal injury and death from crime occur more often in the United States than in any other industrial nation of the world.

Firearms are a primary instrument of injury and death in American crime. Two out of every three homicides are committed with guns. Since 1963 the number of homicides involving firearms has increased 48 percent in the United States while the number of homicides committed with other weapons has risen only 10 percent.

The circumstances of most homicides suggest that a person without ready access to a gun would not inevitably kill with another weapon. Studies show that most persons who commit homicide are not relentless, determined killers, but rather are persons likely to act on impulse in a moment of rage or passion and without a plan or determined intent to kill. There is no hard evidence to prove or disprove the thesis that lacking a gun, an enraged person will resort to a knife or other weapon. But there is evidence demonstrating that the fatality rate of firearms attacks is more than four times greater than the fatality rate of knife attacks (knives being the

[1] This is not to imply that all persons who oppose additional controls are extremists.

next most frequent and lethal weapon used in homicides). Thus, even if the number of violent attacks did not go down, the number of fatalities resulting from violent attacks would be substantially reduced if the attackers did not have guns.

The deadliness of firearms is perhaps best illustrated by the fact that they are virtually the only weapons used in killing police officers. Policemen are armed. They are trained in the skills of self-defense. They expect trouble and are prepared for it. Yet, from 1960 through 1967, 411 police officers were killed in the course of their official duties—76 of them in 1967 alone. Guns were used in 96 percent of these fatal attacks on police.

In assassinations, guns play a crucial role because they extend the deadliness and the effectiveness of the assassin. Of the nine assassination attempts on American presidents or presidential candidates, all involved firearms. All, except the assassination of President Kennedy, involved handguns.

Guns also play an increasingly deadly role in aggravated assault and robbery. In 1968, 23 percent of all aggravated assaults were committed with guns, as opposed to only 13 percent in 1963. One out of every three robberies (two out of every three armed robberies) is committed with a gun, and the fatality rate for victims of firearms robberies is almost four times as great as for victims of other armed robberies.

In all these violent crimes, handguns are the weapon predominantly used. Although only slightly more than one-fourth (or 24 million) of the firearms in the nation are handguns, they account for about half of all homicides and three-fourths of all firearms homicides. When firearms are involved in aggravated assaults and robberies in large cities, the handgun is almost invariably the weapon used.

3. FIREARMS AND SELF-DEFENSE

WE FIND THAT FIREARMS IN THE HOME ARE PROBABLY OF LESS VALUE THAN COMMONLY THOUGHT IN DEFENDING THE HOUSEHOLDER'S LIFE AGAINST INTRUDERS, BUT THAT FIREARMS IN BUSINESS ESTABLISHMENTS MAY SOMETIMES BE EFFECTIVE IN DEFENDING AGAINST ROBBERIES.

It may seem incongruous that in our advanced and civilized society individual citizens should feel the need to keep a gun for self-protection. Yet a 1966 public opinion survey, conducted for the President's Commission on Law Enforcement and the Administration of Justice, disclosed that more than 22 million households (37 percent of the total and 66 percent of the households with guns) included self-defense as one reason, among others, for owning a firearm. Since many owners keep their guns in the home for protection against intruders, it is important to assess, to the extent possible, the nature of the threat from intruders and the chances of gun owners to defend themselves successfully with their weapons.

What is the nature of the threat in the home? The number of killings in the home by burglars and robbers[2] is not large relative to the total number of homicides. Burglars usually try to avoid contact with the homeowner: they rely on stealth and are more likely to flee than fight when discovered. The robber poses a much greater threat to the personal safety of the occupant of the house, but robberies occur in the home far less often than in other places.[3] Because of these

[2]Robbery involves taking property by force; burglary involves illegal entry without force against the person.

[3]The 17-city victim-offender survey conducted by our Task Force on Individual Acts of Violence shows an average of 6 percent of armed robberies occurring in the home.

factors, studies in several cities indicate that killings in the home by robbers and burglars account for no more than 2 percent or 3 percent of all criminal homicides.[4]

What are the householder's chances of successfully defending himself with a gun? In only a relatively small number of instances do home robberies or burglaries result in the death of the victim. Examination shows that in the great majority of the cases, the householder had no warning and thus no chance to arm himself with a gun. Studies in Los Angeles and Detroit indicate that only about two percent of home robberies, and two-tenths of one percent of home burglaries, result in the firearms death or injury of the intruder at the hands of the householder.[5] Moreover, in considering the value of handguns, or firearms generally, for self-defense in the home, one must also take into account the risks associated with home possession of a gun. A substantial number of the 23,000 annual firearms accidents occur in the home. Of the 8,000 annual firearms homicides, a large percentage occur among family members or acquaintances, and many of these also occur in the home.

From the standpoint of the individual householder, then, the self-defense firearm appears to be a dangerous investment. The existence of guns in one-half of America's homes may deter intruders. One may assume a robber is reluctant to ply his trade in homes rather than on the street because of the possibility that he may encounter an alert, armed householder. Our Task Force made an effort to study the extent of this deterrence, but was unable to arrive at any firm conclusion. The evidence is convincing, however, that the home robber most often has the advantage of surprise, and the armed segment of our population is paying a heavy price in accidents and in the shooting of family members, friends and acquaintances for whatever deterrent effect their possession of self-defense firearms may be providing. In a more rational world, home intrusion would be deterred by other means—such as non-lethal weapons, alarm systems, and other security arrangements—that are less dangerous to the occupants of the home.

Burglars and robbers also threaten businesses, and firearms are frequently kept in places of business for protection. Such firearms are useful primarily against robbers, since burglars usually break and enter after the business has closed. Research to date does not permit us to draw firm conclusions as to the net usefulness of self-defense firearms possessed by storeowners and other businessmen. We do know, however, that business self-defense firearms do **not** cause the great number of accidents caused by home firearms or involve the same risk of homicide to family members and friends. Thus, the home and the business establishment must be clearly distinguished from each other when considering the usefulness of firearms for self-defense.

4. FIREARMS CONTROL IN THE UNITED STATES

A NATIONAL FIREARMS POLICY WHICH SIGNIFICANTLY REDUCES THE AVAILABILITY OF HANDGUNS WILL REDUCE THE AMOUNT OF FIREARMS VIOLENCE

The United States still does not have an effective national firearms policy. Federal gun laws have been passed largely in response to sensational episodes of gun violence. In general the

[4]Home intrusions resulting in sexual attacks are also a threat, but they occur much less frequently than commonly believed. Our victim-offender survey suggests that substantially less than one fourth of the 27,000 rapes or rape attempts reported in the United States each year are committed by intruding strangers in the home. Since about 20,000 robberies (armed and unarmed) and 800,000 burglaries occur annually in the home, not more than three-quarters of one percent of home intrusions result in an attempted rape.

[5]No data are available on how frequently robberies and burglaries are foiled by the householder's display of a gun that is not fired. Nor are data available on use of guns by women to prevent attempted rapes; presumably this occurs extremely infrequently.

approach of these laws has been to use federal power merely to curtail interstate movements of firearms, leaving each of the states free to adopt the degree and kind of internal control it wished. Moreover, even this limited policy objective was not effectively implemented. It was perfectly legal, until the passage of the Gun Control Act of 1968, to sell or ship weapons from a state which had little or no firearms control to persons in a state with a stricter system. Since attempts to establish uniform state and local firearms laws never succeeded, the few serious efforts at state and local regulation (as in Massachusetts and New York) have been consistently frustrated by the flow of firearms from jurisdictions with looser or no controls.

Under this patchwork statutory regime, our firearms population has grown to the point where guns are readily available to everyone—legally in most cases, illegally in the rest. The Gun Control Act of 1968 does curtail imports of cheap foreign firearms; it significantly restricts mail order and interstate gun shipments to individuals; and it forbids the possession of handguns by convicted felons and other dangerous classes. But the 1968 Act is not designed to affect either the overall size of the tremendous United States gun population which is the legacy of past firearms policies, or the hand-to-hand or "street" sales of second-hand guns. Yet such sales appear to be the major source of the firearms used in crime. We have learned that almost half of all rifles and shotguns and more than half of all handguns are acquired second-hand—usually from a friend or other private party.

Our lack of an effective national firearms policy is primarily the result of our culture's casual attitude toward firearms and its heritage of the armed, self-reliant citizen. These are the factors that have prevented passage of effective gun regulation legislation in the United States. Guns are routinely carried in pockets and left in closets, corners, and bureau drawers. In many parts of the country, they are standard equipment in pickup trucks and small businesses. Nearly 15 million licensed hunters make extensive use of firearms for sporting purposes. The hero of American movies and television is the man with a gun—the soldier, cowboy, spy, sheriff, or criminal—and our children accumulate an arsenal of toy guns. Accustomed to firearms, convinced that they are household necessities, entertained by fiction and drama that portray the gun as a glamorous instrument of personal justice, many Americans underestimate the consequences of widespread firearms availability.

Despite the acceptance of guns as a common part of everyday American life, there is also a growing realization in the United States of the social costs of ineffective gun control. On the one hand, firearms manufacturers are on record favoring the requirement of an identification card for firearms owners and denying gun ownership to felons and mental and physical incompetents. On the other hand, advocates of strict gun control are increasingly inclined to acknowledge the legitimate use of guns by sportsmen. Both the President's Commission on Law Enforcement and the Administration of Justice in 1967 and the National Advisory Commission on Civil Disorders in 1968 recommended that the federal government and the states should act to strengthen the presently inadequate firearms control laws.

In determining what our national firearms policy should be, it is necessary to keep clearly in mind that just as the term "firearms" includes different kinds of weapons which contribute unequally to violence, so also does the phrase "gun control" comprise a number of quite separate ideas. Four different strategies of gun control can be identified, though in legislative measures the strategies are often found in various combinations.

1. **Registration of firearms.** Registration is designed to provide a record of all persons who own firearms as well as the firearms they own. Proponents point out that registration would help police trace weapons and thus deter a registered owner from criminal use or illegal transfer of his firearm. Opponents of registration reply that criminals will not register firearms and that the registration process is costly.

2. **Prohibition of gun ownership by certain classes of persons (felons, addicts, etc.).** This type of control is put forward as making it more difficult for poor gun risks to obtain firearms from legitimate sources. Licensing and investigation of applicants are often utilized as part of this strategy. Opponents argue that the prohibited class can still obtain guns by theft or in the hand-to-hand market, while legitimate users are caused added inconvenience.

3. **Increased criminal penalties for the use of guns in crime.** Increased penalties are urged as a means to deter criminals from using firearms. Opponents point out that existing penalties for violent crime are already severe and that an extra measure of punishment will have little additional deterrent effect.

4. **Restrictive licensing.** This method requires all persons seeking to buy a particular type of firearm, typically a handgun, to demonstrate to the authorities an affirmative need to own the firearm. Its proponents urge that alone among the four control strategies, restrictive licensing is designed to reduce substantially the number of handguns in circulation. Its opponents note that restrictive licensing systems require the surrender of many previously lawful firearms, and amount to "confiscation."

Can any of these systems of firearms control be expected to reduce firearms violence? Some argue that with 90 million firearms in our country, no system of control will prevent persons from obtaining guns and using them illegally. The criminal, they declare, can always get a gun. The argument is not without merit, for it points the way to the steps which must be taken.

Our studies have convinced us that the heart of any effective national firearms policy for the United States must be to reduce the availability of the firearm that contributes the most to violence. **This means restrictive licensing of the handgun.** We believe, on the basis of all the evidence before us, that reducing the availability of the handgun **will** reduce firearms violence.

Although no other nation in history has ever attempted to institute firearms control with so many guns already dispersed throughout all segments of the population, foreign crime statistics provide some encouraging insights into the possible results of stricter control of the handgun in the United States. Thus in England and Wales, with restrictive licensing systems and with much lower rates of violent crime than the United States, only 18 percent of homicides in 1967 were committed with firearms weapons compared to 64 percent in the United States. Only six percent of all robberies in England and Wales in 1967 involved guns, as compared to 36 percent in the United States. These lower rates of homicides and armed robberies and more importantly of firearms usage in such crimes suggest that a system which makes it substantially more difficult to obtain firearms can reduce the use of firearms in violent behavior and consequently can reduce both the frequency and the dangerousness of such behavior. In England and Wales the criminal cannot—or at least does not—always get a gun, and the public safety is much improved as a result.[6]

5. RECOMMENDATIONS FOR A NATIONAL FIREARMS POLICY

The Commission offers the following recommendations to reduce the role which firearms play in violence in the United States.

[6]Comparison of firearms crimes in cities within the United States, although complicated by the problem of "leakage" across state lines, also shows that rates of firearm use in violence are lowest in the Northeast where firearms possession rates are the lowest.

Public Education

- We urge a public education campaign, aided by the National Rifle Association and other private organizations devoted to hunting and sport shooting, to stress the duties and responsibilities of firearms ownership so that a new awareness of the proper role of firearms in American life can prevail in the more than 30 million homes which possess firearms. In particular, we urge the nation's gun manufacturers to issue safety booklets with each gun that they sell and to administer safety tests by mail to purchasers based upon these booklets.

- We urge individual citizens—particularly on the basis of the statistics on firearms accidents—to reflect carefully before deciding that loaded firearms are necessary or desirable for self-defense in their homes.

Research

- We urge that further research be undertaken on the relationships between firearms and violence and on the measures that can reduce firearms violence. Further work should especially be done on how firearms accidents occur and can be prevented and on the psychological impact of guns on criminals.

- Further research is also needed as part of the effort to design firearm control systems that are no more restrictive than necessary and which minimize costs to firearms users and to the community as a whole.

- Scientific research should be intensified on devices to assist law enforcement personnel in detecting the presence of concealed firearms on the person.

- The Federal Government should join with private industry to speed the development of an effective non-lethal weapon. We consider this recommendation to be of the utmost importance. So long as crime rates mount in this nation and civil disorders threaten, law-abiding Americans understandably fear for their safety. An effective non-lethal weapon could serve defensive needs without risk to human life.

Legislation

We conclude that the rising tide of firearms violence in this country merits further legislative action at the present time.

