

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 479
(Senator Smith)
Judicial Proceedings

Public Safety - Access to Firearms - Storage Requirements (Jaelynn's Law)

This bill makes several alterations to the statutory prohibition on access to a firearm by an unsupervised child. The bill (1) expands application of the existing prohibition to an individual who is younger than age 18 (a minor) and to an unloaded firearm, as described below; (2) establishes additional prohibitions and increasing penalties based on whether an unsupervised minor actually gained access to the firearm and whether the firearm caused harm to the minor or to another person; and (3) alters exceptions to the prohibition and applies the amended exceptions to all of the prohibitions under the bill.

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/Current Law:

Existing Prohibition

Under 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 younger than age 16*

would gain access to the firearm. A violator is guilty of a misdemeanor and subject to a maximum fine of \$1,000.

The bill modifies and expands the existing prohibition by establishing that a person may not store or leave a *firearm (loaded or unloaded)* in a location where the person knew or should have known that an unsupervised *minor could* gain access to the firearm. A violator is guilty of a misdemeanor, punishable by *imprisonment for up to 90 days and/or a maximum fine of \$1,000.*

Additional Prohibitions

The bill prohibits a person from storing or leaving a firearm in a location where the person knew 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, punishable by imprisonment for up to two years and/or a \$2,500 maximum fine.

The bill also prohibits a person from storing or leaving a firearm in a location where the person knew 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, punishable by imprisonment for up to three years and/or a \$5,000 maximum fine.

Exceptions

Under current law, 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.

The bill alters the existing exceptions to reflect application of the statute to a minor. The bill also establishes that the prohibitions 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 leaves the firearm unloaded and 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; or
- the firearm is left or stored unloaded and has been rendered inoperable to anyone other than an adult.

Effect of a Violation

Under current law, 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. The bill does not alter this provision.

Definitions

For purposes of the existing prohibition, a “child” means an individual younger than age 16. The bill repeals this definition. Under current law, a “minor” means an individual younger than age 18.

State Revenues: General fund revenues increase minimally from monetary penalties imposed in the District Court for violations of the bill’s expanded prohibitions.

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. In fiscal 2020, there were 60 violations filed in the District Court and 31 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 \$3,900 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: Local revenues increase minimally from monetary penalties imposed in the circuit courts for violations of the bill's expanded prohibitions.

Local Expenditures: Expenditures increase minimally as a result of incarceration penalties imposed for violations of the bill's expanded prohibitions. 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: SB 646 of 2020, a similar bill, passed the Senate with amendments and was referred to the House Judiciary Committee, but no further action was taken. Its cross file, HB 636, received a hearing in the House Judiciary Committee, but no further action was taken. 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 200 (Delegates Stein and Bartlett) - Judiciary.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, and Montgomery 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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