

To: MD Senate Judicial Proceedings Committee

February 16, 2022

From: John H. Gundling

Hagerstown, MD

Dear Folks, I rise in Strong Objection to HB0425 as its language indicts any person that has a screwdriver, hammer, and a block of aluminum as a ghost gun builder. This bill, and its corresponding Senate proposal SB0387, would prohibit private individuals from acquiring or selling "unfinished frames and receivers" within the state starting June 1, 2022. After that date, those parts themselves would be deemed to be "firearms." To be lawfully kept after January 1st, 2023, all unfinished frames and receivers would have to be serialized as the bills describe. The mere possession of any unserialized item considered to be a firearm is a criminal offense as of 1/1/2023.

What is an "unfinished frame or receiver" under these bills? The bills create a very broad new definition of "firearm" to make clear that unfinished receivers will now be considered to be a firearm [Changing the goalposts, are we?]. Specifically, the bills define "unfinished frame or receiver" to mean "a forged, cast, printed, extruded, or machined body or similar article that:

1. Has reached a stage in manufacture where it may readily be completed, assembled, or converted to be used as the frame or receiver of a functional firearm; or
2. Is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled, or converted."

After some Legal scholars have perused these bills, they infer that under this definition, a "zero percent" receiver might well fall under the bills' coverage if it is sold or marketed as such. The bills do not even attempt to define the meaning of "readily completed, assembled or converted." It appears that the intent of the bills is to piggyback on the elaboration of these terms as defined in the pending ATF regulations which have yet to be finalized. Nothing in those pending regulations purport to cover a zero percent receiver.

Let's for the sake of argument say that I recently picked up a nice hunk of metal, that resembles an unfinished frame or receiver. Now, my cousin has a machine shop and I've asked him to take the hunk of metal and assist me with building a lawnmower engine. Under this definition, subject to interpretation by the government, I'm in possession of an unfinished frame or receiver and after January 1 2023, guilty of a felony punishable by three years in prison and a \$10,000 fine.

We've come a long way baby from "shall not be infringed". As a matter of historical fact, gun making prior to 1791 and after, was a home encouraged industry in the New United States of America.

What if I just serialize my guns at home?

Not unless you're a federally licensed dealer, importer, manufacturer, or other federal licensee authorized by federal law to "provide marking services." The bill requires that such entities mark firearms with a serial number that consists of the first three and last five digits of *their* FFL number, plus "another number." Inscriptions must be within compliance with the federal rules that define depth, height, and method. The bills don't require that anyone "actually perform" this service; and potential engravers are able to charge whatever they'd like. Engraving to federal standards (as required by the bills) requires skill and expensive machinery and few FFLs may have either the desire or the capability to perform this task.

What if my homemade gun is already serialized?

The bills offer no accommodation for these types of firearms. They'd have to be serialized as described or dispossessed before the bills go into effect on January 1, 2023.

Can I serialize my 3D-printed gun?

Not unless it can be done in accordance with the federal rules. Serial numbers cannot be legally inscribed directly to polymer due to their vulnerability to being easily obliterated. A *permanently embedded* metal plate capable of accepting a serial number (think of the plate on a Polymer80 or Glock frame) might suffice.

What if I cannot find a dealer or am away when the law goes into effect? What if I didn't know I had to do this?

Doesn't matter. The bills as written contain no requirement that violators knew what they were doing was criminal. They're strict liability crimes. Innocent mistakes or unknowing non-compliance are criminal under these bills. It would appear that the backers of these bills are more interested in criminalizing gun owners than in compliance.

Can I sell my homemade guns?

The bills exempt from coverage "a sale, an offer to sell, a transfer, or a delivery of a firearm or an unfinished frame or receiver to, or possession of a firearm or unfinished frame or receiver by" a federally licensed manufacturer, importer or FFL dealer. Presumably, that means that you would be able to sell your homemade gun to such a federally licensed entity. There is no requirement that such a dealer agree to purchase any firearm.

What if I already have a lawfully registered NFA-regulated item that was homemade?

The language of the bills admits of no exceptions for such items. If the NFA item was not serialized by a federally licensed manufacturer or importer, then it is banned as of 1/1/2023 unless it is serialized in accordance with the bills' requirements before then.

Is there an alternative so that we can keep making our own guns?

Yes. You can keep making your own guns if you use receivers that are serialized by a federally licensed manufacturer or importer. Such receivers are already firearms under existing federal law (and state law) and can be purchased from FFLs.

Otherwise, the bills provide that a person "may not purchase, receive, sell, offer to sell, or transfer an unfinished frame or receiver" as of June 1, 2022, and may not "possess" any pre-existing non-serialized unfinished receiver on or after January 1, 2023.

Just for the sake of discussion, how many folks that you know or don't know have gone through deceased relatives' possessions and discover gun parts, entire workable firearms, other paraphernalia related to gun making and gun cleaning, and gunsmithing tools that you never knew your dearly departed relative had? Under these bills, the mere possession of such items, without registration would now be considered illegal.