It is the ready availability of the handgun, so often a weapon of crime and so infrequently a sporting arm, that is the most serious part of the current firearms problem in this country. The time has come to bring the handgun under reasonable control.

A restrictive licensing system for handguns is needed. State governments should be given the first opportunity to establish such systems in conformity with minimum federal standards that afford considerable discretion to each state to adopt a system suitable to its own needs. Accordingly—

- We recommend federal legislation to encourage the establishment of state licensing systems for handguns. The federal legislation would introduce a federal system of handgun licensing, applicable only to those states which within a four-year period fail to enact a state law that (1) establishes a standard for determining an individual's need for a handgun and for the licensing of an individual who shows such a need and (2) prohibits all others from possessing handguns or buying handgun ammunition.

We propose that the states be permitted to determine for themselves what constitutes "need" to own a handgun. For the federal system applicable to states which fail to enact their own

licensing systems, we recommend that determinations of need be limited to police officers and security guards, small businesses in high crime areas, and others with a special need for self-protection. At least in major metropolitan areas, the federal system should **not** consider normal household self-protection a sufficient showing of need to have a handgun.

We also recommend that a system of federal administrative or judicial review be established to assure that each state system is administered fairly and does not discriminate on the basis of race, religion, national origin, or other unconstitutional grounds.

We note that it will be necessary to compensate those handgun owners who are required to give up previously lawful firearms; this cost, which should be borne by the federal government, could amount to $500 million.

Finally, we emphasize that laws controlling handguns should provide serious penalties for the possession of such guns by unlicensed persons. The apprehension of such persons should in time greatly reduce the rate of violent crime in the United States.

Shotguns and rifles are far less of a threat than handguns, particularly in the area of violent crime. At the same time, legitimate use of the long gun is widespread. The significant differences between handguns and long guns call for substantially different control strategies. We can make substantial inroads on firearms violence without imposing major inconveniences on hunters and skeet and trap shooters, and without impeding other legitimate activities of millions of long gun owners. Accordingly—

- We recommend federal legislation to establish minimum standards for state regulation of long guns under which (1) an identification card would be required for long gun owners and purchasers of long gun ammunition (a system similar to that recommended by gun manufacturers) and (2) any person 18 and over would be entitled to such a card, except certain classes of criminals and adjudicated incompetents. For states which do not adopt such regulations within four years, a federal regulatory system would be established.

- We do **not** recommend federal legislation to require nationwide registration of existing long guns. Substantially the same benefits could be obtained from less costly and burdensome control strategies.

- We do recommend that persons who **transfer** long guns be required to fill out a single card giving the serial number, type, make, and model of the weapon, the transferee's social security and firearms identification card numbers, the transferor's name and social security number, and the date of the transaction.

Supplementary Measures

Restrictive licensing of handguns and the simple identification card system for long guns represent the key legislative recommendations of this Commission in the area of gun control. There are, however, a number of other important goals which uniform and effective gun control legislation should accomplish. We urge the nation's lawmakers to consider them.

First, the Gun Control Act of 1968, which is intended to curtail the import of firearms unsuitable for sporting use, should be extended to prohibit domestic production and sale of "junk guns." Second, a federal firearms information center should be established to accumulate and store information on firearms and owners received from state agencies; this information would be available to state and federal law enforcement agencies. Third, licensed gun dealers should be required by federal statute to adopt and maintain security procedures to minimize theft of firearms.

6. CONCLUSION

An effective national firearms policy would help to reduce gun violence in the United States. It would also have a significance beyond the question of firearms. In comparison with most of the causes of violence in America, the firearms problem is concrete and manageable. But it is also complex and emotion-laden. For the United States to move effectively toward its solution would signify a new ability to transcend our violent past.

SEPARATE STATEMENT

Four members of the Commission (Senator Roman L. Hruska, Judge Ernest W. McFarland, Congressman Hale Boggs, and Leon Jaworski) state that there is a great deal with which they agree in the report on "Firearms and Violence." They feel, however, that the needs are not the same in the various States, or, for that matter, in all parts of a State. It is their opinion that each State should be permitted to determine for itself without additional restrictions from the Federal Government the system which best meets its needs to control the use of both the handguns and the long guns. They are unable, therefore, to concur fully in the report of the Commission.

9 members approved the report
4 members made the foregoing
separate statement

STATISTICAL APPENDIX

1. **Total number of firearms** in civilian hands (U.S., 1968):

RIFLES:	35 million.
SHOTGUNS:	31 million.
HANDGUNS:	24 million.
TOTAL:	90 million.

2. **Annual increase** in number of firearms in civilian hands (U.S., 1962 vs. 1968):

RIFLES:	1962, 0.7 million	1968, 1.4 million.
SHOTGUNS:	1962, 0.7 million	1968, 1.4 million.
HANDGUNS:	1962, 0.6 million	1968, 2.5 million.
TOTAL:	1962, 2.1 million	1968, 5.3 million.

3. **Mode of acquisition** of firearms (U.S., 1968):

RIFLES:	New, 56%	Used, 44%.
SHOTGUNS:	New, 54%	Used, 46%.
HANDGUNS:	New, 46%	Used, 54%.

Note: More than 50% of all acquisitions of used firearms are from private parties, rather than from stores.

4. **Accidental deaths** of civilians from firearms and other causes (U.S., 1967):

MOTOR VEHICLES:	53,100
FALLS:	19,800
FIRES:	7,700
DROWNING:	6,800
FIREARMS:	2,800
POISONS:	2,400
MACHINERY:	2,100

5. **Total number of major violent offenses** (U.S., 1964 vs. 1967):

HOMICIDES:	1964, 9,250	1967, 12,100.
AGGRAVATED ASSAULTS:	1964, 200,000	1967, 253,300.
ROBBERIES:	1964, 129,830	1967, 202,050.

6. **Criminal uses** of firearms (U.S., 1964 vs. 1967):

HOMICIDES:	1964, 55% with firearms	1967, 63% with firearms.
AGGRAVATED ASSAULTS:	1964, 15% with firearms	1967, 21% with firearms.
ROBBERIES:	1964, not available	1967, 37% with firearms.

7. **Deadliness** of firearms attacks vs. knife attacks (U.S., 1967):

Percentage of firearms attacks resulting in death:	12.8.
Percentage of knife attacks resulting in death:	2.9.

(Firearms attacks are thus 4.4 times as deadly as knife attacks.)

8. Type of **gun** used in crimes committed with firearms (large U.S. cities, 1967):

HOMICIDE:	Long guns, 8%	Handguns, 92%.
AGGRAVATED ASSAULT:	Long guns, 14%	Handguns, 86%.
ROBBERY:	Long guns, 4%	Handguns, 96%.

Note: Handguns were used in 76% of gun homicides throughout the United States in 1967.

Source: Task Force Report, Firearms and Violence in American Life (National Commission on the Causes and Prevention of Violence. July, 1969).

STATEMENT OF

WOODROW M. ALLEN

In support of H.B. 365

February 3, 1972

Mr. Chairman and Members of the Committee:

I am pleased to have the opportunity to appear before you to offer testimony in support of H.B. 365.

Let me first take just a moment to explain the major provisions of the bill.

House Bill 365 would prohibit the sale and possession of handguns and handgun ammunition in the State of Maryland. However, citizens would be allowed to use handguns for target shooting or other sporting or recreational purposes at state-licensed pistol clubs which could provide facilities to keep the handguns secure.

A hearing and appeal procedure is provided for any party whose application for a pistol club license is denied or whose license is revoked.

If enacted into law, Maryland citizens will have until January 1, 1973, to deliver any handguns they own or possess to a state or local law enforcement agency, for which they will be reimbursed at fair market value up to a maximum of $25.00 for each handgun. After that date, persons in violation of the law would be fined not more than $5,000.00, or imprisoned not more than five years, or both, and handguns and handgun ammunition would be subject to forfeiture.

Of course, federal, state, and local departments and agencies, state-licensed professional security guard and private detective services, and handguns manufactured before 1890, or determined to be unserviceable or intended for use as a curio or collector's item, all would be exempted from the provisions of the law.

It hardly seems necessary to recite the need for this legislation. The daily tragedy caused by our state's continued tolerance of handguns reads like a litany of lunacy:

-- "Two of every three murders in the United States are committed with guns, while three of every four murders in the Southern region of the United States, including Maryland, are committed with guns -- primarily handguns.

-- Last year, 119 American police officers were killed and 2,126 were injured, many of these in the State of Maryland; 78 of the 119 police officers killed -- or two of every three -- were murdered with a handgun.

-- Guns, most often handguns, were used in seven of every ten of the 24,512 violent crimes committed in Maryland in 1970.

-- Nearly two of every three Maryland robberies in 1970 were committed with guns.

As Senator Kennedy points out in his letter in support of H.B. 365: "Gun accidents are also a needless cause of tragedy. It is particularly astounding that 40 percent of the fatalities from the annual toll of 3,000 gun accidents are children between the ages of one and 19. The list of statistics, anecdotes, and personal tragedies related to the misuse of guns is endless."

Each time a living creature is killed or maimed by a handgun, it's almost always a human being. And for this State, which at one time offered hope and freedom from fear and terror, to now allow instead the fraudulent freedom of incivility, violence, and "man's inhumanity

to man" is indeed ironic. And it's just not acceptable.

But there are those who contend that government doesn't have the right to prohibit the ownership of handguns or any guns, that it's their"right to keep and bear arms" as provided in the second amendment to the Constitution. But that's just not the case. The Supreme Court has ruled that gun control laws are not unconstitutional unless they impair the effectiness of the militia. The Court, in 1939, determined that the Second Amendment's purpose was "to assure the continuation and render possible the effectiveness of the Militia. It must be interpreted and applied with that end in mind." We now have the armed forces and the National Guard, and Militia and vigilante groups no longer are required.

There are other citizens, and politicians, and lobby groups who claim "Guns do not kill people, people kill people," or "If a person really wants to kill someone, he'll find a way."

While there's no doubt that people do in fact kill people, handguns make the task much easier, and maybe even more tempting. And I think the government has the responsibility to make killing more difficult, not easier. According to the National Commission on the Causes and Prevention of Violence:

> "The circumstances of most homicides suggest that a person without ready access to a gun would not inevitably kill with another weapon. Studies show that most persons who commit homicide are not relentless, determined killers, but rather are persons likely to act on impulse in a moment of rage or passion and without a plan or determined intent to kill. There is no hard evidence to prove or disprove the thesis that lacking a gun, an enraged person will resort to a knife or other weapon. But there is evidence demonstrating that the fatality rate of firearms attacks is more than four times greater than the fatality rate of knife attacks (knives being the next most frequent and lethal weapon used in homicides). Thus, even if the number of violent attacks did not go down, the number of fatalities resulting from violent attacks would be substantially reduced if the attackers did not have guns."

Handguns make it easy to approach a victim without alarming him, and they allow deadly attacks to be made by physically or psychologically weak persons who otherwise would be unable to overpower their victims. Handguns can be used from a distance, and they're so quick that they don't require any thought until the victim is dead.

Long guns, on the other hand, just aren't that effective. They're heavy, expensive, not easily concealable, and they can't be whipped out of a coat pocket. What is more, they aren't designed primarily to be used on human beings, and most long gun killings and woundings are accidental.

Probably the most massive of the many myths manufactured by the gun lobby and the extremists at both ends is that which holds handguns to be necessary tools of home protection. The Violence Commission studies show that "only about two per cent of home robberies, and two-tenths of one per cent of home burglaries, result in the firearms death or injury of the intruder at the hands of the householder."

> "Conceivably, a householder might have time to arm himself if bandits take minutes to force their way in. But even in that unlikely circumstance, would not the householder be as well off with a shotgun in his hands as a pistol?"

Measured against that meaningless "home protection" benefit must be the risks that go with keeping a gun at home. A substantial number of the 23,000 annual firearms accidents, including 3,000 fatalities, occur in the home. Nearly 8 of 10 of the 8,000 annual gun murders occur among family members, friends, and relatives, most of them in the home. I'd prefer more fights and fewer funerals. The Violence Commission states:

> "From the standpoint of the individual householder, then, the self-defense firearm appears to be a dangerous investment. The existence of guns in one-half on America's homes may deter intruders. One may assume a robber is reluctant to ply his trade in homes rather than on the street because of the possibility that he may encounter an alert, armed householder. Our Task Force made an effort to study the extent of this deterrence, but was unable to arrive at any firm conclusion. <u>The evidence is convincing, however, that the home robber most often has the advantage of surprise, and the armed segment of our population is paying a heavy price in accidents and in the shooting of family</u>

members, friends and acquaintances for whatever deterrent effect their possession of self-defense firearms may be providing. In a more rational world, home intrusion would be deterred by other means--such as non-lethal weapons, alarm systems, and other security arrangements--that are less dangerous to the occupants of the home.

But instead, "More and more people are buying guns to protect themselves from more and more people who are buying guns."

Many opponents to H. B. 365 contend that only honest citizens will turn in their guns, but the criminals wont. But the fact of the matter is that the street criminal is almost always young and impulsive, and if he has a gun, he somehow got it from a "law-abiding citizen." It is the "honest" citizens who provide the reservoir of handguns that keeps criminals armed. The only way to keep guns out of the hands of criminals is to cut off the supply. That's just what H.B. 365 would start to do.

And the experiences of other nations that have pursued this course offer encouragement.

> "In the first six months of 1971, there were 54 homicides in London, a city which has outlawed the private ownership of handguns; during the same time there were 652 -- or 12 times as many homicides -- in New York City."
>
> "There were 213 murders in Tokyo, the world's largest city and one which bans handguns, during 1970, and only three were committed with handguns; during the same year there were 538 handgun murders in New York City."

The Violence Commission concludes "that a system which makes it substantially more difficult to obtain firearms can reduce the use of firearms in violent behavior and consequently can reduce both the

frequency and the dangerousness of such behavior. In England and Wales the criminal cannot--or at least does not--always get a gun, and the public safety is much improved as a result."

In conclusion I want to say that all the facts and figures of the F. B. I. and the Commission on Violence really don't tell the full story. When we talk about handgun violence in this state, we are talking about people -- individual human beings, and not statistics or numbers. We are talking about endless personal human tragedies, most made possible by our government's inexcusable tolerance, and even encouragement, of a violent handgun mentality.

