



Senator Will Smith, Chairman
Senate Judicial Proceedings Committee
Maryland General Assembly
90 State Circle
Annapolis, MD 21401

February 14, 2022

Chairman Smith and members of the committee,

On behalf of Everytown for Gun Safety, America's largest violence prevention organization and the many Moms Demand Action and Students Demand Action volunteers across Maryland, I submit this written testimony in strong support of Senate Bill 387, a bill to regulate ghost guns. This bill is simple, clear, and comprehensive. It will provide state and local law enforcement officials with an invaluable new tool in their fight to stem the tide of untraceable, unserialized guns that is flooding the streets of Maryland communities and killing and injuring far too many Marylanders, including a 15-year-old boy just a few weeks ago. Due to gaps in federal law, the parts and kits used to build these guns can be purchased without a background check and aren't marked with a serial number. This has made ghost guns a weapon of choice for gun traffickers, convicted criminals, violent domestic abusers, armed extremists, and a host of other prohibited persons, who cannot legally purchase or possess firearms. It's high time Maryland closes the gap in the law that has allowed ghost guns to proliferate and kill and injure countless Marylanders. I urge a favorable report.

After years of consideration and amendment, this bill is timelier than ever before. In a few short months, the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") is expected to finalize an update to federal rules that have, due to their current, flawed interpretation of federal law, enabled the mass marketing and unregulated sale of ghost guns. The proposed new rule would clarify the meaning of the term "firearm" under federal law.¹ Federal gun safety laws regulate "firearms," including frames or receivers, the central building blocks

¹ ATF Proposed Rule, "Definition of 'Frame or Receiver' and Identification of Firearms," 86 FR 27720, available at: <https://www.federalregister.gov/documents/2021/05/21/2021-10058/definition-of-frame-or-receiver-and-identification-of-firearms>



that can easily be converted into operable firearms.² Current ATF rules have taken the flawed position that frames or receivers do not qualify as a ‘firearm’ until they have been completely drilled out and are ready to build around, even though unfinished frames and receivers can be made into a firearm in less than an hour.³ These rules have allowed the market for ghost gun parts and kits—unfinished frames and receivers and the parts required to build them into untraceable—to flourish, creating an easy path for prohibited persons to access deadly, untraceable firearms with no background check and no questions asked.

When finalized, these new ATF rules will state that unfinished frames and receivers—the parts that can readily be completed and build into firearms—are “firearms” under federal law, just like finished frames and receivers and fully-built firearms. Once these rules are in place, unfinished frames and receivers will be subject to all the federal regulations applicable to the manufacture, sale, and possession of firearms. When manufactured, they must be imprinted with a unique serial number. They cannot be sold by licensed dealers unless the purchaser undergoes a background check. They will be illegal to possess by anyone who is legally prohibited from possessing firearms. SB 387 is designed to strengthen Maryland law in ways that align with, compliment, and expand upon these forthcoming federal regulations.

As with the forthcoming federal rules, this bill would expand Maryland’s definition of “firearm” to include firearms, finished frames and receivers *and* unfinished frames and receivers. The bill would also employ a clear and precise definition of the term “unfinished frame or receiver,” by using a definition that directly tracks the one that will soon be in place at the federal level. The ATF rules contain an expansive set of factors that should be considered when determining whether an object can “readily” be converted into a finished frame or receiver. The sponsors of SB 387 have thoughtfully crafted the bill so that these factors can be relied upon in the interpretation and implementation of the regulations in SB 387, ensuring consistency with federal law and clear guidance for Maryland courts. Indeed, Maryland courts currently rely on federal law when interpreting the meanings of identical terms in state law.⁴ This approach will

² 18 USC 921(a)(3). This is the same basic framework currently used in the Maryland code. See MD Public Safety Code Ann 5-101(h).

³ “ATF and the Rising Threat of Ghost Guns,” available at: <https://everytownresearch.org/report/atf-the-rising-threat-of-ghost-guns/>.

