

Daniel J. Carlin-Weber
SB387 Public Safety – Untraceable Firearms
Unfavorable
2/16/2022

I am a professional firearms instructor and advocate of responsible firearms handling and ownership. I teach through my Baltimore City-based company, C-W Defense, and hold numerous credentials related to firearms instruction including being recognized as a Qualified Handgun Instructor by the Maryland State Police. Since 2016, I have taught Marylanders from all walks of life how to safely operate firearms and the responsibilities that come with them. I am also an owner of firearms that I have made myself and come before you today to urge an unfavorable report of Senate Bill 387.

SB387 and its House counterpart, HB425, take a much more heavy-handed approach than similar bills from the last General Assembly Regular Session in targeting “privately made firearms,” “homemade firearms,” or so-called “ghost guns”. Two of those bills from last year, SB624 and HB638 (also the re-purposed SB190), allowed current owners to serialize their privately made firearms on their own and created civil penalties for first-time offenders for those who didn’t. Subsequent offenses would be criminally punishable. These bills, however, do what many politicians have assured no one is doing to gun owners; *coming to take their guns*. While giving the appearance of a pathway for current possessors to keep what they’ve always had the legal ability – and indeed right to have – the bills make failure to comply a life-changing criminal act. All Marylanders who’ve made any gun themselves, even if they’ve serialized it on their own, face having to discard their property by January 1st, 2023, or leave themselves vulnerable to up to three (3) years imprisonment and up to a \$10,000 fine **per count**. Likewise, any unserialized unfinished

firearms frames and receivers cannot be acquired after June 1st, 2022, and possession of them if they are not serialized in the prescribed manner after January 1st, 2023, is criminal.

Beyond suddenly and permanently criminalizing an act that has always been lawful (the making of one's own firearm for personal usage), the bill should be given an unfavorable report for its difficult pathway to compliance, its strict liability penalties, for its ripeness for abuse by law enforcement, and vagueness. These bills remove any legal ability of an individual who isn't a federally licensed manufacturer from making their own guns **completely**, even if they did not use an 80% receiver or kit. If someone has the skills, tools, and design acumen, or even if they're just curious, they're out of luck. The bills require that any gun be assembled exclusively with serialized receivers made by licensed manufacturers. Make a gun any other way and face imprisonment.

Making one's own gun has always been legal in the United States and indeed, Maryland. A maker or owner must not be legally prohibited from firearms possession and the gun itself must comply with all federal and state laws. As law professor Josh Blackman wrote in the Tennessee Law Review:

“In light of *Heller* (District of Columbia v. *Heller*, 554 U.S., 570 (2008)), a personal right to make one's own arms for individual use has a much stronger constitutional pedigree than the right to buy and sell arms from others, especially in the commercial context. There are no “longstanding prohibitions” on making a gun for oneself. Americans have been making their own guns since the founding of the Republic. This practice, deeply rooted in our nation's history and tradition is fairly well-established. Today, it is legal to make a gun for personal use, with very limited exceptions. In contrast, the sale of firearms has been burdened much more heavily than the right to make firearms.”

- The 1st Amendment, 2nd Amendment, and 3D Printed Guns, *SSRN*, (2014, June 15) p. 496, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2450663.

The manner of production has mostly not mattered, whether it be via welding metal parts together, removing metal from an unfinished receiver (i.e., common 80% receivers), 3-D printing, or by any number of possible methods. As a result, there are an untold number of homemade firearms in Maryland. The General Assembly has never required that these arms be registered or accounted for in any way. There lacks an all-seeing authority with the ability (physically and legally) to peer into every person's gun safe, basement, garage, or kitchen to find them. Some of these items have, however, been serialized by their owners and voluntarily registered with the Maryland State Police (MSP) or even with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) if they were lawfully made into and registered as items in compliance with the National Firearms Act of 1934 (NFA).