Let me say I have talked with many of our colleagues in the House who have told me they think H. B. 365 is a good bill, that it offers the only effective way of finally controlling handguns and their violence, and they even admit my bill will be law -- sometime. But they feel it's just too strong to support at this time. I understand this concern, but I also want this Committee to understand the tragic price our citizens will have to pay for our political pause. All past evidence indicates that if we fail to act boldly now, thousands of more Maryland Citizens will be gunned down until the time we finally do what humanity and reason tell us we should do today.

Thank you for your consideration.

STATEMENT OF JAMES L. DUNBAR IN BEHALF
OF FEDERAL ARMORED EXPRESS, INC.,
DUNBAR ARMORED EXPRESS AND LOUGHLIN SECURITY AGENCY
CONCERNING THE PROPOSED GUN CONTROL BILL
LEGISLATION - HOUSE BILL NO. 277
AND SENATE BILL NO. 205
FEBRUARY 3, 1972

My name is James Loughlin Dunbar and I live at 58 J Timonium Road in Timonium, Maryland. I am the President and Treasurer of Federal Armored Express, Inc., Dunbar Armored Express, Inc. and Loughlin Security Agency. All of these companies are Maryland corporations which operate in the State of Maryland and all have their headquarters at 910 South Grundy Street, Baltimore, Maryland. Federal Armored Express, Inc., which was founded in 1956, provides armored car services in Baltimore City and Baltimore, Anne Arundel, Howard, and Prince Georges Counties. Dunbar Armored Express, Inc. has its operational base in Riverdale, Maryland, and it provides armored car services in the District of Columbia and the adjacent Maryland and Virginia counties. The Loughlin Security Agency provides uniformed security guards for businesses and institutions in Baltimore City and the Metropolitan Baltimore Counties.

We are very much in favor of the proposed Gun Control Legislation contained in House Bill No. 277 and Senate Bill No. 205. We believe that this legislation, if passed, will improve the security and the safety of the services that we perform.

We do, however, request that a change be made in the section dealing with fees for permits, that is, Section 26E, subsection b, of Section 2 of the proposed bill. Almost all of the employees employed by these three companies carry weapons in the normal course of their employment and accordingly, must have the appropriate permits. From a practical point of view, our company

would be required to pay the application fees for new permits or renewal permits for our employees. During the year 1971, these three companies employed approximately 248 full-time and part-time employees who carried weapons. During 1970, we experienced a turnover in the three companies of approximately 70 - 80 employees. Because we have a need to employ many part-time employees, we find that we have a considerable turnover rate from year to year. Many of our part-time employees are only employed by us for short periods of time during periods of peak activity. It is, of course, necessary to obtain a permit for part-time employees as well as full-time employees. We believe that the $25.00 permit fee required under House Bill No. 277 and Senate Bill No. 205 would cost our companies approximately $6200.00 in the first year after the enactment of the legislation. Because the bills require the renewal of permits every two years, we would have to estimate that approximately one-half of our working force would have to have renewal permits each year. Because of this, and because of our relatively high turnover rate and dependency upon part-time employees, we believe that each year we would require a total of approximately 200 new and renewal permits. This means that our cost on a year-to-year basis would be approximately $5,000.00.

The amendment that we propose and that we have submitted to members of this committee would require each of our companies to pay the full amount of the fee required by the Superintendent of the Maryland State Police for the first ten permits applied for each year by each company. All subsequent applications for permits submitted in the same year would require a fee not to exceed $10.00. While our proposed amendment would substantially

reduce our cost in obtaining permits for our employees, it would still provide a very substantial amount of revenue for the state. Under our proposed amendment, our three companies would pay to the state in permit fees approximately $2900.00 to $3,000.00. In subsequent years, our companies would pay approximately $2500.00 per year in permit fees for new permits and renewal permits.

We believe that the fees that this company would submit to the state on an annual basis would be more than adequate to cover the cost of administration of the permits issued to employees of our companies. It would be easier for the state to process the applications concerning our employees and to administer the permits issued to our employees because of the common source of the applications. Our companies would continue to fingerprint, photograph, interview and make background checks of all prospective employees. This information could be furnished to the state at no cost.

Our employees who work for Dunbar Armored Express must be qualified to carry weapons in both the District of Columbia and the State of Maryland. It is interesting to note that the present fee that must be remitted to the District of Columbia to obtain a permit is only $3.00 per employee. We have recently opened a small office for Federal Armored Express and the Loughlin Security Agency in Connecticut. In Connecticut it only costs $2.00 per employee to obtain a permit. While we do not ask that the fees be reduced to a level as low as those fees charged in the District of Columbia and the State of Connecticut, we do ask you to consider the lowness of those fees when considering our

proposed amendment.

There are also certain significant factors which exist in the operation of our businesses which add to the safety and control over the handling of weapons which do not exist with the average individual permit holder. In addition to the checks that are made by the Superintendent of the Maryland State Police prior to issuing a permit, all of our applicants for employment are thoroughly checked by us and are also checked by our bonding company as all of these employees must be bonded. Another very important distinction is the fact that the weapons used by our employees are owned by our companies. A weapon is only checked out to an employee while he is on duty and is turned back over to the company at the end of every day. In our situation, if an individual permit is revoked or if it is not renewed or if the employee leaves our employment, he does not have the weapon -- we do. In the situation of an individual permit holder the fact that his permit has been revoked or has not been renewed has no bearing on his continued ability to possess and use the weapon. For this reason, we believe that the supervision over weapons in our situation is much more effective than it is over weapons that are owned and used by individual permit holders. Additionally, we have a pistol range where we instruct our employees on the proper use of the weapons that are furnished them.

For the reasons that I have just outlined, it is respectively requested that our proposed amendment be considered and adopted.

James L. Dunbar
February 3, 1972

HB 277

2-3-72 Hearing

Sponsor - Jack Eldridge

Proposed amendments were designed to be in line with Senate
by to a point in time - that Senate state cty
No objection to amendment to exclude party moving -

Benjamin Col. [illegible] (Dep't of Public Safety & Corrections)
here to support crime control, not gun control -

Pro - Donald E. Pomerleau
unanimously approved by executive board of Ass'n of Chiefs
of Police - has not come before entire membership -
Not properly called "crime control" legislation
Opposed to confiscation or registration

Pro - Milton Allen (State's Atty Balto. City)
Not always in favor
Worried about exact language
line [illegible] 21-22, page 7
"has warrant for police on safety & public safety
of others"
after [illegible] -
Think unconstitutional as now written.

Pro - Col. Thomas Smith (Md. State Police)
Not simply a Balto. City

Pro - Arthur Marshall (State's Atty - P.G. County)
Generally favors [illegible]
a critical situation
[illegible] should [illegible]
[illegible]

HB277 (Cont'd)

Arthur Marshall (Cont'd)

Results stop & frisk should be included because of inclusion of § 594 (b)

Pro - Frank Conaway

Pro - Rev. Gray

Pro - James L. Dunbar (Fed. Armored Express, Inc., etc.)
Wants amendment to reduce permit fees

~~Pro - Stephen Pertunak~~

Pro - Al Leonard

Pro - Wm Weems (Speaking for Youth Group - Member of Gov. [illegible] Public Advisory Commission)
Wants written report of all stop-and-frisk
Wants permit costs lowered to $10 -
Wants age lowered to 18 for permit.
Feels may reduce drug abuse -

~~Pro - Margit Carlson (Arbitrant ... of [illegible])~~

Pro - Father Pisera (Albany & P.G. Cty.)
Wants written report of stop & frisk -

HB277 (Cont'd)

Arthur Marshall (Cont'd)

Results stop & frisk should be included because of inclusion of § 594 (b)

Pro-Frank Conaway

Pro-Rev. Gay

Pro-James L. Dunbar (Fed. Armored Express, Inc., etc.)
Wants amendment to reduce permit fees

~~Pro-Stephen [illegible]~~

Pro-Al Leonard

Pro-Wm Owens (Speaking for [illegible] - Member of Gov. [illegible] [illegible] Advisory Commission)
Wants written report of all stop-and-frisk
Wants permit costs lowered to $10.-
Wants age lowered to 18 for permit.
Feels may reduce drag [illegible] —

Pro-[illegible] Carlson ([illegible])

Pro-Father Pison (Mtgy & P.G. Cty)
Wants written report of stop & frisk —

Opponents

Mr. Robert Esler (NRA)

Opposes 365 & 375
Wants amendments to 277

Re 375
See §445(c) of Article 27 —
limits on possession — he thinks is very strong, but unenforceable —

Re HB 277 —
Says there is much good in bill — as well as bad —
Take emergency label off — will reduce pressure —
Wants judicial review of present process

Left between 4 & 6 p.m.

Balto. Game & Fish Ass. —

Benjamin Connor (Allegany City Police Dep't — individual)
Candidates police alone - [illegible] - stopping women etc

Mr. ~~[illegible]~~ Chambers

Mr. Harper (St. Charles Sportsman Club)
404 favor
258 [illegible] wrong
277
375 } would be against
365

Opponents (Cont'd)

Dr. Albert Strawinski
Flatly opposed to 365

Mr. Edwin Rockefeller

Suggests new definition for handgun - refers to "firearm" under US Code -

Mrs Cunningham
Opposes HB 277 - favors Esler amendments -
Opposes HB 365 - Can't save him from himself -
Says HB 375 unenforceable

Mrs Rosemary Brown
Opposed HB 277

Mr. Burs
Compliments the sponsors & press leaving -

Mr. Bell
Opposed 277 & 365

Mr John Alden

Mrs G. L. Bertrand

George Plesha
Opp. 277 & 365
even with amendments

Mark Zimmerman
Opposes 277
[illegible] laws opposed

HB 365

2-3-72 Hearing

Sponsor - Woody Hale

Proponent - Lem Hale

Proponent - Dr. Stephen Pasternak

Pro - Dr. Virgil Carlson (DMH)

Pro - J. Elliott Corbett

Pro - July 10th

Hands for ones should be counted - see training -

2/25/72 STATEMENT ON GUN CONTROL Senator Newton I. Steers, Jr.

(S.B 205)

My vote against Governor Mandel's "Gun Control" bill was based on three defects in the bill which I thought important. Amendments were offered to amend these defects, but were not adopted in the Senate. The Senate leadership has represented to a number of Senators that those amendments will be adopted in the House. If this occurs, I expect to vote for the bill when it comes back from the House.

The bill is not a gun registration bill. It is a bill which prohibits "wearing, carrying or transporting" a gun, specifically a hand gun. Rifles and other weapons are not affected. The bill also contains provisions permitting "stop and frisk" when the officer has "reasonable suspicion" rather than "probable cause", the standards for the latter being much more difficult to meet.

First problem.

As the bill left the Senate it was legal for anybody to have one, or indeed, 50, pistols in his dwelling or his place of business. However, nobody could pick up one of these pistols (for he would then be carrying without a permit) unless he was a building owner or tenant; thus, when the homeowner leaves his house or the store owner leaves his store, any guns in the building are immobilized. If the homeowners wife, son, father or any other person picks up the gun, with or without permission, that person has violated a law. If a thief brings his own gun into the house and you are successful in getting it away from him, you are violating a law when you hold it in your hand.

Second Problem.

The second problem I find with the bill is the failure to provide proper review of a policeman when he stops and frisks a suspect. Although a very desirable provision, in my opinion, it could be abused, and frisking should be made subject to review by the same authority set up to review cases in which the Superintendent of Police turns down an application for a gun permit.

Finally, stiff sentences for violating this law and similar ones are desirable. However, sentences which are absolutely mandatory run into this problem: a young offender, perhaps under extenuating circumstances, would be subject to the mandatory 5 year sentence. It is true that the sentence ~~has been~~ will be useful in preventing

repetition of the crime during ~~that~~ the period of imprisonment. However, it may well be that the criminal will emerge from prison more likely to commit crimes than if he had never gone to prison. Unfortunately, our prisons tend to criminalize prisoners. The only mandatory sentence that can really be effective in cutting the crime rate is the mandatory life sentence. I, for one, cannot accept the notion that a life sentence should be imposed, even for second offenders, for crimes where the penalty is now, say, five years. In such cases, a judge is in the best position to determine what social interest is best served by a one year sentence or a five year sentence. If he finds that a five year sentence is more likely to be injurious to society (leaving aside the effects on the criminal) he should be permitted to impose a lesser sentence.

LOCAL TELEPHONE: 374-4729
FROM BALTIMORE CITY:
DIAL 1-374-4729

SIDNEY C. MILLER, JR.
ATTORNEY AT LAW
RIDGE ROAD
UPPERCO, MARYLAND 21155

February 4, 1972

Honorable C. Maurice Weidemeyer
236 Main Street
Annapolis, Maryland 21401

Re: House Bill 277, Senate Bill 205

Dear Mr. Weidemeyer:

A line to thank you for your courtesy yesterday at the House Judiciary hearing, and also to summarize the data which I had hoped to present by oral testimony - but did not get the opportunity to do because of the number of persons wishing to speak:

I. Reviewing, somewhat hastily, the narcotics and liquor laws of the fifty jurisdictions outside of Maryland, the following would appear to be the case with respect to the forfeiture of vehicles found to contain contraband:

(a) 30 jurisdictions flatly recognize the rights of innocent lienholders by provisions which, generally speaking, either provide for the release of the vehicle to the lienholder or for payment of the lien out of the proceeds derived from the sale of the vehicle.

(b) 9 jurisdictions have no vehicle forfeiture provisions whatsoever in such narcotics or liquor laws as they may have.

(c) 3 jurisdictions recognize the rights of innocent lienholders in one of their contraband laws, but not in the other.

(d) 2 jurisdictions leave the protection of innocent lienholders to the discretion of the court on a case-by-case basis.

(e) 6 jurisdictions only - retain strict forfeiture provisions which deny recognition to the rights of innocent lienholders.

II. The Federal Government on December 15, 1971, announced the reversal of its vehicle forfeiture policy - of some 40 years standing - and various agencies are now willing to release seized vehicles unless the lienholder knew, or should have known, that the same would be used for an illegal purpose. (See the Federal Register for that day, Title 31).