There has been much ado made about "kits" that are available from manufacturers, such as Polymer 80 and others. Accordingly, to the ATF, such "kits" are made by non-licensed manufacturers "who manufacture partially complete, disassembled, or inoperable frame or receiver kits, to include both firearm parts kits that allow a person to make only a frame or receiver, and those kits that allow a person to make a complete weapon." 86 Fed. Reg. at 27736. Several points bear mentioning:

First, most (if not all) of the unserialized "ghost guns" recovered by the police in Maryland are made from such kits. Indeed, the Baltimore Police Department has announced to great fanfare that ghost gun seizures have increased over the last few years. Yet, according to information obtained from the Baltimore Police Department, the BPD seized 2,355 guns in 2021. Of that number, according to the BPD, 352 were "ghost guns," including guns made from kits (Polymer 80s). That is slightly less than 15% of the total number of guns seized in 2021.

Baltimore's problem with illegal guns is thus far vaster than "ghost guns." The BPD does not identify separately the number ghost guns actually used in violent crimes and there are few statistics available on the number of ghost guns actually used in crime. What numbers that are available suggest that the use of ghost guns in violent crime is minute. For example, "the Justice Department reported that more than 23,000 weapons without serial numbers were seized by law enforcement between 2016 and 2020 and were linked to 325 homicides or attempted homicides." <https://bit.ly/3GgaT94> (<https://bit.ly/3GgaT94>). That 325 homicides or attempted homicides represent a tiny percentage of the universe of 23,000 ghost guns seized (0.14%).

Legislation, such as these bills, focusing on "ghost guns" thus will not make the slightest dent in the soaring homicide rate. The numbers in Baltimore bear that out. For example, in 2011, the BPD seized 2,178 firearms (no ghost guns) and the number of murders was 196, of which 88 resulted in arrests (a 44.9% clearance rate). In 2011 there were also 379 non-fatal shootings. In 2020, the BPD seized roughly the same number of guns (2,244) (including 128 ghost guns), and yet the number of murders was 335 of which only 102 resulted in arrests (a 28.7% arrest clearance rate). And by 2020, the number of non-fatal shootings had nearly doubled from 2011 to 724. Similarly, BPD's weapons possession arrests were 1,224 in 2011, but virtually the same in 2020 (1,233), but the number of murders in 2020 were 81.1% higher than in 2011.

It is noted with sadness that Baltimore is headed for a new record in homicides with 36 killings in January 2022, a pace that would result in 432 murders for 2022, a number never seen in Baltimore before. <https://bit.ly/3KYQzN1> (<https://bit.ly/3KYQzN1>). No word from the BPD if any of these killings came from the use of "ghost guns." The BPD has not released murder arrest numbers for 2021, but we are informed that there

were 337 homicides in 2021, 2,355 gun seizures and 726 non-fatal shootings, numbers not much different than 2020. We note that in the years between 2011 and 2021, the General Assembly enacted numerous gun control statutes, including the much-touted Firearms Safety Act of 2013. None of those laws had the slightest impact on crime in Baltimore.

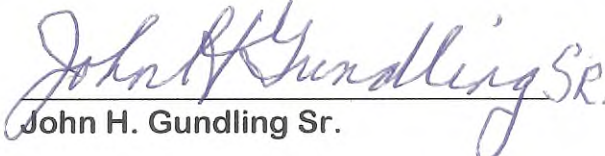
At a minimum, it should be obvious that there is no correlation (much less cause and effect) between guns seized and violent crime. A more relevant statistic is the clearance rate for serious crimes. As noted above, BPD's arrest clearance rate for murder in 2020 was a merely 28.7% and only 44.9% in 2011. By comparison, the nationwide clearance rate for murder is 54.4%. <https://bit.ly/3s3qiVb> (<https://bit.ly/3s3qiVb>).

Baltimore's clearance rate for homicides is plainly abysmal, a reality that does not go unnoticed by violent criminals and law-abiding citizens alike. See Johns Hopkins Center for Gun Policy and Research, *Reducing Violence And Building Trust* at 5 (June 2020) ("In Baltimore neighborhoods most impacted by gun violence, residents lack faith in BPD's ability to bring individuals who commit violence to justice.

Perceived risk of being shot and perceptions that illegal gun carrying is likely to go unpunished lead some residents to view gun carrying as a necessary means for self-defense."). In any event, there is no evidence of which we are aware that the inability to trace an unserialized firearm actually has prevented an arrest for any serious violent crime. The General Assembly seriously errs in focusing on "ghost guns" when it should be paying attention to the soaring rate of violent crime.

Notwithstanding, the Maryland Bill of Rights, and Constitutional Amendments such as the 2nd, 4th, 5th, 9th, and 14th, wherein issues arise which will and should be redressed as usurpations of any citizens' Inalienable Rights of the United States.

Please dispense with these egregious bills, which do little or nothing for the Public Safety of Marylanders. Thank you for reading.


John H. Gundling Sr.