



SENATE JUDICIAL PROCEEDINGS COMMITTEE
WALTER M. BAKER, CHAIRMAN * COMMITTEE REPORT SYSTEM
Department of Legislative Reference . 1988 General Assembly of Maryland

BILL ANALYSIS
HOUSE BILL 1131

HANDGUNS MANUFACTURE AND SALE - PROHIBITION

SPONSORS:

Delegates Hughes, Genn, Frosh, Cummings, Oaks, Boston, M. Murphy, Montague, Rawlings, Exum, Menes, Campbell, Gordon, Anderson, Perkins, Woods, Kreamer, Shapiro, Harrison, Douglass, Rosenberg, Franchot, Blumenthal, Jones, Lawlah, Kirk, Young, Fulton, Curran, Hergenroeder, Pinsky, Dembrow, Maddox, and Currie

SUMMARY OF BILL:

This bill prohibits the manufacture for distribution or sale of any handgun that is not included on a handgun roster published by the Superintendent of the Maryland State Police. The bill also prohibits the issuance of a permit to carry a handgun unless the handgun is listed on the roster, and prohibits selling a handgun manufactured after 1970 that is not on the handgun roster.

Under the bill, a person may not be held liable in a civil action for the manufacture or sale of a handgun solely on the grounds that it is a Saturday Night Special, if the handgun is included on the handgun roster.

The Superintendent must publish the roster by July 1, 1989. In determining whether a handgun should be included on the roster, the Superintendent must consider its concealability, ballistic accuracy, weight, quality of materials and manufacture, safety, and caliber. The Superintendent may place a handgun on the roster unless: a court, after all appeals are exhausted, has found that the handgun is a Saturday Night Special; it is not detectable by standard security equipment commonly used at airports or courthouses; or it is not useful for legitimate sporting activities, self protection, or law enforcement.

A person may petition to have a handgun placed on the roster, and the Superintendent must approve or deny the petition in 45 days. If the petition is not acted upon in 45 days, it is considered denied. If denied, the petitioner may request a hearing within 15 days, and the hearing must be held within 90 days from the receipt of the request. At the hearing, the petitioner has the burden of proof that the handgun should be placed on the roster. Any aggrieved party may appeal a decision within 30 days in accordance with the Administrative Procedure Act.

The Superintendent may seek a permanent or temporary injunction from a circuit court to enjoin the willful and continuous manufacture, sale, or offer for sale in violation of the bill of a handgun not on the handgun roster.

Compliance with the prohibitions in the bill against the manufacture for distribution or sale, sale, or offer for sale of handguns is not required until January 1, 1990.

BACKGROUND:

Senate Bill 3, which would have made selling a Saturday Night Special a misdemeanor, received a favorable report with amendments, but was rejected by the Senate on March 24, 1986.

Existing law makes no distinction between handguns classified as Saturday Night Specials and any other handgun. There is no prohibition against the sale of a Saturday Night Special, and such sales are regulated no differently than the sale of any other handgun.



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FLOOR REPORT

HOUSE BILL 1131

**PROHIBITION OF HANDGUNS - MANUFACTURE AND SALE - PROHIBITION OF
STRICT LIABILITY FOR DAMAGES CAUSED BY CERTAIN CRIMINAL USE OF FIREARMS**

SPONSORS:

Delegates Hughes, Genn, Frosh, Cummings, Oaks, Boston, M. Murphy, Montague, Rawlings, Exum, Menes, Campbell, Gordon, Anderson, Perkins, Woods, Kreamer, Shapiro, Harrison, Douglass, Rosenberg, Franchot, Blumenthal, Jones, Lawlah, Kirk, Young, Fulton, Curran, Hergenroeder, Pinsky, Dembrow, Maddox, and Currie

COMMITTEE RECOMMENDATION: Favorable with 10 amendments

SUMMARY OF BILL:

House Bill 1131 establishes a Handgun Roster Board in the Department of Public Safety and Correctional Services. The Board is charged with compiling and publishing a roster of permitted handguns that are useful for legitimate sporting, self-protection, or law enforcement purposes.

The Board consists of 9 members appointed by the Governor with the advice and consent of the Senate. The members are: the Superintendent of the Maryland State Police, who is the chairman, representatives of the Associations of Chiefs of Police, the Maryland State's Attorneys Association, a handgun manufacturer, the National Rifle Association, Marylanders Against Handgun Abuse, and 3 citizen members.

The bill specifies the characteristics of a handgun that the Board is required to consider in determining whether a handgun should be placed on the handgun roster. These include concealability, ballistic accuracy, weight, quality of materials, quality of manufacture, reliability as to safety, and caliber.

The Board is authorized to place a handgun on the roster on its own initiative and is required to, upon the successful petition of any person, unless certain exceptions apply.

The bill sets forth procedures for petitioning to place a handgun on the roster, and for appeal of the denial of a petition.

The bill prohibits:

1. The manufacture, for distribution or sale, of any handgun that is not on the roster;
2. The sale or offer for sale of a handgun manufactured after January 1, 1985 that is not on the roster; and
3. The manufacture, sale, or offer for sale of a handgun on which the identification number is obliterated, removed, changed, or altered.

A violation of these prohibitions is a misdemeanor. A manufacturer who violates these provisions is subject to a maximum fine of \$10,000 for each violation and a seller is subject to a maximum fine of \$2,500 for each violation. Each handgun manufactured, sold, or offered for sale in violation of the provisions of this bill is a separate violation.

The bill also provides that a person or entity may not be held strictly liable for damages of any kind resulting from injuries to another person sustained as a result of the criminal use of any handgun by a third person, unless the person or entity conspired with the third person to commit, or willfully aided, abetted, or caused the commission of the criminal act in which the handgun was used.

COMMITTEE AMENDMENTS:

The Committee adopted 10 amendments to the bill.

AMENDMENT NO. 1:

This is a technical amendment to the title of the bill.

AMENDMENT NO. 2:

This amendment adds a preamble.

AMENDMENT NO. 3:

This amendment strikes the definition of "Saturday Night Special" and adds language prohibiting the manufacture, sale or offer for sale of a handgun without an identification number or with an altered number.

AMENDMENT NO. 4:

The amendment strikes language that would have prohibited the imposition of civil liability on any person for the manufacture or sale of a handgun solely on the grounds that it is a Saturday Night Special, if the handgun was included on the roster. This amendment also adds the penalty provisions and language intended to overrule the Kelley decision.

AMENDMENT NO. 5:

This amendment establishes the Handgun Roster Board and gives the Board the authority to compile the roster of permitted handguns. The amendment also makes conforming changes.

AMENDMENT NO. 6:

This amendment changes the manufacture cut off date for handguns that may be sold in the state from 1970 to January 1, 1985.

AMENDMENT NO. 7:

This amendment requires the Secretary of the Department, rather than the State Police Superintendent, to adopt regulations.

AMENDMENT NO. 8:

This amendment makes it mandatory for the Board to place a handgun on the roster upon the successful petition of any person.

AMENDMENT NO. 9:

This amendment requires a notice of denial to be sent by certified mail and makes technical and conforming changes.

AMENDMENT NO. 10:

This amendment strikes language that is inconsistent with current law.

BACKGROUND:

The case of Kelley v. R. G. Industries, Inc., 304 Md. 120, 497 A.2d. 1143 (1985), held that manufacturers or marketers of "Saturday Night Special" handguns may be held liable to innocent persons who suffer gunshot injuries from the criminal use of their products. The purpose of this bill is to overturn that ruling, and also to regulate the sale of this type of handgun in the State.

SHR/jrw



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SHR/jrw

April 07, 1988

Judicial Proceedings Committee
James Senate Office Building
Annapolis, Maryland 21401

Dear Senators:

I am the treasurer of the United Sportsmen's PAC in Maryland, a Director of the Maryland and District of Columbia Rifle and Pistol Association and a civil rights activist. I am also systems analyst and registered voter in District 16 and Howard A. Denis is my Senator. I am also represented by Delegate Gil J. Genn, a sponsor of House Bill 1131 - a bill to remove the power to legislate from the legislature and turn it over to an unelected bureaucrat, the Superintendent of the State Police. Sweeping regulatory powers broad enough to be a threat to all law abiding citizens in Maryland. This bill is unconstitutional and opposed by all firearms owners in District 16, who realize it installs the framework to ban any handgun ownership in Maryland as has occurred in the District of Columbia. The firearms owners can remove Gil J. Genn from office in 1990, but we cannot remove the Superintendent of the State Police. The firearms owners of District 16 are the only people who can be trusted to make the proper decisions regarding gun purchase and ownership. The concentration of these powers in the hands of a single individual goes against the principle of separation of powers on which our Government is wisely based.

I urge you to oppose House Bill 1131. I urge you to kill this bill in any amended form. Please do not couple this bill with Senate Bill 484, which deserves hearing and floor vote on its own merit. SB 484 is not a pro-gun bill, but an anti-third party liability bill. The threat of the expanding concept of third party liability affects the security of all Maryland citizens, which is why the Kelley Decision must be repealed.

Please defend the Constitution and the Bill of Rights and report HB 1131 unfavorably. Thank you for the honor of allowing me to testify on this bill.

I am, sirs, very respectfully, your obedient servant,



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*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.*

Maryland Attorney General Disregards Constitution

On December 10, 1987, during testimony presented to the U.S. House of Representatives, Maryland Attorney General J. Joseph Curran, Jr., displayed a contemptuous disregard for the Constitutional rights of all American citizens. Curran was on Capitol Hill testifying in support of the latest ban on firearms—the so-called “plastic gun,” that supposedly eludes airport security detection.

Craig Markva, Governmental Affairs Representative for Gun Owners of America, expressed shock at Curran's testimony. “Mr. Curran displayed a terrible ignorance on the subject of plastic firearms and advocated a concept of government that is more akin to a country of the Communist bloc,” said Markva.



Attorney General Curran

Curran Favors Control by Elite

Markva was referring to Curran's arrogant exhortation to his fellow lawmakers to outlaw any gun they didn't like because, “We make the rules.” Curran continued his tirade by reasoning that there would be no problems with passing these laws since, “We make the shots. This is our ballgame. . . we set the standards.”

The GOA representative pointed out that, “According to the Constitution that I read, the power Mr. Curran claims to have exclusive power of is in ‘We the People.’ It is not in the power of the elected elite as Mr. Curran apparently prefers. The Maryland Attorney General's belief that it is okay to ban anything legislators dislike is exactly why the Founding Fathers believed in the right to keep and bear arms. They wrote the Second Amendment to restrain people just like him.

“We have been saying all along that the facts surrounding plastic guns are being clouded by hysteria and fear. Legislators who are already opposed to gun ownership are trying to sell this gun grab as a prevention of terrorism. This is absurd since there is no all-plastic gun in existence. This fact was even acknowledged by Mr. Curran.”

Citing the Glock 17, an Austrian-made gun that is only 17 percent plastic, the Maryland Attorney General stated that there would never be any use for such a gun. He quoted a Department of Justice official as saying, “no respectable individual [would] procure a defense weapon such as a Glock 17 pistol.” Curran also stated that the Glock “should be prohibited because it is an invitation for terrorists.”

What Mr. Curran failed to mention is that the Glock 17 “terrorist weapon” had just been adopted as the main sidearm of the city of Miami Police Department as well as by 250 other police forces around the nation. The state troopers of Curran's own state—Maryland—disagreed with him. They just rated the Glock 17 as the number one preference in a recent test of firearms under consideration by the state.

So, in the words of Attorney General Curran, the members of 251 American police forces (at a minimum) cannot be considered “respectable individuals.”

THE RIGHT TO BEAR ARMS

IS IT AN ABSOLUTE RIGHT?

DOES IT APPLY TO INDIVIDUALS?



WHAT DOES THE SECOND AMENDMENT MEAN?

WHAT IS THE MILITIA?

WHO CAN INTERPRET THE CONSTITUTION?

THE ANSWERS ARE

CLEAR AND UNEQUIVOCAL

FOR THOSE WHO WILL READ

THIS SHORT RESEARCH PAPER

Reprinted by NAKBA The NATIONAL ASSOCIATION

TO KEEP AND BEAR ARMS, from

AMERICAN PISTOL & RIFLE ASSOCIATION

ABOUT INDIVIDUAL CITIZENS AND GUNS?

The Founding Fathers of our country — those wise, principled and courageous men who pledged their lives, their fortunes and their sacred honor to the cause of liberty and the creation of the greatest nation ever conceived by men — were they alive today, would be appalled and angered at the widespread, malicious attack on one of the most basic American freedoms — the right to bear arms. Here is what those great American patriots said:

Thomas Jefferson: "No free man shall ever be debarred the use of arms."

Patrick Henry: "The great object is that every man be armed. Everyone who is able may have a gun."

James Madison: "Americans have the right and advantage of being armed — unlike the citizens of other countries whose governments are afraid to trust the people with arms."

Samuel Adams: "The Constitution shall never be construed to prevent the people of the United States who are peaceable citizens from keeping their own arms."

Alexander Hamilton: "The best we can hope for concerning the people at large is that they be properly armed."

Honest Americans will objectively note that in each of the above quotes reference is clearly made to the right of the people, not to the right or authority of either state or federal government. Furthermore, nothing is said about the preemptive or collective right of the army, national guard, state police or any federal agency to possess and/or control all weapons instead of, or for the good of, the people. Clearly, the men who established this Republic, and who wrote the Constitution and the Bill of Rights, intended, and stated beyond doubt, that the people, i.e., individual Americans, have the right and duty to be armed.

WHAT IS THE MILITIA?

But if it is the people who are to be armed, then what is the "militia" which is referred to in the Second Amendment? What was it when the Constitution was written, and does it still exist today?

By definition of our Founding Fathers, those citizens who were not in the "Organized Militia" (the standing army), were considered the "Unorganized Militia" (which included all males 18-45 who were subject to call for the organized militia). All other citizens, e.g., those neither organized nor subject to call (i.e., all men under 18 and over 45) were known as the "Militia of the Residue" as defined by Alexander Hamilton. The militia is all the people!

George Mason: "I ask, sir, what is the militia? It is the whole people, except for a few public officials."

Elbridge Gerry: "I ask what is the purpose of the militia? To offset the need of large standing armies, the bane of liberty."

James Madison: "The right of the people to keep (to have and to hold, openly or concealed) and bear (carry, transport and use) arms (weapons of self defense, including the handgun which predated the rifle and has existed for self defense since the 1500's) shall not be infringed (invalidated, limited, abridged). A well regulated militia, composed of the body of the people, trained to arms, is the best and most natural defense of a free country."

The Militia Act of 1790; Article 1, Section 8 of the U.S. Constitution; and the Federalist Papers, pages 24-29 state: "It will become necessary to organize and regulate a certain portion of the militia (i.e., the people)."

Clearly, the militia is the people — all the People! It was so in 1776 when we declared our independence and fought for our freedom. It was so in 1787 when the Constitution was approved. It was so in 1791 when the Bill of Rights (including the Second Amendment) was added. And it is true today.

INTERPRETING THE CONSTITUTION

Today we hear gun control advocates, naive do-gooders, liberals, leftists, and various public officials refer to the right of judges and the courts

to "interpret" the Constitution. We are also told (when we directly quote the Constitution or the Founding Fathers) that what was stated in the

Bill of Rights or what was written or said "back then" was alright for "those days", but that things have changed. In other words, the Constitution does not apply today in those cases where the liberal mentality does not want it to apply.

But those objections are easily answered. First, because the vast majority of U.S. citizens are reasonably intelligent and can read, and the Constitution and Bill of Rights are written in plain language (the same English we read and write today) and are not difficult to understand. Secondly, the authors of those documents anticipated this very problem with those who would usurp the people's rights, and those weak and unprincipled souls who would foolishly compromise or surrender their rights.

Jefferson and Madison addressed the subject directly and forcefully:

Thomas Jefferson: "On every question of construction (of the Constitution) let us carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed."

James Madison: "I entirely concur in the propriety of resorting to the sense in which the Constitution was accepted and ratified by the nation. In that sense alone it is a legitimate Constitution. And, if that be not the guide in expounding it, there can be no security for a consistent and stable government."

Thomas Jefferson: "To consider the judges as the ultimate arbiters of all constitutional ques-

tions is a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy."

The Second Amendment, i.e., Article II of the Bill of Rights, consists of 27 plainly written words which had the understanding, support, approval and forceful advocacy of its authors and all our forefathers, who created and built this nation. This declaration of the absolute, unequivocal, inalienable right of the people to be armed, needs no interpretation!

Most honest Americans, even those naively for gun control, will be forced to admit, in the light of the foregoing quotes, that the Second Amendment says what it means and means what it says.

However, those intent on disarming the American people will then try the ploy of arguing that while the federal government cannot constitutionally deny the individual's right to keep and bear arms, the states and their sub-governments (cities and counties and agencies and commissions) can do so.

Fortunately, our Founding Fathers anticipated such usurpation of power and denial of liberty. James Madison, the principal author of the Constitution, and later our 4th President, stated in an address before the Congress concerning the Bill of Rights which he also authored: "I do not fear oppression of these rights as much by the federal government as I do by the state governments. By enumerating these rights into the Constitution it will render those state laws unconstitutional which infringe on the rights of the people."

WHY THE SECOND AMENDMENT?

Amendment II 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.

When James Madison wrote the Bill of Rights, he and his colleagues enumerated our natural rights and freedoms in Article I (freedom of religion, freedom of speech, freedom of the press, freedom to assemble, etc.) and then in Article II stated how the people should preserve those individual liberties — by an armed citizenry! There can be no question that this was the intent of the Founding Fathers. Furthermore, the significance given to this right and duty is apparent by its position in the Bill of Rights — being stated in Article II ahead of all other rights, guarantees, protections and subsequent amendments. Two of our greatest Presidents remove any lingering doubt.

Thomas Jefferson: "The constitutions of most of our states (and of the United States) assert that all power is inherent in the people, that they may exercise it by themselves; that it is their right and duty to be at all times armed; that they are entitled to freedom of person, freedom of religion, freedom of property and freedom of the press."

Thomas Jefferson: "The strongest reason for the people to retain the right to keep and bear arms is, as a last resort, to protect themselves against tyranny in government."

Abraham Lincoln: "Our safety, our liberty, depends upon preserving the Constitution of the United States as our Fathers made it inviolate. The people of the United States are the rightful masters of both Congress and the Courts, not to overthrow the Constitution, but to overthrow the men who pervert the Constitution."

CREDENTIALS OF THE FOUNDING FATHERS QUOTED HEREIN

Thomas Jefferson (1743-1826)

Author of the Declaration of Independence (1776). Succeeded Patrick Henry as Governor of Virginia (1779), succeeded Benjamin Franklin as Minister to France (1785), became Secretary of State (1790). Elected Vice President (1796). Third President of the United States (1801-1809).

Patrick Henry (1736-1799)

One of history's greatest orators and spokesman for the American Revolution: "Give me liberty or give me death." Delegate to the House of Burgesses (1765-74) and to the Continental Congress (1774-76). Governor of Virginia (1776-79). Key proponent for the Bill of Rights.

Samuel Adams (1722-1803)

Great patriot and signer of the Declaration of Independence (1776). Organized the Sons of Liberty, the Committee of Correspondence and the Boston Tea Party. Member of the Continental Congress. Governor of Massachusetts (1794-1797).

Elbridge Gerry (1744-1814)

Member of the Continental Congress (1776). Signed Declaration of Independence (1776) and Articles of Confederation. Delegate to Constitutional Convention (1787). Refused to sign the Constitution without Bill of Rights. Served in first two Congresses (1789-93). Elected Governor of Massachusetts (1810).

Elected Vice President with President James Madison (1812).

George Mason (1725-1792)

Elected Virginia House of Burgesses (1759). Drafted Declaration of Rights for Virginia. Member of Federal Constitutional Convention (1787). Important voice in drafting the Constitution. With Patrick Henry was the primary force behind the creation and adoption of Bill of Rights.

Alexander Hamilton (1755-1804)

Before the Revolutionary War he wrote articles and pamphlets espousing the patriotic cause. Captain of Artillery and Secretary and aide-de-camp of General Washington. Later brilliantly commanded forces at Yorktown. Member of Continental Congress (1782-83). Hamilton and Madison were two strongest voices in creating the Constitution. Called "A giant of the young republic." A conservative financial genius who served as Secretary of Treasury under Washington. The most powerful and brilliant of the Federalists.

James Madison (1751-1836)

Drafted Virginia Constitution (1776). Served in the Continental Congress (1780-83) and Virginia legislature (1784-86). The principal force at the Constitutional Convention and given the title "Father of the Constitution." Brilliant contributor to the Federalist (papers). Author of the Bill of Rights. Congressman from Virginia (1789-97). Secretary of State (1801-09). Fourth President of the United States (1809-17).

CONCLUSION

The statements that you have read in this short treatise were the serious measured words of the men who signed the Declaration of Independence, served in the Continental Congress, drafted the Constitution of the United States and wrote the Bill of Rights. These were uncommon men who unselfishly pledged their lives, their fortunes and their sacred honor to the cause of freedom, and so created the greatest nation that has ever existed in all history. These wise men of vision understood and publicly declared that the guarantee of liberty rested in the Bill of Rights, and that the very foundation of that liberty was Article II, which provided for an armed citizenry through the clearly understood right and duty of free men to be armed so that they might defend their lives, liberty, property and their country.

To oppose the right to keep and bear arms on ideological grounds is one thing, even though it indicates a clear lack of historical perspective and a denial of the natural, absolute inalienable right to defend one's life, family, property, and freedom. However, to oppose that right by denying that the Second Amendment means what it says or that it does not pertain in the

rights of the people, is at best a demonstration of ignorance, and in most instances a maneuver of deception and intellectual dishonesty.

Finally, for those who refuse to respect the Constitution, or for whatever reason would deny or abolish those rights it guarantees, to you we state our uncompromising position. No task will be too hard, no battle will be too fierce, no sacrifice will be too great for the patriots of this nation who have sworn to defend our rights, ensure our freedom and preserve our heritage, and to pass them on to our children and generations of Americans yet unborn.

Today the American Pistol & Rifle Association stands at the forefront of those who are committed to the defense of the Constitution of the United States of America and the freedoms it so clearly guarantees.

If you will join in this noble cause, let us hear from you today.

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GUN CONTROL: The Wrong Prescription For Violent Crime

by David T. Hardy*

The incidence of violent crime in the United States has led to a variety of proposed remedies. Few such proposals have engendered as much controversy as attempts to prohibit or restrict private firearm ownership. The traditional calls to legislate criminal sanctions for firearm possession have recently been supplemented by proposals for judicial recognition of civil liability for the sale or distribution of handguns.

This article will initially examine the historical and social context of American firearm regulation. It will then analyze, from a pragmatic standpoint, the policy considerations behind the imposition of criminal sanctions for private firearm manufacture, sale, ownership and use.

Contrary to popular perception, widespread handgun ownership and efforts to legally ban private handgun ownership are not twentieth century phenomena. As early as 1363, "hand cannons" about nine inches long were being manufactured. Four-and-a-half centuries ago, the Austrian Emperor Maximillian, noting complaints against individuals who "carry guns secretly under clothing," banned the making and carrying of "handguns that ignite themselves."¹ One of the first British shipments to the colony at Jamestown was a lot of "300 short pistols with firelocks."² Even the current proportion of handguns to rifles and shotguns—roughly 1:3—has remained stable for centuries. When British General Gage compelled Bostonians to surrender their firearms in 1776, they relinquished more than 1,800 muskets and 634 pistols.³

America's first attempt to ban the private ownership and carrying of handguns is found in an 1837 Georgia enactment⁴ which was promptly struck down as an infringement of the right to keep and bear arms.⁵ During the late 19th and early 20th centuries the vast majority of southern and southwestern states enacted statutes banning the carrying of handguns. Some of the statutes which banned the carrying of handguns applied in almost all circumstances, others applied only to public places, and still other statutes applied to cities, towns, and villages.⁶ The southern and southwestern handgun

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controls were largely abandoned in later decades, even as gun control became popular in the northeast. The outcome was contrary to what many might expect: between 1933 and 1965, the southern and western states which were drifting away from handgun legislation experienced homicide rate declines of 33 to 50%, while homicide rates in the northeast generally increased.⁸

Currently estimates of total firearm ownership in the United States range from 120 million to as high as 140 million firearms,⁹ of which about 25 to 30% are handguns.¹⁰ Private ownership of handguns in the United States can thus be estimated at approximately 50 million pieces. These are widely distributed among the American populace; several surveys have found that approximately half of American households own a firearm of some type, and approximately one-quarter of them own a handgun.¹¹

I.

Is Firearm Regulation the Answer to Violent Crime?

A comparison of patterns of firearm ownership with rates of violent crime demonstrates that firearm regulation is inherently incapable of controlling criminal violence.

1. *Firearm Regulations Typically Meet with Poor Compliance and with Enforcement Difficulties.*

A national survey conducted in 1975 indicated that less than half of American handgun owners could be expected to comply either with a national registration or a national confiscation statute.¹² Even these dismal estimates appear to be overly optimistic. In Chicago, compliance with a handgun registration ordinance is estimated to be just 25% while in Cleveland a scant 10% of handgun owners are believed to have complied with a registration ordinance.¹³

The inefficiency and inequity of handgun registration is even more alarming when one considers that the object of such laws—those who would use handguns for criminal purposes—are least likely to register their weapons. In fact, the rate of violent crime involving the use of handguns is miniscule in comparison to the volume of handgun ownership. For example, it is estimated that only one handgun in 3,000 will ever be used in a homicide.¹⁴ Thus, it is apparent that the brunt of any registration enforcement effort will fall upon otherwise law-abiding citizens. A judge of Chicago's "gun court" has conceded that for him:

the most striking experience is with respect to the kinds of people that appear there as defendants. For most, this is their first arrest of any kind. I don't mean now that this is their first conviction, but I mean this is their first arrest of any kind, and many of them are old people, many of them are shopkeepers, persons who have been previous victims of violent crimes.¹⁵

Similarly, the Senate Subcommittee on the Constitution recently concluded that approximately 75% of federal firearm prosecutions are current-

ly "aimed at ordinary citizens who had neither criminal intent nor knowledge."¹⁶

Further, the argument of gun control proponents that regulation would prevent homicides involving persons who know each other is flawed. The argument requires a dubious logical leap that the perpetrators are otherwise law-abiding citizens. The fact that the victim and the assailant knew each other, however, proves nothing of itself. In fact, such violence between acquaintances or family members is highly concentrated in a violent subculture atypical of society as a whole. A study of domestic homicide in Kansas City found, for example, that in 85% of domestic homicides the police had previously been summoned to the household to stop violence, and in over half they had been summoned five times or more.¹⁷ A recent medical study of victims of such attacks found that 78% volunteered a history of hard drug use and 16% specifically admitted heroin usage on the day of the attack.¹⁸ Presumably, the perpetrators' background was even less respectable. Such individuals are unlikely either to heed regulatory measures or be deterred by prosecutions of shopkeepers and the elderly.

2. *There Is No Demonstrable Relationship Between Firearm Ownership and Violent Crime Levels.*

Between 1969 and 1980 private ownership of handguns doubled in the United States, from about 24 million to approximately 52 million handguns.¹⁹ Although the total number of crimes involving handguns rose during that period, the percentage of crimes involving handgun use fell. The proportion of homicides involving handguns fell from 51% to 50% between 1974 and 1980. Further, the percentage of robberies involving handguns fell from 45% to 40% in the same time period.²⁰ Moreover, the domestic murder rate, which logically should have doubled if in fact handguns play a major role in the occurrence of domestic homicides, instead remained stable at about 1.6 domestic homicide per 100,000 population.²¹ Thus a doubling in the number of privately owned handguns did not result in a corresponding increase in handgun crime rates. It is hard to dispute the conclusion of one recent federally funded study that "[t]here appear to be no strong causal connections between private gun ownership and the crime rate."²²

3. *Firearms Laws Have Consistently Failed to Affect Violent Crime Rates.*

In 1966, New Jersey enacted a statutory scheme requiring a police permit prior to the purchase of any firearm, requiring an additional police permit for carrying it, imposing registration of all firearms and mandating a waiting period for handgun purchases. Two years later its murder rate had increased 46%, its rape rate had increased 21% and its robbery rate had increased 94%.²³

Hawaii imposed the same requirements the following year, later adding a two-year mandatory minimum sentence for carrying a firearm without a permit and imposing a total ban on "Saturday Night Specials." Within two years its murder rate climbed 42%, its rape rate was up 144% and its robbery rate escalated 79%.²⁴

In 1976, the District of Columbia became the first modern American jurisdiction to adopt a total ban on civilian handgun sales. Its violent crime rates were in fact falling at the time the law was imposed. Its murder rate had fallen 30% and its robbery rate 8% in the two years before the handgun prohibition. However, in the first two years under the prohibition, the murder rate *increased* 18% and the robbery rate *increased* 24%.¹³

Advocates of handgun prohibition may counter that the increased crime rates are due to sociological factors, and might have been even greater except for the ban on handguns. This contention, however, is conclusively rebutted by statistical studies which do take into account social variables and nevertheless conclude that firearms regulation is demonstrably ineffective.

The earliest of such studies were undertaken by the Wisconsin Legislative Reference Library and by economist Alan Krug.¹⁴ These studies found no relationship between firearm licensing laws and violent crime rates. Both were criticized, however, for failure to adopt more refined and expansive definitions of firearm laws and for failure to consider variables other than such laws.¹⁵

In 1975, Douglas Murray, a statistician at the University of Wisconsin, employed a far more detailed testing system. Utilizing multi-variant statistical techniques, Murray first plotted various violence rates (handgun homicide, robbery, assault, suicide and accidental death rates) for the fifty states. He then used multiple regression techniques to determine the effect of a variety of social conditions (including poverty levels, education, sex and age differentials) on these rates. Murray then classed state handgun laws into seven categories, ranging from waiting periods to strict licensing of all purchasers, and attempted to determine the effect of such laws after taking into account serial variations. Murray could find but one relationship—that of purchase age limits with assaults—and even this was statistically insignificant.¹⁶ In brief, when social variables are considered, firearm laws have no effect on violence rates. Murray also established that density of firearm ownership itself has no effect on overall homicide, robbery, assault, or suicide rates,¹⁷ establishing that the problem is inherent in the approach of firearm control, and not an artifact of inefficient administration or nonuniform application.

Murray's work has since been criticized in an unpublished study conducted at Florida State University. Yet when that study re-ran Murray's analysis, using what were felt to be the proper data and method, its findings were the same: "The results indicate that not a single gun control law, and not all the gun control laws added together, had a significant impact on providing additional explanatory power in determining gun violence . . . Gun laws do not appear to affect gun crimes."¹⁸

In sum, the experiences of New Jersey, Hawaii, and the District of Columbia are not flukes, but rather define the norm. Firearm laws have consistently failed to affect violent crime rates. The simple fact is that firearm regulations have consistently failed to achieve their objective.

4. Recent Studies Have Shown Handgun Self-Defense to be a Significant Social Benefit.

Until recently, it was widely assumed that use of firearms in self-defense was a comparatively rare phenomenon, and that regulatory statutes which might restrict self-defense use would impose no significant social cost. Recent scholarship has destroyed this assumption. As Professors Kleck and Bordua summarize:

A 1978 national survey indicated that in 7% of households with a gun some member of the household had, in the past, used a gun (even if it wasn't fired) for self-protection against a person, excluding military service or police work . . . A California survey found that 8.6% of handgun owners responding had used a handgun for self-protection . . . Even in connection with robberies, there is some opportunity for victims to use weapons to defend themselves. In 3.5% of robberies reported to victimization surveys in eight U.S. cities in 1971-72, victims admitted using weapons (not necessarily firearms) for self-protection. . . . Presumably this is a conservative estimate, since many victims may be doubtful about the legality of their weapon use, and therefore reluctant to acknowledge it to government interviewers.¹⁹

These findings would indicate that the average burglar has a probability of encountering an armed home owner approximately equal to his probability of being arrested, convicted and sentenced to prison.²⁰ "Given the *seriousness* of the possible outcome, even a very slight probability of the event occurring may be taken seriously by a potential burglar."²¹ Handguns, moreover, play a predominant role in self-defense. A 1977 California study of justifiable homicides by private citizens, predominantly self-defense cases, found that 81 % involved handguns, and over 97% involved a firearm of some type.²²

II.

Deficiencies in Particular Handgun Control Proposals

With these general considerations established, it is useful to analyze the deficiencies contained in particular firearm proposals. Six major classes of proposals are considered: total prohibition of handgun ownership; registration and permit systems; a ban on "Saturday Night Specials"; a ban on short-barreled handguns; imposition of mandatory waiting periods; and mandatory sentences for carrying firearms without a permit.

1. Handgun Prohibition.

As discussed above, any effort to prohibit civilian ownership of handguns would be met with massive noncompliance; approximately half of the owners of the nation's 50 million handguns would choose to ignore the law. Compounding this problem would be obvious difficulties in obtaining probable cause for the searches and seizures necessary for effective enforcement.

Assuming the law could be enforced, the result would be even worse. "To imprison just one percent of these 25 million people [who would not

surrender their handguns] would require several times as many cells as the entire Federal prison system now has. The combined Federal, State and local jail systems could barely manage." As noted earlier, the brunt of this enforcement effort would be directed against ordinarily law-abiding citizens who own handguns for purposes of defense rather than criminal aggression. Therefore, the result of strict enforcement would be a lessening of respect for the legitimacy of government on a scale probably not seen since alcohol prohibition a half century ago. Because firearm owners are atypically system-supporting (for example, handgun owners are roughly twice as likely to have enlisted in the military as non-handgun owners),³⁸ one may question whether any government could lightly alienate millions of these individuals.

Even assuming an idyllic system in which all civilian handguns would vanish by legislative fiat, or all violent criminals would turn in their weapons on the date of enactment, there is still reason to doubt whether a handgun ban would affect the rate of criminal homicide. Other weapons may easily be substituted for handguns, sometimes with more serious results. A logical contender for substitution would be the shotgun, which is in fact far more powerful and lethal than the average handgun. A medical study of civilian gunshot wounds found, for instance, that "mortality from shotgun wounds was more than twice that of other gunshot wounds."³⁹ When chest wounds alone were considered, the shotgun mortality rate was ten times that of handgun injuries.⁴⁰

It may be argued that a shotgun lacks concealability and therefore would not be substituted in many of these cases. This response, however, has several serious weaknesses. First, a substitution in only a small number of cases would be sufficient to equalize the mortality rate with handguns. As Professors Kleck and Bordua note:

[w]hether handgun prohibition would result in a net increase in the assault fatality rate would depend on what proportion of prospective assaulters would substitute knives for handguns, and what proportion would substitute long guns. Kates and Benenson estimate that even if only 30% switched to long guns and the remaining 70% switched to knives, there would still be a substantial net increase in homicides.⁴¹

Second, concealability may be a vastly overrated factor in weapons choice. Domestic homicides, for instance, typically occur in the home where concealability is totally irrelevant. "Crime of passion" killings outside the home involve a state of rage in which the offender does not particularly worry about detection. A major California study of all violent deaths in the state over a six month period found no significant differences in weapons choice between handguns and other firearms, whether the homicide occurred within a residence or outside it.⁴² The study concluded that "restrictions placed on handgun ownership, without comparable restrictions on long guns, would very likely result in an increase in the use of long guns in all violent deaths."⁴³

Third, to the extent homicides are not "crimes of passion," the offender has the time and inclination to saw down the barrel and stock of a

shotgun and make a lethal and concealable sawed-off shotgun. Over one-third of the long guns seized by local police departments and traced by federal authorities have been cut below the legal barrel limit.⁴⁴ Thus, handgun prohibition may actually act to increase rather than reduce the number of violent deaths.

A second logical candidate for substitution would be the knife. Knife wounds frequently cause serious internal damage.⁴⁵ The shorter range required for a knife attack is largely irrelevant in criminal homicide, since most encounters, even with firearms, take place at a range of ten feet or less.⁴⁶

The primary argument against knife substitution is the 1968 study conducted by Franklin Zimring, which essentially concluded that since the ratio of knife assaults to homicides was five times as great as the ratio of gun assaults to homicides, knife wounds were only one-fifth as likely to kill.⁴⁷

Zimring's methodology and conclusions have been extensively impeached by subsequent findings that assault is not simply an unsuccessful homicide, nor homicide a successful assault. Rather, firearm attackers are more likely to be motivated by a specific intent to kill. Moreover, the use of homicide-to-assault ratios as an indicator of deadliness leads to questionable results such as wide fluctuations in the same state from year to year, wide disparities between otherwise similar states, and an indication that assaults are more likely to be deadly in states with strict firearm controls.⁴⁸

Medical studies of fatality rates seem more likely to provide an accurate fatality ratio. While these do indicate that knife wounds overall have a lower fatality rate, they demonstrate that this is due to a high proportion of such wounds being administered by pocket knives, which almost never prove lethal. Ice picks and butcher knives, on the other hand, have a fatality rate about equal to that of the pistol.⁴⁹ It seems more likely that a violent criminal, if deprived of a firearm, would turn to a butcher knife or similar implement than to a folding pocket knife.

The conclusion is that handgun prohibitions are unlikely to reduce, and may well increase, criminal homicide rates. When balanced along with the significant social cost of handgun regulation, including the probability of reduction in self-defense usage, regulations can scarcely be said to be justified.

2. Registration and Permit Systems

While systems for registering firearms and licensing their owners enjoyed a popularity in the late 1960s, today such proposals have virtually been abandoned even by groups which might be expected to advocate them. In 1975, Handgun Control, Inc. (at that time known as the National Council to Control Handguns) testified before a House Subcommittee that:

... the licensing and registration legislation presently up for consideration has been seen by some as a potential first step in the direction of resolving the serious problem of handgun violence in America. But rather than a step forward NCCH regards it as a step in the wrong direc-

tion. Such a bill would establish a large bureaucracy at considerable expense to the taxpayer. Mountains of paperwork and endless processing of forms would be required . . . Would it be expensive? Yes. Unwieldy? Yes. Only marginally efficient? Yes."

The National Coalition to Ban Handguns adds that "it is doubtful that registration would act as a sufficient deterrent. Criminals do not leave their guns behind to be traced, nor would they register them in the first place."

3. Bans of "Saturday Night Specials."

Proposals to prohibit "Saturday Night Specials" were quite popular in the mid-1970s. The term itself is incapable of definition, and the proposed definitions focus on factors ranging from the melting point of the receiver to the retail cost of the firearm. If, as suggested above, a total prohibition of handguns would not affect criminal homicide in any positive way, there is little reason to believe that a prohibition of only some handguns would achieve that effect. Even the National Coalition to Ban Handguns has repudiated this form of legislation: "the Saturday Night Special ban would be easily circumvented."

The concept of a "Saturday Night Special," an inexpensive handgun typically used in crime, was initially documented by studies conducted by the Bureau of Alcohol, Tobacco and Firearms (BATF) of guns traced upon request by local law enforcement agencies." Subsequent investigation by the Police Foundation found, however, that the studies were seriously flawed. Among other major flaws, about a quarter of the guns traced were in fact "lost and found" or voluntarily surrendered, not seized as part of a criminal investigation; most of those seized during criminal investigations were seized only for gun law violations, not violent crimes; and even so, barely a quarter of the guns studied in fact fit the bureau's own definition of a "Saturday Night Special." The Police Foundation conducted its own study, which soundly refuted the BATF's conclusions." In 1980, even the BATF repudiated its earlier findings, conceding that only 27% of the guns traced the preceding year met its definition of "Saturday Night Special." It is thus appropriate to lay the notion of a "Saturday Night Special" to rest.

4. Bans on Short-Barreled Handguns.

Endeavors to prohibit short-barreled pistols (occasionally referred to by the disgustingly cute title of "snubbies") stem largely from a series of articles published in the *Miami News*." These listed the fifteen handguns most frequently traced by the Bureau of Alcohol, Tobacco and Firearms for local police departments and determined that eleven of the fifteen had relatively short barrels. Based on this information, it was asserted that "two of every three handguns used in murders, rapes, robberies and muggings" met this definition."

Even the briefest examination of the data demonstrates the fallacy of this conclusion. First, the firearms surveyed were all those traced, and the statistics from the tracing agency indicate that less than half were actually

seized in connection with a serious crime." Second, while short-barreled guns comprised 11 of the 15 firearms most often traced, *those 11 categories added up to only 33.9% of the traces*; this anomaly occurs because the top 15 firearms in fact made up less than half of the entire number traced. If, as seems likely, 33% or more of handguns have short barrels, nothing is proved. In short, the *Miami News* study was hardly a professional effort. Even if a valid relationship were found, one might question whether it was *causal*. It may be that short barrels are more popular in urban areas, and thus comprise a larger percentage of firearms in areas where crime is concentrated. If so, removing them from the market would have no effect: They would simply be replaced by other weapons.

Finally, one might observe, on purely intuitive grounds, that it would seem unlikely that a street criminal who currently engages in robbery using a handgun with a two-inch barrel, would suddenly abandon his profession if he could only obtain those with four-inch barrels. The two-inch increase might require a deeper pocket, but is unlikely to lead to rehabilitation of a violent offender. The hacksaw that can shorten a shotgun can achieve the same objective on a handgun.

5. Waiting Periods.

Waiting periods, which impose a mandatory delay between the time a firearm is ordered and the time it may be delivered to the purchaser, are aimed at reducing domestic homicide rates by impairing the ability of a person to purchase and rapidly obtain a firearm. The theory is that persons purchasing while in a homicidal rage will be given time to "cool off" before delivery can be affected. Unfortunately for the theory, statistical studies have repeatedly shown no correlation between waiting period statutes and homicide rates." This might be expected, as "waiting periods" control only legitimate purchases from dealers, and the firearms used in violent crime are more likely to be obtained by theft or through fences, and only rarely from a legitimate dealer." One study found that two-thirds of convicted gun murderers had owned their firearms for six months to a year prior to the homicide; and only one of the 13 armed robbers studied had purchased the firearm from a dealer."

Moreover, the notion of a person in a homicidal rage looking for a gun store (much less finding one open between the hours of 10 p.m. and 2 a.m. when most crime of passion killings occur)," driving to the store, purchasing a firearm, and returning to find his victim, seems most improbable. By definition a "crime of passion" is most frequently committed in an irrational, enraged state in which a person is unlikely to make rational weapons choices, much less embark on a shopping expedition. The waiting period can thus be discarded as a serious anti-crime tool.

6. Mandatory Minimum Sentences for Violation.

In this category it is vital to distinguish between two different approaches with radically different effects. Both involve imposition of a mandatory minimum sentence—that is, a sentence for a minimum term and for which release on probation, parole, or other form of leniency is

unavailable. The first possible use of this sentencing procedure limits it to specific acts involving the use of a firearm or other weapon in designated violent crimes. The second seeks to impose these mandatory sentences upon any individual who violates a firearm regulation (usually a regulation requiring a permit for carrying a firearm on the person), regardless of whether a violent criminal use was involved or contemplated.

The first type of statute, involving a mandatory minimum sentence for use of a firearm in a violent crime, appears uniformly to have had positive results. In 1974, for example, the states of Arizona and South Carolina adopted such statutes.⁴³ Between 1975 and 1977, robberies involving the use of firearms in Arizona declined steeply from 1,591 to 1,221.⁴⁴ Although firearm robberies constituted less than half the total robberies in Arizona over that period, firearm robberies declined by nearly two-thirds.⁴⁵ In South Carolina the results were even more striking. In 1974, that state reported 2,115 firearm robberies; in 1975 only 1,531; and in 1976 firearm robberies decreased to 1,331.⁴⁶

In 1975, Florida enacted a broader law, penalizing use of a handgun in a broad variety of violent felonies with a mandatory three-year minimum sentence. Similar results have been reported: firearm robberies decreased by 38.5% and firearm aggravated assault decreased by 14.5% during the first year.⁴⁷ Thus, in contrast to the forms of firearm owner regulation adopted in New Jersey, Hawaii and other states, mandatory sentencing for actual use of a firearm in a violent crime appears to have been followed by substantial decreases in the rate of violent crime.

Whether the extension of mandatory sentencing to all violators of a firearm regulation—as opposed to those who commit a *violent crime*—is justified is another question. Obviously, mandatory sentencing involves a substantial increase in the demands upon the criminal justice system. Since it limits the minimum sentence which can actually be imposed, the incentives for plea bargaining may be substantially reduced and the number of cases taken to trial, or appealed, may be increased. Similarly, the number of persons actually incarcerated may increase, which increases the demands on prisons. While the favorable experiences of states with mandatory sentences for actual use of a weapon in a specified violent crime suggest that a narrowly-drafted proposal may result in benefit, extension of this to violators of weapons regulations in general poses the risk of unduly penalizing large numbers of individuals who may violate technical regulations for self-protection or other reasons.⁴⁸ As such, it may well overload the criminal justice system and deprive judges of needed flexibility when dealing with persons who are not likely to be the source of violent crime.

The prototype of mandatory sentencing for regulatory violations is the State of Massachusetts, which in April 1975 enacted a statute (commonly known as “Bartley-Fox,” for its sponsors) imposing a one-year mandatory term upon any person carrying a firearm without an appropriate permit.⁴⁹

The results of the law were, to put it charitably, ambiguous. Some forms of violent crime did decline in Massachusetts following the enactment of the statute. But since violent crime was declining nationwide—the hand-

gun murder rate fell nationwide from 5.3 to 4.4 per 100,000 population between 1974 and 1978—⁵⁰ whether this was caused by the statute or by mere coincidence is difficult to determine. Studies suggesting that the declines were due to the law have been criticized, both from a technical⁵¹ and from a logical⁵² perspective:

Before the gun law was imposed in April, gun murder rates had already begun their drop (in January) and gun assault rates were beginning to drop (starting in March), whereas gun robbery rates reached new highs after April and in fact remained high well into the following year. The expected conclusion would be that the April firearm law hardly caused changes occurring in January, February, and the following year. But the study managed to suggest causation: The January murder drop must have been due to an attempted enactment of the law at the time; the March assault drop must have been due to the publicity campaign that began in February; the 1976 robbery decline must have been due to robbers having adopted a wait and see attitude on the gun law as to how it would be applied.⁵³

Nor did the experience of similar laws in nearby states give backers of the Massachusetts law much cause to hope. Acting upon initial favorable reports, and a well-orchestrated media campaign, New York in 1980 adopted a similar mandatory sentence for unlicensed pistol carrying. Despite 9,900 arrests in the first year the law was in effect, New York handgun homicides shot up 25%, and handgun robberies increased 56%.⁵⁴

Whatever the effect on the crime rate, its negative effects were obvious. One of the first test cases involved the prosecution of a young man who held a carrying license but had inadvertently allowed it to expire. In an effort to raise money to purchase his high school class ring, he took his firearm to a dealer to sell it. On the way he was stopped for a traffic violation, the gun was seen, and for this minor infraction he ultimately was sentenced to a year in jail without possibility of probation or parole.⁵⁵

Considering that (1) both state and federal firearms laws have been enforced with disproportionate impact against law-abiding persons,⁵⁶ and (2) persons guilty of actually using a firearm in a serious felony would, presumably, face more than a year's incarceration even absent firearm regulations, the inference may be drawn that the main effect of such laws would be to generate cases of this type.

The effect upon the criminal justice system of the minimum mandatory sentence for carrying without a permit was no less severe. The acquittal rate for defendants charged solely with carrying increased by approximately 20%.⁵⁷ Among those convicted, the rate of cases appealed jumped four-fold, from 20% to 85%.⁵⁸

Given that the social cost of mandatory sentencing, whether measured in terms of the impact upon the individual or upon the workload of the criminal justice system, tends to be quite high, one might well ask whether the benefits of a Massachusetts-type law could not be obtained at more reasonable expense through a narrower system of mandatory sentencing. If the objective is to reduce use of firearms in crime, increasing the penalties for use in crime may have the same ultimate effect upon the criminal

population as increasing penalties for possession or carrying of firearms generally. Moreover, since narrowing the focus of the mandatory sentence to individuals who have actually committed serious crimes necessarily brings about a massive reduction in the number of persons actually subject to the law, the penalties imposed can be increased proportionately. Thus, correctional resources which might be used for incarcerating 100 firearm law violators for one year apiece could instead be devoted to incarcerating 20 armed robbers for five years each; intuition suggests that the latter proposal is more likely to influence the armed robbery rate. In this respect it is interesting that the major study supporting the case for enactment of Massachusetts-type statutes concedes:

We have not reached the point of knowing whether it is changes in punishment imposed for committing an assault or robbery with a gun or simply for carrying a gun without a license which are responsible for the altered crime pattern. This is, of course, critical for evaluation of the relative advantages in terms of crime control of felony firearms laws which mandate additional punishment for crimes committed with a gun as compared to new felony firearms laws aimed at the ownership, possession and/or carrying of firearms."

In short, all the benefits of a Massachusetts-type law might be achieved simply by punishing criminal use of firearms, at considerably less cost.

Conclusion

After more than a century of experience with firearm laws at the state and federal level, and after more than a decade of advanced statistical analysis of such statutes, the conclusion remains that firearm regulatory statutes are as much a failure in controlling violent crime as were the alcohol prohibition statutes of a half century ago. There comes a point at which appeals to try "just one more" experiment in a given area should be shelved between the blueprints for the Maginot Line and the formulae for patent medicines.

Footnotes

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5. *Digest of the Statute of Laws of the State of Georgia in Force Prior to the Session of the General Assembly of 1851* at 818 (1951).
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7. See 1889 Ariz. Terr. Sess. 1869 Tenn. Pub. Acts ch. 23; 1871 Tex. Gen. Laws ch. 34; 1974 Ark. Acts 155; 1875 Mo. Laws 50; *Leyes Del Territorio del Nuevo, Mexico*, 1868-69, Cap. 32; Laws act 13; S.C. Stat. at Large n. 435 (1901); 1910 Ga. Laws 432; 1919 N.C. Pub. Laws ch. 197.
8. President's Commission on Law and Enforcement and the Administration of Justice, Task Force Report: "Crime and Its Impact—An Assessment," 31 n.1 (1967).
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19. Wright & Rossi, *supra* note 9, at 2.
20. *Id.* at 3.
21. In 1969, the murder rate was 6.8 per 100,000 population, and 25.2% involved a spouse or other relation, yielding a domestic murder rate of 1.7. By 1974, the rate had risen slightly: 22.8% of that year's 9.8 rate involved relatives, for a domestic rate of 2.2. *U.S. Dept. of Justice, F.B.I. Uniform Crime Reports* 19 (1974). But by 1980 the domestic rate had fallen to a point below its 1969 levels; with a murder rate of 7.8 and 16.1% of these involving relatives, the domestic murder rate was 1.6. *U.S. Dept. of Justice, F.B.I. Uniform Crime Reports* 12 (1980).
22. Wright & Rossi, *supra* note 9, at 125.
23. Hardy, "Let's Shelve Gun Control," 1 *Just. Rep.* 5 (Fall 1981).
24. *Id.*
25. *Id.*

26. Wisconsin Legislative Reference Library, "The Regulation of Firearms by the States," Research Bulletin No. 130 (1960); 113 Cong. Rec. 20060, 20064 (1967), 114 Cong. Rec. 1496 (1968) (reprinting Krug studies).

27. See Zimring, "Games with Guns and Statistics," 1968 Wis. L. Rev., 1113. Krug's response may be found in *Hearings on S. Res. 240 before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 90th Cong., 2d Sess. 734 (1968).

28. Murray, "Handguns, Gun Control Laws and Firearm Violence," 23 Soc. Prob. 81 (1975).

29. *Id.* at 89-90.

30. See Hardy, "Why Gun Control Can't Work," *Inquiry* 15, 18-19 (Feb. 28, 1982).

31. Kleck & Bordua, "The Assumptions of Gun Control," in *Weapons, Crimes and Violence in America* 103 (J. Wright, P. Rossi, K. Daly & E. Burdin eds. 1981), (citations omitted).

32. *Id.* at 101.

33. *Id.*

34. California Department of Justice, *Homicide in California* 91 (1979).

35. Kates, *supra* note 13, at 184. See also Benenson & Hardy, "Critiquing the Case for Handgun Prohibition," in *Restricting Handguns: The Liberal Skeptics Speak Out* 69, 87-88 (D. Kates, ed. 1979) (estimating costs of a national handgun prohibition and call-in at between two and eight billion dollars for initial compensation, five billion dollars per year for arrest and processing of arrestees, and four and a half billion dollars per year for prosecution and trial, all assuming only a 10% arrest rate).

