

**2023-02-21 SB 656 (Support).pdf**

Uploaded by: Hannibal Kemerer

Position: FAV

**ANTHONY G. BROWN**  
*Attorney General*



**CANDACE McLAREN LANHAM**  
*Chief of Staff*

**CAROLYN A. QUATTROCKI**  
*Deputy Attorney General*

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

FACSIMILE NO.  
(410) 576-7036

WRITER'S DIRECT DIAL NO.  
(410) 576-6584

February 21, 2023

**TO:** The Honorable William C. Smith Jr.  
Chair, Judicial Proceedings Committee

**FROM:** Office of the Attorney General

**RE:** SB0656 – Criminal Law – Failure to Property Store Firearm – Death of Another (Support)

---

The Office of Attorney General supports Senate Bill 656 and urges the Committee to favorably report this commonsense gun storage legislation. If enacted, SB 656 would increase the penalty for an adult who legally possesses a firearm and fails to properly secure the loaded firearm in a location whether they knew or should have known that a child for whom they have custodial authority could gain access to the firearm and where the child uses the firearm causing death to another.

The over-proliferation of firearms is a national scourge. Moreover, hapless gun owners who leave their loaded firearms where children can obtain them and wreak havoc on themselves or others is a significant problem. The current penalty for reckless endangerment is a mere \$1,000, with no jail time. Senate Bill 656 would amend Md. Crim Law Code §4-404, by increasing the penalty for adults who fail to properly store their guns to prevent access to children, when the child uses the gun and causes the death of another. Instead of a misdemeanor punishable by only by a fine not exceeding \$1,000, the penalty would be a felony punishable by imprisonment not exceeding ten (10) years and/or a fine not exceeding \$10,000.

We believe Senator Carter's legislation makes good sense and will ultimately save lives. For the foregoing reasons, we urge a favorable report on SB 656.

cc: Committee Members

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us

**Official SAO Testimony SB0656.pdf**

Uploaded by: Hassan Giordano

Position: FAV



February 21, 2023

**Senate Judicial Proceedings Committee,**  
Chairman, William Smith

**Support for SB0656 – Criminal Law - Failure to Properly Store Firearm-  
Death of Another**

Attention Chairman Smith, Vice-Chair Waldstreicher and members of the committee:

I am writing to express my **support for SB0656 – Criminal Law - Failure to Properly Store Firearm- Death of Another**. Simply put, this bill is long overdue and a law that would hopefully go a long way in helping to prevent the senseless deaths of others while working to ensure gun safety is paramount amongst those privileged with the right of gun ownership.

As you've heard from me on several occasions this session, gun safety is a cornerstone of my administration, and I will continue to push for common sense policies that keep the citizens of this great state, and the city that I represent, safe from the harm that can come from irresponsible gun owners and those who obtain these weapons by illegal means.

The hardest part of my job as State's Attorney is hearing the horror stories from the families of those who have had their loved one's life tragically cut short at the hands of someone with a firearm. So you can imagine the unimaginable conversation I had to have with the family of 15-year old Nykayla Strawder whose life was cut short by a nine-year old neighbor. And given the age of the suspect, there were no charges brought forth in pursuit of justice for this family, due to state law that prohibits minors of this age from being charged with such crimes.

But here you have two families torn apart by one tragic and unthinkable action, and as the city's top prosecutor my hands were tied given the limitations placed on me and my office given the current law. And while we eventually brought forth charges against the child's grandmother for not properly securing her legally obtained firearm, I am sure if you ask the Strawder family, a \$1,000 fine – which is the maximum allowable penalty under MD Criminal Law Code §4-404 - would not be the pursuit of justice they envisioned my office taking as we sought a sufficient penalty for the loss of this innocent young child.

As a father of a six-year old little girl, I cannot even begin to imagine the pain and suffering families such as the Strawders' must endure following tragedies such as this. But the current law is a further slap in the face when trying to come to terms with the loss of a loved one.

Increasing this penalty to a felony from that of a misdemeanor, and increasing the fine to \$10,000 while making it a jailable offense with the maximum sentence being that of 10-years, is the least I would ask this body to consider when trying to remedy what we can



all see as a loophole that will leave families struggling with a way to cope with their grief while searching for some form of justice by those responsible for offering just that.

