

June 13, 2018

MEMORANDUM

To: Gender Equity, Safe Communities, New Americans and Education Committee
From: Greg Doss, Central Staff Analyst
Subject: CB 119266 (Firearm Storage) and CB 119267 (Lost and Stolen Firearms)

Summary:

Gun violence is one of the leading causes of death in America.ⁱ Some jurisdictions are responding to this epidemic by passing laws that mandate the safe storage of firearms. This memo describes: (1) two Council bills pertaining to safekeeping of firearms, (2) identifies issues related to the bills, and (3) discusses literature on gun impacts and gun control.

- [Council Bill 119266](#) requires that guns be secured in a locked container when not in the possession or under the control of their owner or other lawfully authorized user. The legislation creates a civil infraction and fines for improperly storing a firearm, when a prohibited person obtains unauthorized firearm access, or when a prohibited person uses a firearm to harm oneself or others.
- [Council Bill 119267](#) increases the existing fine for failing to report a lost or stolen firearm.

Council Bill 119266: Gun Storage Legislation Detailed Summary:

The following sections highlight the significant policy provisions of the safe storage legislation and the lost or stolen firearms legislation:

A. Definitions (10.79.010)

- a. At Risk Person - Any person who has made statements or exhibited behavior that indicates to a reasonable person there is a likelihood that the person is at risk of attempting suicide or causing physical harm to oneself or others.
- b. Lawfully Authorized User – Any person who is not in unlawful possession of a firearm, is not prohibited from possessing a firearm under state or federal law, and has express permission to possess and use the firearm.
- c. Prohibited Person – Any person who is not a lawfully authorized user.
- d. Locked Container – Any storage device approved of or meeting specifications established by the Chief of Police by rule.
- e. “Minor” means a person under 18 years of age who is not authorized under RCW 9.41.042 to possess a firearm.
- f. “Prohibited person” means any person who is not a lawfully authorized user.

B. Safe Storage of Firearms (10.79.020)

Unless carried by or under the control of the owner or other lawfully authorized user, firearms must be kept in a locked container while in buildings and on any premises. It shall be a civil infraction for any person to store or keep any firearm in any premises unless such weapon is secured in a locked container. This is the case regardless of whether a trigger lock is used. (See 4d. below for more information.)

C. Unauthorized access prevention (10.79.030)

Not limited to any premises, it shall be a civil infraction if any person knows or reasonably should know that a minor, an at-risk person, or a prohibited person is likely to gain access to a firearm belonging to or under the control of that person, and a minor, an at-risk person, or a prohibited person obtains the firearm.

D. Civil Penalties and liability (10.79.040)

- a. \$500 or Community restitution if firearm is not stored properly. 10.79.020
- b. \$1,000 or Community restitution if a minor, an at-risk person, or a prohibited person obtains the firearm. 10.79.030
- c. \$10,000 if a prohibited person, an at-risk person, or a minor obtains a firearm and uses it to injure or cause the death of oneself or another or uses the firearm in connection with a crime. 10.79.030
- d. A violation of SMC 10.79.020 or 10.79.030 shall be prima facie evidence of negligence per se in any civil proceeding if an at-risk person or a minor obtains a firearm and uses it to injure or cause the death of oneself or another or uses the firearm in connection with a crime

E. Notice of Infraction, Hearing, Contesting Infraction (10.79.050, 060 and 070)

A Court or peace officer may issue a notice of infraction. Any person who receives a notice of infraction has the right to contest, to not contest or to explain mitigating circumstances. In any hearings, the Court may defer findings and entry of its order for up to one year. Upon deferring findings, the Court may assess costs as the Court deems appropriate. At the end of the deferral period, the Court may dismiss the infraction.

A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury. The person named in the notice may subpoena witnesses, the officer and has the right to present evidence and examine witnesses. The burden of proof is on the City to establish the commission of the infraction. The Court shall determine whether the infraction was committed. An appeal may be made to the Superior Court, which is subject only to a discretionary review.

