

Testimony to the House Judiciary Committee
In Opposition to HB 0042

Esteemed Members of the Committee,

In reviewing the proposed legislation, HB 42 would redefine the “waiting period” for Maryland residents to take possession of lawfully purchased regulated firearms to an ***undefined period of time*** by imposing the requirement to wait for an “approval” disposition from the Maryland Secretary of Police in response to an application to purchase a regulated firearm (77R). This would effectively remove the State of Maryland’s requirement to disapprove a firearm application within the 7 day notification period as codified in Maryland Public Safety Article (PSA) 5-122, which states:

Maryland PSA 5-122

(a) The Secretary shall disapprove a firearm application if:

(1) The Secretary determines that the firearm applicant supplied false information or made a false statement;

(2) The Secretary determines that the firearm application is not properly completed; or

(3) The Secretary receives written notification from the firearm applicant’s licensed attending physician that the firearm applicant suffers from a mental disorder and is a danger to the firearm applicant or to another.

(b) (1) if the Secretary disapproves a firearm application, the Secretary shall notify the prospective seller, lessor, or transferor in writing of the disapproval within 7 days after the date that the executed firearm application is forwarded to the Secretary by certified mail or facsimile machine.

(2) After notifying the prospective seller, lessor, or transferor under paragraph (1) of this subsection, the Secretary shall notify the prospective purchaser, lessee, or transferee in writing of the disapproval.

(3) The date when the prospective seller, lessor, or transferor forwards the executed firearm application to the Secretary by certified mail or by facsimile machine is the first day of the 7-day period allowed for notice of disapproval to the prospective seller, lessor, or transferor.

Per paragraph (b)(1) above, the Maryland Secretary of Police has 7 days from the time of receipt of the application to conduct an investigation and provide written notification of the disapproval decision based on the results of the investigation. This supposes that the Secretary of Police will have conducted its investigation and made a determination as to whether it disapproves or does not disapprove of the application within the 7 day period.

Regulated Firearms Application Volume and the Firearm Safety Act of 2013

In early January 2013, the Maryland Legislature introduced the Firearm Safety Act of 2013, referred to in its bill form henceforth as Senate Bill 281 (SB281) with the full support of the Governor and his Administration, including the Secretary of Police. At the time the bill was introduced for its first reading in the Senate Judicial Proceedings Committee on January 18, 2013, the time to disposition regulated firearm applications was approximately 17 days and continue to increase until the law was enacted (See Figure 1).¹ The current disposition time (as of 2/21/14) is 149 days and continues to increase.

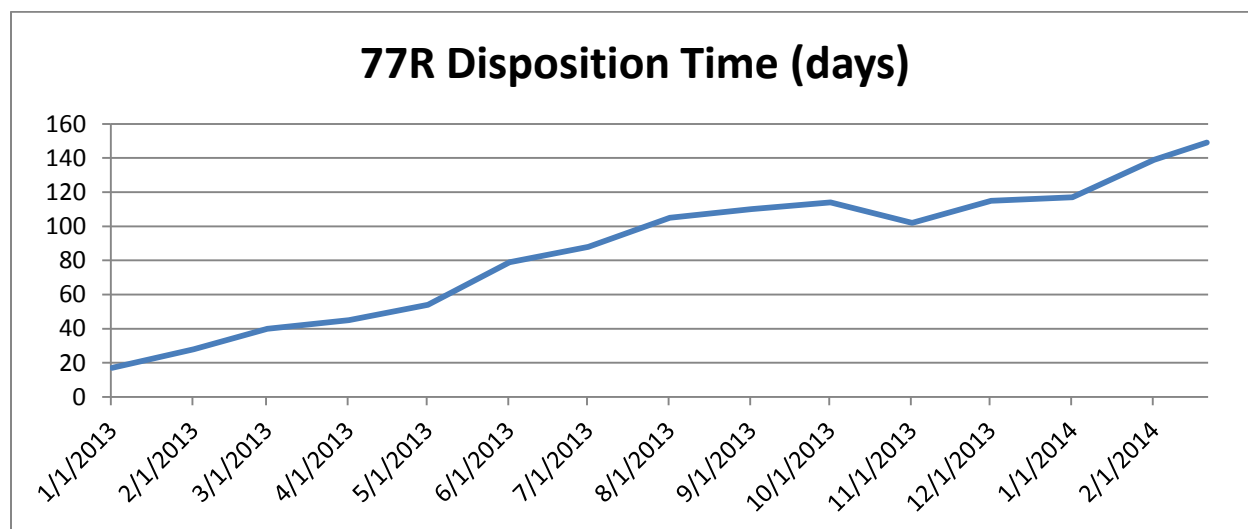


Figure 1: Regulated Firearm Disposition Time in days since 1/1/2013

The bill (SB281) contained the following elements:

