

SB 0387/ HB 0425 Untraceable Firearms

As written this bill does not affect the criminal who may have or may choose to steal a gun that does not have a serial number on it. The number of crimes involving unregistered firearms is a small percentage of all crimes violent or otherwise where firearms were used in the State of Maryland. This is legislation that once again targets the gun hobbyist to make them a criminal instead of addressing the issue of robbery, murder, or felony assault with a firearm. Adjudicating the criminal for the crimes they commit will solve the issues our state has, not enacting more gun laws that only inhibit law abiding citizens from self-protection. I have added below examples for you that come from the research Maryland Shall Issue has done.

Please find an unfavorable Report for this bill.

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A. Privately Manufactured Firearms Are Rarely Used In Crime And Existing Owners Are Law-Abiding Hobbyists, Not Criminals

These new provisions, if enacted, would burden and penalize an activity that has been perfectly legal under federal and state law for the entire history of the United States, *viz.*, the manufacture of homemade guns for personal use. Under Federal law, a person may legally manufacture a firearm for his own personal use. See 18 U.S.C. § 922(a). However, “it is illegal to transfer such weapons in any way.” *Defense Distributed v. United States*, 838 F.3d 451, 454 (5th Cir. 2016). This manufacture typically “involves starting with an ‘80% lower receiver,’ which is simply an unfinished piece of metal that looks quite a bit like a lower receiver but is not legally considered one and may therefore be bought and sold freely. It requires additional milling and other work to turn into a functional lower receiver.” (Id).

Manufacturing a typical “80% lower” into a “functional lower receiver” is not a trivial process. It takes tools, expertise and hours of time. Miscues are common and, when made, essentially convert the “80% lower” into scrap. Individuals who undertake this process are hobbyists. Even after the receiver is successfully made, the owner would still have to purchase the additional parts, such as a barrel, the trigger, slide and all the internal parts to complete the assembly. All

these additional parts are expensive. With the cost of the tools to mill the receiver, plus the cost of the parts, a final assembled homemade gun may cost **more to make than** it would to actually buy an identical gun from a dealer.

The complexity of this process has been pointed out in court filings by the ATF and the U.S. Department of Justice. For example, in *State of California v. BATF*, No. 20-cv-0761 (N.D. Cal.), the Department of Justice and the ATF explained:

An unfinished receiver that has not yet had “machining of any kind performed in the area of the trigger/hammer (fire-control) recess (or cavity),” see ATF Firearms Technology Branch Technical Bulletin 14-01 (“Bulletin 14-01”), filed in *Calif. Rifle and Pistol Ass’n v. ATF*, Case No. 1:14-cv-01211, ECF No. 24 at 285 (E.D. Cal. Jan. 9, 2015), requires that numerous steps be performed simply to yield a receiver, that then in turn must be assembled with other parts into a device that can expel a projectile by the action of an explosive. These milling and metalworking steps—each of which require skills, tools, and time—include: 1) “milling out of fire-control cavity”; 2) “drilling of selector-lever hole”; 3) “cutting of trigger slot”; 4) “drilling of trigger pin hole; and 5) “drilling of hammer pin hole.” Compl. Ex. 9. Importantly, ATF will treat any “indexing”—the inclusion, in the receiver blank, of visual or physical indicators regarding the two-dimensional or three-dimensional parameters of the machining that must be conducted—as rendering the receiver blank a firearm. See Compl. Ex. 12; Ex. 13; Shawn J. Nelson, *Unfinished Lower Receivers*, 63 U.S. Attorney’s Bulletin No. 6 at 44-49 (Nov. 2015) (“Nelson, Unfinished Receivers”), available at: <https://go.usa.gov/x7pP3>. This prevents the makers of receiver blanks from annotating the blank to instruct the purchaser as to the precise measurements needed, in three dimensions, to “excavate the fire control cavity and drill the holes for the selector pin, the trigger pin, and the hammer pin.” Nelson, *Unfinished Receivers*, at 47. The need to conduct these machining steps from scratch, without indexing, and “carefully” means a working gun cannot be produced “without difficulty.” *Id.* And the work to excavate the cavities and drill holes in a solid, unmachined substrate requires care rather than speed to avoid doing so raggedly or in the wrong area. See *id.* Therefore, the receiver cannot be completed “without delay,” even leaving aside the further assembly with many other parts needed to have a weapon that can expel a bullet by explosive action. A receiver blank therefore may not “readily be converted” into a firearm.