36. G. Newton & F. Zimring, *Firearms and Violence in American Life* 12 (1970), (staff report to Nat'l Commission on the Causes and Prevention of Violence finding 37% of American military veterans own handguns, compared to only 18% of non-veterans).

37. Sherman & Parrish, "Management of Shotgun Injuries: A Review of 152 Cases," 3 J. Trauma 76, 76 (1963). See also Taylor, "Gunshot Wounds of the Abdomen," 177 *Annals of Surgery* 174, 175-76 (1973); DeMuth, "The Mechanism of Shotgun Wounds," 11 J. Trauma 219 (1971); Gray, Harrison, Couves & Howard, "Penetrating Injuries to the Chest," 111 *Am. J. Surgery* 709, 710 (1960).

38. Sherman and Parrish, *supra* note 37, at 77.

39. Kleck & Bordua, *supra* note 31, at 94.

40. Hardy, *supra* note 12, at 260.

41. *Id.* at 262 n. 167.

42. Bureau of Alcohol, Tobacco and Firearms, *Concentrated Urban Enforcement* 40-41 (1977).

43. Glaiser & Rentoul, *Medical Jurisprudence & Toxicology* 273-74 (1966); K. Simpson, *Forensic Medicine* 64 (1964).

44. President's Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society* 256 (1967) (study of policemen killed in New York City over the past century; combat range in no case exceeded 21 feet, average was 10 feet or less).

45. Zimring, "Is Gun Control Likely to Reduce Violent Killings?," 35 U. Chi. L. Rev. 721 (1968).

46. Hardy & Stompoly, *supra* note 9, at 104-10.

47. Wilson & Sherman, "Civilian Penetrating Wounds of the Abdomen," 153 *Annals Surgery* 639, 642 (1961). (forty-four of ninety knife cases studied involved pocket knives, with no fatalities resulting; ice pick fatality rate was 14.3%, butcher knife fatality rate was 13.3%, and switchblade knife fatality rate was 5.9%. Handgun fatality rate was 16.8%).

48. *Hearings on Firearm Legislation*, *supra* note 15, at 2672.

49. National Coalition to Ban Handguns, *20 Questions and Answers* (pamphlet 1976).

50. *Id.*

51. Bureau of Alcohol, Tobacco and Firearms, *Project Identification* (1976).

52. Police Foundation, *Firearms Abuse: A Research and Policy Report* 24-25 (1977). See also Hardy, *supra* note 12, at 249-50.

53. Police Foundation, *supra* note 52, at 60, 69, 71.

54. Bureau of Alcohol, Tobacco and Firearms, *1979 Firearms Trace Project* 37 (1980).

55. Wright & Rossi, *supra* note 9, at v (forward by Senator Kennedy).

56. *The Miami News*, September 5, 1981, at 1-A.

57. *Id.*

58. See *supra* notes 52-53.

59. See *Report on the Federal Firearms Owners Protection Act*, Se. Rep. No. 3476, 97th Cong., 2d Sess. 51-52 (1982); Murray, *supra* note 28; Hardy, *supra* note 30.

60. Hardy, *supra* note 12, at 258.

61. Kates, *supra* note 13, at 183-85.

62. See *supra* note 59.

63. 1974 Ariz. Sess. Laws ch. 144, § 3; 1975 Ariz. Sess. Laws ch. 23, § 3; S.C. Code Ann. § 16-11-330 (law Co-op. 1976). The Arizona provisions have since been incorporated into a general criminal code which provides for increased and mandatory sentences for such crimes when committed with a weapon or following a prior violent offense. See Ariz. Rev. Stat. Ann. §§ 13-604, 701 (1978).

64. Arizona Uniform Crime Reporting, *Arizona Crime Report* 17 (1975); *Arizona Uniform Crime Reporting, Crime in Arizona* 18 (1977).

65. To be precise, firearms robberies were 42% of all Arizona robberies in 1975 and 38.7% in 1977. The total number of robberies declined from 3,751 in the former year to 3,155 in the latter, or a decline of 596 cases per year. Of those, 370 came in the area of firearm robberies. By contrast, robberies with "other weapons", largely clubs and blunt instruments, rose from 191 cases to 214 cases. See *supra* note 64.

66. South Carolina Law Enforcement Division, *Crime in South Carolina* 20-21 (1976). Firearm robberies also fell much more rapidly than robberies overall, declining from 62% of all robberies in 1974 to 45% of all robberies in 1976. As with Arizona, robberies with "other weapons" increased, from 3.8% of robberies in 1974 to 7.6% in 1976. *Id.*

67. Letter from James T. Barrett, Executive Assistant to the Attorney General of Florida, to Bill Garrison (June 28, 1977).

68. See *supra* notes 12-16 and accompanying text.

69. Mass. Ann. Laws ch. 269, § 10 (Michie/Law Co-op Supp. 1977).

70. Congressional Research Service, 97th Cong., 2d Sess., *Federal Regulation of Firearms* 3 (Comm. Print 1982).

71. See *Id.* at 66-67; Hardy, *supra* note 12, at 263-71.

72. Hardy, "Gun Control," *Reason* 37, 38-39, (Nov. 1982).

73. *Id.* at 38-39.

74. *Id.* at 39.

75. Beha, *and Nobody Can Get You Out: The Impact of a Mandatory Prison Sentence for the Illegal Carrying of a Firearm on the Use of Firearms and the Administration of Criminal Justice in Boston*, A-26 (July 14, 1976) (unpublished manuscript available from Center for Criminal Justice, Harvard Law School). See also *Commonwealth v. McQuoid*, 369 Mass. 925, 344 N.E.2d 179 (1976).

76. See *supra* notes 14-16 and accompanying text.

77. Beha, *supra* note 75, at 77.

78. *Id.* at 64.

79. Rossman, Floyd, Pierce, McDevitt, & Bowers, "The Impact of the Mandatory Gun Law in Massachusetts," 174 (1979) (unpublished manuscript available at Boston University).

The Modern Firearm: The Only Way To Protect Oneself

There is an old saying in rhetoric that if you cannot answer your opponent's arguments, abuse your opponent. Sadly, The Post's editorials vilifying the National Rifle Association (of which "The NRA's New Killer Instinct" on Sept. 24 is just the latest) are an excellent example of that old saying in action.

The fact of the matter is that The Post has been advocating "gun control" for years based on an argument that more shootings will result unless there are fewer guns. The NRA's latest ads merely point out that an armed individual is in a better position to protect himself (or, more likely, herself) and less likely to be injured by criminal aggression. Either of these arguments can be fairly debated. The Post, however, finds all that very tedious, so it criticizes the persons making the opposite argument.

Not only does The Post have a closed mind on the gun control issue, it's also getting lazy.

—Dennis B. Wilson

As is so often the case, The Post uses selective recall in commenting about the National Rifle Association and its programs. If your purpose in writing about our new advertising campaign had been to explain or clarify rather than to pillory NRA, you would have reported on the entire ad, not just the dramatic headlines and photographs.

The "NRA's New Killer Instinct," to which you referred in the editorial Sept. 24, is a responsible series of paid communications to alert law-abiding citizens to their constitutionally guaranteed rights to firearms ownership and self-protection.

I'm not sure whose point of view The Post represents—I doubt it's the victims of the 151 rapes, 120 murders, 6,273 burglaries, 936 unarmed robberies, 1,594 armed robberies and 2,763 assaults that were reported to the Washington, D.C., police department between Jan. 1 and July 31 of this year. Unfortunately, these 11,837 victims can't legally protect themselves with a firearm in the District of Columbia because acquisition of firearms has been banned since Feb. 5, 1977.

The NRA is on the side of the victims. They call us every day asking us to tell them about their rights under the Constitution to own and use firearms to protect themselves, their families and their property. They speak with great concern and in many cases feel violated and helpless. Has the editorial board ever interviewed members of The Post staff who have suffered the role of the victim to see how they felt?

In your ongoing attempt to propagandize the myth that NRA and law enforcement are no longer allies, you totally ignore the message in the ad that specifically asks, "Why can't a policeman be there when you need him?" and NRA's sympathy and understanding for this problem. It's too bad you didn't quote the cop, which states, "He's somewhere else, responding to crimes already committed." And: "Police know they're outnumbered by criminals 20 to 1. As much as they'd like to, America's police can't always be there to defend you the moment you need them."

The membership of the National Rifle Association (particularly the 122,327 members in D.C., Maryland and Virginia) respectfully disagrees with your position.

—J. Warren Cassidy

The writer is executive vice president of the National Rifle Association.

On Sept. 24, The Post ran an attack against advertisements being run by the National Rifle Association. However, The Post failed to provide any reasonable answers to the questions posed by the NRA about when a man or woman is faced with a life-threatening situation. Additionally, The Post appears determined to foster the myth that the police are responsible for protecting individual citizens. Unfortunately for the editors of The Post, the judicial system has already stated, in *Bower v. DeVito*, that there is "no constitutional right to be protected by the state against being murdered by criminals or madmen." Further, in *Warren v. District of Columbia*, the D.C. Court of Appeals ruled in 1981 that the police have "no duty to the individual citizen, . . . only to the general public."

There have been numerous additional decisions by the courts that clearly show that the state is not responsible for protecting the citizen. Further, they also show that it is the responsibility of the citizen to protect herself from attacks upon her person. Thus, while it can be argued whether the state has the right to regulate firearms, it is quite clear that each citizen is granted the right to defend herself when faced with a potentially life-threatening situation.

The modern firearm is the only weapon that will allow a woman or an elderly citizen a reasonable chance to protect herself from a stronger or younger attacker. Given that possession of a firearm is thus the only reasonable way that a woman may ensure her safety, the position of the NRA becomes the reasonable one. The NRA has not fought every form of legislation to control firearms. On the contrary, they were the principal supporters of the 1968 Gun Control Act. Rather, the NRA has fought and will continue to fight every form of legislation that threatens to make access to firearms by honest citizens more difficult.

—David L. Ramsey

124 ATTORNEY GRIEV. COMM'N v. BENNETT

[304 Md. 120 (1985).]

member of a profession which should stand free from all suspicion. Such proceedings are not by way of punishment, but the Court in such cases exercises its discretion whether a man whom they have formerly admitted to practice is a proper person to be continued on the roll or not. *See, e.g., Attorney Griev. Comm'n v. Nothstein*, 300 Md. 667, 686-87, 480 A.2d 807, 817 (1984); *Mandel*, 294 Md. at 588, 451 A.2d at 923, and *Attorney Griev. Comm'n v. Kerpelman*, 288 Md. 341, 381-82, 420 A.2d 940, 959 (1980), *cert. denied*, 450 U.S. 970, 101 S.Ct. 1492, 67 L.Ed.2d 621 (1981).

We agree with Bar Counsel "that forgery of a judge's name on a court document strikes at the heart of our system of justice." The perpetrator of such an act is not qualified to continue as a member of the Bar of this Court. *See Attorney Griev. Comm'n v. Jacob*, 303 Md. 172, 180-81, 492 A.2d 905, 909 (1985), and cases there cited.

It follows that Bennett must be disbarred.

IT IS SO ORDERED; RESPONDENT SHALL PAY ALL COSTS TAXED BY THE CLERK OF THIS COURT, INCLUDING COSTS OF ALL TRANSCRIPTS, PURSUANT TO MARYLAND RULE BV15 c, FOR WHICH SUM JUDGMENT IS ENTERED IN FAVOR OF THE ATTORNEY GRIEVANCE COMMISSION AGAINST STANLEY Y. BENNETT.

497 A.2d 1143

Olen J. KELLEY et ux.

v.

R.G. INDUSTRIES, INC. et al.

Misc. No. 20, Sept. Term, 1983.

Court of Appeals of Maryland.

Oct. 3, 1985.

Motion for Reconsideration Denied Nov. 22, 1985.

Victim, who was shot during armed robbery of grocery store where he was employed, and his wife brought tort

action against manufacturer and marketer of handgun used in the crime. On certification from the federal District Court, Frank A. Kaufman, Chief Judge, the Court of Appeals, Eldridge, J., held that: (1) strict liability would not be extended to manufacturer or marketer under strict liability doctrines of abnormally dangerous activity or product; (2) risk/utility strict liability test was inapplicable; but (3) if the weapon were found by trier of fact to be a "Saturday Night Special," liability against manufacturer and marketer could be imposed.

Questions of law answered.

1. Negligence ⇨22

An "abnormally dangerous activity" for which strict liability is imposed satisfies the following factors: existence of high degree of risk of some harm to a person, land or chattels or others; likelihood that harm that results from it will be great; inability to eliminate the risk by exercise of reasonable care; extent to which the activity is not a matter of common usage; inappropriateness of the activity to place where it is carried on; and extent to which its value to the community is outweighed by its dangerous attributes.

See publication Words and Phrases for other judicial constructions and definitions.

2. Weapons ⇨18(1)

Abnormally dangerous activity doctrine, which is not extended to instances in which alleged tort-feasor is not owner or occupier of land, would not be extended to manufacturer or marketer of handgun to impose liability for incident in which victim was shot during armed robbery.

3. Products Liability ⇨75

In order for a plaintiff to recover for strict product liability, he must establish that product was in defective condition at time it left possession or control of seller, that it was unreasonably dangerous to user or consumer, that defect was cause of the injuries, and that the product was

expected to and did reach consumer without substantial change in its condition.

4. Weapons \S 18(1)

Handgun manufacturer or marketer could not be held liable for strict product liability to victim who was shot during armed robbery; handgun would not be found defective merely because it was capable of being used during criminal activity to inflict harm.

5. Weapons \S 18(1)

"Risk/utility test," which rests on balancing of allegedly defective product's risks and utilities, and which is only applied when something goes wrong with a product, would not be extended to impose liability on manufacturer or marketer of handgun which had not malfunctioned.

See publication Words and Phrases for other judicial constructions and definitions.

6. Common Law \S 14

Common law is subject to judicial modification in light of modern circumstances or increased knowledge.

7. Common Law \S 14

Common-law principles should not be changed contrary to public policy of the state set forth by the General Assembly.

8. Weapons \S 18(1)

To impose strict liability upon manufacturers or marketers of handguns for gunshot injuries resulting from misuse of handguns by others would have been contrary to Maryland public policy as set forth by the legislature.

9. Weapons \S 18(1)

Manufacturers and marketers of "Saturday Night Special" handguns, cheap, easily concealable handguns primarily suited for criminal activity, can be found strictly liable to innocent persons who suffer gunshot injuries from criminal use of their products.

See publication Words and Phrases for other judicial constructions and definitions.

10. Weapons ⇨18(2)

In a tort suit against manufacturer or marketer of a "Saturday Night Special" handgun, a handgun should rarely, if ever, be deemed a "Saturday Night Special" as a matter of law; instead, it is a finding to be made by trier of facts.

11. Weapons ⇨18(1)

Once trier of facts determines that a handgun is a "Saturday Night Special," then liability for all resulting damages suffered by gunshot victim consistent with established law concerning tort damages may be imposed against manufacturer or anyone else in marketing chain, including retailer, if plaintiff or plaintiff's decedent suffers injury or death because he is shot with the weapon, the shooting is a criminal act, and plaintiff is not a participant in the criminal activity; shooting itself may be sole criminal act or may occur in course of another crime where person firing the weapon is one of perpetrators of the crime, and neither contributory negligence nor assumption of risk is recognized as a defense.

12. Courts ⇨100(1)

Change of common law specifying conditions under which strict liability would be imposed against manufacturer or marketer of Saturday Night Special handgun would be applied in instant case and all other causes of actions accruing after date of mandate unless it would be shown that initial marketing of the weapon to a member of the public occurred prior to date of the mandate.

Howard L. Siegel and Barry H. Helfand, Rockville, for appellants.

Gerard P. Uehlinger and Lentz, Hooper, Jacobs & Blevins, Baltimore, on amicus curiae brief of Foundation for Handgun Educ.

Edward S. Digges, Jr., and Piper & Marbury, Baltimore, and James P. Dorr, Anne G. Kimball, and Wildman, Har-

rold, Allen & Dixon, Chicago, Ill., on amicus curiae brief of Colt Firearms Div. of Colt Industries Inc., Smith & Wesson, A Div. of Bangor Punta Corp., Sturm, Ruger & Co., Inc.

Thomas M. Baumann (Hardwick, Tripoda & Harris, on brief, Baltimore, and James B. Sales, Frank G. Jones, Louis S. Zimmerman and Fullbright & Jaworski, of counsel, on brief, Houston, Tex., for appellees.

Argued before MURPHY, C.J., ELDRIDGE, COLE, DAVIDSON,* RODOWSKY and COUCH, JJ., and JAMES C. MORTON, Jr., Associate Judge of the Court of Special Appeals (retired), Specially assigned.

ELDRIDGE, Judge.

This case comes to us by an Order of Certification from the United States District Court for the District of Maryland.¹ The issues concern whether a handgun manufacturer or marketer might be liable under some circumstances for gunshot injuries caused by the use of one of its handguns during the commission of a crime.

I.

Olen J. Kelley was injured when an unnamed assailant shot him in the chest during an armed robbery of the grocery store where he was employed. The weapon used in the crime was a Rohm Revolver Handgun Model RG-38S, Serial Number 0152662, designed and marketed by Rohm Gesellschaft, a West German corporation. The handgun was assembled and initially sold by R.G. Industries, Inc., a Miami-based corporation which is a subsidiary of the West German corporation.

* Davidson, J., participated in the hearing of the case and in the conference in regard to its decision, but died prior to the adoption of the opinion of the Court.

1. Uniform Certification of Questions of Law Act, Maryland Code (1974, 1984 Repl.Vol.), § 12-601 *et seq.* of the Courts and Judicial Proceedings Article.

Kelley and his wife filed a tort action against Rohm Gesellschaft and R.G. Industries in the Circuit Court for Montgomery County, setting forth several theories for recovery. The first count was based on strict liability, with the plaintiffs claiming that the handgun was "abnormally dangerous." Count two, also sounding in strict liability, alleged that the handgun was defective in its "marketing, promotion, distribution and design," rendering it "unreasonably dangerous." Count three rested on a negligence theory. In a fourth count, the plaintiffs sought damages for loss of consortium.

One of the defendants, R.G. Industries, had the case removed to the United States District Court for the District of Maryland, pursuant to 28 U.S.C. §§ 1441 and 1446. R.G. Industries then filed an answer to the declaration and moved for summary judgment on the ground that it was not involved in the marketing or distribution of the handgun in question. Thereafter the parties filed a stipulation that R.G. Industries be dismissed from the case, without prejudice.

The remaining defendant, Rohm Gesellschaft, moved to dismiss the declaration for failure to state a claim, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Rohm argued in its memorandum in support of the motion to dismiss that "the [p]laintiffs' contentions [must] fail because the handgun performed as it was supposed to perform and because Rohm Gesellschaft is not responsible for the criminal and tortious acts of Mr. Kelley's assailant." At a hearing on the motion, the United States District Court found that there were no controlling precedents in this Court on the strict liability issues and certified the following questions to us:

"Question 1

Is a handgun, which inflicts injury as the norm, rather than the exception, a defective or unreasonably dangerous product?

"Question 2

Is the marketing of handguns an abnormally dangerous activity?

(a) Does the abnormally dangerous activity doctrine extend to instances in which the alleged tortfeasor is not an occupier of land?

(b) Does the abnormally dangerous activity doctrine apply where harm is brought about by some third person or persons over whom the tortfeasor had no control?"

Oral argument was then held before this Court. As a result of matters raised at oral argument which were not specifically addressed in the certification order, the plaintiffs requested that the order be withdrawn and that a new order be filed. Pursuant to the request, the United States District Court withdrew the original Order of Certification and substituted a "Further Order of Certification" posing the following four questions:

"Question 1

Is a handgun, which inflicts injury as the norm, rather than the exception, a defective or unreasonably dangerous product?

If the answer to Question 1 is "No," then

"Question 2

Is a Rohm Revolver Handgun Model RG38S, which inflicts injury as the norm, rather than the exception, a defective or unreasonably dangerous product?

"Question 3

Is the marketing of handguns an abnormally dangerous activity? In answering this question, it may be that the Court of Appeals of Maryland may desire to address itself to the following sub-questions:

(a) Does the abnormally dangerous activity doctrine extend to instances in which the alleged tortfeasor is not an occupier of land?

(b) Does the abnormally dangerous activity doctrine apply where harm is brought about by some third person or persons over whom the tortfeasor had no control?

If the answer to Question 3 is "No," then

"Question 4

Is the marketing of Rohm Revolver Handguns Model RG38S an abnormally dangerous activity? In answering this question, it may be that the Court of Appeals of Maryland may desire to address itself to the following sub-questions:

(a) Does the abnormally dangerous activity doctrine extend to instances in which the alleged tortfeasor is not an occupier of land?

(b) Does the abnormally dangerous activity doctrine apply where harm is brought about by some third person or persons over whom the tortfeasor had no control?"

In addition, the Further Order of Certification provided that this Court was not restricted in its consideration and determination of the matter by the phrasing of the certified questions.

In considering the certified questions, and pursuant to the above-mentioned provision in the federal court's order, we have rephrased the questions as follows:

- 1) Is the manufacturer or marketer of a handgun, in general, liable under any strict liability theory to a person injured as a result of the criminal use of its product?
- 2) Is the manufacturer or marketer of a particular category of small, cheap handguns, sometimes referred to as "Saturday Night Specials," and regularly used in criminal activity, strictly liable to a person injured by such handgun during the course of a crime?
- 3) Does the Rohm Revolver Handgun Model RG38S, serial number 0152662, fall within the category referred to in question 2?

The first question will be addressed in Part II of this opinion, the second in Part III, and the final question in Part IV.

II.

Kelley maintains that a manufacturer and marketer of a handgun, which inflicts injuries such as his, should be held liable under either of two strict liability theories. First, Kelley asserts that the manufacturer or marketer is strictly liable because the manufacturing or marketing of handguns is an "abnormally dangerous activity." Restatement (Second) of Torts, §§ 519-520. Second, Kelley argues that the manufacturer or marketer is strictly liable because handguns are "abnormally dangerous products" under Restatement (Second) of Torts, § 402A. For the following reasons, however, neither of these two doctrines, nor any of the other previously recognized strict liability principles, could properly be applied to hold, in general, the manufacturer or marketer of a handgun liable to a person injured by the handgun during the course of a crime.²

A.

[1] Kelley's first premise for the imposition of liability is under the Restatement (Second) of Torts, §§ 519 and 520. These sections recognize the liability of one engaged in an abnormally dangerous or ultrahazardous activity even though that person may have exercised the utmost care to prevent harm. Whether an activity is "abnormally dangerous" under these sections depends on its satisfying the following six factors, specified in § 520:

- "(a) existence of a high degree of risk of some harm to the person, land or chattels of others;
- (b) likelihood that the harm that results from it will be great;
- (c) inability to eliminate the risk by the exercise of reasonable care;

2. Such situation is, of course, distinguishable from an injury inflicted when a handgun malfunctions. In the latter case, there may be recovery, in appropriate circumstances, under settled principles of products liability law.

- (d) extent to which the activity is not a matter of common usage;
- (e) inappropriateness of the activity to the place where it is carried on; and
- (f) extent to which its value to the community is outweighed by its dangerous attributes.”³

[2] Regardless, however, of whether a handgun might satisfy these factors, Maryland law would not permit liability to be imposed on a handgun manufacturer or marketer under this theory. This Court has refused to extend the abnormally dangerous activity doctrine to instances in which the alleged tortfeasor is not an owner or occupier of land. *Toy v. Atlantic Gulf & Pacific Co.*, 176 Md. 197, 4 A.2d 757 (1939). See also *Yommer v. McKenzie*, 255 Md. 220, 257 A.2d 138 (1969); *Kirby v. Hylton*, 51 Md.App. 365, 443 A.2d 640 (1982).

The thrust of the doctrine is that the activity be abnormally dangerous in relation to the area where it occurs. If a gasoline station owner has faulty tanks which leak gasoline into the underground water supply, that might be abnormally dangerous if the land in which the tanks are buried is located in a well populated area. In such a situation, the hazard bears a relation to the occupation and location of the land on which the activity occurs. See *Yommer v. McKenzie*, *supra*. The dangers inherent in the use of a handgun in the commission of a crime, on the other hand, bear no relation to any occupation or ownership of land. Therefore, the abnormally dangerous activity doctrine does not apply to the manufacture or marketing of handguns.

Other jurisdictions which have addressed the issue are in accord. See, e.g., *Perkins v. F.I.E. Corp.*, 762 F.2d 1250, 1268 (5th Cir.1985), *rev'g Richman v. Charter Arms Co.*,

3. For a discussion advocating the imposition of liability upon handgun manufacturers under this theory, see S. Speiser, *Disarming the Handgun Problem by Directly Suing Arms Makers*, Nat'l L.J., June 8, 1981, at 29, col. 1.

571 F.Supp. 192 (E.D.La.1983) ("[marketing handguns] is not a land-related activity, and the injuries of which the plaintiffs complain were not caused by the marketing itself, but rather resulted only when there was substandard conduct on the part of third parties"); *Martin v. Harrington and Richardson, Inc.*, 743 F.2d 1200, 1203-1204 (7th Cir. 1984) (ultrahazardous activity doctrine applies only to the use of a product, not to its manufacture or sale); *Riordan v. International Armament Corp.*, 132 Ill.App.3d 642, 87 Ill.Dec. 765, 769, 477 N.E.2d 1293, 1297 (1985) ("We have found no decision other than *Richman* that has held that the lawful sale of a non-defective product can be an ultrahazardous activity."); *Burkett v. Freedom Arms*, 299 Or. 551, 704 P.2d 118 (1985). See also Note, *Legal Limits of a Handgun Manufacturer's Liability for the Criminal Acts of Third Persons*, 49 Mo.L.Rev. 830 (1984) (criticizing the imposition of liability under the ultrahazardous activity doctrine).

B.

Kelley next contends that a handgun is an abnormally dangerous product, and he argues that a handgun manufacturer or marketer should be strictly liable according to Restatement (Second) of Torts, § 402A. Section 402A provides that:

"(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) The rule stated in Subsection (1) applies although

(a) the seller has exercised all possible care in the preparation and sale of his product, and

(b) the user or consumer has not bought the product from or entered into any contractual relation with the seller."

[3] Maryland adopted § 402A in *Phipps v. General Motors Corp.*, 278 Md. 337, 363 A.2d 955 (1976). In so doing, this Court held that in order for a plaintiff to recover under this theory, he must establish that:

"(1) the product was in a defective condition at the time that it left the possession or control of the seller, (2) that it was unreasonably dangerous to the user or consumer, (3) that the defect was a cause of the injuries, and (4) that the product was expected to and did reach the consumer without substantial change in its condition."

278 Md. at 344, 363 A.2d 955. See also, e.g., *Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581, 495 A.2d 348 (1985); *Sheehan v. Anthony Pools*, 50 Md.App. 614, 440 A.2d 1085 (1982), *aff'd.*, 295 Md. 285, 455 A.2d 434 (1983); *Eaton Corp. v. Wright*, 281 Md. 80, 375 A.2d 1122 (1977).

Phipps and its progeny expressly require that the product be defective when sold. In determining whether a product is defective, in its design or its manufacture, Maryland cases have generally applied the "consumer expectation" test. As this Court explained in *Phipps*:

"[f]or a seller to be liable under § 402A, the product must be both in a 'defective condition' and 'unreasonably dangerous' at the time that it is placed on the market by the seller. Both of these conditions are explained in the official comments in terms of consumer expectations. As Comment g explains, the requirement of a defective condition limits application of § 402A to those situations where 'the product is, at the time it leaves the seller's hands, in a condition not contemplated by the ultimate consumer, which will be unreasonably dangerous to him.' An 'unreasonably dangerous product is defined in Comment i as one which is 'dangerous to an extent beyond that which would be contemplated by the ordinary con-

sumer who purchases it, with the ordinary knowledge common to the community as to its characteristics.' ” 278 Md. at 344, 363 A.2d 955.

[4] A handgun manufacturer or marketer could not be held liable under this theory. Contrary to Kelley's argument, a handgun is not defective merely because it is capable of being used during criminal activity to inflict harm. A consumer would expect a handgun to be dangerous, by its very nature, and to have the capacity to fire a bullet with deadly force. Kelley confuses a product's *normal function*, which may very well be dangerous, with a defect in a product's design or construction. For example, an automobile is a dangerous product, if used to run down pedestrians. In such situation, injury would result from the nature of the product—its ability to be propelled at a great speed with great force. But that same automobile might also be defective in its design or construction, *e.g.*, if the gasoline tank were placed in such position that it could easily explode in a rear-end collision. Only in the second instance, regarding the placement of the gasoline tank, would the design of the product be defective, exposing the product's manufacturer to liability under § 402A. Similarly, a handgun is dangerous because its normal function is to propel bullets with deadly force. That alone is not sufficient for its manufacturer to incur liability under § 402A. For the handgun to be defective, there would have to be a problem in its manufacture or design, such as a weak or improperly placed part, that would cause it to fire unexpectedly or otherwise malfunction.

Another test used to determine whether a design defect exists under § 402A is the “risk/utility” test, applied in *Barker v. Lull Engineering Co., Inc.*, 20 Cal.3d 413, 143 Cal.Rptr. 225, 573 P.2d 443 (1978). In *Barker*, the plaintiff machinery operator sued the defendant manufacturer for injuries received while trying to escape from the malfunctioning machinery. The plaintiff alleged that the machinery was defective because it was not equipped with certain safety devices. The plaintiff appealed from a jury's verdict

for the defendants, arguing that the trial court had erred in instructing the jury that strict liability for a product design must be "based on a finding that the product was unreasonably dangerous for its intended use." 20 Cal.3d at 422, 143 Cal.Rptr. 225, 573 P.2d 443. The Supreme Court of California agreed with the plaintiff, and reversed. In so doing, the court articulated a dual definition for a design defect, the second part of which rests on a balancing of the product's risks and utilities (20 Cal.3d at 432, 143 Cal.Rptr. 225, 573 P.2d 443):

"[A] product may be found defective in design, so as to subject a manufacturer to strict liability for resulting injuries, under either of two alternative tests. First, a product may be found defective in design if the plaintiff establishes that the product failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner. Second, a product may alternatively be found defective in design if the plaintiff demonstrates that the product's design proximately caused his injury and the defendant fails to establish, in light of the relevant factors, that, on balance, the benefits of the challenged design outweigh the risk of danger inherent in such design."

Since the *Barker* decision, numerous jurisdictions have adopted a risk/utility test as an alternate standard for the determination of design defects under § 402A. See, e.g., *Caterpillar Tractor Co. v. Beck*, 593 P.2d 871 (Alaska 1979); *Rucker v. Norfolk & W. Ry. Co.*, 77 Ill.2d 434, 33 Ill.Dec. 145, 396 N.E.2d 534 (1979); *Hunt v. City Stores, Inc.*, 387 So.2d 585 (La.1980); *Back v. Wickes Corp.*, 375 Mass. 633, 378 N.E.2d 964 (1978); *Duke v. Gulf & Western Mfg. Co.*, 660 S.W.2d 404 (Mo.App.1983); *Cepeda v. Cumberland Engineering Co., Inc.*, 76 N.J. 152, 386 A.2d 816 (1978); *Wilson v. Piper Aircraft Corp.*, 282 Or. 61, 577 P.2d 1322 (1978).

While no decision of this Court in a product liability case has expressly rested upon an application of the risk/utility test, we did state in *Phipps* that "in some circumstances the

question of whether a particular design is defective may depend upon a balancing of the utility of the design and other factors against the magnitude of that risk." 278 Md. at 348, 363 A.2d 955. Also, the Court of Special Appeals in *Sheehan v. Anthony Pools, supra*, 50 Md.App. at 620 n. 6, 440 A.2d 1085, in referring to the factors used in the risk/utility analysis, said that "[t]hese factors rationalize what most courts do in deciding design cases, although not all the factors are necessarily weighed nor is the risk/utility analysis denominated as such." *Ibid*.

[5] We believe, however, that the risk/utility test is inapplicable to the present situation. This standard is only applied when something goes wrong with a product. In *Barker*, an unbalanced machine tipped over. In *Back v. Wickes Corp., supra*, a motor home exploded, and in *Duke v. Gulf & Western Mfg. Co., supra*, a power press caught the plaintiff's hands. These products malfunctioned. On the other hand, in the case of a handgun which injured a person in whose direction it was fired, the product worked precisely as intended. Therefore, the risk/utility test cannot be extended to impose liability on the maker or marketer of a handgun which has not malfunctioned.

In sum, regardless of the standard used to determine whether a product is "defective" under § 402A, a handgun which functions as intended and as expected is not "defective" within the meaning of that section. This has been the consistent conclusion in other jurisdictions which have confronted the issue.

For example, in *Patterson v. Rohm Gesellschaft*, 608 F.Supp. 1206 (N.D.Tex.1985), plaintiff's decedent died from gunshot wounds inflicted by a .38 caliber Rohm during a crime. The plaintiff argued that the gun's manufacturer was strictly liable under § 402A. Rejecting the "defective design" claim, the court stated that "a gun, by its very nature, must be dangerous and must have the capacity to discharge a bullet with deadly force." 608 F.Supp. at 1212.

Similarly, in *Riordan v. International Armament Corp.*, *supra*, the court rejected the plaintiff's contention that a handgun was defectively designed because it was small and easily concealable, saying, "[the] size and concealability of the defendants' handguns were not conditions which caused the handgun to fail to perform in the manner reasonably to be expected in light of its nature and intended function." 87 Ill.Dec. at 770, 477 N.E.2d at 1298. The court held that a handgun could not be deemed defective "where the plaintiff's injury was caused by that product's operation precisely as it was designed to operate." *Ibid.* Accord, *Richman v. Charter Arms Co.*, 571 F.Supp. 192, 196-197 (E.D.La. 1983), *rev'd on other grounds*, *Perkins v. F.I.E. Corp.*, 762 F.2d 1250, 1268 (5th Cir.1985); *Martin v. Harrington and Richardson, Inc.*, *supra*, 743 F.2d 1200; *Francis v. Diamond International Corp.*, Nos. CV82-11-1279 and CV83-02-0215 (Ct. of Com.Pl., Butler County Ohio, March 22, 1983), *appeal noted*, No. CA-84-09-111, Ohio Court of Appeals. See, in addition, Makarevick, *Manufacturers' Strict Liability for Injuries From a Well-Made Handgun*, 24 Wm. & Mary L. Rev. 467 (1983) (criticism of both negligence and strict liability theories as bases for imposing liability); Santarelli and Calio, *Turning the Gun on Tort Law: Aiming at Courts to Take Products Liability to the Limit*, 14 St. Mary's L.J. 471 (1983) (arguing that existing products liability theories cannot be extended to hold handgun manufacturers liable); Note, *Handguns and Products Liability*, 97 Harv.L.Rev. 1912 (1984) (handgun manufacturers should not be liable under either design defect or defective distribution theories). *But cf.*, Turley and Harrison, *Strict Tort Liability of Handgun Suppliers*, 6 Hamline L.Rev. 285 (1983) (favoring imposition of liability under § 402A).⁴

4. Courts have also rejected liability under various other theories. For example, two federal cases were dismissed in light of the particular state law regarding product liability. *Mavilia v. Stoeger Industries*, 574 F.Supp. 107 (D.Mass.1983) (In the absence of negligence, Massachusetts only recognizes product liability under a warranty theory; no

C.

[6] The fact that a handgun manufacturer or marketer generally would not be liable for gunshot injuries resulting from a criminal's use of the product, under previously recognized principles of strict liability, is not necessarily dispositive. This Court has repeatedly said that "the common law is not static; its life and heart is its dynamism—its ability to keep pace with the world while constantly searching for just and fair solutions to pressing societal problems." *Harrison v. Mont. Co. Bd. of Educ.*, 295 Md. 442, 460, 456 A.2d 894 (1983). See *Felder v. Butler*, 292 Md. 174, 182, 438 A.2d 494 (1981). The common law is, therefore, subject to judicial modification in light of modern circumstances or increased knowledge. *Jones v. State*, 302 Md. 153, 161, 486 A.2d 184 (1985); *Boblitz v. Boblitz*, 296 Md. 242, 462 A.2d 506 (1983); *Condore v. Prince George's Co.*, 289 Md. 516, 425 A.2d 1011 (1981). Indeed, we have not hesitated to change the common law to permit new actions or remedies where we have concluded that such course was justified. *Boblitz v. Boblitz*, *supra* (authorizing negligence action by one spouse against another); *Morley v. Acker*, 294 Md. 47, 447 A.2d 857 (1982) (changing common law so as to permit an action of forcible detainer even though force is not present); *Adler v. American Standard*

breach of warranty when product performs as it should); *Bennett v. Cincinnati Checker Cab Co., Inc.*, 353 F.Supp. 1206 (E.D.Ky. 1973) (plaintiff failed to allege particular product defect under Kentucky law; manufacturer not responsible for criminal acts of third parties).

In *Linton v. Smith & Wesson*, 127 Ill.App.3d 676, 82 Ill.Dec. 805, 466 N.E.2d 339, *appeal den.*, 101 Ill.2d 582 (1984), the court affirmed the dismissal of the plaintiff's complaint because, under Illinois law, no common law duty existed upon the manufacturer of a nondefective handgun to control the distribution of the product to the general public.

Also, some trial courts have dismissed cases without explanation. *Shipman v. Jennings Firearms, Inc.*, No. 83-6511-CIV-Roettger (United States District Court for the Southern District of Florida, April 26, 1985); *Haviland v. Sturm, Ruger Co.*, No. L-2369 (Cir.Ct. of Blount County, Tennessee, February 18, 1983); *Gebhardt v. Bangor Punta Operations, Inc.*, No. 81-40059 (United States District Court for the Eastern District of Michigan, October 15, 1981).

Corp., 291 Md. 31, 432 A.2d 464 (1981) (recognizing tort of abusive or wrongful discharge); *Lusby v. Lusby*, 283 Md. 334, 390 A.2d 77 (1978) (refusing to recognize interspousal immunity with regard to outrageous intentional torts); *Harris v. Jones*, 281 Md. 560, 380 A.2d 611 (1977) (recognizing tort of intentional infliction of emotional distress).

[7] On the other hand, we have consistently recognized that common law principles should not be changed contrary to the public policy of the State set forth by the General Assembly of Maryland. *Harrison v. Mont. Co. Bd. of Educ.*, *supra*, 295 Md. at 460-461, 456 A.2d 894; *Condore v. Prince George's Co.*, *supra*, 289 Md. at 532, 425 A.2d 1011; *Austin v. City of Baltimore*, 286 Md. 51, 55-56 (majority opinion), 67-70 (Smith and Eldridge, JJ., concurring), 405 A.2d 255, 263 (1979).

By Ch. 13 of the Acts of 1972, the Maryland General Assembly enacted a comprehensive regulatory scheme concerning the wearing, carrying and transporting of handguns, codified under the subtitle "Handguns" at Maryland Code (1957, 1982 Repl.Vol., 1984 Cum.Supp.), Art. 27, §§ 36B-36G.

The subtitle begins with a declaration of the State's policy, in § 36B(a), 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."

To effectuate that policy, the Legislature generally made it unlawful for persons to wear, carry or transport handguns, whether openly or concealed. § 36B(b).⁵ Section 36B(c) also provides certain limited exceptions to the prohibition.⁶ Law enforcement personnel, both State and feder-

5. Art. 27, § 36B(b) provides, in pertinent part:

"(b) *Unlawful wearing, carrying, or transporting of handguns; penalties.*—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 it shall be a rebuttable presumption that the person is knowingly transporting the handgun. . ."

6. Section 36B(c) includes the following exceptions.

"(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.

* * * * *

"(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, 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 used in connection with a target shoot, formal or informal target practice, sport shooting event, hunting, trapping, dog obedience training class or show or any organized military activity while engaged in, on the way to,

al, as well as persons in the military, are permitted to carry handguns. Exceptions are also created for persons engaged in hunting and target practice, and for home and business protection if confined to the real estate owned or leased by the persons having the handguns. An allowance is also made for a person who does not fit within any of those exceptions, but who, under § 36E, has proven, upon application to the Maryland State Police, that he has "good and substantial reason" to carry a handgun and meets certain other qualifications.⁷

or returning from any such activity. Nothing in this section shall prevent any bona fide gun collector from moving any part or all of his gun collection from place to place for public or private exhibition. However, while traveling to or from any such place or event referred to in this paragraph, a handgun shall be unloaded and carried in an enclosed case or enclosed holster.

"(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.

"(5) Nothing in this section shall prevent a person from carrying or transporting any signal pistol or other visual distress signal approved by the United States Coast Guard, in any vessel used upon the waterways of this State, or if unloaded and carried in an enclosed case, in any vehicle."

7. This exception is first stated in § 36B(c)(2), which states that:

"(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 § 36E of this article."

Art. 27, § 36E provides, in pertinent part:

"(a) *Issuance*.—A permit to carry a handgun 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 eighteen 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

ment officials." Saturday Night Specials are generally characterized by short barrels, light weight, easy conceal-

able handguns were used in crimes and violent acts "which far too often mar the urban weekend." 118 Cong.Rec. 21, 27029 (1972). This term is generally used to describe a small, cheap handgun used in criminal activity. *York v. State*, 56 Md.App. 222, 227, 467 A.2d 552 (1983), cert. denied, 299 Md. 137, 472 A.2d 1000 (1984); *United States v. Looney*, 501 F.2d 1039, 1040 (4th Cir.1974); *R.G. Industries, Inc. v. Askew*, 276 So.2d 1, 2 (Fla.1973).

9. Geoffrey Alprin, General Counsel of the Metropolitan Police Department, Washington, D.C., testified before the Senate Committee on the Judiciary regarding Saturday Night Specials:

"Specifically, 'Saturday night specials,' because of their poor construction and low quality, are extremely dangerous weapons, not only to intended targets and bystanders, but also to the user himself. They misfire, fire accidentally, and backfire with some degree of regularity. They are notoriously inaccurate at even short distances.

"Furthermore, the low-grade components used in these weapons, in addition to the fact that many of the parts are foreign-made at reduced labor costs, result in their mass production and extremely low retail prices. A reasonably safe American-made .22 caliber revolver retails in this country for over \$50. Many of the 'Saturday night specials' can be purchased here for between \$10 and \$20 and less, I might add. Thus, the weapon is accessible to almost anyone who wants one at no more than a few dollars. . . .

"It should also be noted that the 'Saturday night special' presents law enforcement problems in tracing and identifying such weapons when they are used to commit criminal offenses. Generally, the weapon is manufactured from soft, inexpensive metal. As a result, serial numbers are easily and sometimes completely erased by either filing or melting. And ballistics examination of such weapons, in order to determine if a fired bullet was discharged from a recovered weapon, is many times made impossible because the metal in the weapon is of such low quality that the characteristics of the barrel are altered every time the weapon is fired."

Hearings on S. 2507 Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary, 92nd Cong., 1st sess. at 109-110 (1971) (hereafter cited as "Handgun Control Hearings"). Similar testimony was given by James Conlisk, Superintendent of Police, Chicago, Illinois, *id.* at 122-123; and Clarence Kelley, Chief of Police, Kansas City, Missouri, *id.* at 352-353.

See also S.Rep. No. 1097, 90th Cong., 2d sess. at 109, U.S.Code Cong. & Admin.News 1968, pp. 2112, 2199, cited *infra* at note 14.

Support is also found in statistical studies of handguns used in crime confiscated by police in major urban centers. One such study showed that 69% of handguns used in robbery, 69% of handguns used in homicides, and 75% of handguns seized that were used in assaults were the small, "crime-related handgun" with barrel lengths of less than 3 inches. Bureau of Alcohol, Tobacco and Firearms, U.S. Dep't of Justice, *Concentrated Urban Enforcement: An Analysis of the Initial*

[8] The express statutory provisions allowing persons to possess and carry handguns in certain specified instances demonstrate that not all handguns or handgun usage is inconsistent with Maryland public policy. In our view, generally to impose strict liability upon the manufacturers or marketers of handguns for gunshot injuries resulting from the misuse of handguns by others, would be contrary to Maryland public policy as set forth by the Legislature.

III.

There is, however, a limited category of handguns which clearly is not sanctioned as a matter of public policy. To impose strict liability upon the manufacturers and marketers of these handguns, in instances of gunshot wounds caused by criminal use, would not be contrary to the policy embodied in the enactments of the General Assembly. This type of handgun, commonly known as a "Saturday Night Special,"⁸ presents particular problems for law enforce-

been granted relief pursuant to Title 18, § 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, 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, 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 a finding that such permit is necessary as a reasonable precaution against apprehended danger."

8. The term "Saturday Night Special" originated in Detroit, where officials first noted the frequency with which these cheap, easily

bility, low cost, use of cheap quality materials, poor manufacture, inaccuracy and unreliability. These characteristics render the Saturday Night Special particularly attractive for criminal use and virtually useless for the legitimate purposes of law enforcement, sport, and protection of persons, property and businesses.¹⁰

Year of Operation CUE in the Cities of Washington, D.C., Boston, Ma., and Chicago, Ill. (1977) at 96-98. Price data from this study indicated that approximately 40% of the guns seized retailed for under fifty dollars. A similar study, based on statistics from sixteen major cities, revealed that 71% of the handguns seized during the study period were of the short-barrelled, easily concealable variety. Bureau of Alcohol, Tobacco and Firearms, U.S. Dep't of Justice, *Project Identification: A Study of Handguns Used in Crime* (1976) at 11, 21.

But cf. Brill, *The Traffic (Legal and Illegal) in Guns*, Harper's, Sept. 1977, at 37-44 (arguing that well-made handguns account for a large percentage of crime weapons).

10. See generally, Bruce-Briggs, *The Great American Gun War*, 45 Pub. Interest 37 (1976); Cook, *The "Saturday Night Special": An Assessment of Alternative Definitions From a Policy Perspective*, 72 J. Crim. & Criminology 1735 (1981). Iveson, *Manufacturers' Liability to Victims of Handgun Crimes: A Common-Law Approach*, 51 Fordham L. Rev. 771, 790-792 (1983); Cox Newspaper Series, "The Snub-Nosed Killers: Handgun in America" (Dec. 1981), reprinted in *Handgun Control Legislation: Hearings Before the Subcomm. of Criminal Law of the Senate Comm. on the Judiciary*, 97th Cong., 2d sess. at 113-152 (1982).

Maxwell Rich, Executive Vice President of the National Rifle Association, testified in Senate hearings that:

"[Saturday Night Specials] have never to my knowledge been accepted for advertising in our official journal, the American Rifleman. Our reason is that they have no sporting purpose, they are frequently poorly made, and they do not represent value received to any purchaser."

Handgun Control Hearings, supra, at 315. Eugene Rossides, Assistant Secretary of the Treasury, also testified at those hearings (*id.* at 132):

"We are all generally familiar with the problems presented by the so-called 'Saturday night specials.' ... Such handguns are inaccurate, unreliable, and unsafe and do not serve sporting purposes or law enforcement or self protection needs."

Patrick Murphy, Police Commissioner of the City of New York, added (*id.* at 177):

"There is absolutely no legitimate reason to permit the importation, manufacture, or sale of these weapons, or their parts. They are sought only by people who have illicit motives, but who may have some difficulty securing a better gun. No policemen, no Army

A.

The legislative policies of both the United States Congress and the Maryland General Assembly reflect the view that "Saturday Night Specials" comprise a distinct category of handguns that, because of their characteristics, should be treated differently from other handguns.

(1)

The Gun Control Act of 1968 was originally enacted by Congress as Title IV of the Omnibus Crime Control and Safe Streets Act of 1968, codified at 18 U.S.C. § 921 *et seq.* The Act prohibits, *inter alia*, the importation into the United States of Saturday Night Specials by banning the importation of *any* firearm¹¹ or ammunition not specifically excepted. Section 922, titled "Unlawful acts," provides in pertinent part:

"(1) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter."

Section 925, titled "Exceptions: Relief from disabilities," allows the importation of firearms for the use of law enforcement, military, or other governmental purposes, § 925(a), and then further provides:

"(d) The Secretary [of the Treasury] may authorize a firearm or ammunition to be imported or brought into the

officer, no security guard, no businessman or merchant, and no sportsman would purchase one of these weapons for any lawful purpose."

11. The term "firearm" is defined to include both "any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of any explosive; [and] the frame or receiver of any such weapon." 18 U.S.C. § 921(a)(3).

United States or any possession thereof if the person importing or bringing in the firearm or ammunition establishes to the satisfaction of the Secretary that the firearm or ammunition—

(1) is being imported or brought in for scientific or research purposes, or is for use in connection with competition or training pursuant to chapter 401 of title 10;¹²

(2) is an unserviceable firearm, other than a machinegun as defined in section 5845(b) of the Internal Revenue Code of 1954¹³ (not readily restorable to firing condition), imported or brought in as a curio or museum piece;

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms; or

(4) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition.

The Secretary may permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection."

12. 10 U.S.C. § 4301 *et seq.*, which concerns, *inter alia*, firearm training for military personnel.

13. 26 U.S.C. § 5845 is the definitional section of the National Firearms Act. 26 U.S.C. § 5801 *et seq.*, which regulates the importation, transfer and taxation of automatic and semi-automatic weapons and weapon parts. Subsection (b), referred to in 18 U.S.C. § 925(d)(2), defines "machinegun" to include any automatic or semi-automatic weapon or any of its parts. Subsection (a), referred to in 18 U.S.C. § 925(d)(3), defines "firearm" as a broad category of small or modified shotguns and rifles, machineguns, mufflers, silencers, and "destructive devices."

Pursuant to the above-quoted provision, the Secretary of the Treasury has promulgated regulations concerning the importation of firearms, collected at 27 C.F.R. part 178. Section 178.112 provides that:

"(a) No firearm or ammunition shall be imported or brought into the United States by a licensed importer (as defined in § 178.11) unless the Director [of the Bureau of Alcohol, Tobacco and Firearms] has authorized the importation of the firearm or ammunition, or the firearm or ammunition is listed on the Importation List compiled by the Director as provided by paragraph (c) of this section.

"(c) The Director may compile an Importation List of firearms and ammunition which he determines to be generally recognized as particularly suitable for or readily adaptable to sporting purposes. . . . No firearm shall be placed on the Importation List unless it is found that (1) the caliber or gauge of the firearm is suitable for use in a recognized shooting sport, (2) the type of firearm is generally recognized as particularly suitable for or readily adaptable to such use, and (3) the use of the firearm in a recognized shooting sport will not endanger the person using it due to deterioration through such use or because of inferior workmanship, materials or design."

The Bureau of Alcohol, Tobacco and Firearms has drawn up what it terms a "Partial List," revised periodically, of handguns not authorized for importation, and a separate "Partial List" of those handguns which meet the criteria for importation with an approved permit. The criteria the Bureau applies in classifying handguns for importation are set forth in its "Factoring Criteria For Weapons," BATF Form 4590. There are two prerequisites that an imported handgun must meet before the factoring criteria are applied: It must have a positive manually operated safety device, and a combined height and length of not less than 10 inches. Factoring criteria include the handgun's overall size, weight, frame construction, caliber, safety features and sporting modifications. The Bureau also reserves the

right to refuse the importation of any handgun which meets the factoring criteria but, nevertheless, otherwise fails to satisfy the "sporting purposes" test of § 925(d)(3).

The ban on the importation of any firearm, except those used for law enforcement, military or sporting purposes, indicates Congressional belief that there is a category of firearms which has little or no legitimate purpose. This is reflected in Congressional reports, hearings and floor debates. For example, the Preamble to the Act, as originally enacted, stated (§ 901(a)(7) of P.L. 90-351, 82 Stat. 225, 226):

"(7) 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, has contributed greatly to lawlessness and to the Nation's law enforcement problems[.]"¹⁴

Another indication of Congressional policy to single out Saturday Night Specials as having little legitimate purpose

14. In S.Rep. No. 1097, 90th Cong., 2d sess. at p. 109, U.S.Code Cong. & Admin.News 1968, at p. 2199, it is stated, regarding this preamble, that:

"[p]aragraph (7) is a specific finding and declaration 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.

