

Introduced by: The Council President
At the request of: The Administration (Law Department)

Prepared by: Department of Legislative Reference

Date: April 19, 2017

Referred to: JUDICIARY AND LEGISLATIVE INVESTIGATIONS Committee

Also referred for recommendation and report to municipal agencies listed on reverse.

CITY COUNCIL 17-0056

A BILL ENTITLED

AN ORDINANCE concerning

Electronic Control Devices – Authorizing Possession in Most Circumstances

FOR the purpose of allowing a person to possess and use an electronic control device as a form of non-lethal self-defense in the home and in public; prohibiting a person from possessing and using an electronic control device in sensitive places; prohibiting a person who poses an unacceptable risk to public safety from possessing and using an electronic control device; prohibiting the sale of an electronic control device to persons who pose an unacceptable risk to public safety; establishing certain penalties; defining certain terms; providing for a special effective date; and generally relating to electronic control devices.

By repealing and reordaining, with amendments

Article 19 - Police Ordinances

Section(s) 59-28

Baltimore City Code

(Edition 2000)

Introduction of an Ordinance or Resolution by Councilmembers at the request of any person, firm or organization is a courtesy extended by the Councilmembers and not an indication of their position.

Agencies

Department of Public Works

Department of Real Estate

Department of Recreation and Parks

Department of Transportation

Fire Department

Health Department

Mayor's Office of Employment Development

Mayor's Office of Human Services

Mayor's Office of Information Technology

Office of the Mayor

Police Department

Other: _____

Other: _____

City Public School System

Core Development Corporation

City Solicitor

Comptroller's Office

Department of Audits

Department of Finance

Department of General Services

Department of Housing and Community Development

Department of Human Resources

Department of Planning

Other: _____

Other: _____

Other: _____

Boards and Commissions

Environmental Control Board

Fire & Police Employees' Retirement System

Labor Commissioner

Parking Authority Board

Planning Commission

Wage Commission

Other: _____

Other: _____

Other: _____

Board of Estimates

Board of Ethics

Board of Municipal and Zoning Appeals

Comm. for Historical and Architectural Preservation

Commission on Sustainability

Employees' Retirement System

Other: _____

Other: _____

Other: _____

Council Bill 17-0056

1 WHEREAS, in 2016, the Supreme Court of the United States concluded in a per curiam
2 opinion in the case of *Caetano v. Massachusetts* that a state government's categorical ban on the
3 possession and use of electronic control devices had not been sufficiently justified under *Heller*,
4 and the concurring opinion stated that such a ban clearly violates the Second Amendment.

5 ~~WHEREAS, in order to promote public welfare and safety, non-lethal self-defense weapons~~
6 ~~such as electronic control devices are preferable to more lethal self-defense weapons, such as~~
7 ~~handguns, and it is therefore desirable to permit the sale, use, and possession of electronic control~~
8 ~~devices for use in self-defense, with reasonable restrictions.~~

9 ~~WHEREAS, in order to promote public welfare and safety, it is necessary to promptly pass an~~
10 ~~ordinance that provides for reasonable regulation of the sale, possession, and use of electronic~~
11 ~~control devices, in addition to those regulations already established in Maryland State law.~~

12 WHEREAS, in response to the Supreme Court's rulings affecting States and their jurisdictions,
13 it is necessary to promptly pass an ordinance that replaces the local ban on electronic control
14 devices and provides for reasonable regulation of the sale, possession, and use of these devices,
15 in addition to those regulations already established in State law.

16 SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the
17 Laws of Baltimore City read as follows:

18 **Baltimore City Code**

19 **Article 19. Police Ordinances**

20 **Subtitle 59. Weapons**

21 **§ 59-28. [Stun guns] ELECTRONIC CONTROL DEVICES.**

22 (A) *DEFINITIONS.*

23 (1) *IN GENERAL.*

24 IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

25 (2) *"ELECTRONIC CONTROL DEVICE"*.

26 "ELECTRONIC CONTROL DEVICE" MEANS A PORTABLE DEVICE DESIGNED AS A WEAPON
27 CAPABLE OF INJURING, IMMOBILIZING, OR INFLICTING PAIN ON AN INDIVIDUAL BY THE
28 DISCHARGE OF ELECTRICAL CURRENT.

29 (3) *"ADJUDICATED AS A MENTAL DEFECTIVE"*.

30 "ADJUDICATED AS A MENTAL DEFECTIVE" MEANS A DETERMINATION BY A COURT,
31 BOARD, COMMISSION, OR OTHER LAWFUL AUTHORITY, THAT, AS A RESULT OF MARKED
32 SUBNORMAL INTELLIGENCE, MENTAL ILLNESS, INCOMPETENCY, CONDITION, OR
33 DISEASE, A PERSON:

34 (i) IS A DANGER TO THEMSELVES OR TO OTHERS; OR

Council Bill 17-0056

1 (II) LACKS THE MENTAL CAPACITY TO CONTRACT OR MANAGE HIS OR HER OWN
2 AFFAIRS.

3 (4) "MENTAL DISORDER".

4 (I) "MENTAL DISORDER" MEANS A BEHAVIORAL OR EMOTIONAL ILLNESS THAT
5 RESULTS FROM A PSYCHIATRIC DISORDER.

6 (II) "MENTAL DISORDER" INCLUDES A MENTAL ILLNESS THAT SO SUBSTANTIALLY
7 IMPAIRS THE MENTAL OR EMOTIONAL FUNCTIONING OF AN INDIVIDUAL AS TO
8 MAKE CARE OR TREATMENT NECESSARY OR ADVISABLE FOR THE WELFARE OF THE
9 INDIVIDUAL OR FOR THE SAFETY OF THE PERSON OR PROPERTY OF ANOTHER.

10 (5) "PROTECTIVE ORDER".

11 "PROTECTIVE ORDER" MEANS A TEMPORARY OR FINAL PROTECTIVE ORDER ENTERED
12 UNDER THE AUTHORITY OF MARYLAND CODE, FAMILY LAW ARTICLE, §§ 4-505 AND
13 4-506.

14 (B) [(a)] *Possession or sale, etc., prohibited.*

15 IN ADDITION TO ALL STATE LAW PROHIBITIONS AND PENALTIES ON THE SALES OF
16 ELECTRONIC CONTROL DEVICES, INCLUDING NO SALES TO MINORS, NO SALES TO THOSE
17 CONVICTED OF CERTAIN CRIMES, AND NO SALES WITHOUT BACKGROUND CHECKS, IT IS
18 UNLAWFUL IN THE CITY:

19 (1) ~~It shall be unlawful~~ FOR ANY PERSON TO POSSESS AN ELECTRONIC CONTROL
20 DEVICE IN A:

21 (I) PUBLIC SCHOOL;

22 (II) STATE PUBLIC BUILDING; OR

23 (III) CITY PUBLIC BUILDING [for any person, firm, or corporation to sell, give
24 away, lend, rent or transfer to any individual, firm, or corporation a stun
25 gun or other electronic device by whatever name or description which
26 discharges a non-projectile electric current within the limits of the City of
27 Baltimore]; ;

28 (2) ~~IT SHALL BE UNLAWFUL~~ FOR ANY PERSON TO SELL OR SHIP AN ELECTRONIC
29 CONTROL DEVICE TO ANY OTHER PERSON KNOWING OR HAVING REASONABLE
30 CAUSE TO BELIEVE THAT THE OTHER PERSON HAS BEEN:

31 (I) ADJUDICATED AS A MENTAL DEFECTIVE; OR

32 (II) COMMITTED TO ANY MENTAL INSTITUTION- ;[It further shall be unlawful
33 for any person to possess, fire, or discharge any such stun gun or electronic
34 device within the City.]

Council Bill 17-0056

1 (3) ~~IT SHALL BE UNLAWFUL~~ FOR ANY PERSON TO POSSESS AN ELECTRONIC CONTROL
2 DEVICE IF THE PERSON SUFFERS FROM A MENTAL DISORDER AND HAS A HISTORY OF
3 VIOLENT BEHAVIOR AGAINST THEMSELVES OR ANOTHER-; AND

4 (4) ~~IT SHALL BE UNLAWFUL~~ FOR ANY PERSON SUBJECT TO A PROTECTIVE ORDER TO
5 POSSESS AN ELECTRONIC CONTROL DEVICE FOR THE DURATION OF THE PROTECTIVE
6 ORDER.

7 (C) [(b)] *Exceptions.*

8 Nothing in this [subsection] SECTION shall be held to apply to any member of the
9 Baltimore City Police Department or any other law enforcement officer while in the
10 performance of his or her official duty.

11 (D) [(c)] *Penalties.*

12 Any violation of the provisions of this section shall be deemed to be a misdemeanor,
13 subject upon conviction to a fine of not more than ~~\$500~~ \$1,000 or to imprisonment for
14 not longer than ~~60 days~~ 12 MONTHS or to both fine and imprisonment, in the discretion of
15 the Court.

16 SECTION 2. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance
17 are not law and may not be considered to have been enacted as a part of this or any prior
18 Ordinance.

19 SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the date it is
20 enacted.

Council Bill 17-0056

Certified as duly passed this _____ day of MAY 15, 2017



President, Baltimore City Council


Certified as duly delivered to Her Honor, the Mayor,

this _____ day of MAY 15, 2017



Chief Clerk

Approved this 17 day of May, 2017



Mayor, Baltimore City

Approved For Form and Legal Sufficiency

This 17th Day of May 2017.



Chief Solicitor

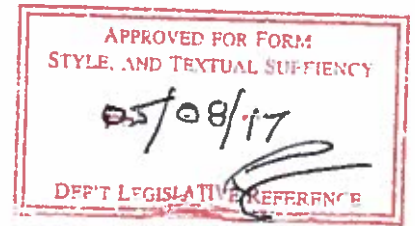
1952

1952

1952

Approved For Form and Legal Sufficiency
This _____ Day of _____

Chief Solicitor



AMENDMENTS TO COUNCIL BILL 17-056
(1st Reader Copy)

By: Judiciary Committee
{To be offered on the Council Floor}

Amendment No. 1

On page 2, strike lines 5 through 11, in their entireties, and substitute:

“WHEREAS, in response to the Supreme Court’s rulings affecting States and their jurisdictions, it is necessary to promptly pass an ordinance that replaces the local ban on electronic control devices and provides for reasonable regulation of the sale, possession, and use of these devices, in addition to those regulations already established in State law.”

Amendment No. 2

ADOPTED

On page 3, after line 12, insert:

“IN ADDITION TO ALL STATE LAW PROHIBITIONS AND PENALTIES ON THE SALES OF ELECTRONIC CONTROL DEVICES, INCLUDING NO SALES TO MINORS, NO SALES TO THOSE CONVICTED OF CERTAIN CRIMES, AND NO SALES WITHOUT BACKGROUND CHECKS, IT IS UNLAWFUL IN THE CITY:”;

and, in line 13 and in line 20, strike “It shall be unlawful” and “IT SHALL BE UNLAWFUL”, respectively, and, in each case, substitute “FOR ANY PERSON”; and, in line 21, before both iterations of “PERSON”, insert “OTHER”; and, in each of lines 27 and 30, strike “IT SHALL BE UNLAWFUL”; and, in each of lines 19 and 24, strike the period and substitute a semi-colon; and, in line 29, strike the period and substitute “: AND”.

Amendment No. 3

On page 4, in line 7, strike “\$500” and substitute “\$1,000”; and, in line 8, strike “60 days” and substitute “12 MONTHS”.

COUNCIL BILL 17-056

**UNOFFICIAL REPRINT TO SHOW CONTEXT
OF AMENDMENTS PROPOSED BY JUDICIARY COMMITTEE**

A BILL ENTITLED

AN ORDINANCE concerning

Electronic Control Devices – Authorizing Possession in Most Circumstances

FOR the purpose of allowing a person to possess and use an electronic control device as a form of non-lethal self-defense in the home and in public; prohibiting a person from possessing and using an electronic control device in sensitive places; prohibiting a person who poses an unacceptable risk to public safety from possessing and using an electronic control device; prohibiting the sale of an electronic control device to persons who pose an unacceptable risk to public safety; establishing certain penalties; defining certain terms; providing for a special effective date; and generally relating to electronic control devices.