With few exceptions, SB387 completely bans the possession of any homemade firearm or the parts for them that a Marylander might currently have, going all the way back to ***before*** 1968. Those exceptions require that a Class 07 Federal Firearms Licensee (FFL) inscribe the firearm or “unfinished frame or receiver” in line with height, depth, and other requirements demanded by 18 U.S.C. § 923(i) and related federal regulations, but with the first three and the last five digits of the FFL's FFL number and “another number.” This requirement exists regardless of whether the item(s) have been serialized by the maker or if the items are already registered with a regulatory body. The numbers *must* be placed by an FFL in the manner the bill describes **or else**. Eligible dealers are not required to offer such a service and if they do, may charge any price they'd like. This “grandfather clause” for items already possessed is deliberately unwieldy and no compensation is offered to anyone who is forced to dispossess themselves of firearms they may have made. The Attorney General has said in statements (<https://youtu.be/EEie6ik94Tg?t=324>) and elsewhere that these guns can be sold, but there is rampant confusion among gun owners and the

public on the legality of selling or transferring homemade firearms. The United States Court of Appeals for the Fifth Circuit has deemed the practice completely illegal. See *Defense Distributed v. United States*, 838 F.3d 451, 454 (5th Cir. 2016). Even if it is legal to sell these arms, that would require a federally licensed dealer to facilitate the sale. Nothing in SB387 compels dealers to handle such sales and if they do not or cannot for whatever reason, the potential seller is left having to discard what they made or face criminal sanction. These are offered as choices law-abiding citizens must make, but there is no choice here for Marylanders who lack the access or means to serialize every gun or part they have. As is usually the case with Maryland gun laws, the onus is always on current or potential gun owners and the State leaves little to no help for them. Manage to comply on your own dime, discard your belongings, or face going to prison.

It's also worth mentioning that SB387 lacks any scienter at all. It doesn't matter if someone finds out on January 1st, 2023, that they were supposed to comply with the bill's demands – prison. It doesn't matter if the owner was overseas on assignment and returned too late to comply – prison. For whatever reason, failure to comply means prison. Too bad. This despite that the General Assembly's Task Force To Study Crime Classification and Penalties recommended requiring *mens rea* by default in criminal statutes in their interim report from December 2020. <https://bit.ly/34qJwvY>. The Maryland Court of Appeals has likewise recently recommended to the General Assembly in *Lawrence v. State*, 475 Md. 384, 408, 257 A.3d 588, 602 (2021) that *mens rea* be incorporated into Maryland's restrictions on the wearing, carrying, and transporting of regulated firearms, Md. Criminal Law § 4-203(a)(1)(i). "Guns are bad" cannot and should not be the basis for casting aside due process protections and if someone is to be sent away to prison for a crime involving a gun (or any crime), a showing that they *actually* meant to commit the act should be required.

Maryland's approach of criminalizing more gun ownership has not changed much in the last 50 years. In 1972, the General Assembly was likewise in a time of responding to public outcry on the pervasiveness of violent crime and access to guns. Governor Mandel sought to limit who could legally carry firearms in public to a very select few classes of people. He also demanded that "stop-and-frisk" be put into Maryland law, so police officers could be less restrained in their approach to enforcing the newly enacted gun laws. The demand for more police action was so great, that the Washington Post was flippant about the potential harms to other liberties and even towards the prospect that Black citizens could have the laws disproportionately enforced against them:

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

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

- Frisking for Firearms. (1972, January 20). *The Washington Post*, p. A18.

Years later in 1988, the General Assembly again found itself facing calls to do more about crime and guns – in ignorance of the laws of the 1972 session and broad powers granted to law enforcement. The pariah identified by lawmakers and members of the media this time was the availability of inexpensive pistols described as "Saturday Night Specials." That invented term for

these guns is from a less than glamorous origin (see B. Bruce-Briggs, “The Great American Gun War”, 45 *Pub. Interest* 37, 50 (1976) <https://bit.ly/3J99dQI>), but supporters of these sorts of bans gleefully champion their work to ban the distribution of them. While there have always been calls to outright ban the possession of handguns and these cheap pistols were an easy target for the legislature, *even they* decided not to affect current possession of these guns, but to create the Handgun Roster Board to ferret out which guns were “safe” enough for the public to purchase. That Board still exists today and pistols not on the Roster cannot be legally sold or transferred within the State – including homemade handguns.