"This finding and declaration is fully supported by the evidence developed by the investigations of the committee and by testimony before it by the Attorney General of the United States, the attorneys general of California, New Jersey, and South Carolina, and by the police officials of Atlanta, Chicago, Los Angeles, New York City, Philadelphia, St. Louis, and the District of Columbia."

The preamble, however, was deleted as a whole from the Act when reenacted by P.L. 90-618, 82 Stat. 1213, because Congress felt it was "unnecessary." H.R.Rep. No. 1577, 90th Cong., 2d sess. at p. 5, U.S.Code Cong. & Admin.News 1968, pp. 4410.

in today's society, and to restrict the public's access to weapons, is found in S.Rep. No. 1097, 90th Cong., 2d sess. at p. 76-80, U.S.Code Cong. & Admin.News 1968, at pp. 2164-2167:

"The problem of firearms misuse in crimes of violence in the United States has been adequately documented by the Judiciary Subcommittee to Investigate Juvenile Delinquency, commencing with the subcommittee's hearings record of 1963 and including the hearing records of 1964, 1965, and 1967.

"There is no further need to detail the committee's findings in this report, in view of the fact that they are included in the above-referenced hearing records and in Judiciary Committee Report 1866, 89th Congress, second session.

"However, a summary of the major problem areas documented by the committee is appropriate to outline the extent and the scope of the firearms abuse problem.

* * * * *

"Substantial numbers of firearms that are sold via the mail-order route in the United States are foreign imported firearms, either of the military surplus category or the category of inexpensive, small-caliber firearms, which have been termed as 'unsafe' and as 'Saturday night specials.'

"Our law enforcement officials have testified that from 50 to 80 percent of the crime guns that are confiscated each year are foreign imports of either of the above categories of weapons. Many of these imports are shipped into the United States as parts or disassembled. Many are rebored and rechambered upon reentry into the United States and the barrels are cut down for concealment purposes.

* * * * *

"The title would curb the flow of surplus military weapons and other firearms being brought into the

United States which are not particularly suitable for target shooting or hunting.

"The provisions concerning the importation of firearms would not interfere with the bringing in of currently produced firearms, such as rifles, shotguns, pistols, or revolvers of recognized quality which are used for hunting and for recreational purposes, or for personal protection.

"The importation of certain foreign-made and military surplus non-sporting firearms has an important bearing on the problem which this title is designed to alleviate. Thus the import provisions of this title seem entirely justified."

Additionally, during the hearings on the Act, a substantial amount of the testimony and evidence revolved around the Saturday Night Special and its role in the country's crime problem. This testimony was later summarized during the floor debates of a proposed amendment to the Act (118 Cong.Rec. 21, 27030 (1972) (statement of Sen. Bayh, Subcommittee Chairman)):

"In the course of these hearings, special attention was focused on Saturday night specials because these handguns present a particular problem for law enforcement and public safety by reason of their cheapness, low quality, ease of concealment, and ready availability. Having no legitimate sporting purpose, these weapons, also known as 'bellyguns' and 'manstoppers,' are the predominant firearm used in crime. The term[s], 'bellygun' and 'manstoppers,' are vividly descriptive of the real purpose of these weapons. The committee soon learned that the United States was being flooded with these criminal weapons, and that most of them were coming from foreign sources."

After Title IV of the Omnibus Crime Control and Safe Streets Act of 1968 was passed, but before its effective date, Congress reenacted the title as the Gun Control Act of

1968.¹⁵ The importation ban on handguns was not affected. In fact, H.R.Rep. No. 1577, 90th Cong., 2d sess., stated at p. 9, U.S.Code Cong. & Admin.News 1968, at p. 4415:

"It has also been urged that the import restrictions of existing law, which are continued in the bill, should be relaxed. The [House Judiciary] committee does not agree. The main purpose of the import restrictions is to arrest the present flood of imports of surplus military weapons and low-priced foreign-made firearms generally, since these types of import[ed] weapons have caused major law enforcement problems."

For further evidence that the Gun Control Act of 1968 was designed to ban the importation of Saturday Night Specials because they comprise a distinct category of guns with little or no legitimate value, see, e.g., Hearings on S. 2507 Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, 92nd Cong., 1st sess.; and 118 Cong.Rec. 21, 27033 (1972) (statement of Sen. Bayh, Chairman of Subcommittee).

(2)

The Maryland gun control legislation, discussed earlier, reflects a similar policy. It permits legitimate uses of handguns akin to those allowed under the federal legislation. Besides recognizing the federally permitted use of handguns for law enforcement purposes, Code, Art. 27, § 36B(c)(1), and sporting purposes, Code, Art. 27, § 36B(c)(3), the Maryland statute also indicates that protection at one's place of business or real estate owned or leased by him, and the carrying of handguns by one having a permit, are legitimate handgun uses. § 36B(c)(2), (4) and § 36E(a). In addition to the specific regulations concerning handguns, the General Assembly also has established separate statutory prohibitions concerning the sale or transfer

15. The reenactment strengthened the gun control provisions by applying the restrictions to shotguns and rifles, and by controlling the interstate shipment and sale of ammunition. The provisions regarding the importation of handguns remained the same.

of pistols and revolvers. Code (1957, 1982 Repl. Vol., 1984 Cum. Supp.), Art. 27, §§ 441-448. These sections, like §§ 36B-36G, show that only the legitimate use of handguns is consistent with State policy.

Saturday Night Specials are largely unfit for any of the recognized legitimate uses sanctioned by the Maryland gun control legislation. They are too inaccurate, unreliable and poorly made for use by law enforcement personnel, sportsmen, homeowners or businessmen. See *supra* notes 9 and 10. The chief "value" a Saturday Night Special handgun has is in criminal activity, because of its easy concealability and low price. Obviously, the use of a handgun in the commission of a crime is not a "legitimate" use justified by State policy. To the contrary, the Legislature has expressly declared that the criminal use of a handgun is a separate crime that carries a mandatory sentence of not less than five years imprisonment. § 36B(d).¹⁶ Furthermore, the General Assembly has specifically banned the sale of pistols and revolvers to, *inter alia*, persons who have been convicted of a crime of violence. Code, Art. 27, § 445.¹⁷

16. Code, Art. 27, § 36B provides, in pertinent part:

"(d) *Unlawful use of handgun or antique firearm in commission of crime: penalties.*—Any person who shall use a handgun or an antique firearm capable of being concealed on the person in the commission of any felony or any crime of violence as defined in § 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:

(1) For a first offense, be sentenced to the Maryland Division of Correction for a term of not less than 5 nor more than 20 years, and it is mandatory upon the court to impose no less than the minimum sentence of 5 years.

(2) For a second or subsequent offense, be sentenced to the Maryland Division of Correction for a term of not less than 5 nor more than 20 years, and it is mandatory upon the court to impose no less than a minimum consecutive sentence of 5 years which shall be served consecutively and not concurrently to any other sentence imposed by virtue of the commission of said felony or misdemeanor."

17. § 445 states that:

"(d) *Sale or transfer to criminal, fugitive, etc.*—A dealer or person may not sell or transfer a pistol or revolver to a person whom he

Thus, the policy implications of the gun control laws enacted by both the United States Congress and the Maryland General Assembly reflect a governmental view that there is a handgun species, *i.e.*, the so-called Saturday Night Special, which is considered to have little or no legitimate purpose in today's society.

(3)

Moreover, the manufacturer or marketer of a Saturday Night Special knows or ought to know that he is making or selling a product principally to be used in criminal activity. For example, a salesman for R.G. Industries, describing what he termed to be a "special attribute" of a Rohm handgun, was said to have told a putative handgun marketer, "If your store is anywhere near a ghetto area, these ought to sell real well. This is most assuredly a ghetto gun." The R.G. salesman allegedly went on to say about another R.G. handgun, "This sells real well, but, between you and me, it's such a piece of crap I'd be afraid to fire the thing." Brill, *The Traffic (Legal and Illegal) In Guns*, Harper's, Sept. 1977, at 40.¹⁸

One commentator, in advocating the imposition of liability upon the manufacturers of Saturday Night Specials, stated:

"It has been suggested that Saturday Night Specials pose a great risk of criminal misuse particularly because they are easily concealable and relatively inexpensive. Most Saturday Night Specials are, in fact, used in crime. In addition, any countervailing social usefulness is negligible because the poor quality of their manufacture precludes

knows or has reasonable cause to believe has been convicted of a crime of violence . . ."

See also § 442(e)(2)(i), requiring every prospective purchaser to sign a statement that he has never been convicted of a crime of violence.

18. It is noteworthy that when the Senate Committee on the Judiciary held its subcommittee hearings on Saturday Night Specials, it asked some of the leading manufacturers of such guns to testify, and all refused. *Handgun Control Hearings*, *supra*, note 8, at 293-300.

their use for most legitimate purposes. Other guns are safer and more accurate for legitimate uses, while not posing the same danger of criminal misuse."

Iveson, *Manufacturers' Liability to Victims of Handgun Crime: A Common Law Approach*, 51 Fordham L.Rev. 771, 791-792 (1983).

We are not aware of any case in other jurisdictions which either distinguishes Saturday Night Specials from handguns in general when deciding a liability claim against a gun manufacturer or marketer for gunshot injuries caused by the criminal use of the product, or which expressly refuses to make such distinction. An analogy may be drawn, however, to the decision of the Supreme Court of Michigan in *Moning v. Alfano*, 400 Mich. 425, 254 N.W.2d 759 (1977). In *Moning*, an eleven year old child was seriously injured by a projectile fired from a slingshot by a playmate. The court reversed a directed verdict for the slingshot's manufacturer, concluding that the manufacturer could be held liable for marketing the slingshot directly to children because a child's misuse was foreseeable. The court reasoned that marketing a dangerous product, knowing that it would be chiefly used by a class of purchasers likely to misuse the product, could be considered unreasonable. 400 Mich. at 446-449, 254 N.W.2d 759.¹⁵

Similarly, the manufacturer or marketer of a Saturday Night Special knows or ought to know that the chief use of the product is for criminal activity. Such criminal use, and the virtual absence of legitimate uses for the product, are clearly foreseeable by the manufacturers and sellers of Saturday Night Specials. Cf. *Volkswagen of America v. Young*, 272 Md. 201, 216-217, 321 A.2d 737 (1974).

19. Cf. *Bojorquez v. House of Toys, Inc.*, 62 Cal.App.3d 930, 133 Cal. Rptr. 483 (1976), in which the California Court of Appeals, in a similar situation, declined to impose liability because, *inter alia*, it would result in a ban on the sale of the toys by judicial fiat. The *Bojorquez* court also refused to hold the defendants strictly liable for failure to warn, because they viewed the inherent dangers of a slingshot to be a matter of common knowledge.

Moreover, as between the manufacturer or marketer of a Saturday Night Special, who places among the public a product that will be used chiefly in criminal activity, and the innocent victim of such misuse, the former is certainly more at fault than the latter. *Cf. Phipps v. General Motors Corp.*, *supra*, 278 Md. at 352-353, 363 A.2d 955.

[9] For the above reasons, we conclude that it is entirely consistent with public policy to hold the manufacturers and marketers of Saturday Night Special handguns strictly liable to innocent persons who suffer gunshot injuries from the criminal use of their products. Furthermore, in light of the ever growing number of deaths and injuries due to such handguns being used in criminal activity, the imposition of such liability is warranted by today's circumstances.

While the fact that a handgun is a Saturday Night Special may not bring its manufacturer or marketer within any of the previously existing theories of strict liability discussed in part II of this opinion, we have repeatedly pointed out that the common law adapts to fit the needs of society. Consequently, we shall recognize a separate, limited area of strict liability for the manufacturers, as well as all in the marketing chain, of Saturday Night Specials.

B.

[10] There is no clear-cut, established definition of a Saturday Night Special, although there are various characteristics which are considered in placing a handgun into that category. Relevant factors include the gun's barrel length, concealability, cost, quality of materials, quality of manufacture, accuracy, reliability, whether it has been banned from import by the Bureau of Alcohol, Tobacco and Firearms, and other related characteristics. Additionally, the industry standards, and the understanding among law enforcement personnel, legislators and the public, at the time the weapon was manufactured and/or marketed by a particular defendant, must be considered. Because many of these factors are relative, in a tort suit a handgun should

rarely, if ever, be deemed a Saturday Night Special as a matter of law. Instead, it is a finding to be made by the trier of facts.

On the other hand, before the question of liability may go to the trier of facts, a threshold question must be decided as a matter of law. Since both state and federal statutes reflect a policy that there are legitimate uses for handguns, the trial court must first find that the plaintiff has made a showing that the handgun in question possesses sufficient characteristics of a Saturday Night Special. Moreover, merely because a handgun is small and short barreled is not itself sufficient for the issue to be submitted to the trier of facts. As stated earlier, the General Assembly of Maryland has recognized the need for certain persons to carry guns, for example, law enforcement personnel and persons with special permits. Non-uniformed law enforcement personnel and certain permit holders will of necessity be required to carry small, short barreled handguns. A high-quality, small, short barreled handgun, designed for such legitimate use, is not a Saturday Night Special, and the trier of facts should not be permitted to speculate otherwise. While the determination by the trial court that the plaintiff has passed the initial hurdle cannot be based on size and barrel length alone, these factors, coupled with evidence of low cost, poor quality of materials or workmanship, unreliability, or other identifying characteristics, may be sufficient for the trial court to allow the issue to go to the trier of facts.

[11] Finally, once the trier of facts determines that a handgun is a Saturday Night Special, then liability may be imposed against a manufacturer or anyone else in the marketing chain, including the retailer. Liability may only be imposed, however, when the plaintiff or plaintiff's decedent suffers injury or death because he is shot with the Saturday Night Special. In addition, the shooting must be a criminal act. The shooting itself may be the sole criminal act, or it may occur in the course of another crime where

the person firing the Saturday Night Special is one of the perpetrators of the crime. Although neither contributory negligence nor assumption of the risk will be recognized as defenses, nevertheless the plaintiff must not be a participant in the criminal activity.²⁰ If the foregoing elements are satisfied, then the defendant shall be liable for all resulting damages suffered by the gunshot victim, consistent with the established law concerning tort damages.

IV

We shall now turn to the question of whether the Rohm Revolver Handgun, Model RG-38S, serial number 0152662 falls within the category of a Saturday Night Special. Under the principles set forth above, this issue does not present a question of law under the Uniform Certification of Questions of Law Act; instead it is a matter for the United States District Court. We shall, however, offer a few comments on this question for whatever assistance they may provide.

There is little information about the weapon set forth in the plaintiffs' declaration which would indicate whether it allegedly falls within the category of a Saturday Night Special. This is understandable, however, as we had drawn no distinction between handguns generally and Saturday Night Specials when the declaration was filed. On the other hand, there is an abundance of material available elsewhere. For example, R.G. Industries, Rohm's American subsidiary, has been called the nation's major producer of Saturday Night Specials.²¹ It was included on a list of domestic manufacturers and marketers of handguns that do

20. The potential class of plaintiffs could include the intended victims of the crime, innocent persons who are unintentionally shot by the criminal, and law enforcement personnel or others who intervene to prevent the crime, to assist the victims, or to apprehend the perpetrator of the crime.

21. Brill, *The Traffic (Legal and Illegal) In Guns*, Harper's, Sept. 1977, at 39.

not meet the federal standards for importation sent by the Department of the Treasury to the Senate subcommittee investigating Saturday Night Specials.²² During the Senate hearings, some Rohms were described as "junk guns,"²³ as having no "legitimate sporting purpose,"²⁴ and as guns that should not be "sold in the American market under any circumstances."²⁵ Further, the *Project Identification* study conducted by the Bureau of Alcohol, Tobacco and Firearms, *supra* note 9, classified seized handguns in three categories, the third category, Class III, being of the poorest quality and least expensive. That study stated that "all Rohms . . . were considered to be Class III." *Id.* at 9.

Additional information shows a recent suggested list price of an RG-38S as \$35.00, if in good condition, or \$55.00, if in excellent condition.²⁶ No Rohm handgun in a two inch barrel may be imported into the United States.²⁷ A Rohm RG-38 double action revolver, .38 special caliber with a three inch barrel, also cannot be imported into the United States,²⁸ but a Model RG-38 Revolver (37 ounce weight) .38

22. *Handgun Control Hearings*, *supra* note 9 at 165.

23. Statement of Lt. Ralph Joyce, Commanding Officer of the Homicide Bureau, Cleveland Police Department. *Handgun Control Hearings* at 309. Lt. Joyce also said of a Rohm that it was "one word everyone in the homicide department knows how to spell believe me." *Id.* at 293.

24. Statement of Maxwell Rich, Executive Vice President, National Rifle Association. *Handgun Control Hearings* at 321.

25. Statement of Harold Serr, retired Director of the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service. *Handgun Control Hearings* at 332.

26. D. Byron, *The Official 1982 Price Guide to Antique and Modern Firearms* (2d Ed.1982) at 359.

27. Bureau of Alcohol, Tobacco and Firearms Form 4690 (7570.5). See also notes 28, 30, *infra*.

28. "Partial List of Foreign Produced Handguns Not Authorized for Importation Into the United States," publication of the Bureau of Alcohol, Tobacco and Firearms, Department of Treasury, at 9.

special caliber, with three and six inch barrels, modified with target accessories and a serial number over 250,000,²⁹ may be imported, as may some other long-barrelled, target modified .38 specials.³⁰

If this case were here on appeal and writ of certiorari from a Maryland circuit court, we would remand the case for further proceedings in light of the principles of Maryland law adopted in this opinion.

V.

One final matter warrants discussion, namely the effective date of the modification in Maryland common law tort principles which is set forth in Part III of this opinion.

Ordinarily in a case such as this, which changes common law principles applicable to civil actions sounding in tort, we would apply the change to the case before us and prospectively to all such causes of action accruing after the date of the case before us. *Boblitz v. Boblitz*, 296 Md. 242, 275, 462 A.2d 506, 622 (1983). The cause of action recognized in Part III of this opinion would normally accrue when the plaintiff suffered a gunshot injury from a Saturday Night Special in the course of criminal activity.

There may, however, be an element of unfairness in applying the common law change herein recognized to all causes of action accruing after this case. The gist of the wrongful act on the part of the manufacturers and marketers of Saturday Night Specials, underlying the cause of action, is the marketing of such guns to the public, knowing that they have little or no legitimate use and foreseeing that the product's chief use is for criminal activity. While

29. As noted earlier, the serial number of the handgun in the present case is 0152662.

30. Such guns are commonly known as an RG-38-6, RG-38-Target, RG-38-3 or RG-38-4. "Partial List of Foreign Handguns Which Meet the Criteria for Importation Into the United States With an Approved Permit," publication of the Bureau of Alcohol, Tobacco and Firearms, Department of Treasury, at 22-23.

manufacturers and marketers of handguns have or should have had such knowledge for a long time, nevertheless until now they have had little reason to anticipate that their actions might result in tort liability. As previously pointed out, no case to the best of our knowledge has heretofore dealt with the particular form of liability recognized in Part III of this opinion. Consequently, when a Saturday Night Special has been first marketed to a member of the public prior to the date of our mandate in this case, but the cause of action accrues after the date of the mandate, there may be some basis for the defendant manufacturers and marketers to complain of unfairness.

[12] Therefore, the change in the common law set forth in Part III of this opinion will apply in the instant case. It will also apply to all other causes of action accruing after the date of our mandate in this case unless it is shown that the initial marketing of the Saturday Night Special to a member of the public, which will usually be the first sale of the gun by a retail gun dealer to a customer, occurred prior to the date of the mandate. In such event, the basis for liability recognized in Part III will not apply, even though the gunshot injury took place after our mandate.³¹

QUESTIONS OF LAW ANSWERED AS HEREIN SET FORTH. EACH PARTY TO PAY ITS OWN COSTS.

31. Our holding in this regard does place upon the defendant manufacturers and marketers the burden of production and persuasion to show that the retail sale took place prior to the date of our mandate. We believe this to be appropriate, as the facts concerning the date of sale to a member of the public can be ascertained much more easily by the defendants than the plaintiff.

Bad Boy Biaggi Bagged

Yet another anti-gun Congressman ran upon the rocks recently when the Honorable Mario Biaggi (D-NY) was sentenced to 2½ years in prison, and fined \$500,000 on charges of obstruction of justice and receiving an "unlawful gratuity—vacations at a Florida spa. . ."

Biaggi, the senior member of the House delegation from the State of New York is eligible for parole after 10 months. He could have been sentenced to a total of 12 years in prison and fined up to \$750,000.

The *New York Times* reported Biaggi as saying "In my heart I didn't do anything wrong. . ." The chief prosecutor in the case, Edward A. McDonald, described the Congressman as a "thoroughly corrupt and venal individual" and said that Biaggi "disgraced himself and discredited his public office."

Mr. Biaggi's attorney, Barry Slotnick (also Bernie Goetz's attorney) made a motion that the judge grant his client great favor in sentencing, saying that Biaggi was a dedicated family man.

The prosecutor said this was "perverse" since Biaggi's crime in receiving an unlawful gratuity also involves his mistress, the then-Ms. Barbara Barlow, who escorted Biaggi to the Florida spa. McDonald described Congressman Biaggi as "an aging Romeo who cannot control his urges."

"Vacationgate"

Even the liberal *Washington Post* has called it "Vacationgate." The response from Congress was less than surprising, if not predictable. The *New York Times* reported on November 4 that Speaker of the House Jim Wright filed an *amicus* brief on behalf of the House leadership asking Federal Judge Jack B. Weinstein "to set aside, on constitutional grounds, Rep. Biaggi's conviction for unlawfully travelling across state lines to accept an illegal gratuity."

The brief stated that the Representative was on official Congressional business and therefore exempt of these



Rep. Biaggi

charges. This defense was based upon the constitutional separation of powers.

Wright's brief went on to say that "The Supreme Court has made it clear that a court cannot challenge or question the motives of a legislator in connection with his legislative activities." The travel expenses for Biaggi were paid for by the taxpayers, which, of course, made it official business. Ms. Barlow's involvement in Biaggi's Congressional affairs was not discussed.

The House Ethics Committee then announced that it would conduct a disciplinary hearing to decide what sanctions if any would be levied upon Biaggi. This hearing is similar to the one that found former Rep. Geraldine Ferraro (D-NY) not guilty of failing to report her husband's income along with her own. *TGO* readers may remember that former Idaho Republican Congressman George Hansen (a strong pro-gunner) was sent to Federal prison for 15 months for not doing the exact same thing.

Biaggi Back in Court

Nevertheless, we have not heard the last of Mr. Biaggi. As *TGO* is going to press, Biaggi is scheduled to be back in court in January for another trial related to the Wedtech Corporation scandal. If Biaggi is convicted on the most serious charge of racketeering, he will be given a mandatory sentence of 20 years. This could have even more serious ramifications for his future as a lawmaker.

If convicted a second time, the House will be forced to expel him from the legislative body. Nevertheless, this may not keep him from being re-elected. The word is that the 10-term Congressman is so popular in his district that he will probably be re-elected even if he is behind bars.

This would lead to an interesting situation. If Biaggi were to introduce additional legislation to take away the firearms freedoms of Americans, then the following headline could become just one of many: "Convicted Crook Pushes Measure to Disarm the Law-Abiding." □

Senate Vote

Continued from page 5

TENNESSEE

Albert Gore	NV
Jim Sasser	Y

TEXAS

Lloyd Bentsen	Y
Phil Gramm	Y

UTAH

Jake Garn	Y
Orrin Hatch	Y

VERMONT

Patrick Leahy	N
Robert T. Stafford	N

VIRGINIA

Paul Trible	Y
John Warner	Y

WASHINGTON

Brock Adams	N
Daniel Evans	NV

WEST VIRGINIA

* Robert C. Byrd	N
* John D. Rockefeller	N

WISCONSIN

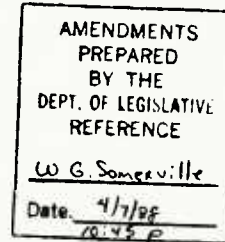
Robert Kasten	Y
William Proxmire	N

WYOMING

Alan K. Simpson	Y
Malcolm Wallop	Y

BY: Senator Boozer
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO HOUSE BILL NO. 1131
(Third Reading File B111)



AMENDMENT NO. 1

On page 1, in line 2, before "Manufacture" insert "Prohibition of"; in the same line, after "Prohibition" insert "of Liability for Damages Caused by Certain Criminal Use of Firearms"; in line 4, after "handguns;" insert "establishing a Handgun Roster Board;"; in line 5, strike "Superintendent of the Maryland State Police" and substitute "Board"; strike beginning with "providing" in line 9 down through "roster;" in line 10; strike beginning with "limiting" in line 14 down through "handguns;" in line 15; in line 21, strike "Superintendent" and substitute "Board"; in line 25, after "changes;" insert:

strictly
"providing that a person or entity may not be held liable for damages resulting from injuries to another person sustained as a result of the criminal use of any firearm by a third person, thereby overturning the remedy established by the Court of Appeals in Olen J. Kelley, et al v. R.G. Industries, Inc., et al, 497A. 2d 1143 (1985) which misconstrued the public policy of Maryland as set forth by the General Assembly;";
and on page 2, after line 10, insert:

(OVER)

"BY adding to
Article - Courts and Judicial Proceedings
Section 5-315
Annotated Code of Maryland
(1984 Replacement Volume and 1987 Supplement)".

AMENDMENT NO. 2

On page 4, after line 39, insert:

"(M) "BOARD" MEANS THE HANDGUN ROSTER BOARD."

On page 5, after line 25, insert:

(A) (1) THERE IS A HANDGUN ROSTER BOARD.

Adopted (2) THE BOARD SHALL CONSIST OF 7 MEMBERS, APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, EACH OF WHOM SHALL SERVE FOR A TERM OF 4 YEARS.

(3) THE MEMBERS OF THE BOARD SHALL BE:

(I) A REPRESENTATIVE OF THE ASSOCIATION OF CHIEFS OF POLICE;

(II) A REPRESENTATIVE OF THE MARYLAND STATE'S ATTORNEYS' ASSOCIATION;

(III) A REPRESENTATIVE OF A HANDGUN MANUFACTURER IN THE STATE;

(IV) A REPRESENTATIVE OF THE MARYLAND CHAPTER OF THE NATIONAL RIFLE ASSOCIATION;

(V) A REPRESENTATIVE OF THE MARYLANDERS AGAINST HANDGUN ABUSE; AND

(VI) 2 CITIZEN MEMBERS.

(4) THE REPRESENTATIVE OF THE ASSOCIATION OF CHIEFS OF POLICE SHALL SERVE AS CHAIRMAN OF THE BOARD.

(5) THE BOARD SHALL MEET AT THE REQUEST OF THE CHAIRMAN OF THE BOARD."

On page 5, in line 26, on page 6 in lines 11, 25, and 31, and on page 7 in line 1, strike "(A)", "(B)", "(C)", "(D)", and "(E)", respectively, and substitute "(B)", "(C)", "(D)", "(E)", and "(F)", respectively. On page 6, in line 14, strike "(D)" and substitute "(E)"; and in the same line, strike "(E)" and substitute "(F)".

On page 5, in lines 26 and 31, on page 6, in lines 2, 11, 18, 22, 30, 32, and 39, and on page 7, in lines 1 and 5, in each instance, strike "SUPERINTENDENT" and substitute "BOARD". On page 6, in line 12, and on page 7, in line 3, strike "SUPERINTENDENT'S" and substitute "BOARD'S". On page 6, in line 40, and on page 7, in lines 11, 15, 20, and 23, in each instance, strike "SUPERINTENDENT" and substitute "BOARD". On page 7, in line 24, strike "SUPERINTENDENT'S" and substitute "BOARD'S".

AMENDMENT NO. 3

On page 5, in lines 2, 5, and 10, in each instance, strike "NOT"; in line 28, strike "PERMITTED" and substitute "PROHIBITED"; in the same line, after "ARE" insert "NOT". On page 6, in line 14, strike "UNLESS" and substitute "IF". On page 7, in line 16, before "USEFUL" insert "NOT". On page 8, in line 24, strike "NOT".

AMENDMENT NO. 4

On page 5, strike in their entirety lines 17 through 20, inclusive; and in line 21, strike "(F)" and substitute "(E)". On page 8, after line 25, insert:

(OVER)

"Article - Courts and Judicial Proceedings

5-315.

(A) A PERSON OR ENTITY MAY NOT BE HELD LIABLE FOR DAMAGES OF ANY KIND RESULTING FROM INJURIES TO ANOTHER PERSON SUSTAINED AS A RESULT OF THE CRIMINAL USE OF ANY FIREARM BY A THIRD PERSON, UNLESS THE PERSON OR ENTITY CONSPIRED WITH THE THIRD PERSON TO COMMIT, OR WILLFULLY AIDED, ABETTED, OR CAUSED THE COMMISSION OF, THE CRIMINAL ACT IN WHICH THE FIREARM WAS USED.

(B) THIS SECTION MAY NOT BE CONSTRUED TO NEGATE, LIMIT, OR MODIFY THE DOCTRINE OF NEGLIGENCE OR STRICT LIABILITY RELATING TO ABNORMALLY DANGEROUS PRODUCTS OR ACTIVITIES AND DEFECTIVE PRODUCTS."

MARYLAND GENERAL ASSEMBLY
DEPARTMENT OF FISCAL SERVICES
DIVISION OF FISCAL RESEARCH
JOSEPH M. COBLE, DIRECTOR

FISCAL NOTE
REVISED

HB 1131

House Bill 1131 (Delegate Hughes, et al)

Referred to Senate Judicial Proceedings Committee

Judiciary

~~Referred to Appropriations~~

SUMMARY OF LEGISLATION: This amended bill requires the Superintendent of the Maryland State Police to compile and publish in the Maryland Register by July 1, 1989 a list of handguns which can be legally sold in Maryland. A list of legal handguns will be sent to firearm dealers a maximum of two times a year. Handguns manufactured after 1970 that are not on the handgun list may not be sold or offered for sale.

The bill provides a definition for "Saturday Night Special" and a list of characteristics which should be considered when a weapon is evaluated for the official handgun roster. The Superintendent is required to adopt rules and regulations necessary to implement a handgun evaluation and enforcement program. The Superintendent may place a handgun on the list or on the petition of any person and is required to process handgun petitions within 45 day. Otherwise the petition will be considered denied. The person that petitions for placement of a handgun on the list is required to provide proof that the gun should be placed on the list. An appeal process is provided if handgun roster petitions are denied.

Finally, the Superintendent is authorized to revoke manufacturer or dealer licenses if they willfully manufacture, sell, or offer for sale handguns that are not in the handgun roster. Handgun manufacturers are exempt from the provisions of this bill until January 1, 1990.

STATE FISCAL IMPACT STATEMENT: This bill could increase FY 1989 general fund expenditures by \$88,156 to implement a handgun roster and related enforcement programs. State revenues are unaffected.

LOCAL FISCAL IMPACT STATEMENT: No effect.

STATE REVENUES: No effect.

STATE EXPENDITURES: The Maryland State Police advise that this bill would increase FY 1989 general fund expenditures by \$88,156. The program would require the hiring of two firearm examiners, one data entry clerk, and one office clerk, costing \$84,246 for wages and fringe benefits. An additional \$3,910 would be required for telephones, postage, printing, and office supplies. The first year estimate reflects a 25% start-up delay. Future year projections include a 5% increase.

State Impact	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
Revenues	-0-	-0-	-0-	-0-	-0-
Expenditures	\$88,156	\$122,050	\$128,152	\$134,560	\$141,288
Net Effect	(\$88,156)	(\$122,050)	(\$128,152)	(\$134,560)	(\$141,288)

() Indicates Decrease

INFORMATION SOURCE: Maryland State Police

ESTIMATE BY: Department of Fiscal Services

Fiscal Note History: First Reader - March 16, 1988
 Revised - Updated Information - March 18, 1988
 Revised - House Third Reader - April 2, 1988

Per: L. E. Logan
 dbg

LEL

John Lang, III, Supervising Analyst
 Division of Fiscal Research

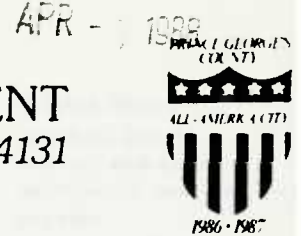
HB 1131
 Page 2



PRINCE GEORGE'S COUNTY GOVERNMENT

County Executive
PARRIS N. GLENDENING

(301) 952-4131



APR - 7 1988
April 7, 1988

The Honorable Senator Baker, Chairman,
and Members of the Judicial Proceedings Committee
Senate Office Building
Annapolis, Maryland

Dear Senators:

House Bill 1131, which would ban the manufacture and sale of handguns known as "Saturday Night Specials", is now before your committee. I wish to urge you in the strongest possible terms to support this legislation.

In Prince George's County we are embroiled in a drug war of unprecedented magnitude in the history of this County. While it is true that the major drug dealers carry weapons that would not be covered by this bill, there are many, many pushers and users who DO carry this kind of weapon. These guns are used in armed robberies of convenience stores and private individuals by users of drugs, in turf skirmishes, and in domestic disputes. This bill will help to make it more difficult to obtain these guns which not only have no legitimate purpose but which actually enable continuing drug-related activities in the form of theft, robberies and murder.

Public safety is one of Prince George's County's highest priorities. Our Police Department is committed to the protection of life and property of County citizens. They need your assistance by passing this bill. We, quite frankly, need as many tools as possible at our disposal to circumvent and combat the criminal activity which has literally pervaded the County. Crime areas have a blurred edge in terms of demographics. If we can stem the steadily growing tide of crime, we can help prevent an overflow into surrounding jurisdictions. We urge your support and assistance in passing this legislation.

Sincerely,

Parris N. Glendening
County Executive

RAYMOND E. BECK
STATE SENATOR
DISTRICT 5
CARROLL AND BALTIMORE COUNTIES

COMMITTEE
BUDGET AND TAXATION

MINORITY WHIP



SENATE OF MARYLAND

ANNAPOLIS MARYLAND 21401-1991

March 31, 1988

PLEASE REPLY TO:
□ DISTRICT OFFICE
189 EAST MAIN STREET
WESTMINSTER MARYLAND 21157
848-4460
✕ ANNAPOLIS OFFICE
SENATE OFFICE BUILDING
ROOM 410
ANNAPOLIS MARYLAND 21401-1991
841-3683
TOLL FREE NUMBER
800-492-7122 EXT 3683

The Honorable Kenneth C. Montague, Jr.
House Office Building
Room 317
Annapolis, Maryland 21401

Dear Ken:

I've considered your proposal to attempt a merger of HB 1131 and SB 484. I've read HB 1131 with amendments and have spoken to several sponsors of SB 484 and we have concluded that they are "stand alone" bills.

In rejecting the proposal merger, I want you to know that I appreciate your contact, efforts and innovation in attempting a compromise. Although narrower in scope, HB 1131 continues to embrace the remedy of civil responsibility on third parties not involved in a criminal act. If the concept of HB 1131 provided for fines, injunctive penalties, and/or contribution to a criminal injuries compensation fund, it might be more palatable in the future.

Again, thank you for your consideration and friendship.

Very truly yours,

RAYMOND E. BECK

REB/rn

cc: Senator John N. Bambacis
Senator William H. Amoss
Senator John C. Coolahan
Senator Frederick C. Malkus
Senator Thomas P. O'Reilly
Senator Walter M. Baker
Senator Victor Cushwa
Senator John W. Derr
Senator Lewis R. Riley

RAYMOND E. BECK

STATE SENATOR

DISTRICT 5

CARROLL AND BALTIMORE COUNTIES

COMMITTEE

BUDGET AND TAXATION

MINORITY WHIP



SENATE OF MARYLAND

ANNAPOLIS MARYLAND 21401-1991

March 31, 1988

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SENATE OFFICE BUILDING
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ANNAPOLIS MARYLAND 21401-1991
841 3683
TOLL FREE NUMBER
800-492 7122 EXT 3683

The Honorable Joel Chasnoff
House Office Building
Room 226
Annapolis, Maryland 21401

Dear Joel:

I've considered your proposal to attempt a merger of HB 1131 and SB 484. I've read HB 1131 with amendments and have spoken to several sponsors of SB 484 and we have concluded that they are "stand alone" bills.

In rejecting the proposal merger, I want you to know that I appreciate your contact, efforts and innovation in attempting a compromise. Although narrower in scope, HB 1131 continues to embrace the remedy of civil responsibility on third parties not involved in a criminal act. If the concept of HB 1131 provided for fines, injunctive penalties, and/or contribution to a criminal injuries compensation fund, it might be more palatable in the future.

Again, thank you for your consideration and friendship.

Very truly yours,

RAYMOND E. BECK

REB/rn

cc: Senator John N. Bambacus
Senator William H. Amoss
Senator John C. Coolahan
Senator Frederick C. Malkus
Senator Thomas P. O'Reilly
Senator Walter M. Baker
Senator Victor Cushwa
Senator John W. Derr
Senator Lewis R. Riley

RAYMOND E. BECK
STATE SENATOR
DISTRICT 5
CARROLL AND BALTIMORE COUNTIES

COMMITTEE
BUDGET AND TAXATION

MINORITY WHIP



SENATE OF MARYLAND

ANNAPOLIS MARYLAND 21401-1991

March 31, 1988

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SENATE OFFICE BUILDING
ROOM 410
ANNAPOLIS MARYLAND 21401-1991
841 3683
TOLL FREE NUMBER
800-492-7122 EXT 3683

The Honorable Gilbert J. Genn
House Office Building
Room 224
Annapolis, Maryland 21401

Dear Gil:

I've considered your proposal to attempt a merger of HB 1131 and SB 484. I've read HB 1131 with amendments and have spoken to several sponsors of SB 484 and we have concluded that they are "stand alone" bills.

In rejecting the proposal merger, I want you to know that I appreciate your contact, efforts and innovation in attempting a compromise. Although narrower in scope, HB 1131 continues to embrace the remedy of civil responsibility on third parties not involved in a criminal act. If the concept of HB 1131 provided for fines, injunctive penalties, and/or contribution to a criminal injuries compensation fund, it might be more palatable in the future.

Again, thank you for your consideration and friendship.

Very truly yours,

RAYMOND E. BECK

REB/rn

cc: Senator John N. Bambacus
Senator William H. Amoss
Senator John C. Coolahan
Senator Frederick C. Malkus
Senator Thomas P. O'Reilly
Senator Walter M. Baker
Senator Victor Cushwa
Senator John W. Derr
Senator Lewis R. Riley

TESTIMONY AGAINST H.B. 1131
Senate Judicial Proceedings Committee
Submitted by: John August
8781 Oxwell Lane
Laurel, MD 20708
April 5, 1988

Members of the Senate Judicial Proceedings Committee:

I urge you to OPPOSE H.B. 1131 concerning the prohibition of the manufacture and sale of handguns, for the following reasons:

1. The bill contains NO sanctions against criminal misuse of handguns.
2. The bill imposes a new restriction on carry permit holders to carry only a particular gun approved by the Superintendent. However, criminals cannot get a permit, so this restriction is strictly imposed on the honest person where it isn't needed.
3. The bill would restrict the actions of collectors should the Superintendent fail to put the guns of their interest on the Roster. This is another restriction on the honest person where it isn't needed.
4. The bill would make the Superintendent more powerful than the Governor, any legislator, and any judge. None of these officials can unilaterally ban the sale of a handgun.
5. The bill would allow the Superintendent to ban the sale of any handgun simply by not putting it on the Handgun Roster. Few people could take the remedy of filing suit in the Circuit Court or even to pursue the prescribed appeals and hearings.
6. The bill would further squander police resources in monitoring and controlling honest citizens rather than fighting crime.
7. The bill furthers the transformation of the State Police mission from protecting to controlling honest citizens.
8. The term "Saturday Night Special" is unworthy to be written into our law. A handgun is already defined in the law as being "capable of being concealed on the person", so the concealability definition does not distinguish it from any other handgun. Any handgun that can wound or kill a human being can also wound or kill a criminal and therefore must

be useful for self-protection. Further, any handgun can be pointed and fired at a paper target and will thereby find some devotees who will use it for sport. Short barreled handguns with minimal sights commonly appear at Maryland ranges.

9. The only logical law indicated by the neologism, "Saturday Night Special", is to prohibit the sale of special guns after 6:00 pm on a Saturday night. The term is racist in origin and is completely irrelevant to any property of a firearm.

For these reasons, I again urge the committee to give this bill an unfavorable report.

SENATOR BAKER:

H.B. 1131 CHANGES THE LAW WITH REGARD TO THE ISSUANCE OF HANDGUN CARRYING PERMITS IN A WAY THAT DIRECTLY CONTRADICTS A PROVISION OF EXISTING LAW WHICH THE BILL DOES NOT DELETE.

ARTICLE 27, SECTION 36E(e) PROVIDES THAT CARRYING PERMITS ARE ISSUED FOR ANY HANDGUN LEGALLY IN THE POSSESSION OF THE PERMIT HOLDER. PAGE 2, LINES 19-20 OF H.B. 1131 WOULD REQUIRE THAT THE PERMIT BE ISSUED FOR A SPECIFIC HANDGUN, EVEN THOUGH THE BILL DOES NOT PROHIBIT THE POSSESSION OF ANY KIND OF HANDGUN.

THERE IS NO VALID REASON TO ISSUE A CARRYING PERMIT RESTRICTED TO ONE SPECIFIC HANDGUN. PLEASE DO EVERYTHING YOU CAN TO DELETE THIS PROVISION OF H.B. 1131.

MAURICE A. GERSHBERG

GARRISON RIFLE & REVOLVER CLUB

301-578-1380

H.B. 1131 -- SUGGESTED AMENDMENT

STRIKE THE ENTIRE BILL AND SUBSTITUTE THE FOLLOWING:

ARTICLE 36I

(1) IF THE SUPERINTENDENT OF THE MARYLAND STATE POLICE HAS EVIDENCE THAT ANY HANDGUN BEING MANUFACTURED FOR DISTRIBUTION OR SALE, SALE, AND OFFER FOR SALE IN THE STATE OF MARYLAND IS UNSAFE FOR LEGITIMATE USE HE SHALL PROVIDE SAID EVIDENCE TO THE ATTORNEY GENERAL.

(2) IF THE ATTORNEY GENERAL FINDS SAID EVIDENCE SUFFICIENT, HE MAY SEEK A PRELIMINARY INJUNCTION BY THE CIRCUIT COURT TO PROHIBIT SUCH MANUFACTURE, DISTRIBUTION OR SALE.

(3) SAID INJUNCTION, IF GRANTED, SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS PROOF IS PROVIDED TO THE COURT THAT SAID HANDGUN IS SAFE FOR LEGITIMATE USE.

(4) SUCH PROOF SHALL CONSIST OF A FINDING BY THE H. F. WHITE BALLISTIC LABORATORY, BEL AIR, MARYLAND, OR AN EQUIVALENT ORGANIZATION, THAT SAID HANDGUN IS SAFE FOR LEGITIMATE USE.

(5) ANY ORGANIZATION SUPPLYING SUCH A FINDING MAY NOT BE HELD LIABLE FOR DAMAGES IN ANY ACTION ARISING FROM USE OF A PARTICULAR HANDGUN, BUT THIS SECTION MAY NOT BE CONSTRUED TO NEGATE, LIMIT, OR MODIFY THE DOCTRINE OF NEGLIGENCE OR STRICT LIABILITY RELATING TO ABNORMALLY DANGEROUS PRODUCTS OR ACTIVITIES AND DEFECTIVE PRODUCTS WITH REGARD TO THE MANUFACTURER, DISTRIBUTOR OR SELLER.

MAURICE A. GERSHBERG
GARRISON RIFLE & REVOLVER CLUB
301-578-1380

April 07, 1988

Judicial Proceedings Committee
James Senate Office Building
Annapolis, Maryland 21401


Dear Senators:

I am the treasurer of the United Sportsmen's PAC in Maryland, a Director of the Maryland and District of Columbia Rifle and Pistol Association and a civil rights activist. I am also systems analyst and registered voter in District 16 and Howard A. Denis is my Senator. I am also represented by Delegate Gil J. Genn, a sponsor of House Bill 1131 - a bill to remove the power to legislate from the legislature and turn it over to an unelected bureaucrat, the Superintendent of the State Police. Sweeping regulatory powers broad enough to be a threat to all law abiding citizens in Maryland. This bill is unconstitutional and opposed by all firearms owners in District 16, who realize it installs the framework to ban any handgun ownership in Maryland as has occurred in the District of Columbia. The firearms owners can remove Gil J. Genn from office in 1990, but we cannot remove the Superintendent of the State Police. The firearms owners of District 16 are the only people who can be trusted to make the proper decisions regarding gun purchase and ownership. The concentration of these powers in the hands of a single individual goes against the principle of separation of powers on which our Government is wisely based.

I urge you to oppose House Bill 1131. I urge you to kill this bill in any amended form. Please do not couple this bill with Senate Bill 484, which deserves hearing and floor vote on its own merit. SB 484 is not a pro-gun bill, but an anti-third party liability bill. The threat of the expanding concept of third party liability affects the security of all Maryland citizens, which is why the Kelley Decision must be repealed.

Please defend the Constitution and the Bill of Rights and report HB 1131 unfavorably. Thank you for the honor of allowing me to testify on this bill.

I am, sirs, very respectfully, your obedient servant,


James L. Norris
5817 Johnson Ave.
Bethesda, Maryland
20817



GUN OWNERS OF AMERICA

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The Gun Owners

*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.*

Maryland Attorney General Disregards Constitution

On December 10, 1987, during testimony presented to the U.S. House of Representatives, Maryland Attorney General J. Joseph Curran, Jr., displayed a contemptuous disregard for the Constitutional rights of all American citizens. Curran was on Capitol Hill testifying in support of the latest ban on firearms—the so-called “plastic gun,” that supposedly eludes airport security detection.

Craig Markva, Governmental Affairs Representative for Gun Owners of America, expressed shock at Curran's testimony. “Mr. Curran displayed a terrible ignorance on the subject of plastic firearms and advocated a concept of government that is more akin to a country of the Communist bloc,” said Markva.



Attorney General Curran

Curran Favors Control by Elite

Markva was referring to Curran's arrogant exhortation to his fellow lawmakers to outlaw any gun they didn't like because, “We make the rules.” Curran continued his tirade by reasoning that there would be no problems with passing these laws since, “We make the shots. This is our ballgame. . . we set the standards.”

The GOA representative pointed out that, “According to the Constitution that I read, the power Mr. Curran claims to have exclusive power of is in ‘We the People.’ It is not in the power of the elected elite as Mr. Curran apparently prefers. The Maryland Attorney General's belief that it is okay to ban anything legislators dislike is exactly why the Founding Fathers believed in the right to keep and bear arms. They wrote the Second Amendment to restrain people just like him.

“We have been saying all along that the facts surrounding plastic guns are being clouded by hysteria and fear. Legislators who are already opposed to gun ownership are trying to sell this gun grab as a prevention of terrorism. This is absurd since there is no all-plastic gun in existence. This fact was even acknowledged by Mr. Curran.”

Citing the Glock 17, an Austrian-made gun that is only 17 percent plastic, the Maryland Attorney General stated that there would never be any use for such a gun. He quoted a Department of Justice official as saying, “no respectable individual [would] procure a defense weapon such as a Glock 17 pistol.” Curran also stated that the Glock “should be prohibited because it is an invitation for terrorists.”

What Mr. Curran failed to mention is that the Glock 17 “terrorist weapon” had just been adopted as the main sidearm of the city of Miami Police Department as well as by 250 other police forces around the nation. The state troopers of Curran's own state—Maryland—disagreed with him. They just rated the Glock 17 as the number one preference in a recent test of firearms under consideration by the state.

So, in the words of Attorney General Curran, the members of 251 American police forces (at a minimum) cannot be considered “respectable individuals.”

THE RIGHT TO BEAR ARMS

IS IT AN ABSOLUTE RIGHT?

DOES IT APPLY TO INDIVIDUALS?



WHAT DOES THE SECOND AMENDMENT MEAN?

WHAT IS THE MILITIA?

WHO CAN INTERPRET THE CONSTITUTION?

THE ANSWERS ARE

CLEAR AND UNEQUIVOCAL

FOR THOSE WHO WILL READ

THIS SHORT RESEARCH PAPER

Reprinted by NAKBA The NATIONAL ASSOCIATION

TO KEEP AND BEAR ARMS, from

AMERICAN PISTOL & RIFLE ASSOCIATION

WHAT DID THE FOUNDING FATHERS REALLY SAY

ABOUT INDIVIDUAL CITIZENS AND GUNS?

The Founding Fathers of our country — those wise, principled and courageous men who pledged their lives, their fortunes and their sacred honor to the cause of liberty and the creation of the greatest nation ever conceived by men — were they alive today, would be appalled and angered at the widespread, malicious attack on one of the most basic American freedoms — the right to bear arms. Here is what those great American patriots said:

Thomas Jefferson: "No free man shall ever be debarred the use of arms."

Patrick Henry: "The great object is that every man be armed. Everyone who is able may have a gun."

James Madison: "Americans have the right and advantage of being armed — unlike the citizens of other countries whose governments are afraid to trust the people with arms."

Samuel Adams: "The Constitution shall never be construed . . . to prevent the people of the United States who are peaceable citizens from keeping their own arms."

Alexander Hamilton: "The best we can hope for concerning the people at large is that they be properly armed."

Honest Americans will objectively note that in each of the above quotes reference is clearly made to the right of the people, not to the right or authority of either state or federal government. Furthermore, nothing is said about the preemptive or collective right of the army, national guard, state police or any federal agency to possess and/or control all weapons instead of, or for the good of, the people. Clearly, the men who established this Republic, and who wrote the Constitution and the Bill of Rights, intended, and stated beyond doubt, that the people, i.e., individual Americans, have the right and duty to be armed.

WHAT IS THE MILITIA?

But if it is the people who are to be armed, then what is the "militia" which is referred to in the Second Amendment? What was it when the Constitution was written, and does it still exist today?

By definition of our Founding Fathers, those citizens who were not in the "Organized Militia" (the standing army), were considered the "Unorganized Militia" (which included all males 18-45 who were subject to call for the organized militia). All other citizens, e.g., those neither organized nor subject to call (i.e., all men under 18 and over 45) were known as the "Militia of the Residue" as defined by Alexander Hamilton. The militia is all the people!

George Mason: "I ask, sir, what is the militia? It is the whole people, except for a few public officials."

Elbridge Gerry: "I ask what is the purpose of the militia? To offset the need of large standing armies, the bane of liberty."

James Madison: "The right of the people to keep (to have and to hold, openly or concealed) and bear (carry, transport and use) arms (weapons of self defense, including the handgun which predated the rifle and has existed for self defense since the 1500's) shall not be infringed (invalidated, limited, abridged). A well regulated militia, composed of the body of the people, trained to arms, is the best and most natural defense of a free country."

The Militia Act of 1790; Article 1, Section 8 of the U.S. Constitution; and the Federalist Papers, pages 24-29 state: "It will become necessary to organize and regulate a certain portion of the militia (i.e., the people)!"

Clearly, the militia is the people — all the People! It was so in 1776 when we declared our independence and fought for our freedom. It was so in 1787 when the Constitution was approved. It was so in 1791 when the Bill of Rights (including the Second Amendment) was added. And it is true today.

INTERPRETING THE CONSTITUTION

Today we hear gun control advocates, naive do-gooders, liberals, leftists, and various public officials refer to the right of judges and the courts

to "interpret" the Constitution. We are also told (when we directly quote the Constitution or the Founding Fathers) that what was stated in the

Bill of Rights or what was written or said "back then" was alright for "those days", but that "things have changed". In other words, the Constitution does not apply today in those cases where the liberal mentality does not want it to apply.

But those objections are easily answered. First, because the vast majority of U.S. citizens are reasonably intelligent and can read, and the Constitution and Bill of Rights are written in plain language (the same English we read and write today) and are not difficult to understand. Secondly, the authors of those documents anticipated this very problem with those who would usurp the people's rights, and those weak and unprincipled souls who would foolishly compromise or surrender their rights.

Jefferson and Madison addressed the subject directly and forcefully:

Thomas Jefferson: "On every question of construction [of the Constitution] let us carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed."

James Madison: "I entirely concur in the propriety of resorting to the sense in which the Constitution was accepted and ratified by the nation. In that sense alone it is a legitimate Constitution. And, if that be not the guide in expounding it, there can be no security for a consistent and stable government."