BY repealing and reordaining, with amendments

Article 19 - Police Ordinances
Section(s) 59-28
Baltimore City Code
(Edition 2000)

Recitals

WHEREAS, the Second Amendment to the United States Constitution reserves to the people the right to keep and bear arms.

WHEREAS, in 2008, the Supreme Court of the United States decided in the case of *District of Columbia v. Heller* that the Second Amendment to the United States Constitution protects an individual's right to possess and use a firearm for traditionally lawful purposes, such as self-defense in the home, and that the Second Amendment encompasses weapons that are typically used by law-abiding citizens for lawful purposes.

WHEREAS, in 2010, the Supreme Court of the United States decided in the case of *McDonald v. City of Chicago* that the Second Amendment's right to possess a firearm for self-defense in the home also applies to the states.

WHEREAS, in 2016, the Supreme Court of the United States concluded in a per curiam opinion in the case of *Caetano v. Massachusetts* that a state government's categorical ban on the possession and use of electronic control devices had not been sufficiently justified under *Heller*, and the concurring opinion stated that such a ban clearly violates the Second Amendment.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

~~WHEREAS, in order to promote public welfare and safety, non-lethal self-defense weapons such as electronic control devices are preferable to more lethal self-defense weapons, such as handguns, and it is therefore desirable to permit the sale, use, and possession of electronic control devices for use in self-defense, with reasonable restrictions.~~

~~WHEREAS, in order to promote public welfare and safety, it is necessary to promptly pass an ordinance that provides for reasonable regulation of the sale, possession, and use of electronic control devices, in addition to those regulations already established in Maryland State law.~~

WHEREAS, in response to the Supreme Court's rulings affecting States and their jurisdictions, it is necessary to promptly pass an ordinance that replaces the local ban on electronic control devices and provides for reasonable regulation of the sale, possession, and use of these devices, in addition to those regulations already established in State law.

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 19. Police Ordinances

Subtitle 59. Weapons

§ 59-28. [Stun guns] ELECTRONIC CONTROL DEVICES.

(A) DEFINITIONS.

(1) IN GENERAL.

IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

(2) "ELECTRONIC CONTROL DEVICE".

"ELECTRONIC CONTROL DEVICE" MEANS A PORTABLE DEVICE DESIGNED AS A WEAPON CAPABLE OF INJURING, IMMOBILIZING, OR INFLICTING PAIN ON AN INDIVIDUAL BY THE DISCHARGE OF ELECTRICAL CURRENT.

(3) "ADJUDICATED AS A MENTAL DEFECTIVE".

"ADJUDICATED AS A MENTAL DEFECTIVE" MEANS A DETERMINATION BY A COURT, BOARD, COMMISSION, OR OTHER LAWFUL AUTHORITY, THAT, AS A RESULT OF MARKED SUBNORMAL INTELLIGENCE, MENTAL ILLNESS, INCOMPETENCY, CONDITION, OR DISEASE, A PERSON:

(i) IS A DANGER TO THEMSELVES OR TO OTHERS; OR

(ii) LACKS THE MENTAL CAPACITY TO CONTRACT OR MANAGE HIS OR HER OWN AFFAIRS.

(4) "MENTAL DISORDER".

(i) "MENTAL DISORDER" MEANS A BEHAVIORAL OR EMOTIONAL ILLNESS THAT RESULTS FROM A PSYCHIATRIC DISORDER.

(II) "MENTAL DISORDER" INCLUDES A MENTAL ILLNESS THAT SO SUBSTANTIALLY IMPAIRS THE MENTAL OR EMOTIONAL FUNCTIONING OF AN INDIVIDUAL AS TO MAKE CARE OR TREATMENT NECESSARY OR ADVISABLE FOR THE WELFARE OF THE INDIVIDUAL OR FOR THE SAFETY OF THE PERSON OR PROPERTY OF ANOTHER.

(5) "PROTECTIVE ORDER".

"PROTECTIVE ORDER" MEANS A TEMPORARY OR FINAL PROTECTIVE ORDER ENTERED UNDER THE AUTHORITY OF MARYLAND CODE, FAMILY LAW ARTICLE, §§ 4-505 AND 4-506.

(B) [(a)] *Possession or sale, etc., prohibited.*

IN ADDITION TO ALL STATE LAW PROHIBITIONS AND PENALTIES ON THE SALES OF ELECTRONIC CONTROL DEVICES, INCLUDING NO SALES TO MINORS, NO SALES TO THOSE CONVICTED OF CERTAIN CRIMES, AND NO SALES WITHOUT BACKGROUND CHECKS, IT IS UNLAWFUL IN THE CITY:

(1) ~~It shall be unlawful~~ FOR ANY PERSON TO POSSESS AN ELECTRONIC CONTROL DEVICE IN A:

(I) PUBLIC SCHOOL;

(II) STATE PUBLIC BUILDING; OR

(III) CITY PUBLIC BUILDING [for any person, firm, or corporation to sell, give away, lend, rent or transfer to any individual, firm, or corporation a stun gun or other electronic device by whatever name or description which discharges a non-projectile electric current within the limits of the City of Baltimore]; ;

(2) ~~IT SHALL BE UNLAWFUL~~ FOR ANY PERSON TO SELL OR SHIP AN ELECTRONIC CONTROL DEVICE TO ANY OTHER PERSON KNOWING OR HAVING REASONABLE CAUSE TO BELIEVE THAT THE OTHER PERSON HAS BEEN:

(I) ADJUDICATED AS A MENTAL DEFECTIVE; OR

(II) COMMITTED TO ANY MENTAL INSTITUTION: ; [It further shall be unlawful for any person to possess, fire, or discharge any such stun gun or electronic device within the City.]

(3) ~~IT SHALL BE UNLAWFUL~~ FOR ANY PERSON TO POSSESS AN ELECTRONIC CONTROL DEVICE IF THE PERSON SUFFERS FROM A MENTAL DISORDER AND HAS A HISTORY OF VIOLENT BEHAVIOR AGAINST THEMSELVES OR ANOTHER: ; AND

(4) ~~IT SHALL BE UNLAWFUL~~ FOR ANY PERSON SUBJECT TO A PROTECTIVE ORDER TO POSSESS AN ELECTRONIC CONTROL DEVICE FOR THE DURATION OF THE PROTECTIVE ORDER.

(C) [(b)] *Exceptions.*

Nothing in this [subsection] SECTION shall be held to apply to any member of the Baltimore City Police Department or any other law enforcement officer while in the performance of his or her official duty.

(D) [(c)] *Penalties.*

Any violation of the provisions of this section shall be deemed to be a misdemeanor, subject upon conviction to a fine of not more than ~~\$500~~ \$1,000 or to imprisonment for not longer than ~~60 days~~ 12 MONTHS or to both fine and imprisonment, in the discretion of the Court.

SECTION 2. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the date it is enacted.

BALTIMORE CITY COUNCIL
JUDICIARY AND LEGISLATIVE INVESTIGATIONS COMMITTEE
VOTING RECORD

BILL#: CC-17-0056 DATE: 5-4-17

**BILL TITLE: Electronic Control Devices –
 Authorizing Possession in Most Circumstances**

MOTION BY: CLARKE SECONDED BY: REISINGER

- FAVORABLE FAVORABLE WITH AMENDMENTS
 UNFAVORABLE WITHOUT RECOMMENDATION

NAME	YEAS	NAYS	ABSENT	ABSTAIN
Costello, E., Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarke, M., Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bullock, J.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pinkett, L.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reisinger, E.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott, B.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stokes, R.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTALS	5	0	2	0

CHAIRPERSON: *CV-PM*
 COMMITTEE STAFF: D'Paul S. Nibber, Initials: *DN*



HEARING NOTES

Bill: 17-0056

Electronic Control Devices - Authorizing Possession in Most Circumstances

Committee: Judiciary and Legislative Investigations

Chaired By: Councilmember Eric Costello

Hearing Date: May 2, 2017

Time (Beginning): 10:10 a.m.

Time (Ending): 10:50 a.m.

Location: Clarence "Du" Burns Chamber

Total Attendance: ~15

Committee Members in Attendance:

Eric Costello Mary Pat Clarke Brandon Scott

Leon Pinkett Edward Reisinger

Bill Synopsis in the file?	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> n/a
Attendance sheet in the file?	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> n/a
Agency reports read?	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> n/a
Hearing televised or audio-digitally recorded?	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no	<input type="checkbox"/> n/a
Certification of advertising/posting notices in the file?	<input type="checkbox"/> yes	<input type="checkbox"/> no	<input checked="" type="checkbox"/> n/a
Evidence of notification to property owners?	<input type="checkbox"/> yes	<input type="checkbox"/> no	<input checked="" type="checkbox"/> n/a
Final vote taken at this hearing?	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no	<input type="checkbox"/> n/a
Motioned by:	N/A		
Seconded by:	N/A		
Final Vote:	N/A		

Major Speakers

(This is not an attendance record.)

- James Gillis, Director of Government Affairs, Police Department
- Hilary Ruley, Law Department

Major Issues Discussed

1. Chairman Costello introduced the proceedings and discussed the agency reports for Council Bill #17-0056.
2. Ms. Hilary Ruley discussed the background and purpose of the Bill. She explained that it was brought forward as a response to a federal lawsuit. Ms. Ruley mentioned that two other jurisdictions, Howard County and Baltimore County, have repealed their stun gun ordinances. She added that, due to a recent Supreme Court case, the City has no defense against a lawsuit challenging the City's stun gun ban. Ms. Ruley noted that the Bill is not a simple repeal, but also adds many legally permissible restrictions to the purchase and ownership of electronic control devices.
3. Chairman Costello asked about the legal fees in the pending case against the City, and was told that it amounts to \$40,000 and will be apportioned between the three defendant jurisdictions in an unknown manner.
4. Councilwoman Clarke asked if the Bill could also ban individuals with a conviction for violent crime from owning electronic control devices, and was told that this is already prohibited by state law.
5. Councilman Scott questioned why the City would repeal the ban, considering the possible violent crime implications. Mr. Gillis explained that the Supreme Court, in its decision, looked at electronic control devices as a means of protection as opposed to as a means to perpetrate crime.
6. Councilwoman Clarke asked whether it would be possible to impose a licensing system on owning a stun gun. She was told that the State has several means of restricting the sales of electronic control devices, but that there is no licensing system.
7. Councilman Pinkett noted that there are many different kinds of electronic control devices and they are available at many different outlets. He asked whether there is a limit to the amount of said devices one can purchase, and he was told there is not.
8. Councilman Scott stated that he is concerned about how small retailers may be reckless in how they go about selling electronic control devices. He also asked whether there will be any monitoring of these devices in online sales, and was told that there would not be. Councilman Scott added that he believes that having an electronic control device could potentially make one more unsafe, citing how an individual may be shot if it appears that they are reaching for one on their person.
9. Councilman Reisinger agreed that there is a problem with repealing the ban, but stated that he is concerned by the possibility of the Committee's inaction on this issue.
10. Chairman Costello asked how gun sales are limited to two stores within the City, and was told this information would be given to him at a later time. He then called for a work session to address several questions: What regulations are in effect that limit sellers of electronic control devices? Is it possible to have an extended stay in the pending federal lawsuit against the City? Is it possible to have electronic control devices incorporated into the gun registry via an executive order? How does the Supreme Court define an electronic control device and how can this be used to benefit the pending bill? Can the state's statutory provisions concerning electronic control devices be incorporated into Council Bill #17-0056? Is it possible to construct an authorized sellers registry within the City? What agency would be in charge? How can the City develop a means to track online sales of electronic control devices?

Further Study

Was further study requested?

