HB 351-FN - AS INTRODUCED

2023 SESSION

23-0030
04/08

HOUSE BILL ***351-FN***

AN ACT relative to the negligent storage of firearms and relative to firearm safety devices.

SPONSORS: Rep. Meuse, Rock. 37; Rep. Heath, Hills. 41; Rep. Levesque, Straf. 4; Rep. M. Smith, Straf. 10

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill requires a locking safety device accompany all private and commercial firearms transactions and expands the criminal penalties for negligent storage of firearms.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

23-0030
04/08

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the negligent storage of firearms and relative to firearm safety devices.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Purpose. The general court finds that it is in the best interests of child protection and public safety to minimize the occurrence of incidents involving negligent storage of firearms by enacting safe firearms storage requirements and corresponding penalties for violations that will reduce the risk of an unsecured weapon falling into the hands of a minor, or a prohibited party.

2 New Section; Pistols and Revolvers; Firearm Safety Devices. Amend RSA 159 by inserting after section 12 the following new section:

159:12-a Firearm Safety Devices Required. In this section:

I.(a) "Commercial sale" means a transfer of ownership of a firearm listed or made available for public sale or exchange including but not limited to, a weapon purchased or exchanged for other goods and services at a licensed firearms dealer, a gun show, or via the commercial website of a dealer.

(b) "Firearm" means any weapon or device designed to be used as a weapon, which will, is designed to, or may be readily converted to, expel a projectile by the action of an explosive, explosion, or other means of combustion, or the frame or receiver of such a device, provided the term "firearm" shall not include the term "antique firearm" as defined in 18 U.S.C. Section 921(a)(16), or a weapon that has been rendered permanently inoperable and is incapable of being readily restored to a firing condition.

(c) "Licensed firearms dealer," "licensed dealer," or "dealer" means a person who has a valid federal firearms dealer license under 18 U.S.C. Section 923(a), and all additional licenses required by state or local law to engage in the business of selling or transferring firearms.

(d) "Private sale" means a transfer of ownership of a firearm between two parties where neither party is a licensed firearms dealer.

(e) "Safety device" means a device which has been specifically designed and manufactured for the purpose of allowing the owner to temporarily disable or securely store one or more firearms and may include:

(1) Trigger locks, cable locks, or other devices featuring a combination lock, key, digital key, radio frequency tag, automated fingerprint identification system, biometric key, voice recognition key, or other locking mechanism capable of preventing the firearm from being discharged by a person not authorized by the owner; or

(2) A lockbox or storage device with a combination lock, key, digital key, radio frequency tag, automated fingerprint identification system, biometric key, voice recognition key, or

other locking mechanism capable of preventing access to the firearm by a person not authorized by the owner.

(f) "Seller" means a person offering a firearm for commercial sale, private sale, or barter.

II.(a) No firearm shall be sold or transferred via commercial sale or private sale unless the sale or transfer includes or is accompanied by a firearm safety device.

(b) No firearm manufactured in this state shall be sold or transferred commercially or privately unless the sale or transfer includes or is accompanied by an approved firearm safety device.

III. Paragraph II shall not apply to:

(a) Antique firearms as defined in RSA 159:1.

(b) Personalized firearms or smart guns possessing an integrated RFID, biometric, voice identification, or other electronic access mechanism which restricts the firearm from being discharged by any person other than its owner.

IV. Sales or transfers shall be exempt from the requirements of paragraph II if the purchaser or transferee presents to the seller or owner a working safety or storage device when accepting delivery of the firearm.

V. Any licensed firearms dealer or private seller who violates the provisions of paragraph II shall be fined not more than $1,000.

VI. Nothing in this section shall be construed to reduce or limit any existing right to purchase and own a firearm or ammunition, or both, or to provide authority to any state or local agency to infringe upon the privacy of any family, home, or business except by lawful warrant.

3 Negligent Storage of Firearms. Amend RSA 650-C:1 to read as follows:

650-C:1 Negligent Storage of Firearms.

I. Nothing in this section shall be construed to reduce or limit any existing right to purchase and own firearms or ammunition, or both, or to provide authority to any state or local agency to infringe upon the privacy of any family, home or business except by lawful warrant.

II. As used in this section, "child," "juvenile" or "youth" shall mean any person under 16 years of age.

III. Any person who stores or leaves on premises under that person's control a loaded firearm[~~, and who knows or reasonably should know that a child is likely to gain access to the firearm~~] ***or an unloaded firearm with unsecured compatible ammunition in such a manner that it is available to a child*** without the ***supervision or*** permission of the child's parent or guardian, is guilty of a [~~violation~~] ***misdemeanor*** if a child gains access to a firearm and:

(a) The firearm is used in a reckless or threatening manner;

(b) The firearm is used during the commission of any misdemeanor or felony; [~~or~~]

(c) The firearm is negligently or recklessly discharged***;***

(d) The firearm is exhibited or displayed to others;

(e) The firearm is brought onto the grounds of any building or facility, public or private, accessible to members of the public where other people are present.