Thomas Jefferson: "To consider the judges as the ultimate arbiters of all constitutional ques-

tions is a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy."

The Second Amendment, i.e., Article II of the Bill of Rights, consists of 27 plainly written words which had the understanding, support, approval and forceful advocacy of its authors and all our forefathers, who created and built this nation. This declaration of the absolute, unequivocal, inalienable right of the people to be armed, needs no interpretation!

Most honest Americans, even those naively for gun control, will be forced to admit, in the light of the foregoing quotes, that the Second Amendment says what it means and means what it says.

However, those intent on disarming the American people will then try the ploy of arguing that while the federal government cannot constitutionally deny the individual's right to keep and bear arms, the states and their sub-governments (cities and counties and agencies and commissions) can do so.

Fortunately, our Founding Fathers anticipated such usurpation of power and denial of liberty. James Madison, the principal author of the Constitution, and later our 4th President, stated in an address before the Congress concerning the Bill of Rights which he also authored: "I do not fear oppression of these rights as much by the federal government as I do by the state governments. By enumerating these rights into the Constitution it will render those state laws unconstitutional which infringe on the rights of the people."

WHY THE SECOND AMENDMENT?

Amendment II: 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.

When James Madison wrote the Bill of Rights, he and his colleagues enumerated our natural rights and freedoms in Article I (freedom of religion, freedom of speech, freedom of the press, freedom of assembly, etc.) and then in Article II stated how the people should preserve those individual liberties — by an armed citizenry! There can be no question that this was the intent of the Founding Fathers. Furthermore, the significance given to this right and duty is apparent by its position in the Bill of Rights — being stated in Article II ahead of all other rights, guarantees, protections and subsequent amendments. Two of our greatest Presidents remove any lingering doubt.

Thomas Jefferson: "The constitutions of most of our states (and of the United States) assert that all power is inherent in the people, that they may exercise it by themselves; that it is their right and duty to be at all times armed; that they are entitled to freedom of person, freedom of religion, freedom of property and freedom of the press."

Thomas Jefferson: "The strongest reason for the people to retain the right to keep and bear arms is, as a last resort, to protect themselves against tyranny in government."

Abraham Lincoln: "Our safety, our liberty, depends upon preserving the Constitution of the United States as our Fathers made it inviolate. The people of the United States are the rightful masters of both Congress and the Courts, not to overthrow the Constitution, but to overthrow the men who pervert the Constitution."

CREDENTIALS OF THE FOUNDING FATHERS QUOTED HEREIN

Thomas Jefferson (1743-1826)

Author of the Declaration of Independence (1776). Succeeded Patrick Henry as Governor of Virginia (1779), succeeded Benjamin Franklin as Minister to France (1785), became Secretary of State (1790). Elected Vice President (1796). Third President of the United States (1801-1809).

Patrick Henry (1736-1799)

One of history's greatest orators and spokesman for the American Revolution: "Give me liberty or give me death." Delegate to the House of Burgesses (1765-74) and to the Continental Congress (1774-76). Governor of Virginia (1776-79). Key proponent for the Bill of Rights.

Samuel Adams (1722-1803)

Great patriot and signer of the Declaration of Independence (1776). Organized the Sons of Liberty, the Committee of Correspondence and the Boston Tea Party. Member of the Continental Congress. Governor of Massachusetts (1794-1797).

Elbridge Gerry (1744-1814)

Member of the Continental Congress (1776). Signed Declaration of Independence (1776) and Articles of Confederation. Delegate to Constitutional Convention (1787). Refused to sign the Constitution without Bill of Rights. Served in first two Congresses (1789-93). Elected Governor of Massachusetts (1810).

Elected Vice President with President James Madison (1812).

George Mason (1725-1792)

Elected Virginia House of Burgesses (1759). Drafted Declaration of Rights for Virginia. Member of Federal Constitutional Convention (1787). Important voice in drafting the Constitution. With Patrick Henry was the primary force behind the creation and adoption of Bill of Rights.

Alexander Hamilton (1755-1804)

Before the Revolutionary War he wrote articles and pamphlets espousing the patriotic cause. Captain of Artillery and Secretary and aide-de-camp of General Washington. Later brilliantly commanded forces at Yorktown. Member of Continental Congress (1782-83). Hamilton and Madison were two strongest voices in creating the Constitution. Called "A giant of the young republic." A conservative financial genius who served as Secretary of Treasury under Washington. The most powerful and brilliant of the Federalists.

James Madison (1751-1836)

Drafted Virginia Constitution (1776). Served in the Continental Congress (1780-83) and Virginia legislature (1784-86). The principal force at the Constitutional Convention and given the title "Father of the Constitution." Brilliant contributor to the Federalist papers. Author of the Bill of Rights. Congressman from Virginia (1789-97). Secretary of State (1801-09). Fourth President of the United States (1809-17).

CONCLUSION

The statements that you have read in this short treatise were the serious measured words of the men who signed the Declaration of Independence, served in the Continental Congress, drafted the Constitution of the United States and wrote the Bill of Rights. These were uncommon men who unselfishly pledged their lives, their fortunes and their sacred honor to the cause of freedom, and so created the greatest nation that has ever existed in all history. These wise men of vision understood and publicly declared that the guarantees of liberty rested in the Bill of Rights, and that the very foundation of that liberty was Article II, which provided for an armed citizenry through the clearly understood right and duty of free men to be armed so that they might defend their lives, liberty, property and their country.

To oppose the right to keep and bear arms on ideological grounds is one thing, even though it indicates a clear lack of historical perspective and a denial of the natural, absolute inalienable right to defend one's life, family, property, and freedom. However, to oppose that right by denying that the Second Amendment means what it says or that it does not pertain in the

rights of the people, is at best a demonstration of ignorance, and in most instances a maneuver of deception and intellectual dishonesty.

Finally, for those who refuse to respect the Constitution, or for whatever reason would deny or abolish those rights it guarantees, to you we state our uncompromising position. No task will be too hard, no battle will be too fierce, no sacrifice will be too great for the patriots of this nation who have sworn to defend our rights, ensure our freedom and preserve our heritage, and to pass them on to our children and generations of Americans yet unborn.

Today the American Pistol & Rifle Association stands at the forefront of those who are committed to the defense of the Constitution of the United States of America and the freedoms it so clearly guarantees.

If you will join in this noble cause, let us hear from you today.

John L. Grady, M.D., President
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GUN CONTROL: The Wrong Prescription For Violent Crime

by David T. Hardy*

The incidence of violent crime in the United States has led to a variety of proposed remedies. Few such proposals have engendered as much controversy as attempts to prohibit or restrict private firearm ownership. The traditional calls to legislate criminal sanctions for firearm possession have recently been supplemented by proposals for judicial recognition of civil liability for the sale or distribution of handguns.

This article will initially examine the historical and social context of American firearm regulation. It will then analyze, from a pragmatic standpoint, the policy considerations behind the imposition of criminal sanctions for private firearm manufacture, sale, ownership and use.

Contrary to popular perception, widespread handgun ownership and efforts to legally ban private handgun ownership are not twentieth century phenomena. As early as 1363, "hand cannons" about nine inches long were being manufactured. Four-and-a-half centuries ago, the Austrian Emperor Maximilian, noting complaints against individuals who "carry guns secretly under clothing," banned the making and carrying of "handguns that ignite themselves."¹ One of the first British shipments to the colony at Jamestown was a lot of "300 short pistols with firelocks."² Even the current proportion of handguns to rifles and shotguns—roughly 1:3—has remained stable for centuries. When British General Gage compelled Bostonians to surrender their firearms in 1776, they relinquished more than 1,800 muskets and 634 pistols.³

America's first attempt to ban the private ownership and carrying of handguns is found in an 1837 Georgia enactment⁴ which was promptly struck down as an infringement of the right to keep and bear arms.⁵ During the late 19th and early 20th centuries the vast majority of southern and southwestern states enacted statutes banning the carrying of handguns. Some of the statutes which banned the carrying of handguns applied in almost all circumstances, others applied only to public places, and still other statutes applied to cities, towns, and villages.⁶ The southern and southwestern handgun

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controls were largely abandoned in later decades, even as gun control became popular in the northeast. The outcome was contrary to what many might expect: between 1933 and 1965, the southern and western states which were drifting away from handgun legislation experienced homicide rate declines of 33 to 50%, while homicide rates in the northeast generally increased.⁸

Currently estimates of total firearm ownership in the United States range from 120 million to as high as 140 million firearms,⁹ of which about 25 to 30% are handguns.¹⁰ Private ownership of handguns in the United States can thus be estimated at approximately 50 million pieces. These are widely distributed among the American populace; several surveys have found that approximately half of American households own a firearm of some type, and approximately one-quarter of them own a handgun.¹¹

I.

Is Firearm Regulation the Answer to Violent Crime?

A comparison of patterns of firearm ownership with rates of violent crime demonstrates that firearm regulation is inherently incapable of controlling criminal violence.

1. Firearm Regulations Typically Meet with Poor Compliance and with Enforcement Difficulties.

A national survey conducted in 1975 indicated that less than half of American handgun owners could be expected to comply either with a national registration or a national confiscation statute.¹² Even these dismal estimates appear to be overly optimistic. In Chicago, compliance with a handgun registration ordinance is estimated to be just 25% while in Cleveland a scant 10% of handgun owners are believed to have complied with a registration ordinance.¹³

The inefficiency and inequity of handgun registration is even more alarming when one considers that the object of such laws—those who would use handguns for criminal purposes—are least likely to register their weapons. In fact, the rate of violent crime involving the use of handguns is minuscule in comparison to the volume of handgun ownership. For example, it is estimated that only one handgun in 3,000 will ever be used in a homicide.¹⁴ Thus, it is apparent that the brunt of any registration enforcement effort will fall upon otherwise law-abiding citizens. A judge of Chicago's "gun court" has conceded that for him:

the most striking experience is with respect to the kinds of people that appear there as defendants. For most, this is their first arrest of any kind. I don't mean now that this is their first conviction, but I mean this is their first arrest of any kind, and many of them are old people, many of them are shopkeepers, persons who have been previous victims of violent crimes.¹⁵

Similarly, the Senate Subcommittee on the Constitution recently concluded that approximately 75% of federal firearm prosecutions are current-

ly "aimed at ordinary citizens who had neither criminal intent nor knowledge."¹⁶

Further, the argument of gun control proponents that regulation would prevent homicides involving persons who know each other is flawed. The argument requires a dubious logical leap that the perpetrators are otherwise law-abiding citizens. The fact that the victim and the assailant knew each other, however, proves nothing of itself. In fact, such violence between acquaintances or family members is highly concentrated in a violent subculture atypical of society as a whole. A study of domestic homicide in Kansas City found, for example, that in 85% of domestic homicides the police had previously been summoned to the household to stop violence, and in over half they had been summoned five times or more.¹⁷ A recent medical study of victims of such attacks found that 78% volunteered a history of hard drug use and 16% specifically admitted heroin usage on the day of the attack.¹⁸ Presumably, the perpetrators' background was even less respectable. Such individuals are unlikely either to heed regulatory measures or be deterred by prosecutions of shopkeepers and the elderly.

2. There Is No Demonstrable Relationship Between Firearm Ownership and Violent Crime Levels.

Between 1969 and 1980 private ownership of handguns doubled in the United States, from about 24 million to approximately 52 million handguns.¹⁹ Although the total number of crimes involving handguns rose during that period, the percentage of crimes involving handgun use fell. The proportion of homicides involving handguns fell from 51% to 50% between 1974 and 1980. Further, the percentage of robberies involving handguns fell from 45% to 40% in the same time period.²⁰ Moreover, the domestic murder rate, which logically should have doubled if in fact handguns play a major role in the occurrence of domestic homicides, instead remained stable at about 1.6 domestic homicide per 100,000 population.²¹ Thus a doubling in the number of privately owned handguns did not result in a corresponding increase in handgun crime rates. It is hard to dispute the conclusion of one recent federally funded study that "[t]here appear to be no strong causal connections between private gun ownership and the crime rate."²²

3. Firearms Laws Have Consistently Failed to Affect Violent Crime Rates.

In 1966, New Jersey enacted a statutory scheme requiring a police permit prior to the purchase of any firearm, requiring an additional police permit for carrying it, imposing registration of all firearms and mandating a waiting period for handgun purchases. Two years later its murder rate had increased 46%, its rape rate had increased 21% and its robbery rate had increased 94%.²³

Hawaii imposed the same requirements the following year, later adding a two-year mandatory minimum sentence for carrying a firearm without a permit and imposing a total ban on "Saturday Night Specials." Within two years its murder rate climbed 42%, its rape rate was up 144% and its robbery rate escalated 79%.²⁴

In 1976, the District of Columbia became the first modern American jurisdiction to adopt a total ban on civilian handgun sales. Its violent crime rates were in fact falling at the time the law was imposed. Its murder rate had fallen 30% and its robbery rate 8% in the two years before the handgun prohibition. However, in the first two years under the prohibition, the murder rate *increased* 18% and the robbery rate *increased* 24%.²¹

Advocates of handgun prohibition may counter that the increased crime rates are due to sociological factors, and might have been even greater except for the ban on handguns. This contention, however, is conclusively rebutted by statistical studies which do take into account social variables and nevertheless conclude that firearms regulation is demonstrably ineffective.

The earliest of such studies were undertaken by the Wisconsin Legislative Reference Library and by economist Alan Krug.²⁶ These studies found no relationship between firearm licensing laws and violent crime rates. Both were criticized, however, for failure to adopt more refined and expansive definitions of firearm laws and for failure to consider variables other than such laws.²⁷

In 1975, Douglas Murray, a statistician at the University of Wisconsin, employed a far more detailed testing system. Utilizing multi-variant statistical techniques, Murray first plotted various violence rates (handgun homicide, robbery, assault, suicide and accidental death rates) for the fifty states. He then used multiple regression techniques to determine the effect of a variety of social conditions (including poverty levels, education, sex and age differentials) on these rates. Murray then classed state handgun laws into seven categories, ranging from waiting periods to strict licensing of all purchasers, and attempted to determine the effect of such laws after taking into account serial variations. Murray could find but one relationship—that of purchase age limits with assaults—and even this was statistically insignificant.²⁸ In brief, when social variables are considered, firearm laws have no effect on violence rates. Murray also established that density of firearm ownership itself has no effect on overall homicide, robbery, assault, or suicide rates,²⁹ establishing that the problem is inherent in the approach of firearm control, and not an artifact of inefficient administration or nonuniform application.

Murray's work has since been criticized in an unpublished study conducted at Florida State University. Yet when that study re-ran Murray's analysis, using what were felt to be the proper data and method, its findings were the same: "The results indicate that not a single gun control law, and not all the gun control laws added together, had a significant impact on providing additional explanatory power in determining gun violence . . . Gun laws do not appear to affect gun crimes."³⁰

In sum, the experiences of New Jersey, Hawaii, and the District of Columbia are not flukes, but rather define the norm. Firearm laws have consistently failed to affect violent crime rates. The simple fact is that firearm regulations have consistently failed to achieve their objective.

4. *Recent Studies Have Shown Handgun Self-Defense to be a Significant Social Benefit.*

Until recently, it was widely assumed that use of firearms in self-defense was a comparatively rare phenomenon, and that regulatory statutes which might restrict self-defense use would impose no significant social cost. Recent scholarship has destroyed this assumption. As Professors Kleck and Bordua summarize:

A 1978 national survey indicated that in 7% of households with a gun some member of the household had, in the past, used a gun (even if it wasn't fired) for self-protection against a person, excluding military service or police work A California survey found that 8.6% of handgun owners responding had used a handgun for self-protection Even in connection with robberies, there is some opportunity for victims to use weapons to defend themselves. In 3.5% of robberies reported to victimization surveys in eight U.S. cities in 1971-72, victims admitted using weapons (not necessarily firearms) for self-protection. . . . Presumably this is a conservative estimate, since many victims may be doubtful about the legality of their weapon use, and therefore reluctant to acknowledge it to government interviewers.³¹

These findings would indicate that the average burglar has a probability of encountering an armed home owner approximately equal to his probability of being arrested, convicted and sentenced to prison.³² "Given the *seriousness* of the possible outcome, even a very slight probability of the event occurring may be taken seriously by a potential burglar."³³ Handguns, moreover, play a predominant role in self-defense. A 1977 California study of justifiable homicides by private citizens, predominantly self-defense cases, found that 81% involved handguns, and over 97% involved a firearm of some type.³⁴

II.

Deficiencies in Particular Handgun Control Proposals

With these general considerations established, it is useful to analyze the deficiencies contained in particular firearm proposals. Six major classes of proposals are considered: total prohibition of handgun ownership; registration and permit systems; a ban on "Saturday Night Specials"; a ban on short-barreled handguns; imposition of mandatory waiting periods; and mandatory sentences for carrying firearms without a permit.

1. *Handgun Prohibition.*

As discussed above, any effort to prohibit civilian ownership of handguns would be met with massive noncompliance; approximately half of the owners of the nation's 50 million handguns would choose to ignore the law. Compounding this problem would be obvious difficulties in obtaining probable cause for the searches and seizures necessary for effective enforcement.

Assuming the law could be enforced, the result would be even worse. "To imprison just one percent of these 25 million people [who would not

surrender their handguns] would require several times as many cells as the entire Federal prison system now has. The combined Federal, State and local jail systems could barely manage.”” As noted earlier, the brunt of this enforcement effort would be directed against ordinarily law-abiding citizens who own handguns for purposes of defense rather than criminal aggression. Therefore, the result of strict enforcement would be a lessening of respect for the legitimacy of government on a scale probably not seen since alcohol prohibition a half century ago. Because firearm owners are atypically system-supporting (for example, handgun owners are roughly twice as likely to have enlisted in the military as non-handgun owners),” one may question whether any government could lightly alienate millions of these individuals.

Even assuming an idyllic system in which all civilian handguns would vanish by legislative fiat, or all violent criminals would turn in their weapons on the date of enactment, there is still reason to doubt whether a handgun ban would affect the rate of criminal homicide. Other weapons may easily be substituted for handguns, sometimes with more serious results. A logical contender for substitution would be the shotgun, which is in fact far more powerful and lethal than the average handgun. A medical study of civilian gunshot wounds found, for instance, that “mortality from shotgun wounds was more than twice that of other gunshot wounds.”” When chest wounds alone were considered, the shotgun mortality rate was ten times that of handgun injuries.”

It may be argued that a shotgun lacks concealability and therefore would not be substituted in many of these cases. This response, however, has several serious weaknesses. First, a substitution in only a small number of cases would be sufficient to equalize the mortality rate with handguns. As Professors Kleck and Bordua note:

[w]hether handgun prohibition would result in a net increase in the assault fatality rate would depend on what proportion of prospective assaulters would substitute knives for handguns, and what proportion would substitute long guns. Kates and Benenson estimate that even if only 30% switched to long guns and the remaining 70% switched to knives, there would still be a substantial net increase in homicides.”

Second, concealability may be a vastly overrated factor in weapons choice. Domestic homicides, for instance, typically occur in the home where concealability is totally irrelevant. “Crime of passion” killings outside the home involve a state of rage in which the offender does not particularly worry about detection. A major California study of all violent deaths in the state over a six month period found no significant differences in weapons choice between handguns and other firearms, whether the homicide occurred within a residence or outside it.” The study concluded that “restrictions placed on handgun ownership, without comparable restrictions on long guns, would very likely result in an increase in the use of long guns in all violent deaths.””

Third, to the extent homicides are not “crimes of passion,” the offender has the time and inclination to saw down the barrel and stock of a

shotgun and make a lethal and concealable sawed-off shotgun. Over one-third of the long guns seized by local police departments and traced by federal authorities have been cut below the legal barrel limit.” Thus, handgun prohibition may actually act to increase rather than reduce the number of violent deaths.

A second logical candidate for substitution would be the knife. Knife wounds frequently cause serious internal damage.” The shorter range required for a knife attack is largely irrelevant in criminal homicide, since most encounters, even with firearms, take place at a range of ten feet or less.”

The primary argument against knife substitution is the 1968 study conducted by Franklin Zimring, which essentially concluded that since the ratio of knife assaults to homicides was five times as great as the ratio of gun assaults to homicides, knife wounds were only one-fifth as likely to kill.”

Zimring’s methodology and conclusions have been extensively impeached by subsequent findings that assault is not simply an unsuccessful homicide, nor homicide a successful assault. Rather, firearm attackers are more likely to be motivated by a specific intent to kill. Moreover, the use of homicide-to-assault ratios as an indicator of deadliness leads to questionable results such as wide fluctuations in the same state from year to year, wide disparities between otherwise similar states, and an indication that assaults are more likely to be deadly in states with strict firearm controls.”

Medical studies of fatality rates seem more likely to provide an accurate fatality ratio. While these do indicate that knife wounds overall have a lower fatality rate, they demonstrate that this is due to a high proportion of such wounds being administered by pocket knives, which almost never prove lethal. Ice picks and butcher knives, on the other hand, have a fatality rate about equal to that of the pistol.” It seems more likely that a violent criminal, if deprived of a firearm, would turn to a butcher knife or similar implement than to a folding pocket knife.

The conclusion is that handgun prohibitions are unlikely to reduce, and may well increase, criminal homicide rates. When balanced along with the significant social cost of handgun regulation, including the probability of reduction in self-defense usage, regulations can scarcely be said to be justified.

2. *Registration and Permit Systems*

While systems for registering firearms and licensing their owners enjoyed a popularity in the late 1960s, today such proposals have virtually been abandoned even by groups which might be expected to advocate them. In 1975, Handgun Control, Inc. (at that time known as the National Council to Control Handguns) testified before a House Subcommittee that:

... the licensing and registration legislation presently up for consideration has been seen by some as a potential first step in the direction of resolving the serious problem of handgun violence in America. But rather than a step forward NCCH regards it as a step in the wrong direc-

tion. Such a bill would establish a large bureaucracy at considerable expense to the taxpayer. Mountains of paperwork and endless processing of forms would be required . . . Would it be expensive? Yes. Unwieldy? Yes. Only marginally efficient? Yes."

The National Coalition to Ban Handguns adds that "it is doubtful that registration would act as a sufficient deterrent. Criminals do not leave their guns behind to be traced, nor would they register them in the first place."

3. Bans of "Saturday Night Specials."

Proposals to prohibit "Saturday Night Specials" were quite popular in the mid-1970s. The term itself is incapable of definition, and the proposed definitions focus on factors ranging from the melting point of the receiver to the retail cost of the firearm. If, as suggested above, a total prohibition of handguns would not affect criminal homicide in any positive way, there is little reason to believe that a prohibition of only some handguns would achieve that effect. Even the National Coalition to Ban Handguns has repudiated this form of legislation: "the Saturday Night Special ban would be easily circumvented."

The concept of a "Saturday Night Special," an inexpensive handgun typically used in crime, was initially documented by studies conducted by the Bureau of Alcohol, Tobacco and Firearms (BATF) of guns traced upon request by local law enforcement agencies." Subsequent investigation by the Police Foundation found, however, that the studies were seriously flawed. Among other major flaws, about a quarter of the guns traced were in fact "lost and found" or voluntarily surrendered, not seized as part of a criminal investigation; most of those seized during criminal investigations were seized only for gun law violations, not violent crimes; and even so, barely a quarter of the guns studied in fact fit the bureau's own definition of a "Saturday Night Special." The Police Foundation conducted its own study, which soundly refuted the BATF's conclusions." In 1980, even the BATF repudiated its earlier findings, conceding that only 27% of the guns traced the preceding year met its definition of "Saturday Night Special." It is thus appropriate to lay the notion of a "Saturday Night Special" to rest.

4. Bans on Short-Barreled Handguns.

Endeavors to prohibit short-barreled pistols (occasionally referred to by the disgustingly cute title of "snubbies") stem largely from a series of articles published in the *Miami News*." These listed the fifteen handguns most frequently traced by the Bureau of Alcohol, Tobacco and Firearms for local police departments and determined that eleven of the fifteen had relatively short barrels. Based on this information, it was asserted that "two of every three handguns used in murders, rapes, robberies and muggings" met this definition."

Even the briefest examination of the data demonstrates the fallacy of this conclusion. First, the firearms surveyed were all those traced, and the statistics from the tracing agency indicate that less than half were actually

seized in connection with a serious crime." Second, while short-barreled guns comprised 11 of the 15 firearms most often traced, *those 11 categories added up to only 33.9% of the traces*; this anomaly occurs because the top 15 firearms in fact made up less than half of the entire number traced. If, as seems likely, 33% or more of handguns have short barrels, nothing is proved. In short, the *Miami News* study was hardly a professional effort. Even if a valid relationship were found, one might question whether it was *causal*. It may be that short barrels are more popular in urban areas, and thus comprise a larger percentage of firearms in areas where crime is concentrated. If so, removing them from the market would have no effect: They would simply be replaced by other weapons.

Finally, one might observe, on purely intuitive grounds, that it would seem unlikely that a street criminal who currently engages in robbery using a handgun with a two-inch barrel, would suddenly abandon his profession if he could only obtain those with four-inch barrels. The two-inch increase might require a deeper pocket, but is unlikely to lead to rehabilitation of a violent offender. The hacksaw that can shorten a shotgun can achieve the same objective on a handgun.

5. Waiting Periods.

Waiting periods, which impose a mandatory delay between the time a firearm is ordered and the time it may be delivered to the purchaser, are aimed at reducing domestic homicide rates by impairing the ability of a person to purchase and rapidly obtain a firearm. The theory is that persons purchasing while in a homicidal rage will be given time to "cool off" before delivery can be affected. Unfortunately for the theory, statistical studies have repeatedly shown no correlation between waiting period statutes and homicide rates." This might be expected, as "waiting periods" control only legitimate purchases from dealers, and the firearms used in violent crime are more likely to be obtained by theft or through fences, and only rarely from a legitimate dealer." One study found that two-thirds of convicted gun murderers had owned their firearms for six months to a year prior to the homicide; and only one of the 13 armed robbers studied had purchased the firearm from a dealer."

Moreover, the notion of a person in a homicidal rage looking for a gun store (much less finding one open between the hours of 10 p.m. and 2 a.m. when most crime of passion killings occur)," driving to the store, purchasing a firearm, and returning to find his victim, seems most improbable. By definition a "crime of passion" is most frequently committed in an irrational, enraged state in which a person is unlikely to make rational weapons choices, much less embark on a shopping expedition. The waiting period can thus be discarded as a serious anti-crime tool.

6. Mandatory Minimum Sentences for Violation.

In this category it is vital to distinguish between two different approaches with radically different effects. Both involve imposition of a mandatory minimum sentence—that is, a sentence for a minimum term and for which release on probation, parole, or other form of leniency is

unavailable. The first possible use of this sentencing procedure limits it to specific acts involving the use of a firearm or other weapon in designated violent crimes. The second seeks to impose these mandatory sentences upon any individual who violates a firearm regulation (usually a regulation requiring a permit for carrying a firearm on the person), regardless of whether a violent criminal use was involved or contemplated.

The first type of statute, involving a mandatory minimum sentence for use of a firearm in a violent crime, appears uniformly to have had positive results. In 1974, for example, the states of Arizona and South Carolina adopted such statutes.⁴³ Between 1975 and 1977, robberies involving the use of firearms in Arizona declined steeply from 1,591 to 1,221.⁴⁴ Although firearm robberies constituted less than half the total robberies in Arizona over that period, firearm robberies declined by nearly two-thirds.⁴⁵ In South Carolina the results were even more striking. In 1974, that state reported 2,115 firearm robberies; in 1975 only 1,531; and in 1976 firearm robberies decreased to 1,331.⁴⁶

In 1975, Florida enacted a broader law, penalizing use of a handgun in a broad variety of violent felonies with a mandatory three-year minimum sentence. Similar results have been reported: firearm robberies decreased by 38.5% and firearm aggravated assault decreased by 14.5% during the first year.⁴⁷ Thus, in contrast to the forms of firearm owner regulation adopted in New Jersey, Hawaii and other states, mandatory sentencing for actual use of a firearm in a violent crime appears to have been followed by substantial decreases in the rate of violent crime.

Whether the extension of mandatory sentencing to all violators of a firearm regulation—as opposed to those who commit a *violent crime*—is justified is another question. Obviously, mandatory sentencing involves a substantial increase in the demands upon the criminal justice system. Since it limits the minimum sentence which can actually be imposed, the incentives for plea bargaining may be substantially reduced and the number of cases taken to trial, or appealed, may be increased. Similarly, the number of persons actually incarcerated may increase, which increases the demands on prisons. While the favorable experiences of states with mandatory sentences for actual use of a weapon in a specified violent crime suggest that a narrowly-drafted proposal may result in benefit, extension of this to violators of weapons regulations in general poses the risk of unduly penalizing large numbers of individuals who may violate technical regulations for self-protection or other reasons.⁴⁸ As such, it may well overload the criminal justice system and deprive judges of needed flexibility when dealing with persons who are not likely to be the source of violent crime.

The prototype of mandatory sentencing for regulatory violations is the State of Massachusetts, which in April 1975 enacted a statute (commonly known as "Bartley-Fox," for its sponsors) imposing a one-year mandatory term upon any person carrying a firearm without an appropriate permit.⁴⁹

The results of the law were, to put it charitably, ambiguous. Some forms of violent crime did decline in Massachusetts following the enactment of the statute. But since violent crime was declining nationwide—the hand-

gun murder rate fell nationwide from 5.3 to 4.4 per 100,000 population between 1974 and 1978—⁵⁰ whether this was caused by the statute or by mere coincidence is difficult to determine. Studies suggesting that the declines were due to the law have been criticized, both from a technical⁵¹ and from a logical⁵² perspective:

Before the gun law was imposed in April, gun murder rates had already begun their drop (in January) and gun assault rates were beginning to drop (starting in March), whereas gun robbery rates reached new highs after April and in fact remained high well into the following year. The expected conclusion would be that the April firearm law hardly caused changes occurring in January, February, and the following year. But the study managed to suggest causation: The January murder drop must have been due to an attempted enactment of the law at the time; the March assault drop must have been due to the publicity campaign that began in February; the 1976 robbery decline must have been due to robbers having adopted a wait and see attitude on the gun law as to how it would be applied.⁵³

Nor did the experience of similar laws in nearby states give backers of the Massachusetts law much cause to hope. Acting upon initial favorable reports, and a well-orchestrated media campaign, New York in 1980 adopted a similar mandatory sentence for unlicensed pistol carrying. Despite 9,900 arrests in the first year the law was in effect, New York handgun homicides shot up 25%, and handgun robberies increased 56%.⁵⁴

Whatever the effect on the crime rate, its negative effects were obvious. One of the first test cases involved the prosecution of a young man who held a carrying license but had inadvertently allowed it to expire. In an effort to raise money to purchase his high school class ring, he took his firearm to a dealer to sell it. On the way he was stopped for a traffic violation, the gun was seen, and for this minor infraction he ultimately was sentenced to a year in jail without possibility of probation or parole.⁵⁵

Considering that (1) both state and federal firearms laws have been enforced with disproportionate impact against law-abiding persons,⁵⁶ and (2) persons guilty of actually using a firearm in a serious felony would, presumably, face more than a year's incarceration even absent firearm regulations, the inference may be drawn that the main effect of such laws would be to generate cases of this type.

The effect upon the criminal justice system of the minimum mandatory sentence for carrying without a permit was no less severe. The acquittal rate for defendants charged solely with carrying increased by approximately 20%.⁵⁷ Among those convicted, the rate of cases appealed jumped four-fold, from 20% to 85%.⁵⁸

Given that the social cost of mandatory sentencing, whether measured in terms of the impact upon the individual or upon the workload of the criminal justice system, tends to be quite high, one might well ask whether the benefits of a Massachusetts-type law could not be obtained at more reasonable expense through a narrower system of mandatory sentencing. If the objective is to reduce use of firearms in crime, increasing the penalties for use in crime may have the same ultimate effect upon the criminal

Footnotes

population as increasing penalties for possession or carrying of firearms generally. Moreover, since narrowing the focus of the mandatory sentence to individuals who have actually committed serious crimes necessarily brings about a massive reduction in the number of persons actually subject to the law, the penalties imposed can be increased proportionately. Thus, correctional resources which might be used for incarcerating 100 firearm law violators for one year apiece could instead be devoted to incarcerating 20 armed robbers for five years each; intuition suggests that the latter proposal is more likely to influence the armed robbery rate. In this respect it is interesting that the major study supporting the case for enactment of Massachusetts-type statutes concedes:

We have not reached the point of knowing whether it is changes in punishment imposed for committing an assault or robbery with a gun or simply for carrying a gun without a license which are responsible for the altered crime pattern. This is, of course, critical for evaluation of the relative advantages in terms of crime control of felony firearms laws which mandate additional punishment for crimes committed with a gun as compared to new felony firearms laws aimed at the ownership, possession and/or carrying of firearms."

In short, all the benefits of a Massachusetts-type law might be achieved simply by punishing criminal use of firearms, at considerably less cost.

Conclusion

After more than a century of experience with firearm laws at the state and federal level, and after more than a decade of advanced statistical analysis of such statutes, the conclusion remains that firearm regulatory statutes are as much a failure in controlling violent crime as were the alcohol prohibition statutes of a half century ago. There comes a point at which appeals to try "just one more" experiment in a given area should be shelved between the blueprints for the Maginot Line and the formulae for patent medicines.

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5. *Digest of the Statute of Laws of the State of Georgia In Force Prior to the Session of the General Assembly of 1851* at 818 (1951).
6. *Nunn v. State*, 1 Ga. 243 (1846).
7. See 1889 Ariz. Terr. Sess. 1869 Tenn. Pub. Acts ch. 23; 1871 Tex. Gen. Laws ch. 34; 1974 Ark. Acts 155; 1875 Mo. Laws 50; *Leyes Del Territorio del Nuevo, Mexico*, 1868-69, Cap. 32; Laws act 13; S.C. Stat. at Large n. 435 (1901); 1910 Ga. Laws 432; 1919 N.C. Pub. Laws ch. 197.
8. President's Commission on Law and Enforcement and the Administration of Justice, Task Force Report: "Crime and Its Impact—An Assessment," 31 n.1 (1967).
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11. *Id.*
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14. *Id.* at 179.
15. *Firearms Legislation Hearings Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 94th Cong., 1st Sess., 587 (1975), (statement of Representative David Shields).
16. *Report of the Subcommittee on the Constitution of the Senate Judiciary Committee on the Right to Keep and Bear Arms*, 97th Cong., 2nd Sess. 23 (1982).
17. G. Wilt, *Domestic Violence and the Police*, 23 (1977).
18. Kirkpatrick & Walt, "The High Cost of Gunshot and Stab Wounds," 14 *J. Surgical Research*, 260, 261-62 (1973).
19. Wright & Rossi, *supra* note 9, at 2.
20. *Id.* at 3.
21. In 1969, the murder rate was 6.8 per 100,000 population, and 25.2% involved a spouse or other relation, yielding a domestic murder rate of 1.7. By 1974, the rate had risen slightly: 22.8% of that year's 9.8 rate involved relatives, for a domestic rate of 2.2. *U.S. Dept. of Justice, F.B.I. Uniform Crime Reports* 19 (1974). But by 1980 the domestic rate had fallen to a point below its 1969 levels; with a murder rate of 7.8 and 16.1% of these involving relatives, the domestic murder rate was 1.6. *U.S. Dept. of Justice, F.B.I. Uniform Crime Reports* 12 (1980).
22. Wright & Rossi, *supra* note 9, at 125.
23. Hardy, "Let's Shelve Gun Control," 1 *Just. Rep.* 5 (Fall 1981).
24. *Id.*
25. *Id.*

26. Wisconsin Legislative Reference Library, "The Regulation of Firearms by the States," Research Bulletin No. 130 (1960); 113 Cong. Rec. 20060, 20064 (1967), 114 Cong. Rec. 1496 (1968) (reprinting Krug studies).
27. See Zimring, "Games with Guns and Statistics," 1968 Wis. L. Rev., 1113. Krug's response may be found in *Hearings on S. Res. 240 before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 90th Cong., 2d Sess. 734 (1968).
28. Murray, "Handguns, Gun Control Laws and Firearm Violence," 23 Soc. Prob. 81 (1975).
29. *Id.* at 89-90.
30. See Hardy, "Why Gun Control Can't Work," *Inquiry* 15, 18-19 (Feb. 28, 1982).
31. Kleck & Bordua, "The Assumptions of Gun Control," in *Weapons, Crimes and Violence in America* 103 (J. Wright, P. Rossi, K. Daly & E. Burdin eds. 1981), (citations omitted).
32. *Id.* at 101.
33. *Id.*
34. California Department of Justice, *Homicide in California* 91 (1979).
35. Kates, *supra* note 13, at 184. See also Benenson & Hardy, "Critiquing the Case for Handgun Prohibition," in *Restricting Handguns: The Liberal Skeptics Speak Out* 69, 87-88 (D. Kates, ed. 1979) (estimating costs of a national handgun prohibition and call-in at between two and eight billion dollars for initial compensation, five billion dollars per year for arrest and processing of arrestees, and four and a half billion dollars per year for prosecution and trial, all assuming only a 10% arrest rate).
36. G. Newton & F. Zimring, *Firearms and Violence in American Life* 12 (1970), (staff report to Nat'l Commission on the Causes and Prevention of Violence finding 37% of American military veterans own handguns, compared to only 18% of non-veterans).
37. Sherman & Parrish, "Management of Shotgun Injuries: A Review of 152 Cases," 3 J. Trauma 76, 76 (1963). See also Taylor, "Gunshot Wounds of the Abdomen, 177 *Annals of Surgery* 174, 175-76 (1973); DeMuth, "The Mechanism of Shotgun Wounds, 11 J. Trauma 219 (1971); Gray, Harrison, Couves & Howard, "Penetrating Injuries to the Chest, 111 *Am. J. Surgery* 709, 710 (1960).
38. Sherman and Parrish, *supra* note 37, at 77.
39. Kleck & Bordua, *supra* note 31, at 94.
40. Hardy, *supra* note 12, at 260.
41. *Id.* at 262 n. 167.
42. Bureau of Alcohol, Tobacco and Firearms, *Concentrated Urban Enforcement* 40-41 (1977).
43. Glaiser & Rentoul, *Medical Jurisprudence & Toxicology* 273-74 (1966); K. Simpson, *Forensic Medicine* 64 (1964).
44. President's Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society* 256 (1967) (study of policemen killed in New York City over the past century; combat range in no case exceeded 21 feet, average was 10 feet or less).
45. Zimring, "Is Gun Control Likely to Reduce Violent Killings?," 35 U. Chi. L. Rev. 721 (1968).
46. Hardy & Stompoly, *supra* note 9, at 104-10.
47. Wilson & Sherman, "Civilian Penetrating Wounds of the Abdomen," 153 *Annals Surgery* 639, 642 (1961), (forty-four of ninety knife cases studied involved pocket knives, with no fatalities resulting; ice pick fatality rate was 14.3%, butcher knife fatality rate was 13.3%, and switchblade knife fatality rate was 5.9%. Handgun fatality rate was 16.8%).
48. *Hearings on Firearm Legislation*, *supra* note 15, at 2672.

49. National Coalition to Ban Handguns, *20 Questions and Answers* (pamphlet 1976).
50. *Id.*
51. Bureau of Alcohol, Tobacco and Firearms, *Project Identification* (1976).
52. Police Foundation, *Firearms Abuse: A Research and Policy Report* 24-25 (1977). See also Hardy, *supra* note 12, at 249-50.
53. Police Foundation, *supra* note 52, at 60, 69, 71.
54. Bureau of Alcohol, Tobacco and Firearms, *1979 Firearms Trace Project* 37 (1980).
55. Wright & Rossi, *supra* note 9, at v (forward by Senator Kennedy).
56. *The Miami News*, September 5, 1981, at 1-A.
57. *Id.*
58. See *supra* notes 52-53.
59. See *Report on the Federal Firearms Owners Protection Act*, S. Rep. No. 3476, 97th Cong., 2d Sess. 51-52 (1982); Murray, *supra* note 28; Hardy, *supra* note 30.
60. Hardy, *supra* note 12, at 258.
61. Kates, *supra* note 13, at 183-85.
62. See *supra* note 59.
63. 1974 Ariz. Sess. Laws ch. 144, § 3; 1975 Ariz. Sess. Laws ch. 23, § 3; S.C. Code Ann. § 16-11-330 (law Co-op. 1976). The Arizona provisions have since been incorporated into a general criminal code which provides for increased and mandatory sentences for such crimes when committed with a weapon or following a prior violent offense. See Ariz. Rev. Stat. Ann. §§ 13-604, 701 (1978).
64. Arizona Uniform Crime Reporting, *Arizona Crime Report* 17 (1975); Arizona Uniform Crime Reporting, *Crime in Arizona* 18 (1977).
65. To be precise, firearms robberies were 42% of all Arizona robberies in 1975 and 38.7% in 1977. The total number of robberies declined from 3,751 in the former year to 3,155 in the latter, or a decline of 596 cases per year. Of those, 370 came in the area of firearm robberies. By contrast, robberies with "other weapons", largely clubs and blunt instruments, rose from 191 cases to 214 cases. See *supra* note 64.
66. South Carolina Law Enforcement Division, *Crime in South Carolina* 20-21 (1976). Firearm robberies also fell much more rapidly than robberies overall, declining from 62% of all robberies in 1974 to 45% of all robberies in 1976. As with Arizona, robberies with "other weapons" increased, from 3.8% of robberies in 1974 to 7.6% in 1976. *Id.*
67. Letter from James T. Barrett, Executive Assistant to the Attorney General of Florida, to Bill Garrison (June 28, 1977).
68. See *supra* notes 12-16 and accompanying text.
69. Mass. Ann. Laws ch. 269, § 10 (Michie/Law Co-op Supp. 1977).
70. Congressional Research Service, 97th Cong., 2d Sess., *Federal Regulation of Firearms* 3 (Comm. Print 1982).
71. See *Id.* at 66-67; Hardy, *supra* note 12, at 263-71.
72. Hardy, "Gun Control," *Reason* 37, 38-39, (Nov. 1982).
73. *Id.* at 38-39.
74. *Id.* at 39.
75. Beha, and Nobody Can Get You Out: *The Impact of a Mandatory Prison Sentence for the Illegal Carrying of a Firearm on the Use of Firearms and the Administration of Criminal Justice in Boston*. A-26 (July 14, 1976) (unpublished manuscript available from Center for Criminal Justice, Harvard Law School). See also *Commonwealth v. McQuoid*, 369 Mass. 925, 344 N.E.2d 179 (1976).

76. *See supra* notes 14-16 and accompanying text.

77. Beha, *supra* note 75, at 77.

78. *Id.* at 64.

79. Rossman, Froyd, Pierce, McDevitt, & Bowers, "The Impact of the Mandatory Gun Law in Massachusetts," 174 (1979) (unpublished manuscript available at Boston University).

The Modern Firearm: The Only Way To Protect Oneself

There is an old saying in rhetoric that if you cannot answer your opponent's arguments, abuse your opponent. Sadly, The Post's editorials vilifying the National Rifle Association (of which "The NRA's New Killer Instinct" on Sept. 24 is just the latest) are an excellent example of that old saying in action.

The fact of the matter is that The Post has been advocating "gun control" for years based on an argument that more shootings will result unless there are fewer guns. The NRA's latest ads merely point out that an armed individual is in a better position to protect himself (or, more likely, herself) and less likely to be injured by criminal aggression. Either of these arguments can be fairly debated. The Post, however, finds all that very tedious, so it criticizes the persons making the opposite argument.

Not only does The Post have a closed mind on the gun control issue, it's also getting lazy.

—Dennis B. Wilson

As is so often the case, The Post uses selective recall in commenting about the National Rifle Association and its programs. If your purpose in writing about our new advertising campaign had been to explain or clarify rather than to pillory NRA, you would have reported on the entire ad, not just the dramatic headlines and photographs.

The "NRA's New Killer Instinct," to which you referred in the editorial Sept. 24, is a responsible series of paid communications to alert law-abiding citizens to their constitutionally guaranteed rights to firearms ownership and self-protection.

I'm not sure whose point of view The Post represents—I doubt it's the victims of the 151 rapes, 120 murders, 6,273 burglaries, 936 unarmed robberies, 1,594 armed robberies and 2,763 assaults that were reported to the Washington, D.C., police department between Jan. 1 and July 31 of this year. Unfortunately, these 11,837 victims can't legally protect themselves with a firearm in the District of Columbia because acquisition of firearms has been banned since Feb. 5, 1977.

The NRA is on the side of the victims. They call us every day asking us to tell them about their rights under the Constitution to own and use firearms to protect themselves, their families and their property. They speak with great concern and in many cases feel violated and helpless. Has the editorial board ever interviewed members of The Post staff who have suffered the role of the victim to see how they felt?

In your ongoing attempt to propagandize the myth that NRA and law enforcement are no longer allies, you totally ignore the message in the ad that specifically asks, "Why can't a policeman be there when you need him?" and NRA's sympathy and understanding for this problem. It's too bad you didn't quote the copy, which states, "He's somewhere else, responding to crimes already committed." And: "Police know they're outnumbered by criminals 20 to 1. As much as they'd like to, America's police can't always be there to defend you the moment you need them."

The membership of the National Rifle Association (particularly the 122,327 members in D.C., Maryland and Virginia) respectfully disagrees with your position.

—J. Warren Cassidy

The writer is executive vice president of the National Rifle Association.

On Sept. 24, The Post ran an attack against advertisements being run by the National Rifle Association. However, The Post failed to provide any reasonable answers to the questions posed by the NRA about when a man or woman is faced with a life-threatening situation. Additionally, The Post appears determined to foster the myth that the police are responsible for protecting individual citizens. Unfortunately for the editors of The Post, the judicial system has already stated, in *Bower v. DeVito*, that there is "no constitutional right to be protected by the state against being murdered by criminals or madmen." Further, in *Warren v. District of Columbia*, the D.C. Court of Appeals ruled in 1981 that the police have "no duty to the individual citizen, . . . only to the general public."

There have been numerous additional decisions by the courts that clearly show that the state is not responsible for protecting the citizen. Further, they also show that it is the responsibility of the citizen to protect herself from attacks upon her person. Thus, while it can be argued whether the state has the right to regulate firearms, it is quite clear that each citizen is granted the right to defend herself when faced with a potentially life-threatening situation.

The modern firearm is the only weapon that will allow a woman or an elderly citizen a reasonable chance to protect herself from a stronger or younger attacker. Given that possession of a firearm is thus the only reasonable way that a woman may ensure her safety, the position of the NRA becomes the reasonable one. The NRA has not fought every form of legislation to control firearms. On the contrary, they were the principal supporters of the 1968 Gun Control Act. Rather, the NRA has fought and will continue to fight every form of legislation that threatens to make access to firearms by honest citizens more difficult.

—David L. Ramsey



digest



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HANDGUN LAW CAN BE VOTED ON BUT NOT DIVIDED

Foes of Maryland's new handgun control law can seek to have the part of it they oppose overturned by a voter referendum, but doing so will also void the part of the law they want to keep, Attorney General Curran has said in a 14-page Opinion.

The new law is "a classic example of legislative compromise," containing a portion of a bill by which handgun control advocates sought a procedure that would ban cheap weapons known as "Saturday Night Specials" in Maryland, as well as portions of a bill by which opponents of handgun control sought reversal of a Maryland Court of Appeals decision, *Kelley v. R.G. Industries, Inc.*, which said that manufacturers and sellers of such handguns can be held liable by crime victims wounded by these weapons.

"The manifest legislative intent was to fashion a compromise in which handgun control and the ... (repeal) of *Kelley*... would stand or fall together..." Curran wrote in the Opinion, which also was signed by Assistant Attorney General Jack Schwartz, chief counsel for opinions and advice. Although the Maryland Constitution permits voters to petition to have only part of a law reviewed by the referendum process, as anti-gun control advocates have sought to do with the new law, if "the handgun control provisions are nullified at referendum, the entire bill will be nullified," the Attorney General said in the Opinion, which was requested by Governor Schaefer.

"In any realistic assessment of the process that led to the enactment of ... (the law), a court would find it a 'fundamental perversion' of legislative

intent if handgun control were nullified but the *Kelley* repealer survived," Curran wrote the Governor.

Under the new law, a nine-member board, chaired by the State Police Superintendent, will develop a list of handguns that may be manufactured or sold in Maryland after January 1, 1990. Any handguns not on the list would be prohibited and violators could receive heavy fines. The law also would ban guns with plastic parts which might escape detection by airport or courthouse security machines.

A group known as the Maryland Committee Against the Gun Ban has been gathering signatures on a petition seeking a referendum on the portions of the law creating the handgun board but leaving the portion of the law repealing the *Kelley* ruling alone.

MSSIC SUIT SETTLED FOR \$16 MILLION

Insurance companies for the 14 directors and officers of the now-defunct Maryland Savings-Share Insurance Corporation (MSSIC) have agreed to pay the State \$16 million to settle a lawsuit accusing the officials of failing to employ MSSIC's regulatory powers to curb the financial abuses which led to the May, 1985 crisis in Maryland's savings and loan industry and the collapse of several savings institutions.

Attorney General Curran called the settlement "a very favorable result for the State" that had been obtained "without the necessity of a lengthy and expensive trial with a potentially uncertain outcome." The money to be paid by the American Casualty Company and the Federal Insurance Company, which had insured the former MSSIC officials for personal liability, will help pay some 22,000 former depositors at Old Court Savings and Loan and First Maryland Savings and Loan who still do not have full access to their frozen accounts at the failed institutions.

The \$16 million settlement is the second largest sum the State has obtained since it began filing lawsuits against those who allegedly were responsible for the S&L crisis. A \$27 million settlement was obtained in 1987 from Venable, Baetjer & Howard, the Baltimore law firm which represented MSSIC, as well as some of the S&L officials MSSIC was supposed to regulate.

In August, 1986, the State filed a \$350 million lawsuit against MSSIC on behalf of the Maryland Deposit Insurance Fund Corporation (MDIF), MSSIC's successor, accusing the former MSSIC officials of failing to enforce MSSIC's rules and regulations even though they had received repeated warnings from their own examiners of the "unsafe and unsound" financial practices which ultimately led to the collapse of Old Court and First Maryland; the savings and loan crisis; the sale of several local savings and loans to out-of-state firms, and the replacement of MSSIC by MDIF.

The questionable financial dealings included dubious investments of depositors' funds and inflated fees to S&L owners who did little or no work, the suit alleged.

In reaching the settlement, the former MSSIC officials, including its one-time president, Charles Hogg, did not admit wrongdoing. In addition to Hogg, the defendants were: former MSSIC senior vice president Paul V. Trice; and former board members George W. H. Pierson, Leonard Bass, Michael J. Dietz, Jerome F. Dolvika, Henry R. Elsnic, John D. Faulkner, Jr., James D. Laudeman, Jr., Terry L. Neifeld, Ralph K. Holmes, Judith Miles Budoff, Jerry D. Whitlock and Dennis B. Berlin.

They had filed a countersuit claiming that State regulators had failed in their duties and abetted the crisis.

MD DEATH SENTENCES PUT IN DOUBT

By a 5-4 ruling, the U.S. Supreme Court has placed in doubt up to 12 of the 16 death sentences currently imposed on Maryland inmates by over-

(Continued on p. 2)

IN THIS ISSUE

developments 2

litigation 4

opinions 5

(Continued from p. 1)

turning the death penalty imposed on Ralph W. Mills, an imprisoned murderer convicted of a second killing in the stabbing death of his prison cellmate in 1984.

The high court's ruling does not void the guilty findings against Mills, 24, or the other inmates, but holds that a printed sentencing form used by the jurors in the Mills case conflicted with a 1978 Supreme Court decision requiring that jurors be allowed to consider any mitigating circumstances when determining whether to impose a death sentence on a defendant.

The sentencing form, approved by the Maryland Court of Appeals in 1978, required a jury to reach unanimous agreement on mitigating factors before considering them in deciding between a life or death sentence.

Mills' lawyers argued that under the form's instructions, if 11 jurors agreed on a mitigating factor but one juror did not, the whole jury would have to hold that it found no mitigating circumstances preventing a death sentence.