Yes **No**

If yes, describe. See Above

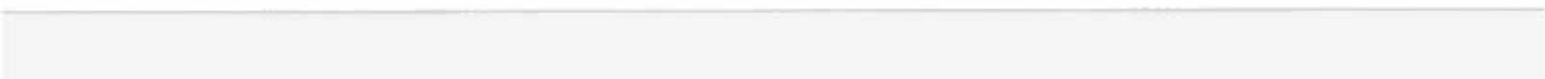
D'Paul Nibber
D'Paul Nibber, Committee Staff

Date: May 5, 2017

cc: Bill File
OCS Chrono File



11/11/11





**BALTIMORE CITY COUNCIL
JUDICIARY AND LEGISLATIVE INVESTIGATIONS
COMMITTEE**

Mission Statement

On behalf of the Citizens of Baltimore City, the mission of the Judiciary and Legislative Investigations Committee is to investigate and study the continuing operations, efficiency, and functions of Baltimore City government in accordance with the laws of Baltimore City, the State of Maryland, and the United States.

As a result of its investigations and studies, the Committee will recommend and oversee reforms to improve the operations of Baltimore City's government through legislative, administrative, and/or budgetary processes.

**The Honorable Eric T. Costello
Chairman**

PUBLIC HEARING

Tuesday, May 2, 2017

10:00 AM

CLARENCE "DU" BURNS COUNCIL CHAMBERS

Council Bill 17-0056

Electronic Control Devices - Authorizing Possession in Most Circumstances

CITY COUNCIL COMMITTEES

BUDGET AND APPROPRIATIONS

Eric Costello – Chair
Leon Pinkett – Vice Chair
Bill Henry
Sharon Green Middleton
Brandon M. Scott
Isaac "Yitzy" Schleifer
Shannon Sneed
Staff: Marguerite Murray

EDUCATION AND YOUTH

Zeke Cohen – Chair
Mary Pat Clarke – Vice Chair
John Bullock
Kristerfer Burnett
Ryan Dorsey
Staff: D'Paul Nibber

EXECUTIVE APPOINTMENTS

Robert Stokes – Chair
Kristerfer Burnett – Vice Chair
Mary Pat Clarke
Zeke Cohen
Isaac "Yitzy" Schleifer
Staff: Jennifer Coates

HOUSING AND URBAN AFFAIRS

John Bullock – Chair
Isaac "Yitzy" Schleifer – Vice Chair
Kristerfer Burnett
Bill Henry
Shannon Sneed
Zeke Cohen
Ryan Dorsey
Staff: Richard Krummerich

JUDICIARY AND LEGISLATIVE INVESTIGATIONS

Eric Costello – Chair
Mary Pat Clarke – Vice Chair
John Bullock
Leon Pinkett
Ed Reisinger
Brandon Scott
Robert Stokes
Staff: D'Paul Nibber

LABOR

Shannon Sneed – Chair
Robert Stokes – Vice Chair
Eric Costello
Bill Henry
Mary Pat Clarke
Staff: Marguerite Murray

LAND USE AND TRANSPORTATION

Edward Reisinger - Chair
Sharon Green Middleton – Vice Chair
Mary Pat Clarke
Eric Costello
Ryan Dorsey
Leon Pinkett
Robert Stokes
Staff: Marshall Bell

PUBLIC SAFETY

Brandon Scott – Chair
Ryan Dorsey – Vice Chair
Kristerfer Burnett
Shannon Sneed
Zeke Cohen
Leon Pinkett
Isaac "Yitzy" Schleifer
Staff: Marshall Bell

TAXATION, FINANCE AND ECONOMIC DEVELOPMENT

Sharon Green Middleton – Chair
Leon Pinkett – Vice Chair
Erick Costello
Edward Reisinger
Robert Stokes
Staff: Jennifer Coates
- Larry Greene (pension only)

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



OFFICE OF COUNCIL SERVICES

LARRY E. GREENE, Director
415 City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202
410-396-7215 / Fax: 410-545-7596
email: larry.greene@baltimorecity.gov

BILL SYNOPSIS

Committee: Judiciary and Legislative Investigations

Bill 17-0056

Electronic Control Devices - Authorizing Possession In Most Circumstances

Sponsor: President Young, et al

Introduced: April 24, 2017

Purpose:

For the purpose of allowing a person to possess and use an electronic control device as a form of non-lethal self-defense in the home and in public; prohibiting a person from possessing and using an electronic control device in sensitive places; prohibiting a person who poses an unacceptable risk to public safety from possessing and using an electronic control device; prohibiting the sale of an electronic control device to persons who pose an unacceptable risk to public safety; establishing certain penalties; defining certain terms; providing for a special effective date; and generally relating to electronic control devices.

Effective: The date it is enacted

Hearing Date/Time/Location: May 2, 2017/10:00 a.m./Clarence "Du" Burns Chamber

Agency Reports

Law Department
Police Department

Favorable w/ Comments
Favorable

ANALYSIS

Current Law

Baltimore City Code, Article 19, §59-28 prohibits both the ownership and use of a "stun gun or other electronic device by whatever name or description which discharges a non-projectile electric current," excepting only the Police Department. The maximum penalty imposed for violating this provision is a \$500 fine and/or 60 days imprisonment.

Background

Council Bill 17-0056 repeals Article 19, §59-28 of the Baltimore City Code, which prohibits the ownership and use of stun guns and other similar devices. The Bill also regulates "electronic control devices," described as "a portable device designed as a weapon capable of injuring, immobilizing, or inflicting pain on an individual by the discharge of electrical current." It includes new provisions that limit which persons may be sold said weapons, including those that have been "adjudicated as a mental defective" or "committed to any mental institution." Individuals that have been determined to have a mental disorder and "a history of violent behavior," or are "subject to a protective order," may not possess an electronic control device. Moreover, said devices are not allowed in certain public spaces including public schools, state public buildings, and Baltimore City public buildings.

The Law Department provided a favorable report for Council Bill 17-0056, approving it for form and legal sufficiency. The Bill was requested by the Law Department in response to a lawsuit brought against the City over the possession of electronic control devices. Based on recent Supreme Court precedent, the Department believes that the City's "stun gun" ban would be invalidated. The plaintiffs agreed to stay their lawsuit in order for the City to adopt a different approach to electronic control devices. Additionally, two neighboring counties, Howard and Baltimore, have repealed their similar laws in response to the aforementioned suit.

The Police Department also provided a favorable report, stating that 17-0056 "strikes a necessary balance between constitutional possession of electronic control devices by private individuals and prohibiting the possession of such devices by those who pose an increase safety risk." According to the Baltimore Sun, Council Bill 17-0056 must pass within 90 days, or the City will be subject to \$40,000 in attorney's fees. It was also reported that this Bill was submitted to the Council mostly at the request of the federal court currently trying the stun gun case.

Additional Information

Fiscal Note: Not Available

Information Source(s): Law Department; Police Department; The Baltimore Sun

Analysis by: *D'Paul & Tiller*
D'Paul S. Nibber
Analysis Date: April 28, 2017

Direct Inquiries to: (410) 396-1268

**CITY OF BALTIMORE
COUNCIL BILL 17-0056
(First Reader)**

Introduced by: The Council President

At the request of: The Administration (Law Department)

Introduced and read first time: April 24, 2017

Assigned to: Judiciary and Legislative Investigations Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Police Department

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Electronic Control Devices – Authorizing Possession in Most Circumstances**

3 FOR the purpose of allowing a person to possess and use an electronic control device as a form of
4 non-lethal self-defense in the home and in public; prohibiting a person from possessing and
5 using an electronic control device in sensitive places; prohibiting a person who poses an
6 unacceptable risk to public safety from possessing and using an electronic control device;
7 prohibiting the sale of an electronic control device to persons who pose an unacceptable risk
8 to public safety; establishing certain penalties; defining certain terms; providing for a special
9 effective date; and generally relating to electronic control devices.

10 BY repealing and reordaining, with amendments

11 Article 19 - Police Ordinances

12 Section(s) 59-28

13 Baltimore City Code

14 (Edition 2000)

15 **Recitals**

16 **WHEREAS**, the Second Amendment to the United States Constitution reserves to the people
17 the right to keep and bear arms.

18 **WHEREAS**, in 2008, the Supreme Court of the United States decided in the case of *District of*
19 *Columbia v. Heller* that the Second Amendment to the United States Constitution protects an
20 individual's right to possess and use a firearm for traditionally lawful purposes, such as
21 self-defense in the home, and that the Second Amendment encompasses weapons that are
22 typically used by law-abiding citizens for lawful purposes.

23 **WHEREAS**, in 2010, the Supreme Court of the United States decided in the case of *McDonald*
24 *v. City of Chicago* that the Second Amendment's right to possess a firearm for self-defense in the
25 home also applies to the states.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

Council Bill 17-0056

1 **WHEREAS**, in 2016, the Supreme Court of the United States concluded in a per curiam
2 opinion in the case of *Caetano v. Massachusetts* that a state government’s categorical ban on the
3 possession and use of electronic control devices had not been sufficiently justified under *Heller*,
4 and the concurring opinion stated that such a ban clearly violates the Second Amendment.

5 **WHEREAS**, in order to promote public welfare and safety, non-lethal self-defense weapons
6 such as electronic control devices are preferable to more lethal self-defense weapons, such as
7 handguns, and it is therefore desirable to permit the sale, use, and possession of electronic control
8 devices for use in self-defense, with reasonable restrictions.

9 **WHEREAS**, in order to promote public welfare and safety, it is necessary to promptly pass an
10 ordinance that provides for reasonable regulation of the sale, possession, and use of electronic
11 control devices, in addition to those regulations already established in Maryland State law.

12 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE**, That the
13 Laws of Baltimore City read as follows:

14 **Baltimore City Code**

15 **Article 19. Police Ordinances**

16 **Subtitle 59. Weapons**

17 **§ 59-28. [Stun guns] ELECTRONIC CONTROL DEVICES.**

18 (A) *DEFINITIONS.*

19 (1) *IN GENERAL.*

20 **IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.**

21 (2) *“ELECTRONIC CONTROL DEVICE”.*

22 **“ELECTRONIC CONTROL DEVICE” MEANS A PORTABLE DEVICE DESIGNED AS A WEAPON**
23 **CAPABLE OF INJURING, IMMOBILIZING, OR INFLECTING PAIN ON AN INDIVIDUAL BY THE**
24 **DISCHARGE OF ELECTRICAL CURRENT.**

25 (3) *“ADJUDICATED AS A MENTAL DEFECTIVE”.*

26 **“ADJUDICATED AS A MENTAL DEFECTIVE” MEANS A DETERMINATION BY A COURT,**
27 **BOARD, COMMISSION, OR OTHER LAWFUL AUTHORITY, THAT, AS A RESULT OF MARKED**
28 **SUBNORMAL INTELLIGENCE, MENTAL ILLNESS, INCOMPETENCY, CONDITION, OR**
29 **DISEASE, A PERSON:**

30 **(I) IS A DANGER TO THEMSELVES OR TO OTHERS; OR**

31 **(II) LACKS THE MENTAL CAPACITY TO CONTRACT OR MANAGE HIS OR HER OWN**
32 **AFFAIRS.**

Council Bill 17-0056

1 (4) "MENTAL DISORDER".

2 (I) "MENTAL DISORDER" MEANS A BEHAVIORAL OR EMOTIONAL ILLNESS THAT
3 RESULTS FROM A PSYCHIATRIC DISORDER.

4 (II) "MENTAL DISORDER" INCLUDES A MENTAL ILLNESS THAT SO SUBSTANTIALLY
5 IMPAIRS THE MENTAL OR EMOTIONAL FUNCTIONING OF AN INDIVIDUAL AS TO
6 MAKE CARE OR TREATMENT NECESSARY OR ADVISABLE FOR THE WELFARE OF THE
7 INDIVIDUAL OR FOR THE SAFETY OF THE PERSON OR PROPERTY OF ANOTHER.

