



Testimony of Christa Nicols, Counsel & Kelsey Rogers, Senior Manager of State Policy, Brady Support
for SB 816, The Firearms Dealers' Safety Act
Before the Maryland Senate Judicial Proceedings Committee
February 20th, 2020

Dear Chairman Smith, Vice-Chair Waldstreicher, and other distinguished members of the
Maryland Senate Judicial Proceedings Committee,

Founded in 1974, Brady works across Congress, courts, and communities, uniting gun owners and non gun owners alike, to take action, not sides, and end America's gun violence epidemic. Our organization today carries the name of Jim Brady, who was shot and severely injured in the assassination attempt on President Ronald Reagan. Jim and his wife, Sarah, led the fight to pass federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah's legacy by uniting Americans from coast to coast, red and blue, young and old, liberal and conservative, to combat the epidemic of gun violence.

Brady thanks the Committee for taking action on this critical legislation. **SB 816, the Firearms Dealers' Safety Act, will implement regulatory fixes to demonstrably reduce firearm thefts, and in turn, reduce gun violence in communities across Maryland.** Brady's President, Kris Brown, recently spoke out in support of this bill, calling it "the kind of common-sense violence prevention bill that all sides can agree on."

Stolen guns are a public safety hazard that can be addressed with common-sense regulation

Stolen guns pose a significant risk to public safety because they are easily diverted to the criminal market and many are ultimately recovered at the scenes of violent crimes, including homicides and robberies. Most stolen guns are recovered in connection with crime near the location where the theft took place.¹ Currently, licensed dealers in Maryland are not subject to any legal requirements, under federal or state law, to secure their firearm inventory, setting them apart from any other businesses in the state that store and sell potentially dangerous products. Pharmacies and cannabis dispensaries operating within the state are required by law to implement minimum theft prevention measures; firearms dealers are not.

¹ Brian Freskos, *Missing Pieces: Gun theft from legal owners is on the rise, fueling violent crime across America*, THE TRACE (Nov. 20, 2017) available at <https://www.thetrace.org/features/stolen-guns-violent-crime-america/>

The ensuing risk to public safety cannot be overstated. Once stolen, the guns cannot be traced by law enforcement, which severely undermines criminal investigations involving guns. Further, data from the Federal Bureau of Investigation (FBI) provides that approximately 22,000 guns were stolen from retailers between 2012 and 2015.² That number is alarming. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) expressed concerns about persistent theft from licensed dealers in 2018, calling it one of the agency’s primary “external challenges.” In the absence of any federal or state security requirements, dealers in Maryland may choose to accept or ignore suggestions from law enforcement and regulators on a voluntary basis despite the high risk of theft.³

Criminals are taking note of the gap in the laws. According to data on theft from licensed dealers from ATF, burglaries increased 48 percent and robberies increased 175 percent between 2012 and 2016.⁴ Gun theft is on the rise across the country because stolen guns are very easy for criminals to sell. The chief of the ATF’s Intelligence Unit said: “[g]uns are the hottest commodity out there, except for . . . cold, hard cash.”⁵ Reporting from the Baltimore Sun suggests that many retail establishments in the state do not consistently, comprehensively, and effectively secure their firearms inventory.⁶ Without action to require gun dealers to implement safe business practices, we cannot expect theft from dealers and their subsequent diversion to the criminal market to slow.

State governments, however, *can* work to reduce the flow of stolen firearms to the criminal market by enacting laws like the Firearms Dealers’ Safety Act. Research published in 2018 found that changes in security requirements are effective at reducing theft from firearms retailers.⁷ Further, states with physical security requirements experience lower rates of firearms theft from licensed dealers. For example, in New Jersey, which has implemented comprehensive security mandates for licensed firearm retailers, ATF recorded only 10 stolen firearms within the state between 2012 and 2016. Conversely, Maryland had 354 stolen firearms recorded during that same period.⁸

The Firearms Dealers’ Safety Act addresses an important gap in federal and state regulation of licensed dealers

Firearms regulation in the United States is a patchwork of federal, state, and local law. ATF is the sole federal agency with the authority to oversee firearms dealers in the United States. ATF considers federally licensed gun dealers to be “the first line in maintaining the security and lawful transfer of firearms” and issues detailed guidance on safe business practices and security measures that dealers can

² Chelsea Parsons and Eugenio Weigend Vargas, *Stolen Guns in America: A State-by-State Analysis*, CENTER FOR AMERICAN PROGRESS (Jul. 25, 2017) available at <https://www.americanprogress.org/issues/guns-crime/reports/2017/07/25/436533/stolen-guns-america/>

³ *Id.*

⁴ Parsons, *supra*.

