

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 646

(Senator Smith, *et al.*)

Judicial Proceedings

Judiciary

Public Safety – Access to Firearms – Storage Requirements (Jaelynn’s Law)

This bill modifies and expands an existing prohibition related to a child’s access to firearms. Specifically, under the bill, a person may not store or leave a firearm in a location where the person knew or should have known that an unsupervised *minor could* gain access to the firearm. A violator is subject to the existing monetary penalty. In addition, the bill prohibits a person from storing or leaving a firearm in specified locations under specified circumstances and establishes penalties for violations of the new prohibitions. Further, the bill (1) alters and expands the exemption to the existing prohibition (as modified by the bill); (2) establishes the intent of the General Assembly regarding prosecutions under the bill’s prohibitions; and (3) repeals the definition of “child” and applies the provisions of current law, as modified by the bill, to minors.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill’s expanded prohibition and penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures due to the bill’s expanded prohibition and penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits a person from storing or leaving a firearm in a location where the person know or should have known that an unsupervised minor could gain access to the firearm and an unsupervised minor does gain access to the firearm. A violator is

guilty of a misdemeanor and subject to maximum penalties of one year imprisonment and/or a fine of \$2,500.

The bill also prohibits a person from storing or leaving a firearm in a location where the person know or should have known that an unsupervised minor could gain access to the firearm, an unsupervised minor does gain access to the firearm, and the firearm causes harm to the minor or another person. A violator is guilty of a misdemeanor and subject to maximum penalties of three years imprisonment and/or a fine of \$5,000.

In addition, the bill establishes the intent of the General Assembly (1) that a parent or guardian of a child who is harmed or who dies as the result of an accidental shooting be prosecuted only under specified circumstances and (2) if a child is harmed or dies as the result of an accidental shooting involving a violation of the bill's provisions by the child's parent or guardian, the State's Attorney must consider the impact of the harm or death on the parent or guardian in determining whether to prosecute the parent or guardian. The intent of the General Assembly may not be construed to limit or otherwise restrict a State's Attorney's ability to prosecute a violation of the bill's provisions.

The bill's provisions do not apply if:

- for a rifle or shotgun, (1) in addition to the current law requirement to have a certificate of firearm and hunter safety issued under applicable provisions of the Natural Resources Article, the minor has been given express permission by the minor's parent or guardian to access the rifle or shotgun for the purpose of engaging in a lawful activity and (2) the person who stores or leaves the rifle or shotgun has no reason to believe that a minor will access the rifle or shotgun for a purpose other than the purpose for which the minor has been given permission to access the rifle or shotgun;
- the firearm is left or stored unloaded and has been rendered inoperable to anyone other than an adult; or
- the person who stores or leaves the firearm stores or leaves (1) the firearm unloaded and (2) any ammunition that the person owns or controls that is suitable for use in the firearm in a secure location where a minor could not reasonably gain access to the ammunition.

Current Law: A person may not store or leave a loaded firearm in a location where the person knew or should have known that an unsupervised *child would* gain access to the firearm. A violator is guilty of a misdemeanor and subject to a maximum fine of \$1,000.

The prohibition does not apply if:

- the child's access to a firearm is supervised by an individual at least age 18;
- the child's access to a firearm was obtained as a result of an unlawful entry;
- the firearm is in the possession or control of a law enforcement officer while the officer is engaged in official duties; or
- the child has a certificate of firearm and hunter safety issued under applicable provisions of the Natural Resources Article.

A violation may not (1) be considered evidence of negligence; (2) be considered evidence of contributory negligence; (3) limit liability of a party or an insurer; or (4) diminish recovery for damages arising out of the ownership, maintenance, or operation of a firearm or ammunition. A party, witness, or lawyer may not refer to a violation during a trial of a civil action that involves property damage, personal injury, or death.

“Child” means an individual younger than age 16. “Minor” means an individual under the age of 18 years.

State Revenues: Because the bill expands a current law prohibition, general fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

The Administrative Office of the Courts advises that, in fiscal 2019, for an offense relating to providing access to firearms by a child, there were 67 violations filed in the District Court and 88 violations filed in the circuit courts.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this expanded crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,700 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have

been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Because the bill expands a current law prohibition, revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: HB 468 of 2019, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 441, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 861 of 2013, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: HB 636 (Delegate Stein, *et al.*) - Judiciary.

Information Source(s): Baltimore City; Montgomery and Prince George's counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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