8 (5) "PROTECTIVE ORDER".

9 "PROTECTIVE ORDER" MEANS A TEMPORARY OR FINAL PROTECTIVE ORDER ENTERED
10 UNDER THE AUTHORITY OF MARYLAND CODE, FAMILY LAW ARTICLE, §§ 4-505 AND
11 4-506.

12 (B) [(a)] *Possession or sale, etc., prohibited.*

13 (1) It shall be unlawful TO POSSESS AN ELECTRONIC CONTROL DEVICE IN A:

14 (I) PUBLIC SCHOOL;

15 (II) STATE PUBLIC BUILDING; OR

16 (III) CITY PUBLIC BUILDING [for any person, firm, or corporation to sell, give away,
17 lend, rent or transfer to any individual, firm, or corporation a stun gun or other
18 electronic device by whatever name or description which discharges a
19 non-projectile electric current within the limits of the City of Baltimore].

20 (2) IT SHALL BE UNLAWFUL TO SELL OR SHIP AN ELECTRONIC CONTROL DEVICE TO ANY
21 PERSON KNOWING OR HAVING REASONABLE CAUSE TO BELIEVE THAT THE PERSON HAS
22 BEEN:

23 (I) ADJUDICATED AS A MENTAL DEFECTIVE; OR

24 (II) COMMITTED TO ANY MENTAL INSTITUTION. [It further shall be unlawful for any
25 person to possess, fire, or discharge any such stun gun or electronic device
26 within the City.]

27 (3) IT SHALL BE UNLAWFUL FOR ANY PERSON TO POSSESS AN ELECTRONIC CONTROL
28 DEVICE IF THE PERSON SUFFERS FROM A MENTAL DISORDER AND HAS A HISTORY OF
29 VIOLENT BEHAVIOR AGAINST THEMSELVES OR ANOTHER.

30 (4) IT SHALL BE UNLAWFUL FOR ANY PERSON SUBJECT TO A PROTECTIVE ORDER TO
31 POSSESS AN ELECTRONIC CONTROL DEVICE FOR THE DURATION OF THE PROTECTIVE
32 ORDER.

Council Bill 17-0056

1 (C) [(b)] *Exceptions.*

2 Nothing in this [subsection] SECTION shall be held to apply to any member of the
3 Baltimore City Police Department or any other law enforcement officer while in the
4 performance of his or her official duty.

5 (D) [(c)] *Penalties.*

6 Any violation of the provisions of this section shall be deemed to be a misdemeanor,
7 subject upon conviction to a fine of not more than \$500 or to imprisonment for not longer
8 than 60 days or to both fine and imprisonment, in the discretion of the Court.

9 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
10 are not law and may not be considered to have been enacted as a part of this or any prior
11 Ordinance.

12 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it is
13 enacted.

JUDICIARY AND LEGISLATIVE INVESTIGATIONS COMMITTEE

Council Bill 17-0056

Hearing Date: May 2, 2017

Agency Reports:

- **Law Department**
 - **Favorable w/ Comments**
- **Police Department**
 - **Favorable**

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor

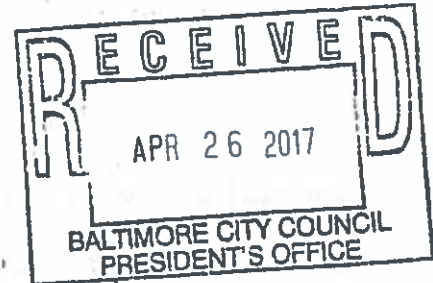


DEPARTMENT OF LAW

101 City Hall
Baltimore, Maryland 21202

April 26, 2017

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 17-0056 – Electronic Control Devices – Authorizing
Control in Most Circumstances

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0056 for form and legal sufficiency. The bill would repeal the City's existing stun gun ban, contained in Section 59-28 of Article 19 of the City Code. It would replace the complete ban with restrictions that would prevent the possession of stun guns by those adjudicated mentally defective, as defined in state law, as well as by those under a protective order. It would also prevent the possession of stun guns in certain government and school buildings. These restrictions would operate in conjunction with the existing state laws on stun guns, which prohibit possession by those under 18 years old, require sellers to perform background checks and maintain a record of buyers. Md. Code, Crim. Law, §4-109. Therefore, passage of this bill will not result in the unfettered use and possession of stun guns. Rather, it will enact permissible regulations that will work in concert with existing state laws.

The Law Department requested this bill in response to a federal lawsuit filed against the Mayor and City Council of Baltimore, Baltimore County and Howard County, alleging that these jurisdictions' local bans on stun guns are unconstitutional under the 2nd Amendment to the United States Constitution. As indicated in the recitals of the bill, recent Supreme Court cases would likely lead a court to invalidate the City's existing ban. *See Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016)(vacated Massachusetts state ban on stun guns); *McDonald v. City of Chicago*, 561 U.S. 742 (2010)(applying 2nd Amendment to states); *District of Columbia v. Heller*, 554 U.S. 570 (2008)(2nd Amendment protects the right to possess weapons for traditionally lawful purposes, including self-defense in the home). However, certain reasonable restrictions are allowed. *See, e.g., Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017)(explaining judicial scrutiny for weapons restrictions); *Heller*, 554 U.S. at 626-27(upholding restrictions on possession by certain criminals, the mentally ill, or in sensitive places).

Howard and Baltimore counties have repealed their laws in response to this lawsuit. The Plaintiffs in the case have agreed to stay the lawsuit for 90 days to give the Mayor and City Council time to enact this bill into law. The Law Department approves the bill for form and legal sufficiency.

Fav / w comments

Very truly yours,

A handwritten signature in blue ink, appearing to read "Hilary Ruley", with a stylized flourish extending to the right.

Hilary Ruley
Chief Solicitor

cc: David E. Ralph, Acting City Solicitor
Karen Stokes, Director, Mayor's Office of Government Relations
Kyron Banks, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalá, Chief Solicitor
Jennifer Landis, Assistant Solicitor



**Catherine Pugh
Mayor**

BALTIMORE POLICE DEPARTMENT



**Kevin Davis
Police Commissioner**

April 28, 2017

Honorable President and Members of the Baltimore City Council
Room 400, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Attention: Natawna Austin, Executive Secretary

**Re: City Council Bill No. 17-0056
Electronic Control Devices - Authorizing Possession in Most
Circumstances**

Dear Council President Young and Members of the City Council:

The Baltimore Police Department (the Department) has reviewed Council Bill 17-0056. This bill is for the purpose of allowing a person to possess and use an electronic control device as a form of non-lethal self-defense and for placing reasonable restrictions on the possession of such devices by persons who may pose a public safety risk.

The Department supports this bill.

The bill was requested in reaction to recent Federal Court opinions in which it was consistently held that the Second Amendment to the United States Constitution applies to electronic control devices. This bill repeals and replaces Section 59-28 of Article 19 of the City Code to accomplish the dual goals of protecting a person's right to lawfully possess such a device for personal protection and prohibiting possession in certain circumstances in the interest of public safety.

The bill as drafted narrows the scope of the City ordinance so that it still outlaws the possession of electronic control devices on school property, in government/public buildings, and restricts the sale to and possession of electronic control devices by people who may be deemed under state law to be mentally unstable and who could otherwise pose a serious public safety risk. Further, the bill prohibits possession of electronic control devices by people who are under the authority of an active protective order. These local restrictions will operate in tandem with those already existing in state law.

The bill strikes a necessary balance between constitutional possession of electronic control devices by private individuals and prohibiting the possession of such devices by those who pose an increased public safety risk.

c/o 242 West 29th Street • Baltimore, Maryland 21211-2908

Thank you for the opportunity to comment. The Department looks forward to working with the City Council on this matter.

Sincerely,



James A. Gills
Director of Government Affairs

JUDICIARY AND LEGISLATIVE INVESTIGATIONS COMMITTEE

Council Bill 17-0056

Hearing Date: May 2, 2017

Attachments:

- **Baltimore City Code, Article 19, §59-28**
- **“Baltimore moves to legalize stun gun possession” – Baltimore Sun**

(c) *Penalties.*

Any violation of the provisions of this section shall be deemed to be a misdemeanor, subject upon conviction to a fine of not more than \$500 or to imprisonment for not longer than 60 days or to both fine and imprisonment, in the discretion of the Court.

(City Code, 1966, art. 19, §99(d), (e); 1976/83, art. 19, §115(d), (f).) (Ord. 56-233; Ord. 63-1655; Ord. 85-385.)

§ 59-28. Stun guns.

(a) *Possession or sale, etc., prohibited.*

(1) It shall be unlawful for any person, firm, or corporation to sell, give away, lend, rent or transfer to any individual, firm, or corporation a stun gun or other electronic device by whatever name or description which discharges a non-projectile electric current within the limits of the City of Baltimore.

(2) It further shall be unlawful for any person to possess, fire, or discharge any such stun gun or electronic device within the City.

(b) *Exceptions.*

Nothing in this subsection shall be held to apply to any member of the Baltimore City Police Department or any other law enforcement officer while in the performance of his or her official duty.

(c) *Penalties.*

Any violation of the provisions of this section shall be deemed to be a misdemeanor, subject upon conviction to a fine of not more than \$500 or to imprisonment for not longer than 60 days or to both fine and imprisonment, in the discretion of the Court.

(City Code, 1976/83, art. 19, §115(e), (f).) (Ord. 56-233; Ord. 85-385.)

§ 59-29. {Reserved}

§ 59-30. Stench bombs.

(a) *"Stench bomb" defined.*

A stench bomb is herein defined as any liquid, gaseous, or solid substance or matter of any kind which is intended to be thrown, dropped, poured, deposited, or discharged for the purpose of producing a noxious, nauseating, sickening, irritating, or offensive odor.

(b) *Possession, sale, use, etc., prohibited.*

It is unlawful for any person to:

(1) sell, barter, or trade a stench bomb;

Baltimore moves to legalize stun gun possession



By **Luke Broadwater**
The Baltimore Sun

APRIL 24, 2017, 7:30 PM

The **Baltimore City Council** is moving to legalize stun gun possession by city residents in response to a federal court ruling.

A bill introduced at Monday's City Council meeting on behalf of the Pugh administration would allow a person to "possess and use an electronic control device as a form of non-lethal self-defense in the home and in public."

The legislation would, however, put some restrictions on the use of stun guns. It states, for instance, that they may not be possessed by a person who "poses an unacceptable risk to public safety."

The city bill is the latest local response to a U.S. Supreme Court ruling that suggested Second Amendment rights extend to stun guns. A group of area residents filed a federal lawsuit in January challenging local bans in Baltimore, Baltimore County and Howard County.

The Baltimore County Council already has voted to repeal its ban on stun guns. Howard County lifted its ban in February in response to the suit.

Hilary Ruley, chief solicitor with the Baltimore law department, told City Council members at a lunch Monday that they need to work quickly on the bill in order to avoid being fined by the federal court.

"We've put in this bill because the federal court has essentially asked us to," she said. "If the bill doesn't pass within 90 days, we'll be hit with more than the \$40,000 in attorney's fees."

Ruley said the law department wants to ban the ownership of stun guns by people who suffer from a mental illness or are under a protective order for domestic violence. She said the legislation also will call for a ban in schools or other public buildings.

City Council President **Bernard C. "Jack" Young** said he wants the bill to pass very soon.

"I'm quite sure the chair of the judiciary will work quite quickly, because we don't want to be fined," he said.

