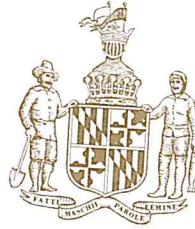


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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

January 14, 2019

Testimony for Senate Bill 35 by Sen. Michael Hough

Criminal Law - Crime of Violence - Definition

Senate Judicial Proceedings Committee

SB 35- Crime of Violence-Using a Firearm While Dealing Drugs Exception

Mr. Chairman, and members of the committee, I ask you to support SB 35, which eliminates an exception currently in the crime of violence statute (14-101) for when a firearm is used and a person is charged with possession with the intent to distribute.

Two years ago we passed legislation to say under 14-101 crimes of violence carry a mandatory minimum. 14-101 comes into play when a firearm is used in the commission of felony, except for some reason the House carved out an exemption for when a firearm is used while selling drugs. This is a giant loop hole in the law.

For those of you concerned that this bill is going to lead to low level drug dealers being given a mandatory minimum for just having a firearm on them, Maryland case law actually requires that the gun be brandished during the exchange.

The Court of Appeals held in *Wynn v. State* (313 Md. 533 (1988)), that "use" is something more than simply possessing, wearing, carrying, or transporting a firearm during a crime of violence or a felony. The word requires "active as opposed to passive" conduct.

The decision was reaffirmed five years later in *Harris v. State* (331 Md. 137 (1993)), which added: "As we see it, 'use' requires that the defendant 'carry out a purpose or action' or 'make instrumental to an end or process' or 'apply to advantage' the firearm.

In a case a few years ago, the Court applied its ruling in *Wynn* to a rape case. The rapist threatened the victim with a firearm, put the gun down, took her into the bedroom and carried out the act in a separate room and therefore because the firearm was not used in the act he was not subject to the mandatory minimum under 14-101.

By passing this bill, we would make it so that when somebody is dealing drugs and in the act of dealing drugs brandishes or uses a firearm like all the other felonies, they will get the mandatory minimum. This does not create a new mandatory minimum, it simply closes a loop hole that should have never been put in there in the first place.

SB 35 closes a loop hole and will allow us to take drug dealers who are using firearms in the commission of their crime off the streets, thus I urge you to give it a favorable report.