The parallels between the push to do something about the cheap pistols mentioned before and “ghost guns” are virtually the same. Both have been decried as the tools of criminals, that there are no legitimate uses for them, and that they are items that usurp the authority of regulatory schemes and police powers. “Specials” as too affordable and “ghost guns” for being too easily obtained. Just as with both, Maryland’s laws do not extend beyond its borders. Roughly half of the guns used in crimes in Maryland originate elsewhere and get here often through illegal trafficking. See Illegal out-of-state gun trafficking is fueling Baltimore's homicide epidemic. (2020, November 19) *Baltimore Magazine*. <https://bit.ly/3ovHeTf>. Kits for Polymer80 and other 80% receivers are likewise easily purchased in neighboring states. The Biden administration’s proposed ATF rule that’s slated to become effective in June 2022 will certainly be met with legal challenges by companies within the firearms industry and like so many other federal rules as of late, be enjoined from enforcement by a federal district court in a jurisdiction with more Republican-appointed judges and tied up – all the while kits are still being sold in neighboring states and elsewhere. If the War on Drugs has taught us anything, it’s that underground markets will still make these items available and indeed, outlaws will still get their guns. The likely retort is that a legislature should

still “do something” or that “perfection should not be the enemy of the good,” but this is in ignorance to Maryland’s status quo of being as tough on guns as red states are on drugs or social issues. This is not working to make Marylanders any safer. The General Assembly would subsequently pass more gun control laws in the ’90s, early 2000s, the Firearm Safety Act of 2013, 2018 with the introduction of Extreme Risk Protection Orders and banishment of “Rapid Fire Trigger Activators,” and in 2021 with the ban on the private transfers of long guns. Violent crime has ebbed and flowed in this time and homicide rates locally have been on the rise despite more and more criminalization and burdens placed upon lawful gun ownership.

Most of the “ghost guns” used as the impetus for this legislation and predecessors from other years are handguns. In *District of Columbia v. Heller*, 554 U.S., 570 (2008), the Court held that D.C.’s prohibition on the ownership of handguns violated the 2nd Amendment, that citizens have an individual right to firearms ownership separate from service in a militia, and that self-defense is core to the 2nd Amendment. Justice Scalia also wrote in the majority opinion that handguns are the “quintessential self-defense weapon.” This bill bans possession of any homemade handguns without regard to whether owners rely upon them for personal defense. While some are happy to mention from *Heller*’s majority opinion that ‘no right is unlimited,’ there is a caveat; “but the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home.” The prohibition caused by these bills could very well be among the policies alluded to by the Court.

Not only does SB387 require that completed unserialized firearms be discarded, but it would also be necessary to discard any *unfinished* frames or receivers in the same manner. These are merely just parts in such a form and carry little legal significance for someone who is not

