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Senate Bills 79 and 80 (as introduced 2-16-23)
Sponsor: Senator Rosemary Bayer (S.B. 79)
Senator Kristen McDonald-Rivet (S.B. 80)
Committee: Civil Rights, Judiciary, and Public Safety

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INTRODUCTION

Collectively, the bills would require an individual who stored or left a firearm unattended in a place that could be accessible to a minor 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.

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 Department of Health and Human Services (DHHS) resulting from the requirement that it publish lethal means counseling literature and provide that literature to Federally licensed firearms. Additionally, the DHHS would 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 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.

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 failing to store a firearm resulting in death or injury 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 the firearm was accessible to a minor, 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 that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. "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 the firearm was accessible to a minor, 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.
- Before entering onto premises, lock the firearm in the glovebox in the individual's vehicle.

Penalties

If an individual failed to properly store or leave a firearm, and as a result of that failure, a minor obtained the firearm, used it to inflict 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, and as a result of that failure, a minor obtained the firearm, used it to inflict death 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 15 years or a maximum fine of \$7,500, or both.

Exceptions

Proposed Section 9 would not apply under the following circumstances:

- The minor obtained a firearm through the minor's unlawful entry of any premises where the firearm had been stored or through the minor's illegal taking of the firearm from the owner's premises.
- The minor obtained a firearm while lawfully acting in self-defense or defense of another.

Additionally, proposed Section 9 would not apply if the minor obtained a firearm with the permission of the minor's parent or guardian and the minor used or possessed the firearm during any of the following:

- The minor's employment.
- Ranching or farming.
- Target practice, hunting, or instruction in the safe use of a firearm.

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. 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 failing to store a firearm resulting in injury as a Class E felony against public safety with a statutory maximum sentence of five years' imprisonment. The bill also would add a 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.

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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.