



Senate Fiscal Agency  
P.O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bills 79 and 80 (as enacted)

**PUBLIC ACTS 16 & 17 of 2023**

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: 4-15-24

**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 was suggested that individuals be required to store firearms in locked containers or with locking devices to prevent unsupervised firearm use by minors.

**CONTENT**

**Senate Bill 79 amended 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) to 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 amended the Code of Criminal Procedure to add the felonies proposed in Senate Bill 79 to the sentencing guidelines.**

The bills took effect on February 13, 2024.

**Senate Bill 79**

**Safe Storage Requirements**

The bill added Section 9 to the handgun licensure Act to require an individual who stores or leaves a firearm unattended on premises under the individual's control, and who knows or reasonably should know that a minor is, or is 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 is properly engaged to render the firearm inoperable by any individual other than the owner or an authorized user.

"Minor" means an individual less than 18 years of age.

"Locked box or container" means 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" means a trigger lock, cable lock, or similar lock that prevents a firearm from discharging.

An individual who enters onto the premises of another individual and stores or leaves a firearm unattended on those premises, and who knows or reasonably should know that a minor is, or is likely to be, present on the premises, must 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 is 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 is properly engaged to render the firearm inoperable by anyone but the authorized user.

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

#### Penalties

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

- A minor obtains the firearm.
- The minor possesses or exhibits the firearm in a public place or in the presence of another person in a careless, reckless, or threatening manner.

If an individual fails to properly store or leave a firearm as prescribed by the bill, and as a result of that failure, a minor obtains the firearm, discharges it and inflicts injury upon the minor or any other individual, and the individual knows or should know that the minor is likely to use the firearm to injure the minor or another individual, the individual is guilty of a felony punishable by imprisonment for up to five years or a maximum fine of \$5,000, or both.

If an individual fails to properly store or leave a firearm as prescribed by the bill, and because of that failure, a minor obtains the firearm, discharges it and inflicts serious impairment of a body function upon the minor or any other individual, the individual is 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" means 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 fails to properly store or leave a firearm as prescribed by the bill, and as a result, a minor obtains the firearm, discharges it and inflicts death upon the minor or any other individual, the individual is 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 can be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct.

### Exceptions

Section 9 does not apply if a minor does the following:

- The minor obtains a firearm with the permission of the minor's parent or guardian.
- Uses or possesses the firearm while the minor is under the supervision of the minor's parent, guardian, or any individual who is at least 18 years old and is authorized by the person's parent or guardian.
- The minor uses or possesses 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 does not apply in the following circumstances:

- A minor who obtains a firearm with the permission of the minor's parent or guardian and who uses or possesses the firearm for the purpose of hunting if the minor complies with applicable hunting laws.
- A minor who obtains a firearm through the minor's unlawful entry of any premises or the more vehicle where the firearm has been stored.
- A minor who obtains a firearm lawfully acting in self-defense or defense of another.

### Safe Storage Literature

The bill requires 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 must 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 must 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

Previously, the Act required 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 were sold a notice that stated, "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 must post in a conspicuous manner at the entrances, exits, and all points of sale on the premises where firearms are sold a notice that informs the reader that failing to store or leave a firearm in the described manner is unlawful.

## **Senate Bill 80**

The bill amended 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.

Previously, a consumer fireworks certification was 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 was a Class G felony against the public trust with a statutory maximum sentence of two years' imprisonment. The bill deleted these sentencing requirements.

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

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Due to current habits of unsafe firearm storage, safe storage laws with criminal consequences have been associated with a decrease in nonfatal firearm injuries for minors and lower rates of teen suicide by firearm.<sup>1</sup> As of 2016, 54% of firearm owners nationwide reported storing their firearm in an unsafe fashion.<sup>2</sup> This has led to a public health emergency regarding firearm deaths among minors. In Michigan, the leading cause of death among individuals under the age of 19 is access to firearms.<sup>3</sup> Sixty percent of firearm deaths are suicides and about 50% of all suicides in Michigan are done by firearm.<sup>4</sup> Of those individuals who attempt suicide by firearm, 90% are successful.<sup>5</sup> The unsafe storage of firearms contributes to this problem. In states with safe storage laws, adolescents aged 14 to 17 saw an 8% decrease in total suicide rates and an 11% decrease in firearm suicide rates.<sup>6</sup> Safe storage reduces overall risk of child injury and death by 75 to 80%.<sup>7</sup>

According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, safe storage laws with criminal consequences also can reduce firearm deaths and injuries resulting from interpersonal violence and unintentional shootings for youth. Households that lock firearms and ammunition are associated with 78% lower risk of self-

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<sup>1</sup> Webster, D., et al., "Association Between Youth-Focused Firearm Laws and Youth Suicides".

<sup>2</sup> Johns Hopkins, Bloomberg School of Public Health, "Survey: More Than Half of U.S. Gun Owners Do Not Safely Store Their Guns", February 2018.

<sup>3</sup> Centers for Disease Control and Prevention, CDC Wonder "About Underlying Cause of Death, 1999-2020", 2024.

<sup>4</sup> Prevent Firearm Suicide, "Michigan", 2019.

<sup>5</sup> Connor, A. et al., National Library of Medicine, "Suicide Case-Fatality Rates in the United States, 2007 to 2014: A Nationwide Population-Based Study", December 2019.

