

HOUSE BILL REPORT

HB 1122

As Reported by House Committee On: Judiciary

Title: An act relating to protecting public safety through responsible storage of firearms.

Brief Description: Protecting public safety through responsible storage of firearms.

Sponsors: Representatives Kagi, Jinkins, Cody, Robinson, Gregerson, Ryu, Ortiz-Self, Fitzgibbon, Farrell, Tharinger, Doglio, Dolan, Frame, Tarleton, Appleton, Springer, Lytton, Chapman, Stanford, Peterson, Ormsby, McBride, Fey, Kloba, Senn, Sells, Kilduff, Santos, Riccelli, Bergquist and Goodman.

Brief History:

Committee Activity:

Judiciary: 2/2/17, 2/16/17 [DPS].

Brief Summary of Substitute Bill

- Provides that, under certain circumstances, a person is guilty of Reckless Endangerment for leaving or storing a firearm in a location where a child is likely to access the firearm and does access and use the firearm.
- Requires firearms dealers to offer to sell or give purchasers a locked box, lock, or device that prevents a firearm from discharging, and provide warnings regarding potential criminal liability for unsafe storage of firearms.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Frame, Goodman, Hansen, Kirby and Orwall.

Minority Report: Do not pass. Signed by 5 members: Representatives Rodne, Ranking Minority Member; Graves, Haler, Klippert and Shea.

Minority Report: Without recommendation. Signed by 1 member: Representative Muri, Assistant Ranking Minority Member.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Edie Adams (786-7180).

Background:

Certain persons are prohibited from possessing firearms under federal and state law. Under state law, a person is prohibited from owning or possessing a firearm when the person:

- has a felony conviction or finding of not guilty by reason of insanity;
- has a conviction or finding of not guilty by reason of insanity for certain domestic violence offenses;
- is subject to a qualifying protection order, no-contact order, or restraining order that meets certain criteria;
- has previously been committed for involuntary mental health treatment for 14 days or after being found criminally insane or incompetent to stand trial;
- is free on bond or personal recognizance for a serious offense;
- is an offender under Department of Corrections supervision;
- is a non-citizen, unless the person has an alien firearms license; or
- is under age 18 (with exceptions), or with respect to possession of pistols, is under age 21 (with exceptions).

Circumstances where a minor is permitted to possess a firearm include: hunting or trapping under a valid license; attending a hunter or firearms safety course; shooting at an established shooting range; engaging in an organized firearms competition; or acting with permission of a parent or guardian at home or on other property controlled by the parent or guardian.

State firearms laws make it unlawful for a person to deliver a firearm to anyone whom the person has reasonable cause to believe is ineligible under state law to possess a firearm. There are no laws specifically addressing criminal or civil liability for storing or leaving a firearm where a minor can obtain access to the firearm.

A person commits the crime of Reckless Endangerment if the person recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another person. A person acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur, and the disregard of that risk is a gross deviation from conduct that a reasonable person would exercise in the same situation. Reckless Endangerment is a gross misdemeanor offense.

Summary of Substitute Bill:

A person is guilty of Reckless Endangerment if the person stores or leaves a firearm in a location where the person knows, or reasonably should know, that a child is likely to gain access, and the child obtains access and possession of the firearm and either:

- causes personal injury or death with the firearm, in which case the offense is an unranked class C felony; or
- causes the firearm to discharge, exhibits the firearm in a public place or in an angry, threatening, or careless manner, or uses the firearm in a crime, in which case the offense is a gross misdemeanor.

The crime does not apply if the firearm was secured in a locked box, gun safe, or other secure locked storage space, or secured with a lock or device that prevents the firearm from discharging. In addition, the crime does not apply if:

- the child's access to the firearm was with the permission of a parent or guardian and supervised by an adult, or is in accordance with laws governing permissible possession of firearms by minors;
- the child's access was obtained as the result of an unlawful entry; or
- the child obtains, or obtains and discharges, the firearm in a lawful act of self-defense.

"Child" means a person under the age of 18.

A prosecuting attorney may decline to prosecute an alleged violation that results in a death or serious injury, such as in the case of a parent who loses a child to suicide by means of a firearm, if prosecution of the violation would serve no public purpose, defeat the purpose of the law, or result in decreased respect for the law.

A firearms dealer must offer to sell or give to a purchaser of any firearm a locked box, a lock, or a device that prevents the discharge of the firearm. In addition, firearms dealers must prominently post a sign on the premises, and deliver written materials to firearms purchasers, that provide a warning indicating that it is a crime to leave an unsecured firearm where a child can and does gain possession. A firearms dealer who violates these requirements is guilty of a class 3 civil infraction and subject to a fine of up to \$50.

Nothing in the act is intended to mandate how or where a firearm must be stored.

Substitute Bill Compared to Original Bill:

The new criminal provisions relating to unsafe storage of a firearm are placed under the Reckless Endangerment statute, rather than constituting a new crime of Community Endangerment Due to Unsafe Storage of a Firearm. The criminal offense is limited to instances where a child gains access to a firearm, rather than any prohibited person. The crime does not apply if the child's access to the firearm was obtained as a result of an unlawful entry. Language referencing the loss of a child to suicide by means of a firearm is included in the provision addressing prosecutorial discretion to decline to prosecute a violation in cases where a death or serious injury results.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Keeping guns out of dangerous hands is the most effective thing we can do to keep people safe. Unsecured firearms have been at the heart of some of the most tragic incidents. Child access is a serious issue, especially considering that youth suicide rates are very high and that there are too many cases in which youth have gained access to firearms and created carnage. This legislation is built on a Florida law, and there are 28 other states with similar laws. There is evidence these laws result in a decrease in deaths. We often hear it said that it is not guns, but rather people, who kill people. This bill is an attempt to keep guns out of the hands of dangerous people and children who do not understand how to handle guns. It is clear the public supports responsible gun ownership laws.

