



Testimony for the Judicial Proceedings Committee

March 23, 2023

HB 159- Criminal Procedure – Warrantless Arrest – Straw Purchase Participant

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UNFAVORABLE

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The ACLU of Maryland and the Maryland Office of the Public Defender oppose HB 159, a bill that would allow for warrantless arrests of those suspected of knowingly being a participant in a straw purchase of a regulated firearm. This bill would violate the Fourth Amendment rights of Marylanders and increase unnecessary interactions with police. Additionally, this bill does not explicitly define who a “participant” is as it relates to the offense. Finally, warrantless arrests are typically reserved for offenses that occur within exigent circumstances, precipitating the need for immediate police action. The mere suspicion of participation in a straw purchase should not trump the needed justification, a warrant, in order to properly facilitate an arrest.

Allowing people suspected of being a participant in a straw purchase to be arrested without a warrant potentially violates the Fourth Amendment and due process protections afforded to Marylanders under the U.S. Constitution. The Fourth Amendment protects against warrantless seizures, in this case, the seizure of a person’s physical body. The offenses laid out in section 2-203(b) are offenses in which probable cause can contemporaneously be established, as the nature of the crime would allow a police officer at the moment to surmise that a crime had just been committed, was being committed, or was about to be committed.

Due to the nature of the offense in subsection (b)(12), knowingly being a participant in a straw purchase of a regulated firearm, an officer would have to meet several elements and have previous knowledge of participants in the situation to establish probable cause. In order for a police officer to suspect that a crime has, is, or is about to take place, the officer would have to see the transfer take place and know that the weapon he sees being transferred is classified as a regulated firearm

under section 5-141 of the Public Safety Article. Additionally, the officer would have to know that this transfer is the result of a straw purchase, meaning he would have to know that the purchaser bought the gun with the intent to give the gun to a person who would otherwise be barred from possessing the gun, subsequently requiring the officer to have prior knowledge that the person the gun is being transferred to is barred from possessing it. It is not conceivable that in an instant moment, an officer would have the requisite knowledge to establish probable cause, therefore resulting in a violation of the Fourth Amendment.

Additionally, adding another offense for which police can perform warrantless arrests is going to negatively impact Black Marylanders by increasing interactions with police. Neither “participant” nor “straw purchase” is defined in the legislation, leaving open to interpretation the conditions needed to be met at a police officer’s discretion. Black communities in Maryland are already overpoliced, over-prosecuted, and over-imprisoned. Adding an additional offense for which police can conduct warrantless arrests will only allow for racial bias and police harassment of Black communities.

For these reasons, the ACLU of Maryland and the Office of the Public Defender urge an unfavorable report on HB 159.

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