- Established an Assault Weapon Ban on commonly used rifles - criminalizing sales, purchase, transfer, and receipt of previously regulated long guns
- Reduced magazine size for sale, purchase, transfer and receipt from capacity from 20 to 10 cartridges
- Introduced a new class of banned firearms that were in common use titled “Copycat Weapons”
- Introduced a licensing requirement – Handgun Qualification License (HQL) for the sale, purchase, transfer and receipt of handguns

¹ Source: MSP Licensing Division Weekly Reports

During the Legislative Session of 2013, as the bill moved through the Senate Judicial Proceedings Committee and House Judicial Committee, was ultimately passed both houses of the Maryland General Assembly and was signed by the Governor in May, 2013, the backlog of regulated firearm applications steadily increased and continued until the law was enacted on October 1, 2013 (see Figure 2). 77R disposition time was greater than 50 days (see Figure 1) by the time the Governor signed the Firearm Safety Act.

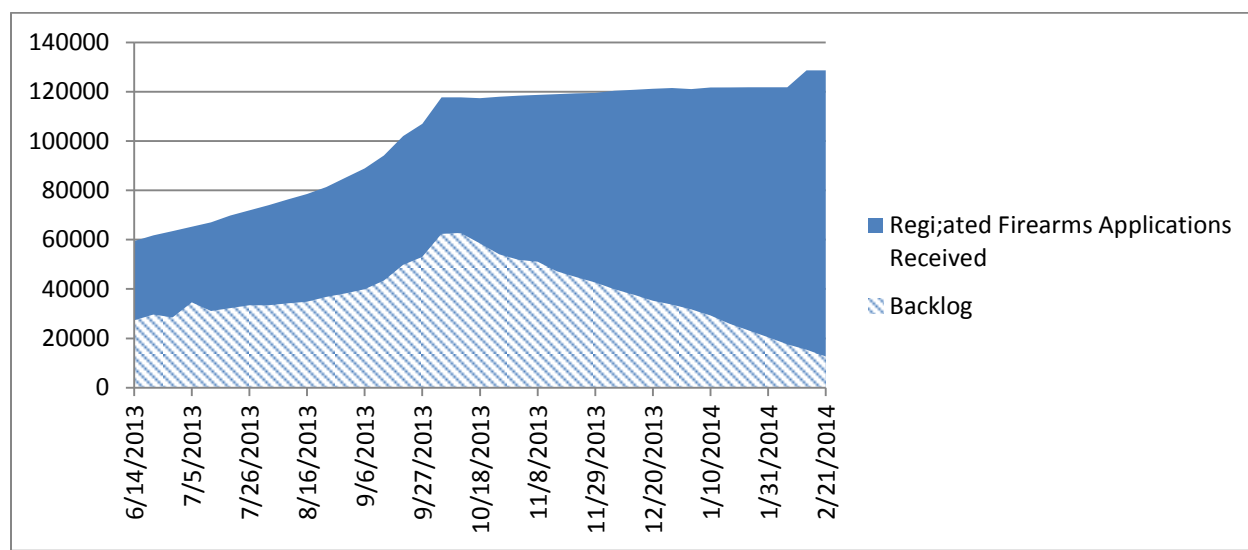


Figure 2: Regulated Firearms Applications Received and Backlog for Calendar Year 2013²

The rate of disposition of 77R's remained constant as the backlog continued to grow due to purchases being made by law abiding citizens in advance of the new law enactment date. This would lead to the conclusion that the **State of Maryland was not allocating adequate resources** to the disposition of regulated firearms application in anticipation of the effects of the restrictive law and failed to make timely adjustments to meet the demand that arose from the legislative action during and after the 2013 Session. As a result of the State's inattentiveness to the growing problem, the disposition time grew, merchants/Federal Firearms Licensees (FFLs) safes to secure the firearms began to overflow and lawful abiding citizens were denied access to their rightfully owned property in a reasonable amount of time. The situation was well publicized and State administration acknowledged the growing backlog in local newspaper interviews as well - for examples see:

- <http://www.wjla.com/articles/2013/02/gun-sales-up-in-maryland-7-day-waiting-period-creates-backlog-84943.html>
- <http://www.guns.com/2013/03/19/maryland-demand-for-gun-applications-overwhelms-state-police-wait-time-40-plus-days/>

² Source: MSP Licensing Division Weekly Reports

- <http://patdollard.com/2013/06/outgunned-maryland-police-overwhelmed-by-huge-backlog-of-background-checks/>
- <http://www.wbaltv.com/news/maryland/i-team/state-police-backlogged-in-gun-purchase-background-checks/21288226>
- http://articles.herald-mail.com/2013-08-14/news/41416095_1_background-checks-gun-dealers-gun-shops

One effective solution to the growing problem would have been for the current administration to temporarily transfer the National Instant Background Check System (NiCS) Point of Contact (POC) for regulated purchases to the Point of Sale (POS)/FFL location. This administrative action was not taken, despite the fact that apparently this ***was well within the discretion of the administration to make the decision to allow FFL's to conduct NICS checks.*** Based on an exhaustive search of Maryland statute law, regulations (COMAR), the Maryland Register and Executive Orders dating back to 1994, there is a lack of artifacts within the State of Maryland archives mandating that the NICS configuration is configured as outlined below. It does not appear that this policy was published nor solicited for public input when it was established. A notice was located from the Federal Alcohol, Tobacco and Firearms which was distributed to Maryland Federal Firearms Licensees³ on October 30, 1998, which contains the following excerpt:

Initiation of NICS Checks

The State of Maryland will act as the point of contact for NICS checks for handguns or assault weapons for which a State background check is required. To request a background check for these firearms, you must contact the Maryland State Police. You should either mail the Maryland state form to Maryland State Police, Firearms Licensing Section, 7751 Washington Blvd, Jessup, Maryland 20794 or you may fax the form to 410-799-5907.

To request a background check for any other firearms, including long gun or pawn redemption transactions, you must contact the Federal Bureau of Investigation's NICS Operations Center by dialing 1-877-FBI-NICS (1-877-324-6427). Your call will be answered by an automated menu that allows you to select from several customer services including initiating a NICS background check.

Lawsuit Initiated to Affirm the Ability to Release Regulated Firearms Following the 7 day period

Figure 3 visually captures a timeline of events related to the following discussion.

³ <http://www.atf.gov/press/releases/1998/10/103098-openletter-ffl-maryland-brady-law.html>