Councilman Eric T. Costello, chairman of the Judiciary and Legislative Investigations Committee, said he would schedule a hearing on the bill for May 2.

lbroadwater@baltsun.com



Catherine Pugh
Mayor

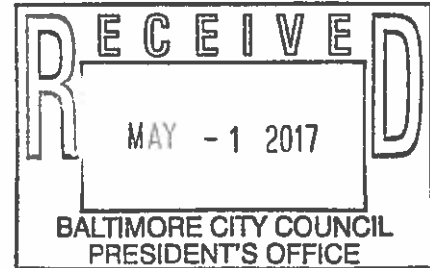
BALTIMORE POLICE DEPARTMENT



Kevin Davis
Police Commissioner

April 28, 2017

Honorable President and Members of the Baltimore City Council
Room 400, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Attention: Natawna Austin, Executive Secretary

**Re: City Council Bill No. 17-0056
Electronic Control Devices - Authorizing Possession in Most
Circumstances**

Dear Council President Young and Members of the City Council:

The Baltimore Police Department (the Department) has reviewed Council Bill 17-0056. This bill is for the purpose of allowing a person to possess and use an electronic control device as a form of non-lethal self-defense and for placing reasonable restrictions on the possession of such devices by persons who may pose a public safety risk.

The Department supports this bill.

The bill was requested in reaction to recent Federal Court opinions in which it was consistently held that the Second Amendment to the United States Constitution applies to electronic control devices. This bill repeals and replaces Section 59-28 of Article 19 of the City Code to accomplish the dual goals of protecting a person's right to lawfully possess such a device for personal protection and prohibiting possession in certain circumstances in the interest of public safety.

The bill as drafted narrows the scope of the City ordinance so that it still outlaws the possession of electronic control devices on school property, in government/public buildings, and restricts the sale to and possession of electronic control devices by people who may be deemed under state law to be mentally unstable and who could otherwise pose a serious public safety risk. Further, the bill prohibits possession of electronic control devices by people who are under the authority of an active protective order. These local restrictions will operate in tandem with those already existing in state law.

The bill strikes a necessary balance between constitutional possession of electronic control devices by private individuals and prohibiting the possession of such devices by those who pose an increased public safety risk.

c/o 242 West 29th Street • Baltimore, Maryland 21211-2908

F

Thank you for the opportunity to comment. The Department looks forward to working with the City Council on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Gilles". The signature is written in a cursive style with a large initial "J".

James A. Gilles
Director of Government Affairs

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor

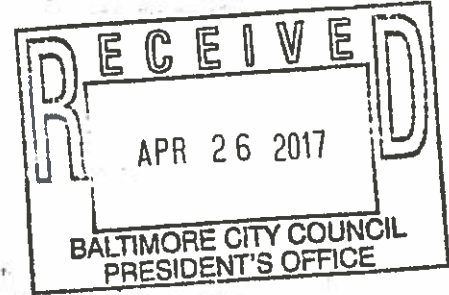


DEPARTMENT OF LAW

101 City Hall
Baltimore, Maryland 21202

April 26, 2017

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 17-0056 – Electronic Control Devices – Authorizing Control in Most Circumstances

Dear President and City Council Members:


The Law Department has reviewed City Council Bill 17-0056 for form and legal sufficiency. The bill would repeal the City's existing stun gun ban, contained in Section 59-28 of Article 19 of the City Code. It would replace the complete ban with restrictions that would prevent the possession of stun guns by those adjudicated mentally defective, as defined in state law, as well as by those under a protective order. It would also prevent the possession of stun guns in certain government and school buildings. These restrictions would operate in conjunction with the existing state laws on stun guns, which prohibit possession by those under 18 years old, require sellers to perform background checks and maintain a record of buyers. Md. Code, Crim. Law, §4-109. Therefore, passage of this bill will not result in the unfettered use and possession of stun guns. Rather, it will enact permissible regulations that will work in concert with existing state laws.

The Law Department requested this bill in response to a federal lawsuit filed against the Mayor and City Council of Baltimore, Baltimore County and Howard County, alleging that these jurisdictions' local bans on stun guns are unconstitutional under the 2nd Amendment to the United States Constitution. As indicated in the recitals of the bill, recent Supreme Court cases would likely lead a court to invalidate the City's existing ban. See *Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016)(vacated Massachusetts state ban on stun guns); *McDonald v. City of Chicago*, 561 U.S. 742 (2010)(applying 2nd Amendment to states); *District of Columbia v. Heller*, 554 U.S. 570 (2008)(2nd Amendment protects the right to possess weapons for traditionally lawful purposes, including self-defense in the home). However, certain reasonable restrictions are allowed. See, e.g., *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017)(explaining judicial scrutiny for weapons restrictions); *Heller*, 554 U.S. at 626-27(upholding restrictions on possession by certain criminals, the mentally ill, or in sensitive places).

Howard and Baltimore counties have repealed their laws in response to this lawsuit. The Plaintiffs in the case have agreed to stay the lawsuit for 90 days to give the Mayor and City Council time to enact this bill into law. The Law Department approves the bill for form and legal sufficiency.

Fav / w comments


Very truly yours,



Hilary Ruley
Chief Solicitor

cc: David E. Ralph, Acting City Solicitor
Karen Stokes, Director, Mayor's Office of Government Relations
Kyron Banks, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalo, Chief Solicitor
Jennifer Landis, Assistant Solicitor

AVERY

FROM	NAME & TITLE	Kyron Banks, Legislative Liaison <i>KB</i>	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Mayor's Office of Government Relations City Hall, Room 228		
	SUBJECT	Bill Introduction for the Administration		

TO Avery Aisenstark, Director, Department of Legislative Reference

DATE: April 17, 2017

An Ordinance Concerning:

Stun Gun Legislation

Please prepare the attached for introduction at the City Council meeting scheduled for Monday, April 24, 2017. This bill is introduced at the request of the Administration (Department of Law). Please return legislation to this office when completed.


If you have any questions regarding this legislation, please contact Hilary Ruley at 410.396.3271.

Thank you.

KB/sw

Attachment

cc: Karen Stokes, Director, Mayor's Office of Government Relations

FROM	NAME & TITLE	Hilary Ruley Chief City Solicitor <i>HR</i>	CITY OF BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Department of Law		
	SUBJECT	Stun Gun Legislation		

DATE:

TO

Mayor Catherine E. Pugh
Office of the Mayor
250 City Hall

April 17, 2017

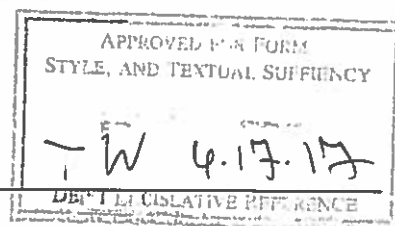
The Law Department as requested that a bill be introduced that partially repeals the City's long-existing stun gun ban, contained in Section 59-28 of Article 19 of the City Code. This bill is in response to a lawsuit filed against the City, Baltimore County and Howard County, alleging that these jurisdictions' local bans on stun guns are unconstitutional under the 2nd Amendment. Recent cases decided by the Supreme Court would likely lead a court to invalidate the City's local law. Howard and Baltimore County have repealed their laws in response to this lawsuit. The Plaintiffs in the case have agreed to stay the lawsuit for 90 days to give the Mayor and City Council time to pass the requisite law.

cc: Karen Stokes, Mayor's Office of Government Relations
Kyron Banks, Mayor's Office of Government Relations
David Ralph, Acting City Solicitor
Elena DiPietro, Chief Solicitor

Attorney Client Privileged

Attorney Work Product

INTRODUCTORY*
CITY OF BALTIMORE
COUNCIL BILL _____



Introduced by: The Council President
At the request of: The Administration (Law Department)

A BILL ENTITLED

AN ORDINANCE concerning

Electronic Control Devices – Authorizing Possession in Most Circumstances

FOR the purpose of allowing a person to possess and use an electronic control device as a form of non-lethal self-defense in the home and in public; prohibiting a person from possessing and using an electronic control device in sensitive places; prohibiting a person who poses an unacceptable risk to public safety from possessing and using an electronic control device; prohibiting the sale of an electronic control device to persons who pose an unacceptable risk to public safety; establishing certain penalties; defining certain terms; providing for a special effective date; and generally relating to electronic control devices.

By repealing and reordaining, with amendments

Article 19 - Police Ordinances
Section(s) 59-28
Baltimore City Code
(Edition 2000)

Recitals

WHEREAS, the Second Amendment to the United States Constitution reserves to the people the right to keep and bear arms.

WHEREAS, in 2008, the Supreme Court of the United States decided in the case of *District of Columbia v. Heller* that the Second Amendment to the United States Constitution protects an individual's right to possess and use a firearm for traditionally lawful purposes, such as self-defense in the home, and that the Second Amendment encompasses weapons that are typically used by law-abiding citizens for lawful purposes.

WHEREAS, in 2010, the Supreme Court of the United States decided in the case of *McDonald v. City of Chicago* that the Second Amendment's right to possess a firearm for self-defense in the home also applies to the states.

WHEREAS, in 2016, the Supreme Court of the United States concluded in a per curiam opinion in the case of *Caetano v. Massachusetts* that a state government's categorical ban on the

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* WARNING: THIS IS AN UNOFFICIAL, INTRODUCTORY COPY OF THE BILL.
THE OFFICIAL COPY CONSIDERED BY THE CITY COUNCIL IS THE FIRST READER COPY.

possession and use of electronic control devices had not been sufficiently justified under *Heller*, and the concurring opinion stated that such a ban clearly violates the Second Amendment.

WHEREAS, in order to promote public welfare and safety, non-lethal self-defense weapons such as electronic control devices are preferable to more lethal self-defense weapons, such as handguns, and it is therefore desirable to permit the sale, use, and possession of electronic control devices for use in self-defense, with reasonable restrictions.

WHEREAS, in order to promote public welfare and safety, it is necessary to promptly pass an ordinance that provides for reasonable regulation of the sale, possession, and use of electronic control devices, in addition to those regulations already established in Maryland State law.

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 19. Police Ordinances

Subtitle 59. Weapons

§ 59-28. [Stun guns] ELECTRONIC CONTROL DEVICES.

(A) *DEFINITIONS.*

(1) *IN GENERAL.*

IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED .

(2) “*ELECTRONIC CONTROL DEVICE*”.

“ELECTRONIC CONTROL DEVICE” MEANS A PORTABLE DEVICE DESIGNED AS A WEAPON CAPABLE OF INJURING, IMMOBILIZING, OR INFLICTING PAIN ON AN INDIVIDUAL BY THE DISCHARGE OF ELECTRICAL CURRENT .

(3) “*ADJUDICATED AS A MENTAL DEFECTIVE*”.

“ADJUDICATED AS A MENTAL DEFECTIVE ” MEANS A DETERMINATION BY A COURT , BOARD, COMMISSION, OR OTHER LAWFUL AUTHORITY , THAT, AS A RESULT OF MARKED SUBNORMAL INTELLIGENCE , MENTAL ILLNESS, INCOMPETENCY , CONDITION, OR DISEASE, A PERSON:

(i) IS A DANGER TO THEMSELVES OR TO OTHERS ; OR

(ii) LACKS THE MENTAL CAPACITY TO CONTRACT OR MANAGE HIS OR HER OWN AFFAIRS.

(4) “*MENTAL DISORDER*”.

(i) “MENTAL DISORDER” MEANS A BEHAVIORAL OR EMOTIONAL ILLNESS THAT RESULTS FROM A PSYCHIATRIC DISORDER .

(II) "MENTAL DISORDER" INCLUDES A MENTAL ILLNESS THAT SO SUBSTANTIALLY IMPAIRS THE MENTAL OR EMOTIONAL FUNCTIONING OF AN INDIVIDUAL AS TO MAKE CARE OR TREATMENT NECESSARY OR ADVISABLE FOR THE WELFARE OF THE INDIVIDUAL OR FOR THE SAFETY OF THE PERSON OR PROPERTY OF ANOTHER .

(5) "PROTECTIVE ORDER".

"PROTECTIVE ORDER" MEANS A TEMPORARY OR FINAL PROTECTIVE ORDER ENTERED UNDER THE AUTHORITY OF MARYLAND CODE, FAMILY LAW ARTICLE, §§ 4-505 AND 4-506.