<sup>6</sup> Webster, D., et al., JAMA Network, "Association Between Youth-Focused Firearm Laws and Youth Suicides", August 2004.

<sup>7</sup> King, C., et al., University of Michigan Institute for Firearm Injury Prevention, "Firearm Safety Education to Reduce Morbidity and Mortality in Rural Youth", 2022.

inflicted firearm injuries and 85% lower risk of unintentional firearm injuries among children.<sup>8</sup> If at least half of households with children that contain at least one unlocked gun switched to storing safely all firearms, 32% of youth firearm deaths could be prevented, saving 251 lives in a single year.<sup>9</sup>

**Response:** According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, firearms are not the only effective means of committing suicide and limiting a minor's access to a firearm may result in similar suicide rates by other means.

### **Supporting Argument**

According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, prosecutors previously lacked the necessary tools to reliably convict an individual of an offense resulting from the unsafe storage of a firearm. By enacting a law that requires safe firearm storage, prosecutors will no longer have to prove elements of manslaughter, gross negligence, or child abuse if they want to convict someone who has not stored their firearm safely. Instead, prosecutors may pursue a conviction under the law intended to combat unsafe gun storage. This would help prosecutors because concepts like manslaughter, gross negligence, and child abuse are often difficult for juries. Additionally, safe storage laws will provide a penalty specific for the crime of unsafe gun storage, resulting in more appropriate justice.

### **Supporting Argument**

According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, gun threats to schools have increased in the last decade and contribute to teachers and students feeling unsafe at school. This has led to a public health emergency in which teachers and students feel unsafe because they are worried about the possibility of a school shooting. School shootings inflict significant loss and trauma on teachers, students, and the local community. Seventy-six percent of school shooters acquired their firearm from the home of a parent or close relative.<sup>10</sup> Testimony also indicates that the mass shooter at the Oxford High School shooting on November 30, 2021 would not have been able to obtain a firearm under the bill's safe storage laws because the shooter unlawfully obtained the firearm from his parents. Therefore, safe storage laws will contribute to preventing school shootings and reducing this public health emergency among teachers and students.

### **Opposing Argument**

According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, individuals benefit from having quick access to their firearms. Reportedly, individuals use guns defensively to stop violent crime at least five times more often each year than they use guns to commit crimes. Storing a firearm in a safe storage container is a barrier to quick access in situations where violence can be prevented. Additionally, specific groups of people benefit the most from having quick access to firearms for self-defense, such as those who are victims of violent crimes and those who are physically weaker, like the elderly. Safe storage may prevent individuals in these groups from accessing the firearm in an appropriate timeframe to stop an assailant. For these reasons, the bills should not have been enacted.

### **Opposing Argument**

Reportedly, the bills' safe storage laws may increase the likelihood that criminals commit crimes because guns serve as deterrents for home invasion and burglary. According to

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<sup>8</sup> Grossman, D., et al., JAMA Network, "*Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*", February 2005.

<sup>9</sup> Monuteaux, M., et al., JAMA Network, "*Association of Increased Safe Household Firearm Storage With Firearm Suicide and Unintentional Death Among US Youths*", May 2019.

<sup>10</sup> United States Secret Service, United States Department of Homeland Security, "*Protecting America's Schools: A U.S. Secret Service Analysis of Targeted School Violence*", 2019.

testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, 60% of home raids in the United Kingdom occur when the homeowner is still inside the home. In the United States, only 13% of home raids occur when the homeowner is still inside the home. Reportedly, on average, American burglars spend twice as long investigating a home before burglary than British burglars because they're worried about a firearm in the home being used against them. This demonstrates that ease of access to firearms is important for deterring crimes.

### **Opposing Argument**

Safe storage laws are not necessary for the wellbeing and protection of Michigan residents if existing laws are enforced better. Specifically, the practice of offering plea deals to offenders who committed firearm-related crimes enables those individuals to continue to legally purchase and possess firearms in the State if the offense is pleaded down from a felony to a misdemeanor. Generally, a plea deal is an agreement made in a court proceeding between the prosecution and the defendant where the defendant pleads guilty to a crime in exchange for a less punitive sentence. Because Michigan law prohibits a person with a felony from purchasing a firearm, offering a plea deal that reduces a sentence from a felony to a misdemeanor may preserve a convicted person's right to purchase a firearm.

According to testimony before the Senate, this same plea deal model was used during a violation of a previous firearm-related law in 2019 with the school shooter who committed the mass shooting at Michigan State University on February 13, 2023. If felony convictions had been pursued for the shooter's previous firearm-related violations, that shooter would not have legally been able to purchase the firearm used in the mass shooting. Reworking the way prosecutors give plea deals to individuals with firearm-related crimes would be a sufficient solution to reduce firearm deaths and mass shootings.

Legislative Analyst: Eleni Lionas

### **FISCAL IMPACT**

Senate Bill 79's criminal penalties may have a negative fiscal impact on the State and local government. Violations are punishable as misdemeanors and felonies of varying severity. More misdemeanor and felony arrests and convictions may 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 will increase funding to public libraries.

Senate Bill 79 may 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 may 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 must use to inform the public. If the requirements can 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 may increase significantly.

Senate Bill 80 will 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 will 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.

Fiscal Analysts: Ellyn Ackerman  
Joe Carrasco, Jr.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.