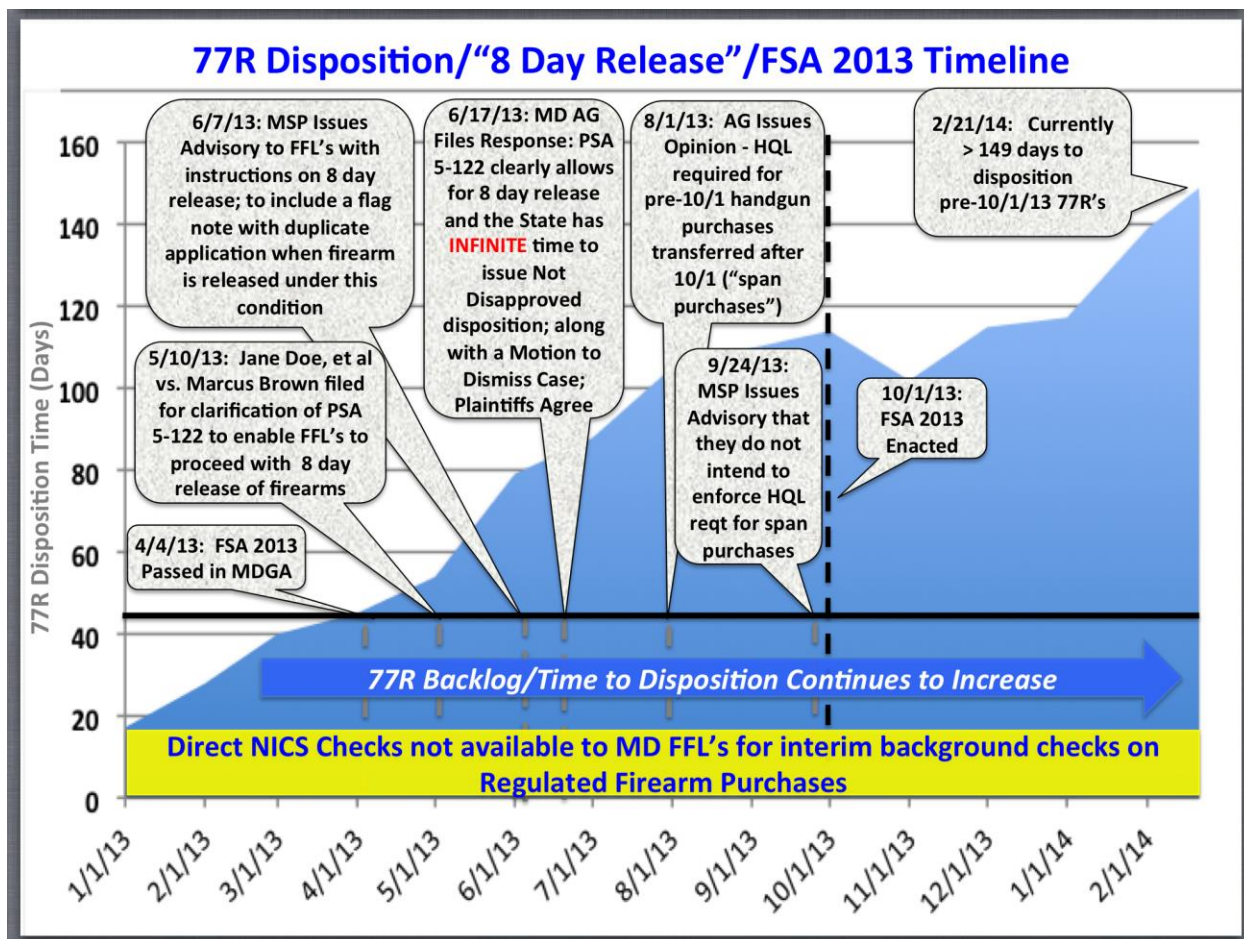


Figure 3: Timeline of Events

On May 10, 2013 as the backlog continued to grow and it appeared the State of Maryland was not taking any action to alleviate the issue, Maryland Licensed Firearms Dealers Association (MLFDA), Maryland Shall Issue (MSI) and Associated Gun Clubs of Baltimore (AGC) filed suit on behalf of a citizen who requested anonymity in the case, Jane Doe vs. Marcus Brown⁴. The plaintiff requested that the State of Maryland clarified the boundaries of PSA 5-122 and that indeed the release of a regulated firearm following the 7 day period was legal. The 7 day period allowed the state to conduct an investigation and return a disapproval notification to the FFL.

On June 17, 2013 the Maryland Attorney General filed a response with the court affirming the plaintiff's interpretation of the statute, which contained the following excerpt:

"Regulated firearms may not be sold, rented or transferred during the seven-day period, PSA 5-123(a), but generally may be transferred thereafter unless the MSP has disapproved of, or placed a hold on the application, COMAR 29.03.01.10"

The Attorney General's response also contains the following excerpt:

⁴ Jane Doe et al v. Col. Marcus Brown, et al; Baltimore County Circuit Court Case Number 03-C-13-005388

"If the MSP disapproves an application, it is required to notify the prospective seller, lessor, or transferor within seven days after the application is forwarded to the MSP. PS 5-122(b). If the MSP does not disapprove an application, it is not required to provide any notice within any particular period of time."

To summarize the situation:

- The backlog of regulated firearm applications continued to grow
- Disposition time of applications increased astronomically
- The State of Maryland Attorney General agreed that FFL's may release firearms after the 7 day waiting period if the application was not return disapproved or on hold
- The State of Maryland Attorney General stated that there is NO time limit on a response of "NOT DISAPPROVED" on a regulated firearm application
- The State of Maryland would not relinquish the NICS Point of Contact to FFL's to have background checks run against prospective purchasers of regulated firearms.