(B) [(a)] *Possession or sale, etc., prohibited.*

(1) It shall be unlawful TO POSSESS AN ELECTRONIC CONTROL DEVICE IN A :

(I) PUBLIC SCHOOL;

(II) STATE PUBLIC BUILDING ; OR

(III) CITY PUBLIC BUILDING [for any person, firm, or corporation to sell, give away, lend, rent or transfer to any individual, firm, or corporation a stun gun or other electronic device by whatever name or description which discharges a non-projectile electric current within the limits of the City of Baltimore].

(2) IT SHALL BE UNLAWFUL TO SELL OR SHIP AN ELECTRONIC CONTROL DEVICE TO ANY PERSON KNOWING OR HAVING REASONABLE CAUSE TO BELIEVE THAT THE PERSON HAS BEEN:

(I) ADJUDICATED AS A MENTAL DEFECTIVE ; OR

(II) COMMITTED TO ANY MENTAL INSTITUTION . [It further shall be unlawful for any person to possess, fire, or discharge any such stun gun or electronic device within the City.]

(3) IT SHALL BE UNLAWFUL FOR ANY PERSON TO POSSESS AN ELECTRONIC CONTROL DEVICE IF THE PERSON SUFFERS FROM A MENTAL DISORDER AND HAS A HISTORY OF VIOLENT BEHAVIOR AGAINST THEMSELVES OR ANOTHER .

(4) IT SHALL BE UNLAWFUL FOR ANY PERSON SUBJECT TO A PROTECTIVE ORDER TO POSSESS AN ELECTRONIC CONTROL DEVICE FOR THE DURATION OF THE PROTECTIVE ORDER.

(C) [(b)] *Exceptions.*

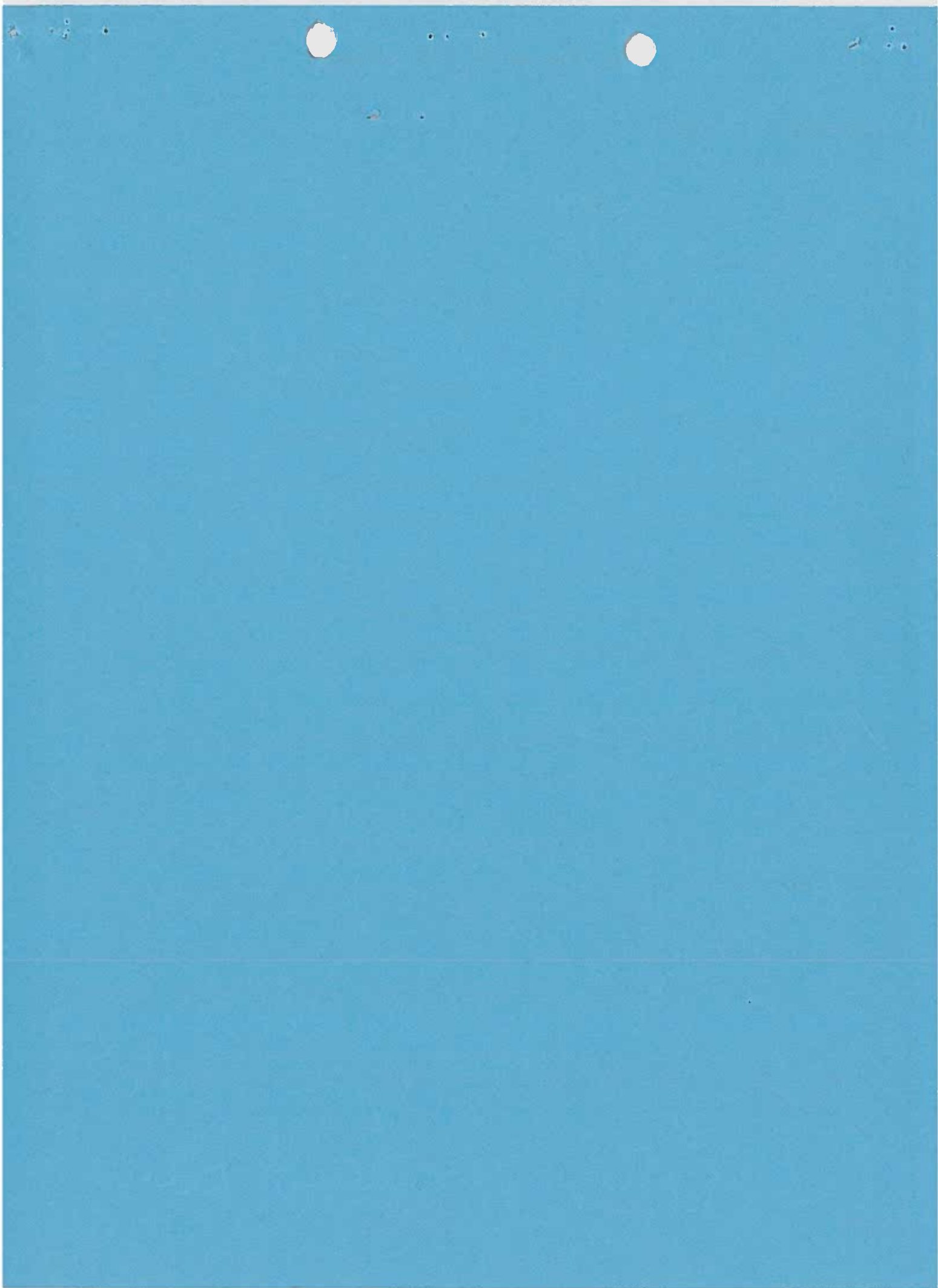
Nothing in this [subsection] SECTION shall be held to apply to any member of the Baltimore City Police Department or any other law enforcement officer while in the performance of his or her official duty.

(D) [(c)] *Penalties.*

Any violation of the provisions of this section shall be deemed to be a misdemeanor, subject upon conviction to a fine of not more than \$500 or to imprisonment for not longer than 60 days or to both fine and imprisonment, in the discretion of the Court.

SECTION 2. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the date it is enacted.



ACTION BY THE CITY COUNCIL

APR 24 2017
20

FIRST READING (INTRODUCTION)

PUBLIC HEARING HELD ON

MAY 2

20 17

COMMITTEE REPORT AS OF

MAY 8

20 17

FAVORABLE

UNFAVORABLE

X

FAVORABLE AS AMENDED

WITHOUT RECOMMENDATION

C.T. RA

Chair

COMMITTEE MEMBERS:

COMMITTEE MEMBERS:

SECOND READING: The Council's action being favorable (unfavorable), this City Council bill was (was not) ordered printed for Third Reading on:

MAY 08 2017

20

Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING

MAY 15 2017

20

Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (ENROLLED)

20

Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (RE-ENROLLED)

20

WITHDRAWAL

20

There being no objections to the request for withdrawal, it was so ordered that this City Council Ordinance be withdrawn from the files of the City Council.

[Signature of President]

President

[Signature of Chief Clerk]

Chief Clerk



Catherine Pugh
Mayor

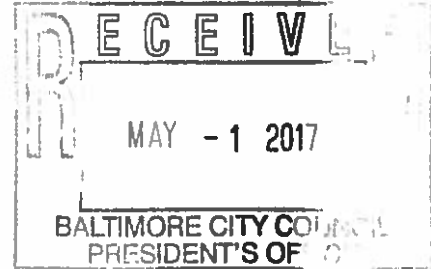
BALTIMORE POLICE DEPARTMENT



Kevin Davis
Police Commissioner

April 28, 2017

Honorable President and Members of the Baltimore City Council
Room 400, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Attention: Natawna Austin, Executive Secretary

**Re: City Council Bill No. 17-0056
Electronic Control Devices - Authorizing Possession in Most
Circumstances**

Dear Council President Young and Members of the City Council:

The Baltimore Police Department (the Department) has reviewed Council Bill 17-0056. This bill is for the purpose of allowing a person to possess and use an electronic control device as a form of non-lethal self-defense and for placing reasonable restrictions on the possession of such devices by persons who may pose a public safety risk.

The Department supports this bill.

The bill was requested in reaction to recent Federal Court opinions in which it was consistently held that the Second Amendment to the United States Constitution applies to electronic control devices. This bill repeals and replaces Section 59-28 of Article 19 of the City Code to accomplish the dual goals of protecting a person's right to lawfully possess such a device for personal protection and prohibiting possession in certain circumstances in the interest of public safety.

The bill as drafted narrows the scope of the City ordinance so that it still outlaws the possession of electronic control devices on school property, in government/public buildings, and restricts the sale to and possession of electronic control devices by people who may be deemed under state law to be mentally unstable and who could otherwise pose a serious public safety risk. Further, the bill prohibits possession of electronic control devices by people who are under the authority of an active protective order. These local restrictions will operate in tandem with those already existing in state law.

The bill strikes a necessary balance between constitutional possession of electronic control devices by private individuals and prohibiting the possession of such devices by those who pose an increased public safety risk.

c/o 242 West 29th Street • Baltimore, Maryland 21211-2908

A

V I B

1951 -

1951 -

Thank you for the opportunity to comment. The Department looks forward to working with the City Council on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Gillis". The signature is written in a cursive style with a large initial "J".

James A. Gillis

Director of Government Affairs

**CITY OF BALTIMORE
COUNCIL BILL 17-0056
(First Reader)**

Introduced by: The Council President

At the request of: The Administration (Law Department)

Introduced and read first time: April 24, 2017

Assigned to: Judiciary and Legislative Investigations Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Police Department

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Electronic Control Devices – Authorizing Possession in Most Circumstances**

3 FOR the purpose of allowing a person to possess and use an electronic control device as a form of
4 non-lethal self-defense in the home and in public; prohibiting a person from possessing and
5 using an electronic control device in sensitive places; prohibiting a person who poses an
6 unacceptable risk to public safety from possessing and using an electronic control device;
7 prohibiting the sale of an electronic control device to persons who pose an unacceptable risk
8 to public safety; establishing certain penalties; defining certain terms; providing for a special
9 effective date; and generally relating to electronic control devices.

10 BY repealing and reordaining, with amendments

11 Article 19 - Police Ordinances
12 Section(s) 59-28
13 Baltimore City Code
14 (Edition 2000)

15 **Recitals**

16 **WHEREAS**, the Second Amendment to the United States Constitution reserves to the people
17 the right to keep and bear arms.

18 **WHEREAS**, in 2008, the Supreme Court of the United States decided in the case of *District of*
19 *Columbia v. Heller* that the Second Amendment to the United States Constitution protects an
20 individual's right to possess and use a firearm for traditionally lawful purposes, such as
21 self-defense in the home, and that the Second Amendment encompasses weapons that are
22 typically used by law-abiding citizens for lawful purposes.

23 **WHEREAS**, in 2010, the Supreme Court of the United States decided in the case of *McDonald*
24 *v. City of Chicago* that the Second Amendment's right to possess a firearm for self-defense in the
25 home also applies to the states.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

Council Bill 17-0056

1 WHEREAS, in 2016, the Supreme Court of the United States concluded in a per curiam
2 opinion in the case of *Caetano v. Massachusetts* that a state government’s categorical ban on the
3 possession and use of electronic control devices had not been sufficiently justified under *Heller*,
4 and the concurring opinion stated that such a ban clearly violates the Second Amendment.

5 WHEREAS, in order to promote public welfare and safety, non-lethal self-defense weapons
6 such as electronic control devices are preferable to more lethal self-defense weapons, such as
7 handguns, and it is therefore desirable to permit the sale, use, and possession of electronic control
8 devices for use in self-defense, with reasonable restrictions.

9 WHEREAS, in order to promote public welfare and safety, it is necessary to promptly pass an
10 ordinance that provides for reasonable regulation of the sale, possession, and use of electronic
11 control devices, in addition to those regulations already established in Maryland State law.

12 SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the
13 Laws of Baltimore City read as follows:

14 Baltimore City Code

15 Article 19. Police Ordinances

16 Subtitle 59. Weapons

17 § 59-28. [Stun guns] ELECTRONIC CONTROL DEVICES.