F. Rules, Evaluations and Effective Date (Sections 2-6)

Section 2. Within 30 days of passage, the Chief of Police must promulgate rules to implement the legislation, including locked container specifications.

Section 3. Within 90 days of passage, the Chief of Police must devise a plan to conduct a survey to determine compliance with SMC 10.79.020 and 10.79.030 and that the survey be completed within one year of the effective date.

Within 12 months of passage, and every five years thereafter, the City Auditor must assess the impacts of the ordinance on gun injuries and deaths and provide a report to Council.

The City Auditor and the Chief of Police shall provide a report of each assessment and survey to the City Council's Gender Equity, Safe Communities, New Americans and Education Committee or its successor within 60 days of completion.

Section 4. Severability Clause

Section 5. Section one of the ordinance shall take effect 180 days after the effective date (see Section 6 below).

Section 6. The ordinance shall take effect and be in force 30 days after its approval by the Mayor, or as provided by SMC 1.04.020.

Council Bill 119267 - Stolen Firearms Legislation Detailed Summary:

The following sections highlight the significant policy provisions of the safe storage legislation and the lost or stolen firearms legislation:

- a. The existing civil fine or forfeiture for failure to report a lost or stolen firearm is increased from an amount not to exceed \$500 to an amount not to exceed \$1,000.
- b. The civil fine is an infraction citation is processed similar to SMC 10.79.050, .060 and .070 in the Safe Storage Legislation (CB 119266).

Potential Issues:

1. Rulemaking timeframe - Section 2 of CB 119266 notes that within 30 days of passage, the Chief of Police must promulgate rules to implement the legislation, including locked container specifications. Central Staff has asked the executive: (1) whether the new Chief will be able to fulfill this requirement in the allotted timeframe; (2) whether SPD has the capacity and the resources for rulemaking; and whether the Chief's process will include consultation with the community, including hunters who will be required to store long guns in locked containers. The following statement was provided by the Executive:

“While one reason to defer an item to rule making is complexity, this is a case where we believe the issues are relatively simple, but are deferring to rule making to retain flexibility into the future. If new options or technologies come to market that clearly meet our objectives of keeping firearms out of the hand of youth or dangerous people, we want to be sure that they can be seen as meeting the law – without having to pass new City legislation. Seattle Police have already begun to look at this issue, and we know that across the country there are established and tested rules on safe storage – rules that have worked for law-abiding gun owners, including sportsmen and hunters. As a result, we believe SPD can relatively quickly establish clear guidelines for Seattle about what constitutes safe storage.”

2. Cumulative penalties - The Law Department has indicated that the citations written under the proposed legislation are not related to the number of victims harmed by the use of a gun. In the case of a mass shooting, a person could be assessed fines for two violations, (1) failure to safely store; and (2) failure to prevent access for a single incident resulting in a cumulative penalty of \$20,000.
3. Citation authority – CB 119266 authorizes Courts to issue citations, but Seattle Municipal Court staff have indicated that Court rules prevent the SMC from issuing citations. Although, the rules would allow for the City Attorney to issue citations for SMC 10.79.020 or 10.79.030.

Court staff also indicates that the option of a deferred finding is authorized for traffic infractions, RCW 46.63.070(5), and that the option is not required for non-traffic infractions. Therefore, offering the deferred finding for the infractions would be a policy decision for the Council.

4. Auditing resources - The City Auditor has indicated that the impact study required in Section 3 could require significant resources and time to complete. The following statement was provided by the Auditor:

“The Office of City Auditor has reached out to the Harborview Injury Prevention & Research Center, the UW Department of Epidemiology/School of Public Health, Seattle Children's Research Institute, and the Violence & Injury Prevention Section of Public Health-Seattle & King County to explore the feasibility of an evaluation “to assess the impacts of the provisions of this ordinance on gun injuries and deaths in Seattle, including the numbers of overall deaths, youth deaths, overall injuries, youth injuries, overall suicides, and youth suicides.” All of these partners agree that there are a range of options for conducting a rigorous evaluation of the safe storage ordinance. However, these options would each require additional resources for data collection and analyses to determine any causal links between the ordinance and the outcomes (i.e., impact evaluation).”