IV. Any person who violates paragraph III shall be [~~fined not more than $1,000~~] ***guilty of a misdemeanor***. ***If the child discharges a weapon obtained as a result of gross negligence resulting in the injury or death of the child or of another person, or uses it to commit a felony, such person shall be charged with a class B felony.***

V. This section shall not apply whenever any of the following occurs:

(a) The child has completed firearm safety instructions by a certified firearms safety instructor or has successfully completed a certified hunter safety course.

(b) The firearm is kept secured in a locked box, gun safe, or other secure locked space, or in a location which a reasonable person would believe to be secure, or is secured with a trigger lock or similar device that prevents the firearm from discharging.

(c) The firearm is carried on the person or within such a close proximity thereto so that the individual can readily retrieve and use the firearm as if carried on the person.

(d) The child obtains or obtains and discharges the firearm in a lawful act of self-defense or defense of another person.

(e) The person who keeps a loaded firearm on any premises which are under such person's custody or control has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises.

(f) The child obtains the firearm as a result of an illegal entry of any premises by any person or an illegal taking of the firearm from the premises of the owner without permission of the owner.

VI. A parent or guardian of a child who is injured or who dies of an accidental shooting shall be prosecuted under this section only in those instances in which the parent or guardian behaved in a grossly negligent manner.

VII. Licensees shall conspicuously post at each purchase counter the following warning in bold type not less than one inch in height: "IT IS IMPORTANT THAT THE OWNER OF A FIREARM SEEK FIREARM SAFETY INSTRUCTIONS FROM A CERTIFIED FIREARMS INSTRUCTOR AND KEEP FIREARMS SECURED FROM UNAUTHORIZED USE." A licensee failing to display this warning to the purchaser of a firearm shall be guilty of a violation.

4 Effective Date. This act shall take effect January 1, 2024.

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HB 351-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to the negligent storage of firearms and relative to firearm safety devices.

FISCAL IMPACT: [X] State [X] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	[ ] General	[ ] Education	[ ] Highway	[ ] Other

COUNTY:

Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill, effective January 1, 2024 (FY 2024), contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2023	FY 2024 through 12/31/23	FY 2024 (Starting 1/1/24 with repeal of Felonies First)
Violation and Misdemeanor Level Offense	$119	$122	$122
Complex Felony Case	$3,195	$3,244	$3,366
Routine Criminal Case	$644	$657	$779
Appeals	Varies	Varies	Varies

Judicial Council	FY 2023	FY 2024
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney - Felony	$825/Case	$825/Case

	$105 administrative fee $200 incarceration fee (If applicable)	$105 administrative fee $200 incarceration fee (If applicable)
Contract Attorney – Misdemeanor	$300/Case $70 administrative fee $100 incarceration fee (If applicable)	$300/Case $70 administrative fee $100 incarceration fee (If applicable)
Assigned Counsel - Felony. Homicide including capital cases. Travel time to court does not count toward the cap.	$125/Hour up to $20,000	$125/Hour up to $20,000
Assigned Counsel - Felony. Travel time to court does not count toward the cap.	$90/Hour up to $5,500	$90/Hour up to $5,500
Assigned Counsel- Misdemeanor. Travel time to court does not count toward the cap.	$90/Hour up to $2,000	$90/Hour up to $2,000
Assigned Counsel - Supreme Court Appeal	$125/Hour up to $10,000	$125/Hour up to $10,000

It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake of new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.

Department of Corrections	FY 2023	FY 2024
FY 2022 Average Cost of Incarcerating an Individual	$64,223	$64,223
FY 2022 Annual Marginal Cost of a General Population Inmate	$6,123	$6,123
FY 2022 Average Cost of Supervising an Individual on Parole/Probation	$688	$688

The Department notes any increase in the incarcerated population will have a direct impact on overtime costs given the Department's history of challenges associated with recruitment. In addition, the New Hampshire State Prison for Men has a degrading infrastructure which will only be exacerbated if an increase in the incarcerated population were to occur.

NH Association of Counties	FY 2023	FY 2024
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	$105 to $125	$105 to $125

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

The Department of Safety states this bill will have no impact on its performance of firearm checks and therefore will have no impact on its budget.

AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections, Safety, and Justice, Judicial Council, and New Hampshire Association of Counties