Whether it be those who illegally possess firearms and choose to act recklessly with these instruments of death, those who irresponsibly use their weapons, or individuals who fail to secure their weapon(s) leading to the unthinkable happening at the hands of those who had no business having access to that firearm in the first place; I will continue to be vocal in my pursuit of ending gun violence by any means necessary.

I would urge a favorable vote on this bill, and thank you for considering this legislation on behalf of the loved ones of those who are still searching for answers. I pray for your continued health and well-being, and I appreciate the service you provide to our great state, along with the level of engagement and commitment you provide to our communities on a daily basis.

Sincerely,

A handwritten signature in black ink, appearing to be "I. Bates", written in a cursive style.

Ivan J. Bates, Esq.  
State's Attorney for Baltimore City

# Testimony\_SB695\_SenJCarterP.pdf

Uploaded by: Jill Carter

Position: FAV



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Jill P. Carter  
In Favor of SB656  
-Criminal Law-Failure to Properly Store Firearm- Death of Another –**

**Before the Judicial Proceedings Committee On  
February 21, 2023**

**Chair Smith, Vice-Chair Waldstreicher, and Members of the Committee:**

**SB656 would increase the penalty for an adult that legally possesses a firearm, and who fails to properly secure or leaves a loaded firearm in a location where the person knew or should have known that a child for whom they have custodial authority, or certain other incompetent persons, could gain access to the firearm, where the child or other specified person uses the firearm and causes the death of another. You've heard earlier this session, as well as in the news last summer of a 9 year old that gained access to a firearm and shot and killed 15 year old NyKayla Strawder. Earlier this month, prosecutors charged the irresponsible gun owner who allowed access to the lethal weapon with reckless endangerment and two counts of failure to secure a firearm. Under current law, the latter charge brings a maximum penalty of onethousand dollars and no jail time. While no punishment will bring NyKayla back, such a measly fee is essentially an affront to the lifetime of suffering that her family is now left with.**

**Some may recall viewing on television last month a video depicting a four (4) month old toddler wearing only a diaper waving a handgun in an apartment hallway trying to pull the trigger, putting the gun under his chin, playing with the gun, and pointing the gun at a neighbor coming up the steps and stating, "look what I have."**

**Or, perhaps you may have heard about the six (6) year old child in Virginia who brought a gun to school and shot his teacher and**

**endangered the lives of children, faculty, and other employees at the elementary school, as well as the individuals he encountered on his way to school.**

**There are countless other cases and situations in which children have had access to guns owned by their parents due to the failure of their parents'/guardians' to properly unload, lock and store the guns, and otherwise prevent their children from gaining access to these dangerous weapons. Some of which, resulted in the death of others, suicide or serious bodily injury.**

**I submit to you that in each of the aforementioned instances, there is an adult whose failure to prevent the child from gaining access to the gun, is at fault.**

**According to research conducted by the Everytown Support Fund, there are at least 2,700 unintentional shootings by children that resulted in 765 deaths and 1,366 non-fatal gun injuries. The same study revealed that in 2020 alone, at least 125 toddlers and children ages five (5) and under shot themselves or someone else, and that from March to December 2020, unintended shooting deaths by children went up more than thirty percent (30%) compared to the same time period in 2019.**

**The American Academy of Pediatrics (AAP) found that children and adolescents are at an increased risk for suicide when there is a gun in the home. Suicide rates are four (4) times higher than for children who live in homes without guns. In the past decade, forty percent (40%) of suicides committed by children and teens involved guns. Nine (9) out of ten (10) of these suicides were with guns that the victims accessed at their own homes or from a relative's home. APP also found that the risk of homicide is three (3) times higher when there are guns in the home.**

**Further, in the May 2018 Journal of Urban Health, it was reported that as many of 4.6 million children live in a home where at least one (1) gun is kept loaded and unlocked. Also, according to a 2018 Johns Hopkins survey, more than half of gun owners do not safely store their guns in a locked gun safe, cabinet or case, locked into a gun rack, or stored with a trigger lock or other lock. Also, a study by Nationwide Children's Hospital revealed that many parents believe that hiding their guns will prevent children from accessing them. However, seventy-five percent**