⁵ Freskos, *supra*.

⁶ Keith Daniels, *How Would Baltimore County’s “SAFE Act” Affect Gun Store Owners?*, FOX BALTIMORE (Nov. 27, 2019) available at <https://foxbaltimore.com/news/local/how-would-baltimore-countys-safe-act-affect-gun-stores-owners>

⁷ Freskos, *supra*.

⁸ Parsons, *supra* at Table 1.

adopt on a voluntary basis to prevent legal guns from entering the criminal market.⁹ Despite that recognition, ATF provides almost no oversight of FFLs' general business practices and does not mandate any security measures.

ATF is systematically underfunded and legally restricted from providing meaningful oversight of gun dealers. This leaves a significant gap in enforcement where state and local governments should be empowered to step in and ensure licensed dealers are engaging in safe business practices that prevent legal guns from being diverted to the criminal market, whether through straw purchases, trafficking, or firearm loss or theft. The Firearms Dealers' Safety Act addresses this gap by requiring common-sense safety and security practices that are consistent with practices that the ATF already urges dealers to adopt.

Federal regulation is insufficient

Federal law is insufficient to detect and deter theft from gun dealers because the law does not *require* FFLs to engage in safe business practices or to employ reasonable security measures. Instead, the current federal regulatory framework merely outlines the minimal requirements for FFLs to obtain and maintain a license. To obtain a license, federal law requires prospective FFLs to be at least 21 years of age, maintain premises from which to conduct business, and certify that business operations are not prohibited by state and local law.¹⁰ Once granted a license, FFLs are required by law to conduct background checks in accordance with the Brady Act¹¹ and may not complete transfers to prohibited purchasers.¹²

Beyond these nominal requirements, the scope of federal regulation governing the business practices of FFLs is limited to recordkeeping and reporting requirements. As part of the recordkeeping requirements, FFLs must maintain records of sales and other dispositions, which includes i) ensuring that the ATF's Firearms Transaction Record, or Form 4473, is completed by a non-FFL transferee; and ii) that all imported or manufactured firearms are appropriately identified by a serial number.¹³ Under the reporting requirements, FFLs must i) notify the ATF when multiple firearms are sold or transferred to the same person within a five-day period; ii) notify the ATF within 48 hours after the loss or theft of firearms in the licensee's inventory, and iii) transfer required records to the licensee's successor or the ATF when the licensee ceases business operations.¹⁴ Currently, there are no federal legal requirements that gun dealers engage in safe business practices and implement basic security requirements to ensure that the guns they sell do not end up in the hands of prohibited purchasers and/or criminals.

Federal regulation is not effectively enforced

⁹ Bureau of Alcohol, Tobacco, Firearms and Explosives, *Safety and Security Information for Federal Firearms Licensees*, ATF Pub. 3317.2 (2010) available at <https://www.atf.gov/firearms/docs/guide/safety-and-security-information-federal-firearms-licensees-atf-p-33172/download>

¹⁰ 18 U.S.C. § 923(d); 923(i)

¹¹ Pub. L. No. 103-159, 107 Stat. 1536 (1993).

¹² 18 U.S.C. § 922(g); (o)

¹³ *Id.* at § 923(g)(1)(A); (2)

¹⁴ *Id.* at § 923(g)(5)-(6)

Even where the federal framework does impose requirements on gun dealers, they are woefully underenforced. The ATF is both underfunded by design and constrained by acts of Congress. In fact, in its 2016 Congressional Budget Submission, the ATF explained that, despite a budget that has remained relatively stagnant for 10 years, its “workload and mission requirements have exponentially increased.”¹⁵ The agency does not have the resources or the will to provide meaningful oversight of gun dealers. Most notably, although the ATF is authorized to revoke the licenses of dealers cited for *willful* noncompliance, the agency does not appear to consistently use its authority to hold licensees accountable for offenses that indicate trafficking, such as: straw sales; sales to self-identified prohibited purchasers; failure to report multiple sales; and failure to report lost or stolen firearms.

A report issued in 2013 by the Department of Justice Office of Inspector General (OIG) found that the ATF consistently failed to meet its own internal inspection targets. The report cites chronic resource constraints and the competing statutory mandate to inspect licensed explosive dealers as an obstacle to the ATF’s ability to meet its FFL inspection targets.¹⁶ The report indicates that dealers typically go *11 years* without federal inspection. As the only federal agency with oversight authority over the gun industry, ineffective enforcement by the ATF requires that states act.