"There is a substantial probability that reasonable jurors . . . in attempting to complete the verdict form as instructed, may well have thought they were precluded from considering any mitigating evidence unless all 12 jurors agreed on the existence of a particular such circumstance," Justice Harry Blackmun wrote for the Court's majority.

"The possibility that a single juror could block such consideration, and consequently require the jury to impose the death penalty, is one we dare not risk," Blackmun wrote.

The high court's ruling means Mills and the other inmates sentenced through the use of the old form may face re-sentencing trials. In June, 1987, the Maryland Court of Appeals adopted a new sentencing form for capital cases which the Supreme Court's latest ruling indicates is proper. The Supreme Court's ruling is likely, however, to postpone indefinitely the actual imposition of the death sentence in Maryland. No inmate has been executed in Maryland since the State restored capital punishment in 1978. The last execution in Maryland occurred in 1961.

Developments

CONSUMER PROTECTION

The Maryland Court of Special Appeals has overturned a Baltimore Circuit Court judge's order sealing the file and closing the doors on the State's case against **Cottman Transmission Systems, Inc.**, which is accused by the State of consumer fraud at some of its 13 Maryland outlets.

Attorney General Curran urged the appellate court to reverse the decision of Judge Thomas A. Noel to seal the Cottman case file, bar reporters from the courtroom and impose a gag on the lawyers in the case, arguing that the judge had offered no "compelling reason" for closing the case and that "secret proceedings simply do not meet the public interest."

Chief Judge Richard P. Gilbert and Associate Judges Theodore Bloom and Richard M. Pollitt ordered the file and proceedings in the case to be reopened to the public but said that lawyers in the case could only discuss procedural

aspects of it outside the courtroom and could not argue the validity of the charges outside of court.

The State filed suit against Cottman in January, charging that the Pennsylvania-based auto transmission repair company was selling unnecessary repairs and services through the use of a deceptive "marketing scheme" that keeps customers in the dark about the nature of the problems in their cars' transmission until after they have paid a substantial fee to have the transmission disconnected and taken apart.

In March, the State filed a motion for an immediate injunction against the firm's allegedly deceptive practices pending trial of the suit, revealing in the motion that a year-long undercover investigation by the Consumer Protection Division showed that the company routinely sells unnecessary repairs and services.

On 22 occasions between June, 1986 and June, 1987, undercover investigators for the Division had specially prepared vehicles examined by Cottman repair centers in Maryland, the motion said. The transmissions in the cars were either working perfectly or had a minor problem, induced by a mechanic for the State, which was easily detectable and correctable without removing the transmission from the car, according to the court papers.

On 17 of the 22 occasions, the State was charged for repairs that were not performed, or charged for parts that were not replaced, and/or were sold repairs that were unnecessary, according to the motion.

In asking the court to close the case in May, attorneys for Cottman said the firm feared that adverse publicity about the State's allegations would force some of the company outlets in Maryland to close before the case came to trial.

The **Maryland Consumer Courier**, the tabloid newspaper published periodically by the Consumer Protection Division, has been cited by the National Association of Consumer Agency Administrators (NACAA) as the best publication of its kind from an office the size of the CPD.

In all, 13 states from across the nation submitted publications to the NACAA competition, which was divided into three categories: newsletters, brochures and booklets/ manuals. The **Courier** was selected as the best newsletter because it is "so newsy; it's very lively; it has lots of information presented in such a way that it's fun to read," an NACAA official said.

Also cited for excellence were the "Special Editions" of the **Courier**, which are single-page fliers dealing with such subjects as home appliances, furniture delivery and warranties.

CRIMINAL INVESTIGATIONS

Alan Michael Wolf, Jr., 40, a professional tax preparer in Baltimore, has been sentenced to 120 days in prison after pleading guilty to failing to file his own 1986 Maryland State income tax return. He has also been fined \$1,000 and ordered to pay \$3,000 toward his tax liability, which will be determined later.

Assistant Attorneys General Melaine M. Shaw and Christopher J. Romano told Baltimore District Court Judge Theodore Oshrine that Wolf earned more than \$60,000 in 1986 by operating the **Mike Wolf Tax Service** in the city and selling boat slips for the Constellation Place Corporation, which operates the Anchorage, an Inner Harbor marina. Evidence of the defendant's income included records of a bank account he kept in the name of "TTM&R," which stood for "Take The Money and Run," the judge was told.

Despite this income, Wolf did not file a State income tax return or pay State taxes on it, evidence showed.

A former State Highway Administration Inspector has been accused of illegally charging more than \$10,000 worth of purchases on a credit card issued to him for use in connection with his State job.

A two-count indictment obtained by Assistant Attorney General John R. Tennis alleges that between May and September, 1986, **Charles F. Pack**, 39, misused the credit card



digest

NEIL A. GRAUER
Editor

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(Continued from p. 2)

issued to him by P. Flanigan & Sons, Inc.

The theft and misappropriation charges against Pack, a former Engineer Associate with the Highway Administration, stem from a joint investigation by the State Police and the Attorney General's Office.

Eugene W. Pellillo, 44, a former St. Mary's County assistant sheriff and purchasing agent, has pleaded guilty to accepting bribes in return for overlooking "exorbitant" prices for jail supplies the county purchased and ignoring the non-delivery of more than \$30,000 in food ordered for the County Jail.

Evidence presented by Assistant Attorney General Romano to Judge John Hanson Briscoe showed that while Pellillo was employed by the St. Mary's County sheriff's office between May, 1984 and June, 1987, he received more than \$5,000 worth of cash, property and goods from an individual known variously as James Madison or James Michael Sorahan in exchange for allowing Madison to charge inflated prices for supplies purchased by the county from firms he represented—some of them apparently fictitious. For example, the county paid \$31,000 for detergent worth \$2,000 and \$11,665 for bleach that cost Madison \$792, the judge was told.

The county also paid over \$30,000 for food for jail inmates but never got any of it, evidence showed.

Among the items Pellillo received in order to influence the performance of his duties included microwave ovens, TV sets, VCRs, money orders, rent payments and car lease payments, Romano told the court.

John Henry Price, III, 30, a commercial and industrial draftsman in Cumberland, has been charged with failing to file a State income tax form for three years and with making false statements on State withholding certificates.

The eight-count indictment against Price obtained from the Anne Arundel County grand jury by Assistant Attorney General Carolyn H. Henneman alleges that the defendant evaded the payment of taxes not only by filling out false exemption certificates but by failing to file any tax returns for 1984, 1985 and 1986, even though he earned enough money to require him to file such returns.

A 17-count indictment has been returned against **Louis P. Alcamo, Sr.**, 63, a plumber with a business in Arnold, accusing him of failing to pay employers' withholding taxes, as well as his own income taxes.

The indictment alleges that Alcamo withheld State and Federal taxes totalling more than \$36,000 from his employees' pay between 1981 and 1987, but did not pay the money to the State or Federal governments. According to the indictment, which was obtained from the Anne Arundel County grand jury by Assistant Attorney General Didre W. Lee, Alcamo also failed to file his personal income tax returns for 1985 or 1986.

A Baltimore Circuit Court jury has convicted **Warren Eric Betters**, 45, a former Motor Vehicle Administration (MVA) Driver's License Examiner, of bribery, conspiracy, suborning perjury and falsifying public records for a scheme in which he received payments of between \$500 to \$700 to issue phony learner's permits and driver's licenses to people who did not take the required eye, law or road tests to obtain them.

Evidence presented by Assistant Attorneys General Lynne A. Battaglia and Christopher J. Romano to the jurors before Judge John Prevas included the testimony of undercover State toopers who had obtained false licenses using fictitious names, as well as audio tapes on which the bribes were discussed and videotapes showing Betters conferring with an alleged middleman, **Milton McCray**, who purportedly played the illegal payments to the defendant.

Ar McCray is scheduled for trial in September.

MEDICAID FRAUD

Hidir Babaturk, 62, a Clarksville, psychiatrist, has been sentenced to 30 days in jail and ordered to pay more than

\$122,000 in fines and restitution after admitting that he improperly billed the State's Medicaid program for services he did not perform between 1984 and 1986.

Evidence presented to Baltimore Circuit Court Judge Edgar J. Silver by Assistant Attorney General Gale R. Caplan showed that Babaturk billed the State for psychotherapy treatments of Medicaid patients who were hospitalized at the North Charles Hospital detoxification unit. He always billed for a maximum 45- to 50-minute session, claiming he held as many as 22 of them a day, when records of the period showed he was working from 8 a.m. to 3:30 p.m. for the Veteran's Administration elsewhere.

Records also showed that Babaturk was paid for sessions that he claimed occurred on days when he was out of the State, and that he frequently did not meet with patients as he claimed but only gave them prescriptions.

Juan M. Chavez, 63, a Towson-based gynecologist, has been ordered to pay \$23,000 in fines and restitution after pleading guilty to defrauding the Medicaid program by billing it for work he never did.

Evidence presented to Baltimore Circuit Court Judge Edward J. Angeletti by Assistant Attorney General Caplan showed that more than half of the bills that Chavez submitted to Medicaid were undocumented, and he also failed to note prescriptions of controlled dangerous substances in the files of his Medicaid patients, who represented almost his entire practice between July, 1985 and March, 1987.

Angeletti ordered Chavez to pay \$18,000 in restitution to the Medicaid program, plus \$5,000 in fines. The judge suspended a one-year prison term he imposed on the doctor.

ENVIRONMENTAL CRIMES

William L. Critzer, Jr., 41, a former production superintendent at **Delta Chemical Corporation**, a Baltimore City firm that admitted violating State water pollution laws, has been fined \$5,000 and ordered to perform 500 hours of community service.

Critzer earlier pleaded guilty before Baltimore Circuit Court Judge Edward J. Angeletti to conspiring to violate the water pollution statutes. He also received a one-year suspended prison sentence and was placed on probation for three years.

Critzer, **Charles E. Batze, Jr.**, 44, a shift supervisor for the company, and the firm all were indicted on charges of illegally discharging chemicals into the Patapsco River in March, 1987. A suspended sentence and fine were imposed on Batze, and the company was fined \$25,000.

Evidence presented by Assistant Attorneys General David Y. Li and Nathan Braverman showed that environmental investigators and State Police saw Delta employees pump an illegal discharge of sludge from the firm's Curtis Bay aluminum sulfate plant into the Patapsco late one night. Further evidence of an illegal dumping was found in contaminated waste water in a plant sump pump, the court was told.

CRIMINAL APPEALS

The Court of Appeals, Maryland's highest court, has let stand a Court of Special Appeals decision affirming the conviction of **Jerome S. Cardin**, a former owner of the now-defunct **Old Court Savings and Loan**, on charges he stole \$385,000 from the thrift by submitting bills for consulting and legal work he never did.

Cardin, 63, a wealthy lawyer and philanthropist, was sentenced to 15 years in prison by Baltimore Circuit Court Judge Edward Angeletti but remains free on \$3 million bond pending conclusion of his appeals, the only remaining one of which could be to the U.S. Supreme Court.

SECURITIES

Baltimore County Circuit Court Judge A. Owen Hennegan has signed an order enjoining financial planner **John**

(Continued from p. 3)

Wesley George, Jr. from continuing the operation of his investment firm, **Capital Concepts**, and turning over control of his assets to the State.

Securities Commissioner Ellyn L. Brown sought the court order against George after he stopped making scheduled interest payments to at least two dozen clients late last year and then suddenly closed his Baltimore County office without leaving a forwarding address.

Affidavits filed by the State indicate that George was selling unregistered securities in violation of Maryland law; encouraged investors to put money into fictitious real estate partnerships, and offered interests in partnerships he was not authorized to sell. More than 70 clients are believed to have given George about \$1 million to invest.

According to court papers filed by the State, George allegedly took his clients' money and pooled it in order to buy "jumbo" certificates of deposit worth more than \$100,000 and paying higher interest rates. He also sold interests in partnerships that owned nursing homes in the Carolinas, and operated several other companies, including **Mortgage Investment Funding, Investment Strategies, Mallard Management, Heritage Financial Corp., and Financial Strategies Corp.**, the court was told.

At the time George opened his operation in Towson in 1981, he was associated with a North Carolina investment company called Capital Concepts, run by a man named Robert Logan. Investors here incorrectly assumed that George was running a branch of Logan's firm, but when they later contacted Logan, they learned that George had no authority to sell interests in the company's investments and had not bought shares in any of them with the clients' money, according to an affidavit filed by Linda Inman, a legal assistant and investigator for the Securities Commissioner.

The Securities Division has referred George's case to the Criminal Investigations Division for further inquiry.

HOUSING AND COMMUNITY DEVELOPMENT

Created by the 1987 reorganization of State government, the new Department of Housing and Community Development reports that in its first year of operation, its largest area of activity involving the six Assistant Attorneys General and three staff attorneys assigned to it was the issuance of \$959 million in revenue bonds to finance various housing projects.

The legal staff worked extensively on 15 housing bond issues, the largest number ever undertaken in one year, and also represented the Department in the closing of many mortgage loans financed by tax-exempt bond proceeds, as well as State-appropriated funds. These included 16 loans totalling about \$34 million for 2,261 units of rental housing under several programs. Legal advice was also provided to the Homeownership Programs and Special Loan Programs in preparing documentation for about 2,940 loans to Marylanders with limited incomes.

The Department's eight community assistance programs required legal guidance in the drafting and review of approximately 260 grant agreements and contracts for some \$19.3 million in financial assistance to local governments and non-profit groups. They will use the money for community development block grants, energy assistance grants, and other community projects. Approximately 12 grants and loans for historic preservation and surveys, as well as many historic preservation easements, also required legal review.

Assistant Attorneys General Margaret McFarland and Judith W. Price, the Department's principal counsel and deputy counsel, respectively, also drafted 16 pieces of proposed legislation, including extensive revisions to the Maryland Homeowners Association Act and new initiatives such as a State Action for Targeted Areas Loan Program, a Closing Costs Assistance Loan Program, an Indian Recognition Program and a Submerged Archaeology Program.

APPOINTMENTS

Attorney General Curran has appointed **Richard W. Emory, Jr.**, an attorney with the Federal Environmental Protection Agency (EPA), as a Special Assistant Attorney General assigned to Maryland's Department of the Environment.

Emory, a former member of the House of Delegates, remains as a member of the EPA staff but has been "loaned" to the Attorney General's Office for one year under the Federal Intergovernmental Personnel Act.

"Dick Emory has nearly a decade's worth of experience in both civil and criminal anti-pollution cases," Curran said, citing in particular the work Emory did on the EPA's 1983 Chesapeake Bay Study. "He's devoted to the preservation of our environment, and I'm delighted to have him join our effort to do just that."

The appointment marks Emory's second tour of duty in the Attorney General's Office. Between June, 1979 and November, 1980, he was assigned to the Department of Natural Resources, which he regularly represented in the trial of administrative, civil and criminal cases involving violations of the State's clean water and hazardous waste laws.

Emory, 47, was a Democratic member of the House of Delegates from 1975 through 1978, representing the old 39th District of Baltimore. An honors graduate of Yale and recipient of a law degree from Harvard, he also has worked as an associate in the Baltimore law firm of Venable, Baetjer and Howard, as well as in private practice on his own. He also has been a trustee of the Maryland Environmental Trust.

Litigation

ANTITRUST

Maryland has joined nine other states in filing suit in San Francisco federal court against 31 American and British insurance firms, alleging that they conspired to limit the commercial general liability insurance available to businesses, public agencies and non-profit groups.

Among the companies named as defendants in the 57-page suit are the **Hartford Fire Insurance Company, Allstate Insurance Company, Aetna Casualty and Surety Company, and CIGNA Corporation**. Also accused of participating in the alleged conspiracy are eight of the "syndicates," or insurance firms, which are part of **Lloyd's of London; the Reinsurance Association of America** and six of its members; the **Insurance Services Office (ISO)**, a trade group representing 1,500 insurance firms, and three insurance brokers.

The states which simultaneously filed suit with Maryland are **Connecticut, New Jersey, Pennsylvania, Ohio, Colorado, Montana, Washington, Alaska, and Michigan**. In March, nine other states—**California, New York, Minnesota, Massachusetts, Texas, West Virginia, Alabama, Wisconsin and Arizona**—filed similar suits against the same companies.

The suits accuse the insurance firms of using the threat of a boycott, which is banned by antitrust laws, to manipulate the U.S. market for commercial liability insurance. The companies allegedly sought to compel the adoption of "stripped-down" insurance policies that reduced or eliminated protection against pollution risks, the payment of legal costs if the policy-holder is sued, and the period of coverage, according to the suit, which was prepared by Deputy Attorney General Charles O. Monk, II; Assistant Attorney General Michael F. Brockmeyer, Chief of the Antitrust Division, and Assistant Attorney General Ellen S. Cooper.

After the filing of the initial suits against the insurance

(Continued on p. 5)

firms by nine states in March, Attorney General Curran visited the Attorneys General offices in New York and West Virginia to discuss the pending cases with antitrust attorneys in those offices. He also attended a meeting in Chicago along with representatives of 20 Attorneys General offices from around the country to discuss and analyze the pending suit. "We've taken a long, careful look at the evidence and we believe it completely supports the allegations we have made, and so do the Attorneys General in nine more states that have joined with us in this suit," Curran said.

The suit seeks an injunction against the insurance firms and an unspecified amount of damages.

The U.S. Supreme Court has ruled that Maryland and all other states may resume **regulating the price of gasoline** if they wish.

Maryland and seven other states had joined Puerto Rico in urging the high court to restore their power to regulate gas prices as they did prior to the imposition by Congress of Federal price controls on petroleum products in 1973.

The Federal controls expired in 1981, and refiners and wholesale marketers of petroleum went to court to block Puerto Rico's effort to reinstitute its own gasoline price controls, contending that Congress intended to have a free market for gas once Federal controls ended.

The U.S. Temporary Emergency Court of Appeals ruled in favor of the petroleum merchants in 1986, but in unanimous ruling in **Puerto Rico v. Isla Petroleum**, the Supreme Court overturned that finding, saying it found no convincing evidence that Congress meant to keep gasoline prices free from regulation once the Federal controls ceased.

While Congress may have had the "belief or desire" that a free market should exist for petroleum products, it did not formally declare so by law, the Supreme Court said. Since "Congress has withdrawn from all substantial involvement in petroleum allocation and price regulation," the states now are free to resume their own price controls if they wish, according to the opinion written by Justice Anton Scalia.

COMPTROLLER

The State alleges that the Chevy Chase outlet of New York's **Saks Fifth Avenue** store pretended to ship more than \$1.6 million worth of fur coats, jackets and other fur clothing to Washington, D.C. and Virginia in an effort to evade more than \$82,000 in Maryland sales taxes.

Retailers don't pay sales taxes on goods shipped out of state, and Saks is accused of engaging in a so-called "empty box" scam to avoid sales taxes on luxury goods in order to maintain its profits without sacrificing its competitive edge.

Assistant Attorneys General Linda Koerber Boyd and Gaylin Sponis told the Maryland Tax Court that **Revillon, Inc.**, the furrier that operates Saks' fur department, told customers they could avoid Maryland's 5% sales tax by having their furs delivered across state lines. Evidence included sales slips with Bethesda addresses on them accompanied by delivery tickets with the same customers' names and addresses but Washington mailing addresses.

The State also alleges that Revillon falsified records to show that merchandise was mailed out of Maryland when the customers actually picked it up at the store.

Attorneys for Saks contended that the company did follow the rules for collecting sales taxes; that the furs in question were shipped out of Maryland, and that sales clerks should not be required to interpret the "intent and instructions of a customer" who may direct the delivery of goods anywhere.

If Saks loses the case, the first of its kind in Maryland, it might have to pay nearly \$200,000 in back taxes and penalties for the unpaid taxes on furs sold between April, 1981 and February, 1985.

The Court of Appeals has ordered the State to refund some \$12 million in truck "**decals**" receipts, ruling that

the Baltimore Circuit Court erred last fall in permitting the State to continue collecting the levy until the end of this fiscal year, even though it held that the fee was unconstitutional.

Baltimore Circuit Court Judge Joseph H. H. Kaplan had deferred implementation of his finding that the decal fee was an unconstitutional tax because the State's current budget was calculated with its proceeds included. In an opinion written by Judge John C. Eldridge, the appellate court held that it was "irrelevant that State officials prepared the fiscal 1988 budget with the expectation that the State would receive future revenues" from the decal fee.

The **American Trucking Association (ATA)** had successfully challenged the 31-year-old decal fee on the grounds that it unconstitutionally hampered interstate commerce because it was the same for out-of-state truckers, who use Maryland's roads less, as it was for Maryland truckers, who use the roads more.

Attorneys for **KLLM, Inc.**, of Jackson, Miss., and **May Trucking Co.**, of Payette, Florida, joined ATA's lawyers in appealing Kaplan's decision to postpone enforcement of his finding. Kaplan's ruling cited a recent U.S. Supreme Court decision that a similar flat, \$25 fee in Pennsylvania was unconstitutional, which prompted five other states—Arkansas, Indiana, Kentucky, New Jersey and Vermont—to either give up similar taxes or cease collecting them as a result of court rulings.

Maryland was the last state with such a fee. The State has since begun imposing a \$7 fee aimed at covering the administrative costs of issuing the decals.

PUBLIC SAFETY AND CORRECTIONAL SERVICES

A correctional officer of the **Maryland Correctional Training Center** in Hagerstown has filed a \$1 million lawsuit against **Corrections Commissioner Arnold J. Hopkins**, seeking the segregation of inmates with AIDS, as well as information for guards about which inmates have the fatal virus.

William E. Fisher, a 16-year veteran of the State prison system, filed the suit in Washington County Circuit Court. Inmates have filed similar legal actions in U.S. District Court in Baltimore.

AVIATION ADMINISTRATION

A petition has been filed in Anne Arundel County Circuit Court seeking condemnation of a 21.2-acre parcel of land adjacent to **Baltimore-Washington International Airport** which may be needed in the future to build a major east-west runway at BWI.

On behalf of the State, Assistant Attorney General Peter W. Taliaferro has deposited a check for \$1.3 million with the court, saying this represents the fair market value of the property, which is owned by **ABC Partnership**, a group that purchased the land for \$550,000 in 1985 and has been planning to build a large business and hotel complex there.

Opinions

CONSTITUTIONAL LAW First Amendment — Establishment Clause

The question was whether the Board of Education of Prince George's County may open the programs and services of a science center to students who attend sectarian schools.

(Continued from p. 5)

The opinion reviewed the cases applying the Establishment Clause of the First Amendment to various proposed forms of aid to nonpublic school students. Considering the way in which the science center conducts its programs, the opinion concluded, the Establishment Clause would not be violated if these programs were made available to nonpublic school students. (Opinion to Senator Leo E. Green, February 5, 1988.)

CRIMINAL LAW

Constitutional Law — Lesser Included Offenses

The question was whether an indictment or other charging document that explicitly charges only a single crime would be legally sufficient to support a prosecution and conviction on lesser offenses included in the crime charged.

Reviewing the requirements of the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights, the opinion concluded that a charging document need not explicitly designate a lesser offense necessarily included in the crime charged. However, to support a prosecution and conviction for the lesser included offense, the charging document must clearly allege all the essential elements of the offense and the specific conduct charged in connection with that offense. (Opinion to Deputy State's Attorney Alexander J. Palenscar, May 24, 1988.)

HOMEOWNERS ASSOCIATION ACT

Condominiums and Cooperatives

The inquiry posed a series of questions concerning the applicability of the Maryland Homeowners Association Act, Title 11B of the Real Property Article, to condominiums and cooperatives.

The opinion advised that the Homeowners Association Act does not apply to condominiums and cooperatives, as such. Rather, it applies to condominiums and cooperatives

only if they are part of a development, as defined in the Homeowners Association Act. The opinion also advised that if the Homeowners Association Act and the Maryland Condominium Act both applied to a condominium unit, the seller of the unit would be required to provide all of the disclosures required by both acts. (Opinion to Senator Idamae Garrett, May 16, 1988.)

LOCAL GOVERNMENT

Charter Counties — Home Rule Powers

The question was whether the Montgomery County Council had the authority to create a private right of action for violation of a county law. The specific provision at issue created the right of a vehicle owner to sue for damages if the vehicle was towed from private property in violation of a new county towing ordinance.

The opinion advised that a charter home rule county has authority to create an express private right of action as a remedial device in an ordinance authorized by the Express Powers Act. Hence, the opinion concluded, the private right of action in the Montgomery County towing ordinance was valid. (Opinion to County Attorney Clyde H. Sorrell, May 24, 1988.)

Municipalities — Counties — Zoning

The Inquiry concerned the applicability of a municipal zoning ordinance to county-owned facilities within the corporate limits of the municipality. Specifically, the question was whether the Town of Poolesville could require Montgomery County to obtain approval from the town before establishing any publicly owned or operated building or use.

The opinion concluded that the town's zoning ordinance was not applicable to governmental facilities owned or operated by the county within the town's corporate limits. Therefore, the town did not have authority to require the county to obtain town approval before establishing publicly owned or operated buildings or uses needed in carrying out the county's governmental functions. (Opinion to Town Attorney Richard S. McKernon, March 23, 1988.)



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ACTS OF THE GENERAL ASSEMBLY OF MARYLAND OF 1988, CONCERNING
HANDGUNS- PROHIBITION OF MANUFACTURE AND SALE - PROHIBITION
OF STRICT LIABILITY FOR DAMAGES CAUSED BY CERTAIN CRIMINAL
USE OF FIREARMS.

Gene M. Raynor
State Administrative Board of Election Laws

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June 8, 1988



The Honorable William Donald Schaefer
Governor of Maryland
State House
Annapolis, Maryland 21401

Dear Governor Schaefer:

You have requested our opinion on the legal effect of a referendum on only part of Chapter 533 (House Bill 1131) of the Laws of Maryland 1988. Chapter 533 contains two main components: provisions creating a mechanism under which the manufacture and sale of cheap "Saturday Night Specials" will be banned, and provisions overturning a Court of Appeals decision imposing strict liability on the manufacturers and sellers of Saturday Night Specials put to criminal use.

Your specific questions are as follows:

1. Are the handgun control and strict liability provisions of Chapter 533 severable?

2. If they are not severable, may the handgun control portions of the act nevertheless be petitioned to referendum separately? That is, if a petition seeks a referendum on only part of Chapter 533, is that petition valid?

3. If the handgun control portions of the act only may be petitioned to referendum, what is the legal effect of such a limited referendum? That is, would the filing of a valid referendum petition limited to the handgun control portions of Chapter 533 also result in the suspension of the strict liability portions of the act? If the referendum effort succeeded, and the

OPINION OF THE ATTORNEY GENERAL

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10-1-88 No. 88-022 June 8, 1988

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The Honorable William Donald Schaefer
June 8, 1988
Page 2

handgun control provisions were rejected in November, would the strict liability provisions be legally effective?

For the reasons stated below, we conclude that the handgun control and strict liability provisions in Chapter 533 are not severable. The General Assembly would not have passed the one without the other.

Because the two sets of provisions are inseparable, a good argument could be made that neither component alone is subject to referendum. Nevertheless, the Referendum Amendment expressly allows "a part of any Act" to be referred. It does not say, and no court has yet held, that the phrase "part of any Act" in the Referendum Amendment means only a severable part. Without clear precedent, we are unable to conclude that this limitation on the people's right to referendum should be imposed. Hence, in response to your second question, we advise that the handgun control provisions of Chapter 533 may be petitioned to referendum, even if the strict liability provisions are not.

However, because the two parts of Chapter 533 are not severable, a referendum on the one will have an effect on the other comparable to the effect of a successful challenge in court. That is, the filing of a valid referendum petition limited to the handgun control provisions of Chapter 533 would suspend the effectiveness of not only those provisions but also the strict liability provisions. And, if the voters were to reject the handgun control provisions of Chapter 533 at referendum, the strict liability provisions would be legally ineffective as well.

I

The 1988 Handgun Legislation

The 1988 Session of the General Assembly was marked by a contentious debate over handguns. In a classic example of legislative compromise, two wholly disparate approaches to the problem were conjoined in the single piece of legislation that became Chapter 533. This political background is essential to an understanding of the legal issue.

On February 5, 1988, Delegate Hughes and many of his colleagues introduced House Bill 1131, the short title of which was "Handguns - Manufacture and Sale - Prohibition." As originally introduced, this bill would have required the Superintendent of the Maryland State Police to establish a handgun roster. The legislation intended that the Superintendent include in this roster handguns so constructed as to be of legitimate sporting, self-protection, or law enforcement use. Manufacture or sale of handguns not on the roster would be

prohibited. Through this mechanism, handguns having some legitimate purpose could be differentiated from "Saturday Night Specials," the cheap handguns commonly used for criminal purposes. The bill also sought to prohibit the manufacture or sale of handguns with plastic components that could escape detection at airports and public buildings.

On February 3, 1988, Senator Beck and several of his colleagues introduced Senate Bill 484, the short title of which was "Civil Actions - Prohibition of Liability for Damages Caused by Certain Criminal Use of Firearms." This bill was intended to achieve a statutory abrogation of the main holding in Kelley v. R. G. Industries, Inc., 304 Md. 124, 497 A.2d 1143 (1985). In Kelley, the Court of Appeals concluded "that it is entirely consistent with public policy to hold the manufacturers and marketers of Saturday Night Special handguns strictly liable to innocent persons who suffer gunshot injuries from the criminal use of their products." 304 Md. at 157.¹

Both bills were favorably reported out of their respective committees. House Bill 1131 passed the House on March 31 by a vote of 85-53. Senate Bill 484 passed the Senate on March 24 by a vote of 27-18.

Nevertheless, each of the two bills faced stiff opposition in the other body. Senate Bill 484 was stalled in the House Judiciary Committee, unlikely to be reported out. House Bill 1131 faced an uncertain vote in the Senate Judicial Proceedings Committee and a filibuster on the Senate floor at Sessions's end.

The proponents of House Bill 1131 then offered a compromise. As one newspaper described it: "They will agree to overturn a landmark court decision that established liability for the makers of inexpensive handguns in return for a bill to ban the sale of cheap Saturday night specials." Washington Post, April 7, 1988, at A38, col. 1. This account quoted Speaker of the House R. Clayton Mitchell as saying, of the two bills, "'I think the only way to get them is to tie them together.'" Id. at col. 3. See also Baltimore Sun, April 7, 1988, at 1A, col. 7.²

¹ Similar bills were introduced in 1986 (House Bill 1595) and 1987 (Senate Bill 52). Each bill passed in its house of origin but failed in the opposite house.

² The compromise also changed the mechanism for the handgun roster. Instead of leaving the decision about the roster to the Superintendent of State Police alone, the compromise amended House Bill 1131 to create a Handgun Roster Board, comprising law enforcement officials, a gun control advocate, a gun user, a gun manufacturer, and three citizen members.

As press accounts make clear, both proponents and opponents of handgun control recognized the amalgamation of the two bills for what it was: a political compromise that gave both sides some, but not all, of what they wanted. According to the Baltimore Sun, "Gun control advocates on the committee hailed the bill's passage as 'historic,' although some gave decidedly mixed reactions to certain compromises that were made to get the bill to the Senate floor." April 9, 1988, at 9A, col. 4. The Washington Post reported that one gun control opponent "said part of the compromise included a promise from him and other opponents on the committee not to participate in a filibuster." April 9, 1988, at B4, col. 1-2. Senator Beck, the main sponsor of Senate Bill 484, was quoted as saying that "the compromise links the bills in a 'quid per quo' [sic] basis." Carroll County Times, April 8, 1988.

In short, there is no doubt that the following post-session summary is accurate: "The two seemingly contradictory provisions were joined in the same bill by legislators who knew there was little chance either would pass without support from both sides in the debate." Baltimore Sun, May 15, 1988, at 13A, col. 1.

Thus, as enacted and signed into law, Chapter 533 contains the two elements of the compromise. Through the mechanism of the Handgun Roster Board, the manufacture and sale of some handguns will be banned in Maryland.³ At the same time, the Kelley decision will be overturned by a provision, to be codified at Article 27, §36-I(h) of the Maryland Code, eliminating strict liability "for damages of any kind resulting from injuries to another person sustained as a result of the criminal use of any firearm by a third person, unless the person or entity conspired with the third person to commit, or willfully aided, abetted, or

³ The Board is to consider the following characteristics in deciding whether to authorize the manufacture and sale of a handgun:

- "(i) Concealability;
- (ii) Ballistic accuracy;
- (iii) Weight;
- (iv) Quality of materials;
- (v) Quality of manufacture;
- (vi) Reliability as to safety;
- (vii) Caliber;
- (viii) Detectability by the standard security equipment commonly used at airports or courthouses and approved by the Federal Aviation Administration for use at airports in the United States; and
- (ix) Utility for legitimate sporting activities, self-protection, or law enforcement."

Proposed Article 27, §36J(b)(2). A party aggrieved by the Board's final decision about a handgun's inclusion on the roster has a right to judicial review. §36J(f)(5).

caused the commission of the criminal act in which the firearm was used."

II

The Referendum

Article XVI, §1(a) of the Maryland Constitution provides that:

"The people reserve to themselves power known as The Referendum, by petition to have submitted to the registered votes of the State, to approve or reject at the polls, any Act, or part of any Act of the General Assembly"

A referendum question concerning any public general law is to be submitted to the voters at the next congressional election if a "referendum petition against an Act or part of an Act ... [is] signed by three percent of the qualified voters of the State of Maryland, calculated upon the whole number of votes cast for Governor at the last preceding Gubernatorial election, of whom not more than half are residents of Baltimore City, or of any one County." Article XVI, §3(a).⁴ Those seeking a referendum must file at least one-third of the required number of signatures with the Secretary of State before June 1. If the remaining signatures are filed by June 30, the referred law "shall not become a law or take effect until thirty days after its approval by a majority of the electors voting thereon" Article XVI, §2.

In reliance on the language that permits referral of "part of any Act," opponents of the handgun control portions of Chapter 533 have circulated a petition that would bring to referendum only those portions of the law.⁵ On May 31, the petitioners filed their initial set of petitions, purporting to bear the signatures of about 22,000 registered voters.⁶ These petitions do not include proposed Article 27, §36-I(h), the portion of

⁴ The three percent figure at present is 33,044.

⁵ Article XVI, §4 provides, in pertinent part, that: "A petition may consist of several papers, but each paper shall contain the full text, or an accurate summary approved by the Attorney General of the Act or part of Act petitioned upon." These petitions purport to contain "the full text ... of the ... part of Act petitioned upon."

⁶ The Secretary of State accepted the petitions provisionally, pending the issuance of this opinion.

Chapter 533 that would overturn the strict liability cause of action announced in Kelley v. R.G. Industries.⁷

III

Severability Principles and Chapter 533

In general, all Maryland statutes are presumed to be severable. Article I, §23 of the Maryland Code provides as follows:

The provisions of all statutes enacted after July 1, 1973 are severable unless the statute specifically provides that its provisions are not severable. The finding by a court that some provision of a statute is unconstitutional and void does not affect the validity of the remaining portions of that statute, unless the court finds that the remaining valid provisions alone are incomplete and are incapable of being executed in accordance with the legislative intent.

Moreover, Chapter 533 itself contains a severability clause. Section 2 of the Act provides, "That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable."

This latter provision is a standard severability clause. Department of Legislative Reference, Legislative Drafting Manual 1987, at 56. The provision was in House Bill 1131 as introduced; it was not added as part of the compromise.

Neither the general nor the specific severability clause is itself determinative of the question of severability. Rather, the question of severability is in every case a question of legislative intent. Of course, the intent to be ascertained is not the actual legislative intent (which is always that the entire law should be effective), but what the General Assembly would have intended had it known that the statute could be only partially effective. Turner v. State, 299 Md. 565, 576, 474 A.2d 1297 (1974). In this regard, the presence of a severability

⁷ Two other substantive provisions of Chapter 533 were omitted from the petition: a prohibition on the manufacture or sale of handguns on which an identification mark or number has been altered, and a savings clause having to do with the manufacture and sale of rifles. See proposed Article 27, §36-1(c) and (f).

clause in the statute raises a presumption that the statute was intended to be severable, "but the clause is merely declaratory of an established rule of construction; it is 'an aid merely, not an inexorable command.'" Sanza v. Maryland Board of Censors, 245 Md. 319, 338, 226 A.2d 317 (1967) (quoting Dorchy v. Kansas, 264 U.S. 286, 290 (1924) (Brandeis, J.)).

Thus, the presence of a severability clause is not conclusive. The Court of Appeals, in a number of cases, has held that unconstitutional provisions of a statute could not be severed from constitutional provisions, notwithstanding the presence in the statute of a severability clause. E.g., Board of Public Works v. Baltimore County, 288 Md. 678, 684, 421 A.2d 588 (1980); Wheeler v. State, 281 Md. 593, 608-09, 380 A.2d 1052 (1977); State v. Schuller, 280 Md. 305, 320-21, 372 A.2d 1076 (1977); Police Comm'r v. Siegel Enterprises, Inc., 223 Md. 110, 133-34, 162 A.2d 727 (1960). As the Court of Appeals put it in City of Baltimore v. A. S. Abell Co., 218 Md. 273, 290, 145 A.2d 111 (1958), a severability clause "does not operate to save provisions which clearly would not have been enacted into law except upon the assumption that the entire act was valid."

The true test of severability is whether, without the inoperable provision, the statute would still be effective to carry out the dominant legislative intent. Turner, 299 Md. at 577; Siegel Enterprises, Inc., 223 Md. at 134; A.S. Abell Co., 218 Md. at 290-91. In determining legislative intent in this regard, as in any other case, the statute must be considered in light of its context. That context includes legislative history and other external manifestations of the General Assembly's aim or purpose. Kaczorowski v. City of Baltimore, 309 Md. 505, 515, 525 A.2d 628 (1987). Where the legislative history of a statute demonstrates that, without the inoperable provisions, the statute would have an effect contrary to the legislative intent, the conclusion must be that the General Assembly would not have enacted the statute without the inoperable provisions. In that case, the statute's provisions must be construed as nonseverable. See Turner, 299 Md. at 577-80 (reviewing legislative history of Female Sitters Law to conclude that statute was not severable).⁸

Truncating a statute would have an effect contrary to the legislative intent if doing so would upset the political

⁸ This principle is most commonly applied by the courts where an exception to a prohibition is found to be unconstitutional. If the prohibition and exception were enacted together, severing the exception would extend the prohibition to a class that the General Assembly manifestly did not intend to include. E.g., Turner, 299 Md. at 577 and 580. Under those circumstances, the courts conclude that the General Assembly would not have enacted one provision without the other.

compromise essential to the bill's passage. The Court of Appeals has been realistic in viewing the give-and-take that is often the key to a bill's enactment. For example, in Nutwell v. Anne Arundel County, 110 Md. 667, 73 A. 710 (1909), the Court of Appeals considered whether a vehicle licensing provision could be severed from an unconstitutional tax exemption for those vehicles. In holding that the two provisions were not severable, even though the licensing provision could have functioned independently, the Court wrote:

The tax exemption feature of this Act is one of its essential parts, and was no doubt intended to secure its passage. It is inseparably connected with the whole scheme of the Act. It is so important that it cannot be presumed the Act would have passed without it.

110 Md. at 672-73. In another case, the Court observed that "it would be impossible to believe ... that if the act had been presented to the legislature with the features eliminated which we have held invalid it would have been passed by the legislature" Curtis v. Mactier, 115 Md. 386, 399, 80 A. 1066 (1911). Cf. McCorkle v. United States, 559 F.2d 1258, 1262 (4th Cir. 1977).⁹ As the leading treatise summarizes the point, "where the invalid portion was the principal inducement for the passage of the statute, the whole statute must fail. In ruling that the legislature would not have enacted separately the valid part of a statute, courts describe the valid and invalid parts of the act as having been conditions, considerations, or compensations for each other." 2 Sutherland Statutory Construction §44.06, at 502 (4th ed. 1986).

Based on the legislative history, recounted in detail in Part I above, there can be no doubt that the portion of Chapter 533 overturning the Kelley decision on strict liability would not have been enacted if the General Assembly had known that the handgun control portions of the legislation would be rendered ineffective, whether because of a court decision or a referendum petition. Handgun control was "so important [to the compromise] that it cannot be presumed the act would have passed without it." Nutwell, 110 Md. at 673. To quote the Court's phrase from Mactier, it is "impossible to believe" that any provision to overturn Kelley would have passed the House of Delegates if the

⁹ In McCorkle, the Fourth Circuit held that a legislative veto provision essential to the passage of a "compromise bill" on salaries was not severable. Although later case law suggests that unconstitutional legislative veto provisions are generally severable, the court's realism in analyzing the role of the provision in the congressional compromise parallels that of the Court of Appeals.

Senate had defeated the handgun control provisions. Therefore, the two provisions are not severable.

IV

The Right to Referendum on a Part of an Inseverable Law

Article XVI, §1 empowers those voters who are dissatisfied with "part of any Act" to take that part to referendum. Language elsewhere in the Referendum Amendment echoes this right reserved to the people, to look within an act to differentiate the part that they find objectionable from the part that is not. Article XVI, §§3(a) and 4.

Of course, the right to refer a part of a law is not unlimited. Neither the whole of, nor any part of, an "appropriation for the maintenance of State Government" may be referred, because that kind of legislation is not subject to referendum. Kelly v. Marylanders for Sports Sanity, 310 Md. 437, 530 A.2d 245 (1987); Bayne v. Secretary of State, 283 Md. 560, 392 A.2d 67 (1978).¹⁰

Moreover, one can imagine referendum attempts that so parse an enactment as to be misleading, too fragmentary, or otherwise beyond the permissible bounds of the referendum. A petition that seeks, through the device of a referendum, merely to tinker with legislative decisions is probably invalid. For instance, we doubt that a referendum petition could validly seek to transform a prohibition into an authorization by eliminating the word "not," or to change the General Assembly's decision on when to implement a law by referring only the section of an act providing for a delayed effective date. An effort of that kind would cross the line from the negative power of the referendum to affirmative legislation or initiative. "The reserved power, known as the referendum, is negative; it is entirely distinct and fundamentally different from that of the initiative." Baid v. Burke County, 205 N.W. 17, 23 (1925). Cf. Cheeks v. Cedlair Corp., 287 Md. 595, 415 A.2d 225 (1980).

¹⁰ In 22 Opinions of the Attorney General 240 (1937), this office considered the validity of a petition seeking to refer part of a law dealing with alcoholic beverages. The opinion concluded that the Referendum Amendment's provision for petitions on "part of a law" should be construed "to permit a referendum on part of a law, only in cases where the law as an entirety is capable of referendum." 22 Opinions of the Attorney General at 242. Since the entire law in question dealt with a subject excepted from referendum by Article XVI, §8, no part of it could be petitioned to a vote. This conclusion was upheld in Berlin v. Shockley, 174 Md. 442, 199 A. 500 (1938).

However, no such extreme case is presented here. The petitioners are not trying to alter one or another aspect of the handgun control mechanism in Chapter 533; instead, they want to negate it altogether.

Thus, this situation presents the direct question of whether Article XVI permits a referendum on parts of an act that are not severable. We are aware of no case, in Maryland or elsewhere, that directly addresses this question.¹¹

In another context, comparable constitutional language has been construed to forbid the negation of part of an inseparable law. Article II, §17 of the Constitution empowers the Governor "to disapprove of any item or items of any [appropriations] Bills ..., and the part or parts of the Bill approved shall be the law, and the item or items of appropriations disapproved shall be void unless repassed ... over the Executive veto." In 61 Opinions of the Attorney General 247 (1976), this office suggested that, if two items in an appropriation bill had "such manifest interdependence between them as to require both to fall if one is unable to stand," the Governor would not be empowered to veto one item but not the other. 61 Opinions of the Attorney General at 253.¹² Cf. Commonwealth v. Barnett, 48 A. 976, 978 (Pa. 1901) ("part" means a "distinct and severable" part of an appropriation).

¹¹ In 22 Opinions of the Attorney General 240, discussed in note 10 above, Attorney General O'Connor observed, rather cryptically, as follows: "Aside from the technical question of constitutional and statutory construction, it would seem that the reference of part of an Act should not be readily implied, for the reason that in the absence of a separability clause in the Act, the burden rests upon the party challenging the same to establish separability." 22 Opinions of the Attorney General at 242-43. Given that the Constitution expressly provides for reference of part of an act, we do not see how that right is "implied." Rather, the question is whether the constitutional language implies a limit on that right, when a bill is not severable. Since Chapter 533 does contain a severability clause, presumably the passing comment in the opinion about the petitioners' burden would not apply here in any event.

¹² The items in question were found to be severable, so the problem was not squarely posed. See also Nowell v. Harrington, 122 Md. 487, 492-93, 89 A. 1098 (1914) (expressing no opinion on whether the Governor could approve a part and disapprove a part of an inseparable item). Cases from other states tend to view the problem not in terms of a limit on a governor's veto power but rather in terms of the legal consequences after a governor vetoes part of an inseparable unit. See, e.g., State v. Holder, 23 So. 643 (Miss. 1898). But see State ex rel. Wisconsin Telegraph Co. v. Henry, 260 N.W. 486, 99 A.L.R. 1267, 1275 (Wis. 1935) ("It may well be that section 10, Art. 5, Wis. Const., was not intended to empower the governor in vetoing parts of an appropriation bill to disavow or dismember a single piece of legislation which is not severable or so as to leave provisions which are not a complete or fitting subject for a separate enactment by the Legislature.").

We recognize the force of the parallel argument that, when the General Assembly has enacted an inseparable law, the voters should be asked to approve or disapprove that legislative decision as a whole, not a piece of it, just as the Governor should. However, the fact remains that Article XVI has never been construed authoritatively to impose on the petitioners the duty to ascertain, as best they can and at their peril, whether disparate parts of an act are severable and, if the parts are not severable despite a severability clause, to petition the whole act to referendum whether they want to or not. Indeed, the one out-of-state case that dwells at length on the impact of a "partial" referendum of a nonseverable bill nowhere suggests that such a referendum is itself improper. Baird v. Burke County, 205 N.W. 17 (N.D. 1925) (discussed in detail in Part V below).

In short, absent authoritative guidance from the courts, we find it difficult to conclude that severability doctrine should be so fully read into the Referendum Amendment as to prevent part of Chapter 533 from going on the ballot. The power of referendum is "vital," this office has observed, one "which the People have solemnly and expressly reserved to themselves" 63 Opinions of the Attorney General 157, 163 (1978). In the final analysis, we think that doubts should be resolved in favor of the right to referendum.

Therefore, we conclude that the petitions seeking a referendum on only the handgun control portions of Chapter 533, if validated, are legally proper.

V

Effect of Partial Referendum

Our conclusion that the handgun control provisions of Chapter 533 alone may be petitioned to referendum does not resolve the question of what happens to the rest of the act if the petition is valid and if the voters reject the handgun control provisions. That is, if the petition results in the suspension of the handgun control provisions, which would otherwise become effective on July 1, will the strict liability abrogation in §36-I(h) also be suspended? If the referendum results in the negation of the handgun control provisions, will §36-I(h) also be negated? Based on the severability analysis set out above and the compelling reasoning of the one case directly on point discussed below, our answer to both of these questions is "Yes." If the handgun control provisions are rendered ineffective, temporarily or permanently, the Kelley repealer provision will also be ineffective.

In Baird v. Burke County, 205 N.W. 17 (N.D. 1925), the North Dakota Supreme Court applied the usual principles of severability

in the context of that state's referendum provision. The North Dakota Legislature had enacted a law, one part of which levied retroactively a certain tax. Another part of the act ratified certain settlement agreements that had been reached during the period when the tax in question had mistakenly been repealed. Under a provision of the North Dakota Constitution allowing a referendum on a law or part of law, the voters of that state rejected the provision to ratify the settlements, which was the only section of the law petitioned to referendum. Thus, the question before the court was whether the provision applying the tax retroactively, which had not been put to referendum, could be given effect.

The North Dakota Supreme Court summarized as follows its rule of severability, substantially identical to that of the Maryland Court of Appeals: "If striking out a part of the law results in a substantial departure from the legislative purpose, or effects an object not within the contemplation of the lawmaking body when the law was passed, and it cannot be presumed that the law would have been passed without the void part, the entire statute falls." 205 N.W. at 23. The court then held that the same principle is to be applied when the excision of a part of a law is the result of a referendum, instead of a court decision:

It is strongly urged that the same result must follow when, through the referendum, the legislative purpose is completely frustrated or altered by striking a portion. Upon what sound principle can a distinction be drawn under the facts in this case? We see none.

Id. The court continued: "From the standpoint of the effect of an adverse referendum of a part of an enactment upon the legislative intention, it is difficult to discover any distinction in principle between excision of a section or a part of a law by the referendum and the same operation through the decision of a court that such section or part is void because unconstitutional." Id.

Finally, the court concluded that, because the provision defeated in the referendum was a main inducement to the enactment of the statute, the statute in its entirety could not survive the excision of that provision:

We conclude that if the result of striking from a law an item, a part, clause, or section, be to take from it the principal inducement that led to its passage in the Legislature, and to leave a portion which, standing alone, in reality is a fundamental perversion of the purpose the lawmaking body intended to effect when the whole was enacted, the effect of

such a referendum is to nullify the whole act as if the statute had been disapproved by the people in its entirety.

205 N.W. at 24.

We believe that the Court of Appeals would adopt the same approach. In any realistic assessment of the process that led to the enactment of Chapter 533, a court would find it a "fundamental perversion" of legislative intent if handgun control were nullified but the Kelley repealer survived. Hence, if the referendum process suspends or nullifies the one, it will have the same effect on the other. The filing of a valid petition will suspend all of Chapter 533.¹³ Therefore, a plaintiff will continue to have a cause of action under Kelley until the referendum. If the referendum results in the rejection of handgun control, Kelley will remain part of this State's common law.

We recognize that this outcome presents the voters with a question that is incomplete, in an important sense. A voter who votes against handgun control is also voting, in effect, against the abrogation of Kelley. However, one can envision other situations in which a referendum would have important collateral consequences not stated in the ballot question itself. For example, suppose that a newly enacted State statute were a prerequisite to the receipt of millions of dollars in federal aid. A successful referendum on that statute would result in the loss of the money - a collateral consequence of major importance nowhere reflected in the wording of the referendum.

A referendum on part of Chapter 533 will inevitably be influenced by factors that go beyond the ballot question itself, one of which might be the collateral effect on the Kelley decision. In this instance as in others, the referendum process works well only if the debate about a question educates the voters fully and fairly. See Article 33, §23-4 of the Maryland Code.

¹³ Significantly, Article XVI does not contain language, comparable to that in referendum provisions of other state constitutions adopted contemporaneously, creating a special rule of severability when part of a law is put to referendum. For example, Article II, §1(d) of the Washington Constitution provides that: "The filing of a referendum petition against one or more items, sections or parts of any act, law or bill shall not delay the remainder of the measure from becoming operative." See also Kentucky Constitution, §171; North Dakota Constitution, Article II, §25; Ohio Constitution, Article II, §1c.

V

Conclusion

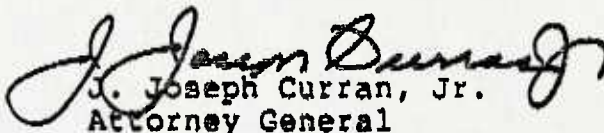
In summary, it is our opinion that:

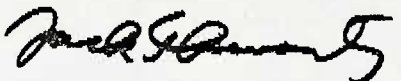
1. Although Chapter 533 of the Laws of Maryland 1988 comprises two strikingly different elements, the two are not severable. The manifest legislative intent was to fashion a compromise in which handgun control and the abrogation of Kelley v. R.G. Industries would stand or fall together.

2. Although the issue is not free from doubt, Article XVI, §1 of the Maryland Constitution should be read to permit a petition to refer only the handgun control provisions of Chapter 533, despite the inseverability of that provision from the act's other provisions.

3. Because no part of Chapter 533 is severable, if the handgun control provisions are suspended though the filing of a referendum petition, the entire act - including the abrogation of Kelley's strict liability holding - will be suspended. If the handgun control provisions are nullified at referendum, the entire act will be nullified.