legally barred from possessing firearms. They are readily available from any number of sources, including from every surrounding state and numerous websites. As chronicled in *I Got a Monster: The Rise and Fall of America's Most Corrupt Police Squad* by Baynard Woods and Brandon Soderberg, Baltimore's Gun Trace Task Force (GTTF) planted firearms and even BB guns on supposed suspects under false pretenses to initiate arrests or justify violence against those in communities already reeling from decades of police misconduct. In the time preceding the GTTF's unraveling, they were *praised* for getting "illegal" guns off the street despite the crimes they were committing to do so. It should not be unimaginable that officers acting in bad faith could do something similar with "ghost guns" or parts for them. Police units in other major cities that focus on 'getting guns off the street' have likewise been scrutinized for their aggressive and constitutionally questionable tactics. There have been calls to disband the District of Columbia's Metropolitan Police Department's Gun Recovery Unit (see Soderberg, B., et al., *'Let Me See That Waistband'*. The Appeal. (April 14, 2021) <https://theappeal.org/dc-gru/>) and New York City disbanded its plainclothes "anti-crime" units over concerns that they were doing far more harm to the public trust and safety than good. See Watkins, A. *N.Y.P.D. disbands plainclothes units involved in many shootings*. The New York Times. (2020, June 15) <https://nyti.ms/3GSmyey>. SB387 and any similar laws that attack the mere possession of items like this only provide more avenues ripe for exploitation by similarly bad actors.

There also exists vagueness problems with precisely what items are being banned.

The proposed § 5-701 provides:

(H) "UNFINISHED FRAME OR RECEIVER" MEANS 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 MARKETING OR SOLD TO THE PUBLIC TO BECOME OR BE USED AS THE FRAME OR RECEIVER OF A FUNCTIONAL FIREARM ONCE COMPLETED, ASSEMBLED, OR CONVERTED.

Not all firearms or firearms kits are created equal. Sig Sauer makes two of the most popular handguns on the civilian market; the P320 series and P365 series of pistols. These guns have a receiver that is nearly entirely internal. Unlike a Glock or Polymer80 handgun where the grip *is* the receiver of the handgun, the P320 and P365 have a removable internal component (the “Fire Control Unit” or FCU) that the ATF considers to be the actual “firearm” and is the serialized part.



*The FCU of a Sig Sauer P320 Handgun.
This is the “receiver” for this handgun. <https://www.sigsauer.com/p320-fire-control-unit.html>*

The FCU fits into what Sig calls a “grip module,” which is the grip for the gun. This grip **is not** the actual frame, or “firearm” of these guns, but rather literally just a grip and has no serial number on itself, but rather a cutout so the serial number on the internal receiver part can peek through. To anyone who doesn’t know the specifics of these guns, they’d identify the grip as the receiver, but it is not. That’s dangerous, as these guns have been sold in Maryland for years now and the grips by themselves strongly resemble the frames this bill is purported to prohibit. Police officers

and prosecutors are not necessarily firearms experts, nor are judges and jurors. Three years imprisonment hinges on whether all parties involved can identify these parts correctly.



*The ATF considers the white part as a firearm and the brown as not.
Maryland law, a prosecutor, police officer, or juror could conclude they both are.*

There are other problems with SB387. In the proposed § 5-702 (1)(i), any firearms made **before** 1968 are exempted from the ban imposed on unserialized guns, presumably because commercial firearms manufacturers were not mandated by federal law to issue serial numbers for guns until the enactment of the Gun Control Act (GCA) in 1968. However, the bill's language does not reflect that the GCA was signed on October 22nd and did not become effective until **December 16th, 1968.** See *Gun Control Act of 1968*, <https://www.govinfo.gov/content/pkg/STATUTE-82/pdf/STATUTE-82-Pg1213-2.pdf>. It is unclear how an investigator or even the possessor of the gun itself is supposed to know the difference between an unserialized gun made in April of 1967 and one made in November 1968. All the worse considering failure to know doesn't spare one from criminal prosecution.