Worryingly, even when inspections do occur and violations are found, little or no remedial action is taken. ATF inspection reports obtained by Brady and analyzed by the *New York Times*¹⁷ found the ATF routinely downgraded the remedial actions recommended by Industry Operations Inspectors (IOIs), who are charged with inspecting individual FFLs, despite repeated indications that licensed dealers had violated federal law. Area Supervisors and Directors of Industry Operations habitually reversed IOIs recommendations to revoke the licenses of FFLs even when egregious repeat violations were uncovered. This included dealers who failed to perform background checks, who sold firearms to customers who stated they were felons or other prohibited purchasers, and dealers who otherwise seriously and repeatedly violated the law. In fact, the reports reveal that less than 0.5% of inspections resulted in the revocation of a license despite widespread noncompliance.¹⁸

Federal regulators know how to deter theft from licensed dealers

ATF understands that FFLs are the first line of defense to prevent theft of firearms and their diversion to the criminal market. Accordingly, ATF urges FFLs to adopt safe business practices and security measures to ensure that criminals are unable to easily obtain guns in its report titled *Safety and Security Information for Federal Firearms Licensees*. The requirements provided in the Firearms Dealers’ Safety Act are consistent with the measures provided by ATF. Specifically, ATF devotes an entire section of the report to specific actions FFLs should take to “reduce...vulnerability to theft/loss and personal injury.” The topics covered include: structural security to ensure the premises are able to deter physical

¹⁵ *Congressional Budget Submission, Fiscal Year 2016*, US Department of the Treasury, ATF, February 2015, at 10, www.edit.justice.gov/sites/default/files/jmd/pages/attachments/2015/02/02/26._bureau_of_alcohol_tobacco_firearms_and_explosives_atf.pdf

¹⁶ 2013 OIG Report, *supra* n. 1, at 27.

¹⁷ Ali Watkins, *When Guns Are Sold Illegally, ATF is Lenient on Punishment*, N.Y. TIMES (Jun. 3, 2018), available at <https://www.nytimes.com/2018/06/03/us/atf-gun-store-violations.html>

¹⁸ 2013 OIG Report, *supra*.

intrusions; inventory security to ensure that firearms are inoperable and secure during and after business hours; and employee screening and business practices developed to deter transfers to straw purchasers or prohibited persons.¹⁹ These recommendations are consistent with provisions enacted in the Firearms Dealers' Safety Act.

States, including Maryland, already supplement the federal framework but more can be done

In light of prolific enforcement failures at the federal level, it is up to state and local governments to ensure that gun dealers in their jurisdiction operate responsibly. Maryland is among the states that have already acted to supplement the federal regulatory structure by requiring gun dealers to obtain state-level licenses. By enacting the Firearm Dealers' Safety Act, Maryland will further address a dangerous gap in federal regulation by ensuring that gun dealers employ safe business practices and security measures known to be effective at slowing the flow of firearms from the legal market to the criminal market.

The Baltimore County Council recently used its authority to deter gun theft from retailers by enacting legislation to require firearms dealers in the jurisdiction to certify adequate theft prevention measures. Like with the Firearms Dealers' Safety Act, the measure passed by the Baltimore County Council is consistent the ATF's guidance on security best practices.

Other states also require gun dealers to implement minimum security requirements to prevent theft of their inventory. For example, New Jersey requires all licensed dealers to implement physical security measures on the business' premises during and after business hours. Dealers are required to submit security plans to the agency with oversight authority for approval to ensure they are adequate for deterring theft.²⁰ Likewise, California requires firearms dealers to implement specific physical security measures, such as rendering inventory inoperable during business hours and locking inventory in steel vaults after business hours. Further, California law requires licensed dealers to complete background checks on any employees that will be transferring firearms on the dealer's behalf to ensure the employee is not prohibited from possessing a firearm. Similar to the Firearms Dealers' Safety Act, the state of Connecticut requires burglary systems and employee background checks.²¹

Brady strongly urges the Maryland Senate Committee on Judicial Proceedings to pass SB 816, the Firearms Dealers' Safety Act.

¹⁹ Bureau of Alcohol, Tobacco, Firearms and Explosives, *Safety and Security Information for Federal Firearms Licensees*, ATF Pub. 3317.2 (2010) available at <https://www.atf.gov/firearms/docs/guide/safety-and-security-information-federal-firearms-licensees-atf-p-33172/download>

²⁰ N.J. Admin. Code. § 13:54-6 et seq.

²¹ Conn. Gen. Stat. § 29-37d - 37f