III. Maryland's forfeiture laws are almost entirely dissimilar. The procedures set out in Section 36-C of the proposed Bill recognize the rights of innocent "owners", without reference one way or the

other to the rights of lienholders. (Possible confusion could arise from the 1970 decision of the Court of Appeals in 258 Md. 192, a vehicle forfeiture case involving narcotics, which equated lienholders with "owners") In addition, the protection of the rights of "owners" appears to be left to the discretion of the Court, the operative word in subsection (c)(ii) being "may" instead of "shall".

On the other hand, Section 297 of the Controlled Dangerous Substances Act presently provides for strict forfeiture - destroying completely the rights of all lienholders, and also those of innocent owners except in those cases where the vehicle happened to be stolen at the time of the illegal transportation. Senate Bill No. 7 has been introduced to correct this inequity.

In complete contrast to the present 297 is the forfeiture provision in the alcoholic beverage law - where the rights of a bona fide lienholder is given complete protection. (See Article 2-B, Section 3(f)(4).

As I indicated, I am absolutely convinced that the destruction of the rights of an innocent third party, by confiscation and forfeiture, can serve no really useful or legitimate purpose whatsoever.

In view of the apparent need for haste, I am enclosing some extra copies of this letter and hoping that you or your staff can distribute the same to more advantage that I could do by a general mailing to the members of both the House and Senate.

Yours very truly,

Sidney C. Miller, Jr.

SCMjr:ms
enclosures

cc: Honorable Martin A. Kircher
Honorable Jon H. Livezey
Honorable Steny H. Hoyer
Honorable J. Joseph Curran, Jr.

VOTERS INTEREST LEAGUE

P.O. Box 7525 • Baltimore, Maryland 21207

February 9, 1972

To the Honorable Members of the
General Assembly of Maryland
The State House
Annapolis, Maryland

Gentlemen:

We of Voters Interest League urge you to cast a negative vote on S.B. No. 205 and H.B. No. 277, the companion Administration "gun-control" bills. These bills attempt to control crime by restricting the transportation of guns by law-abiding citizens and by increasing the authority of the police to stop and frisk persons suspected of being armed.

In our opinion, these provisions are unwise and unnecessary, and in certain respects unconstitutional. We believe that they would reassure the armed criminal that his intended victim was most likely unarmed and defenseless. We also fear that the stop-and-frisk provision would lead to the killing of more policemen and to the harassment of innocent people.

We urge instead the prompt enforcement of all laws presently on the books, mandatory imprisonment for at least five years of persons found armed with <u>any type</u> of deadly weapon while committing a felony, and the passage of a resolution by the General Assembly of Maryland instructing our Congressional delegation to take whatever steps are necessary to overturn the Miranda case decision and others of the U. S. Supreme Court which are tying the hands of policemen and judges.

These recommendations are made after consultation with a number of law enforcement officials: some active uniformed policemen, others in different capacities, including teachers of law enforcement.

We wish to draw your attention to three points made by proponents of H.B. No. 277 at the hearing February 3 before the House Judiciary Committee.

Police Commissioner Pomerleau stated, "Your gun is only a vehicle. ... The real problem is the people problem." Our recommendations emphasize punishing the criminal and maintaining freedom for law-abiding citizens. Could not judges recently retired be called back for temporary duty to help clear the backlog of cases and thus promise a speedy trial to persons charged with a crime?

Baltimore City State's Attorney Allen, after stating his support for H.B. No. 277 as the best bill it would be possible to get this year, added that perhaps next year "we can get one which will get at the guts of the crime problem." Is this not substantiation of citizens' fears that the present Administration bill is a foot-in-the-door for confiscation of all private firearms? This year's H.B. No. 365 actually proposes that all private handguns be turned in by January 1, 1973, with compensation at fair market value to a maximum of $25!

Finally, the Governor's staff spokesman, Mr. Eldridge, asserted that the Second Amendment of the U. S. Constitution does not give to the people the right to bear arms but guarantees to the States the right to have a militia and to arm that militia. We quote this amendment in full:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

WEBSTER'S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE, Second College Edition (1970) defines "militia" as follows:

> in the U. S., all able-bodied male citizens between 18 and 45 years old who are not already members of the regular armed forces: members of the National Guard and of the Reserves (of the Army, Air Force, Coast Guard, Navy, and Marine Corps) constitute the organized militia; all others, the unorganized militia

It appears to us that this language clearly guarantees to "the people" the right to firearms, and we believe that only persons proven to be convicted felons, mental incompetents, drug addicts, and habitual drunkards should be denied the right to keep and bear arms. Consequently, the proposed requirement of a permit to transport a handgun seems to be an unconstitutional provision of this bill.

Another provision probably unconstitutional, mentioned in an opponent's statement, is the requirement of a satisfactory explanation to a policeman to be made by a person suspected of being armed. Does this not infringe on the Fifth Amendment guarantee against self-incrimination?

Please try to control crime by seeing to it that criminals will hesitate to commit felonies because of fully expecting to get punished promptly, and punished severely if found armed. In the United States of America it should be possible to control the criminal element without sacrificing freedom for the law-abiding, either in part immediately or completely in the future--we need to remember that in every country in which a dictatorship has been established, the people were disarmed.

Very sincerely yours,

Maud-Ellen Zimmerman

(Miss) Maud-Ellen Zimmerman, Chairman
VOTERS INTEREST LEAGUE

In addition to the DEFEAT of H.B. No. 277 (companion S.B. No. 205), we urge the

DEFEAT of H.B. No. 365, "Prohibit Private Ownership of Guns" and of
H.B. No. 375, "Private Transfer of Pistols"

PASSAGE of H.B. No. 254, "Juvenile Court, Firearms" and of
H.B. No. 404, "Strict Sentences for Gun Use", amended
to require at least five years mandatory imprisonment
(actually in prison five years before parole possible)
and
to apply to being armed with any type deadly weapon
while committing a felony.

The Washington Post

AN INDEPENDENT NEWSPAPER · WEDNESDAY, FEBRUARY 2, 1972 PAGE A14

The Pistol Packers

Governor Marvin Mandel's modest proposal to spare the lives of a few policemen by cracking down on gun-toters in public places has run into a withering crossfire, as he no doubt anticipated, from "sportsmen" on one side and from libertarians on the other. It may be that both of them somewhat misapprehend the purpose of the stop and frisk authorization the governor has proposed. The "sportsmen" see it as a form of gun control—which it certainly is not. And the libertarians see it as a license for unlimited harassment of black citizens —which the governor certainly does not intend it to be.

The Mandel proposal would fix stiff penalties for carrying a handgun on one's person or in an automobile without a permit. An exception is made for sportsmen engaged in an authorized sporting enterprise. And the bill would authorize policemen to stop persons and pat them down briefly and superficially on the basis of a "reasonable belief" that those persons are illegally carrying a concealed pistol. Prohibitions on packing concealed pistols are hardly novel and hardly a threat to bona fide sportsmen. For what sport would a "sportsman" want to carry a handgun around with him on the streets of a city? The purpose of this legislation is to enable policemen to protect themselves from thugs who last year used handguns to kill 72 officers engaged in the performance of their duty.

Anyone who wants to know what a real gun control bill is like need only look at the provisions of a measure introduced in the Maryland Assembly last week by Del. Woodrow M. Allen. It would flatly ban private ownership of pistols; anyone wishing to use a pistol for target shooting or other forms of "sport" would have to join a licensed gun club where it would be kept under prescribed conditions and fired only under careful supervision; persons owning handguns would be required to turn them in to state or local police by next January 1 for fair compensation.

Now, that is what we call a gun control bill. It would save the lives not only of policemen but also of daughters coming home from late dates and being mistaken for intruders, of wives and husbands displeased with one another with a firearm lying handy in a bedside drawer, of neighbors eager to settle political differences of the sort that arise now and then over a glass or two of some distillate. In fact, it is so sensible, practical and realistic that it has no possibility of passage by the assembly at the present time. Several thousand more Marylanders will have to lose their lives by pistol bullets before the insensate opposition of the gun lobbyists can be overcome.

The small first step toward sanity proposed by Governor Mandel appears to have had its chances of enactment improved by a prudent concession which has won it the endorsement of State Senator Clarence M. Mitchell III. It is wise and right, we think, that the basis for frisking a suspected gun toter should be sharpened so as to prevent arbitrary police action. The U.S. Supreme Court has said that the Fourth Amendment will not be violated if police officers search suspects for lethal weapons in situations where they may lack probable cause for an arrest. But of course this cannot be taken to mean that the police may search on mere unsubstantiated suspicion. Civil libertarians have been wholly justified in insisting that the police have real grounds for frisking; and we believe this insistence can be effectively fortified by requiring the police to report every stop and frisk incident so that the record will show just how frequently their action has been warranted.

Such sharpening of the legislation will, we hope, diminish the fears of the libertarians. The phantasies of the "sportsmen" may be dispelled by speeding up the system for issuing permits and by assuring them that they can carry their handguns to and from lawful sporting enterprises.

Remember when every American mother hoped her son would become President.

Editorial

The Silent Protectors

LAST year *The American Rifleman* published in its "Armed Citizen" columns 112 actual instances in which the mere presence of a firearm in the hands of a resolute citizen prevented crime without bloodshed. Every case came from news reports confirmed by police records in 97 communities across the land. Among these were Seattle, Kansas City, San Jose, Atlanta, Baltimore, Dallas, Detroit, El Paso and 89 others.

Every one chronicled a triumph of a self-reliant American with the "cool," to use the current slang, to stop a crime without shooting anyone. They prevented robberies and quite possibly rapes and murders. They were able to do so because they were armed—with guns.

Now on the 100th anniversary of the National Rifle Association of America, we would like to ask a simple question:

Can anyone show us where 112 crimes have been averted by the Federal Gun Control Act of 1968?

Those who uphold this act and would further disarm law-abiding American citizens owe it to the American public to explain themselves.

Can they say why it is that crime continues to rise under the 1968 act instead of/deereasing?

Without putting words into overworked mouths, we can surmise that they will say the answer is a need for even stricter gun laws.

In all honesty, we must disagree. The answer is a need for many things, but laws that deprive decent persons of self-protection are not among them.

The answer may be a need for more uniformed policemen patrolling our crime-infested big cities. Philadelphia in chopping down its crime rate provided prima facie evidence of this. The Washington, D.C., police department, recruited to full strength for the first time in many years, also brought about a distinct reduction in crime by putting more properly-trained patrolmen on the streets. Some other communities have succeeded, likewise.

The answer may be a need for longer sentences that keep habitual criminals in jail instead of allowing them to whiz through courtrooms with a speed that makes justice somewhat like a revolving door.

The answer may be the need for broad rehabilitation programs that reorient all but the most hopeless hardened criminals (if there are such), and end the cycle under which many criminals find themselves compelled to return to crime for lack of anything better.

The answer may be an end to flabby permissiveness and a "lie down and quit" attitude on the part of some local courts and authorities whenever unruly, lawless elements "make a fist" at them.

The answer may be a return to a traditional American creed recognized and practiced by every good NRA Member, of respecting the rights and way of life of all respectable fellow Americans.

It is proper to discuss all this on the 100th anniversary of The National Rifle Association of America, an organization founded to promote marksmanship and broadened to support conservation and national improvement, because the legitimate ownership of firearms is an integral part of our Nation. This the NRA recognizes and champions.

As shown in this magazine and elsewhere, the mere presence of firearms in the hands of responsible Americans can serve to curb violence. The Federal Gun Control Act of 1968 apparently can't.

There is reason to believe and hope that the next Congress will recognize this fact and repeal the 1968 Act, at least insofar as it places burdens and restrictions on individual law-abiding gun owners.

That, coupled with the mandatory penalty laws that the NRA has long advocated for criminal misuse of guns, will do more to curb crime than the senseless provisions of the 1968 act which tend to stamp out legitimate gun ownership while criminals run riot and thumb their noses at all laws. ■

(Permission is granted to reprint this editorial.
The American Rifleman, *Washington, D. C. January 1971)*

The Armed Citizen

Just as Walter Nettles, 75, closed his store at Tucson, Ariz., at 11 p.m., two armed and hooded men stepped up and demanded money. Seeing them, Mrs. Nettles ran from her car with a drawn pistol and shouted for them to leave her husband alone. One of the gunmen fired at her and missed. When she returned the fire and Nettles grabbed a .38 revolver from the car to join in the battle, the pair fled. *(The Arizona Daily Star, Tucson, Ariz.)*

Helen Friedlien, a store clerk in Cincinnati, Ohio, grabbed a gun when two men attempted to rob her one night. Although one holdup man was armed, both fled immediately. *(The Cincinnati Post and Times Star, Cincinnati, Ohio)*

Earl Presswood, manager of a diner in Shreveport, La., pulled a .380 pistol when a man armed with a .22 handgun entered his diner one day and attempted to rob him. The man fled, but was later captured by police. *(The Shreveport Journal, Shreveport, La.)*

Mrs. Mary F. Richardson of Kansas City, Kans., pulled a .32 automatic pistol after a young man snatched her purse while she was going to work one day. She fired once. The purse snatcher was arrested later at a local hospital with a minor wound. *(The Kansas City Kansan, Kansas City, Kans.)*

Lumpkin Loggins, a store owner in Orlando, Fla., drew a .38 revolver when two men armed with a shotgun attempted to rob him as he was closing one night. The pair jumped into a ditch and fired at Loggins but fled when the storeowner fired back. They were apprehended later. *(The Orlando Sentinel, Orlando, Fla.)*

When a burglar alarm sounded in a neighbor's home, Alfred Kaelin, a lawyer in South Land Park, Calif., went to investigate and saw a man carrying a TV leave the neighbor's house. The lawyer yelled for the man to stop. Instead the burglar tried to hit him with a crowbar. Kaelin fought with the man until Mrs. Kaelin arrived with a shotgun and held the burglar for police. *(Sacramento Union, Sacramento, Calif.)*

When a man followed her home one night, Eleanor Sanders, 34, of Westminster, Calif., got a gun, went out into her yard, and found the man peeking into her bedroom window. She fired one shot into the air and another at the prowler, causing him to run away. He was later apprehended by police. *(The Register, Downey, Calif.)*

Arcides Obregon, manager of a grocery store in Miami, Fla., got his shotgun after two men robbed the store, one knifing him in the stomach in a scuffle. Firing once, Obregon wounded one of the robbers, who later died. The other escaped. *(The Miami Herald, Miami, Fla.)*

After two convicts escaped from the county jail, Roy Bell of West Plains, Mo., got a .30-30 rifle when he saw a man running through his yard. At gunpoint, the man confessed he was one of the escapees and said he wanted to surrender. Bell held the man for the sheriff. *(Daily Quill, West Plains, Mo.)*

Five youths armed with a sawed-off shotgun seized $1,100 from a Houston, Tex., motorcycle shop and tied up proprietor John E. Jones and his employees. As they were about to make a getaway on bikes stolen from the store, Jones worked his way loose and fired several shotgun blasts at the fleeing hoodlums. One youth, wounded slightly, was arrested on the spot, and two of his accomplices were apprehended the next day. *(The Houston Post, Houston, Tex.)*

When James McCollum, an employee of an apartment building in Indianapolis, Ind., caught three men carrying furniture from the building, he got a .38 revolver and held them for police. *(The Indianapolis Star, Indianapolis, Ind.)*

JUDGE DRAWS GUN IN COURT—When two Soledad State Prison inmates charged with assaulting a guard scuffled with bailiffs during a hearing in Salinas, Calif., Superior Court Judge Stanley Lawson, 57, drew a pistol and placed it on his lap. It was necessary "for the protection of my staff and myself," he later said. *(The New York Times, New York, N.Y.)*

Mere presence of a firearm, without a shot being fired, prevents crime in many instances, as shown by news reports sent to The Armed Citizen. Shooting usually can be justified only where crime constitutes an immediate, imminent threat to life or limb or, in some circumstances, property. The above accounts are from clippings sent in by NRA Members. Anyone is free to quote or reproduce them.