Firearm Storage Research:

Council Bill 119266 on Firearm Storage identifies in its opening recitals a number of research studies examining the relationship between safe storage and the reduction of suicide, school shootings and the criminal use of stolen guns (crime guns). More detail on these studies is provided in Appendix B. The sections that follow provide information about gun storage regulations at the federal level and in other states. These laws have similar storage requirements to CB 119266, and many impose criminal penalties or civil liability on gun owners that irresponsibly store their firearms and such storage results in harm to others. Council Bill 119266 is relatively unique in its approach to allow the police and courts to levy a civil fine for the improper storage of firearms.

Federal Laws on Gun Storage: ii

There is no federal preemption on gun control laws. Rather, the federal government has elected to pursue a strategy whereby states are free to regulate firearms simultaneously with the federal government. Under this approach, there are two independent regulatory schemes—one at the federal level and one at the state level. Accordingly, anyone who is involved in the purchase or ownership of firearms must comply with both sets of regulations.ⁱⁱⁱ

Federal statutes do not mandate trigger locks or safe storage in every situation. Additionally, there are no current federal standards for the specification of locking devices such as trigger locks. On January 16, 2013, President Obama signed a series of executive orders to address gun violence and school safety in the wake of the Newtown, Connecticut school massacre in December 2012. One of these orders calls for the Consumer Product Safety Commission to review the effectiveness of gun locks and gun safes, including existing voluntary industry standards, and take any steps that may be warranted to improve the standards.

Current federal law makes it unlawful for any licensed importer, manufacturer or dealer to sell or transfer any handgun unless the transferee is provided with a secure gun storage or safety device. The legislation does not apply to transfers by private sellers and does not require that transferees use the device.

Other State Laws on Gun Storage:^{iv}

Eleven states have laws concerning firearm locking devices. Massachusetts is the only state that generally requires that all firearms be stored with a lock in place; California, Connecticut, and New York impose this requirement in certain situations. Other state laws regarding locking devices are similar to the federal law, in that they require locking devices to accompany certain guns manufactured, sold, or transferred. Five of the eleven states also set standards for the design of locking devices or require them to be approved by a state agency for effectiveness. A comparison of state and local law requirements for locked gun storage can be found in Appendix A.

At-Risk / Vulnerable Persons:^v

Three states require firearms to be stored with a locking device in place if the person resides with someone who is ineligible to possess firearms. New York enacted a law in 2013 that requires a firearm owner to keep his or her firearm locked if he or she lives with a convicted felon, a domestic abuser, or a person with a federally prohibitive mental health history. California enacted a similar law that requires a firearm owner to keep his or her firearm in a locked container or secured with a locking device if he or she lives with a person prohibited under state or federal law from possessing a firearm. Connecticut's law is also similar, but it only applies to loaded firearms.^{vi}

Child Access Protection (CAP) Laws:^{vii}

There are no CAP laws at the federal level, and federal law does not generally require gun owners to safely store their guns. Federal law does, however, make it unlawful for any licensed importer, manufacturer or dealer to sell or transfer any handgun unless the transferee is provided with a "secure gun storage or safety device,"^{viii} and immunizes the lawful owner of a handgun who uses a secure gun storage or safety device from certain civil actions based on the criminal or unlawful misuse of the handgun by a third party.^{ix}

Twenty-seven states and DC have enacted child access prevention laws. CAP laws take a variety of forms. The most restrictive laws impose criminal liability when a minor is likely to gain access to a negligently stored firearm regardless of whether the minor actually gains access (California). The least restrictive prohibit certain persons, such as parents or guardians, from directly providing a firearm to a minor (Utah). There is a wide range of laws that fall somewhere between these bookends, including laws that impose criminal liability for negligently stored firearms, but only where the child uses the firearm and causes death or serious injury. Less restrictive laws impose penalties only in the event of reckless, knowing or intentional conduct by the adult.

The state of Washington has no specific CAP laws, however, there is some precedence for the use of a criminal charge of reckless endangerment when a person has left a gun within reach of a child and the child has shot himself or herself.