Very truly yours,


J. Joseph Curran, Jr.
Attorney General


Jack Schwartz
Chief Counsel
Opinions and Advice

JS/kmi

B:KMI:JS40

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HOUSE BILL No. 1131
(81r2283)

E1

Introduced by Delegates Hughes, Genn, Frosh, Cummings, Oaks,
Boston, M. Murphy, Montague, Rawlings, Exum, Menes, Campbell,
Gordon, Anderson, Perkins, Woods, Kreamer, Shapiro, Harrison,
Douglass, Rosenberg, Franchot, Blumenthal, Jones, Lawlah,
Kirk, Young, Fulton, Curran, Hergenroeder, Pinsky, Dembrow,
Maddox, and Currie

Read and Examined by Proofreader:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor,
for his approval this _____ day of _____
at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 Handguns - Prohibition of Manufacture and Sale - Prohibition
3 of Strict Liability for Damages Caused by Certain Criminal Use
4 of Firearms

5 FOR the purpose of prohibiting the manufacture for distribution
6 or sale, sale, and offer for sale of certain handguns;
7 establishing a Handgun Roster Board in the Department of
8 Public Safety and Correctional Services; requiring the
9 Superintendent--of--the--Maryland--State--Police Board to
10 establish and maintain-a publish by a certain date a handgun
11 roster, and thereafter maintain the handgun roster;
12 establishing certain considerations before a handgun is
13 placed on the handgun roster; providing-that-certain-types
14 of-handguns--may--not--be--placed--on--the--handgun--roster;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by
amendment or deleted from the law by amendment.

Script denotes opposite chamber/conference committee
amendments.

1 defining certain terms; authorizing the Superintendent of
 2 the Maryland State Police to seek injunctive relief under
 3 certain circumstances; authorizing the revocation of certain
 4 licenses for willful violations of this Act; ~~limiting civil~~
 5 ~~liability concerning certain handguns; prohibiting issuance~~
 6 ~~of a permit to carry certain handguns;~~ establishing
 7 procedures for hearings and appeals; ~~authorizing~~ requiring
 8 the Superintendent Secretary of Public Safety and
 9 Correctional Services to adopt rules and regulations to
 10 implement this Act; making the provisions of this Act
 11 severable; providing for publication of the handgun roster;
 12 providing for judicial review of certain actions by the
 13 Superintendent Board; providing that compliance with the
 14 prohibition against the manufacture for distribution or
 15 sale, sale, or offer for sale of certain handguns is not
 16 required until a certain date; making certain technical
 17 changes; providing that a person or entity may not be held
 18 strictly liable for damages resulting from injuries to
 19 another person sustained as a result of the criminal use of
 20 any firearm by a third person; and generally relating to
 21 handguns.

22 BY repealing and reenacting, with amendments,

23 Article 27 - Crimes and Punishments
 24 Section 36E(a), 36F and 443(h)
 25 Annotated Code of Maryland
 26 (1987 Replacement Volume)

27 BY adding to

28 Article 27 - Crimes and Punishments
 29 Section 36-I and 36J
 30 Annotated Code of Maryland
 31 (1987 Replacement Volume)

32 Preamble

33 WHEREAS, "Saturday--Night--Specials" Certain handguns
 34 generally include several of the following characteristics:
 35 easily concealable, ballistically inaccurate, relatively light in
 36 weight, of low quality and manufacture, unreliable as to safety,
 37 and of low calibre; and

38 WHEREAS, "Saturday-Night-Specials" Certain handguns have no
 39 legitimate socially useful purpose and are not suitable for law
 40 enforcement, self-protection, or sporting activities; and

41 WHEREAS, Only the prohibition of the manufacture and sale of
 42 these "Saturday--Night--Specials" Handguns will remove these
 43 handguns from the streets of this State; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 27 - Crimes and Punishments

36E-

{a}--A-permit-to-carry-a-handgun-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};-if:

{1}--THE-HANDGUN-FOR-WHICH-THE-PERMIT-IS-REQUESTED-IS OF-A-TYPE-THAT-IS-INCLUDED-ON-THE-HANDGUN-ROSTER;-AND

{2}--THE-SUPERINTENDENT-FINDS-THAT-THE-PERSON:

{1}-{1}-Is-eighteen-years-of-age-or-older;-and

{2}-{II}-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;-§ 925(c)-of-the-United-States-Code;-and

{3}-{III}-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}-{IV}-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}-{V}-Has;-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}-{VI}-Has;-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-a finding-that-such-permit-is-necessary-as-a-reasonable-precaution against-apprehended-danger;

36F.

(A) AS USED IN THIS SUBHEADING, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

1 [(a) The term "handgun" as used in this subheading shall
2 include] (B) "HANDGUN" MEANS any pistol, revolver, or other
3 firearm capable of being concealed on the person, including a
4 short-barreled shotgun and a short-barreled rifle as these terms
5 are defined below, except it [shall] DOES not include a shotgun,
6 rifle or antique firearm as those terms are defined below.

7 [(1) The term "antique] (C) "ANTIQUE firearm" means
8 [--]:

9 [(a)] (1) Any firearm (including any firearm with a
10 matchlock, flintlock, percussion cap, or similar type of ignition
11 system) manufactured in or before 1898; and

12 [(b)] (2) Any replica of any firearm described in
13 [subparagraph (a)] PARAGRAPH (1) OF THIS SUBSECTION if such
14 replica [--]:

15 (i) Is not designed or redesigned for using
16 rimfire or conventional centerfire fixed ammunition, or

17 (ii) Uses rimfire or conventional centerfire
18 fixed ammunition which is no longer manufactured in the United
19 States and which is not readily available in the ordinary
20 channels of commercial trade.

21 [(2) The term "rifle"] (D) "RIFLE" means a weapon
22 designed or redesigned, made or remade, and intended to be fired
23 from the shoulder and designed or redesigned and made or remade
24 to use the energy of the explosive in a fixed metallic cartridge
25 to fire only a single projectile through a rifled bore for each
26 single pull of the trigger.

27 [(3) The term "short-barreled] (E) "SHORT-BARRELED
28 shotgun" means a shotgun having one or more barrels less than
29 eighteen inches in length and any weapon made from a shotgun
30 (whether by alteration, modification, or otherwise) if such
31 weapon as modified has an overall length of less than twenty-six
32 inches.

33 [(4) The term "short-barreled] (F) "SHORT-BARRELED
34 rifle" means a rifle having one or more barrels less than sixteen
35 inches in length and any weapon made from a rifle (whether by
36 alteration, modification, or otherwise) if such weapon, as
37 modified, has an overall length of less than twenty-six inches.

38 [(5) The term "shotgun"] (G) "SHOTGUN" means a
39 weapon designed or redesigned, made or remade, and intended to be
40 fired from the shoulder and designed or redesigned and made or
41 remade to use the energy of the explosive in a fixed shotgun
42 shell to fire through a smooth bore either a number of ball shot
43 or a single projectile for each single pull of the trigger.

44 [(b) The term "vehicle" as used in this subheading shall
45 include any motor vehicle, as defined in Title 11 of the
46 Transportation Article, trains, aircraft, and vessels.]

(H) "HANDGUN ROSTER" MEANS THE ROSTER OF PERMITTED HANDGUNS
COMPILED BY THE SUPERINTENDENT BOARD UNDER § 36-I OF THIS
ARTICLE.

[(c) The term "law-enforcement personnel" shall mean]

(I) "LAW ENFORCEMENT PERSONNEL" MEANS:

(1) [any] 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]; AND

(2) [any] 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.

~~(J) -- "SATURDAY--NIGHT--SPECIAL"--MEANS---A---CHEAP,---EASILY
CONCEALABLE--HANDGUN--THAT--IS--NOT--SUITABLE--FOR LEGITIMATE-PURPOSES
FOR:~~

~~(1) --LAW-ENFORCEMENT;~~

~~(2) --SELF-PROTECTION;--OR~~

~~(3) --SPORTING-ACTIVITIES;~~

~~(K) (J) "SUPERINTENDENT" MEANS THE SUPERINTENDENT OF THE
MARYLAND STATE POLICE, OR THE SUPERINTENDENT'S DESIGNEE.~~

~~(L) (K) "VEHICLE" MEANS ANY MOTOR VEHICLE, AS DEFINED IN
TITLE 11 OF THE TRANSPORTATION ARTICLE, TRAINS, AIRCRAFT, AND
VESSELS.~~

(L) "BOARD" MEANS THE HANDGUN ROSTER BOARD.

36-I.

(A) EXCEPT FOR THE MANUFACTURE OF PROTOTYPE MODELS REQUIRED
FOR DESIGN, DEVELOPMENT, TESTING, AND APPROVAL BY THE BOARD, A
PERSON MAY NOT MANUFACTURE -A- FOR DISTRIBUTION OR SALE ANY
HANDGUN THAT IS NOT INCLUDED ON THE HANDGUN ROSTER IN THE STATE.

(B) A PERSON MAY NOT SELL OR OFFER FOR SALE IN THE STATE A
HANDGUN MANUFACTURED AFTER 1970 JANUARY 1, 1985 THAT IS NOT ON
THE HANDGUN ROSTER.

(C) A PERSON MAY NOT MANUFACTURE, SELL, OR OFFER FOR SALE
ANY HANDGUN ON WHICH THE MANUFACTURER'S IDENTIFICATION MARK OR
NUMBER IS OBLITERATED, REMOVED, CHANGED, OR OTHERWISE ALTERED.

1 ~~{e} (D) {1}~~ THE SUPERINTENDENT MAY SEEK A PERMANENT OR
2 TEMPORARY INJUNCTION FROM A CIRCUIT COURT TO ENJOIN THE WILLFUL
3 AND CONTINUOUS MANUFACTURE, SALE, OR OFFER FOR SALE, IN VIOLATION
4 OF THIS SECTION, OF A HANDGUN NOT INCLUDED ON THE HANDGUN ROSTER.

5 ~~{2}--WHEN--SEEKING--AN--INJUNCTION--UNDER--THIS--SECTION,~~
6 ~~THE--SUPERINTENDENT--MAY--NOT--BE--REQUIRED--TO--~~

7 ~~{i}--FILE--A--BOND--OR~~

8 ~~{ii}--SHOW--A--LACK--OF--ADEQUATE--REMEDY--AT--LAW--~~

9 ~~{B} (E)~~ SUBJECT TO THE PROVISIONS OF THE ADMINISTRATIVE
10 PROCEDURE ACT, THE SUPERINTENDENT SECRETARY OF PUBLIC SAFETY AND
11 CORRECTIONAL SERVICES SHALL ADOPT RULES AND REGULATIONS NECESSARY
12 TO CARRY OUT THE PROVISIONS OF THIS ACT.

13 ~~{E}--A--PERSON--MAY--NOT--BE--HELD--LIABLE--IN--A--CIVIL--ACTION--FOR~~
14 ~~THE--MANUFACTURE--OR--SALE--OF--A--HANDGUN--SOLELY--ON--THE--GROUNDS--THAT~~
15 ~~IT--IS--A--SATURDAY-NIGHT-SPECIAL--IF--THE--HANDGUN--IS--OF--A--TYPE--THAT~~
16 ~~IS--INCLUDED--ON--THE--HANDGUN--ROSTER--~~

17 (F) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO INTERFERE
18 WITH A PERSON'S ABILITY TO MANUFACTURE, SELL, OR OFFER TO SELL
19 RIFLES OR OTHER WEAPONS NOT DEFINED AS HANDGUNS IN SECTION §
20 36F(B) OF THIS ARTICLE.

21 (G) (1) ANY PERSON WHO MANUFACTURES A HANDGUN, FOR
22 DISTRIBUTION OR SALE, IN VIOLATION OF THIS SECTION SHALL BE
23 GUILTY OF A MISDEMEANOR AND SHALL BE FINED NOT MORE THAN \$10,000
24 FOR EACH VIOLATION.

25 (2) ANY PERSON OR ENTITY WHO SELLS OR OFFERS TO SELL
26 A HANDGUN IN VIOLATION OF THIS SECTION SHALL BE GUILTY OF A
27 MISDEMEANOR AND SHALL BE FINED NOT MORE THAN \$2,500 FOR EACH
28 VIOLATION.

29 (3) FOR PURPOSES OF THIS SUBSECTION, EACH HANDGUN
30 MANUFACTURED, SOLD, OR OFFERED FOR SALE IN VIOLATION OF THIS
31 SUBSECTION SHALL BE A SEPARATE VIOLATION.

32 (H) (1) A PERSON OR ENTITY MAY NOT BE HELD STRICTLY LIABLE
33 FOR DAMAGES OF ANY KIND RESULTING FROM INJURIES TO ANOTHER PERSON
34 SUSTAINED AS A RESULT OF THE CRIMINAL USE OF ANY HANDGUN FIREARM
35 BY A THIRD PERSON, UNLESS THE PERSON OR ENTITY CONSPIRED WITH THE
36 THIRD PERSON TO COMMIT, OR WILLFULLY AIDED, ABETTED, OR CAUSED
37 THE COMMISSION OF THE CRIMINAL ACT IN WHICH THE HANDGUN FIREARM
38 WAS USED.

39 (2) THIS SECTION MAY NOT BE CONSTRUED TO OTHERWISE
40 NEGATE, LIMIT, OR MODIFY THE DOCTRINE OF NEGLIGENCE OR STRICT
41 LIABILITY RELATING TO ABNORMALLY DANGEROUS PRODUCTS OR ACTIVITIES
42 AND DEFECTIVE PRODUCTS.

43 36J.

MENTS
BY THE
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1 (A) (1) THERE IS A HANDGUN ROSTER BOARD IN THE DEPARTMENT
2 OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

3 (2) THE BOARD SHALL CONSIST OF 9 MEMBERS, APPOINTED
4 BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, EACH
5 OF WHOM SHALL SERVE FOR A TERM OF 4 YEARS.

6 (3) THE MEMBERS OF THE BOARD SHALL BE:

7 (I) THE SUPERINTENDENT;

8 (II) A REPRESENTATIVE OF THE ASSOCIATION OF
9 CHIEFS OF POLICE;

10 (III) A REPRESENTATIVE OF THE MARYLAND STATE'S
11 ATTORNEYS' ASSOCIATION;

12 (IV) A REPRESENTATIVE OF A HANDGUN MANUFACTURER
13 IN, PREFERABLY A MANUFACTURER FROM THE STATE;

14 (V) A REPRESENTATIVE OF THE MARYLAND CHAPTER OF
15 THE NATIONAL RIFLE ASSOCIATION;

16 (VI) A REPRESENTATIVE OF THE MARYLANDERS
17 AGAINST HANDGUN ABUSE; AND

18 (VII) 3 CITIZEN MEMBERS.

19 (4) THE SUPERINTENDENT SHALL SERVE AS CHAIRMAN OF THE
20 BOARD.

21 (5) THE BOARD SHALL MEET AT THE REQUEST OF THE
22 CHAIRMAN OF THE BOARD OR BY REQUEST OF A MAJORITY OF THE MEMBERS.

23 (B) (1) THERE IS A HANDGUN ROSTER THAT THE
24 SUPERINTENDENT BOARD SHALL COMPILE AND PUBLISH IN THE MARYLAND
25 REGISTER BY JULY 1, 1989, AND THEREAFTER MAINTAIN, OF PERMITTED
26 HANDGUNS THAT ARE PRIMARILY USEFUL FOR LEGITIMATE SPORTING,
27 SELF-PROTECTION, OR LAW ENFORCEMENT PURPOSES.

28 (2) THE SUPERINTENDENT BOARD SHALL CONSIDER, AT A
29 MINIMUM, THE FOLLOWING CHARACTERISTICS OF A HANDGUN IN
30 DETERMINING WHETHER ANY HANDGUN SHOULD BE PLACED ON THE HANDGUN
31 ROSTER:

32 (I) CONCEALABILITY;

33 (II) BALLISTIC ACCURACY;

34 (III) WEIGHT;

35 (IV) QUALITY OF MATERIALS;

36 (V) QUALITY OF MANUFACTURE;

1 (VI) RELIABILITY AS TO SAFETY; AND

2 (VII) CALIBER;

3 (VIII) DETECTABILITY BY THE STANDARD SECURITY
4 EQUIPMENT COMMONLY USED AT AIRPORTS OR COURTHOUSES AND APPROVED
5 BY THE FEDERAL AVIATION ADMINISTRATION FOR USE AT AIRPORTS IN THE
6 UNITED STATES; AND

7 (IX) UTILITY FOR LEGITIMATE SPORTING
8 ACTIVITIES, SELF-PROTECTION, OR LAW ENFORCEMENT.

9 (3) IN DETERMINING WHETHER ANY HANDGUN SHOULD BE
10 PLACED ON THE HANDGUN ROSTER, THE BOARD SHALL CAREFULLY CONSIDER
11 EACH OF THE CHARACTERISTICS LISTED UNDER PARAGRAPH (2) OF THIS
12 SUBSECTION AND MAY NOT PLACE UNDUE WEIGHT ON ANY ONE
13 CHARACTERISTIC.

14 ~~(3)~~ (4) THE SUPERINTENDENT BOARD SHALL SEMIANNUALLY:

15 (I) PUBLISH THE HANDGUN ROSTER IN THE MARYLAND
16 REGISTER; AND

17 (II) SEND A COPY OF THE HANDGUN ROSTER TO ALL
18 PISTOL AND REVOLVER DEALERS THAT ARE LICENSED UNDER SECTION 443
19 OF THIS ARTICLE.

20 ~~(4)--NOTHING--IN--THIS--SUBSECTION--SHALL--REQUIRE--THE~~
21 ~~SUPERINTENDENT--TO--SEND--ANY--NOTICES--OR--COPIES--OF--THE--HANDGUN~~
22 ~~ROSTER--TO--DEALERS--MORE--THAN--2--TIMES--A--YEAR.~~

23 ~~(B)~~ (C) (1) THE SUPERINTENDENT BOARD MAY PLACE A HANDGUN ON
24 THE HANDGUN ROSTER UPON THE SUPERINTENDENT'S BOARD'S OWN
25 INITIATIVE OR.

26 (2) ON THE SUCCESSFUL PETITION OF ANY PERSON, SUBJECT
27 TO THE PROVISIONS OF SUBSECTIONS (B) (E) THROUGH (G) AND (F)
28 OF THIS SECTION, THE BOARD SHALL PLACE A HANDGUN ON THE HANDGUN
29 ROSTER UNLESS:

30 (1) A COURT, AFTER ALL APPEALS ARE EXHAUSTED, HAS
31 DETERMINED MADE A FINDING THAT THE HANDGUN IS A SATURDAY-NIGHT
32 SPECIAL FOR THE PURPOSE OF CIVIL LIABILITY;

33 (2) ~~THE SUPERINTENDENT DETERMINES THAT THE HANDGUN~~
34 ~~IS NOT DETECTABLE BY THE STANDARD SECURITY EQUIPMENT COMMONLY~~
35 ~~USED AT AIRPORTS OR COURTHOUSES AND APPROVED BY THE FEDERAL~~
36 ~~AVIATION ADMINISTRATION FOR USE AT AIRPORTS IN THE UNITED STATES;~~
37 ~~OR~~

38 (3) ~~THE SUPERINTENDENT DETERMINES THAT THE HANDGUN IS~~
39 ~~NOT OF A TYPE PRIMARILY USEFUL FOR LEGITIMATE SPORTING~~
40 ~~ACTIVITIES, SELF-PROTECTION, OR LAW ENFORCEMENT~~ DECISION OF THE
41 BOARD SHALL BE AFFIRMED.

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158

1 ~~(e)~~ (D) (1) A PERSON WHO PETITIONS FOR PLACEMENT OF A
2 HANDGUN ON THE HANDGUN ROSTER SHALL BEAR THE BURDEN OF PROOF THAT
3 THE HANDGUN SHOULD BE PLACED ON THE ROSTER.

4 (2) A PETITION TO PLACE A HANDGUN ON THE HANDGUN
5 ROSTER SHALL BE SUBMITTED IN WRITING AND SHALL BE IN THE FORM AND
6 MANNER PRESCRIBED BY THE SUPERINTENDENT BOARD.

7 ~~(D)~~ (E) (1) UPON RECEIPT OF A PETITION TO PLACE A HANDGUN
8 ON THE HANDGUN ROSTER, THE SUPERINTENDENT BOARD SHALL, WITHIN 45
9 DAYS OF RECEIPT OF THE PETITION:

10 ~~(1)~~ (I) DENY THE PETITION IN WRITING, STATING THE
11 REASONS FOR DENIAL; OR

12 ~~(2)~~ (II) APPROVE THE PETITION AND PUBLISH A
13 DESCRIPTION OF THE HANDGUN IN THE MARYLAND REGISTER, INCLUDING
14 NOTICE THAT ANY OBJECTION TO ITS INCLUSION IN THE HANDGUN ROSTER
15 MUST BE FILED WITH THE SUPERINTENDENT BOARD WITHIN 30 DAYS.

16 (2) IF THE SUPERINTENDENT BOARD FAILS TO DENY OR
17 APPROVE A PETITION WITHIN THE TIME REQUIRED UNDER PARAGRAPH (1)
18 OF THIS SUBSECTION, THE PETITION SHALL BE CONSIDERED DENIED.

19 ~~(E)~~ (F) (1)(I) IF THE SUPERINTENDENT BOARD DENIES A
20 PETITION TO PLACE A HANDGUN ON THE HANDGUN ROSTER, THE BOARD
21 SHALL NOTIFY THE PETITIONER BY CERTIFIED MAIL, RETURN RECEIPT
22 REQUESTED.

23 (II) THE PETITIONER MAY REQUEST A HEARING
24 WITHIN 15 DAYS FROM THE DATE THAT THE SUPERINTENDENT'S BOARD'S
25 DENIAL LETTER IS MAILED RECEIVED.

26 (2) THE SUPERINTENDENT BOARD SHALL, WITHIN A
27 REASONABLE TIME NOT TO EXCEED ~~120~~ 90 DAYS AFTER RECEIVING A
28 REQUEST FOR A HEARING, BOTH HOLD A HEARING ON THE PETITION AND
29 ISSUE A WRITTEN FINAL DECISION ON THE PETITION.

30 (3) ~~THE--SUPERINTENDENT--MAY--PERMIT--ANY--INTERESTED~~
31 ~~PERSON--TO--PARTICIPATE--AS--A--PARTY--IN--THE--HEARING~~ THE
32 SUPERINTENDENT BOARD SHALL PROVIDE NOTICE OF THE HEARING IN
33 ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

34 (4) AT A HEARING HELD UNDER THIS SUBSECTION, THE
35 PETITIONER SHALL ~~SUBMIT--EVIDENCE--FROM--AN--EXPERT--SATISFACTORY~~
36 HAVE THE BURDEN OF PROVING TO THE SUPERINTENDENT BOARD, THAT THE
37 HANDGUN AT ISSUE IS ~~PRIMARY~~ USEFUL FOR LEGITIMATE SPORTING, LAW
38 ENFORCEMENT, OR SELF-PROTECTION PURPOSES, AND THEREFORE SHOULD BE
39 PLACED ON THE ROSTER.

40 (5) ANY AGGRIEVED PARTY OF RECORD MAY APPEAL WITHIN
41 30 DAYS A FINAL DECISION OF THE SUPERINTENDENT BOARD IN
42 ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

1 (6) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS
2 REQUIRING THE SUPERINTENDENT BOARD TO TEST ANY HANDGUN OR HAVE
3 ANY HANDGUN TESTED AT THE SUPERINTENDENT'S BOARD'S EXPENSE.

4 (5)--NOTHING--IN--THIS--SECTION--SHALL--BE--CONSTRUED--AS
5 REQUIRING--THE--SUPERINTENDENT--TO--TEST--ANY--HANDGUN--OR--HAVE--ANY
6 HANDGUN--TESTED--AT--THE--SUPERINTENDENT'S--EXPENSE--

7 (6)--ONCE--A--PETITION--TO--PLACE--A--PARTICULAR--HANDGUN--ON
8 THE--HANDGUN--ROSTER--IS--DENIED--WITH--ALL--APPEALS--EXHAUSTED--THE
9 SUPERINTENDENT--MAY--NOT--PLACE--THAT--HANDGUN--ON--THE--HANDGUN--ROSTER--

10 (P)--(1)--IF--A--TIMELY--OBJECTION--TO--PLACEMENT--OF--A--HANDGUN
11 APPROVED--BY--THE--SUPERINTENDENT--ON--THE--HANDGUN--ROSTER--IS--RECEIVED--
12 THE--SUPERINTENDENT--SHALL--WITHIN--30--DAYS--OF--RECEIVING--THE
13 OBJECTIONS--EITHER--DISMISS--THE--OBJECTIONS--IN--WRITING--OR--BASED
14 UPON--THEM--NOT--PLACE--THE--HANDGUN--ON--THE--HANDGUN--ROSTER--

15 (2)--IF--THE--SUPERINTENDENT--DECIDES--NOT--TO--PLACE--A
16 HANDGUN--ON--THE--HANDGUN--ROSTER--BASED--UPON--OBJECTIONS--THE
17 SUPERINTENDENT--SHALL--INFORM--ANY--PETITIONER--FOR--THAT--HANDGUN--OF
18 THAT--DECISION--IN--WRITING--

19 (6)--(1)--ANY--PETITIONER--OBJECTOR--OR--OTHER--PARTY--AGGRIEVED
20 BY--A--FINAL--DECISION--OF--THE--SUPERINTENDENT--MAY--WITHIN--30--DAYS--OF
21 THE--SUPERINTENDENT'S--FINAL--DECISION--APPEAL--THAT--DECISION--TO--THE
22 CIRCUIT--COURT--IN--ACCORDANCE--WITH--THE--ADMINISTRATIVE--PROCEDURE
23 ACT--

24 (2)--THE--SUPERINTENDENT--MAY--APPEAL--AN--ADVERSE--COURT
25 DECISION--TO--THE--COURT--OF--SPECIAL--APPEALS--

26 443.

27 (h) The Superintendent of the Maryland State Police
28 [and/]or his duly authorized agent or agents shall revoke an
29 issued pistol and revolver dealer's license, by written
30 notification forwarded to the licensee, under any of the
31 following circumstances:

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

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

HOUSE BILL No. 1131

11

(3) IF THE LICENSEE HAS WILLFULLY MANUFACTURED,
OFFERED TO SELL, OR SOLD A HANDGUN NOT ON THE HANDGUN ROSTER IN
VIOLATION OF § 36-I OF THIS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That if any provision
of this Act or the application thereof to any person or
circumstance is held invalid for any reason in a court of
competent jurisdiction, the invalidity does not affect other
provisions or any other application of this Act which can be
given effect without the invalid provision or application, and
for this purpose the provisions of this Act are declared
severable.

SECTION 3. AND BE IT FURTHER ENACTED, That compliance with
the prohibition of this Act against the manufacture for
distribution or sale, sale, or offer for sale of handguns is not
required until January 1, 1990.

SECTION -3- 4. AND BE IT FURTHER ENACTED, That this Act
shall take effect July 1, 1988.

Approved:

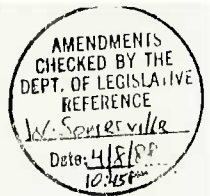
Governor.

Speaker of the House of Delegates.

President of the Senate.

BY: The Judicial Proceedings Committee

AMENDMENTS TO HOUSE BILL NO. 1131
(Third Reading File Bill)



AMENDMENT NO. 1

On page 1, in line 2, before "Manufacture" insert "Prohibition of"; in the same line, after "Prohibition" insert "of Strict Liability for Damages Caused by Certain Criminal Use of Firearms"; in line 4, after "handguns;" insert "establishing a Handgun Roster Board in the Department of Public Safety and Correctional Services;"; in line 5, strike "Superintendent of the Maryland State Police" and substitute "Board"; strike beginning with "providing" in line 9 down through "roster;" in line 10; in line 11, after "Superintendent" insert "of the Maryland State Police"; strike beginning with "limiting" in line 14 down through "handguns;" in line 16; in line 17, strike "Superintendent" and substitute "Secretary of Public Safety and Correctional Services"; in line 21, strike "Superintendent" and substitute "Board"; and in line 25, after "changes;" insert:

"providing that a person or entity may not be held strictly liable for damages resulting from injuries to another person sustained as a result of the criminal use of any firearm by a third person;". On page 2, in line 3 strike "36E(a)."

AMENDMENT NO. 2

On page 2, after line 10, insert:

"Preamble

WHEREAS, "Saturday Night Specials" generally include several of the following characteristics: easily concealable, ballistically inaccurate, relatively light in weight, of low quality and manufacture, unreliable as to safety, and of low calibre; and

WHEREAS, "Saturday Night Specials" have no legitimate socially useful purpose and are not suitable for law enforcement, self-protection, or sporting activities; and

WHEREAS, Only the prohibition of the manufacture and sale of these "Saturday Night Specials" will remove these handguns from the streets of this State; now, therefore,.

AMENDMENT NO. 3

On page 4, strike in their entirety lines 30 through 35, inclusive; and in lines 36 and 38, strike "(K)" and "(L)", respectively, and substitute "(J)" and "(K)", respectively. On page 5, after line 6, insert:

"(C) A PERSON MAY NOT MANUFACTURE, SELL, OR OFFER FOR SALE ANY HANDGUN ON WHICH THE MANUFACTURER'S IDENTIFICATION MARK OR NUMBER IS OBLITERATED, REMOVED, CHANGED, OR OTHERWISE ALTERED." On lines 7 and 15, strike "(C)"

ADOPTED
BY THE HOUSE
4/9/88
DATE

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and "(D)", respectively, and substitute "(D)" and "(E)", respectively.

AMENDMENT NO. 4

On page 5, strike in their entirety lines 17 through 20, inclusive; and after line 24, insert:

"(G) (1) ANY PERSON WHO MANUFACTURES A HANDGUN, FOR DISTRIBUTION OR SALE, IN VIOLATION OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR AND SHALL BE FINED NOT MORE THAN \$10,000 FOR EACH VIOLATION.

(2) ANY PERSON OR ENTITY WHO SELLS OR OFFERS TO SELL A HANDGUN IN VIOLATION OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR AND SHALL BE FINED NO MORE THAN \$2,500 FOR EACH VIOLATION.

(3) FOR PURPOSES OF THIS SUBSECTION, EACH HANDGUN MANUFACTURED, SOLD, OR OFFERED FOR SALE IN VIOLATION OF THIS SUBSECTION SHALL BE A SEPARATE VIOLATION.

(H) (1) A PERSON OR ENTITY MAY NOT BE HELD STRICTLY LIABLE FOR DAMAGES OF ANY KIND RESULTING FROM INJURIES TO ANOTHER PERSON SUSTAINED AS A RESULT OF THE CRIMINAL USE OF ANY HANDGUN BY A THIRD PERSON, UNLESS THE PERSON OR ENTITY CONSPIRED WITH THE THIRD PERSON TO COMMIT, OR WILLFULLY AIDED, ABETTED, OR CAUSED THE COMMISSION OF THE CRIMINAL ACT IN WHICH THE HANDGUN WAS USED.

(2) THIS SECTION MAY NOT BE CONSTRUED TO OTHERWISE NEGATE, LIMIT, OR MODIFY THE DOCTRINE OF NEGLIGENCE OR STRICT LIABILITY RELATING TO ABNORMALLY DANGEROUS PRODUCTS OR ACTIVITIES AND DEFECTIVE PRODUCTS."

AMENDMENT NO. 5

On page 4, after line 39, insert:

"(L) "BOARD" MEANS THE HANDGUN ROSTER BOARD."

On page 5, after line 25, insert:

"(A) (1) THERE IS A HANDGUN ROSTER BOARD IN THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

(2) THE BOARD SHALL CONSIST OF 9 MEMBERS, APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, EACH OF WHOM SHALL SERVE FOR A TERM OF 4 YEARS.

(3) THE MEMBERS OF THE BOARD SHALL BE:

(I) THE SUPERINTENDENT;

(II) A REPRESENTATIVE OF THE ASSOCIATION OF CHIEFS OF POLICE;

(III) A REPRESENTATIVE OF THE MARYLAND STATE'S ATTORNEYS' ASSOCIATION;

(IV) A REPRESENTATIVE OF A HANDGUN MANUFACTURER IN THE STATE;

(V) A REPRESENTATIVE OF THE MARYLAND CHAPTER OF THE NATIONAL RIFLE ASSOCIATION;

(VI) A REPRESENTATIVE OF THE SUPERINTENDENT AGAINST HANDGUN ABUSE; AND

(VII) 3 CITIZEN MEMBERS.

(4) THE SUPERINTENDENT SHALL SERVE AS CHAIRMAN OF THE BOARD.

(5) THE BOARD SHALL MEET AT THE REQUEST OF THE CHAIRMAN OF THE BOARD."

On page 5, in line 26, on page 6 in lines 11, 25, and 31, and on page 7 in line 1, strike "(A)", "(B)", "(C)", "(D)", and "(E)", respectively, and substitute "(B)", "(C)(1)", "(D)", "(E)", and "(F)", respectively. On page 6, in line 14, strike "(D)" and substitute "(E)"; and in the same line, strike "(E)" and substitute "(F)".

On page 5, in lines 26 and 31, on page 6, in lines 2, 11, 18, 28, 30, 32, and 39, and on page 7, in lines 1, 5, and 15 in each instance, strike "SUPERINTENDENT" and substitute "BOARD". On page 6, in line 12, and on page 7, in line 3, strike "SUPERINTENDENT'S" and substitute "BOARD'S". On page 6, in line 40, and on page 7, in lines 11, 20, and 23, in each instance, strike "SUPERINTENDENT" and substitute "BOARD". On page 7, in line 24, strike "SUPERINTENDENT'S" and substitute "BOARD'S".

AMENDMENT NO. 6

On page 5, in line 5, strike "1970" and substitute "JANUARY 1, 1985".

AMENDMENT NO. 7

On page 5, in line 15, strike "SUPERINTENDENT" and substitute "SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES".

AMENDMENT NO. 8

On page 6, in line 12, strike "OR" and substitute "(2)"; in the same line, after the second "THE" insert "SUCCESSFUL"; and in line 14, after "SECTION," insert "THE BOARD SHALL PLACE A HANDGUN ON THE HANDGUN ROSTER". On page 6, in lines 15, 18, and 22, strike "(1)", "(2)", and "(3)", respectively, and substitute "(I)", "(II)", and "(III)", respectively.

AMENDMENT NO. 9

On page 7, in line 1, after "(1)" insert "(I)"; in line 2, after "ROSTER," insert "THE BOARD SHALL NOTIFY THE PETITIONER BY CERTIFIED MAIL,

(Over)

RETURN RECEIPT REQUESTED. (II)"; in line 4, strike "MAILED" and substitute "RECEIVED"; and in line 17, after "AND" insert "THEREFORE".

AMENDMENT NO. 10

On pages 2 and 3, strike in their entirety lines 14 through 39 on page 2 and lines 1 through 10 on page 3, inclusive.

A H 5 + 8

B-H85-22

BY: Judicial Proceedings Committee

SUBSTITUTE AMENDMENTS TO HOUSE BILL NO. 1131
(Third Reading File B111)



AMENDMENT NO. 5

On page 4, after line 39, insert:

"(L) "BOARD" MEANS THE HANDGUN ROSTER BOARD."

On page 5, after line 25, insert:

"(A) (1) THERE IS A HANDGUN ROSTER BOARD IN THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

(2) THE BOARD SHALL CONSIST OF 9 MEMBERS, APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, EACH OF WHOM SHALL SERVE FOR A TERM OF 4 YEARS.

(3) THE MEMBERS OF THE BOARD SHALL BE:

(I) THE SUPERINTENDENT;

(II) A REPRESENTATIVE OF THE ASSOCIATION OF CHIEFS OF

POLICE;

(III) A REPRESENTATIVE OF THE MARYLAND STATE'S ATTORNEYS'

ASSOCIATION;

(IV) A REPRESENTATIVE OF A HANDGUN MANUFACTURER IN THE

STATE;

(V) A REPRESENTATIVE OF THE MARYLAND CHAPTER OF THE NATIONAL

RIFLE ASSOCIATION;

MARYLANDERS

(VI) A REPRESENTATIVE OF THE ~~SUPERINTENDENT~~ AGAINST HANDGUN

ABUSE; AND

(VII) 3 CITIZEN MEMBERS.

(OVER)

ADOPTED
BY THE HOUSE
4/9/88
DATE

(4) THE SUPERINTENDENT SHALL SERVE AS CHAIRMAN OF THE BOARD.

(5) THE BOARD SHALL MEET AT THE REQUEST OF THE CHAIRMAN OF THE BOARD OR BY REQUEST OF A MAJORITY OF THE MEMBERS."

On page 5, in line 26, on page 6 in lines 11, 25, and 31, and on page 7 in line 1, strike "(A)", "(B)", "(C)", "(D)", and "(E)", respectively, and substitute "(B)", "(C)(1)", "(D)", "(E)", and "(F)", respectively. On page 6, in line 14, strike "(D)" and substitute "(E)"; and in the same line, strike "(E)" and substitute "(F)".

On page 5, in lines 26 and 31, on page 6, in lines 2, 11, 30, 32, and 39, and on page 7, in lines 1, 5, and 15 in each instance, strike "SUPERINTENDENT" and substitute "BOARD". On page 6, in line 12, and on page 7, in line 3, strike "SUPERINTENDENT'S" and substitute "BOARD'S". On page 6, in line 40, and on page 7, in lines 11, 20, and 23, in each instance, strike "SUPERINTENDENT" and substitute "BOARD". On page 7, in line 24, strike "SUPERINTENDENT'S" and substitute "BOARD'S".

AMENDMENT NO. 8

On page 6, in line 12, strike "OR" and substitute ". (2)"; in the same line, after the second "THE" insert "SUCCESSFUL"; and in line 14, after "SECTION," insert "THE BOARD SHALL PLACE A HANDGUN ON THE HANDGUN ROSTER"; in lines 14 and 15, strike ": (1)"; and strike beginning with "HANDGUN" in line 16 down through "ENFORCEMENT" in line 24 and substitute "DECISION OF THE BOARD SHALL BE AFFIRMED".

#18

C-HB3-16

BY: Senator C. Riley

AMENDMENT TO HOUSE BILL NO. 1131
(Third Reading File Bill)

AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE REFERENCE <i>W. York</i> Date: <i>4/9/88</i> <i>5:26</i>
--

On page 6, after line 1, insert:

"(3) IN DETERMINING WHETHER ANY HANDGUN SHOULD BE PLACED ON THE
HANDGUN ROSTER, THE BOARD SHALL CAREFULLY CONSIDER EACH OF THE
CHARACTERISTICS LISTED UNDER PARAGRAPH (2) OF THIS SUBSECTION AND MAY NOT
PLACE UNDUE WEIGHT ON ANY ONE CHARACTERISTIC.";
and in line 2, strike "(3)" and substitute "(4)".

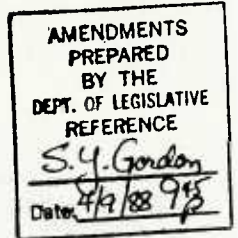
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ADOPTED
BY THE HOUSE
4/9/88
DATE

BY: Senator Cade

#19

AMENDMENTS TO HOUSE BILL NO. 1131, AS AMENDED
(Third Reading File Bill)



In Senator Cade's Amendments labelled "A-HB5-88", strike Amendment No. 2 in its entirety.

On page 5 of the bill, in line 15, before "THE" insert "SUBJECT TO THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT,".

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APPROVED BY THE HOUSE
4/9/88
DATE

BY: Senator Cade

#16

AMENDMENT TO HOUSE BILL NO. 1131, AS AMENDEDAMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
REFERENCE

S. Nematollahi

4/1/88 3:37 pm

On page 1 of the substitute Judicial Proceedings Committee Amendments,
in line 15 of Amendment No. 5, strike "1W" and substitute ", PREFERABLY A
MANUFACTURER FROM".

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ADOPTED
BY THE HOUSE4/9/88
DATE

BY: Senator Green

AMENDMENT TO HOUSE BILL NO. 1131, AS AMENDEDAMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
REFERENCE

M. Garboough

Date: 4/9/88 2nd

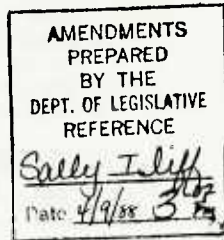
On page 1 of the Judicial Proceedings Committee Amendments, in lines 3 and 7 of Amendment No. 2, strike "Saturday Night Specials" and substitute "Certain handguns"; in line 11 of the same amendment, strike "Saturday Night Specials" and substitute "handguns".

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ADOPTED
BY THE HOUSE
4/9/88
DATE

BY: Senator Cade

AMENDMENTS TO HOUSE BILL NO. 1131
(Third Reading File Bill)



AMENDMENT NO. 1

On page 5, in line 1, after "(A)" insert:

"EXCEPT FOR THE MANUFACTURE OF PROTOTYPE MODELS REQUIRED FOR DESIGN, DEVELOPMENT, TESTING, AND APPROVAL BY THE BOARD,".

AMENDMENT NO. 2

On page 7, in line 1, before "IF" insert "SUBJECT TO THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT,".

SCREEN

**ADOPTED
BY THE HOUSE**

4/9/88
DATE

113

C-HB3-36

BY: Senator Beck

AMENDMENT TO HOUSE BILL NO. 1131, AS AMENDED

AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE REFERENCE <i>A. J. Yarnough</i> Date: <i>4/9/88</i> <i>4 PM</i>

On page 2 of the Judicial Proceedings Committee Amendments, in lines 14 and 16 of Amendment No. 4, in each instance, strike "HANDGUN" and substitute "FIREARM".

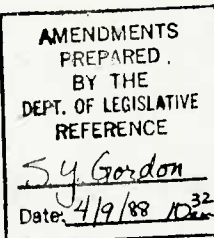
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**ADOPTED
BY THE HOUSE**

4/9/88
DATE

BY: Judicial Proceedings Committee

AMENDMENTS TO HOUSE BILL NO. 1131
(Third Reading File Bill)

AMENDMENT NO. 1

On page 4, of the bill, in line 16, strike "SUPERINTENDENT" and substitute "BOARD".

AMENDMENT NO. 2

On page 5, of the bill, in line 39, strike "AND"; and on page 6 of the bill in line 1, after "CALIBER" insert ";

(VIII) DETECTABILITY BY THE STANDARD SECURITY EQUIPMENT COMMONLY USED AT AIRPORTS OR COURTHOUSES AND APPROVED BY THE FEDERAL AVIATION ADMINISTRATION FOR USE AT AIRPORTS IN THE UNITED STATES; AND

(IX) UTILITY FOR LEGITIMATE SPORTING ACTIVITIES, SELF-PROTECTION, OR LAW ENFORCEMENT".

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ADOPTED
BY THE HOUSE
4/9/88
DATE

SUMMARY of H.B. 1131

New Section 36J of Article 27 would require the Superintendent of State Police to compile and maintain a Handgun Roster of permitted handguns. The Superintendent could not put on the list guns which:

1. The courts have found to be a Saturday Night Special.
2. The Superintendent finds to be a Saturday Night Special based on considerations of the gun's concealability, quality, reliability, accuracy and caliber.
3. Cannot be detected by standard security devices at courthouses and airports. Petitioners can request the Superintendent to place particular guns on the list and Objectors could object to any gun. Either could appeal the Superintendent's decision to court.

Section 36I would make it illegal to manufacture or sell any handgun not on the Handgun Roster (Also no one could get a permit to carry a handgun not on the Roster). If a gun is on the Roster, the weapons manufacturer and seller couldn't be sued under Kelly for manufacturing or selling it.

Plainly, metal detectors and X-ray scanners provide significant protection for our public buildings and airports. However, there is a growing threat to the effectiveness of these security devices because of the development and proliferation of handguns which cannot be detected by this equipment.

We understand that the technology is now available to create handguns which are almost entirely plastic, and therefore not detectable by standard security devices. The proliferation of predominantly plastic handguns would totally undermine the effectiveness of metal detectors and make our public buildings and airports much more vulnerable.

By enacting House Bill 1131, the Maryland General Assembly can take action regarding both Saturday Night Specials and non-detectable handguns. I strongly urge this Committee to endorse this measure.

Thank you.

NOTE: MACHINE GUNS MUST BE REGISTERED WITH THE SUPERINTENDENT OF THE MARYLAND STATE POLICE WITHIN 24 HOURS OF ACQUISITION AND ANNUALLY BY JUNE 1st OF EVERY YEAR.

State of Maryland
Maryland State Police
MACHINE GUN REGISTRATION FORM

For the annual registration of machine guns as required under Article 27,
Section 379, Annotated Code of Maryland

Caliber	Manufacturer	Type or Model	Serial
Maryland Driver's License Number		Social Security Number	
Full Name of Owner		Street Address	
City	County	State	Zip Code

Description of Owner:

Race Sex DOB HT. WT. Hair Eyes

Address or location weapon is presently being stored

Occupation Employer

From Whom Weapon Was Received Address

Date Firearm Was Acquired Purpose For Which Gun Was Acquired

Are You A Licensed Federal Dealer in Machine Guns _____ If So, Your Number _____

CERTIFICATION: As owner of the above gun(s), I certify that I am a citizen of the United States of America and that I have not been convicted of a "Crime of Violence". "Crime of Violence" applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder of any degree, manslaughter, kidnapping, rape, mayhem, assault, to do great bodily harm, robbery, burglary, housebreaking, breaking and entering and larceny.

Date: _____ Registered Owner's Signature: _____

For Police Use

CRCR Check Processed By Mail Stamp (Received)

Instructions: Submit completed form for machine gun(s) in your possession. Use reverse side of form for registration of additional weapons. Forms are submitted directly to the Firearms License Section, Maryland State Police, Pikesville, Maryland 21208.

ation requirements is a violation of Article 27

GUN INFORMATION

Make: _____
MAKE CODE _____ Caliber: _____ Serial #: _____
Model: _____ Type: _____ Barrel length: _____
Finish: _____ Country of Origin: _____

GUN INFORMATION

Make: _____
MAKE CODE _____ Caliber: _____ Serial #: _____
Model: _____ Type: _____ Barrel length: _____
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**MARYLAND GENERAL ASSEMBLY
DEPARTMENT OF FISCAL SERVICES
DIVISION OF FISCAL RESEARCH
JOSEPH M. COBLE, DIRECTOR**

**FISCAL NOTE
REVISED**

HB 1131

House Bill 1131 (Delegate Hughes, et al)

Judiciary

SUMMARY OF LEGISLATION: This bill requires the Superintendent of the Maryland State Police to compile and maintain a list of handguns which can be legally sold in Maryland. A list of legal handguns will be sent to firearm dealers a maximum of two times a year. Handguns manufactured after 1970 that are not on the handgun list may not be sold or offered for sale.

The bill provides a definition for "Saturday Night Special" and a list of characteristics which should be considered when a weapon is evaluated for the official handgun roster. The Superintendent is required to adopt rules and regulations necessary to implement a handgun evaluation and enforcement program. The Superintendent may place a handgun on the list or on the petition of any person. The person that petitions for placement of a handgun on the list is required to provide proof that the gun should be placed on the list. An appeal process is provided if handgun roster petitions are denied.

Finally, the Superintendent is authorized to revoke manufacturer or dealer licenses if they willfully manufacture, sell, or offer for sale handguns that are not in the handgun roster.

STATE FISCAL IMPACT STATEMENT: This bill could increase FY 1989 general fund expenditures by \$88,156 to implement a handgun roster and related enforcement programs. State expenditures are unaffected.

LOCAL FISCAL IMPACT STATEMENT: No effect.

STATE REVENUES: No effect.

STATE EXPENDITURES: The Maryland State Police advise that this bill would increase FY 1989 general fund expenditures by \$88,156. The program would require the hiring of two firearm examiners, one data entry clerk, and one office clerk, costing \$84,246 for wages and fringe benefits. An additional \$3,910 would be required for telephones, postage, printing, and office supplies. The first year estimate reflects a 25% start-up delay. Future year projections include a 5% increase.

State Impact	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
Revenues	-0-	-0-	-0-	-0-	-0-
Expenditures	\$88,156	\$122,050	\$128,152	\$134,560	\$141,288
Net Effect	(\$88,156)	(\$122,050)	(\$128,152)	(\$134,560)	(\$141,288)

() Indicates Decrease

INFORMATION SOURCE: Maryland State Police

ESTIMATE BY: Department of Fiscal Services

Fiscal Note History: First Reader - March 16, 1988
Revised - Updated Information - March 18, 1988

Per: L. E. Logan
dbg

L. E. L.

John Lang, III, Supervising Analyst
Division of Fiscal Research

MARYLAND GENERAL ASSEMBLY
DEPARTMENT OF FISCAL SERVICES
DIVISION OF FISCAL RESEARCH
JOSEPH M. COBLE, DIRECTOR

FISCAL NOTE

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Fiscal Note History: First Reader - March 16, 1988

Per: L. E. Logan
dbg

Liell

John Lang, III, Supervising Analyst
Division of Fiscal Research

HB 1131
Page 2

March 17, 1988

Drug Related Firearm Activity
Baltimore District Office

In the Spring of 1986, the Baltimore District Office and ATF concluded an investigation into a marijuana and cocaine trafficking organization in Anne Arundel County, Maryland, that used a retail gunshop as a base of operation. The owner of the gunshop was the principal figure in the organization. The gunshop was purchased with the proceeds from marijuana and cocaine trafficking. This ultimately led to the seizure of the gunshop under provisions of Title 21 under the arrest forfeiture section.

The organization, through the gunshop, had associated itself with local law enforcement officers who have a tendency to frequent such shops. While no police officers were involved in the drug trafficking operation, one U.S. Customs Agent was indicted in federal court for obstruction of justice and theft of government property to which he pled guilty to theft of government property, case involving the operation of the gunshop.

The gunshop owner supplied an UZI submachine gun that was used in a drug related homicide in Florida.

Two handguns used in a drug related shooting in Prince George's County, Maryland, were traced to this gunshop. Although the victim did not die, he was shot in the head and remains in a comatose condition.

The owner of the gunshop entered a plea to conspiracy to distribute marijuana and cocaine and received a twelve (12) year sentence. Other members of this organization were convicted in federal court.

The gunshop was seized and the weapons below were found in the inventory. These weapons could have made it into the hands of drug traffickers.

Machine Guns	- 54	valued at \$47,475.00
Handguns	- 130	Valued at \$35,735.00
Shotguns	- 61	Valued at \$16,938.00
Rifles	- 63	Valued at \$15,346.00
Silencers	- 28	Valued at \$6,464.00
Ammunitions	-	Valued at \$24,938.00

Statistics

Baltimore City Police Departments

Handgun Offenses: - 4,464 Total:
 Includes 119 murders
 2,890 robberies
 74 rapes
 1,881 aggravated assaults

Seized Firearms:

1,807 Handguns
214 Rifles
232 Shotguns
127 Sawed off shotguns

Total - 2380

DEA Baltimore District Office

Firearms Destroyed - 1987 = 22
 - 1986 = 69
 - 1985 = 39

Firearms Seized - 1987 = 41
 - 1986 = 35

Mid-Atlantic OCDETF Region

FY 1987 - 63 cases involving firearms

Total firearms seized in cases were:

79 Handguns
55 Rifles
35 Shotguns
4 Silencers
1 Machine gun
19 Other weapons

STATEMENT OF
J. JOSEPH CURRAN. JR.
ATTORNEY GENERAL OF MARYLAND
IN SUPPORT OF HOUSE BILL 1131
BEFORE THE HOUSE JUDICIARY COMMITTEE
MARCH 21, 1988

Thank you for this opportunity to speak in favor of House Bill 1131. This bill provides a way to get Saturday Night Specials, which cause so much injury, and "plastic handguns," which cannot be detected by standard airport and courthouse security devices off the streets.

Our state is experiencing a handgun crisis. Between 1980 and 1986, 1,295 Marylanders were murdered with handguns - and many others were badly injured. Even our schools have been affected. According to a Grand Jury study requested by Baltimore City Circuit Court Judge Ellen almost half of all male students in the City's public schools have carried a handgun at some time, and 60% of all students knew someone who had been shot, threatened or robbed in their school within a six month period.

Many of the handguns used to cause these tragedies have been Saturday Night Specials. These guns are virtually useless for sporting, self-defense and law-enforcement purposes because they are poorly made and inaccurate. One police officer testified before a congressional committee that Saturday Night Specials can be "extremely dangerous" for the user because they "misfire, fire accidentally, and backfire with some degree of regularity? However, they are also easily concealable and thus of great use to criminals.

