

Daniel J. Carlin-Weber
HB425 Public Safety – Untraceable Firearms
Unfavorable
2/9/2022

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 House Bill 425.

HB425 and its Senate counterpart, SB387, 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.

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, HB425 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 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 themselves 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 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 HB425 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.

It's also worth mentioning that HB425 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.

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 HB425 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 Brandon Soderberg and Baynard Woods, 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. HB425 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 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.

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 on their own 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 HB425. 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 Code, Public Safety, § 5-101(g), § 5-133(b), and § 5-205(b), 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 in alternatives to relying on just 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. Furthermore, it is worth reading the amicus brief submitted by the Black Attorneys for Legal Aid and Bronx Defenders in support of the petitioners 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. HB425 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.

I strongly urge an unfavorable report.



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