The Armed Citizen

Clayton Kasten operated a business in North Milwaukee, Wis., for 24 years until vandals forced him to move to a better neighborhood. His old property remained a favorite target for hoodlums, however, who broke in almost daily. When Kasten caught several boys inside and held them at gunpoint for police, he was charged with disorderly conduct. The boys' parents complained that Kasten had pointed a gun at their sons. The Milwaukee police detective bureau also recommended the charge "in light of recent shootings on the north side." Later, a judge threw out the charge against Kasten. *(Milwaukee Journal, Milwaukee, Wis.)*

Six armed bandits drove into the small town of Mascouche, Canada, tied up the only policeman on duty and robbed a credit union. As they were leaving, they fired at a local resident. He ran into his home for a shotgun and wounded one of the robbers seriously. *(The Globe and Mail, Toronto, Canada)*

Lawrence H. Burke drew a gun after three men robbed his New Orleans, La., jewelry store of rings valued at $3800. The store owner fired five shots, then chased the thieves in his car. Cornering one robber several blocks away, Burke held the man at gunpoint until police arrived. *(The Times-Picayune, New Orleans, La.)*

Ronald Royce, a pharmacist in Elgin, Ill., called police when he recognized a man in his store who previously had used a forged prescription to obtain drugs. When a policeman came, the suspect drew a gun and pointed it at the policeman's head. Grabbing a gun from behind the counter, Royce wounded the gunman. As the man ran, the policeman wounded him again and arrested him. *(The Daily Courier-News, Elgin, Ill.)*

John A. Uhrig, 80, refused to open the door of his apartment in Fort Wayne, Ind., when a man knocked and demanded to be let in. As the man crashed through the door, Uhrig got a pistol and fired. The intruder fled, apparently unhurt. *(Fort Wayne Journal Gazette, Fort Wayne, Ind.)*

Olen Fish was locking up his store near West Plains, Mo., when a stranger asked to buy a pack of cigarettes. Fish reopened the store and let the "customer" in. The man then demanded money and reached into his pocket as if to draw a gun. Pulling his own gun, Fish fired and wounded the robber. *(The Quill, West Plains, Mo.)*

Mike Usalatz grabbed a gun when the burglar alarm in his laundromat in Worcester, N. Y., sounded one night. Rushing to the front door, he apprehended two prowlers as they were about to flee. *(Oneonta Star, Oneonta, N. Y.)*

Anthony Perry, 68, of Rochester, N.Y., heard a burglar alarm at his bowling alley early one morning. Rushing outside with a gun, he saw two men attempting to flee. Perry caught one man and held him at gunpoint. *(The Democrat and Chronicle, Rochester, N.Y.)*

When a robber chased his son into their apartment vestibule and stabbed the youth in the back, Joseph Cilino, Sr., of Jersey City, N.J., got a .357 magnum revolver and shot the knifer. *(Jersey Journal, Jersey City, N.J.)*

Office machines piled up near the door of a house trailer prompted City Councilman Albert L. O'Neil of Manchester, N.H., to stop his car and investigate. He pulled a revolver and held a suspect for police. *(The Manchester Union Leader, Manchester, N.H.)*

James E. Clark, 63, a paraplegic in a Boston nursing home, pulled a .38 revolver from his night table after three hoodlums armed with straight razors invaded the home to rob patients. One of the robbers snatched a cane from Clark's 85-year-old mother, a co-owner of the home, and struck her across the forehead, breaking her glasses.

Clark fired three warning shots, hoping the intruders would flee. Instead, two of them rushed Clark. When one of the attackers was only 2½ ft. away and about to hack Clark with a razor, the paraplegic fired. His bullet hit the man in the chest, wounding him fatally. The other robbers fled. *(The Record American, Boston, Mass.)*

Mere presence of a firearm, without a shot being fired, prevents crime in many instances, as shown by news reports sent to The Armed Citizen. Shooting usually can be justified only where crime constitutes an immediate, imminent threat to life or limb or, in some circumstances, property. The above accounts are from clippings sent in by NRA Members. Anyone is free to quote or reproduce them.

APPLICATION TO PURCHASE OR TRANSFER A PISTOL OR REVOLVER

COPY #2

PLEASE PRINT OR TYPE

Home Telephone _____

SECTION I - APPLICANT

Name _____ Date _____ Hour _____
(First) (Middle) (Last)

Present Address _____
(Street) (City) (County) (State) (Zip)

Previous Address _____

Race _____ Sex _____ Age _____ Height _____ Weight _____ Hair _____ Eyes _____

Date of Birth _____ Place of Birth _____

Social Security # _____ Driver License # _____ State _____

Occupation _____ Employer _____

Employer's Address _____

Date/Place Last Application _____ Approved: Yes ☐ No ☐

I CERTIFY THAT I HAVE READ AND UNDERSTAND THE QUALIFICATIONS AND RESTRICTIONS PRINTED ON REVERSE OF THIS FORM AND THAT I AM NOT PROHIBITED BY LAW FROM PURCHASING OR POSSESSING A PISTOL OR REVOLVER AND THE ABOVE FACTS GIVEN BY ME ARE TRUE AND CORRECT.

Penalty for falsification up to $1,000 fine or two years in jail or both

_____
(Signature of Applicant)

SECTION II - DEALER

Name of Dealer _____ License # _____

Address of Dealer _____

Agent has personal knowledge of applicant: Yes ☐ No ☐ If yes, how long? _____

Signature of Agent _____

Forwarded to _____ Forwarding Date _____

SECTION III INVESTIGATION

Agency _____

Approved ☐ Recommend Disapproval ☐

Remarks

_____
(Signature of Investigating Authority)

Date _____

DISAPPROVED ☐

By authority of Superintendent, Maryland State Police

_____
(Name and Rank)

Date _____

SECTION IV TRANSFER OF FIREARM

Calibre _____ Make _____ Type - Model _____

Serial # _____ Barrel Length _____ Blue ☐ Nickled ☐ New ☐ Used ☐

Date of Transfer _____

_____
(Signature of purchaser-in presence of seller)

_____
(Signature of Seller)

Address of Seller _____

437-

SEE REVERSE SIDE FOR INSTRUCTIONS

MSP-77R
5/66

(This is not a permit to carry a pistol or revolver)

POLICE — POLICE COMMISSIONER OF BALTIMORE CITY — HANDGUNS—1972 HANDGUN CONTROL LAW, CONSTRUCTION OF.

May 16, 1972.

Commissioner Donald D. Pomerleau,
Baltimore City Police Department.

We have answered herein in the order submitted the questions you have propounded regarding the construction of certain provisions of the 1972 Handgun Control Law, Senate Bill 205, which was enacted effective March 27, 1972. Section 3 of the bill adds new Sections 36B, 36C, 36D, 36E, and 36F to Article 27 of the Annotated Code of Maryland (1971 Replacement Volume and 1971 Supplement) and these sections are referred to herein without further reference to said Article.

> *Question:* Does a Baltimore City Police Officer have the authority to carry his revolver outside of the jurisdiction of Baltimore City when he is off duty? If so, is this same privilege extended to other City, County and State Law Enforcement agencies?

Answer: Section 36B, subheading "Wearing, carrying, or transporting handguns," provides in subsection (c) that the wearing, carrying, or transporting of a handgun anywhere in Maryland is authorized to law enforcement personnel of the United States, the State of Maryland, or any Maryland county or city provided that such law enforcement officer is duly authorized a handgun as part of his official equipment at the time and under the circumstances that he is wearing, carrying, or transporting a handgun. The term "law enforcement personnel" is defined in Section 36F(c) to mean any full-time member of a police force or other agency of the United States, a state, county, municipality, or other political subdivision who has duties of crime prevention and detection and enforcement of the laws. The term also includes any

part-time member of a county or municipal police force who is duly certified as trained and qualified in the use of handguns. Members of a force or department who qualify as law enforcement personnel must nevertheless operate under a departmental regulation or other official sanction authorizing the wearing, carrying, and transporting of a handgun as official equipment at the time and under the circumstances of such possession. This requirement is undoubtedly satisfied by Rule 3, Section 1 of the Rules and Regulations of the Baltimore City Police Department which provides in specific terms that members of the department are considered to be on duty or ready for duty at all times and shall be suitably armed. Accordingly, under the Handgun Control Law, police officers of your department are authorized to have handguns in their possession anywhere within the State of Maryland at all times. Similar authorization is vested in law enforcement personnel outside Baltimore City who carry handguns under official rule or regulation as above indicated.

> *Question:* The Bill states that jailers, guards, etc. may wear, carry, and transport handguns at the institution. Would these correctional officers be authorized to transport these handguns to and from their home? If so, would they, while enroute, have to unload them and have them in an enclosed case or holster?

Answer: The question does not precisely reflect the Handgun Control Law. The statute actually declares that "any jailer, prison guard, warden, or guard or keeper of any penal, correctional, or detention institution" is authorized to carry a handgun. Section 36B(c)(iv). It does not restrict such personnel to the possession of handguns on the premises of the institution, but establishes them as an excepted group in a similar manner to law enforcement personnel, members of the armed forces, sheriffs and their deputies. They are subject to the same limitation that is provided for law enforcement personnel, *i.e.* a jailer, guard, warden, or keeper is in lawful possession of a handgun at

the time and under the circumstances when he is carrying, wearing, or transporting it if there is official authorization to do so by an appropriate rule, regulation, or order to wear, carry, or transport a handgun as part of his official equipment. As to your question whether jailers, guards, etc. may carry handguns to and from their homes and the manner of transporting that complies with the law (loaded or unloaded, in an enclosed case or otherwise) the answer depends upon the existence of appropriate rules or regulations of the Division of Correction which has jurisdiction over the institutions because precisely the same limitation is provided by the statute for staff members of penal and correctional institutions as for law enforcement personnel. Such departmental regulation should delineate the policy of the Division of Correction with respect to the institutions under its jurisdiction and their personnel in connection with wearing, carrying, and transporting handguns. Compliance with the statute requires such policy to be fully defined and it should be noted that the exception to the permit requirements extends to the personnel described in the statute and none other.

> *Question:* What is a reasonable time limit for a person employed as a bank guard, security officer, etc. to have any handgun removed from his person after completing his work assignment?

Answer: Section 36E(h) extends an exemption from the handgun permit requirement of the statute to "uniformed security guards, special railway police, watchmen cleared for their employment by the Maryland State Police, guards employed by banks and savings and loan and building and loan associations, express and armored car agencies. The one year exemption for the above personnel which will terminate on March 26, 1973 operates to authorize them to wear, carry, or transport a handgun without a permit "while in the course of their employment or while traveling to or from the place of employment". The violation of this as of any other provision of the Handgun Control Law is a misdemeanor and is therefore constituted a penal statute

as to which strict construction in favor of a suspected offender is required. *Sanza v. Md. Board of Censors,* 245 Md. 319 (1967); *Bergen v. State,* 243 Md. 394 (1964). Although providing no further guidance the statute clearly authorizes the possession of a handgun after completion of the exempt individual's tour of duty or work assignment. The test of lawful possession of a handgun is whether he is in fact enroute to or from his place of employment. The application of the test depends upon the facts in each case and is not susceptible to an answer in general terms. A police officer accosting an individual who claims the shelter of this particular exemption from the permit requirements should take into consideration the time of completion of the employee's work assignment, the area where he has been stopped, and the respective locations of his place of employment and his home. If stopped in an area that may be considered to be enroute between the place of employment and destination without unreasonable deviation, and within such reasonable time of the completion of his tour of duty as would ordinarily place him in that general area there is not an apparent violation of the statute. Any doubt as to the fact of travel to or from the place of employment should be given to the accosted person. That the legislature has seen fit to accord to this group an exception from the handgun permit requirements in the form of a year's grace indicates to us the legislative sense that they may be trusted not to abuse the privilege of being allowed to wear, carry, or transport a handgun to and from their place of employment.

> *Question:* If an officer, in the "stop and frisk" procedure, would be confronted by an individual who was enroute to a target match, etc. and he was fully cooperative by answering the necessary questions and producing identification to corroborate his identity, could our officers, in the interest of remaining on patrol, verify the facts at a later, more convenient time and if the information proves false, obtain a warrant for the person's arrest?