Federal Defendants’ Notice Of Motion And Motion To Dismiss Plaintiffs’ Complaint For Declaratory And Injunctive Relief, at 16-17 (filed Nov. 30, 2020).

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 we have 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>. 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.

We note 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>. 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>. 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.

Second, the proposed regulations issued by the ATF would effectively ban unserialized kits by reclassifying them as “firearms” for purposes of federal law. That reclassification of kits would mean that the frame or receiver of the kit would be required to be serialized (and sold through FFLs like other firearms). Specifically, under the proposed rule, “weapon parts kits with partially complete frames or receivers containing the necessary parts such that they may readily be completed, assembled, converted, or restored to expel a projectile by the action of an explosive would be “firearms” for which each frame or receiver of the weapon, as defined under this rule, would need to be marked.” (86 Fed. Reg. at 27736). After the proposed rule goes into effect in June of 2022, such **unserialized** kits will thus be completely unavailable commercially. Likewise unavailable would be any “readily be converted” unfinished frames or receivers, as the ATF proposed rule would likewise deem such items to be firearms and thus must be serialized in order to be sold legally and only then through FFLs who would perform background checks for these items, just like for any other

type of firearm. The only unserialized receivers that would remain unregulated by the ATF would be those receivers that are NOT “readily” converted or assembled into a completed receiver, such as blocks of aluminum sold as “zero percent” receivers and that number is vastly smaller than the current universe of “ghost guns.” As noted, the ATF proposed regulations heavily tighten the definition of “readily” converted, thereby **further** limiting the number and availability of these remaining types of unfinished receivers.

B. The Bills Would Do Nothing To Prevent Or Deter Criminals From Acquiring Guns While Criminalizing Existing, Law-Abiding Hobbyists

The ATF proposed rule would ban unserialized “kits” and would dry up the market for unserialized receivers. Period, full stop. Yet, ironically, the bans imposed by these bills would not stop any person from actually acquiring any non-regulated receivers that would be left, such as “zero percent receivers.” Such items would still not be “firearms” under federal law and thus would not be regulated by federal law. Such items thus would remain available all over the United States, even if the bills should become law and were perfectly enforced 100% of the time. The market for these items is nationwide in scope. Accordingly, nothing in the bans imposed by these bills would or could actually stop any criminal or disqualified person from acquiring all the hardware necessary to make his own gun. All such a person would need do is drive to another state and buy over the counter. The idea that these bills would prevent crime or acquisition of a “ghost gun” is thus fantasy.

More importantly, a disqualified person would not be deterred by these bills because such a disqualified person is **already** precluded by federal law from possessing **any** modern firearm or modern ammunition of **any** type. 18 U.S.C. § 922(g). Actual or constructive possession of a modern firearm or ammunition by a person subject to this firearms disability is a felony, punishable by up to **10** years imprisonment under federal law. See 18 U.S.C. § 924(a)(2). The same disqualification and similar punishments are also **already** imposed under existing Maryland law. See MD Code, Public Safety, § 5-101(g)(3), § 5-133(b)(1), § 5-205(b)(1). Simple actual or constructive possession of a receiver **alone** (as further defined by the ATF rule) would be sufficient to constitute a violation of these existing laws, as a receiver **alone** is considered a “firearm” under **existing** Maryland and federal law. See 18 U.S.C. § 921(a)(3); MD Code, Public Safety, § 5-101(h)(1)(ii). These bills would not change that reality an iota. See <https://bit.ly/3rgG9Au> (announcing arrests and prosecutions of violent criminals and illegal gun manufacturers in Cecil County).

These bills go beyond the requirements of federal law and the proposed ATF regulations by making possession of existing privately manufactured firearms illegal. That result simply criminalizes innocent, law-abiding hobbyists and gun owners who have done nothing wrong. Existing criminals in possession of a “ghost gun” can be and should be arrested for illegal possession and the existing punishments for such illegal possession are far harsher than those imposed by these bills. These bills will not change that legal reality. Yet, these bills will also result in the arrest of law-abiding hobbyists. The reality is that few existing, otherwise law-abiding owners of these homemade guns will know or realize that possession of their existing firearms or unfinished frames has been banned. Actual compliance by existing owners will thus likely be virtually non-existent. In short, the bills are utterly **pointless** as a public safety measure. They would succeed only in turning otherwise law-abiding citizens into criminals. That is not sound public policy.