**(75%) of children who live in homes with guns know where they are supposedly hidden.**

**Maryland's existing law, Md. Crim Law Code §4-404, provides that a person who does not store or leaves a firearm in a location where the person knew or should have known that that an unsupervised child would gain access to the firearm is only guilty of a misdemeanor punishable by a fine not exceeding \$1,000.00. Current Maryland law essentially provides no penalty; but instead, operates only as a suggestion. The current law is insufficient to incentivize adults to properly store their guns and otherwise prevent children from gaining access to them. More teeth are needed to prevent future easily preventable disasters. According to the Baltimore Sun, more than seven (7) people in Maryland were either injured or killed by a minor accessing an improperly stored firearm since 2020.**

**SB656 would amend Md. Crim Law Code §4-404, by increasing the penalty for adults who fail to properly store their guns to prevent access to children, and the child uses the gun and causes the death of another. Instead of a misdemeanor punishable by only by a fine not exceeding \$1,000.00, the penalty would be a felony punishable by imprisonment not exceeding ten (10) years and/or a fine not exceeding \$10,000.**

**By enacting SB656, Maryland would join Massachusetts and California that allow for jail time for adults who fail to properly store their guns to prevent access to children that results in death. The threat of prosecution is a small price to pay to save a child's or adult's life.**

**For these reasons, I respectfully request a favorable report on Senate Bill 656.**

**Sincerely,**



**Jill P. Carter, Esq.**

**230220-SB0656-fair-store-firearm.pdf**

Uploaded by: Christine Hunt

Position: UNF

Christine Hunt and Jay Crouthers  
1014 Dockser Drive  
Crownsville, MD 21032

February 20, 2023

Maryland General Assembly  
Members of the Judicial Proceedings Committee  
Annapolis, MD

RE: SB0656-Criminal Law-Failure to Properly Store Firearm-Death of Another

Dear Senators,

We oppose SB 656 and respectfully request that you vote against it.

We agree that the death of a child is a terrible thing and should be avoided. However, to pass a bill regarding the storage of firearms in a private home, business etc., is government overreach and should not be allowed.

Fining a person for violating a bill such as this will do nothing to repair the damage from an accident that would harm or kill the child.

And convicting a person of felony for violating this bill is unjust. Because, if a child acquires the firearm unknowingly by the owner, the child, and potentially his/her parents are liable.

My suggestion is to generate more awareness of the problem and encourage parents to educate their children about what to do if they find a firearm – which is to leave it alone!

Please vote against SB 656.

Sincerely,

Christine Hunt and Jay Crouthers

**SB0656\_Testimony\_2A\_Maryland.pdf**

Uploaded by: John Josselyn

Position: UNF



**Senate Bill 656**  
**Criminal Law - Failure to Properly Store Firearm - Death of Another**

**UNFAVORABLE**

Senate Bill 656 adds “WARD” as new category of persons whose access to a firearm must be prevented by the owner of the firearm. The term “ward” is defined as an adult person who is the subject of a legal guardianship and who is prohibited from possessing a firearm.

The language of the Bill does not clarify why the person is restricted, nor does it address whether the prohibition is based upon State law or Federal law. With the recent decriminalization of recreational marijuana, persons who are users of marijuana may not be prohibited from possessing firearms under State law but remain prohibited under Federal law.

Under §4-104 (a)(c)(2) “A PERSON MAY NOT VIOLATE PARAGRAPH (1) OF THIS SUBSECTION RESULTING IN THE CHILD OR WARD USING THE FIREARM AND CAUSING THE DEATH OF ANOTHER.”

The language of §4-104 (a)(c)(2) is vague and ambiguous. In one scenario, the child or ward uses the firearm to directly cause death to another as a direct result of the firearm’s use. In an alternate scenario, the child or ward uses the firearm without causing death but causes death without discharging the firearm or in a manner unrelated to the use of the firearm in any way.