Answer: Yes, the mere failure to make an immediate arrest is not a legal impediment to the prosecution of an offense short of the running of the statute of limitations. As a practical matter, however, a delay in arrest, even though reasonable, may tend to make it more difficult to convict an offender. Thus, though certainly not fatal as a matter of law, it would be better whenever practicable to immediately resolve the question whether a violation is being committed by the accosted person.

> *Question:* Supervisory employees of a business establishment, with the approval of the owner or lessee, are authorized to carry, wear and transport a handgun upon the premises of said business establishment. Would this employee be authorized to transport this weapon to and from his home?

Answer: A negative reply is indicated because the statute does not provide such authorization. As to guards, security personnel, etc., the statute specifically authorizes wearing, carrying, and transporting a handgun between the individual's home and his place of employment. The omission of such authorization in the case of supervisory employees must be considered as deliberate. If the legislature had intended supervisory employees to be authorized to carry handguns to and from the premises of their employer, such intent would have been reflected in specific terms in the statute as it was for the individuals described in Section 36E(h).

> *Question:* When a "frisk" is conducted and an object feels like a firearm, but the search reveals a tool which could be used in a burglary, could this person be arrested and the tool used as evidence if other elements of "Rogue and Vagabond" exist?

Answer: In our opinion dated July 5, 1968, delineating guidelines for "stop and frisk" under the authority of the United States Supreme Court case of *Terry v. Ohio* we said that if an object felt in patting down a suspect's clothing

turned out not to be a weapon it could not be used to justify the arrest of the suspect. We believe the same principle to be presently applicable to "stop and frisk" under the Handgun Control Law if an object found in the course of a lawful "frisk" turns out to be something other than a handgun. We are aware that there is some authority outside Maryland supporting a contrary view. We do not mean to suggest that there may not be circumstances which would justify an arrest upon probable cause to believe that the suspect is committing a misdemeanor in the presence of the officer which would authorize a search incident to a lawful arrest. This must be determined upon the facts in each case.

Question: What is the definition of an enclosed holster?

Answer: The statute does not elucidate the term "enclosed holster". We believe the term to mean a holster so designed as to restrict in some way access to the handgun so that a fastening device or closure has to be opened, released, or removed before the weapon can be exposed or freed from the holster and made immediately available for use. In our view therefore the "enclosed" requirement is satisfied by holstering so as to deny open access to the weapon and without regard to any particular means of accomplishing such purpose, whether by a flap or strap or otherwise.

Question: The Bill refers to the fact that holders of a permit while in possession of a handgun and are under the influence of alcohol and/or drugs are guilty of a misdemeanor. Would this law also apply to those who are not required to have a permit, i.e., bank guard, person enroute to or from a formal or informal pistol match, etc.? If it does not apply, what course of action may we take?

Answer: The section which makes it a misdemeanor for a person with a valid handgun permit to wear, carry, or transport a handgun while under the influence of liquor or drugs is a penal statute as are other sections of the statute. Section

36E(k). Accordingly, the operation of the statute may not be extended beyond its terms to include persons lawfully in possession of a handgun without a permit. It would require an amendment of the statute for a person in lawful possession of a handgun otherwise than as the holder of a handgun permit to be found in violation of the law merely by being under the influence of alcohol or drugs. As to such persons, *e.g.* an intoxicated special officer or a drunk armed with a pistol who claims to be on his way to target practice, several courses of action are available to the police officer. He may request the suspect to accompany him to the police station for verification of the facts claimed to provide a lawful basis for the possession of a handgun without a permit. The suspect may be required to further identify himself at the station to establish that he is an exempt individual or to provide additional proof of his intention to use a handgun for an exempt purpose. In the case of a person under the influence of alcohol or drugs, it is a permissible action, in our judgment, to sequester his handgun temporarily as a reasonable precaution against harm of the owner or another person until he is no longer under the influence at which time it should be returned to him. We might add that further action may be indicated leading to appropriate action to decide whether such individual ought to continue to have lawful access to handguns. In the case of some alcoholics referral to a detoxication facility as provided in the comprehensive Intoxication and Alcoholism Control Act, Article 2C of the Annotated Code of Maryland (1968 Replacement Volume) and further treatment as provided therein may be indicated. Drug abusers may be referred for treatment as provided in Article 43B, Section 9 of the Annotated Code of Maryland (1971 Replacement Volume), title "Drug Abuse Control and Rehabilitation".

> *Question:* An officer has reasonable suspicion, including a bulge on the person's hip. The officer stops the person and asks his name, address, and reason for being in the area. If the person refuses to answer the questions, the officer now has the authority to "frisk". If the person refuses to be

"frisked", what recourse does the officer have? If the refusal extends to a physical resistance, what recourse does the officer have?

Answer: The right of a police officer to conduct a "frisk" when his belief that the suspect is presently armed and dangerous is in fact reasonable and may not be frustrated by the refusal of the suspect to submit to a "frisk". Under Section 36D(3)(4) a suspect has a duty to identify himself and explain his actions so as to dispel the officer's reasonable belief that he is in unlawful possession of a handgun, and if the suspect fails to do so, the officer is authorized to "frisk" him. A refusal to answer authorized questions will not dispel the officer's belief and the suspect may be required to submit to a patting down of his clothing. Should he resist a lawful "frisk" a suspect may be compelled to submit to it by the use of as much force as necessary, but not more. Resistance to a lawful "frisk" by physical force inflicted upon the police officer constitutes an assault. A suspect who offers physical resistance to a lawful "frisk" may be arrested and charged with assault.

FRANCIS B. BURCH, *Attorney General.*

FRED OKEN, *Asst. Attorney General.*

HANDGUN CONTROL LAW OF 1972

Background Information

In December of 1971, Governor Marvin Mandel announced that he would submit to the 1972 Session of the General Assembly of Maryland a bill to control the widespread use of handguns in criminal activities in the State of Maryland. His concern was based upon the upsurge of crime in the State and particularly within Baltimore City where 62% of all homicides in 1971 were committed with handguns. The bill, introduced in the Senate of Maryland on January 17, 1972 contains a Declaration of Policy which clearly states the purpose and urgent need for legislation in this area.

The Senate Judicial Proceedings Committee held a public hearing on the bill during which testimony was received from law enforcement officials, legislators, representatives of various rifle and pistol associations, and many interested citizens. Following this hearing, the Committee adopted numerous amendments to meet some of the specific objections of opponents and to clarify certain sections of the bill. The bill was the subject of a two-week debate in the Senate and finally passed and was sent to the House of Delegates where it received further refinement and ultimate adoption. Senate Bill 205 became Chapter 13 of the Laws of 1972 on March 27, 1972 when it received the signature of Governor Marvin Mandel, and became effective immediately.

The Bill

Under the provisions of the enactment, the wearing, carrying, or knowingly transporting of a handgun is now a criminal offense for which specific penalties have been established. These penalties are graded so that the first offender can be treated differently in the discretion of the court; however, the penalties for subsequent offenses are mandatory. Also, the law provides for separate mandatory penalties for a violation on school property, for a violation with an intent to injure, and for use in the commission of a felony.

Certain exceptions have been established to meet the legitimate concerns of those who need a handgun. Those excluded from the law's provisions include law enforcement personnel on official duty, permit holders, participants in certain sporting activities, and the person who possesses a handgun at home or at his place of business.

To effectively attack the use of a handgun in street crime, the law codifies the "stop and frisk" practices of police agencies. The provisions are based upon the decision in Terry v. Ohio, 392 U.S. 1; however, the enactment does not seek to broaden the authority of the police under that decision of the Supreme Court. The new law provides guidelines for the protection of the public and the effective implementation of the limited search procedures.

A handgun may be worn, carried, or transported by a permit holder and the new law establishes permit granting authority in the Superintendent of the Maryland State Police and also establishes criteria for the granting of the permits. An appeal board has been created to hear appeals from individuals whose permit request has been denied.

So that anyone reading the new law can quickly determine what type of firearm is being considered, the enactment utilizes the definitions provided in the federal firearms legislation and explicitly defines what is and what is not considered a handgun for the purposes of this new law.

Timothy E. Clarke
Counsel, Senate Judicial
Proceedings Committee

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February 22, 1972

Mr. Dennis Dooley
Department of Legislative Reference
16 Francis Street
Annapolis, Maryland 21404

S.B. 205
1972

Dear Dennis:

I enclose herewith a copy of our opinion with regard to the constitutionality of the Governor's handgun control bill. In our haste to get it to the Governor's Office late last week, I neglected to send you a copy.

Very truly yours,

Thomas J. Kenney, Jr.
Assistant Attorney General

TJK:aba
Enc.

OFFICES OF

FRANCIS B. BURCH
ATTORNEY GENERAL

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February 14, 1972

John C. Eldridge, Esq.
Chief Legislative Officer
Executive Department
State House
Annapolis, Maryland 21404

Dear Mr. Eldridge:

As requested, we have examined Senate Bill 205, (introduced in identical form in the House of Delegates as House Bill 277) relating to the regulation of handguns. It is our opinion that the bill, as introduced, is constitutional on its face. We have set out below the reasons for our opinion with particular attention to those sections of the bill about which constitutional questions have been raised.

There has been considerable discussion of the "stop and frisk" provisions found in Section 36D of the bill, titled "Limited Search." The keystone of the argument for the constitutionality of such provisions is found in the opinions of the Supreme Court in Terry v. Ohio, 392 U.S. 1 (1968), and its companion cases of Sibron v. New York, 392 U.S. 40 (1968) and Peters v. New York, 392 U.S. 40 (1968). The holding in Terry was well summarized by then Chief Justice Warren as follows:

> "...Each case of this sort will, of course, have to be decided on its own facts. We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled . for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken."

The language of Section 36D obviously parallels the language of the Supreme Court in Terry very closely. Of course, as the above quoted portion of the opinion makes clear, each "stop and frisk" case will have to be judged on its own facts and ultimately must be decided in accordance with the dictates of the Fourth Amendment as applied to the States through the Fourteenth Amendment. The Terry decision did not involve construction of a statute, but rather dealt with the conduct of a "stop and frisk" by a police officer measured against the Fourth Amendment guarantees as interpreted by judicial decision.

The bill in question seeks to embody the standards set forth in the decisions in a statutory form which will cover a myriad of factual situations. The bill reflects the judge-made standards with accuracy. Certainly there can be no objection to the codification of the standards in one statute. However, it has been said that Terry was "the Court's first word - but certainly not its last - on the subject of stop and frisk... [I]t made a conscious effort to leave sufficient room for movement in almost any direction." LaFave, "Street Encounters and the Constitution," 64 Mich. L. Rev. 39, 46 (1968). Various decisions, including some by our own Court of Special Appeals - see, e.g., Cleveland v. State, 8 Md. App. 204, 259 A. 2d 73 (1969) and Williams v. State, 7 Md. App. 204, 253 A. 2d 786 (1969) - have further amplified the holding in Terry but the Supreme Court has made no further definitive statements on the subject.

Thus, each case will continue to be judged on its facts against the Fourth Amendment standards which the proposed bill mirrors. However, the ultimate articulation of these standards rests with the courts and much may yet be said.

Several specific points have been raised with regard to Section 36D of the bill. First, in Terry the Court was seemingly quite careful to use the word "outer" with reference to the patting or frisking of clothing. The proposed bill does not specificy "outer" clothing. However, this omission would not appear to create a substantial constitutional objection. The connotation of the words "pat" and "frisk" is the placing of the hands on the outer layer of clothing in order to feel beneath it some bulge or foreign object which could be a weapon. The procedure, by its nature, does not involve going beneath clothing in its initial stages. Moreoever, the meaning of "outer" is not entirely clear. It could, for example, mean any clothing except underwear. In fact, the use of the word might raise more questions than it would answer. Secondly, the use of the word "information", in addition to the words "observation" and "experience" which are found in Terry, as the basis of the reasonable belief which justifies a "stop", has been the subject of comment. However, the rationale of Terry would seem to be that the totality of circumstances may form the basis for the police officer's belief. Information is simply another circumstance or basis for a reasonable belief. The proposed bill uses "information" with "observation" and "experience" in a conjunctive sense. Indeed, in Williams v. State, supra, the Court of Special Appeals approved a "stop and frisk", citing Terry, where the officers acted on the basis of information and observation. Finally, it has been argued that Terry should not be applied in cases where the "criminal activity ... [believed to be] afoot" (392 U.S. 30) by the police officer is a so-called "possessory" offense, one example of which is carrying a handgun. See Williams v. Adams, 436 F. 2d 30 (2d Cir. 1970) rev'd on reconsideration 441 F. 2d 394 (2d Cir. 1971). This argument may have arisen from the factual situation in Terry where the officer, through his observations, saw men who were apparently "casing" a store for a robbery, and deduced from that that a gun might be used. From these circumstances the officer was justified to undertake a stop and frisk to protect himself and others from possible harm. Thus, in Terry, there were several steps which led up to the stop and frisk and ultimate seizure of a weapon--reasonable belief that criminal activity was afoot, that such activity

could reasonably involve a gun, and then the stop and subsequent frisk to neutralize the threat of the gun. The heart of the possessory offense objection would seem to be that there is danger of police misconduct if the criminal activity is, e.g., carrying a handgun, because there are not the objective outward manifestations in such activity as there are in, e.g., walking past a store window many times in casing for a robbery. Also, some possessory offenses, e.g., possession of narcotics as found in Williams v. Adams, supra, may not be very likely to involve the use of a weapon which would endanger the police and members of the public. However, in our view, these objections are not well founded from a constitutional standpoint. The factual situation in Terry was different; the "criminal activity afoot" was not illegal possession of a handgun. Granted it may be more difficult for a police officer to form his reasonable belief in the case of a possessory offense. However, it is certainly possible that a police officer, from the totality of circumstances known to him, would form a reasonable belief that a person is carrying a handgun, and there is certainly nothing explicit in the Terry opinion to indicate that the rationale is inapplicable to possessory offenses. In fact, in his concurring opinion, the late Mr. Justice Harlan appears to have considered this very question and he sought to make explicit what he thought the majority's implicit view on it was. Mr. Justice Harlan noted that under the facts in Terry, there was no Ohio statute which specifically allowed police officers to stop and frisk persons whom they believed were carrying dangerous weapons. However, he stated that, "if the State of Ohio were to provide that police officers could, on articulable suspicion less than probable cause, forcibly frisk and disarm persons thought to be carrying concealed weapons, I would have little doubt that action taken pursuant to such authority could be constitutionally reasonable." 392 U.S. at 31. Thus, not only does the Terry rationale, on its face, appear applicable to the proposed bill. In addition, we have an indication from Mr. Justice Harlan that Terry would support a state stop and frisk statute.

