

Commentary for Safe Storage Model Legislation

December 13, 2023

The safe storage of firearms can save lives. In 2020, firearm-related injuries became the leading cause of injury deaths for children and teens ages 1-19; firearms are used in nearly half of suicides by minors; and the majority of individuals who carried out a K-12 mass shooting obtained the firearms used in the shooting from a family member. Keeping firearms and ammunition locked has been associated with a lower risk of firearm injuries for children and teens in homes where guns are stored. Safe storage also protects adults by preventing unintentional shootings and decreasing the risk of gun suicides, gun thefts, and criminal discharges of firearms. This model legislation provides a framework for states to consider as they determine whether and how to craft laws mandating the safe storage of firearms. The model below draws upon similar laws adopted across the country.

This model legislation is designed to identify the main features (and varying specifics) of existing safe storage statutes that have been adopted in a number of states. These statutes are generally of two types—“conditional storage” statutes and “required storage” statutes. The “conditional storage” statutes generally require that individuals who possess a firearm securely store the firearm, when not in use, if (a) they know or reasonably should know that a juvenile could gain access to the firearm if not secure and/or (b) they know or reasonably should know that a person present or residing on the premises is ineligible to possess a firearm pursuant to state or federal law. The “required storage” statutes require firearm owners/possessors to securely store the firearm at all times when it is not in use. Some state statutes combine these types—for example, by requiring secure storage as a baseline and imposing additional requirements and/or liability when a juvenile or prohibited person has access.

The model legislation below likewise combines aspects of both approaches. It includes language that would require individuals who possess firearms to securely store such firearms at all times when the firearms are not in use. It further provides for civil liability where an individual’s failure to safely secure a firearm results in the harm envisioned by the “conditional storage” statutes—a minor or someone ineligible to possess a firearm gaining access to an unsecured firearm and injuring themselves or another.

The Department is not endorsing any particular formulation of a safe storage statute, and the model legislation is not intended to provide a comprehensive firearm-safety scheme that could be adopted wholesale. Rather, this model statute draws from the state laws already in existence; identifies key provisions that may be important to help ensure fair, effective, and safe implementation of such a law; and identifies options for states to consider as they legislate in this area. In drafting its own legislation, each state must account for its own policy, legal, administrative, and operational considerations and requirements.

The provisions of the model legislation are as follows:

SEC. 1. SECURING FIREARMS

Section 1 provides a framework for a statute mandating the safe storage of firearms when not in use.

Section 1 first sets forth the situations in which an individual is required to secure a firearm and a description as to what constitutes “secure.” Although that description is written at a high level of generality for purposes of the model legislation, states may elect to enumerate in greater detail the various secure-storage mechanisms and options available to their residents. The Department has published a [Safe Storage Fact Sheet](#) listing some common options for secure at-home storage, alongside estimated costs (which some states help to cover through tax rebates or exemptions^[i]). Voluntary out-of-home storage is another option for gun owners, and, to that end, the Bureau of Alcohol, Tobacco, Firearms and Explosives recently published an [open letter](#) providing guidance on two methods by which federal firearms licensees (such as gun stores) can provide secure-storage services to their customers.

With respect to the situations in which safe storage is mandated, some states require a person who possesses a firearm to safely secure said firearm when unattended only if a minor could potentially access the firearm (*e.g.*, Florida^[ii], Michigan^[iii], Texas^[iv]); others also require safe storage when an individual who is ineligible to possess a firearm is present (*e.g.*, California^[v]; Colorado^[vi]; New York^[vii]); and still others require safe storage *any* time a firearm is unattended (Connecticut^[viii], Massachusetts^[ix], Oregon^[x]). This model bill generally requires any person who possesses a firearm to safely store the firearm when it is not under their direct control, with a limited exception for current law enforcement officers if their law enforcement agency implements a different storage requirement and they comply with their agency’s policy.

Section 1 further provides for appropriate penalties, as determined by the state implementing the model legislation, for those who fail to comply with the storage requirements. Some states include a wide range of increasing penalties depending on such factors as whether the person committed any prior violations of the storage requirements, the type of firearm at issue, and whether any harm results (*e.g.*, Nevada^[xi], Massachusetts^[xii], Michigan^[xiii]).

SEC. 2. WRITTEN WARNINGS AT POINT OF SALE

Section 2 would require those engaged in the retail sale of firearms to warn purchasers that failure to safely store the firearm could result in penalties. Several states have adopted similar warning requirements (*e.g.*, Connecticut^[xiv], Texas^[xv], Vermont^[xvi]). Section 2 further provides for appropriate penalties, as determined by the state implementing the model legislation, for the failure to provide this notification.