To create a felony offense whereby the firearm owner may be punished by imprisonment for a period not exceeding 10 years or a fine not exceeding \$10,000 or both is excessive. This is especially true for an action taken by another without the knowledge, consent or involvement of the firearm owner.

The penalties stipulated by Senate Bill 656 for the firearm owner's negligent storage of a firearm exceed the penalties for a person who commits willful manslaughter and negligent manslaughter through gross negligence. ( Criminal Law Article §4-207(a)(1)(2), §4-208 and §4-209(d)(1) ). They also exceed the penalties for manslaughter by vehicle or vessel involving criminal negligence. ( Criminal Law §4-210(f)(1) )

During testimony on a similar bill, a county States Attorney explained that such offenses are rarely prosecuted because the person subject to charges has already suffered enough. If Senate Bill 656 becomes law, the likelihood of charges ever being placed will be reduced exponentially.

We strongly request an unfavorable report on Senate Bill 656.

John H. Josselyn  
2A Maryland

Attachments:      Criminal Law Article §4-207  
                         Criminal Law Article §4-208  
                         Criminal Law Article §4-209  
                         Criminal Law Article §4-210

## Document: Md. Criminal Law Code Ann. § 2-207

### Md. Criminal Law Code Ann. § 2-207

Copy Citation

Current with all legislation from the 2022 Regular Session of the General Assembly; including legislation ratified by the voters at the November 2022 election.

**Michie’s™ Annotated Code of Maryland Criminal Law (Titles 1 – 14) Title 2. Homicide. (Subts. 1 – 5) Subtitle 2. Murder and Manslaughter. (§§ 2-201 – 2-210)**

#### § 2-207. Manslaughter.

(a) A person who commits manslaughter is guilty of a felony and on conviction is subject to:

- (1) imprisonment not exceeding 10 years; or
- (2) imprisonment in a local correctional facility not exceeding 2 years or a fine not exceeding \$500 or both.

(b) The discovery of one’s spouse engaged in sexual intercourse with another does not constitute legally adequate provocation for the purpose of mitigating a killing from the crime of murder to voluntary manslaughter even though the killing was provoked by that discovery.

(c) The discovery or perception of, or belief about, another person’s race, color, national origin, sex, gender identity, or sexual orientation, whether or not accurate, does not constitute legally adequate provocation to mitigate a killing from the crime of murder to manslaughter.

#### History

An. Code 1957, art. 27, §§ 387, 387A; 2002, ch. 26, § 2; 2021, ch. 369, § 1.

## Document: Md. Criminal Law Code Ann. § 2-208

### Md. Criminal Law Code Ann. § 2-208

Copy Citation

Current with all legislation from the 2022 Regular Session of the General Assembly; including legislation ratified by the voters at the November 2022 election.

**Michie’s™ Annotated Code of Maryland Criminal Law (Titles 1 – 14) Title 2. Homicide. (Subts. 1 – 5) Subtitle 2. Murder and Manslaughter. (§§ 2-201 – 2-210)**

#### § 2-208. Charging document.

**(a)** An indictment for murder or manslaughter is sufficient if it substantially states:

“(name of defendant) on (date) in (county) feloniously (willfully and with deliberately premeditated malice) killed (and murdered) (name of victim) against the peace, government, and dignity of the State.”.

**(b)** An indictment for murder or manslaughter, or for being an accessory to murder or manslaughter, need not set forth the manner or means of death.

#### History

An. Code 1957, art. 27, § 616; 2002, ch. 26, § 2.

Michie’s™ Annotated Code of Maryland

Copyright © 2023 All rights reserved.

## Document: Md. Criminal Law Code Ann. § 2-209

### Md. Criminal Law Code Ann. § 2-209

#### Copy Citation

Current with all legislation from the 2022 Regular Session of the General Assembly; including legislation ratified by the voters at the November 2022 election.