Questions have been raised with regard to Section 36E(a)(6), under which the Superintendent of the Maryland State Police is empowered to issue permits for handguns if, among other reasons, it is the Superintendent's judgment that the permit applicant has a "good and substantial reason to wear, carry, or transport a handgun." It has been urged that this is an

overly broad delegation of authority. However, under the holding in Pressman v. Barnes, 209 Md. 544, 121 A. 2d 816 (1956), a delegation of authority in the area of police powers can be constitutional even though standards are not furnished for the exercise of the delegated authority. This principle of Maryland law, together with the various remedies afforded an applicant under the bill in the event his request for a permit is denied, would appear to dissipate any constitutional objections on this point.

Section 36C of the bill, relating to forfeiture of certain items of property used in connection with violations of Section 36B has also prompted considerable discussion. It has been argued that the bill places the burden on an innocent person to prove that he did not and could not have known that his property was being used in violation of Section 36B. However, it is clear under the recent decision of Prince George's County v. Blue Bird Cab Co., 284 A. 2d 203 (1971), that the knowledge of the owner of forfeited property is irrelevant unless the statute under which the forfeiture was accomplished makes such knowledge a consideration. The bill, as drafted, does make the knowledge of the owner relevant and thus goes further than the law requires.

In the light of the foregoing, it is our view that the proposed bill is constitutional on its face.

Very truly yours,

Francis B. Burch
Attorney General

Thomas J. Kenney, Jr.
Assistant Attorney General

TJK:aba

Governor submits gun-control bill to Legislature with slight changes

1/14/72

By GILBERT A. LEWTHWAITE
Annapolis Bureau of The Sun

Annapolis—Governor Mandel yesterday submitted his gun-control bill—changed in detail, but not substance—to the General Assembly as emergency legislation.

The bill contains the controversial stop-and-frisk clause, and puts added emphasis on mandatory jail sentences for criminal use of handguns.

It also seeks to set up a three-man review board, appointed by the Governor, to hear appeals by people refused police permits to carry handguns.

Permits, valid for two years, will cost up to $25. The money will go toward the estimated $300,000 operating budget of a special gun-permit department to be set up by the State Police.

Other changes have been made in the wording of various sections to clarify their meanings or to make them common sense.

John C. Eldridge, the Governors' chief legislative aide, who drew up the bill, said the alterations were made after study of more than 400 letters from legislators, lawyers and gun lobbyists who had been sent a draft outline of the bill.

"We got several hundred letters with suggestions . . . we took every one up with the Governor, and the ones he decided to adopt were the ones that he thought would make the bill more workable," Mr. Eldridge said.

The bill, submitted to both the Senate and the House of Delegates, will take effect immediately as emergency legislation if it gets the necessary three-fifths majorities in both houses.

The bill basically would limit the carrying of handguns to persons with permits, and would authorize the police to stop and pat down anyone an officer has "reasonable belief" might be illegally carrying a handgun.

Col. Thomas S. Smith, the superintendent of State Police, would be given power under the bill to issue gun-carrying permits to anyone with "good and substantial reason to wear, carry, or transport a handgun."

The superintendent's request for clearer guidelines on those eligible for permits was rejected by the Governor on the grounds that it would be impossible to draw up a list to cover all circumstances.

But the bill would outlaw the issuance of permits to anyone who is under 21, who has served a year in prison without being pardoned, who has been free from a term in a juvenile institution for less than 10 years, who has been convicted of narcotics possession or is an alcoholic.

Establishment of a handgun-permit review board, an innovation in the final draft of the bill, was suggested by both the guy lobbyists and Colonel Smith, according to Mr. Eldridge.

It would operate as a separate agency within the Department of Public Safety and Correctional Services. Its three members—"appointed from the general public by the governor and serving at the pleasure of the governor"—would be able to "either sustain, reverse or modify the decisions of the superintendent."

The only permanent exceptions from the permit process would be full-time policemen. The qualification "full-time" was added to the final draft deliberately to exclude part-time "law officers" such as politically appointed deputy sheriffs.

The exception also would apply to servicemen, prison guards and wardens while they were either on duty or traveling to or from duty.

The only times members of the general public could carry guns without permits would be from a "place of legal purchase" or on the way to or from a "target shoot, target practice, sport shooting event, hunt, or any organized civic or military activity."

The original draft contained provisions also for "skeet and trap" meetings also, but members of gun clubs pointed out that handguns were not normally used in these two sports.

Whenever a handgun is carried, it would have to be in a closed case or holster and unloaded. The original draft said the case should be marked as a "gun case." This was dropped because it was thought likely to be an invitation to the theft of small arms left in cars or carried.

Under the bill submitted yesterday, two exceptions were made to the otherwise mandatory forefeiture of seized weapons and vehicles in which they were carried. The exceptions cover stolen cars and "common carriers," such as taxis or buses whose owners are unaware that their passenger is illegally armed.

The bill has a special provision to cover the delay between its enactment and the issuance of permits to those in regular need of handguns such as licensed private policemen, bank guards, armored-car escorts, and private detectives.

These private policemen would be permitted to continue carrying their guns on duty for a year, pending the approval of their applications for permits.

Colonel Smith has estimated that between 10,000 and 11,000 permits will be issued in the private security field, making up the bulk of the $300,000 annual operating budget.

Mr. Elridge said of the amendments: "There is no general purpose on toughening or lessening the bill or trying to appeal to anyone or anything like that. They are just specific suggestions in the way the bill was worded which were felt would improve its workability."

Shortly before the Governor submitted his bill, he met with a group of black ministers and two black legislators who support the bill. Governor Mandel again promised to keep his door open for any complaints about police harassment—a major objection to the stop-and-frisk clause.

The ministers represented Baptist and Methodist parishes in Baltimore city and Baltimore county. They were accompanied by delegates Frank M. Conaway (D., 4th Baltimore) and Joseph Chester (D., 2nd Baltimore).

Officers who conduct on-the-spot searches which are fruitless would be protected from being sued for damages unless it could be proved that they had acted without "reasonable grounds for suspicion and with malice."

The proof would have to be "by a fair preponderance of the evidence"—the normal civil suit requirement.

This phrase was inserted in the final draft at the request of a legislator, who apparently felt the definition should be spelled out, since such a civil suit could possibly arise out of criminal proceedings, where normal proof has to be "beyond a reasonable doubt."

3/18/72

Senate enacts gun bill

Governor to sign it March 27

BY GILBERT A. LEWTHWAITE
Annapolis Bureau of The Sun

Annapolis—The Senate yesterday approved and sent the gun control bill to Governor Mandel, who announced he will sign it into law a week from Monday.

The delay is to give the State Police time to set up the machinery for issuing permits, and to allow the public a chance to study the bill.

Beginning March 27 it will be illegal in Maryland to wear, carry or transport a hand gun without a permit except on the way to and from legitimate sporting events, between bona fide residences or on the way to one's privately owned business.

Stop and frisk

The police will also be empowered under the law to stop and frisk people they believe may be armed and dangerous.

Enactment of the bill makes Maryland the eighth state in the nation to ban the open carrying of handguns.

Governor Mandel, suffering from a cold and unable to comment personally, was reported satisfied that the bill's impact on crime would not be lessened by the 66 amendments tagged onto it during its 8-week passage through the Legislature.

House amendments approved

The final legislative action came in the Senate yesterday, when by a 32-to-10 vote the lawmakers approved 24 amendments made in the House.

"End of a long, long journey," commented Senator William S. James (D., Harford), the Senate president.

J. Robert Esher, chief lobbyist for the state's gun clubs and a leading foe of the legislation, said: "I'm hardly surprised, but obviously disappointed."

Mr. Esher, who in previous years established a reputation for successful lobbying, said: "I never bucked the administration before. It's an altogether different ball game. For crying out loud, you never saw any ordi-

See GUN, A13, Col. 1

State Senate enacts gun control bill; Governor to sign it into law March 27

GUN, from A1

nary bill get the kind of attention this thing got."

Mr. Esher has been granted an appointment by the Governor next week. At the meeting he intends to reveal what he believes are legal flaws in the bill, and will ask the Governor to veto it.

"It's not a nonsense request. There are legal difficulties with the bill under the Maryland constitution," he said.

Move to reconsider

The bill is widely expected to be petitioned to referendum on the November ballot, and there is little doubt that 29,000 signatures needed could be quickly gathered by gun-enthusiast opponents and blacks fearful of harassment in the ghettoes.

Two hours after the bill passed, Senator Victor L. Crawford (D., Montgomery) sent a shock wave through the State House by suddenly moving for its reconsideration.

His grounds for doing so were that one of the House amendments apparently allowed any business proprietor to carry a gun around. He withdrew his motion after he was convinced that the gun had to be unloaded and encased and that the businessman had to be on his way to or from his own business.

The Senate vote yesterday repeated the pattern set in all debates on the issue—splitting the black vote.

Senator Verda F. Welcome (D. 4th Baltimore) and Senator Clarence W. Blount (D. 5th Baltimore) voted against the bill, while Senator Clarence M. Mitchell (D., 4th Baltimore) and Senator Robert L. Daton (D., 2d Baltimore) voted for it.

Senator Mitchell said afterwards he voted for the bill only because he was certain that a court challenge being prepared by the Monumental Bar Association, a group of Baltimore black lawyers, would succeed in having the stop-and-frisk section stricken from the bill as unconstitutional.

Sees loophole

Meanwhile, Milton B. Allen, Baltimore's state's attorney, voiced an eleventh-hour complaint about the new gun law, saying that a "glaring defect" is its failure to adequately prevent certain persons with criminal records from obtaining weapons.

The bill prohibits any person convicted of a crime of violence from getting a pistol permit. But Mr. Allen noted that the provision applied only to those who had received a sentence of more than a year.

"What this means, for example, is that if a subject is convicted of manslaughter, a felony, and receives a six month's sentence, or is convicted of aggravated assault, a misdemeanor and receives less than a one-year sentence, he may still apply for and be granted a permit to carry a gun," he said.

"I see no justification for allowing a law to exist that enables convicted criminals who happen to get off with less than a one-year jail term to have such easy access to legitimate purchase of a pistol.

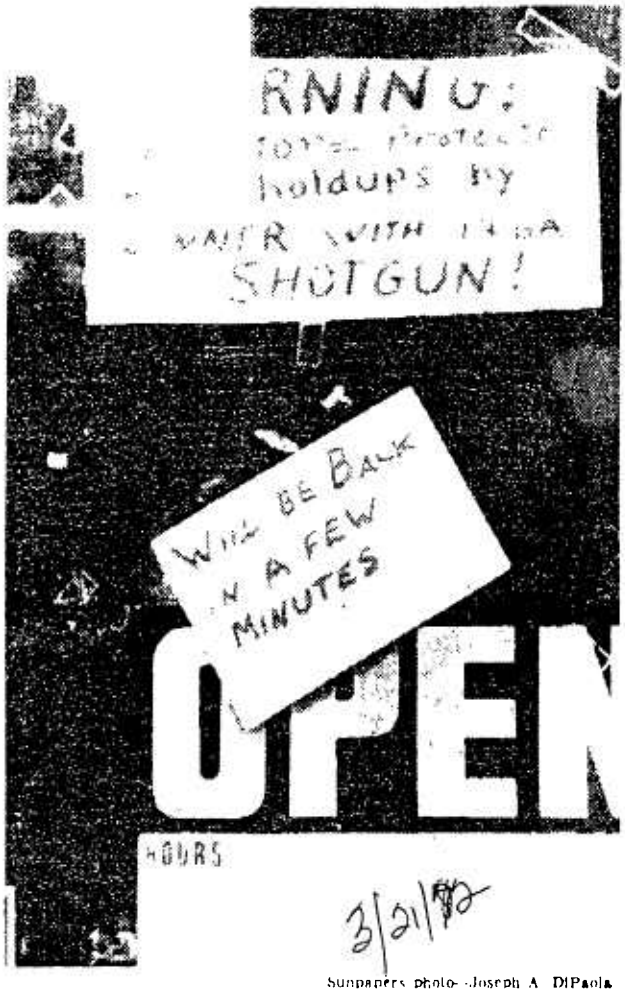
"I am talking here about convictions for gun-related crimes, violent crimes of any kind, not petty crimes such as traffic violations, public disturbances or the like.

"Saving clause"

"There is a saving clause in the new gun bill, which gives the superintendent of State Police the discretion to deny a permit to a gun applicant who exhibits a "propensity for violence or instability."

"This is a bit vague, in my opinion, and unless strictly enforced by the superintendent, unstable persons with criminal records may still acquire weapons."

Gun bill signing is set



Sunpapers photo--Joseph A. DiPaola

Owner of the store above, on 32d street just off Greenmount avenue, gives fair warning to would-be robbers.

By GILBERT A. LEWTHWAITE
Annapolis Bureau of The Sun

Annapolis--Governor Mandel said yesterday he would sign his emergency gun control bill into law next Monday--rejecting a police plea for a three-week time lag.

Col. Thomas S. Smith, superintendent of State Police who requested the delay, said: "It really is pushing us a bit."

He said he asked the Governor to postpone signing the bill to give State Police time to hire seven additional civilians, redesignate 14 police officers and work out permit procedures.

The permit application forms are still being printed, and Colonel Smith now hopes to get them by Friday and have them distributed over the weekend in time for the Monday deadline.

"We're going to try"

"I really contemplated not being ready for three weeks. We have a lot of things to do between now and Monday. I requested a longer period, but the Governor said we could do it by Monday and we are going to try to do it that way," Colonel Smith said.

The police have already received "numerous enquiries" about permits, he said, adding that the official estimate was

See GUN, C7, Col. 1

Mandel rejects bid for delay, will sign gun bill Monday

3/21/72

GUN, from C20

that 30,000 gun owners would apply for a $15 permit during the first year.