States Imposing Civil Liability on Persons Who Fail to Store Firearms Properly:^x

Some states have passed laws that make it easier to prove in a Civil Court negligence for the irresponsible storage of a firearm. These laws allow for the assumption of negligence when parents fail to safely store a firearm and a child harms himself or others. Council Bill 119266 uses a similar approach to civil liability, except that it mandates the type of storage that must be used (lock box).

California imposes civil liability on the parent or guardian of a minor for damages resulting from the minor's discharge of a firearm, where the parent or guardian permitted the minor to have the firearm or left it accessible to the minor. Connecticut imposes strict liability in civil actions on persons who fail to store firearms securely, where a minor gains access and causes injury or death.

In Illinois, when a minor under the age of 21 legally acquires a firearms license by obtaining the permission of a parent or guardian, that parent or guardian becomes liable for civil claims for damages resulting from the minor's use of firearms or ammunition.

In Nevada, a parent or guardian is jointly and severally liable with the minor for civil damages caused by permitting the minor to possess a firearm, where the parent or guardian knows that the minor has a propensity to commit violent acts or has been previously adjudicated delinquent or has been convicted of a criminal offense, or knows or has reason to know that the minor intends to use the firearm for an unlawful purpose.

King County Safe Storage Program:

The County's LOK-IT-UP program promotes the safe storage of firearms as part of a partnership between gun storage retailers and public health. Launched in 2017, the program uses a "public health approach that helps us better understand how and when guns are used unsafely, and then develop solutions that put an end to these preventable injuries and losses. Guided by research and evidence, we develop prevention programs and evaluate those programs rigorously."^{xi} The program helps consumers decide which storage devices (lock boxes, safes or gun vaults with a push button, combination, or digital keypad lock) to use and promotes those devices that meet the California Department of Justice safety standards.^{xii} The program website provides information about storage devices as well as where they can be purchased in the community.

Please contact me should you have any questions.

Additional Information:

- Appendix A: Additional Information on State Laws on Safe Storage (pg. 8-9)
- Appendix B: Academic Research on Firearm Storage (pg. 10)
- References/Endnotes (pg. 11-12)

cc: Kirstan Arestad, Central Staff Director
Amy Tsai, Supervising Analyst, Central Staff

Appendix A.

Additional information on State Laws on Safe Storage:

<i>State</i>	<i>Firearms Must Be Kept Locked</i>	<i>Locks Must Accompany Dealer Sales</i>	<i>Locks Must Accompany Private Sales</i>	<i>Locks Must Meet Standards or Be Approved</i>
California ^{xiii}	Sometimes	Yes	Yes	Yes
Connecticut ^{xiv}	Sometimes	Handguns only	Handguns only	Yes
Illinois ^{xv}		Handguns only		
Maryland ^{xvi}		Handguns only		Yes
Massachusetts ^{xvii}	Yes	Handguns and assault weapons only ^{xviii}	Handguns and assault weapons only	Yes
Michigan ^{xix}		Yes		
New Jersey ^{xx}		Handguns only	Handguns only	
New York ^{xxi}	Sometimes	Yes		Yes
Ohio ^{xxii}		Offer only		
Pennsylvania ^{xxiii}		Handguns only		
Rhode Island ^{xxiv}		Handguns only		

Select Municipal Laws on Storage:

- New York City requires any lawful owner or custodian of a firearm to render his or her weapon inoperable by use of a safety locking device while the weapon is out of his or her immediate possession or control.^{xxv}
- San Francisco prohibits any person from keeping a handgun within a residence unless the handgun is stored in a locked container or disabled with a trigger lock unless the handgun is carried on the person.^{xxvi}

- The City of Sunnyvale prohibits a person from keeping a firearm in any residence owned or controlled by that person unless the firearm is stored in a locked container, or the firearm is disabled with a trigger lock, when it is not carried on the person or in his or her immediate control and possession.^{xxvii}
- The City of Albany enacted an ordinance prohibiting any person who owns or is a custodian of a firearm from storing or leaving out of his or her possession and control, a firearm that is not disabled by a locking mechanism or securely locked in a safe storage depository.^{xxviii}

Appendix B.

