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TO: The Honorable Luke Clippinger
Chair, Judiciary Committee

FROM: The Office of the Attorney General

RE: HB 638 – Public Safety – Untraceable and Undetectable Firearms – Support with
Amendments

The Office of the Attorney General urges a favorable report on House Bill 638—the “Untraceable Firearms” or “ghost guns” bill. This bill prohibits a person from manufacturing, assembling, constructing, possessing, selling, offering to sell, transferring, purchasing or receiving a firearm or frame or receiver that either lacks a serial number or other identifying information—referred to as “untraceable” firearms—or that is constructed of materials that are not detectable by a metal detector, or that has a configuration that is not detectable as a firearm when viewed through an x-ray machine—referred to as “undetectable” firearms. Any violator would be guilty of a misdemeanor and on conviction, subject to maximum penalties of imprisonment for two years, and/or a \$5,000 fine. The bill would also amend existing law to require a handgun qualification license to purchase, rent, or receive an unfinished firearm frame or receiver.

Generally, when a firearm is manufactured or imported into the United States, it must be marked with a serial number and additional information about the manufacturer and/or importer. Then, when it is sold in Maryland, a background check is conducted on the consumer and the retailer retains records of the transaction, which enables the “tracing” of records.

The “untraceable” ghost guns addressed by this legislation are designed to circumvent these federal and State gun laws. Ghost gun purveyors sell unfinished parts of a firearm, rather than the whole firearm, because the parts themselves do not qualify as a “firearm” that would trigger the serialization requirement. The unfinished parts, however, are easily made into a firearm with commonly available household tools. This process allows the purchasers to go undetected, and un-checked for purposes of background checks.

The presence of these untraceable guns on the streets threatens public safety. Law enforcement officers across the country are increasingly encountering trafficking rings that mass-manufacture and sell untraceable firearms, which are now a consistent and pervasive component of crime in our communities.¹ For example, the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) reports that 30 percent of firearms recovered in California in 2019 were unserialized.² These undetectable ghost guns are often used in shootings—in Maryland and elsewhere—by individuals who would not pass a background check.³

The bill also addresses a second type of ghost gun—“undetectable” guns—that are designed to evade the metal detectors and x-ray machines used to keep our airplanes and public buildings safe. These guns are either made of plastic or other materials that do not set off metal detectors, or they are configured in a way that does not look like a firearm when viewed on an x-ray screen. Like untraceable guns, these undetectable guns are designed to evade existing security measures.

Consistent with the Attorney General’s efforts to protect Maryland residents against the dangers of firearms and gun violence, House Bill 638 closes the loopholes that allow for untraceable and undetectable guns in Maryland.

We note, however, three aspects of the bill that require amendment. First, the bill allows a court to “order suspension of prosecution” for violations of the bill if the court finds that the violation was not serious and the person was not likely to offend in the future. Although courts preside over the *outcome* of prosecutions, it would likely offend separation of powers principles to authorize the judiciary to infringe on the executive branch’s power to *pursue* a prosecution. We understand that Delegate Lopez, the sponsor of House Bill 638, has agreed to propose an amendment striking that portion of the bill, and we urge the Committee to adopt it.

Second, we recommend that the bill’s penalty provision be increased to be consistent with the penalties that currently apply to other firearms violations. As written, the bill makes violation a misdemeanor punishable by up to two years imprisonment and or a \$5,000 (*see* § 5-705(c)(1)),

¹ See Everytown Research and Policy, *Untraceable: The Rising Specter of Ghost Guns* (May 14, 2020), at 12, <https://everytownresearch.org/report/the-rising-specter-of-ghost-guns/>.

² Josiah Bates, *The Saugus High School Shooter Used an Illegal “Ghost Gun.” Authorities Warn More Criminals Are Using Untraceable Weapons to Get Around Gun Laws*, Time Magazine (Nov. 23, 2019), <https://time.com/5737227/saugus-shooter-ghost-gun/>.

³ Justin Fenton, *Baltimore Police Report a 400 % Increase in Untraceable ‘Ghost Guns,’ as Legislators Consider Action* Baltimore Sun (Feb. 18, 2021), <https://www.baltimoresun.com/news/crime/bs-pr-md-ci-cr-ghost-gun-ban-20210218-ae2dortu6ngn5llmfmq6yxtx6m-story.html>; *see also*, Richard Winton & Mark Puente, *Rifle Used in Deadly Riverside Shooting was Untraceable ‘Ghost Gun,’ Sources Say*, Baltimore Sun (Aug. 14, 2019), <https://www.baltimoresun.com/rifle-used-in-deadly-riverside-shooting-was-untraceable-ghost-gun-sources-say-story.html>

whereas firearms violations are typically subject a term of imprisonment of five years and or a \$10,000 fine. *See* Md. Code Ann., Pub. Safety § 5-144(b). Untraceable and undetectable firearms are just as dangerous as regulated firearms, and we believe that the penalties should reflect that fact.

Finally, the bill includes an exception for firearms or unfinished frames and receivers that have been engraved with a serial number “in accordance with all federal laws and regulations.” § 5-702(3). That works for manufacturers, licensees, and dealers, which are subject to federal laws, *see* 18 U.S.C. § 923(i), 27 C.F.R. § 478.92(a)(1), 27 C.F.R. § 479.102, but it would not apply to an average citizen who may want to build a firearm and sell it; he or she would not be subject to federal laws requiring serialization. Amending the provision to refer to “any applicable” federal regulations should correct this issue.

With those amendments, and for the reasons stated above, the Office of the Attorney General urges a favorable report of House Bill 638.

cc: Members of the Judiciary Committee