An example of a Saturday Night Special would be the .22

caliber, 2 inch barrel "R.G. #14" gun used to wound Ronald Reagan. This weapon is only of use to criminals, who want to surprise a victim and shoot them at short range. I have enclosed for you an "ALERT" issued to prison officials by the Department of Public Safety showing how such a weapon can be easily concealed in a standard sized personal pager. The gun can be shot-without opening the pager. According to Baltimore City Police statistics approximately 20% of the handguns used in crimes can be categorized as low quality Saturday Night Specials.

Since so many types of handguns are made,, it is critical to adequately designate which guns are Saturday Night Specials. Since there is no clear cut textual definition in the common law doctrine of negligence, factors must be applied on a case-by-case basis to determine whether a particular handgun can be used for legitimate purposes. House Bill 1131 assigns this task to our state's gun experts, the State Police.

House Bill 1131 would require the Superintendent of State Police to publish a Roster of handguns which are primarily used for legitimate purposes. The Superintendent would keep off the Roster handguns which cannot reasonably be used for sporting, self-defense, or law-enforcement purposes and handguns which cannot be detected by airport or courthouse security devices. It would be illegal to manufacture or sell any handgun not on the Handgun Roster. In determining whether to place a handgun on the Handgun Roster, the Superintendent would consider the weapon's concealability, quality, safety, accuracy and caliber. Gun dealers would have the right to challenge the Superintendent's

decisions in court.

The Bill also provides that once a handgun is on the Handgun Roster, those who manufactured and sold the weapon could not be sued on the grounds that it is a Saturday Night Special. The Superintendent would be required to semi-annually publish the Roster in the Maryland Register.

I believe that House Bill 1131 provides a workable procedure for identifying and prohibiting the sale of Saturday Night Specials. It also helps gun dealers by letting them know precisely which guns they can sell and which guns they cannot sell.

House Bill 1131 would also deal with the growing threat posed by handguns that cannot be detected by standard airport and courthouse security devices which have proved effective. The Superintendent would not be able to place such weapons on the Handgun Roster. According to the Federal Aviation Administration's May 1987 Semiannual Report to Congress on the Effectiveness of the Civil Aviation Security Program, since 1973, security devices at U.S. Airports have detected 37,716 firearms resulting in approximately 16,000 arrests. At BWI Airport alone, 28 handguns were detected and confiscated in 1985, 19 in 1986, and 15 from January to December 1 of 1987. At the federal courthouse in Baltimore, 12 guns have been confiscated since 1983 as a result of the detection devices. In a single Maryland county, Baltimore County, the sheriff's office informs us that they confiscated 10-30 illegal handguns a year at the courthouse with their metal detector.



HOUSE OF DELEGATES

ANNAPOLIS, MARYLAND 21401

April 1, 1988

Dear Bill:

We want to thank you for your thoughtful and courageous vote on HB 1131, the "Saturday Night Special" bill.


You sent a strong statement to the Maryland Senate and confirmed Governor Schaefer's support of the bill.


Most importantly, your decision was made in the face of tough opposition and an entrenched NRA lobbying effort.


It is refreshing to know that the overwhelming majority of Maryland citizens supported this bill and were not deprived of their voice by a vocal minority.

We hope you will continue to fight for this reasonable piece of legislation by contacting your Senator and supporting the bill if it comes back from the Senate.

Again, our deepest thanks.


Ralph M. Hughes


Gilbert J. Genn


Peter Franchot

Maryland Retail Merchants Association

HB 1131



March 23, 1988

The Honorable William S. Horne
Chairman, House Judiciary Committee
Room 121, Lowe House Office Building
Annapolis, Maryland 21401

Dear Chairman Horne:

I am writing to express the interest of the Maryland Retail Merchants Association in House Bill 1131. I could not appear at the hearing on March 21 due to previous commitments.

A growing concern of retailers, especially in urban areas, has been the use of small handguns, commonly referred to as "Saturday Night Specials," in hold-ups of retail locations. The easy availability and danger posed by these handguns led us to support SB 3 that would make it a misdemeanor to sell these handguns.

This concern also leads us to support HB 1131 to the extent that it prohibits the sale of "Saturday Night Specials." We have no position on the manufacture of these handguns.

We urge a favorable report on HB 1131.

Sincerely,

Thomas S. Saquella
President

cc: Hon. Ralph Huges

TSS/ma

H.B. 1131
H.J.R. _____

Vote Tally
3126/88
Date

S.B. _____
S.J.R. _____

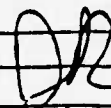
MOTION: ☒ Favorable ☒ Amended ☐ Re-refer to _____
☐ Unfavorable ☐ Hold ☐ Other _____

HOUSE JUDICIARY COMMITTEE

	YEAS	NAYS	ABSTAIN	ABSENT
HORNE, W. S.				
MINNICK, J.	✓			
BUSCH, M.	✓	✓		
POOLE, B.		✓		
SHAPIRO, D.	✓			
DYPSKI, C.	✓			
GENN, G.	✓			
DE PAZZO, L.	✓			
CURRAN, G.	✓			
BELL, E.	✓			
MATTHEWS, R.		✓		
VALLARIO, J.		✓		
MASTERS, K.			✓	
CHASNOFF, J.	✓			
MENES, P.	✓			
PALUMBO, R.	✓			
HUGHES, R.	✓			
KELLY, K.	✓			
BLUMENTHAL, R.				✓
EHRlich, R.		✓		
MADDOX, E. F.	✓			
FLANAGAN, R.	✓			
MONTAGUE, K.	✓			
TOTAL	16	4	1	1

NOTE: Comments, if any, must be made known to the members BEFORE the Vote.

COMMENTS: _____



Committee Reporter

**MARYLAND DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES**

Legislative Liaison
Annapolis Office

764-4038
974-2591

POSITION ON PROPOSED LEGISLATION

DATE: 3/18/88 SUPPORT X

BILL NUMBER: HB 1131 OPPOSE NO POSITION

BILL TITLE: HANDGUNS - MANUFACTURE AND SALE - PROHIBITION

REVIEW AND ANALYSIS:

House Bill 1131 would require that the Superintendent of the Maryland State Police establish and maintain a roster of approved handguns. Unless a handgun successfully meets established criteria which indicate the guns legitimacy, that weapon may not be sold in this state if it is newer than a 1970 model; may not be manufactured in this state; and, a handgun permit cannot be issued so that a person may carry such a handgun.

If this bill becomes law, it is anticipated that the Maryland State Police would develop criteria modeled after the National Institute of Justice Technology Assessment Program. This program was developed by the National Bureau of Standards and is designed to gauge a handgun's suitability, safety and reliability by applying certain standards of visual inspection, dimensional and functional criteria and actual firing tests. We believe that this assessment program provides a thorough analysis of a handgun's legitimacy and that, if the program was applied universally, all non-quality handguns would be removed from the legitimate marketplace. It has also been estimated that approximately 80% of handgun accidents caused by inadvertant firing could be eliminated.

While it is difficult to determine the initial number of handgun models which would be evaluated for inclusion on the handgun roster, the Firearms License Section has estimated the number to be approximately 500 models. Considering that there are approximately 2,000 handgun manufacturers in the world today, it is not unreasonable to assume that the potential exists for dealing with thousands of different handgun models, even though the bill is restricted to those weapons manufactured after 1970.

FOR ADDITIONAL INFORMATION CONTACT: 1/SGT. DON HOFFMAN
OF THE MARYLAND STATE POLICE - TELEPHONE NO. 653-4312 or 974-2591

POSITION ON PROPOSED LEGISLATION

Page #

BILL NUMBER: HB 1131

BILL TITLE: HANDGUNS - MANUFACTURE AND SALE - PROHIBITION

SUPPORT X OPPOSE

NO POSITION

REVIEW AND ANALYSIS:

Initial estimates justify a separate unit under the Crime Laboratory Division to deal with the implementation of this legislation. This unit would be staffed by two Firearms Examiners, one of whom would be a supervisor, one Data Device Operator and a Steno Clerk. A fiscal estimate has placed the first year start up cost at approximately \$92,691. Additional resources would be required to effectively administer this program.



HOUSE OF DELEGATES

ANNAPOLIS, MARYLAND

HOUSE JUDICIARY COMMITTEE

SPEAKERS AND APPEARANCES

DATE OF HEARING: March 27HOUSE BILL NO. AND SPONSOR: HB 1131 Del. Hughes

SENATE BILL NO. AND SPONSOR: _____

SUBJECT MATTER: Handguns - Manufacture and Sale Prohibition

LIST OF SPEAKERS AND INTERESTED PARTIES

Delegate Peter FRANCHOT

PROPOSERS

✓ COL. ELMER TIPPETT SUPERINTENDENT - MARYLAND STATE POLICE
NAME (please print) ADDRESS AFFILIATION✓ SGT R.E. PEDERSACK, MARYLAND STATE POLICE
NAME (please print) ADDRESS AFFILIATION✓ Chief Neil Behan BALTO. Co. Police
NAME (please print) ADDRESS AFFILIATION✓ LOUISE HESS HANDGUN CONTROL
NAME (please print) ADDRESS AFFILIATION✓ STUART O. SINGLES STATES CITY BALTO. CITY
NAME (please print) ADDRESS AFFILIATION✓ KENNETH A. STEVENS 8564 STORCH WOODS DR
NAME (please print) ADDRESS SAVAGE, MD. 20763 AFFILIATION✓ J. Joseph Curran, Attorney General
NAME (please print) ADDRESS AFFILIATION✓ ~~ANTHONY BRENNAN~~ BALTIMORE COUNTY CITY

OPOONENTS

✓ MAURICE A GERSHBERG 5701 ROBIN AVE
NAME (please print) ADDRESS BALTO 21215 GARRISON RTR CLUB
AFFILIATION✓ NORMAN PEDERSACK 9635 DUNDRAWN RD 21236 MLEDA INC
NAME (please print) ADDRESS AFFILIATION✓ Weldon Clark 7914 A Vintage Circle 21661 M & DC R & P
NAME (please print) ADDRESS AFFILIATION✓ Downey, Chuck Cunningham 1600 Rhode Island Ave 20036 NRA
NAME (please print) ADDRESS AFFILIATION✓ C. S. BAKER, JR 2538 OLD FT. SCHS. RD.
NAME (please print) ADDRESS CARROLL COUNTY SPORTSMEN'S ASSN
AFFILIATION✓ Jim Monaghan 5817 JOHNSON AVENUE
NAME (please print) ADDRESS SUMMERS MD 20817 AFFILIATION✓ Louis C McCann Jr 2206 Pulaski Hwy
NAME (please print) ADDRESS HAVRE DE GRACE MD CITY 21229
AFFILIATION

✓ TOM BROWN 3703 ST MARGARET ST CUPERTINO

Report of the Committee on Judiciary

Distribution Date: MARCH 30, 1988
Second Reading Date: MARCH 30, 1988
Report Number: 88-026

<u>Bill No</u>	<u>Report</u>	<u>Sponsor</u>	<u>Relating to</u>
<u>FAVORABLE</u>			
HB 1131	FWA	Del. Hughes, et al	Handguns - Manufacture and Sale - Prohibition
SB 247	FAV	The President (Judiciary)	Judgeships - Circuit and District Courts
SB 609	FAV	Sen. Baker (Maryland Judicial Conference)	Juror Selection - Qualification and Summoning
<u>REFERRED</u>			
SB 11	TO ENV. MRTS.	Sen. Cushwa, et al	Hunting - Careless or Negligent
SB 161	TO ECN. MRTS.	Sen. C. Riley (Finance Comm.)	Rental Motor Vehicles - Collision Damage Waivers
<u>UNFAVORABLE</u>			
HB 893	UNF	Del. Palumbo	Landlord and Tenant - Right of Access - Cable Television Companies

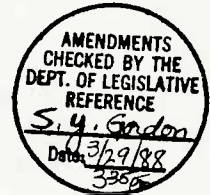


CHAIRMAN

03/29/88;11:45

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL NO. 1131
(First Reading File Bill)



AMENDMENT NO. 1 PURPOSE A A

On page 1, in line 3, after "manufacture" insert "for distribution or sale"; in line 5, strike "maintain a" and substitute "publish by a certain date a handgun roster, and thereafter maintain the"; in line 15, strike "authorizing" and substitute "requiring"; and in line 20, after "Superintendent;" insert "providing that compliance with the prohibition against the manufacture for distribution or sale, sale, or offer for sale of certain handguns is not required until a certain date;".

AMENDMENT NO. 2 CLARIFYING AND LIMITING TO PERMIT RFP

On page 4, in line 20, after "FOR" insert "LEGITIMATE PURPOSES FOR"; and in line 29, strike the second "A" and substitute "FOR DISTRIBUTION OR SALE ANY".

AMENDMENT NO. 3 STRIKES LANGUAGE EXEMPTING THE SVT

On page 4, in line 34, strike "(1)"; and on pages 4 and 5, strike in ~~FROM~~ their entirety lines 38 and 39 on page 4, and lines 1 and 2 on page 5. CERTAIN LEGAL REQUIREMENTS

AMENDMENT NO. 4 STRIKES IMPRECISE LANGUAGE

On page 5, in line 7, strike "IS OF A TYPE THAT".

(OVER)

Amendments to HB 1131

Page 2 of 3

AMENDMENT NO. 5

On page 5, in line 11, strike "SECTION" and insert "§"; in line 15, after "AND" insert "PUBLISH IN THE MARYLAND REGISTER BY JULY 1, 1989, AND THEREAFTER"; in line 16, strike "PRIMARILY"; in line 18, strike ", AT A MINIMUM,"; and strike in their entirety lines 34 through 36, inclusive.

AMENDMENT NO. 6

On page 6, in line 4, strike "THROUGH (G)" and substitute "AND (E)"; in line 6, strike "DETERMINED" and substitute "MADE A FINDING"; and strike beginning with "FOR" in line 6 down through "LIABILITY" in line 7.

AMENDMENT NO. 7

On page 6, in line 21, after "(D)" insert "(1)"; in line 22, after "SHALL" insert ", WITHIN 45 DAYS OF RECEIPT OF THE PETITION"; in lines 23 and 25, strike "(1)" and "(2)", respectively, and substitute "(I)" and "(II)", respectively; and after line 28, insert: "(2) IF THE SUPERINTENDENT FAILS TO DENY OR APPROVE A PETITION WITHIN THE TIME REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE PETITION SHALL BE CONSIDERED DENIED.".

AMENDMENT NO. 8

On page 6, in line 34, strike "120" and substitute "90"; strike beginning with "THE" in line 37 down through "HEARING" in line 38 and substitute: "THE SUPERINTENDENT SHALL PROVIDE NOTICE OF THE HEARING IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT".

AMENDMENT NO. 9

On page 6, in line 40, strike "SUBMIT EVIDENCE FROM AN EXPERT, SATISFACTORY" and substitute: "HAVE THE BURDEN OF PROVING"; and in line 43, after "PURPOSES" insert ", AND SHOULD BE PLACED ON THE ROSTER."

Amendments to HB 1131

Page 3 of 3

(5) ANY AGGRIEVED PARTY OF RECORD MAY APPEAL WITHIN 30 DAYS A FINAL DECISION OF THE SUPERINTENDENT IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

(6) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS REQUIRING THE SUPERINTENDENT TO TEST ANY HANDGUN OR HAVE ANY HANDGUN TESTED AT THE SUPERINTENDENT'S EXPENSE".

AMENDMENT NO. 10

On page 7, strike in their entirety lines 1 through 22, inclusive.

AMENDMENT NO. 11

On page 8, after line 8, insert: "SECTION 3. AND BE IT FURTHER ENACTED, That compliance with the prohibition of this Act against the manufacture for distribution or sale, sale, or offer for sale of handguns is not required until January 1, 1990."; and in line 9, strike "3" and substitute "4".

Introduced by Delegates Hughes, Genn, Frosh, Cummings, Oaks,
Boston, M. Murphy, Montague, Rawlings, Exum, Menes, Campbell,
Gordon, Anderson, Perkins, Woods, Kreamer, Shapiro, Harrison,
Douglass, Rosenberg, Franchot, Blumenthal, Jones, Lawlah,
Kirk, Young, Fulton, Curran, Hergenroeder, Pinsky, Dembrow,
Maddox, and Currie

Read and Examined by Proofreader:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor,
for his approval this _____ day of _____
at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 Handguns - *Prohibition of* Manufacture and Sale - Prohibition
3 *of Strict Liability for Damages Caused by Certain Criminal Use*
4 *of Firearms*

5 FOR the purpose of prohibiting the manufacture for distribution
6 *or sale, sale, and offer for sale of certain handguns;*
7 *establishing a Handgun Roster Board in the Department of*
8 *Public Safety and Correctional Services; requiring the*
9 *Superintendent--of--the--Maryland--State--Police Board* to
10 establish and maintain a publish by a certain date a handgun
11 roster, and thereafter maintain the handgun roster;
12 establishing certain considerations before a handgun is
13 placed on the handgun roster; *providing-that-certain-types*
14 *of-handguns--may--not--be--placed--on--the--handgun--roster;*

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken from the bill by
amendment or deleted from the law by amendment.
Script denotes opposite chamber/conference committee
amendments.

1 defining certain terms; authorizing the Superintendent of
 2 the Maryland State Police to seek injunctive relief under
 3 certain circumstances; authorizing the revocation of certain
 4 licenses for willful violations of this Act; ~~limiting civil~~
 5 ~~liability concerning certain handguns; prohibiting issuance~~
 6 ~~of a permit to carry certain handguns;~~ establishing
 7 procedures for hearings and appeals; ~~authorizing~~ requiring
 8 the Superintendent Secretary of Public Safety and
 9 Correctional Services to adopt rules and regulations to
 10 implement this Act; making the provisions of this Act
 11 severable; providing for publication of the handgun roster;
 12 providing for judicial review of certain actions by the
 13 Superintendent Board; providing that compliance with the
 14 prohibition against the manufacture for distribution or
 15 sale, sale, or offer for sale of certain handguns is not
 16 required until a certain date; making certain technical
 17 changes; providing that a person or entity may not be held
 18 strictly liable for damages resulting from injuries to
 19 another person sustained as a result of the criminal use of
 20 any firearm by a third person; and generally relating to
 21 handguns.

22 BY repealing and reenacting, with amendments,

23 Article 27 - Crimes and Punishments
 24 Section 36E(a), 36F and 443(h)
 25 Annotated Code of Maryland
 26 (1987 Replacement Volume)

27 BY adding to

28 Article 27 - Crimes and Punishments
 29 Section 36-I and 36J
 30 Annotated Code of Maryland
 31 (1987 Replacement Volume)

32 Preamble

33 WHEREAS, ~~"Saturday--Night--Specials"~~ Certain handguns
 34 generally include several of the following characteristics:
 35 easily concealable, ballistically inaccurate, relatively light in
 36 weight, of low quality and manufacture, unreliable as to safety,
 37 and of low calibre; and

38 WHEREAS, ~~"Saturday-Night-Specials"~~ Certain handguns have no
 39 legitimate socially useful purpose and are not suitable for law
 40 enforcement, self-protection, or sporting activities; and

41 WHEREAS, Only the prohibition of the manufacture and sale of
 42 these "Saturday--Night--Specials" Handguns will remove these
 43 handguns from the streets of this State; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 27 - Crimes and Punishments

36E-

{a}--A permit to carry a handgun 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; IF:

{1}--THE HANDGUN FOR WHICH THE PERMIT IS REQUESTED IS OF A TYPE THAT IS INCLUDED ON THE HANDGUN ROSTER; AND

{2}--THE SUPERINTENDENT FINDS THAT THE PERSON:

{1}--Is eighteen 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, § 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, 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, 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 a finding that such permit is necessary as a reasonable precaution against apprehended danger.

36F.

(A) AS USED IN THIS SUBHEADING, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

1 [(a) The term "handgun" as used in this subheading shall
2 include] (B) "HANDGUN" MEANS any pistol, revolver, or other
3 firearm capable of being concealed on the person, including a
4 short-barreled shotgun and a short-barreled rifle as these terms
5 are defined below, except it [shall] DOES not include a shotgun,
6 rifle or antique firearm as those terms are defined below.

7 [(1) The term "antique] (C) "ANTIQUE firearm" means
8 [--]:

9 [(a)] (1) Any firearm (including any firearm with a
10 matchlock, flintlock, percussion cap, or similar type of ignition
11 system) manufactured in or before 1898; and

12 [(b)] (2) Any replica of any firearm described in
13 [subparagraph (a)] PARAGRAPH (1) OF THIS SUBSECTION if such
14 replica [--]:

15 (i) Is not designed or redesigned for using
16 rimfire or conventional centerfire fixed ammunition, or

17 (ii) Uses rimfire or conventional centerfire
18 fixed ammunition which is no longer manufactured in the United
19 States and which is not readily available in the ordinary
20 channels of commercial trade.

21 [(2) The term "rifle"] (D) "RIFLE" means a weapon
22 designed or redesigned, made or remade, and intended to be fired
23 from the shoulder and designed or redesigned and made or remade
24 to use the energy of the explosive in a fixed metallic cartridge
25 to fire only a single projectile through a rifled bore for each
26 single pull of the trigger.

27 [(3) The term "short-barreled] (E) "SHORT-BARRELED
28 shotgun" means a shotgun having one or more barrels less than
29 eighteen inches in length and any weapon made from a shotgun
30 (whether by alteration, modification, or otherwise) if such
31 weapon as modified has an overall length of less than twenty-six
32 inches.

33 [(4) The term "short-barreled] (F) "SHORT-BARRELED
34 rifle" means a rifle having one or more barrels less than sixteen
35 inches in length and any weapon made from a rifle (whether by
36 alteration, modification, or otherwise) if such weapon, as
37 modified, has an overall length of less than twenty-six inches.

38 [(5) The term "shotgun"] (G) "SHOTGUN" means a
39 weapon designed or redesigned, made or remade, and intended to be
40 fired from the shoulder and designed or redesigned and made or
41 remade to use the energy of the explosive in a fixed shotgun
42 shell to fire through a smooth bore either a number of ball shot
43 or a single projectile for each single pull of the trigger.

44 [(b) The term "vehicle" as used in this subheading shall
45 include any motor vehicle, as defined in Title 11 of the
46 Transportation Article, trains, aircraft, and vessels.]

1 (H) "HANDGUN ROSTER" MEANS THE ROSTER OF PERMITTED HANDGUNS
 2 COMPILED BY THE SUPERINTENDENT BOARD UNDER § 36-1 OF THIS
 3 ARTICLE.

4 [(c) The term "law-enforcement personnel" shall mean]

5 (I) "LAW ENFORCEMENT PERSONNEL" MEANS:

6 (1) [any] ANY full-time member of a police force or
 7 other agency of the United States, a State, a county, a
 8 municipality or other political subdivision who is responsible
 9 for the prevention and detection of crime and the enforcement of
 10 the laws of the United States, a State, or of a county or
 11 municipality or other political subdivision of a State[. The
 12 term shall also include any]; AND

13 (2) [any] ANY part-time member of a police force of a
 14 county or municipality who is certified by the county or
 15 municipality as being trained and qualified in the use of
 16 handguns.

17 {J}--"SATURDAY--NIGHT--SPECIAL"--MEANS---A---CHEAP,---EASILY
 18 CONCEALABLE--HANDGUN--THAT--IS--NOT--SUITABLE--FOR LEGITIMATE-PURPOSES
 19 FOR-

20 {1}--LAW-ENFORCEMENT;

21 {2}--SELF-PROTECTION;-OR

22 {3}--SPORTING-ACTIVITIES-

23 {K} {J} "SUPERINTENDENT" MEANS THE SUPERINTENDENT OF THE
 24 MARYLAND STATE POLICE, OR THE SUPERINTENDENT'S DESIGNEE.

25 {L} {K} "VEHICLE" MEANS ANY MOTOR VEHICLE, AS DEFINED IN
 26 TITLE 11 OF THE TRANSPORTATION ARTICLE, TRAINS, AIRCRAFT, AND
 27 VESSELS.

28 (L) "BOARD" MEANS THE HANDGUN ROSTER BOARD.

29 36-1.

30 (A) EXCEPT FOR THE MANUFACTURE OF PROTOTYPE MODELS REQUIRED
 31 FOR DESIGN, DEVELOPMENT, TESTING, AND APPROVAL BY THE BOARD, A
 32 PERSON MAY NOT MANUFACTURE -A- FOR DISTRIBUTION OR SALE ANY
 33 HANDGUN THAT IS NOT INCLUDED ON THE HANDGUN ROSTER IN THE STATE.

34 (B) A PERSON MAY NOT SELL OR OFFER FOR SALE IN THE STATE A
 35 HANDGUN MANUFACTURED AFTER 1970 JANUARY 1, 1985 THAT IS NOT ON
 36 THE HANDGUN ROSTER.

37 (C) A PERSON MAY NOT MANUFACTURE, SELL, OR OFFER FOR SALE
 38 ANY HANDGUN ON WHICH THE MANUFACTURER'S IDENTIFICATION MARK OR
 39 NUMBER IS OBLITERATED, REMOVED, CHANGED, OR OTHERWISE ALTERED.

1 ~~(C)~~ ~~(D)~~ ~~(1)~~ THE SUPERINTENDENT MAY SEEK A PERMANENT OR
2 TEMPORARY INJUNCTION FROM A CIRCUIT COURT TO ENJOIN THE WILLFUL
3 AND CONTINUOUS MANUFACTURE, SALE, OR OFFER FOR SALE, IN VIOLATION
4 OF THIS SECTION, OF A HANDGUN NOT INCLUDED ON THE HANDGUN ROSTER.

5 ~~(2) -- WHEN -- SEEKING -- AN -- INJUNCTION UNDER THIS SECTION,~~
6 ~~THE SUPERINTENDENT MAY NOT BE REQUIRED TO:~~

7 ~~(1) -- FILE A BOND; OR~~

8 ~~(11) -- SHOW A LACK OF ADEQUATE REMEDY AT LAW;~~

9 ~~(E)~~ (E) SUBJECT TO THE PROVISIONS OF THE ADMINISTRATIVE
10 PROCEDURE ACT, THE SUPERINTENDENT SECRETARY OF PUBLIC SAFETY AND
11 CORRECTIONAL SERVICES SHALL ADOPT RULES AND REGULATIONS NECESSARY
12 TO CARRY OUT THE PROVISIONS OF THIS ACT.

13 ~~(E) -- A PERSON MAY NOT BE HELD LIABLE IN A CIVIL ACTION FOR~~
14 ~~THE MANUFACTURE OR SALE OF A HANDGUN SOLELY ON THE GROUNDS THAT~~
15 ~~IT IS A SATURDAY-NIGHT SPECIAL, IF THE HANDGUN IS OF A TYPE THAT~~
16 ~~IS INCLUDED ON THE HANDGUN ROSTER;~~

17 (F) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO INTERFERE
18 WITH A PERSON'S ABILITY TO MANUFACTURE, SELL, OR OFFER TO SELL
19 RIFLES OR OTHER WEAPONS NOT DEFINED AS HANDGUNS IN SECTION §
20 36F(B) OF THIS ARTICLE.

21 (G) (1) ANY PERSON WHO MANUFACTURES A HANDGUN, FOR
22 DISTRIBUTION OR SALE, IN VIOLATION OF THIS SECTION SHALL BE
23 GUILTY OF A MISDEMEANOR AND SHALL BE FINED NOT MORE THAN \$10,000
24 FOR EACH VIOLATION.

25 (2) ANY PERSON OR ENTITY WHO SELLS OR OFFERS TO SELL
26 A HANDGUN IN VIOLATION OF THIS SECTION SHALL BE GUILTY OF A
27 MISDEMEANOR AND SHALL BE FINED NOT MORE THAN \$2,500 FOR EACH
28 VIOLATION.

29 (3) FOR PURPOSES OF THIS SUBSECTION, EACH HANDGUN
30 MANUFACTURED, SOLD, OR OFFERED FOR SALE IN VIOLATION OF THIS
31 SUBSECTION SHALL BE A SEPARATE VIOLATION.

32 (H) (1) A PERSON OR ENTITY MAY NOT BE HELD STRICTLY LIABLE
33 FOR DAMAGES OF ANY KIND RESULTING FROM INJURIES TO ANOTHER PERSON
34 SUSTAINED AS A RESULT OF THE CRIMINAL USE OF ANY HANDGUN FIREARM
35 BY A THIRD PERSON, UNLESS THE PERSON OR ENTITY CONSPIRED WITH THE
36 THIRD PERSON TO COMMIT, OR WILLFULLY AIDED, ABETTED, OR CAUSED
37 THE COMMISSION OF THE CRIMINAL ACT IN WHICH THE HANDGUN FIREARM
38 WAS USED.

39 (2) THIS SECTION MAY NOT BE CONSTRUED TO OTHERWISE
40 NEGATE, LIMIT, OR MODIFY THE DOCTRINE OF NEGLIGENCE OR STRICT
41 LIABILITY RELATING TO ABNORMALLY DANGEROUS PRODUCTS OR ACTIVITIES
42 AND DEFECTIVE PRODUCTS.

43 36J.

1 (A) (1) THERE IS A HANDGUN ROSTER BOARD IN THE DEPARTMENT
2 OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

3 (2) THE BOARD SHALL CONSIST OF 9 MEMBERS, APPOINTED
4 BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, EACH
5 OF WHOM SHALL SERVE FOR A TERM OF 4 YEARS.

6 (3) THE MEMBERS OF THE BOARD SHALL BE:

7 (I) THE SUPERINTENDENT;

8 (II) A REPRESENTATIVE OF THE ASSOCIATION OF
9 CHIEFS OF POLICE;

10 (III) A REPRESENTATIVE OF THE MARYLAND STATE'S
11 ATTORNEYS' ASSOCIATION;

12 (IV) A REPRESENTATIVE OF A HANDGUN MANUFACTURER
13 IN, PREFERABLY A MANUFACTURER FROM THE STATE;

14 (V) A REPRESENTATIVE OF THE MARYLAND CHAPTER OF
15 THE NATIONAL RIFLE ASSOCIATION;

16 (VI) A REPRESENTATIVE OF THE MARYLANDERS
17 AGAINST HANDGUN ABUSE; AND

18 (VII) 3 CITIZEN MEMBERS.

19 (4) THE SUPERINTENDENT SHALL SERVE AS CHAIRMAN OF THE
20 BOARD.

21 (5) THE BOARD SHALL MEET AT THE REQUEST OF THE
22 CHAIRMAN OF THE BOARD OR BY REQUEST OF A MAJORITY OF THE MEMBERS.

23 ~~(A)~~ (B) (1) THERE IS A HANDGUN ROSTER THAT THE
24 SUPERINTENDENT BOARD SHALL COMPILE AND PUBLISH IN THE MARYLAND
25 REGISTER BY JULY 1, 1989, AND THEREAFTER MAINTAIN, OF PERMITTED
26 HANDGUNS THAT ARE PRIMARILY USEFUL FOR LEGITIMATE SPORTING,
27 SELF-PROTECTION, OR LAW ENFORCEMENT PURPOSES.

28 (2) THE SUPERINTENDENT BOARD SHALL CONSIDER, ~~AT A~~
29 MINIMUM, THE FOLLOWING CHARACTERISTICS OF A HANDGUN IN
30 DETERMINING WHETHER ANY HANDGUN SHOULD BE PLACED ON THE HANDGUN
31 ROSTER:

32 (I) CONCEALABILITY;

33 (II) BALLISTIC ACCURACY;

34 (III) WEIGHT;

35 (IV) QUALITY OF MATERIALS;

36 (V) QUALITY OF MANUFACTURE;

1 (VI) RELIABILITY AS TO SAFETY; AND

2 (VII) CALIBER;

3 (VIII) DETECTABILITY BY THE STANDARD SECURITY
4 EQUIPMENT COMMONLY USED AT AIRPORTS OR COURTHOUSES AND APPROVED
5 BY THE FEDERAL AVIATION ADMINISTRATION FOR USE AT AIRPORTS IN THE
6 UNITED STATES; AND

7 (IX) UTILITY FOR LEGITIMATE SPORTING
8 ACTIVITIES, SELF-PROTECTION, OR LAW ENFORCEMENT.

9 (3) IN DETERMINING WHETHER ANY HANDGUN SHOULD BE
10 PLACED ON THE HANDGUN ROSTER, THE BOARD SHALL CAREFULLY CONSIDER
11 EACH OF THE CHARACTERISTICS LISTED UNDER PARAGRAPH (2) OF THIS
12 SUBSECTION AND MAY NOT PLACE UNDUE WEIGHT ON ANY ONE
13 CHARACTERISTIC.

14 (3) (4) THE SUPERINTENDENT BOARD SHALL SEMIANNUALLY:

15 (I) PUBLISH THE HANDGUN ROSTER IN THE MARYLAND
16 REGISTER; AND

17 (II) SEND A COPY OF THE HANDGUN ROSTER TO ALL
18 PISTOL AND REVOLVER DEALERS THAT ARE LICENSED UNDER SECTION 443
19 OF THIS ARTICLE.

20 (4) --NOTHING--IN--THIS--SUBSECTION--SHALL--REQUIRE--THE
21 SUPERINTENDENT--TO--SEND--ANY--NOTICES--OR--COPIES--OF--THE--HANDGUN
22 ROSTER--TO--DEALERS--MORE--THAN--2--TIMES--A--YEAR--

23 (b) (c) (1) THE SUPERINTENDENT BOARD MAY PLACE A HANDGUN ON
24 THE HANDGUN ROSTER UPON THE SUPERINTENDENT'S BOARD'S OWN
25 INITIATIVE OR.

26 (2) ON THE SUCCESSFUL PETITION OF ANY PERSON, SUBJECT
27 TO THE PROVISIONS OF SUBSECTIONS (b) (E) THROUGH (g) AND (e) (F)
28 OF THIS SECTION, THE BOARD SHALL PLACE A HANDGUN ON THE HANDGUN
29 ROSTER UNLESS:

30 (1) A COURT, AFTER ALL APPEALS ARE EXHAUSTED, HAS
31 DETERMINED MADE A FINDING THAT THE HANDGUN IS A SATURDAY-NIGHT
32 SPECIAL FOR THE PURPOSE OF CIVIL LIABILITY;

33 (2) --THE--SUPERINTENDENT--DETERMINES--THAT--THE--HANDGUN
34 IS--NOT--DETECTABLE--BY--THE--STANDARD--SECURITY--EQUIPMENT--COMMONLY
35 USED--AT--AIRPORTS--OR--COURTHOUSES--AND--APPROVED--BY--THE--FEDERAL
36 AVIATION--ADMINISTRATION--FOR--USE--AT--AIRPORTS--IN--THE--UNITED--STATES--
37 OR

38 (3) --THE--SUPERINTENDENT--DETERMINES--THAT--THE--HANDGUN--IS
39 NOT--OF--A--TYPE--PRIMARILY--USEFUL--FOR--LEGITIMATE--SPORTING
40 ACTIVITIES--SELF-PROTECTION--OR--LAW-ENFORCEMENT DECISION OF THE
41 BOARD SHALL BE AFFIRMED.

1 ~~(E)~~ (D) (1) A PERSON WHO PETITIONS FOR PLACEMENT OF A
2 HANDGUN ON THE HANDGUN ROSTER SHALL BEAR THE BURDEN OF PROOF THAT
3 THE HANDGUN SHOULD BE PLACED ON THE ROSTER.

4 (2) A PETITION TO PLACE A HANDGUN ON THE HANDGUN
5 ROSTER SHALL BE SUBMITTED IN WRITING AND SHALL BE IN THE FORM AND
6 MANNER PRESCRIBED BY THE SUPERINTENDENT BOARD.

7 ~~(D)~~ (E) (1) UPON RECEIPT OF A PETITION TO PLACE A HANDGUN
8 ON THE HANDGUN ROSTER, THE SUPERINTENDENT BOARD SHALL, WITHIN 45
9 DAYS OF RECEIPT OF THE PETITION:

10 ~~(1)~~ (I) DENY THE PETITION IN WRITING, STATING THE
11 REASONS FOR DENIAL; OR

12 ~~(2)~~ (II) APPROVE THE PETITION AND PUBLISH A
13 DESCRIPTION OF THE HANDGUN IN THE MARYLAND REGISTER, INCLUDING
14 NOTICE THAT ANY OBJECTION TO ITS INCLUSION IN THE HANDGUN ROSTER
15 MUST BE FILED WITH THE SUPERINTENDENT BOARD WITHIN 30 DAYS.

16 (2) IF THE SUPERINTENDENT BOARD FAILS TO DENY OR
17 APPROVE A PETITION WITHIN THE TIME REQUIRED UNDER PARAGRAPH (1)
18 OF THIS SUBSECTION, THE PETITION SHALL BE CONSIDERED DENIED.

19 ~~(E)~~ (F) (1)(I) IF THE SUPERINTENDENT BOARD DENIES A
20 PETITION TO PLACE A HANDGUN ON THE HANDGUN ROSTER, THE BOARD
21 SHALL NOTIFY THE PETITIONER BY CERTIFIED MAIL, RETURN RECEIPT
22 REQUESTED.

23 (II) THE PETITIONER MAY REQUEST A HEARING
24 WITHIN 15 DAYS FROM THE DATE THAT THE SUPERINTENDENT'S BOARD'S
25 DENIAL LETTER IS ~~MAILED~~ RECEIVED.

26 (2) THE SUPERINTENDENT BOARD SHALL, WITHIN A
27 REASONABLE TIME NOT TO EXCEED ~~120~~ 90 DAYS AFTER RECEIVING A
28 REQUEST FOR A HEARING, BOTH HOLD A HEARING ON THE PETITION AND
29 ISSUE A WRITTEN FINAL DECISION ON THE PETITION.

30 (3) ~~THE--SUPERINTENDENT--MAY--PERMIT--ANY--INTERESTED~~
31 ~~PERSON--TO--PARTICIPATE--AS--A--PARTY--IN--THE--HEARING~~ THE
32 SUPERINTENDENT BOARD SHALL PROVIDE NOTICE OF THE HEARING IN
33 ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

34 (4) AT A HEARING HELD UNDER THIS SUBSECTION, THE
35 PETITIONER SHALL ~~SUBMIT--EVIDENCE--FROM--AN--EXPERT--SATISFACTORY~~
36 HAVE THE BURDEN OF PROVING TO THE SUPERINTENDENT BOARD, THAT THE
37 HANDGUN AT ISSUE IS PRIMARILY USEFUL FOR LEGITIMATE SPORTING, LAW
38 ENFORCEMENT, OR SELF-PROTECTION PURPOSES, AND THEREFORE SHOULD BE
39 PLACED ON THE ROSTER.

40 (5) ANY AGGRIEVED PARTY OF RECORD MAY APPEAL WITHIN
41 30 DAYS A FINAL DECISION OF THE SUPERINTENDENT BOARD IN
42 ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

1 (6) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS
2 REQUIRING THE SUPERINTENDENT BOARD TO TEST ANY HANDGUN OR HAVE
3 ANY HANDGUN TESTED AT THE SUPERINTENDENT'S BOARD'S EXPENSE.

4 (5)--NOTHING--IN--THIS--SECTION--SHALL--BE--CONSTRUED--AS
5 REQUIRING--THE--SUPERINTENDENT--TO--TEST--ANY--HANDGUN--OR--HAVE--ANY
6 HANDGUN--TESTED--AT--THE--SUPERINTENDENT'S--EXPENSE--

7 (6)--ONCE--A--PETITION--TO--PLACE--A--PARTICULAR--HANDGUN--ON
8 THE--HANDGUN--ROSTER--IS--DENIED,--WITH--ALL--APPEALS--EXHAUSTED,--THE
9 SUPERINTENDENT--MAY--NOT--PLACE--THAT--HANDGUN--ON--THE--HANDGUN--ROSTER--

10 (7)--(1)--IF--A--TIMELY--OBJECTION--TO--PLACEMENT--OF--A--HANDGUN
11 APPROVED--BY--THE--SUPERINTENDENT--ON--THE--HANDGUN--ROSTER--IS--RECEIVED,
12 THE--SUPERINTENDENT--SHALL,--WITHIN--30--DAYS--OF--RECEIVING--THE
13 OBJECTIONS,--EITHER--DISMISS--THE--OBJECTIONS--IN--WRITING--OR,--BASED
14 UPON--THEM,--NOT--PLACE--THE--HANDGUN--ON--THE--HANDGUN--ROSTER--

15 (2)--IF--THE--SUPERINTENDENT--DECIDES--NOT--TO--PLACE--A
16 HANDGUN--ON--THE--HANDGUN--ROSTER--BASED--UPON--OBJECTIONS,--THE
17 SUPERINTENDENT--SHALL--INFORM--ANY--PETITIONER--FOR--THAT--HANDGUN--OF
18 THAT--DECISION--IN--WRITING--

19 (6)--(1)--ANY--PETITIONER,--OBJECTOR,--OR--OTHER--PARTY--AGGRIEVED
20 BY--A--FINAL--DECISION--OF--THE--SUPERINTENDENT--MAY,--WITHIN--30--DAYS--OF
21 THE--SUPERINTENDENT'S--FINAL--DECISION,--APPEAL--THAT--DECISION--TO--THE
22 CIRCUIT--COURT--IN--ACCORDANCE--WITH--THE--ADMINISTRATIVE--PROCEDURE
23 ACT--

24 (2)--THE--SUPERINTENDENT--MAY--APPEAL--AN--ADVERSE--COURT
25 DECISION--TO--THE--COURT--OF--SPECIAL--APPEALS--

26 443.

27 (h) The Superintendent of the Maryland State Police
28 [and/]or his duly authorized agent or agents shall revoke an
29 issued pistol and revolver dealer's license, by written
30 notification forwarded to the licensee, under any of the
31 following circumstances:

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

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

1 (3) IF THE LICENSEE HAS WILLFULLY MANUFACTURED,
2 OFFERED TO SELL, OR SOLD A HANDGUN NOT ON THE HANDGUN ROSTER IN
3 VIOLATION OF § 36-1 OF THIS ARTICLE.

4 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision
5 of this Act or the application thereof to any person or
6 circumstance is held invalid for any reason in a court of
7 competent jurisdiction, the invalidity does not affect other
8 provisions or any other application of this Act which can be
9 given effect without the invalid provision or application, and
10 for this purpose the provisions of this Act are declared
11 severable.

12 SECTION 3. AND BE IT FURTHER ENACTED, That compliance with
13 the prohibition of this Act against the manufacture for
14 distribution or sale, sale, or offer for sale of handguns is not
15 required until January 1, 1990.

16 SECTION -3- 4. AND BE IT FURTHER ENACTED, That this Act
17 shall take effect July 1, 1988.

Approved:

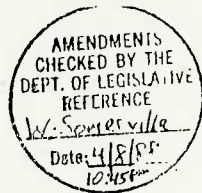
Governor.

Speaker of the House of Delegates.

President of the Senate.

BY: The Judicial Proceedings Committee

AMENDMENTS TO HOUSE BILL NO. 1131
(Third Reading File Bill)



AMENDMENT NO. 1

On page 1, in line 2, before "Manufacture" insert "Prohibition of"; in the same line, after "Prohibition" insert "of Strict Liability for Damages Caused by Certain Criminal Use of Firearms"; in line 4, after "handguns;" insert "establishing a Handgun Roster Board in the Department of Public Safety and Correctional Services"; in line 5, strike "Superintendent of the Maryland State Police" and substitute "Board"; strike beginning with "providing" in line 9 down through "roster;" in line 10; in line 11, after "Superintendent," insert "of the Maryland State Police"; strike beginning with "limiting" in line 14 down through "handguns;" in line 16; in line 17, strike "Superintendent" and substitute "Secretary of Public Safety and Correctional Services"; in line 21, strike "Superintendent" and substitute "Board"; and in line 25, after "changes;" insert:

"providing that a person or entity may not be held strictly liable for damages resulting from injuries to another person sustained as a result of the criminal use of any firearm by a third person;" On page 2, in line 3 strike "36E(a),".

AMENDMENT NO. 2

On page 2, after line 10, insert:

"Preamble

WHEREAS, "Saturday Night Specials" generally include several of the following characteristics: easily concealable, ballistically inaccurate, relatively light in weight, of low quality and manufacture, unreliable as to safety, and of low calibre; and

WHEREAS, "Saturday Night Specials" have no legitimate socially useful purpose and are not suitable for law enforcement, self-protection, or sporting activities; and

WHEREAS, Only the prohibition of the manufacture and sale of these "Saturday Night Specials" will remove these handguns from the streets of this State; now, therefore,,"

AMENDMENT NO. 3

On page 4, strike in their entirety lines 3D through 35, inclusive; and in lines 36 and 38, strike "(K)" and "(L)", respectively, and substitute "(J)" and "(K)", respectively. On page 5, after line 6, insert:

"(C) A PERSON MAY NOT MANUFACTURE, SELL, OR OFFER FOR SALE ANY HANDGUN ON WHICH THE MANUFACTURER'S IDENTIFICATION MARK OR NUMBER IS OBLITERATED, REMOVED, CHANGED, OR OTHERWISE ALTERED;" in lines 7 and 15, strike "(C)"

ADOPTED

BY THE HOUSE

4/9/88

DATE

(Over)

and "(D)", respectively, and substitute "(D)" and "(E)", respectively.

AMENDMENT NO. 4

On page 5, strike in their entirety lines 17 through 20, inclusive; and after line 24, insert:

"(G) (1) ANY PERSON WHO MANUFACTURES A HANDGUN, FOR DISTRIBUTION OR SALE, IN VIOLATION OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR AND SHALL BE FINED NOT MORE THAN \$10,000 FOR EACH VIOLATION.

(2) ANY PERSON OR ENTITY WHO SELLS OR OFFERS TO SELL A HANDGUN IN VIOLATION OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR AND SHALL BE FINED NO MORE THAN \$2,500 FOR EACH VIOLATION.

(3) FOR PURPOSES OF THIS SUBSECTION, EACH HANDGUN MANUFACTURED, SOLD, OR OFFERED FOR SALE IN VIOLATION OF THIS SUBSECTION SHALL BE A SEPARATE VIOLATION.

(H) (1) A PERSON OR ENTITY MAY NOT BE HELD STRICTLY LIABLE FOR DAMAGES OF ANY KIND RESULTING FROM INJURIES TO ANOTHER PERSON SUSTAINED AS A RESULT OF THE CRIMINAL USE OF ANY HANDGUN BY A THIRD PERSON, UNLESS THE PERSON OR ENTITY CONSPIRED WITH THE THIRD PERSON TO COMMIT, OR WILLFULLY AIDED, ABETTED, OR CAUSED THE COMMISSION OF THE CRIMINAL ACT IN WHICH THE HANDGUN WAS USED.

(2) THIS SECTION MAY NOT BE CONSTRUED TO OTHERWISE NEGATE, LIMIT, OR MODIFY THE DOCTRINE OF NEGLIGENCE OR STRICT LIABILITY RELATING TO ABNORMALLY DANGEROUS PRODUCTS OR ACTIVITIES AND DEFECTIVE PRODUCTS."

AMENDMENT NO. 5

On page 4, after line 39, insert:

"(L) "BOARD" MEANS THE HANDGUN ROSTER BOARD."

On page 5, after line 25, insert:

"(A) (1) THERE IS A HANDGUN ROSTER BOARD IN THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

(2) THE BOARD SHALL CONSIST OF 9 MEMBERS, APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, EACH OF WHOM SHALL SERVE FOR A TERM OF 4 YEARS.

(3) THE MEMBERS OF THE BOARD SHALL BE:

(I) THE SUPERINTENDENT;

(II) A REPRESENTATIVE OF THE ASSOCIATION OF CHIEFS OF POLICE;

(III) A REPRESENTATIVE OF THE MARYLAND STATE'S ATTORNEYS' ASSOCIATION;

STATE; (IV) A REPRESENTATIVE OF A HANDGUN MANUFACTURER IN THE
RIFLE ASSOCIATION; (V) A REPRESENTATIVE OF THE MARYLAND CHAPTER OF THE NATIONAL
ABUSE; AND (VI) A REPRESENTATIVE OF THE SUPERINTENDENT AGAINST HANDGUN
(VII) 3 CITIZEN MEMBERS.

(4) THE SUPERINTENDENT SHALL SERVE AS CHAIRMAN OF THE BOARD.
(5) THE BOARD SHALL MEET AT THE REQUEST OF THE CHAIRMAN OF THE
BOARD."

On page 5, in line 26, on page 6 in lines 11, 25, and 31, and on page 7
in line 1, strike "(A)", "(B)", "(C)", "(D)", and "(E)", respectively, and
substitute "(B)", "(C)(1)", "(D)", "(E)", and "(F)", respectively. On page 6,
in line 14, strike "(D)" and substitute "(E)"; and in the same line, strike
"(E)" and substitute "(F)".

On page 5, in lines 26 and 31, on page 6, in lines 2, 11, 18, 22, 30, 32,
and 39, and on page 7, in lines 1, 5, and 15 in each instance, strike
"SUPERINTENDENT" and substitute "BOARD". On page 6, in line 12, and on page
7, in line 3, strike "SUPERINTENDENT'S" and substitute "BOARD'S". On page 6,
in line 40, and on page 7, in lines 11, 20, and 23, in each instance, strike
"SUPERINTENDENT" and substitute "BOARD". On page 7, in line 24, strike
"SUPERINTENDENT'S" and substitute "BOARD'S".

AMENDMENT NO. 6

On page 5, in line 5, strike "1970" and substitute "JANUARY 1, 1985".

AMENDMENT NO. 7

On page 5, in line 15, strike "SUPERINTENDENT" and substitute "SECRETARY
OF PUBLIC SAFETY AND CORRECTIONAL SERVICES".

AMENDMENT NO. 8

On page 6, in line 12, strike "OR" and substitute ", (2)": in the same
line, after the second "HE" insert "SUCCESSFUL"; and in line 14, after
"SECTION," insert "THE BOARD SHALL PLACE A HANDGUN ON THE HANDGUN ROSTER".
On page 6, in lines 15, 18, and 22, strike "(1)", "(2)", and "(3)",
respectively, and substitute "(1)", "(11)", and "(11)", respectively.

AMENDMENT NO. 9

On page 7, in line 1, after "(1)" insert "(1)"; in line 2, after
"ROSTER," insert "THE BOARD SHALL NOTIFY THE PETITIONER BY CERTIFIED MAIL,

(Over)

Amendments to HB 1131

Page 4 of 4

RETURN RECEIPT REQUESTED. (II)"; in line 4, strike "MAILED" and substitute "RECEIVED"; and in line 17, after "AND" insert "THEREFORE".

AMENDMENT NO. 10

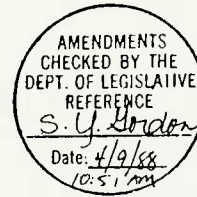
On pages 2 and 3, strike in their entirety lines 14 through 39 on page 2 and lines 1 through 10 on page 3, inclusive.

11 H 5 + 8

B-HB5-22

BY: Judicial Proceedings Committee

SUBSTITUTE AMENDMENTS TO HOUSE BILL NO. 1131
(Third Reading File B111)



AMENOMENT NO. 5

On page 4, after line 39, insert:

"(L) "BOARD" MEANS THE HANOGUN ROSTER BOARD."

On page 5, after line 25, insert:

"(A) (1) THERE IS A HANOGUN ROSTER BOARD IN THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

(2) THE BOARD SHALL CONSIST OF 9 MEMBERS, APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, EACH OF WHOM SHALL SERVE FOR A TERM OF 4 YEARS.

(3) THE MEMBERS OF THE BOARD SHALL BE:

(I) THE SUPERINTENDENT;

(II) A REPRESENTATIVE OF THE ASSOCIATION OF CHIEFS OF

POLICE;

(III) A REPRESENTATIVE OF THE MARYLAND STATE'S ATTORNEYS'

ASSOCIATION;

(IV) A REPRESENTATIVE OF A HANDGUN MANUFACTURER IN THE

STATE;

(V) A REPRESENTATIVE OF THE MARYLAND CHAPTER OF THE NATIONAL

RIFLE ASSOCIATION;

MARYLANDERS

(VI) A REPRESENTATIVE OF THE ~~SUPERINTENDENT~~ AGAINST HANOGUN

ABUSE; AND

(VII) 3 CITIZEN MEMBERS.