Academic Research on Firearm Storage

Research on Firearm Related Suicide and School Shootings: According to a study conducted by the University of Washington School of Public Health, sixty-three percent of firearm-owning households in Washington state do not store their firearms locked and unloaded.^{xxix} The study was conducted as part of research into suicides and suicide prevention.

Suicide is the 10th-leading cause of death in the United States, and almost half of suicide deaths involve a firearm. In Washington state in 2016, firearms were the leading method of suicide for men and the second-leading method for women. According to a Spokesman-Review analysis of state death records, 4,164 people in Washington ended their lives with a firearm between 2010 and 2017. That accounts for almost half of all suicides and 78 percent of gun deaths.^{xxx}

A study conducted at the Harborview Injury Prevention and Research Center found that safe storage of guns decreased the risk of accidental firearm injuries and suicides to youth by 73 percent.^{xxxi} This study examined 108 cases where a child or adolescent younger than 20 years gained access to a firearm and shot himself/ herself intentionally or unintentionally or shot another individual unintentionally.

The Harborview Study shows that the presence of a household firearm is associated with an increased risk of suicide among adults and adolescents. In a related study of suicide attempters and completers, investigators found that 75 percent of the guns were stored in the residence of the victim, friend or relative.^{xxxii}

Available evidence, as compiled by the RAND Corporation, indicates that child access prevention laws and safe storage laws reduce self-inflicted fatal or nonfatal firearm injuries among youth and reduce unintentional firearm injuries or unintentional firearm deaths among children.^{xxxiii} The study also indicates that limiting access to individuals with mental illness appears to reduce the rates of gun violence.^{xxxiv}

A Secret Service study of school shooters showed that access to guns was common to many attackers. Over two-thirds of the attackers acquired the gun (or guns) used in their attacks from their own home or that of a relative.^{xxxv}

Research on Stolen Firearms and Crime: Stolen guns can be used to commit subsequent crimes. The Bureau of Justice Statistics has reported that at least 232,000 guns were stolen per year from 2005-2010^{xxxvi} and A U.S. Department of the Treasury study revealed that nearly a quarter of ATF gun trafficking investigations involved stolen firearms and that ten percent of the investigations involved guns stolen from residences.^{4. xxxvii}

An estimated 150,000 adults in King County reported keeping a firearm unlocked in their homes in 2015.^{xxxviii} In 2017, the Seattle Police Department reported taking into custody 3,213 guns and has indicated that 250 guns were reported stolen in the same year.

References / Endnotes:

ⁱ <http://www.businessinsider.com/us-gun-death-murder-risk-statistics-2018-3>

ⁱⁱ Information provided for laws in other jurisdictions was selected from the website for the Giffords Law Center to prevent Gun Violence. Some changes are made for clarity and brevity.

ⁱⁱⁱ Harwood, William S. . "Gun Control: State Versus Federal Regulation of Firearms."Maine Policy Review 11.1 (2002) : 58 -73,
<https://digitalcommons.library.umaine.edu/mpr/vol11/iss1/12>.

^{iv} Information provided for laws in other jurisdictions was selected from the website for the Giffords Law Center to prevent Gun Violence. Some changes are made for clarity and brevity.

^v Information provided for laws in other jurisdictions was selected from the website for the Giffords Law Center to prevent Gun Violence. Some changes are made for clarity and brevity.

^{vi} <http://lawcenter.giffords.org/gun-laws/policy-areas/child-consumer-safety/safe-storage/>

^{vii} Information provided for laws in other jurisdictions was selected from the website for the Giffords Law Center to prevent Gun Violence. Some changes are made for clarity and brevity.

^{viii} 21.18 U.S.C. § 922(z)(1). A “secure gun storage or safety device” is defined under 18 U.S.C. § 921(a)(34) as: (A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device; (B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or (C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

^{ix} Everytown for Gun Safety, Analysis of School Shootings (Dec. 31, 2015), at <http://everytownresearch.org/reports/analysis-of-school-shootings/>

^x Information provided for laws in other jurisdictions was selected from the website for the Giffords Law Center to prevent Gun Violence. Some changes are made for clarity and brevity.

