

Daniel J. Carlin-Weber  
HB1291 – UNF  
Judiciary Committee  
3/1/2021

I am a firearms instructor and advocate of responsible firearms handling and ownership. Currently, I am certified by the Maryland State Police as a Qualified Handgun Instructor and regularly teach the course necessary to receive the Handgun Qualification License (HQL). I'm also a Utah Concealed Firearm Permit Instructor, and NRA Range Safety Officer and Basic Pistol Instructor. Since 2016, I have instructed Marylanders from all walks of life on how to safely operate firearms and the responsibilities that come with their usage. I come before you today to urge an unfavorable report of House Bill 1291.

HB1291 completely bans the possession of any homemade firearm or the parts for them that a Marylander could have going back to 1968. Violators face up to two years imprisonment and a fine up to \$5000 per item. There is no grandfather clause for items already possessed, nor is any compensation offered for this taking of personal property. Put simply, if someone has a gun they had lawfully and privately made for themselves, they face potential prosecution and incarceration. The bill's enactment might attack some people causing harm in our communities, but its very broad approach instead threatens average citizens with violence at the hands of the state merely for doing something they've always had the right to do.

Many of the firearms seen as the impetus for this legislation and similar are handguns. In *District of Columbia v Heller*, 554 U.S., 570 (2008), the Court had held that D.C.'s prohibition on the ownership of handguns violated the 2<sup>nd</sup> Amendment, that citizens have an individual right to firearms ownership separate from service in a militia, and that self-defense is core to the 2<sup>nd</sup>

Amendment. Justice Scalia also wrote in the majority opinion handguns are the “quintessential self-defense weapon.” This bill bans possession of any homemade handguns which indeed are relied upon for personal defense by many of these home gun builders. HB1291 is submitted in complete disregard to the holdings in *Heller*.

Additionally, making one’s own gun has always been legal in the United States and indeed, Maryland. An owner must not be legally prohibited from firearms possession and the gun itself must be in compliance with federal and state laws. As law professor Josh Blackman wrote in the Tennessee Law Review:

“In light of *Heller*, 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, 15 June 2014, p. 496, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2450663](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2450663).

The manner of production has not mattered, whether it be via welding metal parts together, removing metal from an unfinished receiver (i.e., common 80% receivers), or by any number of possible methods. As a result, there are an untold number of homemade firearms in Maryland.

There lacks an all-seeing authority with the ability to peer into every person's basement, garage, or kitchen and consequently, these items are not accounted for in any database, nor have they ever been required to be reported to an agency within the state merely because they were created. Serialization of these privately made firearms has also never been required under Maryland or Federal law. California did not even completely ban the possession of homemade firearms or further making of them. They implemented a system that requires makers of their own guns mark and register them, but only with a serial number issued by their Department of Justice. *Regulations: Unique Serial Number Application (USNA) Process*, State of California Dept. of Justice, <https://oag.ca.gov/firearms/regs/usna>.

Not only does HB1291 require that completed privately made 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 from numerous websites. It does not take much imagination to see how easily a bad actor working within a police department could easily obtain these devices and perhaps plant them on someone they wish to make a suspect. 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 an arrest or justify violence against those in communities already reeling from decades of police misconduct. In the time preceding the GTTF's unravelling, they were *praised* for getting "illegal" guns off of the street despite the crimes they were committing in order to do so. HB1291 and any similar laws that attack the mere possession of items only provides more avenues ripe for exploitation by similarly bad actors.

There are other problems with HB638. Any firearms made prior to 1968 are exempted from the ban imposed on privately made 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 language in the HB1291 does not reflect that the GCA was enacted on October 22<sup>nd</sup>, 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 a homemade gun made in 1966 and one in 1972, let alone one made in September of 1968 and November 1968. The legislation should at least reflect the proper date of enactment, not merely the year it went into effect.

I understand the desire to make Maryland a safer place for residents and that legislators have a duty to represent their constituents' best interests, however, this legislation does not contribute in the slightest to public safety and makes the same mistakes of legislation submitted in prior years on this topic. The typical Marylander is well-meaning and harmless to others, yet this bill threatens them with the potential for violence by the vary law enforcement agencies this state is trying to reform because of the various ways they have abused their powers and members of the public. Individuals determined to harm others will still find the means in order to do so unabated despite this legislation while honest and innocent Marylanders only face more burdensome and confusing laws that do little more other than to punish them for having sought privacy. Prosecutors in Maryland already have a plethora of criminal statutes at their disposal for targeting 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).

I urge an unfavorable report.

A handwritten signature in blue ink, appearing to read 'D. Carlin-Weber', is centered below the text. The signature is fluid and cursive, with a prominent initial 'D'.

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