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Senate Bills 79 and 80 (as enrolled)
Sponsor: Senator Rosemary Bayer (S.B. 79)
 Senator Kristin McDonald Rivet (S.B. 80)
Senate Committee: Civil Rights, Judiciary, and Public Safety
House Committee: Judiciary

Date Completed: 3-24-23

INTRODUCTION

Collectively, the bills would require an individual who stored or left a firearm unattended in a place where the individual knew or reasonably should have known that a minor was present to follow specified safe storage requirements. They would prescribe penalties to an individual who failed to follow the safe storage requirements if a minor did obtain the firearm. In addition, they would require a Federally licensed firearm dealer in the State to include literature for free with the sale of a firearm that describes the proposed safe storage requirements, among other information. Senate Bill 80 is tie-barred to Senate Bill 79.

BRIEF RATIONALE

Michigan law prohibits a minor from possessing a firearm unless under the direct supervision of an adult. Some contend that this prohibition fails to prevent some minors from gaining access to firearms and using them without the required supervision, which can lead to injuries or fatalities. Accordingly, it has been suggested that individuals be required to store firearms in locked containers or with locking devices to prevent their unsupervised use by minors.

BRIEF FISCAL IMPACT

Taken together, the bills would have a negative fiscal impact on State and local government. Senate Bill 79's criminal penalties could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. Any associated increase in fine revenue would increase funding to public libraries. Senate Bill 79 also would lead to indeterminate minor costs for the Department of Health and Human Services (DHHS) and Department of Attorney General resulting from requirements proposed in the bill.

Senate Bill 80 would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases.

MCL 28.435 et al. (S.B. 79)
711.11b (S.B. 80)

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CONTENT

Senate Bill 79 would amend the handgun licensure Act to do the following:

- **Require an individual to comply with certain requirements for the safe storage of a firearm that could be accessible to a minor.**
- **Prescribe penalties for violations of the bill.**
- **Require the Department of Health and Human Services (DHHS) inform the public of the requirements and penalties of the bill.**
- **Require the DHHS to publish lethal means counseling literature and provide that literature to Federally licensed firearm dealers.**
- **Require Federally licensed firearm deals to include specified literature with the sale of a firearm**
- **Modify a provision requiring Federally licensed firearm dealers to post language about safe storage on points of sale on the premises where firearms are sold.**

Senate Bill 80 would amend Code of Criminal Procedure to add the felonies proposed in Senate Bill 79 to the sentencing guidelines.

Senate Bill 79

Safe Storage Requirements

The bill would add Section 9 to the handgun licensure Act to require an individual who stored or left a firearm unattended on premises under the individual's control, and who knew or reasonably should have known that a minor was, or was likely to be, present on the premises, to do one or more of the following:

- Store the firearm in a locked box or container.
- Keep the firearm unloaded and lock the firearm with a locking device that was properly engaged to render the firearm inoperable by any individual other than the owner or an authorized user.

"Minor" would mean an individual less than 18 years of age.

"Locked box or container" would mean a secure container, specifically designed for the storage of firearms that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device to which a minor does not possess the key or combination, or otherwise have access. "Locking device" would mean a trigger lock, cable lock, or similar lock that prevents a firearm from discharging.

An individual who entered onto the premises of another individual and stored or left a firearm unattended on those premises, and who knew or reasonably should have known that a minor was, or was likely to be, present on the premises, would have to do one or more of the following:

- Store the firearm in a locked box or container.
- Keep the firearm unloaded and lock the firearm with a locking device that was properly engaged to render the firearm inoperable by an individual other than the owner or an authorized user.
- Before entering onto premises, store the firearm in a locked box or container in the vehicle, or keep the firearm unloaded and lock it with a locking device that was properly engaged to render the firearm inoperable by anyone but the authorized user.

In addition, the bill specifies that an individual storing the firearm in a motor vehicle as described above would have to lock the motor vehicle.

Penalties

Under the bill, an individual who violated the bill's provisions by failing to store or leave a firearm in a manner as described above would be guilty of a misdemeanor punishable by up to 93 days imprisonment or a fine of up to \$500, or both, if the following occurred because of that violation:

- A minor obtained the firearm.
- The minor possessed or exhibited the firearm in a public place or in the presence of another person in a careless, reckless, or threatening manner.

If an individual failed to properly store or leave a firearm as prescribed by the bill, and as a result of that failure, a minor obtained the firearm, discharged it and inflicted injury upon the minor or any other individual, and the individual knew or should have known that the minor was likely to use the firearm to injure the minor or another individual, the individual would be guilty of a felony punishable by imprisonment for up to five years or a maximum fine of \$5,000, or both.

If an individual failed to properly store or leave a firearm as prescribed by the bill, and because of that failure, a minor obtained the firearm, discharged it and inflicted serious impairment of a body function upon the minor or any other individual, the individual would be guilty of a felony punishable by up to 10 years or a fine of up to \$7,500, or both.