18 (A) DEFINITIONS.

19 (1) IN GENERAL.

20 IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

21 (2) “ELECTRONIC CONTROL DEVICE”.

22 “ELECTRONIC CONTROL DEVICE” MEANS A PORTABLE DEVICE DESIGNED AS A WEAPON
23 CAPABLE OF INJURING, IMMOBILIZING, OR INFLECTING PAIN ON AN INDIVIDUAL BY THE
24 DISCHARGE OF ELECTRICAL CURRENT.

25 (3) “ADJUDICATED AS A MENTAL DEFECTIVE”.

26 “ADJUDICATED AS A MENTAL DEFECTIVE” MEANS A DETERMINATION BY A COURT,
27 BOARD, COMMISSION, OR OTHER LAWFUL AUTHORITY, THAT, AS A RESULT OF MARKED
28 SUBNORMAL INTELLIGENCE, MENTAL ILLNESS, INCOMPETENCY, CONDITION, OR
29 DISEASE, A PERSON:

30 (I) IS A DANGER TO THEMSELVES OR TO OTHERS; OR

31 (II) LACKS THE MENTAL CAPACITY TO CONTRACT OR MANAGE HIS OR HER OWN
32 AFFAIRS.

Council Bill 17-0056

1 (4) "MENTAL DISORDER".

2 (I) "MENTAL DISORDER" MEANS A BEHAVIORAL OR EMOTIONAL ILLNESS THAT
3 RESULTS FROM A PSYCHIATRIC DISORDER.

4 (II) "MENTAL DISORDER" INCLUDES A MENTAL ILLNESS THAT SO SUBSTANTIALLY
5 IMPAIRS THE MENTAL OR EMOTIONAL FUNCTIONING OF AN INDIVIDUAL AS TO
6 MAKE CARE OR TREATMENT NECESSARY OR ADVISABLE FOR THE WELFARE OF THE
7 INDIVIDUAL OR FOR THE SAFETY OF THE PERSON OR PROPERTY OF ANOTHER.

8 (5) "PROTECTIVE ORDER".

9 "PROTECTIVE ORDER" MEANS A TEMPORARY OR FINAL PROTECTIVE ORDER ENTERED
10 UNDER THE AUTHORITY OF MARYLAND CODE, FAMILY LAW ARTICLE, §§ 4-505 AND
11 4-506.

12 (B) [(a)] *Possession or sale, etc., prohibited.*

13 (1) It shall be unlawful TO POSSESS AN ELECTRONIC CONTROL DEVICE IN A:

14 (I) PUBLIC SCHOOL;

15 (II) STATE PUBLIC BUILDING; OR

16 (III) CITY PUBLIC BUILDING [for any person, firm, or corporation to sell, give away,
17 lend, rent or transfer to any individual, firm, or corporation a stun gun or other
18 electronic device by whatever name or description which discharges a
19 non-projectile electric current within the limits of the City of Baltimore].

20 (2) IT SHALL BE UNLAWFUL TO SELL OR SHIP AN ELECTRONIC CONTROL DEVICE TO ANY
21 PERSON KNOWING OR HAVING REASONABLE CAUSE TO BELIEVE THAT THE PERSON HAS
22 BEEN:

23 (I) ADJUDICATED AS A MENTAL DEFECTIVE; OR

24 (II) COMMITTED TO ANY MENTAL INSTITUTION. [It further shall be unlawful for any
25 person to possess, fire, or discharge any such stun gun or electronic device
26 within the City.]

27 (3) IT SHALL BE UNLAWFUL FOR ANY PERSON TO POSSESS AN ELECTRONIC CONTROL
28 DEVICE IF THE PERSON SUFFERS FROM A MENTAL DISORDER AND HAS A HISTORY OF
29 VIOLENT BEHAVIOR AGAINST THEMSELVES OR ANOTHER.

30 (4) IT SHALL BE UNLAWFUL FOR ANY PERSON SUBJECT TO A PROTECTIVE ORDER TO
31 POSSESS AN ELECTRONIC CONTROL DEVICE FOR THE DURATION OF THE PROTECTIVE
32 ORDER.

Council Bill 17-0056

1 (C) [(b)] *Exceptions.*

2 Nothing in this [subsection] SECTION shall be held to apply to any member of the
3 Baltimore City Police Department or any other law enforcement officer while in the
4 performance of his or her official duty.

5 (D) [(c)] *Penalties.*

6 Any violation of the provisions of this section shall be deemed to be a misdemeanor,
7 subject upon conviction to a fine of not more than \$500 or to imprisonment for not longer
8 than 60 days or to both fine and imprisonment, in the discretion of the Court.

9 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
10 are not law and may not be considered to have been enacted as a part of this or any prior
11 Ordinance.

12 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it is
13 enacted.

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor

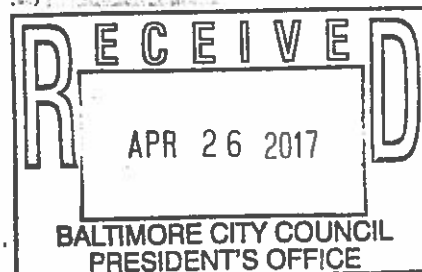


DEPARTMENT OF LAW

101 City Hall
Baltimore, Maryland 21202

April 26, 2017

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 17-0056 – Electronic Control Devices – Authorizing Control in Most Circumstances

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0056 for form and legal sufficiency. The bill would repeal the City's existing stun gun ban, contained in Section 59-28 of Article 19 of the City Code. It would replace the complete ban with restrictions that would prevent the possession of stun guns by those adjudicated mentally defective, as defined in state law, as well as by those under a protective order. It would also prevent the possession of stun guns in certain government and school buildings. These restrictions would operate in conjunction with the existing state laws on stun guns, which prohibit possession by those under 18 years old, require sellers to perform background checks and maintain a record of buyers. Md. Code, Crim. Law, §4-109. Therefore, passage of this bill will not result in the unfettered use and possession of stun guns. Rather, it will enact permissible regulations that will work in concert with existing state laws.

The Law Department requested this bill in response to a federal lawsuit filed against the Mayor and City Council of Baltimore, Baltimore County and Howard County, alleging that these jurisdictions' local bans on stun guns are unconstitutional under the 2nd Amendment to the United States Constitution. As indicated in the recitals of the bill, recent Supreme Court cases would likely lead a court to invalidate the City's existing ban. See *Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016)(vacated Massachusetts state ban on stun guns); *McDonald v. City of Chicago*, 561 U.S. 742 (2010)(applying 2nd Amendment to states); *District of Columbia v. Heller*, 554 U.S. 570 (2008)(2nd Amendment protects the right to possess weapons for traditionally lawful purposes, including self-defense in the home). However, certain reasonable restrictions are allowed. See, e.g., *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017)(explaining judicial scrutiny for weapons restrictions); *Heller*, 554 U.S. at 626-27(upholding restrictions on possession by certain criminals, the mentally ill, or in sensitive places).

Howard and Baltimore counties have repealed their laws in response to this lawsuit. The Plaintiffs in the case have agreed to stay the lawsuit for 90 days to give the Mayor and City Council time to enact this bill into law. The Law Department approves the bill for form and legal sufficiency.

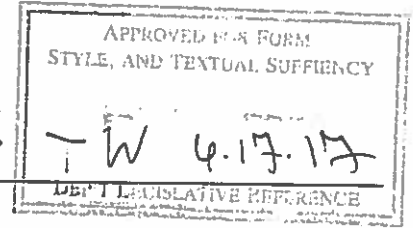
fav w/ comments



INTRODUCTORY*

CITY OF BALTIMORE

COUNCIL BILL 17-0056



Introduced by: The Council President
At the request of: The Administration (Law Department)

A BILL ENTITLED

SLI
Law
Police

AN ORDINANCE concerning

Electronic Control Devices – Authorizing Possession in Most Circumstances

FOR the purpose of allowing a person to possess and use an electronic control device as a form of non-lethal self-defense in the home and in public; prohibiting a person from possessing and using an electronic control device in sensitive places; prohibiting a person who poses an unacceptable risk to public safety from possessing and using an electronic control device; prohibiting the sale of an electronic control device to persons who pose an unacceptable risk to public safety; establishing certain penalties; defining certain terms; providing for a special effective date; and generally relating to electronic control devices.

BY repealing and reordaining, with amendments

- Article 19 - Police Ordinances
- Section(s) 59-28
- Baltimore City Code
- (Edition 2000)

Recitals

WHEREAS, the Second Amendment to the United States Constitution reserves to the people the right to keep and bear arms.

WHEREAS, in 2008, the Supreme Court of the United States decided in the case of *District of Columbia v. Heller* that the Second Amendment to the United States Constitution protects an individual's right to possess and use a firearm for traditionally lawful purposes, such as self-defense in the home, and that the Second Amendment encompasses weapons that are typically used by law-abiding citizens for lawful purposes.

WHEREAS, in 2010, the Supreme Court of the United States decided in the case of *McDonald v. City of Chicago* that the Second Amendment's right to possess a firearm for self-defense in the home also applies to the states.

WHEREAS, in 2016, the Supreme Court of the United States concluded in a per curiam opinion in the case of *Caetano v. Massachusetts* that a state government's categorical ban on the

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* WARNING: THIS IS AN UNOFFICIAL, INTRODUCTORY COPY OF THE BILL.
THE OFFICIAL COPY CONSIDERED BY THE CITY COUNCIL IS THE FIRST READER COPY.

possession and use of electronic control devices had not been sufficiently justified under *Heller*, and the concurring opinion stated that such a ban clearly violates the Second Amendment.

WHEREAS, in order to promote public welfare and safety, non-lethal self-defense weapons such as electronic control devices are preferable to more lethal self-defense weapons, such as handguns, and it is therefore desirable to permit the sale, use, and possession of electronic control devices for use in self-defense, with reasonable restrictions.

WHEREAS, in order to promote public welfare and safety, it is necessary to promptly pass an ordinance that provides for reasonable regulation of the sale, possession, and use of electronic control devices, in addition to those regulations already established in Maryland State law.

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 19. Police Ordinances

Subtitle 59. Weapons

§ 59-28. [Stun guns] ELECTRONIC CONTROL DEVICES.

(A) *DEFINITIONS.*

(1) *IN GENERAL.*

IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED .

(2) *“ELECTRONIC CONTROL DEVICE”.*

“ELECTRONIC CONTROL DEVICE” MEANS A PORTABLE DEVICE DESIGNED AS A WEAPON CAPABLE OF INJURING, IMMOBILIZING, OR INFLICTING PAIN ON AN INDIVIDUAL BY THE DISCHARGE OF ELECTRICAL CURRENT .

(3) *“ADJUDICATED AS A MENTAL DEFECTIVE”.*

“ADJUDICATED AS A MENTAL DEFECTIVE” MEANS A DETERMINATION BY A COURT , BOARD, COMMISSION, OR OTHER LAWFUL AUTHORITY , THAT, AS A RESULT OF MARKED SUBNORMAL INTELLIGENCE, MENTAL ILLNESS, INCOMPETENCY, CONDITION, OR DISEASE, A PERSON:

(I) IS A DANGER TO THEMSELVES OR TO OTHERS ; OR

(II) LACKS THE MENTAL CAPACITY TO CONTRACT OR MANAGE HIS OR HER OWN AFFAIRS.

(4) *“MENTAL DISORDER”.*

(I) *“MENTAL DISORDER”* MEANS A BEHAVIORAL OR EMOTIONAL ILLNESS THAT RESULTS FROM A PSYCHIATRIC DISORDER .

(ii) "MENTAL DISORDER" INCLUDES A MENTAL ILLNESS THAT SO SUBSTANTIALLY IMPAIRS THE MENTAL OR EMOTIONAL FUNCTIONING OF AN INDIVIDUAL AS TO MAKE CARE OR TREATMENT NECESSARY OR ADVISABLE FOR THE WELFARE OF THE INDIVIDUAL OR FOR THE SAFETY OF THE PERSON OR PROPERTY OF ANOTHER .