We hear about these tragic stories of youth obtaining access to firearms and causing death or serious injury. These cases have a violent impact on communities and families. The third leading cause of death of children between the ages of 10 and 14 is death by firearm. These stories don't seem to make a difference. There has to be something that will move the Legislature to act to save lives. These tragic deaths are preventable with basic precautions. Considering the damage that firearms cause, it is inadequate to put forth objections about stigmatizing gun owners and comments that other things can kill children. This bill does not interfere with a person's right to lawful self-defense.

Owning firearms comes with responsibility, part of which is safe storage so that they are not accessible to children and others who should not have access. While the bill will not prevent all guns from getting into the wrong hands, it can help prevent senseless heartache and tragedy. Some of the most tragic cases involve children shooting themselves or their siblings or friends. These tragedies often involve guns that have been taken from homes. In 65 percent of school shootings, the gun was obtained from the home. Preventable gun violence is not a partisan issue. The citizens of this state have spoken that they want responsible gun laws.

Our law currently allows firearms owners to leave a firearm out in the open with no consequences. We do not have any criminal laws to address these situations. In one case, a person kept loaded and cocked semi-automatic pistols in virtually every room in a house where a child lived. The child took one of the guns to school and a classmate was seriously injured. This person was charged on a negligence theory of Assault in the third degree, but he bore no criminal responsibility. The court found the storage habits were negligent, but the law did not allow imposition of criminal liability for that negligence.

(Opposed) Training and education is the best way to prevent inappropriate access to firearms. We need to teach people how to be safe and responsible with firearms. There is nothing in this legislation that provides information or awareness to teach people responsible gun ownership. The bill has goals that many people agree with, and we all recognize the importance of educating firearms owners about the tools that can be used for securing firearms. It is in the discretion of firearms owners how best to apply those tools. This bill is attempting to regulate common sense. To put someone in prison after the accident has occurred is like closing the barn door after the horse has gotten out. To truly have an effect in reducing these tragedies, the legislation should focus on educating people rather than passing laws to lock them up. Throwing a parent in prison after losing a child in a tragic accident will only result in a decreased respect for the law.

Firearm owners are already responsible with their firearms. Firearms are involved in a disproportionately low percentage of deaths of children. Guns are involved in less than one-half of 1 percent of accidental deaths of children. The per capita rate of accidents involving firearms has decreased while firearm ownership is at an all-time high. Current law already provides a remedy. The crime of Reckless Endangerment applies to these situations, and this crime has been used to obtain convictions.

This bill does not consider a securely locked home as providing secure storage. A person who locks his or her home should not be responsible if a criminal breaks in and takes the firearm. This legislation turns honest Americans who are victims of theft into felons. There is nothing in the bill that increases the penalty for someone who breaks into a home and steals a firearm. This form of gun control does not work and will not stop bad people from getting guns. All it will do is prevent people from being able to defend themselves if someone breaks into their homes. Every firearm already comes with a locking device as required by federal and state law, so that provision of the bill is unnecessary. The felony offense is unwarranted. If the action is not intentional then the person should not be charged with a felony.

Persons Testifying: (In support) Representative Kagi, prime sponsor; Lelach Rave, Washington Chapter of the American Academy of Pediatrics; Sundae Delgado; Timothy Moses; Adrian Diaz, Seattle Police Department; Roberta Greenwood; Russ Hague; Janis Flagg; Leann Kennedy; and Kelly Bernardo.

(Opposed) William Parks, Inland Northwest Action Shooters and Spokane Academy of Defensive Shooting; James Williams, Tacoma Sportsmen's Club; Grey Wunderly; Boyd Kneeland, Washington Arms Collectors; Keely Hopkins, National Rifle Association; Melissa Denny, Pistol Annie's Jewelry and Pawn; Marty Hayes, Firearms Academy of Seattle; Ralph Myers; and Phil Watson, Firearms Policy Coalition.

Persons Signed In To Testify But Not Testifying: Pat Griffith, League of Women Voters of Washington; Allen Bentley; Tony Gomez, King County Public Health; Aulisandria Hardwell; Kay Shoudy and Nancy Dombrowski, Grandmothers Against Gun Violence; Mike Lucero, Janice Hopwood, and Leanne Kennedy, Alliance for Gun Responsibility; Annabel Kirschner; Kelly Bernardo; Nathan Hockett; Larry King; Dave Douglas, Moms Demand Action; Peter Haigh; Rick Halle, Gun Rights Coalition; Michael Settles; Jane Milhans; Wendy Stevens; Bea Christophersen; Carol Evans; Michael Long; Priest Harold; Ira Moser; Edward Kelley; Steven Mena; Michael Brumback; Ernest Rodriguez; Matt Bower; Clark Sealls; Allen Ernst; Jonathan Kohl; Matthew Smiddy; Steve Ludden; Jim Goldsmith; Mark Pidgeon, Hunters Heritage Council; Alex Jamerson; Clint Beyer; Christopher Irwin; Sean Jeanes; Andrew Mesojednik; Chris Shock; Mark Witte; and Eric Miller.