

INSTITUTE FOR LEGISLATIVE ACTION

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NRA

February 20, 2023

State Senate of Maryland
Judicial Proceedings Committee
Chairman William C. Smith Jr.
90 State Circle
Annapolis, Maryland, 21401

Dear Chairman Smith:

On behalf of our tens of thousands of members in Maryland, we ask you today to give an unfavorable report to Senate Bill 858 for the following reasons:

Increasing the age restriction

HB307 would change § 4-104 by substituting the term “minor” for “child” throughout the section. This has the effect of applying the firearm storage requirement to situations involving anyone under the age of 18.

Addition of prohibited persons

HB307 requires gun owners to take the same storage precautions to prevent access by a prohibited person as they would for a minor. The circumstances are somewhat different, as there are exceptions to the storage requirement for minors to use firearms in certain circumstances, whereas there are no such exceptions for prohibited person.

Limits the exceptions to rifles and shotguns

At present, the exceptions under which a child is permitted to have access to a firearm pertains to all “firearms.” HB307 would alter § 4-104 to limit that to only a rifle or shotgun.

Alteration of the certificate exception

HB307 would change § 4-104 by removing the certificate of firearm and hunter safety exception to the application of the statute. Meaning that even a responsible minor who has acquired such a certificate could no longer have access to firearm without also having express permission from a parent or guardian.

At present, the exemption in § 4-104(b)(4) creates a means by which a responsible child may have unsupervised access to a firearm. You might imagine a scenario where a 15-year-old get off from school at 2:30pm before his parents get home and would want to go hunting.

Under the HB307, a minor would need to have this certificate along with the requirement the minor

(II) 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.

Further, HB307 further alters the § 4-104(b)(4) exemption to limit it to a minor’s access to rifles and shotguns, rather than all firearms. So, a .22lr pistol could not be stored in such a manner to permit a 17-year-old just home from school to

access it in order to plink or go hunting by themselves.

Loaded versus unloaded

HB307 would change § 4-104 by extending the storage requirement from covering only loaded firearms to both loaded and unloaded firearms.

Unclear storage requirements

HB307 provides that a person is exempted from the statute is,

(III) THE FIREARM: SECURED IN A LOCKED CONTAINER THAT IS EQUIPPED WITH A TAMPER-RESISTANT LOCK;

The above language makes clear that not all locked containers are sufficient for firearm storage, as the container must have a “tamper-resistant” lock. “Tamper-resistant lock” is not defined for the purposes of this statute. Therefore, gun owners would not be able to know what storage arrangements meet this vague definition.

According to a word search, the term “tamper-resistant lock” does not appear anywhere else in Maryland code. The term “tamper resistant” does appear in relation to smoke alarms, giving no guidance on how it would be interpreted in this context.

Lowering the bar for a violation

The legislation changes the following existing language,

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.

To,

A person may not store or leave a loaded firearm in a location where the person knew or **reasonably** should have known that **a prohibited person or** an unsupervised ~~child~~ **minor is likely to** gain access to the firearm.

This lowers the threshold for culpability. “Would” connotes that the person knew or should have known that the child was going to gain access to the firearm. The removal of “would” connotes that the person knew or should have known that the child may possibly gain access to the firearm.

The new language implicates a larger array of firearm storage arrangements, and is therefore, far worse.

Increased penalties

The penalty for a violation of the existing storage provision is increased from a misdemeanor with a fine of up to \$1,000 to imprisonment up to 90 days or a \$1,000 fine or both.

The legislation also creates new penalties based on the severity of the result of not properly storing the firearm.

If an unsupervised minor or prohibited person in fact gains access to the firearm it is a misdemeanor punishable by up to 2 years imprisonment or a fine of up to \$2,500 or both.

If an unsupervised minor or prohibited person in fact gains access to the firearm and an injury results, it is a misdemeanor punishable by up to 3 years imprisonment or a \$5,000 fine or both.

Legislation is unnecessary

MD Code, Criminal Law, § 3-204 provides,

(a) A person may not recklessly:

(1) engage in conduct that creates a substantial risk of death or serious physical injury to another;

The penalty for such conduct is a misdemeanor that carries up to five years imprisonment, a fine of up to \$5,000, or both.

There is recent caselaw (*Tabassi v. Carrol County Department of Social Services* (2018)) suggesting that this statute has been used to prosecute those who have left children with access to firearms.

The National Rifle Association respectfully requests that you *give an unfavorable report to House Bill 307*.

Sincerely,

D.J. Spiker
State Director
NRA-ILA

CC: Senator Jeff Waldstreicher
Senator Jill P. Carter
Senator William G. Folden
Senator Mary-Dulany James
Senator Mike McKay
Senator C. Anthony Muse
Senator Charles E. Sydnor III
Senator Alonzo T. Washington
Senator Chris West