**Michie's™ Annotated Code of Maryland Criminal Law (Titles 1 – 14) Title 2. Homicide. (Subts. 1 – 5) Subtitle 2. Murder and Manslaughter. (§§ 2-201 – 2-210)**

#### § 2-209. Manslaughter by vehicle or vessel — Gross negligence.

**(a)** In this section, “vehicle” includes a motor vehicle, streetcar, locomotive, engine, and train.

**(b)** A person may not cause the death of another as a result of the person’s driving, operating, or controlling a vehicle or vessel in a grossly negligent manner.

**(c)** A violation of this section is manslaughter by vehicle or vessel.

**(d)**

**(1)** Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$5,000 or both.

**(2)**

**(i)** A person who violates this section, having previously been convicted under this section, § 2-210, § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of this article, or § 21-902 of the Transportation Article, is guilty of a felony and on conviction is subject to imprisonment not exceeding 15 years or a fine not exceeding \$10,000 or both.

**(ii)** For the purposes of application of subsequent offender penalties under subparagraph (i) of this paragraph, a conviction for a crime committed in another state or federal jurisdiction that, if committed in this State would constitute a violation of this section, § 2-210, § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of this article, or § 21-902 of the Transportation Article, shall be considered a violation of this section.

**(e)**

**(1)** An indictment or other charging document for manslaughter by vehicle or vessel is sufficient if it substantially states:

“(name of defendant) on (date) in (county) killed (name of victim) in a grossly negligent manner against the peace, government, and dignity of the State.”.

**(2)** An indictment or other charging document for manslaughter by vehicle or vessel need not set forth the manner or means of death.

## History

---

An. Code 1957, art. 27, § 388; 2002, ch. 26, § 2; 2016, chs. 517, 518.

Michie’s™ Annotated Code of Maryland

Copyright © 2023 All rights reserved.

**Content Type:**

**Terms:**

**Narrow By:** -None-

**Date and Time:** Feb 19, 2023 04:19:05 p.m. EST



Print

Cookie Policy

Terms & Conditions

**Document:** Md. Criminal Law Code Ann. § 2-210**Md. Criminal Law Code Ann. § 2-210****Copy Citation**

Current with all legislation from the 2022 Regular Session of the General Assembly; including legislation ratified by the voters at the November 2022 election.

**Michie's™ Annotated Code of Maryland Criminal Law (Titles 1 – 14) Title 2. Homicide. (Subts. 1 – 5) Subtitle 2. Murder and Manslaughter. (§§ 2-201 – 2-210)**

**§ 2-210. Manslaughter by vehicle or vessel — Criminal negligence.**

**(a)** In this section, “vehicle” includes a motor vehicle, streetcar, locomotive, engine, and train.

**(b)** A person may not cause the death of another as the result of the person’s driving, operating, or controlling a vehicle or vessel in a criminally negligent manner.

**(c)** For purposes of this section, a person acts in a criminally negligent manner with respect to a result or a circumstance when:

**(1)** the person should be aware, but fails to perceive, that the person’s conduct creates a substantial and unjustifiable risk that such a result will occur; and

**(2)** the failure to perceive constitutes a gross deviation from the standard of care that would be exercised by a reasonable person.

**(d)** It is not a violation of this section for a person to cause the death of another as the result of the person’s driving, operating, or controlling a vehicle or vessel in a negligent manner.

**(e)** A violation of this section is criminally negligent manslaughter by vehicle or vessel.

**(f)**

**(1)** Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.

**(2)**

**(i)** A person who violates this section, having previously been convicted under this section, § 2-209, § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of this article, or § 21-902 of the Transportation Article,

is guilty of a felony and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.

**(ii)** For the purposes of application of subsequent offender penalties under subparagraph (i) of this paragraph, a conviction for a crime committed in another state or federal jurisdiction that, if committed in this State would constitute a violation of this section, § 2-209, § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of this article, or § 21-902 of the Transportation Article, shall be considered a violation of this section.

## History

---

2011, ch. 334; 2016, chs. 517, 518.

Michie's™ Annotated Code of Maryland

Copyright © 2023 All rights reserved.