⁴ See Moore v. State, 424 Md. 118, 131 (Md. 2011), in which the MD Court of Appeals discovered the meaning of “frame or receiver” by referring to ATF regulations.



avoid confusion, ensure clarity, and create a single standard to enable effective and consistent enforcement.

To date, nine states and Washington DC have passed laws like SB 387 to combat the rising threat of ghost guns. Many of those laws use the same approach as this bill—regulating unfinished frames and receivers and ensuring that they are treated just like finished firearms under the law. These states include Delaware, New Jersey, New York, and Rhode Island as well as Washington DC. With only one recent exception, these state laws have consistently been upheld when challenged in court. To date only Nevada’s ghost gun law has been successfully challenged in court. In that case, a state court found that the definition of “unfinished frame or receiver” in Nevada’s law was vague. That ruling is currently being appealed to the Nevada Supreme Court. The definition of ‘unfinished frame or receiver’ in SB 387 has no such vagueness problem. The bill uses plain language—language that precisely tracks the forthcoming federal regulations and aligns with federal law and its extensive explication of what constitutes an unfinished frame or receiver, including the factors that should be considered when making that determination—that makes it far clearer than the language at issue in Nevada. I am confident that the definition in SB 387, particularly when read in conjunction with the forthcoming federal rules, precisely lays out the prohibitions in this important law and would survive any challenges alleging vagueness.⁵

This bill will not impose any undue burdens on Marylanders who wish to assemble their own firearms. The bill doesn’t prohibit the self-manufacture of firearms, nor does it restrict the methods by which firearms can be built. The bill simply requires that the central building blocks of all firearms, self-made or otherwise, be marked with a serial number, in accordance with federal law. Going forward, those who wish to build firearms can still do, and can still begin with an unfinished frame or receiver if that’s their preference. But that part must be engraved with a serial number—either by its commercial manufacturer or by the at-home builder. Federally licensed firearm dealers currently offer engraving services and can provide those services to those who wish to build their own firearms or engrave those they have already built using unserialized parts. Indeed, the forthcoming federal rules will create a new class of federal firearm

⁵ I would urge the sponsors and members of the committee to clarify the legislative intent behind the definition used in the bill, to ensure that, going forward, the Maryland terms are interpreted in a manner consistent with the forthcoming federal rules. It would also be helpful to include that information and details on the federal rules and guidelines in the regulations promulgated by the Secretary to help carry out the provisions of the law.



license for those who wish exclusively to engage in the business of providing engraving services to builders of self-made firearms.

The number of ghost guns recovered by law enforcement officers across Maryland each year has been rising at an alarming rate. By prohibiting future sales of unserialized, unfinished frames and receivers, SB 387 will empower state and local law enforcement, from the Attorney General to the State Police to the Baltimore Police Department, to stop the flow of these untraceable weapons into Maryland communities. By targeting enforcement against online sellers who ship the parts and kits needed to build ghost guns to anyone with a credit card, law enforcement officials can keep the guns out of the hands of gun traffickers, violent abusers, armed extremists, children, and all other people who Maryland and federal law prohibits from possessing firearms. At home builders could continue to access these parts if they wish, provided they undergo the background check and comply with all applicable Maryland and federal laws. These responsible gun owners can not only go on building once the law takes effect, they can also take comfort in knowing that if the weapons they build are ever lost, stolen, or used in the commission of a crime, they will be marked with a serial number that will enable law enforcement to investigate and identify those responsible.

SB 387 will help keep Marylanders safe from the threat of untraceable ghost guns, keep firearms out of the hands of people who shouldn't have them, stymie gun traffickers and others looking to evade Maryland's strong gun laws, and align the state with what will soon become the law of the land—a law that recognizes that parts that can easily be built into deadly firearms are subject to the same regulations as the firearms themselves. The bill is well-crafted and strikes a balance between ensuring public safety and the rights of all Marylanders. I strongly urge the committee to issue a favorable report and advance this life-saving legislation.

Sincerely,

Samuel Levy

Senior Counsel, Everytown for Gun Safety