I understand the desire to make Maryland a safer place for residents – I want that too – and that legislators have a duty to represent their constituents’ best interests. However, this legislation does not contribute in the slightest to public safety. The vast majority of Marylanders and indeed Maryland gun owners are well-meaning and harmless to others, yet this bill threatens them with the potential for violence by the various law enforcement agencies this State just last year spent great attention to reforming because of the numerous ways they have abused their powers and skirted accountability. Individuals determined to harm others will still find the means to do so unabated while honest and innocent people only face more burdensome and confusing laws that do little more other than to threaten and punish them. Prosecutors and police do not have a lack of laws at their disposal to target those bringing harm against others in our communities with illegally possessed or carried guns (see Md. Public Safety Art., § 5-101(g), § 5-133(b), and § 5-205(b), also Md. Criminal Law § 4-203 just to name a few). This is not a plea to just “enforce the laws we already have,” but to reflect on what actual good may come from such a pro-carceral approach. The legislature is indeed working to invest in communities and even alternatives to relying solely on criminal law enforcement to mitigate and intervene in disputes. I encourage it to continue those approaches and not yield to the desires by some of just throwing more muscle at communities already weary of the effects of over-policing.

The City of Philadelphia recently conducted a year-and-a-half-long study on why it suffers from so much gun violence and what approaches could be taken to lessen it. Like the City of Baltimore (with its Mayor, Police Commissioner, and numerous state lawmakers using the City’s crime woes as justification for the ban on “ghost guns”), police in Philadelphia have noted an uptick in seizures of privately made firearms. However, the report *doesn’t* recommend outlawing the guns

or making stiffer penalties for those with them merely because they are unserialized. It states on page 170:

“A common argument made to support arrests for gun possession is to get guns off the street. Unfortunately, there are so many guns legally bought and sold in this country—in addition to guns that are purchased illegally or “ghost guns” which are bought in pieces and assembled—that several thousand gun possession arrests per year hardly impacts the volume of available guns (see Appendix 7: DAO 16).” - 100 Shooting Review Committee Report, (2022 January 25) pp. 170-179, <https://bit.ly/3utv0ya>.

The report is fully aware of the trouble of trying bans like this in a country where there exist enough millions of guns to arm every adult resident at least twice. See NSSF Releases Firearms Production Figures. (2019, December 4) NSSF. <https://bit.ly/331muey>. There aren’t enough police nor enough prison cells to lock up every possessor of illegal guns, whether they be “ghost guns” or not. The emphasis, as the report suggests, should be to focus on holding those committing violence accountable and not merely going after illegal possessors. Like the previously mentioned concerns of police units in D.C. and New York City, Philadelphia District Attorney Larry Krasner writes in the 100 Shooting Review Committee Report on page 43:

“Focusing so many resources on removing guns from the street while a constant supply of new guns is available is unlikely to stop gun violence, but it does erode trust and the perceived legitimacy of the system. This in turn decreases the likelihood that people will cooperate and participate in the criminal legal system and associated processes, reducing clearance, conviction, and witness appearance rates.”

John Pfaff of Slate recently provided coverage on the report, noting the differences in approaches offered by Krasner in contrast with New York City Mayor Eric Adams, who has not been shy about taking an aggressive approach to targeting illegal gun possession. See Pfaff, J. *What an analysis of 2,000 shootings tells us about how to end gun violence*. Slate Magazine. (2022, February 14). <https://bit.ly/3v1nTx8>.

Furthermore, it is worth reading the amicus brief submitted by the Black Attorneys for Legal Aid and The Bronx Defenders in support of the plaintiffs in *New York State Rifle & Pistol Association Inc. v. Bruen*, 20-843 for a host of examples of what the enforcement of gun control laws really looks like. <https://bit.ly/3LdnJZn>. From their summary:

“The consequences for our clients are brutal. New York police have stopped, questioned, and frisked our clients on the streets. They have invaded our clients’ homes with guns drawn, terrifying them, their families, and their children. They have forcibly removed our clients from their homes and communities and abandoned them in dirty and violent jails and prisons for days, weeks, months, and years. They have deprived our clients of their jobs, children, livelihoods, and ability to live in this country. And they have branded our clients as “criminals” and “violent felons” for life. They have done all of this only because our clients exercised a constitutional right.”

Maryland has followed a similar path for decades and is continuing to effectively eliminate the 2nd Amendment for whole classes of people who deserve to be able to exercise it like anyone else.