Although the model legislation confines the warning requirement to retail sellers at the point of sale, some states have imposed similar notice requirements on other actors in other circumstances. For example, California’s Educational Code^[xvii] now requires local educational agencies to notify families annually about safe gun storage beginning in the 2023–24 school year. If so desired, states can broaden the reach of Section 2 to cover additional persons/entities or enact a parallel provision in applicable administrative codes.

SEC. 3. CIVIL LIABILITY

Section 3 provides that any individual violating the safe storage requirements in Section 1 is strictly liable for damages if a minor or an individual who is prohibited under state or federal law from possessing a firearm obtains the firearm and causes injury to their own person or the person

or property of another. States have adopted a variety of civil liability frameworks to address harms stemming from violations of their safe storage statutes, with evidence of a violation constituting negligence *per se* in at least one state (Oregon^[xviii]) and evidence of a violation making the party that committed the violation strictly liable for damages in another (Connecticut^[xix]).

[i] *See, e.g.*, Conn. Gen. Stat. § 12-412(101); 36 Maine Rev. Stat. § 1760(111); N.J. Stat. § 2C:58-2; Tenn. Code § 67-6-399; Tex. Tax Code § 151.3131; Va. Code § 58.1-339.14.

[ii] Fla. Stat. § 790.174

[iii] Mich. Comp. Laws Serv. § 28.429

[iv] Tex. Penal Code § 46.13

[v] Cal. Penal Code §§ 25000-25225

[vi] Colo. Rev. Stat. § 18-12-114

[vii] N.Y. Penal Law §§ 265.45, 265.50

[viii] Conn. Gen. Stat § 29-37i

[ix] Mass. Gen. Laws ch. 140, § 131L

[x] Or. Rev. Stat. § 166.395

[xi] Nev. Rev. Stat. § 202.300

[xii] Mass. Gen. Laws ch. 140, § 131L

[xiii] Mich. Comp. Laws Serv. § 28.429

[xiv] Conn. Gen. Stat § 29-37b

[xv] Tex. Penal Code § 46.13

[xvi] Vt. Stat. tit. 13, § 4024

[xvii] Cal. Educ. Code § 49392

[xviii] Or. Rev. Stat. § 166.395

[xix] Conn. Gen. Stat § 52-571g

SAFE STORAGE MODEL LEGISLATION

SEC. 1. SECURING FIREARMS

(a) STORAGE REQUIREMENTS.—

(1) A possessor of a firearm shall, at all times that the firearm is not carried by the possessor on their person or within such close proximity that the possessor can readily retrieve and use the firearm as if such possessor carried the firearm on their person, secure the firearm:

(A) In a locked container, such as a gun safe; or

(B) With a properly engaged tamper-resistant mechanical lock or other tamper-resistant safety device rendering the firearm inoperable.

(2) For purposes of paragraph (1) of this subsection, the possessor has not secured the firearm as required if:

(A) A key or combination to the container, mechanical lock, or other safety device is readily available to a person whom the possessor has not authorized to carry or control the firearm or who is not legally permitted to possess the firearm; or

(B) The firearm is a handgun and is left unattended in a vehicle (regardless of whether the vehicle itself is locked) without being secured in a separate locked container or with a safety device rendering the firearm inoperable.

(b) APPLICATION TO LAW ENFORCEMENT.—This section does not apply to a current law enforcement officer, with respect to a particular firearm, if the law enforcement agency employing that officer has a policy regarding safe storage and the firearm is stored in compliance with that policy.

(c) PENALTY.—Any person who knowingly engages in conduct that violates subsection (a) of this section shall be subject to [appropriate penalties specified by state law].

SEC. 2. WRITTEN WARNINGS AT POINT OF SALE

(a) Each person, firm, or corporation that engages in the retail sale of any firearm, at the time of sale of any such firearm, shall provide to the purchaser thereof a written copy of Section 1 and a written warning that shall state in block letters not less than one inch in height: “UNLAWFUL STORAGE OF A FIREARM MAY RESULT IN [penalties specified by state law].”

- (b) Each such person, firm, or corporation shall conspicuously post and, at all times, display the warning specified in subsection (a) of this section in block letters not less than three inches in height.
- (c) Any person, firm, or corporation that violates any provision of Section 2 shall be subject to [appropriate penalties specified by state law].

SEC. 3. CIVIL LIABILITY

- (a) **STRICT LIABILITY.**—Any person whose act or omission constitutes a violation of Section 1(a) shall be strictly liable for damages incurred through the possession or use of such person’s firearm by a minor or a resident of the premises who is ineligible to possess a firearm under state or federal law or who poses a risk of imminent personal injury to themselves or to other individuals. For the purposes of this section, “minor” means [appropriate age specified by state law].
- (b) **EXCEPTION.**—Subsection (a) of this section does not apply if the injury results from a lawful act of self-defense or defense of another person.