The State of Maryland endangered the safety of its citizens by not allowing FFL's to conduct NICS checks during this period, with the knowledge that Maryland was not working off the backlog in a timely manner and acknowledgment of the statute.

Among the reasons that citizens were purchasing regulated firearms at a high rate was the imposition of the Handgun Qualification License (HQL) requirement to sell, purchase, transfer and receive handgun in the State of Maryland. Many Marylanders found this new pending burden to purchase a handgun to be burdensome and unconstitutional. Faced with an upcoming date of October 1 to avoid submitting to the HQL requirement, and an increasing 77R disposition time, an inquiry was made to the Attorney General concerning the "span purchase" conundrum - the increasing possibility that a purchase made before September 23, 2013 (allowing for the 7 day waiting period per PSA 5-122) and received after October 1, 2013 would require a HQL to take delivery of hand gun. On August 1, 2013 the AG issued an opinion that indeed the HQL was required for span purchases. Disposition time on August 1, 2013 was well over 100 days with 61 days to the law being implemented.

On September 24, 2013 – one week before the law was enacted and one day beyond the 7 day waiting period to October 1 - the Maryland State Police issued an advisory that they did not intend to enforce the HQL requirement for span purchases.

In September, 2013 the State of Maryland indicated that they were nearly caught up with the background check backlog, in spite of reporting a large number of applications still outstanding. The Maryland State Police has stated in local newspaper articles there were varying amounts of 500 firearms, between 200⁵ and 500⁶ of them in total, released during the peak backlog during the Summer/Fall of 2013 (State police months behind on background checks.

⁵ http://articles.baltimoresun.com/2014-01-11/news/bs-md-gun-backlog-20140111_1_background-checks-gun-law-gun-ownership

⁶ "Guns released to buyers with criminal histories", *Baltimore Sun*, August 1, 2013

Conducting spot checks with a few FFL's in Maryland, I have discovered that each of the releases I was able to obtain information on to prohibited persons could have been prevented with a NICS check:

- Misdemeanor charge with a maximum penalty of 3 years – Federal 4473 prohibiting factor
- Felony charge with a maximum penalty of 5 years – Federal 4473 prohibiting factor
- Felony charge with maximum penalty of 5 years – Federal 4473 prohibiting factor

I would encourage this legislative body to enquire a compilation of the remaining releases to prohibited persons to determine if, in fact, all of the incidences could have been prevented by the state allowing the FFL's to become the POC for the NICS system on regulated firearms purchases, and consider legislative action to codify MD FFLs as the POC for NICS into law and ensure that the State of Maryland is supplying database information to NICS in a timely fashion.

The result of the release of regulated firearms to prohibited persons is entirely and solely the result of the State's actions, not the FFL's nor the law abiding purchasers.

Given the history of the State of Maryland's inability to effectively disposition regulated firearms applications in a timely manner, and their unwillingness to relinquish the NICS POC to the Point of Sale in the face of a growing backlog combined with the Attorney General's statement in court that the state has no effective deadline to disposition applications as "Not Disapproved", this would constitute an immense infringement on the second amendment in this state.

Furthermore, I am opposed to the use of the term "approved" as it relates to the State's disposition of a firearm application. There are numerous instances of the both of the terms "not disapproved" and "approved" in the current Maryland statute.⁷

When the State conducts an investigation following the submission of a regulated firearm application, and cannot find a condition to deny the transfer thereby creating a status of "not disapproved". Use of the term "approved" intimates that the State officially sanctions transfer and ownership of the firearm, which I sincerely doubt is the intention of the State. The second amendment right to keep and bear arms does not emanate from the State (it is derived from the inalienable human right to self-defense), thus firearms purchasers do not seek the State's approval to exercise that right, but rather the State imposed a requirement to conduct an investigation to determine if there is a condition that would prevent a person from exercising that right.

If this proposed legislation is enacted into law, there would be no time limit for release of regulated firearm purchases to lawful abiding citizens of the State of Maryland.

I respectfully request that this bill be returned with an unfavorable report.

⁷ Public Safety Article 5-123, 5-124 and 5-125