**Content Type:**

**Terms:**

**Narrow By:** -None-

**Date and Time:** Feb 19, 2023 04:28:55 p.m. EST



Print

Cookie Policy

Terms & Conditions

# Untitled document.pdf

Uploaded by: Randall Morris

Position: UNF

My name is Randall Morris and I am a Maryland Qualified Handgun Instructor, a NRA Certified Pistol Instructor and a NRA Certified Range Safety Officer.

I find this bill unfavorable, has no real safety impact, causes harm to law abiding citizens, and most likely would get struck down if it were to become law.

# **MSI Testimony on SB 656.pdf**

Uploaded by: Mark Pennak

Position: INFO



February 21, 2023

## WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, AS INFORMATION FOR SB 656

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is a Section 501(c)(4) all-volunteer, non-partisan, non-profit 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 Maryland and of the Bar of the District of Columbia. I recently 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, federal 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, personal protection in the home, personal protection outside the home and in muzzle loader. I appear today as President of MSI to provide INFORMATIONAL testimony on SB 656

### The Bill:

The Bill would amend MD Code Criminal Law § 4-104. Specifically, Section 4-104 currently provides that “[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 child is defined for these purposes as a person “under the age of 16 years.” The Bill would amend Section 4-104 to expand this ban on storage to include a ban on providing access to a WARD, who is defined to as an adult who is both **a prohibited person** and who is **THE SUBJECT OF A LEGAL GUARDIANSHIP**. The Bill then provides that a person may not also violate this ban on storage where such violation “**RESULTING IN THE CHILD OR WARD USING THE FIREARM AND CAUSING THE DEATH OF ANOTHER.**” A person who violates this additional prohibition is deemed to be “**GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH.**”

**The Bill Is Unnecessary:** The Bill cannot be justified as necessary to bar access to a firearm by a prohibited person. Existing federal and State law already ban possession by a prohibited person and these bans extend not only to actual possession but to constructive possession. “Constructive possession’ of a firearm is established when a person, though lacking physical custody of the firearm, still has the power and intent to exercise control over the firearm.” *Henderson v. United States*, 575 U.S. 622, 626 (2015). Such constructive possession is a violation of federal law, 18 U.S.C. § 922(g)(1), which is punishable by up to 10 years imprisonment under federal law. 18 U.S.C. § 924(a)(2). Under the Sentencing Reform Act of 1984, Congress eliminated parole for defendants convicted of federal crimes

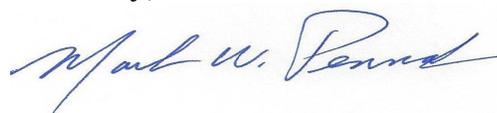
committed after November 1, 1987. Such constructive possession by a prohibited person also violates MD Code, Public Safety, § 5-133(b)(1) (regulated firearms), and MD Code, Public Safety, § 5-205(b)(1) (long guns). See, e.g., *Moore v. State*, 2106 WL 103352 (Ct.of.Sp.App. 2016). A violation of MD Code Public Safety, § 5-133(b), is punishable by imprisonment for up to 5 years and/or a fine not exceeding \$10,000. MD Code, Public Safety, § 5-144(b). Such possession by a convicted felon is a felony and is punishable by under Md Code, Public Safety, 5-133(c), for up to 15 years. These punishments are comparable to the punishment imposed by this Bill.

Persons who allow such access may be charged as accessories or as aiders and abettors or as co-conspirators. See 18 U.S.C. §§ 2, 3; MD Code, Criminal Procedure, § 4-204. See *United States v. Olson*, 856 F.3d 1216 (9th Cir. 2017); *Bellamy v. State*, 403 Md. 308, 334, 941 A.2d 1107, 1122 (2008). Allowing such access to a disqualified person is also chargeable under 18 U.S.C. § 922(d), a violation of which is a federal felony punishable by imprisonment for up to 15 years. 18 U.S.C. § 924(a)(8). See *United States v. Stegmeier*, 701 F.3d 574, 580 (8th Cir. 2012) (affirming a conviction under Section 922(d)).

