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UNATTENDED FIREARMS WITHIN REACH OR ACCESS OF A MINOR

House Bill 5745 (Substitute H-1)
House Bill 5746 (Substitute H-1)
Sponsor: Rep. Marc Shulman

House Bill 5747 (Substitute H-1)
Sponsor: Rep. James Koetje

**Committee: Conservation and Outdoor
Recreation**
First Analysis (5-23-00)

THE APPARENT PROBLEM:

In the wake of a number of shootings involving seemingly ever younger children, many people have concluded that further efforts are needed to emphasize that gun owners must be responsible for making certain that children are not able to get to and make use of firearms. One of the most recent of these tragedies highlighted the problems that exist in current law. After the shooting death of one six-year-old child by another six-year-old, it was discovered that the gun used in the shooting had been left unattended in the home of the child who did the shooting. Many people believe that the child's responsibility in this shooting pales in comparison to the responsibility of the adult whose behavior allowed the child to gain access to the gun. Unfortunately, current law makes prosecution of the person who essentially made the gun available for the child who did the shooting difficult and uncertain at best. Furthermore, similar gaps exist in civil law. Gun owners who behave irresponsibly and allow small children access to firearms should face not only criminal sanctions but should risk being subjected to civil actions as well.

THE CONTENT OF THE BILLS:

House Bill 5745 would amend the Michigan Penal Code to add civil and criminal penalties for leaving firearms unattended where children under the age of 18 had access to them, but would exempt people who had taken any one of a number of actions to secure their firearms. House Bill 5746 would amend the Code of Criminal Procedure (MCL 777.16m) to add the new crimes proposed by House Bill 5745 to the sentencing guidelines, and would not take effect unless House Bill 5745 were enacted. House Bill 5747 would amend the Revised Judicature Act to impose civil liability for

leaving a firearm unattended within reach or access of a minor.

House Bill 5745 would add a new section to the Michigan Penal Code (MCL 750.223a) that would make it a state civil infraction, punishable by a fine of up to \$100, to leave a firearm "unattended in any place in which the person [knew] or recklessly disregard[ed] that a juvenile [could] be lawfully present, not under adult supervision, and able to gain access to the firearm." The violation would be a crime if a juvenile gained access to, and possessed, the unattended firearm, or someone else obtained the firearm from the juvenile and any of the following circumstances existed:

- the possession of the firearm created a substantial risk that injury or death would occur;
- the discharge of the firearm caused injury to any individual; or
- the discharge of the firearm killed or caused serious injury to any individual.

Possession creating "a substantial risk that injury or death would occur" would be a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$500, or both; possession causing someone injury by discharging the firearm would be a felony punishable by imprisonment for up to 4 years or a fine of up to \$1,000, or both; possession resulting in the killing or seriously injuring of someone by discharging the firearm would be a felony punishable by imprisonment for up to 15 years or a fine of up to \$5,000, or both.

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A firearm would not be subject to forfeiture for the state civil infraction unless the person had previously been found responsible for such a state civil infraction or for one of the three listed crimes. (Section 239 of the penal code otherwise requires that “all pistols, weapons or devices carried, possessed or used” contrary to the penal code be otherwise forfeited to the state.)

Exemptions. The bill would not apply to a person if any of the following circumstances existed:

- the person equipped the firearm with a trigger lock or other locking or safety device or mechanism (other than the firearm’s “safety”) that was designed to render a firearm temporarily inoperable or otherwise incapable of being discharged;
- the person placed the firearm in a container, compartment, or location that a reasonable person would believe was secure from access by the juvenile;
- the person placed the firearm in a locked storage container, compartment, or case that was operated by a key or combination or was equipped with a locking device or other device designed to prevent unauthorized access to, or operation of, that firearm by the juvenile;
- the person unloaded the firearm in chamber and magazine and stored the ammunition for that firearm in a locked container, compartment, or case that was operated by a key or combination or was equipped with a locking device or other device designed to prevent unauthorized access to that ammunition by the juvenile;
- the person lawfully carried the firearm on his or her person, or kept the firearm within such close proximity that it could be readily retrieved by the individual as if it were lawfully carried on his or her person;
- the person permitted or allowed access by the juvenile to the firearm to lawfully use, possess, or transport it on the person’s own property or as otherwise provided by law (including, but not limited to, lawful hunting or target shooting, or lawful self-defense or the lawful defense of another person); or
- another individual gained access to the firearm by unlawful means.

It would be a rebuttable presumption that someone was exempt from the bill’s provisions if he or she presented either (1) a certificate of inspection from the safety inspection required of all pistols or (2) proof of purchase of either (a) a trigger lock or other locking or

safety device or mechanism that was designed to render a firearm temporarily inoperable or otherwise incapable of being discharged, or (b) a container, compartment, or case that was operated by a key or combination or was equipped with a locking device or other device designed to prevent unauthorized access to, or operation of, that firearm by the juvenile.

The bill would define “juvenile” to mean someone less than 18 years old who was not legally emancipated, and would specify that it would not prohibit someone from being charged with, convicted of, or sentenced for another violation of law arising out of the violation of the bill’s provisions.