"I would think that the way the law is written it has got to be [interpreted] somewhat liberally. I don't mean everyone applying [for a permit] is going to get one. But if a person is required to be in a place where he might think his life is threatened and he can substantiate that, we are duty-bound under the law to issue a permit."

"Bad portion" of city

As examples he cited the milk man or insurance agent carrying money in a "bad portion" of the city.

He said permits would also be granted to sportsmen, who under the new law are allowed to carry their handguns unloaded and encased to legitimate shooting events without a permit.

The sportsmen's permits would specify the limited circumstances in which their weapons could be used. The only purpose of having a permit would be to protect the gun enthusiast from the possibility of a mistaken arrest.

In the effort to prepare the permit office, Colonel Smith said there had been no chance yet to educate his officers on the exercise of the bill's stop-and-frisk provisions.

"We have not gotten out anything as yet. But guidelines will come out prior to our getting into this thing. We are in a time-frame now and we have to do first things first. These other things will follow."

Governor Mandel, at a press conference yesterday, said the bill "thrusts Maryland into the vanguard of states attacking crime and the criminal by eliminating indiscriminate possession and use of handguns."

"From the day it was introduced, this bill—its purpose and its intent—has been misrepresented and distorted by those who believe it invades their civil liberties on the one hand, and by those who believe it intrudes upon their right to bear arms on the other," the Governor said.

"But my concern throughout this long and difficult debate has been the average citizen, who has the right to life, the right to walk our streets without fear, the right to enjoy our recreational areas without being gunned down."

"Those who remain skeptical need only recall that seven persons were killed last weekend in Baltimore city—six by handguns," he added.

Mandel's Signature

News American

Launches Gun Curbs

By STEVEN NORWITZ
News American Bureau

ANNAPOLIS — At 1 p.m. today, Gov. Mandel's handgun control bill becomes law.

The governor is scheduled to sign the bill at that time, and says it will become effective immediately.

News American

It will then be illegal to carry or transport a hand gun in Maryland without a permit, except in certain cases.

Violators will face minimum mandatory sentences and police will be able to stop and search someone if they have a "reasonable belief" that he is carrying a gun illegally.

UNLOADED guns, enclosed in a holster or a case, may be carried without a permit between:

News American

- The gunowner's residence and target ranges or place of target practice.

MAR 2 7 1972

- The residence and place of business which is owned and operated by the gun owner.
- Residence of the gun owner.

News American

- The gun owner's residence and a repair shop.

News American

- The gun owner's residence and a hunting shop.

All other purposes will require a permit; which will cost $15 and can be obtained at any state police station, Baltimore City does not have a State Police office so residents will have to go to the nearest one.

MAR 2 7 1972

Permit applications will contain 20 questions pertaining to character stability and a police record, said Sgt. Rocco J. Garielle, who heads the new hand gun permit unit of the state police.

News American

THERE ARE no specific guidelines yet on how permits will be issued, but each application will be studied on its own merits and a reply may take months in some instances, according to Gabrielle. Permits will last two years.

Although the heart of the bill, according to the governor, is its stop-and-frisk provision, that part of the measure will not be immediately enforced in Baltimore City.

MAR 2 7 1972

Dennis S. Hill, the Baltimore police spokesman, said the department will continue to operate "under the old guidelines" until the law has been reviewed by the attorney general's office and translated into police regulations.

News American

CURRENT guidelines are not as broad as those in the Mandel bill. The department's regulations will be subject to the approval of the attorney general before they are distributed to the 3,400-man force. This could take "several weeks."

Current guidelines enable a police officer to search someone if he has a "reasonable suspicion that the person has committed, is committing or is about to commit a crime."

Governor Mandel today will also name the five member review board which will consider citizens' appeals for being denied permits.

MAR 2 7 1972

In describing the bill, Mandel said last week that "to some the new law might appear to go too far. To others, it might appear to go not far enough. Yet it was a necessary and reasonable step toward ending the senseless slaughter on our streets."

QUESTION: Do you think the state gun control law is working?

NEWS AMERICAN
Asked in Highlandtown

OCT 1 1 1972

FRED RZECZKOWSKI
Salesman
Baltimore

No not really. . . there are still a lot of murders around and it really is quite easy to get a gun if you really want one. . . I do think that the crime rate has gone up instead of going down since this law began. . . I do not see how you are going to stop a person if he wants a gun bad enough.

STEVE KOTULA
Mechanic
Baltimore

I do not think it has worked out at all. . . there is too much going on underground. . . it is a good law but if anyone wants a gun badly enough he can find a way to get it. . . it is helpful to at least run a criminal record on a person who is trying to buy a gun. . . there are just too many loopholes in the law as it is written.

NEWS AMERICAN

OCT 1 1 1972

HERBERT RAVENSCROFD
Machinist
Baltimore

It is just as easy to get a gun as it used to be. . . there is still a high crime rate and I cannot see how this bill has done much. . . as a matter of fact, I could go out of state and get guns if I really wanted them . . . it seems so easy with no questions asked and no registration necessary.

ARNOLD QUITT
Assistant Manager
Randallstown

It's doing pretty well most of the time but I do not know how long it will last. . . there are so many different ways to get a gun that something has to be done. . . this city is full of gun-happy people and it should not be so easy for them to get guns.

(over)

Gun control law:

One year later, skeptics still are

3/28/73

By JAMES ROUSMANIERE, JR.

In the early hours of March 28 last year, 20-year-old Katherine Clark, of Brentwood, was shot and killed by her boyfriend in the parking lot of Prince Georges County General Hospital in Cheverly.

The incident occurred less than 12 hours after Governor Mandel had put his signature on the state's first comprehensive handgun control law, a measure regarded by many to be one of the strictest in the nation.

Stop and frisk

Miss Clark was the first shooting victim during the tenure of the law, which celebrated its first birthday yesterday. She was not the last. Preliminary statistics show that the law apparently has not deterred violent crime in the state.

In Baltimore city alone, 190 persons died last year from handgun wounds. The total is down 10 from 1971, but apparently no one is crediting the new gun law for the modest dip. During the same period, aggravated assaults with handguns and armed robberies took upward jumps.

Officials are reluctant to assess the full effect of the law because it is so new. In only one respect can tangible success be detected—and this is the record of the controversial "stop and frisk" provision, that allows police to check for hidden weapons. Police throughout the state stopped 538 persons on suspicion of carrying concealed weapons during the last 12 months and they found 354—65 per cent—to be, in fact, carrying guns.

Of the firm statistics to come out of the law's first year, few come even close to approximating what was anticipated.

• It was originally thought that the State Police, who review gun permit requests, would receive up to 50,000 applications. However, only 6,717 applications were filed during the first 11 months. A total of 3,500 requests, mostly from

See GUNS, C7, Col. 5

Police seized over 1,600 handguns in the city last year

GUNS, from C26

businessmen and women, were granted; 1,000 were turned down, and the rest still are being processed.

The $15 application fee accompanying all requests was designed to cover costs of investigation and administration. According to Detective Sgt. Joseph Gabriele, head of the handgun permit division of the State Police, the unit is losing more than $46 on each application. The 12-month loss has been projected at $176,000 and, presumably, the deficit will have to be made up in general fund allocations.

The permit application process was originally estimated to take something on the order of two weeks, at most. Instead, the backlog of applications and the apparent shortage of manpower has delayed action on some permit applications as long as four months.

• The law requires the state's attorney to initiate "forfeiture" proceedings on all handguns found to be carried illegally. The purpose of the action is to determine where the weapon should go: to its alleged owner or to the incinerator. In Baltimore city, 179 handguns were confiscated last year under stop and frisk. In addition, an estimated 3,000 handguns were seized in other arrests.

Milton B. Allen, Baltimore state's attorney, estimates it will cost his office more than $50,000 to carry out the "forfeiture" proceedings, which involve hearings. He has not initiated any proceedings so far because he says he doesn't have the money.

Like others involved with the passage of the gun control bill, John C. Eldridge, the Governor's chief legislative aide, suggests it is too early to pass judgment on the law. He added that he has received "very few" complaints about the law.

A former unpaid lobbyist for the Maryland Pistol and Rifle Association, however, says he has received "many calls" from critics of the law, mostly people who "feel unsafe in high-crime areas."

J. Robert Esher, who lobbied against the bill last year, remarked, "I don't see any drop in the crime rate. And the reason is that the sort of people who are likely to commit serious crimes aren't going to submit an application."

Sergeant Gabriele said the low number of permit applications, compared to what was estimated, reflects primarily the fact that sportsmen and hunters are not normally required to have permits and that homeowners and shopkeepers who do not carry weapons are not subject to the new law.

The permit applicants his office has turned down Sergeant Gabriele said, are those "who don't give a good and substantial reason" to carry a gun. One such applicant, he said, said he wanted a gun because he "liked the feel of it at his side."

A citizens handgun permit appeal board has reversed only 31 of Sergeant Gabriele's decisions.

Private security guards, whose numbers are estimated at 11,000 in the state, were given a one-year's grace period before having to get gun permits.

Due to the backlog of cases, however, the attorney general has ruled that they may continue to wear their weapons without a permit, providing that they have filed for one. Sergeant Gabriele noted, however, that many of them may not even need permits, since they do not normally carry their guns outside of their places of work.

1972 gun-control law's abuses, benefits have failed to materialize

By ROBERT A. ERLANDSON

Neither the feared abuses nor the expected benefits of Maryland's controversial 1972 handgun control law appear to have materialized yet.

Both police and civic sources state that police have not abused the "stop-and-frisk" provision which generated the most heated debate on the bill in the General Assembly.

And although a major objective was to get illegal weapons off the streets, by no stretch of the imagination—by statistics or in the opinion of people interviewed in and outside police circles—has the law succeeded more than minimally.

No one interviewed could offer a concrete solution to the problem and even the suggestion that "all handguns should be registered or confiscated" was considered an ideal, not a practical, answer.

Minority and civil liberties groups expressed grave fears that police would use "stop and frisk" as an excuse for arbitrary searches, particularly of blacks.

In practice, however, those fears apparently have not materialized.

State and city police said the

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Gun-control is not shaping up

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statistics and reports they receive indicate "quality stop and frisk, and quality arrests" under the nearly two-year-old law.

Spokesmen for the American Civil Liberties Union and the National Association for the Advancement of Colored People said yesterday they have received no complaints of police using the law as harassment.

Senator Verda F. Welcome (D., 4th Baltimore), one of the bill's strongest opponents, said yesterday she has received two minor complaints that were actually "misunderstandings" of "stop and frisk."

Still opposes overall law

Senator Welcome said she still opposes the overall law "because it is not strong enough; there are loopholes and more people have guns than before."

The senator said, however, that she believes the vocal opposition to "stop and frisk" has "caused the police to be on their best behavior" in using it.

Sgt. Rocco Gabriele, chief of the State Police pistol-permit section, said he has received no complaints of police abuse of the law. Dennis S. Hill, spokesman for the city force, said his department has had one "inquiry," generated by a local newspaper.

The law allows policemen who have "reasonable belief" that a person may be carrying a pistol illegally to stop him and search him. A report must be filed within 24 hours whether there is an arrest or not.

According to police statistics, the overwhelming majority of those searched and arrested on weapons charges in Baltimore are black.

But this also is reflected in the percentage of blacks, 66.4 per cent, involved in all arrests in the city. Mr. Hill said that of 43,757 persons arrested last year, 29,080 were black.

On the other hand, he pointed out, the vast majority of victims of crimes are blacks as well, usually of acts committed by other blacks.

"Poor, black people are the most likely to be victims," he said.

Of 539 "stops" reported by city police between April, 1972, and October, 1973, 445, or 82.5 per cent, have been nonwhites. Of 368 arrests made in those cases, 312, or 84.7 per cent have been nonwhites.

City police statistics show that nonwhite males, mainly blacks, between the ages of 25 and 29 stand the greatest chance of being stopped and searched, and arrested, for carrying guns illegally. The next largest age groups are also nonwhite males between the ages of 30 and 34, and 35 and 39.

600,000 registered firearms

There are more than 600,000 firearms registered, and more than 500,000 of those are handguns, Sergeant Gabriele said. The number of unregistered weapons could be double that or more — the sergeant would not hazard a guess.

Although a permit is mandatory to carry a gun legally, registration of firearms is not required.

About 25,000 pistol sales are reported to State Police annually, but private sales go unrecorded. Other major problems, the sergeant said, are that unreported guns are brought to Maryland from other states, and there is no law against importing parts to fabricate the infamous "Saturday night specials."

The overall impact of the handgun law remains to be seen, he said, because "the law has not really been tested yet. There is a settling down period. Do all the people in the state understand there is a law requiring a permit to carry a gun?"

"Basically, if used properly, this law could be another tool for the benefit of the citizens," Sergeant Gabriele said. "The intent was to get the guns off the streets, but I don't believe there is any noticeable drop in the major crimes involving firearms.

"This law is like any other law, but it is not going to stop homicides. The law will help Maryland law enforcement officers to the extent they choose to use it and to the extent that citizens co-operate."

At this point State Police are planning to seek only minor amendments, nothing substantive, except possibly a renewed request to raise the permit application fee from $15 to $25.

"Losing money"

Sergeant Gabriele said the average investigation of an applicant takes 5 hours, although some have taken as many as 100 hours. Each investigation costs $25.50, without counting overhead, he said, "and we are losing money every time we do one. The permit section was supposed to be self-sustaining, but we're not."

Although State Police expected 50,000 handgun applications in the first year, there have been 9,052 since it began in March, 1972.

Of the 7,152 that have been fully processed, 1,937, 27.1 per cent, have been either rejected outright or have been revoked after being issued.

The United States Treasury Department has estimated that more than 1 million "street guns," which can be purchased cheaply, are entering the country each year.

Hundreds of illegal weapons have been confiscated in Baltimore and the counties since the control law took effect, but they represent only a small proportion of those actually being held in the state.

Party in 26th Ward

The Patriotic Women's Democratic Club of the 26th Ward will hold its installation of officers and Christmas party at 6:30 P.M. December 10 in Overlea Hall, 6809 Belair road.

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