I have testified before the General Assembly that I probably have the means to comply if a serialization requirement were made, but I do not represent the mean for gun owners or not even necessarily others who’ve made their own guns. I’ve been an instructor, advocate, and monitor of gun-related legislation and lawsuits for several years and have done a lot of networking in the industry. I think by now I can say I’m at least somewhat of an expert on Maryland’s firearms laws, spending an unhealthy amount of time navigating their numerous pitfalls for both my safety and that of my students. I have a privileged background in this regard with access to as many resources as I do. SB387 is egregious, but it likely will not be people like myself who bear the brunt of its enforcement. It will be enforced arbitrarily and capriciously against those who don’t know how to

handle police encounters and unwittingly talk themselves into trouble; against those walking home in a rough neighborhood and who have a gun for their protection; against those who were merely curious in the novelty of making their own gun and who talked about it too much on social media; against those are utterly unaware of what this legislative body does; against your very own constituents.

The irony cannot be lost that after a legislative session that focused on badly needed reforms for law enforcement agencies within the State that this body deems these problematic agencies just fine to sic on more Marylanders. The bill's enactment *might* be used against some people committing violence in our communities, but it is regular, ordinary citizens who are in the middle of a political game between the General Assembly's approach to crime prevention and the Governor's. It is also an election year and lawmakers are vying for the endorsements of various special interest groups, so the prudence that may normally exist in a year when considering which type of Marylander to jail seems to be lost in this session. Maryland already has a litany of laws that criminalize various levels of conduct with and around firearms and this desire to lock up more Marylanders is horribly and sadly misplaced. Maryland citizens cannot be made pawns in political games and especially not when it comes to their potential interaction with the criminal justice system for the exercise of constitutionally protected rights.

I strongly urge an unfavorable report.

A handwritten signature in blue ink, appearing to read 'DCW', is positioned above a faint, light blue circular stamp. The stamp contains some illegible text and a central emblem.

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Mandel seeks tighter gun law

By BARRY C. RASCOVAR
Annapolis Bureau of The Sun

Annapolis—Citing the recent outbreak of shooting incidents in Baltimore schools, Governor Mandel has summoned top law enforcement and criminal justice officials to a meeting today to discuss ways of stemming the free flow of hand guns in Maryland.

The present situation, Mr. Mandel said yesterday "cannot be tolerated, particularly in the Baltimore city schools." There have been four shooting incidents—one of them fatal—near city schools in recent weeks, and

city police have confiscated more than 125 handguns from school students during the same period.

The purpose of today's meeting, which will take place in the State Office Building in Baltimore, will be to discuss what type of legislation should be drafted to curb the flow of guns into the hands of criminals and students.

Those attending

Scheduled to attend the meeting with the Governor are Donald D. Pomereau, the city police commissioner; Robert J. Lally, the state's Public Safety chief; Thomas H. Smith, State Police superintendent; Robert W. Sweeney, chief judge of the state's District Courts; Dulaney Foster, chief judge of the city Supreme Bench; Francis B. Burch, the state attorney general; Arthur B. Marshall, Prince Georges county state's attorney and chairman of the Maryland State's Attorneys' Association; and Milton B. Allen, the city's state's attorney.

Mr. Mandel has in recent

weeks reversed his stand on the need for stronger state laws regulating the ownership of handguns. He has indicated that he now favors new legislation that would place greater restrictions on the sale of handguns than is now on the books.

Existing law restricts the sale of handguns by dealers. It does not, however, affect the sale of handguns by private individuals.

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Frisking for Firearms

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

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

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

The General Assembly could usefully add some

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

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

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

Governor submits gun-control bill to Legislature with slight changes

By GILBERT A. LEWTHWAITE
Annapolis Bureau of The Sun

Annapolis—Governor Mandel yesterday submitted his gun-control bill—changed in detail, but not substance—to the General Assembly as emergency legislation.

The bill contains the controversial stop-and-frisk clause, and puts added emphasis on mandatory jail sentences for criminal use of handguns.