House Bill 5747 would add a new section to the Revised Judicature Act (MCL 600.2951a) to impose civil liability on anyone who left a firearm unattended in any place in which he or she knew or “recklessly” disregarded that a juvenile might be lawfully present, not under adult supervision, and able to gain access to the firearm under circumstances that would violate the provisions of House Bill 5745. More specifically, such a person would be liable for any death, injury, or damages caused by the discharge of that firearm and the access created a substantial and unjustifiable risk that injury or death would occur.

A person who obtained a firearm that was left unattended in violation of the bill’s provisions would not be entitled to recover damages, nor would the person’s estate, if the person committed or attempted to commit a crime while possessing the firearm.

The bill would apply regardless of whether the person were charged with or convicted of violating the provisions of House Bill 5745. The same exemptions would apply to the bill’s provisions as those under House Bill 5745 (see above).

Effective date. All three bills, if enacted, would take effect September 1, 2000.

BACKGROUND INFORMATION:

On February 29, 2000, Kayla Rolland, a six-year-old, was shot and killed by a six-year-old classmate. The boy became the youngest suspect in a spate of shocking school shootings that have rocked the nation. While prosecutors have pointed out that as a matter of law, a 6-year-old cannot be held criminally liable for his actions, the man who allegedly was keeping the weapon in the home where the boy lived has been charged with involuntary manslaughter. The weapon used was a stolen .32-caliber handgun that the boy

allegedly found under a blanket in an uncle's house where he was staying.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Proponents of the bills argue that they will fill voids in both criminal and civil law. The direction taken in the bills is an improvement over many attempts at gun regulation, because it adds to gun owners' responsibilities rather than taking away their rights. Further, the exceptions will serve to protect gun owners who have acted responsibly, while still making certain that punishment will more easily and certainly be secured against those who fail to treat the responsibility of gun ownership with appropriate care.

Against:

Opponents of the bills argue that although the intent of the bills is laudable, there are many problems that should be addressed if the bills are to actually improve matters. Opponents argue that the bills' standards of care are as high or higher than the current standards of care for already existing crimes and for civil actions which may already be pursued under common law. They point out that while the threshold standard of care needed to show negligent homicide with an automobile is ordinary negligence (that is, that the defendant knew or should have known of the risk), the bills would require that gun owner negligence would have to be established by showing gross negligence (that the defendant knew or recklessly disregarded the risk). Further, the bills dealing with the changes to criminal law essentially keep in place the difficult to prove standard of care already needed to prove a case of involuntary manslaughter. (However, the changes would improve some situations by allowing the prosecution of individuals whose actions had caused injury, rather than death; a charge of involuntary manslaughter would be easier pursue in cases involving a death because the defenses provided in the bills would not apply under an involuntary manslaughter charge.)

Opponents further argue that the exemptions and exceptions provided in the bills effectively eliminate the responsibility they propose to create. Specifically, the rebuttable presumption provisions would simply place another hurdle in the way of prosecution. In particular, the provision that would exempt someone

who had a certificate of inspection, which is required by law, would essentially provide that any lawful gun owner, regardless of how irresponsibly he or she acted, would be presumed to have acted responsibly. Opponents also argue that the exceptions are so broad that if the gun owner in the involved in the Kayla Rolland shooting had been the legal owner of the gun involved, he would likely be protected from both civil and criminal prosecution under these bills.

In addition, opponents of the bills point out that House Bill 5747 would make it more difficult for an irresponsible gun owner to be held liable in a civil action for allowing a minor to get to and use a firearm than current law. Under common law, an irresponsible gun owner could be found liable under a negligence standard rather than the gross negligence standard that the bill would establish. Furthermore, the exceptions provided would further decrease the likelihood that an irresponsible gun owner who could be civilly liable under common law would face civil liability under the bill's provisions.

Response:

Proponents argue that the bills represent a necessary first step towards better gun laws. Even if the bills might not be as broad or as effective as many proponents of gun regulation might wish, many gun control advocates feel that merely getting such laws enacted and on the books is a huge step forward and argue that once enacted these laws could more easily be amended at a later date. Further, the argument that the presumptions in the bills would protect all lawful gun owners even if they were negligent is unsupported. First, it should be noted that lawful gun owners tend to behave responsibly; most of the gun crimes in the nation are perpetrated by people who have illegally obtained firearms. Furthermore, the presumption in the bills is subject to evidence offered by the prosecution in a criminal case, or the plaintiff's counsel in a civil case, that would refute or rebut that presumption. If a party is presumed to have acted responsibly, but there is clear evidence that he or she did not, then the presumption will not serve to protect that individual.

POSITIONS:

The National Rifle Association supports the bills. (5-19-00)

The Michigan United Conservation Clubs is neutral on the bills. (5-19-00)

The Prosecuting Attorneys Association of Michigan has not taken a position on the bills. (5-17-00)

The Michigan Trial Lawyers Association opposes
House Bill 5747. (5-19-00)

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Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.