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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.

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