



President
Mark W. Pennak

January 22, 2020

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MARYLAND SHALL ISSUE, IN SUPPORT OF SB 43

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is an all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. I am also an attorney and an active member of the Bar of the District of Columbia and the Bar of Maryland. I retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland Firearms Law and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License (“HQL”) and a certified NRA instructor in rifle, pistol and personal protection in the home and outside the home and muzzle loading. I appear today as President of MSI in support of SB 43.

This bill amends various sections of the Maryland Code to eliminate the fingerprinting requirement otherwise imposed by those sections where fingerprints of the relevant person have already been previously submitted. The rationale of all these various fingerprinting requirements is to enable a background check of the concerned individual. That need for resubmission of prints no longer obtains in Maryland, as Maryland is a full participant in the FBI’s “Rap Back” program, which is part of the FBI’s Next Generation Identification Program. See COMAR 12.15.06.01-.04.

Specifically, the Maryland Central Repository controls access to the Rap Back program. Under COMAR 12.15.06.03:

B. The Central Repository shall:

- (1) Submit the fingerprints of employees or licensees of authorized non-criminal justice government agency to the FBI; and
- (2) Retain the fingerprints of an employee or licensee of authorized non-criminal justice government agencies for future submission to the FBI Rap Back program or for national fingerprint searches.

The FBI’s Rap Back service allows authorized agencies to receive notification of activity on individuals who hold positions of trust or who are under criminal justice supervision or investigation, **thus eliminating the need for repeated background checks** on a person from the same applicant agency. Prior to the deployment of Rap Back, the national and Maryland criminal history background check system

provided a **one-time snapshot** view of an individual's criminal history status. With Rap Back, "authorized agencies can receive on-going status notifications of any criminal history reported to the FBI after the initial processing and retention of criminal or civil transactions. By using fingerprint identification to identify persons arrested and prosecuted for crimes, Rap Back provides a nationwide notice to both criminal justice and noncriminal justice authorities regarding subsequent actions." <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi>

In Maryland, under the Rap Back Program, the Central Repository is automatically notified by the FBI if any person whose prints have been previously submitted has a new "record" entered into the FBI's system. The Central Repository then immediately (within 72 hours) forwards the information to the relevant Maryland agency so that the agency can investigate the reasons for the entry of such a "record" in the system and take appropriate action. In short, the system provides continuous monitoring of any person who has previously submitted prints, rather than a simple snapshot in time.

The Rap Back program is the reason that, effective October 1, 2016, and with the enactment of House Bill 312 in 2016, 2016 Maryland Laws Ch. 618, the State Police no longer request or need fingerprinting for Maryland wear and carry permit renewal applications. See MD Code, Public Safety, § 5-309(c) ("A person who applies for a renewal of a permit is not required to be fingerprinted unless the Secretary requires a set of the person's fingerprints to resolve a question of the person's identity."). The House vote on that bill was 133 Yeas and 1 Nay and the Senate vote was 45 Yeas and 0 Nays. <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0312/?ys=2016rs> This bill is the same sort of common sense, good government legislation. With Rap Back, resubmission of fingerprints is simply no longer needed and thus is a waste of time and money for all concerned. MSI requests a favorable report.

Sincerely,



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