^{xi} <https://www.kingcounty.gov/depts/health/violence-injury-prevention/violence-prevention/gun-violence.aspx>

^{xii} <https://oag.ca.gov/firearms/fsdcertlist/>

^{xiii} 39.California and Massachusetts also require internal safety features on handguns, including chamber load indicators and/or magazine safety disconnect mechanisms. These provisions are discussed in our summary on Design Safety Standards

^{xiv} Conn. Gen. Stat. §§ 29-33(d), 29-37b, 29-37i.

^{xv} 720 Ill. Comp. Stat. 5/24-9.5.

^{xvi} 29.Md. Code Ann., Pub. Safety § 5-132.

^{xvii} Mass. Gen. Laws ch. 140, §§ 131K, 131L(a); 940 Mass. Code Regs. 16.02, 16.04 – 16.07.

^{xviii} An entity responsible for the manufacture, importation or sale as an inventory item or consumer good of these weapons that does not include or incorporate a locking device shall be individually and jointly liable to any person who sustains personal injury or property damage resulting from the failure to include or incorporate such a device. Mass. Gen. Laws ch. 140, §§ 131K.

^{xix} Mich. Comp. Laws § 28.435.

^{xx} N.J. Stat. Ann. § 2C:58-2a(5)(d), (e).

^{xxi} N.Y. Gen. Bus. Law § 396-ee; New York Penal Law § 265.45; N.Y. Comp. Codes R. & Regs. tit. 9, § 471.2.

^{xxii} Ohio Rev. Code Ann. § 2923.25.

^{xxiii} 18 Pa. Cons. Stat. § 6142.

^{xxiv} R.I. Gen. Laws § 11-47-60.3.

^{xxv} New York, N.Y., Admin. Code §§ 10-311, 10-312(a).

^{xxvi} S.F. Police Code § 4512(a), (c)(2).

^{xxvii} Sunnyvale Municipal Code § 9.44.040.

^{xxviii} Albany Municipal Code § 193-6.

^{xxix} Erin Renee Morgan, Anthony Gomez, Ali Rowhani-Rahbar, “Firearm Ownership, Storage Practices, and Suicide Risk Factors in Washington State, 2013–2016”, American Journal of Public Health: published online before print May 17, 2018

^{xxx} <http://www.spokesman.com/stories/2018/mar/25/in-washington-78-percent-of-gun-deaths-are-suicide/#/0>

^{xxxi} Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries. JAMA February 9, 2005
Corresponding Author: David C. Grossman, MD, MPH.

^{xxxii} 7. Grossman DC, Reay DT, Baker SA. Self-inflicted and unintentional firearm injuries among children and adolescents: the source of the firearm. Arch Pediatric Adolescent Med. 1999;153:875-878.

^{xxxiii} The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States. Santa Monica, CA: RAND Corporation, 2018. https://www.rand.org/pubs/research_reports/RR2088.html. Also available in print form.

^{xxxiv} The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States. “States that currently do not require a background check investigating all types of mental health histories that lead to federal prohibitions on firearm purchase or possession should consider implementing robust mental illness checks, which appear to reduce rates of gun violence.”

^{xxxv} https://www.secretservice.gov/data/protection/ntac/ssi_final_report.pdf

^{xxxvi} Lynn Langton, , U.S. Department of Justice, Office of Justice Programs, Firearms Stolen during Household Burglaries and Other Property Crimes, 2005-2010 1 (Nov. 2012), available at <http://1.usa.gov/1hmLgkk>. (via <https://everytownresearch.org/everytown-comments-on-lost-and-stolen/>)
Washington State Behavioral Risk Factor Surveillance System,

^{xxxvii} Following the Gun: Enforcing Federal Laws Against Firearms Traffickers, *supra* note 6, at 11, 41

^{xxxviii} Washington State Behavioral Risk Factor Surveillance System