(OVER)

ADOPTED
BY THE HOUSE

4/9/88
DATE

(4) THE SUPERINTENDENT SHALL SERVE AS CHAIRMAN OF THE BOARD.

(5) THE BOARD SHALL MEET AT THE REQUEST OF THE CHAIRMAN OF THE BOARD OR BY REQUEST OF A MAJORITY OF THE MEMBERS."

On page 5, in line 26, on page 6 in lines 11, 25, and 31, and on page 7 in line 1, strike "(A)", "(B)", "(C)", "(D)", and "(E)", respectively, and substitute "(B)", "(C)(1)", "(D)", "(E)", and "(F)", respectively. On page 6, in line 14, strike "(D)" and substitute "(E)"; and in the same line, strike "(E)" and substitute "(F)".

On page 5, in lines 26 and 31, on page 6, in lines 2, 11, 30, 32, and 39, and on page 7, in lines 1, 5, and 15 in each instance, strike "SUPERINTENDENT" and substitute "BOARD". On page 6, in line 12, and on page 7, in line 3, strike "SUPERINTENDENT'S" and substitute "BOARD'S". On page 6, in line 40, and on page 7, in lines 11, 20, and 23, in each instance, strike "SUPERINTENDENT" and substitute "BOARD". On page 7, in line 24, strike "SUPERINTENDENT'S" and substitute "BOARD'S".

AMENDMENT NO. 8

On page 6, in line 12, strike "OR" and substitute ". (2)"; in the same line, after the second "THE" insert "SUCCESSFUL"; and in line 14, after "SECTION," insert "THE BOARD SHALL PLACE A HANDGUN ON THE HANDGUN ROSTER"; in lines 14 and 15, strike ": (1)"; and strike beginning with "HANDGUN" in line 16 down through "ENFORCEMENT" in line 24 and substitute "DECISION OF THE BOARD SHALL BE AFFIRMED".

#18

C-HB3-16

BY: Senator C. Riley

AMENOMENT TO HOUSE BILL NO. 1131
(Third Reading File B111)

AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE REFERENCE
<i>W. J. [signature]</i>
Date: <i>4/7/88</i> <i>5:24</i>

On page 6, after line 1, insert:

"(3) IN DETERMINING WHETHER ANY HANDGUN SHOULD BE PLACED ON THE
HANDGUN ROSTER, THE BOARD SHALL CAREFULLY CONSIDER EACH OF THE
CHARACTERISTICS LISTED UNDER PARAGRAPH (2) OF THIS SUBSECTION AND MAY NOT
PLACE UNQUE WEIGHT ON ANY ONE CHARACTERISTIC.";
and in line 2, strike "(3)" and substitute "(4)".

SCREEN

ADOPTED
BY THE HOUSE
4/9/88
DATE

BY: Senator Cade

#19

AMENDMENTS TO HOUSE BILL NO. 1131, AS AMENDED
(Third Reading File B111)

AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE REFERENCE <u>S. Y. Gordon</u> Date: <u>4/9/88</u> <u>9/8</u>
--

In Senator Cade's Amendments labelled "A-HB5-88", strike Amendment No. 2 in its entirety.

On page 5 of the bill, in line 15, before "THE" insert "SUBJECT TO THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT,".

SCREEN

APPROVED
BY THE HOUSE
4/9/88
DATE

BY: Senator Cade

#14

AMENDMENT TO HOUSE BILL NO. 1131, AS AMENDED

AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE REFERENCE

#5

S. Nematollahi

4/14/88 3:37 PM

On page 1 of the substitute Judicial Proceedings Committee Amendments,
In line 15 of Amendment No. 5, strike "IN" and substitute ", PREFERABLY A
MANUFACTURER FROM".

SCREEN

ADOPTED
BY THE HOUSE

4/9/88

DATE

#117

A-HB5-87

BY: Senator Green

AMENDMENT TO HOUSE BILL NO. 1131, AS AMENDED

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
REFERENCE

M. Garbrough
Date: 4/9/88 2:14

On page 1 of the Judicial Proceedings Committee Amendments, in lines 3 and 7 of Amendment No. 2, strike "Saturday Night Specials" and substitute "Certain handguns"; in line 11 of the same amendment, strike "Saturday Night Specials" and substitute "handguns".

SCREEN

ADOPTED
BY THE HOUSE
4/9/88
DATE

BY: Senator Cade

AMENDMENTS TO HOUSE BILL NO. 1131
(Third Reading File Bill)

AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE REFERENCE <i>Sally T. Liff</i> Date <i>4/9/88</i> <i>3</i> <i>PM</i>
--

AMENDMENT NO. 1

On page 5, in line 1, after "(A)" insert:

"EXCEPT FOR THE MANUFACTURE OF PROTOTYPE MODELS REQUIRED FOR DESIGN,
DEVELOPMENT, TESTING, AND APPROVAL BY THE BOARD,".

AMENDMENT NO. 2

On page 7, in line 1, before "IF" insert "SUBJECT TO THE PROVISIONS OF
THE ADMINISTRATIVE PROCEDURE ACT,".

SCREEN

ADOPTED
BY THE HOUSE
4/9/88
DATE

13

C-HB3-36

BY: Senator Beck

AMENDMENT TO HOUSE BILL NO. 1131, AS AMENDED

AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE REFERENCE <i>N. G. G. G. G.</i> Date <u>4/9/88</u> <i>4 pm</i>
--

On page 2 of the Judicial Proceedings Committee Amendments, in lines 14 and 16 of Amendment No. 4, in each instance, strike "HANDGUN" and substitute "FIREARM".

SCREEN

**ADOPTED
BY THE HOUSE**

4/9/88
DATE

BY: Judicial Proceedings Committee

AMENDMENTS TO HOUSE BILL NO. 1131
(Third Reading File Bill)

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
REFERENCE

Sy. Gordon
Date 4/9/88 10³²

AMENDMENT NO. 1

On page 4, of the bill, in line 16, strike "SUPERINTENDENT" and substitute "BOARD".

AMENDMENT NO. 2

On page 5, of the bill, in line 39, strike "AND"; and on page 6 of the bill in line 1, after "CALIBER" insert ";

(VIII) DETECTABILITY BY THE STANDARD SECURITY EQUIPMENT COMMONLY USED AT AIRPORTS OR COURTHOUSES AND APPROVED BY THE FEDERAL AVIATION ADMINISTRATION FOR USE AT AIRPORTS IN THE UNITED STATES; AND

(IX) UTILITY FOR LEGITIMATE SPORTING ACTIVITIES, SELF-PROTECTION, OR LAW ENFORCEMENT".

SCREEN

ADOPTED
BY THE HOUSE
4/9/88
DATE

BY: Senator Boozer

(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO HOUSE BILL NO. 1131

(Third Reading File B111)

AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE REFERENCE <u>W. G. Somerville</u> Date <u>4/7/88</u> <u>10:45 P</u>
--

AMENDMENT NO. 1

On page 1, in line 2, before "Manufacture" insert "Prohibition of"; in the same line, after "Prohibition" insert "of Liability for Damages Caused by Certain Criminal Use of Firearms"; in line 4, after "handguns;" insert "establishing a Handgun Roster Board;"; in line 5, strike "Superintendent of the Maryland State Police" and substitute "Board"; strike beginning with "providing" in line 9 down through "roster;" in line 10; strike beginning with "limiting" in line 14 down through "handguns;" in line 15; in line 21, strike "Superintendent" and substitute "Board"; in line 25, after "changes;" insert:

strictly
"providing that a person or entity may not be held liable for damages resulting from injuries to another person sustained as a result of the criminal use of any firearm by a third person, thereby overturning the remedy established by the Court of Appeals in Olen J. Kelley, et al v. R.G. Industries, Inc., et al, 497A. 2d 1143 (1985) which misconstrued the public policy of Maryland as set forth by the General Assembly;"; and on page 2, after line 10, insert:

(OVER)

"BY adding to
Article - Courts and Judicial Proceedings
Section 5-315
Annotated Code of Maryland
(1984 Replacement Volume and 1987 Supplement)".

AMENDMENT NO. 2

On page 4, after line 39, insert:

"(M) "BOARD" MEANS THE HANDGUN ROSTER BOARD."

On page 5, after line 25, insert:

"(A) (1) THERE IS A HANDGUN ROSTER BOARD.

Adopted (?) THE BOARD SHALL CONSIST OF 7 MEMBERS, APPOINTED BY THE
GVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, EACH OF WHOM SHALL SERVE
FOR A TERM OF 4 YEARS.

(3) THE MEMBERS OF THE BOARD SHALL BE:

(I) A REPRESENTATIVE OF THE ASSOCIATION OF CHIEFS OF
POLICE;

(II) A REPRESENTATIVE OF THE MARYLAND STATE'S ATTORNEYS'
ASSOCIATION;

(III) A REPRESENTATIVE OF A HANDGUN MANUFACTURER IN THE
STATE;

(IV) A REPRESENTATIVE OF THE MARYLAND CHAPTER OF THE
NATIONAL RIFLE ASSOCIATION;

(V) A REPRESENTATIVE OF THE MARYLANDERS AGAINST HANDGUN
ABUSE; AND

(VI) 2 CITIZEN MEMBERS.

(4) THE REPRESENTATIVE OF THE ASSOCIATION OF CHIEFS OF POLICE SHALL SERVE AS CHAIRMAN OF THE BOARD.

(5) THE BOARD SHALL MEET AT THE REQUEST OF THE CHAIRMAN OF THE BOARD."

On page 5, in line 26, on page 6 in lines 11, 25, and 31, and on page 7 in line 1, strike "(A)", "(B)", "(C)", "(D)", and "(E)", respectively, and substitute "(B)", "(C)", "(D)", "(E)", and "(F)", respectively. On page 6, in line 14, strike "(D)" and substitute "(E)"; and in the same line, strike "(E)" and substitute "(F)".

On page 5, in lines 26 and 31, on page 6, in lines 2, 11, 18, 22, 30, 32, and 39, and on page 7, in lines 1 and 5, in each instance, strike "SUPERINTENDENT" and substitute "BOARD". On page 6, in line 12, and on page 7, in line 3, strike "SUPERINTENDENT'S" and substitute "BOARD'S". On page 6, in line 40, and on page 7, in lines 11, 15, 20, and 23, in each instance, strike "SUPERINTENDENT" and substitute "BOARD". On page 7, in line 24, strike "SUPERINTENDENT'S" and substitute "BOARD'S".

AMENDMENT NO. 3

On page 5, in lines 2, 5, and 10, in each instance, strike "NOT"; in line 28, strike "PERMITTED" and substitute "PROHIBITED"; in the same line, after "ARE" insert "NOT". On page 6, in line 14, strike "UNLESS" and substitute "IF". On page 7, in line 16, before "USEFUL" insert "NOT". On page 8, in line 24, strike "NOT".

AMENDMENT NO. 4

On page 5, strike in their entirety lines 17 through 20, inclusive; and in line 21, strike "(F)" and substitute "(E)". On page 8, after line 25, insert:

(OVER)

"Article - Courts and Judicial Proceedings

5-315.

(A) A PERSON OR ENTITY MAY NOT BE HELD LIABLE FOR DAMAGES OF ANY KIND RESULTING FROM INJURIES TO ANOTHER PERSON SUSTAINED AS A RESULT OF THE CRIMINAL USE OF ANY FIREARM BY A THIRD PERSON, UNLESS THE PERSON OR ENTITY CONSPIRED WITH THE THIRD PERSON TO COMMIT, OR WILLFULLY AIDED, ABETTED, OR CAUSED THE COMMISSION OF, THE CRIMINAL ACT IN WHICH THE FIREARM WAS USED.

(B) THIS SECTION MAY NOT BE CONSTRUED TO NEGATE, LIMIT, OR MODIFY THE DOCTRINE OF NEGLIGENCE OR STRICT LIABILITY RELATING TO ABNORMALLY DANGEROUS PRODUCTS OR ACTIVITIES AND DEFECTIVE PRODUCTS."

MARYLAND GENERAL ASSEMBLY
DEPARTMENT OF FISCAL SERVICES
DIVISION OF FISCAL RESEARCH
JOSEPH M. COBLE, DIRECTOR

FISCAL NOTE
REVISED

HB 1131

House Bill 1131 (Delegate Hughes, et al)

Referred to Senate Judicial Proceedings Committee

Judiciary

Referred to Appropriations

SUMMARY OF LEGISLATION: This amended bill requires the Superintendent of the Maryland State Police to compile and publish in the Maryland Register by July 1, 1989 a list of handguns which can be legally sold in Maryland. A list of legal handguns will be sent to firearm dealers a maximum of two times a year. Handguns manufactured after 1970 that are not on the handgun list may not be sold or offered for sale.

The bill provides a definition for "Saturday Night Special" and a list of characteristics which should be considered when a weapon is evaluated for the official handgun roster. The Superintendent is required to adopt rules and regulations necessary to implement a handgun evaluation and enforcement program. The Superintendent may place a handgun on the list or on the petition of any person and is required to process handgun petitions within 45 day. Otherwise the petition will be considered denied. The person that petitions for placement of a handgun on the list is required to provide proof that the gun should be placed on the list. An appeal process is provided if handgun roster petitions are denied.

Finally, the Superintendent is authorized to revoke manufacturer or dealer licenses if they willfully manufacture, sell, or offer for sale handguns that are not in the handgun roster. Handgun manufacturers are exempt from the provisions of this bill until January 1, 1990.

STATE FISCAL IMPACT STATEMENT: This bill could increase FY 1989 general fund expenditures by \$88,156 to implement a handgun roster and related enforcement programs. State revenues are unaffected.

LOCAL FISCAL IMPACT STATEMENT: No effect.

STATE REVENUES: No effect.

STATE EXPENDITURES: The Maryland State Police advise that this bill would increase FY 1989 general fund expenditures by \$88,156. The program would require the hiring of two firearm examiners, one data entry clerk, and one office clerk, costing \$84,246 for wages and fringe benefits. An additional \$3,910 would be required for telephones, postage, printing, and office supplies. The first year estimate reflects a 25% start-up delay. Future year projections include a 5% increase.

VICE GEORGE'S COUNTY GOVERNMENT

State Impact	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
Revenues	-0-	-0-	-0-	-0-	-0-
Expenditures	\$88,156	\$122,050	\$128,152	\$134,560	\$141,288
Net Effect	(\$88,156)	(\$122,050)	(\$128,152)	(\$134,560)	(\$141,288)

() Indicates Decrease

INFORMATION SOURCE: Maryland State Police

ESTIMATE BY: Department of Fiscal Services

Fiscal Note History: First Reader - March 16, 1988
Revised - Updated Information - March 18, 1988
Revised - House Third Reader - April 2, 1988

Per: L. E. Logan
dbg

L.E.L.

John Lang, III, Supervising Analyst
Division of Fiscal Research

HB 1131
Page 2

Thursday,

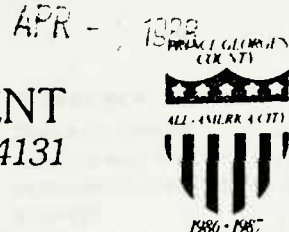
Patricia M. Blum
Patricia M. Blum
County Executive



PRINCE GEORGE'S COUNTY GOVERNMENT

County Executive
PARRIS N. GLENDENING

(301) 952-4131



April 7, 1988

The Honorable Senator Baker, Chairman,
and Members of the Judicial Proceedings Committee
Senate Office Building
Annapolis, Maryland

Dear Senators:

House Bill 1131, which would ban the manufacture and sale of handguns known as "Saturday Night Specials", is now before your committee. I wish to urge you in the strongest possible terms to support this legislation.

In Prince George's County we are embroiled in a drug war of unprecedented magnitude in the history of this County. While it is true that the major drug dealers carry weapons that would not be covered by this bill, there are many, many pushers and users who DO carry this kind of weapon. These guns are used in armed robberies of convenience stores and private individuals by users of drugs, in turf skirmishes, and in domestic disputes. This bill will help to make it more difficult to obtain these guns which not only have no legitimate purpose but which actually enable continuing drug-related activities in the form of theft, robberies and murder.

Public safety is one of Prince George's County's highest priorities. Our Police Department is committed to the protection of life and property of County citizens. They need your assistance by passing this bill. We, quite frankly, need as many tools as possible at our disposal to circumvent and combat the criminal activity which has literally pervaded the County. Crime areas have a blurred edge in terms of demographics. If we can stem the steadily growing tide of crime, we can help prevent an overflow into surrounding jurisdictions. We urge your support and assistance in passing this legislation.

Sincerely,

Parris N. Glendening
County Executive

RAYMOND E. BECK
STATE SENATOR
DISTRICT 5
CARROLL AND BALTIMORE COUNTIES

COMMITTEE
BUDGET AND TAXATION

MINORITY WHIP



SENATE OF MARYLAND

ANNAPOLIS MARYLAND 21401-1991

March 31, 1988

PLEASE REPLY TO:
☐ DISTRICT OFFICE
189 EAST MAIN STREET
WESTMINSTER MARYLAND 21157
848-4460
☒ ANNAPOLIS OFFICE
SENATE OFFICE BUILDING
ROOM 410
ANNAPOLIS MARYLAND 21401-1991
841-3683
TOLL FREE NUMBER
800-492-7122 EXT 3683

The Honorable Kenneth C. Montague, Jr.
House Office Building
Room 317
Annapolis, Maryland 21401

Dear Ken:

I've considered your proposal to attempt a merger of HB 1131 and SB 484. I've read HB 1131 with amendments and have spoken to several sponsors of SB 484 and we have concluded that they are "stand alone" bills.

In rejecting the proposal merger, I want you to know that I appreciate your contact, efforts and innovation in attempting a compromise. Although narrower in scope, HB 1131 continues to embrace the remedy of civil responsibility on third parties not involved in a criminal act. If the concept of HB 1131 provided for fines, injunctive penalties, and/or contribution to a criminal injuries compensation fund, it might be more palatable in the future.

Again, thank you for your consideration and friendship.

Very truly yours,

RAYMOND E. BECK

REB/rn

cc: Senator John N. Bambacus
Senator William H. Amoss
Senator John C. Coolahan
Senator Frederick C. Malkus
Senator Thomas P. O'Reilly
Senator Walter M. Baker
Senator Victor Cushwa
Senator John W. Derr
Senator Lewis R. Riley

RAYMOND E. BECK
STATE SENATOR
DISTRICT 5
CARROLL AND BALTIMORE COUNTIES

COMMITTEE
BUDGET AND TAXATION

MINORITY WHIP



SENATE OF MARYLAND

ANNAPOLIS MARYLAND 21401-1991

March 31, 1988

PLEASE REPLY TO:
☐ DISTRICT OFFICE
189 EAST MAIN STREET
WESTMINSTER, MARYLAND 21157
845 4460
☒ ANNAPOLIS OFFICE
SENATE OFFICE BUILDING
ROOM 410
ANNAPOLIS MARYLAND 21401-1991
841 3683
TOLL FREE NUMBER
800-492 7122 EXT 3683

The Honorable Joel Chasnoff
House Office Building
Room 226
Annapolis, Maryland 21401

Dear Joel:

I've considered your proposal to attempt a merger of HB 1131 and SB 484. I've read HB 1131 with amendments and have spoken to several sponsors of SB 484 and we have concluded that they are "stand alone" bills.

In rejecting the proposal merger, I want you to know that I appreciate your contact, efforts and innovation in attempting a compromise. Although narrower in scope, HB 1131 continues to embrace the remedy of civil responsibility on third parties not involved in a criminal act. If the concept of HB 1131 provided for fines, injunctive penalties, and/or contribution to a criminal injuries compensation fund, it might be more palatable in the future.

Again, thank you for your consideration and friendship.

Very truly yours,

151

RAYMOND E. BECK

REB/rn

cc: Senator John N. Bambacus
Senator William H. Amoss
Senator John C. Coolahan
Senator Frederick C. Malkus
Senator Thomas P. O'Reilly
Senator Walter M. Baker
Senator Victor Cushwa
Senator John W. Derr
Senator Lewis R. Riley

RAYMOND E. BECK
STATE SENATOR
DISTRICT 5
CARROLL AND BALTIMORE COUNTIES

COMMITTEE
BUDGET AND TAXATION

MINORITY WHIP



SENATE OF MARYLAND

ANNAPOLIS MARYLAND 21401-1991

PLEASE REPLY TO
☐ DISTRICT OFFICE
129 EAST MAIN STREET
WESTMINSTER MARYLAND 21157
848-4460
☒ ANNAPOLIS OFFICE
SENATE OFFICE BUILDING
ROOM 410
ANNAPOLIS MARYLAND 21401-1991
841-3683
TOLL FREE NUMBER
800-492-7122 EXT 3663

March 31, 1988

The Honorable Gilbert J. Genn
House Office Building
Room 224
Annapolis, Maryland 21401

Dear Gil:

I've considered your proposal to attempt a merger of HB 1131 and SB 484. I've read HB 1131 with amendments and have spoken to several sponsors of SB 484 and we have concluded that they are "stand alone" bills.

In rejecting the proposal merger, I want you to know that I appreciate your contact, efforts and innovation in attempting a compromise. Although narrower in scope, HB 1131 continues to embrace the remedy of civil responsibility on third parties not involved in a criminal act. If the concept of HB 1131 provided for fines, injunctive penalties, and/or contribution to a criminal injuries compensation fund, it might be more palatable in the future.

Again, thank you for your consideration and friendship.

Very truly yours,

RAYMOND E. BECK

REB/rn

cc: Senator John N. Bambacus
Senator William H. Amoss
Senator John C. Coolahan
Senator Frederick C. Malkus
Senator Thomas P. O'Reilly
Senator Walter M. Baker
Senator Victor Cushwa
Senator John W. Derr
Senator Lewis R. Riley

TESTIMONY AGAINST H.B. 1131
Senate Judicial Proceedings Committee
Submitted by: John August
8781 Oxwell Lane
Laurel, MD 20708
April 5, 1988

Members of the Senate Judicial Proceedings Committee:

I urge you to OPPOSE H.B. 1131 concerning the prohibition of the manufacture and sale of handguns, for the following reasons:

1. The bill contains NO sanctions against criminal misuse of handguns.
2. The bill imposes a new restriction on carry permit holders to carry only a particular gun approved by the Superintendent. However, criminals cannot get a permit, so this restriction is strictly imposed on the honest person where it isn't needed.
3. The bill would restrict the actions of collectors should the Superintendent fail to put the guns of their interest on the Roster. This is another restriction on the honest person where it isn't needed.
4. The bill would make the Superintendent more powerful than the Governor, any legislator, and any judge. None of these officials can unilaterally ban the sale of a handgun.
5. The bill would allow the Superintendent to ban the sale of any handgun simply by not putting it on the Handgun Roster. Few people could take the remedy of filing suit in the Circuit Court or even to pursue the prescribed appeals and hearings.
6. The bill would further squander police resources in monitoring and controlling honest citizens rather than fighting crime.
7. The bill furthers the transformation of the State Police mission from protecting to controlling honest citizens.
8. The term "Saturday Night Special" is unworthy to be written into our law. A handgun is already defined in the law as being "capable of being concealed on the person", so the concealability definition does not distinguish it from any other handgun. Any handgun that can wound or kill a human being can also wound or kill a criminal and therefore must

be useful for self-protection. Further, any handgun can be pointed and fired at a paper target and will thereby find some devotees who will use it for sport. Short barreled handguns with minimal sights commonly appear at Maryland ranges.

9. The only logical law indicated by the neologism, "Saturday Night Special", is to prohibit the sale of special guns after 6:00 pm on a Saturday night. The term is racist in origin and is completely irrelevant to any property of a firearm.

For these reasons, I again urge the committee to give this bill an unfavorable report.

STRIKE THE ENTIRE BILL AND SUBSTITUTE THE FOLLOWING:

ARTICLE 36I

(1) IF THE SUPERINTENDENT OF THE MARYLAND STATE POLICE HAS EVIDENCE THAT ANY HANDGUN BEING MANUFACTURED FOR DISTRIBUTION OR SALE, SALE, AND OFFER FOR SALE IN THE STATE OF MARYLAND IS UNSAFE FOR LEGITIMATE USE HE SHALL PROVIDE SAID EVIDENCE TO THE ATTORNEY GENERAL.

(2) IF THE ATTORNEY GENERAL FINDS SAID EVIDENCE SUFFICIENT, HE MAY SEEK A PRELIMINARY INJUNCTION BY THE CIRCUIT COURT TO PROHIBIT SUCH MANUFACTURE, DISTRIBUTION OR SALE.

(3) SAID INJUNCTION, IF GRANTED, SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS PROOF IS PROVIDED TO THE COURT THAT SAID HANDGUN IS SAFE FOR LEGITIMATE USE.

(4) SUCH PROOF SHALL CONSIST OF A FINDING BY THE H. F. WHITE BALLISTIC LABORATORY, BEL AIR, MARYLAND, OR AN EQUIVALENT ORGANIZATION, THAT SAID HANDGUN IS SAFE FOR LEGITIMATE USE.

(5) ANY ORGANIZATION SUPPLYING SUCH A FINDING MAY NOT BE HELD LIABLE FOR DAMAGES IN ANY ACTION ARISING FROM USE OF A PARTICULAR HANDGUN, BUT THIS SECTION MAY NOT BE CONSTRUED TO NEGATE, LIMIT, OR MODIFY THE DOCTRINE OF NEGLIGENCE OR STRICT LIABILITY RELATING TO ABNORMALLY DANGEROUS PRODUCTS OR ACTIVITIES AND DEFECTIVE PRODUCTS WITH REGARD TO THE MANUFACTURER, DISTRIBUTOR OR SELLER.

MAURICE A. GERSHBERG
GARRISON RIFLE & REVOLVER CLUB
301-578-1380

SENATOR BAKER:

H.B. 1131 CHANGES THE LAW WITH REGARD TO THE ISSUANCE OF HANDGUN CARRYING PERMITS IN A WAY THAT DIRECTLY CONTRADICTS A PROVISION OF EXISTING LAW WHICH THE BILL DOES NOT DELETE.

ARTICLE 27, SECTION 36E(e) PROVIDES THAT CARRYING PERMITS ARE ISSUED FOR ANY HANDGUN LEGALLY IN THE POSSESSION OF THE PERMIT HOLDER. PAGE 2, LINES 19-20 OF H.B. 1131 WOULD REQUIRE THAT THE PERMIT BE ISSUED FOR A SPECIFIC HANDGUN, EVEN THOUGH THE BILL DOES NOT PROHIBIT THE POSSESSION OF ANY KIND OF HANDGUN.

THERE IS NO VALID REASON TO ISSUE A CARRYING PERMIT RESTRICTED TO ONE SPECIFIC HANDGUN. PLEASE DO EVERYTHING YOU CAN TO DELETE THIS PROVISION OF H.B. 1131.

MAURICE A. GERSHBERG

GARRISON RIFLE & REVOLVER CLUB

301-578-1380

Plainly, metal detectors and X-ray scanners provide significant protection for our public buildings and airports. However, there is a growing threat to the effectiveness of these security devices because of the development and proliferation of handguns which cannot be detected by this equipment.

We understand that the technology is now available to create handguns which are almost entirely plastic, and therefore not detectable by standard security devices. The proliferation of predominantly plastic handguns would totally undermine the effectiveness of metal detectors and make our public buildings and airports much more vulnerable.

By enacting House Bill 1131, the Maryland General Assembly can take action regarding both Saturday Night Specials and non-detectable handguns. I strongly urge this Committee to endorse this measure.

Thank you.

SUMMARY of H.B. 1131

New Section 36J of Article 27 would require the Superintendent of State Police to compile and maintain a Handgun Roster of permitted handguns. The Superintendent could not put on the list guns which:

1. The courts have found to be a Saturday Night Special.
2. The Superintendent finds to be a Saturday Night Special based on considerations of the gun's concealability, quality, reliability, accuracy and caliber.
3. Cannot be detected by standard security devices at courthouses and airports. Petitioners can request the Superintendent to place particular guns on the list and Objectors could object to any gun. Either could appeal the Superintendent's decision to court.

Section 36I would make it illegal to manufacture or sell any handgun not on the Handgun Roster (Also no one could get a permit to carry a handgun not on the Roster). If a gun is on the Roster, the weapons manufacturer and seller couldn't be sued under Kelly for manufacturing or selling it.

NOTE: MACHINE GUNS MUST BE REGISTERED WITH THE SUPERINTENDENT OF THE MARYLAND STATE POLICE WITHIN 24 HOURS OF ACQUISITION AND ANNUALLY BY JUNE 1st OF EVERY YEAR.

State of Maryland
Maryland State Police
MACHINE GUN REGISTRATION FORM

For the annual registration of machine guns as required under Article 27,
Section 379, Annotated Code of Maryland

<u>Caliber</u>	<u>Manufacturer</u>	<u>Type or Model</u>	<u>Serial</u>
<u>Maryland Driver's License Number</u>		<u>Social Security Number</u>	
<u>Full Name of Owner</u>		<u>Street Address</u>	
<u>City</u>	<u>County</u>	<u>State</u>	<u>Zip Code</u>

Description of Owner: Race Sex DOB HT. WT. Hair Eyes

Address or location weapon is presently being stored

Occupation Employer

From Whom Weapon Was Received Address

Date Firearm Was Acquired Purpose For Which Gun Was Acquired

Are You A Licensed Federal Dealer in Machine Guns _____ If So, Your Number _____

CERTIFICATION: As owner of the above gun(s), I certify that I am a citizen of the United States of America and that I have not been convicted of a "Crime of Violence". "Crime of Violence" applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder of any degree, manslaughter, kidnapping, rape, mayhem, assault, to do great bodily harm, robbery, burglary, housebreaking, breaking and entering and larceny.

Date: _____ Registered Owner's Signature: _____

For Police Use

CRCR Check Processed By Mail Stamp (Received)

Instructions: Submit completed form for machine gun(s) in your possession. Use reverse side of form for registration of additional weapons. Forms are submitted directly to the Firearms License Section, Maryland State Police, Pikesville, Maryland 21208.

~~Failure to comply with registration requirements is a violation of Article 27~~

MAKE CODE

Caliber: _____ Serial # _____

Type: _____ Barrel length _____

Country of Origin: _____

GUN INFORMATION

MAKE CODE

Caliber: _____ Serial # _____

Type: _____ Barrel length _____

Country of Origin: _____

GUN INFORMATION

MAKE CODE

Caliber: _____ Serial # _____

Type: _____ Barrel length _____

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MARYLAND GENERAL ASSEMBLY
DEPARTMENT OF FISCAL SERVICES
DIVISION OF FISCAL RESEARCH
JOSEPH M. COBLE, DIRECTOR

FISCAL NOTE
REVISED

HB 1131

House Bill 1131 (Delegate Hughes, et al)

Judiciary

SUMMARY OF LEGISLATION: This bill requires the Superintendent of the Maryland State Police to compile and maintain a list of handguns which can be legally sold in Maryland. A list of legal handguns will be sent to firearm dealers a maximum of two times a year. Handguns manufactured after 1970 that are not on the handgun list may not be sold or offered for sale.

The bill provides a definition for "Saturday Night Special" and a list of characteristics which should be considered when a weapon is evaluated for the official handgun roster. The Superintendent is required to adopt rules and regulations necessary to implement a handgun evaluation and enforcement program. The Superintendent may place a handgun on the list or on the petition of any person. The person that petitions for placement of a handgun on the list is required to provide proof that the gun should be placed on the list. An appeal process is provided if handgun roster petitions are denied.

Finally, the Superintendent is authorized to revoke manufacturer or dealer licenses if they willfully manufacture, sell, or offer for sale handguns that are not in the handgun roster.

STATE FISCAL IMPACT STATEMENT: This bill could increase FY 1989 general fund expenditures by \$88,156 to implement a handgun roster and related enforcement programs. State expenditures are unaffected.

LOCAL FISCAL IMPACT STATEMENT: No effect.

STATE REVENUES: No effect.

STATE EXPENDITURES: The Maryland State Police advise that this bill would increase FY 1989 general fund expenditures by \$88,156. The program would require the hiring of two firearm examiners, one data entry clerk, and one office clerk, costing \$84,246 for wages and fringe benefits. An additional \$3,910 would be required for telephones, postage, printing, and office supplies. The first year estimate reflects a 25% start-up delay. Future year projections include a 5% increase.

State Impact	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
Revenues	-0-	-0-	-0-	-0-	-0-
Expenditures	\$88,156	\$122,050	\$128,152	\$134,560	\$141,288
Net Effect	(\$88,156)	(\$122,050)	(\$128,152)	(\$134,560)	(\$141,288)

() Indicates Decrease

INFORMATION SOURCE: Maryland State Police

ESTIMATE BY: Department of Fiscal Services

Fiscal Note History: First Reader - March 16, 1988

Revised - Updated Information - March 18, 1988

Per: L. E. Logan
dbg

L.E.L.

John Lang, III, Supervising Analyst
Division of Fiscal Research

HB 1131
Page 2

MARYLAND GENERAL ASSEMBLY
DEPARTMENT OF FISCAL SERVICES
DIVISION OF FISCAL RESEARCH
JOSEPH M. COBLE, DIRECTOR

FISCAL NOTE

HB 1131

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INFORMATION SOURCE: Maryland State Police

ESTIMATE BY: Department of Fiscal Services

Fiscal Note History: First Reader - March 16, 1988

Per: L. E. Logan
dbg

L. E. Logan

John Lang, III, Supervising Analyst
Division of Fiscal Research

March 17, 1988

Drug Related Firearm Activity
Baltimore District Office

In the Spring of 1986, the Baltimore District Office and ATF concluded an investigation into a marijuana and cocaine trafficking organization in Anne Arundel County, Maryland, that used a retail gunshop as a base of operation. The owner of the gunshop was the principal figure in the organization. The gunshop was purchased with the proceeds from marijuana and cocaine trafficking. This ultimately led to the seizure of the gunshop under provisions of Title 21 under the arrest forfeiture section.

The organization, through the gunshop, had associated itself with local law enforcement officers who have a tendency to frequent such shops. While no police officers were involved in the drug trafficking operation, one U.S. Customs Agent was indicted in federal court for obstruction of justice and theft of government property to which he pled guilty to theft of government property, case involving the operation of the gunshop.

The gunshop owner supplied an UZI submachine gun that was used in a drug related homicide in Florida.

Two handguns used in a drug related shooting in Prince George's County, Maryland, were traced to this gunshop. Although the victim did not die, he was shot in the head and remains in a comatose condition.

The owner of the gunshop entered a plea to conspiracy to distribute marijuana and cocaine and received a twelve (12) year sentence. Other members of this organization were convicted in federal court.

The gunshop was seized and the weapons below were found in the inventory. These weapons could have made it into the hands of drug traffickers.

Machine Guns	- 54	valued at \$47,475.00
Handguns	- 130	Valued at \$35,735.00
Shotguns	- 61	Valued at \$16,938.00
Rifles	- 63	Valued at \$15,346.00
Silencers	- 28	Valued at \$6,464.00
Ammunitions	-	Valued at \$24,938.00

Statistics

Baltimore City Police Departments

Handgun Offenses: - 4,464 Total:
 Includes 119 murders
 2,890 robberies
 74 rapes
 1,881 aggravated assaults

Seized Firearms:

1,807 Handguns
 214 Rifles
 232 Shotguns
 127 Sawed off shotguns

Total - 2380

DEA Baltimore District Office

Firearms Destroyed - 1987 = 22
 - 1986 = 69
 - 1985 = 39

Firearms Seized - 1987 = 41
 - 1986 = 35

Mid-Atlantic OCDETF Region

FY 1987 - 63 cases involving firearms

Total firearms seized in cases were:

79 Handguns
55 Rifles
35 Shotguns
4 Silencers
1 Machine gun
19 Other weapons

STATEMENT OF
J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL OF MARYLAND
IN SUPPORT OF HOUSE BILL 1131
BEFORE THE HOUSE JUDICIARY COMMITTEE
MARCH 21, 1988

Thank you for this opportunity to speak in favor of House Bill 1131. This bill provides a way to get Saturday Night Specials, which cause so much injury, and "plastic handguns," which cannot be detected by standard airport and courthouse security devices off the streets.

Our state is experiencing a handgun crisis. Between 1980 and 1986, 1,295 Marylanders were murdered with handguns - and many others were badly injured. Even our schools have been affected. According to a Grand Jury study requested by Baltimore City Circuit Court Judge Ellen almost half of all male students in the City's public schools have carried a handgun at some time, and 60% of all students knew someone who had been shot, threatened or robbed in their school within a six month period.

Many of the handguns used to cause these tragedies have been Saturday Night Specials. These guns are virtually useless for sporting, self-defense and law-enforcement purposes because they are poorly made and inaccurate. One police officer testified before a congressional committee that Saturday Night Specials can be "extremely dangerous" for the user because they "misfire, fire accidentally, and backfire with some degree of regularity? However, they are also easily concealable and thus of great use to criminals.

An example of a Saturday Night Special would be the .22

caliber, 2 inch barrel "R.G. #14" gun used to wound Ronald Reagan. This weapon is only of use to criminals, who want to surprise a victim and shoot them at shortrange. I have enclosed for you an "ALERT" issued to prison officials by the Department of Public Safety showing how such a weapon can be easily concealed in a standard sized personal pager. The gun can be shot-without opening the pager. According to Baltimore City Police statistics approximately 20% of the handguns used in crimes can be categorized as low quality Saturday Night Specials.

Since so many types of handguns are made,, it is critical to adequately designate which guns are Saturday Night Specials. Since there is no clear cut textual definition in the common law doctrine of negligence, factors must be applied on a case-by-case basis to determine whether a particular handgun can be used for legitimate purposes. House Bill 1131 assigns this taste to our state's gun experts, the State Police.

House Bill 1131 would require the Superintendent of State Police to publish a Roster of handguns which are primarily used for legitimate purposes. The Superintendent would keep off the Roster handguns which cannot reasonably be used for sporting, self-defense, or law-enforcement purposes and handguns which cannot be detected by airport or courthouse security devices. It would be illegal to manufacture or sell any handgun not on the Handgun Roster. In determining whether to place a handgun on the Handgun Roster, the Superintendent would consider the weapon's concealability, quality, safety, accuracy and caliber. Gun dealers would have the right to challenge the Superintendent's

decisions in court.

The Bill also provides that once a handgun is on the Handgun Roster, those who manufactured and sold the weapon could not be sued on the grounds that it is a Saturday Night Special. The Superintendent would be required to semi-annually publish the Roster in the Maryland Register.

I believe that House Bill 1131 provides a workable procedure for identifying and prohibiting the sale of Saturday Night Specials. It also helps gun dealers by letting them know precisely which guns they can sell and which guns they cannot sell.

House Bill 1131 would also deal with the growing threat posed by handguns that cannot be detected by standard airport and courthouse security devices which have proved effective. The Superintendent would not be able to place such weapons on the Handgun Roster. According to the Federal Aviation Administration's May 1987 Semiannual Report to Congress on the Effectiveness of the Civil Aviation Security Program, since 1973, security devices at U.S. Airports have detected 37,716 firearms resulting in approximately 16,000 arrests. At BWI Airport alone, 28 handguns were detected and confiscated in 1985, 19 in 1986, and 15 from January to December 1 of 1987. At the federal courthouse in Baltimore, 12 guns have been confiscated since 1983 as a result of the detection devices. In a single Maryland county, Baltimore County, the sheriff's office informs us that they confiscated 10-30 illegal handguns a year at the courthouse with their metal detector.



HOUSE OF DELEGATES

ANNAPOLIS, MARYLAND 21401

April 1, 1988

Dear Bill:

We want to thank you for your thoughtful and courageous vote on HB 1131, the "Saturday Night Special" bill.

You sent a strong statement to the Maryland Senate and confirmed Governor Schaefer's support of the bill.

Most importantly, your decision was made in the face of tough opposition and an entrenched NRA lobbying effort.

It is refreshing to know that the overwhelming majority of Maryland citizens supported this bill and were not deprived of their voice by a vocal minority.

We hope you will continue to fight for this reasonable piece of legislation by contacting your Senator and supporting the bill if it comes back from the Senate.

Again, our deepest thanks.


Ralph M. Hughes


Gilbert J. Genn


Peter Franchot

H.B. 1131

H.J.R. _____

Vote Tally
3126/88
Date

S.B. _____

S.J.R. _____

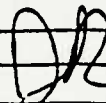
MOTION: ☒ Favorable ☒ Amended ☐ Re-refer to _____
☐ Unfavorable ☐ Hold ☐ Other _____

HOUSE JUDICIARY COMMITTEE

	YEAS	NAYS	ABSTAIN	ABSENT
HORNE, W. S.				
MINNICK, J.	✓			
BUSCH, M.	✓	✓		
POOLE, B.				
SHAPIRO, D.	✓			
DYPSKI, C.	✓			
GENN, G.	✓			
DE PAZZO, L.	✓			
CURRAN, G.	✓			
BELL, E.	✓			
MATTHEWS, R.		✓		
VALLARIO, J.		✓		
MASTERS, K.			✓	
CHASNOFF, J.	✓			
MENES, P.	✓			
PALUMBO, R.	✓			
HUGHES, R.	✓			
KELLY, K.	✓			
BLUMENTHAL, R.				✓
EHRlich, R.		✓		
MADDOX, E. F.	✓			
FLANAGAN, R.	✓			
MONTAGUE, K.	✓			
TOTAL	16	4	1	1

NOTE: Comments, if any, must be made known to the members BEFORE the Vote.

COMMENTS: _____



Committee Reporter

Maryland Retail Merchants Association

HB 1131



March 23, 1988

The Honorable William S. Horne
Chairman, House Judiciary Committee
Room 121, Lowe House Office Building
Annapolis, Maryland 21401

Dear Chairman Horne:

I am writing to express the interest of the Maryland Retail Merchants Association in House Bill 1131. I could not appear at the hearing on March 21 due to previous commitments.

A growing concern of retailers, especially in urban areas, has been the use of small handguns, commonly referred to as "Saturday Night Specials," in hold-ups of retail locations. The easy availability and danger posed by these handguns led us to support SB 3 that would make it a misdemeanor to sell these handguns.

This concern also leads us to support HB 1131 to the extent that it prohibits the sale of "Saturday Night Specials." We have no position on the manufacture of these handguns.

We urge a favorable report on HB 1131.

Sincerely,

Thomas S. Saquella
President

cc: Hon. Ralph Huges

TSS/ma

MARYLAND DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

Legislative Liaison
Annapolis Office

764-4038
974-2591

POSITION ON PROPOSED LEGISLATION

DATE: 3/18/88 SUPPORT X

BILL NUMBER: HB 1131 OPPOSE NO POSITION

BILL TITLE: HANDGUNS - MANUFACTURE AND SALE - PROHIBITION

REVIEW AND ANALYSIS:

House Bill 1131 would require that the Superintendent of the Maryland State Police establish and maintain a roster of approved handguns. Unless a handgun successfully meets established criteria which indicate the guns legitimacy, that weapon may not be sold in this state if it is newer than a 1970 model; may not be manufactured in this state; and, a handgun permit cannot be issued so that a person may carry such a handgun.

If this bill becomes law, it is anticipated that the Maryland State Police would develop criteria modeled after the National Institute of Justice Technology Assessment Program. This program was developed by the National Bureau of Standards and is designed to gauge a handgun's suitability, safety and reliability by applying certain standards of visual inspection, dimensional and functional criteria and actual firing tests. We believe that this assessment program provides a thorough analysis of a handgun's legitimacy and that, if the program was applied universally, all non-quality handguns would be removed from the legitimate marketplace. It has also been estimated that approximately 80% of handgun accidents caused by inadvertant firing could be eliminated.

While it is difficult to determine the initial number of handgun models which would be evaluated for inclusion on the handgun roster, the Firearms License Section has estimated the number to be approximately 500 models. Considering that there are approximately 2,000 handgun manufacturers in the world today, it is not unreasonable to assume that the potential exists for dealing with thousands of different handgun models, even though the bill is restricted to those weapons manufactured after 1970.

FOR ADDITIONAL INFORMATION CONTACT: 1/SGT. DON HOFFMAN
OF THE MARYLAND STATE POLICE - TELEPHONE NO. 653-4312 or 974-2591

POSITION ON PROPOSED LEGISLATION

Page #

BILL NUMBER: HB 1131

BILL TITLE: HANDGUNS - MANUFACTURE AND SALE - PROHIBITION

SUPPORT X OPPOSE

NO POSITION

REVIEW AND ANALYSIS:

Initial estimates justify a separate unit under the Crime Laboratory Division to deal with the implementation of this legislation. This unit would be staffed by two Firearms Examiners, one of whom would be a supervisor, one Data Device Operator and a Steno Clerk. A fiscal estimate has placed the first year start up cost at approximately \$92,691. Additional resources would be required to effectively administer this program.



HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND

HOUSE JUDICIARY COMMITTEE

SPEAKERS AND APPEARANCES

17
DATE OF HEARING: March 21
HOUSE BILL NO. AND SPONSOR: HB 1131 Del. Hughes
SENATE BILL NO. AND SPONSOR: _____
SUBJECT MATTER: Handguns - Manufacture and Sale Prohibition

LIST OF SPEAKERS AND INTERESTED PARTIES

PROPOSERS

Delegate Peter FRANCHOT

✓ COL. ELMER TIPPETT SUPERINTENDENT - MARYLAND STATE POLICE
NAME (please print) ADDRESS AFFILIATION

✓ SGT R.E. PEDERSEN, MARYLAND STATE POLICE
NAME (please print) ADDRESS AFFILIATION

✓ Chief Neil Behan BALTO. Co. Police
NAME (please print) ADDRESS AFFILIATION

✓ LOUISE HESS HANDGUN CONTROL
NAME (please print) ADDRESS AFFILIATION

✓ STUART C. SIMONS STATES CITY BALTO. CITY
NAME (please print) ADDRESS AFFILIATION

✓ KENNETH A. STEVENS 8564 STORCH WOODS DR
NAME (please print) ADDRESS AFFILIATION

✓ J. Joseph Curran, Attorney General
NAME (please print) ADDRESS AFFILIATION

✓ ~~WILLIAM BRENNER~~ BALTIMORE COUNTY
NAME (please print) ADDRESS AFFILIATION

OPPOSERS

✓ MAURICE A GERSHBERG 5701 ROBIN AVE
NAME (please print) ADDRESS AFFILIATION

✓ NORMAN PEDERSEN 9635 DUNDAS RD 21236 MLEDA INC
NAME (please print) ADDRESS AFFILIATION

✓ WELDON CLARK 7914 A VINTAGE CIR 21661 M & DC R & P
NAME (please print) ADDRESS AFFILIATION

✓ DOUGLAS CHUCK CUNNINGHAM 1600 Rhode Island Ave 20636 NRA
NAME (please print) ADDRESS AFFILIATION

✓ C. D. BAKER, JR 2538 OLD PT. SCHS. RD.
NAME (please print) ADDRESS AFFILIATION

✓ VIN NOLAN 5817 JOHNSON AVENUE
NAME (please print) ADDRESS AFFILIATION

✓ LOUIS C. CANNON JR 2206 Pulaski Hwy
NAME (please print) ADDRESS AFFILIATION

✓ TOM BROWN 3703 ST MARGARET ST COTTON
NAME (please print) ADDRESS AFFILIATION

Report of the Committee on Judiciary

Distribution Date: MARCH 30, 1988
Second Reading Date: MARCH 30, 1988
Report Number: 88-026

<u>Bill No</u>	<u>Report</u>	<u>Sponsor</u>	<u>Relating to</u>
<u>FAVORABLE</u>			
HB 1131	FWA	Del. Hughes, et al	Handguns - Manufacture and Sale - Prohibition
SB 247	FAV	The President (Judiciary)	Judgeships - Circuit and District Courts
SB 609	FAV	Sen. Baker (Maryland Judicial Conference)	Juror Selection - Qualification and Summoning
<u>REREFERRED</u>			
SB 11	TO ENV. MRTS.	Sen. Cushwa, et al	Hunting - Careless or Negligent
SB 161	TO ECN. MRTS.	Sen. C. Riley (Finance Comm.)	Rental Motor Vehicles - Collision Damage Waivers
<u>UNFAVORABLE</u>			
HB 893	UNF	Del. Palumbo	Landlord and Tenant - Right of Access - Cable Television Companies

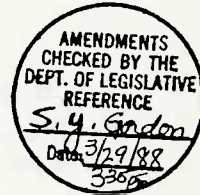
William H. Homan

CHAIRMAN

03/29/88;11:45

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL NO. 1131
(First Reading File Bill)



AMENDMENT NO. 1 PURPOSE A

On page 1, in line 3, after "manufacture" insert "for distribution or sale"; in line 5, strike "maintain a" and substitute "publish by a certain date a handgun roster, and thereafter maintain the"; in line 15, strike "authorizing" and substitute "requiring"; and in line 20, after "Superintendent;" insert "providing that compliance with the prohibition against the manufacture for distribution or sale, sale, or offer for sale of certain handguns is not required until a certain date;".

AMENDMENT NO. 2 CLARIFYING AND LIMITING TO PERMITTED

On page 4, in line 20, after "FOR" insert "LEGITIMATE PURPOSES FOR"; and in line 29, strike the second "A" and substitute "FOR DISTRIBUTION OR SALE ANY".

AMENDMENT NO. 3 STRIKES LANGUAGE EXEMPTING THE SUT

On page 4, in line 34, strike "(1)"; and on pages 4 and 5, strike in ~~FROM~~ their entirety lines 38 and 39 on page 4, and lines 1 and 2 on page 5. CERTAIN LEGAL REQUIREMENTS

AMENDMENT NO. 4 STRIKES IMPRECISE LANGUAGE

On page 5, in line 7, strike "IS OF A TYPE THAT".

(OVER)

Amendments to HB 1131

Page 2 of 3

AMENDMENT NO. 5

On page 5, in line 11, strike "SECTION" and insert "§"; in line 15, after "AND" insert "PUBLISH IN THE MARYLAND REGISTER BY JULY 1, 1989, AND THEREAFTER"; in line 16, strike "PRIMARILY"; in line 18, strike ", AT A MINIMUM,"; and strike in their entirety lines 34 through 36, inclusive.

AMENDMENT NO. 6

On page 6, in line 4, strike "THROUGH (G)" and substitute "AND (E)"; in line 6, strike "DETERMINED" and substitute "MADE A FINDING"; and strike beginning with "FOR" in line 6 down through "LIABILITY" in line 7.

AMENDMENT NO. 7

On page 6, in line 21, after "(D)" insert "(1)"; in line 22, after "SHALL" insert ", WITHIN 45 DAYS OF RECEIPT OF THE PETITION"; in lines 23 and 25, strike "(1)" and "(2)", respectively, and substitute "(I)" and "(II)", respectively; and after line 28, insert: "(2) IF THE SUPERINTENDENT FAILS TO DENY OR APPROVE A PETITION WITHIN THE TIME REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE PETITION SHALL BE CONSIDERED DENIED.".

AMENDMENT NO. 8

On page 6, in line 34, strike "120" and substitute "90"; strike beginning with "THE" in line 37 down through "HEARING" in line 38 and substitute: "THE SUPERINTENDENT SHALL PROVIDE NOTICE OF THE HEARING IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT".

AMENDMENT NO. 9

On page 6, in line 40, strike "SUBMIT EVIDENCE FROM AN EXPERT, SATISFACTORY" and substitute: "HAVE THE BURDEN OF PROVING"; and in line 43, after "PURPOSES" insert ", AND SHOULD BE PLACED ON THE ROSTER."

Amendments to HB 1131

Page 3 of 3

(5) ANY AGGRIEVED PARTY OF RECORD MAY APPEAL WITHIN 30 DAYS A FINAL DECISION OF THE SUPERINTENDENT IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

(6) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS REQUIRING THE SUPERINTENDENT TO TEST ANY HANDGUN OR HAVE ANY HANDGUN TESTED AT THE SUPERINTENDENT'S EXPENSE".

AMENDMENT NO. 10

On page 7, strike in their entirety lines 1 through 22, inclusive.

AMENDMENT NO. 11

On page 8, after line 8, insert: "SECTION 3. AND BE IT FURTHER ENACTED, That compliance with the prohibition of this Act against the manufacture for distribution or sale, sale, or offer for sale of handguns is not required until January 1, 1990."; and in line 9, strike "3" and substitute "4".