**The Reckless Endangerment Statute Or The Manslaughter Statute Are Better Vehicles:** A failure to store a firearm properly can be (and has been) charged under Maryland's reckless endangerment statute. MD Code, Criminal Law, § 3-204. See <https://www.foxnews.com/us/baltimore-grandmother-indicted-9-year-old-boy-fatally-shot-teen-girl>. In our view, the "reckless endangerment" statute sets the appropriate legal standard for the imposition of the severe penalties contemplated by the Bill and effectively make this Bill unnecessary. That statute provides that "(a) A person may not recklessly: (1) engage in conduct that creates a substantial risk of death or serious physical injury to another." A violation is "subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both." This statute is already being used to address recklessly allowed access to a firearm by a child. The same statute is equally applicable to recklessly allowing access to a firearm by a prohibited person who is also a ward of the defendant.

Section 3-204 could easily be amended to provide for an increase of penalties to 10 years of imprisonment and a fine of \$10,000 where a person recklessly allows access to a firearm death results from the use of that firearm by the ward or a child. Such recklessness or "gross negligence" is, for example, the standard used by MD Code, Criminal Law, § 2-209 to punish "manslaughter by vehicle or vessel." As with this Bill, a violation of Section 2-209 is a felony and punishable by up to 10 years in prison. In both cases, death was the unintended result of reckless behavior. The conduct addressed by the Bill is also arguably addressed by Maryland's "manslaughter" statute, which is likewise punishable as a felony and imprisonment for up to 10 years. MD Code, Criminal Law, § 2-207. See *Tolen v. State*, 242 Md.App. 288, 215 A.3d 363, 369 (2019) (discussing the elements of involuntary "unlawful act-manslaughter"). Any competent prosecutor can make use of these tools to address the circumstances described in this Bill. These tools need only be used.

Sincerely,



Mark W. Pennak  
President, Maryland Shall Issue, Inc.

[mpennak@marylandshallissue.org](mailto:mpennak@marylandshallissue.org)

# **SB 656 Failure to Properly Store a Firearm OPD inf**

Uploaded by: Melissa Rothstein

Position: INFO



NATASHA DARTIGUE  
PUBLIC DEFENDER

KEITH LOTRIDGE  
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN  
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD  
ACTING DIRECTOR OF GOVERNMENT RELATIONS

## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB 656 Criminal Law – Failure to Properly Store Firearm – Death of Another**

**FROM: Maryland Office of the Public Defender**

**POSITION: Informational**

The Maryland Office of the Public Defender provides this information to highlight the impact of Senate Bill 656's revisions to Criminal Law § 4-104(c) and (d), which will establish an incarcerable felony where a child or ward uses a firearm that was improperly stored, resulting in the death of another person.

These provisions predominantly target parents and guardians -- specifically parents and guardians who may lawfully possess a gun, but on at least one occasion did not properly store it, with tragic results. Its incarcerable penalties will inherently separate families. While proper gun storage is an important consideration in parenting, redressing it through incarceration is draconian, particularly where, as here, there is no requisite intent.

The threat of a felony sentence will not prevent improper storage of a firearm. Rather, it is more likely to increase criminality and instability among individuals and families. Even a few days of incarceration can have lasting and debilitating effects, including housing instability, unemployment, destabilized family relationships, and psychological trauma for both parents and children. Incarceration is known to have negative health consequences, and is ill-suited to provide even basic medical care, factors that have become more apparent and especially dangerous since the COVID pandemic began. A felony conviction heightens these barriers, often precluding government assistance, housing, professional licensure and other job opportunities.

Racial disparities in both law enforcement and child welfare monitoring make unequal enforcement of § 4-104 especially likely. The trauma associated with arrest and incarceration further contributes to ongoing health disparities for Black Marylanders.

Proactive measures that respond to concerns related to gun possession and use are more effective and warranted than additional crimes and penalties. Education about gun safety and proper storage techniques should be prioritized. Where a gun was fatally used by a child or ward, crisis response and trauma counseling are needed, rather than destabilizing measures that incarcerate their parent or guardian.

---

**Submitted by: Government Relations Division of the Maryland Office of the Public Defender.**

**Authored by: Melissa Rothstein, Chief of External Affairs,  
[melissa.rothstein@maryland.gov](mailto:melissa.rothstein@maryland.gov), 410-767-9853.**