"Serious impairment of a body function" would mean that term as defined in Section 58c of the Michigan Vehicle Code. (Section 58c of the Code specifies that the term includes one or more of the following: a) loss of a limb or loss of use of a limb; b) loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb; c) loss of an eye or ear or loss of use of an eye or ear; d) loss or substantial impairment of a bodily function; e) serious visible disfigurement; f) a comatose state that lasts for more than 3 days; g) measurable brain or mental impairment; h) a skull fracture or other serious bone fracture; i) subdural hemorrhage or subdural hematoma; j) loss of an organ.)

If an individual failed to properly store or leave a firearm as prescribed by the bill, and as a result, a minor obtained the firearm, discharged it and inflicted death upon the minor or any other individual, the individual would be guilty of a felony punishable by imprisonment for up to 15 years or a maximum fine of \$15,000, or both.

The bill specifies that a criminal penalty described above could be imposed in addition to any penalty that could be imposed for any other criminal offense arising from the same conduct.

Exceptions

Section 9 would not apply if a minor did the following:

- The minor obtained a firearm with the permission of the minor's parent or guardian.
- Used or possessed the firearm while the minor was under the supervision of the minor's parent, guardian, or any individual who was at least 18 years old and was authorized by the person's parent or guardian.
- The minor used or possessed the firearm during the minor's employment, ranching or farming, or target practice or instruction in the safe use of a firearm.

In addition, Section 9 also would not apply in the following circumstances:

- A minor who obtained a firearm with the permission of the minor's parent or guardian and who used or possessed the firearm for the purpose of hunting if the minor complied with applicable hunting laws.
- A minor who obtained a firearm through the minor's unlawful entry of any premises or the more vehicle where the firearm had been stored.
- A minor who obtained a firearm lawfully acting in self-defense or defense of another.

Safe Storage Literature

The bill would require the DHHS to inform the public of the penalties for failing to store or leave a firearm in the manner prescribed by the bill in consultation with the Department of Attorney General. The DHHS also would have to publish lethal means counseling literature and provide that literature to Federally licensed firearm dealers for the purposes described below.

The Act prohibits a Federally licensed firearms dealer from selling a firearm in Michigan unless the firearm is accompanied with, free of charge, a brochure or pamphlet that includes safety information on the use and storage of the firearm. Under the bill, a licensed dealer also would have to supply a written warning informing the purchaser of the penalties for failing to store or leave a firearm and lethal means counseling literature published by the DHHS.

Federally Licensed Firearm Dealers

The Act requires a Federally licensed firearms dealer to post in a conspicuous manner at the entrances, exits, and all points of sale on the premises where firearms are sold a notice that states, "You may be criminally and civilly liable for any harm caused by a person less than 18 years of age who lawfully gains unsupervised access to your firearm if unlawfully stored". Instead, under the bill, a Federally licensed firearms dealer would have to post in a conspicuous manner at the entrances, exits, and all points of sale on the premises where firearms were sold a notice that informed the reader that failing to store or leave a firearm in the described manner is unlawful.

Senate Bill 80

The bill would amend the Code of Criminal Procedure to add the following sentencing guidelines:

- Failure to store a firearm resulting in injury as a Class E felony against public safety with a statutory maximum sentence of five years' imprisonment
- Failure to store a firearm resulting in serious impairment of body function as a Class D felony with a statutory maximum of 10 years' imprisonment.
- Failure to store a firearm resulting in death as a Class C felony against public safety with a statutory maximum sentence of 15 years' imprisonment.

Currently, under the Code a consumer fireworks certification is a Class G felony against public safety with a statutory maximum sentence of two years' imprisonment. In addition, a student safety zone violation involving work, loitering, or residency and any subsequent offense is a Class G felony against the public trust with a statutory maximum sentence of two years' imprisonment. The bill would delete these sentencing requirements.

FISCAL IMPACT

Senate Bill 79's criminal penalties could have a negative fiscal impact on the State and local government. Violations would be punishable as misdemeanors and felonies of varying severity. More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,400 per probationer per year. For any increase in prison intakes, the average annual cost of housing a prisoner in a State correctional facility is an estimated \$45,700. Per diem rates range from \$98 to \$192 per day, depending on the security level of facility. Any associated increase in fine revenue would increase funding to public libraries.

Senate Bill 79 would lead to indeterminate minor costs for the DHHS resulting from the requirement that it publish lethal means counseling literature and provide that literature to Federally licensed firearms. Additionally, the DHHS and Department of Attorney General could face an indeterminate increase in costs resulting from the requirement that the public be informed of the penalties proposed under the bill. The bill does not specify what means the DHHS would need to use to inform the public. If the requirements could be fulfilled through making the information available on the Department's webpage, the cost would be minimal. However, if it is necessary that the Department implement a statewide media campaign, the costs could increase significantly.

Senate Bill 80 would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.