It also seeks to set up a three-man review board, appointed by the Governor, to hear appeals by people refused police permits to carry handguns.

Permits, valid for two years, will cost up to \$25. The money will go toward the estimated \$300,000 operating budget of a special gun-permit department to be set up by the State Police.

Other changes have been made in the wording of various sections to clarify their meanings or to make them common sense.

John C. Eldridge, the Governor's chief legislative aide, who drew up the bill, said the alterations were made after study of more than 400 letters from legislators, lawyers and gun lobbyists who had been sent a draft outline of the bill.

"We got several hundred letters with suggestions . . . we took every one up with the Governor, and the ones he decided to adopt were the ones that he thought would make the bill more workable," Mr. Eldridge said.

The bill, submitted to both the Senate and the House of Delegates, will take effect immediately as emergency legislation if it gets the necessary three-fifths majorities in both houses.

The bill basically would limit the carrying of handguns to persons with permits, and would authorize the police to stop and pat down anyone an officer has "reasonable belief" might be illegally carrying a handgun.

Col. Thomas S. Smith, the superintendent of State Police, would be given power under the bill to issue gun-carrying permits to anyone with "good and substantial reason to wear, carry, or transport a handgun."

The superintendent's request for clearer guidelines on those eligible for permits was rejected by the Governor on the grounds that it would be impossible to draw up a list to cover all circumstances.

But the bill would outlaw the issuance of permits to anyone who is under 21, who has served a year in prison without being pardoned, who has been free from a term in a juvenile institution for less than 10 years, who has been convicted of narcotics possession or is an alcoholic.

Establishment of a handgun-permit review board, an innovation in the final draft of the bill, was suggested by both the gun lobbyists and Colonel Smith, according to Mr. Eldridge.

It would operate as a separate agency within the Department of Public Safety and Correctional Services. Its three members—"appointed from the general public by the governor

and serving at the pleasure of the governor"—would be able to "either sustain, reverse or modify the decisions of the superintendent."

The only permanent exceptions from the permit process would be full-time policemen. The qualification "full-time" was added to the final draft deliberately to exclude part-time "law officers" such as politically appointed deputy sheriffs.

The exception also would apply to servicemen, prison guards and wardens while they were either on duty or traveling to or from duty.

The only times members of the general public could carry guns without permits would be from a "place of legal purchase" or on the way to or from a "target shoot, target practice, sport shooting event, hunt, or any organized civic or military activity."

The original draft contained provisions also for "sneak and trap" meetings also, but members of gun clubs pointed out that handguns were not normally used in these two sports.

Whenever a handgun is carried, it would have to be in a closed case or holster and unloaded. The original draft said the case should be marked as a "gun case." This was dropped because it was thought likely to be an invitation to the theft of small arms left in cars or carried.

Under the bill submitted yesterday, two exceptions were made to the otherwise mandatory forfeiture of seized weapons and vehicles in which they were carried. The exceptions cover stolen cars and "common carriers," such as taxis or buses whose owners are unaware that their passenger is illegally armed.

The bill has a special provision to cover the delay between its enactment and the issuance of permits to those in regular need of handguns such as licensed private policemen, bank guards, armored-car escorts, and private detectives.

These private policemen would be permitted to continue carrying their guns on duty for a year, pending the approval of their applications for permits.

Colonel Smith has estimated that between 10,000 and 11,000 permits will be issued in the private security field, making up the bulk of the \$300,000 annual operating budget.

Mr. Eldridge said of the amendments: "There is no general purpose on toughening or lessening the bill or trying to appeal to anyone or anything like that. They are just specific suggestions in the way the bill was worded which were felt would improve its workability."

Shortly before the Governor submitted his bill, he met with a group of black ministers and two black legislators who support the bill. Governor Mandel again promised to keep his door open for any complaints about police harassment—a major objection to the stop-and-frisk clause.