(5) "PROTECTIVE ORDER".

"PROTECTIVE ORDER" MEANS A TEMPORARY OR FINAL PROTECTIVE ORDER ENTERED UNDER THE AUTHORITY OF MARYLAND CODE, FAMILY LAW ARTICLE, §§ 4-505 AND 4-506.

(B) [(a)] *Possession or sale, etc., prohibited.*

(1) It shall be unlawful TO POSSESS AN ELECTRONIC CONTROL DEVICE IN A :

(i) PUBLIC SCHOOL;

(ii) STATE PUBLIC BUILDING ; OR

(iii) CITY PUBLIC BUILDING [for any person, firm, or corporation to sell, give away, lend, rent or transfer to any individual, firm, or corporation a stun gun or other electronic device by whatever name or description which discharges a non-projectile electric current within the limits of the City of Baltimore].

(2) IT SHALL BE UNLAWFUL TO SELL OR SHIP AN ELECTRONIC CONTROL DEVICE TO ANY PERSON KNOWING OR HAVING REASONABLE CAUSE TO BELIEVE THAT THE PERSON HAS BEEN:

(i) ADJUDICATED AS A MENTAL DEFECTIVE ; OR

(ii) COMMITTED TO ANY MENTAL INSTITUTION . [It further shall be unlawful for any person to possess, fire, or discharge any such stun gun or electronic device within the City.]

(3) IT SHALL BE UNLAWFUL FOR ANY PERSON TO POSSESS AN ELECTRONIC CONTROL DEVICE IF THE PERSON SUFFERS FROM A MENTAL DISORDER AND HAS A HISTORY OF VIOLENT BEHAVIOR AGAINST THEMSELVES OR ANOTHER .

(4) IT SHALL BE UNLAWFUL FOR ANY PERSON SUBJECT TO A PROTECTIVE ORDER TO POSSESS AN ELECTRONIC CONTROL DEVICE FOR THE DURATION OF THE PROTECTIVE ORDER.

(C) [(b)] *Exceptions.*

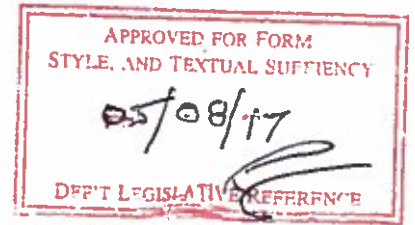
Nothing in this [subsection] SECTION shall be held to apply to any member of the Baltimore City Police Department or any other law enforcement officer while in the performance of his or her official duty.

(D) [(c)] *Penalties.*

Any violation of the provisions of this section shall be deemed to be a misdemeanor, subject upon conviction to a fine of not more than \$500 or to imprisonment for not longer than 60 days or to both fine and imprisonment, in the discretion of the Court.

SECTION 2. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the date it is enacted.



AMENDMENTS TO COUNCIL BILL 17-056
(1st Reader Copy)

By: Judiciary Committee
{To be offered on the Council Floor}

Amendment No. 1

On page 2, strike lines 5 through 11, in their entireties, and substitute:

“WHEREAS, in response to the Supreme Court's rulings affecting States and their jurisdictions, it is necessary to promptly pass an ordinance that replaces the local ban on electronic control devices and provides for reasonable regulation of the sale, possession, and use of these devices, in addition to those regulations already established in State law.”

Amendment No. 2

On page 3, after line 12, insert:

“IN ADDITION TO ALL STATE LAW PROHIBITIONS AND PENALTIES ON THE SALES OF ELECTRONIC CONTROL DEVICES, INCLUDING NO SALES TO MINORS, NO SALES TO THOSE CONVICTED OF CERTAIN CRIMES, AND NO SALES WITHOUT BACKGROUND CHECKS, IT IS UNLAWFUL IN THE CITY:”;

and, in line 13 and in line 20, strike “It shall be unlawful” and “IT SHALL BE UNLAWFUL”, respectively, and, in each case, substitute “FOR ANY PERSON”; and, in line 21, before both iterations of “PERSON”, insert “OTHER”; and, in each of lines 27 and 30, strike “IT SHALL BE UNLAWFUL”; and, in each of lines 19 and 24, strike the period and substitute a semi-colon; and, in line 29, strike the period and substitute “: AND”.

Amendment No. 3

On page 4, in line 7, strike “\$500” and substitute “\$1,000”; and, in line 8, strike “60 days” and substitute “12 MONTHS”.

COUNCIL BILL 17-056

**UNOFFICIAL REPRINT TO SHOW CONTEXT
OF AMENDMENTS PROPOSED BY JUDICIARY COMMITTEE**

A BILL ENTITLED

AN ORDINANCE concerning

Electronic Control Devices – Authorizing Possession in Most Circumstances

FOR the purpose of allowing a person to possess and use an electronic control device as a form of non-lethal self-defense in the home and in public; prohibiting a person from possessing and using an electronic control device in sensitive places; prohibiting a person who poses an unacceptable risk to public safety from possessing and using an electronic control device; prohibiting the sale of an electronic control device to persons who pose an unacceptable risk to public safety; establishing certain penalties; defining certain terms; providing for a special effective date; and generally relating to electronic control devices.

BY repealing and reordaining, with amendments

Article 19 - Police Ordinances
Section(s) 59-28
Baltimore City Code
(Edition 2000)

Recitals

WHEREAS, the Second Amendment to the United States Constitution reserves to the people the right to keep and bear arms.

WHEREAS, in 2008, the Supreme Court of the United States decided in the case of *District of Columbia v. Heller* that the Second Amendment to the United States Constitution protects an individual's right to possess and use a firearm for traditionally lawful purposes, such as self-defense in the home, and that the Second Amendment encompasses weapons that are typically used by law-abiding citizens for lawful purposes.

WHEREAS, in 2010, the Supreme Court of the United States decided in the case of *McDonald v. City of Chicago* that the Second Amendment's right to possess a firearm for self-defense in the home also applies to the states.

WHEREAS, in 2016, the Supreme Court of the United States concluded in a per curiam opinion in the case of *Caetano v. Massachusetts* that a state government's categorical ban on the possession and use of electronic control devices had not been sufficiently justified under *Heller*, and the concurring opinion stated that such a ban clearly violates the Second Amendment.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

~~WHEREAS, in order to promote public welfare and safety, non-lethal self-defense weapons such as electronic control devices are preferable to more lethal self-defense weapons, such as handguns, and it is therefore desirable to permit the sale, use, and possession of electronic control devices for use in self-defense, with reasonable restrictions.~~

~~WHEREAS, in order to promote public welfare and safety, it is necessary to promptly pass an ordinance that provides for reasonable regulation of the sale, possession, and use of electronic control devices, in addition to those regulations already established in Maryland State law.~~

WHEREAS, in response to the Supreme Court's rulings affecting States and their jurisdictions, it is necessary to promptly pass an ordinance that replaces the local ban on electronic control devices and provides for reasonable regulation of the sale, possession, and use of these devices, in addition to those regulations already established in State law.

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 19. Police Ordinances

Subtitle 59. Weapons

§ 59-28. [Stun guns] ELECTRONIC CONTROL DEVICES.

(A) DEFINITIONS.

(1) IN GENERAL.

IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

(2) "ELECTRONIC CONTROL DEVICE".

"ELECTRONIC CONTROL DEVICE" MEANS A PORTABLE DEVICE DESIGNED AS A WEAPON CAPABLE OF INJURING, IMMOBILIZING, OR INFLICTING PAIN ON AN INDIVIDUAL BY THE DISCHARGE OF ELECTRICAL CURRENT.

(3) "ADJUDICATED AS A MENTAL DEFECTIVE".

"ADJUDICATED AS A MENTAL DEFECTIVE" MEANS A DETERMINATION BY A COURT, BOARD, COMMISSION, OR OTHER LAWFUL AUTHORITY, THAT, AS A RESULT OF MARKED SUBNORMAL INTELLIGENCE, MENTAL ILLNESS, INCOMPETENCY, CONDITION, OR DISEASE, A PERSON:

(i) IS A DANGER TO THEMSELVES OR TO OTHERS; OR

(ii) LACKS THE MENTAL CAPACITY TO CONTRACT OR MANAGE HIS OR HER OWN AFFAIRS.

(4) "MENTAL DISORDER".

(i) "MENTAL DISORDER" MEANS A BEHAVIORAL OR EMOTIONAL ILLNESS THAT RESULTS FROM A PSYCHIATRIC DISORDER.

(II) "MENTAL DISORDER" INCLUDES A MENTAL ILLNESS THAT SO SUBSTANTIALLY IMPAIRS THE MENTAL OR EMOTIONAL FUNCTIONING OF AN INDIVIDUAL AS TO MAKE CARE OR TREATMENT NECESSARY OR ADVISABLE FOR THE WELFARE OF THE INDIVIDUAL OR FOR THE SAFETY OF THE PERSON OR PROPERTY OF ANOTHER.

(5) "PROTECTIVE ORDER".

"PROTECTIVE ORDER" MEANS A TEMPORARY OR FINAL PROTECTIVE ORDER ENTERED UNDER THE AUTHORITY OF MARYLAND CODE, FAMILY LAW ARTICLE, §§ 4-505 AND 4-506.

(B) [(a)] *Possession or sale, etc., prohibited.*

IN ADDITION TO ALL STATE LAW PROHIBITIONS AND PENALTIES ON THE SALES OF ELECTRONIC CONTROL DEVICES, INCLUDING NO SALES TO MINORS, NO SALES TO THOSE CONVICTED OF CERTAIN CRIMES, AND NO SALES WITHOUT BACKGROUND CHECKS, IT IS UNLAWFUL IN THE CITY:

(1) ~~It shall be unlawful~~ FOR ANY PERSON TO POSSESS AN ELECTRONIC CONTROL DEVICE IN A:

(I) PUBLIC SCHOOL;

(II) STATE PUBLIC BUILDING; OR

(III) CITY PUBLIC BUILDING [for any person, firm, or corporation to sell, give away, lend, rent or transfer to any individual, firm, or corporation a stun gun or other electronic device by whatever name or description which discharges a non-projectile electric current within the limits of the City of Baltimore]; ;

(2) ~~IT SHALL BE UNLAWFUL~~ FOR ANY PERSON TO SELL OR SHIP AN ELECTRONIC CONTROL DEVICE TO ANY OTHER PERSON KNOWING OR HAVING REASONABLE CAUSE TO BELIEVE THAT THE OTHER PERSON HAS BEEN:

(I) ADJUDICATED AS A MENTAL DEFECTIVE; OR

(II) COMMITTED TO ANY MENTAL INSTITUTION; ;[It further shall be unlawful for any person to possess, fire, or discharge any such stun gun or electronic device within the City.]

(3) ~~IT SHALL BE UNLAWFUL~~ FOR ANY PERSON TO POSSESS AN ELECTRONIC CONTROL DEVICE IF THE PERSON SUFFERS FROM A MENTAL DISORDER AND HAS A HISTORY OF VIOLENT BEHAVIOR AGAINST THEMSELVES OR ANOTHER; ; AND

(4) ~~IT SHALL BE UNLAWFUL~~ FOR ANY PERSON SUBJECT TO A PROTECTIVE ORDER TO POSSESS AN ELECTRONIC CONTROL DEVICE FOR THE DURATION OF THE PROTECTIVE ORDER.

(c) [(b)] *Exceptions.*

Nothing in this [subsection] SECTION shall be held to apply to any member of the Baltimore City Police Department or any other law enforcement officer while in the performance of his or her official duty.

(D) [(c)] *Penalties.*

Any violation of the provisions of this section shall be deemed to be a misdemeanor, subject upon conviction to a fine of not more than ~~\$500~~ \$1,000 or to imprisonment for not longer than ~~60 days~~ 12 MONTHS or to both fine and imprisonment, in the discretion of the Court.

SECTION 2. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the date it is enacted.