The ministers represented Baptist and Methodist parishes in Baltimore city and Baltimore county. They were accompanied

by delegates Frank M. Conaway (D., 4th Baltimore) and Joseph Chester (D., 2nd Baltimore).

Officers who conduct on-the-spot searches which are fruitless would be protected from being sued for damages unless it could be proved that they had acted without "reasonable grounds for suspicion and with malice."

The proof would have to be "by a fair preponderance of the evidence"—the normal civil suit requirement.

This phrase was inserted in the final draft at the request of a legislator, who apparently felt the definition should be spelled out, since such a civil suit could possibly arise out of criminal proceedings, where normal proof has to be "beyond a reasonable doubt."

The Washington Post

AN INDEPENDENT NEWSPAPER

WEDNESDAY, FEBRUARY 2, 1972 PAGE A14

The Pistol Packers

Governor Marvin Mandel's modest proposal to spare the lives of a few policemen by cracking down on gun-toters in public places has run into a withering crossfire, as he no doubt anticipated, from "sportsmen" on one side and from libertarians on the other. It may be that both of them somewhat misapprehend the purpose of the stop and frisk authorization the governor has proposed. The "sportsmen" see it as a form of gun control—which it certainly is not. And the libertarians see it as a license for unlimited harassment of black citizens—which the governor certainly does not intend it to be.

The Mandel proposal would fix stiff penalties for carrying a handgun on one's person or in an automobile without a permit. An exception is made for sportsmen engaged in an authorized sporting enterprise. And the bill would authorize policemen to stop persons and pat them down briefly and superficially on the basis of a "reasonable belief" that those persons are illegally carrying a concealed pistol. Prohibitions on packing concealed pistols are hardly novel and hardly a threat to bona fide sportsmen. For what sport would a "sportsman" want to carry a handgun around with him on the streets of a city? The purpose of this legislation is to enable policemen to protect themselves from thugs who last year used handguns to kill 72 officers engaged in the performance of their duty.

Anyone who wants to know what a real gun control bill is like need only look at the provisions of a measure introduced in the Maryland Assembly last week by Del. Woodrow M. Allen. It would flatly ban private ownership of pistols; anyone wishing to use a pistol for target shooting or other forms of "sport" would have to join a licensed gun club where it would be kept under prescribed conditions and fired only under careful supervision; persons owning handguns would be required

to turn them in to state or local police by next January 1 for fair compensation.

Now, that is what we call a gun control bill. It would save the lives not only of policemen but also of daughters coming home from late dates and being mistaken for intruders, of wives and husbands displeased with one another with a firearm lying handy in a bedside drawer, of neighbors eager to settle political differences of the sort that arise now and then over a glass or two of some distillate. In fact, it is so sensible, practical and realistic that it has no possibility of passage by the assembly at the present time. Several thousand more Marylanders will have to lose their lives by pistol bullets before the insensate opposition of the gun lobbyists can be overcome.

The small first step toward sanity proposed by Governor Mandel appears to have had its chances of enactment improved by a prudent concession which has won it the endorsement of State Senator Clarence M. Mitchell III. It is wise and right, we think, that the basis for frisking a suspected gun toter should be sharpened so as to prevent arbitrary police action. The U.S. Supreme Court has said that the Fourth Amendment will not be violated if police officers search suspects for lethal weapons in situations where they may lack probable cause for an arrest. But of course this cannot be taken to mean that the police may search on mere unsubstantiated suspicion. Civil libertarians have been wholly justified in insisting that the police have real grounds for frisking; and we believe this insistence can be effectively fortified by requiring the police to report every stop and frisk incident so that the record will show just how frequently their action has been warranted.

Such sharpening of the legislation will, we hope, diminish the fears of the libertarians. The fantasies of the "sportsmen" may be dispelled by speeding up the system for issuing permits and by assuring them that they can carry their handguns to and from lawful sporting enterprises.